ISSUES PENDING IN THE TENTH CIRCUIT

COMPILED BY THE KANSAS FEDERAL PUBLIC DEFENDER

Updated June 22, 2026

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 Clerk of Court 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. This approach follows The Tenth Circuit Criminal Handbook. 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). We think this list will be a good resource for those who wish to use this document on a regular basis.

Sixth, our summaries are generally based on a quick look at the briefs—we apologize if we bungle or omit any of your issues. If we did, please let us know.

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 once a week. If we fall behind, we apologize. If you are aware of an issue that we might have missed, please send the case name and number our way.

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I. Charging Documents

A. Joinder/Severance

Did the district court err in denying this defendant's motion to sever his drug-conspiracy trial from that of his codefendant? *United States v. Lin*, No. 25-6066 (oral argument March 19, 2026)

In this multi-defendant case involving kidnapping-resulting-in-death charges against the codefendants but not against the defendant (who was charged with counts related to conspiring to kill federal officers), did the district court err when it denied the defendant's motion to sever? *United States v. Si. Wahhaj*, No. 23-2168 (oral argument May 14, 2026)

Did the district court err when it refused to sever sex offenses that were based on different acts, at different times, against different people? *United States v. Haight*, No. 25-5132 (reply brief filed Apr. 16, 2026)

In this drug conspiracy prosecution, did the district court abuse its discretion when it refused to sever this defendant, who wanted to proceed to trial and to avoid delay caused by codefendants? *United States v. Guterrez*, No. 25-6164 (gov't brief filed May 13, 2026)

If not waived, did the district court err (or plainly err) when it denied the motion to sever as: (1) untimely and; (2) on the merits, as the codefendants' strategies were prejudicially antagonistic? *United States v. Cruz*, No. 25-6163 (reply brief filed June 10, 2026)

B. Failure to State an Offense

Did this indictment, alleging that an officer violated 18 USC § 1519 when he "deactivated" his body-worn camera, fail to state an offense? *United States v. Smith*, No. 25-7019 (oral argument May 14, 2026)

Did this indictment sufficiently allege a federal kidnapping offense under 18 USC § 1201(a)(1) when it merely alleged the use of a "motor vehicle" in interstate commerce? *United States v. Bachicha*, No. 25-2150 (brief filed April 11, 2026)

C. Multiplicity

When a defendant records one video that depicts two minors, is it a plain double jeopardy (or multiplicity) violation to convict the defendant of more than one count under 18 USC § 2251(a) for producing the video? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026)

If this issue is not waived, are this defendant's convictions for both possession and receipt of child pornography plainly multiplicitous, and should the Tenth Circuit order one of the convictions vacated? *United States v. Reed*, No. 24-6241 (oral argument March 19, 2026)

Did the district court plainly violate the double jeopardy clause when it entered two convictions for possession and receipt of the same images of child pornography under two different statutes, 18 USC § 2252(a)(2) & (a)(4)(B), or are the convictions based on different images? *United States v. Cooper*, No. 25-7047 (reply brief filed May 28, 2026)

D. Statutes of Limitations

At this forced-labor conspiracy trial, did the district court's statute-of-limitations instructions and special interrogatories – which extended the ordinary ten-year limitations period without requiring

the indictment to plead, or the jury to agree unanimously on, any defendant-specific qualifying acts, and which allowed the jury to convict on earlier conduct so long as the offenses were not proved solely by such acts – dilute the temporal limits Congress imposed on 18 USC § 1589 and 1594(a)? *United States v. Hadley*, No. 25-3144 (brief filed March 16, 2026)

E. Fifth Amendment Pre-Indictment Delay

Did the district court err when it held that a 4-and-a-half-year preindictment delay did not violate the Due Process Clause? *United States v. Gonzales*, No. 26-2007 (brief filed June 17, 2026)

II. Right to Counsel/Self-Representation

A. Ineffective Assistance of Counsel

With respect to the defendant's bank fraud conviction, was defense counsel's performance deficient? If so, should the Court of Appeals remand the ineffective-assistance-of-counsel claim to the district court for a prejudice determination? *United States v. Martin*, No. 24-3140 (OA January 20, 2026)

With respect to the false-tax-returns conviction, should the Court remand the ineffective-assistance-of-counsel claim to the district court for a prejudice determination? *United States v. Martin*, No. 24-3140 (OA January 20, 2026)

In this first-degree-murder trial, was counsel's performance deficient when he conceded guilt of *second*-degree murder against the defendant's wishes, and was that deficient performance structural error, or, alternatively, did it prejudice the defendant, given that the jury convicted the defendant of first-degree murder anyway? At a minimum, should the district court have granted an evidentiary hearing on this claim? *United States v. Sago*, No. 25-5057 (oral argument May 14, 2026)

Did the district court err in rejecting this defendant's claim of ineffective assistance of counsel based on a failure to file a notice of appeal? *United States v. Cota-Higuera*, No. 25-2083 (gov't brief filed Feb. 25, 2026)

B. Right to Self-Representation

Were the pro se defendants denied their Sixth Amendment right to self-representation when they were excluded from 48 bench conferences and two substantive jury-note conferences? If so, does this constitute reversible structural error? *United States v. Si. Wahhaj*, No. 23-2168 (oral argument May 14, 2026); *United States v. Morton*, No. 24-2039 (oral argument May 14, 2026); *United States v. H. Wahhaj*, No. 23-2170 (oral argument May 14, 2026)

C. Other

Did the district court violate this defendant's right to effective assistance of counsel when it limited the defendant's opening statement to five minutes? *United States v. Harrison*, No. 26-6017 (brief filed May 26, 2026)

III. Challenges to the Prosecution/Double Jeopardy

Does it violate double jeopardy to impose multiple punishments for two counts of conviction for abusive sexual contact of a minor under 18 U.S.C. § 2244(a)(3) based on a single course of conduct involving the touching of two body parts (here, breasts then vagina) in immediate succession? *United States v. Aguilar*, No. 24-2146 (OA November 17, 2025)

If not waived, and assuming that there was sufficient evidence to convict the defendant of perjury under 18 U.S.C. § 1623(a) and obstruction of justice under 18 U.S.C. § 1503(a), do convictions for both offenses violate the Double Jeopardy Clause? *United States v. Milliron*, No. 23-1217 (OA September 8, 2025)

When a defendant records one video that depicts two minors, is it a plain double jeopardy (or multiplicity) violation to convict the defendant of more than one count under 18 USC § 2251(a) for producing the video? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026)

After convicting this defendant of murder, the jury also returned multiplicitous convictions under 18 U.S.C. § 924(c) (discharging a firearm in relation to a crime of violence, 10-year mandatory minimum consecutive sentence) and 18 U.S.C. § 924(j) (causing death during a § 924(c) offense, no mandatory minimum, no consecutive requirement). Should the remedy have been dismissal of the lesser-included 924(c) conviction, rather than dismissal of the 924(j) conviction? *United States v. Beard*, No. 25-7031 (oral argument March 17, 2026)

Must this Court vacate the conviction under 18 USC § 924(j) because of the Supreme Court's recent decision in *Barrett v. United States*? *United States v. Seminole* No. 24-8080 (oral argument March 17, 2026)

Did the district court plainly violate the double jeopardy clause when it entered two convictions for possession and receipt of the same images of child pornography under two different statutes, 18 USC § 2252(a)(2) & (a)(4)(B), or are the convictions based on different images? *United States v. Cooper*, No. 25-7047 (reply brief filed May 28, 2026)

Did the district court commit legal error by dismissing the 18 USC § 924(j) count and sentencing this defendant for the lesser offense under 18 USC § 924(c)? *United States v. Forrester*, No. 25-7092 (brief filed June 5, 2026)

IV. Speedy Trial

A. Constitutional Speedy Trial Right

Assuming good cause to consider the claim, did the 4-and-a-half-year delay between indictment and trial violate this defendant's constitutional Speedy Trial right? *United States v. Isong*, No. 24-4108 (reply brief filed May 25, 2025)

Did the government violate this defendant's constitutional speedy trial rights when it exploited its failure to arrest a codefendant until the trial's eve and then proffered this "inability" to find the codefendant as the reason to postpone the trial, such that the defendant spent nearly five years in pretrial incarceration? *United States v. Adegboruwa*, No. 24-4116 (brief filed March 24, 2026)

B. Statutory Speedy Trial Right

Did the district court erred when it granted ends-of-justice continuances, 18 USC § 3161(h)(7), related to superseding indictments and codefendant preparation without properly considering the prejudice to this defendant? *United States v. Gutierrez*, No. 25-6164 (gov't brief filed May 13, 2026)

Did the government violate this defendant's statutory speedy trial rights, 18 USC § 3161(h)(7)(C), when it exploited its failure to arrest a codefendant until the trial's eve and then proffered this "inability" to find the codefendant as the reason to postpone the trial, such that the defendant spent

nearly five years in pretrial incarceration (because the district court refused to sever the trials)? *United States v. Adegboruwa*, No. 24-4116 (brief filed March 24, 2026)

V. Fourth Amendment Issues

A. Standing

1. Plain Smell/Dog Sniffs

Did this drug dog's sniff of a vehicle constitute an illegal warrantless search because: (1) her sniff could detect noncontraband items (reasonable expectation of privacy); and/or (2) the dog made physical contact with the vehicle during the open-air sniff (trespass doctrine)? *United States v. Ostertag*, No. 25-8055 (oral argument May 12, 2026)

2. Residences

Did the defendants have standing to challenge a search warrant used to search property where they lived even though they did not own the property because they had not yet been lawfully evicted from the property? *United States v. Si. Wahhaj*, No. 23-2168 (oral argument May 14, 2026); *United States v. Morton*, No. 24-2039 (oral argument May 14, 2026); *United States v. H. Wahhaj*, No. 23-2170 (oral argument May 14, 2026)

3. Vehicles

Did the defendant-driver have standing to challenge the search of the vehicle because he reasonably believed that he had borrowed the vehicle from someone with authority to grant him possession? *United States v. Pappas*, No. 25-1385 (brief filed April 14, 2026)

B. Warrantless Arrests

Did officers have probable cause to arrest this defendant for drug distribution? *United States v. Mayberry*, No. 25-1232 (reply brief filed May 4, 2026)

Did officers have probable cause to arrest this defendant for aiding prostitution, disorderly conduct, or interfering with an arresting officer? *United States v. Johnson*, No. 25-4152 (brief filed May 1, 2026)

Did officers arrest this defendant without probable cause when they grabbed him, yanked him off the steps, pushed him up against a fence, and handcuffed him? *United States v. Ballage*, No. 25-1438 (brief filed May 7, 2026)

C. Warrantless Seizures (Persons)

1. Encounters on the Street

Did the officers have reasonable suspicion to seize the defendant based on a concerned-citizen call, the defendant's nervous appearance, the defendant's peering into the window of an unoccupied car for sale, and the defendant's reaching into a duffle bag? *United States v. Valdez*, No. 25-2053 (oral argument April 29, 2026)

2. Car Stops

a) Reasons to Stop

Did officers have reasonable suspicion to seize the defendant, who was seated in the rear passenger seat of a parked vehicle, because: (1) the vehicle was backed into the parking spot; (2) it was late at night; (3) in a high-crime area; (4) three or four people walked from the vehicle to a bus stop upon

seeing the officers; and (5) the defendant made furtive movements when officers approached the vehicle? *United States v. Jackson*, No. 25-1147 (oral argument April 30, 2026)

Did an officer have reasonable suspicion to conduct a traffic stop after observing the car stop on a residential road and let people either in or out of the car? *United States v. Underwood*, No. 25-7037 (oral argument March 19, 2026)

Assuming the search warrant was invalid, did the officers have reasonable suspicion to stop this defendant based on probable cause of drug trafficking or because smoke was coming from the car? *United States v. Schear*, No. 25-8043 (reply brief filed April 23, 2026)

b) Duration of Stop

Did officers unreasonably prolong this traffic stop to pursue a hunch that a trailer the defendant was towing was stolen? *United States v. Reed*, No. 24-6241 (oral argument March 19, 2026)

Did the officer have reasonable suspicion to continue to detain this defendant after the officer issued a warning ticket during this traffic stop? If not, did the defendant consent to answering additional questions, or should this Court remand to the district court to determine whether the stop became a consensual encounter? *United States v. Rodriguez*, No. 25-1266 (oral argument May 14, 2026)

Did officers have reasonable suspicion to prolong this traffic stop based on the defendant's nervousness, criminal history, and a vinegar smell? *United States v. Marshall*, No. 25-5155 (oral argument May 14, 2026)

Assuming the search warrant was invalid, did officers unreasonably prolong this traffic stop by following the defendant (at his request) into town so that the smoking car could be looked at and after a drug dog alerted on the vehicle? *United States v. Schear*, No. 25-8043 (reply brief filed April 23, 2026)

Did the police illegally prolong the duration of this traffic stop by conducting an unrelated inquiry after all traffic-related tasks were complete and before allowing this defendant to proceed on his way? *United States v. Mejia-Quiroz*, No. 25-1320 (brief filed Feb. 23, 2026)

D. Warrantless Seizures (Places/Effects)

1. Impoundments

Assuming standing exists, was the impoundment of the defendant's vehicle an improper pretext to search for evidence of a crime? *United States v. Pappas*, No. 25-1385 (brief filed April 14, 2026)

E. Search Warrants

1. Particularity

Was this iPhone search warrant for evidence of stolen property insufficiently particular, when it should have been limited in scope both subject-wise and temporally, and when its scope far exceeded the probable cause to support it? *United States v. Reed*, No. 24-6241(oral argument March 19, 2026)

2. Probable Cause

a) False Statements/Omissions (*Franks*)

Did the search warrant contain intentional or reckless misstatements and/or material omissions? If so, did this information negate probable cause? *United States v. Knox*, No. 25-6011 (oral argument March 19, 2026)

b) Nexus

Did the search warrant's supporting affidavit – which relied solely on an arrestee's allegation that he brought drugs found in his car from the defendant on her property, without information establishing the informant's credibility, without corroboration, and without any specific allegation that evidence of drug activity would be found at the property – establish probable cause to search the property? *United States v. Radick*, No. 25-7050 (reply brief filed April 6, 2026)

c) Other

Did the search warrant for the vehicle lack probable cause because the confidential informant was unreliable, the facts in the affidavit had innocent explanations, and the agent misled the judge in the affidavit? *United States v. Schear*, No. 25-8043 (reply brief filed April 23, 2026)

Did this search warrant for a USPS package lack probable cause? *United States v. Findley*, No. 25-8019 (reply brief filed May 12, 2026)

3. Manner/Scope of Search

Did officers exceed the scope of a warrant to search this defendant's person when officers continued to detain the defendant after they paused their search indefinitely and without any other justification to detain the defendant? *United States v. Chambers*, No. 25-1427 (brief filed May 8, 2026)

F. Warrantless Searches

1. Searches Incident to Arrest

If not waived, did the officer properly search this defendant incident to arrest because the officer had probable cause to believe that the defendant violated a criminal statute requiring a car's driver to provide "immediate evidence" of insurance upon request? *United States v. Sigala-Bara*y, No. 25-1245 (oral argument May 12, 2026) (gov't appeal)

