

Sixth Circuit Update

MATTHEW MONAHAN

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Occasions Clause

- ❖ In ***Erlinger v. United States*, 144 S. Ct. 1840 (2024)**, the Supreme Court said that whether offenses are committed on separate occasions for purposes of ACCA is a *jury* question. This overruled prior Sixth Circuit law.
- ❖ The Sixth Circuit held that this question *is* subject to harmless error review. ***United States v. Campbell*, 122 F.4th 624 (6th 2024)**.



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Occasions Clause Follow on

ACCA

- ❖ ***United States v. Cogdill*, 130 F.4th 523 (6th Cir. 2025)**
- ❖ Error *not* harmless when two drug crimes were within three months of each other with no intervening arrest. Consider three factors: **timing, proximity, character/relationship**
 - ❖ **Multiple drug deals, in the same county, within a few months (June – September). That’s it.**
 - ❖ **No other info as to location or timing. Were all deals in the same place?**
 - ❖ **No intervening arrest**
 - ❖ **Drugs from same source? We don’t know**
 - ❖ **3 mo. Gap in time, alone, not enough to show separate occasions.**

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Second Amendment

SECOND
AMENDMENT

- ❖ ***United States v. Rahimi*, 144 S. Ct. 1889 (2024):** a person subject to a domestic violence restraining order may be disarmed without violating the Second Amendment
- ❖ Future challenges:
 - ❖ laws banning possession of a firearm by a user of unlawful controlled substance, possession of a firearm by undocumented noncitizens, and possession of machineguns.
- ❖ The Sixth Circuit refused to find plain error if these arguments are not preserved.

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Second Amendment

**SECOND
AMENDMENT**

❖ ***United States v. Williams*, 113 F.4th 637 (6th Cir. 2024).**

- ❖ Re 922(g): as-applied challenge OK if D can show ...
lack of “**dangerousness**”

Follow on cases:

- ❖ ***US v. Risner*, 129 F.4th 361 (2025).** No facial challenge to 924(c).
- ❖ ***US v. Goins*, 118 F.4th 794 (2024).** Violate the terms of state probation= dangerous
- ❖ ***US v. Morton*, 124 F.4th 492 (2024).** Prior firearm felonies = dangerousness.
- ❖ ***US v. Gales*, 118 F.4th 822 (2024).** No 2A facial to a prohibition on domestic violence misdemeanor possessing gun

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More Williams Follow on's

FIREARMS

❖ ***U.S. v. Raphael Williams*, 24-1409, (6th Cir. April 17, 2025)**

Judge Levy (EDMI) granted an as-applied *Bruen* motion and dismissed the indictment.

- ❖ CA6 (J. Ritz) Reversed. Why?
- ❖ 1. Raphael's prior resisting/obstructing conviction was assaultive-y and dangerous-y. Also, Raphael had a prior fleeing and eluding. Dangerous people flee. Dangerous people elude.
- ❖ 2. Raphael was on probation at the time of his FIP arrest. His probation conditions said: “don't FIP.”

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More Williams Follow on's

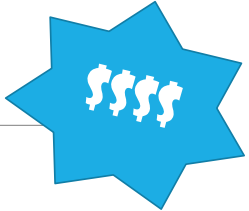


FIREARMS

- ❖ ***U.S. v. Ronald Williams, 24-1244, (6th Cir. April 11, 2025)***
Judge Levy (EDMI) granted an as-applied *Bruen* motion and dismissed the indictment.
- ❖ CA6 (J. Moore) Reversed. Why?
- ❖ 1. Ronald had two prior murder convictions. *Very* dangerous
- ❖ 2. Ronald was on parole at the time of his FIP arrest. His parole conditions said: "don't FIP."

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Forfeiture

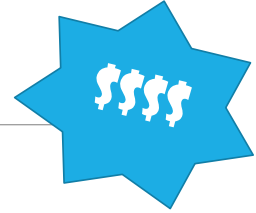


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- ❖ ***McIntosh v. United States, 601 U.S. 330 (2024)*** –
- ❖ Fed. R. Crim. P. 32.2 – generally requiring a district court to enter a preliminary order of forfeiture in advance of sentencing – is a time-related directive that, if missed, does not deprive the judge of her power to order forfeiture against the defendant
- ❖ This reversed current Sixth Circuit law
- ❖ However – newly local rule would still require forfeiture requests 3 weeks in advance of sentencing

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Restitution



- ❖ ***United States v. Gray*, 121 F.4th 578 (2024)**
- ❖ Vacated restitution order when it covered illegally obtained benefits outside the scope of the indictment

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Pretrial Motions

Searches

- ❖ Siting en banc, the Sixth Circuit in ***United States v. Sanders*, 106 F.4th 455, 459 (6th Cir. 2024)**, walked back decisions in recent years giving teeth to the “nexus” requirement for search warrants.
- ❖ The Sixth Circuit rejected a line of its own cases finding warrant affidavit must state that there is “direct evidence” of drug trafficking will be found in a residence to justify a search.
- ❖ Instead, the court decided a credible tip of drug trafficking and two controlled buys from a car driven from the apartment searched were sufficient. Sufficient nexus is plainly demonstrated when there exists “[e]vidence that one leaves a residence, engages in a drug transaction, and then return[s] into the residence.”

