

Supreme Court Review: Criminal Law Cases from the October 2024 Term

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Supreme Court Review: Criminal Law Cases from the October 2024 Term

In its October 2024 term, the Supreme Court issued several significant decisions in cases involving federal criminal law and constitutional criminal procedure. These cases ranged from familiar topics for the Court—such as crimes of violence, fraud, testimony, and excessive force—to emerging issues and those of first impression, such as certain sentencing reductions under the First Step Act and the scope of immunity under the Protection of Lawful Commerce in Arms Act. These cases also involved various phases of the criminal process, from arrest through conviction, resentencing, and supervised release. This report offers an overview of the Supreme Court’s rulings in these cases.

Two cases involved the scope of criminal statutes: *Kousisis v. United States*, 145 S. Ct. 1382 (2025), holding that an intent to cause economic loss may sustain a wire fraud conviction under 18 U.S.C. § 1343, even where the victim suffered no actual economic loss; and *Thompson v. United States*, 145 S. Ct. 821 (2025), holding that the prohibition on making “false” statements in a loan application under 18 U.S.C. § 1014 does not include “misleading” statements.

Two cases involved firearms: *Smith & Wesson Brands v. Estados Unidos Mexicanos*, 145 S. Ct. 1556, 1562 (2025), holding that the Government of Mexico’s aiding and abetting theory of liability was insufficiently plausible to deny immunity under the Protection of Lawful Commerce in Arms Act to gun manufacturers for alleged downstream harms in Mexico; and *Bondi v. VanDerStok*, 145 S. Ct. 857 (2025), holding that the Bureau of Alcohol, Tobacco, Firearms and Explosives’ rule regulating certain unmarked firearms (sometimes called “ghost guns”), along with kits of their constituent parts, is consistent with the Gun Control Act.

Three decisions were related to sentencing: *Delligatti v. United States*, 145 S. Ct. 797 (2025), holding that a crime of violence under 18 U.S.C. § 924(c) may be committed by omission; *Esteras v. United States*, 145 S. Ct. 2031 (2025), holding that retributive factors tied to the original crime of conviction may not be considered in supervised-release revocation decisions; and the consolidated cases of *Hewitt v. United States* and *Duffey v. United States*, 145 S. Ct. 2165 (2025), which held that federal defendants whose original sentences were vacated prior to the enactment of the First Step Act are entitled to retroactive sentencing relief under the act.

Two cases dealt with constitutional rights: *Glossip v. Oklahoma*, 145 S. Ct. 612 (2025), holding in a capital case that the prosecution had violated its constitutional obligation to correct false testimony; and *Barnes v. Felix*, 145 S. Ct. 1353 (2025), holding that excessive force claims under the Fourth Amendment involving deadly force should be evaluated in view of the broader circumstances leading up to the use of force, not only the specific time frame when the officer believed that the use of such force was warranted.

This report concludes by discussing potential ways that Congress could respond legislatively to the Court’s decisions.

Contents

Introduction	1
Scope of Criminal Statutes	1
<i>Kousisis v. United States</i> : Fraud	1
<i>Thompson v. United States</i> : False Statements	2
Firearms Cases	3
<i>Smith & Wesson Brands v. Estados Unidos Mexicanos</i> : Immunity for Gun Manufacturers and Distributors	3
<i>Bondi v. VanDerStok</i> : Regulating “Ghost Guns”	4
Sentencing Cases	5
<i>Delligatti v. United States</i> : Crime of Violence	5
<i>Esteras v. United States</i> : Supervised Release Determinations	6
<i>Hewitt v. United States</i> and <i>Duffey v. United States</i> : First Step Act Sentencing Reductions	8
Constitutional Rights Cases	9
<i>Glossip v. Oklahoma</i> : Duty to Correct False Testimony	9
<i>Barnes v. Felix</i> : Excessive Force	10
Congressional Considerations	12

Contacts

Author Information	12
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Introduction

In its October 2024 term, the Supreme Court issued several significant decisions in cases involving federal criminal law and constitutional criminal procedure. Among other things, the Court weighed in on

- the scope of federal fraud and false-statement statutes;
- the scope and validity of firearm-related statutes, providing certain immunities to firearm dealers and manufacturers, and regulating “ghost guns” and firearm parts kits;
- the interpretation of sentencing provisions related to mandatory minimum sentences of imprisonment, supervised release, and providing relief under the First Step Act;
- the obligation of prosecutors to correct false witness testimony under the Due Process Clause of the Fourteenth Amendment; and
- the proper standards for assessing police use of deadly force under the Fourth Amendment.

This report summarizes these selected cases and discusses potential ways that Congress could respond legislatively to the Court’s decisions.

