



INTERACTIVE

Case Law Update

JANUARY - MARCH 2022

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

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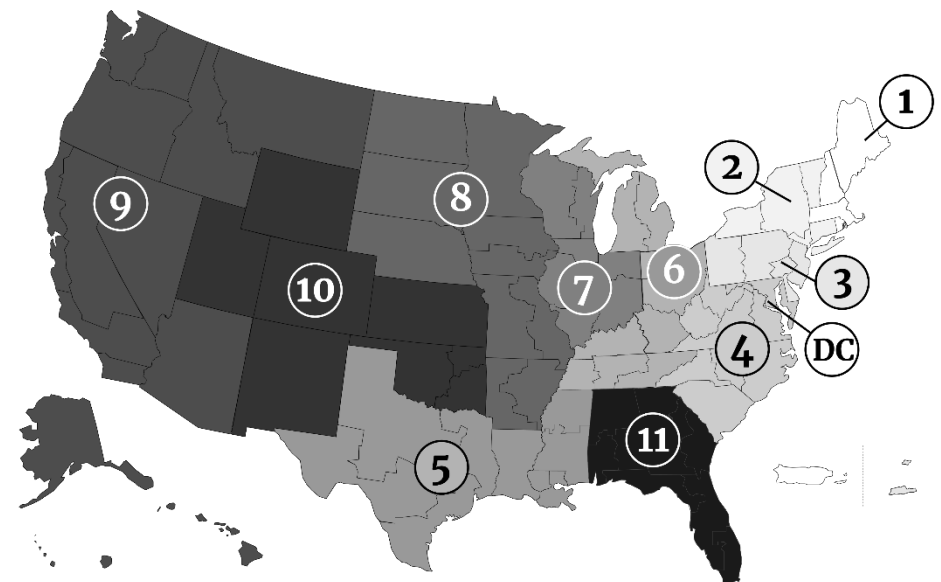
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Cases appear in descending chronological order within a circuit.

U.S. Supreme Court

Wooden v. United States, 142 S. Ct. 1063 (2022)

Offenses that arise from a single criminal episode do not occur on different “occasions,” given the term’s ordinary meaning, and thus count as only one prior conviction for purposes of 18 U.S.C. § 924(e) (commonly referred to as the “Armed Career Criminal Act” or the “ACCA”). Whether offenses occurred on different occasions depends on multiple factors, including timing, location, and the character and relationship of the offenses.

Appellate Court

Career Offender

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

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

The addition of attempt crimes to the commentary to §4B1.2 is not authoritative under *Stinson v. United States*, 508 U.S. 36 (1993), because it is plainly “inconsistent” with the guideline. Deference to the commentary is also not warranted under *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), because the guideline is not “genuinely ambiguous.” This holding is in conflict with the court’s opinion in *United States v. Moses*, 23 F.4th 347 (4th Cir. 2022).

Fifth Circuit

United States v. Garner, 28 F.4th 678 (5th Cir. 2022)

Louisiana aggravated assault with a firearm is not categorically a “crime of violence” under §4B1.2(a) because it is a general intent crime that can be committed recklessly or negligently.

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

United States v. Dixon, 27 F.4th 568 (7th Cir. 2022)

Iowa intimidation with a dangerous weapon qualifies as a “crime of violence” for purposes of the guidelines because the statute requires “reasonable apprehension of serious injury.” Such a requirement “necessarily includes a ‘threatened use of physical force,’” and therefore, meets the definition of “crime of violence” under the elements clause of §4B1.2(a)(1).

United States v. Thomas, 27 F.4th 556 (7th Cir. 2022)

Wisconsin child abuse is a “crime of violence” for purposes of the career offender guidelines because it requires intentionally inflicting bodily harm on a child, which is consistent with circuit precedent. The court held that it would not reconsider such precedent based on a circuit split regarding whether “overt violent force” is required by the definition of “violent felony” in 18 U.S.C. § 924(e) (commonly referred to as the “Armed Career Criminal Act” or the “ACCA”) or the definition of “crime of violence” in §4B1.2(a).

United States v. Shaffers, 22 F.4th 655 (7th Cir. 2022)

A conviction for Illinois aggravated assault that incorporates the prong of the divisible Illinois battery statute requiring “fear of causing bodily harm” is a “crime of violence” under the elements clause of §4B1.2(a)(1).

Eighth Circuit

United States v. Lopez-Castillo, 24 F.4th 1216 (8th Cir. 2022)

Arizona aggravated assault constitutes a “crime of violence,” as defined in §4B1.2(a) and incorporated at §2K2.1(a)(2), because it requires the use of physical force against another person.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Categorical Approach

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

United States v. Proctor, 28 F.4th 538 (4th Cir. 2022)

A Maryland conviction for assault with intent to prevent lawful apprehension or detainer is not a “violent felony” under the force clause of 18 U.S.C. § 924(e) (commonly known as the “Armed Career Criminal Act” or “ACCA”) because it can be committed with the *de minimis* touching of someone to prevent arrest.

