



Federal Sentencing Update

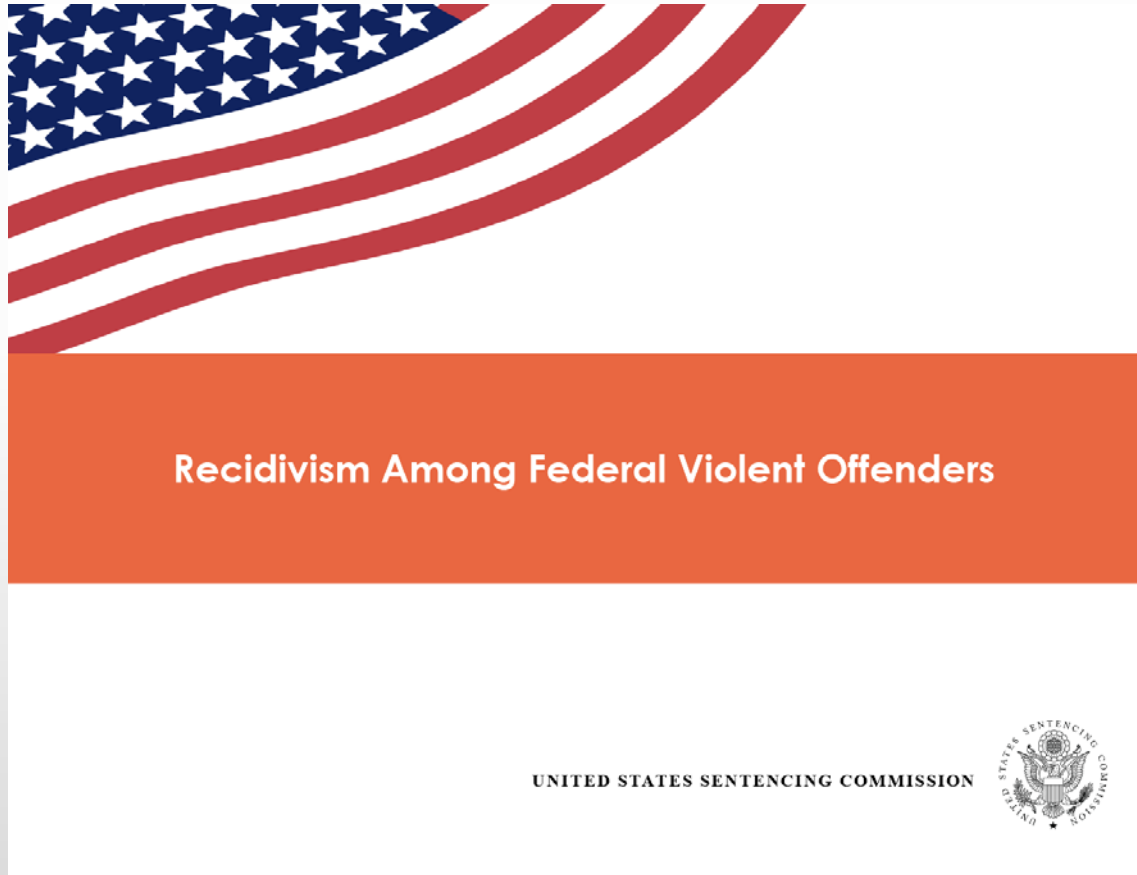


Commission Website Resources

www.ussc.gov

- Guideline App
- Drug Conversion Calculator
- E-learning Courses
- Decision Trees
- Podcasts
- Case Law Concierge
- IDA: Interactive Data Analyzer

Recidivism of Federal Offender Reports



- Violent offenders
- Effects of aging
- Criminal history
- Drug trafficking offenders
- Federal Firearms Offenders
- General overview
- Length of Incarceration

