



Case Law Updates

Western District of Arkansas

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Erlinger | ACCA

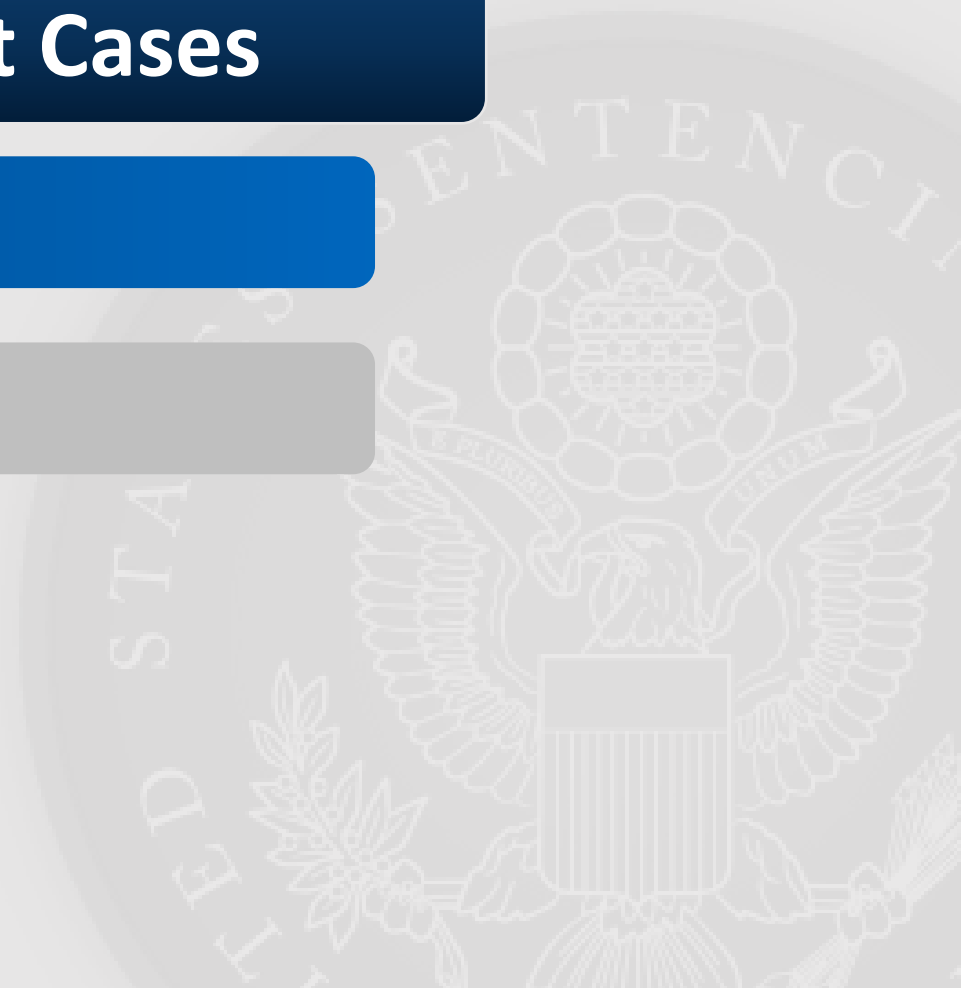
Delligatti | Omissions

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Armed Career Criminal Act

18 U.S.C. § 924(e)



Wooden v. United States

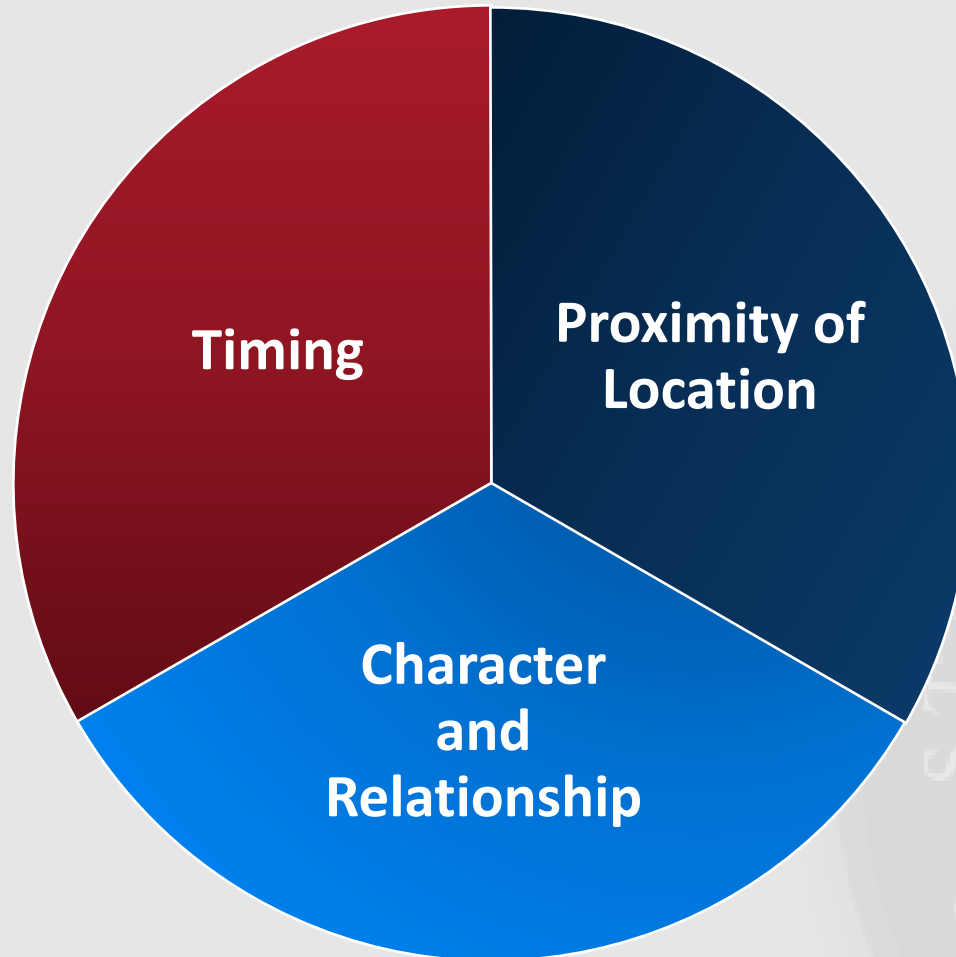
142 S. Ct. 1063 (2022)



Holding:

Offenses arising from a single criminal episode do not occur on different occasions.

Occasions Clause Test



Erlinger v. United States

602 U.S. 821 (2024)



Holding:

For purposes of applying the Armed Career Criminal Act, a unanimous jury must determine beyond a reasonable doubt that a defendant's past offenses were committed on separate occasions.

United States v. Bowling

135 F.4th 1125 (8th Cir. 2025)

 **December 1, 1990**

 **March 19, 1991**

 **March 27, 1991**

 **February 16, 2014**

“There is no plausible argument that three of these four burglaries were committed on the same occasion. The district court’s error in failing to submit the issue to a jury is therefore harmless beyond a reasonable doubt.”

