Federal Sentencing GUIDE

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Guidelines Amendments Effective November 1, 2026

The Sentencing Commission adopted several amendments, effective November 1, 2026. Four amendments made substantial changes to the guidelines and are summarized by topic in this newsletter. In a nutshell, the amendments:

1. Add an inflation multiplier to the monetary guidelines.
2. Include "fentanyl-related substances" in the drug guidelines.
3. Simplify the rules for grouping multiple counts.
4. Clarify how courts choose among imprisonment, probation, and fines.

Application Principles (Chapter 1)

11th Circuit says non-retroactive guideline change cannot support compassionate release. (150)(192) Ruling on defendant's petition for compassionate release under 18 U.S.C. §3582(c)(1)(A)(i), the district court reduced defendant's sentence from 39 to 24 years based on the disparity resulting from the fact that the 2018 amendment to 18 U.S.C. §924(c)'s "firearms stacking" rule is not retroactive. The government appealed and the Eleventh Circuit reversed, based on the intervening decision in *Rutherford v. U.S.*, 608 U.S. 454 (2026), which held that a non-retroactive change in the law cannot be an "extraordinary and compelling" basis for relief §3582(c)(1)(A)(i). Nor can guideline §1B1.13(b)(6) authorize a reduction contrary to the statute. *U.S. v. Rizo*, __ F.4th __ (11th Cir. 2026), No. 24-11349.

6th Circuit relies on commentary for loss calculation based on amounts paid for counterfeit drugs. (180)(252) The Sixth Circuit held that the district court properly calculated loss under the pre-2024 version of §2B1.1 by multiplying the number of counterfeit pills attributable to defendant by a conservative price of $2 per pill. Under Commentary Note 3(F)(v), loss includes amounts purchasers paid for drugs falsely represented as FDA-approved,

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without deducting the counterfeit pills' value. The Sixth Circuit ruled that despite *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L.Ed.2d 832 (2024), circuit precedent permits reliance on the guideline commentary's interpretation of the ambiguous term "loss." *U.S. v. Basalyga*, __ F.4th __ (6th Cir. Oct. 19, 2026), No. 25-5972.

6th Circuit holds defendants waived challenge to application of pre-2024 Guidelines. (194)(780) The Sixth Circuit held that defendants waived challenges to the district court's use of the pre-2024 guidelines because they had agreed to that version in their plea agreements and based their sentencing arguments on it. Both defendants were therefore barred from arguing on appeal that the district court should have applied the 2024 guidelines. *U.S. v. Basalyga*, __ F.4th __ (6th Cir. Oct. 19, 2026), No. 25-5972.

Offense Conduct (Ch. 2)

6th Circuit affirms increase where pill mill created risk of death or serious bodily injury. (218)(252) The Sixth Circuit upheld the district court's finding that defendant to Chirinos de Urena created a risk of death or serious bodily injury under §2B1.1(b)(16)(A) by participating for approximately three years in manufacturing, pressing, and packaging millions of counterfeit pills in an unregulated operation. Even if the government had to prove her actual awareness of the risk, the circumstantial evidence supported that finding. *U.S. v. Basalyga*, __ F.4th __ (6th Cir. Oct. 19, 2026), No. 25-5972.

10th Circuit holds 15 vulnerable victims is a large number in a fraud case. (218)(310) On resentencing, the district court added two levels under §3A1.1(b)(2) after finding that 21 victims were particularly vulnerable to defendants' fraudulent scheme. The Tenth Circuit affirmed, holding that 15 victims whose individual vulnerabilities facilitated the fraud were sufficient to satisfy the enhancement's large-number requirement. Relying on circuit precedent involving 16 vulnerable victims, the court declined to decide whether the five-victim or ten-victim thresholds under §2B1.1(b)(2) should govern the analysis. *U.S. v. Hess*, __ F.4th __ (10th Cir. Oct. 27, 2026), Nos. 25-1191, 25-1179.

10th Circuit affirms upward variance based on harm from fraudulent scheme to sell human remains. (218) Defendant was convicted of a scheme to obtain bodies for cremation and selling body parts. The district court calculated defendant Koch's advisory Guidelines range as 78 to 97 months but imposed a 180-month sentence, citing the exceptional seriousness of the offense, the emotional devastation suffered by victims, defendant's lack of remorse, and the guidelines' failure to account adequately for the depth and breadth of the harm. The Tenth Circuit found no error and affirmed. *U.S. v. Hess*, __ F.4th __ (10th Cir. Oct. 27, 2026), Nos. 25-1191, 25-1179.