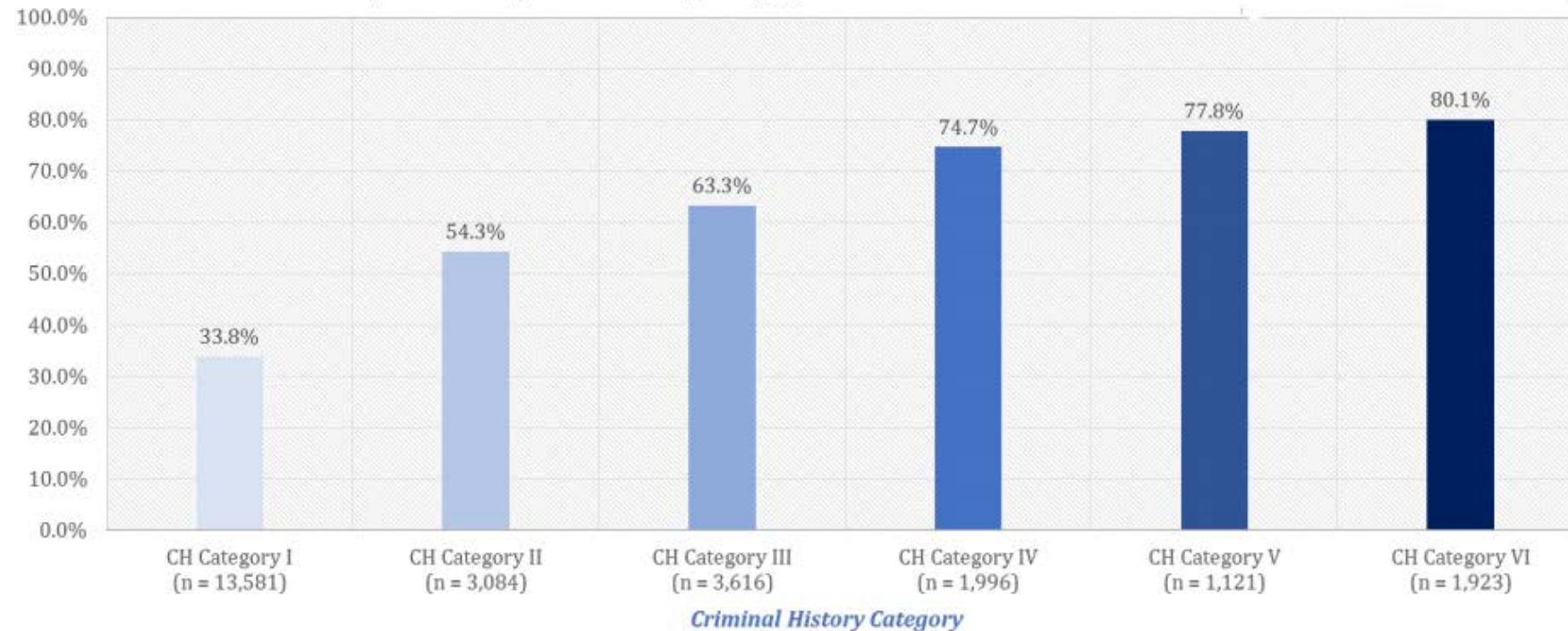
Criminal History and Recidivism Report

- Recidivism rates are closely correlated with total criminal history points and resulting Criminal History Category classification, as offenders with lower criminal history scores have lower recidivism rates than offenders with higher criminal history scores.



Recidivism and Criminal History

Figure 7A.
Rearrest Rates for Recidivism Study Offenders by Criminal History Category



SOURCE: U.S. Sentencing Commission's 2005 Recidivism Release Cohort Datafile, RECID05. Of the 25,431 cases in this study, the Commission excluded cases from this analysis that were missing information necessary to perform the analysis.

