

WEEKLY APPELLATE UPDATE

Things were again relatively quiet at the Fourth Circuit this week on the published criminal decision front as the court was busy issuing several published decisions in civil cases. Maybe this accounts for the lengthy breakdown of the *Clay* decision.

Don't forget about our upcoming seminar in Charleston, slated for August 27, 2026. Attached are a registration form and the agenda.

Fourth Circuit Update



United States v. Clay, No. 24-4681, 2026 WL 2222360,

<https://www.ca4.uscourts.gov/opinions/244681.P.pdf> (Aug.

3, 2026): Clay was the Chief of Police in a small town in West Virginia. Clay engaged in various horrific offenses

relating to sex trafficking of a minor, and he did so while wearing his uniform, using his police cruiser, and (in one instance) in a “restricted-access area” used by the police department. Clay was indicted on four counts of sex trafficking of a minor and one count of obstruction of justice. He proceeded to trial and was convicted on all counts. After a series of post-trial motions, he was sentenced to 25 years’ imprisonment and a ten-year term of supervised release. He appealed.

On appeal, Clay presented several arguments. First, Clay argued that his trial counsel had an “unwaivable conflict” and that sentencing counsel’s motion for new trial—based on that conflict—should have been deemed timely filed even though it was filed over a year after the jury’s verdict. **The district court found the motion should have been filed within 14 days of the verdict and the Fourth Circuit agreed.** Additionally, the Fourth Circuit found **the conflict in question did not fall into the category of “exceptional category” of an unwaivable conflict.**

Clay also maintained a Speedy Trial Act violation because he was not brought to trial within seventy days of the government’s Fourth Superseding indictment. Based on a series of pretrial motions and a re-indictment which included a new charge, Clay argued that the STA expired before his case was brought to trial. However, **because had Clay filed an evidentiary motion which sought to admit evidence ordinarily excluded under the Rape Shield Law, and because the requisite *in camera* hearing on that motion did not occur until the first day of trial, the speedy trial clock did not run until that date.**

Clay also argued the government failed to establish the interstate nexus prong of § 1591. That statute requires the government prove commercial sex trafficking of a minor “in or affecting interstate commerce.” The Fourth Circuit, on

an issue of first impression, **agreed with the district court that the use of phones and cellular networks to arrange intrastate criminal activity satisfies the interstate nexus requirement of the statute. Noteworthy: the Fourth Circuit dropped a footnote to say that “sister circuits have held that even completely intrastate commercial sex satisfies 18 U.S.C. § 1591’s interstate nexus requirement.”**

Clay next sought to convince the appellate court that the government did not establish that he coerced the victim to have sex with him because it was the victim’s step-mother who did the coercing, and that wearing his uniform during the sexual encounters wasn’t sufficient to establish coercion. **The Fourth Circuit rejected this argument, agreeing with the Eighth Circuit that the statutory language “will be used” in § 1591(a) permits coercion by another person.** Moreover, the record was “rife” with evidence of Clay’s “indirect” coercion related to his wearing of his uniform.

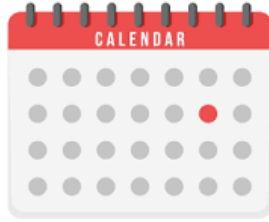
Finally, Clay challenged the procedural reasonableness of his sentencing, contending that the facts showed that the two-level enhancement for use of computer and the five-level enhancement for undue influence were not warranted. **The Fourth Circuit found that the use of a smartphone to arrange the encounters was sufficient to qualify as use of a “computer” under § 2G1.3(b)(3) and therefore the district court did not clearly err in applying that enhancement. The Fourth Circuit also found that the age gap between Clay and the victim met the rebuttable presumption of undue influence and that Clay failed to overcome the presumption.**

Clay’s convictions and sentence were affirmed in their entirety.



Supreme Court Upcoming/Update

All was quiet at the Court this week. The next orders list is scheduled for August 17.



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.

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.

