



Commission Update

Middle District of Pennsylvania Defense

March 24, 2026

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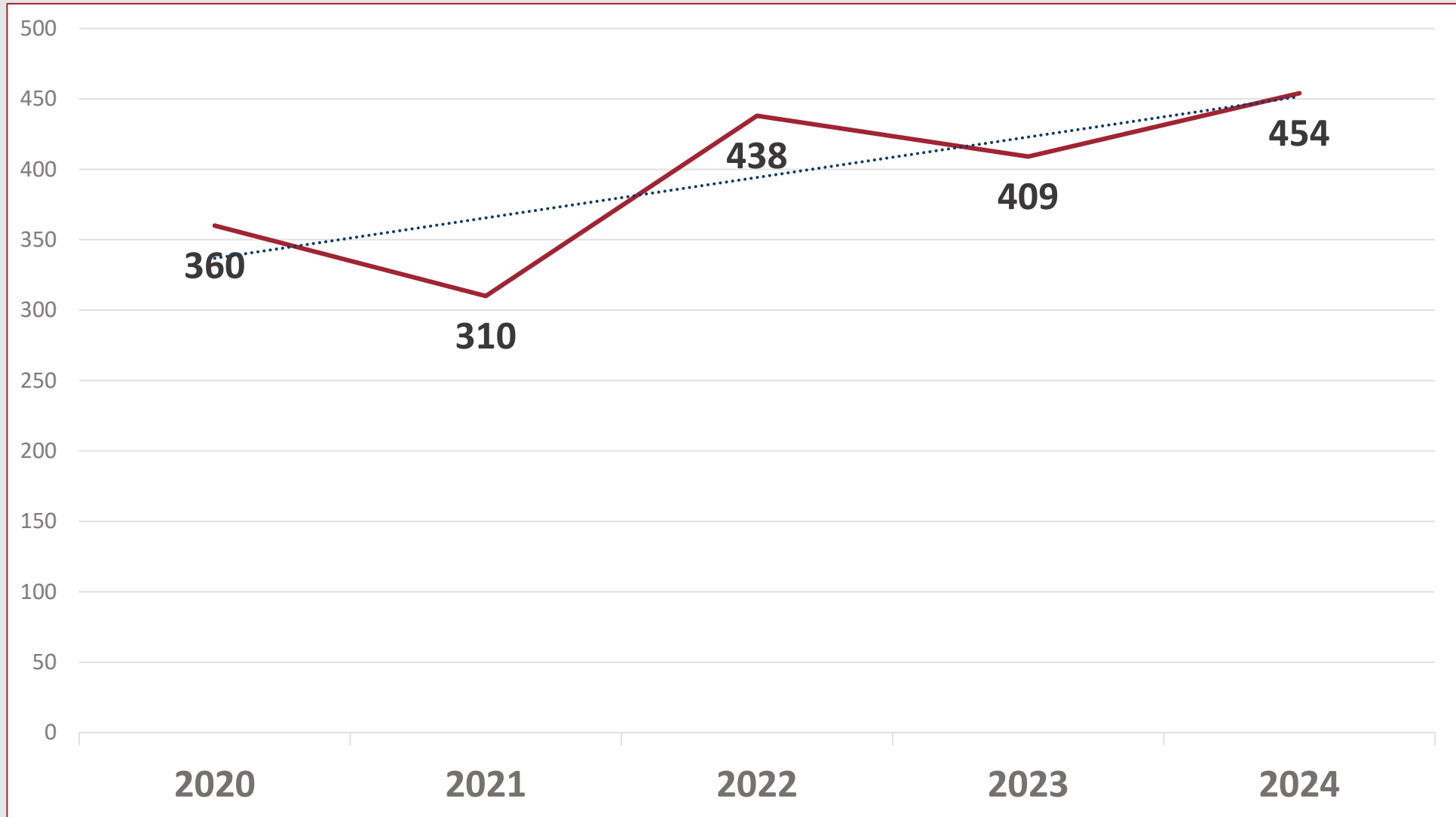
Office of Education and Sentencing Practice

[Online HelpLine Form](#)



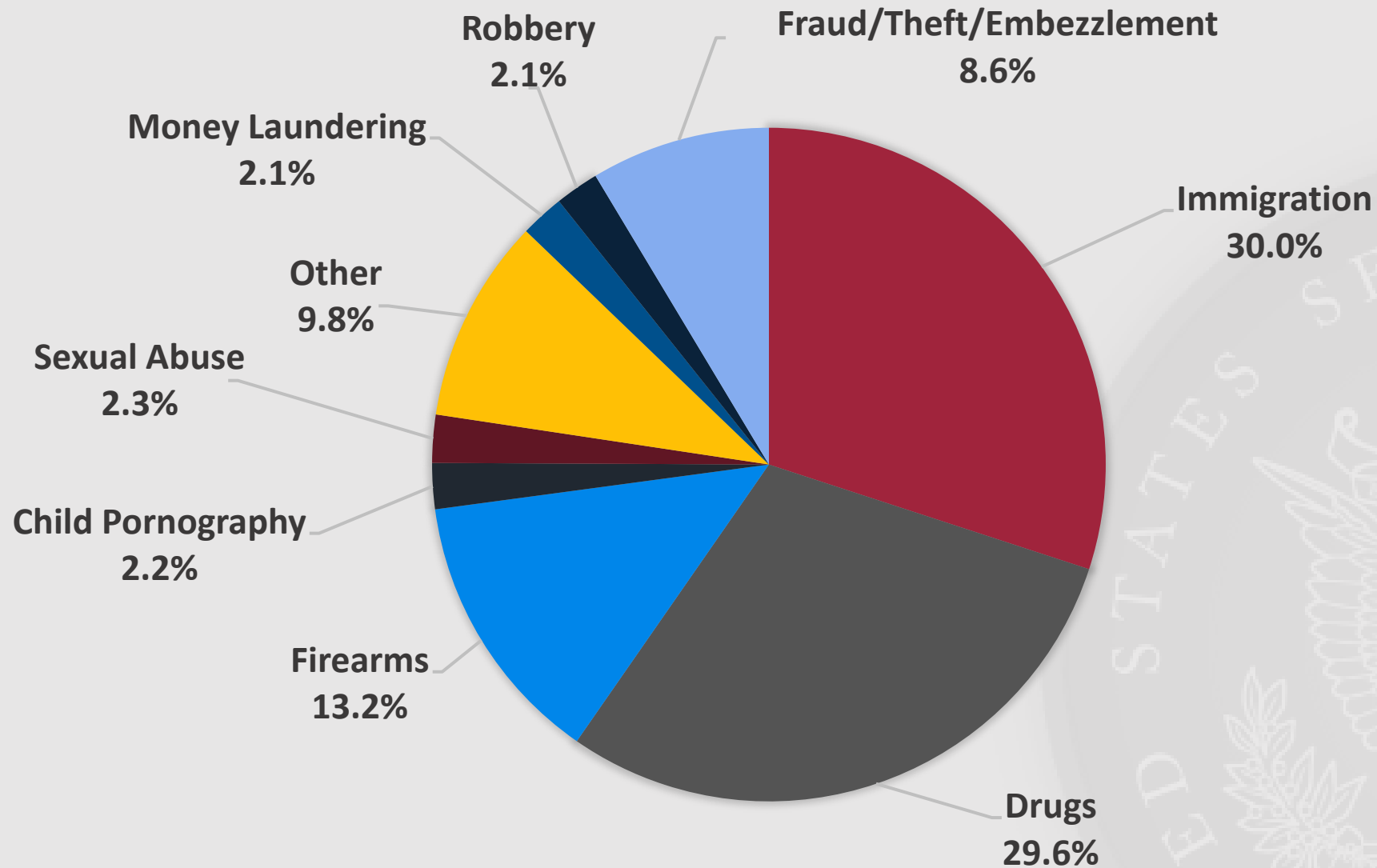
Middle District of Pennsylvania FY2024

Number of Sentenced Individuals Over Time



Primary Offense Types

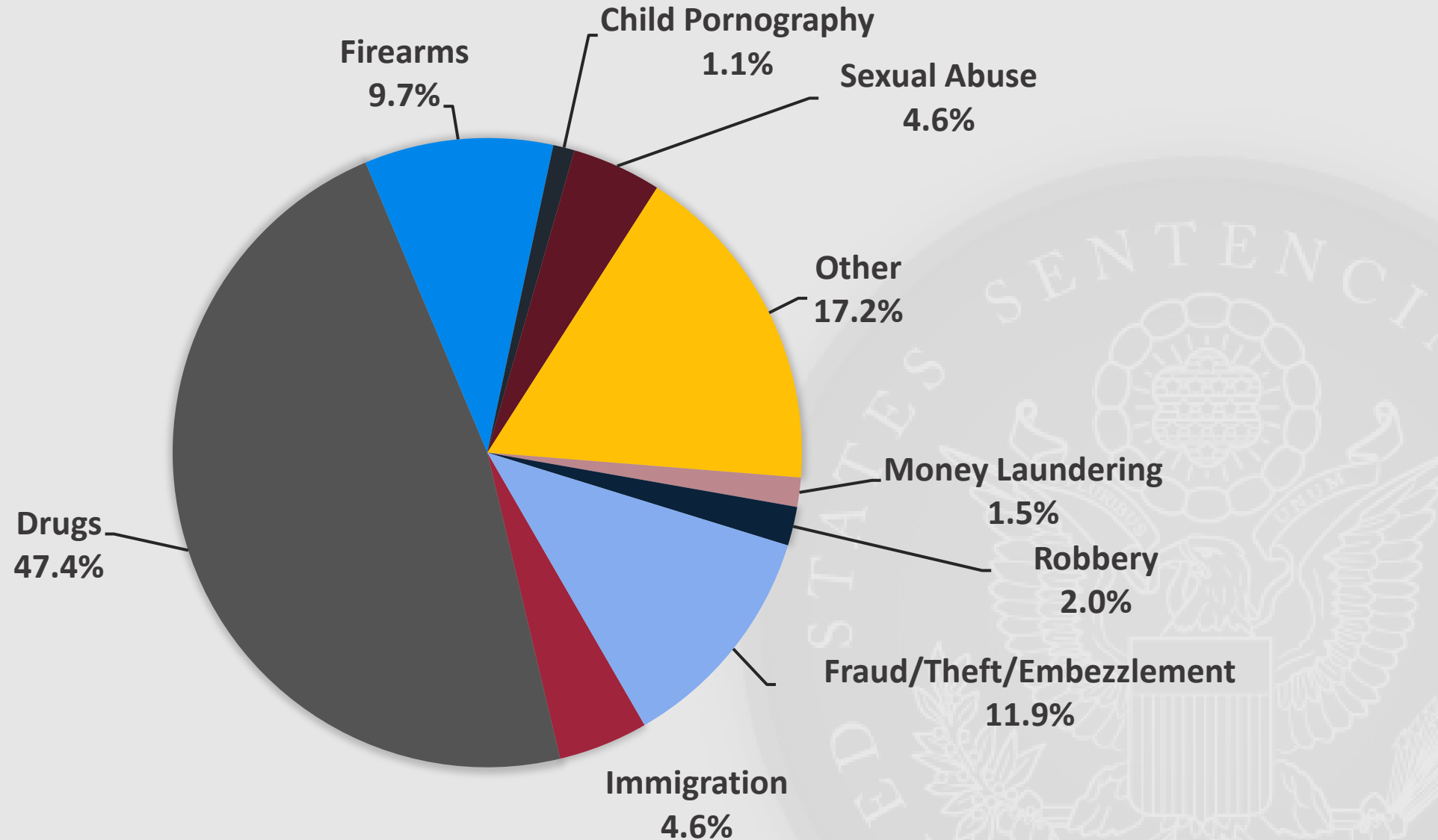
National – FY2024



SOURCE: Sourcebook (N = 61,678 Cases)

Primary Offense Types

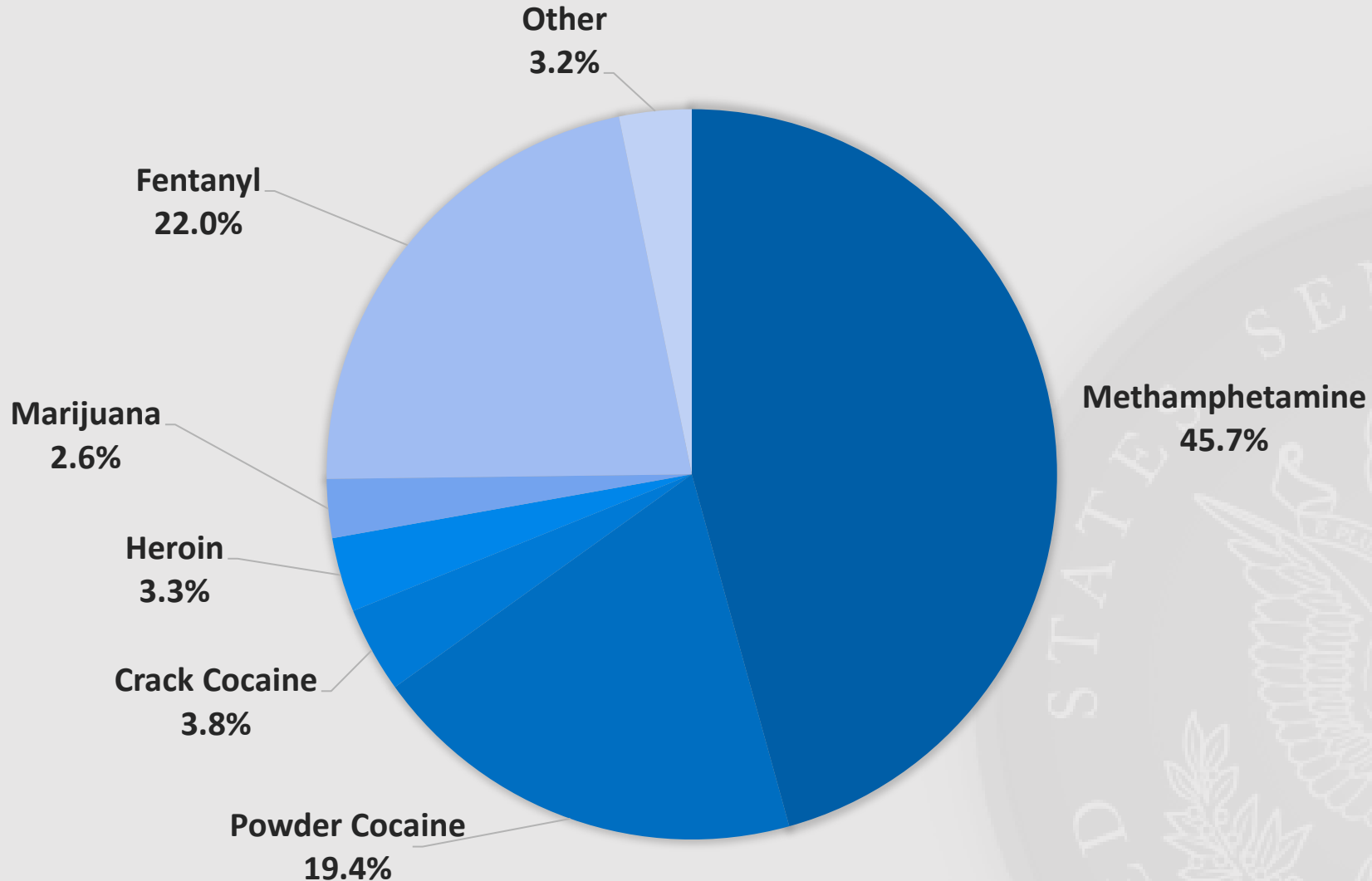
Middle District of Pennsylvania – FY2024



SOURCE: Sourcebook (N = 454 Cases)

