

ISSUES PENDING IN THE TENTH CIRCUIT

COMPILED BY THE KANSAS FEDERAL PUBLIC DEFENDER



Updated March 17, 2020

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.

Please direct all inquiries to Dan Hansmeier at daniel_hansmeier@fd.org, Paige Nichols at paige_nichols@fd.org, or Kayla Gassmann at kayla_gassmann@fd.org.

Table of Contents

I. Appeals/scope of remand 1

II. Competence 1

III. Confessions..... 1

IV. Continuances 1

V. Discovery 1

VI. Double Jeopardy 1

VII. Eighth Amendment and Capital Issues 1

VIII.Ex Post Facto Issues 1

IX. First Amendment or Other Rights of Access..... 1

X. Forfeiture 1

XI. Fourth Amendment Issues 2

 A. Arrest Warrant 2

 B. Attenuation (intervening circumstances) 2

 C. Consent..... 2

 D. Excessive Force 2

 E. Fruit of the Poisonous Tree..... 2

 F. Good Faith Exception..... 2

 G. Government Actor..... 2

 H. Hearing Issues..... 2

 I. Inventory Searches 2

 J. Knock and Talk 3

 K. Plain View Doctrine..... 3

 L. Protective Sweeps..... 3

 M. Scope of Warrantless Search..... 3

 N. Search Incident to Arrest 3

 O. Search Warrant Issues (including *Franks v. Delaware* issues)..... 3

 P. Standing (reasonable expectation of privacy)..... 4

 Q. *Terry* Stops: Initial Detention 4

 R. *Terry*: Frisk 4

 S. Traffic Stops..... 4

 T. Warrantless Arrests 5

 U. Warrantless Searches & Seizures..... 5

XII. Fourteenth Amendment: Due Process	6
XIII.Fifth Amendment: Due Process	6
XIV.Fifth Amendment: Right to Silence	6
XV. Fifth Amendment: Confessions & <i>Miranda</i>	7
XVI.Habeas Issues	7
A. 28 U.S.C. § 2241	7
B. 28 U.S.C. § 2254	7
C. 28 U.S.C. § 2255	9
D. Fed. R. Civ. P. 60(b).....	9
E. Coram Nobis.....	9
XVII. Immigration Issues.....	10
XVIII. Indictment Issues	10
A. Amendments.....	10
B. Duplicity	10
C. Grand Jury Issues	10
D. Sufficiency of the Indictment (Sixth Amendment)	10
E. Variance	10
XIX.Jurisdictional Issues	10
XX. Motion Practice	10
XXI.Offenses	10
A. 8 U.S.C. § 1253 (removal-related offenses)	10
B. 8 U.S.C. §§ 1325/1326 (illegal entry/reentry)	10
C. 16 U.S.C. § 3372, et al. (illegally taking fish and wildlife)	11
D. 18 U.S.C. § 2 (aiding and abetting)	11
E. 18 U.S.C. § 111 (assaulting, resisting, impeding an officer or employee).....	11
F. 18 U.S.C. § 242 (civil-rights violation).....	11
G. 18 U.S.C. § 287 (false claims against the government)	11
H. 18 U.S.C. § 371 (conspiracy).....	11
I. 18 U.S.C. § 666 (bribery)	11
J. 18 U.S.C. § 669 (theft from health care program).....	11
K. 18 U.S.C. § 842 (unlawful distribution/possession of explosives).....	11
L. 18 U.S.C. § 843 (using a communication device)	11
M. 18 U.S.C. § 844 (arson).....	11

N.	18 U.S.C. § 875 (interstate communications)	11
O.	18 U.S.C. § 876 (mailing threatening communications)	11
P.	18 U.S.C. § 922(d) (disposal to a prohibited person)	11
Q.	18 U.S.C. § 922(g) (prohibited person in possession)	11
R.	18 U.S.C. § 924(c) (Possession/Use of Firearm during drug trafficking offense)	12
S.	18 U.S.C. § 1001 (false statements)	12
T.	18 U.S.C. § 1005 (false bank entries)	12
U.	18 U.S.C. § 1028 (identity-document fraud)	12
V.	18 U.S.C. § 1028A (identity theft)	13
W.	18 U.S.C. § 1030 (computer fraud and related activity)	13
X.	18 U.S.C. § 1041 (false statements to a bank)	13
Y.	18 U.S.C. § 1112 (involuntary manslaughter)	13
Z.	18 U.S.C. § 1153 (offenses committed within Indian country)	13
AA.	18 U.S.C. § 1201 (kidnapping)	13
BB.	18 U.S.C. § 1341 (mail fraud)	13
CC.	18 U.S.C. § 1343 (wire fraud)	13
DD.	18 U.S.C. § 1344 (bank fraud)	13
EE.	18 U.S.C. § 1347 (health-care fraud)	13
FF.	18 U.S.C. § 1361 (depredation of government property)	13
GG.	18 U.S.C. § 1512 (witness tampering)	13
HH.	18 U.S.C. § 1513 (obstruction of justice)	13
II.	18 U.S.C. § 1591 (sex trafficking of children)	13
JJ.	18 U.S.C. § 1791 (contraband in prison)	13
KK.	18 U.S.C. § 1951 (Hobbs Act robbery)	13
LL.	18 U.S.C. § 1956 (money laundering)	13
MM.	18 U.S.C. § 2119 (carjacking)	13
NN.	18 U.S.C. §§ 2241-2245 (sexual abuse)	14
OO.	18 U.S.C. § 2250 (SORNA: failure to register); 42 U.S.C. § 16911	14
PP.	18 U.S.C. § 2251 (sexual exploitation/production of child pornography)	14
QQ.	18 U.S.C. § 2422 (enticement to travel to engage in prostitution)	14
RR.	18 U.S.C. § 2423 (transportation of minors)	14
SS.	18 U.S.C. § 2252A (receiving/distributing child pornography)	14
TT.	21 U.S.C. § 841 (drug trafficking)	14

UU.	21 U.S.C. § 846 (drug conspiracy)	14
VV.	21 U.S.C. § 856 (drug-involved premises)	15
WW.	26 U.S.C. § 5861 (firearms offenses)	15
XX.	26 U.S.C. § 7201 (tax evasion).....	15
YY.	26 U.S.C. § 7212.....	15
ZZ.	28 U.S.C. § 455 (recusal)	15
AAA.	42 U.S.C. § 3631 (interfering with housing rights).....	15
BBB.	49 U.S.C. § 46504 (intimidating a flight attendant)	15
CCC.	Regulatory and CFR Offenses	15
XXII.	Pleas.....	15
A.	Acceptance of Plea.....	15
B.	Appeal Waiver.....	15
C.	Breach	15
D.	Rejection of Plea Agreement.....	15
E.	Withdrawal of Plea.....	15
XXIII.	Restitution (18 U.S.C. § 3663, 3664, <i>et al.</i>).....	15
XXIV.	Rules of Criminal Procedure	16
A.	Rule 8 (Joinder/Severance).....	16
B.	Rule 11 (pleas) (see main Pleas section).....	16
C.	Rule 12 (motions).....	16
D.	Rule 32 (sentencing procedures).....	16
E.	Rule 33 (new trial)	16
F.	Rule 35 (modification of a sentence).....	16
G.	Rule 41 (search & seizure).....	16
XXV.	Scope of Remand/Mandate Rule/Other Remand Issues.....	16
XXVI.	Second Amendment Issues.....	17
XXVII.	Sentencing.....	17
A.	Allocution.....	17
B.	Apprendi.....	17
C.	Armed Career Criminal Act (18 U.S.C. 924(e))	17
D.	Burden of Proof	17
E.	Capital Sentencing.....	17
F.	Consecutive Sentences (18 U.S.C. § 3584)	17

G. Commitment in Lieu of Imprisonment (18 U.S.C. § 4244)	18
H. Departures and Variances	18
I. Fines & Assessments	18
J. First Step Act	18
K. Guidelines Sections	19
1. USSG § 1B1.2	19
2. USSG § 1B1.3 (relevant conduct)	19
3. USSG § 2A2.2	19
4. USSG § 2A3.2 (sexual abuse of a minor)	19
5. USSG § 2A4.1 (bodily injury)	19
6. USSG § 2A6.1	19
a) subsection (b)(2)(A) (more than 2 threats)	19
7. USSG § 2B1.1	19
8. USSG § 2B3.1 (robbery)	20
9. USSG § 2C1.1	20
10. USSG § 2D1.1 (drugs)	20
11. USSG § 2G1.1 (sex trafficking)	20
12. USSG § 2G2.2 (child pornography)	20
13. USSG § 2K1.4 (arson)	20
14. USSG § 2K2.1	20
15. USSG § 2K2.2	21
16. USSG § 2L1.2 (immigration offenses)	21
17. USSG § 2T1.1 (tax loss)	21
18. USSG § 2T1.4 (sophisticated means—tax offense)	21
19. USSG § 2Q2.1	21
20. USSG § 3A1.1 (hate crime/vulnerable victim)	21
21. USSG § 3A1.2	21
22. USSG § 3A1.3	21
23. USSG § 3A1.4 (terrorism)	21
24. USSG § 3B1.1 (aggravating role)	21
25. USSG § 3B1.2 (mitigating role)	22
26. USSG § 3C1.1 (obstruction)	22
27. USSG § 3C1.2 (reckless endangerment during flight)	23

