

# SELECTED RETROACTIVITY CASELAW



**Prepared by the  
Office of General Counsel  
U.S. Sentencing Commission  
Crack Retroactivity Summit**

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**Disclaimer:** This document lists certain issues and caselaw discussed during the Commission panel at the Crack Retroactivity Summit in Charlotte. The list is not a complete compilation of the caselaw pertaining to the issues, does not represent the official views of the Commission, and should not be considered definitive.

Retroactivity Caselaw Issues

**Can a court grant a § 3582(c)(2) motion based on the new crack amendments prior to March 3, 2008, the effective date of the amendment to §1B1.10?**

*United States v. Ross*, ---F.3d---, 2008 WL 115115 (9th Cir. Jan. 14, 2008).  
*Humphrey v. United States*, 2007 WL 4589749 (N.D. Ohio Dec. 27, 2007).  
*Pierre-Louis v. United States*, 2008 WL 114468 (D. Me. Jan. 9, 2008).  
*United States v. Womack*, 2008 WL 78782 (S.D. Ill. Jan. 7, 2008).  
*United States v. Allende*, 2007 WL 4367813 (S.D. Tex. Dec. 13, 2007).

**Is a § 3582(c)(2) proceeding a full resentencing?**

New USSG §1B1.10(a)(3).

*United States v. Jordan*, 162 F.3d 1 (1st Cir. 1998).  
*United States v. Swint*, 2007 WL 2745767 (3d Cir. Sept. 21, 2007).  
*United States v. Legree*, 205 F.3d 724 (4th Cir. 2000).  
*United States v. Whitebird*, 55 F.3d 1007 (5th Cir. 1995).  
*United States v. Tidwell*, 178 F.3d 946 (7th Cir. 1999).  
*United States v. Hicks*, 472 F.3d 1167 (9th Cir. 2007).  
*United States v. Torres*, 99 F.3d 360 (10th Cir. 1996).  
*United States v. Bravo*, 203 F.3d 778 (11th Cir. 2000).  
*United States v. Moreno*, 421 F.3d 1217 (11th Cir. 2005).  
*United States v. Suarez*, 2007 WL 4547773 (11th Cir. Dec. 27, 2007).

**Does a defendant have the right to a § 3582(c)(2) hearing?**

*Restrepo-Contreras v. United States*, 99 F.3d 1128 (1st Cir. 1996).  
*United States v. Legree*, 205 F.3d 724 (4th Cir. 2000).  
*United States v. Townsend*, 98 F.3d 510 (9th Cir. 1996).

**Does a defendant have the right to be present at a § 3582(c)(2) hearing?**

Fed. R. Crim. P. 43(b)(4).

**Does a defendant have a right to counsel under § 3582(c)(2)?**

*United States v. Reddick*, 53 F.3d 462 (2d Cir. 1995).  
*United States v. Legree*, 205 F.3d 724 (4th Cir. 2000).  
*United States v. Whitebird*, 55 F.3d 1007 (5th Cir. 1995).  
*United States v. Tidwell*, 178 F.3d 946 (7th Cir. 1999).  
*United States v. Townsend*, 98 F.3d 510 (9th Cir. 1996).

**Does the court have to order a new presentence report on a § 3582(c)(2) motion?**

*United States v. Mueller*, 168 F.3d 186 (5th Cir. 1999).  
*United States v. Wyatt*, 115 F.3d 606 (8th Cir. 1997).  
*United States v. Forty-Estremera*, 498 F. Supp. 2d 468 (D. P.R. 2007).

**Under what circumstances could a court go below the amended guideline range?**

Where a downward departure was given at the original sentence:

New USSG § 1B1.10(b)(2)(B).

*United States v. Wyatt*, 115 F.3d 606 (8th Cir. 1997).  
*United States v. Vautier*, 144 F.3d 756 (11th Cir. 1998).

Where a downward departure was not given at the original sentence:

New USSG § 1B1.10(b)(2)(A).

*United States v. Jordan*, 162 F.3d 1 (1st Cir. 1998).  
*United States v. Hasan*, 245 F.3d 682 (8th Cir. 2001).  
*United States v. Hicks*, 472 F.3d 1167 (9th Cir. 2007).  
*United States v. Bravo*, 203 F.3d 778 (11th Cir. 2000).  
*United States v. Forty-Estremera*, 498 F. Supp. 2d 468 (D. P.R. 2007).

**Are courts post-Booker still bound by the safety valve requirements in 18 U.S.C. § 3553(f) inasmuch as it requires judicial factfinding?**

*United States v. Morrisette*, 429 F.3d 318 (1st Cir. 2005).  
*United States v. Bermudez*, 407 F.3d 536 (1st Cir. 2005).  
*United States v. Barrero*, 425 F.3d 154 (2d Cir. 2005).  
*United States v. Carey*, 382 F.3d 387 (3d Cir. 2004).  
*United States v. McKoy*, 452 F.3d 234 (3d Cir. 2006).  
*United States v. Payton*, 405 F.3d 1168 (10th Cir. 2005).  
*United States v. Brehm*, 442 F.3d 1291 (11th Cir. 2006).

**If a defendant was sentenced as a career offender pursuant to §4B1.1, what impact does Amendment 706 have on his sentence?**

*United States v. Sewell*, 77 F.3d 480 (5th Cir. 1996).  
*United States v. Stotts*, 84 Fed. Appx. 607 (6th Cir. 2003).  
*United States v. Ross*, 165 Fed. Appx. 473 (7th Cir. 2006).  
*United States v. Hankerson*, 224 Fed. Appx. 900 (11th Cir. 2007) (per curiam).

**May a court amend a sentence pursuant to § 3582(c)(2) where the original sentence was imposed pursuant to a binding plea agreement?**

*United States v. Moure-Ortiz*, 184 F.3d 1 (1st Cir. 1999).

*United States v. Brown*, 71 Fed. Appx. 383 (5th Cir. 2003).

*United States v. Peveler*, 359 F.3d 369 (6th Cir. 2004).

*United States v. Hemminger*, 1997 WL 235838 (7th Cir. 1997).

*United States v. McKenna*, 1998 WL 30793 (9th Cir. 1998).

*United States v. Trujeque*, 100 F.3d 869 (10th Cir. 1996).