

Sixth Circuit Criminal Review

SD Ohio Spring CJA CLE
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Constitutional Challenges Second Amendment

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***United States v. Rahimi*, 602 U.S. 680 (2024)**

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

- *Rahimi* – reaffirmed need to find historical analogues to support current limit on Second Amendment
 - “the Second Amendment right may only be burdened once a defendant *has been found* to pose a threat to the *physical* safety of others.”
 - Rejected government theory that a legislature can disarm anyone it deems “not responsible.”
- *Williams* – allows for as-applied challenges under 922(g) to show one is not sufficiently dangerous
 - Burden is on defendant—but does not tell us what the burden is
 - Not limited to elements of prior offenses, can look at all facts
 - Sets out three levels of prior offenses as guideposts:
 - “crimes against the person” – murder, rape, assault, and robbery
 - Crimes that “pose a significant threat of danger” – drug trafficking and burglary
 - Crimes that “cause no physical harm to another person in the community” – mail fraud, making false statements

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Cases in the wake of *Williams*

- *United States v. Goins*, 118 F.4th 794 (6th Cir. 2024)
 - FIP case – Repeated DUIs + drug possession + on state probation (“most important factor”) = no gun possession
- *United States v. Ronald Williams*, No. 24-1244, 2025 WL 1089531 (6th Cir. April 11, 2025) –
 - FIP case – two prior murder cases + on parole = no gun possession
- *United States v. Raphael Williams*, No. 24-1409, 2025 WL 1136326 (6th Cir. April 17, 2025) –
 - FIP case – resisting/obstructing + fleeing and eluding + on probation = no gun possession
- *United States v. Hostettler*, 170 F.4th 539 (2026) (Bloomekatz, Stranch, Readler)
 - FIP case - originally a win in the Dist. Ct., b/4 *Williams*, but gov’t appealed
 - Remanded for *Williams* hearing – EVEN THOUGH – was on SR when possessed the gun
 - Probation, Parole, or SR is not automatically disarming – only when “no gun” condition is for a crime that is itself violent and past actions indicated he would act dangerously in the future (nexus)
 - MUST consider the “unique circumstances of the offenses committed” – *i.e.*, the facts
 - Focused on CONVICTIONS and even ARRESTS – not on uncharged conduct

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More Cases in the wake of *Williams*

- *United States v. Risner*, 129 F.4th 361 (6th Cir. 2025)
 - **§ 924(c) in furtherance of a drug-trafficking offense** is facially constitutional; analysis also forecloses most, if not all, as-applied challenges
- *United States v. Gales*, 118 F.4th 822 (6th Cir. 2024)
 - **§ 922(g)(9) (misdemeanor crime of domestic violence)** facially valid, and as-applied challenges okay
- *United States v. Gore*, 118 F.4th 808 (6th Cir. 2024)
 - **§ 922(j) (stolen firearm)** and **§ 922(n) (under felony indictment)** are facially constitutional. Withholds deciding whether an as-applied challenge might be successful under either, because not raised
- *United States v. Bridges*, 150 F.4th 517 (6th Cir. 2025)
 - **§ 992(a) (banning machine gun possession)** facially constitutional and as applied to Bridges. The lack of connection to lawful purposes makes them “unusual,” so consistent with historical firearm regulation
- *United States v. Knipp, Jr.*, 138 F.4th 429 (6th Cir. 2025)
 - **§ 922(d)(1) (knowingly selling or disposing of a firearm to a felon)** facially constitutional because “the right to acquire is limited by lawful constraints on the right to possess;”
 - BUT – since the buyer’s felony was failure to pay child support, might be unconstitutional as applied (but wasn’t raised below, so didn’t survive plain error review)

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More Cases in the wake of *Williams*

- *United States v. Escobar-Temal*, 161 F.4th 926 (6th Cir. 2025)
 - **§ 922(g)(5)(A) (alien illegally in US in possession of a firearm)**
 - an alien is part of “the people” when he has “sufficient connections to the national community”
 - Facially constitutional; also constitutional as applied here
 - Gov’t can disarm groups deemed “dangerous” (like FIP)
 - BUT ALSO – groups that were difficult to **regulate**
 - those illegally present lack a relationship with the US government (fix it by gaining legal status)
- *United States v. VanOchten*, 150 F.4th 552 (6th Cir. 2025)
 - **§ 922(g)(3) (unlawful user of or addicted to a controlled substance)**
 - Actively drunk (and high on weed) when shot a gun towards a propane tank in neighborhood
 - Conduct “alone” was sufficient to disarm (did not really consider priors)
 - “The ‘80-year-old grandmother who uses marijuana for a chronic medical condition and keeps a pistol tucked away for her own safety’ is not dangerous. *Veasley*, 98 F.4th at 917–18. The 31-year-old member of a criminal gang who uses methamphetamine and has recently committed violent assaults and armed robbery, by contrast, is dangerous. *Williams*, 113 F.4th 658.”
- *United States v. Taylor*, 165 F.4th 1029 (6th Cir. 2026)
 - Pretrial Detention determination is NOT the same as the *Williams* dangerousness determination
 - But, clearly the Court thinks pretrial release is the easier burden

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Pending in Supreme Court

United States v. Hemani, No. 24-1234 (argued March 3rd)

- As applied challenge to 922(g)(3)
 - (unlawful user – occasionally smoked weed)
- Gov't sought cert – and argues:
 - Constitutional b/c analogous to founding-era laws restricting the rights of “drunkards”
 - Habitual drug users pose a clear danger of misusing firearms
 - Can remove themselves from the class at any time, so only “temporary” disarmament
 - And, § 925(c) process fixes any constitutional concerns in “marginal” cases

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18 U.S.C. § 925(c) – a path to restoration?

