

ISSUES PENDING IN THE TENTH CIRCUIT

COMPILED BY THE KANSAS FEDERAL PUBLIC DEFENDER



Updated January 8, 2021

PREFACE

In the fall of 2014, we (the Kansas Federal Public Defender) contacted the Tenth Circuit Court of Appeals about compiling a list of issues pending in the Court. To accomplish our goal, we needed the Tenth Circuit's assistance, and the Court came through (we are particularly indebted to Chief Deputy Clerk Chris Wolpert). Without the Tenth Circuit's assistance, this document would not exist.

We borrowed this idea from the Federal Public Defender for the Central District of Illinois. We thank them for allowing us to follow their lead.

A few words on the contents of this document. First, when an appeal is decided, the issue summary for that case will be removed from this document (as no longer pending).

Second, we have categorized issues in what we hope is a sensible approach. The categories are neither static nor exhaustive. We might add new ones, combine old ones, or make any other changes we see fit. Our goal is to make this as user-friendly as possible.

Third, the document is searchable. If you want to know if there are any *Terry* issues pending, just search for "*Terry*" or "frisk." The easiest way to search is to use the keyboard shortcut CTRL + F (this launches a "find" function).

Fourth, there are bookmarks and the Table of Contents is hyperlinked to the body of the outline.

Fifth, at the end of the document, we have included a list of recently added cases (within the last month), with the issues in those cases parenthetically noted. We think this list will be a good resource for those who wish to use this document on a regular basis (and we thank former AFPD Jill Wichlens (Denver) for the suggestion).

Sixth, we do not mean to suggest an opinion on the merits of any case by our summaries. Our summaries are based on a very quick look at the briefs—we apologize if we bungle or omit any of your issues.

And finally, the document is available to anyone, for whatever use it might provide. We suggest the following uses: (1) when filing a brief in the Tenth Circuit or litigating an issue in the district court, to determine whether similar issues are currently pending, and, if so, to advise the Court and to review the briefs to assist in formulating arguments; (2) to assist attorneys in preserving issues in the district court (by providing notice of issues recently raised); and (3) to become better writers (by reading others' work and attempting to improve on it in our own work).

Our goal is to update this document weekly. If we fall behind, we apologize. If you are aware of an issue that we might have missed, please send the case name and number our way.

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Table of Contents

I. Appeals/scope of remand 1

II. Competence 1

III. Confessions..... 1

IV. Continuances 1

V. Discovery 1

VI. Double Jeopardy 1

VII. Eighth Amendment and Capital Issues 1

VIII.Ex Post Facto Issues 1

IX. First Amendment or Other Rights of Access..... 1

X. Forfeiture 1

XI. Fourth Amendment Issues 1

 A. Arrest Warrant 1

 B. Attenuation (intervening circumstances) 2

 C. Consent..... 2

 D. Excessive Force 2

 E. Fruit of the Poisonous Tree..... 2

 F. Good Faith Exception..... 2

 G. Government Actor..... 2

 H. Hearing Issues..... 2

 I. Inventory Searches 2

 J. Knock and Talk 3

 K. Plain View Doctrine..... 3

 L. Protective Sweeps..... 3

 M. Scope of Warrantless Search..... 3

 N. Search Incident to Arrest 3

 O. Search Warrant Issues (including *Franks v. Delaware* issues)..... 3

 P. Standing (reasonable expectation of privacy)..... 4

 Q. *Terry* Stops: Initial Detention 4

 R. *Terry*: Frisk 4

 S. Traffic Stops..... 4

 T. Warrantless Arrests 5

 U. Warrantless Searches & Seizures..... 5

XII. Fourteenth Amendment: Due Process	6
XIII. Fifth Amendment: Due Process	6
XIV. Fifth Amendment: Right to Silence	6
XV. Fifth Amendment: Confessions & <i>Miranda</i>	6
XVI. Habeas Issues	7
A. 28 U.S.C. § 2241	7
B. 28 U.S.C. § 2254	7
C. 28 U.S.C. § 2255	10
D. Fed. R. Civ. P. 60(b).....	10
E. Coram Nobis.....	10
XVII. Immigration Issues.....	10
XVIII. Indictment Issues	10
A. Amendments.....	10
B. Duplicity	11
C. Grand Jury Issues	11
D. Sufficiency of the Indictment (Sixth Amendment)	11
E. Variance	11
XIX. Jurisdictional Issues	11
XX. Motion Practice	11
XXI. Offenses	11
A. 8 U.S.C. § 1253 (removal-related offenses)	11
B. 8 U.S.C. § 1324 (encouraging/transporting illegal immigration).....	11
C. 8 U.S.C. §§ 1325/1326 (illegal entry/reentry)	11
D. 18 U.S.C. § 78 (securities fraud)	11
E. 16 U.S.C. § 3372, et al. (illegally taking fish and wildlife)	11
F. 18 U.S.C. § 2 (aiding and abetting)	11
G. 18 U.S.C. § 111 (assaulting, resisting, impeding an officer or employee).....	12
H. 18 U.S.C. § 113 (assaults within maritime and territorial jurisdiction)	12
I. 18 U.S.C. § 242 (civil-rights violation).....	12
J. 18 U.S.C. § 287 (false claims against the government)	12
K. 18 U.S.C. § 371 (conspiracy).....	12
L. 18 U.S.C. § 666 (bribery)	12
M. 18 U.S.C. § 669 (theft from health care program).....	12

N.	18 U.S.C. § 842 (unlawful distribution/possession of explosives)	12
O.	18 U.S.C. § 843 (using a communication device)	12
P.	18 U.S.C. § 844 (arson)	12
Q.	18 U.S.C. § 875 (interstate communications)	12
R.	18 U.S.C. § 876 (mailing threatening communications)	12
S.	18 U.S.C. § 922(a) (false statement during firearm purchase)	12
T.	18 U.S.C. § 922(d) (disposal to a prohibited person)	12
U.	18 U.S.C. § 922(g) (prohibited person in possession)	12
V.	18 U.S.C. § 924(c) (Possession/Use of Firearm during drug trafficking offense)	13
W.	18 U.S.C. § 1001 (false statements)	13
X.	18 U.S.C. § 1005 (false bank entries)	13
Y.	18 U.S.C. § 1028 (identity-document fraud)	13
Z.	18 U.S.C. § 1028A (identity theft)	14
AA.	18 U.S.C. § 1030 (computer fraud and related activity)	14
BB.	18 U.S.C. § 1041 (false statements to a bank)	14
CC.	18 U.S.C. § 1112 (involuntary manslaughter)	14
DD.	18 U.S.C. § 1153 (offenses committed within Indian country)	14
EE.	18 U.S.C. § 1201 (kidnapping)	14
FF.	18 U.S.C. § 1341 (mail fraud)	14
GG.	18 U.S.C. § 1343 (wire fraud)	14
HH.	18 U.S.C. § 1344 (bank fraud)	14
II.	18 U.S.C. § 1347 (health-care fraud)	14
JJ.	18 U.S.C. § 1361 (depredation of government property)	14
KK.	18 U.S.C. § 1512 (witness tampering)	14
LL.	18 U.S.C. § 1513 (obstruction of justice)	14
MM.	18 U.S.C. § 1591 (sex trafficking of children)	14
NN.	18 U.S.C. § 1791 (contraband in prison)	14
OO.	18 U.S.C. § 1951 (Hobbs Act robbery)	14
PP.	18 U.S.C. § 1956 (money laundering)	14
QQ.	18 U.S.C. § 2119 (carjacking)	14
RR.	18 U.S.C. §§ 2241-2245 (sexual abuse)	15
SS.	18 U.S.C. § 2250 (SORNA: failure to register); 42 U.S.C. § 16911	15
TT.	18 U.S.C. § 2251 (sexual exploitation/production of child pornography)	15

UU.	18 U.S.C. § 2422 (enticement to travel to engage in prostitution)	15
VV.	18 U.S.C. § 2423 (transportation of minors)	15
WW.	18 U.S.C. § 2252A (receiving/distributing child pornography)	15
XX.	21 U.S.C. § 841 (drug trafficking)	15
YY.	21 U.S.C. § 846 (drug conspiracy)	16
ZZ.	21 U.S.C. § 856 (drug-involved premises)	17
AAA.	26 U.S.C. § 5861 (firearms offenses)	17
BBB.	26 U.S.C. § 7201 (tax evasion)	17
CCC.	26 U.S.C. § 7212	17
DDD.	28 U.S.C. § 455 (recusal)	17
EEE.	42 U.S.C. § 3631 (interfering with housing rights)	17
FFF.	49 U.S.C. § 46504 (intimidating a flight attendant)	17
GGG.	Assimilative Crimes Act (ACA)	17
HHH.	Regulatory and CFR Offenses	17
XXII.	Pleas	17
A.	Acceptance of Plea	17
B.	Appeal Waiver	17
C.	Breach	17
D.	Rejection of Plea Agreement	18
E.	Withdrawal of Plea	18
XXIII.	Restitution (18 U.S.C. § 3663, 3664, <i>et al.</i>)	18
XXIV.	Rules of Criminal Procedure	18
A.	Rule 8 (Joinder/Severance)	18
B.	Rule 11 (pleas) (see main Pleas section)	18
C.	Rule 12 (motions)	18
D.	Rule 32 (sentencing procedures)	18
E.	Rule 33 (new trial)	18
F.	Rule 35 (modification of a sentence)	19
G.	Rule 41 (search & seizure)	19
XXV.	Scope of Remand/Mandate Rule/Other Remand Issues	19
XXVI.	Second Amendment Issues	19
XXVII.	Sentencing	19
A.	Allocution	19

B. Apprendi.....	19
C. Armed Career Criminal Act (18 U.S.C. 924(e))	19
D. Burden of Proof	19
E. Capital Sentencing.....	19
F. Consecutive Sentences (18 U.S.C. § 3584)	19
G. Commitment in Lieu of Imprisonment (18 U.S.C. § 4244).....	19
H. Departures and Variances	19
I. Fines & Assessments	20
J. First Step Act	20
K. Guidelines Sections	20
1. USSG § 1B1.2.....	20
2. USSG § 1B1.3 (relevant conduct).....	20
3. USSG § 2A2.2	20
4. USSG § 2A3.1 (criminal sexual abuse)	21
5. USSG § 2A3.2 (sexual abuse of a minor).....	21
6. USSG § 2A3.4 (abusive sexual contact).....	21
7. USSG § 2A4.1 (bodily injury).....	21
8. USSG § 2A6.1	21
a) subsection (b)(2)(A) (more than 2 threats)	21
9. USSG § 2B1.1.....	21
10. USSG § 2B2.1 (burglary).....	21
11. USSG § 2B3.1 (robbery)	21
12. USSG § 2C1.1.....	22
13. USSG § 2D1.1 (drugs).....	22
14. USSG § 2G1.1 (sex trafficking)	22
15. USSG § 2G2.2 (child pornography).....	22
16. USSG § 2K1.4 (arson).....	22
17. USSG § 2K2.1	22
18. USSG § 2K2.2.....	23
19. USSG § 2L1.2 (immigration offenses).....	23
20. USSG § 2T1.1 (tax loss).....	23
21. USSG § 2T1.4 (sophisticated means—tax offense).....	23
22. USSG § 2Q2.1.....	23

23. USSG § 3A1.1 (hate crime/vulnerable victim).....	23
24. USSG § 3A1.2	23
25. USSG § 3A1.3	23
26. USSG § 3A1.4 (terrorism)	23
27. USSG § 3B1.1 (aggravating role).....	23
28. USSG § 3B1.2 (mitigating role).....	23
29. USSG § 3C1.1 (obstruction).....	23
30. USSG § 3C1.2 (reckless endangerment during flight).....	24
31. USSG § 3D1.2-1.5 (multiple counts)	24
32. USSG § 3E1.1 (acceptance of responsibility).....	24
33. USSG § 4A1.1	24
34. USSG § 4A1.2	24
35. USSG § 4A1.3 (criminal-history departures)	24
36. USSG §§ 4B1.1, 4B1.2 (crime of violence; controlled substance offense).....	24
37. USSG § 4B1.5.....	25
38. USSG § 5C1.2 (safety valve).....	25
39. USSG § 5G1.3.....	25
40. USSG § 5K1.1	25
41. USSG § 5K2.7	25
42. USSG § 5K2.14.....	25
43. USSG § 5G1.2.....	25
44. USSG § 7B1.3 (revocation of probation or supervised release).	26
L. Mandatory Minimums and Maximums	26
M. Reasonableness	26
1. Procedural.....	26
2. Substantive.....	26
N. SORNA Sentencing Issues	27
O. Three Strikes (18 U.S.C. § 3559(c)).....	27
P. Resentencing Issues	28
Q. Compassionate Release under 18 U.S.C. § 3582(c)(1)	28
R. Sentence Reductions under 18 U.S.C. § 3582(c)(2).....	28
S. Constitutional Issues.....	28
1. Fifth Amendment Due Process.....	28

2. Sixth Amendment and Hearsay	28
XXVIII. Sixth Amendment	28
A. Right to Effective Assistance of Counsel	28
B. Substitution of Counsel/Conflicts of Interest/Counsel of Choice	28
C. Self-Incrimination.....	29
D. Self-Representation/Waiver of Counsel	29
E. Confrontation	29
F. Impartial Jury	29
G. Jury Verdict	29
H. Compulsory Process	29
XXIX. Speedy Trial (statutory/constitutional) & Interstate Agreement on Detainers Act.....	29
XXX. Standards of Review	30
A. Waiver.....	30
B. Forfeiture/Plain Error.....	30
C. De Novo Review.....	30
XXXI. Statutes of Limitations.....	30
XXXII. Supervised Release	30
A. Revocation Issues.....	30
B. Sentencing Issues (either initially or after revocation)	30
1. Statutory Maximum	30
2. Substantive.....	31
3. Procedural.....	31
4. Unlawful Delegation of authority.....	31
5. Assimilative Crimes Act (ACA) sentences	31
C. Conditions of Supervised Release.....	31
XXXIII. Trial Practice and Evidence Issues	32
A. Closing Argument	32
B. Confidential Informants.....	32
C. Cumulative Error.....	32
D. Demonstrative Evidence.....	32
E. Due Process	32
F. Eyewitness Identification Testimony	33
G. Judicial misconduct	33