Primary Drug Types

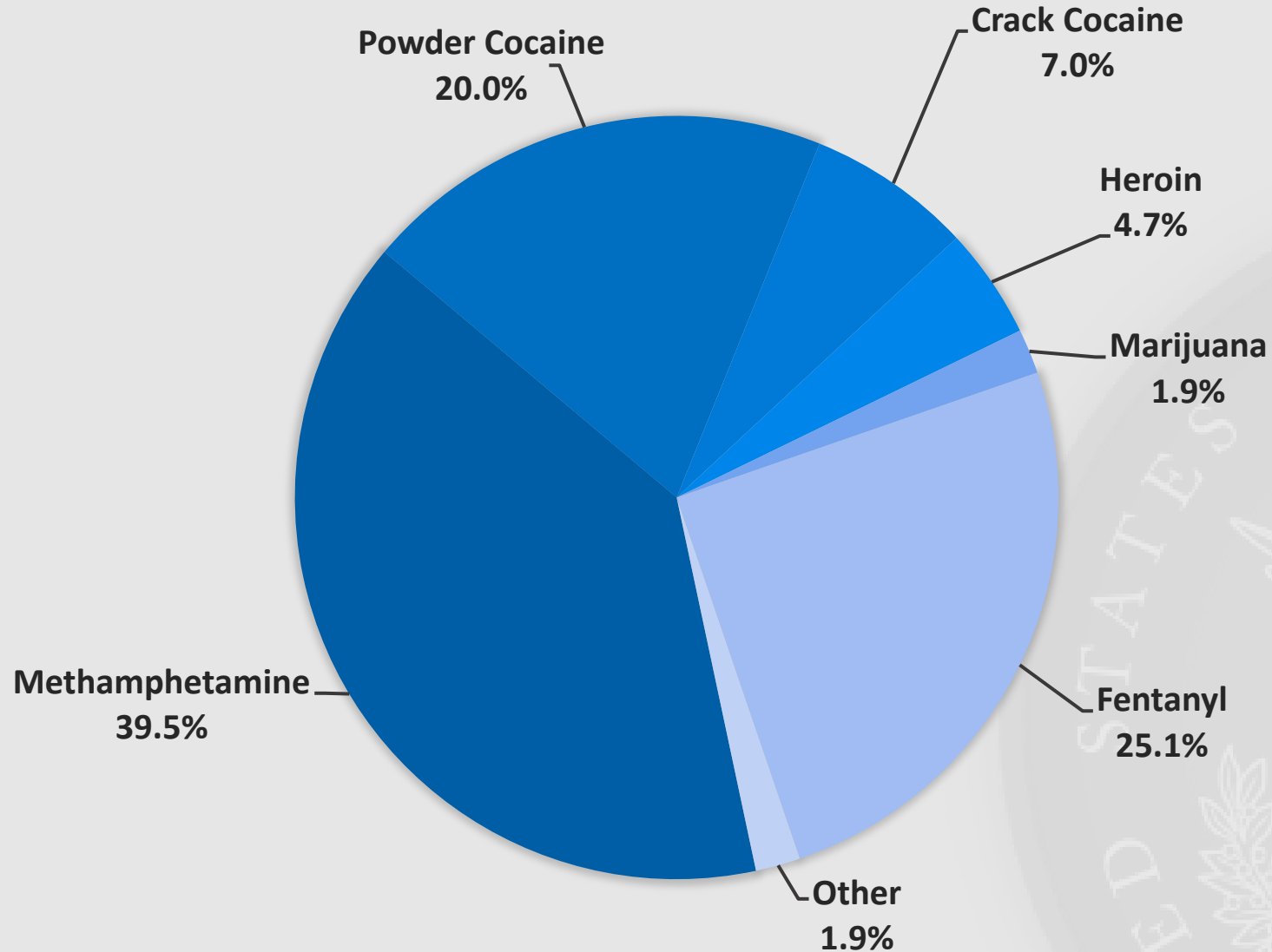
National – FY2024



SOURCE: Sourcebook (N = 18,150 Cases)

Primary Drug Types

Middle District of Pennsylvania – FY2024



Live Polling

Go to ttpoll.com

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“MDPA”

Join Session



The 2025 Guidelines Manual is red in honor of which school?

- A. Harvard Law School**
- B. University of Alabama**
- C. Cornell Law School**
- D. Lanier Junior Senior High School**



Commission Update



Topics

2025 Amendments

2026 Proposed Amendments

Case Law

2025

Amendments

- ☐ Drug Offenses
- ☐ Firearms Offenses
- ☐ Circuit Conflicts
- ☐ Simplification
- ☐ Supervised Release



Drug Offenses

A

Mitigating Role

B

Fentanyl Misrepresentation

A

Mitigating Role

Mitigating Role Cap

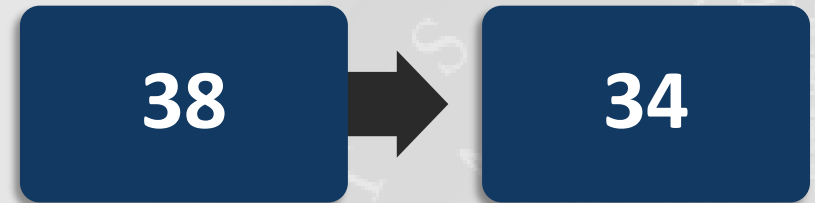
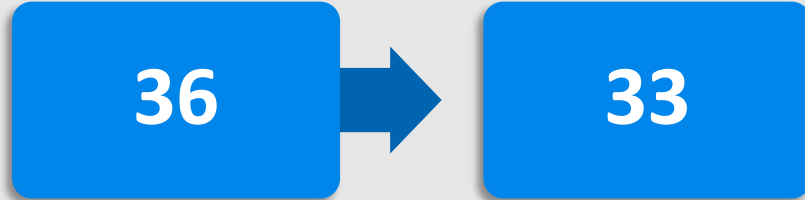
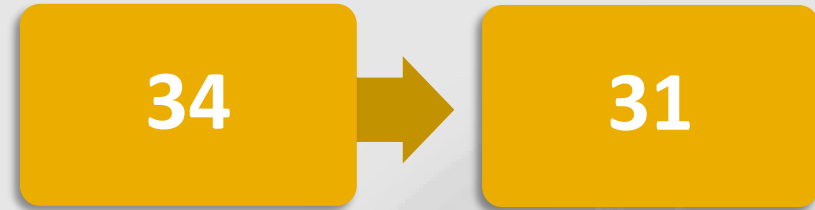
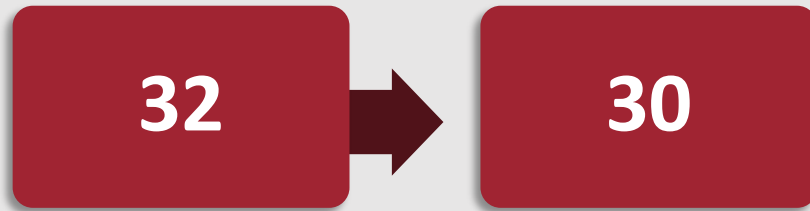
REDUCTION

Special Instruction

APPLICATION

Mitigating Role Cap

Prior §2D1.1(a)(5)



Mitigating Role Cap

New §2D1.1(a)(5)

32



30

34



31

36

or

38



32

Minimal



30

New

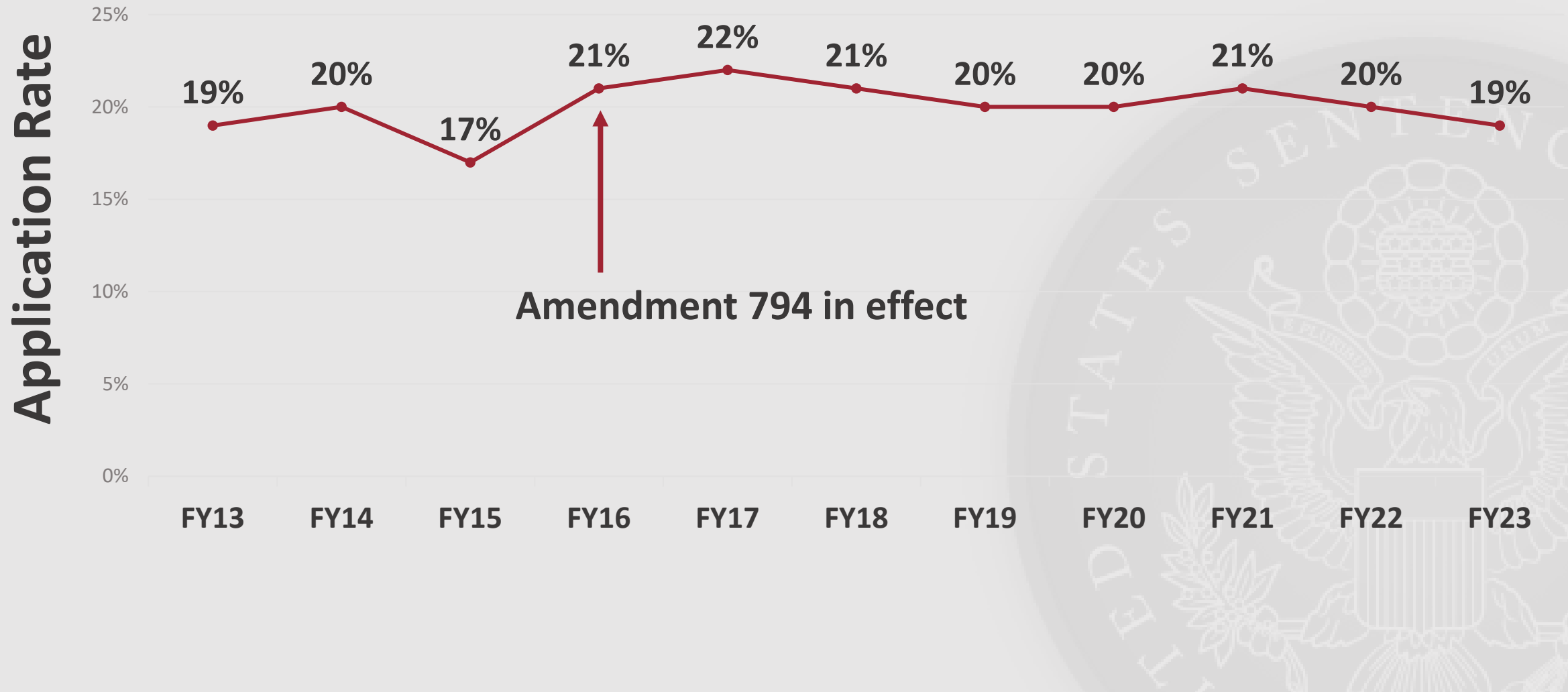
A

Mitigating Role

Mitigating Role Cap

Special Instruction

MITIGATING ROLE ADJUSTMENT TRENDS



Role

§3B1.2

(a) Minimal Participant

-4

Levels

(b) Minor Participant

-2

Levels

-3

Levels

Role

§3B1.2

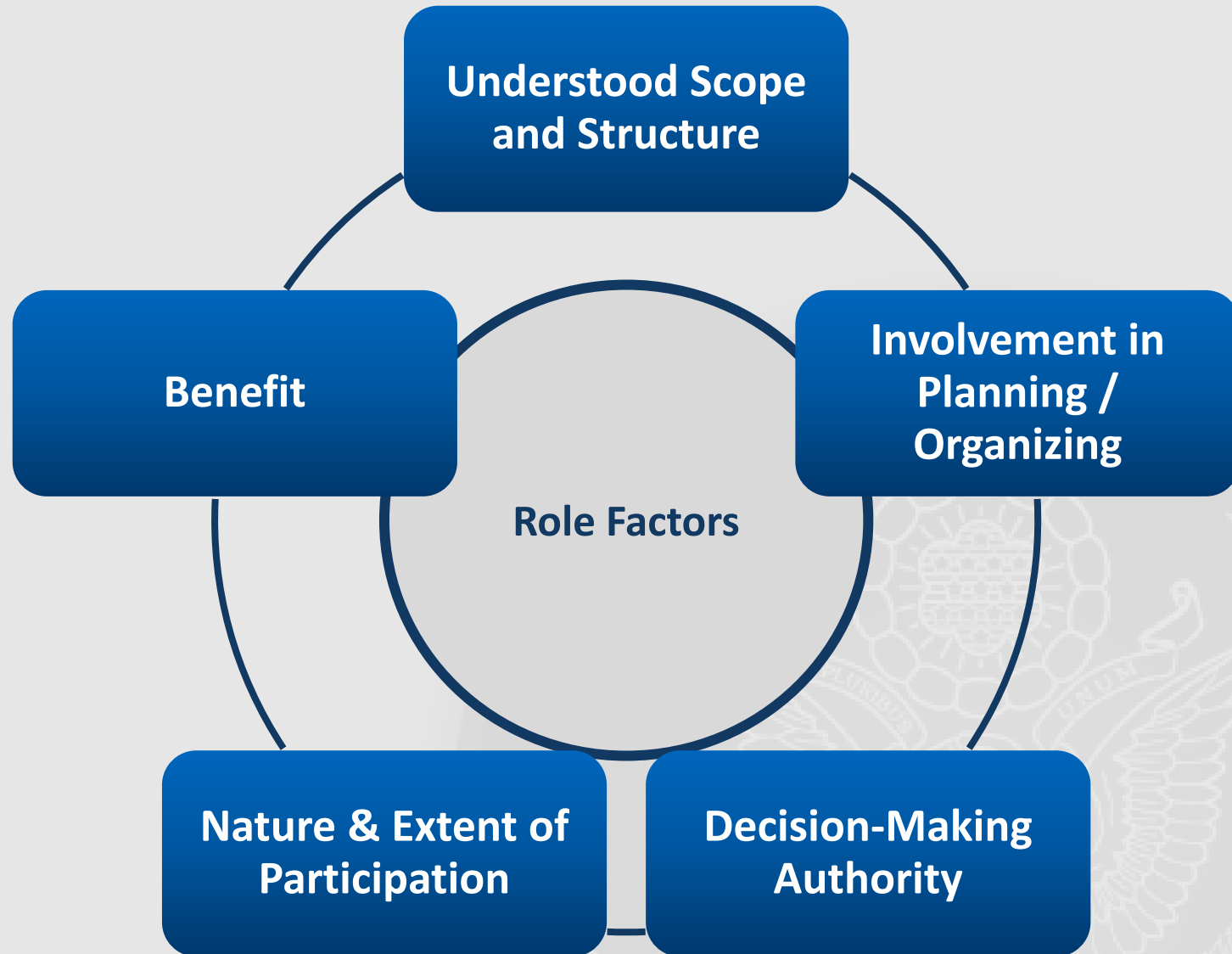
Other Participants

Need Not Be Charged

**Substantially Less Culpable than
Others in the Offense**

Role

§3B1.2



Jane Doe was caught with two kilograms of methamphetamine at Philadelphia International Airport. Ms. Doe was paid \$500 by someone she met online to transport the drugs, but there is no other information about the offense.

