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# Issues Pending In Criminal Cases in the Seventh Circuit

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# Preface

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This document is intended to allow trial and appellate counsel in criminal cases in the Seventh Circuit to know what issues are pending, but not yet decided, in the Seventh Circuit. To my knowledge, until now, no such publicly available database existed.

The usefulness of such a database is threefold. First, when litigating a case in the trial court, it is important to know if you have potential issues that are currently pending on appeal. If the Court of Appeals issues an opinion which creates an issue for you after your case has closed or is on direct appeal, you will be saddled with plain error review on appeal or, worse if no notice of appeal was filed, attempting to mount a collateral attack. On the other hand, if you see an issue is pending on appeal and you raise it below, you will have a better standard of review on appeal should the opinion ultimately issued be favorable to your client. Second, when you raise an issue on appeal, it is useful to know if there are other cases pending with the same or similar issue. This is especially true for cases which raise a legal challenge, as opposed to an issue based upon the application of the facts to well established law. For example, if you intend to raise a challenge to the constitutionality of the residual clause of the Armed Career Criminal Act, it would be good to know if the question has already been raised and is pending in the court. With that knowledge, you could both review the brief in the other pending case for assistance with crafting your own argument and alert the court to the other cases which raise the same issue. Finally, as alluded to already, it is always helpful to read pleadings drafted by others on an issue you intend to raise. By doing so, you may find cases and arguments which you can incorporate into your own argument.

A few notes on using this reference. Once an opinion is issued in a case, I will of course remove it from the database. I will update the database weekly, and it will be available on our website at <http://ilc.fd.org>. Pro se briefs are not included unless such a brief clearly presents an important issue.

## I. APPELLATE PROCEDURE

Whether the district court misconstrued the remand for resentencing as limited rather than general? *United States v. Durham*, No. 15-2474.

Whether the district court erred in finding the intended loss determination from the first sentencing established the law of the case? *United States v. Durham*, No. 15-2474.

Whether the district court erred in finding the actual loss calculation from the first sentencing established the law of the case? *United States v. Durham*, No. 15-2474.

Whether the district court erred by failing to conduct a full resentencing hearing following a remand from this Court for resentencing after *United States v. Thompson*, including barring Mr. Mobley from making arguments and refusing to consider information in mitigation? *United States v. Mobley*, No. 15-2255.

Whether the district court erroneously increased Mr. Mobley's sentence on Count 2 by ten months? *United States v. Mobley*, No. 15-2255.

## II. COMPETENCY

Whether the district court erred in finding that the government's request for a further extension of Mr. Breedlove's commitment was for a "reasonable additional period of time"? *United States v. Breedlove*, No. 15-2058.

Whether the district court erred in finding that the resumption of Haldol injections after a three-month interruption caused by the government's dilatoriness was "medically appropriate"? *United States v. Breedlove*, No. 15-2058.

Whether the district court erred in denying Mr. Breedlove's motion for release or discharge? *United States v. Breedlove*, No. 15-2058.

Whether the district court erred in finding that *Sell* applies where defendant has entered a plea and awaits sentencing? *United States v. Breedlove*, No. 15-2058.

### III. COUNSEL

#### A. Choice of

Whether the district court violated Jones's Sixth and Fifth Amendment rights by issuing a pretrial restraining order for Jones's life insurance policies without holding a hearing or requiring the government to prove that those assets were traceable to the alleged healthcare fraud? *United States v. Jones*, No. 15-1792.

#### B. Ineffective Assistance

Did the defendant receive the assistance of counsel guaranteed by the Sixth Amendment where defense counsel was laboring under possible indictment by the same agency that was prosecuting the case against his client? *United States v. Lewisby*, No. 14-2236

Whether the defendant received ineffective assistance of counsel at trial when his attorney failed to call a witness who had given exculpatory testimony at a pretrial hearing? *United States v. Dillard*, No. 16-1760.

#### C. Motion for New Counsel

Whether the district court abused its discretion by failing to conduct any inquiry into the reasons behind defense counsel's motion to withdraw during the restitution proceedings after Mr. Conour had been sentenced? *United States v. Conour*, No. 13-3753 & 14-2629.

Whether the district court's denial of Mr. Thomas's request for appointment of trial counsel violated his 6th Amendment rights? *United States v. Thomas*, No. 15-1142.

Whether the district court erred in failing to appoint new trial counsel for Jones in his healthcare fraud trial? *United States v. Jones*, No. 15-1792.

D. Privileged information

E. Right to

Whether the district court abused its discretion and infringed upon Mr. Poke's Sixth Amendment right to counsel when it did not afford Mr. Poke enough time to consult with the newly-appointed attorney he had only met two days prior to the full resentencing hearing? *United States v. Poke*, No. 15-3659.

F. Waiver of

Whether the district court conducted a defective *Faretta* colloquy that resulted in an erroneous decision to allow Mr. Tate to represent himself at trial? *United States v. Tate*, No. 15-1186.

#### IV. COLLATERAL ATTACK

Whether the district court erred when it failed to preclude the government from prosecuting Dennis Michael based on facts that the government previously failed to prove by a preponderance of evidence in a prior civil lawsuit against his co-defendant? *United States v. Egan*, No. 15-2485.

#### V. CONTEMPT

#### VI. DISCOVERY

#### VII. DOUBLE JEOPARDY

Whether the district court committed error when it denied Moore's motion to dismiss and bar re-trial in accordance with protections afforded by the Fifth Amendment of the United States Constitution prohibiting Double Jeopardy? *United States v. Moore*, No. 15-1272.

Whether Appellants were denied a fundamentally fair trial and sentence when the prosecution sought and the court imposed convictions and maximum

sentences in violation of the bar against Double Jeopardy? *United States v. Gries & McCullars*, Nos. 15-2432 & 15-2447.

## VIII. EVIDENCE AND TRIAL PROCEDURE

### A. *Brady*

Whether the district court erred when it concluded that claims based on *Brady v. Maryland* and *Giglio v. United States* can never be pursued in a motion under Federal Rule of Criminal Procedure 33 based on newly discovered evidence, where nothing in the plain language of Rule 33 mandates this requirement, and where this Court and other circuits have consistently addressed such claims on the merits under Rule 33? *United States v. O'Malley*, No. 14-2711.

### B. *Bruton*

### C. *Brady* Material

Whether the district court erred in denying Mandell a new trial based on newly discovered evidence where the government withheld exculpatory evidence and impeachment information from the defense at trial concerning the charged firearm and ownership of Polekatz? *United States v. Mandell*, Nos. 14-3747 & 14-3772.

### D. Closing argument

Whether Uriarte's due process rights were violated when the government commented on un-rebutted evidence of unexplained wealth during closing argument? *United States v. Uriarte*, No. 13-1374.

### E. Co-conspirator statements

Whether the district court deprived Cardena of a fair trial by failing to rule on the government's motion to admit co-conspirators statements before trial? *United States v. Cardena*, No. 12-3680.

Whether the district court erred by allowing the actions of Bloom's associates to be imputed to Bloom under an erroneous application of agency rules? *United States v. Bloom*, No. 15-1445.

F. Confrontation, right to

Did the government violate Davis's due process rights when it refused to immunize Gigi Rovito, who was essential to counter the testimony of immunized prosecution witness John Rovito, where the government's only stated reason for refusing immunity was that it did not believe Gigi Rovito's proffered testimony? *United States v. Davis*, No. 15-3671.

Whether the district court erred by allowing the government to introduce NPLEX records under the business records exception where they were prepared in anticipation of litigation and do not fall within the exception of the hearsay rule in violation of *Crawford v. Washington* and its progeny? *United States v. Lynn*, No. 15-3228.

Were Carson's rights under the Sixth Amendment's Confrontation Clause violated when the district court precluded defense counsel from cross-examining a key witness about crimes he committed and for which he did not expect to be prosecuted based on a grant of immunity? *United States v. Carson*, No. 15-3421.

G. Confidential Informants

H. Continuances

I. Cross-examination

Whether the district court violated Mr. Rivas's Sixth Amendment rights and abused its discretion by denying him the ability to cross-examine the fingerprint identification expert regarding prior misapplications of the expert's methodology? *United States v. Rivas*, No. 13-3526

Did the district court abuse its discretion by prohibiting Davis from cross-examining Brown to show that the purpose of the planned attack on Serpico was not debt collection? *United States v. Davis*, No. 15-3671.



#### J. Cumulative Errors

Whether the district court erred in denying Brown’s motion for a new trial because a number of improper evidentiary rulings individual and cumulatively substantially prejudiced Brown resulting in an unfair trial? *United States v. Brown*, No. 16-1603.

#### K. Demonstrative Evidence

Whether the district court erred by allowing the government to show a demonstrative video of the “shake and bake” method of manufacturing methamphetamine at trial that was unduly prejudicial to Mr. Lynn? *United States v. Lynn*, No. 15-3228.

#### L. Entrapment

#### M. Experts

Whether the court erred when it determined that the testimony of Special Agent Joseph Raschke regarding historical cell cite analysis had met the *Daubert* standards and should be admitted during the government’s case in chief? *United States v. Lewisby*, No. 14-2236.

Vani sought to present an expert on the issue of mortgage lending practices. The district court acknowledged his expertise regarding mortgage lending practices. But the court barred him because it required a scientific methodology. Reviewed *de novo*, should Vani’s expert have testified? *United States v. Vani*, No. 15-2597.

Whether the district court erred when it allowed the government’s expert to testify even though the testimony was not based on sufficient facts or data and the testimony was not the product of reliable principles and methods? *United States v. Egan*, No. 15-2485.

Whether the district court abused its discretion in admitting expert testimony regarding the fair market value of Defendant’s teaching contract prejudicing the Defendant’s trial and requiring a new trial? *United States v. Moshiri*, No. 16-1126.

N. Fugitive Disentitlement Doctrine

O. Hearsay

Whether the admission of the 911 recording and transcript, as well as the testimony of officers Ledbetter and Ross repeating what Diego Shears had told them, constituted inadmissible hearsay which amounted to plain error? *United States v. Hayden*, No. 13-3750.

Whether the district court erred by allowing the government to introduce evidence of an out of court statement by an undercover agent to establish that Mr. Amaya possessed a weapon? *United States v. Amaya*, No. 14-2617.

Whether the consulting agreement should have been admitted into evidence under the co-conspirator exception to the hearsay rule when there was authentication or foundation and there was no evidence of the declarant? *United States v. Turner*, No. 15-1175.

Whether the district court erred in admitting hearsay evidence, which was irrelevant, more prejudicial than probative, and which violated the Confrontation Clause, against Klemis at trial? *United States v. Klemis*, No. 15-2057.

Whether the district court abused its discretion in admitting Cupp's hearsay statements against Matthew Elder as being statements "in furtherance" of a conspiracy, under Federal Rule of Evidence 801(d)(2)(E)? *United States v. Elder*, No. 15-2584.

Did the government establish that Davis participated in a conspiracy with Carparelli and John Rovito, such that calls between Rovito and Carparelli on one hand and Brown on the other were nonhearsay coconspirator statements under Federal Rule of Evidence 801(d)(2)(E)? *United States v. Davis*, No. 15-3671.

Whether statements by non-testifying "brokers" should have been excluded as hearsay when there was no independent evidence to show they had been in conspiracy with Jones at the time? *United States v. Jones*, No. 15-3547.

