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*** Supreme Court case law from October 1, 2015 through June 27, 2016 (October Term 2015 and cases pending for October Term 2016); and Fifth Circuit case law from August 12, 2015 through February 10, 2016, with some later decisions.**

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II. SEARCH AND SEIZURE

Mullenix v. Luna, ____ U.S. ____, 136 S. Ct. 305 (2015) (per curiam) (decision below: Luna v. Mullenix, 773 F.3d 712 (5th Cir. 2014)) The Fifth Circuit erred in denying police officers qualified immunity in a § 1983 action alleging the improper use of excessive force in violation of the Fourth Amendment, because no Supreme Court case clearly established that the way the officers ended the car chase in this case (shooting into the hood of the fleeing vehicle from an overpass, which resulted in the driver's being shot and killed) was unreasonable under the circumstances presented here. (Justice Scalia field an opinion concurring in the judgment. Justice Sotomayor filed a dissenting opinion.)

Utah v. Strieff, ____ U.S. ____, 136 S. Ct. 2056 (decision below: State v. Strieff, 357 P.3d 532 (Utah 2015)) Where initial investigatory stop of defendant led to discovery of an outstanding warrant for defendant, leading to the defendant's arrest and the discovery of drugs and drug paraphernalia for which he was later prosecuted, defendant was not entitled to suppression of the evidence; even if the initial investigatory stop was unlawful, the police officer's discovery of a valid, pre-existing, and untainted arrest warrant attenuated the connection between the unconstitutional investigatory stop and the evidence seized incident to a lawful arrest; accordingly, the Court reversed the Utah Supreme Court's suppression of the evidence. (Justice Sotomayor filed a dissenting opinion, which was joined in part by Justice Ginsburg. Justice Kagan filed a dissenting opinion, which was joined by Justice Ginsburg.)

Birchfield v. North Dakota, ____ U.S. ____, 136 S. Ct. 2160 (2016) The Fourth Amendment permits warrantless breath tests pursuant to arrests for drunk driving, but not warrantless blood tests; although both taking a blood sample and administering a breath test are searches governed by the Fourth Amendment, breath tests do not implicate significant privacy concerns; however, the same cannot be said about blood tests, which are significantly more intrusive; their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test; furthermore, motorists may not be criminally punished for refusing to submit to a blood test based on legally implied consent to submit to them; the Court drew the line between civil penalties and evidentiary consequences on the one hand (permissible), and criminal penalties on the other (impermissible). (Justice Sotomayor filed an opinion concurring in part and dissenting in part, in which she was joined by Justice Ginsburg. Justice Thomas filed an opinion concurring in the judgment in part and dissenting in part.)

United States v. Castillo, 804 F.3d 361 (5th Cir. 2015) The district court did not err in denying defendant's motion to suppress evidence based upon an allegedly illegal traffic stop, because the stopping officer had reasonable suspicion to believe that defendant had committed the traffic infraction that was invoked to justify the stop of defendant's vehicle (namely, driving in the left lane without passing). (Judge Elrod filed a dissenting opinion.)

United States v. Dominguez, 804 F.3d 702 (5th Cir. 2015) (on denial of reh'g en banc to 611 Fed. Appx. 247 (5th Cir. 2015) (unpublished)) Where panel had concluded that a vehicle stop was not supported by reasonable suspicion, a poll for rehearing en banc failed by a 7-8 vote. (Judge Smith authored an opinion dissenting from denial of rehearing en banc, in which he was joined by Judges Jones, Clement, and Owen.)

United States v. Moore, 805 F.3d 590 (5th Cir. 2015) District court reversibly erred in granting defendant's motion to suppress the fruits of a search warrant for defendant's residence; as an initial matter, the district court erred in declining to apply the good-faith exception to the exclusionary rule; contrary to the district court's conclusion, the affidavit supporting the warrant was not so "bare bones" that it rendered official belief in the existence of probable cause entirely unreasonable; however, going beyond the good-faith holding, the Fifth Circuit also disagreed with the district court's holding that probable cause was lacking; the magistrate judge had a substantial basis for determining probable cause existed, and the search warrant was valid.

United States v. Garcia-Lopez, 809 F.3d 834 (5th Cir. 2016) Where defendant challenged a warrantless search in his bedroom (done in the course of looking for defendant's brother, for whom the police had a felony arrest warrant) that uncovered firearms for whose possession defendant was prosecuted, the district court did not err in denying defendant's motion to suppress; searching between defendant's mattress and the box springs was permissible under the protective-sweep doctrine because the officers had a reasonable suspicion that the person for whom they were looking could be hiding in hollowed-out box springs.

United States v. Weast, 811 F.3d 743 (5th Cir. 2016) In possession-of-child-pornography case, the police did not violate defendant's rights by using peer-to-peer software, without a warrant, to identify defendant's IP address as possibly linked to child pornography and to download data that defendant had made available for sharing; defendant's activities eliminated any reasonable expectation of privacy in this information.

United States v. Villegas Rojas, 812 F.3d 382 (5th Cir. 2016) Under United States v. Verdugo-Urquidez, 494 U.S. 259 (1990), the Fourth Amendment does not apply to searches and seizures of nonresident aliens who have "no previous significant voluntary connection with the United States"; therefore, Colombian drug defendants had no cognizable Fourth Amendment claim with respect to wiretapped and recorded conversations in Colombia, even if the wiretaps were part of a "joint venture" between the Colombian National Police and the DEA.

United States v. Beene, 818 F.3d 157 (5th Cir. 2016) Search of defendant's car could not be upheld as a search incident to arrest because, under Arizona v. Gant, 556 U.S. 332 (2009), such a search is permissible only where it is reasonable to believe that the car would contain evidence relevant to the crime of arrest; that was not the case here, however, where the defendant was arrested for resisting arrest; the car would not contain evidence of that crime; furthermore, the use of a drug-sniffing dog to sniff defendant's car, parked in the driveway of his home, was not a Fourth Amendment search; under the circumstances of this case, the driveway was outside the curtilage and was instead akin to an open field; finally, a warrantless search of a vehicle parked in

a residential driveway is, under Fifth Circuit law, permissible where (1) there is probable cause that the vehicle contains contraband ***and*** (2) there are exigent circumstances justifying the search; here, however, the district court did not make factual findings about whether exigent circumstances were present; accordingly, the Fifth Circuit vacated the judgment of the district court and remanded for further proceedings. (Judge Graves filed a dissenting opinion. Although he agreed on the exigent-circumstances point, he disagreed that the dog sniff was not a Fourth Amendment search.)

III. INTERROGATIONS AND CONFESSIONS

IV. OTHER PRETRIAL MATTERS

A. Double Jeopardy/Multiplicity

Puerto Rico v. Sanchez Valle, ____ U.S. ____, 136 S. Ct. 1863 (2016) (decision below: El Pueblo de Puerto Rico v. Sánchez Valle, *et al.*, 192 D.P.R. 594, 2015 WL 1317010 (P.R. 2015)) The Double Jeopardy Clause bars Puerto Rico and the United States from successively prosecuting a single person for the same conduct under equivalent criminal laws; for double-jeopardy purposes, Puerto Rico and the United States are the same sovereign because, like the federal government, the ultimate source of Puerto Rico's prosecutorial power is the United States Congress. (Justice Ginsburg, joined by Justice Thomas, filed a concurring opinion, in which she suggested that the Court should, in a future case, reconsider its "separate sovereigns" doctrine as applied to successive prosecutions by parts of the whole USA. Justice Thomas filed an opinion concurring in part and concurring in the judgment. Justice Breyer filed a dissenting opinion, in which he was joined by Justice Sotomayor.)

Bravo-Fernandez v. United States, cert. granted, ____ U.S. ____, 136 S. Ct. 1491 (Mar. 28, 2016) (granting cert. to United States v. Bravo-Fernandez, 790 F.3d 41 (1st Cir. 2015)) (1) Under Ashe v. Swenson, 397 U.S. 436 (1970), and Yeager v. United States, 557 U.S. 110 (2009), can a vacated, unconstitutional conviction cancel out the preclusive effect of an acquittal under the collateral-estoppel prong of the Double Jeopardy Clause? (2 Under Evans v. Michigan, ____ U.S. ____, 133 S. Ct. 1069 (2013), does the Double Jeopardy Clause permit a district court to retract its "judgment of acquittal" entered on remand as an interpretation of the Court of Appeals' mandate?

B. Speedy Trial/Continuance/Pre-Indictment Delay/Statute of Limitations/IAD

Musacchio v. United States, ____ U.S. ____, 136 S. Ct. 709 (2016) (decision below: United States v. Musacchio, 590 Fed. Appx. 359 (5th Cir. 2014) (unpublished)) A defendant cannot successfully raise 18 U.S.C. § 3282(a)'s statute-of-limitations bar for the first time on appeal; because § 3282(a) does not impose a jurisdictional limit, the failure to raise a statute-of-limitations defense at or before trial is reviewable on appeal, if at all, only for plain error; however, a district court's failure to enforce an unraised limitations defense under § 3282(a) cannot be a

plain error, because if a defendant fails to press the defense, it does not become part of the case, and thus there is no error for an appellate court to correct.

