INTERACTIVE

Case Law Update

JANUARY – DECEMBER 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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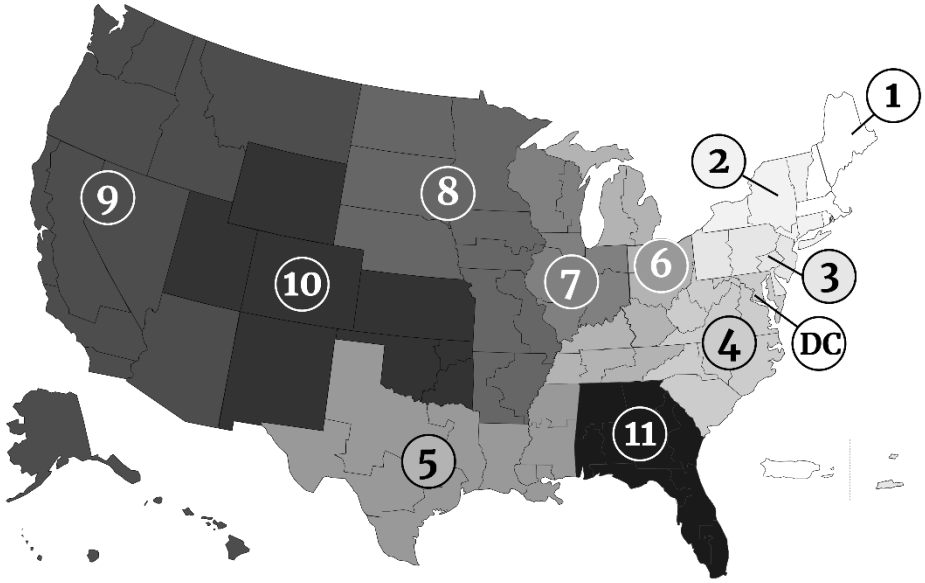

Cases appear in descending chronological order within a circuit.

U.S. Supreme Court

Erlinger v. United States, 144 S. Ct. 1840 (2024)	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), the Armed Career Criminal Act (ACCA).
Brown v. United States, 602 U.S. 101 (2024)	A state drug conviction counts as a predicate "serious drug offense" under 18 U.S.C. § 924(e), the Armed Career Criminal Act (ACCA), if it involves a drug that appeared on the federal drug schedules at the time of the state drug conviction. The holding resolves a circuit conflict and adopts the Eleventh Circuit's view, instead of the view of the Third, Eighth, and Tenth Circuits, which look to the federal drug schedule at the time of the federal offense, or the Fourth Circuit, which looks to the federal drug schedule at the time of federal sentencing.
Pulsifer v. United States, 601 U.S 124 (2024)	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 reduce to one" when the text is read in context, including in conjunction with the guidelines.

Appellate Court

Career Offender

First Circuit

United States v. Moran-Stenson, 115 F.4th 11 (1st Cir. 2024)	The "scheduled drugs" component of Maine's drug-trafficking statute is a "divisible element," so a court may use the modified categorical approach to determine whether an individual committed a predicate "controlled substance offense" within the meaning of §4B1.2(b)(1) for purposes of the higher base offense level in §2K2.1(a)(4)(A).

Third Circuit

United States v. Valentin, 118 F.4th 579 (3d Cir. 2024)	The defendant's 18 U.S.C. § 924(c) conviction for brandishing a gun during a Hobbs Act robbery "in order to intimidate" another person was "crime of violence" under §4B1.2(a)(1), even if Hobbs Act robbery itself was not a crime of violence under the guidelines.

United States v. Hurtt, 105 F.4th 520 (3d Cir. 2024)	A Pennsylvania aggravated assault conviction is categorically a predicate "crime of violence" under §4B1.2(a)(1) because it requires a physical act with specific intent to threaten corporeal harm.
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).
Fifth Circuit	
United States v. Minor, 121 F.4th 1085 (5th Cir. 2024)	For purposes of the career offender enhancement, the Controlled Substances Act's definition of "'controlled substance' in place at the time of sentencing for the instant offense is the proper comparison for determining whether [] predicate convictions constitute 'controlled substance offenses.'"
Sixth Circuit	
United States v. Parham, 119 F.4th 488 (6th Cir. 2024)	A prior conviction for attempted second-degree murder under Tenn. Code Ann. § 39-13-210(a)(1) (2008) is a "crime of violence" as defined by §4B1.2(a).
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.
Seventh Circuit	
United States v. Bevly, 110 F.4th 1043 (7th Cir. 2024)	After *Borden v. United States*, 593 U.S. 420 (2021), bank robbery under 18 U.S.C. § 2113(a) remains a crime of violence for purposes of §4B1.2 because the offense requires intentional conduct.
United States v. Smith, 109 F.4th 888 (7th Cir. 2024)	Under the categorical approach, a conviction for aggravated robbery in Illinois under 720 ILL. COMP. STAT. 5/18-5(a) qualifies as a "serious violent felony" for the statutory enhancement in 21 U.S.C. § 841(b)(1)(B) and as a "crime of violence" for §4B1.1(a).
United States v. White, 97 F.4th 532 (7th Cir. 2024)	"*Kisor* [*v. Wilkie*, 588 U.S. 558 (2019),] did not disturb *Stinson* [*v. United States*, 508 U.S. 36 (1993),] or [the Seventh Circuit's] precedent" holding that Application Note 1 to §4B1.2 is authoritative in the 2021 version of the *Guidelines Manual*. The court also rejected the defendant's argument that "the Sentencing Commission lacked clear congressional authorization to include inchoate offenses as career-offender predicates" under the "major questions doctrine."

Ninth Circuit

United States v. Gomez, 115 F.4th 987 (9th Cir. 2024)	Assault with a deadly weapon under Cal. Penal Code § 245(a)(1) is not a "crime of violence" under §4B1.2(a) because its scope is not limited to "uses of force with a mens rea greater than recklessness."

Tenth Circuit

United States v. Manzano, 112 F.4th 915 (10th Cir. 2024)	Second-degree murder under Oklahoma law is not a "crime of violence" under §4B1.2(a)(2) because it is a categorical mismatch with the Tenth Circuit's definition of generic murder.
United States v. Venjohn, 104 F.4th 179 (10th Cir. 2024)	Following *United States v. Taylor*, 596 U.S. 845 (2022), Colorado felony menacing is not a "crime of violence" under §4B1.2(a) because it does not require communication of a threat.
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. Hicks, 100 F.4th 1295 (11th Cir. 2024)	The Georgia offense of aggravated assault with a deadly weapon, in violation of O.C.G.A. § 16-5-21(a)(2), is categorically a "crime of violence" under the enumerated offense clause of §4B1.2(a)(2) for the purposes of the increased base offense level at §2K2.1(a)(2).
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

D.C. Circuit

United States v. Burwell, 122 F.4th 984 (D.C. Cir. 2024)	A conviction for bank robbery under 18 U.S.C. § 2113(a) does not qualify as a "crime of violence" for purpose of 18 U.S.C. § 924(c) because section 2113(a) is an indivisible statute that "sets forth three alternative means—force and violence, intimidation, and extortion—of completing the same crime" and "extortion need not involve the use or threat of force."
United States v. Smith, 104 F.4th 314 (D.C. Cir. 2024)	Because the continuing criminal enterprise murder statute (21 U.S.C. § 848) "requires the intentional use of force against another person that results in an intentional killing and uses intent-connoting verbs to define the culpable content, the provision qualifies categorically as a crime of violence under 18 U.S.C. § 924(c)."

