

# ISSUES PENDING IN THE TENTH CIRCUIT

COMPILED BY THE KANSAS FEDERAL PUBLIC DEFENDER



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# 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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## **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 (brief filed August 10, 2020).

## **II. Competence**

Does this defendant's intellectual disability, which impairs his ability to process verbal information, render him incompetent to stand trial? *United States v. Perea*, No. 19-2160 (reply brief filed May 12, 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**

Did the district court plainly err by sentencing this defendant on two 18 U.S.C. § 924(c) counts, where both involve the same predicate drug offense, and six 18 U.S.C. § 922(g) counts, where all involve the same possession? *United States v. Briscoe*, No. 19-3261 (brief filed June 22, 2020).

Did the district court err by considering, at sentencing, charges that were dismissed with prejudice for lack of evidence? *United States v. Castillo-Quintana*, No. 19-3147 (gov't brief filed April 3, 2020).

Does this defendant's conviction in the Court of Indian Offenses (a CFR court) bar his subsequent prosecution in federal district court for the same conduct? *United States v. Denezpi*, No. 19-1213 (reply brief filed February 19, 2020).

## **VII. Eighth Amendment and Capital Issues**

## **VIII. Ex Post Facto Issues**

Did the district court plainly err by finding that this defendant had admitted to being "found in" the United States on a later date than the defense argued, which triggered application of a different sentencing guideline manual (and a higher range)? *United States v. Romero-Lopez*, No. 19-1268 (reply brief filed May 30, 2020).

## **IX. First Amendment or Other Rights of Access**

Did the district court err when it only partially granted this intervenor church's motion to unseal the transcript of a criminal habeas proceeding, and should the judge have recused herself because of statements she made about the church? *United States v. Walker*, No. 20-1037 (reply brief filed July 10, 2020).

## **X. Forfeiture**

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 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 (brief filed July 6, 2020).

Was the officers' warrantless search of this defendant's bedroom in his mother's house unlawful, because his grandfather did not have actual or apparent authority to consent to the search, and because any consent he may have given was not voluntary because of the grandfather's dementia and inability to speak English? *United States v. Quezada-Lara*, No. 19-2200 (gov't brief filed April 27, 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).

Did the district court err in finding that this defendant's encounter with the police was consensual? *United States v. Sanchez*, No. 19-2092 (reply brief filed September 3, 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 (brief filed September 1, 2020).

Was the impoundment of this defendant's car unconstitutional, because it exceeded the applicable local policy? *United States v. Woodard*, No. 20-5004 (brief filed August 13, 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 (reply brief filed May 13, 2020).

### **J. Knock and Talk**

### **K. Plain View Doctrine**

### **L. Protective Sweeps**

Can the officer's entry onto property be justified as a protective sweep if no arrest occurs, or must a protective sweep of a home be incident to arrest? *United States v. Quezada-Lara*, No. 19-2200 (gov't brief filed April 27, 2020).

### **M. Scope of Warrantless Search**

### **N. Search Incident to Arrest**

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

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 (brief filed September 2, 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 (brief filed July 24, 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 (brief filed June 10, 2020); *United States v. Xiang*, No. 20-1070 (brief filed August 26, 2020).

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 (gov't brief filed September 2, 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 search warrant for this defendant's home lack probable cause? *United States v. Ross*, No. 19-7008 (OA November 21, 2019).

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**

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 law enforcement have reasonable suspicion to stop the defendant's vehicle based upon the officer's knowledge of the driver's suspended license status over a month prior to the date of the stop? *United States v. Spence*, No. 20-6022 (brief filed August 7, 2020).

Does a clearly pretextual traffic stop violate the Fourth Amendment? *United States v. Briscoe*, No. 19-3261 (brief filed June 22, 2020) (foreclosed issue).

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 lack reasonable suspicion or probable cause either because it was based on an unreliable informant's tip about drug trafficking, or because driving on a lane line is not a traffic violation? *United States v. Cruz*, No. 19-2132 (gov't brief filed March 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 (reply brief filed April 13, 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 probable cause for a traffic stop where the vehicle drove onto the fog line, and even if there was, did the officer unlawfully extend the stop? And did the stop become a consensual encounter, and if so, was the consent valid, or did the search exceed the scope of the consent? *United States v. Gomez-Arzate*, No. 19-2119 (reply brief filed April 13, 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).

Did law enforcement unreasonably extend this defendant's detention during a traffic stop after the purpose of the stop was completed, and was there reasonable suspicion to support a dog sniff of this defendant's car? *United States v. Ahmed*, No. 18-4092 (OA November 21, 2019).

Did the district court err in finding that two lane departures provided reasonable suspicion for a traffic stop? *United States v. Ockert*, No. 19-3049 (OA March 12, 2020).

