INTERACTIVE

Case Law Update

JANUARY – JUNE 2022

Case Law Update provides brief summaries of select Supreme Court and appellate court decisions that involve the guidelines and other aspects of federal sentencing. Each quarterly release is replaced with a cumulative update. Cases appear in descending chronological order within a circuit. The Commission publishes this document to assist in understanding and applying the sentencing guidelines. The information does not necessarily represent the official position of the Commission and it should not be considered definitive or comprehensive.

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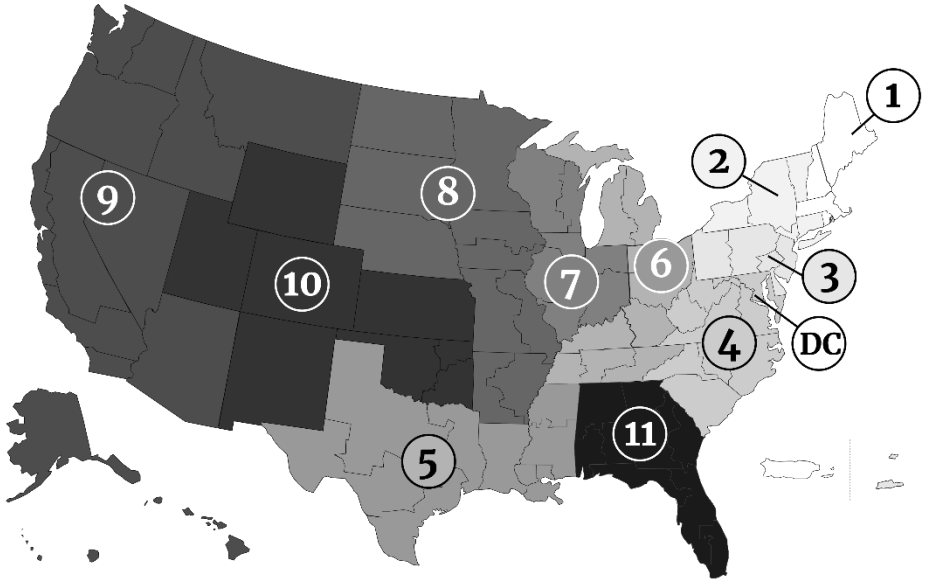

Cases appear in descending chronological order within a circuit.

U.S. Supreme Court

Concepcion v. United States, No. 20-1650, 2022 WL 2295029 (June 27, 2022)	When a district court adjudicates a motion pursuant to section 404 of the First Step Act of 2018, the district court "may consider other intervening changes of law (such as changes to the [s]entencing [g]uidelines) or changes of fact (such as behavior in prison)" in determining whether and to what extent to reduce an eligible defendant's sentence. However, the district court need not accept such arguments.
United States v. Taylor, 142 S. Ct. 2015 (2022)	Attempted Hobbs Act robbery is not a "crime of violence" under the "elements" clause of 18 U.S.C. § 924(c)(3)(A) because taking a substantial step towards Hobbs Act robbery does not categorically require the use, attempted use, or threatened use of physical force.
Wooden v. United States, 142 S. Ct. 1063 (2022)	Offenses that arise from a single criminal episode do not occur on different "occasions," given the term's ordinary meaning, and thus count as only one prior conviction for purposes of 18 U.S.C. § 924(e) (commonly referred to as the "Armed Career Criminal Act" or the "ACCA"). Whether offenses occurred on different occasions depends on multiple factors, including timing, location, and the character and relationship of the offenses.

Appellate Court

Career Offender

D.C. Circuit	
First Circuit	*No cases selected by Commission staff.*
Second Circuit	*No cases selected by Commission staff.*
United States v. Castillo, 36 F.4th 431 (2d Cir. 2022)	Attempted second-degree gang assault under New York law is not a "crime of violence" under the "force" clause of §4B1.2(a) because it is not a coherent offense—it requires intent to cause unintended serious physical injury—and none of the coherent elements of the offense otherwise involve the use, attempted use, or threatened use of physical force. Additionally, the offense falls outside of the generic definition of "attempt," as used in Application Note 1 to §4B1.2, and the generic definition of "aggravated assault," as included in the "enumerated offenses" clause of §4B1.2(a).

Third Circuit

United States v. Abreu, 32 F.4th 271 (3d Cir. 2022)	Conspiracy to commit a crime of violence is not a "crime of violence" for purposes of §2K2.1. Section 2K2.1's commentary defines "crime of violence" by reference to §4B1.2(a), the guideline text of which excludes conspiracy offenses.
United States v. Dawson, 32 F.4th 254 (3d Cir. 2022)	Pennsylvania drug trafficking is a "controlled substance offense" under §4B1.2(b) because the Pennsylvania statute does not criminalize more conduct than the guidelines.

Fourth Circuit

United States v. Rice, 36 F.4th 578 (4th Cir. 2022)	North Carolina assault inflicting physical injury by strangulation is categorically a "crime of violence" within the meaning of §4B1.2(a)(1) because it "can only be committed with an intentional, knowing or purposeful state of mind."
United States v. Campbell, 22 F.4th 438 (4th Cir. 2022)	The addition of attempt crimes to the commentary to §4B1.2 is not authoritative under *Stinson v. United States*, 508 U.S. 36 (1993), because it is plainly "inconsistent" with the guideline. Deference to the commentary is also not warranted under *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), because the guideline is not "genuinely ambiguous." This holding is in conflict with the court's opinion in *United States v. Moses*, 23 F.4th 347 (4th Cir. 2022).

Fifth Circuit

United States v. Vargas, 35 F.4th 936 (5th Cir. 2022)	*Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), which does not discuss the sentencing guidelines, did not unequivocally overrule Fifth Circuit precedent holding that §4B1.1's career-offender enhancement includes inchoate offenses such as conspiracy.
United States v. Garner, 28 F.4th 678 (5th Cir. 2022)	Louisiana aggravated assault with a firearm is not categorically a "crime of violence" under §4B1.2(a) because it is a general intent crime that can be committed recklessly or negligently.

Sixth Circuit

United States v. Miller, 34 F.4th 500 (6th Cir. 2022)	Tennessee drug delivery constitutes a "controlled substance offense" under §4B1.2(b) because it includes only completed deliveries of narcotics (*i.e.*, actual, constructive, or attempted transfers of narcotics), not attempted deliveries. The Sixth Circuit's *en banc* decision in *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019) (per curiam) (en banc), *reconsideration denied* 929 F.3d 317 (Mem.), did not bind the panel to the opposite conclusion because the *Havis* court merely accepted a stipulation by the parties as to the reach of the Tennessee drug delivery statute and did not independently examine and make a holding on that issue.

Seventh Circuit

United States v. Dixon, 27 F.4th 568 (7th Cir. 2022)	Iowa intimidation with a dangerous weapon qualifies as a "crime of violence" for purposes of the guidelines because the statute requires "reasonable apprehension of serious injury."

	Such a requirement "necessarily includes a 'threatened use of physical force,'" and therefore, meets the definition of "crime of violence" under the "elements" clause of §4B1.2(a)(1).
United States v. Thomas, 27 F.4th 556 (7th Cir. 2022)	Wisconsin child abuse is a "crime of violence" for purposes of the career offender guidelines because it requires intentionally inflicting bodily harm on a child, which is consistent with circuit precedent. The court held that it would not reconsider such precedent based on a circuit split regarding whether "overt violent force" is required by the definition of "violent felony" in 18 U.S.C. § 924(e) (commonly referred to as the "Armed Career Criminal Act" or the "ACCA") or the definition of "crime of violence" in §4B1.2(a).
United States v. Shaffers, 22 F.4th 655 (7th Cir. 2022)	A conviction for Illinois aggravated assault that incorporates the prong of the divisible Illinois battery statute requiring "fear of causing bodily harm" is a "crime of violence" under the "elements" clause of §4B1.2(a)(1).
Eighth Circuit	
United States v. Burnett, 35 F.4th 1147 (8th Cir. 2022)	The 2009 version of the Arkansas assault-by-suffocation-or-strangulation statute, which is nearly identical to the current version, qualifies as a "crime of violence" for purposes of §2K2.1(a)(4), which incorporates the definition of such term in §4B1.2(a).
United States v. Lopez-Castillo, 24 F.4th 1216 (8th Cir. 2022)	Arizona aggravated assault constitutes a "crime of violence," as defined in §4B1.2(a) and incorporated at §2K2.1(a)(2), because it requires the use of physical force against another person.
Ninth Circuit	
United States v. Tagatac, 36 F.4th 1000 (9th Cir. 2022)	Hawai'i's second-degree robbery statute is divisible, and the defendant was convicted under the part of the statute that qualifies as a "crime of violence" under the "force" clause of §4B1.2(a).
United States v. House, 31 F.4th 745 (9th Cir. 2022)	Montana possession of dangerous drugs with intent to distribute is not a "controlled substance offense" under §4B1.2(b) because the Montana statute criminalizes more conduct than its federal analogue. Specifically, the federal definition of marijuana at 21 U.S.C. § 802(16) was amended in 2018 to expressly exclude hemp, whereas the Montana statute's definition does not exclude hemp.
Tenth Circuit	
United States v. Wilkins, 30 F.4th 1198 (10th Cir. 2022)	The district court would not have obviously erred by considering the Texas aggravated robbery statute of which the defendant previously was convicted to be divisible and by deeming its statutory components to be elements. The defendant pleaded guilty to the set of elements that meet the guidelines' definition of "crime of violence."

Eleventh Circuit

No cases selected by Commission staff.

