

THE SIXTH CENSUS

ISSUE 104 – Sept to Dec 2024

FEDERAL PUBLIC DEFENDER'S OFFICE SOUTHERN DISTRICT OF OHIO

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OUR NEW FORMAT

To begin 2025, we have decided to update the format of our publication. First, we changed the name and format. In addition, we have added a link to the end of each summary. You can click this link to go to a more thorough outline of each case, if you need more information or context. As before, you can always click the name of the case to go to the Sixth Circuit's website to read the entire decision.

We have also made the decision to (except in rare cases) limit the placement of a case to one topic. Although published decisions regularly address many issues raised by the parties, the case is normally only given published status for one of those issues. Therefore, in most cases, we will only address that topic in this summary. You will also notice that we have decided to consolidate the subheadings and topics for cases.

Finally, we want to take a moment to acknowledge the efforts of AFDP Richard Monahan. For the past 15 years, Richard has steadfastly worked on Precedential Value, providing us all with this valuable resource for our practices. Richard has decided to give others in the office the opportunity to work on this publication. We thank Richard for his dedication to this newsletter!

"The liberties of none are safe unless the liberties of all are protected." – William O. Douglas, Supreme Court Justice, 1939-1975

PRETRIAL MATTERS AND DISCOVERY

[United States v. Kincaide 23-5821](#)

A state defendant cannot utilize the First Amendment to intervene in a federal criminal case and obtain a sealed cooperation document that he believes might assist him in his defense. Neither experience nor logic favor a qualified First Amendment right of access to cooperation agreements under the test articulated by the Supreme Court in *Press-Enterprise II*. [Read more here](#)

SUPPRESSION

[United States v. Taylor 23-5344](#)



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What began as a proper traffic stop ended up **violating the Fourth Amendment when the officer prolonged the stop beyond the time necessary to complete the traffic ticket so that a canine unit could arrive and sniff the vehicle.** As such, the evidence found after the canine alert must be suppressed. The Court further found that **the good faith exception could not apply** to such facts. [Read more here](#)

[United States v. Urraca 24-5014](#)

The amount of irregularities and “oddities” surrounding a truck driver’s destination, cargo, paperwork, etc., were sufficient to allow continued detention for purposes of a canine sniff of the vehicle. Once the canine alerted, this provide probable cause for a search of the vehicle and its contents. [Read more here](#)

PLEA

No cases this issue.

TRIAL AND EVIDENCE ISSUES

[United States v. Morton 24-5022](#)

In the first case since the Court’s pronouncement in *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), the Court determined that **Morton’s criminal history showed “dangerousness,” such that an as-applied Second Amendment constitutional challenge to his 18 U.S.C. § 922(g) conviction must fail.** [Read more here](#)

[United States v. Perry 23-1543](#)

§ 3161(h)(1)(F) of the Speedy Trial Act should be read “in tandem” with § 3161(h)(4), the latter of which **independently pauses the 70-day clock during an individual’s period of incompetency.** [Read more here](#)

[United States v. Gore 23-3640](#)

18 U.S.C. § 922(j) **is not facially unconstitutional**, it is consistent with this nation’s tradition of regulating the purchase and receipt of goods known or believed to be stolen. Further, **18 U.S.C. § 922(n) is not facially unconstitutional**, it is “relevantly similar” to our nation’s tradition of pretrial detention. [Read more here](#)

[United States v. Goins 23-5848](#)

At the time of Goins’ firearm possession, **he could lawfully be disarmed pursuant to 18 U.S.C. § 922(g)(1).** This was because Goins was on a “relatively short **probation sentence for a dangerous crime,**” and violated a condition of his probation that prohibited him from possessing firearms at the time that he did so. Also “his repeated actions demonstrated a likelihood of future dangerous conduct.” [Read more here](#)

*If we desire respect
for the law, we must
first make the law
respectable.* - Louis
D. Brandeis



[United States v. Gales 23-5928](#)

18 U.S.C. § 922(g)(9) is facially constitutional. [Read more here](#)

[United States v. Thompson 23-5503](#)

The district court did not abuse its discretion by excluding Thompson’s expert testimony that medical personnel and prison staff had contributed to the death at issue where Thompson had inflicted the fatal wound. [Read more here](#)

SENTENCING

[United States v. Gray 22-1828](#)

Where the indictment alleges a conspiracy lasting a certain time period, and the defendant admits in his plea hearing only to conduct covering that time period, **restitution may not be based on other alleged misconduct occurring outside the time of the offense of conviction.** [Read more here](#)

[United States v. Campbell 22-5567](#)

Tennessee robbery (Tenn. Code Ann. § 39-13-40) is categorically a violent felony. Although the statute in theory encompasses negligent threats of force, a review of Tennessee history shows it have never been used that way. Further, **although a judge and not the jury determined that Campbell’s prior convictions occurred on occasions different from one another, such error was subject to harmless error analysis,** and was so in this case. [Read more here](#)

[United States v. Parham 24-5025](#)