C. Conflict of Interest/Recusal

Williams v. Pennsylvania, ____ U.S. ____, 136 S. Ct. 1899 (2016) (decision below: Commonwealth v. Williams, 105 A.3d 1234 (Penn. 2014)) Where former Chief Justice Ronald Castille of the Pennsylvania Supreme Court had, in his former capacity as the district attorney of Philadelphia, personally approved the death penalty for defendant, it violated due process for Chief Justice Castille to (1) deny defendant's motion for recusal and (2) participate in the Pennsylvania Supreme Court's adjudication of defendant's claim for post-conviction relief; under the Due Process Clause, there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case; in these circumstances, neither the involvement of multiple actors in the case nor the passage of time relieves the former prosecutor of the duty to withdraw in order to ensure the neutrality of the judicial process in determining the consequences his or her earlier, critical decision may have set in motion; Chief Justice Castille's authorization to seek the death penalty against defendant amounted to significant, personal involvement in a critical trial decision, and therefore his failure to recuse presented an unconstitutional risk of violence; moreover, an unconstitutional failure to recuse constitutes structural error that is not amenable to harmless-error review, regardless of whether the judge's vote was dispositive; accordingly, the Supreme Court vacated the Pennsylvania Supreme Court's judgment denying defendant post-conviction relief and remanded for fresh consideration by that court, unburdened by any possibility of bias. (Chief Justice Roberts filed a dissenting opinion, in which he was joined by Justice Alito. Justice Thomas filed a dissenting opinion.)

United States v. Jackson, 805 F.3d 200 (5th Cir. 2015) District court did not abuse its discretion in disqualifying tax defendant's counsel of choice for non-waivable actual and potential conflicts of interests arising out of attorney's representation of possible government witnesses and the fact that attorney's compensation would ultimately depend upon another person implicated in the case.

D. Severance

E. Other

Caetano v. Massachusetts, ____ U.S. ____, 136 S. Ct. 1027 (2016) (per curiam) (decision below: Commonwealth v. Caetano, 26 N.E.3d 688 (Mass. 2015)) In ruling that defendant's conviction under a statute prohibiting possession of a stun gun did not violate the Second Amendment, the Supreme Judicial Court of Massachusetts ran afoul of the United States Supreme Court's decision in District of Columbia v. Heller, 554 U.S. 570 (2008), in three ways; first, the Massachusetts court incorrectly relied on the fact that stun guns were not in common use at the time of the Second Amendment's enactment, whereas Heller makes clear that the Second Amendment extends to arms that were not in existence at the time of the founding; the

Massachusetts court repeated this error when it found that stun guns were "unusual" (and thus not entitled to Second Amendment protection) for this same reason; finally, the Massachusetts court erroneously relied on the fact that stun guns are not readily adaptable to use in the military, whereas Heller rejected the proposition that only those weapons useful in warfare are protected; accordingly, the Supreme Court granted defendant's petition for a writ of certiorari, vacated the judgment of the Supreme Judicial Court of Massachusetts, and remanded the case for further proceedings. (Justice Alito filed an opinion concurring in the judgment, in which he was joined by Justice Thomas.)

Luis v. United States, ____ U.S. ____, 136 S. Ct. 1083 (2016) (decision below: United States v. Luis, 564 Fed. Appx. 493 (11th Cir. 2014) (unpublished)) The Court held that the pretrial restraint of a criminal defendant's legitimate, untainted assets (those not traceable to a criminal offense) needed to retain counsel of choice violates the Sixth Amendment; in a plurality opinion, Justice Breyer (joined by the Chief Justice and Justices Ginsburg and Sotomayor) balanced the interests involved and concluded that, on balance, the pretrial restraint of untainted assets that could be used to pay for counsel of choice violated the Sixth Amendment; Justice Thomas concurred in the judgment; he would eschew the balancing test applied by the plurality and would hold that the same rule follows as a result solely of the Sixth Amendment's text and common-law backdrop. (Justice Kennedy filed a dissenting opinion in which he was joined by Justice Alito. Justice Kagan filed a dissenting opinion in which she found the Court's judgment inconsistent with United States v. Monsanto, 491 U.S. 600 (1989), although she found that decision "troubling.")

United States v. Cordova-Soto, 804 F.3d 714 (5th Cir. 2015) Illegal-reentry defendant was not deprived of due process when she was previously ordered removed; she failed to show that her waiver of rights and stipulation of removability were involuntary; the immigration judge's failure to make an explicit finding of voluntariness, as required by regulation, did not alter the result; moreover, any misadvice from the ICE agent about defendant's eligibility for relief from removal did not constitute a due-process violation because, under United States v. Lopez-Ortiz, 313 F.3d 225, 231 (5th Cir. 2002), discretionary relief from removal does not give rise to a protected due-process interest.

V. DISCOVERY/PRETRIAL INVESTIGATION & PREPARATION

Wearry v. Cain, ____ U.S. ____, 136 S. Ct. 1002 (2016) (per curiam) Under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, the prosecution's failure to disclose material evidence of innocence violated death-sentenced Louisiana defendant's due process rights; first, previously undisclosed police records showed that two inmates had made statements that case doubt on the credibility of the state's star witness; additionally, the state failed to disclose that the state's other principal witness had twice sought a deal to reduce his existing sentence in exchange for testifying against defendant; finally, the prosecution failed to turn over medical records on an alleged co-participant, which records cast doubt on whether the crime could have occurred as the state's star witness claimed it did; viewed cumulatively, this newly revealed evidence undermined

confidence in defendant's conviction; accordingly, the Supreme Court granted defendant's petition for a writ of certiorari, reversed the judgment of the Louisiana post-conviction court denying collateral relief, and remanded for further proceedings. (Justice Alito filed a dissenting opinion, in which he was joined by Justice Thomas.)

VI. TRIAL

A. Jury Selection

Foster v. Chatman, ____ U.S. ____, 136 S. Ct. 1737 (2016) The Supreme Court held that it had jurisdiction to review the Georgia state court's decision denying capital defendant's claim of racial discrimination in jury selection, in violation of Batson v. Kentucky, 476 U.S. 79 (1986), and its progeny; although the Georgia court denied relief on the basis of state res judicata law, that was not an adequate and independent state ground precluding Supreme Court review because the state court's application of res judicata depended upon a federal constitutional ruling; on the merits, the Court held that the state court's decision that defendant failed to show purposeful discrimination was clearly erroneous; defendant established purposeful discrimination in the state's strikes of two black prospective jurors, notwithstanding the state's race-neutral justifications for striking the prospective jurors; accordingly, the Court reversed the judgment below and remanded for further proceedings. (Justice Alito filed an opinion concurring in the judgment. Justice Thomas filed a dissenting opinion.)

B. Admission and Exclusion of Evidence

United States v. Barnes, 803 F.3d 209 (5th Cir. 2015):

(1) The district court did not abuse its discretion in admitting certain Facebook and text messages against defendant; those messages were adequately authenticated under Fed. R. Evid. 901; conclusive proof of authenticity is not required for the admission of disputed evidence; the jury holds the ultimate responsibility for evaluating the reliability of the evidence; in any event, any error in admitting the messages was harmless.

(2) The district court did not abuse its discretion in permitting a person to testify when that person admitted to using methamphetamine on the morning of his testimony; persons are presumed to be competent to be a witness if they have personal knowledge of a matter and agree to speak truthfully; nothing in the record cast doubt upon the district court's threshold finding of competency; because the witness met the minimum threshold for competency to testify, any remaining issues with the credibility of his testimony were properly left to the jury.

United States v. Haines, 803 F.3d 713 (5th Cir. 2015) In drug prosecution, where case agent was permitted to offer both expert testimony and lay opinion testimony respecting drug jargon, although some testimony was permissibly offered as lay opinion testimony, the district court did not adequately differentiate between the agent's lay and expert testimony; the district

court also erred in permitting the agent to give lay opinion testimony about common words and language that were well within the province of the jury to interpret; nevertheless, these errors were harmless.

United States v. Smith, 804 F.3d 724 (5th Cir. 2015) In prosecution of city alderman for accepting or soliciting a brief, in violation of 18 U.S.C. § 666(a)(1)(B), district court did not abuse its discretion in admitting city revenue ledger as a business record under Fed. R. Evid. 803(6); although defendant contended that ledger lacked trustworthiness, thus disqualifying it under Rule 803(6)(E); challenges to the accuracy or completeness of a record go to its weight, not its admissibility; nor did the original-writing rule of Fed. R. Evid. 1002 preclude admission; it is well established that rule 1002 does not apply in situations where the mere existence of an independent factual condition is sought to be proved, even if the condition is contained in or effectuated through a writing; the government used the city's revenue ledge to prove the existence of tangible representations of money and their delivery to the person who made the ledge, not to prove the terms of underlying documents reflecting payments.

United States v. Benitez, 809 F.3d 243 (5th Cir. 2015) The district court did not abuse its discretion in refusing to appoint an expert in voice identification to assist with defendant's case, which involved some tape recordings; first, a defense expert was not necessary to meet the testimony of a particular government witness, because she did not testify about voice identification, but merely translated the recorded conversations from Spanish to English; also, under Fed. R. Evid. 901(b)(5), lay testimony about voice identification is permissible by anyone who heard the voice under circumstances that connect it with the alleged speaker; therefore, expert testimony on this point was not necessary.

United States v. Ramos-Rodriguez, 809 F.3d 817 (5th Cir. 2016) In case involving transportation of drugs in a hidden compartment, the district court did not abuse its discretion in admitting, under Fed. R. Evid. 404(b), evidence of a previous vehicle stop about six weeks before the incident for which defendant was on trial, at which time the truck the defendant was driving was discovered to also have a hidden compartment; the evidence was relevant to show defendant's knowledge that he was carrying drugs and was not unduly prejudicial, and, alternatively, its admission was harmless; also, the case agent's expert testimony did not stray into the forbidden territory of expressing an opinion on the ultimate issue of whether defendant had knowledge of the drugs; finally, there was no error in the prosecutor's arguing that, without knowledge, defendant would not have been entrusted with such a large, valuable cargo of drugs; although direct testimony of this type has been criticized, the Fifth Circuit has held (in United States v. Sanchez-Hernandez, 507 F.3d 826, 833 (5th Cir. 2007)) that it is permissible for prosecutors to argue this inference when a defendant claims no knowledge.

C. Cross-Examination/Confrontation/Compulsory Process

United States v. Barnes, 803 F.3d 209 (5th Cir. 2015) The district court did not violate defendant's Sixth Amendment right to confront witnesses when that court limited cross-

examination regarding certain witnesses' prior arrests; the mere fact that a defendant has been arrested is not generally admissible for impeachment purposes, unless it arises out of the transaction at issue, in which case it may be admissible to show the possible bias of the witness.

