

WEEKLY APPELLATE UPDATE

On August 28, the Fourth Circuit issued its October calendar, which has some interesting criminal cases on it, including a case regarding whether the district court erred in denying a motion to suppress when the K-9 repeatedly touched the car during the sniff. There's only one opinion to review this week.

Fourth Circuit Update



United States v. Arevalo, No. 24-4308, 2026 WL 2603965, <https://www.ca4.uscourts.gov/opinions/244308.P.pdf> (Sep. 3, 2026): It's time for everyone's favorite type of opinion: a multi-defendant, MS-13 appeal! This one has a very interesting wrinkle, at least. Three defendants—Arevalo, Menjivar, and Turcios—proceeded to trial on RICO and drug conspiracy charges along with several VICAR murder and weapons offenses. Ultimately, all three defendants were largely convicted as charged. The Fourth Circuit affirmed Arevalo's and Menjivar's convictions; however, the Fourth Circuit **reversed** Turcios' conviction because of the district court's handling of Turcios' closing argument.

Turcios' counsel presented Turcios' side of the story (without him testifying), vouched for various witnesses, suggested Arevalo had no reason not to testify, and argued the other defendants committed the homicides without Turcios (when all three had jointly defended the case up until that point). The district court instructed the government not to object. Following Turcios' argument, the district court **struck** the argument in its entirety and instructed the jury to disregard it completely. The Fourth Circuit **agreed with Turcios that the deprivation of a closing argument violated his right to counsel**. The Fourth Circuit concluded the district court should have permitted contemporaneous objections to the argument as portions of it were permissible. The Fourth Circuit found that while a district court "enjoys broad discretion to control closing arguments," a judge abuses that discretion when it "strikes all of the argument, even the unobjectionable parts." Accordingly, the Fourth Circuit remanded Turcios' case for a new trial.

The Fourth Circuit affirmed Arevalo's and Menjivar's convictions, concluding:

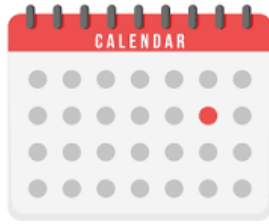
- The district court's handling of Turcios' closing argument did not prejudice either Arevalo or Menjivar as the jury presumably followed the court's instruction to ignore Turcios' closing argument altogether;
- The district court did not err in refusing to permit Arevalo or Menjivar from cross-examining a cooperating witness about a rape allegation made against the witness by the witness' girlfriend;

- Arevalo and Menjivar could not show the deportation of a witness violated their due process rights as the testimony of that witness would have been cumulative to other evidence presented at trial;
- Arevalo and Menjivar could not show that the government's alleged failure to maintain a jail call between a co-defendant and his mother resulted in prejudice or that the government acted in bad faith in failing to maintain the evidence;
- The district court did not err in barring a co-defendant's testimony due to a late *Brady* disclosure rather than dismissing the charges against Arevalo and Menjivar;
- The district court did not err in setting aside the jury's verdict regarding the RICO conspiracy pertaining to Arevalo. The jury found Arevalo guilty of RICO conspiracy and made a factual finding that he killed a victim. However, the jury also found Arevalo not guilty of VICAR murder with regard to that victim. The Fourth Circuit concluded the jury could have concluded Arevalo did kill the victim but without the necessary purpose to establish a VICAR violation; thus, the verdicts and special findings could stand with one another.



Supreme Court Upcoming/Update

The Supreme Court issued an orders list today; however, those orders largely dealt with petitions for rehearing, miscellaneous relief such as requests for stays, and attorney discipline. The Court will meet for its “long conference” on September 28, and the Court typically grants certiorari in several cases following that conference.



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.

~~***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 advocate 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.

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

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