

WEEKLY APPELLATE UPDATE

The Update is coming to you a few days early this week as we'll be in Charleston for the next few days related to our yearly seminar. If there are decisions issued later today, tomorrow, or Friday, we'll cover those next week.

Fourth Circuit Update



United States v. Smith, No. 25-4065, 2026 WL 2482572, <https://www.ca4.uscourts.gov/opinions/254065.P.pdf> (Aug. 25, 2026): Smith was arrested with a handgun with a conversion switch. As a result, he was indicted for possession of a machinegun in violation of 18 U.S.C. § 922(o). Smith moved to dismiss the indictment under the

Second Amendment, which the district court denied. Smith thereafter pleaded guilty without a plea agreement. The PSR added a serial number enhancement pursuant to USSG § 2K2.1(b)(4)(B)(i) (the “serial number enhancement”). Smith objected, arguing the gun was still traceable because only two of the three serial numbers on the firearm were modified (the opinion has pictures!). For support, Smith cited the 2024 amendment to the serial number enhancement. The district court overruled Smith’s objection and applied the enhancement.

Smith appealed. He brought a facial and as-applied challenge to his § 922(o) conviction. The Fourth Circuit found that the facial challenge **failed under step one of the *Bruen* test because machine guns are not in common use for a lawful purpose. Smith also conceded that with the switch attached, his handgun qualified as a machinegun as defined by § 5845(b), thereby dooming his as-applied challenge.**

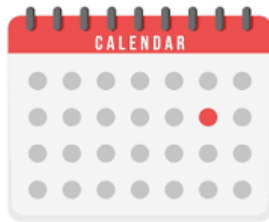
Smith also argued the serial number enhancement should not have been applied because one of the three serial numbers on the handgun was not modified. **The Fourth Circuit agreed, holding that that modified serial number enhancement applies only where a firearm is no longer traceable.** The Fourth Circuit determined that, in this case, **where only one iteration of a serial number was modified, but the other two serial numbers remain unaltered, that gun is clearly traceable.** The Court **vacated Smith’s sentence and remanded for resentencing without the enhancement.**

Judge Agee dissented regarding the court’s interpretation of the enhancement.



Supreme Court Upcoming/Update

All was quiet at the Court this week. The next orders list is scheduled for Friday, September 4.



Following the Fourth Circuit:

On July 17, the Fourth Circuit issued its calendar for its September 2026 Term of Court. Here are some cases that we are following:

United States v. Leticia James, No. 25-4673; ***United States v. James Comey***, 25-4674: Whether Lindsay Halligan's appointment as U.S. Attorney was lawful; whether indictments sought and obtained by Halligan are valid.

United States v. Garcia, No. 25-4023: Whether district court erred in admitting expert testimony that defendant possessed firearm in furtherance of drug trafficking crime for § 924(c) conviction.

United States v. Peters, No. 24-6704: Whether defendant's 18 U.S.C. §§ 2, 1028A(a)(1) conviction remains sound following *Dubin v. United States*, 599 U.S. 110 (2023).

~~***United States v. Bixler***, No. 25-4091: Procedural and substantive reasonableness of significant upward variant sentence imposed on conviction for failure to register as sex offender. **Removed from argument calendar 8.10.26**~~

United States v. Ajayi, No. 25-4523: Whether district court erred in denying motion to suppress evidence obtained pursuant to search warrant for defendant's Google accounts; other issues.

In re: Application, No. 26-4303: Challenge to district court's order related to application for order pursuant to 18 U.S.C. § 2703(d).

United States v. Hess, No. 25-4511: Whether defendant's right to impartial jury was contravened; whether DEA criminal investigation is "pending proceedings" for purposes of 18 U.S.C. § 1505; evidentiary issues.

~~***United States v. St. Felix***, No. 24-4578: Whether evidence sufficient for Hobbs Act robbery conviction when victim's cryptocurrency funds were not taken from victim's person or physical presence; other issues. ***Removed from argument calendar 8.18.26***~~

United States v. Vick, No. 25-4275: Whether district court erroneously enhanced offense level under USSG § 3A1.2(c)(2).

United States v. Owens, No. 25-4469: Whether South Carolina first-degree assault and battery remains “crime of violence” after *United States v. Clemons*, 901 S.E.2d 280 (S.C. 2024).

In re: US, No. 26-1545: Whether, after *Erlinger v. United States*, 602 U.S. 821 (2024), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the district court erred in finding that an ACCA-eligible offense is not a single aggravated crime, and permitting the defendant to plead guilty to violation of 18 U.S.C. § 922(g)(1), while ordering a jury trial on the ACCA elements of § 924(e).

United States v. Henderson, No. 24-4536: Whether, in appeal after remand and resentencing, government has forfeited right to invoke appeal waiver by not raising the issue during the first appeal.

United States v. Street, No. 25-4051: Propriety of enhancement under USSG for reckless endangerment during flight; whether alternative variant sentence is based on clearly erroneous factual findings.

United States v. Chhippa, No. 25-4276: Multi-issue appeal from convictions for conspiracy to provide and provision of material support to foreign terrorist organization.

United States v. Wilder, No. 25-4444: Whether district court erred in granting motion to suppress based on finding 911 call did not provide reasonable suspicion for stop and frisk.

United States v. Bagayoko, No. 25-4230: Whether traffic stop was unnecessarily prolonged; whether individual bottles of pesticide in one box constituted a “single package” under Hazardous Materials Transportation Act.

United States v. Chafin, No. 25-4521: Whether district court's consideration of “breach of trust” during a sentencing in a revocation hearing was a retributive and prohibited purpose.

United States v. Brooks, No. 25-4127: Whether the government breached defendant's plea agreement, thereby requiring resentencing; other issues.

~~**United States v. Ray**, No. 25-4016: Whether district court abused its discretion by removing juror for misconduct after jury deliberations had begun; other issues. **Removed from argument calendar 7.28.26**~~

United States v. Zacarias, No. 25-4242: Whether prosecution under the Maritime Drug Law Enforcement Act (MDLEA) was constitutional; whether government adequately established jurisdiction; other issues.

United States v. Wright, No. 18-4215: Whether Wright has established that plain error under *Erlinger* affected his substantial rights.

United States v. Nguyen, No. 21-4620: Whether appeal waiver valid when court failed to advise defendant of right to have jury determine occasions element of ACCA.

United States v. Sims, No. 23-4723: Whether harmless error is proper standard of review for preserved error under *Erlinger*; other issues.

~~**United States v. Dixie**, No. 25-4067: Whether failure to sever resulted in unfair prejudice to defendants that could not be cured by jury instruction; sufficiency of evidence; other issues. **Continued from argument calendar 7.21.26**~~

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