- It creates three levels of presumptions: a lifetime ban for typical “violent” crimes, certain sex offenses, and a host of other offenses we wouldn’t really consider “violent”; a 10-year ban for drug trafficking offenses; and a 5-year ban for all other felony convictions.
- The 5- and 10-years presumptions are measured from when one is released from incarceration, probation, parole, or supervised release, whichever is later.
- One can apply for restoration even if they fall under one of the presumptions, but if the presumption applies then they must show extraordinary circumstances to get their gun rights back.
- If the presumption does not apply (for example, you finished serving a sentence for tax fraud 6 years ago) you still have to convince the DOJ that you’re not dangerous but you don’t have to show extraordinary circumstances.
- The DOJ is not limited to the categorical approach, so can look at all facts surrounding the prior conviction and anything that has happened since that shows you might be dangerous.
- There is a fee for applying for restoration.

Available at: <https://www.justice.gov/ag/media/1408436/dl?inline>

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Constitutional Challenges

Fourth Amendment

9

***United States v. Moffitt*, No. 24-5536, 2025 WL 2702495 (6th Cir. 2025)** Clay, Gibbons, and Stranch

Moffit was stopped for swerving all over the place. When officer first approached car, Moffit handed him his driver's license and explained he had been trying to use his GPS. Officer asked where he was going, Moffit said to see his romantic partner in Franklin, Kentucky. Officer then told Moffit to move his car to a parking lot, and the officer ran his license for warrants. There were none.

The officer then returned to Moffit's car and asked for his registration. While holding Moffit's registration the officer asked: where his partner resided; if Moffit lived in Springfield; what he had been doing at a hotel immediately prior (entering address into his GPS); if there was anything illegal in the vehicle; and for consent to search. After getting consent, the officer found a gun.

Held: Gun Suppressed—stop improperly extended. (No suspicious answers or activities.)

The officer's questions about Moffit's actions at the hotel and concerning illegal items in the car were not "reasonably related" to the purpose of the [traffic] stop;" as the officer had already gotten answers to the "context-framing" questions typical of routine traffic violation inquiries.

Also – those questions occurred after the officer ran Moffit's driver's license; and Moffit had already provided his registration; so questions did not **overlap** with any inquiry into the circumstances for the stop (swerving).

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United States v. Santos, 161 F.4th 1007 (6th Cir. 2025)

Sutton, Murphy, and Bloomekatz

Santos was passenger in a vehicle stopped for having expired tags. Before the officer blue-lighted them, Santos repeatedly turned around to glance at the cop car. Once stopped, officer asked both for their licenses, Santos looked around his seat, but not in his cross-body bag, then said he couldn't find it, but gave the officer his name and birthdate. Officer ran Santos's info. and discovered: a violent past, that he was on probation, and received an alert that Santos was "possibly armed."

Officer returned to car, asked the driver to exit, and questioned her about weapons and/or drugs on her or in vehicle, and got her consent to search the car. Asked Santos to exit, asked for consent to search Santos, and Santos agreed.

Held: Officer properly asked the driver to exit and questioned her about weapons/guns, because by that point he had reasonable suspicion that Santos presented danger to the officer.

- Unclear whether those questions "measurably extended the stop," as the officer retained her driver's license the entire time;
- But that didn't matter, because those actions "were within the scope of the stop because they helped ensure officer safety."

**Distinguishable from *Moffit* for that reason.

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United States v. Santiago, 139 F.4th 570 (6th Cir. 2025)

Larsen, Griffin, Mathis

Cops at gas station, car drives by with "obvious odor of marijuana," which increases when driver gets out of the vehicle. No one else is in the car. As Santiago walked into the gas station, the cops saw a pistol in his waistband.

Illegal to possess a firearm while under the influence; marijuana is illegal in Tennessee.

Held: (1) Smell of an illegal substance, like marijuana, localized to a suspect supports a *Terry* stop,

(2) smell of marijuana, localized to a particular person, is sufficient to constitute probable cause to arrest the person for the crime of marijuana possession.

The smell alone—even though legal hemp smells the same—gave the officers "reasonable ground" to believe Santiago had committed a crime—possessing marijuana—in their presence."

Both officers testified that "in the course of performing his duties as a police officer, he had never encountered someone smoking hemp."

