Selected Supreme Court Cases On Sentencing Issues

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SELECTED SUPREME COURT CASES ON SENTENCING ISSUES

This document provides brief summaries of selected Supreme Court cases that involve the guidelines and other aspects of federal sentencing. These summaries are listed in reverse chronological order and are not intended to be comprehensive. Instead, this document focuses on cases covering sentencing topics that may be of current interest, including the following:

- the authority of the Commission;
- the categorical approach;
- departures and variances;
- the consideration of rehabilitation in sentencing;
- the application of the Sixth Amendment to sentencing;
- the scope of supervised release;
- the standards applicable to convictions under 18 U.S.C. §§ 924(c) (the use or possession of a firearm in a crime of violence or drug trafficking crime) and 924(e) (the Armed Career Criminal Act); and
- motions for sentence reductions under 18 U.S.C. § 3582(c).

The Subject Matter Index at the end of this document highlights the topics listed above and indexes the selected cases under those topics, as applicable. Further information about many of these topics, including the categorical approach and departures, can be found on the Commission's website.

Erlinger v. United States, 144 S. Ct. 1840 (2024).

The Supreme Court held that the Fifth and Sixth Amendments require a unanimous jury to determine beyond a reasonable doubt that an individual's past offenses were committed on separate occasions in order to apply the enhanced sentencing penalty under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). In so holding, the Court relied on its decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), that only a jury may find facts that "increase the prescribed range of penalties to which a criminal defendant is exposed." The Court dismissed "some practical problems" that could arise from its holding, stating that "the right to a jury trial 'has always been' an important part of what keeps this Nation 'free,' " which the Court traced back through colonial history, relying on the Constitution, Bill of Rights, and the Federalist Papers.

Brown v. United States, 144 S. Ct. 1195 (2024).

The Supreme Court held that in "light of context, precedent, and statutory purpose," a state drug conviction counts as a predicate "serious drug offense" under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA")—which defines a controlled substance offense by reference to the federal Controlled Substances Act—if it involves a drug that appeared on the federal drug schedules at the time of the state drug conviction. The Court explained

that because the ACCA gauges what a defendant's criminal history says about their "culpability and dangerousness," the analysis involves a "backward-looking" examination. Accordingly, the Court concluded that courts must "examine the law as it was when the defendant violated it, even if that law is subsequently amended."

Pulsifer v. United States, 601 U.S. 124 (2024).

The Supreme Court held that a defendant is eligible for "safety-valve relief" based on the criminal history provision at 18 U.S.C. § 3553(f)(1) if he "[A] does not have four criminal-history points, [B] does not have a prior three-point offense, and [C] does not have a prior two-point violent offense." The provision "thus creates an eligibility checklist, and demands that a defendant satisfy every one of its conditions." The Court concluded that while there are two "grammatically permissible readings of the statute when viewed in the abstract," the "two possible readings thus reduce to one" when the text is read in context, including in conjunction with the guidelines.

Lora v. United States, 599 U.S. 453 (2023).

The Supreme Court held that the concurrent-sentence bar in 18 U.S.C. § 924(c)(1)(D)(ii) applies only to terms of imprisonment imposed under that subsection and does not extend to convictions under 18 U.S.C. § 924(j). While subsection (j) references subsection (c) ("a person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm"), "it does so only with respect to offense elements, not penalties." Accordingly, the Court held that subsection (c)'s concurrent-sentence bar does not extend to subsection (j) because Congress put subsection (j) in a discrete subsection with its own penalties.

Concepcion v. United States, 597 U.S. 481 (2022).

The Supreme Court held that in adjudicating a motion pursuant to section 404 of the First Step Act of 2018, Pub. L. No. 115–391, § 404, 132 Stat. 5194, 5222, the district court "may consider other intervening changes of law (such as changes to the Sentencing Guidelines) or changes of fact (such as behavior in prison)." The Court determined that, as in original sentencings, in section 404 proceedings, district courts may consider any information not expressly limited by Congress or the Constitution; because section 404 of the First Step Act contains no such express limitations, district courts may consider a broad range of information in determining whether and by what amount to reduce an eligible defendant's sentence, including intervening changes of law or fact. However, while the district court must consider such arguments, it is not required to accept them.

United States v. Taylor, 596 U.S. 845 (2022).

The Supreme Court held that attempted robbery in violation of the Hobbs Act, 18 U.S.C. § 1951, does not constitute a "crime of violence" under 18 U.S.C. § 924(c)(3)(A)'s elements clause because it does not require the use, attempted use, or threatened use of force. Attempted Hobbs Act robbery requires "an intention to take property by force or threat" and "a substantial step toward achieving that object." The Court explained that a defendant could take a substantial step without ever using, attempting, or threatening physical force—for example, if the defendant was thwarted before communicating any threat—so attempt to commit Hobbs Act robbery is not a crime of violence under the categorical approach.

Additionally, the Court rejected the government's contention that *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007), required the defendant to identify a case which involved a defendant not using, threatening, or attempting force. The Court distinguished *Duenas-Alvarez* for two reasons: (1) *Duenas-Alvarez* "required a federal court to make judgment about the meaning of a state statute" whereas *Taylor* "asks only whether the elements of one federal law align with those proscribed in another" and (2) *Duenas-Alvarez* concerned the comparison between a generic offense and a state statute which "clearly overlapped" but might apply more broadly, whereas *Taylor* involves a statute that does not require proof of any of the elements required by section 924(c)(3)(A).

Wooden v. United States, 595 U.S. 360 (2022).

The Supreme Court held that "[c]onvictions arising from a single criminal episode . . . can count only once under" 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). The ACCA applies where a defendant has three prior convictions for violent felonies or serious drug offenses that were "committed on occasions different from one another." The Court determined that "'occasion' means an event or episode" which may "encompass multiple, temporally distinct activities." The Court explained that the amount of time, proximity of location, and character and relationship between offenses are factors in determining whether multiple offenses occurred on one occasion or more than one occasion. Accordingly, the Court held that the defendant's "one-after-another-after-another burglary of ten units in a single storage facility occurred on one 'occasion,'" and so his ten convictions for that conduct "count only once under ACCA."

Terry v. United States, 593 U.S. 486 (2021).

The Supreme Court held that crack cocaine offenders sentenced under 21 U.S.C. § 841(b)(1)(C) are not eligible for a sentence reduction under section 404 of the First Step Act of 2018. Under section 404, an offender is eligible for a sentence reduction if he was previously sentenced for a "covered offense," which is defined as "a violation of a [f]ederal criminal statute, the statutory penalties for which were modified by" certain provisions of

the Fair Sentencing Act of 2010. The Court concluded that "'statutory penalties' references the entire, integrated phrase 'a violation of a [f]ederal criminal statute,'" which means "offense." The Court pointed out that, unlike offenses sentenced under 21 U.S.C. § 841(b)(1)(A) and § 841(b)(1)(B), the statutory penalties for a section 841(b)(1)(C) offense "remain exactly the same" before and after 2010. Thus, the Court held that the Fair Sentencing Act did not modify the statutory penalties for a section 841(b)(1)(C) offense.

Borden v. United States, 593 U.S. 420 (2021).

The Supreme Court held that an offense that requires a *mens rea* of only recklessness cannot qualify as a predicate "violent felony" under the elements clause in 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). The Court determined that the elements clause, which requires the "use of physical force against the person of another," does not include offenses criminalizing reckless conduct. Specifically, the Court found that the phrase "against . . . another," when modifying "use of force," requires that a "perpetrator direct his action at, or target, another individual." The Court explained that reckless crimes do not meet this standard because they merely require a person to "consciously disregard[] a substantial and unjustifiable risk" of injury.

Davis v. United States, 589 U.S. 345 (2020).

The Supreme Court, in a *per curiam* opinion, held that "there is no legal basis" for a court of appeals to decline reviewing "unpreserved factual arguments" for plain error under Federal Rule of Criminal Procedure 52(b). The defendant had challenged for the first time on appeal whether the sentences for his state and federal offenses were part of the "same course of conduct" such that they should run concurrently under §5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment). The Fifth Circuit had declined to review the argument, deeming it to raise factual issues that "could never constitute plain error." The Court explained that "[t]he text of Rule 52(b) does not immunize factual errors from plain-error review," and that its "cases likewise do not purport to shield any category of errors from plain-error review."

Shular v. United States, 589 U.S. 154 (2020).

The Supreme Court held that the proper categorical methodology for determining whether a defendant's prior state offense qualifies as a predicate "serious drug offense" under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA") is to assess whether the elements of the state offense involve the conduct identified in the definition of "serious drug offense" in section 924(e)(2)(A)(ii) (*i.e.*, "involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance"). In so holding, the Court rejected the defendant's argument that section 924(e)(2)(A)(ii) identifies offenses, rather than conduct, thus requiring a generic-offense categorical approach. The Court explained

that "by speaking of activities a state-law drug offense 'involv[es],' [section] 924(e)(2)(A)(ii) suggests that the descriptive terms immediately following the word 'involving' identify conduct."

Holguin-Hernandez v. United States, 589 U.S. 169 (2020).

The Supreme Court held that "the defendant's district-court argument for a specific sentence (namely, nothing or less than 12 months) preserved his claim on appeal that the 12-month sentence [he received] was unreasonably long." The Court explained that where a defendant "advocates for a sentence shorter than the one ultimately imposed," nothing more is needed under Federal Rule of Criminal Procedure 51(b) to preserve his claim that the longer sentence is unreasonable. Further, the Court noted that such a defendant is not required to refer to the "reasonableness" of his sentence to preserve his claim for appeal.

United States v. Haymond, 588 U.S. 634 (2019).

The Supreme Court, in a fractured decision, invalidated a provision in 18 U.S.C. § 3583(k) requiring a judge to revoke a defendant's term of supervised release and impose a mandatory minimum of five years' imprisonment, "without regard to the length of the prison term authorized for [a revocation of supervised release by] the defendant's initial crime of conviction," if the judge finds, by a preponderance of the evidence, that the defendant committed an offense enumerated in section 3583(k) while on supervised release.

A plurality of the Court relied on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Alleyne v. United States*, 570 U.S. 99 (2013), and their progeny to conclude that the provision impermissibly allows a judge to increase "the legally prescribed range of allowable sentences" for a defendant, in violation of the Fifth and Sixth Amendments. While the concurrence disagreed with the plurality's application of "the *Apprendi* line of cases to the supervised-release context," the concurrence agreed that the provision is unconstitutional because the features of the provision "more closely resemble the punishment of new criminal offenses, but without granting a defendant the rights, including the jury right, that attend a new criminal prosecution." Courts of Appeals have held that the concurrence is controlling.

United States v. Davis, 588 U.S. 445 (2019).

Relying on its decisions in *Johnson v. United States*, 576 U.S. 591 (2015), and *Sessions v. Dimaya*, 584 U.S. 148 (2018), the Supreme Court held that the residual clause of the definition of "crime of violence" in 18 U.S.C. § 924(c)(3) is unconstitutionally vague. The residual clause captures offenses that "involve[] a substantial risk [of the use of] physical force against the person or property of another." In *Johnson*, the Court found that the residual clause of the definition of "violent felony" in 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA") was void for vagueness because courts were required to apply the

categorical approach and imagine whether the "ordinary case" of a defendant's crime would require a "serious potential risk of physical injury to another." In *Dimaya*, the Court found that the residual clause of the definition of "crime of violence" in 18 U.S.C. § 16 was also void for vagueness for requiring the same comparison of an abstract "ordinary case" to an ill-defined amount of risk.