Scope of Criminal Statutes

Kousisis v. United States: Fraud

In *Kousisis v. United States*, the Supreme Court was asked to resolve whether an intent to cause net economic loss is required to sustain a wire fraud conviction under 18 U.S.C. § 1343.¹ The Court held that an intent to deprive the government of money or property is sufficient for purposes of § 1343.²

Kousisis concerned an individual defendant and the painting company that he managed, who were both charged with and convicted of wire fraud and conspiracy to commit wire fraud under 18 U.S.C. §§ 1343 and 1349, respectively, in connection with their bids for two government contracts for painting projects in Philadelphia.³ Projects receiving U.S. Department of Transportation funds must comply with federal regulations requiring participation by “disadvantaged-business enterprises” (DBEs).⁴ The defendants submitted bids falsely representing that the company would acquire painting supplies from a third-party, prequalified DBE. Notwithstanding this falsehood, PennDOT considered the painting itself to be satisfactory and there was no evidence that the government suffered any economic loss as a consequence of the fraud.⁵

¹ *Kousisis v. United States*, 145 S. Ct. 1382, 1389–90 (2025).

² *Id.* at 1388.

³ *Id.* at 1388–89.

⁴ *Id.* at 1389.

⁵ *Id.*

The Supreme Court unanimously upheld the convictions.⁶ The majority analyzed the plain text of 18 U.S.C. § 1343 and found no basis therein for an economic loss requirement.⁷ Based on the “statutory elements” of (1) a scheme, (2) a goal of obtaining money or property, and (3) the use of false pretenses, the majority wrote that “[n]o matter how long we stare at it, the broad, generic language of § 1343 leaves us struggling to see any basis for excluding a fraudulent-inducement scheme.”⁸ Accordingly, the government need not prove an intent to cause an economic loss or actual loss under § 1343.⁹

The holding in *Kousisis* allows for the wire and mail fraud statutes to apply to so-called “fraudulent inducement” schemes, in which the defendant induces the victim into a financial transaction based on false pretenses, but the victim nonetheless does not suffer an economic loss. The majority in *Kousisis* made clear that the “‘language of the wire fraud statute’ is undeniably ‘broad’” and added that “Congress enacted the wire fraud statute, and it is up to Congress—if it so chooses—to change it.”¹⁰

Should Congress seek to narrow the scope and applicability of the fraud statutes, it could add or make explicit elements that are currently absent or that courts have implied based on the common law roots of fraud. For example, if Congress sought to preclude the application of the fraud statutes to cases where victims do not suffer pecuniary loss, it could specify economic harm as an element of the offense.¹¹

Thompson v. United States: False Statements

In *Thompson v. United States*, the Supreme Court confronted whether 18 U.S.C. § 1014, which generally prohibits “false” statements in loan and credit applications, extends to “misleading” statements.¹² The Court narrowly construed the scope of the statute, holding that § 1014 does not reach “misleading” statements.¹³

In *Thompson*, the Federal Deposit Insurance Corporation (FDIC) was attempting to recoup a failed bank’s outstanding loans. The defendant told the FDIC his loan amount was \$110,000—the value of only his first loan of three, which totaled \$219,000.¹⁴ The defendant was then charged and convicted under 18 U.S.C. § 1014 for making “false statement[s]” to the FDIC.¹⁵ The district court and circuit court affirmed, holding that § 1014’s prohibition against “false statements” extends to misleading statements as well, and that although the defendant’s statement that he took out a loan in the amount of \$110,000 was not false, it was misleading as to the existence of the additional loans.¹⁶

The Supreme Court reversed. The Court relied primarily on statutory text and structure in its analysis, observing that “false” and “misleading” statements are independent concepts—“a

⁶ *Id.* at 1388.

⁷ *Id.* at 1391–92.

⁸ *Id.* at 1391.

⁹ *Id.* at 1388.

¹⁰ *Id.* at 1398.

¹¹ For more information on the case, see CRS Legal Sidebar LSB11327, *Kousisis v. United States and the Reach of Federal Fraud Statutes*, by Cassandra J. Barnum (2025).

¹² *Thompson v. United States*, 145 S. Ct. 821, 825–26 (2025).

¹³ *Id.* at 826.

¹⁴ *Id.* at 824.

¹⁵ *Id.*

¹⁶ *Id.*

misleading statement can be true,” and “a true statement is obviously not false.”¹⁷ The Court therefore explained that “a statute that applies to ‘any false statement’ does not cover all misleading statements, because the statement must still be false.”¹⁸ According to the Court, Congress could have used “misleading” in § 1014 as it has in other statutes, but opted not to, indicating Congress meant to restrict § 1014’s reach to false statements.¹⁹

Should Congress wish to prohibit misleading statements to the FDIC, like the ones at issue in *Thompson*, it could amend the statute prohibiting “false” statements in the context of loan applications to also cover “misleading” statements.²⁰ This would align 18 U.S.C. § 1014 with other statutes that include the term “misleading,” such as 18 U.S.C. § 1365(b) (prohibiting “materially false or misleading” labeling of consumer products).²¹

Firearms Cases

Smith & Wesson Brands v. Estados Unidos Mexicanos: Immunity for Gun Manufacturers and Distributors