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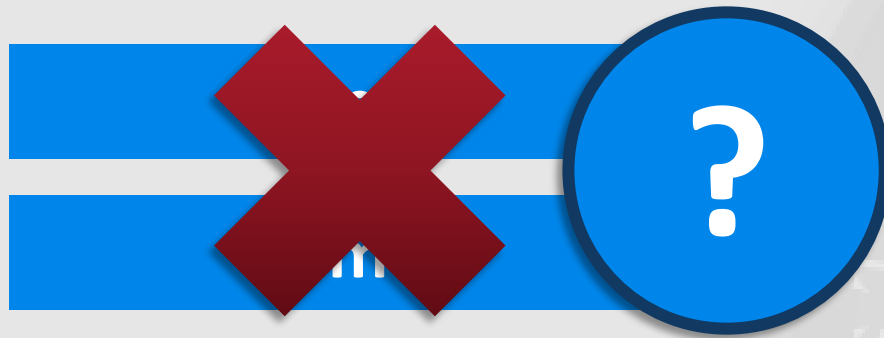
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Categorical Approach

A method for determining whether an offense meets a given definition, such as “crime of violence.”



Ohio aggravated murder can be committed by omission—that is, through a defendant’s failure to act. For example, a mother was convicted of Ohio aggravated murder after she left her toddler home alone while she went on a beach vacation, and the child starved to death.

Does this information categorically preclude Ohio aggravated murder from qualifying as a crime of violence?

A. Yes

B. No



Force Requirement

Commission



Omission



?

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

145 S. Ct. 797 (2025)



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.

Categorical Approach



Delligatti v. United States

145 S. Ct. 797 (2025)



Holding:

The knowing or intentional causation of bodily injury necessarily involves the use of physical force, even when caused by omission rather than affirmative action.

Crimes of Omission



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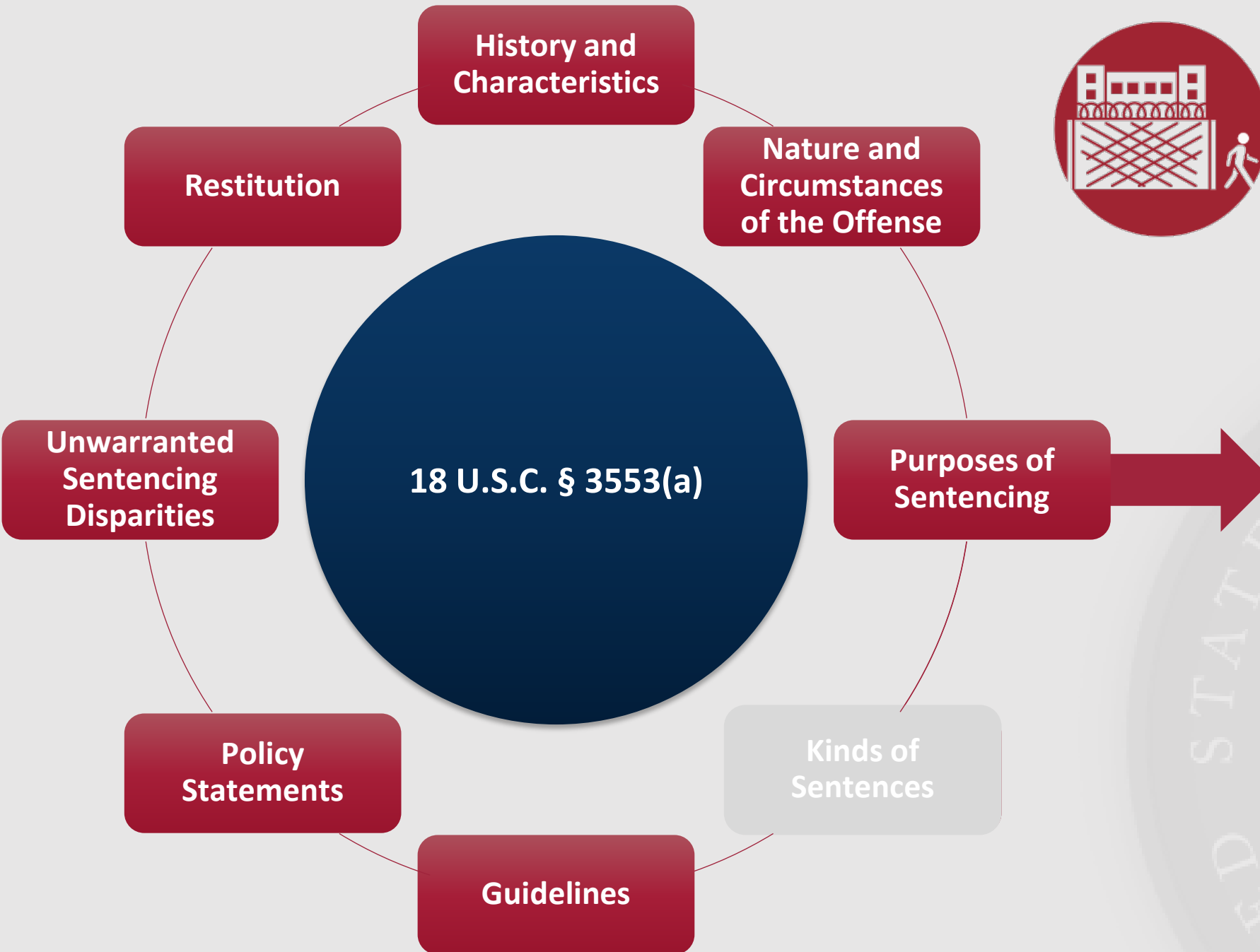
Fernandez | Compassionate Release

Rutherford | Compassionate Release



Sentencing Factors for Supervised Release

18 U.S.C. § 3583(c), (e)



1. Retribution
2. Deterrence
3. Incapacitation
4. Rehabilitation

Retributive Sentencing Factors

United States v. Porter

974 F.3d 905 (8th Cir. 2020)

Although § 3553(a)(2)(A) is “an improper, irrelevant, or excluded factor,” its consideration is not an error of law; rather, “we examine whether the court gave significant weight to that factor.”

United States v. Booker

63 F.4th 1254 (10th Cir. 2023)

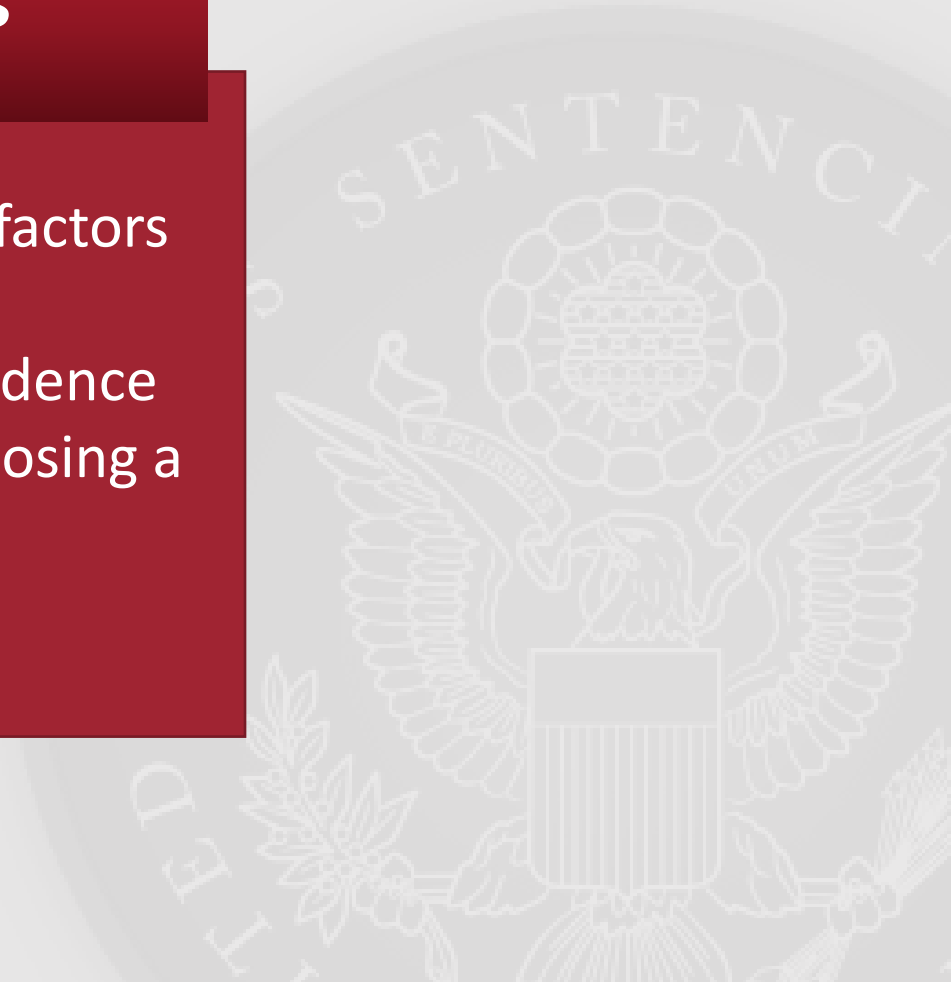
“[T]he omission of § 3553(a)(2)(A) from the [supervised release] sentencing factors . . . precludes a court from considering the need for retribution when modifying or revoking a term of supervised release.”

