

Seventh Circuit Case Update

Relevant Precedential Cases from September of 2019 to September 2020

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I. § 3582 Cases

United States v. Guerrero, No. 19-1676. Since 2015, Guerrero has sought a reduction of his prison sentence under Amendment 782 to the Sentencing Guidelines, which reduced guideline ranges for drug quantities. His original guidelines range was life plus 60 months but he and the government agreed to jointly recommend a total of 228 months in prison. The district court accepted this agreement and imposed 228 months in prison. In later 3582 proceedings, the district court miscalculated how the guidelines amendments applied to the calculations used in Guerrero's original sentencing and misconstrued Guerrero's pro se filings. The Court of Appeals held he is entitled to and has not yet received one opportunity for full consideration of the merits of his request. Accordingly, it vacated the decision of the district court and remanded so that he may properly present such a motion.

II. Aggravated Identity Theft

United States v. Muresanu, No. 18-3690. Muresanu was charged with four crimes: possession of counterfeit access devices and three counts of aggravated identity theft. The identity-theft charges were legally defective. The indictment alleged that Muresanu attempted to commit aggravated identity theft, but there is no such federal crime; the statutory definition of aggravated identity theft does not cover attempts. The district court deleted the attempt language from the jury instructions and instructed the jury on the elements of the completed crime. The modified instruction conformed to the statutory offense but varied from the charges in the indictment. The jury found Muresanu guilty on all counts. The

Court of Appeals reversed and remanded, holding that the modification of the jury instructions led the jury to convict Muresanu of crimes not charged by the grand jury, violating his Fifth Amendment right to be tried only on charges brought by indictment. That category of error is per se reversible.

III. Anders Briefs

United States v. Caviedes-Zuniga, No. 19-1104. The Court of Appeals held that, when an attorney files an *Anders* brief, the attorney should ensure that a defendant understands these risks of challenging his sentence and makes an informed choice whether to contest the sentence. Where counsel assures the Court that he discussed the risks and benefits with the defendant, who decided not to dispute his sentence, it is unnecessary for counsel to discuss, under the *Anders* procedure, potential arguments in support of resentencing.

IV. Appeal Waivers

United States v. Johnson, No. 18-2350. During an in-chambers conference among court and counsel, Johnson's attorney withdrew an objection to the restitution amount to be paid to the victims of his client's wire fraud. Johnson was not present. Then, in open court, Johnson confirmed he no longer disputed restitution, recognized the plea agreement included an appeal waiver, pleaded guilty, and was sentenced. Johnson now challenges his sentence, arguing he did not waive this appeal and his sentence is unconstitutional because he was not present when his attorney dropped the restitution objection. The Court of Appeals upheld the appeal waiver and dismissed Johnson's appeal.

V. Child Pornography/Sex Offenses

United States v. Dewitt, No. 19-1295. Dewitt was found guilty by a jury of child pornography offenses. Dewitt argued the government's evidence was insufficient because the jury heard no expert testimony (from a medical doctor, for example) about the age of girls depicted in images sent from his cellphone. The Court of Appeals held that, while some cases may present close calls that benefit from expert evidence, this one did not. The jury heard and saw more than

enough to make a reliable finding that Dewitt possessed, produced, and distributed images of children. The Court affirmed.

***United States v. Howard*, No. 19-1005.** Howard was charged with seven crimes relating to possession, receipt, distribution, and production of child pornography. He pleaded guilty to five counts but proceeded to trial on the counts accusing him of producing child pornography in violation of § 2251(a). The videos involved in these counts do not depict a child engaged in sexually explicit conduct; they show Howard masturbating next to a fully clothed and sleeping child. The Court of Appeals held that the videos are not child pornography. The government's theory was that Howard violated the statute by "using" the clothed and sleeping child as an object of sexual interest to produce a visual depiction of himself engaged in solo sexually explicit conduct. However, the Court held that government's interpretation of § 2251(a) "stretches the statute beyond the natural reading of its terms considered in context" and vacated the two production convictions.

***United States v. Hosler*, No. 19-2863.** Hosler was convicted after a bench trial of using a facility or means of interstate commerce to attempt to persuade, induce, entice, or coerce a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b). The charge stemmed from Hosler's communications over a period of several weeks with an undercover police detective posing as a mother offering her 12-year-old daughter for sex in exchange for money. On appeal, Hosler argued that his conduct did not meet the requirements of the statute because he did not attempt to transform or overcome the supposed minor's will. The Court of Appeals disagreed, finding "It is sufficient for conviction if the defendant makes a "direct attempt to use the parent as an intermediary to convey the defendant's message to the child."

VI. Crimes of Violence/Violent Felonies

***United States v. Haynes*, No. 17-3657.** Haynes challenged three of his convictions under 18 U.S.C. § 924(c) for using a firearm during a crime of violence. Those convictions were based on Haynes' three convictions under 18 U.S.C. § 1952(a)(2), which required proof, among other things, that he committed or attempted to commit a "crime of violence." The crimes of violence that form

the basis of Haynes' § 1952(a)(2) convictions were three armed robberies in violation of the Hobbs Act, 18 U.S.C. § 1951, which is a crime of violence for purposes of § 924(c). The issue in this appeal was whether the different crimes in this set of charges – § 1951 nested inside § 1952(a)(2) nested inside § 924(c) – can support the § 924(c) convictions. The district court upheld Haynes' § 924(c) convictions because the indictment and jury instructions, taken together, required jurors to find each element of the Hobbs Act robberies – crimes of violence – at the center of the nested charging scheme. Haynes appealed, arguing both that § 1952(a)(2) is not “divisible” and that the jury did not necessarily find him guilty of the underlying Hobbs Act robberies. The Court of Appeals affirmed, finding § 1952(a)(2)(B) is divisible and therefore applied the modified categorical approach to determine whether the convictions were crimes of violence.

United States v. Glispie, No. 19-1224. Glispie pled guilty to being a felon in possession of a firearm but reserved the right to challenge his designation as an armed career criminal based on his prior convictions for residential burglary under Illinois law. The district court concluded that Illinois residential burglary was not broader than generic burglary following *Dawkins v. United States*, 809 F.3d 953 (7th Cir. 2016). On appeal, Glispie argues residential burglary in Illinois covers a broader swath of conduct than generic burglary for purposes of the ACCA and cannot be used as a predicate offense. The Court of Appeals determined that this issue had not been considered fully as to whether the limited-authority doctrine applies to the Illinois residential burglary statute. If the limited-authority doctrine applies to residential burglary, then a conviction for Illinois residential burglary is broader than generic burglary and cannot qualify as an aggravated felony for purposes of the ACCA. Because the Supreme Court of Illinois has not made this determination, and because the question is likely to arise frequently and to affect the administration of justice in both the state and federal courts, the Court respectfully sought the assistance of the Supreme Court of Illinois by certifying this controlling question of law.

