

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*."

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 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).

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).

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

The Tenth Circuit has previously stated that when reviewing the denial of a motion to suppress, the Court “views the evidence in the light most favorable to the government.” Should the Court revisit this standard? *United States v. Knox*, No. 16-3324 (OA Sept. 27, 2017).

II. Competence

Whether the state court erroneously allowed a capital trial to proceed despite evidence that the defendant had decompensated since being found competent. *Grant v. Trammell*, No. 14-6131 (OA Jan. 21, 2016).

III. Confessions

IV. Continuances

Should the district court have continued this trial after it blocked the defendant’s theory of defense by announcing, on the first day of trial, that it would not give an anticipated jury instruction? *United States v. Glaub*, No. 17-1182 (brief filed Sept. 14, 2017).

V. Discovery

Did the district court err in denying any hearing or remedy for the defendant’s allegations of government discovery violations? *United States v. Riddle*, No. 16-4143 (OA Sept. 28, 2017).

Did the district court err in denying this defendant’s motion to dismiss as a remedy for the IRS’s destruction of audit files that the agents admitted supported this tax-evasion defendant’s defense? *United States v. Stegman*, No. 16-3321 (OA Sept. 27, 2017).

VI. Double Jeopardy

Did the defendant’s acquittal in a previous drug-conspiracy case bar his prosecution in this drug-conspiracy case? *United States v. Brown*, No. 16-6210 (OA Sept. 27, 2017).

Were two of the charges in this false-documents case multiplicitous? *United States v. Etenyi*, No. 16-3364 (OA Oct. 26, 2017).

Is the unit of prosecution for assault with a dangerous weapon (18 U.S.C. § 113(a)(3)) the act of assault rather than the number of victims, and do this defendant’s three convictions for a single assault violate double jeopardy? *United States v. Viarrial*, No. 17-2032 (brief filed Aug. 16, 2017).

VII. Eighth Amendment and Capital Issues

Whether capital-sentencing jury instructions, as exploited by the prosecutor, improperly limited the scope of relevant mitigating evidence. *Grant v. Trammell*, No. 14-6131 (OA Jan. 21, 2016).

Are Oklahoma’s jury instructions defining mitigating circumstances unconstitutionally limiting? *Simpson v. Royal*, No. 16-6191 (OA Nov. 16, 2017).

Did the death sentence in this case rest on an unreasonable and unconstitutional determination that the murder was heinous, atrocious, and cruel? *Simpson v. Royal*, No. 16-6191 (OA Nov. 16, 2017).

Did the admission of victim-impact evidence deprive this capital defendant of reliable sentencing? *Postelle v. Royal*, No. 16-6290 (brief filed Aug. 31, 2017).

VIII. Ex Post Facto Issues

IX. First Amendment

Were this defendant's hyperbolic Internet posts in response to police shootings and corruption protected by the First Amendment, and should the district court have dismissed his charges of interstate communications with intent to injure (18 U.S.C. § 875(c))? *United States v. Stevens*, No. 17-5044 (OA Nov. 14, 2017).

Were this defendant's letters to the USDA asking it to pay his private debts protected speech, and should the district court have dismissed this false-claims prosecution, or acquitted the defendant, or instructed the jury on the defendant's First Amendment defense? *United States v. Glaub*, No. 17-1182 (brief filed Sept. 14, 2017).

X. Forfeiture

Was the evidence sufficient to support the court's money forfeiture order in this wire-fraud case? *United States v. Matthew Channon*, No. 16-2254 (OA Nov. 16, 2017); *United States v. Brandi Channon*, No. 16-2285 (OA Nov. 16, 2017).

XI. Fourth Amendment Issues

A. Arrest Warrant

B. Consent

Did agents' persistence and deception turn this "consensual" encounter (a knock-and-talk that morphed into an interrogation in the agents' car) into an involuntary seizure? *United States v. Dates*, No. 16-2267 (reply brief filed Sept. 7, 2017).

Did this driver voluntarily consent to a search of his car after the officer who stopped him for speeding asked his wife intrusive questions and unlawfully prolonged the stop? *United States v. Ramos*, No. 17-2013 (OA Nov. 16, 2017).

Whether the Tenth Circuit should remand this case to determine whether this defendant's "consent" was fruit of a preceding unconstitutional warrantless seizure of his home, and whether law enforcement's search exceeded the scope of any consent. *United States v. Shrum*, No. 17-3059 (brief filed July 31, 2017).

Where the driver consented only to a "look real quick" in his car, did the trooper exceed the scope of this consent by searching in the trunk? *United States v. Vargas*, No. 17-3029 (OA Nov. 16, 2017).

C. Excessive Force

D. Fruit of the Poisonous Tree

E. Good Faith Exception

Did the district court err in finding that this search warrant—which the district court agreed lacked probable cause—was executed in good faith? *United States v. Dunn*, No. 15-1475 (OA Nov. 17, 2016).

Can *Leon* save the execution of a search warrant that was based on an invalid protective sweep? *United States v. Bagley*, No. 16-3305 (OA Sept. 28, 2017).

Absent a nexus between the place to the searched and the evidence sought, can the good-faith exception save execution of this unsupported search warrant? *United States v. Chambers*, No. 17-5046 (reply brief filed Sept. 28, 2017).

Did the district court erroneously consider information outside of the warrant affidavit and warrant process when it found good faith? Was the district court’s good-faith finding otherwise erroneous? *United States v. Knox*, No. 16-3324 (OA Sept. 27, 2017).

F. Government Actor

G. Hearing Issues

H. Inventory Searches

Did this investigatory “inventory search” of a rental car violated the Fourth Amendment? *United States v. Sanchez*, No. 17-4000 (OA Nov. 16, 2017).

I. Knock and Talk

J. Plain View Doctrine

K. Protective Sweeps

Did the district court err in finding that a protective sweep conducted inside a house, after the defendant was arrested (pursuant to an arrest warrant) at the front door of the house, was valid? *United States v. Bagley*, No. 16-3305 (OA Sept. 28, 2017).

Was a warrantless search of a house and its attic—after the defendant was arrested outside—justified as a protective sweep? *United States v. Banks*, No. 16-6322 (OA Sept. 27, 2017).

L. Scope of Warrantless Search

M. Search Incident to Arrest

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

Did the district court correctly find that allegations that a suspect in a stabbing and theft four miles away was present in the defendant’s home two days later did *not* establish probable cause that evidence of the stabbing would be found in the defendant’s home? *United States v. Dunn*, No. 15-1475 (OA Nov. 17, 2016).

Did a warrant to search for evidence of a stabbing and theft lack particularity when it purported to authorize a search for evidence including but not limited to mail, weapons, cell phones, computers, paperwork, and DNA? *United States v. Dunn*, No. 15-1475 (OA Nov. 17, 2016).

Whether the district court erred in granting blanket suppression for a *Franks* violation. *United States v. Gehrman*, No. 16-1208 (OA March 23, 2017) (gov't appeal).

Did this search-warrant affidavit contain a sufficient nexus to the property to be searched? *United States v. Ingram*, No. 16-6221 (OA Sept. 27, 2017).

Did the district court err in denying a *Franks* hearing on the defendant's claim that the search-warrant affidavit omitted material information that the defendant and his alleged associates were in prison during the time the affiant claimed they were involved in an ongoing drug conspiracy? *United States v. Ingram*, No. 16-6221 (OA Sept. 27, 2017).

Should evidence seized from the defendant's smartphone have been suppressed as the fruit of an unlawful search, where the search warrant for the phone was issued by a Kansas state judge, but executed in Missouri (beyond the Kansas judge's jurisdiction)? *United States v. Pacheco*, No. 16-3294 (OA Sept. 27, 2017).

Did officers exceed the scope of a search warrant for "records of narcotics transactions" when they seized the defendant's electronic devices? *United States v. Pacheco*, No. 16-3294 (OA Sept. 27, 2017).

Did this search warrant affidavit fail to establish a nexus between the place to be search and the evidence sought? *United States v. Chambers*, No. 17-5046 (reply brief filed Sept. 28, 2017).

O. Standing (reasonable expectation of privacy)

P. Terry Stops: Initial Detention

Q. Terry: Frisk

Did law-enforcement's discovery during a traffic stop that a passenger (1) had recently been arrested for weapons possession; and (2) was listed in a gang database provide reasonable suspicion for a *Terry* pat-down? *United States v. Hammond*, No. 17-1102 (OA Nov. 14, 2017).

R. Traffic Stops

Agents had probable cause to search this defendant's trunk for a 40-inch-long rifle. Did a search of a small storage compartment in the passenger area of the car exceed the permissible scope of the search? *United States v. Mirabal*, No. 16-2188 (OA Sept. 27, 2017).

Was the traffic stop of this defendant justified? *United States v. Brown*, No. 16-6210 (OA Sept. 27, 2017).

Was an isolated incident of drifting left of center sufficient to justify this traffic stop? *United States v. Ingram*, No. 16-6220 (OA Sept. 27, 2017).

Was this defendant's continued detention after being ticketed justified by his nervousness and inconsistent stories? *United States v. Chow*, No. 16-8115 (gov't brief filed April 8, 2017).

After an anonymous tip that a man was smoking marijuana in a car, officers blocked this defendant in with a police cruiser, lights on. Was this a detention, supported by reasonable suspicion? And did a search of credit cards in a bag in the car exceed the scope of any search for evidence of marijuana consumption? *United States v. Saulsberry*, No. 16-6306 (OA Sept. 27, 2017).

Was this traffic stop for improper lane change under New Mexico law supported by reasonable suspicion? *United States v. Vance*, No. 17-2008 (OA Nov. 16, 2017).

Was the district court's probable-cause finding in support of this traffic stop based on clearly erroneous factual findings? Was it based on a legally erroneous exercise of judicial notice? *United States v. Angeles*, No. 16-3354 (gov't brief filed Sept. 8, 2017).

Did an incidental lane breach give law enforcement a reasonable suspicion to support this traffic stop? *United States v. Angeles*, No. 16-3354 (gov't brief filed Sept. 8, 2017).

Was the district court's finding that the trooper reasonably believed that this defendant's brake light was out clearly erroneous? *United States v. Roberts*, No. 17-4021 (OA Nov. 16, 2017).

Was a second VIN inspection beyond the scope of this traffic stop for speeding? *United States v. Ramos*, No. 17-2013 (OA Nov. 16, 2017).

Did thirteen questions to a passenger, unrelated to this speeding stop, unlawfully prolong the stop? *United States v. Ramos*, No. 17-2013 (OA Nov. 16, 2017).

S. Warrantless Arrests

Was evidence that drugs were in a hotel room and that the defendant was seen walking toward the room with another person sufficient to establish probable cause to arrest the defendant? *United States v. Amador*, No. 17-3018 (brief filed July 26, 2017).

T. Warrantless Seizures

Was law enforcement's warrantless seizure of this defendant's home, when he was not suspected of any crime, unreasonable? *United States v. Shrum*, No. 17-3059 (brief filed July 31, 2017).

U. Warrantless Searches

Should the Tenth Circuit remand this case for findings on whether a later search warrant was an independent source of evidence observed during a warrantless search of this defendant's home? *United States v. Shrum*, No. 17-3059 (brief filed July 31, 2017).

Did the government fail to establish that a search of a hotel room pursuant to a warrant was an independent source of evidence discovered during a previous warrantless search? *United States v. Amador*, No. 17-3018 (brief filed July 26, 2017).

Did the district court properly conclude that a gun found during a warrantless search of this defendant's car would have been inevitably discovered by either plain view or a legal inventory search? *United States v. Metts*, No. 17-2111 (brief filed Sept. 27, 2017).

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).