Retributive Sentencing Factors

United States v. Esteras

88 F.4th 1163 (6th Cir. 2023)

References to the § 3553(a)(2)(A) factors “do not create a procedurally unreasonable sentence absent evidence that the court was engaged in imposing a purely retributive sentence.”



Esteras v. United States

S. Ct. No. 23-7483 (from 6th Cir.)



Question Presented:

May a court rely on the § 3553(a)(2)(A) factors when revoking supervised release even though Congress excluded these factors from the factors to consider under § 3583(e) when revoking supervised release?

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Ellingburg v. United States

S. Ct. No. 24-482 (from 8th Cir.)



Question Presented:

Whether criminal restitution under the Mandatory Victim Restitution Act is penal for purposes of the Constitution's Ex Post Facto Clause.

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Compassionate Release

18 U.S.C. § 3582(c)(1)(A)(i)

A court may not modify a term of imprisonment once it has been imposed **except**...in certain circumstances...

Consideration of
§ 3553(a) Factors



Extraordinary and
Compelling
Circumstances



Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A)

Section 1B1.13 (Policy Statement)



Medical Circumstances



Age



Family Circumstances



Victim of Abuse



Other Reasons



Unusually Long Sentence

Motion to Vacate

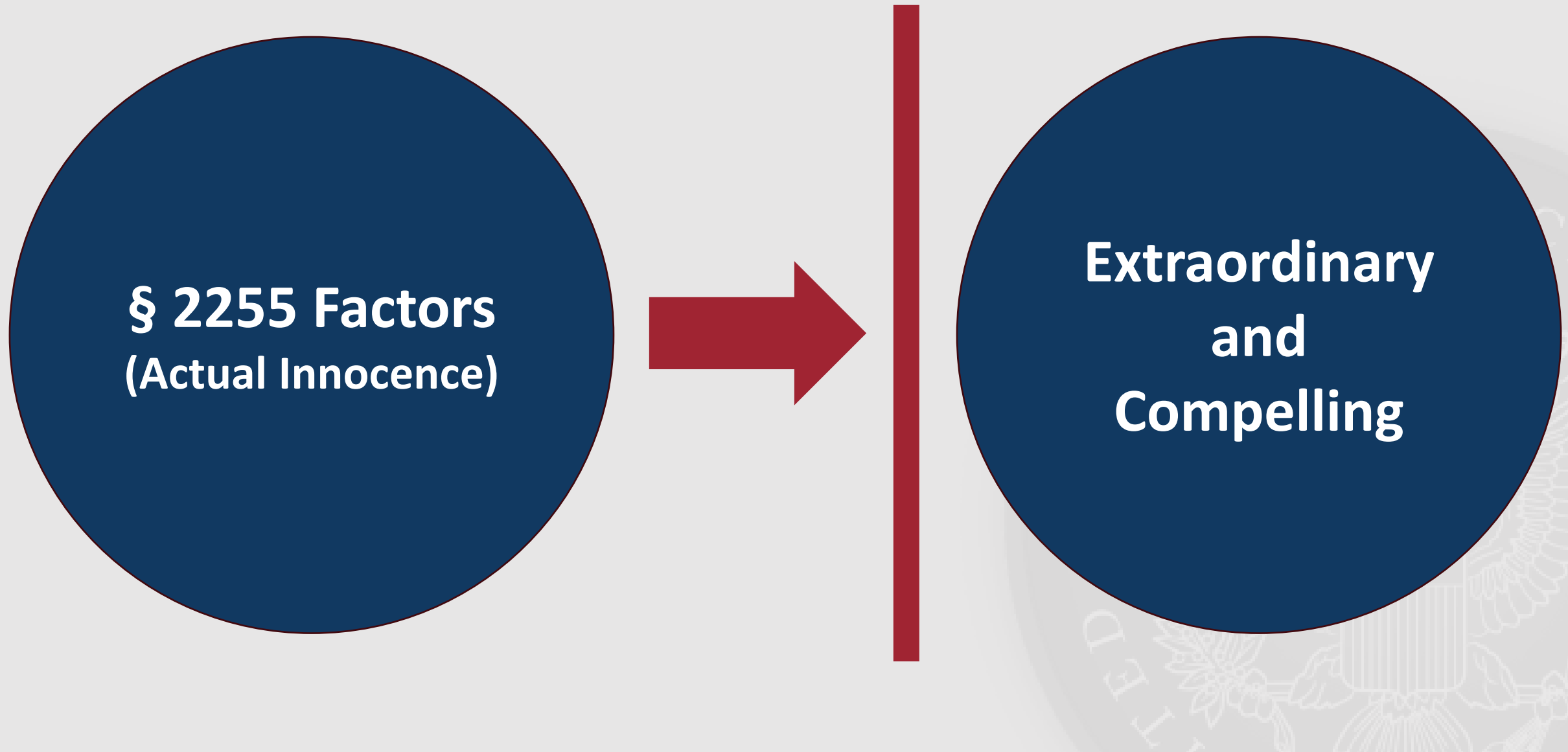
28 U.S.C. § 2255

A prisoner may seek to vacate, set aside, or correct a sentence imposed in violation of the Constitution or federal law.



Actual Innocence

What are Extraordinary and Compelling Circumstances?



Extraordinary and Compelling Circumstances

United States v. Crandall

25 F.4th 582 (8th Cir. 2022)

A defendant “cannot avoid the restrictions of the post-conviction relief statute [in his challenge that his conviction was legally erroneous] by resorting to a request for compassionate relief instead.”

Fernandez v. United States

S. Ct. No. 24-556 (from 2d Circuit)



Question Presented:

Whether a combination of “extraordinary and compelling reasons” that may warrant a discretionary sentence reduction under 18 U.S.C. § 3582(c)(1)(A) can include reasons that may also be alleged as grounds for vacatur of a sentence under 28 U.S.C. § 2255.

