

WEEKLY APPELLATE UPDATE

Things were fairly quiet this week at the Fourth Circuit as the dog days of summer drag along. There was nothing exciting announced by the Supreme Court, as the next orders list is not due out until August 17.

Fourth Circuit Update



United States v. Melvin, No. 23-4622, 2026 WL 2147881,
<https://www.ca4.uscourts.gov/opinions/234622.P.pdf> (July 27, 2026): Melvin pleaded guilty to one count of felon in possession under § 922(g)(1). The PSR identified four prior

convictions as potential ACCA predicates. Melvin objected to three of the four predicates within 14 days as required by Rule 32(f). The government did not file PSR objections or a sentencing memorandum. At the sentencing hearing, the district court sustained Melvin's objections to two predicates, leaving only two qualifying ACCA predicates instead of the three required to impose an ACCA sentence.

After the district court ruled in Melvin's favor on two predicates, the government then proposed reliance on a conviction not previously designated in the PSR. The government indicated it had not raised this predicate earlier because the PSR already listed four predicates and it was "not entirely aware of the basis for Melvin's objections." Over defense counsel's objection, the district court granted a continuance for the preparation of a supplemental PSR, which (no shock) recommended use of the newly-identified conviction as an ACCA predicate. The district court found Melvin to be an armed career criminal and sentenced him to 188 months.

On appeal, the government filed two motions for summary disposition *and then* tried to invoke Melvin's appeal waiver. **The Fourth Circuit found the government had forfeited its right to assert the waiver by not raising it in its first responsive filing.**

The majority then held that **the district court abused its discretion by permitting the Government to introduce a new ACCA predicate without showing good cause for failing to object to the PSR's failure to identify it within the original objection period.** The court found that the government's explanation—that it was unaware of Melvin's objection basis and that the PSR already listed four predicates—did not constitute good cause.

The majority then **rejected the government's harmless error**, holding that *United States v. Dix* (which found a Rule 32 violation harmless when the

defendant received sufficient notice before sentencing) applies only when the government presents additional arguments before receiving an adverse ruling, not after. In this case, the district court had ruled against the government before it sought to identify the additional predicate. Because the district court's error resulted in at least 5 years additional incarceration, it was not harmless. The Fourth Circuit therefore **vacated and remanded for resentencing without the ACCA enhancement**.

Judge Agee **dissented**, arguing the district court properly exercised its discretion in finding good cause to excuse the government's late objection and granting a continuance for preparation of the supplemental PSR. Judge Agee emphasized that Rule 32's purpose is ensuring adequate notice and an opportunity to respond, which Melvin received through the continuance and supplemental briefing process. Judge Agee argued the majority's interpretation created unnecessary burdens on sentencing proceedings, noting other circuits permit reliance on unlisted predicates when defendants receive adequate notice before sentencing.

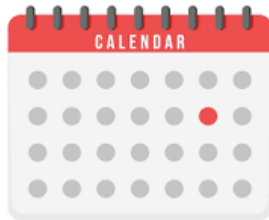
United States v. Jaqu, No. 21-4677, 2026 WL 2147875, <https://www.ca4.uscourts.gov/opinions/214677.P.pdf> (July 27, 2026): Jaqu went to trial and was convicted. Several months after the conclusion of trial but before a sentencing hearing was set, Jaqu sent a letter to the district court saying he **wanted to represent himself at sentencing**. While the district court relieved Jaqu's trial counsel, it **denied his right to proceed *pro se*, finding his request "thoroughly untimely."**

On appeal, Jaqu argued that his Sixth Amendment right to represent himself at sentencing was violated. **The Fourth Circuit agreed with Jaqu and vacated his sentence, remanding to the district court for a *Faretta* hearing and resentencing.** The Fourth Circuit determined that "a request for self-representation at sentencing made after trial but before sentencing is not subject to the discretion of the district court if the criteria for self-representation are otherwise met."



Supreme Court Upcoming/Update

The next orders list is scheduled for August 17; we'll let you know if the Court decides to take on any more cases regarding beer and airplanes. *See Jouppe v. Alaska*, No. 25-246.



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~~

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