INTERACTIVE

Case Law Update

JANUARY – JUNE 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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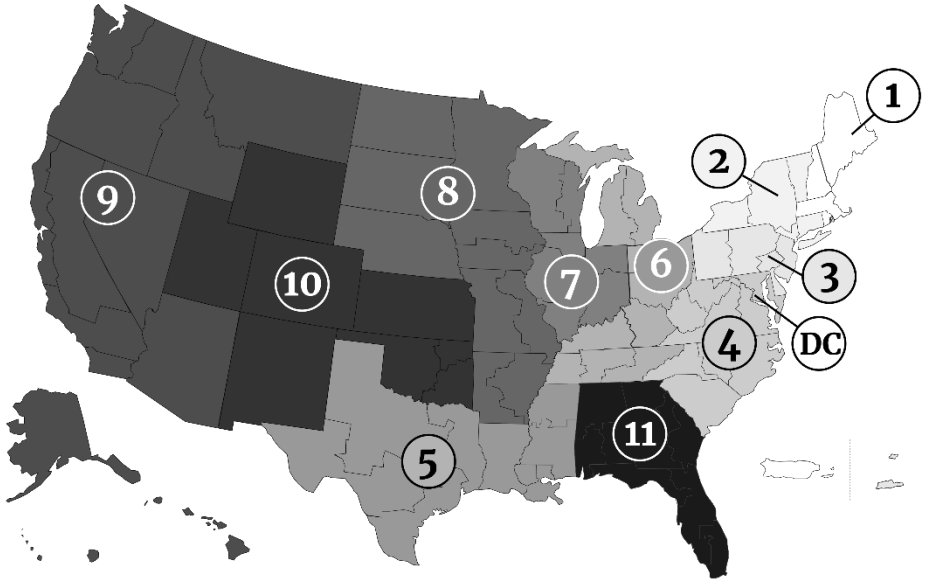

Cases appear in descending chronological order within a circuit.

U.S. Supreme Court

Hewitt v. United States, 145 S. Ct. 2165 (2025)	"All first-time [18 U.S.C. § 924(c)] offenders who appear for sentencing after the First Step Act's [(FSA)] enactment date—including those whose previous sentences have been vacated and who thus need to be resentenced—are subject to the Act's revised penalties." Based on the present-perfect tense of section 403(b) of the FSA and "the nature of vacatur," a vacated sentence "has not been imposed" for the purposes of section 403(b), thereby allowing for resentencing.
Esteras v. United States, 145 S. Ct. 2031 (2025)	District courts cannot consider 18 U.S.C. § 3553(a)(2)(A) when revoking supervised release under 18 U.S.C. § 3583(e) because the ten factors specified in section 3553(a) inform a district court's sentencing decision and eight of those ten factors allow for revocation under section 3583(e). "[T]he natural implication is that Congress did not intend for courts to consider the other two factors."
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

Third Circuit

United States v. Payo, 135 F.4th 99 (3d Cir. 2025)	The district court abused its discretion when it determined that the defendant's prior robbery offenses qualified as "crimes of violence" under §4B1.2 in reliance on a forfeited argument and a non-*Shepard* document (a state court docket sheet).

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).

Fifth Circuit

United States v. Wickware, No. 24-10519, 2025 WL 2048446 (5th Cir. July 22, 2025)	While a change to "commentary must clearly overrule our caselaw to warrant a departure from the rule of orderliness, . . . [a] change to the Guidelines themselves is more important, and more akin to statutory amendment" such that pre-amendment precedent on what

	constitutes "a crime of violence" no longer controls. Because the 2023 amended guidelines definition of "robbery" "is the same or broader than" the Texas Penal Code's definition, a Texas robbery conviction is a "crime of violence" under §4B1.2(a)(2).
Sixth Circuit	
United States v. Cervenak, 135 F.4th 311 (6th Cir. 2025)	Robbery in violation of Ohio Revised Code § 2911.02(A)(2) is not a "crime of violence" for purposes of §4B1.2(a)(2) because the elements of the Ohio robbery statute are not a categorical match with the elements of the guidelines' definitions of extortion or robbery.
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).
Tenth Circuit	
United States v. Sjodin, 139 F.4th 1188 (10th Cir. 2025)	Under *Borden v. United States*, 593 U.S. 420 (2021), assault with a firearm in violation of California Penal Code § 245 is not a "crime of violence" or "aggravated assault" under either §4B1.2(a)'s element clause or enumerated clause because the elements of the California assault statute permit convictions for a mens rea less culpable than recklessness.