P. Impeachment

Whether it was reversible error for a case agent to testify about the circumstances of the victim's identification where the victim did not forget or change his earlier identification at trial? *United States v. Sparkman*, No. 12-3683.

Did the district court abuse its discretion by allowing the government to examine its own witness, John Rovito, about his prior statements to law enforcement when the government knew Rovito would not testify consistently with those statements? *United States v. Davis*, No. 15-3671.

Whether the district court erred in permitting the government expert to testify to legal standards and allowing the government to violate Rule 16 and impeach the defendant on a collateral but prejudicial matter? *United States v. Kohli*, No. 15-3481.

Q. Insufficient

Whether the evidence presented at trial was sufficient to support the guilty verdicts against Natalizio and Abate? *United States v. Natalizio & Abate*, Nos. 14-1945 & 14-2434.

Whether the evidence presented by the government insufficient to sustain Shannon's convictions for conspiracy and aiding and abetting possession with intent to distribute a controlled substance? *United States v. Shannon*, No. 14-3044.

Whether the district court erred by denying Klemis's motion for judgment of acquittal because the evidence presented at trial was insufficient to show beyond a reasonable doubt that Tyler McKinney ingested or died as a result of heroin, and thus insufficient to sustain a conviction for Count 2? *United States v. Klemis*, No. 15-2057.

The prosecution had to prove Vani's specific intent to defraud. No victim testified to misrepresentations by Vani, and the information in the loan applications submitted by Vani was supplied by others. Was the evidence sufficient to convict Vani? *United States v. Vani*, No. 15-2597.

Whether the evidence presented at trial was insufficient to support a conviction because the evidence came from almost entirely biased witnesses and the

prosecution supplied a fact for a witness to testify about that was different from his own testimony? *United States v. Elder*, No. 15-2584.

Whether the evidence was deficient as a matter of law and fact to establish guilt of conspiracy to sexually exploit a child and thereby child exploitation enterprise requiring reversal of those convictions and an order vacating the sentence imposed upon those counts? *United States v. Gries & McCullars*, Nos. 15-2432 & 15-2447.

Whether the conviction failed as a matter of law where the government failed to meet its burden of proof that something of value was offered in exchange for the attempted murder for hire plot? *United States v. Caguana*, No. 15-3453.

Under the mail and wire fraud statutes, misrepresentations must be “material” to be actionable. Burns did not make knowing misrepresentations about the investments themselves or about the characteristics of those investments that are material under federal law. Rather, his knowing misrepresentations concerned solely his own experience and credibility as a salesman. Were Burns’s knowing misrepresentations material? *United States v. Burns*, No. 15-2824.

Whether the evidence was deficient as a matter of law and fact to establish guilt of conspiracy to sexually exploit a child and thereby, child exploitation enterprise requiring reversal of those convictions, and an order vacating the sentence imposed upon those counts? *United States v. Gries & McCullars*, No. 15-2432 & 15-2447.

Whether the evidence was insufficient to support Nagelvoort’s conviction of the charged Anti-Kickback violations because the government did not prove beyond a reasonable doubt that Nagelvoort acted willfully; and because the challenged contractual arrangements fell within the “Safe Harbors” of the Anti-Kickback statute? *United States v. Novak & Nagelvoort*, Nos. 15-2821 & 15-2766.

Whether the district court erred by finding that Dutcher’s statement and Facebook post were sufficiently proven as true threats and denying Dutcher’s motion for a judgment of acquittal? *United States v. Dutcher*, No. 16-1767.

Whether the district court erred in denying the defendant's motion for judgment of acquittal when the evidence did not establish intent or unlawful conduct? *United States v. Kohli*, No. 15-3481.

Whether sufficient evidence was presented at trial to support the conspiracy conviction where the purported deal was between Jones and a paid police informant, where there was no evidence of a deal to possess or distribute cocaine between Jones and the purported "brokers"? *United States v. Jones*, No. 15-3547.

Whether there was sufficient evidence presented at trial to support the attempt to possess with intent to distribute conviction where Jones was arrested without being shown any cocaine and with insufficient money in his possession to complete the purported transaction? *United States v. Jones*, No. 15-3547.

Whether there was sufficient evidence presented at trial to support the conviction for carrying a firearm during and in relation to a drug trafficking crime where Jones was never in possession of drugs to defend? *United States v. Jones*, No. 15-3547.

Whether the government failed to prove a violation of the Anti-Kickback statute beyond a reasonable doubt requiring reversal of Defendant's conviction? *United States v. Moshiri*, No. 16-1126.

Whether, where no witness was able to identify the defendant's involvement in any drug transaction, the government's evidence was sufficient to establish guilty beyond a reasonable doubt? *United States v. Dillard*, No. 16-1760.

#### R. Line-ups/Identification

Whether the admission of Exhibit 376, a photo array with the alleged kidnapper's photograph emphasized and not identified by the victim until two years after the kidnapping violated Due Process? *United States v. Sparkman*, No. 12-3683.

#### S. Prosecutorial Misconduct

Did the government breach the proffer agreement to not use statements or information provided by Jenkins in its case in chief against him, when its agents testified that they went to Jenkins's house and searched for the gun and found it,

and then the government offered the gun as evidence? If so, does the violation require a new trial? *United States v. Jenkins*, No. 14-2898.

Whether the district court erred by allowing the government to introduce evidence that Cardena agreed to cooperate with law enforcement officials? *United States v. Cardena*, No. 12-3680.

Whether Uriarte was unfairly prejudiced by prosecutorial misconduct during his trial through the introduction of known false testimony and the bringing of future witnesses to the courtroom window during trial to identify the defendants? *United States v. Uriarte*, No. 13-1374.

Whether prosecutorial misconduct, including prejudicial remarks designed only to improperly inflame the passions of the jury, misrepresentation of evidence, and improper witness vouching, infected the trial proceedings and violated Klemis's constitutional right to a fair trial? *United States v. Klemis*, No. 15-2057.

Whether the government committed misconduct in final summation and throughout the trial? *United States v. Bloom*, No. 15-1445.

Whether Mr. Flournoy's due process right to a fair trial was violated when the government submitted inconsistent, material facts to the district court and engaged in improper closing argument? *United States v. Flournoy*, No. 14-2325.

Did the government's actions during closing arguments amount to reversible prosecutorial misconduct when in addition to arguing Mr. Briseno's guilt on acquitted counts it also misstated the burden of proof and vouched for eight witnesses' testimonies? *United States v. Briseno*, No. 15-2347.

Whether the district court abused its discretion when it admitted physical evidence against Dennis Michael, even though the government could not show that the evidence was in the same condition because it could not account for almost three years between the item's recovery and first record of custody? *United States v. Egan*, No. 15-2485.

T. Relevance

U. Right to be Present for Trial

V. Right to Present a Defense

Whether the district court erred by denying Jones's request to reopen the evidence to exercise his Constitutional right to testify? *United States v. Jones*, No. 14-3727.

Is the right of self-defense for conduct charged under 18 U.S.C. § 111 conditioned on the presence of an imminent threat of death or serious bodily harm, where the statute itself is silent on the requirement and where the accepted law of self-defense actually provides that one may repel a lesser threat with reasonable force? *United States v. Waldman*, No. 15-1756.

Did the district court clearly err when it determined that Mr. Waldman was not faced with an imminent threat and had a reasonable alternative? *United States v. Waldman*, No. 15-1756.

Whether the district court erred in finding that Jones waived his right to testify when he repeatedly evinced his desire to do so, but when his lawyer actively opposed it? *United States v. Jones*, No. 15-1792.

Whether the trial court deprived defendant of his right to present his good-faith defense by excluding defendant's evidence that: (1) his 2008 lawsuit against Blue Cross resulted in a very favorable settlement, and (2) after defendant's 2012 indictment, Medicare continued paying for the same AK laser/IPL procedures that the government claimed were fraudulent from 2003 to 2010? *United States v. Kolbusz*, No. 15-2962.

Whether the district court erred in finding that Jones waived his right to testify when he repeatedly evinced his desire to do so, but when his lawyer actively opposed it? *United States v. Jones*, No. 15-1792.

Whether the district court erred in basing its decision on guilt after a bench trial on Dennis Michael's failure to testify, thereby violating his right to not testify, and inappropriately shifting the burden to him to prove his innocence? *United States v. Egan*, No. 15-2485.

Did the district court err by preventing Carson from eliciting testimony about his awareness of the alleged victims' past prostitution - evidence directly bearing on his defense that he subjectively believed the women were not coerced into engaging in commercial sex acts, but did so willingly? *United States v. Carson*, No. 15-3421.

## W. Rules of Evidence

### 1. 109 (Foundation)

Whether the investigating detective and hired informant should have been allowed to interpret Jones' alleged use of "drug code" as negotiating a cocaine purchase even though there was no corroborating discovery of cocaine or testimony by any witness that Jones had used such in relation to a cocaine transaction? *United States v. Jones*, No. 15-3547.

### 2. 401 (Relevant Evidence)

Whether the district court erred in admitting incomplete and mislabeled recordings into evidence? *United States v. Jones*, No. 15-3547.

### 3. 403 (Exclusion of Relevant Evidence)

Whether the court erred when it granted the government's motion in limine to admit the contents of the defendant's cell phone and facebook account including photographs and texts where the foundation could not be adequately laid and the evidence was substantially more prejudicial than probative? *United States Lewisby*, No. 14-2236.

Whether the district court abused its discretion when it admitted a Chicago diamond dealer's testimony as it was not relevant to an attempt robbery in Brooklyn, New York; however, assuming arguendo it was relevant, the testimony nevertheless misled the jury and its prejudicial effect outweighed its probative value? *United States v. Wrobel*, No. 15-2511.



Whether it was error to deny the defendant's motion for a mistrial after the prosecution published to the jury the fact of defendant's prior conviction for a felony Class 4 cocaine possession? *United States v. Urena*, No. 15-3663.

4. *404(b)(Character Evidence)*

Whether the district court erred when it allowed the government to introduce evidence of unexplained wealth without any corroborating tax returns or evidence? *United States v. Uriarte*, No. 13-1374.

Whether the district court erred by denying Jones's motion for new trial based on the government's improper and prejudicial use of Rule 404(b) evidence during its closing argument? *United States v. Jones*, No. 14-3727

Whether the trial court erred in its pretrial rulings concerning: (1) the admission of extensive evidence relating to patients not named as indictment victims; (2) whether the admission of that protracted testimony was violative of Rule 404(b); (3) did the admission of evidence unnamed patients constructively amend indictment 12 CR 782; and (4) did the admission of far-reaching unnamed patient evidence render the indictment multiplicitous? *United States v. Kolbusz*, No. 15-2962.

Did the district court err when it failed to engage in the analysis required by *United States v. Gomez*, 763 F.3d 845 (7th Cir. 2014) (en banc) to admit Rule 404(b) evidence? *United States v. Mabie*, No. 15-1899.

Whether in this jury trial for illegal reentry to the United States from Mexico, admission of evidence of seven prior removals from this country to Mexico was simply propensity evidence and was not discrete evidence admissible for any of the Rule 404(b) purposes allowed? *United States v. Urena*, No. 15-3663.

