Fourth Circuit Update

Significant criminal decisions

November 2025 – November 2026

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ROADMAP

Today’s topics

I Second Amendment

II Fourth Amendment

III Crimes of violence

IV Trial issues

V Sentencing

VI Supervised release

Second Amendment

No defense wins in the Fourth Circuit this year



United States v. Gould

GOV'T WIN

163 F.4th 795 (4th Cir. Jan. 2, 2026) (on rehearing) (Diaz, C.J.)

- Facial challenge
- § 922(g)(4) is permanent disarmament – kind of
- *Heller dicta* doesn't resolve because applies to committed, not just currently mentally ill
- Relevant history of "preventing violence by those found to pose an increased risk of danger"
- Because there are *some* valid applications, facial challenge fails



Takeaway The court expressly left as-applied challenges to § 922(g)(4) open — build the factual record.

Kipke v. Moore

MIXED

165 F.4th 194 (4th Cir. Jan. 20, 2026) (Gregory, J.; Agee, J., concurring in part and dissenting in part)

- MD relies on sensitive place exception to 2nd Am under *Heller*
- Upheld most of Maryland's 2023 sensitive-places law, including government buildings, school grounds, transit, demonstrations, parks, health-care facilities, amusement venues, and places serving alcohol.
- Struck down MD's default prohibition on carrying firearms on private property open to the public without the owner's express permission.



Takeaway *Kipke*'s approach to historical analogues will shape criminal Second Amendment challenges – unless the S.Ct. grants cert.

United States v. Jacobs

MIXED

166 F.4th 395 (4th Cir. Jan. 21, 2026) (Agee, J.)

- Wins § 922(g)(1) and (g)(9) as-applied challenges in DC
- Subsequent law completely upends result
- Loses (g)(1)
- Remands for reconsideration of (g)(9)



Takeaway The court has not decided whether as-applied challenges to § 922(g)(9) are viable — raise them and develop the record.

United States v. Speed

GOV'T WIN

175 F.4th 272 (4th Cir. May 5, 2026) (Quattlebaum, J.)

- Prosecution for possession of unregistered silencers
- Court avoids deciding whether silencers are protected by the 2nd Am.
- Speed's challenge fails because the National Firearms Act's registration requirement for silencers is a presumptively constitutional "shall-issue" scheme under Maryland Shall Issue, Inc. v. Moore, 116 F.4th 211 (4th Cir. 2024) (en banc).



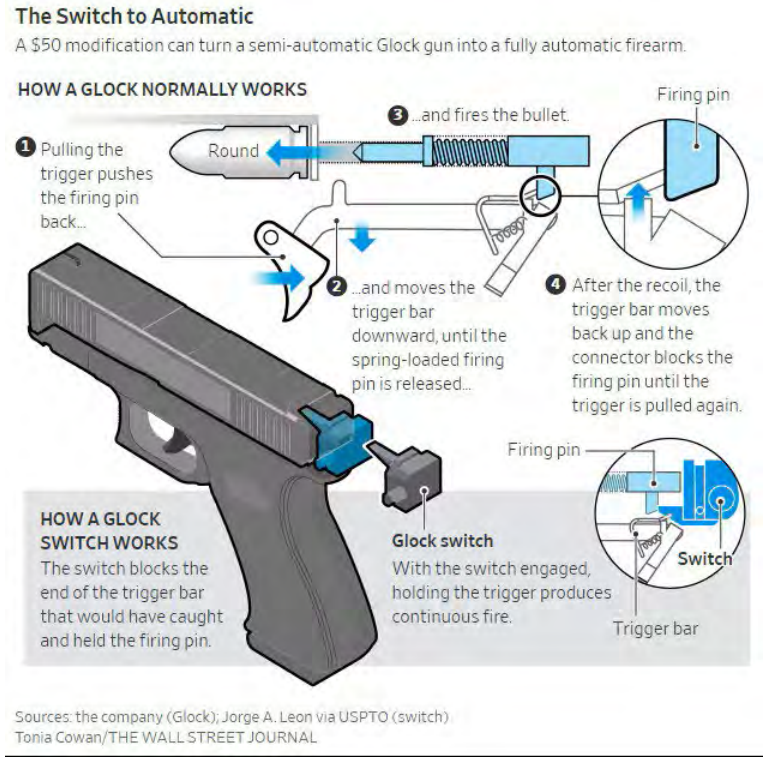
Takeaway To attack a shall-issue regime under 2nd Am, show abusive delay, cost, or discretion — Speed lost for making no such showing.

