INTERACTIVE

Case Law Update

JANUARY – MARCH 2025

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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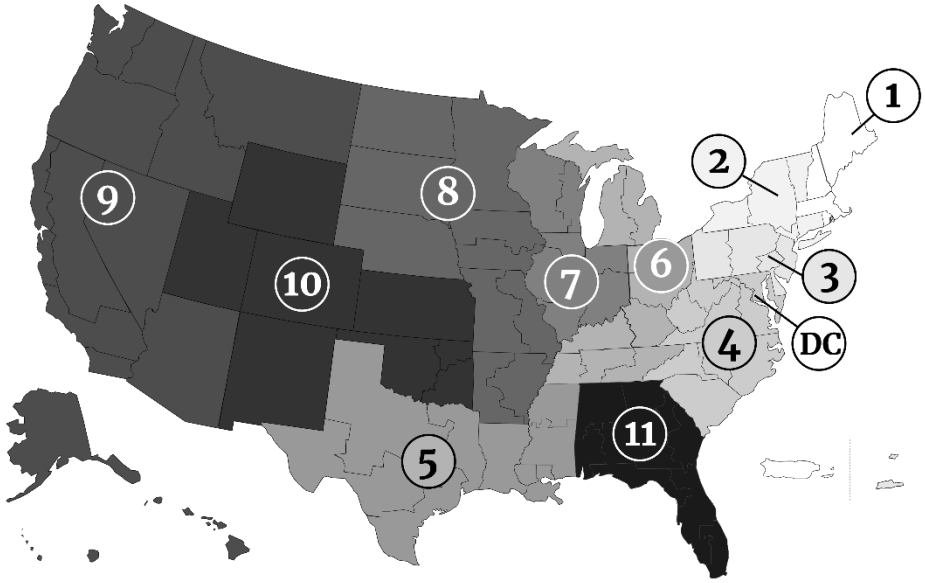

Cases appear in descending chronological order within a circuit.

U.S. Supreme Court

Delligatti v. United States, 145 S. Ct. 797 (2025)	Causing bodily harm by omission requires the use of force within the meaning of the elements clause in 18 U.S.C. § 924(c). Thus, New York second-degree murder—and, a VICAR offense premised on it—is a "crime of violence" under 18 U.S.C. § 924(c), even though it can be committed by omission. Moreover, because "[i]ntentional murder is *the* prototypical 'crime of violence,' and it has long been understood to incorporate liability for both act and omission," omissions can qualify as acts of violence under section 924(c).

Appellate Court

Career Offender

Fourth Circuit

United States v. Parham, 129 F.4th 280 (4th Cir. 2025)	Virginia common law robbery, which "can be committed by conduct broader than the generic form of robbery," is not a "crime of violence" under the enumerated offenses clause of §4B1.2(a)(2).

Seventh Circuit

United States v. Ferguson, 131 F.4th 617 (7th Cir. 2025)	A conviction under 18 U.S.C. § 844(i) for maliciously destroying a building or vehicle by fire or explosives counts as "arson" and thus is a "crime of violence" for purposes of §4B1.2(a)(2).

Categorical Approach

First Circuit

Rojas-Tapia v. United States, 130 F.4th 241 (1st Cir. 2025)	"Aggravated mail robbery" under 18 U.S.C. § 2114(a) constitutes a "crime of violence" within the meaning of 18 U.S.C. § 924(c) where not based on repeated commission of "simple mail robbery."

Fourth Circuit

United States v. Shanton, 125 F.4th 548 (4th Cir. 2025)	*Borden v. United States*, 141 S. Ct. 1817 (2021), did not undermine circuit precedent establishing that Maryland robbery is a "violent felony" for purposes of 18 U.S.C. § 924(e), the Armed Career Criminal Act (ACCA), because Maryland robbery "parrots in material respect" the definition in the ACCA.

Ninth Circuit

United States v. Thompson, 127 F.4th 1204 (9th Cir. 2025)	Washington Revised Code § 9A.44.083 is a categorical match to "each element of the abusive sexual conduct generic definition of 'sexual abuse,'" and it "is either a categorical match to, or relates to, the generic offense of 'abusive sexual contact involving a minor.'"

	Therefore, a prior conviction under the Washington statute supports application of the 10-year mandatory minimum enhancement under 18 U.S.C. § 2251(e).