## **T. Warrantless Arrests**

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 analyzing the stop and arrest of this defendant under the exigent circumstances doctrine, when the parties briefed the permissible scope of a traffic stop? *United States v. Solis*, No. 20-3018 (brief filed August 26, 2020).

Did the district court err when it denied this defendant's motion to suppress evidence because the government failed to prove reasonable suspicion to detain him or probable cause to arrest him and search his jacket? *United States v. Sanchez*, No. 19-2092 (reply brief filed September 3, 2020).

Did the district court err when it denied this defendant's motion to suppress evidence, because the government failed to prove reasonable suspicion to detain him or frisk him, or probable cause to seize and search his jacket? *United States v. Sanchez*, No. 19-2092 (reply brief filed September 3, 2020).

Did officers in this case conduct an impermissible warrantless search of a business by inspecting the curtilage of the home for 8 minutes after receiving no answer to their knock, pressing their faces against gaps in the structure, all along a closed garage door? *United States v. Powell*, No. 19-8083 (reply brief filed July 13, 2020).

Was this defendant bus passenger seized within the meaning of the Fourth Amendment when a DEA agent asked several questions, showed his badge, and asked three times to search her backpack, and even if she was, was her consent voluntary? *United States v. Ramos-Burciaga*, No. 19-2174 (reply brief filed May 21, 2020).

Did police officers have reasonable suspicion to enter a hotel room and seize the occupants, based on a 911 call (which later turned out to be fabricated), when the call contained internal inconsistencies and was not corroborated? *United States v. Romero*, No. 19-4117 (reply brief filed June 25, 2020).

Did any exception to the warrant requirement allow the entry and search of this defendant's home? *United States v. Cruz*, No. 19-2127 (reply brief filed April 17, 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).

Did law enforcement unlawfully enter this defendant's curtilage without a warrant to observe serial numbers on suspected stolen ATVs? *United States v. Ross*, No. 19-7008 (OA November 21, 2019).

Does the "plain view" exception excuse these officers' warrantless search of this defendant's car? *United States v. Ockert*, No. 19-3049 (OA March 12, 2020).

## **XII. Fourteenth Amendment: Due Process**

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**

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 (brief filed August 28, 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 (brief filed July 6, 2020).

Should this defendant's statement be suppressed because it was obtained in violation of *Miranda*? *United States v. Sanchez*, No. 19-2092 (reply brief filed September 3, 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 without a *Miranda* advisory? *United States v. Ross*, No. 19-7008 (OA November 21, 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**

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 (brief filed August 20, 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 (gov't brief filed August 17, 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 state defendant entitled to habeas relief based on his *Batson* and equal-protection claims? *Johnson v. Martin*, No. 19-5091 (gov't brief filed September 4, 2020).

Is this state defendant entitled to habeas relief based on his claims of ineffective assistance of counsel? *Honie v. Powell*, No. 19-4158 (brief filed August 24, 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 (brief filed August 21, 2020) (state appeal).

Does the Eighth Amendment prohibit mandatory life sentences for juveniles convicted of multiple crimes, and is this defendant entitled to relief on that basis? *Berry v. Whitten*, No. 20-6066 (brief filed July 3, 2020).

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 (gov't brief filed September 1, 2020).

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

Is this state defendant entitled to § 2254 relief on his claims of ineffective assistance of counsel for failure to file a suppression motion and failure to raise a Vienna Convention claim? *Molina-Solorzano v. Martin*, No. 20-6061 (brief filed June 22, 2020).

Is this state defendant entitled to § 2254 relief on his claims that law enforcement violated his right to counsel during interrogation, due process, and his right to present a defense? *Spruill v. Braggs*, No. 20-6009 (reply brief filed August 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 (gov't brief filed July 13, 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**

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 (brief filed May 5, 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).

Is this defendant entitled to 28 U.S.C. § 2255 relief on grounds that his counsel failed to argue at sentencing that Hobbs Act Robbery was not a crime of violence? *United States v. Cuthbertson*, No. 18-1223 (reply brief filed August 9, 2019).

### **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 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 (brief filed August 10, 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. Hernández-Calvillo*, No. 19-3210 (brief filed August 31, 2020) (gov't appeal); *United States v. Papalotzi*, No. 19-3211 (brief filed August 31, 2020) (gov't appeal).

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

Was this defendant's removal hearing fundamentally unfair, because he was incorrectly charged in that proceeding, such that the prior removal order cannot serve as the basis for a conviction for illegal reentry? *United States v. Sánchez-Porra*, No. 20-2016 (gov't brief filed July 27, 2020).

