THE ZEALOUS ADVOCATE

NEWSLETTER FOR THE DEFENSE
Fall 2026

The Editor's Message

During this time of increasing prosecutions and rising caseloads, we appreciate our panel for their continued zealous advocacy and dedication to indigent defense in our district. The consistently high-level defense work we see in court on a daily basis is inspiring.

We hope that the articles included in this edition of the Zealous Advocate likewise inspire defense lawyers as they represent clients in our district. In this edition, we offer several articles addressing topics such as how to apply the Fourth Amendment in cases where law enforcement offer emergency aid, a primer on *Brady* violations and appropriate remedies, utilizing *Batson* to combat racial bias during the jury selection process, and finally, sentencing disparities in drug offenses where death results. As we do each fall, we have included along with our links to recent Fourth Circuit and Supreme Court cases, a summary of new Federal Rules of Evidence and Appeals along with proposed amendments to the U.S. Sentencing Guidelines.

We hope our newsletter is a helpful addition to your practice and keeps you up to date on recent legal developments. Our next CLE training programs for attorneys in our district will be held November 19th-20th at N.C. State's McKimmon Center in Raleigh. We look forward to seeing everyone there and hope you know how important your work is for criminal defendants in the EDNC.

Vidalia Patterson & Laura S. Wasco

ZA Editors

We look forward to seeing everyone at the McKimmon Center on November 19-20 for our annual CLE.

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PANEL ATTORNEY INFORMATION

Reminders

Please watch for emails our Panel Administrator, April Bunn, sends out regarding any training, CLE opportunities, and new procedures and protocols regarding eVoucher and updates. You can always find the most updated version of the Attorney Manual for eVoucher on the Court's website: http://www.nced.uscourts.gov/pdfs/AttorneyManual.pdf

Seminar BOLOs

Our 2026 EDNC Federal Criminal Practice Seminar will be held on Thursday, November 19th through Friday, November 20th at North Carolina State University's McKimmon Center in Raleigh.

We will host one seminar next year. Please save the dates for our 2027 EDNC Federal Criminal Practice Seminar, which will be a two-day seminar held October 14-15 in New Bern, NC. Additional details, including registration and reservation information, will be sent out later and will also be posted to our website.

PRACTICE TIPS

The Emergency Aid Standard: Probable Cause, Reasonable Suspicion, or a Secret Third Thing?

The emergency aid exception is a species of the exigent circumstances doctrine, which allows law enforcement officers to conduct limited, warrantless searches in cases where it is impracticable to obtain a warrant.[1] Usually, warrantless searches must nonetheless be supported by probable cause.[2] However, in *Brigham City v. Stuart*, the Supreme Court held that warrantless entry into a home to render emergency aid does not violate the Fourth Amendment, so long as police "have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury."[3] The Court did not elaborate on what constitutes an "objectively reasonable basis," which has generated confusion in the lower courts. Courts have variably interpreted *Brigham City* to require probable cause, reasonable suspicion, or a different quantum of suspicion entirely.[4] The Fourth Circuit is among those that have required only reasonable suspicion.[5] Earlier this year, in *Case v. Montana*, the Supreme Court revisited the *Brigham City* standard and unanimously held that the standard for a search under the emergency aid exception is neither probable cause nor reasonable suspicion.[6] Rather, "*Brigham City*'s reasonableness standard means just what it says, with no further gloss."[7] For practitioners in the Fourth Circuit, the bottom line of *Case* is this: reasonable suspicion is no longer sufficient to justify warrantless entry into a home to render emergency aid. But what is? This article will review precedent from the Supreme Court and the First, Eighth, and Tenth Circuits on common emergency scenarios and provide pointers for defense attorneys contesting emergency aid searches.

The canonical emergency aid cases—*Brigham City*, *Michigan v. Fisher*,[8] and *Case*—provide little insight into the objective reasonableness standard, as the particular facts of those cases arguably rose to the level of probable cause. In *Brigham City*, officers responding to a noise complaint heard shouting from inside the house and watched through a screen door and windows as four adults struggled to restrain a teenager, who then struck one of the adults, causing him to spit blood.[9] The officers announced themselves at the door, but the altercation continued until an officer entered the home and announced their presence again.[10] Certainly, the officers' firsthand observation of an ongoing assault furnished probable cause that the occupants of the home were threatened with serious injury.

In *Fisher*, a woman directed officers to a residence where she claimed a man was "going crazy."[11] The officers arrived to a chaotic scene. Three windows had been smashed, with shards of glass still littering the ground, and a couch blocked the front door.[12] In the driveway, near a broken fence, sat a pickup truck with a crushed hood and bloodied clothes in the cab.[13] A trail of blood led from the hood to the back door of the house.[14] Through the windows, officers observed

Mr. Fisher screaming and throwing things inside.[15] From this vantage, however, they could not tell whether he was targeting another person.[16] Mr. Fisher refused to identify himself, either by name or as the resident of the home, or disclose whether anyone inside required medical attention.[17] It was certainly reasonable to conclude that someone inside the home had already suffered a potentially serious injury, or that Mr. Fisher's violent fit threatened to injure others who may have been inside.[18] Just as in *Brigham City*, police personally observed conduct that created the risk of serious injury. The Court found this to be such "a straightforward application of the emergency aid exception" that it decided the case without briefing on the merits or oral argument.[19] Indeed, the facts of *Fisher* rose to probable cause that someone inside the home had been, or would imminently be, seriously injured, leaving no need to address *Brigham City*'s murky objective reasonableness standard.

Finally, the unusual facts of *Case v. Montana* also amounted to probable cause. Police arrived at Mr. Case's home after his ex-girlfriend reported a disturbing phone call: Mr. Case, who sounded intoxicated, said he was going to commit suicide.[20] He described his plan and indicated that he would leave a note.[21] When she told Mr. Case that she would call the police, he replied that "he would shoot them all too."[22] She then heard a clicking noise, which she took to be Mr. Case racking the action of his handgun, and the line went dead.[23] When police arrived to perform a "wellness check," they observed beer cans, an empty holster, and a notepad through an open window.[24] Mr. Case did not respond when officers knocked and shouted his name.[25] The account of the phone call, together with the visual corroboration and Mr. Case's failure to respond, amounted to probable cause that Mr. Case had already shot himself and was seriously injured or worse, or that he was about to shoot himself. Mr. Case conceded as much at oral argument.[26]

