

FOURTH CIRCUIT DECISIONS ON
CRIMINAL LAW AND PROCEDURE

Published Between April 1, 2025, and March 31, 2026

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TABLE OF CONTENTS

INTRODUCTION	1
I. OFFENSES	1
8 U.S.C. § 1326, Illegal Reentry After Removal	1
18 U.S.C. § 245, Intimidation Against Federally Protected Activities	1
18 U.S.C. § 249, Hate Crimes	2
18 U.S.C. § 401, Criminal Contempt	2
18 U.S.C. § 842, Teaching the Making of Explosives	2
18 U.S.C. § 844, Use of Fire to Commit a Felony	2
18 U.S.C. §§ 922, 924, Firearms	2
18 U.S.C. § 1014, Mortgage Fraud	4
18 U.S.C. § 1028A, Aggravated Identity Theft	4
18 U.S.C. § 1030, Computer Fraud	4
18 U.S.C. § 1343, Wire Fraud	4
18 U.S.C. § 1347, Health Care Fraud	5
18 U.S.C. § 1546, Visa Fraud	5
18 U.S.C. § 1589, Forced Labor	5
18 U.S.C. § 1621, Perjury	6
18 U.S.C. § 1958, Using Interstate Commerce in Commission of Murder-for-Hire	6
18 U.S.C. § 1959, Violent Crimes in Aid of Racketeering Activity	6
18 U.S.C. § 1962, RICO – Prohibited Activities	7
18 U.S.C. § 2250, Failure to Register	7
18 U.S.C. § 2251, Sexual Exploitation of Children	7
21 U.S.C. § 841 et seq., Controlled Substances, Prohibited Acts	7
42 U.S.C. § 1320a-7b, Anti-Kickback Statute	8

	42 U.S.C. § 3631, Intimidation Based on Race Preventing Fair Housing.....	8
II.	FIRST AMENDMENT ISSUES	9
III.	SECOND AMENDMENT ISSUES	9
IV.	FOURTH AMENDMENT ISSUES	9
	Consent to Search	9
	Independent Source.....	9
	Probable Cause.....	10
	Reasonableness of Search	11
	Reasonable Suspicion	11
	Seizures	12
	Traffic Stops.....	12
	Exclusionary Rule/Good Faith Exception	13
V.	FIFTH AMENDMENT ISSUES (Pre-trial and Trial).....	13
	Double Jeopardy	13
	Due Process.....	14
	Grand Juries	16
	Self-Incrimination	16
VI.	SIXTH AMENDMENT ISSUES (Pre-trial and Trial)	17
	Confrontation Clause	17
	Speedy Trial	17
	Impartial Jury	18
	Trial by Jury	18
	Assistance of Counsel	18
	Right to compel testimony	19

VII.	EIGHTH AMENDMENT ISSUES	19
VIII.	FOURTEENTH AMENDMENT ISSUES	20
	Equal Protection Clause	20
IX.	OTHER PRE-TRIAL ISSUES	20
	Continuance	20
	Federal Rule of Criminal Procedure 8	20
	Federal Rule of Criminal Procedure 11	20
	Federal Rule of Criminal Procedure 16	21
	18 U.S.C. § 3161 et seq., Speedy Trial Act	22
	18 U.S.C. § 2518, Wiretap Procedure	22
X.	TRIAL AND POST-TRIAL ISSUES	23
	Jurisdictional Elements	23
	Jury Selection	23
	Evidence	24
	Federal Rules of Evidence 401 et seq.	24
	Federal Rules of Evidence 600 et seq.	25
	Federal Rules of Evidence 701 et seq.	25
	Federal Rules of Evidence 801 et seq.	26
	Sufficiency of Evidence	27
	Venue	27
	Mistrials	28
	Defenses	28
	Jury Instructions	28
	Federal Rule of Criminal Procedure 23	29

Federal Rule of Criminal Procedure 29	29
Federal Rule of Criminal Procedure 33	29
Federal Rule of Criminal Procedure 37	30
Federal Rule of Criminal Procedure 59	30
28 U.S.C. § 1827, Interpreters	30
XI. SENTENCING ISSUES	31
Sentencing Statutes	31
18 U.S.C. § 3584, Multiple Sentences of Imprisonment	31
Sentencing Guidelines	31
U.S.S.G. § 1B1.3, Relevant Conduct.....	31
U.S.S.G. § 2A4.1, Kidnapping, Abduction, Unlawful Restraint	31
U.S.S.G. § 2B1.1, Larceny, Embezzlement, and Other Forms of Theft.....	31
U.S.S.G. § 2B3.1, Robbery, Extortion, and Blackmail.....	32
U.S.S.G. § 2D1.1, Unlawful Manufacturing, Trafficking, or Possession With Intent to Traffic in Controlled Substances	32
U.S.S.G. § 2G1.3, Promotion of Prohibited Sexual Conduct with a Minor	32
U.S.S.G. § 2G2.2, Trafficking, Receiving, Transporting, Shipping, Soliciting, Advertising or Possessing Material Involving the Sexual Exploitation of a Minor.....	33
U.S.S.G. § 2K2.1 et seq., Firearms Offenses.....	33
U.S.S.G. § 3A1.1 et seq., Victim Related Adjustments.....	33
U.S.S.G. § 3B1.1 et seq., Role Related Adjustments	34
U.S.S.G. § 3C1.1 et seq., Obstruction Related Adjustments	34
U.S.S.G. § 4B1.2, Definitions of Terms Used in Section 4B1.1	34
Sentencing Procedure.....	35
Restitution and Forfeiture	35

18 U.S.C. § 2259, Mandatory Restitution.....	35
Supervised Release (Including Revocation Issues)	36
Reasonableness of Sentence	37
XII. APPELLATE ISSUES.....	37
Appeal Waivers.....	37
Reviewability of Issues (Including Appellate Jurisdiction and Standards of Review)	38
XIII. SELECTED POST-CONVICTION ISSUES	39
18 U.S.C. § 3582(c) Motions	39
28 U.S.C. § 2241 Petitions.....	39
28 U.S.C. § 2255 Motions	40

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INTRODUCTION

This outline documents the published decisions of the Fourth Circuit over the past twelve months that address criminal law and procedure issues encountered by court-appointed attorneys or relevant to court-appointed representation, primarily on direct appeal. Decisions that represent defense wins or otherwise contain defense-favorable findings are marked by an exclamation point (!). Decisions that, in the compiler's judgment, are significant because they contain particularly lengthy, thoughtful, or otherwise useful discussion are marked by an asterisk (*). Note that not every issue raised in a decision is reflected in the outline. Finally, note that quotations in this outline may be "cleaned up" by the omission of internal quotations, citations, or alterations; be sure to refer to the actual opinions for the Court's exact language. Please report errors or omissions in the outline to the compiler at patrick_bryant@fd.org.

I. OFFENSES

8 U.S.C. § 1326, Illegal Reentry After Removal

United States v. Castro-Aleman, No. 24-4032, 141 F.4th 576 (4th Cir. June 26, 2025) (Richardson, J.) (E.D. Va.) (affirming denial of collateral attack on removal order because removal proceedings were not fundamentally unfair, in that defendant had no constitutional right to be properly advised of eligibility for discretionary asylum, making it irrelevant that immigration judge failed to adequately develop the record regarding potential asylum claim, and further that defendant could not show prejudice because there was no reasonable probability that he would have prevailed in an asylum proceeding)

18 U.S.C. § 245, Intimidation Against Federally Protected Activities

United States v. Hudak, No. 24-4313, 156 F.4th 405 (4th Cir. Oct. 7, 2025) (Wilkinson, J.) (M.D.N.C.) (holding that mental health evidence (other than insanity) was irrelevant to factual question in hate crimes case involving race-based assault of victim in road rage incident (with federal jurisdiction based on victim's travel in interstate commerce); noting that statute requires that assault happened "because of" race and that a crime can have multiple but-for causes, including mental illness, but "[a]s long as the defendant would not have attacked [the victim] if [the victim] were a different race, the defendant has committed the attack 'because of' race")

18 U.S.C. § 249, Hate Crimes

United States v. Ritter, No. 24-4576, 167 F.4th 677 (4th Cir. Feb. 18, 2026) (Richardson, J.) (D.S.C.) (finding evidence sufficient to prove that defendant killed his sexual partner—a trans woman—“because of” her “gender identity,” 18 U.S.C. § 249(a)(2), because he feared people knowing that he was in a relationship with a trans woman, meaning that the killing was “because of one of Doe’s perceived gender-related characteristics: Doe’s biological sex”)

18 U.S.C. § 401, Criminal Contempt

United States v. Jamerson, No. 25-4045, 168 F.4th 188 (4th Cir. Feb. 27, 2026) (King, J.; Benjamin, J., concurring) (W.D.N.C.) (affirming criminal contempt conviction for third-party custodian whose son did not report to prison as ordered; finding that release order was in effect during that period, notwithstanding its citation to pre-trial release statute instead of post-conviction release statute; further finding that terms of release order were sufficiently clear to apprise TPC of requirements and consequences) (N.B.: Judge Benjamin concurred to advise district courts to clearly tell potential TPC’s about the possibility of contempt convictions and jail time.)

18 U.S.C. § 842, Teaching the Making of Explosives

See First Amendment Issues, *infra*

18 U.S.C. § 844, Use of Fire to Commit a Felony

! *United States v. Florentine*, No. 24-4206, 147 F.4th 477 (4th Cir. Aug. 7, 2025) (Berner, J.) (D.S.C.) (vacating conviction for use of fire to commit a felony—here, interstate domestic violence—because victim was already dead by the time defendant lit her corpse on fire; reasoning that offense of interstate domestic violence ends when the victim dies, and so defendant’s actions in trying to conceal the crime could not have contributed to its commission; ultimately concluding that remand was not necessary since district court repeatedly announced it would impose same sentence even without that count)

18 U.S.C. §§ 922, 924, Firearms

United States v. Fulton, No. 24-4300, 136 F.4th 185 (4th Cir. May 6, 2025) (Rushing, J.) (E.D.N.C.) (holding, for purposes of prosecution under 18 U.S.C. § 922(g)(1), that issue of whether a prior conviction is a “felony” is a question of law for the court to decide, not a question of fact for the jury, and hence reversing district court’s grant of motion for acquittal, or in the alternative a new trial, because district court was empowered to consider state-law authorities regardless of whether they were admitted at trial, and observing that here there was ample bases for concluding that defendant’s prior offense was a felony despite the fact that he had only received a 13-day sentence for it)

United States v. Nutter, No. 22-4541, 137 F.4th 224 (4th Cir. May 14, 2025) (Agee, J.) (S.D. W. Va.) (holding that 18 U.S.C. § 922(g)(9), which prohibits possession of a firearm by a person who has been convicted of a misdemeanor crime of domestic violence, is not facially unconstitutional under the Second Amendment, since there are at least some circumstances where the law could validly apply, as all defendants with an MCDV conviction would necessarily have been convicted of an offense involving the use of force against a victim, relying on similarity to § 922(g)(8), which had been upheld in *United States v. Rahimi*, 602 U.S. 680 (2024); rejecting argument that *Rahimi* was distinguishable because that prohibition was only temporary (i.e., while the person was subject to a restraining order), reasoning that due process concerns related to imposition of restraining order in absence of conviction were not present when the person has a qualifying MCDV conviction)

United States v. Gould, No. 24-4192, 163 F.4th 795 (4th Cir. July 29, 2025) (Diaz, J.) (S.D. W. Va.) (holding that 18 U.S.C. § 922(g)(4), which prohibits possession of a firearm after having been committed to a mental institution, was not facially unconstitutional under the Second Amendment, because even though defendant's conduct—possession of a shotgun at home—was presumptively protected by the Second Amendment, the prohibition was not a permanent one, since several states had mechanisms for relief, and historical tradition of firearm regulation included disarming “dangerous” people, and mentally ill people could reasonably fall within the ambit of such treatment)

United States v. Murillo-Lopez, No. 23-4302, 151 F.4th 584 (4th Cir. Aug. 18, 2025) (Heytens, J.; Benjamin, J., dissenting) (E.D. Va.) (concluding that 18 U.S.C. § 922(g)(5), which prohibits possession of firearms by one who is illegally or unlawfully in the United States, was not unconstitutional under the Second Amendment, since pre-*Bruen* precedent upholding statute remained good law because it accurately determined that undocumented non-citizens “do not belong to the class of law-abiding members of the political community to whom the Second Amendment gives protection”)

United States v. Jackson, No. 24-4114, 152 F.4th 564 (4th Cir. Sept. 12, 2025) (Diaz, J.) (D. Md.) (holding that 18 U.S.C. § 922(n), which makes it unlawful for a person under indictment to transport a firearm in interstate commerce, is not unconstitutional under the Second Amendment, because even if defendant's possession of a gun is generally within the scope of the Second Amendment, the law was similar to historical regulations like surety laws, permitting a legislative judgment to disarm those who might use a firearm irresponsibly)

United States v. Nji, et al., No. 23-4236, 159 F.4th 259 (4th Cir. Nov. 18, 2025) (Niemeyer, J.) (D. Md.) (finding evidence in firearm smuggling case sufficient to prove that defendants knew the firearms had obliterated serial numbers (18 U.S.C. § 922(k)) because they constituted a small, tight-knit group dedicated to smuggling weapons to one side of sectarian fight in Cameroon, testimony that group members knew they had to conceal what they were doing, and photos of guns showed obvious defacing of serial numbers)

! *United States v. Jacobs*, No. 24-4287, 166 F.4th 395 (4th Cir. Jan. 21, 2026) (Agee, J.) (N.D.W. Va.) (finding facial and as-applied challenges to 18 U.S.C. § 922(g)(1) precluded by *Hunt* and *Canada*, and facial challenge to 18 U.S.C. § 922(g)(9) precluded by *Nutter*, but remanding district court's ruling that § 922(g)(9) was unconstitutional as applied to defendant for further

consideration in light of those recent Fourth Circuit opinions, noting that there was very little factual development in the record of his circumstances that might be relevant for an as-applied challenge)

18 U.S.C. § 1014, Mortgage Fraud

! *United States v. Mosby*, No. 24-4304, 143 F.4th 264 (4th Cir. July 11, 2025) (Thacker, J.; Niemeyer, J., dissenting in part) (holding the district court erred in giving jury instruction that venue in mortgage fraud case was proper in any district where defendant took an act in furtherance of the offense, as that could have allowed conviction based on mere preparatory acts instead of essential conduct acts, and finding that there was insufficient evidence that defendant conducted essential acts of communicating false statements in mortgage application in Maryland)