Did the district court err in admitting evidence that Carson engaged in other, uncharged bad acts for the purpose of establishing his "modus operandi" when Carson's identity was not at issue in the case? *United States v. Carson*, No. 15-3421.

5. 605 (*Judge's Competency as a Witness*)

6. 609 (*Prior Convictions*)

7. 702 (*Testimony by an Expert*)

8. 704 (*Opinion on Ultimate Issue*)

Whether Federal Rule of Evidence 704 permits an expert law enforcement witness to give an opinion on Brown's compliance with professional standards and the reasonableness of Brown's behavior as measured by those standards? *United States v. Brown*, No. 16-1603.

9. 803 (*Business Records*)

X. Shackles at Trial

Y. Selective Prosecution

Z. Self Incrimination

AA. Severance/Joinder

Did the district court's denial of Lewellen's severance motion operate to deny him a fair and reliable trial? *United States v. Lewellen*, No. 13-2321.

BB. Speedy Trial

Whether the government violated Mr. Trudeau's Speedy Trial Act Rights, permitting 393 days to pass before he was brought to trial? *United States v. Trudeau*, No. 14-1869

Whether Mr. Khatib's right to a speedy trial was violated when more than seventy days of non-excludable time passed between the date of his initial appearance on the indictment and his bench trial? *United States v. Khatib*, No. 14-2216.

Whether the district court wrongly denied Robey's constitutional and statutory speedy trial claims by relying on unsubstantiated representations by counsel, which resulted in a three-year delay between indictment and trial? *United States v. Robey*, No. 15-2172.

Whether the district court committed reversible error when it denied Allen’s motion to dismiss the indictment due to a violation of his Sixth Amendment right to a speedy trial? *United States v. Allen*, No. 16-1752.

CC. Stipulations

DD. Witnesses

EE. Wiretaps

## IX. FORFEITURE

Whether Szaflarski had property or rights to property to which the judgment of forfeiture could attach? *United States v. Szaflarski*, No. 14-1540.

## X. GUILTY PLEAS & PLEA AGREEMENTS

A. Appeal Waiver

Whether the Court may reach the merits of these issues despite the appeal waiver, as Haslam challenges the enforceability of the entire plea agreement, and the government has been directed not to enforce waivers of ineffective assistance of counsel claims? *United States v. Haslam*, No. 14-2641.

B. By Magistrate

C. Competency

D. Factual Basis

Whether the district court failed to ensure Appellants’ pleas conformed to Rule 11, as the pleas were not entered knowingly and voluntarily, and there was an insufficient factual basis to accept the pleas? *United States v. Morrison & Novak*, Nos. 15-3589 & 15-3601.

E. Interference with by judge

Whether the district court violated Federal Rule of Criminal Procedure 11 when it repeatedly commented on the plea negotiations, including warning the defendant that he should work with his lawyer because he faced “very, very

serious” charges and the government was willing to dismiss most of them?  
*United States v. Jones*, No. 14-1665.

#### F. Knowing and Voluntary

Whether, in light of the unlawful detention order under 18 U.S.C. § 4241, Mr. Brown’s *Alford* plea was not entered voluntarily, when the circumstances indicate that the plea was entered into primarily to seek relief from the detention order? *United States v. Brown*, No. 14-2524

Whether the record shows that Haslam entered the plea agreement and his guilty plea unknowingly and unintelligently as a result of the ineffective assistance of defense counsel inducing Haslam to plead guilty upon the belief the government was bound to a promise to withhold evidence of battery and confinement?  
*United States v. Haslam*, No. 14-2641.

Whether the district court erred in failing to personally address Mr. Stanislawczyk who was *pro se* and spoke no English - and to explain his right of allocution, and permit him to speak or present any information to mitigate the sentence, as Rule 32(i)(4)(A)(ii) of the Federal Rules of Criminal Procedure explicitly requires? *United States v. Stanislawczyk*, No. 15-3106.

#### G. Withdrawal

Whether this case must be remanded with instructions to allow Mr. Henderson to withdraw his guilty plea because it was not entered knowingly, intelligently, and voluntarily? *United States v. Henderson*, No. 13-3861.

Whether this case must be remanded to allow the district court to determine whether Mr. Henderson’s motion to withdraw his guilty plea must be granted?  
*United States v. Henderson*, No. 13-3861.

Whether the error made by the district court in accepting Mr. Henderson’s guilty plea to the indictment instead of the information was harmless and could prejudice him in the future? *United States v. Henderson*, No. 13-3861.

Whether the district court erred when it denied Mr. Brown’s motion to withdraw guilty plea? *United States v. Brown*, No. 16-1239.

## H. Breach

Whether the district court clearly erred by making a finding of fact that the government had not promised through the plea agreement to withhold evidence of battery and confinement and, on that finding, erred in ruling that the government had not breached that agreement? *United States v. Haslam*, No. 14-2641.

Whether the government breached the plea agreement by not recommending a sentence consistent with the plea agreement's guidelines calculations and by arguing for two enhancements that were not included in the plea agreement? *United States v. Morris*, No. 15-2402.

Whether the defendants are entitled to be resentenced because of the government's material breach of the plea agreements? *United States v. Odeh & Hussein*, Nos. 15-3389 & 15-3392.

Whether the district court erred when it found that Ms. Lewis had waived the right to claim that the government had breached the plea agreement because she had not raised it in the original sentencing or original appeal? *United States v. Lewis*, No. 16-1401.

Whether the district court erred when it found that even if the objection had not been waived, the government had not breached the plea agreement? *United States v. Lewis*, No. 16-1401.

## XI. INDICTMENT

Whether the government's second superseding indictment was multiplicitous or duplicitous when it impermissibly charged Jones - over three separate counts - based solely on the location when authorities found the firearms when the evidence showed that the defendant possessed the firearms as a single course of conduct? *United States v. Jones*, No. 14-1665.

Whether the district court infringed Robey's right to indictment by a grand jury when the court allowed the government to amend the indictment without jury oversight based on the government's characterization of 19 of the 25 counts as "scrivener's errors"? *United States v. Robey*, No. 15-2172.

Did the prosecutor constructively amend the indictment in his rebuttal closing argument by arguing that Davis engaged in an extortionate extension of credit, rather than an extortionate collection of his loan as charged in the superseding indictment? *United States v. Davis*, No. 15-3671.

## XII. INTERSTATE AGREEMENT ON DETAINERS

### XIII. *JOHNSON* ISSUES

In *Johnson v. United States*, The Supreme Court struck down the Armed Career Criminal Act's "residual clause" as unconstitutionally vague. The Sentencing Guidelines use the same residual clause in defining "crime of violence," which elevates certain sentencing ranges. Is the Guidelines' residual clause also void for vagueness? *United States v. Gillespie*, No. 15-1686.

*Johnson* overruled the line of cases that established that vehicular fleeing was a crime of violence, and it repudiated the "ordinary case" test upon which they were based. Wisconsin's fleeing offense does not require dangerous driving and it extends to non-motorized vehicles like bicycles. If the Guidelines' residual clause still has any validity post-*Johnson*, must this Court nevertheless find that Wisconsin's fleeing offense isn't a crime of violence? *United States v. Gillespie*, No. 15-1686.

In *Johnson v. United States*, the Supreme Court struck down the Armed Career Criminal Act's "residual clause" as unconstitutionally vague. The sentencing guidelines use the same residual clause in defining "crime of violence," which elevates certain sentencing ranges. Is the guidelines' residual clause also void for vagueness? *United States v. Hurlburt*, No. 14-3611.

If the guidelines' residual clause has any remaining validity post-*Johnson*, must this Court nevertheless find that Wis. Stat. § 941.20(3)(a)2 is not a crime of violence given that it criminalizes shooting from a vehicle into any building or vehicle - regardless of whether the building or vehicle is occupied or even might be occupied? *United States v. Hurlburt*, No. 14-3611.

In light of *Johnson*, and the fact that this Court views precedent regarding the ACCA's residual clause as applicable to its interpretation of the career offender's residual clause, is the district court's calculation of McGuire's guideline range, based on the determination that he is a career offender under the sentencing guidelines, plainly erroneous? *United States v. McGuire*, No. 15-2071.

Even if this Court holds *Johnson* does not render void the career offender guideline's residual clause, is remand required for the district court to consider the holding in *Johnson* in its weighing of 18 U.S.C. § 3553(a) factors, where intervening case law applies to cases pending on direct appeal, and defense counsel raised in the court below the fact that the *Johnson* issue was pending before the Supreme Court? *United States v. McGuire*, No. 15-2071.

Whether Indiana's robbery statute, which criminalizes the taking of property from another person or from the presence of another person by putting any person in fear, is a violent felony after *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Duncan*, No. 15-3485.

Whether sex trafficking of a minor constitutes a "crime of violence" pursuant to 18 U.S.C. § 924(c)(3) after the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Jackson*, No. 15-3693.

A § 924(c) charge is an add-on offense to an underlying "crime of violence" - a felony that has the use or threat of force as an element. Hobbs Act robbery does not require the use or threat of force as an element. Can a § 924(c) conviction be based on a Hobbs Act robbery? *United States v. Anglin*, No. 15-3625.

Whether Mr. Worthen's § 924(j) conviction for carrying a firearm causing death during a crime of violence must be vacated because the Hobbs Act Robbery offense underlying the § 924(j) conviction categorically fails to qualify as a crime of violence within the meaning of § 924(c)(3)(A) and the residual clause of § 924(c)(3)(B) is unconstitutionally vague under *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Worthen*, No. 15-3521.

Whether Mr. Cureton's § 924(c) conviction for brandishing a firearm during a crime of violence must be vacated because the Interstate Communication of Ransom Request offense underlying the § 924(c) conviction categorically fails to qualify as a crime of violence within the meaning of § 924(c)(3)(A) and the residual clause of § 924(c)(3)(B) is unconstitutionally vague under *Johnson v.*

*United States*, 135 S. Ct. 2551 (2015)? *United States v. Cureton*, Nos. 15-3575 & 15-3581.

#### XIV. JURY ISSUES

##### A. Selection

Whether Uriarte was unfairly prejudiced by the for cause removal of Juror 24 despite Juror 24's claims that he could be impartial? *United States v. Uriarte*, No. 13-1374.

Whether the district court improperly dismissed Juror Chism from the jury and whether the district court improperly communicated with the jury about this issue? *United States v. Turner*, No. 15-1175.

Whether Klemis's constitutional right to an impartial jury was violated because Voir Dire Panelist Number 28 was biased, not struck for cause, and instead deliberated on Klemis's jury? *United States v. Klemis*, No. 15-2057

##### B. Batson

##### C. Challenges for Cause

##### D. Deliberations

Whether the district court erred when it issued the *Silvern* instruction after receiving notice that the jury was deadlocked on some counts and with knowledge that one juror was crying due to the length of the deliberations? *United States v. Uriarte*, No. 13-1374.

Whether the district court erred by not holding a hearing when it learned that a juror had broken into tears during jury deliberations out of concern that she would lose her job if deliberations did not conclude soon? *United States v. Uriarte*, No. 13-1374.



## E. Instructions

Whether the district court abused its discretion in refusing to instruct the jury on buyer-seller relationships, when the jury could have reasonably concluded that Mr. Haynes was only engaged in a buyer-seller relationship? *United States v. Haynes*, No. 13-3617.

