



INTERACTIVE

# Case Law Update

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JANUARY - MARCH 2024

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

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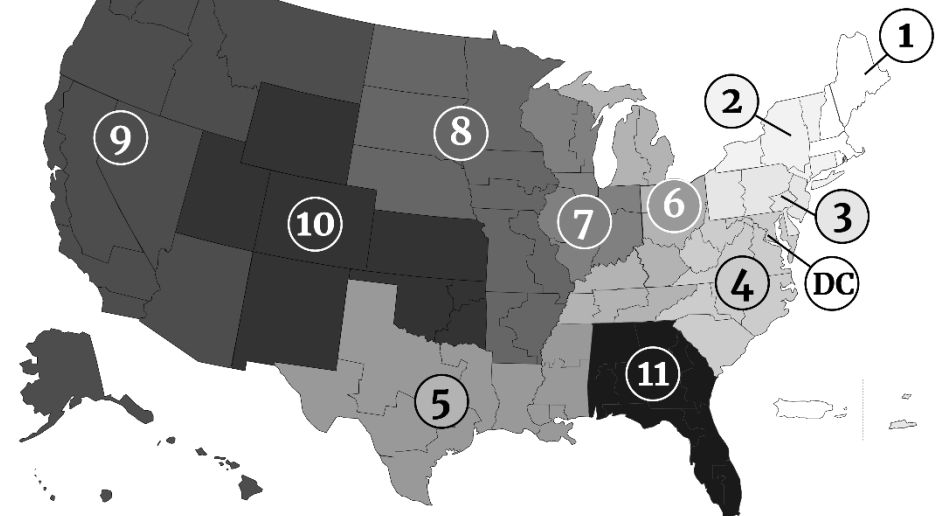
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*Cases appear in descending chronological order within a circuit.*

## U.S. Supreme Court

*No cases selected by Commission staff.*

## Appellate Court Career Offender

### Third Circuit

United States v. Williams, No. 22-3468, 2024 WL 469303 (3d Cir. Feb. 7, 2024)

The district court did not plainly err in applying an enhanced base offense level under §2K2.1(a)(4)(A) based on finding that the defendant’s prior drug conviction under 16 Del. Code § 4754 was a “controlled substance offense” within the meaning of §4B1.2(b).

### Fourth Circuit

United States v. Robinson, 92 F.4th 531 (4th Cir. 2024)

Because it requires both the necessary degree of force—“inflic[tion of] physical injury”—and a mens rea more culpable than mere recklessness, North Carolina assault by strangulation categorically qualifies as a “crime of violence” under §4B1.2(a)(1) for the purpose of §2K2.1(a)(2), even after *United States v. Taylor*, 596 U.S. 845 (2022).

### Sixth Circuit

United States v. Ivy, 93 F.4th 937 (6th Cir. 2024)

“[A]ggravated robbery with a deadly weapon under Ohio Revised Code § 2911.01(A)(1), without further information that the aggravated-robbery conviction is predicated on a particular underlying theft offense, is not a crime of violence” under §4B1.2(a)’s elements clause or the enumerated-offenses clause.

### Tenth Circuit

United States v. Devereaux, 91 F.4th 1361 (10th Cir. 2024)

Assault resulting in serious bodily injury in violation of 18 U.S.C. § 113(a)(6) is not categorically a “crime of violence” under §4B1.2(a)(1), for purposes of §2K2.1(a)(3), because it may be committed recklessly.

### Eleventh Circuit

United States v. Dubois, 94 F.4th 1284 (11th Cir. 2024)

A drug trafficking offense involving a substance regulated by state—but not by federal—law at the time of the defendant’s prior conviction, such as the defendant’s Georgia offense of trafficking hemp, is categorically a “controlled substance offense” within the meaning of §4B1.2(b) for the purposes of sentencing enhancement under §2K2.1(a)(4)(A).

## Categorical Approach

### Fourth Circuit

United States v. Lassiter, 96 F.4th 629 (4th Cir. 2024)

Attempted murder in aid of racketeering, 18 U.S.C. § 1959(a)(5), premised upon an attempted murder under Virginia law—which “necessarily requires the attempted use of force”—is a “crime of violence” for purposes of 18 U.S.C. § 924(c).

United States v. Hamilton, 95 F.4th 171 (4th Cir. 2024)

North Carolina attempted robbery with a dangerous weapon is not an inchoate attempt offense and thus qualifies as a “violent felony” under the Armed Career Criminal Act (ACCA). As a completed offense “fully and carefully delineated in the statute” that requires as an element the use or threatened use of a firearm or dangerous weapon, it is distinguishable from the inchoate crime of attempted Hobbs Act robbery at issue in *United States v. Taylor*, 596 U.S. 845 (2022).