Attempted second-degree murder in Tennessee is a “crime of violence” under the Guidelines. [Read more here](#)

[United States v. Adams 23-3524](#)

An upward variance, on a supervised release revocation, from 8-14 months to 24 **months was not procedurally unreasonable, even though the court mentioned Adams’ mental health struggles in imposing the sentence.** “While our precedents support treating a defendant’s mental health issues as a mitigating factor, we have never held that a defendant’s mental health must *always* be treated as mitigating, notwithstanding the defendant’s conduct.” [Read more here](#)

[United States v. Holt 23-3106](#)

Holt’s 900-month sentence for murdering someone as part of a criminal enterprise **was not violative of the Eighth Amendment, and was procedurally and substantively reasonable.** This despite Holt’s youth at the time of the offense. [Read more here](#)

[United States v. Vaughn 24-5090](#)

District courts do not improperly delegate their judicial authority when they fail to cap substance-abuse testing within special conditions of supervised release. District courts do not plainly err when they expressly state that the defendant “shall participate in a program of testing and/or treatment for drug and/or alcohol abuse.” Nor do district courts plainly err when their special conditions **do not specify whether mental health treatment is outpatient or inpatient**. [Read more here](#)

APPEAL AND POST CONVICTION MATTERS

[Gardner v. United States 23-1388](#)

Counsel was not ineffective, even though counsel failed to introduce evidence that the “victim” of a sex trafficking offense advertised herself for sex work in the months leading up to the offense. Because the victim was under 18 at the time the offense started, consent or voluntary participation was not a defense to the crime, and therefore Gardner could not prove prejudice. [Read more here](#)

[United States v. Washington 24-5124](#)

For purposes of **compassionate release, non-retroactive changes in law are not “similar in gravity”** to medical circumstances, advanced age, family circumstances; or whether the defendant was a victim of abuse while in custody, **such that the “catch all” provision of U.S.S.G. § 1B1.13(b)(5) applies**. [Read more here](#)

[United States v. Flores 24-5170](#)

A district court’s **notice** that it did not intend to reduce a defendant’s sentence **is not a final appealable decision**. [Read more here](#)

[United States v. Abdullah 24-3093](#)

Even though the district court erred in its interpretation of Abdullah’s sentence reduction motion, the denial was proper because Abdullah **was not entitled to a reduction under the Guidelines-recalculation step. The Fair Sentencing Act’s changes would still trigger the same mandatory-minimum sentence that was originally imposed**. [Read more here](#)

[Neuhard v. United States 22-2120](#)

Counsel’s **decision to not introduce evidence of defendant’s autism**, made after an investigation, **was not ineffective assistance of counsel**. The evidence was not a defense to the charged crimes, and the decision not to present it was a strategic one. [Read more here](#)

THE EXTENDED VERSIONS

[United States v. Joseph Gray 22-1828](#)

Where the indictment alleges a conspiracy lasting a certain time period, and the defendant admits in his plea hearing only to conduct covering that time period, **restitution may not be based on other alleged misconduct occurring outside the time of the offense of conviction.**

Gray was convicted of one count of conspiracy to defraud the United States by applying for and receiving disability benefits using false information. The indictment alleged that the conspiracy lasted from 215 through 2019. Gray plead guilty to that conspiracy. At sentencing, the Government sought restitution from 2004 through 2019 – they alleged that Gray had defrauded the United States using similar fraud for that time. The district court agreed, and order restitution in the amount of 264,631\$. On appeal, the Sixth Circuit held “No count of the indictment referenced, expressly or obliquely, any conduct before 2015. By the indictment’s terms, the conspiracy began in 2015 and concluded in 2019. Accepting a linear theory of time, a conspiracy that began in 2015 does not cause losses in 2004. That suffices to resolve this case. The restitution order should not have covered losses before January 2015.” [Go Back](#)

[United States v. Taylor 23-5344](#)

What began as a proper traffic stop ended up **violating the Fourth Amendment when the officer prolonged the stop beyond the time necessary to complete the traffic ticket so that a canine unit could arrive and sniff the vehicle.** As such, the evidence found after the canine alert must be suppressed. The Court further found that **the good faith exception could not apply** to such facts.

The officer stopped Taylor for speeding. Taylor had trouble finding his insurance card, and his movements in looking for it made the officer nervous. So instead of writing the traffic ticket, the office called in for Taylor’s record, and found that he had priors. The officer called for a canine unit to do a sniff of the vehicle. The dog alerted for drugs, but no drugs were found. Instead, a weapon was located, and Taylor was federal charged. The Court determined that none of the facts available to the officer (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, allowed for a finding of reasonable suspicion of criminal activity. As such, the evidence should be suppressed. [Go back](#)

[United States v. Campbell 22-5567](#)

Tennessee robbery (Tenn. Code Ann. § 39-13-40) is categorically a violent felony. Although the statute in theory encompasses negligent threats of force, a review of Tennessee history shows it have never been used that way. Further, **although a judge and not the jury determined that Campbell’s prior convictions occurred on occasions different from one another, such error was subject to harmless error analysis**, and was so in this case.