Second Circuit

Pannell v. United States, 115 F.4th 154 (2d Cir. 2024)	A completed 18 U.S.C. § 2114(a) robbery qualifies as a "crime of violence" under 18 U.S.C. § 924(c), and because that base offense qualifies, "an aggravated offense that incorporates the elements of that base offense necessarily qualifies too."
Medunjanin v. United States, 99 F.4th 129 (2d Cir. 2024)	"[T]he fact that a defendant may have been convicted of an otherwise valid crime of violence based on an aiding and abetting theory of liability has no effect on the crime's validity as a § 924(c) predicate," as previously held in *United States v. McCoy*, 995 F.3d 32, 57–58 (2d Cir. 2021). "Nothing in [*United States v. Taylor*, 596 U.S. 825 (2022),] overrules, alters, or otherwise casts doubt on the aiding-and-abetting logic and conclusion set forth in *McCoy*."

Fourth Circuit

United States v. Fulks, 120 F.4th 146 (4th Cir. 2024)	The federal carjacking statute at 18 U.S.C. § 2119 is divisible into completed and attempted carjacking offenses; completed carjacking remains a categorical "crime of violence" under the force clause of 18 U.S.C. § 924(c) after *United States v. Taylor*, 596 U.S. 845 (2022), and *Borden v. United States*, 593 U.S. 420 (2021).
United States v. Canada, 103 F.4th 257 (4th Cir. 2024)	Criminal domestic violence under South Carolina law is not a "violent felony" under 18 U.S.C. § 924(e), the Armed Career Criminal Act (ACCA), because it "*can* 'be committed with general criminal intent, including a mental state of recklessness.'"
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 18 U.S.C. § 924(e), 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).

Seventh Circuit

United States v. Johnson, 114 F.4th 913 (7th Cir. 2024)	Because the defendant's Armed Career Criminal Act (ACCA) "case was still pending on direct review at the time *Erlinger* [*v. United States*, 144 S. Ct. 1840 (2024),] was decided," *Erlinger* applies to deciding if his prior offenses occurred on different occasions and "the district court erred in declining to send the different-occasions question to a jury."
United States v. Anderson, 99 F.4th 1106 (7th Cir. 2024)	Although the Florida Supreme Court's decision in *Somers v. United States*, 355 So. 3d 887 (Fla. 2022), held that its aggravated assault statute does not include reckless conduct, "appellate cases using the recklessness standard were good law at the time of [the defendant's]

	conviction," so it is not a predicate "violent felony" for purposes of the Armed Career Criminal Act (ACCA).
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*, 588 U.S. 445 (2019), and *Borden v. United States*, 593 U.S. 420 (2021), because it "requires more than ordinary recklessness" and thus satisfies the elements clause of section 924(c).
Ninth Circuit	
United States v. Defrance, 124 F.4th 814 (9th Cir. 2024)	Montana partner or family member assault is not categorically a "misdemeanor crime of domestic violence" under 18 U.S.C. § 922(g)(9) because it "does not require the use of physical force" and can instead be committed "through any form of communication that inflicts bodily injury in the form of emotional anguish."
United States v. Howald, 104 F.4th 732 (9th Cir. 2024)	An attempt to kill in violation of 18 U.S.C. § 249(a)(2)(A)(ii)(II) is categorically a "crime of violence" under 18 U.S.C. § 924(c)(3)(A).
Eleventh Circuit	
United States v. Armstrong, 122 F.4th 1278 (11th Cir. 2024)	"[T]he plain text of [18 U.S.C.] § 2113(a) demonstrates that the statute is divisible and criminalizes two distinct acts—robbery and extortion—each of which can be committed through various factual means." Unlike attempted Hobbs Act robbery under 18 U.S.C. § 1591, discussed in *United States v. Taylor*, 596 U.S. 845 (2022), attempted bank robbery under 18 U.S.C. § 2113(a) is categorically a "crime of violence" for the purposes of 18 U.S.C. § 924(c)(1)(A)(ii) "because it requires as an element that the defendant acted 'by force and violence, or by intimidation' in committing the inchoate crime."
United States v. Lightsey, 120 F.4th 851 (11th Cir. 2024)	The defendant's prior Florida attempted armed robbery categorically qualifies as a "crime of violence" under the elements clause of 18 U.S.C. § 924(e)(2)(B)(i) because it required the use of force against a person. Prior circuit precedent holding that such attempts qualify under the Armed Career Criminal Act (ACCA) remains binding law—not abrogated by *United States v. Taylor*, 596 U.S. 845 (2022)—because Florida attempted robbery requires more culpable conduct than generic federal attempts.
United States v. Brooks, 112 F.4th 937 (11th Cir. 2024)	Georgia's robbery statute is divisible under *Mathis v. United States*, 579 U.S. 500 (2016), and robbery by "use of force" qualifies as a "crime of violence" under the enumerated clause in §4B1.2(a)(2).
United States v. Ferguson, 100 F.4th 1301 (11th Cir. 2024)	The clause of Georgia's statute criminalizing threatening a witness, O.C.G.A. § 16-10-32(b), is divisible as to economic and physical harm; applying the modified categorical approach, the

	court found that the offense of threatening physical harm is a "violent felony" for the purposes of the Armed Career Criminal Act (ACCA).

Chapter Three Adjustments

D.C. Circuit

United States v. Webster, 102 F.4th 471 (D.C. Cir. 2024)	The adjustment at §3B1.5 for use of body armor during the commission of a drug trafficking crime or a crime of violence "contains no *mens rea* requirement" and was properly applied to a defendant who "wore body armor while participating in the Capitol riot." There is no requirement that the body armor be used with intent to commit a crime of violence or during a crime that involves use or threatened use of firearms.

First Circuit

United States v. González-Santillan, 107 F.4th 12 (1st Cir. 2024)	The government may request an obstruction of justice enhancement under §3C1.1 where the defendant absconds before sentencing, despite its pledge in a plea agreement "that no other adjustments or departures [were] applicable . . . nor [would] be sought by the parties." By absconding, it was the defendant who breached an "implied but obvious term of any plea agreement" to "show up for sentencing and not flee the jurisdiction."

Second Circuit

United States v. Orelien, 119 F.4th 217 (2d Cir. 2024)	To support its application of the §3C1.1 obstruction of justice enhancement based on perjury, a district court must find not only that the statement was materially untrue but also that the defendant "acted with 'willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.'"

Third Circuit

United States v. Soto, 122 F.4th 503 (3d Cir. 2024)	The application of the adjustment for obstruction of justice at §3C1.1 was not sufficiently supported where the record included no evidence that the defendant's entering an elevator with jurors was intended to obstruct the proceedings.
United States v. Chandler, 104 F.4th 445 (3d Cir. 2024)	While knowledge of a victim's status alone is insufficient to permit application of the official victim enhancement at §3A1.2, the enhancement is proper where the victim's status as a government employee influenced the defendant's choice to commit the crime. To determine the defendant's motive, the district court may look at "facts attendant to" the "offense of conviction," which here included a robbery immediately before a kidnapping.
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."