In *Smith & Wesson Brands v. Estados Unidos Mexicanos*, the Supreme Court addressed whether allegations made by the Government of Mexico—that seven U.S. gun manufacturers and a U.S. gun distributor aided and abetted illegal firearms trafficking in Mexico—satisfied an exception to the civil immunity afforded by the Protection of Lawful Commerce in Arms Act (PLCAA).²² The Court held that allegations in Mexico’s complaint were insufficiently plausible to trigger this exception.²³

Congress enacted PLCAA in 2005 to prohibit lawsuits against firearm and ammunition manufacturers, distributors, dealers, and importers, seeking recovery for harm solely caused by the “criminal or unlawful misuse” of a firearm or ammunition, or component part of either.²⁴ PLCAA provides, however, that these entities may be liable under certain exceptions, including the “predicate exception” to such immunity.²⁵ PLCAA’s predicate exception authorizes civil liability if (1) a defendant knowingly violated a federal or state statute regulating the sale or marketing of firearms, and (2) the defendant’s violation was a proximate cause of the plaintiff’s injuries.²⁶

In 2021, the Government of Mexico filed suit against several gun manufacturers and a distributor, alleging that the defendants were civilly liable for costs associated with gun violence in Mexico.²⁷

¹⁷ *Id.* at 826.

¹⁸ *Id.*

¹⁹ *Id.* at 826–27.

²⁰ See 18 U.S.C. § 1014; *Thompson*, 145 S. Ct. at 826–27.

²¹ 18 U.S.C. § 1365(b); see also *Thompson*, 143 S. Ct. at 827 (offering other examples).

²² *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 145 S. Ct. 1556, 1562 (2025).

²³ *Id.*

²⁴ Pub. L. No. 109-92, § 4(5)(A), 119 Stat. 2095, 2097 (2005) (codified at 15 U.S.C. § 7903(5)(A)); see also *id.* § 3, 119 Stat. at 2096–97 (codified at 15 U.S.C. § 7902).

²⁵ *Id.* § 4(5)(A)(iii), 119 Stat. at 2097–98 (codified at 15 U.S.C. § 7903(5)(A)(iii)).

²⁶ *Id.*

²⁷ Complaint at 1–8, *Estados Unidos Mexicanos v. Smith & Wesson*, No. 1:21-cv-11269-FDS (D. Mass. Aug. 4, 2021).

The defendants responded that they were shielded from civil liability under PLCAA.²⁸ Mexico alleged that the defendants knowingly aided and abetted gun trafficking in Mexico and therefore that PLCAA's predicate exception applied.²⁹

The Supreme Court narrowly construed the meaning of aiding and abetting liability for purposes of PLCAA's predicate exception. The Court observed that aiding and abetting liability requires "participat[ion]"³⁰ in "specific wrongful acts."³¹ In contrast, "omissions" or "incidental[]" conduct, the Court explained, are not enough to establish aiding and abetting liability.³² Here, the Court found that the complaint fell short because it did not "pinpoint . . . any specific criminal transactions that the defendants (allegedly) assisted,"³³ nor did the complaint plausibly allege that the defendants favorably treated any firearms dealers to further any such criminal activity.³⁴

As PLCAA and the predicate exception are creatures of federal statute, Congress has options to address the Court's ruling in *Smith & Wesson*. Congress could amend the predicate exception to codify the Supreme Court's holding, or it could amend the scope of the exception to the extent it disagrees with the Court's conclusion. An amendment could include clarifying language as to what legal violations by actors in the firearms industry may trigger the predicate exception, when a firearms entity bears sufficient causal responsibility for any downstream misuse of firearms, and when (or if) plaintiffs may bring an action under PLCAA for harms occurring outside of the United States.

***Bondi v. VanDerStok*: Regulating "Ghost Guns"**

In *Bondi v. VanDerStok*, the Supreme Court assessed whether a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) rule addressing "ghost guns" was permissible under the Gun Control Act of 1968 (GCA).³⁵ The Court upheld the rule, holding that the rule fell within the scope of the statute.³⁶

Federal law, including the GCA, regulates entities licensed to engage in the firearms business (federal firearms licensees, or FFLs).³⁷ Among other requirements imposed on these businesses, FFLs must "identify by means of a serial number engraved or cast on the receiver or frame of the weapon" each firearm manufactured in, or imported into, the United States.³⁸ Not all weapons in the United States are subject, however, to these and other identification requirements. In response to developments in firearms technology and perceived gaps in the then-existing regulatory scheme, ATF issued the 2022 "ghost gun" rule that targeted certain unmarked firearms, along

²⁸ Joint Memorandum of Law in Support of Defendants' Motion to Dismiss, *Estados Unidos Mexicanos*, No. 1:21-cv-11269-FDS (D. Mass. Nov. 22, 2021).

²⁹ Plaintiff's Memorandum of Law in Opposition to Defendants' Joint Motion to Dismiss, *Estados Unidos Mexicanos*, No. 1:21-cv-11269-FDS (D. Mass. Jan. 31, 2022).

³⁰ *Smith & Wesson*, 145 S. Ct. at 1565 (quoting *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938)).

³¹ *Id.* at 1566 (quoting *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 494 (2023)) (emphasis omitted).