Categorical Approach

First Circuit	
Rodríguez-Méndez v. United States, 134 F.4th 1 (1st Cir. 2025)	Robbery of a motor vehicle in violation of Article 173B of the Puerto Rico Penal Code, P.R. Laws Ann. tit. 33 § 4279b (repealed 2004), is not a "violent felony" under 18 U.S.C. § 924(e), the Armed Career Criminal Act, because Puerto Rico law "does not limit intimidation to threatened use of force against the 'person of another'" but "also includes threats against property."
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."
Third Circuit	
United States v. Vines, 134 F.4th 730 (3d Cir. 2025)	The federal bank robbery statute, 18 U.S.C. § 2113(a), is divisible and includes the distinct offenses of bank extortion and bank robbery. Attempted armed bank robbery in violation of § 2113(d) "predicated on § 2113(a)'s robbery clause is a crime of violence under 18 U.S.C. § 924(c)(3)(A)."

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.

Seventh Circuit

United States v. Santana, 141 F.4th 847 (7th Cir. 2025)	Unlike cases "holding [*Erlinger v. United States*, 602 U.S. 821 (2024),] errors harmless beyond a reasonable doubt," which "have involved much greater gaps in time and distance and greater differences in the crimes themselves," it was plain error for a judge, rather than a jury, to determine under the Armed Career Criminal Act that the offenses were committed on different occasions where the "time and distance factors" were "less clear-cut."

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).

Tenth Circuit

United States v. Butler, 141 F.4th 1136 (10th Cir. 2025)	*Borden v. United States*, 593 U.S. 420 (2021), did not disturb the holding of prior circuit precedent that forcible assault on a federal officer under 18 U.S.C. § 111(b) is a "crime of violence," as it "requires a finding that the defendant *intentionally* used, attempted to use, or threatened to use physical force against the person of another."

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

Fourth Circuit

United States v. Crawley, 140 F.4th 165 (4th Cir. 2025)	The recent amendment to §1B1.13 applies to motions decided after its effective date "irrespective of when the motion itself was filed." For motions based on §1B1.13(b)(6), serving "at least ten years of the term of imprisonment" means "service of a specified *time*, not a specified *sentence*," the latter of which may have adjustments for good-time credits.

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*."

Sixth Circuit

United States v. Bricker, 135 F.4th 427 (6th Cir. 2025)	The policy guidance in §1B1.13(b)(6) that allows nonretroactive changes in the law to be considered extraordinary and compelling reasons in narrowly circumscribed situations is "invalid." The Commission "does not have the authority" to overrule *United States v. McCall*, 56 F.4th 1048 (6th Cir. 2022) (en banc), which reached a contrary interpretation, and allowing §1B1.13(b)(6) to stand would "effectively negate" 1 U.S.C. § 109—"Congress's clear limitation on retroactively applying new legislation."

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.

Eighth Circuit

United States v. Rogge, 141 F.4th 902 (8th Cir. 2025)	Section 3582(c) of title 18, permitting defendants themselves to file a motion for compassionate release, "applies only to offenses committed on or after the effective date of the [Sentencing Reform Act]."

Criminal History

Third Circuit

United States v. Martinez, 137 F.4th 858 (3d Cir. 2025)	To promote judicial economy, "when a defendant is entitled to seek the benefit of a retroactive Guidelines provision," such as §4C1.1, "by filing a motion under [18 U.S.C.] § 3582(c)(2)," the appellate court may, on direct appeal, "exercise its discretion under [28 U.S.C.] § 2106 to vacate the defendant's sentence and remand for resentencing."
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. de la Cruz, 135 F.4th 1127 (8th Cir. 2025)	Under the 2023 *Guidelines Manual*, "to be eligible for the zero-point-offender reduction [under §4C1.1], a defendant must show *both* that he did not receive an enhancement under §3B1.1 *and* that he was not engaged in a continuing criminal enterprise."