Seventh Circuit

United States v. Orona, 118 F.4th 858 (7th Cir. 2024)	The government permissibly declined to file a §3E1.1(b) acceptance of responsibility motion based on the defendant's "frivolous objection to the intended loss amount." The court did not address the latest amendments to §3E1.1, which occurred while the appeal was pending, because they "are not retroactive."
United States v. Mireles, 116 F.4th 713 (7th Cir. 2024)	"[M]erely failing to surrender voluntarily does not warrant an obstruction of justice enhancement" under §3C1.1, so a limited remand was required to assess the court's reasoning for the enhancement.
United States v. Cervantes, 109 F.4th 944 (7th Cir. 2024)	An aggravating role adjustment under §3B1.1 "is sufficient to disqualify [a person] from eligibility for a two-level reduction under §4C1.1," as the Commission clarified in an amendment to §4C1.1.

Eighth Circuit

United States v. Donath, 107 F.4th 830 (8th Cir. 2024)	The government had a rational basis for withholding an acceptance of responsibility motion under §3E1.1(b) where an individual "lack[ed] candor and remorse on a factual issue that was central to the determination of his sentencing range." The recent amendment to §3E1.1(b) "simply clarifies what 'preparing for trial' means" but "does not alter Application Note 6," under which "the government has broad discretion to withhold its motion."

Ninth Circuit

United States v. Patterson, 119 F.4th 609 (9th Cir. 2024)	"The title, history, purpose, and ordinary understanding of the term 'hate crime' all indicate that application of [§3A1.1(a)] requires the trier of fact to find beyond a reasonable doubt that the defendant acted with animus."

Tenth Circuit

United States v. Tony, 121 F.4th 56 (10th Cir. 2024)	The guidelines are "grievously ambiguous" as to "whether a district court may decline to group an obstruction count with its underlying offense when the obstruction adjustment can be independently triggered by conduct for which a defendant was neither charged nor convicted," so remand was warranted under the rule of lenity.
United States v. Smith, 100 F.4th 1244 (10th Cir. 2024)	The district court did not err in denying a two-level reduction for acceptance of responsibility under §3E1.1(a) for a defendant who challenged the factual element of intent at trial by arguing that he lacked the requisite mens rea for second-degree murder and was ultimately convicted of involuntary manslaughter.

Eleventh Circuit

United States v. Blanco, 102 F.4th 1153 (11th Cir. 2024)	The §3A1.4(a) sentencing enhancement for promoting terrorism was appropriate where the defendant's offense was calculated to "influence, affect, or retaliate against government conduct" irrespective of the defendant's specific intent.

Compassionate Release

Second Circuit

United States v. Fernandez, 104 F.4th 420 (2d Cir. 2024)	As most other circuits have held, "we conclude that since challenges to the validity of a conviction must be made under [28 U.S.C. §] 2255, they cannot qualify as 'extraordinary and compelling reasons' under [18 U.S.C. §] 3582(c)(1)(A). Compassionate release is not a channel to habeas relief or an end run around the limitations of section 2255."

Third Circuit

United States v. Rutherford, 120 F.4th 360 (3d Cir. 2024)	Section 1B1.13(b)(6)—the portion of the "compassionate release" policy statement that allows nonretroactive changes in the law to be considered as extraordinary and compelling reasons in "narrowly circumscribed circumstances"—conflicts with congressional intent on nonretroactivity for changes made by the First Step Act to the "stacking" provision in 18 U.S.C. § 924(c). Circuit precedent holding that changes to section 924(c) cannot "be[] a consideration when determining eligibility for compassionate release" thus remains binding.

Fourth Circuit

United States v. Davis, 99 F.4th 647 (4th Cir. 2024)	The district court abused its discretion when it did not consider circuit precedent, subsequently amplified by both *Concepcion v. United States*, 597 U.S. 481 (2022), and the

	Commission's recent amendment to §1B1.13, to determine whether intervening changes in law constituted extraordinary and compelling reasons warranting a sentence reduction.
Ninth Circuit	
United States v. Yepez, 108 F.4th 1093 (9th Cir. 2024)	A motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) may not be used to shorten a term of supervised release.
Eleventh Circuit	
United States v. Handlon, 97 F.4th 829 (11th Cir. 2024)	Amendment 814 was a substantive amendment to the policy statement in §1B1.13 and thus may not be retroactively applied to a previously filed motion for a sentence reduction. Instead, the movant may refile for relief under the amended policy statement.

Criminal History

Second Circuit	
United States v. Washington, 103 F.4th 917 (2d Cir. 2024)	A split panel of the Second Circuit held that the phrase "similar to" in §4A1.2(c)(1)(B) allows courts "to take into account 'any . . . relevant factor, including the actual conduct involved'" in deciding whether an exception to the excluded-offense rule in §4A1.2(c)(1) applies. The majority concluded that the text of §4A1.2(c)(1)(B) does not require use of the categorical approach and that the guidance given in the commentary "plainly requires reviewing the underlying facts of the case, including the defendant's conduct."
Fifth Circuit	
United States v. Morales, 122 F.4th 590 (5th Cir. 2024)	"[T]o be eligible for the zero-point-offender reduction [under the 2023 *Guidelines Manual*], a defendant must show *both* that he did not receive the enhancement under §3B1.1 *and* that he was not engaged in a continuing criminal enterprise."
Eighth Circuit	
United States v. Austin, 104 F.4th 695 (8th Cir. 2024)	Section 4A1.1(d) [formerly §4A1.1(e)] provides for an additional criminal history point "for each prior sentence resulting from a conviction of a crime of violence that did not receive any points" because it was treated as a single sentence. While the defendant contended that his other qualifying convictions "occurred on the same occasion" as a crime of violence that received points, broadening "the meaning of 'crime of violence' to encompass a 'single criminal occurrence' is inconsistent with the plain language" of the guideline.
Tenth Circuit	
United States v. Montano, 109 F.4th 1275 (10th Cir. 2024)	The government was not relieved of its burden to prove how points for prior convictions should be calculated where the prior state judgment consolidated five cases but was silent on how the combined sentence of imprisonment was allocated to each case.

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.

Seventh Circuit

United States v. Montgomery, 114 F.4th 847 (7th Cir. 2024)	"[T]he government needed to show more than three transactions tied to [a] storage unit in a one-month period to satisfy its burden to trigger the two-level enhancement under §2D1.1(b)(12)" for maintaining a drug premises.
United States v. Yates, 98 F.4th 826 (7th Cir. 2024)	"[T]he government need not test all the methamphetamine attributable to a defendant" for purposes of assessing its purity and corresponding base offense level under §2D1.1(c). However, "there must be evidence that the part [tested] reliably represents the whole."

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)."

Eleventh Circuit

United States v. Graham, 123 F.4th 1197 (11th Cir. 2024)	The language of the §2D1.1(b)(2) enhancement—"the defendant used violence, made a credible threat to use violence, or directed the use of violence"—focuses on the defendant's own conduct; thus, the enhancement cannot be based on the actions of co-conspirators. Here, because the use of force by others was not a reasonably foreseeable consequence of the defendant's own acts, the district court clearly erred in application of the enhancement.

