FOURTH CIRCUIT DECISIONS ON CRIMINAL LAW AND PROCEDURE

Published Between November 1, 2025, and March 31, 2026

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(Excerpted edition: decisions issued on or after November 1, 2025)

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INTRODUCTION

This outline documents the published decisions of the Fourth Circuit issued between November 1, 2025, and March 31, 2026, that address criminal law and procedure issues encountered by court-appointed attorneys or relevant to court-appointed representation, primarily on direct appeal. Decisions that represent defense wins or otherwise contain defense-favorable findings are marked by an exclamation point (!). Decisions that, in the compiler's judgment, are significant because they contain particularly lengthy, thoughtful, or otherwise useful discussion are marked by an asterisk (*). Note that not every issue raised in a decision is reflected in the outline. Finally, note that quotations in this outline may be "cleaned up" by the omission of internal quotations, citations, or alterations; be sure to refer to the actual opinions for the Court's exact language. Please report errors or omissions in the outline to the compiler at patrick_bryant@fd.org.

This edition is excerpted from the outline covering decisions published between April 1, 2025, and March 31, 2026. Entries for decisions issued before November 1, 2025, have been removed, as have subject headings that no longer contain any entries. Each main section heading has been retained; where no qualifying decision remains in a section, that is noted.

I. OFFENSES

18 U.S.C. § 249, Hate Crimes

United States v. Ritter, No. 24-4576, 167 F.4th 677 (4th Cir. Feb. 18, 2026) (Richardson, J.) (D.S.C.) (finding evidence sufficient to prove that defendant killed his sexual partner—a trans woman—"because of" her "gender identity," 18 U.S.C. § 249(a)(2), because he feared people knowing that he was in a relationship with a trans woman, meaning that the killing was "because of one of Doe's perceived gender-related characteristics: Doe's biological sex")

18 U.S.C. § 401, Criminal Contempt

United States v. Jamerson, No. 25-4045, 168 F.4th 188 (4th Cir. Feb. 27, 2026) (King, J.; Benjamin, J., concurring) (W.D.N.C.) (affirming criminal contempt conviction for third-party custodian whose son did not report to prison as ordered; finding that release order was in effect during that period, notwithstanding its citation to pre-trial release statute instead of post-conviction release statute; further finding that terms of release order were sufficiently clear to apprise TPC of requirements and consequences) (N.B.: Judge Benjamin concurred to advise district courts to clearly tell potential TPC's about the possibility of contempt convictions and jail time.)

18 U.S.C. § 842, Teaching the Making of Explosives

See First Amendment Issues, *infra*

18 U.S.C. §§ 922, 924, Firearms

United States v. Nji, et al., No. 23-4236, 159 F.4th 259 (4th Cir. Nov. 18, 2025) (Niemeyer, J.) (D. Md.) (finding evidence in firearm smuggling case sufficient to prove that defendants knew the firearms had obliterated serial numbers (18 U.S.C. § 922(k)) because they constituted a small, tight-knit group dedicated to smuggling weapons to one side of sectarian fight in Cameroon, testimony that group members knew they had to conceal what they were doing, and photos of guns showed obvious defacing of serial numbers)

United States v. Gould, No. 24-4192, 163 F.4th 795 (4th Cir. Jan. 2, 2026) (on rehearing) (Diaz, J.) (S.D. W. Va.) (holding that 18 U.S.C. § 922(g)(4), which prohibits possession of a firearm after having been committed to a mental institution, was not facially unconstitutional under the Second Amendment, because even though defendant's conduct—possession of a shotgun at home—was presumptively protected by the Second Amendment, the prohibition was not a permanent one, since several states had mechanisms for relief, and historical tradition of firearm regulation included disarming "dangerous" people, and mentally ill people could reasonably fall within the ambit of such treatment)

! *United States v. Jacobs*, No. 24-4287, 166 F.4th 395 (4th Cir. Jan. 21, 2026) (Agee, J.) (N.D.W. Va.) (finding facial and as-applied challenges to 18 U.S.C. § 922(g)(1) precluded by *Hunt* and *Canada*, and facial challenge to 18 U.S.C. § 922(g)(9) precluded by *Nutter*, but remanding district court's ruling that § 922(g)(9) was unconstitutional as applied to defendant for further consideration in light of those recent Fourth Circuit opinions, noting that there was very little factual development in the record of his circumstances that might be relevant for an as-applied challenge)

18 U.S.C. § 1028A, Aggravated Identity Theft

! *United States v. McDonald*, No. 24-4362, 166 F.4th 440 (4th Cir. Feb. 5, 2026) (Gregory, J.) (W.D. Va.) (reversing aggravated identity theft conviction of former executive director of county economic development agency who used various schemes including forged contracts and deeds to siphon funds from agency into her own accounts, concluding that identity theft was not the "crux" of the specifically identified fraud offense in the indictment because the use of someone else's identity "was an element of her broader scheme to profit from fraudulent behaviors, but it was ancillary to the particular wire fraud charged," citing standard from *Dubin v. United States*, 599 U.S. 110 (2023) that identity theft must encompass, not merely support, underlying felony)