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Pretrial Motions

Sanders Follow On

- ❖ ***United States v. Simmons*, 129 F.3d 382 (6th Cir. 2025)**
- ❖ Drug dealer has a house and a drug house. Police see drug dealer dealing drugs at drug house. Then he goes back to his house house. Police get warrants for both houses. About the house house: lots of “inferencing” based on “training and experience.”
- ❖ CA6: There’s a nexus between drug dealing and house house! Drug activity in one house is enough to search another house if defendant is seen driving between two houses.

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Pretrial Motions

Searches

- ❖ ***United States v. Taylor*, 121 F.4th 590 (2024).**
- ❖ Police did not have reasonable suspicion to detain driver beyond the time needed to issue a traffic citation.
- ❖ Court rejected government’s standard justifications: (1) Taylor’s travel plans; (2) Taylor’s criminal history involving firearms and narcotics; (3) multiple air fresheners on Taylor’s gear shift; and (4) Taylor’s odd movements while searching for proof of insurance.

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Pretrial Motions

Searches

- ❖ ***United States v. Whitlow*, 134 F.4th 914 (2025).**
- ❖ State police officer sees “loose” weed in a car. Weed legal in Ohio, illegally federally. Search, leads to gun, leads to suppression motion.
- ❖ Court says (1) yes probable cause that federal crime occurred bc officer saw weed and weed is illegal federally and (2) a state officer can enforce federal law even in the absence of “affirmative federal authorization.”

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Pretrial Motions

Speedy Trial

- ❖ In ***United States v. Brown*, 100 F.4th 703 (6th Cir. 2024)**, the court gave a very careful reading to delays in getting the defendant to a facility for a competency evaluation.
- ❖ The government only gets 10 days to transport a defendant to the facility for evaluation.
- ❖ This is a recurring problem so this opinion will be helpful in trying to hold the government accountable for getting clients transported to FMCs for evaluation in a timely manner.

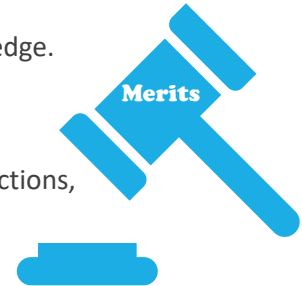
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Frauds

Healthcare Fraud

In ***United States v. Stanton*, 103 F.4th 1204 (6th Cir. 2024)**, in an opinion by Chief Judge Sutton, the court addressed several issues for healthcare fraud:

- ❖ Failure to follow state regulations is relevant to guilty knowledge.
- ❖ The government may use medical experts to rebut doctor's testimony about complying with standards of care.
- ❖ The court endorsed use of deliberate indifference jury instructions, even after *Ruan*.



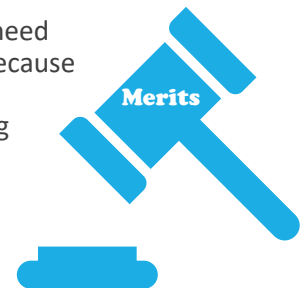
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Deliberate Indifference (cont)

In ***United States v. Hofstetter*, 80 F.4th 725 (6th Cir. 2023)**, on remand after *Ruan*, the court upheld the conviction of plain clinic operators for “maintaining a drug-involved premises in violation of 21 U.S.C. § 856(a)(1).”

On plain-error review, the court held that jury instructions did not need to spell out “knowingly” mens rea standard required under *Ruan* because instructions as a whole made clear the jury had to find defendants knowingly opened the clinics for the purpose of illegally distributing drugs.

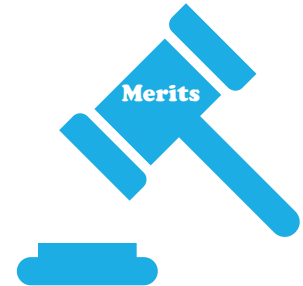
The court also again endorsed the deliberate indifference jury instructions as proper after *Ruan*.



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PBM Fraud

In ***United States v. Bolos*, 104 F.4th 562 (6th Cir. 2024)**, the court upheld a conviction in a growing type of prosecution for defrauding “pharmacy benefit managers,” who act as middlemen between insurers, Medicare, and pharmacies.