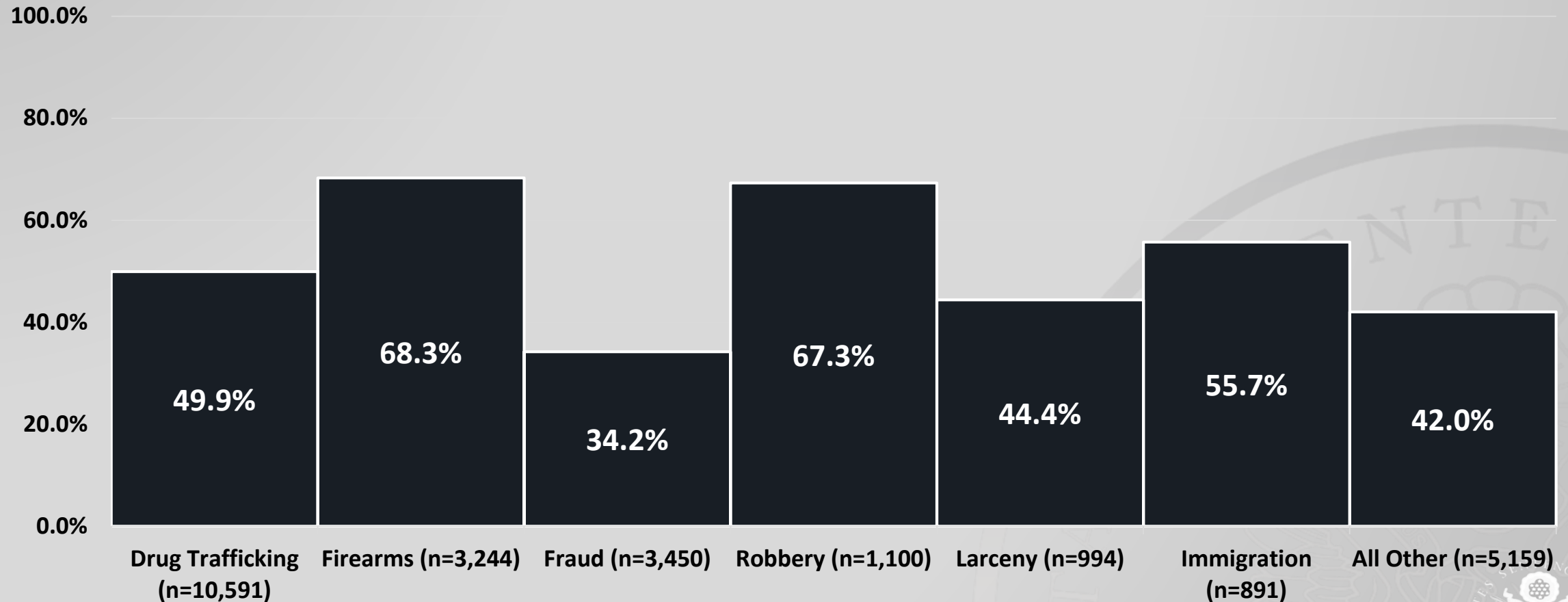


Criminal History and Recidivism Report

- There are differences in recidivism rates among offenders with zero criminal history points.
- Offenders with zero points and no prior contact with the criminal justice system have a lower recidivism rate (25.7%) than offenders with zero points but some prior contact with the criminal justice system (37.4%).



Re-Arrest Rates by Type of Federal Offense for Calendar Year 2005 Released Offenders



SOURCE: U.S. Sentencing Commission 2005 Recidivism Datafile, RECID05_UPDT. Cases missing information were excluded.

Selected Supreme Court and Third Circuit Cases



First Step Act and Retroactivity Issues

- *U.S. v. Jackson*, -F.3d-, 2020 WL 3563995 (3d Cir. July 1, 2020)
 - Use drug amount from offense of conviction, not conduct to determine retroactivity of Fair Sentencing Act
- *U.S. v. Aviles*, 938 F.3d 503 (3d Cir. 2019)
 - § 851 enhancement change is not retroactive
- *U.S. v. Hodge*, 948 F.3d 160 (3d Cir. 2020)
 - § 924(c) change is not retroactive

Residual Clause at 18 U.S.C. § 924(c)

- *U.S. v. Davis*, 139 S. Ct. 2319 (2019)
 - The residual clause at 18 U.S.C. § 924(c)(3)(B)'s crime of violence definition is unconstitutionally vague

“Serious Drug Trafficking Offense” at ACCA

- *Shular v. U.S.*, 140 S. Ct. 779 (2020)
 - ACCA’s definition of “serious drug offense” requires only that a state offense involve the conduct specified in the federal statute, not that a state offense match the elements of a generic analogue offense.