Campbell was arrested for being a felon in possession of a firearm. He was convicted after a jury trial. At sentencing, he argued that his prior conviction for Tennessee robbery was not a violent felony for purposes of the ACCA, as the statute as written allowed for convictions for negligent threats of force, and thus *Elonis v. United States*, 575 U.S 723 (2015) controlled. The Sixth Circuit determined “Throughout the ‘long history’ of Tennessee’s robbery statute, ‘not once’ has a Tennessee court construed the fear element to encompass instances where a defendant negligently caused the victim fear.” Therefore, despite the statutory language, the conviction qualified as a violent felony.

Campbell also had three prior drug offenses. He argued that the Government did not prove to the jury that these offenses occurred on occasions different from one another, and therefore could only be counted as one qualifying offense, citing *Erlinger v. United States*, 144 S. Ct 1840 (2024). But *Erlinger* was decided after Campbell’s sentencing.

The Court first determined that error occurred, as the element was not provided to the jury. However, this error is not a structural one, but may be found to be harmless beyond a reasonable doubt. And given the record, it was harmless in this case. [Go Back](#)

[Gardner v. United States 23-1388](#)

Counsel was not ineffective, even though counsel failed to introduce evidence that the “victim” of a sex trafficking offense advertised herself for sex work in the months leading up to the offense. Because the victim was under 18 at the time the offense started, consent or voluntary participation was not a defense to the crime, and therefore Gardner could not prove prejudice.

Gardner found out that a former girlfriend of his, BH, was prostituting herself on Backpage. He paid for her services, knowing that she was 17 at the time. Soon, he became her pimp. This relationship lasted even after BH turned 18. In a 2255 petition, Gardner argued that his counsel was ineffective for failing to present to the jury the Backpage ads, which showed that BH was a voluntary participant. For 18 U.S.C. 1591 offenses, if the victim was under 18, no coercion need be shown. If the victim was over 18, coercion is an element. The Court determined that counsel was not ineffective for failing to introduce these ads (or cross examining the victim about them), as the government was not required to show coercion. [Go Back](#)

[United States v. Washington 24-5124](#)

For purposes of **compassionate release, non-retroactive changes in law are not “similar in gravity”** to medical circumstances, advanced age, family circumstances; or whether the defendant was a victim of abuse while in custody, **such that the “catch all” provision of U.S.S.G. § 1B1.13(b)(5) applies.**

Washington filed his fourth compassionate release motion after U.S.S.G. 1B1.13 was amended on November 1, 2023. He argued that the disparity between crack and powder cocaine was a circumstance that the district court could consider in granting compassionate release under the revisions to the Guideline. In the first case dealing with this new Guideline, the Court disagreed. It found that (b)(5)’s “similar in gravity” catch all language referred to traditional circumstances, such as advanced age, family circumstances, and medical issues. It did not refer to changes in the law. Further, the Court noted that the revised Guidelines already contained a provision for considering changes in the law when “a defendant has served at least ten years of an ‘unusually long sentence’ and the legal change would produce a gross disparity between the sentence being served” and the one that likely would have been imposed under the new law.” [Go Back](#)

[United States v. Morton 24-5022](#)

In the first case since the Court’s pronouncement in *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), the Court determined that **Morton’s criminal history showed “dangerousness,” such that an as-applied Second Amendment constitutional challenge to his 18 U.S.C. § 922(g) conviction must fail.**

Morton was charged with a violation of felon in possession in violation of 18 U.S.C. § 922(g). He moved to dismiss the indictment under the Second Amendment, based upon *New York State Rifle & Pistol Ass’n v. Bruen*. The district court denied the motion, finding that his prior felonies showed that he was a “direct threat to public safety,” and therefore, as applied to him, 18 U.S.C. § 922 was constitutional. The Sixth Circuit agreed, finding that the district court made an adequate inquiry into Morton’s past conduct to determine dangerousness, and that the determination was sound, as the court focused on Morton’s prior violent crimes against persons. [Go Back](#)

[United States v. Urraca 24-5014](#)

The amount of irregularities and “oddities” surrounding a truck driver’s destination, cargo, paperwork, etc., were sufficient to allow continued detention for purposes of a canine sniff of the vehicle. Once the canine alerted, this provide probable cause for a search of the vehicle and its contents.

Urraca was driving a semitrailer in Tennessee when he was pulled over for a regulatory inspection. The officer became suspicious when several details of Urraca's trip did not add up. Eventually, the officer got his canine and did a walk around the trailer. The dog alerted, and 20 kilograms of cocaine were found. The district court suppressed the evidence, finding that the officer lacked reasonable suspicion to extend the traffic stop, as the non-criminal discrepancies, neither separately nor cumulatively, indicated that criminal activity was afoot. The Sixth Circuit disagreed, finding that three facts gleaned from the stop together provided probable cause. [Go Back](#)

[United States v. Adams 23-3524](#)

An upward variance, on a supervised release revocation, from 8-14 months to 24 **months was not procedurally unreasonable, even though the court mentioned Adams' mental health struggles in imposing the sentence.** "While our precedents support treating a defendant's mental health issues as a mitigating factor, we have never held that a defendant's mental health must *always* be treated as mitigating, notwithstanding the defendant's conduct."

