

# First Step Act



# First Step Act Provisions

Reduces certain enhanced mandatory minimum penalties (21 U.S.C. § 851) for certain offenders (Section 401)

Broadens safety valve at 18 U.S.C. § 3553(f) (Section 402)

Clarifies stacking at 18 U.S.C. § 924(c) (Section 403)

Applies the Fair Sentencing Act retroactively (Section 404)

# ***What is covered offense under Section 404?***

(a) DEFINITION OF COVERED OFFENSE.—In this section, the term “covered offense” means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010

(b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed.

# Fair Sentencing Act Changes

BEFORE	Fair Sentencing Act	AFTER
50 or more grams crack	21 U.S.C. § 841(b)(1)(A) 10-year min – life max	280 grams
5 grams – 49.9 grams crack	21 U.S.C. § 841(b)(1)(B) 5-year min- 40-year max	28 -279.9 grams
Less than 5 grams	21 U.S.C. § 841(b)(1)(C) 20-year max	Less than 28 grams

# ***United States v. Terry* (Docket No. 20-5902)**

**Question presented:**

Whether pre-August 3, 2010, crack offenders sentenced under 21 U.S.C. § 841(b)(1)(C) have a covered offense under Section 404 of the First Step Act.

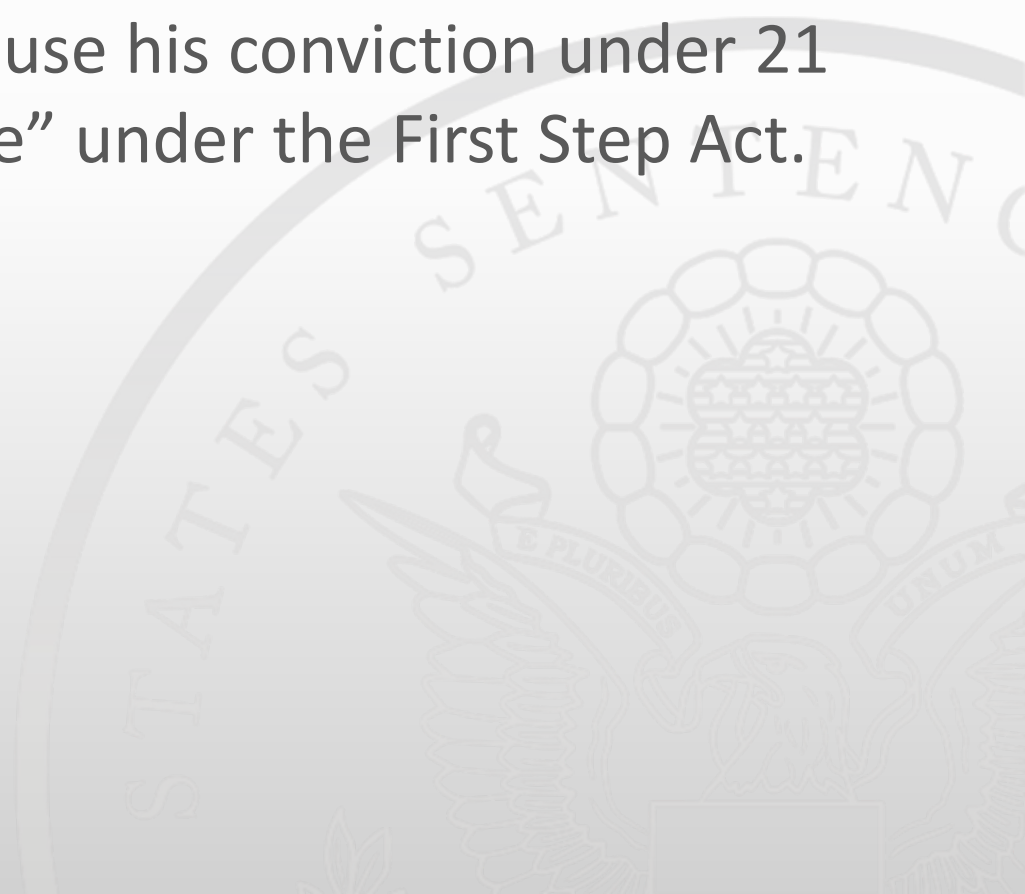
Cert. granted Jan. 8, 2021. Argument set for May 4, 2021

*See U.S. v. Brit*, 966 F.3d 257 (3d Cir. 2020)

# Eligibility for a Reduction Under Section 404 is Based on Offense of Conviction

A defendant whose relevant conduct involved more than 21 kilos of crack was still eligible for a reduction because his conviction under 21 U.S.C. 841 (b)(1)(A) was a “covered offense” under the First Step Act.