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.

Ninth Circuit

United States v. Gonzalez-Loera, 135 F.4th 856 (9th Cir. 2025)	A defendant is "ineligible for relief under §4C1.1 [under the 2023 *Guidelines Manual*] if he *either* received an [aggravating role] adjustment under §3B1.1 *or* engaged in a continuing criminal enterprise."
United States v. Carver, 132 F.4th 1158 (9th Cir. 2025)	*Kisor v. Wilkie*, 588 U.S. 558 (2019), did not overrule circuit precedent holding—based on "traditional tools of interpretation, not reliance on the commentary"—that "convictions set aside under section 1203.4 of the California Penal Code are not expunged for purposes of section 4A1.2(j) of the Guidelines."

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."

Seventh Circuit

United States v. Barnes, 141 F.4th 882 (7th Cir. 2025)	A two-level aggravating role adjustment under §3B1.1(c)—that applies "if the defendant was an organizer, leader, manager, or supervisor in any criminal activity" that did not involve five or more participants and was not "otherwise extensive"—is proper where the defendant recruits a co-conspirator and coordinates logistical details.

United States v. Hodge, 138 F.4th 1021 (7th Cir. 2025)	"[T]he district court's silence on the applicability of the statutory safety valve precludes us from knowing whether it ignored, or considered and rejected, one of [the defendant's] principal mitigating arguments," requiring remand for resentencing.

Eighth Circuit

United States v. Armond, 135 F.4th 626 (8th Cir. 2025)	The district court did not plainly err in denying the safety valve reduction to a defendant who "neither participated in a proffer interview nor disclosed any information he had concerning his offense." The defendant's "bald assertion" that "he never had any information to provide . . . incorrectly attempts to shift the burden to the Government to disprove his claim" and "would render [] § 5C1.2(a)(5)'s 'all information' requirement a nullity."
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."

Ninth Circuit

United States v. Keller, 142 F.4th 645 (9th Cir. 2025)	"Because the Commission expressly incorporated the Drug Conversion Tables into the text of §2D1.1(c) and adopted them using the procedures required for enacting the Guidelines themselves," these tables "should be regarded as part of the Guidelines, and no further [*Kisor v. Wilkie*, 588 U.S. 558 (2019),] inquiry is required before a district court may apply the drug ratios."

Economic Crimes

Third Circuit

United States v. Lucidonio, 137 F.4th 177 (3d Cir. 2025)	Under §2T1.9(b)(2), conduct "intended to encourage" persons "other than or in addition to co-conspirators" to defraud the IRS is not limited to actions "explicitly directing" another to impede the IRS. The enhancement was nonetheless inapplicable where employees knew of and acquiesced to the payroll tax fraud scheme perpetrated by defendant employers and thus were not persons "other than or in addition to co-conspirators."
United States v. Barkers-Woode, 136 F.4th 496 (3d Cir. 2025)	Application of §2B1.1(b)(1) based on intended loss (to a defendant sentenced in 2022) was reversible error pursuant to circuit precedent holding that "loss" means actual—not intended—loss. In addition, the term "victim" unambiguously includes victims of identity theft without requiring deference to the definition at Application Note 4(E) to §2B1.1.

Ninth Circuit

United States v. Yafa, 136 F.4th 1194 (9th Cir. 2025)	Under the 2023 version of the *Guidelines Manual*, Application Note 3(B) to §2B1.1—instructing courts to use a defendant's gain resulting from the offense as an alternative measure for calculating loss where loss cannot reasonably be determined—is entitled to deference under *Kisor v. Wilkie*, 588 U.S. 558 (2019).

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.

Eighth Circuit

United States v. Bernard, 136 F.4th 762 (8th Cir. 2025)	Under *United States v. Rahimi*, 602 U.S. 680 (2024), 18 U.S.C. § 922(g)(9) "is constitutional in at least some of its applications and thus not unconstitutional on its face" given the "historical tradition of regulating firearms possession by those who present a credible threat of safety to others."

