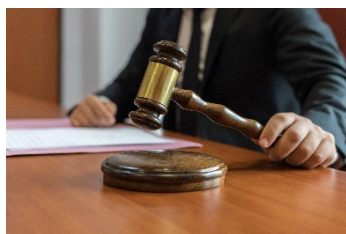


WEEKLY APPELLATE UPDATE

Things have been very quiet this week on the issued-opinions front, as the Fourth Circuit held its September Term arguments. Noted below in the *Following the Fourth Circuit* section are the cases that were heard and the panel composition.

Fourth Circuit Update

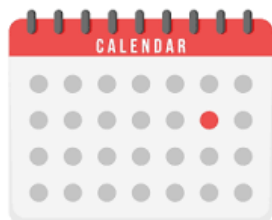


The Fourth Circuit did not issue any published criminal opinions this week.



Supreme Court Upcoming/Update

The Court's big Fall Conference scheduled for September 28, 2026. We'll be keeping an eye on the results of that 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. **Chief Judge Diaz, Judge Richardson, Senior Judge Floyd**

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. **Chief Judge Diaz, Judge Richardson, Senior Judge Floyd**

~~*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). **Continued from argument calendar 8.27.26**~~

~~*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. **Judge Wilkinson, Judge Wynn, Judge Berner**

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). **Judge Wilkinson, Judge Wynn, Judge Berner**

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. **Judge King, Judge Agee, Judge Wynn**

~~*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). **Chief Judge Diaz, Judge Niemeyer, Judge Benjamin**

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). **Chief Judge Diaz, Judge Niemeyer, Judge Benjamin**

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). **Chief Judge Diaz, Judge Niemeyer, Judge Benjamin**

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. **Judge Rushing, Senior Judge Keenan, District Judge Rodriguez**

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. **Judge Rushing, Senior Judge Keenan, District Judge Rodriguez**

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. **Judge King, Judge Gregory, Judge Wynn**

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. **Judge Agee, Judge Thacker, Judge Berner**

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. **Judge Niemeyer, Judge Gregory, Judge Richardson**

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. **Judge Wilkinson, Judge King, Judge Rushing**

~~*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. **Chief Judge Diaz, Judge Quattlebaum, Judge Heytens**

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

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. **Judge Wynn, Judge Harris, Judge Benjamin**

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

~~***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. Cayemite, 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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