United States v. Hope, 28 F.4th 487 (4th Cir. 2022)

A 2013 conviction for possession of marijuana with intent to distribute in proximity of a school under South Carolina Code § 44-53-445 is not a “serious drug offense” under 18 U.S.C. § 924(e) because section 445 is indivisible as to drug type and the federal and South Carolina drug schedules do not categorically match. Even if section 445 were divisible by drug type, South Carolina’s definition of “marijuana” in 2013 was broader than the federal definition of “marijuana” at the time of the defendant’s sentencing on the instant case.

United States v. White, 24 F.4th 378 (4th Cir. 2022)

Virginia common law robbery is not a “violent felony” under 18 U.S.C. § 924(e) because it can be committed by means of threatening to accuse the victim of having committed sodomy.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

Johnson v. United States, 24 F.4th 1110 (7th Cir. 2022)

The defendant’s prior conviction for Indiana criminal deviate conduct qualifies as a “violent felony” under 18 U.S.C. § 924(e) (commonly referred to as the “Armed Career Criminal Act” or the “ACCA”). At the time of the defendant’s conviction, the Indiana statute was divisible, and the forcible compulsion part of the statute, under which the defendant was convicted, required sufficient force to qualify as a “violent felony” under the ACCA.

Eighth Circuit

United States v. Hutchinson, 27 F.4th 1323 (8th Cir. 2022)

Texas burglary qualifies as a “violent felony” under 18 U.S.C. § 924(e) (commonly referred to as the “Armed Career Criminal Act” or the “ACCA”) because it “contains the [necessary] generic specific intent requirement” that the defendant unlawfully enter with intent to commit a crime.

United States v. Fisher, 25 F.4th 1080 (8th Cir. 2022)

The Minnesota first-degree burglary statute is divisible, and first-degree burglary with assault (“subdivision 1(c)” of the statute) qualifies as a “serious violent felony” for purposes of the enhanced penalties provided under 21 U.S.C. § 841(b)(1)(A).

United States v. Matthews, 25 F.4th 601 (8th Cir. 2022)

Minnesota attempted second-degree murder qualifies as a “violent felony” under 18 U.S.C. § 924(e) because the second-degree murder statute requires that the defendant intend to cause the death of a human being, and attempt convictions require that the defendant have the specific intent to commit the underlying offense.

United States v. Williams, 24 F.4th 1209 (8th Cir. 2022)

Nebraska offense of making terroristic threats is not a “violent felony” under 18 U.S.C. § 924(e) because it can be committed with a mental state of “reckless disregard.” The Supreme Court’s decision in *Borden v. United States*, 141 S. Ct. 1817 (2021), which held that an offense that can be committed with a *mens rea* of recklessness does not qualify as a “violent felony,” abrogated *Fletcher v. United States*, 858 F.3d 501 (8th Cir. 2017), which had held that the Nebraska offense of making terroristic threats categorically qualified as a “violent felony.”

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Chapter Three Adjustments

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

United States v. Zhong, 26 F.4th 536 (2d Cir. 2022)

The vulnerable victim adjustment under §3A1.1(b) may be applied based on victims’ membership in a class where the class is defined by characteristics that make the victims “unusually vulnerable” or “particularly susceptible” to the criminal conduct at issue.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

United States v. Hasson, 26 F.4th 610 (4th Cir. 2022)

The Commission properly amended the terrorism adjustment under §3A1.4 pursuant to a congressional directive, and the adjustment does not require that a defendant be convicted of a “[f]ederal crime of terrorism,” as defined in 18 U.S.C. § 2332b(g).

United States v. Barringer, 25 F.4th 239 (4th Cir. 2022)

In a tax fraud case, the abuse-of-trust enhancement under §3B1.3 applied to a company’s vice president and board member who managed nearly all the company’s financial affairs and thus occupied a “position of trust.” Applying the enhancement did not constitute impermissible double-counting because the elements required to show the defendant was a “responsible person” for purposes of her tax fraud conviction did not include proof of a “position of trust.”

Fifth Circuit

United States v. Lara, 23 F.4th 459 (5th Cir. 2022)

The use of a child as a diversionary tactic during the commission of a previously planned crime is an affirmative act sufficient for the application of §3B1.4’s adjustment for using a minor to commit a crime.

