

# ISSUES PENDING IN THE TENTH CIRCUIT

COMPILED BY THE KANSAS FEDERAL PUBLIC DEFENDER



Updated March 11, 2019

# 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.”

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**

## **II. Competence**

## **III. Confessions**

## **IV. Continuances**

Did the district court abuse its discretion when it refused to continue this defendant's sentencing hearing? *United States v. McClafin*, No. 18-1217 (reply brief filed Feb. 14, 2019).

Did the district court abuse its discretion when it refused to continue this defendant's sentencing hearing so that his family members could attend and address the court in person, under oath? *United States v. Penuelas*, No. 18-2150 (brief filed Jan. 24, 2019).

## **V. Discovery**

Did the magistrate err in this federal misdemeanor shoplifting case by precluding the defendant from presenting a mental-health expert at trial as a discovery-violation sanction? *United States v. Paup*, No. 18-1114 (submitted on briefs March 21, 2019).

Did the district court err in refusing discovery and subpoenas related to this defendant's necessity defense? *United States v. Shields*, No. 18-1364 (brief filed Jan. 2, 2019).

## **VI. Double Jeopardy**

Did this drug defendant's conspiracy prosecution in a Colorado federal court, after he pleaded guilty to the same conspiracy in a Texas federal court, violate the Double Jeopardy clause? *United States v. Mier-Garces*, No. 18-1085 (reply brief filed Dec. 27, 2018).

Did the district court err in denying this defendant's motion to dismiss his conspiracy and other charges on double-jeopardy grounds? *United States v. Leal*, No. 18-2083 (OA Jan. 24, 2019) (interlocutory appeal).

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

Does Oklahoma's "especially heinous, atrocious, or cruel" aggravator violate the Eighth Amendment, and is this state capital defendant entitled to 28 U.S.C. § 2254 relief? *Mitchell v. Royal*, No. 16-6258 (supplemental reply brief filed Nov. 9, 2018).

After the judge in this Oklahoma capital case—who was also serving as sentencer—excluded a jail snitch's testimony as inadmissible, did he violate the defendant's Eighth Amendment and Due Process rights by deliberately exposing himself to the details of the testimony (asking the state, *after* excluding the evidence, to make an offer of proof)? *Bush v. Royal*, No. 16-6318 (OA March 21, 2019).

Did the judge in this Oklahoma capital case commit constitutional error by admitting victim-impact evidence in violation of Supreme Court precedent? *Bush v. Royal*, No. 16-6318 (OA March 21, 2019).

Did cumulative error violate this Oklahoma capital defendant's Eighth Amendment and due-process rights? *Bush v. Royal*, No. 16-6318 (OA March 21, 2019).

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

### **IX. First Amendment**

#### **X. Forfeiture**

### **XI. Fourth Amendment Issues**

The district court originally granted this defendant's motion to suppress, and the government appealed. But the government then voluntarily dismissed its appeal, after which the district court granted the government leave to dismiss the case without prejudice. Nine-plus months later, the government recharged the defendant and argued that *Workman* overruled the legal basis for the district court's original suppression order. Did the district court err in declining to find that the government was collaterally estopped from relitigating the suppression motion? *United States v. Arterbury*, No. 18-5085 (OA March 20, 2019).

#### **A. Arrest Warrant**

#### **B. Attenuation (intervening circumstances)**

Did the district court err in holding that the discovery of an arrest warrant for the defendant *after* law-enforcement's discovery of evidence was an "intervening circumstance" sufficient to purge the taint of the officer's unlawful conduct? *United States v. Gaines*, No. 17-3270 (OA Jan. 23, 2019).

Did this defendant's flight between any Fourth Amendment violation and his arrest and subsequent searches attenuate that violation? *United States v. Nash*, No. 18-2095 (OA March 20, 2019) (gov't appeal from suppression order).

#### **C. Consent**

Did the district court err in holding that this defendant voluntarily consented to law enforcement's entry into his home? *United States v. Warwick*, No. 18-2116 (gov't brief filed Feb. 19, 2019).

#### **D. Excessive Force**

#### **E. Fruit of the Poisonous Tree**

#### **F. Good Faith Exception**

Did the government waive any good-faith argument on remand by insufficiently briefing it in this defendant's first appeal, and, if not, does good faith excuse the warrantless search of this defendant's email? *United States v. Ackerman*, No. 17-3238 (OA Nov. 16, 2018).

Did the district court err when it refused, on good-faith grounds, to suppress the fruit of an unconstitutional search? *United States v. Cookson*, Nos. 18-3070, 18-3071 (OA March 20, 2019).

#### **G. Government Actor**

**H. Hearing Issues**

**I. Inventory Searches**

**J. Knock and Talk**

**K. Plain View Doctrine**

Did the seizure of this defendant's cell phone fall within the plain-view doctrine under the facts of this case, and, if not, did the government establish inevitable discovery? *United States v. Blackburn*, No. 17-2141 (OA July 27, 2018).

**L. Protective Sweeps**

**M. Scope of Warrantless Search**

**N. Search Incident to Arrest**

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

Was this computer-fraud search warrant a pretext to search for child pornography; did the agents exceed the scope of the warrant (as the district court found) when they expanded their search after finding child pornography; did a second warrant purge the taint of the foregoing illegality; and did the district court err in denying suppression on good-faith grounds? *United States v. Loera*, No. 17-2180 (OA Sept. 25, 2018).

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

Did this defendant have standing to challenge the search of his email (before it was delivered to its intended recipient) under either a trespass theory or a privacy theory? *United States v. Ackerman*, No. 17-3238 (OA Nov. 16, 2018).

**Q. *Terry* Stops: Initial Detention**

Did the district court err in holding that the challenged law-enforcement encounter in this case was consensual, and not a seizure for Fourth Amendment purposes? *United States v. Gaines*, No. 17-3270 (OA Jan. 23, 2019).

Were officers permitted to detain this defendant-passenger at the curb pending completion of a traffic stop? *United States v. Gurule*, No. 18-4039 (OA Jan. 23, 2019) (gov't appeal).

**R. *Terry*: Frisk**

Did law enforcement unlawfully retrieve and further inspect a small container of pills during a *Terry* frisk of this defendant? *United States v. Phommaseng*, No. 17-3225, 17-3226, 17-3227 (OA Sept. 27, 2018).

Did officers have reasonable suspicion to justify frisking this defendant? *United States v. Gurule*, No. 18-4039 (OA Jan. 23, 2019).

Did the officer in this case lack reasonable suspicion that the defendant was both armed and dangerous when the officer ordered the defendant to submit to a pat-down search? *United States v. Romero, Jr.*, No. 18-2180 (brief filed March 4, 2019).

### **S. Traffic Stops**

Was this traffic stop (in the defendant's own driveway) unlawfully prolonged for purposes of a dog sniff? *United States v. Phommaseng*, No. 17-3225, 17-3226, 17-3227 (OA Sept. 27, 2018).

Was this traffic stop unlawfully prolonged, thereby tainting the driver's consent to search the car? *United States v. Torres*, No. 18-2026 (OA Jan. 24, 2019).

Did a bare report that this driver had marijuana in his car give law enforcement reasonable suspicion to stop the car? And did law enforcement thereafter credibly develop sufficient probable cause to search the car? *United States v. Bullcoming*, No. 18-6083 (reply brief filed Nov. 16, 2018).

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 (gov't brief filed Jan. 29, 2019).

### **T. Warrantless Arrests**

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 (brief filed March 4, 2019).

### **U. Warrantless Searches & Seizures**

Did a warrantless dog sniff of a car parked within the curtilage of the defendant's home violate the Fourth Amendment? *United States v. Phommaseng*, No. 17-3225, 17-3226, 17-3227 (OA Sept. 27, 2018).