The wrinkle in these facts is that Mr. Case was well-known to police. He had previously threatened suicide and, on another occasion, had attempted suicide-by-cop.[27] The officers believed that Mr. Case was lying in wait inside, hoping to provoke a lethal confrontation.[28] Forty minutes after they arrived, officers finally entered Mr. Case's home, armed with long-barreled guns and ballistic shields.[29] When Mr. Case appeared from behind a curtain holding a black object, an officer shot him.[30] Mr. Case argued that his history with police was a countervailing factor against probable cause of an emergency, and that the police officers' entry itself precipitated the emergency, just as they suspected it would.[31] However, the on-scene officers' subjective estimation of the situation was irrelevant, as probable cause is an objective standard.[32] Furthermore, as Justice Jackson pointed out at oral argument, Mr. Case's history of suicidality could bolster—not detract from—the conclusion that he had committed or was about to commit suicide.[33] The Court in *Case* held that probable cause is not required for entry under the emergency aid exception, but nonetheless, probable cause was likely present.[34]

Brigham City, *Fisher*, and *Case* leave practitioners with little to go on, but caselaw from the First, Eighth, and Tenth Circuits, where courts understood *Brigham City* to create a new standard, may shed light on the objective reasonableness standard. Whether there is an objectively reasonable basis to believe an emergency is ongoing is a fact-intensive inquiry. And while no two cases will be identical, practitioners may look to these circuits to see how they have treated these common features of emergency aid scenarios:

1. 911 HANG-UPS

911 calls are the "predominant means of communicating emergency situations" and are therefore strongly indicative of an exigency.[35] A 911 hang-up call and subsequent failure to answer return calls from the dispatcher may indicate that an emergency has left the caller incapacitated or unable to speak freely. Still, police must attempt to corroborate the emergency. In *United States v. Najar*, police responded to a call after the 911 dispatcher received a hang-up call from the defendant's address, and four call-back attempts were answered and immediately disconnected.[36] The defendant, whom police observed moving around inside, refused to answer the door, so the officers requested the dispatcher attempt another call-back and confirmed that the phone rang inside the house.[37] When the defendant finally opened the door, he claimed to be home alone and denied having called 911.[38] The Tenth Circuit held that the officers reasonably concluded that Najar was either lying about calling 911 or lying about being the only occupant, and therefore they had an objectively reasonable basis to believe that another person was in danger inside the house.[39]

On the other hand, in *United States v. Martinez*, the Tenth Circuit held that "a *static* 911 call is insufficient to create an objectively reasonable belief that someone inside the home is in need of aid."[40] "Static" or "phantom" 911 calls occur when weather or line damage causes the dispatcher's phone to ring when no one has dialed. Static calls, as opposed to hang-up calls, do not communicate emergencies.

2. DOMESTIC DISTURBANCES

A report of a domestic disturbance, without more, does not justify warrantless entry into the home.[41] In *Storey v. Taylor*, the Tenth Circuit held that exigent circumstances were not present where police responding to a domestic disturbance did not hear an ongoing argument or see evidence of a violent altercation.[42] The plaintiff claimed his wife had left the house, and the officers observed her return home through the garage during their interaction with the plaintiff, clearly indicating that the dispute had ended and that the plaintiff was not holding her inside and preventing her from speaking to the police.[43] Similarly, in *Lundstrom v. Romero*, police lacked an objectively reasonable belief that a child was in danger inside the plaintiff's house based solely on a neighbor's report that she had heard an adult woman strike and scream at a young child in the backyard.[44]

3. FIREARMS

The mere presence of firearms does not create an exigency.[45] In *McInerney v. King*, officers argued that they entered the home to assure the safety of the plaintiff and her daughter, as the plaintiff reportedly owned guns, had a history of substance abuse, and at times exhibited "erratic, aggressive, and violent" behavior.[46] The Tenth Circuit held that a reasonable officer could not have concluded that an emergency was ongoing where there was no report of a disturbance and only the bare suggestion of danger.[47] Similarly, in *United States v. Giambro*, the First Circuit recognized that the presence of firearms inside the home did not justify warrantless entry once an emergency had already concluded.[48] There, police entered the defendant's home following a non-emergency call reporting that his wife had passed away inside the home days prior.[49] Even if police had reason to believe that the defendant had injured his wife using one of these guns, there was no indication that she was still alive and in need of assistance.

In *United States v. Gambino-Zavala*, however, the Tenth Circuit held that warrantless entry was justified because police were responding to multiple reports of gunshots from the defendant's apartment, and the defendant appeared to lie to the police when he claimed to be home alone, although his roommate's car was parked in outside.[50] The Eighth Circuit reached the same conclusion on similar facts.[51] At the risk of stating the obvious, firearms may give rise to exigent circumstances *when they are used*. But even when a suspect does not use or threaten to use a gun, it may nonetheless give rise to exigent circumstances. For instance, in *United States v. Quarterman*, the Eighth Circuit held that officers responding to a domestic dispute were justified in entering the home because the defendant was wearing a holstered gun.[52] The court noted that, while neither the fact of a domestic dispute nor the presence of a firearm independently rises to the level of an exigent circumstance, the introduction of an immediately accessible weapon into what are generally highly volatile confrontations pushes the situation over the line.[53]

4. UNLOCKED/OPEN/BROKEN WINDOWS AND DOORS

Unlocked windows and doors are not, standing alone, evidence of an ongoing emergency, especially in rural areas.[54] In *United States v. Martinez*, it was not suspicious that the second-floor balcony door in the rear of the defendant's house was unlocked, as there was no indication of an emergency beyond a static 911 call, and no one appeared to be inside.[55] In *United States v. Quezada*, however, the Eighth Circuit held that warrantless entry was justified when an officer attempting to serve papers found the front door of the home unlocked.[56] The door yielded to his knock, and the officer saw lights and a television on inside, but no one responded when he announced himself, leading him to reasonably conclude that someone was inside and unable to respond.[57] The court noted that, without the lights and television indicating that someone was indeed home, it may have been more reasonable to assume the occupant had simply forgotten to lock the door on her way out.[58] Under those facts, the situation would resemble *Martinez*.

In *McInerney v. King*, police arrived at the plaintiff's house to find the front door, garage, and two windows open.[59] The Tenth Circuit noted that this did not give rise to the inference of danger, observing that it is not unusual to leave

one's windows and doors open during the summer.[60] If officers arrived at the same scene in the winter, they may have had an objectively reasonable basis to believe a burglary was taking place.

