

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2020

SMITH MERINORD, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

MOTION TO PROCEED IN FORMA PAUPERIS

The Petitioner, Smith Merinord, by his undersigned counsel, requests leave to file a Petition for Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 39 of the Supreme Court Rules. Counsel was appointed in the lower court pursuant to 18 U.S.C. § 3006 and Rule 44, Fed. R. CR. P.

This the 22nd day of October, 2020.

Respectfully submitted,


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No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2020

SMITH MERINORD, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

- I. WHETHER THE FIRST STEP ACT APPLIES TO CASES PENDING ON DIRECT APPEAL AT THE TIME OF ITS ENACTMENT, WHERE THE PETITIONER WAS CONVICTED OF THREE HOBBS ACT ROBBERIES AND RECEIVED THREE CONSECUTIVE SENTENCES TOTALING 57 YEARS FOR BRANDISHING FIREARMS UNDER 18 U.S.C. § 924(c).

TABLE OF CONTENTS

QUESTION(S) PRESENTED	ii
TABLE OF CONTENTS	iii
INDEX TO APPENDIX.....	iv
TABLE OF CASES AND STATUTES.....	v
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
PROCEDURAL HISTORY.....	2
STATEMENT OF FACTS	3
REASONS FOR GRANTING THE PETITION	6
I. THE FIRST STEP ACT SHOULD APPLY TO ALL CASES PENDING ON DIRECT APPEAL IN ORDER TO ACCOMPLISH ITS INTENT AND PURPOSE TO PROHIBIT THE STACKING OF SECTION 924(c) 25-YEAR MANDATORY MINIMUM SENTENCES ABSENT AN INTERVENING CONVICTION.....	6
CONCLUSION	11
CERTIFICATE OF SERVICE	12

INDEX TO APPENDIX

APPENDIX A -	Opinion of the Fourth Circuit Court of Appeals (filed July 27, 2020)
APPENDIX B -	Judgment
APPENDIX C -	Mandate
APPENDIX D -	Order amending Judgment (filed August 8, 2020)
APPENDIX E -	Amended Judgment, EDNC (5:15-CR-00136-2-BO)
APPENDIX F -	18 U.S.C. § 924(c) prior to First Step Act
APPENDIX G -	§ 403, First Step Act
APPENDIX H -	18 U.S.C. § 924(c) after First Step Act (12/21/2018)
APPENDIX I -	18 U.S.C. § 1951

TABLE OF CASES AND STATUTES

CASES

<u>Arizona v. Gant</u> , 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009)	9
<u>Clay v. United States</u> , 537 U.S. 522, 123 S.Ct. 1072, 155 L.Ed.2d 88 (2003)	8
<u>Davis v. United States</u> , 564 U.S. 229, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011)	9
<u>Deal v. United States</u> , 508 U.S. 129, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993)	6
<u>Dean v. United States</u> , 137 S.Ct. 1170, 197 L.Ed.2d 490 (2017)	6
<u>Hamm v. City of Rock Hill</u> , 379 U.S. 306, 85 S.Ct. 384, 13 L.Ed.2d 300 (1964).....	10
<u>Townes v. Alabama</u> , 139 S.Ct. 18, 202 L.Ed.2d 337 (Mem) (2018)	9
<u>United States v. Jordan</u> , 952 F.3d 160 (4 th Cir. 2020)	4
<u>United States v. Santos</u> , 553 U.S. 507, 128 S.Ct. 2020, 170 L.Ed.2d 912 (2008)	8
<u>United States v. Schooner Peggy</u> , 1 Cranch 103, 110, 2 L.Ed. 49 (1801).....	10

STATUTES

18 U.S.C. § 924(c)	4, 6
18 U.S.C. § 924(c)(1)(A)(i)	6
18 U.S.C. § 924(c)(1)(C)(ii)	6
18 U.S.C. §1951	3
Civil Rights Act of 1964.....	10
First Step Act, Pub. L. No. 115-391, 132 Stat. 5194.....	6

PETITION FOR WRIT OF CERTIORARI

Petitioner Smith Merinord respectfully prays this Court that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Fourth Circuit, issued on July 27, 2020, affirming his judgment and sentence.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit for which review is sought is United States v. Smith Merinord, No. 16-4557 (4th Cir., July 27, 2020). The opinion is unpublished. The opinion of the United States Court of Appeals for the Fourth Circuit is reproduced in the Appendix to this petition as Appendix A. The judgment is reproduced as Appendix B. The mandate is reproduced as Appendix C. A citation was amended by order filed on August 8, 2020. (Appendix D).

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit was issued on July 27, 2020. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner was charged with three counts of Hobbs Act robbery pursuant to 18 U.S.C. § 1951, and three counts of brandishing a firearm in violation of 18 U.S.C. § 924(c). § 403 of the First Step Act amended 18 U.S.C. § 924(c) on December 21, 2018.

STATEMENT OF THE CASE

Procedural History

Petitioner Smith Merinord and Cortese Tramand Davis were charged in a twelve count indictment with Hobbs Act robbery and firearm offenses. Pursuant to a plea agreement, Cortese Davis pled guilty to Counts 7, 8, 9, and 10 on June 1, 2016. Petitioner was only charged in Counts 7-12, and went to trial on those counts.

Count 7 charged Merinord and Davis with the robbery of an Advance Auto Parts store in Fayetteville, North Carolina on November 2, 2013, and Count 8 charged them with brandishing a firearm in furtherance of said robbery. Count 9 charged them both with the robbery of another Advance Auto Parts store in Lumberton, North Carolina later on that same date, and Count 10 charged them with brandishing a firearm in furtherance of that robbery. Count 11 charged Mr. Merinord and an unnamed individual with the robbery of a Red Lobster restaurant in Fayetteville, North Carolina on November 16, 2013. Count 12 charged Merinord with brandishing a firearm during the course of that robbery.

Prior to trial, Petitioner Merinord filed a motion to dismiss Counts 8, 10 and 12 contending that the Hobbs Act robbery charges underlying the § 924(c) charges categorically failed to qualify as crimes of violence. By order filed on October 26, 2015 the motion to dismiss was denied.

Petitioner Merinord's case came on for trial at the June 6, 2016 criminal term of court sitting in Elizabeth City, North Carolina, the Honorable Terrence W. Boyle,

District Court Judge, presiding. Motions for judgment of acquittal were denied. On June 8, 2016 the jury found Mr. Merinord guilty of all charges.