United States v. Smith

GOV'T WIN

188 F.4th 770 (4th Cir. Aug. 25, 2026) (Benjamin, J.)

- Possession of machine gun based on "Glock switch"
- § 922(o) doesn't violate Second Amendment
- Machineguns don't get Second Amendment protection
- Challenges fail at *Bruen* step one



Takeaway Smith also produced a defense win on the serial-number enhancement — see Sentencing.

II

Fourth Amendment Developments in the Fourth Circuit











Marijuana and *Sakyi*'s per se rule

Good news

Bad news

Let's talk about Sakyi

United States v. Sakyi, 160 F.3d 164 (4th Cir. 1998)

- Allows officers to order everyone out of a vehicle and pat them down based on reasonable suspicion that marijuana is present
- *Sakyi* says it creates a presumption, but in practice it's a **per se rule**
- *Sakyi* is based on the idea that marijuana = guns = danger
- Hemp is legal; recreational marijuana is legal in Maryland and Virginia, medical marijuana in West Virginia



Hemani may help

DEFENSE WIN

United States v. Hemani, 608 U.S. ___ (June 18, 2026) (Gorsuch, J.) (9–0)

- The Supreme Court rejected the idea that regularly using marijuana made Hemani too dangerous to possess a gun
- *Hemani* explains there's a disconnect between federal marijuana policy and the idea that marijuana users are "categorically and unusually dangerous"
- This is obviously in tension with *Sakyi*



United States v. Carson

GOV'T WIN

180 F.4th 650 (4th Cir. July 8, 2026) (Benjamin, J.; Berner, J., concurring in the judgment) (W.D.N.C.)

- Affirmed denial of suppression: under *Sakyi*, officers' reasonable suspicion that marijuana was in the car justified frisking the backseat passenger.
- In concurrence, Judge Berner agreed *Sakyi* binds the panel but, invoking *Hemani*, wrote that legalization undercuts its drugs-mean-guns premise.



Takeaway Preserve the *Sakyi* challenge for en banc or Supreme Court review.

Now, the good news!

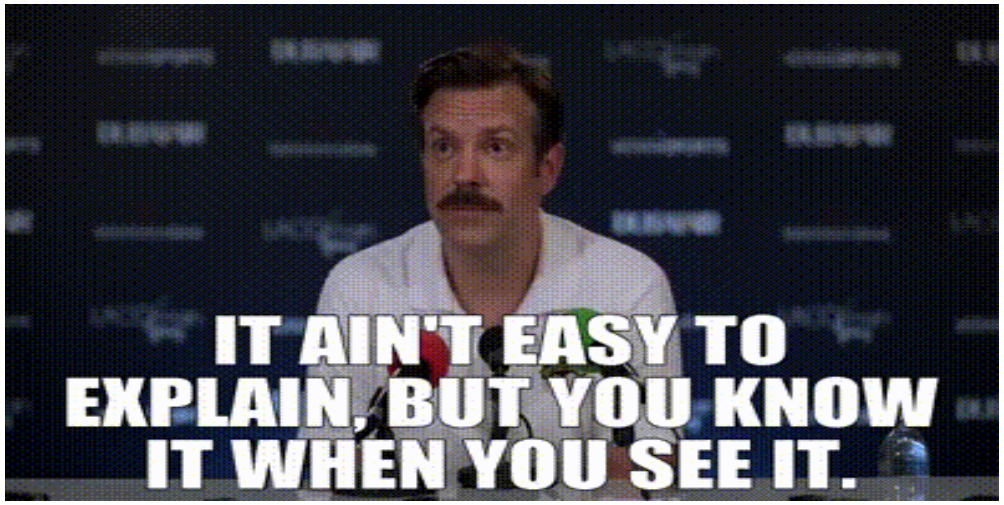


United States v. Hawkins

DEFENSE WIN

161 F.4th 242 (4th Cir. Dec. 11, 2025) (Benjamin, J.)

- Pretext traffic stop, really for drugs
- Held: officers unlawfully extended the stop without reasonable suspicion
- Prior drug convictions and federal supervised release get “little weight” in the totality of the circumstances
- Officers’ “I know it when I see it” / “training and experience” testimony doesn’t cut it when they didn’t see anything passed hand-to-hand



Takeaway Push back on criminal-history and “training and experience” justifications.