United States v. Barker, 820 F.3d 167 (5th Cir. 2016) In child-pornography prosecution, defendant's Confrontation Clause rights were not violated by the admission, through a Texas-certified Sexual Assault Nurse Examiner ("SANE"), of the hearsay statements of a child alleging that the defendant sexually assaulted her; the primary purpose of the conversation between the SANE and the child was to medically evaluate and treat the young girl, not to collect evidence for a prosecution, even though it may have tended to lead to defendant's prosecution.

D. Prosecutorial/Judicial Misconduct

United States v. Smith, 814 F.3d 268 (5th Cir. 2016) After the Fifth Circuit's reversal of the district court's judgment of acquittal in this possession-of-child pornography case, see United States v. Smith, 739 F.3d 843 (5th Cir. 2014), defendant appealed from the judgment of conviction and sentence, alleging prosecutorial misconduct during his trial; the Fifth Circuit first held that it was not precluded from considering these claims; defendant was not required to cross-appeal from the government's appeal of the judgment of acquittal; moreover, the law-of-the-case doctrine did not bar consideration of these claims because the Fifth Circuit had not previously considered them; on the merits, the Fifth Circuit held that the prosecutor had committed reversible plain error by (1) impermissible vouching for government witnesses and (2) arguing that it had no reason to try the defendant unless he were guilty, thereby putting the integrity of the government behind the prosecution; these errors were plain under Fifth Circuit law; the errors also affected defendant's substantial rights, given that the evidence of guilt, though sufficient, was not overwhelming, and given that the case boiled down to a credibility issue; finally, the errors seriously affected the fairness, integrity, and public reputation of defendant's convictions; accordingly, the Fifth Circuit vacated defendant's conviction and remanded for a new trial.

E. Jury Instructions

United States v. Griffin, 800 F.3d 198 (5th Cir. 2015) Where the indictment against defendant (charging him with defrauding two banks) was redacted to delete all references to one of the banks, on the ground that that bank was not involved in the case, there was no constructive amendment of the indictment, because the charge against the defendant was ***narrowed***, not broadened; nor was there a prejudicial variance, because defendant knew before trial that the government was going to proceed on a theory that only one bank was defrauded.

United States v. Eghobor, 812 F.3d 352 (5th Cir. 2015) In health care fraud prosecution, district court did not abuse its discretion either by giving an Allen charge or by deviating from the language of the Fifth Circuit's pattern Allen charge.

United States v. Nagin, 810 F.3d 348 (5th Cir. 2016) Where defendant, the former mayor of New Orleans, was charged with honest-services fraud, bribery, and other related offenses, the

jury instructions did not, on plain-error review, run afoul of Skilling v. United States, 561 U.S. 358 (2010).

F. Jury Deliberations and Verdict/Publicity

Dietz v. Bouldin, ____ U.S. ____, 136 S. Ct. 1885 (2016) (decision below: 794 F.3d 1093 (9th Cir. 2015)) A federal district court has a limited inherent power to rescind a jury discharge order and recall a jury in a civil case for further deliberations after identifying an error in the jury's verdict; the district court did not abuse that power here, where, realizing that the verdict was manifestly erroneous, the district court recalled the jury within only a few minutes of its being discharged, all jurors but one were still in the courthouse, and there was no evidence that the jurors spoke to anyone about the case after discharge or were otherwise exposed to extrinsic influences; the Court cautioned that its recognition of a court's inherent power to recall a jury was limited to civil cases only, in light of additional concerns in criminal cases. (Justice Thomas filed a dissenting opinion in which he was joined by Justice Kennedy.)

Peña-Rodriguez v. Colorado, cert. granted, ____ U.S. ____, 136 S. Ct. 1513 (Apr. 4, 2016) (No. 15-606) (granting cert. to Peña-Rodriguez v. People, 350 P.3d 287 (Colo. 2015)) May a no-impeachment rule (i.e., a rule of evidence generally prohibiting the impeachment of a jury verdict with juror testimony regarding statements made during deliberations) constitutionally bar evidence of racial bias offered to prove a violation of the Sixth Amendment right to an impartial jury?

United States v. Eghobor, 812 F.3d 352 (5th Cir. 2015) In health care fraud prosecution, district court did not abuse its discretion in providing the jury, at their request, a transcript of one witness's testimony; although a cautionary instruction reminding the jury to focus on all the evidence should generally be given in this scenario, it is not required, and here, where the defendant did not request such an instruction, there was no plain error in not giving it.

G. Other

United States v. Bryant, ____ U.S. ____, 136 S. Ct. 1954 (2016) (decision below: United States v. Bryant, 769 F.3d 671 (9th Cir. 2014)) For purposes of 18 U.S.C. § 117(a) – criminalizing recidivist domestic assault committed on federal enclaves or Indian country – it does not violate the Constitution for the government to rely upon valid uncounseled tribal-court misdemeanor convictions to prove § 117(a)'s predicate-offense element; the Sixth Amendment does not apply to Indian county, and the Indian Civil Rights Act ("ICRA") likewise does not require appointment of counsel for misdemeanor cases, even those resulting in imprisonment; because defendant's uncounseled misdemeanor convictions were not violative of the Sixth Amendment when they were sustained, their use in a later prosecution likewise did not violate the Sixth Amendment; furthermore, use of those convictions likewise does not violate due process, because the tribal-court proceedings were conducted in accordance in ICRA, which sufficiently ensured the reliability of the convictions. (Justice Thomas filed a concurring opinion.)

Peña-Rodriguez v. Colorado, cert. granted, ____ U.S. ____, 136 S. Ct. 1513 (Apr. 4, 2016) (No. 15-606) (granting cert. to Peña-Rodriguez v. People, 350 P.3d 287 (Colo. 2015)) May a no-impeachment rule (i.e., a rule of evidence generally prohibiting the impeachment of a jury verdict with juror testimony regarding statements made during deliberations) constitutionally bar evidence of racial bias offered to prove a violation of the Sixth Amendment right to an impartial jury?

United States v. Bowen, 799 F.3d 336 (5th Cir. 2015), reh'g *en banc* denied, 813 F.3d 600 (5th Cir. 2016) In trial of New Orleans police officers charged with killing or wounding civilians at the Danziger Bridge in the aftermath of Hurricane Katrina, the district court did not abuse its discretion in granting a new trial based upon the fact that federal prosecutors had made anonymous comments about the case while it was going on, as well as other wrongdoing by the prosecutors; the panel majority agreed with the district court that a new trial was warranted irrespective of harm/prejudice, under the authority of Brecht v. Abrahamson, 507 U.S. 619, 638 n.9 (1993); the panel majority also agreed with the district court's alternative finding that the defendants were prejudiced; finally, the panel majority rejected the government's request to remove the district judge. (Judge Prado filed a dissenting opinion, expressing his view that the district court had abused its discretion in granting a new trial.) **(The government's petition for rehearing en banc was rejected by a 7-7 vote.)**

United States v. Pratt, 807 F.3d 641 (5th Cir. 2015) In trial of high-profile New Orleans defendant charged with theft of government funds – which trial was subject to the same sort of anonymous prosecutorial blogging as in United States v. McRae, 795 F.3d 471 (5th Cir. 2015), and United States v. Bowen, 799 F.3d 336 (5th Cir. 2015) – defendant was not entitled to a presumption of prejudice arising from the online remarks, because the prosecutorial conduct in question was too far removed from the proceedings to support such a presumption; because defendant did not allege any actual prejudice, therefore, the district court did not abuse its discretion in denying defendant's motion for a new trial.

United States v. Eghobor, 812 F.3d 352 (5th Cir. 2015) In health care fraud prosecution, district court did not abuse its discretion in denying defendant's motion for a new trial based on newly discovered evidence (a tape recording among concerned parties); this tape recording was, at best, merely impeaching, and mere impeachment evidence is insufficient to entitle a defendant to a new trial; moreover, the evidence would probably not produce an acquittal.

United States v. Weast, 811 F.3d 743 (5th Cir. 2016) The district court did not violate defendant's constitutional rights by refusing to let him represent himself; defendant's pretrial conduct indicated that he was likely to use his self-representation to delay or disrupt his trial.

United States v. Villegas Rojas, 812 F.3d 382 (5th Cir. 2016) Venue for prosecution of extradited Colombian drug defendants was proper in the Eastern District of Texas; although the plane bringing the defendants first stopped at Guantanamo to refuel, Guantanamo is not part of

"the United States" for purposes of determining proper venue.

United States v. Austin, 812 F.3d 453 (5th Cir. 2016) District court did not err in failing to inquire into disgruntled defendant's eligibility for court-appointed counsel, where defendant had retained counsel and had not alleged changed financial circumstances; district court likewise did not abuse its discretion in denying retained counsel's motion to withdraw.

VII. GUILTY PLEAS

A. Rule 11/Boykin Errors

B. Breach of Plea Agreement

United States v. Williams, 821 F.3d 656 (5th Cir. 2016), on denial of reh'g, ____ F.3d ____, 2016 WL 4410056 (5th Cir. Aug. 18, 2016) Even on plain-error review, defendant was entitled to relief on his claim that the government breached his plea agreement by failing to recommend a sentence at the low end of the Guideline range, as the government had promised to do in the plea agreement; moreover, at least where a breach is material (as the one here was), a defendant may elect between the remedies of specific performance and withdrawal of his plea; accordingly, the Fifth Circuit vacated the judgment below and remanded for defendant to make a final, counseled, and enforceable election of remedy.