The case came on for sentencing on August 29, 2016 before Judge Boyle sitting in federal court in Raleigh, North Carolina. Petitioner's renewed objection to Hobbs Act robberies being crimes of violence was denied. Counts 7, 9 and 11 were consolidated, and Mr. Merinord received a sentence of 181 months concurrent. On Count 8 he received a 7 year consecutive sentence (84 months); on Count 10 he received a 25 year consecutive sentence (300 months); and on Count 12 he received a 25 year consecutive sentence (300 months). This equated to a total sentence of 865 months, or 72 years, 1 month. Petitioner (d.o.b. August 6, 1993) was only 20 years old at the time of the offenses, and 23 years old at the time of sentencing.

The notice of appeal was filed on September 6, 2016. An amended judgment was filed on September 16, 2016 solely to correct a mathematical error in the restitution amount. (App. E). In an opinion entered by the Fourth Circuit Court of Appeals on July 27, 2020, Petitioner's judgment was affirmed by unpublished per curium opinion. (App. A).

Statement Of Facts

This case arose out of a string of armed robberies in the Fayetteville, North Carolina area during the fall of 2013. Petitioner Merinord was charged in three of the incidents, and co-defendant Cortese Davis was charged in five of the incidents. Each incident involved a Hobbs Act robbery pursuant to 18 U.S.C. § 1951 (App. I), and the brandishing of a firearm in furtherance thereof pursuant to 18 U.S.C. §

924(c). (App. F). Counts 1-6 involved co-defendant Davis, and those cases were dismissed pursuant to his plea agreement.

The Smith Merinord trial involved only Counts 7 through 12 for the offenses occurring on November 2 and November 16, 2013. As previously noted, he was convicted of all charges. After sentencing, and while the case was pending on direct appeal to the Fourth Circuit Court of Appeals, the First Step Act was enacted with an effective date of December 21, 2018. Section 403 of the First Step Act amended § 924(c)(1)(C) by striking “second or subsequent conviction under this subsection” and inserting “violation of this subsection that occurs after a prior conviction under this subsection has become final”. What this did was prohibit the stacking of § 924(c) 25-year mandatory minimum sentences absent an intervening conviction.

After several extensions and abeyances, the Fourth Circuit Court of Appeals decided Petitioner’s case on July 27, 2020. It relied on its recent decision in United States v. Jordan, 952 F.3d 160 (4th Cir. 2020). In Jordan, the Fourth Circuit held that the First Step Act did not apply to a defendant whose case was pending on appeal when it was enacted. The Court noted that § 403(b) of the First Step Act stated that amendments to § 924(c) shall apply to any offense that was committed before the date of the enactment of the Act, if a sentence for the offense had not been imposed as of such date of the enactment. The Fourth Circuit then held that a sentence was “imposed” when the district court announced it, not when appeals are exhausted. 952 F.3d at 171-172. Defendant Jordan had argued that a sentence should not be imposed until it becomes final after a direct appeal, in which case he

would get the benefit of the First Step Act. He further argued that § 403 of the First Step Act was entitled “Clarification of Section 924(c) of Title 18, United States Code” and therefore was intended to clarify the proper interpretation of § 924(c), and therefore should apply to cases on direct review. Both contentions were denied by the Fourth Circuit Court of Appeals.

There is a petition for certiorari pending before the United States Supreme Court in the Jordan case. It was docketed on September 1, 2020 as No. 20-256. It is the understanding of counsel for Petitioner Merinord that the Supreme Court has ordered the Government to respond, with a response due on or before November 2, 2020. Two amicus briefs have been filed in support of Jordan’s petition thus far. The question presented in Jordan is whether each separate conviction under § 924(c)(1) requires only a separate predicate crime of violence or drug trafficking offense, as the Third, Fourth, and Eighth Circuits have held, or also requires a separate act of using, carrying, or possessing a firearm, as the Second, Fifth, Sixth, Seventh, Tenth, and D.C. Circuits have held. While that issue differs from the retroactivity issue herein under the First Step Act, both issues involve the stacking of § 924(c) 25-year mandatory minimum sentences absent an intervening conviction.

Due to the recency of the First Step Act and this issue, undersigned counsel is not aware of whether or not there is a circuit split on this issue. Petitioner requests that his petition be held until it can be determined whether a circuit split exists.

REASONS FOR GRANTING THE PETITION

I. THE FIRST STEP ACT SHOULD APPLY TO ALL CASES PENDING ON DIRECT APPEAL IN ORDER TO ACCOMPLISH ITS INTENT AND PURPOSE TO PROHIBIT THE STACKING OF SECTION 924(c) 25-YEAR MANDATORY MINIMUM SENTENCES ABSENT AN INTERVENING CONVICTION.

Petitioner Smith Merinord was sentenced on August 29, 2016 for three Hobbs Act robberies and three brandishing firearm convictions under § 924(c). At that time, § 924(c) carried a mandatory minimum sentence of 7 years for the first brandishing conviction, and 25 years for each additional brandishing conviction. See Dean v. United States, 137 S.Ct. 1170, 1174, 197 L.Ed.2d 490 (2017); 18 U.S.C. § 924(c)(1)(A)(ii); 18 U.S.C. § 924(c)(1)(C)(i). Each subsequent conviction carried the increased mandatory minimum penalty, even if received with the first conviction in a “single proceeding”. Deal v. United States, 508 U.S. 129, 131, 113 S.Ct. 1993, 1996, 124 L.Ed.2d 44 (1993). Thus, Petitioner received a consecutive 57 year sentence added to his Hobbs Act robbery sentence of 181 months.

Smith Merinord timely filed his appeal which was pending in December, 2018 when Congress enacted the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194. Section 403 of the First Step Act is entitled “Clarification of Section 924(c) of Title 18, United States Code.” (App. G). Subsection (a) mandated that the 25-year mandatory minimum sentence for a second or subsequent offense applies only when a prior conviction under § 924(c) already has become final. In other words, the 25-year mandatory minimum sentence no longer applies to multiple § 924(c) convictions obtained in a single prosecution. Petitioner respectfully contends that

the First Step Act should apply to defendants, like him, who have been sentenced but their cases were still pending on direct appeal at the time of its enactment.¹

The purpose of the First Step Act is to prohibit the stacking of § 924(c) 25-year mandatory minimum sentences absent an intervening conviction. Its intent was to remedy the draconian sentences where firearm offenses were joined with drug and violent offenses by indictment and for trial. Petitioner, who was only 20 years old at the time of the offenses, is looking to spend the rest of his life in prison. Should it be determined that the First Step Act applies to cases still pending on direct appeal, Mr. Merinord's sentence would be 181 months for the Hobbs Act robberies, plus 7 years for each of the three § 924(c) counts consecutively. This would result in a sentence of 433 months, or 36 years 1 month, which is a significantly high sentence. Nonetheless, it would be 36 years less than the mandatory minimum sentence he received.