Categorical Approach

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

Stone v. United States, No. 20-1778, 2022 WL 2203612 (2d Cir. June 21, 2022)	Where a jury finds a defendant guilty of violating 18 U.S.C. § 924(c) based on two predicates, only one of which can lawfully serve as a predicate, the error is harmless if the jury would have found the defendant guilty of the allowable predicate beyond a reasonable doubt. Further, second-degree murder under New York law is categorically a "crime of violence" for purposes of section 924(c).
United States v. Pastore, 36 F.4th 423 (2d Cir. 2022)	Substantive violent crimes in aid of racketeering (VICAR) offenses are divisible offenses subject to the modified categorical approach. A substantive VICAR conviction for attempted murder in aid of racketeering that is predicated on attempted murder in violation of New York law is a "crime of violence" for purposes of 18 U.S.C. § 924(c).
United States v. Laurent, 33 F.4th 63 (2d Cir. 2022)	A substantive RICO violation is a "crime of violence" for purposes of 18 U.S.C. § 924(c) "[i]f one of the two racketeering acts required for [the] violation conforms to the definition of a crime of violence." However, under Second Circuit precedent, conspiracy to commit Hobbs Act robbery is not a "crime of violence" under section 924(c).

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

United States v. Proctor, 28 F.4th 538 (4th Cir. 2022)	A Maryland conviction for assault with intent to prevent lawful apprehension or detainer is not a "violent felony" under the "force" clause of 18 U.S.C. § 924(e) because it can be committed with the *de minimis* touching of someone to prevent arrest.
United States v. Hope, 28 F.4th 487 (4th Cir. 2022)	A 2013 conviction for possession of marijuana with intent to distribute in proximity of a school under South Carolina Code § 44-53-445 is not a "serious drug offense" under 18 U.S.C. § 924(e) because section 445 is indivisible as to drug type and the federal and South Carolina drug schedules do not categorically match. Even if section 445 were divisible by drug type, South Carolina's definition of "marijuana" in 2013 was broader than the federal definition of "marijuana" at the time of the defendant's sentencing on the instant case.

United States v. White, 24 F.4th 378 (4th Cir. 2022)	Virginia common law robbery is not a "violent felony" under 18 U.S.C. § 924(e) (commonly known as the "Armed Career Criminal Act" or "ACCA") because it can be committed by means of threatening to accuse the victim of having committed sodomy.
Fifth Circuit	
United States v. Perry, 35 F.4th 293 (5th Cir. 2022)	Applying circuit precedent, the district court committed plain error by allowing the jury to convict the defendants under 18 U.S.C. §§ 924(c), (j), and (o) based on a RICO conspiracy as a "crime of violence" predicate.
United States v. Stoglin, 34 F.4th 415 (5th Cir. 2022)	Because Texas aggravated assault can be committed recklessly, it does not qualify as a "serious violent felony" under 18 U.S.C. § 3559(c)(2)(F)(ii).
Sixth Circuit	
	No cases selected by Commission staff.
Seventh Circuit	
Aguirre-Zuniga v. Garland, 37 F.4th 446 (7th Cir. 2022)	The defendant's prior 2018 Indiana conviction for dealing in methamphetamine is not an "aggravated felony" for purposes of removability under 8 U.S.C. § 1227(a)(2)(A)(iii) because the Indiana statute at the time of conviction criminalized optical, positional, and geometric isomers of methamphetamine, while the corresponding federal offense only prohibits optical isomers. Therefore, the statute of conviction was facially overbroad. In addition, a court may only apply the "realistic probability" test to a statute if the court finds the statute ambiguous.
Johnson v. United States, 24 F.4th 1110 (7th Cir. 2022)	The defendant's prior conviction for Indiana criminal deviate conduct qualifies as a "violent felony" under 18 U.S.C. § 924(e) (commonly referred to as the "Armed Career Criminal Act" or the "ACCA"). At the time of the defendant's conviction, the Indiana statute was divisible, and the forcible compulsion part of the statute, under which the defendant was convicted, required sufficient force to qualify as a "violent felony" under the ACCA.
Eighth Circuit	
United States v. Hutchinson, 27 F.4th 1323 (8th Cir. 2022)	Texas burglary qualifies as a "violent felony" under 18 U.S.C. § 924(e) because it "contains the [necessary] generic specific intent requirement" that the defendant unlawfully enter with intent to commit a crime.
United States v. Fisher, 25 F.4th 1080 (8th Cir. 2022)	The Minnesota first-degree burglary statute is divisible, and first-degree burglary with assault ("subdivision 1(c)" of the statute) qualifies as a "serious violent felony" for purposes of the enhanced penalties provided under 21 U.S.C. § 841(b)(1)(A).

United States v. Matthews, 25 F.4th 601 (8th Cir. 2022)	Minnesota attempted second-degree murder qualifies as a "violent felony" under 18 U.S.C. § 924(e) because the second-degree murder statute requires that the defendant intend to cause the death of a human being, and attempt convictions require that the defendant have the specific intent to commit the underlying offense.
United States v. Williams, 24 F.4th 1209 (8th Cir. 2022)	Nebraska offense of making terroristic threats is not a "violent felony" under 18 U.S.C. § 924(e) (commonly referred to as the "Armed Career Criminal Act" or the "ACCA") because it can be committed with a mental state of "reckless disregard." The Supreme Court's decision in *Borden v. United States*, 141 S. Ct. 1817 (2021), which held that an offense that can be committed with a *mens rea* of recklessness does not qualify as a "violent felony," abrogated *Fletcher v. United States*, 858 F.3d 501 (8th Cir. 2017), which had held that the Nebraska offense of making terroristic threats categorically qualified as a "violent felony."
Ninth Circuit	
United States v. Begay, 33 F.4th 1081 (9th Cir. 2022) (en banc)	The Supreme Court's decision in *Borden v. United States*, 141 S. Ct. 1817 (2021), solely foreclosed offenses requiring only a *mens rea* of "ordinary" recklessness from qualifying as "violent felonies" under the "elements" clause of 18 U.S.C. § 924(e)(2)(B). Accordingly, second-degree murder under 18 U.S.C. § 1111(a), which requires that a defendant act "with recklessness that rises to the level of extreme disregard for human life" rather than with "ordinary recklessness," is a "crime of violence" under the similarly worded "elements" clause of 18 U.S.C. § 924(c)(3)(A).
Tenth Circuit	
	No cases selected by Commission staff.
Eleventh Circuit	
United States v. Jackson, 36 F.4th 1294 (11th Cir. 2022)	For purposes of 18 U.S.C. § 924(e), due process requires courts to apply the version of the schedules in the Controlled Substances Act in effect at the time a defendant committed his instant offense when determining whether a prior offense constitutes a "serious drug offense."
United States v. Gardner, 34 F.4th 1283 (11th Cir. 2022)	For purposes of the definition of "serious drug offense" in 18 U.S.C. § 924(e) (commonly referred to as the "Armed Career Criminal Act" or the "ACCA"), the phrase "maximum term of imprisonment," with respect to a prior offense under Alabama law, means the statutory maximum term of imprisonment for such offense, not the "high end" of the sentencing range calculated under Alabama's presumptive sentencing guidelines.

Chapter Three Adjustments

D.C. Circuit	
	No cases selected by Commission staff.
First Circuit	
United States v. McCarthy, 32 F.4th 59 (1st Cir. 2022)	While criminal conduct that occurred before a guilty plea can be considered in a §3E1.1 acceptance-of-responsibility analysis, a court should only look to conduct that occurred after the "lodging of a federal charge." In addition, the commentary to §3E1.1 makes clear that the weight accorded to criminal conduct in such an analysis depends on the "nature and extent of the misconduct"; thus, any criminal conduct, regardless of its classification as a felony or a misdemeanor, may be relevant to the authenticity of a defendant's acceptance of responsibility.
United States v. Brown, 31 F.4th 39 (1st Cir. 2022)	Application of §3C1.2 requires flight from arrest plus reckless conduct, which is satisfied when a defendant physically struggles to resist arrest while possessing a loaded firearm and during the struggle that firearm falls to the ground; the risk of an accidental firing results in potential serious injury to the law enforcement officer.
Second Circuit	
United States v. Capelli, No. 19-4362, 2022 WL 2203732 (2d Cir. June 21, 2022)	The defendant's trial counsel did not provide ineffective assistance in failing to argue for a downward adjustment under §3E1.1 because, although his counsel conceded at trial that there was sufficient evidence of one of four counts, the defendant went to trial on all four counts and contested factual issues. Additionally, there was no indication that the defendant accepted responsibility pre-trial, which is a valid consideration for the 2-level decrease under §3E1.1(a), not just the additional 1-level decrease under §3E1.1(b).
United States v. Wynn, 37 F.4th 63 (2d Cir. 2022)	When a defendant is sentenced for a RICO violation, the application of a mitigating role adjustment under §3B1.2 will be evaluated based on his role in the overall RICO enterprise.
United States v. Gershman, 31 F.4th 80 (2d Cir. 2022)	The district court properly applied §3C1.1 to the entirety of the defendant's RICO conviction by applying it after calculating the highest base offense level among the underlying racketeering acts under §2E1.1, rather than applying §3C1.1 only to certain racketeering acts and then comparing the resulting offense levels under §2E1.1.
United States v. Zhong, 26 F.4th 536 (2d Cir. 2022)	The vulnerable victim adjustment under §3A1.1(b) may be applied based on victims' membership in a class where the class is defined by characteristics that make the victims "unusually vulnerable" or "particularly susceptible" to the criminal conduct at issue.
Third Circuit	
United States v. Adair, No. 20-1463, 2022 WL 2350277 (3d Cir. June 30, 2022)	Application Note 4 to §3B1.1, which provides a multi-factor test for determining whether a defendant is an "organizer" or "leader" of a criminal activity warranting an aggravating-role adjustment, is no longer binding. Reevaluating the guideline under the process of *Kisor v.*

