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FOREWORD

HON. DARRIN P. GAYLES*

The United States Court of Appeals for the Eleventh Circuit was created in 1981 when Congress divided the six states (Florida, Georgia, Alabama, Mississippi, Louisiana, and Texas) which formerly comprised the Fifth Circuit.1 The Eleventh Circuit has jurisdiction over federal cases originating in Florida, Georgia, and Alabama.2 The Circuit includes nine district courts, with each state divided into Northern, Middle, and Southern Districts.3

The Eleventh Circuit serves a population as richly diverse as the cases which come before it. According to the U.S. Census Bureau, approximately 35,345,111 people live within the Eleventh Circuit’s territory of Florida (20,271,272), Georgia (10,214,860), and Alabama (4,858,979).4 Its territory comprises the highest percentage of Blacks—approximately twenty-five percent—of any federal judicial circuit in the country.5 The Circuit’s territory also includes a

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* United States District Judge for the Southern District of Florida. I thank Adam Hoock, Heather Sarafoglu, and Zach Vosseler (my outstanding law clerks) for their assistance in editing this piece.


2 Id.


high percentage of Hispanics (approximately seventeen percent) and significant numbers of other racial and ethnic minorities. It is also estimated that approximately 900,000 gay, lesbian, bisexual, and transgender individuals reside in Florida, Georgia, and Alabama. Therefore, the Eleventh Circuit’s decisions are consequential to its population as a whole and, occasionally, the interests of its minority communities more specifically.

Today, the Eleventh Circuit is comprised of eleven active judges (Chief Judge Ed Carnes, Judge Gerald Bard Tjoflat, Judge Frank M. Hull, Judge Stanley Marcus, Judge Charles R. Wilson, Judge William H. Pryor Jr., Judge Beverly B. Martin, Judge Adalberto Jordan, Judge Robin S. Rosenbaum, Judge Julie E. Carnes, and Judge Jill A. Pryor) and eight senior judges (Judge James C. Hill, Judge Peter T. Fay, Judge Phyllis A. Kravitch, Judge R. Lanier Anderson, Judge J.L. Edmondson, Judge Emmett Ripley Cox, Judge Joel F. Dubina, and Judge Susan H. Black). With only eleven active judges, the Eleventh Circuit remains one of the nation’s most productive courts. Over the twelve-month period ending in June 2015, the Eleventh Circuit led all circuits in the number of appeals filed (6140). Of those appeals, the Eleventh Circuit had the nation’s highest number of civil prisoner appeals (1874), the fourth highest number of ad-


6 Sex, Race, and Hispanic Origin, supra note 5.
8 The Eleventh Circuit has twelve authorized active judgeships. See 28 U.S.C. §44(a) (2012).
ministrative appeals (343), the highest number of all other civil appeals (2551), and the second highest number of criminal appeals (1372). Over the same period of time, the Eleventh Circuit also led all circuits in the number of appeals terminated (6069), including 3561 appeals terminated on the merits. Remarkably, the Court’s eleven active judges terminated 82.3% of all appeals decided on the merits in the Eleventh Circuit. And despite its relatively low number of active and senior judges, the Eleventh Circuit ranked fourth among all circuits in the median time from the filing of a notice of appeal to disposition.

The breadth of cases decided by the Eleventh Circuit is noteworthy. The Court regularly issues opinions on matters related to a variety of civil matters, including contract disputes, torts, securities, admiralty, patent and trademark infringement, employment discrimination, bankruptcy, regulatory matters, and accommodations for the disabled. The Court also handles direct appeals from a variety of important criminal cases, including drug trafficking, anti-terrorism, public corruption, child pornography, and health care fraud prosecutions, as well as writs and habeas petitions.

