

Table B-3A. (September 30, 2013—Continued)

| Circuit and District | Appeals Commenced | | | Appeals Disposed of | | |
|----------------------|-------------------|--------------|--------------|---------------------|--------------|--------------|
| | Total | Civil | Criminal | Total | Civil | Criminal |
| 9TH | 7,760 | 6,091 | 1,669 | 7,794 | 6,186 | 1,608 |
| AK | 87 | 66 | 21 | 116 | 76 | 40 |
| AZ | 841 | 481 | 360 | 751 | 430 | 321 |
| CA,N | 843 | 756 | 87 | 854 | 779 | 75 |
| CA,E | 941 | 848 | 93 | 1,046 | 954 | 92 |
| CA,C | 2,323 | 1,936 | 387 | 2,462 | 2,097 | 365 |
| CA,S | 588 | 357 | 231 | 555 | 340 | 215 |
| HI | 136 | 112 | 24 | 113 | 92 | 21 |
| ID | 159 | 105 | 54 | 120 | 83 | 37 |
| MT. | 231 | 144 | 87 | 190 | 106 | 84 |
| NV. | 522 | 414 | 108 | 532 | 417 | 115 |
| OR . | 416 | 350 | 66 | 352 | 299 | 53 |
| WA,E | 168 | 117 | 51 | 180 | 109 | 71 |
| WA,W | 482 | 393 | 89 | 502 | 395 | 107 |
| GUAM . | 11 | 7 | 4 | 11 | 5 | 6 |
| NMI | 12 | 5 | 7 | 10 | 4 | 6 |
| 10TH | 1,789 | 1,335 | 454 | 1,901 | 1,448 | 453 |
| CO | 498 | 401 | 97 | 476 | 394 | 82 |
| KS | 297 | 206 | 91 | 329 | 227 | 102 |
| NM | 211 | 140 | 71 | 215 | 139 | 76 |
| OK,N | 170 | 127 | 43 | 186 | 142 | 44 |
| OK,E | 79 | 50 | 29 | 73 | 62 | 11 |
| OK,W | 280 | 217 | 63 | 316 | 251 | 65 |
| UT | 163 | 125 | 38 | 204 | 153 | 51 |
| WY | 91 | 69 | 22 | 102 | 80 | 22 |
| 11TH | 5,174 | 3,648 | 1,526 | 5,640 | 3,880 | 1,760 |
| AL,N | 283 | 221 | 62 | 319 | 232 | 87 |
| AL,M | 127 | 89 | 38 | 155 | 114 | 41 |
| AL,S | 140 | 89 | 51 | 191 | 105 | 86 |
| FL,N | 407 | 284 | 123 | 487 | 304 | 183 |
| FL,M | 1,451 | 1,048 | 403 | 1,616 | 1,086 | 530 |
| FL,S | 1,386 | 902 | 484 | 1,403 | 955 | 448 |
| GA,N | 762 | 590 | 172 | 813 | 626 | 187 |
| GA,M | 295 | 188 | 107 | 283 | 204 | 79 |
| GA,S | 323 | 237 | 86 | 373 | 254 | 119 |

NOTE: Totals include reopened, remanded, and reinstated appeals as well as original appeals. This table does not include data for the U.S. Court of Appeals for the Federal Circuit.

Table B-5. (September 30, 2013—Continued)