*U.S. v. Jackson*, 964 F.3d 197 (3d Cir. 2020)



# Covered and not Covered Offense: Can the Defendant get a Reduction?

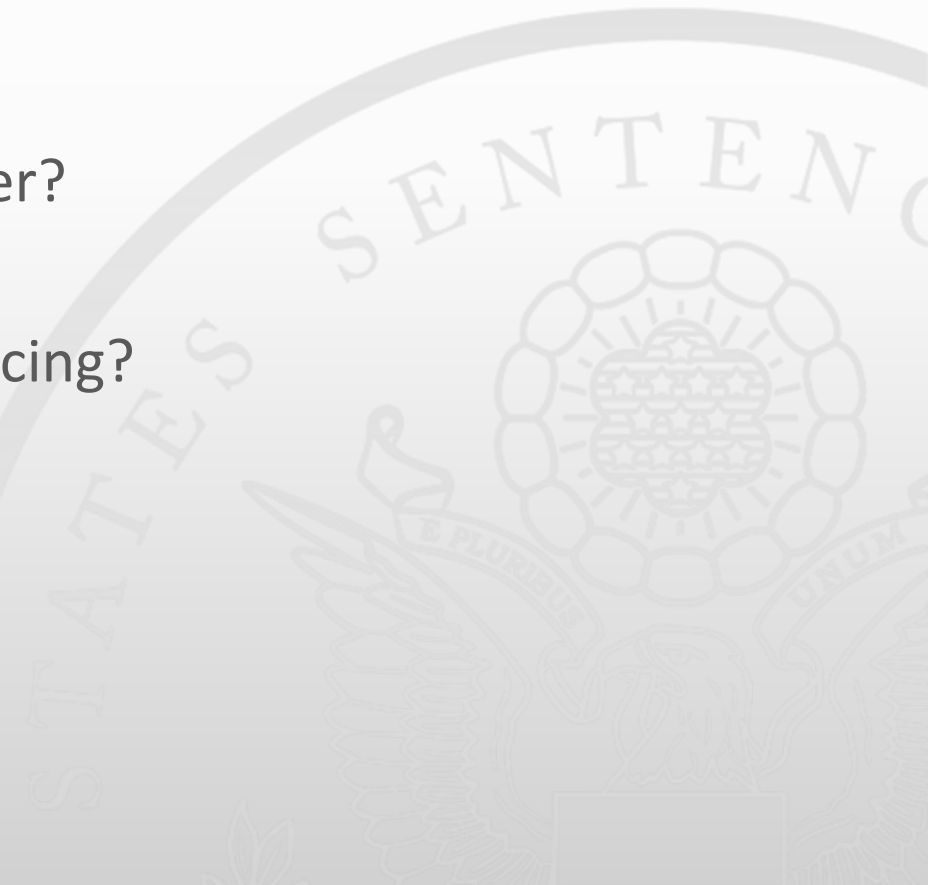
A defendant convicted of a multi-drug conspiracy involving crack ***and*** powder cocaine was still eligible for a reduction

*United States v. Winters*, 986 F.3d 942 (5th Cir. 2021)



# Does the Defendant get a Plenary Sentencing?

- Is this a complete do-over?
- Does the court have to:
  - Re-calculate the guidelines?
  - Determine if the defendant is still a career offender?
  - Consider 3553(a) factors?
  - Fix guideline mistakes made at the original sentencing?
- *U.S. v. Easter*, 975 F.3d 318 (3d Cir. 2020)