XIII. Fifth Amendment: Due Process

Did the district court err in denying any evidentiary hearing on this defendant's selective-prosecution and vindictive-prosecution claims? *United States v. Portillos*, No. 16-1323 (OA Sept. 25, 2017).

XIV. Fifth Amendment: Confessions & *Miranda*

Should the district court have suppressed this murder defendant's statements on grounds that law enforcement continued to question him after he invoked his *Miranda* rights, in violation of *Edwards v. Arizona*? *United States v. Yepa*, No. 16-2060 (OA April 27, 2017).

Whether this postal employee was "in custody" when postal investigators questioned him, and whether (1) he should have been given a full *Miranda* warning in addition to the *Garrity* warning the investigators gave him, and (2) his statements were voluntary. *United States v. Lemon*, No. 16-6213 (OA Sept. 28, 2017).

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).

Did the government violate *Braswell* during this tax-evasion trial when it attributed records of the corporation to the individual defendant? *United States v. Stegman*, No. 16-3321 (OA Sept. 27, 2017).

Did agents' persistence and deception turn this knock-and-talk that morphed into an interrogation in the agents' car into a custodial interrogation requiring *Miranda* warnings? *United States v. Dates*, No. 16-2267 (reply brief filed Sept. 7, 2017).

XV. Habeas Issues

A. 28 U.S.C. § 2241

B. 28 U.S.C. § 2254

Whether the state appellate court's IAC, jury-instruction, and *Batson* decisions in this capital case were unreasonable, and whether the federal district court therefore improperly deferred to the state appellate court in denying habeas relief. *Grant v. Trammell*, No. 14-6131 (OA Jan. 21, 2016).

Whether cumulative-error claims are cognizable in habeas proceedings, and whether this capital case presents reversible cumulative error. *Grant v. Trammell*, No. 14-6131 (OA Jan. 21, 2016).

This Oklahoma prisoner filed a § 2254 petition to challenge, on due-process grounds, the state court's misapplication of newly-discovered-evidence rules in his state postconviction proceeding.

Did the district court erroneously deny habeas relief by misapplying AEDPA standards to the prejudice prong of *Strickland*? *Newmiller v. Raemisch*, No. 16-1396 (reply brief filed April 5, 2017).

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).

Did the Oklahoma Court of Criminal Appeals unreasonably apply *Chapman* when it held that the trial court's exclusion of a letter from the deceased complainant recanting his sex-abuse claims was harmless (and is a COA warranted here)? *Puckett v. Rios*, No. 16-6349 (reply brief filed July 5, 2017).

Should the district court have granted habeas relief on this defendant's *Brady* claim? *Lebere v. Trani*, No. 16-1499 (brief filed March 3, 2017).

Should the district court have granted habeas relief on this defendant's IAC claim that his trial lawyer failed to challenge the admission of critical evidence at his murder trial? *Coones v. Shelton*, No. 16-3329 (brief filed March 8, 2017).

Having found three related constitutional violations, did the district court use the wrong test to determine whether this state murder defendant was entitled to federal habeas relief? *Acosta v. Raemisch*, No. 17-1131 (reply brief filed July 12, 2017).

Whether the district court should have granted relief, or at least a hearing, on this defendant's claim that the Colorado Court of Appeals unreasonably held that he "impliedly" waived his right to trial counsel when he twice fired his lawyers shortly before trial. *Vreeland v. Zupan*, No. 16-1503 (state's brief filed Sept. 28, 2017).

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*, No. 15-8013 (brief filed June 19, 2017).

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*, No. 15-8013 (brief filed June 19, 2017).

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 (brief filed Aug. 17, 2017).

Should the district court have granted relief on this state prisoner's IAC, confrontation, and due-process claims? *Thompson v. Allbaugh*, No. 17-6127 (brief filed Aug. 16, 2017).

Should the district court have granted relief, or at least a hearing, on this state capital-defendant's ineffective-assistance-of-counsel, prosecutorial-misconduct, and capital-instructional-error claims? *Underwood v. Royal*, No. 16-6262 (state's brief filed Sept. 29, 2017).

Should the district court have granted § 2254 relief to this state kidnapping defendant, who was convicted despite the fact that the district court's jury instructions omitted an essential element of

the crime, an error to which trial counsel ineffectively failed to object? *Hagos v. Raemisch*, No. 17-1076 (brief filed July 17, 2017).

Should the district court have granted relief or at least an evidentiary hearing on this state prisoner's claims of juror misconduct (a sleeping juror) and ineffective assistance of counsel (for not alerting the court to the sleeping juror)? *Smith v. Aldridge*, No. 17-6149 (brief filed Sept. 25, 2017).

C. 28 U.S.C. § 2255

Whether Wyoming and Nebraska burglary convictions are violent felonies for ACCA purposes after *Johnson*, and whether this claim is cognizable in a § 2255 proceeding. *United States v. Driscoll*, No. 16-8118 (reply brief filed March 17, 2017).

Should the district court have appointed counsel to represent this mentally impaired defendant on his § 2255 petition? *United States v. Jaramillo*, No. 16-1491 (brief filed May 16, 2017).

Should the district court have held an evidentiary hearing on this defendant's ineffective-assistance-of-counsel claims? *United States v. Bong*, No. 16-3323 (reply brief filed Sept. 7, 2017).

Did the district court err when it sua sponte held that this defendant's *Brady* claim was time-barred? *United States v. Bong*, No. 16-3323 (reply brief filed Sept. 7, 2017).

Is this defendant entitled to a certificate of appealability and § 2255 relief on his *Johnson*-related ACCA claim? *United States v. Rhodes*, No. 17-6096 (OA Nov. 14, 2017).

Did this petitioner's claim that his attorney failed to consult with him about an appeal relate back to his original claim that counsel was ineffective in failing to file an appeal? *United States v. Smith*, No. 17-3075 (brief filed Aug. 14, 2017).

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

XVI. Indictment Issues

A. Amendments

Did the government's evidence and argument on this false-statements count constructively and impermissibly broaden the indictment by allowing for a conviction based on an uncharged statement? *United States v. Miller*, No. 16-1231 (OA Sept. 25, 2017).

Was the government's amendment to the indictment during the second week of this tax-evasion trial permissible? *United States v. Stegman*, No. 16-3321 (OA Sept. 27, 2017).

B. Duplicity

In this unlawful-prescriptions case, the government prosecuted the doctor-defendant on a "drug cocktail" theory, charging multiple controlled substances in a single count. Were these charges duplicitous? *United States v. Miller*, No. 16-1231 (OA Sept. 25, 2017).

C. Grand Jury Issues

D. Sufficiency of the Indictment (Sixth Amendment)

E. Variance

Did the state court's refusal to instruct the jury consistent with the dates in the bill of particulars result in an unconstitutional variance? *Vreeland v. Zupan*, No. 16-1503 (state's brief filed Sept. 28, 2017).

Did the government's addition of overt acts to the indictment just before trial amount to an unconstitutional variance? *United States v. Ray*, No. 16-1306 (reply brief filed Oct. 10, 2017).

XVII. Jurisdictional Issues

XVIII. Motion Practice

XIX. Offenses

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

Was the evidence sufficient to sustain this 18 U.S.C. § 1253 conviction, and did the jury instructions fairly inform the jury of the charge? *United States v. Etenyi*, No. 16-3364 (OA Oct. 26, 2017).

B. 8 U.S.C. § 1326 (illegal reentry)

Should the district court have dismissed this illegal-reentry charge on grounds that the underlying administrative removal order was invalid? *United States v. Almanza-Vigil*, No. 17-2007 (OA Nov. 16, 2017).

Was this defendant's Colorado drug conviction an aggravated felony under 8 U.S.C. § 1101, thus properly triggering his removal? *United States v. Almanza-Vigil*, No. 17-2007 (OA Nov. 16, 2017).

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)

Was the district court's failure to instruct the jury, consistent with *Wolfname*, on the essential assault element of 18 U.S.C. § 111 plain error? *United States v. Jereb*, No. 16-4127 (OA Nov. 14, 2017).

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

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

Was the jury instruction defining "claim" overbroad and inconsistent with Supreme Court precedent? *United States v. Glaub*, No. 17-1182 (brief filed Sept. 14, 2017).

H. 18 U.S.C. § 371 (conspiracy)

Defendant Wells, a journalist, reported a pending land-use protest online. He was convicted of conspiring to trespass on public lands. Was the evidence sufficient to support his convictions, in light of his First Amendment defense? *United States v. Wells*, No. 16-4006 (OA Nov. 17, 2016).

I. 18 U.S.C. § 666 (bribery)

Was the evidence insufficient in this bribery case to establish the statutory value element, or is that element vague as applied in this case? *United States v. Hardin*, No. 16-1229 (OA May 8, 2017).

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)

Were this defendant's hyperbolic Internet posts in response to police shootings and corruption protected by the First Amendment, and should the district court have dismissed his charges of interstate communications with intent to injure (18 U.S.C. § 875(c))? *United States v. Stevens*, No. 17-5044 (OA Nov. 14, 2017).

Whether this defendant's Facebook posts were protected by the First Amendment, and whether the evidence was otherwise sufficient to convict him. *United States v. Tinoco*, No. 17-2059 (brief filed July 31, 2017).

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)

Whether the evidence was insufficient to prove that the defendant knowingly possessed a gun found in his girlfriend's house. *United States v. Benford*, No. 15-6163 (supplemental briefs filed Oct. 28, 2016).

Was the evidence sufficient to support this defendant's gun conviction? *United States v. Banks*, No. 16-6322 (OA Sept. 27, 2017).

Was the evidence sufficient to establish this defendant's constructive possession of firearms and ammunition? *United States v. Martinez*, No. 16-1393 (reply brief filed Sept. 29, 2017).

Should this defendant's § 922(g) conviction be reversed for insufficient evidence that the defendant knowingly possessed (actually or constructively) the firearms and ammunition specified in the indictment, on the date specified in the indictment? *United States v. Silva*, No. 17-2030 (brief filed Oct. 2, 2017).

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, and is federal kidnapping a crime of violence for purposes of § 924(c)? *United States v. Jessie Hopper*, No. 15-2190 (OA Jan. 17,

2017); *United States v. Ford*, No. 17-1122 (brief filed Sept. 21, 2017) (and should this defendant have been granted § 2255 relief?).

Is a Hobbs Act robbery a crime of violence for purposes of 18 U.S.C. § 924(c)(3)(A)? *United States v. Melgar-Cabrera*, No. 16-2018 (OA May 9, 2017).

Does *Johnson* invalidate the residual clause of § 924(c), and is a Hobbs Act robbery a crime of violence for purposes of § 924(c)? *United States v. Dubarry*, No. 16-4067 (appeal from denial of § 2255 relief; brief filed Sept. 15, 2016); *United States v. Pasley*, No. 17-6033 (brief filed April 5, 2017); *United States v. Lopez-Aguilar*, No. 17-2121 (brief filed Sept. 5, 2017).

Was the evidence sufficient in this case to prove that the defendant intentionally possessed a firearm *in furtherance* of drug crimes? *United States v. Gabourel*, No. 16-6227 (OA May 10, 2017).

Is armed bank robbery a crime of violence for purposes of § 924(c)? *United States v. Cravens*, No. 16-8111 (OA Sept. 12, 2017); *United States v. Wade*, No. 16-1364 (OA Nov. 14, 2017); *United States v. Smith*, No. 17-3086 (brief filed Sept. 11, 2017).

Is the residual clause of § 924(c) unconstitutionally vague; is armed bank robbery under 18 U.S.C. § 2113(a) and (d) a crime of violence; and should the district court have granted this defendant § 2255 relief? *United States v. Lloyd*, No. 16-2219 (reply brief filed Aug. 16, 2017).

Is the residual clause of § 924(c) unconstitutionally vague; is aggravated assault on a federal officer under 18 U.S.C. § 111(a) & (b) a crime of violence; and should the district court have granted § 2255 relief? *United States v. Wing*, No. 17-1007 (OA Sept. 25, 2017).