28. USSG § 3D1.2-1.5 (multiple counts)	23
29. USSG § 3E1.1 (acceptance of responsibility)	23
30. USSG § 4A1.1	23
31. USSG § 4A1.2	23
32. USSG § 4A1.3 (criminal-history departures)	23
33. USSG §§ 4B1.1, 4B1.2 (crime of violence; controlled substance offense).....	23
34. USSG § 4B1.5.....	24
35. USSG § 5C1.2 (safety valve).....	24
36. USSG § 5G1.3.....	24
37. USSG § 5K1.1	24
38. USSG § 5K2.7	24
39. USSG § 5K2.14.....	24
40. USSG § 5G1.2.....	24
41. USSG § 7B1.3 (revocation of probation or supervised release).	24
L. Mandatory Minimums and Maximums	24
M. Reasonableness	24
1. Procedural.....	24
2. Substantive.....	25
N. SORNA Sentencing Issues	27
O. Three Strikes (18 U.S.C. § 3559(c)).....	27
P. Resentencing Issues	27
Q. Sentence Reductions under 18 U.S.C. § 3582(c)(2).....	27
R. Constitutional Issues.....	27
1. Fifth Amendment Due Process.....	27
2. Sixth Amendment and Hearsay	27
XXVIII. Sixth Amendment	27
A. Right to Effective Assistance of Counsel.....	27
B. Substitution of Counsel/Conflicts of Interest/Counsel of Choice.....	28
C. Self-Incrimination.....	28
D. Self-Representation/Waiver of Counsel.....	28
E. Confrontation	28
F. Jury Verdict	28
G. Compulsory Process	29

XXIX.	Speedy Trial (statutory/constitutional) & Interstate Agreement on Detainers Act.....	29
XXX.	Standards of Review	29
	A. Waiver.....	29
	B. Forfeiture/Plain Error.....	29
	C. De Novo Review.....	29
XXXI.	Statutes of Limitations.....	29
XXXII.	Supervised Release	29
	A. Revocation Issues.....	29
	B. Sentencing Issues (either initially or after revocation)	29
	1. Substantive.....	29
	2. Procedural.....	30
	3. Unlawful Delegation of authority.....	30
	4. Assimilative Crimes Act (ACA) sentences	30
	C. Conditions of Supervised Release.....	30
XXXIII.	Trial Practice and Evidence Issues	30
	A. Closing Argument	31
	B. Confidential Informants.....	31
	C. Cumulative Error.....	31
	D. Demonstrative Evidence.....	31
	E. Due Process	31
	F. Eyewitness Identification Testimony	31
	G. Judicial misconduct	31
	H. Jury Instructions	31
	1. Aiding and Abetting	31
	2. Burden of Proof.....	32
	3. Conspiracy.....	32
	4. Constructive Possession	32
	5. Deliberate Avoidance/Ignorance	32
	6. Elements (see statute under which defendant tried).....	32
	7. Sentencing Elements	32
	8. Flight.....	32
	9. Guilt by Association/Guilt of Others	32
	10. Investigative Techniques.....	32

11. Knowledge.....	32
12. Polygraphs.....	32
13. Proof.....	32
14. Spoliation	32
15. Theory of Defense/Affirmative Defense	32
16. Unanimity.....	33
17. Voluntary Intoxication.....	33
18. Witness Cautionary Instructions.....	33
I. Jury Questions	33
J. Jury Selection	33
K. Mistrial	33
L. Prior Convictions	33
M. Prosecutorial Misconduct.....	33
N. Right to be Present.....	33
O. Right to Present Defense	33
P. Rule 106 (rule of completeness).....	33
Q. Rules 401, 402, 403 (relevance & undue prejudice)	33
R. Rule 404(b).....	34
S. Rules 412, 413 & 414 (Sexual Assault Evidence)	34
T. Rules 601-615 (Witnesses)	34
U. Rules 701-706 (Opinions and Expert Testimony).....	34
V. Rules 801-807 (hearsay).....	35
W. Rule 901 (authentication)	35
X. Rule 1002 (Best Evidence Rule).....	35
Y. Rule 1006 (Summaries).....	35
Z. Surrebuttal	35
AA. Voir Dire	35
XXXIV. Vagueness.....	35
XXXV. Wiretap Issues (18 U.S.C. § 2510-2522 or FISA Section 702)	35

I. Appeals/scope of remand

II. Competence

Does this defendant's intellectual disability, which impairs his ability to process verbal information, render him incompetent to stand trial? *United States v. Perea*, No. 19-2160 (brief filed January 21, 2020).

III. Confessions

IV. Continuances

V. Discovery

Did the district court err by not imposing more severe sanctions for the government's discovery violations? *United States v. Jumaev*, No. 18-1296 (gov't brief filed February 7, 2020).

VI. Double Jeopardy

Did the district court err by considering, at sentencing, charges that were dismissed with prejudice for lack of evidence? *United States v. Castillo-Quintana*, No. 19-3147 (brief filed March 2, 2020).

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

Did this drug defendant's conspiracy prosecution in a Colorado federal court, after he pleaded guilty to the same conspiracy in a Texas federal court, violate the Double Jeopardy clause? *United States v. Mier-Garces*, No. 18-1085 (OA May 9, 2019).

VII. Eighth Amendment and Capital Issues

VIII. Ex Post Facto Issues

Did the district court plainly err by finding that this defendant had admitted to being "found in" the United States on a later date than the defense argued, which triggered application of a different sentencing guideline manual (and a higher range)? *United States v. Romero-Lopez*, No. 19-1268 (brief filed January 27, 2020).

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. Brandi Channon*, No. 19-2028; *United States v. Matthew Channon*, No. 19-2029 (OA March 12, 2020).

XI. Fourth Amendment Issues

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

A. Arrest Warrant

B. Attenuation (intervening circumstances)

C. Consent

Was the officers' warrantless search of this defendant's bedroom in his mother's house unlawful, because his grandfather did not have actual or apparent authority to consent to the search, and because any consent he may have given was not voluntary because of the grandfather's dementia and inability to speak English? *United States v. Quezada-Lara*, No. 19-2200 (brief filed March 13, 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 (gov't brief filed March 4, 2020).

Did the district court err in finding that this defendant's encounter with the police was consensual? *United States v. Sanchez*, No. 19-2092 (gov't brief filed February 20, 2020).

D. Excessive Force

E. Fruit of the Poisonous Tree

F. Good Faith Exception

Did the district court err in holding that the good faith exception was an independent reason to deny the motion to suppression, even if the warrant was deficient? *United States v. Stein*, No. 19-3043 (OA March 10, 2020).

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

G. Government Actor

H. Hearing Issues

Did the district court err when it denied this defendant's motion to suppress by making factual findings unsupported by the record and by failing to hold an evidentiary hearing? *United States v. Murray*, No. 19-8067 (brief filed March 12, 2020).

I. Inventory Searches

Did the district court err by denying this defendant's motion to suppress, based on a conclusion that the evidence was discovered during a proper inventory search? *United States v. Chavez*, No. 19-2123 (brief filed February 21, 2020).

Was the impoundment and search of this vehicle allowed either because it was believed to contain evidence of a crime or under the community-caretaking function? *United States v. Shelton*, No. 19-2112 (reply brief filed January 22, 2020).

J. Knock and Talk

K. Plain View Doctrine

L. Protective Sweeps

Can the officer's entry onto property be justified as a protective sweep if no arrest occurs, or must a protective sweep of a home be incident to arrest? *United States v. Quezada-Lara*, No. 19-2200 (brief filed March 13, 2020).

M. Scope of Warrantless Search

N. Search Incident to Arrest

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

Was this defendant entitled to a *Franks* hearing based on the omission of exculpatory information from the search warrant affidavit? *United States v. Moses*, No. 19-6036 (reply brief filed January 30, 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 (gov't brief filed February 7, 2020).

Did the district court err in denying the motion to suppress because the warrant lacked probable cause and particularity, or because it found there was no *Franks* violation? *United States v. Stein*, No. 19-3043 (OA March 10, 2020).

Did the district court err in holding that the good faith exception was an independent reasons to deny the motion to suppression, even if the warrant was deficient? *United States v. Stein*, No. 19-3043 (OA March 10, 2020).

Did the search warrant for this defendant's home lack probable cause? *United States v. Ross*, No. 19-7008 (OA November 21, 2019).

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

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

Did the search warrant affidavit in this case contain material omissions; did it establish probable cause; and was law enforcement's detention of this defendant during the execution of the search warrant reasonable under *Bailey v. United States*? *United States v. Jenkins*, No. 19-6014 (OA Jan. 23, 2020).

P. Standing (reasonable expectation of privacy)

Q. Terry Stops: Initial Detention

Was there reasonable suspicion, based on an anonymous 911 call, to stop this defendant? *United States v. Gaines*, No. 19-3177 (gov't brief filed March 13, 2020).