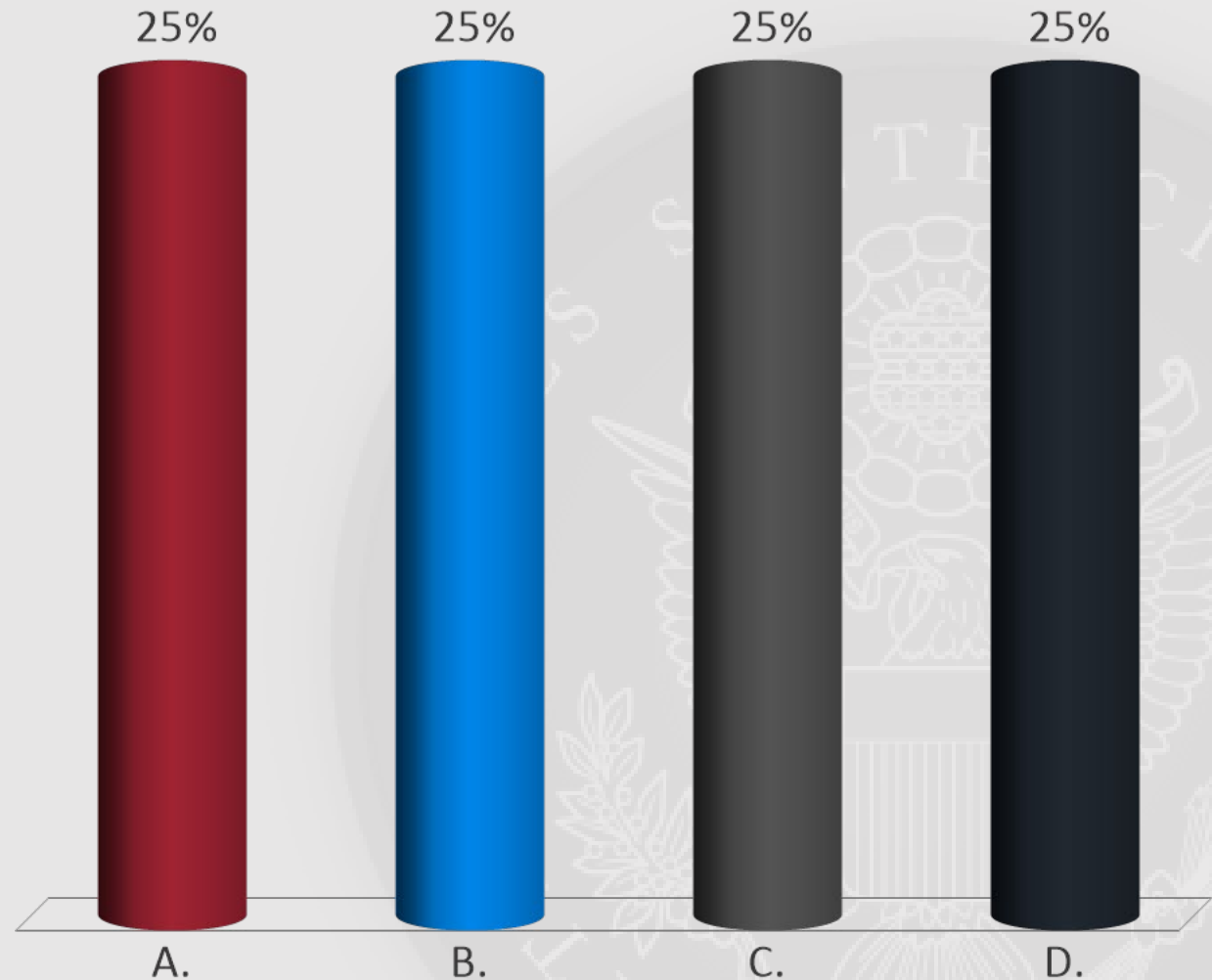
What role adjustment, if any, would you apply based only upon the prior role guidance?

A. No Reduction

B. -2

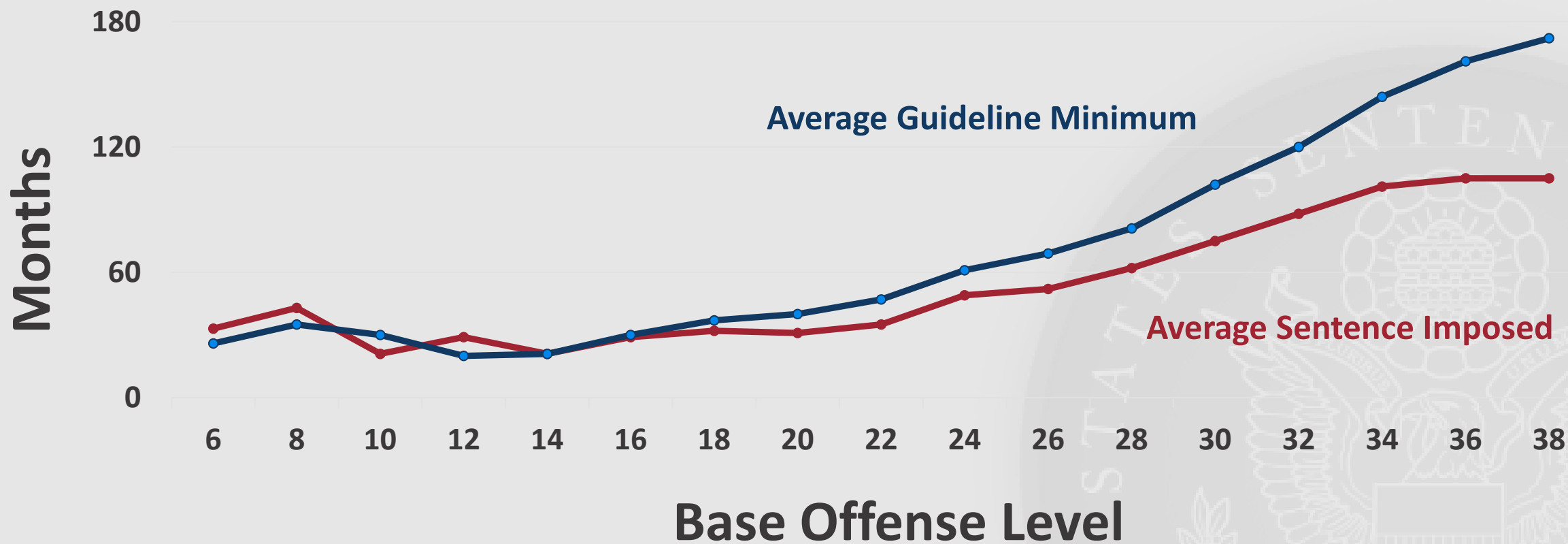
C. -3

D. -4



Drug Quantity

FY2023



Special Instruction

Amended §2D1.1(e)

Role

§3B1.2

Function

Amended §2D1.1(e)



Function

Amended §2D1.1(e)

(B) In addition to the circumstances identified in §3B1.2, an adjustment under §3B1.2 is *generally warranted* if the defendant's *primary function* in the offense was performing a *low-level trafficking function*.

Function

Amended §2D1.1(e)

(a)

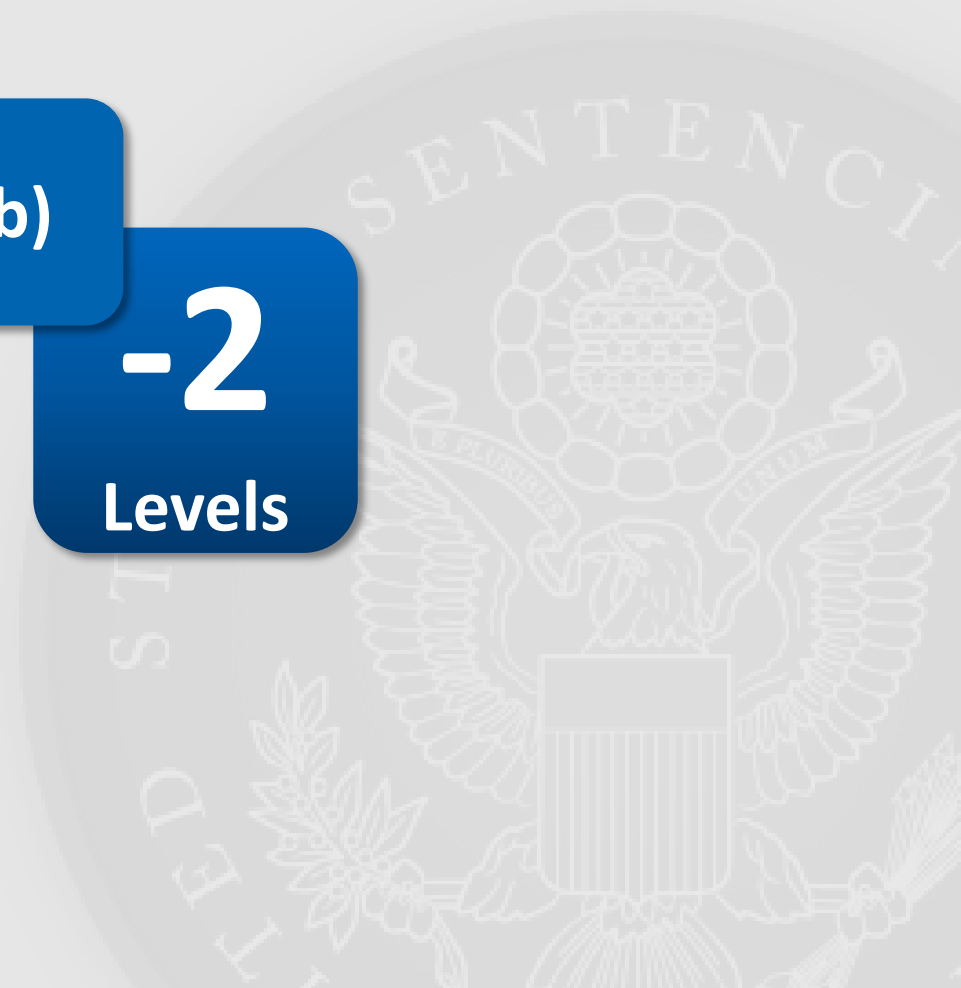
-4

Levels

(b)

-2

Levels



Function

Amended §2D1.1(e)

-4

Levels

(a)

**Generally Warranted for
Plainly Lowest-Level Functions**

Couriers, Lookouts, Errand Runners

- (i) An adjustment under §3B1.2(a) is generally warranted if the defendant's primary function in the offense was ***plainly among the lowest level*** of drug trafficking functions, such as serving as a ***courier, running errands, sending or receiving phone calls or messages, or acting as a lookout*** . . .

Function

Amended §2D1.1(e)

(a)

-4

Levels

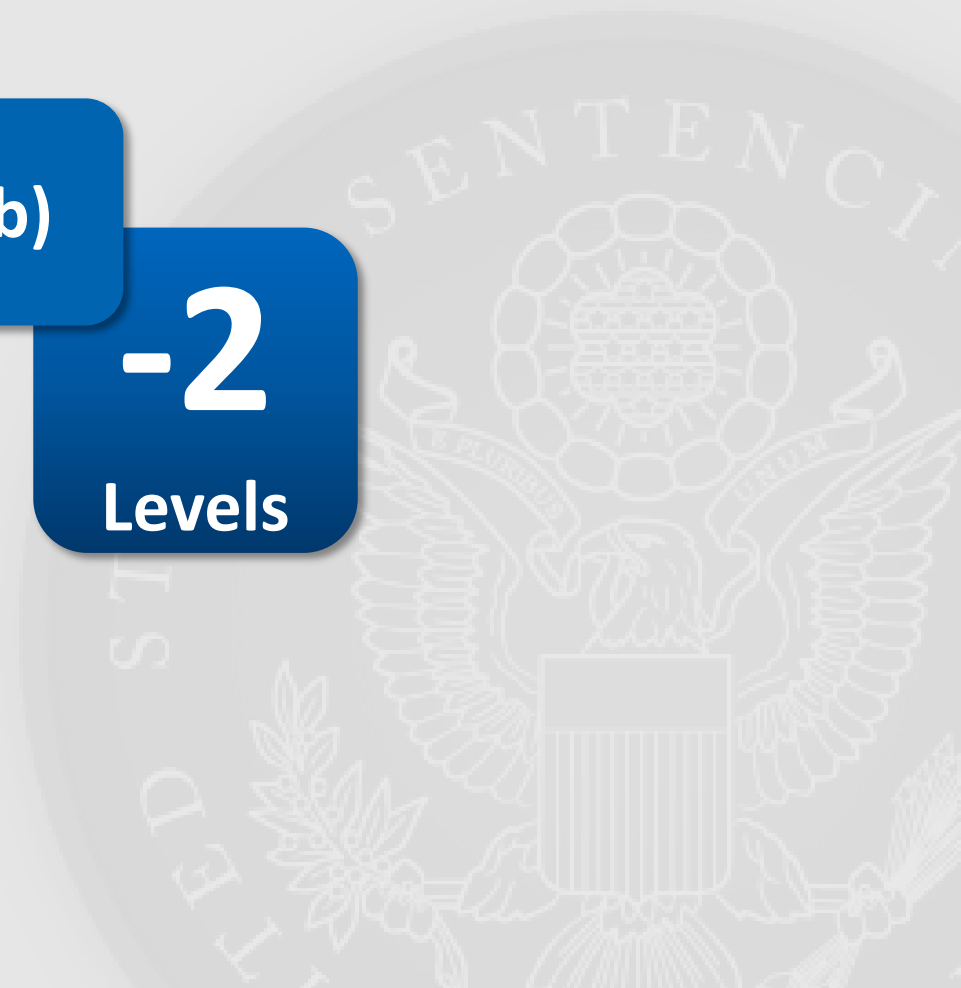
***Generally Warranted for
Plainly Lowest-Level Functions***

Couriers, Lookouts, Errand Runners

(b)

-2

Levels



Function

Amended §2D1.1(e)

- (ii) an adjustment under §3B1.2(b) is generally warranted if the defendant's primary function in the offense was performing **another low-level trafficking function**, such as **distributing controlled substances in user-level quantities for little or no monetary compensation or with a primary motivation other than profit** (e.g., the defendant was otherwise unlikely to commit such an offense and was motivated by an intimate or familial relationship, or by threats or fear to commit the offense).

