

ISSUES PENDING IN THE TENTH CIRCUIT

COMPILED BY THE KANSAS FEDERAL PUBLIC DEFENDER



Updated October 8, 2021

PREFACE

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

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

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

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

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

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

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

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

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

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

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I. Appeals/scope of remand

Did the district court err when it declined to consider whether this defendant's prior conviction for felony menacing in Colorado was a crime of violence under § 2K2.1 as beyond the scope of the appellate remand? *United States v. Lozado*, No. 20-1420 (OA September 21, 2021).

II. Competence

Did this defendant's inability to assist counsel render his trial a due process violation? *United States v. Ferguson*, No. 20-7045 (reply brief filed March 11, 2021).

III. Confessions

IV. Continuances

Did the district court err by refusing to grant a continuance when it was impossible for defense counsel to adequately prepare for trial? *United States v. Herrera*, No. 19-2126 (gov't brief filed August 2, 2021); *United States v. Sanchez*, No. 19-2141 (gov't brief filed August 2, 2021); *United States v. Baca*, No. 19-2195 (gov't brief filed August 2, 2021).

V. Discovery

Did the district court err by allowing a surprise witness to testify at the end of trial, when 18 U.S.C. § 3432 requires pretrial disclosure of witnesses? *United States v. Joe Gallegos*, No. 20-2058 (brief filed September 20, 2021).

Does 18 U.S.C § 3432, which requires disclosure of witnesses 3 days before trial for a capital offense, apply to an offense punishable by death, even if the government elects not to pursue the death penalty? *United States v. Garcia*, No. 19-2188 (brief filed June 28, 2021).

Did the district court err by permitting the government to introduce evidence that was disclosed late, in piecemeal fashion, and in violation of the court's discovery orders? *United States v. Topete-Madrueño*, No. 20-2180 (reply brief filed September 17, 2021).

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

VI. Double Jeopardy

Because the defendant was previously acquitted of certain charges, should the government have been estopped from introducing testimony about the conduct underlying those charges in a different trial? *United States v. Ojimba*, No. 20-6109 (OA September 23, 2021).

VII. Eighth Amendment and Capital Issues

Does this defendant's life sentence for convictions related to fentanyl violate the Eighth Amendment? *United States v. Shamo*, No. 21-4116 (reply brief filed September 15, 2021).

Does this defendant's mandatory life sentence violate the Eighth Amendment's proportionality requirement? (foreclosed issue). *United States v. Burtrum*, No. 20-5091 (OA September 21, 2021).

Is this defendant entitled to a COA or § 2255 relief based on ineffective assistance of counsel during the guilt and penalty phases of his capital trial, evidentiary and due process claims, claims relating to uncharged aggravating factors, or his challenge to the reasonable-doubt instruction? *Menzies v. Powell*, No. 19-4042 (supplemental briefs filed March 8, 2021).

VIII. Ex Post Facto Issues

IX. First Amendment or Other Rights of Access

X. Forfeiture

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

XI. Fourth Amendment Issues

A. Arrest Warrant

B. Attenuation (intervening circumstances)

C. Consent

Did the district court err when it found that this defendant's consent to a law enforcement search of his luggage was voluntary? *United States v. Delgado-Salazar*, No. 21-2048 (gov't brief filed October 6, 2021).

Did the district court err when it found that this defendant's consent to an encounter with law enforcement and to the search of a bag in his possession was voluntary? *United States v. Rodriguez*, No. 20-2173 (gov't filed July 6, 2021).

Did the district court err when it found that this defendant's consent to search his pockets was voluntary? *United States v. Ballance*, No. 20-3141 (reply brief filed March 15, 2021).

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

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

D. Excessive Force

E. Fruit of the Poisonous Tree

F. Good Faith Exception

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

G. Government Actor

H. Hearing Issues

I. Inventory Searches

Was the search of this defendant's duffel bag, done well after booking and after the agent took the bag home, invalid? *United States v. Bullcoming*, No. 20-6125 (reply brief filed August 31, 2021).

J. Knock and Talk

K. Plain View Doctrine

L. Protective Sweeps

Did the district court err when it determined that a warrantless "protective" search of this defendant's vehicle did not violate the Fourth Amendment? *United States v. Alexander*, No. 20-3238 (reply brief filed August 30, 2021).

M. Scope of Warrantless Search

N. Search Incident to Arrest

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

Did the district court err by finding that the warrant to search a home was still supported by probable cause at the time the search was executed? *United States v. Topete-Madrueno*, No. 20-2180 (reply brief filed September 17, 2021).

Did the district court err by denying this defendant's request for a Franks hearing regarding alleged lies in the affidavit supporting the search warrant? *United States v. Velarde-Pavia*, No. 20-2135 (gov't brief filed June 28, 2021).

Did the district court err by denying the motion to suppress evidence found on the defendant's cell phone, because the warrant was insufficiently particular and overly broad? *United States v. Palms*, No. 20-5072 (OA September 21, 2021).

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

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

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

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

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

P. Standing (reasonable expectation of privacy)

Did the district court err by holding that this defendant did not have standing to object to the search of a car because he was not the registered owner? *United States v. Topete-Madrueño*, No. 20-2180 (reply brief filed September 17, 2021).

Q. Terry Stops: Initial Detention

Did the district court err when it found that law enforcement's request that the defendant get off the bus to speak with them was not a seizure? *United States v. Vazquez-Lopez*, No. 21-2033 (reply brief filed October 5, 2021).

Did the district court err when it found that officers had sufficient reasonable suspicion to stop this defendant based on a 911 call? *United States v. Ballance*, No. 20-3141 (reply brief filed March 15, 2021).

R. Terry: Frisk

Did law enforcement's pat down of this defendant violate the Fourth Amendment, because there were no facts suggesting the defendant was armed and dangerous? *United States v. Candle*, No. 21-7005 (reply brief filed September 16, 2021).

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

S. Traffic Stops

Was this defendant seized when an officer attempted to make a traffic stop and followed the defendant, when no actual traffic violation had occurred? *United States v. Jeffers*, No. 21-6017 (brief filed August 6, 2021).

Did the police officer in this case impermissibly extend the traffic stop without reasonable suspicion? *United States v. Frazier*, No. 20-4131 (reply brief filed October 7, 2021).

Did the district court err when it found this traffic stop valid, because it is not a violation of law to display a valid temporary permit and a state-issued license plate simultaneously? *United States v. Deluca*, No. 20-8075 (brief filed June 4, 2021).

Did the police officer impermissibly extend the traffic stop of this defendant until a drug dog arrived and alerted? *United States v. Butler*, No. 20-8037 (gov't brief filed June 21, 2021).

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

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

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

T. Warrantless Arrests

U. Warrantless Searches & Seizures

Did the district court err by denying this defendant's motion to suppress where the police ordered the defendant out of a car and to crawl onto the ground, at gunpoint, when he was asleep in a car with someone the police were arresting, who said that the defendant had a gun? *United States v. Bosman*, No. 21-1076 (brief filed September 10, 2021).

Did the district court err by finding reasonable suspicion to stop this defendant two separate times, and by finding the area of the stop to be a "high crime" area? *United States v. Gates*, No. 20-4106 (OA September 23, 2021).

Did the district court err when it found that exigent circumstances justified the officers' warrantless search of a crime victim's home when there was no evidence that anyone else was inside the home? If not, does the inevitable discovery doctrine save the search? *United States v. Logan*, No. 20-3202 (reply brief filed April 7, 2021).

Did the district court err by denying the motion to suppress evidence found when an agent lifted and felt the defendant's bag, which he had placed in an overhead compartment on a bus? *United States v. Fernandez*, No. 20-2106 (OA September 22, 2021).

XII. Fourteenth Amendment: Due Process

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

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

XIII. Fifth Amendment: Due Process

Did the district court err when it denied this defendant's motion to dismiss alleging selective enforcement based on discriminatory enforcement by ATF? *United States v. Casanova*, No. 20-2159 (gov't brief filed October 1, 2021).