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 (reply brief filed Sept. 11, 2017).

Was the evidence at trial sufficient to convict the defendant of aiding and abetting § 924(c), when the defendant did not direct the informant to deliver a gun at the same time he delivered drugs to a customer? *United States v. Renteria*, No. 16-4204 (gov't brief filed July 13, 2017).

Was the evidence sufficient to sustain this defendant's § 924(c) conviction? *United States v. Banks*, No. 16-6322 (OA Sept. 27, 2017).

Whether arson under 18 U.S.C. § 844(i) is a crime of violence for purposes of § 924(c). *United States v. Salas*, No. 16-2170 (OA Sept. 27, 2017); *United States v. Lawless*, No. 17-1148 (brief filed Aug. 21, 2017).

Whether the residual clause of § 924(c) is unconstitutionally vague; whether federal armed bank robbery is a crime of violence; and whether the district court should have granted this defendant § 2255 relief. *United States v. Salvador*, No. 17-1081 (brief filed May 24, 2017); *United States v. Higley*, No. 17-1111 (brief filed June 12, 2017) (18 U.S.C. § 924(c)); *United States v. Riforgiate*, No. 17-1135 (reply brief filed Aug. 31, 2017).

Whether assault with a dangerous weapon under 18 U.S.C. § 113(a)(3) is a crime of violence for § 924(c) purposes. *United States v. Viarrial*, No. 17-2032 (brief filed Aug. 16, 2017); *United States v.*

Muskett, No. 17-2123 (brief filed Oct. 11, 2017) (and whether this defendant is entitled to § 2255 relief).

Whether the residual clause of § 924(c) is unconstitutionally vague; whether *Autobee* and *Kundo* were wrongly decided; and whether the district court should have granted this defendant § 2255 relief. *United States v. Morgan*, No. 17-1172 (reply brief filed Sept. 19, 2017).

Whether the residual clause of § 924(c) is unconstitutionally vague, and whether federal carjacking is a crime of violence. *United States v. Silva*, No. 17-2030 (brief filed Oct. 2, 2017).

Whether federal assault resulting in serious bodily injury (18 U.S.C. § 113(a)(6)) is a crime of violence for purposes of 18 U.S.C. § 924(c)(3). *United States v. Mann*, No. 17-2117 (gov't appeal) (gov't brief filed Oct. 5, 2017).

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

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

Did the government prosecute this defendant under the wrong subsection of 18 U.S.C. § 1028, and was the evidence insufficient to prove the charge? *United States v. Etenyi*, No. 16-3364 (OA Oct. 26, 2017).

Assuming that the defendant fraudulently persuaded an unwitting driver's license officer to produce a driver's license in his name, can he be convicted of "aiding and abetting" her production of the license under 18 U.S.C. § 1028? *United States v. Etenyi*, No. 16-3364 (OA Oct. 26, 2017).

T. 18 U.S.C. § 1028A (identity theft)

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

Was the evidence insufficient to prove that any allegedly false statement was made to an FDIC-insured financial institution? *United States v. Riddle*, No. 16-4143 (OA Sept. 28, 2017).

V. 18 U.S.C. § 1201 (kidnapping)

W. 18 U.S.C. § 1341 (mail fraud)

X. 18 U.S.C. § 1343 (wire fraud)

Y. 18 U.S.C. § 1344 (bank fraud)

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

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

Was the evidence sufficient to sustain this defendant's witness-tampering conviction? *United States v. Banks*, No. 16-6322 (OA Sept. 27, 2017).

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

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

Was the complainant’s conclusory testimony that she was solicited to commit “sex acts” sufficient to prove the “sex act” element of this crime, and did the district court plainly err in failing to define “sex act” for the jury? *United States v. Lacy*, No. 17-3119 (brief filed Oct. 11, 2017).

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

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

Was the evidence sufficient to support this defendant’s money-laundering conspiracy conviction? *United States v. Brown*, No. 16-6210 (OA Sept. 27, 2017).

Was the evidence sufficient to sustain this defendant’s money-laundering convictions? *United States v. Banks*, No. 16-6322 (OA Sept. 27, 2017).

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

Did the district court overbroadly define “sexual abuse” in its instructions to this jury? *United States v. Magnan*, No. 17-8026 (brief filed July 31, 2017).

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

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

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

Was the evidence of this businessman’s connection to massage parlors sufficient to prove that he committed prostitution-related crimes? Alternatively, was the evidence sufficient to overcome his entrapment defense? *United States v. Tee*, No. 16-3243 (OA Sept. 28, 2017).

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

Did Congress exceed its commerce power when it enacted 18 U.S.C. § 2423(c) (the “noncommercial prong”), and is this subsection unconstitutional either facially or as applied to this defendant? *United States v. Durham*, No. 16-6075 (OA March 23, 2017).

Was the evidence of knowledge and intent sufficient to support this defendant’s conviction? *United States v. Lacy*, No. 17-3119 (brief filed Oct. 11, 2017).

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

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

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

Was the government’s evidence sufficient to prove constructive possession of PCP under *Little* or otherwise? *United States v. Gabourel*, No. 16-6227 (OA May 10, 2017).

Was the government’s evidence sufficient to prove that this defendant—who appeared a single time at a drug-conspiracy headquarters and was videotaped counting cash—distributed or aided and abetted the distribution of heroin? *United States v. Arciniega-Zetin*, No. 16-4145 (OA Nov. 14, 2017).

Was the evidence sufficient to sustain this defendant's drug convictions? *United States v. Banks*, No. 16-6322 (OA Sept. 27, 2017).

Was evidence of this defendant's presence as a passenger in a truck in which drugs were concealed sufficient to sustain his drug trafficking and conspiracy convictions? *United States v. Rodriguez-Flores*, No. 17-2039 (brief filed Aug. 28, 2017).

NN. 21 U.S.C. § 846 (drug conspiracy)

Was the testimony of a drug-addicted gang member, absent other corroborating evidence, sufficient to sustain the defendant's drug conspiracy conviction? *United States v. Gabourel*, No. 16-6227 (OA May 10, 2017).

Was this defendant's mere presence among drug dealers sufficient to convict him of a drug conspiracy and other drug counts? *United States v. Grant*, No. 16-6228 (OA May 10, 2017).

Was the evidence sufficient to support this defendant's drug-conspiracy conviction? *United States v. Brown*, No. 16-6210 (OA Sept. 27, 2017).

Was the evidence sufficient to prove the defendant's participation in the conspiracy as charged? *United States v. Marquez*, No. 17-2028 (gov't brief filed Oct. 6, 2017).

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

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

Is the National Firearms Act, as applied to silencers and short-barreled rifles that are made, possessed, and transferred within the borders of Kansas, a valid exercise of Congressional power? *United States v. Cox*, No. 17-3034 (brief filed Aug. 21, 2017).

QQ. 26 U.S.C. § 7201 (tax evasion)

RR. 26 U.S.C. § 7212

SS. 28 U.S.C. § 455 (recusal)

The defendants were convicted of conspiring to trespass on closed public lands as a land-use protest. The Southern Utah Wilderness Alliance urged the government to prosecute and helped the government collect evidence, and its legal director attended nearly every day of trial. This director was close personal friends with the trial judge. Should the judge have recused himself? *United States v. Wells*, No. 16-4006 (OA Nov. 17, 2016); *United States v. Lyman*, No. 16-4007 (submitted Nov. 17, 2016).

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

Does 49 U.S.C. § 46504 require specific intent, and did the district court erroneously exclude intoxication evidence offered to disprove intent? *United States v. Lynch*, No. 16-1242 (OA Sept. 25, 2017).

Is the "intimidation" element of 49 U.S.C. § 46504 overbroad or unconstitutionally vague? *United States v. Lynch*, No. 16-1242 (OA Sept. 25, 2017).

XX. Pleas

- A. Acceptance of Plea**
- B. Appeal Waiver**
- C. Breach**
- D. Rejection of Plea Agreement**
- E. Withdrawal of Plea**

This defendant moved before sentencing to withdraw his plea, arguing that the negotiation process was rushed on the day of the plea, and that the plea documents were not fully translated or explained to him. Did the district court err in denying the motion? *United States v. Cano-Babena*, No. 16, 3298 (OA Oct. 26, 2017).

Should the district court have granted this defendant's pre-sentencing motion to withdraw his plea? *United States v. Qualls*, No. 17-2046 (reply brief filed Sept. 22, 2017).

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

Did the district court err in ordering restitution for repairs to public lands that were not directly attributable to the defendants in this land-use protest case? *United States v. Wells*, No. 16-4006 (OA Nov. 17, 2016); *United States v. Lyman*, No. 16-4007 (submitted Nov. 17, 2016).

Did the district court exceed its statutory authority when it ordered restitution for losses sustained by individuals who were not "victims" of the offense? *United States v. Ballard*, No. 16-3274 (OA Sept. 27, 2017).

Did the district court exceed its statutory authority when it ordered restitution for amounts that did not constitute "losses" sustained by a victim as a result of the offense? *United States v. Ballard*, No. 16-3274 (OA Sept. 27, 2017).

Did the district court err in imposing restitution absent proof of a causal nexus between the offense conduct and the claimed victim's losses in this child-pornography case involving the "Angela Series"? *United States v. Davis*, No. 17-4040 (gov't brief filed Sept. 6, 2017).

Did the district court err in ordering restitution for the "replacement cost" of stolen property that was returned to the victim, absent sufficient proof of the property's value? *United States v. Howard*, No. 17-6125 (brief filed Sept. 5, 2017).

XXII. Rules of Criminal Procedure

A. Rule 8 (Joinder/Severance)

Should the district court have severed the defendants in this drug-conspiracy case due to antagonistic defenses and different degrees of culpability? *United States v. Brown*, No. 16-6210 (OA Sept. 27, 2017).

Whether the district court erred in denying severance, given admission of codefendant's drug-smuggling in this case charging operation of an unregistered aircraft. *United States v. Wiles*, No. 16-8074 (OA Sept. 12, 2017).

B. Rule 12 (motions)

Whether the district court erred in holding that whether a person has been adjudicated or committed for 18 U.S.C. § 924(g)(4) purposes is an issue of fact rather than an issue of law subject to Rule 12(b)(3)(B)(v) dismissal. *United States v. McLinn*, No. 17-3083 (brief filed Aug. 18, 2017).

C. Rule 32 (sentencing procedures)

D. Rule 33 (new trial)

E. Rule 41 (search & seizure)

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

XXIV. Second Amendment Issues

Does the National Firearms Act as applied to making, possessing, and transferring silencers and short-barreled rifles violate the Second Amendment? *United States v. Cox*, No. 17-3034 (brief filed Aug. 21, 2017).

XXV. Sentencing

A. Allocution

B. Apprendi

This defendant's child-pornography sentence was enhanced because he was found to have engaged in a "pattern of activity" under USSG § 4B1.5. The enhancement was based on allegations of conduct that was never charged, admitted, or proven to a jury. Did imposition of this enhancement based on judge-found facts violate the defendant's due-process and sixth amendment rights? *United States v. Janatsch*, No. 16-6324 (submitted Sept. 28, 2017).

Did the district court's imposition of a sentence five times the top of the guideline range based on judge-found facts about an incident unrelated to the crime of conviction violate the defendant's fifth and sixth amendment rights? *United States v. Goossen*, No. 16-2252 (OA Nov. 16, 2017).

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

Whether this defendant is entitled to § 2255 relief from his ACCA sentence on grounds that his prior convictions for Texas aggravated assault (which required only recklessness) and Texas burglary (which did not require an entry contemporaneous with criminal intent) are not violent felonies. *United States v. Perry*, No. 16-8098 (reply brief filed May 15, 2017).