Did the district court err in relying on this defendant's Colorado parole agreement to deny (without a hearing) his motion to suppress the fruit of a warrantless search by a federal agent of the defendant's location via the Colorado Department of Corrections' GPS database? *United States v. Mathews*, No. 18-1215 (reply brief filed Feb. 8, 2019).

Did the warrantless seizure (by a border agent) and eventual search of this defendant's laptop violate the Fourth Amendment? *United States v. Williams*, No. 18-1299 (brief filed Dec. 27, 2018) (EFF amicus brief filed Jan. 8, 2019).

Did the district court erroneously find probable cause to search this defendant's car based solely on an officer's undermined testimony that he smelled marijuana from outside the car? *United States v. Pittman*, No. 18-3158 (brief filed Jan. 14, 2019).

Did the district court erroneously invoke inevitable discovery by collective knowledge to excuse this warrantless car search? *United States v. Pittman*, No. 18-3158 (brief filed Jan. 14, 2019).

Should the district court have found that an officer lawfully frisking this defendant had probable cause to seize a baggy in his pocket, under the plain-feel doctrine? *United States v. Nash*, No. 18-2095 (OA March 20, 2019) (gov't appeal from suppression order).

## **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**

Were the two counts charged in this case under 18 U.S.C. §§ 2422(b) and 2251 (production of pornography and enticement to travel) multiplicitous? *United States v. Isabella*, No. 17-1197 (OA Nov. 16, 2018).

Did the district court properly order this defendant to submit to involuntary medication to achieve competency? *United States v. Osborn*, No. 18-4009 (OA Sept. 27, 2018).

Did this defendant waive his vindictive prosecution claim by failing to file a timely Rule 12 motion to dismiss, and should the district court have dismissed the indictment on vindictive-prosecution grounds? *United States v. Bowline*, No. 17-7080 (OA Nov. 14, 2018).

Are this defendant's tax-evasion and bankruptcy-fraud convictions multiplicitous? *United States v. Wendy Yurek*, No. 18-1134 (OA March 19, 2019).

Are this defendant's four child-pornography convictions under 18 U.S.C. § 2252(a)(5)(B) multiplicitous? *United States v. Elliott*, No. 18-2105 (brief filed Jan. 7, 2019).

Did the government violate *Batson* when it used a peremptory challenge to excuse one of only two African American jurors in this defendant's venire, and proffered a pretextual reason for doing so? *United States v. Golden*, No. 18-6163 (brief filed Feb. 6, 2019).

Did the district court improperly rely on the defendant's silence at sentencing to make findings justifying sentencing enhancements? *United States v. Robertson*, No. 18-2165 (brief filed Feb. 25, 2019).

### **XIV. Fifth Amendment: Confessions & *Miranda***

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 this defendant knowingly and intelligently waive his *Miranda* rights? *United States v. Blackburn*, No. 17-2141 (OA July 27, 2018).

Did the district court err in finding this defendant's confession voluntary? *United States v. Ravenell*, No. 18-2091 (OA March 20, 2019).

Did the district court err in concluding that admission of this defendant's un-*Mirandized* statements at her firearms trial was harmless? *United States v. O'Neal*, 18-1365 (brief filed March 8, 2019).

### **XV. Habeas Issues**

**A. 28 U.S.C. § 2241**

**B. 28 U.S.C. § 2254**

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)).

Habeas courts have broad discretion to order an adequate remedy for constitutional violations. Here the district court vacated this defendant's state death sentence. But the district court refused to consider the defendant's argument that the state should not be allowed to seek another death sentence, because at least 18 of this elderly defendant's mitigating witnesses had died since the original trial. Did the district court abuse its discretion? *Eaton v. Wilson*, Nos. 15-8013, 16-8086 (OA Sept. 27, 2018).

The federal district court vacated this defendant's state death sentence and directed that the defendant be appointed counsel and resentenced within 120 days. The state took no action by that deadline. Did the state waive its right to re-seek the death penalty in this case? *Eaton v. Wilson*, Nos. 15-8013, 16-8086 (OA Sept. 27, 2018).

Should the district court have granted discovery and an evidentiary hearing on this capital defendant's *Brady* and IAC claims? *Goode v. Royal*, No. 16-5124 (OA March 20, 2018).

Should the district court have granted habeas relief on this state capital defendant's claims that (1) the exclusion of expert testimony relevant to the defendant's ability to form the necessary intent deprived him of due process; and (2) his *Miranda* waiver was neither knowing nor intelligent? *Coddington v. Carpenter*, No. 16-6295 (state's appeal) (OA Jan. 24, 2019).

Should the district court have granted habeas relief on this state capital defendant's claims that his trial and appellate counsel were ineffective? *Johnson v. Royal*, No. 16-5165 (OA Nov. 13, 2018).

Are this state defendant's IAC claims procedurally defaulted, and, if not, should the district court hold an evidentiary hearing to decide those claims? *Smith v. Allbaugh*, No. 17-5095 (OA Sept. 26, 2018).

Are this defendant's ineffective-assistance-of-counsel claims procedurally defaulted, and did the district court otherwise erroneously deny a hearing and 28 U.S.C. § 2254 relief? *Duran v. Archuleta*, No. 17-1321 (reply brief filed May 14, 2018).

Did the district court err when it granted this state capital murder defendant a stay and abeyance in his 28 U.S.C. § 2254 action? *Kell v. Benzón*, No. 17-4191 (reply brief filed July 5, 2018) (state's appeal).

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 capital defendant entitled to 28 U.S.C. § 2254 relief on grounds of intellectual disability, ineffective assistance of counsel, and instructional error? *Smith v. Carpenter*, No. 17-6184 (OA March 20, 2019).

Is this Colorado sexual-abuse defendant entitled to 28 U.S.C. § 2254 relief on his claim that he was convicted based on perjured testimony (by the teenage complainant, who recanted a year after trial)? *Farrar v. Raemisch*, No. 18-1005 (reply brief filed Dec. 19, 2018).

Is this Oklahoma capital defendant entitled to 28 U.S.C. § 2254 relief on grounds of ineffective assistance of trial and appellate counsel? *Davis v. Carpenter*, No. 17-6225 (reply brief filed Jan. 11, 2019).

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).

Whether this Oklahoma capital defendant is entitled to 28 U.S.C. § 2254 relief, or at least a hearing, on his claims of ineffective assistance of counsel, prosecutorial misconduct, and evidentiary error. *Harmon v. Carpenter*, No. 16-6360 (OA Nov. 14, 2018).

En Banc: Whether this Oklahoma capital defendant is entitled to 28 U.S.C. § 2254 relief based on his challenges to Oklahoma's "heinous, atrocious, or cruel" aggravating factor. *Pavatt v. Carpenter*, No. 14-6117 (en banc supplemental brief filed Jan. 9, 2019).

Is this Oklahoma negligent-homicide defendant entitled to a certificate of appealability and 28 U.S.C. § 2254 relief? *Mann v. Aldridge*, No. 18-6193 (brief filed Dec. 13, 2018).

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 murder defendant entitled to equitable tolling of his federal statute of limitations for filing a 28 U.S.C. § 2254 petition challenging his state conviction and sentence? *Ramirez v. Allbaugh*, No. 18-6127 (state's brief filed Feb. 20, 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).

### **C. 28 U.S.C. § 2255**

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).

Was this petitioner entitled to retroactive application of *Louis* in his 28 U.S.C. § 2255 proceeding? *United States v. Hopkins*, No. 18-2046 (reply brief filed Nov. 8, 2018).