C. Other

VIII. SENTENCING

A. Constitutional Challenges

Hurst v. Florida, ____ U.S. ____, 136 S. Ct. 616 (2016) (decision below: Hurst v. State, 147 So.3d 435 (Fla. 2014)) Florida's death sentencing scheme violates the Sixth Amendment in in light of Ring v. Arizona, 536 U.S. 584 (2002); Florida requires not the jury but a judge to make the critical findings necessary to impose the death penalty; that Florida provides an advisory jury is immaterial; as in Ring, defendant had the maximum authorized punishment he could receive was increased by a judge's own fact-finding; the Court overruled Hildwin v. Florida, 480 U.S. 638 (1989) (per curiam), and Spaziano v. Florida, 468 U.S. 447 (1984), to the extent that they allowed a sentencing judge to find an aggravating circumstance, independent of a jury's fact-finding, that was necessary for imposition of the death penalty. (Justice Breyer filed an opinion concurring in the judgment. Although he did not agree with the Sixth Amendment rationale of the opinion of the Court, he concurred based on his view that the Eighth Amendment requires that a jury, not a judge, make the decision to sentence a defendant to death. Justice Alito filed a dissenting opinion.)

Kansas v. Carr, ____ U.S. ____, 136 S. Ct. 633 (2016) (decisions below: State v. Carr, 329 P.3d 1195 (Kan. 2014), State v. Carr, 331 P.3d 544 (Kan. 2014), and State v. Gleason, 329 P.3d 1102 (Kan. 2014)):

(1) The Eighth Amendment does not require that a capital-sentencing jury be affirmatively instructed that mitigating circumstances "need not be proven beyond a reasonable doubt," as the Kansas Supreme Court held here; nor was such an instruction constitutionally necessary in these particular cases to avoid confusion; even assuming that it would be unconstitutional to require the defense to prove mitigating circumstances beyond a reasonable doubt, the record belies the defendant' contention that the instructions caused jurors to apply such a standard of proof here.

(2) The Constitution did not require severance of the Carr brothers' joint sentencing proceedings; such a constitutional claim would sound, not in the Eighth Amendment, but rather in due process; here, the record did not support the claim that the admission of mitigating evidence as to one Carr brother could have so infected the jury's consideration of the other's sentence as to amount to a violation of due process.

(Justice Sotomayor filed a dissenting opinion, the principal thrust of which was that the Supreme Court should not have reviewed these cases. She would have dismissed the writs as improvidently granted.)

Montgomery v. Louisiana, ____ U.S. ____, 136 S. Ct. 718 (2016) (decision below: State v. Montgomery, 141 So.3d 264 (La. 2014)) When a new substantive rule of federal constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule; the Supreme Court therefore had jurisdiction to decide whether the Supreme Court of Louisiana erred in refusing to give retroactive effect in this case to the United States Supreme Court's decision Miller v. Alabama, 567 U.S. ___, 132 S. Ct. 2455, 83 L.Ed.2d 407 (2012) (holding that it violates the Eighth Amendment to require lifetime incarceration without the possibility of parole for persons convicted of homicides committed when under age 18); on the merits, the Supreme Court held that Miller's prohibition on mandatory life without parole for juvenile offenders announced a new substantive rule that, under the Constitution, is retroactive in cases on state collateral review, because it necessarily carried a significant risk that a defendant faced a punishment that the law cannot impose upon him; accordingly, the Court reversed the judgment below and remanded for further proceedings. (Justice Scalia filed a dissenting opinion in which he was joined by Justices Thomas and Alito. Justice Thomas filed a dissenting opinion.)

Betterman v. Montana, ____ U.S. ____, 136 S. Ct. 1609 (2016) (decision below: State v. Betterman, 342 P.3d 971 (Mont. 2015)) The Sixth Amendment's speedy trial guarantee does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges; the Court noted that due process provides some protection against "exorbitant delay" in sentencing, but, because defendant did not make a due-process claim, the Court "express[ed] no opinion on

how he might fare under that more pliable standard." (Justice Thomas filed a concurring opinion, in which he was joined by Justice Alito. Justice Sotomayor filed a concurring opinion.) **(NOTE: This overrules contrary Fifth Circuit law. See, e.g., Juarez-Casares v. United States, 496 F.2d 190, 192 (5th Cir. 1974).)**

Lynch v. Arizona, ____ U.S. ____, 136 S. Ct. 1818 (2016) (per curiam) (decision below: State v. Lynch, 357 P.3d 119 (Ariz. 2015)) Under Simmons v. South Carolina, 512 U.S. 154 (1994), and its progeny, where a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life imprisonment without the possibility of parole, the Due Process Clause entitles the defendant to inform the jury of his parole ineligibility, either by a jury instruction or in arguments by counsel; the Arizona court ran afoul of this principle by refusing to inform the jury about defendant's parole ineligibility; accordingly, the Supreme Court granted defendant's petition for writ of certiorari, summarily reversed the Arizona Supreme Court's judgment (which had found no Simmons error), and remanded for further proceedings. (Justice Thomas filed a dissenting opinion, in which he was joined by Justice Alito.)

Beckles v. United States, cert. granted, ____ U.S. ____, 136 S. Ct. 2510 (June 27, 2016) (No. 15-8544) (granting cert. to Beckles v. United States, 616 Fed. Appx. 415 (11th Cir. 2015) (unpublished)) (1) Does Johnson v. United States, ____ U.S. ____, 135 S. Ct. 2551 (2015) – declaring the residual clause of the Armed Career Criminal Act's "violent felony" definition unconstitutionally vague – apply to collateral cases challenging federal sentences enhanced under the identically worded residual clause in USSG § 4B1.2(a)(2)? (2) Does Johnson's constitutional holding apply to the residual clause in USSG § 4B1.2(a)(2), thereby rendering challenges to sentences enhanced under it cognizable on collateral review? (3) Does mere possession of a sawed-off shotgun, an offense listed as a "crime of violence" only in the commentary to USSG § 4B1.2, remain a "crime of violence" after Johnson?

United States v. Guzman, 797 F.3d 346 (5th Cir. 2015) (on denial of reh'g) Although defendant claimed, for the first time in a petition for rehearing, that his ACCA-enhanced sentence was invalid under Johnson v. United States, 135 S. Ct. 2551 (2015) (which invalidated the residual clause of the ACCA's "violent felony" definition), the Fifth Circuit declined to grant relief; it was unclear whether the prior conviction in question qualified as a "violent felony" under the elements clause of the "violent felony" definition, and that lack of clarity precluded relief under the plain-error standard.

United States v. Preciado-Delacruz, 801 F.3d 508 (5th Cir. 2015) District court did not violate defendant's Fifth Amendment privilege against compelled self-incrimination by considering defendant's refusal to discuss relevant conduct as a reason to deny him a reduction for acceptance of responsibility; the Supreme Court has explicitly declined to consider that question, see Mitchell v. United States, 526 U.S. 314, 330 (1999), and binding Fifth Circuit precedent foreclosed defendant's argument, see United States v. Mourning, 914 F.2d 699, 706-07 (5th Cir. 1990).

United States v. Haines, 803 F.3d 713 (5th Cir. 2015) In a drug-conspiracy case, the statutory minimum sentence for a given defendant is determined on the basis of the relevant quantity of drugs attributable to ***that*** individual defendant, not the quantity of drugs attributable to the conspiracy as a whole; and that quantity should be found by the jury, not the sentencing judge.

United States v. Muñoz-Navarro, 803 F.3d 765 (5th Cir. 2015) Where defendant was subjected to an enhanced sentence under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e), he was entitled to resentencing under the Supreme Court's intervening decision in Johnson v. United States, 135 S. Ct. 2551 (2015); of the five prior convictions identified as ACCA predicates below, four of those could be predicates only under the residual clause of the ACCA's "violent felony" definition, which was declared unconstitutionally vague in Johnson; lacking three qualifying ACCA predicates, defendant did not qualify for sentencing under the ACCA; because the government disclaimed reliance on defendant's appeal waiver, the Fifth Circuit vacated defendant's sentence and remanded for resentencing.

United States v. Benitez, 809 F.3d 243 (5th Cir. 2015) Under United States v. Haines, 803 F.3d 713, 742 (5th Cir. 2015) (decided after the sentencings in this case), the district court plainly erred in applying a mandatory minimum to defendants on the basis of a drug quantity not found by the jury, but rather found only by the judge; as to two defendants, this error did not affect their substantial rights; as to another defendant, however, it ***did*** affect his substantial rights and also seriously affected the fairness, integrity, or public reputation of judicial proceedings; accordingly, the Fifth Circuit vacated that defendant's sentence and remanded for resentencing.

United States v. Caravayo, 809 F.3d 269 (5th Cir. 2015) Where defendant (originally convicted of possession of child pornography) was subjected to a special condition of supervised release barring him from dating any adult with minor children, the condition violated defendant's First Amendment right of free association, because the dating restriction was not supported by a factual finding or otherwise substantiated by the record; accordingly, the Fifth Circuit vacated defendant's sentence and remanded for resentencing. (Judge King dissented.)

United States v. Hebert, 813 F.3d 551 (5th Cir. 2015) There was no reversible error in sentencing defendant, convicted of bank-fraud charges, on the basis of a cross-reference to the second-degree murder Guideline (based, in turn, on the district court's finding that defendant had first killed the human victim of his fraud); there was sufficient evidence for that finding, and the district court's finding was not clearly erroneous; the Fifth Circuit did not reach the propriety of the cross-reference to second-degree murder because the sentence was justified as an upward variance, the district court's alternative basis for the sentence; the sentence did not violate the Fifth and Sixth Amendments because the Fifth Circuit has foreclosed as-applied constitutional challenges to sentences within the statutory maximum that are reasonable only if based on judge-found facts; finally, the sentence did not violate the Eighth Amendment because it wsa not grossly disproportionate.