H. Jury Instructions	33
1. Aiding and Abetting	33
2. Burden of Proof.....	33
3. Conspiracy.....	33
4. Constructive Possession	33
5. Deliberate Avoidance/Ignorance	33
6. Elements (see statute under which defendant tried).....	33
7. Sentencing Elements	33
8. Flight.....	33
9. Guilt by Association/Guilt of Others	33
10. Investigative Techniques.....	33
11. Knowledge.....	33
12. Polygraphs.....	34
13. Proof.....	34
14. Spoliation	34
15. Theory of Defense/Affirmative Defense	34
16. Unanimity.....	34
17. Voluntary Intoxication	34
18. Witness Cautionary Instructions.....	34
I. Jury Questions	34
J. Jury Selection	34
K. Mistrial	34
L. Prior Convictions	34
M. Privileges.....	34
N. Prosecutorial Misconduct.....	34
O. Right to be Present.....	35
P. Right to Present Defense	35
Q. Rule 201 (judicial notice).....	35
R. Rule 106 (rule of completeness).....	35
S. Rules 401, 402, 403 (relevance & undue prejudice)	36
T. Rule 404(b)	36
U. Rules 412, 413 & 414 (Sexual Assault Evidence)	37
V. Rules 601-615 (Witnesses)	37

W. Rules 701-706 (Opinions and Expert Testimony).....	37
X. Rules 801-807 (hearsay).....	38
Y. Rule 901 (authentication).....	38
Z. Rule 1002 (Best Evidence Rule).....	38
AA. Rule 1006 (Summaries).....	38
BB.Surrebuttal	38
CC.Voir Dire.....	38
XXXIV. Vagueness.....	39
XXXV. Wiretap Issues (18 U.S.C. § 2510-2522 or FISA Section 702)	39

I. Appeals/scope of remand

After a government appeal and remand on a different issue, was the district court estopped from reconsidering its earlier suppression order, which was not appealed? *United States v. Koerber*, No. 19-4147 (gov't brief filed December 9, 2020).

II. Competence

Did this defendant's inability to assist counsel render his trial a due process violation? *United States v. Ferguson*, No. 20-7045 (brief filed December 17, 2020).

III. Confessions

IV. Continuances

V. Discovery

Did the district court err by not imposing more severe sanctions for the government's discovery violations? *United States v. Jumaev*, No. 18-1296 (reply brief filed March 30, 2020).

VI. Double Jeopardy

VII. Eighth Amendment and Capital Issues

Is this defendant entitled to a COA or § 2255 relief based on ineffective assistance of counsel during the guilt and penalty phases of his capital trial, evidentiary and due process claims, claims relating to uncharged aggravating factors, or his challenge to the reasonable-doubt instruction? *Menzies v. Powell*, No. 19-4042 (gov't brief filed December 22, 2020).

VIII. Ex Post Facto Issues

IX. First Amendment or Other Rights of Access

X. Forfeiture

Did the district court plainly err by failing to making a finding of a nexus between the offense and the forfeited property before issuing a forfeiture order? *United States v. Decker*, No. 20-7030 (gov't brief filed November 27, 2020).

The Tenth Circuit remanded this fraud case for further proceedings regarding forfeiture. The district court refused to hold an evidentiary hearing on remand. Did the district court violate the mandate, or otherwise err in revising its forfeiture order? *United States v. Matthew Channon*, No. 19-2029 (OA March 12, 2020).

XI. Fourth Amendment Issues

A. Arrest Warrant

Did the district court err when it denied this defendant's motion to suppress, because officers illegally searched a third party's shop to arrest him, without sufficient evidence that he lived at the shop or was inside the shop? *United States v. Jones*, No. 19-6182 (gov't brief filed June 24, 2020).

B. Attenuation (intervening circumstances)

C. Consent

Did the district court err when it found that this defendant's consent to search his pockets was voluntary? *United States v. Ballance*, No. 20-3141 (brief filed December 23, 2020).

Did the district court err when it found this defendant voluntarily consented to police officers' entry into his home, or by concluding that the defendant's father had apparent authority to consent to a search of the defendant's bedroom? *United States v. Guillen*, No. 20-2004 (reply brief filed October 1, 2020).

Was law enforcement's search of this vehicle valid, either because there was probable cause or because there was consent to search? *United States v. Torres*, No. 19-2161 (reply brief filed June 4, 2020).

D. Excessive Force

E. Fruit of the Poisonous Tree

F. Good Faith Exception

Does the good-faith exception apply to the execution of a flawed NIT warrant in this child-pornography case? Does it apply the execution of a flawed warrant to search this defendant's home? *United States v. Wagner*, No. 19-3068 (OA Jan. 23, 2020).

G. Government Actor

H. Hearing Issues

Did the district court err when it denied this defendant's motion to suppress by making factual findings unsupported by the record and by failing to hold an evidentiary hearing? *United States v. Murray*, No. 19-8067 (gov't brief filed May 11, 2020).

I. Inventory Searches

Was the impoundment of this defendant's car unconstitutional, because the police department had no standard policy for impounding and it was done only to investigate crime? If so, does the inevitable discovery doctrine apply? *United States v. Thibeault*, No. 20-6105 (reply brief filed December 21, 2020).

Was the impoundment of this defendant's car unconstitutional, because it exceeded the applicable local policy? *United States v. Woodard*, No. 20-5004 (reply brief filed December 4, 2020).

Did the district court err when it found that the inventory of this defendant's car was a legitimate exercise of the police community caretaking function, and that disassembling part of the interior did not exceed the scope of a valid inventory search? *United States v. Kendall*, No. 19-1465 (gov't brief filed August 4, 2020).

Did the district court err by concluding that the impoundment and search of this defendant's vehicle was constitutional? *United States v. Venezia*, No. 19-1432 (reply brief filed July 27, 2020).

Did the district court err by denying this defendant's motion to suppress, based on a conclusion that the evidence was discovered during a proper inventory search? *United States v. Chavez*, No. 19-2123 (OA September 24, 2020).

J. Knock and Talk

K. Plain View Doctrine

L. Protective Sweeps

M. Scope of Warrantless Search

N. Search Incident to Arrest

O. Search Warrant Issues (including *Franks v. Delaware* issues)

Did the district court err by denying the motion to suppress evidence found on the defendant's cell phone, because the warrant was insufficiently particular and overly broad? *United States v. Palms*, No. 20-5072 (brief filed December 28, 2020).

Did the district court err by denying this defendant's motion to suppress because the warrant to search his home was not supported by probable cause? *United States v. Kilgore*, No. 20-5059 (reply brief filed November 16, 2020).

Did the district court err when it determined that the warrant to search this defendant's home was complete and sufficiently particular, even though the warrant was separated from the affidavit and list of items to be seized prior to the search? *United States v. Nolan*, No. 21-1021 (gov't brief filed November 18, 2020).

Did the district court err when it determined that the warrant to search this defendant's home satisfied the Fourth Amendment's particularity requirement? *United States v. Suggs*, No. 19-1487 (reply brief filed November 13, 2020).

Did the search warrant for this defendant's home, based on high energy consumption, establish probable cause to search the home, and did the warrant affidavit recklessly omit material information that differentiated between two people with similar names? *United States v. Yan*, No. 20-1071 (reply brief filed January 4, 2021); *United States v. Xiang*, No. 20-1070 (reply brief filed January 4, 2021).

Did the search warrant for this defendant's home allege a sufficient nexus between the house and criminal activity? Did the warrant sufficiently describe with particularity the items to be seized? And does the good faith exception or the inevitable discovery doctrine save the search? *United States v. Cotto*, No. 19-2182 (reply brief filed October 21 2020).

Did the district court err when it found there was sufficient probable cause for a search warrant of this defendant's home, based on an information provided by an informant, when it found that the good faith exception would apply regardless, or when it held that no *Franks* hearing was required? *United States v. Smith*, No. 20-5006 (reply brief filed June 23, 2020).

Did the search warrant for this defendant's out-of-state home provide a sufficient nexus between the crime and the residence? Should items that were seized but which were not listed in the warrant have been suppressed? *United States v. Nabeel Khan*, No. 19-8051 (reply brief filed September 2, 2020).

Was this search warrant defective because it failed to establish probable cause that the patient files to be seized would be in the defendant's home, did the scope of the search exceed the warrant, and does the good faith exception apply? *United States v. Kahn*, No. 19-8054 (reply brief filed August 26, 2020).

Did the district court err by not suppressing the fruits of extraterritorial search warrants in this terrorism case, issued by a Colorado judge for evidence in Philadelphia? *United States v. Jumaev*, No. 18-1296 (reply brief filed March 30, 2020).

Did the Virginia magistrate judge who issued this NIT warrant to search a Kansas computer lack authority to do so, and was the warrant otherwise illegal? *United States v. Wagner*, No. 19-3068 (OA Jan. 23, 2020).

Was the warrant issued to search this defendant's home for pornography unconstitutionally flawed? *United States v. Wagner*, No. 19-3068 (OA Jan. 23, 2020).

P. Standing (reasonable expectation of privacy)

Q. Terry Stops: Initial Detention

Did the district court err when it found that officers had sufficient reasonable suspicion to stop this defendant based on a 911 call? *United States v. Ballance*, No. 20-3141 (brief filed December 23, 2020).

Was this defendant seized without suspicion when, in the middle of the night, an officer parked in front of the defendant's parked car, blocking his exit, and activated his emergency lights? *United States v. Tafuna*, No. 20-4078 (brief filed December 4, 2020).

Was there reasonable suspicion, based on an anonymous 911 call, to stop this defendant? *United States v. Gaines*, No. 19-3177 (reply brief filed March 31, 2020).

R. Terry: Frisk

Did law enforcement's pat down of this defendant violate the Fourth Amendment, because there were no facts suggesting the defendant was armed and dangerous? *United States v. Torres*, No. 19-2161 (reply brief filed June 4, 2020).

S. Traffic Stops

Did the police officer impermissibly detour from the mission of the traffic stop of this defendant by investigating other criminal activity, and did those actions impermissibly extend the stop? *United States v. Malone*, No. 20-1183 (gov't brief filed December 22, 2020).

Did law enforcement have reasonable suspicion of drug trafficking sufficient to extend a stop for a minor traffic infraction? *United States v. Komsonkeo*, No. 20-6064 (reply brief filed December 31, 2020).

If this traffic stop was not escalated into an arrest, did the officers impermissibly extend the stop beyond its purpose without reasonable suspicion? *United States v. Williams*, No. 19-3265 (gov't brief filed July 6, 2020).

Did the stop and search of this defendant's car violate the Fourth Amendment because it was impermissibly extended, and because the defendant did not consent to the search? *United States v. Mercado-Garcia*, No. 19-2153 (reply brief filed June 23, 2020).

Did the stop of this defendant's vehicle violate the Fourth Amendment because it lacked reasonable suspicion of careless driving, because the stop was impermissibly extended, because the consent to search the car was invalid, or because the search exceeded the consent? *United States v. Martinez-Torres*, No. 19-2121 (OA September 24, 2020).

Did the stop of this defendant's vehicle violate the Fourth Amendment, because it lacked reasonable suspicion, because a completed parking violation did not justify the stop, and/or because the police impermissibly extended the stop? And did the district court apply an incorrect legal standard by reviewing the magistrate judge's finding "in the light most favorable to the government?" *United States v. Torres*, No. 19-2161 (reply brief filed June 4, 2020).

Was there reasonable suspicion of alien transporting to justify extending the traffic stop of this defendant, after the officer gave him a written warning? *United States v. Mendoza*, No. 19-2105 (reply brief filed April 10, 2020).

Was there reasonable suspicion for a traffic stop, or did the officer unconstitutionally extend the detention of the defendant? *United States v. Chavez*, No. 19-4121 (reply brief filed March 20, 2020).

T. Warrantless Arrests

Did the district court err when it ruled that this defendant's arrest and subsequent search were supported by probable cause? *United States v. Reese*, No. 20-1044 (gov't brief filed November 24, 2020).

Did the officers' display of force, by pulling their guns, transform this traffic stop into a de facto arrest at the outset, without probable cause? *United States v. Williams*, No. 19-3265 (brief filed April 2, 2020).

Did the officer in this case lack probable cause to arrest this defendant—who momentarily balked and questioned the officer's order that he submit to a pat-down—for resisting an officer? *United States v. Romero, Jr.*, No. 18-2180 (OA July 19, 2019).

U. Warrantless Searches & Seizures

Did the district court err by denying the motion to suppress evidence found when an agent lifted and felt the defendant's bag, which he had placed in an overhead compartment on a bus? *United States v. Fernandez*, No. 20-2106 (brief filed January 4, 2021).

Did the district court err by denying the motion to suppress, because the officer's subjective interpretation of the drug dog alert is insufficient to give probable cause to search? *United States v. Goldberg*, No. 20-6090 (gov't brief filed December 21, 2020).

Did the need to provide emergency aid to someone inside authorize the warrantless search of this defendant's home? *United States v. Mora*, No. 19-2097 (reply brief filed January 31, 2020).

XII. Fourteenth Amendment: Due Process

Is this defendant's indefinite commitment as a sex offender subject to equal protection and due process protections, and does it violate those protections? *Wimberly v. Williams*, No. 20-1128 (brief filed Oct. 26, 2020).

Does this defendant's state conviction for violating a sex-offender residency prohibition violate his federal due process rights, because the prohibition was enacted after his sex-offense conviction, or does that fact render the evidence insufficient for his conviction? *Childers v. Crow*, No. 20-5014 (gov't brief filed December 18, 2020).

Did the state court violate this capital defendant's due process rights when it admitted a steady stream of prurient and irrelevant evidence about her sex life (purportedly to show her motive to kill her estranged husband)? *Andrew v. Aldridge*, No. 15-6190 (OA July 27, 2017) (abated pending en banc decision in *Pavatt v. Carpenter*, No. 14-6117 (en banc supplemental brief filed Jan. 9, 2019)).