Sixth Circuit

United States v. Wellman, 26 F.4th 339 (6th Cir. 2022)

An adjustment for obstruction of justice under §3C1.1 may properly be applied to a defendant convicted of an obstruction offense where the adjustment is based upon different conduct than the conduct underlying the offense of conviction.

Seventh Circuit

No cases selected by Commission staff.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Compassionate Release

D.C. Circuit

No cases selected by Commission staff.

First Circuit

United States v. Ruvalcaba, 26 F.4th 14 (1st Cir. 2022)

While the policy statement found at §1B1.13 is inapplicable to prisoner-initiated motions for compassionate release under 18 U.S.C. § 3582(c)(1)(A), it “may serve as a non-binding reference” for such motions and remains applicable to compassionate release motions brought by the Bureau of Prisons. Also, “in the absence of a contrary directive in an applicable policy statement,” a district court is not precluded from considering a non-retroactive change in the law “as part of the ‘extraordinary and compelling’ calculus” on a case-by-case basis. This case deepens the circuit split on both issues and created an intra-circuit split in the Sixth Circuit over the propriety of considering changes in law in combination with other factors as grounds for a reduction in sentence.

United States v. Teixeira-Nieves, 23 F.4th 48 (1st Cir. 2022)

Although the compassionate release provision at 18 U.S.C. § 3582(c)(1)(A) provides authority for a district court to reduce a sentence to time served and impose home confinement as a condition of probation or supervised release, the provision does not provide authority for a district court to order that an unmodified sentence be served on home confinement.

Second Circuit

United States v. Halvon, 26 F.4th 566 (2d Cir. 2022)

Defendants who received a statutory mandatory minimum sentence are eligible for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A).

Third Circuit

Fourth Circuit

United States v. Hargrove, 30 F.4th 189 (4th Cir. 2022)

No cases selected by Commission staff.

The determination of whether a defendant demonstrates extraordinary and compelling reasons for compassionate release under 18 U.S.C. § 3582(c)(1)(A) is a multifaceted inquiry conducted on the totality of the relevant circumstances. Further, in deciding whether to reduce a sentence under section 3582(c)(1)(A), it is proper for a district court to consider 18 U.S.C. § 3553(a)(2)(A)'s retributive factors, even where the sentence was in part a revocation sentence.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

United States v. McKinnie, 24 F.4th 583 (6th Cir. 2022)

The court’s holding in *United States v. Havis*, 927 F.3d 382 (6th Cir. 2019) (providing that an attempt crime cannot be a predicate “controlled substance offense” for purposes of the career offender enhancement at §4B1.1), was a nonretroactive judicial decision, and therefore, cannot serve as an “extraordinary and compelling reason” justifying compassionate release under 18 U.S.C. § 3582(c)(1)(A), whether offered alone or in combination with other factors. This case deepens the intra-circuit split over the propriety of considering changes in law in combination with other factors as grounds for a sentence reduction.

Seventh Circuit

United States v. Shorter, 27 F.4th 572 (7th Cir. 2022)

Release from prison to home confinement renders a motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A) that was filed prior to such release moot. The argument that a return to prison would pose a “very high medical risk” if the defendant violated such home confinement is “too speculative to provide [the defendant] with a constitutionally cognizable stake in this case.”

United States v. Rucker, 27 F.4th 560 (7th Cir. 2022)

Notwithstanding the court’s conclusion in *United States v. Broadfield*, 5 F.4th 801 (7th Cir. 2021), that “the availability of vaccines had effectively eliminated the risks of COVID-19 to most federal prisoners,” district courts must assess an inmate’s individual circumstances in deciding whether compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) is warranted.

United States v. Barbee, 25 F.4th 531 (7th Cir. 2022)

Remand of the district court’s denial of the defendant’s compassionate release motion under 18 U.S.C. § 3582(c)(1)(A), which was based in part on his risk of contracting COVID-19, would be inappropriate because such a remand would not result in a decision in the defendant’s favor “[g]iven the current data and the availability of safe and effective vaccines.”

Eighth Circuit

United States v. Crandall, 25 F.4th 582 (8th Cir. 2022)

A non-retroactive change in the law, whether offered alone or in combination with other factors, cannot contribute to a finding of “extraordinary and compelling reasons” for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A). This case deepens the circuit split over the propriety of considering changes in law in combination with other factors as grounds for a reduction in sentence.