### **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 (brief filed August 3, 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. § 242 (civil-rights violation)**
- I. 18 U.S.C. § 287 (false claims against the government)**
- J. 18 U.S.C. § 371 (conspiracy)**
- K. 18 U.S.C. § 666 (bribery)**
- L. 18 U.S.C. § 669 (theft from health care program)**

Was there sufficient evidence that the assets stolen in this case belonged to a qualifying “health care benefit program”? *United States v. Maynard*, No. 19-1304 (reply brief filed June 9, 2020).

- M. 18 U.S.C. § 842 (unlawful distribution/possession of explosives)**
- N. 18 U.S.C. § 843 (using a communication device)**
- O. 18 U.S.C. § 844 (arson)**
- P. 18 U.S.C. § 875 (interstate communications)**
- Q. 18 U.S.C. § 876 (mailing threatening communications)**
- R. 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).

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

Should this defendant's conviction be vacated because the government failed to allege and prove that he knew of his felon status? *United States v. Sanchez*, No. 19-2092 (reply brief filed September 3, 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. Kasperait*, No. 19-6188 (reply brief filed July 6, 2020).

Is this defendant's pre-*Rehaif* 18 U.S.C. § 922(g) guilty plea invalid because the defendant was not advised that he had to know he had the status of a prohibited person? *United States v. Tignor*, No. 19-1158 (reply brief filed March 31, 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).

Is this defendant's pre-*Rehaif* 18 U.S.C. § 922(g) guilty plea invalid because the facts did not prove that the defendant knew he possessed a firearm and knew he belonged to a category of prohibited persons? *United States v. Wilson*, No. 19-1055 (amicus brief from the FPDs of Colorado and Wyoming filed December 17, 2019) (OA Jan. 23, 2020).

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

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 (brief filed July 22, 2020).

Did the district court err by instructing the jury that a defendant "carries" a firearm when he transports it in a separate compartment of a vehicle? *United States v. Swan*, No. 19-8068 (reply brief filed June 30, 2020).

Did the government present sufficient evidence that a codefendant carried a firearm, because it did not offer the firearm in evidence and did not offer testimony sufficient to establish that the weapon was a real firearm? *United States v. Ruiz*, No. 19-2175 (reply brief filed May 20, 2020).

**V. 18 U.S.C. § 1001 (false statements)**

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

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

**Y. 18 U.S.C. § 1028A (identity theft)**

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

Is evidence that a threat was sent over the internet, standing alone, insufficient to prove that a threat charged under 18 U.S.C. § 1030 was transmitted in interstate commerce? *United States v. Golightley*, No. 19-3135 (reply brief filed April 30, 2020).

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

**BB. 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).

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

Did the district court err by denying the defense request for a lesser-included offense instruction, and refusing to instruct the jury on assault in this murder trial? *United States v. Oldham*, No. 19-8023 (reply brief filed March 23, 2020).

**DD. 18 U.S.C. § 1201 (kidnapping)**

**EE. 18 U.S.C. § 1341 (mail fraud)**

**FF. 18 U.S.C. § 1343 (wire fraud)**

**GG. 18 U.S.C. § 1344 (bank fraud)**

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

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

Did this defendant's conviction and 13-month sentence violate due process, when applicable regulations provide for a sentence of up to 12 months? *United States v. Allen*, No. 19-1380 (reply brief filed July 27, 2020).

**JJ. 18 U.S.C. § 1512 (witness tampering)**

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

**LL. 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 (reply brief filed April 20, 2020).

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

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

**OO. 18 U.S.C. § 1956 (money laundering)**

**PP. 18 U.S.C. § 2119 (carjacking)**

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

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

Was the evidence sufficient to convict this defendant of sexual assault under 18 U.S.C. § 2242 where there was no forensic evidence and the victim's account of the assault changed multiple times? *United States v. Palillero*, No. 19-2111 (reply brief filed May 27, 2020).

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

**SS. 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).

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

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

**VV. 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 (brief filed July 23, 2020).

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

**WW. 21 U.S.C. § 841 (drug trafficking)**

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 (brief filed June 29, 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 (brief filed June 25, 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. Kabn*, 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 (reply brief filed April 22, 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).

**XX. 21 U.S.C. § 846 (drug conspiracy)**

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 (brief filed June 26, 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 (brief filed June 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 single conspiracy in this drug-distribution case, and/or was there an impermissible variance between the indictment and the government's proof? *United States v. Sanchez*, No. 19-6034 (OA March 12, 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).

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

**ZZ. 26 U.S.C. § 5861 (firearms offenses)**

**AAA. 26 U.S.C. § 7201 (tax evasion)**

**BBB. 26 U.S.C. § 7212**

**CCC. 28 U.S.C. § 455 (recusal)**

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

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

**FFF. Assimilative Crimes Act (ACA)**

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 (gov't brief filed August 26, 2020).