1st Circuit holds defendant waived claim that value of services should reduce the loss amount. (219)(855) The district court found the loss from fraudulent payments obtained from Massachusetts' Medicaid program was about $99.7 million. For the first time on appeal, defendant argued that the loss amount should have been reduced by the fair market value of services defendant's company actually provided. The First Circuit held that defendant failed to preserve this argument because she did not make it in the district court. Defendant also waived plain-error review by failing to argue for its application in her appellate brief. *U.S. v. Newton*, __ F.4th __ (1st Cir. Oct. 29, 2026), No. 25-1101.

1st Circuit says defendant waived challenge to sophisticated-means increase by failing to object. (218)(855) For the first time on appeal, defendant argued that the district court erred in adding two levels for sophisticated means under §2B1.1(b)(10)(C) based on defendant's concealment of her health care fraud through offshore financial accounts and other elaborate transactions. The First Circuit held that defendant waived the argument by

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failing to make it in the district court even though the final presentence report identified the factual basis for it. Moreover, there was no plain error because the evidence showed more than $10 million transferred to Kenyan financial accounts, concealed assets, false patient and billing records, and coordinated corporate entities. *U.S. v. Newton*, __ F.4th __ (1st Cir. Oct. 29, 2026), No. 25-1101.

Commission adds inflation multiplier to monetary guidelines. (219)(224)(370)(630)(840) Noting that the guidelines' monetary tables were last adjusted for inflation in 2015, the Commission revised monetary thresholds across multiple guidelines—including theft, fraud, robbery, tax, and fine provisions for individuals and organizations—by applying an inflation multiplier based on the Consumer Price Index and rounding according to established statutory methods. The amendment also updated monetary amounts in specific offense characteristics. *Amendment 838, effective November 1, 2026.*

Commission adds "fentanyl-related substances" to the drug guidelines. (240)(252) The amendment responds to the HALT Fentanyl Act (2025) by incorporating into §2D1.1 "fentanyl-related substances," which Congress classified as Schedule I drugs and subjected to the same penalties as fentanyl analogues. These substances are assigned the same quantity thresholds and base offense levels as fentanyl analogues in the Drug Quantity Table and Drug Equivalency Tables. The amendment also adds a note defining "fentanyl-related substance" by reference to federal law and establishing a rebuttable presumption that the listed base offense levels apply. The amendment ensures that fentanyl-related substances are treated equivalently to fentanyl analogues for sentencing purposes. *Amendment 839, effective Nov. 1, 2026*.

8th Circuit reverses upward variance for improper speculation about ties to Mexican drug cartel. (240)(742) The Eighth Circuit held that the district court plainly erred by speculating, without evidentiary support, that defendant's offense proceeds would reach Mexican drug cartels. The court rejected the government's reliance on the district court's judicial experience and assumptions about cartel activity to support the speculation. Because the court referred to the alleged cartel connection twice and appeared to treat it as a principal basis for defendant's 50-month upward variance sentence, defendant showed a reasonable probability of receiving a lower sentence absent the error. *U.S. v. Orellana*, __ F.4th __ (8th Cir. Oct. 19, 2026), No. 25-2870.

11th Circuit upholds drug quantity and premises increases based on co-conspirator conduct. **(240)(275)** The Eleventh Circuit affirmed defendant's 235-month sentence, holding that the district court did not clearly err in attributing to defendant the drug quantities seized from multiple locations associated with his drug-distribution conspiracy. Defendant did not object to presentence-report findings that he conspired to distribute drugs from three residences and was responsible for the seized quantities. Nor did his arrest show that he withdrew from the conspiracy. The panel also held that a §2D1.1(b)(12) premises enhancement may be based on a co-conspirator's relevant conduct. Given defendant's drug sales from one residence and participation in a music video promoting the conspiracy's drug distribution, the use of the other residences was reasonably foreseeable. Judge Rosenbaum dissented from the premises-enhancement holding. *U.S. v. McLaurin*, __ F.4th __ (11th Cir. Oct. 23, 2026), No. 24-11532.