Whether a Kansas aggravated-battery conviction is a violent felony for ACCA purposes. *United States v. McMahan*, No. 16-3308 (OA Oct. 26, 2017).

Whether an Oregon arson conviction is a violent felony for ACCA purposes, and whether the district court should have granted this defendant § 2255 relief. *United States v. Buck*, No. 16-8103 (brief filed Jan. 13, 2017).

Whether this defendant is entitled to a certificate of appealability and § 2255 relief on his *Johnson* claim that his predicate burglaries no longer qualify as violent felonies. *United States v. Westover*, No. 17-8013 (reply brief filed April 14, 2017).

Whether New Mexico residential burglary is a violent felony for ACCA purposes, and whether the district court should have granted this defendant § 2255 relief. *United States v. Turrieta*, No. 16-2281 (OA Sept. 27, 2017; response to gov't supplemental brief re: structure v. enclosed space filed Oct. 11, 2017); *United States v. Tolentino*, No. 17-2099 (brief filed Aug. 8, 2017); *United States v. Sanchez*, No. 17-2064 (abated pending decision in *Turrieta*); *United States v. Sandoval*, No. 17-2062 (brief filed Aug. 2, 2017).

Whether Oklahoma manslaughter in the first degree is a violent felony for ACCA purposes, and whether this defendant is entitled to a certificate of appealability and § 2255 relief. Also whether *Voisine* abrogates *Zuniga-Soto* and *Armijo*. *United States v. Bouziden*, No. 17-6031 (OA Sept. 28, 2017).

Should the Court grant this defendant a certificate of appealability and § 2255 relief on his claim that his prior burglary convictions are not ACCA predicates under today's law? *United States v. Couchman*, No. 17-6018 (brief filed April 4, 2017).

Whether Wyoming and Oregon burglaries are violent felonies for ACCA purposes, and whether the district court should have granted this defendant § 2255 relief. *United States v. Murphy*, No. 17-8010 (reply brief filed June 9, 2017).

Whether New Mexico third-degree robbery is a violent felony for ACCA purposes, and whether the district court should have granted this defendant § 2255 relief. *United States v. Garcia*, No. 17-2019 (reply brief filed Aug. 21, 2017).

Is Kansas robbery an ACCA predicate, and should the district court have granted this defendant § 2255 relief? *United States v. Bong*, No. 16-3323 (reply brief filed Sept. 7, 2017).

Did three of this defendant's prior convictions—all committed on the same day—qualify as separate convictions under the ACCA, and, if not, is this defendant entitled post-*Johnson* to § 2255 relief? *United States v. Brunken*, No. 17-6085 (reply brief filed Oct. 10, 2017).

Is Oklahoma's general conspiracy statute divisible, and is this defendant entitled to § 2255 relief post-*Mathis*? *United States v. Trent*, No. 17-6041 (reply brief filed Sept. 26, 2017).

Whether New Mexico attempted armed robbery and aggravated battery are violent felonies under the ACCA, and whether this defendant is entitled to § 2255 relief. *United States v. Dean*, No. 17-2113 (brief filed Aug. 28, 2017).

Whether Oklahoma second-degree rape, maiming, and burglary are violent felonies under the ACCA, and whether this defendant is entitled to § 2255 relief. *United States v. Galbreath*, No. 17-6121 (brief filed Aug. 23, 2017).

Did the district court erroneously find that it likely relied on the unconstitutional residual clause in granting this defendant § 2255 relief after *Johnson*? *United States v. Britto*, No. 17-5033 (response brief filed Oct. 11, 2017) (gov't appeal).

Whether New Mexico armed robbery and aggravated battery are violent felonies for ACCA purposes. *United States v. Serrano*, No. 17-2068 (brief filed July 27, 2017).

Whether New Mexico attempted murder and attempted aggravated battery are violent felonies for ACCA purposes, and whether this defendant is entitled to § 2255 relief. *United States v. Thompson*, No. 17-2011 (brief filed July 26, 2017).

Whether New Mexico burglary and armed robbery are crimes of violence, and whether this defendant is entitled to § 2255 relief. *United States v. Hopson*, No. 17-2018 (brief filed July 26, 2017).

Whether Oklahoma robbery with firearms, second-degree burglary, and assault and battery with a deadly weapon are violent felonies for ACCA purposes, and whether this defendant is entitled to § 2255 relief. *United States v. Byers*, No. 17-6089 (brief filed July 26, 2017); *United States v. Smith*, No. 17-6128 (brief filed July 24, 2017).

Whether Oklahoma second-degree burglary and pointing a weapon are ACCA predicates, and whether this defendant is entitled to § 2255 relief. *United States v. Washington*, No. 17-6079 (brief filed July 19, 2017).

Whether this defendant's prior convictions constitute only a single countable offense under the ACCA, and whether Oklahoma forcible sodomy is divisible or an ACCA predicate here. *United States v. Degeare*, No. 17-6080 (reply brief filed Oct. 10, 2017).

Is Arkansas burglary an ACCA predicate, did *Mathis* abrogate *Spring*, and should this defendant have been granted § 2255 relief after *Johnson*? *United States v. Robinson*, No. 17-6046 (brief filed Sept. 15, 2017).

Whether New Mexico residential burglary is an ACCA predicate. *United States v. Aires*, No. 17-2076 (brief filed Sept. 5, 2017).

Whether New Mexico aggravated assault with a deadly weapon and New Mexico aggravated burglary are violent felonies for purposes of the ACCA, and whether this defendant is entitled to § 2255 relief. *United States v. Pacheco*, No. 17-2115 (brief filed Sept. 26, 2017).

Whether federal bank robbery (18 U.S.C. § 2113(a)) is an ACCA predicate. *United States v. Ybarra*, No. 17-2131 (brief filed Sept. 26, 2017).

D. Burden of Proof

E. Capital Sentencing

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

G. Departures and Variances

This defendant was resentenced after winning *Johnson* relief that dramatically reduced his total offense level. Was the district court's upward variance at resentencing to double the guideline range excessive and unreasonable? *United States v. Richardson*, No. 16-6314 (gov't brief filed Feb. 15, 2017).

The district court varied upward in this 924(c) case to impose the guideline sentence that the district court believed would have applied to the defendant's dismissed robbery count. But the district court was wrong about what that guideline sentence would have been. Was the resulting variant sentence the result of plain procedural error? *United States v. Ross*, No. 16-3335 (OA Oct. 26, 2017).

H. Fines & Assessments

Did the district court err when it imposed a \$5,000.00 special assessment under 18 U.S.C. § 3014(a) on this indigent defendant? *United States v. Janatsch*, No. 16-6324 (submitted Sept. 28, 2017).

Whether the district court clearly erred in finding that this defendant was able to pay a \$1,000.00 fine. *United States v. Sanchez*, No. 17-1166 (reply brief filed Oct. 5, 2017).

I. Guidelines Sections

1. USSG § 1B1.2

Did the district court err when it relied on relevant conduct (rather than on the offense of conviction) to determine the offense guideline section and base offense level? *United States v. Jereb*, No. 16-4127 (OA Nov. 14, 2017).

2. USSG § 1B1.3 (relevant conduct)

Did the district court err in basing its drug-quantity finding on evidence of sales that were made before the defendant joined the conspiracy? *United States v. Johnson*, No. 16-3280 (OA Sept. 28, 2017).

Did the district court clearly err in calculating this defendant's drug quantity based on an alleged coconspirator's contradictory testimony? *United States v. Pacheco*, No. 16-3294 (OA Sept. 27, 2017).

Did the district court err in calculating drug quantity? *United States v. Banks*, No. 16-6322 (OA Sept. 27, 2017).

Whether the district court erred when it attributed to this defendant for sentencing purposes prescription drug sales that were made outside the boundaries of the charged drug conspiracy? *United States v. Wilcox*, No. 16-4094 (OA Nov. 16, 2017).

Did the evidence support the district court's finding that the defendant's involvement in the conspiracy began 8 months, rather than only 5 months, before the end date? *United States v. Valdez*, No. 16-3363 (gov't brief filed Sept. 5, 2017).

Was there sufficient evidence of the defendant’s knowledge and agreement to attribute five kilograms of cocaine to him? *United States v. Solis*, No. 17-2027 (gov’t cross-appeal No. 17-2035) (brief filed Oct. 10, 2017).

3. USSG § 2A2.2

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

4. USSG § 2A3.5 (SORNA)

5. USSG § 2A4.1

a) subsection (b)(2)(A) (permanent or life-threatening bodily injury)

6. USSG § 2A6.1

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

7. USSG § 2B1.1

a) subsection (b) (loss amount)

Did the district court err when it calculated actual loss (1) despite the government’s statement during a *Lafler/Frye* hearing that it would only pursue intended loss, (2) based on speculative, unsupported assumptions, and (3) based on either not-charged or acquitted conduct? *United States v. Johnson*, No. 16-4146 (OA Sept. 28, 2017); *United States v. Riddle*, No. 16-4143 (OA Sept. 28, 2017).

Did the district court err in holding that consumer payments that merely pass through a bank are “receipts from a financial institution” for purposes of applying a “greater than \$1 million” enhancement? *United States v. Johnson*, No. 16-4146 OA Sept. 28, 2017).

b) subsection (b)(2) (victim enhancement)

c) subsection (b)(10)(C) (sophisticated means)

Did the district court erroneously rely on acquitted conduct to apply a sophisticated-means enhancement? *United States v. Johnson*, No. 16-4146 (OA Sept. 28, 2017).

8. USSG § 2B3.1 (robbery)

Did the district court err when it applied a 4-level enhancement for abduction because this bank-robbery defendant told the bank manager to give him access to the bank’s vault, and then followed the manager and a teller to the vault? *United States v. Archuleta*, No. 16-1297 (OA May 9, 2017).

Does brandishing a firearm equal physical restraint under § 2B3.1(b)(4)(B), and should the Tenth Circuit reconsider *United States v. Fisher*, 132 F.3d 1327 (10th Cir. 1997)? *United States v. Wade*, No. 16-1364 (OA Nov. 14, 2017).

Did the district court erroneously conclude that the guidelines do not incorporate the statutory definition of “firearm” (or define “firearm” at all) for this enhancement? *United States v. Smith*, No. 17-8014 (brief filed July 17, 2017).

9. USSG § 2C1.1

10. USSG § 2D1.1

Did the district court err in finding that this defendant knew that the methamphetamine he drove from Phoenix to Kansas City was from Mexico, and adding 2 levels for knowing importation under § 2D1.1(B)(5)? *United States v. Valdez*, No. 16-3363 (gov’t brief filed Sept. 5, 2017).

11. USSG § 2G2.2 (child pornography)

Whether the district court erred in applying the 5-level “pattern of activity” enhancement where (1) the conduct did not qualify as “sexual abuse or exploitation,” and (2) the hearsay statements on which the enhancement was based were unreliable. *United States v. Pulham*, No. 16-8019 (OA Jan. 19, 2017).

Did the district court err in failing to address the defendant’s arguments that his unlikely recidivism and family circumstances justified a variance? *United States v. Soto*, No. 16-3276 (OA Sept. 28, 2017).

12. USSG § 2K2.1

Was the evidence sufficient to support a finding that the firearms in this case—which were never recovered—were capable of accepting a large capacity magazine, such as to support a base-offense level 20, under § 2K2.1(a)(4)(B)? *United States v. Arevalo-Magana*, No. 16-5121 (gov’t brief filed Dec. 15, 2016).

Did the district court rely on the wrong standard (focusing on “accessibility”) for establishing either actual or constructive possession for purposes of a 2-level enhancement under § 2K2.1(b)(1)(A)? *United States v. Beierle*, No. 16-8040 (OA Sept. 12, 2017).