Chief Judge Carnes continues to guide the Court as it decides some of the most important and contentious issues faced by our nation. Over the past year, the Court has issued important opinions on a wide range of constitutional issues, including the intersection of privacy rights and the needs of law enforcement in today’s technological age; whether religious freedoms are unduly burdened by the Affordable Care Act’s “contraceptive mandate”; the contours of the right to keep and bear arms on public property; and an ongoing debate on the clash between free speech, privacy, and gun rights. In a spirited opinion and dissent, the Court also considered

10 Id.
11 Id.
12 Id.
13 Id.
14 United States v. Davis, 785 F.3d 498, 500 (11th Cir. 2015).
16 GeorgiaCarry.org, Inc. v. U.S. Army Corps of Eng’rs, 788 F.3d 1320 (11th Cir. 2015).
17 Wollschlaeger v. Governor of Florida, 760 F.3d 1195 (11th Cir. 2014), vacated and superseded, 797 F.3d 859 (11th Cir. 2015), vacated and superseded, —
whether a sentence is substantively unreasonable in light of the con-
siderable discretion given to district judges post-Booker.18

The most consequential opinions for thousands of individuals
who live in the Eleventh Circuit concern criminal justice issues, in-
cluding sentencing. According to the Federal Bureau of Investiga-
tion, approximately 11.2 million people are arrested every year in
the United States.19 Approximately 2.2 million people are currently
serving sentences in our nation’s prisons and jails.20 As noted by
Georgetown University Law Center Professor Paul Butler, “[t]he
two million Americans in prison represent the most urgent challenge
to democratic values since the civil rights era.”21 In the 2014 fiscal
year, 6675 people were sentenced by federal judges in the Eleventh
Circuit.22 Given the number and breadth of significant criminal
cases in the Eleventh Circuit, the Court will undoubtedly decide
more important issues related to sentencing and criminal justice.

For this Eleventh Circuit Issue, the University of Miami Law Re-
view has assembled an interesting group of articles that address sev-
eral topics relevant to this circuit. First, Lindsey Friedman discusses
stolen artifact/antiquity law in the Eleventh Circuit and the future
landscape of the law related to the $4 billion worth of artifacts and
antiquity coming out of the Middle East due to political conflict.23

F.3d —, 2015 WL 8639875 (11th Cir. Dec. 14, 2015), vacated on petition for
rehearing en banc (11th Cir. Feb. 3, 2016).

18 United States v. Rosales-Bruno, 789 F.3d 1249, 1278 (11th Cir. 2015)
(Wilson, C., dissenting); see also United States v. Booker, 543 U.S. 220, 226
(2005).

19 FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORT: CRIME IN THE
in-the-u.s/2014/crime-in-the-u.s.-2014/persons-arrested/main/persons-ar-
rested.pdf.


22 U.S. SENTENCING COMM’N, STATISTICAL INFORMATION PACKET: FISCAL
YEAR 2014, ELEVENTH CIRCUIT 8 (2015), http://www.ussc.gov/sites/defau-
t/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-dis-

23 See Lindsey Friedman, Application of the McClain Doctrine to ISIS Stolen
Next, David Markus and Nathan Wesler analyze the Eleventh Circuit’s decision in *United States v. Davis*, holding that the production of a cell phone carrier’s business records did not constitute a search within the meaning of the Fourth Amendment or, alternatively, was not an unreasonable search. Chance Meyer and Craig Trocino discuss the future of the death penalty in Florida in light of the U.S. Supreme Court’s decision in *Hurst v. Florida*, which held that Florida’s sentencing scheme for capital cases violated the Sixth Amendment. Christina M. Frohock interprets the debate set forth in *Patterson v. Secretary, Florida Department of Corrections* and the prohibition against successive habeas petitions. And finally, C. Caitlin Giles, an Articles & Comments Editor of the *University of Miami Law Review* and the editor of this Eleventh Circuit edition, addresses in a student note the conflicting pleading standards in the Eleventh Circuit and other circuits for Rule 9(b) of the False Claims Act. These important and timely articles constitute welcomed additions to legal discourse and dialogue within our Circuit.

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24 United States v. Davis, 785 F.3d 498 (11th Cir. 2015).
28 Paterson v. Sec’y, Florida Dep’t of Corr., 812 F.3d 885 (11th Cir. 2016).