| Circuit and Nature of Proceeding | Total Appeals Terminated ¹ | Terminations on the Merits | | | | | | | | | |
|----------------------------------|---------------------------------------|-------------------------------|-------------------------------|--------------|--------------------------------|------------|------------|-----------|-----------|----------------------|-------------------------------|
| | | Disposed of by Consolidations | Percent of Total Terminations | Total | Affirmed/Enforced ² | Dismissed | Reversed | Remanded | Other | Cert. Appeal-ability | Percent Reversed ³ |
| 11TH CIRCUIT | 6,867 | 231 | 57.7 | 3,965 | 2,539 | 256 | 221 | 19 | 13 | 917 | 6.4 |
| CRIMINAL | 1,760 | 125 | 64.1 | 1,128 | 959 | 97 | 61 | 2 | 9 | - | 5.4 |
| U.S. PRISONER PETITIONS | 878 | 9 | 60.1 | 528 | 79 | 19 | 14 | 1 | - | 415 | 2.7 |
| OTHER U.S. CIVIL | 303 | 21 | 54.5 | 165 | 142 | 3 | 16 | 4 | - | - | 9.7 |
| PRIV. PRISONER PETITIONS | 1,208 | 9 | 61.2 | 739 | 110 | 103 | 23 | - | 1 | 502 | 3.1 |
| OTHER PRIVATE CIVIL | 1,491 | 47 | 41.6 | 620 | 528 | 13 | 67 | 9 | 3 | - | 10.8 |
| BANKRUPTCY | 81 | 1 | 49.4 | 40 | 32 | 3 | 4 | 1 | - | - | 10.0 |
| ADMINISTRATIVE APPEALS | 442 | 18 | 42.5 | 188 | 152 | - | 34 | 2 | - | - | 18.1 |
| ORIGINAL PROCEEDINGS | 704 | 1 | 79.1 | 557 | 537 | 18 | 2 | - | - | - | - |

NOTE: This table does not include data for the U.S. Court of Appeals for the Federal Circuit.

¹ Totals include reopened and remanded appeals as well as original appeals.

² Affirmed includes merit terminations affirmed in part and reversed in part.

³ Percent not shown where the total number of cases terminated on the merits is less than 10. Percentages of cases reversed have not been computed for original proceedings because of their difference from appeals, nor are they included in the percentage of total appeals reversed.

Table B-1. (September 30, 2013—Continued)

| Circuit and Nature of Proceeding | Cases Pending Oct. 1, 2012 ¹ | Cases Commenced | | | Cases Terminated | | | | | | | | | Cases Pending Sept. 30, 2013 |
|----------------------------------|---|-----------------|--------------|------------------------|--------------------|-------------------------------|------------------------------------|------------|--------------|----------------------------|------------------------------------|--------------------|----------------------------|------------------------------|
| | | Total | Original | Re-opened ² | Total Terminations | Procedural Terminations | | | | Terminations on the Merits | | | | |
| | | | | | | Total Procedural Terminations | Cases Disposed of by Consolidation | By Judge | By Staff | Total Merit Terminations | Cases Disposed of by Consolidation | After Oral Hearing | After Submission on Briefs | |
| 11TH CIRCUIT | 3,853 | 6,366 | 6,046 | 320 | 6,867 | 2,671 | 13 | 875 | 1,783 | 4,196 | 231 | 450 | 3,515 | 3,352 |
| CRIMINAL | 1,400 | 1,526 | 1,493 | 33 | 1,760 | 507 | - | 130 | 377 | 1,253 | 125 | 108 | 1,020 | 1,166 |
| U.S. PRISONER PETITIONS | 381 | 831 | 783 | 48 | 878 | 341 | 1 | 54 | 286 | 537 | 9 | 16 | 512 | 334 |
| OTHER U.S. CIVIL | 194 | 262 | 238 | 24 | 303 | 117 | - | 41 | 76 | 186 | 21 | 31 | 134 | 153 |
| PRIV. PRISONER PETITIONS | 550 | 1,188 | 1,121 | 67 | 1,208 | 460 | - | 132 | 328 | 748 | 9 | 36 | 703 | 530 |
| OTHER PRIVATE CIVIL | 942 | 1,367 | 1,260 | 107 | 1,491 | 824 | 11 | 350 | 463 | 667 | 47 | 221 | 399 | 818 |
| BANKRUPTCY | 61 | 82 | 78 | 4 | 81 | 40 | 1 | 20 | 19 | 41 | 1 | 12 | 28 | 62 |
| ADMINISTRATIVE APPEALS | 262 | 400 | 367 | 33 | 442 | 236 | - | 98 | 138 | 206 | 18 | 26 | 162 | 220 |
| ORIGINAL PROCEEDINGS | 63 | 710 | 706 | 4 | 704 | 146 | - | 50 | 96 | 558 | 1 | - | 557 | 69 |

NOTE: This table includes appeals reopened and remanded as well as original appeals. This table does not include data for the U.S. Court of Appeals for the Federal Circuit.