Did the district court base its § 2K2.1(b)(6)(B) enhancement on a clearly erroneous factual finding? *United States v. Beierle*, No. 16-8040 (OA Sept. 12, 2017).

Did the district court apply the wrong standard when it enhanced the defendant’s sentence under § 2K2.1(b)(5)? *United States v. Francis*, No. 16-1449 (OA Nov. 14, 2017).

Whether Colorado lewd molestation is a crime of violence under § 2K2.1(a)(2), and whether the district court erred in applying a conduct-based inquiry to make it so. *United States v. Gieswein*, No. 16-6366 (OA Nov. 16, 2017).

Was the evidence of “close proximity” insufficient to support a 4-level increase under § 2K2.1(b)(6)(B)? *United States v. Templeton*, No. 17-2091 (gov’t brief filed Sept. 26, 2017).

Did the district court err in applying an enhancement under § 2K2.1(b)(6)(B)? *United States v. Ferrell*, No. 17-1024 (OA Nov. 14, 2017).

Did the district court erroneously add two silencers to the number of firearms involved in this defendant’s offense under § 2K2.1(b)(1)(B) absent any evidence that he knew the devices at issue were silencers? *United States v. Salas*, No. 17-2098 (brief filed Oct. 5, 2017).

Are New Mexico conspiracy to commit armed robbery, and federal threat (under 18 U.S.C. § 115(a)(1)) crimes of violence for purposes of § 2K2.1? *United States v. Aguirre*, No. 17-2047 (brief filed Oct. 6, 2017).

13. USSG § 2K2.2

14. USSG § 2L1.2 (immigration offenses)

Whether the Oklahoma crime of concealing stolen property is an aggravated felony for purposes of § 2L1.2(b)(1)(C). *United States v. Lugo-Tovar*, No. 16-6259 (gov’t brief filed April 6, 2017).

Whether Kansas aggravated assault is a crime of violence under § 2L1.2(b)(1)(A)(ii)(2015). *United States v. Corral-Garcia*, No. 17-3104 (brief filed Aug. 16, 2017).

15. USSG § 2T1.1 (tax loss)

Did the district court erroneously calculate this tax-evasion defendant's tax loss by relying on acquitted conduct? *United States v. Stegman*, No. 16-3321 (OA Sept. 27, 2017).

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

Did the district court erroneously apply a sophisticated-means enhancement to this tax-evasion defendant? *United States v. Stegman*, No. 16-3321 (OA Sept. 27, 2017).

17. USSG § 2Q2.1

18. USSG § 3A1.3

Does pointing a gun = physical restraint, and is *Fisher* wrong about this? *United States v. Viarrial*, No. 17-2032 (brief filed Aug. 16, 2017).

19. USSG § 3B1.1

20. USSG § 3B1.2 (mitigating role)

Did the district court err by comparing this defendant to “the universe of persons participating in similar crimes” in order to deny him a minor-role adjustment? *United States v. Orduno-Ramirez*, No. 17-3010 (gov't brief filed June 27, 2017).

Should the district court have granted this defendant a minimal-participant reduction? *United States v. Valdez*, No. 16-3363 (gov't brief filed Sept. 5, 2017).

Did the district court err in denying this defendant a minor or minimal-role reduction on grounds that she provided necessary services and a car to her bank-robber boyfriend? *United States v. Morris*, No. 17-3074 (reply brief filed Aug. 2, 2017).

21. USSG § 3B1.3 (abuse of trust)

22. USSG § 3C1.1 (obstruction)

Can an obstruction enhancement be applied to conduct obstructing the investigation of an offense of acquittal? *United States v. Stegman*, No. 16-3321 (OA Sept. 27, 2017).

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

Must the defendant know he is being pursued to trigger this enhancement, and, if so, was the evidence here sufficient to support an enhancement for reckless endangerment during flight? *United States v. Cano-Bahena*, No. 16, 3298 (OA Oct. 26, 2017).

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

Did the district court plainly err by failing to follow the guidelines' grouping rules? *United States v. Lymon*, No. 17-2077 (brief filed Sept. 6, 2017).

25. USSG § 3E1.1

Should this defendant have been granted a 2-level reduction for acceptance of responsibility where he admitted his conduct and went to trial solely to challenge the question of his intent? *United States v. Lynch*, No. 16-1242 (OA Sept. 25, 2017).

In this bank-robbery case, the district court denied the addict-defendant any reduction for acceptance of responsibility on grounds that he had tried to have drugs brought into the jail shortly after his guilty plea (which he entered less than three weeks after his arrest). Was this an abuse of discretion? *United States v. Downing*, No. 17-6058 (gov't brief filed Aug. 10, 2017).

26. USSG § 4A1.1

27. USSG § 4A1.2

Did the district court err when it assessed a criminal-history point for the defendant's juvenile-status offense—possessing less than an ounce of marijuana in Colorado, where such conduct is legal for an adult? *United States v. Archuleta*, No. 16-1297 (OA May 9, 2017).

Did the district court erroneously assess a criminal-history point for this defendant's previous conviction under a local ordinance, and does the categorical approach apply to determine whether a violation of a local ordinance is also a violation of state law? *United States v. Abeyta*, No. 17-1025 (OA Nov. 14, 2017).

Whether the district court committed plain error by assessing 2 points for an 11-month sentence that was not imposed within 10 years of the commencement of the instant offense. *United States v. Corral-Garcia*, No. 17-3104 (brief filed Aug. 16, 2017).

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

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

Whether Wyoming convictions for aggravated assault are crimes of violence for career-offender purposes, and whether the district court erred in relying on guideline commentary to conclude that they are. *United States v. Jereb*, No. 16-4127 (OA Nov. 14, 2017).

Whether Colorado second-degree assault is a crime of violence for career-offender purposes. *United States v. Ontiveros*, No. 16-1362 (OA Sept. 27, 2017).

Whether Colorado robbery is a crime of violence (and whether *Harris* was wrong). *United States v. Thomas*, No. 16-1321 (gov't brief filed Feb. 28, 2017).

Whether Utah second-degree felony aggravated assault is categorically a crime of violence. *United States v. Bettcher*, No. 16-4165 (OA Sept. 28, 2017) (gov't appeal).

Whether a Hobbs Act robbery (18 U.S.C. § 1951) is a crime of violence under the 2016 guidelines. *United States v. O'Connor*, No. 16-3300 (OA Sept. 27, 2017).

Whether the following are crimes of violence for career-offender purposes under the 2016 guidelines: 18 U.S.C. § 111(a)(1) and (b) (assaulting, resisting, impeding, intimidating, and interfering with a correctional officer with infliction of bodily injury), and a DC conviction for assault on a police officer. *United States v. Kendall*, No. 16-6344 (OA Sept. 28, 2017).

Whether a Colorado conviction for assault on a peace officer is a crime of violence for career-offender purposes, and whether this defendant—sentenced under the mandatory guidelines (pre-*Booker*)—is entitled to *Johnson* relief under § 2255 notwithstanding *Beckles*. *United States v. Greer*, No. 16-1282 (OA Sept. 25, 2017).

Whether Kansas aggravated assault is a crime of violence for career-offender purposes. *United States v. Benton*, No. 16-3332 (OA Sept. 27, 2017).

Whether this defendant's § 924(c) conviction, predicated on a Hobbs Act robbery, is a crime of violence for career-offender purposes. *United States v. Murphy*, No. 16-3255 (OA Nov. 14, 2017).

Whether aggravated assault under 18 U.S.C. § 111(b) is a crime of violence for career-offender purposes. *United States v. Murphy*, No. 16-3255 (OA Nov. 14, 2017).

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. Mulay*, No. 17-3031 (OA Nov. 13, 2017).

Whether Colorado distribution is a controlled-substance offense for career-offender purposes. *United States v. McKibbin*, No. 16-1493 (OA Nov. 14, 2017).

Is Kansas aggravated battery under K.S.A. 21-5413(b)(1)(B) a crime of violence? *United States v. Williams*, No. 17-3071 (brief filed Aug. 30, 2017).

Whether Texas manufacturing and attempted manufacturing are controlled-substance offenses for career-offender purposes, and whether the district court erred by refusing to apply *Mathis* when resentencing the defendant after granting § 2255 relief. *United States v. Cash*, No. 17-7018 (brief filed Aug. 23, 2017).

Whether the mandatory guidelines are subject to vagueness challenges, and whether New Mexico robbery is a crime of violence. *United States v. Rhoads*, No. 17-2018 (brief filed Aug. 15, 2017).

Are New Mexico conspiracy to commit armed robbery, and federal threat (under 18 U.S.C. § 115(a)(1)) crimes of violence for purposes of § 2K2.1? *United States v. Aguirre*, No. 17-2047 (brief filed Oct. 6, 2017).

30. USSG § 4B1.5

31. USSG § 5K1.1

32. USSG § 5K2.14

33. USSG § 5G1.2(d)

Did the district court clearly err when it imposed consecutive sentences without proper grouping? *United States v. Lymon*, No. 17-2077 (brief filed Sept. 6, 2017).

J. Mandatory Minimums and Maximums

Did the district court erroneously sentence this conspiracy defendant to twice the statutory maximum? *United States v. Archuleta*, No. 16-1297 (OA May 9, 2017).

Did the district court violate *Alleyne* by imposing a statutory mandatory minimum 10-year sentence when the jury was not instructed that quantity was an element of the offense to be found beyond a reasonable doubt? *United States v. Johnson*, No. 16-3280 (OA Sept. 28, 2017).

Did the district court erroneously rely on this defendant's prior sexual-abuse convictions in sentencing him to the mandatory minimum under 18 U.S.C. § 2252A(b)(2)? *United States v. Hebert*, No. 17-8028 (gov't brief filed Sept. 6, 2017).

Did the government fail to prove that this defendant was previously convicted of a qualifying drug felony for 21 U.S.C. § 851 purposes when it relied solely on the previous case's docket entries, which did not specify the drug of conviction? *United States v. Hayes*, No. 17-4060 (brief filed Oct. 10, 2017).

Did the district court plainly err when it failed to conduct the colloquy required by 21 U.S.C. § 851(b)? *United States v. Hayes*, No. 17-4060 (brief filed Oct. 10, 2017).

K. Reasonableness

1. Procedural

Whether the consecutive sentences imposed in this unlawful-prescriptions and false-statement case were procedurally unreasonable. *United States v. Miller*, No. 16-1231 (OA Sept. 25, 2017).

Did the district court's rejection of the defendant's arguments for leniency without explanation render his upward-variant sentence procedurally unreasonable? *United States v. Goossen*, No. 16-2252 (OA Nov. 16, 2017).

The district court varied upward in this 924(c) case to impose the guideline sentence that the district court believed would have applied to the defendant's dismissed robbery count. But the district court was wrong about what that guideline sentence would have been. Was the resulting variant sentence the result of plain procedural error? *United States v. Ross*, No. 16-3335 (OA Oct. 26, 2017).

Was the district court's reliance on information outside the record at sentencing, without prior notice to the defendant, plain procedural error? *United States v. Huntsman*, No. 17-4031 (submitted Nov. 16, 2017).

Must district courts find *clear and convincing* evidence before imposing an upward variance of more than double the defendant's guideline sentence? *United States v. Scott*, No. 16-1474 (reply brief filed Sept. 11, 2017).

Did the district court err in relying on double hearsay, inconsistent statements, and uncorroborated unreliable witnesses when it imposed an upward variance of more than double this defendant's guideline sentence? *United States v. Scott*, No. 16-1474 (reply brief filed Sept. 11, 2017).

Did the district court commit procedural error because it failed to give an adequate explanation for the 25-year above-guidelines sentence it imposed in this bank robbery/924(c) case? *United States v. Smith*, No. 17-3086 (brief filed Sept. 11, 2017).

