

SELECTED RETROACTIVITY CASELAW



**Prepared by the
Office of General Counsel
U.S. Sentencing Commission
Crack Retroactivity Summit**

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Disclaimer: This document lists certain issues and caselaw discussed during the Commission panel at the Crack Retroactivity Summit in Charlotte. The list is not a complete compilation of the caselaw pertaining to the issues, does not represent the official views of the Commission, and should not be considered definitive.

Retroactivity Caselaw Issues

Can a court grant a § 3582(c)(2) motion based on the new crack amendments prior to March 3, 2008, the effective date of the amendment to §1B1.10?

United States v. Ross, ---F.3d---, 2008 WL 115115 (9th Cir. Jan. 14, 2008).
Humphrey v. United States, 2007 WL 4589749 (N.D. Ohio Dec. 27, 2007).
Pierre-Louis v. United States, 2008 WL 114468 (D. Me. Jan. 9, 2008).
United States v. Womack, 2008 WL 78782 (S.D. Ill. Jan. 7, 2008).
United States v. Allende, 2007 WL 4367813 (S.D. Tex. Dec. 13, 2007).

Is a § 3582(c)(2) proceeding a full resentencing?

New USSG §1B1.10(a)(3).

United States v. Jordan, 162 F.3d 1 (1st Cir. 1998).
United States v. Swint, 2007 WL 2745767 (3d Cir. Sept. 21, 2007).
United States v. Legree, 205 F.3d 724 (4th Cir. 2000).
United States v. Whitebird, 55 F.3d 1007 (5th Cir. 1995).
United States v. Tidwell, 178 F.3d 946 (7th Cir. 1999).
United States v. Hicks, 472 F.3d 1167 (9th Cir. 2007).
United States v. Torres, 99 F.3d 360 (10th Cir. 1996).
United States v. Bravo, 203 F.3d 778 (11th Cir. 2000).
United States v. Moreno, 421 F.3d 1217 (11th Cir. 2005).
United States v. Suarez, 2007 WL 4547773 (11th Cir. Dec. 27, 2007).

Does a defendant have the right to a § 3582(c)(2) hearing?

Restrepo-Contreras v. United States, 99 F.3d 1128 (1st Cir. 1996).
United States v. Legree, 205 F.3d 724 (4th Cir. 2000).
United States v. Townsend, 98 F.3d 510 (9th Cir. 1996).

Does a defendant have the right to be present at a § 3582(c)(2) hearing?

Fed. R. Crim. P. 43(b)(4).

Does a defendant have a right to counsel under § 3582(c)(2)?

United States v. Reddick, 53 F.3d 462 (2d Cir. 1995).
United States v. Legree, 205 F.3d 724 (4th Cir. 2000).
United States v. Whitebird, 55 F.3d 1007 (5th Cir. 1995).
United States v. Tidwell, 178 F.3d 946 (7th Cir. 1999).
United States v. Townsend, 98 F.3d 510 (9th Cir. 1996).

Does the court have to order a new presentence report on a § 3582(c)(2) motion?

United States v. Mueller, 168 F.3d 186 (5th Cir. 1999).
United States v. Wyatt, 115 F.3d 606 (8th Cir. 1997).
United States v. Forty-Estremera, 498 F. Supp. 2d 468 (D. P.R. 2007).

Under what circumstances could a court go below the amended guideline range?

Where a downward departure was given at the original sentence:

New USSG § 1B1.10(b)(2)(B).

United States v. Wyatt, 115 F.3d 606 (8th Cir. 1997).
United States v. Vautier, 144 F.3d 756 (11th Cir. 1998).

Where a downward departure was not given at the original sentence:

New USSG § 1B1.10(b)(2)(A).

United States v. Jordan, 162 F.3d 1 (1st Cir. 1998).
United States v. Hasan, 245 F.3d 682 (8th Cir. 2001).
United States v. Hicks, 472 F.3d 1167 (9th Cir. 2007).
United States v. Bravo, 203 F.3d 778 (11th Cir. 2000).
United States v. Forty-Estremera, 498 F. Supp. 2d 468 (D. P.R. 2007).

Are courts post-Booker still bound by the safety valve requirements in 18 U.S.C. § 3553(f) inasmuch as it requires judicial factfinding?

United States v. Morrisette, 429 F.3d 318 (1st Cir. 2005).
United States v. Bermudez, 407 F.3d 536 (1st Cir. 2005).
United States v. Barrero, 425 F.3d 154 (2d Cir. 2005).
United States v. Carey, 382 F.3d 387 (3d Cir. 2004).
United States v. McKoy, 452 F.3d 234 (3d Cir. 2006).
United States v. Payton, 405 F.3d 1168 (10th Cir. 2005).
United States v. Brehm, 442 F.3d 1291 (11th Cir. 2006).

If a defendant was sentenced as a career offender pursuant to §4B1.1, what impact does Amendment 706 have on his sentence?

United States v. Sewell, 77 F.3d 480 (5th Cir. 1996).
United States v. Stotts, 84 Fed. Appx. 607 (6th Cir. 2003).
United States v. Ross, 165 Fed. Appx. 473 (7th Cir. 2006).
United States v. Hankerson, 224 Fed. Appx. 900 (11th Cir. 2007) (per curiam).

May a court amend a sentence pursuant to § 3582(c)(2) where the original sentence was imposed pursuant to a binding plea agreement?

United States v. Moure-Ortiz, 184 F.3d 1 (1st Cir. 1999).

United States v. Brown, 71 Fed. Appx. 383 (5th Cir. 2003).

United States v. Peveler, 359 F.3d 369 (6th Cir. 2004).

United States v. Hemminger, 1997 WL 235838 (7th Cir. 1997).

United States v. McKenna, 1998 WL 30793 (9th Cir. 1998).

United States v. Trujeque, 100 F.3d 869 (10th Cir. 1996).