(b)

-2

Levels

**Generally Warranted for
Other Low-Level Functions**

Certain User-Level Dealers

Function

Amended §2D1.1(e)

-4

Levels

(a)

***Generally Warranted for
Plainly Lowest-Level Functions***

Couriers, Lookouts, Errand Runners

-2

Levels

(b)

***Generally Warranted for
Other Low-Level Functions***

Certain User-Level Dealers

Function

Amended §2D1.1(e)

Other Participants



Substantially Less Culpable
than Others in the Offense



Special Instruction

New §2D1.1(e)

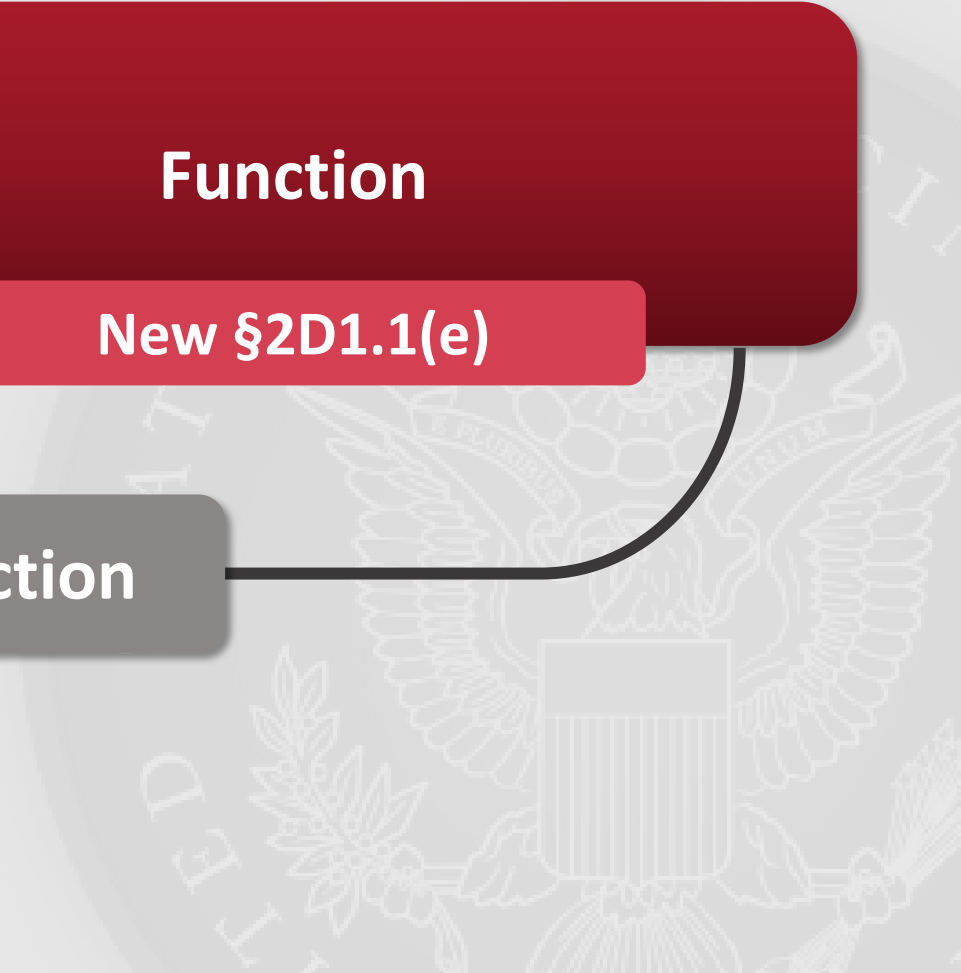
Role

§3B1.2

Function

New §2D1.1(e)

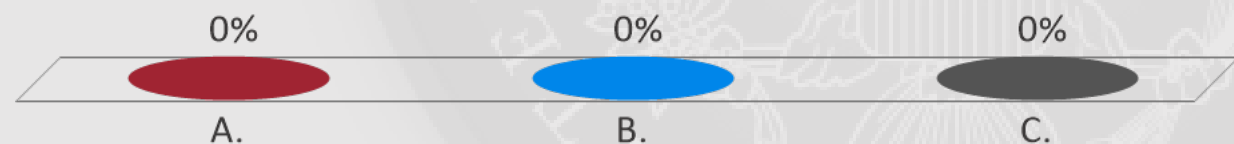
Apply the Greatest Reduction



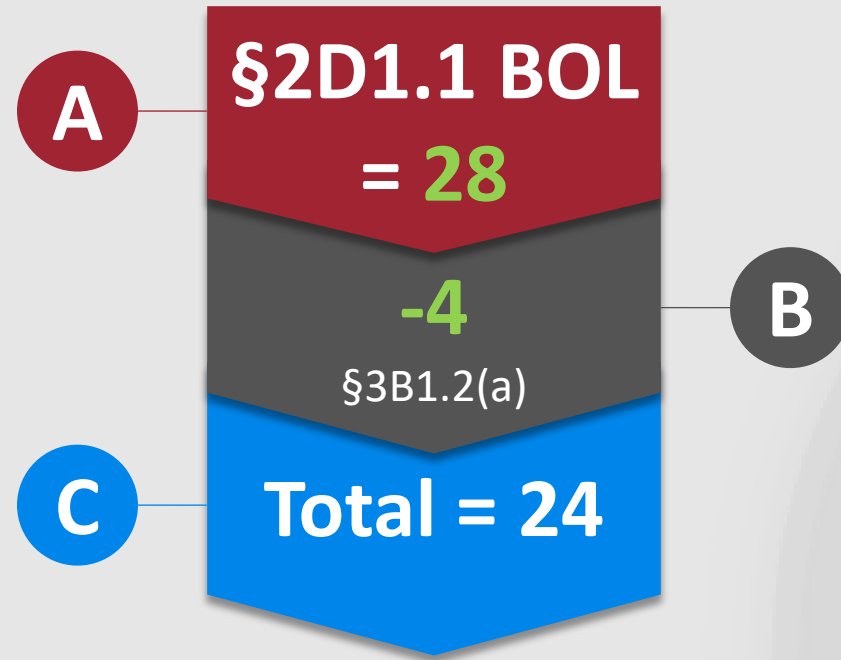
John Smith was arrested while attempting to enter the United States with two kilograms of fentanyl. The court has decided that Mr. Smith qualifies as a minor participant under §3B1.2(b) and that, under the special instruction at §2D1.1(e)(2), his primary function was plainly among the lowest level of drug trafficking functions.

What §3B1.2 adjustment should Mr. Smith receive?

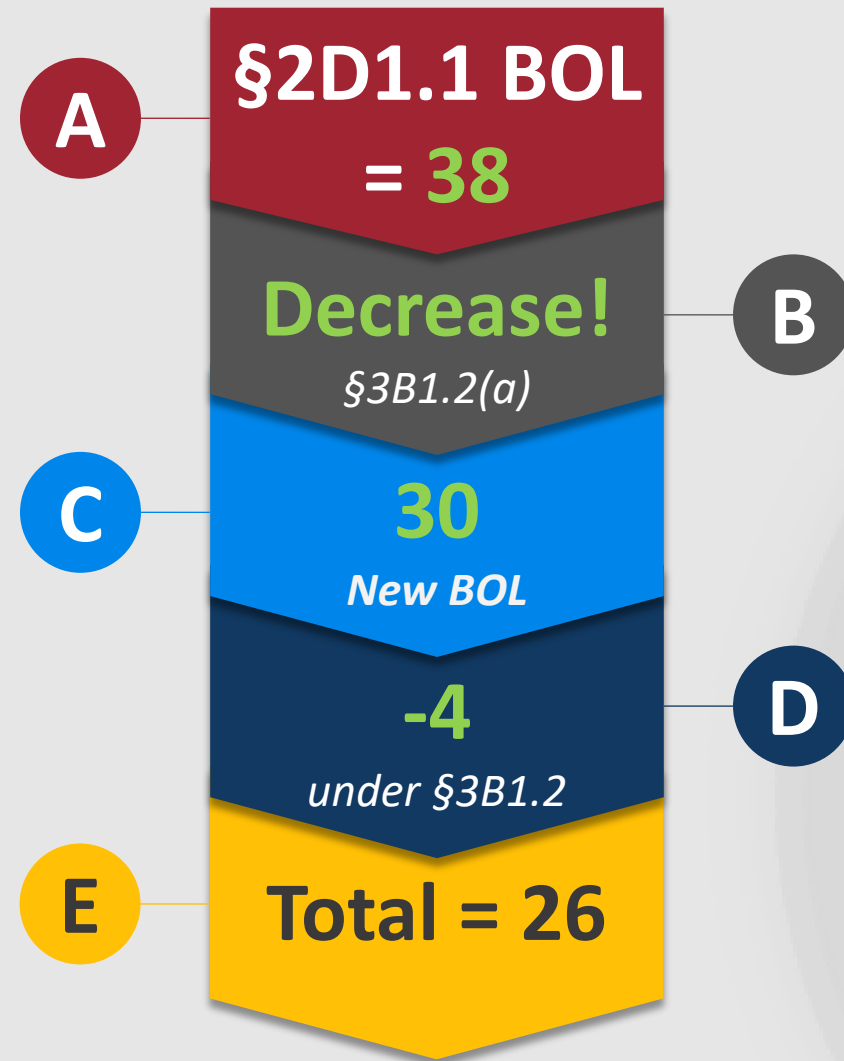
- A. -2, under §3B1.2(b)**
- B. -4, under §3B1.2(a)**
- C. -6, under §2D1.1(e)(2) and §3B1.2(b)**



Sample Calculation



Sample Calculation – Mitigating Role Cap





Drug Offenses

A

Mitigating Role

B

Fentanyl Misrepresentation

B

Fentanyl Misrepresentation

Prior §2D1.1(b)(13)

Defendant

knowingly misrepresented or knowingly marketed as another substance

+4

represented or marketed as a
legitimately manufactured drug

&

willful blindness or
conscious avoidance of knowledge

+2

B

Fentanyl Misrepresentation

New §2D1.1(b)(13)

Defendant

knowingly misrepresented or knowingly marketed as another substance

+4

represented or marketed as a
legitimately manufactured drug

&

reckless disregard

+2

New

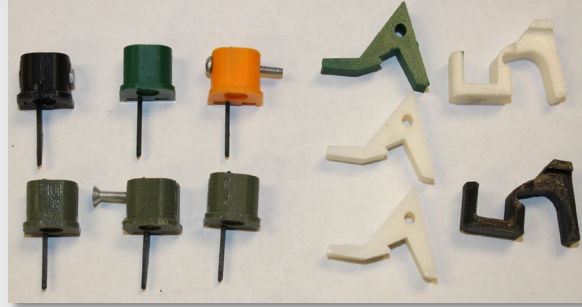
2025

Amendments

- Drug Offenses
- Firearms Offenses
- Circuit Conflicts
- Simplification
- Supervised Release



Firearms Offenses



**Machinegun
Conversion Devices
(MCD)**



Firearms Offenses

“Machinegun” Definition

26 U.S.C. § 5845(b)

The term “**machinegun**” includes:

any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun.



Firearms Offenses

Base Offense Levels

Section 2K2.1(a)(1), (3), (4), (5)

Firearm

26 U.S.C. § 5845(a)

National Firearms Act

***includes MCDs**

SOCs & Cross Reference

Section 2K2.1, App. Note 1

Firearm

18 U.S.C. § 921(a)(3)

Gun Control Act

***excludes MCDs**

Benjamin Lee was convicted of unlawful possession of a machinegun, in violation of 18 U.S.C. § 922(o). The offense involved a machinegun conversion device. The PSR assigned BOL 18 because the offense involved a firearm described in 26 U.S.C. 5845(a). The government sought a 6-level enhancement under 2K2.1(b)(1) because Mr. Lee's relevant conduct included possession of 30 additional MCDs.

Does §2K2.1(b)(1)?

A. Yes

B. No





Firearms Offenses

New Specific Offense Characteristic

New §2K2.1(b)(5)

+2

Defendant Possessed 4+ MCDs

or

+2

Defendant Transferred MCD

or

+4

Defendant Possessed 30+ MCDs



Firearms Offenses

(b)(1) Number of Firearms

(b)(2) Lawful Sporting Purpose

(b)(3) Destructive Device

(b)(4) Stolen Firearms, Modified Serial Numbers, Unserialized Firearms

(b)(5) Trafficking & Straw Purchasing

(b)(6) Transport Out of the United States and Other Felony Enhancement

(b)(7) Recordkeeping Offenses

(b)(8) Trafficking – Organized Crime

(b)(9) Trafficking – Mitigating Circumstances

Offense Level Cap: 29



Firearms Offenses

(b)(1) Number of Firearms

(b)(2) Lawful Sporting Purpose

(b)(3) Destructive Device

(b)(4) Stolen Firearms, Modified Serial Numbers, Unserialized Firearms

(b)(5) New MCD Specific Offense Characteristic

New §2K2.1(b)(5)

(b)(6) Trafficking & Straw Purchasing

(b)(7) Transport Out of the United States and Other Felony Enhancement

(b)(8) Recordkeeping Offenses

(b)(9) Trafficking – Organized Crime

(b)(10) Trafficking – Mitigating Circumstances

Offense Level Cap: 29



2025

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- Drug Offenses
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- Simplification
- Supervised Release



Circuit Conflicts

A

Physically Restrained
§2B3.1 (Robbery)

B

Intervening Arrest
§4A1.2(a)(2) (Criminal History)

A

Physically Restrained **§2B3.1 (Robbery)**

Physically Restrained

§2B3.1(b)(4)(B)

Firearm Enhancement

§2B3.1(b)(2)(A)–(C)

A

Physically Restrained
§2B3.1 (Robbery)

Physically Restrained

§2B3.1(b)(4)(B)

DON'T MOVE!!!

Without Physical Measures

?



A

Physically Restrained §2B3.1 (Robbery)

Physically Restrained

§2B3.1(b)(4)(B)

Without Physical Measures



Wallace, 461 F.3d 15 (1st Cir. 2006)

Dimache, 665 F.3d 603 (4th Cir. 2011)

Howell, 17 F.4th 673 (6th Cir. 2021)

Deleon, 116 F.4th 1260 (11th Cir. 2024)

Physical Measures Required



Anglin, 169 F.3d 154 (2d Cir. 1999)

Bell, 947 F.3d 49 (3d Cir. 2020)

Garcia, 857 F.3d 708 (5th Cir. 2017)

Herman, 930 F.3d 872 (7th Cir. 2019)

Parker, 241 F.3d 1114 (9th Cir. 2001)

A

Physically Restrained §2B3.1 (Robbery)

Physically Restrained

New §2B3.1(b)(4)(B)

Physical Measures Required

**Restricted through Physical
Contact or Confinement**



A

Physically Restrained §2B3.1 (Robbery)

Physically Restrained

New §2B3.1(b)(4)(B)

Firearm Enhancement

§2B3.1(b)(2)(A)–(C)

A

Physically Restrained §2B3.1 (Robbery)

Firearm Enhancement

§2B3.1(b)(2)(A)–(C)

+7

Firearm Discharged

+6

Firearm Otherwise Used

+5

Firearm Brandished or Possessed

A

Physically Restrained §2B3.1 (Robbery)

Firearm Enhancement

New §2B3.1(b)(2)(B)

Firearm used for a specific threat, including pointing at a victim, or physical contact

+6





Circuit Conflicts

A

Physically Restrained
§2B3.1 (Robbery)

B

Intervening Arrest
§4A1.2(a)(2) (Criminal History)

B

Intervening Arrest §4A1.2(a)(2) (Criminal History)

Single



**Robbery
Burglary**

or

Separate



Robbery

Burglary

B

Intervening Arrest §4A1.2(a)(2) (Criminal History)

1



Sentenced Same Day

or



**Same Charging
Document**

AND

2

No Intervening Arrest



B

Intervening Arrest §4A1.2(a)(2) (Criminal History)

No Intervening Arrest

Traffic Stop

?