Given *Johnson* and *Dimaya*, the Court noted that the constitutionality of section 924(c)(3)'s residual clause would depend on whether it requires the application of the categorical approach (which would require an "ordinary case" comparison), or a case-specific approach that considers the defendant's actual conduct. After examining the text, context, and history of section 924(c)(3), the Court concluded that section 924(c)(3)'s residual clause does, in fact, require the application of the categorical approach, thus rendering it invalid.

Stokeling v. United States, 586 U.S. 73 (2019).

The Supreme Court held that "a robbery offense that has as an element the use of force sufficient to overcome a victim's resistance necessitates the use of 'physical force' within the meaning of" the definition of "violent felony" in 18 U.S.C § 924(e) ("Armed Career Criminal Act" or "ACCA"). In so holding, the Court relied on the history of the ACCA, as well as its opinion in *Johnson v. United States*, 559 U.S. 133 (2010) (discussed further below). Specifically, the Court found that, under common law, robbery includes an unlawful taking committed with sufficient force to overcome the resistance encountered, no matter how slight that resistance was, and that Congress "made clear that the 'force' required for common-law robbery would be sufficient to justify an enhanced sentence" under the ACCA. Further, the Court explained that *Johnson* "relied on a definition of 'physical force' that specifically encompassed robbery" and established that the term "physical force" means "force capable of causing physical pain or injury to another person," which includes "the force necessary to overcome a victim's physical resistance." Accordingly, the Court found that Florida robbery, which "corresponds to that level of force," qualifies as a "violent felony" under the ACCA.

Rosales-Mireles v. United States, 585 U.S. 129 (2018).

The Supreme Court held that a miscalculation of a defendant's guideline range, "[which] has been determined to be plain and to affect [the] defendant's substantial rights," will, in the ordinary case, satisfy the fourth prong of a plain error review (*i.e.*, "seriously affect the fairness, integrity, or public reputation of judicial proceedings") and thus "call[] for a court of appeals to exercise its discretion under [Federal Rule of Criminal Procedure] 52(b) to vacate the defendant's sentence." The Court explained that errors need not amount to a "powerful indictment" of the judicial system or call into question the competence or integrity of a judge in order to warrant relief under Rule 52(b). Rather, "an error resulting in a higher range than the [g]uidelines provide usually establishes a reasonable probability that a defendant will serve a prison sentence that is more than 'necessary' to fulfill the purposes of incarceration," which "warrants serious consideration in

a determination whether to exercise discretion under Rule 52(b)." Nevertheless, the Court recognized that, because the fourth prong of plain error review is a case-specific inquiry, there may be cases in which a court may be satisfied that countervailing factors will preserve the fairness, integrity, and public reputation of judicial proceedings, without correcting an error.

Koons v. United States, 584 U.S. 700 (2018).

The Supreme Court affirmed the denial of the defendants' motions for sentence reductions under 18 U.S.C. § 3582(c)(2), which permits courts to reduce a term of imprisonment if the defendant was initially sentenced "based on a sentencing range" that was later lowered by the Commission. The Court held that the defendants were ineligible for such reductions because their "sentences were 'based on' their mandatory minimums and on their substantial assistance to the [g]overnment, not on sentencing ranges that the Commission later lowered." In so holding, the Court explained that, "[f]or a sentence to be 'based on' a lowered [g]uideline range, the range must have at least played 'a relevant part [in] the framework the [sentencing] judge used' in imposing the sentence." When a court scraps a guideline range in favor of a mandatory minimum, however, the range drops out of the case and cannot be considered as forming the basis for the sentence that the court ultimately imposes.

Hughes v. United States, 584 U.S. 675 (2018).

The Supreme Court held that a defendant who entered a plea agreement specifying a particular sentence under Federal Rule of Criminal Procedure 11(c)(1)(C) ("Type-C agreement") generally will be considered to have received a sentence "based on" the guidelines for purposes of 18 U.S.C. § 3582(c)(2). That statute permits courts to reduce a term of imprisonment if the defendant was initially sentenced "based on a sentencing range" that was later lowered by the Commission. The Court's holding resolved the uncertainty that resulted from its divided decision in *Freeman v. United States*, 564 U.S. 522 (2011) (discussed further below). The Court reasoned that, even after *United States v. Booker*, 543 U.S. 220 (2005), the guidelines "remain a basis for almost all federal sentences," and that "[a] sentence imposed pursuant to a Type-C agreement is no exception to the general rule that a defendant's [guideline] range is both the starting point and a basis for his ultimate sentence." The Court held that this interpretation furthers not only the purposes of section 3582(c)(2), but also the broader purposes of the Sentencing Reform Act of 1984.

Sessions v. Dimaya, 584 U.S. 148 (2018).

The Supreme Court held that the residual clause in 18 U.S.C. § 16, which defines the term "crime of violence" and is incorporated by reference in the Immigration and Nationality Act's mandatory removal provisions, is void for vagueness. The residual clause

defined "crime of violence" as a felony that "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." The Court concluded that section 16's residual clause had the same flaws as the residual clause of the definition of "violent felony" in 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"), which the Court invalidated in *Johnson v. United States*, 576 U.S. 591 (2015). Specifically, the Court determined that section 16's residual clause, like the ACCA's residual clause, creates "grave uncertainty" about "how to estimate the risk posed by a crime," as well as "the level of risk that makes a crime 'violent.'" Further, the Court rejected the government's argument that "three textual discrepancies" between section 16's residual clause and the ACCA's residual clause make section 16 "significantly easier to apply," finding that each of those discrepancies is merely a "proverbial distinction" that makes no difference.

Honeycutt v. United States, 581 U.S. 443 (2017).

The Supreme Court held that 21 U.S.C. § 853, which "mandates forfeiture of 'any property constituting, or derived from, any proceeds [a] person obtained, directly or indirectly, as the result of' certain drug crimes," is limited to property that a defendant himself actually acquired as the result of a drug crime. Accordingly, the Court concluded that a defendant may not be held jointly and severally liable under section 853 for property that a co-conspirator derived as a result of a drug crime but that the defendant did not acquire.

Dean v. United States, 581 U.S. 62 (2017).

The Supreme Court held that 18 U.S.C. § 924(c), which criminalizes the use or possession of a firearm in connection with a violent or drug trafficking crime by imposing a mandatory minimum "in addition to and consecutive to" the sentence for the underlying offense, does not prevent a court from considering the mandatory minimum when calculating an appropriate sentence for the underlying violent or drug trafficking crime. In so holding, the Court rejected the government's contention that courts should not consider the effect of other sentences a defendant may face in a multicount case until deciding whether the sentences should run consecutively or concurrently. Rather, the Court found that the sentencing factors in 18 U.S.C. § 3553(a) "permit a court imposing a sentence on one count of conviction to consider [the] sentences imposed on other counts," and that nothing in section 924(c) restricts the authority conferred on courts by section 3553(a).

Beckles v. United States, 580 U.S. 256 (2017).

The Supreme Court held that the guidelines are not subject to vagueness challenges under the Due Process Clause and that former §4B1.2(a)(2) (concerning the definition of "crime of violence") was not void for vagueness. In so holding, the Court rejected the defendant's argument that its decision in *Johnson v. United States*, 576 U.S. 591 (2015)—

which found the residual clause of the definition of "violent felony" in 18 U.S.C. § 924(e) (commonly referred to as the "Armed Career Criminal Act" or the "ACCA") void for vagueness—applies to the identical language in the residual clause that was in the 2006 version of §4B1.2(a). The Court distinguished the ACCA, which fixes the permissible range of sentences for certain defendants, from the guidelines, which are advisory and "merely guide the exercise of a court's discretion in choosing an appropriate sentence within the statutory range." Nevertheless, the Court cautioned that its holding neither renders the guidelines "immune from constitutional scrutiny," nor renders sentencing procedures entirely immune from scrutiny under the Due Process Clause.

Mathis v. United States, 579 U.S. 500 (2016).

The Supreme Court held that a defendant's prior conviction cannot qualify as a predicate "violent felony" under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA") if the offense of conviction enumerates "multiple, alternative means of satisfying one (or more) of its elements." In so holding, the Court noted that the categorical approach applies to the evaluation of prior convictions and reiterated its longstanding principles that (1) a state offense cannot qualify as an ACCA predicate violent felony if its elements are broader than those of the "generic" version of a listed "violent felony" (including "burglary, arson, or extortion"), and (2) how a defendant actually perpetrated an offense makes no difference. The Court found that a statute that specifies alternative means to commit a required element gives a court "no special warrant to explore the facts of [a defendant's] offense, rather than to determine the [offense's] elements and compare them with the generic definition."

The Court instructed that a court faced with an alternatively phrased statute must first "determine whether its listed items are elements or means." If the listed items are indeed elements, the court then may review the record materials under the modified categorical approach to determine which of the enumerated alternative elements played a part in the defendant's prior conviction for purposes of comparing that element to that of the "generic" version of the listed violent felony. Finally, the Court held that the Iowa burglary statute, which lists multiple means of satisfying its locational element, is broader than "generic" burglary, and thus, the defendant's convictions under the Iowa burglary statute could not give rise to an enhanced sentence under the ACCA.

Torres v. Lynch, 578 U.S. 452 (2016).

The Supreme Court held that a state offense counts as an "aggravated felony" under 8 U.S.C. § 1101(a)(43) when it has every substantive element of a federal offense listed in section 1101(a)(43) but not a jurisdictional element (common in federal criminal law) requiring a connection to interstate commerce. In so holding, the Court relied on two contextual considerations: (1) section 1101(a)(43)'s penultimate sentence, which demonstrates that Congress intended for the term "aggravated felony" to capture serious offenses, regardless of whether they are prohibited by federal, state, or foreign law; and (2) "a well-established background principle distinguishing between substantive and

jurisdictional elements in federal criminal statutes," which supports reading section 1101(a)(43) to include state analogues that lack an interstate commerce requirement.

Molina-Martinez v. United States, 578 U.S. 189 (2016).

The Supreme Court held that "[n]othing in the text of Rule 52(b) [of the Federal Rules of Criminal Procedure], its rationale, or the Court's precedents supports a requirement that a defendant seeking appellate review of an unpreserved [g]uidelines error make some further showing of prejudice beyond the fact that the erroneous, and higher, [guideline] range set the wrong framework for the sentencing proceedings." The Court noted that this is so even if a defendant's ultimate sentence falls within both the correct and incorrect guideline range.

Welch v. United States, 578 U.S. 120 (2016).

The Supreme Court held that its decision in *Johnson v. United States*, 576 U.S. 591 (2015), which deemed unconstitutional the residual clause of the definition of "violent felony" in 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"), applies retroactively to cases on collateral review. The Court found that *Johnson* announced a "substantive" rule by altering "the range of conduct or the class of persons that the [ACCA] punishes" and thus fell within one of the categories of decisions that have retroactive effect under its decision in *Teague v. Lane*, 489 U.S. 288 (1989).

Johnson v. United States, 576 U.S. 591 (2015).