Whether the First Step Act should apply to cases pending on direct appeal requires a balancing of statutory interpretation versus finality. The starting point for any issue of statutory interpretation is the language of the statute itself. Absent ambiguity or a clearly expressed legislative intent to the contrary, the language of a statute is generally given its plain and ordinary meaning. The Fourth Circuit in Jordan took the position that Congress clearly expressed that the First Step Act only applied to sentences which had not been imposed as of the date of enactment,

¹ To facilitate review, Petitioner has attached a copy of 18 U.S.C. § 924(c) prior to the First Step Act as Appendix F, a copy of § 403 of the First Step Act as Exhibit G, and a copy of 18 U.S.C. § 924(c) after the First Step Act as Appendix H.

and “imposed” was when the district court announces it, not when appeals are exhausted. 952 F.3d at 172.

Petitioner Merinord contends that § 403(b) of the First Step Act, by using the term “imposed”, created an ambiguity as to its application. Generally cases on direct appeal are not “final”. If the purpose and intent of the First Step Act was to reduce unfairly applied and unduly long consecutive sentences, it should apply to all defendants moving forward as well as to those still on direct appeal.

Petitioner contends that this issue should have been addressed under the rule of lenity, and requests that this Court apply the rule of lenity.

Under the rule of lenity, ambiguous criminal statutes are construed against the Government and in favor of a defendant. United States v. Santos, 553 U.S. 507, 514, 128 S.Ct. 2020, 2025, 170 L.Ed.2d 912 (2008). If the rule of lenity were to apply, the term “imposed” should equate to finality, i.e. when the direct appeal is over. If the line is drawn at that time, the First Step Act would preclude cases on collateral review. This would be a fair and appropriate conclusion.

Petitioner Merinord respectfully contends that while a sentence may be announced by the district court, it is not fully imposed until it is final. In addressing the time limits for filing a post-conviction § 2255 petition, the United States Supreme Court in Clay v. United States, 537 U.S. 522, 123 S.Ct. 1072, 155 L.Ed.2d 88 (2003), held that a federal criminal conviction becomes final, for the purpose of calculating the one-year period in which the defendant may move to

vacate, when time expires for filing a petition for certiorari contesting the appellate court's affirmation of conviction. More particularly it held:

"Here, the relevant context is postconviction relief, a context in which finality has a long-recognized, clear meaning: Finality attaches when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires."

537 U.S. at 527, 123 S.Ct. at 1076.

As can be seen, the § 2255 statute was construed in favor of the defendant.

Likewise, the First Step Act should be construed in favor of defendants in order to effectuate its purpose and intent to reserve only the harshest of punishments for the serious recidivists.

Crediting counsel for Jordan on his appeal to the Fourth Circuit, Petitioner also cited the Fourth Circuit to Davis v. United States, 564 U.S. 229, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011), and Townes v. Alabama, 139 S.Ct. 18, 202 L.Ed.2d 337 (Mem) (2018) for the contention that a conviction was not final as long as the case was on direct review. Davis involved a police search issue. While on appeal, the United States Supreme Court entered its decision in Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). The Supreme Court held that when the Gant decision was announced, Davis's conviction had not yet become final on direct review, and Gant therefore applied retroactively. 564 U.S. at 244, 131 S.Ct. at 2431.²

²The Supreme Court ultimately held that the exclusionary rule did not apply and affirmed.

In Townes, the petition for a writ of certiorari was denied. However Justice Sotomayor filed a memorandum stating that while Townes' case was still pending direct review it was not yet final. Justice Sotomayor concluded:

“Yet the trial court, after its unilateral intervention in Townes’ appeal resulted in dueling transcripts, failed to preserve the recording at issue—despite the fact that Townes’ case was still pending direct review, and consequently, his conviction was not yet final. As a result the potential for this Court’s full review of Townes’ conviction has been frustrated.”

129 S.Ct. at 20.

Finally, Petitioner Merinord would like to put an additional twist on the Supreme Court decision in Hamm v. City of Rock Hill, 379 U.S. 306, 85 S.Ct. 384, 13 L.Ed.2d 300 (1964), cited by Appellant Jordan in his supplemental brief in the Fourth Circuit Court of Appeals. Hamm was a “sit in” case where trespass convictions were on appeal at the time the Civil Rights Act of 1964 was enacted. The Supreme Court in Hamm noted the existence of a body of federal and state law to the effect that convictions on direct review at the time the conduct in question is rendered no longer unlawful by statute, must abate. 379 U.S. at 312, 85 S.Ct. at 389. Therefore the judgments were vacated and the charges ordered dismissed. 379 U.S. at 317, 85 S.Ct. at 392. While the instant case involves a criminal sentence still on appeal, the reasoning in Hamm should still apply. After all, the intent and purpose of the First Step Act was to adjust and reduce draconian sentences except for repeat and habitual offenders.

The Hamm court found its earliest expression of the above doctrine in Chief Justice Marshall’s opinion in United States v. Schooner Peggy, 1 Cranch 103, 110, 2

L.Ed. 49 (1801). The doctrine is of such significant import, that it is restated below:

"But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional * * * I know of no court which can contest its obligation."

379 U.S. at 312, 85 S.Ct. at 389-390.

For the above reasons, Petitioner Merinord respectfully contends that his sentences are not final, the First Step Act should apply, and his petition should be allowed.

CONCLUSION

For the foregoing reasons, Petitioner Smith Merinord respectfully requests that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit affirming his conviction and sentence.

This the 22nd day of October, 2020.

DUNN, PITTMAN, SKINNER & CUSHMAN, PLLC
Counsel for Petitioner Smith Merinord

By:



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No.
IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2020

SMITH MERINORD, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

ENTRY OF APPEARANCE

and

CERTIFICATE OF SERVICE

I, Rudolph A. Ashton, III, a member of the North Carolina State Bar, having been appointed to represent the Petitioner in the United States Court of Appeals for the Fourth Circuit, pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A, hereby enter my appearance in this Court in respect to this Petition for a Writ of Certiorari.

I, Rudolph A. Ashton, III, do swear or declare that on this date, the 22nd day of October, 2020, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached motion for leave to proceed *in forma pauperis* and petition for a writ of certiorari on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing in an envelope containing the above documents in the United States mail properly addressed to each of them and

with first-class postage prepaid. The names and addresses of those served are as follows:

Jennifer P. May-Parker, AUSA
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Solicitor General of the United States
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This the 22nd day of October, 2020.