18 U.S.C. § 1028A, Aggravated Identity Theft

! *United States v. McDonald*, No. 24-4362, 166 F.4th 440 (4th Cir. Feb. 5, 2026) (Gregory, J.) (W.D. Va.) (reversing aggravated identity theft conviction of former executive director of county economic development agency who used various schemes including forged contracts and deeds to siphon funds from agency into her own accounts, concluding that identity theft was not the “crux” of the specifically identified fraud offense in the indictment because the use of someone else’s identity “was an element of her broader scheme to profit from fraudulent behaviors, but it was ancillary to the particular wire fraud charged,” citing standard from *Dubin v. United States*, 599 U.S. 110 (2023) that identity theft must encompass, not merely support, underlying felony)

18 U.S.C. § 1030, Computer Fraud

! *United States v. Umeti*, No. 24-4478, 167 F.4th 687 (4th Cir. Feb. 19, 2026) (Agee, J.) (E.D. Va.) (reversing conviction for computer fraud (arising from phishing schemes) due to lack of proof of \$5,000 in loss to victim, an element necessary to raise statutory maximum from one year to ten years (18 U.S.C. § 1030(c)(4)(B)(i)), because even though there was some testimony about investigation and remediation of computer crimes, it included no dollar figures, leading Fourth Circuit to say that any conclusion as to loss amount would be “pure guesswork”)

18 U.S.C. § 1343, Wire Fraud

United States v. Sanders, No. 23-4486, 146 F.4th 372 (4th Cir. July 24, 2025) (Hanes, D.J., sitting by designation) (D. Md.) (affirming wire fraud conviction of man who committed fraud in the provision of IT equipment and services to government agencies (failing to deliver some equipment he had accepted payment for and providing substandard equipment in other cases), finding that district court did not err by instructing jury that it could infer intent from “the secretive or irregular manner in which a transaction is carried out,” rejecting argument that instruction conflated irregularity of process with willful intent to defraud because instructions as a whole correctly described mens rea requirement)

18 U.S.C. § 1347, Health Care Fraud

! *United States v. Elfenbein*, No. 24-4048, 144 F.4th 551 (4th Cir. July 17, 2025) (Richardson, J.) (D. Md.) (reversing district court's grant of motion for judgment of acquittal in case of urgent-care clinic doctor accused of overbilling insurance companies, because it was within jury's province to determine whether doctor's interpretation of billing codes was reasonable; affirming, however, district court's grant of motion for new trial, reasoning that evidence was close, the most damning testimony came from the defendant's own witnesses rather than the government's evidence, and district court had discretion to re-weigh the evidence when considering new trial motion)

18 U.S.C. § 1546, Visa Fraud

United States v. Aborisade, No. 24-4466, 163 F.4th 856 (4th Cir. Jan. 8, 2026) (Benjamin, J.; Heytens, J., dissenting) (D. Md.) (holding that evidence was sufficient for visa fraud conviction of defendant who prepared false immigration visa self-petitions under the Violence Against Women Act; noting that the statute refers to "documents required by immigration laws or regulations," and rejecting argument that no specific type of evidence is required (and so the false documents he submitted were not "required" ones) because the statute requires at least *some* evidence, so whatever he submitted was a "required" document; further rejecting argument that defendant did not violate the statute's "knowingly presents" element because he did not submit the application under oath, holding that statute does not contain an oath requirement, noting circuit split on this issue)

18 U.S.C. § 1589, Forced Labor

United States v. Chaudhri, No. 23-4054, 134 F.4th 166 (4th Cir. Apr. 8, 2025) (Thacker, J.) (E.D. Va.) (holding that the forced labor statute, 18 U.S.C. § 1589, applies to "the domestic labor of a family member obtained by another member of the family," such as here where one defendant and her two adult sons forced the wife of one of the sons to perform household labor via force, coercion, physical restraints, and threats of harm; further holding that statute is not unconstitutionally vague, adopting common dictionary definitions for "labor" and "services," and reasoning that a person of ordinary intelligence would understand that statute prohibits forcing a family member to perform domestic chores) (concurring, Judge Berner, joined by Judge Thacker, further expounded that the forced labor statute is constitutional because it was enacted to enforce the Thirteenth Amendment)

United States v. Chaudhri, No. 23-4054, 134 F.4th 166 (4th Cir. Apr. 8, 2025) (Thacker, J.) (E.D. Va.) (holding that district court erred in instructing jury on "threats" element of forced labor statute, noting that under *Counterman v. Colorado*, 600 U.S. 66 (2023), a "true threat" requires a subjective intent to threaten, meaning that defendant at least acted with reckless disregard for the fact that his statement could be taken as a threat, but concluding that instruction error was harmless in light of sufficiency of evidence on other theories of guilt)

18 U.S.C. § 1621, Perjury

United States v. Mosby, No. 24-4304, 143 F.4th 264 (4th Cir. July 11, 2025) (Thacker, J.; Niemeyer, J., dissenting in part) (affirming perjury conviction for former state's attorney who stated she made pre-retirement withdrawals under COVID-19 relief act because she was suffering "adverse financial consequences" as a result of pandemic, when in fact she avoided taxes on withdrawn funds and used them to buy vacation homes; rejecting argument that "adverse financial consequences" is fundamentally ambiguous, especially in light of qualifiers surrounding term on disbursement form)

18 U.S.C. § 1958, Using Interstate Commerce in Commission of Murder-for-Hire

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (rejecting argument that murder-for-hire and conspiracy to commit murder-for-hire were same offense for double jeopardy purposes, reasoning that murder statute has element requiring defendant to take an act affecting interstate commerce while conspiracy statute does not, and conspiracy statute requires agreement that murder statute does not; noting that the substantive murder-for-hire offense "does not require the existence of an actual murder-for-hire agreement," because "the statutory phrase 'consideration for a promise or agreement to pay' does not create a separate 'agreement element,' but rather modifies the type of intent which a defendant must possess" when traveling in or otherwise affecting interstate commerce")

18 U.S.C. § 1959, Violent Crimes in Aid of Racketeering Activity

United States v. Contreras-Avalos, No. 23-4048 139 F.4th 314 (4th Cir. June 3, 2025) (Wilkinson, J.) (D. Md.) (rejecting argument that evidence was insufficient to prove VICAR murder in MS-13 gang case where defendant was involved in attack on victim, noting that government can prove "purpose" element of 18 U.S.C. § 1959(a) (that defendant acted "for the purpose of maintaining or increasing his position" in the racketeering enterprise) by showing that defendant knew that the violent act was expected of him by virtue of his membership in the gang)

United States v. Ordonez-Zometa, No. 23-4185, 141 F.4th 531 (4th Cir. June 17, 2025) (King, J.) (D. Md) (holding, in MS-13 RICO conspiracy and VICAR murder case, that evidence was sufficient to prove that gang clique's activity affected interstate or foreign commerce, noting that only a de minimis impact is necessary, and evidence here included use of cell phones by defendants to coordinate gang business, as well as use of Western Union to transfer money to gang leaders in El Salvador)

! *United States v. Jenkins*, No. 24-4220, 169 F.4th 497 (4th Cir. Mar. 10, 2026) (Agee, J.) (E.D. Va.) (affirming most VICAR convictions arising from loose-knit gang involved in drug trafficking and firearm offenses that attempted to kill rival gang members in retaliation for death of their associate, mostly rejecting arguments about whether this group qualified as a RICO enterprise and whether each defendant was a member in it and/or acted with the purpose of furthering their positions in it; reversing, however, one conviction for VICAR attempted murder because that defendant simply fired a gun at a house but lacked specific intent to kill anyone)

18 U.S.C. § 1962, RICO – Prohibited Activities

United States v. Ordonez-Zometa, No. 23-4185, 141 F.4th 531 (4th Cir. June 17, 2025) (King, J.) (D. Md) (holding, in MS-13 RICO conspiracy and VICAR murder case, that evidence was sufficient to prove that gang clique’s activity affected interstate or foreign commerce, noting that only a de minimis impact is necessary, and evidence here included use of cell phones by defendants to coordinate gang business, as well as use of Western Union to transfer money to gang leaders in El Salvador)

18 U.S.C. § 2250, Failure to Register

United States v. Kokinda, No. 22-4595, 146 F.4th 405 (4th Cir. July 28, 2025) (Thacker, J.) (N.D. W. Va.) (affirming conviction of sex offender for failing to register after he moved around a general area, staying at various campsites; holding (after remand from Supreme Court) that SORNA guidelines promulgated by Attorney General defining ambiguous term “habitually lives” were not entitled to *Chevron* deference, but that under *Loper Bright* they were “an accurate construction of the law,” such that jury instructions based on the guideline were not erroneous)

18 U.S.C. § 2251, Sexual Exploitation of Children

* *United States v. Deritis*, No. 23-4150, 137 F.4th 209 (4th Cir. May 14, 2025) (Thacker, J.) (W.D.N.C.) (holding, in CSAM production case, that jury instruction defining “lascivious exhibition” by reference to “*Dost* factors” contained “adequate safeguards,” including instructions that (1) mere nudity alone was not sufficient to establish “lascivious exhibition”; (2) jury should not rely exclusively on *Dost* factors; (3) no single factor is dispositive; and (4) discouraged a strict and mathematical application of the factors)

United States v. Deritis, No. 23-4150, 137 F.4th 209 (4th Cir. May 14, 2025) (Thacker, J.) (W.D.N.C.) (finding evidence sufficient to prove CSAM production where defendant “used” minor to produce depictions of sexually explicit conduct by (1) placing a hidden camera in bathroom, and (2) taking photo of minor’s hand on his own genitals, which satisfied statutory requirement of lascivious exhibition of genitals of *any person*)

21 U.S.C. § 841 et seq., Controlled Substances, Prohibited Acts

United States v. Naum, No. 20-4133, 134 F.4th 234 (4th Cir. Apr. 11, 2025) (Quattlebaum, J.) (N.D. W. Va.) (affirming conviction of doctor for conspiracy and aiding and abetting the distribution of controlled substances based on actions of nurse at his medical clinic (who prescribed drugs without a doctor’s supervision), noting that the government must prove not only that he knowingly or intentionally distributed controlled substances, but also that he knew or intended that his conduct was unauthorized, citing *Ruan v. United States*, 597 U.S. 450 (2022); finding that district court erred in not instructing jury on subjective-knowledge element, and that error was plain in light of *Ruan*, but that Naum could not show that incorrect instruction actually

affected the outcome, since evidence was strong that Naum knew what nurse was doing, knew that it was illegal, and signed off on it anyway)

United States v. Henderson, No. 22-4447, 136 F.4th 527 (4th Cir. May 7, 2025) (Rushing, J.) (W.D. Va.) (affirming, in case involving conspiracy to distribute methamphetamine, district court's refusal to instruct jury that the mere existence of a buyer-seller relationship did not prove a conspiracy, noting settled circuit precedent that a single buy-sell transaction involving substantial quantity of drugs can support inference of knowing participation in a distribution conspiracy; further observing that evidence here included delivery of a large amount of drugs, and thus a buyer-seller instruction would potentially mislead the jury)

United States v. Cabrera-Rivas, No. 22-4331, 142 F.4th 199 (4th Cir. June 30, 2025, *as amended* July 8, 2025) (Diaz, J.; Gregory, J., concurring in part, dissenting in part, and dissenting from judgment) (W.D.N.C.) (finding evidence of constructive possession sufficient in case charging both conspiracy and possession with intent to distribute drugs, noting that there was evidence that defendant was part of a concerted effort to arrange drug deal and was able to control the movements of others and production and price of drugs, even though he never physically handled them; observing that result might be different if defendant was mere "arms-length broker" who was not closely tied enough to principals so as to ensure delivery)

42 U.S.C. § 1320a-7b, Anti-Kickback Statute

United States v. Booker, No. 23-4612, 146 F.4th 332 (4th Cir. July 22, 2025) (Diaz, J.) (W.D.N.C.) (affirming conviction of operator of company providing drug testing services under Anti-Kickback Statute, which prohibits paying kickbacks to refer someone for services that are reimbursable by Medicaid, where evidence was sufficient for jury to conclude that defendant's relationship with director of community organization was not a legitimate agency relationship but rather a scheme to obtain patients for the drug testing company; additionally rejecting argument that Anti-Kickback Statute violates the non-delegation doctrine because Congress provided extensive guidance for Department of Health and Human Services to promulgate regulations)

42 U.S.C. § 3631, Intimidation Based on Race Preventing Fair Housing

United States v. Hudak, No. 24-4313, 156 F.4th 405 (4th Cir. Oct. 7, 2025) (Wilkinson, J.) (M.D.N.C.) (holding that mental health evidence (other than insanity) was irrelevant to factual question in hate crimes case involving race-based assault of neighbor under statute prohibiting injury or intimidation based on race because the victim was occupying a dwelling; noting that statute requires that assault happened "because of" race and that a crime can have multiple but-for causes, including mental illness, but "[a]s long as the defendant would not have attacked his neighbor if the neighbor were a different race, the defendant has committed the attack 'because of' race")

II. FIRST AMENDMENT ISSUES

United States v. Arthur, No. 24-4306, 160 F.4th 597 (4th Cir. Dec. 3, 2025) (Agee, J.; Gregory, J., dissenting) (E.D.N.C.) (rejecting facial challenge to statute prohibiting teaching someone how to make or use explosives while knowing that such person intends to use such information to commit crime of violence, 18 U.S.C. § 842(p)(2)(B), holding that statute does not cover a substantial amount of protected speech, and indeed that it may not cover *any* protected speech since it falls into category of speech integral to crime because statute requires knowledge that recipient of information will use it in relation to crime of violence; concluding that speech covered by the statute is a “far cry” from protected abstract advocacy of violence)

! *United States v. Al-Timimi*, No. 14-4451, 164 F.4th 292 (4th Cir. Jan. 9, 2026) (Wynn, J.) (E.D. Va.) (vacating convictions for, inter alia, soliciting others to levy war against the U.S. where defendant, who was respected elder at Virginia mosque, told several mosque members just after 9/11 to go join the mujahadeen, offering guidance about being discreet and encouraging them to meet up with a particular terrorist group in Pakistan; holding that none of the defendant’s statements constituted incitement under the *Brandenburg* test, which requires that the “advocated-for lawless action must be happening quite soon,” whereas the action urged in these statements was “neither sufficiently imminent nor sufficiently definite to lose First Amendment protection,” with the court noting that he “specified no time from in which these actions should be completed and no details as to how they should be carried out,” making his “exhortations vague and general” and “merely encouragement,” which was not sufficient to support aiding and abetting convictions, noting that he also did not encourage, “with the requisite intent, a *specific* unlawful act”)

