



Introduction to Federal Sentencing

Judges Seminar

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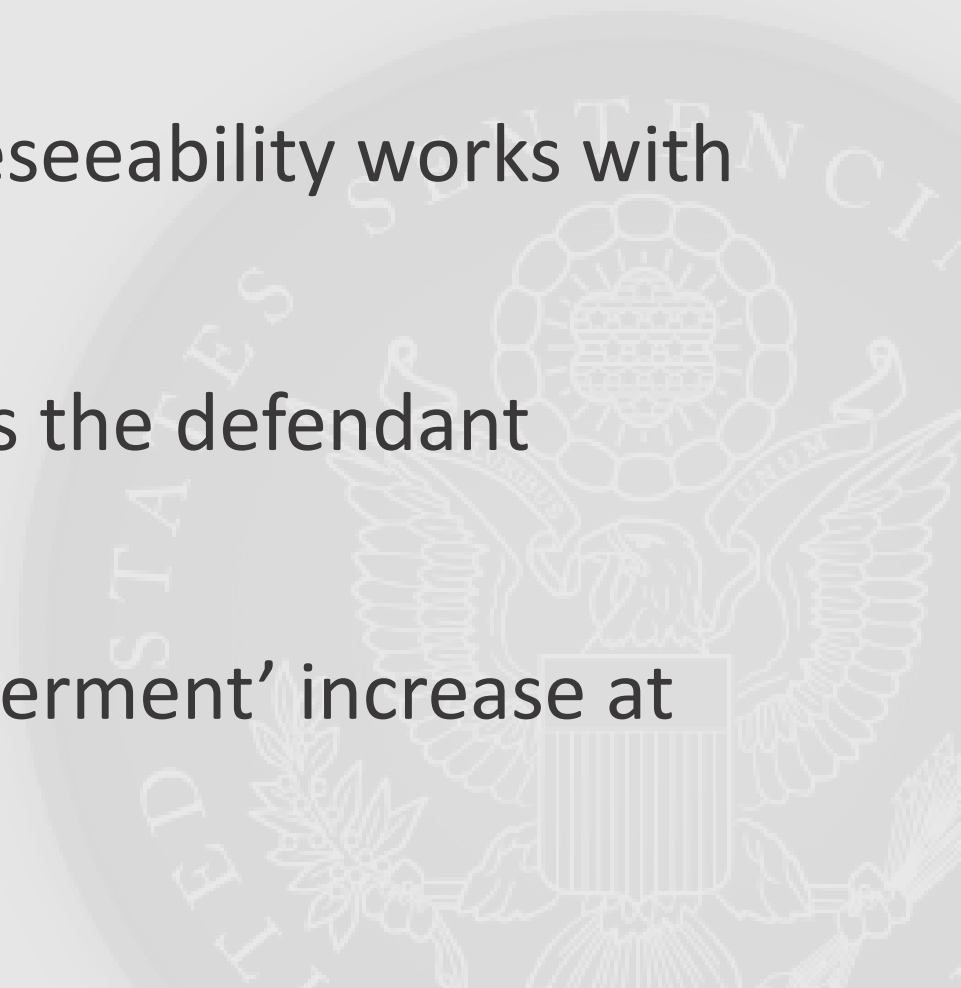
Submitted Questions

“How does relevant conduct work?”

“Can you explain how reasonable foreseeability works with relevant conduct?”

“How do I determine how many aliens the defendant transported across the border?”

“Can you discuss the ‘reckless endangerment’ increase at the alien smuggling guideline?”



Submitted Questions

“I’m sentencing a person who was convicted of money laundering and wire fraud. In calculating the money laundering count, I’m instructed to use §2B1.1, but can you tell me which base offense level applies?”

“Can you go over how grouping works?”

“I’m sentencing someone for bribery, and I have never had a case like that before, how do I find what other judges are doing in bribery cases?”

How many people have you sentenced as a district court judge?

- A.** Less than 10 people
- B.** 11 to 25 people
- C.** 26 to 50 people
- D.** 51 to 100 people
- E.** 101 to 200 people
- F.** More than 200 people



Today's Agenda



1 Federal Sentencing Basics

2 Guidelines Manual Basics

3 Online Resources

Drug Trafficking Scenario



You are about to sentence Jose Morales, who was convicted of one count of distribution of fentanyl.

The offense involved Mr. Morales selling one gram of fentanyl to Jane Doe, who died of a fentanyl overdose after using the fentanyl purchased from Mr. Morales.

Before selling to Jane Doe, Mr. Morales had been selling fentanyl off and on to support his own addiction to opiates.

The government estimates that he sold about 20 grams of fentanyl in the last year.

Drug Trafficking Scenario



For the last decade, Mr. Morales has been either homeless or incarcerated, shuffling in and out of prison for petty offenses, such as larceny and drug possession.

Prior to that time, Mr. Morales had worked residential construction, until a back injury put him out of work and got him hooked on opiates.

In the year leading up to sentencing, Mr. Morales cooperated with the government (offering up his sources of supply), successfully completed inpatient mental health and substance abuse treatment, and is now gainfully employed and sober.

Drug Trafficking Scenario



The statutory penalties are 0 to 20 years, although the government could have convicted Mr. Morales of an offense with penalties of 20 years to life.

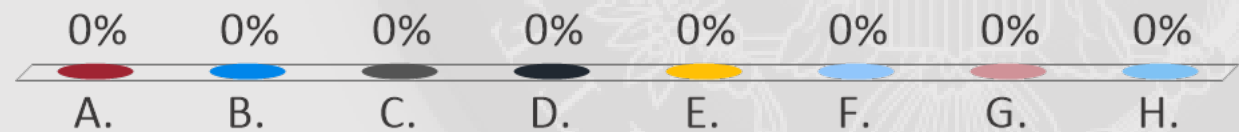
Mr. Morales is requesting probation.

The government, due to Mr. Morales's cooperation, is not advocating for a specific sentence.

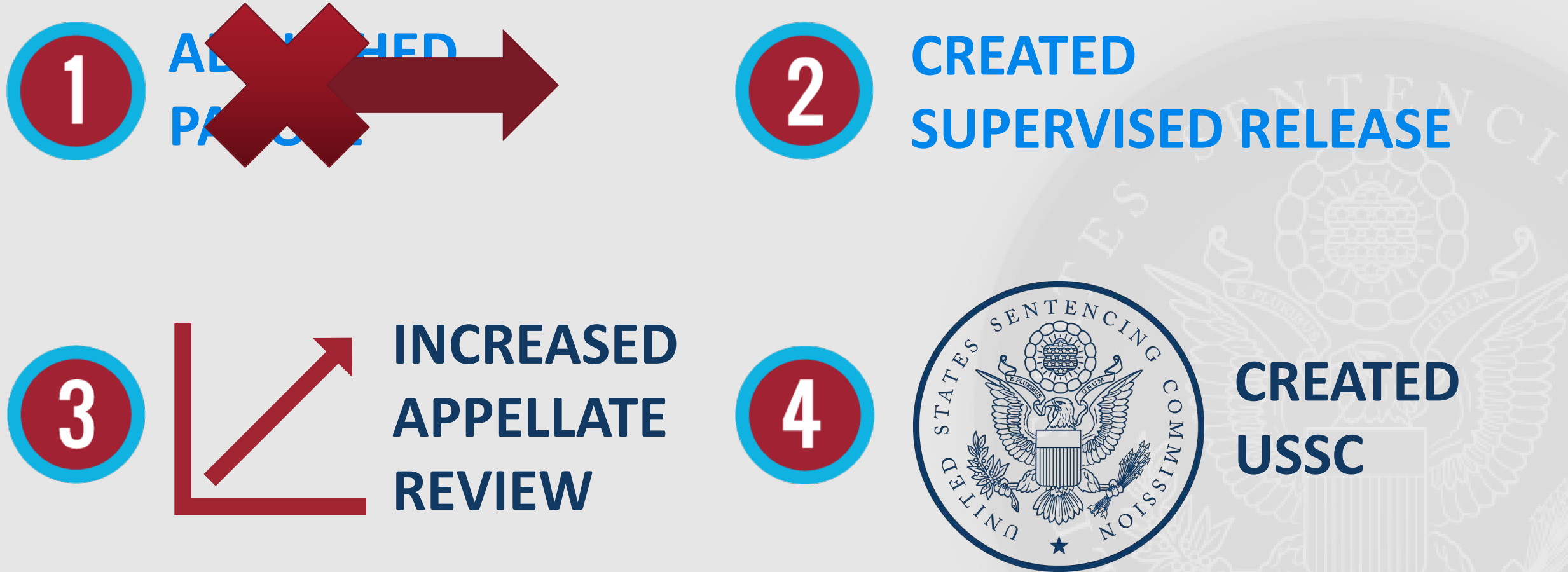
Jane Doe's family plan to speak at sentencing and ask that "this repeat and unrepentant criminal be given the maximum sentence of 20 years."

How would you sentence Mr. Morales?

- A.** Probation
- B.** Less than 1 year
- C.** 1 to 3 years
- D.** 4 to 6 years
- E.** 7 to 9 years
- F.** 10 to 15 years
- G.** 16 to 19 years
- H.** 20 years



The Sentencing Reform Act of 1984



The United States Sentencing Commission



Guidelines Manual

UNITED STATES SENTENCING COMMISSION
GUIDELINES MANUAL
2023



Chapter 1 - General Principles

Chapter 2 - Offense Conduct

Chapter 3 - Adjustments

Chapter 4 - Criminal History

Chapter 5 - Determining the Sentence

Chapter 6 - Sentencing Procedures

Chapter 7 - Violations of Probation and TSR

Chapter 8 - Organizations

General Approach to Federal Sentencing Guidelines

1

Charged Offense

e.g., 18 U.S.C. § 2113(a)

2

Real Offense

e.g., injury, weapon

Real Offense: Relevant Conduct



Charlotte Byrd was charged with conspiring to distribute 500 grams or more methamphetamine (mixture). The jury, however, found that Ms. Byrd was involved in less than 50 grams of methamphetamine (mixture).

Is the court bound by this quantity at sentencing?

A. Yes

✓ **B.** No



Relevant Conduct Synopsis – 3 Main Rules

1. Defendant accountable for **acts he/she did** in furtherance of the offense of conviction.
2. Defendant might be accountable for certain **acts others did** in furtherance of the offense of conviction.
3. ***For certain offenses***, defendant also accountable for acts he/she did in the **same course of conduct or common scheme or plan** beyond the offense of conviction.

Section 1B1.3 Overview

Defendant
(a)(1)(A)

+

Jointly Undertaken
(a)(1)(B)

+

Harms
(a)(3)

All
Offenses (a)(1):

(P)reparation

(D)uring

(A)voiding

Some
Offenses (a)(2):

Same Course of Conduct / Common Scheme or Plan

Tweaks BOL,
SOC, CR IC & (a)(4):

“Otherwise Specified” & “Other Information Specified”

Key Areas for Relevant Conduct

1

Jointly Undertaken Criminal Activity

2

Expanded Relevant Conduct

Jointly Undertaken Criminal Activity Three-Part Test



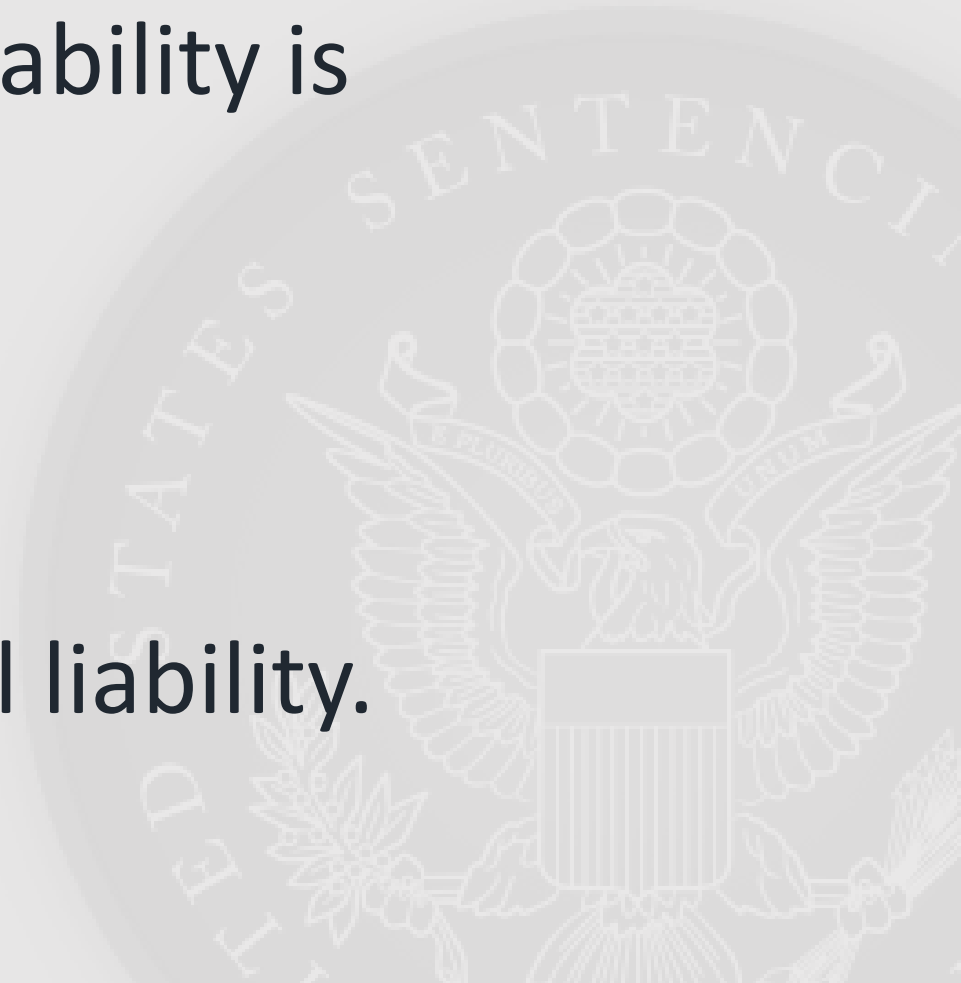
Relevant Conduct

§1B1.3, App. Note 1 (p. 24)

Sentencing accountability is



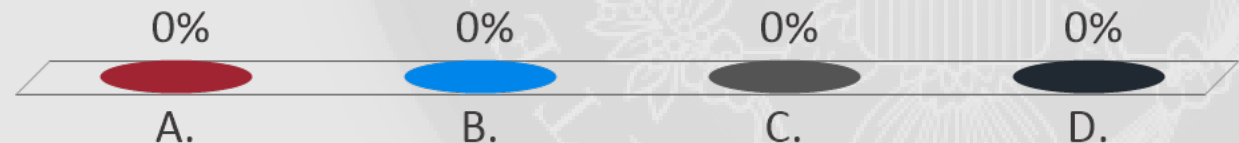
the same as criminal liability.



Bob Dooley is convicted of conspiracy to distribute 1 kilogram of heroin. The conspiracy distributed 5 kilograms of heroin. Mr. Dooley knew about the entire scope of the conspiracy, but he only agreed to participate in the distribution of 250 grams of heroin on three separate occasions.

What quantity of drugs will Mr. Dooley be held responsible for at §2D1.1(a)(5)?

- A.** 250 grams
- ✓ **B.** 750 grams
- C.** 1 kilogram
- D.** 5 kilograms



Relevant Conduct & Conspiracy Law

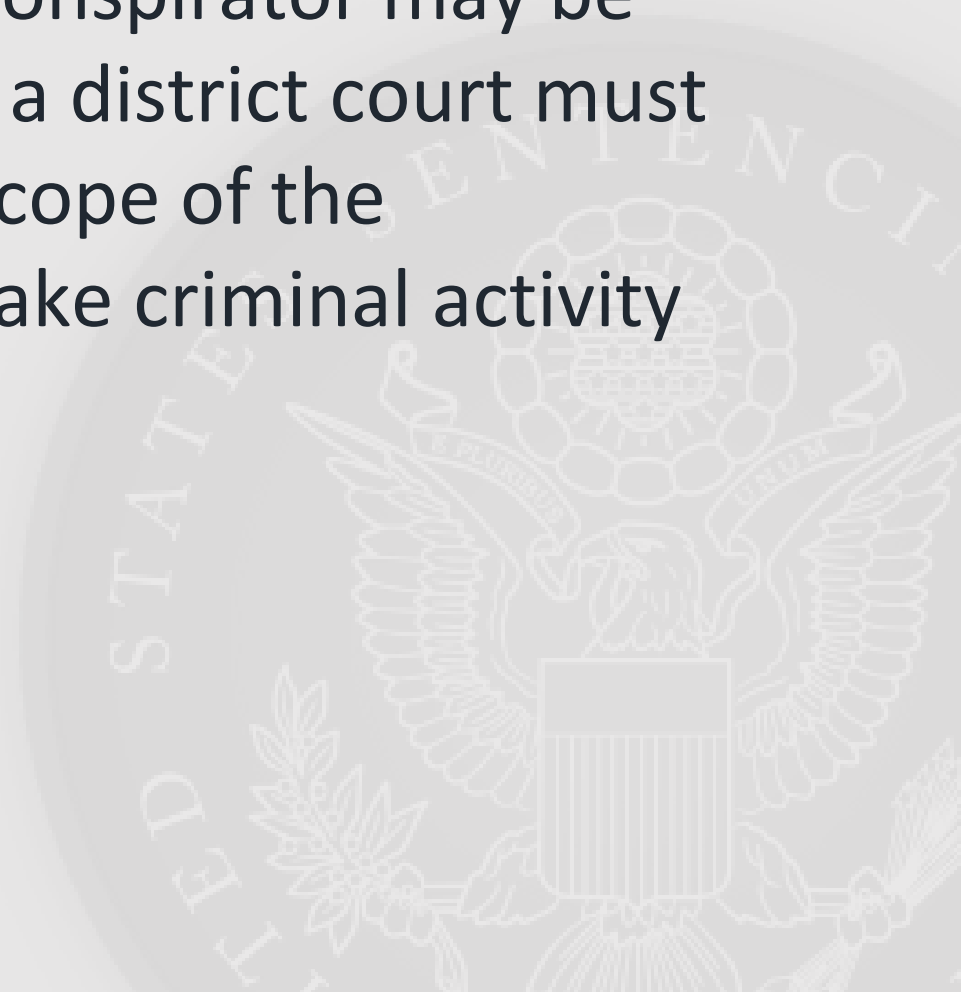
“The advisory guidelines instruct—and this Court has **repeatedly held**—that the scope of relevant conduct with regard to the drug amounts involved in a conspiracy under § 1B1.3(a)(1)(B) is **‘significantly narrower’** than the conduct needed to obtain a conspiracy conviction.”

United States v. McReynolds, 964 F.3d 555 (6th Cir. 2020)

United States v. Evans

90 F.4th 257 (4th Cir. 2024)

“So before, say, drugs seized from a co-conspirator may be attributed to a defendant at sentencing, a district court must make **‘particularized findings’** as to the scope of the defendant's agreement to jointly undertake criminal activity as well as to foreseeability.”



Three-Part Test

§1B1.3(a)(1)(B)(i)-(iii) (p. 23)



Robert Jones and John Smith are convicted of robbing a Bank of America. During the robbery, only John Smith possessed a firearm.

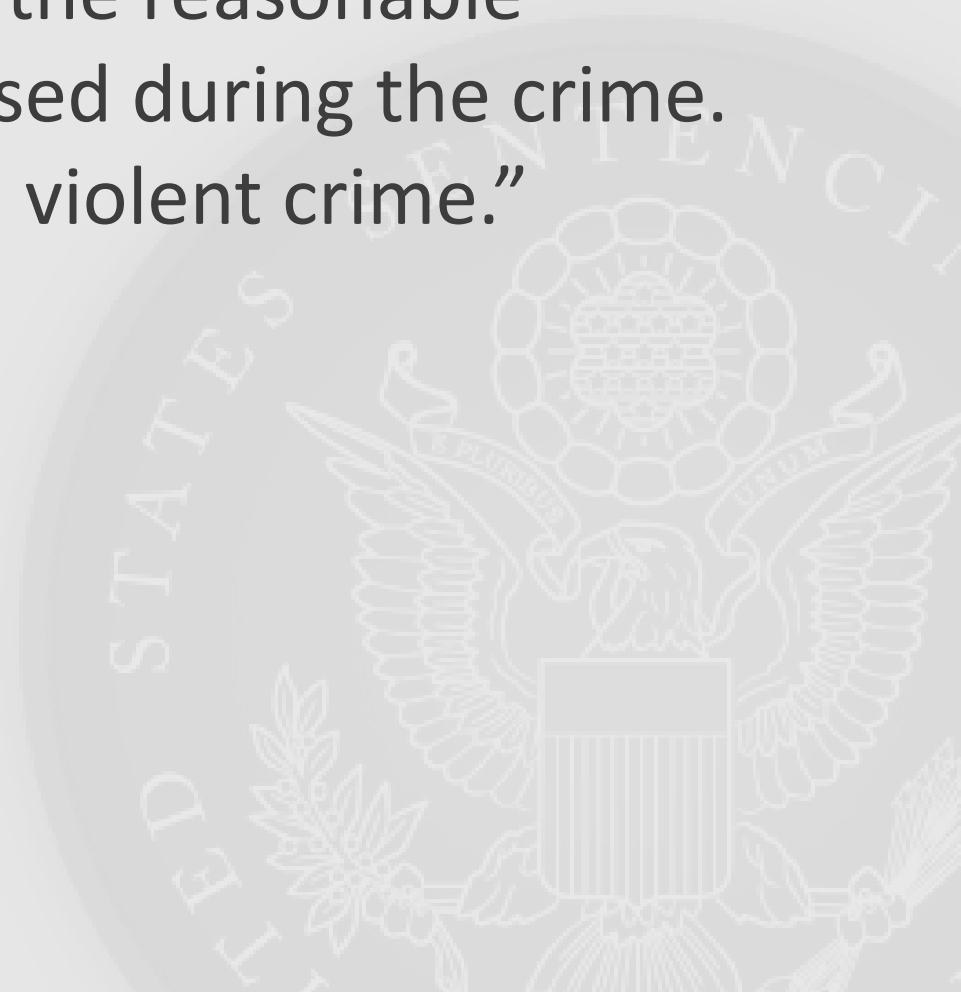
Should Mr. Jones receive an increase at §2B3.1(b)(2) for “if a firearm was possessed”?

- ✓ A. Yes
- B. No



United States v. Brumfield
89 F.4th 506 (5th Cir. 2024)

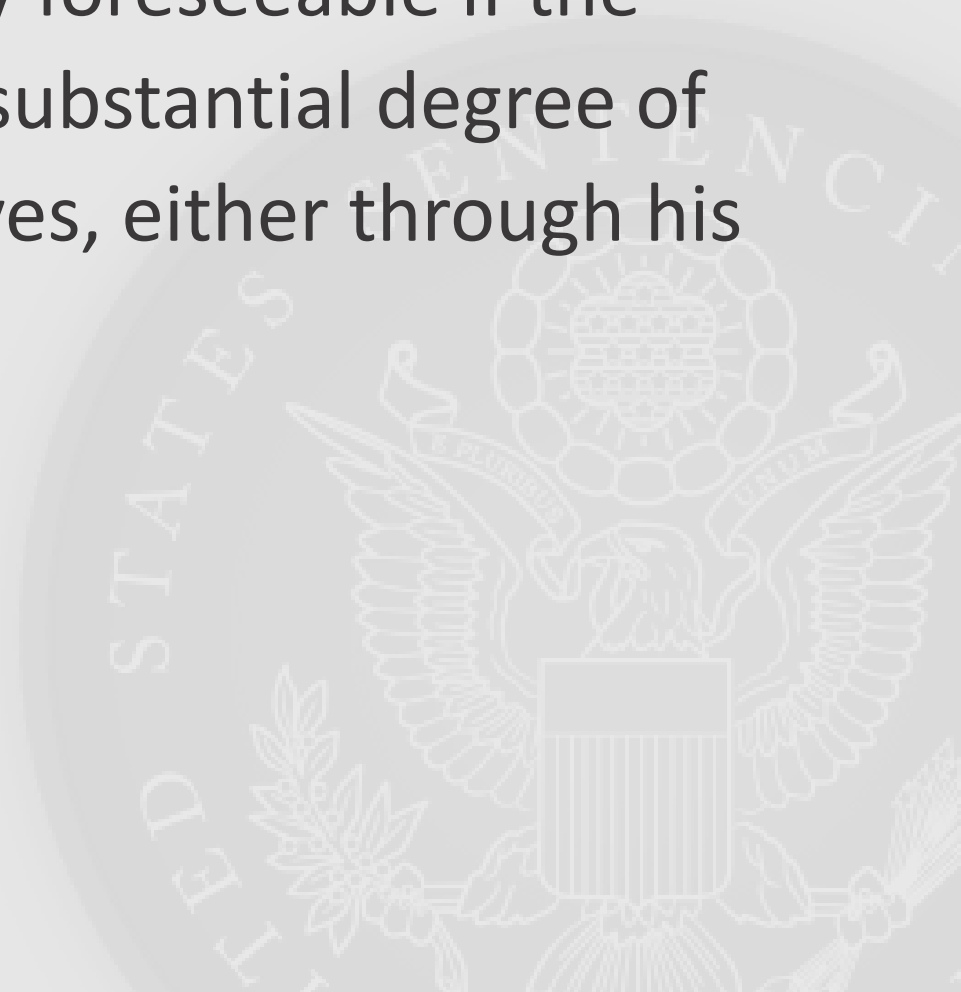
“The nature of a bank robbery demands the reasonable foreseeability that a weapon would be used during the crime. Indeed, bank robbery “is, by its nature, a violent crime.”



United States v. Yates

98 F.4th 826 (7th Cir. 2024)

“A co-conspirator's conduct is reasonably foreseeable if the defendant-conspirator ‘demonstrated a substantial degree of commitment to the conspiracy's objectives, either through his words or his conduct.’”



When Can Relevant Conduct Expand?



Aggregate Harm Cases



Physical Harm Cases



Offenses Included at §3D1.2(d)

Section 3D1.2(d)

Drugs | §2D1.1

Possession or Distribution of
Child Pornography | §2G2.2

Fraud | §2B1.1

Alien Smuggling | §2L1.1

Firearms | §2K2.1

Money Laundering | §2S1.1

Bribery | §2C1.1

Tax Offenses | §2T1.1

Counterfeiting | §2B5.3

Common Scheme or Plan

Section 1B1.3(a)(2), App. Note 5(B)(i)

Other Offense



Conviction

Victims

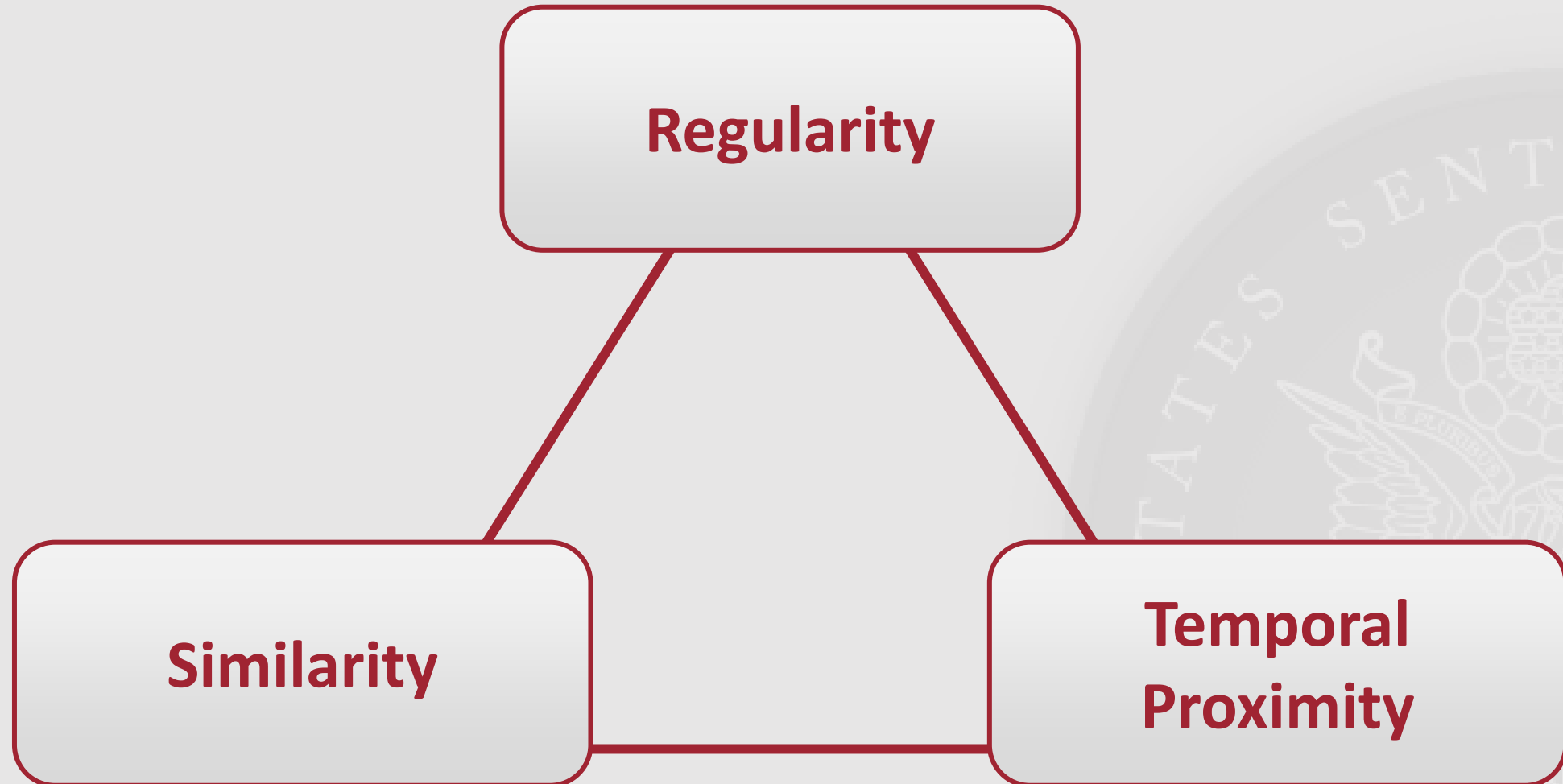
Accomplices

Purpose

***Modus
Operandi***

Same Course of Conduct

Section 1B1.3(a)(2), App. Note 5(B)(ii)



Ruth Langmore was convicted of conspiracy to distribute 5 kilograms or more of cocaine. The charged cocaine conspiracy took place between 2018 and 2020, and Ms. Langmore was the leader of the conspiracy. Ms. Langmore, however, was a low-level fentanyl courier, in a different conspiracy, involving different coconspirators, that began and ended in 2015. No charges were ever brought as to the fentanyl conspiracy.

Does Ms. Langmore's relevant conduct include fentanyl?

A. Yes

 **B. No**



United States v. Schultz
88 F.4th 1141 (5th Cir. 2023)

“A weak showing as to any of the factors does not preclude a finding of relevant conduct, but it does require a stronger showing from one of the other factors to compensate for the deficiency.

“To determine the similarity of the offenses, courts must consider whether ‘there are distinctive similarities between the offense of conviction and the remote conduct,’ or whether the offenses are merely similar in kind.”

Robert Hinojosa is charged with one count of alien smuggling. The offense of conviction involved one alien.

During the presentence interview, Mr. Hinojosa admitted to smuggling at least six aliens over the past year.

The probation officer applied §2L1.1(b)(2)(A) for smuggling 6-24 aliens.

Is this correct?

✓ **A. Yes**

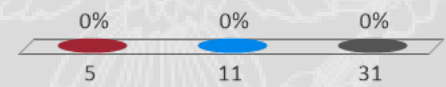
B. No



Scenario

The defendant is caught crossing the border with five aliens in his car and a search of his “What’s App” proves he made six prior trips of transporting within the last few months. However, the actual number of the aliens is unknown for those other prior six trips. What number of aliens would you use to calculate the enhancement at §2L1.1 for “number of aliens”?

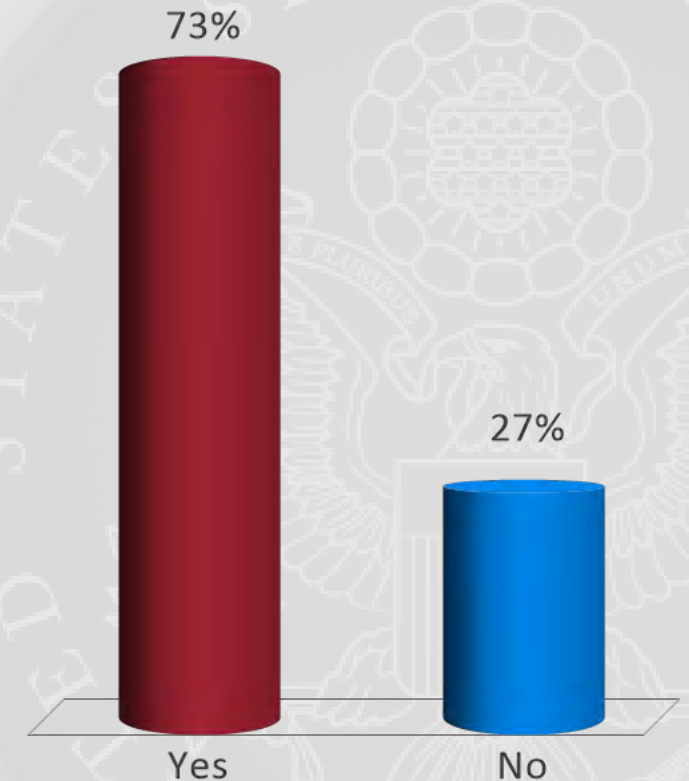
- A. 5
- B. 11
- C. 31



Justice McDonald is convicted of unlawful possession of a firearm. The offense of conviction charges him with possessing a semi-automatic firearm in November 2018. Mr. McDonald also possessed two different semi-automatic firearms in February 2018 and October 2018. Mr. McDonald was a felon at all relevant times.

Does Mr. McDonald receive a 2-level enhancement under §2K2.1(b)(1) for the offense involving 3 to 7 firearms?

- ✓ **A. Yes**
- B. No**



United States v. Parlor

2 F.4th 807 (9th Cir. 2021)

When a defendant is prohibited from possessing firearms because of his status as a felon, possession of any firearms in addition to the ones for which he was charged can be relevant conduct because it is the same course of conduct or common scheme or plan under §1B1.3.

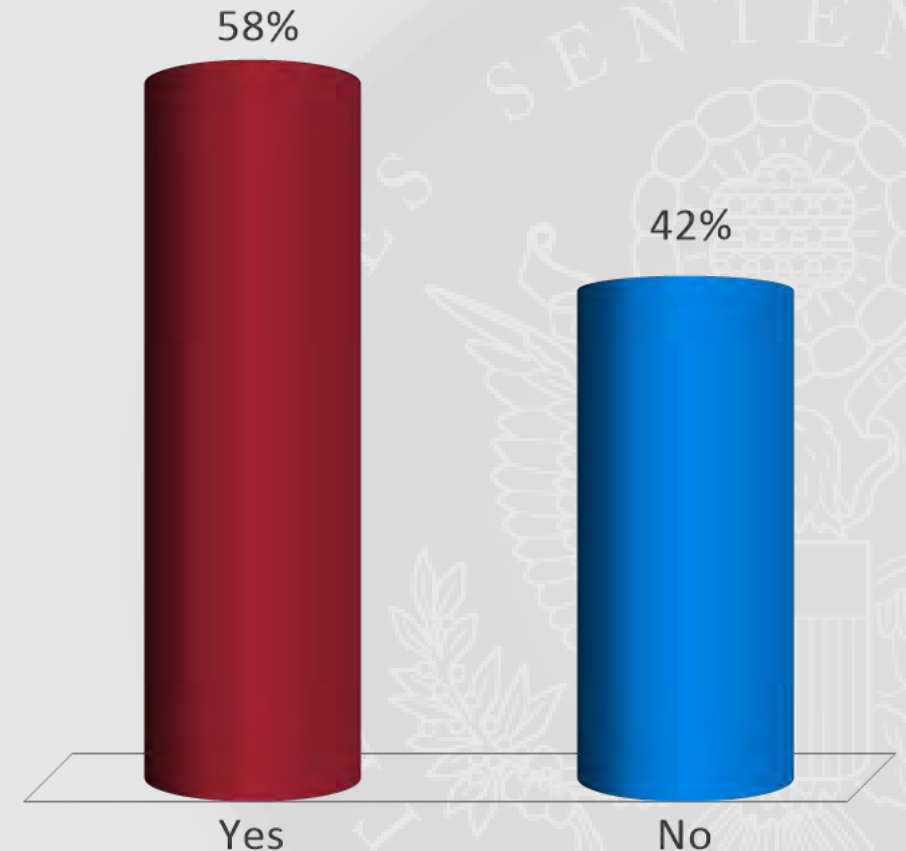
See also, U.S. v. McDonald, 28 F.4th 553 (4th Cir. 2022)

Sherry Adams was charged with two bank robberies that occurred on April 3rd and April 5th. She pleads guilty to the April 3rd robbery only.

Is the April 5th robbery relevant conduct?

A. Yes

 **B.** No



Offenses **Excluded** at §3D1.2(d)

Section 3D1.2(d)

Robbery | §2B3.1

Extortion | §2B3.2

Murder | §2A1.1

Kidnapping | §2A4.1

Assault | §2A2.3

Aggravated Assault | §2A2.2

Blackmail | §2B3.3

Criminal Sex Abuse | §2A3.1

Burglary | §2B2.1

Weapon Enhancement

Section 2D1.1(b)(1)

If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.

1

Government proves that
the **weapon** and **drugs**
are present

2

SOC applies unless
defendant can prove
“**clearly improbable.**”

Safety Valve

§2D1.1(b)(1)

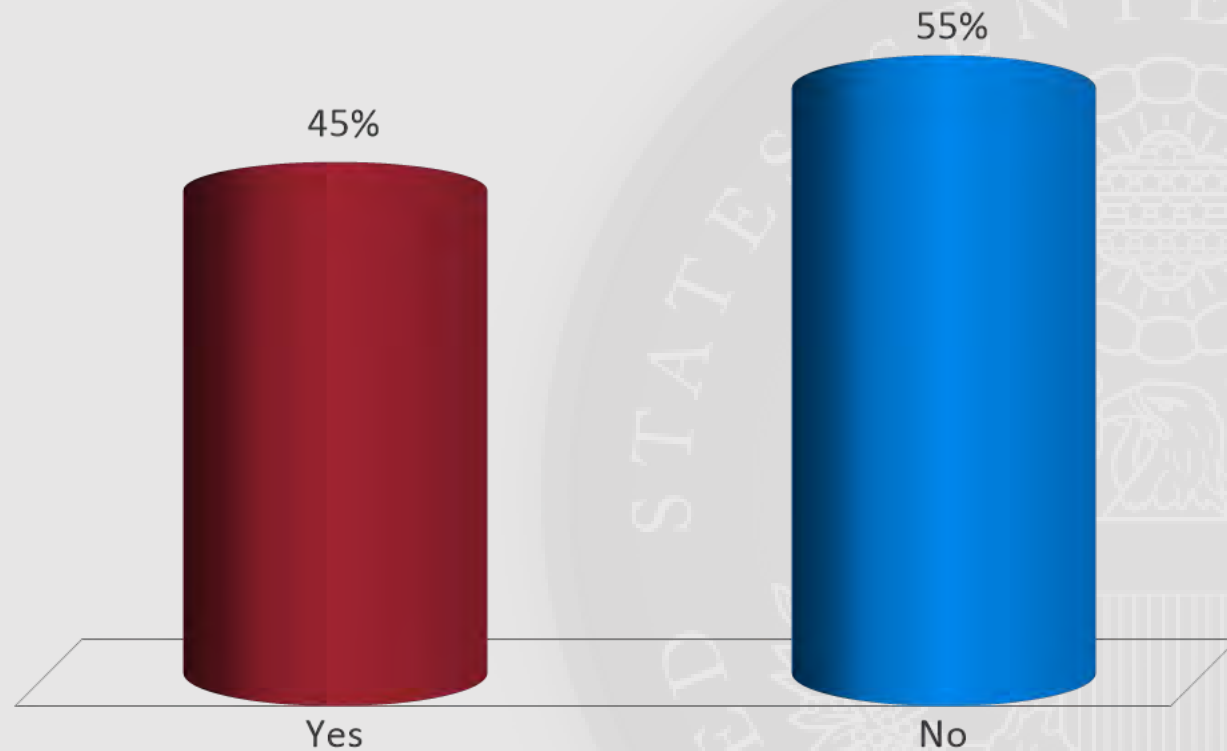
If a dangerous weapon (including a firearm) *was possessed*

§5C1.2(a)(2)

the *defendant did not possess . . .*
a firearm or other dangerous
weapon (or induce another
participant to do so) . . .

Can a defendant qualify for the safety valve if he received a 2-level increase under §2D1.1 for a dangerous weapon?

- ✓ A. Yes
B. No



United States v. Bingham

88 F.4th 1220 (7th Cir. 2024)

The term ‘defendant’ limits the accountability of the defendant to his own conduct and conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused.”

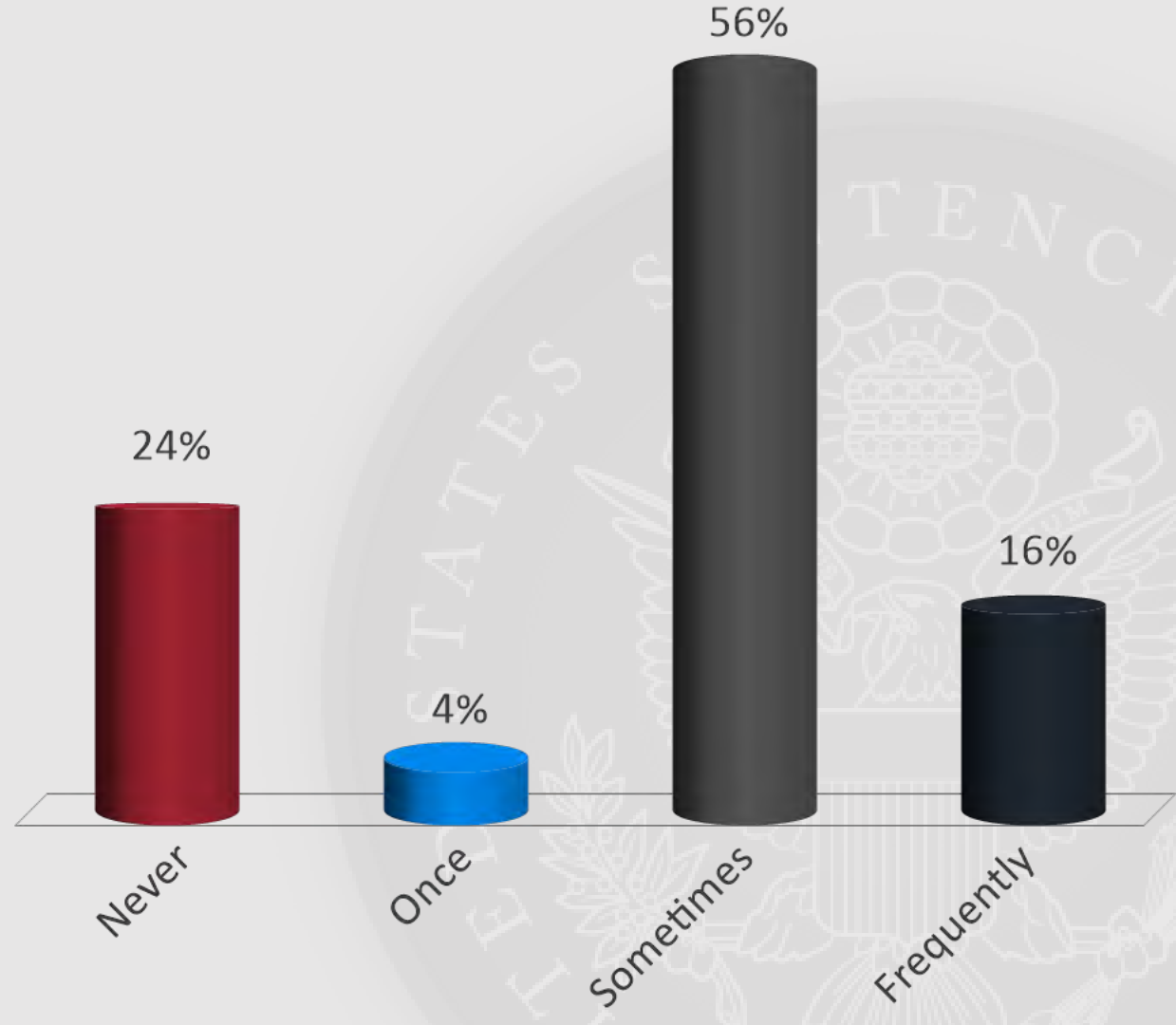
“Every circuit to address the issue has held that the no-firearms condition is narrower than the firearms enhancement and does not impute reasonably foreseeable acts of co-conspirators to a defendant.”



Commission Resources

How often do you use Commission resources?

- A.** Never
- B.** Once
- C.** Sometimes
- D.** Frequently

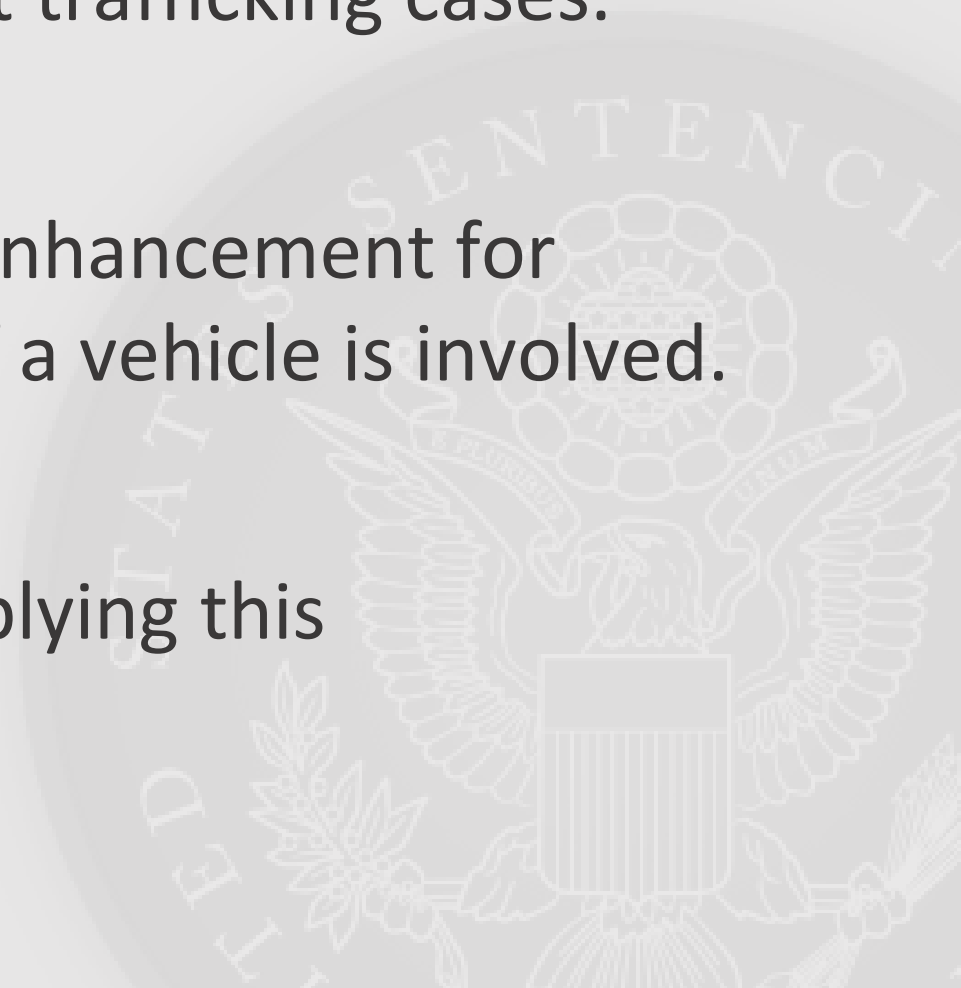


Question

In the Fifth Circuit, we have a lot migrant trafficking cases.

Many involve disputes over the 3-level enhancement for “substantial risk of death,” particularly if a vehicle is involved.

What factors should I consider when applying this enhancement?





UNITED STATES SENTENCING COMMISSION

GUIDELINES | RESEARCH | POLICYMAKING | EDUCATION

Primers

Primer

FILTERS

TOPIC

- ☐ About Us
- ☐ Alien Smuggling
- ☐ Antitrust
- ☐ Backgrounder
- ☐ Categorical Approach
- ☐ Computer Fraud
- ☐ Copyright/Trademark
- ☐ Corporate Crime
- ☐ Criminal History
- ☐ Departures/Variances
- ☐ Drugs
- ☐ Economic Crime
- ☐ Family Ties and Responsibilities
- ☐ Firearms
- ☐ Forgery/Counterfeiting
- ☐ Fraud
- ☐ Historical Development of the Guidelines
- ☐ Illegal Reentry
- ☒ Immigration
- ☐ Intellectual Property
- ☐ Loss
- ☐ Manslaughter

BACKGROUNDER

Immigration

PRIMER

JUNE 2024

This primer provides a general overview of the statutes and case law relating to criminal immigration offenses.

[Download the PDF](#)

LEARN MORE



Immigration Offenses

Primer on Immigration Offenses (2024)

As discussed below, some courts have articulated several factors to consider when applying this enhancement in vehicle cases.

i. Fifth Circuit's case-specific analysis

The Fifth Circuit has made clear that the enhancement under §2L1.1(b)(6) creates no *per se* rules; instead, "[d]efining the contours of this enhancement is dependent upon carefully applying the words of the guideline in a case-specific analysis."⁸⁵ As a result, the court has articulated several factors to consider when applying §2L1.1(b)(6) when aliens are transported in vehicles, including "the availability of oxygen, exposure to temperature extremes, the aliens' ability to communicate with the driver of the vehicle, their ability to exit the vehicle quickly, and the danger to them if an accident occurs."⁸⁶ The court also has held that the enhancement does not apply when "[t]he only dangers were the same dangers arising from a passenger not wearing a seatbelt in a moving vehicle."⁸⁷

Additional facts that have supported the enhancement, in both vehicle and non-vehicle related cases, include the severity of vehicle overcrowding, whether the aliens were abandoned, the time of year during which the journey took place, the distance traveled, whether the aliens were fed, hydrated, and adequately clothed for the journey, and crossing over the Rio Grande in very deep water.⁸⁸

ii. Ninth Circuit's factors for increased risk

In *United States v. Torres-Flores*, the Ninth Circuit noted the following:

Every passenger traveling on our highways faces a small, but non-trivial, risk of death or injury. This baseline risk is inherent in all vehicular travel and must therefore be disregarded in determining whether the offense was committed in a manner that involved a "substantial risk of death or serious bodily injury to another person." We focus on the ways in which the method of transporting

⁸⁵ *United States v. Garza*, 541 F.3d 290, 294 (5th Cir. 2008) (quoting *Solis-Garcia*, 420 F.3d at 516).

⁸⁶ *United States v. Zuniga-Amezquita*, 468 F.3d 886, 889 (5th Cir. 2006). These factors are not exhaustive. See *United States v. Garcia-Solis*, 927 F.3d 308, 312–13 (5th Cir. 2019) (concluding factors listed in *Zuniga-Amezquita* are not exhaustive and noting reckless driving can be basis for enhancement because Application Note 3 of §2L1.1 implies "fleeing from law enforcement may warrant application," by instructing §3C1.2 should not apply if §2L1.1(b)(6) applies "solely on the basis of conduct related to fleeing from a law enforcement officer").