	Wilkie, 139 S. Ct. 2400 (2019), as required by *United States v. Nasir*, 17 F.4th 459 (3d Cir. 2021), the court examined the text, structure, purpose, and history of §3B1.1 and found that they "compel the conclusion that the terms 'organizer' and 'leader' are not genuinely ambiguous." In addition, the amendments made to Application Note 6 to §3E1.1 by Amendment 775 are no longer controlling because (1) Amendment 775 impermissibly altered §3E1.1(b); (2) Amendment 775 exceeded the Commission's delegated powers; and (3) Amendment 775 represented the Commission's "legal interpretation" of §3E1.1(b) and was not the product of "agency subject-matter expertise," thus prohibiting the amendment from qualifying for controlling deference under any framework.
Fourth Circuit	
United States v. Hasson, 26 F.4th 610 (4th Cir. 2022)	The Commission properly amended the terrorism adjustment under §3A1.4 pursuant to a congressional directive, and the adjustment does not require that a defendant be convicted of a "[f]ederal crime of terrorism," as defined in 18 U.S.C. § 2332b(g).
United States v. Barringer, 25 F.4th 239 (4th Cir. 2022)	In a tax fraud case, the abuse-of-trust adjustment under §3B1.3 applied to a company's vice president and board member who managed nearly all the company's financial affairs and thus occupied a "position of trust." Applying the adjustment did not constitute impermissible double counting because the elements required to show the defendant was a "responsible person" for purposes of her tax fraud conviction did not include proof of a "position of trust."
Fifth Circuit	
United States v. Lara, 23 F.4th 459 (5th Cir. 2022)	The use of a child as a diversionary tactic during the commission of a previously planned crime is an affirmative act sufficient for the application of §3B1.4's adjustment for using a minor to commit a crime.
Sixth Circuit	
United States v. Wellman, 26 F.4th 339 (6th Cir. 2022)	An adjustment for obstruction of justice under §3C1.1 may properly be applied to a defendant convicted of an obstruction offense where the adjustment is based upon different conduct than the conduct underlying the offense of conviction.
Seventh Circuit	
United States v. Haas, No. 20-3269, 2022 WL 2207831 (7th Cir. June 21, 2022)	A district court does not plainly err in grouping several counts of transmitting threats in interstate commerce against "federal employees, whom it regarded in the aggregate as one victim," separately from others involving "nonspecific threats directed to no identifiable victim (other than society itself)." Application Note 2 to §3D1.2 "leaves room for the atypical case . . . where the victim is neither society at large nor a single identifiable individual, but rather a victim category such as 'federal employees.'"

United States v. Mikulski, 35 F.4th 1074 (7th Cir. 2022)	The obstruction adjustment at §3C1.1 applies where a defendant obstructs a state investigation that is "based on the same facts" as the eventual federal conviction, even if the federal investigation of the offense of conviction had not begun at the time of the obstruction. In addition, such an adjustment t is also warranted where a defendant attempts to hinder an investigation of his offense of conviction but is unsuccessful.

Eighth Circuit

	No cases selected by Commission staff.

Ninth Circuit

	No cases selected by Commission staff.

Tenth Circuit

United States v. Arellanes-Portillo, 34 F.4th 1132 (10th Cir. 2022)	The district court plainly erred by basing an aggravating role adjustment under §3B1.1(b) on relevant conduct for the defendant's drug offenses and not exclusively for his money laundering offenses. Under Application Note 2(C) to §2S1.1, only money laundering relevant conduct may justify a Chapter Three adjustment for money laundering convictions.

Eleventh Circuit

	No cases selected by Commission staff.

Compassionate Release

D.C. Circuit

	No cases selected by Commission staff.

First Circuit

United States v. Ruvalcaba, 26 F.4th 14 (1st Cir. 2022)	While the policy statement found at §1B1.13 is inapplicable to prisoner-initiated motions for compassionate release under 18 U.S.C. § 3582(c)(1)(A), it "may serve as a non-binding reference" for such motions and remains applicable to compassionate release motions brought by the Bureau of Prisons. Also, "in the absence of a contrary directive in an applicable policy statement," a district court is not precluded from considering a non-retroactive change in the law "as part of the 'extraordinary and compelling' calculus" on a case-by-case basis. This case deepens the circuit split on both issues.
United States v. Texeira-Nieves, 23 F.4th 48 (1st Cir. 2022)	Although the compassionate release provision at 18 U.S.C. § 3582(c)(1)(A) provides authority for a district court to reduce a sentence to time served and impose home confinement as a condition of probation or supervised release, the provision does not provide authority for a district court to order that an unmodified sentence be served on home confinement.

Second Circuit	
United States v. Orena, 37 F.4th 58 (2d Cir. 2022)	In reviewing a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A), a district court may not consider new evidence or arguments that a defendant's conviction was invalid as part of weighing the 18 U.S.C. § 3553(a) factors; such evidence or arguments must instead be presented through 28 U.S.C. § 2255 or 28 U.S.C. § 2241.
United States v. Halvon, 26 F.4th 566 (2d Cir. 2022)	Defendants who received a statutory mandatory minimum sentence are eligible for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A).
Third Circuit	
	No cases selected by Commission staff.
Fourth Circuit	
United States v. Hargrove, 30 F.4th 189 (4th Cir. 2022)	The determination of whether a defendant demonstrates extraordinary and compelling reasons for compassionate release under 18 U.S.C. § 3582(c)(1)(A) is a multifaceted inquiry conducted on the totality of the relevant circumstances. Further, in deciding whether to reduce a sentence under section 3582(c)(1)(A), it is proper for a district court to consider 18 U.S.C. § 3553(a)(2)(A)'s retributive factors, even where the sentence was in part a revocation sentence.
Fifth Circuit	
	No cases selected by Commission staff.
Sixth Circuit	
United States v. McKinnie, 24 F.4th 583 (6th Cir. 2022)	The court's holding in *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019) (providing that an attempt crime cannot be a predicate "controlled substance offense" for purposes of the career offender enhancement at §4B1.1), was a nonretroactive judicial decision, and therefore, cannot serve as an "extraordinary and compelling reason" justifying compassionate release under 18 U.S.C. § 3582(c)(1)(A), whether offered alone or in combination with other factors. This case deepens the intra-circuit split over the propriety of considering changes in law in combination with other factors as grounds for a sentence reduction.
Seventh Circuit	
United States v. Sarno, No. 21-1963, 2022 WL 2207829 (7th Cir. June 21, 2022)	A district court does not plainly err in denying a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) if counsel fails to alert the court to any problem contacting his client until he moves for reconsideration and the proffered information from the client would not have changed the court's decision to deny the motion on 18 U.S.C. § 3553(a) grounds.

United States v. Newton, No. 21-2514, 2022 WL 2145230 (7th Cir. June 15, 2022)	Although a remand on a compassionate release motion under 18 U.S.C. § 3582(c)(1)(A) is not a full resentencing, it is "a risky procedure for a district court to rule on [such] a motion without the input of the parties" following numerous changes in intervening law.
United States v. Shorter, 27 F.4th 572 (7th Cir. 2022)	Release from prison to home confinement renders a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) that was filed prior to such release moot. The argument that a return to prison would pose a "very high medical risk" if the defendant violated such home confinement is "too speculative to provide [the defendant] with a constitutionally cognizable stake in this case."
United States v. Rucker, 27 F.4th 560 (7th Cir. 2022)	Notwithstanding the court's conclusion in *United States v. Broadfield*, 5 F.4th 801 (7th Cir. 2021), that "the availability of vaccines had effectively eliminated the risks of COVID-19 to most federal prisoners," district courts must assess an inmate's individual circumstances in deciding whether compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) is warranted.
United States v. Barbee, 25 F.4th 531 (7th Cir. 2022)	Remand of the district court's denial of the defendant's compassionate release motion under 18 U.S.C. § 3582(c)(1)(A), which was based in part on his risk of contracting COVID-19, would be inappropriate because such a remand would not result in a decision in the defendant's favor "[g]iven the current data and the availability of safe and effective vaccines."
Eighth Circuit	
United States v. Crandall, 25 F.4th 582 (8th Cir. 2022)	A non-retroactive change in the law, whether offered alone or in combination with other factors, cannot contribute to a finding of "extraordinary and compelling reasons" for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A). This case deepens the circuit split over the propriety of considering changes in law in combination with other factors as grounds for a reduction in sentence.
Ninth Circuit	
United States v. Fower, 30 F.4th 823 (9th Cir. 2022)	Compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) is not available to defendants prior to incarceration.
United States v. King, 24 F.4th 1226 (9th Cir. 2022)	Inmates who committed crimes before November 1, 1987, cannot move for compassionate release under 18 U.S.C. § 3582(c)(1). Rather, such inmates remain subject to 18 U.S.C. § 4205(g), which was repealed and replaced by section 3582(c)(1), effective on such date, and provides that only the Bureau of Prisons may seek compassionate relief on behalf of inmates.
Tenth Circuit	
	No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Criminal History

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

No cases selected by Commission staff.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

United States v. Hubbert, 35 F.4th 1068 (7th Cir. 2022)	The defendant's prior state conviction for possession with intent to distribute was not relevant conduct to his instant federal distribution offenses because the instant offenses occurred five years after the prior offense, involved significantly larger quantities of drugs, and involved a co-conspirator.
United States v. Bravo, 26 F.4th 387 (7th Cir. 2022)	The district court erred in counting the defendant's 2014 convictions for Illinois "streetgang contact" towards his criminal history score because (1) the crime is equivalent to disorderly conduct, an offense that is excluded under §4A1.2(c)(1) if certain requirements are met, and (2) the defendant met those requirements.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Drug Offenses

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

United States v. Skaggs, 23 F.4th 342 (4th Cir. 2022)

A prior state drug conviction for which a sentence of 26 months was imposed concurrently with five other 26-month concurrent sentences qualifies as a "serious drug felony" under 21 U.S.C. § 841(b)(1)(A). Such a sentence satisfies the definition's requirement that the defendant "served a term of imprisonment of more than 12 months" because it remains a distinct term of imprisonment even when served simultaneously with other sentences.