2. *Terry* Frisks

Did the officers have reasonable suspicion to frisk the defendant based on a concerned-citizen call, the defendant's nervous appearance, the defendant's peering into the window of an unoccupied car for sale, and the defendant's reaching into a duffle bag? *United States v. Valdez*, No. 25-2053 (oral argument April 29, 2026)

Did the officer have reasonable suspicion to frisk this passenger/defendant based on the defendant's nervousness, criminal history, gang affiliation, the smell of vinegar, and another passenger's request for the officers to remove the defendant from the vehicle? *United States v. Marshall*, No. 25-5155 (oral argument May 14, 2026)

Did officers have reasonable suspicion to frisk this passenger during a traffic stop? *United States v. Beasley*, No. 25-1282 (gov't brief filed May 8, 2026)

Did officers have reasonable suspicion to frisk (and handcuff) this driver during an investigatory car stop? *United States v. Pappas*, No. 25-1385 (brief filed April 14, 2026)

Did officers have reasonable suspicion to frisk this defendant (who was suspected of hitting a child with a water bottle)? If so, did the frisk nonetheless exceed the permissible scope of the search when officers opened and reached into the defendant's jacket pocket without first conducting a pat-down of the outer clothing? *United States v. Ballage*, No. 25-1438 (brief filed May 7, 2026)

3. Vehicle-Specific Warrantless Searches

a) Automobile Exception

Assuming the search warrant was invalid, did officers have probable cause to search this vehicle for drugs based on an uncorroborated tip from an unreliable informant? *United States v. Schear*, No. 25-8043 (reply brief filed April 23, 2026)

b) Protective Sweeps

Did officers have the requisite reasonable suspicion that this defendant was presently dangerous with ready access to a weapon to conduct a protective sweep of the vehicle? *United States v. Washington*, No. 25-1349 (gov't brief filed May 27, 2026)

4. Parolees/Probationers

Did officers need reasonable suspicion to search this defendant's bedroom while the defendant was on post-release supervision in Kansas? If so, was there reasonable suspicion to conduct a warrantless search of this defendant's bedroom? *United States v. Vano*, No. 25-3128 (reply brief filed May 29, 2026)

G. Exclusionary Rule

1. General Principles

Assuming officers unlawfully detained the defendant, were the drugs discovered a but-for cause of the unlawful detention (i.e., is there a "factual nexus" between the contraband and the illegality)? *United States v. Rodriguez*, No. 25-1266 (oral argument May 14, 2026)

2. Good Faith Exception

If the search warrant contained intentional or reckless misstatements and/or material omissions that negated probable cause, does the good-faith exception save the fruits of any unconstitutional search? *United States v. Knox*, No. 25-6011 (oral argument March 19, 2026)

If probable cause did not exist to search the defendant's vehicle, did officers rely in good faith on a search warrant that was never "served"? *United States v. Schear*, No. 25-8043 (reply brief filed April 23, 2026)

If probable cause did not exist to search the property, does the good-faith exception save the fruits from suppression? *United States v. Radick*, No. 25-7050 (reply brief filed April 6, 2026)

If the search warrant for the USPS package lacked probable cause, does the good-faith exception save the fruits from suppression? *United States v. Findley*, No. 25-8019 (reply brief filed May 12, 2026)

If there was not reasonable suspicion to conduct a warrantless search of this supervisee's bedroom, does the good-faith exception save the fruits from suppression? *United States v. Vano*, No. 25-3128 (reply brief filed May 29, 2026)

3. Independent Source

Assuming officers unlawfully detained the defendant, was a dog sniff an "independent source" for the discovery of the drugs? *United States v. Rodriguez*, No. 25-1266 (oral argument May 14, 2026)

4. Inevitable Discovery

Did the district court plainly err or abuse its discretion when it construed the government's notice to file supplemental exhibits as a motion to reconsider to conclude that the officers inevitably would have inventoried the defendant's bag? *United States v. Valdez*, No. 25-2053 (oral argument April 29, 2026)

Assuming officers unlawfully detained the defendant, would the officers have inevitably discovered the drugs anyway? *United States v. Rodriguez*, No. 25-1266 (oral argument May 14, 2026)

Did the district court err when it refused to suppress items found during an unlawful protective sweep of this defendant's hotel room under the inevitable discovery exception to the exclusionary rule? *United States v. Johnson*, No. 25-4152 (brief filed May 1, 2026)

If officers exceeded the scope of a warrant to search the defendant's person, does the inevitable discovery doctrine nonetheless apply to save the fruits found on a cell phone in the defendant's home from suppression, as the residential search warrant lacked particularity and, thus, was not an alternative lawful means of finding the evidence? *United States v. Chambers*, No. 25-1427 (brief filed May 8, 2026)

5. Attenuation

If officers did not have reasonable suspicion to frisk this passenger during a traffic stop, did the defendant's flight attenuate any causal connection to preclude suppression as a remedy? *United States v. Beasley*, No. 25-1282 (gov't brief filed May 8, 2026)

VI. Confessions/Statements

A. Eliciting/Obtaining Information from Counseled Defendants

Did the government violate the Sixth Amendment when a jailhouse informant elicited statements from this counseled defendant and relayed them to the government? *United States v. Withrow*, No. 24-5040 (gov't brief filed May 20, 2026)

VII. Constitutional Challenges to Statutes

A. Commerce Clause Et Al.

Is the federally protected activities statute, 18 USC § 245(b)(1)(A), as applied in this case involving four shootings against state and local public officials in alleged retaliations for purely state and local actions, an unconstitutional exercise of Congress's commerce clause, federal elections, and civil rights authority? *United States v. Pena*, No. 25-2090 (gov't brief filed May 13, 2026)

B. Second Amendment

Is **18 USC § 922(g)(1)** unconstitutional—either facially or as applied to this defendant? *United States v. Smith*, No. 24-5106 (government appeal) (OA September 11, 2025); *United States v. Forbis*, No. 24-5097 (government appeal) (OA September 11, 2025); *United States v. Clements*, No. 24-2171 (OA November 20, 2025); *United States v. McBee*, No. 25-5049 (OA January 22, 2026); *United States v. Knox*, No. 25-6011 (oral argument March 19, 2026); *United States v. Lollis*, No. 25-7055 (as-applied; non-

violent felony) (oral argument May 14, 2026); *United States v. Wallace*, No. 25-5074 (government's brief filed October 20, 2025); *United States v. Smith*, No. 25-5081 (government's brief filed October 20, 2025); *United States v. Nelson*, No. 25-5086 (government's brief filed October 20, 2025); *United States v. Ellett*, No. 25-5140 (facial and as-applied) (gov't brief filed Feb. 20, 2025); *United States v. Ostertag*, No. 25-8055 (oral argument May 12, 2026) (facial and as-applied); *United States v. Vano*, No. 25-3128 (reply brief filed May 29, 2026) (facial); *United States v. Beasley*, No. 25-1282 (gov't brief filed May 8, 2026); *United States v. Washington*, No. 25-1349 (gov't brief filed May 27, 2026) (facial and as-applied); *United States v. Clark*, No. 25-5141 (gov't brief filed June 1, 2026) (facial challenge); *United States v. Bray*, No. 25-7091 (brief filed April 28, 2026) (as applied); *United States v. Salazar*, No. 25-1298 (brief filed May 1, 2026); *United States v. Ballage*, No. 25-1438 (brief filed May 7, 2026); *United States v. Watkins*, No. 25-1471 (brief filed June 6, 2026)

Is **18 U.S.C. § 922(g)(3)** – which prohibits an unlawful drug user from possessing a gun – facially or as-applied unconstitutional? *United States v. Clements*, No. 24-2171 (OA November 20, 2025); *United States v. Lewis*, No. 24-6148 (OA November 19, 2025) (same); *United States v. Kelley*, No. 23-6194 (oral argument March 19, 2026) (facial challenge only); *United States v. Martinez*, No. 23-6140 (government appeal) (brief filed Nov. 13, 2025) (as-applied challenge to marijuana users)

Does the defendant's straw-purchaser convictions under **18 USC § 922(a)(6)** and **18 USC § 371** (conspiracy) violate the Second Amendment? *United States v. Jaghoori*, No. 25-3192 (gov't brief filed June 4, 2026)

VIII. Pleas

A. Rule 11(c)(1)(C) Agreements

If not waived, did the district court abuse its discretion when it rejected the parties' Rule 11(c)(1)(C) plea agreement without considering the government's reasons for the plea agreement? If so, was this error harmless? *United States v. Hallford*, No. 25-1257 (reply brief filed June 15, 2026)

B. Appeal Waivers

Is it a miscarriage of justice to enforce an appellate waiver against a claim of factual innocence of a § 924(c) conviction? *United States v. Sandoval*, No. 23-4019 (OA September 10, 2025)

Did the defendant waive his guidelines challenges via the appeal waiver within the plea agreement? *United States v. Kendrick*, No. 25-7042 (oral argument April 29, 2026)

Did the government waive the appeal waiver because it failed to file a motion to enforce the waiver? *United States v. Gutierrez*, No. 25-4104 (oral argument May 14, 2026)

Did the defendant waive his guidelines challenges via the appeal waiver within the plea agreement? *United States v. Ford*, No. 25-5171 (reply brief filed April 16, 2026)

Did the defendant waive his plea-rejection challenge via the appeal waiver within the plea agreement? *United States v. Hallford*, No. 25-1257 (reply brief filed June 15, 2026)

C. Breaches

Did the government plainly breach its plea agreement with this defendant by urging the district court to base its sentence on non-relevant conduct alleged in counts the government agreed to dismiss and "not further prosecute"? *United States v. Noles*, No. 25-6082 (oral argument March 19, 2026)

D. Validity of Plea

Is the defendant's plea to drug offenses plainly invalid because: (1) the district court did not inform the defendant of the essential elements of three of the offenses, as is required by Rule 11(b)(1)(G); or (2) establish an adequate factual basis for these offenses, as is required under Rule 11(b)(3)? *United States v. Huerta-Torres*, No. 24-5125 (OA September 11, 2025)

Did the district court err (plainly or otherwise) by accepting this defendant's guilty plea to § 922(g)(3) (prohibiting an unlawful user from possessing a gun), because (1) the plea plainly lacked a factual basis; or (2) the statute is unconstitutional under the Second Amendment, either facially or as-applied? *United States v. Lewis*, No. 24-6148 (OA November 19, 2025)

IX. Trial Rights/Protections

A. Right to Present a Defense

Did the district court deny this defendant the right to present a defense when it refused to admit evidence of an alternative perpetrator? *United States v. Withrow*, No. 24-5040 (gov't brief filed May 20, 2026)

In this gun case, did the district court deprive Milstead of his right to present a defense when it refused to instruct the jury on his duress defense? *United States v. Milstead*, No. 25-3199 (brief filed Mar. 11, 2026)

At this illegal-reentry (8 USC § 1326) prosecution, the district court refused to permit the defendant to present a defense that he did not know his status as an alien based on Tenth Circuit precedent. Does intervening Supreme Court precedent require revisiting the appropriate mens rea for § 1326 and recognizing that the offense also requires proof that the defendant knew his status as an alien? *United States v. Barraza-Ramirez*, No. 25-2147 (brief filed April 9, 2026)

B. Right to Testify/Remain Silent

Did the district court plainly violate *Doyle v. Ohio* when it allowed the government to cross-examine this testifying defendant about his *Miranda*-warned post-arrest partial silence? *United States v. Estrada*, No. 25-8003 (oral argument March 17, 2026)

Did the district court's noncompliance with the Court Interpreters Act deny this defendant his constitutional right to testify (also due process, present a defense, and fair trial)? *United States v. Adegboruwa*, No. 24-4116 (brief filed March 24, 2026)

Whether the prosecution plainly violated this defendant's due process rights under Doyle v. Ohio by impeaching him with his post-*Miranda*-warning silence? *United States v. Luster*, No. 25-5145 (brief filed April 24, 2026)

Did the prosecutor plainly violate *Doyle v. Ohio* by introducing evidence of this defendant's post-arrest, post-Miranda silence at trial to prove that he committed the charged murder? *United States v. Forrester*, No. 25-7092 (brief filed June 5, 2026)

At this murder trial, did the district court repeatedly err in allowing the government to use this defendant's invocation of his right to remain silent as substantive evidence of guilt? *United States v. Gonzales*, No. 26-2007 (brief filed June 17, 2026)

C. Right to Confront Witnesses

If not waived, did the district court abuse its discretion (or plainly err) and violate this defendant's Sixth Amendment confrontation rights in admitting a key witness's prior testimony at the defendant's murder trial without sufficient evidence that the government had made reasonable efforts to find the witness? *United States v. Barker*, No. 24-7100 (oral argument March 19, 2026)

Did the district court violate this defendant's confrontation rights when it allowed a government expert witness on cell site location data to adopt and incorporate into his testimony actions and decisions made by a previous expert who was unable to testify at trial? If so, was the error harmless? *United States v. Pena*, No. 25-2090 (gov't brief filed May 13, 2026)

Did the district court violate the Sixth Amendment when it refused to permit the defendant to recall the government's lead case agent during the defendant's case-in-chief? *United States v. Gutierrez*, No. 25-6164 (gov't brief filed May 13, 2026)

Did the admission of a testifying witness's grand-jury testimony violate the Sixth Amendment's Confrontation Clause? If so, was the error harmless? *United States v. Withrow*, No. 24-5040 (gov't brief filed May 20, 2026)

D. Constructive Amendment

Was this defendant's money-laundering charge constructively amended at trial by the introduction of an effect on interstate commerce not alleged in the indictment? Or was this defendant's wire-fraud charge constructively amended at trial by the introduction of a scheme to defraud not alleged in the indictment? And were these claims adequately preserved via the defendant's post-trial motion for judgment of acquittal? If not, has the defendant waived the issue, or can the defendant nonetheless win on plain-error review? *United States v. Lacona*, No. 25-1033 (virtual OA February 5, 2026)

In this assault case, did the district court constructively amend the indictment when it removed the specific intent requirement from the jury instruction? *United States v. Regnier*, No. 25-8062 (oral argument May 14, 2026)

At this forced-labor conspiracy trial, did the district court's statute-of-limitations instructions and special interrogatories – which extended the ordinary ten-year limitations period without requiring the indictment to plead, or the jury to agree unanimously on, any defendant-specific qualifying acts, and which allowed the jury to convict on earlier conduct so long as the offenses were not proved solely by such acts – constructively amend the indictment? *United States v. Hadley*, No. 25-3144 (brief filed March 16, 2026)

At this wire fraud trial, did the government constructively amend the indictment (and violate the defendant's fair trial rights) by relying on evidence of fraud against a victim different from the alleged victim in the indictment? *United States v. Vergato*, No. 25-1362 (brief filed April 28, 2026)

In this drug case, was the indictment constructively amended when the district court admitted evidence of prior uncharged drug sales and the prosecutor urged the jury to convict on those prior, uncharged sales? *United States v. Watkins*, No. 25-1471 (brief filed June 6, 2026)