United States v. Williams

DEFENSE WIN

180 F.4th 613 (4th Cir. July 7, 2026) (Benjamin, J.; Rushing, J., dissenting) (W.D.N.C.)

- Questions: when was the defendant seized, and did police have reasonable suspicion at that point?
  - Defense needed the seizure to occur when the police car stopped in front of Williams's car, because the officer testified he smelled weed as soon as he got out of his car
- Held: defendant was seized even if not fully blocked; a reasonable person wouldn't have felt free to leave
- An anonymous 911 call didn't create reasonable suspicion
- Relies on other defense wins to find no reasonable suspicion



Takeaway Pin down the moment of seizure as early as possible. Partial blocking by police cars can be enough. Use the videos if they help.

United States v. Martin

DEFENSE WIN

173 F.4th 110 (4th Cir. Apr. 17, 2026) (Benjamin, J.; King, J., dissenting)

- Officer impermissibly prolonged the traffic stop without reasonable suspicion by asking driver and passenger about guns
- A detour of any length establishes a *Rodriguez* violation
  - Officers **can** ask these questions if they do so without prolonging the stop
- Whether an officer can prolong a stop to ask about weapons depends on the totality of the circumstances
  - Rejects a **per se rule** that officers can ask about weapons for safety reasons



Takeaway Gun questions that extend a stop need their own justification under *Rodriguez*.

United States v. Griffin

DEFENSE WIN

188 F.4th 297 (4th Cir. Aug. 14, 2026) (Benjamin, J.; Heytens, J., dissenting)

- Defense successfully challenged a search warrant based on timing and nexus of affidavit allegations.
- Even under deferential review ("substantial basis"), affidavit failed because "facts alleged were either not connected with the place to be searched, too old, or both." (Timing and nexus)
- Describing neighborhood as "open-air drug market" isn't enough
- Old criminal histories and stale investigations not enough



Takeaway It's possible to win a challenge to a search warrant based on lack of probable cause in affidavit and lack of good faith by officers.

United States v. Perez

DEFENSE WIN

167 F.4th 709 (4th Cir. Feb. 23, 2026) (Benjamin, J.)

- Forfeiture case – police seized $25k cash in one of Perez's homes
- On supervised release with broad search condition
- Home was leased to his girlfriend, who was not subject to condition
- Search violated Fourth Amendment



Takeaway Supervision search conditions do not reach other people's homes.

United States v. Lowers

MIXED

170 F.4th 134 (4th Cir. Mar. 10, 2026) (Thacker, J.)



- Defendant had a reasonable expectation of privacy in files stored in Google Drive:
  - Google Drive is like a filing cabinet
  - Digital files are like sealed manila envelopes — a container
- Container searches require a warrant, and so did this one
- **Hash-matching** digital files doesn't support the **private search doctrine** — a visual inspection is required
- Lowers loses because of the attenuation exception to the exclusionary rule

Takeaway Government can't search files stored in the cloud without a warrant, and the private search doctrine applies only if cloud service employees actually opened the files to examine them.

Andrews v. Baltimore City Police Dep't

MIXED

2026 WL 2872021, No. 18-1953 (4th Cir. Sept. 24, 2026) (Berner, J.)

- Cell cite simulator = device that mimics cell tower, used to locate phones
- Fourth Amendment search, requires warrant
- In this case, simulator intruded into the home



Takeaway Look for clues that a cell-site simulator was used during the investigation.

Now for the bad news…



United States v. Belmonte Cardozo

GOV'T WIN

181 F.4th 461 (4th Cir. July 13, 2026) (Quattlebaum, J.)

- Cell-phone border searches
- Existing rule: **Forensic** searches are **nonroutine** and **require** individualized suspicion
- This case: **Manual** searches are **routine** and **don't require** individualized suspicion
- Proviso: if a manual search takes too long, the Fourth Amendment may come into play



Takeaway Be aware of what data and apps are stored on your phone during international travel.