Whether the district court improperly permitted the jury to find willfulness without evidence that Trudeau actually knew that his conduct was unlawful? *United States v. Trudeau*, No. 14-1869

Whether a new trial is warranted because the district court misapplied the willfulness standard? *United States v. Trudeau*, No. 14-1869.

Whether Abate was denied a fair trial when the district court allowed the jury to read and use an unfair and unredacted copy of the indictment during jury deliberations? *United States v. Natalizio & Abate*, Nos. 14-1945 & 14-2434.

Whether the jury instructions were so improper that a new trial is mandated? Specifically, (A) whether the “willfulness” instruction accurately stated the law, (B) whether the jury should have unanimously determined which Specially Designated National Turner conspired to provided services for, and (C) whether the indictment constructively amended the indictment by adding a Specially Designated National not named in Count 3? *United States v. Turner*, No. 15-1175

Vani proposed a jury instruction for materiality based on Supreme Court precedent, which the district court denied. Reviewed *de novo*, was Vani’s proposed instruction proper? *United States v. Vani*, No. 15-2597.

Whether the district court erred by failing to instruct the jury that, as a matter of law, CFTC Rule 1.25 allows the use of leverage? *United States v. Bloom*, No. 15-1445.

Did the district court commit plain error when its jury instruction on the RICO count failed to require the government to prove every element of the offense beyond a reasonable doubt? *United States v. Briseno*, No. 15-2347.

Whether the district court erred in not ruling that Nagelvoort had legally withdrawn from the alleged conspiracy as of April 28, 2011, and in failing to instruct the jury that purported coconspirator statements and conduct occurring after April 28, 2011 were inadmissible against Nagelvoort? *United States v. Novak & Nagelvoort*, Nos. 15-2821 & 15-2766.

Whether the mens rea instruction given by the court permitted the jury to find guilt on the legally insufficient theory that Dutcher knew other people reasonably would view his statement as a true threat but he made the statement anyway? *United States v. Dutcher*, No. 16-1767.

Whether the district court plainly erred in giving a jury instruction that permitted the jury to convict the defendant upon a finding of malpractice? *United States v. Kohli*, No. 15-3481.

Did the district court err in instructing the jury that it could find the statutory element of “reckless disregard” satisfied if Carson merely acted carelessly? *United States v. Carson*, No. 15-3421.

#### F. Mistrial

### XV. OFFENSES

#### A. 8 U.S.C. § 1326 (Illegal Reentry)

Whether venue was proper to prosecute Mr. Orona-Ibarra in the Central District of Illinois after he was “found” in the state of Texas by ICE agents and never left federal custody or the knowledge of immigration authorities before his prosecution in that district? *United States v. Orona-Ibarra*, No. 15-1176.

#### B. 18 U.S.C. § 43 (Animal Enterprise Terrorism)

Did the District Court err in holding that the Animal Enterprise Terrorism Act, 18 U.S.C. § 43(a), is not facially overbroad in violation of the First Amendment, given that it prohibits protected speech and conduct that cause loss to businesses that use or sell animal products? *United States v. Johnson & Lang*, Nos. 16-1459 & 16-1694.

Did the District Court err in holding that the AETA is not facially void for vagueness, given that its broad application to all interstate property crimes committed against businesses which use or sell animal products invites and has resulted in discriminatory and arbitrary enforcement against animal rights activists? *United States v. Johnson & Lang*, Nos. 16-1459 & 16-1694.

Did the District Court err in holding that the AETA's punishment of non-violent property crime as a "terrorist" offense is rationally related to a legitimate government purpose, and thus does not violate Substantive Due Process, both on its face, and as applied to Appellants' conduct? *United States v. Johnson & Lang*, Nos. 16-1459 & 16-1694.

C. 18 U.S.C. § 152

Whether it was a violation of Title 18, United States Code, Section 152(d) in that Stoller stated "none" in response to Question 14 of the SOFA, failing to list "Power of Direction over the trust," holding legal title to Stoller's mother's home located at 1212 North Lathrop, River Forest, Illinois, when Stoller had no interest in the property? *United States v. Stoller*, No. 14-3587.

Whether Stoller pled guilty to a charge (Count IX) that was not a crime? *United States v. Stoller*, No. 14-3587.

D. 18 U.S.C. § 371 (Conspiracy)

E. 18 U.S.C. § 373

F. 18 U.S.C. § 401(3)

G. 18 U.S.C. § 666

H. 18 U.S.C. § 844

I. 18 U.S.C. § 915 (Foreign Diplomat)

Whether the evidence was insufficient to support Mr. Bey's conviction for pretending to be a diplomatic official of a foreign government under 18 U.S.C. § 915, when the evidence clearly established that he represented himself to be a Moorish American diplomat from the Mu'ur Republic, which is not a foreign government? *United States v. Hillman*, No. 13-3689.

J. 18 U.S.C. § 922(g)

Whether any rational trier of fact could have convicted Mr. Parks of the offense of being a felon in possession of a weapon given the inconsistencies in the testimony of the government's primary witness, the lack of physical evidence, and the implausibility of the theory of the case posited by the government at trial? *United States v. Parks*, No. 13-1448.

Whether the evidence presented was sufficient to convict Mr. Martin of being a felon in possession of a firearm, where the presiding judge made several mistaken findings of fact in accepting the testimony of the government's key witness, Collin White? *United States v. Martin*, No. 15-1605.

Whether Hancock's statutory discharge from the Colorado Department of Corrections rehabilitating his civil rights precluding the use of those convictions under a charge of 18 U.S.C. § 922(g)(1)? *United States v. Hancock*, No. 15-1956.

Whether the district court erred by entering judgment and imposing sentence on two convictions for violating § 922(g)(1) when the jury did not find the ammunition and gun were acquired at different times or stored in different locations? *United States v. Washington*, No. 15-2656.

K. 18 U.S.C. § 924(c)(use of weapon during drug or violent felony)

Whether the district court violated Uriarte's right to trial by jury when the court found that his conviction under Count Eleven for possessing a firearm was a second or subsequent conviction and sentenced him to a consecutive 25 year term of imprisonment? *United States v. Uriarte*, No. 12-3747.

Whether the district court violated Uriarte's right to trial by jury when the court found that he had brandished a firearm and sentenced him to a consecutive seven year term of imprisonment? *United States v. Uriarte*, No. 12-3747.

Whether the district court erred in sentencing Sparkman to a mandatory consecutive sentence of 25 years under 18 U.S.C. § 924(c) for a successive conviction where (1) there was no interval of punishment between the two § 924(c) offenses and (2) the district court and not the jury found that it was a subsequent conviction? *United States v. Sparkman*, No. 12-3683.

Whether the jury and not the district court was required to find that the defendant "brandished" a firearm during a kidnapping to justify an increase in

his mandatory minimum sentence from five to seven years? *United States v. Sparkman*, No. 12-3683.

Whether the government presented sufficient evidence to prove beyond a reasonable doubt that Juan Amaya possessed a firearm in furtherance of a drug trafficking crime when the only evidence that a firearm was possessed was the opinion of an undercover agent and no evidence at all was introduced that the objected furthered a drug crime? *United States v. Amaya*, No. 14-2617.

Whether the government presented sufficient evidence to prove beyond a reasonable doubt that Mr. Amaya committed an assault with a dangerous weapon to maintain or further his position within the Latin Kings? *United States v. Amaya*, No. 14-2617.

Whether the district court erred in imposing judgment of a conviction on the 18 U.S.C. §924(c) count where the underlying predicate offense of attempted armed bank robbery fails to qualify as a “crime of violence” under § 924(c)(3), in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Armour*, No. 15-2170.

Whether the district court erred in imposing the statutory seven year mandatory minimum sentence for “brandishing” a firearm where the jury did not make that finding, in violation of *Alleyne v. United States*, 133 S. Ct. 2151 (2013)? *United States v. Armour*, No. 15-2170.

Whether Mr. Worthen’s § 924(j) conviction for carrying a firearm causing death during a crime of violence must be vacated because the Hobbs Act Robbery offense underlying the § 924(j) conviction categorically fails to qualify as a crime of violence within the meaning of § 924(c)(3)(A) and the residual clause of § 924(c)(3)(B) is unconstitutionally vague under *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Worthen*, No. 15-3521.

Whether Mr. Cureton’s § 924(c) conviction for brandishing a firearm during a crime of violence must be vacated because the Interstate Communication of Ransom Request offense underlying the § 924(c) conviction categorically fails to qualify as a crime of violence within the meaning of § 924(c)(3)(A) and the residual clause of § 924(c)(3)(B) is unconstitutionally vague under *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Cureton*, Nos. 15-3575 & 15-3581.

A § 924(c) charge is an add-on offense to an underlying crime of violence - a felony that has the use or threat of force as an element. In this case, the government based Mr. Mitchell's § 924(c) charge on his commission of bank robbery, under § 2113. Yet § 2113 does not require the use or threat of force as an element. Instead, it can be violated through "intimidation." Can a § 924(c) conviction be based on a violation of § 2113? *United States v. Mitchell*, No. 16-1541.

Whether Mr. Rivera's § 924(c) convictions for brandishing a firearm during a crime of violence must be vacated because the Hobbs Act robbery offenses underlying the § 924(c) convictions categorically fail to qualify as crimes of violence within the meaning of § 924(c)(3)(A) and the residual clause of § 924(c)(3)(B) is unconstitutionally vague under *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Rivera*, No. 16-1322.

Mr. Enoch was convicted under 18 U.S.C. § 2114(a) of robbing a person having custody of property belonging to the United States. Was that conviction a "crime of violence" so that he could properly be convicted of the separate offense found in 18 U.S.C. § 924(c) and receive a mandatory consecutive sentence? *United States v. Enoch*, No. 16-1546.

- L. 18 U.S.C. § 956
- M. 18 U.S.C. § 1001 (false statements)
- N. 18 U.S.C. § 1017

Whether the evidence was insufficient to support Mr. Bey's conviction under 18 U.S.C. § 1017 for using the seal of the Department of Justice, knowing it had been fraudulently affixed to his identification card, when the evidence showed that the card featured a counterfeit facsimile of the seal rather than the actual seal itself? *United States v. Hillman*, No. 13-3689.

- O. 18 U.S.C. § 1028A (aggravated identity theft)
- P. 18 U.S.C. § 1341 (mail fraud)

Was the district court's finding that Murphy actually intended to "hinder, delay, or defraud" the United States at the time he transferred his interest in the assets

in a retirement account jointly held by he and his wife Patricia 4-1/2 years before he was indicted almost seven years after order of restitution was entered was clearly erroneous? *United States v. Murphy*, No. 15-2285.

If the district court's finding was clearly erroneous, should the government's other theories of recovery, *i.e.*, that the transfer of Charles's interest to Patricia in the retirement account was constructively fraudulent or that Patricia was a mere nominee of his regarding the retirement account be dismissed? *United States v. Murphy*, No. 15-2285.

Q. 18 U.S.C. § 1343(wire fraud)

Whether Andry's conviction on Count One must be vacated because of a material variance in the evidence produced at trial and the single, overarching wire fraud scheme charged in the superseding indictment? *United States v. Andry*, No. 16-1113.