18 U.S.C. § 1030, Computer Fraud

! *United States v. Umeti*, No. 24-4478, 167 F.4th 687 (4th Cir. Feb. 19, 2026) (Agee, J.) (E.D. Va.) (reversing conviction for computer fraud (arising from phishing schemes) due to lack of proof of $5,000 in loss to victim, an element necessary to raise statutory maximum from one year to ten years (18 U.S.C. § 1030(c)(4)(B)(i)), because even though there was some testimony

about investigation and remediation of computer crimes, it included no dollar figures, leading Fourth Circuit to say that any conclusion as to loss amount would be "pure guesswork")

18 U.S.C. § 1546, Visa Fraud

United States v. Aborisade, No. 24-4466, 163 F.4th 856 (4th Cir. Jan. 8, 2026) (Benjamin, J.; Heytens, J., dissenting) (D. Md.) (holding that evidence was sufficient for visa fraud conviction of defendant who prepared false immigration visa self-petitions under the Violence Against Women Act; noting that the statute refers to "documents required by immigration laws or regulations," and rejecting argument that no specific type of evidence is required (and so the false documents he submitted were not "required" ones) because the statute requires at least *some* evidence, so whatever he submitted was a "required" document; further rejecting argument that defendant did not violate the statute's "knowingly presents" element because he did not submit the application under oath, holding that statute does not contain an oath requirement, noting circuit split on this issue)

18 U.S.C. § 1958, Using Interstate Commerce in Commission of Murder-for-Hire

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (rejecting argument that murder-for-hire and conspiracy to commit murder-for-hire were same offense for double jeopardy purposes, reasoning that murder statute has element requiring defendant to take an act affecting interstate commerce while conspiracy statute does not, and conspiracy statute requires agreement that murder statute does not; noting that the substantive murder-for-hire offense "does not require the existence of an actual murder-for-hire agreement," because "the statutory phrase 'consideration for a promise or agreement to pay' does not create a separate 'agreement element,' but rather modifies the type of intent which a defendant must possess" when traveling in or otherwise affecting interstate commerce")

18 U.S.C. § 1959, Violent Crimes in Aid of Racketeering Activity

! *United States v. Jenkins*, No. 24-4220, 169 F.4th 497 (4th Cir. Mar. 10, 2026) (Agee, J.) (E.D. Va.) (affirming most VICAR convictions arising from loose-knit gang involved in drug trafficking and firearm offenses that attempted to kill rival gang members in retaliation for death of their associate, mostly rejecting arguments about whether this group qualified as a RICO enterprise and whether each defendant was a member in it and/or acted with the purpose of furthering their positions in it; reversing, however, one conviction for VICAR attempted murder because that defendant simply fired a gun at a house but lacked specific intent to kill anyone)

II. FIRST AMENDMENT ISSUES

United States v. Arthur, No. 24-4306, 160 F.4th 597 (4th Cir. Dec. 3, 2025) (Agee, J.; Gregory, J., dissenting) (E.D.N.C.) (rejecting facial challenge to statute prohibiting teaching someone how to make or use explosives while knowing that such person intends to use such information to commit crime of violence, 18 U.S.C. § 842(p)(2)(B), holding that statute does not cover a substantial amount of protected speech, and indeed that it may not cover *any* protected speech since it falls into category of speech integral to crime because statute requires knowledge that recipient of information will use it in relation to crime of violence; concluding that speech covered by the statute is a "far cry" from protected abstract advocacy of violence)

! *United States v. Al-Timimi*, No. 14-4451, 164 F.4th 292 (4th Cir. Jan. 9, 2026) (Wynn., J.) (E.D. Va.) (vacating convictions for, inter alia, soliciting others to levy war against the U.S. where defendant, who was respected elder at Virginia mosque, told several mosque members just after 9/11 to go join the mujahadeen, offering guidance about being discreet and encouraging them to meet up with a particular terrorist group in Pakistan; holding that none of the defendant's statements constituted incitement under the *Brandenburg* test, which requires that the "advocated-for lawless action must be happening quite soon," whereas the action urged in these statements was "neither sufficiently imminent nor sufficiently definite to lose First Amendment protection," with the court noting that he "specified no time from in which these actions should be completed and no details as to how they should be carried out," making his "exhortations vague and general" and "merely encouragement," which was not sufficient to support aiding and abetting convictions, noting that he also did not encourage, "with the requite intent, a *specific* unlawful act")