Adams had a history of mental illness and episodes, such that he was sent off for several competency evaluations prior to his guilty plea. He served his time and was released to serve his term of supervised release; however, it did not go well for him. He continued to struggle with mental health and substance abuse issues, and this led to other criminal conduct. The district court tried therapy, halfway house, and other measures, but Adams did not improve. Finally, he fell out of contact with his probation officer for over a year, and during that time, committed some state offenses. The district court ultimately revoked Adams release and imposed a sentence of 24 months, which was an upward variance from the Guidelines. The court implored Adams to "reconsider [his] behaviors whenever [he is] inclined not to take [his] medication, to act out in a violent way." Defense counsel objected to this, stating that this was improper consideration of his mental status. On appeal the Court affirmed the sentence. It found that it was not an "impermissible factor" to consider Adams dangerousness to the community, even though that was related to his mental health. [Go Back](#)

[United States v. Perry 23-1543](#)

§ 3161(h)(1)(F) of the Speedy Trial Act should be read "in tandem" with § 3161(h)(4), the latter of which independently pauses the 70-day clock during an individual's period of incompetency.

A prior conviction of aggravated domestic violence, prohibited by Mich. Comp. Laws § 750.81a(3), is a crime of violence for purposes of U.S.S.G. § 2K2.1(a)(4)(A).

Perry claimed the Speedy Trial Act was violated while he awaited competency restoration treatment. After a hearing in September 2021, the district court ordered Perry to be committed to the custody of the Attorney General pursuant to 18 U.S.C. § 4241(d) for competency restoration treatment. By September 30, 2021, he was designated to a facility in North Carolina. For "reasons that the government [did] not fully explain[]," Perry did not arrive to the facility until March 1, 2022—152 days after his designation for treatment.

Two exclusion periods of the Speedy Trial Act were at issue: § 3161(h)(4), which omits from the 70-day calculation "[a]ny period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial," and § 3161(h)(1), which excludes various "period[s] of delay resulting from other proceedings concerning the defendant." One of these relevant proceedings includes time dedicated to the "transportation of any defendant from another district, or to and from places of examination or hospitalization" § 3161(h)(1)(F). The length of such transportation is presumed to be unreasonable if in "excess of ten days from the date [of] an order of removal or an order directing such transportation, and the defendant's arrival at the destination..." *Id.*

The Sixth Circuit determined that "*any* period of delay" falling under § 3161(h)(4), "*shall* be excluded" from the 70-day clock. §§ 3161(h), 3161(h)(4) (emphasis added). These terms read together are absolute prohibitions of counting any time against the Speedy Trial Act deadline when a defendant has been found incompetent to stand trial. This also comports with constitutional concerns as it would violate due process to try a defendant deemed incompetent. As a result, the entire period of time following the court's order finding Perry not competent to stand trial, until the time that his competency was restored was excludable.

Perry was previously convicted of aggravated domestic violence pursuant to Mich. Comp. Laws § 750.81a(3) which criminalizes: “commit[ting] an assault and battery” against a spouse, former spouse, domestic co-habitant, or intimate partner, and “inflict[ing] serious or aggravated injury upon [the victim] without intending to commit murder or to inflict great bodily harm less than murder.” Mich. Comp. Laws § 750.81a(2)–(3). Perry argued this prior conviction was not a crime of violence that “has as an element the use, attempted use, or threatened use of physical force against the person of another.” U.S.S.G. § 4B1.2(a)(1).

The Sixth Circuit took note of the phrase “assault *and* battery,” finding that Michigan defines battery as “an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person.” Next, “inflict” is defined by the State as “direct interaction with the victim.” And lastly, Michigan courts defined “serious or aggravated injury” as “a physical injury that requires immediate medical treatment or that causes disfigurement, impairment of health, or impairment of a part of the body.” Thus, all the relevant terms of Michigan’s aggravated domestic violence offense together plainly satisfied the force requirement. [Go Back](#)

[United States v. Holt 23-3106](#)

Eighth Amendment jurisprudence requires district courts only to *consider* a defendant’s youth at sentencing. Holt’s medical-based Eighth Amendment claim was brought in the wrong venue—since he was not challenging his prison sentence but rather his medical care, he needed to bring a civil suit.

Holt’s 900 months sentence of imprisonment was procedurally and substantively reasonable.

Holt was previously sentenced to a mandatory term of life imprisonment on a racketeering-murder count (RICO) and 25 years’ imprisonment for murder with a firearm during a drug-trafficking crime. Both convictions stemmed from a murder Holt committed while he was 17. Holt later moved to vacate his sentence based on the constitutional violation—mandatory life imprisonment imposed on a juvenile.