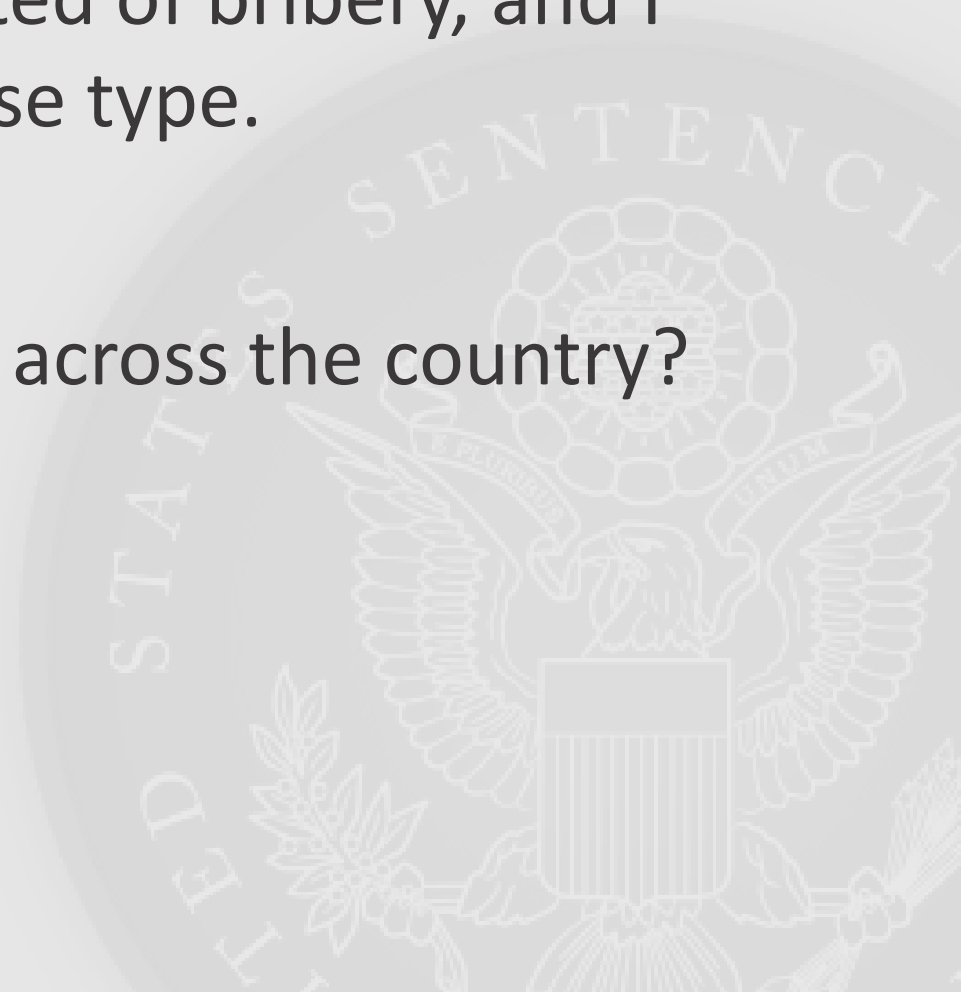
⁸⁷ *Zuniga-Amezquita*, 468 F.3d at 889 (citing *Solis-Garcia*, 420 F.3d at 516).

⁸⁸ See, e.g., *United States v. Najera*, 915 F.3d 997, 1002 (5th Cir. 2019) (crossing deep water); *United States v. Cardona-Lopez*, 602 F. App'x 191, 192 (5th Cir. 2015) (per curiam) (14 passengers in vehicle rated for seven); *United States v. Chapa*, 362 F. App'x 411, 413 (5th Cir. 2010) (per curiam) (harsh conditions and inadequately prepared); *United States v. De Jesus-Ojeda*, 515 F.3d 434, 443 (5th Cir. 2008) (same); *United States v. Hernandez-Pena*, 267 F. App'x 367, 368–69 (5th Cir. 2008) (per curiam) (through brush without access to water).

Question

I'm sentencing a person who was convicted of bribery, and I have never sentenced anyone that offense type.

How do other judges handle these cases across the country?



DATA FILTERS

Sentences Un

Fiscal Year 2015.

Geography

Circuit --Select--

State --Select--

District --Select--

100.0

ON

Sentence Imposed Relative to Guideline Range

Fiscal Year 2015,2016,2017,2018,2019,2020,2021,2022,2023

	2015		2016		2017		2018		2019		2020		2021		2022		2023	
Sentence Range	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Grand Total	447	100.0%	378	100.0%	335	100.0%	315	100.0%	342	100.0%	240	100.0%	247	100.0%	361	100.0%	366	100.0%
Within Range	124	27.7%	96	25.4%	76	22.7%	77	24.4%	63	18.4%	32	13.3%	48	19.4%	64	17.7%	85	23.2%
Upward Departure	-		1	0.3%	1	0.3%	-		-		-		1	0.4%	-		-	
\$5K1.1 Substantial Assistance	136	30.4%	120	31.7%	90	26.9%	97	30.8%	119	34.8%	81	33.8%	81	32.8%	107	29.6%	123	33.6%

☐ Burglary/Trespass

☐ Child Pornography

Bribery/Co

Search...

Drug Type

0

2015

2016

2017

2018

2019

2020

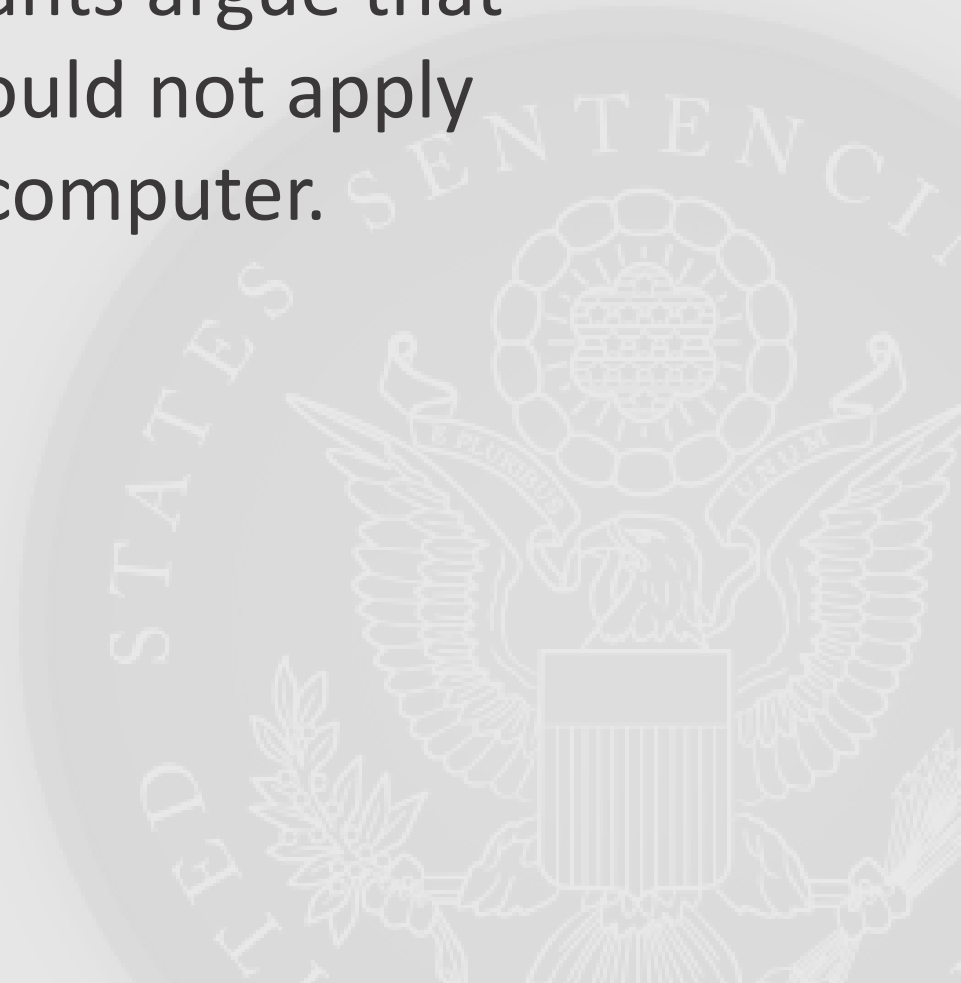
2021

Year

Question

In child exploitation cases, many defendants argue that enhancements for use of a computer should not apply because every offense involves use of a computer.

How should I address this argument?





three provisions (including the maximum 5-level enhancement for possession of 600 or more images) now apply to a majority of offenders,⁵⁸ they add a significant 11-level cumulative enhancement based on the content of the typical offender's collection. The current guideline thus does not adequately distinguish among most offenders regarding their culpability for their collecting behaviors. Furthermore, the 11-level cumulative enhancement, in addition to base offense levels of 18 or 22,⁵⁹ results in guideline ranges that are overly severe for some offenders in view of the nature of their collecting behavior.

The Commission recommends that §2G2.2(b) be updated to account more meaningfully for the current spectrum of offense behavior regarding the nature of images, the volume of

The Commission's study of the manners in which offenders distribute child pornography suggests that approximately one-quarter of all non-production offenders sentenced in federal court today have had some level of involvement in child pornography communities.⁶¹ There currently is no enhancement in §2G2.2 aimed at offenders' involvement in such communities. The existing enhancement for distribution of child pornography, §2G2.2(b)(3), indirectly punishes some offenders for their involvement with child pornography communities, insofar as Internet-based communities such as Internet chat rooms or bulletin boards dedicated to child exploitation serve as forums in which offenders often trade child pornography. However, that enhancement — in particular, its incremental 2- to 7-level enhancements for different types of distribution⁶² — was not designed to punish community involvement *per se*.⁶³

Similarly, the 2-level enhancement for use of a computer, §2G2.2(b)(6), applies in virtually every case and, thus, fails to differentiate among offenders with respect to their involvement in communities.⁶⁴

⁵⁸ See Chapter 2 at 32.

⁵⁹ See Chapter 4 at 80–92 (discussing the manners in which offenders today collect child pornography and the nature and volume of images possessed by typical offenders).

⁶¹ See Chapter 6 at 151 & n.70.

⁶² See USSG §2G2.2(b)(3)(A)–(F).

⁶³ See Chapter 6 at 151–52 (discussing the manner in which USSG §2G2.2(b)(3) applies to offenders' distribution conduct indicating "community" involvement compared to its application to other offenders' distribution conduct not suggesting "community" involvement).



level enhancement for use of a computer, §2G2.2(b)(6), applies in virtually every case and, thus, fails to differentiate among offenders with respect to their involvement in communities.⁶⁴

A new guideline provision specifically dealing with offenders' community involvement, as distinct from their distribution conduct, could better differentiate among offenders' culpability based on their degree of such community involvement.⁶⁵ In addition, the guideline could be amended to better distinguish between more and less culpable distribution conduct while remaining "technology-neutral" (and, thus, remain relevant in view of inevitable future changes in technologies). The enhancement in §2G2.2(b)(3) was created before the widespread use of P2P file-sharing programs and other types of emerging technologies by non-production

⁶⁴ *Id.* 66. Therefore, a revised guideline should better differentiate among offenders based

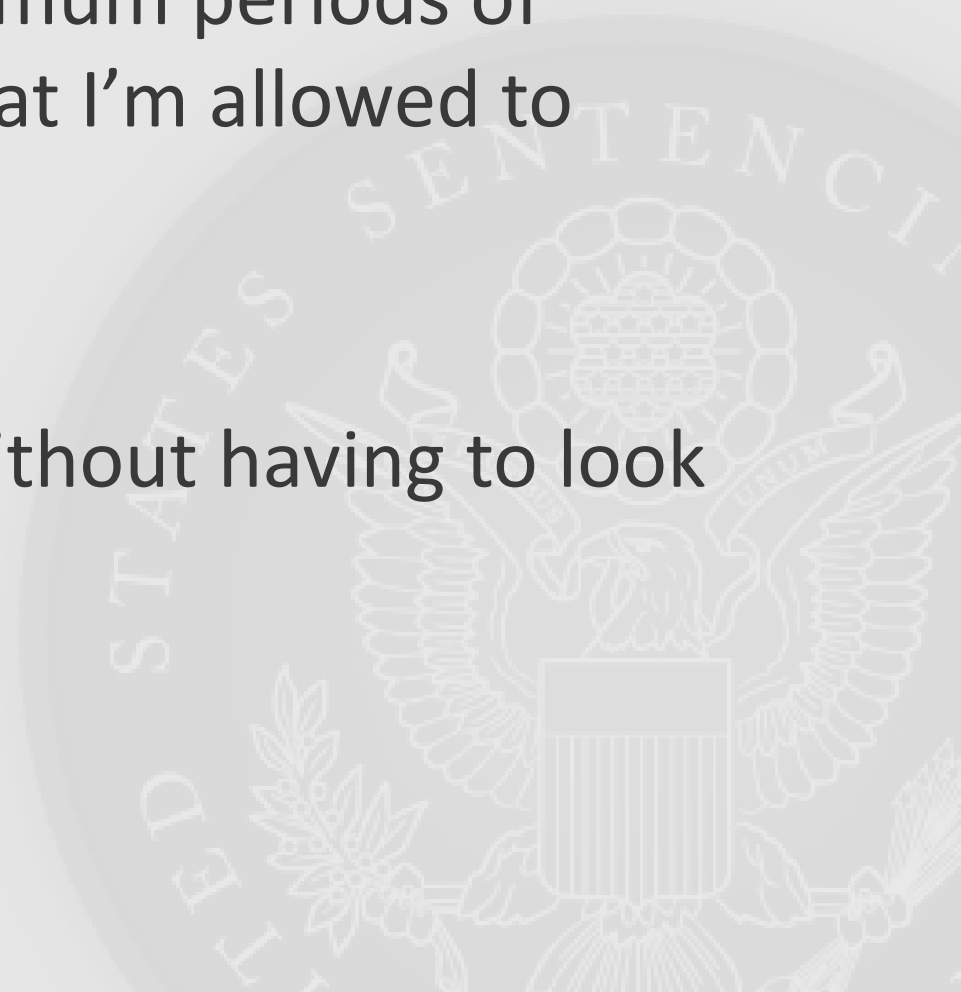
Massachusetts, to the Commission, at 1 (Feb. 15, 2012) (contending that offenders' involvement in child pornography communities and use of sophisticated computer technologies "are important aspects of this crime and its offenders that are not taken into account by the current guidelines"); see also Joint Prepared Statement of James Fottrell, Steve Debrota, and Francey Hakes, U.S. Department of Justice, to the Commission, at 17 (Feb. 15, 2012) ("The Commission should . . . consider adding new specific offense characteristics [to the guideline] to better differentiate among offenders, such as by accounting for offenders who communicate with one another and in so doing, facilitate and encourage the sexual abuse of children and the production of more child pornography, as well as for offenders who create and administer the forums where such communication is taking place.").

⁶⁵ See USSG §§4A1.1 (Criminal History Category) and 4A1.2 (Definitions and Instructions for Computing Criminal History).

Question

I'm having trouble determining the maximum periods of imprisonment and supervised release that I'm allowed to impose following a revocation.

Is there an easy way to figure that out without having to look up the statutes and case law?





UNITED STATES SENTENCING COMMISSION

THE UNITED STATES SENTENCING COMMISSION



Probation and Supervised Release

The United States Code (U.S.C.) and the Guidelines Manual both address the response to violations of their conditions. This document serves as a quick reference to Chapter Seven of the Guidelines Manual, Violations of Probation and Supervised Release. The Guidelines Manual, Violations of Probation and Supervised Release, be correctly applied and considered, but are advisory.

Terms of Supervised Release and Probation

	Imprisonment Range 18 U.S.C. § 3559	Statutorily Authorized TSR 18 U.S.C. § 3583(b)
Class A Felony	Life imprisonment or Death	Not more than 5 years
Class B Felony	25 years or more	Not more than 5 years
Class C Felony	10 years < term < 25 years	Not more than 3 years
Class D Felony	5 years < term < 10 years	Not more than 3 years
Class E Felony	1 year < term < 5 years	Not more than 1 year
Class A Misd.	6 months < term < 1 year	Not more than 1 year

*USSC §5012(b) provides that the TSR shall not be less than the term of imprisonment.

Should the defendant violate his probation term, the maximum sentence is the original offense of conviction.

Classification and Reporting of Violations - §57B1.1 & §57B1.2

GRADE A

Conduct constituting a federal, state, or local offense punishable by imprisonment exceeding one year, or death.

- Crime of Violence;
 - Controlled substance offense; and/or
 - Possession of § 5042(a) firearm or device;
2. Any other offense punishable by imprisonment exceeding 20 years.

GRADE B

Conduct constituting any other federal, state, or local offense punishable by imprisonment exceeding one year.

GRADE C

Conduct constituting any other federal, state, or local offense punishable by imprisonment of one year or less (i.e., "technical violations").



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HELPLINE

THE UNITED STATES SENTENCING COMMISSION



Reimposition of Supervised Release

Determining the statutorily available term of supervised release following revocation pursuant to 18 U.S.C. § 3583(h).

Can a New Term of Supervised Release be Imposed?

A new term of supervised release may be imposed upon revocation of a prior term of supervised release. The calculation is fairly simple, but requires critical information, such as the date of the original offense, the statutorily authorized term of supervised release based on the offense type, and the term of imprisonment upon revocation. The date of the original offense will determine how the new term of supervised release is calculated.

On or after April 30, 2003	Between September 13, 1994 - April 29, 2003	Before September 13, 1994
<div>1</div> <p>Determine the statutory maximum term of supervised release for the original offense.</p> <hr/> <p>Subtract the amount of imprisonment to be imposed upon revocation (in addition to any term(s) of imprisonment imposed on prior revocation(s) of the supervised release).</p> <hr/> <p>The difference is the statutory maximum term of supervised release that can be imposed upon revocation of supervised release.</p>	<p>Determine the statutory maximum term of imprisonment upon revocation.</p> <hr/> <p>Subtract the amount of imprisonment to be imposed upon revocation (in addition to any term(s) of imprisonment imposed on prior revocation(s)).</p> <hr/> <p>If the difference is greater than zero, an additional term of supervised release can be imposed.</p>	<div>2</div> <p>Determine the length of the supervised release term being revoked. (NOTE: Court may first extend term to statutory maximum - § 3583(s)(2)).</p> <hr/> <p>Subtract the amount of imprisonment to be imposed upon revocation (in addition to any term(s) of imprisonment imposed on prior revocation(s)).</p> <hr/> <p>The difference is the maximum term of supervised release that can be imposed upon revocation of supervised release.</p>



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FILTERS



TRAINING TOPIC

- ☐ Revocations of Probation and Supervised Release

Supervised Release

DECEMBER 2020

Supervised Release The following is a brief overview of supervised release. One-Pager

LEARN MORE

Question

I'm sentencing a person who was convicted of money laundering and wire fraud. In calculating the money laundering count, I'm instructed to use §2B1.1.

In §2B1.1, do I begin with an offense level of 6 or 7?

There appears to be two permissible ways to read the text and application notes.



INTERACTIVE CASE LAW UPDATE

Start Your Case Here!

(Updated April 30, 2024) Case law updates are selected by the Commission staff. The guidelines and other aspects of the release is replaced with a current chronological order within a circuit.

Click the button below to access the case law update for a specific circuit or circuit. Click the "Back to Home" button to return to the map and list of topics.

EXPLORE BY TOPIC



Click on a topic to navigate to a relevant case law update by circuit.

The Commission publishes the information does not necessarily represent the Commission's views.

Case Law Update Archives:

January - March 2024
January - December 2023
January - December 2022

HelpLine

The USSC HelpLine assists practitioners in applying the guidelines.

ASK A QUESTION

DISCLAIMER

JANUARY - DECEMBER 2023

Economic Crimes

D.C. Circuit

United States v. Otunyo, 63 F.4th 948 (D.C. Cir. 2023)

Under §2B1.1(a)(1), "an offense referenced to this guideline" refers to "any one" of the defendant's convictions, not the "most serious" offense within a group under the guidelines.

Application of the sophisticated means enhancement (§2B1.1(b)(10)(C)) together with the enhancement for sophisticated money laundering (§2S1.1(b)(3)) was not double counting where the money laundering was sophisticated for separate reasons than the sophisticated means for the underlying bank fraud.

First Circuit

United States v. Gadson, 77 F.4th 16 (1st Cir. 2023)

The district court did not plainly err in using "intended loss" rather than "actual loss" to determine the base offense level under §2B1.1. Circuit precedent provides "reasonable arguments as to why 'loss' as used in [§2B1.1] does not unambiguously mean only actual loss, and why 'intended loss' falls within that term's 'zone of ambiguity.'"

The district court did not clearly err in applying a two-level enhancement under §2B1.1(b)(11)(C)(i) for a co-conspirator's unauthorized use of a third party's means of identification to fraudulently open a bank account, where the defendant's own use of fraudulent documents to open bank accounts established "that it was reasonably foreseeable to him that [his co-conspirators] could use false identities when opening additional bank accounts."

United States v. Iwuanyanwu, 69 F.4th 17 (1st Cir. 2023)

The district court did not clearly err in applying a two-level enhancement under §2B1.1(b)(2)(A)(iii) for causing substantial financial hardship where the victim, who was disabled, unable to work, and lived on a fixed income, wired almost six months of income to the defendant and had to take out personal loans to pay her medical expenses as a result.

Second Circuit

No cases selected by Commission staff.

Cases appear in descending chronological order within a circuit.

Question

I've received my first section 3582(c)(2) motion for a sentencing reduction based on a retroactive amendment.

Help!





UNITED STATES

Adobe Connect Recordings

GET STARTED


PRO




TRA




Select "GET STARTED"


 Overview

 Searching for Recordings


RECORDINGS BY SUBJECT


 Session Topics

RECORDINGS BY SERIES

 Series Topics

RECORDINGS BY MONTH

 March 2024 (1 Recording)

 November 2023 (1 Recording)

Select your topic(s) of interest within the accordion below; you can only have one accordion section open at a time to simplify navigation. Links are provided to help you easily locate recordings. Remember that **newest content is always on top of each section**, and that **this may require you to work backwards** if you are interested in multiple sessions that build upon a single topic. If a topic has an AM and PM session listed it means that this session was run twice on that day. The presentation content is the same; however, there may be subtle differences in the delivery.

Amendments

Criminal History Amendment & Potential Retroactivity

This session will discuss the Commission's promulgated criminal history amendment and the recent vote on retroactivity on parts of the amendment.

- [November 2023](#)

Amendments

An in-depth look at the recently passed 2023 amendments including changes to compassionate release, status points for zero-point offenders, firearms, and more.

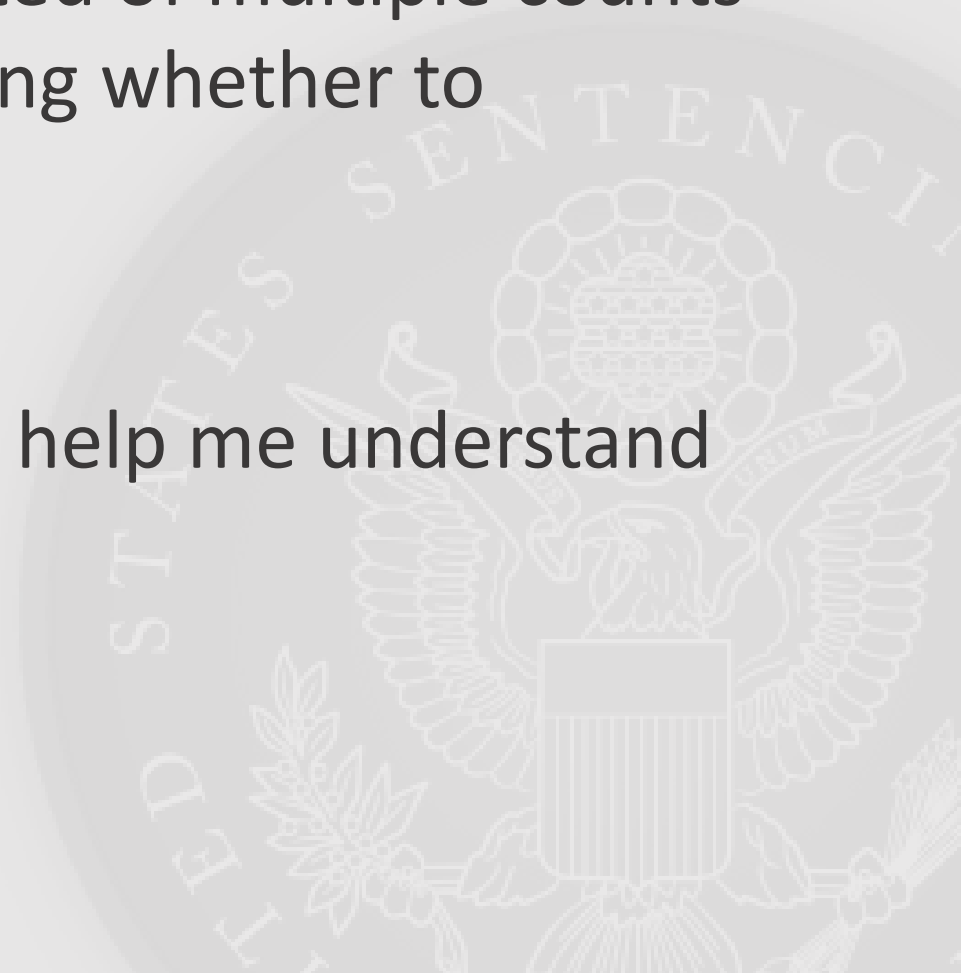
- [August 2023](#)

Case Law Updates

Question

I'm sentencing a person who was convicted of multiple counts of conviction, and the parties are disputing whether to "group" or "assign units."

What resources do you have available to help me understand the issue?





MULTIPLE COUNTS

Grouping of Multiple Counts

If you've ever encountered a federal case with multiple counts, attend this session. Learn how to determine a single offense level for multiple counts – we'll make it easy by using our decision tree for offense types. The session addresses grouping rules, harm, the assignment of units for cases involving multiple counts, and grouping rules.

The following quick reference materials were developed on the topic of multiple counts.

- [Decision Tree](#) PDF
- [Resources Guide](#) PDF

One-Pagers

Product Type:

[Decision Trees](#)
[Quick Reference Materials](#)



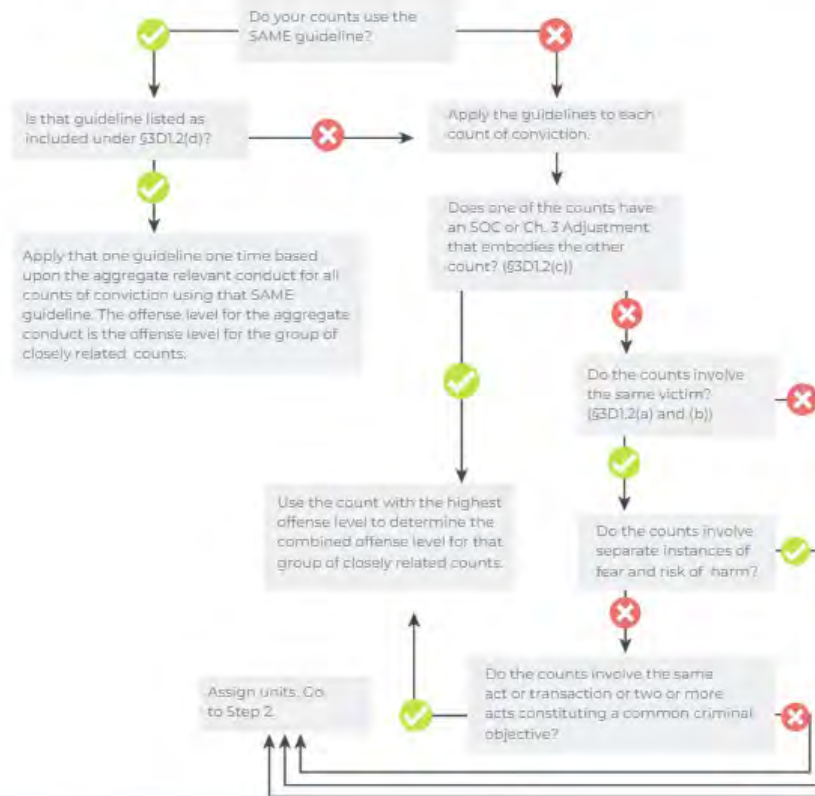
Grouping Multiple Counts of Conviction Decision Tree

Step 1:

Grouping Closely Related Counts (§3D1.2)

Answer these questions for each count* to determine if the grouping rules at §3D1.2 apply. If, after evaluating each count,* two or more counts* remain, move onto Step 2: Assignment of Units (§3D1.4).

*"Count" can be a single count or a group of closely-related counts.





GROUPING MULTIPLE COUNTS OF CONVICTION

Summary

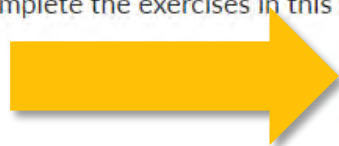
(August 2020) This eLearning module demonstrates applying the grouping rules following the process outlined in this [Decision Tree](#).

Learning Objectives

By the end of this module, you will be able to:

- Use the Grouping Decision Tree to determine a single offense level for a case involving multiple counts of conviction;
- Define the criteria for applying the four grouping rules in §3D1.2;
- Identify the difference between grouping multiple counts of conviction under §3D1.2(a), (b), and (c);
- Describe the process of assigning units under §3D1.4;
- Distinguish between "grouping" multiple counts of conviction under §3D1.4;
- Apply the multiple counts rules under Chapter Three, Part D to real-world scenarios; and
- Determine a single offense level for real-world scenarios involving multiple counts of conviction.

In order to complete the exercises in this course, you will need to have access to the [Grouping Decision Tree](#).



Grouping Multiple Counts of Conviction

START COURSE

DETAILS ▾

Learning Objectives

By the end of this module, you will be able to:

- Use the [Grouping Decision Tree](#) to determine a single offense level for a case involving multiple counts of conviction;
- Define the criteria for applying the four grouping rules in §3D1.2;
- Identify the difference between grouping multiple counts of conviction under §3D1.2(d) and grouping multiple counts under §3D1.2(a), (b), and (c);
- Describe the process of assigning units under §3D1.4;
- Distinguish between "grouping" multiple counts of conviction under §3D1.2 and the "assignment of units" to multiple counts of conviction under §3D1.4;
- Apply the multiple counts rules under Chapter Three, Part D to real-world scenarios; and
- Determine a single offense level for real-world scenarios involving multiple counts of conviction.

FILTERS

TRAINING TOPIC

- ☐ Criminal History
- ☐ Introductory-Level Guideline Application
- ☒ Multiple Counts/Grouping
- ☐ Organizational Guidelines
- ☐ Relevant Conduct
- ☐ Sentencing Procedure

CES

Question

Why did the Commission remove burglary as one its enumerated crimes of violence?





2023 GUID

CHAPTER FOUR – CRIMINAL HISTORY AND CRIMINAL LIVELIHOOD

798

The 20
below
amenc
amenc

§4B1.2. Definitions.

(a) Crime

by imprison

The amendment deletes “burglary of a dwelling” from the list of enumerated offenses. In implementing this change, the Commission considered that (1) burglary offenses rarely result in physical violence, (2) “burglary of a dwelling” is rarely the instant offense of conviction or the determinative predicate for purposes of triggering higher penalties under the career offender guideline, and (3) historically, career offenders have rarely been rearrested for a burglary offense after release. The Commission considered several studies and analyses in reaching these conclusions.

(1)

another

(2)

arson,

material

CHA

CHA

CHA

Reason for Amendment: This amendment is a result of the Commission's multi-year study of statutory and guideline definitions relating to the nature of a defendant's prior conviction (e.g., “crime of violence,” “aggravated felony,” “violent felony,” “drug trafficking offense,” and “felony drug offense”) and the impact of such definitions on the relevant statutory and guideline provisions (e.g., career offender, illegal reentry, and armed career criminal). As part of this study, the Commission considered feedback from the field, including conducting a roundtable discussion on these topics and considering the varying case law interpreting these statutory and guideline definitions. In particular, the Commission has received extensive comment, and is aware of numerous court opinions, expressing a view that the definition of “crime of violence” is complex and unclear. The amendment is informed by this public comment and case law, as well as the Supreme Court's recent decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015), regarding the statutory definition of “violent felony” in 18 U.S.C. § 924(e) (commonly referred to as the “Armed Career Criminal Act” or “ACCA”). While not addressing the guidelines, that decision has given rise to significant litigation regarding the guideline definition of “crime of violence.” Finally, the Commission analyzed a range of sentencing data, including a study of the sentences relative to the guidelines for the career offender guidelines. See U.S. Sent’g Comm’n, *Quick Facts: Career Offenders* (Nov. 2015) (highlighting the decreasing rate of within range guideline sentences (27.5% in fiscal year 2014), which has been coupled with increasing rates of government (45.6%) and non-government sponsored below range sentences (25.9%)).

Note:

November 01, 1989

(268); Amended effective

November 01, 1997 ([Amendment 568](#));

, 2002 ([Amendment 646](#));

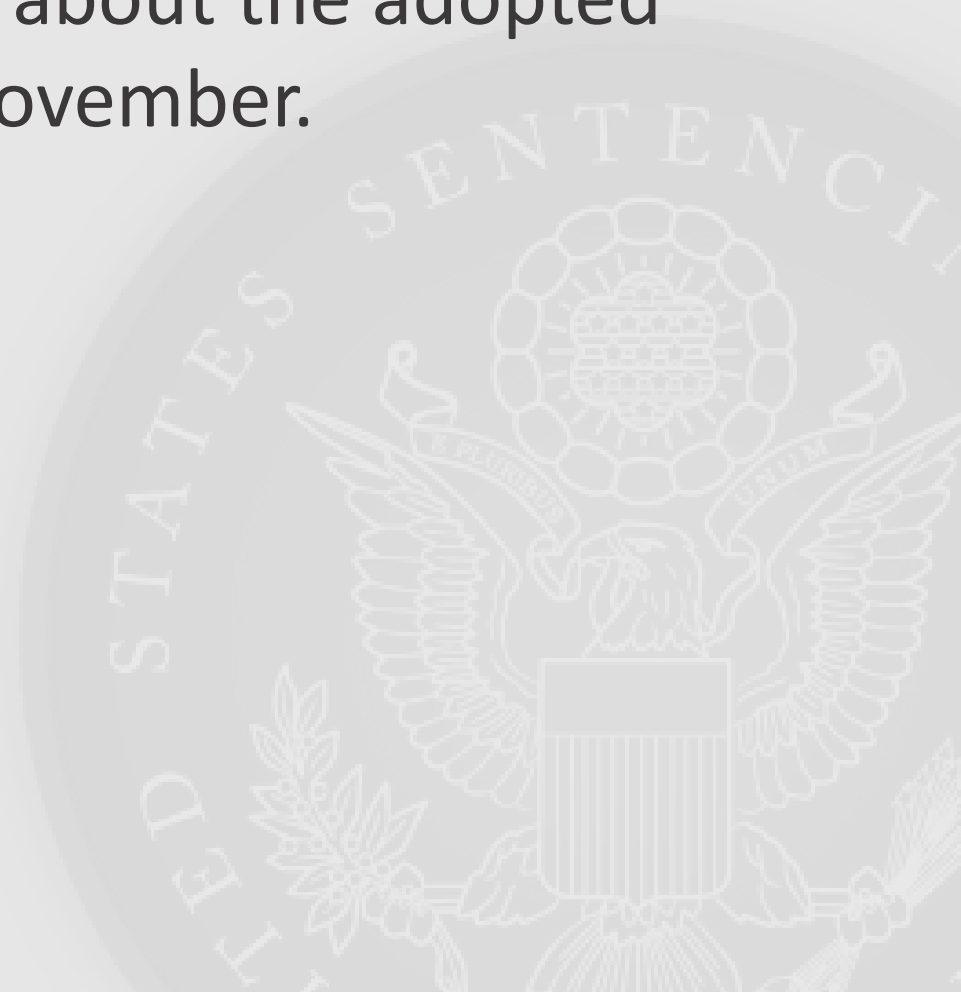
2016 ([Amendment 798](#))

You will find the
comprehensive archive
amendments and *Guidelines*
dating back to 1987.

Question

Defense attorneys are raising arguments about the adopted amendments that will go into effect in November.

Where can I find them?





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SENTENC

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> MEETINGS &

> FEDERAL REG

> PUBLIC COM

> AMENDMENT

Amendments

Data Briefing



FILTERS



AMENDMENT CYCLE

- ☐ Adopted Amendments
- ☐ Proposed Amendments

TOPIC

- ☐ 2014 Drug Amendment
- ☐ Acceptance of Responsibility
- ☐ Acquitted Conduct
- ☐ Alien Smuggling
- ☐ Alternatives to Incarceration
- ☐ Amendments
- ☐ Animal Fighting
- ☐ Bipartisan Budget Act
- ☐ Campaign Finance
- ☐ Cannabinoids
- ☐ Career Offenders

AMENDMENT



Adopted Amendments (effecti

APRIL 2024

Amendment Cycle:
Adopted Amendments

- "Reader-Friendly"
- Official Text



LEARN MORE



Amendments to the Sentencing Guidelines

April 30, 2024

Effective Date
November 1, 2024

This compilation contains unofficial text of amendments to the sentencing guidelines, policy statements, commentary, and Statutory Index submitted to Congress, and is provided only for the convenience of the user. Official text of the amendments can be found on the Commission's website at www.ussc.gov and will appear in a forthcoming edition of the *Federal Register*.

AMENDMENT



Retroactivity Ame
(2023)

AUGUST 2023

"Reader-Friendly"

LEARN MORE

Questions or Comments?



www.ussc.gov



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2024 Proposed Amendments

2024 Amendment Cycle Input

Public Comment

Thousands received

Two days of hearings

50 witnesses

Advisory Group Input

Meetings with experts

2024 Amendments

Acquitted Conduct

Intended Loss

Youthful Offender

Drug Offenses

Circuit Split: Altered Firearms

“Zero-Point” Offenders

Acquitted Conduct



Acquitted Conduct Timeline



**2023 Proposed
Amendment**



**Supreme
Court**



**118th
Congress**



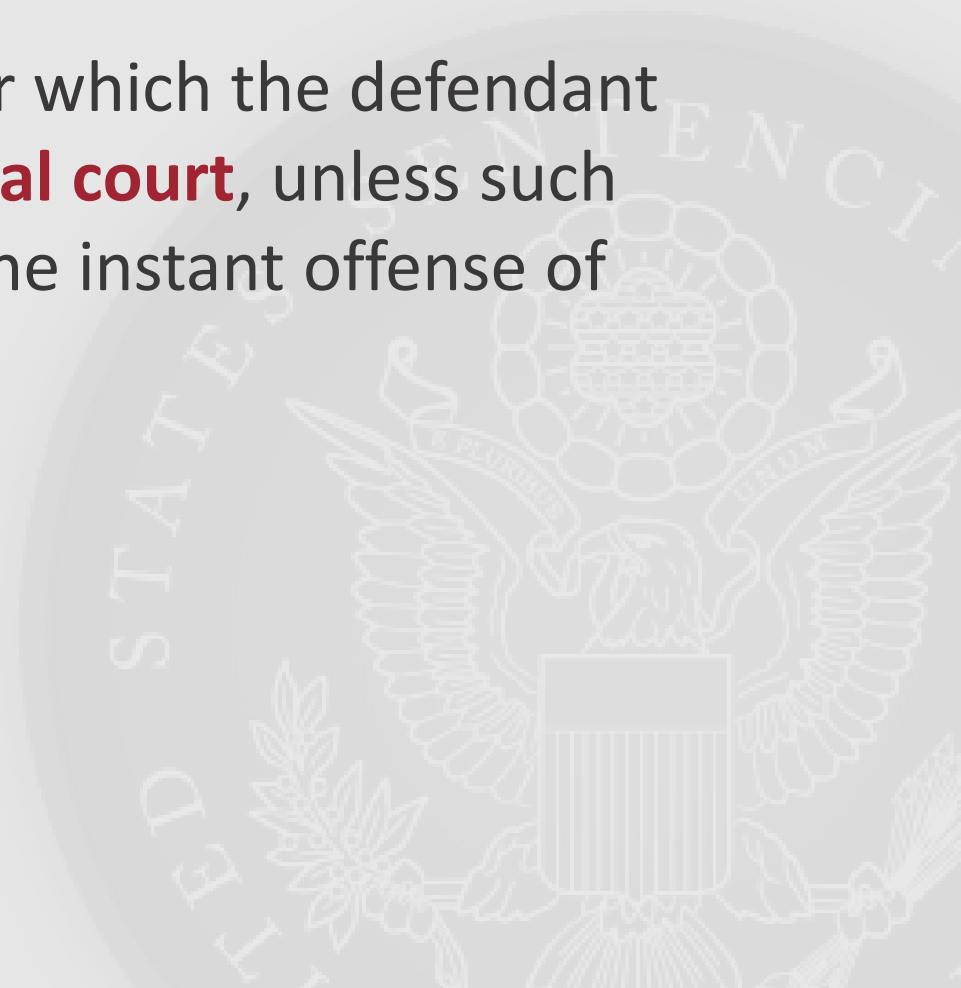
**2024
Amendment**

Acquitted Conduct

Promulgated §1B1.3(c)

(c) ACQUITTED CONDUCT –

Relevant conduct **does not include** conduct for which the defendant was **criminally charged and acquitted in federal court**, unless such conduct also establishes, in whole or in part, the instant offense of conviction.





Intended Loss Amendment

Commission Priorities for 2023–2024

88 Fed. Reg. 60536 (2023)

“Continuation of its multiyear study of the Guidelines Manual to address case law concerning the **validity and enforceability of guideline commentary**, and possible consideration of amendments that might be appropriate.”



Stinson v. United States

508 U.S. 36 (1993)

Commentary is authoritative unless:

1

Violates the Constitution or Federal Statute

2

Inconsistent or Plainly Erroneous

or

Kisor v. Wilkie

139 S. Ct. 2400 (2019)

Auer deference applies:

1

Genuinely Ambiguous

2

Reasonable

3

Character and Context

&

Circuit Split: *Stinson* or *Kisor*

Stinson (More Deferential)

United States v. Vargas, 74 F.4th 673 (5th Cir. 2023) (en banc)

United States v. White, 97 F.4th 532 (7th Cir. 2024)

United States v. Maloid, 71 F.4th 795 (10th Cir. 2023)

Kisor (Less Deferential)

United States v. Nasir, 17 F.4th 459 (3d Cir. 2021) (en banc)

United States v. Riccardi, 989 F.3d 476 (6th Cir. 2021)

United States v. Castillo, 69 F.4th 648 (9th Cir. 2023)

United States v. Dupree, 57 F.4th 1269 (11th Cir. 2022) (en banc)

Intra-Circuit Split

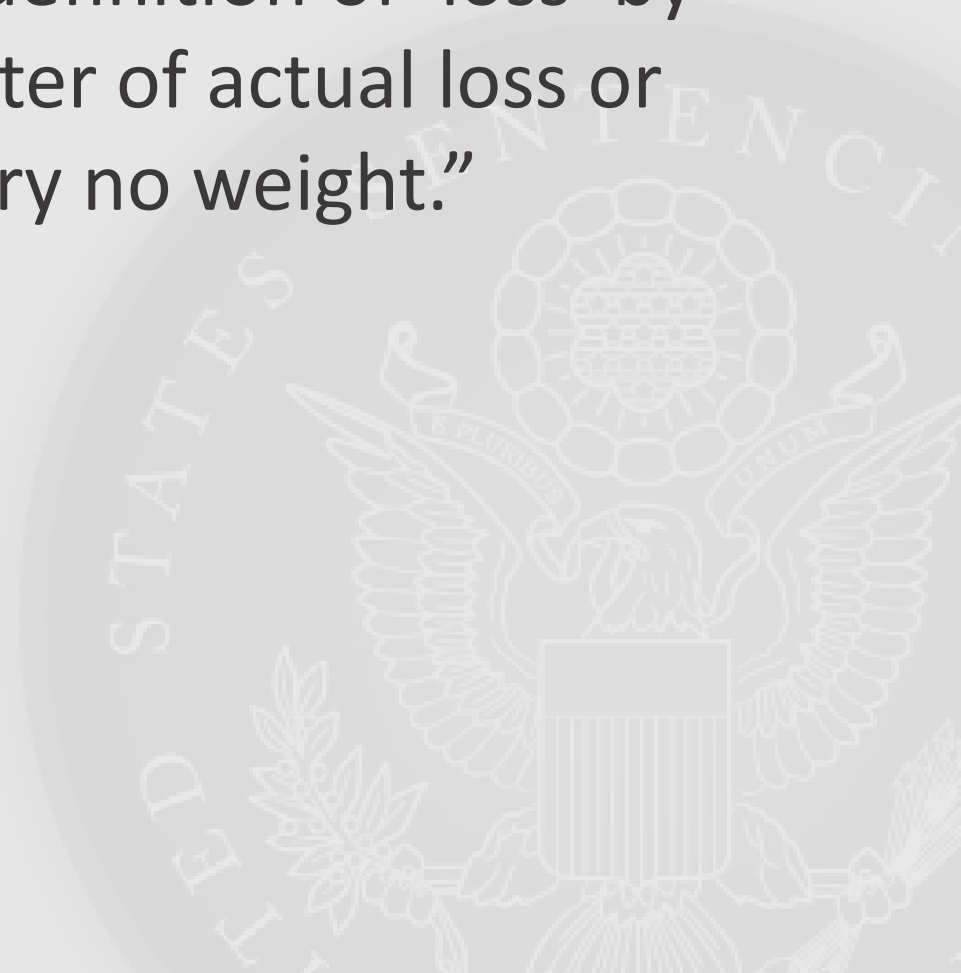
United States v. Campbell, 22 F. 4th 438 (4th Cir. 2022)

United States v. Moses, 23 F. 4th 347 (4th Cir. 2022)

United States v. Banks

55 F.4th 246 (3d Cir. 2022)

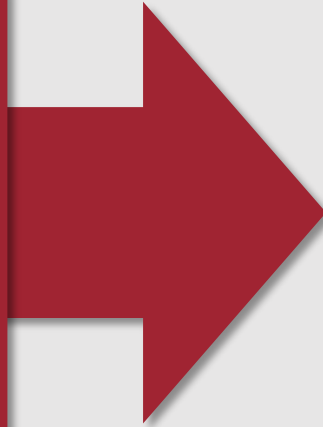
“Because the commentary expands the definition of ‘loss’ by explaining that generally ‘loss is the greater of actual loss or intended loss,’ we accord the commentary no weight.”



Loss Amendment

Amendment 827

**Commentary
(Intended Loss)**



**Guideline Text
(Intended Loss)**





Youthful Offender Amendment

Duties of the Commission

28 U.S.C. §§ 991(b)(1)(C), 994(d)



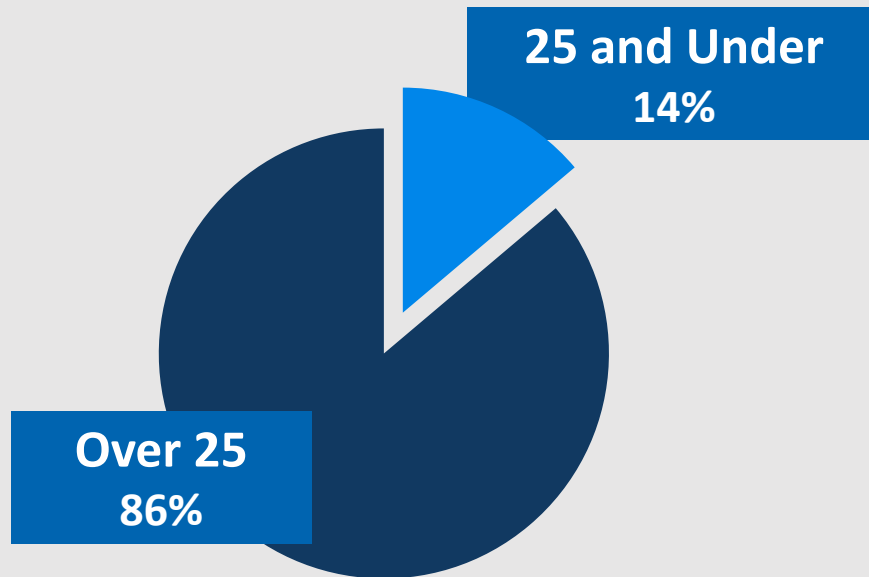
Reflect Advancement in Knowledge of Human Behavior

Determine Relevance of Age

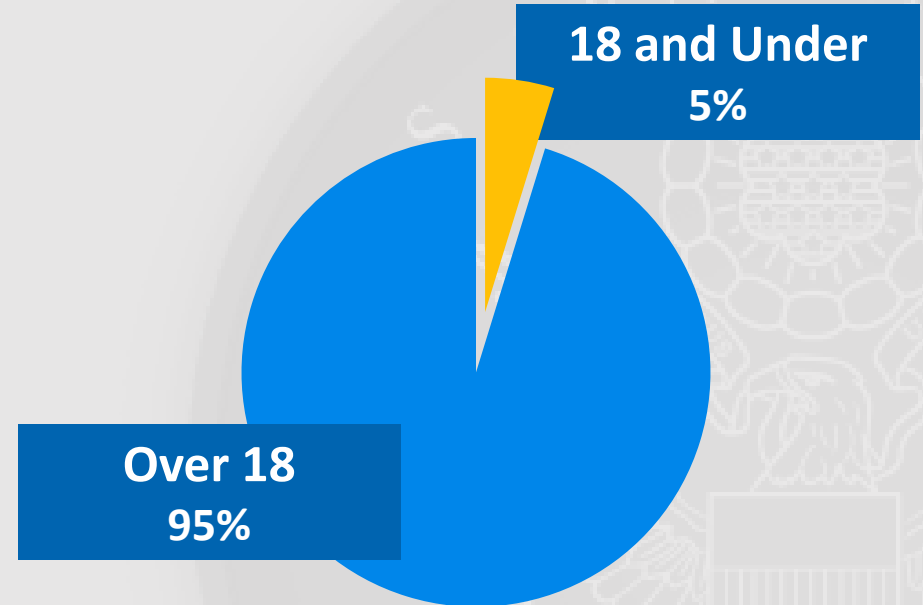
Data on Youth (FY2022)

What We Learned During the Amendment Cycle

Age at Sentencing

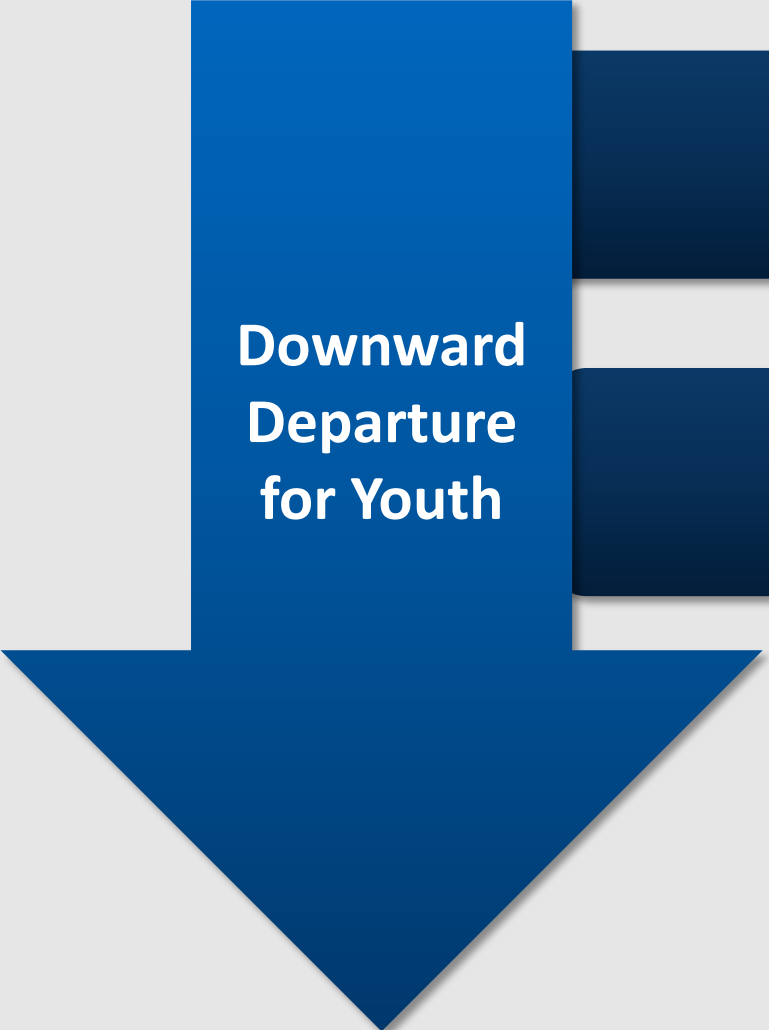


Age at Prior Offense



Downward Departure for Youth

Promulgated Amendment to §5H1.1



Downward
Departure
for Youth

Time of Sentencing

or

Time of Prior Offenses

General Information on Youth

Promulgated Amendment to §5H1.1

- Risk-Seeking
- Impulsive
- Susceptible to Outside Influence

Age-Crime Curve

**Amenable to
Rehabilitation**

Information for Specific Youths

Promulgated Amendment to §5H1.1

Risk Factors

Environment

Adverse Childhood Experiences

Substance Use

Familial Relationships

Lack of Educational Opportunities



Individualized Promotion of Crime Desistence

Promulgated Amendment to §5H1.1

Age-Appropriate
Interventions

Protective Factors

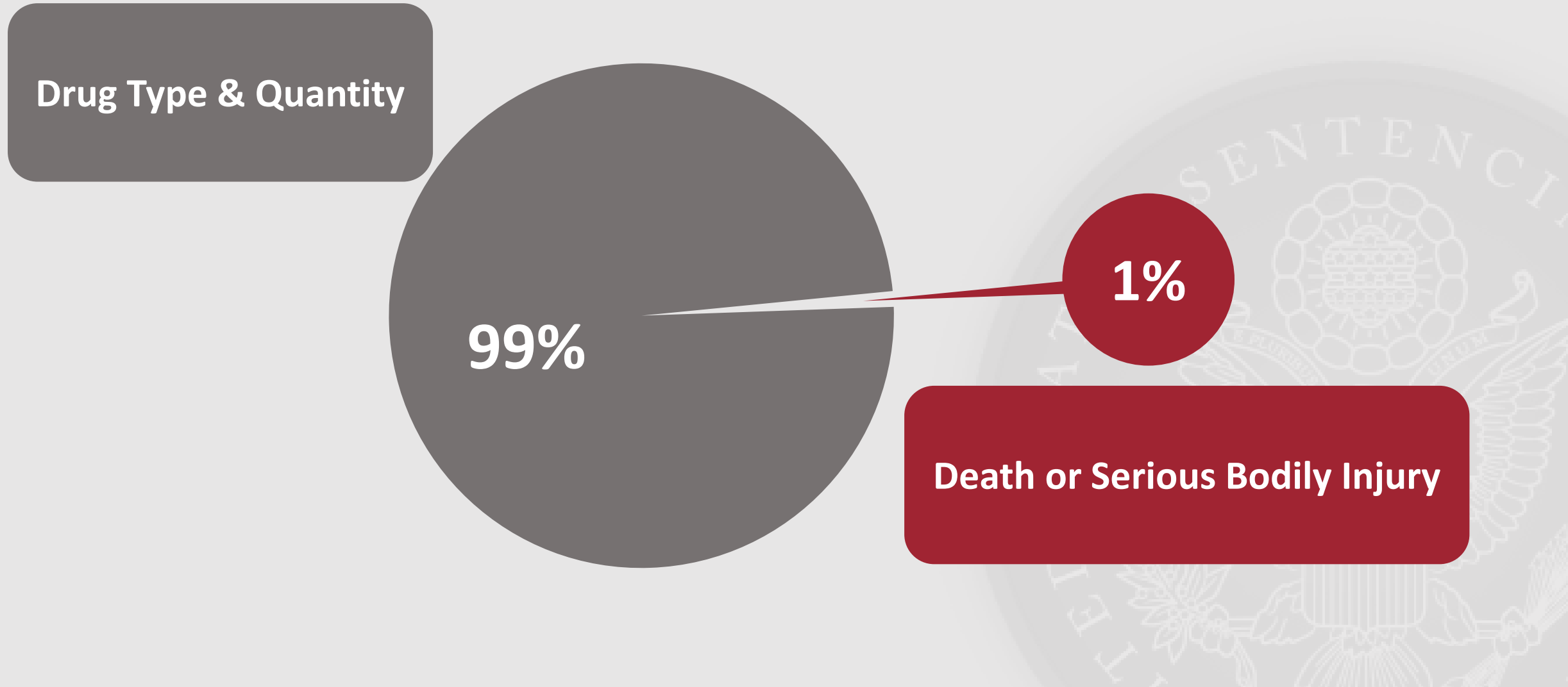
Non-Incarceration



Drug Trafficking Amendment

Drug Trafficking: Base Offense Levels

Two Calculation Methods



Death or Serious Bodily Injury

Offense of Conviction or Relevant Conduct?