³² *Id.* (quoting *Twitter*, 598 U.S. at 489, 500, and *Rosemond v. United States*, 572 U.S. 65, 77 n.8 (2014)).

³³ *Id.* at 1567.

³⁴ *Id.*

³⁵ *Bondi v. VanDerStok*, 145 S. Ct. 857, 862 (2025).

³⁶ *Id.* at 868.

³⁷ Pub. L. No. 90-617, 82 Stat. 1213 (codified as amended at 18 U.S.C. §§ 921–928); see 18 U.S.C. § 923.

³⁸ 18 U.S.C. § 923(i).

with kits of their constituent parts.³⁹ ATF amended the definition of “frame or “receiver” to include “a partially complete, disassembled, or nonfunctional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored, or otherwise converted to function as a frame or receiver.”⁴⁰

The 2022 rule was challenged under the Administrative Procedure Act on the grounds that weapons parts kits fall outside the scope of the GCA, thus making the rule facially inconsistent with that act.⁴¹ In *Bondi*, the Court upheld the rule as consistent with the GCA.⁴² The Court determined that “weapon” as used in the GCA was an “artifact noun” (meaning that it refers to an object created by humans usually “characterized by an intended function, rather than by some ineffable natural essence”).⁴³ As such, the Court found that the term encompassed unfinished weapons when the intended function of the unfinished objects was obvious. Under this interpretation, the Court held at least some weapons parts kits to be “weapons.”⁴⁴ The Court next concluded that at least some weapons parts kits met the “readily converted” standard, finding that some kits could be made operable with comparable time and effort to starter guns, which are explicitly covered by the GCA.⁴⁵ The Court also determined that the new ATF definitions of “frame” or “receiver,” which include a partially complete frame or receiver, were consistent with the GCA’s undefined usage of those terms.⁴⁶ Here again, the Court held that “frame” and “receiver” were artifact nouns that would naturally be read to include some partially complete frames and receivers.⁴⁷ The Court reasoned that the GCA’s serialization requirements would make little sense if applied only to completed frames and receivers.⁴⁸

The holding in *VanDerStok* could be altered or reversed by clarifying the existing definitions in 18 U.S.C. § 921 to articulate what, if any, partially complete firearms may be regulated under the GCA.⁴⁹

Sentencing Cases

Delligatti v. United States: Crime of Violence

In *Delligatti v. United States*, the Supreme Court resolved a circuit split on whether a defendant who causes bodily injury or death to another necessarily uses “physical force” within the meaning of 18 U.S.C. § 924(c), even if the result is caused “by omission.”⁵⁰ The Court held that “the ‘use’ of ‘physical force’ in § 924(c) encompasses the knowing or intentional causation of bodily

³⁹ Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24652 (Apr. 26, 2022) (codified at 27 C.F.R. pts. 447, 478, 479).

⁴⁰ *Id.* at 24739.

⁴¹ See 5 U.S.C. § 706(2)(C); 18 U.S.C. § 921.

⁴² *Bondi*, 145 S. Ct. at 868.

⁴³ *Id.* at 869–70 (cleaned up).

⁴⁴ *Id.*

⁴⁵ *Id.* at 868–69; 18 U.S.C. § 921(a)(3).

⁴⁶ *VanDerStok*, 145 S. Ct. at 872; 27 C.F.R. § 478.11 (2025).

⁴⁷ *VanDerStok*, 145 S. Ct. at 873.

⁴⁸ *Id.*; 18 U.S.C. § 923(i).

⁴⁹ 18 U.S.C. § 921. For more information on the case, see CRS Legal Sidebar LSB11325, *Supreme Court Upholds ATF “Ghost Gun” Regulation in Bondi v. VanDerStok*, by Matthew D. Trout (2025).

⁵⁰ *Delligatti v. United States*, 145 S. Ct. 797, 805 (2025).

injury,” regardless of whether “an offender causes bodily injury by omission rather than affirmative act.”⁵¹

Under 18 U.S.C. § 924(c), using or carrying a firearm in the commission of a “crime of violence” triggers a mandatory minimum penalty of five years of imprisonment.⁵² Section 924(c) further defines a “crime of violence” for purposes of this mandatory minimum to include an offense that is a felony and that “has as an element the use . . . of physical force against the person . . . of another.”⁵³ Federal appeals courts have disagreed on whether a defendant “use[s] . . . physical force” for purposes of § 924(c) when he knowingly or intentionally causes death or bodily injury through a failure to act.⁵⁴

In *Delligatti*, the defendant argued that the New York state law that he was convicted of violating allowed for homicide to be committed “by act *or* omission” and thus did not meet the “physical force” requirement of Section 924(c).⁵⁵ The Supreme Court rejected this argument, reasoning that “[a] person uses force in that sense when he makes force his ‘instrument,’ whether directly or indirectly.”⁵⁶ The Court added that in other “crime of violence” cases, the Court understood that “use” means to convert to one’s service or to employ.⁵⁷ This understanding of “use” comports with ordinary usage, the Court wrote—for example, when a car owner “uses” rain to wash his vehicle by leaving it outside.⁵⁸ The Court explained that intentionally causing the death of another may be committed by omission, emphasizing that this view has “deep roots in the common law” and that the causation requirement ensures that the death may be traced to the defendant.⁵⁹ To highlight the point, the Court offered as an example that “[w]hen a young child starves to death after his parents refuse to give him food, that harm would not have occurred but for the parents’ choice.”⁶⁰