Did the district court procedurally err when it imposed an 84-month above-guideline sentence in this wire-fraud/money-laundering case without first fully calculating and considering the guidelines? *United States v. Evans*, No. 17-1185 (brief filed Sept. 25, 2017).

2. Substantive

Was this defendant's guideline sentence of 24 months for a supervised release violation, with 12 months ordered to run consecutively to his other state and federal sentences, substantively unreasonable? *United States v. Rocha-Rodriguez*, No. 16-1045 (gov't brief filed June 6, 2016).

Is this child-abuse defendant's 480-month sentence substantively unreasonable? *United States v. Durham*, No. 16-6075 (OA March 23, 2017).

Is this drug-conspiracy defendant's life sentence substantively unreasonable? *United States v. Lopez-Garcia*, No. 16-3174 (submitted Sept. 28, 2017).

Was this defendant's statutory-maximum child-pornography sentence substantively unreasonable? *United States v. Janatsch*, No. 16-6324 (submitted Sept. 28, 2017).

Was this defendant's 27-month illegal-reentry sentence substantively unreasonable? *United States v. Tovilla-Martinez*, No. 16-1331 (OA Sept. 25, 2017).

Was this drug defendant's sentence—compared with the sentences of his codefendants—substantively unreasonable? *United States v. Cano-Babena*, No. 16, 3298 (OA Oct. 26, 2017); *United States v. Valdez*, No. 16-3363 (gov't brief filed Sept. 5, 2017).

Was the upward variance in this drug case—to five times the top of the guideline range—substantively unreasonable? *United States v. Goossen*, No. 16-2252 (OA Nov. 16, 2017).

Are these jailer-defendants' 12- and 24-month respective downward-variant sentences for civil-rights offenses substantively unreasonable? *United States v. Brown*, No. 17-7016; *United States v. Barnes*, No. 17-7017 (consolidated government appeals; OA Nov. 14, 2017).

Whether this sixty-year-old non-violent bank-robbery defendant's 60-month sentence is substantively unreasonable. *United States v. Keith*, No. 16-6374 (reply filed Oct. 2, 2017).

Whether this methamphetamine addict's 30-year above-guideline sentence for bank robbery plus a 924(c) count is substantively unreasonable. *United States v. Jordan*, No. 16-3370 (reply brief filed July 27, 2017).

Whether this drug addict's high-end 240-month sentence for an out-of-character, non-violent, weaponless bank robbery is substantively unreasonable. *United States v. Downing*, No. 17-6058 (gov't brief filed Aug. 10, 2017).

Whether a 200-month sentence for this defendant, convicted of helping her boyfriend rob a bank plus a 924(c) count, is substantively unreasonable. *United States v. Morris*, No. 17-3074 (reply brief filed Aug. 2, 2017).

Whether this mail and wire fraud defendant's 5-year probationary sentence (with an advisory guideline range of 78-97 months) is substantively unreasonable. *United States v. Sample*, No. 17-2086 (gov't brief filed Aug. 25, 2017) (gov't appeal).

Is this wire-fraud/money-laundering defendant's 84-month above-guideline sentence substantively unreasonable? *United States v. Evans*, No. 17-1185 (brief filed Sept. 25, 2017).

L. SORNA Sentencing Issues

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

Is Oklahoma first-degree manslaughter a predicate offense for three-strikes purposes, and did the district court err in relying on a minute entry in an appearance docket to so find here? *United States v. Leaverton*, No. 17-5001 (OA Nov. 16, 2017).

N. Resentencing Issues

O. Constitutional Issues

1. Fifth Amendment Due Process

Did the trial court's repeated denial of evidentiary hearings violate this defendant's due-process rights? *United States v. Johnson*, No. 16-4146 (OA Sept. 28, 2017); *United States v. Riddle*, No. 16-4143 (OA Sept. 28, 2017).

Should the district court have disqualified the prosecutor in this case? *United States v. Riddle*, No. 16-4143 (OA Sept. 28, 2017).

2. Sixth Amendment and Hearsay

Whether the district court erred in applying the 5-level "pattern of activity" enhancement in this child-pornography case where the hearsay statements on which the enhancement was based were unreliable. *United States v. Pulbam*, No. 16-8019 (OA Jan. 19, 2017).

XXVI. Sixth Amendment

A. Right to Effective Assistance of Counsel

Whether trial counsel's failure to investigate this capital defendant's complex mental condition and capacity constituted ineffective assistance of counsel. *Grant v. Trammell*, No. 14-6131 (OA Jan. 21, 2016).

Whether counsel was ineffective in this capital case by failing to introduce organic-brain-damage evidence. *Littlejohn v. Trammell*, No. 14-6177 (OA Jan. 20, 2016).

Did the trial court's initial appointment of counsel over the defendant's protest, and later revocation of that appointment, result in the defendant receiving ineffective assistance of counsel? *United States v. Lyman*, No. 16-4007 (submitted Nov. 17, 2016).

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).

Was this defendant denied his right to conflict-free counsel when the district court (1) appointed CJA counsel who had previously represented two witnesses, and (2) excluded the defendant from proceedings in which it concluded that counsel was not conflicted? *United States v. Johnson*, No. 16-4146 (OA Sept. 28, 2017).

Did a search warrant for email accounts that included attorney-client communications, but that did not impose any filtering requirements, violate the Sixth Amendment (especially given the deficiency of the government's self-directed filter)? *United States v. Johnson*, No. 16-4146 (OA Sept. 28, 2017).

Was trial counsel ineffective in (1) giving inaccurate advise and failing to correct the district court's inaccurate advise with respect to whether and how the defendant's prior convictions might be used to impeach him if he testified; and (2) failing to listen to jail audio recordings that were admitted against the defendant at trial? *United States v. Prieto*, No. 16-1333 (OA Sept. 27, 2017).

Should the district court have granted habeas relief on this defendant's IAC claim that his trial lawyer failed to challenge the admission of critical evidence at his murder trial? *Coones v. Shelton*, No. 16-3329 (brief filed March 8, 2017).

After this murder defendant's state public defenders suddenly withdrew four days before trial, he was without counsel for several days, during which key events occurred that changed the course of trial. Was this deprivation of counsel structural error and per se reversible error? *Acosta v. Raemisch*, No. 17-1131 (reply brief filed July 12, 2017).

Whether the Colorado Court of Appeals unreasonably concluded that this defendant "impliedly" waived his right to trial counsel when he twice fired attorneys shortly before trial. *Vreeland v. Zupan*, No. 16-1503 (state's brief filed Sept. 28, 2017).

Was capital counsel ineffective in this state case for failing to (1) investigate, prepare, and present lay witnesses; (2) request a second-degree-murder instruction; (3) object to prosecutorial misconduct; (4) object to erroneous HAC instructions; and (5) objection to an instruction that limited consideration of mitigation? *Simpson v. Royal*, No. 16-6191 (OA Nov. 16, 2017).

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*, No. 15-8013 (brief filed June 19, 2017).

Were trial and appellate counsel ineffective in not addressing the Flynn Effect as mitigating evidence? *Postelle v. Royal*, No. 16-6290 (brief filed Aug. 31, 2017).

Was trial counsel ineffective in (1) failing to bring juror misconduct to the district court's attention; (2) failing to adequately advise the defendant about a favorable plea offer; (3) failing to challenge an illegal search; and (4) failing to challenge an inventory search, and did the district court err in denying these claims without an evidentiary hearing? *United States v. Cash*, No. 17-7018 (brief filed Aug. 23, 2017).

Was trial counsel ineffective in (1) failing to object to the district court's use of conspiracy-wide drug quantity at sentencing; (2) failing to consult with the defendant about an appeal? *United States v. Smith*, No. 17-3075 (brief filed Aug. 14, 2017).

Was trial counsel ineffective in failing to investigate and call alibi witnesses in this kidnapping/robbery case? *United States v. Ford*, No. 17-1122 (brief filed Sept. 21, 2017).

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

Did the district court's refusal, on the first day of trial, to grant a continuance and allow appointed counsel to withdraw so that retained counsel could represent the defendant violate the defendant's right to counsel of choice? *United States v. Lemon*, No. 16-6213 (OA Sept. 28, 2017).

Did the trial court err when it failed to ask the defendant personally about motions of unclear provenance that were filed seeking new counsel and to withdraw the defendant's guilty plea? *United States v. Soto*, No. 16-3276 (OA Sept. 28, 2017).

Did the district court deny this defendant counsel of choice when it denied him access to seized funds—not traced to any crime charged—to fund his defense, in violation of *United States v. Louis*? *United States v. Johnson*, No. 16-4146 (OA Sept. 28, 2017).

Whether appellate counsel was ineffective in failing to raise IAC claims with respect to trial counsel, and in failing to challenge the trial court's exclusion of a defense expert witness in this state capital trial. *Wood v. Royal*, No. 16-6001 (OA Nov. 14, 2017).

Whether trial counsel were ineffective in failing to investigate and present mitigating evidence in this capital case. *Wood v. Royal*, No. 16-6001 (OA Nov. 14, 2017).

Was counsel ineffective in advising this defendant with respect to plea negotiations, and in failing to challenge his designation as a career offender? *United States v. Dodds*, No. 17-3116 (brief filed Sept. 6, 2017).

C. Self-Incrimination

D. Self-Representation

E. Confrontation

Did exclusion of a testifying coconspirator's plea agreement and sentencing exposure violate this defendant's confrontation rights? *United States v. Mirabal*, No. 16-2188 (OA Sept. 27, 2017).

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).

Did the district court improperly exclude defense evidence offered to counter government evidence admitted in violation of in limine orders (on grounds that the defendants did not object when the government's evidence came in)? *United States v. Johnson*, No. 16-4146 (OA Sept. 28, 2017); *United States v. Riddle*, No. 16-4143 (OA Sept. 28, 2017).

Did the district court violate this tax-evasion defendant's confrontation rights by admitting testimonial statements and documents that his deceased tax preparer provided the government during its investigation of the case? *United States v. Stegman*, No. 16-3321 (OA Sept. 27, 2017).

Did the district court violate this assault defendant's confrontation rights by limiting her cross-examination of the complainant with respect to the defendant's self-defense defense? *United States v. Tapaba*, No. 17-2104 (brief filed Sept. 5, 2017).

F. Impartial Jury

When several jurors expressed concern after seeing a Hispanic man sitting in a truck in the jurors' parking lot, and one juror even followed the man and took his picture, fearing "intimidation or repercussions to members of the jury," did the district court err in refusing to declare a mistrial, or in failing to ask the jurors more probing questions before denying a mistrial? *United States v. Rios-Morales*, No. 16-3233 (submitted Sept. 28, 2017).

G. Compulsory Process

XXVII. Speedy Trial (statutory and constitutional) & Interstate Agreement on Detainers

Act

Did the district court err when it held that the defendant's motion to dismiss on speedy-trial grounds, filed during jury selection (three days before the jury was empaneled), was untimely? *United States v. Riddle*, No. 16-4143 (OA Sept. 28, 2017).

This defendant was detained in state custody nearly 10 months before his federal indictment. Were the state proceedings merely a ruse to bypass the charging time limits in the federal Speedy Trial Act, and should the district court have dismissed this indictment? *United States v. Asfour*, No. 16-6231 (OA Sept. 27, 2017).

Did the government violate the Interstate Agreement on Detainers Act when it arrested this defendant while he was in state custody and shuttled him back and forth before trying him on federal charges? *United States v. Ray*, No. 16-1306 (reply brief filed Oct. 10, 2017).

Did the district court erroneously deny this defendant's motion to dismiss for statutory speedy-trial violations? *United States v. Ray*, No. 16-1306 (reply brief filed Oct. 10, 2017).

