

APPENDIX

APPENDIX A: Unpublished decision of the Ninth Circuit, filed

December 3, 2025

United States v. Mickey

United States Court of Appeals for the Ninth Circuit

November 18, 2025**, Argued and Submitted, Pasadena, California; December 3, 2025,
Filed

No. 24-6478

Reporter

2025 U.S. App. LEXIS 31417 *; 2025 LX 575087; 2025 WL 3470023

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. WILLIE DWAYNE MICKEY,
Defendant - Appellant.

Notice: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE
32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Subsequent History: Rehearing denied by, Rehearing denied by, En banc [United States v. Mickey, 2026 U.S. App. LEXIS 3834 \(Feb. 6, 2026\)](#)

Prior History: [*1] Appeal from the United States District Court for the Southern District of California. D.C. No. 3:15-cr-01201-BTM-1. Barry Ted Moskowitz, District Judge, Presiding.

[United States v. Mickey, 2016 U.S. Dist. LEXIS 5667, 2016 WL 205400 \(S.D. Cal., Jan. 15, 2016\)](#)

Disposition: AFFIRMED.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Mark R. Rehe, Mark R. Rehe, Mr. Daniel Earl Zipp, Office of the U.S. Attorney, San Diego, CA; Ms. Alexandra Fairbanks Foster, USAO, San Diego, CA.

For WILLIE DWAYNE MICKEY, Defendant - Appellant: Sydney J. Rusch, Law Offices of David R. Silldorf, APC, San Diego, CA; David R. Silldorf, San Diego, CA.

Judges: Before: WARDLAW, IKUTA, and MILLER, Circuit Judges.

Opinion

MEMORANDUM*

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Willie Dwayne Mickey appeals the denial of his motion for a sentence reduction under [18 U.S.C. § 3582\(c\)\(2\)](#). We have jurisdiction under [28 U.S.C. § 1291](#) and affirm.

Neither [18 U.S.C. § 3582\(c\)\(2\)](#) nor [U.S.S.G. § 1B1.10](#) violates the nondelegation doctrine. Congress delegated to the United States Sentencing Commission the power to create policy statements that district courts must follow when reducing a defendant's sentence under [18 U.S.C. § 3582\(c\)\(2\)](#). See [United States v. Davis](#), 739 F.3d 1222, 1226 (9th Cir. 2014). The Commission permissibly exercised that power to create [U.S.S.G. § 1B1.10](#). See [Dillon v. United States](#), 560 U.S. 817, 819, 130 S. Ct. 2683, 177 L. Ed. 2d 271 (2010). Congress's delegation to the Commission did not violate the nondelegation doctrine because Congress provided a sufficient intelligible principle. See [United States v. Pheasant](#), 129 F.4th 576, 579-80 (9th Cir. 2025). Congress dictated how, when, and why the [*2] Commission must create policy statements for sentence modification proceedings. [28 U.S.C. § 994\(a\)\(2\)](#), (o), (u). This is a sufficient intelligible principle because Congress "provided some standard constraining discretion." [Pheasant](#), 129 F.4th at 580 (emphasis in original). We therefore reject Mickey's nondelegation challenge to [18 U.S.C. § 3582\(c\)\(2\)](#) and [U.S.S.G. § 1B1.10](#). See [Mistretta v. United States](#), 488 U.S. 361, 374, 109 S. Ct. 647, 102 L. Ed. 2d 714 (1989); [Davis](#), 739 F.3d at 1225.¹

Even after [Loper Bright Enterprises v. Raimondo](#), 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), [U.S.S.G. § 1B1.10](#) is binding on district courts because Congress, not the Commission, made policy statements "binding on the courts." [Davis](#), 739 F.3d at 1226. Congress directed courts to make their sentence reductions "consistent with applicable policy statements issued by the Sentencing Commission." [18 U.S.C. § 3582\(c\)\(2\)](#). "If a sentence reduction is inconsistent with a policy statement, it would violate [§ 3582\(c\)](#)'s directive, so policy statements must be binding." [United States v. Garcia](#), 655 F.3d 426, 435 (5th Cir. 2011).

Neither [18 U.S.C. § 3582\(c\)\(2\)](#) nor [U.S.S.G. § 1B1.10](#) intrudes on a core judicial power. Congress may eliminate or limit courts' discretion in sentencing. See [Mistretta](#), 488 U.S. at 364; [Chapman v. United States](#), 500 U.S. 453, 467, 111 S. Ct. 1919, 114 L. Ed. 2d 524 (1991). Here, Congress limited courts' discretion to reduce a defendant's sentence by creating statutory requirements for eligibility and mandating that any sentence reduction be "consistent with applicable policy statements issued by the Sentencing Commission." [18 U.S.C. § 3582\(c\)\(2\)](#). These limitations do not intrude on a core judicial power because "[a]

* This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).

¹ Each of our sister circuits to have confronted the issue has reached the same conclusion. [United States v. Erskine](#), 717 F.3d 131, 138-39 (2d Cir. 2013); [United States v. Berberena](#), 694 F.3d 514, 525 (3d Cir. 2012); [United States v. Garcia](#), 655 F.3d 426, 435 (5th Cir. 2011); [United States v. Horn](#), 679 F.3d 397, 405 (6th Cir. 2012); [United States v. Anderson](#), 686 F.3d 585, 590 (8th Cir. 2012); [United States v. Dryden](#), 563 F.3d 1168, 1171 (10th Cir. 2009); [United States v. Taylor](#), 743 F.3d 876, 879, 408 U.S. App. D.C. 356 (D.C. Cir. 2014) (per curiam).

sentencing scheme providing for 'individualized [*3] sentences rests not on constitutional commands, but on public policy enacted into statutes.'" [Chapman, 500 U.S. at 467](#) (quoting [Lockett v. Ohio, 438 U.S. 586, 604-605, 98 S. Ct. 2954, 57 L. Ed. 2d 973 \(1978\)](#) (plurality opinion)). The existence of any discretion to reduce a sentence is "not constitutionally compelled" but instead "a congressional act of lenity." [Dillon, 560 U.S. at 828](#).

AFFIRMED.