10th Circuit upholds increase for using bat and baton in connection with drug-trafficking. (284) The district court added two levels for use of a weapon under §2D1.1(b)(1) where defendant possessed a baseball bat and police-style baton in connection with his methamphetamine offenses. The Tenth Circuit affirmed, noting that defendant had used them to threaten a car thief when retaking his stolen vehicle that contained his methamphetamine supply at the time it was stolen. The incident occurred only five days before his arrest. *U.S. v. Barrera*, __ F.4th __ (10th Cir. Oct. 27, 2026), No. 25-8049.

6th Circuit holds any error in applying increase for "pattern" in child porn case was harmless. **(310)** The district court added five levels under §2G2.2(b)(5) based on a prior juvenile conviction for sexually abusing two minors, resulting in an offense level of 42 and a guidelines range capped at 50 years. The Sixth Circuit declined to rule on defendant's claim that the commentary conflicted with the text of the guideline, concluding that any error was harmless. The enhancement increased the offense level by only one level without affecting the applicable Guidelines range of 30 to 50 years. *U.S. v. Dodd*, __ F.4th __ (6th Cir. Oct. 26, 2026), No. 25-3557.

6th Circuit says court properly considered defendant's expressed intent to commit future sexual offenses. **(310)** The district court imposed a 50-year sentence based on defendant's prison messages describing plans to sexually abuse infant victims upon release and his coercion of a caregiver to produce child pornography. The Sixth Circuit

affirmed, finding this showed the risk of future crimes under 18 U.S.C. §3553(a)(2), even if the particular victims would not be accessible to defendant upon release. *U.S. v. Dodd*, __ F.4th __ (6th Cir. Oct. 26, 2026), No. 25-3557.

6th Circuit upholds increase for inducing girlfriend to purchase firearms as a straw purchaser. (330) The district court added two levels under §2K2.1(b)(5)(B)(iii) for defendant's inducing his girlfriend to purchase firearms for him because his prior mental-health adjudication prohibited him from possessing guns. The Sixth Circuit affirmed, noting that after defendant was committed and a firearms dealer refused to sell him a gun, his girlfriend began purchasing firearms that were later found in his possession. Circumstantial evidence is sufficient, and proof need only satisfy the preponderance standard. *U.S. v. Laykovich*, __ F.4th __ (6th Cir. Oct. 29, 2026), No. 25-5766.

Adjustments (Chapter 3)

10th Circuit upholds vulnerable-victim increase for exploiting financial and personal vulnerabilities. (410) The district court added two levels under §3A1.1(b)(2), finding that defendants' fraudulent funeral-home scheme involved 21 particularly vulnerable victims whose financial hardship, loved ones' terminal illnesses, or hospice referrals made them unusually susceptible to promises of free or discounted cremation services. The Tenth Circuit affirmed, rejecting defendant's argument that the district court improperly presumed vulnerability based on class membership, noting that the district court explained how defendants exploited the victims' vulnerabilities to obtain access to and fraudulently sell human remains. *U.S. v. Hess*, __ F.4th __ (10th Cir. Oct. 27, 2026), Nos. 25-1191, 25-1179.

10th Circuit upholds vulnerable-victim increase based on relevant conduct aiding and abetting. (410) On resentencing, the district court applied §3A1.1(b)(2) to defendant Koch despite her argument that she had not personally interacted with most of the vulnerable victims. The Tenth Circuit affirmed, holding that the enhancement is offense-specific and encompasses all vulnerable victims involved in relevant conduct under §1B1.3, including conduct the defendant aided and abetted. The court also rejected Koch's arguments that the district court was bound by the government's position in the district court or that the government could not defend the enhancement on appeal. *U.S. v. Hess*, __ F.4th __ (10th Cir. Oct. 27, 2026), Nos. 25-1191, 25-1179.

5th Circuit says any error in reckless-flight increase was not a miscarriage of justice for appeal waiver. (460)(850) The district court sentenced defendant to 240 months after adding two levels under §3C1.2 for recklessly creating a substantial risk of death or serious bodily injury while fleeing law enforcement. On remand from the Supreme Court following *Hunter v. U.S.*, 608 U.S. 713 (2026), the Fifth Circuit held that defendant's appeal waiver barred his challenge to the enhancement. The district court found that he drove through residential yards, including an area where his juvenile nephew had recently walked. Under *Hunter,* even if this finding was erroneous, such an ordinary sentencing error would not be a miscarriage of justice. *U.S. v. Harris*, __ F.4th __ (5th Cir. Oct. 29, 2026, No 25-60017.