E. Prosecutorial Misconduct

1. False Evidence/Perjured Testimony

At this child sex abuse trial, did the district court apply the wrong standard under *Glossip* when it required the defendant to prove that the detective committed perjury before granting a motion for new trial? And was the district court's finding that the government did not allow the testimony to go uncorrected factually untrue and clearly erroneous? *United States v. Smith*, No. 26-5020 (brief filed June 3, 2026)

2. Improper Comments/Questioning

Did the prosecutor commit plain, reversible misconduct during closing argument by misrepresenting a key witness's testimony? *United States v. Lacona*, No. 25-1033 (virtual OA February 5, 2026)

During closing arguments, did the prosecutor (1) mis-define "heat of passion"; (2) plainly mis-define premeditation by comparing it to switching ice cream orders at the last minute; or (3) commit plain misconduct by stating a personal opinion that the defendant's acts were premeditated? *United States v. Phillips*, No. 25-7003 (virtual OA February 5, 2026)

Did the prosecutor commit plain misconduct and deprive this defendant of a fair trial by (1) eliciting expert and non-expert opinion testimony that circumvented expert and other rules and invaded the province of the jury; or (2) mischaracterizing evidence, attacking the defendant's credibility, and appealing to emotion by asking the jury to hold the defendant accountable during closing argument? *United States v. Wilson*, No. 24-7093 (oral argument March 17, 2026)

Did the prosecutor engage in plain misconduct during questioning of witnesses and closing argument in this murder trial? *United States v. Beard*, No. 25-7031 (oral argument March 17, 2026)

Did the prosecutor commit plain misconduct during closing argument by overemphasizing the right and wrong nature of running from police officers? *United States v. Campbell*, No. 25-5065 (oral argument April 30, 2026)

Did the prosecutor commit plain misconduct during closing argument when the prosecutor misstated the law regarding the specific-intent element for attempted murder? *United States v. Collins*, No. 25-7017 (oral argument May 12, 2026)

Did the prosecutor commit plain prosecutorial error during closing argument when it told the jurors that the defendants had used up all the doubt they were due because law enforcement had already repeatedly given them the benefit of the doubt, thus effectively telling the jury that the defendants were no longer presumed innocent? *United States v. Si. Wahhaj*, No. 23-2168 (oral argument May 14, 2026); *United States v. Morton*, No. 24-2039 (oral argument May 14, 2026); *United States v. Su. Wahhaj*, No. 23-2171 (oral argument May 14, 2026)

Under plain error review, did the government's repeated and persistent vouching for and bolstering of the key government witness deprive this defendant of a fair trial? *United States v. Gonzalez*, No. 25-3163 (gov't brief filed June 10, 2026)

Did the prosecutor commit plain misconduct during closing argument by making two improper and prejudicial misstatements of the law with respect to the government's burden of proof? *United States v. Lee*, No. 25-7084 (gov't brief filed June 10, 2026)

Whether the prosecutor committed misconduct by eliciting improper testimony from its witnesses and improperly opining on the evidence and the defendant's credibility in its rebuttal closing argument? *United States v. Salazar*, No. 25-1298 (brief filed May 1, 2026)

In this child sex abuse case, (1) did the prosecutor improperly vouch for the victim by asking her father a loaded question that assumed the alleged sexual abuse occurred; and/or (2) plainly commit misconduct during closing argument by repeatedly inviting the jurors to convict based on emotion, sympathy, and a perceived duty to secure justice? *United States v. Toyne*, No. 26-7016 (brief filed May 28, 2026)

Did the prosecutor in rebuttal closing argument improperly urge the jury to consider evidence that had been admitted in violation of *Doyle v. Ohio*? *United States v. Forrester*, No. 25-7092 (brief filed June 5, 2026)

Did the prosecutor plainly misstate the law regarding premeditation during closing argument? *United States v. Forrester*, No. 25-7092 (brief filed June 5, 2026)

F. Motions for Mistrial

Did the district court abuse its discretion when it denied a mistrial after an audience member interrupted a witness examination to inject a purported clarification of the witness's testimony? *United States v. Seminole* No. 24-8080 (oral argument March 17, 2026)

G. Motions to New Trial

Did the district court abuse its discretion in finding this defendant's motion for new trial untimely without applying the correct excusable-neglect framework? If so, did the district court also abuse its discretion in denying the motion on the merits when it deemed immaterial newly discovered evidence that a key eyewitness to the killing underlying the defendant's second-degree-murder conviction had lied both to the FBI and during her trial testimony? *United States v. Lansing*, No. 25-4006 (OA January 23, 2026)

H. Sufficiency Challenges

Was proof of perjury before a grand jury sufficient to convict the defendant as an accessory after the fact under **18 U.S.C. § 3**? *United States v. Milliron*, No. 23-1217 (OA September 8, 2025)

If a codefendant's murder conviction is reversed, must the defendant's accessory after the fact conviction under **18 U.S.C. § 3** be reversed too? *United States v. Milliron*, No. 23-1217 (OA September 8, 2025)

If the defendant's perjury convictions are reversed because of insufficient evidence, must the Court also reverse the defendant's conviction for accessory after the fact under **18 U.S.C. § 3**? *United States v. Milliron*, No. 23-1217 (OA September 8, 2025)

Was the evidence sufficient to prove that the victim – a subcontractor of a private corrections company – was an official victim covered by **18 U.S.C. § 111**? *United States v. Hernandez*, No. 25-2084 (oral argument May 12, 2026)

Was the evidence sufficient to prove that this defendant used a deadly and dangerous weapon under **18 U.S.C. § 111(a)(1), (b)**? *United States v. Campbell*, No. 25-5065 (oral argument April 30, 2026)

Was the evidence sufficient to convict this defendant of interference with federally protected activities, **18 USC § 245(b)(1)(A)**, when he allegedly orchestrated four shootings on the houses of state and local elected officials when those shootings occurred after the local election was complete and the results were certified? *United States v. Pena*, No. 25-2090 (gov't brief filed May 13, 2026)

Was the evidence insufficient to convict under **18 USC § 922(a)(6)** when the government did not introduce any evidence that the defendant knew that he was "under Indictment or Information" when he made a payment to a pawn broker as part of a loan to eventually reacquire his own firearm? *United States v. Mejia*, No. 25-1295 (brief filed April 1, 2026)

Was the evidence sufficient to prove that this defendant knew that he was a convicted felon under **18 USC § 922(g)(1)**? *United States v. Clark*, No. 25-5141 (gov't brief filed June 1, 2026)

Is attempted murder under 18 U.S.C. § 1143(a) a crime of violence under **18 USC § 924(c)**? *United States v. Sandoval*, No. 23-4019 (OA September 10, 2025)

Was the evidence insufficient to prove premeditation in this **18 USC § 1111** murder/**18 USC § 924(c)** case given evidence that the defendant acted in self-defense? *United States v. Beard*, No. 25-7031 (oral argument March 17, 2026)

Was the evidence insufficient to prove premeditation in this **18 USC § 1111** murder/**18 USC § 924(c), (j)** case? *United States v. Forrester*, No. 25-7092 (brief filed June 5, 2026)

Was the evidence insufficient to convict this defendant of voluntary manslaughter under **18 USC § 1112**? *United States v. Smith*, No. 25-7077 (brief filed May 4, 2026)

Was the evidence insufficient to prove the interstate-commerce element in this prosecution for kidnapping (**18 USC § 1201(a)(1)**), robbery (**18 USC § 1951**), and brandishing a firearm during a crime of violence (**18 USC § 924(c)(1)(A)(ii)**)? *United States v. Taylor*, No. 25-5018 (gov't brief filed June 3, 2026)

At this attempted kidnapping (**18 USC § 1201(a)(1)**) trial, was the evidence sufficient to prove the defendant's specific intent to kidnap? *United States v. Harrison*, No. 26-6017 (brief filed May 26, 2026)

At this kidnapping (**18 USC § 1201(a)**) trial, was the evidence insufficient to prove that this defendant "held" the victim other than while actively committing aggravated assault and sexual abuse offenses for which he was also convicted? *United States v. Harper*, No. 25-5184 (brief filed June 11, 2026)

Was the evidence insufficient to convict this defendant of aggravated identity theft under **18 USC § 1028A(a)(1)** because of a lack of evidence that the defendant misappropriated the means of identification of a living person? *United States v. Freeman*, No. 25-5119 (oral argument May 14, 2026)

Was the evidence of specific intent to kill sufficient to convict the defendant of attempted murder under **18 U.S.C. § 1113**? *United States v. Collins*, No. 25-7017 (oral argument May 12, 2026)

At this trial for conspiring to kill federal officers under **18 U.S.C. § 1117**, was the evidence insufficient at a matter of law to prove the jurisdictional element? *United States v. Si. Wahhaj*, No. 23-2168 (oral argument May 14, 2026)

Did the district court err by holding that the defendant could not plead to a lesser included offense under the Major Crimes Act, when a non-Indian defendant charged with the same crime could do so? *United States v. English*, No. 23-1328 (brief filed August 12, 2024) (abated)

Was the evidence insufficient to convict this defendant of kidnapping and conspiracy to kidnap resulting in death, **18 USC § 1201(a)(1), (c)**? *United States v. Morton*, No. 24-2039 (oral argument May 14, 2026); *United States v. Su. Wahhaj*, No. 23-2171 (oral argument May 14, 2026) (same); *United States v. H. Wahhaj*, No. 23-2170 (oral argument May 14, 2026) (same)

If this argument is not waived, can an individual be convicted of kidnapping and conspiring to kidnap when the evidence establishes that the individual helped a biological parent remove a child from another biological parent because this conduct is not considered kidnapping under **18 USC § 1201**? *United States v. Morton*, No. 24-2039 (oral argument May 14, 2026); *United States v. Su. Wahhaj*, No. 23-2171 (oral argument May 14, 2026); *United States v. H. Wahhaj*, No. 23-2170 (oral argument May 14, 2026)

In this case involving a direct mail promotion advertising campaign, was the evidence insufficient to convict the defendant of mail fraud under **18 U.S.C. § 1341** because the defendant did not know that the mailer was engaged in a scheme to defraud when he signed the mailer as a client? *United States v. Lytle*, No. 24-1410 (OA January 23, 2026)

In this case involving a direct mail promotion advertising campaign, was the evidence insufficient to convict the defendant of wire fraud under **18 U.S.C. § 1343** because the defendant: (1) did not know that the mailer was engaged in a scheme to defraud when he signed the mailer as a client; (2) did not intend to engage in the scheme to defraud; and (3) did not aid and abet fraudulent conduct by another mailer? *United States v. Lytle*, No. 24-1410 (OA January 23, 2026)

Was the evidence insufficient to support the interstate-commerce element of these wire fraud convictions under **18 USC § 1343** because the government failed to prove that the interstate transmission of an SBA loan file was reasonably foreseeable to the defendant and failed to prove any other interstate transmissions? *United States v. Lacona*, No. 25-1033 (virtual OA February 5, 2026)

Was the evidence sufficient to prove the specific-intent elements of mail fraud, **18 USC § 1341**, wire fraud, **18 USC § 1343**, and money laundering, **18 USC § 1957**? *United States v. Lopez*, No. 25-2097 (reply brief filed March 30, 2026)

Was the evidence sufficient to prove the specific-intent element of wire fraud/aiding-abetting wire fraud, 18 USC § 1343, where witness testimony established that the defendant did not specifically intend to defraud the victim named in the indictment? *United States v. Vergato*, No. 25-1362 (brief filed April 28, 2026)

In this case involving a direct mail promotion advertising campaign, was the evidence insufficient to convict the defendant of a wire-fraud conspiracy under **18 U.S.C. § 1349** because the defendant had no duty to evaluate the promotional material or the client and had no knowledge that specific clients were engaged in a scam? *United States v. Lytle*, No. 24-1410 (OA January 23, 2026)

Was proof of perjury before a grand jury sufficient to convict the defendant of obstruction of justice under **18 U.S.C. § 1503(a)**? If so, does the conviction violate the Double Jeopardy Clause? *United States v. Milliron*, No. 23-1217 (OA September 8, 2025)

If the defendant's perjury convictions are reversed because of insufficient evidence, must the Court also reverse the defendant's conviction for obstruction of justice under **18 U.S.C. § 1503(a)**? *United States v. Milliron*, No. 23-1217 (OA September 8, 2025)

In this prosecution under **18 USC § 1519**, was the evidence sufficient to convict based on the defendant-officer's "deactivation" of his body-worn camera? *United States v. Smith*, No. 25-7019 (oral argument May 14, 2026)

Was the evidence sufficient to convict this defendant of a forced-labor conspiracy under 18 U.S.C. § 371 and 18 U.S.C. § 1589, where the government introduced evidence of sporadic, school-based discipline and later supervision of a non-profitable biodiesel lab and no evidence of force, threats, or abuse for the purpose of obtaining labor? *United States v. Hadley*, No. 25-3144 (brief filed March 16, 2026)

Was the evidence sufficient to convict this defendant of two different counts of perjury under **18 U.S.C. § 1623(a)**? *United States v. Milliron*, No. 23-1217 (OA September 8, 2025)

If this defendant's predicate wire-fraud convictions are reversed for either trial error or insufficient evidence, should his money-laundering convictions be reversed as well? *United States v. Lacona*, No. 25-1033 (virtual OA February 5, 2026)

At this trial for providing material support and resources to kill federal officers under **18 U.S.C. § 2339A** (and conspiring to do so), was the evidence insufficient at a matter of law to prove the jurisdictional element? If not, did the district court plainly err when it failed to properly instruct the jury on the jurisdictional element under **18 USC § 2339A**? *United States v. Si. Wahhaj*, No. 23-2168 (oral argument May 14, 2026)

Was there sufficient evidence to convict the defendant under **18 USC § 2244(a)(3)** based on evidence that the defendant touched the minor victim, without any evidence that the defendant did so with the intent to sexually arouse or gratify? *United States v. Aguilar*, No. 24-2146 (OA November 17, 2025)

Was the evidence sufficient to convict this defendant of sex offenses in Indian Country under **18 USC § 2241, 18 USC 2242, and 18 USC 2243**, in light of inconsistencies in and lack of corroboration for the government's evidence? *United States v. Haight*, No. 25-5132 (reply brief filed Apr. 16, 2026)

Was the evidence sufficient to convict this defendant of sexually abusing a child under **18 USC § 2246(2)(C)** because the evidence failed to show penetration? *United States v. Toyne*, No. 26-7016 (brief filed May 28, 2026)

Was the evidence insufficient to support this defendant's conviction under **18 USC § 2251**? *United States v. Bindues*, No. 24-2117 (OA September 10, 2025)

In a case involving voyeuristic activity and recordings of nude minors (as well as one "upskirt" recording of a fully clothed minor) not engaged in sexually explicit conduct: (1) was the evidence insufficient to convict the defendant of the six counts of attempted production of child pornography under **18 U.S.C. § 2251(a), (e)**? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026)

The defendant captured a zoomed-in screenshot of a minor's genitals from a video of the minor getting undressed and into a bathtub. Does this conduct constitute the "use[] … of any minor to engage in sexually explicit conduct" under **18 U.S.C. § 2251**, or was the evidence insufficient to prove that element of the offense? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026)