United States v. Williams, No. 18-3318. Williams was convicted after a jury trial of Hobbs Act robbery. Judge Colin S. Bruce presided over his jury trial but a few months later, it became public that Judge Bruce had engaged in *ex parte*

communications with members of the United States Attorney's Office for the Central District of Illinois. As a result, all criminal cases assigned to Judge Bruce were reassigned to other judges. Judge Darrow sentenced Williams to 180 months' imprisonment. Williams appealed his conviction and sentence, arguing Judge Bruce's *ex parte* communications with the Office violated his due process rights and the federal recusal statute, warranting a new trial. The Court of Appeals concluded there is no evidence of actual bias in this case to justify a new trial. As to his sentence, Williams argued Judge Darrow improperly found that he was a career offender. Although Williams does not qualify as a career offender because his prior Illinois conviction for aggravated criminal sexual abuse was not a crime of violence, the court's sentence was not plain error because the judge specifically found she would impose the same sentence regardless of his career offender status.

***United States v. Carter*, No. 18-3713.** Carter pled guilty to possessing a firearm as a felon after police officers arrested him and found a stolen handgun in his possession. At sentencing, the district court calculated his Sentencing Guideline range based on a finding that he had previously sustained at least two felony convictions for "crimes of violence." U.S.S.G. § 2K2.1(a)(2). Carter appealed, arguing that the district court erred in classifying two of his prior convictions as crimes of violence. The Court of Appeals affirmed because Carter had at least two prior felony convictions that qualify as crimes of violence under the categorical approach required under the Guidelines. The Court also reminded the district courts that the classification of prior convictions under the Sentencing Guidelines can produce abstract disputes that bear little connection to the purposes of sentencing. As the Sentencing Commission itself has recognized since the Sentencing Guidelines were first adopted, district judges may and should use their sound discretion to sentence under 18 U.S.C. § 3553(a) on the basis of reliable information about the defendant's criminal history even where strict categorical classification of a prior conviction might produce a different guideline sentencing range.

***United States v. Vesey*, No. 19-3068.** Vesey pled guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). On appeal he argued the district court based its sentencing calculations on an erroneous determination

that his prior conviction for Illinois aggravated assault was a crime of violence within the meaning of the United States Sentencing Guidelines. The Court of Appeals held that an Illinois aggravated assault conviction was a crime of violence because he was convicted under the portion of the divisible statute that requires an element of the use, attempted use, or threatened use of force. The Court also determined the district court was entitled to use *Shepard* documents to determine under which clause of the statute Vesey was convicted.

VII. Evidentiary Issues

United States v. Washington, No. 19-1331. Washington was charged with unlawfully possessing a firearm as a felon after police officers saw him toss a gun into a residential yard. Before trial the government moved to admit a video posted on YouTube about three months before the arrest depicting Washington holding what prosecutors argued was the same gun. Over Washington's objection, the district judge permitted the admission of still photos from the video but not the video itself. The jury found Washington guilty. Washington appealed and challenged the admission of this evidence. The Court of Appeals affirmed, holding that evidence of recent past possession of the same gun is admissible for a nonpropensity purpose – namely, to show the defendant's ownership and control of the charged firearm – although evidence of past possession of a different gun would raise Rule 404(b) concerns.

VIII. Expert Testimony

United States v. Truitt, No. 18-2324. Truitt was charged with making false claims in violation of 18 U.S.C. § 287 and theft of government funds under 18 U.S.C. § 641 after she filed seven false tax returns claiming \$300,000 refunds. She was convicted by a jury. On appeal, she claimed the district court erred in excluding her expert, a psychologist who proposed to testify that Truitt was a member of a “charismatic group” and membership in that group caused her to lack the *mens rea* necessary to commit the crimes. The group at issue was the Moorish Science Temple of America. The Court of Appeals affirmed the district court's refusal to allow the testimony because the psychologist lacked the expertise to speak authoritatively about charismatic groups and his methods were unreliable.

United States v. Malagon, No. 18-3200. A jury convicted Malagon of conspiracy with intent to distribute cocaine and possession of cocaine with intent to distribute. Malagon appealed, arguing that the district court improperly admitted expert testimony about use of coded language, the price of cocaine in the Chicago area, and common tactics used by drug traffickers. The Court of Appeals affirmed, under plain error review, holding no error occurred because the expert relied on his training and expertise when testifying.

IX. Felon in Possession/Domestic Violence Misdemeanant in Possession

United States v. Williams, No. 19-1358. Williams had already pleaded guilty to possessing a firearm after a felony conviction when the Supreme Court issued *Rehaif v. United States* and his plea reflected the law as it was in this Circuit before that decision. On appeal, Williams sought to withdraw his plea on plain error review but argued the Court should adopt a new standard called “the supervening-decision doctrine” under which the government would bear the burden of proving that an error did not affect the defendant’s rights. The Court of Appeals rejected this argument and concluded that the defendant bears the burden of showing that his erroneous understanding of the elements of § 922(g) affected his substantial rights - his decision to plead guilty - before he may prevail. Williams failed to carry that burden, and the Court affirmed.

United States v. Maez, et. al, Nos. 19-1287, 19-1768, & 19-2049. The defendants in these cases were found guilty of violating 18 U.S.C. § 922(g) at jury trial. They raised issues regarding *Rehaif v. United States* to challenge their convictions in trials held before *Rehaif* was decided. They asserted *Rehaif* errors including a missing element in their indictments and jury instructions and a denied motion for a judgment of acquittal. Applying plain-error review, the Court of Appeals concluded the asserted errors do not require reversing any of the convictions. Jones’s sentence was vacated, however, because the district court made what is known as a *Tapia* error, imposing a longer prison term for purposes of rehabilitation through prison programs.

United States v. Triggs, No. 19-1704. Triggs was indicted for unlawfully possessing a firearm in violation of 18 U.S.C. § 922(g)(9), which prohibits firearm possession by persons convicted of a misdemeanor crime of domestic violence.

Soon after he filed his notice of appeal, the Supreme Court issued its decision in *Rehaif*. Triggs raised a *Rehaif* claim on appeal, seeking to withdraw his plea. The Court of Appeals reversed and remanded, holding the error is plain and prejudicial because Triggs could plausibly argue he did not know he belonged to the relevant category of persons disqualified from firearm possession - more specifically, that he did not know his ten-year-old conviction was a “misdemeanor crime of domestic violence” as that phrase is defined for purposes of § 922(g)(9).