### Eighth Circuit

Brewer v. United States, 89 F.4th 1091 (8th Cir. 2024)

Voluntary manslaughter in violation of 18 U.S.C. § 1112(a) remains a “crime of violence” under 18 U.S.C. § 924(c) after *United States v. Davis*, 139 S. Ct. 2319 (2019), and *Borden v. United States*, 141 S. Ct. 1817 (2021), because it “requires more than ordinary recklessness” and thus satisfies the elements clause of section 924(c).

## Chapter Three Adjustments

### Third Circuit

United States v. Alowemer, 96 F.4th 386 (3d Cir. 2024)

The terrorism enhancement in §3A1.4(a) was properly applied where the defendant “calculated,” or specifically intended, to “retaliate against government conduct” by plotting an attack to avenge the deaths of ISIS fighters killed by the United States.

### Fourth Circuit

United States v. Maynard, 90 F.4th 706 (4th Cir. 2024)

Application Note 4(B) to the obstruction guideline at §3C1.1, listing perjury as conduct covered by the enhancement, does not impermissibly expand the guideline beyond its text because it interprets rather than defines the guideline terms “obstruct” and “impede” and is therefore authoritative.

United States v. Pettus, 90 F.4th 282 (4th Cir. 2024)

The district court’s explanation for applying the §3C1.1 obstruction enhancement was insufficient where it failed to articulate whether it had determined that the defendant had concealed evidence contemporaneously with his arrest and, if so, whether it was a “material hindrance” to an investigation—both considerations in Application Note 4(D).

### Fifth Circuit

United States v. Ortega, 93 F.4th 278 (5th Cir. 2024)

The district court erred in applying a two-level increase for obstruction of justice under §3C1.1 where the defendant, “in answering his wife’s question about what she should say to

the judge [during the sentencing hearing], . . . tried to create a unified, arguably truthful narrative between the two of them.” “[A]n endeavor to influence a witness to tell the truth’ is not obstruction.”

## Compassionate Release

*No cases selected by Commission staff.*

## Criminal History

*No cases selected by Commission staff.*

## Drug Offenses

### Fifth Circuit

United States v. Garza, 93 F.4th 913 (5th Cir. 2024)

A “backward-looking” test applies “when evaluating whether a prior drug offense qualifies for the felony drug offense sentencing enhancement” under 21 U.S.C. § 841(b)(1)(D). Because the defendant’s prior drug convictions qualified as felony drug offenses at the time he was convicted of them and those convictions were final before sentencing in the present case, the district court properly employed a sentencing enhancement under this test.

### Tenth Circuit

United States v. Zhong, 95 F.4th 1296 (10th Cir. 2024)

“[A] defendant who is convicted of having a certain state of mind must provide information about that state of mind to the Government in order to qualify for safety-valve relief under [18 U.S.C.] § 3553(f)(5).”

## Economic Crimes

### Seventh Circuit

United States v. Gulzar, 92 F.4th 684 (7th Cir. 2024)

Deference to Application Note 3 to §2B1.1 was proper to determine that loss “should be measured at the time [the victim] detected the loss.” In reaching this result, the Seventh Circuit declined to “weigh in on [whether *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), overruled *Stinson v. United States*, 508 U.S. 36 (1993),] because either approach would result in deferring to the Guidelines commentary here.”

## Firearms

### Fourth Circuit

United States v. Claybrooks, 90 F.4th 248 (4th Cir. 2024)

The defendant could not mount a vagueness challenge to the prohibition on possession of firearms by an unlawful drug user in 18 U.S.C. § 922(g)(3) where his conduct—that he was an unlawful user of controlled substances at the time of his arrest—fell squarely within the confines of the statutory provision.

### Seventh Circuit

United States v. Creek, 95 F.4th 484 (7th Cir. 2024)

A tin can for chewing tobacco that contained sealed explosive powder and a fuse is a “destructive device” within the meaning of the National Firearms Act, 26 U.S.C. § 5845(f)(1), so a two-level “destructive device” enhancement under §2K2.1(b)(3)(A) properly applied.

### Tenth Circuit

United States v. Morales-Lopez, 92 F.4th 936 (10th Cir. 2024)

Section 922(g)(3) of title 18, which forbids “an unlawful user of . . . any controlled substance” from possessing a firearm, cannot be held unconstitutionally vague—either on its face or as-applied—where it clearly applies to the defendant’s conduct, namely, possession of a firearm with a user-amount of methamphetamine on his person.