B

Intervening Arrest §4A1.2(a)(2) (Criminal History)

Traffic Stop Counts

Morgan, 354 F.3d 621 (7th Cir. 2003)

Formal Arrest Required

Ley, 876 F.3d 103 (3d Cir. 2017)

Rogers, 86 F.4th 259 (6th Cir. 2023)

Leal-Felix, 665 F.3d 1037 (9th Cir. 2011)

Wright, 862 F.3d 1265 (11th Cir. 2017)

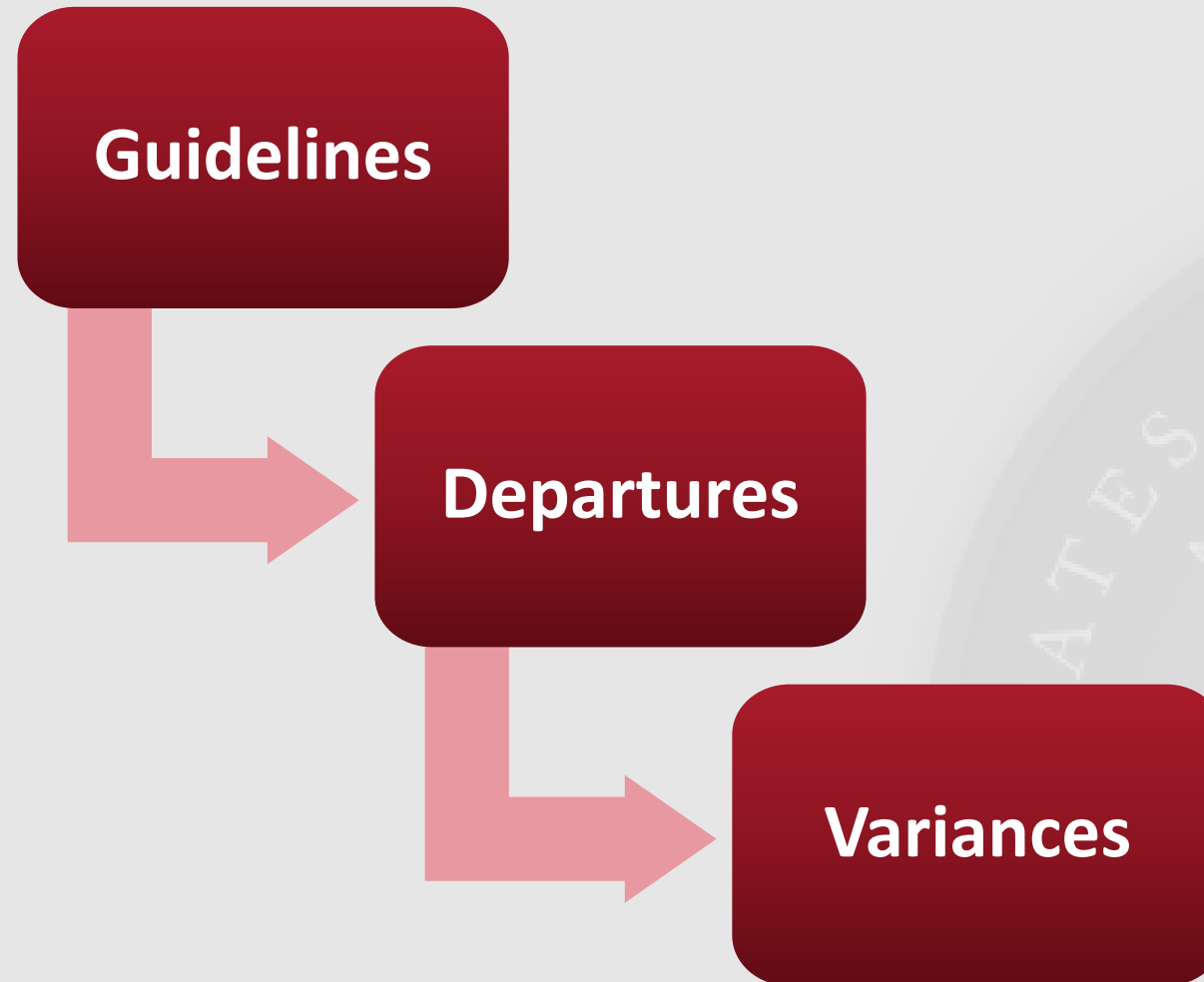
2025

Amendments

- Drug Offenses
- Firearms Offenses
- Circuit Conflicts
- Simplification
- Supervised Release



Simplification





Simplification

Guidelines



Variances

Early Disposition

Chapter 3 Adjustment

Substantial Assistance (§5K1.1)

Final Step of Guidelines

Appendix B (Historical Departures)

Variance

2025

Amendments

- Drug Offenses
- Firearms Offenses
- Circuit Conflicts
- Simplification
- Supervised Release



Supervised Release

Overarching Themes



**Individualized
Assessments**



**Rehabilitation &
Public Safety**



**Consider All
Statutory Options**



**Promote Judicial
Discretion**



Supervised Release

A

Implementation

B

Violations

A

Implementation

Imposition

§5D1.1

Length

§5D1.2

Conditions

§5D1.3

**Modification, Early
Termination, &
Extension**

§5D1.4

Early Termination & Statutory Minimum

Case Law

A requirement to impose a minimum term of supervised release does not alter a court's authority to terminate before the expiration of the minimum term.

United States v. Lester

92 F.4th 740 (8th Cir. 2024)

United States v. Spinelle

41 F.3d 1056 (6th Cir. 1994)



Supervised Release

A

Implementation

B

Violations

B

Violations

Overall Structure

Introduction

Revocation

§7C1.4

Responses to Violations

§7C1.3

Revocation Table

§7C1.5

Commission Update



Topics

2025 Amendments

2026 Proposed Amendments

Case Law

2026 Proposed Amendments

Alternatives to Incarceration

Infrequently Used SOC's

Drug Trafficking

Sophisticated Means

Economic Crimes

Career Offender

Post-Offense Rehabilitation

Circuit Conflicts

Simplifying Multiple Counts

Human Smuggling

Commission Update



Topics

2025 Amendments

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Case Law

Case Law

Guidelines Commentary

Categorical Approach

Restitution

Sentencing Procedure

Pending Supreme Court Cases

Case Law

Guidelines Commentary

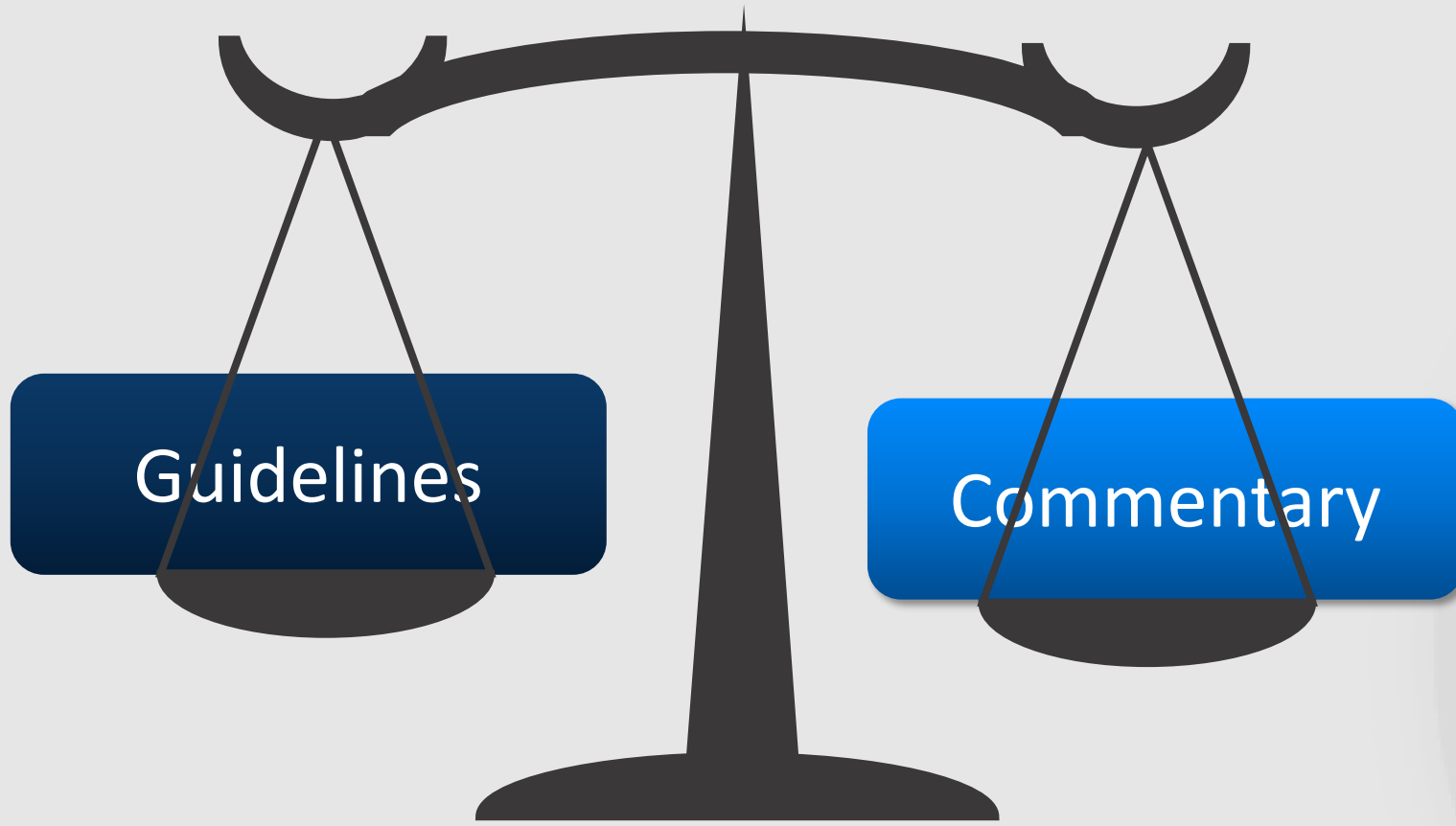
Categorical Approach

Restitution

Sentencing Procedure

Pending Supreme Court Cases

Status of Guidelines Commentary



Stinson v. United States

508 U.S. 36 (1993)

Commentary is authoritative unless:

1

Violates the Constitution or Federal Statute

2

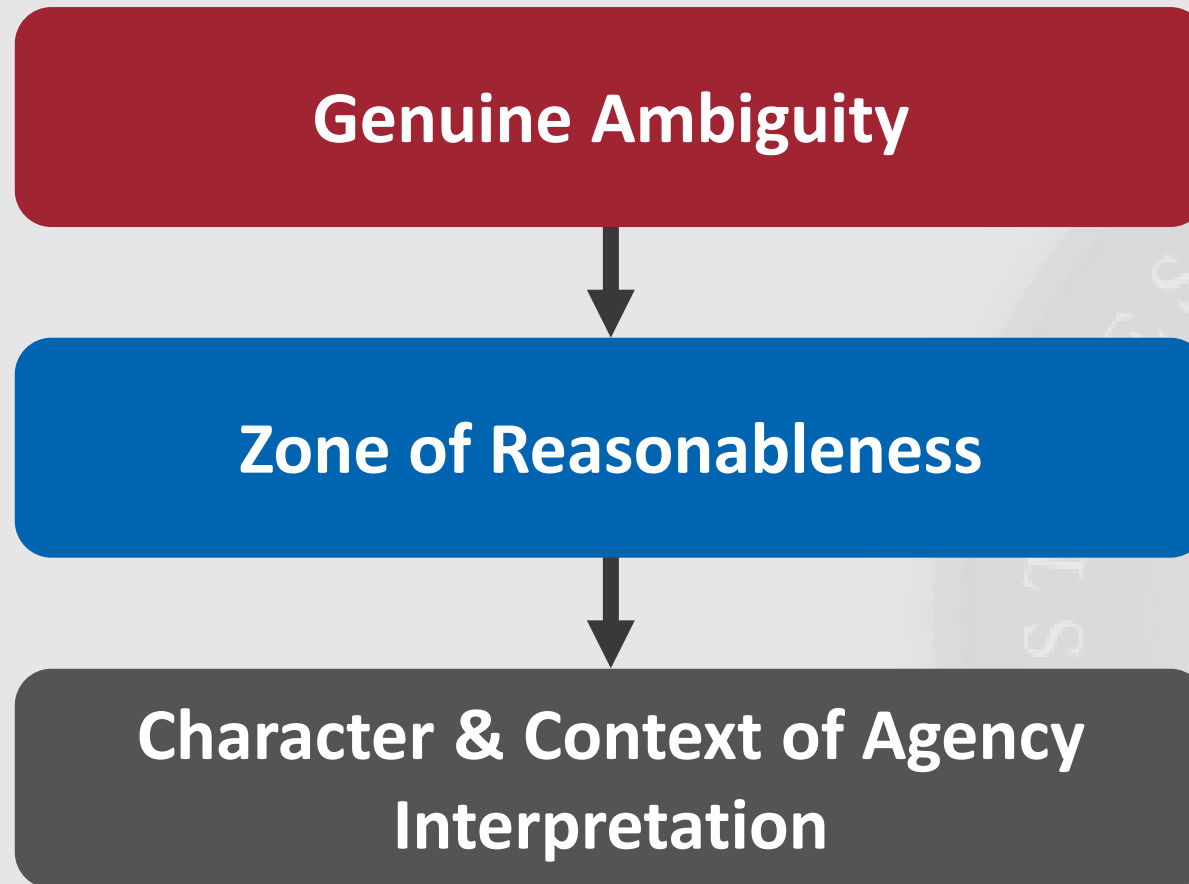
Inconsistent or Plainly Erroneous

OR

Kisor v. Wilkie

588 U.S. 558 (2019)

Framework for deference to an agency's interpretation of its own regulations:



Circuit Split: *Stinson* or *Kisor*

Stinson (More Deferential)

United States v. Rainford, 110 F.4th 455 (2d Cir. 2024)

United States v. Vargas, 74 F.4th 673 (5th Cir. 2023) (en banc)

United States v. White, 97 F.4th 532 (7th Cir. 2024)

United States v. Maloid, 71 F.4th 795 (10th Cir. 2023)

Kisor (Less Deferential)

United States v. Nasir, 17 F.4th 459 (3d Cir. 2021) (en banc)

United States v. Boler, 115 F.4th 316 (4th Cir. 2024)

United States v. Riccardi, 989 F.3d 476 (6th Cir. 2021)

United States v. Castillo, 69 F.4th 648 (9th Cir. 2023)

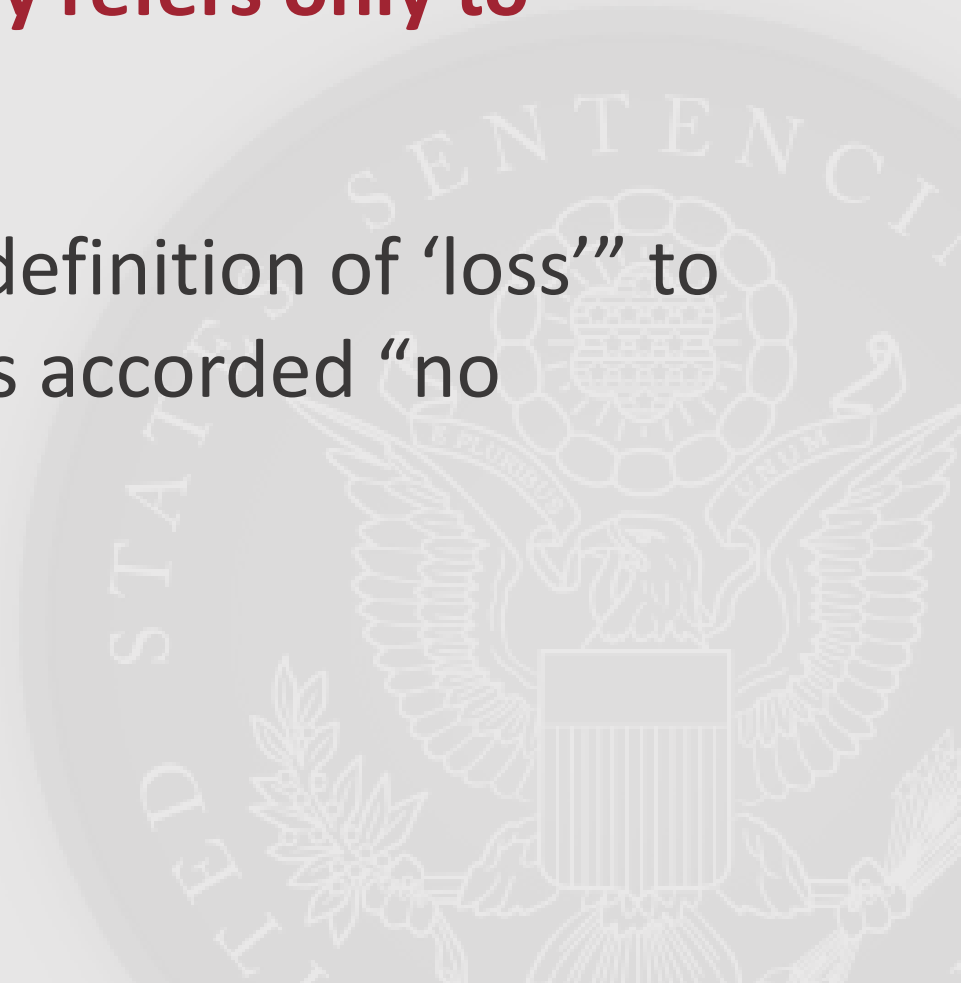
United States v. Dupree, 57 F.4th 1269 (11th Cir. 2022) (en banc)

United States v. Banks

55 F.4th 246 (3d Cir. 2022)

The term “loss” in §2B1.1 **unambiguously refers only to “actual loss.”**

“Because the commentary expands the definition of ‘loss’ to include intended loss, the commentary is accorded “no weight.”