Did the government engage in outrageous conduct that violates due process by using a paid informant who targeted this heroin-addicted defendant with diminished cognitive abilities? *United States v. Leal*, No. 21-2003 (brief filed August 23, 2021).

Did the district court's refusal to allow this defendant access to the trailer that was the crime scene violate his Fifth or Sixth Amendment rights? *United States v. Bullcoming*, No. 20-6125 (reply brief filed August 31, 2021).

Do the government's Brady violations in this case warrant a new trial? *United States v. Herrera*, No. 19-2126 (gov't brief filed August 2, 2021); *United States v. Sanchez*, No. 19-2141 (gov't brief filed August 2, 2021); *United States v. Baca*, No. 19-2195 (gov't brief filed August 2, 2021).

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

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

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

XIV. Fifth Amendment: Right to Silence

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

XV. Fifth Amendment: Confessions & *Miranda*

Did the district court err when it denied the motion to suppress this defendant's statements, finding they were not coerced and that the defendant's waiver of his *Miranda* rights was valid? *United States v. Woody*, No. 21-2007 (gov't brief filed September 7, 2021).

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

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

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

XVI. Habeas Issues

A. 28 U.S.C. § 2241

Did the district court err when it certified this defendant's extradition to Poland, because there was no evidence supporting a critical allegation and thus no probable cause? *Kubicki v. Wilkinson*, No. 21-2012 (brief filed January 29, 2021).

Is this military defendant entitled to habeas relief on his claims that the military court failed to address the impact drug ingestion had on his mens rea and the introduction of misleading sentencing evidence? *Bales v. Commandant*, No. 20-3167 (gov't brief filed March 2, 2021).

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

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

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

Did the district court err or violate separate of powers when it found that this defendant's acceptance of a presidential pardon constituted a waiver of his challenge to the conviction and dismissal from the army and rendered the case moot? *Lorance v. Commandant*, No. 3055 (reply brief filed February 5, 2021).

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

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

B. 28 U.S.C. § 2254

Is this defendant entitled to a COA or habeas relief on his claims of actual innocence of an enhanced mandatory-minimum sentence? *Lee v. Schnurr*, No. 21-3098 (brief filed July 28, 2021).

Should this capital defendant's conviction be vacated based on claims of: ineffective assistance of guilt phase or penalty phase counsel; violation of his right to silence or confrontation rights via admission of his prison file; Eighth or Fourteenth Amendment violations based on the court's reliance on unconstitutional aggravating factors? *Menzies v. Powell*, No. 19-4042 (brief filed March 24, 2021).

Is this state defendant entitled to habeas relief on his claim of ineffective assistance of appellate counsel for failure to raise a claim of ineffective assistance of trial counsel? *Gravitt v. Bear*, No. 20-6156 (brief filed March 16, 2021).

Is this state defendant entitled to habeas relief on his claims that, as a juvenile offender who did not commit homicide, he must receive a sentence that includes a meaningful opportunity for release? *Lee v. Archuleta*, No. 15-1346 (gov't brief filed May 28, 2021).

Is this state defendant entitled to a COA or habeas relief on his claims of ineffective assistance of counsel? *Gravitt v. Bear*, No. 20-6156 (brief filed March 2, 2021).

Did the district court err by granting this defendant habeas relief on his claim of ineffective assistance of counsel? *Sumpter v. Kansas*, No. 20-3186 (cross-appeal brief filed February 5, 2021) (state appeal) (supplemental briefs filed June 9, 2021).

Is this defendant entitled to habeas relief on his claims of insufficient evidence, prosecutorial misconduct, and ineffective assistance of counsel? *Stillwagon v. Martin*, No. 20-6165 (brief filed January 27, 2021).

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

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

Is this defendant entitled to a COA or habeas relief based on his claims of effective assistance of counsel during the guilt and penalty phases of his capital trial, evidentiary and due process claims, uncharged aggravating factors, or challenge to the reasonable-doubt instruction? *Menzies v. Powell*, No. 19-4042 (supplemental briefs filed March 8, 2021).

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

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

Is this state murder defendant entitled to § 2254 relief on his claims of insufficient evidence and ineffective assistance of counsel? *MEEK v. Martin*, No. 20-7021 (reply brief filed April 2, 2021).

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

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

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

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

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

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

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

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

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

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

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

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

C. 28 U.S.C. § 2255

Is this defendant entitled to a COA or habeas relief on his claims of insufficient evidence and ineffective assistance of appellate counsel? *United States v. Strickland*, No. 21-6051 (brief filed September 16, 2021).

Is this defendant entitled to a COA or habeas relief on his claim of ineffective assistance of counsel at the plea stage? *United States v. Shebata*, No. 21-3107 (brief filed September 1, 2021).

Is this defendant entitled to a COA or habeas relief on his claims of actual innocence of an enhanced sentencing scheme? *United States v. Caldwell*, No. 21-4026 (brief filed August 2, 2021).

Is this defendant entitled to a COA and § 2255 relief because his prior convictions no longer qualify as ACCA predicates, rendering his sentence in violation of due process? *United States v. Thompson*, No. 21-6060 (brief filed July 15, 2021).

Did the district court err when it found that this defendant had not shown prejudice from a Rehaif error, when he had previously served probationary sentences? *United States v. Avitia*, No. 21-1028 (brief filed July 8, 2021).

Is this defendant entitled to § 2255 relief based on his claims of conflicted counsel or ineffective assistance of counsel? *United States v. Alcorta*, No. 20-3198 (reply brief filed September 22, 2021).

Does the savings clause of § 2255(e) allow for this defendant's claim that he is not an armed career criminal based on intervening case law? *Jackson v. Warden*, No. 21-3011 (brief filed June 8, 2021).

Did the district court err when it refused to consider this defendant's pro se § 2255 motion based on Rehaif, or is his claim procedurally barred? *United States v. Dace*, No. 20-1343 (reply brief filed May 10, 2021).

Does *United States v. Haymond* have retroactive effect, because it invalidated a portion of a federal statute? *United States v. Memmott*, No. 20-4119 (reply brief filed June 15, 2021).

Did this defendant's judgment become final only after the district court entered an amended judgment on remand, for purposes of the § 2255 statute of limitations? *United States v. Anthony*, No. 20-6134 (reply brief filed June 30, 2021).

Did the district court err when it refused to consider this defendant's pro se § 2255 motion based on Rehaif, or is his claim procedurally barred? *United States v. Nelson*, No. 20-1340 (reply brief filed May 10, 2021).

Is this defendant entitled to an evidentiary hearing and § 2255 relief on his claim of ineffective assistance of counsel? *United States v. Lemon*, No. 20-6119 (brief filed January 13, 2021).

Is this defendant entitled to a COA or § 2255 relief on his claims of ineffective assistance of counsel, based on counsel's failure to object to sentencing enhancements? *United States v. Babcock*, No. 20-4003 (reply brief filed April 15, 2021).

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

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

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

E. Coram Nobis

XVII. Immigration Issues

XVIII. Indictment Issues

A. Amendments

B. Duplicity

C. Grand Jury Issues

D. Sufficiency of the Indictment (Sixth Amendment)

E. Variance

Was this indictment constructively amended by a jury instruction that included an additional element? *United States v. Segue*, No. 20-7034 (reply brief filed April 2, 2021); *United States v. Sutton*, No. 20-7028 (reply brief filed April 2, 2021).

XIX. Jurisdictional Issues

Did the government fail to meet its burden to prove that the district court had subject matter jurisdiction because the government relinquished federal interest in this tribal land? *United States v. Vigil*, No. 20-2160 (OA September 22, 2021).

XX. Motion Practice

XXI. Offenses

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

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

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

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

Was there insufficient evidence that this defendant entered the country without inspection, where the evidence showed that she was under surveillance at all times? *United States v. Perez-Velasquez*, No. 19-2118 (OA September 22, 2021).