XIII. Fifth Amendment: Due Process

Were this defendant's Fifth and Sixth Amendment rights to due process and a jury trial violated when the guideline range and statutory maximum were determined based on facts found by the judge, and not a jury? *United States v. Adams*, No. 20-6071 (gov't brief filed December 2, 2020).

Was the government's involvement in this defendant's charged attempted use of explosives so outrageous that it should have been barred from prosecuting him? *United States v. Varnell*, No. 20-6040 (reply brief filed December 15, 2020).

Was a mistrial warranted by a government witness's reference to the defendant's custodial status during trial? *United States v. Kahn*, No. 19-8054 (reply brief filed August 26, 2020).

Did the district court err when it found a witness's statements to be voluntary and the admission of those statements not to violate due process, when the statements were made at the police station, after police kicked down the witness's door and ordered her out of the house? *United States v. Cade*, No. 19-3220 (reply brief filed July 2, 2020).

Did outrageous conduct by government officials (distributing child pornography through the Playpen website) warrant dismissal of this defendant's indictment? *United States v. Wagner*, No. 19-3068 (OA Jan. 23, 2020).

XIV. Fifth Amendment: Right to Silence

Did the court's instruction that the jury could find intent by what the defendant did or omitted to due impermissibly burden the defendant's right to silence? *United States v. Kahn*, No. 19-8054 (reply brief filed August 26, 2020).

XV. Fifth Amendment: Confessions & *Miranda*

Should some of all of this defendant's statements be suppressed because agents deliberately interrogated him without informing him of his *Miranda* rights before obtaining his statements again after a waiver, and/or because his waiver was not voluntary? *United States v. Guillen*, No. 20-2004 (reply brief filed October 1, 2020).

Did the state court err in this capital case when it admitted the defendant's un-*Mirandized* statements? *Andrew v. Aldridge*, No. 15-6190 (OA July 27, 2017) (abated pending en banc decision in *Pavatt v. Carpenter*, No. 14-6117 (en banc supplemental brief filed Jan. 9, 2019)).

Did law enforcement unlawfully interrogate this defendant in violation of *Miranda* and his due-process rights? *United States v. Wagner*, No. 19-3068 (OA Jan. 23, 2020).

XVI. Habeas Issues

A. 28 U.S.C. § 2241

Is this military defendant entitled to habeas relief on his claims that the military court filed to address the impact drug ingestion had on his mens rea and the introduction of misleading sentencing evidence? *Bales v. Commandant*, No. 20-3167 (brief filed December 7, 2020).

Is this military defendant entitled to habeas relief on his claims of defective jury instructions in his military proceeding? *Santucci v. Commandant*, No. 20-3149 (reply brief filed December 21, 2020).

Is this defendant entitled to a COA and habeas relief on his claims of Brady violations and the presentation of perjured testimony? *Lebere v. Trani*, No. 20-1117 (brief filed September 11, 2020).

Is this defendant entitled to habeas relief on his challenge to his immigration detention, particularly in light of the conditions created by COVID-19? *De La Rosa v. Guadian*, No. 20-3134 (brief filed September 10, 2020).

Did the district court err or violate separate of powers when it found that this defendant's acceptance of a presidential pardon constituted a waiver of his challenge to the conviction and dismissal from the army and rendered the case moot? *Lorance v. Commandant*, No. 3055 (gov't brief filed December 16, 2020).

Is this state defendant entitled to § 2241 relief on his claims that Colorado failed to provide a constitutionally adequate bail hearing, which considered ability to pay and alternatives to cash bail? *Elliott v. Brown*, No. 21-1175 (reply brief filed July 1, 2020).

Is this military defendant entitled to § 2241 relief, based on his claims of broad review of military convictions, ineffective assistance of counsel, and insufficient evidence? *Page v. Commandant*, No. 20-3005 (reply brief filed September 22, 2020).

In this habeas corpus application, did the district court erroneously deny this defendant's request for credit for presentence confinement under 18 U.S.C. § 3585(b)(1), when the defendant received state probation "credit" for the disputed period but was not in official detention? *United States v. Goodface*, No. 19-1238 (reply brief filed November 21, 2019).

B. 28 U.S.C. § 2254

Is this defendant entitled to habeas relief on his claim that his coerced confession was used at his trial? *Bauders v. Crow*, No. 20-5101 (brief filed December 21, 2020).

Is this defendant entitled to habeas relief on his claims of illegal entrapment? *Mayfield v. Morris*, No. 20-2061 (brief filed November 5, 2020).

Is this defendant entitled to an evidentiary hearing on his habeas claims of actual innocence and flawed scientific evidence? *Nicholls v. Hansen*, No. 20-1159 (brief filed October 30, 2020).

Is this defendant's indefinite commitment as a sex offender subject to equal protection and due process protections, and does it violate those protections? *Wimberly v. Williams*, No. 20-1128 (brief filed Oct. 26, 2020).

Is this defendant entitled to a COA or habeas relief based on his claims of effective assistance of counsel during the guilt and penalty phases of his capital trial, evidentiary and due process claims, uncharged aggravating factors, or challenge to the reasonable-doubt instruction? *Menzies v. Powell*, No. 19-4042 (gov't brief filed December 22, 2020).

Is this state defendant entitled to habeas relief based on his *Batson* and equal-protection claims? *Johnson v. Martin*, No. 19-5091 (reply brief filed September 25, 2020).

Is this state defendant entitled to habeas relief based on his claims of ineffective assistance of counsel? *Honie v. Powell*, No. 19-4158 (reply brief filed October 15, 2020).

Did the district court err by granting a writ of habeas corpus to this death-penalty defendant, because: (1) the defendant pleaded guilty only as a principal and not an accomplice, and had proved his innocence as a principal, and (2) ineffective assistance of counsel during the plea stage? *Taylor v. Powell*, No.20-4039 (gov't brief filed January 4, 2021) (state appeal).

Does Wyoming's kidnapping statute violate the Sixth Amendment by allowing guilt and mandatory-minimum sentences to be determined without a jury verdict beyond a reasonable doubt, and is this defendant entitled to 28 U.S.C. § 2254 relief on that basis? *Haves v. Pacheco*, No. 19-8047 (reply brief filed November 2, 2020).

Is this state murder defendant entitled to § 2254 relief on his claims of insufficient evidence and ineffective assistance of counsel? *MEEK v. Martin*, No. 20-7021 (brief filed June 24, 2020).

Is this state defendant entitled to an evidentiary hearing on his claim that the exclusion of a doctor's testimony interfered with his right to present a defense, and has he established a claim of actual innocence sufficient to allow consideration of his claim? *Holcomb v. Whitten*, No 19-5033 (reply brief filed May 22, 2020).

Is this state defendant entitled to § 2254 relief based on his claim of ineffective assistance of counsel, arguing that trial counsel was deficient for not objecting to the dismissal of four hard-of-hearing jurors without requesting assistive hearing devices? *Lind v. Meadows*, No. 19-1320 (reply brief filed August 18, 2020).

Is this state murder defendant entitled to relief or a COA on his claim of actual innocence and an involuntary plea, based on new, uncontested facts that a codefendant acted alone? *Resinger v. Farris*, No. 20-7009 (brief filed March 24, 2020).

Is this state sexual-assault defendant entitled to relief or a COA on his claims of ineffective assistance of counsel, prosecutorial misconduct, and cumulative error? *Finlayson v. State of Utah*, No. 19-4151 (reply brief filed October 16, 2020).

Did the district court err by granting § 2254 relief to this defendant based on his claims that simultaneous convictions for attempted murder and aggravated battery with a deadly weapon violated the prohibition against double jeopardy? *Armendariz v. Vigil*, No. 19-2206 (defendant brief filed March 6, 2020) (state appeal).

Did the district court err by finding that this state murder defendant overcame multiple procedural bars to post-conviction review, and was entitled to relief, because he had shown cause and prejudice and actual innocence? *Fontenot v. Crow*, No. 19-7045 (reply brief filed April 27, 2020) (state appeal).

Is this state murder defendant entitled to 28 U.S.C. § 2254 relief or a COA on his claims of denial of a fair trial, via the admission of irrelevant and prejudicial testimony, or prosecutorial misconduct? *Vargas v. Williams*, No. 19-1192 (brief filed November 19, 2019).

Should the district court have granted this state capital defendant habeas relief based on individual or cumulative error, or at the very least have held an evidentiary hearing on her *Brady* and IAC claims? *Andrew v. Aldridge*, No. 15-6190 (OA July 27, 2017) (abated pending en banc decision in *Pavatt v. Carpenter*, No. 14-6117 (en banc supplemental brief filed Jan. 9, 2019)).

Should the district court have granted federal habeas relief (or at least an evidentiary hearing) on this state capital defendant's claims of ineffective assistance of counsel, unconstitutional jury instructions, unconstitutional victim-impact testimony, and cumulative error? *Harris v. Carpenter*, No. 17-6109 (OA March 20, 2019).

Is this state child-abuse/murder defendant entitled to 28 U.S.C. § 2254 relief on grounds that his conviction was tainted by Sixth Amendment violations (the trial judge's denial of the right to present evidence that the state's forensic lab was unaccredited), the introduction of unduly prejudicial autopsy photographs, and cumulative error? *Weimer v. Allbaugh*, No. 18-6072 (state's brief filed Sept. 27, 2018).

Is this Oklahoma molestation defendant entitled to a certificate of appealability and 28 U.S.C. § 2254 relief on his ineffective-assistance-of-counsel and state-misconduct claims? *Whitely v. Farris*, No. 18-6085 (OA March 21, 2019).

Is this Oklahoma murder defendant entitled to 28 U.S.C. § 2254 relief on his claims that he was denied his right to present a complete defense, that his trial counsel was ineffective, and that the evidence was insufficient to support his conviction? *Davis v. Allbaugh*, No. 18-6131 (OA March 21, 2019).

Is this Oklahoma sex-crimes defendant entitled to 28 U.S.C. § 2254 relief on his ineffective-assistance-of-counsel claims? *Crim v. Harvanke*, No. 18-7049 (brief filed Jan. 3, 2019).

Is this state sex offender entitled to a certificate of appealability and federal habeas relief (or at least an evidentiary hearing) on his actual innocence claim? *Burke v. Bigelow*, No. 18-4132 (brief filed March 5, 2019).

Whether the district court's dismissal of this state habeas defendant's 28 U.S.C. § 2254 petition on grounds that the basis for his claims could have been discovered earlier merits a certificate of appealability. *Barrientez v. Martin*, No. 19-6047 ((brief filed May 16, 2019).

Is this Utah murder defendant entitled to a certificate of appealability and 28 U.S.C. § 2254 relief on his claims of prosecutorial misconduct? *Pinder v. Crowther*, No. 19-4039 (brief filed July 12, 2019).

C. 28 U.S.C. § 2255

Does it violate due process to apply the now-repealed residual clause of USSG § 4B1.2 retroactively, to uphold the defendant's career-offender designation, based on a different conviction that the conviction that originally justified that status? *United States v. Raymonde*, No. 20-1254 (brief filed October 30, 2020).

Is this defendant entitled to § 2255 relief on his Fourth Amendment claims of illegal search and seizure and ineffective assistance of counsel? *United States v. Maley*, No. 20-2073 (brief filed October 8, 2020).

Did the district court err when it refused to consider this defendant's pro se § 2255 motion based on Rehaif, or is his claim procedurally barred? *United States v. Hisey*, No. 20-3106 (gov't brief filed January 4, 2021).

Is this defendant entitled to a COA or § 2255 relief on his claims of ineffective assistance of counsel, based on counsel's failure to object to sentencing enhancements? *United States v. Babcock*, No. 20-4003 (brief filed September 4, 2020).

Is this defendant entitled to a COA or § 2255 relief regarding claims of ineffective assistance of counsel, based on failure to investigate DNA evidence and omissions during plea negotiations? *Jenks v. United States*, No. 20-4023 (reply brief filed October 22, 2020).

Whether this petitioner is entitled to a certificate of appealability and 28 U.S.C. § 2255 relief despite the collateral-attack waiver in his plea agreement where his counsel ineffectively advised him during plea negotiations. *United States v. Henry*, No. 18-3023 (reply brief filed Dec. 18, 2018).

D. Fed. R. Civ. P. 60(b)

E. Coram Nobis

XVII. Immigration Issues

XVIII. Indictment Issues

A. Amendments

B. Duplicity

In this gun-possession case, did the admission of evidence of a prior robbery involving a gun create duplicity problem in the indictment and lead to a non-unanimous verdict? *United States v. Wilson*, No. 19-1198 (reply brief filed February 6, 2020).

C. Grand Jury Issues

D. Sufficiency of the Indictment (Sixth Amendment)

E. Variance

Was this indictment constructively amended by a jury instruction that included an additional element? *United States v. Segue*, No. 20-7034 (brief filed December 14, 2020).

Was this indictment constructively amended at trial because the jury could have convicted on a fraud scheme that was not charged in the indictment? *United States v. Koerber*, No. 19-4147 (gov't brief filed December 9, 2020).

XIX. Jurisdictional Issues

Was there sufficient evidence that this second-degree-murder defendant's offense was committed within the territorial jurisdiction of the United States, and did the district court violate Rule 12 by delaying ruling on this defendant's jurisdictional challenge until after he was convicted? *United States v. Antonio*, No. 18-2118 (OA July 19, 2019).

XX. Motion Practice

XXI. Offenses

A. 8 U.S.C. § 1253 (removal-related offenses)

B. 8 U.S.C. § 1324 (encouraging/transporting illegal immigration)

Did the district court err when it held that the prohibition on encouraging or inducing illegal immigration was facially unconstitutional under the First Amendment? *United States v. Hernandez-Cabillo*, No. 19-3210 (reply brief filed December 21, 2020) (gov't appeal); *United States v. Papalotzi*, No. 19-3211 (reply brief filed December 21, 2020) (gov't appeal).