Ninth Circuit

United States v. King, 24 F.4th 1226 (9th Cir. 2022)

Inmates who committed crimes before November 1, 1987, cannot move for compassionate release under 18 U.S.C. § 3582(c)(1). Rather, such inmates remain subject to 18 U.S.C. § 4205(g), which was repealed and replaced by section 3582(c)(1), effective on such date, and provides that only the Bureau of Prisons may seek compassionate relief on behalf of inmates.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Criminal History

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

No cases selected by Commission staff.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

United States v. Bravo, 26 F.4th 387 (7th Cir. 2022)

The district court erred in counting the defendant's 2014 convictions for Illinois "streetgang contact" towards his criminal history score because (1) the crime is equivalent to disorderly conduct, an offense that is excluded under §4A1.2(c)(1) if certain requirements are met, and (2) the defendant met those requirements.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Drug Offenses

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

United States v. Skaggs, 23 F.4th 342 (4th Cir. 2022)

A prior state drug conviction for which a sentence of 26 months was imposed concurrently with five other 26-month concurrent sentences qualifies as a “serious drug felony” under 21 U.S.C. § 841(b)(1)(A). Such a sentence satisfies the definition’s requirement that the defendant “served a term of imprisonment of more than 12 months” because it remains a distinct term of imprisonment even when served simultaneously with other sentences.

Fifth Circuit

United States v. Lujan, 25 F.4th 324 (5th Cir. 2022)

The district court clearly erred when it applied the “wholesale” price of methamphetamine (the price the drug could be purchased for), rather than its “retail” price (the price the drug could be sold for), to convert the defendant’s illicit profits to a methamphetamine quantity. While a court may consider the “wholesale” price of a drug in lieu of its “retail” price, which is more commonly used, to conduct a cash-to-drug-quantity conversion, the district court in this case erred because it “implausibly” assumed the defendant would have used all her illicit profits for future methamphetamine purchases.

Sixth Circuit

United States v. Sadler, 24 F.4th 515 (6th Cir. 2022)

But-for causation under 21 U.S.C. § 841(b)(1)(C), which imposes an enhanced sentence for a drug distribution conviction that results in death or serious bodily injury, does not require evidence from a blood toxicology test.

Seventh Circuit

United States v. Ford, 22 F.4th 687 (7th Cir. 2022)

In determining whether to apply the enhancement in §2D1.1(b)(12) for maintaining a drug premises, courts should, consistent with guideline commentary, consider how often a defendant used the premises for controlled substance distribution, the scope of the enterprise, and the degree of control the defendant had on access to and activities on the premises.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Economic Crimes

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

No cases selected by Commission staff.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

United States v. Hills, 27 F.4th 1155 (6th Cir. 2022)

The district court correctly applied §2C1.1 (relating to bribes), rather than §2C1.2 (relating to gratuities), to the defendants’ underlying racketeering activity to determine their base offense level under §2E1.1, even though Appendix A of the *Guidelines Manual* references both §§2C1.1 and 2C1.2 for the statutes criminalizing the defendants’ underlying racketeering activity. The district court did not err in finding that the defendants were “public officials” for purposes of §2C1.1 because Application Note 1’s definition of the term includes unelected public officials. The district court also did not err in finding that one of the defendants held a “high level decision-making position” pursuant to Application Note 4 of §2C1.1 based on his position as “the [] chair of [a] [d]ental [d]epartment of a county-owned hospital,” even though such position was not elected, served below a board, and did not have final say on the matter in question and even though the offenses of conviction “did not directly involve” the chair’s authority.

Seventh Circuit

No cases selected by Commission staff.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

United States v. Lonich, 23 F.4th 881 (9th Cir. 2022)

The government failed to prove by clear and convincing evidence that the defendants’ actions caused a bank’s failure. As a result, the defendants’ §2B1.1 enhancements for loss amount, number of victims, and jeopardizing the safety and soundness of a financial institution were infirm.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Firearms

D.C. Circuit

No cases selected by Commission staff.

First Circuit

| *No cases selected by Commission staff.*

Second Circuit

| *No cases selected by Commission staff.*

Third Circuit

| *No cases selected by Commission staff.*

Fourth Circuit

| *No cases selected by Commission staff.*

Fifth Circuit

| *No cases selected by Commission staff.*

Sixth Circuit

| *No cases selected by Commission staff.*

Seventh Circuit

United States v. Price, 28 F.4th 739 (7th Cir. 2022)

| The district court properly applied the enhancement at §2K2.1(b)(1)(A) for offenses involving “three or more firearms” based on the two firearms related to the defendant’s underlying possession charges and a rental gun “briefly possessed” by the defendant at a store for guns and ammunition because the possession offenses were similar, the three instances of possession sufficiently constituted regularity, and the defendant possessed the gun “at the ‘same place’ and at the ‘same time’ as other charged firearms.” In addition, the Supreme Court’s opinion in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), requiring *scienter* for a conviction under 18 U.S.C. § 922(g) does not extend to sentencing enhancements under §2K2.1(b)(4)(A) for offenses involving stolen firearms.