United States v. Johnson

GOV'T WIN

148 F.4th 287 (4th Cir. 2025) (Harris, J.)

- K-9 sniff next to the defendant's door in an apartment hallway wasn't a search
- No reasonable expectation of privacy because the dog could detect only contraband
- Johnson had **no curtilage** outside his apartment door because that area was part of a common hallway
- Deciding what is curtilage requires a fact-based analysis; some apartments may have curtilage



Takeaway Curtilage is fact-bound — develop the record on the area's layout, access, and use.

United States v. Lodge

GOV'T WIN

174 F.4th 434 (4th Cir. Apr. 30, 2026) (Young, D.J., sitting by designation; Gregory, J., dissenting)

- Court reviews abandonment "finding" for clear error, making abandonment a poor issue for appeal.
- Discarding property in location where defendant has a privacy interest is a relevant consideration to abandonment.
- *Lodge* isn't helpful on abandonment front, but it *is* helpful on whether a person has a privacy interest in the curtilage of someone else's home.
- Court says Lodge could have a privacy interest in property where he doesn't live, because his children's grandmother lives there and he sometimes spends the night.



Takeaway When assessing warrantless searches of bags or cars, ask whether search took place on private property where your client may have a privacy interest.

Hayat v. Diaz

GOV'T WIN

188 F.4th 687 (4th Cir. Aug. 20, 2026) (Niemeyer, J.; Benjamin, J., dissenting)

- Cops get tip about man yelling at children while forcing them into trunk of car
- Car was Hayat's, a Tesla with rear-facing jump seats
- Court concludes there was reasonable suspicion to investigate
- That suspicion allowed officers to follow Hayat inside



Takeaway Expect the government to cite *Hayat* to justify warrantless home entries.

United States v. Allen

GOV'T WIN

173 F.4th 543 (4th Cir. Apr. 28, 2026) (Niemeyer, J.)

- A lawful inventory policy must limit officer discretion with specificity "as to who is to be the subject of an inventory search, when the person must be searched, and what is to be searched."
- Inevitable discovery applied because government presented evidence of RPD and Sheriff's Dept. policies that required inventory of every arrestee's personal belongings before entry to the jail.



Takeaway When the government asserts inevitable discovery, compare the police department's asserted inventory policy to Allen's specificity requirements.

III

Crimes of Violence

§ 924(c)

Guidelines

ACCA



United States v. Straite

GOV'T WIN

177 F.4th 261 (4th Cir. May 18, 2026) (Gregory, J.)

- 2009: Straite & friends rob a bank, come back a few months later to try it again
- Convicted of § 924(c) because attempted bank robbery was "crime of violence"
- Court holds that it still is: "by force and violence, or by intimidation" modifies both "takes" and "attempts to take"



"Of course it's fake money, you're holding us up with a fake gun."

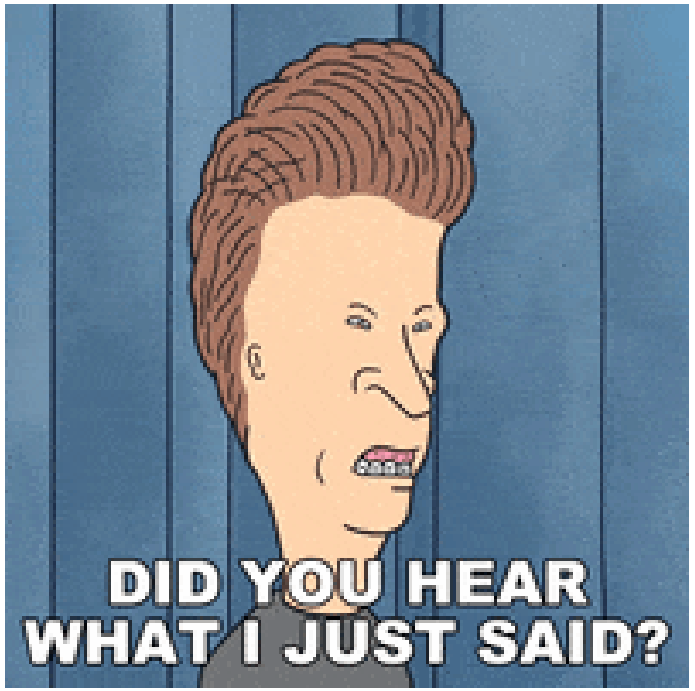
Takeaway Attempted § 2113(d) offenses will support § 924(c) counts