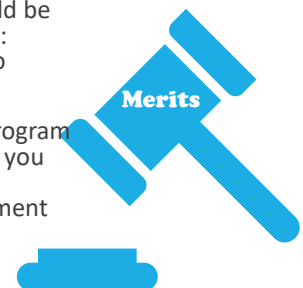
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Federal Program Fraud/Bribery

United States v. Sittenfeld.

Panel says bribery and federal program fraud require a politico to “corruptly” enter into an “express” quid pro quo.” Majority affirms longstanding precedent that an *express* quid pro quo does not need to be an *explicit* quid pro quo. And there’s enough circumstantial evidence here bc “love you, but can’t” could be read to mean “if you don’t pay me, I won’t vote how you want.” Also bad: asking the FBI agents to launder money orders thru a shell LLC in order to secure a lot of votes.

Good to know: (1) if you ever have a client charged with bribery or fed program fraud and need some jury instruction ideas, come back to this case; (2) if you ever have a bribery or fed program fraud case, and there’s a campaign contribution in there somewhere, preserve First and Fourteenth Amendment objections to the government’s proposed instructions.



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Evidence

Confrontation Clause

***United States v. Taylor*, 127 F.4th 1008 (2024)**

Main witness catches state charges after reporting crime. He thought maybe the state would go easier on him for continued cooperation. District Court precludes cross-exam on that topic.

Sixth Circuit allows new trial, even if it was unclear if witness knew about potential benefits.

But see ***Reed v. May*, 134 F.4th 455 (6th Cir. 2025)** – AEDPA case with a con clause issue: can an officer testify to what an informant told the officer and the info leads to discovery of evidence/arrest. Split panel says yes, and deepens a circuit split.

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Evidence

Proffer statements

***United States v. Grogan*, 127 F.4th 642 (2025)**

Held that government erred by offering statements from a proffer session to rebut defendant's testimony because the statements weren't inconsistent with the testimony. Examples:

1. Invoking the Fifth Amendment when asked on cross: "Were those your drugs?" or "Did you jump out of a window when the police tried to arrest you?"
2. Attacking the credibility or reliability of another witness. Such as: my girlfriend is a lying liar who lied.
3. Questioning the sufficiency of the government's proofs. Again, example: "The government can't prove how they became in possession of this firearm to even have knowledge of me being involved in anything that they're presenting in court today."

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Evidence

404(b) & Intrinsic Conduct

***United States v. Sadrinia*, 134 F.4th 887 (6th Cir. 2025)**

Oral surgeon performs oral surgery on a drug addict. Surgeon prescribes pain killers post-op and sees patient many times. Patient overdoses on the pain killers, dies, and the government charges doctor with distribution causing death.

Unrelated to any of the above, the jury learned that Sadrinia cursed at employees, one of whom threatened to report him for malpractice, and Sadrinia once used another dentist's prescription pad to prescribe opioids.

Sixth Circuit: New trial. None of the 404(b) evidence was properly noticed and none of it was intrinsic to the charged conduct.

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Juries

Rejections of jury challenges

In ***United States v. Kechego*, 91 F.4th 845 (6th Cir. 2024)**, the court found no plain error in failure to hold *Remmer* hearing despite foreperson saying jurors were playing cards in another room and looking at their phones.

In ***United States v. O'Lear*, 90 F.4th 519 (6th Cir. 2024)**, the court found no error in exclusion of unvaccinated jurors from the jury pool. And in ***United States v. Johnson*, 95 F.4th 404 (6th Cir. 2024)**, the court refused to find systematic exclusion of African Americans in jury selection could be shown through use of voter registration or exclusion of those refusing to respond to questionnaires.

In ***Fields v. Jordan*, 86 F.4th 218 (6th Cir. 2023)**, the en banc court found no clearly established Supreme Court law barring jury experiments – when jurors used a knife in evidence to unscrew a cabinet in the jury room.

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Career Offender

In ***United States v. Cervanek***, 135 F.4th 311 (6th Cir. 2025) (en banc)

10 CA6 justices from across the spectrum sign on to an opinion applying the categorical approach to find that Ohio's "twice divisible" robbery statute. Least culpable conduct is an extortion that runs broader than guidelines extortion.

- ❖ Dissents: home in on divisibility *and* whether to certify the divisibility question to the Ohio Sup Ct.

Sentencing

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Drug quantity calculations

The Sixth Circuit has recently issued helpful decisions requiring district courts to engage in careful analysis of drug quantity calculations. This year, in ***United States v. Histed***, 93 F.4th 948 (6th Cir. 2024), the court remanded for additional findings when the court enhanced the drug quantity because he had "no doubt" the defendant trafficked additional meth.

There is very helpful language in this decision, and the court also limited the district court on remand to reviewing evidence already in the record.