III. SECOND AMENDMENT ISSUES

See 18 U.S.C. § 922, 924, Firearms, *supra*

IV. FOURTH AMENDMENT ISSUES

Consent to Search

United States v. Alvarado Dubon, No. 24-4076, 135 F.4th 202 (4th Cir. April 30, 2025) (Heytens, J.) (E.D. Va.) (affirming district court’s finding that defendant consented to police search of his home after allowing them to enter the house into its front room and then allowing them to conduct further exploration of other rooms in the guise of a protective sweep, where they found a rifle the defendant was prohibited from possessing, noting that police were not obligated to tell defendant he could refuse consent, and further noting that defendant did not revoke consent before rifle was found)

Independent Source

United States v. Deritis, No. 23-4150, 137 F.4th 209 (4th Cir. May 14, 2025) (Thacker, J.) (W.D.N.C.) (holding, in CSAM production case, that evidence from defendant’s Google account—which was obtained pursuant to a valid warrant—was admissible as it was derived

independently from allegedly improper seizure of Google account when it was subject of earlier preservation request under Stored Communications Act, 18 U.S.C. § 2703(f), and thus avoiding questions of whether preservation request amounted to a seizure or whether, if so, the delay in obtaining a warrant after the seizure was reasonable)

Probable Cause

United States v. Dugan, No. 22-4642, 136 F.4th 162 (4th Cir. May 1, 2025) (King, J.) (S.D. W. Va.) (finding that warrant to search defendant’s residence was supported by probable cause, where affidavit related that a foreign agency tracked defendant’s access of a dark-web site hosting CSAM and described extensive steps necessary to register for access, which permitted inference that defendant had not “stumbled upon the site or its content by accident”)

United States v. Joseph, No. 24-4108, 138 F.4th 797 (4th Cir. May 28, 2025) (Heytens, J.) (S.D. W. Va.) (finding warrantless arrest supported by probable cause when, after a valid *Terry* stop based on reasonable suspicion of drug dealing, police found a knife with a white powdery substance on it during a pat-down and a drug dog alerted to bag defendant had been carrying; noting that defendant was not formally arrested before dog alert even though he had been handcuffed, because restraint is not automatically sufficient to constitute an arrest, and because detention was not longer than necessary to confirm or dispel suspicion)

United States v. Ordonez-Zometa, No. 23-4185, 141 F.4th 531 (4th Cir. June 17, 2025) (King, J.) (D. Md) (affirming denial of motion to suppress in MS-13 murder case after finding that warrant affidavit readily supplied probable cause to believe that evidence would be found in defendant’s residence—where he returned shortly after the murder, allowing the inference that blood or clothing could be found there—and defendant’s phone and Facebook account—since there was evidence the murder was recorded, permitting inference that video would be found in those locations; further holding that evidence would have been admissible under the good faith exception in any event)

United States v. Krueger, No. 24-4328, 145 F.4th 460 (4th Cir. July 25, 2025) (Harris, J.) (E.D. Va.) (rejecting argument that probable cause was not “stale” in CSAM-receipt case even though November 2019 warrant described internet activity in January 2019, reasoning that affidavit explained that collectors of CSAM rarely delete it (and provided sufficient basis to think that the internet user was such a collector based on the number of uploads and downloads), and strong possibility that a thorough search of devices could uncover material even if it had been deleted)

United States v. Glass, No. 24-4193, 160 F.4th 563 (4th Cir. Dec. 2, 2025) (Wilkinson, J.) (W.D.N.C.) (holding that district court did not err in denying motion to suppress after *Franks* hearing in CSAM case, agreeing that officer’s affidavit (based on defendant’s ex-wife’s allegations that he had numerous images on his computer) did not intentionally or recklessly omit fact that ex-wife had previously accused defendant of similar actions that did not lead to criminal charges, because that did not necessarily mean prior accusations were untrue, and on this occasion, ex-wife provided “detailed and specific” information that established her “basis of knowledge”)

Reasonableness of Search

United States v. Krueger, No. 24-4328, 145 F.4th 460 (4th Cir. July 25, 2025) (Harris, J.) (E.D. Va.) (affirming denial of motion to suppress in CSAM receipt case upon holding that delay between seizure of devices in November 2019 and federal search warrant application in September 2022 was not unreasonable because defendant's devices were seized and controlled by state police and in any event he did not timely assert a possessory interest in the return of the property)

United States v. Johnson, No. 23-4255, 148 F.4th 287 (4th Cir. Aug. 5, 2025) (Harris, J.) (D. Md.) (finding that police use of drug detection dog to conduct sniff at defendant's door in common hallway of apartment building did not intrude on defendant's reasonable expectation of privacy, and did not encroach on his curtilage since he did not own or otherwise have the right to exclude others from the area immediately around his doorway)

! *United States v. Perez*, No. 23-7280, 167 F.4th 709 (4th Cir. Feb. 23, 2026) (Benjamin, J.) (M.D.N.C.) (holding that a condition of supervised release that permits a warrantless search of a supervisee's "property" does not permit the government to search real property owned by him and leased by a third-party resident, and further concluding that in order to rely on the supervised release conditions to search the tenant's residence, the officers must have had probable cause to believe that the supervisee also resided at the tenant's home, which they did not have here) (N.B: This holding arose in the context of a civil forfeiture action brought by the government against approximately \$25,000 in currency discovered during the search, money believed to be connected to drugs; both landlord and tenant claimed part of the money.)

United States v. Lowers, No. 24-4546, 170 F.4th 134 (4th Cir. Mar. 10, 2026) (Thacker, J.; King, J., concurring in the judgment) (E.D.N.C.) (holding that defendant had reasonable expectation of privacy in his Google Drive account, notwithstanding that it contained CSAM that Google notified law enforcement about, and notwithstanding Google's terms of use, meaning that law enforcement's search of files beyond those initially examined by Google employee was a Fourth Amendment violation, but concluding that exclusion was not required because this violation was ultimately too attenuated from evidence eventually seized from defendant's home)

Reasonable Suspicion

United States v. Joseph, No. 24-4108, 138 F.4th 797 (4th Cir. May 28, 2025) (Heytens, J.) (S.D. W. Va.) (affirming denial of motion to suppress after finding that reasonable suspicion supported seizure of defendant, noting that police had received tip about drug activity in a hotel room, saw plastic baggies and scales in room, saw defendant leave room carrying a duffel bag while appearing to check over his shoulder as if he was wary of being followed, and defendant took off running when he saw police)

United States v. Murillo-Lopez, No. 23-4302, 151 F.4th 584 (4th Cir. Aug. 18, 2025) (Heytens, J.; Benjamin, J., dissenting) (E.D. Va.) (affirming denial of motion to suppress premised on traffic stop conducted by police who were looking for person named in arrest warrant, rejecting argument that police did not know with certainty that defendant was the wanted person since he matched description well enough to give police reasonable suspicion that he had an outstanding

warrant, noting that the warrant gave police sufficient reason to stop the vehicle, and they did not need additional reasonable suspicion of then-ongoing criminal activity) (dissenting on this point, Judge Benjamin argued that the description police had was too vague to eliminate a substantial portion of innocent travelers and police did not do enough to confirm whether person with arrest warrant was in car they stopped)

Seizures

United States v. Coe, No. 24-4111, 159 F.4th 202 (4th Cir. Nov. 12, 2025) (Heytens, J.) (E.D. Va.) (holding that “seizure” of defendant was not unreasonable, rejecting argument that officer used excessive force by pointing his firearm, with no safety, with his finger on the trigger, into Coe’s side and back as the officer pinned Coe against his car; observing that district court did not make factual findings about officer’s handling of firearm and Coe had not shown that it was clearly erroneous for judge *not* to find those facts, and noting that officer acted reasonably in that he was outnumbered by several men hanging around in parking lot at night when he saw Coe making a drug deal inside his car) (N.B.: The Fourth Circuit “denounce[d]” “in the strongest possible terms” officer’s testimony at suppression hearing that he drew his firearm regardless of the crime he saw.)

Traffic Stops

United States v. Joseph, No. 24-4108, 138 F.4th 797 (4th Cir. May 28, 2025) (Heytens, J.) (S.D. W. Va.) (finding that traffic stop was not unduly prolonged to await arrival of drug-detection dog where officer acted with reasonable diligence in processing traffic ticket, especially where driver’s lack of identification somewhat impeded prompt completion of stop)

United States v. Ordonez-Zometa, No. 23-4185, 141 F.4th 531 (4th Cir. June 17, 2025) (King, J.) (D. Md) (affirming denial of motion to suppress evidence resulting from a traffic stop where police knew that defendant had an arrest warrant for murder, police had his photograph and a description of the car used to transport body of murder victim, police saw a man matching the photo leave a residence suspected to be the murder scene and get into a car matching the description of the one tied to the murder; finding alternatively that the stop would have been justified under the automobile exception because police had probable cause that the car itself was the instrumentality of a crime; further rejecting argument that police acted impermissibly by waiting for defendant to enter the car, since test does not depend on their subjective motivations and they would have been able to seize the car anyway, but “caution[ing] against law enforcement intentionally withholding the execution of an arrest warrant in hopes of gaining access to a location they could not otherwise search”)

! *United States v. Hawkins*, No. 24-4502, 161 F.4th 242 (4th Cir. Dec. 11, 2025) (Benjamin, J.) (N.D.W. Va.) (reversing denial of suppression motion where police observed person they knew had a drug conviction in a car interacting with a man at an apartment complex who leaned into car window for a brief conversation they suspected was a drug deal, after which police pulled car over and summoned drug dog, which alerted even though no drugs were found, although firearm was found in waistband of defendant-passenger (whom police did not know and who was not involved in brief conversation with man at apartment complex); concluding that these facts (individually or

collectively) did not amount to reasonable suspicion to conduct or extend traffic stop since police did not see any direct indicia of drug deal (such as hand-to-hand exchange or money or even man who leaned into car putting something in his pocket) and alleged inconsistencies between passengers' explanations for brief interaction were minor and not suspicious)

Exclusionary Rule/Good Faith Exception

United States v. Chatrie, No. 22-4489, 107 F.4th 319 (4th Cir. April 30, 2025) (en banc) (per curiam) (E.D. Va.) (affirming, without opinion, district court's denial of Chatrie's motion to suppress evidence gathered via a geofence warrant; splitting 7-to-7 in several concurring opinions over whether a geofence is a search, but agreeing 14-to-1 that the good faith exception would preclude exclusion of the evidence in any event) (N.B.: The Supreme Court granted Chatrie's petition for certiorari (U.S. No. 25-112), and will hear oral argument on April 27, 2026.)

United States v. Henderson, No. 22-4447, 136 F.4th 527 (4th Cir. May 7, 2025) (Rushing, J.) (W.D. Va.) (holding that warrant was not so obviously lacking in indicia of probable cause that police could not rely on it in good faith, precluding exclusion of evidence gathered from defendant's cell phones, which were searched pursuant to an affidavit premised on informant's identification of defendant as meth supplier and officer's somewhat generic statements about how drug dealers typically maintain evidence on their cell phones)

! *United States v. Ray*, No. 24-4024, 141 F.4th 129 (4th Cir. June 3, 2025) (Thacker, J.; Rushing, J., dissenting) (E.D. Va.) (affirming grant of motion to suppress in CSAM case arising from search of defendant's phone, where warrant authorized search of defendant and seizure of his phone, but not search of the phone; holding that good faith exception was simply inapplicable where issue was not whether the warrant was supported by probable cause but rather whether the warrant authorized a search at all and search exceeded the scope of an unambiguous warrant)

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (holding that the installation and use of a pen register is not a Fourth Amendment search, so suppression under the Fourth Amendment's exclusionary rule is not an available remedy, and "join[ing] at least five of our sister circuits in holding that statutory suppression is not an available remedy for a pen register statute violation when, as [in 18 U.S.C. § 3123], the statutes do not provide for suppression")

V. FIFTH AMENDMENT ISSUES (PRE-TRIAL AND TRIAL)

Double Jeopardy

United States v. Glass, No. 24-4193, 160 F.4th 563 (4th Cir. Dec. 2, 2025) (Wilkinson, J.) (W.D.N.C.) (finding no double jeopardy violation in conviction for three separate counts of CSAM receipt even though indictment did not list specific files and had somewhat overlapping date ranges, noting that trial evidence referred to three different incidents of downloading different files at different times, and "the arguments and evidence at trial repeatedly connected distinct files to each receipt count")

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (rejecting argument that murder-for-hire and conspiracy to commit murder-for-hire were same offense for double jeopardy purposes, reasoning that murder statute has element requiring defendant to take an act affecting interstate commerce while conspiracy statute does not, and conspiracy statute requires agreement that murder statute does not; noting that the substantive murder-for-hire offense “does not require the existence of an actual murder-for-hire agreement,” because “the statutory phrase ‘consideration for a promise or agreement to pay’ does not create a separate ‘agreement element,’ but rather modifies the type of intent which a defendant must possess” when traveling in or otherwise affecting interstate commerce”)

Due Process

United States v. Oliver, No. 23-4544, 133 F.4th 329 (4th Cir. Apr. 8, 2025) (Agee, J.) (E.D. Va.) (stating that when a witness asserts a right against self-incrimination that may conflict with a defendant’s right to present a complete defense, the district court must make a proper and particularized inquiry into the legitimacy and scope of the witness’s assertion of the privilege, which the district court did here—a resentencing hearing—by finding that co-defendant’s appeal was still pending, meaning that he could still suffer adverse consequences from testimony, and by finding that scope of proposed questioning permitted blanket invocation of privilege instead of necessitating question-by-question invocation)

United States v. Chaudhri, No. 23-4054, 134 F.4th 166 (4th Cir. Apr. 8, 2025) (Thacker, J.) (E.D. Va.) (holding that district court did not clearly err in crediting government’s proffered race-neutral explanations for striking jurors—that it did not want jurors who were “very young” (under 30), unmarried, or childless—in case about forced domestic labor, even though government’s explanation for strikes was not quite so precise at trial)

United States v. Parada, No. 22-4262, 134 F.4th 188 (4th Cir. Apr. 9, 2025) (Agee, J.; Wynn, J., concurring) (finding that district court did not clearly err in crediting government’s explanations for juror strikes as race-neutral and not pretextual, where reason for one strike was purported to be based on juror’s thick accent, raising concern he would have difficulty in deliberations, and reason for another was juror’s failure to properly fill out questionnaire) (Judge Wynn, concurring, “write[s] separately to point out that our circuit stands alone by employing deferential review at *Batson*’s step two”)

! *United States v. Smith*, No. 22-4338, 134 F.4th 248 (4th Cir. Apr. 14, 2025) (Thacker, J.) (E.D.N.C.), *as amended* May 6, 2025) (ordering reassignment of case to a different judge on remand “in light of the district court’s disregard for procedure and our precedent,” including many deficiencies in Rule 11 colloquy and sentencing hearing)