Is this petitioner entitled to 28 U.S.C. § 2255 relief (or at least an evidentiary hearing) on his claims of ineffective assistance of counsel and *Brady* violations? *United States v. Holloway*, No. 18-4083 (OA March 21, 2019).

Is this capital petitioner entitled to an evidentiary hearing on his 28 U.S.C. § 2255 claims that his counsel was ineffective in failing to present mitigating evidence, and failing to object to prosecutorial misconduct (the government's invocation of religious authority)? *United States v. Fields*, No. 17-7031 (gov't brief filed March 8, 2019).

Is this defendant's 28 U.S.C. § 2255 petition timely, on grounds that it was filed within a year after an impediment to filing (the defendant's residence-prison's failure to update its law library) was removed? *United States v. Wiseman*, No. 18-2143 (brief filed Nov. 26, 2018).

Is this defendant entitled to 28 U.S.C. § 2255 relief (or at least a hearing) on grounds that his counsel failed to consult with him about an appeal? *United States v. Herring*, No. 18-4023 (reply brief filed Jan. 9, 2019).

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

**E. Coram Nobis**

Whether negation of the materiality element of 18 U.S.C. § 1001(a)(3) represents actual innocence warranting coram nobis relief, and whether procedural default bars this defendant from relief. *United States v. Miles*, No. 18-6119 (OA March 21, 2019).

**XVI. Immigration Issues**

**XVII. Indictment Issues**

**A. Amendments**

**B. Duplicity**

**C. Grand Jury Issues**

**D. Sufficiency of the Indictment (Sixth Amendment)**

**E. Variance**

**XVIII. 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 (brief filed Feb. 19, 2019).

**XIX. Motion Practice**

**XX. Offenses**

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

**B. 8 U.S.C. § 1326 (illegal reentry)**

Whether the district court erred in denying this unlawful-reentry defendant's pre-sentencing *Pereira*-based motion to withdraw his guilty plea. *United States v. Contreras-Cabrera*, No. 18-6189 (reply brief filed Feb. 22, 2019); *United States v. Herrera-Rivas*, No. 18-6192 (reply brief filed Feb. 22, 2019); *United States v. Garcia-Galvan*, No. 18-6198 (reply brief filed Feb. 22, 2019).

Does 8 U.S.C. § 1255(b)(1)(D) violate due process to the extent that it precludes review of removal orders in subsequent criminal prosecutions? Has this unlawful-reentry defendant shown that his underlying removal order was invalid? And should the district court have held a hearing to determine a fact relevant to the defendant's challenge to his underlying removal order? *United States v. Gonzales-Fierro*, No. 18-2168 (brief filed Feb. 19, 2019).

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

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

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

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

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

In this sovereign citizen's false-claims prosecution under 18 U.S.C. § 287, did the district court err in (1) denying Mr. Hutson's First-Amendment-based motion to dismiss; (2) defining "claim" for the jury; and (3) not instructing the jury on specific intent? *United States v. Hutson*, No. 18-1206 (brief filed Feb. 28, 2019).

**H. 18 U.S.C. § 371 (conspiracy)**

**I. 18 U.S.C. § 666 (bribery)**

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

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

**L. 18 U.S.C. § 844 (arson)**

**M. 18 U.S.C. § 875 (interstate communications)**

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

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

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

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

Is the residual clause of 18 U.S.C. § 924(c)(3)(B) void for vagueness; is federal kidnapping a crime of violence for purposes of § 924(c); and should this defendant have been granted § 2255 relief? *United States v. Ford*, No. 17-1122 (reply brief filed May 21, 2018).

Is § 924(c)(3)(B) unconstitutionally vague, and is retaliating against a witness under 18 U.S.C. § 1513 a crime of violence for § 924(c) purposes? *United States v. Bowen*, No. 17-1011 (OA Sept. 27, 2018).

Whether arson under 18 U.S.C. § 844(i) is a crime of violence for purposes of § 924(c). *United States v. Lawless*, No. 17-1148 (OA Nov. 15, 2018).

Whether forcibly assaulting a federal officer under 18 U.S.C. § 111(a)(1)(b) is a crime of violence for § 924(c) purposes (preserving issue notwithstanding *Kendall*), and whether this defendant is entitled to 28 U.S.C. § 2255 relief. *United States v. Montoya*, No. 17-8044 (brief filed May 7, 2018).

Is federal arson a crime of violence for § 924(c) purposes, and is this defendant entitled to 28 U.S.C. § 2255 relief? *United States v. Moore*, No. 17-1224 (OA Oct. 24, 2018).

Is armed bank robbery under 18 U.S.C. § 2111 is a crime of violence for § 924(c) purposes, and is this defendant entitled to § 2255 relief? *United States v. Clark*, No. 18-2048 (briefs filed Nov. 13, 2018).

Is Hobbs Act robbery a crime of violence for § 924(c) purposes (preserving issue notwithstanding *Melgar-Cabrera*), and is the Supreme Court's grant of a petition for certiorari in *Stokeling* reason to grant these defendants COAs on this question? *United States v. Johnson*, No. 17-3136 (brief filed July 24, 2018).

Are Hobbs Act robbery and VICAR-based Utah and Arizona aggravated assault crimes of violence for § 924(c) purposes, and is this defendant entitled to § 2255 relief? *United States v. Toki, et al.*, Nos. 17-4153, 17-4154, & 17-4155 (reply brief filed Nov. 8, 2018).

Is 18 U.S.C. § 2111 robbery a crime of violence for § 924(c) purposes, and is this defendant entitled to a COA and § 2255 relief? *United States v. Shirley*, No. 18-2071 (brief filed August 15, 2018).

Is this defendant entitled to 28 U.S.C. § 2255 relief from his 18 U.S.C. § 924(c) conviction on *Johnson* grounds? *United States v. Morgan*, No. 17-1172 (OA Nov. 13, 2018).

Is this defendant entitled to a certificate of appealability and 28 U.S.C. § 2255 relief from his 18 U.S.C. § 924(c) conviction under *Rosemond*? *United States v. Wiseman*, No. 18-2143 (brief filed Nov. 26, 2018).

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

Was the evidence sufficient in this 18 U.S.C. § 1001 false-statements case? *United States v. Williams*, No. 18-1080 (OA March 21, 2019).

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

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

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

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

**W. 18 U.S.C. § 1201 (kidnapping)**

Was the evidence sufficient to support this defendant's kidnapping conviction under 18 U.S.C. § 1201(a)(1) and (2)? *United States v. Aguilar-Banuelos*, No. 18-1133 (gov't brief filed Oct. 23, 2018).

**X. 18 U.S.C. § 1341 (mail fraud)**

**Y. 18 U.S.C. § 1343 (wire fraud)**

**Z. 18 U.S.C. § 1344 (bank fraud)**

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

**BB. 18 U.S.C. § 1361 (depredation of government property)**

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

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

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

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

Was the evidence sufficient to sustain this defendant's conviction for manufacturing weapons in prison under 18 U.S.C. § 1791? *United States v. Golden*, No. 18-6163 (brief filed Feb. 6, 2019).

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

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

Whether the district court had a sufficient factual basis to accept this defendant's guilty plea to money laundering. *United States v. Gonzales*, No. 18-8017 (OA Jan. 24, 2019).

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

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

Did Congress violate the non-delegation doctrine when it authorized the Attorney General to decide whether or not to apply SORNA retroactively (preserving issue pending *Gundy*)? *United States v. Williams*, No. 18-8053 (gov't brief filed Nov. 20, 2018); *United States v. Gibson*, No. 18-8083 (gov't brief filed Feb. 6, 2019).

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

Was the evidence sufficient in this case to establish violations of 18 U.S.C. §§ 2422(b) and 2251 (production of pornography and enticement to travel)? Were these two counts multiplicitous? *United States v. Isabella*, No. 17-1197 (OA Nov. 16, 2018).