III. SECOND AMENDMENT ISSUES

See 18 U.S.C. § 922, 924, Firearms, *supra*

IV. FOURTH AMENDMENT ISSUES

Probable Cause

United States v. Glass, No. 24-4193, 160 F.4th 563 (4th Cir. Dec. 2, 2025) (Wilkinson, J.) (W.D.N.C.) (holding that district court did not err in denying motion to suppress after *Franks* hearing in CSAM case, agreeing that officer's affidavit (based on defendant's ex-wife's allegations that he had numerous images on his computer) did not intentionally or recklessly omit fact that ex-wife had previously accused defendant of similar actions that did not lead to criminal charges, because that did not necessarily mean prior accusations were untrue, and on this occasion, ex-wife provided "detailed and specific" information that established her "basis of knowledge")

Reasonableness of Search

! *United States v. Perez*, No. 23-7280, 167 F.4th 709 (4th Cir. Feb. 23, 2026) (Benjamin, J.) (M.D.N.C.) (holding that a condition of supervised release that permits a warrantless search of a supervisee's "property" does not permit the government to search real property owned by him and leased by a third-party resident, and further concluding that in order to rely on the supervised release conditions to search the tenant's residence, the officers must have had probable cause to believe that the supervisee also resided at the tenant's home, which they did not have here) (N.B: This holding arose in the context of a civil forfeiture action brought by the government against approximately $25,000 in currency discovered during the search, money believed to be connected to drugs; both landlord and tenant claimed part of the money.)

United States v. Lowers, No. 24-4546, 170 F.4th 134 (4th Cir. Mar. 10, 2026) (Thacker, J.; King, J., concurring in the judgment) (E.D.N.C.) (holding that defendant had reasonable expectation of privacy in his Google Drive account, notwithstanding that it contained CSAM that Google notified law enforcement about, and notwithstanding Google's terms of use, meaning that law enforcement's search of files beyond those initially examined by Google employee was a Fourth Amendment violation, but concluding that exclusion was not required because this violation was ultimately too attenuated from evidence eventually seized from defendant's home)

Seizures

United States v. Coe, No. 24-4111, 159 F.4th 202 (4th Cir. Nov. 12, 2025) (Heytens, J.) (E.D. Va.) (holding that "seizure" of defendant was not unreasonable, rejecting argument that officer used excessive force by pointing his firearm, with no safety, with his finger on the trigger, into Coe's side and back as the officer pinned Coe against his car; observing that district court did not make factual findings about officer's handling of firearm and Coe had not shown that it was clearly erroneous for judge *not* to find those facts, and noting that officer acted reasonably in that he was outnumbered by several men hanging around in parking lot at night when he saw Coe making a drug deal inside his car) (N.B.: The Fourth Circuit "denounce[d]" "in the strongest possible terms" officer's testimony at suppression hearing that he drew his firearm regardless of the crime he saw.)

Traffic Stops

! *United States v. Hawkins*, No. 24-4502, 161 F.4th 242 (4th Cir. Dec. 11, 2025) (Benjamin, J.) (N.D.W. Va.) (reversing denial of suppression motion where police observed person they knew had a drug conviction in a car interacting with a man at an apartment complex who leaned into car window for a brief conversation they suspected was a drug deal, after which police pulled car over and summoned drug dog, which alerted even though no drugs were found, although firearm was found in waistband of defendant-passenger (whom police did not know and who was not involved in brief conversation with man at apartment complex); concluding that these facts (individually or collectively) did not amount to reasonable suspicion to conduct or extend traffic stop since police did not see any direct indicia of drug deal (such as hand-to-hand exchange or money or even man who leaned into car putting something in his pocket) and alleged inconsistencies between passengers' explanations for brief interaction were minor and not suspicious)

Exclusionary Rule/Good Faith Exception

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (holding that the installation and use of a pen register is not a Fourth Amendment search, so suppression under the Fourth Amendment's exclusionary rule is not an available remedy, and "join[ing] at least five of our sister circuits in holding that statutory suppression is not an available remedy for a pen register statute violation when, as [in 18 U.S.C. § 3123], the statutes do not provide for suppression")

V. FIFTH AMENDMENT ISSUES (PRE-TRIAL AND TRIAL)

Double Jeopardy

United States v. Glass, No. 24-4193, 160 F.4th 563 (4th Cir. Dec. 2, 2025) (Wilkinson, J.) (W.D.N.C.) (finding no double jeopardy violation in conviction for three separate counts of CSAM receipt even though indictment did not list specific files and had somewhat overlapping date ranges, noting that trial evidence referred to three different incidents of downloading different files at different times, and "the arguments and evidence at trial repeatedly connected distinct files to each receipt count")

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (rejecting argument that murder-for-hire and conspiracy to commit murder-for-hire were same offense for double jeopardy purposes, reasoning that murder statute has element requiring defendant to take an act affecting interstate commerce while conspiracy statute does not, and conspiracy statute requires agreement that murder statute does not; noting that the substantive murder-for-hire offense "does not require the existence of an actual murder-for-hire agreement," because "the statutory phrase 'consideration for a promise or agreement to pay' does not create a separate 'agreement element,' but rather modifies the type of intent which a defendant must possess" when traveling in or otherwise affecting interstate commerce")