A broken window suggests an emergency, especially when shards of glass are still on the ground. This indicates that the window was broken recently, and an officer could reasonably understand that a burglary or a violent altercation is ongoing inside. This was a contributing factor in *Fisher*.[61] But as always, officers must corroborate the emergency. In *Luethje v. Kyle*, the plaintiff's neighbor called 911 to report that someone had smashed his window and fled.[62] The caller did not indicate that anyone had entered the home, and the responding officers observed that the interior screen was intact, leaving them with no objectively reasonable basis to believe a burglary was taking place inside.[63]

Because of the fact-intensive nature of this inquiry, there is no one-size-fits-all argument to suppress the fruits of an emergency aid search. But in any emergency exception case, defense attorneys should highlight where officers failed to take reasonable steps to corroborate the emergency. "[O]fficers may not ignore obvious and available options for gathering facts to determine if an emergency actually exists."[64] For example, the failure to knock and announce before entering will be unreasonable in almost all cases.[65] Imagine a wellness check on an elderly neighbor who has been conspicuously absent from bingo night. One could reasonably expect that police would, at a minimum, attempt to call the neighbor and knock and announce their presence before barging into his home. Consider also any countervailing evidence that police may have ignored. A car-sized dry patch in an otherwise snow-covered driveway should indicate that the neighbor is out of the house, not trapped inside.

Defense attorneys may also be tempted to argue that an officer's delay in entering the home belies that there was no true emergency—that if the officer truly believed that someone was in immediate need of assistance, he would not have hesitated to enter. Courts frequently reject this argument.[66] First, a police officer's subjective beliefs are, as always, irrelevant.[67] Second, courts do not want to incentivize officers to enter hastily, before seeking out necessary corroboration of the emergency.[68] It may seem counterintuitive, but the better argument is that police responded *too* quickly to the supposed emergency. Instead of focusing on their subjective beliefs, draw out the measures that police failed to take to ensure there was indeed an ongoing emergency.

[1] *See Lange v. California*, 594 U.S. 295, 301 (2021).
[2] *See, e.g.*, *United States v. Santana*, 427 U.S. 38, 42–43 (1976) (holding that police may pursue a fleeing suspect into a home without a warrant if they have probable cause to make an arrest).
[3] *Brigham City v. Stuart*, 547 U.S. 398, 400 (2006).
[4] *Compare, e.g.*, *Chamberlain ex rel. Chamberlain v. City of White Plains*, 960 F.3d 100, 105 (2d Cir. 2020) (requiring probable cause), *with, e.g.*, *United States v. Yengel*, 711 F.3d 392, 397 (4th Cir. 2013) (requiring reasonable suspicion), *and, e.g.*, *Hill v. Walsh*, 884 F.3d 16, 23 (1st Cir. 2018) (recognizing a novel standard).
[5] *See, e.g.*, *Yengel*, 711 F.3d at 397 (4th Cir. 2013) (citing *Mora v. City of Gaithersburg*, 519 F.3d 216, 224 (4th Cir. 2008)) ("An objectively reasonable belief must be based on specific articulable facts and reasonable inferences that could have been drawn therefrom.").
[6] *Case v. Montana*, 607 U.S. 107, 113 (2026).
[7] *Id.* at 110.
[8] *Michigan v. Fisher*, 558 U.S. 45 (2009) (per curiam).
[9] *Brigham City*, 547 U.S. at 400–01.
[10] *Id.*
[11] *Fisher*, 558 U.S at 45.
[12] *Id.* at 45–46.
[13] *Id.*
[14] *Id.* at 46, 48.
[15] *Id.* at 46.
[16] *Id.* at 48.
[17] Petition for Writ of Certiorari at 12, *Fisher*, 558 U.S. 45 (No. 09-91), 2009 WL 2197544.
[18] *Fisher*, 558 U.S. at 48.
[19] *Id.*; *see Fisher*, 558 U.S. 45 (No. 09-91).
[20] *Case*, 607 U.S. at 110.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.* at 110–11.
[25] *Id.* at 111.
[26] Transcript of Oral Argument at 45, *Case*, 607 U.S. 107 (No. 24-624), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/24-624_bq7d.pdf (last accessed July 21, 2026).
[27] *Case*, 607 U.S. at 111.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] Transcript of Oral Argument, *supra* note 26, at 42–43, 45.
[32] *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citing *Ornelas v. United States*, 517 U.S. 690, 696 (1996)).
[33] Transcript of Oral Argument, *supra* note 26, at 13–14.
[34] *See Case*, 607 U.S. at 113.

[35] *See United States v. Najar*, 451 F.3d 710, 719 (10th Cir. 2006) (citing *United States v. Holloway*, 290 F.3d 1331, 1339 (11th Cir. 2002)).
[36] *Id.* at 715–16.
[37] *Id.* at 716.
[38] *Id.* at 716–17.
[39] *Id.* at 720.
[40] 643 F.3d 1292, 1296 (10th Cir. 2011) (emphasis added).
[41] *Storey v. Taylor*, 696 F.3d 987, 994 (10th Cir. 2012) (citing *Davis v. United States*, 290 F.3d 1239, 1244 (10th Cir. 2002); *United States v. Quarterman*, 877 F.3d 794, 799 (8th Cir. 2017).
[42] *Storey*, 696 F.3d at 994–96.
[43] *Id.*
[44] 616 F.3d 1108, 1127–28 (10th Cir. 2010).
[45] *McInerney v. King*, 791 F.3d 1224, 1234 (10th Cir. 2015); *Quarterman*, 877 F.3d at 798 (8th Cir. 2017).
[46] *McInerney*, 791 F.3d at 1232–33.
[47] *Id.* at 1234.
[48] 126 F.4th 46, 56–57 (1st Cir. 2025).
[49] *Id.* at 49–50.
[50] 539 F.3d 1221, 1226 (10th Cir. 2008).
[51] *United States v. Valencia*, 499 F.3d 813, 816 (8th Cir. 2007).
[52] 877 F.3d at 798–99.
[53] *Id.*
[54] *See Martinez*, 643 F.3d at 1297.
[55] *Id.*
[56] 448 F.3d 1005, 1007–08 (8th Cir. 2006).
[57] *Id.*
[58] *Id.*
[59] 791 F.3d at 1227.
[60] *Id.* at 1234.
[61] 558 U.S. at 45–46.
[62] 131 F.4th 1179, 1191 (10th Cir. 2025).
[63] *Id.*
[64] *Giambro*, 126 F.4th at 57.
[65] *See e.g.*, *Luethje*, 131 F.4th at 1195. (noting that the knock-and-announce is part of the "basic investigation" of a reported emergency).
[66] *See e.g.*, *Najar*, 451 F.3d at 719 ("A delay caused by a reasonable investigation into the situation facing the officers does not obviate the existence of an emergency."); *Case*, 607 U.S. at 118–19 (noting that the forty-minute delay between police arrival and entry was reasonable in view of the need for caution); *but see McInerney*, 791 F.3d at 1233–34 (noting that it was significant that the officer observed nothing to corroborate his suspicion of a disturbance inside the home in the thirty-five minutes that he waited for backup before entering).
[67] *See Brigham City*, 547 U.S. at 404.
[68] *See e.g.*, *Najar*, 451 F.3d at 719.

The ZA Editors thank Bailey Owen for contributing this helpful information. Bailey was a rising third-year law student at Duke University School of Law and an intern in the FPD office during the Summer of 2026.

