

Supreme Court's Criminal Law Decisions: The Term In Review

By **Kenneth Notter** (August 6, 2025, 2:17 PM EDT)

After a blockbuster slate of criminal law decisions in the 2023-2024 term, the U.S. Supreme Court's criminal decisions in its 2024-2025 term proved underwhelming.

The court issued just five criminal decisions — down from 11 in the previous term — and none of those decisions is poised to have the lasting consequences of last term's decisions narrowing frequently charged criminal statutes or setting the boundaries of presidential immunity from prosecution.[1]

That is not to say that this term's decisions are not important. As always, each decision is a window into how the court and individual justices approach difficult questions of criminal law and which questions pique their interest. Practitioners should therefore carefully consider each decision and the lessons and reminders they hold.



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The Cases

Thompson v. U.S.

On March 21, a unanimous court **held** that a federal statute — Title 18 of the U.S. Code, Section 1014 — that prohibits false statements to influence the action of a federally insured financial institution "does not criminalize statements that are misleading but not false." [2]

Delligatti v. U.S.

The same day, in a 7-2 decision, the court held that the "knowing or intentional causation of injury or death" — even if through inaction — "necessarily involves the use of physical force against another person," and thus triggers a mandatory minimum sentence of five years' imprisonment. [3]

Kousisis v. U.S.

On May 22, a unanimous court held that the federal mail and wire fraud statutes do not require a scheme to inflict a net pecuniary loss on a victim. [4]

Esteras v. U.S.

The court, divided 7-2, held on June 20 that district courts may not consider Title 18 of the U.S. Code,

Section 3553(a)(2)(A) — which covers the need for retribution for a defendant's underlying offense — when deciding whether to revoke a defendant's supervised release.[5]

Hewitt v. U.S.

The court, divided 5-4, held on June 26 that a defendant whose sentence has been vacated should be resentenced applying the more lenient penalties following enactment of the First Step Act, even if they were originally sentenced before that law was enacted in 2018.[6]

Trends and Observations

After deciding at least nine criminal cases in each of the prior two terms, the court decided just five this time around — the fewest in any term since at least 2007 when the court began categorizing its cases using its current methodology.[7]

And, for the first time in decades, the court decided zero state court criminal cases.[8] The court's ostensible disinterest in criminal cases coming from state courts is not new, but for the court to hear not even one case is remarkable, given that more than 98% of all cases are filed in state courts.[9]

By contrast, the court continues to favor criminal cases involving questions of federal statutory interpretation. All five cases this term turned in whole or in part on statutory interpretation.

For the third term in a row, defendants won a majority of the cases, with the only losses coming in Delligatti and Kousisis. But Kousisis broke a decadeslong winning streak for defendants in cases involving the federal mail and wire fraud statutes.

The Thompson decision, by contrast, kept alive the court's seemingly annual tradition of rejecting overbroad interpretations of criminal statutes by agreeing with the defendant that a misleading-but-literally-true statement is not false under Title 18 of the U.S. Code, Section 1014.

Justices Samuel Alito and Ketanji Brown Jackson were the term's most frequent writers, each writing in the same three cases. Justice Alito penned two dissents — in Esteras and Hewitt — and one concurrence, in Thompson. Justice Jackson wrote the majority opinion in Hewitt, a concurrence in part and in the judgment in Esteras, and a concurrence in Thompson.

Chief Justice John Roberts and Justice Elena Kagan each joined all five majority opinions, and Justice Neil Gorsuch broke most often from the majority opinion, declining, in whole or in part, to join three of the five majority opinions — Delligatti, Kousisis and Esteras.

Implications

Though the defendant prevailed in three of the five cases, the defendants in two of those three cases are unlikely to see any real benefit from their wins.

In the Thompson case, the court vacated former Chicago alderman Patrick Thompson's conviction, but sent the case back for the U.S. Court of Appeals for the Seventh Circuit to determine if Thompson's conviction under Section 1014 should nevertheless be affirmed because his statements were in fact false. Several justices strongly suggested the answer is yes, meaning Thompson may find himself in the same position he would have been had the court ruled against him.

Nor are many other defendants likely to benefit from Thompson's victory. The line between false and misleading-but-literally-true statements is a thin one, and often context-dependent. It is hard to see many jurors buying a defense argument that a statement was merely misleading, and not also false.

Jurors typically need both a legal reason to find a defendant not guilty and a motivation to do so. The more a legal reason seems like a lawyer's technicality, the less motivated jurors typically are to side with the defendant.

The Esteras decision may prove to be a similarly Pyrrhic victory. The court vacated Edgardo Esteras' sentence, but remanded for the lower courts to consider only the factors listed in Section 3583(e), without considering those listed in Section 3553(a)(2)(A) when deciding whether to revoke supervised release. Yet the allowable and prohibited considerations substantially overlap.

For example, though a district court now may not consider "the seriousness of the offense," it may still "consider the nature and circumstances of the offense" in weighing whether revocation is needed to deter the defendant from committing future crimes. In most cases, the more serious the offense, the more deterrence is needed, meaning seriousness considerations are already baked into the permissible considerations.

Thus, Esteras may change how district courts articulate their decisions, but not the bottom-line conclusions themselves.

