

WEEKLY APPELLATE UPDATE

The Fourth Circuit was relatively quiet this week, issuing only one published criminal opinion as the court gears up for its September Term next week. The Supreme Court's next conference is scheduled for September 28, 2026.

Fourth Circuit Update



United States v. Martinez-Chavez, No. 25-4318, 2026 WL 2651072,

<https://www.ca4.uscourts.gov/opinions/254318.P.pdf> (Sept. 9, 2026): Martinez-Chavez was stopped for a traffic violation. His car contained several firearms and

ammunition. Martinez-Chavez was a convicted felon, and the government charged him with a § 922(g)(1) violation.

He proceeded to trial and was convicted. Martinez-Chavez appealed, raising issues regarding a pretrial request for an adverse inference jury instruction and another related to the prosecution's closing arguments (only one of which was preserved). As to closing arguments, the prosecutor called one of defendant's witnesses a liar (no objection), and later stated the case was important to law enforcement personnel removing armed felons from the community (objection). The government conceded both remarks were improper. The court found the **errors harmless because the remarks were isolated, and that curative instructions had been given** stating officer testimony deserves no special weight and arguments are not evidence. The court also found the **evidence of guilt was overwhelming**.

As to the adverse inference instruction, during discovery, defense counsel sent a general discovery request to the law enforcement agency some five months after the incident. The agency had a six-month retention policy for dispatch recordings of radio calls. However, counsel did not specifically request those recordings until October 2024, several months after the automatic deletion date. Defense counsel conceded the government acted without bad faith and with due diligence after the specific request.

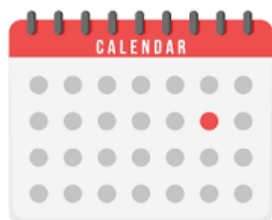
Martinez-Chavez **sought an adverse inference jury instruction based on spoliation of evidence**. The district court **denied the instruction**, finding no due process violation under *California v. Trombetta* and no entitlement under *United States v. Johnson* because the government did not know the recordings would be relevant before deletion and the automatic disposal was not willful conduct.

The court **affirmed the district court**. Martinez-Chavez failed to show the government knew the recordings were relevant before deletion or that willful conduct caused their loss.



Supreme Court Upcoming/Update

Conference scheduled for September 28, 2026. We'll be keeping an eye on the results of that big day.



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. **Removed from argument calendar 9.3.26**~~

~~**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**~~

On August 28, the Fourth Circuit issued its calendar for the October 2026 Term of Court. Here are some cases that we are following:

United States v. Chin, No. 25-4259: Whether district court erred in denying motion to dismiss superseding indictment for Speedy Trial Act violation; other issues.

In the Matter of the Search of: Under Seal, No. 25-4496: Whether target of search has Fourth Amendment or common law right to view preindictment warrant; other issues.

United States v. Cantrell, No. 24-4553: Whether search warrant affidavit lacked probable cause and whether good faith exception applies; whether district court erred in denying Defendant's request for a *Franks* hearing.

United States v. Scofield, No. 25-4646: Whether 18 U.S.C. § 922(n) is unconstitutional, both facially and as applied to defendant.

United States v. Beauregard, No. 25-4672: Whether possession of a controlled substance, in violation of Va. Code section 18.2-250, is necessarily a Grade B violation.

United States v. White, No. 23-4563: Whether White's written criminal judgment contains discretionary conditions of supervised release that are materially different from those pronounced at sentencing.

United States v. Cayemitte, No. 25-4288: Multiple sentencing challenges, including whether district court failed to give adequate weight to defendant's atypical and severe childhood trauma; applicability of categorical approach.

United States v. Bieber, No. 25-4686: Whether admission of Google Drive evidence identified by automated system, including matching hash marks, violated Confrontation Clause; other issues.

United States v. Lark, No. 24-4267: Whether defendant was prejudiced by trial counsel's erroneous advice that the government could not advocated for sentencing beyond drug quantity stipulated in factual basis.

United States v. Jones, No. 25-4084: Whether 18 U.S.C. § 3553(f)(1)(A) excludes all offenses assigned one point, including status point assigned to instant offense under USSG § 4A1.1(e).

United States v. Vause, No. 25-4119: Whether three consecutive sentences for three false statements in a single interview created multiplicity issue; whether *Apprendi* error was harmless.

United States v. Reed, No. 25-4013: Whether sufficient evidence supported continuing criminal enterprise conviction; whether district court abused its discretion by admitting certain video evidence at trial; other issues.

United States v. Everett, No. 25-4453: Whether official victim enhancement at USSG § 3A1.2(c)(1) applies; whether district court adequately explained its rationale.

United States v. Rogers, No. 25-4465: Whether district court erred in denying motion to suppress when K-9 repeatedly touched car during sniff; other issues.

United States v. Herring, No. 24-4437: Whether, in Hobbs Act robbery prosecution, the government adduced sufficient evidence that robberies affected interstate commerce; other issues.

United States v. Smith, No. 24-6528: Whether trial and appellate counsel rendered ineffective assistance of counsel by failing to challenge defendant's career offender enhancement.

United States v. Nunez-Couret, No. 25-4587: Whether felony violation of 18 U.S.C. § 111(a)(1) requires proof that defendant forcibly and intentionally caused physical contact with assault victim; other issues.

United States v. Massey, No. 25-4542: In prosecution for § 922(g)(1), was evidence sufficient for jury to find appellant knew decades-old convictions were felonies.

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