**GGG. Regulatory and CFR Offenses**

## **XXII. Pleas**

**A. Acceptance of Plea**

**B. Appeal Waiver**

**C. Breach**

**D. Rejection of Plea Agreement**

**E. Withdrawal of Plea**

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 (gov't brief filed September 4, 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 err by ordering restitution for losses caused by uncharged conduct and by relying only on unverified statements of losses? *United States v. Allen*, No. 19-1380 (reply brief filed July 27, 2020).

Did the district court err by re-imposing restitution after revocation of supervised release, after the statutory period for restitution had expired? *United States v. Delano*, No. 19-5103 (reply brief filed June 19, 2020).

Did the district court err by ordering restitution for the employer's promised matching 401(k) contributions, in addition to the employees' stolen contributions, or by ordering restitution for

hospital bills paid by employee victims who did not receive the health insurance they paid for? *United States v. Maynard*, No. 19-1304 (reply brief filed June 9, 2020).

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 (reply brief filed May 7, 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).

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)**
- 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 abuse its discretion when it denied this defendant’s motion for a new trial based on newly discovered evidence and Brady violations? *United States v. Thomas*, No. 19-1209 (gov’t brief filed March 16, 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 (brief filed August 28, 2020).

Did the district court violate the Tenth Circuit’s mandate when it reimposed the same sentence at resentencing, after the Tenth Circuit ruled that the defendant was ACCA-eligible? *United States v. Dutch*, No. 19-2196 (reply brief filed May 12, 2020) (gov’t appeal).

## **XXVI. Second Amendment Issues**

### **XXVII. Sentencing**

#### **A. Allocution**

#### **B. Apprendi**

Does it violate the Sixth Amendment jury-trial right or the Fifth Amendment due-process right for a judge to impose a de facto life sentence based on judge-found facts? *United States v. Ansberry*, No. 19-1048 (reply brief filed January 27, 2020) (foreclosed issue).

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

Do convictions for New Mexico aggravated battery and burglary qualify as violent felonies under ACCA? *United States v. Sanchez*, No. 19-2092 (reply brief filed September 3, 2020).

Did the district court err when it held that this defendant's prior Oklahoma conviction qualifies as a serious drug offenses under ACCA, and the Oklahoma drug schedule is not overbroad? *United States v. Lawson*, No. 20-6001 (gov't brief filed June 11, 2020).

Did the district court err when it held that this defendant's prior Oklahoma conviction qualifies as a serious drug offenses under ACCA, and the Oklahoma drug schedule is not overbroad? *United States v. Traywick*, No. 19-6173 (reply brief filed May 27, 2020).

Is New Mexico aggravated battery a violent felony under ACCA? *United States v. Ybarra*, No. 19-2142 (reply brief filed March 19, 2020).

Did the district court err in sentencing this defendant under ACCA, based on this defendant's prior Colorado robbery conviction? *United States v. Sanchez*, No. 19-2092 (reply brief filed September 3, 2020).

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**

#### **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 March 16, 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 err by calculating personal-use drug quantity amounts as relevant conduct in this drug-trafficking case? *United States v. Wilson*, No. 19-7048 (reply brief filed May 19, 2020).

Did the district court by including packages that were not weighed in its drug-quantity findings? *United States v. Castillo-Quintana*, No. 19-3147 (brief filed March 2, 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)**

Was there sufficient evidence to support an enhancement under § 2A3.1 for causing serious bodily injury, based on the victim's vague assessment of the pain caused? *United States v. Mills*, No. 19-1472 (reply brief filed August 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. 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 (reply brief filed April 17, 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 (reply brief filed March 2, 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 § 2B3.1 (robbery)**

**11. USSG § 2C1.1**

**12. USSG § 2D1.1 (drugs)**

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 (brief filed June 25, 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. Otuomye*, No. 19-3250 (brief filed June 23, 2020).

Did the district court err when it found that this defendant possessed a firearm in connection with this offense and added a 2-level enhancement on that basis? *United States v. Castillo-Quintana*, No. 19-3147 (brief filed March 2, 2020).

Was there sufficient evidence supporting the district court’s drug-quantity findings in this distribution-conspiracy case? *United States v. Sanchez*, No. 19-6034 (OA March 12, 2020).

**13. USSG § 2G1.1 (sex trafficking)**

**14. USSG § 2G2.2 (child pornography)**

**15. USSG § 2K1.4 (arson)**

Did the district court err by applying the increased base offense level of USSG § 2K1.4(a)(1) without proof that the offense actually created a substantial risk of death or serious injury, regardless of the defendant’s intent? *United States v. Ansberry*, No. 19-1048 (reply brief filed January 27, 2020).

## **16. 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 (brief filed August 27, 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 (brief filed August 27, 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 (gov't brief filed September 2, 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 (gov't brief filed September 4, 2020).

