TENTH CIRCUIT ORAL ARGUMENT CALENDAR

Monday, November 16, 2026
Denver, CO
Courtroom IV

9:00 A.M.
(Moritz, Ebel & Rossman)

25-2129 NM United States v. Young (Submitted on the Briefs)

1. Did the government prove by a preponderance of the evidence that over $230,000 in cash was attributable to the defendant as drug proceeds under USSG § 2D1.1?
2. Did the district court violate this defendant's Sixth Amendment rights by using unadmitted facts not found beyond a reasonable doubt when imposing a 26-year sentence?
3. Is the defendant's 26-year, within-range sentence substantively unreasonable?

for the government: Paul Mysliwiec
for the defendant: Gregory M. Acton, Albuquerque, NM

26-6017 WOK United States v. Harrison

1. 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?
2. Was the evidence sufficient to prove the specific-intent element of attempted kidnapping under 18 USC § 1201(a)(1))?
3. Did the district court abuse its discretion when it admitted as intrinsic evidence prejudicial "blood photographs" of events that occurred after the alleged crime?

for the government: David R. Nichols, Jr.
for the defendant: Robert D. Gifford, Oklahoma City, OK

25-7078 EOK United States v. Martin (Submitted on the Briefs)

1. Did the district court abuse its discretion under Rules 401, 402, and 403 by admitting cumulative and graphic autopsy photos where the only issue in dispute at trial was who murdered the victim (not whether the victim had, in fact, been murdered)? If so, was the error harmless?

for the government: Andrew W. Laing
for the defendant: Lynn C. Hartfield, Denver, CO

26-6046 WOK United States v. Yang

1. Did the district court abuse its discretion by reprimanding defense counsel for violating his duty of candor to the court where (1) at defendant's change-of-plea hearing, defense counsel said that (A) counsel was satisfied the defendant understood the charges, potential punishment, and rights she would be giving up; (B) counsel thought that he and the defendant had been able to communicate as necessary with the help of an interpreter; and (C) counsel didn't know of any reason the district court should be hesitant to accept defendant's plea; but (2) in connection with defendant's subsequent 28 U.S.C. § 2255 motion, defense counsel later swore that (A) counsel had always questioned whether the defendant's guilty plea was understandingly made; (B) counsel thought the interpreter's services had been adequate; and (C)) counsel questioned whether the defendant's plea was knowing and voluntary?

for the government: Steven W. Creager
for the defendant: Robert D. Gifford, Oklahoma City, OK

26-7016 EOK United States v. Toyne

1. If not waived, did the district court abuse its discretion (or, if forfeited, plainly err) 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 an entry from the victim's journal as a present sense impression under Rule 803(1)?
2. Did the prosecutor commit plain misconduct by (1) improperly vouching for the victim by asking her father a loaded question that assumed the alleged sexual abuse occurred; and/or (2) repeatedly inviting the jurors, during closing argument, to convict based on emotion, sympathy, and a perceived duty to secure justice?
3. Was the evidence sufficient to convict this defendant of sexually abusing a child under 18 USC § 2246(2)(C) despite the absence of any evidence of penetration?
4. Do multiple hearsay violations and prosecutorial misconduct cumulatively require reversal?

for the government: Lisa C. Williams
for the defendant: Justin A. Lollman, Tulsa, OK

26-2027 NM United States v. Lujan (government appeal)

1. Did the district court err in ruling that officers lacked probable cause to believe that contraband or evidence of drug trafficking would be found in defendant's vehicle where (1) defendant absconded from his term of supervised release after officers found evidence of drug trafficking at his residence; (2) two months later, officers encountered defendant as he was driving up to a residence associated with him; and (3) a search incident to arrest revealed a saran-wrapped bundle containing more than $4,000 in cash in defendant's pocket?

for the government: James Braun
for the defendant: Erlinda O. Johnson, Albuquerque, NM

Wednesday, November 18, 2026
Denver, CO
Courtroom II

9:00 A.M.
(Homes, Bacharach & Carson)