In response to *Delligatti*, Congress could define the “use” of physical force for purposes of 18 U.S.C. § 924(c) by specifying whether it must entail an affirmative action or may include an omission.⁶¹

Esteras v. United States: Supervised Release Determinations

In *Esteras v. United States*, the Court addressed a circuit split over whether a judge may consider retribution in supervised-release revocation determinations.⁶² The Court held that a judge may not factor retribution associated with the underlying offense in such determinations.⁶³

⁵¹ *Id.*

⁵² 18 U.S.C. § 924(c).

⁵³ *Id.*

⁵⁴ See Pet. for Writ of Certiorari, *Delligatti v. United States*, No. 23-825, at *14 (Jan. 19, 2024) (identifying circuit split).

⁵⁵ *Delligatti*, 145 S. Ct. at 804.

⁵⁶ *Id.*

⁵⁷ *Id.* at 810.

⁵⁸ *Id.* at 807–08.

⁵⁹ *Id.* at 807–09.

⁶⁰ *Id.* at 807.

⁶¹ See *id.* at 805; 18 U.S.C. § 924(c). For more information on the case, see CRS Legal Sidebar LSB11293, *Supreme Court Clarifies That a “Crime of Violence” May Be Committed by “Omission”*, by Dave S. Sidhu (2025).

⁶² *Esteras v. United States*, 145 S. Ct. 2031, 2036 (2025).

⁶³ *Id.* at 2037.

The Sentencing Reform Act of 1984 (SRA) authorizes, and in some instances requires, federal courts to impose supervised release on an individual convicted of a federal crime.⁶⁴ In general, supervised release comprises a set of conditions with which a federal defendant must comply upon release from prison.⁶⁵ Compliance with conditions is monitored by a federal probation officer.⁶⁶ If a defendant violates a condition, the court may revoke the supervised release and may, among other things, send the defendant back to prison.⁶⁷

The SRA lists deterrence, incapacitation, and rehabilitation among the factors that a judge must consider in making these revocation determinations.⁶⁸ The SRA does not, however, expressly include retribution as one such factor.⁶⁹ Retribution is a backward-looking theory of punishment that generally provides that an individual who commits a crime deserves to be punished, and that the punishment should be commensurate with the individual's culpability and the harms the individual inflicted on society.⁷⁰

Relying in part on an analysis of congressional intent, the Supreme Court in *Esteras* removed retribution from the universe of what a judge can consider in revocation proceedings. First, referencing the general canon of construction that “expressing one item of [an] associated group or series excludes another left unmentioned,”⁷¹ the Court explained that the “omission” of the retributive factor from § 3583(e) supports a “negative implication” that Congress did not intend for courts to consider retribution in revocation decisions.⁷² Second, the Court added that related sentencing provisions include retribution, suggesting that the exclusion of retribution from § 3583(e) was intentional.⁷³ The Court further observed that the purpose of supervised release is to “fulfill[] rehabilitative ends” and to “provide[] individuals with postconfinement assistance” and, as such, the omission of retributive factors comports with the forward-looking goals of supervised release.⁷⁴

The *Esteras* Court emphasized the absence of the retributive factor from 18 U.S.C. § 3583(e) to support its conclusion that judges may not consider retribution for the original crime of conviction in making a supervised release revocation decision.⁷⁵ To permit judges to consider the retributive factor in supervised release revocations, Congress could explicitly add it to § 3583 and could specify the weight to be assigned to this factor.⁷⁶

⁶⁴ Pub. L. No. 98-473, title II, § 212(a)(2), 98 Stat. 1987, 1999 (codified as amended at 18 U.S.C. § 3583(a)).

⁶⁵ OFF. OF GEN. COUNSEL, U.S. SENT'G COMM'N, PRIMER: SUPERVISED RELEASE 1 (2021), https://www.ussc.gov/sites/default/files/pdf/training/primers/2021_Primer_Supervised_Release.pdf [<https://perma.cc/3R7D-MYWK>].

⁶⁶ 18 U.S.C. § 3601.

⁶⁷ *Id.* § 3583(e)(3).

⁶⁸ *Id.* § 3583(c) (listing 18 U.S.C. §§ 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)).

⁶⁹ *Id.* (18 U.S.C. § 3553(a)(2)(A) not listed).

⁷⁰ For more information on the four primary purposes of punishment, including retribution, see CRS Legal Sidebar LSB10929, *Supreme Court: Retribution Tied to the Original Offense Cannot Factor into Supervised Release Revocation Decisions*, by Dave S. Sidhu (2025).

⁷¹ *Id.* at 2040 (quoting *Chevron v. Echazabal*, 536 U.S. 73, 80 (2002)).

⁷² *Id.* at 2040–41 (quoting *Chevron*, 536 U.S. at 81).