Ninth Circuit

United States v. Duarte, 137 F.4th 743 (9th Cir. 2025) (en banc)	Under *United States v. Rahimi*, 602 U.S. 680 (2024), 18 U.S.C. § 922(g)(1) is constitutional as applied to individuals convicted of non-violent felonies. With this holding, the Ninth Circuit aligns with the Fourth, Eighth, Tenth, and Eleventh Circuits but splits with the Third Circuit.
United States v. Kurns, 129 F.4th 589 (9th Cir. 2025)	An individual's execution of Bureau of Alcohol, Tobacco, Firearms and Explosives 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).

Tenth Circuit

United States v. Gordon, 137 F.4th 1153 (10th Cir. 2025)	Under *United States v. Rahimi*, 602 U.S 680 (2024), 18 U.S.C. § 922(g)(8)(C)(ii)—which prohibits firearm possession by any person "subject to a court order that . . . by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against [an] intimate partner or child that would reasonably be expected to cause bodily injury"—is facially constitutional "[b]ecause there are at least some circumstances in which (C)(ii) can be constitutionally applied to a defendant's conduct."

Eleventh Circuit

United States v. Dubois, 139 F.4th 887 (11th Cir. 2025)	*United States v. Rahimi*, 605 U.S. 680 (2024), did not abrogate circuit precedent holding that 18 U.S.C. § 922(g)(1) is constitutional under the Second Amendment because *Rahimi* deemed prohibitions on the possession of firearms by felons and the mentally ill—categories of persons thought by a legislature to present a special danger of misuse—to be presumptively lawful.
United States v. James, 135 F.4th 1329 (11th Cir. 2025)	The §2K2.1(b)(6)(B) sentencing enhancement for use of a firearm "in connection with" another felony offense is broad but not ambiguous, thus Application Note 14(B) is not entitled to deference under *Kisor v. Wilkie*, 588 U.S. 558 (2019). Under the plain meaning of the guideline, a person possesses a firearm "in connection with" another offense if the firearm possession is contextually, causally, or logically related to that offense.

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

Eighth Circuit

United States v. Myore, 142 F.4th 606 (8th Cir. 2025)	Application of sentencing enhancements to a robbery conviction despite a jury acquittal on related counts of carjacking and assault were proper because "a jury's acquittal establishes only that the government failed to prove an essential element of an offense beyond a reasonable doubt," and while "[t]hese constitutional issues are the subject of ongoing debate, . . . our panel is bound by . . . controlling Eighth Circuit precedent."

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—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.

Fifth Circuit

United States v. Lucas, 134 F.4th 810 (5th Cir. 2025)	"[G]iven that restitution orders under the [Victim Witness Protection Act (VWPA)] are not subject to the same statutory limits as the [Mandatory Victims Restitution Act], if a defendant agrees to allow the district court to determine the restitution under the VWPA, he cannot appeal that order as exceeding the statutory maximum."

Sixth Circuit

United States v. Fike, 140 F.4th 351 (6th Cir. 2025)	The Mandatory Victims Restitution Act permits courts to add prejudgment interest as part of a restitution award when needed to more fully compensate a victim's losses. "Because of the time value of money, [fraudulently acquired] funds' value at sentencing [may have decreased] from their value at the time of the fraud," and interest "reflects that change in value."

Eighth Circuit

United States v. Nesdahl, 140 F.4th 474 (8th Cir. 2025)	A conviction for sexual exploitation of children pursuant to 18 U.S.C. § 2251(a) does not qualify as "trafficking in child pornography" as required by 18 U.S.C. § 2259(b)(2) for the assessment of restitution.

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

First Circuit

United States v. Maldonado-Negroni, 141 F.4th 333 (1st Cir. 2025)	A district court's unelaborated response—here, a brief "yes" when asked if it "would have imposed the same sentence regardless" of whether a supervised release violation was "a Grade A violation or Grade B violation"—is "insufficient to show that the sentence imposed was detached from [an] erroneous Guidelines range."