### Eleventh Circuit

United States v. Dubois, 94 F.4th 1284 (11th Cir. 2024)

*N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), did not abrogate circuit precedent in *United States v. Rozier*, 598 F.3d 768 (11th Cir. 2010), which upheld 18 U.S.C. § 922(g)(1) under the Second Amendment.

## First Step Act of 2018

### Fourth Circuit

United States v. Richardson, 96 F.4th 659 (4th Cir. 2024)

Under the “sentencing package doctrine,” courts have discretion to reduce sentences for offenses that are not covered by the First Step Act of 2018 if those offenses were sentenced with covered offenses as an “inherently interrelated, interconnected, and holistic process.” In so holding, the Fourth Circuit joined the Seventh and Eighth Circuits, and split from the Second, Tenth, and Eleventh Circuits.

### Fifth Circuit

United States v. Duffey, 92 F.4th 304 (5th Cir. 2024)

Section 403 of the First Step Act—relating to 18 U.S.C. § 924(c)—does not apply when “notwithstanding post-enactment vacatur, ‘a sentence had been imposed’ prior to the date of the enactment” of the First Step Act. In so holding, the Fifth Circuit joined the Sixth Circuit and split with the Third, Fourth, and Ninth Circuits.

## Relevant Conduct

*No cases selected by Commission staff.*

## Restitution

### Fifth Circuit

United States v. Shah, 95 F.4th 328 (5th Cir. 2024)

The categorical approach does not apply to the determination of whether an offense is an “offense against property” for purposes of the Mandatory Victims Restitution Act, as the Second, Fourth, Sixth, Ninth, and Eleventh Circuits also have concluded.

## Sentencing Procedure

### Third Circuit

United States v. Cruz, 95 F.4th 106 (3d Cir. 2024)

The government’s uncured breach of the plea agreement, where it supported a four-level enhancement in excess of the negotiated total offense level and “did not retract its erroneous position unequivocally,” warranted remand for resentencing.

### Fourth Circuit

United States v. Castellon, 92 F.4th 540 (4th Cir. 2024)

The district court’s denial of a noncapital criminal defendant’s request pursuant to Fed. R. Crim. Pro. 43(c)(1)(B) to knowingly, voluntarily waive his right to be present at his sentencing hearing does not warrant collateral order review on appeal.

## Sex Offenses

### Eleventh Circuit

United States v. Gatlin, 90 F.4th 1050 (11th Cir. 2024)

The plain meaning of the phrase “custody, care, or supervisory control” as used in the two-level enhancement at §2G1.3(b)(1)(B) requires only that the defendant is “responsible for looking after the [victim] child’s wellbeing.” The Eleventh Circuit “decline[d] to adopt the more ‘formalistic’ view held by the Ninth Circuit” that limits application of §2G1.3(b)(1)(B) to relationships that are “broadly comparable to that of parents, relatives, and legal guardians.”

## Supervised Release

### Second Circuit

United States v. Oliveras, 96 F.4th 298 (2d Cir. 2024)

Under the “special needs” doctrine, “the imposition of a special condition of supervised release that allows for searches without individualized suspicion does not violate the Fourth

United States v. Sims, 92 F.4th 115 (2d Cir. 2024)

Amendment and, thus, can be imposed if sufficiently supported by the record under the factors set forth in [18 U.S.C. §] 3583(d).” However, the court must make an “‘individualized assessment’ as to each defendant when determining whether to impose a special condition.”

Remand for further proceedings is appropriate to determine whether a special condition for non-association is reasonably related to the applicable 18 U.S.C. § 3553(a) factors when the reasonableness is not self-evident from the record.

#### **Fourth Circuit**

United States v. King, 91 F.4th 756 (4th Cir. 2024)

Federal Rule of Criminal Procedure 11 requires the district court to advise defendants who plead guilty about the exposure, upon violation of supervised release, to additional incarceration beyond the statutory maximum term of imprisonment.

United States v. Newby, 91 F.4th 196 (4th Cir. 2024)

Because the First Step Act of 2018 does not authorize district courts to impose new discretionary terms of supervised release in an 18 U.S.C. § 3582(c)(1)(B) sentencing modification proceeding, the district court’s reimposition of discretionary conditions of supervised release erroneously not announced at the original sentencing hearing required remand for full resentencing, as the amended judgment remained infected by the initial sentencing error.

United States v. Lewis, 90 F.4th 288 (4th Cir. 2024)

Chapter Seven of the *Guidelines Manual* does not improperly consider a prohibited factor in violation of 18 U.S.C. § 3583(e)(3)—retribution as outlined in 18 U.S.C. § 3553(a)(2)(A)—or impermissibly base recommended sentences on the seriousness of the supervised release violation.