Sentencing

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Intended Loss

The Sixth Circuit repeatedly affirmed use of intended loss (rather than actual) for guideline purposes – rejecting arguments that actual loss should be used.

This continues to result in high loss amounts:

- ❖ \$50 million intended loss for theft of trade secrets. ***United States v. Xu*, No. 22-4020, 2024 WL 3688438, at *10 (6th Cir. July 24, 2024).**
- ❖ \$121.8 million intended loss for “anticipated profits” defendant hoped to earn by using stolen information. ***United States v. You*, 74 F.4th 378 (6th Cir. 2023).**
- ❖ \$1.5 million intended loss for stolen credit card info. ***United States v. Smith*, 79 F.4th 790 (6th Cir. 2023).**

Sentencing

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“In connection” win

Prosecutors often convict on a gun charge and seek enhanced penalties under the guidelines for use of the gun “in connection” with another offense.

In ***United States v. Alvarado*, 95 F.4th 1047, 1053 (6th Cir. 2024)**, the court issued a rare win for a defendant in this area. The court found that the government did not meet its burden to show that the defendant had committed reckless endangerment (under Tennessee law) because of a lack of evidence anyone was in the proximity of the defendant when he fired a gun.

Sentencing

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Supervised Release

In ***United States v. Hale*, 127 F.4th 638 (2025)**. The court decided that early termination of supervised release *does not* require extraordinary rehabilitation or exceptionally good behavior.

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Sentencing

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Supervised Release

In ***United States v. Hayden*, 102 F.4th 368, 374 (6th Cir. 2024)**, the court held for the first time that district courts need only adopt “by reference” standard supervision conditions from a districtwide general order.

Special conditions require the court to orally pronounce the conditions and explain the basis for them.

New local rule

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Sentencing

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POSTCONVICTION

Procedural default

In a negative development for habeas petitioners, the Sixth Circuit held that it can enforce procedural default even if the State does not raise the issue in the district court.

The Sixth Circuit held, “in the habeas setting, we are not bound by the state’s litigation decisions.” ***Whitman v. Gray*, 103 F.4th 1235, 1239 (6th Cir. 2024).**

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POSTCONVICTION

More procedural hurdles...

- ❖ In ***Witham v. United States*, 97 F.4th 1027 (6th Cir. 2024)**, in consolidated appeals, the court found, as a matter of first impression, that petitioners may not collaterally attack a plea-based conviction based on actual innocence unless he can show he is actually innocent of equally or more serious charges dismissed as part of the plea bargain.

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POSTCONVICTION

Right to Present a Defense – *Chandler*

- ❖ ***Chandler v. Brown*, --F.4th--, 2025 WL 1358110 (6th Cir. May 9, 2025)**
- ❖ Habeas relief granted, and DJ reversed, where state court struck over 20 defense witnesses without any basis in state law. Case involved child sexual abuse and the complainant had a documented pattern of fabricating allegations against parents. The pattern was so severe a state court judge made express credibility findings as to the complainant. But the jury never learned about the credibility problems bc the judge struck all the witnesses.
- ❖ **Odd procedural history in CA6: panel grants relief, petition for rehearing granted, en banc court orders amended opinion, amended opinion grants relief.**

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POSTCONVICTION

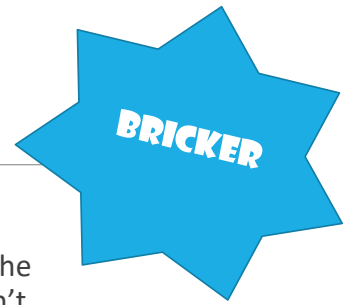
Rule 60(b)

In *In re West*, **103 F.4th 417 (6th Cir. 2024)**, the court held that judges should not construe Rule 60(b) motions as second or successive 2255 motions.

This is a helpful decision because it allows clients to challenge their sentences for “any other reason that justifies relief,” Fed. R. Civ. 60(b)(6), without automatically getting the motion rejected on procedural grounds.

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Compassionate Release



- ❖ ***United States v. Bricker*, 135 F.4th 427 (6th Cir. 2025).**
Invalidates U.S.S.G. 1B1.13(b)(6). We don't care what Congress told the commission and we don't care what the commission said: Nonretroactive changes to the law can't amount to an "extraordinary and compelling" reason for a reduction under § 3582(c)(1)(A). ***United States v. McCall*, 56 F.4th 1048 (6th Cir. 2022).**
- ❖ Sentencing Commission cannot overrule circuit precedent and federal statute without violating separation of powers. Bricker, go back to prison, McHenry and Orta, stay in prison.

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Resources

- ❖ **Sixth Circuit Blog**
 - ❖ <https://circuit6.blogspot.com/>
- ❖ **Precedential Value**
 - ❖ <https://ohs.fd.org/precedential-value>
- ❖ **Sixth Circuit Daily emails**
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