Economic Crimes

Second Circuit

United States v. Rainford, 110 F.4th 455 (2d Cir. 2024)	Application Note 3 to §2B1.1(b), which defines "loss" as the "greater of actual loss or intended loss," is authoritative because it "is neither inconsistent with nor a plainly erroneous reading of the guideline." "Loss" has no single definition and "can mean different things in different contexts." In so holding, the Second Circuit agreed with the Sixth and Seventh Circuits and split with the Third Circuit.

Third Circuit

United States v. Peperno, 119 F.4th 322 (3d Cir. 2024)	When determining whether payments constitute multiple bribes pursuant to §2C1.1(b)(1), courts should consider these non-exhaustive factors: (1) "whether the payments were 'made to influence a single action'"; (2) "whether the pattern and amount of the payments bear the hallmarks of installment payments, such as a regular schedule of payments over a finite period of time toward a fixed final sum, rather than a series of intermittent and varied bribes"; and (3) "whether the method for making each payment remains the same."

Fourth Circuit

United States v. Boler, 115 F.4th 316 (4th Cir. 2024)	The district court properly relied on Application Note 3(A) to §2B1.1 to determine the loss amount based on "intended loss" rather than "actual loss." Under *Kisor v. Wilkie*, 588 U.S. 558 (2019), the term "loss" is "genuinely ambiguous," the commentary defining the term "falls 'within the bounds of reasonable interpretation,'" and the "character and context of the commentary entitle it to controlling weight." In so holding, the Fourth Circuit agreed with the Second, Sixth, and Seventh Circuits and split with the Third Circuit.

Fifth Circuit

United States v. Day, 117 F.4th 622 (5th Cir. 2024)	An enhancement for "substantial financial hardship" under §2B1.1(b)(2) cannot "rest . . . on total loss alone." "[T]he loss table in §2B1.1(b)(1) already accounts for these concerns," while "§2B1.1(b)(2) punishes the hardships imposed on the victims."

Sixth Circuit

United States v. Agrawal, 97 F.4th 421 (6th Cir. 2024)	Under the "government-benefits" rule in Application Note 3(F)(ii) to §2B1.1, the "unintended recipient" and the "unintended use" scenarios both require the court to calculate "net loss" by "subtracting the amount that the recipient *would have received* from the government if it had known of the fraud from the amount the recipient *actually received* from the government."

Seventh Circuit

United States v. Ponle, 110 F.4th 958 (7th Cir. 2024)	The district court properly relied on Application Note 3 to §2B1.1(b) to determine the loss amount based on "intended loss" rather than "actual loss" because *Kisor v. Wilkie*, 588 U.S. 558 (2019), "did not purport to modify" *Stinson v. United States*, 508 U.S. 36 (1993). In so holding, the Seventh Circuit agreed with the Second and Sixth Circuits and split with the Third Circuit.
United States v. Johnson, 104 F.4th 662 (7th Cir. 2024)	Applying *Stinson v. United States*, 508 U.S. 36 (1993), which was "undisturbed by" *Kisor v. Wilkie*, 588 U.S. 558 (2019), the "$500-per-card minimum" rule in Application Note 3(F)(i) to §2B1.1 "is entitled to controlling weight" as the note "is not inconsistent with or a plainly erroneous reading of §2B1.1."

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*, 588 U.S. 558 (2019), overruled *Stinson v. United States*, 508 U.S. 36 (1993),] because either approach would result in deferring to the Guidelines commentary here."

Tenth Circuit

United States v. Hess, 106 F.4th 1011 (10th Cir. 2024)	Where a mortician sold various remains of the deceased to body parts purchasers without next of kin's knowledge, the district court erred under §2B1.1 in not crediting against actual loss the value of legitimate goods and services received by next of kin. It also erred by including in the actual loss amount payments made by the body parts purchasers who suffered no pecuniary harm and received a benefit despite the fraudulent nature of the business.

Firearms

First Circuit

United States v. Nieves-Díaz, 99 F.4th 1 (1st Cir. 2024)	Although an "auto-sear device" is not a "firearm" as defined in Application Note 1 to §2K2.1, it does qualify as a "firearm that is described in 26 U.S.C. § 5845(a)," the definition used in the text of §2K2.1(a) for the purposes of applying certain enhanced base offense levels. The mere presence of ammunition in close proximity to drugs does not warrant application of "a presumption akin to the one that Application Note 14(B)" to §2K2.1 sets forth for a firearm. While that presumption "rests on the assessment that a firearm's presence on the scene in and of itself would embolden the defendant," ammunition "cannot—on its own—cause harm," and "it is hard to see how one could presume an observer would react to the display of a single bullet on a table" in the same way as "a similar display of a single firearm."

Third Circuit

Range v. Att'y Gen. United States, 124 F.4th 218 (3d Cir. 2024)	Section 922(g)(1) of title 18 violates the Second Amendment as applied to Mr. Range, because, despite a 1995 conviction for false statements, he "remains among 'the people' protected by the Second Amendment." The "Supreme Court's references to 'law-abiding, responsible citizens' do not mean that every American who gets a traffic ticket is no longer among 'the people' protected by the Second Amendment."
United States v. McIntosh, 124 F.4th 199 (3d Cir. 2024)	Application Notes 2 and 14(B) to §2K2.1 are entitled to deference because the terms "large capacity magazine" in §2K2.1(a)(4)(B) and "another felony offense" in §2K2.1(b)(6)(B) are "genuinely ambiguous" and the interpretations of those terms found in the commentary are reasonable and entitled to "controlling weight."

United States v. Clark, 115 F.4th 245 (3d Cir. 2024)	While receipt of a firearm in exchange for drugs does not constitute "use" of a weapon "in connection with" drug distribution, the application of the §2K2.1(b)(6)(B) enhancement was nevertheless proper because the defendant "possessed" the firearm he received, and the firearm facilitated the drug offense.
United States v. Moore, 111 F.4th 266 (3d Cir. 2024)	The prohibition against felons possessing firearms at 18 U.S.C. § 922(g)(1) is constitutional as applied to an individual on supervised release because "history and tradition support disarming convicts who are completing their sentences."
United States v. Dorsey, 105 F.4th 526 (3d Cir. 2024)	The narrow holding in *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023) (en banc), that 18 U.S.C. § 922(g)(1) cannot be constitutionally applied to an individual who has a single, 30-year-old, non-violent felony conviction does not plainly extend so far as to prevent its application to any individual with a single, non-violent felony—regardless of the nature and timing of the prior offense and the individual's parole status at that time.
United States v. Hill, 98 F.4th 473 (3d Cir. 2024)	*Rehaif v. United States*, 588 U.S. 225 (2019), announced a new substantive rule—requiring proof that a person prohibited from possessing a firearm knew of his prohibited status for a conviction under 18 U.S.C. § 922(g)—that applies retroactively to a collateral motion to vacate a sentence.

Fourth Circuit

United States v. Hunt, 123 F.4th 697 (4th Cir. 2024)	Prior circuit decisions rejecting as-applied challenges to 18 U.S.C. § 922(g)(1) "remain binding because they can be read 'harmoniously' with [*N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022),] and [*United States v. Rahimi*, 602 U.S. 680 (2024),] and have not been rendered 'untenable' by them." "[E]ven if we were deciding this case unconstrained by this Court's pre-*Bruen* precedent," the as-applied challenge fails both parts of the *Bruen* test.
United States v. Canada, 103 F.4th 257 (4th Cir. 2024)	Section 922(g)(1) of title 18 is "facially constitutional because it 'has a plainly legitimate sweep' and may constitutionally be applied in at least some 'set of circumstances.'" While "[t]he law of the Second Amendment is in flux, and courts (including this one) are grappling with many difficult questions in the wake of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 [(2022)]," "no federal appellate court has held that Section 922(g)(1) is facially unconstitutional, and we will not be the first."
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.