Eighth Circuit

| *No cases selected by Commission staff.*

Ninth Circuit

| *No cases selected by Commission staff.*

Tenth Circuit

United States v. Sanchez, 22 F.4th 940 (10th Cir. 2022)

| The district court did not clearly err in applying the enhancement in §2K2.1(b)(6)(B) for possession of a firearm in connection with another felony offense where the defendant’s possession of a loaded firearm had the potential to facilitate his possession of a stolen vehicle.

Eleventh Circuit

No cases selected by Commission staff.

First Step Act of 2018

D.C. Circuit

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

No cases selected by Commission staff.

Fifth Circuit

No cases selected by Commission staff.

United States v. Lyons, 25 F.4th 342 (5th Cir. 2022)

The district court did not abuse its discretion when it considered all conditions present at the defendant’s original sentencing, including an unused sentencing enhancement and the plea agreement, and denied the defendant’s motion for a sentence reduction under section 404 of the First Step Act of 2018.

Sixth Circuit

United States v. Bailey, 27 F.4th 1210 (6th Cir. 2022)

The district court did not abuse its discretion by providing a brief explanation for its denial of the defendant’s motion for a sentence reduction under section 404 of the First Step Act of 2018 or by concluding that the defendant’s career offender designation under §4B1.1 meant that the First Step Act of 2018 did not affect his guideline range.

United States v. Johnson, 26 F.4th 726 (6th Cir. 2022)

The district court abused its discretion in denying the defendant’s motion for a sentence reduction pursuant to section 404 of the First Step Act of 2018. Given that the defendant’s guideline range had decreased from a range of 200 to 235 months to a range of 160 to 185 months, the district court’s justification for leaving intact the defendant’s 300-month sentence was insufficient, rendering the sentence substantively unreasonable.

Seventh Circuit

United States v. McSwain, 25 F.4th 533 (7th Cir. 2022)

A multidrug conspiracy involving cocaine base and another substance constitutes a “covered offense” for purposes of section 404 of the First Step Act of 2018.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

United States v. Burris, 29 F.4th 1232 (10th Cir. 2022)

In ruling on a motion for a sentence reduction under section 404 of the First Step Act of 2018, a district court is obligated to correctly calculate a defendant’s revised guideline range “prior to deciding, in its discretion, whether to reduce [the] defendant’s sentence.” The district court’s failure to do so in this case was not harmless error, as its “exercise of discretion was untethered from the correct calculation of [the defendant’s] revised [guideline] range.”

Eleventh Circuit

United States v. Williams, 25 F.4th 1307 (11th Cir. 2022)

The defendant’s conviction under 21 U.S.C. § 841(a) does not constitute a “covered offense” under section 404 of the First Step Act of 2018 because the penalties for his offense were set by 21 U.S.C. § 841(b)(1)(C) via a cross-reference in 21 U.S.C. § 860(a), and the penalties in section 841(b)(1)(C) were not modified by the Fair Sentencing Act of 2010. In so holding, the court relied on the Supreme Court’s reasoning in *Terry v. United States*, 141 S. Ct. 975 (2021).

Relevant Conduct

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

United States v. McDonald, 28 F.4th 553 (4th Cir. 2022)

The defendant’s possession of firearms in three different incidents qualified as the same course of conduct as, and therefore relevant conduct to, his instant offense of possession of ammunition by a convicted felon. The three incidents were temporally connected and

Fifth Circuit

involved a pattern of sufficiently similar conduct (illegal possession of similar types of firearms).

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

No cases selected by Commission staff.

United States v. Boyle, 28 F.4th 798 (7th Cir. 2022)

The conduct underlying the defendant’s state offense for sexual assault of a child was not relevant conduct to his instant federal offense for producing and possessing child pornography. Therefore, the district court did not err in imposing the defendant’s 50-year federal sentence consecutive to his 40-year state sentence pursuant to §5G1.3(d).

United States v. Asbury, 27 F.4th 576 (7th Cir. 2022)

The district court committed reversible error when it relied on additional drug quantities through relevant conduct not sufficiently proved by the government that increased the drug quantity for which the defendant was held responsible at sentencing. The district court’s assertion that it would impose the same sentence absent errors in the guideline calculation did not render such error harmless.