The Supreme Court held that the imposition of an increased sentence under the residual clause of the definition of "violent felony" in 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA") violates the Constitution's guarantee of due process. The residual clause defined a "violent felony" as a crime that "involves conduct that presents a serious potential risk of physical injury to another." The Court found that two features of the residual clause "conspire to make it unconstitutionally vague," in violation of the Due Process Clause. First, "the residual clause leaves grave uncertainty about how to estimate the risk posed by a crime" by tying "the judicial assessment of risk to a judicially imagined 'ordinary case' of a crime, not to real-world facts or statutory elements." Second, "the residual clause leaves uncertainty about how much risk it takes for a crime to qualify as a violent felony." Combining these two features together, the Court concluded that "the residual clause produces more unpredictability and arbitrariness than the Due Process Clause tolerates."

The Court further rejected the argument that the residual clause can be "void for vagueness only if it is vague in all its applications," explaining that its precedent "squarely contradict[s] the theory that a vague provision is constitutional merely because there is

some conduct that clearly falls within the provision's grasp." Finally, the Court overruled its contrary holdings in *James v. United States*, 550 U.S. 192 (2007), and *Sykes v. United States*, 564 U.S. 1 (2011) (both discussed further below), explaining that "[s]tanding by *James* and *Sykes* would undermine, rather than promote, the goals that *stare decisis* is meant to serve."

Abramski v. United States, 573 U.S. 169 (2014).

The Supreme Court held that 18 U.S.C. § 922(a)(6), which imposes criminal penalties on any individual who, in connection with the acquisition of a firearm, makes false statements about "any fact material to the lawfulness of the sale," applies to a straw buyer—namely, an individual who buys a firearm on another's behalf while falsely claiming that it is for himself—regardless of whether the true buyer could have bought the firearm without the straw buyer. In so holding, the Court rejected the defendant's argument that section 922(a)(6) only applies to a straw buyer where the true buyer is legally ineligible to buy a firearm on his own, explaining that falsely affirming that one is the actual buyer of a firearm constitutes a material misrepresentation. As the Court explained, "[n]o piece of information is more important under federal firearms law than the identity of . . . the person who acquires a gun as a result of a transaction with a licensed dealer."

Paroline v. United States, 572 U.S. 434 (2014).

The Supreme Court held that (1) a proximate-cause requirement applies to all losses described in 18 U.S.C. § 2259, which mandates restitution for losses incurred by a victim as a result of trafficking in child pornography depicting the victim, and (2) "where it can be shown both that a defendant possessed a victim's images and that a victim has outstanding losses caused by the continuing traffic in those images but where it is impossible to trace a particular amount of those losses to the individual defendant by recourse to a more traditional causal inquiry, a court applying [section] 2259 should order restitution in an amount that comports with the defendant's relative role in the causal process that underlies the victim's general losses." Further, the Court provided "rough guideposts" for how courts should determine the proper amount of restitution under section 2259. Specifically, the Court suggested that courts could consider the following factors: the number of past defendants who contributed to a victim's general losses; any reasonable prediction of the number of future offenders likely to be caught and convicted of offenses contributing to such losses; any reasonably reliable estimate of the broader number of offenders involved; whether the individual defendant reproduced or distributed images of the victim; whether the individual defendant had any connection to the initial production of such images; and how many images of the victim the individual defendant possessed.

United States v. Castleman, 572 U.S. 157 (2014).

The Supreme Court held that the defendant's Tennessee conviction "for having 'intentionally or knowingly cause[d] bodily injury to' the mother of his child qualifies as a 'misdemeanor crime of domestic violence' " for purposes of 18 U.S.C § 922(g)(9). First, the Court analyzed the phrase "the use . . . of physical force," which forms part of the definition of "misdemeanor crime of domestic violence." Relying on its reasoning in *Johnson v. United States*, 559 U.S. 133 (2010), the Court concluded that "Congress incorporated the common-law meaning of 'force'—namely, offensive touching—in [such] definition." Second, the Court determined that the Tennessee statute under which the defendant was convicted is a "divisible" statute and applied the modified categorical approach to conclude that the use of physical force was an element of the defendant's conviction, thus qualifying his conviction as a "misdemeanor crime of domestic violence."

Burrage v. United States, 571 U.S. 204 (2014).

The Supreme Court held that the 20-year mandatory minimum penalty provision of 21 U.S.C. § 841(b)(1)(C), which applies when death or serious bodily injury "results from" the use of a controlled substance that a defendant unlawfully distributes, does not apply when the use of such a substance "contributes to, but is not a but-for cause of, [a] victim's death or injury." To reach its holding, the Court examined the phrase "results from," which section 841(b)(1)(C) does not define, and determined that the phrase requires "actual causality" (*i.e.*, proof that a harm would not have occurred "but for" a defendant's conduct).

Descamps v. United States, 570 U.S. 254 (2013).

The Supreme Court held that the modified categorical approach does not apply to statutes that "contain a single, 'indivisible' set of elements sweeping more broadly than the corresponding generic offense." The Court found that its "caselaw explaining the categorical approach and its 'modified' counterpart all but resolve[d]" the case. The Court explained that it first established the categorical approach in *Taylor v. United States*, 495 U.S. 575 (1990) (discussed further below), providing that a court may " 'look only to the statutory definitions'—*i.e.*, the elements—of a defendant's prior offenses, and *not* 'to the particular facts underlying those convictions.' " However, the Court noted that *Taylor* also hypothesized that if a statute has alternative elements, such as a burglary statute that prohibits "entry of an automobile as well as a building," a court could "look beyond" the statutory elements to other materials used in a defendant's case "to determine which of [the] statute's alternative elements formed the basis of the defendant's prior conviction." The Court then explained that its decision in *Shepard v. United States*, 544 U.S. 13 (2005) (discussed further below), established what has become known as the modified categorical approach, authorizing courts "to scrutinize a restricted set of materials" to determine which "version" of an offense a defendant was convicted of where the statute at issue is "divisible" (*i.e.*, "comprises multiple, alternative versions of [a] crime"). Accordingly, the Court concluded that the sole purpose of the modified categorical approach is to help implement

the categorical approach when a defendant's prior conviction is with respect to a divisible statute.

Alleyne v. United States, 570 U.S. 99 (2013).

The Supreme Court held that any fact that increases the mandatory minimum sentence for an offense is an "element" that must be submitted to a jury and found beyond a reasonable doubt, thus overruling *Harris v. United States*, 536 U.S. 545 (2002). The Court determined that its decision in *Harris* could not be reconciled with its reasoning in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Specifically, the Court explained that *Apprendi*'s principle—that the Sixth Amendment provides each defendant with the right to have a jury find, beyond a reasonable doubt, any fact that increases the prescribed range of penalties to which the defendant is exposed—applies with "equal force" to both facts that increase the statutory maximum for an offense as well as those that increase the statutory minimum for such offense.

Peugh v. United States, 569 U.S. 530 (2013).

The Supreme Court held that the *Ex Post Facto* Clause is violated when a defendant is sentenced under the version of the guidelines in effect at the time of sentencing rather than the version in effect at the time the crime was committed, and the newer guidelines produce a higher applicable sentencing range. In so holding, the Court rejected the government's argument that, because of *United States v. Booker*, 543 U.S. 220 (2005), the guidelines "lack sufficient legal effect" to give rise to an *ex post facto* violation. Rather, the Court concluded that, because the post-*Booker* federal sentencing system adopted procedural measures that make the guidelines the "lodestone" of sentencing, a retrospective increase in a defendant's applicable guideline range "creates a sufficient risk of a higher sentence to constitute an *ex post facto* violation."

Southern Union Company v. United States, 567 U.S. 343 (2012).

The Supreme Court held that the principle established in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), that "[t]he Sixth Amendment reserves to juries the determination of any fact, other than the fact of a prior conviction, that increases a criminal defendant's maximum potential sentence," also applies to criminal fines. The Court explained that there is "no principled basis under *Apprendi* for treating criminal fines differently." The Court further explained that "*Apprendi*'s 'core concern' is to reserve to the jury 'the determination of facts that warrant punishment for a specific statutory offense,'" and such concern "applies whether the sentence is a criminal fine or imprisonment or death." In addition, the Court found that the "historical role of the jury at common law" supports the application of *Apprendi* to criminal fines.

Dorsey v. United States, 567 U.S. 260 (2012).

The Supreme Court held that the provisions of the Fair Sentencing Act of 2010 (FSA) that reduced the crack-to-powder cocaine sentencing disparity from 100-to-1 to 18-to-1 apply to offenders who committed a crack cocaine crime before the effective date of the FSA but were sentenced after such date. The Court recognized that it "must assume that Congress did *not* intend [the FSA's] penalties to apply unless [Congress] clearly indicated to the contrary." The Court then concluded that there were "indicia of a clear congressional intent" in the FSA, as well as the Sentencing Reform Act of 1984 (SRA), to apply the FSA's more lenient mandatory minimum penalties to the aforementioned offenders.

Setser v. United States, 566 U.S. 231 (2012).

The Supreme Court held that "a district court, in sentencing a defendant for a federal offense, has authority to order that the federal sentence be consecutive to an anticipated state sentence that has not yet been imposed." Rejecting the defendant's arguments to the contrary, the Court found "nothing in the Sentencing Reform Act [of 1984], or in any other provision of law, to show that Congress foreclosed the exercise of district courts' sentencing discretion" in selecting "whether the sentences they impose will run concurrently or consecutively with respect to other sentences that they impose, or that have been imposed in other proceedings, including state proceedings."

Freeman v. United States, 564 U.S. 522 (2011), *holding modified by Hughes v. United States*, 584 U.S. 675 (2018).

The Supreme Court held that the defendant was eligible for a sentence reduction under 18 U.S.C. § 3582(c)(2), which permits courts to reduce a defendant's term of imprisonment if the defendant was initially sentenced "based on a sentencing range" that was later lowered by the Commission. However, there was no majority agreement as to why. A plurality of the Court concluded that defendants who enter into plea agreements under Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure that "specify a particular sentence may be said to have been sentenced 'based on' a [guideline] range, making them eligible for relief under [section] 3582(c)(2)." In contrast, the concurrence agreed with the dissent that sentences following a Rule 11(c)(1)(C) agreement are "based on the agreement rather than the [g]uidelines," thus precluding relief under section 3582(c)(2) in the "typical" case. Nevertheless, the concurrence concluded that relief under section 3582(c)(2) may be available when a Rule 11(c)(1)(C) agreement "expressly" uses the guideline range applicable to a defendant's offense to establish the defendant's sentence and such guideline range is subsequently lowered by the Commission. Both the plurality and the concurrence found that the defendant's sentence was "based on" a guideline range that was subsequently lowered by the Commission, thus making him eligible to seek relief under section 3582(c)(2).

Tapia v. United States, 564 U.S. 319 (2011).

The Supreme Court held that 18 U.S.C. § 3582(a), which instructs courts to "recogniz[e] that imprisonment is not an appropriate means of promoting correction and rehabilitation," precludes a court from imposing or lengthening a prison term in order to foster a defendant's rehabilitation. The Court reached its holding after examining the ordinary meaning of the term "recognize," the context of section 3582(a), and section 3582(a)'s legislative history. The Court explained that Congress "clearly" provided that "when sentencing an offender to prison, [a] court shall consider all the purposes of punishment except rehabilitation."