Fifth Circuit

United States v. Lujan, 25 F.4th 324 (5th Cir. 2022)

The district court clearly erred when it applied the "wholesale" price of methamphetamine (the price the drug could be purchased for), rather than its "retail" price (the price the drug could be sold for), to convert the defendant's illicit profits to a methamphetamine quantity. While a court may consider the "wholesale" price of a drug in lieu of its "retail" price, which is more commonly used, to conduct a cash-to-drug-quantity conversion, the district court in this case erred because it "implausibly" assumed the defendant would have used all her illicit profits for future methamphetamine purchases.

Sixth Circuit

United States v. Gardner, 32 F.4th 504 (6th Cir. 2022)	The district court properly applied the drug-premises enhancement under §2D1.1(b)(12) to a defendant's sentence because one of the defendant's "primary and principal uses for his home" was drug distribution.
United States v. Sadler, 24 F.4th 515 (6th Cir. 2022)	But-for causation under 21 U.S.C. § 841(b)(1)(C), which imposes an enhanced sentence for a drug distribution conviction that results in death or serious bodily injury, does not require evidence from a blood toxicology test.

Seventh Circuit

United States v. Ford, 22 F.4th 687 (7th Cir. 2022)	In determining whether to apply the enhancement in §2D1.1(b)(12) for maintaining a drug premises, courts should, consistent with guideline commentary, consider how often a defendant used the premises for controlled substance distribution, the scope of the enterprise, and the degree of control the defendant had on access to and activities on the premises.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Economic Crimes

D.C. Circuit

No cases selected by Commission staff.

First Circuit

United States v. Gordon, No. 21-1023, 2022 WL 2254859 (1st Cir. June 23, 2022)	Under Application Note 3(E)(i) to §2B1.1, a defendant is not entitled to leniency for refunds he made to victims after receiving a demand letter from his state attorney general's office, which put him on notice that his offenses had been detected.

Second Circuit

No cases selected by Commission staff.

Third Circuit	
	No cases selected by Commission staff.
Fourth Circuit	
	No cases selected by Commission staff.
Fifth Circuit	
United States v. Aderinoye, 33 F.4th 751 (5th Cir. 2022)	For purposes of §2B1.1(b)(2)(A)(iii), a loss qualifies as "substantial financial hardship" if it significantly impacts the victim's resources. Also, the enhancement at §2B1.1(b)(9)(A) applies when an offender unaffiliated with a charitable organization steals from the organization by pretending to have authority over its accounts.
Sixth Circuit	
United States v. Hills, 27 F.4th 1155 (6th Cir. 2022)	The district court correctly applied §2C1.1 (relating to bribes), rather than §2C1.2 (relating to gratuities), to the defendants' underlying racketeering activity to determine their base offense level under §2E1.1, even though Appendix A of the *Guidelines Manual* references both §§2C1.1 and 2C1.2 for the statutes criminalizing the defendants' underlying racketeering activity. The district court did not err in finding that the defendants were "public officials" for purposes of §2C1.1 because Application Note 1's definition of the term includes unelected public officials. The district court also did not err in finding that one of the defendants held a "high level decision-making position" pursuant to Application Note 4 to §2C1.1 based on his position as "the [] chair of [a] [d]ental [d]epartment of a county-owned hospital," even though such position was not elected, served below a board, and did not have final say on the matter in question and even though the offenses of conviction "did not directly involve" the chair's authority.
Seventh Circuit	
United States v. Nitzkin, No. 21-3014, 2022 WL 2236083 (7th Cir. June 22, 2022)	Pursuant to Application Note 8(B) to §2B1.1, as revised by Amendment 617, the enhancement in §2B1.1(b)(9)(A) applies to a "diversion of funds raised by a legitimate officer of a legitimate charity."
Eighth Circuit	
	No cases selected by Commission staff.
Ninth Circuit	
United States v. Lonich, 23 F.4th 881 (9th Cir. 2022)	The government failed to prove by clear and convincing evidence that the defendants' actions caused a bank's failure. As a result, the defendants' §2B1.1 enhancements for loss

	amount, number of victims, and jeopardizing the safety and soundness of a financial institution were infirm.
Tenth Circuit	
	No cases selected by Commission staff.
Eleventh Circuit	
	No cases selected by Commission staff.

Firearms

D.C. Circuit	
	No cases selected by Commission staff.
First Circuit	
	No cases selected by Commission staff.
Second Circuit	
	No cases selected by Commission staff.
Third Circuit	
	No cases selected by Commission staff.
Fourth Circuit	
	No cases selected by Commission staff.
Fifth Circuit	
United States v. Luna-Gonzalez, 34 F.4th 479 (5th Cir. 2022)	The failure to prove that a large-capacity magazine is compatible with an offender's firearm precludes the application of §2K2.1(a)(4)(B), which imposes an enhanced base offense level if an offense involved a semiautomatic firearm "capable of accepting a large capacity magazine."
Sixth Circuit	
United States v. McKenzie, 33 F.4th 343 (6th Cir. 2022)	The phrase "reason to believe," for purposes of §2K2.1(a)(4)(B), requires, "at most, that a straw purchaser know of facts creating a fair probability that the true buyer could not possess a firearm." It does not require the government to affirmatively rule out possible "innocent" explanations for such facts.
Seventh Circuit	
United States v. Price, 28 F.4th 739 (7th Cir. 2022)	The district court properly applied the enhancement at §2K2.1(b)(1)(A) for offenses involving "three or more firearms" based on the two firearms related to the defendant's underlying possession charges and a rental gun "briefly possessed" by the defendant at a

	store for guns and ammunition because the possession offenses were similar, the three instances of possession sufficiently constituted regularity, and the defendant possessed the gun "at the 'same place' and at the 'same time' as other charged firearms." In addition, the Supreme Court's opinion in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), requiring *scienter* for a conviction under 18 U.S.C. § 922(g) does not extend to sentencing enhancements under §2K2.1(b)(4)(A) for offenses involving stolen firearms.
Eighth Circuit	
United States v. Sewalson, 36 F.4th 832 (8th Cir. 2022)	The plain language of the cross-reference at §2K2.1(c)(1), which applies if a defendant "used or possessed" a firearm in connection with the commission of another offense, does not require "active use of the firearm" in order for the cross-reference to apply. This case deepens a circuit split between the Ninth and Tenth Circuits.
Ninth Circuit	
	No cases selected by Commission staff.
Tenth Circuit	
United States v. Sanchez, 22 F.4th 940 (10th Cir. 2022)	The district court did not clearly err in applying the enhancement in §2K2.1(b)(6)(B) for possession of a firearm in connection with another felony offense where the defendant's possession of a loaded firearm had the potential to facilitate his possession of a stolen vehicle.
Eleventh Circuit	
United States v. Stines, 34 F.4th 1315 (11th Cir. 2022)	The higher base offense level in §2M5.2 applies if an offense involves weapons parts for more than two operable firearms.

First Step Act of 2018

D.C. Circuit	
	No cases selected by Commission staff.
First Circuit	
	No cases selected by Commission staff.
Second Circuit	
	No cases selected by Commission staff.
Third Circuit	
United States v. Mitchell, No. 20-2493, 2022 WL 2336476 (3d Cir. June 29, 2022)	Section 403 of the First Step Act of 2018 applies to defendants whose sentences on 18 U.S.C. § 924(c) counts are vacated and remanded for resentencing after the Act's enactment.

Fourth Circuit	
United States v. Goodwin, No. 20-7320, No. 20-7362, 2022 WL 2183281 (4th Cir. June 21, 2022)	The defendant was ineligible for relief under section 404 of the First Step Act of 2018 because his sentence previously was imposed in accordance with the Fair Sentencing Act of 2010.
United States v. Thomas, 32 F.4th 420 (4th Cir. 2022)	A continuing criminal enterprise conviction under 21 U.S.C. §§ 848(a) and (c) does not qualify as a "covered offense" under section 404 of the First Step Act of 2018.
Fifth Circuit	
United States v. Lyons, 25 F.4th 342 (5th Cir. 2022)	The district court did not abuse its discretion when it considered all conditions present at the defendant's original sentencing, including an unused sentencing enhancement and the plea agreement, and denied the defendant's motion for a sentence reduction under section 404 of the First Step Act of 2018.
Sixth Circuit	
United States v. Bailey, 27 F.4th 1210 (6th Cir. 2022)	The district court did not abuse its discretion by providing a brief explanation for its denial of the defendant's motion for a sentence reduction under section 404 of the First Step Act of 2018 or by concluding that the defendant's career offender designation under §4B1.1 meant that the First Step Act of 2018 did not affect his guideline range.
United States v. Johnson, 26 F.4th 726 (6th Cir. 2022)	The district court abused its discretion in denying the defendant's motion for a sentence reduction pursuant to section 404 of the First Step Act of 2018. Given that the defendant's guideline range had decreased from a range of 200 to 235 months to a range of 160 to 185 months, the district court's justification for leaving intact the defendant's 300-month sentence was insufficient, rendering the sentence substantively unreasonable.
Seventh Circuit	
United States v. McSwain, 25 F.4th 533 (7th Cir. 2022)	A multidrug conspiracy involving cocaine base and another substance constitutes a "covered offense" for purposes of section 404 of the First Step Act of 2018.
Eighth Circuit	
	No cases selected by Commission staff.
Ninth Circuit	
United States v. Merrell, 37 F.4th 571 (9th Cir. 2022)	The version of 18 U.S.C. § 924(c)(1) in effect after the enactment of the First Step Act of 2018, not the pre-Act version of section 924(c)(1), applies at post-Act resentencing hearings of defendants whose sentences were imposed before the Act's passage and subsequently vacated.