United States v. Beeman, No. 22-4488, 135 F.4th 139 (4th Cir. Apr. 18, 2025) (Quattlebaum, J.) (E.D. Va.) (holding that district court did not err in denying mistrial in threats case when, during closing, prosecutor asked jurors to imagine how they would subjectively feel upon receiving threats, noting that the prosecutor’s misstatement was quickly corrected to remind jurors that standard was an objective one, statement was isolated, curative instruction was given, and evidence of guilt was overwhelming)

United States v. Dugan, No. 22-4642, 136 F.4th 162 (4th Cir. May 1, 2025) (King, J.) (S.D. W. Va.) (finding no *Brady* violation in denial of motion to compel discovery related to foreign agency's provision of information about its investigatory techniques used to track defendant's access of website containing CSAM, because his request was grounded only in speculation that discovery would lead to materially favorable information)

United States v. Cabrera-Rivas, No. 22-4331, 142 F.4th 199 (4th Cir. June 30, 2025, *as amended* July 8, 2025) (Diaz, J.; Gregory, J., concurring in part, dissenting in part, and dissenting from judgment) (W.D.N.C.) (holding that magistrate judge did not clearly err in finding defendant in drug conspiracy case competent to stand trial, noting that judge was entitled to credit expert testimony from government witness over defendant's witnesses, since burden is on defendant to prove that he is *not* competent, rather than on government to prove he *is* competent)

United States v. Cabrera-Rivas, No. 22-4331, 142 F.4th 199 (4th Cir. June 30, 2025, *as amended* July 8, 2025) (Diaz, J.; Gregory, J., concurring in part, dissenting in part, and dissenting from judgment) (W.D.N.C.) (holding that district court did not err by declining to conduct a post-trial competency hearing for drug conspiracy defendant who was found competent pre-trial and, although his trial testimony was sometimes "rambling and non-responsive," it did not suggest that he did not understand the proceedings)

United States v. Wilson, No. 23-4737, 149 F.4th 448 (4th Cir. Aug. 25, 2025) (Yoon, D.J. sitting by designation; Gregory, J., dissenting) (E.D.N.C.) (holding that government did not breach plea agreement by moving for an upward departure at sentencing after also moving for downward departure, since plea agreement did not obligate government to ask for below-guideline sentence and did not constrain government's discretion to seek an above-range sentence; further holding that government did not breach by arguing facts at sentencing that were somewhat inconsistent with factual stipulations in plea agreement (e.g., facts suggesting defendant was leader/organizer of drug ring, rather than just manager/supervisor) because agreement gave government broad discretion to make sentencing arguments; calling the government's conduct "troubling" but not rising to reversible plain error)

United States v. Sandoval, et al., No. 23-4360, 154 F.4th 186 (4th Cir. Oct. 8, 2025) (Maddox, J., sitting by designation) (E.D. Va.) (holding that new trial was not warranted under *Brady/Giglio* standard after post-trial disclosure of misconduct by government's expert witness in MS-13 racketeering trial, noting that "the materiality requirement is not satisfied when a law enforcement officer's misconduct is tangential to the evidence establishing a defendant's own culpability," further noting that misconduct information was at most impeaching, and newly discovered evidence is not material if it is merely impeaching and witness was impeached in other ways and trial did not turn on credibility contest between witness and defendant)

United States v. Palmer, No. 23-4538, 159 F.4th 221 (4th Cir. Nov. 18, 2025) (Diaz, J.) (W.D.N.C.) (affirming district court's denial of motion to dismiss for preindictment delay in naturalization fraud case, finding that defendant's vague suggestions about potential lost testimony from his mother (who died before trial and who might have testified about defendant's "mental challenges") were insufficient to show prejudice from delay, especially since general subject of defendant's mental defects was covered by other witnesses)

United States v. Minkkinen, No. 23-4443, 168 F.4th 174 (4th Cir. Feb. 26, 2026) (Rushing, J.) (S.D.W. Va.) (reversing district court's grant of motion to dismiss based on pre-indictment delay in bringing charges based on theft of trade secrets, where investigation began in 2016 but indictment was not returned until 2022; accepting premise that defendants suffered prejudice from delay (in the form of death of two potential witnesses and destruction of some relevant documents), but finding that government's reasons for delay (lengthy investigative efforts and proffers with defendants) were not done in bad faith or for purposes of delay alone) (N.B.: It's ironic that a case about pre-indictment delay took 21 months after argument before the opinion was issued. Now the case will be remanded for trial, in 2026, on charges dating back to 2016.)

Grand Juries

United States v. Contreras-Avalos, No. 23-4048 139 F.4th 314 (4th Cir. June 3, 2025) (Wilkinson, J.) (D. Md.) (finding no constructive amendment, in violation of grand jury clause of Fifth Amendment, where district court's oral instructions to jury on two counts in MS-13 VICAR murder case that referred to "conspiracy" even though those counts charged substantive crimes, noting that court corrected written instructions to remove reference to conspiracy, and—applying plain error standard of review—there was no showing of prejudice from the mistake in light of overwhelming evidence, consistent argument that defendant committed the murders (not merely conspired to do so), and both oral and written jury instructions contained all elements the government had to prove)

Self-Incrimination

United States v. Oliver, No. 23-4544, 133 F.4th 329 (4th Cir. Apr. 8, 2025) (Agee, J.) (E.D. Va.) (holding that district court did not abuse its discretion, during resentencing hearing, by allowing co-defendant to invoke right against self-incrimination regarding facts of the case, since co-defendant's appeal was still pending and questioning could subject him to future adverse consequences; further holding that district court's decision to permit blanket invocation of privilege was not overbroad, due to broad scope of proposed questions and potential harm witness could face by answering any of them)

United States v. Purks, No. 23-4495, 139 F.4th 388 (4th Cir. June 5, 2025) (Gregory, J.) (W.D. Va.) (affirming district court's ruling that statements made by prison inmate regarding drug conspiracy were admissible and voluntary where district court credited law enforcement officer's testimony that Purks did not invoke right to counsel after receiving *Miranda* warnings (even assuming the warnings were necessary when Purks was incarcerated for other offenses) and found that defendant's will was not overborne even though he was still recovering from an alleged beating by guards, because of time that had passed since the beating, the questioning (federal) officers were not from the same agency as (state) prison guards, Purks declined to answer some questions without pushback from officers, and he testified he was not in so much pain that it clouded his thinking)

United States v. Ordonez-Zometa, No. 23-4185, 141 F.4th 531 (4th Cir. June 17, 2025) (King, J.) (D. Md.) (holding that district court did not clearly err in finding that statements to police in MS-13 murder case were not involuntary, noting that although defendant had been kept in an

interrogation room for several hours, he was allowed to use the restroom and was given water, was later moved to a conference room at his own request, and police did not exploit defendant's concern about his family's well-being as a means to overbear the defendant's free will; noting that officer's statement that if defendant remained silent it could be used against him at trial was "unfortunate and plainly incorrect," but finding that statement was not coercive in context of full interview, and even if admission of the statement was erroneous, any error would be harmless in light of substantial evidence regarding the murder aside from the defendant's statements; finally, holding that statements were not subject to suppression under 18 U.S.C. § 3501(c), codifying a six-hour presentment rule, because that statute only applies to arrests for violations of federal law, and arrest here was made by state officers pursuant to state warrants)

United States v. Contreras, No. 22-4745 (and four others), 149 F.4th 349 (4th Cir. Aug. 14, 2025, amended Aug. 29, 2025) (Berner, J.) (E.D. Va.) (rejecting argument by defendant in MS-13 gang murder case that his incriminating statements to police should have been suppressed because, as part of "rapport-building" part of interrogation before officer issued *Miranda* warnings, defendant admitted illegally entering the United States; noting that some courts have held that questions eliciting incriminating statements do not fall under the "routine booking questions" exception to *Miranda*, but finding any such error here harmless since evidence regarding defendant's immigration status or any other statements made before warnings were given)

VI. SIXTH AMENDMENT ISSUES (PRE-TRIAL AND TRIAL)

Confrontation Clause

United States v. Seward, No. 23-4431, 135 F.4th 161 (4th Cir. Apr. 25, 2025) (Heytens, J.) (D.S.C.) (finding violation of Confrontation Clause, as explicated in *Smith v. Arizona*, 602 U.S. 779 (2024), where DNA expert in murder case testified about, among other things, fellow analyst's testing of DNA samples, but holding that error was harmless beyond a reasonable doubt because evidence of guilt was "overwhelming," including significant forensic evidence that posed no Confrontation Clause problems)

Speedy Trial

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (declining to reverse conviction of one defendant in complex multi-defendant drug gang murder case on constitutional speedy trial grounds, even though district court did not make express ruling on Sixth Amendment argument when denying statutory speedy trial claim, noting that district court made sufficient factual findings when denying statutory claim for court of appeals to conclude that constitutional claim failed, in that delay was lengthy but was based on good reasons and did not cause any particular prejudice)

United States v. Chaudhry, No. 24-4471, 162 F.4th 133 (4th Cir. Dec. 16, 2025) (Quattlebaum, J.) (E.D. Va.) (affirming material support for terrorism conviction over speedy trial challenge by Pakistani national who spent most of his life in the U.S. but went to Pakistan with the goal of going to Afghanistan to fight U.S. and allied forces there, leading to his arrest and

imprisonment in Pakistan for over ten years; concluding that constitutional speedy trial rights were not violated because, even though delay was lengthy, the government made reasonable efforts to bring defendant back to U.S. for trial (despite not filing a formal extradition request, which court accepted would have been futile) and defendant did not assert speedy trial until well after his return to U.S. for trial)

Impartial Jury

United States v. Ritter, No. 24-4576, 167 F.4th 677 (4th Cir. Feb. 18, 2026) (Richardson, J.) (D.S.C.) (finding no reason to grant a new trial to defendant charged with murder of his sexual partner—a trans woman—on the basis of her gender identity in light of transgender juror’s comments to media after the trial, noting that juror disclosed that she was trans during jury selection and said she could be impartial, deferring to district court’s questioning of juror and court’s determination that she was credible and nothing in her comments to media contradicted her oath as a juror)

United States v. Umeti, No. 24-4478, 167 F.4th 687 (4th Cir. Feb. 19, 2026) (Agee, J.) (E.D. Va.) (holding that district court did not err in denying motion for new trial in case charging wire fraud and computer damage arising from phishing schemes where prospective juror said he “worked in cybersecurity,” had heard of the defendants, and “might have done some of the remediation” for computer intrusions in case, leading to a strike for cause; noting that juror’s statements were fairly innocuous and did not state opinion on guilt or innocence, lessening chance that the statements infected the rest of the jury pool, such that defendant was not entitled to presumption of prejudice due to extrinsic influence)

Trial by Jury

United States v. Brown, No. 21-4253, 136 F.4th 87 (4th Cir. April 29, 2025) (Niemeyer, J.) (W.D.N.C.) (agreeing, in illegal firearm possession case, that there was error under *Erlinger v. United States*, 602 U.S. 821 (2024), when the question of whether the defendant’s potentially ACCA-qualifying prior convictions occurred on “occasions different from one another” was not included in the indictment or found by the jury; holding, however, that error was subject to harmless error review because it is a variety of *Apprendi* error and such errors are not structural since it is not a constructive amendment to the indictment; finally holding that the error in this case was in fact harmless because Brown had pled guilty, thus making the issue whether he would not have pled if he had known that jury would have to make the different-occasions finding, and there was no reason to believe he would have gone to trial since there was no plausible argument that the prior offenses had happened on the same occasion)

Assistance of Counsel

! *United States v. Brown*, No. 22-7105, 137 F.4th 248 (4th Cir. May 20, 2025) (Gregory, J., joined by King, J.; Rushing, J., dissenting) (reversing denial of 28 U.S.C. § 2255 motion claiming ineffective assistance of counsel, where counsel gave defendant incorrect advice about sentence exposure, leading defendant to reject plea offer; finding prejudice prong of *Strickland*

established where Brown testified he would have taken the deal, that he eventually pleaded guilty to more serious charges, and that the end result would have been more favorable to him if he had taken the plea; holding that Brown did not have to prove that he would have accepted plea deal if he had been properly advised (which Judge Rushing argued in dissent should have been the standard); ordering government to re-offer the same plea agreement on remand)

United States v. Palmer, No. 23-4538, 159 F.4th 221 (4th Cir. Nov. 18, 2025) (Diaz, J.) (W.D.N.C.) (affirming denial of motion to suppress in naturalization fraud case where motion argued that state guilty plea (which was basis of fraudulent denial of criminal history during naturalization process) was invalid due to ineffective assistance of counsel (*Padilla* error, i.e., counsel's failure to advise him about immigration consequences of conviction), holding that this was essentially a collateral attack on state conviction that could only be brought for complete denial of counsel (*Custis*), not ordinary ineffective assistance of counsel)

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (affirming denial of motion to substitute counsel filed by one defendant four days before trial in multi-defendant drug gang murder case, where source of dissatisfaction with counsel was mainly lack of visits, noting that COVID-19 restrictions had limited some opportunities for in-person visits and counsel did meet with defendant more frequently after he complained about it, further finding that district court adequately inquired into dispute and that any error was harmless because counsel performed adequately at trial (something defendant did not contest)) (N.B.: The Fourth Circuit noted that this defendant “almost physically attacked his attorney and continued pro se” towards the end of the trial. The Court (somewhat dryly) observed that “[w]hile this might be evidence of a later breakdown in the attorney-client relationship, it doesn’t say anything about the effectiveness of Lamborn’s lawyers before then.”)