Due Process

United States v. Palmer, No. 23-4538, 159 F.4th 221 (4th Cir. Nov. 18, 2025) (Diaz, J.) (W.D.N.C.) (affirming district court's denial of motion to dismiss for preindictment delay in naturalization fraud case, finding that defendant's vague suggestions about potential lost testimony from his mother (who died before trial and who might have testified about defendant's "mental challenges") were insufficient to show prejudice from delay, especially since general subject of defendant's mental defects was covered by other witnesses)

United States v. Minkkinen, No. 23-4443, 168 F.4th 174 (4th Cir. Feb. 26, 2026) (Rushing, J.) (S.D.W. Va.) (reversing district court's grant of motion to dismiss based on pre-indictment delay in bringing charges based on theft of trade secrets, where investigation began in 2016 but indictment was not returned until 2022; accepting premise that defendants suffered prejudice from delay (in the form of death of two potential witnesses and destruction of some relevant documents), but finding that government's reasons for delay (lengthy investigative efforts and proffers with defendants) were not done in bad faith or for purposes of delay alone) (N.B.: It's ironic that a case about pre-indictment delay took 21 months after argument before the opinion was issued. Now the case will be remanded for trial, in 2026, on charges dating back to 2016.)

VI. SIXTH AMENDMENT ISSUES (PRE-TRIAL AND TRIAL)

Speedy Trial

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (declining to reverse conviction of one defendant in complex multi-defendant drug gang murder case on constitutional speedy trial grounds, even though district court did not make express ruling on Sixth Amendment argument when denying statutory speedy trial claim, noting that district court made sufficient factual findings when denying statutory claim for court of appeals to conclude that constitutional claim failed, in that delay was lengthy but was based on good reasons and did not cause any particular prejudice)

United States v. Chaudhry, No. 24-4471, 162 F.4th 133 (4th Cir. Dec. 16, 2025) (Quattlebaum, J.) (E.D. Va.) (affirming material support for terrorism conviction over speedy trial challenge by Pakistani national who spent most of his life in the U.S. but went to Pakistan with the goal of going to Afghanistan to fight U.S. and allied forces there, leading to his arrest and imprisonment in Pakistan for over ten years; concluding that constitutional speedy trial rights were not violated because, even though delay was lengthy, the government made reasonable efforts to

bring defendant back to U.S. for trial (despite not filing a formal extradition request, which court accepted would have been futile) and defendant did not assert speedy trial until well after his return to U.S. for trial)

Impartial Jury

United States v. Ritter, No. 24-4576, 167 F.4th 677 (4th Cir. Feb. 18, 2026) (Richardson, J.) (D.S.C.) (finding no reason to grant a new trial to defendant charged with murder of his sexual partner—a trans woman—on the basis of her gender identity in light of transgender juror's comments to media after the trial, noting that juror disclosed that she was trans during jury selection and said she could be impartial, deferring to district court's questioning of juror and court's determination that she was credible and nothing in her comments to media contradicted her oath as a juror)

United States v. Umeti, No. 24-4478, 167 F.4th 687 (4th Cir. Feb. 19, 2026) (Agee, J.) (E.D. Va.) (holding that district court did not err in denying motion for new trial in case charging wire fraud and computer damage arising from phishing schemes where prospective juror said he "worked in cybersecurity," had heard of the defendants, and "might have done some of the remediation" for computer intrusions in case, leading to a strike for cause; noting that juror's statements were fairly innocuous and did not state opinion on guilt or innocence, lessening chance that the statements infected the rest of the jury pool, such that defendant was not entitled to presumption of prejudice due to extrinsic influence)

Assistance of Counsel

United States v. Palmer, No. 23-4538, 159 F.4th 221 (4th Cir. Nov. 18, 2025) (Diaz, J.) (W.D.N.C.) (affirming denial of motion to suppress in naturalization fraud case where motion argued that state guilty plea (which was basis of fraudulent denial of criminal history during naturalization process) was invalid due to ineffective assistance of counsel (*Padilla* error, i.e., counsel's failure to advise him about immigration consequences of conviction), holding that this was essentially a collateral attack on state conviction that could only be brought for complete denial of counsel (*Custis*), not ordinary ineffective assistance of counsel)

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (affirming denial of motion to substitute counsel filed by one defendant four days before trial in multi-defendant drug gang murder case, where source of dissatisfaction with counsel was mainly lack of visits, noting that COVID-19 restrictions had limited some opportunities for in-person visits and counsel did meet with defendant more frequently after he complained about it, further finding that district court adequately inquired into dispute and that any error was harmless because counsel performed adequately at trial (something defendant did not contest)) (N.B.: The Fourth Circuit noted that this defendant "almost physically attacked his attorney and continued pro se" towards the end of the trial. The Court (somewhat dryly) observed that "[w]hile this might be evidence of a later breakdown in the attorney-client relationship, it doesn't say anything about the effectiveness of Lamborn's lawyers before then.")