DePierre v. United States, 564 U.S. 70 (2011).

The Supreme Court held that the term "cocaine base," as used in 21 U.S.C. § 841(b)(1), "refers generally to cocaine in its chemically basic form," rather than "exclusively to what is colloquially known as 'crack cocaine.'" In so holding, the Court explained that, while using the term "cocaine base" to refer to chemically basic cocaine is redundant, Congress's choice to use such term is "best understood as an effort to make clear that [the statute] does not apply to offenses involving powder cocaine or other nonbasic cocaine-related substances." The Court found that this reading of the term is consistent with the structure of section 841(b)(1).

Sykes v. United States, 564 U.S. 1 (2011), *overruled by Johnson v. United States*, 576 U.S. 591 (2015).

The Supreme Court held that vehicle flight, in violation of Indiana's "resisting law enforcement law," qualifies as a "violent felony" under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). Specifically, the Court found that the offense "falls within the residual clause [of the definition of "violent felony" in section 924(e)(2)(B)(ii)] because, as a categorical matter, it presents a serious potential risk of physical injury to another." In so finding, the Court described the dangers inherent in vehicle flight from law enforcement and the risk of violence associated with such conduct, citing statistics showing that the risk of physical danger from vehicle flight is greater than the dangers presented by burglary and arson—two of the enumerated offenses in the definition of "violent felony" in section 924(e)(2)(B)(ii). Finally, the Court observed that Congress chose to frame the ACCA in general and qualitative terms that require courts to evaluate the risks posed by different offenses.

McNeill v. United States, 563 U.S. 816 (2011).

The Supreme Court held that when determining whether a defendant's previous drug offense under state law is a "serious drug offense" for purposes of 18 U.S.C. § 924(e)

("Armed Career Criminal Act" or "ACCA"), a sentencing court must consult the "maximum term of imprisonment" that was applicable to the offense at the time the defendant was convicted for that offense. A "serious drug offense" is defined to include certain offenses under state law with a "maximum term of imprisonment of ten years or more." First, the Court explained that the only way to determine whether a previous conviction was for a serious drug offense is "to consult the law that applied at the time of that conviction." Second, the Court discussed how "[t]he 'broader context of the statute as a whole,' specifically the adjacent definition of 'violent felony,' confirms [the Court's] interpretation." Finally, the Court noted that "absurd results" would follow if the Court adopted the defendant's position that a court should consult current state law to define a previous offense, explaining that, under such approach, a prior conviction for an offense could "disappear" entirely for ACCA purposes if a state reformulated the offense after the conviction.

Pepper v. United States, 562 U.S. 476 (2011).

The Supreme Court held that "when a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's post-sentencing rehabilitation, and [that] such evidence may, in appropriate cases, support a downward variance from the now-advisory [guideline] range." The Court found that (1) a "categorical bar" on the consideration of post-sentencing rehabilitation evidence would "directly contravene" Congress's expressed intent in 18 U.S.C. § 3661 that no limitation shall be placed on the evidence to be considered at sentencing, and (2) post-sentencing rehabilitation may "critically inform a sentencing judge's overarching duty under [18 U.S.C.] § 3553(a) to 'impose a sentence sufficient, but not greater than necessary,' to comply with the sentencing purposes set forth in [18 U.S.C.] § 3553(a)(2)." The Court also found the contrary arguments advanced by *amicus* unpersuasive, noting specifically that 18 U.S.C. § 3742(g)(2), which "effectively forecloses a resentencing court from considering evidence of a defendant's postsentencing rehabilitation for purposes of imposing a non-[g]uidelines sentence," was rendered invalid after *United States v. Booker*, 543 U.S. 220 (2005). Finally, the Court further held that "the law of the case doctrine did not require the [d]istrict [c]ourt in this case to apply the same percentage departure from the [guideline] range for substantial assistance that had been applied at [the defendant's] prior sentencing."

Abbott v. United States, 562 U.S. 8 (2010).

After interpreting 18 U.S.C. § 924(c)'s "except" clause, the Supreme Court held that "a defendant is subject to a mandatory, consecutive sentence for a [section] 924(c) conviction, and is not spared from that sentence by virtue of receiving a higher mandatory minimum on a different count of conviction." The Court noted that section 924(c) had been amended in 1998 to provide, in relevant part, that "[e]xcept to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law," any individual who uses or carries a firearm during and in relation to any crime of violence or drug trafficking crime, or who possesses a firearm in furtherance of such a

crime, shall "(i) be sentenced to a term of imprisonment of not less than [five] years; (ii) if the firearm [was] brandished, be sentenced to a term of imprisonment of not less than [seven] years; and (iii) if the firearm [was] discharged, be sentenced to a term of imprisonment of not less than [ten] years." The Court explained that the "except" clause meant that a section 924(c) offender would not be subject to "stacked" sentences for a single violation of section 924(c). For example, if an offender "possessed, brandished, and discharged a gun," the Court found that "the mandatory penalty [for the offender] would be [ten] years, not 22." The Court explained that the offender would be subject to "the highest mandatory minimum specified for his conduct in [section] 924(c), unless another provision of law directed to conduct proscribed by [section] 924(c) imposes an even greater mandatory minimum." The Court further concluded that the rule of lenity did not apply because the defendants' interpretations reflected "an implausible reading of [] congressional purpose."

Dillon v. United States, 560 U.S. 817 (2010).

The Supreme Court held that its decision in *United States v. Booker*, 543 U.S. 220 (2005), "which rendered the [g]uidelines advisory to remedy the Sixth Amendment problems associated with a mandatory sentencing regime," does not apply to sentence reduction proceedings under 18 U.S.C. § 3582(c)(2), and therefore, does not require treating §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as nonbinding. First, the Court explained that *Booker* left intact the provisions of the Sentencing Reform Act of 1984 that gave the Commission the authority "to revise the [g]uidelines" and "to determine when and to what extent a revision will be retroactive." Second, the Court explained that "[w]hen the Commission makes a [g]uidelines amendment retroactive, [section] 3582(c)(2) authorizes a district court to reduce an otherwise final sentence that is based on the amended provision," provided that the reduction is consistent with any applicable policy statements issued by the Commission—namely, §1B1.10. Third, the Court rejected the defendant's argument that proceedings under section 3582(c)(2) are "resentencing" proceedings. Fourth, the Court determined that section 3582(c)(2) "establishes a two-step inquiry." At step one, a court must "follow the Commission's instructions in §1B1.10 to determine [a] prisoner's eligibility for a sentence modification and the extent of the reduction authorized." At step two, a court must "consider any applicable [18 U.S.C.] § 3553(a) factors and determine whether, in its discretion, the reduction authorized by reference to the policies relevant at step one is warranted in whole or in part under the particular circumstances of the case." Finally, the court concluded that proceedings under section 3582(c)(2) "do not implicate the Sixth Amendment right to have essential facts found by a jury beyond a reasonable doubt" and that the remedial aspect of *Booker* does not apply to such proceedings.

United States v. O'Brien, 560 U.S. 218 (2010).

The Supreme Court once again interpreted 18 U.S.C. § 924(c), which "prohibits the use or carrying of a firearm in relation to a crime of violence or drug trafficking crime, or the possession of a firearm in furtherance of [such a crime]," and held that the fact that the firearm used, carried, or possessed was a machine gun is an element of the offense that

must be proved to a jury beyond a reasonable doubt, rather than a sentencing factor. In an earlier case, *Castillo v. United States*, 530 U.S. 120 (2000) (discussed further below), the Court had determined that "an analogous [machine gun] provision in a previous version of [section 924(c)] constituted an element of [the] offense to be proved to [a] jury." In light of amendments made to section 924(c) in 1998, the Court considered whether its analysis and holding in *Castillo* still control the interpretation of section 924(c).

In *Castillo*, the Court had examined five factors to determine whether Congress intended the machine gun provision to be an element or a sentencing factor. In the instant case, the Court determined that the 1998 amendments to section 924(c) "did nothing to affect the second through fifth *Castillo* factors" and that only the first factor—"language and structure"—required "closer examination." After examining each change to section 924(c), the Court concluded that Congress's intent was "to make the statute more readable," rather than transform the machine gun provision from an element into a sentencing factor.

Johnson v. United States, 559 U.S. 133 (2010).

The Supreme Court held that "the Florida felony offense of battery by '[a]ctually and intentionally touch[ing]' another person" does not involve the use of "physical force" within the definition of "violent felony" in 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"), and therefore, does not constitute a predicate "violent felony" for purposes of the ACCA. First, the Court noted that it was bound by the Florida Supreme Court's holding that "the element of 'actually and intentionally touching' under Florida's battery law is satisfied by *any* intentional physical contact, 'no matter how slight.'" Second, the Court reasoned that, absent a definition of "physical force" in the ACCA, the Court must give the term its "ordinary" meaning and found that the various dictionary definitions of the term "suggest a degree of power that would not be satisfied by the merest touching." Finally, the Court concluded that, in the context of the ACCA's "violent felony" definition, "the phrase 'physical force' means *violent* force—that is, force capable of causing physical pain or injury to another person," thus precluding the Florida felony offense of battery from qualifying as a "violent felony."

Spears v. United States, 555 U.S. 261 (2009).

The Supreme Court held that "district courts are entitled to reject and vary categorically from the crack cocaine [g]uidelines based on a policy disagreement with those [g]uidelines." In so holding, the Court clarified its holding in *Kimbrough v. United States*, 552 U.S. 85 (2007), explaining that even when a defendant in a crack cocaine case presents no "special mitigating circumstances," a district court may nonetheless vary downward from the advisory guideline range "based solely on its view that the 100-to-1 ratio embodied in the sentencing guidelines for the treatment of crack cocaine versus powder cocaine creates 'an unwarranted disparity within the meaning of [18 U.S.C.] § 3553(a),' and is 'at odds with [section] 3553(a).'" Consequently, the Court further held that a district court also

has the authority to substitute "a different ratio which, in [its] judgment, corrects the disparity."

Chambers v. United States, 555 U.S. 122 (2009), *abrogated by Johnson v. United States*, 576 U.S. 591 (2015).

The Supreme Court held that a failure to report for penal confinement under Illinois law does not qualify as a predicate "violent felony" under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). First, the Court determined that, for ACCA purposes, the Illinois statute contains "at least two separate crimes, namely, escape from custody on the one hand, and a failure to report on the other." Second, the Court considered whether the "failure to report" crime satisfies the ACCA's definition of "violent felony" and determined that it does not. While the crime "clearly satisfies" the first part of the definition (*i.e.*, it is a "crime punishable by imprisonment for a term exceeding one year"), the Court found that the crime does not have "as an element the use, attempted use, or threatened use of physical force against the person of another," does not consist of "burglary, arson, or extortion," does not involve the "use of explosives," and does not "involve conduct that presents a serious potential risk of physical injury to another."

Greenlaw v. United States, 554 U.S. 237 (2008).

The Supreme Court held that, absent a government appeal or cross-appeal of a defendant's sentence, a court of appeals may not, on its own initiative, order an increase in the defendant's sentence. The Court explained that, in the United States' adversary system, courts generally follow the principle of "party presentation"—that is, courts "rely on the parties [of a civil or criminal case] to frame the issues for decision and assign [themselves] the role of neutral arbiter of matters the parties present." The Court further explained that the principle of party presentation informs the "cross-appeal rule," which is an "unwritten but longstanding rule" providing that "an appellate court may not alter a judgment to benefit a nonappealing party." The Court noted that it had never ordered an exception to the cross-appeal rule and found no reason warranting an exception in the instant case.