Right to compel testimony

United States v. Nji, et al., No. 23-4236, 159 F.4th 259 (4th Cir. Nov. 18, 2025) (Niemeyer, J.) (D. Md.) (holding that district court did not err in preventing defendants in firearm smuggling case from introducing statement made by co-conspirator (during proffer session in hopes of obtaining plea agreement) that another member of the group (who had served in U.S. military) told them that their actions were not illegal, concluding that co-conspirator could validly invoke Fifth Amendment right against self-incrimination since his case was not yet final and government did not believe his statement during proffer session)

VII. EIGHTH AMENDMENT ISSUES

United States v. Contreras, No. 22-4745 (and four others), 149 F.4th 349 (4th Cir. Aug. 14, 2025, amended Aug. 29, 2025) (Berner, J.) (E.D. Va.) (imposition of mandatory life sentence on defendant in MS-13 murder case did not violate prohibition on cruel and unusual punishments even though defendant had only just turned eighteen shortly before the offenses, noting that “governing precedents draw a bright line at the age of eighteen in the imposition of these serious penalties”)

VIII. FOURTEENTH AMENDMENT ISSUES

Equal Protection Clause

United States v. Moore, No. 24-4201, 145 F.4th 572 (4th Cir. Aug. 1, 2025) (Niemeyer, J.) (E.D. Va.) (reversing district court's grant of motion to dismiss firearm indictment on equal protection (selective enforcement based on race) grounds, finding that statistical evidence about racial makeup of drivers stopped by police in Richmond did not establish a discriminatory purpose for the traffic stop in this case, which led to the discovery of the firearm; declining to address discriminatory effect prong of selective enforcement claim)

IX. OTHER PRE-TRIAL ISSUES

Continuance

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (holding that district court did not err in denying motion for continuance filed a week before trial in multi-defendant drug gang murder case, where basis for motion was need to review voluminous discovery, noting that most discovery had been available for a year and defendants could not identify (even post-trial) anything in discovery that would have changed trial strategy or outcome)

Federal Rule of Criminal Procedure 8

United States v. Contreras, No. 22-4745 (and four others), 149 F.4th 349 (4th Cir. Aug. 14, 2025, amended Aug. 29, 2025) (Berner, J.) (E.D. Va.) (affirming district court's refusal to sever counts and defendants in MS-13 murder case where murders happened close in time and followed same pattern, and evidence created no substantial risk of spillover prejudice)

United States v. Mosley, No. 21-4541, 168 F.4th 145 (4th Cir. Feb. 23, 2026) (Gregory, J.) (D. Md.) (holding that district court did not err in denying motion to sever witness-murder charges from drug conspiracy charges, explaining that drug evidence explained how parties to murder plot were connected, as well as providing motive for murder of witness, noting also that any joinder error was harmless since district court instructed jury to consider charges and defendants separately and drug evidence would have been admissible at a severed murder trial anyway)

Federal Rule of Criminal Procedure 11

! *United States v. Smith*, No. 22-4338, 134 F.4th 248 (4th Cir. Apr. 14, 2025) (Thacker, J.) (E.D.N.C.), *as amended* May 6, 2025) (declining to enforce appeal waiver contained in plea agreement after plea colloquy was insufficient in numerous ways, in that “the district court failed to review the terms of the appeal waiver with him, failed to confirm that he understood the appeal waiver, and incorrectly stated the terms of the appeal waiver by informing Appellant that he waived his right to appeal his conviction—as opposed to his right to appeal his conviction *and*

sentence”; further finding that defendant did not adequately understand appeal waiver in light of his “severe mental illness and his minimal education”)

! *United States v. Craig*, No. 22-4230, 142 F.4th 192 (4th Cir. June 30, 2025) (Diaz, J.) (N.D. W. Va.) (holding that government breached plea agreement by advocating for enhancements at sentencing based on facts that were not stipulated in plea agreement, where agreement and plea colloquy referred to stipulated facts as the “total relevant conduct,” noting that government was permitted to disclose at sentencing facts that were not included in the plea, but crossed the line by advocating for enhancements based on those facts; finally noting that typical remedy in such a case includes remand for resentencing before a different district judge)

United States v. Solis-Rodriguez, No. 22-4654, 144 F.4th 617 (4th Cir. July 23, 2025) (Quattlebaum, J.) (W.D.N.C.; Traxler, J., concurring in judgment) (affirming convictions and 180-month sentence of defendant charged with two firearm counts who was (the Fourth Circuit assumes) wrongly advised during his plea colloquy that maximum sentence was ten years—not ten years on *each* count—because defendant could not show that he would have rejected plea and gone to trial if he had been accurately advised of potential statutory maximum)

United States v. Milam, No. 23-4527, 150 F.4th 320 (4th Cir. Aug. 13, 2025) (Niemeyer, J.) (E.D.N.C.) (affirming district court’s decision that defendant had not shown a “fair and just reason” for withdrawing guilty plea despite government’s belated production of complete copy of search warrant and affidavit (a scanning error had initially left some pages missing), reasoning that plea colloquy revealed that defendant knowingly and voluntarily pled guilty, and full affidavit would have made a suppression weaker, not stronger, and thus provided no basis to believe that it would have had any effect on his decision to plead guilty)

United States v. Golestan, No. 23-4583, 151 F.4th 634 (4th Cir. Aug. 22, 2025) (Berner, J.) (D.S.C.) (affirming denial of motion to withdraw guilty plea to wire fraud in scheme to create fictitious companies in order to obtain IP addresses for resale, concluding that district court’s failure to warn defendant—a naturalized U.S. citizen who might have been subject to denaturalization—of potential immigration consequences of conviction was harmless error because text of Fed. R. Crim. P. 11(b)(1)(O) applied only to non-citizens, and there was no reasonable probability that defendant would have gone to trial if court had complied with Rule 11)

United States v. Smith, No. 24-4231, 157 F.4th 366 (4th Cir. Oct. 15, 2025) (Wilkinson, J.) (E.D. Va.) (finding that several errors in Rule 11 colloquy were harmless because defendant could not show reasonable probability that he would have gone to trial if the district court had followed Rule to the letter in light of substantial evidence against him and lack of any identifiable defense, and noting that this was so even though original counsel was later disbarred, since counsel’s purported ineffectiveness during plea process did not mean that defendant would have rejected plea and opted for trial)

Federal Rule of Criminal Procedure 16

United States v. Dugan, No. 22-4642, 136 F.4th 162 (4th Cir. May 1, 2025) (King, J.) (S.D. W. Va.) (finding no violation of Rule 16(a)(1)(E) in denial of motion to compel discovery related to foreign agency’s provision of information about its investigatory techniques used to track

defendant's access of website containing CSAM, because request was premised entirely on speculation that discovery would lead to information that would be "material to preparing the defense")

18 U.S.C. § 3161 et seq., Speedy Trial Act

United States v. Myrick, No. 23-4768, 150 F.4th 308 (4th Cir. Aug. 13, 2025) (Niemeyer, J.) (E.D. Va.) (holding that district court did not err in denying motion to dismiss under Speedy Trial Act after finding that time between suppression hearing and issuance of written opinion denying suppression was properly excluded from speedy trial clock, rejecting argument that decision was made at time of hearing)

United States v. Myrick, No. 23-4768, 150 F.4th 308 (4th Cir. Aug. 13, 2025) (Niemeyer, J.) (E.D. Va.) (holding that the filing of a superseding indictment does not reset the speedy trial clock for offenses charged, or required to be joined with those charged, in the original indictment, but when a superseding indictment adds new and different charges to the case—charges not required by the Double Jeopardy Clause to be included with the original charge—the clock for *those* charges is tied to the filing of the superseding indictment, not the original indictment)

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (concluding that "delays that postdate the filing of a motion to dismiss under the Speedy Trial Act don't matter" because "a motion for dismissal [under the Act] is effective only for periods of time which antedate the filing of the motion" and "subsequent periods of delay, whether includable or excludable, are inconsequential")

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (holding that district court properly excluded certain period under "ends of justice" exception, 18 U.S.C. § 3161(h)(7), in complex multi-defendant drug gang murder case even though court did not explicitly use term "ends of justice," since court made sufficient findings to support exception, including "the time span of the charged offenses, the number of defendants, the number of counts, the number of potential witnesses, and the voluminous amount of discovery")

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (holding that district court did not err in denying Speedy Trial Act motion to dismiss brought by one defendant in drug gang murder case because co-defendants requested continuance to prepare for trial, finding that delay was reasonable where although defendant moved for severance, he did not appeal denial of severance motion and could not point to any particularized prejudice from delay (as opposed to general prejudice from joinder))

18 U.S.C. § 2518, Wiretap Procedure

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (holding that government's burden under federal and state wiretap statutes "is not great" and may be satisfied by "present[ing] specific factual information" showing that officers have "encountered difficulties in penetrating the criminal enterprise or in gathering evidence," and

finding that the district court reasonably concluded the officers met their burden here by offering detailed, non-conclusory explanations for why wiretaps were necessary and why other investigative techniques (including physical surveillance, witness interviews, grand jury proceedings, search warrants, and controlled buys) were insufficient in investigation of drug ring; concluding also that statute authorizes “any aggrieved person”—not just person whose phone was tapped—to challenge the order, but only require probable cause that “*an individual*” was committing a crime, and police unquestionably had probable cause to tap one defendant’s phones, meaning that they did not need probable cause as to all defendants)

X. TRIAL AND POST-TRIAL ISSUES

Jurisdictional Elements

United States v. Perez, No. 24-4039, 150 F.4th 237 (4th Cir. Aug. 12, 2025) (Quattlebaum, J.; Wynn, J., concurring; Harris, J., concurring in part, dissenting in part) (E.D. Va.) (examining jurisdictional element of prosecution for obscenity arising inside federal prison—whether the offense occurred within the special territorial jurisdiction of the United States, 18 U.S.C. § 7(3)—and concluding that conduct questions (where did the crime happen) are adjudicative facts for the factfinder to decide, whereas legal-status questions (whether that location is within federal territorial jurisdiction) are legislative facts that do not change from case to case and are properly determined by the judge; remanding for district court to consider extensive records proffered by government for first time on appeal concerning federal government’s acquisition of land for federal prison and state’s cession of jurisdiction over it) (concurring, Judge Wynn stated that if this had been a jury trial instead of a bench trial, he would have decided that Double Jeopardy precluded a remand; dissenting, Judge Harris concluded that jurisdictional elements are like any other element that must be proven to a jury beyond a reasonable doubt) (N.B.: Although the Supreme Court denied Perez’s petition for certiorari, there is an acknowledged circuit split on this issue, and that fact—plus the division among the judges on this panel—make this an issue worth preserving.)

Jury Selection

United States v. Beeman, No. 22-4488, 135 F.4th 139 (4th Cir. Apr. 18, 2025) (Quattlebaum, J.) (E.D. Va.) (holding that district court did not err by empaneling anonymous jury in trial of man accused of sending threatening letters to people involved in an earlier prosecution, noting first that jury was not truly anonymous since defense counsel had unredacted jury list and district court’s order only required the lawyers to refer to jurors by number in open court, but even if these procedures did make the jury anonymous, it was not an abuse of discretion in light of sufficiency of district court’s factual basis and court’s steps to ensure jury did not infer that its actions were not being taken because the defendant was dangerous)

Evidence

Federal Rules of Evidence 401 et seq.

United States v. Chaudhri, No. 23-4054, 134 F.4th 166 (4th Cir. Apr. 8, 2025) (Thacker, J.) (E.D. Va.) (finding no error under Fed. R. Evid. 403 or 404(b) in district court's admission of evidence of abuse of victim in forced labor case that occurred after forced labor stopped, concluding that abuse evidence was "integral" and "natural" part of victim's story about what happened during her marriage; further holding that abuse evidence was not unfairly prejudicial because it was no more sensational than evidence of earlier forced labor; finally stating that any possible error was harmless in light of weight of evidence)

United States v. Beeman, No. 22-4488, 135 F.4th 139 (4th Cir. Apr. 18, 2025) (Quattlebaum, J.) (E.D. Va.) (finding no abuse of discretion, under Fed. R. Evid. 404(b), during trial of man for sending three threatening letters to federal officials involved in a prior prosecution, in district court's admission of an uncharged fourth letter, since uncharged letter was intrinsic to charged offense in that it helped establish defendant's responsibility for sending the letters, as well as his intent to communicate a true threat; finding for same reasons that uncharged letter would have been admissible even as extrinsic evidence because it went to motive, identity, and other issues, and not just defendant's character; finally finding no error under Fed. R. Evid. 403 because uncharged letter was no more prejudicial than charged letters)

United States v. Seward, No. 23-4431, 135 F.4th 161 (4th Cir. Apr. 25, 2025) (Heytens, J.) (D.S.C.) (finding no abuse of discretion in exclusion of evidence that government witness—whom defense argued was alternative suspect in murder case—had failed a polygraph test, especially where defense was able to probe the witness's deception while cross-examining law enforcement witness)

United States v. Ferguson, No. 23-4347, 140 F.4th 538 (4th Cir. June 16, 2025) (Richardson, J.) (E.D. Va.) (holding that district court did not err by admitting first nine-and-a-half minutes of forty-five-minute forensic interview of defendant's daughter in sexual abuse case, since the entire video was relevant under Fed. R. Evid. 401 in that consistency of statements earlier and later in the interview rehabilitated daughter after defense attacked her credibility and also showed that interviewer followed protocol, which enhanced reliability of statements; further holding that this evidence was not unfairly prejudicial under Fed. R. Evid. 403, as it was probative to daughter's credibility and was even less prejudicial than later portion of video where daughter described abuse)

United States v. Mosby, No. 24-4304, 143 F.4th 264 (4th Cir. July 11, 2025) (Thacker, J.; Niemeyer, J., dissenting in part) (holding that district court did not err in prosecution of former state's attorney who fraudulently withdrew funds from her retirement account that she used to buy vacation homes, noting that the use to which she put the funds was relevant to whether she in fact was suffering from "adverse financial consequences" of COVID-19 (as required for withdrawals), and evidence was not unfairly prejudicial just because it might have made the jury resent the defendant for being wealthy)

United States v. Contreras, No. 22-4745 (and four others), 149 F.4th 349 (4th Cir. Aug. 14, 2025, amended Aug. 29, 2025) (Berner, J.) (E.D. Va.) (holding that "historical racketeering

evidence” of prior MS-13 murders that the defendants in this MS-13 murder cases were not charged with was not inadmissible under Fed. R. Evid. 403 because it was relevant to whether the defendants were part of an enterprise that carried out murders; noting also that judge instructed jury that defendants were not on trial for any acts outside the indictment)

United States v. Contreras, No. 22-4745 (and four others), 149 F.4th 349 (4th Cir. Aug. 14, 2025, amended Aug. 29, 2025) (Berner, J.) (E.D. Va.) (finding no abuse of discretion, in MS-13 murder case, in admission of graphic photos and videos of victim’s murder, excavation of victims’ graves, and autopsy, concluding that even though evidence was manifestly prejudicial, it was not unfairly so under Fed. R. Evid. 403, given strong relevance to several trial issues)

United States v. Hudak, No. 24-4313, 156 F.4th 405 (4th Cir. Oct. 7, 2025) (Wilkinson, J.) (M.D.N.C.) (affirming district court’s admission of evidence that defendant in race-based hate crimes case had Nazi memorabilia in his home after initially excluding the evidence under Fed. R. Evid. 403, reasoning that defendant opened the door to such evidence by testifying on direct examination that he had these items because he was a “military collector,” permitting government to rebut with details of items to argue they were relevant to his motive to commit race-based assaults; observing that how much weight to assign to the Nazi memorabilia was a question of weight, not admissibility)

Federal Rules of Evidence 600 et seq.