R. Terry: Frisk

Did law enforcement's pat down of this defendant violate the Fourth Amendment, because there were no facts suggesting the defendant was armed and dangerous? *United States v. Torres*, No. 19-2161 (gov't brief filed March 4, 2020).

S. Traffic Stops

Did the stop and search of this defendant's car violate the Fourth Amendment because it was impermissibly extended, and because the defendant did not consent to the search? *United States v. Mercado-Garcia*, No. 19-2153 (brief filed March 2, 2020).

Did the stop of this defendant's vehicle lack reasonable suspicion or probable cause either because it was based on an unreliable informant's tip about drug trafficking, or because driving on a lane line is not a traffic violation? *United States v. Cruz*, No. 19-2132 (brief filed December 20, 2019).

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 (brief filed December 20, 2019).

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 (gov't brief filed March 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 (gov't brief filed March 4, 2020).

Was there probable cause for a traffic stop where the vehicle drove onto the fog line, and even if there was, did the officer unlawfully extend the stop? And did the stop become a consensual encounter, and if so, was the consent valid, or did the search exceed the scope of the consent? *United States v. Arzate*, No. 19-2119 (brief filed November 29, 2019).

Was there reasonable suspicion for a traffic stop, or did the officer unconstitutionally extend the detention of the defendant? *United States v. Chavez*, No. 19-4121 (gov't brief filed February 21, 2020).

Does a Utah statute permitting stops for decriminalized equipment violations contravene the Fourth Amendment, by allowing stops based on violations that are not crimes? *United States v. Meadows*, No. 19-4071 (reply brief filed February 10, 2020).

Was there reasonable suspicion of criminal activity to justify detaining this defendant pending a dog sniff? *United States v. Orozco-Rivas*, No. 19-6074 (submitted on briefs March 12, 2020).

Did law enforcement unreasonably extend the defendant's traffic stop by employing a time-consuming background check, and was there reasonable suspicion of impaired driving justifying the extension? *United States v. Mayville*, No. 19-4008 (OA March 10, 2020).

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

Did law enforcement unreasonably extend the scope and duration of this traffic stop? *United States v. Cortez*, No. 19-2058; *United States v. Reyes-Moreno*, No. 19-2059 (OA March 10, 2020).

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

T. Warrantless Arrests

Did the officer in this case lack probable cause to arrest this defendant—who momentarily balked and questioned the officer's order that he submit to a pat-down—for resisting an officer? *United States v. Romero, Jr.*, No. 18-2180 (OA July 19, 2019).

U. Warrantless Searches & Seizures

Was this defendant bus passenger seized within the meaning of the Fourth Amendment when a DEA agent asked several questions, showed his badge, and asked three times to search her backpack, and even if she was, was her consent voluntary? *United States v. Ramos-Burciaga*, No. 19-2174 (brief filed March 2, 2020).

Did police officers have reasonable suspicion to enter a hotel room and seize the occupants, based on a 911 call (which later turned out to be fabricated), when the call contained internal inconsistencies and was not corroborated? *United States v. Romero*, No. 19-4117 (brief filed January 13, 2020).

Should evidence from a search of this defendant's vehicle be suppressed, where the vehicle was impounded on private property contrary to law enforcement rules, and because there was no probable cause? *United States v. Brooks*, No. 19-6116 (OA March 12, 2020).

Did any exception to the warrant requirement allow the entry and search of this defendant's home? *United States v. Cruz*, No. 19-2127 (gov't brief filed March 9, 2020).

Did the need to provide emergency aid to someone inside authorize the warrantless search of this defendant's home? *United States v. Mora*, No. 19-2097 (reply brief filed January 31, 2020).

Did the officer conduct a search when he moved a camper's hatch and then opened the hatch to look inside, and if so was that search justified by plain view or consent? *United States v. Neugin*, No. 19-7043 (OA March 10, 2020).

Did the district err in finding that this defendant's seizure in a public park was supported by reasonable suspicion of a drug sale? *United States v. Serna*, No. 19-2114 (submitted on briefs March 12, 2020).

Was there sufficient reasonable suspicion and/or probable cause to stop this defendant based on a tip about a traffic violation, to prolong the stop, and eventually to arrest this defendant based on the discovery of a gun in a nearby backyard? *United States v. Goebel*, No. 19-2125 (OA March 10, 2020).

Was there probable cause to arrest and search this defendant, based on the officer's observations of the defendant's interaction with other suspects and a confidential informant, and did the defendant abandon a gun at the scene? *United States v. Jackson*, No. 19-1191 (OA March 12, 2020).

Was there reasonable suspicion of a potential auto-burglary, justifying a stop of this defendant as he exited a car parked in the driveway? And were there exigent circumstances allowing the officer to enter the backyard after him to arrest him after he fled? *United States v. Shelton*, No. 19-2112 (reply brief filed January 22, 2020).

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

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

XII. Fourteenth Amendment: Due Process

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

XIII. Fifth Amendment: Due Process

Did the district court err when it found a witness's statements to be voluntary and the admission of those statements not to violate due process, when the statements were made at the police station, after police kicked down the witness's door and ordered her out of the house? *United States v. Cade*, No. 19-3220 (brief filed February 18, 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).

Did the district court apply the wrong legal standard when it denied the motion to dismiss for preindictment delay? *United States v. Woodard*, No. 19-5009 (OA Jan. 22, 2020).

XIV. Fifth Amendment: Right to Silence

Did admission of this defendant's confession violate Due Process and the right to silence, when it was obtained at gunpoint when he was severely injured and semiconscious? *United States v. Cain*, No. 19-7030 (reply brief filed March 3, 2020).

Does a supervised-release condition that requires the defendant to submit to polygraph testing violate the Fifth Amendment's protection against self-incrimination? *United States v. Richards*, No. 19-8044 (gov't brief filed February 19, 2020).

XV. Fifth Amendment: Confessions & *Miranda*

Did law enforcement unlawfully interrogate this defendant in violation of *Miranda*? *United States v. Goebel*, No. 19-2125 (OA March 10, 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 the district court err in finding this defendant's confession voluntary? *United States v. Ravenell*, No. 18-2091 (OA March 20, 2019).

Did law enforcement unlawfully interrogate this defendant without a *Miranda* advisory? *United States v. Ross*, No. 19-7008 (OA November 21, 2019).

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

Did law enforcement's false promise of leniency and other misrepresentations render this drug defendant's confession involuntary? *United States v. Young*, No. 18-6221 (OA Jan. 23, 2020).

Did law enforcement unlawfully interrogate these defendants during a traffic stop without a *Miranda* advisory? *United States v. Cortez*, No. 19-2058; *United States v. Reyes-Moreno*, No. 19-2059 (OA March 10, 2020).

XVI. Habeas Issues

A. 28 U.S.C. § 2241

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

B. 28 U.S.C. § 2254

Is this state 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 (brief filed March 2, 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 robbery defendant entitled to relief or a COA on any of his multiple claims of ineffective assistance of counsel, for failure to perform DNA testing, based on failure to pursue an alibi defense, and failure to object vouching testimony? *LaPointe v. Oliver*, No. 19-3258 (brief filed January 7, 2020).

Did the district court err by finding that this state murder defendant overcame multiple procedural bars to post-conviction review, and was entitled to relief, because he had shown cause and prejudice and actual innocence? *Fontenot v. Crow*, No. 19-7045 (appellee brief filed March 16, 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).

Is that state drug defendant entitled to 28 U.S.C. § 2254 relief (or an evidentiary hearing) on his claims of ineffective assistance of counsel, prosecutorial misconduct, involuntary confession, double jeopardy, or insufficient evidence? *Urquiza v. Allbaugh*, No. 19-5066 (gov't brief filed November 26, 2019).

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

Should the district court have granted habeas relief on this state capital defendant's claims that (1) the exclusion of expert testimony relevant to the defendant's ability to form the necessary intent deprived him of due process; and (2) his *Miranda* waiver was neither knowing nor intelligent? *Coddington v. Carpenter*, No. 16-6295 (state's appeal) (OA Jan. 24, 2020).

Should the district court have granted federal habeas relief (or at least an evidentiary hearing) on this state capital defendant's claims of ineffective assistance of counsel, unconstitutional jury instructions, unconstitutional victim-impact testimony, and cumulative error? *Harris v. Carpenter*, No. 17-6109 (OA March 20, 2019).

Is this state child-abuse/murder defendant entitled to 28 U.S.C. § 2254 relief on grounds that his conviction was tainted by Sixth Amendment violations (the trial judge's denial of the right to present evidence that the state's forensic lab was unaccredited), the introduction of unduly prejudicial autopsy photographs, and cumulative error? *Weimer v. Allbaugh*, No. 18-6072 (state's brief filed Sept. 27, 2018).

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

Is this Oklahoma murder defendant entitled to 28 U.S.C. § 2254 relief on his claims that he was denied his right to present a complete defense, that his trial counsel was ineffective, and that the

evidence was insufficient to support his conviction? *Davis v. Allbaugh*, No. 18-6131 (OA March 21, 2019).

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

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

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

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

C. 28 U.S.C. § 2255

Is this defendant entitled to § 2255 relief based on her claim that prosecutors obtained Sixth-Amendment protected communications between her and her lawyer, is this error a structural error, and, if so, what is the remedy? *United States v. Read-Forbes*, No. 19-3268 (brief filed March 16, 2020).