Chapter Three Adjustments

First Circuit

United States v. Salvador-Gutierrez, 128 F.4th 299 (1st Cir. 2025) (en banc)	Contrary to an earlier panel ruling, an individual "may not be subjected to §3B1.4's upward adjustment based solely on it having been reasonably foreseeable that his co-conspirators would use a minor within the scope of, and in furtherance of, [a] conspiracy" under §1B1.3(a)(1)(B). Section 3B1.4 "reaches only those circumstances in which 'the defendant,' by some affirmative act, personally used or attempted to use a minor to commit the offense or assist in avoiding detection of, or apprehension for, the offense." Section 3B1.4 "requires some 'active[] employ[ment]' of [a] minor 'during the commission of the [offense],' as well as that the minor, so employed, play some 'detectable role in the [offense]'s commission." "It therefore is not enough for the government to show that a minor was merely present during an offense. Nor is it enough for the government to show that the defendant engaged the minor to some end that was unrelated to, or merely incidental to, the commission of the offense."

Fourth Circuit

United States v. Lawson, 128 F.4th 243 (4th Cir. 2025)	The two-level vulnerable victim adjustment at §3A1.1 may be properly applied based on an individual's advanced age if there is "some link between age and susceptibility to the criminal conduct," such as in the "particular *context* of a telemarketing scheme that dangled potentially life-changing prize winnings." The court properly denied a minor role reduction at §3B1.2 because while performing "an essential or indispensable role . . . is not determinative," being a "conduit of funds"—like the defendant—is "an important and highly culpable role in a *money laundering conspiracy*."
United States v. Luong, 125 F.4th 147 (4th Cir. 2025)	The two-level vulnerable victim adjustment at §3A1.1 cannot be properly applied based on membership in a susceptible class unless the district court "clearly and unequivocally identif[ied] which particularized characteristics made the [v]ictim *unusually vulnerable* and why."
United States v. Bright, 125 F.4th 97 (4th Cir. 2025)	The district court procedurally erred in applying an aggravating role adjustment at §3B1.1 without first making "particularized findings" regarding the scope of the criminal activity or whether the criminal activity was "otherwise extensive," as required by the relevant conduct principles at §1B1.3.

Fifth Circuit

United States v. Bell, 125 F.4th 662 (5th Cir. 2025)	For the acceptance of responsibility consideration of whether a person has withdrawn from "criminal conduct"—a term undefined in the guidelines—courts "may consider the 'seriousness' of the defendant's wrongful conduct under this factor to determine whether it outweighs evidence of acceptance of responsibility."

Eighth Circuit

United States v. Henry, 132 F.4th 1063 (8th Cir. 2025)	Consistent with cases from the First, Sixth, Tenth and Eleventh Circuits that have required "something more" than simply "possessing a firearm during flight," the district court properly applied §3C1.2 for reckless endangerment during flight where the defendant fled from "police carrying in his pocket a gun loaded with a chambered round."

Compassionate Release

Fifth Circuit

United States v. Austin, 125 F.4th 688 (5th Cir. 2025)	Under *United States v. Escajeda*, 58 F.4th 184 (5th Cir. 2023), "[a] non-retroactive change in the law cannot constitute an extraordinary and compelling reason justifying sentence reduction under [18 U.S.C.] § 3592(c)(1)." While §1B1.13(b)(6) provides that courts may consider such changes, the Commission "cannot make retroactive what Congress made non-retroactive" and "'does not have the authority to amend the statute we construed' in *Escajeda*."

Seventh Circuit

United States v. Black, 131 F.4th 542 (7th Cir. 2025)	Section §1B1.13(b)(6), which allows certain changes in law to be considered "extraordinary and compelling reasons" for compassionate release, conflicts with the First Step Act's prospective-only "anti-stacking" amendment to 18 U.S.C. § 924(c). Accordingly, circuit precedent holding that the anti-stacking amendment "cannot serve as the basis for a defendant's eligibility by itself or in combination with other factors" remains binding.

Criminal History

Third Circuit

United States v. Milchin, 128 F.4th 199 (3d Cir. 2025)	Under the 2023 *Guidelines Manual*, the exclusions from zero-point offender eligibility in §4C1.1(a)(10)—aggravating role and continuing criminal enterprise—are to be read disjunctively, meaning that §4C1.1 "makes ineligible any defendant that *either* received an aggravating role adjustment *or* was engaged in a continuing criminal enterprise."