United States v. Jones, No. 24-4282, 166 F.4th 428 (4th Cir. Feb. 4, 2026) (Wynn, J.) (E.D.N.C.) (holding that district court did not err in preventing defendant in drug case from asking cooperating witness about his own drug convictions from the 1990s, noting that Fed. R. Evid. 609(b) presumptively excludes evidence about convictions more than ten years old, and probative value here was minimal since defendant was able to cross-examine witness on fact that he was testifying as part of a plea deal and witness already admitting selling drugs)

Federal Rules of Evidence 701 et seq.

United States v. Seward, No. 23-4431, 135 F.4th 161 (4th Cir. Apr. 25, 2025) (Heytens, J.) (D.S.C.) (finding no violation of Fed. R. Evid. 702 in admission of government’s firearms toolmark expert in case involving shooting death of postal inspector, as the Fourth Circuit has already rejected a categorical ban on toolmark testimony, and defense counsel was able to explore problems with this type of evidence via cross-examination)

United States v. Contreras, No. 22-4745 (and four others), 149 F.4th 349 (4th Cir. Aug. 14, 2025, amended Aug. 29, 2025) (Berner, J.) (E.D. Va.) (finding no error in district court’s admission, under Fed. R. Evid. 702 and 703, of police gang expert’s testimony in MS-13 murder case, noting that “a witness’s qualifications under Rule 702 are judged liberally,” and this witness had extensive experience and knowledge about MS-13 homicide investigations; further holding that this testimony was not based on inadmissible hearsay in violation of the Confrontation Clause because it was based on expert’s own independent judgment applying his own training and experience rather than merely a conduit for testimonial hearsay)

United States v. Hudak, No. 24-4313, 156 F.4th 405 (4th Cir. Oct. 7, 2025) (Wilkinson, J.) (M.D.N.C.) (holding that district court did not abuse its discretion by excluding under Fed. R. Evid. 702(a) proposed expert witness in hate crimes case against man charged with assaulting two people because of their race, observing that expert's report contained no factual basis for conclusion that defendant suffered from mental illness at the time of the assaults—"too great an analytical gap between the data and the opinion proffered")

United States v. Palmer, No. 23-4538, 159 F.4th 221 (4th Cir. Nov. 18, 2025) (Diaz, J.) (W.D.N.C.) (holding that district court erred in naturalization fraud case by excluding proposed expert testimony under Fed. R. Evid. 704(b) (which prohibits testimony that a defendant had a mental state that is an element of offense) in light of *Diaz v. United States*, 602 U.S. 526 (2024), since proposed testimony was that defendant read at a grade level below that necessary to understand question on immigration form, reasoning that this testimony did not directly opine on mental state, but left that inference for the jury to draw; ultimately concluding that error was harmless given extensive additional evidence about defendant's reading ability)

United States v. Nji, et al., No. 23-4236, 159 F.4th 259 (4th Cir. Nov. 18, 2025) (Niemeyer, J.) (D. Md.) (affirming exclusion of proposed defense expert in firearm smuggling case involving group who sent weapons to one side of sectarian fight in Cameroon, where expert would have testified about background of dispute in order to suggest that defendants concealed what they were doing so the recipients of the weapons would be safe, rather than because they knew what they were doing was illegal; noting that expert could not testify about mental state anyway, but district court also appropriately excluded testimony to avoid a "mini-trial" on situation in Cameroon)

Federal Rules of Evidence 801 et seq.

United States v. Deritis, No. 23-4150, 137 F.4th 209 (4th Cir. May 14, 2025) (Thacker, J.) (W.D.N.C.) (holding, in CSAM production case, that district court erred by excluding testimony from ex-wife that defendant had ordered minor victim not to use bathroom in which he had placed a hidden camera, reasoning that an out of court statement providing directions from one individual to another does not constitute hearsay because it is an imperative command admitted to prove that it was said and not a declarative statement admitted for its truth; further holding, however, that error was harmless in light of strength of other evidence)

United States v. Ferguson, No. 23-4347, 140 F.4th 538 (4th Cir. June 16, 2025) (Richardson, J.) (E.D. Va.) (affirming district court's admission of full forensic interview of defendant's daughter in sexual abuse case, rejecting argument that initial portions of interview were hearsay, reasoning that they were admitted not for the truth of the matters asserted therein (such as answers to rapport-building questions like the girl's favorite cereal) but to show that the interview followed accepted protocol and that the daughter understood the protocol)

United States v. Contreras, No. 22-4745 (and four others), 149 F.4th 349 (4th Cir. Aug. 14, 2025, amended Aug. 29, 2025) (Berner, J.) (E.D. Va.) (finding no abuse of discretion in district court's admission, in MS-13 gang murder case, of handwritten note from cooperating witness detailing jailhouse conversations with defendants, since note fell within "present sense impression" exception to hearsay rule, Fed. R. Evid. 803(1), in that the note recorded witness's version of event immediately after it happened)

United States v. Nji, et al., No. 23-4236, 159 F.4th 259 (4th Cir. Nov. 18, 2025) (Niemeyer, J.) (D. Md.) (holding that district court did not err in preventing defendants in firearm smuggling case from introducing statement made by co-conspirator (during proffer session in hopes of obtaining plea agreement) that another member of the group (who had served in U.S. military) told them that their actions were not illegal, concluding that residual hearsay exception, Fed. R. Evid. 807, did not apply because statement was not sufficiently trustworthy, in that government did not believe statement from proffer session, alleged declarant (former military member) testified at trial and denied saying it)

United States v. McDonald, No. 24-4362, 166 F.4th 440 (4th Cir. Feb. 5, 2026) (Gregory, J.) (W.D. Va.) (finding no abuse of discretion in district court's exclusion of grand jury testimony from defendant's colleague, in case charging former director of economic development agency with fraudulently using agency funds for her own purposes, when trial evidence suggesting colleague's involvement caused him to invoke Fifth Amendment rights, since grand jury testimony did not fall within hearsay exception in Fed. R. Evid. 804(b)(1) for testimony at other hearings, as government did not have similar motive to develop colleague's testimony before grand jury as it would at trial, as required by Rule)

Sufficiency of Evidence

See Offenses, *supra*

Venue

United States v. Purks, No. 23-4495, 139 F.4th 388 (4th Cir. June 5, 2025) (Gregory, J.) (W.D. Va.) (concluding that drug distribution is a continuing offense, and thus that venue was proper under 18 U.S.C. § 3237(a) in any district where the crime was “begun, continued, or completed,” including the district where the drugs were eventually delivered and sold) (N.B.: The defendant framed his appeal as a challenge to the district court's denial of his motion for judgment of acquittal, arguing that the evidence of venue was insufficient. The Fourth Circuit clarified that, since the question of venue was submitted to the jury, the proper framing is a challenge that the jury instruction on venue was improper. And although Purks did not object to the jury instruction, his Rule 29 motion preserved the issue. This acknowledgment that the issue was preserved at least avoided plain error review, but note that a sufficiency claim is reviewed de novo, while jury instruction challenges are reviewed for abuse of discretion. It's likely a distinction without a difference here, as it was ultimately a question of whether the district court erred as a matter of law, which would necessarily be an abuse of discretion, but it could matter in other cases.)

! *United States v. Mosby*, No. 24-4304, 143 F.4th 264 (4th Cir. July 11, 2025) (Thacker, J.; Niemeyer, J., dissenting in part) (holding the district court erred in giving jury instruction that venue in mortgage fraud case was proper in any district where defendant took an act in furtherance of the offense, as that could have allowed conviction based on mere preparatory acts instead of essential conduct acts, and finding that there was insufficient evidence that defendant conducted essential acts of communicating false statements in mortgage application in Maryland)

Mistrials

United States v. McDonald, No. 24-4362, 166 F.4th 440 (4th Cir. Feb. 5, 2026) (Gregory, J.) (W.D. Va.) (finding no abuse of discretion in district court’s denial of mistrial in case charging former director of economic development agency with fraudulently using agency funds for her own purposes, noting that basis for motion was mid-trial delays for various reasons (including defendant’s own collapse during trial), and district court took pains to minimize prejudice from delays, including specific jury instructions, and extended closing arguments)

United States v. Ritter, No. 24-4576, 167 F.4th 677 (4th Cir. Feb. 18, 2026) (Richardson, J.) (D.S.C.) (holding that district court did not abuse its discretion in denying mistrial in murder case after witness responded to question with hearsay statement implicating defendant (that someone else had heard that defendant killed the victim), pointing out that district court provided curative instruction to jury, that both parties impeached the witness about the statement, and that it was not necessarily the case that the jury would conclude that the defendant confessed to the person who passed that statement along to the witness)

Defenses

United States v. Hudak, No. 24-4313, 156 F.4th 405 (4th Cir. Oct. 7, 2025) (Wilkinson, J.) (M.D.N.C.) (affirming district court’s conclusion that evidence of mental illness (either in the form of expert witness or defendant’s own testimony) was inadmissible in hate crimes case involving race-based assaults, since defendant had not pleaded insanity, noting that Insanity Defense Reform Act, 18 U.S.C. § 17(a) “bars a defendant who is not pursuing an insanity defense from offering evidence of his lack of volitional control as an alternative defense,” and explaining that some evidence of mental illness may be admissible in a hypothetical situation “to show [that a defendant] did not do it, not that he could not help it,” whereas here the evidence would be used to argue “that he could not help it, not that he did not do it,” which is “precisely the kind of ‘diminished capacity evidence in disguise’ barred by the IDRA”)

Jury Instructions

N.B.: For decisions discussing jury instructions related to the elements of a specific offense, see the heading for that offense.

United States v. Cabrera-Rivas, No. 22-4331, 142 F.4th 199 (4th Cir. June 30, 2025, *as amended* July 8, 2025) (Diaz, J.; Gregory, J., concurring in part, dissenting in part, and dissenting from judgment) (W.D.N.C.) (holding that defendant in drug conspiracy case was not entitled to “public authority” defense instruction when, although informant told defendant to conduct a sting deal to help federal agents, informant did not have actual authority to direct such a sting and agent with authority never ratified it or conveyed same instruction)

United States v. Contreras, No. 22-4745 (and four others), 149 F.4th 349 (4th Cir. Aug. 14, 2025, *amended* Aug. 29, 2025) (Berner, J.) (E.D. Va.) (holding that district court did not abuse its discretion in denying duress defense jury instruction in MS-13 murder case because—even

assuming duress could be a defense to VICAR murder—defendants could only show a generalized fear of reprisal if they refused to participate in murder, rather than present threat of death or serious bodily injury at the moment they committed the crimes)

United States v. McDonald, No. 24-4362, 166 F.4th 440 (4th Cir. Feb. 5, 2026) (Gregory, J.) (W.D. Va.) (declining to order new trial after district court responded to defendant’s closing argument (which highlighted evidence and witnesses government could have called in fraud case, but did not) with sua sponte instruction to jury that the government had the burden of proof but was not required to present any particular type of evidence, or indeed all possible evidence; noting that “refraining from providing this instruction, or granting an additional few minutes for supplemental argument, may have been a better exercise of discretion,” but that a violation of Fed. R. Crim. P. 30 requires reversal only on a showing of prejudice, which defendant did not do here)

Federal Rule of Criminal Procedure 23

United States v. Parada, No. 22-4262, 134 F.4th 188 (4th Cir. Apr. 9, 2025) (Agee, J.; Wynn, J., concurring) (affirming district court’s decision to proceed in MS-13 VICAR case with eleven-member jury after one juror became ill with COVID-19 during deliberations, noting that the court “sufficiently considered and explained its decision” by soliciting input from counsel and “thoroughly considering all possible alternatives,” including substituting an alternate or postponing deliberations) (N.B.: This trial lasted 34 days, and the jury had already deliberated for more than two full days before the juror fell ill.)

Federal Rule of Criminal Procedure 29

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (holding that review of sufficiency of the evidence in CCE murder case was “foreclosed” because defendant failed to renew mid-trial motion for judgment of acquittal after putting on a defense, unless defendant could show “manifest miscarriage of justice”)

Federal Rule of Criminal Procedure 33

United States v. Contreras-Avalos, No. 23-4048 139 F.4th 314 (4th Cir. June 3, 2025) (Wilkinson, J.) (D. Md.) (affirming district court’s denial of motion for new trial in prosecution for RICO conspiracy and conspiracy to distribute drugs despite considerable amount of evidence coming from cooperating gang members, noting that “[e]ven in the context of a Rule 33 motion for a new trial, where the district court may act as the ‘thirteenth juror’ and conduct its own assessment of witness credibility, *our* review is limited to assessing whether the court “exercised its discretion in an arbitrary or capricious manner”)

United States v. Ordonez-Zometa, No. 23-4185, 141 F.4th 531 (4th Cir. June 17, 2025) (King, J.) (D. Md) (holding that a district court ruling on a Rule 33 motion *may* consider witness credibility but is not *obligated* to revisit the credibility of witnesses when nothing called credibility into serious doubt)

! *United States v. Elfenbein*, No. 24-4048, 144 F.4th 551 (4th Cir. July 17, 2025) (Richardson, J.) (D. Md.) (reversing district court’s grant of motion for judgment of acquittal in case of urgent-care clinic doctor accused of overbilling insurance companies, because it was within jury’s province to determine whether doctor’s interpretation of billing codes was reasonable; affirming, however, district court’s grant of motion for new trial, reasoning that evidence was close, the most damning testimony came from the defendant’s own witnesses rather than the government’s evidence, and district court had discretion to re-weigh the evidence when considering new trial motion)

United States v. Sandoval, et al., No. 23-4360, 154 F.4th 186 (4th Cir. Oct. 8, 2025) (Maddox, J., sitting by designation) (E.D. Va.) (finding no abuse of discretion in district court’s denial of motion for new trial after post-trial disclosure of misconduct by police officer who was expert witness in MS-13 racketeering trial, noting that misconduct was unrelated to testimony and was not material since it would have been useful for impeachment at most and officer’s testimony was mostly general information about gang operations not focused on facts of the case)

Federal Rule of Criminal Procedure 37

United States v. Armstrong, No. 23-6621, 132 F.4th 736 (4th Cir. Apr. 1, 2025) (Benjamin, J.) (W.D.N.C.) (holding that Fed. R. Crim. P. 37—which allows for “indicative rulings”—gives district courts the authority to deny motions for reconsideration while an appeal of the underlying order is pending in the Fourth Circuit)

Federal Rule of Criminal Procedure 59

United States v. Cabrera-Rivas, No. 22-4331, 142 F.4th 199 (4th Cir. June 30, 2025, *as amended* July 8, 2025) (Diaz, J.; Gregory, J., concurring in part, dissenting in part, and dissenting from judgment) (W.D.N.C.) (rejecting argument that magistrate judge did not have authority to issue final ruling on defendant’s competency to stand trial because defendant forfeited this argument (and could not satisfy plain-error review on appeal) by not raising it either before the magistrate judge or the district court)