Death or Serious Bodily Injury

Offense of Conviction
(Elements)



or

Relevant Conduct
(Actual Conduct)



Death or Serious Bodily Injury

Which Alternative Offense Level Applies?

Death or Serious Bodily Injury

Offense of Conviction
(Elements)



43

Statutory Minimum: Life

38

Statutory Minimum: 20 Years

30

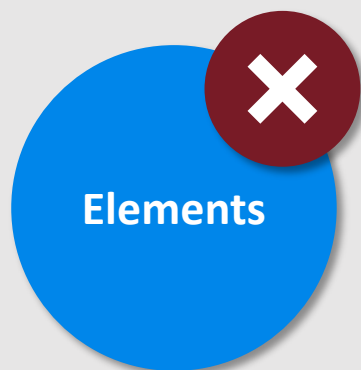
Statutory Maximum: 30 Years

26

Statutory Maximum: 15 Years

Stipulating to Death/SBI Offense Levels

Section 1B1.2



If the **elements** of the offense do not establish death or serious bodily injury . . .



. . . the parties can **stipulate** to the higher base offense levels.

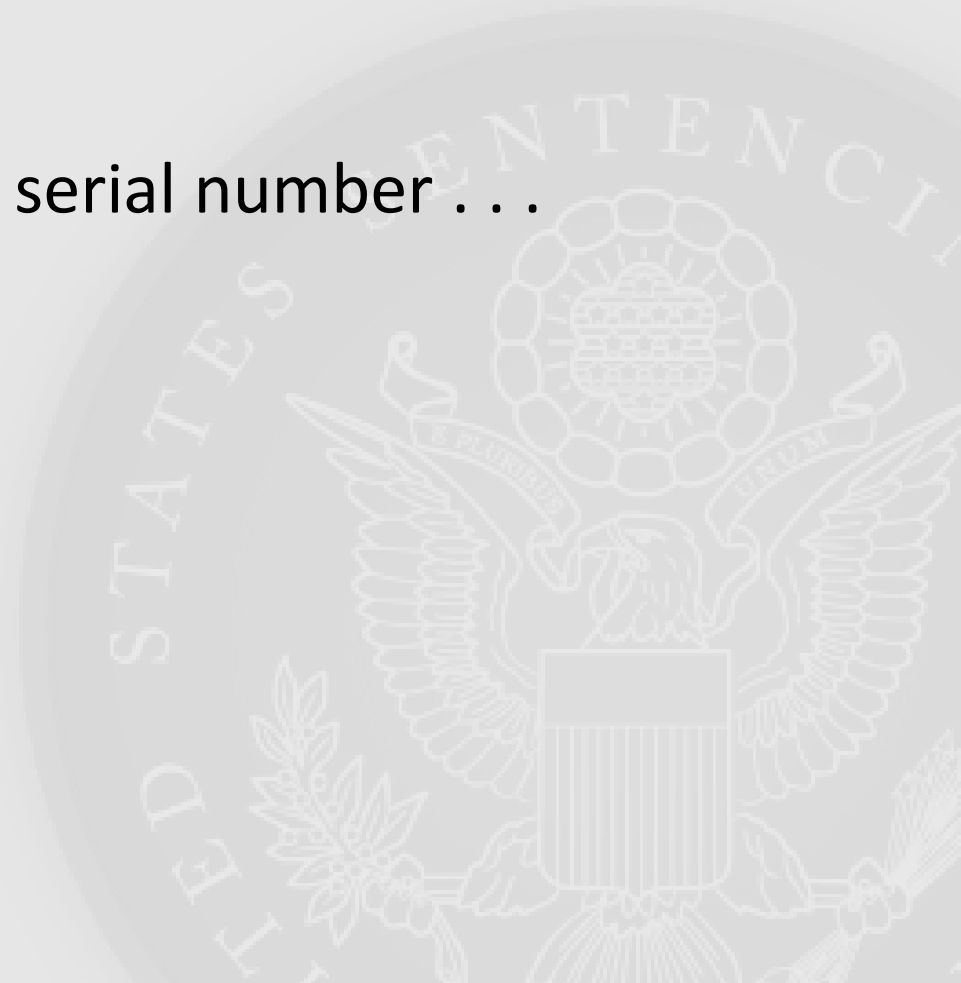


Circuit Conflict Amendment: Firearm

Obliterated/Altered Serial Number §2K2.1(b)(4)

Current Language

(B)(i) any firearm had an altered or obliterated serial number . . .
increase by **4** levels.



§2K2.1(b)(4)(B)

Proposed Change

(B)(i) any firearm had ~~an altered or obliterated serial number~~ a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye . . .



Section 4C1.1 Amendment

Adjustment for Certain Zero-Point Offenders

Section 4C1.1

2

Level
Decrease

No Criminal History Points | §4C1.1(a)(1)

AND

No Offense Exclusions | §4C1.1(a)(2)-(10)

Zero-point Exclusions

Terrorism Adjustment Applied (§3A1.4)

Def. did not use violence/threats

No death or serious bodily injury

Not a sex offense conviction

Def. did not cause substantial financial hardship

Def. did not possess, transfer, receive firearm

Offenses against Individual Rights

No adjustment for vulnerable victim or hate crime

No aggravating role under §3B1.1 and no CCE

Zero-point Exclusions

Terrorism Adjustment Applied (§3A1.4)

Def. did not use violence/threats

No death or serious bodily injury

Not a sex offense conviction

Def. did not cause substantial financial hardship

Def. did not possess, transfer, receive firearm

Offenses against Individual Rights

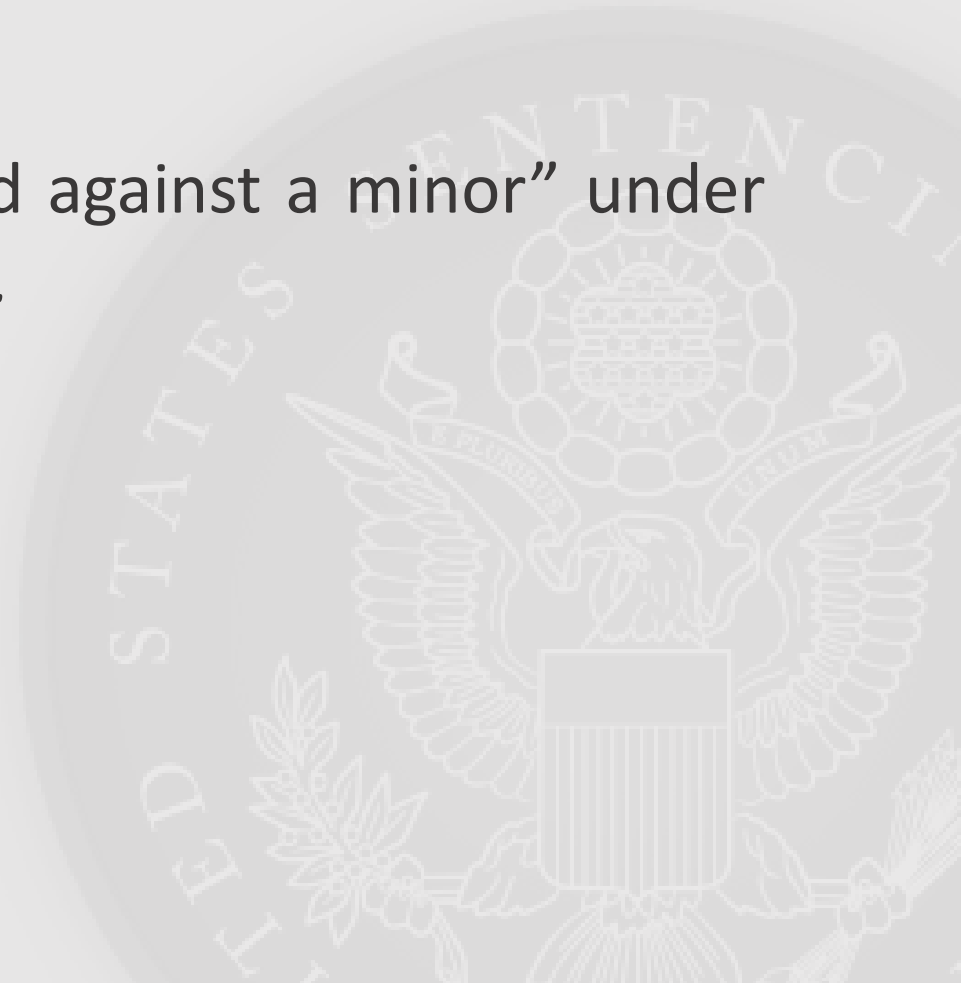
No adjustment for vulnerable victim or hate crime

No aggravating role under §3B1.1 and no CCE

“Sex Offense” Definition in §4C1.1

Current (a)(5)

“***Sex offense***” means an offense, “perpetrated against a minor” under listed statutory provisions (*e.g. sex trafficking*).



“Sex Offense” Definition in §4C1.1

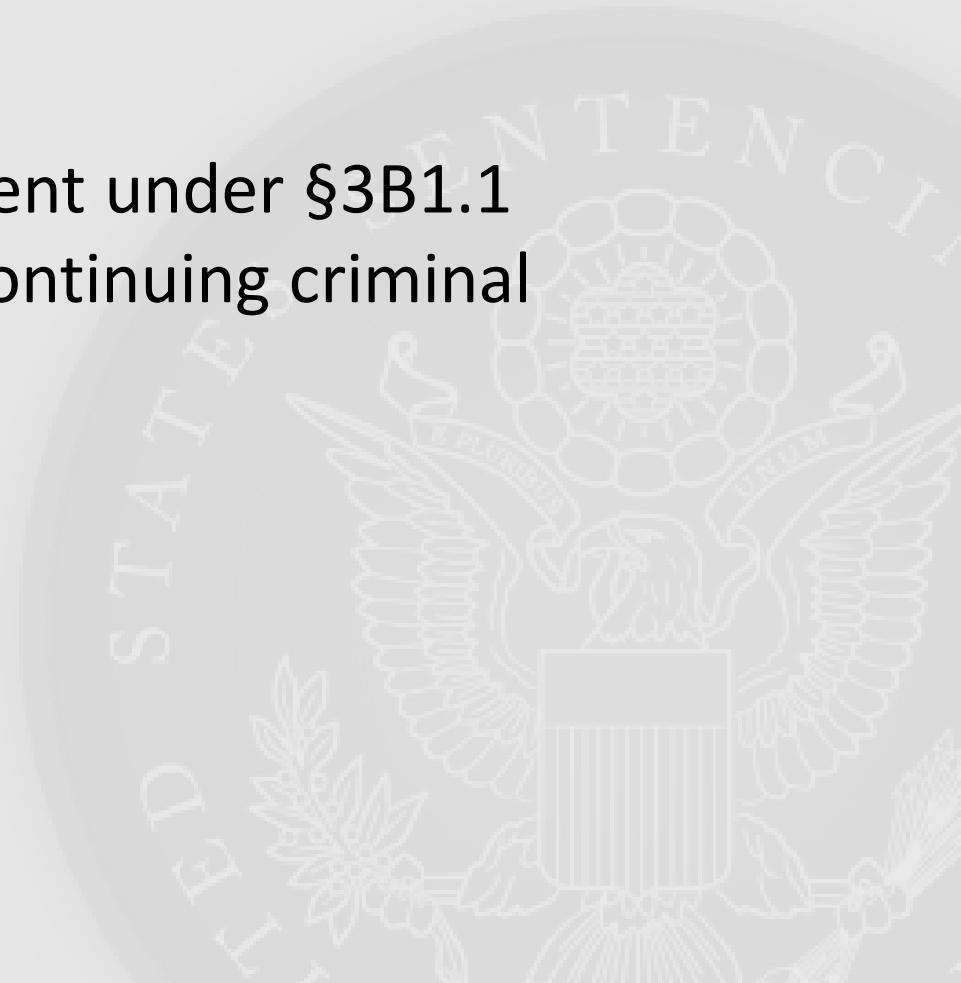
Proposed Amendment

“***Sex offense***” means (A) ~~an offense, perpetrated against a minor,~~ **an offense** under listed statutory provisions (*e.g.* sex trafficking).

“Aggravating Role and CCE”

Current (a)(10)

(10) the defendant did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise (CCE), as defined in 21 U.S.C. § 848;



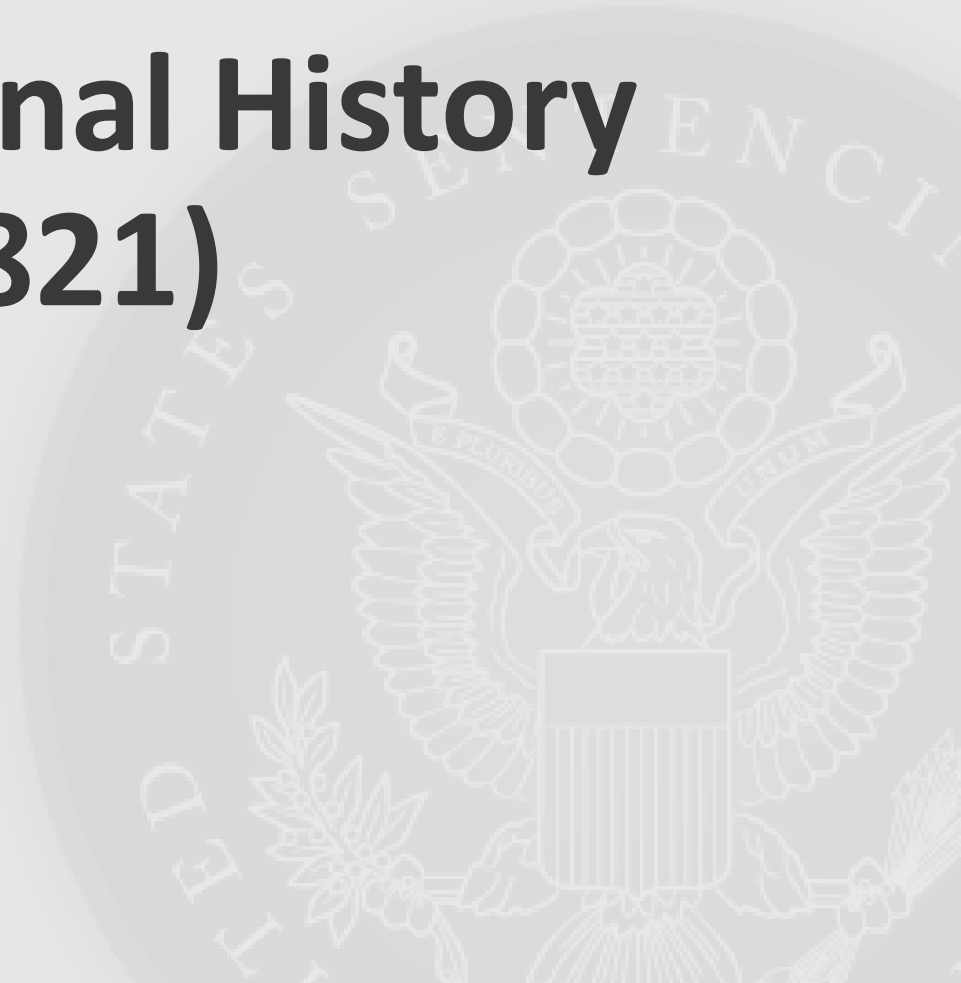
“Aggravating Role and CCE”

Proposed Amendment

(10) the defendant did not receive an adjustment under §3B1.1 (Aggravating Role) ~~and~~; and

(11) the defendant was not engaged in a continuing criminal enterprise (CCE), as defined in 21 U.S.C. § 848;

Retroactivity of Criminal History Amendment (821)



2023 Criminal History Amendments

1

Status Points

2

Criminal History Zero



Status Point

Section 4A1.1(e)

Add 1 Criminal History Point If...

1

7+

7 or More Criminal
History Points

§4A1.1(a)–(d)

AND

2

Under Criminal Justice
Sentence*

Adjustment for “Criminal History Zero”

Section 4C1.1

2

Level
Decrease

No Criminal History Points | §4C1.1(a)(1)

AND

No Offense Exclusions | §4C1.1(a)(2)-(10)

Motions for Retroactive Application of “Status Points”

	Total	Granted		Denied	
	N	N	%	N	%
Total	8,773	4,050	46.2	4,723	53.8

Source: U.S. Sentencing Commission Part A of the 2023 Criminal History Amendment Retroactivity Data Report, Table 1

Extent of Sentence Reductions for “Status Points” Grants

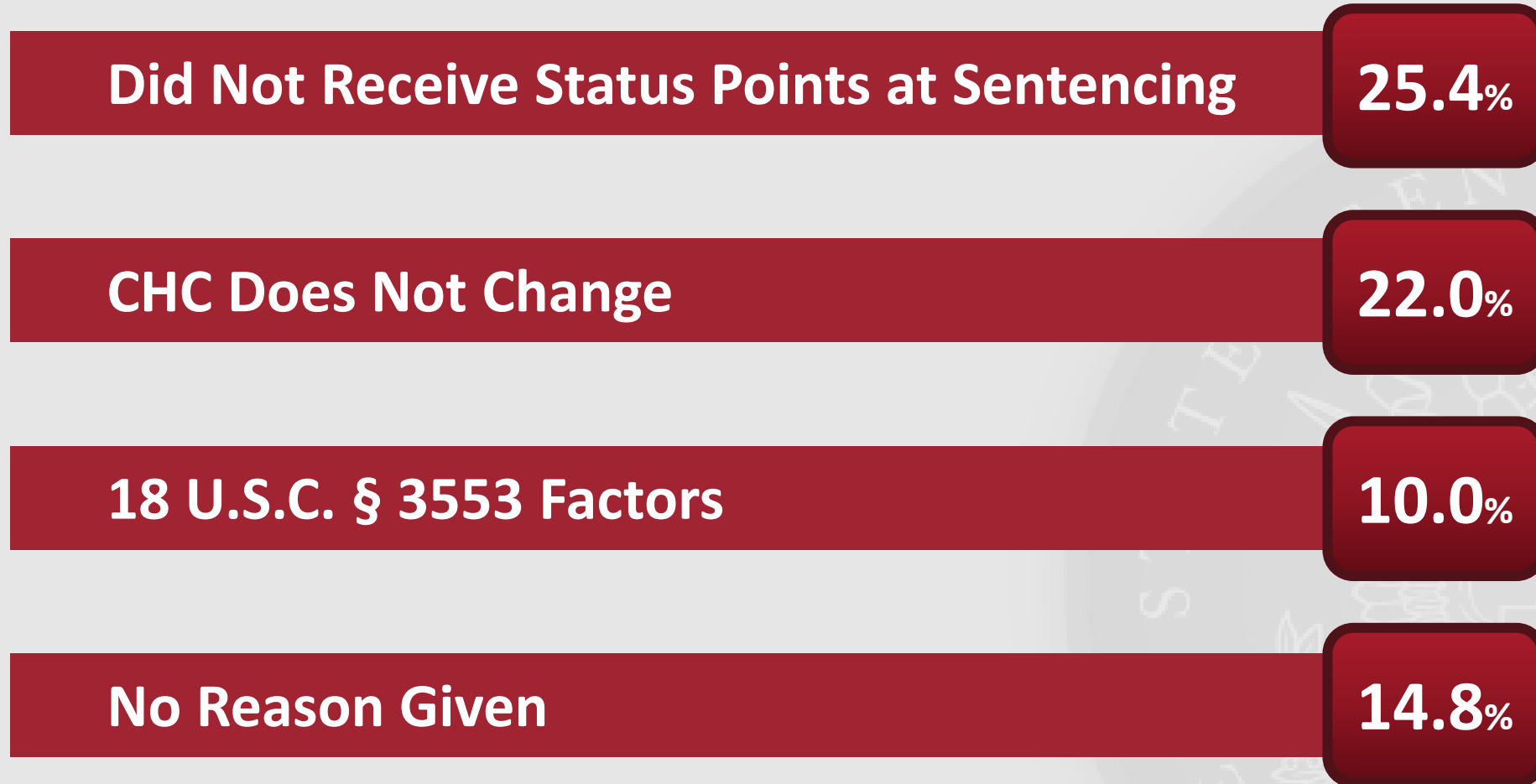
		Mean			
	N	Current Sentence in Months	New Sentence in Months	Decrease in Months From Current Sentence	Percent Decrease from Current Sentence
Total	3,705	102	91	11	12.1%

Source: U.S. Sentencing Commission Part A of the 2023 Criminal History Amendment Retroactivity Data Report, Table 8

Most Common Offenses for “Status Points” Grants



Most Common Reasons for “Status Points” Denials



Motions For Retroactive Application of “Criminal History Zero”

	Total	Granted		Denied	
	N	N	%	N	%
Total	6,561	2,773	42.3	3,788	57.7

Source: U.S. Sentencing Commission Part B of the 2023 Criminal History Amendment Retroactivity Data Report, Table 1

Extent of Sentence Reductions for “Criminal History Zero” Grants

		Mean			
	N	Current Sentence in Months	New Sentence in Months	Decrease in Months From Current Sentence	Percent Decrease from Current Sentence
Total	2,579	81	68	13	17.2%

Source: U.S. Sentencing Commission Part B of the 2023 Criminal History Amendment Retroactivity Data Report, Table 8

Most Common Offenses for “Criminal History Zero” Grants



Most Common Reasons for “Criminal History Zero” Denials

More than Zero Criminal History Points at Sentencing

25.4%

Firearm Possessed in Connection with the Offense

14.3%

Current Sentence Below Bottom of New Range and No §5K1.1

9.7%

Aggravating Role

9.3%

No Reason Given

11.8%

Complete AO Form 247

UNITED STATES DISTRICT COURT
for the

United States of America
v.

Case No: _____
USM No: _____

Date of Original Judgment: _____
Date of Previous Amended Judgment: _____
(Use Date of Last Amended Judgment if Any)

Defendant's Attorney

ORDER REGARDING MOTION FOR SENTENCE REDUCTION
PURSUANT TO 18 U.S.C. § 3582(c)(2)

Upon motion of ☐ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion, and taking into account the policy statement set forth at USSG §1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,

IT IS ORDERED that the motion is:
☐ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months is reduced to _____.
(See Page 2 for additional parts. Complete Parts I and II of Page 2 when motion is granted)

IT IS ORDERED that the motion is:
☐ DENIED. ☐ GRANTED and the defendant
the last judgment issued) of _____
(See Page 2 for additional parts. Complete

Send Form & Other Docs:



Reductions in Sentencing (Compassionate Release)



Motions for Compassionate Release

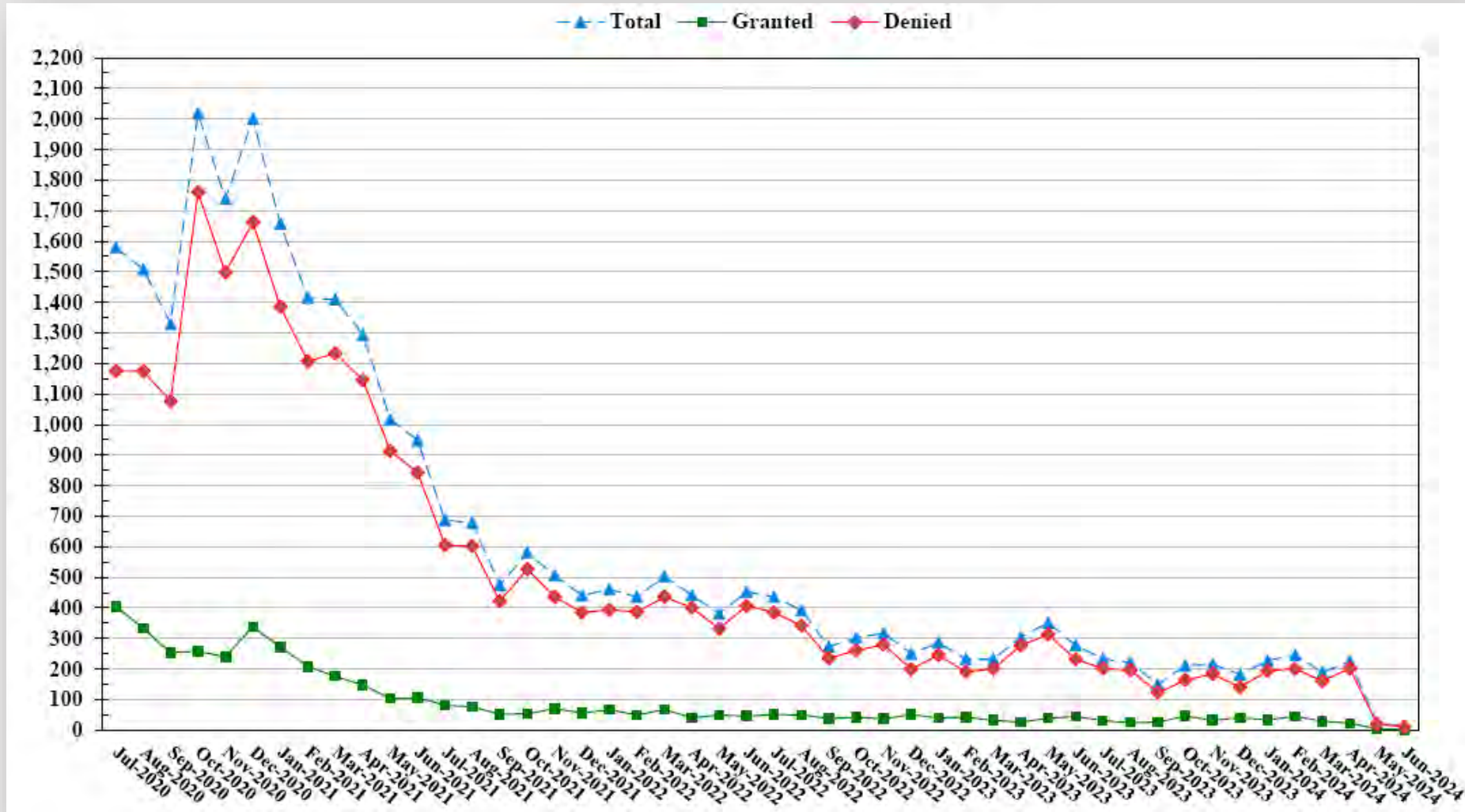
October 2019 – June 2024

	Total	Granted		Denied	
	N	N	%	N	%
Total	32,638	5,215	16.0	27,423	84.0

Source: U.S. Sentencing Commission Compassionate Release June 2024 Data Report, Table 1

Motions for Compassionate Release

July 2020 – June 2024



Source: U.S. Sentencing Commission Compassionate Release June 2024 Data Report, Figure 1

Top Reasons for Grants

First Two Quarters, FY 2024

Reasons	N	%
Rehabilitation	63	15.7
Serious physical or medical condition (USSG §1B1.13(b)(1)(B))	47	11.7
Terminal illness (USSG §1B1.13(b)(1)(A))	34	8.5
Unusually long sentence (10 or more years) and change in law (USSG §1B1.13(b)(6))	34	8.5
Multiple 18 U.S.C. § 924(c) penalties	24	6.0

Top Reasons For Denials

First Two Quarters, FY 2024

Reasons	N	%
18 U.S.C § 3553(a) factors	694	24.6
Not at risk from COVID/pandemic	279	9.9
Rehabilitation insufficient	257	9.1
Failure to exhaust administrative remedies	245	8.7
Insufficient proof of serious physical and medical condition	218	7.7
No extraordinary and compelling reason provided	187	6.6

Methamphetamine Report



The Rise of Federal Methamphetamine Offenses



United States Sentencing Commission
June 2024

Important Commission Dates



Important Commission Dates

**June
21:**

- Comment Period on Retroactivity Closes



**July
15:**

- Comment Period on Priorities Closes
- Retroactivity Hearing



**August
8:**

- Vote on Retroactivity



**August
20-22:**

- Commission's National Seminar



**November
1:**

- Amendments Effective Barring Congressional Action





Hot Topics in Federal Sentencing

National Judges Seminar

June 13, 2024

This document is produced and disseminated at U.S. taxpayer expense.

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Office of Education and Sentencing Practice

[Online HelpLine Form](#)



Hot Topics in Federal Sentencing

Adjustment for Certain Zero-Point Offenders (§4C1.1)

Retroactivity of Guidelines Amendments

Drug Offenses

- Enhanced Base Offense Levels
- Fentanyl & Fentanyl Analogues

Firearms

- Ghost Guns
- Firearm Definition

Supervised Release





Adjustment for Certain Zero-Point Offenders

Section 4C1.1

Adjustment for Certain Zero-Point Offenders

Section 4C1.1

2

Level
Decrease

No Criminal History Points | §4C1.1(a)(1)

AND

No Offense Exclusions | §4C1.1(a)(2)-(10)

Offense Exclusions for Zero-Point Offenders

Section 4C1.1(a)(2)–(10)

Conviction-Based

Sex Offense

Individual Rights

Serious Human Rights Violation

Defendant-Based

Violence

Substantial Financial Hardship

Firearm or Dangerous Weapon

Hate Crime Adjustment

Vulnerable Victim

Aggravating Role & No CCE

Offense-Based

Death or Serious Bodily Injury

Terrorism Adjustment

John Gregory pled guilty to Conspiracy to Transport Undocumented Aliens. Mr. Gregory was armed with a firearm when he dropped off the undocumented migrants at a stash house. Mr. Gregory received a two-level increase under §2L1.1(b)(5)(C) because the offense involved possession of a dangerous weapon. Mr. Gregory has no prior convictions.

Does Mr. Gregory receive an adjustment under §4C1.1?

A. Yes

 **B. No**



Josh Sampson pled guilty to Conspiracy to Transport Undocumented Aliens in the same case. Mr. Sampson operated the stash house at which Mr. Gregory—while armed—dropped off the undocumented migrants. Mr. Sampson also received a two-level increase under §2L1.1(b)(5)(C) because the offense involved possession of a dangerous weapon. Mr. Sampson has no prior convictions.

Does Mr. Sampson receive an adjustment under §4C1.1?

✓ **A. Yes**

B. No



Defendant-Based Offense Exclusion

§2L1.1(b)(5)(C)

If a dangerous weapon (including a firearm) *was possessed*

§4C1.1(a)(7)

the *defendant did not possess . . .*
a firearm or other dangerous
weapon (or induce another
participant to do so) . . .

Safety Valve

§2D1.1(b)(1)

If a dangerous weapon (including a firearm) *was possessed*

§5C1.2(a)(2)

the *defendant did not possess . . .*
a firearm or other dangerous
weapon (or induce another
participant to do so) . . .



Section 3582(c)(2) Motions

**Reduction in Term of Imprisonment Based on
Amended Guidelines Range**

Dillon v. United States

560 U.S. 817 (2010)

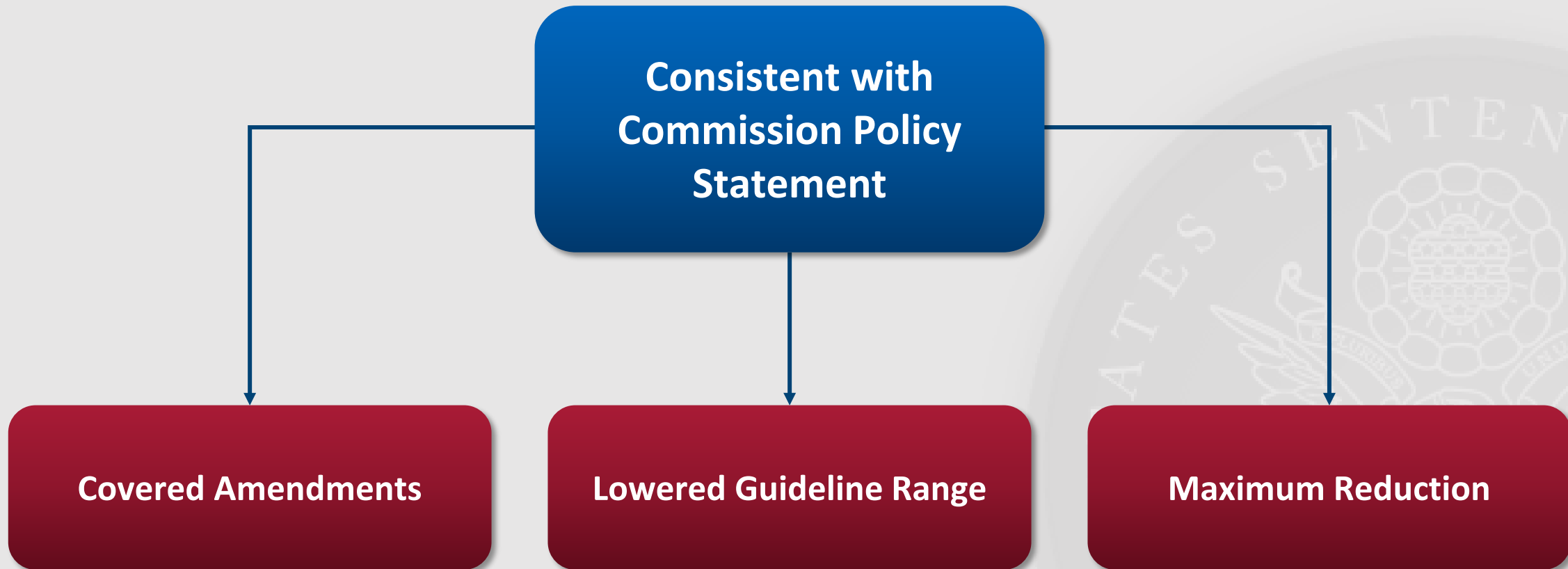
**Consistent with
Commission Policy
Statement**

Remains Binding after *Booker*



Commission Policy Statement on Retroactivity

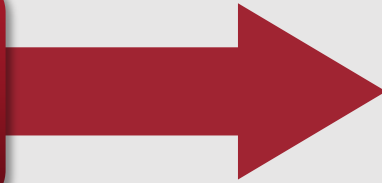
Section 1B1.10



Covered Amendments

Section 1B1.10(a)(2)(A)

Covered Amendments



Check List at §1B1.10(d)

Amendment 821

Part A - Status Points – §4A1.1(e)

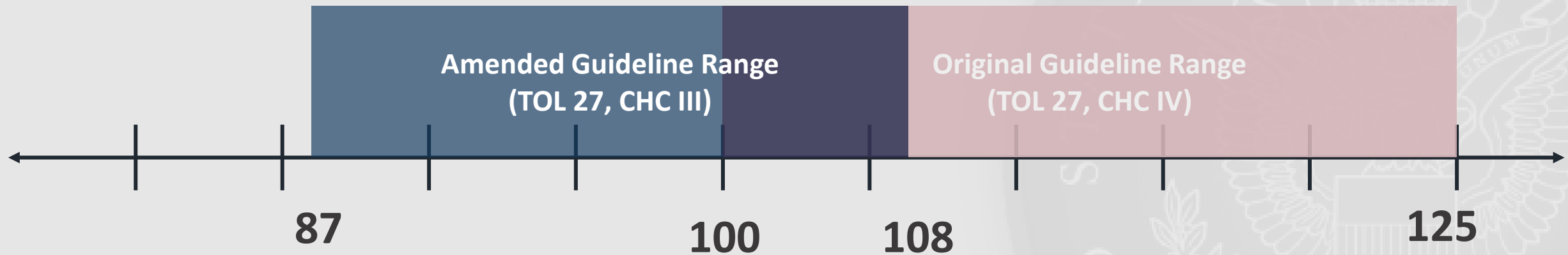
Part B - Zero-Point Offenders – §4C1.1



Commission Policy Statement on Retroactivity

Section 1B1.10(a)(2)(B)

Lowered Guideline Range



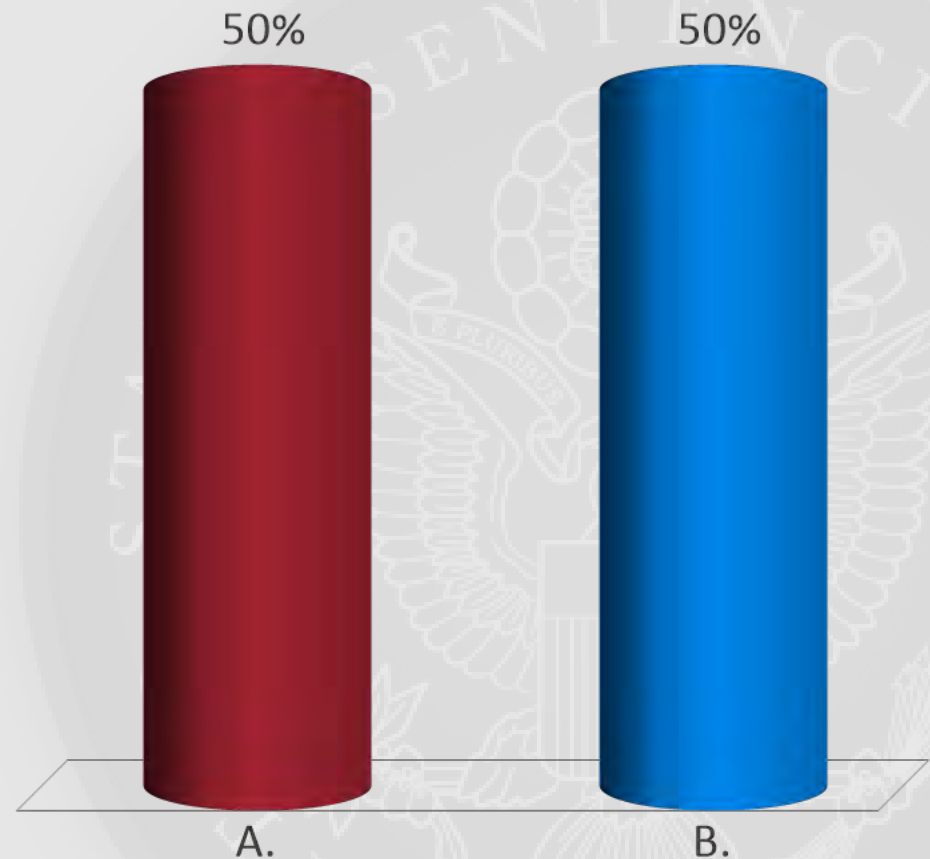
Jake Fanning filed a retroactive reduction request under Amendment 782 (drugs minus 2) and 821 (status). Mr. Fanning was not eligible under 782 nor 821 independently but is eligible under the combined 782 and 821 because his new offense level combined with his lower criminal history category results in an amended guideline range below his prior sentence.

Is Mr. Fanning eligible for retroactivity?



A. Yes

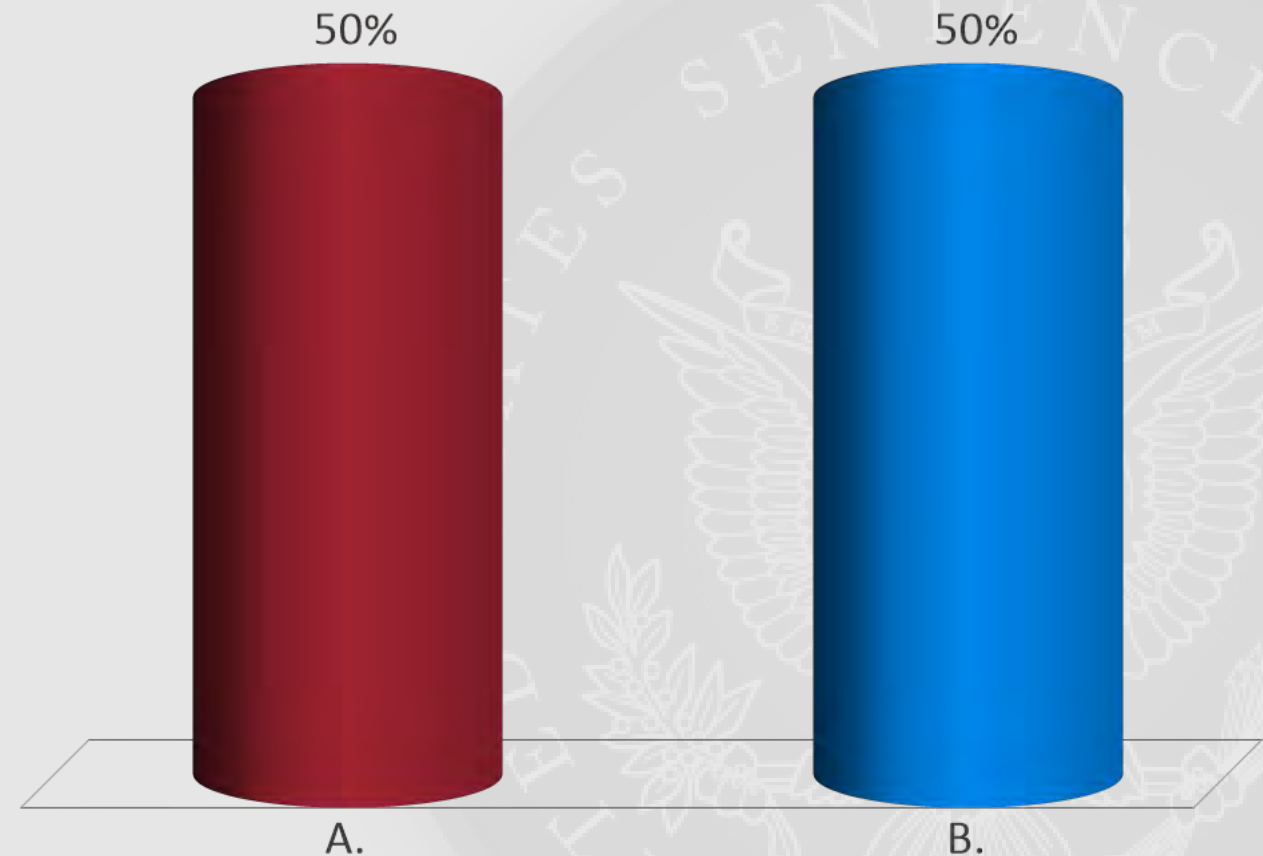
B. No



Samuel Druthers was assigned 15 criminal history points, including two “status points,” when he was sentenced in December 2022.

Is Mr. Druthers eligible for relief under § 3582(c)(2)?

- A. Yes
- ✓ B. No



Samuel Druthers Example

SENTENCING TABLE (in months of imprisonment)						
Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)

Criminal History Points: 15

Criminal History Points: 14

Substantial Assistance Exception

Section 1B1.10(b)(2)(B) & App. Note 3

Reduction



Comparable Reduction
(27% Departure)

Original Term (§5K1.1)

Amended Guideline Range
33–41 months

Original Guideline Range
41–51 months

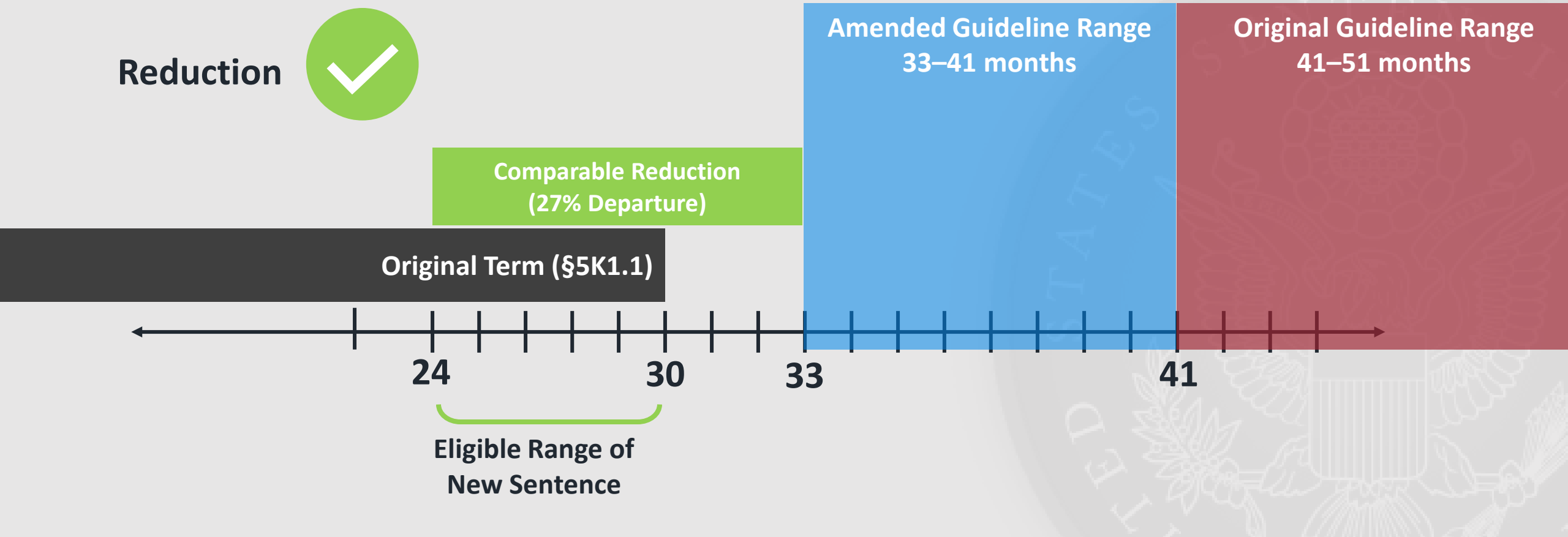
24

30

33

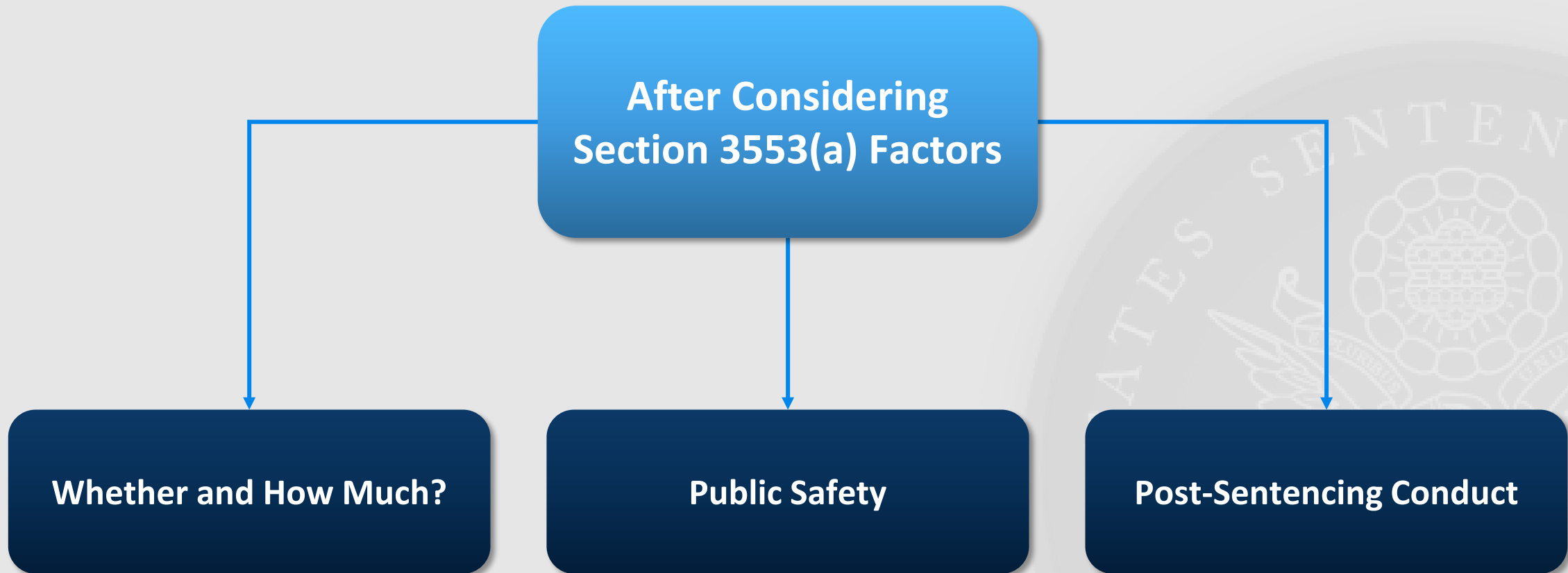
41

Eligible Range of
New Sentence



Sentencing Reductions for Retroactive Guidelines

Section 1B1.10, App. Note 1(B)





Enhanced Base Offense Levels for Drug Offenses

If you have handled a case involving the distribution of drugs involving death or serious bodily injury, was the defendant subject to a mandatory minimum on that basis?

Select all that apply.

- A. Yes**
- B. No**
- C. No, but parties have a sentencing stipulation**
- D. I haven't had this type of case yet**



If you have handled a case involving the distribution of drugs involving death or serious bodily injury, how has this affected your sentencing determination?

Select all that apply.

- A. No Impact**
- B. Relevant to the Guidelines Calculation**
- C. Basis for Departure**
- D. Relevant to § 3553(a) Factors**



Base Offense Levels: Death or SBI

Sections 2D1.1(a)(1) and (a)(2)

43

Mandatory Life
Death or Serious Bodily Injury

38

20-year Mandatory Minimum
Death or Serious Bodily Injury

Parties may stipulate



Stan Ringer pleaded guilty to one count of distribution of fentanyl with a statutory penalty of up to 20 years' imprisonment. The indictment does not mention a death; however, the plea includes the following: "Pursuant to §1B1.2(a), the parties agree and stipulate that Mr. Ringer sold fentanyl to Jane Doe, resulting in Ms. Doe's fatal overdose, and that the BOL at §2D1.1(a)(2) applies."

Does the higher BOL of 38 at §2D1.1(a)(2) apply?