United States v. McClinton, 23 F.4th 732 (7th Cir. 2022)

In determining the defendant’s sentence for robbery and brandishing a firearm, the district court properly considered the murder of a co-defendant, for which the defendant was acquitted, as relevant conduct because, even though the defendants were a safe distance away from the robbery scene when the murder occurred, the murder “clearly occurred” in the course of the robbery.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Restitution

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

United States v. Yalincak, 30 F.4th 115 (2d. Cir. 2022)

Under 18 U.S.C. § 3664(h), district courts may combine apportionment of liability to impose “hybrid restitution” orders limiting the restitution obligation for some participants in an offense while holding other participants in the offense responsible for the full amount of the loss. Such hybrid restitution obligations are not satisfied until either a defendant has paid as much as she has been ordered to pay, or the victim has been made whole.

United States v. Afriyie, 27 F.4th 161 (2d Cir. 2022)

The Supreme Court’s decision in *Lagos v. United States*, 138 S. Ct. 1684 (2018), did not undermine Second Circuit precedent holding that victims of certain offenses may recover under 18 U.S.C. § 3663A(b)(4) (commonly referred to as the “Mandatory Victims Restitution Act” or the “MVRA”) attorneys’ fees incurred while participating in government investigations of the offenses. However, expenses incurred while participating in a noncriminal investigation by the Securities and Exchange Commission are not recoverable under the MVRA.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

No cases selected by Commission staff.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

No cases selected by Commission staff.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

United States v. Casados, 26 F.4th 845 (10th Cir. 2022)

Section 3663A of title 18, United States Code (commonly referred to as the “Mandatory Victims Restitution Act” or the “MVRA”), requires certain defendants to reimburse their victims for transportation expenses incurred while attending proceedings related to the defendants’ offenses. While the MVRA permits a victim’s representative to “assume the victim’s rights,” the representative’s own expenses may not be substituted for those of the victim.

United States v. Anthony, 25 F.4th 792 (10th Cir. 2022)

Restitution is a component of a criminal sentence and therefore is part of a defendant’s “judgment of conviction.” Where restitution is determined after a defendant’s initial sentencing, the judgment of conviction does not become final—and trigger a one-year window to file a motion under 28 U.S.C. § 2255—until the restitution proceedings are final. In addition, in a deferred restitution case, a defendant may appeal the conviction and sentence within 14 days of either (1) the entry of the initial judgment, or (2) the entry of the amended judgment containing the restitution amount.

Eleventh Circuit

No cases selected by Commission staff.

Sentencing Procedure

D.C. Circuit

No cases selected by Commission staff.

First Circuit

United States v. Torres-Melendez, 28 F.4th 339 (1st Cir. 2022)

The district court erred and imposed a procedurally unreasonable sentence when it varied upward to a sentence that was twice the top of the guideline range for possession of a machine gun after finding the defendant “has a track record of engaging in drug offenses and weapon violations” based on two arrests for offenses dismissed for lack of a speedy trial. Absent the requisite preponderance of the evidence, a court cannot “rely on an arrest record as evidence of a defendant’s conduct” without “some reliable indication that the underlying conduct actually occurred.”

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

United States v. Benton, 24 F.4th 309 (4th Cir. 2022)

To find that the defendant qualified for a sentencing enhancement under 18 U.S.C. § 942(e) (commonly referred to as the “Armed Career Criminal Act” or the “ACCA”), the district court erred in relying on prior convictions that were not identified as ACCA predicates in the defendant’s presentence report. Under circuit precedent, the government must identify all convictions it wishes to rely upon for an ACCA enhancement at the time of sentencing so that a defendant has notice and the opportunity to challenge the convictions. Therefore, at a collateral proceeding, the government may not rely on predicates that were not identified at sentencing to preserve an ACCA enhancement that can no longer be sustained by the original predicates.

Fifth Circuit

United States v. Jackson, 30 F.4th 269 (5th Cir. 2022)

It does not violate due process to retroactively apply circuit precedent treating a Texas burglary-of-a-habitation conviction as a “violent felony” under 18 U.S.C. § 924(e) (commonly referred to as the “Armed Career Criminal Act” or the “ACCA”).

United States v. Hammond, 24 F.4th 1011 (5th Cir. 2022)

A district court is not required to put a defendant on notice that it might upwardly depart pursuant to Application Note 4 of §7B1.4 when determining the sentence to impose upon revocation of supervised release.

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

No cases selected by Commission staff.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

United States v. Warren, 22 F.4th 917 (10th Cir. 2022)

Motions for reconsideration may be filed under 18 U.S.C. § 3582(c), but such motions must be filed within the time to appeal the order that is the subject of the motion. Untimeliness is not a jurisdictional bar, however, and thus may be waived by the government.

United States v. Cozad, 21 F.4th 1259 (10th Cir. 2022)

Under 18 U.S.C. § 3553(a), it is procedurally unreasonable for a court to impose a harsher sentence based on a defendant’s decision to plead guilty without a plea agreement.