Irizarry v. United States, 553 U.S. 708 (2008).

The Supreme Court held that Rule 32(h) of the Federal Rules of Criminal Procedure, which requires a court to give "reasonable notice" that the court is contemplating a "departure" from the recommended guideline range on a ground not identified for departure in the presentence report or in a party's prehearing submission, does not apply to a "variance" from a recommended guideline range. In so holding, the Court declined to extend the rule it set forth in *Burns v. United States*, 501 U.S. 129 (1991) (discussed further below), explaining that the underlying due process concerns no longer applied in the aftermath of its decision in *United States v. Booker*, 543 U.S. 220 (2005). The Court also reasoned that Rule 32(h) "does not apply to 18 U.S.C. § 3553 variances by its terms" because the word

"departure" is a "term of art under the [g]uidelines and refers only to non-[g]uidelines sentences imposed under the framework set out in the [g]uidelines."

United States v. Rodriquez, 553 U.S. 377 (2008).

The Supreme Court held that two of the defendant's three prior Washington drug trafficking convictions qualified as predicate "serious drug offenses" under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). The Court explained that, under the ACCA, "a state drug-trafficking conviction qualifies as 'a serious drug offense' if 'a maximum term of imprisonment of ten years or more is prescribed by law' for the 'offense.'" While the Washington drug trafficking statute provides a maximum term of imprisonment of five years, the Court noted that another statutory provision provides that an individual convicted of a "second or subsequent offense" may "be imprisoned for a term up to twice the term otherwise authorized." Focusing on three key terms used in the ACCA (*i.e.*, "offense," "law," and "maximum term"), the Court found that "a straightforward application of the language of the ACCA leads to the conclusion that the 'maximum term of imprisonment prescribed by law' in this case was [ten] years," and not, as the defendant contended, five years. Thus, the Court determined that these two prior convictions "had to be counted under [the] ACCA."

Begay v. United States, 553 U.S. 137 (2008), *abrogated by Johnson v. United States*, 576 U.S. 591 (2015).

The Supreme Court held that driving under the influence (DUI) under New Mexico law does not qualify as a predicate "violent felony" under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). Specifically, the Court considered whether New Mexico DUI falls within the scope of the second clause of the definition of "violent felony" (*i.e.*, section 924(e)(2)(B)(ii)). The second clause defines "violent felony" as a crime that "is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." While the Court assumed that DUI involves conduct that "presents a serious potential risk of physical injury to another," the Court concluded that DUI falls outside the scope of the second clause because the offense is "simply too unlike the [clause's] listed examples for [the Court] to believe that Congress intended the [clause] to cover it." Rather than interpreting section 924(e)(2)(B)(ii) as covering "*every* crime that 'presents a serious potential risk of physical injury to another,'" the Court found that it should read the examples listed as limiting the crimes that the section covers to "crimes that are roughly similar, in kind as well as in degree of risk posed, to the examples themselves."

Kimbrough v. United States, 552 U.S. 85 (2007).

The Supreme Court held that a sentencing judge may consider the disparity between the guidelines' treatment of crack and powder cocaine offenses when determining whether a

within-guidelines sentence "is 'greater than necessary' to serve the objectives of sentencing." In so holding, the Court rejected the government's contention that, even though *United States v. Booker*, 543 U.S. 220 (2005), rendered the guidelines advisory, the guidelines adopting the 100-to-1 ratio for crack cocaine versus powder cocaine sentences are an exception to the general freedom that sentencing courts have in applying the 18 U.S.C. § 3553(a) factors.

Watson v. United States, 552 U.S. 74 (2007).

The Supreme Court held that "a person does not 'use' a firearm [within the meaning of 18 U.S.C.] § 924(c)(1)(A) when he receives it in trade for drugs." In so holding, the Court rejected the government's argument to the contrary as lacking authority in "either precedent or regular English," and distinguished the instant case from *Smith v. United States*, 508 U.S. 223 (1993), and *Bailey v. United States*, 516 U.S. 137 (1995) (both discussed further below).

Gall v. United States, 552 U.S. 38 (2007).

The Supreme Court held that "while the extent of the difference between a particular sentence and the recommended [guideline] range is surely relevant, courts of appeals must review all sentences—whether inside, just outside, or significantly outside the [guideline] range—under a deferential abuse-of-discretion standard." The Court explained that its decision in *United States v. Booker*, 543 U.S. 220 (2005), invalidated 18 U.S.C. § 3742(e), which "directed appellate courts to apply a *de novo* standard of review to departures from the [g]uidelines." Accordingly, appellate courts' review of sentencing decisions is now limited to determining whether they are "reasonable," which warrants only an abuse-of-discretion standard of review. The Court further explained that, in reviewing the reasonableness of a sentence outside the guideline range, an appellate court may take "the degree of variance into account and consider the extent of a deviation from the [g]uidelines." However, the appellate court need not find "extraordinary" circumstance to justify the sentence or use "a rigid mathematical formula that uses the percentage of [the] departure as the standard for determining the strength of the justifications required for [the] sentence." The Court finally explained that, under an abuse-of-discretion standard, an appellate court "may, but is not required to, apply a presumption of reasonableness" if the district court's sentence is within the guideline range, but it "may not apply a presumption of unreasonableness" if the sentence is outside the guideline range. The Court concluded that an appellate court "must give due deference" to the district court, and the mere fact that "the appellate court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court."

Logan v. United States, 552 U.S. 23 (2007).

The Supreme Court held that under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"), a state court conviction that at no time deprived the offender of civil rights is not exempted under 18 U.S.C. § 921(a)(20) from qualifying as a predicate offense for purposes of an enhanced sentence under the ACCA. In so holding, the Court explained that section 921(a)(20) only exempts a prior conviction that has been expunged or set aside, or with respect to which the offender "has been pardoned or has had civil rights restored." Because the ordinary meaning of the word "restore" is "to give back something that had been taken away," the Court concluded that the exemption in section 921(a)(20) cannot cover the case of an offender who never lost any civil rights.

Rita v. United States, 551 U.S. 338 (2007).

The Supreme Court held that "a court of appeals may apply a presumption of reasonableness to a district court sentence that reflects a proper application of the [s]entencing [g]uidelines." The Court explained that the presumption of reasonableness is neither binding nor reflects "strong judicial deference of the kind that leads appeals courts to grant greater factfinding leeway to an expert agency than to a district judge." Rather, the Court explained, "the presumption reflects the nature of the [g]uidelines-writing task that Congress set for the Commission and the manner in which the Commission carried out that task." The Court also concluded that "the presumption applies only on appellate review" and that, "even if it increases the likelihood that [a sentencing] judge, not [a] jury, will find 'sentencing facts,'" the presumption does not violate the Sixth Amendment. The Court further held that the district court judge's statement of reasons at sentencing, even though brief, was legally sufficient, and that the defendant's special circumstances did not render his within-guidelines sentence unreasonable.

James v. United States, 550 U.S. 192 (2007), *overruled by Johnson v. United States*, 576 U.S. 591 (2015).

The Supreme Court held that attempted burglary under Florida law qualifies as a predicate "violent felony" under the residual clause of the definition of that term in 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). First, the Court concluded that "neither the statutory text nor the legislative history [of section 924(e)] discloses any congressional intent to categorically exclude attempt offenses from the scope of [section] 924(e)(2)(B)(ii)'s residual [clause]." Second, the Court applied the categorical approach and determined that Florida attempted burglary, which requires "overt conduct directed toward unlawfully entering or remaining in a dwelling, with the intent to commit a felony therein," satisfies the requirements of the residual clause (*i.e.*, "involves conduct that presents a serious potential risk of physical injury to another").

Cunningham v. California, 549 U.S. 270 (2007).

The Supreme Court held that California's determinate sentencing law, which "assigns to the trial judge, not to the jury, authority to find the facts that expose a defendant to an elevated 'upper term' sentence," violates a defendant's right to a jury trial, safeguarded by the Sixth and Fourteenth Amendments.

Washington v. Recuenco, 548 U.S. 212 (2006).

The Supreme Court held that "[f]ailure to submit a sentencing factor to the jury, like failure to submit an element to the jury, is not structural error" warranting reversal. In so holding, the Court noted that it has "repeatedly recognized that the commission of a constitutional error at trial alone does not entitle a defendant to automatic reversal" and that "most constitutional errors can be harmless."

Shepard v. United States, 544 U.S. 13 (2005).

The Supreme Court held that a sentencing court may not look to police reports or complaint applications in determining whether an earlier guilty plea necessarily admitted and supported a conviction for "generic burglary," and consequently, was a predicate "violent felony" under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). Rather, the Court held, a judicial inquiry under the ACCA "to determine whether a plea of guilty to burglary defined by a nongeneric statute necessarily admitted elements of the generic offense is limited to the terms of the charging document, the terms of a plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or to some comparable judicial record of this information." In so holding, the Court confirmed that "guilty pleas may establish ACCA predicate offenses and that [the reasoning in *Taylor v. United States*, 495 U.S. 575 (1990) (discussed further below),] controls the identification of generic convictions following pleas, as well as convictions on verdicts, in [s]tates with nongeneric offenses."

United States v. Booker, 543 U.S. 220 (2005).

In two separate opinions, the Supreme Court held the following: (1) the Sixth Amendment jury protections, as construed in *Blakely v. Washington*, 542 U.S. 296 (2004) (discussed further below), apply to the sentencing guidelines; and (2) two provisions of the Sentencing Reform Act of 1984, which had the effect of making the guidelines mandatory, "must be invalidated in order to allow the statute to operate in a manner consistent with congressional intent." In *Blakely*, the Court held that a sentencing judge may exceed a statutory maximum solely based on facts reflected in the jury verdict or admitted by the defendant. In the instant case, the Court found that there was no distinction of constitutional significance between the mandatory guidelines and the Washington State determinate sentencing scheme at issue in *Blakely*.

To avoid any Sixth Amendment issues, the Court concluded that the appropriate remedy was to sever and excise 18 U.S.C. § 3553(b)(1), which made the guidelines mandatory and binding on courts in most cases, and 18 U.S.C. § 3742(e), which required appellate courts to consider whether sentences were outside of the guideline range and conduct *de novo* review of any departures. The Court thus rendered the guidelines "effectively advisory." The Court noted that, with this modification, sentencing courts would be required to consider the guidelines but permitted to tailor sentences in light of other statutory concerns as well.

Leocal v. Ashcroft, 543 U.S. 1 (2004).

The Supreme Court held that state DUI offenses that "either do not have a *mens rea* component or require only a showing of negligence in the operation of a vehicle" do not meet the definition of "crime of violence" in 18 U.S.C. § 16, and therefore, do not qualify as an "aggravated felony" under the Immigration and Nationality Act. Giving the words in section 16(a) their "ordinary or natural" meaning, the Court concluded that the "key phrase in [section] 16(a)—'use . . . of physical force against the person or property of another'—most naturally suggests a higher degree of intent than negligent or merely accidental conduct." Further, the Court concluded that section 16(b) also requires "a higher *mens rea* than the merely accidental or negligent conduct involved in a DUI offense." Nevertheless, the Court noted that its holding does not address the question of "whether a state or federal offense that requires proof of the *reckless* use of force against a person or property of another qualifies as a crime of violence under 18 U.S.C. § 16."