Tenth Circuit

United States v. Burris, 29 F.4th 1232 (10th Cir. 2022)	In ruling on a motion for a sentence reduction under section 404 of the First Step Act of 2018, a district court is obligated to correctly calculate a defendant's revised guideline range "*prior* to deciding, in its discretion, whether to reduce [the] defendant's sentence." The district court's failure to do so in this case was not harmless error, as its "exercise of discretion was untethered from the correct calculation of [the defendant's] revised [guideline] range."

Eleventh Circuit

United States v. Smith, 30 F.4th 1334 (11th Cir. 2022)	The district court violated due process by alternatively denying the defendant's motion for a sentence reduction under section 404 of the First Step Act of 2018 without giving the defendant an opportunity to present his arguments in support of the reduction.
United States v. Williams, 25 F.4th 1307 (11th Cir. 2022)	The defendant's conviction under 21 U.S.C. § 841(a) does not constitute a "covered offense" under section 404 of the First Step Act of 2018 because the penalties for his offense were set by 21 U.S.C. § 841(b)(1)(C) via a cross-reference in 21 U.S.C. § 860(a), and the penalties in section 841(b)(1)(C) were not modified by the Fair Sentencing Act of 2010. In so holding, the court relied on the Supreme Court's reasoning in *Terry v. United States*, 141 S. Ct. 975 (2021).

Relevant Conduct

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

United States v. Elbaz, No. 20-4019, 2022 WL 2348691 (4th Cir. June 30, 2022)	Under 18 U.S.C. § 3661 and §1B1.4, which place no limitation on the information to be considered at sentencing, and §1B1.3, which "broadly defin[es] the relevant conduct to be considered," the district court properly considered losses to foreign victims of the defendant's fraud scheme at sentencing.
United States v. McDonald, 28 F.4th 553 (4th Cir. 2022)	The defendant's possession of firearms in three different incidents qualified as the same course of conduct as, and therefore relevant conduct to, his instant offense of possession of

	ammunition by a convicted felon. The three incidents were temporally connected and involved a pattern of sufficiently similar conduct (illegal possession of similar types of firearms).
Fifth Circuit	
	No cases selected by Commission staff.
Sixth Circuit	
	No cases selected by Commission staff.
Seventh Circuit	
United States v. Boyle, 28 F.4th 798 (7th Cir. 2022)	The conduct underlying the defendant's state offense for sexual assault of a child was not relevant conduct to his instant federal offense for producing and possessing child pornography. Therefore, the district court did not err in imposing the defendant's 50-year federal sentence consecutive to his 40-year state sentence pursuant to §5G1.3(d).
United States v. Asbury, 27 F.4th 576 (7th Cir. 2022)	The district court committed reversible error when it relied on additional drug quantities through relevant conduct not sufficiently proved by the government that increased the drug quantity for which the defendant was held responsible at sentencing. The district court's assertion that it would impose the same sentence absent errors in the guideline calculation did not render such error harmless.
United States v. McClinton, 23 F.4th 732 (7th Cir. 2022)	In determining the defendant's sentence for robbery and brandishing a firearm, the district court properly considered the murder of a co-defendant, for which the defendant was acquitted, as relevant conduct because, even though the defendants were a safe distance away from the robbery scene when the murder occurred, the murder "clearly occurred" in the course of the robbery.
Eighth Circuit	
	No cases selected by Commission staff.
Ninth Circuit	
	No cases selected by Commission staff.
Tenth Circuit	
	No cases selected by Commission staff.
Eleventh Circuit	
	No cases selected by Commission staff.

Restitution

D.C. Circuit	
	No cases selected by Commission staff.
First Circuit	
	No cases selected by Commission staff.
Second Circuit	
United States v. Yalincak, 30 F.4th 115 (2d. Cir. 2022)	Under 18 U.S.C. § 3664(h), district courts may combine apportionment of liability to impose "hybrid restitution" orders limiting the restitution obligation for some participants in an offense while holding other participants in the offense responsible for the full amount of the loss. Such hybrid restitution obligations are not satisfied until either a defendant has paid as much as she has been ordered to pay, or the victim has been made whole.
United States v. Afriyie, 27 F.4th 161 (2d Cir. 2022)	The Supreme Court's decision in *Lagos v. United States*, 138 S. Ct. 1684 (2018), did not undermine Second Circuit precedent holding that victims of certain offenses may recover under 18 U.S.C. § 3663A(b)(4) (commonly referred to as the "Mandatory Victims Restitution Act" or the "MVRA") attorneys' fees incurred while participating in government investigations of the offenses. However, expenses incurred while participating in a noncriminal investigation by the Securities and Exchange Commission are not recoverable under the MVRA.
Third Circuit	
	No cases selected by Commission staff.
Fourth Circuit	
United States v. Elbaz, No. 20-4019, 2022 WL 2348691 (4th Cir. June 30, 2022)	The district court erred in including in its restitution calculation under 18 U.S.C. § 3663A (commonly referred to as the "Mandatory Victims Restitution Act" or the "MVRA") foreign victims of the defendant's fraud scheme who had no nexus to the defendant's criminal conduct in the United States.
Fifth Circuit	
	No cases selected by Commission staff.
Sixth Circuit	
	No cases selected by Commission staff.
Seventh Circuit	
United States v. Eaden, No. 20-2763, 2022 WL 2254433 (7th Cir. June 23, 2022)	A district court plainly errs in ordering a defendant to pay restitution to his former employer equal to the amount that the employer paid a customer to remedy the defendant's fraudulent overbilling. "[R]estitution is limited solely to 'actual losses caused by the specific

	conduct underlying the offense,'" and a former employer's mere repayment of "unearned funds it had obtained" from a customer "solely by reason of [the defendant's] fraud" is "not a loss" to the employer.
Eighth Circuit	
	No cases selected by Commission staff.
Ninth Circuit	
	No cases selected by Commission staff.
Tenth Circuit	
United States v. Casados, 26 F.4th 845 (10th Cir. 2022)	Section 3663A of title 18, United States Code (commonly referred to as the "Mandatory Victims Restitution Act" or the "MVRA"), requires certain defendants to reimburse their victims for transportation expenses incurred while attending proceedings related to the defendants' offenses. While the MVRA permits a victim's representative to "assume the victim's rights," the representative's own expenses may not be substituted for those of the victim.
United States v. Anthony, 25 F.4th 792 (10th Cir. 2022)	Restitution is a component of a criminal sentence and therefore is part of a defendant's "judgment of conviction." Where restitution is determined after a defendant's initial sentencing, the judgment of conviction does not become final—and trigger a one-year window to file a motion under 28 U.S.C. § 2255—until the restitution proceedings are final. In addition, in a deferred restitution case, a defendant may appeal the conviction and sentence within 14 days of either (1) the entry of the initial judgment, or (2) the entry of the amended judgment containing the restitution amount.
Eleventh Circuit	
	No cases selected by Commission staff.

Sentencing Procedure

D.C. Circuit	
	No cases selected by Commission staff.
First Circuit	
United States v. Flores-Gonzalez, 34 F.4th 103 (1st Cir. 2022)	A district court's variance from a defendant's guideline range, driven solely by a community-based characteristic, does not reflect an exercise of discretion under *Kimbrough v. United States*, 552 U.S. 85 (2007), to vary from the guideline range based on a categorical policy disagreement with the guidelines. While a community-based characteristic of an offense may be relevant to sentencing and relied upon as *a* factor in varying upward under 18 U.S.C.