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

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

**NN. 18 U.S.C. § 1591 (child sex trafficking)**

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

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

Was the government’s evidence of a series of discrete buy-sell agreements sufficient to support the jury’s verdict that this defendant conspired to distribute more than 500 grams of methamphetamine? Did the district court properly instruct the jury for purposes of the verdict and sentencing under the statutory mandatory minimum? *United States v. Carter*, No. 18-8014 (reply brief filed Dec. 20, 2018).

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).

Is this defendant’s prior Wyoming drug conviction a “felony drug offense” for purposes of conviction and sentencing under 21 U.S.C. § 841(b)(1)(B), and does the categorical approach apply in answering this question? *United States v. Means-Goodman*, No. 18-8037 (gov’t brief filed Feb. 19, 2019).

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

Was the evidence sufficient to prove interdependence or a common purpose in this drug-conspiracy case? *United States v. Montijo-Dominguez*, No. 18-2008 (OA March 20, 2019).

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).

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

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

Did the district court plainly err when it failed to instruct the jury that an essential element of 26 U.S.C. § 5861(d) is that the defendant knew the weapons at issue had the characteristics of machine guns? *United States v. Bishop*, No. 18-4088 (gov’t brief filed March 7, 2019)

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

Was the evidence sufficient to convict this defendant-wife of committing tax evasion and bankruptcy fraud alongside her husband? *United States v. Wendy Yurek*, No. 18-1134 (OA March 19, 2019).

Were the jury instructions in this tax-evasion case clearly erroneous? *United States v. Gorrell*, No. 18-5041 (OA March 19, 2019).

**UU. 26 U.S.C. § 7212**

Does 26 U.S.C. § 7212(a) (corrupt or forcible interference with internal revenue laws) require proof of physical force? *United States v. Gutierrez*, No. 18-2109 (reply brief filed Feb. 5, 2019).

Do any of this tax protester’s pro se jurisdictional and other arguments have merit? *United States v. Gutierrez*, No. 18-2109 (reply brief filed Feb. 5, 2019).

**VV. 28 U.S.C. § 455 (recusal)**

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

Was the government's evidence sufficient in this housing-rights case to show that this defendant attacked his victim on account of his victim's race (as opposed to his victim's son's race), and did the government's focus on the victim's son's race constructively amend the indictment? *United States v. Porter*, Nos. 18-4081, 18-4099 (gov't reply brief Feb. 15, 2019).

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

**XXI. Pleas**

Did the district court plainly violate Fed. R. Crim. P. 11(c)(1)(C) by sentencing this drug defendant based on an offense level contrary to that stipulated to by the parties? *United States v. Aragon*, No. 18-1121 (OA Jan. 23, 2019).

**A. Acceptance of Plea**

Does a magistrate judge have jurisdiction (or authority) to accept a guilty plea, or only recommend that the district court do so? *United States v. Garcia*, No. 18-2060 (OA March 20, 2019); *United States v. Finney*, No. 18-3045 (OA Jan. 23, 2019).

**B. Appeal Waiver**

**C. Breach**

**D. Rejection of Plea Agreement**

**E. Withdrawal of Plea**

Whether the district court erred in denying this unlawful-reentry defendant's pre-sentencing *Pereira*-based motion to withdraw his guilty plea. *United States v. Contreras-Cabrera*, No. 18-6189 (gov't brief filed Feb. 2, 2019); *United States v. Herrera-Rivas*, No. 18-6192 (gov't brief filed Feb. 2, 2019); *United States v. Garcia-Galvan*, No. 18-6198 (gov't brief filed Feb. 2, 2019).

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

Did the district court err in ordering restitution for losses caused by someone other than the defendant? *United States v. Anthony*, No. 18-6047 (reply brief filed March 4, 2019) (amicus brief by Human Trafficking Institute filed Jan. 17, 2019).

**XXIII. Rules of Criminal Procedure**

**A. Rule 8 (Joinder/Severance)**

Should the district court have severed this defendant's tax-evasion and bankruptcy-fraud trial from that of her husband-codefendant? *United States v. Wendy Yurek*, No. 18-1134 (OA March 19, 2019).

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

**C. Rule 12 (motions)**

- D. Rule 32 (sentencing procedures)**
- E. Rule 33 (new trial)**
- F. Rule 41 (search & seizure)**

#### **XXIV. Scope of Remand/Mandate Rule/Other Remand Issues**

#### **XXV. Second Amendment Issues**

#### **XXVI. Sentencing**

Did the district court abuse its discretion when it denied this defendant's request to continue the sentencing hearing? *United States v. Rubio-Sepulveda*, No. 18-1055 (OA Jan. 23, 2019).

- A. Allocution**
- B. Apprendi**
- C. Armed Career Criminal Act (18 U.S.C. 924(e))**

Whether Utah assault by a prisoner is an ACCA predicate, whether the district court misapplied the categorical approach, and whether this defendant is entitled to a certificate of appealability and § 2255 relief. *United States v. Pikyavit*, No. 17-4068 (reply brief filed March 9, 2018).

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

Is New Mexico robbery an ACCA predicate, and is this defendant entitled to a certificate of appealability and § 2255 relief? *United States v. Barela*, No. 17-2165 (brief filed Jan. 18, 2018).

Did the district court improperly deny this defendant 28 U.S.C. § 2255 relief from his 2008 ACCA sentence by finding that the sentence was *not* based on the now-invalidated residual clause? *United States v. Copeland*, No. 17-5125 (OA Jan. 23, 2019).

Is the 1995 version of Oklahoma first-degree robbery a violent felony for ACCA purposes? *United States v. Harbert*, No. 17-6246 (brief filed March 26, 2018).

Are the New Mexico crimes of armed robbery, aggravated assault, and aggravated battery violent felonies for ACCA purposes, and should the district court have granted this defendant 28 U.S.C. § 2255 relief? *United States v. Manzanares*, No. 18-2010 (brief filed April 13, 2018).

Are this defendant's prior Oklahoma convictions ACCA predicates, and is he entitled to 28 U.S.C. § 2255 relief? *United States v. Abbo*, No. 18-6081 (brief filed Dec. 4, 2018).

Are New Mexico commercial burglary, aggravated assault, and aggravated battery ACCA predicates, and is this defendant entitled to a certificate of appealability and 28 U.S.C. § 2255 relief? *United States v. Anzures*, No. 18-2115 (brief filed Jan. 25, 2019).

**D. Burden of Proof**

**E. Capital Sentencing**

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

**G. Departures and Variances**

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 (brief filed Feb. 12, 2019).

**H. Fines & Assessments**

**I. Guidelines Sections**

**1. USSG § 1B1.2**

**2. USSG § 1B1.3 (relevant conduct)**

Did the district court err in relying on the presentence report to establish contested relevant conduct? *United States v. Padilla*, No. 18-5009 (OA Nov. 14, 2018).

Did the district court plainly err when it included this gun defendant's previous possession of a different gun a year earlier as relevant conduct? *United States v. Garcia*, No. 18-6033 (OA Nov. 14, 2018).

Did the district court clearly err in its drug-quantity finding? *United States v. Aragon*, No. 18-1121 (OA Jan. 23, 2019).

**3. USSG § 2A2.2**

Did the district court err in sentencing this assault defendant under USSG § 2A2.2, instead of USSG § 2A2.4, without making proper findings? *United States v. Peralta*, No. 18-2130 (brief filed Jan. 9, 2019).

