

**TENTH CIRCUIT ORAL ARGUMENT CALENDAR**  
**Byron White Courthouse, Denver, Colorado**

**Wednesday, May 16, 2018**  
**Courtroom I**

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**9:00 A.M.**

**17-8059 WY United States v. Young**

1. Where the defendant neither sped nor otherwise violated traffic laws during his flight from police, did the district court err in applying a reckless-endangerment enhancement, USSG § 3C1.2?

for the government: Jason Conder

for the defendant: Josh Lee (Colorado FPD)

**17-8066 WY United States v. Latorre**

1. Was this pilot's consent to a search of his plane the fruit of an illegal detention?
2. Was this defendant's grand-jury testimony the fruit of an illegal detention?
3. Were a state agent's "stall tactics"—designed to keep this pilot on the ground until Homeland Security could arrive and follow up on another agent's belief that this former drug-defendant pilot's flight habits were suspicious—supported by reasonable suspicion (and does the collective-knowledge doctrine apply here)?

for the government: Thomas Szott

for the defendant: Catherine Young (Laramie, WY)

**17-8069 WY United States v. Sheriff**

1. Is federal bank robbery under 18 U.S.C. § 2113(a) a crime of violence for career-offender purposes?

for the government: David Kubichek

for the defendant: Keith Goody (Battle Ground, WA)

**17-1337 CO United States v. Ibanez (submitted on the briefs)**

1. Was the district court's imposition of a guideline sentence—driven by a guideline, USSG § 2K2.1(a)(4)(B), that was based on a since-repudiated criminal statute (regarding semi-automatic weapons)—substantively unreasonable?

for the government: Michael Johnson

for the defendant: John Carlson (Colorado FPD)

**17-1345 CO United States v. Tena-Arana**

1. Did the district court err when it concluded that the defendant's willingness to waive (and actual waiver of) his appellate rights was not an appropriate variance consideration?

for the government: Bishop Grewell

for the defendant: Jacob Rasch-Chabot

9:00 A.M.

**17-4107 UT United States v. Rafal**

1. Did the district court plainly err by misapplying the grouping rules in USSG §§ 3D1.2 and 3D1.4?

for the government: Jennifer Williams

for the defendant: Scott Wilson (Utah FPD)

**17-4131 UT United States v. Martinez**

1. Was this traffic stop—not for any traffic violation, but to see if the occupants were the people sought in a bank robbery—supported by reasonable suspicion?

for the government: Felice Viti

for the defendant: Edward Jones (Herber City, UT)

**17-4148 UT United States, Appellant v. Kemp & Associates, et al.**

1. Did the district court err in dismissing this indictment for failure to allege a per se offense under the Sherman Act, 15 U.S.C. § 1?
2. Did the duration of this conspiracy delay the start of the statute of limitations?

for the government: Andrew Finch

for the defendant: James Mitchell (New York, NY)

**17-4084 UT United States v. Roman**

1. Was this defendant's acquittal in state court of the same murder charge he faced in federal court admissible to establish his theory of defense that the acquittal motivated the manufacture of evidence presented at his federal trial?
2. Was evidence that the defendant shared drugs with a friend during the same evening that they handled the defendant's rifle sufficient to sustain this defendant's 18 U.S.C. § 924(c) conviction?
3. Did the double-jeopardy clause bar this defendant's federal murder and gun prosecution after the defendant was acquitted of the same murder in state court (preserving attack on dual-sovereignty doctrine for Supreme Court review)?

for the government: Elizabethanne Stevens

for the defendant: Howard Pincus (Colorado FPD)

**17-7051 EOK United States v. DeLia**

1. Was the evidence sufficient to sustain this doctor's health-care-fraud conviction under 18 U.S.C. § 1347?
2. Did the district court violate this defendant's Sixth Amendment right to represent himself at trial?
3. The general statute of limitations (18 U.S.C. § 3282) passed before the indictment in this health-care-fraud case was filed. Did the Wartime Suspension of Limitations Act (18 U.S.C. § 3287) apply, notwithstanding the fact that the alleged victim was a state agency, not a federal agency?

for the government: Linda Epperley

for the defendant: Robert Wyatt (Oklahoma City, OK)

**17-7054 EOK United States v. Crawford (submitted on the briefs)**

1. Whether this defendant is entitled to 28 U.S.C. § 2255 relief from his mandatory-guidelines career-offender sentence, which was based on an Oklahoma conviction for throwing or dropping an object from a vehicle.

for the government: Linda Epperley

for the defendant: Barry Derryberry (Oklahoma FPD)

**Thursday, May 17, 2018**  
**Courtroom I**

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**8:30 A.M.**

**17-3157 KS United States v. Russian**

1. Did the district court unconstitutionally delegate power to the probation officer to decide whether to place this defendant in residential drug treatment as a condition of supervised release?
2. Should this defendant's judgment be amended to conform to the oral sentence pronounced with respect to a condition of supervised release?

for the government: Alan Metzger

for the defendant: Howard Pincus (Colorado FPD)