	§ 3553(a), courts must still connect the sentence imposed to factors that specifically relate either to the defendant's personal characteristics or to the nature of the defendant's conduct.
United States v. Procell, 31 F.4th 32 (1st Cir. 2022)	When a discrepancy exists between an oral sentencing pronouncement and a written judgment, appellate courts tend to honor the oral pronouncement, especially when it is "unambiguous and lawful."
United States v. Torres-Melendez, 28 F.4th 339 (1st Cir. 2022)	The district court erred and imposed a procedurally unreasonable sentence when it varied upward to a sentence that was twice the top of the guideline range for possession of a machine gun after finding the defendant "has *a track record of engaging in drug offenses and weapon violations*" based on two arrests for offenses dismissed for lack of a speedy trial. Absent the requisite preponderance of the evidence, a court cannot "rely on an arrest record as evidence of a defendant's conduct" without "some reliable indication that the underlying conduct actually occurred."
Second Circuit	
Al-'Owhali v. United States, 36 F.4th 461 (2d Cir. 2022)	The concurrent sentence doctrine, which allows a court to decline to consider a challenge to a "conviction for which an appellant's sentence runs concurrently with that for another, valid conviction," applies to a collateral challenge to a conviction for which the sentence runs consecutively to an unchallenged life sentence.
United States v. Leroux, 36 F.4th 115 (2d Cir. 2022)	A defendant's oral statement consenting to sentencing by videoconference and confirming he conferred with counsel about his right to be present "will usually be enough to establish the defendant's consent" under the CARES Act. A district court's findings that proceeding by videoconference would allow a defendant the opportunity to promptly appeal his sentence and would facilitate the defendant's designation to a correctional facility are sufficient to show that delaying the sentencing would harm the interests of justice.
Third Circuit	
	No cases selected by Commission staff.
Fourth Circuit	
United States v. Benton, 24 F.4th 309 (4th Cir. 2022)	To find that the defendant qualified for a sentencing enhancement under 18 U.S.C. § 942(e) (commonly referred to as the "Armed Career Criminal Act" or the "ACCA"), the district court erred in relying on prior convictions that were not identified as ACCA predicates in the defendant's presentence report. Under circuit precedent, the government must identify all convictions it wishes to rely upon for an ACCA enhancement at the time of sentencing so that a defendant has notice and the opportunity to challenge the convictions. Therefore, at a collateral proceeding, the government may not rely on predicates that were not identified at sentencing to preserve an ACCA enhancement that can no longer be sustained by the original predicates.

Fifth Circuit

United States v. Perez-Espinoza, 31 F.4th 988 (5th Cir. 2022)	There is no material difference between the oral pronouncement at sentencing that the defendant must report to the nearest U.S. Probation Office within 72 hours of reentering the United States and the written judgment, issued one week later, clarifying that he must report immediately; therefore, the written judgment does not need to be amended to reflect the oral pronouncement.
United States v. Alfaro, 30 F.4th 514 (5th Cir. 2022)	A district court's failure to accept the government's concessions regarding money returned, fair market value of the property returned, or services rendered by the defendant when determining the total loss amount under §2B1.1 results in an erroneous assessment of total loss and an erroneous guideline range calculation.
United States v. Jackson, 30 F.4th 269 (5th Cir. 2022)	It does not violate due process to retroactively apply circuit precedent treating a Texas burglary-of-a-habitation conviction as a "violent felony" under 18 U.S.C. § 924(e) (commonly referred to as the "Armed Career Criminal Act" or the "ACCA").
United States v. Hammond, 24 F.4th 1011 (5th Cir. 2022)	A district court is not required to put a defendant on notice that it might upwardly depart pursuant to Application Note 4 to §7B1.4 when determining the sentence to impose upon revocation of supervised release.

Sixth Circuit

United States v. Maddux, No. 20-5972, 2022 WL 2232426 (6th Cir. June 22, 2022)	Federal Rule of Criminal Procedure 32.2, which provides the procedure for entering a forfeiture order in a criminal case, is a mandatory claims processing rule (which must be strictly adhered to), rather than a time-related directive (which need not be). This case deepens the circuit split between the Eighth Circuit, with which the Sixth Circuit agrees, and the Second and Fourth Circuits.
In re: United States of America, 32 F.4th 584 (6th Cir. 2022)	The district court was not permitted to generally reject the plea agreement, which contained appeal waivers, on the grounds that such waivers (among other things) "effectively 'coerce' guilty pleas with offers 'too good to refuse,' and 'inhibit[] the development of the [s]entencing [g]uidelines'" because those are categorical concerns rather than case-specific considerations.

Seventh Circuit

United States v. Swank, No. 22-1081, 2022 WL 2298448 (7th Cir. June 27, 2022)	The district court's ambiguous statement concerning general deterrence and its "tether[ing]" of that factor to the guidelines neither ran afoul of the parsimony principle nor indicated that it applied a presumption of reasonableness to the guideline range. The context of the district court's statements demonstrated its belief that a within-guidelines sentence satisfied the sentencing goals of 18 U.S.C. § 3553(a).

United States v. Hernandez, No. 20-3480, 2022 WL 2254451 (7th Cir. June 23, 2022)	The district court did not plainly err in proceeding by video under the CARES Act absent a finding that sentencing could not be further delayed without serious harm to the interests of justice; "[n]othing suggests that the district judge discounted [the defendant's] allocution or otherwise viewed his sentencing arguments less favorably merely because he made them remotely."
United States v. Garcia, No. 20-3335, 2022 WL 2252888 (7th Cir. June 23, 2022)	The district court plainly erred when it considered prior convictions of the defendant that did not receive any criminal history points in calculating the defendant's base offense level; this miscalculation affected the defendant's total offense level and resulting guideline range through the application of the grouping rules.
United States v. Nitzkin, No. 21-3014, 2022 WL 2236083 (7th Cir. June 22, 2022)	A district court plainly errs in imposing an enhancement under §2B1.1(b)(9)(A) and an adjustment under §3B1.3 if the enhancement and adjustment do not reflect different conduct. Application Note 8(E)(i) to §2B1.1 does not permit double counting "[i]f the conduct that forms the basis for an enhancement under subsection (b)(9)(A) is the only conduct that forms the basis for an adjustment under §3B1.3."
Eighth Circuit	
	No cases selected by Commission staff.
Ninth Circuit	
	No cases selected by Commission staff.
Tenth Circuit	
United States v. Farley, 36 F.4th 1245 (10th Cir. 2022)	The district court plainly erred by stating that it would have to depart downward by ten offense levels from the presentence report's recommendation (1080 months) to impose the 40-year sentence sought by the government. The court further erred by stating that it had varied downward by six levels to impose a 630-month sentence. In fact, the court would have had to vary by only one level (from 43 to 42) to impose the 40-year sentence. The defendant had a "reasonably likely chance at a lower sentence if a proper method [had been] used to determine the extent of the downward variance."
United States v. Moore, 30 F.4th 1021 (10th Cir. 2022)	The district court plainly erred by offering the defendant the choice between either "(1) an immediate 51-month sentence of imprisonment; or (2) a 48-month sentence of probation, subject to *at least* 84 months' imprisonment for any future probation violation." This "sentence-in-advance system" was procedurally unreasonable because it did not comport with required resentencing procedures. The district court could not have known whether a future probation violation would justify the increase to the original sentence offer.

United States v. Warren, 22 F.4th 917 (10th Cir. 2022)	Motions for reconsideration may be filed under 18 U.S.C. § 3582(c), but such motions must be filed within the time to appeal the order that is the subject of the motion. Untimeliness is not a jurisdictional bar, however, and thus may be waived by the government.
United States v. Cozad, 21 F.4th 1259 (10th Cir. 2022)	Under 18 U.S.C. § 3553(a), it is procedurally unreasonable for a court to impose a harsher sentence based on a defendant's decision to plead guilty without a plea agreement.
Eleventh Circuit	
United States v. Howard, 28 F.4th 180 (11th Cir. 2022)	The district court erred and imposed a substantively unreasonable sentence when it imposed probation for a physician who committed health care crimes, failing to properly consider and weigh the 18 U.S.C. § 3553(a) sentencing factors and giving weight to "improper factors" such as the loss of a professional license and becoming a felon.
United States v. Maurya, 25 F.4th 829 (11th Cir. 2022)	The district court violated the *Ex Post Facto* Clause of the Constitution by using the 2018 *Guidelines Manual* to sentence the defendant because the 2-level enhancement for substantial financial hardship at §2B1.1(b)(2)(A)(iii) did not exist during the timeframe in which the defendant committed her offense.

Sex Offenses

D.C. Circuit	
	No cases selected by Commission staff.
First Circuit	
United States v. Messner, No. 21-1483, 2022 WL 2232422 (1st Cir. June 22, 2022)	The defendant suffered no prejudice from his counsel's failure to object on *ex post facto* grounds to the application of the sexual-abuse-of-a-toddler enhancement under §2G2.2(b)(4)(B) because the presentence report and record made clear that both the probation officer and government believed that a §2G2.2(b)(4) enhancement would be appropriate under either subparagraph (A) or (B) of §2G2.2(b)(4) and there was uncontested evidence sufficient under circuit precedent "to support the application of the sadistic-or-masochistic enhancement under §2G2.2(b)(4)(A)."
Second Circuit	
	No cases selected by Commission staff.
Third Circuit	
	No cases selected by Commission staff.
Fourth Circuit	
United States v. Morehouse, 34 F.4th 381 (4th Cir. 2022)	The enhancement at §2G2.2(b)(3)(B) for distribution "in exchange for any valuable consideration, but not for pecuniary gain," requires a four-part showing: that the defendant