R. 18 U.S.C. § 1346 (Honest Services Fraud)

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

T. 18 U.S.C. § 1591 (sex trafficking)

U. 18 U.S.C. § 1832 (Economic espionage)

V. 18 U.S.C. § 1951 (Hobbs Act)

Whether there was sufficient evidence to support the jury's verdict of Hobbs Act violations as there was no nexus between the attempt robbery and interstate commerce? *United States v. Wrobel*, No. 15-2511.

A § 924(c) charge is an add-on offense to an underlying "crime of violence" - a felony that has the use or threat of force as an element. Hobbs Act robbery does not require the use or threat of force as an element. Can a § 924(c) conviction be based on a Hobbs Act robbery? *United States v. Anglin*, No. 15-3625.

Whether Mr. Worthen's § 924(j) conviction for carrying a firearm causing death during a crime of violence must be vacated because the Hobbs Act Robbery

offense underlying the § 924(j) conviction categorically fails to qualify as a crime of violence within the meaning of § 924(c)(3)(A) and the residual clause of § 924(c)(3)(B) is unconstitutionally vague under *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Worthen*, No. 15-3521.

W. 18 U.S.C. § 1957

X. 18 U.S.C. § 1959

Y. 18 U.S.C. § 1962(RICO)

Whether the government presented sufficient evidence to prove beyond a reasonable doubt that Mr. Amaya participated in the affairs of an enterprise through a pattern of racketeering when it failed to prove two charged predicate acts during the period of time that it alleged Mr. Amaya to be a member of that enterprise? *United States v. Amaya*, No. 14-2617

Z. 18 U.S.C. § 2113

A § 924(c) charge is an add-on offense to an underlying crime of violence - a felony that has the use or threat of force as an element. In this case, the government based Mr. Mitchell's § 924(c) charge on his commission of bank robbery, under § 2113. Yet § 2113 does not require the use or threat of force as an element. Instead, it can be violated through "intimidation." Can a § 924(c) conviction be based on a violation of § 2113? *United States v. Mitchell*, No. 16-1541.

AA. 18 U.S.C. § 2250 (Failure to Register)

BB. 18 U.S.C. § 2342(a) (Contraband Cigarette Trafficking Act)

CC. 18 U.S.C. § 2422(b) (inducing a minor re: sex)



DD. 18 U.S.C. § 2256(2)(A)(v)(lascivious exhibition of genitals)

EE. 21 U.S.C. § 841(a)(Controlled Substances)

Whether the district court lacked subject matter jurisdiction because there is no statute for the offense of attempt to possess with intent to distribute five grams or more of methamphetamine, and because even though 21 U.S.C. § outlaws and sets penalties for attempt drug prosecutions, it is constitutionally vague because it lacks definition of attempt as a criminal offense? *United States v. Brown*, No. 15-1475.

Whether the Controlled Substance Analogue Act is unconstitutionally vague as applied to the XLR-11 because it fails to give fair notice of criminal penalties and promotes arbitrary enforcement? *United States v. Morrison & Novak*, Nos. 15-3589 & 15-3601.

FF. 21 U.S.C. § 843 (Phone Count)

GG. 21 U.S.C. § 846 (Controlled Substances Conspiracy)

Whether the evidence was insufficient to support Mr. Haynes's conviction for conspiracy to manufacture methamphetamine, when it only showed a buyer-seller relationship between Mr. Haynes, a seller of pseudoephedrine, and other individuals who used and manufactured methamphetamine? *United States v. Haynes*, No. 13-3617.

Was the evidence presented by the government insufficient to sustain defendant's convictions for conspiracy and aiding and abetting possession with intent to distribute a controlled substance? *United States v. Shannon*, No. 14-3044.

Whether the government presented sufficient evidence to prove beyond a reasonable doubt that Cardena conspired to possess with intent to distribute a controlled substance? *United States v. Cardena*, No. 12-3680.

Whether the government presented sufficient evidence of intent and substantial step elements for the district court to conclude on inference and beyond a reasonable doubt that Brown attempted to deliver - not merely to possess - methamphetamine in violation of 21 U.S.C. § 846? *United States v. Brown*, No. 15-1475.

Whether there was sufficient evidence presented during trial to convict Mr. Thomas of conspiracy to possess heroin with intent to distribute, where Mr. Thomas's relationship with his supplier merely constitutes a buyer-seller relationship and the government failed to prove he conspired with any other individual? *United States v. Thomas*, No. 15-2691.

HH. 42 U.S.C. § 1320a-7b(b)(1)(A) (Anti-Kickback Statute)  
Whether this Court should revisit its decision in *United States v. Borrasi*, 639 F.3d 774, 781 (7th Cir. 2011) and hold that in order to violate the Anti-Kickback statute, the improper inducement of referrals must be either the "primary purpose" or at least a "substantial purpose" of the charged contract or payment? *United States v. Novak & Nagelvoort*, Nos. 15-2821 & 15-2766.

Whether the evidence was sufficient to support Novak's convictions for conspiracy and violating the Anti-Kickback Statute when the government failed to present any evidence from which a reasonable jury could infer that Novak's recorded statements, which are exculpatory on their face, had an opposite and inculpatory meaning? *United States v. Novak & Nagelvoort*, Nos. 15-2821 & 15-2766.

II. 42 U.S.C. § 7413 (Environmental Offenses)

JJ. 42 U.S.C. § 16911(d)(SORNA)

XVI. RECUSAL

XVII. RESTITUTION

XVIII. RETROACTIVE GUIDELINE AMENDMENTS

Whether, in light of *United States v. Wren*, 706 F.3d 861 (7th Cir. 2013), the district court erred when it denied Mr. Freeman's motion to reduce sentence, filed pursuant to 18 U.S.C. § 3582(c)(2)? *United States v. Freeman*, No. 14-1362.

Whether the district court erred in denying Brown's motion under 18 U.S.C. § 3582(c) without making a factual finding as to the drug amount Brown was actually accountable for? *United States v. Brown*, No. 16-1216.

## XIX. SEARCH & SEIZURE

### A. Arrest

#### 1. *In the home*

#### 2. *Probable cause to*

Whether the state court order at issue in this case established adequate probable cause to justify tracking Mr. Patrick's cell phone to locate and arrest him? If not, then the fruits of the tracking - the gun located at his feet when he was arrested - must be ordered suppressed? *United States v. Patrick*, No. 15-2443.

If this Court elects to address the issue on the merits, whether tracking an individual's cell phone is a search under the Fourth Amendment that requires the government to obtain a warrant supported by probable cause? *United States v. Patrick*, No. 15-2443.

Did the district court erroneously deny Mr. Miller's motion to suppress evidence seized from his person following his warrantless arrest when it found that the police had probable cause to arrest Mr. Miller, even though the police did not have reasonably trustworthy information to support probable cause? *United States v. Miller*, No. 15-3197.

An ATF agent relied solely on the word of an untested informant to order a stop of Michael Anglin. The agent had met the informant just days before and hadn't verified any of his incriminating claims. In addition, the informant's motives were unclear and his story was vague and shifting. The responding officers didn't just stop Anglin for questioning, they arrested him. Did the informant's claims create probable cause for Michael Anglin's arrest? *United States v. Anglin*, No. 15-3625.

Whether the district court erred in denying Mr. McCaw's motion to suppress evidence where Officer Holmes, acting solely on the basis of an uncorroborated tip conveyed to him by the nightclub's owner, that two anonymous individuals had reported that a white male in the club wearing a black hat and gray t-shirt had a handgun in his waist, seized and searched Mr. McCaw without reasonable suspicion that Mr. McCaw was engaged in criminal conduct, or was otherwise armed and dangerous? *United States v. McCaw*, No. 16-1615.

Whether police had probable cause for the arrest of Jones and hence for the resulting search incident to arrest of the vehicle he was driving and ensuing searches of other property belonging to Jones, or whether evidence found and seized during those searches should have been excluded as the fruits of an illegal search? *United States v. Jones*, No. 15-3547.

#### B. Canine Searches

Did the District Court erroneously deny Peter's motion to suppress evidence of marijuana and a hand gun seized by the Indiana State Police from his home and garage by determining that the dog sniff conducted inside his fenced in yard on the front porch and at the front and back doors of his house was not a search under the Fourth Amendment requiring a warrant? *United States v. Peter*, No. 13-1094.

Whether the district court erred in reversing its decision to reopen Mr. Herman's suppression hearing in light of *Florida v. Jardines*? *United States v. Herman*, No. 13-3210.

Whether the government, by entering Mr. Herman's locked secure apartment building without consent, and conducting a dog sniff without a warrant, at the front door of his apartment, violated his Fourth Amendment right to be free of unreasonable searches and seizures under *Florida v. Jardines*? *United States v. Herman*, No. 13-3210.

### C. Consent

Whether the district court erred in denying the motions to suppress evidence in determining there was actual and apparent authority by a third party, consent was granted prior to entry into the home, contraband was in plain view, and there was no promise of immunity from prosecution in exchange for a gun? *United States v. Brandon*, No. 13-3471.

Whether the district court erred in denying Mr. Wright's Motion to Suppress the warrantless search of his computer, where the search took place pursuant to consent obtained from a third party with no actual or apparent authority to do so? *United States v. Wright*, No. 15-3109.

Did the district court err when it decided that Mr. Thompson consented to the final search of his apartment, without considering whether that consent was tainted by the violations that came before it? *United States v. Thompson*, No. 16-1105.

Did the district court err when it failed to make relevant factual findings and failed to apply the factors set forth by this Court to decide whether consent is voluntary? *United States v. Thompson*, No. 16-1105.

### D. Curtilage

Did the District Court, after finding that the police intrusion within the curtilage of Peter's dwelling to obtain evidence was a trespass and a search within the meaning of the Fourth Amendment, erroneously determine that the search was so minimal that it did not require a warrant or probable cause? *United States v. Peter*, No. 13-1094

### E. Excessive Force

### F. Expectation of privacy

Did the district court err in denying Tolbert's motion to suppress evidence, finding that he had no reasonable expectation of privacy in a hotel room? *United States v. Tolbert*, No. 14-3586.

Whether the district court erred in finding that defendants had an objectively reasonable expectation of privacy in a conversation that occurred while being detained in a police transport vehicle? *United States v. Paxton*, No. 14-2913

Did the district court err when it denied Mr. Caira's motion to suppress and approved the government's warrantless seizure of his IP login history? Did Mr. Caira have a reasonable expectation of privacy in his location information? Are the privacy concerns heightened by the fact that the government tracked each time he logged into his email from his home computer? *United States v. Caira*, No. 14-1003.

Did Mr. Caira have a reasonable expectation of privacy in records held by a third party where he never voluntarily conveyed his location information? *United States v. Caira*, No. 14-1003.

#### G. Franks

Whether Hancock should have been granted a *Franks* hearing under Seventh Circuit precedent when a finding of recklessness was made by the district court? *United States v. Hancock*, No. 15-1956.

Whether the district court erred in denying Mandell a *Franks* hearing in spite of the substantial preliminary showing of intentional or reckless material omissions from Tipton's affidavit in support of the Title III interception? *United States v. Mandell*, Nos. 14-3747 & 14-3772.

Whether the district court committed reversible error in denying the defendant's motion to suppress evidence and for a *Franks* hearing, where with no information about the informant, there can be no basis for probable cause to issue a search warrant; this is not a case where the information about the informant is argued to show unreliability; this is a case where there is simply no information at all about the informant. By steadfastly not disclosing information about the informant, the government prevented the judiciary from performing its very function. The failure to disclose reaches the level of a *Brady* violation? *United States v. Thomas*, No. 15-2483.