2024 Loss Calculation Amendment

Section 2B1.1(b)(1), Notes to Loss Table

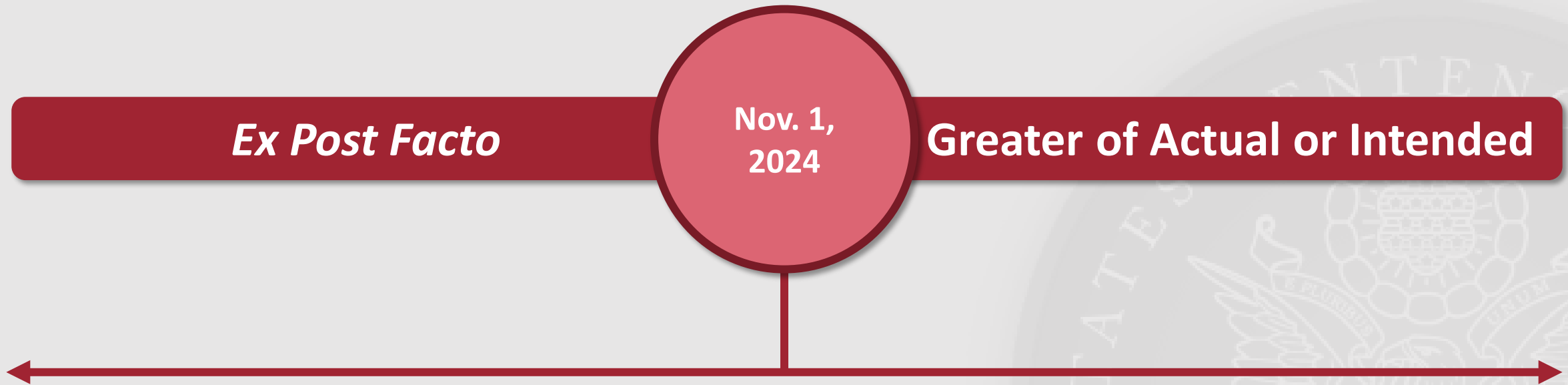


Commentary

**Actual vs. Intended
(Use the Greater)**

Guidelines

Loss Calculation



Deference to Commentary on Intended Loss

Ex Post Facto

Actual Loss

“Application of § 2B1.1(b)(1) based on intended loss was plain error”
[as to offense committed before the 2024 loss amendment].

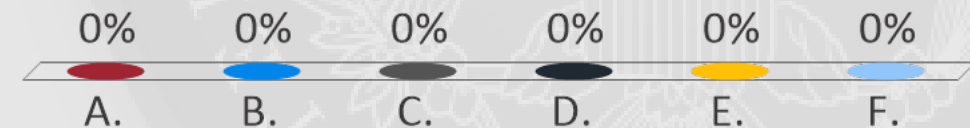
***United States v. Barkers-Woode*, 136 F.4th 496 (3d Cir. 2025)**

Nov. 1,
2024



Since 2024, the Third Circuit has deferred to Guidelines commentary in defining which of the following terms? [*check all that apply*]

- A. Victim (§2B1.1 – Fraud)
- B. Dangerous Weapon (§2B3.1 – Robbery)
- C. Image (§2G2.2 – Child Pornography)
- D. Large Capacity Magazine (§2K2.1 – Firearms)
- E. Instant Offense (§4B1.2 – Criminal History)
- F. None of the Above



Deference to Guidelines Commentary

Unambiguous/No Deference

Instant Offense (§4B1.2 – Criminal History)

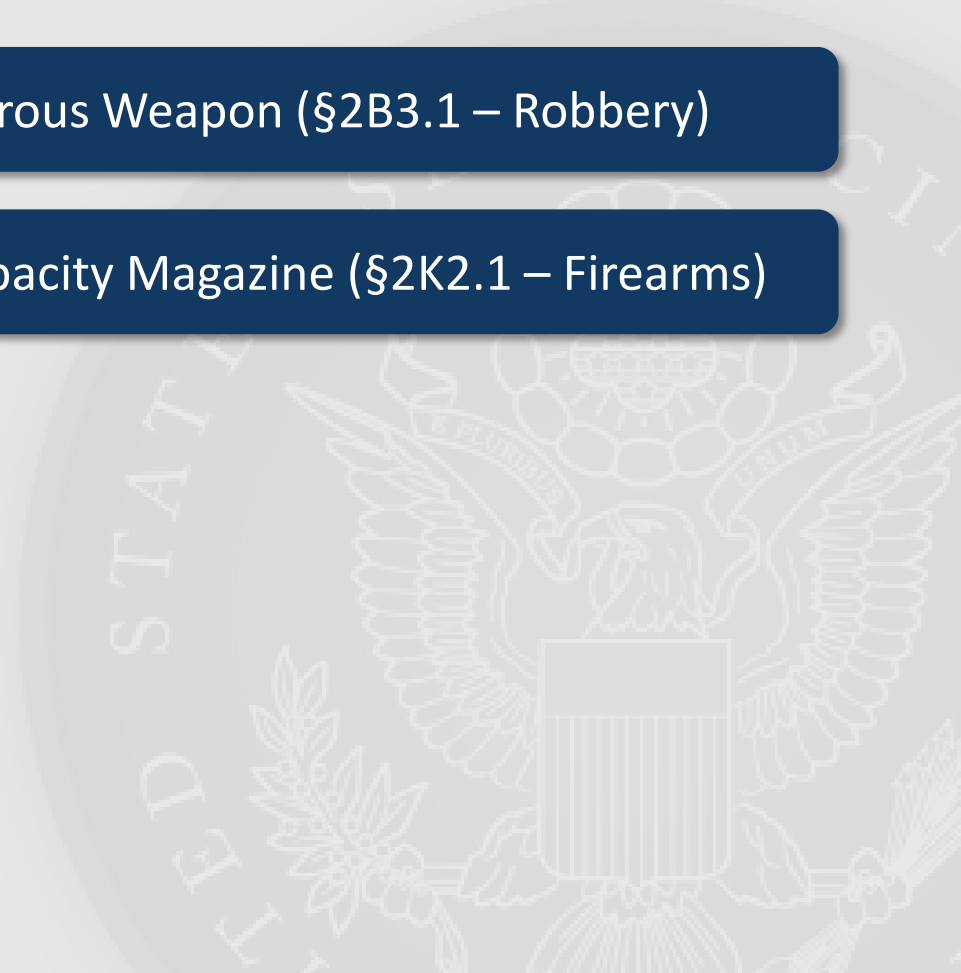
Victim (§2B1.1 – Fraud)

Image (§2G2.2 – Child Pornography)

Ambiguous/Deference

Dangerous Weapon (§2B3.1 – Robbery)

Large Capacity Magazine (§2K2.1 – Firearms)



Interplay between Criminal History, Time Frames, and Offense Date

Example

Commencement of Instant Offense | June 1, 2024

5-year window | June 1, 2019

10-year window | June 1, 2014

15-year window | June 1, 2009

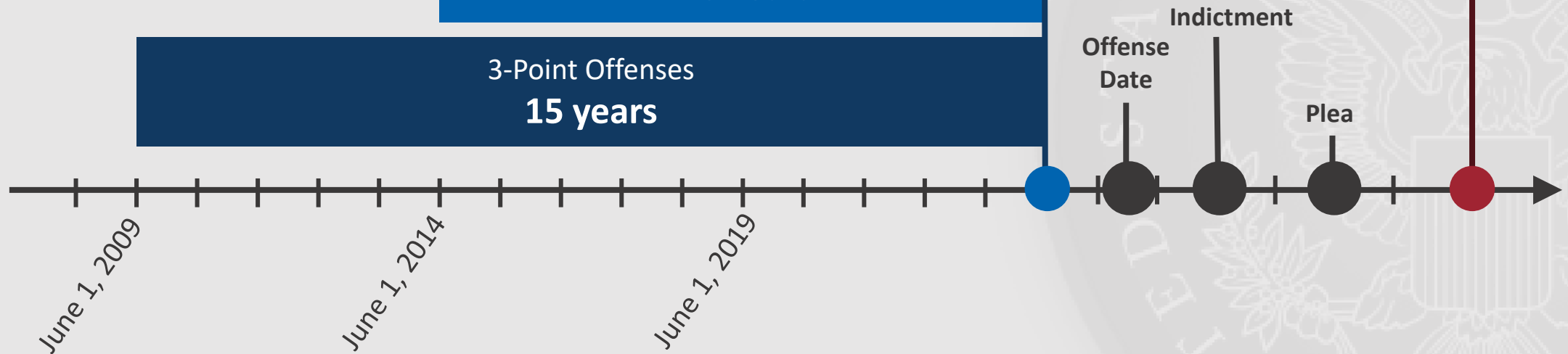
Commencement
of the
Instant Offense

1- and 2-Point Offenses
(Under 18)
5 years

1- and 2-Point Offenses (18 and older)
10 Years

3-Point Offenses
15 years

Date of Federal
Sentencing



Commencement of the Instant Offense

Commencement of the Instant Offense

“Commencement of the instant offense” unambiguously refers to “the **start of the conduct comprising the offense of conviction**, i.e., the specific offense conduct for which the defendant is then being sentenced,” **not relevant conduct**.

U.S. v. Josey, 155 F.4th 234 (3d Cir. 2025)

United States v. Josey

Outstanding Issues and Implications

Does *Josey* affect what constitutes a “prior sentence” for criminal history scoring?

Prior Sentence

Any sentence previously imposed upon adjudication of guilt for conduct *not part of the instant offense*.

§4A1.2(a)(1)

Economic Offenses – Victim Enhancement

Section 2B1.1(b)(2)

“Victim” in §2B1.1 unambiguously “includes victims of identity theft,” even without deference to guidelines commentary.

***U.S. v. Barkers-Woode*, 136 F.4th 496 (3d Cir. 2025)**

Child Pornography Offenses – Number of Images

Section 2G2.2(b)(7)

“We hold that ‘image,’ in the moving picture or video context, unambiguously means ‘frame’” for purposes of §2G2.2(b)(7).

“Deference to the Commentary’s” 75-images-per-video rule
“is therefore unwarranted.”

***U.S. v. Haggerty*, 107 F.4th 175 (3d Cir. 2024)**

Deference to Guidelines Commentary

Unambiguous/No Deference

Instant Offense (§4B1.2 – Criminal History)

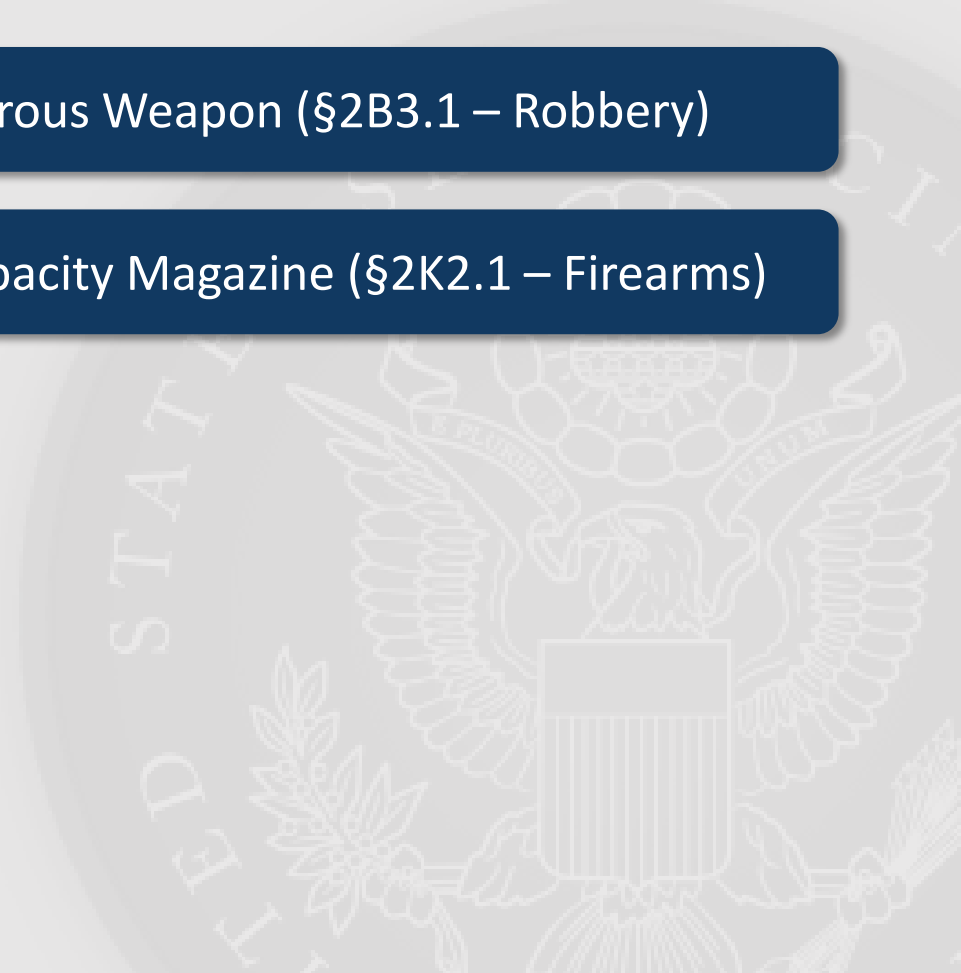
Victim (§2B1.1 – Fraud)

Image (§2G2.2 – Child Pornography)

Ambiguous/Deference

Dangerous Weapon (§2B3.1 – Robbery)

Large Capacity Magazine (§2K2.1 – Firearms)



Dangerous Weapon

Section 1B1.1, App. Note 1(E)

Dangerous Weapon:

Instrument capable of inflicting death/SBI

OR

Object that—

- Closely resembles such an instrument, *or*
- Defendant used to create the impression that object was such an instrument

Dangerous Weapon

Section 1B1.1, App. Note 1(E); 2A4.1(b)(3); 2B3.1(b)(2)(D)

“[T]he term ‘dangerous weapon’ is indeed **genuinely ambiguous**, . . . so we can rely on the Sentencing Commission’s commentary to **reasonably interpret the phrase to include replica firearms.**”

U.S. v. Chandler, 104 F.4th 445 (3d Cir. 2024)

Firearm Offenses – Base Offense Levels

Section 2K2.1

Type of
Firearm

26

§2K2.1(a)(1)

22

§2K2.1(a)(3)

20

§2K2.1(a)(4)

Semiautomatic Firearm
Capable of Accepting a
Large Capacity Magazine

**Type of
Firearm**

**Semiautomatic Firearm Capable of
Accepting a Large Capacity Magazine**

§2K2.1, App. Note 2

Semiautomatic firearm with the ability to fire many rounds without reloading because **at the time of the offense—**

A magazine that could accept
more than 15 rounds of ammunition was

**Attached
to the Firearm**

OR

**In Close Proximity
to the Firearm**

Firearms Offenses – Large Capacity Magazine

Section 2K2.1, App. Note 2

“Application Note 2’s interpretation of ‘large capacity magazine’ . . . meets the extensive requirements for deference laid out in *Kisor*.”