- ✓ **A. Yes**
- B. No**

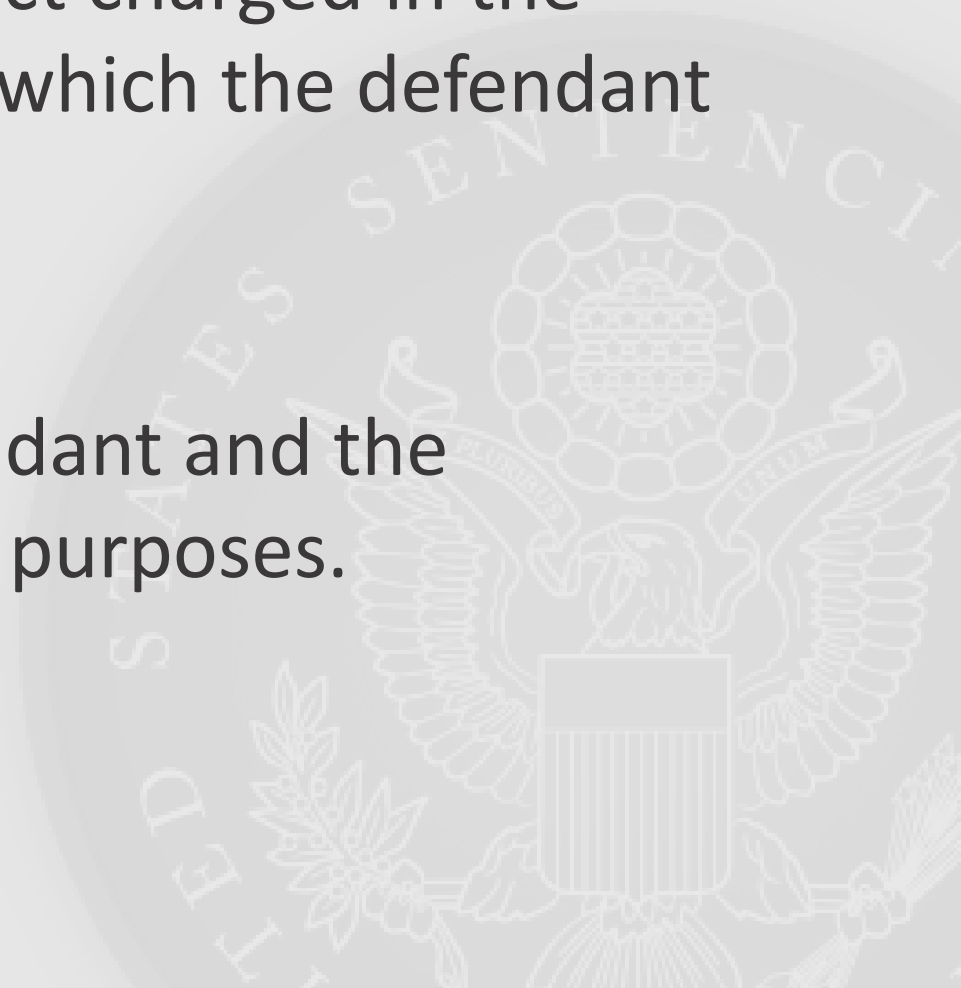


Applicable Guidelines and Stipulations

Section 1B1.2(a) and App. Note 1

Offense of conviction - the offense conduct charged in the count of the indictment or information to which the defendant was convicted.

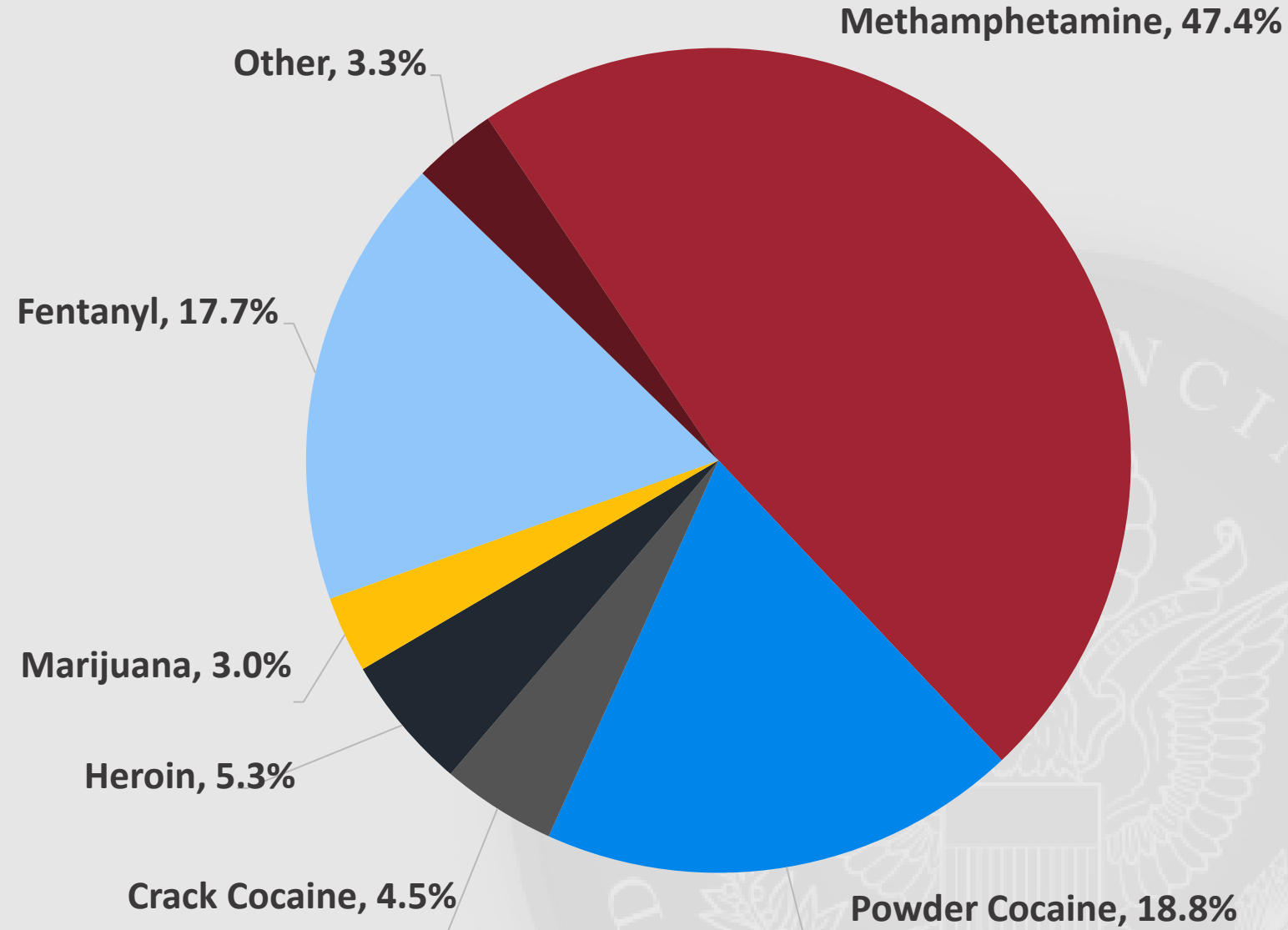
Stipulation - applies only if both the defendant and the government explicitly agree for guidelines purposes.





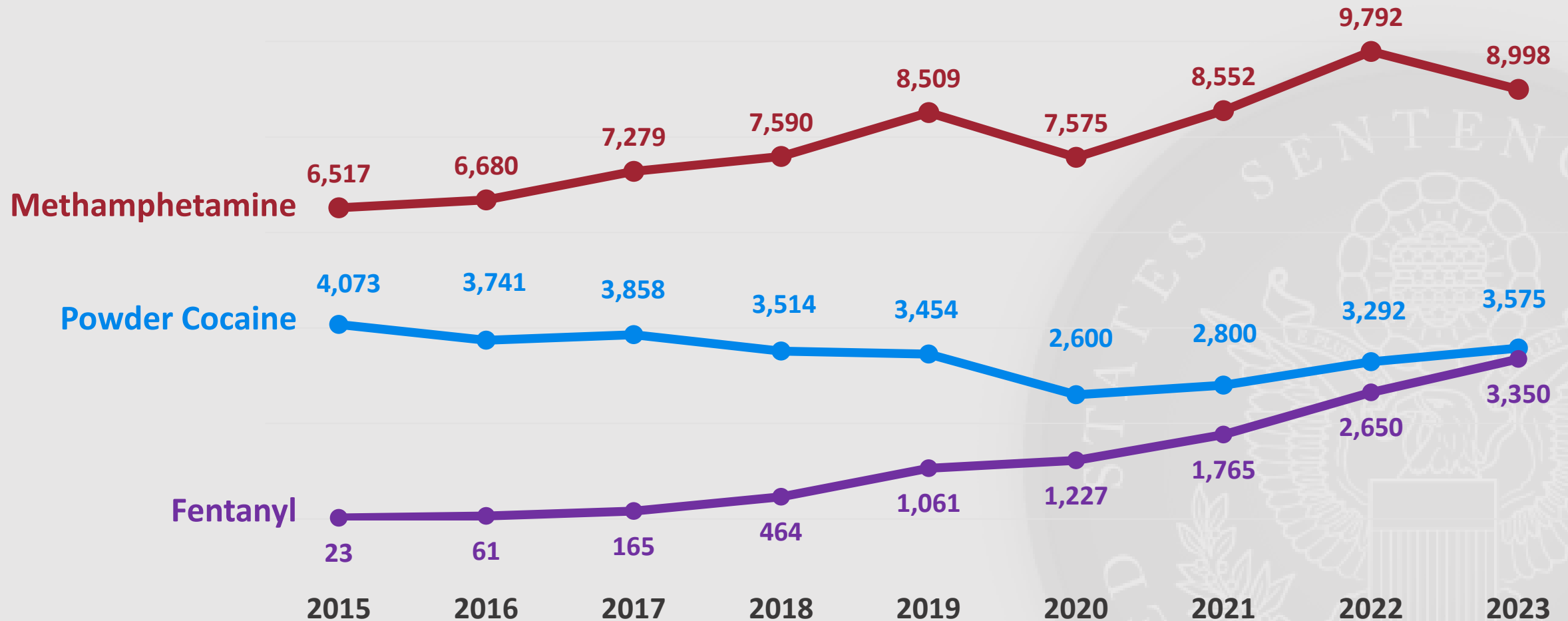
Fentanyl & Fentanyl Analogues

Distribution of Primary Drug Type in Federal Drug Cases Fiscal Year 2023



Number of Drug Trafficking Cases by Major Drug Type Over Time

Fiscal Year 2015 - Fiscal Year 2023



Which of the following pills are authentic oxycodone?

A.



B.



C.



D.



E. None of the Above

F. All of the Above



Fentanyl and Fentanyl Analogue Enhancements

Section 2D1.1(b)(13)(A)

+4

The defendant...

knowingly misrepresented or knowingly marketed as another substance a mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue,

Knowingly misrepresented or knowingly marketed

Have you sentenced a defendant in a case where the defendant knowingly misrepresented or knowingly marketed fentanyl or fentanyl analogue at §2D1.1(b)(13)(A)?

A. Yes

B. No



Fentanyl and Fentanyl Analogue Enhancements

Section 2D1.1(b)(13)(B)

+2

The defendant...

represented or marketed as a legitimately manufactured drug another mixture or substance containing fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, and acted with **willful blindness or conscious avoidance** of knowledge that such mixture or substance was not the legitimately manufactured drug.

willful blindness or conscious avoidance

Have you sentenced a defendant in a case where the defendant acted with willful blindness or conscious avoidance of knowledge that such mixture or substance was not the legitimately manufactured drug at §2D1.1(b)(13)(B)?

A. Yes

B. No





United States Sentencing Commission
January 2021

FENTANYL AND FENTANYL ANALOGUES

FEDERAL TRENDS AND TRAFFIC

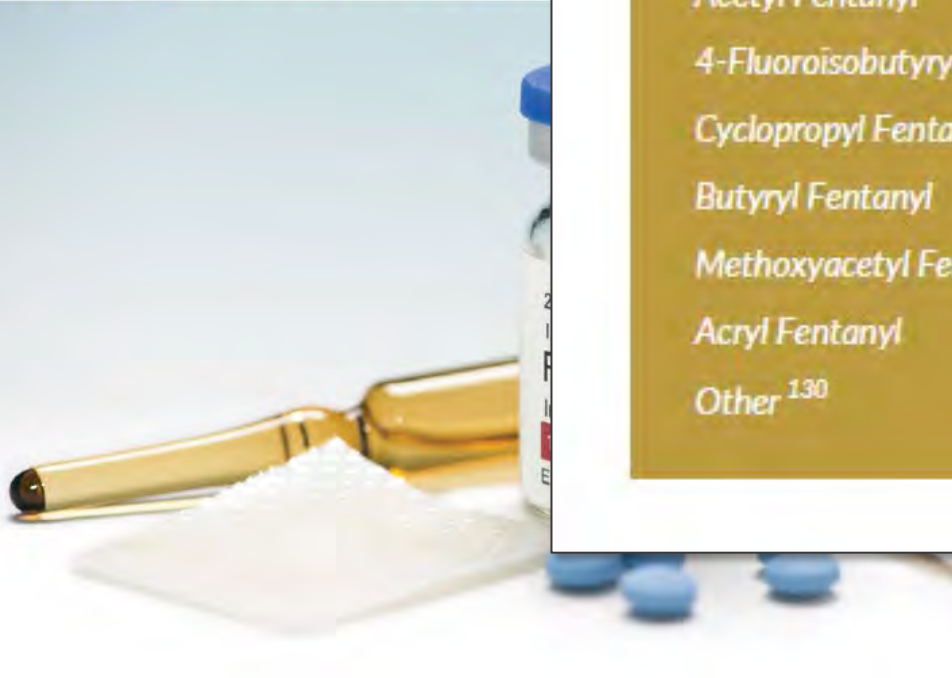
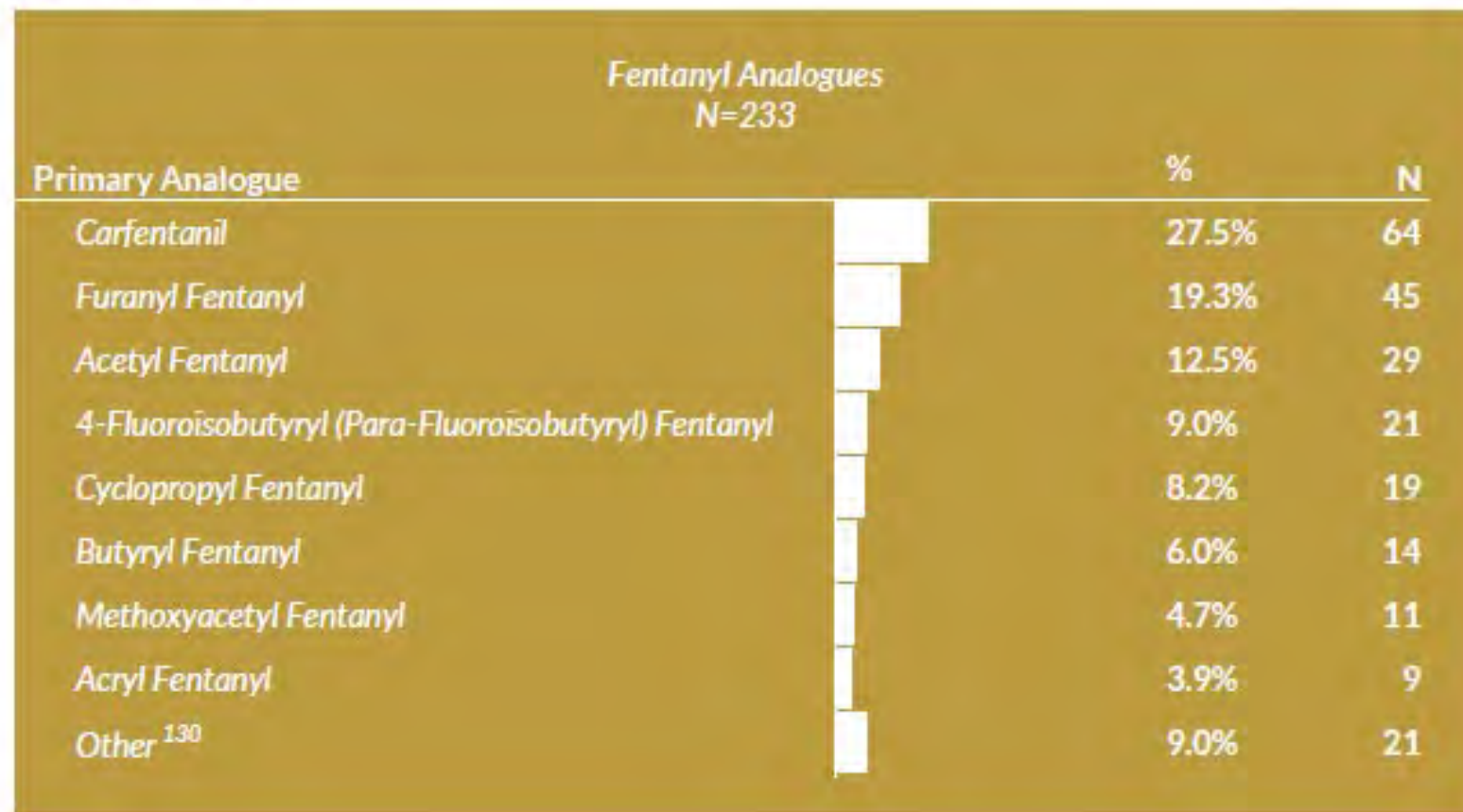


Figure 12. Types of Fentanyl Analogues in the Federal System
Fiscal Year 2019





QuickFacts

Fentanyl Analogue Trafficking

Population Snapshot

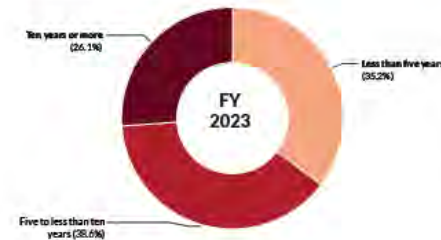
64,124 cases were reported in FY23;
19,066 involved drugs,¹
18,939 involved drug trafficking.²

1.4% of such cases involved
fentanyl analogues, up
113.5% since FY 2019.

Number of Fentanyl Analogue Trafficking Offenses



Sentence Length



Individual and Offense Characteristics³

88.3% of individuals sentenced for fentanyl analogue trafficking were men.

59.9% were Black, 22.9% were Hispanic, 16.0% were White, and 1.1% were Other races.

Their average age was 36 years.

88.6% were United States citizens.

31.8% had little or no prior criminal history (Criminal History Category I); 8.0% were individuals sentenced under the career offender guideline (§4B1.1).

The median base offense level in these cases was 30, corresponding to between 100 and 300 grams of fentanyl analogue.

Sentences were increased for:

- possessing a weapon (36.7%);
- a leadership or supervisory role in the offense (4.9%).

Sentences were decreased for:

- minor or minimal participation in the offense (12.5%);
- meeting the safety valve criteria in the sentencing guidelines (20.5%).

The most common fentanyl analogue types were:

- Para-fluorofentanyl (90);
- Acetyl fentanyl (62);
- Fluorofentanyl (46);
- Despropionyl fentanyl (35);
- Carfentanil (20).⁴

Punishment

The average sentence for fentanyl analogue traffickers was 87 months.

98.9% were sentenced to prison.

58.3% were convicted of an offense carrying a mandatory minimum penalty; 48.7% of those individuals were relieved of that penalty.

Means of Relief from Mandatory Minimum Penalty for Fentanyl Analogue Traffickers



QuickFacts

Fentanyl Analogue Trafficking

Sentences Relative to the Guideline Range

Of the 50.4% of individuals sentenced for fentanyl analogue trafficking under the *Guidelines Manual*:

- 44.4% were sentenced within the guideline range.
- 42.9% received a substantial assistance departure.
 - Their average sentence reduction was 52.5%.
- 2.3% received an Early Disposition Program (EDP) departure.⁵
 - Their average sentence reduction was 70.0%.

- 7.5% received some other downward departure.
 - Their average sentence reduction was 40.4%.

49.6% received a variance; of those individuals:

- 93.1% received a downward variance.
 - Their average sentence reduction was 35.7%.
- 6.9% received an upward variance.
 - Their average sentence increase was 72.2%.

The average guideline minimum and the average sentence imposed increased over the past five years.

- The average guideline minimum increased from 97 months in fiscal year 2019 to 118 months in fiscal year 2023.
- The average sentence was 74 months in fiscal year 2019 and 87 months in fiscal year 2023.



QuickFacts

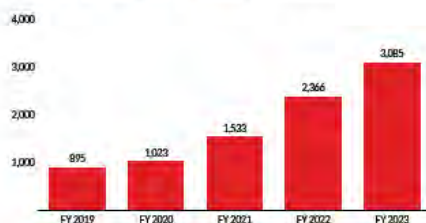
Fentanyl Trafficking

Population Snapshot

64,124 cases were reported in FY23;
19,066 involved drugs;¹
18,939 involved drug trafficking.²

16.3% of such cases involved fentanyl³, up 244.7% since FY 2019.

Number of Fentanyl Trafficking Offenses



Sentence Length



Individual and Offense Characteristics⁴

82.1% of individuals sentenced for fentanyl trafficking were men.

39.5% were Hispanic, 37.8% were Black, 20.0% were White, and 2.7% were Other races.

Their average age was 34 years.

86.4% were United States citizens.

41.1% had little or no prior criminal history (Criminal History Category I); 5.2% were individuals sentenced under the career offender guideline (§4B1.1).

The median base offense level in these cases was 28, corresponding to between 280 and 400 grams of fentanyl.

Sentences were increased for:

- possessing a weapon (30.2%);
- a leadership or supervisory role in the offense (4.8%).

Sentences were decreased for:

- minor or minimal participation in the offense (21.3%);
- meeting the safety valve criteria in the sentencing guidelines (30.7%).

The top six districts for fentanyl trafficking offenses were:

- Southern District of California (229);
- District of Arizona (177);
- Western District of Texas (128);
- Southern District of New York (94);
- District of Massachusetts (90);
- Eastern District of Missouri (90).

Punishment

The average sentence for fentanyl traffickers was 71 months.

97.6% were sentenced to prison.

53.4% were convicted of an offense carrying a mandatory minimum penalty; 50.9% of those individuals were relieved of that penalty.

Means of Relief from Mandatory Minimum Penalty for Fentanyl Traffickers

	Percent
Safety Valve	25.0%
Substantial Assistance	13.5%
Both	8.3%



QuickFacts

Fentanyl Trafficking

Sentences Relative to the Guideline Range

Of the 61.1% of individuals sentenced for fentanyl trafficking under the *Guidelines Manual*:

- 47.1% were sentenced within the guideline range.
- 29.7% received a substantial assistance departure.
 - *Their average sentence reduction was 54.8%.*
- 15.4% received an Early Disposition Program (EDP) departure.⁵
 - *Their average sentence reduction was 64.7%.*
- 6.4% received some other downward departure.
 - *Their average sentence reduction was 48.4%.*

38.9% received a variance; of those individuals:

- 93.7% received a downward variance.
 - *Their average sentence reduction was 39.4%.*
- 6.3% received an upward variance.
 - *Their average sentence increase was 150.1%.*

The average guideline minimum and the average sentence slightly increased over the past five years.

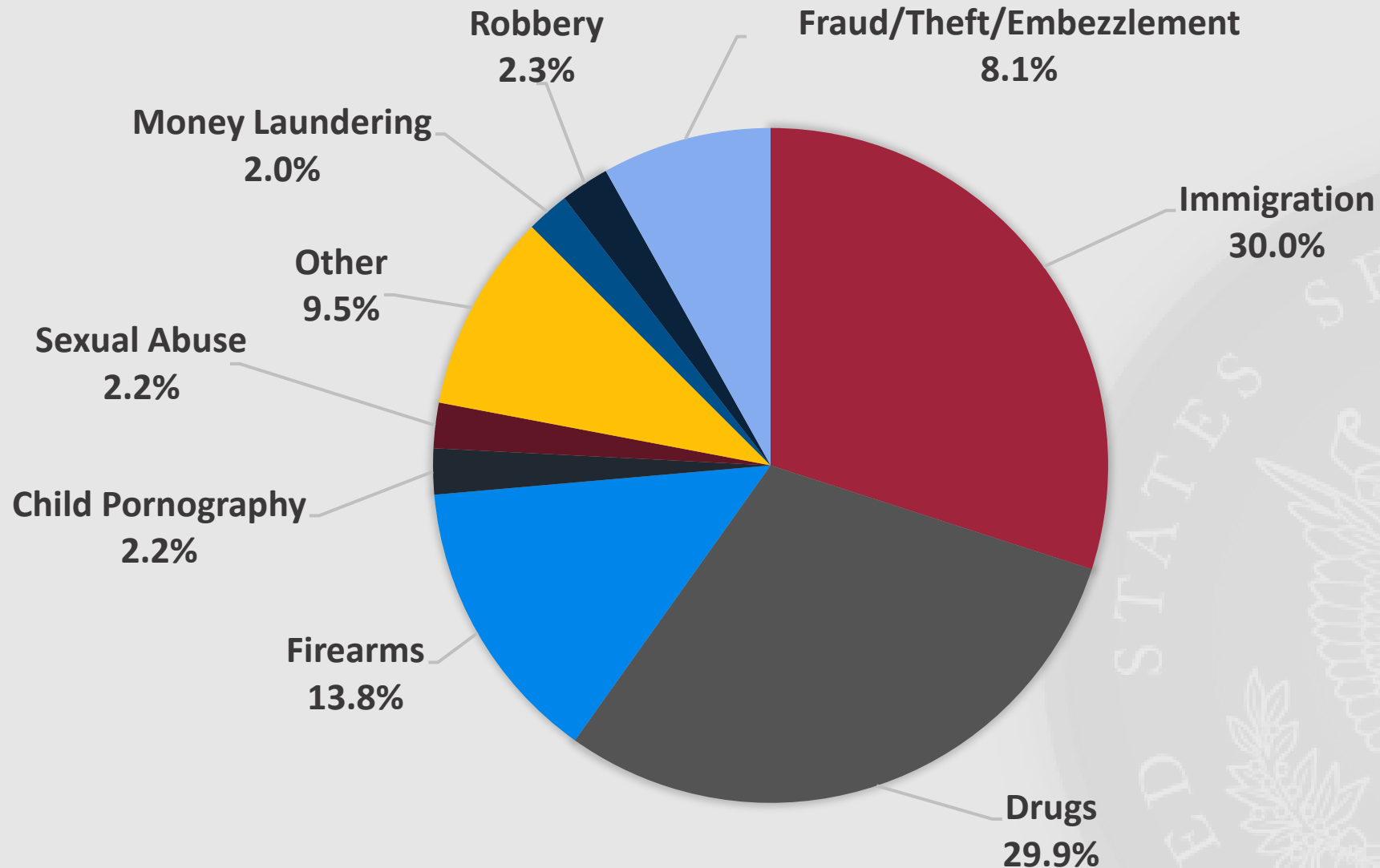
- The average guideline minimum increased from 92 months in fiscal year 2019 to 97 months in fiscal year 2023.
- The average sentence was 69 months in fiscal year 2019 and 71 months in fiscal year 2023.



Firearms

Primary Offense Types

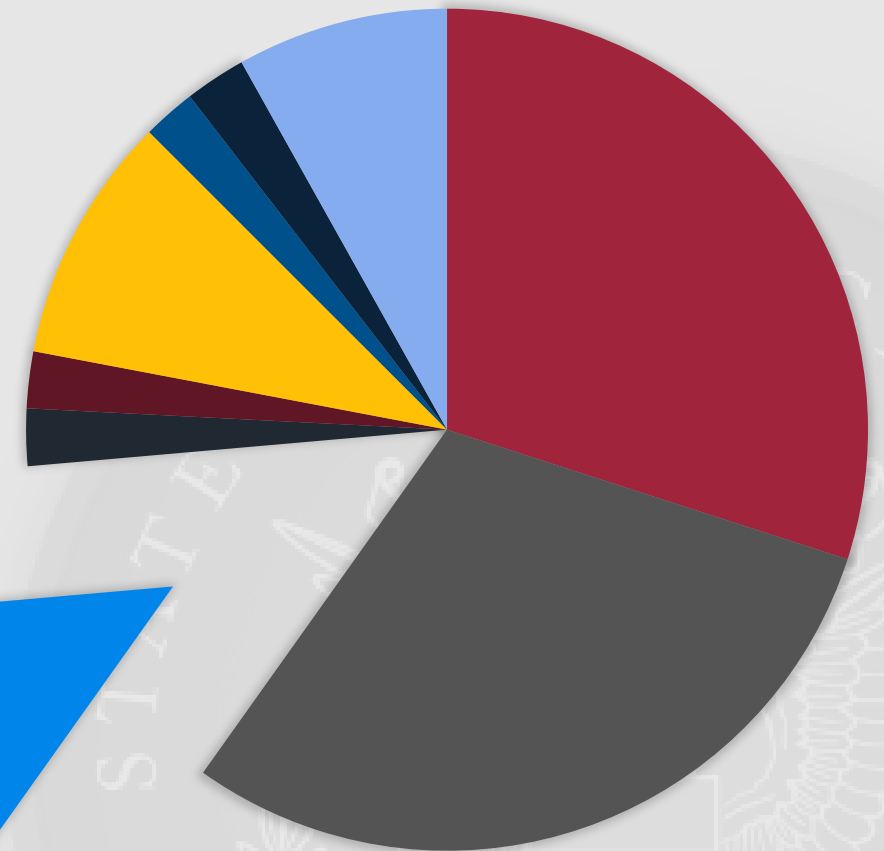
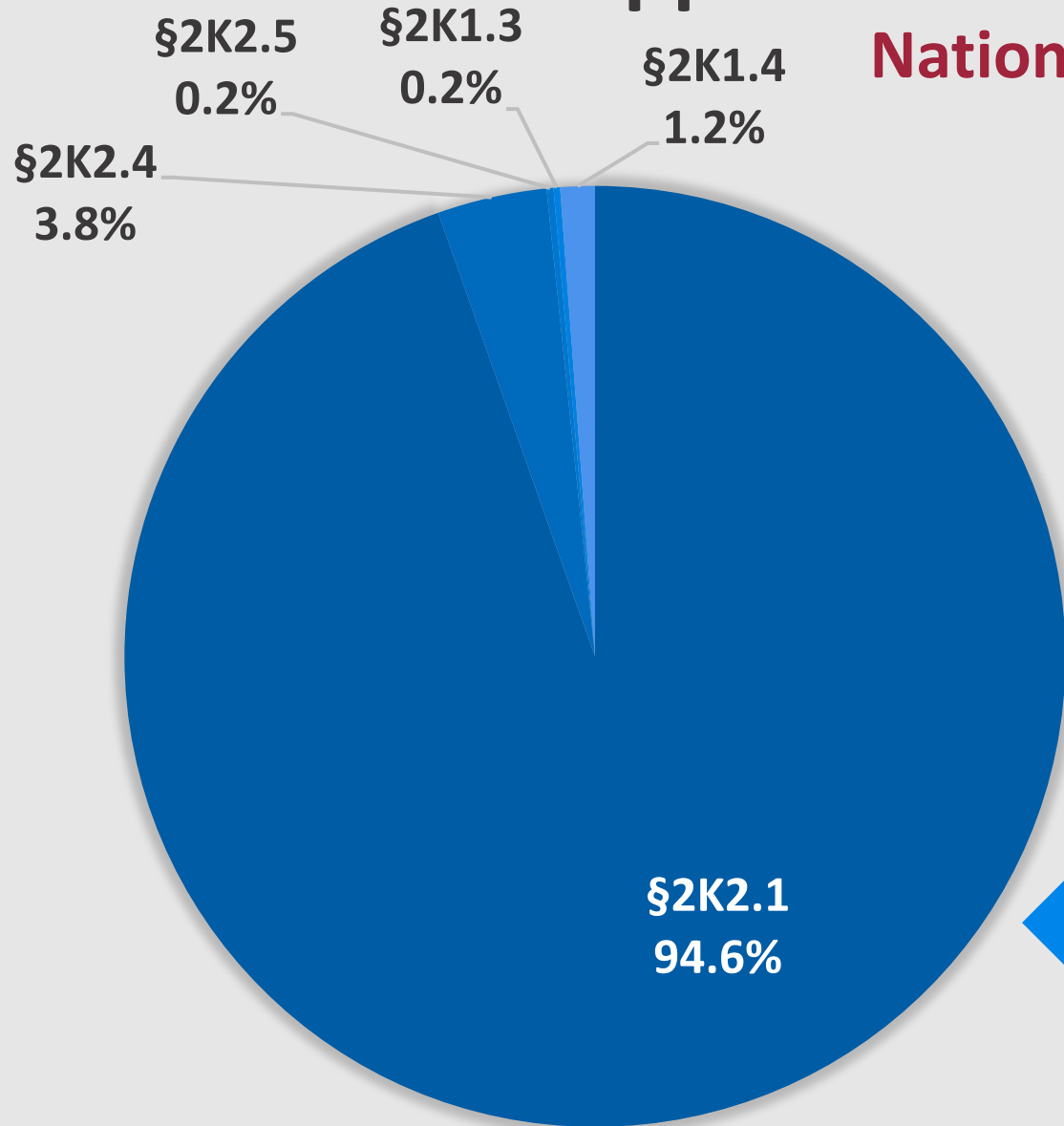
National – FY2023



SOURCE: IDA (N = 64,126 Cases)

Applicable Firearms Guideline

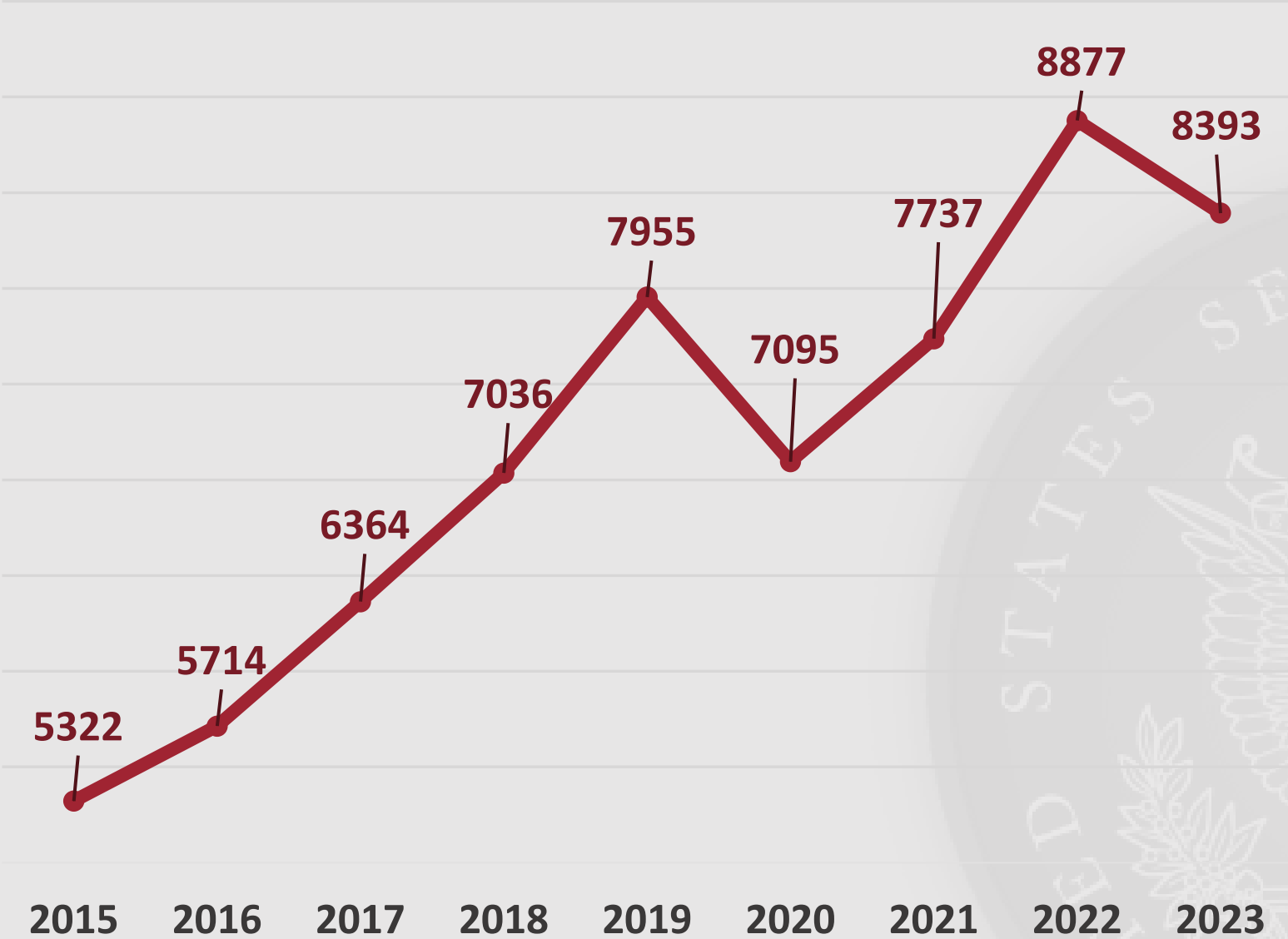
National – FY2023



**Firearms
13.8%**

Firearms Offenses: Number of Sentenced Individuals

§2K2.1



Ghost Guns



Approximately how often do you see “ghost guns” (unserialized firearms) in firearms cases?

- A. Never**
- B. Rarely**
- C. Sometimes**
- D. Frequently**
- E. Almost always**



If you have handled a case involving a ghost gun, how has this affected your sentencing determination?

- A. No Impact**
- B. Relevant to the Guidelines Calculation**
- C. Basis for Departure**
- D. Relevant to § 3553(a) Factors**



Specific Offense Characteristic: Ghost Guns

Section 2K2.1(b)(4)

+2

Stolen Firearms (No Mental State)

+4

Obliterated/Altered Serial Numbers (No Mental State)

Specific Offense Characteristic: Ghost Guns

Section 2K2.1(b)(4)

+2

Stolen Firearms (No Mental State)

+4

Obliterated/Altered Serial Numbers (No Mental State)

Ghost Guns (Mental State Required)

or

Specific Offense Characteristic: Ghost Guns

Section 2K2.1(b)(4)

The **defendant knew** that any firearm involved in the offense was **not otherwise marked with a serial number** or was **willfully blind to or consciously avoided knowledge** of such fact...

Defendant

Not Serialized

Mental State

+4

Ayla Leon was convicted of Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. § 922(g), after Ms. Leon was found with a loaded handgun on October 1, 2023. Ms. Leon had purchased the handgun from a neighbor. The neighbor told Ms. Leon that the gun, which was unserialized, was untraceable because it was built from a kit.

Does the 4-level “ghost gun” enhancement apply?

A. Yes

 **B. No**



Ex Post Facto Clause

Section 1B1.11

UNITED STATES SENTENCING COMMISSION
GUIDELINES MANUAL
2023



Use guidelines in effect on date of sentencing
UNLESS . . .



Ex Post Facto Clause violation

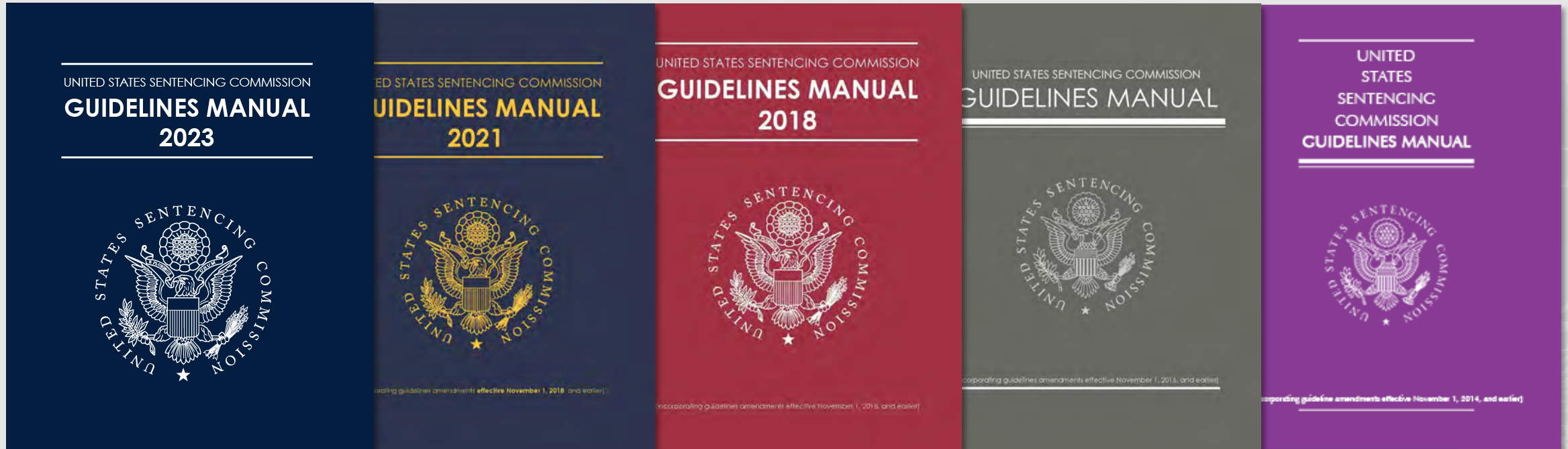
Offense of conviction
committed before new
guidelines take effect

AND

New guidelines are
higher than those at
the time of the offense

One Book Rule

Section 1B1.11



One Book Rule

Firearm Definition & Machineguns: Key Issues

1

Base Offense Level

2

Specific Offense Characteristics

Which of the following images shows a machinegun?

A.



B.



C.



D.



E.



F.



G. None of the Above

✓ H. All of the Above

“Machinegun” Definition

26 U.S.C. § 5845(b)

The term “machinegun” also includes “***any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun***”

Machinegun Conversion Devices



Base Offense Levels: Title 26 Firearms

Section 2K2.1(a)(1), (2), (4), (5), and App. Note 2

Firearm Described in 26 U.S.C. § 5845(a)

Machineguns

Short-Barreled and Sawed-Off
Shotguns

Short-Barreled Rifles

Destructive Devices

Two Prior COVs/CSOs

26

Prior Crime of Violence/Controlled Substance Offense

22

Prohibited Person/Specified Convictions

20

Title 26 Firearm

18

Firearm Definition

Section 2K2.1(b)(1), App. Note 1

Section 2K2.1

Firearm

18 U.S.C. § 921(a)(3)



Firearm

26 U.S.C. § 5845(a)

Specific Offense Characteristic: Number of Firearms

Section 2K2.1(b)(1)

If the offense involved three or more firearms, increase as follows:

Number of Firearms	Increase in level
(A) 3–7	+2
(B) 8–24	+4
(C) 25–99	+6
(D) 100–199	+8
(E) 200 or more	+10

Scenario

The defendant was convicted of unlawful possession of a machinegun, in violation of 18 U.S.C. § 922(o), based on his possession of a Glock switch (a machinegun conversion device). The defendant admitted that he obtained 30 Glock switches, which he ordered online from an overseas retailer.

The PSR assigned a BOL 18 because the “offense involved a firearm described in 26 U.S.C. § 5845(a)” and did not apply any specific offense characteristics.

The defendant objected that the court should use a BOL 12 because the switch was not a “firearm” under the definition in §2K2.1, Application Note 1.

Base offense level 18 applies “if the offense involved a firearm described in 26 U.S.C. § 5845(a).” Base offense level 12 applies to offenses not subject to other base offense levels.

What is the applicable base offense level in this case?

✓ **A. BOL 18**

B. BOL 12



United States v. Nieves-Díaz

99 F.4th 1 (1st Cir. 2024)

A machinegun conversion device constitutes a “firearm that is described in 26 U.S.C. § 5845(a)” for purposes of the BOL under §2K2.1(a).



The government objected that the court should apply an enhancement under §2K2.1(b)(1) based on the number of firearms because the defendant possessed 30 Glock switches.

How, if at all, would you take into account the number of switches at sentencing?

- A. Apply a §2K2.1(b)(1) enhancement for the number of firearms**
- B. Do not apply §2K2.1(b)(1)**
- C. Do not apply §2K2.1(b)(1) and depart or vary based on the number of switches**



United States v. Nieves-Díaz

99 F.4th 1 (1st Cir. 2024)

Because a machinegun conversion device is not a “firearm” as defined in 18 U.S.C. § 921(a)(3), it is not “any firearm” for purposes of §2K2.1(b)(6)(B)’s enhancement for possession of “any firearm . . . in connection with another felony offense.”



QuickFacts

18 U.S.C. § 922

What is 18 U.S.C. § 922(g)?

18 U.S.C. § 922(g) prohibits certain persons from shipping a firearm or ammunition while subject to a prohibition from a prior conviction for a felony offense.

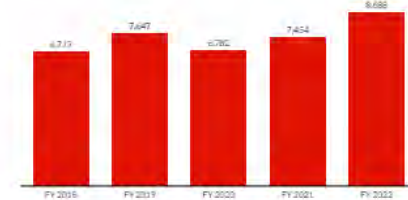
Population Snapshot

64,142 cases were reported in FY22;

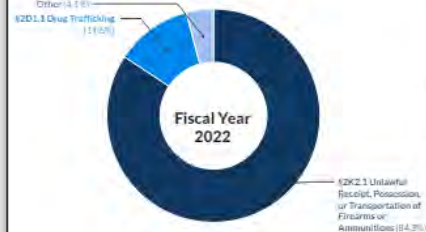
8,688 involved convictions under 18 U.S.C. § 922(g).¹

87.8% were convicted under 18 U.S.C. § 922(g)(1) because of a prior felony conviction.

Numbers Over Time



Primary Sentencing Guideline



This document was produced and published at U.S. taxpayer expense.

Offender and Offense Characteristics

97.5% of section 922(g) offenders

58.1% were Black, 23.1% were White, and 3.2% were Other race

Their average age was 35 years

96.6% were United States citizens

26.0% were in the highest History Category (VI);

- 6.8% were CHC I;
- 8.6% were CHC II;
- 21.3% were CHC III;
- 21.4% were CHC IV;
- 15.9% were CHC V.

The top five districts for section 922(g) offenders were:

- Eastern District of Michigan
- Northern District of California
- Northern District of Texas
- Western District of Texas
- Western District of Missouri

Districts with the highest percentage of section 922(g) offenders were:

- Middle District of Tennessee
- Eastern District of Michigan
- Northern District of Illinois
- Northern District of Alabama
- Middle District of North Carolina

Punishment

97.4% of section 922(g) offenders received a sentence of imprisonment, and sentences varied widely by offense, with the most common penalty applied in the case of 18K2.1 Unlawful Receipt, Possession, or Transportation of Firearms or Ammunitions (84.3%).

15.0% of section 922(g) offenders were sentenced under more than one statute with a mandatory minimum penalty.

- 2.8% were sentenced under the Career Criminal Act (ACCA)
- 5.2% were convicted of a crime with a mandatory minimum penalty
- 7.0% were convicted of a crime with a mandatory minimum penalty



QuickFacts

18 U.S.C. § 922(g) Firearms

The average sentence for all section 922(g) offenders was 64 months.

• The average sentence for offenders convicted of violating section 922(g) and sentenced under ACCA was 72 months.

• The average sentence for offenders convicted of violating section 922(g) but not sentenced under ACCA was 60 months.

Sentences Relative to the Guideline Range

Of the 61.3% of section 922(g) offenders sentenced under the Guidelines Manual:

- 82.7% were sentenced within the guideline range
- 10.1% received a substantial assistance departure
- Their average sentence reduction was 46.1%.
- 5.7% received some other downward departure
- Their average sentence reduction was 39.7%.

38.7% received a variance; of those offenders:

- 89.3% received a downward variance.
- Their average sentence reduction was 35.7%.
- 10.7% received an upward variance.
- Their average sentence increase was 41.9%.

The average guideline minimum and average sentence imposed remained steady over the past five years.

• The average guideline minimum was 72 months in fiscal year 2018 and fiscal year 2022.

• The average sentence imposed decreased from 64 months in fiscal year 2018 to 63 months in fiscal year 2022.

¹ Cases with incomplete sentencing information were excluded from analysis.

² 18 U.S.C. § 924(e) requires a 15-year mandatory minimum penalty on offenders convicted of violating section 922(g) with three previous convictions for a violent felony or serious drug crime.

³ "Early Disposition Program (or EDP) departures" are departures where the government sought a sentence below the guideline range because the offender participated in the government's Early Disposition Program, through which the offender's case was resolved in an expedited manner. See USSC §5K3.1.

Sentences Relative to the Guideline Range

Of the 61.3% of section 922(g) offenders sentenced under the Guidelines Manual:

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- 10.1% received a substantial assistance departure.
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United States Sentencing Commission
July 2022

What Do Federal Firearms Offenses Really Look Like?



Figure 3. §2K2.1 ENHANCEMENTS
Fiscal Year 2021



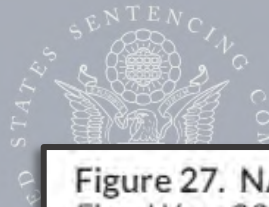
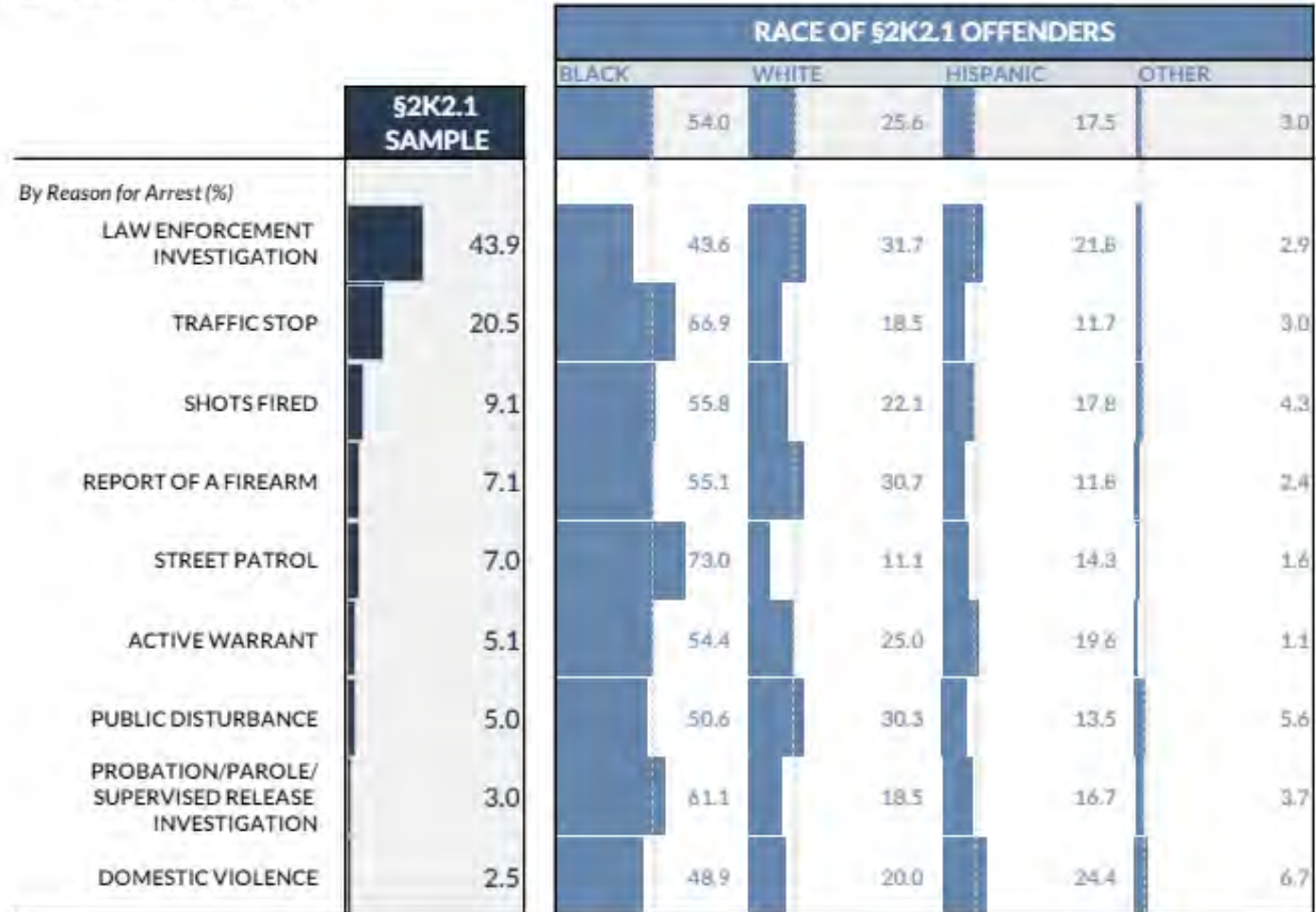


Figure 27. NATURE OF ARREST EVENT LEADING TO §2K2.1 CONVICTION
Fiscal Year 2021 Sample





Supervised Release

Mandatory, Standard & Special Conditions

Mandatory Conditions

Statutorily Required 18 U.S.C. § 3583 and §5D1.3(a)

Discretionary Conditions

Standard Conditions Recommended in *all* cases
§5D1.3(c)

Special Conditions Recommended in *some*
cases & circumstances
§5D1.3(d)–(e)

Do you orally pronounce “standard” conditions of supervised release?