#### **Seventh Circuit**

United States v. Wilcher, 91 F.4th 864 (7th Cir. 2024)

“Congress has instructed that district courts cannot rely on the seriousness of the offense when crafting a supervised release term, and the court here relied—expressly and exclusively—on that factor.” Accordingly, remand was appropriate.

#### **Eighth Circuit**

United States v. Morin, 95 F.4th 592 (8th Cir. 2024)

“Nowhere does [18 U.S.C.] § 3583(e)(3) require the court ‘to consider or aggregate’ prior revocation terms of imprisonment” and credit them towards the maximum sentence length authorized by statute. “Instead, the ‘all or part’ clause [of section 3583(e)] imposes a per-revocation limit” capped by the statutorily authorized maximum.

United States v. Lester, 92 F.4th 740 (8th Cir. 2024)

The district court retains discretion under 18 U.S.C. § 3583(e)(1) to terminate supervised release early for defendants convicted under 21 U.S.C. § 841(b)(1)(A), despite a 2002 amendment to section 841(b)(1)(A) that requires a court to initially impose five years of supervised release “[n]otwithstanding section 3583 of Title 18.”



**Eleventh Circuit**

United States v. Tripodis, 94 F.4th 1257 (11th Cir. 2024)

The government did not breach the unambiguous terms of the plea agreement when it recommended a term of supervised release about which the agreement was silent; extrinsic evidence demonstrated that the defendant understood he could be subject to a term of supervised release.

**General Application Issues**

*No cases selected by Commission staff.*

**Other Offense Types**

**D.C. Circuit**

United States v. Brock, 94 F.4th 39 (D.C. Cir. 2024)

The “administration of justice” enhancement under §2J1.2(b)(2) “does not apply to interference with the legislative process of certifying electoral votes” because its “text, context, and commentary show that ‘administration of justice’ refers to judicial, quasi-judicial, and adjunct investigative proceedings, but does not extend to the unique congressional function of certifying electoral college votes.”

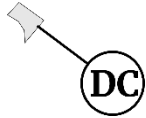
**Eleventh Circuit**

United States v. Pugh, 90 F.4th 1318 (11th Cir. 2024)

As a matter of first impression, 18 U.S.C. § 231(a)(3), which prohibits impeding law enforcement officers during a civil disorder affecting interstate commerce, is constitutional. The Eleventh Circuit rejected the defendant’s arguments that section 231(a)(3) is facially unconstitutional because it “(1) exceeds Congress’s power to legislate under the Commerce Clause, (2) is a substantially overbroad regulation of activities protected by the First Amendment, (3) is a content-based restriction of expressive activities in violation of the First Amendment, and (4) is vague in violation of the Fifth Amendment’s Due Process Clause.”

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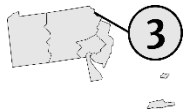
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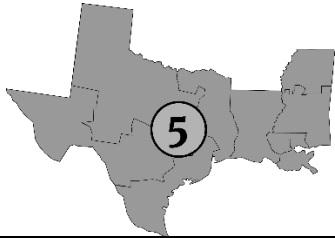


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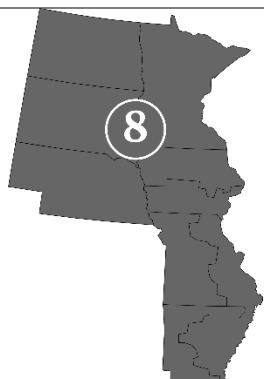
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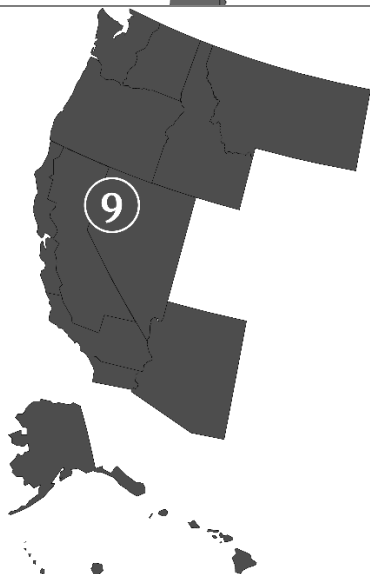


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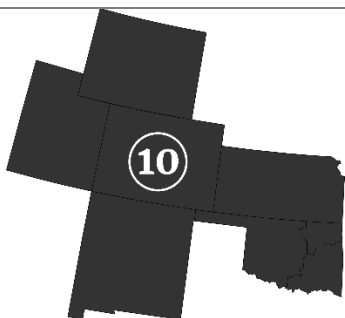
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