Right to compel testimony

United States v. Nji, et al., No. 23-4236, 159 F.4th 259 (4th Cir. Nov. 18, 2025) (Niemeyer, J.) (D. Md.) (holding that district court did not err in preventing defendants in firearm smuggling case from introducing statement made by co-conspirator (during proffer session in hopes of obtaining plea agreement) that another member of the group (who had served in U.S. military) told them that their actions were not illegal, concluding that co-conspirator could validly invoke Fifth Amendment right against self-incrimination since his case was not yet final and government did not believe his statement during proffer session)

VII. EIGHTH AMENDMENT ISSUES

No published decisions in this category were issued during this period.

VIII. FOURTEENTH AMENDMENT ISSUES

No published decisions in this category were issued during this period.

IX. OTHER PRE-TRIAL ISSUES

Continuance

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (holding that district court did not err in denying motion for continuance filed a week before trial in multi-defendant drug gang murder case, where basis for motion was need to review voluminous discovery, noting that most discovery had been available for a year and defendants could not identify (even post-trial) anything in discovery that would have changed trial strategy or outcome)

Federal Rule of Criminal Procedure 8

United States v. Mosley, No. 21-4541, 168 F.4th 145 (4th Cir. Feb. 23, 2026) (Gregory, J.) (D. Md.) (holding that district court did not err in denying motion to sever witness-murder charges from drug conspiracy charges, explaining that drug evidence explained how parties to murder plot were connected, as well as providing motive for murder of witness, noting also that any joinder error was harmless since district court instructed jury to consider charges and defendants separately and drug evidence would have been admissible at a severed murder trial anyway)

18 U.S.C. § 3161 et seq., Speedy Trial Act

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (concluding that "delays that postdate the filing of a motion to dismiss under the Speedy Trial Act don't matter" because "a motion for dismissal [under the Act] is effective only for periods of time which antedate the filing of the motion" and "subsequent periods of delay, whether includable or excludable, are inconsequential")

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (holding that district court properly excluded certain period under "ends of

justice" exception, 18 U.S.C. § 3161(h)(7), in complex multi-defendant drug gang murder case even though court did not explicitly use term "ends of justice," since court made sufficient findings to support exception, including "the time span of the charged offenses, the number of defendants, the number of counts, the number of potential witnesses, and the voluminous amount of discovery")

United States v. Lamborn, et al., No. 22-4554, 159 F.4th 230 (4th Cir. Nov. 18, 2025) (Diaz, J.) (E.D. Va.) (holding that district court did not err in denying Speedy Trial Act motion to dismiss brought by one defendant in drug gang murder case because co-defendants requested continuance to prepare for trial, finding that delay was reasonable where although defendant moved for severance, he did not appeal denial of severance motion and could not point to any particularized prejudice from delay (as opposed to general prejudice from joinder))

18 U.S.C. § 2518, Wiretap Procedure

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (holding that government's burden under federal and state wiretap statutes "is not great" and may be satisfied by "present[ing] specific factual information" showing that officers have "encountered difficulties in penetrating the criminal enterprise or in gathering evidence," and finding that the district court reasonably concluded the officers met their burden here by offering detailed, non-conclusory explanations for why wiretaps were necessary and why other investigative techniques (including physical surveillance, witness interviews, grand jury proceedings, search warrants, and controlled buys) were insufficient in investigation of drug ring; concluding also that statute authorizes "any aggrieved person"—not just person whose phone was tapped—to challenge the order, but only require probable cause that "*an individual*" was committing a crime, and police unquestionably had probable cause to tap one defendant's phones, meaning that they did not need probable cause as to all defendants)

X. TRIAL AND POST-TRIAL ISSUES

Evidence

Federal Rules of Evidence 600 et seq.

United States v. Jones, No. 24-4282, 166 F.4th 428 (4th Cir. Feb. 4, 2026) (Wynn, J.) (E.D.N.C.) (holding that district court did not err in preventing defendant in drug case from asking cooperating witness about his own drug convictions from the 1990s, noting that Fed. R. Evid. 609(b) presumptively excludes evidence about convictions more than ten years old, and probative value here was minimal since defendant was able to cross-examine witness on fact that he was testifying as part of a plea deal and witness already admitting selling drugs)

Federal Rules of Evidence 701 et seq.