Did the district court err by applying an enhancement for possession of a firearm capable for accepting a large capacity magazine, when the defendant in fact possessed only the lower receiver of a firearm? *United States v. Pedro*, No. 19-6175 (reply brief filed July 14, 2020).

Did the district court plainly err by setting this defendant's base offense level at 20, based on a crime-of-violence conviction that does not independently receive criminal-history points? *United States v. Silva*, No. 19-1298 (reply brief filed May 5, 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)?

Did the district court err by increasing this firearm defendant's sentence absent sufficient evidence under USSG § 2K2.1(b)(6)(B)? *United States v. Ross*, No. 19-7008 (OA November 21, 2019).

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).

## **17. USSG § 2K2.2**

### **18. USSG § 2L1.2 (immigration offenses)**

Did the district court plainly err by finding that this defendant had admitted to being "found in" the United States on a later date than the defense argued, which triggered application of a different sentencing guideline manual (and a higher range)? *United States v. Romero-Lopez*, No. 19-1268 (reply brief filed May 30, 2020).

**19. USSG § 2T1.1 (tax loss)**

For a conviction for impeding the administration of tax law, did the district court err by calculating the loss as the entire tax debt owed by the two companies overseen by the defendant? *United States v. Maynard*, No. 19-1304 (reply brief filed June 9, 2020).

**20. USSG § 2T1.4 (sophisticated means—tax offense)**

**21. USSG § 2Q2.1**

**22. 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).

**23. USSG § 3A1.2**

Did the district court err by applying USSG § 3A1.2(a) because no government employees were victims of the offense of conviction, as opposed to relevant conduct? *United States v. Ansberry*, No. 19-1048 (reply brief filed January 27, 2020).

**24. USSG § 3A1.3**

**25. 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 (brief filed August 28, 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).

Did the district court err by applying a terrorism enhancement under USSG § 3A1.4 on the ground that the offense was in retaliation for a separate murder, when the court did not find that murder constituted “government conduct”? *United States v. Ansberry*, No. 19-1048 (reply brief filed January 27, 2020).

**26. USSG § 3B1.1 (aggravating role)**

**27. 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 (brief filed July 27, 2020).

Did the district court err when it denied this defendant a reduction for being a minimal participant? *United States v. Castillo-Quintana*, No. 19-3147 (brief filed March 2, 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 relied on improper factors and speculation to deny this defendant's request for a minor-role reduction? *United States v. Delgado-Lopez*, No. 19-3113 (OA March 12, 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).

### **28. USSG § 3C1.1 (obstruction)**

Did the district court err when it applied the § 3C1.1 enhancement, based on the defendant's letter advising a potential witness to "plead the fifth"? *United States v. Benitez-Lopez*, No. 19-1439 (reply brief filed August 11, 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).

### **29. USSG § 3C1.2 (reckless endangerment during flight)**

### **30. 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 (brief filed September 4, 2020).

### **31. USSG § 3E1.1 (acceptance of responsibility)**

Did the district court erroneously deny an acceptance-of-responsibility reduction for this defendant, who went to trial on stipulated facts in order to preserve his suppression issue? *United States v. Ross*, No. 19-7008 (OA November 21, 2019).

### **32. USSG § 4A1.1**

### **33. USSG § 4A1.2**

Did the district court plainly err by imposing two criminal history points for a 2000 state offense that was too old to count? *United States v. Briscoe*, No. 19-3261 (brief filed June 22, 2020).

Did the district court plainly err in calculating this defendant's criminal history score, by counting two sentences for failing to display proof of insurance separately when the tickets were imposed at the same time? *United States v. Fifield*, No. 19-1440 (reply brief filed September 3, 2020).

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

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

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 (brief filed August 13, 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 (gov't brief filed July 29, 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. Folse*, 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).

**36. USSG § 4B1.5**

**37. USSG § 5C1.2 (safety valve)**

Did the district court err when it found that this defendant possessed a weapon in connection with his drug offense and was therefore not safety-valve eligible? *United States v. Castillo-Quintana*, No. 19-3147 (brief filed March 2, 2020)

**38. USSG § 5G1.3**

**39. USSG § 5K1.1**

**40. USSG § 5K2.7**

**41. USSG § 5K2.14**

**42. 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).

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

**L. Mandatory Minimums and Maximums**

**M. Reasonableness**

**1. Procedural**

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 (brief filed July 29, 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 (brief filed June 25, 2020).

Is this defendant's 144- month above-guidelines sentence for arson procedurally or substantively unreasonable, where the court treated some improper factors as aggravating and refused to consider multiple facts as mitigating? *United States v. Lawless*, No. 20-1173 (reply brief filed July 27, 2020).