In this federal habeas case, assuming the merits of the issue is properly before the Court, is the defendant's 2001 conviction for distributing drugs with intent to commit a crime of violence under **21 USC § 841(b)(7)** invalid because the district court relied on the now-invalid residual clause in 18 USC § 16 to conclude that the defendant's prior conviction for criminal sexual contact of a minor under New Mexico law qualified as a crime of violence? *United States v. Hahn*, No. 24-2069 (oral argument March 18, 2026)

Was the evidence insufficient to prove beyond a reasonable doubt that this defendant knew of, joined, or participated in the charged drug conspiracy under **21 USC § 846**? *United States v. Lin*, Appeal No. 25-6066 (oral argument March 19, 2026)

If not waived, was the evidence insufficient to prove knowledge, voluntary participation, and interdependence under **21 USC § 846** at this meth conspiracy trial? *United States v. Gutierrez*, No. 25-6164 (gov't brief filed May 13, 2026)

Was the evidence insufficient to convict this defendant of a drug conspiracy under **21 USC § 846**? *United States v. Cruz*, No. 25-6163 (reply brief filed June 10, 2026)

Was the evidence insufficient to prove that this doctor engaged in a continuing criminal enterprise or unlawfully distributed controlled substances resulting in death under **21 USC § 848**? *United States v. Kahn*, No. 25-8004 (oral argument May 14, 2026)

Was the evidence sufficient to convict this defendant of a continuing criminal enterprise under **21 USC § 848**? *United States v. Adegboruwa*, No. 24-4116 (brief filed March 24, 2026)

Was the evidence sufficient to convict this defendant of possession of unregistered silencers under **26 USC § 5861(d)**; specifically, was the evidence sufficient to prove that this defendant knew the silencers found in his bedroom had the characteristics that brought the silencers within the definition of a "firearm" in 18 USC § 921(a)(25) (as cross-referenced in 26 USC § 5845(a))? *United States v. Vano*, No. 25-3128 (reply brief filed May 29, 2026)

I. Cumulative Error

If two instructional errors are individually harmless, is reversal necessary because of the cumulative effect of the two errors? *United States v. Reger*, No. 24-1411 (OA January 23, 2026)

In this child-pornography-production case, do instructional and evidentiary errors cumulatively warrant reversal? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026)

Did the cumulative effect of instructional error and prosecutorial misconduct deprive this defendant of a fair trial? *United States v. Phillips*, No. 25-7003 (virtual OA February 5, 2026)

Did the cumulative effect of evidentiary errors and prosecutorial misconduct deprive this defendant of a fair trial? *United States v. Wilson*, No. 24-7093 (oral argument March 17, 2026)

Does the cumulative effect of juror misconduct, a witness outburst, and instructional error warrant a new trial? *United States v. Seminole* No. 24-8080 (oral argument March 17, 2026)

Do several evidentiary errors and prosecutorial misconduct cumulatively warrant reversal in this assault-of-an-officer case? *United States v. Campbell*, No. 25-5065 (oral argument April 30, 2026)

Does the cumulative effect of three errors (failure to sever, improper instructions, and prosecutorial misconduct) warrant a new trial? *United States v. Si. Wahhaj*, No. 23-2168 (oral argument May 14, 2026)

Does the cumulative effect of multiple errors (Fourth Amendment, self-representation, instructional errors, prosecutorial misconduct) warrant a new trial? *United States v. Morton*, No. 24-2039 (oral argument May 14, 2026)

Do numerous evidentiary errors cumulatively warrant reversal in this case involving an officer who deactivated his body-worn camera then sexually assaulted a female? *United States v. Smith*, No. 25-7019 (oral argument May 14, 2026)

Does prosecutorial misconduct and an erroneous jury instruction cumulatively warrant reversal in this drug case? *United States v. Gonzalez*, No. 25-3163 (gov't brief filed June 10, 2026)

Does cumulative error require a new trial in this drug conspiracy case? *United States v. Cruz*, No. 25-6163 (reply brief filed June 10, 2026)

Do two instructional errors and a violation of the Court Reporters Act cumulatively require reversal in this continuing criminal enterprise case? *United States v. Adegboruwa*, No. 24-4116 (brief filed March 24, 2026)

Do evidentiary and instructional errors, plus prosecutorial misconduct, cumulatively require reversal in this drug trafficking case? *United States v. Salazar*, No. 25-1298 (brief filed May 1, 2026)

Do two plain evidentiary errors -- (A) eliciting testimony commenting on the defendant's post-*Miranda* partial silence; and (B) introducing an inadmissible hearsay statement from the lead detective -- cumulatively require reversal in this gun case? *United States v. Guerrero*, No. 25-3222 (brief filed May 15, 2026)

Do three evidentiary errors and one instructional error cumulatively require reversal in this first-degree murder case? *United States v. Withrow*, No. 24-5040 (gov't brief filed May 20, 2026)

Do multiple hearsay violations and prosecutorial misconduct cumulatively require reversal in this child sex abuse case? *United States v. Toyne*, No. 26-7016 (brief filed May 28, 2026)

Do three evidentiary errors cumulatively require reversal in this murder case? *United States v. Shafe*, No. 25-3177 (brief filed June 3, 2026)

X. Judges and Juries

A. Disqualifying Judges/Reassigning Cases

Whether reassignment to a different judge is warranted based on gratuitous comments at sentencing that the judge would have the defendant hanged if it were a permissible punishment for assaulting an immigration officer? *United States v. Barron-Esquivel*, No. 25-3218 (brief filed May 11, 2026)

B. Magistrates

In this felony case, and if not waived, did the district court impermissibly delegate to a magistrate judge (under 28 U.S.C. § 636) the authority to issue a report and recommendation to resolve guidelines objections? *United States v. Kendrick*, No. 25-7042 (oral argument April 29, 2026)

C. Impartial Jury

Did a juror plainly commit disqualifying misconduct by, contrary to the court's instructions, discussing the case in the jury room before deliberations began? Did other jurors plainly violate the defendant's right to be present at a critical stage when they reported the first juror's misconduct to court staff? Was the district court's inquiry into this juror misconduct plainly inadequate? *United States v. Seminole* No. 24-8080 (oral argument March 17, 2026)

Assuming that there is jurisdiction to consider this appeal, did the district court abuse its discretion by not investigating after receiving credible evidence of improper outside influence on the jury (i.e., the jury deliberated in a room equipped with surveillance devices)? If remanded, should the Court direct the district court to apply a presumption of prejudice prior to further factual development? *United States v. Anglin*, No. 25-6191 (reply brief filed June 11, 2026)

D. Judge-Jury Communications

Did the district court's deficient response to a jury note about constructive possession fail to disclose the controlling legal principle that a person does not automatically possess the property of a joint tenant, especially considering that the district court did not instruct on constructive possession? *United States v. Lollis*, No. 25-7055 (oral argument May 14, 2026)

D. Jury Instructions

1. Burden of proof

Did the elements instructions plainly misstate the government's burden of proof by directing that the defendant must be found not guilty if the government "failed to prove *each* of these elements" rather than directing that the defendant must be found not guilty if the government failed to prove *any* or *any one or more* of the elements? *United States v. Seminole* No. 24-8080 (oral argument March 17, 2026)

2. Jury Unanimity

At this continuing criminal enterprises trial, did the district court violate the defendant's constitutional rights by refusing to instruct jurors that they were required to unanimously agree as to the identity of at least five or more people with respect to whom the defendant occupied an organizing, supervisory, or managerial position? *United States v. Adegboruwa*, No. 24-4116 (brief filed March 24, 2026)

3. Lesser Included Offenses

Did the failure to instruct on second-degree murder in this first-degree murder case violate the Fourteenth Amendment? *Fuston v. Quick*, No. 24-6166 (oral argument Jan. 23, 2026)

At this possession-with-intent-to-distribute trial, did the district court reversibly err when it refused to instruct the jury on possession of a controlled substance as a lesser included offense? *United States v. Salazar*, No. 25-1298 (brief filed May 1, 2026)

4. Investigative Techniques

Given the defendant's entrapment defense in this undercover sex-sting case, did the district court err (or plainly err) in instructing the jury categorically that it was "proper" for a government agent to engage in an undercover scheme? *United States v. Estrada*, No. 25-8003 (oral argument March 17, 2026)

5. Theory of Defense/Affirmative Defense

Did the district court plainly err when it instructed the jury that imperfect self-defense was a defense to first-degree murder and other lesser-included offenses, but failed to instruct the jury that the government was required to prove beyond a reasonable doubt that the defendant did not act in imperfect self-defense in order to secure a first-degree murder conviction? *United States v. Phillips*, No. 25-7003 (virtual OA February 5, 2026)

Did the district court plainly err when it instructed the jury that evidence of this defendant's mental diseases or defects could only be considered to evaluate premeditation, but provided no other defense (thereby removing the evidence from the jury's consideration of imperfect self-defense and heat of passion)? *United States v. Phillips*, No. 25-7003 (virtual OA February 5, 2026)

If not waived, did the district court err (or plainly err) in including a "duty to retreat" instruction within the self-defense instruction, given the facts in this case? *United States v. Lynn*, No. 25-5027 (oral argument April 30, 2026)

Did the district court err when it (1) gave an imperfect self-defense instruction, but (2) refused to instruct the jury that the government was required to prove beyond a reasonable doubt that the defendant did *not* act in imperfect self-defense? *United States v. Lynn*, No. 25-5027 (oral argument April 30, 2026)

Did the district court plainly err in giving a self-defense instruction that shifted the burden to the defendant to "restore" his right to self-defense if he was the initial aggressor? *United States v. Seminole* No. 24-8080 (oral argument March 17, 2026)

6. Elements

Did the district court plainly err when it failed to instruct the jury on the definition of possession after the jury note demonstrated that constructive possession was in issue? *United States v. Lollis*, No. 25-7055 (oral argument May 14, 2026)

Did the district court fail to properly instruct the jury that solicitation of another with the intent to kill and attempt to kill a witness to prevent that witness's attendance and testimony in an official proceeding, **18 USC § 373**, requires the jury to find, beyond a reasonable doubt, that the solicitation

was serious, meaning that there was an actual intent that the crime occur? If so, was the error harmless? *United States v. Pena*, No. 25-2090 (gov't brief filed May 13, 2026)

At this trial for a gun-related crime under 18 USC § 922(a)(6), did the district court erroneously instruct the jury that the government did not have to prove that the defendant "acted with knowledge that his conduct was unlawful," as the instruction confused the jury and caused them to believe that the defendant's knowledge and intent were irrelevant? *United States v. Mejia*, No. 25-1295 (brief filed April 1, 2026)

At this trial for conspiring to kill federal officers under **18 U.S.C. § 1117**, did the district court plainly err when it failed to properly instruct the jury on the jurisdictional element? *United States v. Si. Wahhaj*, No. 23-2168 (oral argument May 14, 2026)

At this forced labor conspiracy trial, **18 USC § 371** and **18 USC § 1589**, did the district court err when it instructed the jury that the prosecution could prove the offense by showing that the defendant conspired to obtain labor from someone living in a climate of fear sufficient to cause them to perform labor against their will? *United States v. Jenkins et al.*, No. 25-3140 (brief filed Feb. 25, 2026)

At this trial for providing material support and resources to kill federal officers under **18 U.S.C. § 2339A** (and conspiring to do so), did the district court plainly err when it failed to properly instruct the jury on the jurisdictional element under **18 USC § 2339A**? *United States v. Si. Wahhaj*, No. 23-2168 (oral argument May 14, 2026)

Did the district court improperly instruct the jury on conspiracy to kidnap under **18 USC § 1201** because it refused to instruct the jury that the defendants agreed "to violate the law"? *United States v. Su. Wahhaj*, No. 23-2171 (oral argument May 14, 2026); *United States v. H. Wahhaj*, No. 23-2170 (oral argument May 14, 2026)

Did the district court improperly instruct the jury on kidnapping under **18 USC § 1201** because it refused to instruct the jury that the defendants "knowingly and contrary to law" kidnapped the victim? *United States v. Su. Wahhaj*, No. 23-2171 (oral argument May 14, 2026); *United States v. H. Wahhaj*, No. 23-2170 (oral argument May 14, 2026)

Did the district court err in this gambling case under **18 USC § 1955** when it refused to instruct the jury that the defendant had to know that his act "was one of participation in gambling," and in incompletely and erroneously defining "gambling" and "knowingly"? If so, did the errors also infect the conspiracy count? Are the errors harmless? *United States v. Arvay*, No. 24-1497 (virtual OA February 5, 2026)

At this **18 USC § 2251** attempt trial, did the district court erroneously refuse to instruct the jury that it had to find that the defendant specifically intended to use the minors to engage in sexually explicit conduct? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026)

At this **18 USC § 2251(a)** trial, did the district court's instruction on "lascivious exhibition" misstate the law and fail to provide the jury with a meaningful understanding of the law? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026)

If not waived because of inadequate briefing, did the district court err by instructing the jury that the defendant could be held liable for the foreseeable acts of his coconspirators without clarifying that those acts had to have been foreseeable before the defendant withdrew from the conspiracy? *United States v. Lin*, Appeal No. 25-6066 (oral argument March 19, 2026)

In this assault case under **18 U.S.C. § 111(a)(1)**, did the district court improperly instruct the jury on the specific intent requirement and the need to find that the defendant committed a simple assault? If so, was this error harmless? *United States v. Regnier*, No. 25-8062 (oral argument May 14, 2026)

In this prosecution for kidnapping (**18 USC § 1201(a)(1)**), robbery (**18 USC § 1951**), and brandishing a firearm during a crime of violence (**18 USC § 924(c)(1)(A)(ii)**), did the district court abuse its discretion when it: (1) denied the defendant's interstate-commerce instruction; and (2) instructed the jury on the "carrying" element of the section 924(c) count? If so, were the errors harmless? *United States v. Taylor*, No. 25-5018 (gov't brief filed June 3, 2026)

At this drug conspiracy trial (**21 USC § 846**), did the district court err (or plainly err) when it instructed the jury that it could infer the defendant's intent to advance or further the object of the conspiracy from knowing acts or omissions? *United States v. Findley*, No. 25-8019 (reply brief filed May 12, 2026)

At this drug conspiracy trial under **21 USC § 846**, did the district court err when it gave a *Pinkerton* instruction because section 846 does not include an over-act requirement? *United States v. Gonzalez*, No. 25-3163 (gov't brief filed June 10, 2026)

At this continuing criminal enterprises trial, **21 USC § 848**, did the district court violate this defendant's constitutional rights by refusing to instruct the jurors that the "in concert with" element requires mutual agreement on a common plan or enterprise on the part of five or more other persons? *United States v. Adegboruwa*, No. 24-4116 (brief filed March 24, 2026)

7. Witness-Related Instructions

Whether the district court violated Rule 605 and/or plainly violated Rule 608 when it instructed the jury that the defendant was "an abuser of drugs" whose testimony must be weighed with greater caution than other witnesses? And whether it was also reversible error for the district court to single out the defendant as a drug abuser when there was evidence that government witnesses were also drug abusers? *United States v. Lee*, No. 25-7084 (gov't brief filed June 10, 2026)