A. Yes

B. No



Conditions of Supervised Release



Discretionary
Conditions

Mandatory Conditions → Need Not Orally Pronounce

Discretionary Conditions → Orally Pronounce

Conditions of Supervised Release

Discretionary Conditions → Orally Pronounce

United States v. Rogers, 961 F.3d 291 (4th Cir. 2020)

United States v. Diggles, 957 F.3d 551 (5th Cir. 2020)

United States v. Anstice, 930 F.3d 907, 908 (7th Cir. 2019)

United States v. Montoya, 82 F.4th 640 (9th Cir. 2023) (en banc)

United States v. Geddes, 71 F.4th 1206 (10th Cir. 2023)

United States v. Rodriguez, 75 F.4th 1231 (11th Cir. 2023)

United States v. Matthews, 54 F.4th 1 (D.C. Cir. 2022)

How do you pronounce discretionary “standard” conditions of supervised release?

- A.** Individually pronounce each condition
- B.** Incorporate conditions in the PSR by reference
- C.** Incorporate another document by reference
- D.** Other



Have you imposed any of the following conditions of supervised release?

- A. Adult Pornography Ban**
- B. Internet Ban**
- C. Computer Ban**
- D. Occupational Restriction**



Discretionary Conditions of Supervised Release

18 U.S.C. § 3583(d)

1

Reasonably related to:

- Offense/Defendant, and
- Deterrence, Incapacitation, and Rehabilitation

2

No Greater Deprivation of Liberty than reasonably necessary

3

Consistent with Commission Policy Statements

Discretionary Conditions of Supervised Release

18 U.S.C. § 3583(d)

INDIVIDUALIZED ASSESSMENT

1

Reasonably related to:

- Offense/Defendant, and
- Deterrence, Incapacitation, and Rehabilitation

2

No Greater Deprivation of Liberty than
reasonably necessary

3

Consistent with Commission Policy Statements

John Smith was convicted of failure to register as a sex offender, which he was required to do as a result of two state convictions for sexual assault of a minor. Mr. Smith repeatedly violated supervised release by failing to report contact with a minor, failing to comply with treatment, and viewing adult pornography. At the violation hearing, the court reimposed two special conditions: a prohibition on all internet use and a prohibition on viewing adult pornography.

Which condition(s) is permissible?

- A. Adult Pornography Ban**
- B. Internet Ban**
- C. Both**
- D. Neither**

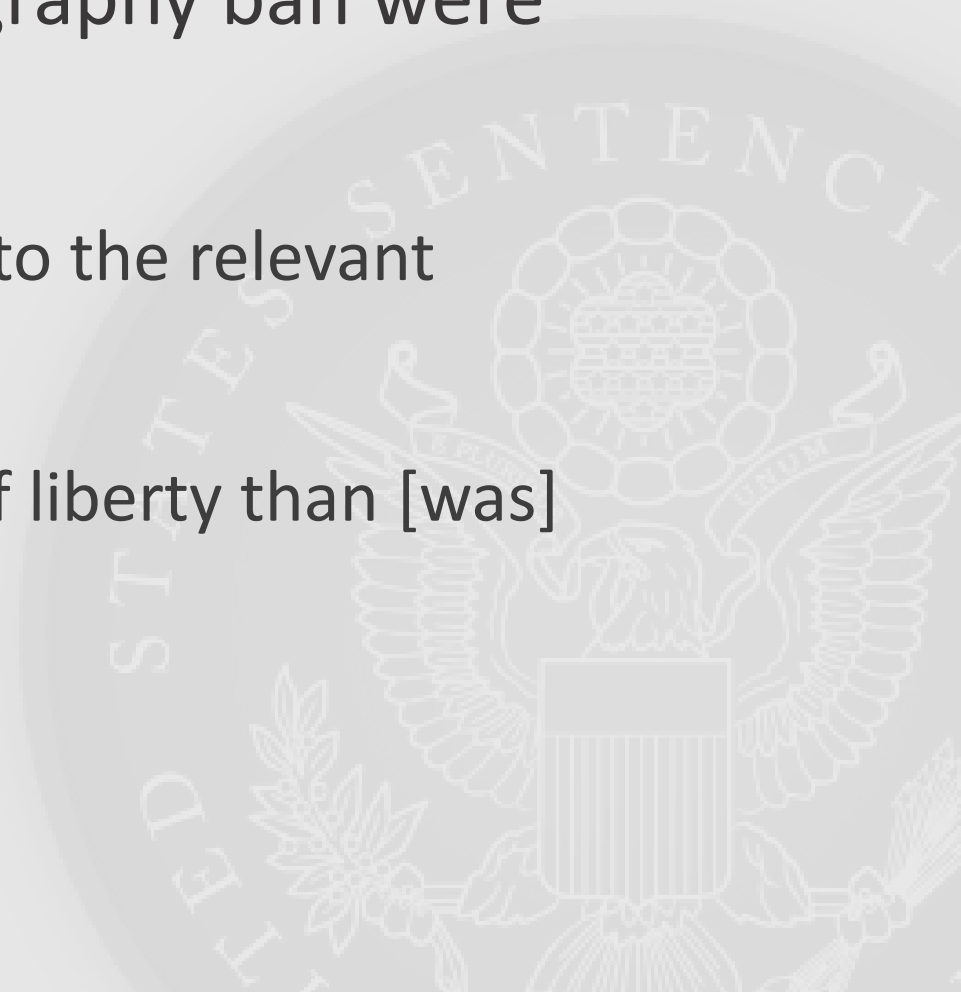


United States v. Eaglin

913 F.3d 88 (2d Cir. 2019)

An internet-access ban and adult pornography ban were substantively unreasonable because—

- neither condition “reasonably related to the relevant sentencing factors,” and
- both involved “a greater deprivation of liberty than [was] reasonably necessary.”



Examples of Vacated Special Conditions

Adult Pornography Ban

United States v. Castellano, 60 F.4th 217 (4th Cir. 2023)

United States v. Sueiro, 59 F.4th 132 (4th Cir. 2023)

United States v. Canfield, 893 F.3d 491 (7th Cir. 2018)

Computer and/or Internet Ban

United States v. Sueiro, 59 F.4th 132 (4th Cir. 2023)

United States v. Blair, 933 F.3d 1271 (10th Cir. 2019)

Limit to One Internet-Connected Device

United States v. Kunz, 68 F.4th 748 (2d Cir. 2023)

Non-Association Condition

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

Suspicionless Search Condition

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

Self-Employment Ban

United States v. Reardon, --- F.4th ---, 2024 WL 2349254 (1st Cir. May 23, 2024)

Examples of Vacated Special Conditions

Self-Employment Ban

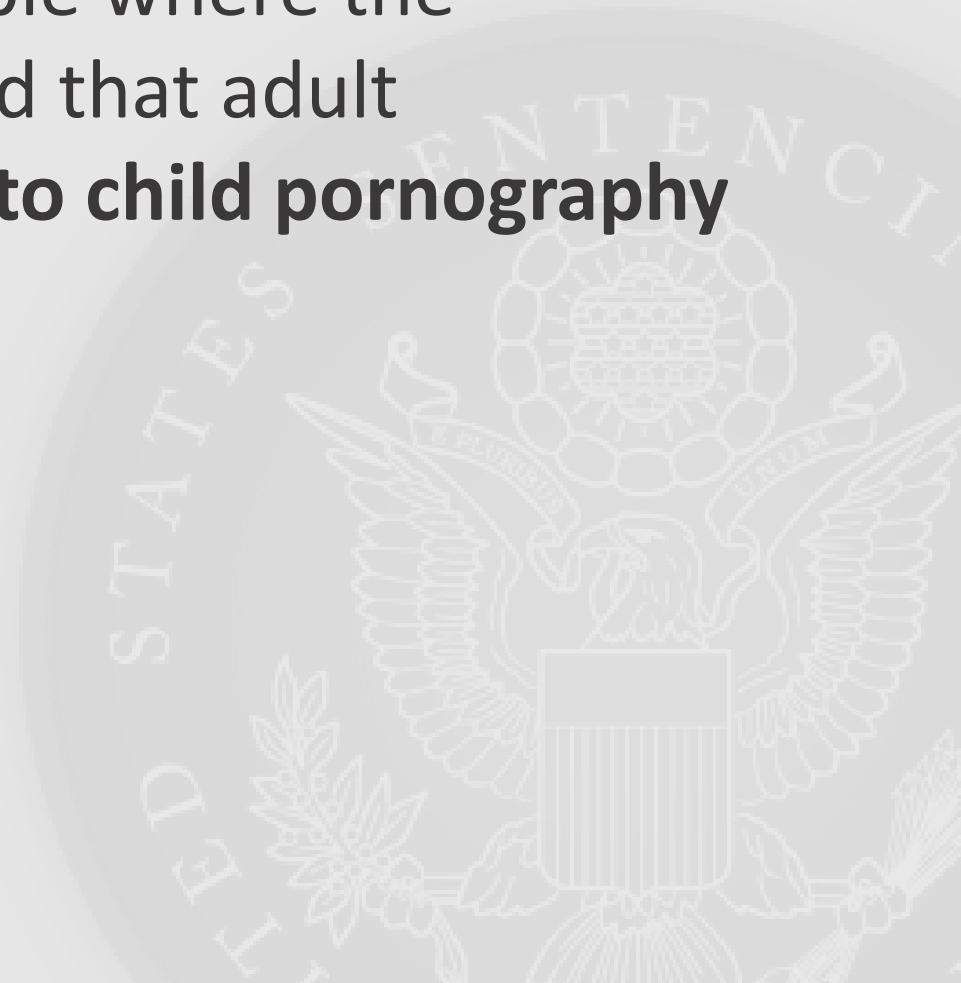
United States v. Reardon, --- F.4th ---, 2024 WL 2349254
(1st Cir. May 23, 2024)

Although “the record certainly would support a finding that an occupational restriction was warranted,” it was “silent . . . as to whether the district court determined that the ban was the minimum restriction necessary.”

United States v. Van Dork

961 F.3d 314 (4th Cir. 2020)

An adult-pornography ban was permissible where the defendant's treatment counselor testified that adult pornography "**could serve as a gateway to child pornography for**" this defendant.



Questions?



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HelpLine (202) 502-4545



training@ussc.gov

Drug Treatment Court Western District of Virginia

**Honorable Elizabeth K. Dillon
Honorable Robert S. Ballou**

**USPO Dennis Gardner
AUSA Charlene Day
AFPD Andrea Harris
Dr. Robert Trestman**

**June 14, 2024
New Orleans, Louisiana**



Is your life better today than before Drug Court?



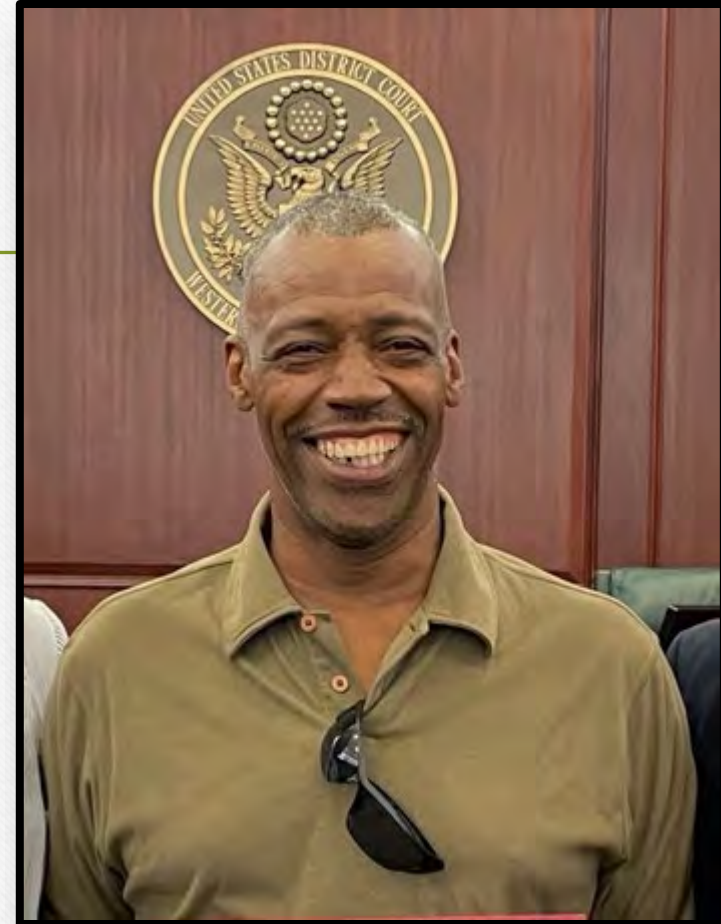
I can walk around with a smile and my head up. I been walking with my head down for a long time.

How has your life been since Drug Court?



I go to bed happy knowing I am ... not missing a part of everything because I'm using.

I think this was
the best thing
that ever
happened to
me.



Is your life better today?



Much better. Much better.

How has the program affected your life?



My life is completely better.

I would be in jail ... if it wasn't for Drug Court.





What did you like about Drug Court?



Everybody looked like they cared about everybody. And I am not used to that.











Congratulations
Will & Lanny



In the drug culture, don't
nobody care nothing
about nobody.
Everybody has an
ulterior motive.

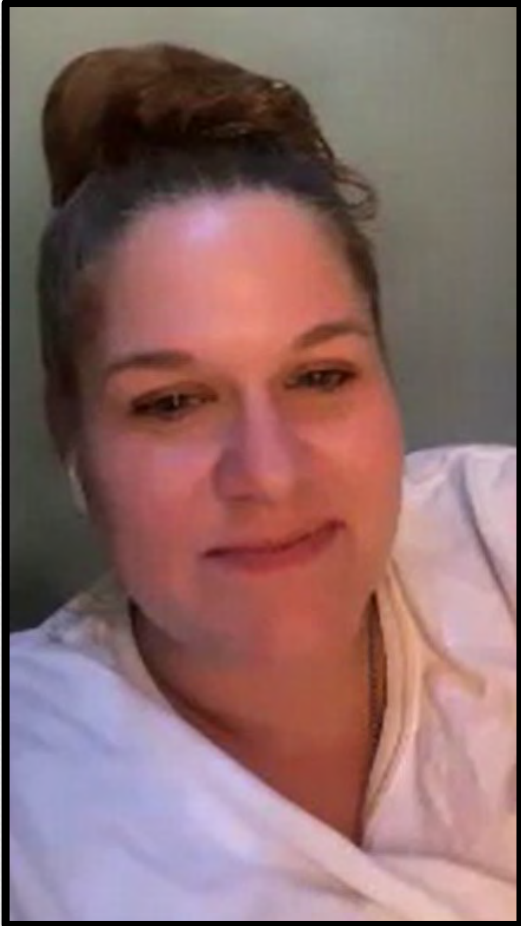


How did Drug Court affect your life?



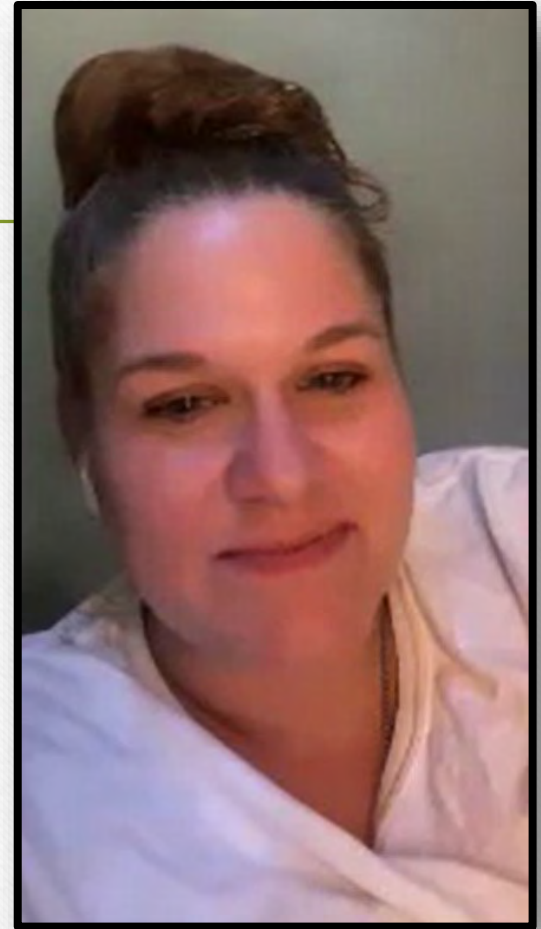
It gave me the foundation I needed and the opportunity to work through all the issues I had leading into my substance abuse.



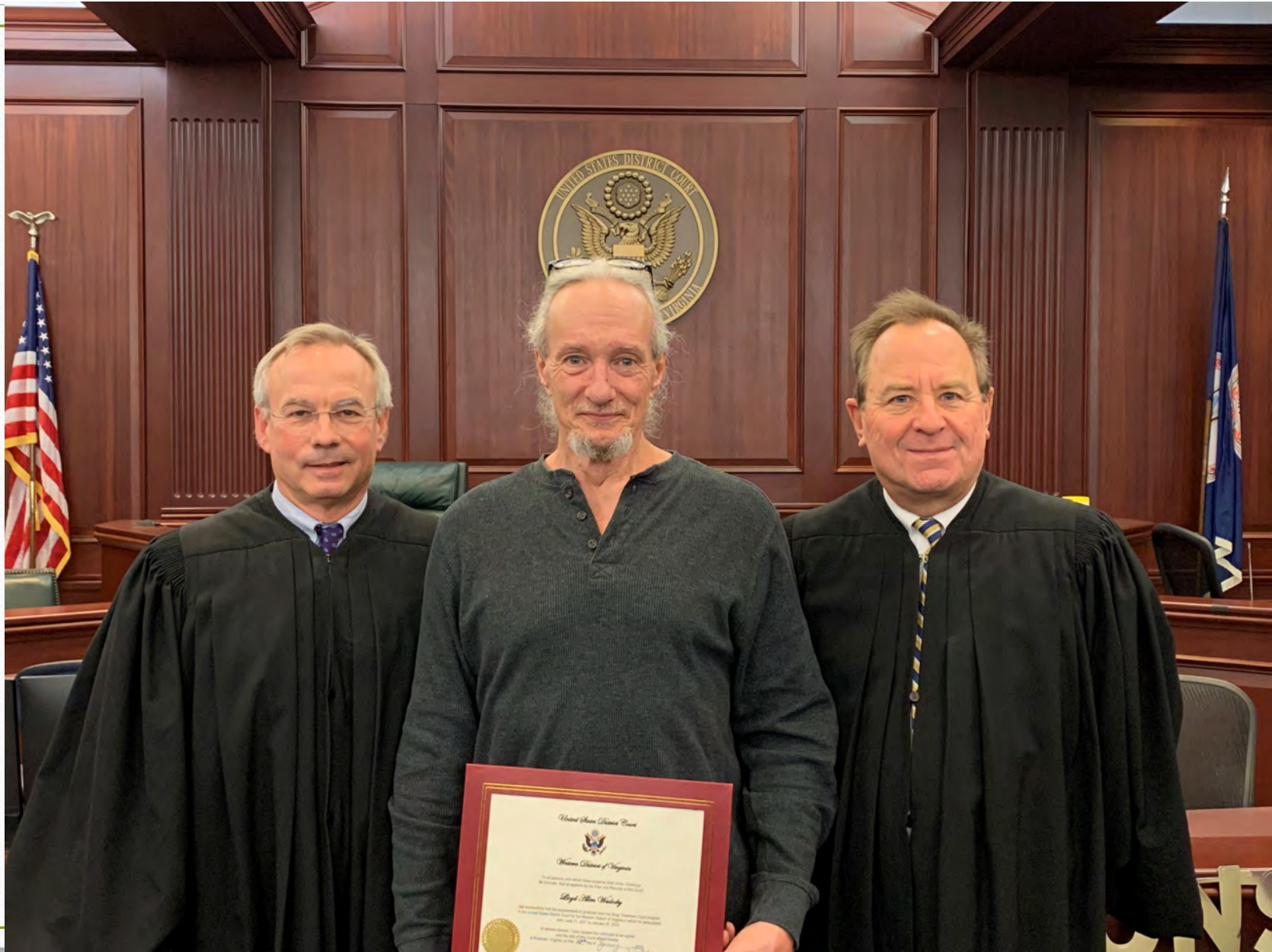


In the beginning I despised everything about Drug Court because I did not see it as something that was going to help me.

Once I got my foot in, I realized my probation officers and everyone were not Public Enemy Number One and they were trying to help me.









They pushed me
to get my driver's
license because I
never had a
license in my life.





I've been a hard core
addict for about 40 years.
Heroin for the most part.

How did Drug Court affect your life?

I am clean today.
Thank goodness for
that. July 13, I'll be
clean for two years.

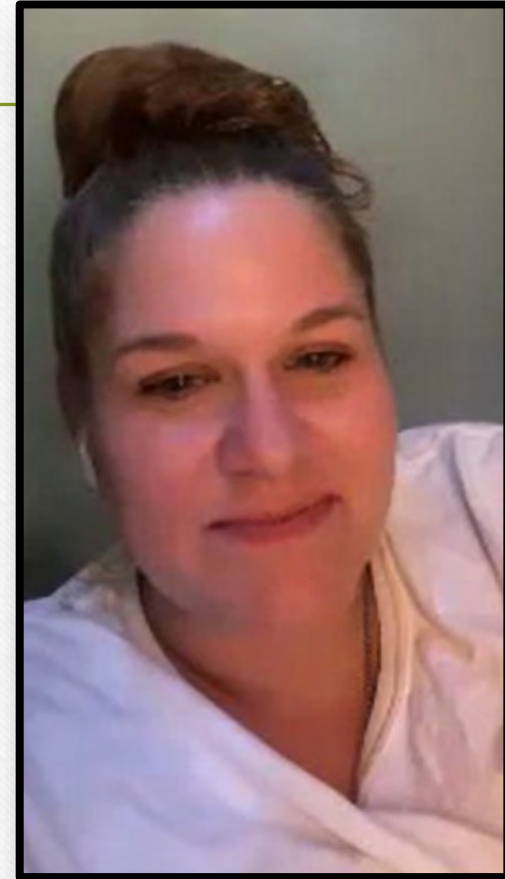


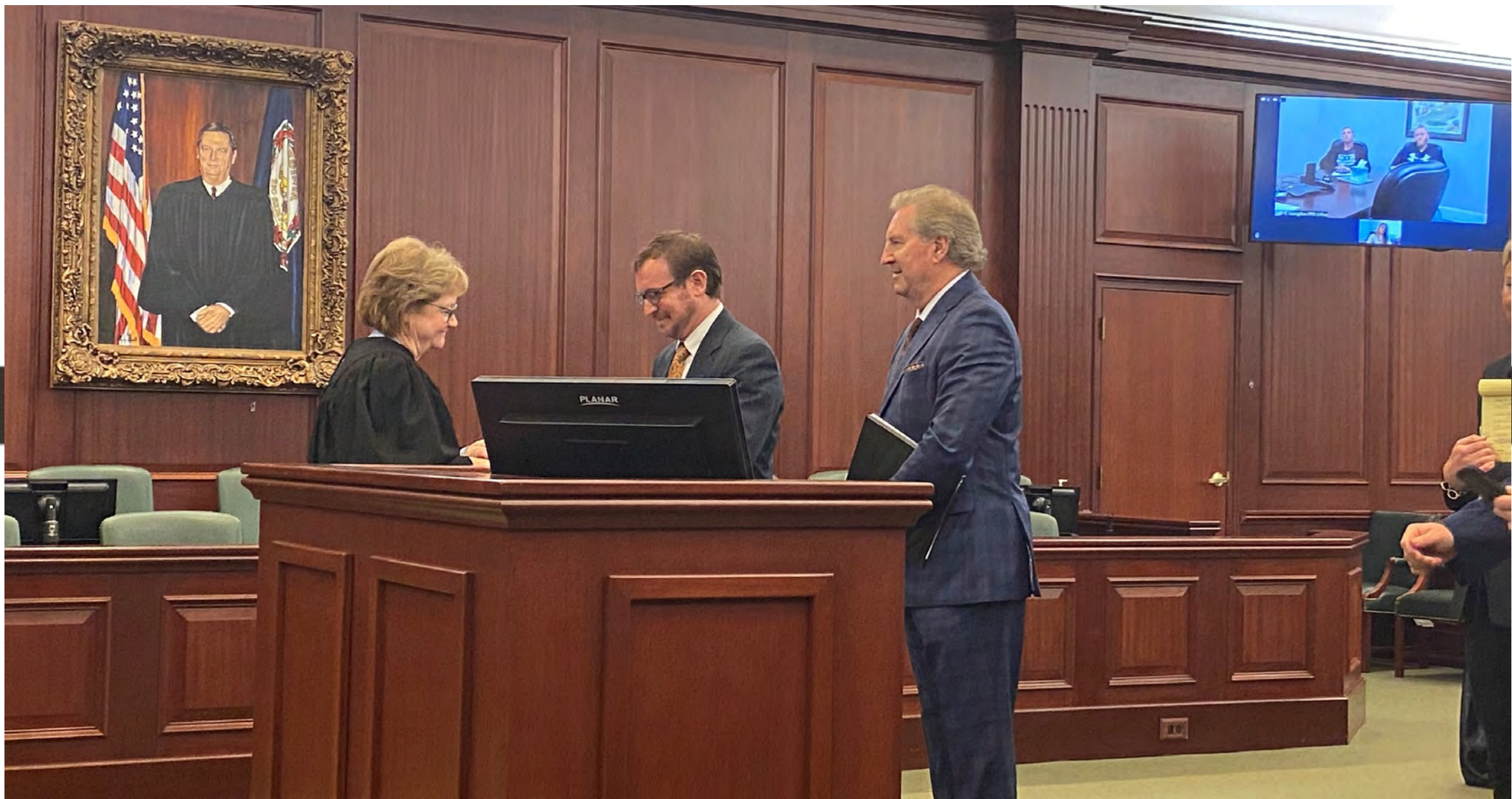




What did you like about DTC?

I loved the support. When I graduated, there was basically an army in the courtroom who had continuously helped me on my journey.



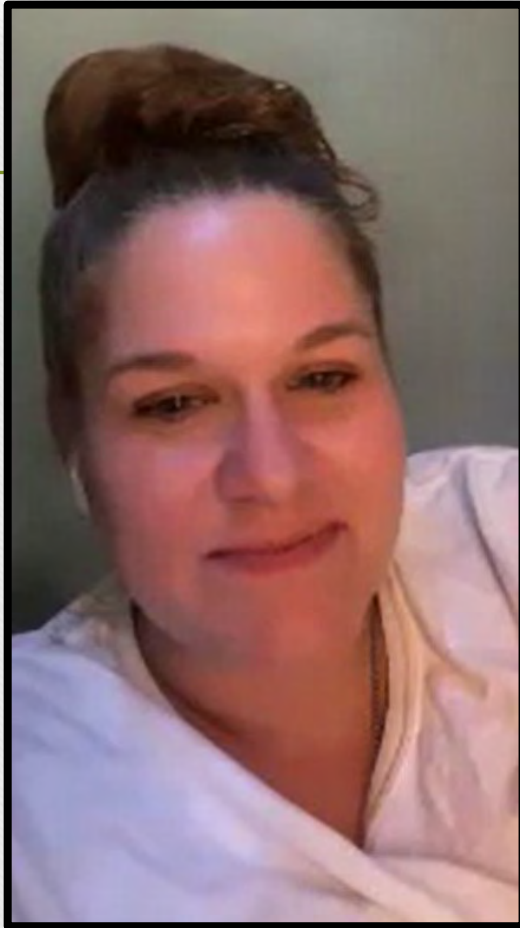




It was a big accomplishment when I graduated Drug Court. I never really completed anything in my life.



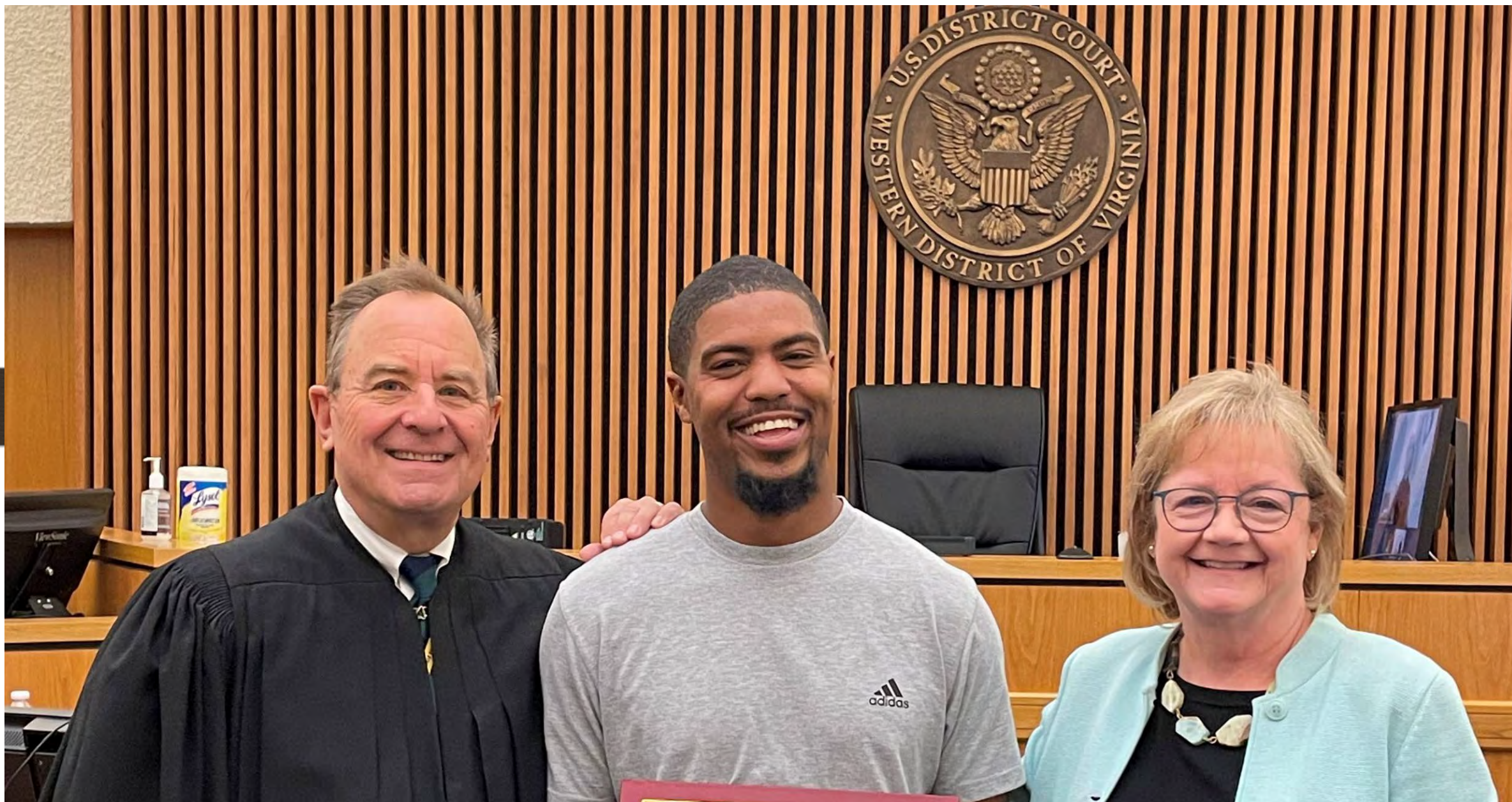




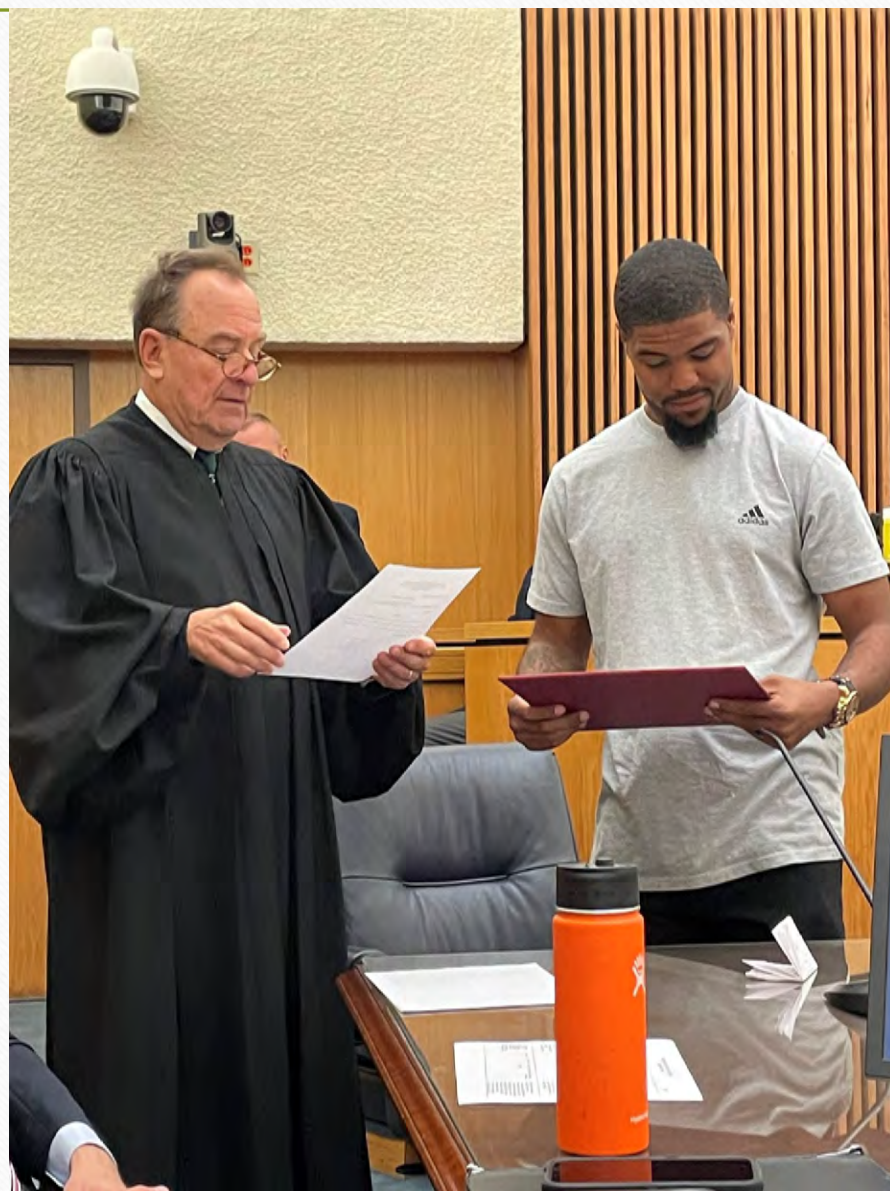
It took a little prodding,
but I learned that
honesty was ... the
fastest way to earn their
trust.















Are you glad you went through the program?



Yes! And I think
a whole lot more
people need to
go through it too.

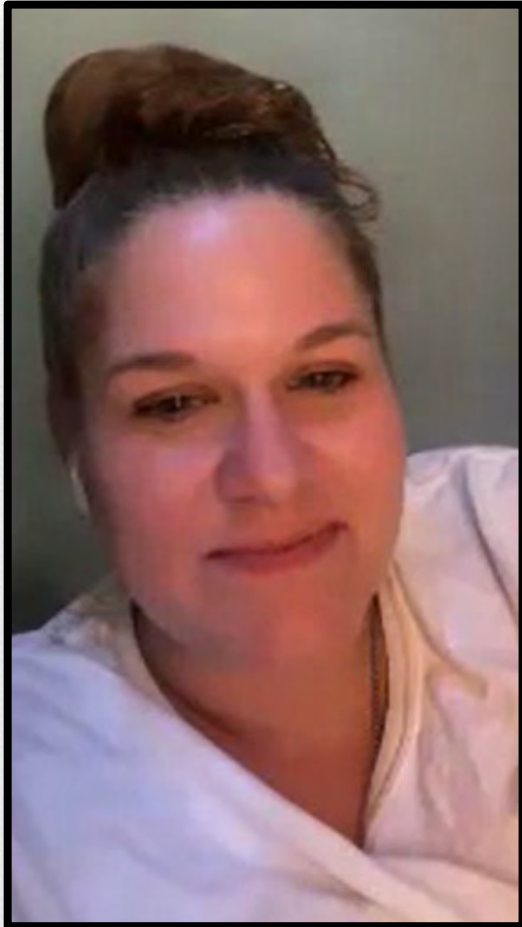


Anonymous – Conspiracy or Not?

In the eyes of the holder, one might think one thing but others might think something else. Conspiracy or notwho knows

RISE 22
July 20-26, 2022 | Nashville, TN





Everything I learned in Drug Court has stuck with me...There is nothing in me that wants to mess up everything that I have worked for to go get high.

My life is just better. I'm healthy. I've been clean for almost two years now.

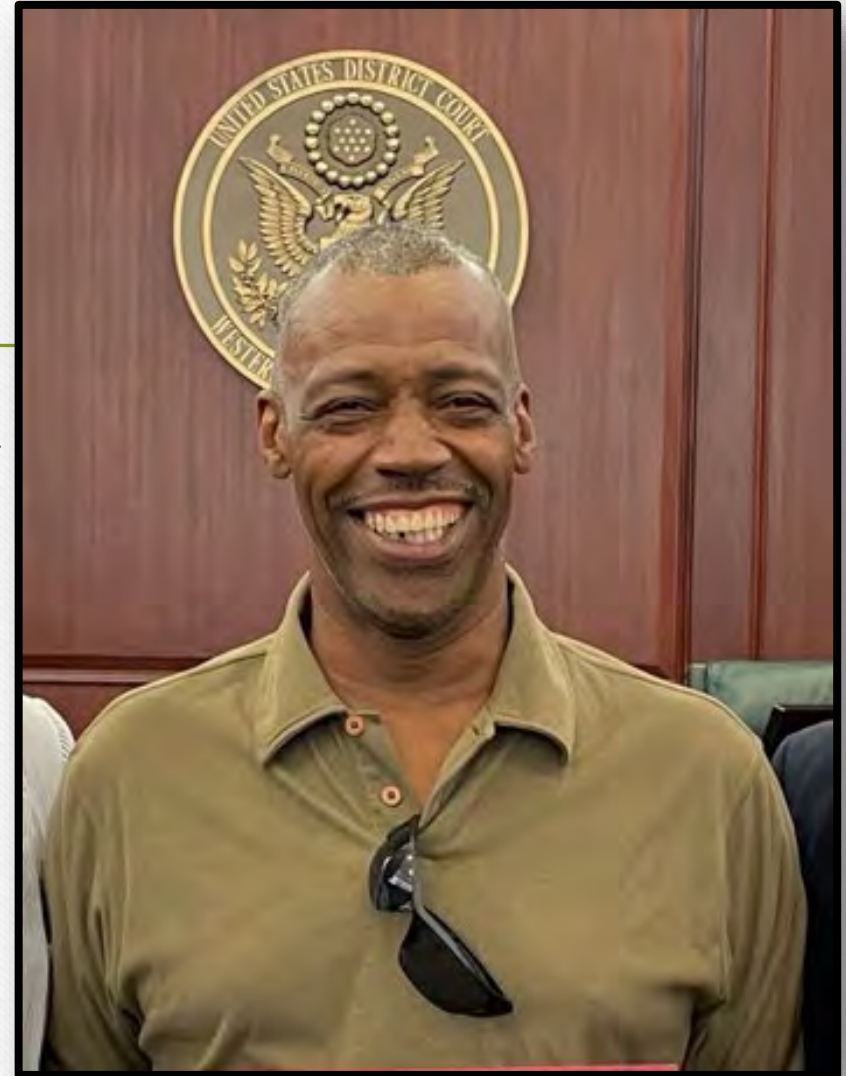


How is your life today?



It's great. I'm coming up on three years at my job. I have a house. I see my daughter all the time.

You come
out a whole
lot better.





You start seeing life,
instead of just being
in life.





Case Law Update

Judges Seminar

June 14, 2024

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Acting Deputy Director

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Office of Education and Sentencing Practice

[Online HelpLine Form](#)



Topics

Supreme Court Cases

Circuit Splits

District Court Issues

Topics

Supreme Court Cases

Pulsifer

Brown & Jackson

Erlinger

Delligatti

Statutory Safety Valve

18 U.S.C. § 3553(f)

For certain drug offenses, a court sentences “without regard to the mandatory minimum” if the court finds:

(f)(1)	(f)(2)	(f)(3)	(f)(4)	(f)(5)
Limited Criminal History	No Dangerous Weapon or Violence	No Death or Serious Bodily injury	No Leadership Role	Safety Valve Proffer

Statutory Safety Valve

18 U.S.C. § 3553(f)

First Step Act of 2018

(f)(1)

Defendant Does Not Have

**Limited
Criminal
History**

More Than

1

Criminal History Point



Statutory Safety Valve

18 U.S.C. § 3553(f)



Statutory Safety Valve

18 U.S.C. § 3553(f)

First Step Act of 2018

(f)(1)

Defendant Does Not Have

Limited
Criminal
History

+4

Criminal
History Points*

+3

Point Offense

+2

Point Violent
Offense

Combination Method
(Ineligible Only If All True)

+4

Criminal
History Points*

+3

Point Offense

+2

Point Violent
Offense

Checklist Method
(Ineligible if Any True)

Circuit Split: Statutory Safety Valve

Checklist Method (Ineligible if Any True)

United States v. Palomares, 52 F.4th 640 (5th Cir. 2022)

United States v. Haynes, 55 F.4th 1075 (6th Cir. 2022)

United States v. Pace, 48 F.4th 741 (7th Cir. 2022)

United States v. Pulsifer, 39 F.4th 1018 (8th Cir. 2022)

Combination Method (Ineligible Only If All True)

United States v. Lopez, 998 F.3d 431 (9th Cir. 2021)

United States v. Jones, 60 F.4th 230 (4th Cir. 2023)

United States v. Garcon, 54 F.4th 1274 (11th Cir. 2022)

Circuit Split: Statutory Safety Valve

Checklist Method (Ineligible if Any True)

United States v. Palomares, 52 F.4th 640 (5th Cir. 2022)

United States v. Haynes, 55 F.4th 1075 (6th Cir. 2022)

United States v. Pace, 48 F.4th 741 (7th Cir. 2022)

United States v. Pulsifer, 39 F.4th 1018 (8th Cir. 2022)

→ SCOTUS grants certiorari.

Combination Method (Ineligible Only If All True)

United States v. Lopez, 998 F.3d 431 (9th Cir. 2021)

United States v. Jones, 60 F.4th 230 (4th Cir. 2023)

United States v. Garcon, 54 F.4th 1274 (11th Cir. 2022)

United States v. Pulsifer

144 S.Ct. 718 (2024)



Question Presented:

Whether a defendant satisfies the criteria in 18 U.S.C. § 3553(f)(1) so long as he does not have (a) more than four criminal history points, (b) a three-point offense, and (c) a two-point offense, or whether the defendant satisfies the criteria so long as he does not have (a), (b), or (c).

United States v. Pulsifer

144 S.Ct. 718 (2024)



Distribution of More than
50 Grams of
Methamphetamine and
Prior Serious Drug Felony.

15 years

Mandatory Minimum

+3 +3

Two 3-Point Sentences

United States v. Pulsifer

144 S.Ct. 718 (2024)

Defendant Does Not Have:



United States v. Pulsifer
144 S.Ct. 718 (2024)



Holding:

A defendant is eligible for safety-valve relief under Paragraph (f)(1) only if he “does not have” all three of the items listed.

United States v. Pulsifer

144 S.Ct. 718 (2024)

Defendant Does Not Have:

Combination Method
(Pulsifer's Argument)

+4
Criminal
History Points*

+3
Point Offense

+2
Point Violent
Offense

Checklist Method
(Government Argument)

+4
Criminal
History Points*

+3
Point Offense

+2
Point Violent
Offense

United States v. Pulsifer

144 S.Ct. 718 (2024)

Defendant Does Not Have:

Checklist Method
(Government Argument)

+4

Criminal
History Points*

Ineligible



+3

Point Offense

Ineligible



+2

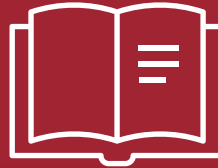
Point Violent
Offense



United States v. Pulsifer

144 S.Ct. 718 (2024)

Two Possible Ways To Read



Two Possible Ways To Read

Text



Don't Drink & Drive

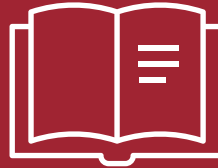


Eat, Drink, & Smoke Before Surgery

United States v. Pulsifer

144 S.Ct. 718 (2024)

Two Possible Ways To Read



Text

Two Possible Ways To Read



“Context”

United States v. Pulsifer

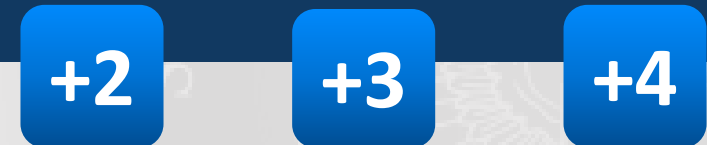
144 S.Ct. 718 (2024)



Anomalous Results (Combination Method)



Superfluidity (Combination Method)



Circuit Split: Statutory Safety Valve

Checklist Method (Ineligible if Any True)

United States v. Palomares, 52 F.4th 640 (5th Cir. 2022)

United States v. Haynes, 55 F.4th 1075 (6th Cir. 2022)

United States v. Pace, 48 F.4th 741 (7th Cir. 2022)

United States v. Pulsifer, 39 F.4th 1018 (8th Cir. 2022)

Combination Method (Ineligible If All True)

United States v. Lopez, 998 F.3d 431 (9th Cir. 2021)

Applies Crim. Hx. Def., e.g., too old to score

United States v. Jones, 60 F.4th 230 (4th Cir. 2023)

United States v. Garcon, 54 F.4th 1274 (11th Cir. 2022)

Doesn't Apply Criminal History Definitions

Pulsifer / Dissent: No Superfluidity ←

Circuit Split: Statutory Safety Valve

**Combination Method
(Ineligible If All True)**

USSC Data Based On

United States v. Lopez, 998 F.3d 431 (9th Cir. 2021)

Applies Crim. Hx. Def., e.g., too old to score

United States v. Jones, 60 F.4th 230 (4th Cir. 2023)

United States v. Garcon, 54 F.4th 1274 (11th Cir. 2022)

Doesn't Apply Criminal History Definitions

Pulsifer / Dissent: No Superfluidity

Section 2D1.1(b)(18) has a 2-level reduction for defendants who satisfy safety valve criteria at §5C1.2.

Does the holding of *Pulsifer* apply to the guidelines?

- A. Yes**
- B. Maybe**
- C. No**



Guidelines Safety Valve

Section 5C1.2

§5C1.2. Limitation on Applicability of Statutory Minimum Sentences in Certain Cases

court finds that the defendant meets the criteria in 18 U.S.C. § 3553(f)(1)–

§ 70506, the court shall impose a sentence in accordance with the applicable guidelines without regard to any statutory minimum sentence, if the court finds that the defendant meets the criteria in 18 U.S.C. § 3553(f)(1)–(5) as follows:

- (1) the defendant does not have—
 - (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;
 - (B) a prior 3-point offense, as determined under the sentencing guidelines; and
 - (C) a prior 2-point violent offense, as determined under the sentencing guidelines;

Topics

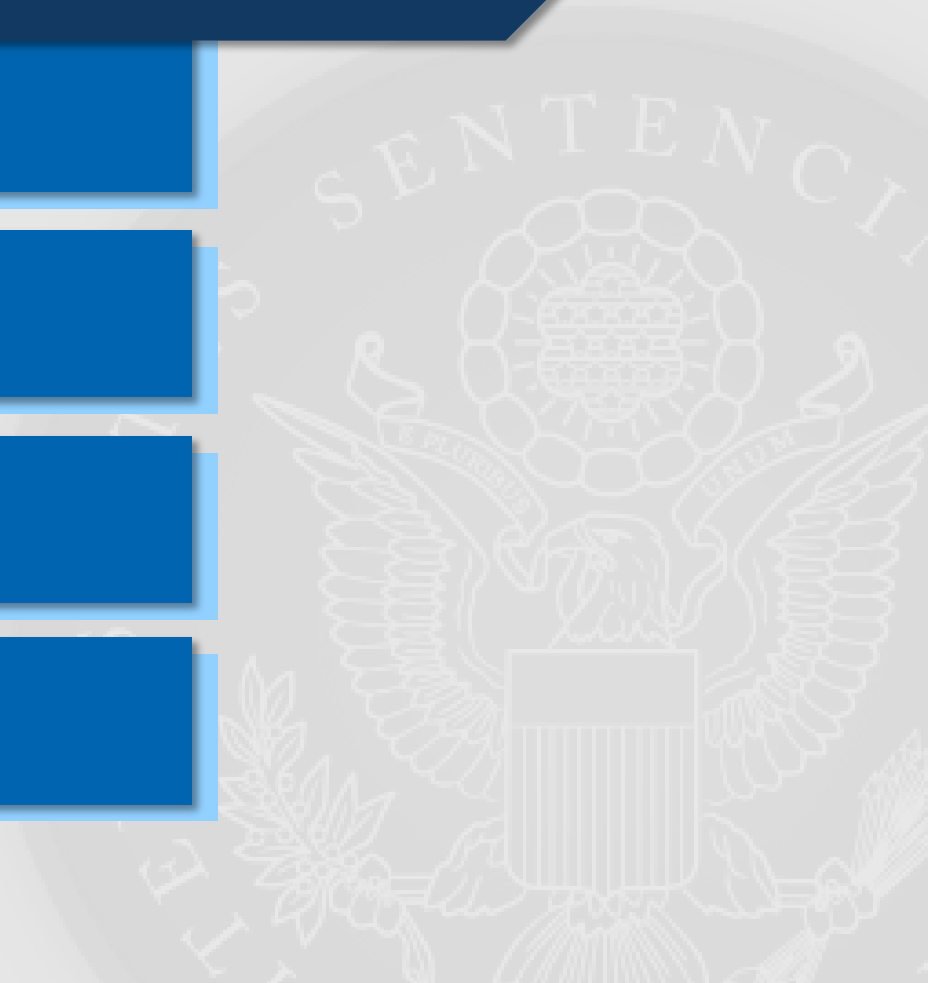
Supreme Court Cases

Pulsifer

Brown & Jackson

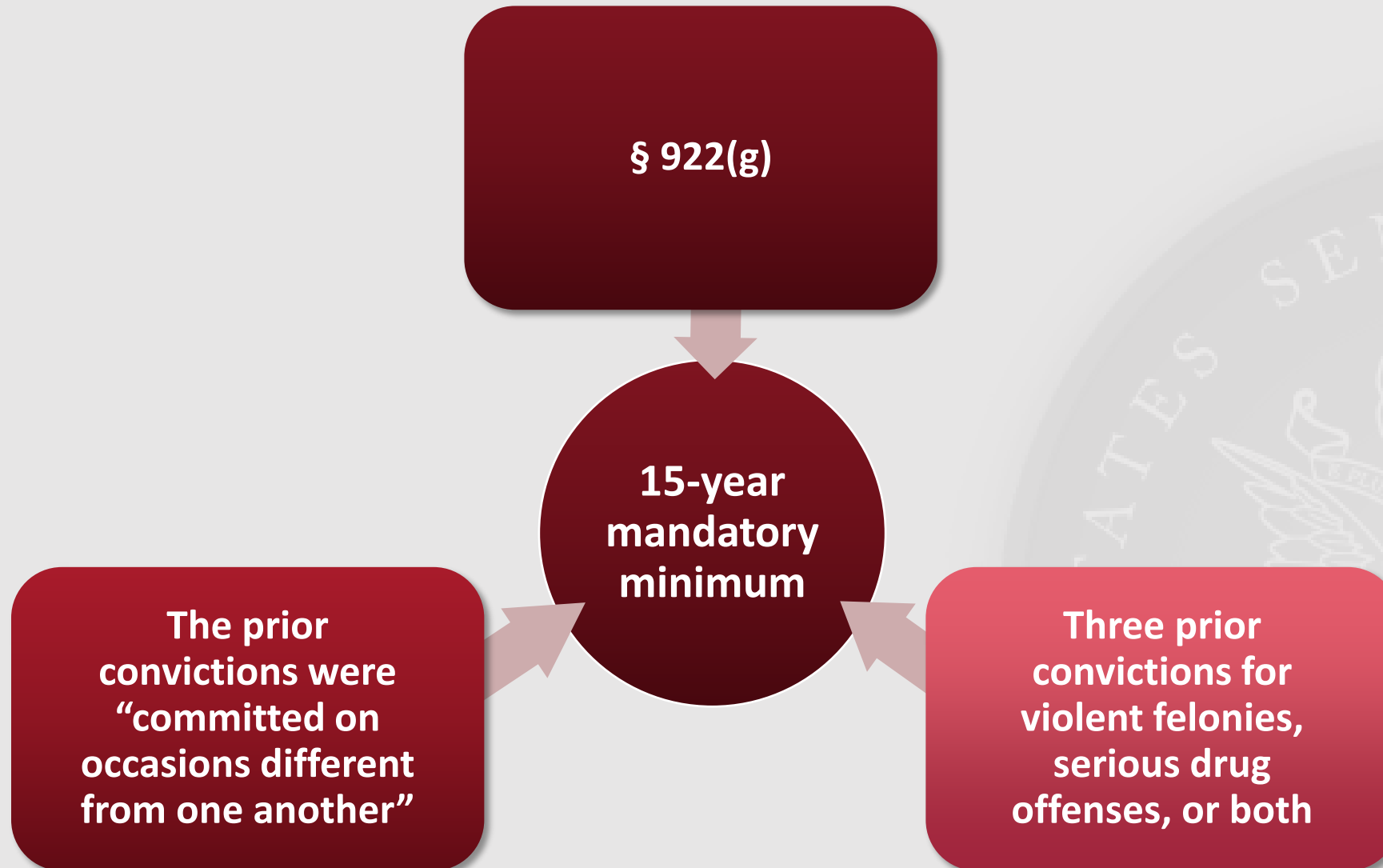
Erlinger

Delligatti



Armed Career Criminal Act

18 U.S.C. § 924(e)



Serious Drug Offense

18 U.S.C. § 924(e)(2)(A)

Federal Drug Priors

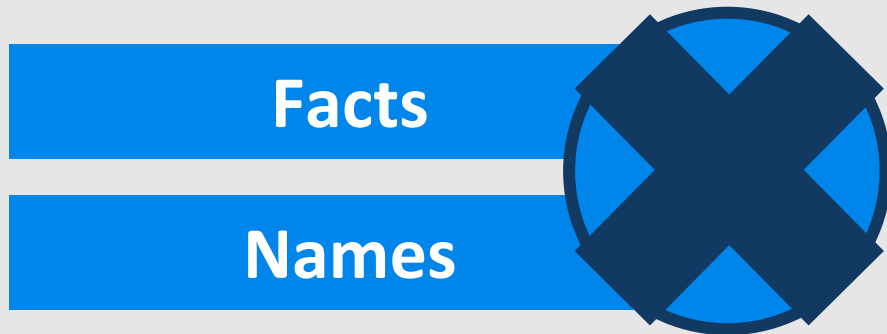
an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46

State Drug Priors

an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))

Categorical Approach

A method for determining whether an offense meets a given definition, such as “violent felony” or “serious drug offense.”