Did the district court err by failing to address this defendant's request for a downward variance, and should the case be remanded for the court to explain or rule on the request? *United States v. Robertson*, No. 20-6014 (reply brief filed July 6, 2020).

Did the district court commit plain error by insufficiently explaining this 84-month sentence for the assimilated Oklahoma offense of child neglect? *United States v. Clark*, No. 19-7046 (reply brief filed June 10, 2020).

Did the district court plainly err by focusing on the guidelines range and deterrence, and failing to consider evidence about this defendant's life and circumstances or rehabilitation? *United States v. Pacheco-Espinoza*, No. 19-2186 (reply brief filed April 17, 2020).

Is this defendant's sentence procedurally or substantively unreasonable because it was based on facts not supported by the record? *United States v. Donovan*, No. 19-6167 (gov't brief filed March 11, 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 (reply brief filed April 22, 2020).

Did the district court procedurally err when it refused to consider the sentence this “Indian” defendant (convicted under the Major Crimes Act) would have faced under state law for the same conduct, when considering the 18 U.S.C. § 3553(a) sentencing factors? *United States v. Begay*, No. 19-2022 (OA November 21, 2019).

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. Simeus*, No. 18-3262 (brief filed May 28, 2019).

Did the district court procedurally err by failing to recognize its discretion to vary downward? *United States v. Purvis*, No. 19-3003 (OA March 12, 2020).

## 2. Substantive

Is this defendant’s within-guidelines 46-month sentence for illegal reentry substantively unreasonable? *United States v. Carrasco-Rico*, No. 20-1053 (brief filed August 5, 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 (brief filed July 27, 2020).

Is this defendant’s statutory-maximum 120-month sentence for firearm possession substantively unreasonable? *United States v. Craine*, No. 19-6189 (gov’t brief filed September 4, 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 (brief filed June 26, 2020)

Is this defendant’s 144- month above-guidelines sentence for arson procedurally or substantively unreasonable, where the court treated some improper factors as aggravating and refused to consider multiple facts as mitigating? *United States v. Lawless*, No. 20-1173 (reply brief filed July 27, 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 84-month above-guidelines sentence for firearm possession by a felon substantively unreasonable? *United States v. Pedro*, No. 19-6175 (reply brief filed July 14, 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 within-guidelines sentence substantively unreasonable in light of his personal characteristics and history, post-offense rehabilitation, and family circumstances? *United States v. Pacheco-Espinoza*, No. 19-2186 (reply brief filed April 17, 2020).

Is this defendant's sentence procedurally or substantively unreasonable because it was based on facts not supported by the record? *United States v. Donovan*, No. 19-6167 (gov't brief filed March 11, 2020).

Is this defendant's 121-month sentence for sexual assault substantively unreasonable? *United States v. Palillero*, No. 19-2111 (reply brief filed May 27, 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 (brief filed May 7, 2020).

Is this defendant's 36-month sentence for assault causing bodily injury, based on a DWI incident, substantively unreasonable? *United States v. Miller*, No. 19-2156 (reply brief filed April 12, 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 (reply brief filed April 20, 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 the defendant's sentence, twice the high end of the Guidelines range, substantively unreasonable in this involuntary manslaughter case? *United States v. Goodman*, No. 19-8008 (OA March 10, 2020).

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 (reply brief filed April 22, 2020).

Is this defendant's de facto life sentence substantively unreasonable, because the attempted bombing offense was not intended to, and did not, hurt anyone, and because of the defendant's medical condition and his low likelihood of recidivism? *United States v. Ansberry*, No. 19-1048 (reply brief filed January 27, 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))**

#### **P. Resentencing Issues**

#### **Q. Sentence Reductions under 18 U.S.C. § 3582(c)(2)**

#### **R. 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 (brief filed June 26, 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 (reply brief filed June 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).

Was counsel ineffective in failing to object at sentencing that Hobbs Act robbery is not a career-offender predicate, and is this defendant (who the government now concedes is not a career offender) entitled to 28 U.S.C. § 2255 relief for this or other due-process reasons? *United States v. Cuthbertson*, No. 18-1223 (reply brief filed August 9, 2019).

Did law enforcement unlawfully interrogate this defendant without counsel, despite knowing that he was represented at the time? *United States v. Ross*, No. 19-7008 (OA November 21, 2019).

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

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 (reply brief filed April 22, 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**

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 (brief filed May 22, 2020).

Were this defendant's confrontation rights violated when a government witness—who initially took blame for the vehicle accident at issue and later recanted—failed to appear and hearsay evidence about the witness's recantation was admitted? *United States v. Goodman*, No. 19-8008 (OA March 10, 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**

Did the district court plainly err by accepting a lawyer's stipulation to elements of the offense without the defendant's consent and without inquiring with the defendant? *United States v. Wilkins*, No. 19-5114 (reply brief filed August 5, 2020).