8. Aiding and Abetting

Was the district court's aiding-and-abetting jury instruction erroneous because it permitted the jury to convict based on incidental facilitation, rather than on active participation in the crime? If so, was the error harmless? *United States v. Reger*, No. 24-1411 (OA January 23, 2026)

9. Good Faith

At this mail and wire fraud trial, did the district court err when it refused to give a good-faith instruction? *United States v. Reger*, No. 24-1411 (OA January 23, 2026)

10. Limiting Instructions

If not waived because of inadequate briefing, did the district court err (or plainly err) when, in response to the jury's request for a government timeline, the court did not instruct the jury that it

should limit its use of the timeline to only the matters on it proven at trial? *United States v. Lin*, Appeal No. 25-6066 (oral argument March 19, 2026)

11. *Allen* Charge

At this forced-labor conspiracy trial, did the district court err by giving the jury a coercive *Allen* instruction after the jury reported difficulty reaching unanimity? *United States v. Hadley*, No. 25-3144 (brief filed March 16, 2026)

In this gun-licensing case, did the district court abuse its discretion when it gave the jury a coercive *Allen* instruction after the jury informed the court that it was deadlocked? *United States v. Mejia*, No. 25-1295 (brief filed April 1, 2026)

12. "On or About"

In this first-degree murder case, did the district court abuse its discretion when it gave an "on or about" instruction in light of the defendant's alibi defense? *United States v. Withrow*, No. 24-5040 (gov't brief filed May 20, 2026)

XI. Rules of Evidence

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

The district court admitted evidence of uncharged sexual assaults under Rule 414. Should the Court issue a limited remand to the district court for a reasoned ruling on why the district court did not exclude this evidence under Rule 403? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026)

Did the district court's admission of other-acts and character evidence in this murder trial plainly violate Rules 403, 404, and 405? *United States v. Beard*, No. 25-7031 (oral argument March 17, 2026)

In this assault-against-an-officer case, did the district court abuse its discretion (or plainly err) under Rule 402 when it admitted evidence that two officers were injured during the defendant's flight from the police? *United States v. Campbell*, No. 25-5065 (oral argument April 30, 2026)

In this murder case, whether the district court abused its discretion under Rule 403 when it admitted a photograph of the victim's heart after the medical examiner surgically removed it from his body? *United States v. Lee*, No. 25-7084 (gov't brief filed June 10, 2026)

At this drug trial, did the district court reversibly err when it allowed the government's law enforcement witness to provide prejudicial nonresponsive answers to questions ("evidentiary harpoons"), informing the jury that the defendant had been on parole when the offense occurred, without taking any corrective action? *United States v. Salazar*, No. 25-1298 (brief filed May 1, 2026)

Did the district court abuse its discretion when it admitted as intrinsic evidence prejudicial "blood photographs" of events that occurred after the crime? *United States v. Harrison*, No. 26-6017 (brief filed May 26, 2026)

Did the district court abuse its discretion under Rule 404(b) by admitting evidence of previous arguments that this defendant had with her husband/murder victim? *United States v. Shafe*, No. 25-3177 (brief filed June 3, 2026)

Did the district court abuse its discretion when it admitted evidence of several uncharged drug sales on other days and in other places as "intrinsic" to the charged single-day drug possession offense? *United States v. Watkins*, No. 25-1471 (brief filed June 6, 2026)

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

At this sex trafficking, kidnapping, and gun-possession trial, did the district court err when it admitted evidence under Rule 413 and Rule 414 that the defendant sexually abused a 16-year-old and an 18-year-old because: (1) the defendant was not charged with a triggering offense; and/or (2) the witnesses were older than 14 years old when they were allegedly molested? *United States v. Clements*, No. 24-2171 (OA November 20, 2025)

C. Rules 601-615 (Witnesses)

Did the district court err (or plainly err) when it denied the defendant's motion to exclude five felony convictions as impeachment evidence under Rule 609? *United States v. Campbell*, No. 25-5065 (oral argument April 30, 2026)

Did the district court plainly err under Rule 602 when it admitted a records custodian's testimony as to the contents of verification letters from the Choctaw Nation and other records not introduced at trial? *United States v. Collins*, No. 25-7017 (oral argument May 12, 2026)

Did the district court abuse its discretion under Rule 609 when it refused to permit the defendant to cross-examine the government's main witness about the witness's prior attempted murder conviction? If so, was the error harmless? *United States v. Cruz*, No. 25-6163 (reply brief filed June 10, 2026)

Whether the district court violated Rule 605 and/or plainly violated Rule 608 when it instructed the jury that the defendant was "an abuser of drugs" whose testimony must be weighed with greater caution than other witnesses? *United States v. Lee*, No. 25-7084 (gov't brief filed June 10, 2026)

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

At this child pornography production trial, did the district court abuse its discretion when it refused to exclude testimony under Rule 702 from an FBI agent purporting to be an expert on "grooming" because: (1) the expert's opinions were not the product of reliable principles and methods; (2) the expert's opinions were irrelevant and not helpful to the jury; and (3) the testimony was substantially outweighed by the danger of unfair prejudice? If so, was the error harmless? *United States v. Bindues*, No. 24-2117 (OA September 10, 2025)

At this defendant's felon-in-possession trial, an interstate "nexus expert" testified that he had read all of the investigative reports in the case and felt like "all of the elements of the crime had been met." Did the admission of this testimony (repeated three times) plainly violate Federal Rules of Evidence 704(b) (as an improper opinion that the defendant possessed the requisite mens rea) and 403 (as unfairly prejudicial)? *United States v. McBee*, No. 25-5049 (OA January 22, 2026)

In this child abuse/neglect case, did the district court (plainly or otherwise) err in admitting expert testimony that (1) parents of an infant should be expected to know when something is wrong with their infant and seek medical care; (2) the expert had medically diagnosed and confirmed child abuse and neglect; (3) the parents' explanations were inconsistent with the infant's injuries; or (4) the expert had told the defendant "not to lie to me anymore"—violating either Fed. Crim. P. 16

(insufficient notice); or Fed. R. Evid. 701, 702 or 704 (insufficient foundation and expertise; irrelevance and unreliability); or Fed. R. 608(a) (improper character testimony); or Fed. R. Evid. 401–403 (irrelevance and unfair prejudice); or because the testimony was a comment on credibility or mens rea or other ultimate issues, and encroached on the jury's function? If so, was this error harmless? *United States v. Wilson*, No. 24-7093 (oral argument March 17, 2026)

Did the district court (plainly or otherwise) err in admitting expert testimony through investigators who had not been noticed as experts and whose testimony attacked the defendant's credibility, in violation of Fed. Crim. P. 16 (insufficient notice); or Fed. R. Evid. 702 or 704 (insufficient foundation and expertise; irrelevance and unreliability); or Fed. R. Evid. 608(a) (improper character testimony), or because the testimony was a comment on credibility, and encroached on the jury's function? If so, was this error harmless? *United States v. Wilson*, No. 24-7093 (oral argument March 17, 2026)

Did the district court abuse its discretion in allowing experts to give legal definitions of what constitutes an authorized prescription under 18 U.S.C. § 821 that were both (1) inaccurate and (2) violated Fed. R. Evid. 702? *United States v. Kahn*, No. 25-8004 (oral argument May 14, 2026)

In this assault case, did the district court abuse its discretion when it precluded the defendant's expert witness from testifying about the defendant's mental and medical health at the time of the incident in support of his claim that he did not intend to commit the assault? *United States v. Regnier*, No. 25-8062 (oral argument May 14, 2026)

Did the district court commit reversible error when it permitted the government's law enforcement expert witness to testify regarding a matter beyond his expertise that impermissibly commented on the credibility of this defendant's recorded statements? *United States v. Salazar*, No. 25-1298 (brief filed May 1, 2026)

In this murder case, did the district court abuse its discretion under Rule 701(c) when it permitted a law-enforcement lay witness to testify about retention firearms holsters, a matter requiring specialized technical knowledge? *United States v. Shafe*, No. 25-3177 (brief filed June 3, 2026)

Whether the district court erred in excluding this defendant's memory expert where the proposed expert was a professor who specializes in memory, the proposed testimony was supported by extensive academic literature, and the integrity of the victim's memory was the central issue? *United States v. Harper*, No. 25-5184 (brief filed June 11, 2026)

E. Rules 801-807 (hearsay)

Did the district court abuse its discretion when it admitted a testifying child witness's hearsay statements: (1) under Rule 807; and (2) to provide background information about the investigation? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026)

Did the district court abuse its discretion in admitting hearsay evidence of this defendant's Indian status? If so, was the error harmless? *United States v. Beard*, No. 25-7031 (oral argument March 17, 2026)

In this case involving a charge of murder in Indian Country, did the district court err in admitting a screenshot of a Choctaw Nation database page purporting to show the defendant's Indian status

under Fed. R. Evid. 803(6) (hearsay exception for records of regularly conducted activity)? *United States v. Lynn*, No. 25-5027 (oral argument April 30, 2026)

Was the admission of – (1) verification letters from the Choctaw Nation; and (2) an Oklahoma DHS employee's testimony as to the substance of hearsays statements regarding the defendant's tribal enrollment status – plainly erroneous because the evidence was inadmissible hearsay? *United States v. Collins*, No. 25-7017 (oral argument May 12, 2026)

Did the district court err when it excluded some of the defendant's post-arrest statements as hearsay because the statements were not introduced for the truth of the matter asserted? If so, was this error harmless? *United States v. Clark*, No. 25-5141 (gov't brief filed June 1, 2026)

Did the district court abuse its discretion when it admitted coconspirator statements under Rule 801(d)(2)(E) without first making the required on-the-record findings that any such statement was made "during" or "in furtherance of" the charged forced-labor conspiracy? *United States v. Peach*, No. 25-3140 (brief filed Feb. 25, 2026)

Whether the district court erred by admitting a text message sent by the victim to an unknown drug dealer that attributed to the defendant statements that implicated the defendant in the victim's death? *United States v. Silas*, No. 25-5179 (brief filed April 22, 2026)

Whether the district court abused its discretion when it prevented the defendant from introducing a codefendant's guilty plea allocution under Rule 804(3)? And did this error violate the defendant's right to present a complete defense and deprive him of a fair trial? *United States v. Smith*, No. 25-7077 (brief filed May 4, 2026)

Did the admission of a testifying witness's grand-jury testimony violate Rule 803(5)? If so, was the error harmless? *United States v. Withrow*, No. 24-5040 (gov't brief filed May 20, 2026)

In this child sex abuse case, did the district court abuse its discretion when it: (1) admitted the victim's hearsay statements – describing alleged earlier abuse – as an excited utterance under Rule 803(2); and/or (2) admitted the victim's journal entry as a present sense impression under Rule 803(1)? *United States v. Toyne*, No. 26-7016 (brief filed May 28, 2026)

Did the district court commit plain error when it violated the rule against hearsay by admitting a law enforcement officer's testimony recounting what he had been told by an individual during the individual's proffer? *United States v. Shafe*, No. 25-3177 (brief filed June 3, 2026)

F. Rule 1006 (summaries, charts to prove content)

If not waived because of inadequate briefing, did the district court plainly err when it admitted a timeline chart and an organizational layout at this drug-conspiracy trial, both of which suggested facts not proven at trial? *United States v. Lin*, No. 25-6066 (oral argument March 19, 2026)

XII. Sentencing

A. Recidivist Statutes/Armed Career Criminal Act (18 U.S.C. § 924(e))/4B1.2

In this illegal reentry case, does the enhanced sentence under 8 USC § 1326(b)(2) violate the Fifth and Sixth Amendments because the defendant did not admit "the existence and timing" of the prior

aggravated felony conviction? (issue foreclosed by *Almendariz-Torres*) *United States v. Trujillo*, No. 25-2124 (reply brief filed May 13, 2026)

Is the federally protected activities statute, 18 USC § 245(b)(1)(A), a crime of violence under 18 USC § 924(c)? *United States v. Pena*, No. 25-2090 (gov't brief filed May 13, 2026)

Did the district court plainly err when it considered this defendant's prior Illinois aggravated battery conviction a crime of violence under USSG § 4B1.2 because the offense can be committed nonviolently? *United States v. Wilcoxen*, No. 25-1469 (brief filed April 28, 2026)

Did the district court err when it determined that Colorado first-degree assault is a crime of violence because the statute encompasses causing non-physical, mental harm, as well as causing harm to oneself? *United States v. Wheaton*, No. 25-1446 (brief filed May 15, 2026)

B. Allocution

Did the district court plainly err by conclusively stating that Mr. Palma would receive a guidelines sentence –i.e., life imprisonment—before allocution? *United States v. Palma*, No. 25-7027 (reply brief filed March 23, 2026)

C. Procedural Reasonableness

In this vehicular manslaughter case, assuming this issue is not waived or forfeited, is the statutory maximum upward-variant 96-month sentence procedurally unreasonable because the district court [1] failed to provide an adequate explanation about why the defendant's criminal history warranted the variance; and [2] based the variance on the need to provide correctional treatment? If this was error, was it harmless? *United States v. Williams*, No. 24-7073 (submitted on briefs September 10, 2025)

Did the district court commit plain error under the Fifth and Sixth Amendments when it allowed the government to use the defendant's statements from a court-ordered mental examination to argue dangerousness at sentencing? *United States v. Lewis*, No. 24-6148 (OA November 19, 2025)

Did the district court plainly or otherwise violate Fed. R. Crim. P. 32(i)(1)(A) when it failed to verify that the defendant had read and discussed the PSR with his attorney? If so, did this error prejudice the defendant by (1) depriving him of an opportunity to challenge factual errors in the PSR, which both (2) discredited his allocution and (3) contributed to the district court's decision to impose a statutory maximum sentence? *United States v. Threatt*, No. 24-6262 (OA January 23, 2026)

If not waived, did the district court commit procedural error (plain or otherwise) when it announced its "gut" feeling that a 72-month sentence was appropriate, and then reverse-engineered a hypothetical and inapplicable guideline range to justify that sentence? *United States v. Cruz*, No. 24-1306 (oral argument March 17, 2026)

If not waived because of inadequate briefing, did the district court procedurally err in calculating the drug quantity attributable to this defendant in this drug-conspiracy case? *United States v. Lin*, Appeal No. 25-6066 (oral argument March 19, 2026)

Did the district court plainly err when it failed to adequately explain its reasons for sentencing the defendant to a within-guidelines-range 360-month prison sentence for child abuse and child neglect convictions? *United States v. Collins*, No. 25-7017 (oral argument May 12, 2026)

Is this defendant's above-guideline sentence procedurally unreasonable (plainly or otherwise) because the district court failed to address the remoteness of the deportations and convictions the court relied on in imposing the upward variance? *United States v. Mora*, No. 25-5030 (reply brief filed November 13, 2025)

In this mail fraud case involving harvested body parts, did the district court plainly err in rejecting evidence of this defendant's post-sentencing rehabilitative efforts on the grounds that she was expected to follow rules and would receive good-time credit by the Bureau of Prisons for doing so? *United States v. Hess*, No. 25-1354 (reply brief filed May 22, 2026)