United States v. Palmer, No. 23-4538, 159 F.4th 221 (4th Cir. Nov. 18, 2025) (Diaz, J.) (W.D.N.C.) (holding that district court erred in naturalization fraud case by excluding proposed expert testimony under Fed. R. Evid. 704(b) (which prohibits testimony that a defendant had a mental state that is an element of offense) in light of *Diaz v. United States*, 602 U.S. 526 (2024), since proposed testimony was that defendant read at a grade level below that necessary to

understand question on immigration form, reasoning that this testimony did not directly opine on mental state, but left that inference for the jury to draw; ultimately concluding that error was harmless given extensive additional evidence about defendant's reading ability)

United States v. Nji, et al., No. 23-4236, 159 F.4th 259 (4th Cir. Nov. 18, 2025) (Niemeyer, J.) (D. Md.) (affirming exclusion of proposed defense expert in firearm smuggling case involving group who sent weapons to one side of sectarian fight in Cameroon, where expert would have testified about background of dispute in order to suggest that defendants concealed what they were doing so the recipients of the weapons would be safe, rather than because they knew what they were doing was illegal; noting that expert could not testify about mental state anyway, but district court also appropriately excluded testimony to avoid a "mini-trial" on situation in Cameroon)

Federal Rules of Evidence 801 et seq.

United States v. Nji, et al., No. 23-4236, 159 F.4th 259 (4th Cir. Nov. 18, 2025) (Niemeyer, J.) (D. Md.) (holding that district court did not err in preventing defendants in firearm smuggling case from introducing statement made by co-conspirator (during proffer session in hopes of obtaining plea agreement) that another member of the group (who had served in U.S. military) told them that their actions were not illegal, concluding that residual hearsay exception, Fed. R. Evid. 807, did not apply because statement was not sufficiently trustworthy, in that government did not believe statement from proffer session, alleged declarant (former military member) testified at trial and denied saying it)

United States v. McDonald, No. 24-4362, 166 F.4th 440 (4th Cir. Feb. 5, 2026) (Gregory, J.) (W.D. Va.) (finding no abuse of discretion in district court's exclusion of grand jury testimony from defendant's colleague, in case charging former director of economic development agency with fraudulently using agency funds for her own purposes, when trial evidence suggesting colleague's involvement caused him to invoke Fifth Amendment rights, since grand jury testimony did not fall within hearsay exception in Fed. R. Evid. 804(b)(1) for testimony at other hearings, as government did not have similar motive to develop colleague's testimony before grand jury as it would at trial, as required by Rule)

Sufficiency of Evidence

See Offenses, *supra*

Mistrials

United States v. McDonald, No. 24-4362, 166 F.4th 440 (4th Cir. Feb. 5, 2026) (Gregory, J.) (W.D. Va.) (finding no abuse of discretion in district court's denial of mistrial in case charging former director of economic development agency with fraudulently using agency funds for her own purposes, noting that basis for motion was mid-trial delays for various reasons (including defendant's own collapse during trial), and district court took pains to minimize prejudice from delays, including specific jury instructions, and extended closing arguments)

United States v. Ritter, No. 24-4576, 167 F.4th 677 (4th Cir. Feb. 18, 2026) (Richardson, J.) (D.S.C.) (holding that district court did not abuse its discretion in denying mistrial in murder case after witness responded to question with hearsay statement implicating defendant (that

someone else had heard that defendant killed the victim), pointing out that district court provided curative instruction to jury, that both parties impeached the witness about the statement, and that it was not necessarily the case that the jury would conclude that the defendant confessed to the person who passed that statement along to the witness)

Jury Instructions

N.B.: For decisions discussing jury instructions related to the elements of a specific offense, see the heading for that offense.

United States v. McDonald, No. 24-4362, 166 F.4th 440 (4th Cir. Feb. 5, 2026) (Gregory, J.) (W.D. Va.) (declining to order new trial after district court responded to defendant's closing argument (which highlighted evidence and witnesses government could have called in fraud case, but did not) with sua sponte instruction to jury that the government had the burden of proof but was not required to present any particular type of evidence, or indeed all possible evidence; noting that "refraining from providing this instruction, or granting an additional few minutes for supplemental argument, may have been a better exercise of discretion," but that a violation of Fed. R. Crim. P. 30 requires reversal only on a showing of prejudice, which defendant did not do here)

Federal Rule of Criminal Procedure 29

United States v. Evans, No. 24-4307, 165 F.4th 255 (4th Cir. Jan. 21, 2026) (Heytens, J.) (E.D. Va.) (holding that review of sufficiency of the evidence in CCE murder case was "foreclosed" because defendant failed to renew mid-trial motion for judgment of acquittal after putting on a defense, unless defendant could show "manifest miscarriage of justice")

XI. SENTENCING ISSUES

Sentencing Guidelines

U.S.S.G. § 2D1.1, Unlawful Manufacturing, Trafficking, or Possession With Intent to Traffic in Controlled Substances

United States v. Jones, No. 24-4282, 166 F.4th 428 (4th Cir. Feb. 4, 2026) (Wynn, J.) (E.D.N.C.) (finding no error in district court's application of obstruction enhancement under U.S.S.G. § 2D1.1(b)(16)(D) based on jail calls from drug defendant attempting to conceal drug proceeds, rejecting argument that similarities between this enhancement and general obstruction provision, U.S.S.G. § 3C1.1, meant that drug-obstruction enhancement should carry same exception (§ 3C1.1, n.4(D)) for actions contemporaneous with arrest that do not cause a material hindrance to the investigation) (N.B.: In a footnote, the Court noted that neither party addressed whether it could defer to commentary in obstruction guideline in interpreting either guideline, potentially making this an argument worth preserving.)