C. 8 U.S.C. §§ 1325/1326 (illegal entry/reentry)

D. 18 U.S.C. § 78 (securities fraud)

Did the district court abuse its discretion by failing to give an instruction on the general rules and restrictions applicable to securities laws, which misled the jury on the government's burden of proof on the first element of securities fraud? *United States v. Jean-Pierre*, No. 20-1039 (reply brief filed October 26, 2020).

E. 16 U.S.C. § 3372, et al. (illegally taking fish and wildlife)

F. 18 U.S.C. § 2 (aiding and abetting)

G. 18 U.S.C. § 111 (assaulting, resisting, impeding an officer or employee)

H. 18 U.S.C. § 113 (assaults within maritime and territorial jurisdiction)

Did the district court err by entering judgment against this defendant under § 113(a)(1), because two counts were multiplicitous, or because the jury instruction failed to instruct the jury to find proof of all the elements? *United States v. Wells*, No. 20-1228 (brief filed December 14, 2020).

I. 18 U.S.C. § 242 (civil-rights violation)

J. 18 U.S.C. § 287 (false claims against the government)

K. 18 U.S.C. § 371 (conspiracy)

L. 18 U.S.C. § 666 (bribery)

M. 18 U.S.C. § 669 (theft from health care program)

N. 18 U.S.C. § 842 (unlawful distribution/possession of explosives)

O. 18 U.S.C. § 843 (using a communication device)

P. 18 U.S.C. § 844 (arson)

Q. 18 U.S.C. § 875 (interstate communications)

R. 18 U.S.C. § 876 (mailing threatening communications)

S. 18 U.S.C. § 922(a) (false statement during firearm purchase)

Was the evidence presented at trial sufficient to establish that there was a valid order of protection entered against this defendant, that he had the opportunity to participate in a hearing about the order, and that he knew there was an order of protection against him, when he stated he was not a prohibited person and to purchase a firearm? Did the district court err by failing to instruct the jury that he had to know he was a prohibited person? *United States v. Kaspereit*, No. 19-6188 (reply brief filed July 6, 2020).

T. 18 U.S.C. § 922(d) (disposal to a prohibited person)

U. 18 U.S.C. § 922(g) (prohibited person in possession)

Is the government required to prove that a defendant knew that a prior conviction precluded him from possessing a firearm? *United States v. Benton*, No. 20-6023 (reply brief filed September 7, 2020).

Was this defendant's guilty plea to possessing a firearm while unlawfully present in the United States not voluntary and intelligent, when he was incorrectly told that the prohibition applies to all aliens? *United States v. Perez-Perez*, No. 19-2154 (reply brief filed July 28, 2020).

Was the evidence presented at trial sufficient to establish that there was a valid order of protection entered against this defendant, that he had the opportunity to participate in a hearing about the order, and that he knew there was an order of protection against him, which prohibited him from

possessing a firearm? Did the district court err by failing to instruct the jury that the defendant had to know he was a prohibited person? *United States v. Kaspereit*, No. 19-6188 (reply brief filed July 6, 2020).

Is this defendant entitled to a judgment of acquittal or a new trial due to Rehaif, which was issued during his direct appeal from his conviction under 18 U.S.C. § 922(g)? And were the jury instructions, which omitted knowledge of status, erroneous? *United States v. Folse*, No. 19-2065 (reply brief filed February 25, 2020).

Was the jury improperly instructed on the elements of the gun-possession offense because the instructions did not require a finding that the defendant knew of his status as a convicted felon? *United States v. Wilson*, No. 19-1198 (reply brief filed February 6, 2020).

V. 18 U.S.C. § 924(c) (Possession/Use of Firearm during drug trafficking offense)

Must this defendant's § 924(c) convictions be vacated because Hobbs Act robbery are not categorically crimes of violence under the force clause, because it can be committed by a threat to harm property? *United States v. Baker*, No. 20-3062 (brief filed December 3, 2020).

Did the district court err in holding that transmitting a threat in interstate commerce is a crime of violence under § 924(c)? *United States v. Mjones*, No. 20-8029 (gov't brief filed December 28, 2020).

Did the district court plainly err in holding that transmitting a threat in interstate commerce is a crime of violence under the elements clause of § 924(c) because it can be committed recklessly? *United States v. Mjones*, No. 20-8029 (gov't brief filed December 28, 2020) (foreclosed issue).

Did the district court err in holding that Hobbs Act robbery and attempted Hobbs Act robbery qualify as crimes of violence under § 924(c)? *United States v. Wilson*, No. 20-5077 (gov't brief filed December 21, 2020).

Is this defendant entitled to § 2255 relief based on his claim that Hobbs Act robbery is not categorically a crime of violence under § 924(c)? *United States v. Wilson*, No. 20-5077 (gov't brief filed December 21, 2020).

Is this defendant entitled to § 2255 relief based on his claim that a violation of 18 U.S.C. § 242, for deprivation of rights under color of law, is not a predicate crime of violence under 18 U.S.C. § 924(c), and what is the burden of proof to show that a sentence relied on the elements clause or residual clause of § 924(c)? *United States v. Rodella*, No. 20-2020 (reply brief filed October 12, 2020).

W. 18 U.S.C. § 1001 (false statements)

Was there insufficient evidence that this defendant conspired to make false statements to obtain immigration benefits, where there was proof of multiple conspiracies and not one single conspiracy? *United States v. Murry*, No. 20-1214 (brief filed December 11, 2020); *United States v. Rajesh Ramcharan*, No. 20-1241 (brief filed December 11, 2020); *United States v. Diann Ramcharan*, No. 20-1243 (brief filed December 11, 2020); *United States v. Harvell*, No. 20-1245 (brief filed January 4, 2021)

X. 18 U.S.C. § 1005 (false bank entries)

Y. 18 U.S.C. § 1028 (identity-document fraud)

Z. 18 U.S.C. § 1028A (identity theft)

AA. 18 U.S.C. § 1030 (computer fraud and related activity)

BB. 18 U.S.C. § 1041 (false statements to a bank)

CC. 18 U.S.C. § 1112 (involuntary manslaughter)

Was the evidence sufficient to convict this defendant of involuntary manslaughter and assault? *United States v. Goodman*, No. 19-8008 (OA March 10, 2020).

DD. 18 U.S.C. § 1153 (offenses committed within Indian country)

Does the district court have authority to impose a conditional discharge and probation under the Indian Major Crimes Act? *United States v. Martinez*, No. 20-2126 (gov't brief filed December 23, 2020).

EE. 18 U.S.C. § 1201 (kidnapping)

Did the district court plainly err when it instructed the jury that the defendant bore the burden to prove that the victim was no longer held against her will before the statute of limitations expired on a kidnapping charge? *United States v. Piette*, No. 20-7008 (brief filed November 26, 2020).

FF. 18 U.S.C. § 1341 (mail fraud)

GG. 18 U.S.C. § 1343 (wire fraud)

HH. 18 U.S.C. § 1344 (bank fraud)

II. 18 U.S.C. § 1347 (health-care fraud)

JJ. 18 U.S.C. § 1361 (deprivation of government property)

KK. 18 U.S.C. § 1512 (witness tampering)

Should this conviction under § 1512 be vacated or reversed because the jury was not instructed on the definition of “official proceeding,” or because there was insufficient evidence to prove intimidation, threats or persuasion? *United States v. Segue*, No. 20-7034 (brief filed December 14, 2020).

LL. 18 U.S.C. § 1513 (obstruction of justice)

MM. 18 U.S.C. § 1591 (sex trafficking of children)

Was there sufficient evidence of intent to engage in prostitution with a minor to convict this defendant of sex trafficking of children? *United States v. Robinson*, No. 19-1256 (OA September 24, 2020).

NN. 18 U.S.C. § 1791 (contraband in prison)

OO. 18 U.S.C. § 1951 (Hobbs Act robbery)

PP. 18 U.S.C. § 1956 (money laundering)

QQ. 18 U.S.C. § 2119 (carjacking)

Did the district court plainly err in accepting this guilty plea to carjacking resulting in death under 18 U.S.C. § 2119(3), because the factual basis established only carjacking under § 2119(1)? *United States v. Lowell*, No. 20-2014 (gov't brief filed November 23, 2020).

Was there sufficient evidence supporting this defendant's carjacking conviction? *United States v. Folse*, No. 19-2065 (reply brief filed February 25, 2020).

RR. 18 U.S.C. §§ 2241-2245 (sexual abuse)

Did the district court violate this defendant's due process rights by relieving the government of its obligation to prove the requisite mens rea under § 2241? *United States v. Wells*, 20-1228 (brief filed December 14, 2020).

SS. 18 U.S.C. § 2250 (SORNA: failure to register); 42 U.S.C. § 16911

TT. 18 U.S.C. § 2251 (sexual exploitation/production of child pornography)

In this child pornography production trial, was there insufficient evidence that the visual depictions at issue had been produced on material that had moved in interstate or foreign commerce? *United States v. Rodriguez*, No. 20-5017 (reply brief filed August 7, 2020).

UU. 18 U.S.C. § 2422 (enticement to travel to engage in prostitution)

VV. 18 U.S.C. § 2423 (transportation of minors)

WW. 18 U.S.C. § 2252A (receiving/distributing child pornography)

Did the government prove beyond a reasonable doubt that this defendant transported child pornography? *United States v. Wasson*, No. 20-3029 (reply brief filed October 15, 2020).

Was the evidence sufficient to sustain this defendant's child-pornography convictions? *United States v. Wagner*, No. 19-3068 (OA Jan. 23, 2020).

XX. 21 U.S.C. § 841 (drug trafficking)

Was there sufficient evidence that this defendant possessed methamphetamine with an intent to distribute, based only on circumstantial evidence? *United States v. Fernandez*, No. 20-2106 (brief filed January 4, 2021).

Did the district court err by improperly instructing the jury on the elements of a crime and the standard of causation for a crime under § 841 that causes a death? Was the evidence sufficient to support this defendant's conviction for that offense? *United States v. Moya*, No. 20-2006 (gov't brief filed September 8, 2020).

Did the district court err by sentencing this defendant under § 841(b)(1)(C), with a 20-year maximum sentence, instead of § 841(b)(1)(D), with a five-year maximum, or by increasing the statutory maximum pursuant to § 851 when the government argued that the enhancement was no longer at issue? *United States v. Dabda*, No. 19-3285 (reply brief filed October 29, 2020).

Was there sufficient evidence to prove that this defendant entered a conspiracy to distribute methamphetamine, and not just a buyer-seller relationship, and that there was a single, interdependent conspiracy? *United States v. Hall*, No. 19-7054 (gov't brief filed June 25, 2020).

Did the district court reversibly err by refusing to give a requested instruction regarding the evidence of multiple conspiracies? *United States v. Hall*, No. 19-7054 (gov't brief filed June 25, 2020).

Was there sufficient evidence that this defendant knew that the doctor he worked with, also his brother, as prescribing drugs in violation of the Controlled Substance Act? *United States v. Nabeel Khan*, No. 19-8051 (reply brief filed September 2, 2020).

Did the district court reversibly err by instructing the jury that the government can prove the knowledge required for drug trafficking if the defendant made an unreasonable but honest mistake. or by failing to instruct the jury that the defendant's actions were a but-for cause of the victim's death? *United States v. Kahn*, No. 19-8054 (reply brief filed August 26, 2020).

Did the district court err by giving an instruction allowing this defendant doctor to be convicted for issuing a prescription either outside the scope of professional or without legitimate medical purpose, and not requiring both? *United States v. Henson*, No. 19-3062 (OA September 23, 2020).

Was the evidence sufficient to sustain this defendant's drug convictions under 21 U.S.C. § 841? *United States v. Duran*, No. 18-1062 (OA March 19, 2019).

Was the evidence sufficient to prove quantity in this drug-conspiracy case? *United States v. Eichler*, No. 18-8015 (reply brief filed Dec. 7, 2018).

YY. 21 U.S.C. § 846 (drug conspiracy)

Was there sufficient evidence that this defendant participated in a single conspiracy to distribute methamphetamine, or if not, was there a variance between the indictment charging one conspiracy and the evidence that proved multiple conspiracies, or should the jury have been instructed on multiple conspiracies? *United States v. Davis*, No. 20-5016 (reply brief filed October 21, 2020).

Was there insufficient evidence that the defendant was a member of a conspiracy and had the specific intent to possess methamphetamine with the intent to distribute it? *United States v. Tennison*, No. 20-3033 (reply brief filed November 18, 2020)

Should this defendant's drug-conspiracy conviction be reversed because: (1) there was insufficient evidence of a conspiracy; (2) text messages that were admitted were more prejudicial than probative, and were not subject to confrontation; (3) irrelevant evidence about this defendant doctor's business practices was admitted and end use of prescriptions; (4) there was insufficient evidence of conspiracy to distribute controlled substances or health care fraud; (5) the district court erred by admitting charts and other summary information. *United States v. Otuonye*, No. 19-3250 (gov't brief filed November 23, 2020).

Was there sufficient evidence to convict this defendant of conspiracy to possess with intent to distribute drugs, when there was no evidence of an agreement between the defendant and his wife? *United States v. Yan*, No. 20-1071 (brief filed June 10, 2020).

Must this drug-defendant's conviction for conspiracy to distribute drugs be reversed because: (1) there was insufficient evidence he joined in the conspiracy; (2) there was a variance between the single conspiracy indicted and the multiple conspiracy proven at trial; (3) prejudicial evidence under

FRE 403; (4) improper law enforcement expert testimony; (5) cumulative error? *United States v. Cushing*, No. 19-7052 (reply brief filed September 2, 2020).

Was the evidence sufficient to prove a shared distribution objective in this drug-conspiracy case? *United States v. Mendoza-Alarcon*, No. 18-2036 (OA March 20, 2019).

ZZ. 21 U.S.C. § 856 (drug-involved premises)

AAA. 26 U.S.C. § 5861 (firearms offenses)

BBB. 26 U.S.C. § 7201 (tax evasion)

CCC. 26 U.S.C. § 7212

DDD. 28 U.S.C. § 455 (recusal)

EEE. 42 U.S.C. § 3631 (interfering with housing rights)

FFF. 49 U.S.C. § 46504 (intimidating a flight attendant)

GGG. Assimilative Crimes Act (ACA)

Did the district court err by denying the motion to dismiss because this defendant could not have been charged under the state law, which served as the basis for his prosecution under the ACA? *United States v. Harris*, No. 20-8032 (brief filed December 11, 2020).