Holt’s updated PSR calculated his guidelines as life imprisonment for the RICO conviction and any term of years up to life for the firearm-murder conviction. The district court imposed a 600-month sentence for the RICO conviction and 300 months for the firearm-murder conviction to run consecutively to the RICO sentence.

Holt challenged the 900-month sentence on 8th Amendment grounds, arguing that the court failed to adequately address his youth and that his medical needs (paraplegia) make any day spent in prison cruel and unusual. As to the youth claim, the Sixth Circuit found that *Miller v. Alabama*, 567 U.S. 460 (2012), only applies to “life-without-parole” sentences and technically the court did not impose such a sentence on Holt. But even if *Miller* was triggered by the court’s sentence, *Miller* only prohibits *mandatory* life sentences. As long as the court considers the defendant’s youth in the sentencing calculus, the court may in its discretion, impose a lengthy sentence.

As to the medical claim, since Holt was challenging the conditions of his confinement rather than his sentence, the proper venue is to bring forth a civil suit against the prison officials providing inadequate medical care.

Holt also brought forth multiple “reasonableness” challenges to his sentence which were all denied. The Sixth Circuit found most of his procedural claims were not adequately preserved and that Holt’s lengthy sentence reasonably fit the crime committed. [Go Back](#)

[United States v. Flores 24-5170](#)

A district court’s notice that it did not intend to reduce a defendant’s sentence is not a final appealable decision. After Amendment 821 became effective in 2023, the district court sua sponte reviewed Flores’s eligibility for a sentence reduction. The court issued a “Notice and Order” which laid out the court’s findings and informed Flores that the court “does not intend to reduce [his] previously imposed term of incarceration.” Flores appealed. The Sixth Circuit determined that although the Notice suggested the court would deny a motion for a sentence reduction, no such motion was filed and adjudicated to “completely dispose[] of the post-judgment matter at issue.” [Go Back](#)

[United States v. Gore 23-3640](#)

18 U.S.C. § 922(j) is not facially unconstitutional, it is consistent with this nation’s tradition of regulating the purchase and receipt of goods known or believed to be stolen. 18 U.S.C. § 922(n) is not facially unconstitutional, it is “relevantly similar” to our nation’s tradition of pretrial detention. The district court did not clearly err when it found the prosecutor did not strike a juror because of their race.

Gore challenged the Gun Control Act provisions on their face. § 922(j) makes it “unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition . . . , knowing or having reasonable cause to believe that the firearm or ammunition was stolen.” Pursuant to *Bruen*, the Sixth Circuit determined it did not need to determine whether the Second Amendment’s plain text covered stolen firearms since § 922(j)’s prohibition is consistent with our nation’s regulatory traditions at step two.

§ 922(n) makes it “unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport . . . any firearm or ammunition or receive any firearm or ammunition.” The Sixth Circuit determined the plain text of the Second Amendment covers the conduct at issue and the government had met its burden of demonstrating that the founding-era practice of pre-trial detention is “relevantly similar” to § 922(n). “Like pretrial detention, § 922(n) restricts indicted persons’ rights, during the fraught period between indictment and trial, for the purpose of furthering public safety and protecting the integrity of the criminal process. And just as bail was denied outright only for defendants facing serious charges, so § 922(n) is triggered only by indictment for a felony charge... [t]his provision simply restricts defendants’ ability to receive, ship, or transfer firearms—it says nothing about possession.” Finally, like pretrial detention, § 922(n)’s burden expires when the criminal case is resolved.

Gore’s counsel also raised a *Batson* objection to the prosecutor’s peremptory strike of juror 164, who was “the only person of color left in the venire.” The district court did not make an express finding as to step one of a *Batson* challenge—whether Gore made a prima facie showing that the peremptory challenge had been exercised on the basis of race. But this did not matter since the prosecutor “offered a race-neutral explanation for the peremptory challenge.” The district court determined it was a “close call,” but ultimately the prosecutor’s explanations were not “implausible, fantastic, silly, [or] superstitious,” so the court rejected Gore’s *Batson* challenge.

From the record, the Sixth Circuit could not infer that the government treated juror 164 different from a similar juror based on race, nor did Gore demonstrate that the government’s proffered reason was so improbable that it had to be pretextual. Giving “great deference” to the district court’s factual determinations, the Sixth Circuit found no clear error.

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[United States v. Goins 23-5848](#)

At the time of Goins’ firearm possession, he could lawfully be disarmed pursuant to 18 U.S.C. § 922(g)(1). This was because Goins was on a “relatively short probation sentence for a dangerous crime,” and violated a condition of his probation that prohibited him from possessing firearms at the time that he did so. Also “his repeated actions demonstrated a likelihood of future dangerous conduct.”