Too Little, Too Late: *Brady* Violations and the Right to a Fair Trial

The Supreme Court first recognized the government's constitutional duty to disclose favorable evidence in *Brady v. Maryland*.[1] In *Brady*, the defendant and a co-defendant were convicted of murder and sentenced to death.[2] Prior to trial, Brady requested access to his co-defendant's statements.[3] Although the prosecution disclosed several statements, it withheld one in which the co-defendant admitted to committing the actual killing.[4] The Supreme Court held that the suppression of evidence favorable to an accused violates due process when the evidence is material either to guilt or punishment.[5]

Since *Brady*, the Supreme Court has expanded the government's disclosure obligations. In *Giglio v. United States*, the Court held that evidence affecting the credibility of a government witness must also be disclosed because impeachment evidence may be just as significant as direct exculpatory evidence.[6] Thus, the prosecution's constitutional duty extends beyond evidence that directly tends to prove innocence and includes information that could be used to challenge the reliability, bias, motive, or truthfulness of witnesses.

A recurring question in *Brady* litigation is not simply whether favorable evidence was disclosed, but whether it was disclosed in time to be useful. The Fourth Circuit has repeatedly held that *Brady* is satisfied only when disclosure is made early enough for the defense to make effective use of the evidence. In *United States v. Smith Grading & Paving Inc.*, the court explained that no constitutional violation occurs if the defendant receives the material in sufficient time to use it effectively at trial.[7] The court further noted that it made no difference whether the information comes directly from the government or reaches the defense through another source.[8] Although *Smith Grading* represents an outer limit of what may constitute timely disclosure, it underscores that timeliness turns on the defense's ability to make meaningful use of the evidence rather than the date on which it is produced.

Not every discovery dispute rises to the level of a constitutional violation. To establish a *Brady* violation, a defendant must demonstrate that the evidence (1) is favorable to the defendant because it is either exculpatory or impeaching; (2) was suppressed by the government; and (3) is material in that its suppression prejudiced the defendant.[9]

Undisclosed evidence is material when "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."[10] "When the government's contumacious conduct involves a delay in producing discovery, rather than a failure to turn over required materials, the relevant inquiry is 'whether the defendant's counsel was prevented by the delay from using the disclosed material effectively in preparing and presenting the defendant's case.'"[11] Under Federal Rule of Criminal Procedure 16(d)(2), a district court may "impose sanctions upon the government's failure to timely comply with a discovery order."[12]

In considering potential sanctions, the court must consider "the reason for the government's delay, and whether the government acted intentionally or in bad faith; the degree of prejudice, if any, suffered by the defendant; and whether any less severe sanction will remedy the prejudice to the defendant and deter future wrongdoing by the government."[13] When a *Brady* violation is discovered, courts must determine an appropriate remedy. The available sanctions vary depending on the nature of the violation and the prejudice suffered by the defendant.

The first and most common remedy is a continuance. Rule 16(d)(2)(A)-(B) expressly authorizes courts to compel disclosure and continue the proceedings to allow the defense adequate time to investigate and incorporate newly disclosed information. The Fourth Circuit has consistently recognized that a continuance, rather than dismissal, is ordinarily the appropriate response to late disclosure of *Brady* material. In *United States v. Collins*, the court observed that a continuance is generally sufficient to cure any prejudice resulting from delayed disclosure.[14]

However, a continuance is not always sufficient. Where delayed disclosure deprives the defense of a meaningful opportunity to investigate, locate witnesses, retain experts, or alter trial strategy, courts possess broader authority under Rule 16(d)(2). One available sanction is the exclusion of evidence. The Fourth Circuit has noted that it "would be a rare case where, absent bad faith, a district court should exclude evidence."[15] However, exclusion is appropriate to deter similar "mistakes" that appear to stem from the United States Attorney's Office. For example, in *United States v. Sterling*, the Fourth Circuit held that the district court abused its discretion by excluding government witnesses based on a good-faith delay in producing *Giglio* material.[16] The court emphasized that exclusion is a severe remedy and that lesser sanctions should ordinarily be considered first.[17]

Dismissal of an indictment remains the most extraordinary remedy. Fourth Circuit precedent consistently holds that dismissal should be reversed for exceptional circumstances where no lesser sanction can adequately protect the defendant's rights.[18] In *United States v. Hastings*, the court reversed a dismissal of the indictment despite repeated bad-faith discovery violations by the government, emphasizing that district courts must employ "the least severe sanction which will adequately punish the government and secure future compliance."[19] Similarly, in *United States v. Hendrick*, the court explained that dismissal is appropriate only when the court cannot craft an alternative remedy.[20] Even where prosecutors suppressed highly significant evidence and mischaracterized that evidence after being ordered to disclose it, the court in *United States v. Burns* held that a new trial was the appropriate remedy because dismissal requires government conduct "so outrageous as to shock the conscience of the court."[21]

For defense counsel, the remedy sought may depend as much on the litigation strategy as the underlying violation. One practical consideration is the specificity of the original *Brady* request. In *United States v. Agurs*, the Supreme Court observed that "[w]hen the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable."[22] By contrast, a generalized request for "all *Brady* material" provides little notice to the prosecution and may make it more difficult to establish culpable suppression. Carefully tailored discovery requests identifying specific categories of favorable evidence may therefore strengthen later requests for sanctions.

Defense counsel should also document precisely how the delayed disclosure impaired the defense. Rather than arguing only that disclosure was untimely, practitioners should explain what could

have been accomplished had the evidence been produced earlier. For instance, counsel may have had the time to interview additional witnesses, retain an expert, conduct forensic testing, pursue plea negotiations, or develop an alternative theory of defense. The more concrete the showing of prejudice, the more likely a court is to conclude that a continuance alone cannot fully remedy the violation.

Timely disclosure is essential to effective representation. Defense attorneys rely on discovery to investigate allegations, assess the strength of the government's case, advise clients regarding plea negotiations, and prepare for trial. When favorable evidence is disclosed late, counsel may lose valuable opportunities to pursue investigative leads, interview witnesses, retain experts, or develop alternative theories of the case.

With *Brady* violations, the consequences for defendants can be significant. A withheld impeachment file may affect a jury's assessment of a key witness. An undisclosed police report may reveal inconsistencies that support a defense theory. Evidence disclosed only after trial may cast doubt on the reliability of a conviction that has already been secured.

Brady compliance is about more than procedural fairness. It is a safeguard designed to reduce the risk of wrongful convictions and ensure that criminal verdicts are based on a complete and accurate presentation of the facts. These court decisions reflect a central principle of the American criminal justice system: the government's role is not simply to secure convictions, but to seek justice.