25-3140 KS United States v. Jenkins
25-3206

1. At this forced labor conspiracy trial, *see* 18 USC § 371; 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? If so, was the error harmless?

for the government: William Glaser
for the defendant: Josh Lee (D. Colo. FPD)

25-3144 KS United States v. Hadley

1. 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—(1) dilute the temporal limits Congress imposed on 18 USC § 1589 and 1594(a); and or (2) constructively amend the indictment?
2. 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?
3. Did the district court err (or plainly err) by giving the jury a coercive Allen instruction after the jury reported difficulty reaching unanimity?

for the government: William Glaser
for the defendant: Elizabeth Franklin-Best, Columbia, SC

25-3145 KS United States v. Peach

1. 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? If so, was the error harmless?

for the government: William Glaser
for the defendant: Kari S. Schmidt, Wichita, KS

26-7011 EOK United States v. Crawford

1. 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)?

for the government: Jarrod A. Leaman
for the defendant: Dean Sanderford (D. Colo. FPD)

25-2147 NM United States v. Barraza-Ramirez

1. At this illegal-reentry (8 USC § 1326) trial, did intervening Supreme Court precedent entitle the defendant to present in his defense evidence that he did not know his status as an alien, despite circuit precedent to the contrary? If so, did the district court commit reversible error by precluding the defendant from presenting such evidence?

for the government: Emil Kiehne
for the defendant: Shira Kieval (D. Colo. FPD)

26-4001 UT United States v. Takai

1. Should the Court dismiss the defendant's appeal as untimely?
2. Did the district court err in ruling that it lacked authority, under Federal Rule of Criminal Procedure 36, to correct an obvious and undisputed error in defendant's old PSR where correcting that error would have no effect on defendant's sentence?

for the government: Nathan Jack
for the defendant: Benjamin C. McMurray (D. Utah FPD)

Wednesday, November 18, 2026
Denver, CO
Courtroom III

9:00 A.M.
(Tymkovich, Eid & Federico)

25-1385 CO United States v. Pappas

1. Did the defendant have standing to challenge the search of the vehicle he was driving because he reasonably believed that he had borrowed it from someone with authority to grant him possession?
2. Assuming standing exists, was the impoundment of the vehicle pretextual?
3. If not waived, did officers have reasonable suspicion to frisk (and handcuff) the defendant during the stop?

for the government: Elizabeth S. Ford Milani
for the defendant: Antony Noble, Lakewood, CO

25-6191 WOK United States v. Anglin

1. 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?
2. If so, did the district court abuse its discretion by failing to investigate after receiving credible evidence of improper outside influence on the jury?
3. If remanded, should the Court direct the district court to apply a presumption of prejudice prior to further factual development?

for the government: D.H. Dilbeck
for the defendant: Fenella J. Flanagan, Tulsa, OK

26-6009 WOK United States v. Daniels

1. 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?

for the government: Erin O'Roke Oakley
for the defendant: Alicia C. Lopez, Santa Fe, NM

25-5145 NOK United States v. Luster (Submitted on the Briefs)

1. Did the prosecution plainly violate this defendant's due process rights under *Doyle v. Ohio* by impeaching him with his post-Miranda silence? If so, is the error harmless?

26-6032 WOK United States v. Jones (Submitted on the Briefs)

1. In this case involving a federal prisoner convicted of threatening a federal officer, is the 46-month upward-variant consecutive sentence substantively unreasonable?

26-8004 WY United States v. Harris

1. In this revocation proceeding involving a defendant who was convicted of producing child pornography, did the district court abuse its discretion when, without 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."
2. Did the district court abuse its discretion when it imposed a condition that prohibits the defendant from accessing adult pornography online.
3. Did the district court abuse 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?

for the government: Brandon R. Rosty
for the defendant: Grant Russell Smith (D. Wy. FPD)

Wednesday, November 18, 2026
Denver, CO
Courtroom IV

9:00 A.M.
(Matheson, Kelly & Phillips)

25-1295 CO United States v. Mejia

1. Was the evidence insufficient to convict under 18 USC § 922(a)(6) because 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 re-acquire his own firearm?
2. 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"?
3. 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?