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Rutherford v. United States & Carter v. United States

S. Ct. Nos. 24-820 & 24-860 (from 3d Cir.)



Question Presented:

Whether federal courts can consider changes to criminal law that do not apply retroactively as “extraordinary and compelling reasons” warranting a sentence reduction.

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Adjustment for Zero-Point Offenders

§4C1.1(a)

Cross-References

**§2D1.1 &
§2K2.1**

**Reckless
Endangerment During
Flight**

§3C1.2

Drug Offenses

§2D1.1

Adjustment for Certain Zero-Point Offenders

Section 4C1.1(a)(10) – 2023 Guidelines Manual

A defendant's offense level is decreased by 2 levels if **all** of **10** listed criteria are met, including:



No Aggravating Role Adjustment (§3B1.1)

&

Not Engaged in a Continuing Criminal Enterprise

United States v. de la Cruz

135 F.4th 1127 (8th Cir. 2025)

Section 4C1.1(a)(10) “creates **two separate requirements**—not one requirement—that a defendant must satisfy to receive the two-level reduction.”

“[A] defendant must show **both** that he did not receive an enhancement under §3B1.1 **and** that he was not engaged in a continuing criminal enterprise.”

Adjustment for Certain Zero-Point Offenders

Section 4C1.1(a)(10) & (11) – 2024 Guidelines Manual

A defendant's offense level is decreased by 2 levels if **all** of **11** listed criteria are met, including:



No Aggravating Role Adjustment (§3B1.1)

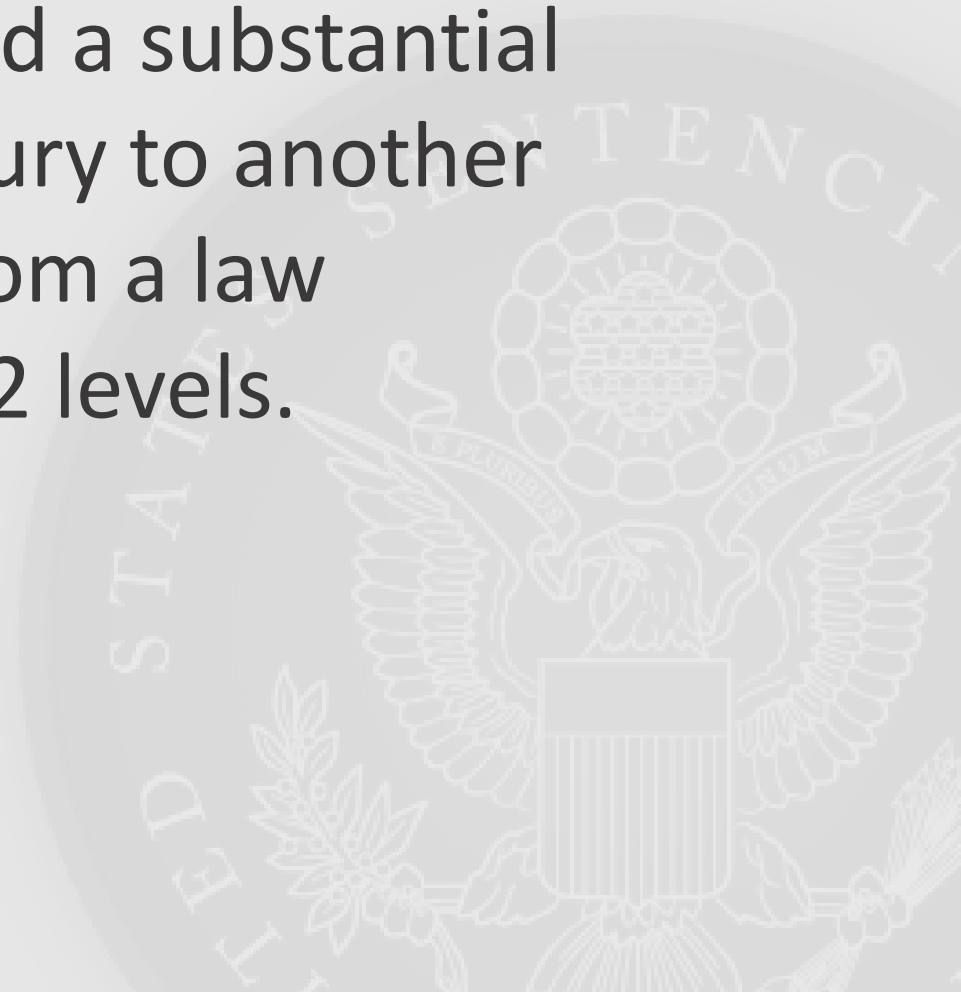


Not Engaged in a Continuing Criminal Enterprise

Reckless Endangerment During Flight

Section 3C1.2

If the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer, increase by 2 levels.



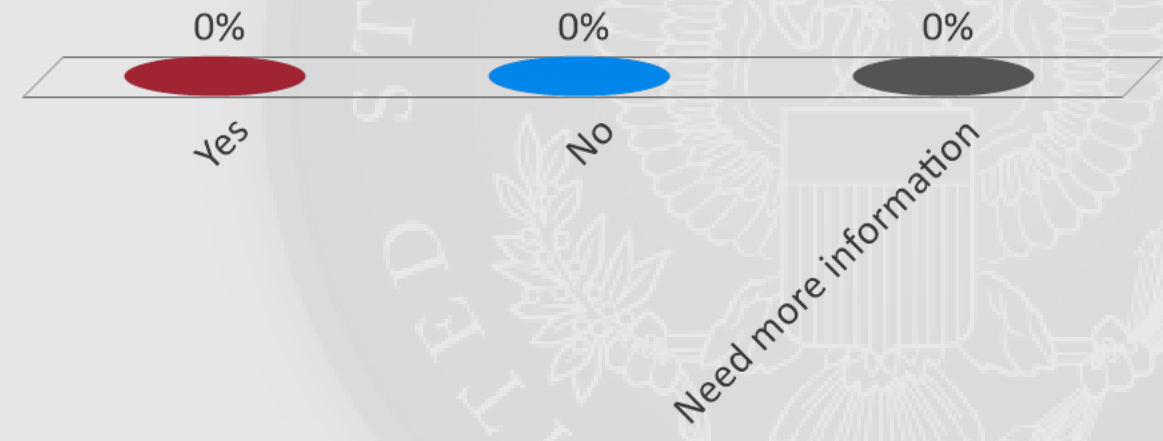
While fleeing from the police, the defendant possesses a firearm.

Does the reckless endangerment adjustment at §3C1.2 apply?