XXVIII. Standards of Review

A. Waiver

B. Forfeiture/Plain Error

C. De Novo Review

XXIX. Supervised Release

A. Revocation Issues

Did the district court plainly err in finding sufficient evidence that this defendant violated SORNA and revoking his release? *United States v. Adams*, No. 17-5048 (gov't brief filed Oct. 6, 2017).

Did the magistrate commit legal error under Fed. R. Crim. P. 32.1(b)(1) by denying this defendant confrontation at his preliminary revocation hearing? *United States v. McFarland*, No. 17-6143 (brief filed Oct. 11, 2017).

Was the testimony at the final revocation hearing sufficient to prove the offenses (state crimes for which the defendant had been arrested) alleged to support revocation? *United States v. McFarland*, No. 17-6143 (brief filed Oct. 11, 2017).

B. Sentencing Issues (either initially or after revocation)

1. Substantive
2. Procedural
3. Unlawful Delegation of authority
4. Assimilative Crimes Act (ACA) sentences

C. Conditions of Supervised Release

This defendant was on supervised release following his conviction and sentence for failure to register. He had previously completed sex-offender treatment, and his original sex crime was 12 years old. His violations of release did not involve sexual misconduct. Did the district court abuse its discretion when it imposed special conditions of a new term of supervised release requiring sex-offender treatment, and prohibiting unsupervised contact with the defendant's own children? *United States v. Garcia*, No. 16-1011 (submitted May 9, 2017).

Did the district court unconstitutionally delegate sentencing authority to a private treatment contractor when it imposed a condition of supervised release obligating the defendant to “successfully complete” treatment with a private contractor, placing no limits on that contractor’s discretion to decide what constitutes “successful completion” of treatment? *United States v. Garcia*, No. 16-1011 (submitted May 9, 2017).

Did the district court abuse its discretion when it imposed a special supervised-release condition of mental-health treatment based only on the court’s speculation that the defendant had gone “off the rail at times”? *United States v. Jereb*, No. 16-4127 (OA Nov. 14, 2017).

Do the occupational and associational restrictions here—including requiring probation approval for any employment—improperly delegate a judicial function to the probation office? *United States v. Jenks*, No. 16-4119 (reply brief filed June 8, 2017).

Did the district court err when it imposed an occupational condition without making necessary findings? *United States v. Jenks*, No. 16-4119 (reply brief filed June 8, 2017).

Did the district court err when it ordered this firearms defendant to submit to sex-offender treatment as a special condition of supervised release without explaining why? *United States v. Francis*, No. 16-1449 (OA Nov. 14, 2017).

Did the district court make sufficient findings to limit this defendant’s contact with his own daughter while on supervised release? *United States v. Cobee*, No. 17-3099 (reply brief filed July 24, 2017).

Did the district court erroneously rely on a 19-year-old sex-crime conviction (that occurred when the defendant was 17 years old) when it imposed special sex-offender conditions of release in this gun case? *United States v. Ford*, No. 17-2073 (gov’t brief filed Sept. 18, 2017).

A standard condition of release provides that the probation officer may, in the officer's discretion, require the defendant to notify another person that the defendant poses a risk to that person. Is this condition impermissibly vague, and does it unlawfully delegate judicial authority to the probation officer and constitute an unlawful occupational restriction? *United States v. Hull*, No. 17-1086 (reply brief filed Oct. 10, 2017).

The district court ordered this bank-fraud defendant to participate in drug testing and/or treatment and refrain from using alcohol while on supervised release. Was this condition supported by the evidence, and did it unlawfully delegate discretion to the probation officer? *United States v. Wright*, No. 17-1191 (brief filed Sept. 25, 2017).

XXX. Trial Practice and Evidence Issues

A. Closing Argument

B. Confidential Informants

C. Cumulative Error

Whether cumulative sentencing-phase error warrants relief in this capital habeas case. *Littlejohn v. Trammell*, No. 14-6177 (OA Jan. 20, 2016).

Whether trial error, including admission of 404(b) evidence, prosecutorial misconduct, and the district court's failure to probe potential juror bias, cumulatively denied the defendant a fair trial. *United States v. Rios-Morales*, No. 16-3233 (submitted Sept. 28, 2017).

Whether instructional error and prosecutorial misconduct cumulatively denied this defendant a fair trial. *United States v. Giannukos*, No. 17-3067 (brief filed Aug. 25, 2017).

Whether improper expert testimony, prior bad acts, and hearsay evidence cumulatively deprived this defendant of a fair trial. *United States v. Martinez*, No. 16-1393 (reply brief filed Sept. 29, 2017).

D. Demonstrative Evidence

E. Due Process

F. Eyewitness Identification Testimony

G. Judicial misconduct

Did the district court improperly ask a DEA agent, who was interpreting phone calls between alleged drug conspirators, whether the conversation might have involved pounds instead of just ounces? *United States v. Marquez*, No. 17-2028 (gov't brief filed Oct. 6, 2017).

H. Jury Instructions

This defendant's theory of defense included an attack on law enforcement's investigative techniques. The district court instructed the jury that the evidence was collected pursuant to a lawful search, and that the government was not obligated to use any particular investigation method. The court refused an instruction that if investigative methods left jurors with a reasonable doubt, they must acquit. Did this imbalanced instruction shift the burden of proof or deprive the defendant of his right to present his theory of defense? *United States v. Jenks*, No. 16-4119 (reply brief filed June 8, 2017).

Did the trial court properly respond to this jury’s questions asking (1) what evidence was related to a particular count; and (2) whether the count referenced the wrong drug-buy date? *United States v. Olea-Monarez*, No. 16-3330 (reply brief filed Sept. 13, 2017).

1. Aiding and Abetting

Whether the district court’s aiding-and-abetting instruction was inconsistent with *Rosemond v. United States*. *United States v. Arciniega-Zetin*, No. 16-4145 (OA Nov. 14, 2017).

2. Burden of Proof

3. Conspiracy

4. Constructive Possession

Whether the district court plainly erred when it failed to instruct the jury that it must determine that the defendant intended to possess the charged drugs (as is now required per *Little*). *United States v. De Rangel*, No. 16-5126 (gov’t brief filed Jan. 26, 2017); *United States v. Arciniega-Zetin*, No. 16-4145 (OA Nov. 14, 2017); *United States v. Scott*, No. 16-1474 (reply brief filed Sept. 11, 2017); *United States v. Giannukos*, No. 17-3067 (brief filed Aug. 25, 2017); *United States v. Martinez*, No. 16-1393 (reply brief filed Sept. 29, 2017).

5. Deliberate Avoidance/Ignorance

Whether the district court erroneously gave a deliberate-ignorance instruction in this heroin-distribution case. *United States v. Arciniega-Zetin*, No. 16-4145 (OA Nov. 14, 2017).

6. Elements (see also statute under which defendant tried)

Whether the district court erroneously instructed the jury that “concrete involvement” was sufficient to prove distribution of heroin. *United States v. Arciniega-Zetin*, No. 16-4145 (OA Nov. 14, 2017).

7. Sentencing Elements

Whether the district court violated *Biglow I* and *II* and *Alleyne* when it instructed the jury that it was not required to find that the defendant-courier knew the amount of drugs that she possessed. *United States v. Lopez*, No. 15-3134 (gov’t brief filed March 21, 2016).

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 deny the defendant’s constitutional right to present a defense when it refused to instruct the jury that a reasonable doubt as to the person who committed the offense necessitated an acquittal? *United States v. Meisel*, No. 15-3182 (OA Sept. 22, 2016).

This defendant testified that he was not a drug dealer and did not give anyone methamphetamine on or around the date charged. Should the district court have given the defendant’s requested

instruction on the lesser-included offense of simple possession? *United States v. Pacheco*, No. 16-3294 (OA Sept. 27, 2017).

Did the district court err in excluding the defendant's proffered evidence of immateriality in the false-statements-to-a-bank case? *United States v. Riddle*, No. 16-4143 (OA Sept. 28, 2017).

Did the district court err in refusing to instruct the jury that the defendant's good-faith reliance on the Kansas Second Amendment Protection Act was a complete defense to his federal gun charges? *United States v. Cox*, No. 17-3034 (brief filed Aug. 21, 2017).

Did the district court err in refusing to give a self-defense instruction in this felon-in-possession case? *United States v. Black*, No. 17-7027 (gov't brief filed Sept. 25, 2017).

16. Unanimity

17. Voluntary Intoxication

18. Witness Cautionary Instructions

Did the district court commit plain error by omitting the 10th Circuit's addicted-witness cautionary instruction (pattern instruction 1.16)? *United States v. Gabourel*, No. 16-6227 OA May 10, 2017).

I. Mistrial

J. Prior Convictions

K. Prosecutorial Misconduct

Did the prosecutor violate *Brady* by withholding information about testifying informants? *United States v. Garcia-Martinez*, No. 15-1432 (reply brief filed Sept. 1, 2016).

In this case charging conspiracy to trespass on public lands, did the government violate *Brady* by not disclosing Bureau of Land Management files conflicting with the government's theory that certain roads were closed to off-highway vehicles? *United States v. Wells*, No. 16-4006 (OA Nov. 17, 2016).

Did the government know that its medical expert's testimony was based on faulty and outdated science, and did the government's failure to disclose this at trial amount to a *Brady* violation? *United States v. Durham*, No. 16-6075 (OA March 23, 2017).

Did the government commit misconduct by implying during closing argument that homosexuals are unsafe around children in this child sexual assault case? *United States v. Durham*, No. 16-6075 (OA March 23, 2017).

Did the prosecutor commit misconduct in this drug-conspiracy case by using 404(b) evidence for an improper (propensity) purpose, arguing facts not in evidence during closing, misstating the evidence, improperly bolstering the credibility of witnesses, appealing to class prejudice, making appeals to the emotions of the jury, and improperly commenting on the civic duty of the jury ("I now ask that you bring justice to us")? *United States v. Rios-Morales*, No. 16-3233 (submitted Sept. 28, 2017).

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).

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).

Did the prosecutor violate this Chinese defendant’s rights to equal protection, due process, and a fair trial when he singled out the sole Asian-American juror during voir dire and asked other jurors if they felt “okay” serving with him? *United States v. Tee*, No. 16-3243 (OA Sept. 28, 2017).

Should the district court have granted habeas relief on this defendant’s *Brady* claim? *Lebere v. Trani*, No. 16-1499 (brief filed March 3, 2017).

Did the state prosecutor in this capital case violate *Brady* by suppressing evidence that would have impeached a jailhouse informant? *Simpson v. Royal*, No. 16-6191 (OA Nov. 16, 2017).

Did the state prosecutor in this capital case violate due process when he denigrated the defendant’s mitigation evidence and made other improper arguments? *Simpson v. Royal*, No. 16-6191 (OA Nov. 16, 2017).

Did the government’s destruction of IRS records violate this tax-fraud defendant’s due process rights under *Youngblood*? *United States v. Ray*, No. 16-1306 (reply brief filed Oct. 10, 2017).

Was the government’s filing of a superseding indictment in this case—after the defendant had filed substantive motions and retained new counsel—vindictive, in violation of due-process? *United States v. Ray*, No. 16-1306 (reply brief filed Oct. 10, 2017).

Did the state prosecutor in this capital case violate *Brady* when it suppressed impeaching evidence related to a jailhouse informant? *Eaton v. Wilson*, No. 15-8013 (brief filed June 19, 2017).

Did the prosecutor commit misconduct when it argued that the jury should rely on hearsay evidence as direct evidence when it was only admitted for impeachment purposes? *United States v. Giannukos*, No. 17-3067 (brief filed Aug. 25, 2017).

Did the prosecutor commit misconduct by commenting on matters not in evidence? *United States v. Magnan*, No. 17-8026 (brief filed July 31, 2017).