6th Circuit upholds obstruction increase based on deletion of electronic records. (461) After learning of a co-conspirator's arrest, defendant exchanged messages about cleaning electronic devices, advised his co-conspirator to clear information, and stated that he had wiped a USB drive containing records related to the counterfeit-pill operation. Evidence also indicated that relevant communications had been removed from his devices. The Sixth Circuit affirmed the district court's two-level increase for obstruction of justice under §3C1.1, ruling that the enhancement applied regardless of whether the effort was successful. *U.S. v. Basalyga*, __ F.4th __ (6th Cir. Oct. 19, 2026), No. 25-5972.

Commission simplifies the rules for grouping multiple counts. (470) The current "multiple count" rules in Chapter Three, Part D, require a multi-step process for grouping counts, calculating offense levels, and combining them into a single offense level. In response to complaints, the Commission adopted an amendment that will replace the existing five guidelines with a single, streamlined §3D1.1 that consolidates all steps. The new approach distinguishes between aggregate-harm offenses (which are calculated together), separate harms (which are calculated individually with adjustments), and other cases, ultimately directing courts to use the highest applicable offense level. *Amendment 840, effective Nov. 1, 2026.*

11th Circuit affirms using same conduct to deny acceptance credit and to vary upward. (480)(740) Defendant committed an armed robbery while he was on bond awaiting sentencing. The district court relied on the new offense to both to deny an acceptance-of-responsibility reduction and to vary upward by four levels to a sentence of 96 months. The Eleventh Circuit rejected defendant's argument that this was improper double punishment, ruling that

a court may vary upward based on conduct already considered in calculating the Guidelines range. *U.S. v. Lemaine*, __ F.4th __ (11th Cir. Oct. 30, 2026), No. 24-14049.

11th Circuit upholds denial of acceptance reduction even if post-plea crime was not "relevant conduct." (482) The district court denied a three-level reduction for acceptance of responsibility under §3E1.1 because defendant committed an armed robbery while on bond awaiting sentencing. The Eleventh Circuit affirmed, holding that a district court may deny a reduction based on defendant's post-plea criminal conduct, even when unrelated to the offense of conviction. The phrase "for his offense" limits the conduct for which a defendant must accept responsibility but does not restrict the evidence a court may consider in evaluating the sincerity of that acceptance. *U.S. v. Lemaine*, __ F.4th __ (11th Cir. Oct. 30, 2026), No. 24-14049.

Criminal History (§4A1.1)

5th Circuit says erroneous career-offender finding was not miscarriage of justice to overcome appeal waiver. (520)(850) Despite waiving appeal in his plea agreement, defendant argued that the district court erred in classifying him as a career offender under §4B1.1. Specifically, he argued that his Louisiana marijuana-distribution conviction was not a qualifying controlled-substance predicate because the state offense included hemp, which the federal definition of marijuana did not. The Fifth Circuit agreed that the district court erred, but ruled that the error was not a "miscarriage of justice" under *Hunter v. U.S.*, 146 S. Ct. 1702 (2026), that would allow an appeal despite the waiver. Ordinary guidelines errors do not suffice. The panel also ruled that the district court's summary rejection of defendant's objection did not deprive him of minimum procedural fairness. The appeal was dismissed. *U.S. v. Chaney*, __ F.4th __ (5th Cir. Oct. 19, 2026), No. 23-30454.

Determining the Sentence (Ch. 5)

5th Circuit upholds transfer of supervised release and denial of early termination despite pending appeal. (580) The district court denied defendant's motion under §3583(e)(1) for early termination of supervised release, rejecting his jurisdictional challenge to the transfer of supervision from Pennsylvania to Texas. The Fifth Circuit held that the Pennsylvania court had authority under 18 U.S.C. §3605 to transfer supervision while defendant's appeal concerning a home-detention condition was pending because the transfer did not change the conditions being appealed. The district court did not improperly consider retributive factors in §3553(a)(2)(A), but only defendant's original offense and criminal history in assessing deterrence and protection of the public under §3553(a)(2)(B) and (C). *U.S. v. Estrada*, __ F.4th __ (5th Cir. Oct. 22, 2026), No. 25-50963.