Respectfully submitted,

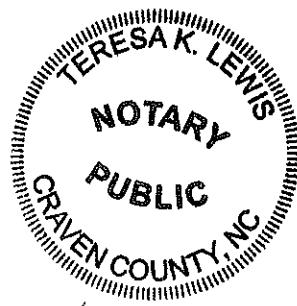
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Subscribed and Sworn to Before Me

This the 22nd day of October, 2020

Teresa K. Lewis
Notary Public

My Commission Expires: 3-19-2024



APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4557

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SMITH MERINORD,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, Chief District Judge. (5:15-cr-00136-BO-2)

Submitted: July 21, 2020

Decided: July 27, 2020

Amended: August 28, 2020

Before GREGORY, Chief Judge, NIEMEYER, Circuit Judge, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Rudolph A. Ashton, III, DUNN PITTMAN SKINNER & CUSHMAN, PLLC, New Bern, North Carolina, for Appellant. Brian A. Benczkowski, Assistant Attorney General, John P. Cronan, Deputy Assistant Attorney General, Thomas E. Booth, Criminal Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Robert J. Higdon, Jr., United States Attorney, Jennifer May-Parker, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Smith Merinord appeals from his convictions for three counts of Hobbs Act robbery, in violation of 18 U.S.C. § 1951 (2018), and three corresponding counts of brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) (2018), and his resulting sentences. We affirm.

Merinord first argues that he is legally innocent of his § 924(c) convictions because there is no valid predicate crime of violence. Section 924(c)(3) provides two definitions of the term “crime of violence”—the force clause in § 924(c)(3)(A) and the residual clause in § 924(c)(3)(B). Although the Supreme Court recently concluded that the residual clause is unconstitutionally vague, *United States v. Davis*, 139 S. Ct. 2319, 2336 (2019), the force clause remains intact. In *United States v. Mathis*, 932 F.3d 242, 266 (4th Cir.), *cert. denied*, 140 S. Ct. 639, 140 S. Ct. 640 (2019), we held that “Hobbs Act robbery constitutes a crime of violence under the force clause of [§] 924(c).” In light of *Mathis*, Merinord’s § 924(c) convictions are valid.

Merinord next claims that the district court erred by permitting a police officer investigating one of the robberies to testify that he was told by another officer about a similar robbery. He was also allowed to testify that he learned fingerprints had been recovered in the second robbery that matched Merinord and his co-defendant. No cautionary jury instruction was given at any time. However, the declarants subsequently testified, and their testimony matched the substance of the hearsay statements.

Nonetheless, Merinord claims that the admission of the hearsay statements set an inappropriate tone, bolstered the subsequent testimony, and hindered his

cross-examination. “Decisions regarding the admission or exclusion of evidence are committed to the sound discretion of the district court and will not be reversed absent an abuse of that discretion.” *United States v. Lancaster*, 96 F.3d 734, 744 (4th Cir. 1996). We will find that discretion to have been abused “only when the district court acted ‘arbitrarily or irrationally.’” *United States v. Moore*, 27 F.3d 969, 974 (4th Cir. 1994) (quoting *United States v. Ham*, 998 F.2d 1247, 1252 (4th Cir. 1993)). Moreover, any error “that does not affect substantial rights must be disregarded.” Fed. R. Crim. P. 52(a); *see also* Fed. R. Evid. 103(a) (noting that error may not be predicated upon a ruling which admits or excludes evidence unless it “affects a substantial right of the party”). Nonconstitutional error is harmless when we “can say, ‘with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error.’” *United States v. Nyman*, 649 F.2d 208, 211-12 (4th Cir. 1980) (quoting *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)).

Initially, it is not at all clear that the testimony complained of by Merinord was hearsay. It appears that the officer recounted the statements in order to explain the basis and process of his investigation, not for the improper purpose of submitting the information as truthful. However, even if it is assumed that the officer erroneously repeated the out-of-court statements for the truth of the facts recited, Merinord can show no prejudice. Because witnesses subsequently corroborated their statements to the officer and were subject to cross-examination, Merinord cannot show reversible error.

Merinord also asserts a claim under the First Step Act of 2018, Pub. L. No. 115-391, § 404, 132 Stat. 5194, challenging the “stacking” of his § 924(c) sentences. In *United*

States v. Jordan, however, we held that the First Step Act does not apply to cases that were pending on appeal when Congress passed the First Step Act. 952 F.3d 160, 174 (4th Cir. 2020). While Merinord asserts that the result in his case is particularly harsh and that a criminal case should not be considered “final” for First Step Act purposes until the appeal is completed, Merinord cannot avoid the holding in *Jordan*. Because Merinord was sentenced before the enactment of the First Step Act, he is not entitled to relief.

Accordingly, we affirm Merinord’s convictions and sentences. We dispense with oral argument because the facts and legal contentions area adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

FILED: July 27, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4557
(5:15-cr-00136-BO-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SMITH MERINORD

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX C

FILED: August 18, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4557
(5:15-cr-00136-BO-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

SMITH MERINORD

Defendant - Appellant

M A N D A T E

The judgment of this court, entered July 27, 2020, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

FILED: August 28, 2020

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4557

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

SMITH MERINORD,

Defendant – Appellant.

ORDER

The Court amends its opinion filed July 27, 2020, as follows:

On page 2, in the second line, the citation is changed to 18 U.S.C. § 1951 (2018).

For the Court—By Direction

/s/ Patricia S. Connor, Clerk

APPENDIX E

UNITED STATES DISTRICT COURT

Eastern

District of

North Carolina

UNITED STATES OF AMERICA

V.