[1] 373 U.S. 83 (1963).
[2] *Id.* at 84.
[3] *Id.*
[4] *Id.*
[5] *Id.* at 87.
[6] 405 U.S. 150, 154 (1972).
[7] 760 F.2d 527, 532 (4th Cir. 1985).
[8] *Id.*
[9] *Vinson v. True*, 436 F.3d 412, 420 (4th Cir. 2006) (citing *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999)).
[10] *Kyles v. Whitley*, 514 U.S. 419, 433–34 (1995) (citing *United States v. Bagley*, 473 U.S. 667, 683 (1985) (opinion of Blackmun, J.)).
[11] *United States v. Sterling*, 724 F.3d 482, 511 (4th Cir. 2013) (quoting *United States v. Ingraldi*, 793 F.2d 408, 411–12 (1st Cir. 1986)).
[12] *Id.* at 512.
[13] *Id.* (citing *United States v. Hammoud*, 381 F.3d 316, 336 (4th Cir. 2004)).
[14] *Hammoud*, 381 F.3d at 336.
[15] 415 F.3d 304, 311 (4th Cir. 2005)
[16] *Sterling*, 724 F.3d at 512 (quoting *Hammoud*, 381 F.3d at 336).
[17] Id.
[18] Id.
[19] 126 F.3d 310, 317 (4th Cir. 1997).
[20] No. 3:21-cr-000014, 2021 WL 3130867 (E.D.Va. July 23, 2021).
[21] No. 6:13-cr-00022, 2016 WL 3910273 (W.D.Va. July 14, 2016).
[22] 427 U.S. 97, 106 (1976).

The ZA Editors thank Jordan Gilchrist for contributing this helpful information. Jordan was a third-year law student at Campbell School of Law and an intern in the FPD office during the Summer of 2026.

Back to *Batson*

Few truths about the criminal justice system are more enduring than the persistence of racial discrimination, and this persistence is especially apparent in jury selection. Although the Constitution guarantees criminal defendants the right to a jury of their peers, reflecting a cross-section of the community, this protection was not consistently extended to all individuals, especially African Americans, until recent decades.[1] Prior to 1986, in the midst of the civil rights movement, the exclusion of African Americans from juries through peremptory strikes was a common practice, despite judicial decisions deeming such actions impermissible. However, on April 30th, 1986, the Supreme Court issued a landmark ruling in *Batson v. Kentucky* that forever changed the legal landscape by prohibiting race-based peremptory strikes.[2] The case involved James Kirkland Batson[3], an African American man in Kentucky who was charged with second-degree burglary and the receipt of stolen goods.[4] At trial, during jury selection, the prosecutor exercised his peremptory discretion and excluded all four African American jurors, leaving the determination of Mr. Batson's guilt or innocence in the hands of an all-white jury.[5]

Despite objections from Batson's defense counsel, the trial court ruled that the jury was proper, reasoning that each side was permitted to "strike anybody they want to."[6] Consequently, Mr. Batson was convicted on both charges, and the

Kentucky Supreme Court upheld his convictions.[7] However, when examining whether the use of peremptory strikes based on race violates the Equal Protection Clause of the Fourteenth Amendment, the Supreme Court found that the lower courts erred and established a three-step framework for contesting such strikes.[8] First, a defendant must "make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts give rise to an inference of discriminatory purpose."[9] This involves demonstrating that: 1) the defendant belongs to a cognizable racial group; 2) the prosecutor struck jurors of the same race as the defendant; and 3) the prosecutor used preemptory discretion to exclude these jurors on the basis of race.[10] Second, once a prima facie showing is made, "the burden shifts to the State to come forward with a neutral explanation for challenging black jurors."[11] Merely denying discriminatory intent or claiming that challenged jurors would be partial due to race is insufficient.[12] Instead, the prosecutor must "articulate a neutral explanation related to the specific case to be tried."[13] Finally, "[t]he trial court then will have the duty to determine if the defendant has established purposeful discrimination."[14]

The *Batson* decision effectively created a judicial safeguard against racial bias in jury selection, benefiting both defendants and jurors. Although some contend that *Batson* alone does not fully combat racial inequality and discrimination within the criminal justice system, which very well may be true, *Batson* is one of the few race-based safeguards that have survived subsequent judicial review. It also remains useful for those harmed by discrimination, as *Batson* challenges continue to be raised time and time again. Furthermore, since 1968, the scope of *Batson* has continued to evolve, expanding into civil cases, applying to gender discrimination, and allowing any defendant, regardless of race, to make a *Batson* challenge even if the jurors are of a different race than the defendant.[15]

Most recently, in *Pitchford v. Cain*, the Supreme Court reaffirmed the principles established in *Batson*, emphasizing that courts must fully engage in the three-step process before denying a defendant's challenge to the use of race-based strikes.[16] In *Pitchford*, "the prosecutor used peremptory strikes against four of the five black potential jurors" during jury selection for Mr. Terry Pitchford's capital murder trial.[17] In response, Mr. Pitchford's counsel objected to the strikes and made a prima facie finding of racial discrimination (step one).[18] Then, upon the trial court's request, the prosecutor offered racially neutral explanations for each strike (step two).[19] However, the trial court did not allow defense counsel to rebut the prosecutors' explanations or "make any finding regarding whether the prosecutor's stated reasons were pretextual"(step three).[20] Thus, Mr. Pitchford was ultimately convicted and sentenced to death by a jury consisting of eleven white jurors and one African American juror, despite several objections by Mr. Pitchford's defense counsel.[21]

On appeal, the Mississippi Supreme Court upheld Mr. Pitchford's conviction, holding that he waived his *Batson* objection by failing to argue that the prosecutor's explanations for the strikes were pretextual.[22] The United States District Court, upon reviewing a habeas corpus petition, disagreed and found that the Mississippi Supreme Court had unreasonably concluded that Mr. Pitchford had waived his *Batson* objection.[23] The Supreme Court affirmed the District Court's findings, stating that the trial court "erroneously omitted *Batson*'s third step" because it "did not afford Pitchford's counsel a sufficient opportunity to rebut the prosecutor's proffered race-neutral reasons for striking the four black jurors and never determined whether the prosecutor's stated reasons were pretextual."[24]

The Court further noted that "[i]f allowed to continue, Pitchford could have argued that the prosecutor did not challenge white jurors similarly situated to the challenged black jurors, which is precisely what Pitchford's post-trial motion later did argue."[25]

Ultimately, the key takeaway for federal practitioners proceeding to trial is to remember to go *back to Batson*. If an attorney's use of peremptory strikes appears to be motivated by race or gender, make a prima facie showing of discrimination. After race- or gender-neutral explanations are offered, practitioners should challenge them when appropriate. If the court attempts to omit a step in the process, make sure any *Batson* objection is preserved for appeal because, at the end of the day, the least we can do for our clients is invoke the judicial safeguard designed to address discrimination, since there was a time when African Americans, other people of color, and women were not afforded the chance to do so.

