
CRIMINAL LAW & PROCEDURE UPDATE: EXAMINING RECENT DEVELOPMENTS AT THE FIFTH CIRCUIT

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TOPICS

- *Bruen* and its progeny in the Fifth Circuit
- Fourth Amendment cases
- Fraud and obstruction cases
- Cases related to the Sentencing Guidelines
- Other interesting developments: jury issues, conditions of supervised release, restitution and forfeiture

SECOND AMENDMENT RECENT SUPREME COURT CASES

- ***New York State Rifle & Pistol Ass’n, Inc. v. Bruen***, 597 U.S. 1 (2022): establishes the method for evaluating whether a statute or regulation violates the Second Amendment
- ***United States v. Rahimi***, 602 U.S. 680 (2024): 18 U.S.C. § 922(g)(8), a federal statute that prohibits individuals subject to a domestic violence restraining order from possessing a firearm, is facially constitutional

BRUEN'S PROGENY IN THE FIFTH CIRCUIT: 18 U.S.C. § 922(G)(1) CASES

- *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024)
- *United States v. Bullock*, 123 F.4th 183 (5th Cir. 2024)
- *United States v. Isaac*, No. 24-50112, 2024 WL 4835243 (5th Cir. Nov. 20, 2024)
- *United States v. Schur*, 132 F.4th 863 (5th Cir. 2025)
- *United States v. Betancourt*, 139 F.4th 480 (5th Cir. 2025)
- *United States v. Kimble*, 142 F.4th 308 (5th Cir. 2025)
- *United States v. Mancilla*, No. 23-10952 (5th Cir. Sept. 10, 2025)

BRUEN'S PROGENY IN THE FIFTH CIRCUIT: 18 U.S.C. § 922(G)(1) ANCILLARY CASES

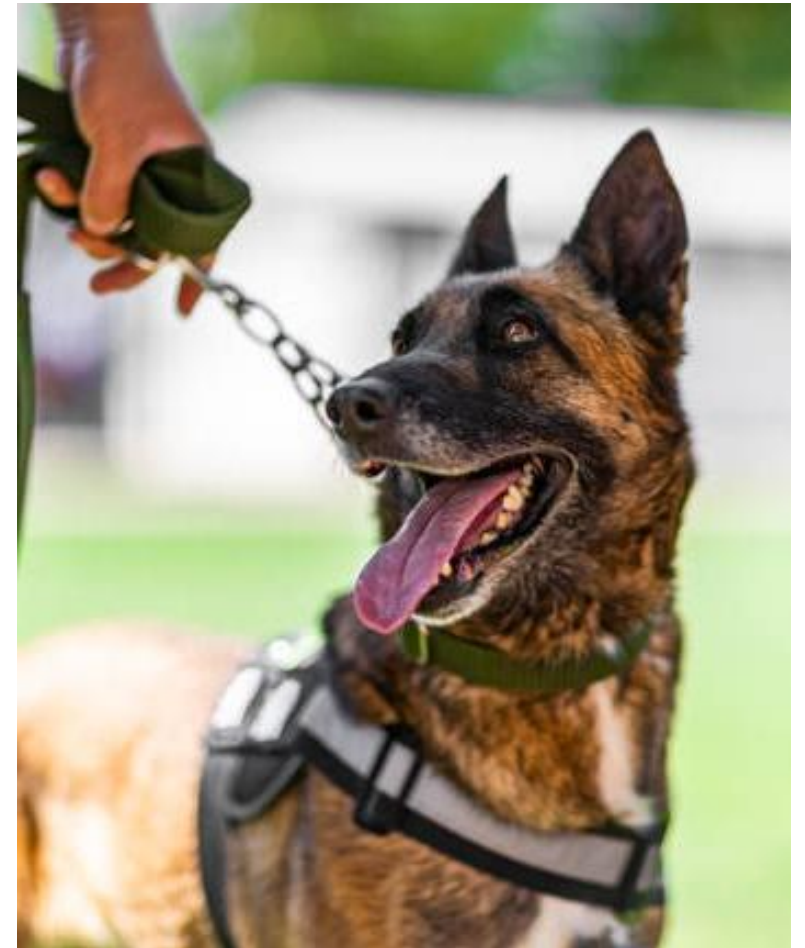
- ***United States v. Giglio***, 126 F.4th 1039 (5th Cir. 2025): § 922(g)(1) is constitutional as applied to a person serving a felony sentence, which includes any term of supervised release and/or probation
- ***United States v. Morgan***, 147 F.4th 522 (5th Cir. 2025): recaps *Diaz* and holds that courts may consider the underlying facts of a predicate felony conviction
- ***United States v. Alaniz***, 146 F.4th 1240 (5th Cir. 2025): courts may consider a defendant's entire criminal history in addition to the predicate felony conviction
- ***United States v. Quiroz***, 125 F.4th 713 (5th Cir. 2025): 18 U.S.C. § 922(n) bars "any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year" from receiving a firearm