***U.S. v. McIntosh*, 124 F.4th 199 (3d Cir. 2024)**

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18 U.S.C. § 924(c)

Any person who, during and in relation to a Crime of Violence possesses a firearm, shall, in addition to the punishment provided for such crime, be subject to a consecutive minimum term of

Possession

+5

Years

Brandished

+7

Years

Discharge

+10

Years

Crime of Violence

18 U.S.C. § 924(c)

An offense that is a felony and—

Force Clause

has as an element the use, attempted use, or threatened use of physical force against the person or property of another

Crime of Violence

18 U.S.C. § 924(c)

An offense that is a felony and—

Force Clause

has as an element the use, attempted use, or threatened use of physical force against the person or property of another

use of physical force

Use of Physical Force

Commission



Omission



Delligatti v. United States

604 U.S. 423 (2025)



Holding:

The knowing or intentional causation of bodily injury necessarily involves the use of physical force, even when caused by omission rather than affirmative action.

Additional Considerations

ACCA



§4B1.2



Section 16



United States v. Minter

164 F.4th 243 (3d Cir. 2026)

“[A]lthough *Delligatti* addressed the crime-of-violence provision in 18 U.S.C. § 924(c)(3)(A), we see no basis for distinguishing that provision from its similarly worded siblings.”

In light of *Delligatti*, “our holding [on omissions under ACCA’s force clause] is no longer good law.”

Categorical Approach

Modified Categorical Approach/*Shepard* Documents

Section 4B1.2

Attempt Offenses

18 U.S.C. § 924(c)

Categorical Approach

Modified Categorical Approach/*Shepard* Documents

Section 4B1.2

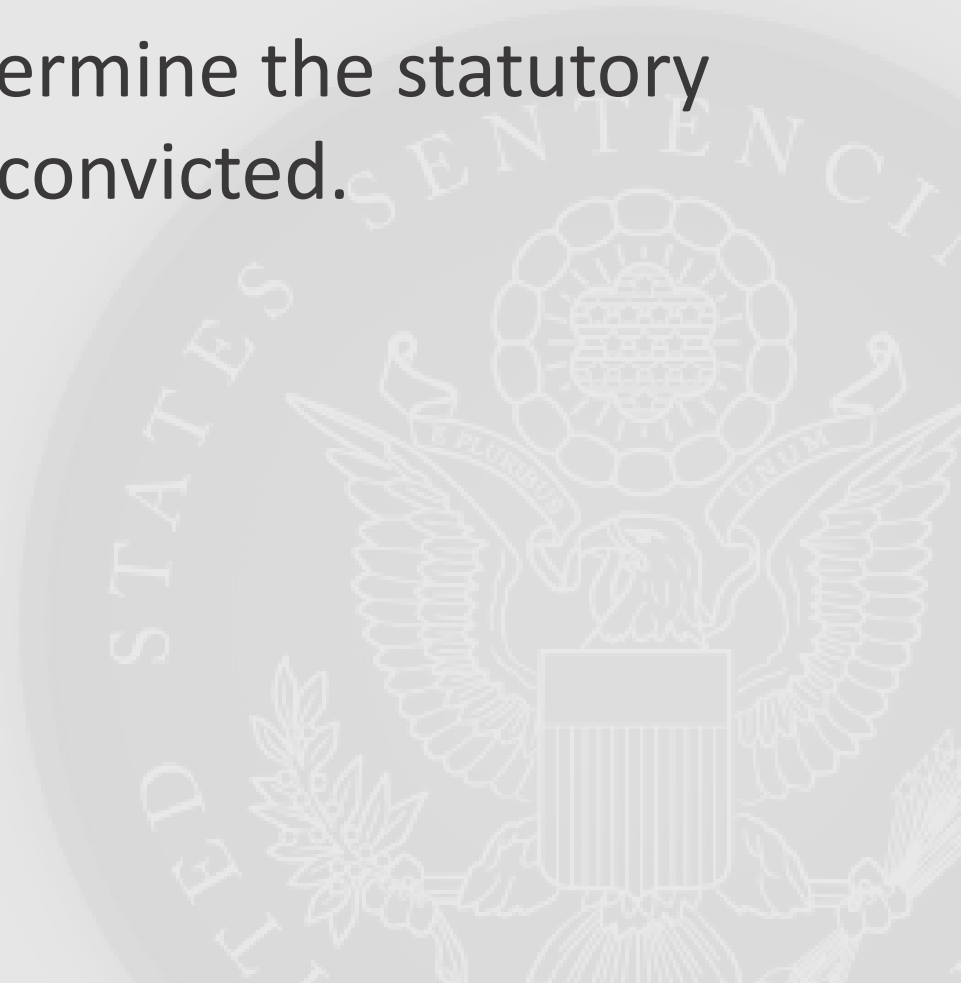
Attempt Offenses

18 U.S.C. § 924(c)

United States v. Payo

135 F.4th 99 (3d Cir. 2025)

Because Pennsylvania robbery is divisible, the modified categorical approach must be used to determine the statutory subsection under which a defendant was convicted.



Modified Categorical Approach Documents

Shepard v. United States, 544 U.S. 13 (2005)



**Charging
Document**



**Plea
Agreement**



**Plea
Transcript**



**Comparable
Judicial
Record**

Kaya Pearson's PSR shows that she has a prior conviction under Pennsylvania's robbery statute, which is divisible—some subsections qualify as crimes of violence, and other subsections do not. Ms. Pearson argues that she was only convicted of burglary, instead of robbery. The government argues that she was convicted of robbery and was convicted of a subsection that qualifies as a crime of violence.

The court is limited to considering *Shepard* documents in making which of the following determinations—

- A. Whether Ms. Pearson was convicted of robbery or burglary**
- B. The statutory subsection of which she was convicted**
- C. Both**
- D. Neither**



United States v. Dobbin

147 F.4th 333 (3d Cir. 2025)

“[C]ourts may consider **non-*Shepard* documents to establish the fact of a conviction**, rather than its character as a crime of violence.”

Non-*Shepard* documents sufficiently established that the defendant was convicted of PA robbery in addition to burglary.

“***Shepard’s limitations apply***” to the determination of “**which subsection** of Pennsylvania’s robbery statute applied . . . and whether that kind of robbery is a crime of violence.”

United States v. Payo

135 F.4th 99 (3d Cir. 2025)

A state-court docket sheet was not a *Shepard* document.

“The default presumption is that a presentence report is not a *Shepard* document.”

A presentence report may qualify as a *Shepard* document “if, but only if, the defendant registered no objection to its contents.”

Recent Third Circuit Decisions

Categorical Approach

Modified Categorical Approach/Shepard Documents

Section 4B1.2

Attempt Offenses

18 U.S.C. § 924(c)

United States v. Vines

134 F.4th 730 (3d Cir. 2025)

The federal bank robbery statute (18 U.S.C. § 2113(a)) is divisible and includes distinct offenses of bank robbery, bank extortion, and bank burglary.

Attempted armed bank robbery (18 U.S.C. § 2113(d)) “predicated on § 2113(a)’s robbery clause is a crime of violence” because it requires “force or intimidation against someone else.”

United States v. Smith

165 F.4th 751 (3d Cir. 2026)

Attempted murder of a federal witness (18 U.S.C. § 1512(a)(1)(C)) is a crime of violence under 924(c) because it “always includes” at least “an attempted use of force.”

Attempted use of physical force is not limited to the “unsuccessful active employment of violent force,” but rather is “(1) having an intent to use physical force and (2) taking a substantial step toward using physical force.”

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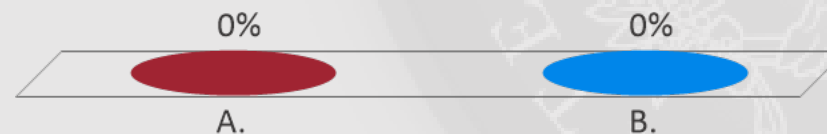
Pending Supreme Court Cases

Brett O'Neil robbed a bank in 1995, when restitution was enforceable for 20 years from the entry of judgment. Before he was sentenced, the MVRA expanded the enforceability window for restitution orders to 20 years from the entry of judgment **or** release from imprisonment, whichever is later. He was sentenced in 1996 to 26 years' imprisonment and ordered to pay \$10,000 in restitution. Upon his release in 2022, Mr. O'Neil had not yet satisfied his restitution order, which with interest had increased to \$25,000.

Is Mr. O'Neil's restitution order subject to the Ex Post Facto Clause?

A. No

B. Yes



Ellenburg v. United States

146 S.Ct. 564 (2026)

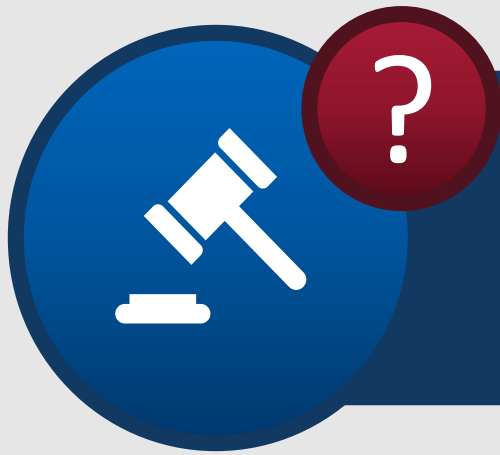


Holding:

Restitution under the Mandatory Victim Restitution Act is criminal punishment for purposes of the Constitution's *Ex Post Facto* Clause.

Ellingburg v. United States

Outstanding Questions and Additional Implications



Does the Sixth Amendment jury right apply to the restitution amount?



Does extending the time in which restitution must be paid *increase* punishment?

Does extending the duration of the restitution obligation increase punishment?

Yes

U.S. v. Norwood, 49 F.4th 189 (3d Cir. 2022)

No

U.S. v. Weinlein, 109 F.4th 91 (2d Cir. 2024)

U.S. v. Blackwell, 852 F.3d 1164 (9th Cir. 2017)

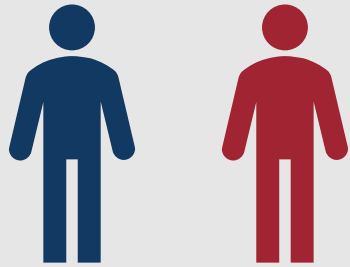
U.S. v. McGuire, 636 F. App'x 445 (10th Cir. 2016)

U.S. v. Rosello, 737 F. App'x 907 (11th Cir. 2018)

MVRA Restitution – Multiple Defendants

18 U.S.C. § 3664(h)

Joint & Several Liability



\$1 Million

Apportionment



\$700,000



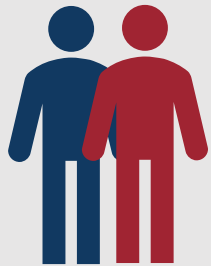
\$300,000

United States v. Shvets

154 F.4th 74 (3d Cir. 2025)

The MVRA “allows sentencing judges to issue ‘hybrid’ restitution orders—i.e., orders that combine apportionment with joint and several liability.”

Total Loss = \$750,000



\$500,000



\$250,000



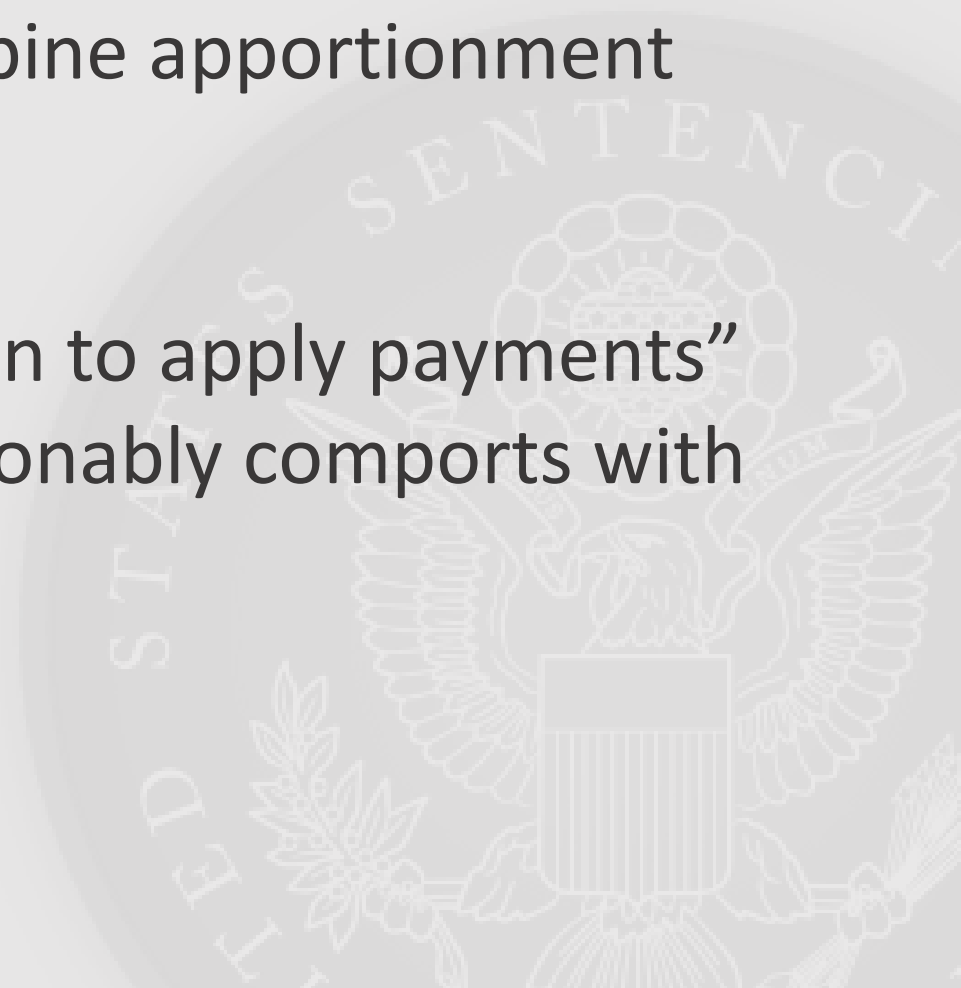
\$500,000

United States v. Shvets

154 F.4th 74 (3d Cir. 2025)

The MVRA “allows sentencing judges to issue ‘hybrid’ restitution orders—i.e., orders that combine apportionment with joint and several liability.”

The sentencing court “has wide discretion to apply payments” toward hybrid orders “in a way that reasonably comports with language in the judgments and is fair.”



MVRA Restitution

United States v. McCormack, 152 F.4th 428 (3d Cir. 2025)

The MVRA “does not let victims recover consequential damages, or the same loss twice.”

Where the defendant stole firearms from guns stores, the court erred in ordering restitution for lost income—

- Because each store “would likely have sold some of the same guns for which they were already getting reimbursed,” those “lost sales were double counted.”
- The “lost sales of *other* weapons are consequential damages not covered by the MVRA.”

MVRA Restitution – Victims

United States v. Cammarata, 145 F.4th 345 (3d Cir. 2025)

Where the defendants committed fraud by submitting fraudulent claims to class action administrators, the defrauded class (and not merely individual class members) qualify as victims under the MVRA.

The district court could order restitution be paid to settlement funds for distribution by claims administrators to class members.

MVRA Restitution – Attorneys’ Fees

United States v. Abrams, 165 F.4th 784 (3d Cir. 2026)

Victims’ attorneys’ fees incurred during the investigation or prosecution of the offense are not “other expenses” recoverable under the MVRA.