In this stalking/gun case, is the 360-month upward departure/variance plainly procedurally unreasonable because the district court failed to give proper notice when it departed upward and when it refused to continue the sentencing hearing before departing (or varying) upward? *United States v. Mentzer*, No. 25-3132 (reply brief filed May 13, 2026)

In this murder case, is the 456-month prison sentence procedurally unreasonable? *United States v. Martin*, No. 25-7057 (reply brief filed May 20, 2026)

Did the district court abuse its discretion under Rules 32(i)(1)(B) and (C) when it considered two undisclosed, unproven, and inaccurate facts when imposing the sentence in this illegal-reentry case? *United States v. Trujillo*, No. 26-5008 (brief filed April 13, 2026)

In this child-pornography case, did the sentencing court plainly err when it based the length of this defendant's 36-month prison sentence in part on its desire to impose in-prison mental health treatment, in violation of the Supreme Court's opinion in *Tapia v. United States*? *United States v. Green*, No. 25-6210 (brief filed April 20, 2026)

In this case involving an assault on an immigration officer, is the upward variance to the statutory maximum procedurally unreasonable because the district court relied on unsupported facts, unreliable information, and speculation, and made comments that undermined the fairness of the sentence? *United States v. Barron-Esquivel*, No. 25-3218 (brief filed May 11, 2026)

Did the district court err under Rule 32(i)(3)(B) when it relied on objected-to portions of the PSR, without the government presenting any supporting evidence, to impose an upward variance? *United States v. Castillo-Delgado*, No. 25-1475 (brief filed June 12, 2026)

Whether the district court violated this drug defendant's Sixth Amendment rights by using unadmitted facts not found beyond a reasonable doubt when imposing a 26-year sentence? *United States v. Young*, No. 25-2129 (brief filed June 17, 2026)

D. Substantive Reasonableness

In this vehicular manslaughter case, is this defendant's statutory maximum upward-variant 96-month sentence substantively unreasonable because **[1]** there was not a sufficiently compelling reason for the sentence; **[2]** the sentence creates an unwarranted disparity; **[3]** there was no basis for finding that the defendant's criminal history was underrepresented; **[4]** the sentence gives no weight to the defendant's acceptance of responsibility; and **[5]** the sentence is impermissibly premised on the need for correctional treatment? *United States v. Williams*, No. 24-7073 (submitted on briefs Sept. 10, 2025)

Is this defendant's above-guideline sentence substantively unreasonable given the remoteness of the deportations and convictions the court relied on in imposing the upward variance? *United States v. Mora*, No. 25-5030 (reply brief filed November 13, 2025)

Is this defendant's 40-month above-guideline sentence—based on unadjudicated non-relevant conduct, and absent consideration of unwarranted sentencing disparities—substantively unreasonable? *United States v. Noles*, No. 25-6082 (oral argument March 19, 2026)

Did this drug-conspiracy defendant who went to trial unfairly receive a harsher 37-month sentence than a codefendant who received a 32-month sentence? *United States v. Lin*, Appeal No. 25-6066 (oral argument March 19, 2026)

In this fraud case involving cremation services, is the upward-variant 180-month sentence substantively unreasonable because the district court did not articulate "legally cognizable grounds" for the variance? *United States v. Koch*, 25-1179 (reply brief filed Jan. 30, 2025)

In this case involving the possession of 10.4 kilograms of fentanyl, the district court used the methamphetamine guidelines range to impose a 240-month above-guidelines-range sentence based on its belief that the fentanyl guidelines range did not adequately account for the dangers associated with fentanyl. Is the upward variance substantively unreasonable because the district court did not adequately support its sentencing methodology or its disagreement with the guidelines? *United States v. Garley*, No. 25-2060 (oral argument March 19, 2026)

In this case involving an officer who deactivated his body-worn camera then sexually assaulted a female, is the 40-year prison sentence substantively unreasonable? *United States v. Smith*, No. 25-7019 (oral argument May 14, 2026)

In this illegal reentry case, is the district court's 63-month upward variance substantively unreasonable? *United States v. Mendez*, No. 25-7051 (reply brief filed April 1, 2026)

In this stalking/gun case, is the 360-month upward departure/variance substantively unreasonable because the district court failed to consider the defendant's acceptance of responsibility and other mitigating factors and imposed a sentence greater than necessary to achieve the statutory purposes of sentencing? *United States v. Mentzer*, No. 25-3132 (reply brief filed May 13, 2026)

In this illegal-reentry case, is the 70-month within-guidelines-range sentence substantively unreasonable because the district court failed to consider that most of the defendant's criminal conduct occurred in the age of development and was remote in time? *United States v. Trujillo*, No. 25-2124 (reply brief filed May 13, 2026)

In this murder case, is the 456-month prison sentence substantively reasonable? *United States v. Martin*, No. 25-7057 (reply brief filed May 20, 2026)

Is the 372-month sentence in this drug conspiracy case substantively unreasonable because: (1) the district court did not properly evaluate the defendant's very low criminal history or properly consider the defendant's age; and/or (2) the defendant's sentence is arbitrary compared to the lower sentences imposed on similarly situated codefendants? *United States v. Cruz*, No. 25-6163 (reply brief filed June 10, 2026)

In this child-pornography case, is the upward-variant 300-month prison sentence substantively unreasonable? *United States v. Weber*, No. 25-3201 (reply brief filed June 10, 2026)

This defendant was convicted of illegal reentry, which also resulted in the revocation of his supervised release. Is the defendant's total 28-month within-guidelines-range sentence substantively unreasonable? *United States v. Pantoja-Hernandez*, Nos. 25-2110, 25-2113 (gov't brief filed April 6, 2026)

In this illegal reentry case, is the 84-month upward variant sentence substantively unreasonable because it created an unwarranted sentence disparity, 18 USC § 3553(a)(6)? *United States v. Miranda-Espinoza*, No. 25-6166 (gov't brief filed May 27, 2026)

In this arson case, is the 84-month upward-variant prison sentence substantively unreasonable in light of undisputed evidence that the offense conduct was the product of severe mental illness? *United States v. Gomez*, No. 26-6028 (gov't brief filed June 18, 2026)

In this gun case, is the 84-month upward-variant prison sentence substantively unreasonable? *United States v. Dutton*, No. 25-6146 (brief filed March 23, 2026)

In this maiming-done-in-aid-of-racketeering case, is the 180-month upward variant sentence substantively unreasonable because the district court gave no weight to the defendant's mitigating arguments and overvalued the fact that the defendant had not been deterred by prior lenient sentences? *United States v. George*, No. 25-6137 (brief filed April 6, 2026)

In this case involving an assault on an immigration officer, whether the upward-variant statutory maximum 20-year sentence is substantively unreasonable because the extent of the variance was not adequately justified? *United States v. Barron-Esquivel*, No. 25-3218 (brief filed May 11, 2026)

In this fentanyl distribution case, is the 4-year prison upward-variant prison sentence substantively unreasonable because: (1) it was based entirely on an inference, disclaimed by the government, that the defendant's drug sale contributed to a third party's death; and (2) the court did not explain the relevance of other section 3553(a) factors when imposing the sentence? *United States v. Daniels*, No. 26-6009 (brief filed May 13, 2026)

In this case involving a federal prisoner convicted of threatening a federal officer, is the 46-month upward-variant consecutive sentence substantively unreasonable? *United States v. Jones*, No. 26-6032 (brief filed May 18, 2026)

In this armed robbery case, is the upward-variant 240-month prison sentence substantively unreasonable? *United States v. Castillo-Delgado*, No. 25-1475 (brief filed June 12, 2026)

In this drugs and guns case, whether the 26-year within-range sentence was substantively unreasonable? *United States v. Young*, No. 25-2129 (brief filed June 17, 2026)

In this kidnapping case, is the upward-variant 204-month prison sentence substantively unreasonable? Does the sentence create an unwarranted disparity with a codefendant's more lenient sentence? *United States v. Muhammad-Springs*, No. 26-3033 (brief filed June 20, 2026)

E. Eighth Amendment

Does this defendant's sentence violate the Eighth Amendment because the defendant is intellectually disabled? *Fuston v. Quick*, No. 24-6166 (oral argument Jan. 23, 2026)

In this kidnapping-resulting-in-death case, does a life sentence violate the Eighth Amendment? *United States v. Su. Wahhaj*, No. 23-2171 (oral argument May 14, 2026); *United States v. H. Wahhaj*, No. 23-2170 (oral argument May 14, 2026)

In this case involving an officer who deactivated his body-worn camera then sexually assaulted a female, does the 40-year prison sentence violate the Eighth Amendment? *United States v. Smith*, No. 25-7019 (oral argument May 14, 2026)

XIII. Guidelines Sections

A. USSG § 1B1.3

If not waived, did the district court clearly err when it included as relevant conduct under USSG § 1B1.3 drug quantities from two cooperating informants' out-of-court hearsay statements? *United States v. Kendrick*, No. 25-7042 (oral argument April 29, 2026)

Did the district court (clearly or plainly) err when it included as relevant conduct under USSG § 1B1.3 drug quantities: (1) from insufficiently reliable and uncorroborated hearsay statements of a cooperating witness who lied to the government, violated the terms of his cooperation agreement, and refused to testify under oath; and (2) derived from conduct unrelated to and temporally remote from the offenses of conviction? *United States v. Findley*, No. 25-8019 (reply brief filed May 12, 2026)

In this fraud and identity theft case, did the district court err (or clearly err) when it considered an armed robbery as relevant conduct under USSG § 1B1.3(a)(1)(B) to increase the base offense level via increases under USSG § 2B1.1(b)(3) (loss amount) and 2B1.1(b)(16)(B) (use of a firearm)? *United States v. Alexander*, No. 25-5182 (reply brief filed June 15, 2026)

B. USSG § 2A2.1

Did the district court err when it applied an increase under USSG § 2A2.1 by giving the defendant's plea-based state conviction issue-preclusive effect on the question of intent to kill and forbidding the defendant from arguing that he lacked the specific intent to kill? *United States v. Lewis*, No. 24-6148 (OA November 19, 2025)

C. USSG § 2A2.2

In this assault case, did the district court err when it applied USSG § 2A2.2 instead of USSG § 2A2.4 because there was no evidence that the defendant intended to cause serious bodily injury? *United States v. Regnier*, No. 25-8062 (oral argument May 14, 2026)

D. USSG § 2A3.2

Did the district court err when it cross-referenced to a different guideline based on a finding that the defendant engaged in sex with another person by force and/or coercion? *United States v. Haight*, No. 25-5132 (reply brief filed Apr. 16, 2026)

E. USSG § 2A4.1

Did the district court err when it applied an increase under USSG § 2A4.1 for "otherwise us[ing]" a firearm during a kidnapping? *United States v. Muhammad-Springs*, No. 26-3033 (brief filed June 20, 2026)

F. USSG § 2B1.1

Did the district court commit procedural sentencing error when it rejected the but-for-causation standard governing pecuniary-loss inquiries under U.S.S.G. § 2B1.1? *United States v. Reger*, No. 24-1411 (OA January 23, 2026)

In this fraud/theft/false statements/impersonating an officer case, did the district court err when it: (1) imposed a two-level sophisticated means increase under USSG § 2B1.1(b)(10); and/or (2) imposed a two-level misrepresentation increase under USSG § 2B1.1(b)(9)? *United States v. Gutierrez*, No. 25-4104 (oral argument May 14, 2026)

If not waived, did the district court erroneously calculate the loss amount under USSG § 2B1.1(b)(1) by treating seized, investor-designated assets as actual loss without making the necessary findings? *United States v. Lopez*, No. 25-2097 (reply brief filed March 30, 2026)

If not waived, when calculating loss under USSG § 2B1.1(b)(1), did the district court err by using an approximation of loss even though the government's evidence established a substantially smaller figure? *United States v. Ford*, No. 25-5171 (reply brief filed April 16, 2026)

If not waived, when calculating the number of victims under USSG § 2B1.1(b)(2), did the district court err when it determined that there were 10 victims even though the government could only identify 8 victims? *United States v. Ford*, No. 25-5171 (reply brief filed April 16, 2026)

In this fraud and identity theft case, did the district court err when it considered an armed robbery as relevant conduct to increase the base offense level via increases under USSG § 2B1.1(b)(3) (loss amount) and 2B1.1(b)(16)(B) (use of a firearm)? *United States v. Alexander*, No. 25-5182 (reply brief filed June 15, 2026)

G. USSG § 2D1.1 (drugs)

If not waived, did the district court clearly err when it: (1) included as relevant conduct under USSG § 1B1.3 drug quantities from two cooperating informants' out-of-court hearsay statements; and (2) included a two-level increase for maintaining a premises under USSG § 2D1.1(b)(12)? *United States v. Kendrick*, No. 25-7042 (oral argument April 29, 2026)

Did the district court err when it applied a two-level "stash house" increase under USSG § 2D1.1(b)(12) because the evidence failed to establish that the defendant maintained the hotel room for the primary purpose of distributing drugs? *United States v. Conill-Perez*, No. 25-6101 (oral argument May 14, 2026)

Did the district court (clearly or plainly) err in its drug-quantity determination under USSG § 2D1.1 because it relied on (1) insufficiently reliable and uncorroborated hearsay statements of a cooperating witness who lied to the government, violated the terms of his cooperation agreement, and refused to testify under oath; and (2) conduct unrelated to and temporally remote from the offenses of conviction? *United States v. Findley*, No. 25-8019 (reply brief filed May 12, 2026)

Did the district court err when it applied a two-level increase under USSG § 2D1.1(b)(1) based on the defendant's possession of a bat and a baton during an unrelated conflict with an acquaintance five days before his arrest for drug trafficking? *United States v. Barrera*, No. 25-8049 (gov't brief filed May 13, 2026)

Did the district court clearly err when it applied a 2-level increase under USSG § 2D1.1(b)(16)(A) (using friendship or affection to involve someone with minimal knowledge of the illegal enterprise)? *United States v. Crawford*, No. 26-7011 (brief filed May 27, 2026)

Did the district court err when it: (1) converted cash into kilograms of converted drug weight without first finding that the conversion ratio bore sufficient indicia of reliability; and/or (2) failed to make an individualized finding attributing fentanyl found on the passenger side of a vehicle to the defendant? *United States v. Watkins*, No. 25-1471 (brief filed June 6, 2026)

Did the government prove by a preponderance of the evidence that over $230,000 in cash found in a vehicle was attributed to the defendant as drug proceeds under USSG § 2D1.1? *United States v. Young*, No. 25-2129 (brief filed June 17, 2026)

H. USSG § 2G2.2 (child pornography)

Rather than apply the 7-level increase under USSG § 2G2.2(b)(3)(E) because the defendant transmitted lewd clips of a girl to entice boys to masturbate on camera, the district court cross-referenced to the child-pornography-production guideline (USSG § 2G2.1) via USSG § 2G2.2(c)(1). Was it plain error to apply the cross-reference because the resulting offense level for each count was not greater under § 2G2.1, and the use of § 2G2.1 caused the district court to group each count separately, resulting in a total higher offense level under the grouping rules? *United States v. Meier*, No. 24-1480 (virtual OA February 5, 2026)