United States v. Scott

DEFENSE WIN

176 F.4th 806 (4th Cir. May 22, 2026) (Heytens, J.; Niemeyer, J., dissenting)

- Virginia robbery and . . . sodomy?
- Court has already held VA robbery is not an ACCA predicate or elements clause "crime of violence"
- Same result applies in Guideline "crime of violence" analysis for enumerated offense
- No use or threatened use of force required



Takeaway Challenge Virginia firearm-use predicates under § 2K2.1 and § 4B1.2.

United States v. Goode

GOV'T WIN

177 F.4th 563 (4th Cir. June 5, 2026) (Wynn, J.) (E.D.N.C.)

- The government forfeited its appeal waiver by moving for summary affirmance and defending on the merits before raising Goode's appeal waiver in a later filing.
  - It can't change tactics later, even if new case law gave it a better argument for applying waiver to the claim.
- North Carolina second-degree murder is categorically a violent felony under the ACCA.



Takeaway Watch for the government forfeiting appeal waivers.

IV

Trial Issues

Public trial right



United States v. Ellis

GOV'T WIN

182 F.4th 403 (4th Cir. July 20, 2026) (Niemeyer, J.; Richardson, J., dissenting)

- Drug/murder trial
- Spectators allegedly trying to intimidate star witness
- Closure of courtroom for rest of his testimony, with exceptions
- Court holds partial closure can’t be structural error or require same amount of justification



Takeaway Pay attention to the scope of any partial closure, object if overbroad.