Was there insufficient evidence that this defendant entered the country without inspection, where the evidence showed that she was under surveillance at all times? *United States v. Alvarado-Diaz*, No. 19-2134 (OA September 22, 2021).

Was there insufficient evidence that this defendant entered the country without inspection, where the evidence showed that he was under surveillance at all times and did not show he actually evaded inspection? *United States v. Bracamonte-Gasparini*, No. 19-2133 (OA September 22, 2021).

D. 18 U.S.C. § 78 (securities fraud)

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

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

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

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

Did the district court err by entering judgment against this defendant under § 113(a)(1), because two counts were multiplicitous, or because the jury instruction failed to instruct the jury to find proof of all the elements? *United States v. Wells*, No. 20-1228 (OA May 14, 2021).

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

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

K. 18 U.S.C. § 371 (conspiracy)

L. 18 U.S.C. § 666 (bribery)

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

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

Did the district court plainly err by imposing a 15-year sentence, when the statutory maximum sentence is 10 years? *United States v. Salas*, No. 20-2158 (gov't brief filed September 22, 2021).

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

P. 18 U.S.C. § 844 (arson)

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

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

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

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

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

Does a jury instruction that failed to require the jury to find that this defendant knew of the status that made him a prohibited person warrant reversal? *United States v. Casanova*, No. 20-2159 (gov't brief filed October 1, 2021).

Under the Kansas sentencing guidelines, was this defendant's Kansas burglary conviction "a crime punishable by imprisonment for a term exceeding one year" under § 922(g)(1)? *United States v. Hilleland*, No. 21-3063 (reply brief filed September 24, 2021).

Was there sufficient evidence that this defendant actually possessed a firearm? *United States v. Nichols*, No. 20-6198 (reply brief filed August 25, 2021).

Is this defendant's guilty plea invalid because he was not advised that the government had to prove he knew of the status that made his gun possession unlawful? *United States v. Aguayo*, No. 21-1009 (reply brief filed May 6, 2021).

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

Should this defendant's § 924(c) convictions be vacated because Hobbs Act robbery is not categorically a crime of violence, either because it criminalizes future conduct or because it includes threats to intangible property? *United States v. Garcia*, No. 21-2009 (brief filed June 25, 2021).

Should this defendant's § 924(c) convictions be vacated because Hobbs Act robbery is not categorically a crime of violence under the force clause, and the § 924(c) convictions were based on the unconstitutional residual clause? *United States v. Eccleston*, No. 20-2119 (brief filed April 26, 2021).

Should this defendant's § 924(c) convictions be vacated because Hobbs Act robbery is not categorically a crime of violence under the force clause, and the § 924(c) convictions were based on the unconstitutional residual clause? *United States v. Brooks*, No. 20-5115 (brief filed March 24, 2021).

Must this defendant's § 924(c) convictions be vacated because Hobbs Act robbery are not categorically crimes of violence under the force clause, because it can be committed by a threat to harm property? *United States v. Baker*, No. 20-3062 (OA May 12, 2021).

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

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

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

Was there insufficient evidence that this defendant conspired to make false statements to obtain immigration benefits, where there was proof of multiple conspiracies and not one single conspiracy? *United States v. Murry*, No. 20-1214 (OA September 21, 2021); *United States v. Rajesh Ramcharan*, No. 20-1241 (OA September 21, 2021); *United States v. Diann Ramcharan*, No. 20-1243 (OA September 21, 2021); *United States v. Harvell*, No. 20-1245 (OA September 21, 2021)

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

Should the convictions for false entries in bank records be vacated because there was insufficient evidence that the entries were false, actually constituted entries, or were made with intent to deceive the victim banks? *United States v. Gregory*, No. 20-3232 (reply brief filed August 10, 2021).

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

Z. 18 U.S.C. § 1028A (identity theft)

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

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

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

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

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

EE. 18 U.S.C. § 1201 (kidnapping)

Did the district court plainly err when it instructed the jury that the defendant bore the burden to prove that the victim was no longer held against her will before the statute of limitations expired on a kidnapping charge? *United States v. Piette*, No. 20-7008 (OA September 21, 2021).

FF. 18 U.S.C. § 2113 (bank robbery)

Did the district court err by finding that this defendant's actions, forcing a victim to withdraw money from an ATM, did not constitute attempted bank robbery? *United States v. Chavez*, No. 20-2083 (OA March 9, 2021) (gov't appeal).

GG. 18 U.S.C. § 1341 (mail fraud)

HH. 18 U.S.C. § 1343 (wire fraud)

II. 18 U.S.C. § 1344 (bank fraud)

Should the convictions for bank fraud be vacated, because the evidence was insufficient to show that the defendant intentionally provided materially false documents or information to the victim banks? *United States v. Gregory*, No. 20-3232 (gov't brief filed June 21, 2021).

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

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

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

Should this conviction under § 1512 be vacated or reversed because the jury was not instructed on the definition of "official proceeding," or because there was insufficient evidence to prove intimidation, threats or persuasion? *United States v. Segue*, No. 20-7034 (reply brief filed April 2, 2021) (gov't brief filed March 15, 2021); *United States v. Sutton*, No. 20-7028 (reply brief filed April 2, 2021).

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

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

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

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

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

RR. 18 U.S.C. § 1959 (racketeering)

Was there insufficient evidence to sustain this defendant's convictions for murder for the purpose of racketeering or conspiracy? *United States v. Andrew Gallegos*, No. 20-2056 (brief filed July 28, 2021); *United States v. Joe Gallegos*, No. 20-2058 (brief filed September 20, 2021).

Did the district court err by instructing the jury it could predicate convictions under § 1959 based on a state offense—second-degree murder—whose statute of limitations had expired? *United States v. Garcia*, No. 19-2188 (brief filed June 28, 2021).

In defining predicate racketeering offenses under § 1959, did the district court err by relying on a state-law definition rather than a federal generic definition? *United States v. Garcia*, No. 19-2188 (brief filed June 28, 2021).

Does the “position” clause of 18 U.S.C. § 1959(a) exceed Congress's commerce clause authority? *United States v. Herrera*, No. 19-2126 (gov't brief filed August 2, 2021); *United States v. Sanchez*, No. 19-2141 (gov't brief filed August 2, 2021); *United States v. Baca*, No. 19-2195 (gov't brief filed August 2, 2021); *United States v. Garcia*, No. 19-2148 (brief filed September 7, 2021); *United States v. Sanchez*, No. 19-2148 (brief filed September 7, 2021).

SS. 18 U.S.C. § 2119 (carjacking)

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

Was there sufficient evidence to support this defendant's conviction for aggravated sexual abuse because there was no evidence of direct skin-to-skin contact between the defendant and the victim, rather than touching through clothing? *United States v. Burtrum*, No. 20-5091 (OA September 21, 2021).

Did the district court violate this defendant's due process rights by relieving the government of its obligation to prove the requisite mens rea under § 2241? *United States v. Wells*, 20-1228 (OA May 14, 2021).

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

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

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

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

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

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

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

Was there sufficient evidence that this defendant participated in a methamphetamine conspiracy? *United States v. Leal*, No. 21-2003 (brief filed August 23, 2021).

Was there sufficient evidence that this defendant possessed methamphetamine with an intent to distribute, based only on circumstantial evidence? *United States v. Fernandez*, No. 20-2106 (OA September 22, 2021).

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

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

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

AAA. 21 U.S.C. § 846 (drug conspiracy)

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

BBB. 21 U.S.C. § 848 (continuing criminal enterprise)

Was there sufficient evidence that this defendant distributed a substance that is prohibited under § 848, and that he willfully committed the crime? *United States v. Shamo*, No. 21-4116 (reply brief filed September 15, 2021).