Did the district court plainly err in failing to apply the two-level reduction under USSG § 2G2.2(b)(1), where the defendant's offense conduct was limited to the receipt of child pornography (absent any intent to distribute or actual distribution)? *United States v. Reed*, No. 24-6241 (oral argument March 19, 2026)

I. USSG § 2K2.1

If this issue is not waived, did the district court err when it concluded that it was prohibited from considering any state records beyond a state court judgment—which everybody agreed incorrectly identified the defendant's prior offense of conviction—to find that this defendant was convicted of a crime of violence for USSG § **2K2.1(a)** purposes? If so, did the actual prior conviction (Colorado second-degree assault by drugging) qualify as a crime of violence? If so, is the error harmless? *United States v. Cruz*, No. 24-1306 (oral argument March 17, 2026)

Did the district court plainly err when it applied a six-level increase under **USSG § 2K2.1(a)(4)(A)** because this defendant's prior Colorado second-degree-assault-resulting-in-serious-bodily-harm conviction is not a crime of violence? *United States v. Beasley*, No. 25-1282 (gov't brief filed May 8, 2026)

Did the district court plainly err in counting this defendant's prior Oklahoma domestic abuse resulting in great bodily harm conviction as a crime of violence under **USSG § 2K2.1(a)(3)**? *United States v. King*, No. 25-6151 (reply brief filed April 1, 2026)

In this machinegun-possession case, did the district court clearly err when it applied a 2-level increase under USSG § **2K2.1(b)(1)(A)** for unlawfully possessing three or more firearms in violation of Colorado law based solely on photographs depicting the firearms, without any evidence that the

photographs were taken in Colorado? If so, should the Court limit remand proceedings to the existing record? *United States v. Thomas*, No. 24-1396 (government's brief filed May 21, 2025)

Was the evidence sufficient to find that this defendant possessed additional firearms found in an unoccupied truck the day prior to the defendant's arrest as relevant conduct for purposes of the two-level increase under USSG § **2K2.1(b)(1)(A)**? *United States v. Bray*, No. 25-7091 (brief filed April 28, 2026)

Did the district court commit plain error when it applied a 4-level increase under USSG § **2K2.1(b)(6)(B)** because: **[1]** the district court applied the wrong test (an already rejected knowledge-and-access standard, without asking whether the defendant intended to exercise control over the drugs) when it incorrectly found that the defendant constructively possessed his girlfriend's marijuana; or **[2]** the defendant's simple possession of the marijuana was plainly not a felony. If so, should the Court vacate and remand for resentencing even though the district court indicated that the increase made no difference to the imposed sentence? *United States v. Arnett*, No. 24-6212 (OA November 20, 2025)

In this case involving a gun stolen from a vehicle, did the district court err when it applied the four-level increase under USSG § **2K2.1(b)(6)(B)** because: (1) Oklahoma third-degree burglary does not qualify as a generic "burglary" for purposes of this guideline; and/or (2) the defendant's conduct did not satisfy the definition of generic "burglary" either? If so, was the error harmless? *United States v. Mims*, No. 25-5139 (oral argument May 12, 2026)

Whether the district court properly considered misdemeanor user drug quantities in the defendant's home to apply a sentencing increase under USSG § **2K2.1(b)(6)(B)**? *United States v. Smith*, No. 25-6042 (gov't brief filed May 1, 2026)

Did the district court err in determining that the defendant committed Colorado fourth-degree arson for purposes of applying a four-level increase under **USSG § 2K2.1(b)(6)(B)** (2024)? *United States v. Kiley*, No. 25-1364 (gov't brief filed May 22, 2026)

Did the district court clearly err when it determined that this defendant possessed two firearms in connection with the Oklahoma felony offense of devising to perform an act of violence for purposes of applying a four-level increase under **USSG § 2K2.1(b)(6)(B)**? *United States v. Dutton*, No. 25-6146 (brief filed March 23, 2026)

Did the district court clearly err in applying **USSG § 2K2.1(b)(6)(B)** by basing its ruling that the defendant threatened another person with a gun on an erroneous finding that the defendant admitted that he "displayed" a gun to another individual? *United States v. Riley*, No. 25-1355 (brief filed April 1, 2026)

Did the district court err (or clearly err) when it applied USSG § **2K2.1(c)(1)(B)** to cross-reference the second-degree murder guideline because the government did not prove by a preponderance of the evidence that the defendant did not act in self-defense? *United States v. Braxton*, No. 25-1186 (oral argument May 14, 2026)

Whether the district court erred by concluding that Milstead did not act in self-defense and applying a cross-reference at **USSG § 2K2.1(c)** to sentence him for an aggravated assault under USSG § 2A2.2? *United States v. Milstead*, No. 25-3199 (brief filed Mar. 11, 2026)

Did the district court err (or clearly err) when it applied **USSG § 2K2.1(c)** to cross-reference the assault-with-intent-to-commit-murder guideline (USSG § 2A2.1(a)(1)) because: (1) the government did not prove that the defendant shot at the defendant; or (2) that he intended to kill her? *United States v. Camacho*, No. 25-2121 (gov't brief filed June 12, 2026)

J. USSG § 2L1.2

Did the district court plainly err when it imposed a 10-level increase under USSG § 2L1.2(b)(2)(A) because the defendant's prior conviction was less than five years old? *United States v. Trujillo*, No. 25-2124 (reply brief filed May 13, 2026)

K. USSG § 2S1.1

Did the district court err when it: (1) set the base offense level at 18 under USSG § 2S1.1(a)(2) based on funds laundered by others because that conduct should not have been considered relevant conduct under USSG § 1B1.3(a)(1)(B); (2) applied a six-level increase under USSG § 2S1.1(b)(1) because the defendant knowingly laundered drug-trafficking proceeds; and/or (3) applied a four-level increase under USSG § 2S1.1(b)(2)(C) because the defendant was "in the business of laundering funds"? *United States v. Power-Escobar*, No. 25-4004 (OA November 19, 2025)

L. USSG § 3A1.1

On remand, did the district court err when it applied a two-level vulnerable-victim increase under USSG § 3A1.1(b)(2) because the defendant did not have meaningful contact with most of the victims and was unaware of their particular vulnerabilities and never sought to exploit those vulnerabilities? *United States v. Koch*, 25-1179 (reply brief filed Jan. 30, 2025)

Did the district court plainly err by applying a vulnerable-victim adjustment under USSG § 3A1.1(b)(1) based on factors already taken into account under the offense guideline? *United States v. Moss*, No. 25-8040 (reply brief filed Mar. 18, 2026)

In this mail fraud case involving harvested body parts, did the district court err in applying the "large number of vulnerable victims" increase under USSG § 3A1.1(b)(2)? If so, was this error harmless? *United States v. Hess*, No. 25-1354 (reply brief filed May 22, 2026)

In this murder case, did the district court err when it applied a vulnerable victim increase under USSG § 3A1.1(b)(1)? *United States v. Martin*, No. 25-7057 (reply brief filed May 20, 2026)

M. USSG § 3B1.2 (mitigating role)

In this drug trafficking case, did the district court plainly err when it refused to apply a mitigating role decrease under USSG § 3B1.2? *United States v. McElroy*, No. 24-5118 (submission on briefs November 21, 2025)

In this drug-trafficking case, if not waived, did the district court clearly err when it refused to apply a mitigating role decrease under USSG § 3B1.2? *United States v. Kendrick*, No. 25-7042 (oral argument April 29, 2026)

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

Did the district court err in denying acceptance-of-responsibility points under USSG § 3E1.1 based on the court's view that defense counsel's PSR objections were frivolous? If so, is the error harmless? *United States v. Cruz*, No. 24-1306 (oral argument March 17, 2026)

O. USSG § 4A1.2

Did the district court have sufficient record evidence to find that this defendant's prior juvenile sentences were *consecutive* sentences and therefore countable under USSG § 4A1.2(d)? And if not, was the district court's error in counting those sentences harmless in light of the court's decision to depart and vary downward to a sentence that would have been mid-range without the error? *United States v. Dawson*, No. 25-1096 (oral argument March 17, 2026)

Did the district court plainly err under USSG § 4A1.2(k)(2) when it assessed three criminal history points for a 1996 Florida conviction because: (1) he initially received probation for the conviction; or (2) the sentence was imposed more than 15 years before the instant offense, even though the probationary sentence was revoked in 2014 and resulted in a 46-month prison sentence? *United States v. Conill-Perez*, No. 25-6101 (oral argument May 14, 2026)

P. USSG § 5G1.3

In this fentanyl case, did the district court plainly err when it excluded as relevant conduct the conduct underlying an anticipated state first-degree murder sentence, which permitted the district court to impose the federal sentence consecutively to the anticipated state murder sentence, as this deprived the defendant of USSG § 5G1.3(b)'s directive to impose a concurrent sentence? *United States v. Garley*, No. 25-2060 (oral argument March 19, 2026)

Did the district court plainly err when it failed to consider USSG § 5G1.3(c)'s directive that Mr. Collins's federal sentence be concurrent to his then-anticipated state sentence? *United States v. Collins*, No. 25-7017 (oral argument May 12, 2026)

XIV. Supervised Release

A. Conditions of Supervised Release

Does the district court have statutory authority to order the defendant to pay for court-ordered treatment as a condition of supervised release? Or is this issue not ripe for appellate review? *United States v. Williams*, No. 25-3067 (oral argument March 19, 2026)

In this child-sex-abuse case involving a life term of supervised release, did the district court: (1) fail to explain how the imposition of a special condition of supervised release prohibiting the defendant from possessing adult pornography satisfied 18 U.S.C. § 3583(d)(1), (2), and (3); or (2) fail to balance the defendant's First Amendment rights against a compelling government interest? Regardless, did the district court abuse its discretion when it imposed the condition because the condition does not satisfy sections 3583(d)(1) or (d)(2)? *United States v. Caraballo*, No. 25-5106 (reply brief filed Feb. 20, 2026)

In this child-pornography case, did the district court plainly err by imposing a special condition of supervised release that prohibits this defendant from accessing legal adult pornography, in violation of the First Amendment and without undertaking any particularized analysis? *United States v. Green*, No. 25-6210 (brief filed April 20, 2026)

Did the district court commit plain error when it imposed, without particularized findings, a special condition of supervised release that requires this defendant to take any mediation he may be prescribed during mental health treatment? *United States v. Wheaton*, No. 25-1446 (brief filed May 15, 2026)

Did the district court plainly err when it imposed a special condition of supervised release that prohibits "displaying gang paraphernalia" because the condition is unconstitutionally vague? *United States v. Wheaton*, No. 25-1446 (brief filed May 15, 2026)

Did the district court abuse its discretion when it imposed a risk-notification condition of supervised release without making any supporting finding and/or is the risk-notification condition void for vagueness? *United States v. Warren*, No. 26-4012 (brief filed May 20, 2026)

In this child pornography revocation case, whether the district court committed plain error when it imposed a special condition of supervised release that restricts this defendant's access to adult pornography without making the necessary individualized, case-specific findings? *United States v. Burghart*, No. 26-6043 (brief filed June 3, 2026)

In this revocation proceeding involving a defendant who was convicted of producing child pornography, whether the district court abused its discretion when, without any analysis, it imposed a supervised-release condition prohibiting the defendant from possessing "any pornographic, sexually oriented, or sexually stimulating visual, auditory, telephone or electronic signs, signals or sounds from any source, unless part of a treatment regimen." *United States v. Harris*, No. 26-8004 (brief filed June 11, 2026).

In this revocation proceeding involving a defendant who was convicted of producing child pornography, whether the district court abused its discretion when it cited the protection of minors as the sole basis for imposing a supervised release condition that prohibits the defendant from engaging in any online sexually explicit chats with adults. *United States v. Harris*, No. 26-8004 (brief filed June 11, 2026).

In this revocation proceeding involving a defendant who was convicted of producing child pornography, whether the district court abused its discretion when it imposed a condition that prohibits the defendant from accessing adult pornography online. *United States v. Harris*, No. 26-8004 (brief filed June 11, 2026).

B. Revocations

This supervised-release-revocation proceeding was based on a new sexual-assault indictment that was dismissed before the proceeding, and on the hearsay statements of a complainant the government failed to produce. (1) Did the admission of the complainant's hearsay violate the defendant's right to confrontation under Fed. R. Crim. P. 32(b)(2)(C)? (2) Was the evidence insufficient to support revocation? *United States v. Kinzhuma*, No. 25-2051 (gov't brief filed June 17, 2026)

Did the district court err (or plainly err) when it admitted testimony containing out-of-court statements by an out-of-court declarant without defendant having an opportunity to confront the adverse witness at the hearing? *United States v. Ransburg*, No. 25-6154 (gov't brief filed June 10, 2026)

C. Revocation Sentences

1. Procedural Reasonableness

Whether the imposition of a new term of supervised release upon revocation plainly violated the Rule 11(c)(1)(C) plea agreement? *United States v. Freeburn*, No. 25-2114 (oral argument May 14, 2026)

If not waived, in this felon in possession of ammunition case, did the district court procedurally err (plainly or otherwise) when it varied upward because it: (1) relied on criminal history that was considered and rejected by the guidelines; (2) relied on incorrect facts when considering the criminal history; (3) failed to consider sentencing disparities; and (4) failed to balance properly mitigating factors? *United States v. Carley*, 25-1240 (reply brief filed June 4, 2026)

Is the 34-month term of supervised release imposed upon a third revocation illegal because it exceeds the statutory maximum under 18 USC § 3583(h)? *United States v. Martinez*, No. 26-4032 (brief filed June 5, 2026)

2. Substantive Reasonableness

In this felon in possession of ammunition case, did the district court substantively err when it varied upward to 30 months' imprisonment because it: (1) relied on criminal history that was considered and rejected by the guidelines; (2) relied on incorrect facts when considering the criminal history; (3) failed to consider sentencing disparities; and (4) failed to balance properly mitigating factors? *United States v. Carley*, 25-1240 (reply brief filed June 4, 2026)

This defendant was convicted of illegal reentry, which also resulted in the revocation of his supervised release. Is the defendant's total 28-month sentence within-guidelines-range substantively unreasonable? *United States v. Pantoja-Hernandez*, Nos. 25-2110, 25-2113 (gov't brief filed April 6, 2026)

Is the 24-month consecutive revocation sentence substantively unreasonable? *United States v. Ransburg*, No. 25-6154 (gov't brief filed June 10, 2026)

Is the 6-month downward-variant revocation sentence substantively unreasonable? *United States v. Bailey*, No. 26-1116 (brief filed June 9, 2026)

Is the upward-variant 18-month upward-variant sentence substantively unreasonable because the district court failed to consider or analyze the section 3553(a) factors (specifically the need to avoid unwarranted disparities)? *United States v. Minor*, No. 26-6012 (brief filed June 12, 2026)

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

When imposing restitution under 18 USC § 1593 in this sex trafficking case, did the district court: (1) clearly err when it found that the defendant was the but-for cause of the victim's losses despite the possibility that prior trauma caused by other individuals may have contributed to the need for medical services; and/or (2) abuse its discretion when it selected 10 years as the cap for future restitution for therapy, psychiatry, and medication? *United States v. Coulter*, No. 24-6026 (argued March 19, 2025)