United States v. Cook, No. 18-1343. A jury convicted Blair Cook of being an unlawful user of a controlled substance (marijuana) in possession of a firearm and ammunition. See 18 U.S.C. §§ 922(g)(3). The Court of Appeals rejected Cook’s vagueness and Second Amendment challenges to section 922(g)(3) along with his objection to the jury instruction on who constitutes an unlawful user of a controlled substance. However, the Court reversed and remanded for a new trial in light of the Supreme Court’s decision in *Rehaif*.

X. First Step Act

United States v. Godinez, No. 19-1215. Godinez pled guilty to conspiracy to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and to possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). The government filed an information under 21 U.S.C. § 851, advising the district court that Godinez had a prior Ohio conviction for possession of cocaine. On appeal, Godinez argued that the First Step Act of 2018, enacted after the signing of his plea agreement but before his sentencing, rendered invalid both the information and the increased penalties it carried. The district court should not have characterized his previous Ohio conviction as a conviction for “possession with intent to distribute” cocaine, the qualifying requirement for the ten-year mandatory minimum. The Court of Appeals agreed and held that, by failing to recognize the changes implemented by the First Step Act, the district court premised its sentencing calculations on a mandatory minimum that was twice what it should have been. This oversight constituted plain error and required that Godinez be resentenced.

United States v. Shaw, et al., Nos. 19-2067, 19-2069, 19-2078, 19-2117. The Court of Appeals held in these four denial of First Step Act petitions that in order to determine whether a defendant is eligible for a reduced sentence under the First Step Act, a court needs to look only at a defendant's statute of conviction, not to the quantities of crack involved in the offense. More specifically, if a defendant was convicted of a crack-cocaine offense that was later modified by the Fair Sentencing Act, he or she is eligible to have a court consider whether to reduce the previously imposed term of imprisonment. Here, each defendant's statutory penalties for crack-cocaine offenses had been modified by the Fair Sentencing Act, so each is eligible to have a court consider whether to reduce the defendant's sentence under the First Step Act. Because each district court did not do so in each of their respective cases, the Court reversed and remanded all four respective district court orders denying the motions for a sentence reduction.

United States v. Sutton, No. 19-2009. Over a decade ago, the district court sentenced Sutton to his then statutory minimum 15 years' imprisonment for distributing crack and carrying a firearm during a drug-trafficking crime. Under the First Step Act, a defendant sentenced for a covered offense (which includes Sutton's crack cocaine charge) may move for the district court to impose a reduced sentence. Sutton submitted his motion seeking relief and the district court denied it. The Court of Appeals asked the parties to brief how the First Step Act interacts with the Sentencing Reform Act, which generally prohibits a court from modifying a sentence. The Court of Appeals held that the First Step Act is its own procedural vehicle and the only limits on the district court's authority under the First Step Act come from the interpretation of the First Step Act itself.

United States v. Corner, No. 19-3517. Corner violated the conditions of his supervised release, and he was sentenced to 18 months' imprisonment followed by 42 months' supervised release. He moved for a reduced sentence under section 404 of the First Step Act. The district court did not assess Corner's eligibility for relief under the Act, explaining that it would not lower his sentence regardless of his eligibility because he had violated the terms of his release. Corner appealed and argued it was procedural error to deny relief without first

determining with the Act applied to his sentence and what the new statutory penalties would be. The Court of Appeals agreed with Corner and reversed.

***United States v. Hudson, et al.*, Nos. 19-2075, 19-2476, & 19-2708.** The First Step Act allows district courts to reduce the sentences of criminal defendants who have been convicted of a “covered offense.” A “covered offense” is a federal crime (committed before August 3, 2010) for which the statutory penalties were modified by the Fair Sentencing Act of 2010. The Appellants in these appeals argued the district court erred in denying their First Step motions. The Court of Appeals reversed and remanded holding: (1) if a defendant’s aggregate sentence includes both covered and non-covered offenses, the district court can reduce the sentence for the non-covered offenses; and (2) if the Fair Sentencing Act did not alter the Guidelines range for a defendant’s covered offense, a district court can reduce the defendant’s sentence for that offense.

***United States v. Sparkman*, No. 17-3318.** Sparkman’s case was on appeal after a resentencing hearing. During the pendency of the appeal, the First Step Act was enacted. The Court of Appeals reaffirmed its holding in *Pierson* that the First Step Act does not apply to cases pending on appeal when it was enacted.

XI. Fourth Amendment Issues

***United States v. Rickmon*, No. 19-2054.** Police departments use a surveillance network of GPS-enabled acoustic sensors called ShotSpotter to identify gunfire, quickly triangulate its location, and then direct officers to it. As a matter of first impression, the Court of Appeals considered in this case whether law enforcement may constitutionally stop a vehicle because, among other articulable facts, it was emerging from the source of a ShotSpotter alert. The district court held that the totality of the circumstances provided the officer responding to the scene with reasonable suspicion of criminal activity to justify the stop. The Court of Appeals affirmed.

***United States v. Caya*, No. 19-2469.** Caya was indicted on drug trafficking and firearms charges based on evidence found in his home during a search conducted on the authority of section 302.113(7r) of the Wisconsin Statutes. The statute authorizes law-enforcement officers to search the person, home, or

property of a criminal offender serving a term of “extended supervision” based on reasonable suspicion of criminal activity or a violation of supervision. Caya moved to suppress the evidence recovered from his home, arguing that the search was unlawful under the Fourth Amendment. The district judge denied the motion. On appeal, the Court of Appeals affirmed, finding that Fourth Amendment law has long recognized that criminal offenders on community supervision have significantly diminished expectations of privacy that are substantially outweighed by the government’s strong interest in preventing recidivism and safely reintegrating offenders into society.

United States v. Howell, No. 18-3157. After ruling out an initial suspect of a warehouse break in, the initial suspected pointed at Howell as a possible suspect. Howell was crossing the street and walking toward the police. When an officer approached to ask what was going on, Howell did not answer, looked panicked, and put his hands in his pockets. The officer reacted by patting down Howell and found a gun in his jacket. A federal gun charge followed, and Howell moved to suppress the gun as the fruit of an unconstitutional stop-and-frisk. The district court denied the motion, Howell proceeded to trial, and a jury found him guilty. Howell now appeals from the denial of the suppression motion. The Court of Appeals reversed the denial of his suppression motion. The Court held that the proper scope of review was to limit itself to the pretrial record rather than looking at the arresting officer’s trial testimony as well. The reason for this was because that was the only source of facts the district court considered in denying Howell’s motion.