Does the Assimilative Crimes Act confer jurisdiction in this case or is this stalking offense covered by other regulations? Is Colorado's stalking statute unconstitutional, such that it cannot be the basis for a conviction under the ACA, and did the district court improperly instruct the jury on stalking? *United States v. Twitty*, No. 20-1083 (reply brief filed September 25, 2020).

HHH. Regulatory and CFR Offenses

XXII. Pleas

A. Acceptance of Plea

B. Appeal Waiver

Did the government waive its arguments regarding enforcement of the appellate waiver? *United States v. Whitaker*, No. 20-7050 (brief filed December 8, 2020).

C. Breach

Did the government breach a Rule 11(c)(1)(C) plea agreement in this case when it sought additional charges and enhancements in a superseding indictment, even though a plea was not ultimately entered? *United States v. Rasmussen*, No. 20-6101 (brief filed December 21, 2020).

Did the government breach the plea agreement in this case by failing to provide the defendant with a reasonable opportunity to cooperate, and failing to inform the court of the defendant's willingness to cooperate? *United States v. Terry*, No. 20-7053 (brief filed December 7, 2020).

D. Rejection of Plea Agreement

E. Withdrawal of Plea

Did the district court err by denying the motion to withdraw the guilty plea, because the denial was based on a clearly erroneous factual finding regarding the defendant's admissions? *United States v. Wilcox*, No. 20-7047 (reply brief filed December 31, 2020).

Did the district court err when it denied this defendant's motion to withdraw his guilty plea after *Rebaif v. United States*? *United States v. Craine*, No. 19-6189 (reply brief filed September 25, 2020).

Whether the district court erred in denying this defendant's motion to withdraw his plea, when the First Step Act (passed on the same day as the change of plea) substantially changed the punishment he was facing, or because of ineffective assistance of counsel? *United States v. Dominguez*, No. 19-8021, 8022 (OA March 12, 2020).

XXIII. Restitution (18 U.S.C. § 3663, 3664, et al.)

Did the district court plainly err by ordering restitution in excess of its statutory authority, specifically by ordering restitution for the expenses of the deceased victim's adult son and his family's travel expenses? *United States v. Casados*, No. 20-1006/1216 (gov't brief filed January 4, 2021).

Did the district court plainly err by ordering restitution to hotels that were not victims of the credit-card-fraud offense this defendant pleaded guilty to? *United States v. Cruz*, No. 19-1345 (gov't brief filed May 13, 2020).

Did the district court sentence this defendant to restitution in excess of the statutory maximum by imposing restitution for losses and victims beyond those encompassed by the single wire fraud conviction? *United States v. Williams*, No. 19-1229 (OA September 22, 2020).

Did the district court calculate excessive loss and restitution based on "unpaid revenue" in this fraud case? *United States v. Wieck*, No. 19-6075 (OA September 22, 2020).

Did the district court err in ordering restitution for losses caused by someone other than the defendant? *United States v. Anthony*, No. 18-6047 (OA May 8, 2019).

XXIV. Rules of Criminal Procedure

A. Rule 8 (Joinder/Severance)

Did the district court err by not severing the multiple bank robbery counts, when the incidents occurred on different days at different locations? *United States v. Rasmussen*, No. 20-6101 (brief filed December 21, 2020).

B. Rule 11 (pleas) (see main Pleas section)

C. Rule 12 (motions)

D. Rule 32 (sentencing procedures)

E. Rule 33 (new trial)

Did the district court err by denying this defendant's motion for a new trial on the basis of new evidence about a witnesses' recantation and the victim's mental-health condition? *United States v. Velarde*, No. 20-1115 (gov't brief filed November 20, 2020).

Did the district court err when it denied the defendant's motion for new trial based on newly discovered evidence? *United States v. Gomez-Castro*, No. 18-4090 (reply brief filed October 31, 2019).

F. Rule 35 (modification of a sentence)

G. Rule 41 (search & seizure)

XXV. Scope of Remand/Mandate Rule/Other Remand Issues

Did the district court erred when it interpreted the Tenth Circuit's mandate to preclude consideration of the defendant's *Carpenter*-based argument on remand, and when it found that it could not consider arguments made on direct appeal even though the Supreme Court had vacated the judgment? *United States v. Thompson*, No. 19-3173 (gov't brief filed December 28, 2020).

XXVI. Second Amendment Issues

XXVII. Sentencing

A. Allocution

B. Apprendi

Were this defendant's Fifth and Sixth Amendment rights to due process and a jury trial violated when the guideline range and statutory maximum were determined based on facts found by the judge, and not a jury? *United States v. Adams*, No. 20-6071 (brief filed October 5, 2020).

C. Armed Career Criminal Act (18 U.S.C. 924(e))

Is Oklahoma domestic abuse assault & battery a violent felony for ACCA purposes? *United States v. Harrison*, No. 17-6119 (OA Sept. 26, 2018).

D. Burden of Proof

E. Capital Sentencing

Is this defendant entitled to a COA or § 2255 relief based on his claims of effective assistance of counsel during the guilt and penalty phases of his capital trial, evidentiary and due process claims, uncharged aggravating factors, or challenge to the reasonable-doubt instruction? *Menzies v. Powell*, No. 19-4042 (gov't brief filed December 22, 2020).

F. Consecutive Sentences (18 U.S.C. § 3584)

G. Commitment in Lieu of Imprisonment (18 U.S.C. § 4244)

H. Departures and Variances

Did the district court err by denying this illegal-reentry defendant's requests for a downward departure or variance for criminal-history overrepresentation? *United States v. Flores-De La Rosa*, No. 19-2113 (gov't brief filed November 27, 2019).

Did the district court abuse its discretion by departing upwards in this gun case based on a discouraged factor and without making required findings? *United States v. Aaron*, No. 18-3232 (OA September 26, 2019).

I. Fines & Assessments

J. First Step Act

Does § 403 of the First Step Act, which eliminated mandatory stacking of two § 924(c) convictions, apply to defendant's whose cases were pending on direct appeal at the time of the Act's passage? *United States v. Jefferson*, No. 17-3150 (supplemental briefs filed December 28, 2020).

Did the district court err by denying this First Step Act motion because the defendant's guidelines range remained unchanged? *United States v. Maytubby*, No. 19-6111 (OA March 10, 2020).

In this First Step Act case, did the district court err by ruling that it could not reconsider this defendant's career-offender designation? *United States v. Brown*, No. 19-7039 (OA Jan. 23, 2020).

Did the district court err when it held a defendant ineligible for relief under the First Step Act solely because his guidelines range remains unchanged? And if so, can a district court deny relief under the Act because the guidelines range has not changed, without considering anything else? *United States v. McKinney*, No. 19-3105 (OA March 12, 2020).

K. Guidelines Sections

1. USSG § 1B1.2

2. USSG § 1B1.3 (relevant conduct)

Did the district court fail to make the required particularized findings in support of its relevant conduct findings, or did it err when it ruled that certain drug purchases were within the scope of the conspiratorial agreement and should be attributed to this defendant as relevant conduct? *United States v. Ellis*, No. 19-3148 (OA September 23, 2020).

Did the district court err by calculating personal-use drug quantity amounts as relevant conduct in this drug-trafficking case? *United States v. Wilson*, No. 19-7048 (OA September 22, 2020).

3. USSG § 2A2.2

Did the district court engage in impermissible double-counting by applying a 5-level enhancement under § 2A1.1(b)(3)(A), for assault causing serious bodily injury, and a 2-level enhancement under § 2A2.2(b)(7), for an assault conviction under 18 U.S.C. § 111(b)? *United States v. Campbell*, No. 19-2199 (reply brief filed May 28, 2020).

Did the district court err in adding a 6-level enhancement to this assault defendant's sentence under USSG § 2A2.2? *United States v. James*, No. 18-3227 (OA November 21, 2019).

4. USSG § 2A3.1 (criminal sexual abuse)

Did the district court err by applying an enhancement for “abduction,” as well as one for the use of force, because it was impermissible double-counting? *United States v. Wells*, No. 20-1228 (brief filed December 14, 2020).

5. USSG § 2A3.2 (sexual abuse of a minor)

6. USSG § 2A3.4 (abusive sexual contact)

Did the district court plainly err by increasing this defendant’s base offense level based on the commentary to § 2A3.4, which defines sexual acts more expansively than the guideline’s text? *United States v. Platero*, No. 19-2193 (reply brief filed August 6, 2020).

7. USSG § 2A4.1 (bodily injury)

8. USSG § 2A6.1

a) subsection (b)(2)(A) (more than 2 threats)

9.1 USSG § 2B1.1

Did the district court err when it applied enhancements for the number of victims and for the use of the means of identification of another person? *United States v. Yarclay*, No. 19-6174 (reply brief filed August 12, 2020).

Did the district court err by applying the arson cross-reference in USSG § 2B1.1 in this false-statement case, and if so, should the government be allowed to present additional evidence on remand? *United States v. Logsdon*, No. 19-7055 (OA September 22, 2020).

Did the district court err when it held that this defendant relocated his fraudulent scheme from Oklahoma to Mexico for the purpose of evading law enforcement, and applied a two-level “relocation” enhancement on that basis? *United States v. Wieck*, No. 19-6075 (OA September 22, 2020).

Did the district court calculate excessive loss and restitution based on “unpaid revenue” in this fraud case? *United States v. Wieck*, No. 19-6075 (reply brief filed March 2, 2020).

10. USSG § 2B2.1 (burglary)

Did the district court err by imposing an enhancement for possession of a dangerous weapon, when the defendant used a hammer to break in a door? *United States v. Martinez*, No. 20-2126 (gov’t brief filed December 23, 2020).

11. USSG § 2B3.1 (robbery)

Did the district court err by applying enhancements for robbing a financial institution, use of a dangerous weapon, and acting as a leader or organizer, where those enhancements were either double-counting or not supported by the facts? *United States v. Rasmussen*, No. 20-6101 (brief filed December 21, 2020).

Did the district court err by applying a cross-reference and sentencing this carjacking defendant under the first-degree murder guideline, § 2A1.1? *United States v. Lowell*, No. 20-2014 (gov’t brief filed November 23, 2020).

12. USSG § 2C1.1

13. USSG § 2D1.1 (drugs)

Did the district court err in its calculations of drug quantity or in applying an enhancement for the use of violence, because those findings were not factually supported? *United States v. McDonald*, No. 20-7052 (brief filed December 29, 2020).

Did the district court err by using the guidelines provision for actual methamphetamine? *United States v. Velazquez-Aguilera*, No. 20-1107 (reply brief filed September 23, 2020).

Did the district court err in calculating the amount of marijuana attributable to this defendant when calculating the base offense level? *United States v. Dabda*, No. 19-3285 (reply brief filed October 29, 2020).

Did the district court err by calculating drug quantities based on total prescriptions by this defendant doctor, or should the court have separated out medical use from non-medical use? *United States v. Otuonye*, No. 19-3250 (gov't brief filed November 23, 2020).

14. USSG § 2G1.1 (sex trafficking)

15. USSG § 2G2.2 (child pornography)

16. USSG § 2K1.4 (arson)

17. USSG § 2K2.1

Did the district court plainly err when it enhanced this defendant's sentence under § 2K2.1 based on a prior Oklahoma controlled substance conviction? *United States v. Russey*, No. 20-6036 (reply brief filed December 15, 2020).

Did the district court err by declining to resolve a factual dispute relating to an enhancement for possessing the firearm in connection with another offense, but then applying that enhancement anyway? *United States v. Russey*, No. 20-6036 (reply brief filed December 15, 2020).

Did the district court err by applying a cross-reference for attempted murder under USSG § 2K2.1 at this defendant's sentencing for firearm possession? *United States v. Rico*, No. 20-1050 (reply brief filed September 16, 2020).

Did the district court err by applying a cross-reference for first-degree murder under USSG § 2K2.1 at this defendant's sentencing for firearm possession? *United States v. Craine*, No. 19-6189 (reply brief filed September 25, 2020).

Did the district court erroneously rely on impeached hearsay testimony in order to add 4 levels to this firearm defendant's sentence under USSG § 2K2.1(b)(6)(B)?

Is Colorado attempted second degree assault a crime of violence for USSG § 2K2.1 purposes? *United States v. Lovato*, No. 18-1468 (OA September 24, 2019) (amicus brief filed by Cato Institute and others, June 23, 2020).

Did the district court properly apply a 2-level enhancement under USSG § 2K2.1 for prior firearms possession in this alien-in-possession case? *United States v. Guillen*, No. 19-2042 (gov't brief filed August 5, 2019).

- 18. **USSG § 2K2.2**
- 19. **USSG § 2L1.2 (immigration offenses)**
- 20. **USSG § 2T1.1 (tax loss)**
- 21. **USSG § 2T1.4 (sophisticated means—tax offense)**
- 22. **USSG § 2Q2.1**
- 23. **USSG § 3A1.1 (hate crime/vulnerable victim)**

Where both the victim and the defendant suffered physical disabilities, did the district court err in enhancing the defendant’s voluntary manslaughter sentence on vulnerable-victim grounds under USSG § 3A1.1? *United States v. Joe*, No. 18-2072 (OA Jan. 24, 2020).

- 24. **USSG § 3A1.2**
- 25. **USSG § 3A1.3**
- 26. **USSG § 3A1.4 (terrorism)**

Did the district court err by apply a terrorism enhancement under USSG § 3A1.4 because of the government’s extensive involvement in the crime? *United States v. Varnell*, No. 20-6040 (reply brief filed December 15, 2020).

Did the district court err by apply a terrorism enhancement under USSG § 3A1.4? *United States v. Allen*, No. 19-3034 (gov’t brief filed May 8, 2020); *United States v. Stein*, No. 19-3030 (reply brief filed July 13, 2020); *United States v. Wright*, No. 19-3035 (gov’t brief filed May 8, 2020).