Fifth Circuit

United States v. Henry, 119 F.4th 429 (5th Cir. 2024)	In considering the applicability of §2K2.1(b)(6)(B) outside of the drug trafficking context, "'no presumption is made' that a firearm facilitated possession of other contraband just because the two items are in close proximity and both are illegally possessed."
United States v. Martin, 119 F.4th 410 (5th Cir. 2024)	The commentary to §2K2.1 defining "large capacity magazine" is consistent with the guideline and "is authoritative under *Stinson* [*v. United States*, 508 U.S. 36 (1993)]."
United States v. Connelly, 117 F.4th 269 (5th Cir. 2024)	As applied to "nonviolent, occasional drug users when of sound mind," 18 U.S.C. § 922(g)(3)—prohibiting "an unlawful user of or [person who is] addicted to any controlled substance" from possessing a firearm or ammunition—violates the Second Amendment.
United States v. Medina-Cantu, 113 F.4th 537 (5th Cir. 2024)	Section 922(g)(5) of title 18—prohibiting an alien illegally or unlawfully in the United States from possession a firearm or ammunition—remains constitutional following *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), and *United States v. Rahimi*, 144 S. Ct. 1889 (2024).

Seventh Circuit

United States v. Brooks, 112 F.4th 937 (11th Cir. 2024)	Under §2K2.1(b)(6)(B), an individual possesses a firearm "in connection with another felony offense"—"even if the firearm itself is the 'fruit' of the other offense"—if the possession of that firearm "facilitates, or has the potential of facilitating, the other offense."
United States v. Feeney, 100 F.4th 841 (7th Cir. 2024)	Application Note 4 to §2K2.4, which instructs courts not to apply specific offense characteristics for an explosive or firearm in sentencing an underlying offense, "extends to any . . . enhancement and not just those based on specific offense characteristics." Thus, the district court erred in applying §2K2.1(a)(5) because "an augmented base offense level that relies on conduct involving explosives or weapons counts as an 'enhancement' under the text of Note 4."
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.

Eighth Circuit

United States v. Tucker Jackson, 106 F.4th 772 (8th Cir. 2024)	A "conviction" for purposes of the higher base offense level in §2K2.1(a)(3) "occurs on 'the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*,'" regardless of whether a sentence has yet been imposed.

Ninth Circuit

United States v. Trumbull, 114 F.4th 1114 (9th Cir. 2024)	The definition of the term "large capacity magazine" in Application Note 2 to §2K2.1 is entitled to deference under *Kisor v. Wilkie*, 588 U.S. 558 (2019). The term is genuinely ambiguous, the Commission's interpretation is reasonable, and the character and context of the definition entitle it to controlling weight.
United States v. Manney, 114 F.4th 1048 (9th Cir. 2024)	The prohibition in 18 U.S.C. § 922(a)(6) against making materially false or fictitious statements "in connection with the acquisition or attempted acquisition of any firearm" comports with the Second Amendment, which "does not protect an individual's false statements."
United States v. Duarte, 101 F.4th 657 (9th Cir. 2024)	Under *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), 18 U.S.C. § 922(g)(1) is unconstitutional as applied to a five-time, "non-violent [felony] offender who has served his time in prison and reentered society." With this holding, the Ninth Circuit aligns with the Third Circuit but splits with the Eighth and Tenth Circuits.

Tenth Circuit

United States v. Aragon, 112 F.4th 1293 (10th Cir. 2024)	The district court erred in applying §2K2.1(b)(6)(B)—for using or possessing a firearm "in connection with another felony offense"—where the defendant's use of a firearm had the potential to result in another offense (arson), but that offense never occurred. The provision "contemplates actual and completed felony offenses," not "'potential' felony offenses."
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. Naranjo, 102 F.4th 280 (5th Cir. 2024)	Section 404(c) of the First Step Act, which "describes the circumstances under which a second Section 404(b) motion for a sentence reduction cannot be heard by a court," is "a mandatory claim-processing rule, not a jurisdictional bar."
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.
Sixth Circuit	
United States v. Caver, 101 F.4th 422 (6th Cir. 2024)	The first step of the two-step process used in the Sixth Circuit to evaluate a motion to reduce a sentence under the First Step Act of 2018 involves recalculating "not just the defendant's *guidelines* range but also the defendant's *statutory* range, including any mandatory minimum that the defendant would face after the Fair Sentencing Act [of 2010]."
Seventh Circuit	
United States v. Colon, 100 F.4th 940 (7th Cir. 2024)	A conviction under 21 U.S.C. § 848(a) for a continuing criminal enterprise does not qualify as a "covered offense" under the First Step Act of 2018 because the Fair Sentencing Act of 2010 did not modify the statutory penalties in section 848(a).
Eleventh Circuit	
United States v. Hernandez, 107 F.4th 965 (11th Cir. 2024)	Consecutive "stacked" 18 U.S.C. § 924(c) sentences originally imposed before the passage of the First Step Act of 2018 that are subsequently vacated after its effective date are not covered by section 403 of the Act, which changed the "stacking" rules for sentences that had "not been imposed as of such date of enactment."

Relevant Conduct

Seventh Circuit	
United States v. Brasher, 105 F.4th 1002 (7th Cir. 2024)	The district court did not plainly err in considering under §1B1.3(a)(2) certain drug transactions that predated the charged offense conduct "by almost fifteen months." While temporal proximity was lacking, "there was sufficient similarity between the offense of conviction and the uncharged conduct to satisfy the plain error standard."

Restitution

Fifth Circuit

United States v. West, 99 F.4th 775 (5th Cir. 2024)	"Under [18 U.S.C.] § 2259, an order of restitution without a proximate-cause analysis is punishment exceeding the statutory maximum." Accordingly, when a district court fails to conduct a proximate-cause analysis to determine restitution, a defendant's appeal waiver does not apply, and the defendant may challenge the restitution order.
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.

Sixth Circuit

United States v. Gray, 121 F.4th 578 (6th Cir. 2024)	The Mandatory Victims Restitution Act of 1996 provides that when "an offense [] 'involves as an element a . . . conspiracy,' the term 'victim' includes 'any person directly harmed by the defendant's criminal conduct in the course of the . . . conspiracy.'" Thus, a district court cannot order restitution for conduct falling outside the temporal limits of the conspiracy defined by a plea or indictment.
United States v. O'Hara, 114 F.4th 557 (6th Cir. 2024)	"[The Mandatory Victims Restitution Act at] 18 U.S.C. § 3663A(a)(2) does not authorize a district court to alter a restitution order, post judgment, to change the payee" from the estate of the victim (the defendant's mother)—of which the defendant was the sole beneficiary—to the federal Crime Victims Fund, despite equity concerns about benefitting from wrongdoing.