¹ Revised.

² In 2007, the category entitled "reopened," which includes all reopened appeals, replaced the category entitled "reinstated." Therefore, data on reopened cases for 2007 and thereafter are not comparable to data published previously on reinstated cases.

Appealing a Criminal Case to the Eleventh Circuit

Filing and Perfecting the Appeal

Notice of Appeal

14 days after final judgment docketed in district court or 14 days after Government's Notice of Appeal, whichever is later

Transcript Request Form

14 days after Notice of Appeal

Certificate of Interested Persons

14 days from the date the case is docketed in the Eleventh Circuit

Web-based Certificate of Interested Persons

Complete this form on the Eleventh Circuit's website on the same day the traditional Certificate of Interested Persons is filed

Briefing, Submission of Appendix, Rehearing, and Certiorari

Appellant's Brief

Unless otherwise ordered, 40 days after district court certifies record as complete for appeal

Appellant's Appendix

7 days after Appellant's Brief

Government's Brief

33 days after Appellant's Brief

Government's Appendix

7 days after Government's Brief

Reply Brief

17 days after Government's Brief

Panel Opinion

Petition for Rehearing or Rehearing En Banc

21 days after panel opinion

Petition for Certiorari in Supreme Court

90 days after panel opinion, en banc opinion, or denial of petition for rehearing (if any)

*To calculate the number of days, exclude the day of the event that triggers the period, count every day, including weekends and legal holidays (defined in FRAP 26(a)(6)), and include the last day of the period. If the last day of the period is a weekend or legal holiday, the due date is the next day that is not a weekend or legal holiday. See FRAP 26(a)(1).

SUMMARY OF IMPORTANT RULES

Certificate of Interested Persons and Corporate Disclosure Statement [11th Cir. R. 26.1]

- Despite the more general language of FRAP 26.1, all appellants in criminal cases must file a Certificate of Interested Persons and Corporate Disclosure Statement (CIP). *See* 11th Cir. R. 26.1.
- Due within 14 days of the docketing of the appeal in the Eleventh Circuit. *See* 11th Cir. R. 26.1-2.
- Must contain an exhaustive listing of persons and corporate entities with an interest in the outcome of the case (*see* 11th Cir. R. 26.1-1 for details).
- Must include the stock (“ticker”) symbol for any publicly-listed corporation, along with its full corporate name as registered with a secretary of state’s office.
- The Web-Based CIP must be submitted the same day the paper certificate is filed. This online form must be completed even if there are no corporate entities with an interest in the case. In that event, simply choose the “Nothing to Enter” option.
- The CIP must also be included in the first brief filed. Any subsequent briefs by any party need only list persons or corporate entities not contained in the CIP included in the first brief. Otherwise, counsel may simply certify that the earlier CIP is complete and correct.
- The Court will not act on an appeal until the CIP is filed, “except to prevent injustice.” 11th Cir. R. 26.1. I.O.P.

Motions [FRAP 27]

- “A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.” FRAP 27(a)(2)(A).
- Any response to a motion is due within 10 days after service of the motion, unless otherwise ordered. *See* FRAP 27(a)(3)(A).
- A movant may reply to any response to its motion within 7 days after service of the response, unless otherwise ordered. *See* FRAP 27(a)(4).
- A motion or response to a motion must not exceed 20 pages, and a reply may not exceed 10 pages, unless otherwise ordered. *See* FRAP 27(d)(2).
- Must state whether the Defendant-Appellant is incarcerated. *See* 11th Cir. R. 27-1(6).