27. USSG § 3B1.1 (aggravating role)

Did the district court err by applying an aggravating-role enhancement without a sufficient factual basis? *United States v. McDonald*, No. 20-7052 (brief filed December 29, 2020).

Did this court err by applying an aggravating-role enhancement without sufficient factual basis? *United States v. Whitaker*, No. 20-7050 (brief filed December 8, 2020).

28. USSG § 3B1.2 (mitigating role)

Did the district court err when it denied this defendant a mitigating role reduction? *United States v. Aguirre*, No. 20-2039 (reply brief filed October 28, 2020).

Did the district court err by reapplying the “indispensable role” test that the 10th Circuit rejected in this defendant’s prior appeal, or otherwise apply an incorrect standard in denying the request for a mitigating-role adjustment? *United States v. Yurek*, No. 19-1297 (reply brief filed March 6, 2020).

Did the district court err when it denied this defendant’s request for a mitigating role reduction under USSG § 3B1.2, without comparing her culpability to that of her coconspirators? Was the district court’s factfinding underlying its denial of this reduction clearly erroneous? *United States v. Nkome*, No. 18-3261 (OA Jan. 23, 2020).

29. USSG § 3C1.1 (obstruction)

Did the district court err by applying an enhancement for obstruction of justice based on ambiguous conversations? *United States v. McDonald*, No. 20-7052 (brief filed December 29, 2020).

Did the district court err by applying the § 3C1.1 enhancement on the basis of disputed facts, when the defendant was facing a criminal charge for the same conduct? *United States v. Wells*, No. 20-1228 (brief filed December 14, 2020).

Did the district court err when it applied the § 3C1.1 enhancement, based on the defendant's trip out of the country after he discovered the investigation against him? *United States v. Perrault*, No. 19-2184 (reply brief filed July 2, 2020).

Did the district court err when it applied the § 3C1.1 enhancement for obstruction of justice because it was not supported by adequate findings by the court or sufficient proof by the government? *United States v. Gomez-Castro*, No. 18-4090 (gov't brief filed September 12, 2019).

Did the district court erroneously enhance this defendant's sentence on obstruction grounds for perjury under USSG § 3C1.1 without making the requisite findings? *United States v. Eichler*, No. 18-8015 (reply brief filed Dec. 7, 2018).

Did the district court erroneously add obstruction points for failure to appear under USSG § 3C1.1 absent any evidence that this defendant did, in fact, ever fail to appear? *United States v. Simeus*, No. 18-3262 (brief filed May 28, 2019).

30. USSG § 3C1.2 (reckless endangerment during flight)

31. USSG § 3D1.2-1.5 (multiple counts)

Did the district err by refusing to group two counts under the guidelines, finding that the two counts were two separate plots to murder the same victim? *United States v. Maldonado-Passage*, No. 20-6060 (reply brief filed October 9, 2020).

32. USSG § 3E1.1 (acceptance of responsibility)

33. USSG § 4A1.1

34. USSG § 4A1.2

35. USSG § 4A1.3 (criminal-history departures)

36. USSG §§ 4B1.1, 4B1.2 (crime of violence; controlled substance offense)

Did the district court err when it found this defendant's prior Kansas reckless aggravated battery conviction qualifies as a crime of violence under § 4B1.2(a)(1)? *United States v. Kissell*, No. 20-3162 (brief filed December 14, 2020).

Did the district court err by applying the career offender enhancement because this defendant's prior Oklahoma drug conviction is not a controlled substance offense? *United States v. Jones*, No. 20-6112 (gov't brief filed January 4, 2021).

Did the district court plainly err in finding that a prior conviction for Colorado third degree assault satisfied the force clause because those offenses can be committed with a mens rea of recklessness? *United States v. Juranek*, No. 20-1078 (reply brief filed December 17, 2020) (foreclosed issue).

Is this defendant's Utah drug offense broader than a "controlled substance offense" under § 4B1.2 because it can be committed by an offer to sell? *United States v. Babcock*, No. 20-4003 (brief filed September 8, 2020).

Did the district court plainly err when it classified this defendant as a career offender based on a prior Oklahoma controlled substance conviction? *United States v. Woodard*, No. 20-5004 (reply brief filed December 4, 2020).

Did the district court err when it found that this defendant’s conviction for shooting from a motor vehicle qualified as a crime of violence under § 4B1.2? Do offenses premised on a mens rea of reckless qualifies as crimes of violence under § 4B1.2? *United States v. Nable*, No. 20-2008 (brief filed June 1, 2020).

Did the district court by relying on the § 4B1.2 commentary to find that attempts and conspiracies to commit crimes of violence qualify for enhancement? *United States v. Martinez*, No. 19-1389 (reply brief filed September 16, 2020).

Did the district court err in applying the career offender enhancement to this defendant based on his prior New Mexico convictions for aggravated battery and possession of marijuana with intent to distribute? *United States v. Folsie*, No. 19-2065 (reply brief filed February 25, 2020).

Did the district court by finding that Colorado third-degree assault is a crime of violence under USSG § 4B1.2? *United States v. Wilson*, No. 19-1198 (reply brief filed February 6, 2020).

Was *Greer* wrongly decided, and is this defendant—who was sentenced as a career-offender under the mandatory guidelines—entitled to *Johnson*-based § 2255 relief? *United States v. Ellis*, No. 17-4097 (brief filed May 25, 2018); *United States v. Miller*, No. 17-4136 (brief filed May 25, 2018); *United States v. Cesspooch*, No. 17-4160 (brief filed June 5, 2018).

On panel rehearing: Are the mandatory guidelines unconstitutionally vague under *Johnson*, and was *Greer* wrong about this in light of *Dimaya*? *United States v. Ward*, No. 17-3182 (reply brief filed Dec. 14, 2018).

Did the district court plainly err by relying on this defendant’s 21 U.S.C. § 846 conspiracy conviction to designate him a career offender under USSG §§ 4B1.1 and 4B1.2? *United States v. Wilson*, No. 18-7045 (gov’t brief filed March 25, 2019).

Is Utah third-degree reckless aggravated assault a crime of violence for career-offender purposes? *United States v. Fagatele*, No. 18-4004 (OA September 26, 2019).

37. USSG § 4B1.5

38. USSG § 5C1.2 (safety valve)

39. USSG § 5G1.3

40. USSG § 5K1.1

41. USSG § 5K2.7

42. USSG § 5K2.14

43. USSG § 5G1.2

Did the district court plainly err by failing to consider USSG § 5G1.2’s limitations on consecutive sentences? *United States v. Beaver*, No. 19-2087 (brief filed November 19, 2019).

44. USSG § 7B1.3 (revocation of probation or supervised release).

L. Mandatory Minimums and Maximums

M. Reasonableness

1. Procedural

Is this defendant's sentence procedurally unreasonable because it was based on an impermissible factor, to send a message to the parties about their agreed-upon sentence? *United States v. Mar-Lopez*, No. 20-1261 (brief filed December 14, 2020).

Is this defendant's above-guideline probation-revocation sentence procedurally or substantively unreasonable, where the sentence constituted enforcement of a sentencing bargain the court had previously offered the defendant? *United States v. Moore*, No. 20-3173 (brief filed December 11, 2020).

Is this defendant's above-guidelines sentence procedurally or substantively unreasonable because the court did not properly weigh the sentencing factors? *United States v. Goldberg*, No. 20-6090 (gov't brief filed December 21, 2020).

Did the district court procedurally err by refusing to consider the fact that the defendant would be deported at sentencing? *United States v. Mendez-Lopez*, No. 20-4029 (supplemental brief filed December 15, 2020).

Did the district court err by failing to adequately state its reasons for imposing a term of supervised release under § 3553(a)? *United States v. Beagle*, No. 20-1099 (gov't brief filed September 25, 2020).

Did the district court err by adding 33 months to this defendant's sentence based on a fact that was no longer true at the time of resentencing? *United States v. Dabda*, No. 19-3285 (reply brief filed October 29, 2020).

Did the district court plainly err by relying on facts that were not established by a preponderance of the evidence to impose an above-guideline sentence? *United States v. Beaver*, No. 19-2087 (brief filed November 19, 2019).

Is this defendant doctor's life sentence procedurally unreasonable because the court did not properly consider all the sentencing factors? *United States v. Henson*, No. 19-3062 (OA September 23, 2020).

Did the district court erroneously vary upward in this gun case on the basis of unreliable evidence, and an improper belief that an uncontested administrative forfeiture was evidence of wrongdoing? *United States v. Simens*, No. 18-3262 (brief filed May 28, 2019).

2. Substantive

Is this defendant's above-guideline probation-revocation sentence procedurally or substantively unreasonable, where the sentence constituted enforcement of a sentencing bargain the court had previously offered the defendant? *United States v. Moore*, No. 20-3173 (brief filed December 11, 2020).

Did the district court err by denying this defendant's request for a downward variance, or impose a substantively unreasonable sentence? *United States v. Aguirre*, No. 20-2039 (reply brief filed October 28, 2020).

Is this defendant's statutory-maximum 120-month sentence for firearm possession substantively unreasonable? *United States v. Craine*, No. 19-6189 (reply brief filed September 25, 2020).

Is this defendant's sentence unreasonable because it resulted in a disparity between codefendants in this case? *United States v. Tennison*, No. 20-3033 (reply brief filed November 18, 2020)

Is this defendant's above-guidelines 72-month sentence for bank fraud substantively unreasonable? *United States v. Yarclay*, No. 19-6174 (reply brief filed August 12, 2020).

Is this defendant's 15-month sentence for indecent exposure while in BOP transit, to run consecutive to the sentence he is already serving, substantively unreasonable? *United States v. Jones*, No. 20-6017 (gov't brief filed July 6, 2020).

Is this defendant's statutory-maximum 120-month sentence for firearms possession by a prohibited person, a sentence four times the guidelines range, substantively unreasonable? *United States v. Kaspereit*, No. 19-6188 (reply brief filed July 6, 2020).

Is this defendant's low-end guidelines sentence of 151 months substantively unreasonable because the court did not consider the § 3553(a) factors? *United States v. Campbell*, No. 19-2199 (reply brief filed May 28, 2020).

Is this defendant's 84-month sentence for a wire-fraud conviction, an upward departure due to criminal-history underrepresentation, substantively unreasonable? *United States v. Williams*, No. 19-1229 (OA September 22, 2020).

Is this defendant's 188-month sentence for child-sex-trafficking substantively unreasonable, in part because of sentencing entrapment by the government? *United States v. Robinson*, No. 19-1256 (OA September 24, 2020).

Is this defendant's 120-month sentence for involuntary manslaughter, which is 69 months above the guidelines range, substantively unreasonable? *United States v. Beaver*, No. 19-2087 (brief filed November 19, 2019).

Is this illegal-reentry defendant's sentence 37-month within-guidelines substantively unreasonable? *United States v. Flores-De La Rosa*, No. 19-2113 (gov't brief filed November 27, 2019).

Is this illegal-reentry defendant's 21-month sentence substantively unreasonable? *United States v. Cuellar-Dominguez*, No. 19-2104 (gov't brief filed October 10, 2019).

Is this defendant doctor's life sentence substantively unreasonable for an 21 U.S.C. § 841 offense? *United States v. Henson*, No. 19-3062 (OA September 23, 2020).

Is this assault defendant's above-guidelines sentence substantively unreasonable? *United States v. James*, No. 18-3227 (gov't brief filed July 29, 2019).

N. SORNA Sentencing Issues

O. Three Strikes (18 U.S.C. § 3559(c))

Did the district court err by sentencing this defendant to mandatory life, when the prior convictions used as predicates were legally infirm in various ways? *United States v. Rasmussen*, No. 20-6101 (brief filed December 21, 2020).

P. Resentencing Issues

Q. Compassionate Release under 18 U.S.C. § 3582(c)(1)

Did the district court err by failing to consider evidence of this defendant's post-sentencing conduct? *United States v. London*, No. 20-6148 (brief filed December 9, 2020).

Did the district court err when it granted this defendant's motion for compassionate release for "extraordinary and compelling reasons", based on a change in the mandatory sentencing statute which drove the original sentence? *United States v. Maumau*, No. 20-4056 (OA September 22, 2020).

R. Sentence Reductions under 18 U.S.C. § 3582(c)(2)

S. Constitutional Issues

1. Fifth Amendment Due Process

2. Sixth Amendment and Hearsay

XXVIII. Sixth Amendment

A. Right to Effective Assistance of Counsel

Was this defendant's mid-trial waiver of the right to counsel knowing and intelligent? *United States v. Outley*, No. 20-6005 (reply brief filed October 27, 2020).

Did the district court err when it held (contrary to the magistrate judge's determination) that trial counsel's deficient performance in the penalty phase did not prejudice this capital defendant? *United States v. Barrett*, No. 19-7049 (OA September 24, 2020).

Should the federal habeas court have granted a hearing on this state capital defendant's claim that her trial lawyer's presentation of inaccurate, incriminating DNA evidence, was ineffective assistance of counsel? *Andrew v. Aldridge*, No. 15-6190 (OA July 27, 2017) (abated pending en banc decision in *Pavatt v. Carpenter*, No. 14-6117 (en banc supplemental brief filed Jan. 9, 2019)).

Was defense counsel ineffective in failing to object to the district court's finding, in 2015, that Oklahoma second-degree burglary qualified as a crime of violence for purposes of a sentencing enhancement under USSG § 2L1.2(b)(1)(A)? *United States v. Rodriguez-Arroyo*, No. 18-6028 (brief filed May 2, 2018).

B. Substitution of Counsel/Conflicts of Interest/Counsel of Choice

Did the district court err by refusing to hold a hearing on this defendant's motion to substitute counsel? *United States v. Segue*, No. 20-7034 (brief filed December 14, 2020).

Did the district court abuse its discretion by failing to hold a hearing to assess this defendant's request for substitute counsel and his complaint that his lawyer had hardly communicated with him? *United States v. Yazzie*, No. 20-2038 (reply brief filed November 12, 2020).

