

WEEKLY APPELLATE UPDATE

Things were relatively quiet in Appellate World this week, with the Fourth Circuit issuing only two published criminal opinions before we sent out the Update (if any are issued later in the day on Friday, we'll cover those next week). The Supreme Court granted cert in an interesting Excessive Fines Clause case, which is covered in the Supreme Court section below.

Our yearly seminar is about a month away on Thursday, August 27, 2026, in Charleston, SC. The seminar will be held in the Charleston Museum Auditorium located at 360 Meeting Street, Charleston, SC. We are seeking 6.0 hours of SC CLE credit, including one hour of SA/MH credit. The registration form is attached, and the agenda will be released soon. To register, please return the completed registration form to Claire.Woodward@fd.org by August 20, 2026. We look forward to seeing everyone on August 27!

Fourth Circuit Update



United States v. Ellis, No. 25-4028, 2026 WL 2083046, <https://www.ca4.uscourts.gov/opinions/254028.P.pdf> (July 20, 2026): Ellis was convicted after a four day trial on drug trafficking charges. During the trial, the district court partially closed the courtroom for about an hour during a witness's testimony based on a report by the Marshal that a single, unidentified gallery member had "clicked his teeth" and rocked back and forth in the courtroom pew while the witness had been testifying. Ellis claimed a violation of his Sixth Amendment right to public trial. In a divided opinion, the Fourth Circuit **determined that the partial closure was not trivial, and implicated Ellis's Sixth Amendment public trial rights.** However, the court found that based on the circumstances of this case, **where closure was partial as to persons excluded and temporally limited, the application of a more relaxed test than for total closure of a courtroom revealed a "substantial reason" for closure, that the partial closure was no broader than necessary, and that there were no reasonable alternatives.** Accordingly, the majority **affirmed** Ellis's conviction. In dissent, Judge Richardson believed that the district court's closure did not survive under *Waller v. Georgia*, 467 U.S. 39 (1984), because the district court did not make adequate findings, and that because it is a structural error, Ellis's conviction should be vacated.

United States v. Jones, No. 23-4711, 2026 WL 2097533, <https://www.ca4.uscourts.gov/opinions/234711.P.pdf> (July 21, 2026): Jones was involved in a straw-purchasing scheme where guns were purchased by straw purchasers in West Virginia and resold elsewhere (as is relevant here, in Pennsylvania). Jones recruited participants, organized firearm purchases,

compensated the straw purchasers, and participated in the subsequent resale of firearms in Pennsylvania. He was charged with four counts, one of which was conspiracy to commit promotional money laundering, a violation of 18 U.S.C. § 1956(h). Promotional money laundering requires the government to prove that the defendant conducted or attempted to conduct a financial transaction that he knew involved the proceeds of a specified unlawful activity (here, gun trafficking) with the intent to carry out that activity. To prove a conspiracy to engage in promotional money laundering, the government needed to prove there was an agreement (separate from the agreement to engage in gun trafficking) to engage in unlawful business operations and that the defendant and another participant agreed to funnel the unlawfully obtained proceeds back into the illicit business.

At trial, the government's theory was that there were two separate conspiracies: one between Jones and the straw purchasers in West Virginia and one between Jones and the purchasers in Pennsylvania. The government specifically maintained that the promotional money laundering scheme was just as to Jones and Pennsylvania conspirators. Fourth Circuit found that **the government failed to show that a conspiracy existed between Jones and the Pennsylvania purchasers to engage in promotional money laundering**. The Fourth Circuit therefore **vacated Jones's conviction on this count and remanded to the district court for resentencing**. Jones also raised several sentencing challenges, only one of which the Fourth Circuit found to have potential merit **based on an amendment to the Guideline in question** (obliterated serial number).

Judge Quattlebaum dissented in part, taking the position that the majority misapplied *United States v. Santos*, 553 U.S. 507 (2008), and *United States v. Heaps*, 39 F.3d 479 (4th Cir. 1994). Judge Quattlebaum would therefore affirm Jones's conviction based on a sufficiency of the evidence of promotional money laundering.



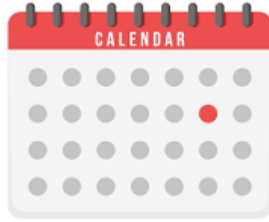
Supreme Court Upcoming/Update

On Monday, **the Supreme Court granted cert in *Jouppi v. Alaska***, No. 25-246. The question presented is whether in determining whether a fine contravenes the Excessive Fines Clause, courts may consider the gravity of the underlying offense purely in the abstract or should consider the gravity of the specific defendant's wrongdoing. In *Jouppi*, Alaska has been trying to forfeit bush pilot Ken Jouppi's Cessna airplane for several years on the basis that one of Jouppi's passengers had beer in her luggage, and the State maintained that one six-pack, at least, would have been visible to Jouppi. For certain Alaskan villages, it's a crime to bring in alcohol. And when the means of

importation is an airplane, the plane is subject to forfeiture, even if the offense is a misdemeanor, the pilot is a first-time offender, and the alcohol belonged to a customer. The Alaska Supreme Court upheld the forfeiture of petitioner's \$95,000 airplane because, the court reasoned, petitioner knew that one of his passenger's grocery bags contained a sixpack of Budweiser.

The Alaska Supreme Court looked at Jouppi's offense in abstract terms, finding that "the illegal importation of even a six-pack of beer causes grave societal harm" and that forfeiting Jouppi's airplane "does not violate the Excessive Fines Clause." The petition sought cert on whether courts should evaluate the gravity of a defendant's offense in the abstract or should instead evaluate the specific defendant's wrongdoing in assessing fines.

No date for argument has yet been set.



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.

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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Find any prior update you may have missed at:

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

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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.**