United States v. Gonzalez-Longoria, ____ F.3d ____, 2016 WL 4169127 (5th Cir. Aug. 5,

2016) (en banc) Although a panel had held that 18 U.S.C. § 16(b) was unconstitutionally vague under the reasoning of Johnson v. United States, ____ U.S. ____, 135 S. Ct. 2551 (2015), see United States v. Gonzalez-Longoria, 813 F.3d 225 (5th Cir. 2016), the en banc Fifth Circuit disagreed and held that § 16(b) was indeed constitutional; the differences between § 16(b) and the provision found unconstitutionally vague in Johnson were significant enough that the en banc majority declined to declare § 16(b) unconstitutional on the basis of Johnson, (Judge Jones filed a concurring opinion, in which she was joined by Judge Smith. Judge Jolly filed a dissenting opinion, in which he was joined by Chief Judge Stewart and Judges Dennis and Graves.)

B. Rule 32/Other Statutory Challenges

Lockhart v. United States, ____ U.S. ____, 136 S. Ct. 958 (2016) (decision below: United States v. Lockhart, 749 F.3d 148 (2d Cir. 2014)) The mandatory minimum sentence of 18 U.S.C. § 2252(b)(2) is triggered by a prior conviction under a state law relating to "aggravated sexual abuse" or "sexual abuse," even though the conviction did not "involv[e] a minor or ward"; the phrase "involving a minor or ward" modifies only "abusive sexual conduct," and not the other two crimes in the series. (Justice Kagan filed a dissenting opinion in which she was joined by Justice Breyer.) **(NOTE: The Fifth Circuit had already so held. See United States v. Hubbard, 480 F.3d 341, 350 (5th Cir. 2007).)**

Luna Torres v. Lynch, ____ U.S. ____, 136 S. Ct. 1619 (2016) (decision below: Luna Torres v. Holder, 764 F.3d 152 (2d Cir. 2014)) A state offense may be "described in" a specified federal statute – and thus constitute an "aggravated felony" under 8 U.S.C. § 1101(a)(43) – even though the federal statute includes an interstate-commerce element that the state offense lacks; accordingly, immigrant's New York conviction for attempted third-degree arson was one for attempting an offense"described in" 18 U.S.C. § 844(i), thus making it an "aggravated felony" under 8 U.S.C. § 1101(a)(43)(E)(i) and (U). (Justice Sotomayor filed a dissenting opinion, in which she was joined by Justices Thomas and Breyer.) **(NOTE: The Fifth Circuit had already so held in Nieto Hernandez v. Holder, 592 F.3d 681, 685 (5th Cir. 2009).)**

Mathis v. United States, ____ U.S. ____, 136 S. Ct. 2243 (2016) (granting cert. to United States v. Mathis, 786 F.3d 1068 (8th Cir. 2015)) The modified categorical approach may be used only to discern the elements of a defendant's prior offense of conviction in a case where a statute sets out alternative offenses with distinct sets of elements; the modified categorical approach may not be used to narrow an offense to a particular statutory alternative that is merely one of several ways that an element may be satisfied; here, the Iowa burglary statute under which defendant was convicted had a single locational element that could be satisfied by several means, some of which qualified as generic "burglary" and others of which did not; because the offense was not categorically " burglary," and because the modified categorical approach could not be used to narrow the conviction, the lower courts erred in enhancing defendant's sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e). (Justice Kennedy filed a concurring opinion. Justice Thomas filed a concurring opinion. Justice Breyer filed a dissenting opinion, in which Justice Ginsburg joined. Justice Alito filed a dissenting opinion.)

United States v. Simpson, 796 F.3d 548 (5th Cir. 2015) The statutory maxima set out in 18 U.S.C. § 3581 – which in turn depend upon the classification of the offense under 18 U.S.C. § 3559 – do not apply where the statute of conviction itself specifies the maximum term of imprisonment allowed.

United States v. Prieto, 801 F.3d 547 (5th Cir. 2015) Under United States v. Salazar, 743 F.3d 445 (5th Cir. 2014), the district court plainly erred in imposing a pornography restriction as a special condition of supervised release because the district court did not explain the justification for the condition and the record did not otherwise make it clear how the condition was related to the statutory factors; moreover, the error affected defendant's substantial rights because the condition could not properly have been imposed on this record; however, the Fifth Circuit declined to exercise its plain-error discretion to correct the error under the circumstances of this case; the Fifth Circuit also held that the district court did not plainly err in imposing a special supervised-release condition prohibiting defendant from residing in or going to places which minors were known to frequent. (Judge King concurred in the judgment only.)

Bender v. United States Parole Commission, 802 F.3d 690 (5th Cir. 2015) In treaty-transfer determination for prisoner transferred from Costa Rica to the United States, the Parole Commission did not run afoul of the statutory directive that the total transfer sentence could not exceed the sentence imposed by the foreign tribunal; the Parole Commission permissibly accomplished this by stating that defendant was to be released from supervision when the total of his imprisonment and his supervision totaled 30 years (which was the Costa Rican sentence); even though the exact amounts of imprisonment and supervision might, at present, not be precisely known, this did not constitute an impermissibly determinate sentence; nor was the Parole Commission's determination procedurally or substantively unreasonable; accordingly, the Fifth Circuit affirmed that determination.

United States v. Schofield, 802 F.3d 722 (5th Cir. 2015) District court did not err in ordering defendant – convicted of attempted transfer of obscene material to a minor, in violation of 18 U.S.C. § 1470 – to register as a sex offender; a violation of § 1470 can qualify as a sex offender under SORNA; under either a noncategorical approach or a categorical approach, defendant's offense of conviction fell under the residual clause of SORNA's definition of a "sex offense"; finally, that residual clause was neither ambiguous nor unconstitutionally vague.

United States v. Haines, 803 F.3d 713 (5th Cir. 2015) In a drug-conspiracy case, the statutory minimum sentence for a given defendant is determined on the basis of the relevant quantity of drugs attributable to ***that*** individual defendant, not the quantity of drugs attributable to the conspiracy as a whole; and that quantity should be found by the jury, not the sentencing judge.

United States v. Benitez, 809 F.3d 243 (5th Cir. 2015) Under United States v. Haines, 803 F.3d 713, 742 (5th Cir. 2015) (decided after the sentencings in this case), the district court plainly erred in applying a mandatory minimum to defendants on the basis of a drug quantity not

found by the jury, but rather found only by the judge; as to two defendants, this error did not affect their substantial rights; as to another defendant, however, it ***did*** affect his substantial rights and also seriously affected the fairness, integrity, or public reputation of judicial proceedings; accordingly, the Fifth Circuit vacated that defendant's sentence and remanded for resentencing.

United States v. Juarez, 812 F.3d 432 (5th Cir. 2016) Where defendant was convicted of brandishing a firearm, in violation of 18 U.S.C. § 924(c)(1)(A)(ii), for which the statutory minimum sentence and the Guideline "range" were seven years' imprisonment, it was unclear exactly what the basis for the district court's 10-year prison sentence was; particularly, it was unclear whether the district court mistakenly believed that it was imposing a within-Guidelines sentence or whether, rather, it was imposing a departure or variance sentence; due to this ambiguity in the sentence, the Fifth Circuit vacated the sentence and remanded for resentencing.

C. (Selected) Guidelines Issues

Beckles v. United States, cert. granted, ____ U.S. ____, 136 S. Ct. 2510 (June 27, 2016) (No. 15-8544) (granting cert. to Beckles v. United States, 616 Fed. Appx. 415 (11th Cir. 2015) (unpublished)) (1) Does Johnson v. United States, ____ U.S. ____, 135 S. Ct. 2551 (2015) – declaring the residual clause of the Armed Career Criminal Act's "violent felony" definition unconstitutionally vague – apply to collateral cases challenging federal sentences enhanced under the identically worded residual clause in USSG § 4B1.2(a)(2)? (2) Does Johnson's constitutional holding apply to the residual clause in USSG § 4B1.2(a)(2), thereby rendering challenges to sentences enhanced under it cognizable on collateral review? (3) Does mere possession of a sawed-off shotgun, an offense listed as a "crime of violence" only in the commentary to USSG § 4B1.2, remain a "crime of violence" after Johnson?

United States v. Muñiz, 803 F.3d 709 (5th Cir. 2015) In alien-transporting case, district court did not err in applying to defendant a six-level enhancement under USSG § 2L1.1(b)(6) for intentionally creating a substantial risk of death or bodily injury; defendant knew that transported alien – who ultimately died of complications from diabetes – was sick, dehydrated, diabetic, and needed insulin, yet she did not seek medical attention for him and abandoned him at a rest stop; likewise, the district court did not clearly err in applying a 10-level enhancement under USSG § 2L1.1(b)(7) because defendant's conduct was a but-for cause of the alien's death.

United States v. Rodriguez-Guerrero, 805 F.3d 192 (5th Cir. 2015) District court did not clearly err in applying a two-level "gun bump" under USSG §2D1.1(b)(1) to defendant convicted of drug conspiracy; although defendant did not personally possess a gun, and although the shotgun found at the "stash house" was not linked to any specific conspirator, such a link was not necessary where, as here, there was enough evidence to support that the weapon must have been possessed by one of the conspirators in furtherance of the conspiracy.

United States v. Putnam, 806 F.3d 853 (5th Cir. 2015) District court committed reversible plain error in imposing a 15-year term of supervised release upon a defendant convicted of failure

to register under SORNA (a violation of 18 U.S.C. § 2250); contrary to the conclusion of the presentence report and the district court, failure to register in violation of § 2250 is not a "sex offense" under USSG § 5D1.2(b)(2) of the Sentencing Guidelines; therefore, the Guideline recommendation for supervised release should have been only five years, not a range of five years to life; because the 15-year supervised-release term greatly exceeded the correct Guideline supervised-release "range" of five years, defendant's substantial rights were affected; finally, because supervised-release terms, like imprisonment, also impose a substantial restraint of liberty, the Fifth Circuit exercised its discretion to correct this plain error by vacating the sentence and remanding for resentencing.