Eleventh Circuit

United States v. Young, 108 F.4th 1307 (11th Cir. 2024)	In a healthcare kickback case involving payments by a government program, the total amount of kickbacks is not sufficient to establish the restitution amount where the government has not established by a preponderance of the evidence under 18 U.S.C. § 3664(e) that it incurred a loss by paying for products that "were not medically necessary or were fraudulently obtained."

Sentencing Procedure

First Circuit

United States v. Reynolds, 98 F.4th 62 (1st Cir. 2024)	The doctrine of abatement *ab initio* applies "when a criminal defendant dies during the pendency of a direct appeal from his conviction," and it abates not only the appeal and all underlying proceedings since their inception, but also "the special assessment, restitution, and forfeiture order imposed pursuant to the conviction."

Second Circuit

United States v. Martinez, 110 F.4th 160 (2d Cir. 2024)	In determining an appropriate sentence, "a sentencing court must accept all of the jury's guilty verdicts that have not been properly set aside." Otherwise, the court "fails to accord due respect to the jury's constitutionally established role" and risks assigning "insufficient weight to the seriousness of *all* the offenses" of conviction.

Third Circuit

United States v. Davis, 105 F.4th 541 (3d Cir. 2024)	The government implicitly breached a plea agreement that recommended a low-end guideline sentence by repeatedly emphasizing the heinous nature of the defendant's crimes and aggravating victim-impact evidence to effectively advocate for a higher sentence.
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. Chang, 121 F.4th 1044 (4th Cir. 2024)	The district court committed plain error when it imposed a harsher sentence—a six-year increase in supervised release—after a successful appeal without sufficiently indicating what intervening circumstances justified the increase, in violation of the "clearly established rule against vindictive sentencing under the Due Process Clause."
United States v. Melvin, 105 F.4th 620 (4th Cir. 2024)	Under 18 U.S.C. § 3582, district courts have authority to alter a sentence during the course of an ongoing sentencing hearing because a sentence does not become final and binding until it is "'unequivocally state[d]' in open court" and "there has been a 'formal break in the proceedings from which to logically and reasonably conclude that sentencing had finished.'" Any limitation during the hearing "would 'strip district courts of flexibility to respond to evolving circumstances [that arise] during sentencing hearings.'"
United States v. Dunlap, 104 F.4th 544 (4th Cir. 2024)	When the record is ambiguous as to whether a district court accepted or rejected a plea agreement under Federal Rule of Criminal Procedure Rule 11(c)(1)(C), that ambiguity "must be construed in the defendant's favor," thus the court is bound to impose the stipulated sentence.
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 Federal Rule of Criminal Procedure Rule 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.

Fifth Circuit

United States v. Butler, 122 F.4th 584 (5th Cir. 2024)	Following *Erlinger v. United States*, 602 U.S. 821 (2024), a jury must decide whether prior offenses occurred on different occasions for purposes of the ACCA, but failure to present the question to a jury could be harmless error.

Sixth Circuit

United States v. Holt, 116 F.4th 599 (6th Cir. 2024)	The defendant's Eighth Amendment claim failed because it involved challenges to conditions of confinement, for which the proper vehicle is a civil suit. "[A]llegedly inadequate 'medical care' was not 'part of the sentence'" that could be challenged on appeal. *Miller v. Alabama*, 567 U.S. 460 (2012), requires a sentencing court to consider a juvenile individual's youth as one factor in the sentencing calculus but "does not prohibit the court from imposing a life sentence as a 'discretionary' matter."

Seventh Circuit

United States v. Dennis, 119 F.4th 1103 (7th Cir. 2024)	A defendant fails to demonstrate that the court improperly relied on inaccurate information "if the government merely mentions inaccurate information on which the court does not expressly found its sentence."

Ninth Circuit

United States v. Brewster, 116 F.4th 1051 (9th Cir. 2024)	The Commission's Judiciary Sentencing Information (JSIN) tool is sufficiently reliable for use at sentencing. The tool "comes from a presumptively reliable source, was designed specifically to be used by judges during sentencing, and was corroborated by other unchallenged evidence"—data from the Commission's Interactive Data Analyzer (IDA) tool.
United States v. Livar, 108 F.4th 738 (9th Cir. 2024)	Where the government "seeks to be relieved of its obligations under the plea agreement" to recommend a certain sentence "because, in its view, the defendant breached the plea agreement or failed to satisfy a condition precedent, the district court must hold an evidentiary hearing to resolve any such factual disputes." However, "due process does not require the government to seek or receive a judicial determination of a defendant's failure to comply with the plea agreement *before* it submits a sentencing recommendation that differs from the terms of the agreement."
United States v. Farias-Contreras, 104 F.4th 22 (9th Cir. 2024) (en banc)	If not prohibited by a plea agreement, the government may respond to a defendant's request for a sentence lower than what the government has agreed to recommend. That response "need not invoke magic words," but it "must be made in good faith and advance the objectives of the plea agreement."
United States v. Lucas, 101 F.4th 1158 (9th Cir. 2024) (en banc)	"[C]lear and convincing evidence is not required for factual findings under the Guidelines, even where potentially large enhancements are at stake; fact-finding by a preponderance of the evidence is sufficient to satisfy due process at sentencing." With this holding, the Ninth Circuit overrules circuit precedent and joins every other circuit in adopting the preponderance standard for factual findings supporting guidelines enhancements.

United States v. Tat, 97 F.4th 1155 (9th Cir. 2024)	A defendant's "failure to challenge certain aspects of her initial sentence [in an original appeal] cannot amount to an 'intentional relinquishment or abandonment' of her right to challenge similar aspects of her second sentence" in an appeal from a de novo resentencing. A de novo resentencing "legally 'wipe[s] the slate clean'" and places the defendant "in the same position as if he [or she] had never been sentenced." "Although it is reversible error to consider the cost of *imprisonment* during sentencing," a district court may consider the cost of a defendant's proposed alternative to incarceration in determining whether that type of sentence is appropriate in a given case.

Eleventh Circuit

United States v. Steiger, 99 F.4th 1316 (11th Cir. 2024) (en banc)	The district court's failure to explain its reasons for imposing a sentence, pursuant to 18 U.S.C. § 3553(c), is reviewed on appeal for plain error where a defendant fails to object below. In so holding, the Eleventh Circuit overruled circuit precedent that provided for *per se* reversal in such circumstances.

Sex Offenses

First Circuit

United States v. Trahan, 111 F.4th 185 (1st Cir. 2024)	The enhancement in 18 U.S.C. § 2252A(b)(2) that applies to prior state convictions "relating to" certain listed offenses has a "broadening effect" that does not require an exact match between federal and state definitions. Therefore, a prior conviction under Massachusetts law for knowing possession of visual material of a child depicted in sexual conduct is sufficiently "related to" federal "child pornography" offenses to warrant application of the 10-year mandatory minimum penalty.
United States v. Abreu, 106 F.4th 1 (1st Cir. 2024)	A conviction under Massachusetts law "for enticement of a child under the age of sixteen with the intent of committing indecent assault and battery is categorically related to the generic crime of 'abusive sexual contact with a minor or ward'" for purposes of applying the 25-year mandatory minimum in 18 U.S.C. § 2251(e).