BRUEN'S PROGENY IN THE FIFTH CIRCUIT: OTHER FIREARM CASES, CONTINUED

- ***United States v. Allam***, 140 F.4th 289 (5th Cir. 2025): 18 U.S.C. § 922(q)(2)(A) regulating possession of firearm within 1000 feet of a school campus
- ***Reese v. BATF***, 127 F.4th 583 (5th Cir. 2025): 18 U.S.C. § 922(b)(1) barring federal firearm licensees from selling handguns to 18-20 year-olds
- ***McRorey v. Garland***, 99 F.4th 831 (5th Cir. 2024): 18 U.S.C. § 922(t) expanding background checks for the sale of firearms to 18-20 year-olds

FOURTH AMENDMENT

- ***US v. Keller***, 123 F.4th 264 (5th Cir. 2024)
 - Held: no plain error in failing to conclude that K-9's sniff of vehicle in primary inspection lane at immigration checkpoint, or that K-9's placing paws on the vehicle's bumper, was a "search" for 4A purposes.
 - Also: there was probable cause to search vehicle after K-9 trained to detect controlled substances & concealed humans "alerted" to vehicle in primary inspection lane and then "indicated" in secondary inspection area.



FOURTH AMENDMENT

- ***US v. Wilson***, 143 F.4th 647 (5th Cir. 2025)
 - Held: suspected possession of a firearm is not a basis for a *Terry* stop (even concealed carry, and even if state law requires a permit).
 - *Wilson* stop was upheld on other, fact-specific grounds. (Officers had reasonable suspicion that defendant was harboring a fugitive.)

FRAUD, OBSTRUCTION, TAMPERING, AND ONE MISTRIAL AND RETRIAL

- ***United States v. DeBruhl-Daniels***, 118 F.4th 735 (5th Cir. 2024): the Fifth Circuit's application of *Fischer v. United States*, 603 U.S. 480 (2024), addressing charges under 18 U.S.C. § 1512(c)(2)
- ***United States v. Fatani***, 125 F.4th 755 (5th Cir. 2025): addressing the scope of a Paycheck Protection Program (PPP) Loan fraud conspiracy
- ***United States v. Breimeister***, 133 F.4th (5th Cir. 2025): holding that the Double Jeopardy Clause did not preclude a retrial on fraud charges because the mistrial was a “manifest necessity”

SENTENCING GUIDELINES



- ***US v. Minor***, 121 F.4th 1085 (5th Cir. 2024)
 - USSG § 4B1.1: career-offender enhancement applies when a defendant has “at least two prior felony convictions” for “a controlled substance offense.”
 - 2018 amendment to the Controlled Substances Act (“CSA”) narrowed the definition of marijuana by excluding hemp.
 - dist. ct. was required to use the definition of “controlled substance” that appeared in CSA *at the time of sentencing for the instant offense*.
 - D’s pre-2018 convictions for federal marijuana-related offenses were not categorically convictions for controlled substances offenses, and thus CO enhancement did not apply.

SENTENCING GUIDELINES

- ***US v. Henry***, 119 F.4th 429 (5th Cir. 2024)
 - USSG § 2K2.1(b)(6)(B): four-level enhancement if the D “used or possessed any firearm or ammunition in connection with another felony offense.”
 - Reversed § 2K2.1(b)(6)(B) enhancement for client who possessed a firearm while in a stolen vehicle due to the “lack of evidence to suggest a relationship between the gun and the stolen car aside from proximity.”
 - Gov’t analogized the possession of a stolen vehicle to drug trafficking.
 - Court said that is “precisely contrary to the holding of *Jeffries*: that, outside of the context of drug trafficking, ‘no presumption is made’ that a firearm facilitated possession of other contraband just because the two items are in close proximity and both are illegally possessed.”