Smith Merlinord

Date of Original Judgment: 8/29/2016

(Or Date of Last Amended Judgment)

Reason for Amendment:

Correction of Sentence on Rémand (18 U.S.C. 3742(f)(1) and (2))
 Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
 Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
 Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 5:15-CR-136-2BO

USM Number: 59285-056

H. P. Williams, Jr.

Defendant's Attorney

Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
 Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
 Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
 Direct Motion to District Court Pursuant to 18 U.S.C. § 2255 or
 18 U.S.C. § 3559(c)(7)
 Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

pleaded guilty to count(s) _____
 pleaded nolo contendere to count(s) _____ which was accepted by the court.
 was found guilty on count(s) 7s, 8s, 9s, 10s, 11s, and 12s after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1951 and 18 U.S.C. § 2	Interfering With Commerce by Robbery and Aiding and Abetting. Brandishing a Firearm During and in Relation to a Crime of Violence and Aiding and Abetting.	11/16/2013	7s
18 U.S.C. § 924(c), 18 U.S.C. § 924(c)(1)(A)(ii) and 18 U.S.C. § 2	Interfering With Commerce by Robbery, Aiding & Abetting.	11/16/2013	8s
18 U.S.C. § 1951 and 18 U.S.C. § 2		11/16/2013	

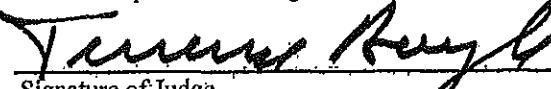
The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____
 Count(s) Original Indictment is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/29/2016

Date of Imposition of Judgment



Signature of Judge

Terrence W. Boyle

US District Judge

Name of Judge

Title of Judge

9/14/2016

Date

DEFENDANT: Smith Merrinord
CASE NUMBER: 5:15-CR-136-2BO

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 924(c), 18 U.S.C. § 924(c)(1)(C) and 18 U.S.C. § 2	Brandishing a Firearm During & In Relation to a Crime of Violence and Aiding and Abetting.	11/16/2013	10s
18 U.S.C. § 1951 and 2	Interfering With Commerce by Robbery, Aiding and Abetting.	11/16/2013	11s
18 U.S.C. § 924(c)	Brandishing a Firearm During and In Relation to a	11/16/2013	12s
18 U.S.C. § 924(c)(1) (C)(i), and 18 U.S.C. § 2	Crime of Violence and Aiding and Abetting.		

DEFENDANT: Smith Merinord
CASE NUMBER: 5:15-CR-136-2BO

Judgment - Page 3 of 3

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of

Counts 7s, 9s and 11 - 181 months per count - concurrent.

Count 8s - 7 years - consecutive.

Count 10s - 25 years - consecutive.

Count 12s - 25 years - consecutive.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Smith Merlinord

CASE NUMBER: 5:15-CR-136-2BO

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

Counts 7s, 9s and 11s - 3 years per count - concurrent. Counts 8s, 10s and 12s - 5 years per count - concurrent.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page..

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive any use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any person's engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Smith Merlinord
CASE NUMBER: 5:15-CR-136-2BO

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall consent to a warrantless search by a United States Probation Officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

DEFENDANT: Smith Merinord

CASE NUMBER: 5:15-CR-136-2BO

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 600.00	\$	\$ 44,311.00

The determination of restitution is deferred until _____ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(f), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Advance Auto Parts #4216		\$2,374.00	
Advance Auto Parts #4170		\$4,262.00	
Deborah Timpanaro		\$7,775.00	
North Carolina Worker's Compensation		\$29,900.00	

TOTALS \$ 0.00 \$ 44,311.00

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for fine restitution.

the interest requirement for fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Smith Merinord
CASE NUMBER: 5:15-CR-136-2BO

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or E below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years); to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years); to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Payment of the special assessment shall be due immediately. Payment of restitution shall be due and payable in full immediately. However, if the defendant is unable to pay in full immediately, the special assessment and restitution may be paid through the Inmate Financial Responsibility Program (IFRP). The court orders that the defendant pay a minimum payment of \$25 per quarter through the IFRP, if available. The court, having considered the defendant's financial resources and ability to pay, orders that any balance still owed at the time of release shall be paid in installments of \$50 per month to begin 60 days after the defendant's release from prison. At the time of the defendant's release, the probation officer shall take into consideration the defendant's ability to pay the restitution ordered and shall notify the court of any needed modification of the payment schedule.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

Cortese Tramond Davis 5:15-CR-136-1BO \$44,311

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:
Order of forfeiture entered on 8/29/2016.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX F

Page 235

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

§ 924

not be admissible as evidence in any proceeding of any court, agency, board, or other entity."

FUNDING FOR BUREAU NOT AUTHORIZED FOR CONSOLIDATION OR CENTRALIZATION OF RECORDS

Pub. L. 112-55, div. B, title II, Nov. 18, 2011, 125 Stat. 609, provided in part: "That no funds appropriated herein or hereafter shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees".

FUNDING FOR BUREAU NOT AUTHORIZED FOR ELECTRONIC RETRIEVAL OF INFORMATION

Pub. L. 112-55, div. B, title II, Nov. 18, 2011, 125 Stat. 610, provided in part: "That, hereafter, no funds made available by this or any other Act may be used to electronically retrieve information gathered pursuant to 18 U.S.C. 923(g)(4) by name or any personal identification code".

FUNDING FOR BUREAU NOT AUTHORIZED FOR DISCLOSURE OF DATA

Pub. L. 112-55, div. B, title II, Nov. 18, 2011, 125 Stat. 609, provided in part: "That, during the current fiscal year and in each fiscal year thereafter, no funds appropriated under this or any other Act may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (8) and (7) of such section, except to: (1) a Federal, State, local, or tribal law enforcement agency, or a Federal, State, or local prosecutor; or (2) a foreign law enforcement agency solely in connection with or for use in a criminal investigation or prosecution; or (3) a Federal agency for a national security or intelligence purpose; unless such disclosure of such data to any of the entities described in (1), (2) or (3) of this proviso would compromise the identity of any undercover law enforcement officer or confidential informant, or interfere with any case under investigation; and no person or entity described in (1), (2) or (3) shall knowingly and publicly disclose such data; and all such data shall be immune from legal process, shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State (including the District of Columbia) or Federal court or in an administrative proceeding other than a proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms and Explosives to enforce the provisions of chapter 44 of such title, or a review of such an action or proceeding; except that this proviso shall not be construed to prevent: (A) the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title) and licensed manufacturer (as defined in section 921(a)(10) of such title); (B) the sharing or exchange of such information among and between Federal, State, local, or foreign law enforcement agencies, Federal, State, or local prosecutors, and Federal national security, intelligence, or counterterrorism officials; or (C) the publication of annual statistical reports on products regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives, including total production, importation, and exportation by each licensed importer (as so defined) and licensed manufacturer (as so defined), or statistical aggregate data regarding firearms traffickers and trafficking channels, or firearms misuse, felons, and trafficking investigations".

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 111-117, div. B, title II, Dec. 16, 2009, 123 Stat. 3128.

Pub. L. 111-8, div. B, title II, Mar. 11, 2009, 123 Stat. 575.

Pub. L. 110-181, div. B, title II, Dec. 26, 2007, 121 Stat. 1903.