**a) subsection (b)(2)(B) (use of dangerous weapon)**

Did the district court clearly err when it declined to apply the aggravated-assault guideline at USSG § 2A2.2 based on this defendant's use of a taser to commit the charged crime of interfering with fair housing rights on account of race? *United States v. Porter*, Nos. 18-4081, 18-4099 (gov't reply brief Feb. 15, 2019) (government cross-appeal).

**4. USSG § 2A3.5 (SORNA)**

**5. USSG § 2A4.1 (bodily injury)**

**6. USSG § 2A6.1**

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

**7. USSG § 2B1.1**

Is USSG § 2B1.1 (the fraud guideline) the right guideline for bankruptcy fraud, or is USSG § 2T1.1 (the tax-crimes guideline) the most analogous guideline? *United States v. Wendy Yurek*, No. 18-1134 (OA March 19, 2019).

Should the district court have calculated loss in this bankruptcy-fraud case as the amount sought to be discharged, or rather the amount of assets concealed, and did the district court clearly err in determining the amount of loss for purposes of USSG § 2B1.1? *United States v. Wendy Yurek*, No. 18-1134 (OA March 19, 2019); *United States v. Daryl Yurek*, No. 18-1129 (OA March 19, 2019).

Did the district court err in applying a 6-level substantial-financial-hardship enhancement under USSG § 2B1.1(b)(2)(C) where the government conceded that, at the time the parties entered their plea agreement, the government did not have evidence to support the enhancement, and it did not thereafter attempt to prove the enhancement? *United States v. McClafin*, No. 18-1217 (reply brief filed Feb. 14, 2019).

Did the district court erroneously hold this fraud defendant responsible at sentencing for a victim's "substantial financial hardship" under USSG § 2B1.1(b)(2)(A), when the hardship was not sufficiently attributable to this defendant (as opposed to his codefendant)? *United States v. Brewington*, No. 18-1357 (brief filed March 1, 2019).

#### **8. USSG § 2B3.1 (robbery)**

Did the district court err in finding this defendant responsible for injury caused to a victim under USSG § 2B3.1(b)(3)(C) based on his codefendant's shooting of a police officer an hour after this defendant was arrested? *United States v. Patton*, No. 3169 (brief filed Jan. 18, 2019).

#### **9. USSG § 2C1.1**

#### **10. USSG § 2D1.1 (drugs)**

Did the district court err in enhancing this drug defendant's sentence for maintaining a drug premises under USSG § 2D1.1(b)(12)? *United States v. Lozano*, No. 18-1031 (OA Nov. 14, 2018).

Were photos of this drug defendant's messy house sufficient to support an enhancement of his sentence for maintaining a drug premises under USSG § 2D1.1(b)(12)? *United States v. Mier-Garces*, No. 18-1085 (reply brief filed Dec. 27, 2018).

Was there a sufficient nexus between the firearms and drugs in this case to support a gun enhancement under USSG § 2D1.1(b)(1)? *United States v. Dominguez-Perez*, No. 18-2063 (OA March 20, 2019).

Was there sufficient evidence to support an enhancement for maintaining a drug premises under USSG § 2D1.1(b)(12)? *United States v. Dominguez-Perez*, No. 18-2063 (OA March 20, 2019).

Did the district court err in imposing a criminal-livelihood enhancement under USSG § 2D1.1? *United States v. Cortes-Gomez*, No. 18-3052 (OA March 20, 2019).

Did the district court err under USSG § 2D1.1 in refusing to consider the impact of inert plant material on the potency of this defendant's synthetic marijuana? *United States v. Abdeljawad*, No. 18-2121 (brief filed Jan. 14, 2019).

#### **11. USSG § 2G1.1 (sex trafficking)**

Did the district court abuse its discretion or plainly err when it imposed a 4-level enhancement for fraud or coercion in this sex-trafficking case under USSG § 2G1.1(b)(1)? *United States v. Sweargin*, No. 18-2111 (reply brief filed Jan. 31, 2019).

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

**13. USSG § 2K2.1**

Is Wyoming felony interference with a peace officer a crime of violence for purposes of USSG § 2K2.1(a)(4)(A)? *United States v. Winder*, No. 17-8075 (OA Sept. 27, 2018).

Did the district court erroneously enhance this defendant's sentence under USSG § 2K2.1(b)(6)(B) for using or possessing a firearm in connection with another felony offense based on the mere presence of unidentified laboratory components? *United States v. Morgan*, No. 18-7032 (gov't brief filed Nov. 13, 2018).

Did sufficient evidence support the district court's 6-level enhancement of this firearm defendant's sentence under USSG § 2K2.1 for possessing a large-capacity magazine? *United States v. Bellamy*, No. 18-3189 (gov't brief filed Feb. 15, 2019).

Did the district court erroneously apply a cross-reference in USSG § 2K2.1(c) without sufficient reliable evidence to increase this defendant's base offense level? *United States v. Carter*, No. 18-8069 (brief filed Jan. 25, 2019).

Did the district court err by increasing this firearm defendant's sentence under USSG § 2K2.1(b)(5)? *United States v. Crockett*, No. 18-1322 (brief filed Feb. 13, 2019).

Did the district court make proper findings under the right standard to find that this defendant assaulted a police officer, in order to enhance his sentence 4 levels under USSG § 2K2.1(b)(6)? *United States v. Robertson*, No. 18-2165 (brief filed Feb. 25, 2019).

**14. USSG § 2K2.2**

**15. USSG § 2L1.2 (immigration offenses)**

Did the district court err in refusing to impose a downward variance or departure under USSG § 2L1.2? *United States v. Lopez-Urbina*, No. 18-2136 (reply brief filed Feb. 26, 2019).

**16. USSG § 2T1.1 (tax loss)**

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

**18. USSG § 2Q2.1**

**19. 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, 2019).

**20. USSG § 3A1.2**

Did the district court err in finding this defendant responsible for assaulting an official victim during flight under USSG § 3A1.2(c)(1), based on his codefendant's shooting of a police officer an hour after this defendant was arrested? *United States v. Patton*, No. 3169 (brief filed Jan. 18, 2019).

Did this defendant's conduct—running away from police while grabbing and dropping a gun—justify a 6-level enhancement for aggravated assault on a police officer under USSG § 3A1.2(c)? *United States v. Gonzales*, No. 18-2170 (brief filed Feb. 8, 2019).

Did the district court make proper findings under the right standard to find that this defendant assaulted an official victim, in order to enhance his sentence 6 levels under USSG § 3A1.2(c)(1)? *United States v. Robertson*, No. 18-2165 (brief filed Feb. 25, 2019).

**21. USSG § 3A1.3**

**22. USSG § 3B1.1**

Did the district court err in subjecting this drug defendant to an aggravated-role enhancement under USSG 3B1.1(b)? *United States v. Lozano*, No. 18-1031 (OA Nov. 14, 2018).

Did the district court err in adding 4 levels to this defendant’s guideline calculation for “organizer-leader” instead of just two levels for “manager-supervisor,” under USSG § 3B1.1? *United States v. Rubio-Sepulveda*, No. 18-1055 (OA Jan. 23, 2019).

Did the district court err when it imposed an organizer/leader sentencing enhancement under USSG § 3B1.1(a)? *United States v. Cortes-Gomez*, No. 18-3052 (OA March 20, 2019).

**23. USSG § 3B1.2 (mitigating role)**

Should the district court have adjusted this defendant’s sentence for her mitigating role under USSG § 3B1.2? *United States v. Wendy Yurek*, No. 18-1134 (OA March 19, 2019).

**24. USSG § 3B1.3 (abuse of trust)**

**25. USSG § 3C1.1 (obstruction)**

Did the district court erroneously add obstruction points for perjury in this case under USSG § 3C1.1? *United States v. Dominguez-Perez*, No. 18-2063 (OA March 20, 2019).