[1] U.S. CONST. amend. 6 § 4.5.1.

[2] *Batson v. Kentucky*, 476 U.S. 79, 79 (1986).
[3] U.S. Courts, FACTS AND CASE SUMMARY – BATSON V. KENTUCKY, https://www.uscourts.gov/about-federal-courts/educational-resources/educational-activities/sixth-amendment-activities/batson-v-kentucky-and-jeb-v-alabama/facts-and-case-summary-batson-v-kentucky (last visited July 24, 2026).
[4] *Batson*, 476 U.S. at 82.
[5] *Id.* at 83.
[6] *Id.*
[7] *Id.* at 84.
[8] *Id.* at 93-94.
[9] *Id.* at 96.
[10] *Id.* at 97.
[11] *Id.*
[12] *Id.* at 97-98.
[13] *Id.* at 98.
[14] *Id.*
[15] *Flowers v. Mississippi*, 588 U.S. 284, 301 (2019).
[16] *Pitchford v, Cain*, 146 S.Ct. 1345, 1348 (2026).
[17] *Id.* at 1350.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 1351.
[23] *Id.*
[24] *Id.* at 1351-52.
[25] *Id.* at 1352.

The ZA Editors thank Shawn Dawson for contributing this helpful information. Shawn was a rising third-year law student at NCCU School of Law and an intern in the FPD office during the Summer of 2026.

When Jurisdiction Becomes the Sentence: Sentencing Disparities in Death-by-Distribution

Few charging decisions have sentencing consequences as significant as the decision to prosecute an overdose death in state or federal court. For example, North Carolina's maximum sentence is dwarfed by the federal mandatory minimum, yet it has a lower evidentiary burden.[1]

That difference is statutory. North Carolina created a standalone death-by-distribution offense in N.C. Gen. Stat. § 14-18.4 and then expanded it in 2023 to reach certain unlawful deliveries as well as sales.[2] Federal law takes a different route. It begins with the ordinary distribution offense in 21 U.S.C. § 841(a) and then adds the hammer in § 841(b)(1)(C): if "death or serious bodily injury results from" the use of the substance, the penalty jumps to twenty years to life.[3] In other words, North Carolina created a separate offense for overdose deaths, while federal law enhances the penalty for an existing distribution offense.

The biggest difference between the two approaches is the causation standard. In *Burrage v. United States*, the Supreme Court held that the federal death-resulting enhancement requires actual, but-for causation when the drug distributed by the defendant was not itself an independently sufficient cause of death.[4] The Court also treated death resulting as an element that must be found beyond a reasonable doubt because it raises both the floor and ceiling of punishment.[5] That matters enormously in mixed-intoxication cases. When the toxicology report has several potential culprits, the federal defense question becomes whether the government can prove this client's drug caused the death to happen as a but-for matter.

North Carolina asks a different question. Section 14-18.4 expressly requires that the victim ingest the substance, that the ingestion cause death, and that the defendant's conduct be the proximate cause of death.[6] The published North Carolina appellate record is still minimal, but the Judicial Branch identified *State v. McCrorey* as a published Court of Appeals decision centered on "death by distribution; proximate cause; actual cause."[7] Proximate cause invites arguments about foreseeability, intervening acts, and whether the charged sale or delivery is too attenuated from the fatal ingestion. Federal law after *Burrage* does not eliminate hard causation issues, but it focuses on actual causation rather than an expressly stated proximate-cause requirement.

The sentencing consequences widen the gap even further. North Carolina's structured sentencing chart still serves its stated purpose of grading punishment. The official felony chart shows a mitigated minimum of 44-58 months for a Class C / Prior Record I case and 94-125 months for a Class B2 / Prior Record Level I case.[8] Federal law is far more compressed. Section 841(b)(1)(C) sets a 240-month floor once death resulting is established, and U.S. Sentencing Guideline § 2D1.1 assigns a base offense level of 38 when the offense of conviction establishes death or serious bodily injury, with level 43 available in certain recidivist cases.[9] At Criminal History Category I, offense level 38 corresponds to 235-293 months, and level 43 is life.[10] So even before aggravators,

firearms, or career-offender issues, the federal system is already calibrated around much longer sentences than the state statute.

The sentencing data points that are easiest to verify publicly fit that structure. In North Carolina, *McCrorey* resulted in a 70-96 month sentence.[11] In federal court, official Department of Justice press releases show the more familiar pattern: Davon Anthony Beckford received 240 months plus five years of supervised release for distribution of fentanyl resulting in death; Maxwell Joseph Gaffney received 240 months for distribution of heroin resulting in death; and Terrance Lamont Hines received life after a jury found him guilty of conspiring to distribute fentanyl with a resulting death and related counts.[12] These examples illustrate that federal sentencing begins from a substantially harsher baseline.

That distinction also explains why state-federal disparity is often a better negotiation theme than a formal variance theory. Why should one dealer face a single-digit-year state range while another faces a 20-year federal floor for broadly similar conduct? But once a federal death-resulting count is charged and proved, or admitted in a plea, the district court cannot wish away the statutory minimum by invoking § 3553(a). The practical lesson is that defense counsel may get more value by using the disparity point early: in pre-indictment advocacy, in discussions over whether the case should remain local, in negotiations to avoid a death-resulting plea, or in efforts to narrow the factual admissions so they do not hand the government the causal element for free.[13]

That does not mean federal sentencing advocacy is without value. It means the more promising arguments are the ones the statutes leave room to hear. The strongest defense argument is not "please ignore the floor," but rather "the floor should never have been triggered." That includes early toxicology consultation in mixed-drug deaths; aggressive discovery on timing, source attribution, and intervening distribution; close attention to whether the government can trace the fatal dose through multiple hands; and careful plea drafting that distinguishes admitted distribution conduct from admitted death-resulting causation.[14] In situations where federal exposure is unavoidable, counsel should still preserve the human facts that matter within the lawful range: low-level addict-to-addict dealing, minimal profit, youth, trauma, treatment history, and the absence of any intent to kill. Those arguments may not defeat the enhancement, but they can still matter at the top end of a twenty-year-to-life range.

The North Carolina side of the record should not be ignored either. Section 14-18.4 is narrower, more specific, and more statute-bound than the federal enhancement model. That gives defense counsel several worthwhile arguments: whether the charged conduct fits the amended statute's particular variants, whether the State can prove proximate cause rather than simple contribution, and whether a more proportionate local resolution better matches the client's actual role and prior record.[15] In short, federal prosecution offers nationwide leverage and harsher sentencing; North Carolina offers doctrinal specificity and more meaningful room to negotiate culpability.