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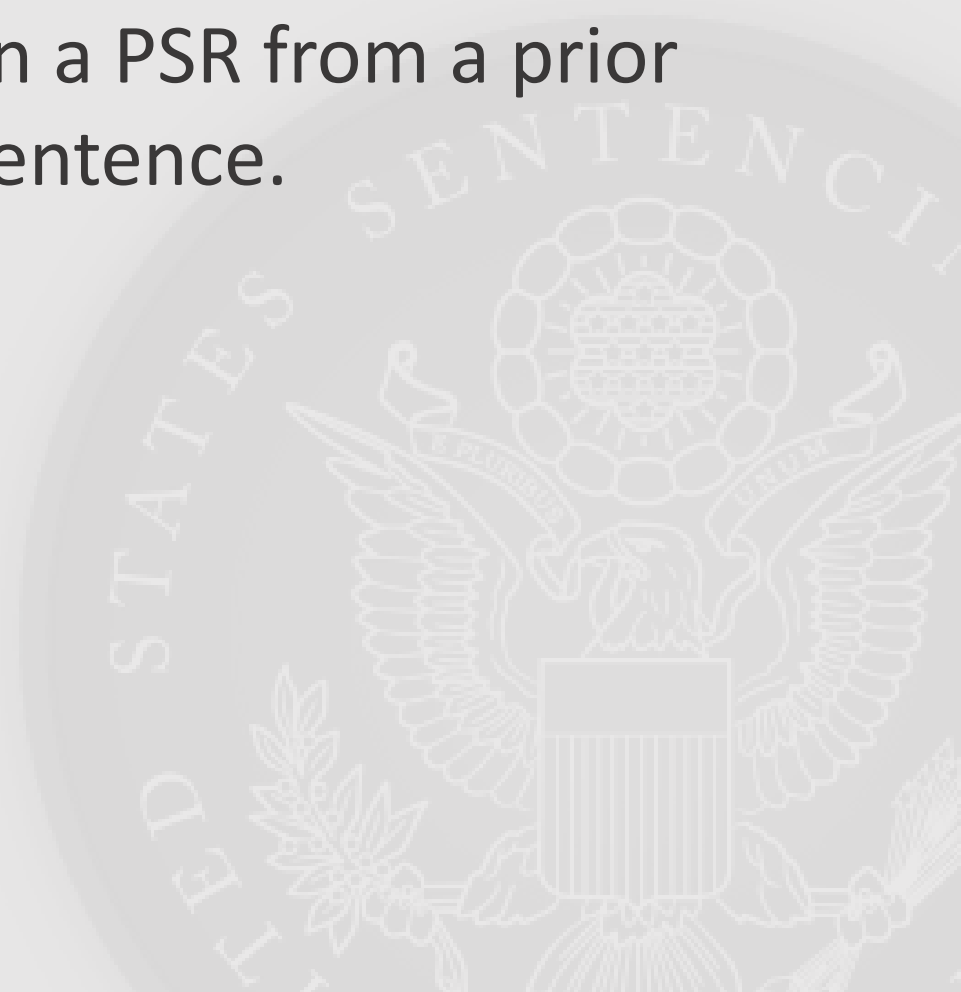
Sentencing Procedure

Pending Supreme Court Cases

United States v. Montas

145 F.4th 383 (3d Cir. 2025)

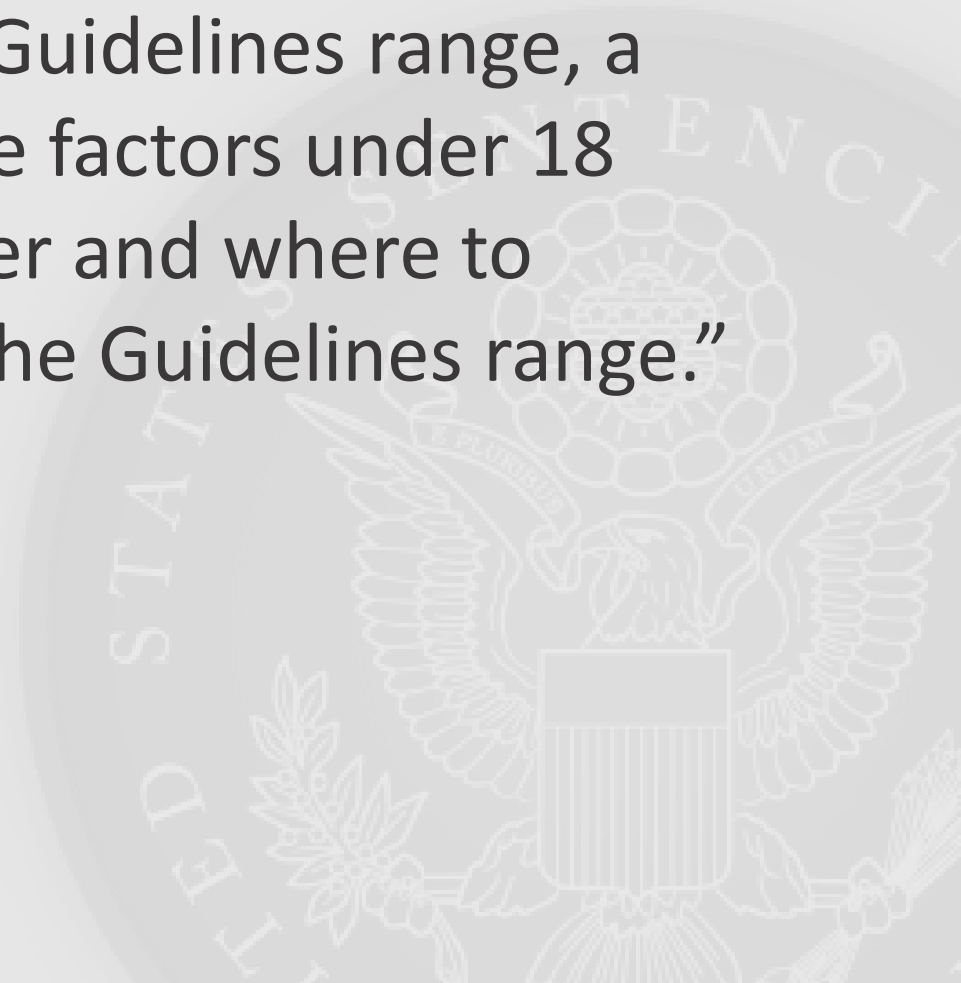
Rule 32(i)(1)(C) requires the court to provide notice to a defendant if it is relying on information in a PSR from a prior federal prosecution in determining the sentence.



United States v. Texidor

164 F.4th 248 (3d Cir. 2026)

Although §1B1.3(c) prohibits courts from considering acquitted conduct when calculating the Guidelines range, a court can consider it “when analyzing the factors under 18 U.S.C. § 3553(a) and determining whether and where to impose a sentence within or outside of the Guidelines range.”



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Pending Supreme Court Cases

October 2025 Term

Fernandez | Compassionate Release

Rutherford & Carter | Compassionate Release

Rico | Fugitive Tolling Doctrine



Pending Supreme Court Cases

October 2025 Term

Fernandez | Compassionate Release

Rutherford & Carter | Compassionate Release

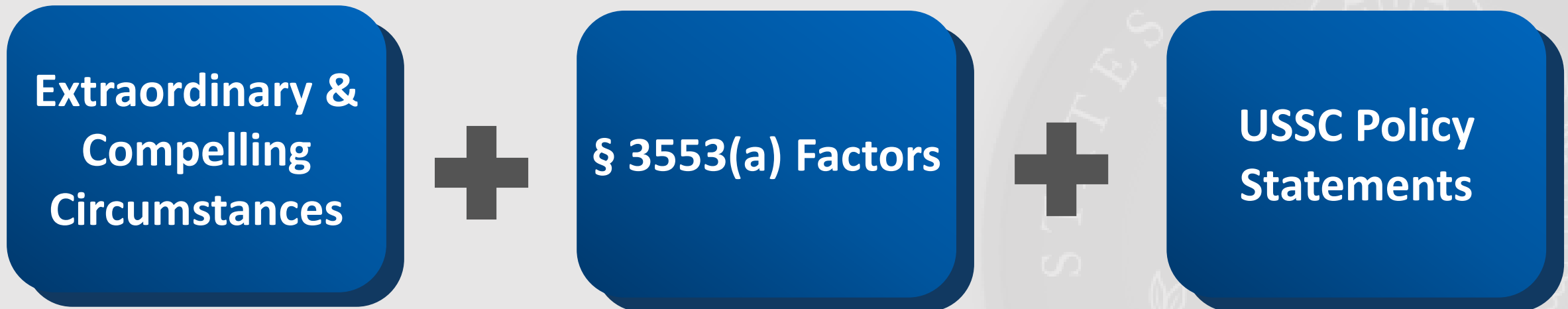
Rico | Fugitive Tolling Doctrine



Compassionate Release

18 U.S.C. § 3582(c)(1)(A)(i)

A court may modify a term of imprisonment once it has been imposed if:



Extraordinary and Compelling Reasons

Collateral Attacks

**Nonretroactive
Changes in Law**

Collateral Attacks

May Not Consider

U.S. v. Fernandez, 104 F.4th 420 (2d Cir. 2024)

U.S. v. Ferguson, 55 F.4th 262 (4th Cir. 2022)

U.S. v. Escajeda, 58 F.4th 184 (5th Cir. 2023)

U.S. v. West, 70 F.4th 341 (6th Cir. 2023)

U.S. v. Von Vader, 58 F.4th 369 (7th Cir. 2023)

U.S. v. Crandall, 25 F.4th 582 (8th Cir. 2022)

U.S. v. Wesley, 60 F.4th 1277 (10th Cir. 2023)

U.S. v. Jenkins, 50 F.4th 1185 (D.C. Cir. 2022)

May Consider

U.S. v. Trenkler, 47 F.4th 42 (1st Cir. 2022)

Fernandez v. United States

2025 WL 1496486 (May 27, 2025)



Question Presented:

Whether “extraordinary and compelling reasons” that may warrant compassionate release can include reasons that may also be alleged as grounds for vacatur of a sentence.

Extraordinary and Compelling Reasons

Collateral Attacks

**Nonretroactive
Changes in Law**

Nonretroactive Changes in Law

May Not Consider

U.S. v. Andrews, 12 F.4th 255 (3d Cir. 2021)

U.S. v. McCall, 56 F.4th 1048 (6th Cir. 2022)

U.S. v. King, 40 F.4th 594 (7th Cir. 2022)

U.S. v. Crandall, 25 F.4th 582 (8th Cir. 2022)

U.S. v. Jenkins, 50 F.4th 1185 (D.C. Cir. 2022)

May Consider

U.S. v. Ruvalcaba, 26 F.4th 14 (1st Cir. 2022)

U.S. McCoy, 981 F.3d 271 (4th Cir. 2020)

U.S. v. Jean, 108 F.4th 275 (5th Cir. 2024)*

U.S. v. Chen, 48 F.4th 1092 (9th Cir. 2022)

U.S. v. McGee, 992 F.3d 1035 (10th Cir. 2021)

Rutherford v. United States

2025 WL 1603603 (June 6, 2025)



Question Presented:

Whether a district court may consider disparities created by the First Step Act's prospective changes in sentencing law when deciding if "extraordinary and compelling reasons" warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

Compassionate Release – 2023 Amendment

Section 1B1.13



Medical Circumstances



Age



Family Circumstances



Victim of Abuse



Other Reasons



Unusually Long Sentence



Unusually Long Sentence

1

Unusually
Long
Sentence

2

Ten Years
Served

3

Change in
Law Creates
Gross
Disparity

4

Individualized
Circumstances

Carter v. United States

2025 WL 1603599 (June 6, 2025)



Question Presented:

Whether the Commission acted within its expressly delegated authority by permitting district courts to consider, in narrowly cabined circumstances, a nonretroactive change in law in determining whether “extraordinary and compelling reasons” warrant a sentence reduction.

Pending Supreme Court Cases

October 2025 Term

Fernandez | Compassionate Release

Rutherford & Carter | Compassionate Release

Rico | Fugitive Tolling Doctrine



Ten years ago, Christian Nichols was sentenced to time served with three years of supervised release. Two years into his term, Mr. Nichols stopped reporting, so the court issued a warrant for his arrest based upon his failure to report. Last month, police arrested Mr. Nichols for assault.

Mr. Nichols may be violated for which of the following violations:

- A. Failure to Report**
- B. Assault**
- ? C. Both**
- D. Neither**



Delayed Revocation

18 U.S.C. § 3583(i)

The power of the court to revoke supervision extends beyond the expiration of the term for any period reasonably necessary to adjudicate matters arising **before its expiration.**



Fugitive Tolling Doctrine

Does NOT Apply

US v. Hernandez-Ferrer, 599 F.3d 63 (1st Cir. 2010)

US v. Talley, 83 F.4th 1296 (11th Cir. 2023)

Applies

US v. Barinas, 865 F.3d 99 (2d Cir. 2017)

US v. Island, 916 F.3d 249 (3d Cir. 2019)

US v. Buchanan, 638 F.3d 448 (4th Cir. 2011)

US v. Swick, 137 F.4th 336 (5th Cir. 2025)

US v. Murguia-Oliveros, 421 F.3d 951 (9th Cir. 2005)

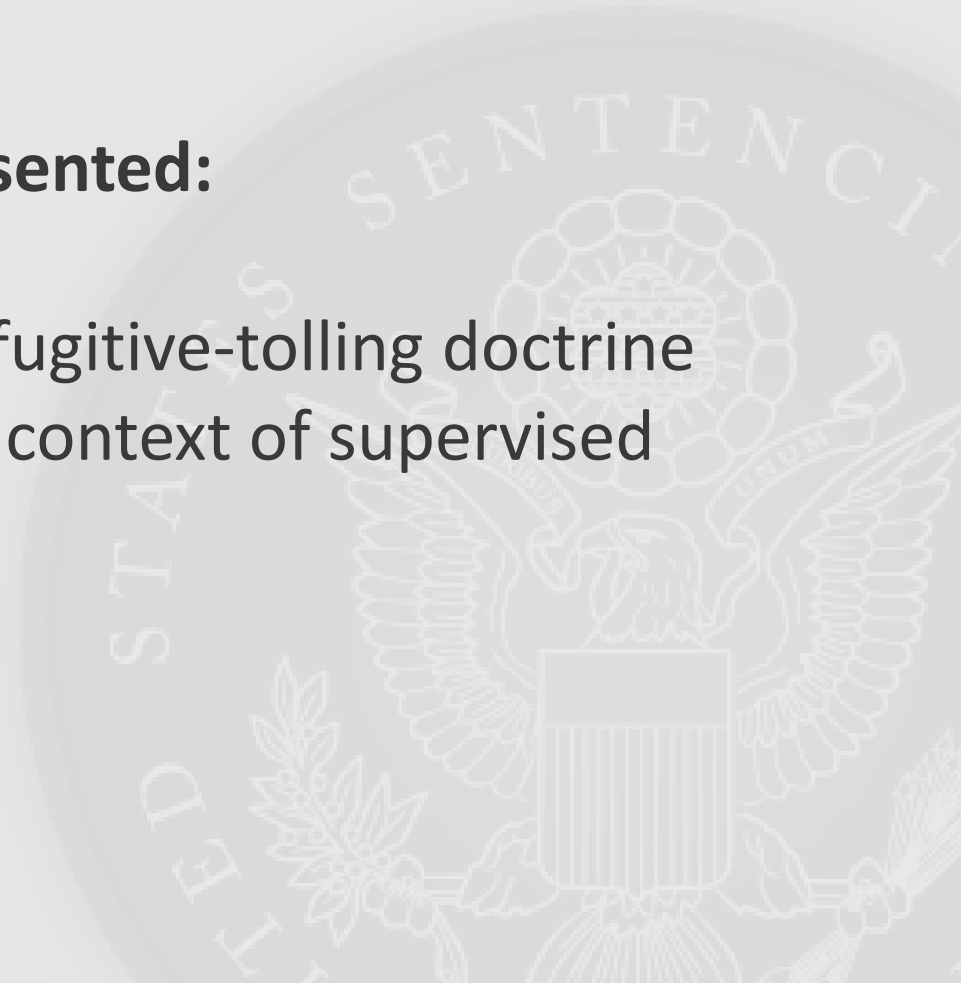
Rico v. United States

2025 WL 1787720 (June 30, 2025)



Question Presented:

Whether the fugitive-tolling doctrine applies in the context of supervised release.



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