United States v. Muñoz-Gonzalez, 812 F.3d 439 (5th Cir. 2016) A pardon granted for reasons other than proof of innocence does not vitiate the defendant's prior crimes or convictions; therefore, the district court did not err in applying a 12-level "crime of violence" enhancement under USSG § 2L1.2(b)(1)(A)(ii) on the basis of defendant's 1994 arson conviction, even though he was granted a pardon as to that conviction in 2004; the underlying documents showed that the pardon was not granted on the basis of innocence or other constitutional or legal error.

United States v. Koss, 812 F.3d 460 (5th Cir. 2016), on denial of reh'g *en banc*, ____ U.S. ____, 2016 WL 3974540 (5th Cir. July 22, 2016) District court did not reversibly err in sentencing defendant convicted of offenses involving a homemade "marijuana butter" and a "brown chunky substance"; the district court did not clearly err in treating these substances as THC, which is punished more severely than marijuana by a 1-to-167 ratio; moreover, the Guidelines' directives contained no ambiguity that would warrant application of the rule of lenity. (On defendant's petition for rehearing en banc, four judges would have voted to take the case en banc.)

United States v. Malone, ____ F.3d ____, 2016 WL 3627319 (5th Cir. July 6, 2016) In sentencing defendants convicted of trafficking in controlled substance analogue AM-2201 (a synthetic cannabinoid), the district court did not clearly err in concluding that, for purposes of the Guidelines, the most closely related controlled substance was THC, one gram of which was treated as 167 grams of marijuana; furthermore, on limited remand, the district court clarified that it understood its discretion to deviate from this 1-to-167 ratio, but simply chose not to exercise that discretion; finally, even though the district court erred, under United States v. Desselle, 450 F.3d 179, 182 (5th Cir. 2006), in basing the extend of defendant's substantial-assistance departures under USSG § 5K1.1 on non-assistance related factors, that error was harmless.

D. Fines and Restitution

United States v. Benns, 810 F.3d 527 (5th Cir. 2016) Where defendant was convicted of one count of submitting a false credit application to Bank of America, it was error to order defendant to pay $54,906.59 in restitution to HUD (the difference in the amount paid by HUD to Bank of America upon foreclosure/default and the amount for which HUD ultimately sold the property); the evidence was insufficient to support a finding that HUD was directly and

proximately harmed by defendant's false credit application because there was no showing that the behavior underlying defendant's offense was the cause of HUD's loss; accordingly, the Fifth Circuit held that HUD was not entitled to restitution in this case under the MVRA, and the Fifth Circuit vacated the restitution award to HUD.

United States v. Tilford, 810 F.3d 370 (5th Cir. 2016) District court did not err in entering a garnishment order against defendant's former spouse for satisfaction of defendant's restitution award out of marital assets; contrary to spouse's contention, the "innocent spouse" exception of 26 U.S.C. § 66(c) of the Internal Revenue Code did not protect her from garnishment to satisfy a criminal judgment; the exception applies only to tax deficiencies.

E. Resentencing/Sentence Reduction

F. Time Credit/Place and Conditions of Confinement/Release on Parole

G. Forfeiture/Return of Property Under Fed. R. Crim. P. 41(g)

United States v. Nagin, 810 F.3d 348 (5th Cir. 2016) The district court did not plainly err in entering a forfeiture judgment against defendant as a personal money judgment, rather than forfeiture of specific property; the combined operation of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) authorizes personal money judgments as a form of criminal forfeiture; the Fifth Circuit noted, but did not weigh in on, a circuit split over whether the government must make a showing that satisfies the requirements of 21 U.S.C. § 853(p)(1)'s substitute-asset provisions as a precondition to imposing a personal money judgment under 28 U.S.C. § 2461(c).

X. APPEAL

Musacchio v. United States, ____ U.S. ____, 136 S. Ct. 709 (2016) (decision below: United States v. Musacchio, 590 Fed. Appx. 359 (5th Cir. 2014) (unpublished)):

(1) A challenge to the sufficiency of the evidence in a criminal case should be assessed against the true elements of the charged crime, not against the elements set forth in an erroneous jury charge; it is irrelevant that the government did not object to the erroneous jury instruction.

(2) A defendant cannot successfully raise 18 U.S.C. § 3282(a)'s statute-of-limitations bar for the first time on appeal; because § 3282(a) does not impose a jurisdictional limit, the failure to raise a statute-of-limitations defense at or before trial is reviewable on appeal, if at all, only for plain error; however, a district court's failure to enforce an unraised limitations defense under § 3282(a) cannot be a plain error, because if a defendant fails to press the defense, it does not become part of the case, and thus there is no error for an appellate court to correct.

Molina-Martinez v. United States, ____ U.S. ____, 136 S. Ct. 1338 (2016) (decision below: United States v. Molina-Martinez, 588 Fed. Appx. 333 (5th Cir. 2014) (unpublished)) For purposes of plain-error review under Fed. R. Crim. P. 52(b), when a defendant is sentenced under an incorrect Guidelines range – whether or not the defendant's ultimate sentence falls within the correct range – the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error, thus satisfying the third prong of plain-error review; the Fifth Circuit erred by requiring defendant to come forward with "additional evidence" of an effect on his substantial rights; accordingly, the Supreme Court reversed the judgment below and remanded for further proceedings. (Justice Alito filed an opinion concurring in part and concurring in the judgment, in which he was joined by Justice Thomas.) **(On remand, the Fifth Circuit vacated defendant's sentence and remanded the case for resentencing. See United States v. Molina-Martinez, 824 F.3d 548 (5th Cir. 2016).)**

Williams v. Pennsylvania, ____ U.S. ____, 136 S. Ct. 1899 (2016) (decision below: Commonwealth v. Williams, 105 A.3d 1234 (Penn. 2014)) Where former Chief Justice Ronald Castille of the Pennsylvania Supreme Court had, in his former capacity as the district attorney of Philadelphia, personally approved the death penalty for defendant, it violated due process for Chief Justice Castille to (1) deny defendant's motion for recusal and (2) participate in the Pennsylvania Supreme Court's adjudication of defendant's claim for post-conviction relief; under the Due Process Clause, there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case; in these circumstances, neither the involvement of multiple actors in the case nor the passage of time relieves the former prosecutor of the duty to withdraw in order to ensure the neutrality of the judicial process in determining the consequences his or her earlier, critical decision may have set in motion; Chief Justice Castille's authorization to seek the death penalty against defendant amounted to significant, personal involvement in a critical trial decision, and therefore his failure to recuse presented an unconstitutional risk of violence; moreover, an unconstitutional failure to recuse constitutes structural error that is not amenable to harmless-error review, regardless of whether the judge's vote was dispositive; accordingly, the Supreme Court vacated the Pennsylvania Supreme Court's judgment denying defendant post-conviction relief and remanded for fresh consideration by that court, unburdened by any possibility of bias. (Chief Justice Roberts filed a dissenting opinion, in which he was joined by Justice Alito. Justice Thomas filed a dissenting opinion.)

Manrique v. United States, cert. granted, ____ U.S. ____, 136 S. Ct. 1712 (Apr. 25, 2016) (No. 15-7520) (granting cert. to United States v. Manrique, 618 Fed. Appx. 579 (11th Cir. 2015) (unpublished) Where a defendant files a notice of appeal from a judgment deferring the entry of a restitution award, and later restitution is assessed and an amended judgment incorporating that restitution award is entered, must a defendant file a separate notice of appeal from the amended judgment in order to challenge the restitution award, or, rather, does the court of appeals have jurisdiction to review the restitution award based solely upon the original notice of appeal?

United States v. Morales, 807 F.3d 717 (5th Cir. 2015) An appeal from an order denying a post-conviction motion to modify a criminal protective order is governed by Federal Rule of Appellate Procedure 4(a) (governing civil appeals), not Rule 4(b) (governing criminal appeals); under Rule 4(a), appellant's notice of appeal was timely; however, on the merits, the Fifth Circuit held that the district court did not abuse its discretion in denying appellant's motion to modify the protective order because appellant did not demonstrate good cause for such modification.

United States v. Heredia-Holguin, 823 F.3d 337 (5th Cir. 2016) (en banc) A defendant's deportation following the completion of his prison term does not render moot the defendant's appeal of his term of supervised release. (Judge Higginson filed a dissenting opinion, in which he was joined by Judges Jolly, Davis, Jones, Smith, and Clement.)

X. REVOCATION OF PROBATION/SUPERVISED RELEASE/PAROLE

A. Probation

B. Supervised Release

United States v. Illies, 805 F.3d 607 (5th Cir. 2015) Where defendant was subject to mandatory revocation of supervised release pursuant to 18 U.S.C. § 3583(g), the district court did not plainly err in the sentence imposed upon defendant; when revoking a term of supervised release under § 3583(g), the district court may consider the sentencing factors of 18 U.S.C. § 3553(a) in determining the length of the resulting sentence, but is not required to do so; nor was there any plain error in the district court's consideration of the factors set out 18 U.S.C. § 3553(a)(2)(A) in this mandatory revocation under § 3583(g).

United States v. Jimison, 825 F.3d 260 (5th Cir. 2016) In a proceeding to revoke supervised release, a defendant has a limited due-process right to confront adverse witnesses, absent good cause for disallowing confrontation; the district court violated this due-process confrontation right when – without a finding, or evidence, of good cause – it allowed a police officer to testify to the out-of-court statements of an informant identifying defendant as the person who had sold him drugs; accordingly, the Fifth Circuit vacated the revocation judgment and remanded for a new hearing.