Second Circuit

United States v. Sterkaj, 138 F.4th 95 (2d Cir. 2025)	Circuit precedent holding that courts may not increase a sentence based on a defendant's failure to cooperate remains binding, notwithstanding intervening Supreme Court decisions, including *Concepcion v. United States*, 597 U.S. 481 (2022).
United States v. Fletcher, 134 F.4th 708 (2d Cir. 2025)	"[A] district court is permitted to confer *ex parte* and off-the-record with a probation officer to seek advice or analysis as long as the officer reveals no new facts that bear on sentencing." If, however, "the officer provides new factual information, the district court may not rely on those facts unless they are first disclosed to the parties and each side has had a reasonable opportunity to comment," pursuant to Fed. R. Crim. P. 32(i)(1)(B).

Fourth Circuit

United States v. Smith, 134 F.4th 248 (4th Cir. 2025)	An appeal waiver is "not knowingly and intelligently made," and is thus invalid, when the district court fails to inform the defendant of his "right to appeal his conviction *and sentence*" under Rule 11. The "proper remedy . . . is to sever the appeal waiver from the remainder of the plea agreement and relieve the defendant of the waiver."
United States v. Brown, 136 F.4th 87 (4th Cir. 2025)	Harmless error review applies to errors under *Erlinger v. United States*, 602 U.S. 821 (2024). Here, the *Erlinger* error, committed in violation of the Fifth and Sixth Amendments, was both that the indictment failed to allege that predicate violent felonies were "committed on occasions different from one another"—an element of the sentencing enhancement under the Armed Career Criminal Act—and that the court failed to advise the defendant that he had a right to have that element found by a jury, but the error was harmless.
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.
Sixth Circuit	
United States v. Shaw, 139 F.4th 548 (6th Cir. 2025)	"[W]hen a defendant argues that the oral sentence conflicts with the written judgment, the defendant is challenging the *written judgment*, not the sentence itself." Thus, the appeal is not barred by a waiver of "the right to appeal any sentence . . . so long as it is within the applicable guideline range."
Seventh Circuit	
United States v. Bell, 139 F.4th 591 (7th Cir. 2025)	Under 18 U.S.C. § 3564(a), a court lacks authority to impose a sentence below the mandatory minimum by running the federal sentence concurrent to a related but discharged state sentence.
Tenth Circuit	
United States v. Gutierrez, 133 F.4th 999 (10th Cir. 2025)	The right to a speedy trial does not extend to postconviction sentencing, as "harms suffered *after* the defendant has lost his presumption of innocence"—such as the defendant's claim that the delay deprived him of an argument that could have yielded a shorter sentence—"are irrelevant under the Speedy Trial clause."
Eleventh Circuit	
United States v. Rivers, 134 F.4th 1292 (11th Cir. 2025)	"[W]e review *Erlinger* [*v. United States*, 602 U.S. 821 (2024)] errors for harmlessness." Here, the district court's error in sentencing the defendant under the Armed Career Criminal Act was not harmless because it is not clear "that the jury would have found unanimously and beyond a reasonable doubt" that his prior serious drug offenses were committed on different occasions as required under *Erlinger*.
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."

Third Circuit

United States v. Wise, 134 F.4th 745 (3d Cir. 2025)	"[A] smartphone counts as a computer" under the unambiguous text of the §2G2.2(b)(6) sentencing enhancement for using a computer "for the possession, transmission, receipt, or distribution" of material involving sexual exploitation of a minor because a smartphone stores and communicates information, accesses the internet, and hosts software.

Fourth Circuit

United States v. Avila, 134 F.4th 244 (4th Cir. 2025)	The district court procedurally erred in applying the cross reference at §2G2.2(c), which applies if the offense involved "causing . . . a minor to engage in sexually explicit conduct" to produce a visual depiction of that conduct, when it failed to make a factual finding that the defendant's offer of money "caused" a victim to make sexually explicit content "after and in response" to his direct request.
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

Second Circuit

United States v. Poole, 133 F.4th 205 (2d Cir. 2025)	The court upheld a condition of supervised release requiring the defendant to submit to suspicionless searches, concluding that the district court conducted "precisely the type of 'individualized assessment' [the circuit's] precedent requires." The record "amply supports" imposition of the condition and the district court properly considered the sentencing purposes of "deterrence, public protection, and rehabilitation."