Second Circuit

United States v. McGrain, 105 F.4th 37 (2d Cir. 2024)	"Parent-like authority is sufficient" but "not necessary" for application of the "custody, care, or supervisory control" enhancement at §2G2.1(b)(5). Application Note 5(A) supports the "ordinary reading of the text, which contemplates that a defendant may have the requisite degree of authority over the minor without qualifying as a parent, relative, or legal guardian."

Third Circuit	
United States v. Haggerty, 107 F.4th 175 (3d Cir. 2024)	For purposes of §2G2.2(b)(7), which enhances offense levels based on the number of "images' involved in the offense, the 75-images-per-video rule in Application Note 6(B)(ii) is not entitled to deference under *Kisor v. Wilkie*, 588 U.S. 558 (2019). The term "image" is not ambiguous; in ordinary usage an "image" is synonymous with a "frame" in the video context. In declining to defer to Application Note 6(B)(ii), the Third Circuit split with the Sixth Circuit.
Fourth Circuit	
United States v. Elboghdady, 117 F.4th 224 (4th Cir. 2024)	The court procedurally erred when—although it found the evidence insufficient to prove intent to engage in sexual conduct with a fictious 11-year-old—it applied the enhancement at §2G1.3(b)(2) and the cross reference to §2A3.1(b)(2) with respect to a minor under the age of 12. A "significant downward variance" did not "reduce the oversight to the level of harmless error."
Seventh Circuit	
United States v. Liestman, 97 F.4th 1054 (7th Cir. 2024)	The phrase "relating to" in the recidivist sentencing enhancement in 18 U.S.C. § 2252(b)(1) "brings within the ambit of the enhancement any prior offense that categorically bears a connection with (or, put in statutory terms, 'relates to') 'the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography,' regardless of whether it sweeps more broadly than that enumerated conduct in some respects."
Eighth Circuit	
United States v. Garner, 119 F.4th 571 (8th Cir. 2024)	"[G]iven the 'broad ordinary meaning' of relating to [that applies based on circuit precedent], we agree with the district court that a prior conviction for indecent exposure with a child in violation of [Texas Penal Code] § 21.11(a)(2)(A) categorically stands in some relation to a perpetrator's physical or nonphysical misuse or maltreatment of a minor for a purpose associated with sexual gratification" and thus qualifies as a predicate conviction for the increased statutory penalty under 18 U.S.C. § 2252(b)(1).
Eleventh Circuit	
United States v. Lusk, 119 F.4th 815 (11th Cir. 2024)	As a matter of first impression, in assessing a prior conviction for purposes of §4B1.5, a court may review the facts to see if the victim was a minor but must otherwise apply the categorical approach. Because the Florida statute under which the defendant was previously convicted is broader than the federal analogue, it cannot qualify as a predicate sex offense.
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. Freeman, 99 F.4th 125 (2d Cir. 2024)	Pursuant to 18 U.S.C. § 3624(e), a term of "supervised release commence[s] only when an individual is no longer imprisoned by any authority and is available for supervision by the federal Probation Office." To hold otherwise "would be inconsistent with the Supreme Court's interpretation of the statutory language" in *United States v. Johnson*, 529 U.S. 53 (2000), and the purpose of supervised release to help "transition to community life."
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 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."
United States v. Sims, 92 F.4th 115 (2d Cir. 2024)	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.

Third Circuit

United States v. D'Ambrosio, 105 F.4th 533 (3d Cir. 2024)	When imposing a condition of supervised release requiring compliance with the Sex Offender Registration and Notification Act ("SORNA"), a district court may not delegate to the probation office a legal determination as to whether a conviction gives rise to a registration requirement under SORNA. A sentencing court has "the authority to modify an arguably unlawful condition of supervised release raised in a motion pursuant to 18 U.S.C. § 3583(e)(2) when properly challenged below," such as the defendants' SORNA challenges.
United States v. Barksdale, 98 F.4th 86 (3d Cir. 2024)	Denying the defendant an opportunity to testify in his own defense at revocation of supervised release hearing was a violation of due process that was not harmless beyond a reasonable doubt, thus warranting remand.

Fourth Circuit

United States v. Bullis, 122 F.4th 107 (4th Cir. 2024)	The district court committed reversible error both because its oral pronouncement of a special condition of supervised release was not "a sufficient match" to the written judgment, and because the oral pronouncement was ambiguous as to whether the court had expressly incorporated the district's Standard Conditions of Supervision when it "referenced generally 'standard conditions in this district.'"

United States v. Smith, 117 F.4th 584 (4th Cir. 2024)	The court must expressly adopt the proposed conditions of supervised release set forth in the presentence report in open court before orally pronouncing a sentence that incorporates those conditions when the court lacks a "standing order – or any order – adopting 'standard conditions of supervised release.'"
United States v. Ellis, 112 F.4th 240 (4th Cir. 2024)	The imposition of a special condition of supervised release that requires the probation officer's approval before using a device capable of accessing the internet is not an unconstitutional delegation of a core judicial function. The court ordered the "broad principle guiding the condition" and retained the "ultimate authority over revoking release," only allowing the probation officer to "fill in many of the details necessary for applying the condition."
United States v. Campbell, 102 F.4th 238 (4th Cir. 2024)	South Carolina attempted armed robbery is a "crime of violence" under the residual clause at §4B1.2(a) (2015) that was in effect at the time of the defendant's revocation hearing and thus qualifies as a Grade A violation of supervised release at §7B1.1(a)(1).
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.

Sixth Circuit

United States v. Hayden, 102 F.4th 368 (6th Cir. 2024)	"[D]efendants' due-process rights are satisfied when the sentencing court incorporates the standard [supervised release] conditions by reference to language contained in a publicly available districtwide order, an individual defendant's presentence investigation report, or other document provided to the defendant before sentencing. But for special discretionary conditions not previously made available to a defendant, a district court must always orally pronounce them and explain its basis for imposing them, provided that its reasoning is not readily apparent from the record. Mandatory conditions can but need not be orally

	pronounced at sentencing, as district courts have no authority to depart from imposing them."
Seventh Circuit	
United States v. Truett, 109 F.4th 996 (7th Cir. 2024)	Because §5D1.3 reflects the statutory framework set forth in 18 U.S.C. § 3624(e), this guideline "correctly describe[s]" the "payment of a fine according to a schedule [as] a mandatory condition of supervised release."
United States v. Cotton, 108 F.4th 987 (7th Cir. 2024)	To identify the maximum possible revocation sentence, the language in 18 U.S.C. § 3583(e) requires a court to determine if the original offense was a class A, B, C, or D felony at the time of conviction—not what it would be under current law.
United States v. Ford, 106 F.4th 607 (7th Cir. 2024)	A supervised release condition requiring payment of a fine pursuant to §5D1.3 that appeared in the judgment, "but was not mentioned or adopted by incorporation during sentencing, must be vacated." While "neither the Supreme Court nor any court of appeals has held since [*United States v. Booker*, 543 U.S. 220 (2005),] that conditions required by . . . §5D1.3 are no longer mandatory," the government did not argue it was a mandatory condition so as to permit an exception to the rule that "the oral sentence controls."
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. Hayden, 119 F.4th 832 (11th Cir. 2024)	Because the district court "orally referenced the 13 discretionary standard conditions of supervised release," and because "the oral pronouncement and written judgment do not conflict," the defendant had sufficient notice and opportunity to object, thus the court did not err when it failed to orally describe the conditions of supervised release at sentencing.