Commission clarifies how courts choose among imprisonment, probation, and fines. (580) The Commission added new introductory commentary to Chapter 5, emphasizing that sentences must be "sufficient, but not greater than necessary," and clarifying that all sentencing options serve punitive purposes. The amendment also reorganized the Sentencing Table into a new §5A1.1, consolidating key information about how to determine guideline ranges and explicitly outlining the sentencing options available within each zone (A–D). *Amendment 841, effective Nov. 1, 2026.*

Departures and *Booker* Variances

6th Circuit says immigration status was not a basis for a further downward variance. (716)(740) At sentencing, defendant sought a further downward variance because her permanent resident alien status exposed her to deportation and restricted her access to Bureau of Prisons programming. The district court denied the request, noting that those consequences were collateral effects of her conviction and explaining that a variance could create disparities with her U.S.-citizen co-conspirators or effectively eliminate consequences associated with committing a felony as a permanent resident alien. The Sixth Circuit affirmed, finding that the district court's reasoned rejection of her arguments was within its sentencing discretion. *U.S. v. Basalyga*, __ F.4th __ (6th Cir. Oct. 19, 2026), No. 25-5972.

10th Circuit finds no plain error despite evidence of post-sentencing rehabilitation. (719) At resentencing, defendant Hess presented evidence of rehabilitation during incarceration, including educational achievements, favorable letters from inmates and staff, and participation in prison programs. The district court acknowledged her good behavior but found it insufficient to outweigh the seriousness of her crimes. The Tenth Circuit affirmed, holding that any error was not plain under *Pepper v. U.S.*, 562 U.S. 476 (2011), which permits but does not require courts to reduce sentences based on post-sentencing rehabilitation. *U.S. v. Hess*, __ F.4th __ (10th Cir. Oct. 27, 2026), Nos. 25-1191, 25-1179.

Sentencing Hearing

11th Circuit applies preponderance standard to finding that defendant committed robbery while on bond. (770) The district court revoked defendant's bond after finding that he committed an armed robbery while awaiting sentencing. At sentencing, the district court found by a preponderance that defendant committed the robbery. The Eleventh Circuit held that although the district court mistakenly stated that the burden of proof at sentencing was the same as at bond revocation, the error was harmless because the court applied the correct preponderance standard and found the evidence overwhelming. *U.S. v. Lemaine*, __ F.4th __ (11th Cir. Oct. 30, 2026), No. 24-14049.

Plea Agreements

8th Circuit enforces waiver except for challenge to reasonableness of upward variance. **(780)(850)** Defendants' plea agreements waived appeal except for a challenge to the "substantive reasonableness" of any upward variance. Accordingly, the Eighth Circuit held that one defendant waived his challenge to the district court's finding of substantial financial hardship under §2B1.1(b)(2) and denial of a reduction for zero criminal history points under §4C1.1(a)(6). Regarding the variances, the panel affirmed one defendant's 70-month upward-variance sentence, but reversed the other defendant's sentence because the district court speculated, without evidentiary support, that the offense proceeds would go to Mexican drug cartels. *U.S. v. Orellana*, __ F.4th __ (8th Cir. Oct. 19, 2026), No. 25-2870.

Violations of Supervised Release

4th Circuit holds courts may sanction for breach of trust in revoking supervised release. (800) The Fourth Circuit affirmed defendant's nine-month revocation sentence, holding that *Esteras v. U.S.*, 606 U.S. 185 (2025), did not abrogate circuit precedent permitting courts to sanction a defendant's breach of trust in violating supervised release conditions. Although 18 U.S.C. §3583(e) prohibits consideration of retribution for the original offense, it expressly permits consideration of guidelines policy statements, including Chapter Seven's directive to sanction breaches of trust. The panel explained that assessing the seriousness of violations does not constitute impermissible retribution for the original crime and may further deterrence, rehabilitation, and public protection. *U.S. v. Chafin*, __ F.4th __ (4th Cir. Oct. 19, 2026), No. 25-4521.

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