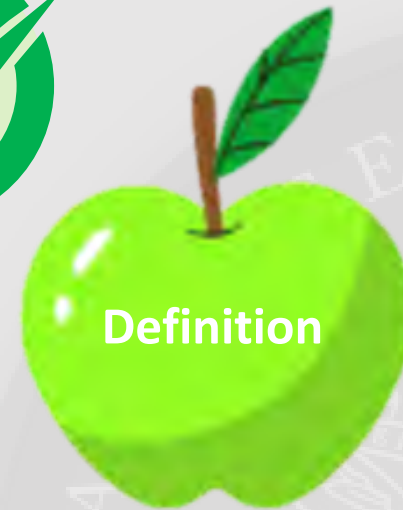


Categorical Approach



Categorical Match

Categorical Approach

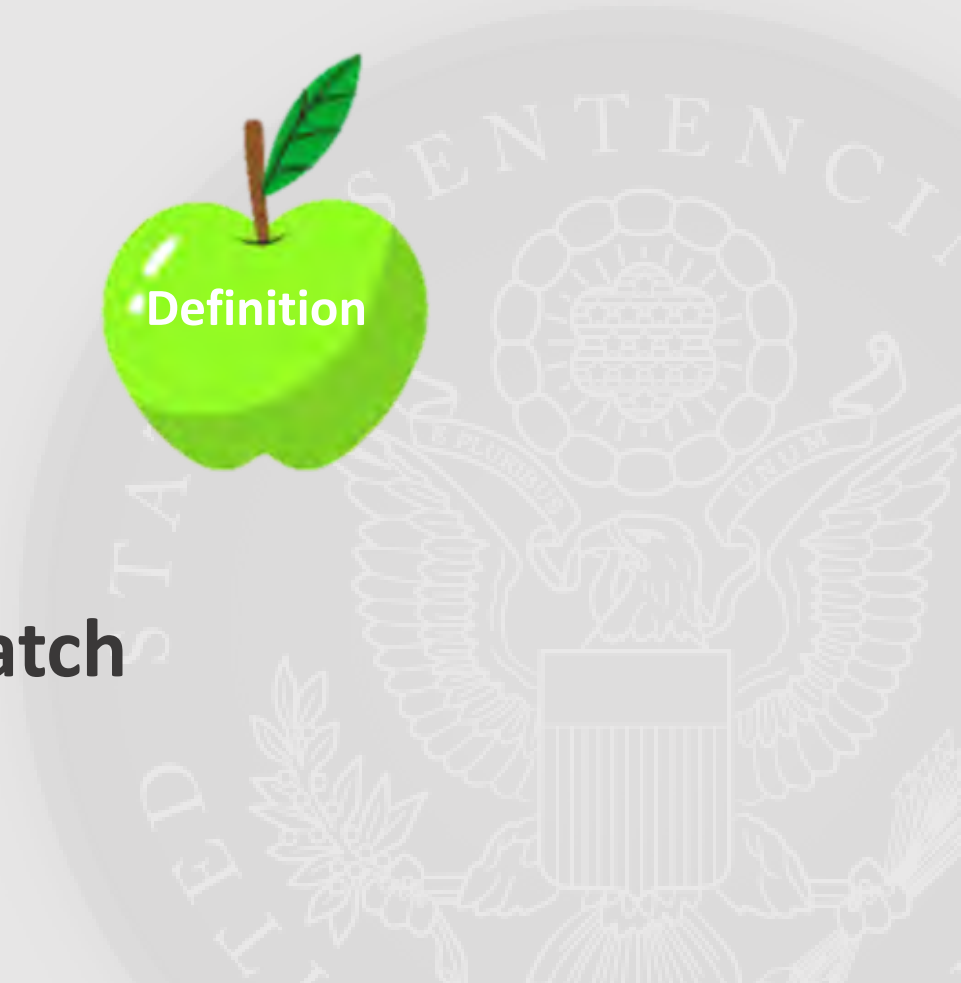


Categorical Match

Categorical Approach



Not a Categorical Match



Serious Drug Offense

18 U.S.C. § 924(e)(2)(A)

Federal Drug Priors

an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46

State Drug Priors

an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))

Serious Drug Offense

18 U.S.C. § 924(e)(2)(A)

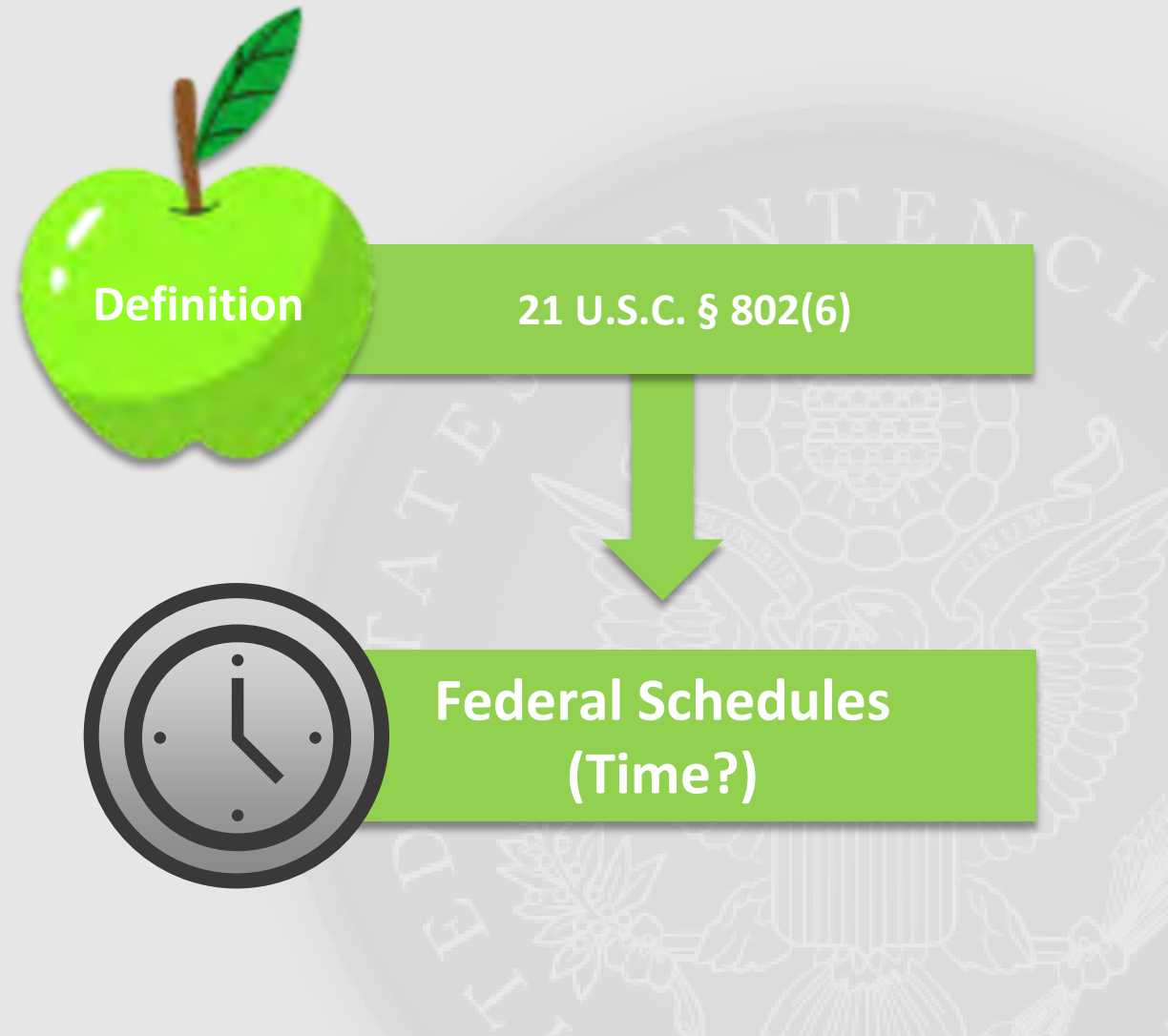
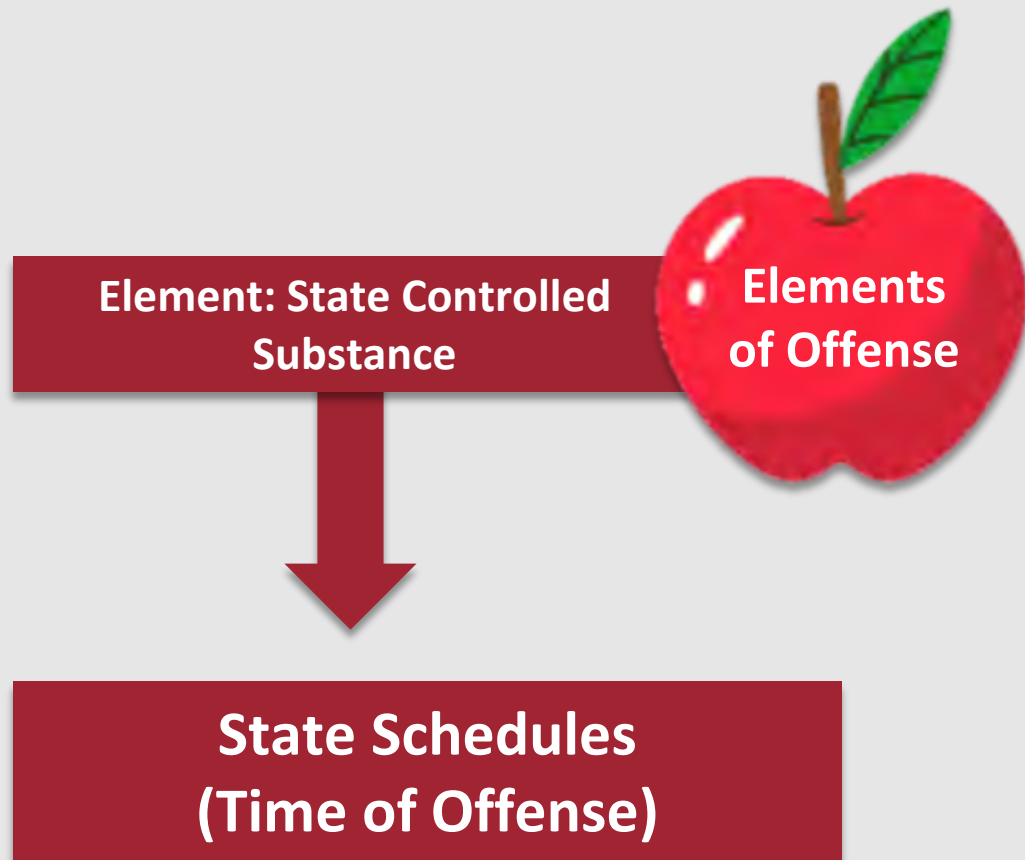
Federal Drug Priors

an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46

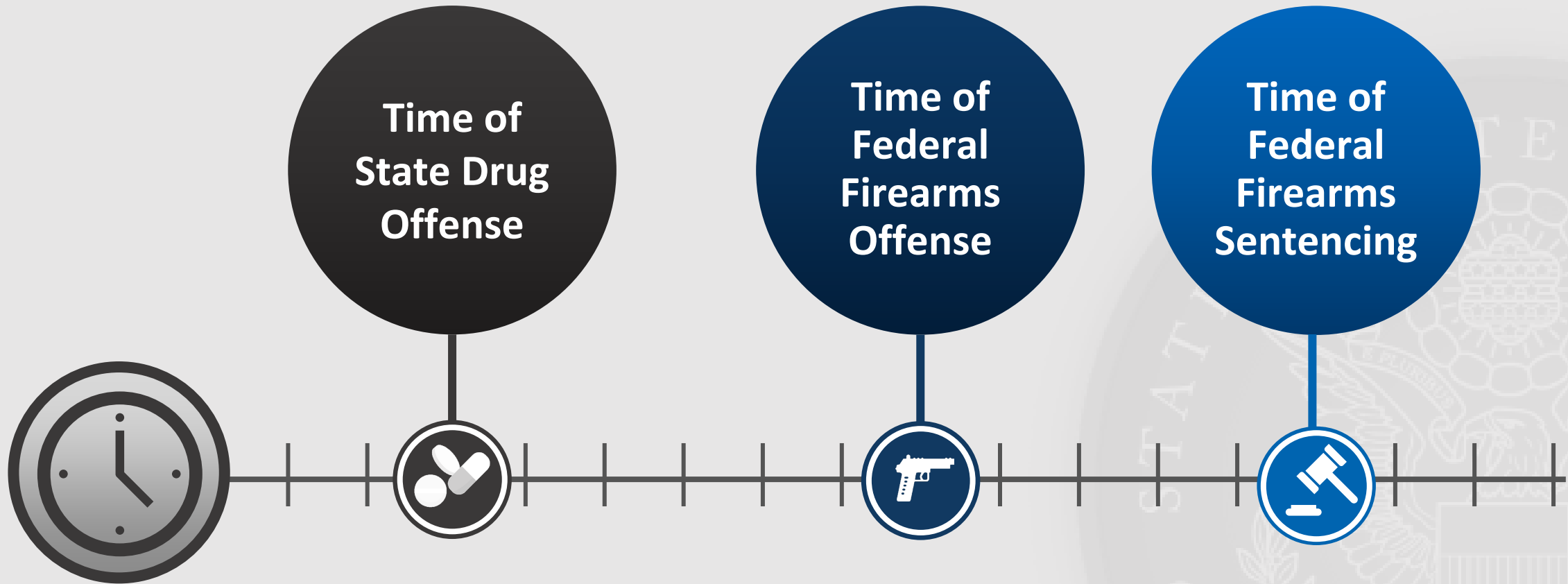
State Drug Priors

an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a **controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))**

Categorical Approach



Timing of Drug Schedule Comparison



Brown v. United States

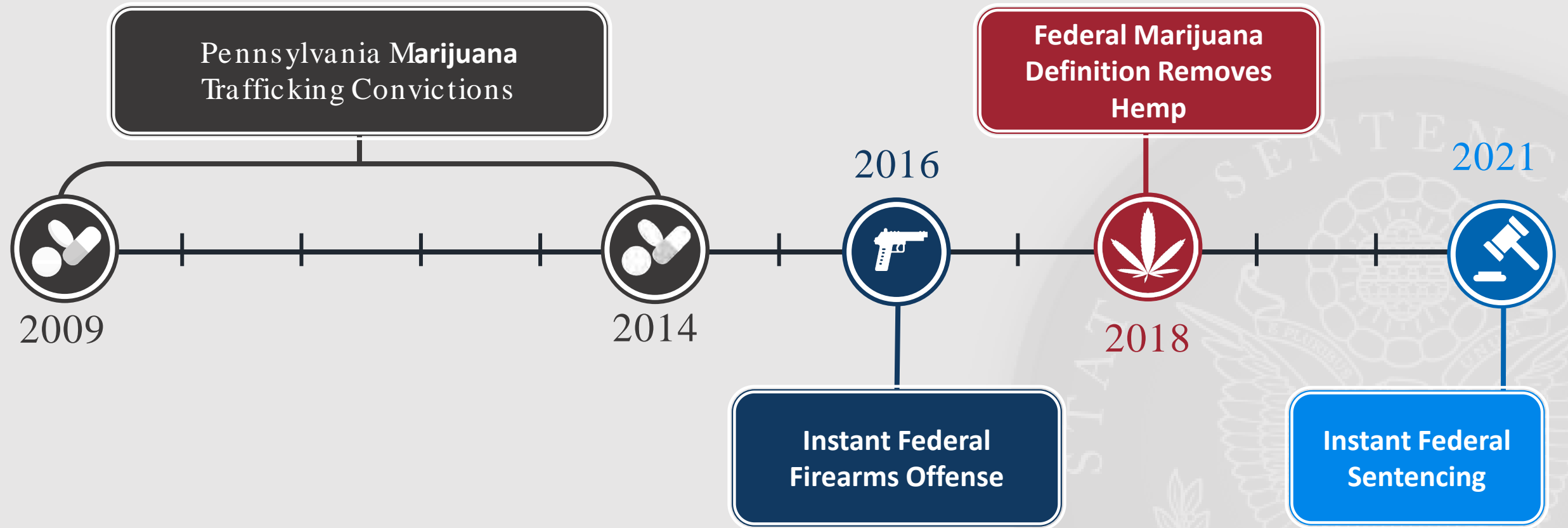
144 S.Ct. 1195 (2024)



Question Presented:

Does “controlled substance” refer to the federal schedules in effect during the prior state drug offense, federal firearm offense, or federal sentencing?

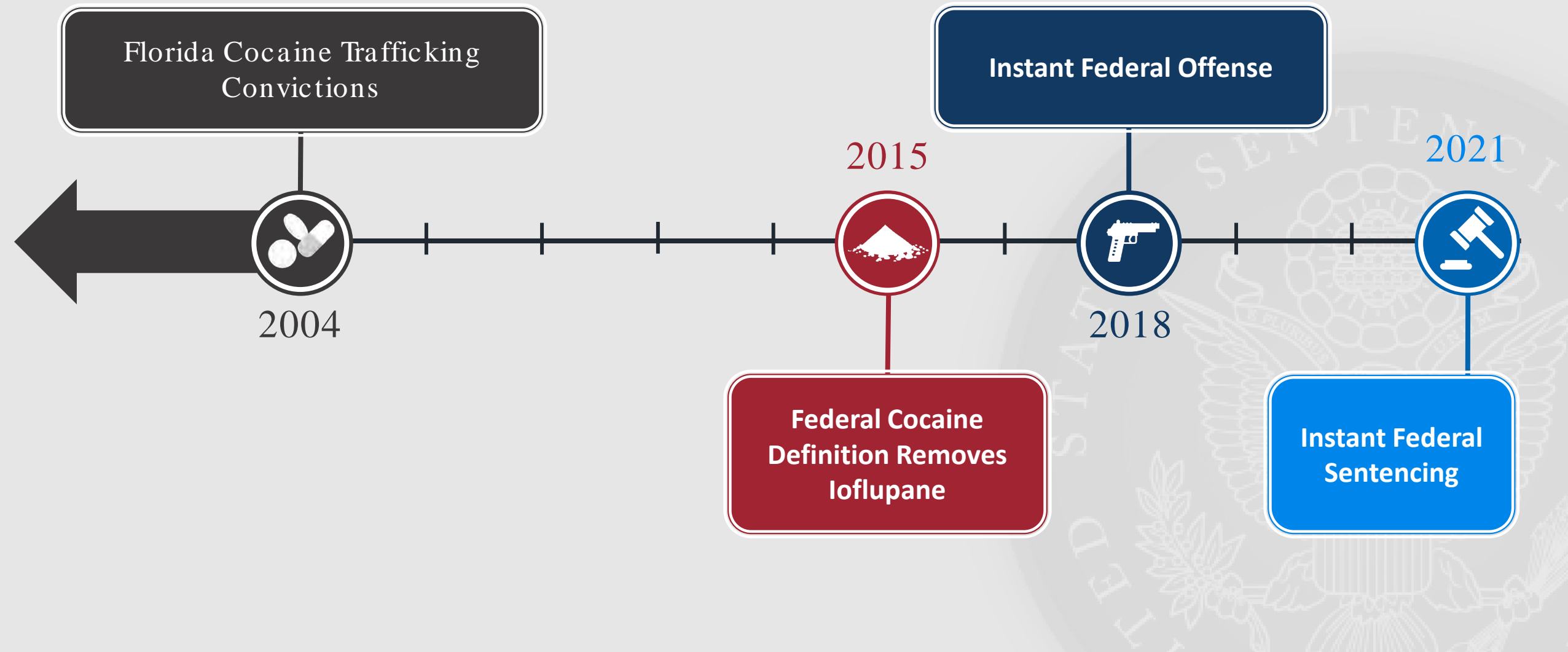
Justin Rashid Brown



Justin Rashid Brown



Eugene Jackson



Eugene Jackson

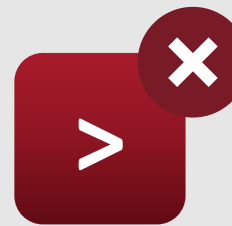
FLA Cocaine 2004



Federal Cocaine 2004

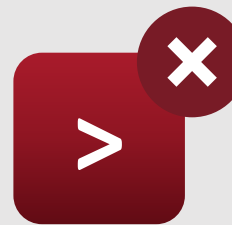
Federal Cocaine Definition Removes Ioflupane 2015

FLA Cocaine 2004



Federal Cocaine 2017

FLA Cocaine 2004



Federal Cocaine 2021

Timing of Drug Schedule Comparison



**Govt.
Argument**

**Jackson
Argument**

**Brown
Argument**



Brown v. United States

144 S.Ct. 1195 (2024)

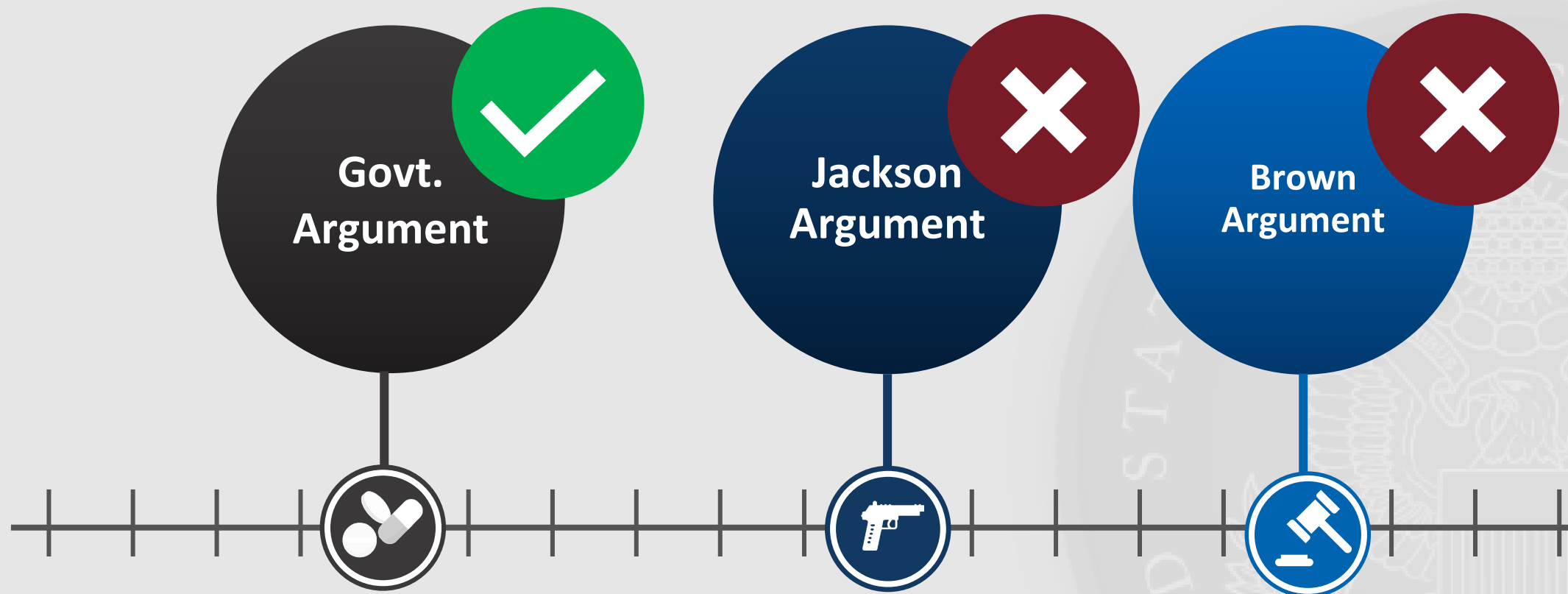


Holding:

A state drug conviction qualifies as an ACCA predicate if it involved a drug on the federal drug schedules at the time of the **state offense**.

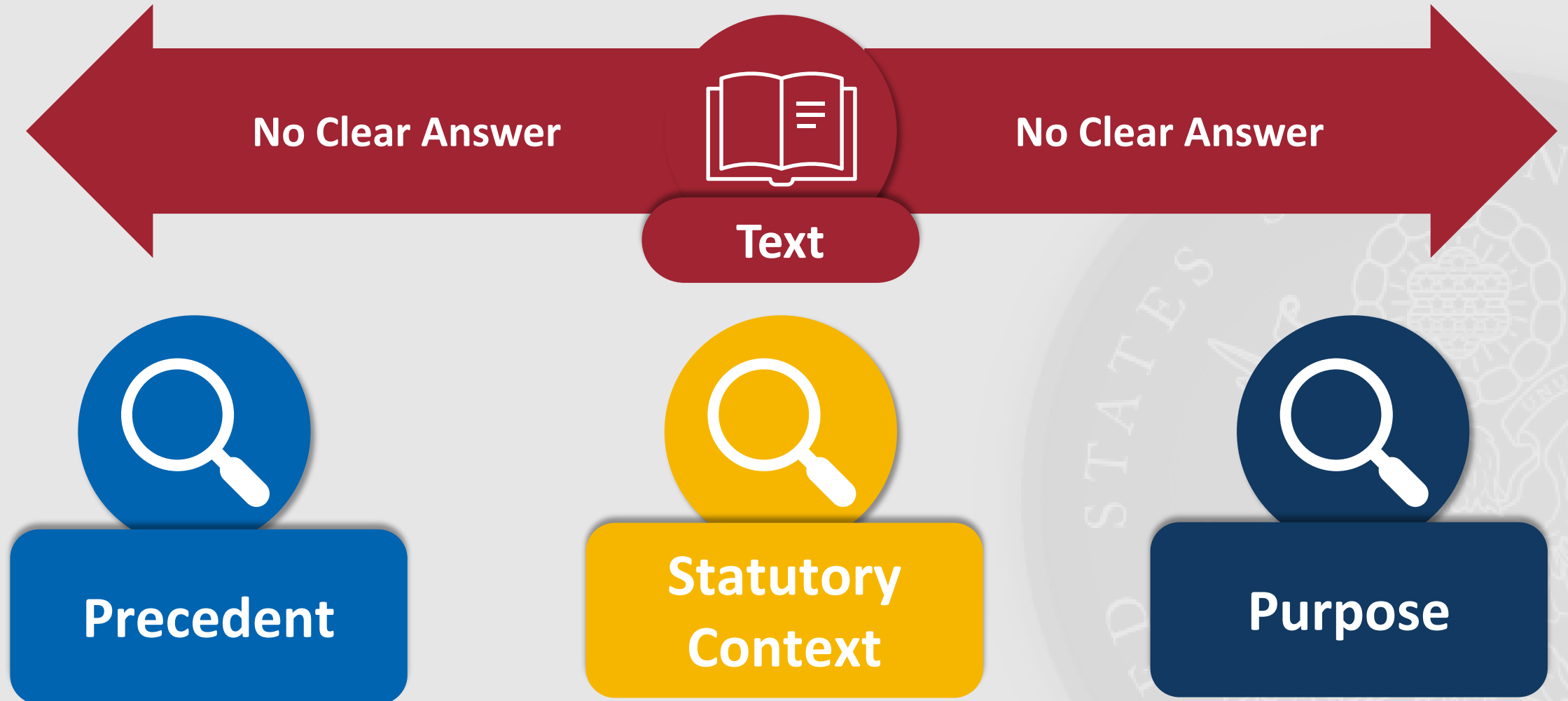
Brown v. United States

144 S.Ct. 1195 (2024)



Brown v. United States

144 S.Ct. 1195 (2024)



Brown v. United States

144 S.Ct. 1195 (2024)

Precedent

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

Statutory Context

Treat Federal and State Offenses Similarly

Purpose

Punish Past Law Breakers More Severely

Related Circuit Split: §4B1.2 Time of Comparison

Time of State Drug Offense

United States v. Lewis, 58 F.4th 764 (3d Cir. 2023)

United States v. Clark, 46 F.4th 404 (6th Cir. 2022)

United States v. Perez, 46 F.4th 691 (8th Cir. 2022)

Time of Federal Offense or Sentencing

United States v. Abdulaziz, 998 F.3d 519 (1st Cir. 2021)

**United States v. Gibson*, 55 F.4th 153 (2d Cir. 2022)

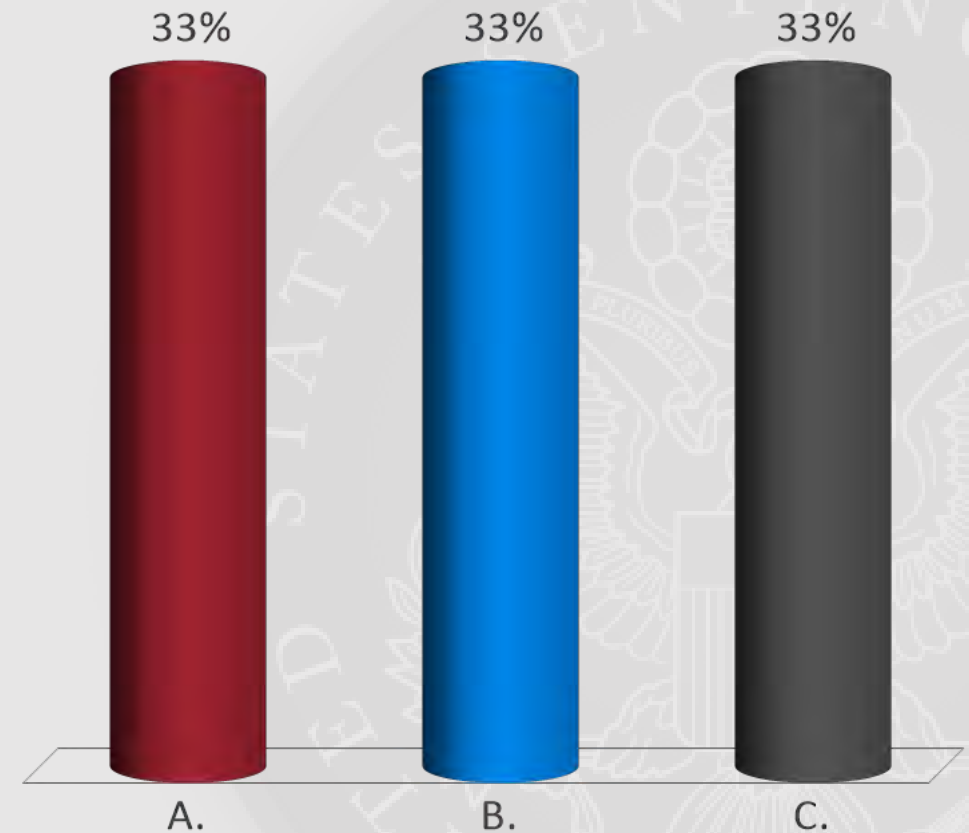
United States v. House, 31 F.4th 745 (9th Cir. 2022)

Does *Brown's* holding apply to §4B1.2?

A. Yes

B. Maybe

C. No



Topics

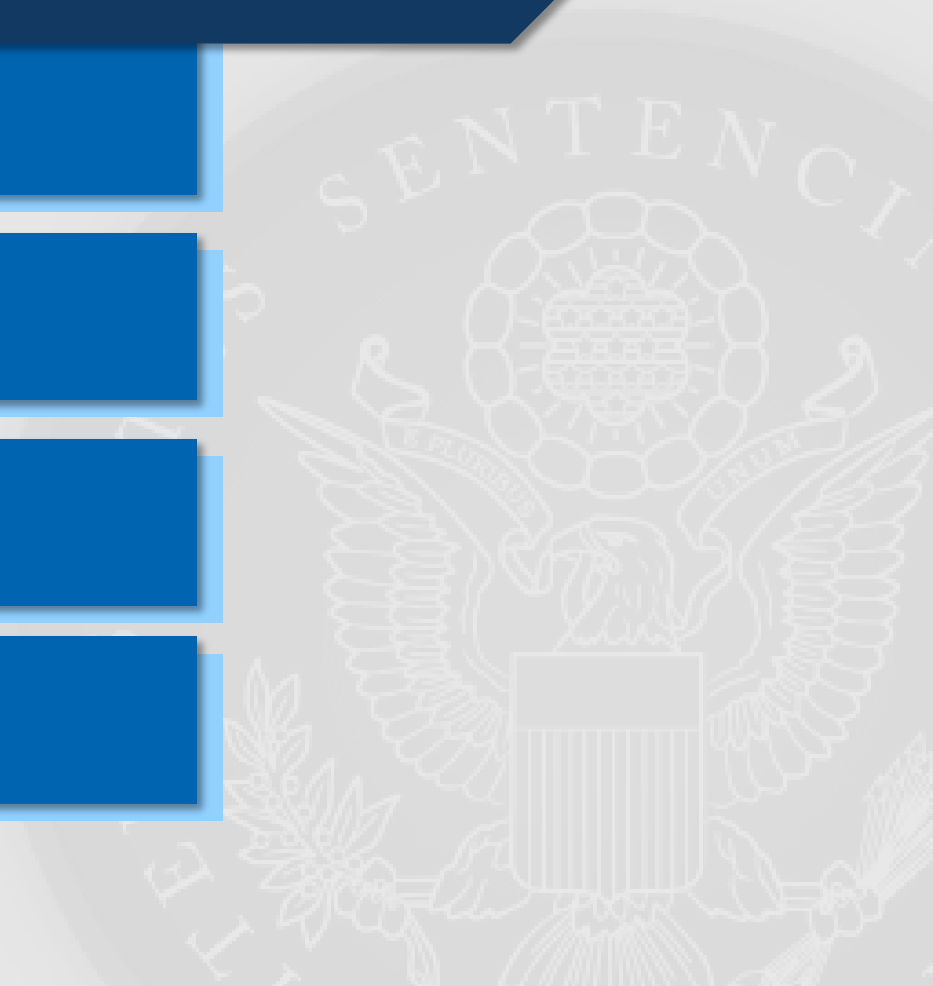
Supreme Court Cases

Pulsifer

Brown & Jackson

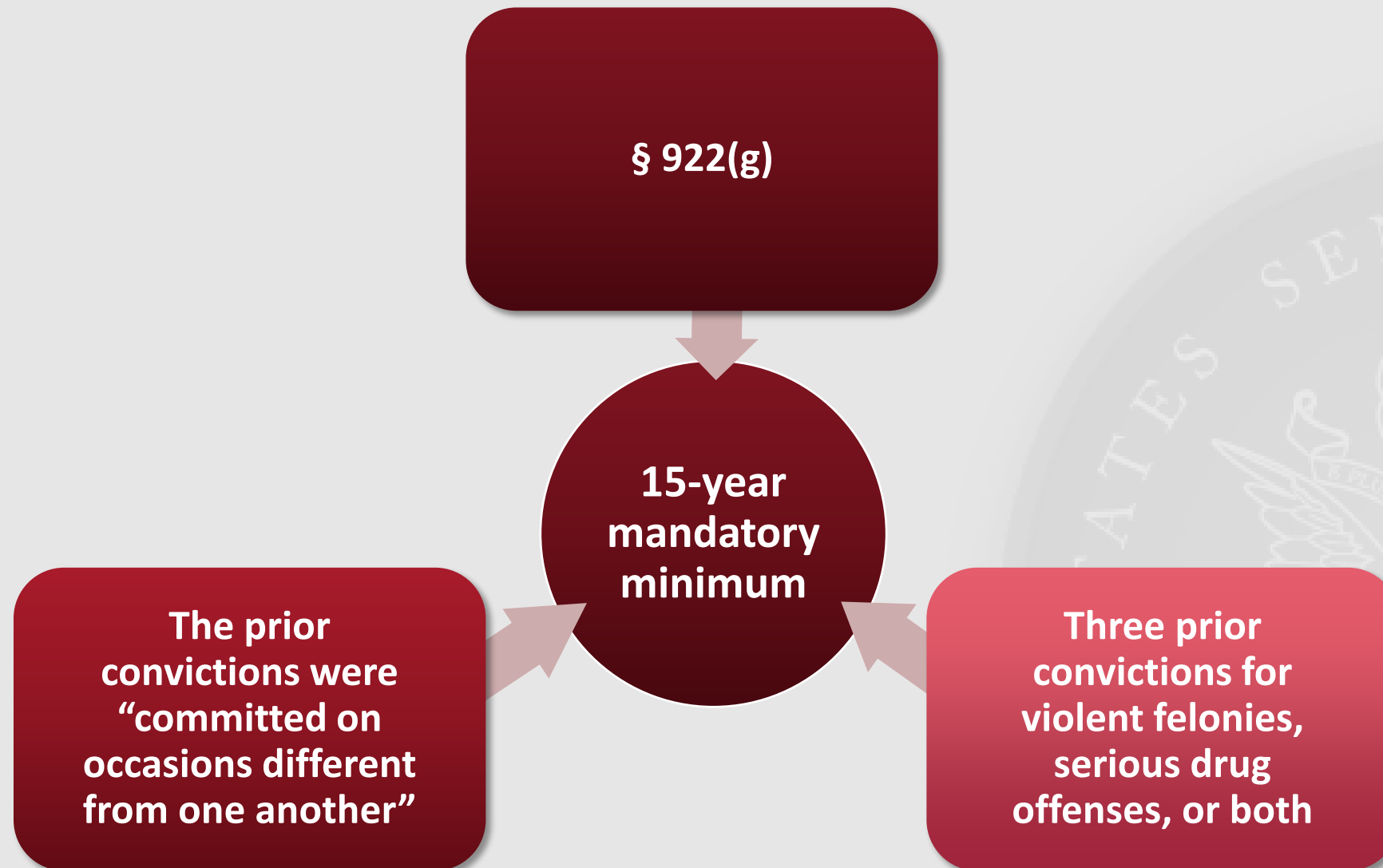
Erlinger

Delligatti



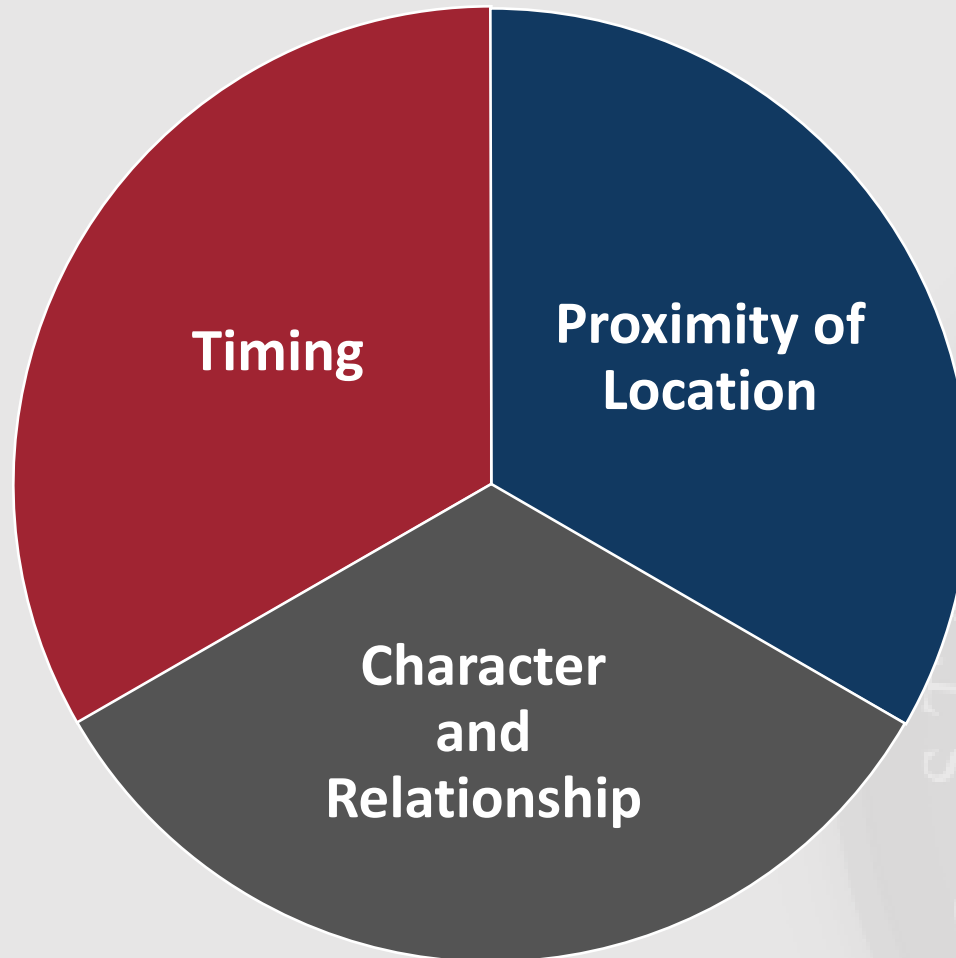
Armed Career Criminal Act

18 U.S.C. § 924(e)



Occasions Clause Inquiry

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



United States v. Erlinger

144 S.Ct. 419 (2023)



Question Presented:

Must the government prove to a jury beyond a reasonable doubt that the defendant's prior convictions were committed on different occasions to impose an enhanced sentence under ACCA?

Argued Mar. 27, 2024

Offenses Committed While on Release

18 U.S.C. § 3147



**Released Pending Federal Trial
or Sentencing**



**Convicted of New Federal
Offense on Release**



**Up to 10 Additional Years,
Consecutive to Offense on
Release**

Offenses Committed While on Release

Section 3C1.3



If 18 U.S.C. § 3147 applies, increase by three offense levels.



Does *Apprendi* apply to offenses committed while on release under § 3147?

- A. Yes**
- B. It Depends**
- C. No**



United States v. Perez

86 F.4th 1311 (11th Cir. 2023)

“We join the Third and Second Circuits in concluding that *Apprendi* applies when a § 3147 enhancement **takes the total sentence beyond the statutory maximum** for the underlying offense(s) of conviction.”



Topics

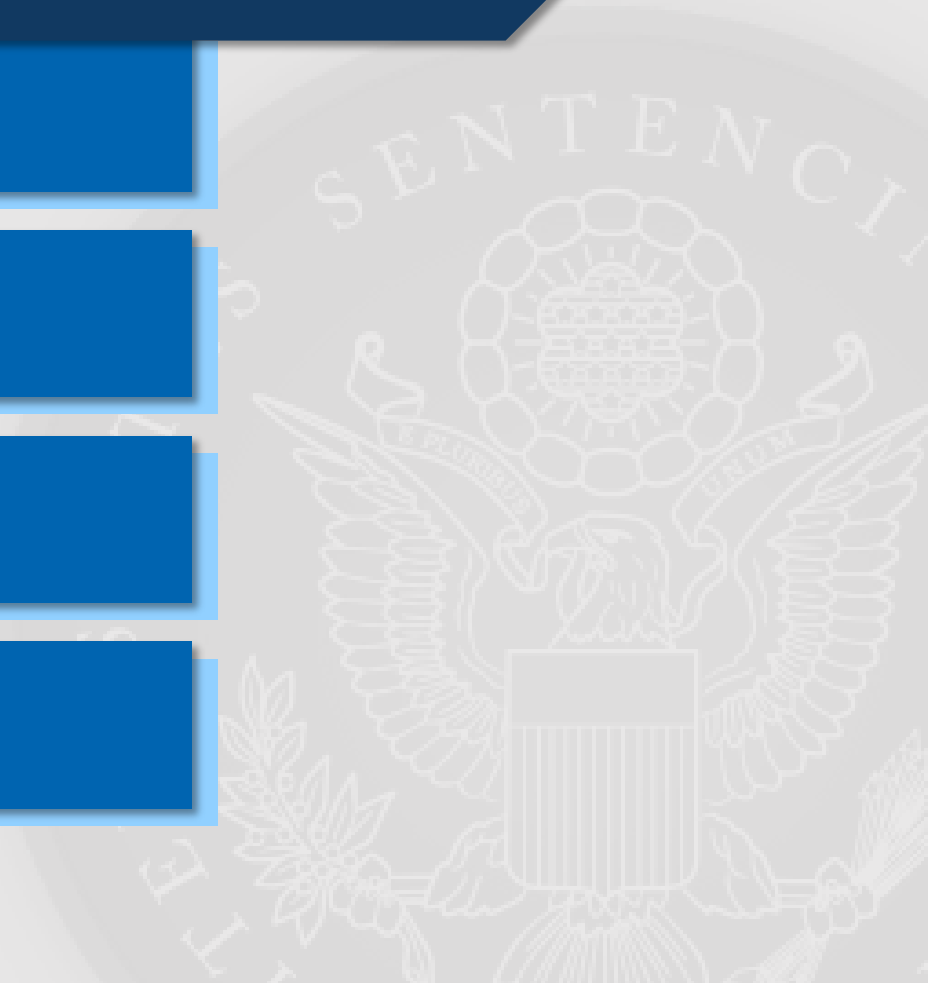
Supreme Court Cases

Pulsifer

Brown & Jackson

Erlinger

Delligatti



Crime of Violence

18 U.S.C. § 924(c)

An offense that is a felony and—

Force Clause

has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

use of physical force

Omission

?

Similar Force Clauses

ACCA

Section 16

§4B1.2



Force Clause: Omission v. Commission

Does NOT Include Omissions

United States v. Jenkins, 68 F.4th 148 (3d Cir. 2023)

United States v. Martinez-Rodriguez, 857 F.3d 282 (5th Cir. 2017)

Includes Omissions

United States v. Báez-Martínez, 950 F.3d 119 (1st Cir. 2020)

United States v. Scott, 990 F.3d 94 (2d Cir. 2021) (en banc)

United States v. Rumley, 952 F.3d 538 (4th Cir. 2020)

United States v. Harrison, 54 F.4th 884 (6th Cir. 2022)

United States v. Jennings, 860 F.3d 450 (7th Cir. 2017)

United States v. Peebles, 879 F.3d 282 (8th Cir. 2018)

United States v. Ontiveros, 875 F.3d 533 (10th Cir. 2017)

United States v. Sanchez, 940 F.3d 526 (11th Cir. 2019)

Delligatti v. United States

2024 WL 2805741 (June 3, 2024)



Question Presented:

Whether a crime that requires proof of bodily injury or death, but can be committed by failing to take action, has as an element the use, attempted use, or threatened use of physical force.

Topics

Supreme Court Cases

Circuit Splits

District Court Issues

Topics

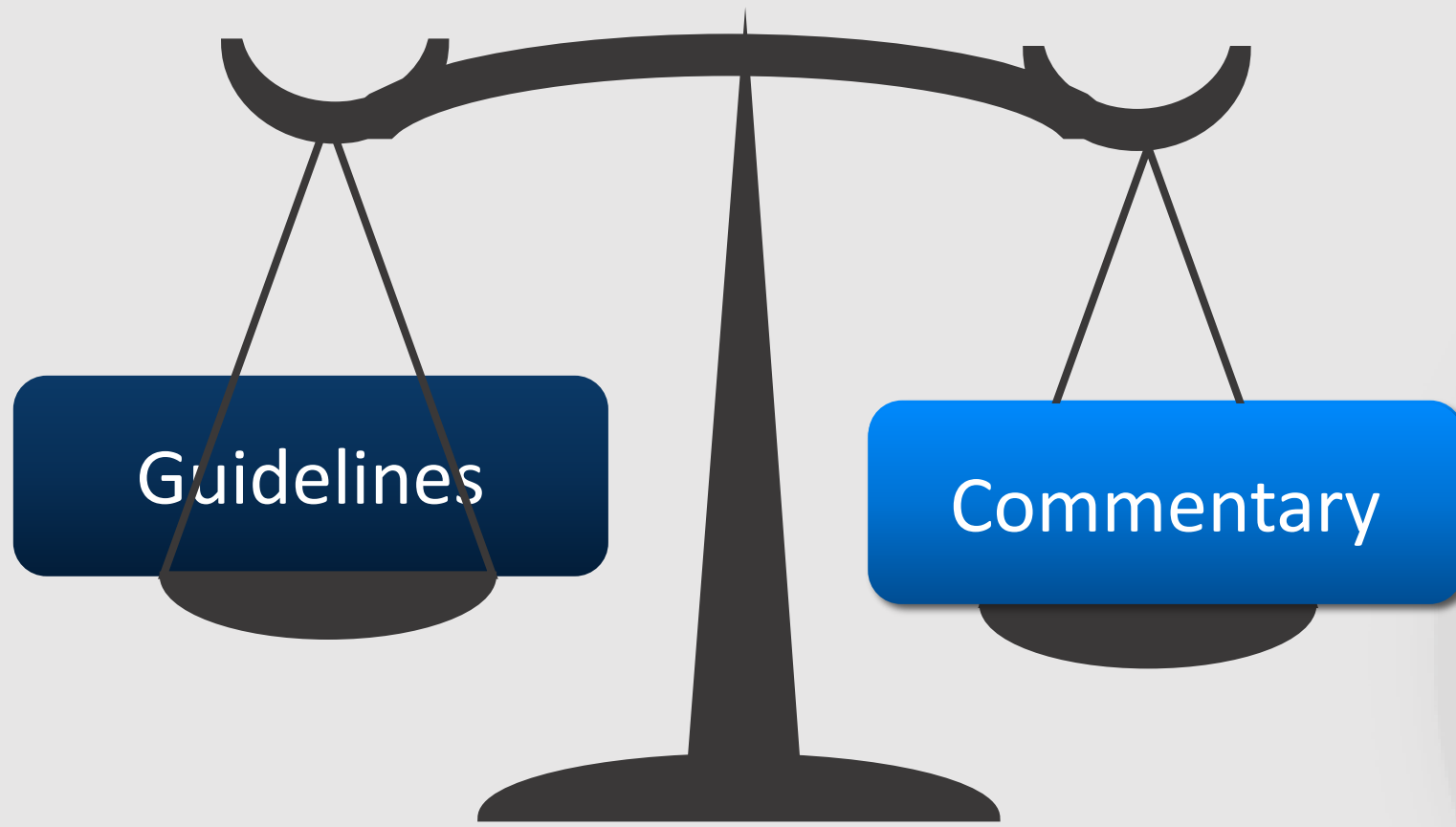
Circuit Splits

Status of Guidelines Commentary

Sexual Exploitation



Guidelines Commentary



Stinson v. United States

508 U.S. 36 (1993)

Commentary

Use unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous.



Seminole Rock Deference



Analogy Is Not Precise

Kisor v. Wilkie

139 S. Ct. 2400 (2019)



Seminole Rock Defence



Kisor Framework

Deference to Agency's Interpretation of Its Rules



Kisor Framework

Genuine Ambiguity



Zone of Reasonableness



**Character & Context of Agency
Interpretation**

Circuit Split: *Stinson* or *Kisor*

***Kisor* (Less Deferential)**

United States v. Nasir, 17 F.4th 459 (3d Cir. 2021) (en banc)

United States v. Riccardi, 989 F.3d 476 (6th Cir. 2021)

United States v. Castillo, 69 F.4th 648 (9th Cir. 2023)

United States v. Dupree, 57 F.4th 1269 (11th Cir. 2022) (en banc)

***Stinson* (More Deferential)**

United States v. Vargas, 74 F.4th 673 (5th Cir. 2023) (en banc)

United States v. White, 97 F.4th 532 (7th Cir. 2024)

United States v. Maloid, 71 F.4th 795 (10th Cir. 2023)

Intra-Circuit Split

United States v. Campbell, 22 F. 4th 438 (4th Cir. 2022)

United States v. Moses, 23 F. 4th 347 (4th Cir. 2022)

Following *Kisor*, the Commission has voted to amend which of the following application notes?