Did the district court erroneously add obstruction points for perjury under USSG § 3C1.1 absent evidence of perjury, and without making the required perjury findings? *United States v. Paup*, No. 18-1114 (submitted on briefs March 21, 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 err when it enhanced this defendant’s sentence for obstruction of justice under USSG § 3C1.1 without making findings about what part of his trial testimony was willfully, materially false? *United States v. Chavarin*, No. 18-4011 (OA March 20, 2019).

Did the district court erroneously rely on testimony that—even if false—was immaterial to enhance this defendant’s sentence on obstruction grounds under USSG § 3C1.1? *United States v. Fernandez-Barron*, No. 18-1254 (brief filed Jan. 7, 2019).

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

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

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

Did the district court erroneously deny an acceptance-of-responsibility reduction under USSG § 3E1.1(a) solely because the government refused to recommend the reduction? *United States v. Finney*, No. 18-3045 (OA Jan. 23, 2019).

Did the district court erroneously deny acceptance of responsibility in this case under USSG § 3E1.1? *United States v. Dominguez-Perez*, No. 18-2063 (OA March 20, 2019).

**29. USSG § 4A1.1**

**30. USSG § 4A1.2**

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

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

Can the mandatory (pre-*Booker* guidelines) be challenged for vagueness, and should the district court have granted this defendant § 2255 relief under *Johnson*? *United States v. Zamora*, No. 17-2188 (reply brief filed Jan. 11, 2019).

Whether armed bank robbery under 18 U.S.C. § 2113 is a crime of violence for career-offender purposes, and whether this mandatory-guidelines defendant is entitled to § 2255 relief. *United States v. Holz*, No. 17-6118 (reply brief filed April 23, 2018).

Are Kansas reckless aggravated battery and Missouri second-degree robbery crimes of violence for career-offender purposes? *United States v. Ash*, Nos. 17-3223 & 17-3245 (OA Nov. 13, 2018).

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. Encinas*, No. 17-8070 (gov’t brief filed March 21, 2018); *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); *United States v. Rith*, No. 17-4149 (brief filed August 3, 2018); *United States v. Martinez*, No. 18-2113 (brief filed Nov. 21, 2018).

Is Colorado distribution of an imitation controlled substance a “controlled substance offense” for career-offender purposes? *United States v. Thomas*, No. 17-1405 (OA Nov. 16, 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).

Is Colorado attempt broader than generic attempt, and is Colorado attempted robbery a crime of violence for career-offender purposes? *United States v. Mendez*, No. 18-1259 (OA March 20, 2019).

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 (brief filed Feb. 22, 2019).

**33. USSG § 4B1.5**

**34. USSG § 5C1.2 (safety valve)**

Is this defendant entitled to safety-valve relief, and did the district court err in concluding otherwise? *United States v. Molina-Villalobos*, No. 17-1411 (OA Nov. 14, 2018).

Is this defendant entitled to safety-valve relief, and did the district court err in concluding otherwise? *United States v. Montijo-Dominguez*, No. 18-2008 (OA March 20, 2019).

**35. USSG § 5G1.3**

Did the district court err by ignoring USSG § 5G1.3 when deciding whether to run this defendant's sentence concurrently or consecutively with an undischarged state sentence? *United States v. Finnesy*, No. 18-3045 (OA Jan. 23, 2019).

**36. USSG § 5K1.1**

**37. USSG § 5K2.14**

**38. USSG § 5G1.2(d)**

**J. Mandatory Minimums and Maximums**

**K. Reasonableness**

**1. Procedural**

Did the district court abuse its discretion by sua sponte presenting its own evidence and arguments in support of a higher sentence for this drug defendant; and should a different judge be reassigned on remand? *United States v. Aragon*, No. 18-1121 (OA Jan. 23, 2019).

Did the district court plainly err when it rejected this defendant's *variance* request on grounds that it did not meet *departure* requirements? *United States v. Gallardo-Medina*, Nos. 18-1125, 18-1126 (submitted on briefs March 19, 2019).

Did the district court's calculation errors render this defendant's sentence procedurally unreasonable? *United States v. Jones*, No. 18-2129 (reply brief filed Nov. 30, 2018).

Does judicial factfinding that triples a defendant's guidelines range violate the due process, notice, and jury provisions of the Fifth and Sixth Amendments? *United States v. Clark*, No. 18-3132 (reply brief filed Feb. 21, 2019).

Did the district court plainly err when it sentenced this defendant on two grouped counts to time exceeding the statutory maximum for those counts? *United States v. Clark*, No. 18-3132 (reply brief filed Feb. 21, 2019).

Did the district court procedurally err at this defendant's sentencing in refusing to hear statements from a character witness, announcing its tentative sentence before hearing arguments or allocution, and failing to consider all sentencing factors? *United States v. McClafin*, No. 18-1217 (reply brief filed Feb. 14, 2019).

Are the child pornography guidelines so inherently flawed as to render any sentence under them procedurally and substantively unreasonable? *United States v. Elliott*, No. 18-2105 (brief filed Jan. 7, 2019).

Did the district court procedurally err by considering only whether this defendant's sentence was sufficient for deterrence purposes, and not considering whether the sentence was greater than necessary? *United States v. Martinez-Palomino*, No. 18-1318 (gov't brief filed Feb. 27, 2019).

Did the district court's clearly erroneous factfinding about when this defendant reentered the United States render his sentence procedurally unreasonable? *United States v. Martinez-Palomino*, No. 18-1318 (gov't brief filed Feb. 27, 2019).

Did the district court violate this defendant's due-process rights by making sentencing findings that more than doubled his guidelines range by the preponderance-of-evidence standard, rather by the clear-and-convincing-evidence standard? *United States v. Robertson*, No. 18-2165 (brief filed Feb. 25, 2019).

## 2. Substantive

The Tenth Circuit held that this repeat bank-robber's sentence of time-served (33 days) was substantively unreasonable, and remanded for resentencing. The district court held a new sentencing hearing, revisited its reasons in light of the Tenth Circuit's opinion, and imposed the same sentence. Is this sentence substantively unreasonable, and should this case be remanded to a different judge for resentencing? *United States v. Walker*, No. 17-4103 (OA May 17, 2018) (gov't appeal).

Is this drug/gun defendant's 120-month sentence substantively unreasonable? *United States v. Vasquez*, No. 17-2189 (OA July 27, 2018).

Was the district court's above-guidelines sentence in this gun case substantively unreasonable? *United States v. Garcia*, No. 18-6033 (OA Nov. 14, 2018).

Is this drug and money-laundering defendant's 235-month top-of-the-guideline sentence substantively unreasonable? *United States v. Rubio-Sepulveda*, No. 18-1055 (OA Jan. 23, 2019).

Is this child-pornography defendant's five-year probationary sentence substantively unreasonable? *United States v. Cookson*, Nos. 18-3070, 18-3071 (OA March 20, 2019) (gov't appeal).

Is this marijuana defendant's 10-month above-guidelines prison sentence substantively unreasonable, especially given the district court's apparent consideration of an impermissible factor? *United States v. Bullcoming*, No. 18-6083 (reply brief filed Nov. 16, 2018).

Is this first-time offender's 180-month sentence on drug and gun convictions substantively unreasonable? *United States v. Dominguez-Perez*, No. 18-2063 (OA March 20, 2019).

Whether the district court's calculation errors rendered this defendant's sentence substantively unreasonable. *United States v. Jones*, No. 18-2129 (reply brief filed Nov. 30, 2018).

Whether this defendant's above-guideline felon-in-possession sentence is substantively unreasonable. *United States v. Cade*, No. 18-6110 (OA March 19, 2019).