Did the district court reversibly err when it held that this defendant's § 2255 motion was untimely? *United States v. Friedman*, No. 19-4127 (brief filed March 6, 2020).

Is this defendant entitled to relief under 28 U.S.C. § 2255 because his 18 U.S.C. § 924(c) conviction was based on the invalidated residual clause, and because his federal assault conviction is otherwise not a crime of violence? *United States v. Muskett*, No. 17-2123 (reply brief filed March 11, 2020).

Is this defendant entitled to a certificate of appealability under 28 U.S.C. § 2255 on his claim that his ACCA enhancement, premised on a prior conviction Colorado theft from a person, rested on the now-invalidated residual clause? And on his claim that the error was not harmless because his alternative conviction for Colorado second-degree assault, does not currently qualify as a violent felony? *United States v. Lozano*, No. 19-1222 (reply brief filed March 5, 2020).

Is this defendant entitled to a certificate of appealability and 28 U.S.C. § 2255 relief because his attorney failed to consult with him about an appeal of his sentence? *United States v. Green*, No. 19-7033 (reply brief filed December 3, 2019).

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

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

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

E. Coram Nobis

XVII. Immigration Issues

XVIII. Indictment Issues

A. Amendments

Did the district court constructively amend this defendant's enticement indictment through its jury instructions at trial? *United States v. Miller*, No. 18-7059 (OA September 24, 2019).

B. Duplicity

In this gun-possession case, did the admission of evidence of a prior robbery involving a gun create duplicity problem in the indictment and lead to a non-unanimous verdict? *United States v. Wilson*, No. 1198 (reply brief filed February 6, 2020).

C. Grand Jury Issues

D. Sufficiency of the Indictment (Sixth Amendment)

Was this indictment for international parental kidnapping and making threats to kidnap insufficient because it failed to allege sufficient facts about the offenses? *United States v. Mobley*, No. 19-3122 (gov't brief filed January 6, 2020).

E. Variance

XIX. Jurisdictional Issues

Was there sufficient evidence that this second-degree-murder defendant's offense was committed within the territorial jurisdiction of the United States, and did the district court violate Rule 12 by delaying ruling on this defendant's jurisdictional challenge until after he was convicted? *United States v. Antonio*, No. 18-2118 (OA July 19, 2019).

XX. Motion Practice

XXI. Offenses

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

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

Should this indictment for illegal reentry have been dismissed, because the defendant's removal was premised on a conviction that is no longer a removable offense? *United States v. Flores*, No. 19-1446 (gov't brief filed February 21, 2020).

In a case charging illegal reentry after a prior removal under 18 U.S.C. § 1326, is a valid warrant of removal a necessary element, and was the evidence insufficient to prove that element in this case? *United States v. Caballero-Anaya*, No. 19-1034 (OA Jan. 23, 2020).

Did the district court err in denying this illegal-reentry defendant's motion to dismiss on grounds that his underlying removal order was invalid? *United States v. Ferman*, No. 19-2078 (OA Jan. 23, 2020).

- C. 16 U.S.C. § 3372, et al. (illegally taking fish and wildlife)**
- D. 18 U.S.C. § 2 (aiding and abetting)**
- E. 18 U.S.C. § 111 (assaulting, resisting, impeding an officer or employee)**
- F. 18 U.S.C. § 242 (civil-rights violation)**
- G. 18 U.S.C. § 287 (false claims against the government)**
- H. 18 U.S.C. § 371 (conspiracy)**

Did the district court erroneously omit willfulness from the elements of conspiracy under 18 U.S.C. § 371? Was the evidence sufficient to support this defendant’s conspiracy convictions? *United States v. Wyatt*, No. 18-1135 (OA September 13, 2019).

- I. 18 U.S.C. § 666 (bribery)**
- J. 18 U.S.C. § 669 (theft from health care program)**

Was there sufficient evidence that the assets stolen in this case belonged to a qualifying “health care benefit program”? *United States v. Maynard*, No. 19-1304 (brief filed February 18, 2020).

- K. 18 U.S.C. § 842 (unlawful distribution/possession of explosives)**
- L. 18 U.S.C. § 843 (using a communication device)**
- M. 18 U.S.C. § 844 (arson)**
- N. 18 U.S.C. § 875 (interstate communications)**

Was there sufficient evidence supporting this defendant’s convictions for making threats to kidnap under 18 U.S.C. § 875(b)? *United States v. Mobley*, No. 19-3122 (gov’t brief filed January 6, 2020).

- O. 18 U.S.C. § 876 (mailing threatening communications)**
- P. 18 U.S.C. § 922(d) (disposal to a prohibited person)**
- Q. 18 U.S.C. § 922(g) (prohibited person in possession)**

Is this defendant’s pre-*Rehaif* 18 U.S.C. § 922(g) guilty plea invalid because the defendant was not advised that he had to know he had the status of a prohibited person? *United States v. Tignor*, No. 19-1158 (gov’t brief filed February 11, 2020).

Is this defendant entitled to a judgment of acquittal or a new trial due to *Rehaif*, which was issued during his direct appeal from his conviction under 18 U.S.C. § 922(g)? And were the jury instructions, which omitted knowledge of status, erroneous? *United States v. Folse*, No. 19-2065 (reply brief filed February 25, 2020).

Was the jury improperly instructed on the elements of the gun-possession offense because the instructions did not require a finding that the defendant knew of his status as a convicted felon? *United States v. Wilson*, No. 1198 (reply brief filed February 6, 2020).

Was the evidence insufficient to convict this defendant of knowingly possessing a firearm, when the weapon was hidden in a car with multiple occupants? Or did the jury instructions misstate the government's burden on the knowledge element of the offense, by omitting any requirement that the defendant knowingly had the power to exercise control over the weapon? *United States v. Shannon*, No. 19-1202 (reply filed January 14, 2020).

Is this defendant's pre-*Rebaif* 18 U.S.C. § 922(g) guilty plea invalid because the defendant was not advised that he had to know he had the status of a prohibited person? *United States v. Trujillo*, No. 19-2057 (reply brief filed January 31, 2020).

Was there sufficient evidence to convict this defendant of constructively possessing a firearm? *United States v. Samora*, No. 19-4070 (OA March 10, 2020).

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

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

Was the evidence insufficient to support this defendant's conviction for brandishing a firearm under § 924(c) because the evidence established that someone else committed that offense? *United States v. Bailey*, No. 19-5069 (gov't brief filed March 6, 2020).

Did the government present sufficient evidence that a codefendant carried a firearm, because it did not offer the firearm in evidence and did not offer testimony sufficient to establish that the weapon was a real firearm? *United States v. Ruiz*, No. 19-2175 (brief filed January 30, 2020).

Is federal kidnapping a "crime of violence" under § 924(c) or the career-offender guideline? *United States v. Nelson*, No. 19-6072 (gov't brief filed December 20, 2019).

Was the evidence sufficient to support this defendant's convictions for carjacking, kidnapping and § 924(c)? *United States v. Nelson*, No. 19-6072 (brief filed September 25, 2019).

Is armed bank robbery under 18 U.S.C. § 2111 is a crime of violence for § 924(c) purposes, and is this defendant entitled to § 2255 relief? *United States v. Clark*, No. 18-2048 (gov't brief filed February 20, 2020).

Are Hobbs Act robbery and VICAR-based Utah and Arizona aggravated assault crimes of violence for § 924(c) purposes, and is this defendant entitled to § 2255 relief? *United States v. Toki, et al.*, Nos. 17-4153, 17-4154, & 17-4155 (supplemental brief filed December 20, 2019).

Is 18 U.S.C. § 2111 robbery a crime of violence for § 924(c) purposes, and is this defendant entitled to a COA and § 2255 relief? *United States v. Shirley*, No. 18-2071 (reply brief filed October 9, 2019).

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

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

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

V. 18 U.S.C. § 1028A (identity theft)

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

Is evidence that a threat was sent over the internet, standing alone, insufficient to prove that a threat charged under 18 U.S.C. § 1030 was transmitted in interstate commerce? *United States v. Golightly*, No. 19-3135 (brief filed December 20, 2019).

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

Y. 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).

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

Did the district court err by denying the defense request for a lesser-included offense instruction, and refusing to instruct the jury on assault in this murder trial? *United States v. Oldham*, No. 19-8023 (gov't brief filed March 2, 2020).

AA. 18 U.S.C. § 1201 (kidnapping)

Was the evidence sufficient to support this defendant's convictions for carjacking, kidnapping and § 924(c)? *United States v. Nelson*, No. 19-6072 (gov't brief filed December 20, 2019).

BB. 18 U.S.C. § 1341 (mail fraud)

CC. 18 U.S.C. § 1343 (wire fraud)

DD. 18 U.S.C. § 1344 (bank fraud)

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

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

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

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

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

Was there sufficient evidence of intent to engage in prostitution with a minor to convict this defendant of sex trafficking of children? *United States v. Robinson*, No. 19-1256 (brief filed December 24, 2019).