for the government: Marissa R. Miller
for the defendant: Jason B. Wesoky, Denver, CO

25-1446 CO United States v. Wheaton

1. 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?
2. Did the district court commit plain error (as the government concedes it did) when it imposed, without particularized findings, a special condition of supervised release that requires this defendant to take any medication he may be prescribed during mental health treatment?
3. 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?

for the government: William B. Morrison
for the defendant: Leah D. Yaffe (D. Colo. FPD)

25-6210 WOK United States v. Green

1. 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*?
2. 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?

for the government: Tiffany Edgmon
for the defendant: Amy W. Senia (D. Colo. FPD)

25-1438 CO United States v. Ballage

1. 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?
2. Did officers have reasonable suspicion to frisk this defendant (who was suspected of hitting a child with a water bottle)? If so, did officers exceed the scope of the frisk when they opened and reached into the defendant's jacket pocket without first conducting a pat-down of the outer clothing?
3. Assuming that officers unlawfully frisked the defendant's right pocket, was the gun found in the left pocket a fruit of this unconstitutional search? If so, must evidence of the gun found in the left pocket be suppressed, or does the inevitable-discovery exception apply?
4. Is 18 USC § 922(g)(1) unconstitutional—either facially or as applied to this defendant?

for the government: William B. Morrison
for the defendant: Perrin Tourangeau (D. Colo. FPD)

25-1355 CO United States v. Riley (Submitted on the Briefs)

1. 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?

25-1320 CO United States v. Mejia-Quiroz

1. Did the police illegally prolong the duration of this traffic stop by conducting an unrelated inquiry after all traffic-related tasks were complete?

for the government: J. Bishop Grewell
for the defendant: Amy W. Senia (D. Colo. FPD)

Thursday, November 19, 2026
Denver, CO
Courtroom III

8:30 A.M.
(McHugh, Murphy & Rossman)

25-3177 KS United States v. Shafe

1. Did the district court abuse its discretion under Rules 403 and 404(b) by admitting evidence of previous arguments that this defendant had with her husband before she shot and killed him?
2. 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?
3. 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?
4. Do these evidentiary errors warrant reversal, individually or cumulatively?

for the government: Jared S. Maag
for the defendant: Kathleen Shen (D. Colo. FPD)

25-7077 EOK United States v. Smith

1. Was the evidence insufficient to convict this defendant of voluntary manslaughter under 18 USC § 1112?
2. Did the district court abuse its discretion, violate the defendant's right to present a defense, and/or deprive the defendant of a fair trial by precluding the defendant from introducing a codefendant's guilty plea allocution under Rule 804(3)?

for the government: Jarrod A. Leaman
for the defendant: Nicole Dawn Herron (EOK FPD)

26-1023 CO United States v. Vaughn

1. Did officers unlawfully extend this car stop when, without reasonable suspicion, they ran a records check on the passengers' criminal histories?
2. Did officers have reasonable suspicion to frisk this driver/defendant based on information that a passenger might be armed and dangerous?

for the government: Elizabeth S. Ford Milani
for the defendant: Kathleen Shen (D. Colo. FPD)

25-7091 EOK United States v. Bray

1. Did the defendant waive his Second Amendment challenge by pleading guilty before the district court ruled on his motion to dismiss?
2. Is 18 USC § 922(g)(1) unconstitutional—either facially or as applied to this defendant?
3. Was the evidence at sentencing sufficient to prove that this defendant possessed additional firearms found in an unoccupied truck the day before his arrest, for purposes of applying a two-level increase under USSG § 2K2.1(b)(1)(A)? If not, is remand required?

for the government: Jarrod A. Leaman
for the defendant: Stuart W. Southerland, Muskogee, OK

25-5184 NOK United States v. Harper

1. 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 the aggravated-assault and sexual-abuse offenses for which he was also convicted?
2. Did the district court err in excluding this defendant's memory expert where (1) the proposed expert was a professor who specializes in memory; (2) the proposed testimony was supported by extensive academic literature; and (3) the integrity of the victim's memory was the central issue? If so, was the error harmless?