28 U.S.C. § 1827, Interpreters

United States v. Sandoval, et al., No. 23-4360, 154 F.4th 186 (4th Cir. Oct. 8, 2025) (Maddox, J., sitting by designation) (E.D. Va.) (holding that district court did not err in denying mistrial in MS-13 racketeering case when juror who was fluent Spanish speaker notified judge that some of an interpreter’s translations were incorrect, noting that this was not the type of error that so infected the entire trial as to rise the level of a structural error, and finding that denial of mistrial was not abuse of discretion since errors were fairly minor and mostly corrected)

XI. SENTENCING ISSUES

Sentencing Statutes

18 U.S.C. § 3584, Multiple Sentences of Imprisonment

United States v. Oliver, No. 23-4544, 133 F.4th 329 (4th Cir. Apr. 8, 2025) (Agee, J.) (E.D. Va.) (holding that district court did not abuse discretion in running two 240-month sentences consecutively, where defendant had been convicted of robbery and conspiracy to commit robbery, noting defendant's extensive criminal record and facts of case made 480-month sentence no greater than necessary to provide for deterrence, protection of the community, and respect for the law, and observing that the Supreme Court has expressly countenanced separate sentences for conspiracy to do an act and for the subsequent accomplishment of that act)

Sentencing Guidelines

U.S.S.G. § 1B1.3, Relevant Conduct

United States v. Henderson, No. 22-4447, 136 F.4th 527 (4th Cir. May 7, 2025) (Rushing, J.) (W.D. Va.) (finding no clear error, in methamphetamine-distribution case, in district court's attribution to defendant of street dealer's drug sales before controlled delivery leading to his arrest, noting wealth of evidence concerning large-scale nature of this drug conspiracy and likelihood that defendant would reasonably foresee the quantities that lower-level dealers would be selling)

U.S.S.G. § 2A4.1, Kidnapping, Abduction, Unlawful Restraint

United States v. Faulls, No. 23-4532, 148 F.4th 280 (4th Cir. Aug. 5, 2025) (Berner, J.) (W.D. Va.) (affirming district court's application of sentencing enhancement in kidnapping case because a "dangerous weapon was used," U.S.S.G. § 2A4.1(b)(3), since defendant carried gun throughout kidnapping of his "intimate partner" and made multiple comments that he would kill her for certain actions, noting that enhancement requires more than "mere brandishing" but that "use" instead requires some action that crosses from intimidation (general implication of possibility of future harm) to threat (statement of intent to commit imminent harm absent compliance), and finding that facts here sufficed given victim's testimony about how she was reluctant to escape out of fear that defendant would use the gun he always kept nearby)

U.S.S.G. § 2B1.1, Larceny, Embezzlement, and Other Forms of Theft

United States v. Sanders, No. 23-4486, 146 F.4th 372 (4th Cir. July 24, 2025) (Hanes, D.J., sitting by designation) (D. Md.) (affirming application of sophisticated means enhancement, U.S.S.G. § 2B1.1(b)(10)(C), against defendant convicted of wire fraud in relation to provision of IT equipment to government agencies, holding that the term "sophisticated means" is genuinely ambiguous and hence deferring to commentary explanation of it; further holding that district court did not clearly err in finding this scheme to be "sophisticated" because even though some aspects

of it were not especially complex, overall scheme (including creating multiple companies and fictitious documents to carry out his plan) qualified as “especially complex or intricate”)

U.S.S.G. § 2B3.1, Robbery, Extortion, and Blackmail

United States v. Oliver, No. 23-4544, 133 F.4th 329 (4th Cir. Apr. 8, 2025) (Agee, J.) (E.D. Va.) (holding that district court did not err in imposing seven-level enhancement under U.S.S.G. § 2B3.1(b)(2)(A) because a firearm was discharged during robbery, even though co-defendant used the gun, since Oliver provided gun to co-defendant, and was responsible for all acts within the scope of jointly undertaken criminal activity in furtherance of that crime that was reasonably foreseeable to him)

U.S.S.G. § 2D1.1, Unlawful Manufacturing, Trafficking, or Possession
With Intent to Traffic in Controlled Substances

United States v. Henderson, No. 22-4447, 136 F.4th 527 (4th Cir. May 7, 2025) (Rushing, J.) (W.D. Va.) (affirming application of firearm enhancement, U.S.S.G. § 2D1.1(b)(1), in case involving methamphetamine conspiracy, where district court credited informant’s testimony that she saw defendant sell drugs while possessing a gun, and a gun was found in a duffel bag containing defendant’s property)

United States v. Jones, No. 24-4282, 166 F.4th 428 (4th Cir. Feb. 4, 2026) (Wynn, J.) (E.D.N.C.) (finding no error in district court’s application of obstruction enhancement under U.S.S.G. § 2D1.1(b)(16)(D) based on jail calls from drug defendant attempting to conceal drug proceeds, rejecting argument that similarities between this enhancement and general obstruction provision, U.S.S.G. § 3C1.1, meant that drug-obstruction enhancement should carry same exception (§ 3C1.1, n.4(D)) for actions contemporaneous with arrest that do not cause a material hindrance to the investigation) (N.B.: In a footnote, the Court noted that neither party addressed whether it could defer to commentary in obstruction guideline in interpreting either guideline, potentially making this an argument worth preserving.)

U.S.S.G. § 2G1.3, Promotion of Prohibited Sexual Conduct with a Minor

United States v. Hodges, No. 24-7186, ___ F.4th ___, 2026 WL 816370 (4th Cir. Mar. 25, 2026) (Agee, J.) (S.D.W. Va.) (affirming application of two enhancements for an offense “involving” a “minor,” U.S.S.G. § 2G1.3(b)(3)(A) and (b)(5), where defendant communicated online with undercover agents about fictitious minors; rejecting argument that the term “minor” was not so ambiguous as to allow resort to the guideline commentary that define the term to involve fictitious minors (so long as they are portrayed by law enforcement), concluding that the term “minor” was ambiguous (at least as to whether it included fictitious minors); noting how “anomalous” it would be to allow conviction for enticement of fictitious minor (18 U.S.C. § 2422(b)) but not allow an enhancement for same conduct under guideline applicable to that offense)

U.S.S.G. § 2G2.2, Trafficking, Receiving, Transporting, Shipping, Soliciting, Advertising or Possessing Material Involving the Sexual Exploitation of a Minor

! *United States v. Avila*, No. 23-4731, 134 F.4th 244 (4th Cir. Apr. 14, 2025) (Heytens, J.) (W.D.N.C.) (reversing district court’s application of cross-reference under U.S.S.G. § 2C2.2(c)(1) for “causing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct,” because court’s factual finding that Avila offered money for videos was not sufficient to establish that he “caused” the video to be taken, since it was possible that video existed before Avila asked for it to be sent)

U.S.S.G. § 2K2.1 et seq., Firearms Offenses

! *United States v. Simmons*, No. 23-4607, 143 F.4th 200 (4th Cir. July 7, 2025) (Berner, J.) (S.D.W. Va.) (holding that district court erred in applying enhancement for number of firearms at sentencing of defendant for possessing firearms prohibited by the National Firearms Act, where court counted both NFA weapons and guns that were not subject to NFA, since non-NFA firearms were not *relevant* to NFA prosecution; holding that the court erred in applying an enhancement for a stolen non-NFA firearm as well, for the same reason)

United States v. Holman, No. 25-4041, ___ F.4th ___, 2026 WL 850185 (4th Cir. Mar. 27, 2026) (Wilkinson, J.) (M.D.N.C.) (affirming application of enhanced offense level for possession of a weapon capable of accepting a large capacity magazine, U.S.S.G. § 2K2.1(a)(3), concluding that term “large capacity” is genuinely ambiguous, permitting deference to commentary defining it as more than 15 rounds, which meant that weapon involved in this felon-in-possession case qualified) (N.B.: This opinion contains a thorough exploration of the plain error standard and the reasons for it, and also notes that “when the error is a miscalculation of the defendant’s Sentencing Guidelines range, the Supreme Court has dictated a presumption: the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.”)

U.S.S.G. § 3A1.1 et seq., Victim Related Adjustments

United States v. Arthur, No. 24-4306, 160 F.4th 597 (4th Cir. Dec. 3, 2025) (Agee, J.; Gregory, J., dissenting) (E.D.N.C.) (affirming application of enhancement for offense “that involved, or was intended to promote, a federal crime of terrorism,” U.S.S.G. § 3A1.4(a), after conviction for teaching bomb-making where evidence showed that defendant (who ran home defense and survivalist business) taught undercover agent how to make and use explosives that agent said were intended to kill federal law enforcement officers he feared would be coming to his home; concluding that district court’s factual findings were sufficient for both “involved” and “intended to promote” prongs, and that any error would be harmless given that district court said it would have imposed same sentence even without this enhancement; dissenting, Judge Gregory expressed “concerns about the wide range of speech encompassed by the statutory language as well as the novelty of criminalizing speech when the speaker lacked specific intent to commit a crime”)

U.S.S.G. § 3B1.1 et seq., Role Related Adjustments

United States v. Oliver, No. 23-4544, 133 F.4th 329 (4th Cir. Apr. 8, 2025) (Agee, J.) (E.D. Va.) (holding that district court did not clearly err in applying two-level enhancement under U.S.S.G. § 3B1.1(c) for being a leader or organizer of robbery where defendant planned the offense, recruited his co-defendant, provided the weapon that was used, and used his wife's inside knowledge to learn about the operations of the business that was robbed, all of which indicated that defendant was key decision-maker of the crime)

United States v. Brewer, No. 24-4468, 157 F.4th 332 (4th Cir. Sept. 26, 2025) (King, J.) (W.D.N.C.) (affirming application of abuse-of-trust enhancement, U.S.S.G. § 3B1.3, in wire fraud case where defendant posed as legitimate financial advisor to swindle victim-investors with promises of high returns; noting that an ordinary commercial relationship cannot support the enhancement, but enhancement is appropriate where, as here, defendant provided sufficient indicia that was essentially in a fiduciary position relative to victims; further rejecting argument that the abuse-of-trust guideline itself was vague as to whether it applied to defendants falsely claiming to hold positions of trust)

U.S.S.G. § 3C1.1 et seq., Obstruction Related Adjustments

United States v. Oliver, No. 23-4544, 133 F.4th 329 (4th Cir. Apr. 8, 2025) (Agee, J.) (E.D. Va.) (affirming district court's application of two-level enhancement under U.S.S.G. § 3C1.1 for obstruction of justice where defendant instructed witness to sign false affidavit, noting that court does not have to make a finding as to each element of perjury if evidence is clear that defendant willfully obstructed justice by attempting to suborn perjury)

U.S.S.G. § 4B1.2, Definitions of Terms Used in Section 4B1.1

United States v. Suncar, No. 23-4765, 142 F.4th 259 (4th Cir. July 2, 2025) (Diaz, J.) (N.D. W. Va.) (holding that Pennsylvania statute prohibiting drug distribution did not criminalize mere attempt offenses, and thus was a valid "controlled substance offense" under U.S.S.G. § 4B1.2(b); noting that although statute criminalizes an "attempted transfer" of drugs, that is a completed delivery and not an inchoate offense)

United States v. Nelson, No. 22-4658, 151 F.4th 577 (4th Cir. Aug. 15, 2025) (King, J.) (N.D. W. Va.) (holding that Virginia statute prohibiting drug distribution, Va. Code § 18.2-248, did not criminalize mere attempt offenses, and thus was a valid "controlled substance offense" under U.S.S.G. § 4B1.2(b); noting that although statute criminalizes an "attempted transfer" of drugs, that is a completed delivery and not an inchoate offense)

United States v. Nelson, No. 22-4658, 151 F.4th 577 (4th Cir. Aug. 15, 2025) (King, J.) (N.D. W. Va.) (holding that federal drug distribution statute, 21 U.S.C. § 841, qualified as a "controlled substance offense" under U.S.S.G. § 4B1.2(b) even though § 841 covered a pair of substances (a cocaine derivative and "hemp-type marijuana") that are no longer covered by Schedule I or II, concluding that a "time of sentencing" test is appropriate and so long as "every substance that could have supported his 2012 conviction was in schedule I or II at the time of his

present sentencing,” and that test was satisfied because the prior conviction involved crack cocaine, which is still covered by schedules)

United States v. Cox, No. 24-4582, 164 F.4th 292 (4th Cir. Jan. 21, 2026) (Wilkinson, J.) (E.D.N.C.) (holding that Florida drug distribution statute did not qualify as “controlled substance offense” under U.S.S.G. § 4B1.2(b)(1) because it also punishes purchasing drugs and mere possession of user quantities, but finding guideline error harmless in light of district court’s clear statement it would impose same sentence regardless of guideline and substantive reasonableness of sentence, which was only slightly higher than correct range and defendant’s requested sentence)

Sentencing Procedure

United States v. Henderson, No. 23-4313, 159 F.4th 213 (4th Cir. Nov. 11, 2025) (Diaz, J.) (S.D.W. Va.) (affirming district court’s decision to allow government to make late arguments for two sentencing enhancements, noting that although Fed. R. Crim. P. 32(f)(1) requires parties to submit objections to presentence report within fourteen days of receipt, it also allows for belated objections at any time before sentencing “for good cause,” and finding good cause shown here because district court ordered supplemental briefing on whether safety valve applied, and court had independent obligation to determine correct range)

Restitution and Forfeiture

18 U.S.C. § 2259, Mandatory Restitution

United States v. Dugan, No. 22-4642, 136 F.4th 162 (4th Cir. May 1, 2025) (King, J.) (S.D. W. Va.) (holding that district court did not abuse its discretion by imposing restitution amounts for CSAM victims in excess of mandatory minimum amount, because the court considered the evidence in light of the factors specified in *Paroline v. United States*, 572 U.S. 434 (2014), which include the number of defendants found to have contributed to the victim’s losses, the prospects of locating any others and obtaining restitution from them, and facts related to defendant’s overall culpability in the production or dissemination of material)

! *United States v. Deritis*, No. 23-4150, 137 F.4th 209 (4th Cir. May 14, 2025) (Thacker, J.) (W.D.N.C.) (vacating, on plain error review, district court’s imposition of statutory maximum special assessment in CSAM production case because it did not conduct any inquiry at all of required factors under 18 U.S.C. § 3553(a) or 18 U.S.C. § 3572(a), noting that court separately found that defendant was incapable of paying a fine, yet imposed maximum special assessment, suggesting that outcome could have been different if the court had considered relevant factors)