Pub. L. 109-108, title I, Nov. 22, 2005, 119 Stat. 2295.

Pub. L. 108-447, div. B, title I, Dec. 8, 2004, 118 Stat. 2659.

§ 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

(D) willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection

(a)(4), (a)(6), (f), (g), (h), (i), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title,

where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any 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, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (e), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(l) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—

(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

(Added Pub. L. 90-351, title IV, § 902, June 19, 1968, 82 Stat. 233; amended Pub. L. 90-618, title I, § 102, Oct. 22, 1968, 82 Stat. 1223; Pub. L. 91-644, title II, § 13, Jan. 2, 1971, 84 Stat. 1889; Pub. L. 98-473, title II, §§ 223(a), 1005(a), Oct. 12, 1984, 98 Stat. 2028, 2138; Pub. L. 99-308, § 104(a), May 19, 1986, 100 Stat. 456; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99-570, title I, § 1402, Oct. 27, 1986, 100 Stat. 3207-39; Pub. L. 100-649, § 2(b), (f)(2)(B), (D), Nov. 10, 1988, 102 Stat. 3817, 3818; Pub. L. 100-690, title VI, §§ 6211, 6212, 6451, 6460, 6462, title VII, §§ 7056, 7060(a), Nov. 18, 1988, 102 Stat. 4359, 4360, 4371, 4373, 4374, 4402, 4403; Pub. L. 101-647, title XI, § 1101, title XVII, § 1702(b)(3), title XXII, §§ 2203(d), 2204(c), title XXXV, §§ 3526-3529, Nov. 29, 1990, 104 Stat. 4829, 4846, 4857, 4924; Pub. L. 103-159, title I, § 102(c), title III, § 302(d), Nov. 30, 1993, 107 Stat. 1541, 1545; Pub. L. 103-322, title VI, § 60013, title XI, §§ 110102(c), 110103(c), 110105(2), 110201(b), 110401(e), 110503, 110504(a), 110507, 110510, 110515(a), 110517, 110518(a), title XXXIII, §§ 330002(h), 330003(f)(2), 330011(1), (j), 330016(1)(H), (K), (L), Sept. 13, 1994, 108 Stat. 1973, 1998-2000, 2011, 2015, 2016, 2018-2020, 2140, 2141, 2145, 2147; Pub. L. 104-294, title VI, § 603(m)(1), (n)-(p)(1), (q)-(s), Oct. 11, 1996, 110 Stat. 3505; Pub. L. 105-386, § 1(a), Nov. 18, 1998, 112 Stat. 3469; Pub. L. 107-278, div. B, title IV, § 4002(d)(1)(E), div. C, title I, § 11009(e)(3), Nov. 2, 2002, 116 Stat. 1809, 1821; Pub. L. 108-174, § 1(2), (3), Dec. 9, 2003, 117 Stat. 2481; Pub. L. 109-92, §§ 5(c)(2), 6(b), Oct. 26, 2005, 119 Stat. 2100, 2102;

Pub. L. 109-304, §17(d)(3), Oct. 6, 2006, 120 Stat. 1707.)

AMENDMENT OF SECTION

Pub. L. 100-649, §2(f)(2)(B), (D), Nov. 10, 1986, 102 Stat. 3818, as amended by Pub. L. 101-647, title XXXV, §3526(b), Nov. 29, 1990, 104 Stat. 4924; Pub. L. 105-277, div. A, §101(h) [title VI, §649], Oct. 21, 1998, 112 Stat. 2681-480, 2681-528; Pub. L. 108-174, §1, Dec. 9, 2003, 117 Stat. 2481, provided that, effective 25 years after the 30th day beginning after Nov. 10, 1986, subsection (a)(1) of this section is amended by striking "this subsection, subsection (b), (c), or (f) of this section, or in section 929" and inserting "this chapter", subsection (f) of this section is repealed, and subsections (g) through (o) of this section are redesignated as subsections (f) through (n), respectively, of this section.

REFERENCE IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (d)(1), is set out as Title 26, Internal Revenue Code. Section 5845(a) of that Code, referred to in subsec. (d)(1), is classified to section 5845(a) of Title 26.

The Controlled Substances Act, referred to in subsecs. (o)(2), (d)(3)(B), (e)(2)(A)(1), (e)(2), and (k)(1), is title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 18 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsecs. (o)(2), (d)(3)(B), (e)(2)(A)(1), (e)(2), and (k)(1), is title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter II (§951 et seq.) of chapter 18 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

AMENDMENTS

2006—Subsecs. (c)(2), (e)(2)(A)(1). Pub. L. 109-304, §17(d)(3)(A), substituted "chapter 705 of title 46" for "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

Subsec. (g)(2). Pub. L. 109-304, §17(d)(3), substituted "801 et seq." for "802 et seq." and "chapter 705 of title 46" for "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

Subsec. (k)(1). Pub. L. 109-304, §17(d)(3)(A), substituted "chapter 705 of title 46" for "the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)".

2005—Subsec. (a)(1). Pub. L. 108-92, §5(o)(2)(A), substituted "(f), or (p)" for "or (f)" in introductory provisions.

Subsec. (o)(5). Pub. L. 108-92, §6(b), added par. (5).

Subsec. (p). Pub. L. 108-92, §5(o)(2)(B), added subsec. (p).

2002—Subsec. (a)(7). Pub. L. 107-273, §11009(e)(3), added par. (7).

Subsec. (e)(1). Pub. L. 107-273, §4002(d)(1)(B), substituted "under this title" for "not more than \$25,000".

1998—Subsec. (o)(1). Pub. L. 105-386, §1(a)(1), added par. (1) and struck out former par. (1) which read as follows: "Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-

barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried."

Subsec. (e)(4). Pub. L. 105-386, §1(a)(2), added par. (4).

1998—Subsec. (a)(1)(B). Pub. L. 104-294, §603(n), repealed Pub. L. 103-322, §38002(h). See 1994 Amendment note below.

Pub. L. 104-294, §603(m)(1)(A), amended directory language of Pub. L. 103-322, §110507. See 1994 Amendment note below.

Subsec. (a)(2). Pub. L. 104-294, §603(m)(1)(B), amended directory language of Pub. L. 103-322, §110507(2). See 1994 Amendment note below.

Subsec. (a)(6), (6). Pub. L. 104-294, §603(o), redesignated par. (6), relating to punishment for juveniles, as (6).

Subsec. (c)(1). Pub. L. 104-294, §603(p)(1), amended directory language of Pub. L. 103-322, §110102(c)(2). See 1994 Amendment note below.