L. Right to be Present

M. Right to Present Defense

Did the district court deny the defendant’s constitutional right to present a defense when it prohibited counsel from arguing that third parties with access to the defendant’s computer might be responsible for the child pornography found on the computer, and it refused to instruct the jury that a reasonable doubt as to the person who committed the offense necessitated an acquittal? *United States v. Meisel*, No. 15-3182 (OA Sept. 22, 2016).

In this case charging conspiracy to trespass on closed public lands, did the district court deny the defendant’s right to present a defense when it prohibited evidence that the land at issue was not closed? *United States v. Lyman*, No. 16-4007 (submitted Nov. 17, 2016).

Did the district court deny this defendant's right to present a defense when it excluded as hearsay evidence that he repudiated his "confession" within a day after making it? *United States v. Lemon*, No. 16-6213 (OA Sept. 28, 2017).

Did the district court deny this defendant's right to present a defense when it quashed a defense subpoena? *United States v. Portillos*, No. 16-1323 (OA Sept. 25, 2017).

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).

Did the district court deprive the defendant of his right to present a defense when it granted the government's untimely motion to exclude a defense expert witness? *United States v. Johnson*, No. 16-4146 (OA Sept. 28, 2017).

Did the district court wrongly exclude evidence of immateriality in this false-statements case? *United States v. Johnson*, No. 16-4146 (OA Sept. 28, 2017).

Did the state court's refusal to allow evidence of this capital defendant's PTSD during the guilt phase violate his right to present a complete defense? *Simpson v. Royal*, No. 16-6191 (OA Nov. 16, 2017).

Did the district court violate this defendant's constitutional right to present a defense by disallowing any evidence or instructions on her duress defense? *United States v. Dixon*, No. 17-7010 (OA Nov. 16, 2017).

Did the district court violate this assault defendant's constitutional right to present a defense by limiting testimony relevant to self-defense? *United States v. Tapaha*, No. 17-2104 (brief filed Sept. 5, 2017).

N. Rule 106 (rule of completeness)

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

Whether confusing evidence about this postal employee's gambling was relevant to show his motive for stealing from the mails. *United States v. Lemon*, No. 16-6213 (OA Sept. 28, 2017).

Should evidence of the defendant's struggles with homosexuality and child pornography have been suppressed as unduly prejudicial in this child sexual abuse case? *United States v. Durham*, No. 16-6075 (OA March 23, 2017).

Should evidence of the defendant's confessions been excluded as more prejudicial than probative? *United States v. Durham*, No. 16-6075 (OA March 23, 2017).

Whether confusing evidence about this postal employee's gambling was unduly prejudicial in his theft-of-mail prosecution. *United States v. Lemon*, No. 16-6213 (OA Sept. 28, 2017).

Was admission of the defendant's prior drug convictions and gang affiliation unduly prejudicial in this drug-conspiracy case? *United States v. Grant*, No. 16-6228 (OA May 10, 2017).

Was admission of this defendant's gang affiliation unduly prejudicial character evidence? *United States v. Brown*, No. 16-6210 (OA Sept. 27, 2017).

Was admission of provocative online massage ads unduly prejudicial in this prostitution-related case? *United States v. Tee*, No. 16-3243 (OA Sept. 28, 2017).

Was admission of officer summary testimony in this drug/gang case unduly prejudicial? *United States v. Banks*, No. 16-6322 (OA Sept. 27, 2017).

Did the district court violate Rule 403 and *Old Chief* in denying this gun-defendant's request to instruct the jury that he was a "prohibited person" rather than a "convicted felon"? *United States v. Silva*, No. 17-2030 (brief filed Oct. 2, 2017).

P. Rule 404(b)

Whether text messages about trading car parts for guns exchanged months before the defendant's alleged illegal possession of a gun were erroneously admitted at trial. *United States v. Benford*, No. 15-6163 (supplemental briefs filed Oct. 28, 2016).

Whether the trial court erroneously admitted evidence that the defendant brandished a gun at someone weeks before the defendant's alleged illegal possession of a different gun. *United States v. Benford*, No. 15-6163 (supplemental briefs filed Oct. 28, 2016).

Was the defendant's struggles with homosexuality and child pornography improper 404(b) evidence that should have been suppressed in this child sexual abuse case? *United States v. Durham*, No. 16-6075 (OA March 23, 2017).

Did the district court abuse its discretion by admitting evidence of a separately charged conspiracy in this drug-conspiracy case? And was admission of this evidence unduly prejudicial insofar as discovery had not been completed in the separate case? *United States v. Rios-Morales*, No. 16-3233 (submitted Sept. 28, 2017).

Did the district court abuse its discretion in this drug-conspiracy case by admitting the defendant's prior drug convictions and gang affiliation? *United States v. Grant*, No. 16-6228 (OA May 10, 2017).

Did the district court abuse its discretion when it admitted, in this drug case, the defendant's multiple prior drug convictions? *United States v. Banks*, No. 16-6322 (OA Sept. 27, 2017).

Did the district court erroneously admit (1) the defendant's prior felon-in-possession conviction; (2) a girlfriend's testimony that she had seen the defendant with a gun; and (3) evidence that the defendant had stolen a gun from an ex-girlfriend in the past, as 404(b) evidence in this felon-in-possession case? *United States v. Scott*, No. 16-1474 (reply brief filed Sept. 11, 2017).

Did the district court allow evidence of this drug & gun defendant's prior drug sales for an improper purpose? *United States v. Martinez*, No. 16-1393 (reply brief filed Sept. 29, 2017).

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

Did the district court improperly instruct the jury that it could consider evidence of prior sexual abuse as propensity evidence? *United States v. Magnan*, No. 17-8026 (brief filed July 31, 2017).

R. Rules 601-615 (Witnesses)

Did the district court plainly error by admitting a complainant's prior consistent statements through two police officers as substantive evidence, and despite the government's failure to ask the complainant to explain or deny the statements (F.R.E. 613)? *United States v. Lacy*, No. 17-3119 (brief filed Oct. 11, 2017).

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

Did the trial court violate Rule 704 when it admitted a DEA agent's expert opinion that the defendant was not an "unwitting" participant in the charged drug conspiracy? *United States v. Garcia-Martinez*, No. 15-1432 (reply brief filed Aug. 19, 2016).

Whether the government's medical expert's testimony in this unlawful-prescriptions case was standardless and inadmissible under Rule 702. *United States v. Miller*, No. 16-1231 (OA Sept. 25, 2017).

Did the district court commit plain error in this drug case by admitting expert testimony that denials of knowledge that a vehicle contains drugs are not generally not credible? *United States v. Rodriguez-Flores*, No. 17-2039 (brief filed Aug. 28, 2017).

Did the district court err in allowing DEA agents to interpret recorded phone calls in this drug conspiracy case? *United States v. Marquez*, No. 17-2028 (gov't brief filed Oct. 6, 2017).

Did the district court err in allowing a narcotics detective to give unhelpful opinions that did nothing more than summarize the government's evidence? *United States v. Martinez*, No. 16-1393 (reply brief filed Sept. 29, 2017).

Was it error to allow a government expert to testify in a child sexual-abuse case that 96-98% of child sexual-abuse complainants are telling the truth? *United States v. Magnan*, No. 17-8026 (brief filed July 31, 2017).

Did the district court plainly err by admitting unreliable expert DNA testimony? *United States v. Silva*, No. 17-2030 (brief filed Oct. 2, 2017).

T. Rules 801-807 (hearsay)

Did the district court err in admitting unauthenticated medical records containing double hearsay? *United States v. Durham*, No. 16-6075 (OA March 23, 2017).

Was the defendant's prior acquittal relevant and admissible under the residual hearsay exception? *United States v. Brown*, No. 16-6210 (OA Sept. 27, 2017).

Did the trial court erroneously admit online ads without a proper business-records foundation? *United States v. Tee*, No. 16-3243 (OA Sept. 28, 2017).

Was admission of multiple prior consistent statements in this child-sexual abuse trial improper? *United States v. Magnan*, No. 17-8026 (brief filed July 31, 2017).

U. Rule 901 (authentication)

Did the district court err in admitting video evidence of the defendant's confessions (recorded on a cellphone) without proper authentication, given the possibility that the recordings had been altered? *United States v. Durham*, No. 16-6075 (OA March 23, 2017).

V. Rule 1002 (Best Evidence Rule)

Did the district court's admission of redacted court records violate the best-evidence rule? *United States v. Francis*, No. 16-1449 (OA Nov. 14, 2017).

W. Rule 1006 (Summaries)

Did the district court erroneously admit summary charts, created from a third party's spreadsheets, the original data for which was never made available to the defense? *United States v. Matthew Channon*, No. 16-2254 (OA Nov. 16, 2017); *United States v. Brandi Channon*, No. 16-2285 (OA Nov. 16, 2017).

X. Surrebuttal

Y. Voir Dire

XXXI. Void for Vagueness

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

XXXIII. Miscellaneous

A. Forum Shopping

B. Disqualification of Government Counsel

Recently Added Cases

(most recent to least recent)

United States v. McFarland, No. 17-6143 (brief filed Oct. 11, 2017) (Fed. R. Crim. P. 32.1; supervised-release revocation).

United States v. Lacy, No. 17-3119 (brief filed Oct. 11, 2017) (18 U.S.C. § 1591; 18 U.S.C. § 2423; F.R.E. 613).

United States v. Muskett, No. 17-2123 (brief filed Oct. 11, 2017) (18 U.S.C. § 924(c)).

United States v. Hayes, No. 17-4060 (brief filed Oct. 10, 2017) (mandatory minimum under 21 U.S.C. § 851).

United States v. Solis, No. 17-2027 (gov't cross-appeal No. 17-2035) (brief filed Oct. 10, 2017) (USSG § 1B1.3).

United States v. Aguirre, No. 17-2047 (brief filed Oct. 6, 2017) (USSG § 2K2.1(a)(2)).

United States v. Mann, No. 17-2117 (gov't appeal) (gov't brief filed Oct. 5, 2017) (18 U.S.C. § 924(c)).

United States v. Salas, No. 17-2098 (brief filed Oct. 5, 2017) (USSG § 2K2.1(b)(1)(B)).

United States v. Silva, No. 17-2030 (brief filed Oct. 2, 2017) (F.R.E. 403, *Old Chief*; 18 U.S.C. § 922(g)(1); F.R.E. 702; 18 U.S.C. § 924(c)).

United States v. Metts, No. 17-2111 (brief filed Sept. 27, 2017) (Fourth Amendment: warrantless search/inevitable discovery).

United States v. Ybarra, No. 17-2131 (brief filed Sept. 26, 2017) (ACCA).

United States v. Pacheco, No. 17-2115 (brief filed Sept. 26, 2017) (ACCA).

Smith v. Aldridge, No. 17-6149 (brief filed Sept. 25, 2017) (28 U.S.C. § 2254; juror misconduct; IAC).

United States v. Wright, No. 17-1191 (brief filed Sept. 25, 2017) (conditions of supervised release).

United States v. Evans, No. 17-1185 (brief filed Sept. 25, 2017) (sentencing: procedural and substantive unreasonableness).

United States v. Qualls, No. 17-2046 (reply brief filed Sept. 22, 2017) (plea withdrawal).

United States v. Ford, No. 17-1122 (brief filed Sept. 21, 2017) (18 U.S.C. § 924(c); 28 U.S.C. § 2255; IAC).

United States v. Robinson, No. 17-6046 (brief filed Sept. 15, 2017) (ACCA).

United States v. Glaub, No. 17-1182 (brief filed Sept. 14, 2017) (First Amendment; 18 U.S.C. § 287; continuance).

United States v. Smith, No. 17-3086 (brief filed Sept. 11, 2017) (18 U.S.C. § 2113(a) & (d)); 18 U.S.C. § 924(c)(3); sentencing: procedural error).