Select all that apply.

- A. Bodily Injury (§1B1.1)**
- B. Intended Loss (§2B1.1)**
- C. Leader/Organizer (§3B1.1)**
- D. Inchoate Offenses (§4B1.2)**
- E. Prohibited Sexual Conduct (§4B1.5)**



Topics

Circuit Splits

Status of Guidelines Commentary

Sexual Exploitation



Sexual Exploitation of Children (CP Production)

18 U.S.C. § 2251

CP Production

15 to 30 Years

CP Production

+

“Sexual Exploitation of Children”

+

“Sexual Exploitation of Children”

35 Years to Life

Sexual Exploitation of Children (CP Production)

18 U.S.C. § 2251

“Sexual Exploitation of Children”

?



Sexual Exploitation of Children

18 U.S.C. § 2251

“Sexual Exploitation of Children”



CP Production Only

“Sexual Exploitation of Children”



**Any Criminal Sexual Conduct Involving
Children**

Sexual Exploitation Predicate Crimes

CP Production Only

United States v. Schopp, 938 F.3d 1053 (9th Cir. 2019)

Any Criminal Sexual Conduct Involving Children

United States v. Winczuk, 67 F.4th 11 (1st Cir. 2023)

United States v. Moore, 71 F.4th 392 (5th Cir. 2023)

United States v. Sykes, 65 F.4th 867 (6th Cir. 2023)

Topics

Supreme Court Cases

Circuit Splits

District Court Issues

Topics

District Court Issues

Plea Hearings

Acceptance of Responsibility

Section 5G1.3

Improper Variances

Opportunity for Objections



I don't accept a guilty plea unless a defendant has been advised, and understands, the maximum possible penalty.

True or False?

A. True

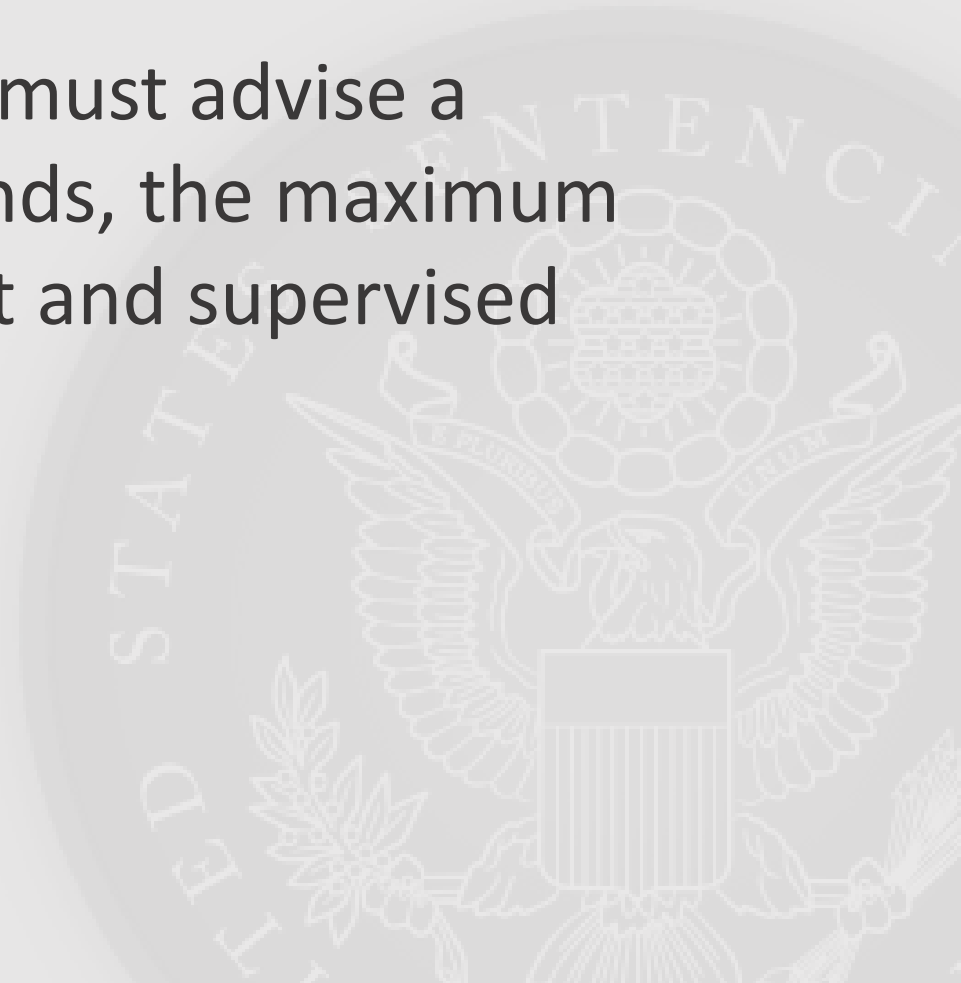
B. False



Considering and Accepting a Guilty Plea

Fed. R. Crim. Pro. 11(b)(1)(H)

Before accepting a guilty plea, the court must advise a defendant, and ensure that he understands, the maximum possible penalty, including imprisonment and supervised release.



The total period of imprisonment for an offense, including violations of supervised release, may exceed the statutory maximum.

True or False?

A. True

B. False



United States v. Wirth
250 F.3d 165 n.1 (2d Cir. 2001)

It is well-settled that punishment for a violation of supervised release may—when combined with punishment on the original offense—exceed the statutory maximum.



I don't accept a guilty plea unless a defendant has been advised, and understands, that he may be imprisoned beyond than the statutory maximum.

True or False?

A. True

B. False



United States v. King

91 F.4th 756 (4th Cir. 2024)

Rule 11 requires a court to advise a defendant that supervised release violations may result in imprisonment above the statutory maximum.



Topics

District Court Issues

Plea Hearings

Acceptance of Responsibility

Section 5G1.3

Improper Variances

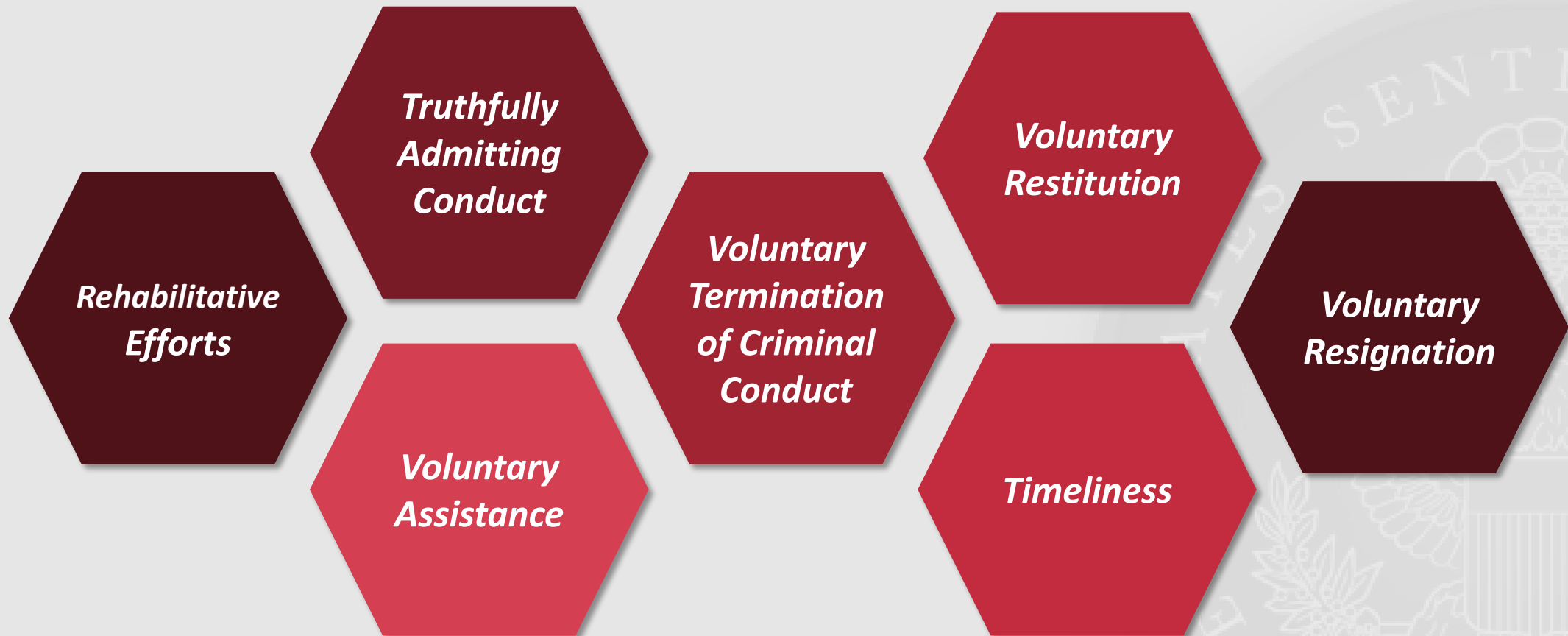
Opportunity for Objections



Acceptance of Responsibility

Section 3E1.1, App. Note 1

Appropriate considerations include, but are not limited to, the following:



In my court, drug use pending sentencing . . .

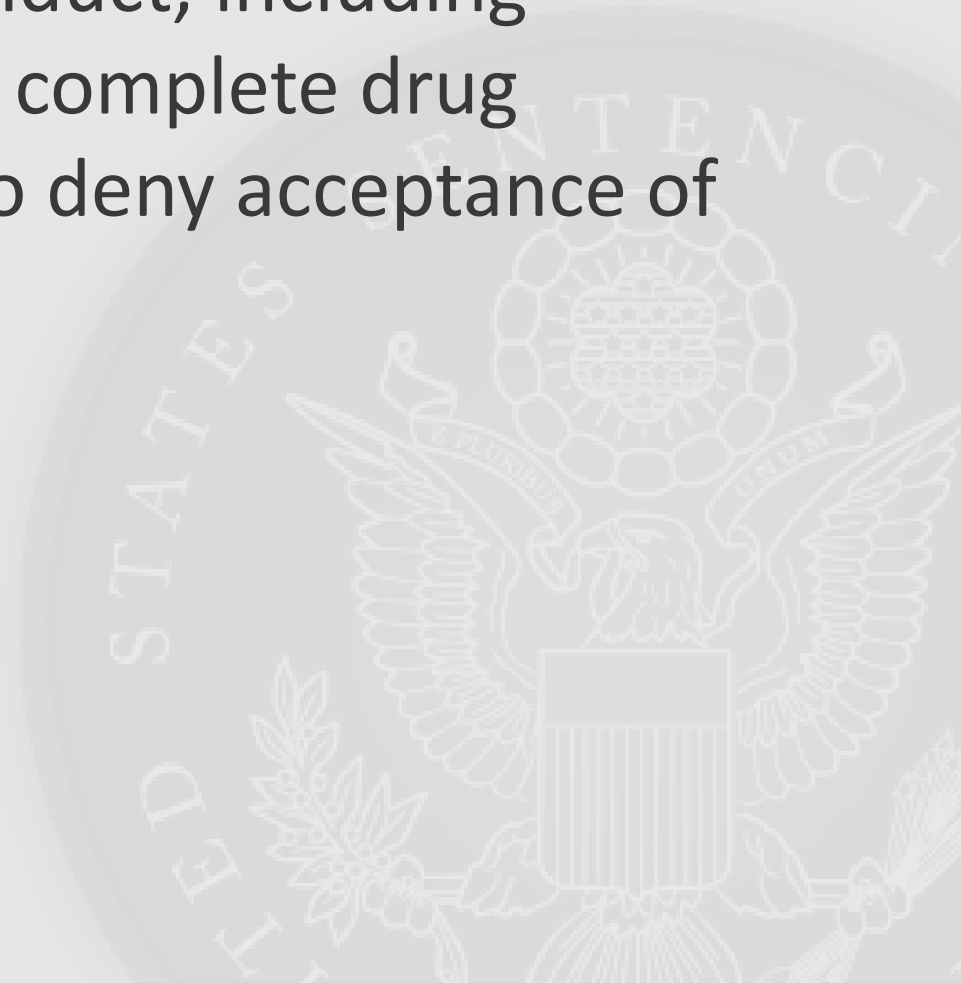
- A. Always Results in Denial of Acceptance**
- B. Often Results in Denial of Acceptance**
- C. Rarely Results in Denial of Acceptance**
- D. Never Results in Denial of Acceptance**



United States v. Mercado

81 F.4th 352 (3d Cir. 2023)

The court may consider post-plea misconduct, including testing positive for cocaine and failing to complete drug treatment in an economic crimes case, to deny acceptance of responsibility.



Topics

District Court Issues

Plea Hearings

Acceptance of Responsibility

Section 5G1.3

Improper Variances

Opportunity for Objections



It's impossible to know whether the BOP will award prior custody credit, so I am under no obligation to consider that issue.

True or False?

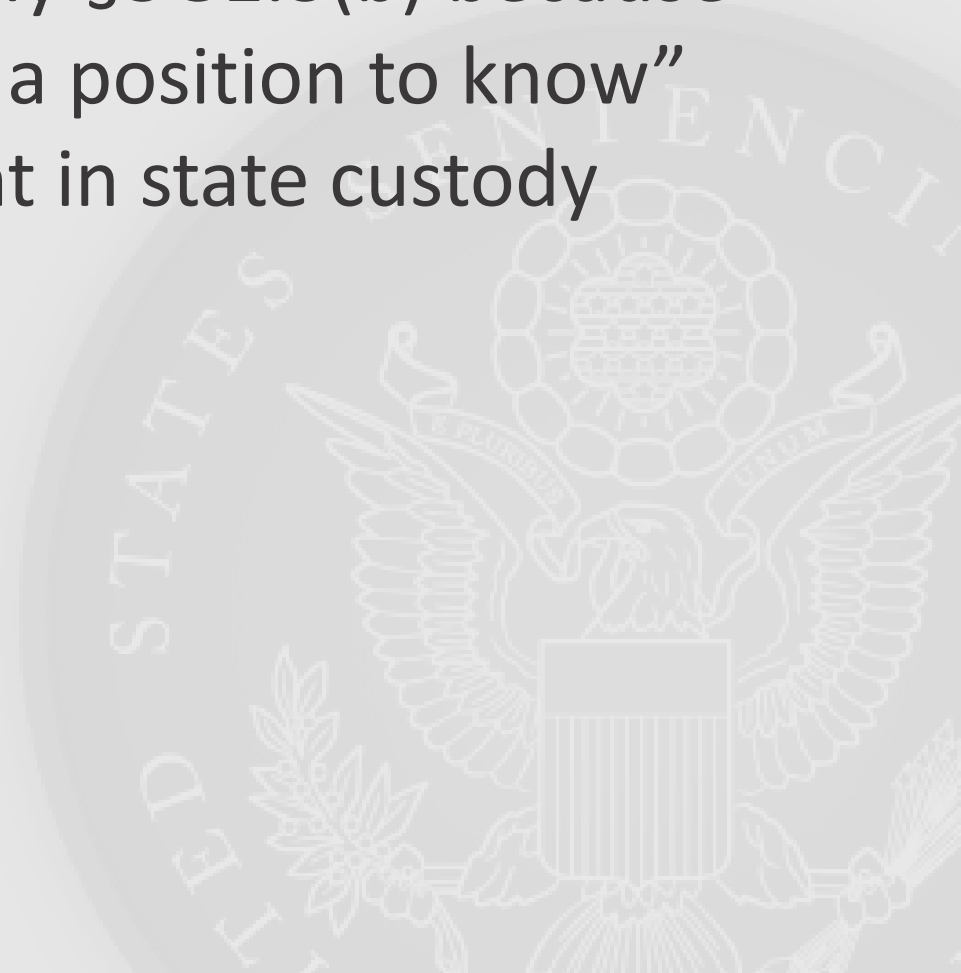
A. True

B. False



United States v. Lee
71 F.4th 1217 (10th Cir. 2023)

The court erred in failing to properly apply §5G1.3(b) because it mistakenly believed that “it was not in a position to know” whether BOP would credit the time spent in state custody before sentencing.



BOP Sentence Computation

18 U.S.C. § 3585(b)(2)



Topics

District Court Issues

Plea Hearings

Acceptance of Responsibility

Section 5G1.3

Improper Variances

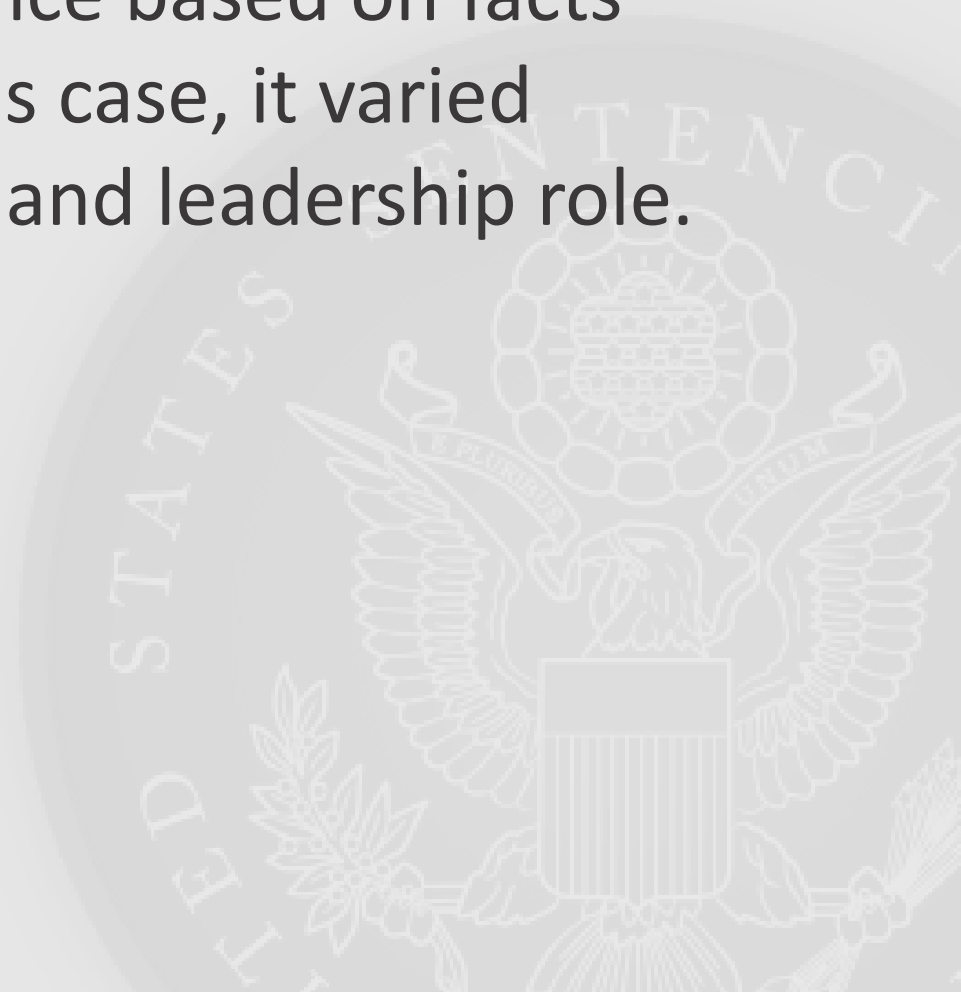
Opportunity for Objections



United States v. Dickson

70 F.4th 1099 (8th Cir. 2023)

The court erred when it imposed a variance based on facts contradicting its guideline findings. In this case, it varied upward based on a higher drug quantity and leadership role.



Topics

District Court Issues

Plea Hearings

Acceptance of Responsibility

Section 5G1.3

Improper Variances

Opportunity for Objections



At the end of a sentencing, I . . .

- A.** Ask “anything else?”
- B.** Ask “are there any additional objections that you would like me to consider?”
- C.** Do not permit the parties to speak after I’ve imposed my sentence.
- D.** Inform the parties about your lunch plans, which you’ve been thinking about for the last 75 minutes.



United States v. Morris

71 F.4th 475 (6th Cir. 2023)

At the end of the sentencing hearing, the court asked, “**anything further,**” which was insufficient for the government to invoke plain-error review.



Questions?



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HelpLine (202) 502-4545



training@ussc.gov

CASA Program



CONVICTION AND SENTENCING ALTERNATIVES

Central District of California

United States Sentencing Commission

Judges Seminar, New Orleans

June 14, 2024

CASA 101: Program Basics



- ❧ Started in 2012: Los Angeles (2), Santa Ana, Riverside
 - ❧ Genesis in STAR, with strong judicial and USAO support
 - ❧ 12-24 month treatment program for substance use disorder(s), mental health issues and “life-skills” deficiencies
- ❧ Both a Diversion-Based Court and an Alternative to Incarceration Program:
 - ❧ Track One: Dismissal of all charges with prejudice
 - ❧ Track Two: Binding FRCrP 11(c)(1)(C) (probation)
- ❧ Collaborative Court Team: USDJ, USMJ, USAO, USPPSO, FPDO and its SSU social workers, treatment providers

Prosecutorial Disqualifiers



- ❧ Child pornography and sexual offenses
- ❧ Subject to removal by immigration authorities
- ❧ Specific acts of violence and (usually) gun offenses
- ❧ More than minor involvement in large scale fraud or narcotics distribution
- ❧ “Too serious for government’s consideration...” and other policy-based issues

Applicant Considerations



- ❧ Nature of the offense: prosecutorial discretion
- ❧ Criminal history
 - ❧ Prior felony convictions, if any
 - ❧ History of rehabilitation efforts, if any
- ❧ “Treatable condition” with some degree of a causal connection to the offense(s)
- ❧ Personal history, including trauma
- ❧ Compliance with pretrial bond conditions
- ❧ Current “pro-social” life-style and recovery efforts
- ❧ Personal and occupational goals

CASA Procedures:

How to Apply



- ❧ Letter application; exhibits (w/in 60 days)
- ❧ Line AUSA, copies to CASA Team
 - ❧ In the district where your client lives
- ❧ Discuss with FPD CASA representatives
 - ❧ Before & after application submission
- ❧ Contact AUSA CASA representative(s)
- ❧ If invited, prepare for client interview
 - ❧ History of substance use, condition(s)
 - ❧ Connection to offense
 - ❧ Change in circumstances
 - ❧ Personal background & goals; commitment
 - ❧ Understanding of CASA Program (Handbook; Contract)

Program Essentials



❧ Readiness for Change:

- ❧ Acknowledge issues
- ❧ Develop willingness for **honest** assessment of what needs to change to avoid further offenses or further legal proceeding
- ❧ Learn how to ask for help

❧ Intensive Supervision:

- ❧ Pre-trial contact and weekly reporting; compliance with bond conditions
- ❧ Updates on program plan

❧ Court Sessions:

- ❧ Bi-weekly with entire team
- ❧ “Check-in” regarding activities, discuss relevant issues (+/-)
- ❧ Individual Team sessions when necessary
- ❧ Address incentives, sanctions and therapeutic adjustments

❧ Review Treatment Plans:

- ❧ Weekly and monthly reporting
- ❧ Collaboration between PSA, SSU and community resources

❧ Curricula:

- ❧ Moral Reconciliation Therapy (MRT); form of Cognitive Behavioral Therapy
- ❧ Ad-hoc along with programmed discussion sessions
- ❧ 40 hours of “productive activity”
 - ❧ Employment, education and/or community service

❧ Periodic Review:

- ❧ @ 6 months
- ❧ Prior to graduation, with participant evaluation process

❧ Graduation Planning:

- ❧ On-going community reintegration

Let's Do The Numbers

Total Applications: @ 1,267 (2012 – 2024)



❧ Participants Accepted: (460)

❧ L.A.: 273

❧ S.A.: 63

❧ R-side: 97
433

❧ Not Accepted by Court: 17

❧ Voluntary* Opt-Out: 7

❧ Current Participants:

❧ L.A.: 31

❧ S.A.: 5

❧ R-side: 6
42

❧ Graduates:

❧ L.A.: 215

❧ S.A.: 63

❧ R-side: 77

355 90%

❧ Track 1: 219 62%

❧ Track 2: 136 38%

355

❧ Involuntary Terminated: 42

❧ 30 = BOP; 12 = CTS/probation

❧ Combined BOP months: 477

❧ \$3,333 x 477 = \$1,589,841

Let's Do The Numbers

Continued: Post-Program Violations



❧ Probation Supervision: Track 2 Graduates n= 71*

❧ No Violations: 51 72%

❧ Positive U.A.: 12 17%

❧ New Arrest: 6 8.5%

❧ Abscond Supervision: 1 1.5%

*Out of a possible 136 Track 2 Graduates

Program Challenges

Call for National & USSC Support!



❧ Target Population:

- ❧ Substance use, mental health & life-skills issues
- ❧ Equity and inclusion

❧ Selection Criteria:

- ❧ Intra-Agency Agreement
- ❧ USAO policies; standards
- ❧ PSA supervision reports

❧ Selection Process:

- ❧ USAO initial review; PSA and defense consultations; maybe a client interview.
- ❧ USAO acceptance, track designation
- ❧ “Appeal” to Crim Chief

❧ Stakeholder Personnel

❧ Treatment Plans:

- ❧ Screening and assessments
- ❧ Risk-Need-Responsivity

❧ Lack of Sufficient Resources:

- ❧ Placements and collateral support

❧ Curricula:

- ❧ MRT/Cognitive behavioral therapy
- ❧ Collateral support modules (R-N-R model)

❧ Evidence-Based Practices:

- ❧ Research and training
- ❧ Evaluation process

❧ Post-Graduation Assistance

Thank You!



Questions & Answers



Multi-Defendant Cases

2024 Judges Seminar

New Orleans, LA

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Office of Education and Sentencing Practice

[Online HelpLine Form](#)



Selected Issues in Multi-Defendant Cases

- Determining relevant conduct of each defendant
- Determining the role of each defendant
- Considering co-defendant disparity
- The impact of binding plea agreements



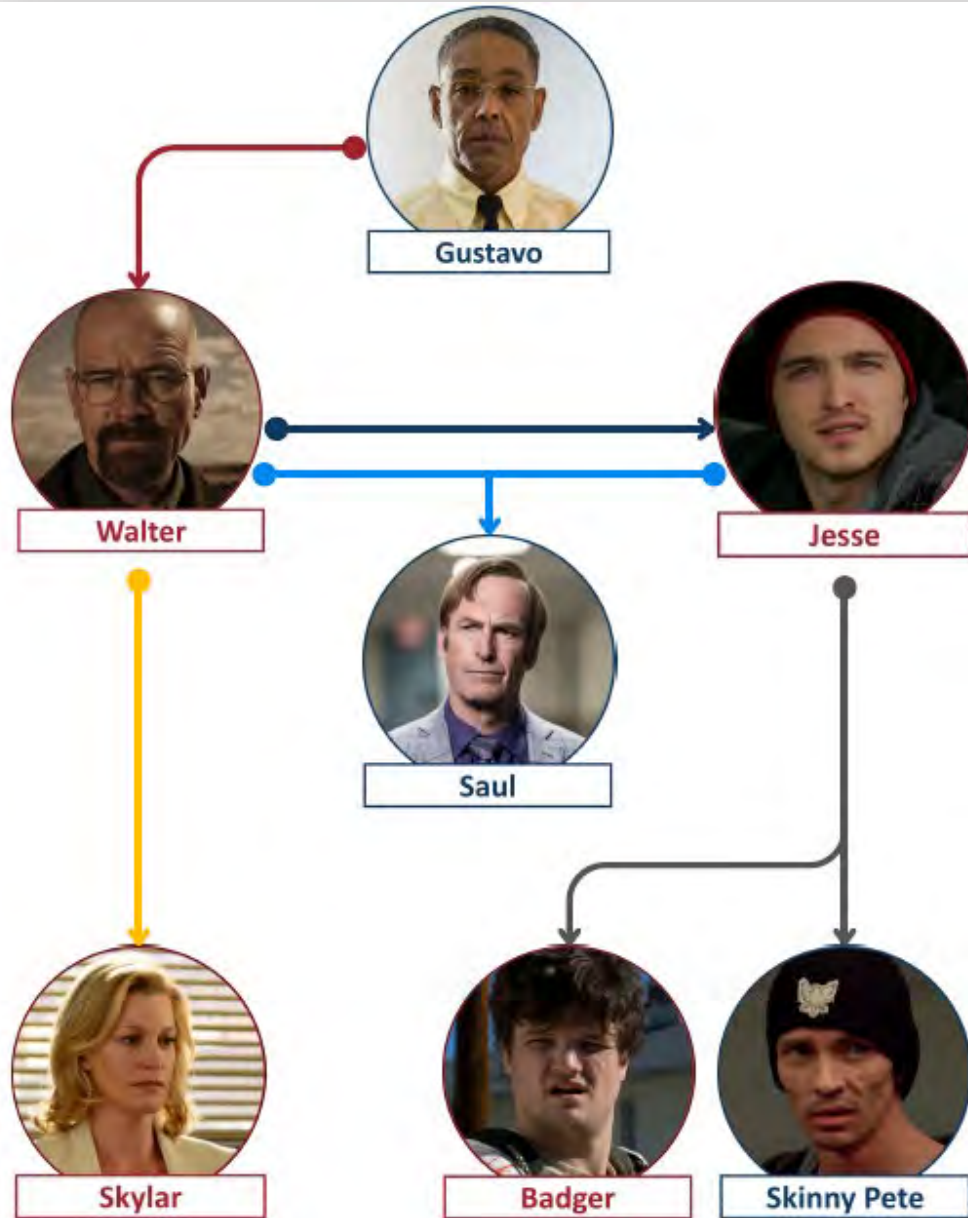
Have you seen Breaking Bad?

A. Yes

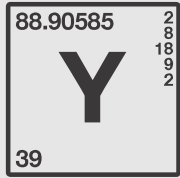
B. No



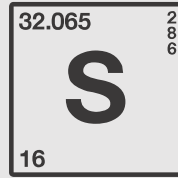
Overview - Handout



- Gustavo, affiliate of Mexican Cartel, operated a large-scale methamphetamine operation. Gustavo recruited Walter.
- Walter produced methamphetamine for Gustavo. Walter recruited Jesse to be his partner.
- Walter and Jesse hired Saul to be their lawyer and to help them launder their drug proceeds.
- Walter recruited his wife, Skylar, to launder his proceeds. Skylar purchased a firearm for Walter.
- Jesse recruited his childhood friends “Badger” and “Skinny Pete” to accompany him for three drug sales.



ou are



entencing:



Badger



Jesse



Skylar



Walter



Badger

Badger



Badger's Relevant Conduct



Badger

Badger pleaded guilty to Conspiracy to Possess with Intent to Distribute 500 Grams or More of Methamphetamine.

The PSR calculated his BOL as 38 because the conspiracy involved 6,000 kilograms of methamphetamine.

He objects to this calculation and argues he was only present for three sales of methamphetamine involving a total of 150 grams of methamphetamine (BOL 32).

Relevant Conduct Synopsis – 3 Main Rules

1. Defendant accountable for **acts he/she did** in furtherance of the offense of conviction.
2. Defendant accountable for **certain acts others did** in furtherance of the offense of conviction.
3. For ***certain offenses***, defendant also accountable for acts he/she did in the **same course of conduct or common scheme or plan** beyond the offense of conviction.

What drug amount should Badger be held accountable for under §2D1.1?

- A.** 6,000 kilograms of methamphetamine
- B.** 500 grams of methamphetamine
- C.** 150 grams of methamphetamine





Acts of
Others

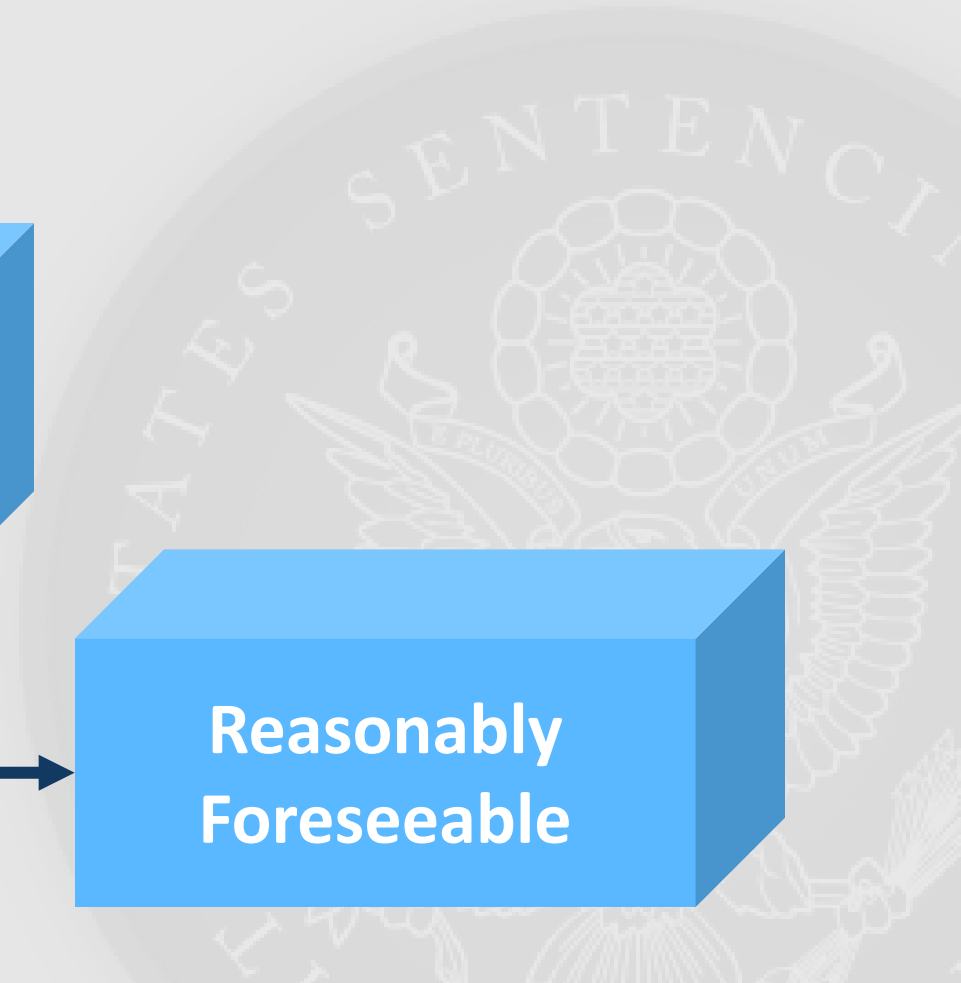
Jointly Undertaken Criminal Activity

Section 1B1.3(a)(1)(B)

Scope of
Agreement

In Furtherance of
Agreement

Reasonably
Foreseeable



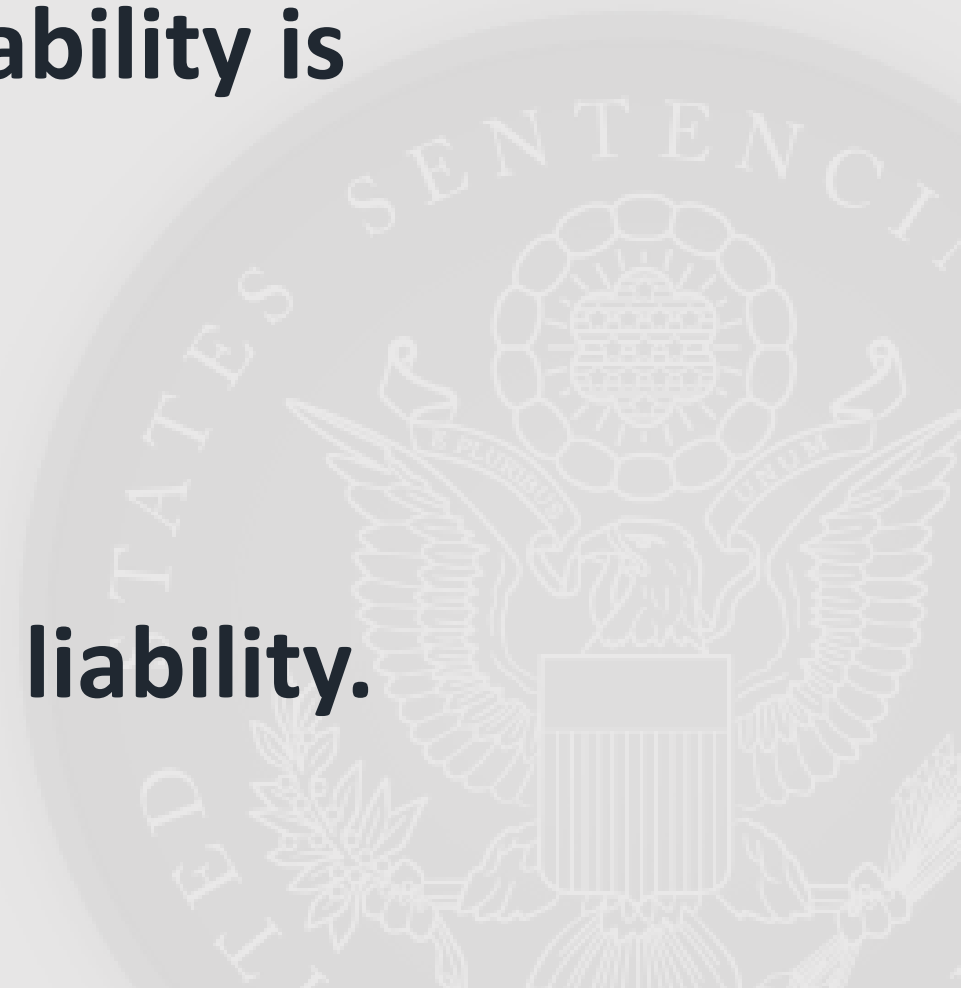
Relevant Conduct

Section 1B1.3, App. Note 1

Sentencing accountability is



the same as criminal liability.



Relevant Conduct & Conspiracy Law

“The advisory guidelines instruct—and this Court has **repeatedly held**—that the scope of relevant conduct with regard to the drug amounts involved in a conspiracy under § 1B1.3(a)(1)(B) is **‘significantly narrower’** than the conduct needed to obtain a conspiracy conviction.”

United States v. McReynolds, 964 F.3d 555 (6th Cir. 2020)

Scenario

The Court:



150g Ice

32

The Defense:

The prevalence of high-purity meth means that it's no longer a proxy for the defendant's role in the distribution chain and is based on the availability of testing, which is arbitrary.

150g Meth Mixture

24

Calculating Offense Levels for Meth Cases

§2D1.1, Notes (B), (C)

If substance is...	Classify as...	Calculate BOL by...
More than 80% pure of “d-meth hydrochloride”	Ice	Weight
Not Ice (but 10% or greater purity)	Methamphetamine (Actual)	Weight x Purity
Less than 10% or unknown purity	Methamphetamine (Mixture)	Weight

Methamphetamine Drug Weight

§2D1.1, Drug Quantity Table

(4)

Level 32

- At least 3 KG but less than 10 KG of Heroin;
- At least 15 KG but less than 50 KG of Cocaine;
- At least 840 G but less than 2.8 KG of Cocaine Base;
- At least 3 KG but less than 10 KG of PCP, or
at least 300 G but less than 1 KG of PCP (actual);
- At least 1.5 KG but less than 5 KG of Methamphetamine, or
at least 150 G but less than 500 G of Methamphetamine (actual), or
at least 150 G but less than 500 G of "Ice";

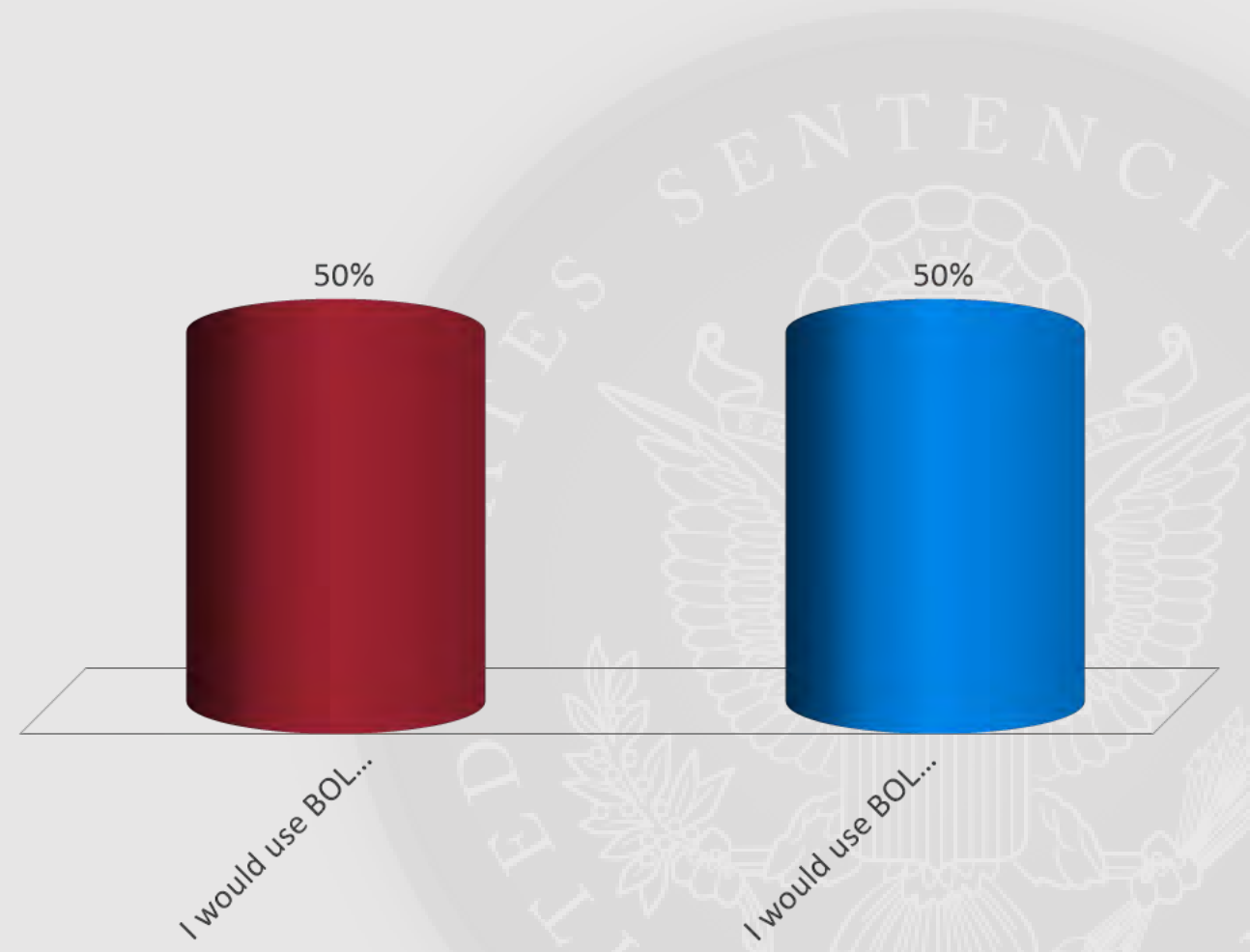
(8)

Level 24

- At least 100 G but less than 400 G of Heroin;
- At least 500 G but less than 2 KG of Cocaine;
- At least 28 G but less than 112 G of Cocaine Base;
- At least 100 G but less than 400 G of PCP, or
at least 10 G but less than 40 G of PCP (actual);
- At least 50 G but less than 200 G of Methamphetamine, or
at least 5 G but less than 20 G of Methamphetamine (actual), or
at least 5 G but less than 20 G of "Ice";

What Base Offense Level would you use for Badger?

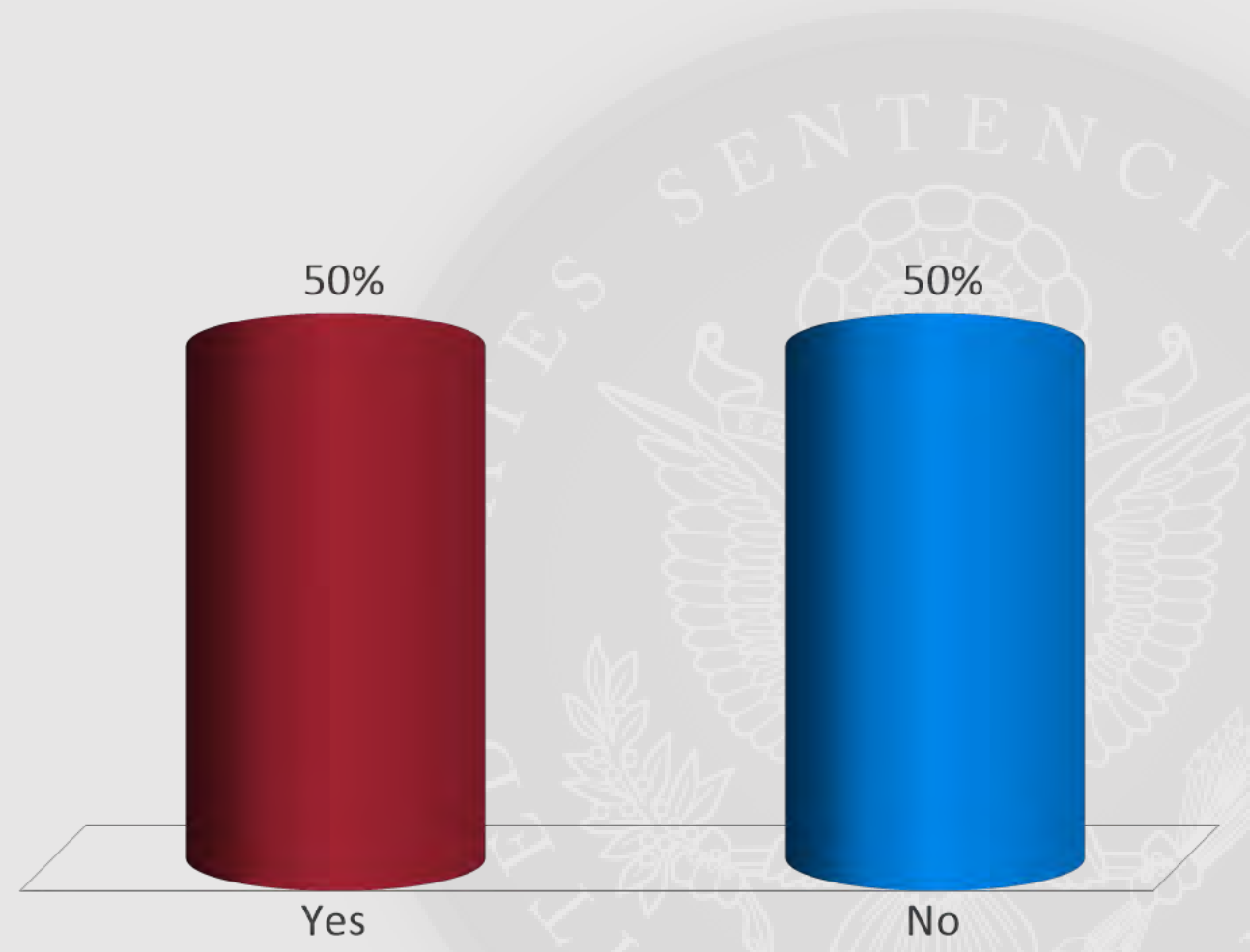
- A.** I would use BOL 32 (“Ice”)
- B.** I would use BOL 24 (“mixture”)



Have you granted a departure or variance to account for an argument similar to Badger's?

A. Yes

B. No



Badger's Conduct



Badger



Jesse



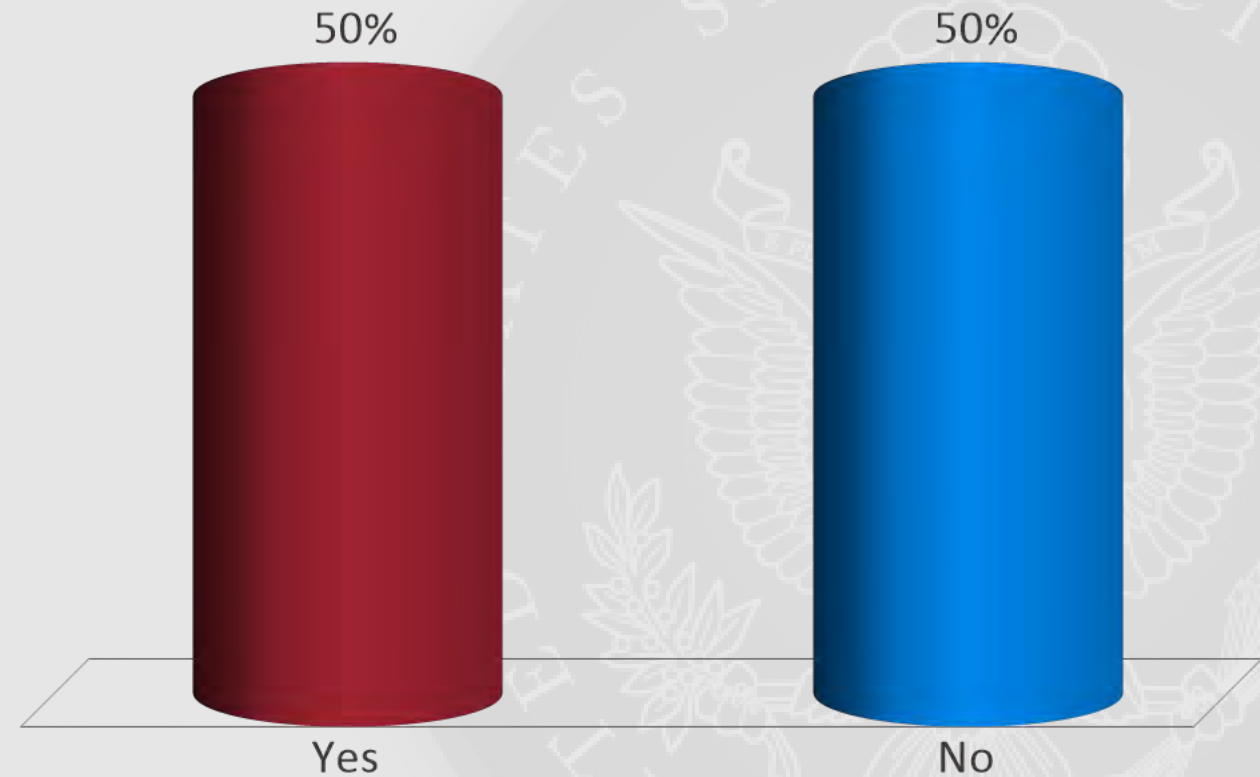
The PSR included a 2-level increase under §2D1.1(b)(1) for possession of a dangerous weapon because Badger was with Jesse during three sales of methamphetamine.

During each of these sales, **Jesse possessed a 9-mm handgun.**

Does the +2 for possession of a dangerous weapon apply, even though Badger did not personally possess a firearm?

A. Yes

B. No



Weapon Enhancement

Section 2D1.1(b)(1) & App. Note 11(A)

If a dangerous weapon (including a firearm) was possessed, increase by 2 levels.

**Offense
Based**

**Includes Jointly Undertaken
Criminal Activity**

Jointly Undertaken Criminal Activity

Sections 1B1.3(a)(1)(B)(i)–(iii)



Scope of
Agreement

In Furtherance of
Agreement

Reasonably
Foreseeable



Badger's Conduct



Badger

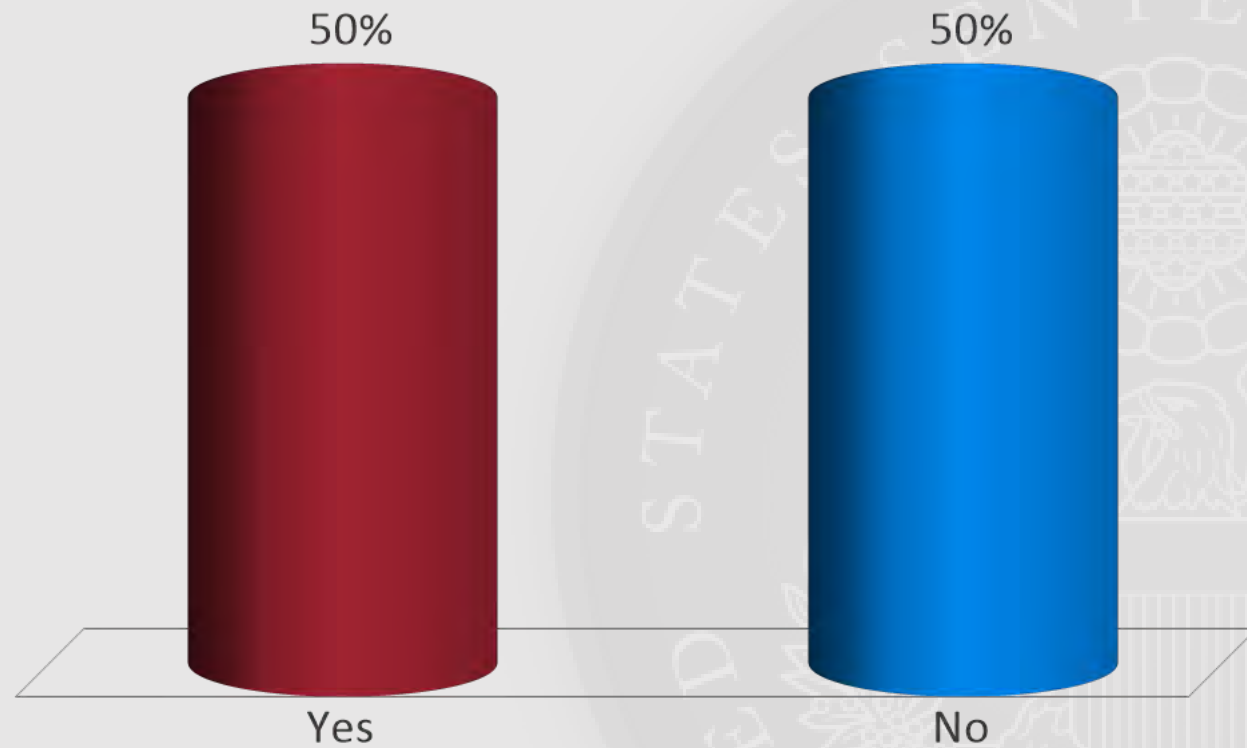
Badger met with the government for a Safety Valve proffer. The PSR did not apply the Safety Valve due to the application of +2 for possession of a weapon.