U.S.S.G. § 2G1.3, Promotion of Prohibited Sexual Conduct with a Minor

United States v. Hodges, No. 24-7186, ___ F.4th ___, 2026 WL 816370 (4th Cir. Mar. 25, 2026) (Agee, J.) (S.D.W. Va.) (affirming application of two enhancements for an offense "involving" a "minor," U.S.S.G. § 2G1.3(b)(3)(A) and (b)(5), where defendant communicated

online with undercover agents about fictitious minors; rejecting argument that the term "minor" was not so ambiguous as to allow resort to the guideline commentary that define the term to involve fictitious minors (so long as they are portrayed by law enforcement), concluding that the term "minor" was ambiguous (at least as to whether it included fictitious minors); noting how "anomalous" it would be to allow conviction for enticement of fictitious minor (18 U.S.C. § 2422(b)) but not allow an enhancement for same conduct under guideline applicable to that offense)

U.S.S.G. § 2K2.1 et seq., Firearms Offenses

United States v. Holman, No. 25-4041, ___ F.4th ___, 2026 WL 850185 (4th Cir. Mar. 27, 2026) (Wilkinson, J.) (M.D.N.C.) (affirming application of enhanced offense level for possession of a weapon capable of accepting a large capacity magazine, U.S.S.G. § 2K2.1(a)(3), concluding that term "large capacity" is genuinely ambiguous, permitting deference to commentary defining it as more than 15 rounds, which meant that weapon involved in this felon-in-possession case qualified) (N.B.: This opinion contains a thorough exploration of the plain error standard and the reasons for it, and also notes that "when the error is a miscalculation of the defendant's Sentencing Guidelines range, the Supreme Court has dictated a presumption: the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error.")

U.S.S.G. § 3A1.1 et seq., Victim Related Adjustments

United States v. Arthur, No. 24-4306, 160 F.4th 597 (4th Cir. Dec. 3, 2025) (Agee, J.; Gregory, J., dissenting) (E.D.N.C.) (affirming application of enhancement for offense "that involved, or was intended to promote, a federal crime of terrorism," U.S.S.G. § 3A1.4(a), after conviction for teaching bomb-making where evidence showed that defendant (who ran home defense and survivalist business) taught undercover agent how to make and use explosives that agent said were intended to kill federal law enforcement officers he feared would be coming to his home; concluding that district court's factual findings were sufficient for both "involved" and "intended to promote" prongs, and that any error would be harmless given that district court said it would have imposed same sentence even without this enhancement; dissenting, Judge Gregory expressed "concerns about the wide range of speech encompassed by the statutory language as well as the novelty of criminalizing speech when the speaker lacked specific intent to commit a crime")

U.S.S.G. § 4B1.2, Definitions of Terms Used in Section 4B1.1

United States v. Cox, No. 24-4582, 164 F.4th 292 (4th Cir. Jan. 21, 2026) (Wilkinson, J.) (E.D.N.C.) (holding that Florida drug distribution statute did not qualify as "controlled substance offense" under U.S.S.G. § 4B1.2(b)(1) because it also punishes purchasing drugs and mere possession of user quantities, but finding guideline error harmless in light of district court's clear statement it would impose same sentence regardless of guideline and substantive reasonableness of sentence, which was only slightly higher than correct range and defendant's requested sentence)

Sentencing Procedure

United States v. Henderson, No. 23-4313, 159 F.4th 213 (4th Cir. Nov. 11, 2025) (Diaz, J.) (S.D.W. Va.) (affirming district court's decision to allow government to make late arguments

for two sentencing enhancements, noting that although Fed. R. Crim. P. 32(f)(1) requires parties to submit objections to presentence report within fourteen days of receipt, it also allows for belated objections at any time before sentencing "for good cause," and finding good cause shown here because district court ordered supplemental briefing on whether safety valve applied, and court had independent obligation to determine correct range)

Restitution and Forfeiture

18 U.S.C. § 2259, Mandatory Restitution

United States v. Glass, No. 24-4193, 160 F.4th 563 (4th Cir. Dec. 2, 2025) (Wilkinson, J.) (W.D.N.C.) (holding that district court adequately considered relevant factors when imposing restitution in CSAM case, even though it only referred to § 2259 once, observing that the court provided extensive application of § 3553(a) factors when imposing prison sentence, and that reasoning "applies just as well to [the] assessment," and court did not need to repeat the same points in the specific context of restitution)