For defenders handling overdose cases in North Carolina and the Fourth Circuit, the practical takeaway is straightforward. Treat jurisdiction as a sentencing fact. In these cases, "state or federal?" is often just as important as "guilty or not guilty?" because the answer may determine whether the case begins in a structured grid or at twenty years flat.[16]

[1] N.C. Gen. Stat. § 14-18.4; 21 U.S.C. §§ 841(a), (b)(1)(C).
[2] N.C. Gen. Stat. § 14-18.4; *An Act to Create the Offenses of Death by Distribution of Certain Controlled Substances and Aggravated Death by Distribution of Certain Controlled Substances*, 2019 N.C. Sess. Laws 83; *Fentanyl Drug Offenses and Related Changes*, 2023 N.C. Sess. Laws 123.
[3] 21 U.S.C. § 841(a), (b)(1)(C).
[4] *Burrage v. United States*, 571 U.S. 204, 210-19 (2014).
[5] *Id.* at 208-210.
[6] N.C. Gen. Stat. § 14-18.4.
[7] *State v. McCrorey*, No. COA23-592 (N.C. Ct. App. Dec. 19, 2023) (published), summary page listing the case as involving "death by distribution; proximate cause; actual cause."
[8] N.C. Judicial branch, *Felony Punishment Chart* (effective for offenses committed on or after Oct. 1, 2013).
[9] U.S. Sent'g Guidelines Manual ch. 5, pt. A (U.S. Sent'g Comm'n 2023).
[10] U.S. Sent'g Guidelines Manual ch. 5, pt. A (U.S. Sent'g Comm'n 2023).
[11] *McCrorey*, No. COA23-592; *see also* user baseline memorandum collecting publicly verifiable North Carolina dispositions.
[12] Press Release, U.S. Att'y's Off., M.D. Pa., *Arizona Man Sentenced To 20 Years In Prison For Distribution Of Fentanyl Resulting In Death* (Jan. 28, 2025); Press Release, U.S. Att'y's Off., S.D. Cal., *Ramona Man*

Sentenced to 20 Years in Heroin Overdose Death (Feb. 12, 2020); Press Release, U.S. Att'y's Off., E.D. Tenn., *Kingsport Man Sentenced to Life In Prison For Role In Fentanyl Overdose Death* (Apr. 29, 2024).
[13] 21 U.S.C. § 841(b)(1)(C); U.S. Sent'g Guidelines Manual § 2D1.1(a)(2); ch. 5, pt. A.
[14] *Burrage*, 571 U.S. at 210-219.
[15] N.C. Gen. Stat. § 14-18.4; 2023 N.C. Sess. Laws 123.
[16] Compare N.C. Judicial Branch, *Felony Punishment Chart*, with 21 U.S.C. § 841(b)(1)() and U.S.S.G. § 2D1.1(a)(2).

The ZA Editors thank Morgan Chapman for contributing this helpful information. Morgan was a third-year law student at William and Mary College of Law and an intern in the FPD office during the Summer of 2026.

LEGAL UPDATES

4th Circuit Update

For up-to-date summaries and commentary on Fourth Circuit cases and federal law, check http://circuit4.blogspot.com. For daily, published Fourth Circuit opinions, visit https://www.ca4.uscourts.gov/opinions.

U.S. Supreme Court Update

For current commentary on Supreme Court criminal cases check https://www.scotusblog.com/columns/scotuscrim/. To peruse SCOTUS cases by term, petitions, interim docket, and capital cases, go to https://www.scotusblog.com/cases/. For recent published SCOTUS opinions, visit https://www.supremecourt.gov/opinions/slipopinion/26.

Amended Rules and Guidelines Update: Changes are Coming to the Appellate Rules, Federal Rules of Evidence, and the Sentencing Guidelines

There are several pending amendments to the Appellate Rules, Federal Rules of Evidence, and the Sentencing Guidelines that are posited to take effect later this year. Here is what practitioners should expect from these changes and how they change the landscape for federal criminal defenders.

1. THE APPELLATE RULES[1]

Form 4 is being simplified to reduce the amount of personal financial detail required. The amendment stems from judicial consensus that the form is largely redundant, and judges frequently only rely on a short portion of the current form. This should not affect most federal criminal defenders due to Fed. R. App. P. 24(a)(3); however, appellate defenders may have to file Form 4 if: (1) the client retained private counsel, but has become indigent prior to appeal; (2) a district court judge finds the appeal is not in good faith and the party is not entitled to proceed IFP; or (3) when the court receives evidence that the client's financial situation has substantially improved since the original indigency determination. Luckily for them, it will be easier now. The change comes into effect December 1, 2026.

2. THE FEDERAL RULES OF EVIDENCE[2]

A deceptively large shift to Rule 801 is on the horizon. The amendment removes the language "and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition" from 801(d)(1)(A). This opens the floodgates on what prior inconsistent statements a litigator can use substantively without sustaining a hearsay objection.

It is good news for federal criminal defenders. The old rule generally only benefited prosecutors who could use grand jury testimony as substantive evidence in response to inconsistent statements at trial. The revised rule received positive comments from the National Association of Criminal Defense Lawyers,[3] and it makes sense. Generally, the Government calls most witnesses in criminal trials. As such, impeachment with a prior inconsistent statement is usually done by defense. Rehabilitation of a witness with a prior consistent statement is usually done by the Government. Previously, the Government usually benefitted from 801(d)(1)(B)'s looser standard, and the amended rule levels the playing field in terms of the substantive value of these statements. The change comes into effect December 1, 2026.

3. THE SENTENCING GUIDELINES[4]

The following changes come into effect on November 1, 2026.

A. Inflationary Adjustments

Arguably the most impactful of the Guideline amendments, the amendment makes adjustments

to the monetary tables in §2B1.1, §2B2.1, §2B3.1, §2R1.1, §2T4.1, §5E1.2, and §8C2.4 to account for inflation. This is the first inflationary update since 2015. This appears favorable for federal defenders because it raises the monetary bar for the Government in financial crimes.

For example, prior to the amendment, a loss of $6,750 would have increased the offender level by two under §2B1.1. Under the revised table, there would be no additional levels for any loss less than $9,000. The bottom line is that this substantively raises the burden of proof for the Government in financial crime cases.

B. Drug Offenses

Considering the HALT Fentanyl Act, the Sentencing Guidelines have been amended to reflect Congressional interest in prosecuting "fentanyl-related substances," which is defined by 21 U.S.C. § 812(e). Stemming from law enforcement's struggle to keep up with new fentanyl analogues and DOJ's struggle to prosecute rapid evolutions under the Analogue Enforcement Act,[5] the amendment reflects the HALT Fentanyl Act's classification of "fentanyl-related substances" as Schedule I substances.