Related: *United States v. Whitlow*, 134 F.4th 914 (6th Cir. 2025) - A state officer had probable cause under both federal and state law to search a vehicle upon viewing loose marijuana in the center console of the vehicle, even though medical marijuana was legal in the state at the time (and hemp was legal under federal law). Observation of a federal law violation by a state officer was enough for a proper stop.

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United States v. Florence, 150 F.4th 773 (6th Cir. 2025)
Thapar, Readler, Bloomekatz (concurring, under Good Faith exception)

Search Warrants – two lines developed since 2024

“Observed Drug Transactions” Case

Officers observed Florence leave a residence and drive to a buy location where he then sold drugs to an undercover cop. Officers then followed him back to the same residence, which he then entered.

Holding: That is enough standing alone to establish probable cause.

- Don't need any evidence that he lived there.
- Don't need a tip that he stored or sold drugs there.

There was additional evidence supporting probable cause – his phone pinged at/near the same residence when he texted undercover cop that he first needed to get dressed and that “the sh** isn't going anywhere.” But not necessary. (Still no case where there was actually only one observed buy.)

Bloomekatz – sets out how this is really stretching law further than ever before, but applies Good Faith

Derived from: *United States v. Sanders*, 106 F.4th 455 (6th Cir. 2024) (en banc) (Readler authored).

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United States v. Long, 155 F.4th 829 (6th Cir. 2025)
Readler, Murphy, Bloomekatz (concurring, under Good Faith exception)

“Known Drug Dealer” case

Complex facts: Basically – A controlled buy from Crenshaw – discovered Long appeared to be supplying Crenshaw (met Crenshaw at 52nd Street residence immediately b/4 the buy); and after the buy Crenshaw again met Long with what appeared to be cash. Long went to house on 42nd street, then appeared to do a buy at a Family Dollar store.

Then, a later, second buy that was similar MO involving both 52nd Street and 42nd Street residences and again indicated Long was the upstream supplier to a street level dealer conducting a controlled buy at a separate location.

Officer's later see Long parked in front of a third address – 35th Street – which they learned he reported as his registered address with Ohio's Adult Parole Authority.

At the same time Officers observed a man walk to Long's car; take something from Long; walk down the street to an individual in a second car; and then return to Long's car.

Officers also saw Long put something in his jacket as he was entering the home.

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United States v. Long, 155 F.4th 829 (6th Cir. 2025)
Readler, Murphy, Bloomekatz (concurring, under Good Faith exception)

“Known Drug Dealer” case

Held: “Know Drug Dealer” theory requires only two things:

- (1) address is actual home of suspect;
- (2) suspect is engaged in “continual and ongoing drug trafficking operations.”

DO NOT NEED – any direct evidence that suspect is dealing or storing drugs there; because we can assume drug dealers keep their proceeds and ledges at their homes.

****Also note** – “long transaction outside Long’s home may well have provided an independent basis for finding probable cause to search it separate from his other drug trafficking.”

Bloomekatz – ALL the circumstances here provide probable cause—should not decide whether separate theories are independently sufficient standing alone.

Derived from: *United States v. Simmons*, 129 F.4th 382 (6th Cir. 2025) (Nalbandian, Thapar, Ritz (Good Faith only)).

15

Case v. Montana, 146 S. Ct. 500 (2026)

Unanimous, with two concurrences

Warrantless Entry of Dwelling for Allegedly Exigent Circumstances

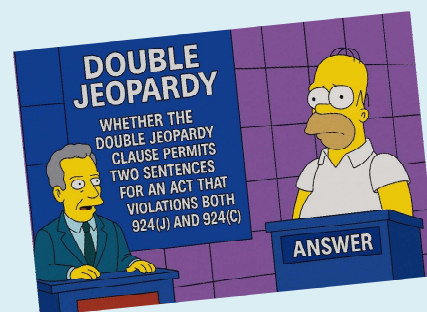
- Law enforcement may enter a home without a search warrant based on an “objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury” – a reasonableness standard
- Decline to transplant “probable cause” requirement into this distinct setting
- Entry was based on “objectively reasonable” belief – 911 call from woman who reported ex-boyfriend called her; said he was going to commit suicide; she heard what she thought was a gun go off followed by silence.

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Barrett v. United States, 146 S. Ct. 482 (2026)

Fifth Amendment - Double Jeopardy & 924(c)

- The Double Jeopardy Clause does not permit two convictions for a single act that violates 18 U.S.C. § 924(j) (murder using a firearm during a Hobbs Act robbery), and § 924(c) (using a firearm during and in relation to the same Hobbs Act robbery).
- 924(c) is a lesser include offence of (j); and Congress did not clearly intend to authorize multiple convictions.



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Villarreal v. Texas, 146 S. Ct. 756 (2026)

Sixth Amendment – Right to Counsel



A qualified conferral order that prohibits only discussion of the defendant's testimony for its own sake during a midtestimony overnight recess permissibly balances the defendant's Sixth Amendment right to counsel against the burden of offering unaltered trial testimony and does not violate the Constitution.