The third case, Hewitt, provided the named defendants immense relief — reducing the mandatory minimum sentence from 25 years to five years. But the court's reasoning was specific to the language of the First Step Act, and applies only to those defendants sentenced before 2018 and whose sentences were vacated after the law went into effect.

Because sentences are rarely vacated, that class of defendants was small to begin with. But because defendants typically exhaust all avenues to challenge their conviction or sentence within a few years, few defendants sentenced before 2018 have viable challenges left by now. That number will continue to decline as time passes, limiting the practical benefit of the Esteras decision.

Counterintuitively, the biggest win for defendants may be in a 9-0 loss, Kousisis. In many courts of appeals, Kousisis' holding — that it is no defense to mail and wire fraud that a victim receive something of equal value to the money they were tricked into parting with — was already the law.

And even in circuits that had adopted a different rule, the Kousisis decision reaffirmed the most important aspect of that rule — that mail and wire fraud require a scheme and intent to inflict a property injury, though the court clarified that the victim need not necessarily lose money. In that sense, the Kousisis decision arguably validated the portion of the rule most important to defendants.

But the most important aspect of the Kousisis decision is that the court described the standard for assessing the materiality element of fraud as demanding but unsettled.[10]

Criminal defense lawyers have traditionally written off the materiality element precisely because most courts have long treated it as anything but demanding. Yet, before the Supreme Court in Kousisis, the Solicitor General's Office unexpectedly advocated for a strict standard of materiality, requiring that a misrepresentation "go to the 'very essence' of the [parties'] bargain." [11]

That is now the U.S. Department of Justice's official position, even though the Supreme Court did not resolve whether that standard, or the less demanding but more often applied standard — requiring only that a misrepresentation involve something a victim would deem important — is correct.[12]

Going forward, every defendant will argue for the more demanding standard, and prosecutors will be bound to agree. With the parties in agreement, most courts likely will, and should, start applying the demanding essence-of-the-bargain standard for materiality. That offers defendants in fraud cases a significant new argument at trial and on appeal.

Aside from these big-picture implications, all five decisions offer lessons and reminders for practitioners. For example, the cases underscore that how you win is often as important as whether you win. In criminal cases specifically, a loss may be a win in everything but name, and vice versa. It is therefore critical, particularly on appeal, for defense lawyers to explain not only why their position is right, but also why being right requires the court to grant meaningful relief to the defendant.

The court's continued focus on statutory interpretation also once again reminds the defense bar to carefully consider all possible arguments challenging the government's theory of prosecution as impermissibly stretching the statutory text.

Because criminal statutes often use similar terms, counsel must carefully review the Supreme Court's decisions — and those of other courts — interpreting the same or similar language, even when the case involves a different statute to the one in the defendant's case.

Conclusion

Though the 2024-2025 term was, by many measures, underwhelming, the court's decisions again revealed trends in how the justices approach criminal cases and offered important lessons and reminders for practitioners.

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[1] For purposes of this article, I define "criminal cases" as the Court itself does, which excludes criminal-adjacent cases such as post-conviction petitions (e.g., *Andrew v. White*, *Hamm v. Smith*, *Rivers v. Guerrero*, *Guitierrez v. Saenz*, *Glossip v. Oklahoma*), challenges to gun regulations (e.g., *Bondi v. Vanderstok*), immigration proceedings (e.g., *A.A.R.P. v. Trump*, *Monsalvo v. Garland*), civil RICO (e.g., *Medical Marijuana v. Horn*), civil suits involving law enforcement or prisoner litigation (e.g., *Williams v. Reed*, *Martin v. United States*, *Perttu v. Richards*), False Claims Act cases (e.g., *Wisconsin Bell v. United States ex rel. Heath*) and civil securities fraud (e.g., *NVIDIA v. Ohman*). See Supreme Court of the United States Granted & Noted List: October Term 2024 Cases for Argument (June 27, 2025), <https://www.supremecourt.gov/orders/24grantednotedlist.pdf> (coding five cases as

"CFY" for criminal federal cases and zero as "CSY" for criminal state cases).

[2] *Thompson v. United States*, 145 S. Ct. 821 (2025).

[3] *Delligatti v. United States*, 145 S. Ct. 797 (2025).

[4] *Kousisis v. United States*, 145 S. Ct. 1382 (2025).

[5] *Esteras v. United States*, 145 S. Ct. 2031 (2025).

[6] *Hewitt v. United States*, 145 S. Ct. 2165 (2025).

[7] See S. Vladeck, *SCOTUS's Declining State Criminal Appeals*, *State Court Report* (Dec. 17, 2024) (collecting data from past Terms), <https://statecourtreport.org/our-work/analysis-opinion/scotuss-declining-state-criminal-appeals>.

[8] *Id.*

[9] J. Murray & B. Lavender, *We Need to Know More About State Supreme Court Cases*, *ACLU* (Dec. 10, 2024), <https://www.aclu.org/news/civil-liberties/we-need-to-know-more-about-state-supreme-court-cases>.

[10] *Kousisis*, 145 S. Ct. at 1398.

[11] *Id.* at 1396-97 (noting government's concession).

[12] See M. Dreeben, *Stare Decisis in the Office of the Solicitor General*, 140 *Yale L.J. Forum* 541, 558 (2021).