Fourth Circuit

United States v. Nixon, 130 F.4th 420 (4th Cir. 2025)	The district court abused its discretion—rendering the sentence procedurally unreasonable—when it relied on dissimilar uncharged conduct to depart to a higher criminal history category and failed to apply "an incremental approach" under §4A1.3 in selecting the higher category "without even acknowledging other criminal history categories on the way."
United States v. Edwards, 128 F.4th 562 (4th Cir. 2025)	By its plain language, North Carolina's special probation statute, which includes a suspended term of imprisonment "and *in addition* require[s] . . . a period or periods of imprisonment," establishes two separate prison terms that should be added together to calculate criminal history points under §4A1.2(k).

Fifth Circuit

United States v. Garza, 127 F.4th 954 (5th Cir. 2025)	Under §4A1.1, a "prior" sentence includes one "issued after the original sentence but before a subsequent resentencing proceeding," as most circuits have concluded.

Sixth Circuit

United States v. Hanson, 124 F.4th 1013 (6th Cir. 2025)	For the purposes of §4C1.1(b)(3), "courts are not strictly limited to considering the enumerated factors under . . . § 2B1.1 n.4(F) when determining whether a defendant caused substantial financial hardship." The list of factors is non-exhaustive, and the financial hardship an individual caused to his victims does not need to "fall perfectly" within the factors to be considered substantial.

Eighth Circuit

United States v. Syphax, 127 F.4th 746 (8th Cir. 2025)	Application Note 11 to §4A1.2 does not apply when calculating a defendant's criminal history score in a case involving "separate, unrelated [prior] sentences" and multiple revocations of those sentences based on the same conduct. Application Note 11 applies only if the state court ordered "*a* revocation." With this holding, the Eighth Circuit aligns with the Tenth Circuit, and it splits with the Sixth and Ninth Circuits.

Tenth Circuit

United States v. Davis, 128 F.4th 1352 (10th Cir. 2025)	A "conviction for underage drinking is 'similar to' a juvenile status offense such that it cannot be included in [a] criminal history score" under §4A1.2(c)(2).
United States v. Caldwell, 128 F.4th 1170 (10th Cir. 2025)	State offenses that occurred during the course of, but did not relate to, the instant offense of failure to register as a sex offender are not deemed relevant conduct simply because of the temporal overlap and therefore were properly assessed as prior sentences for purposes of calculating criminal history.

Drug Offenses

Third Circuit

United States v. Moss, 129 F.4th 187 (3d Cir. 2025)	When determining the offense level for a methamphetamine conviction under §2D1.1, some degree of estimation by a sentencing court as to the purity of unseized drugs based on the purity of seized drugs is reasonable, provided the court favors "the more conservative estimate when purity levels vary."

Eighth Circuit

United States v. Salinas, 132 F.4th 1083 (8th Cir. 2025)	The district court "did not err in applying the willful blindness doctrine" under §2D1.1(b)(13) for the defendant's "marketing or representing pills containing fentanyl as oxycodone pills." The supporting facts met the "two basic requirements" for willful blindness: (1) the defendant "subjectively believed that a high probability existed" that the fentanyl he possessed was not oxycodone, and (2) he "acted to avoid confirming that fact."

Economic Crimes

Eleventh Circuit

United States v. Horn, 129 F.4th 1275 (11th Cir. 2025)	"Because courts must consider both actual harm and intended harm" under §1B1.3(a)(3), "courts must consider both 'actual loss' and 'intended loss,'" under §2B1.1. Thus, the text of §2B1.1(b)(1)(A) is not ambiguous, and the court need not turn to the commentary to determine the definition of "loss." Moreover, Amendment 827, a "clarifying amendment" that applies here, further supports the conclusion that "loss" is the greater of actual or intended loss.

Firearms

Third Circuit

United States v. Ashe, 130 F.4th 50 (3d Cir. 2025)	The district court's finding that the defendant constructively possessed a firearm that was found in the trunk of his vehicle was clearly erroneous because "surrounding circumstances," including that the defendant was incarcerated when the firearm was discovered, had not accessed the vehicle for six months, and the vehicle was stored on a lot with minimal security, "undercut the significance of [his] ownership of the vehicle."
United States v. Quailes, 126 F.4th 215 (3d Cir. 2025)	Defendants on state supervised release—including a sentence of parole or probation—do not have a Second Amendment right to possess firearms. Because this nation's history and tradition support "disarming convicts still serving a criminal sentence," 18 U.S.C. § 922(g)(1) is constitutional as applied to such defendants.