Did the district court err in classifying and sentencing seven counts under 18 U.S.C. § 1030 as felonies absent a unanimous jury verdict based on proof beyond a reasonable doubt that each offense independently caused a felony-triggering loss? *United States v. Golightly*, No. 19-3135 (reply brief filed April 30, 2020).

#### **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 (brief filed August 10, 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**

### **XXXII. Supervised Release**

#### **A. Revocation Issues**

Did the district court plainly err by revoking this defendant’s supervised release pursuant to the mandatory revocation provision of 18 U.S.C. § 3583(g), without a jury finding beyond a reasonable doubt? *United States v. Ewing*, No. 20-5005 (reply brief filed May 18, 2020).

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 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 (gov’t brief filed August 5, 2020).

Did the district court plainly err by imposing a sentence upon revocation which, when combined with the original imprisonment sentence, exceeds the statutory maximum for the original conviction? *United States v. Ewing*, No. 20-5005 (reply brief filed May 18, 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 (reply brief filed May 22, 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**

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**

Did the district court err by holding that the sentencing guideline for assault was not analogous to the assimilated Oklahoma offense of child neglect, and did it thereby incorrectly calculate the guidelines range? *United States v. Clark*, No. 19-7046 (reply brief filed June 10, 2020).

### **C. Conditions of Supervised Release**

Did the district court plainly err by imposing a supervised release condition that bans use of electronic communication or storage devices? *United States v. Mann*, No. 20-5029 (brief filed July 29, 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 (brief filed July 29, 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 (brief filed June 25, 2020).

Did the district court plainly err by imposing a special condition of supervised release requiring the defendant to cooperate with blood testing without making particularized findings justifying the intrusion? *United States v. De Luna*, No. 20-1017 (gov't brief filed August 17, 2020).

Did the district court plainly err by imposing a condition requiring inpatient drug treatment without making particular findings that the defendant needed such treatment? *United States v. Wilkins*, No. 19-5114 (reply brief filed August 5, 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 (brief filed April 29, 2020).

Did the district court err when it concluded that it was required to reimpose previous conditions of supervised release, upon revocation, and if so, is this defendant entitled to resentencing? *United States v. Henry*, No. 19-1125 (reply brief filed May 25, 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 (reply brief filed May 20, 2020).

Did the district court plainly err by granting unlimited discretion to the probation officer to require this defendant to submit to drug testing? *United States v. Miller*, No. 19-2156 (gov't brief filed March 31, 2020).

Did the district court plainly err by imposing conditions of supervised release that: (1) require this defendant to "take prescribed medications as directed," and (2) authorize a probation officer to require the defendant to inform third parties that he poses a risk to them? *United States v. Golightley*, No. 19-3135 (reply brief filed April 30, 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).

Did the district court plainly err in this child pornography case by imposing a special condition prohibiting this defendant from possessing adult pornography or any "sexually stimulating" material? *United States v. Koch*, No. 19-8034 (OA March 12, 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 (reply brief filed April 20, 2020).

In this trial of a confidential informant who raised a public authority defense, did the government prove beyond a reasonable doubt that he did not reasonably believe he was acting as an authorized government agent? *United States v. Cruz*, No. 19-2132 (gov't brief filed March 23, 2020).

#### **C. Cumulative Error**

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 (brief filed June 29, 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 (brief filed May 22, 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).

Did multiple pro-prosecution rulings by the district court result in cumulative error that warrants reversal of this sexual-assault conviction? *United States v. Palillero*, No. 19-2111 (reply brief filed May 27, 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 (reply brief filed April 20, 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**

Do multiple errors rise to the level of a due-process violation and require a new trial in this murder case, including mishandling “gruesome” photos, mishandling a witness’s invocation of the Fifth Amendment privilege, mishandling the invocation of spousal privilege? *United States v. Oldham*, No. 19-8023 (reply brief filed March 23, 2020).

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 (reply brief filed June 5, 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 (reply brief filed April 22, 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 (reply brief filed April 20, 2020).

Did the district court err by refusing to grant a new trial, based on the plain error of not instructing the jury on duress? *United States v. Cruz*, No. 19-2132 (gov't brief filed March 23, 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. Prosecutorial Misconduct**

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 (brief filed August 7, 2020).

Did multiple instances of prosecutorial misconduct deprive this defendant of a fair trial? *United States v. Starks*, No. 19-3256 (brief filed May 22, 2020).

Were this defendants due process rights violence 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)).

**N. Right to be Present**

**O. 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 (brief filed August 10, 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)).

**P. 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 (reply brief filed April 20, 2020).

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

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 (brief filed June 26, 2020).