⁷³ *Id.* at 2041.

⁷⁴ *Id.* (quoting *United States v. Johnson*, 529 U.S. 53, 59–60 (2000)).

⁷⁵ *Id.* at 2040–41.

⁷⁶ For more information on the case, see CRS Legal Sidebar LSB10929, *Supreme Court: Retribution Tied to the Original Offense Cannot Factor into Supervised Release Revocation Decisions*, by Dave S. Sidhu (2025).

***Hewitt v. United States* and *Duffey v. United States*: First Step Act Sentencing Reductions**

The question before the Supreme Court in the consolidated cases of *Hewitt v. United States* and *Duffey v. United States* (collectively referred to as *Hewitt* unless noted in this Report) is whether a sentence imposed prior to enactment of the First Step Act of 2018 (FSA) that was vacated post-enactment of the FSA is an “imposed” sentence ineligible for sentencing relief.⁷⁷ The Court held that sentences vacated in this sequence are entitled to such statutory relief.⁷⁸

Prior to the enactment of the FSA,⁷⁹ a defendant convicted of a crime of violence under 18 U.S.C. § 924(c) was subject to (1) a five-year mandatory minimum sentence for a first-time offense, and (2) a twenty-five-year mandatory minimum for a second violation.⁸⁰ The twenty-five-year sentence would be “stacked,” or served consecutively, with the five-year sentence.⁸¹ The Supreme Court had previously held that this stacking regime would apply to each count of conviction, even if those counts arose from the same criminal prosecution.⁸² This holding had the effect of allowing first-time offenders to essentially be treated as recidivists for sentencing purposes.⁸³

The FSA afforded sentencing relief by providing that, for first-time offenders, only five-year mandatory minimum sentences could apply to each count of conviction.⁸⁴ The FSA permits a twenty-five-year mandatory recidivist enhancement only after an initial violation had become “final.”⁸⁵ For offenses committed prior to December 21, 2018 (the date of FSA enactment), the FSA applies this sentencing relief, in part, if the sentence “has not been imposed” by the date of enactment.⁸⁶

In *Hewitt*, the Supreme Court held that defendants in this circumstance were entitled to the more lenient sentencing regime created by the FSA, reasoning that Congress’s use of “*has* been imposed”—rather than “*had* been imposed”—signals that the pre-enactment sentence must continue to be “extant.”⁸⁷ The Court contrasted this present-perfect verb tense with alternative phrases used by Congress in other parts of the FSA, such as “was previously imposed,” which would indicate congressional intent to exclude all pre-enactment sentences.⁸⁸ In addition, the legal effect of a vacatur is to treat an order or judgment as if it never occurred, the Court pointed out.⁸⁹

Relying on the text of the FSA, the Court in *Hewitt* indicated that if Congress intended for the vacated sentencing hearings to be excluded from the statute’s sentencing relief, Congress could have selected alternative words such as a sentence that “was previously imposed” pre-

⁷⁷ *Hewitt v. United States*, 145 S. Ct. 2165, 2170–71 (2025).

⁷⁸ *Id.* at 2171.

⁷⁹ First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (codified in scattered sections of 8, 12, 18, 20, 21, 29, 34, 42, 50 U.S.C.).

⁸⁰ *Hewitt*, 145 S. Ct. at 2169.

⁸¹ *Id.*

⁸² *Id.*; see also *Deal v. United States*, 508 U.S. 129 (1993).

⁸³ *Hewitt*, 145 S. Ct. at 2169.

⁸⁴ First Step Act of 2018, § 403(a), 132 Stat. at 5221–22 (codified as amended at 18 U.S.C. § 924 note).

⁸⁵ *Id.*

⁸⁶ *Id.* § 403(b).

⁸⁷ *Id.* at 2171 (emphasis added).

⁸⁸ *Id.* at 2173; see also *id.* at 2171 (noting with respect to verb tense that “that distinction makes a difference”).

⁸⁹ *Id.* at 2173.

enactment.⁹⁰ If Congress were to make this amendment, defendants whose sentences were imposed and vacated pre-enactment would be subject to the harsher sentencing regime in place prior to the FSA, even if the resentencing had occurred post-enactment. Amending the statute in this way would eliminate the “partial retroactivity” that is currently in place and create a bright line rule.⁹¹

Constitutional Rights Cases

Glossip v. Oklahoma: Duty to Correct False Testimony

In *Glossip v. Oklahoma*, the Supreme Court considered whether it had jurisdiction to review a state court’s ruling in a capital case and, if so, whether the defendant was entitled to a new trial on account of a prosecutorial failure to correct certain false testimony.⁹² The Court asserted jurisdiction⁹³ and on the merits determined that the defendant’s due process rights were violated, entitling him to a new trial.⁹⁴

The Fourteenth Amendment provides that no state may “deprive any person of life, liberty, or property, without due process of law.”⁹⁵ In 1959, the Supreme Court held in *Napue v. Illinois* that when a prosecutor knows witness testimony to be false and does not correct it, the defendant is deprived of due process of law under the Fourteenth Amendment.⁹⁶ In so holding, the Court wrote that “[t]he principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness.”⁹⁷