C. Parole

XI. § 2255/HABEAS CORPUS/POST-CONVICTION RELIEF/INEFFECTIVE ASSISTANCE OF COUNSEL/AEDPA

A. § 2255 generally

Welch v. United States, ____ U.S. ____, 136 S. Ct. 1257 (2016) (granting cert. to United States v. Welch, No. 14-15733 (11th Cir. June 9, 2015) (unpublished order)) Johnson v. United States, ____ U.S. ____, 135 S. Ct. 2551 (2015), announced a new substantive rule of constitutional law that applies retroactively to cases on collateral review. **(NOTE: Welch overruled the Fifth Circuit's contrary decision in In re Williams, 806 F.3d 322 (5th Cir. 2015).)**

Beckles v. United States, cert. granted, ____ U.S. ____, 136 S. Ct. 2510 (June 27, 2016) (No. 15-8544) (granting cert. to Beckles v. United States, 616 Fed. Appx. 415 (11th Cir. 2015) (unpublished)) (1) Does Johnson v. United States, ____ U.S. ____, 135 S. Ct. 2551 (2015) – declaring the residual clause of the Armed Career Criminal Act's "violent felony" definition unconstitutionally vague – apply to collateral cases challenging federal sentences enhanced under the identically worded residual clause in USSG § 4B1.2(a)(2)? (2) Does Johnson's constitutional holding apply to the residual clause in USSG § 4B1.2(a)(2), thereby rendering challenges to sentences enhanced under it cognizable on collateral review? (3) Does mere possession of a sawed-off shotgun, an offense listed as a "crime of violence" only in the commentary to USSG § 4B1.2, remain a "crime of violence" after Johnson?

B. Habeas Corpus (§ 2254) generally

White v. Wheeler, ____ U.S. ____, 136 S. Ct. 456 (2015) (per curiam) (decision below: Wheeler v. Simpson, 779 F.3d 366 (6th Cir. 2015)) The Sixth Circuit erred in granting federal habeas relief to Kentucky state prisoner based on his claim that the trial court had erred in dismissing for cause a potential juror who expressed qualms about his ability to consider the death penalty; the Sixth Circuit did not properly apply the deference that it was required to accord the Kentucky Supreme Court's ruling affirming the trial court's decision to strike the potential juror; accordingly, the Supreme Court reversed the Sixth Circuit's judgment and remanded for further proceedings.

Duncan v. Owens, ____ U.S. ____, 136 S. Ct. 651 (2016) (per curiam) (decision below: Owens v. Duncan, 781 F.3d 360 (7th Cir. 2015)) The Supreme Court had granted certiorari, see Duncan v. Owens, ____ U.S. ____, 136 S. Ct. 27 (Oct. 1, 2015), to decide whether the Seventh Circuit ran afoul of the AEDPA and the Supreme Court's AEDPA jurisprudence when the Seventh Circuit granted habeas relief on the grounds that (1) the trial court violated defendant's clearly established right to have his guilt adjudicated solely upon the evidence introduced at trial, and (2) the error was not harmless. However, following briefing and oral argument, the Supreme Court dismissed the writ of certiorari as improvidently granted.

Kernan v. Hinojosa, ____ U.S. ____, 136 S. Ct. 1603 (2016) (per curiam) (decision below: Hinojosa v. Davey, 803 F.3d 412 (9th Cir. 2015)) Where California state prisoner claimed a federal ex post facto violation based on the retrospective abolition of his opportunity to earn good-time credit, the Ninth Circuit erred in declining to apply the AEDPA's deferential review for decisions "on the merits; although courts normally presume that an unexplained denial of relief by a higher court did not disregard the application of a procedural bar in the last reasoned decision by

a lower court, see Ylst v. Nunnemaker, 501 U.S. 797, 803 (1991), that presumption can be refuted by "strong evidence"; here, there was such evidence, although the lower California court denied relief on a procedural ground (improper venue), the California Supreme Court's denial of an original writ could not have rested on that ground; the California Supreme Court's decision was therefore on the merits, and the Ninth Circuit should have applied AEDPA's deferential review; accordingly, the Supreme Court granted the state's petition for a writ of certiorari and reversed the Ninth Circuit's judgment. (Justice Sotomayor filed a dissenting opinion, in which she was joined by Justice Ginsburg.)

Johnson v. Lee, ____ U.S. ____, 136 S. Ct. 1802 (2016) (per curiam) (decision below: Lee v. Jacquez, 788 F.3d 1124 (9th Cir. 2015)) The Ninth Circuit erred in holding that California's "Dixon bar" – precluding criminal defendants from raising, for the first time on post-conviction review, claims that could have been raised on direct appeal – was not an adequate and independent state procedural rule barring federal habeas review; contrary to what the Ninth Circuit concluded, the Dixon bar is firmly established and regularly followed; accordingly, the Court granted the state's petition for writ of certiorari, reversed the Ninth Circuit's judgment, and remanded for further proceedings.

Moore v. Texas, cert. granted, ____ U.S. ____, 136 S. Ct. 2407 (June 6, 2016) (No. 15-797) (granting cert. to Ex parte Moore, 470 S.W.3d 481 (Tex. Crim. App. 2015)) Does it violate the Eighth Amendment and the Supreme Court's decisions in Hall v. Florida, ____ U.S. ____, 134 S. Ct. 1986 (2014), and Atkins v. Virginia, 536 U.S. 304 (2002), to prohibit the use of current medical standards on intellectual disability, and require the use of outdated medical standards, in determining whether an individual may be executed?

Brumfield v. Cain, 808 F.3d 1041 (5th Cir. 2015) The district court did not clearly err in finding that Louisiana capital-murder defendant was intellectually disabled, thus precluding his execution under the Eighth Amendment and Atkins v. Virginia, 536 U.S. 304 (2002).

C. Ineffective Assistance of Counsel/Conflict of Interest

Maryland v. Kulbicki, ____ U.S. ____, 136 S. Ct. 2 (2015) (per curiam) (decision below: Kulbicki v. State, 99 A.3d 730 (Md. 2014) Contrary to the Maryland Court of Appeals' conclusion, defense counsel in a homicide case did not, in the 1995 trial in that case, provide ineffective assistance of counsel by failing to question the legitimacy of the Comparative Bullet Lead Analysis ("CBLA") evidence introduced by the prosecution; at the time of trial in 1995, the validity of CBLA was widely accepted, and courts regularly admitted CBLA evidence until 2003; although the Maryland high court believed that defense counsel should have challenged the CBLA evidence on the basis of a flaw in such evidence identified by a 1991 report, effective assistance of counsel does not require defense counsel to go "looking for a needle in a haystack," even when they have "reason to doubt there is any needle there"; defendant's counsel thus did not provide deficient performance when they failed to uncover the 1991 report and to use the report's so-called

methodological flaw against the state's expert on cross-examination; accordingly, the Supreme Court reversed the judgment below.

Woods v. Etherton, ____ U.S. ____, 136 S. Ct. 1149 (2016) (per curiam) (decision below: Etherton v. Rivard, 800 F.3d 737 (6th Cir. 2015)) Where Michigan state drug defendant alleged that state appellate counsel was ineffective for failing to raise, on direct appeal, claims (1) that defendant's Confrontation Clause rights were violated by the introduction of an anonymous tip and (2) that trial counsel was ineffective for failing to object on confrontation grounds, the Sixth Circuit misapplied the AEDPA in granting defendant federal habeas relief; it was not unreasonable for the state court to determine that there was no prejudice from the alleged violations; the Sixth Circuit failed to give state appellate counsel and the state habeas court the benefit of the doubt, as required by the AEDPA; accordingly, the Supreme Court granted the state's petition for a writ of certiorari and reversed the Sixth Circuit's judgment.

Buck v. Stephens, cert. granted, ____ U.S. ____, 136 S. Ct. 2409 (June 6, 2016) (No. 15-8049) (granting cert. to Buck v. Stephens, 623 Fed. Appx. 688 (5th Cir. 2015) (unpublished)) Was Texas capital defendant entitled to a certificate of appealability to appeal the denial of his motion to reopen the judgment and obtain merits review of his claim that his trial counsel was constitutionally ineffective for knowingly presenting an "expert" who testified that defendant was more likely to be dangerous in the future because he is black, where future dangerousness was both a prerequisite for a death sentence and the central issue at sentencing?

United States v. Batamula, 823 F.3d 237 (5th Cir. 2016) (en banc) Where federal defendant alleged, in a 28 U.S.C. § 2255 motion, that he had been provided ineffective assistance of counsel by his counsel's failure to warn him of the immigration consequences of his guilty plea, in violation of Padilla v. Kentucky, 559 U.S. 356 (2010), panel had originally held that the district court erred in denying defendant's § 2255 motion without an evidentiary hearing based solely upon the fact that, at his guilty plea, defendant was admonished by the judge about possible deportation, see United States v. Batamula, 788 F.3d 166 (5th Cir. 2015); on en banc rehearing, the Fifth Circuit held the district court was correct to dismiss defendant's § 2255 motion without an evidentiary hearing because defendant failed to allege, or adduce evidence showing, that the outcome of the plea process would have been different with competent advice; particularly, this was so because the record conclusively established that defendant was deportable before his guilty plea, and remained so afterwards. (Judge Dennis filed a dissenting opinion, in which he was joined by Judge Graves.)

D. Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)

E. Other

United States v. Fernandez, 797 F.3d 315 (5th Cir. 2015) District court abused its discretion in reopening, pursuant to Fed. R. Civ. P. 60(b)(6), its 1998 judgment denying defendant

(sentenced to life imprisonment on drug charges) collateral relief under 28 U.S.C. § 2255; the purported basis for Rule 60(b)(6) – namely, that the district court had inadvertently failed to rule upon a meritorious claim that defense counsel was ineffective with respect to a claim that defendant's trial should be severed from that of his co-defendant – was more properly characterized as one under Rule 60(b)(1) (mistake or inadvertence), to which a one-year time limitation applied; because defendant's motion was not filed until long after the one-year time period had elapsed, the motion was untimely; accordingly, the Fifth Circuit reversed the district court's order granting Rule 60(b) relief and granting defendant a new trial.