for the government: Leena Alam
for the defendant: Josh Lee (D. Colo. FPD)

25-3199 KS United States v. Milstead

1. In this gun case, did the district court deprive the defendant of his right to present a defense by refusing to instruct the jury on duress?
2. Did the district court err by (1) concluding that the defendant did not act in self-defense and (2) applying a cross-reference at USSG § 2K2.1(c) to sentence him for an aggravated assault under USSG § 2A2.2?

for the government: Duston J. Slinkard
for the defendant: Kayla Gassmann (D. Kan. FPD)

Thursday, November 19, 2026
Denver, CO
Courtroom IV

8:30 A.M.
(Hartz, Tymkovich & Bacharach)

24-4108 UT United States v. Isong (Submitted on the Briefs)

1. Assuming good cause exists to consider the claim, did the 4-and-a-half-year delay between indictment and trial violate this defendant's constitutional Speedy Trial right?

24-4116 UT United States v. Adegboruwa

1. Did the government violate this defendant's constitutional and/or speedy trial rights when it exploited its failure to arrest a codefendant until the trial's eve and then cited its purported "inability" to find the codefendant as the reason to postpone the trial, such that the defendant spent nearly five years in pretrial incarceration?
2. If not waived, did the district court's noncompliance with the Court Interpreters Act deny this defendant his constitutional right to testify (also his rights to due process, to present a defense, and to a fair trial)?
3. Was the evidence sufficient to convict this defendant of a continuing criminal enterprise under 21 USC § 848?
4. If not waived, 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?
5. 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?
6. If not waived, do two instructional errors and a violation of the Court Reporters Act cumulatively require reversal?

for the government: Nathan Jack
for the defendant: Jonathan D. Reppucci, Denver, CO

25-6206 WOK United States v. Butler

1. Did the defendant waive his implied-bias argument where he (1) raised an actual-bias challenge to a prospective juror below; (2) raised an implied-bias argument on appeal; and (3) failed to argue plain error?
2. In this case involving an interracial violent sexual assault, (1) if not waived, did the district court violate this defendant's Sixth Amendment right to an impartial jury by denying a for-cause challenge to a prospective juror who disclosed prior sexual victimization; and/or (2) abuse its discretion when it refused this defendant's request to inquire into potential racial bias during voir dire?
3. Do these errors require reversal, individually or cumulatively?

for the government: Jay T. Shank
for the defendant: Laura K. Deskin (WOK FPD)

25-4152 UT United States v. Johnson

1. Did officers have probable cause to arrest this defendant for aiding prostitution, disorderly conduct, or interfering with an arresting officer?
2. If not waived, did officers unlawfully enter, then seize, the defendant's hotel room to obtain a warrant?
3. Did the search warrant for the hotel room lack probable cause?
4. 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 independent source and/or inevitable discovery exception to the exclusionary rule?
5. Did the district court abuse its discretion when it denied this defendant's motion to withdraw his guilty plea four days after he entered the plea?

for the government: Briggs Matheson
for the defendant: J. Edward Jones, Heber City, UT

25-1298 CO United States v. Salazar

1. Is 18 USC § 922(g)(1) unconstitutional—either facially or as applied to this defendant?
2. If not waived, did the district court reversibly err when, in this drug trial, 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?
3. If not waived, 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?
4. Did the district court reversibly err when it refused to instruct the jury on possession of a controlled substance as a lesser included offense of possession with intent to distribute?
5. If not waived, did the prosecutor commit misconduct by eliciting improper testimony from its witnesses and improperly opining on the evidence and the defendant's credibility in its rebuttal closing argument?
6. Do evidentiary and instructional errors, plus prosecutorial misconduct, cumulatively require reversal in this drug trafficking case?

for the government: Rajiv Mohan
for the defendant: Jonathan Reppucci, Denver, CO

25-1469 CO United States v. Wilcoxen

1. 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?

for the government: William B. Morrison
for the defendant: Paige K. Roff (D. Colo. FPD)