Eleventh Circuit

United States v. Howard, 28 F.4th 180 (11th Cir. 2022)

The district court erred and imposed a substantively unreasonable sentence when it imposed probation for a physician who committed health care crimes, failing to properly consider and weigh the 18 U.S.C. § 3553(a) sentencing factors and giving weight to “improper factors” such as the loss of a professional license and becoming a felon.

United States v. Maurya, 25 F.4th 829 (11th Cir. 2022)

The district court violated the *Ex Post Facto* Clause of the Constitution by using the 2018 *Guidelines Manual* to sentence the defendant because the 2-level enhancement for substantial financial hardship at §2B1.1(b)(2)(A)(iii) did not exist during the timeframe in which the defendant committed her offense.

Sex Offenses

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

No cases selected by Commission staff.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

United States v. Hyatt, 28 F.4th 776 (7th Cir. 2022)

The district court erred in applying the 2-level increase at §2G2.2(b)(3)(F) for knowing distribution of child pornography based solely on the fact that the defendant uploaded images to Dropbox, a file-sharing platform. Notably, no circuit has held that the enhancement may apply “based solely on the upload of files to cloud-based storage.”

United States v. Skaggs, 25 F.4th 494 (7th Cir. 2022)

The district court’s imposition of a life sentence based on the belief that such a sentence was required by 18 U.S.C. § 3559(e) was harmless error because the district court stated, along with its reasoning and analysis of the 18 U.S.C. § 3553(a) factors, that it would have nevertheless imposed the same sentence.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

No cases selected by Commission staff.

Supervised Release

D.C. Circuit

United States v. Turner, 21 F.4th 862 (D.C. Cir. 2022)

At a sentencing for revocation of supervised release, the guideline range determined under Chapter 7’s Revocation Table is the total recommended punishment, regardless of whether an offender’s supervised release is revoked while serving a single term of supervised release or multiple concurrent terms of supervised release. It is procedural error to impose multiple within-range revocation terms reflecting each count of conviction that carried a supervised release term.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

No cases selected by Commission staff.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

No cases selected by Commission staff.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

United States v. Wells, 29 F.4th 580 (9th Cir. 2022)

The defendant’s special condition of supervised release prohibiting the possession or use of a computer is unconstitutionally vague because the condition’s definition of the term “computer” would cause “men of common intelligence [to] necessarily guess at its meaning and differ as to its application.” Because the special condition violates a constitutional right that was not expressly and specifically waived by the defendant’s valid appeal waiver, it is an “illegal” sentence that the defendant may challenge.

United States v. Ponce, 22 F.4th 1045 (9th Cir. 2022)

The correct legal standard for deciding a motion for early termination of supervised release is set forth in 18 U.S.C. § 3583(e), which makes clear that a district court enjoys discretion to consider a wide range of circumstances.

Tenth Circuit

No cases selected by Commission staff.

Eleventh Circuit

United States v. Moore, 22 F.4th 1258 (11th Cir. 2022)

The district court did not plainly err in imposing a revocation sentence and a new term of imprisonment that resulted in a combined sentence that exceeded the statutory maximum for the original offense because the text of 18 U.S.C. § 3583(e) does not indicate that “the full panoply of rights provided for in the Fifth or Sixth Amendments apply to [section] 3583(e) revocation proceedings,” and neither the Supreme Court nor the Eleventh Circuit have directly resolved the issue.

General Application Issues

D.C. Circuit

No cases selected by Commission staff.

First Circuit

United States v. Espinoza-Roque, 26 F.4th 32 (1st Cir. 2022)

The district court clearly erred when it applied a higher base offense level under §2K2.1(a)(4)(B) to the defendant’s firearms offenses based on its conclusion that the

	<p>defendant was an “unlawful user of or addicted to any controlled substance” at the time he committed those offenses. The district court had relied on the defendant’s statement that he “used marijuana every day without interruption to get to sleep” to find the requisite temporal nexus needed to apply the higher base offense level, but that reliance was erroneous given other “undisputed evidence” in the defendant’s record.</p>
Second Circuit	
Third Circuit	<p><i>No cases selected by Commission staff.</i></p>
Fourth Circuit	<p><i>No cases selected by Commission staff.</i></p>
<p>United States v. Moses, 23 F.4th 347 (4th Cir. 2022)</p>	<p>The district court properly applied Application Note 5(C) to §1B1.3 because guideline commentary is authoritative and binding even if the guideline is unambiguous. <i>Kisor v. Wilkie</i>, 139 S. Ct. 2400 (2019) (limiting deference to an executive agency’s interpretation of its regulations), did not alter the authoritative weight afforded to guideline commentary under <i>Stinson v. United States</i>, 508 U.S. 36 (1993). This holding is in conflict with the court’s opinion in <i>United States v. Campbell</i>, 22 F.4th 438 (4th Cir. 2022).</p>
Fifth Circuit	
Sixth Circuit	<p><i>No cases selected by Commission staff.</i></p>
Seventh Circuit	<p><i>No cases selected by Commission staff.</i></p>
Eighth Circuit	<p><i>No cases selected by Commission staff.</i></p>
<p>United States v. Fisher, 25 F.4th 1080 (8th Cir. 2022)</p>	<p>The district court did not plainly err in concluding that §5K2.23 does not authorize a court to downwardly depart below a statutory minimum penalty. The court further indicated that it was “inclined to agree with the other circuits that have decided this issue” were the question raised on <i>de novo</i> review.</p>
Ninth Circuit	
Tenth Circuit	<p><i>No cases selected by Commission staff.</i></p>
	<p><i>No cases selected by Commission staff.</i></p>