Did the district court's finding of a conflict of interest impermissibly deprive this defendant of his choice of counsel? *United States v. Henson*, No. 19-3062 (OA September 23, 2020).

Did the district court insufficiently inquire into a possible breakdown of this defendant's relationship with counsel when the district court refused to conduct a private inquiry, outside the presence of the prosecutor? *United States v. Milhouse*, No. 18-3245 (brief filed May 17, 2019).

C. Self-Incrimination

D. Self-Representation/Waiver of Counsel

Did the district court err when it denied this defendant the right to represent himself at sentencing? *United States v. Piette*, No. 20-7008 (brief filed November 26, 2020).

Was this state defendant improperly compelled to choose between self-representation and a conflicted counsel? Was his waiver of counsel voluntary? Was it unreasonable for the state trial judge to prohibit him from withdrawing his waiver only a week later? *Wellmon v. CDOC*, No. 19-1002 (reply brief filed August 1, 2019).

E. Confrontation

Did the district court plainly err by admitting out-of-court statements by non-testifying officers suggesting that this defendant had trafficked drugs during the investigation, in violation of the Sixth Amendment? *United States v. Starks*, No. 19-3256 (reply brief filed October 8, 2020).

Did the state court violate this capital defendant's Sixth Amendment right to confrontation when it admitted police reports containing testimonial statements by the deceased several weeks before his death accusing the defendant of trying to kill him? *Andrew v. Aldridge*, No. 15-6190 (OA July 27, 2017) (abated pending en banc decision in *Pavatt v. Carpenter*, No. 14-6117 (en banc supplemental brief filed Jan. 9, 2019)).

F. Impartial Jury

Was this priest, accused of sex offenses against children, deprived of his right to an impartial jury due to the venire's demonstrated sympathy for victims of sex offenses and panel members descriptions of their poor opinions of him? And is that error a structural error requiring reversal, even absent an objection? *United States v. Perrault*, No. 19-2184 (reply brief filed July 2, 2020).

G. Jury Verdict

H. Compulsory Process

XXIX. Speedy Trial (statutory/constitutional) & Interstate Agreement on Detainers Act

Should the speedy trial dismissal of this case have been with prejudice, because of the delay caused by government tactics and widespread government misconduct? And if not, was the reindictment too late when it occurred more than 60 days after the dismissal without prejudice became final? *United States v. Koerber*, No. 19-4147 (gov't brief filed December 9, 2020).

Did a six-year delay in this terrorism case violate the defendant's constitutional speedy trial right? *United States v. Muhtorov*, No. 18-1366 (reply brief filed April 7, 2020).

Should the district court have dismissed the indictment for providing material support to a terrorist organization because of constitutional speedy-trial violations resulting from a six-year delay? *United States v. Jumaev*, No. 18-1296 (reply brief filed March 30, 2020).

XXX. Standards of Review

A. Waiver

B. Forfeiture/Plain Error

C. De Novo Review

XXXI. Statutes of Limitations

The statute of limitations for traveling to have sex with a minor under 18 U.S.C. § 2423 began to run when the victim turned 16, and therefore expired before this defendant was indicted. In the interim, two statutes were passed that extended the statute of limitations. Should this defendant's conviction be reversed or did those statutes validly extend the statute of limitations? *United States v. Piette*, No. 20-7008 (brief filed November 26, 2020).

XXXII. Supervised Release

A. Revocation Issues

Did the district court abuse its discretion when it found that this misdemeanor defendant—who indisputably did not receive the statutorily required notice that the district court had imposed a new condition of release—knowingly violated that condition? *United States v. Pleviak*, No. 18-3236 (reply brief filed Jan. 29, 2019).

B. Sentencing Issues (either initially or after revocation)

1. Statutory Maximum

Did the district court plainly err by imposing a revocation sentence that exceeded the statutory maximum term of imprisonment for possession with intent to distribute marijuana? *United States v. Bruley*, No. 20-6078 (brief filed December 10, 2020).

Did the district court plainly err in sentencing this defendant as though his original offense was a Class B felony, not a Class C felony, and because the sentence imposed exceeds the permissible statutory maximum? *United States v. Coleman*, No. 20-6046 (brief filed October 5, 2020).

Did the district court impose an illegal sentence when it imposed a 14-month prison sentence for a supervised release violation when the defendant had already served the statutory maximum for the underlying offense? *United States v. Crespin*, No. 19-4155 (supplemental briefs filed December 2, 2020).

Did the district court impose an illegal sentence when, without a jury finding of guilt beyond a reasonable doubt, it imposed a 10-month prison sentence upon revocation, when the defendant had already served 115 months of a statutory maximum 120-month prison sentence for his underlying felon-in-possession offense? *United States v. Salazar*, No. 19-3217 (OA September 23, 2020; supplemental briefs filed December 23, 2020).

2. Substantive

Is this defendant's mid-guideline revocation sentence substantively unreasonable? *United States v. Abeita*, No. 19-2051 (gov't brief filed August 19, 2019).

3. Procedural

Did the district court plainly err in imposing a term of supervised release without specifying which conviction was the basis for that supervision? *United States v. Bruley*, No. 20-6078 (brief filed December 10, 2020).

Whether the district court erred, plainly or otherwise, under 18 U.S.C. § 3583(h)'s sentencing limits, when sentencing this defendant for a supervised-release violation. *United States v. Branch*, No. 18-3069 (gov't brief filed August 27, 2018).

Did the district court abuse its discretion by not considering the statutory sentencing factors at this defendant's sentencing hearing? *United States v. Ward*, No. 18-4111 (brief filed Dec. 19, 2018).

Did the district court procedurally err by imposing a mid-guideline revocation sentence without sufficient explanation? *United States v. Abeita*, No. 19-2051 (brief filed June 25, 2019).

4. Unlawful Delegation of authority

5. Assimilative Crimes Act (ACA) sentences

C. Conditions of Supervised Release

Did the district court err because the written judgment includes two conditions of supervised release that were not orally pronounced? *United States v. Bruley*, No. 20-6078 (brief filed December 10, 2020).

Did the district court plainly err by requiring this defendant to take any prescribed medication on supervised release because it failed to justify the condition with particularized findings and compelling circumstances? *United States v. Fonville*, No. 20-7033 (brief filed December 4, 2020).

Did the district court err by failing to make specific findings as to the special conditions of supervised release? *United States v. Beagle*, No. 20-1099 (gov't brief filed September 25, 2020).

Should multiple conditions of supervised release be struck from this defendant's judgment because there were no findings to support them? *United States v. Dabda*, No. 19-3285 (reply brief filed October 29, 2020).

Does a condition of supervised release which allows the probation officer to require the defendant to notify third persons that he poses a risk to them, if the court approves it, mean that a hearing must be held regarding the approval? *United States v. Martinez*, No. 19-1389 (reply brief filed September 16, 2020).

Did the district court plainly err by imposing a blanket ban on internet use as a special condition of supervised release? *United States v. Egli*, No. 19-4140 (OA September 22, 2020).

Does the district court's requirement that this defendant serve his term of supervised release in Colorado, and not in New York where he is from, constitute an impermissible residency restriction? *United States v. Ortiz*, No. 19-1261 (gov't brief filed January 21, 2020).

XXXIII. Trial Practice and Evidence Issues

A. Closing Argument

B. Confidential Informants

Did the district court err by refusing to require the government to disclose information about a confidential informant, so that the defense could call her as a witness? *United States v. Robinson*, No. 19-1256 (OA September 24, 2020).

C. Cumulative Error

Do multiple errors, including incompetency, Rule 403, and prosecutorial misconduct, require reversal in this case? *United States v. Ferguson*, No. 20-7045 (brief filed December 17, 2020).

Do multiple instructional and evidentiary errors require reversal in this case? *United States v. Segue*, No. 20-7034 (brief filed December 14, 2020).

Did multiple errors, including evidentiary errors and prosecutorial misconduct, deprive this defendant of a fair trial? *United States v. Velarde*, No. 20-1115 (gov't brief filed November 20, 2020).

Did multiple errors, including improper expert testimony, excluded expert testimony, and improper instructions, cumulatively deprive this defendant of a fair trial? *United States v. Moya*, No. 20-2006 (gov't brief filed September 8, 2020).

Did multiple errors, including improper expert testimony, hearsay evidence, evidence admitted in violation of the defendant's confrontation rights, and prosecutorial misconduct, cumulatively deprive this defendant of a fair trial? *United States v. Starks*, No. 19-3256 (reply brief filed October 8, 2020).

Did multiple errors, including jury instructions, Rule 404(b) evidence, and improper expert testimony, amount to reversible cumulative error? *United States v. Hall*, No. 19-7054 (gov't brief filed June 25, 2020).

Did multiple errors, including lack of an impartial jury, admission of prejudicial evidence, and erroneous jury instructions, mandate a new trial in this sexual-abuse case? *United States v. Perrault*, No. 19-2184 (reply brief filed July 2, 2020).

If not individually reversible, do multiple evidentiary errors require a new trial in this child-sex-trafficking case? *United States v. Robinson*, No. 19-1256 (OA September 24, 2020).

If not individually reversible, did the district court's multiple instructional errors amount to cumulative error requiring reversal? *United States v. Gomez-Castro*, No. 18-4090 (gov't brief filed September 12, 2019).

D. Demonstrative Evidence

E. Due Process

Did the government's admission of untruthful transcripts violate this defendant's due process rights at trial? *United States v. Wright*, No. 19-3035 (brief filed November 12, 2019).

F. Eyewitness Identification Testimony

G. Judicial misconduct

H. Jury Instructions

1. Aiding and Abetting

Did the district court commit plain error when it (1) repeatedly instructed the jurors, including the alternate juror, that they could talk about the evidence in the case before the end of the trial, (2) inadequately instructed the jury on aider and abettor liability, and (3) failed to instruct the jury that constructive possession requires an intent to control the item(s) possessed? *United States v. Gomez-Castro*, No. 18-4090 (gov't brief filed September 12, 2019).

2. Burden of Proof

3. Conspiracy

Did the district court plainly err in this drug-conspiracy case when it failed to instruct the jury, in response to a jury question, that an agreement with an undercover government agent is insufficient to support a conspiracy conviction? *United States v. Mendoza-Alarcon*, No. 18-2036 (OA March 20, 2019).

4. Constructive Possession

Did the district court plainly err by instructing the jury that it could convict this defendant of constructively possessing a firearm, without instructing them that they had to find that he intended to control it? *United States v. Xiong*, No. 19-5111 (supplemental briefs filed November 3, 2020).

Did the district court plainly err by instructing the jury that it could convict this defendant of constructively possessing a firearm, without instructing them that they had to find that he intended to control it? *United States v. Samora*, No. 19-4070 (OA March 10, 2020).

Did the district court commit plain error when it (1) repeatedly instructed the jurors, including the alternate juror, that they could talk about the evidence in the case before the end of the trial, (2) inadequately instructed the jury on aider and abettor liability, and (3) failed to instruct the jury that constructive possession requires an intent to control the item(s) possessed? *United States v. Gomez-Castro*, No. 18-4090 (gov't brief filed September 12, 2019).

5. Deliberate Avoidance/Ignorance

Did the district court err by giving a deliberate ignorance/willful blindness instruction in this drug-conspiracy case involving a doctor? *United States v. Henson*, No. 19-3062 (OA September 23, 2020).

6. Elements (see statute under which defendant tried)

7. Sentencing Elements

8. Flight

9. Guilt by Association/Guilt of Others

10. Investigative Techniques

11. Knowledge

Was it error for the district court to give a good faith jury instruction for one codefendant, but not for another? *United States v. Nabeel Khan*, No. 19-8051 (reply brief filed September 2, 2020).

12. Polygraphs

13. Proof

14. Spoliation

15. Theory of Defense/Affirmative Defense

Did the district court err by refusing to instruct the jury on entrapment in this child-sex-trafficking case? *United States v. Robinson*, No. 19-1256 (OA September 24, 2020).

Did the district court err by refusing to instruct the jury on entrapment in this terrorism case? *United States v. Allen*, No. 19-3034 (reply brief filed July 13, 2020); *United States v. Stein*, No. 19-3030 (reply brief filed July 13, 2020); *United States v. Wright*, No. 19-3035 (reply brief filed July 13, 2020).

Did the district court err in refusing to instruct the jury in this drug-conspiracy case that mere proof of a buyer-seller relationship is not enough to establish a conspiracy? *United States v. Eichler*, No. 18-8015 (reply brief filed Dec. 7, 2018).

16. Unanimity

Did the jury instructions in this sexual-abuse trial overlap and lack specificity, to the point of allowing verdicts that were non-unanimous and violated the defendant's double-jeopardy rights? *United States v. Perrault*, No. 19-2184 (reply brief filed July 2, 2020).

17. Voluntary Intoxication

18. Witness Cautionary Instructions

I. Jury Questions

J. Jury Selection

Did the district court err in denying this defendant's Jury Act challenge, 28 U.S.C. § 1861, based on the court's practice of calling petit jurors only from certain geographic districts? *United States v. Allen*, No. 19-3034 (reply brief filed July 13, 2020); *United States v. Stein*, No. 19-3030 (reply brief filed July 13, 2020); *United States v. Wright*, No. 19-3035 (reply brief filed July 13, 2020).

K. Mistrial

L. Prior Convictions

M. Privileges

Did the district court err when it enforced the privileges invoked by the government and ended questioning about a DEA informant? *United States v. Fernandez*, No. 20-2106 (brief filed January 4, 2021).

N. Prosecutorial Misconduct

Did the government's mid-trial change of position regarding the relevance of certain images constitute prosecutorial misconduct warranting a mistrial? *United States v. Ferguson*, No. 20-7045 (brief filed December 17, 2020).

Did the prosecutor's misstatement of the defense expert's qualifications during closing argument render the trial fundamentally unfair? *United States v. Velarde*, No. 20-1115 (gov't brief filed November 20, 2020).

Did the district court err by denying this defendant's motion for a new trial based on pervasive prosecutorial misconduct, including maligning defense counsel, suggesting the defense should have presented evidence, and questioning witnesses on excluded subjects? *United States v. Coriz*, No. 20-2019 (reply brief filed November 25, 2020).