Fifth Circuit

United States v. Giglio, 126 F. 4th 1039 (5th Cir. 2025)	"Because the Constitution allows the government to disarm individuals who are carrying out criminal sentences, [18 U.S.C.] § 922(g)(1) is constitutional as applied" to individuals on supervised release.

Ninth Circuit

United States v. Kurns, 129 F.4th 589 (9th Cir. 2025)	An individual's execution of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) transfer documents "supports an inference of [his] constructive possession" of a firearm when counting the number of firearms involved in an offense under §2K2.1(b)(1).

First Step Act of 2018

Seventh Circuit

United States v. Johnson, 132 F.4th 1012 (7th Cir. 2025)	"[U]nder the First Step Act, a defendant may seek a reduction of a sentence imposed upon revocation of supervised release when the underlying crime from which the supervised release stems is a 'covered offense.'"

Relevant Conduct

No cases selected by Commission staff.

Restitution

Third Circuit

United States v. Cammarata, 129 F.4th 193 (3d Cir. 2025)	While class action settlement funds and claims administrators did not constitute "victims" under the Mandatory Victims Restitution Act (MVRA)—and thus were not entitled to restitution for defendant's fraudulent scheme to recover class action settlement funds through a fictitious claims aggregator—classes for which settlement funds were created *were* "victims" entitled to restitution from defendant.

Eleventh Circuit

United States v. Sotelo, 130 F.4th 1229 (11th Cir. 2025)	Where the record "supports a reasonable estimate of future costs to victims of child pornography who are currently unaware of the trafficked images, no language in [18 U.S.C.] § 2259 nor case law prevents a district court from properly ordering restitution."

Sentencing Procedure

Fourth Circuit

United States v. Barrett, 133 F.4th 280 (4th Cir. 2025)	The district court "failed to give appropriate retroactive effect to Amendment 821" when it reduced the defendant's criminal history score but disregarded whether the reduction affected her eligibility for a two-level adjustment under what is now §2D1.1(b)(18). The "amended guidelines range" under §1B1.10(b)(1) is a product of both the criminal history category and the offense level, and courts must consider the amendment's impact on both.
United States v. Notgrass, 130 F.4th 129 (4th Cir. 2025)	An appeal from a sentence of probation is not barred when the appellate waiver covers only "any sentence of imprisonment, fine, and term of supervised relief" because a term of probation is a substitute for imprisonment and is thus a distinct and separate punishment category.

Eleventh Circuit

United States v. Davis, 130 F.4th 1272 (11th Cir. 2025)	Because there is a right to counsel at sentencing, "there is also a correlative right to proceed *pro se* at sentencing if a defendant has clearly and unequivocally sought to do so," and the court has made an inquiry under *Faretta v. California*, 422 U.S. 806 (1975). The right of self-representation can be invoked after trial but before sentencing.

Sex Offenses

Second Circuit

United States v. Darrah, 132 F.4th 643 (2d Cir. 2025)	Section 2G2.2(b)(3)(B)—which provides for a 5-level increase if the defendant distributed child pornography "in exchange for any valuable consideration, but not for pecuniary gain"—"considers whether a mutual understanding arose between two or more persons regarding their respective rights and duties." The district court erred in applying §2G2.2(b)(3)(B) based on the defendant's "unilateral expectations absent any assenting language or conduct."

Fourth Circuit

United States v. Fucito, 129 F.4th 289 (5th Cir. 2025)	Section 2G2.2(b)(3)(B) "does not require a defendant to actually receive 'valuable consideration' in exchange for distributing child pornography." Additionally, a court does not err "by counting duplicate images for sentencing enhancement purposes" under §2G2.2(b)(7).

Sixth Circuit

United States v. Ramirez Gomez, 129 F.4th 954 (6th Cir. 2025)	Section 2A3.5(b)(1)(C), which provides for an 8-level enhancement where an individual (1) failed to register as a sex offender and (2) "committed . . . a sex offense against a minor," does not require a conviction for the sex offense against a minor. "Courts may apply . . .

	§2A3.5(b)(1)(C) based on a judicial determination, by a preponderance of the evidence, that the defendant 'committed . . . a sex offense against a minor' while in failure to register status."