Schriro v. Summerlin, 542 U.S. 348 (2004).

The Supreme Court held that *Ring v. Arizona*, 536 U.S. 584 (2002) (discussed further below), does not apply retroactively to death penalty cases already final on direct review because (1) *Ring* announced a new procedural rule, rather than a substantive rule, and (2) *Ring*'s new procedural rule was not a "watershed rule of criminal procedure." The Court explained that when a decision of the Court "results in a 'new rule,' that rule applies to all criminal cases still pending on direct review." With respect to convictions that are already final, however, a new procedural rule generally does not apply retroactively unless that rule is a watershed rule of criminal procedure "implicating the fundamental fairness and accuracy of the criminal proceeding." The Court found that *Ring*'s holding announced a new procedural (rather than substantive) rule because it "did not alter the range of conduct Arizona law subjected to the death penalty," but rather "altered the range of permissible methods for determining whether a defendant's conduct is punishable by death [by] requiring that a jury rather than a judge find the essential facts bearing on punishment." The Court further found that *Ring*'s new procedural rule was not a watershed rule of criminal procedure because judicial factfinding does not so seriously diminish the accuracy of a criminal proceeding as to create an impermissibly large risk of punishing conduct that the law does not reach.

Blakely v. Washington, 542 U.S. 296 (2004).

Applying *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (discussed further below), which held that any fact, other than a prior conviction, that "increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury[] and proved beyond a reasonable doubt," the Supreme Court concluded that the defendant's sentence violated his Sixth Amendment right to a jury trial. The defendant had pled guilty to second-degree kidnapping involving the use of a firearm under Washington law. While Washington law specified a "standard range" of 49 to 53 months' imprisonment for such an offense, Washington law also provided that a judge could impose a sentence above the standard range upon finding, by a preponderance of the evidence, "substantial and compelling reasons justifying an exceptional sentence," such as the application of an aggravating factor. The judge at the defendant's sentencing found that the defendant had acted with "deliberate cruelty," a statutorily enumerated ground for upward departure, and sentenced the defendant to 90 months' imprisonment.

Under *Apprendi*, the Court found that the sentencing judge improperly increased the defendant's sentence above the prescribed statutory maximum based on an aggravating factor that was neither admitted by the defendant in his guilty plea nor found by a jury. In so finding, the Court explained that, for *Apprendi* purposes, "the relevant 'statutory maximum' is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings." The Court also clarified that the instant case was "not about whether determinate sentencing is constitutional, only about how it can be implemented in a way that respects the Sixth Amendment."

Ring v. Arizona, 536 U.S. 584 (2002).

The Supreme Court held that the Sixth Amendment right to a jury trial entitles defendants in capital cases "to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." The Court acknowledged that its decision in *Walton v. Arizona*, 497 U.S. 639 (1990), which held that "Arizona's sentencing scheme was compatible with the Sixth Amendment because the additional facts found by the judge qualified as sentencing considerations, not as 'element[s] of the offense of capital murder,'" was irreconcilable with its later decision in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). In *Apprendi*, the Court held that "the Sixth Amendment does not permit a defendant to be 'expose[d] . . . to a penalty *exceeding* the maximum he would receive if punished according to the facts reflected in the jury verdict alone.'" Thus, the Court overruled *Walton* "to the extent that it allows a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty," explaining that, because Arizona's enumerated aggravating factors operate as "the functional equivalent of an element of a greater offense," the Sixth Amendment requires the factors to be found by a jury.

Harris v. United States, 536 U.S. 545 (2002), *overruled by Alleyne v. United States*, 570 U.S. 99 (2013).

The Supreme Court held that (1) as a matter of statutory construction, 18 U.S.C. § 924(c)(1)(A) defines a single offense and regards brandishing a firearm and discharging a firearm "as sentencing factors to be found by [a] judge, not offense elements to be found by [a] jury," and (2) 18 U.S.C. § 924(c)(1)(A)(ii), which provides for a two-year increase in a defendant's minimum sentence if the defendant brandished a firearm "during and in relation to [his] crime of violence or drug trafficking crime," is constitutional. Reaffirming its decision in *McMillan v. Pennsylvania*, 477 U.S. 79 (1986), the Court concluded that "[b]asing a 2-year increase in [a] defendant's minimum sentence on a judicial finding of brandishing does not evade the requirements of the Fifth and Sixth Amendments." The Court explained that Congress "simply took one factor that has always been considered by sentencing courts to bear on punishment . . . and dictated the precise weight to be given that factor." Accordingly, the Court concluded that the brandishing factor in section 924(c)(1)(A)(ii) does not need to be alleged in an indictment, submitted to a jury, or proven beyond a reasonable doubt.

United States v. Cotton, 535 U.S. 625 (2002).

The Supreme Court overruled *Ex parte Bain*, 121 U.S. 1 (1887), which held that an omission of fact from an indictment is a "jurisdictional" defect that requires *vacatur* of a defendant's sentence. Instead, the Court held that (1) a defective indictment does not by its nature deprive a court of jurisdiction, and (2) the omission from a federal indictment of a fact that enhances a defendant's statutory maximum sentence does not justify a court of appeals' *vacatur* of the enhanced sentence. The Court explained that *Bain* was the "product of an era in which [the] Court's authority to review criminal convictions was greatly circumscribed," and that the Court's "desire to correct obvious constitutional violations" led to a more expansive notion of "jurisdiction." That term has a different meaning today—"the courts' statutory or constitutional *power* to adjudicate [a] case." This concept of subject-matter jurisdiction, the Court explained, "can never be forfeited or waived," thus "defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court." Finally, the Court noted that post-*Bain* cases "confirm that defects in an indictment do not deprive a court of its power to adjudicate a case" (*i.e.*, indictment defects are not "jurisdictional" defects).

Buford v. United States, 532 U.S. 59 (2001).

The Supreme Court held that deferential review is appropriate when a court of appeals reviews a trial court's guideline determination as to whether an offender's prior convictions were consolidated, and thus "related," for sentencing purposes. The Court concluded that a district court is in a better position than an appellate court "to decide whether a particular set of individual circumstances demonstrates 'functional consolidation'" because a district judge has comparatively greater expertise than an

appellate judge with trials, sentencing, and consolidations. The Court also noted that the fact-intensive nature of "functional consolidation" decisions and the "limited value of uniform court of appeals precedent" favor deferential review.

Apprendi v. New Jersey, 530 U.S. 466 (2000).

The Supreme Court found unconstitutional a New Jersey statute that increased the maximum penalty for a firearm possession offense from ten to 20 years if the trial judge finds, by a preponderance of the evidence, that the defendant committed a "hate crime." The Court further held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." In so holding, the Court rejected the state's three primary arguments in defense of the statute: (1) "[t]he required finding of biased purpose is not an 'element' of a distinct hate crime offense, but rather the traditional 'sentencing factor' of motive"; (2) *McMillan v. Pennsylvania*, 477 U.S. 79 (1986), "holds that the legislature can authorize a judge to find a traditional sentencing factor on the basis of a preponderance of the evidence"; and (3) *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) (discussed further below), "extended *McMillan*'s holding to encompass factors that authorize a judge to impose a sentence beyond the maximum provided by the substantive statute under which a defendant is charged."

Castillo v. United States, 530 U.S. 120 (2000).

The Supreme Court held that 18 U.S.C. § 924(c)(1), which prohibits the use or carrying of a "firearm" in relation to a crime of violence and dramatically increases the penalty when the weapon used or carried is a "machinegun," used the word "machinegun" (and similar words) to state an element of a separate, aggravated crime. The Court found that the statute's structure strongly favored a "new crime" interpretation, rather than an "enhanced penalty" interpretation. The Court further found that the statute's structure suggested that the difference between using or carrying a "machinegun," instead of "firearm," is both substantive and substantial—a conclusion that supports a "separate crime" interpretation. Finally, the Court determined that the length and severity of an added mandatory sentence that turns on the presence or absence of a "machinegun" (or any of the other listed firearm types) weighs in favor of treating such offense-related words as referring to an element. The Court noted that these considerations make this statute a stronger "separate crime" case than *Jones v. United States*, 526 U.S. 227 (1999), and *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) (both discussed further below)—cases in which the Court was closely divided as to Congress's likely intent. The Court concluded that Congress intended the firearm type words used in section 924(c)(1) to refer to an element of a separate, aggravated crime.

Johnson v. United States, 529 U.S. 694 (2000).

The Supreme Court held that (1) 18 U.S.C. § 3583(h), which "authorizes a district court to impose an additional term of supervised release following the reimprisonment of those who violate the conditions of an initial term," does not apply retroactively, so no *ex post facto* issue arose in the instant case, and (2) 18 U.S.C. § 3583(e), as in effect at the time of the defendant's original offense, authorized a court to reimpose a term of supervised release following reimprisonment upon revocation. Although the Court noted that post-revocation penalties relate to a defendant's original conviction, the Court found it unnecessary to conduct an *ex post facto* analysis because section 3583(h) does not apply retroactively. Rather, the Court found that section 3583(h) only applies to cases in which the initial offense occurred after the section's effective date and that there was no clear statement of congressional intent to the contrary. Thus, the Court concluded that the defendant could not have been sentenced under section 3583(h), leaving his case to turn on whether section 3583(e) permitted his sentence. After analyzing Congress's unconventional use of the term "revoke" in the statute, the Court found that it did.

United States v. Johnson, 529 U.S. 53 (2000).

The Supreme Court held that, under 18 U.S.C. § 3624(e), a supervised release term does not commence until an individual "is released from imprisonment." Therefore, the length of a supervised release term cannot be reduced by any excess time served in prison. The Court examined the text of section 3624(e), which states in relevant part: "The term of supervised release commences on the day the person is released from imprisonment." The Court concluded that the ordinary common sense meaning of "release" is to be freed from confinement. The Court found additional support in 18 U.S.C. § 3583(a), which authorizes the imposition of a "term of supervised release after imprisonment." Furthermore, the Court determined that the objectives of supervised release would be unfulfilled if excess prison time were to offset and reduce terms of supervised release, and that Congress had intended for supervised release to assist individuals in their transition to community life.

Mitchell v. United States, 526 U.S. 314 (1999).

The Supreme Court held that (1) a defendant's guilty plea is not a waiver of his Fifth Amendment privilege against self-incrimination in the sentencing phase of his case, and (2) in determining facts about a defendant's crime that bear upon the severity of his sentence, a sentencing court may not draw an adverse inference from the defendant's silence. In so holding, the Court relied on its decision in *Griffin v. California*, 380 U.S. 609 (1965), which held that it is constitutionally impermissible for a prosecutor or judge to draw a negative inference from a defendant's refusal to testify.

Jones v. United States, 526 U.S. 227 (1999).

The Supreme Court held that 18 U.S.C. § 2119, the federal carjacking statute, establishes three separate offenses, each of which must be charged in an indictment, proven beyond a reasonable doubt, and submitted to a jury for its verdict. In so holding, the Court emphasized the features of the carjacking statute that distinguish it from the illegal re-entry statute that was the focus of *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) (discussed further below). Specifically, the Court noted that the structure of the carjacking statute and its legislative history indicate that Congress intended for the jury to determine the facts that control the statutory sentencing range.