Eleventh Circuit

No cases selected by Commission staff.

Other Offense Types

D.C. Circuit

No cases selected by Commission staff.

First Circuit

No cases selected by Commission staff.

Second Circuit

No cases selected by Commission staff.

Third Circuit

No cases selected by Commission staff.

Fourth Circuit

No cases selected by Commission staff.

Fifth Circuit

No cases selected by Commission staff.

Sixth Circuit

No cases selected by Commission staff.

Seventh Circuit

No cases selected by Commission staff.

Eighth Circuit

No cases selected by Commission staff.

Ninth Circuit

No cases selected by Commission staff.

Tenth Circuit

United States v. Logsdon, 26 F.4th 854 (10th Cir. 2022)

The district court properly applied the cross-reference in §2B1.1(c)(2), which applies if “the offense involved arson,” to a defendant convicted of making a false statement to an arson investigator, even though the defendant did not mention arson in her statement and there was no evidence that she committed arson. The false statement offense “involved arson” because an underlying arson launched the investigation in which she made a materially false statement that led to her prosecution.

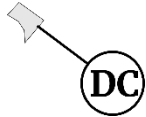
Eleventh Circuit

| *No cases selected by Commission staff.*

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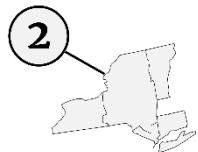
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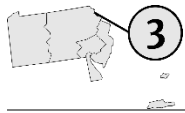
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 United States v. Espinoza-Roque, 26 F.4th 32 (1st Cir. 2022) (General Application Issues)



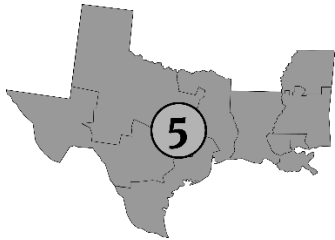
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 United States v. Hope, 28 F.4th 487 (4th Cir. 2022) (Categorical Approach)
 United States v. White, 24 F.4th 378 (4th Cir. 2022) (Categorical Approach)
 United States v. Hasson, 26 F.4th 610 (4th Cir. 2022) (Chapter Three Adjustments)
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United States v. Hargrove, 30 F.4th 189 (4th Cir. 2022) (Compassionate Release)
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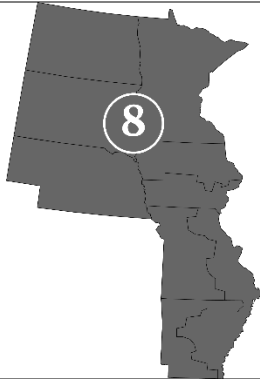


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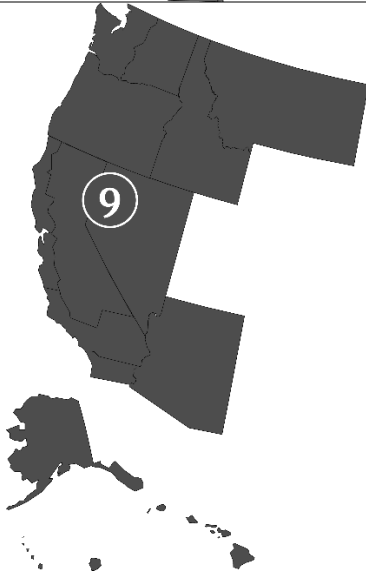


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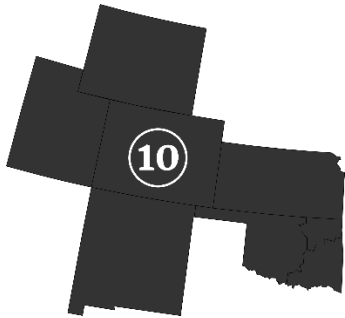
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