Subsec. (i). Pub. L. 104-294, §603(r), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(8). Pub. L. 104-294, §603(q), inserted closing parenthesis before comma at end.

Subsec. (k). Pub. L. 104-294, §603(r), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 104-294, §603(s), amended directory language of Pub. L. 103-322, §110504. See 1994 Amendment note below.

Pub. L. 104-294, §603(r), redesignated subsec. (k) as (l). Former subsec. (l) redesignated (m).

Subsecs. (m) to (o). Pub. L. 104-294, §603(r), redesignates (l) to (n) as (m) to (o), respectively.

1994—Subsec. (a)(1). Pub. L. 103-322, §330016(1)(K), substituted "fined under this title" for "fined not more than \$5,000" in concluding provisions.

Pub. L. 103-322, §330011(1), amended directory language of Pub. L. 101-647, §3628. See 1990 Amendment note below.

Pub. L. 103-322, §110201(b)(1), which directed the striking of "paragraph (3) or (3) of" in subsec. (a)(1), could not be executed because of prior amendment by Pub. L. 103-169. See 1998 Amendment note below.

Subsec. (a)(1)(B). Pub. L. 103-322, §380002(h), which directed amendment of subpar. (B) by substituting "(r)" for "(q)", was repealed by Pub. L. 104-294, §603(n), which provided that §380002(h) shall be considered never to have been enacted.

Pub. L. 103-322, §110507(1), as amended by Pub. L. 104-294, §603(m)(1)(A), struck out "(a)(6)," after "(a)(4)."

Pub. L. 103-322, §110103(o), which substituted "(v), or (w)" for "or (v)", was repealed by Pub. L. 103-322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Pub. L. 103-322, §110102(c)(1), which substituted "(r), or (v) of section 922" for "or (q) of section 922", was repealed by Pub. L. 103-322, §110105(2). See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (a)(2). Pub. L. 103-322, §110507(2), as amended by Pub. L. 104-294, §603(m)(1)(B), inserted "(a)(6)." after "subsection".

Subsec. (a)(3). Pub. L. 103-322, §330016(1)(H), substituted "fined under this title" for "fined not more than \$1,000".

APPENDIX G

SEC. 403. CLARIFICATION OF SECTION 924(C) OF TITLE 18, UNITED STATES CODE.

<< 18 USCA § 924 >>

(a) IN GENERAL.—Section 924(c)(1)(C) of title 18, United States Code, is amended, in the matter preceding clause (i), by striking “second or subsequent conviction under this subsection” and ~~*5222~~ inserting “violation of this subsection that occurs after a prior conviction under this subsection has become final”.

<< 18 USCA § 924 NOTE >>

(b) APPLICABILITY TO PENDING CASES.—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not been imposed as of such date of enactment.

FIRST STEP ACT OF 2018, PL 115-391, December 21, 2018, 132 Stat 5194

**Not Authorized for Salaries or Administrative Expenses
Relating to Consolidation or Centralization of Records of Acquisition
and Disposition of Firearms Maintained by Licensees**

Pub.L. 112-55, Div. B, Title II, Nov. 18, 2011, 125 Stat. 609, provided: "That no funds appropriated hereof, or hereafter shall be available for salaries or administrative expenses in connection with consolidating or centralizing, within the Department of Justice, the records, or any portion thereof, of acquisition and disposition of firearms maintained by Federal firearms licensees".

**Not Authorized for Bureau of Alcohol, Tobacco, Firearms and Explosives
Authorized for Disclosure of Databases**

Pub.L. 112-55, Div. B, Title II, Nov. 18, 2011, 125 Stat. 609, provided: "That, during the current fiscal year and in each fiscal year thereafter, no funds appropriated under this or any other Act [Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012, Pub.L. 112-55, Div. B, Nov. 18, 2011, 125 Stat. 591; see Tables for classification] may be used to disclose part or all of the contents of the firearms Trace System database maintained by the National Trace Center of the Bureau of Alcohol, Tobacco, Firearms and Explosives or any information required to be kept by licensees pursuant to section 44(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section, except to: (1) a Federal, State, local, or tribal law enforcement agency, or a Federal, state, or local prosecutor; or (2) a foreign law enforcement agency only in connection with or for use in a criminal investigation or prosecution; or (3) a Federal agency for a national security or intelligence purpose; unless such disclosure of such data to any of the agencies described in (1), (2) or (3) of this proviso would compromise the safety of any undercover law enforcement officer, or confidential informant, or interfere with any case under investigation; and no person or entity described in (1), (2) or (3) shall knowingly and publicly disclose such data; and all such data shall be immune from legal process; shall not be subject to subpoena or other discovery, shall be inadmissible in evidence, and shall not be used, relied on, or disclosed in any manner, nor shall testimony or other evidence be permitted based on the data, in a civil action in any State (including the District of Columbia) or Federal court or in an administrative proceeding other than a proceeding commenced by the Bureau of Alcohol, Tobacco, Firearms and Explosives to enforce the provisions of chapter 44 of such title [this chapter], or a review of such an action or proceeding; except that this proviso shall not be construed to prevent: (A) the disclosure of statistical information concerning total production, importation, and exportation by each licensed importer (as defined in section 921(a)(9) of such title [18 U.S.C.A. § 921(a)(9)]) and licensed manufacturer (as defined in section 921(a)(10) of such title [18 U.S.C.A. § 921(a)(10)]); (B) the sharing or exchange of such information among and between Federal, State, local, or foreign law enforcement agencies, Federal, state, or local prosecutors, and Federal national security, intelligence, counterterrorism officials; or (C) the publication of annual statistical reports on products regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives, including total production, importation, and exportation by each licensed importer (as so defined) and licensed manufacturer (as so defined), or statistical aggregate data regarding firearms traffickers and trafficking channels, or firearms misuse, felonies, and trafficking investigations".

Similar provisions were contained in the following prior Appropriations Act:

Pub.L. 111-117, Div. B, Title II, Dec. 16, 2009, 123 Stat. 3128.

Pub.L. 111-8, Div. B, Title II, Mar. 11, 2009, 123 Stat. 575.

Pub.L. 110-161, Div. B, Title II, Dec. 26, 2007, 121 Stat. 1903.

Pub.L. 109-108, Title I, Nov. 22, 2005, 119 Stat. 2295.

Pub.L. 108-447, Div. B, Title I, Dec. 8, 2004, 118 Stat. 2859.