United States v. Read, 118 F.4th 1317 (11th Cir. 2024)	A procedural challenge to the imposition of sentence—here, a term of supervision imposed without orally describing the standard conditions of supervision—is an appeal of the actual sentence that is covered by an enforceable appeal waiver.
United States v. Etienne, 102 F.4th 1139 (11th Cir. 2024)	A condition of supervised release prohibiting a defendant from contacting "Judges' Chambers or any facility" or "visiting" specified federal courthouses was not impermissibly vague or overbroad; the court pronounced at sentencing that the restriction applied to "court facilities" and the meaning of "visiting" is straightforward. Moreover, the visiting restriction did not unduly burden the defendant's constitutional right to access the courts.
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

Fourth Circuit

United States v. Mitchell, 120 F.4th 1233 (4th Cir. 2024)	*United States v. Campbell*, 22 F.4th 438 (4th Cir. 2022)—which held that *Kisor v. Wilkie*, 588 U.S. 558 (2019), limits the deference to commentary required by *Stinson v. United States*, 508 U.S. 36 (1993)—"controls on the question of whether *Kisor* modified *Stinson*" because it was decided before *United States v. Moses*, 23 F.4th 347 (4th Cir. 2022)—which concluded that "*Stinson* continues to apply unaltered by *Kisor*." With this holding, the Fourth Circuit reaffirmed its alignment with the Third, Sixth, Ninth, and Eleventh Circuits, and its disagreement with the Second, Fifth, Seventh, Eighth, and Tenth Circuits.

Seventh Circuit

United States v. Betts, 99 F.4th 1048 (7th Cir. 2024)	"[C]ourts should apply the elements-based approach to decide whether a guideline is sufficiently analogous to the defendant's crime of conviction," an approach already in practice in the Third, Fifth, Eighth, and Tenth Circuits.

Ninth Circuit

United States v. Le, 119 F.4th 700 (9th Cir. 2024)	The background commentary to §2X1.1 "aligns with the text of §2X1.1(b)(2)," and together, they demonstrate an intent to "penalize a mere conspiratorial agreement less harshly than situations in which much of the wrongful conduct was already completed." Therefore, in determining whether an individual is entitled to a 3-level decrease for a conspiracy under §2X1.1(b)(2), a court should compare "the steps that remain [in a substantive offense] . . . against the steps that were completed."

Other Offense Types

D.C. Circuit

United States v. Sargent, 103 F.4th 820 (D.C. Cir. 2024)	The "text, structure, and context of the Guidelines" indicate that the guideline covering aggravated assaults (§2A2.2) also applies to assaults involving the intent to commit another felony.
United States v. Nassif, 97 F.4th 968 (D.C. Cir. 2024)	Section 2A2.4 "is the guideline most appropriate" for a conviction under 18 U.S.C. § 1752(a)(2), which prohibits "knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engag[ing] in disorderly or disruptive conduct in . . . any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions" because obstruction of officers was implicit in the defendant's charge.
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."

Third Circuit

United States v. Chandler, 104 F.4th 445 (3d Cir. 2024)	The dangerous weapon enhancements at §§2A4.1(b)(3) and 2B3.1(b)(2)(D) applied to a kidnapping and robbery committed with a replica firearm. Because the term "dangerous weapon" is "genuinely ambiguous," the reasonable interpretation in Application Note 1(E) to §1B1.1 is entitled to controlling deference; as defined there, the replica is a "dangerous weapon" because it created increased risk of deadly escalation and increased fear in victims.

Fourth Circuit

United States v. Mitchell, 120 F.4th 1233 (4th Cir. 2024)	Section 1B1.2(d) unambiguously "applies where a defendant is convicted on a count charging a conspiracy to commit more than one robbery, even if those underlying robberies would constitute violations of the same statute" and "that conviction must 'be treated' at sentencing 'as if the defendant had been convicted on a separate count of conspiracy for each' robbery falling within that conspiracy, regardless of whether the robberies were specifically identified by date and location in the indictment."

Fifth Circuit

United States v. Lerma, 123 F.4th 768 (5th Cir. 2024)	"Leaping a fence to escape a community corrections center, community treatment center, halfway house, or similar facility," as the defendant did, is an escape from "secure custody," so the offense level reductions in §2P1.1(b) for escape from "non-secure custody" do not apply.

Ninth Circuit

United States v. Shih, 119 F.4th 1136 (9th Cir. 2024)	The district court properly applied the higher base offense level at §2M5.1(a)(1), which applies in export cases where "national security controls"—a term not defined in the guidelines—"were evaded." "[N]ational security" was one of the "reasons for control" provided in the Code of Federal Regulations for the devices exported in this case, and evidence showed "this was not a mere recordkeeping offense" warranting a lower offense level.

Eleventh Circuit

United States v. Deleon, 116 F.4th 1260 (11th Cir. 2024)	The §2B3.1(b)(4)(B) enhancement for a robbery in which "any person was physically restrained" applies "where a defendant creates circumstances allowing [his victims] no alternative but compliance"—here, by pointing a gun at (but never touching) a cashier. Concurrences called for en banc review of the provision, which is the subject of a circuit split. The Eleventh Circuit aligns with the First, Fourth, Sixth and Tenth Circuits, while the Second, Third, Fifth, Seventh, Ninth and D.C. Circuits require use of a physical restraint.
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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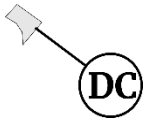

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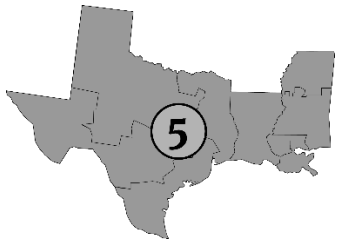

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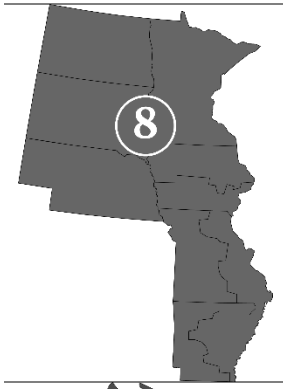

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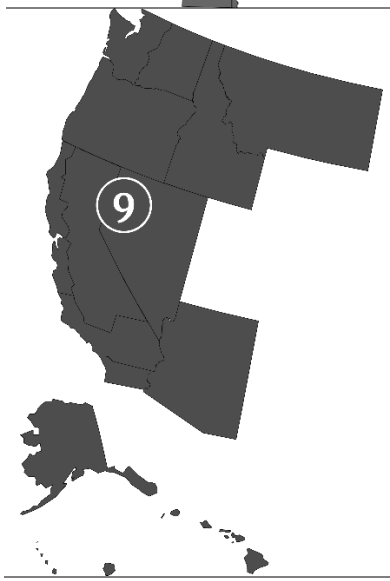

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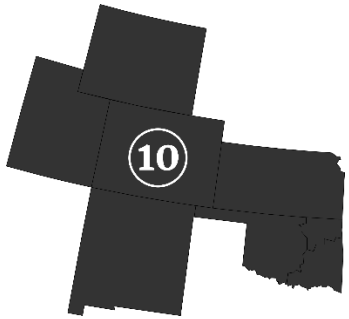

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