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Guilty Plea Waivers

19

***Hill v. United States*, No. 23-3665, 2025 WL 3094125 (6th Cir. 2025)**

Clay, Moore, and White

- Filed a § 2255 arguing his 924(c) based on an attempted bank robbery was no longer valid after *United States v. Taylor*, 596 U.S. 845 (2022).
- BUT – had a plea waiver in his plea agreement:
 - Waived the right to appeal his conviction or sentence and the right to challenge the conviction or sentence collaterally, including in a 28 U.S.C. § 2255 proceeding
 - But, reserved the right to appeal “(a) any punishment in excess of the statutory maximum”

Held: Prior Sixth Circuit case, *Vowell*, controlled—not later-in-time case *Portis*.

“Vowell stands for the rule that a challenge based on a subsequent law rendering a sentence statutorily excessive is permitted notwithstanding a knowing and voluntary waiver.”

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***United States v. Jackson*, --- F.4th ----, 2026 WL 1021184 (6th Cir. 2026)**

Batchelder, Thapar, and Mathis (dissenting)

- Pled guilty to § 922(g)(1) via a plea agreement, and said he:
 - “acknowledge[d] that he is subject to the enhanced penalties provided in Title 18, United States Code, Section 924(e)(1), because [he] has been convicted of three or more violent felonies and/or serious drug offenses. The statutory mandatory minimum sentence that the Court **must impose** ... is **15 years’ imprisonment.**”
- At plea hearing – twice affirmed “the Court’s obligation to sentence him to at least 15 years.”
- Did not file objections to PSR; raised a procedural challenge to his sentence on appeal.
 - **URNS OUT – he was not actually subject to ACCA.**

Held: Claim not reviewable because WAIVED. Knowingly and voluntarily waived ACCA – because affirmatively agreed with the Court’s proposed course of action.

- Opinion calls into doubt *United States v. Montgomery*, 998 F.3d 693 (6th Cir. 2021).

Mathis – This is invited error, not waiver. Nothing shows that he “intentionally relinquished or abandoned a known right”

Even the majority suggests this would be an effective IIAC or 2255 claim.

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Pending in Supreme Court

***Hunter v. United States*, No. 24-1063 (argued March 3, 2025)**

1. Whether the only permissible exceptions to a general appeal waiver are for claims of ineffective assistance of counsel or that the sentence exceeds the statutory maximum.

2. Whether an appeal waiver applies when the sentencing judge advises the defendant that he has a right to appeal and the government does not object.

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Trial Issues

23

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

Kethledge, Moore, and Bloomekatz

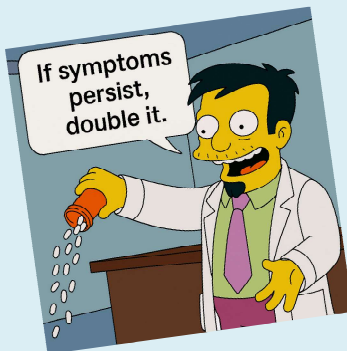
Limits on Intrinsic Evidence

Background: Jay Sadrinia, a Kentucky dentist, was convicted under 21 U.S.C. § 841 for unlawfully prescribing morphine without a legitimate medical purpose, resulting in the death of his patient, Cheyenne Witt. In advance of trial, the government gave Rule 404(b) notice just 12 days before its intent to introduce testimony from former employees. The district court found the notice untimely and excluded the evidence under Rule 404(b), but it nonetheless admitted it as “intrinsic” to the charged conduct—an exception that does not require pretrial notice. At trial, three former employees testified—without any limiting instruction—about events disconnected in time and substance from Witt’s treatment:

- **Former assistant:** Said Sadrinia fired her using profanity and called her “white trash.”
- **Former colleague:** Testified he used her prescription pad while she was abroad.
- **Former office manager:** Said she quit over the incident, warned him he was “going to kill someone,” and testified he lied about the drug he prescribed.

Holding on Evidentiary Error:

1. **Not Intrinsic** – The testimony was too remote in time and context to be intrinsic. The prescription-pad incident occurred over a year earlier, and the firing took place months after the patient’s death. Even collateral circumstances—such as quitting, warnings, or lies—were unrelated to Witt’s treatment and had no direct link to the charged offense.
2. **Not Harmless** – The court found the testimony highly prejudicial. The government’s case was not overwhelming, and the admitted evidence portrayed Sadrinia as volatile, dishonest, and unprofessional. The prosecution leaned into this theme during closing argument, and the district court gave the jury no limiting instruction. The court concluded there was a serious risk the jury convicted based on character, not conduct.



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United States v. Glenn, 146 F.4th 485 (6th Cir. 2025)**Gilman, Stranch, and Larsen (dissenting)**

- Glenn went to trial on charges of distributing carfentanil that resulted in death.
- Based exclusively on a series of text messages – no eyewitness identification or search warrant evidence connecting Glenn to the drug transaction
- Text messages were ambiguous – appeared to be discussing a trade of sex for something, but little to no specialized language (other than victim saying she was “dope sick”)
 - Instead, the text messages used ordinary English

Held: While officers can give expert testimony as to “slang, street language, and the jargon of the illegal drug trade,” and can give opinions about “coded language” or “common practices of the drug trade,”

- They CANNOT “interpret[e] ordinary English language to effectively tell the jury the government’s theory of the case.”
- There was no foundation as to how the officer’s expertise would be helpful in interpreting common words and phrases in texts.