At the time that Goins possessed a firearm, he had been convicted of the relevant offenses (punishable by a term of imprisonment exceeding 1 year) and was on probation: (1) a 4th DUI offense, (2) DUI on a suspended license, and (2) possession of a controlled substance. One condition of his probation was that he not possess firearms. Goins brought an as-applied challenge to § 922(g)(1).

Following *United States v. Williams*, 113 F.4th 637 (6th Cir. 2024), the Sixth Circuit recognized that “Congress may disarm individuals they believe are dangerous,” but defendants may continue to argue for an “individualized exception” to its application.

Here, the Sixth Circuit found that Goins had engaged in conduct that endangered the public when he drove under the influence, and it was within this nation’s historical tradition to temporarily limit his firearm possession because of this dangerous conduct. Further, our nation’s tradition of forfeiture laws, which temporarily disarmed individuals completing their sentences, also supports disarming those on probation, parole, or supervised release. *United States v. Gore*’s pre-trial detention analysis lends additional support to temporary disarmament as a condition of probation. On this same note, the Sixth Circuit pointed to the similar treatment of the Fourth Amendment and its limited application

in the probation/ supervised release context as justification for the temporary deprivation of the Second Amendment right.

Lastly, Goins' record revealed a "dangerous pattern of misuse of alcohol and motor vehicles, often together. His actions, including causing a motor vehicle accident, pose a danger to public safety. Moreover, and most importantly, at the time Goins possessed the firearm [], he was in violation of a condition of his [] state probation term." Thus, disarming Goins temporarily as a condition of his probation, especially given his pattern of dangerous conduct, is consistent with this nation's historical tradition of firearm regulation. [Go Back](#)

[United States v. Thompson 23-5503](#)

The district court did not abuse its discretion by excluding Thompson's expert testimony that medical personnel and prison staff had contributed to the death at issue where Thompson had inflicted the fatal wound.

Thompson's direct appeal regarding the lawfulness of his conviction under 18 U.S.C. § 1118(a), was based on a collateral attack on a predicate sentence, and therefore, Thompson needed to first challenge the prior sentence in the appropriate court. If successful, he may then challenge his § 1118 conviction under 28 U.S.C § 2255.

The district court did not plainly error by permitting a medical examiner to testify about an autopsy performed by an unavailable pathologist as the testimony did not affect Thompson's substantial rights.

In 1999, the Superior Court of the District of Columbia sentenced Thompson to a term of 127 years and eight months to life for crimes he committed as a juvenile. In 2014, Thompson stabbed Jones, another inmate, multiple times with a metal object. Jones died two hours later. Thompson was convicted of second-degree murder under 18 U.S.C. § 1111, murder by a federal prisoner while "under a sentence for a term of life imprisonment," pursuant to 18 U.S.C. § 1118, and possessing a prohibited object pursuant to 18 U.S.C. § 1791(a)(2).

Thompson first argued that the district court should not have excluded his expert testimony that medical personnel and prison staff negligence contributed to Jones's death. The court excluded the evidence pursuant to Fed. R. Evid. 401. The Sixth Circuit had to determine whether the relevant statutory definition of murder "would permit a defendant who inflicts an otherwise mortal injury on a victim to assert as a defense that proper medical care could have saved the victim's life." Since § 1111 adopts the common-law definition of murder, the Sixth Circuit interpreted the statute to incorporate common-law causation principles. Under these causation principles, Thompson's own experts suggested that Jones' stab wounds were the primary cause of his death, and the alleged improper medical care did not break the causal chain. Thus, their opinions did not convey anything "of consequence in determining" whether Thompson committed murder.

Next, Thompson argued that the § 1118 charge should have been dismissed because his underlying life sentence is unconstitutional— a functional life sentence for nonhomicide crimes committed as a juvenile in contravention of *Graham v. Florida*, 560 U.S. 48 (2010) and its progeny. The Sixth Circuit noted that it need not decide the merits of Thompson's collateral attack on his predicate sentence. Rather, Thompson had already sought to vacate his prior sentence in the D.C. courts and if his challenge is successful and he is resentenced to a term that does not qualify as a life sentence, then he may challenge his conviction under § 1118 on federal postconviction review.

Lastly, Thompson claimed the medical examiner during trial testified about an autopsy performed by an unavailable pathologist in violation of *Smith v. Arizona*, 144 S. Ct. 1785 (2024). Thompson did not object at trial, so this argument was subject to plain error review. The Sixth Circuit found that whether the examiner's testimony ran afoul of *Smith* was a close call. But even if the testimony was erroneously admitted, it did not affect Thompson's substantial rights where he "asked the jury to acquit on theories of self-defense and diminished capacity, which by their terms, accept causation and provide an excuse or justification." Further the jury saw photographic and video evidence of the stab wounds and murder, making the examiner's testimony about the wounds unlikely to have affected the jury's conclusion on causation.