# **Violent Felony/Crime of Violence**

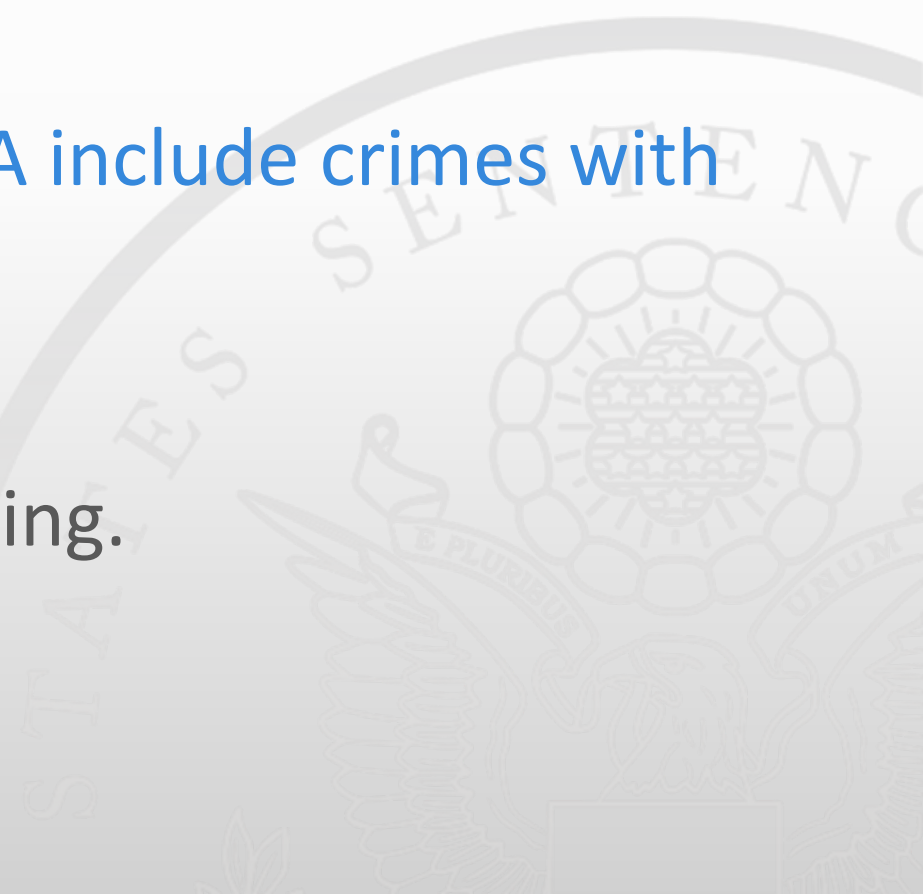


# ***United States v. Borden* (Docket No. 19-5410)**

**Question presented:**

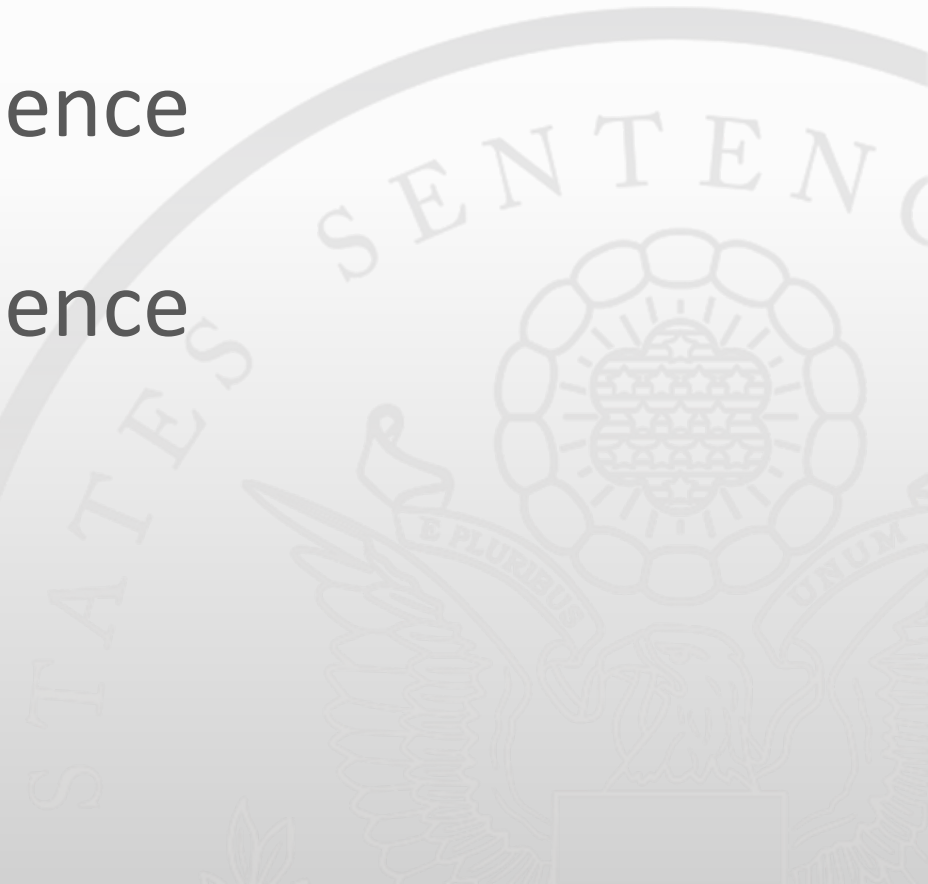
Does the “use of force” clause in the ACCA include crimes with *mens rea* of mere recklessness?