Supervised Release

Fourth Circuit

United States v. Williams, 130 F.4th 177 (4th Cir. 2025)	A special condition of supervised release providing that the probation officer, "in consultation with the treatment provider, will supervise [the defendant's] participation in the program (provider, location, modality, duration, intensity, etc.)" does not permit a probation officer to decide whether in-patient treatment is required and is therefore not an unconstitutional delegation of a core judicial function. Instead, the special condition is only a delegation of "administrative supervisory responsibilities like the selection and schedule of the programs."

Sixth Circuit

United States v. Hale, 127 F.4th 638 (6th Cir. 2025)	The Sixth Circuit clarified that 18 U.S.C. § 3583(e)(1) "does not require a finding of exceptionally good behavior before a district court may grant a motion for early termination of supervised release, though such behavior remains a relevant consideration." "Section 3583(e)(1) requires the district court to determine whether early termination 'is warranted by the conduct of the defendant released and the interest of justice,' in addition to certain [18 U.S.C.] § 3553(a) factors. The text does not make 'exceptionally good' conduct an absolute prerequisite to relief."

Eleventh Circuit

United States v. Murat, 132 F.4th 1347 (11th Cir. 2025)	The district court retained jurisdiction and did not err when it revoked a term of supervised release based on some—but not all—alleged violations and then ruled on the other violations in a second revocation order entered before the first revocation term expired.
United States v. Charles, 129 F.4th 1334 (11th Cir. 2025)	The defendant was not entitled to waive the statutory maximum term of supervised release as a stipulated condition for imposition of a lesser term of imprisonment because "statutory maximums are not 'rights'" that belong to the defendant but rather "*limits* imposed by *Congress*." Accordingly, the district court's sentence of 45 years' imprisonment—below the guideline range of life—to be followed by 15 years' supervised release—in excess of the five-year statutory maximum—was an illegal sentence.

General Application Issues

	No cases selected by Commission staff.

Other Offense Types

Fifth Circuit

United States v. Flores, 130 F.4th 465 (5th Cir. 2025)	The Assimilative Crimes Act (18 U.S.C. § 13) provides that a person who violates state law on a federal enclave is "guilty of a like offense and subject to a like punishment." However, the requirement of a "like punishment" "does not preclude a combined term of imprisonment and supervised release from exceeding the maximum term of incarceration permitted under state law," which would not be followed by supervised release.

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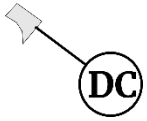

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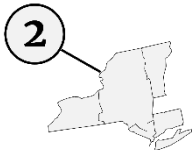

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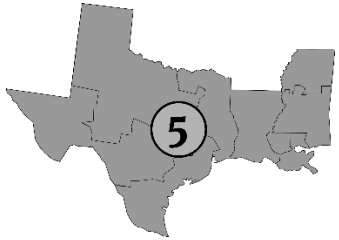

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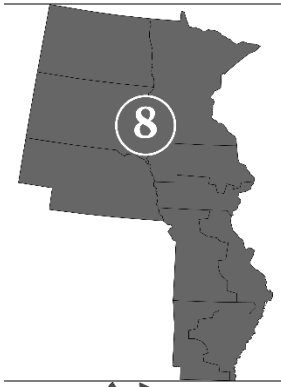

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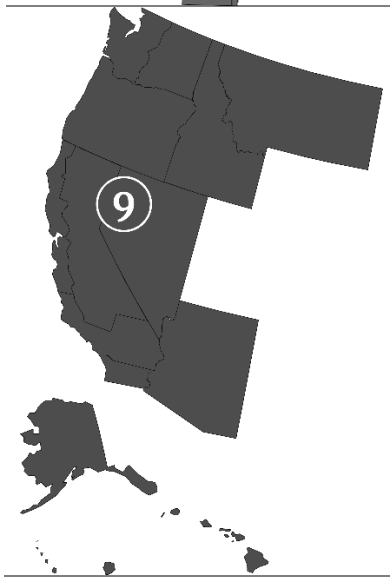

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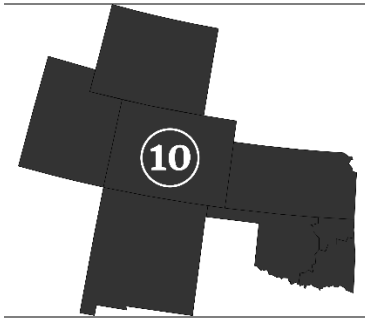

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