

A Doctrine in Crisis: *Stare Decisis*

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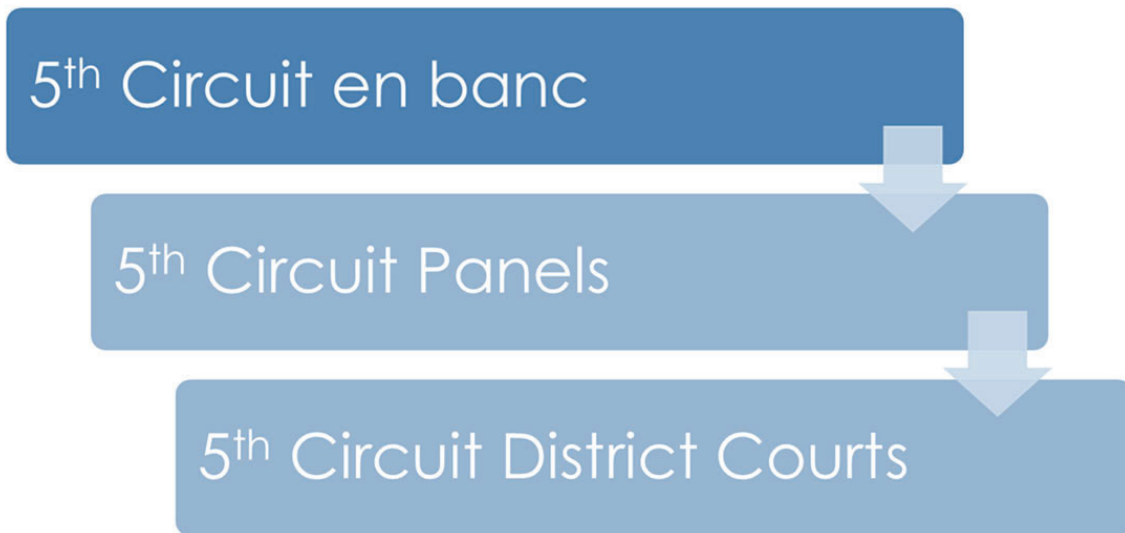
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Stare Decisis

- “to stand by the thing decided and not disturb the calm”
 - *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020) (Kavanaugh, J. concurring)
- “a foundation stone of the law”
 - *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446 (2015)
- “avoid[s] an arbitrary discretion in the courts”
 - Alexander Hamilton, Federalist Paper No. 78
- “keep[s] the scale of justice even and steady”
 - William Blackstone

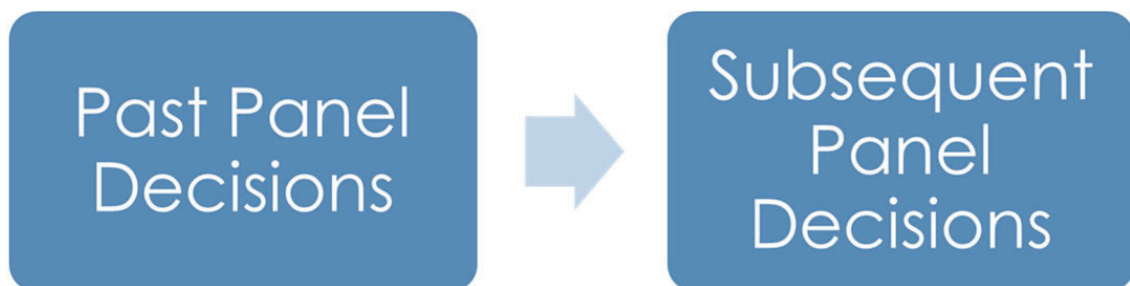
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Fifth Circuit – Vertical *Stare Decisis*



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Fifth Circuit – Horizontal *Stare Decisis*



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The Rule of Orderliness

- “It is a well-settled Fifth Circuit rule of orderliness that one panel of our court may not overturn another panel’s decision, absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our en banc court. Indeed, even if a panel’s interpretation of the law appears flawed, the rule of orderliness prevents a subsequent panel from declaring it void.” *Jacobs v. Nat’l Drug Intel. Ctr.*, 548 F.3d 375, 378 (5th Cir. 2008).
- “[W]hen two published panel decisions conflict, we must follow the earlier.” *Id.*

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How Far Does the Rule of Orderliness Reach?

- Prior Precedent: *Nieto Hernandez v. Holder*
 - Issue: Was the TX offense of felon in possession of a firearm an aggravated felony as defined by federal law?
 - Dependent on whether TX offense fell within the description in 18 U.S.C. § 922(g) (federal felon in possession of firearm statute)
 - Defendant ***conceded*** that Texas's “felon” and “firearm” elements were identical to the federal substantive elements in § 922(g).
 - Defendant argued instead that the Texas offense of felony in possession of a firearm was not an aggravated felony because state law did not contain an “interstate commerce” or jurisdictional element.
 - The panel rejected the argument and held that the TX offense was an aggravated felony.

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