United States v. Eymann & Lyons, Nos. 19-2090 & 19-2101. Eymann and Lyons were flying in a small airplane from California to Pennsylvania and stopped in Litchfield, Illinois. Law enforcement had been monitoring their plane for months because they found the airplane’s movement patterns and quick turnaround trips suspicious. The plane was known to land at small, rural airports late at night to refuel when the airports were otherwise closed. Law enforcement arranged to have a drug-detection dog at the Litchfield airport. When the plane arrived at 12:05 a.m., it did not simply refuel and leave. Instead, the two individuals unloaded cargo into a courtesy car at the airport and drove away. Officers parked behind the car when it stopped at a nearby hotel and parked.

Officer asked Eymann if he had brought any marijuana from California and he said he had a small, personal use amount in the car. This admission led to a drug dog sniff of the car and a positive alert and discovery of 2.5 grams of marijuana. Officers then took the dog to the airplane and he alerted again. The found 29.5 kilograms in the plane and a firearm. The defendants filed a motion to suppress the evidence arguing the stop at the hotel parking lot was not supported by reasonable suspicion. They renewed their argument on appeal, stating that the officers had nothing more than a hunch when stopping the two men. The Court of Appeals disagreed and affirmed. Lyons also argued the officers did not have probable cause to arrest him after they found marijuana in Eymann's luggage. The Court split on this issue, with Judge Wood finding the officers did not have probable cause, Judge Sykes finding they did have probable cause, and Judge Hamilton dissenting from the entire opinion.

United States v. Jackson & Freeman, Nos. 19-2928 & 19-3153. A police officer pulled over Jackson and his passenger Freeman for violating a provision of the Chicago municipal code prohibiting any object obstructing the driver's clear view through the windshield - in this case an air freshener. Officers subsequently recovered three firearms from the vehicle and Jackson and Freeman were each charged with unlawful possession of a firearm by a felon. Jackson and Freeman moved to suppress the evidence for lack of probable cause to conduct the traffic stop based on their argument that the officer erroneously believed that there could not be anything hanging from the rearview mirror, regardless of whether it obstructed the driver's view. The district court denied the motion. The Court of Appeals affirmed, finding that all that is required for a traffic stop is reasonable suspicion and because the officer had an articulable and objective basis for suspecting that the air freshener obstructed Jackson's clear view in violation of the city municipal code, the stop was lawful.

United States v. Patton, No. 19-2466. Detective Lane Mings of the Galesburg, Illinois, police asked a state judge to issue a search warrant. Mings submitted an affidavit relating that an informant had been inside Patton's home and seen him take a retail quantity of methamphetamine from his safe. The affidavit did not discuss the informant's criminal history, his likely motivation for cooperation (obtaining lenience on pending charges), or his reliability (e.g., whether earlier

information had panned out). It did give a few facts that corroborated the informant's story, though many of those facts could have been learned by someone who had not been inside Patton's home. In addition, the state judge took testimony from the informant and then issued a warrant. Patton challenged the warrant on appeal because the testimony was not recorded and was not available but the judge issued the warrant anyway based on the affidavit only. The Court of Appeals affirmed holding that the text of the affidavit is not the end-all when the state judge hears testimony and Mings was not "dishonest or reckless."

United States v. Wilson, No. 19-2503. Wilson was convicted of being a felon in possession of a firearm. Wilson argued on appeal the gun found on his person should have been suppressed because the police subjected him to an unlawful *Terry* stop. The Court of Appeals disagreed and affirmed his conviction. The Court held that the officers had reasonable suspicion to stop Wilson by tackling him because he had a bulge in his pocket, turned away from them when they arrived, was in a high crime area, and had a report of armed men selling drugs nearby.

United States v. Glenn, No. 19-2802. Police conducted a controlled buy at Glenn's home. The transaction was recorded on audio and video. About a month later the police asked for a warrant to search Glenn's home. A state judge put the officer under oath, took his testimony (which was recorded), and issued a warrant. A search turned up cocaine and guns. On appeal, Glenn challenged the district court's denial of his motion to suppress. The district judge held a hearing and concluded that the warrant was supported by probable cause. Glenn argued there was not probable cause because the officer did not tell the state judge whether agents had searched the informant before the transaction, that the informant had a long criminal record and was cooperating to earn lenience, and that the informant's record of providing accurate information was with the local police as a whole rather than with the officer personally. The Court of Appeals affirmed, finding that the omissions were "unfortunate." However, the Court conclude they do not negate probable cause, when the evidence is viewed as a whole and the federal court gives the state judge great deference.

XII. Guilty Plea Procedure

United States v. Zacahua, No. 16-4046. Zacahua argued the Court should vacate his guilty plea because the district court failed to inform him of the potential immigration consequences of his plea, as Federal Rule of Criminal Procedure 11(b)(1)(O) requires. The government conceded that issue, and the Court agreed that the district court failed to give Zacahua this admonishment. However, because Zacahua did not demonstrate a reasonable probability that, had the district court provided this warning, he would not have pleaded guilty, the Court affirmed.

XIII. Illegal Reentry

United States v. Hernandez-Perdomo & Rangel-Rodriguez, Nos. 19-1964 & 19-2113. Rangel-Rodriguez and Hernandez-Perdomo are both Mexican citizens who have never been lawfully admitted to the United States. Immigration authorities served both of them with Notices to Appear (“NTA”) for removal proceedings. These NTAs were defective because they did not list a date or time for an initial removal hearing. They were both removed from the country. When they each illegally returned to the United States and they were indicted for illegal reentry in violation of 8 U.S.C. § 1326(a). In light of the Supreme Court’s decision in *Pereira v. Sessions*, they moved to dismiss their respective indictments by collaterally attacking their underlying removal orders under 8 U.S.C. § 1326(d) based on the defective NTAs. The district courts denied their motions, and each defendant entered a conditional plea of guilty to the illegal reentry charge and reserved his right to appeal the denial of the motion to dismiss the indictment. The Court of Appeals concluded that Rangel and Hernandez failed to demonstrate that they satisfy any of the requirements set out in § 1326(d) and affirmed.

United States v. Manriquez-Alvarado, No. 19-2521. Manriquez-Alvarado is a citizen of Mexico and has entered the United States repeatedly by stealth. He was found in the United States yet again in 2018 and indicted for illegal reentry. All of his prior convictions for reentry rest on a 2008 removal order. Manriquez-Alvarado contended this order is invalid because immigration officials never had “jurisdiction” to remove him because a document captioned “Notice to Appear”

that was served on him in February of 2008 did not include a date for a hearing. *Pereira v. Sessions* holds that a document missing this information does not satisfy the statutory requirements, 8 U.S.C. §1229(a)(1), for a Notice to Appear. The Court of Appeals held in *Ortiz-Santiago v. Barr*, that *Pereira* identifies a claims processing doctrine rather than a rule limiting the jurisdiction of immigration officials. Therefore, if the problem escapes notice, and the case goes to judgment on the merits, the result is conclusive; the decision cannot be collaterally attacked on the ground that the jurisdictional allegations were defective. The Court of Appeals affirmed.