**Funding Not Authorized to be Used to Electronically Retrieve
Information Relating to Discontinuance of Firearms or Ammunition
Business**

Pub.L. 112-55, Div. B, Title II, Nov. 18, 2011, 125 Stat. 610, provided in part: "That, hereafter, no funds made available by this or any other Act [Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012, Pub.L. 112-55, Div. B, Nov. 18, 2011, 125 Stat. 591; see Tables for classification] may be used to electronically retrieve information gathered pursuant to 18 U.S.C. 923(g)(4) by name or any personal identification code".

Statutory Construction; Evidence

Pub.L. 105-277, Div. A, § 101(b) [Title I, § 119(d)], Oct. 21, 1998, 112 Stat. 2681-70, provided that:

"(1) **Statutory construction.**—Nothing in the amendments made by this section [amending this section and section 921 of this title and enacting provisions set out as a note under this section] shall be construed—

"(A) as creating a cause of action against any firearms dealer or any other person for any civil liability; or

"(B) as establishing any standard of care.

"(2) **Evidence.**—Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with the amendments made by this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity."

[Amendment by Pub.L. 105-277, Div. A, § 101(b) [Title I, § 119(d)], effective 180 days after Oct. 21, 1998; see Div. A, § 101(b) [Title I, § 119(e)] of Pub.L. 105-277, set out as a note under 18 U.S.C.A. § 921.]

§ 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

(D) willfully violates any other provision of this chapter, shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922, shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be

prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime, of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(b) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 16 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished, by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in, or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), (k) of section 922, or knowing importation or bringing into the United States or any possession thereof of any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter. *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(4) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(8) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; and

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.); the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any 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; that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection (c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(l) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) **Penalties relating to secure gun storage or safety device.**

(1) **In general.**

(A) **Suspension or revocation of license; civil penalties.**—With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

(B) **Review.**—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) **Administrative remedies.**—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

(Added Pub.L. 90-351, Title IV, § 902, June 19, 1968, 82 Stat. 233; amended Pub.L. 90-618, Title I, § 102, Oct. 22, 1968, 82 Stat. 1223; Pub.L. 91-644, Title II, § 18, Jan. 2, 1971, 84 Stat. 1889; Pub.L. 98-473, Title II, §§ 223(a), 1005(a), Oct. 12, 1984, 98 Stat. 2028, 2138; Pub.L. 99-308, § 104(a), May 19, 1986, 100 Stat. 456; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 99-570, Title I, § 1402, Oct. 27, 1986, 100 Stat. 3207-39; Pub.L. 100-649, § 2(b); (I)(2)(B), (D), Nov. 10, 1988, 102 Stat. 3817, 3818; Pub.L. 100-690, Title VI, §§ 6211, 6212,

(Added Pub.L. 89-554, § 3(d), Sept. 6, 1966, 80 Stat. 610; amended Pub.L. 103-322, Title XXXIII, § 330016(I)(I), Sept. 13, 1994, 108 Stat. 2147.)

§ 1924. Unauthorized removal and retention of classified documents or material

(a) Whoever, being an officer, employee, contractor, or consultant of the United States, and, by virtue of his office, employment, position, or contract, becomes possessed of documents or materials containing classified information of the United States, knowingly removes such documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location shall be fined under this title or imprisoned for not more than five years, or both.

(b) For purposes of this section, the provision of documents and materials to the Congress shall not constitute an offense under subsection (a).

(c) In this section, the term "classified information of the United States" means information originated, owned, or possessed by the United States Government concerning the national defense or foreign relations of the United States that has been determined pursuant to law or Executive order to require protection against unauthorized disclosure in the interests of national security.

(Added Pub.L. 103-359, Title VIII, § 808(a), Oct. 14, 1994, 108 Stat. 3458; amended Pub.L. 107-278, Div. B, Title IV, § 4002(d)(1)(C)(i), Nov. 2, 2002, 116 Stat. 1809; Pub.L. 115-118, Title II, § 202, Jan. 19, 2018, 132 Stat. 19.)

HISTORICAL AND STATUTORY NOTES

Severability of Provisions

Invalidation of any provision, amendment or application of Pub.L. 115-118, not to affect remaining provisions, amendments and applications, see Pub.L. 115-118, § 206, set out as a note under 50 U.S.C.A. § 1801.

CHAPTER 95—RACKETEERING

Sec.	
1951.	Interference with commerce by threats or violence.
1952.	Interstate and foreign travel or transportation in aid of racketeering enterprises.
1952A.	Renumbered 1958.]
1952B.	Renumbered 1959.]
1953.	Interstate transportation of wagering paraphernalia.
1954.	Offer, acceptance, or solicitation to influence operations of employee benefit plan.
1955.	Prohibition of illegal gambling businesses.
1956.	Laundering of monetary instruments.
1957.	Engaging in monetary transactions in property derived from specified unlawful activity.
1958.	Use of interstate commerce facilities in the commission of murder-for-hire.
1959.	Violent crimes in aid of racketeering activity.
1960.	Prohibition of unlicensed money transmitting businesses.

Year Congressional Review; Expedited Consideration

Effective on and after the first day of fiscal year 2005, amendments by Title III (§§ 301 to 377) of Pub.L. 107-56 shall terminate if Congress enacts a joint resolution to that effect; such resolution shall be given expedited consideration, see Pub.L. 107-56 Title III, § 303, Oct. 26, 2001, 115 Stat. 298, set out as a note under 31 U.S.C.A. § 5311.

§ 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce; by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or

future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

(June 25, 1948, c. 645, 62 Stat. 793; Pub.L. 103-322, Title XXXIII, § 330016(I)(L), Sept. 13, 1994, 108 Stat. 2147.)

HISTORICAL AND STATUTORY NOTES

References in Text

Sections 101 to 115 of Title 29, referred to in text of subsec. (c), is a reference to Act Mar. 23, 1932, c. 90, 47 Stat. 70, popularly known as the Norris-LaGuardia Act. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 29, Labor, and Tables.

Section 11 of that act, formerly classified to section 111 of Title 29, was repealed and reenacted as section 3692 of this title by Act June 25, 1948, c. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948.

Section 12 of that act, formerly classified to section 112 of Title 29, was repealed by Act June 25, 1948, and is covered by rule 42(b), Federal Rules of Criminal Procedure, this title.

Section 164 of Title 45, included within the reference in subsec. (c) to sections 151 to 188 of Title 45, was repealed by Act Oct. 10, 1940, c. 851, § 4, 54 Stat. 1111. See section 6101 of Title 41, Public Contracts.