Muscarello v. United States, 524 U.S. 125 (1998).

The Supreme Court held that the phrase "carries a firearm," in relation to a drug trafficking offense under 18 U.S.C. § 924(c), applies to a person who knowingly possesses and conveys a firearm in a vehicle—including in a locked glove compartment or in the trunk of the car. In so holding, the Court noted that the federal courts of appeals have "unanimously concluded that [the term] 'carry' is not limited to the carrying of weapons directly on the person but can include their carriage in a car." The Court examined whether Congress intended to limit the scope of the word "carry" to instances in which a gun is carried "on the person" and concluded that "neither the statute's basic purpose nor its legislative history support circumscribing the scope of the word 'carry' by applying an 'on the person' limitation."

Edwards v. United States, 523 U.S. 511 (1998).

The Supreme Court held that §1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)) "require[s] the sentencing judge, not the jury, to determine both the kind and the amount of the drugs at issue in a drug conspiracy." The defendants had been charged under 21 U.S.C. §§ 841 and 846 with conspiracy to possess with intent to distribute mixtures containing cocaine and cocaine base ("crack"), and the jury had returned a general guilty verdict without specifying the object(s) of the conspiracy. The defendants argued that the drug statutes and the Constitution required the judge to assume that the jury had convicted them of a conspiracy involving the lesser object, cocaine. The Court concluded that even if the defendants were correct, it would make no difference to their case, because "the [g]uidelines instruct a sentencing judge to base a drug-conspiracy offender's sentence on the offender's 'relevant conduct.'" The Court explained that relevant conduct in the defendants' case included both conduct that constituted their offense of conviction, as well as conduct that was a "part of the same course of conduct or common scheme or plan as the offense of conviction." Furthermore, the Court noted that the defendants' sentences were within the "statutory limits applicable to a cocaine-only conspiracy."

Almendarez-Torres v. United States, 523 U.S. 224 (1998).

The Supreme Court held that 8 U.S.C. § 1326(b)(2), which authorizes a prison term of up to 20 years for an alien who illegally returned to the United States after a previous deportation if the previous "deportation was subsequent to a conviction for commission of an aggravated felony," is a penalty provision that authorizes an enhanced penalty for a recidivist, rather than a separate crime. Accordingly, the Court further held that the government is not required by the statute or the Constitution to include a defendant's earlier aggravated felony conviction as a separate element in an indictment charging a violation of 8 U.S.C. § 1326.

United States v. LaBonte, 520 U.S. 751 (1997).

The Supreme Court held that the Commission's promulgation of Amendment 506, which amended the definition of "offense statutory maximum" in §4B1.1 (Career Offender) to mean "the maximum term of imprisonment authorized for [an] offense of conviction . . . not including any increase in that maximum term under a sentencing enhancement provision that applies because of [a] defendant's prior criminal record," was "at odds" with the plain and unambiguous language of the "career offender" directive in 28 U.S.C. § 994(h). In section 994(h), Congress directed the Commission to "assure" that prison terms for categories of offenders who commit a third felony drug offense or crime of violence be sentenced "at or near the maximum term authorized" by statute. However, Congress did not define the phrase "maximum term authorized." The Court, giving the words their "ordinary meaning," concluded that "the phrase 'at or near the maximum term authorized' is unambiguous and requires a court to sentence a career offender 'at or near' the 'maximum' prison term available once all relevant statutory sentencing enhancements are taken into account." In reaching its holding, the Court made clear that although the Commission has "significant discretion in formulating [the] guidelines," its discretion "must bow to the specific directives of Congress."

United States v. Gonzales, 520 U.S. 1 (1997).

The Supreme Court held that "the plain language of 18 U.S.C. § 924(c) forbids a federal district court to direct that a term of imprisonment under that statute run concurrently with any other term of imprisonment, whether state or federal." However, the Court noted that section 924(c) does not limit the court's authority under 18 U.S.C. § 3584 to order that other federal sentences (*i.e.*, federal sentences other than firearms sentences under section 924(c)) run concurrently with any other term of imprisonment, whether state or federal.

United States v. Watts, 519 U.S. 148 (1997).

The Supreme Court held that a sentencing court may consider the conduct underlying a defendant's acquitted charge, so long as that conduct has been proved by a preponderance of the evidence. The Court found that the guidelines did not alter sentencing courts' discretion under 18 U.S.C. § 3661, which provides that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." Rather, the Court noted that the policy set forth in section 3661 had been incorporated into §1B1.4 (Information to be Used in Imposing Sentence (Selecting a Point Within the Guideline Range or Departing from the Guidelines)). The Court further noted that §1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)) provides that "[c]onduct that is not formally charged or is not an element of [a defendant's] offense of conviction may enter into the determination of [his] applicable guideline sentencing range."

Melendez v. United States, 518 U.S. 120 (1996).

The Supreme Court held that a government motion under §5K1.1 (Substantial Assistance to Authorities (Policy Statement)) attesting to a defendant's substantial assistance in a criminal investigation and requesting a district court to depart below the minimum of the applicable guideline range does not authorize the district court to depart below any statutory minimum sentence. Rather, the Court concluded that a separate government motion pursuant to 18 U.S.C. § 3553(e) is required in order for a court to depart below a statutory minimum, thus rejecting the defendant's argument that the Commission had created a "unitary" motion system in promulgating §5K1.1. The Court agreed with the government that "nothing in [section] 3553(e) suggests that a district court has power to impose a sentence below the statutory minimum to reflect a defendant's cooperation when the [g]overnment has not authorized such a sentence, but has instead moved for a departure only from the applicable [g]uidelines range." The Court further noted that nothing in section 3553(e) or 28 U.S.C. § 994(n) (which directs the Commission to establish guidelines providing for lower sentences to account for a defendant's substantial assistance) suggests that "the Commission itself may dispense with [section] 3553(e)'s motion requirement or, alternatively, 'deem' a motion requesting or authorizing different action—such as a departure below the [g]uidelines minimum—to be a motion authorizing the district court to depart below the statutory minimum."

Koon v. United States, 518 U.S. 81 (1996).

The Supreme Court held that on appeal from a district court's decision to depart from a guideline range, "[t]he appellate court should not review the departure decision *de novo*, but instead should ask whether the sentencing court abused its discretion." The Court further explained that the abuse-of-discretion standard "includes review to determine that the discretion was not guided by erroneous legal conclusions." Applying this standard to the

appeal at issue, the Court found that the district court did not abuse its discretion in applying a five-level downward departure for the victim's misconduct in provoking the defendants' wrongful conduct, or in relying on the defendants' susceptibility to abuse in prison and the burdens of their successive prosecutions in applying another three-level downward departure. However, the Court found that the district court did abuse its discretion in further justifying the three-level departure based on the defendants' loss of their law enforcement careers and their low risk of recidivism.

United States v. Armstrong, 517 U.S. 456 (1996).

The Supreme Court held that: (1) Rule 16(a)(1)(C) of the Federal Rules of Criminal Procedure "authorizes defendants to examine [g]overnment documents material to the preparation of their defense against the [g]overnment's case-in-chief, but not to the preparation of selective-prosecution claims"; (2) the presumption of regularity supports the prosecutorial decisions of the Attorney General and United States attorneys, and "in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties"; (3) a person who claims selective prosecution "must demonstrate that the federal prosecutorial policy 'had a discriminatory effect and that it was motivated by a discriminatory purpose'"; (4) to establish a discriminatory effect in a race case, a claimant "must show that similarly situated individuals of a different race were not prosecuted"; and (5) to establish entitlement to discovery in a selective-prosecution claim based on race, a claimant "must produce credible evidence that similarly situated defendants of other races could have been prosecuted, but were not."

Neal v. United States, 516 U.S. 284 (1996).

Adhering to its holding in *Chapman v. United States*, 500 U.S. 453 (1991), the Supreme Court rejected the defendant's argument that the Commission's revised system for calculating LSD sentences under §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) requires reconsideration of the method used to determine statutory minimum sentences. While the Court acknowledged that the Commission's expertise and the design of the guidelines "may be of potential weight and relevance in other contexts," the Court concluded that "the Commission's choice of an alternative methodology for weighing LSD [did] not alter [the Court's] interpretation of [21 U.S.C. § 841(b)(1)] in *Chapman*." The Court held that, in any event, the principle of *stare decisis* required it to adhere to its earlier decision.

Bailey v. United States, 516 U.S. 137 (1995), *superseded by statute as stated in Welch v. United States*, 578 U.S. 120 (2016).

The Supreme Court held that 18 U.S.C. § 924(c)(1), which in relevant part criminalizes the "use" of a firearm during and in relation to a drug trafficking crime,

"requires evidence sufficient to show an *active employment* of [a] firearm by [a] defendant, a use that makes the firearm an operative factor in relation to the predicate offense." In so holding, the Court found that the term "use" connotes "more than mere possession of a firearm by a person who commits a drug offense."

Witte v. United States, 515 U.S. 389 (1995).

The Supreme Court held that, "[b]ecause consideration of relevant conduct in determining a defendant's sentence within the legislatively authorized punishment range does not constitute punishment for that conduct," a later prosecution for an offense based on that conduct "does not violate the Double Jeopardy Clause's prohibition against the imposition of multiple punishments for the same offense." In so holding, the Court rejected the defendant's claim that his indictment for cocaine offenses violated the Double Jeopardy Clause because the cocaine offenses already had been considered as relevant conduct in his sentencing for an earlier marijuana offense. The Court relied on its previous decision in *Williams v. Oklahoma*, 358 U.S. 576 (1959), which "specifically [] rejected the claim that double jeopardy principles bar a later prosecution or punishment for criminal activity where that [criminal] activity has been considered at sentencing for a second crime." The Court explained that, "[t]o the extent that the [g]uidelines aggravate punishment for related conduct outside the elements of [an offense] on the theory that such conduct bears on the 'character of the offense,' the offender is still punished only for the fact that the *present* offense was carried out in a manner that warrants increased punishment, not for a *different* offense (which that related conduct may or may not constitute)."

Nichols v. United States, 511 U.S. 738 (1994).

Adhering to *Scott v. Illinois*, 440 U.S. 367 (1979), and overruling *Baldasar v. Illinois*, 446 U.S. 222 (1980), the Supreme Court held that, "consistent with the Sixth and Fourteenth Amendments of the Constitution, an uncounseled misdemeanor conviction, valid under *Scott* because no prison term was imposed, is also valid when used to enhance punishment at a subsequent conviction." The Court reaffirmed its holding in *Scott* that the Sixth Amendment right to counsel does not attach to criminal proceedings that do not result in imprisonment and agreed with the dissent in *Baldasar* that "a logical consequence of [such] holding is that an uncounseled conviction valid under *Scott* may be relied upon to enhance the sentence for a subsequent offense." As the Court explained, reliance on such a conviction is "consistent with the traditional understanding of the sentencing process, which [the Court has] often recognized as less exacting than the process of establishing guilt."

Custis v. United States, 511 U.S. 485 (1994).