In this sex-offense case, the district court ordered restitution under 18 U.S.C. § 1593. In doing so, did the district court apply the wrong causation standard to the restitution question, and was its

restitution award for therapy, psychiatry, and medication supported by sufficient evidence? *United States v. Coulter*, No. 24-6026 (argued March 19, 2025)

Assuming the issue is not abandoned, did the district court err (or clearly err) when it refused to reduce a restitution award to a victim who had already recovered damages with a civil judgment for the same loss? *United States v. Martin*, No. 25-3048 (OA January 20, 2026)

Did the district court err when it ordered deferred restitution because the government did not request restitution during the 90-day statutory deadline, 18 USC § 3664(d)(5)? *United States v. Seminole*, No. 25-8041 (submitted on the briefs March 17, 2026)

XVI. Sentence Modifications/Resentencing

A. Retroactive Guidelines Amendment -- 18 USC § 3582(c)(2)

Did the district court abuse its discretion when it denied the defendant's motion to reduce his above-guidelines-range sentence under 18 USC § 3582(c)(2) via Form AO 247 and its brief explanation that the defendant's conviction "involved serious conduct that warrants a significant sentence"? *United States v. Duncan*, No. 24-6235 (OA July 9, 2025)

B. Resentencing Issues

Can a defendant waive or forfeit an argument that the district court, on remand for resentencing, failed to comply with the law of the case doctrine or the mandate rule? *United States v. Wells*, No. 24-1294 (submitted on briefs September 10, 2025)

If not waived, did the law of the case doctrine and the mandate rule require the district court, on remand for resentencing, to apply the downward variance granted by the first sentencing judge? *United States v. Wells*, No. 24-1294 (submitted on briefs September 10, 2025)

If the Court vacates and remands for resentencing because of a guidelines miscalculation, should the Court limit remand proceedings to the existing record? *United States v. Thomas*, No. 24-1396 (government's brief filed May 21, 2025)

XVII. Appeals/Miscellaneous

A. Jurisdiction

Can the appellate court consider disputed allegations made in an unsworn, post-appeal statement that the defendant was prejudiced by the district court's failure to verify that he had read and discussed the PSR with his attorney, or is his claim more properly a 28 U.S.C. § 2255 claim that should be brought first in the district court? *United States v. Threatt*, No. 24-6262 (OA January 23, 2026)

Does the court of appeals have jurisdiction to consider an improper-jury-influence claim even though the district court granted a hearing to consider the claim, and the defendant appealed before the claim was resolved? *United States v. Anglin*, No. 25-6191 (reply brief filed June 11, 2026)

B. Standards of Review

1. Waiver

Is a multiplicity argument waived if the defendant who elects a trial did not raise it within the time limit for filing pretrial motions under Fed. R. Crim. P. 12(b)(3)(B)(ii)? *United States v. Morgan*, No. 24-3186 (OA January 23, 2026); *United States v. Reed*, No. 24-6241 (oral argument March 19, 2026)

Did the defendant waive his Double Jeopardy argument by failing to argue plain error in the opening brief? *United States v. Milliron*, No. 23-1217 (OA September 8, 2025)

Did the defendant waive his severance motion via inadequate briefing and/or failure to argue plain error in his opening brief? *United States v. Cruz*, No. 25-6163 (reply brief filed June 10, 2026)

Did the defendant waive his Sixth Amendment confrontation-clause challenge by failing to argue plain error in the opening brief? *United States v. Barker*, No. 24-7100 (oral argument March 19, 2026)

Did the defendant waive his forfeited procedural-sentencing claim by failing to argue plain error in the opening brief? *United States v. Williams*, No. 24-7073 (submitted on briefs September 10, 2025)

Did the government waive its argument that the district court could not dismiss the indictment at the defendant's request during the sentencing hearing because the government failed to object below and failed to argue plain error in the opening brief? *United States v. Forbis*, No. 24-5097 (government appeal) (OA September 11, 2025)

Did the defendant waive his procedural reasonableness challenge because he did not raise the challenge below and did not argue plain error on appeal? *United States v. Mora*, No. 25-5030 (reply brief filed November 13, 2025)

Did this defendant waive his constructive-amendment claim by (1) not raising it below; and (2) not arguing plain error on appeal? *United States v. Lacona*, No. 25-1033 (virtual OA February 5, 2026)

Did the defendant waive his challenge to the district court's sentencing methodology by: (1) not raising it below; and (2) not arguing plain error on appeal? *United States v. Cruz*, No. 24-1306 (oral argument March 17, 2026)

Did the defendant waive his instructional challenge by: (1) not raising it below; and (2) not arguing plain error on appeal? *United States v. Findley*, No. 25-8019 (reply brief filed May 12, 2026)

Did the defendant waive his procedural-reasonableness sentencing challenge by: (1) not raising it below; and (2) not arguing plain error on appeal? *United States v. Carley*, 25-1240 (reply brief filed June 4, 2026)

Should the Tenth Circuit decline to consider this defendant's sufficiency-of-the-evidence challenges to his mail- and wire-fraud convictions where (1) the jury was instructed on three theories of liability, but (2) the defendant only challenged the sufficiency of evidence as to one of those theories? *United States v. Lytle*, No. 24-1410 (OA January 23, 2026)

Did this defendant waive his sufficiency-of-the-evidence challenge because he did not include the entire trial transcript in the record on appeal? *United States v. Gutierrez*, No. 25-6164 (gov't brief filed May 13, 2026)

Did the defendant waive his guidelines challenge based on statements defense counsel made at the sentencing hearing? *United States v. Reger*, No. 24-1411 (OA January 23, 2026)

Did the defendant intentionally waive his appellate challenge to the district court's sentencing procedure via trial counsel's statements in the district court? *United States v. Cruz*, No. 24-1306 (oral argument March 17, 2026)

Did the defendant waive four of his claims because of inadequate briefing? *United States v. Lin*, Appeal No. 25-6066 (oral argument March 19, 2026)

Did the defendant waive his instructional challenge because: (1) he invited the district court to include the challenged language; and/or (2) he does not argue plain error on appeal? *United States v. Lynn*, No. 25-5027 (oral argument April 30, 2026)

Did the defendant waive his guidelines challenge to the loss amount because he did not brief the district court's alternative ground for the loss calculation (intended loss)? *United States v. Lopez*, No. 25-2097 (reply brief filed March 30, 2026)

Did the defendant waive his challenges to the district court's factual findings related to two guidelines increases by stipulating to these facts and the corresponding guidelines? *United States v. Ford*, No. 25-5171 (reply brief filed April 16, 2026)

2. Forfeiture/Plain Error

Evidence of similar crimes may be admitted under FRE 413(a)/FRE 414 only if the defendant is "accused of" a sexual assault/child molestation. Where the defendant objected to the admission of similar crimes on various other grounds but did not challenge whether he was "accused of" the required acts, did the district court's finding that the defendant was "accused of" the required acts sufficiently preserve an "accused of" challenge for purposes of appeal? *United States v. Clements*, No. 24-2171 (OA November 20, 2025)

Did the defendant forfeit his Rule 609(a)(1) objection because he did not renew it at trial following the district court's conditional pretrial ruling? *United States v. Campbell*, No. 25-5065 (oral argument April 30, 2026)

Did the defendant forfeit his challenge to the lack of an imperfect-defense-of-others instruction because his requested instruction was instead based on principles of involuntary manslaughter and involuntary intoxication? *United States v. Rainford*, No. 24-7022 (OA September 11, 2025)

Did the defendant forfeit his challenges to: (1) the lack of a proper knowledge instruction in this conspiracy and gambling case under 18 USC § 1955? *United States v. Arvay*, No. 24-1497 (virtual OA February 5, 2026)

Did the defendant forfeit his challenge to an "undercover-scheme"-related jury instruction because his appellate argument is different than the objections made below? *United States v. Estrada*, No. 25-8003 (oral argument March 17, 2026)

Did the defendant forfeit his instructional challenge because he only offered a generalized objection below ("confusing and inappropriate") and did not specifically argue that the instruction was

improper because the crime was a specific intent crime? *United States v. Findley*, No. 25-8019 (reply brief filed May 12, 2026)

Did the defendant's statement during allocution that his lawyer never went over his PSR with him sufficiently preserve his appellate claim that the district court violated Fed. R. Crim. P. 32(i)(1)(A) when it failed to verify that the defendant had read and discussed the PSR with his attorney? *United States v. Threatt*, No. 24-6262 (OA January 23, 2026)

Did the defendant forfeit his guidelines challenge premised on the district court's application of an incorrect legal standard because the defendant did not object to the use of the incorrect legal standard in the district court? *United States v. Reger*, No. 24-1411 (OA January 23, 2026)

If not waived, did the defendant at least forfeit his claim that his statutory maximum upward-variant 96-month sentence is procedurally unreasonable because the district court [1] failed to provide an adequate explanation about why the defendant's criminal history warranted the variance; and [2] based the variance on the need to provide correctional treatment? *United States v. Williams*, No. 24-7073 (submitted on briefs September 10, 2025)

If not waived, did the defendant forfeit his procedural-reasonableness claim because he did not object to the calculation or explanation of the sentence in the district court? *United States v. Mora*, No. 25-5030 (government's brief filed October 22, 2025)

Did the defendant forfeit his challenge to the district court's reliance on two undisclosed, unproven, and inaccurate facts relied on by the district court when orally pronouncing the sentence because the defendant did not contemporaneously object to the oral pronouncement of the sentence? *United States v. Trujillo*, No. 26-5008 (brief filed April 13, 2026)

Did the defendant forfeit his challenge at the revocation hearing to the admission of hearsay statements because he did not renew his objection at the revocation hearing or request the district court to conduct the Rule 32.1(b)(2)(C) balancing test? *United States v. Ransburg*, No. 25-6154 (gov't brief filed June 10, 2026)

E. Motions to Continue

Did the district court abuse its discretion when it denied the defendant's motion to continue the jury trial when retained counsel substituted in less than three weeks before the commencement of trial? *United States v. Smith*, No. 25-7019 (oral argument May 14, 2026)

In this sex offense case, did the district court err when it denied the defendant's motion to continue to examine a minor's cell phone that law enforcement had reviewed? *United States v. Haight*, No. 25-5132 (reply brief filed Apr. 16, 2026)

In this murder case, did the district court err in denying this defendant's motion to continue the trial, which was premised on the government's late disclosure of evidence that heavily impacted the defendant's alibi defense? *United States v. Gonzales*, No. 26-2007 (brief filed June 17, 2026)

XVIII. Habeas Issues

A. 28 U.S.C. § 2241

Assuming that this issue was properly exhausted, does the Constitution foreclose military jurisdiction over all retired servicemembers, or at least over those retired for disability? *Laughrey v. Commandant*, No. 24-3073 (reply brief filed Dec. 9, 2025)

B. 28 U.S.C. § 2254

Assuming the issue is not waived, was this state prisoner's habeas petition timely under 28 U.S.C. § 2244(d)? *Cato v. Bridges*, No. 24-5093 (reply brief filed Dec. 18, 2025)

Did the district court err by granting habeas relief based on actual innocence and new evidence the defendant did not cause the victim's death? *Moore v. White*, No. 23-6133 (state appeal) (OA September 2024)

Is the state court's determination that *McGirt* is not retroactive as a matter of state law an independent and adequate state procedural rule that can support a determination that this defendant procedurally defaulted his claim that he was denied due process when the State exercised criminal jurisdiction to prosecute him (an Indian) for crimes he committed in Indian country? *July v. Tinsley*, No. 25-5157 (brief filed June 12, 2026)

C. 28 U.S.C. § 2255

Does this Court have jurisdiction to consider this appeal from the denial of a motion to appoint counsel to represent the defendant on a successive § 2255? *United States v. Barrett*, No. 24-7060 (government's brief filed November 8, 2024)

Is this defendant entitled to habeas relief on his claim that his § 924(c) conviction is invalid because his predicate offense could be committed recklessly? *United States v. Barrett*, No. 23-7086 (OA September 9, 2025)

Is it a miscarriage of justice to enforce an appellate waiver against a claim of factual innocence of a § 924(c) conviction? *United States v. Sandoval*, No. 23-4019 (OA September 10, 2025)

In this federal habeas case, is the defendant's habeas petition timely because the defendant has established his actual innocence of a 21 USC § 841(b)(7) conviction (distributing drugs with the intent to commit a crime of violence), as the prior conviction used to establish the defendant's guilt is no longer a crime of violence after the residual clause in 18 USC § 16 was declared unconstitutional? *United States v. Hahn*, No. 24-2069 (oral argument March 18, 2026)

In this federal habeas case, to establish actual innocence to avoid section 2255(e)'s time bars, must the defendant also establish his actual innocence to equally serious charges that were dismissed pursuant to a plea agreement, rather than just his actual innocence to the crime of conviction, or were the other charges not as "equally serious" as the crime of conviction? *United States v. Hahn*, No. 24-2069 (oral argument March 18, 2026)

Recently Added Cases

United States v. Muhammad-Springs, No. 26-3033 (brief filed June 20, 2026)

United States v. Young, No. 25-2129 (brief filed June 17, 2026)

United States v. Gonzales, No. 26-2007 (brief filed June 17, 2026)

United States v. Castillo-Delgado, No. 25-1475 (brief filed June 12, 2026)

July v. Tinsley, No. 25-5157 (brief filed June 12, 2026)

United States v. Minor, No. 26-6012 (brief filed June 12, 2026)

United States v. Harper, No. 25-5184 (brief filed June 11, 2026)

United States v. Harris, No. 26-8004 (brief filed June 11, 2026)

United States v. Bailey, No. 26-1116 (brief filed June 9, 2026)

United States v. Watkins, No. 25-1471 (brief filed June 6, 2026)

United States v. Forrester, No. 25-7092 (brief filed June 5, 2026)

United States v. Martinez, No. 26-4032 (brief filed June 5, 2026)

United States v. Smith, No. 26-5020 (brief filed June 3, 2026)

United States v. Burghart, No. 26-6043 (brief filed June 3, 2026)

United States v. Shafe, No. 25-3177 (brief filed June 3, 2026)

United States v. Toyne, No. 26-7016 (brief filed May 28, 2026)

United States v. Crawford, No. 26-7011 (brief filed May 27, 2026)

United States v. Harrison, No. 26-6017 (brief filed May 26, 2026)

United States v. Warren, No. 26-4012 (brief filed May 19, 2026)

United States v. Jones, No. 26-6032 (brief filed May 18, 2026)

United States v. Wheaton, No. 25-1446 (brief filed May 15, 2026)

United States v. Guerrero, No. 25-3222 (brief filed May 15, 2026)

United States v. Daniels, No. 26-6009 (brief filed May 13, 2026)

United States v. Barron-Esquivel, No. 25-3218 (brief filed May 11, 2026)

United States v. Ransburg, No. 25-6154 (gov't brief filed June 10, 2026)

United States v. Chambers, No. 25-1427 (brief filed May 8, 2026)

United States v. Ballage, No. 25-1438 (brief filed May 7, 2026)