As such, the Drug Quantity Table and the Drug Equivalency Tables in §2D1.1 have been amended to reflect this new category. "It sets the quantity thresholds and base offense levels for fentanyl-related substances at the same level as fentanyl analogues[.]"[6] The amendment also adds "fentanyl-related substances" to the §2D1.1(b)(13) enhancement to be applied only when the court applies the offense level in the Drug Quantity Table for fentanyl, a fentanyl analogue, or a fentanyl-related substance. This is because "fentanyl-related substance" is a very wide class meant to capture substances that may not even exist currently. To couch the breadth of the class, a new Note to the Drug Quantity Table explains that the base offense level presumptively applies to fentanyl-related substances, but that presumption is rebuttable. If a defendant establishes that the substance either 1) blocks, diminishes, or counteracts a fentanyl or fentanyl analogue effect, or 2) is significantly less potent than fentanyl, the court should determine the base offense level using the converted drug weight of the most closely related controlled substance referenced in §2D1.1.

C. Multiple Counts

Chapter Three, Part D is being revised to simplify the procedure for determining the single offense level for cases involving multiple counts. The current five guidelines of Chapter Three are now replaced with a single guideline at §3D1.1. The stated aim is to resolve confusion in applying the rule as currently written to avoid unwarranted sentencing disparities.

According to the Commission's calculations, the amendment is "largely outcome neutral."[7] This is based in a review of all cases sentenced in fiscal year 2024. Upon review, the Commission concluded that "the average change in sentence imposed on all multiple count cases would be less than one month."[8] As such, the amendment is unlikely to cause major shifts in the lives of practitioners other than—hopefully—an increased ease in navigating §3D1.1.

The amendment also includes conforming changes throughout the Guidelines, such as §1B1.3 (Relevant Conduct).

D. Sentencing Options

Arguably, the most interesting of the amendments is the new Introductory Commentary and additional guideline at §5A1.1 (Sentencing Table). Considering demographic disparities in initial determinations of whether a sentence should include imprisonment, the Commission has decided to elucidate the fact that imprisonment is not always the most appropriate response to a federal criminal conviction.[9]

The new Introductory Commentary attempts to make clear the "full range of sentencing options available under the guidelines before proceeding to the Sentencing Table itself."[10] The new Introductory Comments notably emphasizes: 1) the importance of the court to consider "all available sentencing options" in fashioning a sentence "sufficient, but not greater than necessary to comply with the purposes set forth in [18 U.S.C. § 3553(a)(2)]." 18 U.S.C. § 3553(a); and 2) the statutory ordering of sentencing options as "a sentence to probation, a fine, or a term of imprisonment." *See* 28 U.S.C. § 994(a)(1)(A).[11] This is further reinforced by the new application note to §5A1.1 that reminds the court that "a fine may be the sole sanction if the guidelines do not require a term of imprisonment."[12]

Hopefully, this restructuring reminds practitioners and judges that the guidelines do not demand their most severe recommendations and the importance of considering the proportionality

of sentences with the gravity of the offense, as well as particularities in the lives of defendants.

E. Simplification

This amendment deletes 26 specific offense characteristics that did not see any use in the last five fiscal years. As such, the amendment should not affect practitioners considering their consistent lack of use. The guidelines affected are: §2A5.1, §2B1.5, §2B2.3, §2B6.1, §2D1.1, §2D1.11, §2D1.12, §2D1.14, §2G3.2, §2H3.1, §2J1.3, §2J1.6, §2J1.9, §2K1.5, §2K2.6, §2M4.1, §2P1.1, §2Q1.2, §2Q1.3, §2Q1.4, §2T1.9, §3B1.4, §3B1.5, and §3C1.1.

F. Statutory Shifts[13]

Amendments are being made to §2H3.1 and §2C1.1, respectively, to consider two new statutory offenses: 1) the Protecting Americans' Data from Foreign Adversaries Act (15 U.S.C. § 9901); and 2) the Foreign Extortion Prevention Technical Corrections Act (18 U.S.C. § 1352). Appendix A is to be amended to reference 15 U.S.C. § 9901 (transfer of data to foreign adversaries) to §2H3.1 and to reference 18 U.S.C. § 1352 (bribes from foreign officials) to §2C1.1.

G. Technical Language[14]

Finally, the guidelines are getting some stylistic changes. "Bureau of Prisons" is being changed to "Federal Bureau of Prisons." References to the Communications Act of 1934 are being updated in the context of the term "interactive computer service." Sections 7B1.4 and 7C1.5 are being updated to clarify the court's authority to except a mandatory revocation, probation, or supervised release when the defendant fails a drug test. Section 7C1.1 is being corrected to cure an erroneous reference to "four" grades of supervised release violations. Sections 8A1.2 and 8C2.8's instantiations of the "guideline range" are being changed to the "guideline fine range."

[1] Summary of Proposed Amendments to the Federal Rules of Practice and Procedure (Published Oct. 16, 2025), https://www.uscourts.gov/sites/default/files/document/2025_supreme_court_package_final.pdf (last visited July 21, 2026).
[2] *Id.*
[3] National Association of Criminal Defense Lawyers, Amendments to Evidence Rules Proposed for Comment, Aug. 2024 (Published Feb. 15, 2025), https://www.nacdl.org/getattachment/bd468520-083c-41d0-a1d1-333513a1d359/nacdl-comments-on-proposed-amendments-to-federal-rules-of-evidence-801-02152025.pdf (last visited July 21, 2026).
[4] United States Sentencing Commission, Amendments to the Sentencing Guidelines (Published Apr. 30, 2026), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202605_RF.pdf (last visited July 21, 2026).
[5] Class-Wide Scheduling of Fentanyl-Related Substances (FRS) (Published Jun. 12, 2025), https://www.congress.gov/crs-product/IN12468 (last visited July 21, 2026).
[6] United States Sentencing Commission, *supra* note 4, at 39.
[7] *Id.* at 49.
[8] *Id.* at 49.
[9] *Id.* at 91.
[10] *Id.* at 91.
[11] *Id.* at 92.
[12] *Id.* at 95.
[13] *Id.* at 97-98.
[14] *Id.* at 101-02.

The ZA Editors thank Sean Fahey for contributing this helpful information. Sean was a third-year law student at NCCU School of Law and was an intern in the FPD office during the Summer of 2026.

LOCAL NEWS

FPD Office News

We are pleased to welcome to the Raleigh office: Assistant Computer Systems Administrator Michelle Crumpler and Davalene Flowers.

We are pleased to announce that former Attorney Fellow, Aaron Davison, will remain working at the Raleigh Office as an Assistant Federal Public Defender.

Panel News

We are pleased to welcome the following new panel attorneys in Raleigh: Gabriel Diaz; and in Wilmington: Chris Agosto Carriero.