June 2021
Summaries of Recent Criminal Decisions by the United States Supreme Court

United States v. Palomar-Santiago, --- S. Ct. ---, 2021 WL 2044540 (May 24, 2021) (An individual charged with illegal reentry in violation of 8 U.S.C. § 1326(a) must satisfy each of the three requirements set forth in § 1326(d) when seeking to collaterally attack the validity of a prior removal, and a showing that the prior removal was not based on a removable offense is not by itself sufficient under subsection (d).).

Van Buren v. United States, --- S. Ct. ---, 2021 WL 2229206 (June 3, 2021) (The offense of exceeding authorized access with a computer, in violation of 18 U.S.C. § 1030(a)(2), which requires proof that an individual used authorized access to "obtain or alter information in the computer that [he or she] is not entitled so to obtain or alter," § 1030(e)(6), "does not cover those who . . . have improper motives for obtaining information that is otherwise available to them." Information the defendant "is not entitled so to obtain or alter" is only "information from particular areas in the computer—such as files, folders, or databases—to which their computer access does not extend." Justice Thomas, joined by Chief Justice Roberts and Justice Alito, dissented and would have held that accessing information for a purpose other than the purposes for which the defendant's access was authorized is sufficient to commit the offense.).

Borden v. United States, --- S. Ct. ---, 2021 WL 2367312 (June 10, 2021) (An offense with a mens rea of recklessness is not a violent felony under the elements clause of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(B)(i). A four-justice plurality reached that conclusion because such offenses "do not require, as ACCA does, the active employment of force" "against the person of another," § 924(e)(2)(B)(i). Justice Thomas agreed with the conclusion on a different textual basis: a reckless offense "does not have as an element the 'use of physical force' because that phrase . . . 'appl[ies] only to intentional acts designed to cause harm.'" Justice Kavanaugh wrote, for himself and three other dissenting justices, that *Voisine v. United States*, 136 S. Ct. 2272 (2016),

which held that reckless offenses were covered by similar language in the definition of "misdemeanor crime of domestic violence," 18 U.S.C. § 921(a)(33)(A), compels the opposite result).

Terry v. United States, --- S. Ct. ---, 2021 WL 2405145 (June 14, 2021) (Distribution of an unspecified quantity of crack cocaine under 21 U.S.C. § 841(b)(1)(C) is not a "covered offense" that is eligible for a reduced sentence under § 404 of the First Step Act of 2018, because the Fair Sentencing Act of 2010 did not modify the statutory penalties for that offense.).

Greer v. United States, --- S. Ct. ---, 2021 WL 2405146 (June 14, 2021) (On direct appeal of an 18 U.S.C. § 922(g) conviction, a guilty plea or verdict's failure to establish a defendant's knowledge of his or her prohibited status, as required by *Rehaif v. United States*, 139 S. Ct. 2191 (2019), is not structural error. If the omission is not objected to, plain-error review applies, including the requirement that the defendant make a case-specific showing of a reasonable probability of a different result—acquittal, in a tried case, or a decision to go to trial, in a pleaded case—if not for the error.).