XIV. Jury Instructions

United States v. Withers, No. 17-3448. Withers was charged with nine counts of sex trafficking. At trial, the government proposed jury instructions on four of those counts that would have allowed Withers to be found guilty if he either knew or recklessly disregarded that force, threats of force, or coercion would be used to cause the women to engage in commercial sex acts. The “recklessly disregarded” *mens rea* element was absent, however, from the superseding indictment against Withers. The district court ruled, and the parties agreed, that the jury instructions would not include that phrase. However, the court’s instructions included this phrase, and neither the court nor the parties recognized the error. Withers was found guilty on all counts. On appeal Withers challenged the four convictions that included the inaccurate instructions, arguing the jury was improperly allowed to consider a lesser mental state. The Court of Appeals agreed that the instructions were plainly wrong. However, it concluded the error did not affect Withers’ substantial rights or otherwise prejudice his trial and affirmed.

XV. Obstruction of Justice

United States v. Bowling, No. 19-2110. Bowling purchased over \$1.3 million worth of computer equipment on the City of Gary, Indiana’s vendor accounts and then sold the devices for cash. The grand jury returned an indictment against Bowling for theft from a local government that received federal funds, 18 U.S.C. § 666. A jury convicted Bowling and the district court sentenced her to 63 months in prison. On appeal, Bowling argued that the district court lacked

subject matter jurisdiction, abused its discretion in admitting certain testimony, and erred in enhancing her sentence for obstructing justice through her malingering. The Court of Appeals affirmed finding that subject matter jurisdiction was appropriate under 18 U.S.C. § 3231, not the charged offense statute. The Court also held the district court did not err by allowing a witness to testify there was “some sort of fraud” going on when asked what her impression of an email from the defendant was. Finally, the Court held that malingering supports an obstruction of justice enhancement.

XVI. Pretrial Statements

United States v. Chaparro, No. 18-2513. A jury found Chaparro guilty on three felony charges for viewing and transporting child pornography. The charges arose from three crimes separated by significant gaps in time: viewing child pornography on a hard drive in July 2013, transmitting child pornography files over the Internet in August 2014, and viewing child pornography on a smartphone in November 2014. In his pretrial interview, Chaparro said he lived at the scene of the crimes on all of the relevant dates. The district court admitted this statement as proof that he was at the residence and responsible for the offenses. The Court of Appeals held that the admission of Chaparro’s pretrial services statement was an error. When Congress created Pretrial Services, it made pretrial services information “confidential” and specifically prohibited its admission “on the issue of guilt in a criminal judicial proceeding.” 18 U.S.C. § 3153(c)(1) & (3). This rule may protect some accused defendants, but its most important benefits accrue to the judicial system as a whole. Confidentiality helps pretrial services officers obtain the information needed to make quick and accurate recommendations about pretrial release and detention. The Court rejected the government’s use of them as impeachment. His convictions that hinged on that evidence were reversed and remanded for new trial.

XVII. Prior Drug Convictions

In *Najera-Rodriguez v. Barr, 926 F.3d 343 (7th Cir. 2019)*, an immigration case, the Seventh Circuit determined that a 2016 violation of 720 ILCS 570/402(c) does not qualify as a controlled substance offense because it is overbroad (it includes salvia) and indivisible. Section 402(c) is the catch-all, any controlled substance

part of the drug possession statute. In a case argued last week, the government conceded that *Najera-Rodriguez* applies to criminal cases as well. That case – No. 18-2218 – concerned a 1993 conviction under section 402(c), which at the time was overbroad not because of salvia but because of propylhexedrine. In sum – the Illinois catch-all subsection of the drug statutes is susceptible to challenges, because it is indivisible and (depending on the year) may be overbroad.

United States v. Adams, No. 18-2932. Adams pled guilty to being a felon in possession of a firearm. In the appeal, he challenged the district court’s denial of his motion to suppress and its application of the Sentencing Guidelines to his case. The Court of Appeals affirmed, holding probable cause supported the search warrant for Adams’ house, and the officers could rely on the warrant in good faith. The Court also held the guidelines range was correctly calculated using Adams’s prior conviction for drug conspiracy which he argued did not qualify as a controlled substance offense under § 2K2.1. The Court noted a circuit split on the controlled substance offense issue.

United States v. De La Torre, et al., Nos. 18-2009, 18-2218, 18-2286, 18-3303, & 19-1299. The Zamudio drug organization distributed pounds of methamphetamine and cocaine throughout the Indianapolis, Indiana area. The defendants in this case were distributors. The defendants raised multiple issues on appeal but the primary decision of interest in this case is the Court of Appeals’ reversal of two defendants guilty pleas based on predicate drug offenses used to increase their sentences under 21 U.S.C. § 851. One of those defendants, Chapman, had prior convictions for possession of controlled substances under 720 ILCS 570/402(c) (1993). The Court of Appeals held that Illinois statute was broader than the federal definition of felony drug offense because it covers propylhexedrine and the federal statute does not and the statute was not divisible. Therefore, Chapman’s convictions under 720 ILCS 570/402(c) cannot be predicate offenses under 21 U.S.C. § 851. The Court made the same decision about defendant Rush who had a prior conviction under Indiana Code § 35-48-4-2 (2000) for possession of methamphetamine. The Indiana statute criminalizes a wider range of methamphetamine isomers than the federal statute which specifically limits to “the optical isomer.” Therefore, the Indiana conviction could not be a predicate for § 851 purposes.

United States v. Garcia & Pineda-Hernandez, Nos. 18-1890 & 18-2261. Garcia and Pineda-Hernandez were two defendants charged in a large drug distribution conspiracy. Garcia pled guilty and Pineda-Hernandez was convicted after a jury trial. Garcia argued that the district court improperly enhanced his sentence by using a prior Indiana drug conviction. The Court of Appeals agreed holding that because Indiana includes a wider class of drugs under its statutes than the federal government does, and the Indiana statute is not divisible, it does not qualify as a felony drug offense under 21 U.S.C. § 841(b)(1). Pineda-Hernandez argued his due process rights were violated when an interpreter misinterpreted portions of the testimony of a key government witness. The Court of Appeals affirmed Pineda-Hernandez case holding that the misinterpretations were “insignificant at most.”