A. Yes

B. No

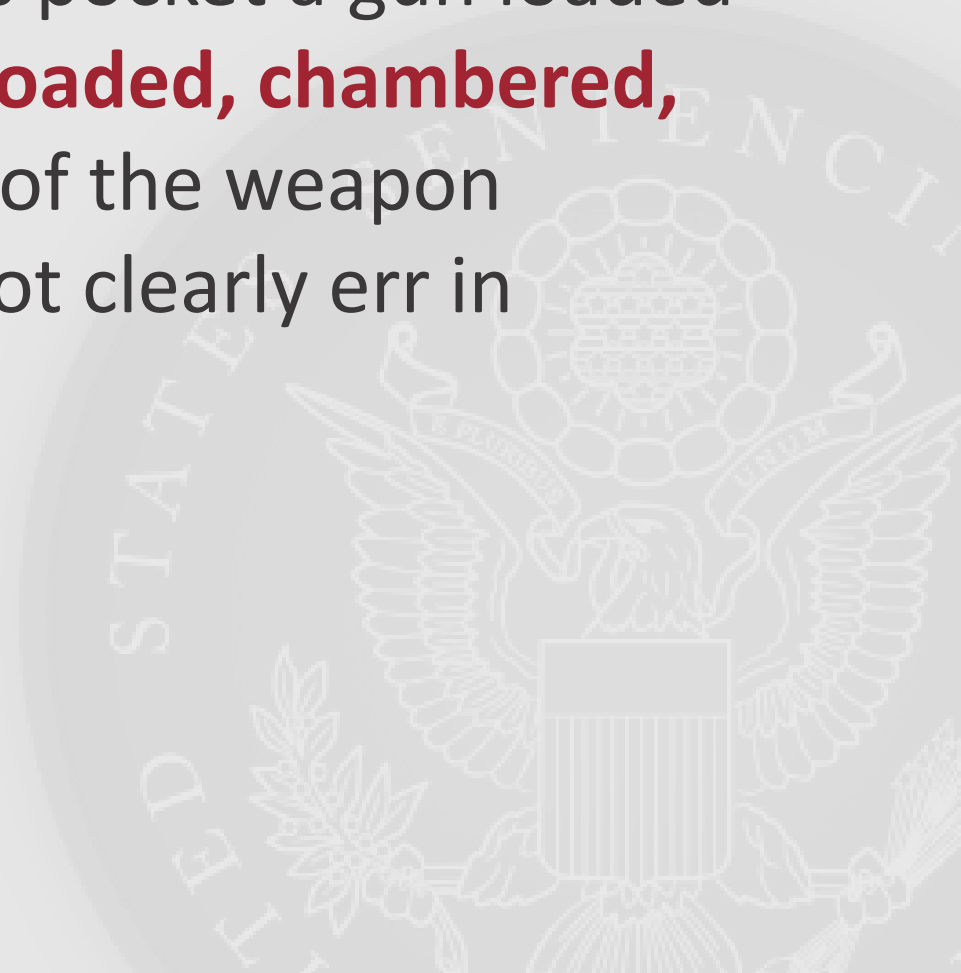
C. Need more information



United States v. Henry

132 F.4th 1063 (8th Cir. 2025)

The defendant “fled police carrying in his pocket a gun loaded with a chambered round....Because the **loaded, chambered, unholstered gun** created ‘the possibility of the weapon accidentally discharging,’ the court did not clearly err in applying the enhancement.”



Cross Reference – §2D1.1(d)(1)

“The district court did not err by applying the murder cross-reference” where the evidence at trial indicated, “at a minimum,” that the defendant aided and abetted the victim’s death.

U.S. v. Patterson, 131 F.4th 901 (8th Cir. 2025)

Cross Reference – §2K2.1(c)

The district court did not clearly err in cross referencing to the voluntary manslaughter guideline, despite the defendant's self-defense claim, where the defendant "said, 'don't make me do this' before shooting" the victim and then fled, and where there was evidence he was angry with the victim beforehand.

U.S. v. Bradley, 127 F.4th 1127 (8th Cir. 2025)

Drug Offenses – §2D1.1

Defendant was charged with conspiracy to distribute and possession with intent to distribute after he was stopped on tribal land in South Dakota with \$2 million worth of substances and pills containing fentanyl.

The drugs were destined for Bloomington, Minnesota.

The court, repeatedly citing concern for the drug problem on tribal lands, varied upward from a range of 292-365 months and sentenced the defendant to life imprisonment.

Drug Offenses – §2D1.1

“It is undisputed that authorities stopped [the] vehicle in which Salinas was a passenger on the reservation. But **presence alone does not establish that Salinas intended to distribute the fentanyl seized on the reservation.**”

The government “never offered evidence that the fentanyl...was intended for *distribution* on the [] Reservation.”

U.S. v. Salinas, 132 F.4th 1083 (8th Cir. 2025)

Drug Offenses – §2D1.1

“By advertising the pills as ‘perks,’ the accepted name for prescription Percocet, with the knowledge that they were not, Wiley knowingly marketed a substance containing fentanyl as another substance.”

Enhancement at §2D1.1(b)(13) was appropriate, where from his *own* overdose on “perks” the defendant had knowledge the “perks” contained fentanyl.

***U.S. v. Wiley*, 122 F.4th 725 (8th Cir. 2024)**

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**Definitions – Crime of
Violence**

§4B1.2(a)

**Definitions –
Controlled Substance
Offense**

§4B1.2(b)

**Definitions – Violent
Felony**

**18 U.S.C.
§ 924(e)**

Crime of Violence

Section 4B1.2(a)

Certain crimes punishable by imprisonment for more than a year and meet either of two criteria:

Force Clause

OR

Enumerated Offenses

The Supreme Court held in *Borden* that offenses that can be committed recklessly cannot be considered crimes of violence under the force clause.

Following *Borden*, is robbery under Arkansas law a crime of violence?

A. Yes

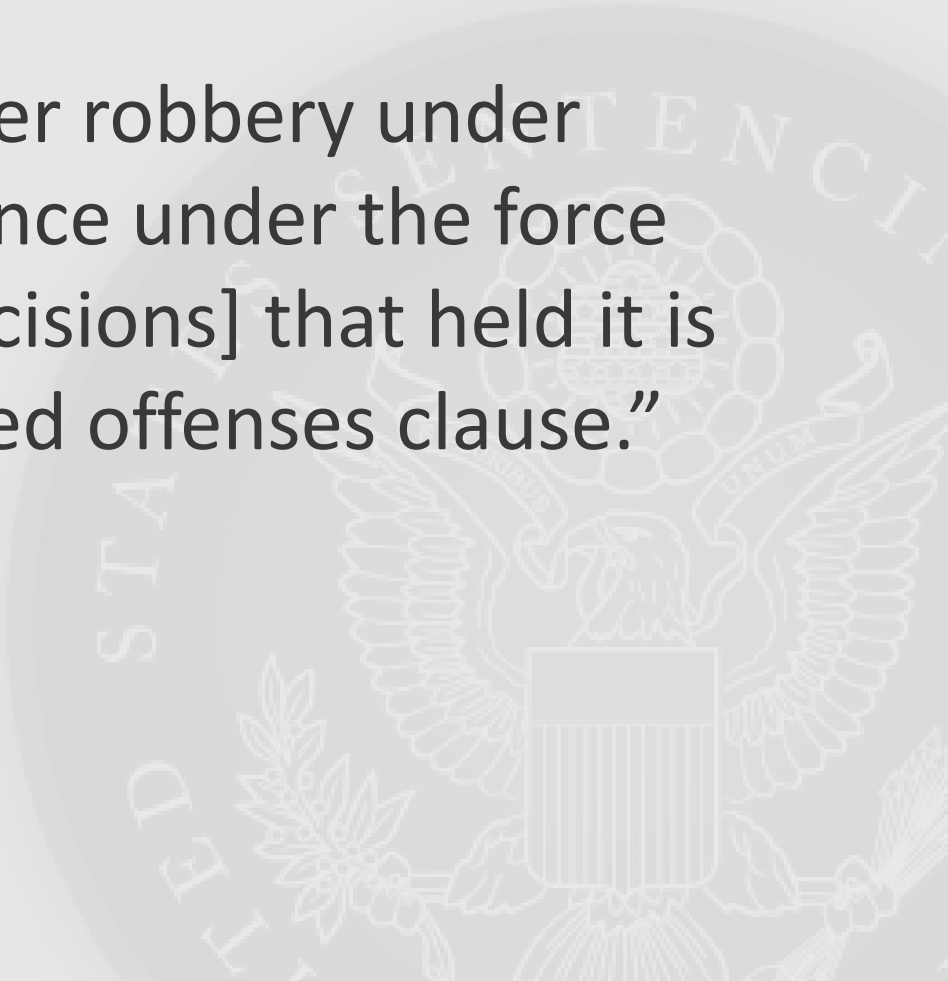
B. No



United States v. Ellis (Edrick)

127 F.4th 1122 (8th Cir. 2025)

“While *Borden* may cast doubt on whether robbery under Arkansas law qualifies as a crime of violence under the force clause, it **does not** alter our [previous decisions] that held it is a qualifying offense under the enumerated offenses clause.”