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[United States v. Gailles 23-5928](#)

18 U.S.C. § 922(g)(9) is facially constitutional. § 922(g)(9) prohibits anyone “who has been convicted in any court of a misdemeanor crime of domestic violence” from transporting, receiving, or possessing a firearm or ammunition. 18 U.S.C. § 921(a)(33) defines misdemeanor crime of domestic violence as an offense requiring proof of “the use or attempted use of physical force, or the threatened use of a deadly weapon,” against another person with whom the offender has a familial, intimate, or cohabitation relationship. Gailes brought a facial challenge to § 922(g)(9).

First, the Sixth Circuit determined domestic-violence misdemeanants are part of the people protected by the Second Amendment. Second, the Sixth Circuit pointed to the historical sources cited in *Rahimi* and *Williams* to establish the constitutionality of firearm regulations that target those who “pose a clear threat of physical violence to another.” And those who have been previously convicted of a domestic violence misdemeanor “fall squarely within the category of people who pose a clear threat to the physical safety of others.” Accordingly, § 922(g)(9) is facially constitutional. [Go Back](#)

[United States v. Parham 24-5025](#)

Attempted second-degree murder in Tennessee is a “crime of violence” under the Guidelines.

18 U.S.C. § 922(g)(1) is constitutional on its face and as applied to Parham whose record contains “numerous violent felonies.”

The Guidelines define “crime of violence” as: “any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that . . . has as an element the use, attempted use, or threatened use of physical force against the person of another.” U.S.S.G. § 4B1.2(a)(1). “Attempted use” implies the defendant took a substantial step “toward the use of force but did not achieve completion.” “Threatened use” means “a communicated intent to inflict physical or other harm on any person or property.”

Parham was convicted of attempted second-degree murder. Tennessee defined second-degree murder as “a knowing killing of another,” and the attempt statute provided three bases for committing an attempt crime. It was not clear under which subsection Parham was convicted, so the Sixth Circuit presumed the least culpable subsection: “taking a substantial step toward the commission of the offense.” Under the relevant portions for attempted second-degree murder, the elements were: “(1) the defendant acted with the intent to unlawfully kill the alleged victim; and (2) the defendant’s conduct constituted a substantial step toward killing the alleged victim.”

Under Tennessee law, the possession of materials to be used in the commission of the crime, near the scene of the attempted crime, may be a substantial step “if such action is strongly corroborative of the actor’s overall criminal purpose.” Thus, “a person’s possession of materials capable of killing someone (for example, poison) near the scene of the intended crime, along with conduct that makes possession of such materials strongly corroborative of the actor’s overall criminal purpose, communicates the intent to inflict harm, which constitutes the threatened use of force.” If any doubt exists, such conduct also constitutes an attempted use of force. And although such materials do not involve direct contact with the victim, they are still capable of causing physical pain/ injury which matches the Guidelines definition of “physical force.” As such, the least culpable way to commit attempted second-degree murder in Tennessee necessarily encompasses at least an attempted use or threatened use of physical force.

As to § 922(g)(1), Parham’s facial and as-applied challenges were foreclosed by *United States v. Williams*, 113 F.4th 637, 662–63 (6th Cir. 2024). Parham’s criminal record contained numerous violent felonies, including two homicide-related convictions involving a firearm. [Go Back](#)

[United States v. Abdullah 24-3093](#)

Although the district court erred in its interpretation of Abdullah’s sentence reduction motion, the denial was proper because Abdullah was not entitled to a reduction under the Guidelines-recalculation step. The Fair Sentencing Act’s changes would still trigger the same mandatory-minimum sentence that was originally imposed.

Abdullah was convicted of conspiring to possess with the intent to distribute at least 500 grams but less than 1.5 kilograms of crack cocaine pursuant to 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846. At the time, § 841(b)(1)(A) mandated a life sentence for those convicted of drug offenses involving 50 grams or more of crack cocaine with 2+ prior felony-drug convictions. Abdullah met this criterion and was sentenced to life in prison.

The Fair Sentencing Act (FSA) later increased the threshold quantity of crack cocaine triggering the mandatory life sentence from 50 grams to 280 grams. Abdullah filed a motion to reduce his sentence based on this provision in August 2019. The district court held a hearing in July 2020 on the motion and then denied the motion in January 2024, finding that Abdullah was not entitled to compassionate release.

Although the district court did not address Abdullah's eligibility for relief under the FSA, the denial of the motion was not error. The threshold inquiry is whether a defendant is eligible for a sentence reduction—i.e., the defendant was convicted of a “covered offense” for which the statutory penalties were modified. If so, then the court must recalculate the defendant's Guidelines and statutory ranges using the retroactive legal changes.

Here, it was at this step that Abdullah's motion failed. Although he was convicted of a covered offense, Abdullah still had two prior felony drug convictions and was found guilty of conspiring to distribute between 500 grams and 1.5 kilograms of crack cocaine. Thus, the FSA's change in drug quantities did not benefit Abdullah. [Go Back](#)

[Neuhard v. United States 22-2120](#)

Neuhard's trial and appellate counsel did not perform deficiently. Pursuant to 28 U.S.C. § 2255, Neuhard argued that his trial and appellate counsel were ineffective. First, he claimed that his trial counsel was ineffective for failing to sufficiently investigate and present expert evidence on his autism at trial. The Sixth Circuit disagreed, finding that the record showed that Neuhard's counsel adequately investigated his autism and developed a reasonable strategy not to introduce the evidence at trial. Thus, this claim failed *Strickland's* first prong : “the defendant must show that counsel's representation fell below an objective standard of reasonableness.”