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

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

EEE. 26 U.S.C. § 7201 (tax evasion)

FFF. 26 U.S.C. § 7212

GGG. 28 U.S.C. § 455 (recusal)

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

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

JJJ. Assimilative Crimes Act (ACA)

Did the district court err by denying the motion to dismiss because this defendant could not have been charged under the state law, which served as the basis for his prosecution under the ACA? *United States v. Harris*, No. 20-8032 (OA May 12, 2021).

Does the Assimilative Crimes Act confer jurisdiction in this case or is this stalking offense covered by other regulations? Is Colorado's stalking statute unconstitutional, such that it cannot be the basis

for a conviction under the ACA, and did the district court improperly instruct the jury on stalking? *United States v. Twitty*, No. 20-1083 (reply brief filed September 25, 2020).

KKK. Regulatory and CFR Offenses

Is this defendant's conviction for disorderly conduct in a national park invalid because the government failed to prove he acted with criminal recklessness, including that he was subjectively aware of the risk he created? *United States v. Lantis*, No. 20-8031 (OA September 9, 2021).

XXII. Pleas

A. Acceptance of Plea

Did the district court err by accepting a plea to possession of a firearm in relation to a drug trafficking offense, when there was no evidence of that nexus? *United States v. Clifford*, No. 21-8004 (reply brief filed August 16, 2021).

B. Appeal Waiver

Is this defendant's waiver of collateral attack invalid because his guilty plea was involuntary? *United States v. Aguayo*, No. 21-1009 (reply brief filed May 6, 2021).

C. Breach

Did the government breach the plea agreement in this case by failing to provide the defendant with a reasonable opportunity to cooperate, and failing to inform the court of the defendant's willingness to cooperate? *United States v. Terry*, No. 20-7053 (OA August 3, 2021).

D. Rejection of Plea Agreement

E. Voluntariness of Plea

Was this defendant's plea involuntary, where he told the court he had been denied necessary medication, changed his mind four times, and was pressed by the prosecutor and court to plead? *United States v. McIntosh*, No. 20-5089 (OA September 21, 2021).

F. Withdrawal of Plea

Did the district court err by not allowing this defendant to withdraw his plea, where he raised questions about the voluntariness of his plea and disputed facts relevant to sentencing enhancements? *United States v. Sunrhodes*, No. 8070 (gov't brief filed June 7, 2021).

Did the district court err by not allowing this defendant to withdraw his plea, where there were questions about the voluntariness of his plea? *United States v. McIntosh*, No. 20-5089 (OA September 21, 2021).

Did the district court err by denying the motion to withdraw the guilty plea, because the denial was based on a clearly erroneous factual finding regarding the defendant's admissions? *United States v. Wilcox*, No. 20-7047 (OA May 12, 2021).

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

Did the district court err when it denied restitution by applying the wrong standard of causation or erroneously assessing the evidence? *United States v. Anthony*, No. 21-6015 (reply brief filed June 30, 2021) (gov't appeal).

Did the district court err by awarding restitution to a victim of a dismissed count, rather than the count of conviction? *United States v. Benally*, No. 20-2157 (supplemental briefs filed August 5, 2021).

Did the district court err by awarding restitution because its award was not supported by reasonable certainty of the cost of the victim's future medical needs? *United States v. Burtrum*, No. 20-5091 (OA September 21, 2021).

Did the district court plainly err by ordering restitution in excess of its statutory authority, specifically by ordering restitution for the expenses of the deceased victim's adult son and his family's travel expenses? *United States v. Casados*, No. 20-1006/1216 (reply brief filed February 22, 2021).

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

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

XXIV. Rules of Criminal Procedure

A. Rule 8 (Joinder/Severance)

Did the district court err by refusing to sever this defendant's trial or certain charges from the rest of the trial? *United States v. Andrew Gallegos*, No. 20-2056 (brief filed July 28, 2021).

Did the district court err by refusing to sever the trial for one defendant's murder count from the other defendants' assassination conspiracy count? *United States v. Herrera*, No. 19-2126 (gov't brief filed August 2, 2021); *United States v. Sanchez*, No. 19-2141 (gov't brief filed August 2, 2021); *United States v. Baca*, No. 19-2195 (gov't brief filed August 2, 2021); *United States v. Garcia*, No. 19-2148 (brief filed September 7, 2021); *United States v. Sanchez*, No. 19-2148 (brief filed September 7, 2021).

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

C. Rule 12 (motions)

D. Rule 29 (motion for judgment of acquittal)

Did the district court err when it sua sponte convicted this defendant of lesser-included offenses despite the government's waiver of that result? *United States v. Cortez-Nieto*, No. 20-3184 (reply brief filed September 27, 2021); *United States v. Cervantes-Aguilar*, No. 20-3189 (reply brief filed September 27, 2021).

E. Rule 32 (sentencing procedures)

Did the district court plainly err by under Rule 32 by restricting this defendant's allocution at sentencing? *United States v. Zajac*, No. 20-4123 (reply brief filed September 7, 2021).

F. Rule 32.1 (supervised release revocation and sentencing)

G. Rule 33 (new trial)

Did the district court err by denying this defendant's two motions for a new trial based on new evidence that effectively negated an element of the crime and based on the government's violations of its disclosure obligations? *United States v. Cordova*, No. 20-2007 (gov't brief filed June 4, 2021).

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

H. Rule 35 (modification of a sentence)

I. Rule 41 (search & seizure)

J. Rule 43 (presence)

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

XXVI. Second Amendment Issues

XXVII. Sentencing

A. Allocution

B. Apprendi

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

Is Colorado first-degree arson a violent felony under ACCA? *United States v. Lynch*, No. 21-1178 (brief filed October 7, 2021).

Is New Mexico aggravated battery a violent felony under ACCA? *United States v. Gonzales*, No. 21-2022 (gov't brief filed July 21, 2021).

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

D. Burden of Proof

E. Capital Sentencing

Is this defendant entitled to a COA or § 2255 relief based on his claims of effective assistance of counsel during the guilt and penalty phases of his capital trial, evidentiary and due process claims, uncharged aggravating factors, or challenge to the reasonable-doubt instruction? *Menzies v. Powell*, No. 19-4042 (supplemental briefs filed March 8, 2021).

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

Did the district court plainly err in imposing a consecutive sentence based on a misunderstanding of statutory requirements? *United States v. Zajac*, No. 20-4123 (reply brief filed September 7, 2021).

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

H. Departures and Variances

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

I. Fines & Assessments

Did the district court err by concluding this defendant had the ability to pay a \$500 immediately? *United States v. Gardner*, No. 20-8060 (reply brief filed July 26, 2021).

J. First Step Act

Did the district court have jurisdiction to consider this defendant's First Step Act motion for a sentence reduction after his release from prison? *United States v. Collins*, No. 21-6001 (OA November 2021).

In addressing a motion under the First Step Act, did the district court err when it found the defendant had been convicted of one "covered offense" but found it lacked jurisdiction to consider arguments about a different, concurrent sentence? *United States v. Carillo*, No. 21-1153 (OA November 2021).

Did the district court err by denying this defendant's motion to reconsider the denial of his First Step Act motion to reduce his crack cocaine sentence because of new circumstances or because of errors in the original order? *United States v. Warren*, 20-1436 (OA September 9, 2021).

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

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

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

K. Guidelines Sections

1. USSG § 1B1.2

2. USSG § 1B1.3 (relevant conduct)

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

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

3. USSG § 2A2.2

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

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

Did the district court err by applying an enhancement for "abduction," as well as one for the use of force, because it was impermissible double-counting? *United States v. Wells*, No. 20-1228 (OA May 14, 2021).

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

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

7. USSG § 2A4.1 (bodily injury)

8. USSG § 2A6.1

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

9. USSG § 2B1.1

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

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

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

10. USSG § 2B2.1 (burglary)

11. USSG § 2B3.1 (robbery)

12. USSG § 2C1.1

13. USSG § 2D1.1 (drugs)

Did the district court err by assessing enhancements for reckless endangerment, aggravating role, or possession of a firearm? *United States v. Twaddle*, No. 20-2128 (OA September 21, 2021).