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

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

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

MM. 18 U.S.C. § 2119 (carjacking)

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

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

Was the evidence sufficient to convict this defendant of sexual assault under 18 U.S.C. § 2242 where there was no forensic evidence and the victim's account of the assault changed multiple times?

United States v. Palillero, No. 19-2111 (brief filed January 22, 2020).

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

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

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

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

SS. 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).

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

Was there sufficient evidence to prove beyond a reasonable doubt that this defendant participated in a single conspiracy to distribute methamphetamine, and if not, was there a fatal variance between the indictment the trial proof? *United States v. Gonzalez-Hernandez*, No. 19-1226 (brief filed February 7, 2020).

Did the district court err by giving an instruction allowing this defendant doctor to be convicted for issuing a prescription either outside the scope of professional or without legitimate medical purpose, and not requiring both? *United States v. Henson*, No. 19-3062 (gov't brief filed March 4, 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).

UU. 21 U.S.C. § 846 (drug conspiracy)

Must this drug-defendant's conviction for conspiracy to distribute methamphetamine be reversed because: (1) there was insufficient evidence of the single, overarching conspiracy charged in the indictment; (2) the variance between the indictment and proof at trial about the number of conspiracies warranted a new trial; (3) coconspirator statements that occurred after the defendant left the conspiracy were admitted against him; or (4) the government failed to prove the quantity and purity of the methamphetamine? *United States v. Serr*, No. 19-1197 (OA March 12, 2020).

Was the evidence sufficient to prove a single conspiracy in this drug-distribution case, and/or was there an impermissible variance between the indictment and the government's proof? *United States v. Sanchez*, No. 19-6034 (OA March 12, 2020).

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

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

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

XX. 26 U.S.C. § 7201 (tax evasion)

YY. 26 U.S.C. § 7212

ZZ. 28 U.S.C. § 455 (recusal)

Should the district court judge have recused himself after an ex parte email response to the defendant's mother indicating that he would sentence the defendant more leniently if her minor children were returned to the United States prior to the sentencing? *United States v. Mobley*, No. 19-3122 (gov't brief filed January 6, 2020).

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

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

CCC. Regulatory and CFR Offenses

Was there sufficient evidence supporting this defendant's convictions for driving under the influence and unsafe driving, in violation of regulations governing a national park? *United States v. Hamilton*, No. 19-2136 (gov't brief filed January 30, 2020).

XXII. Pleas

A. Acceptance of Plea

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

B. Appeal Waiver

C. Breach

Did the district court err by denying a motion for sanctions in a § 2255 proceeding, where the defendant alleged that the government breached the plea agreement by asserting that he qualified for an ACCA enhancement? And if so, what is the remedy? *United States v. Wilfong*, No. 18-6219 (OA March 12, 2020).

D. Rejection of Plea Agreement

E. Withdrawal of Plea

Whether the district court erred in denying this defendant's motion to withdraw his plea, when the First Step Act (passed on the same day as the change of plea) substantially changed the punishment he was facing, or because of ineffective assistance of counsel? *United States v. Dominguez*, No. 19-8021, 8022 (OA March 12, 2020).

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

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

hospital bills paid by employee victims who did not receive the health insurance they paid for? *United States v. Maynard*, No. 19-1304 (brief filed February 18, 2020).

Did the district court plainly err by ordering restitution to hotels that were not victims of the credit-card-fraud offense this defendant pleaded guilty to? *United States v. Cruz*, No. 19-1345 (brief filed February 12, 2020).

Did the district court sentence this defendant to restitution in excess of the statutory maximum by imposing restitution for losses and victims beyond those encompassed by the single wire fraud conviction? *United States v. Williams*, No. 19-1229 (brief filed January 17, 2020).

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

Did the district court err by ordering restitution for the father’s payments to divorce and family-law attorneys in this international-kidnapping case? *United States v. Mobley*, No. 19-3122 (gov’t brief filed January 6, 2020).

Did the district court err in ordering restitution for losses caused by someone other than the defendant? *United States v. Anthony*, No. 18-6047 (OA May 8, 2019).

XXIV. Rules of Criminal Procedure

A. Rule 8 (Joinder/Severance)

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

C. Rule 12 (motions)

D. Rule 32 (sentencing procedures)

E. Rule 33 (new trial)

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

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

F. Rule 35 (modification of a sentence)

Did the district court have jurisdiction, two days after the sentencing, to reconsider the sentence in this drug-trafficking case based on its own reconsideration of the reasonableness of the sentence? *United States v. Harris*, No. 19-1068 (submitted on briefs March 12, 2020).

G. Rule 41 (search & seizure)

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

Did the district court violate the Tenth Circuit’s mandate when it reimposed the same sentence at resentencing, after the Tenth Circuit ruled that the defendant was ACCA-eligible? *United States v. Dutch*, No. 19-2196 (brief filed March 10, 2020) (gov’t appeal).

XXVI. Second Amendment Issues

XXVII. Sentencing

A. Allocution

B. Apprendi

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

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

Is New Mexico aggravated battery a violent felony under ACCA? *United States v. Ybarra*, No. 19-2142 (gov’t brief filed February 27, 2020).

Did the district court err in sentencing this defendant under ACCA, based on this defendant’s prior Colorado robbery conviction? *United States v. Sanchez*, No. 19-2092 (gov’t brief filed February 20, 2020).

Did the government meet its burden to prove that this defendant had three predicate offenses under ACCA, where the government introduced no evidence of the convictions? Are these Oklahoma drug convictions predicate offenses under ACCA? *United States v. Thrasher*, No. 19-6100 (reply brief filed January 27, 2020).

Whether Oklahoma controlled-substance distribution offenses count as predicate serious drug offenses under ACCA. *United States v. Cantu*, No. 19-6043 (OA March 12, 2020).

Whether New Mexico residential burglary and robbery count as predicate violent felonies under ACCA. *United States v. Martinez*, No. 19-2046 (OA March 12, 2020).

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

Are the New Mexico crimes of armed robbery, aggravated assault, and aggravated battery violent felonies for ACCA purposes, and should the district court have granted this defendant 28 U.S.C. § 2255 relief? *United States v. Manzanares*, No. 18-2010 (OA March 12, 2020).

Is New Mexico robbery an ACCA predicate? *United States v. Velasquez*, No. 17-2150 (OA Jan. 23, 2020) (gov’t appeal).

D. Burden of Proof

E. Capital Sentencing

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

Did the district court abuse its discretion by ordering this defendant's sentence, for a crime he committed in prison, to run consecutive to the sentence he was already serving? *United States v. Krall*, No. 19-6178 (brief filed February 25, 2020).

Did the district court err by ordering this defendant's sentence for a supervised release violation to run consecutive to a federal sentence that is yet to be imposed, when 18 U.S.C. § 3584(a) gives discretion to make that determination to the later-sentencing federal court? *United States v. Ramon*, No. 19-1221 (OA March 12, 2020).

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

H. Departures and Variances

Did the district court err by denying this defendant's request for a downward variance based on his age, physical condition and addiction recovery? *United States v. Vanover*, No. 19-2168 (reply brief filed February 26, 2020).

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

Did the district court abuse its discretion by departing upwards in this gun case based on a discouraged factor and without making required findings? *United States v. Aaron*, No. 18-3232 (OA September 26, 2019).

I. Fines & Assessments

J. First Step Act

Does § 403 of the First Step Act, which eliminated mandatory stacking of two § 924(c) convictions, apply to defendant's whose cases were pending on direct appeal at the time of the Act's passage? *United States v. Jefferson*, No. 17-3150 (supplemental briefs filed March 16, 2020).

Did the district court err in holding that this defendant was not eligible for a sentence reduction under the First Step Act? *United States v. Fields*, No. 19-2081 (OA March 10, 2020).

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

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

Did the district court err when it held a defendant ineligible for relief under the First Step Act solely because his guidelines range remains unchanged? And if so, can a district court deny relief under the Act because the guidelines range has not changed, without considering anything else? *United States v. McKinney*, No. 19-3105 (OA March 12, 2020).

Did the district court have jurisdiction to rule on a motion under the First Step Act, when the defendant was convicted of a powder cocaine offense but he was held responsible for crack cocaine as relevant conduct? And if so, did the court err by applying § 3582(c)(2) and using drug amounts

from the PSR to determine eligibility for relief under the Act? *United States v. Ulloa*, No. 19-6080 (brief filed August 28, 2019).

Did the district court impose a procedurally and substantively unreasonable sentence by refusing to grant the defendant's motion for relief under the First Step Act and refusing to hold a resentencing hearing? *United States v. Mannie*, No. 19-6102 (OA March 10, 2020).

K. Guidelines Sections

1. USSG § 1B1.2

2. USSG § 1B1.3 (relevant conduct)

Did the district court by including packages that were not weighed in its drug-quantity findings? *United States v. Castillo-Quintana*, No. 19-3147 (brief filed March 2, 2020).

3. USSG § 2A2.2

Did the district court err by applying a 5-level enhancement because the defendant was convicted of assault causing a serious bodily injury, when the enhancement was previously 4 levels and there is no empirical evidence supporting the increase? *United States v. Krall*, No. 19-6178 (brief filed February 25, 2020).