United States v. Dozier, No. 18-3447. Dozier was arrested for trafficking methamphetamine in Decatur, Illinois. A federal grand jury indicted him for conspiracy and possession of methamphetamine with intent to distribute. Under the terms of the Controlled Substances Act then in effect, Dozier faced increased penalties if he had a prior conviction for a “felony drug offense.” A “felony drug offense” is a drug-related offense “that is punishable by imprisonment for more than one year under any law of the United States or of a State.” In 2006, Dozier was convicted in Texas of unlawful possession of cocaine, a “state jail felony” punishable by imprisonment of six months to two years. The Texas case had been resolved by plea bargain; in exchange for Dozier’s guilty plea, the prosecutor agreed to a nine-month sentence based on section 12.44(a) of the Texas Penal Code, which gives the sentencing judge the discretion to punish a person convicted of a state jail felony by imposing a period of confinement permissible for a Class A misdemeanor. Dozier argued that the Texas conviction was not a qualifying predicate because the terms of his plea agreement exposed him to confinement of not more than one year. The district judge rejected this argument and imposed a sentence of 20 years, the mandatory minimum for an offender with a prior felony drug conviction. The Court of Appeals affirmed, holding Dozier pleaded guilty to and was convicted of a two-year state jail felony. The Court further held “it does not matter that the sentencing judge accepted the plea bargain and exercised the discretion conferred by state law to

sentence Dozier as if he were a misdemeanor. Dozier was, in fact, convicted of a two-year drug felony.” Judge Hamilton dissented.

***United States v. Ruth*, No. 20-1034.** This appeal involved a question about whether the Illinois drug statute sweeps more broadly than its federal counterpart because the former includes a particular isomer of a substance that the latter does not. Ruth pled guilty to federal gun and drug charges and received an enhanced sentence due to his prior Illinois conviction for possession with intent to deliver cocaine. The Illinois statute defines cocaine to include its positional isomers, whereas the federal definition covers only cocaine’s optical and geometric isomers. Ruth argued the district court erred in sentencing him because, using the categorical approach, the overbreadth of the Illinois statute disqualifies his prior conviction as a predicate felony drug offense. The Court of Appeals agreed and vacated Ruth’s sentence and remanded for resentencing.

XVIII. Prior Sex Offense Convictions

***United States v. Kaufmann*, No. 18-2742.** For certain federal crimes involving sexual exploitation of minors, a federal statute - 18 U.S.C. § 2252(b) - increases the mandatory minimum sentence when the defendant has a prior conviction “under the laws of any State relating to,” among other things, “possession ... of child pornography.” Kaufmann pled guilty to two federal crimes involving sexual exploitation of a minor. The district court imposed an enhanced mandatory minimum sentence under § 2252(b) because Kaufmann has prior convictions for possession of child pornography under an Indiana statute. Kaufmann challenged his sentence, arguing that his prior state convictions do not support a § 2252(b) enhancement because the Indiana statute of his convictions criminalized conduct broader than the federal version of possession of child pornography. The Court of Appeals affirmed, holding that in *United States v. Kraemer*, it held that a § 2252(b) enhancement does not require the state statute of conviction to be the same as or narrower than the analogous federal law. Rather, the words “relating to” in § 2252(b) expand the range of enhancement-triggering convictions.

XIV. Relevant Conduct

United States v. Hopper, No. 18-2576. A jury found Hopper guilty of conspiracy to distribute methamphetamine, as charged in the indictment, and returned a special verdict form finding that the conspiracy involved an amount of 50 grams or more. Based on interviews with other participants in the conspiracy, the probation office determined that Mr. Hopper's relevant conduct involved 1.968 kilograms of ice methamphetamine. The Court of Appeals concluded that the district court plainly erred when it calculated Mr. Hopper's relevant conduct and corresponding guidelines range because it counted certain transactions twice and erroneously double-counted those drug quantities. The Court of Appeals vacated Mr. Hopper's sentence and remand his case to the district court for resentencing.

United States v. Holding, No. 18-3270. Police seized 143.7 kilograms of marijuana from Holding's car and apartment, and he pleaded guilty to possessing over 100 kilograms. But at sentencing, the district court held him responsible for the equivalent of 4,679.7 kilograms - over 32 times the amount seized. The additional quantity was based solely on the Presentence Investigation Report's account that confidential informants told law enforcement Holding was dealing significant quantities of methamphetamine during the relevant period. The Court of Appeals reversed and remanded for resentencing, holding that although a sentencing court acts within its discretion when it credits confidential informants' statements about drug quantity, when a defendant objects, the evidence supporting that quantity must be found to be reliable. The statements here did not meet the reliability test. The district court made no findings regarding the credibility of the confidential informant aside from the fact that the informant's information appeared in the PSR.

United States v. Carnell, No. 19-2207. Carnell pled guilty to a conspiracy to distribute a mixture containing methamphetamine. The sentencing guidelines distinguish between mixtures involving methamphetamine and methamphetamine that is at least 80% pure. The latter the Guidelines refer to as "ice," and that definition carries with it sentences that are substantially higher than those for non-ice methamphetamine. Carnell argued on appeal that the government failed to meet its burden of proving that the substance in which he

dealt was ice methamphetamine, and therefore he should have been sentenced as though he was involved in a conspiracy to distribute methamphetamine that is less than 80% pure. The Court of Appeals agreed, holding the government bears the burden of proving the methamphetamine involved in the case is at least 80% pure and “circumstantial evidence by users, dealers and law enforcement that a drug appears to be ice based on look, smell, effect, nomenclature or the like will not suffice to meet the government’s burden, by a preponderance of the evidence, that a drug is at least 80% pure methamphetamine.”

XX. Restitution

United States v. Collins, No. 19-1176. Collins was the executive director of the Kankakee Valley Park District and the treasure for the related Kankakee Valley Park Foundation. He stole money from both entities and was eventually charged and pled guilty to mail and wire fraud charges. On appeal he has raised several challenges to his sentence including a challenge to the district court’s calculation of the loss amount, a challenge to the denial of acceptance of responsibility, and a challenge to the restitution amount. The Court of Appeals affirmed, holding that the district court did not abuse its discretion in calculating the loss amount and denying acceptance of responsibility. The Court also dismissed the restitution issue holding that, under *Manrique v. United States*, it could not review a challenge to the restitution because Collins failed to file a notice of appeal after the district court entered the amended judgment setting the amount of restitution.

United States v. Dridi, No. 18-3334. From 2012 to 2015, employees of Elite Imports, a car dealership, engaged in a variety of fraudulent activities. Dridi was charged with conspiring to violate the Racketeer Influenced and Corrupt Organizations Act and interstate transportation of stolen property. A jury found him guilty of both crimes. The district court sentenced him to 72 months in prison and ordered \$1,811,679.25 in restitution. Dridi now challenged his sentence and the restitution order on appeal, arguing that the district court should have made specific factual findings about Dridi’s participation in the conspiracy. The Court of Appeals agreed that the district court erred both by not making specific factual findings prior to sentencing Dridi. However, that error

did not affect his substantial rights. The district court also did not adequately demarcate the scheme before imposing \$1,811,679.25 in restitution. This error affected his substantial rights and the Court vacated the restitution order and remanded the issue of restitution for further proceedings.