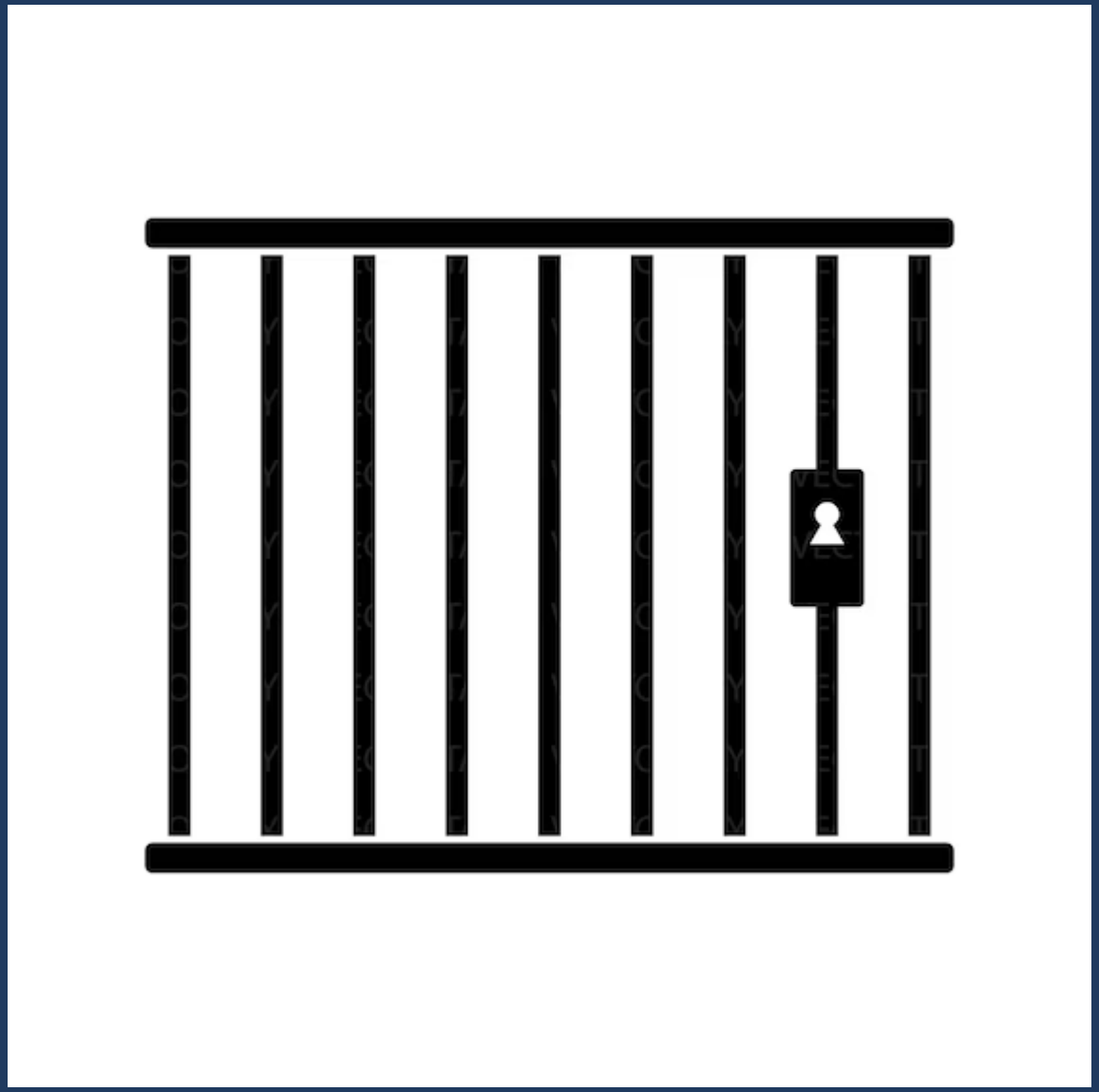
V

Sentencing

Guidelines commentary

Other Guidelines issues

ACCA and Rogers/Singletary



Commentary challenges: preserve them

Supreme Court review pending: *Beaird v. United States* will decide whether 2024's *Loper Bright* decision applies to Guidelines commentary, or whether rule will continue to be that commentary governs unless it is inconsistent with the Guideline itself.

United States v. Hodges

171 F.4th 291 (4th Cir. 2026) (Agee, J.)

Commentary's definition of "minor" in § 2G1.3 to include fictitious minors, such as undercover officers, deserves deference.

United States v. Holman

171 F.4th 303 (4th Cir. 2026) (Wilkinson, J.)

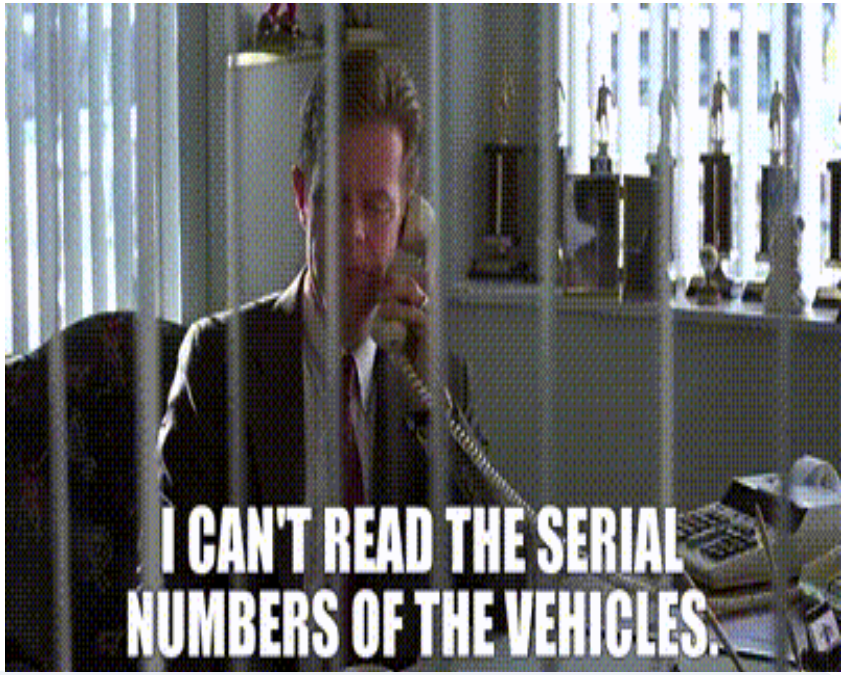
Commentary's definition of "large capacity" magazine in § 2K2.1 as one holding more than 15 rounds deserves deference.