**17-4103 UT United States, Appellant v. Walker**

1. The Tenth Circuit held that this repeat bank-robber's sentence of time-served (33 days) was substantively unreasonable, and remanded for resentencing. The district court held a new sentencing hearing, revisited its reasons in light of the Tenth Circuit's opinion, and imposed the same sentence. Is this sentence substantively unreasonable, and should this case be remanded to a different judge for resentencing?

for the government: Jennifer Williams

for the defendant: Adam Bridge (Utah FPD)

**16-6315 WOK Cuesta-Rodriguez v. Royal**

1. Should the district court have granted relief on this state capital defendant's claims of ineffective assistance of counsel and prosecutorial misconduct?

for the government: Caroline Hunt

for the defendant: Michael Lieberman (Oklahoma FPD)

**Thursday, May 17, 2018**  
**Courtroom II**

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**8:30 A.M.**

**17-1148 CO United States v. Lawless**

1. Whether arson under 18 U.S.C. § 844(i) is a crime of violence for purposes of 18 U.S.C. § 924(c).

for the government: Karl Schock

for the defendant: Kathleen Shen (Colorado FPD)

**17-1180 CO United States v. Pacheco-Donelson**

1. The district court ordered this defendant not to associate with gang members while on supervised release, and refused—without a proper inquiry or particularized findings—to make an exception for the defendant’s close foster brothers. Was this an abuse of discretion?

for the government: Michael Johnson

for the defendant: Meredith Esser (Colorado FPD)

**17-1232 CO United States v. Mosley**

1. Is this gun defendant’s upward variant sentence of 60 months (double his mid-range guideline sentence) substantively unreasonable?

for the government: Bishop Grewell

for the defendant: Michael Sheehan (Centennial, CO)

**17-1242 CO United States v. Frias**

1. Did a nine-month delay between this defendant’s state sentencing and her federal arrest (on a two-year-old indictment) violate her constitutional speedy trial rights?

for the government: James Murphy

for the defendant: John Arceci (Colorado FPD)

**Thursday, May 17, 2018**  
**Courtroom III**

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**8:30 A.M.**

**17-2085 NM United States v. Roach**

1. Did the district court violate the Sixth Amendment by restricting this defendant's cross-examination of his codefendant with respect to her potential sentence and other matters affecting her credibility?

for the government: James Braun

for the defendant: Aric Elsenheimer (New Mexico FPD)

**17-2096 NM United States v. Mejia-Rios**

1. Did this 4-minute impersonal mass illegal-reentry plea proceeding (involving a general advisory given to a large group followed by generic questioning of a group of four) violate either Rule 11 or the defendant's due-process rights?

for the government: Dustin Segovia

for the defendant: Wendy Palen (Glendo, WY)

**17-2117 NM United States v. Mann**

1. 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).

for the government: Finnuala Tessier

for the defendant: Brian Pori (New Mexico FPD)

**17-2124 NM United States v. Chavez-Morales**

1. Did the district court procedurally err when it varied upwards without meaningfully considering this defendant's mitigating reasons for his reentries after removal?
2. Did the district court plainly err when it imposed the maximum term of supervised release without explaining why, and without mentioning USSG § 5D1.1(c) (recommending against supervision when deportation likely)?

for the government: Paul Mysliwicz

for the defendant: John Butcher (New Mexico FPD)

**17-2172 NM United States v. Romero**

1. Did evidence that this defendant's boyfriend spanked her son with a belt support the district court's finding that she participated in child abuse, and its revocation of her supervised release?

for the government: Marisa Ong

for the defendant: Todd Hotchkiss (Albuquerque, NM)

**17-2179 NM United States v. Ulibarri**

1. Is this defendant's revocation sentence—which is longer than his initial sentence—substantively unreasonable?
2. Did the district court plainly err by failing to make particularized findings before imposing a condition of supervised release requiring the defendant to take all prescribed mental-health medications?

for the government: Jennifer Rozzoni

for the defendant: Sylvia Baiz (New Mexico FPD)

**Thursday, May 17, 2018**  
**Courtroom IV**

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**8:30 A.M.**

**17-3086 KS United States v. Smith (submitted on the briefs)**

1. Is armed bank robbery, 18 U.S.C. § 2113(d), a crime of violence for purposes of 18 U.S.C. § 924(c)?
2. 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/18 U.S.C. 924(c) case?

for the government: Carrie Capwell

for the defendant: Dan Hansmeier (Kansas FPD)

**17-3170 KS United States v. Godinez-Perez**

1. After an unlimited remand for resentencing, the district court refused to rule on two of this defendant's variance arguments. Was this refusal either legal error or an abuse of discretion?

for the government: Carrie Capwell

for the defendant: Paige Nichols (Kansas FPD)

**17-3179 KS United States v. Michaelis**

1. Is it plain error for a district court to impose a special condition of supervised release "in all cases" without making the statutorily required defendant-specific findings?

for the government: Jason Hart

for the defendant: Paige Nichols (Kansas FPD)