Did the district court err by assessing a 2-level enhancement for gun possession because the gun was not possessed close in time to the drug possession offense? *United States v. Portillo-Uranga*, No. 20-3191 (reply brief filed July 28, 2021).

Did the district court err in its calculations of drug quantity or in applying an enhancement for the use of violence, because those findings were not factually supported? *United States v. McDonald*, No. 20-7052 (OA September 21, 2021).

14. USSG § 2G1.1 (sex trafficking)

15. USSG § 2G2.2 (child pornography)

16. USSG § 2K1.4 (arson)

17. USSG § 2K2.1

Did the district court err by classifying this defendant's prior California conviction for possession of methamphetamine for sale as a controlled substance offense under § 4B1.2? *United States v. Blattel*, No. 21-8018 (brief filed August 19, 2021).

Did the district court err by imposing an enhancement for possessing a firearm in connection with another felony offense? *United States v. McCowan*, No. 21-8035 (brief filed August 3, 2021).

Did the district court err by imposing an enhancement for possessing a firearm in connection with another felony offense without sufficient evidence? *United States v. Southard*, No. 21-6035 (gov't brief filed October 1, 2021).

Did the district court err by imposing an enhancement for possessing a firearm in connection with another felony offense, when the facts supported mere possession of a firearm? *United States v. Sanchez*, No. 21-2010 (reply brief filed August 11, 2021).

Did the district court err in applying enhancements for using or possessing the charged firearm in connection with attempted murder or any other felony? *United States v. Alexander*, No. 20-6154 (OA September 21, 2021).

Did the district court err when it enhanced this defendant's sentence under § 2K2.1 based on a prior Oklahoma controlled substance conviction, or by applying the enhancement for possessing a firearm in connection with another felony? *United States v. Nichols*, No. 20-6198 (reply brief filed August 25, 2021).

Did the district court err when it declined to consider whether this defendant's prior conviction for felony menacing in Colorado was a crime of violence under § 2K2.1 as beyond the scope of the appellate remand? *United States v. Lozado*, No. 20-1420 (OA September 21, 2021).

Did the district court err by relying exclusively on statements in the PSR to establish allegations supporting an enhancement for possessing a high capacity magazine? *United States v. Bramlett*, No. 21-8005/8008 (brief filed May 4, 2021).

Did the district court err when it enhanced this defendant's sentence under § 2K2.1 based on a prior Oklahoma controlled substance conviction? *United States v. Smith*, No. 21-6012 (brief filed April 28, 2021).

Did the district court err when it applied enhancements for a stolen firearm and possessing a gun in connection with another felony offense, when the evidence did not support them? *United States v. Gross*, No. 20-6175 (reply brief filed June 23, 2021).

Is Colorado third degree assault a crime of violence for USSG § 2K2.1 purposes? *United States v. Moon*, No. 20-1333 (gov't brief filed April 7, 2021).

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

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

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

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

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

18. USSG § 2K2.2

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

20. USSG § 2T1.1 (tax loss)

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

22. USSG § 2Q2.1

23. USSG § 2S1.1 (money laundering)

Did the district court plainly err by applying an aggravating-role enhancement based on this defendant’s role in a drug trafficking organization, rather than focusing on the money-laundering conduct? *United States v. Arellanes-Portillo*, No. 20-3165 (OA September 21, 2021).

24. USSG § 3A1.1 (hate crime/vulnerable victim)

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

25. USSG § 3A1.2

26. USSG § 3A1.3

27. USSG § 3A1.4 (terrorism)

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

28. USSG § 3B1.1 (aggravating role)

Did the district court err by applying a manager/supervisor enhancement where there was insufficient evidence that the defendant had control or responsibility for the actions of the other

participants? Was any error in application of a sentencing enhancement harmless where the sentencing court stated it would impose the same sentence without the challenged enhancement? *United States v. Escarsiga*, No. 21-6043 (brief filed August 12, 2021).

Did the district court err by applying a manager/supervisor enhancement because this defendant was not a “supervisor” in the criminal activity? *United States v. Astorga*, No. 21-2026 (gov’t brief filed September 13, 2021).

Did the district court err by applying a manager/supervisor enhancement because the defendant did not exercise control over any subordinate, or because the court did not make the necessary factual findings? *United States v. Shepherd*, No. 20-6192 (gov’t brief filed August 18, 2021).

Did the district court err by applying an aggravating-role enhancement without a sufficient factual basis? *United States v. McDonald*, No. 20-7052 (OA September 21, 2021).

29. USSG § 3B1.2 (mitigating role)

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

30. USSG § 3C1.1 (obstruction)

Did the district court err by applying an enhancement for obstruction of justice based on ambiguous conversations? *United States v. McDonald*, No. 20-7052 (OA September 21, 2021).

Did the district court err by applying the § 3C1.1 enhancement on the basis of disputed facts, when the defendant was facing a criminal charge for the same conduct? *United States v. Wells*, No. 20-1228 (OA May 14, 2021).

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

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

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

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

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

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

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

Did the district court err by denying this defendant an adjustment for acceptance of responsibility because he went to trial? *United States v. Casanova*, No. 20-2159 (gov’t brief filed October 1, 2021).

34. USSG § 4A1.1

35. USSG § 4A1.2

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

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

Did the district court err when it determined that a Kansas reckless aggravated battery conviction qualifies as a crime of violence under USSG § 4B1.2(a)(1), because the offense does not require force against the person of another, or because the offense is premised on causation of injury? *United States v. Adams*, No. 21-3043 (brief filed July 1, 2021).

Did the district court plainly err when it determined that a Kansas reckless aggravated battery conviction qualifies as a crime of violence under USSG § 4B1.2(a)(1)? *United States v. Alexander*, No. 20-3238 (reply brief filed August 30, 2021).

Did the district court err by applying the career offender enhancement because this defendant's prior Oklahoma drug conviction is not a controlled substance offense? *United States v. Ritchie*, No. 20-6069 (OA September 23, 2021).

Did the district court err by applying the career offender enhancement because this defendant's prior Oklahoma drug conviction is not a controlled substance offense? *United States v. Jones*, No. 20-6112 (OA May 14, 2021).

Is this defendant's Utah drug offense broader than a "controlled substance offense" under § 4B1.2 because it can be committed by an offer to sell? *United States v. Babcock*, No. 20-4003 (reply brief filed April 15, 2021).

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

38. USSG § 4B1.5

39. USSG § 5C1.2 (safety valve)

40. USSG § 5G1.3

41. USSG § 5K1.1

42. USSG § 5K2.7

43. USSG § 5K2.14

44. USSG § 5G1.2

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

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

L. Mandatory Minimums and Maximums

M. Reasonableness

1. Procedural

Did the district court plainly err by refusing to consider this defendant's family circumstances at sentencing or by misinterpreting § 3553(a)(6) to require the judge to sentence this defendant similarly with other defendants without the same family issues? *United States v. Littlejohn*, No. 21-1224 (brief filed October 1, 2021).

Did the district court err when it failed to rule on all the objections to the PSR, or because the court relied on clearly erroneous facts or failed to explain the sentence? *United States v. McCrary*, No. 21-6047 (brief filed September 10, 2021).

Did the district court err when it denied this defendant's motion for a downward variance, because of age of the defendant's criminal history? *United States v. Nunez-Rosa*, No. 21-2031 (reply brief filed October 1, 2021).

Is this defendant's sentence procedurally unreasonable because the district court refused to rule on the central guideline dispute in the case? *United States v. Colbert*, No. 21-1041 (reply brief filed September 20, 2021).

Did the district court inadequately explain the sentence? *United States v. Astorga*, No. 21-2026 (gov't brief filed September 13, 2021).

Did the district court procedurally err when it imposed this sentence because it misunderstood applicable statutes and guidelines? *United States v. Farley*, No. 21-8013 (gov't brief filed October 1, 2021).