	"(1) agreed . . . to an exchange with another person under which (2) the defendant knowingly distributed child pornography to that other person (3) for the specific purpose of obtaining something of valuable consideration (4) from that same other person."
Fifth Circuit	
	No cases selected by Commission staff.
Sixth Circuit	
United States v. Zabel, 35 F.4th 493 (6th Cir. 2022)	The district court did not abuse its discretion in determining that the isolated location of the defendant's abusive sexual contact in the victim's workplace and the conduct itself justified an upward variance to reflect the seriousness of the offense and the offense conduct.
United States v. Meek, 32 F.4th 576 (6th Cir. 2022)	The district court did not err in denying a reduction under §2G2.2(b)(1) for conduct limited to the "receipt or solicitation" of child pornography because the defendant used LimeWire to download child pornography and admitted at sentencing that "he may have inadvertently shared or traded child pornography." Additionally, the denial of a reduction under §2G2.2(b)(1) does not necessitate the application of the distribution enhancement under §2G2.2(b)(3)(F) because "it is conceivable that a defendant could unknowingly distribute child pornography, making him ineligible for both a §2G2.2(b)(1) reduction and a §2G2.2(b)(3)(F) enhancement."
United States v. Gould, 30 F.4th 538 (6th Cir. 2022)	A FaceTime call is a "visual depiction" under §2G1.3(c)(1) because the plain meaning of the term does not include a permanency requirement. In addition, for purposes of §2G1.3(c)(1), an offense involves "offering by advertisement a minor to engage in sexually explicit conduct" if a defendant responds to such an advertisement.
Seventh Circuit	
United States v. Hyatt, 28 F.4th 776 (7th Cir. 2022)	The district court erred in applying the 2-level increase at §2G2.2(b)(3)(F) for knowing distribution of child pornography based solely on the fact that the defendant uploaded images to Dropbox, a file-sharing platform. Notably, no circuit has held that the enhancement may apply "based solely on the upload of files to cloud-based storage."
United States v. Skaggs, 25 F.4th 494 (7th Cir. 2022)	The district court's imposition of a life sentence based on the belief that such a sentence was required by 18 U.S.C. § 3559(e) was harmless error because the district court stated, along with its reasoning and analysis of the 18 U.S.C. § 3553(a) factors, that it would have nevertheless imposed the same sentence.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

United States v. Randall, 34 F.4th 867 (9th Cir. 2022)	To be eligible for the 5-level enhancement under §2G2.2(b)(3)(B), which applies when an offender distributes child pornography "in exchange for any valuable consideration," the offender need not actually receive the "valuable consideration."
United States v. Rosenow, 33 F.4th 529 (9th Cir. 2022)	The special instruction in §2G2.1(d)(1) makes clear that, if an offense referenced to §2G2.1 involved the exploitation of more than one minor, a district court must apply the guidelines applicable to multiple counts "as if the exploitation of each minor had been contained in a separate count of conviction."

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Supervised Release

D.C. Circuit

United States v. Turner, 21 F.4th 862 (D.C. Cir. 2022)	At a sentencing for revocation of supervised release, the guideline range determined under Chapter 7's Revocation Table is the total recommended punishment, regardless of whether an offender's supervised release is revoked while serving a single term of supervised release or multiple concurrent terms of supervised release. It is procedural error to impose multiple within-range revocation terms reflecting each count of conviction that carried a supervised release term.

First Circuit

United States v. Serrano-Berrios, No. 21-1457, 2022 WL 2301936 (1st Cir. June 27, 2022)	The district court improperly relied on the defendant's state charges in varying upward from the guideline range for his revocation sentence because the magistrate judge had found no probable cause to conclude the defendant had committed any of the charged crimes and had dismissed the alleged corresponding violation of supervised release.
United States v. Cintron-Ortiz, 34 F.4th 121 (1st Cir. 2022)	On plain error review, assuming the defendant's condition of supervised release requiring him to remain at his residence 12 hours per day constitutes "home confinement" under 18 U.S.C. § 3563(b)(19), it is not "clear or obvious" that the condition is also equivalent to "imprisonment" for purposes of the statutory maximum term of imprisonment for revocation sentences under 18 U.S.C. § 3583(e)(3). The statutory text "does not plainly show that such a

	condition constitutes imprisonment," and further, the question is an unsettled question of law in the circuit and has led to a conflict among other circuits.
Second Circuit	
United States v. Peguero, 34 F.4th 143 (2d Cir. 2022)	As established by circuit precedent, district courts' authority under 18 U.S.C. § 3583(e)(3) to revoke a term of supervised release on a finding that a defendant committed a criminal offense while on supervised release does not unconstitutionally contravene the defendant's rights to indictment by a grand jury, confront witnesses, be tried by a jury, and remain free unless proven guilty beyond a reasonable doubt. Supervised release revocation proceedings are not criminal prosecutions, so defendants are not entitled to "the full panoply of rights" they would be in a criminal prosecution.
Third Circuit	
	No cases selected by Commission staff.
Fourth Circuit	
United States v. Morris, No. 18-6926, 2022 WL 2284537 (4th Cir. June 24, 2022)	In deciding the defendant's motion under 18 U.S.C. § 3583(e)(2) to modify his supervised release conditions, the district court had jurisdiction to consider the restrictions on internet use because intervening decisions "altered the law surrounding internet-use conditions."
United States v. Nelson, No. 21-4250, 2022 WL 2185350 (4th Cir. June 17, 2022)	The district court plainly erred in concluding that §7B1.3(g)(2), which replicates the statutory text in 18 U.S.C. § 3583(h), required a five-year mandatory minimum term of supervised release upon the defendant's release from imprisonment for a revocation sentence.
Fifth Circuit	
United States v. Badillo, 36 F.4th 660 (Mem) (5th Cir. 2022)	Pursuant to circuit precedent, district courts lack authority under 18 U.S.C. § 3583(d) to impose a condition of supervised release ordering offenders convicted of illegal reentry to self-deport after they are released from confinement.
United States v. Mejia-Banegas, 32 F.4th 450 (5th Cir. 2022)	The Western District of Texas's standard risk-notification condition of supervised release is not an improper delegation of authority to probation officers.
Sixth Circuit	
United States v. Zabel, 35 F.4th 493 (6th Cir. 2022)	The district court did not abuse its discretion in determining that lifetime supervised release was appropriate in light of the defendant's conduct and the district court's conclusion that the lack of indicators in his background explaining the offense warranted lifetime supervision. "For the same reasons," the lifetime supervised release was "also constitutional under the Eighth Amendment."
United States v. Sears, 32 F.4th 569 (6th Cir. 2022)	Time served for prior violations of supervised release "is not credited toward and does not limit the statutory maximum that a court may impose" for a subsequent violation of supervised release under 18 U.S.C. § 3583(e).

Seventh Circuit	
United States v. Patlan, 31 F.4th 552 (7th Cir. 2022)	The district court did not err in treating the defendant's failed drug screening as a Grade B, rather than a Grade C, violation because the defendant stipulated to the violations alleging possession and use of amphetamine and methamphetamine based on such screening.
Eighth Circuit	
	No cases selected by Commission staff.
Ninth Circuit	
United States v. Wells, 29 F.4th 580 (9th Cir. 2022)	The defendant's special condition of supervised release prohibiting the possession or use of a computer is unconstitutionally vague because the condition's definition of the term "computer" would cause "men of common intelligence [to] necessarily guess at its meaning and differ as to its application." Because the special condition violates a constitutional right that was not expressly and specifically waived by the defendant's valid appeal waiver, it is an "illegal" sentence that the defendant may challenge.
United States v. Ponce, 22 F.4th 1045 (9th Cir. 2022)	The correct legal standard for deciding a motion for early termination of supervised release is set forth in 18 U.S.C. § 3583(e), which makes clear that a district court enjoys discretion to consider a wide range of circumstances.
Tenth Circuit	
	No cases selected by Commission staff.
Eleventh Circuit	
United States v. Coglianese, 34 F.4th 1002 (11th Cir. 2022)	A supervised release condition restricting the defendant's possession of an "electronic data storage medium" was not overbroad and did not "impose a greater deprivation of liberty than necessary" because the condition did not constitute a total ban on such a medium and was reasonably related to the defendant's offenses of conviction.
United States v. Moore, 22 F.4th 1258 (11th Cir. 2022)	The district court did not plainly err in imposing a revocation sentence and a new term of imprisonment that resulted in a combined sentence that exceeded the statutory maximum for the original offense because the text of 18 U.S.C. § 3583(e) does not indicate that "the full panoply of rights provided for in the Fifth or Sixth Amendments apply to [section] 3583(e) revocation proceedings," and neither the Supreme Court nor the Eleventh Circuit have directly resolved the issue.

General Application Issues

D.C. Circuit	
First Circuit	*No cases selected by Commission staff.*
United States v. Espinoza-Roque, 26 F.4th 32 (1st Cir. 2022)	The district court clearly erred when it applied a higher base offense level under §2K2.1(a)(4)(B) to the defendant's firearms offenses based on its conclusion that the defendant was an "unlawful user of or addicted to any controlled substance" at the time he committed those offenses. The district court had relied on the defendant's statement that he "used marijuana every day without interruption to get to sleep" to find the requisite temporal nexus needed to apply the higher base offense level, but that reliance was erroneous given other "undisputed evidence" in the defendant's record.
Second Circuit	*No cases selected by Commission staff.*
Third Circuit	*No cases selected by Commission staff.*
Fourth Circuit	
United States v. Moses, 23 F.4th 347 (4th Cir. 2022)	The district court properly applied Application Note 5(C) to §1B1.3 because guideline commentary is authoritative and binding even if the guideline is unambiguous. *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019) (limiting deference to an executive agency's interpretation of its regulations), did not alter the authoritative weight afforded to guideline commentary under *Stinson v. United States*, 508 U.S. 36 (1993). This holding is in conflict with the court's opinion in *United States v. Campbell*, 22 F.4th 438 (4th Cir. 2022).
Fifth Circuit	
United States v. Ramirez, 37 F.4th 233 (5th Cir. 2022)	Application Note 3 to §2L1.1 explains that courts should not apply the §3C1.2 adjustment for reckless endangerment during flight in addition to the §2L1.1(b)(6) enhancement for reckless endangerment if the enhancement is premised "solely on the basis of conduct related to fleeing from a law enforcement officer."
United States v. Cordova-Lopez, 34 F.4th 442 (5th Cir. 2022)	Application Note 3 to §2L1.2 is not in tension with the guidelines; rather, it "merely describes what the [g]uidelines' text and structure would unambiguously require even in its absence." In so holding, the court declined to decide the deference owed to guideline commentary.
United States v. Castelo-Palma, 30 F.4th 284 (5th Cir. 2022)	Whether an undisputed fact is sufficient to apply the reckless endangerment enhancement at §2L1.1(b)(6) is a legal question subject to *de novo* review. Further, circuit precedent has identified five factors to consider when reviewing the application of the enhancement to the