Serious Drug Trafficking Offense (ACCA)

- *U.S. v. Daniels*, 915 F.3d 148 (3d Cir. 2019)
 - PA possession with intent to deliver cocaine is a serious drug offense because “the statute encompasses attempts, as defined by federal law, to manufacture, distribute, or possess w/intent to manufacture or distribute controlled substance.”
- *U.S. v. Torres*, 961 F.3d 618 (3d Cir. 2020)
 - Conspiracy offense can be predicate even if it covers other substantive offenses during the conspiracy



Prior Felony Drug Offense

- *U.S. v. Aviles*, 938 F.3d 503 (3d Cir. 2019)
 - A conviction under N.J. Stat. Ann. § 2C:35-4 (Maintaining or Operating a Controlled Substance Production Facility) is not a predicate felony drug offense for purposes of § 851
 - A conviction under MD § 5-602 is not categorically a felony drug offense because it includes substances that are broader than the federal definition

Supervised Release Revocation

- *U.S. v. Haymond*, 139 S. Ct 2369 (2019)
 - The sex offender revocation statute (18 U.S.C. 3583(k)) which mandates revocation and five years' imprisonment if the defendant committed certain offenses is unconstitutional

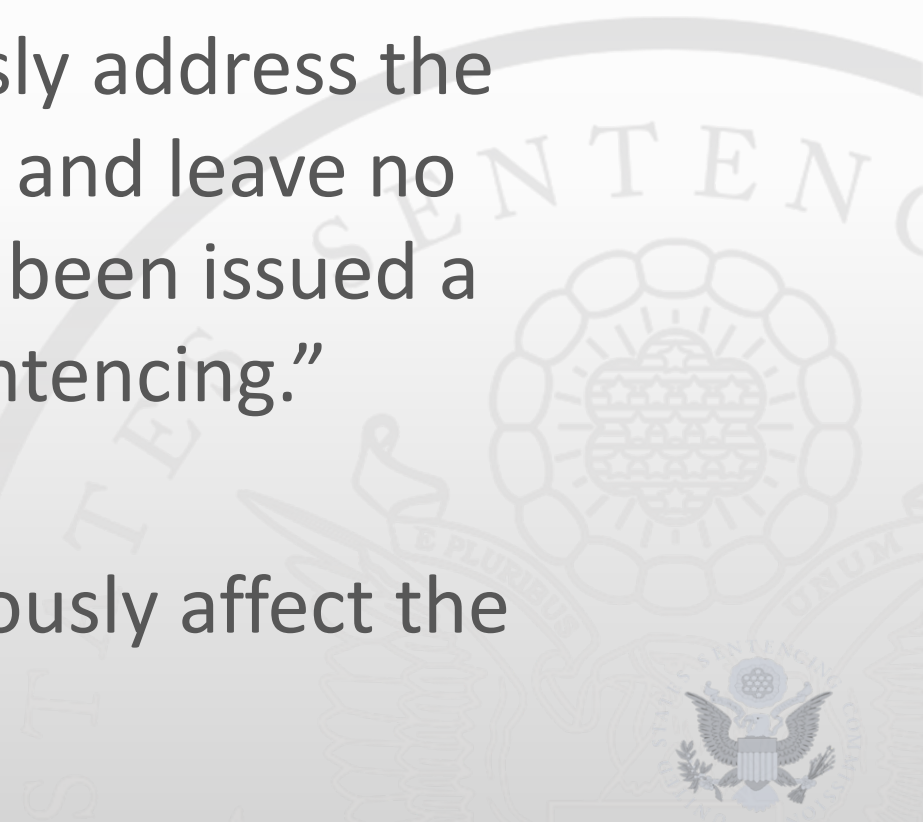
Adequate Representation

- *U.S. v. Sepling*, 944 F.3d 138 (3d Cir. 2019)
 - “Sentencing Counsel cannot adequately represent a client at a sentencing involving a controlled substance not specified in the Guidelines without undertaking a reasonable inquiry into that substance in order to challenge the ratio set forth in the equivalency table, when appropriate.”