Did the district court err by relying on improper factors to select the sentence, including the defendant's association with "dangerous people," which included his own brother, or by computing the sentence by beginning at the statutory maximum and working downward? *United States v. Southard*, No. 21-6035 (brief filed July 1, 2021).

Did the district court plainly err in relying on the possibility that others who worked in a mall could have been injured by arson, when the record contains no evidence that anyone else was present at the mall at the time? *United States v. Salas*, No. 20-2158 (gov't brief filed September 22, 2021).

Did the district court impose a procedurally or substantively unreasonable sentence in light of the defendant's history? *United States v. Velasco-Mares*, No. 20-2179 (reply brief filed August 2, 2021).

Is this defendant's term of supervised release procedurally or substantively unreasonable, because the district court failed to consider that the defendant had overserved the statutory maximum imprisonment sentence, and failed to consider the time the defendant had already served during the COVID-19 pandemic? *United States v. Mobley*, No. 21-3004 (reply brief filed July 19, 2021).

Did the district court procedurally err by increasing this defendant's sentence because she pleaded guilty without a plea agreement? *United States v. Cozad*, No. 20-3233 (OA September 21, 2021).

Is this defendant's sentence procedurally unreasonable because he received an enhancement based on acquitted conduct? *United States v. Ojimba*, No. 20-6109 (OA September 23, 2021).

Is this defendant's sentence procedurally unreasonable because it was based on an impermissible factor, to send a message to the parties about their agreed-upon sentence? *United States v. Mar-Lopez*, No. 20-1261 (OA September 9, 2021).

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

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

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

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

2. Substantive

Is this defendant's above-guidelines sentence of 48 months for fentanyl distribution substantively unreasonable? *United States v. McCrary*, No. 21-6047 (brief filed September 10, 2021).

Is this defendant's within-guidelines sentence substantively unreasonable, in light of the age of the defendant's criminal history? *United States v. Nunez-Rosa*, No. 21-2031 (reply brief filed October 1, 2021).

Is this defendant's sentence above-guidelines sentence substantively unreasonable? *United States v. Colbert*, No. 21-1041 (reply brief filed September 20, 2021).

Is this defendant's term of supervised release substantively unreasonable, because the district court failed to give effect to the mitigating circumstances in this case and does not account for the possibility that the defendant could be revoked and resentenced indefinitely? *United States v. Stan*, No. 21-1065 (gov't brief filed September 16, 2021).

Is this defendant's 630-month sentence for production of child pornography substantively unreasonable? *United States v. Farley*, No. 21-8013 (gov't brief filed October 1, 2021).

Is this defendant's life sentence for a sexual abuse case substantive unreasonable? *United States v. Woody*, No. 21-2007 (gov't brief filed September 7, 2021).

Is this defendant's statutory-maximum 120-month sentence substantively unreasonable, in light of the defendant's possession of a single gun that had to be manually loaded and the lack of any violence? *United States v. Nichols*, No. 20-6198 (reply brief filed August 25, 2021).

Did the district court impose a procedurally or substantively unreasonable sentence in light of the defendant's history? *United States v. Velasco-Mares*, No. 20-2179 (reply brief filed August 2, 2021).

Is this defendant's 46-month sentence substantive unreasonable, in light of his family and mental-health history? *United States v. Sunrhodes*, No. 8070 (gov't brief filed June 7, 2021).

Is this defendant's above-guideline statutory-maximum sentence for weapons possession by a convicted felon substantively unreasonable? *United States v. Gross*, No. 20-6175 (reply brief filed June 23, 2021).

Is this defendant's term of supervised release procedurally or substantively unreasonable, because the district court failed to consider that the defendant had overserved the statutory maximum imprisonment sentence, and failed to consider the time the defendant had already served during the COVID-19 pandemic? *United States v. Mobley*, No. 21-3004 (reply brief filed July 19, 2021).

The government's delay in bringing this defendant to court on the indictment led to the use of a much higher guideline range, and resulted in a unwarranted disparities. Is that sentence substantive unreasonable? *United States v. Diaz*, No. 20-1269 (reply brief filed May 26, 2021).

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

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

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

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

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

N. SORNA Sentencing Issues

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

P. Resentencing Issues

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

Did the district court abuse its discretion in denying this defendant's motion to reduce sentence under 18 U.S.C. § 3582(c)(1)(A) by conditioning relief on proof of citizenship and relying on unsupported fact? *United States v. Parada*, No. 20-3244 (OA September 21, 2021).

Did the district court abuse its discretion when it denied this defendant's motion for compassionate release based on findings that his medical conditions were not new or were not extraordinary and compelling reasons for a reduction, or based on findings that the defendant posed a danger to the public? *United States v. Krowner*, No. 21-2175 (OA September 21, 2021).

Did the district court err in its denial of compassionate release, because it failed to conduct the correct statutory analysis, failed to properly consider the § 3553(a) factors or erred in finding this defendant was dangerous? *United States v. Wilson*, No. 20-1324 (OA September 9, 2021).

Did the district err when it found it did not have authority to determine what constitutes extraordinary and compelling reasons warranting compassionate release under § 3582(c)(1)? *United States v. Delgado-Montoya*, No. 20-2125 (OA March 9, 2021).

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

S. Constitutional Issues

- 1. Fifth Amendment Due Process**
- 2. Sixth Amendment and Hearsay**

XXVIII. Sixth Amendment

A. Right to Effective Assistance of Counsel

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

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

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

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

Did the district court err when it ruled that this defendant's trial attorney did not work under a conflict of interest, or render ineffective assistance? *United States v. Casanova*, No. 20-2159 (gov't brief filed October 1, 2021).

Did the district court err by refusing to hold a hearing on this defendant's motion to substitute counsel? *United States v. Segue*, No. 20-7034 (reply brief filed April 2, 2021).

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

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

C. Self-Incrimination

D. Self-Representation/Waiver of Counsel

Did the district court err when it denied this defendant the right to represent himself at sentencing? *United States v. Piette*, No. 20-7008 (OA September 21, 2021).

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

E. Confrontation

Did the district court err by admitting the recording of a 911 call because there was an insufficient foundation or because admission of the call violated the defendant's confrontation rights? *United States v. Draine*, No. 20-6118 (reply brief filed October 1, 2021).

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

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

F. Impartial Jury

G. Jury Verdict

H. Compulsory Process

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

Did the district court err by dismissing the indictment for violation of this defendant's constitutional speedy trial rights, where the government waited to prosecute him until after his state prosecution was completed? *United States v. Garcia*, No. 20-1386 (OA November 2021) (gov't appeal).

Did the district court erred when it denied this defendant's motion to dismiss the indictment under the Speedy Trial Act, because the clock started when the case was transferred and he was arraigned in a different district? *United States v. Black*, No. 20-3199 (OA September 21, 2021).

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

Should the district court have dismissed the indictment for providing material support to a terrorist organization because of constitutional speedy-trial violations resulting from a six-year delay? *United States v. Jumaev*, No. 18-1296 (supplemental brief filed June 1, 2021).

XXX. Standards of Review

A. Waiver

B. Forfeiture/Plain Error

C. De Novo Review

XXXI. Statutes of Limitations

The statute of limitations for traveling to have sex with a minor under 18 U.S.C. § 2423 began to run when the victim turned 16, and therefore expired before this defendant was indicted. In the interim, two statutes were passed that extended the statute of limitations. Should this defendant's conviction be reversed or did those statutes validly extend the statute of limitations? *United States v. Piette*, No. 20-7008 (OA September 21, 2021).

XXXII. Supervised Release

A. Revocation Issues

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

B. Sentencing Issues (either initially or after revocation)

1. Statutory Maximum

Did the district court plainly err by imposing a revocation sentence that exceeded the statutory maximum term of imprisonment for possession with intent to distribute marijuana? *United States v. Bruley*, No. 20-6078 (OA September 23, 2021).