United States v. Smith

DEFENSE WIN

188 F.4th 770 (4th Cir. Aug. 25, 2026) (Benjamin, J.; Agee, J., concurring in part and dissenting in part)

- § 2k2.1(b)(4)(B)(i): +4 enhancement "[i]f ... any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye."
- 3 serial numbers on gun, 1 still visible
- Enhancement does not apply



Takeaway No enhancement if gun can still be traced.

United States v. Franklin

DEFENSE WIN

187 F.4th 168 (4th Cir. Aug. 14, 2026) (Benjamin, J.; Agee, J., dissenting)

- Firearm found in backpack with one stolen check
- Enhancement for possession of firearm – no objection
- Court holds insufficient factual findings to support enhancement – no facilitation or potential to facilitate offense
- Proximity alone isn't enough



Takeaway Lack of findings can be not just error, but plain error.

United States v. Melvin

DEFENSE WIN

183 F.4th 322 (4th Cir. July 27, 2026) (Gregory, J.) (E.D.N.C.)

- Govt could not present a new ACCA predicate for the first time at sentencing without presenting good cause for failure to object within 14 days of PSR under Fed. R. Crim. P. 32.
- "Because the Government did not present good cause for failing to object to the presentence report," DCT erred in allowing introduction of new predicate.
- Reasoning can apply to other enhancements besides ACCA (ACCA scenario won't recur because *Erlinger* requires indictment)
- This case includes another late assertion of appeal waiver by govt.



Takeaway Object if the government asserts a predicate offense or any other enhancement for the first time at sentencing.

VI

Supervised Release

Unpronounced conditions

Violation grades

Statutory caps



United States v. Tostado

DEFENSE WIN

No. 23-4423, 2026 WL 881728 (4th Cir. Mar. 31, 2026) (Heytens, J.; Rushing, J., dissenting)

- *Rogers* error: when SR condition isn't announced at sentencing and appears only in judgment
- Plea agreement said Tostado agreed to search condition whether imposed at sentencing or in J&C
- Court imposed condition orally, but condition in judgment was slightly different
- *Rogers* error, requires full resentencing



Takeaway Compare the written judgment with what the judge said at sentencing.

United States v. McLaurin

168 F.4th 693 (4th Cir. Mar. 6, 2026) (Gregory, J.)

DEFENSE WIN

- Under US v. Rogers, 961 F.3d 291 (4th Cir. 2020), a non-mandatory supervised-release condition included in the written judgment but never orally announced at sentencing is a "nullity" and cannot be the basis for a later violation.
- *Rogers* error is outside the scope of appeal waiver because it asserts claim that dct exceeded its authority.
- *Rogers* claims can be raised in revocation proceedings, at least where judgment was entered before *Rogers*.



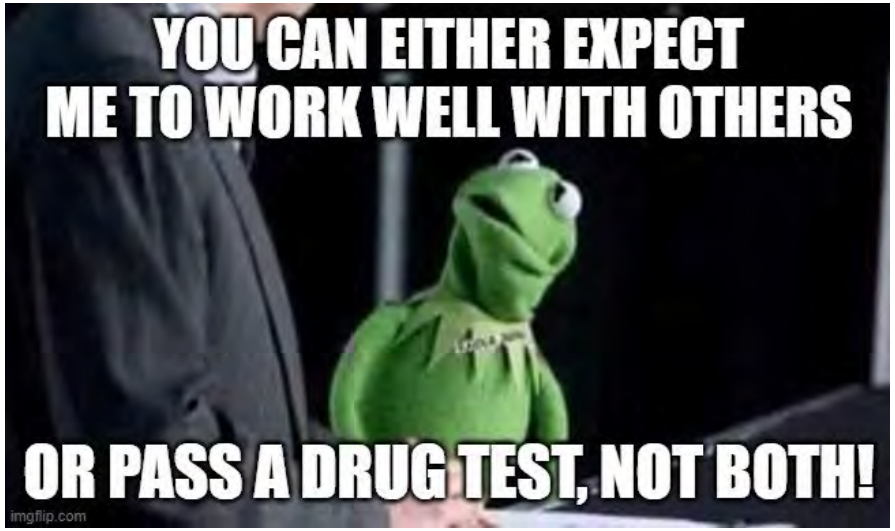
Takeaway In any revocation, you should compare the judgment with the sentencing transcript before any revocation hearing to make sure the condition in question was announced at sentencing.