Did multiple instances of prosecutorial misconduct deprive this defendant of a fair trial? *United States v. Starks*, No. 19-3256 (reply brief filed October 8, 2020).

Were this defendant's due process rights violated by the prosecutor's improper statements, including misstatements of the evidence and references to evidence outside the record? *United States v. Lujan*, No. 19-1442 (reply brief filed July 13, 2020).

Did the prosecutors in this state capital trial violate *Brady* when they concealed a sentencing benefit they engineered for a witness who claimed that the defendant had confessed to the crime while in jail? *Andrew v. Aldridge*, No. 15-6190 (OA July 27, 2017) (abated pending en banc decision in *Pavatt v. Carpenter*, No. 14-6117 (en banc supplemental brief filed Jan. 9, 2019)).

Did the prosecutors in this state capital trial violate the defendant's right to fundamental fairness when they falsely suggested in closing that her daughter's emotional breakdown during her penalty-phase testimony was evidence that she was not opposed to her mother's execution? *Andrew v. Aldridge*, No. 15-6190 (OA July 27, 2017) (abated pending en banc decision in *Pavatt v. Carpenter*, No. 14-6117 (en banc supplemental brief filed Jan. 9, 2019)).

O. Right to be Present

P. Right to Present Defense

Did the district judge abuse his discretion by interfering with the defense case at trial, suggesting the defendant's guilt, interfering with the impeachment of witnesses, impugning the defense expert, and undermining the credibility of the defense? *United States v. Koerber*, No. 19-4147 (gov't brief filed December 9, 2020).

Did the state court deny this capital defendant's right to present a defense when it excluded several defense witnesses as a sanction for perceived discovery infractions? *Andrew v. Aldridge*, No. 15-6190 (OA July 27, 2017) (abated pending en banc decision in *Pavatt v. Carpenter*, No. 14-6117 (en banc supplemental brief filed Jan. 9, 2019)).

Q. Rule 201 (judicial notice)

Did the district err by refusing to take judicial notice of an army document that listed the defendant's primary job, which was relevant to the immigration fraud case against him? *United States v. Murry*, No. 20-1214 (brief filed December 11, 2020); *United States v. Rajesh Ramcharan*, No. 20-1241 (brief filed December 11, 2020); *United States v. Diann Ramcharan*, No. 20-1243 (brief filed December 11, 2020); *United States v. Harvell*, No. 20-1245 (brief filed January 4, 2021).

R. Rule 106 (rule of completeness)

Did the district court plainly err by allowing the government to introduce only portions of a defendant's comments on social media, excluding potentially exculpatory statements? *United States v. Robinson*, No. 19-1256 (OA September 24, 2020).

S. Rules 401, 402, 403 (relevance & undue prejudice)

Did the district court err by allowing the introduction of images of child pornography, when the defense did not dispute that issue? *United States v. Ferguson*, No. 20-7045 (brief filed December 17, 2020).

Did the district court err by allowing the admission of evidence about a victim's risk of death, when there was no evidence she suffered an injury that risked death? *United States v. Wells*, No. 20-1228 (brief filed December 14, 2020).

Did the district court abuse its discretion by refusing to admit testimony that a witness saw the victim laughing after her testimony? *United States v. Velarde*, No. 20-1115 (gov't brief filed November 20, 2020).

Did the district court err when it denied the defendant's request to present evidence about a February 2020 traffic stop, based on its prior ruling that the government could not present the evidence under Rule 404(b)? *United States v. Outley*, No. 20-6005 (reply brief filed October 27, 2020).

Did the district court err in the fraud and money-laundering trial when it admitted evidence that the defendant beat his wife? *United States v. Wieck*, No. 19-6075 (OA September 22, 2020).

Did the district court erroneously admit irrelevant, prejudicial, hearsay evidence of drug sales that predated this defendant's alleged involvement in the charged drug conspiracy, in violation of FRE 401, 402, 403, 602, and 801? *United States v. Duran*, No. 18-1062 (OA March 19, 2019).

T. Rule 404(b)

In this case involving charges of kidnapping and traveling to engage in sex with a minor, did the district court err in this by admitting evidence that the defendant molested other children? *United States v. Piette*, No. 20-7008 (brief filed November 26, 2020).

Did the district court abuse its discretion by admitting evidence of the defendant's involvement in other kidnappings and murder offenses? *United States v. Cellicion*, No. 20-2101 (gov't brief filed November 20, 2020).

In this trial for enticement of a minor and possession of a fraudulent document, did the district court plainly err by failing to instruct the jury to consider evidence of defendant's past child molestation only as it was relevant to one count, rather both counts? *United States v. Regalado*, No. 20-5024 (gov't brief filed September 4, 2020).

In this securities fraud trial, did the district court abuse its discretion by attorney letter agreements that were substantially more prejudicial than probative of any issue at trial? *United States v. Jean-Pierre*, No. 20-1039 (reply brief filed October 26, 2020).

Did the district court by admitting evidence about the defendant's prior arrest under Rule 404(b)? *United States v. Tennison*, No. 20-3033 (reply brief filed November 18, 2020).

Did the district court reversibly err by admitting evidence of a phone call between the defendant and another person about an unidentified person "snitching." *United States v. Hall*, No. 19-7054 (gov't brief filed June 25, 2020).

Did the district court err by admitting evidence of prior bad acts for an improper purpose under Rule 404(b)? *United States v. Lujan*, No. 19-1442 (reply brief filed July 13, 2020).

Did the district court err by admitting evidence of a prior robbery under Rule 404(b) in this gun-possession case? *United States v. Wilson*, No. 19-1198 (reply brief filed February 6, 2020).

Did the district court erroneously admit FRE 404(b) evidence of cannabis sales and use in this methamphetamine-conspiracy case, especially absent a limiting instruction? *United States v. Eichler*, No. 18-8015 (reply brief filed Dec. 7, 2018).

Did the district court abuse its discretion in this DUI-second-degree-murder case by admitting 404(b) evidence that portrayed the defendant as a person with a propensity for callousness and driving drunk? *United States v. Merritt*, No. 18-1146 (OA May 9, 2019).

U. Rules 412, 413 & 414 (Sexual Assault Evidence)

Did the district court err by excluding evidence of a victim's prior sexual behavior, where the evidence was relevant and excluding it violated the defendant's confrontation and due process rights? *United States v. Palms*, No. 20-5072 (brief filed December 28, 2020).

Are FRE 412 and 413 unconstitutional because they violate the due process clause, or did the district court err by allowing the admission of factually dissimilar propensity evidence under these rules? *United States v. Coriz*, No. 20-2019 (reply brief filed November 25, 2020).

Did the district court err by allowing the government to introduce hundreds of alleged incidents of prior sexual abuse in this trial of a priest for sex offenses? *United States v. Perrault*, No. 19-2184 (reply brief filed July 2, 2020).

V. Rules 601-615 (Witnesses)

Did the district court violate FRE 605 and improperly add evidence when it told the jury that there was only one video in the case, when that contradicted the defendant's testimony? *United States v. Andasola*, No. 19-1482 (gov't brief filed December 16, 2020).

Did the district court err by allowing a witness to be present during the trial as a crime victim, when there was no evidence presented that she was harmed by the murder-for-hire scheme charged? *United States v. Maldonado-Passage*, No. 20-6060 (reply brief filed October 9, 2020).

W. Rules 701-706 (Opinions and Expert Testimony)

Did the district court plainly err by allowing a lay witness to provide expert testimony on "prison culture?" *United States v. Segue*, No. 20-7034 (brief filed December 14, 2020).

Did the district court abuse its discretion by allowing the government to ask an expert hypothetical questions that addressed the ultimate issue in the case and were confusing? And did the district court err by denying the defendant's requests to present expert testimony? *United States v. Moya*, No. 20-2006 (gov't brief filed September 8, 2020).

Did the district court abuse its discretion when it admitted handwriting expert testimony? *United States v. Foust*, No. 19-6161 (gov't brief filed August 28, 2020).

Did the district court abuse its discretion when it admitted expert testimony from a law enforcement witness absent either notice from the government or any Rule 702 finding? *United States v. Starks*, No. 19-3256 (reply brief filed October 8, 2020).

Was it error to admit the testimony of a law enforcement expert who had only information about the investigation? *United States v. Hall*, No. 19-7054 (gov't brief filed June 25, 2020).

Was it error for the district court to admit testimony from a law enforcement agent about “pimping” culture and methods, and was the agent allowed to testify as both a fact and expert witness without proper instructions? *United States v. Robinson*, No. 19-1256 (OA September 24, 2020).

Did the district court abuse its discretion in this drug case by admitting a case agent’s subjective belief in the defendant’s guilt, and “expert” testimony translating recorded phone calls, in violation of FRE 701 and 702? *United States v. Duran*, No. 18-1062 (OA March 19, 2019).

X. Rules 801-807 (hearsay)

Did the district court abuse its discretion by admitting hearsay evidence that this defendant and an alleged coconspirator crossed the U.S.-Mexico border together? *United States v. Starks*, No. 19-3256 (reply brief filed October 8, 2020).

Did the district court abuse its discretion during the Rule 801 proceeding, concerning the admission of statements made by coconspirators during the course of the conspiracy? *United States v. Wright*, No. 19-3035 (brief filed November 12, 2019).

Did the district court erroneously exclude as hearsay cross-examination about statements that had already been admitted into evidence? *United States v. Wagner*, No. 19-3068 (OA Jan. 23, 2020).

Did the district court erroneously admit an entire 911 call at trial as a present sense impression? *United States v. Lovato*, No. 18-1468 (OA September 24, 2019).

Y. Rule 901 (authentication)

Did the district court err by admitting jail call recordings that had not been properly authenticated? *United States v. Pebley*, No. 20-7022 (gov't brief filed December 2, 2020).

Did the district court err in admitting photos and chats from Facebook because Facebook records are not self-authenticating business records and there was no other foundation for their admission? *United States v. Wilson*, No. 19-1198 (reply brief filed February 6, 2020).

Z. Rule 1002 (Best Evidence Rule)

AA. Rule 1006 (Summaries)

BB. Surrebuttal

CC. Voir Dire

Did the district court err by refusing to allow counsel to conduct voir dire on racial or ethnic bias in this immigration-fraud case? *United States v. Murry*, No. 20-1214 (brief filed December 11, 2020); *United States v. Rajesh Ramcharan*, No. 20-1241 (brief filed December 11, 2020); *United States v. Diann Ramcharan*, No. 20-1243 (brief filed December 11, 2020); *United States v. Harvell*, No. 20-1245 (brief filed January 4, 2021).

Did the district court err under the Fifth or Sixth Amendments by prohibiting the defense from providing information about implicit racial and ethnic prejudices to potential jurors? *United States v. Mercado-Garcia*, No. 19-2153 (reply brief filed June 23, 2020).

XXXIV. Vagueness

XXXV. Wiretap Issues (18 U.S.C. § 2510-2522 or FISA Section 702)

Was the government's warrantless surveillance of this terrorism defendant under the Foreign Intelligence Surveillance Act unconstitutional? And/or was disclosure of the FISA materials required for litigation of this suppression issue? Was the defendant entitled to notice of other surveillance tools used by the government? *United States v. Muhtorov*, No. 18-1366 (reply brief filed April 7, 2020) (multiple amicus briefs filed by The Brennan Center, NACDL, former Church Committee staff, and cybersecurity experts)

Recently Added Cases

(most recent to least recent)

United States v. Fernandez, No. 20-2106 (brief filed January 4, 2021) (21 U.S.C. § 841, privileges, warrantless searches)

United States v. McDonald, No. 20-7052 (brief filed December 29, 2020) (USSG § 2D1.1, § 3B1.1, § 3C1.1).

United States v. Palms, No. 20-5072 (brief filed December 28, 2020) (search warrant issues, FRE 412).

United States v. Ballance, No. 20-3141 (brief filed December 23, 2020) (Terry stop, consent).

United States v. Rasmussen, No. 20-6101 (brief filed December 21, 2020) (breach of plea, severance, 18 U.S.C. § 3559, USSG § 2B1.3).

Bauders v. Crow, No. 20-5101 (brief filed December 21, 2020) (28 U.S.C. § 2254).

United States v. Ferguson, No. 20-7045 (brief filed December 17, 2020) (competency, Rule 403, prosecutorial misconduct, cumulative error).

United States v. Segue, No. 20-7034 (brief filed December 14, 2020) (substitute counsel, constructive amendment, 18 U.S.C. § 1512, expert testimony, cumulative error).

United States v. Kissell, No. 20-3162 (brief filed December 14, 2020) (USSG § 4B1.2).

United States v. Mar-Lopez, No. 20-1261 (brief filed December 14, 2020) (procedural reasonableness).

United States v. Wells, No. 20-1228 (brief filed December 14, 2020) (18 U.S.C. §§ 2241, 113, USSG §§ 2A3.1, 3C1.1, FRE 403)

United States v. Harris, No. 20-8032 (brief filed December 11, 2020) (Assimilative Crimes Act).

United States v. Moore, No. 20-3173 (brief filed December 11, 2020) (procedural and substantive reasonableness).

United States v. Murry, No. 20-1214 (brief filed December 11, 2020) (voir dire, FRE 201, 18 U.S.C. § 1001).

United States v. Bruley, No. 20-6078 (brief filed December 10, 2020) (supervised release statutory maximum, conditions of supervised release).

United States v. London, No. 20-6148 (brief filed December 9, 2020) (compassionate release).

United States v. Whitaker, No. 20-7050 (brief filed December 8, 2020) (USSG § 3B1.1, appeal waiver).

United States v. Terry, No. 20-7053 (brief filed December 7, 2020) (breach of plea agreement).

Bales v. Commandant, No. 20-3167 (brief filed December 7, 2020) (28 U.S.C. § 2241).

United States v. Fonville, No. 20-7033 (brief filed December 4, 2020) (conditions of supervised release).

United States v. Jones, No. 20-6112 (brief filed December 4, 2020) (USSG § 4B1.2).