The Supreme Court held that with the sole exception of convictions obtained in violation of the right to counsel, a defendant in a federal sentencing proceeding does not

have the right to collaterally attack the validity of previous state convictions used to enhance the defendant's sentence under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"). The defendant argued that both of his previous Maryland convictions were invalid because (1) he did not receive effective assistance of counsel with respect to either case, (2) his guilty plea for his 1985 conviction was not knowing and intelligent, and (3) "he had not been adequately advised of his rights in opting for a 'stipulated facts' trial" with respect to his 1989 conviction. However, after declining to extend the right to collaterally attack a prior conviction used for sentencing enhancement beyond the right to counsel established in *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Court concluded that "[n]one of these alleged constitutional violations rises to the level of a jurisdictional defect resulting from the failure to appoint counsel at all."

United States v. Granderson, 511 U.S. 39 (1994).

The Supreme Court interpreted 18 U.S.C. § 3565(a), which provides that if a person on probation possesses illegal drugs, "the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence." Recognizing the ambiguity in the term "original sentence," the Court applied the rule of lenity and resolved the ambiguity in the defendant's favor. Specifically, the Court held that, for purposes of section 3565(a), the term "original sentence" refers to the originally applicable range of imprisonment under the guidelines. Accordingly, if a defendant's probation is revoked for possession of illegal drugs, the minimum revocation sentence is one-third of the maximum of the originally applicable guideline range, and the maximum revocation sentence is the maximum of the originally applicable guideline range.

Smith v. United States, 508 U.S. 223 (1993).

The Supreme Court held that exchanging or bartering a gun for illegal drugs constitutes "use" of a firearm "during and in relation to . . . [a] drug trafficking crime" within the meaning of 18 U.S.C. § 924(c)(1). In so holding, the Court rejected the defendant's argument that section 924(c)(1) requires proof not only that a firearm was used, but also that it was used as a weapon.

Deal v. United States, 508 U.S. 129 (1993), *superseded by statute as stated in United States v. Davis*, 588 U.S. 445 (2019).

The Supreme Court held that the defendant's second through sixth convictions under 18 U.S.C. § 924(c)(1) in a single proceeding arose "[i]n the case of his second or subsequent conviction" within the meaning of section 924(c)(1) and subjected him to additional penalties. Rejecting the defendant's argument that section 924(c)(1) is "facially ambiguous" and "should therefore be construed in his favor pursuant to the rule of lenity," the Court concluded that the term "conviction" in section 924(c)(1) unambiguously "refers to the finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment

of conviction," rather than to a judgment of conviction. The Court also concluded that because section 924(c)(1) does not use the term "offense," the statute "cannot possibly be said [to] require a criminal act after the first conviction." Rather, section 924(c)(1) only requires "a *conviction* after the first conviction."

Stinson v. United States, 508 U.S. 36 (1993).

The Supreme Court held that "commentary in the [*Guidelines Manual*] that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." To reach its holding, the Court found that "the guidelines are the equivalent of legislative rules adopted by federal agencies" and that the commentary "is akin to an agency's interpretation of its own legislative rules." The Court further held that amended commentary is also binding, even though it is not required to be reviewed by Congress, and that "prior judicial constructions of a particular guideline cannot prevent the Commission from adopting a conflicting interpretation that satisfies the standard" set forth by the Court's holding.

United States v. Dunnigan, 507 U.S. 87 (1993).

The Supreme Court held that (1) upon a proper determination that a defendant has committed perjury at trial, an obstruction-of-justice enhancement under §3C1.1 is required, and (2) such a requirement "is consistent with [the Court's] precedents and is not in contravention of the privilege of [a defendant] to testify in her own behalf."

Wade v. United States, 504 U.S. 181 (1992).

The Supreme Court held that a district court has the authority to (1) review a prosecutor's refusal to file a motion under 18 U.S.C. § 3553(e) for a sentence reduction below the statutory minimum, or a motion under §5K1.1 (Substantial Assistance to Authorities (Policy Statement)) for a sentence reduction below the guidelines minimum, for a defendant who provides "substantial assistance in the investigation or prosecution of another person who has committed an offense," and (2) grant a remedy if the district court finds that "the refusal was based on an unconstitutional motive." However, the Court clarified that neither "a claim that a defendant merely provided substantial assistance," nor "additional but generalized allegations of improper motive" will "entitle a defendant to a remedy or even to discovery or an evidentiary hearing." To reach its holding, the Court noted that it did not need to decide whether §5K1.1 "'implements' and thereby supersedes" section 3553(e), or whether the two sections "pose two separate obstacles." The Court also noted that the government-motion condition in both sections gives the government "a power, not a duty, to file a motion when a defendant has substantially assisted."

United States v. Wilson, 503 U.S. 329 (1992).

The Supreme Court held that 18 U.S.C. § 3585(b) (concerning credit for prior custody) authorizes the Attorney General, rather than the district court, to compute the amount of credit that should be granted toward a defendant's term of imprisonment for any time the defendant spent in official detention prior to the date the sentence commences. To reach its holding, the Court reviewed the language in section 3585(b) and concluded that Congress intended for the computation of credit to occur after a defendant begins his sentence, thus precluding a district court from applying section 3585(b) at sentencing. Further, even though section 3585(b) does not expressly refer to the Attorney General, the Court noted that Congress had entirely rewritten 18 U.S.C. § 3568 when Congress changed it to its present form in section 3585(b) and determined "it likely that the former reference to the Attorney General was simply lost in the shuffle."

United States v. R.L.C., 503 U.S. 291 (1992).

The Supreme Court held that the language in 18 U.S.C. § 5037(c)(1)(B) limiting the sentence of a juvenile to "the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult" refers to the maximum sentence that could be imposed if the juvenile were being sentenced after application of the guidelines. However, the Court emphasized that determining the maximum permissible sentence under section 5037(c)(1)(B) "does not require plenary application of the [g]uidelines to juvenile delinquents." Rather, where section 5037(c)(1)(B) applies, "a sentencing court's concern with the [g]uidelines goes solely to the upper limit of the proper [g]uideline range as setting the maximum term for which a juvenile may be committed to official detention, absent circumstances that would warrant departure under [18 U.S.C.] § 3553(b)."

Williams v. United States, 503 U.S. 193 (1992).

After considering the scope of appellate review under 18 U.S.C. § 3742(f) of a sentence in which a district court departs from the applicable guideline range, the Supreme Court held that: (1) the use of a departure ground prohibited by a policy statement in the *Guidelines Manual* can constitute an "incorrect application" of the guidelines under section 3742(f)(1); and (2) when a district court relies on an improper ground in departing from the applicable guideline range, a court of appeals may not affirm the resulting sentence "based solely on its independent assessment that the departure is reasonable under [section] 3742(f)(2)." The Court explained that when a departure decision is the result of an incorrect application of the guidelines, a court of appeals is required to conduct separate inquiries under both section 3742(f)(1) and section 3742(f)(2) to assess whether a remand is necessary. The Court further explained that a remand is required under section 3742(f)(1) only if a sentence was "imposed *as a result of* an incorrect application" of the guidelines. Accordingly, the Court also held that when a court of appeals determines that a district court considered an invalid factor in sentencing, a remand is required under

section 3742(f)(1) unless the court of appeals finds that the error was harmless (*i.e.*, that the district court would have imposed the same sentence regardless of the invalid factor).

Burns v. United States, 501 U.S. 129 (1991), *abrogation recognized by Dillon v. United States*, 560 U.S. 817 (2010).

The Supreme Court held that "before a district court can depart upward [from a defendant's applicable guideline range] on a ground not identified as a ground for upward departure either in the presentence report or in a prehearing submission by the [g]overnment, Rule 32 [of the Federal Rules of Criminal Procedure] requires that the district court give the parties reasonable notice that it is contemplating such a ruling." The Court further provided that such notice must "specifically identify" the ground on which the district court is contemplating the upward departure.

Chapman v. United States, 500 U.S. 453 (1991).

The Supreme Court held that 21 U.S.C. § 841(b)(1)(B)(v) "requires the weight of the carrier medium to be included when determining the appropriate sentence for trafficking in LSD" and that this statutory construction does not violate due process and is not unconstitutionally vague.

Braxton v. United States, 500 U.S. 344 (1991).

The Supreme Court declined to resolve the question of whether the defendant's guilty plea "contain[ed] a stipulation" within the meaning of subsection (a) of §1B1.2 (Applicable Guidelines). While the Court had granted certiorari to resolve a circuit conflict over the meaning of §1B1.2(a), the Court ultimately chose not to resolve the conflict because (1) the Commission had initiated a proceeding after the Court's grant of certiorari to eliminate the conflict, and (2) the instant case could be decided on other grounds. Noting that Congress had charged the Commission with "the *duty* to [periodically] review and revise the [g]uidelines" and granted the Commission "the unusual explicit *power* to decide whether and to what extent its amendments reducing sentences will be given retroactive effect," the Court acknowledged that Congress may have intended for the Commission to have the task of initially and primarily resolving circuit conflicts over the meaning of the guidelines. Thus, the Court concluded that it should be "more restrained and circumspect in using [its] certiorari power as the primary means of resolving such conflicts."

Taylor v. United States, 495 U.S. 575 (1990).

The Supreme Court held that, for purposes of an enhanced sentence under 18 U.S.C. § 924(e) ("Armed Career Criminal Act" or "ACCA"), a defendant's offense constitutes

"burglary," and thus meets the ACCA's definition of a predicate "violent felony," if "either its statutory definition substantially corresponds to 'generic' burglary, or the charging paper and jury instructions actually required the jury to find all the elements of generic burglary in order to convict the defendant." First, the Court examined the legislative history of section 924(e) and determined that Congress intended for section 924(e) to embody "a categorical approach to the designation of predicate offenses"—that is, "using uniform, categorical definitions to capture all offenses of a certain level of seriousness that involve violence or an inherent risk thereof, and that are likely to be committed by career offenders, regardless of technical definitions and labels under state law." Second, the Court concluded that, for purposes of section 924(e), "Congress meant by 'burglary' the generic sense in which the term is now used in the criminal code of most [s]tates." The Court explained that "generic" burglary consists of the following "basic" elements: "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." Finally, the Court determined that section 924(e) "generally requires [a] trial court to look only to the fact of conviction and the statutory definition of the prior offense," but noted that a court could "go beyond the mere fact of conviction in a narrow range of cases where a jury was actually required to find all the elements of generic burglary" (*e.g.*, where a burglary statute includes "entry of an automobile as well as a building" and a jury is required "to find an entry of a building to convict").

Mistretta v. United States, 488 U.S. 361 (1989).

The Supreme Court upheld the constitutionality of the Sentencing Reform Act of 1984 (SRA), holding that Congress neither delegated excessive legislative power nor violated the doctrine of separation of powers when it established the Sentencing Commission and charged the Commission with promulgating guidelines for federal sentencing. While the Court acknowledged that Congress had granted the Commission "significant discretion" in formulating the guidelines, the Court concluded that Congress had not violated the nondelegation doctrine because Congress had set forth "more than merely an 'intelligible principle' or minimal standards" in the SRA for the exercise of the Commission's delegated authority. In rejecting the claim that Congress had violated the doctrine of separation of powers, the Court upheld the establishment of the Commission in the judicial branch, the SRA's requirement that at least three federal judges serve with nonjudges as members of the Commission, and the SRA's empowerment of the President to appoint the members of the Commission and remove them for cause.

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