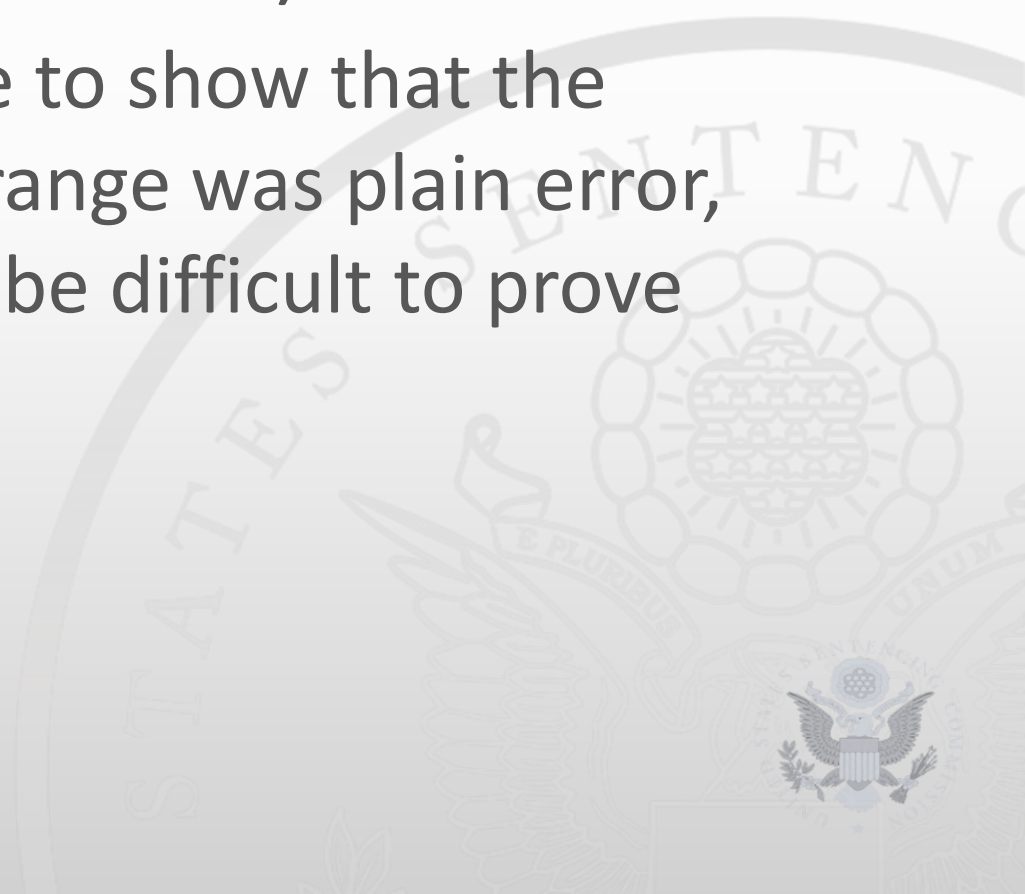
Right to Allocute

- *U.S. v. Greenspan*, 923 F.3d 138 (3d Cir. 2019)
 - “A sentencing judge must unambiguously address the defendant himself, not just his counsel, and leave no room for doubt that the defendant has been issued a personal invitation to speak prior to sentencing.”
 - However, here the mistake did not seriously affect the fairness of the proceedings.