United States v. Jones

DEFENSE WIN

173 F.4th 87 (4th Cir. Apr. 14, 2026) (Niemeyer, J.)

- Revocation petition alleged state felony counterfeiting offense (Grade B) and repeated positive drug screens (Grade C)
- Only revoked on drug tests, but sentenced for Grade B offense
- Plain error, because positive drug screen is only Grade C
- Drug use, a felony, might be "inferred" from tests, but the district court didn't do so



Takeaway Check the grade on every revocation.

United States v. Watson

DEFENSE WIN

177 F.4th 601 (4th Cir. June 8, 2026) (Wilkinson, J.)

- On revocation, the district court sentenced Watson to 41 months' imprisonment followed by 21 months' home detention.
- DCt could not impose a combination of incarceration and home detention that exceeded the maximum term permitted by 18 U.S.C. § 3583(e)(3).
- Maximum revo sentence was 48 months, and home detention and incarceration count 1:1.



Takeaway Home detention and incarceration count equally toward the maximum revocation sentence.

United States v. Mills

MIXED

173 F.4th 182 (4th Cir. Apr. 20, 2026) (Agee, J.) (E.D. Va.)

- Revocation for committing state crime of which he was acquitted
- Revocation affirmed – credibility won't be reviewed
- Sentence vacated – court didn't address mitigating argument about otherwise spotless supervision record

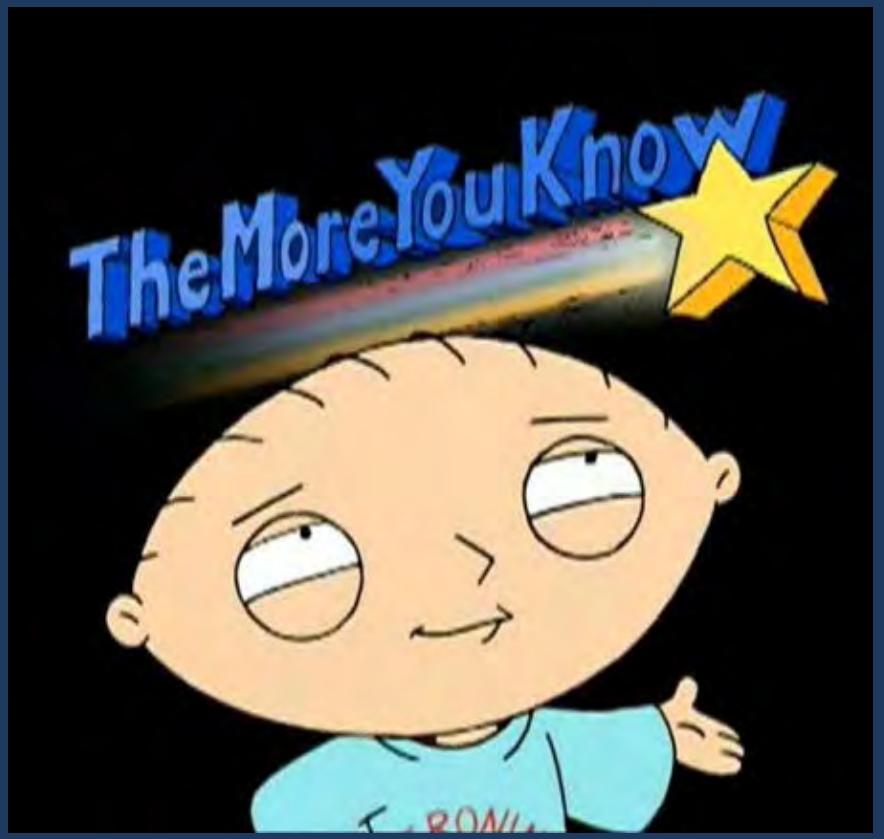


Takeaway District court's duty to explain sentence and address non-frivolous issues is the same for revocation sentence.

Resources

- Fourth Circuit Blog: https://circuit4.blogspot.com/

- *In Plain Cite*: Your favorite podcast platform





Questions?