SENTENCING GUIDELINES

- ***US v. Cisneros***, 130 F.4th 472 (5th Cir. 2025)
 - USSG § 2K2.1(b)(6)(B): four-level enhancement if the D “used or possessed any firearm or ammunition in connection with another felony offense.”
 - Guideline commentary only establishes a presumption of facilitation of drug trafficking offenses when firearms are in close proximity to drugs. Does not apply to *ammunition*.
 - Relied on *United States v. Eaden*, 914 F.3d 1004 (5th Cir. 2019), to find plain error.
 - “No evidence that the ammunition found in Cisneros’s bedroom was ever plainly visible from any location where drug transactions occurred.”



SENTENCING GUIDELINES

- ***US v. Le***, 126 F.4th 373 (5th Cir. 2025)
 - USSG § 2D1.1(b)(12): two-level enhancement if “the defendant maintained a premises for the purpose of manufacturing or distributing a controlled substance”
 - Held: insufficient evidence that D maintained the motorcycle shop for the purpose of distributing drugs.
 - The conclusory statement in factual basis that D and a codefendant used and maintained the shop as a drug premises, was not enough.

SENTENCING GUIDELINES

- ***US v. Wesley***, 123 F.4th 423 (5th Cir. 2024)
 - Held: D had sufficient unrestricted and exclusive access and control over house he used to conduct drug sales, and thus district court did not clearly err in finding that D maintained premises within meaning of USSG § 2D1.1(b)(12) enhancement
 - Although D did not own or rent the house, he had a key, distributed drugs alone from the house without the aid of others, and was seen using the house multiple times.

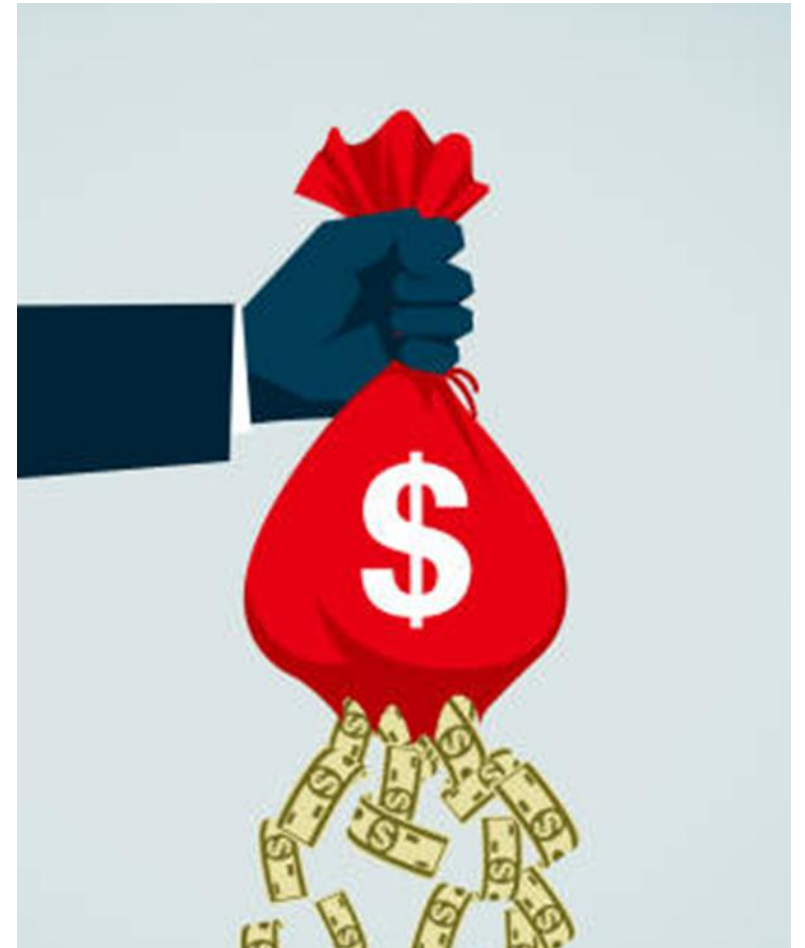
SENTENCING GUIDELINES



- ***US v. Ritchey***, 117 F.4th 762 (5th Cir. 2024)
 - conspiracy to defraud the US in connection with a scheme to overcharge the VA for medical supplies during the COVID-19 pandemic.
 - Held: district court improperly calculated loss amount under USSG § 2B1.1 by not taking “realistic, economic approach” to estimating fair market value of items sold at inflated price
 - Loss = amount VA paid for masks *minus* fair market value
 - A court must not “overemphasize its discretion as factfinder at the expense of economic analysis”