United States v. Hernandez, No. 19-1505. A jury found Hernandez guilty of mail fraud for her participation in a fraudulent mortgage trust company. She appealed her conviction, arguing that the government did not prove that she used the mails in furtherance of the scheme to defraud. Her sentence also includes restitution and she argued that the district court improperly delegated its authority to the Bureau of Prisons by not entering a specific payment schedule for her to follow while serving her prison sentence. The Court of Appeals affirmed, holding sufficient evidence supports the mail fraud convictions, and the district court permissibly deferred Hernandez's restitution payments until after her release.

United States v. Simon, No. 19-1317. Simon appeals the district court's decision denying his motions to reconsider amendments to his restitution obligations. The Court of Appeals concluded that the majority of the challenges Simon made could and should have been raised at sentencing and on direct appeal from his conviction. Those issues were therefore waived; as to the remainder, the appeal was untimely.

XXI. Safety Valve

United States v. Draheim & Lewis, Nos. 19-1262 & 19-1911. Draheim was a drug dealer in Wisconsin and Lewis worked for her. Caught up in the conspiracy, both eventually pleaded guilty to certain narcotics offenses. At sentencing, Draheim faced a mandatory-minimum sentence of ten years. She argued she qualified for "safety-valve relief," and the district court had to find both that she was a leader of the enterprise *and* engaged in a continuing criminal enterprise. The district court overruled Draheim's objection because she was the leader of her enterprise. Lewis contended that the court should only sentence him based on his conviction, not any other "relevant conduct." The court overruled his objection too. Lewis and Draheim appealed. The Court of Appeals affirmed Draheim's case but vacated Lewis's case and remanded for resentencing. The

Court found that the district court did not specifically find the dismissed drug quantities qualified as part of a common scheme or plan. The two transactions were significantly different so that they were not necessarily relevant conduct to each other.

XXII. Sentencing Procedure

United States v. Lee, Nos. 18-1687 & 18-1950. Lee was charged with executing a scheme to defraud local governments by falsely representing that his company manufactured its turbo blowers in the United States when, in fact, they had been manufactured in South Korea. A grand jury indicted Lee on five counts of wire fraud and three counts of smuggling. After a trial, the jury found Lee guilty on all counts. Lee now appealed his convictions and the restitution ordered, and the government cross-appealed Lee's prison sentence. The Court of Appeals affirmed, finding the government did not constructively amend the indictment and had proved all of the elements of wire fraud with sufficient evidence. The Court also held that the district court was able to reduce Lee's sentence under Rule 35(a) from 20 months to 12 months based on the court's determination that part of the sentencing guidelines calculation was objectively erroneous.

United States v. Gardner, No. 18-1731. Gardner was arrested after firing a gun at two vehicles thought to be driven by rival gang members. He pled guilty to possessing a firearm as a felon. The district judge imposed an above-Guidelines sentence based in part on Gardner's use of violence in a prior burglary. On appeal Gardner argues procedural error, asserting the categorical approach applies when a judge exercises *Booker* discretion to impose an above-Guidelines sentence based on a defendant's aggravating conduct in a prior crime. The Court of Appeals disagreed, holding the sentencing judge may consider aggravating circumstances in a defendant's criminal record without the constraints imposed by the categorical approach that usually applies to statutory sentencing enhancements and the determination of offense-level increases and criminal-history points under the Sentencing Guidelines.

United States v. Melvin, No. 19-1409. Melvin wanted to obtain a copy of his presentence investigation report before his sentencing hearing but the district court ordered the probation office not to give a copy to Melvin, who was instead

allowed only to review the report with his attorney. At his sentencing hearing, Melvin asked for his own copy of the report, but the district court refused his request. Melvin appealed, arguing that the district court violated 18 U.S.C. § 3552(d) and Federal Rule of Criminal Procedure 32(e)(2) by denying him a copy of his presentence investigation report. The Court of Appeals held that the district court did not violate § 3552(d), but did violate Rule 32(e)(2), which means what it says: defendants should be given their presentence investigation report. Melvin did not receive his report, so this was error. However, the Court concluded the error was harmless in Melvin's case.

United States v. Ballard, No. 19-2103. Ballard has a long history of criminal conduct, which the sentencing judge described as “probably one of the worst criminal histories [he’d] seen in 30 years” of experience. Ballard pled guilty to possessing a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1) and was sentenced as an Armed Career Criminal to 232 months, an upward departure from the guidelines range. The Court of Appeals remanded for resentencing after finding Ballard did not qualify as an Armed Career Criminal. At resentencing, the guidelines range became 33 to 41 months. The district court imposed a sentence of 108 months, relying on Ballard's extensive criminal history. The Court of Appeals held that the district court did not provide an adequate explanation for the extreme upward departure from the recommended Guidelines range and committed procedural error. The Court vacated the sentence and remanded for resentencing.

United States v. Bridgewater, No. 19-2522. Bridgewater pled guilty to one count of soliciting an obscene visual depiction of a minor in violation of 18 U.S.C. § 2252A(a)(3)(B)(i). The district court departed upward from the 60 month guidelines range and imposed a sentence of 78 months to account for a charge of attempted enticement of a minor that the government dismissed in exchange for his guilty plea. Bridgewater appealed his sentence, arguing it is substantively unreasonable because basing a sentence on dismissed conduct creates system-wide disparity. The Court of Appeals affirmed, finding the district court's sentence appropriately reflects Bridgewater's actual conduct. The Court emphasized that it wants district courts to particularize their sentences to offenders and their offenses. That, in turn, means sentences must account for

exacerbating circumstances when the guidelines do not. For that reason, district courts must often address dismissed conduct to adequately consider the “seriousness of the offense” under 18 U.S.C. § 3553(a)(2).

United States v. Perez, No. 18-3156. Perez was charged with, and pled guilty to, distributing heroin on one occasion. At Perez’s sentencing hearing, the district judge expressed concern that the guidelines range of 33–41 months’ imprisonment presented in Perez’s PSR did not reflect the full scope of his involvement in drug trafficking. This concern stemmed from the PSR’s description of Perez’s conduct suggesting that he was responsible for distributing large quantities of heroin, methamphetamine, and cocaine. Unsatisfied with the disparity between Perez’s guidelines range and his conduct described in the PSR, the judge continued the sentencing hearing and directed the government to file a sentencing memorandum. The memorandum was to detail which offense conduct the government could support by a preponderance of the evidence and which offense conduct it could not so support. When the parties and judge reconvened, the government presented witness testimony that elaborated on conduct described in the PSR. The judge used that evidence to calculate a higher guidelines range and impose a 121-month sentence. Perez appealed his sentence, arguing that the sentencing judge should have disqualified himself because his impartiality might reasonably be questioned under 28 U.S.C. § 455(a). Because Perez has not demonstrated that a reasonable observer would have questioned the judge’s impartiality, The Court of Appeals affirmed the sentence.