Next, Neuhard alleged his trial counsel was ineffective for not requesting an immediate evidentiary hearing to determine whether a testifying agent had acted deliberately when she testified about polygraphs. The Sixth Circuit determined that this claim failed *Strickland's* prejudice prong regardless of any finding of deficient performance. Neuhard could not demonstrate a reasonable probability that the district court would have granted a mistrial had counsel immediately requested an evidentiary hearing following the polygraph comments.

Lastly, Neuhard claimed his appellate counsel was deficient for appealing the district court's refusal to introduce Neuhard's polygraph offer when she should have appealed the denial of his mistrial motion based on the polygraph evidence. Focusing on the two issues presented, the Sixth Circuit disagreed, finding the mistrial denial did not provide “clearly stronger” grounds for appeal than the one counsel raised. [Go Back](#)

[United States v. Kincaide 23-5821](#)

Neither experience nor logic favor a qualified First Amendment right of access to cooperation agreements under the test articulated by the Supreme Court in *Press-Enterprise II*. Kincaide pled guilty to federal firearm offenses in May 2023. Following Kincaide's plea, Swain filed a motion to intervene in Kincaide's case. Swain sought to unseal a docket entry in Kincaide's case titled, “plea agreement supplement,” believing it to be a cooperation agreement. Swain had been indicted for murder and alleged that Kincaide was a witness, so in the event that Kincaide may testify against him, Swain sought to uncover any cooperation agreement. Swain asserted a First Amendment right of access to the plea supplement.

To determine whether the First Amendment's right of access attaches, the Sixth Circuit applied the Supreme Court's “experience and logic” test articulated in *Press-Enter. Co. v. Superior Ct.*, 478 U.S. 1, 8-9 (1986) (*Press-Enter. II*), which asks: (1) whether the proceeding or material has “historically been open to the press and the general public,” and (2) whether “public access plays a significant positive role in the functioning of the particular process in question.”

Under prong one, there is no “widespread, historical tradition of public access to cooperation agreements.” And as to prong two, public access to cooperation agreements would endanger government cooperators, and likely frustrate government investigations. Thus, the same concerns the Sixth Circuit had with access to PSR objections and search-warrant documents were applicable here and the Court could not say with any certainty that public access would “play a significant positive role in the functioning of the particular process in question.” Failing both prongs, Swain’s motion to intervene was denied. [Go Back](#)

[United States v. Vaughn 24-5090](#)

District courts do not improperly delegate their judicial authority when they fail to cap substance-abuse testing within special conditions of supervised release.

District courts do not plainly err when they expressly state that the defendant “shall participate in a program of testing and/or treatment for drug and/or alcohol abuse.” Nor do district courts plainly err when their special conditions do not specify whether mental health treatment is outpatient or inpatient.

Vaughn alleged the district court had improperly delegated its judicial power to the probation officer when the court did not determine the frequency of drug testing and whether he must receive alcohol treatment under special condition 1 of his supervised release. Vaughn also alleged the same defect for special condition 2 based on the court’s failure to designate whether his mental-health treatment is inpatient or outpatient.

The Sixth Circuit first pointed out the distinction Congress made between “drug testing conducted as a mandatory condition of supervised release and drug testing performed in the course of a special condition of drug treatment.” As a mandatory condition, “district courts *must* impose non-treatment drug testing on the defendant as part of supervised release”—18 U.S.C. § 3583(d). But as a special condition, “district courts *may* require drug testing as part of a substance-abuse program.” Since district courts have this discretion, testing caps apply only to mandatory conditions—not special conditions. Thus, when district courts impose drug testing through a special condition, they fulfill their judiciary duties so long as the court “decide[s] whether treatment is required.” Program implementation—drug testing caps—can be left up to probation officers.

Vaughn took issue with the “and or” language of the special condition requiring him to “participate in a program of testing and/or treatment for drug *and/or* alcohol abuse.” Vaughn believed this let the probation officer decide whether treatment for drugs, alcohol, or both would be required. Since, this was a special condition, again, the court need only decide whether such treatment is required. Also, “drug and/or alcohol abuse” is synonymous with “substance abuse.” This claim therefore also failed.

Lastly, Vaughn’s failure to raise his objection in the district court regarding the failure to specify inpatient vs outpatient treatment doomed his claim. Since circuits are split on the inpatient-outpatient claim and the Sixth Circuit lacks binding case law holding that a district court cannot allow probation officers to decide whether inpatient treatment will be required, Vaughn cannot overcome the plain-error standard. [Go Back](#)