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."
Fifth Circuit	
United States v. Swick, 137 F.4th 336 (5th Cir. 2025)	"[F]ugitive tolling exists in the supervised release context," such that a court retains jurisdiction to revoke supervision after the supervised release term expires "based on crimes [the supervisee] committed while at large." With this holding the Fifth Circuit aligns with the Second, Third, Fourth, and Ninth Circuits but splits with the First and Eleventh Circuits.
Sixth Circuit	
United States v. Tavarez, 141 F.4th 750 (6th Cir. 2025)	"[T]he record must demonstrate that the district court considered the relevant § 3553(a) factors before denying an early termination [of supervised release] motion." Failure to consider the relevant section 3553(a) factors is an abuse of discretion requiring the district court's denial order to be vacated and the case remanded for reconsideration.
United States v. Lockridge, 140 F.4th 791 (6th Cir. 2025)	No constitutional infirmity existed where the district court "did not spell out precisely" at the time of sentencing how "in-the-future conditions of supervised release" related to treatment programs and drug tests would be implemented. Under Article III, the district court "may use the assistance of nonjudicial officers," such as probation officers, so long as it "reviews, then accepts, modifies, or rejects, the nonjudicial officers' recommendations."
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

Tenth Circuit

United States v. Richardson, 136 F.4th 1261 (10th Cir. 2025)	Application of §5G1.3(d) resulting in a partially concurrent, partially consecutive term of imprisonment to an undischarged sentence was appropriate where the "court acted within its discretion in treating the [instant] offense independently" from the offense underlying the undischarged term of imprisonment rather than as relevant conduct under §1B1.3.

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.

Ninth Circuit

United States v. Greene, 137 F.4th 1056 (9th Cir. 2025)	The district court plainly erred in relying on a carjacking "pseudo-count" to calculate the defendant's offense level where the stipulated facts in the plea agreement did not "establish all elements of federal carjacking," namely that the defendant acted with the "intent to cause death or serious bodily harm."

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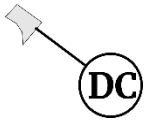

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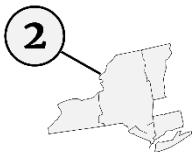

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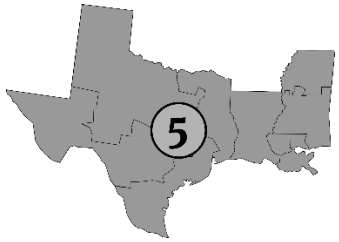

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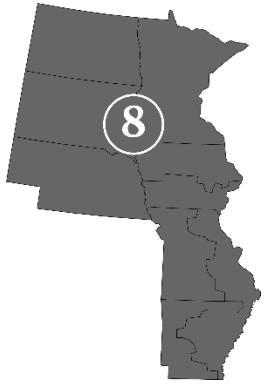

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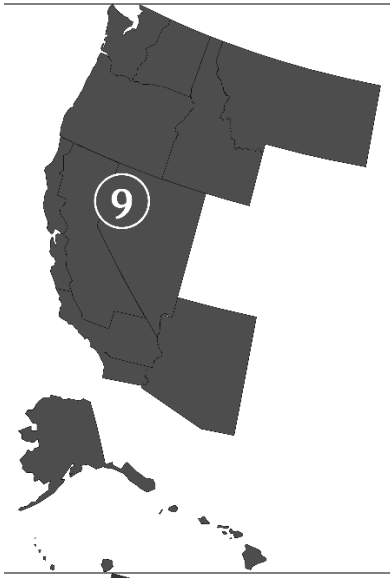

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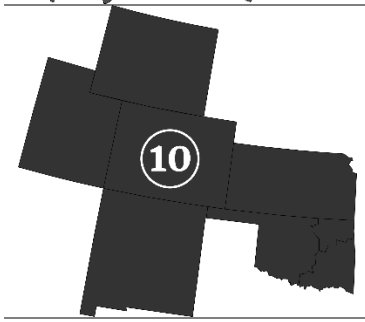

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