Did the district court err under Rule 403 by admitting a letter written by the defendant advising a potential witness to "plead the fifth," because the probative value of the letter was outweighed by potential prejudice? *United States v. Benitez-Lopez*, No. 19-1439 (reply brief filed August 11, 2020).

Did the district court abuse its discretion by admitting social media posts about pimp culture from 2015 as evidence of his 2018 charges for enticing and facilitating prostitution, or by not excluding the posts under Rule 403? *United States v. Alfred*, No. 19-1243 (reply brief filed June 26, 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 (reply brief filed March 2, 2020).

Did the district court err by refusing to strike a witness's testimony about the defendant's prior imprisonment and domestic violence? *United States v. Denezpi*, No. 19-1213 (reply brief filed February 19, 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).

#### **R. Rule 404(b)**

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 (brief filed August 3, 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 (brief filed June 26, 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).

#### **S. Rules 412, 413 & 414 (Sexual Assault Evidence)**

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 (brief filed August 7, 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).

#### **T. Rules 601-615 (Witnesses)**

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 (brief filed September 4, 2020).

#### **U. Rules 701-706 (Opinions and Expert Testimony)**

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 (brief filed June 29, 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 (brief filed May 22, 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).

Did the district court erroneously exclude the defendant's DNA expert because the notice of intent to offer the testimony was untimely or deficient? *United States v. Palillero*, No. 19-2111 (reply brief filed May 27, 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 (reply brief filed April 20, 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).

#### **V. 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 (brief filed May 22, 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).

#### **W. 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 (brief filed August 25, 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).

#### **X. Rule 1002 (Best Evidence Rule)**

Did the district court violate the best-evidence rule (FRE 1002) by admitting (partial) transcripts of Spanish language audiotapes without admitting the tapes themselves; and did the district court plainly err when it instructed the jury that the translations (which attributed certain statements to the defendant) were accurate and not to be rejected? *United States v. Chavez*, No. 17-8096 (OA March 20, 2019).

#### **Y. Rule 1006 (Summaries)**

#### **Z. Surrebuttal**

#### **AA. Voir Dire**

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. Maldonado-Passage*, No. 20-6060 (brief filed September 4, 2020) (FRE 615, USSG § 3D1.2).

*United States v. Babcock*, No. 20-4003 (brief filed September 4, 2020) (28 U.S.C. § 2255).

*United States v. Nolan*, No. 21-1021 (brief filed September 2, 2020) (search warrant issues).

*United States v. Thibeault*, No. 20-6105 (brief filed September 1, 2020) (inventory search; inevitable discovery).

*United States v. Hernandez-Calvillo*, No. 19-3210 (brief filed August 31, 2020) (gov't appeal) (8 U.S.C. § 1324);

*United States v. Papzlotzi*, No. 19-3211 (brief filed August 31, 2020) (gov't appeal) (8 U.S.C. § 1324)

*United States v. Varnell*, No. 20-6040 (brief filed August 28, 2020) (due process, USSG § 3A1.4).

*United States v. Thompson*, No. 19-3173 (brief filed August 28, 2020) (scope of mandate/remand issues).

*United States v. Russey*, No. 20-6036 (brief filed August 27, 2020) (USSG § 2K2.1).

*United States v. Solis*, No. 20-3018 (brief filed August 26, 2020) (warrantless search and seizure).

*United States v. Pebley*, No. 20-7022 (brief filed August 25, 2020) (FRE 901).

*Honie v. Powell*, No. 19-4158 (brief filed August 24, 2020) (28 U.S.C. § 2254).

*Taylor v. Powell*, No. 20-4039 (brief filed August 21, 2020) (state appeal) (28 U.S.C. § 2254).

*Lorance v. Commandant*, No. 3055 (brief filed August 20, 2020) (28 U.S.C. § 2241).

*United States v. Woodard*, No. 20-5004 (brief filed August 13, 2020) (inventory search, USSG § 4B1.2).

*United States v. Koerber*, No. 19-4147 (brief filed August 10, 2020) (collateral estoppel, speedy trial, variance from indictment, right to present defense).

*United States v. Spence*, No. 20-6022 (brief filed August 7, 2020) (traffic stops).

*United States v. Coriz*, No. 20-2019 (brief filed August 7, 2020) (prosecutorial misconduct, FRE 412, 413).

*United States v. Regalado*, No. 20-5024 (brief filed August 5, 2020) (FRE 404(b)).

*United States v. Carrasco-Rico*, No. 20-1053 (brief filed August 5, 2020) (substantive reasonableness).

*United States v. Jean-Pierre*, No. 20-1039 (brief filed August 3, 2020) (FRE 404(b), 15 U.S.C. § 78).

*United States v. Mann*, No. 20-5029 (brief filed July 29, 2020) (conditions of supervised release).