Not Harmless: While cell tower data showed Glenn was in the area close to when she died, it did not conclusively establish that Glenn gave the victim the carfentanil she overdosed on (doesn’t really show that he gave her drugs at all).

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United States v. Buddi, 168 F.4th 439 (6th Cir. 2026)**Stranch, Bush, and Readler**

- Buddi argued that her guideline range should be lower (based on a Tier I sex offense under SORNA), because her underlying state offense lacked a mens rea requirement as to the victim’s age, while 18 U.S.C. § 2422(b) does.
- Section 2422(b) makes it a crime to knowingly entice an individual “who has not attained the age of 18” to travel in interstate commerce to engage in illegal sexual activity

Held: To be guilty of § 2422(b), a person must “knowingly” entice and must “know” the person they are enticing is under the age of 18.

- The categorical approach applies, so since her state statute of conviction (from Florida) did not require knowledge of the victim’s age, it did not qualify as a Tier II offense.

Important: This statute is often violated through online/cell phone contact only. Hands-on offenses likely will be related differently.

- Also important is that in most cases, it is the age of the victim alone that makes the sexual conduct illegal.

Reminder: *Rehaif* is a gold mine.

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Armed Career Criminal Act

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Erlinger Cases

***United States v. Cogdill*, 130 F.4th 523 (6th Cir. 2025)**
Griffin, Davis, and Clay (dissenting re: structural error)

- Indictment alleged simple 922(g)(1) violation. Cogdill pled guilty as charged; did not admit that he previously committed three ACCA predicates on occasions different from one another.
- Sentencing judge imposed ACCA over his objection.
- At issue were two prior drug trafficking offenses
 - involving same drug, possibly even coming from the same stash
 - committed in same county with no evidence of different locations (so could have been “exact same place”)
 - allegedly committed about three months apart

HELD: Gov’t failed to prove harmlessness beyond a reasonable doubt.

- “[O]n its own, a gap in time between offenses—even one as long as three months—does not prove beyond a reasonable doubt how a rational jury, properly instructed under *Wooden* and *Erlinger*, would have resolved the multi-factored occasions inquiry.” *Id.* at 530 (emphasis added).

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Erlinger Cases

United States v. Robinson, 133 F.4th 712 (6th Cir. 2025)

- two drug offenses involving *different* drugs and taking place *nearly three years* apart, separated by an *intervening conviction*.
- **Erlinger Error Harmless**
(Stranch, Thapar, Murphy)

United States v. Kimbrough, 138 F.4th 473 (6th Cir. 2025)

- Two aggravated burglary offenses about 2.3 miles apart, *reported* 9 days apart (but no evidence of when actually committed) with no intervening arrests or significant events
- Properly instructed jury could reasonably conclude they were “similar or intertwined,” shared “a common scheme or purpose,” and part of “an uninterrupted course of conduct”
- **Erlinger Error NOT Harmless**
(Gilman, Readler, Bloomekatz)

United States v. Durhan, 151 F.4th 821 (6th Cir. 2025)

- Two defendants – **one error was Harmless** (burglaries in Oct. 2009, Oct. 2010, Jan. 2011)
 - More than 3 months separated offenses; more than 15 miles separated 2010 and 2011 offenses; victims not connected
- **One NOT Harmless** – 4 first degree robberies (Aug. 6th, 18th, 31st 2008 and June 11, 2009)
 - 3 were all in same month, all occurred in Jefferson County, Ky, all of Family Dollar stores (Moore (dissented in part), Bush (concurred), and Nalbandian (per curium))

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Sentencing Issues The Guidelines

30

United States v. Vowels-Harper, 159 F.4th 1095 (6th Cir. 2025)

Bloomekatz, Gilman, and Clay (dissenting)

Addresses the 4-level base offense level enhancement in the CP production guideline, U.S.S.G. § 2G2.1(b)(4) for involving material that portrays sadistic or masochistic conduct.

Held: For pubescent minors, images of penetration do not necessarily qualify for this enhancement. While penetration of a *prepubescent* minor automatically triggers the enhancement, for pubescent minors it must be determined on a case-by-case basis.

- age does not determine pubescence – court must decide
- if pubescent, does the image depict “visibl[e]” and objective markers of physical pain, emotional suffering, or humiliation”
 - “like bondage, urination, humiliating costumes or positions, penetration with large or sharp objects, facial expressions denoting distress, or body language suggesting discomfort”

There: Remanded for resentencing without the enhancement: image was of a pubescent 12-year-old putting a marker in her vagina, without any indication of pain or humiliation.

Note: decided under the production guideline, but the same enhancement appears in U.S.S.G. § 2G2.2 (possession, receipt, distribution) and U.S.S.G. § 2G3.1 (importing, mailing transporting, transferring to a minor).