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

Did the district court err in adding a 2-level enhancement to this assault defendant's sentence for more than minimal planning under USSG § 2A2.2(b)(1)? *United States v. Coombs*, No. 19-8036 (OA March 12, 2020).

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

5. USSG § 2A4.1 (bodily injury)

6. USSG § 2A6.1

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

7. 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 (brief filed February 26, 2020).

Did the district court err when it held that this defendant relocated his fraudulent scheme from Oklahoma to Mexico for the purpose of evading law enforcement, and applied a two-level "relocation" enhancement on that basis? *United States v. Wieck*, No. 19-6075 (reply brief filed March 2, 2020).

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

8. USSG § 2B3.1 (robbery)

9. USSG § 2C1.1

10. USSG § 2D1.1 (drugs)

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

Was there sufficient evidence supporting application of an enhancement under USSG § 2D1.1(b)(2) for using or making a credible threat of violence? *United States v. Zarate-Suarez*, No. 19-1203 (submitted on briefs March 12, 2020)

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

Were photos of this drug defendant's messy house sufficient to support an enhancement of his sentence for maintaining a drug premises under USSG § 2D1.1(b)(12)? *United States v. Mier-Garces*, No. 18-1085 (OA May 9, 2019).

11. USSG § 2G1.1 (sex trafficking)

12. USSG § 2G2.2 (child pornography)

13. USSG § 2K1.4 (arson)

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

14. USSG § 2K2.1

Did the district court plainly err by setting this defendant's base offense level at 20, based on a crime-of-violence conviction that does not independently receive criminal-history points? *United States v. Silva*, No. 19-1298 (brief filed March 13, 2020).

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

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

Is Colorado attempted second degree assault a crime of violence for USSG § 2K2.1 purposes? *United States v. Lovato*, No. 18-1468 (OA September 24, 2019).

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).

Did the district court plainly err in applying a USSG § 2K2.1(a)(1) enhancement where one of the "prior" convictions relied on to trigger the enhancement post-dated the defendant's offense of conviction? *United States v. Trujillo*, No. 19-2057 (reply brief filed January 31, 2020).

15. USSG § 2K2.2

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

Did the district court plainly err by finding that this defendant had admitted to being “found in” the United States on a later date than the defense argued, which triggered application of a different sentencing guideline manual (and a higher range)? *United States v. Romero-Lopez*, No. 19-1268 (brief filed January 27, 2020).

17. USSG § 2T1.1 (tax loss)

For a conviction for impeding the administration of tax law, did the district court err by calculating the loss as the entire tax debt owed by the two companies overseen by the defendant? *United States v. Maynard*, No. 19-1304 (brief filed February 18, 2020).

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

19. USSG § 2Q2.1

20. 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).

21. USSG § 3A1.2

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

22. USSG § 3A1.3

23. USSG § 3A1.4 (terrorism)

Did the district court err by apply a terrorism enhancement under USSG § 3A1.4? *United States v. Allen*, No. 19-3034 (brief filed November 8, 2019); *United States v. Stein*, No. 19-3030 (brief filed November 12, 2019); *United States v. Wright*, No. 19-3035 (brief filed November 12, 2019).

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

24. USSG § 3B1.1 (aggravating role)

Was there sufficient evidence supporting application of an enhancement under USSG § 3B1.1(a) for being an organizer or leader in this drug case? *United States v. Zarate-Suarez*, No. 19-1203 (submitted on briefs March 12, 2020).

Did the district court err in applying an aggravating-role enhancement under § 3B1.1, because there was insufficient evidence that the defendant directed or controlled any other participants in this drug-distribution scheme, or that there were 5 or more participants? *United States v. White*, No. 19-7022 (submitted on briefs March 10, 2020).

Did the district court err when it applied a 2-level aggravating-role enhancement under § 3B1.1, because there was insufficient evidence that the defendant was a manager in this tax-fraud conspiracy? *United States v. Gebrmann*, No. 19-1145 (OA Jan. 23, 2020).

25. USSG § 3B1.2 (mitigating role)

Did the district court err when it denied this defendant a reduction for being a minimal participant? *United States v. Castillo-Quintana*, No. 19-3147 (brief filed March 2, 2020)

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

Did the district court err when it relied on improper factors and speculation to deny this defendant’s request for a minor-role reduction? *United States v. Delgado-Lopez*, No. 19-3113 (OA March 12, 2020).

Did the district court err when it denied this defendant’s request for a mitigating role reduction under USSG § 3B1.2, without comparing her culpability to that of her coconspirators? Was the district court’s factfinding underlying its denial of this reduction clearly erroneous? *United States v. Nkome*, No. 18-3261 (OA Jan. 23, 2020).

Did the district court err by focusing on the “essential” nature of the defendant’s role to deny a mitigating-role adjustment under § 3B1.2? *United States v. Madrid*, No. 19-2060 (OA March 10, 2020).

26. USSG § 3C1.1 (obstruction)

Was there sufficient evidence to support application of the obstruction enhancement under USSG § 3C1.1? *United States v. Fisher*, No. 19-4096 (reply brief filed February 13, 2020).

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

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

Did the district court err when it enhanced this defendant’s sentence for obstruction of justice under USSG § 3C1.1 without making findings about what part of his trial testimony was willfully, materially false? *United States v. Chavarin*, No. 18-4011 (OA March 20, 2019).

Did the district court erroneously 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).

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

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

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

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

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

30. USSG § 4A1.1

31. USSG § 4A1.2

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

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

Did the district court err in applying the career offender enhancement to this defendant based on his prior New Mexico convictions for aggravated battery and possession of marijuana with intent to distribute? *United States v. Folse*, No. 19-2065 (reply brief filed February 25, 2020).

Did the district court by finding that Colorado third-degree assault is a crime of violence under USSG § 4B1.2? *United States v. Wilson*, No. 1198 (reply brief filed February 6, 2020).

Is federal kidnapping a “crime of violence” the career-offender guideline? Did the district court plainly err by classifying this defendant’s prior Oklahoma drug conviction as a controlled substance offense under the career offender guideline? *United States v. Nelson*, No. 19-6072 (gov’t brief filed December 20, 2019).

Whether Utah robbery qualifies as a predicate “crime of violence” under the career-offender guideline. *United States v. Platt*, No. 19-6061 (reply brief filed October 18, 2019).

Was *Greer* wrongly decided, and is this defendant—who was sentenced as a career-offender under the mandatory guidelines—entitled to *Johnson*-based § 2255 relief? *United States v. Ellis*, No. 17-4097 (brief filed May 25, 2018); *United States v. Miller*, No. 17-4136 (brief filed May 25, 2018); *United States v. Cesspooch*, No. 17-4160 (brief filed June 5, 2018).

On panel rehearing: Are the mandatory guidelines unconstitutionally vague under *Johnson*, and was *Greer* wrong about this in light of *Dimaya*? *United States v. Ward*, No. 17-3182 (reply brief filed Dec. 14, 2018).

Did the district court plainly err by relying on this defendant’s 21 U.S.C. § 846 conspiracy conviction to designate him a career offender under USSG §§ 4B1.1 and 4B1.2? *United States v. Wilson*, No. 18-7045 (gov’t brief filed March 25, 2019).

Is Utah third-degree reckless aggravated assault a crime of violence for career-offender purposes? *United States v. Fagatele*, No. 18-4004 (OA September 26, 2019).

34. USSG § 4B1.5

35. USSG § 5C1.2 (safety valve)

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

36. USSG § 5G1.3

Did the district court when it failed to adjust this defendant's felon-in-possession sentence under USSG § 5G1.3 for time already served on a state conviction for vehicle theft, which had been determined to be relevant conduct? *United States v. Rhoades*, No. 19-1263 (reply brief filed March 2, 2020).

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

37. USSG § 5K1.1

38. USSG § 5K2.7

39. USSG § 5K2.14

40. 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).

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

L. Mandatory Minimums and Maximums

M. Reasonableness

1. Procedural

Did the district court commit plain error by insufficiently explaining this 84-month sentence for the assimilated Oklahoma offense of child neglect? *United States v. Clark*, No. 19-7046 (brief filed March 6, 2020).

Did the district court plainly err by focusing on the guidelines range and deterrence, and failing to consider evidence about this defendant's life and circumstances or rehabilitation? *United States v. Pacheco-Espinoza*, No. 19-2186 (brief filed February 26, 2020).

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

Did the district court procedurally err by failing to adequately explain the sentence, which was 13 months above the guidelines range? *United States v. Davis*, No. 19-6146 (gov't brief filed February 14, 2020).

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

Is this defendant doctor's life sentence procedurally unreasonable because the court did not properly consider all the sentencing factors? *United States v. Henson*, No. 19-3062 (gov't brief filed March 4, 2020).

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

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

Did the district court impose a procedurally erroneous upward departure based on improper factors and without the required notice? Is this defendant's above-guideline sentence procedurally erroneous even if it was a variance rather than a departure? *United States v. Hamilton*, No. 18-5124 (OA September 24, 2019).

Did the district court's mistaken view of how the law might have applied in a hypothetical version of this case render this defendant's sentence procedurally unreasonable? *United States v. Pena*, No. 19-2050 (OA March 10, 2020).