Whether this child-pornography defendant's 10-year within-guidelines prison sentence is substantively unreasonable. *United States v. Blair*, No. 18-1220 (OA March 19, 2019).

Is this ICE defendant's within-guidelines sentence substantively unreasonable? *United States v. Clark*, No. 18-3132 (reply brief filed Feb. 21, 2019).

Is this unlawful-reentry defendant's 57-month below-guideline sentence substantively unreasonable? *United States v. Lopez-Urbina*, No. 18-2136 (reply brief filed Feb. 26, 2019).

Are the child pornography guidelines so inherently flawed as to render any sentence under them procedurally and substantively unreasonable? *United States v. Elliott*, No. 18-2105 (brief filed Jan. 7, 2019).

Is this unlawful-reentry defendant's above-guideline sentence, justified solely on deterrence grounds, substantively unreasonable? *United States v. Martinez-Palomino*, No. 18-1318 (gov't brief filed Feb. 27, 2019).

Is this unlawful-reentry defendant's within-guideline sentence substantively unreasonable? *United States v. Pennelas*, No. 18-2150 (brief filed Jan. 24, 2019).

Is this defendant's sentence substantively unreasonable? *United States v. Carter*, No. 18-8069 (brief filed Jan. 25, 2019).

**L. SORNA Sentencing Issues**

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

**N. Resentencing Issues**

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

**P. Constitutional Issues**

**1. Fifth Amendment Due Process**

**2. Sixth Amendment and Hearsay**

**XXVII. Sixth Amendment**

**A. Right to Effective Assistance of Counsel**

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)).

Did counsel's ineffectiveness in failing to investigate this state capital defendant's mental health result in the defendant being tried while incompetent? *Eaton v. Wilson*, Nos. 15-8013, 16-8086 (OA Sept. 27, 2018).

Was trial counsel ineffective in failing to investigate and call alibi witnesses in this kidnapping/robbery case? *United States v. Ford*, No. 17-1122 (reply brief filed May 21, 2018).

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 trial counsel in this Oklahoma capital case ineffective in failing to object to unconstitutional victim-impact evidence? *Bush v. Royal*, No. 16-6318 (OA March 21, 2019).

Was appellate counsel in this Oklahoma capital case ineffective in failing to challenge the constitutionality of Oklahoma law barring capital defendants who plead guilty from receiving a jury sentencing hearing? *Bush v. Royal*, No. 16-6318 (OA March 21, 2019).

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 (brief filed Oct. 12, 2018).

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

**C. Self-Incrimination**

**D. Self-Representation/Waiver of Counsel**

Was this defendant's waiver of counsel knowing and intelligent? What was the district court required to do to ensure that the waiver was valid? *United States v. Hansen*, No. 17-4159 (OA Sept. 27, 2018).

Did the district court reversibly err in denying this defendant's invocation of his right to represent himself on a limited remand to reconsider a condition of supervised release that the district court chose not to impose? *United States v. Russian*, No. 18-3173 (brief filed Jan. 7, 2019).

**E. Confrontation**

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. Jury Verdict**

Does Oklahoma's death-penalty law violate the Sixth Amendment, and is this state capital defendant entitled to 28 U.S.C. § 2254 relief? *Mitchell v. Royal*, No. 16-6258 (supplemental reply brief filed Nov. 9, 2018).

**G. Compulsory Process**

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

Did the district court err in denying this defendant's motion to dismiss on Sixth Amendment speedy-trial grounds? *United States v. Medina*, No. 17-1455 (OA Nov. 16, 2018).

Did the government violate this defendant's Sixth Amendment speedy-trial rights when it delayed prosecution of his case for more than a year after the indictment was returned? *United States v. Nixon*, No. 18-1154 (OA Jan. 24, 2019).

Did the district court err in denying this defendant's motion to dismiss on Sixth Amendment and statutory speedy-trial grounds? *United States v. Cortes-Gomez*, No. 18-3052 (OA March 20, 2019).

**XXIX. Standards of Review**

**A. Waiver**

**B. Forfeiture/Plain Error**

## C. De Novo Review

### XXX. Statutes of Limitations

### XXXI. Supervised Release

#### A. Revocation Issues

Was the district court's reliance on hearsay to revoke this defendant's supervised release reversible error? *United States v. Murphy*, No. 18-5052 (OA March 20, 2019).

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).

Did the district court lack jurisdiction to consider a violation at this defendant's final supervised-release revocation hearing after a no-probable-cause finding at the preliminary hearing? Was the evidenced presented at the final hearing sufficient to establish the alleged violation? *United States v. Pearson*, Nos. 18-6200, 18-6201 (brief filed Feb. 21, 2019).

#### B. Sentencing Issues (either initially or after revocation)

##### 1. Substantive

Is this defendant's revocation sentence substantively unreasonable? *United States v. Rosales-Trujillo*, Nos. 18-8023 & 18-8032 (OA March 20, 2019).

Is this defendant's sentence of lifetime supervised release substantively unreasonable? *United States v. Miller*, No. 19-8068 (gov't brief filed Feb. 27, 2019).

##### 2. 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 err in classifying this defendant's drug possession as a grade B violation of supervised release? *United States v. Draper*, No. 18-3187 (reply brief filed Feb. 13, 2019).

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).

##### 3. Unlawful Delegation of authority

##### 4. Assimilative Crimes Act (ACA) sentences

#### C. Conditions of Supervised Release

In this child-pornography case, does a special condition of release prohibiting the defendant from using any computer or device with internet access without his probation officer's permission involve a greater deprivation of liberty than necessary? *United States v. Blair*, No. 18-1220 (OA March 19, 2019).

Is the standard condition of release obligating the defendant to notify others that he or she poses a risk, should the probation officer so demand, unconstitutionally vague, and does it improperly delegate judicial authority to the probation office (distinguishing *Hull*)? *United States v. Cabral*, No. 18-1263 (OA March 18, 2019).

Did the district court plainly err when it imposed a special condition of release obligating this defendant to take any medication prescribed to him, without making required findings? *United States v. Malone*, No. 18-3213 (gov't brief filed Feb. 22, 2019).

## **XXXII. Trial Practice and Evidence Issues**

- A. Closing Argument**
- B. Confidential Informants**
- C. Cumulative Error**
- D. Demonstrative Evidence**
- E. Due Process**
- F. Eyewitness Identification Testimony**
- G. Judicial misconduct**
- H. Jury Instructions**
  - 1. Aiding and Abetting**
  - 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**
5. **Deliberate Avoidance/Ignorance**
6. **Elements (see also statute under which defendant tried)**
7. **Sentencing Elements**
8. **Flight**
9. **Guilt by Association/Guilt of Others**
10. **Investigative Techniques**
11. **Knowledge**
12. **Polygraphs**
13. **Proof**
14. **Spoliation**
15. **Theory of Defense/Affirmative Defense**

Did the district court err in denying this unlawful-reentry defendant his request to assert a duress defense at trial? *United States v. Arias-Quijada*, No. 18-6130 (submitted on briefs March 21, 2019).

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).

Did the district court err in refusing to instruct the jury on the defendant's necessity defense in this prison-contraband case? *United States v. Shields*, No. 18-1364 (brief filed Jan. 2, 2019).

Did the district court err when it instructed the jury not to consider this defendant's theory of defense (that he was guilty of a lesser-included offense) unless and until it acquitted him of the charged defense? *United States v. Antonio*, No. 18-2118 (brief filed Feb. 19, 2019).

16. **Unanimity**
17. **Voluntary Intoxication**
18. **Witness Cautionary Instructions**

Did the district court err in refusing to give a cautionary instruction regarding accomplice testimony? *United States v. Cortes-Gomez*, No. 18-3052 (OA March 20, 2019).