## H. Good Faith Exception

### I. Hearing

Whether the court erroneously denied Chagoya-Morales's motion to quash arrest and suppress evidence without an evidentiary hearing? *United States v. Chagoya-Morales*, No. 16-1198.

### J. *Miranda*

Whether the district court erred when it failed to make findings and suppress the statements that Dennis Michael, after surviving a barge explosion, made to several government investigators without receiving a *Miranda* warning? *United States v. Egan*, No. 15-2485.

Whether Mr. Nichols's incriminating statements and conduct on January 23, 2015, constituted an involuntary confession elicited by a false promise of leniency in violation of the Fifth and Fourteenth Amendments, as well as *United States v. Vollalpando*, 588 F.3d 1124 (7th Cir. 2009)? *United States v. Nichols*, No. 16-1628.

## K. Miscellaneous

### L. Reasonable suspicion

Whether the district court erred in denying Roman's motion to suppress evidence because there was no reasonable suspicion to stop and search Roman's vehicle and no valid consent to search the vehicle? *United States v. Roman*, No. 14-3209

Whether the district court erred in denying the motion to suppress? *United States v. Payne*, No. 15-2161.

Whether police officers had reasonable suspicion, based on information from Parkhill's neighbor and from their investigation and corroborating observations, that Parkhill, for whom they had an arrest warrant, was a passenger in a vehicle so as to justify its stop? *United States v. Parkhill*, No. 15-2772 (government appeal).

M. Search

1. *Inevitable discovery*

2. *Probable cause to*

Whether the district court erred in denying Anglin's motion to suppress a firearm found on his person and other fruits of his search and seizure? *United States v. Anglin*, No. 15-1251.

Whether the district court erred when it found that Agent McKnight's unlawful search of Mr. Jenkins' cell phone was in objectively reasonable reliance on *United States v. Flores-Lopez*, when that case was only decided one month after the search? *United States v. Jenkins*, No. 15-3068.

Whether the evidence from Mr. White's home should have been suppressed because probable cause was lacking, the omission of Mr. Doe's criminal history and informant status detracted from the existing evidence, and the good faith exception does not apply? *United States v. White*, No. 15-3260.

Whether the district court erred by not suppressing evidence that police obtained from the rental car loaned to Mr. Dickson when officers unlawfully entered the car, seized the sleeping Mr. Dickson, and only discovered a gun and drugs after physically moving him? *United States v. Dickson*, No. 16-1039.

3. *Protective Sweeps*

N. Standing.

O. *Terry Stops*

Whether the district court erred in determining that the police officers who effected a traffic stop of McPhaul on December 21, 2013, lawfully employed "felony stop procedures" in commanding him to exit his vehicle, at gun point, and subject himself to the officers pat down search of him? *United States v. McPhaul*, No. 16-1162.



P. Warrants

Whether the search warrant affidavit was sufficient to establish probable cause where there was no evaluation of the informant's credibility and the affidavit contained only conclusory statements? *United States v. Olivo*, No. 14-1140.

Whether the FISA evidence and its evidentiary fruits should have been suppressed before trial? *United States v. Turner*, No. 15-1175.

Whether the district court erred in ruling that Tipton did not intentionally or recklessly omit material information from his affidavit and in determining that the government satisfied the necessity prong under Title III in obtaining judicial authorization for the interception of Mandell's oral communications? *United States v. Mandell*, Nos. 14-3747 & 14-3772.

Whether, due to the party presentation principle, this Court should assume without deciding that tracking an individual's cell phone is a search under the Fourth Amendment and requires the government to obtain a warrant supported by probable cause? *United States v. Patrick*, No. 15-2443.

Whether the search warrant application conflated evidence that tied child pornography coming through the modem to being on the computer, which gave the officers access far beyond the actual evidence they had that Featherly distributed child pornography? *United States v. Featherly*, No. 15-3854.

XX. SENTENCING

A. Acquitted conduct

Whether the use of unreliable evidence and acquitted conduct to impose sentence violated the Fifth and Sixth Amendments? *United States v. Ranjel*, No. 15-3778.

B. Armed Career Criminal/Career Offender

Whether the district court erred in sentencing West as an armed career criminal? *United States v. West*, No. 14-2415.

Whether the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii) is unconstitutionally vague? *United States v. Bond*, No. 15-1224.

Did the trial court erroneously sentence defendant under the ACCA when it considered non-Shepard's material in violation of the modified categorical approach to conclude defendant's previous Missouri second degree burglary conviction qualified as a violent felony offense? *United States v. Smith*, No. 15-3033.

Whether Mr. Haney's 1975 conviction for burglary under Illinois law and his 1998 conviction for aggravated assault under Pennsylvania law were properly considered violent felonies for purposes of applying the Armed Career Criminal sentencing enhancement under 18 U.S.C. § 924(e)? *United States v. Haney*, No. 16-1513.

C. Burden of Proof

D. Consecutive/Concurrent Sentences

Whether the sentence imposed was intended to run consecutive because the court wrongfully considered the criminal conduct as two separate crimes rather than one overall offense against two individuals? *United States v. Caguana*, No. 15-3453.

Where State and Federal offenses both involved child molesting as relevant conduct, was it an abuse of discretion for the district court to refuse to order concurrent sentences? *United States v. Hoffman*, No. 16-1595.

E. Cumulative Error

F. Double Jeopardy

Whether Appellants were denied a fundamentally fair trial and sentence when the prosecution sought and the court imposed convictions and maximum sentences in violation of the bar against Double Jeopardy? *United States v. Gries & McCullars*, No. 15-2432 & 15-2447.

G. Entrapment and manipulation

H. Evidence admissible

Whether the court violated defendants constitutional right to trial by jury when the court sentenced him on the basis of uncharged and unproved conduct?

*United States v. Syms*, No. 15-3067.

Whether the district court procedurally erred and denied to Williams his Fifth Amendment right to due process when it relied on inaccurate information at sentencing? *United States v. Williams*, No. 16-1392.

Alexander Kluball has struggled with mental illness since early childhood. Nevertheless, he has in the past been symptom-free for years at a time, and he was never diagnosed as untreatable. Despite these facts, the district court found that there's no treatment that will have a lasting impact on his dangerousness to the community. Did the district court's reliance on this unsupported speculation violate Kluball's due process right to be sentenced based on accurate information? *United States v. Kluball*, No. 16-1849.

I. Ex Post Facto

Whether the district court erred in holding that application of policy statement U.S.S.G. § 1B1.10(b)(2)(A) violates the *Ex Post Facto* Clause? *United States v. King*, No. 13-2940 (government appeal)

J. Fair Sentencing Act

K. Fast Track

L. Fines

M. Forfeiture

Whether Mr. Carlson, as the agent of the OMC, has a sufficient "possessory interest" in the seized property bearing the insignia of the OMC such that he was entitled to direct notice of the pending forfeiture proceedings? *United States v. Bowser*, No. 15-2258.

Whether the government knew or should have known of the location of the OMC's national headquarters such that direct notice of the forfeiture proceedings could be provided? *United States v. Bowser*, No. 15-2258.

18 U.S.C. § 981(a)(2)(B) requires the sentencing court to limit the forfeiture order to the defendant's profit from the offense. Here, the sentencing court failed to make a factual finding as to Burns' profit and ordered forfeiture far in excess even of the total funds he received from USA Retirement Management Services. Should the excessive forfeiture order be vacated? *United States v. Burns*, No. 15-2824.

N. Guideline Sections

1. *1B1.10(b)(2)(A)*
2. *2A3.5(b)(1)(A) (committing a sex offense while in fugitive status)*
3. *2A4.1(b)(3) (otherwise use a firearm)*

Whether the district court erroneously assessed a two level enhancement under § 2A4.1(b)(3) for using a dangerous weapon where Mr. Kruger did not "otherwise use" the firearm in question as defined in the guidelines? *United States v. Kruger*, No. 15-3203.

4. *2B1.1(a)(money laundering)*
5. *2B1.1(b)(1) (Amount of loss)*

Whether the sentencing court erred in applying both the enhancement for giving something of pecuniary value and the enhancement where something of pecuniary value was given, where the statute itself requires that something of pecuniary value be given? *United States v. Caguana*, No. 15-3453.

6. *2B1.1(b)(2) (number of victims in fraud)*
7. *2B1.1(b)(2)(A) (mass marketing)*
8. *2B1.1(b)(9)(C)(Sophisticated Means)*

Vani's sentence was enhanced by two levels each for sophisticated means, abuse of trust, and obstruction of justice. Vani was sentenced to 42 months while his

codefendants received lesser sentences. Did the district court err in applying the enhancements? Was the sentence reasonable? *United States v. Vani*, No. 15-2597.

Whether the district court erred in enhancing Mr. Minhas's offense level for causing substantial financial hardship to victims? *United States v. Minhas*, Nos. 15-3761 & 15-3763.

9. *2B1.1(b)(10)(A) (relocating fraudulent scheme)*
10. *2B1.1(b)(11)(B)(i) (production of counterfeit access device)*
11. *2B1.1(b)(18)(B)(offense involving commodities law)*
12. *2B3.1*

Did the district court err in its guidelines calculations of the defendant's robbery sentence when it applied a 2-level, offense level increase, based on its conclusion that a check-cashing business is a "financial" institution under U.S.S.G. § 2B3.1(b)(1)? *United States v. Cook*, No. 15-2529.

Did the district court err in its guidelines calculation of the defendant's robbery sentence when it applied another 2-level, offense level increase, based on its conclusion that the use of "physical restraint" as defined in U.S.S.G. § 2B3.1(b)(4)(B) was encompassed within the base offense level for a robbery offense? *United States v. Cook*, No. 15-2529.

13. *2D1.1(Controlled Substances)*

Whether the district court erred in calculating the quantity of cocaine base for which defendant Darrion Capers was responsible when calculating his sentencing guidelines? *United States v. Capers*, No. 14-1426.

Whether a defendant's indefinite, uncorroborated, and unreliable post-arrest statement is sufficient evidence to establish that the defendant is responsible for the distribution of 30 to 40 kilograms of heroin as relevant conduct? *United States v. Tankson*, No. 14-3787.

Whether uncharged drug distribution can be considered part of the same course of conduct or part of a common scheme or plan where the evidence establishes only that the past conduct occurred at some time within two years of the charged conduct and there is no information regarding specific transactions? *United States v. Tankson*, No. 14-3787.

Whether the district court erred when it declined to calculate the drug quantity for which Booker was responsible? *United States v. Booker*, No. 15-1726.

Whether the district court failed to articulate sufficient reasons for adopting the PSR drug weight calculation? *United States v. Miller*, No. 15-2856.

Whether the district court calculated the defendant's drug weight based on inaccurate or unreliable information or without affording the defendant meaningful opportunity to rebut contested evidence? *United States v. Miller*, No. 15-2856.

Whether the district court placed an improper burden of persuasion upon the defendant at sentencing? *United States v. Miller*, No. 15-2856.

Whether the district court erred in applying a 1:167 ratio for XLR-11, as such a determination was contrary to the sentencing guidelines and was not based on scientific evidence? *United States v. Morrison & Novak*, Nos. 15-3589 & 15-3601.