United States v. Glass, No. 24-4193, 160 F.4th 563 (4th Cir. Dec. 2, 2025) (Wilkinson, J.) (W.D.N.C.) (holding that district court adequately considered relevant factors when imposing restitution in CSAM case, even though it only referred to § 2259 once, observing that the court provided extensive application of § 3553(a) factors when imposing prison sentence, and that reasoning “applies just as well to [the] assessment,” and court did not need to repeat the same points in the specific context of restitution)

Supervised Release (Including Revocation Issues)

United States v. Williams, No. 24-4043, 134 F.4th 134 (4th Cir. Apr. 7, 2025) (Heytens, J.) (W.D.N.C.) (holding that district court did not abuse its discretion during revocation hearing when it balanced defendant's due process liberty interests against good cause for admitting hearsay evidence in the form of alleged assault victim's out-of-court statements implicating defendant, noting that government provided sufficient evidence that victim was unavailable but warning that flimsy attempts to locate potential witnesses might not be good enough)

United States v. Walton, No. 23-4314, 145 F.4th 476 (4th Cir. July 28, 2025) (Rushing, J.; Gregory, J., concurring in part, dissenting in part) (N.D. W. Va.) (affirming revocation of defendant serving supervised release term after presidential commutation of prison term, rejecting argument that district court did not have jurisdiction because he was serving "a presidentially commuted sentence, not a judicially imposed one," since commutation order had expressly left in place original term of supervised release; further holding that district court did not abuse its discretion in permitting defendant to waive counsel and proceed pro se at revocation hearing, noting that Sixth Amendment right to counsel does not apply to revocation proceeding and finding that waiver was knowingly and voluntary on this record, a point on which Judge Gregory disagreed)

United States v. Jones, No. 23-4713, 157 F.4th 375 (4th Cir. Oct. 24, 2025) (King, J.) (D.S.C.) (finding no error in supervised release condition delegating payment scale for drug testing to probation officer, since requirement for testing was mandatory and special condition still left the number of tests up to the court) (N.B.: This case was an unusual candidate for publication, since defense counsel essentially conceded the (already narrow) claim during oral argument. But the Court did clarify that direct appeal was the proper method to challenge a supervised release condition, rather than waiting until the defendant is serving supervised release or after he gets revoked. And it's also notable that the Court declined to rely on an appeal waiver, since it was apparently easier to resolve the case on the merits than get into whether the waiver applied.)

United States v. Aborisade, No. 24-4466, 163 F.4th 856 (4th Cir. Jan. 8, 2026) (Benjamin, J.; Heytens, J., dissenting) (D. Md.) (finding no inconsistency between release conditions (1) requiring defendant to report to probation office in district where he is released and (2) requiring him to report to probation office in district where he is authorized to live, reasoning that defendants are released into districts where they are authorized to live)

! *United States v. McLaurin*, No. 24-4261, 168 F.4th 693 (4th Cir. Mar. 6, 2026) (Gregory, J.; Niemeyer, J., dissenting) (D. Md.) (vacating revocation sentence based on condition that was not pronounced at original sentencing, holding that initial appeal waiver did not bar this appeal—nor was the condition the law of the case—because unpronounced condition was a "nullity" and never became law of the case; further holding that revocation hearing was first opportunity to challenge validity of condition, since defendant could not bring free-standing *Rogers* claim absent a "procedurally appropriate mechanism"; dissenting, Judge Niemeyer called this holding "*Rogers* on steroids")

Reasonableness of Sentence

United States v. Oliver, No. 23-4544, 133 F.4th 329 (4th Cir. Apr. 8, 2025) (Agee, J.) (E.D. Va.) (holding that 480-month sentence—an upward variance from guideline range of 292 to 365 months—was substantively reasonable in robbery and robbery conspiracy case where defendant had 27 prior convictions, including for violent felonies, as well as extensive prison disciplinary record, and where offense caused considerable harm to victims, including one who was shot four times resulting in permanent injuries; noting that district court adequately considered defendant’s mitigating arguments)

United States v. Solis-Rodriguez, No. 22-4654, 144 F.4th 617 (4th Cir. July 23, 2025) (Quattlebaum, J.) (W.D.N.C.; Traxler, J., concurring in judgment) (holding that district court adequately considered defendant’s mitigating arguments in firearm case, and stating “although not necessary for, nor a basis of, our decision, we also note that the district court asked counsel ‘if there’s any legal reason why this sentence as proposed should not be imposed?’” and counsel said nothing; concurring in part, Judge Traxler would have held that this silence was a forfeiture of any claim that the court had not considered all of the defendant’s arguments)

! *United States v. Celedon*, No. 23-4701, 165 F.4th 873 (4th Cir. Jan. 30, 2026) (Gregory, J.; Diaz, J., dissenting) (holding that district court failed to adequately address on the record defendant’s mitigating arguments in supervised release revocation case, and that the failure was plainly unreasonable, further holding that error was not harmless)

! *United States v. Tostado*, No. 23-4423, ___ F.4th ___, 2026 WL 881728 (4th Cir. Mar. 31, 2026) (Heytens, J.; Rushing, J., dissenting) (vacating sentence due to *Rogers* error where supervised release condition announced at sentencing permitted probation officer to conduct warrantless search without reasonable suspicion “for safety reasons,” but written judgment permitted suspicionless searches at any time, so long as it was part of officer’s supervision functions; rejecting government’s arguments (1) that this difference was not material, because the written condition was a greater limitation on the defendant’s liberty; (2) that defendant forfeited this argument by not objecting at sentencing, since error did not arise until judgment was entered after sentencing; (3) that condition matched PSR, since district court did not adopt or incorporate that provision; (4) that error was harmless due to provision in plea agreement that defendant would be subject to all conditions in a standing order even if not pronounced at sentencing, reasoning that this was not a binding plea and court’s failure to announce condition meant that it was never in fact validly included in the judgment (even assuming a *Rogers* error could ever be harmless); and finally holding that defendants have Article III standing to raise claim on appeal, notwithstanding principle that condition was not technically part of sentence, since defendant has incentive to comply with condition unless and until appeals court decided invalidity of condition)

XII. APPELLATE ISSUES

Appeal Waivers

! *United States v. Smith*, No. 22-4338, 134 F.4th 248 (4th Cir. Apr. 14, 2025) (Thacker, J.) (E.D.N.C.), *as amended* May 6, 2025) (after finding that appeal waiver was invalid due to district court’s inadequate Rule 11 colloquy and defendant’s lack of understanding of waiver, holding that

the proper remedy for an invalid appeal waiver is to sever the appeal waiver from the remainder of the plea agreement and relieve the defendant of the waiver; further holding that appeal waiver would be unenforceable even if it was valid, “because this district court’s practice of omitting necessary information in both plea and sentencing hearings, disregarding proper procedure, and relying on appeal waivers to shield procedurally unreasonable sentences from review constitutes a miscarriage of justice warranting our consideration of the merits of the appeal, regardless of the validity of the appeal waiver”)

United States v. Yelizarov, No. 22-6698, 140 F.4th 597 (4th Cir. June 23, 2025) (Gibney, J., sitting by designation) (D. Md.) (holding that appeal waiver applied to sentence imposed after successful 28 U.S.C. § 2255 motion resulted in vacatur of § 924(c) count, because plea agreement and plea colloquy specifically warned defendant that he would get the same sentence even if one of his § 924(c) predicates were later deemed not to qualify as a crime of violence)

United States v. Richardson, No. 23-4471, 146 F.4th 394 (4th Cir. July 28, 2025) (Floyd, J.) (E.D.N.C.) (holding that objection to firearm enhancement in drug case was covered by appeal waiver, and that although the Fourth Circuit will decline to enforce a waiver if doing so would be a miscarriage of justice, no such danger is present here, where the miscarriage argument is essentially a re-worked claim that the enhancement was improperly applied; further holding that claim of ineffective assistance of counsel for failing to object to enhancement was not covered by appeal waiver, but was not conclusive on the face of the record given that there was a strong basis for applying enhancement)

Reviewability of Issues (Including Appellate Jurisdiction and Standards of Review)

United States v. Oliver, No. 23-4544, 133 F.4th 329 (4th Cir. Apr. 8, 2025) (Agee, J.) (E.D. Va.) (addressing appropriate standard of review for claims of violation of right against self-incrimination, holding that review of denial of *defendant’s* right is de novo, while review of a *witness’s* invocation of right against self-incrimination is essentially about an evidentiary ruling, and so is reviewed for abuse of discretion)

! *United States v. Smith*, No. 22-4338, 134 F.4th 248 (4th Cir. Apr. 14, 2025) (Thacker, J.) (E.D.N.C.), *as amended* May 6, 2025) (holding that “[w]here an appellant does not seek to withdraw his underlying plea, but instead challenges the appeal waiver as unknowing and involuntary, we review the validity of the appeal waiver de novo,” but “[o]n the other hand, where an appellant seeks to withdraw his guilty plea based on forfeited Rule 11 errors because he would not have entered the plea agreement but for the errors, we review for plain error”)

United States v. Cabrera-Rivas, No. 22-4331, 142 F.4th 199 (4th Cir. June 30, 2025, *as amended* July 8, 2025) (Diaz, J.; Gregory, J., concurring in part, dissenting in part, and dissenting from judgment) (W.D.N.C.) (holding that defendant’s failure to object to magistrate judge’s order finding him competent to stand trial did not affect appellate jurisdiction, but was instead an issue of whether the objection was properly preserved)

XIII. SELECTED POST-CONVICTION ISSUES

18 U.S.C. § 3582(c) Motions

United States v. Crawley, No. 24-6257, 140 F.4th 165 (4th Cir. June 10, 2025) (Niemeyer, J.) (E.D. Va.) (holding that Sentencing Commission’s guideline amendment related to compassionate release motions, U.S.S.G. § 1B1.13, applies to motions that were filed before the amendment’s effective date, since the use of the present tense in 18 U.S.C. § 3582(c)(1)(A) allows district courts to reduce sentences if the reduction “*is* consistent with *applicable* policy statements,” indicating that § 1B1.13 is designed to guide the court’s exercise of discretion at the time the court considers the motion)

United States v. Crawley, No. 24-6257, 140 F.4th 165 (4th Cir. June 10, 2025) (Niemeyer, J.) (E.D. Va.) (holding that requirement in U.S.S.G. § 1B1.13 that a defendant seeking a sentence reduction have “served at least 10 years of his term of imprisonment” refers to time *actually served*, and not time imposed, which might have been shortened by good-time credit, even though such credit counted towards service of the sentence)

! *United States v. Johnson*, No. 23-6896, 143 F.4th 212 (4th Cir. July 8, 2025) (Gregory, J.; Niemeyer, J., dissenting) (affirming, over appeal by government, district court’s grant of compassionate release and reduction of two life sentences plus 790 months (resulting from drug trafficking case involving two murders) to 35 years due to significant sentencing disparities with other members of drug trafficking enterprise, including triggerman in one murder who received only five years, holding that list of extraordinary and compelling circumstances in applicable guideline section was not exhaustive) (dissenting, Judge Niemeyer argued that sentencing disparities between defendants who were convicted of different offenses can never be unwarranted and hence cannot constitute extraordinary and compelling reasons for reducing a sentence)

United States v. Burleigh, No. 23-6254, 145 F.4th 541 (4th Cir. July 31, 2025) (Quattlebaum, J.; Gregory, J., dissenting) (E.D. Va.) (affirming denial of compassionate release motion for defendant convicted of carjacking and firearm charges, finding that district court adequately considered defendant’s arguments, including that impact of § 924(c) stacking called for a lower sentence, but simply rejected them as not compelling, especially given serious and violent nature of offenses)

28 U.S.C. § 2241 Petitions

Bonnie v. Dunbar, No. 24-6665, 157 F.4th 610 (4th Cir. Nov. 5, 2025) (Niemeyer, J.; Wynn, J., dissenting) (D.S.C.) (rejecting 28 U.S.C. § 2241 habeas corpus claim for prisoner serving 144-month sentence—120 months of which is attributable to a drug offense that is eligible for First Step Act credits and 24 months of which is attributable to § 924(c) offense that it not eligible for First Step Act credits—because total 144-month sentence is treated as one aggregate sentence that includes imprisonment for an ineligible offense, noting also that First Step Act text excludes “a prisoner” with certain convictions, not “a sentence”)

28 U.S.C. § 2255 Motions

! *United States v. Brown*, No. 22-7105, 137 F.4th 248 (4th Cir. May 20, 2025) (Gregory, J., joined by King, J.; Rushing, J., dissenting) (reversing denial of 28 U.S.C. § 2255 motion claiming ineffective assistance of counsel, where counsel gave defendant incorrect advice about sentence exposure, leading defendant to reject plea offer; finding prejudice prong of *Strickland* established where Brown testified he would have taken the deal, that he eventually pleaded guilty to more serious charges, and that the end result would have been more favorable to him if he had taken the plea; holding that Brown did not have to prove that he would have accepted plea deal if he had been properly advised (which Judge Rushing argued in dissent should have been the standard); ordering government to re-offer the same plea agreement on remand)

United States v. Yelizarov, No. 22-6698, 140 F.4th 597 (4th Cir. June 23, 2025) (Gibney, J., sitting by designation) (D. Md.) (affirming denial of 28 U.S.C. § 2255 motion claiming ineffective assistance of counsel relating to plea negotiations in robbery case, finding no prejudice where defendant had not shown he would have gone to trial on robbery charge even if he had known that charges for unrelated murder could be brought and result in consecutive sentence (which in fact happened), given counsel's credible testimony that defendant instructed him not to pursue global plea and nothing in robbery plea referred to murder, belying any suggestion that defendant thought murder case was covered by robbery plea)

United States v. Dimkpa, No. 23-6245, 169 F.4th 228 (4th Cir. Mar. 3, 2026) (Harris, J.) (M.D.N.C.) (affirming denial of 28 U.S.C. § 2255 motion from physician convicted in 2019 of unauthorized distribution of oxycodone, who tried to take advantage of Supreme Court's 2022 decision in *Ruan* (which required proof that defendant knew his prescribing practices were outside of norms of professional practice), reasoning that claim was procedurally defaulted and movant could not show cause for default since *Ruan*-type claim was "available" at the time of his conviction)

United States v. Carillo Murillo, No. 23-6510, 169 F.4th 273 (4th Cir. Mar. 5, 2026) (King, J.; Thacker, J., dissenting) (affirming denial of 28 U.S.C. § 2255 based on ineffective assistance of counsel where counsel informed defendant that his plea to cocaine conspiracy rendered him "deportable," even though deportation was mandatory (or at least presumptively mandatory) consequence of conviction, because removal was not "wholly inevitable" (although chances to avoid it were extremely remote); noting that constitutional minimum requirement is to inform defendant that conviction *may* carry *risk* of deportation)