Briefs [11th Cir. R. 28-1]

- Must include the following components in the following order:
 - A. Cover Page
 - B. Certificate of Interested Persons and Corporate Disclosure Statement
 - C. Statement Regarding Oral Argument
 - D. Table of Contents
 - E. Table of Citations
 - F. Statement Regarding Adoption of Briefs of Other Parties (if applicable)
 - G. Statement of Subject-Matter and Appellate Jurisdiction
 - H. Statement of the Issues
 - I. Statement of the Case
 - J. Summary of the Argument
 - K. Argument and Citations of Authority
 - L. Conclusion
 - M. Certificate of Compliance
 - N. Certificate of Service

Appendix to the Briefs [11th Cir. R. 30-1]

- Must be filed within 7 days after the party's brief is filed. *See* 11th Cir. R. 30-1(c).
- Two copies must be filed. *See* 11th Cir. R. 30-1(d).
- The appendix may be bound at the top, and documents must be accessible by commercially-available indexing tabs (or their equivalent) “which extend beyond the edge of page” and are “staggered in sequence from top to bottom along the right-hand side.” Tab numbers should correspond to the original document numbers assigned by the district court and noted on the docket sheet, which must also be tabbed and identified. *See* 11th Cir. R. 30-1 I.O.P. 1.
- Per 11th Cir. R. 30-1(a), except for those documents listed in FRAP 30(a)(1), the required list of Appendix documents set forth in FRAP 30 do not apply in the Eleventh Circuit. These are:
 - A. The relevant docket entries in the proceeding below;
 - B. The relevant portions of the pleadings, charge, findings, or opinion;
 - C. The judgement, order, or decision in question; and
 - D. Other parts of the record to which the parties wish to direct the Court's attention
- For further detail on what to include in the Appendix, please see the Eleventh Circuit's “Instructions for Preparing an Appendix” resource, available at the Court's website and included in these CLE materials.

APPENDIX CHECKLIST

CRIMINAL CASES

Required Contents. In an appeal in a criminal case, the appellant must file an Appendix containing:

- 1. Index
- 2. District Court docket sheet

Items 3-13 to be arranged chronologically by date of entry into the record:

- 3. Indictment, information, or petition as amended
- 4. Parts of any pretrial order relevant to issues on appeal
- 5. Judgment or interlocutory order appealed from
- 6. Other order(s) sought to be reviewed
- 7. Supporting opinion, findings of fact and conclusions of law filed or delivered orally by the court
- 8. Jury instruction (if correctness in issue)
- 9. Magistrate's report and recommendation, when appealing a court order adopting same in whole or in part
- 10. Relevant parts of any document whose interpretation is central to the issues on appeal
- 11. If any issue concerns the guilty plea, the transcript of the guilty plea colloquy and any written plea agreement
- 12. If any issue concerns the sentence, the transcript of the sentencing proceeding, and the presentence investigation report and addenda, under seal in a separate envelope
- 13. Any other pleadings, affidavits, transcripts, filings, documents, or exhibits that appellant believes will be helpful to this Court in deciding the appeal
- 14. Certificate of Service

Form:

- Durable White Covers (front & back)
- Indexing Tabs (Tab numbers corresponding to district court document numbers)
- No more than 250 sheets of paper in each volume

Number Required:

- Prisoner Pro Se: None
- Pro Se IFP: 1 copy
- Other: 2 copies

ANDERS CHECKLIST

Provide citations to the record, including the presentence report (PSR), and to relevant authority, where appropriate, in the right hand column to demonstrate compliance by the district court and/or the parties.