Controlled Substance Offense

Section 4B1.2(b)

Certain crimes punishable by imprisonment for more than a year and meet either of two criteria:

**Manufacture, Import, Export, Distribute,
Dispense; Possession w/Intent**

OR

Enumerated Offenses

Controlled Substance Offense

Controlled substance predicate offense for determining career-offender status at §4B1.1(a) need not be based on a **federally** controlled substance.

U.S. v. Ellis (Gilbert), 129 F.4th 1075 (8th Cir. 2025)

ACCA - Violent Felony

18 U.S.C. § 924(e)

Certain crimes punishable by imprisonment for more than a year and meet either of two criteria:

Force Clause

OR

Enumerated Offenses

ACCA – Violent Felony

Defendant's plea of nolo contendere to Arkansas domestic battery in the second degree is a violent felony for purposes of the ACCA, where state plea hearing transcript alleged he acted with the purpose of causing physical injury.

U.S. v. Chambers, 133 F.4th 812 (8th Cir. 2025)

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Community Service

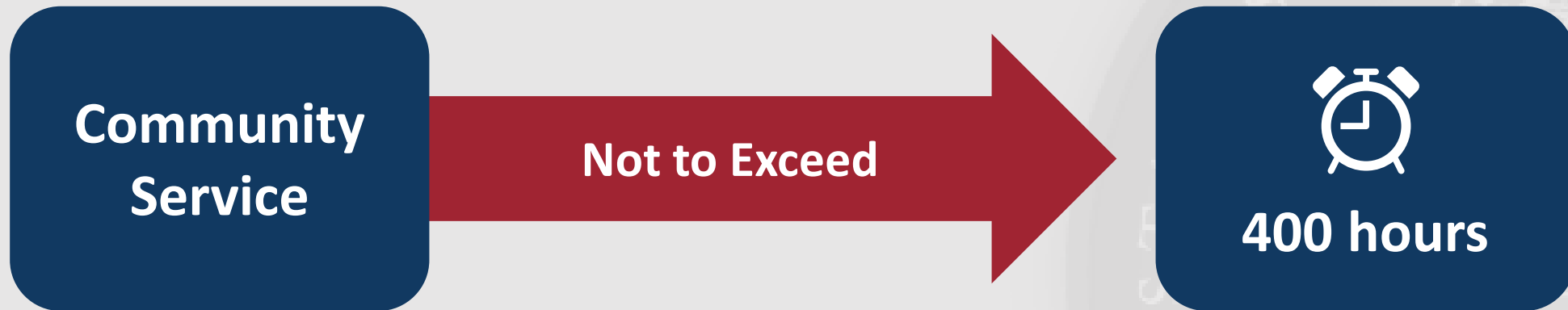
§5F1.3



Community Service

Section 5F1.3 & App. Note 1

Community service may be ordered as a condition of probation or supervised release.



Following his conviction, the defendant was sentenced to a term of imprisonment and five years of supervised release. The court ordered a special term of supervised release requiring the defendant to obtain full-time employment, or to perform up to 20 hours of community service per week in lieu of employment until the defendant was employed.

Is this term of supervised release permissible?

A. Yes

B. No



United States v. Hinkeldey

124 F.4th 1093 (8th Cir. 2024)

“Under this special condition, Hinkeldey could potentially be required to perform 20 hours of community service per week for the remainder of his five-year term of supervised release (**approximately 5,000 hours**), well over the 400-hour limit suggested by the Guidelines.”

“Without any justification for the excess hours, we conclude that the district court plainly erred in imposing the condition without a cap on the number of hours.”

Supervised Release

The district court's statements "support its decision to revoke Shaw's term of supervised release; they do not, however, convince us that the district court was determined to impose the statutory maximum sentence regardless of the grade of Shaw's violation."

U.S. v. Shaw, 104 F.4th 691 (8th Cir. 2024)

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**Limitation on
Applicability of
Statutory Minimums**

§5C1.2



Safety Valve

Section 5C1.2

Provides relief from mandatory minimum sentences for first-time, non-violent drug offenders who meet certain requirements.



Safety Valve

Section 5C1.2(a)(5)

**Truthfully Provide All Information
and Evidence**

**Offense / Same Course of Conduct /
Common Scheme or Plan**

**May Apply if Defendant Has No
Information or Gov't Already Has It**

The defendant pleaded guilty to distributing a controlled substance. He did not participate in a proffer session, nor did he disclose any information he had concerning the offense. Instead, he (now) claims that he never had any information to provide.

Is the defendant entitled to the two-level reduction?

A. Yes

B. No



United States v. Armond

135 F.4th 636 (8th Cir. 2025)

“Armond incorrectly attempts to shift the burden to the Government to disprove his claim, even though **the defendant bears the burden** of showing that he is affirmatively entitled to the safety valve reduction.”

“To hold otherwise would permit a defendant to claim entitlement to the safety valve reduction by refusing to speak with the Government and assert after the fact that he never had any information to provide.”