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

2. Mandatory Minimum

Did the district court err in applying the mandatory revocation and minimum sentence provisions of § 3583(k) which had previously been found unconstitutional both by the Tenth Circuit and the Supreme Court? *United States v. Shakespeare*, No. 21-8010 (reply brief filed September 2, 2021).

3. Substantive

Is this defendant's above-guideline probation-revocation sentence procedurally or substantively unreasonable, where the sentence constituted enforcement of a sentencing bargain the court had previously offered the defendant? *United States v. Moore*, No. 20-3171 (OA September 21, 2021).

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

4. Procedural

Is this defendant's above-guideline probation-revocation sentence procedurally or substantively unreasonable, where the sentence constituted enforcement of a sentencing bargain the court had previously offered the defendant? *United States v. Moore*, No. 20-3171 (OA September 21, 2021).

Did the district court plainly err in imposing a term of supervised release without specifying which conviction was the basis for that supervision? *United States v. Bruley*, No. 20-6078 (OA September 23, 2021).

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

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

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

5. Unlawful Delegation of authority

6. Assimilative Crimes Act (ACA) sentences

C. Conditions of Supervised Release

Did the district court err by imposing a condition prohibiting possession of sexual materials, or by imposing a condition requiring the defendant to submit to a psychosexual evaluation? *United States v. Englehart*, No. 21-8007 (OA November 2021)

Did the district court plainly err by imposing a special condition of supervised release that prohibited this defendant from possessing pornography depicting sexually explicit conduct? *United States v. Holuby*, No. 21-6071 (brief filed September 20, 2021).

Did the district court err by restricting this defendant's right to associate with his spouse as a condition of supervised release? *United States v. Astorga*, No. 21-2026 (gov't brief filed September 13, 2021).

Did the district court err by imposing conditions of supervised release that are overly burdensome? *United States v. Mobley*, No. 21-3004 (reply brief filed July 19, 2021).

Did the district court plainly err by imposing five special conditions of supervised release without proper justification? *United States v. Bennie*, No. 20-2147 (OA September 21, 2021).

Did the district court err by issuing a written judgment including a condition that conflicted with its oral pronouncement of the sentence? *United States v. Bennie*, No. 20-2147 (OA September 21, 2021).

Did the district court err because the written judgment includes two conditions of supervised release that were not orally pronounced? *United States v. Bruley*, No. 20-6078 (OA September 23, 2021).

Did the district court plainly err by requiring this defendant to take any prescribed medication on supervised release because it failed to justify the condition with particularized findings and compelling circumstances? *United States v. Fonville*, No. 20-7033 (OA May 12, 2021).

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

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

XXXIII. Trial Practice and Evidence Issues

A. Closing Argument

B. Confidential Informants

Did the district court abuse its discretion by denying this defendant's motion to produce the confidential information and for information about the informant? *United States v. Velarde-Pavia*, No. 20-2135 (gov't brief filed June 28, 2021).

C. Cumulative Error

Do multiple errors, including a surprise witness and declining to bifurcate the trial, cumulatively require reversal? *United States v. Garcia*, No. 19-2188 (brief filed June 28, 2021).

Do multiple errors, including refusing to grant a continuance, refusing to sever counts, Brady violations, warrant a new trial? *United States v. Herrera*, No. 19-2126 (gov't brief filed August 2, 2021); *United States v. Sanchez*, No. 19-2141 (gov't brief filed August 2, 2021); *United States v. Baca*, No. 19-2195 (gov't brief filed August 2, 2021).

Do multiple errors, including incompetency, Rule 403, and prosecutorial misconduct, require reversal in this case? *United States v. Ferguson*, No. 20-7045 (reply brief filed March 11, 2021).

Do multiple instructional and evidentiary errors require reversal in this case? *United States v. Segue*, No. 20-7034 (reply brief filed April 2, 2021); *United States v. Sutton*, No. 20-7028 (reply brief filed April 2, 2021).

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

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

D. Demonstrative Evidence

E. Due Process

Did the district court err by refusing to bifurcate the trial of multiple defendants accused of multiple murders, to separate the most grisly murder from the other charges, when the surrounding circumstances were different than the other counts, and the spillover effect would be prejudicial on the other charges? *United States v. Garcia*, No. 19-2188 (brief filed June 28, 2021).

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

F. Eyewitness Identification Testimony

G. Judicial misconduct

H. Jury Instructions

1. Aiding and Abetting

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

2. Burden of Proof

3. Conspiracy

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

4. Constructive Possession

Did the district court plainly err by instructing the jury it could convict this defendant of constructively possessing a firearm, without instructing them that they had to find that he intended to control it? *United States v. Neff*, No. 21-3013 (brief filed August 23, 2021)

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

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

5. Deliberate Avoidance/Ignorance

6. Elements (see statute under which defendant tried)

7. Sentencing Elements

8. Flight

9. Guilt by Association/Guilt of Others

Did the district court err by instructing the jury that “the possible guilt of others should not enter your thinking,” and refusing to clarify that the jurors could consider the possible guilt of testifying witnesses when evaluating their credibility? *United States v. Cortez-Nieto*, No. 20-3184 (reply brief filed

September 27, 2021); *United States v. Cervantez-Aguilar*, No. 20-3189 (reply brief filed September 27, 2021).

10. Investigative Techniques

11. Knowledge

12. Polygraphs

13. Proof

Did the district court err and infringe on the province of the jury by responding to a jury question about the weight to be given to certain facts in this officer-impersonation case? *United States v. Bennie*, No. 20-2147 (OA September 21, 2021).

14. Spoliation

15. Theory of Defense/Affirmative Defense

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

16. Unanimity

17. Voluntary Intoxication

18. Witness Cautionary Instructions

I. Jury Questions

J. Jury Selection

K. Mistrial

L. Prior Convictions

M. Privileges

Did the district court err when it enforced the privileges invoked by the government and ended questioning about a DEA informant? *United States v. Fernandez*, No. 20-2106 (OA September 22, 2021).

N. Prosecutorial Misconduct

Did the prosecutor misstate the law when she told the jurors that “the possible guilt of others should not enter your thinking”—and therefore they should not consider the cooperators’ motive to testify falsely? *United States v. Cortez-Nieto*, No. 20-3184 (reply brief filed September 27, 2021); *United States v. Cervantez-Aguilar*, No. 20-3189 (reply brief filed September 27, 2021).

Did the prosecutor’s closing argument based on facts not in evidence warrant a new trial? *United States v. Gregory*, No. 20-3232 (gov’t brief filed June 21, 2021).

Did the government’s mid-trial change of position regarding the relevance of certain images constitute prosecutorial misconduct warranting a mistrial? *United States v. Ferguson*, No. 20-7045 (reply brief filed March 11, 2021).

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

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

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

O. Right to be Present

P. Right to Present Defense

Did the district court abuse its discretion and violate this defendant's constitutional right to present a defense by excluding evidence of the victim's assaults on third parties, when the defense was self-defense? *United States v. Shayne*, No. 21-8021 (brief filed August 20, 2021).

Was this defendant deprived of his right to present a complete defense when the court refused to allow him to introduce his own previous statements denying his involvement in a murder, when the government introduced his inculpatory statements? *United States v. Herrera*, No. 19-2126 (gov't brief filed August 2, 2021).

Was this defendant denied his right to present a complete defense because the jury was not permitted to learn he had previously been acquitted of related charges? *United States v. Ojimba*, No. 20-6109 (OA September 23, 2021).

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

Q. Rule 201 (judicial notice)

Did the district err by refusing to take judicial notice of an army document that listed the defendant's primary job, which was relevant to the immigration fraud case against him? *United States v. Murry*, No. 20-1214 (OA September 21, 2021); *United States v. Rajesh Ramcharan*, No. 20-1241 (OA September 21, 2021); *United States v. Diann Ramcharan*, No. 20-1243 (OA September 21, 2021); *United States v. Harvell*, No. 20-1245 (OA September 21, 2021).