31

United States v. Parkey, 142 F.4th 866 (6th Cir. 2025)

Griffin, Moore, and Ritz

Held: When a production charge (U.S.S.G. § 2G2.1) is based on a single minor taking photographs/videos of herself doing sexually explicit things to only herself, district courts can also apply the 2-point adjustment at U.S.S.G. § 3B1.4 for “used or attempted to use a person less than eighteen years of age to commit the offense.”

Even though:

1. The commentary to § 3B1.4 says it does not apply if the “offense guideline incorporates this factor.”
2. And, in general, a court double count which “occurs when precisely the same aspect of the defendant’s conduct factors into his sentence in two separate ways.”

But, here, neither is implicated because the production guideline only accounts for the minor being used as the subject of the photos.

- § 3B1.4 accounts for the *separate harm* of taking the photos.

Acknowledges this is counterintuitive: “a defendant receives a higher sentence when the minor photographs herself than if the defendant had photographed the minor.

”But we are bound by the text of the Guidelines.”

32

United States v. Hawkins, 165 F.4th 442 (6th Cir. 2026)

Gibbons, Stranch, and Davis

Hawkins pled guilty to a meth conspiracy and admitted significant amounts of drug weight herself. But, her guidelines were enhanced significantly due to her codefendant's out-of-court statements. The codefendant did not testify; no law enforcement officer testified – only evidence was what PSR copied from a police report. There was also no other evidence that corroborated the codefendant's statement.

Held: Remanded for resentencing on a closed record.

“Where we have affirmed a district court’s heavy reliance on co-conspirators’ statements, we have most often done so when the co-conspirators provided *testimony*. And more often than not, we have affirmed reliance on testimony when that testimony was corroborated.”

There are “only a handful of instances in which we have affirmed the use of co-conspirator’s statements not in the form of actual testimony.” *Id.* And that was when:

1. The co-conspirator’s out-of-court statement was actually consistent with other evidence presented, and
2. The statement is “full of detail” that is both internally and externally consistent.

But – be aware: body cam/audio records; hearsay from multiple people; or a cop’s independent investigation that actually corroborates the statement – is probably enough

- may also be enough if the Cop testifies to the reliability of the witness/coconspirator

33

United States v. Matthews, 155 F.4th 845 (6th Cir. 2025)

Mathis, Nalbandian, and Ritz

Established what “knowing misrepresented or knowing marketed” fentanyl as another substance for purposes of 4-level base offense level at U.S.S.G. § 2D1.1(b)(13).

Because the Guidelines do not define “knowingly,” “misrepresent,” or “market,” start with the ordinary meaning. So,

Held: “A person ‘knowingly misrepresents’ fentanyl as another substance when he, being aware that the substance he distributes contains fentanyl, asserts or communicates to the person to whom he distributes that it does not.”

Enhancement does not apply if:

- distributor is unaware that the substance contains fentanyl; or
- does not make a false or misleading assertion—through written or spoken words—about the contents of the substance.

“A person ‘knowingly markets’ fentanyl as another substance when he sells or advertises it as something else despite his awareness that the substance contains fentanyl.”

34

***United States v. Allen*, 93 F.4th 350 (2024)**

Nalbandian, White, Stranch

Meth distribution case. Allen was a middleman – he ferried drugs from the source to a single woman, Kristen. He always dealt her small quantities, until law enforcement turned her into a CI, and then told her to ask for a full pound.

Filed a motion for downward variance, arguing among other things that the drug weight was mostly driven by the pound that law enforcement requested. Motion denied, sentenced to bottom of guideline range.

On appeal, argued for the first time law enforcement engaged in “sentencing entrapment” or “sentencing manipulation.”

Held: Applied plain error review, so didn’t reach the merits. The Sixth noted that other circuits have recognized “sentencing entrapment” and “sentencing manipulation” as legitimate sentencing factors. But, the Sixth left for another day whether it will similarly recognize the theories—so this is an open question.

Sentencing entrapment occurs when “the government induces a defendant to commit a more serious crime when he was predisposed to commit a less serious offense.”

Sentencing manipulation occurs when “the government unfairly exaggerates the defendant’s sentencing range by engaging in a longer-than-needed investigation and, thus, increase[s] the drug quantities for which the defendant is responsible.”

35

Pending in Supreme Court

Beaird v. United States, No. 25-5343 (cert granted April 20th)

- Whether *Stinson v. United States*, 508 U.S. 36 (1993), still correctly states the rule for the deference that courts must give the commentary to the Sentencing Guidelines.
- *Stinson* applied *Auer* deference to Guidelines commentary, but *Auer* was significantly limited by *Kisor v. Wilkie*, 588 U.S. 558 (2019).
- We have good law on this: *United States v. Riccardi*, 989 F.3d 476 (6th Cir. 2021) (holding that the *Kisor* framework applies to the Guidelines).