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**Guidelines
Commentary**

Circuit Split

**Abuse of Position of
Trust**

§3B1.3

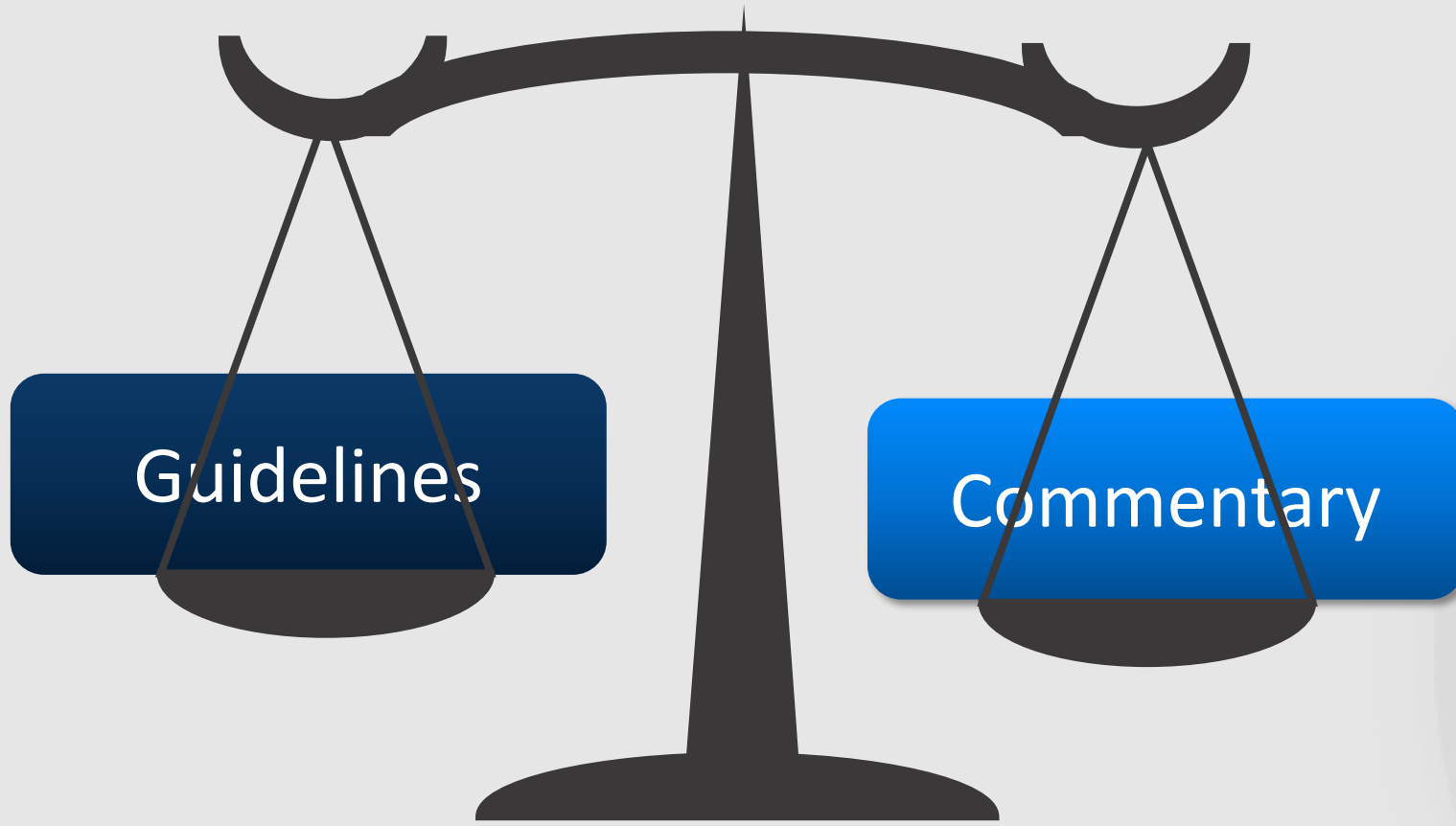
Firearms

§2K2.1

Obstruction of Justice

§3C1.1

Status of Guidelines Commentary



Stinson v. United States

508 U.S. 36 (1993)

Commentary is authoritative unless:

1

Violates the Constitution or Federal Statute

2

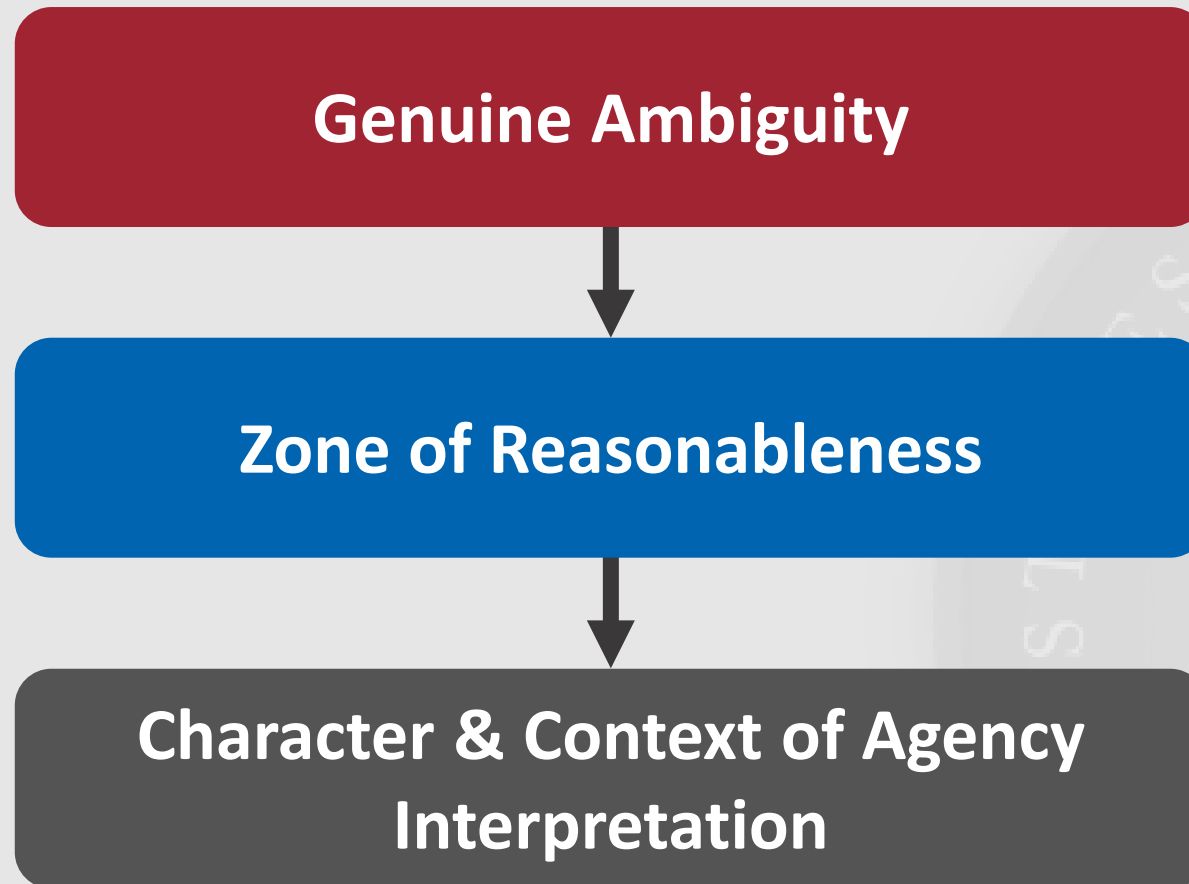
Inconsistent or Plainly Erroneous

OR

Kisor v. Wilkie

588 U.S. 558 (2019)

Framework for deference to an agency's interpretation of its own regulations:



Circuit Split: *Stinson* or *Kisor*

Stinson (More Deferential)

United States v. Rainford, 110 F.4th 455 (2d Cir. 2024)

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)