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~~

Appellate Division Contact Information

Office of the Federal Public Defender
District of South Carolina
1901 Assembly Street
Suite 200
Columbia, South Carolina 29201

Kim Albro – 803-765-5088, Kimberly_Albro@fd.org
Emily Deck Harrill – 803-765-5079, Emily_Harrill@fd.org

Find any prior update you may have missed at:

<https://sc.fed.us/appellate-unit-weekly-updates>

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**FEDERAL PUBLIC DEFENDER
DISTRICT OF SOUTH CAROLINA**

William F. Nettles, IV

Federal Public Defender

1901 Assembly Street, Suite 200
Columbia, SC 29201
Tele: (803) 765-5070
Fax: (803) 765-5084

145 King Street, Suite 325
Charleston, SC 29401
Tele: (843) 727-4148
Fax: (843) 727-4179

Two Liberty Square
75 Beattie Place, Suite 950
Greenville, SC 29601
Tele: (864) 235-8714
Fax: (864) 233-0188

McMillan Federal Building
401 Evans Street, Suite 105
P.O. Box 1873
Florence, SC 29503
Tele: (843) 662-1510
Fax: (843) 667-1355

Reply to: Columbia

June 9, 2026

FEDERAL CRIMINAL PRACTICE – SUMMER 2026

CJA Training Notice

The Office of the Federal Public Defender for the District of South Carolina will sponsor a CJA Training Seminar in Charleston, South Carolina, on **Thursday, August 27, 2026**. The seminar will be held at The Charleston Museum Auditorium located at 360 Meeting Street, Charleston, South Carolina. Please note check-in will begin at 8:00 a.m., and the seminar will begin promptly at 8:30 a.m.

This Office is seeking **6** hours of CLE credits, and the final agenda will be provided prior to the seminar. There is no registration fee to attend. To register, please complete and submit the attached registration form to **Claire_Woodward@fd.org** by **Thursday, August 20, 2026**.

If you have questions regarding the seminar, please contact: Claire Woodward O'Donnell at (803) 765-5089 or Claire_woodward@fd.org.

Registration Form - Federal Criminal Practice - SUMMER2026

Charleston, SC

August 27, 2026

Name _____

Mailing Address _____

City/State/Zip _____

Telephone _____

Email _____

SC Bar Number _____

Please note the CLE approved credit hours will *only* be forwarded to the South Carolina Bar Association.

**Please return the completed registration form on or before August 20, 2026, to
Claire_Woodward@fd.org.**

FEDERAL CRIMINAL PRACTICE – SUMMER 2026
A Seminar for the CJA Defense Bar, District of South Carolina
August 27, 2026
SC CLE Course Number _____

8:00 – 8:25	<i>Check-in</i>
8:25 – 8:30	Welcome William F. Nettles, IV, Federal Public Defender, Office of the Federal Public Defender for the District of South Carolina
8:30 – 9:30	Writing for Sentencing Fritz Scheller, Fritz Scheller, P.L., Orlando, FL
9:30 – 10:30	Supreme Court and Fourth Circuit Update Joshua B. Carpenter, Assistant Federal Public Defender, Office of the Federal Public Defender for the Western District of North Carolina and Ann L. Hester, Assistant Federal Public Defender, Office of the Federal Public Defender for the Western District of North Carolina
10:30 – 10:45	BREAK
10:45 – 12:15	DNA Jennifer Friedman, Deputy Federal Public Defender, Capital Habeas Unit, Federal Public Defender's Office for the Central District of California, Los Angeles, CA
12:15 – 1:45	LUNCH (on your own)
1:45 – 2:45	Case Budgeting and CJA Update 2026 Emily Meyers Munn, CJA Case Budgeting Attorney, United States Courts of the Fourth Circuit, Richmond, VA
2:45 – 3:45	Discovery Emily Limehouse, Senior Litigation Counsel and Brittini Welsh, Supervisory Legal Administrative Specialist, United States Attorney's Office for the District of South Carolina
3:45 – 4:00	BREAK
4:00 – 5:00	Opposites (?) Attract: Mindfulness and Laughter Emily Deck Harrill, Assistant Federal Public Defender, Office of the Federal Public Defender for the District of South Carolina