	base offense level for unlawful transportation of aliens into the United States via a motor vehicle: (1) the availability of oxygen, (2) any exposure to temperature extremes, (3) the aliens' ability to communicate with the vehicle's driver, (4) the aliens' ability to exit the vehicle quickly, and (5) the danger to the aliens if an accident occurs.
Sixth Circuit	
United States v. Gardner, 32 F.4th 504 (6th Cir. 2022)	Conspiracy to distribute and possess with intent to distribute narcotics is not an offense consisting of the "distribution of a controlled substance" for purposes of the federal benefits ban under 21 U.S.C. § 862(a); the district court committed legal error in concluding otherwise. However, the district court correctly denied safety-valve relief for a defendant who did not admit her culpable mental state.
United States v. Nunley, 29 F.4th 824 (6th Cir. 2022)	The cumulative application of the enhancement under §2K2.1(b)(6)(B) for use of a firearm in connection with another felony offense and the adjustment under §3A1.2(c)(1) for assaulting a law enforcement officer does not constitute impermissible double counting, even where the conduct underlying the enhancement and adjustment is the same.
Seventh Circuit	
	No cases selected by Commission staff.
Eighth Circuit	
United States v. Alibegic, 34 F.4th 1122 (8th Cir. 2022)	The statutory text in effect at the time the defendant committed his instant offense is the relevant statutory text for determining whether his offense conduct qualifies as "another felony offense" under §2K2.1(b)(6)(B); later amendments to the statute are irrelevant.
United States v. Fisher, 25 F.4th 1080 (8th Cir. 2022)	The district court did not plainly err in concluding that §5K2.23 does not authorize a court to downwardly depart below a statutory minimum penalty. The court further indicated that it was "inclined to agree with the other circuits that have decided this issue" were the question raised on *de novo* review.
Ninth Circuit	
United States v. Kirilyuk, 29 F.4th 1128 (9th Cir. 2022)	Because Application Note 3(F)(i) to §2B1.1 provides that "loss" for use of counterfeit credit cards must be calculated at not less than $500 per credit card used, the application note expands the meaning of "loss" in a manner inconsistent with the guideline language and acts as an enhanced punishment rather than an assessment of "loss" tied to the facts of the case. Therefore, Application Note 3(F)(i) is not binding under *Stinson v. United States*, 508 U.S. 36 (1993), which provides that the role of a guideline's application notes is to explain the sentencing guidelines, not enact policy changes to them.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Other Offense Types

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

No cases selected by Commission staff.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

United States v. Ziesel, No. 20-4240, 2022 WL 2339157 (6th Cir. June 29, 2022)

A verbal instruction by a bank robber to get on the ground, without a change in location, use of actual restraints, or threat of use of a dangerous weapon, does not constitute "physical restraint" for purposes of §2B3.1(b)(4)(B). The inquiry focuses "on the defendant's action, not the victim's reaction."

Seventh Circuit

United States v. Hernandez, No. 20-3480, 2022 WL 2254451 (7th Cir. June 23, 2022)

The district court did not clearly err in concluding that the defendant should be held responsible for conspiracy to commit murder as part of his RICO conspiracy conviction because evidence in the presentence report showed that the defendant was a gang leader responsible for enforcing "violent policies, which sometimes required shooting rival gang members" and "that he had also directly furthered those policies by offering lethal weapons to his fellow gang members and by personally participating in the gang's 'security' activities."

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit	
	No cases selected by Commission staff.
Tenth Circuit	
United States v. Logsdon, 26 F.4th 854 (10th Cir. 2022)	The district court properly applied the cross-reference in §2B1.1(c)(2), which applies if "the offense involved arson," to a defendant convicted of making a false statement to an arson investigator, even though the defendant did not mention arson in her statement and there was no evidence that she committed arson. The false statement offense "involved arson" because an underlying arson launched the investigation in which she made a materially false statement that led to her prosecution.
Eleventh Circuit	
	No cases selected by Commission staff.

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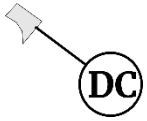
(Cases appear in descending chronological order within a circuit.)



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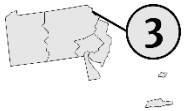

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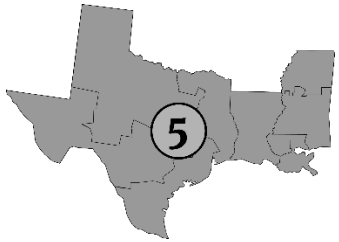

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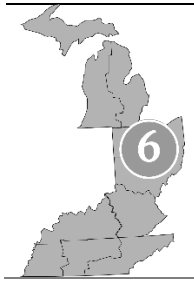

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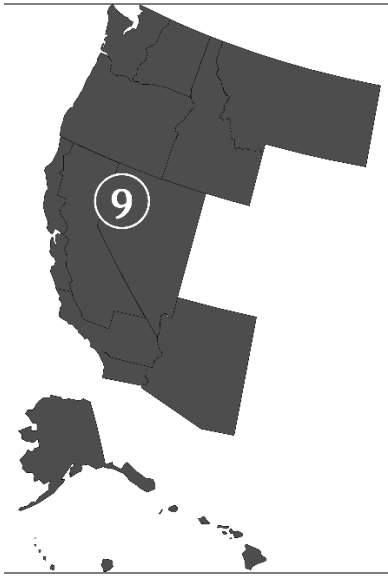
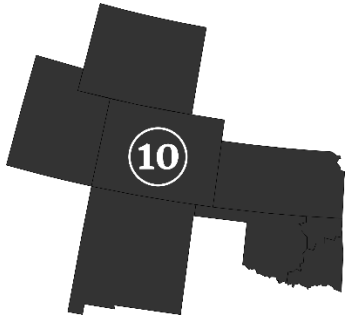


United States v. Tagatac, 36 F.4th 1000 (9th Cir. 2022) (Career Offender)
United States v. House, 31 F.4th 745 (9th Cir. 2022) (Career Offender)
United States v. Begay, 33 F.4th 1081 (9th Cir. 2022) (en banc) (Categorical Approach)
United States v. Fower, 30 F.4th 823 (9th Cir. 2022) (Compassionate Release)
United States v. King, 24 F.4th 1226 (9th Cir. 2022) (Compassionate Release)
United States v. Lonich, 23 F.4th 881 (9th Cir. 2022) (Economic Crimes)
United States v. Merrell, 37 F.4th 571 (9th Cir. 2022) (First Step Act of 2018)
United States v. Randall, 34 F.4th 867 (9th Cir. 2022) (Sex Offenses)
United States v. Rosenow, 33 F.4th 529 (9th Cir. 2022) (Sex Offenses)
United States v. Wells, 29 F.4th 580 (9th Cir. 2022) (Supervised Release)
United States v. Ponce, 22 F.4th 1045 (9th Cir. 2022) (Supervised Release)
United States v. Kirilyuk, 29 F.4th 1128 (9th Cir. 2022) (General Application Issues)



United States v. Wilkins, 30 F.4th 1198 (10th Cir. 2022) (Career Offender)
United States v. Arellanes-Portillo, 34 F.4th 1132 (10th Cir. 2022) (Chapter Three Adjustments)
United States v. Sanchez, 22 F.4th 940 (10th Cir. 2022) (Firearms)
United States v. Burris, 29 F.4th 1232 (10th Cir. 2022) (First Step Act of 2018)
United States v. Casados, 26 F.4th 845 (10th Cir. 2022) (Restitution)
United States v. Anthony, 25 F.4th 792 (10th Cir. 2022) (Restitution)
United States v. Farley, 36 F.4th 1245 (10th Cir. 2022) (Sentencing Procedure)
United States v. Moore, 30 F.4th 1021 (10th Cir. 2022) (Sentencing Procedure)
United States v. Warren, 22 F.4th 917 (10th Cir. 2022) (Sentencing Procedure)
United States v. Cozad, 21 F.4th 1259 (10th Cir. 2022) (Sentencing Procedure)
United States v. Logsdon, 26 F.4th 854 (10th Cir. 2022) (Other Offense Types)

United States v. Jackson, 36 F.4th 1294 (11th Cir. 2022) (Categorical Approach)
United States v. Gardner, 34 F.4th 1283 (11th Cir. 2022) (Categorical Approach)
United States v. Stines, 34 F.4th 1315 (11th Cir. 2022) (Firearms)
United States v. Smith, 30 F.4th 1334 (11th Cir. 2022) (First Step Act of 2018)
United States v. Williams, 25 F.4th 1307 (11th Cir. 2022) (First Step Act of 2018)
United States v. Howard, 28 F.4th 180 (11th Cir. 2022) (Sentencing Procedure)
United States v. Maurya, 25 F.4th 829 (11th Cir. 2022) (Sentencing Procedure)
United States v. Coglianese, 34 F.4th 1002 (11th Cir. 2022) (Supervised Release)
United States v. Moore, 22 F.4th 1258 (11th Cir. 2022) (Supervised Release)