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

2. Substantive

Is this defendant's within-guidelines sentence substantively unreasonable in light of his personal characteristics and history, post-offense rehabilitation, and family circumstances? *United States v. Pacheco-Espinoza*, No. 19-2186 (brief filed February 26, 2020).

Is this defendant's 720-month sentence for production and transportation of child pornography substantively unreasonable? *United States v. Brown*, No. 19-8061 (brief filed February 11, 2020).

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

Is this defendant's 60-month sentence for involuntary manslaughter, which doubled the guidelines range, substantively unreasonable? *United States v. Gomez*, No. 19-6155 (gov't brief filed March 4, 2020).

Is this defendant's within-guidelines 12-month sentence for failing to register as a sex offender substantively unreasonable? *United States v. Barber*, No. 19-6152 (gov't brief filed February 24, 2020).

Is this defendant's 121-month sentence for sexual assault substantively unreasonable? *United States v. Palillero*, No. 19-2111 (brief filed January 22, 2020).

Is this defendant's 84-month sentence for a wire-fraud conviction, an upward departure due to criminal-history underrepresentation, substantively unreasonable? *United States v. Williams*, No. 19-1229 (brief filed January 17, 2020).

Is this defendant's 36-month sentence for assault causing bodily injury, based on a DWI incident, substantively unreasonable? *United States v. Miller*, No. 19-2156 (brief filed January 16, 2020).

Is this defendant's 188-month sentence for child-sex-trafficking substantively unreasonable, in part because of sentencing entrapment by the government? *United States v. Robinson*, No. 19-1256 (brief filed December 24, 2019).

Is this defendant's below-guidelines 24-month sentence substantively unreasonable in this child-pornography possession case, where the defendant had no prior criminal history? *United States v. Richards*, No. 19-8044 (gov't brief filed February 19, 2020).

Is this defendant's within-guidelines 18-month sentence substantively unreasonable, because of his age, physical condition, and addiction recovery? *United States v. Vanover*, No. 19-2168 (reply brief filed February 26, 2020).

Is this defendant's 100-month sentence, 13 months above the guidelines range, substantively unreasonable in this felon-in-possession case? *United States v. Davis*, No. 19-6146 (gov't brief filed February 14, 2020).

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

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

Is the defendant's sentence, twice the high end of the Guidelines range, substantively unreasonable in this involuntary manslaughter case? *United States v. Goodman*, No. 19-8008 (OA March 10, 2020).

Is this defendant's 480-month sentence substantively unreasonable? *United States v. Nelson*, No. 19-6072 (gov't brief filed December 20, 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 defendant doctor's life sentence substantively unreasonable for an 21 U.S.C. § 841 offense? *United States v. Henson*, No. 19-3062 (gov't brief filed March 4, 2020).

Is this defendant's de facto life sentence substantively unreasonable, because the attempted bombing offense was not intended to, and did not, hurt anyone, and because of the defendant's medical condition and his low likelihood of recidivism? *United States v. Ansberry*, No. 19-1048 (reply brief filed January 27, 2020).

Was the district court's within-guidelines sentence substantively unreasonable, because it is twice as long as a coconspirator's sentence? *United States v. Madrid*, No. 19-2060 (OA March 10, 2020).

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

Is this defendant’s within-guidelines sentence for recklessly committed aggravated assault substantively unreasonable? *United States v. Sandoval*, No. 19-2041 (OA Jan. 23, 2020).

Is this fraud defendant’s above-guideline sentence substantively unreasonable? *United States v. Hamilton*, No. 18-5124 (OA September 24, 2019).

Is this illegal reentry defendant’s above-guideline sentence—more than twice the high end of the guidelines range—substantively unreasonable? *United States v. Caballero-Anaya*, No. 19-1034 (OA Jan. 23, 2020).

Is this carjacking defendant’s above-guideline sentence (360 months, despite a guideline range of 123-138 months) substantively unreasonable? *United States v. Pena*, No. 19-2050 (OA March 10, 2020).

Is this assault defendant’s within-guideline sentence substantively unreasonable? *United States v. Coombs*, No. 19-8036 (OA March 12, 2020).

N. SORNA Sentencing Issues

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

P. Resentencing Issues

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

R. Constitutional Issues

1. Fifth Amendment Due Process

2. Sixth Amendment and Hearsay

XXVIII. Sixth Amendment

A. Right to Effective Assistance of Counsel

Is this defendant entitled to § 2255 relief based on her claim that prosecutors obtained Sixth-Amendment protected communications between her and her lawyer, is this error a structural error, and, if so, what is the remedy? *United States v. Read-Forbes*, No. 19-3268 (brief filed March 16, 2020).

Did the district court err when it held (contrary to the magistrate judge’s determination) that trial counsel’s deficient performance in the penalty phase did not prejudice this capital defendant? *United States v. Barrett*, No. 19-7049 (brief filed March 13, 2020).

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

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

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

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

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

Did the district court's finding of a conflict of interest impermissibly deprive this defendant of his choice of counsel? *United States v. Henson*, No. 19-3062 (gov't brief filed March 4, 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. Milbouse*, No. 18-3245 (brief filed May 17, 2019).

C. Self-Incrimination

D. Self-Representation/Waiver of Counsel

Did the district court err by granting this defendant's request for proceed pro se, without determining that his waiver of the right to counsel was knowing and intelligent? *United States v. Hamett*, No. 19-5054 (reply brief filed January 30, 2020).

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

Were this defendant's confrontation rights violated when a government witness—who initially took blame for the vehicle accident at issue and later recanted—failed to appear and hearsay evidence about the witness's recantation was admitted? *United States v. Goodman*, No. 19-8008 (OA March 10, 2020).

Were this defendant's confrontation rights violated when the district court declared the victim unavailable and allowed the government to present her testimony through a transcript of a state-court preliminary hearing? *United States v. Nelson*, No. 19-6072 (gov't brief filed December 20, 2019).

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

F. Jury Verdict

Did the district court err in classifying and sentencing seven counts under 18 U.S.C. § 1030 as felonies absent a unanimous jury verdict based on proof beyond a reasonable doubt that each

offense independently caused a felony-triggering loss? *United States v. Golightly*, No. 19-3135 (brief filed December 20, 2019).

G. Compulsory Process

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

Did a six-year delay in this terrorism case violate the defendant's constitutional speedy trial right? *United States v. Muhtorov*, No. 18-1366 (gov't brief filed February 10, 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 (gov't brief filed February 7, 2020).

XXX. Standards of Review

A. Waiver

B. Forfeiture/Plain Error

C. De Novo Review

XXXI. Statutes of Limitations

XXXII. Supervised Release

A. Revocation Issues

Did the district court impose an illegal sentence when, without a jury finding of guilt beyond a reasonable doubt, it imposed a 10-month prison sentence upon revocation, when the defendant had already served 115 months of a statutory maximum 120-month prison sentence for his underlying felon-in-possession offense? *United States v. Salazar*, No. 19-3217 (brief filed January 30, 2020).

Did the district court err when it found by a preponderance of the evidence that this defendant violated the rules of the halfway house and thus violated the terms of his supervised release? *United States v. Boddy*, No. 19-6113 (gov't brief filed February 14, 2020).

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

B. Sentencing Issues (either initially or after revocation)

1. Substantive

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

2. Procedural

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

Did the district court 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).

3. Unlawful Delegation of authority

4. Assimilative Crimes Act (ACA) sentences

Did the district court err by holding that the sentencing guideline for assault was not analogous to the assimilated Oklahoma offense of child neglect, and did it thereby incorrectly calculate the guidelines range? *United States v. Clark*, No. 19-7046 (brief filed March 6, 2020).

C. Conditions of Supervised Release

Did the district court plainly err by imposing a blanket ban on internet use as a special condition of supervised release? *United States v. Egli*, No. 19-4140 (brief filed February 3, 2020).

Did the district court plainly err by granting unlimited discretion to the probation officer to require this defendant to submit to drug testing? *United States v. Miller*, No. 19-2156 (brief filed January 16, 2020).

Did the district court err by imposing drug- and alcohol-related conditions of supervised release that were not supported by evidence? *United States v. Richards*, No. 19-8044 (gov't brief filed February 19, 2020).

Did the district court plainly err by imposing conditions of supervised release that: (1) require this defendant to "take prescribed medications as directed," and (2) authorize a probation officer to require the defendant to inform third parties that he poses a risk to them? *United States v. Golightley*, No. 19-3135 (brief filed December 20, 2019).

Does the district court's requirement that this defendant serve his term of supervised release in Colorado, and not in New York where he is from, constitute an impermissible residency restriction? *United States v. Ortiz*, No. 19-1261 (gov't brief filed January 21, 2020).

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

Did the district court plainly err when it imposed a special condition of release obligating this defendant to take any medication prescribed to him, without making required findings? *United States v. Lovato*, No. 18-1468 (OA September 24, 2019).

XXXIII. Trial Practice and Evidence Issues

A. Closing Argument

B. Confidential Informants

Did the district court err by refusing to require the government to disclose information about a confidential informant, so that the defense could call her as a witness? *United States v. Robinson*, No. 19-1256 (brief filed December 24, 2019).