Argued November 3, 2020. Decision pending.



# Qualifying Definitions

- ACCA: Violent felony
- §4B1.2: Crime of violence
- 18 U.S.C. § 924(c): Crime of violence



# Selected Categorical Approach Cases

- *U.S. v. Nasir*, 982 F.3d 144 (3d Cir. 2021)
- *U.S. v. Walker*, 990 F.3d 316 (3d Cir. 2021)
- *U.S. v. Bullock*, 970 F.3d 210 (3d Cir. 2020)



# *Wooden v. U.S.* (Docket No. 20-5279)

## Question presented:

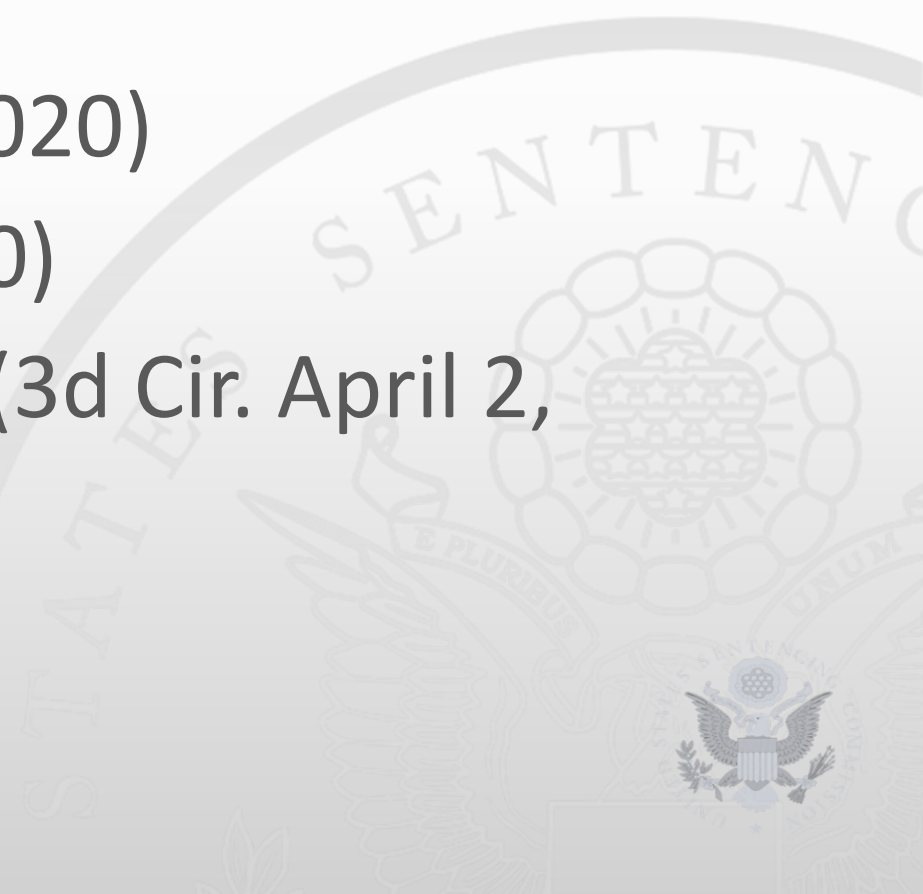
Whether offenses that were committed as part of a single criminal spree, but sequentially in time, were “committed on occasions different from one another” for purposes of a sentencing enhancement under the Armed Career Criminal Act?