Whether the district court erred in determining the appropriate drug quantity in the case, when it relied on double counting of the purchase and sale of the same drugs, the unsubstantiated presumption that all telephone communications result in sales, and the artificial inflation based on communications that did not discuss type or quantity of drugs? *United States v. Cisneros*, No. 16-1300.

Whether the judge miscalculated the guidelines range by incorrectly finding Mr. Ranjel distributed two or more kilograms of cocaine? *United States v. Ranjel*, No. 15-3778.

Whether the district court erroneously found that the controlled substance referenced in the sentencing guidelines that is most closely related to Alpha-PVP is methcathinone rather than pyrovalerone? *United States v. Moreno*, No. 15-3312.

Whether the district court erred in calculating a guideline sentence based on an attribution of over 50 kilograms of cocaine where the conspiracy and attempt

presented to the jury included only a single purchase of 20 kilograms. The Court's use of cash and bank accounts to calculate an additional quantity of cocaine was in error because there was insufficient evidence connecting the money to the deal on which the conviction was based? *United States v. Jones*, No. 15-3547.

14. *2D1.1(b)(1) (possession of a firearm during drug offense)*

Whether the district court erred in determining that Mr. Joyce possessed a firearm that was present during relevant conduct because the evidence fell short of demonstrating his drug activities in July 2013, when the firearm was possessed, were part of the same course of conduct or a common scheme or plan as his charged conduct nearly two months earlier? *United States v. Joyce*, No. 14-1560.

Whether the district court erred when it found that a gun found next to a defendant's bedroom and near drug paraphernalia is "enough" to impose § 2D1.1(b)(1)'s two level firearm enhancement? *United States v. Morris*, No. 15-2402.

Whether the district court erred in adding an upward variance to the calculated guideline for use of a drug house and especially dangerous weapon when no drugs were found in the house and the gun was not loaded? *United States v. Jones*, No. 15-3547.

15. *2D1.1(b)(12) (maintaining premises)*

Whether the district court erred in finding Mr. Thomas's use of Anita Andrews's apartment constituted maintaining a premises for the purpose of distributing heroin and imposing a two level enhancement under § 2D1.1(b)(12)? *United States v. Thomas*, No. 15-2691.

Whether, given that the evidence showed only four controlled buys of small drug quantities over the approximately one year period Mr. Winfield lived at his residence, the judge erred when she decided that § 2D1.1(b)(12)'s two level

enhancement for maintaining a “drug premises” applied? *United States v. Winfield*, Nos. 16-1047 & 16-1048.

16. 2G1.1(c)(1) (cross-reference)

17. 2G1.3(b)(3)(A)(using a computer to entice minor)

18. 2G1.3(c)(3)(cross-reference)

19. 2G2.1 (child exploitation)

20. 2G2.2 (child pornography)

21. 2K2.1(a)(firearm offense after prior drug felony)

Whether the district court miscalculated Mr. Bloch’s guidelines range when it determined that a battery by human waste conviction was a crime of violence under § 2K2.1(a)(1)? *United States v. Bloch*, No. 13-3333.

Whether the district court committed reversible procedural error by incorrectly calculating the guidelines sentencing range, when Mr. Watson’s 2014 Michigan conviction for fleeing and eluding police officers was not a crime of violence for purposes of determining his base offense level pursuant to Section 2K2.1(a)(3) of the Sentencing Guidelines? *United States v. Watson*, No. 16-1505.

22. 2K2.1(b)(1)(B) (number of firearms involved)

23. 2K2.1(b)(6)(B) (possession of firearm in connection with a felony offense)

Whether the sentencing court committed clear error when it applied a four point enhancement under § 2K2.1(b)(6)(B) when the predicate “another felony offense” was, in part, an identical state charge, that was ultimately dismissed by Cook County prosecutors because of the federal indictment; and where all additional factors - that were not *prima facie* elements of the federal indictment - were nonetheless part of relevant conduct and taken into account at sentencing? *United States v. Lemle*, No. 15-3699.



Whether the district court erred by applying an enhanced offense level for Cherry's felon in possession offense based on the fact that his co-conspirator's firearm was capable of accepting a large capacity magazine? *United States v. Cherry*, No. 16-1891.

24. 2K2.1(c)(1)(A)(using firearm in connection with another offense)

Whether the district court erred in determining at sentencing that McPhaul possessed body armor in a manner intended by him to protect himself from gunfire while in connection with the commission of another felony offense three by requiring an addition of four offense levels pursuant to § 2K2.6(b)(1)? *United States v. McPhaul*, No. 16-1162.

25. 2L1.2 (prior conviction)

Whether the district court adequately explain why it was denying Mr. Quinonez-Barraza's motion for below guideline sentence based on the argument that the 16 level enhancement under § 2L1.2 is not founded on empirical research regarding deterrent efficacy or any other variable relevant to the purposes of sentencing producing an unsound sentence under the particular facts of this case? *United States v. Quinonez*, No. 14-2096.

Whether the court erred when it applied the 16 level enhancement to Chagoya-Morales's base offense level based on his prior conviction for aggravated batter constituting a "crime of violence" pursuant to § 2L1.2(b)(1)(A) contrary to the rule announced in *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Chagoya-Morales*, No. 16-1198.

Whether Mr. Haney's 1977 conviction for armed bank robbery under federal law and his 1988 conviction for aggravated assault under Pennsylvania law were properly considered crimes of violence under § 2K2.1 of the Sentencing Guidelines? *United States v. Haney*, No. 16-1513.

Whether the erroneous application of an eight level enhancement to Mr. Paz-Giron's offense level under § 2L1.2 of the sentencing guidelines is plain error, warranting remand for resentencing? *United States v. Paz-Giron*, No. 16-1554.

26. 2L2.1(b)(2)(C) (more than 100 documents)
27. 2L2.1(b)(5)(B)(using or obtaining a foreign passport)
28. 2T1.1
29. 2X1.1 (attempt)
30. 3A1.1(vulnerable victim)

Whether the district court erred when it concluded that the elderly victims of the offense were unusually vulnerable due to their age and applied a two-point enhancement to the defendant's guideline calculation pursuant to § 3A1.1(b)(1)? *United States v. Lewis*, No. 16-1401.

31. 3A1.2(c)(1) (assaulting an official victim)

32. 3B1.1(a)(Leader or organizer)

Whether the district court committed procedural error in its application of a three-point enhancement for Defendant-Appellant's perceived supervisory role in the offense of conviction? *United States v. Vasquez-Hernandez*, No. 14-3622.

Whether a single instance in which a defendant requests assistance from a third party in distributing a controlled substance is sufficient to qualify him as a manager or supervisor under U.S.S.G. § 3B1.1(c) and thus preclude the application of the safety valve? *United States v. Collins*, No. 15-1998.

Whether a defendant referring a customer to another source, without any active participation in the transaction and receiving no profit from the transaction, is sufficient to qualify him as a manager or supervisor under U.S.S.G. § 3B1.1(c) and thus preclude the application of the safety valve? *United States v. Collins*, No. 15-1998.

Whether the district court incorrectly determined the applicable sentencing guideline when it concluded that Shannon was subject to a two-level enhancement as the organizer or leader of a criminal enterprise? *United States v. Shannon*, No. 15-2667.

Whether the district court erred in applying an additional two points to Mr. Jackson's offense level based on its finding that he was an "organizer, leader, manager, or supervisor" pursuant to U.S.S.G. § 3B1.1(1)(A)? *United States v. Jackson*, No. 15-3693.

Whether the district court clearly erred when it applied the three-level enhancement for Mr. Brown's manager supervisor role in the offense? *United States v. Brown*, No. 16-1239.

Whether the judge errantly imposed obstruction of justice and role in the offense enhancement? *United States v. Ranjel*, No. 15-3778.

33. 3B1.2(Minor role)

Whether the district court erred in denying Mr. Garibay's request for a minor role reduction in his guidelines range at sentencing? *United States v. Garibay*, No. 14-2678.

Whether Mr. Covarrubias's 135 month sentence was unreasonable because the district court erred in applying § 3B1.2 and failed to correctly calculated the advisory guidelines range? *United States v. Covarrubias*, No. 16-1407.

34. 3B1.3(Abuse of position of trust)

35. 3C1.1(Obstruction of justice)

Whether the District Court erred by sentencing Kasp to 97 months due to an incorrectly calculated sentencing range based on the District Court's finding that Kasp obstructed justice by filing false statements in an affidavit. *United States v. Kasp*, No. 13-2907

Whether the district court improperly calculated the advisory sentencing guidelines by applying a 2-level offense enhancement for obstruction of justice pursuant to U.S.S.G. §3C1.1? *United States v. McMahan*, No. 12-3291

Whether Mr. Blount's testimony at co-defendant Charles Thomas's trial provided valid grounds to impose a § 3C1.1 obstruction of justice enhancement on Mr. Blount? *United States v. Blount*, No. 15-2114.

Whether codefendant Domingo Blount's testimony at Mr. Thomas's trial provided valid grounds to impose a § 3C1.1 obstruction of justice enhancement on Mr. Thomas? *United States v. Thomas*, No. 15-1142.

Whether the district court erred during sentencing when the Court enhanced Mr. Brown's sentence by two levels for obstruction of justice, based upon Mr. Brown's compelled testimony during a motion to suppress hearing held in another court, which was never ruled upon? *United States v. Brown*, No. 15-2243.

Whether the district court erred in applying an additional two points to Mr. Jackson's offense level, pursuant to U.S.S.G. § 3C1.1, based on its finding that he obstructed justice by testifying on his own behalf? *United States v. Jackson*, No. 15-3693.

Whether the district court procedurally erred by applying a sentencing enhancement for obstruction of justice when Ms. Brewer did not willfully produce a false document at sentencing? *United States v. Brewer*, No. 15-3094.

Whether the district court erred in determining at sentencing that McPhaul willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice when he alleged engaged in witness tampering of former defense turned government witness, Dayonia Ivey, thereby requiring an addition of two offense levels under § 3C1.1? *United States v. McPhaul*, No. 16-1162.

Whether the district court erred in applying a two-level enhancement for obstruction of justice when the defendant was not under arrest and had not been charged with any crime at the time he fled in panic, fearing for his life? *United States v. Cisneros*, No. 16-1300.

Whether Mr. Nichols should have been subject to the "obstruction enhancement" under § 3C1.1 where the district court applied the enhancement based on its finding that Mr. Nichols gave false testimony at his suppression hearing and that

Mr. Nichols's actual thought process or state of mind was not a determinative factor for consideration? *United States v. Nichols*, No. 16-1628.

Whether the judge errantly imposed obstruction of justice and role in the offense enhancement? *United States v. Ranjel*, No. 15-3778.

Whether the district court erroneously determined defendant's sentencing guideline level by imposing an unwarranted enhancement for obstruction of justice pursuant to U.S.S.G. § 3C1.1? *United States v. Dillard*, No. 16-1760.

36. 3C1.2(*Reckless Endangerment*)

37. 3D1.2(*Grouping*)

Whether the district court improperly calculated Wagner's guidelines range due to improper application of a grouping enhancement? *United States v. Wagner*, No. 15-3265.