- I. **Jury Questions**
- J. **Mistrial**
- K. **Prior Convictions**
- L. **Prosecutorial Misconduct**

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)).

Did the state prosecutor in this capital case violate *Brady* when it suppressed impeaching evidence related to a jailhouse informant? *Eaton v. Wilson*, Nos. 15-8013, 16-8086 (OA Sept. 27, 2018).

Did the prosecutor in this case commit reversible misconduct during rebuttal closing argument? *United States v. Loya-Ramirez*, No. 18-1100 (OA March 21, 2019).

### **M. Right to be Present**

### **N. Right to Present Defense**

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)).

Was this defendant deprived of his right to present a defense by way of a witness's exonerating statements when the government caused the witness to invoke the Fifth Amendment and refused to grant her immunity, and the district court excluded her recorded statement? *United States v. Dalton*, No. 17-2146 (OA Sept. 25, 2018).

Did the district court deprive this defendant of his due process and statutory rights (under 18 U.S.C. § 3006A(e)(1)) by denying funds for a mental-health expert and excluding evidence at trial of his mental-health history? *United States v. Martinez*, No. 18-8007 (OA Nov. 16, 2018).

Did the district court deprive this false-statements defendant of his constitutional right to present a defense by excluding two defense expert witnesses? *United States v. Williams*, No. 18-1080 (OA March 21, 2019).

Did the district court violate this pro-se gun defendant's Fifth and Sixth Amendment rights to testify and present a defense when it limited his testimony about how the weapon he designed worked, and why he didn't think it was a federally-covered machine gun, on grounds that it was improper (un-noticed) expert testimony? *United States v. Bishop*, No. 18-4088 (gov't brief filed March 7, 2019).

### **O. Rule 106 (rule of completeness)**

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

Was the video of this defendant's SWAT-team arrest irrelevant and unduly prejudicial to his trial on gun charges? *United States v. Dalton*, No. 17-2146 (OA Sept. 25, 2018).

Was evidence of non-criminal (but nonetheless inflammatory) pictures and communications irrelevant and unduly prejudicial in this pornography/enticement case? *United States v. Isabella*, No. 17-1197 (OA Nov. 16, 2018).

Did the district court plainly err in excluding a witness's statements that the defendant thought he would get life in prison if he had a gun—relevant to his intent not to possess a gun? *United States v. Manning*, No. 17-8084 (OA Sept. 27, 2018).

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).

Did the district court erroneously exclude as irrelevant evidence proffered by this fraud defendant in support of his mistake defense? *United States v. Brevington*, No. 18-1357 (brief filed March 1, 2019).

**Q. Rule 404(b)**

Did the district court err in admitting F.R.E. 404(b) evidence as res gestae? *United States v. Williams*, No. 18-1080 (OA March 21, 2019).

Did the district court violate FRE 403 or 404(b) by admitting evidence that this robbery/gun defendant previously shot a person with the gun he was charged with unlawfully possessing? *United States v. Duncan*, No. 18-6009 (gov’t brief filed Nov. 14, 2018).

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 (reply brief filed March 5, 2019).

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

**S. Rules 601-615 (Witnesses)**

Did the district court abuse its discretion under F.R.E. 608(a) by preventing this defendant—whose credibility the government attacked during cross-examination—from presenting evidence of his truthful character? *United States v. Martinez*, No. 18-8007 (OA Nov. 16, 2018).

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

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).

Did the district court plainly err in admitting lay hearsay and expert testimony that the weapons at issue in this unregistered-machine-guns case were in fact machine guns? *United States v. Bishop*, No. 18-4088 (gov’t brief filed March 7, 2019).

Did the district court violate *Daubert* and FRE 702 by denying a hearing on this defendant’s motion to exclude expert GPS testimony? *United States v. Mathews*, No. 18-1215 (reply brief filed Feb. 8, 2019).

**U. Rules 801-807 (hearsay)**

Should the district court have admitted the recording of an unavailable witness’s exonerating statements under the catch-all provision of Federal Rule of Evidence 807? *United States v. Dalton*, No. 17-2146 (OA Sept. 25, 2018).

Did the district court err in excluding statements against penal interest, proffered under Fed. R. Evid. 804, that a third party made, admitting that the gun in this gun case was his? *United States v. Manning*, No. 17-8084 (OA Sept. 27, 2018).

Did the district court erroneously exclude as hearsay evidence proffered by this defendant for a non-hearsay purpose? *United States v. Brewington*, No. 18-1357 (brief filed March 1, 2019).

**V. Rule 901 (authentication)**

**W. 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).

**X. Rule 1006 (Summaries)**

**Y. Surrebuttal**

**Z. Voir Dire**

**XXXIII. Vagueness**

**XXXIV. Wiretap Issues (18 U.S.C. § 2510-2522)**

## Recently Added Cases

(most recent to least recent)

*United States v. O'Neal*, 18-1365 (brief filed March 8, 2019) (Fifth Amendment: confessions & *Miranda*).

*United States v. Romero, Jr.*, No. 18-2180 (brief filed March 4, 2019) (Fourth Amendment: Terry frisk, warrantless arrest).

*United States v. Brewington*, No. 18-1357 (brief filed March 1, 2019) (trial practice: hearsay, relevance; USSG § 2B1.1).

*Burke v. Bigelow*, No. 18-4132 (brief filed March 5, 2019) (28 U.S.C. § 2254).

*United States v. Hutson*, No. 18-1206 (brief filed Feb. 28, 2019) (18 U.S.C. § 287).

*United States v. Robertson*, No. 18-2165 (brief filed Feb. 25, 2019) (USSG §§ 2K2.1, 3A1.2; sentencing: procedural reasonableness; Fifth Amendment: due process).

*United States v. Wilson*, No. 18-7045 (brief filed Feb. 22, 2019) (USSG §§ 4B1.1, 4B1.2).

*United States v. Pearson*, No. 18-6200 (brief filed Feb. 21, 2019) (supervised release revocation issues).

*United States v. Gonzalez-Fierro*, No. 18-2168 (brief filed Feb. 19, 2019) (8 U.S.C. § 1326).

*United States v. Antonio*, No. 18-2118 (brief filed Feb. 19, 2019) (jurisdiction; theory of defense).

*United States v. Crockett*, No. 18-1322 (brief filed Feb. 13, 2019) (USSG § 2K2.1(b)(5)).

*United States v. Aaron*, No. 18-3232 (brief filed Feb. 12, 2019) (sentencing: departures).

*United States v. Gonzales*, No. 18-2170 (brief filed Feb. 8, 2019) (USSG § 3A1.2(c)).

*United States v. Golden*, No. 18-6163 (brief filed Feb. 6, 2019) (18 U.S.C. § 1791; fifth amendment (equal protection: *Batson*)).

*United States v. Malone*, No. 18-3213 (brief filed Jan. 31, 2019) (supervised release: conditions).

*United States v. Carter*, No. 18-8069 (brief filed Jan. 25, 2019) (USSG § 2K2.1; sentencing: substantive unreasonableness).

*United States v. Anzures*, No. 18-2115 (brief filed Jan. 25, 2019) (ACCA).

*United States v. Pennelas*, No. 18-2150 (brief filed Jan. 24, 2019) (sentencing: substantive unreasonableness; continuances).

*Ramirez v. Allbaugh*, No. 18-6127 (state's brief filed Feb. 20, 2019) (28 U.S.C. § 2254).

*United States v. Patton*, No. 3169 (brief filed Jan. 18, 2019) (USSG § 2B3.1; USSG § 3A1.2).

*United States v. Miles*, No. 18-6119 (OA March 21, 2019) (habeas issues: coram nobis).