| | |
|--|--|
| GUILTY PLEA - FED. R. CRIM. P. 11 | |
| (NOTE: May be pretermitted, per <i>United States v. Garcia</i> , 483 F.3d 289 (5th Cir. 2007), if the record reflects that the defendant does not wish to challenge the guilty plea) | |
| I. Advising and Questioning the Defendant - FED. R. CRIM. P. 11(b)(1) | |
| (A) risk of perjury | |
| (B) right to plead not guilty or persist in not-guilty plea | |
| (C) right to a jury trial | |
| (D) right to counsel at trial and every other stage | |
| (E) certain specific rights at trial | |
| (F) defendant's waiver of trial rights | |
| (G) nature of the charge | |
| (H) maximum possible penalty | |
| (I) mandatory minimum penalty | |
| (J) any applicable forfeiture | |
| (K) court's authority to order restitution | |
| (L) court's obligation to impose a special assessment | |
| (M) court's obligation to calculate guidelines range and consider that range, possible departures, and other 18 U.S.C. § 3553(a) factors | |
| (N) terms of waiver of right to appeal or collaterally attack the sentence | |
| (O) risk of removal, denial of citizenship, and denial of future admission if convicted and not a U.S. citizen | |
| II. Voluntariness of Plea - Rule 11(b)(2) | |
| III. Plea's Factual Basis - Rule 11(b)(3) | |
| IV. Judicial Consideration of Plea Agreement - Rule 11(c)(3) (advisory to defendant if plea agreement is of specified type) | |
| V. Accepting Plea Agreement - Rule 11(c)(4) (informing defendant that, to the extent agreement is of specified type, the agreed disposition will be in the judgment) | |
| VI. Enforcing Plea Agreement (Government's compliance with plea agreement, defense counsel's certification whether government intends to enforce appeal waiver, and validity of appeal waiver) | |

| SENTENCING - FED. R. CRIM. P. 32 | |
|--|--|
| (NOTE: May be pretermitted if the record reflects a valid, enforceable sentencing waiver) | |
| I. Rule 32(e)(2) (disclosing the PSR) | |
| II. Rule 32(i)(1) (verifying that defendant and counsel read and discussed the PSR and any addendum to the PSR and allowing counsel to comment on PSR and sentencing matters) | |
| III. Rule 32(i)(3) (findings on disputed matters) | |
| IV. Rule 32(i)(4) (allowing counsel and defendant to speak) | |
| V. Rule 32(j)(1) (advising defendant of any right to appeal and right to appeal in forma pauperis) | |
| VI. Rule 32(k)(1) (judgment correctly sets forth plea, offense(s) of conviction, and sentence, including conditions of supervised release imposed at sentencing) | |
| VII. Adequacy of reasons for sentence; 18 U.S.C. § 3553(c) | |
| VIII. Calculation of sentence | |
| Offense level calculation (identify base offense level and any adjustments) | |
| Criminal history calculation (identify prior convictions and any additional points) | |
| Advisory guidelines range | |
| Statutory minimum or maximum, if any, term of imprisonment and supervised release | |
| Fine range, if fine was imposed; <i>see</i> U.S.S.G. § 5E1.2, and findings on fine and on defendant's ability to pay; <i>see id.</i> ; 18 U.S.C. §§ 3571 & 3572 | |

Descamps Framework for the ACCA predicates
(Violent Felony or Serious Drug Offense)

1. Is the crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult?
 - a. Yes ➡ move to question 2
 - b. No ➡ conviction cannot qualify as an ACCA predicate

2. Determine if the statute of conviction meets the generic definition of the crime as determined by federal courts, preferably the Supreme Court.
 - a. Yes ➡ conviction counts as a violent felony under the ACCA, no further analysis
 - b. No ➡ could any of the alternatives in the statute match the generic version?
 - i. Yes ➡ move to question 3
 - ii. No ➡ conviction cannot qualify as an ACCA predicate, regardless of what the *Shepard* documents indicate

3. Determine if the status is divisible (it “sets out one or more elements of the offense in the alternative”) or indivisible (it contains “a single, indivisible set of elements”).
 - a. If the statute is divisible ➡ apply the modified categorical approach and consult the *Shepard* documents
 - b. If the statute is indivisible ➡ the prior conviction cannot qualify as an ACCA predicate, regardless of what the *Shepard* documents indicate

Descamps v. United States, — U.S. —, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013)

United States v. Howard, — F.3d —, 2014 WL 630657 (11th Cir. 2014) (Alabama third-degree burglary is not an ACCA predicate)

What if a client has received the ACCA enhancement and one of the predicates is no longer valid?

- if the judgment became final less than one year ago ➡ 28 U.S.C. § 2255 petition
- if the judgment became final more than one year ago ➡ 28 U.S.C. § 2241 petition