Supervised Release (Including Revocation Issues)

United States v. Aborisade, No. 24-4466, 163 F.4th 856 (4th Cir. Jan. 8, 2026) (Benjamin, J.; Heytens, J., dissenting) (D. Md.) (finding no inconsistency between release conditions (1) requiring defendant to report to probation office in district where he is released and (2) requiring him to report to probation office in district where he is authorized to live, reasoning that defendants are released into districts where they are authorized to live)

! *United States v. McLaurin*, No. 24-4261, 168 F.4th 693 (4th Cir. Mar. 6, 2026) (Gregory, J.; Niemeyer, J., dissenting) (D. Md.) (vacating revocation sentence based on condition that was not pronounced at original sentencing, holding that initial appeal waiver did not bar this appeal—nor was the condition the law of the case—because unpronounced condition was a "nullity" and never became law of the case; further holding that revocation hearing was first opportunity to challenge validity of condition, since defendant could not bring free-standing *Rogers* claim absent a "procedurally appropriate mechanism"; dissenting, Judge Niemeyer called this holding "*Rogers* on steroids")

Reasonableness of Sentence

! *United States v. Celedon*, No. 23-4701, 165 F.4th 873 (4th Cir. Jan. 30, 2026) (Gregory, J.; Diaz, J., dissenting) (holding that district court failed to adequately address on the record defendant's mitigating arguments in supervised release revocation case, and that the failure was plainly unreasonable, further holding that error was not harmless)

! *United States v. Tostado*, No. 23-4423, ___ F.4th ___, 2026 WL 881728 (4th Cir. Mar. 31, 2026) (Heytens, J.; Rushing, J., dissenting) (vacating sentence due to *Rogers* error where supervised release condition announced at sentencing permitted probation officer to conduct warrantless search without reasonable suspicion "for safety reasons," but written judgment permitted suspicionless searches at any time, so long as it was part of officer's supervision functions; rejecting government's arguments (1) that this difference was not material, because the written condition was a greater limitation on the defendant's liberty; (2) that defendant forfeited

this argument by not objecting at sentencing, since error did not arise until judgment was entered after sentencing; (3) that condition matched PSR, since district court did not adopt or incorporate that provision; (4) that error was harmless due to provision in plea agreement that defendant would be subject to all conditions in a standing order even if not pronounced at sentencing, reasoning that this was not a binding plea and court's failure to announce condition meant that it was never in fact validly included in the judgment (even assuming a *Rogers* error could ever be harmless); and finally holding that defendants have Article III standing to raise claim on appeal, notwithstanding principle that condition was not technically part of sentence, since defendant has incentive to comply with condition unless and until appeals court decided invalidity of condition)

XII. APPELLATE ISSUES

No published decisions in this category were issued during this period.

XIII. SELECTED POST-CONVICTION ISSUES

28 U.S.C. § 2241 Petitions

Bonnie v. Dunbar, No. 24-6665, 157 F.4th 610 (4th Cir. Nov. 5, 2025) (Niemeyer, J.; Wynn, J., dissenting) (D.S.C.) (rejecting 28 U.S.C. § 2241 habeas corpus claim for prisoner serving 144-month sentence—120 months of which is attributable to a drug offense that is eligible for First Step Act credits and 24 months of which is attributable to § 924(c) offense that it not eligible for First Step Act credits—because total 144-month sentence is treated as one aggregate sentence that includes imprisonment for an ineligible offense, noting also that First Step Act text excludes "a prisoner" with certain convictions, not "a sentence")

28 U.S.C. § 2255 Motions

United States v. Dimkpa, No. 23-6245, 169 F.4th 228 (4th Cir. Mar. 3, 2026) (Harris, J.) (M.D.N.C.) (affirming denial of 28 U.S.C. § 2255 motion from physician convicted in 2019 of unauthorized distribution of oxycodone, who tried to take advantage of Supreme Court's 2022 decision in *Ruan* (which required proof that defendant knew his prescribing practices were outside of norms of professional practice), reasoning that claim was procedurally defaulted and movant could not show cause for default since *Ruan*-type claim was "available" at the time of his conviction)

United States v. Carillo Murillo, No. 23-6510, 169 F.4th 273 (4th Cir. Mar. 5, 2026) (King, J.; Thacker, J., dissenting) (affirming denial of 28 U.S.C. § 2255 based on ineffective assistance of counsel where counsel informed defendant that his plea to cocaine conspiracy rendered him "deportable," even though deportation was mandatory (or at least presumptively mandatory) consequence of conviction, because removal was not "wholly inevitable" (although chances to avoid it were extremely remote); noting that constitutional minimum requirement is to inform defendant that conviction *may* carry *risk* of deportation)