SENTENCING GUIDELINES

- ***US v. Day***, 117 F.4th 622 (5th Cir. 2024)
 - Held: there was insufficient evidence for six-level enhancement under USSG § 2B1.1(b)(2)(C) for causing substantial financial hardship to 25 or more victims
 - Substantial financial hardship = “a loss” that “significantly impacts the victim’s resources”
 - Guidelines Application Note with non-exhaustive list of factors



SENTENCING GUIDELINES

- **2025 Guidelines Amendments (effective Nov. 1, 2025)**
 - Biggest change is the **elimination of departures (except for substantial assistance and “fast track”)**.
 - fast-track cases is now found at §3F1.1 and §5K1.1 remains substantially unchanged
 - deletes entirely the §5H "Specific Offender Characteristics" policy statements
 - the Commission still considers those provisions to be valuable in assessing whether to **vary** from the Guidelines, and will be including them in a new Part III of Appendix B to the Guidelines Manual
 - Now sentencing is a **2-step process**:
 - Step 1 is to calculate the advisory guidelines range
 - Step 2 is to determine the sentence pursuant to 18 U.S.C. § 3553(a)

JURY ISSUES



- ***US v. Carpenter***, 140 F.4th 733 (5th Cir. 2025)
 - Held: the district court abused its discretion by dismissing an empaneled juror (a teacher) after her employer (the principal) contacted the court
 - Fed. R. Crim. P. 24(c)(1) allows alternate juror to replace a juror who is “unable to perform” or who is “disqualified from performing their duties”
 - district court made no finding that juror was unable to perform her duties, but instead, dismissed her because it would have excused her for undue hardship had it received employer’s email during *voir dire*
 - nothing in record indicated that juror was unable to perform her duties

JURY ISSUES



- ***US v. Qureshi***, 121 F.4th 1095 (5th Cir. 2024)
- Doctor prosecuted for distributing controlled substance
- Erroneous jury instruction
- *Ruan v. U.S.*: Supreme Court held that, “once a defendant meets the burden of producing evidence that” he was “authorized” to distribute a controlled substance, “the Government must prove beyond a reasonable doubt that the defendant knowingly or intentionally acted in an unauthorized manner”

ADDITIONAL FIFTH CIRCUIT CASELAW: TERMS AND CONDITIONS OF SUPERVISED RELEASE

- ***United States v. Swick***, 137 F.4th 336 (5th Cir. 2025): fugitive tolling applies to a term of supervised release
- Pronouncing Conditions of Supervised Release:
 - ***United States v. Quezada-Atayde***, 148 F.4th 360 (5th Cir. Aug. 6, 2025)
 - ***United States v. Chicol-Najarro***, 147 F.4th 531 (5th Cir. Aug. 6, 2025)
 - ***United States v. Lezama-Ramirez***, No. 23-30721 (5th Cir. Sept. 5, 2025)

RESTITUTION

- ***US v. Lucas***, 134 F.4th 810 (5th Cir. 2025)
 - D convicted of conspiracy to commit bank and wire fraud. His schemes involved fraudulently obtaining small-business loans from the gov't and vehicle loans from private lenders.
 - Held: D's fraudulent procurement of social security widower disability benefits was not part of same scheme, conspiracy, or pattern as frauds underlying his conspiracy to commit bank and wire fraud, and thus the district court lacked authority under Mandatory Victims Restitution Act (MVRA) to include restitution award to Social Security Administration (SSA).
 - The purpose of bank and wire fraud scheme was for D and his co-conspirators to use fraudulent corporation to obtain loan proceeds, whereas social security fraud implicated D only, did not involve any false information about corporation, centered on receiving social security benefits as opposed to money loans, and was not directed at any financial institution.

FORFEITURE

- ***US v. Davis***, 137 F.4th 349 (5th Cir. 2025)
 - Following D's guilty plea to wire fraud, a preliminary order of forfeiture for property purchased with fraudulent loan proceeds was issued.
 - Lender sought to file an ancillary petition claiming an interest in the property. The district court denied petition due to a drafting error by counsel naming as petitioner a similarly-named lender who did not have any interest in the property. Lender and similarly-named lender appealed.
 - Held: Counsel's drafting error was fatal to petition, and even if amendment to petition claiming interest in property subject to criminal forfeiture was permissible, proposed amendment was untimely.



CONCLUSION

QUESTIONS AND DISCUSSION WELCOMED