United States v. Barr, No. 19-1238. In 2014, Barr was charged with federal crimes for his role in a fraudulent real-estate-selling scheme in Chicago. However, he was living in Saudi Arabia at the time and detained for unrelated conduct. Barr eventually was returned to the United States and pled guilty to making false statements to a financial institution. At his sentencing hearing, Barr tried to argue that his time in Saudi Arabia should be a mitigating factor. The district court disagreed and prevented Barr from advancing this argument at the hearing. Barr sought the judge’s recusal. The judge denied the recusal motion. Barr challenged his sentence and the district court’s orders denying his motions for additional time, the dismissal of the indictment, the withdrawal of his guilty

plea, and the judge's recusal on appeal. The Court of Appeals affirmed, finding no errors.

United States v. Jones, No. 19-1644. In 1998, a federal jury convicted Jones of two carjackings, an armed bank robbery, and using firearms during those crimes of violence. At that time, the district court sentenced him to 840 months in prison. Twenty years later, the district court vacated its original sentence and ordered resentencing because Jones no longer qualified as a career offender under the federal Sentencing Guidelines. At resentencing, Jones's effective Guidelines range was 348–390 months. The district court deviated from the Guidelines and once again sentenced Jones to 840 months in prison. The Court of Appeals reversed and remanded for resentencing because the district court did not sufficiently justify the extent of its deviation from the Guidelines.

XXIII. Supervised Release

United States v. Collins, No. 18-3011. Collins appealed several conditions of supervised release. The first condition he challenges requires him to stay in the "jurisdiction," but the district court's written judgment does not match its oral pronouncement of the condition and its definition at sentencing. The Court remanded with instructions to fix this condition. The Court held because he had not objected to the other two conditions, he had waived his challenges to them. The Court also issued the following warning to district courts regarding discrepancies between oral pronouncements of the sentence and written judgments: "We take this opportunity to urge the district courts in this Circuit to take care to enter written judgments in criminal cases that correspond to their oral pronouncements at sentencings. We acknowledge that the Probation and Clerk's Offices play vital roles in this process. At day's end, however, courts enter judgments. . . . Like several of these appeals, this one might have been avoided had the written judgment been reviewed promptly and the inconsistencies brought to the district court's attention."

United States v. Shockey, No. 19-1308. Shockey appealed from the district court's order revoking his supervised release and imposing a 15-month prison sentence. The district court found that Shockey not only used methamphetamine but also possessed it, a Grade B violation of one of his supervised release

conditions. Shockey challenges this classification and argued the court should have found he only used methamphetamine, not possessed it. Because the district court reasonably could infer possession from use, the Court of Appeals affirmed the judgment.

***United States v. Anderson & Roach*, Nos. 18-1870 & 18-3096.** The defendants argued for the first time on appeal that a condition of their terms of supervised release is unconstitutionally vague. In a series of recent opinions, filed after these defendants filed their briefs, the Court of Appeals as held that a defendant who receives an opportunity to object to a proposed condition of supervised release at sentencing but fails to do so waives his objection. Based on this binding precedent, the Court affirmed these two cases.

***United States v. Lee*, No. 19-1300.** Lee pled guilty to one count of possessing 50 grams or more of methamphetamine with intent to distribute and one count of possessing firearms in furtherance of a drug trafficking crime. Lee challenged the district court's imposition of a condition of supervised release that will prohibit him from interacting with known felons unless he receives the probation officer's permission. Two of Lee's sons are felons. The Court of Appeals declined the address the constitutional association issue but vacated the condition because it violates the rule against delegating Article III power and remanded for reassessment.

***United States v. Groce*, No. 19-1170.** Groce challenged two conditions of supervised release that were imposed as part of his sentence for various sex trafficking crimes. In the district court, Groce did not object to either of the two conditions, even though he objected to four others and waived his right to have the district court read each condition and its justification. Under recent precedent, the Court of Appeals determined that these circumstances normally amount to waiver and there was nothing unusual in Groce's case that would call for a different result. The Court affirmed.

***United States v. Falls*, No. 19-3050.** Falls appealed the revocation of his supervised release arguing the district court erred during his revocation hearing by not conducting an explicit "interest of justice" analysis under Federal Rule of

Criminal Procedure 32.1(b)(2)(C) before admitting an audio recording of an interview during which he confessed to the violation in question. The Court of Appeals affirmed, disagreeing with Falls's suggestion that the Court should require an explicit application of Rule 32.1(b)(2)(C)'s interest-of-justice balancing test given his interest in questioning his interviewing officer about the nature and circumstances of his interview. Falls did not show, however, that his interviewing officer was an "adverse witness" that Rule 32.1(b)(2)(C) entitled him to question subject to an interest-of-justice determination.

***United States v. Manyfield*, No. 19-2096.** Manyfield admitted several violations of his supervised release and the district court revoked his term of supervision and sentenced him to twenty-four months in prison followed by a lifetime term of supervised release. The parties agreed on appeal that the court neither gave adequate notice of the conditions of supervision (many of which have been deemed vague) nor sufficiently explained its reasons for imposing them. On appeal, the parties argued about the scope of the remand - whether it should be a full remand or a limited one. The Court of Appeals concluded a limited remand was appropriate because the district court properly justified the prison sentence and term of supervised release and only needed to reconsider the conditions of supervised release on remand. The Court did not apply waiver principles because Manyfield had no notice of the conditions and no opportunity to object to them.

***United States v. Durham*, No. 18-3283.** Durham received a 35-year sentence for a federal drug offense that was later reduced to 20 years due to subsequent amendments to the Sentencing Guidelines. On supervised release, however, Durham violated the terms of his supervised release, including by committing a domestic battery. The district court sentenced him to 30 months' imprisonment for these violations - about twice the high end of the guidelines advisory range. In imposing this sentence, the district court emphasized the gravity of Durham's abuse of his ex-girlfriend but also considered the reduction in sentence he received. Durham argued the sentence was the product of the district court effectively penalizing him for benefiting from the amendments to the guidelines that reduced his original sentence. The Court of Appeals affirmed, noting that

the district court's reliance on § 7B1.4, Application Note 4 was likely in error but had no effect on the sentence.