Cert granted: February 22, 2021

*See U.S. v. Torres*, 961 F.3d 618 (3d Cir. 2020)

# Third Circuit Remands

- *U.S. v. Raia*, -F.3d-, 2021 WL 1257790 (3d Cir. April 6, 2020)
- *U.S. v. Brito*, 979 F.3d 185 (3d Cir. Cir. 2020)
- *U.S. v. Capps*, 977 F.3d 250 (3d Cir. 2020)
- *U.S. v. Yusef*, -F.3d-, 2021 WL 1232080 (3d Cir. April 2, 2021)



# Supervised Release Condition Cases



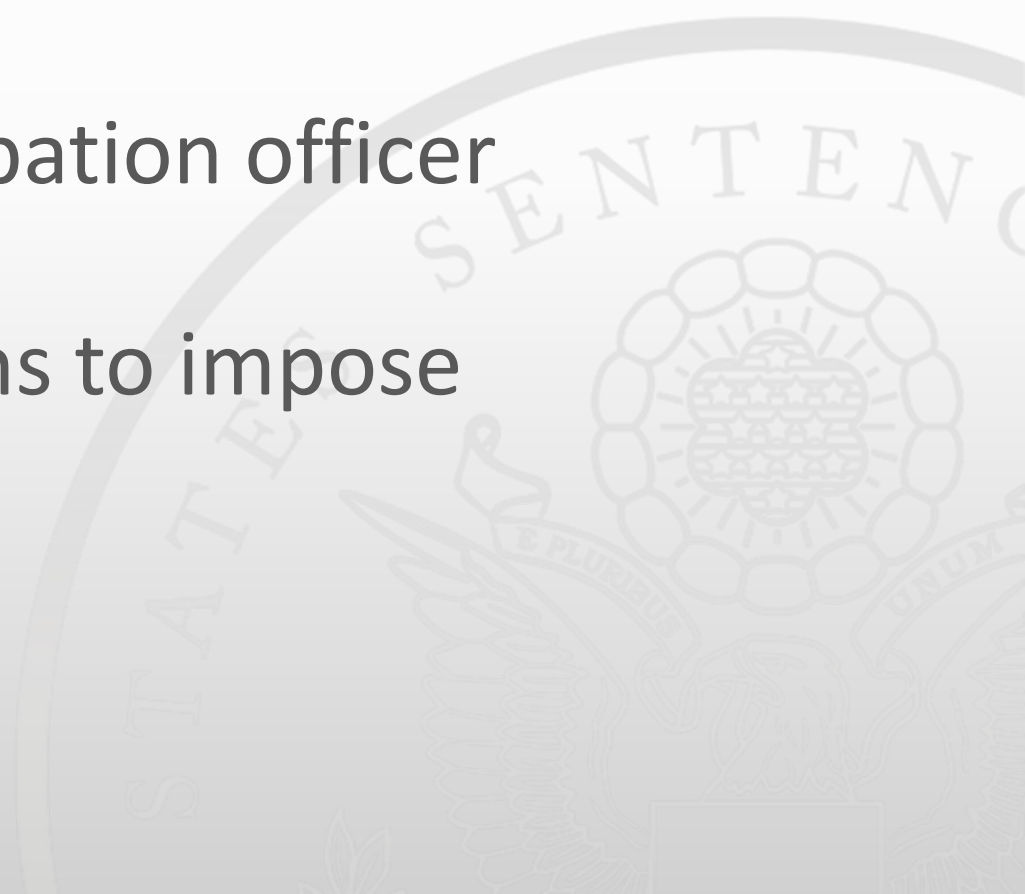
# Supervise Release Pitfalls

Deciding what conditions to announce in court

Delegating decisions to the probation officer

Selecting what special conditions to impose

Individualized assessments





# Selected Supervised Release Cases

- *U.S. v. Senke*, 986 F.3d 300 (3d Cir. 2021)
- *U.S. v. Melvin*, 978 F.3d 49 (3d Cir. 2020)
- *U.S. v. Selighman*, 966 F.3d 237 (3d Cir. 2020)

