

## TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Monday, August 17, 2026  
Denver, CO  
Courtroom I

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2:00 P.M.

Holmes, Hartz, Tymkovich, Matheson, Bacharach, Phillips, McHugh, Moritz, Eid, Carson, Rossman & Federico

24-2128 NM United States v. Ruiz

1. In this sex-offense case, did the district court err when it denied the defendant's motion to dismiss the indictment as impermissibly vague, as the 3-year and 4-year offense periods charged in the indictment precluded the defendant from presenting an alibi defense and placed him at risk of double jeopardy?
2. Did the district court abuse its discretion when it issued a modified Allen instruction where the jury reached an impasse seven hours into their deliberations?
3. Was the defendant's non-Indian status an element of the offense on which the government bore the initial burden of production and the ultimate burden of persuasion (rather than an affirmative defense on which the defendant bore at least the initial burden of production) for purposes of 18 U.S.C. § 1152? If so, was evidence that the defendant was born in Mexico sufficient to prove the defendant's non-Indian status?
4. If the defendant's non-Indian status was an affirmative defense on which the defendant bore the initial burden of production (rather than an element that the indictment was required to allege and on which the government bore the initial burden of production), does the double-jeopardy clause prevent the government from retrying the defendant?

for the government: Paige Messee

for the defendant: Violet Edelman (Albuquerque, NM)

24-7030 NM United States v. Hebert

1. Did the district court plainly err by permitting the government to elicit witness testimony commenting on the defendant's silence as to his status as an Indian or non-Indian?
2. Did the district court plainly err by failing to instruct the jury as to the factors to consider in determining the defendant's status as an Indian or a non-Indian?
3. Was the defendant's non-Indian status an element of the offense on which the government bore the initial burden of production and the ultimate burden of persuasion (rather than an affirmative defense on which the defendant bore at least the initial burden of production) for purposes of 18 U.S.C. § 1152? If so, was the evidence sufficient to prove that this defendant was a non-Indian for purposes of 18 U.S.C. § 1152?
4. If the defendant's non-Indian status was an affirmative defense on which the defendant bore the initial burden of production (rather than an element that the indictment was required to allege and on which the government bore the initial burden of production), does the double-jeopardy clause prevent the government from retrying the defendant?
5. Did the defendant forfeit his sufficiency-of-the-evidence challenge to the Indian-status-of-the defendant element because he raised different grounds for acquittal in the district court, or is the issue preserved because the district court sua sponte addressed it?

for the government: Linda Epperley

for the defendant: Jared Guemmer (Tulsa, OK)