R. Rule 106 (rule of completeness)

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

Did the district court err by permitting testimony about gang relationships among witnesses? *United States v. Andrew Gallegos*, No. 20-2056 (brief filed July 28, 2021).

Did the district court err by admitting evidence of a prior drug transaction, admitting photographic evidence of firearms seized after the defendant's arrest, or admitting exhibits related to meth without a reliable chain of custody? *United States v. Twaddle*, No. 20-2128 (OA September 21, 2021).

Did the district court err by admitting an unintelligible recorded conversation and testimony about the alleged statements on it? *United States v. Cordova*, No. 20-2007 (gov't brief filed June 4, 2021).

Did the district court err by admitting evidence of a WhatsApp chat against this defendant, because the evidence was not authenticated, unreliable and prejudicial? *United States v. Ojimba*, No. 20-6109 (OA September 23, 2021).

Did the district court err by allowing the introduction of images of child pornography, when the defense did not dispute that issue? *United States v. Ferguson*, No. 20-7045 (reply brief filed March 11, 2021).

Did the district court err by allowing the admission of evidence about a victim's risk of death, when there was no evidence she suffered an injury that risked death? *United States v. Wells*, No. 20-1228 (OA May 14, 2021).

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

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

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

T. Rule 404(b)

In this VICAR trial, did the district court err by admitting testimony that the defendant committed other gang-related assaults nine years earlier? *United States v. Sanchez*, No. 19-2141 (brief filed February 2, 2021); *United States v. Baca*, No. 19-2195 (brief filed February 1, 2021).

In this meth distribution case, did the district court plainly err by admitting evidence that the defendant had prior convictions for trafficking a different drug? *United States v. Ritchie*, No. 20-6069 (OA September 23, 2021).

In this case involving charges of kidnapping and traveling to engage in sex with a minor, did the district court err in this by admitting evidence that the defendant molested other children? *United States v. Piette*, No. 20-7008 (OA September 21, 2021).

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

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

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

Did the district court err by excluding evidence of a victim's prior sexual behavior, where the evidence was relevant and excluding it violated the defendant's confrontation and due process rights? *United States v. Palms*, No. 20-5072 (OA September 21, 2021).

V. Rules 601-615 (Witnesses)

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

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

Did the district court err by allowing a lay witness to offer expert opinion testimony about the significance of drug quantities and characteristics of drug distribution, or by allowing expert witnesses to testify to the defendant's mental state of intent to distribute drugs? *United States v. Draine*, No. 20-6118 (reply brief filed October 1, 2021).

Did the district court plainly err by allowing a lay witness to provide expert testimony on "prison culture?" *United States v. Segue*, No. 20-7034 (reply brief filed April 2, 2021); *United States v. Sutton*, No. 20-7028 (reply brief filed April 2, 2021).

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

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

X. Rules 801-807 (hearsay)

Did the district court err by admitting a victim's statements made to a doctor during a medical examination related to sexual assault? *United States v. Woody*, No. 21-2007 (gov't brief filed September 7, 2021).

Did the district court err by admitting photos from a website because they were hearsay and insufficiently authenticated? *United States v. Shamo*, No. 21-4116 (reply brief filed September 15, 2021).

Did the district court err by admitting witness statements under the coconspirator exception, because there was not a sufficient basis that the witness was part of the drug conspiracy? *United States v. Butler*, No. 20-8037 (reply brief filed July 26, 2021).

Did the district court abuse its discretion by admitting an alleged sexual assault victim’s statements under various hearsay exceptions when the government failed to prove when the statements occurred? *United States v. Vigil*, No. 20-2160 (OA September 22, 2021).

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

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

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

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

Y. Rule 901 (authentication)

Z. Rule 1002 (Best Evidence Rule)

AA. Rule 1006 (Summaries)

BB. Surrebuttal

CC. Voir Dire

Did the district court err by refusing to allow counsel to conduct voir dire on racial or ethnic bias in this immigration-fraud case? *United States v. Murry*, No. 20-1214 (OA September 21, 2021); *United States v. Rajesh Ramcharan*, No. 20-1241(OA September 21, 2021); *United States v. Diann Ramcharan*, No. 20-1243 (OA September 21, 2021); *United States v. Harvell*, No. 20-1245 (OA September 21, 2021).

XXXIV. Vagueness

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

Did the district court err in denying this defendant’s motion to suppress because the affidavit did not establish probable cause for the wiretap, and subsequent tapping orders were tainted? *United States v. Sauzameda*, No. 20-2151 (reply brief filed August 23, 2021).

Did the district court err by denying the motion to suppress wiretap recordings because the “necessity” finding was not established, and because many intercepted calls originated outside the district and were placed to phones outside the district? *United States v. Portillo-Uranga*, No. 20-3191 (reply brief filed August 17, 2021).

Was the government’s warrantless surveillance of this terrorism defendant under the Foreign Intelligence Surveillance Act unconstitutional? And/or was disclosure of the FISA materials required for litigation of this suppression issue? Was the defendant entitled to notice of other surveillance

tools used by the government? *United States v. Muhtorov*, No. 18-1366 (reply brief filed April 7, 2020) (multiple amicus briefs filed by The Brennan Center, NACDL, former Church Committee staff, and cybersecurity experts)

Recently Added Cases

(most recent to least recent)

United States v. Lynch, No. 21-1178 (brief filed October 7, 2021) (18 U.S.C. § 924(e)).

United States v. Littlejohn, No. 21-1224 (brief filed October 1, 2021) (procedural reasonableness).

United States v. Casanova, No. 20-2159 (gov't brief filed October 1, 2021) (due process, conflict of interest, 18 U.S.C. § 922(g), USSG § 3E1.1).

United States v. Holuby, No. 21-6071 (brief filed September 20, 2021) (conditions of supervised release).

United States v. Joe Gallegos, No. 20-2058 (brief filed September 20, 2021) (18 U.S.C. § 1959; discovery)

United States v. Strickland, No. 21-6051 (brief filed September 16, 2021) (28 U.S.C. § 2255).

United States v. McCrary, No. 21-6047 (brief filed September 10, 2021) (procedural and substantive reasonableness).

United States v. Bosman, No. 21-1076 (brief filed September 10, 2021) (warrantless searches and seizures).

United States v. Shebata, No. 21-3107 (brief filed September 1, 2021) (28 U.S.C. § 2255).

United States v. Neff, No. 21-3013 (brief filed August 23, 2021) (constructive possession).

United States v. Leal, No. 21-2003 (brief filed August 23, 2021) (due process, 21 U.S.C. § 841).

United States v. Shayne, No. 21-8021 (brief filed August 20, 2021) (right to present defense).

United States v. Blattel, No. 21-8018 (brief filed August 19, 2021) (USSG § 4B1.1).

United States v. Escarsiga, No. 21-6043 (brief filed August 12, 2021) (USSG § 3B1.1, harmlessness)

United States v. Nunez-Rosa, No. 21-2031 (brief filed August 12, 2021) (procedural and substantive reasonableness).

United States v. Jeffers, No. 21-6017 (brief filed August 6, 2021) (traffic stop).

United States v. McCowan, No. 21-8035 (brief filed August 3, 2021) (USSG § 2K2.1).

United States v. Caldwell, No. 21-4026 (brief filed August 2, 2021) (28 U.S.C. § 2255).

Lee v. Schnurr, No. 21-3098 (brief filed July 28, 2021) (28 U.S.C. § 2254).

United States v. Gallegos, No. 20-2056 (brief filed July 28, 2021) (18 U.S.C. § 1959, severance, Rule 403).

United States v. Hilleland, No. 21-3063 (brief filed July 26, 2021) (18 U.S.C. § 922(g)).

United States v. Colbert, No. 21-2141 (brief filed July 21, 2021) (procedural and substantive reasonableness).