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Sentencing Issues

The Categorical Approach

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***United States v. Tooley*, 155 F.4th 883 (6th Cir. 2025)**

White, Stranch, and Murphy

“Crime of Violence” – use of force clause

Kentucky second degree manslaughter is defined as:

“[a] person is guilty of manslaughter in the second degree when he **wantonly** causes the death of another person”

Held: “*Borden* and the Model Penal Code use the terms ‘recklessly’ and ‘negligently’ to describe what Kentucky law defines as ‘wantonly’ and ‘recklessly,’ respectively. But the two frameworks are functionally identical.”

Since Kentucky’s “wantonly” is the same as *Borden*’s “recklessly” – the statute lacks the necessary mens rea to qualify under the use of force clause.

Note: Applies to other Kentucky crimes that use the “wanton” mens rea.

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

Mathis, Sutton, C.J., Moore, Clay, Gilman, Kethledge, Stranch, Larsen, Davis, Bloomekatz

“Crime of Violence” – Enumerated Offenses Clause (Ohio Robbery)

- Ohio Rev. Code 2911.02: Robbery is having a deadly weapon, inflicting physical harm on another, or **using or threatening force against another in committing or attempting to commit a theft**
 - Sixth previously held Ohio robbery does not meet the force clause. So now we are looking at the enumerated offenses clause
 - “Theft” is defined as depriving owner of property (naturally)
 - *But also* as breaking and entering, trespassing in a habitation when person is present, tampering with records, impersonating an officer, forges a writing with purpose to defraud, sports cheating/corruption (§ 2913.01)
- **Guidelines (at the time):**
 - Extortion is obtaining something of value by wrongful use of force or fear or threat of physical injury.
 - Generic robbery is misappropriation of property w/ immediate danger to person
 - Note - GLs now define robbery so that it includes taking or obtaining property by (among other things) fear of injury to person **or property**, thus covering Hobbs Act robbery
- **Held:** Statute is twice divisible: (1) by the type of robbery and (2) the type of theft committed
- **Held:** Ohio robbery without a specified predicate theft offense is neither robbery nor extortion
- **Rule:** D need not provide caselaw when they can point to the plain text of the state statute.

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***United States v. Evans*, 156 F.4th 813 (6th Cir. 2025)**

Mathis, Griffin, and Thapar

“Crime of Violence” – Enumerated Offenses Clause (Ohio Aggravated Robbery)

Held: Agg. Robbery Ohio Rev. Code 2991.01(A)(1) – matches “extortion” under § 4B1.2.

“Extortion” under § 4B1.2 means “obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.”

The (A)(1) version of Ohio aggravated robbery defines it as: in attempting or committing a theft offense (or fleeing after) (theft defined at § 2913.01 (listing multiple versions of “theft” – same as *Cervenak*) one:

–has “a deadly weapon on or about the offender's person or under the offender's control **and either display the weapon, brandish it, indicate that the offender possesses it, or use it**”

BUT unlike *Cervenak*, **indictment listed a specific theft statute:** § 2913.02(A), which is basically, a traditional theft definition – obtaining property with the purpose of depriving the owner of it.

SO – meets both elements of “extortion” – (1) requires obtaining something of value from another, (2) requires an implied threat (through displaying or brandishing a weapon).

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Reduction in Sentence under § 3582(c)(1)(A) “Extraordinary and Compelling” Circumstances

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United States v. Bricker, 135 F.4th 427 (6th Cir. 2025) Batchelder, Readler, and Stranch (dissenting)

USSG § 1B1.13(b)(6) “is invalid” Three consolidated cases -- Bricker/McHenry/Orta

- Each case raised question whether a given “nonretroactive change in sentencing law” can serve as an “extraordinary and compelling” reason for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A), an exception to finality.

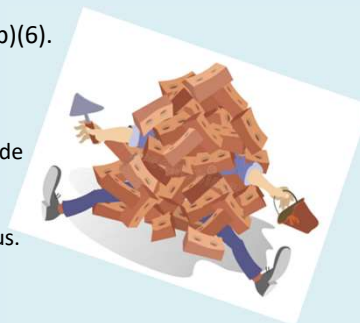
ISSUE: Whether the Sentencing Commission has the power, in exercising its delegated authority under 28 U.S.C. 994(t), to describe as “extraordinary and compelling” circumstances the situation where a person has served over ten years of an “unusually long sentence” and who, due to a nonretroactive change in the law, would not be subject to that sentence today.

HELD: No. The Commission overstepped its authority by promulgating 1B1.13(b)(6).

RATIONALE: The “finality doctrine is ordinary and universal.”

We have already interpreted the term “extraordinary” as used in § 3582(c)(1)(A) to exclude nonretroactive changes in the law. *McCall* (6th Cir. 2022) (en banc).

The Commission has no authority to interpret the statutory term differently to overrule us.



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Pending in Supreme Court

Reduction in Sentence – 18 U.S.C. § 3582(c)(1)(A)

Fernandez v. United States

- 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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Pending in Supreme Court

Reduction in Sentence – 18 U.S.C. § 3582(c)(1)(A)

Rutherford v. United States/Carter v. United States

- Whether the Sentencing Commission acted within its expressly delegated authority by allowing district courts to consider, in certain circumstances, a nonretroactive change in law in determining whether “extraordinary and compelling reasons” warrant a sentence reduction.