Hartfield v. Osborne, 808 F.3d 1066 (5th Cir. 2015) Where Texas defendant filed a pretrial petition for habeas corpus under 28 U.S.C. § 2241, alleging a violation of his federal constitutional right to a speedy trial, but was then later put to trial and convicted, the Fifth Circuit declined to hear defendant's appeal; first, defendant's conviction meant that 28 U.S.C. § 2254 now applied to his appeal, not 28 U.S.C. § 2241; furthermore, a pretrial petition involves an inquiry into whether "special circumstances" existed to reach the merits of the speedy-trial claim; the "special circumstances" inquiry was thus no longer relevant under § 2254; finally, the district court had granted a certificate of appealability ("COA") only on the no-longer-relevant "special circumstances" question; without a COA as to any other questions, the Fifth Circuit had no jurisdiction to decide those questions; accordingly, the Fifth Circuit dismissed defendant's appeal.

Robinson v. United States, 812 F.3d 476 (5th Cir. 2016) Federal defendant failed to show that he was entitled to proceed with a 28 U.S.C. § 2241 habeas petition under the savings clause of 28 U.S.C. § 2255; in order to proceed under the savings clause, a defendant must show, among other things, that a retroactively applicable Supreme Court decision breathed new life into a previously foreclosed claim; however, the decision defendant relied upon as making this showing was merely a GVR (grant of certiorari, vacate, and remand) order by the Supreme Court and not a substantive decision.

XII. MISCELLANEOUS

A. Particular Substantive Offenses (and Defenses)

Ocasio v. United States, ____ U.S. ____, 136 S. Ct. 1423 (2016) (decision below: United States v. Ocasio, 750 F.3d 399 (4th Cir. 2014)) A defendant may be convicted of conspiring to violate the Hobbs Act (18 U.S.C. § 1951) based on proof that he reached an agreement with the owner of the property in question to obtain that property under color of official right; there is no requirement that the conspirators agree to obtain property from someone outside the conspiracy. (Justice Breyer filed a concurring opinion. Justice Thomas filed a dissenting opinion. Justice Sotomayor filed a dissenting opinion in which she was joined by Chief Justice Roberts.)

Taylor v. United States, ____ U.S. ____, 136 S. Ct. 2074 (2016) (decision below: United States v. Taylor, 754 F.3d 217 (4th Cir. 2014)) In a federal criminal prosecution under the Hobbs Act (18 U.S.C. § 1951), the government satisfies the Act's commerce element if it shows that the

defendant robbed or attempted to rob a drug dealer of drugs or drug proceeds; because even the intrastate production, possession, and distribution of controlled substances affects interstate commerce, a robber who affects even the intrastate sale of marijuana affects commerce over which the United States has jurisdiction; here, the government met its burden by introducing evidence that defendant's gang intentionally targeted drug dealers to obtain drugs and drug proceeds; this proof was sufficient to meet the Hobbs Act's commerce element. (Justice Thomas filed a dissenting opinion.)

Nichols v. United States, ____ U.S. ____, 136 S. Ct. 1113 (2016) (decision below: United States v. Nichols, 775 F.3d 1225 (10th Cir. 2014)) A sex offender who resides in a foreign country is not, under 42 U.S.C. § 16913(a), required to update his registration in the jurisdiction where he formerly resided; therefore, defendant who moved from Kansas to the Philippines was not required to update his registration in Kansas once he left the state; accordingly, the Supreme Court reversed the Tenth Circuit's judgment affirming defendant's conviction for failing to update his sex-offender registration, in violation of 18 U.S.C. § 2250(a)(3).

United States v. Bryant, ____ U.S. ____, 136 S. Ct. 1954 (2016) (decision below: United States v. Bryant, 769 F.3d 671 (9th Cir. 2014)) For purposes of 18 U.S.C. § 117(a) – criminalizing recidivist domestic assault committed on federal enclaves or Indian country – it does not violate the Constitution for the government to rely upon valid uncounseled tribal-court misdemeanor convictions to prove § 117(a)'s predicate-offense element; the Sixth Amendment does not apply to Indian county, and the Indian Civil Rights Act ("ICRA") likewise does not require appointment of counsel for misdemeanor cases, even those resulting in imprisonment; because defendant's uncounseled misdemeanor convictions were not violative of the Sixth Amendment when they were sustained, their use in a later prosecution likewise did not violate the Sixth Amendment; furthermore, use of those convictions likewise does not violate due process, because the tribal-court proceedings were conducted in accordance in ICRA, which sufficiently ensured the reliability of the convictions. (Justice Thomas filed a concurring opinion.)

Voisine v. United States, ____ U.S. ____, 136 S. Ct. 2272 (2016) (decision below: United States v. Voisine, 778 F.3d 176 (1st Cir. 2015)) A misdemeanor domestic assault committed with the mens rea of recklessness qualifies as a "misdemeanor crime of domestic violence" for purposes of 18 U.S.C. §§ 921(a)(33)(A) and 922(g)(9). (Justice Thomas filed a dissenting opinion, in which Justice Sotomayor joined in part.)

McDonnell v. United States, ____ U.S. ____, 136 S. Ct. 2355 (2016) (decision below: United States v. McDonnell, 792 F.3d 478 (4th Cir. 2015)) For purposes of the federal bribery statute, Hobbs Act, and honest-services fraud statute, §§ 201, 1346, 1951, which criminalize taking an "official act" for money, campaign contributions, or any other thing of value, an "official act" is a decision or action on a question or matter that involves a formal exercise of governmental power and must be something specific and focused that is "pending" or "may by law be brought" before a public official; to qualify as an "official act," the public official must make a decision or take an action on that question or matter, or agree to do so; setting up a meeting, talking to another official, or organizing an event – without more – does not fit that definition of "official act";

because the jury instructions given in the trial of defendant (the former governor of Virginia) did not correctly convey these limitations to the jury, the Supreme Court vacated the Fourth Circuit's judgment affirming defendant's convictions and remanded to the Fourth Circuit for further proceedings (including whether the evidence was insufficient to support the charges as limited by the Supreme Court's opinion).

Salman v. United States, cert. granted, ____ U.S. ____, 136 S. Ct. 899 (Jan. 19, 2016) (No. 15-628) (granting cert. to United States v. Salman, 792 F.3d 1087 (9th Cir. 2015)) Does the personal benefit to the insider that is necessary to establish insider trading under Dirks v. SEC, 463 U.S. 646 (1983), require proof of "an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature," as the Second Circuit held in United States v. Newman, 773 F.3d 438 (2d Cir. 2014), cert. denied, No. 15-137 (U.S. Oct. 5, 2015), or is it enough that the insider and the tippee shared a close family relationship, as the Ninth Circuit held in this case?

Shaw v. United States, cert. granted, ____ U.S. ____, 136 S. Ct. 1711 (Apr. 25, 2016) (No. 15-5991) (granting cert. to United States v. Shaw, 781 F.3d 1130 (9th Cir. 2015)) For purposes of subsection (1) of the bank-fraud statute, 18 U.S.C. § 1344, does the element of a "scheme to defraud a financial institution" require proof of a specific intent not only to deceive, but also to cheat, a bank?

United States v. Griffin, 800 F.3d 198 (5th Cir. 2015) The Fifth Circuit rejected defendant's claim that the government had failed to prove that bank-fraud defendant had defrauded the bank, i.e., had failed to prove that defendant placed the bank at risk of civil liability or financial loss; the Fifth Circuit noted, but did not address the effect of, the Supreme Court's decision in Loughrin v. United States, ____ U.S. ____, 134 S. Ct. 2384 (2014) (the government had argued that the risk-of-loss requirement was questionable in light of Loughrin).

United States v. Schofield, 802 F.3d 722 (5th Cir. 2015) District court did not err in ordering defendant – convicted of attempted transfer of obscene material to a minor, in violation of 18 U.S.C. § 1470 – to register as a sex offender; a violation of § 1470 can qualify as a sex offender under SORNA; under either a noncategorical approach or a categorical approach, defendant's offense of conviction fell under the residual clause of SORNA's definition of a "sex offense"; finally, that residual clause was neither ambiguous nor unconstitutionally vague.

United States v. Barnes, 803 F.3d 209 (5th Cir. 2015) For purposes of 21 U.S.C. § 856 – maintaining a "place" for use in drug-related activities – the district court did not err in defining the term "place" to include not only a house, but also the "yard area" to that house.

United States v. Benitez, 809 F.3d 243 (5th Cir. 2015) Agreeing with the Eleventh Circuit, see United States v. Timmons, 283 F.3d 1246, 1251-52 (11th Cir. 2002), the Fifth Circuit held that the simultaneous sale of a gun and drugs qualifies as carrying a gun in relation to a drug crime, in violation of 18 U.S.C. § 924(c)(1)(A).

United States v. Cardenas, 810 F.3d 373 (5th Cir. 2016) To establish the offense of unlawful exportation of ammunition 18 U.S.C. § 554(a), the government is required to prove only that the defendant knew he was dealing with ammunition that was intended for export and that the exportation was illegal; the government is not required to prove both that the defendant knew that the ammunition was an item for which an export license was required and that he intended to export the weapons without the license.

United States v. Villegas Rojas, 812 F.3d 382 (5th Cir. 2016) In case where defendants in Colombia were prosecuted in the United States for a large-scale conspiracy to import cocaine into the United States (via Guatemala and Mexico), 21 U.S.C. §§ 959 and 963 were not unconstitutional; rather, they were valid exercise of Congress's power over interstate and foreign commerce; the Fifth Circuit also held that, notwithstanding the general presumption against the extraterritorial application of United States law, §§ 959 and 963 did apply to acts outside the United States.

B. Insanity/Competency/Civil Commitment

C. Reversals for Insufficiency of the Evidence or Multiplicity

United States v. CITGO Petroleum Corp., 801 F.3d 477 (5th Cir. 2015) (reversing corporations' convictions under the Clean Air Act and the Migratory Bird Treaty Act)