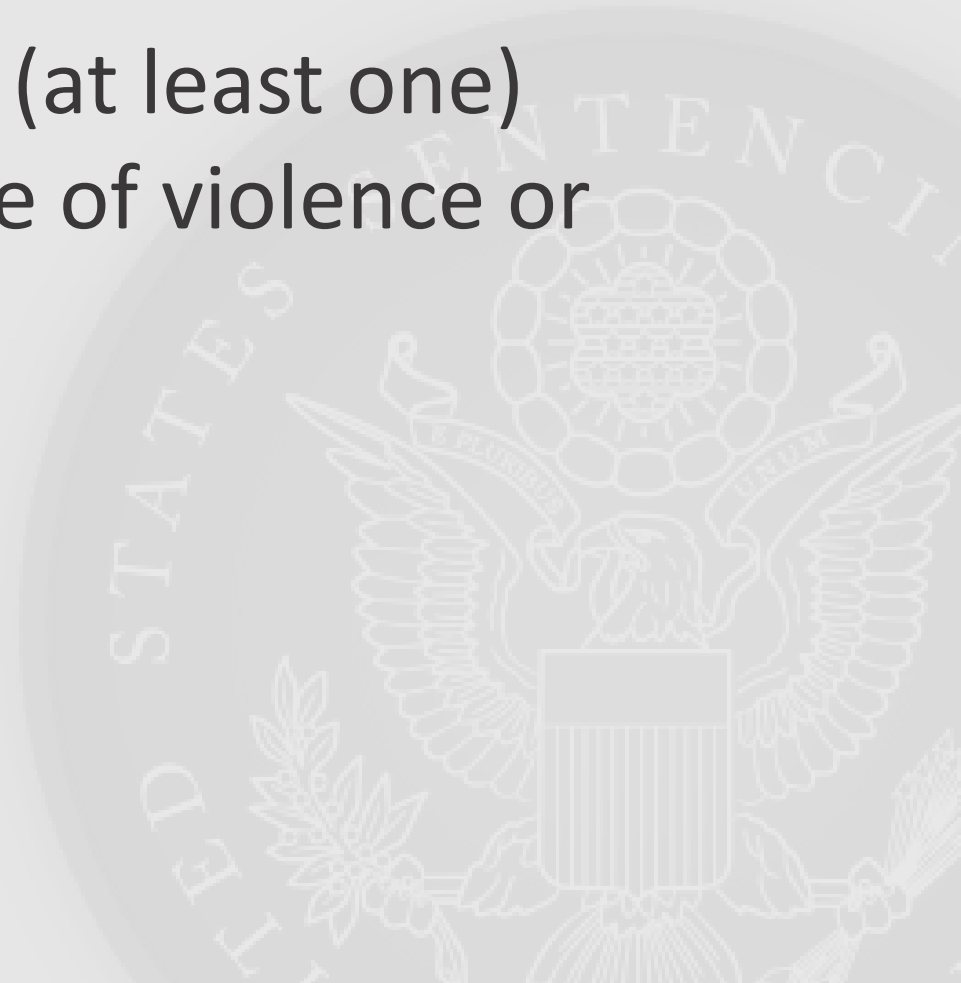
United States v. Dupree, 57 F.4th 1269 (11th Cir. 2022) (en banc)

United States v. Boler, 115 F.4th 316 (4th Cir. 2024)

Firearms Base Offense Level

Section 2K2.1

The defendant committed any part of the instant offense subsequent to sustaining (at least one) felony conviction of either a crime of violence or a controlled substance offense.



Firearms – §2K2.1

“We conclude that a ‘conviction’ under §2K2.1 occurs ‘on the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*.’”

Otherwise, a court could consider an unsentenced plea for calculating criminal history but not for determining a base offense level. “This would produce an illogical result.”

U.S. v. Tucker Jackson, 106 F.4th 772 (8th Cir. 2024)

Abuse of Position of Trust or Use of Special Skill

Section 3B1.3

If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels.*



United States v. Kingsbury

197 F.4th 879 (8th Cir. 2024)

FBI Analyst w/Top Secret Clearance

**18 U.S.C. § 793(e) (Willful Retention
of National Defense Information)**

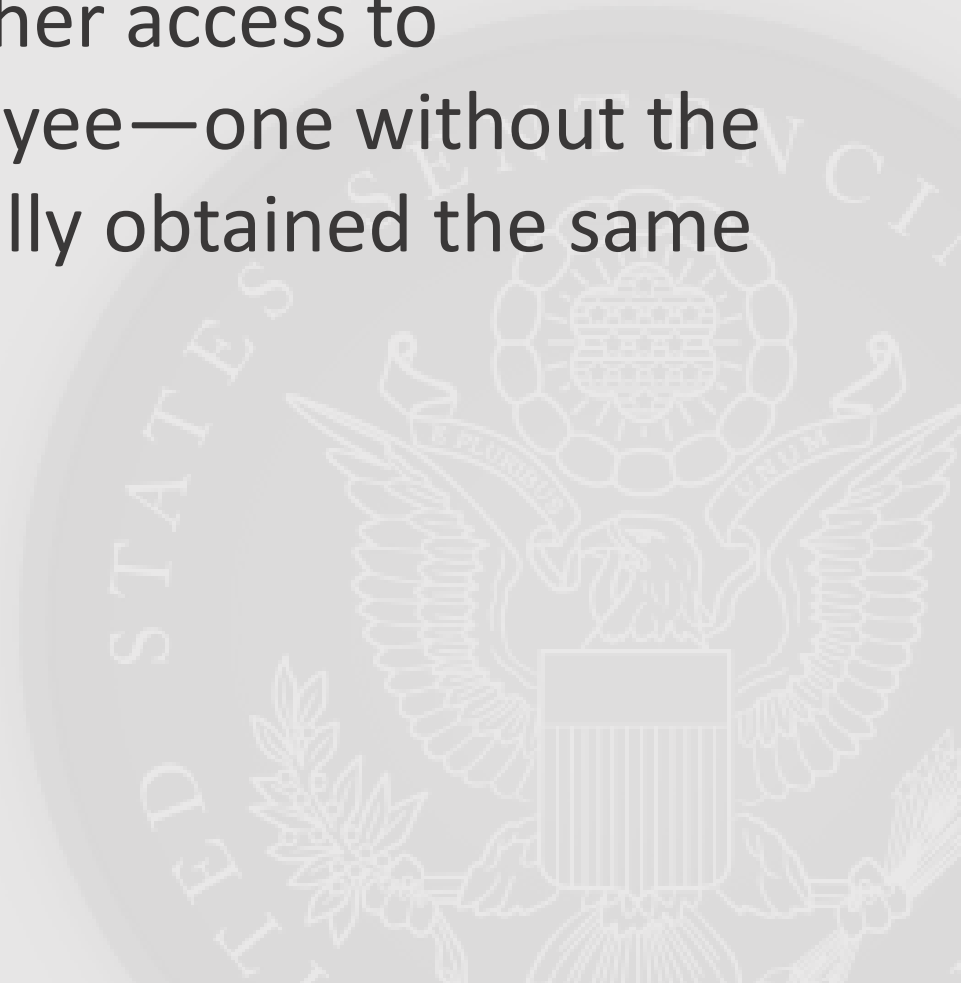
Received 3B1.3 Adjustment



United States v. Kingsbury

197 F.4th 879 (8th Cir. 2024)

“Though her security clearance allowed her access to classified documents, another FBI employee—one without the same clearance, could also have unlawfully obtained the same classified documents.”



Obstructing or Impeding the Administration of Justice

Section 3C1.1

**Willfully Obstructs or
Impedes the
Administration of Justice**

Relating to

**Offense of Conviction /
Relevant Conduct**

OR

+2

Closely Related Offense

Obstructing or Impeding the Administration of Justice

Section 3C1.1, App. Note 4(D)



Destroying Evidence



**Contemporaneously with
Arrest**

United States v. Manning

106 F.4th 796 (8th Cir. 2024)



United States v. Manning

106 F.4th 796 (8th Cir. 2024)

“Manning’s actions were **more than an impulsive response**, and instead amounted to a willful attempt to destroy the phone.”

“It was only after his residence was secured and additional officers arrived to assist in the search that Manning returned to his car, where he broke the second phone.”

Obstruction – §3C1.1

“By text, Chambers suggested he and [the victim] get married so the government could not ‘use’ her against him.”

“Chambers’s ‘scheme’ to prevent [the victim] from testifying ‘amounts to aiding and abetting the obstruction-of-justice enhancement for purposes of §3C1.1.’”

U.S. v. Chambers, 133 F.4th 812 (8th Cir. 2025)

Please Review our Session



Questions?



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