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Restitution

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Ellinburg v. United States, 146 S. Ct. 564 (2026)

- Restitution under the Mandatory Victim Restitution Act (MVRA) is a criminal punishment for purposes of the Ex Post Facto Clause.
- This may open the door for other challenges.

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Supervised Release

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United States v. Lockridge, 140 F.4th 791 (6th Cir. 2025)
Sutton, C.J., Clay, and Thapar

Avoiding Improper Delegations under Article III

Lockridge, was sentenced to 210 months in prison and three years of supervised release.

One condition required him to undergo mental health and substance abuse treatment “**as directed by the probation officer,**” without specifying whether that treatment would be inpatient or outpatient.

Lockridge argued: that allowing that decision to be made by the probation officer violated Article III by improperly delegating judicial authority.

Rule: Under Article III, sentencing is a core judicial function that courts may not delegate, though they may work with nonjudicial officers so long as the court retains ultimate authority.

Held: the Sixth avoided a constitutional delegation problem by interpreting the condition to reserve the final decision about the nature of treatment—whether inpatient or outpatient—for the district judge at a later time, after the term of imprisonment is done, rather than assigning that authority to the probation officer.

****Because** that decision would not need to be made for nearly two decades, and **because Lockridge will have counsel and the opportunity to object when the time comes**, the Court found no constitutional violation.

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***United States v. Hale*, 127 F.4th 638 (6th Cir. 2025)**
Larsen, Gilman, and Stranch

A little over four years into supervision, Hale asked the court to end the rest of his term early.

- The district court denied the request. It praised Hale's behavior but said it wasn't "exceptionally good"—something the court thought was required under prior Sixth Circuit precedent.

Held: The statute does not require "exceptionally good behavior." While that kind of conduct can support early termination, it isn't a prerequisite.

Once a defendant has served at least one year of supervision, a court can end the term early if, after considering the § 3553(a) factors, doing so is justified by the defendant's conduct and the interests of justice.

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***United States v. Collins*, 171 F.4th 830 (6th Cir. 2026)**
Moore, Thapar, and Mathis

The district court denied Collins's request for early termination of supervised release under 18 U.S.C. § 3583(e)(1) due to its "custom" to "not consider a defendant's request for early termination until he has completed at least half of his term of supervision."

Holding: The statute requires service of only one year of supervised release. The district court abused its discretion because "district courts cannot employ a blanket rule requiring defendants to complete a certain proportion of their supervised-release term without conducting an individualized assessment of the relevant § 3553(a) factors."

Takeaways:

(1) While how much time a person has (or has not) served on supervision might be relevant to whether early termination is appropriate for that specific person under the § 3553(a) factors and the specific facts presented in his case, district courts cannot as a general rule decline to terminate supervision until a preset period of time has passed.

(2) This logic applies in the compassionate release/reduction in sentence world as well, as the Collins Court specifically notes (citing *United States v. Bailey*, No. 20-5951, 2021 WL 3631341, at *2 (6th Cir. Aug. 17, 2021)).

Built upon: *United States v. Tavaréz*, 141 F.4th 750 (6th Cir. 2025).

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***Esteras v. United States*, 145 S. Ct. 2031 (2025)**

Held: District courts may not consider the “seriousness of the offense” at the supervised-release-revocation hearing because it's one of the few § 3553(a) factors that the supervised-release statute (18 U.S.C. § 3583(e)) doesn't incorporate.

- 18 U.S.C. § 3583(e) excludes § 3553(a)(2)(A) – “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;”
- “The offense” means the underlying conviction
- Left open whether district courts can consider the seriousness of the violation conduct

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***United States v. Patterson*, 158 F.4th 700 (6th Cir. 2025) Nalbandian, Moore, and Bush**

While on supervised release, Patterson committed murder. After *Esteras*, argued that the district court could not consider retributive factors in relation to the *violation conduct*.

Held: Can consider seriousness of *the violation conduct*, promoting respect for the law, and just punishment for *the violation conduct*.

- NOT mandatory to consider seriousness of the *violation conduct*, but the Sixth’s prior case law says it’s “a discretionary factor that may be considered” as a “breach of trust”
- Since *Esteras* left this question open, held Sixth’s prior case law remains controlling

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***Rico v. United States*, 146 S. Ct. 947 (2026)**

- The Sentencing Reform Act does not authorize a judicially created rule automatically extending a defendant's term of supervised release when the defendant absconds.
- Just really great language in the case about the limits of supervised release.
 - I think/hope this will be useful down the road, and to maybe take another stab at prior interpretations of 18 U.S.C. § 3582.

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Resources

❖ Call or email

❖ erin_rust@fd.org

❖ Sixth Circuit Daily emails

❖ https://public.govdelivery.com/accounts/USFEDCOURTS/subscriber/new?qs=USFEDCOURTS_1022

❖ Sixth Circuit Appellate Blog by Squire Patton Boggs

❖ <https://www.sixthcircuitappellateblog.com/>

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