In *Glossip*, the defendant was accused of murder for hire.⁹⁸ He was convicted and sentenced to death, based largely on the testimony of a primary witness, the person who committed the murder.⁹⁹ After multiple appeals, one of which resulted in a retrial in which the defendant was again convicted, the Oklahoma attorney general’s office turned over a previously undisclosed box of material containing notes from a prosecutor’s meeting with the primary witness, which indicated that the prosecutor was aware that a portion of the witness’s testimony was false.¹⁰⁰ Specifically, the witness had testified at trial that he had been given lithium to treat a cold and had never seen a psychiatrist, when in fact a psychiatrist had prescribed lithium for his bipolar disorder.¹⁰¹ The prosecutor’s notes contained what appeared to be a reference to the psychiatrist.¹⁰²

⁹⁰ *Id.*

⁹¹ *Id.* at 2168.

⁹² 145 S. Ct. 612, 624–25 (2025).

⁹³ *Id.* at 626.

⁹⁴ *Id.* at 633.

⁹⁵ U.S. CONST., amend. XIV, § 1.

⁹⁶ 360 U.S. 264 (1959).

⁹⁷ *Id.* at 269.

⁹⁸ 145 S. Ct. 612 (2025).

⁹⁹ *Id.* at 620.

¹⁰⁰ *Id.* at 622–623.

¹⁰¹ *Id.*

¹⁰² *Id.*

The Oklahoma attorney general conceded that the prosecutor had committed a *Napue* violation.¹⁰³ The defendant filed a petition for post-conviction relief from the Oklahoma Court of Criminal Appeals (OCCA), which denied the petition on the basis that it was procedurally barred by Oklahoma’s Post-Conviction Procedures Act (PCPA).¹⁰⁴ The defendant appealed to the Supreme Court, which reversed and ordered a new trial.¹⁰⁵

The *Glossip* Court first held that it had jurisdiction to review the conviction because the basis for the OCCA’s decision to apply the PCPA was predicated on whether a federal constitutional violation occurred.¹⁰⁶ Turning to the merits, the Court held that “the prosecution violated its constitutional obligation to correct false testimony.”¹⁰⁷ The Court cited its own precedent in finding that such a violation warrants a new trial if the false testimony “in any reasonable likelihood could have affected the judgment of the jury.”¹⁰⁸ Because the witness’s testimony “was the only direct evidence of [defendant’s] guilt,” the Court held, “the jury’s assessment of [the witness’s] credibility was necessarily determinative here.”¹⁰⁹ This, combined with a number of other concerns it had about the trial, led the Court to conclude that “the *Napue* error here prejudiced the defense.”¹¹⁰ The Court found that the OCCA had erred in its application of *Napue* and that the defendant was entitled to a new trial.¹¹¹

In *Glossip*, the Supreme Court construed the Fourteenth Amendment. Given Congress does not have authority to override a constitutional interpretation from the Court through ordinary legislation, its only option if it disagreed with the Court’s interpretation of the Fourteenth Amendment would be to pursue a constitutional amendment.¹¹² Congress’s options may be additionally limited given that the Court was reviewing a state-court judgment, although Congress could clarify Supreme Court jurisdiction in cases that originate in state courts.¹¹³

***Barnes v. Felix*: Excessive Force**

In *Barnes v. Felix*, the Supreme Court resolved a circuit split concerning the scope of the time frame that must be analyzed in determining whether an officer’s use of deadly force is acceptable under the Fourth Amendment.¹¹⁴ The Court opted for a broader scope, holding that “a court must

¹⁰³ *Id.* at 623.

¹⁰⁴ *Id.* at 624.

¹⁰⁵ *Id.* at 633.

¹⁰⁶ *Id.* at 626 (OCCA “made application of the PCPA contingent on its determination that the attorney general’s confession of federal constitutional error had no basis in law or fact.”).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 626–627 (citing *Giglio v. United States*, 405 U.S. 150, 154 (1972)) (cleaned up).

¹⁰⁹ *Id.* at 628.

¹¹⁰ *Id.* at 629.

¹¹¹ *Id.* at 633.

¹¹² See *Dickerson v. United States*, 530 U.S. 428, 437 (2000) (“Congress may not legislatively supersede our decisions interpreting and applying the Constitution.”).

¹¹³ The majority and dissent disagreed as to whether the Supreme Court could exercise jurisdiction over the case. Compare *Glossip*, 145 S. Ct. at 624–626 (holding that the Court had such jurisdiction), with *id.* at 644–49 (arguing that the Court lacks jurisdiction) (Thomas, J., dissenting). See generally Cong. Rsch. Serv., *Overview of Congressional Control Over Judicial Power*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIII-S1-5-1/ALDE_00013528 (last visited Aug. 14, 2025) (“Congress can . . . alter the jurisdiction of the federal courts”).