Badger objects to this calculation, arguing he did not personally possess a firearm.

Is the PSR correct that Badger cannot qualify for the Safety Valve because he received a 2-level increase under §2D1.1 for a dangerous weapon?

A. Yes

B. No



Guidelines Safety Valve

Sections 5C1.2(a)(1)–(5)

1

Limited
criminal
history

2

**Defendant
did not use
violence or
possess a
weapon**

3

Offense did
not result
in death or
SBI

4

Defendant
was not a
leader or
organizer

5

Completed
Safety
Valve
Proffer

The defendant

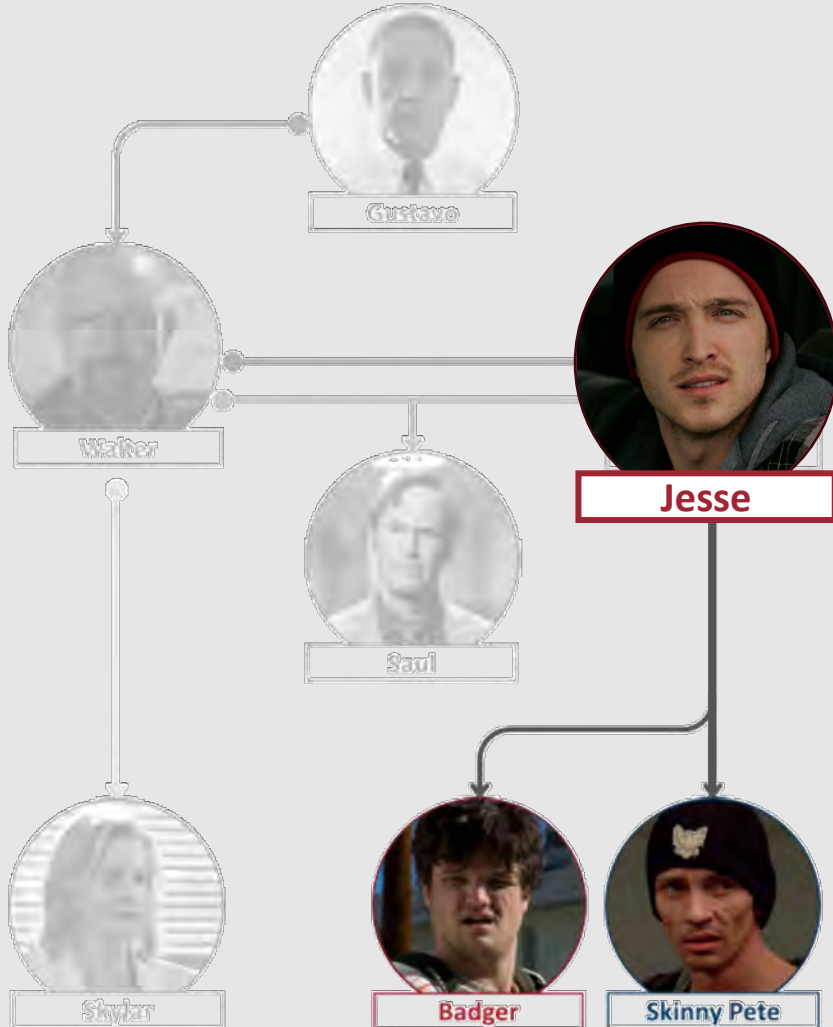
Relevant Conduct Exceptions

Introductory Clause

**Defendant
Based**

**Eliminates Jointly Undertaken
Criminal Activity**

Badger's Role in the Offense



Mitigating Role?

3

Present for 3 sales only

\$\$

Not Paid

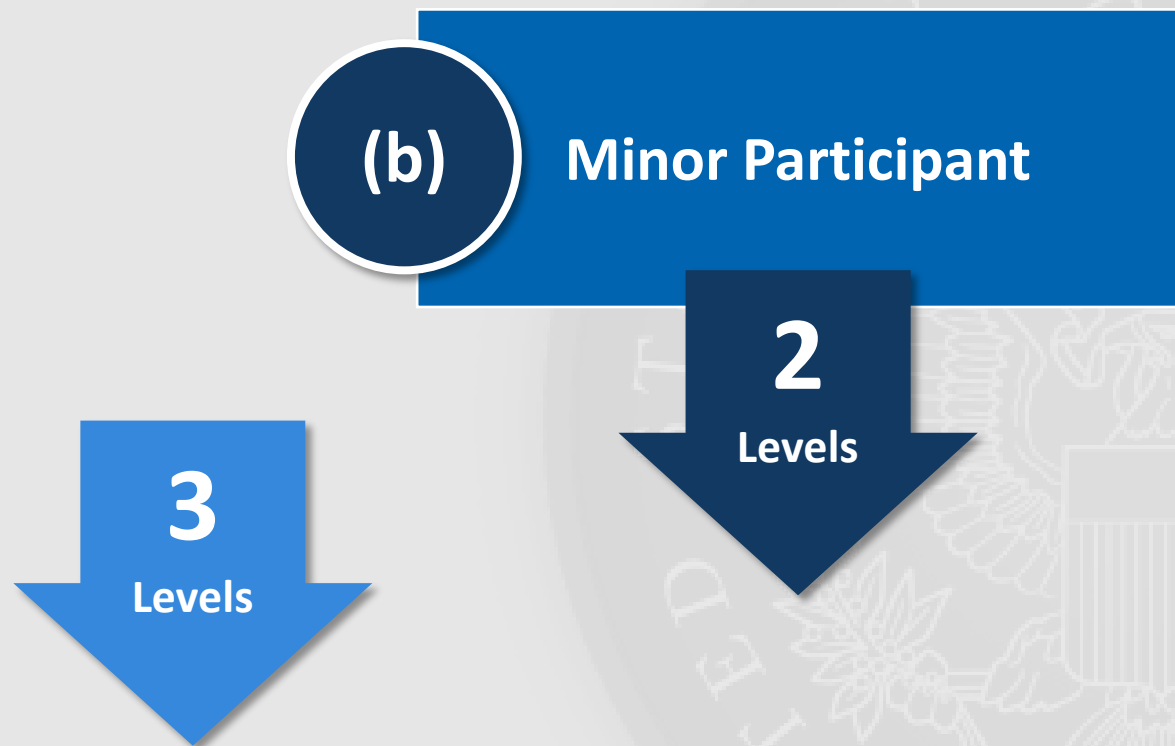
?

Unaware of scope

Mitigating Role

Section 3B1.2

Based on the defendant's role in the offense, decrease the offense level as follows:



Adjusting the BOL for Mitigating Role

Section 2D1.1(a)(5)

32



30

34



31

36



32

(Minimal)



33

(Minor)

38



32

(Minimal)



34

(Minor)

Apply Both BOL Reduction and Mitigating Role

Applicability of the Adjustment

Section 3B1.2, App. Note 3

When considering the mitigating role adjustment...

Substantially less culpable than average participant

**Fact-Based Determination
(Totality of circumstances)**

Mitigating Role Factors

Section 3B1.2, App. Note. 3(C)

Factors to Consider

- Understanding of Scope and Structure
- Participation in Planning / Organization
- Decision-Making Authority
- Stood to Benefit
- Participation in Criminal Activity



Would you give Badger a minor role adjustment?

- A.** Yes, a 4-level reduction
- B.** Yes, a 3-level reduction
- C.** Yes, a 2-level reduction
- D.** No



Badger's Guideline Range

BOL

30

§2D1.1 – Base Offense Level

+2

§2D1.1(b)(1) – Firearm

-2

§2D1.1(b)(18) –SOC for §5C1.2

-3

§3B1.2(a) –Mitigating Role

-3

§3E1.1 – Acceptance of Responsibility

-2

§4C1.1 – Zero Point Offender

Final OL

22

CHC: I

GL Range:

41 – 51



Badger

- 23 years old
- No prior criminal history
- Loving childhood
- History of smoking marijuana
- Doing well under pretrial supervision
- Employed at a video game store
- Lives with his parents
- Requests §5H1.1 departure

Badger's Departure Request

Proposed Section 5H1.1



Badger

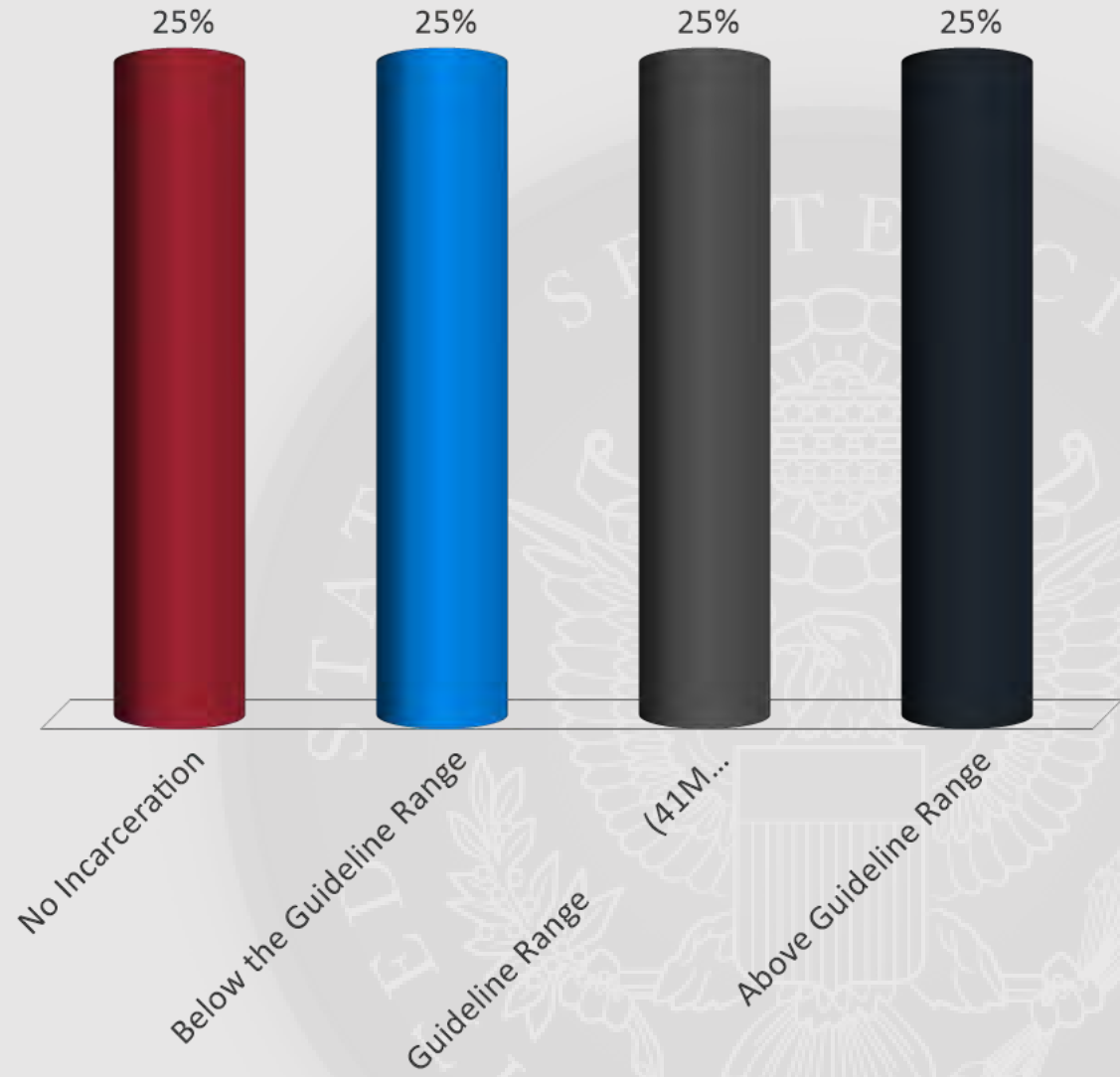
A downward departure may also be warranted due to the defendant's youthfulness at the time of the offense or prior offenses.

In general, youthful offenders are more impulsive, risk-seeking, and susceptible to outside influence.

Youthful offenders also are more Amenable to rehabilitation.

What sentence would you impose for Badger?

- A. No Incarceration
- B. Below the Guideline Range
- C. Guideline Range
(41M – 51M)
- D. Above Guideline Range





Jesse

Jesse



Jesse's Conduct

Jesse pleaded guilty to Conspiracy to Possess with Intent to Distribute 500 Grams or More of Methamphetamine.



Jesse

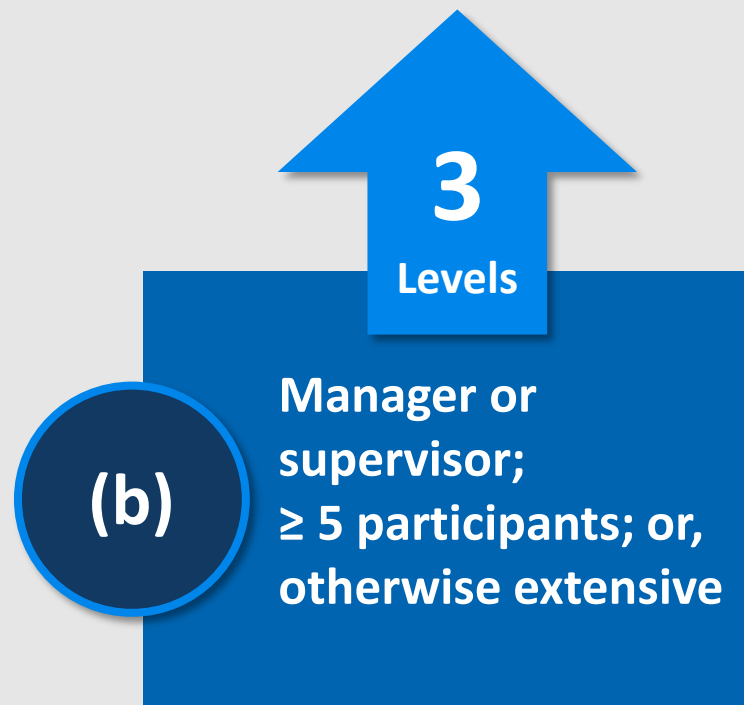
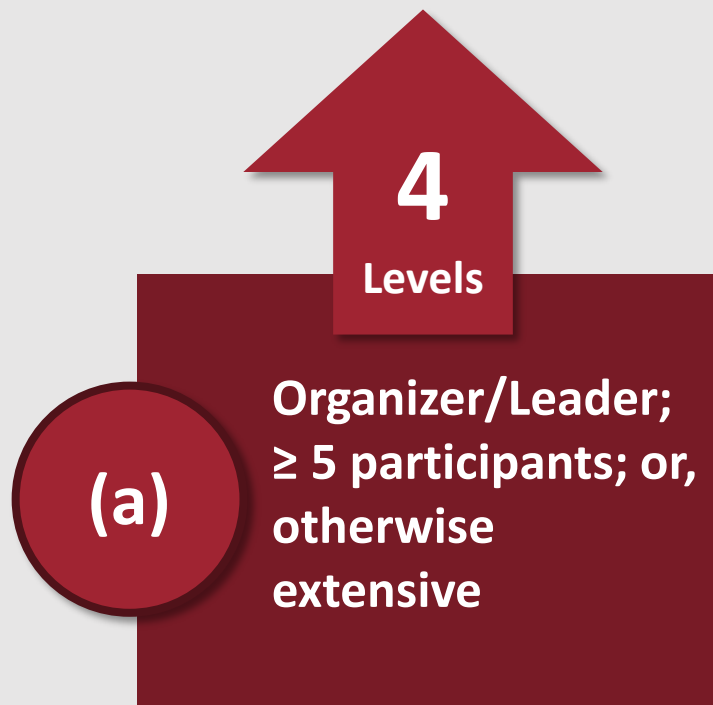
The PSR included a 4-level aggravating role enhancement because Jesse recruited Badger and Skinny Pete, he was a co-leader of the conspiracy with Walter, the conspiracy involved 5 or more people and was extensive.

Jesse objects to this enhancement and argues Walter was the chemist, mastermind, and true leader of the conspiracy. Jesse claims he only acted at Walter's direction.

Aggravating Role

Section 3B1.1

Based on the defendant's role in the offense, increase the offense level as follows:



Factors to Consider

§3B1.1, App. Note. 4

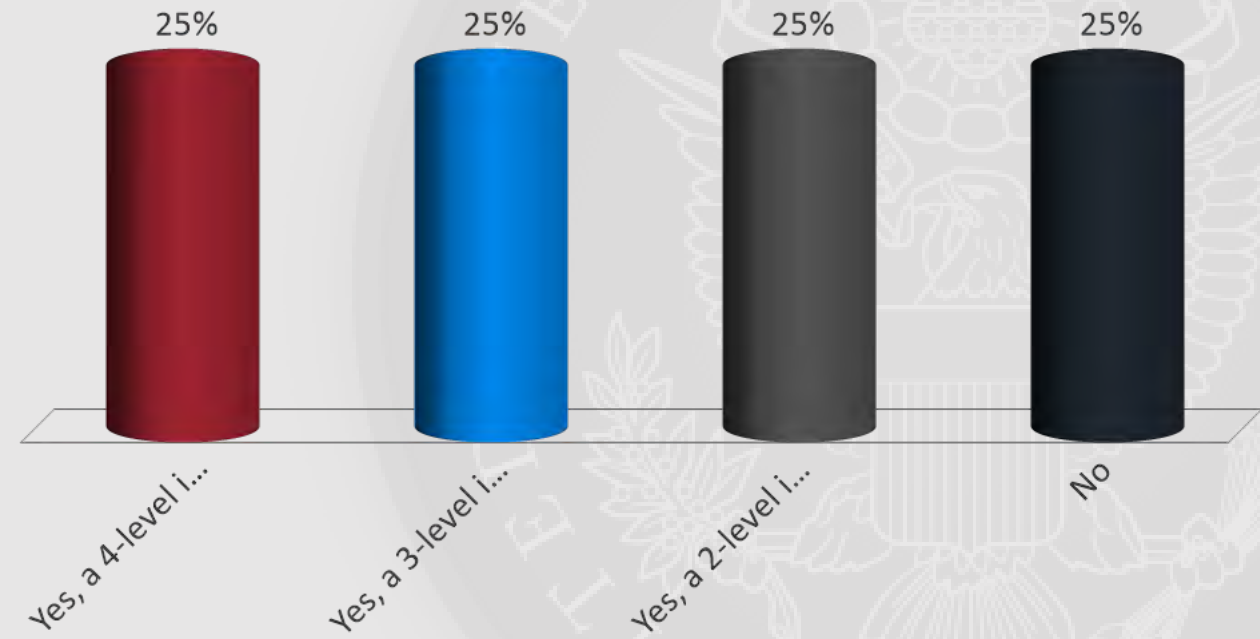
Factors to Consider

- Exercise of Decision-Making Authority
- Nature of Participation in the Offense
- Recruitment of Accomplices
- Larger Share of Fruits of the Crime
- Degree of Planning
- Degree of Control or Authority Over Others



Would you give Jesse an aggravating role enhancement?

- A.** Yes, a 4-level increase
- B.** Yes, a 3-level increase
- C.** Yes, a 2-level increase
- D.** No



Jesse's Guideline Range

BOL
38

§2D1.1 – Base Offense Level

+2

§2D1.1(b)(1) – Firearm

+2

§2D1.1(b)(5) – Importation of Chemicals

+3

§3B1.1(a) – Aggravating Role

-3

§3E1.1 – Acceptance of Responsibility

Final OL

42

CHC: III

GL Range:

360 - Life

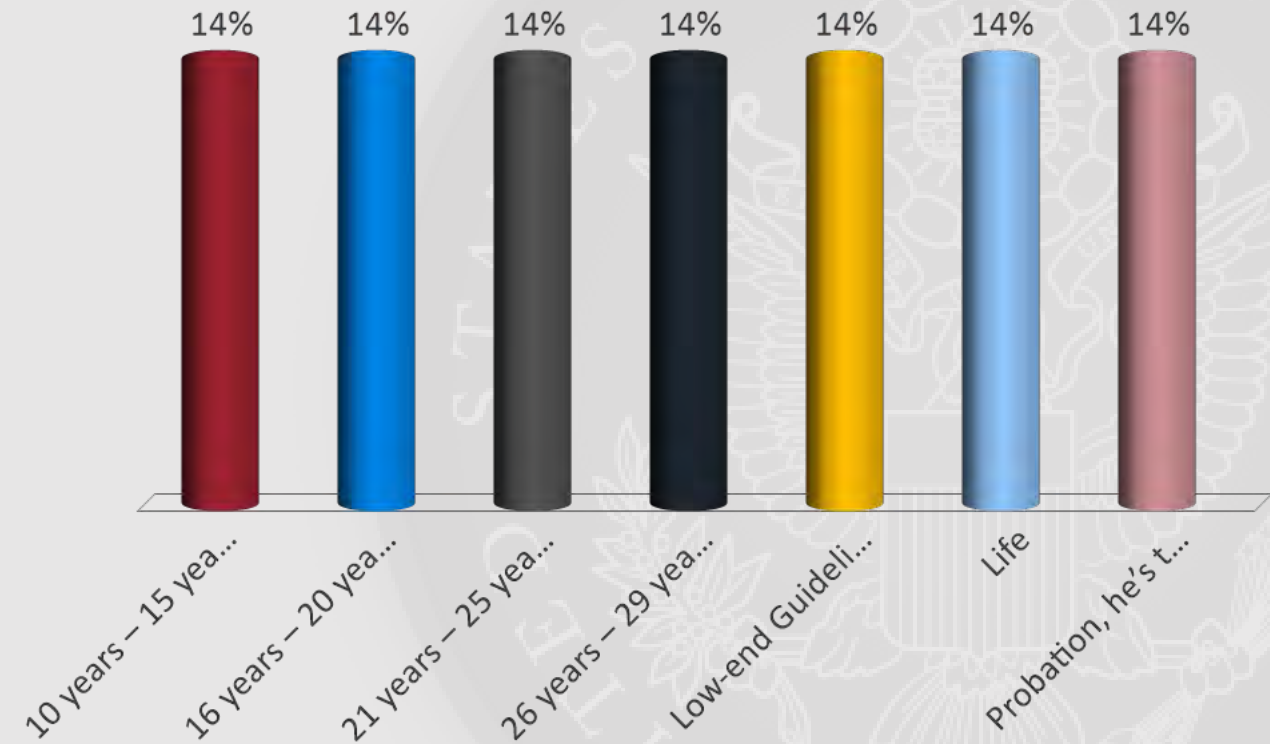


Jesse

- 27 years old
- 6 criminal history points
- Held in pretrial detention
- Loving childhood, but lost maternal aunt while in high school
- History of alcohol and drug use, to include heroin, cocaine and methamphetamine
- Hopes to become a sobriety and recovery coach after completion of prison sentence

What sentence would you impose for Jesse?

- A. 10 years – 15 years
- B. 16 years – 20 years
- C. 21 years – 25 years
- D. 26 years – 29 years
- E. Low-end Guideline (30 yrs)
- F. Life
- G. Probation, he's the best character!





Skylar

skylar



Skylar's Conduct



Skylar

Skylar pleaded guilty to Trafficking in Firearms in violation of 18 U.S.C. § 933.

The PSR applied a 2-level increase for trafficking a firearm at §2K2.1(b)(5), and a 4-level increase under §2K2.1(b)(6)(B) because she believed the firearm she gave to Walter would be used in connection with drug trafficking.

Specific Offense Characteristic: Straw Purchasing or Trafficking

Section 2K2.1(b)(5)

Apply the Greatest

+2

§§ 933(a)(2), (a)(3) Convictions

+2

Straw Purchasing & Trafficking Conduct

+5

Multiple Firearms + Particular Individuals

Trafficking/Straw Purchasing: Mitigating Circumstances

Section 2K2.1(b)(9)

A

If §2K2.1(b)(5) applies

B

1 or fewer criminal history points

&

i

Familial Relationship
Threats/Fear

C

&

Otherwise Unlikely

OR

ii

Vulnerable to
Persuasion due to
Mental or Physical
Condition

-2

Skylar's Conduct



Skylar

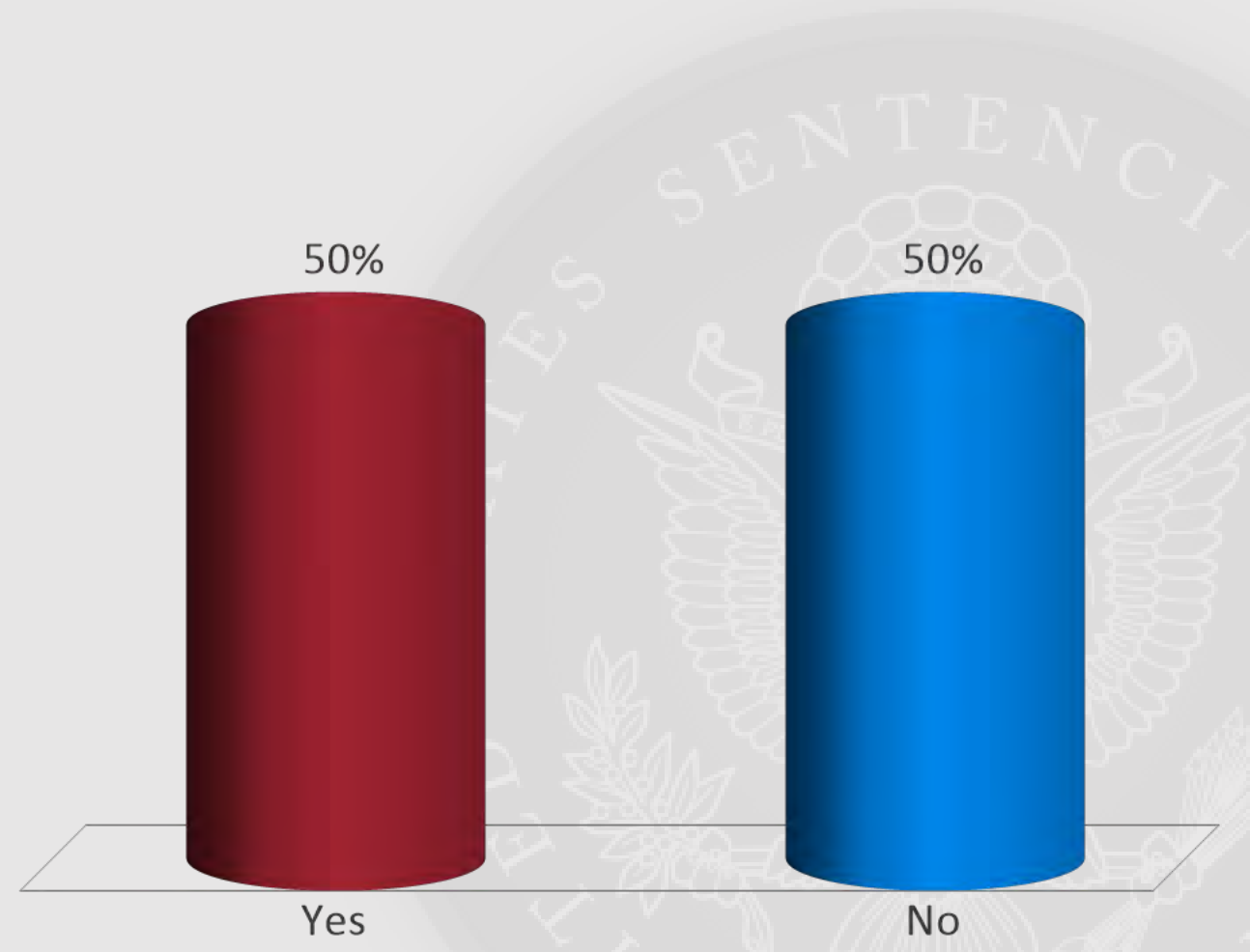
The PSR did not apply the 2-level reduction at §2K2.1(b)(9).

Skylar believes she should receive the 2-level reduction because she was motivated to buy the gun for her husband, and she would not have otherwise purchased the firearm.

Would you apply the 2-level reduction under §2K2.1(b)(9) based on Skylar's argument?

A. Yes

B. No



Skylar's Guideline Range

BOL

14

§2K2.1(a)(6)(B) – Base Offense Level

+2

§2K2.1(b)(5)(A) – 18 USC § 933 Conviction

+4

§2K2.1(b)(6)(B) – Firearm in connection

-2

§2K2.1(b)(9) – Family Motivation, Otherwise Unlikely

-3

§3E1.1 – Acceptance of Responsibility

Final OL

15

CHC: I

GL Range:

18 - 24

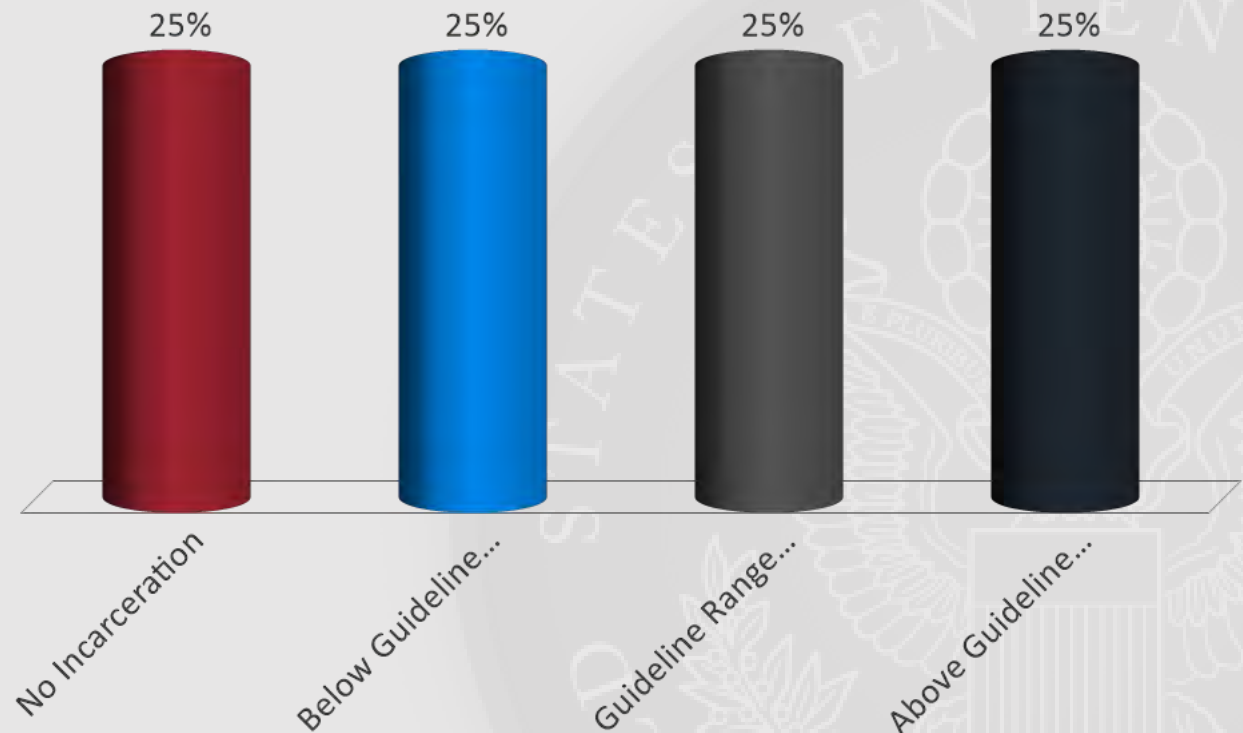


Skylar

- 43 years old
- No prior criminal convictions.
- Bachelor's degree in accounting
- Employment history working payroll
- Positive childhood
- Family support
- Doing well under pretrial supervision
- Stay-at-home mother (two children, ages 17 and 2)
- Money laundering count is dismissed

What sentence would you impose for Skylar?

- A.** No Incarceration
- B.** Below Guideline Range
- C.** Guideline Range (18M – 24M)
- D.** Above Guideline Range





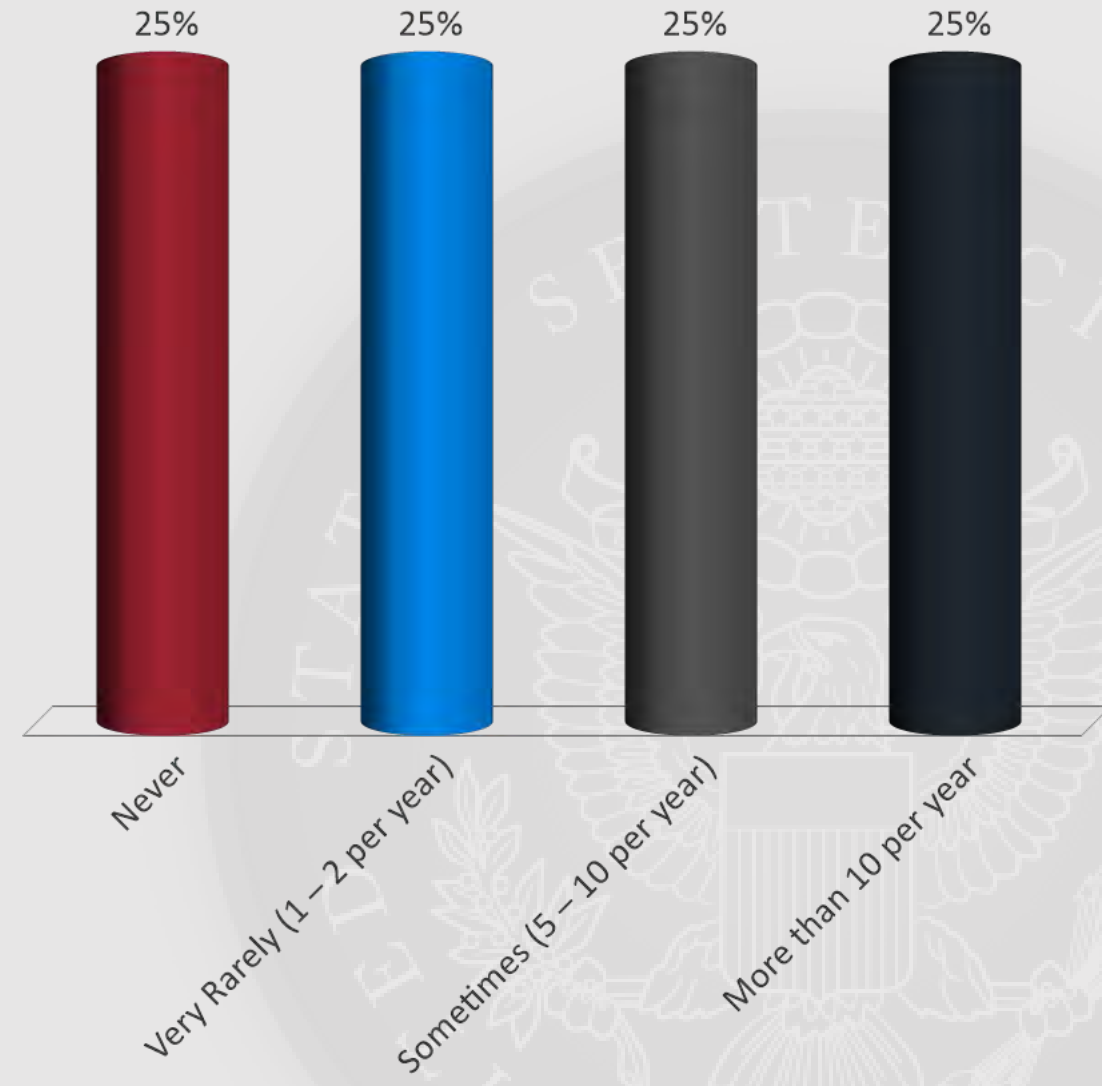
Walter

walter



Do you take binding plea agreements under Rule 11(c)(1)(C)?

- A.** Never
- B.** Very Rarely (1 – 2 per year)
- C.** Sometimes (5 – 10 per year)
- D.** More than 10 per year



Walter's Guideline Range

BOL
38

§2D1.1 – Base Offense Level

+2

§2D1.1(b)(1) – Firearm

+2

§2D1.1(b)(5) – Importation of Chemicals

+4

§3B1.1(a) – Aggravating Role

+2

§3B1.3 – Special Skill

-3

§3E1.1 – Acceptance of Responsibility

Final OL

43

CHC: I

GL Range:

Life



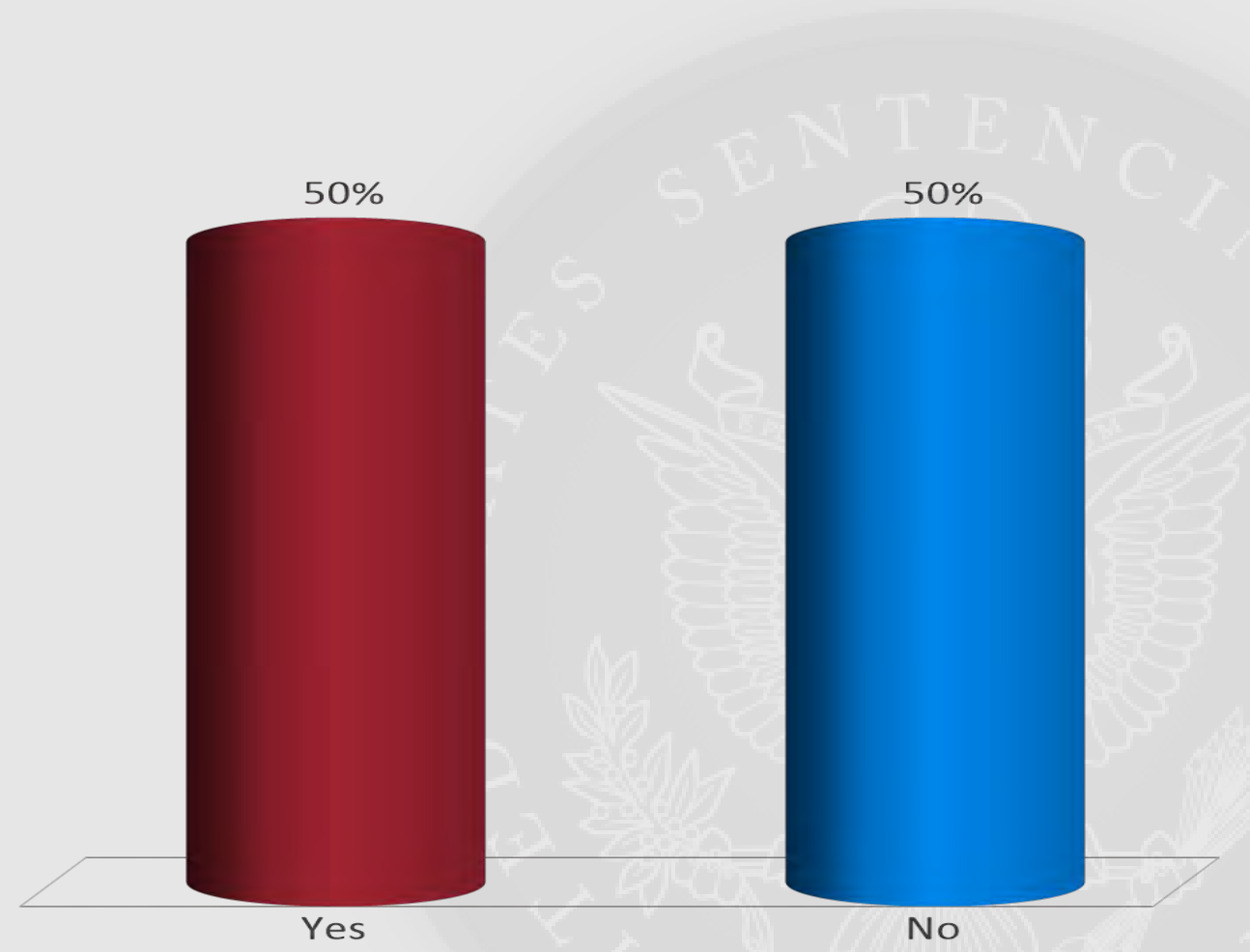
Walter

- 45 years old
- No prior criminal convictions
- Brilliant chemist and former schoolteacher
- Unemployed
- Undergoing medical treatments for lung cancer. Prognosis unknown
- Lives with his wife Skylar and their two children
- Cooperated under §5K1.1 and 18 U.S.C. § 3553(e)
- Binding plea agreement for 20 years imprisonment

Would you accept this binding plea agreement for a 20-year sentence?

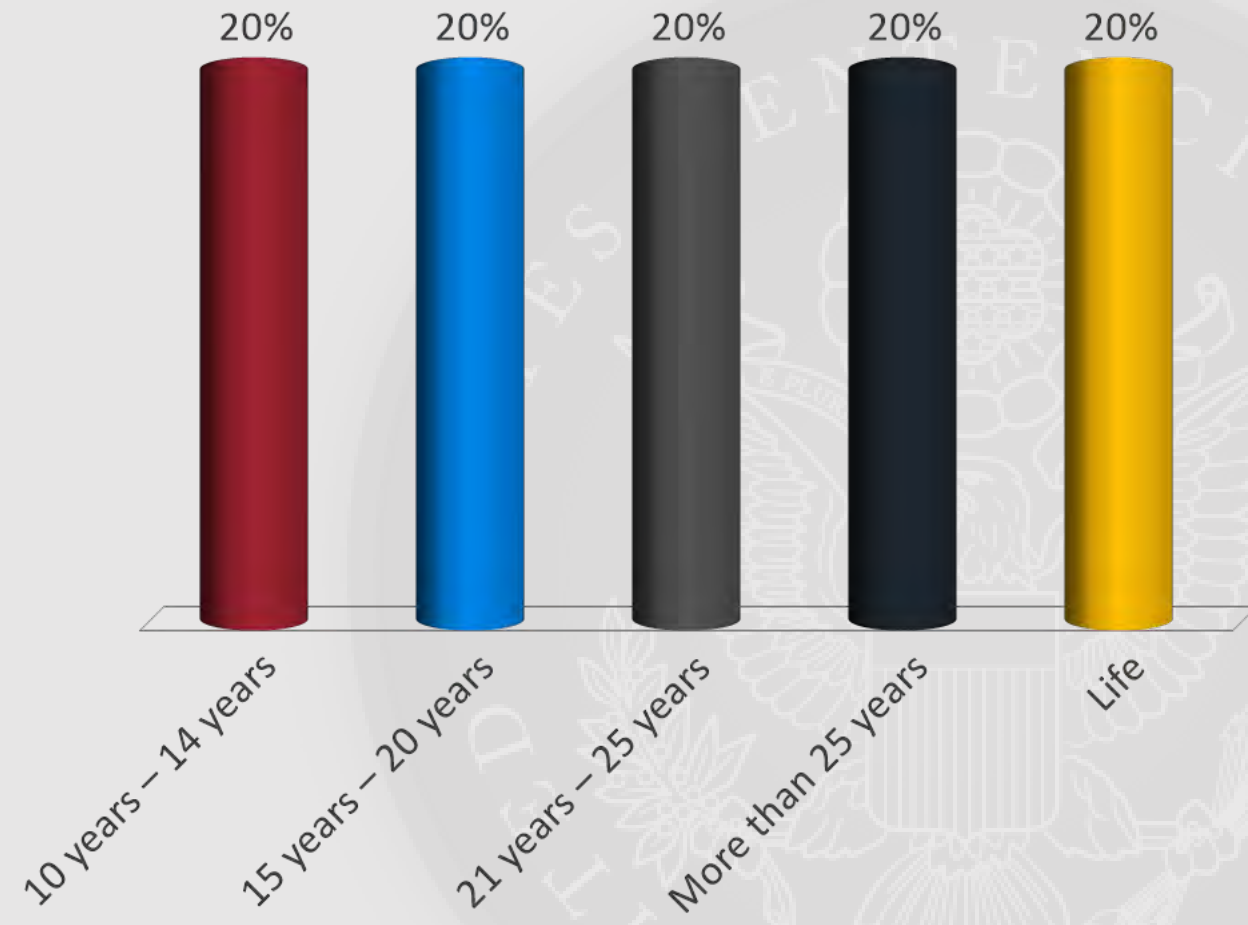
A. Yes

B. No



What sentence would you give Walter, absent the binding plea agreement?

- A.** 10 years – 14 years
- B.** 15 years – 20 years
- C.** 21 years – 25 years
- D.** More than 25 years
- E.** Life



STARTING A SPECIALTY COURT

Presented by:

The Honorable Stephen R. Bough
United States District Judge
Western District of Missouri



FROM



THIS





TO THIS!

HISTORY

- About Us
- Offender/Defendant Programs
- Probation & Pretrial FAQs
- Re-entry Court
- Workforce Development
- Contracting Information
- Intensive Drug Treatment Court
- Internship Program
- Panel of Experts

[Home » Probation & Pretrial](#)

Re-entry Court

The mission of the Western District of Missouri's Re-entry Court is to provide alternative programming for individuals who are on federal supervision and have significant substance abuse treatment needs. The program is based on the belief that if offenders with substance abuse problems are offered the right type of assistance and held accountable, they may stand a better chance of leading a drug-free and law-abiding life than would otherwise be the case. Re-entry Court was designed to assist participants by providing a judicially-supervised regimen of treatment, supervision, and innovative case management. The program, which has demonstrated positive results throughout the country, was crafted in a manner to improve participant outcomes, thereby reducing recidivism, conserving judicial resources, and making a positive difference in the lives of those we serve.

[>> View Western Missouri's Program in the News](#)

The Re-entry Court was developed through a partnership between the U.S. District Court, U.S. Attorney's Office, Federal Public Defender's Office, U.S. Probation and Pretrial Office, and a contracted substance abuse treatment provider. The above entities also comprise the RE-Entry Court Team and are present at each Court hearing. The Court, through these entities, provides multi-faceted support to the participant, and accomplishes its mission by combining a program of intense supervision, the best practices in addiction treatment, and timely court intervention.



United States District Court Western Missouri

Reentry Court 2011 – present

U.S. District Judge Ortrie Smith

U.S. Magistrate Judge John Maughmer

U.S. District Judge Stephen Bough



Home » News Flash

JCPAO Press Releases

Posted on: October 8, 2018

U.S. Sen. McCaskill applauds graduates in 150th Jackson County Drug Court class

For Immediate Release

Oct. 8, 2018

U.S. Sen. Claire McCaskill, who helped initiate the first Drug Court in Jackson County, greeted and congratulated about two dozen new graduates of Jackson County Drug Court in a special ceremony Monday at the Jackson County Courthouse in Kansas City.

McCaskill delivered remarks for the graduates and their supporters, praising the graduates and noting how far the program has come since it was initiated in the early 1990s, when she was prosecutor here. Now, nearly 3,000 persons have benefited from the program, which allows drug offenders to receive treatment in lieu of traditional prosecution. McCaskill noted the strong, bi-partisan support for such programs and recalled how she knew the program had achieved some success when police drug officers, who initially were skeptical of it, attended a graduation a few years later and applauded the graduates.

"At that moment, I knew we had created something special," McCaskill stated.

Jackson County Prosecutor Jean Peters Baker introduced McCaskill and detailed how such programs have grown in Missouri and across the nation. Now, nearly 165 Drug Court programs exist in Missouri.

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JCPAO Press Releases

Notable Cases and Events

Jackson County, Missouri

Drug Court

U.S. District Judge Brian Wimes

previously State Court Drug Court
Commissioner & Trial Judge

Chief U.S. District Judge Beth Phillips

previously Jackson County Prosecutor &
U.S. Attorney, Western Missouri

PARTNERSHIP

An abstract graphic design featuring a solid black background. The word "PARTNERSHIP" is written in a large, white, sans-serif font on the left side. To the right of the text, there is a complex, overlapping pattern of thin white lines that form various geometric shapes, including triangles, quadrilaterals, and polygons, creating a sense of depth and movement.



Partners

Court

Probation

U.S. Attorney

U.S. Public Defender

STATISTICS

An abstract geometric pattern consisting of numerous thin, white, straight lines of varying lengths and orientations. These lines intersect to form a complex web of polygons, primarily quadrilaterals and pentagons, of different sizes. The pattern is concentrated on the right side of the image, with some lines extending towards the center.

Offenders

50% Time Reduction

85.7% Success*

*54% Control Group

Community



OTHER SPECIALTY COURTS

IDTC

Intensive Drug Treatment Court



- About Us
- Offender/Defendant Programs
- Probation & Pretrial FAQs
- Re-entry Court
- Workforce Development
- Contracting Information
- Intensive Drug Treatment Court**
- Internship Program
- Panel of Experts

Home » Probation & Pretrial

Intensive Drug Treatment Court

For individuals whose criminal conduct was motivated primarily by substance abuse, the Western District of Missouri's Intensive Drug Treatment Court program provides a unique and potentially lifesaving opportunity. Started in 2017, the program provides non-guideline sentencing alternatives to defendants whose criminal conduct was primarily motivated by addiction, and who then may be deterred from future criminal conduct by participating in a period of intensive drug treatment and support services under court supervision. The program's multifaceted approach of intense focus on substance abuse treatment, accountability to the Court, as well as access to services that promote job and housing stability aim to reduce offender recidivism rates.



While supervised by District Court Chief Judge Beth Phillips, the program is a collaborative effort between the Court, the United States Probation and Pretrial Services Office, the United States Attorney's Office, the Federal Public Defender's Office, and a contracted substance abuse counselor. This team selects individuals who qualify under the program's guidelines for participation, considering the individual's criminal background and their likelihood to respond to the program's efforts. Together, the team strives to achieve the program's desired goal – that participants who successfully complete the program can live healthy, productive, and law-abiding lives.

The program is structured for this success and lasts between 24 and 36 months, depending on the participant's rate of success in each phase. Each of the program's five phases are designed to allow the participant to gain the skills and tools necessary to succeed in the community. These

ITC

Intensive Trama Court



Multiphases

#1

#2

START A PROBLEM SOLVING COURT



Watch One



Find Resources



Gather Partners



UMKC LAW REVIEW

Vol. 92

Spring 2024

No. 3

MISSOURI SPECIALTY COURTS

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University of Missouri
Kansas City

Law Review

Spring 2024



PROBLEM-SOLVING COURTS

Introduction

(Last updated March 2024) In August 2023, the Commission identified as one of its [final priorities](#) "the "[c]ompilation and dissemination of information on court-sponsored programs relating to diversion, alternatives-to-incarceration, and reentry (e.g., Pretrial Opportunity Program, Conviction And Sentence Alternatives (CASA) Program, Special Options Services (SOS) Program, Supervision to Aid Re-entry (STAR) Program) through the Commission's website and possible workshops and seminars sharing best practices for developing, implementing, and assessing such programs." With this priority, the Commission continues its ongoing work in the area of alternatives to incarceration.

The Commission received a considerable amount of [public comment](#) supporting the "[c]ompilation and dissemination of information on court-sponsored programs relating to diversion, alternatives-to-incarceration, and reentry...through the Commission's website."

This page provides a collection of publicly available resources that have informed and are a product of the Commission's 2023-2024 policy priority work thus far. It will be updated periodically as the Commission continues its work in this area. The Commission recognizes that the needs and resources of stakeholders and participants are unique to each district. Therefore, the Commission believes that these programs are best developed at a grassroots level. The information provided on this webpage is intended to support such development.

Timeline of Commission Work

1987 through 2023

● Policy Priority ● Symposium ● Reports/Other Resources ● Hearing ● Amendment

U.S. Sentencing Commission

Problem Solving Court Resource



U.S. Sentencing Commission

Podcast

Commission Chats



WHAT'S HOLDING YOU BACK?

**START A
SPECIALTY COURT**

Presented by:

The Honorable Stephen R. Bough
United States District Judge
Western District of Missouri