In this trial of a confidential informant who raised a public authority defense, did the government prove beyond a reasonable doubt that he did not reasonably believe he was acting as an authorized government agent? *United States v. Cruz*, No. 19-2132 (brief filed December 20, 2019).

C. Cumulative Error

Did multiple pro-prosecution rulings by the district court result in cumulative error that warrants reversal of this sexual-assault conviction? *United States v. Palillero*, No. 19-2111 (brief filed January 22, 2020).

If not individually reversible, do multiple evidentiary errors require a new trial in this child-sex-trafficking case? *United States v. Robinson*, No. 19-1256 (brief filed December 24, 2019).

If not individually reversible, do multiple evidentiary and argument errors require a new trial in this drug-distribution case? *United States v. Cristerna-Gonzalez*, No. 19-7009 (OA March 10, 2020).

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

D. Demonstrative Evidence

E. Due Process

Do multiple errors rise to the level of a due-process violation and require a new trial in this murder case, including mishandling "gruesome" photos, mishandling a witness's invocation of the Fifth Amendment privilege, mishandling the invocation of spousal privilege? *United States v. Oldham*, No. 19-8023 (gov't brief filed March 2, 2020).

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

F. Eyewitness Identification Testimony

G. Judicial misconduct

H. Jury Instructions

1. Aiding and Abetting

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

2. Burden of Proof

3. Conspiracy

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

4. Constructive Possession

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

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

5. Deliberate Avoidance/Ignorance

Did the district court err by giving a deliberate ignorance/willful blindness instruction in this drug-conspiracy case involving a doctor? *United States v. Henson*, No. 19-3062 (gov't brief filed March 4, 2020).

6. Elements (see statute under which defendant tried)

7. Sentencing Elements

8. Flight

9. Guilt by Association/Guilt of Others

10. Investigative Techniques

11. Knowledge

12. Polygraphs

13. Proof

14. Spoliation

15. Theory of Defense/Affirmative Defense

Did the district court err by refusing to instruct the jury on entrapment in this child-sex-trafficking case? *United States v. Robinson*, No. 19-1256 (brief filed December 24, 2019).

Did the district court err by refusing to grant a new trial, based on the plain error of not instructing the jury on duress? *United States v. Cruz*, No. 19-2132 (brief filed December 20, 2019).

Did the district court err by refusing to instruct the jury on entrapment in this terrorism case? *United States v. Allen*, No. 19-3034 (brief filed November 8, 2019); *United States v. Stein*, No. 19-3030 (brief filed November 12, 2019); *United States v. Wright*, No. 19-3035 (brief filed November 12, 2019).

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

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

I. Jury Questions

J. Jury Selection

Did the district court err in denying this defendant's Jury Act challenge, 28 U.S.C. § 1861, based on the court's practice of calling petit jurors only from certain geographic districts? *United States v. Allen*, No. 19-3034 (brief filed November 8, 2019); *United States v. Stein*, No. 19-3030 (brief filed November 12, 2019); *United States v. Wright*, No. 19-3035 (brief filed November 12, 2019).

K. Mistrial

L. Prior Convictions

M. Prosecutorial Misconduct

Was it plain error to allow the government to make a propensity argument based on Rule 404(b) evidence? *United States v. Cristerna-Gonzalez*, No. 19-7009 (OA March 10, 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)).

Did the prosecutor commit reversible misconduct while cross-examining this defendant? *United States v. Wyatt*, No. 18-1135 (OA September 13, 2019).

N. Right to be Present

O. Right to Present Defense

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

P. Rule 106 (rule of completeness)

Did the district court plainly err by allowing the government to introduce only portions of a defendant's comments on social media, excluding potentially exculpatory statements? *United States v. Robinson*, No. 19-1256 (brief filed December 24, 2019).

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

Did the district court abuse its discretion by admitting social media posts about pimp culture from 2015 as evidence of his 2018 charges for enticing and facilitating prostitution, or by not excluding the posts under Rule 403? *United States v. Alfred*, No. 19-1243 (brief filed February 7, 2020).

Did the district court err in the fraud and money-laundering trial when it admitted evidence that the defendant beat his wife? *United States v. Wieck*, No. 19-6075 (reply brief filed March 2, 2020).

Did the district court err by refusing to strike a witness's testimony about the defendant's prior imprisonment and domestic violence? *United States v. Denezpi*, No. 19-1213 (reply brief filed February 19, 2020).

Did the court err by admitting photographs of the victim's injuries under Rule 403? *United States v. Nelson*, No. 19-6072 (gov't brief filed December 20, 2019).

Was it reversible error under Rules 401 or 403 to allow testimony about a drug cartel in Mexico, when there was no evidence connecting the defendant to any cartel? *United States v. Cristerna-Gonzalez*, No. 19-7009 (OA March 10, 2020).

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

R. Rule 404(b)

Did the district court err by admitting evidence of a prior robbery under Rule 404(b) in this gun-possession case? *United States v. Wilson*, No. 1198 (reply brief filed February 6, 2020).

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

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

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

T. Rules 601-615 (Witnesses)

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

Did the district court erroneously exclude the defendant's DNA expert because the notice of intent to offer the testimony was untimely or deficient? *United States v. Palillero*, No. 19-2111 (brief filed January 22, 2020).

Was it error for the district court to admit testimony from a law enforcement agent about "pimping" culture and methods, and was the agent allowed to testify as both a fact and expert witness without proper instructions? *United States v. Robinson*, No. 19-1256 (brief filed December 24, 2019).

Was it plain error to allow two law enforcement officers to testify about the typical practices of drug trafficking? *United States v. Cristerna-Gonzalez*, No. 19-7009 (OA March 10, 2020).

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

V. Rules 801-807 (hearsay)

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

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

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

W. Rule 901 (authentication)

Did the district court err in admitting photos and chats from Facebook because Facebook records are not self-authenticating business records and there was no other foundation for their admission? *United States v. Wilson*, No. 1198 (reply brief filed February 6, 2020).

X. Rule 1002 (Best Evidence Rule)

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

Y. Rule 1006 (Summaries)

Z. Surrebuttal

AA. Voir Dire

Did the district court err under the Fifth or Sixth Amendments by prohibiting the defense from providing information about implicit racial and ethnic prejudices to potential jurors? *United States v. Mercado-Garcia*, No. 19-2153 (brief filed March 2, 2020).

XXXIV. Vagueness

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

Was the government’s warrantless surveillance of this terrorism defendant under the Foreign Intelligence Surveillance Act unconstitutional? And/or was disclosure of the FISA materials required for litigation of this suppression issue? Was the defendant entitled to notice of other surveillance tools used by the government? *United States v. Muhtorov*, No. 18-1366 (gov’t brief filed February 10, 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. Read-Forbes, No. 19-3268 (brief filed March 16, 2020) (effective assistance of counsel, 28 U.S.C. § 2255).

United States v. Jefferson, No. 17-3150 (supplemental briefs filed March 16, 2020) (First Step Act).

United States v. Barrett, No. 19-7049 (brief filed March 13, 2020) (effective assistance of counsel).

United States v. Quezada-Lara, No. 19-2200 (brief filed March 13, 2020) (consent to search, protective sweep).

United States v. Silva, No. 19-1298 (brief filed March 13, 2020) (USSG § 2K2.1).

United States v. Murray, No. 19-8067 (brief filed March 12, 2020) (suppression hearing issues).

United States v. Dutch, No. 19-2196 (brief filed March 10, 2020) (gov't appeal) (mandate/scope of remand).

United States v. Clark, No. 19-7046 (brief filed March 6, 2020) (assimilated crimes sentences, procedural reasonableness).

United States v. Bailey, No. 19-5069 (gov't brief filed March 6, 2020) (18 U.S.C. § 924(c)).

United States v. Friedman, No. 19-4127 (brief filed March 6, 2020) (28 U.S.C. § 2255).

Finlayson v. State of Utah, No. 19-4151 (brief filed March 2, 2020) (28 U.S.C. § 2254).

United States v. Ramos-Burciaga, No. 19-2174 (brief filed March 2, 2020) (warrantless search and seizure).

United States v. Mercado-Garcia, No. 19-2153 (brief filed March 2, 2020). (traffic stops, voir dire).

United States v. Logsdon, No. 19-7055 (brief filed February 26, 2020) (USSG § 2B1.1).

United States v. Castillo-Quintana, No. 19-3147 (brief filed March 2, 2020) (safety valve, USSG § 2D1.1, USSG § 3B1.2, double jeopardy, relevant conduct).

United States v. Pacheco-Espinoza, No. 19-2186 (brief filed February 26, 2020) (procedural and substantive reasonableness).

United States v. Krall, No. 19-6178 (brief filed February 25, 2020) (consecutive sentences, USSG § 2A2.2).

United States v. Cade, No. 19-3220 (brief filed February 18, 2020) (Fifth Amendment voluntariness).

United States v. Chavez, No. 19-2123 (brief filed February 21, 2020) (inventory search).

United States v. Maynard, No. 19-1304 (brief filed February 18, 2020) (18 U.S.C. § 669, USSG § 2T1.1, restitution).

United States v. Cruz, No. 19-1345 (brief filed February 12, 2020) (restitution).