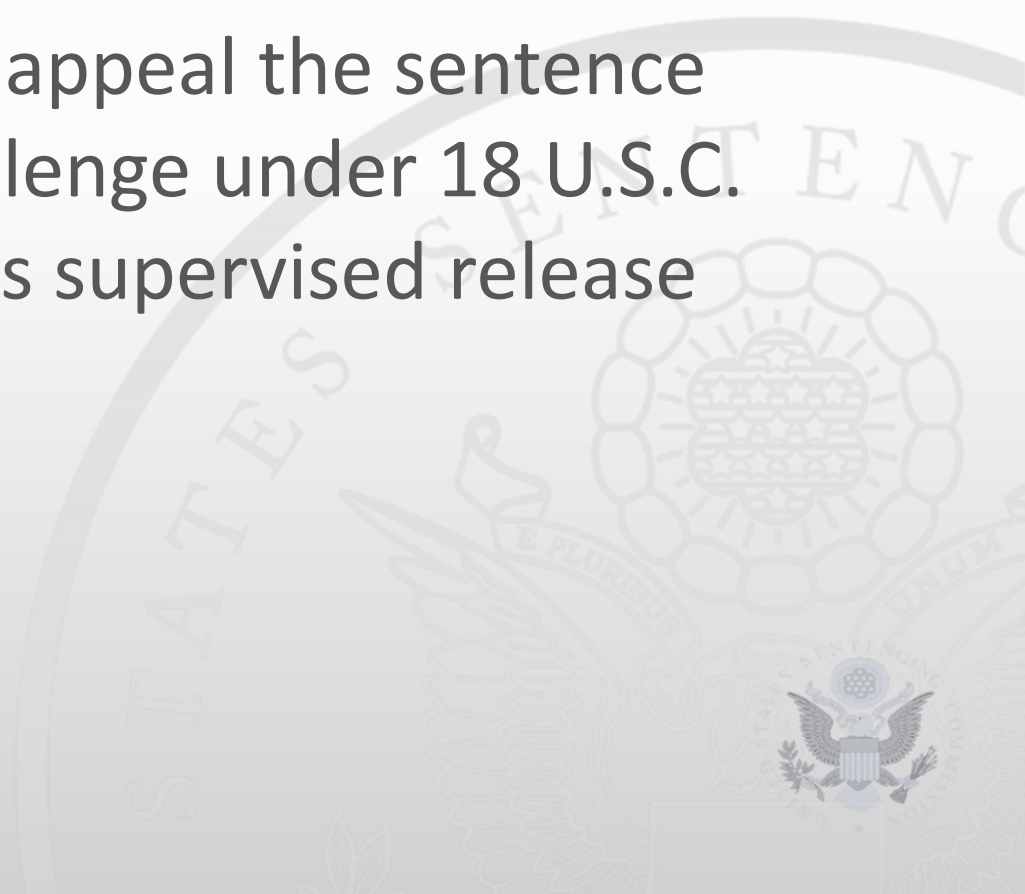
Plain Error Standard

- *U.S. v. Payano*, 930 F.3d 186 (3d Cir. 2019)
 - In this case, the defendant was able to show that the court's error in what the statutory range was plain error, even though in most cases it might be difficult to prove plain error



Appeal Waiver

- *U.S. v. Damon*, 933 F.3d 269 (3d Cir. 2019)
 - A defendant who waives his right to appeal the sentence portion of the sentence, cannot challenge under 18 U.S.C. § 3583(e)(1) the ability to shorten his supervised release term



Evidence Issues

- *U.S. v. Mitchell*, 944 F.3d 116 (3d Cir. 2019)
 - Court plainly erred by relying on the defendant's bare arrest record at sentencing
- *U.S. v. Gray*, 942 F.3d 627 (3d Cir. 2020)
 - The introduction of an NCIC report was sufficient to meet the government's burden to prove the firearm was stolen, particularly where the defendant presented no evidence to rebut the NCIC report.



Stokeling v. United States, 139 S. Ct. 544 (2019)

A robbery offense that has an element of force sufficient to overcome a victim's resistance meets the level of force necessary to qualify as a violent felony under the elements clause of the Armed Career Criminal Act

Robbery

- *U.S. v. Peppers*, 899 F.3d 211 (3d Cir. 2018)
 - PA robbery (§ 3701(a)(1)(v)) at the time the defendant was convicted of this offense was not a violent felony because the statute has been interpreted to include “any amount of force applied to a person while committing a theft[,]” including the mere “use of threatening words or gestures, and operates on the mind,” and because “[t]he degree of actual force is immaterial, so long as it is sufficient to separate the victim from his property,”
- *U.S. v. McCants*, 952 F.3d 416 (3d Cir. 2020)
 - NJ robbery (a)(2) section is a crime of violence at §4B1.2



§2B3.1 (Robbery)

- *U.S. v. Bell*, 947 F.3d 49 (3d Cir. 2020)
 - Court incorrectly applied the physical restraint enhancement.