¹¹⁴ *Barnes v. Felix*, 145 S. Ct. 1353, 1356 (2025).

consider all the relevant circumstances, including facts and events leading up to the climactic moment.”¹¹⁵

The Fourth Amendment provides, in relevant part, that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]”¹¹⁶ The Supreme Court has recognized that the Fourth Amendment protects the “right to be free from the use of excessive force in the course of an arrest.”¹¹⁷ The Court has previously stressed that the constitutionality of a given use of force must involve an assessment of reasonableness¹¹⁸ under a “totality-of-the-circumstances” inquiry, which requires an appraisal of the “whole picture” and the “surrounding circumstances” leading up to the use of force—not a fact or factor “in isolation.”¹¹⁹ In contrast to a totality-of-the-circumstances test with a wide aperture, some courts have employed a “moment of threat” approach to uses of deadly force, limiting an analysis of the use of deadly force to the specific time frame when the officer believed that the use of such force was warranted and treating the circumstances leading up to the use of force as irrelevant.¹²⁰

In *Barnes*, the Supreme Court concluded that the latter approach “conflicts” with the Court’s prior instruction to consider the totality of the circumstances.¹²¹ The Court held that a court cannot “‘narrow’ the totality-of-the-circumstances inquiry” or “put on chronological blinders” by “focus[ing] on only a single moment.”¹²² While “the precise time of the shooting will often be what matters most,” the Court acknowledged, a court “must look too, in this and all excessive-force cases, at any relevant events coming before.”¹²³ The Court indicated this review is needed because “earlier facts and circumstances” may provide context as to why the officer employed the force at issue and thus may inform the reasonableness inquiry.¹²⁴

Because *Barnes* was based on the Fourth Amendment rather than a federal statute, Congress’s options to respond directly to the case are somewhat limited.¹²⁵ Congress could legislate in the law enforcement use-of-force arena by, for example, encouraging the adoption of particular force standards by state and local agencies pursuant to its Spending Clause authority.¹²⁶ Congress could also consider addressing existing civil enforcement mechanisms and the judicially created legal doctrine of qualified immunity (which generally shields government officials, including law enforcement, from civil liability based on alleged deprivations of statutory or constitutional rights

¹¹⁵ *Id.*

¹¹⁶ U.S. CONST., amend. IV.

¹¹⁷ See *Lee v. Ferraro*, 284 F.3d 1188, 1197 (11th Cir. 2002) (citing *Graham v. Connor*, 490 U.S. 386, 394–95 (1989)).

¹¹⁸ See *Florida v. Jimeno*, 500 U.S. 248, 250 (1991) (observing that the “ultimate touchstone” of a Fourth Amendment analysis is “reasonableness.”).

¹¹⁹ *District of Columbia v. Wesby*, 583 U.S. 48, 60–61 (2018).

¹²⁰ See *Barnes*, 145 S. Ct. at 1357 (noting “a court could ask only about the situation existing ‘at the moment of the threat’ that sparked the fatal shooting.” (quoting *Rockwell v. Brown*, 664 F.3d 985, 991 (5th Cir. 2011))).

¹²¹ *Barnes*, 145 S. Ct. at 1359.

¹²² *Id.* at 1359–60.

¹²³ *Id.* at 1360.

¹²⁴ *Id.* at 1358.

¹²⁵ See *Dickerson v. United States*, 530 U.S. 428, 437 (2000).

¹²⁶ See CRS Report R46827, *Funding Conditions: Constitutional Limits on Congress’s Spending Power*, by Victoria L. Killion (2021).

under certain circumstances).¹²⁷ As an alternative to legislation, Congress could leave the resolution of legal issues related to police use of force to the courts.¹²⁸

Congressional Considerations

Congress can seek to legislatively address the outcomes of any of the aforementioned cases subject to constitutional constraints to the extent it disagrees with them. Congress has expressed interest in regulating the broad areas of law related to the aforementioned cases, though it does not appear that legislation has been put forward on the specific questions at issue in these cases.

For example, some Members in recent Congresses have proposed bills generally concerning fraud (e.g., S.2680, 119th Congress; S.2725, 119th Congress); PLCAA (e.g., H.R.1068, 119th Congress; H.R.4836, 117th Congress); “ghost guns” (e.g., H.R.2698, 119th Congress; H.R.544, 119th Congress); supervised release (e.g., H.R.5005, 118th Congress; S.1248, 118th Congress); the FSA (e.g., S.1217, 118th Congress; S.1247, 118th Congress); capital punishment (S.3764, 119th Congress; H.R.9868, 118th Congress); and excessive force (S.22, 117th Congress; H.R.8088, 116th Congress). The cases summarized in this report may guide or inform future legislative activity both in these general legal fields and as to the particular issues decided in these cases.

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¹²⁷ See CRS Legal Sidebar LSB10492, *Policing the Police: Qualified Immunity and Considerations for Congress*, by Whitney K. Novak (2023).

¹²⁸ For more information on this case, see CRS Legal Sidebar LSB11336, *Excessive Force and the Fourth Amendment: Supreme Court Clarifies Scope of Legal Test*, by Michael A. Foster and Dave S. Sidhu (2025).

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