38. 3E1.1 (*Acceptance of Responsibility*)

Whether the district court improperly calculated the advisory sentencing guidelines when it ruled that because the defendant's guilty plea was not an exceptional case, defendant was not eligible to receive a 3-level decrease for acceptance of responsibility in accordance with §3E1.1? *United States v. McMahan*, No. 12-3291

The Guidelines' provision for an acceptance of responsibility reduction includes a non-exhaustive list of factors for a court to consider. No one factor entitles the defendant to a reduction and none precludes the reduction. Here, did the district court erroneously treat continued criminal activity as precluding the reduction when it said that a defendant was "required" to not engage in further criminal activity, and that Edwards did not meet this requirement? *United States v. Edwards*, Nos. 15-2373 & 15-2374.

Did the district court improperly deny Frias credit for acceptance of responsibility? *United States v. Frias*, 15-1568.

Whether the district court erred in imposing sentence by failing to calculate the guideline range, determine whether acceptance of responsibility should be

granted, and consider the § 3553(a) factors? *United States v. Gutierrez*, No. 15-2762.

Whether the district court committed error in denying defendants acceptance of responsibility? *United States v. Odeh & Hussein*, Nos. 15-3389 & 15-3392.

Whether the district court clearly erred in denying an offense-level guideline reduction for acceptance of responsibility? *United States v. Furando*, No. 15-1157.

Whether Mr. Nichols should have received a downward adjustment for acceptance of responsibility pursuant to § 3E1.1 where the district court found that Mr. Nichols was not entitled to the adjustment because the ruling on the obstruction enhancement precluded any finding that Mr. Nichols had accepted responsibility for his conduct? *United States v. Nichols*, No. 16-1628.

### 39. 4A1.1 (Criminal History)

Whether the district court abused its discretion when it found that a criminal history category of III did not overstate Mr. Pantazelos' criminal background and whether the resulting sentence is substantively unreasonable? *United States v. Pantazelos*, No. 13-1394

Whether the district court erred in calculating Mr. Purvis' criminal history category, when three criminal history points were incorrectly assessed under the 2005 Sentencing Guidelines for a prior conviction that was not separated by an intervening arrest and was related to another conviction receiving three points? *United States v. Purvis*, No. 12-3856

Whether the district court incorrectly calculated Jones's sentencing guideline range and criminal history category by using a conviction that occurred more than fifteen years prior to the commencement of the conduct in this case? *United States v. Jones*, No. 14-1665.

Whether the district court improperly interpreted and applied § 4A1.2(e) and 4A1.2(k) to allow for any period of custody to bring a prior conviction within the United States Sentencing Guidelines' criminal history consideration timeframe? *United States v. Marks*, No. 15-2862

Whether the district court erroneously assessed three criminal history points by assessing one criminal history point for a conviction that was related to the

instant offenses and by assessing two criminal history points under § 4A1.1(d) despite the fact that Mr. Kruger was no longer on probation during the commission of the instant offenses? *United States v. Kruger*, No. 15-3203.

40. 4B1.1 (Career Offender)

Whether the district court incorrectly calculated the defendant's criminal history category and eligibility for the career offender enhancement where one of defendant's prior convictions would have fallen outside of the 15 year period but for the district court's relevant conduct finding? *United States v. Tankson*, No. 14-3787.

The Sentencing Guidelines provide for heightened sentenced for certain defendants previously convicted of a crime of violence, which includes "burglary of a dwelling." Wisconsin Statute § 943.10(1m)(a) criminalizes burglary of "any building or dwelling." Is this an overbroad, indivisible statute within the meaning of *Descamps v. United States*, 133 S. Ct. 2276 (2013), as applied to the Guidelines, such that it cannot be categorized as a crime of violence? *United States v. Edwards*, Nos. 15-2373 & 15-2374.

The Sentencing Guidelines provide for heightened sentences for certain defendants previously convicted of a crime of violence which includes burglary of a dwelling. Wisconsin Statute § 943.10(1m)(a) criminalizes burglary of "any building or dwelling." Is this an overbroad, indivisible statute within the meaning of *Descamps v. United States*, 133 S. Ct. 2276 (2013) such that it can't be categorized as a crime of violence? *United States v. Pouliot*, No. 15-2552.

Whether the district court erred in sentencing Armour as a career offender where neither of Armour's two underlying Indiana robbery convictions qualifies as a "crime of violence" under U.S.S.G. §4B1.1, in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015)? *United States v. Armour*, No. 15-2170.

Whether the district court erroneously classified Mr. Lynn as a career offender based on two convictions under 720 ILCS 5/12-4(b)(8) for aggravated battery on a public way? *United States v. Lynn*, No. 15-3228.

41. 5C1.2 (Safety Valve)

Whether the trial court erred in failing to apply the “safety valve” to Mr. Ponce-Perez contained in 18 U.S.C. § 3553(f), U.S.S.G. § 5C1.2, and U.S.S.G. § 2D1.1(b)(16) resulting in a minimum ten year sentence being imposed on the defendant? *United States v. Ponce-Perez*, No. 14-1001.

Whether the district court erred in imposing a five-year sentence under the misapprehension that Mr. Hussinger faced a mandatory minimum sentence of five years, when both parties agreed that the safety-valve provision of 18 U.S.C. § 3553(f) removed the mandatory minimum? *United States v. Hussinger*, No. 14-2708.

42. 5G1.2(Consecutive and Concurrent Sentences)

43. 5G1.3(Credit for time served on state case)

Whether the district court’s decision, by initially predicting the amount of credit a person will receive against his sentence and increasing the sentence to deprive that person of the projected credited time, is procedurally flawed? *United States v. Davis*, No. 14-3109.

Whether the district court improperly interpreted U.S.S.G. § 7B1.3(e) by determining that the amount of time Mr. Davis had spent in custody awaiting trial and subject to a detainer based upon the supervised release warrant was not time resulting from the supervised release violation warrant or proceeding? *United States v. Davis*, No. 14-3109.

44. 5K1.1 (Substantial Assistance)

Whether the district court procedurally erred when it concluded it did not have discretion to consider information provided by the defendant to law enforcement that the government did not include in its motion for a downward departure? *United States v. Williams*, No. 16-1392.

45. 5K2.20 (Aberrant Behavior)

O. Mandatory Minimums

Whether the district court’s fact-finding that resulted in a 20-year mandatory minimum sentence violated Mr. Bethany’s Sixth Amendment rights pursuant to the Supreme Court’s ruling in *Alleyne*. *United States v. Bethany*, No. 13-1777



Whether the Sixth Amendment's right to a jury trial and the Fifth Amendment's Due Process Clause require the government to prove to a jury the fact of a prior conviction beyond a reasonable doubt when the prior conviction increases the mandatory minimum sentence to which a defendant is subjected? *United States v. Saenz*, No. 13-2698

Was *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) wrongly decided in light of subsequent decisions of the Supreme Court; and were Mannebach's right under the Fifth and Sixth Amendments violated when the judge imposed mandatory life sentences under 21 U.S.C. § 841(b)(1)(A) and 18 U.S.C. § 3559(c)(1) ["Three Strikes Law"] where the predicate prior convictions are not charged in an indictment or found by a jury beyond a reasonable doubt. *United States v. Mannebach*, No. 13-1787

Whether the district court improperly enhanced the defendant's mandatory minimum sentence pursuant to the government's filing of an 851 notice, where the prior drug felony should have been found to be part of the defendant's present offense of conviction? *United States v. Perkins*, No. 13-1399

Does it violate the 6th Amendment for the sentencing court to increase the minimum and maximum penalty based on a prior conviction not alleged in the indictment, admitted by the defendant or proven to a jury? *United States v. Misleveck*, No. 13-1855

Whether judicial fact finding regarding Mr. Herrell's prior qualifying felonies for purposes of the Armed Career Criminal Act violated Mr. Herrell's rights under the Fifth Amendment due process clause and the Sixth Amendment right to trial by jury? *United States v. Herrell*, No. 13-1023

Whether the district court improperly doubled Lee's sentence pursuant to 21 U.S.C. §841(b)(1), based on a prior Illinois drug possession charge that had been dismissed after Lee successfully served a probationary term? *United States v. Lee*, No. 12-1718

Whether the defendant should have been sentenced under the Fair Sentencing Act in light of *Dorsey*, where he was sentenced after the effective date of the Act? *United States v. Lee*, No. 12-1718

Whether the defendant was entitled to re-sentencing without a mandatory minimum sentence of Life where he was sentenced after the effective date of the FSA but received the mandatory minimum sentence provided by the law prior to the FSA? *United States v. Herman*, No. 12-1183

Whether the nature and fact of a prior conviction must be alleged in the indictment and proved to a jury beyond a reasonable doubt in order for that conviction to increase a statutory minimum and maximum penalty? *United States v. Lyons*, No. 14-1442.

Whether the district court committed error by failing to resolve the issue of whether Mr. Hendricks' convictions had become final for purposes of a prior conviction for 18 U.S.C. § 3559(e)? *United States v. Hendricks*, No. 14-2477

Whether the district court committed error by failing to receive or consider any evidence of Mr. Hendricks' prior convictions to determine whether or not the convictions counted as a "Federal sex offense" as required under 18 U.S.C. § 3559(e) for mandatory life imprisonment? *United States v. Hendricks*, No.14-2477

Whether a prior conviction, used to increase statutory mandatory minimum and maximum penalties for an offense, must be proven to a jury beyond a reasonable doubt pursuant to *Alleyne v. United States*, 133 S. Ct. 2151 (2013)? *United States v. Bond*, No. 15-1224.

Whether the grant of sole discretion in the federal prosecutor rather than the judge in sentencing defendant to mandatory minimum violates the separation of powers doctrine offense? *United States v. Syms*, No. 15-3067.

Whether defendant's sentence was rendered in violation of the 8th Amendment prohibition on cruel and unusual punishment and substantive due process when defendant was sentenced to the mandatory minimum despite his lack of criminal history where prosecutor refused to grant safety valve? *United States v. Syms*, No. 15-3067.

#### P. Miscellaneous

The Supreme Court has held that courts cannot lengthen a prison term to promote an offender's rehabilitation. During her time on federal supervision Ms. Kolp often relapsed into drug addiction. Her supervision was revoked, and rather than imposing a guideline sentence between 4-10 months, the court sentenced her to 20 months. During sentencing, it noted that the two driving factors were punishment and treatment. Did the district court lengthen its sentence to promote Ms. Kolp's rehabilitation? *United States v. Kolp*, No. 14-1601.

Whether the district court impermissibly considered Mr. Haynes's race in imposing sentence, when it alluded to his race in explaining why a 240 month sentence was necessary? *United States v. Haynes*, No. 13-3617

Whether the district court erred in denying Corral's motion for downward departure based on the over-representation of his criminal history? *United States v. Corral*, No. 14-1964.

Whether the district court erred in denying Corral's motion for downward departure based upon exceptional family circumstances? *United States v. Corral*, No. 14-1964.

Whether the district court abused its discretion during sentencing in awarding credit for only 24 of the 41 months of pre-indictment delay, based upon a finding of no bad faith in delay, arbitrarily determining a period of 18 months sufficient to investigate, and failing to adjust the criminal history category for the pre-indictment delay prejudice resulting in three additional points? *United States v. Cortez-Lopez*, No. 14-2638.

Whether the sentencing considerations in 18 U.S.C. § 3553 and the Eighth Amendment to the United States Constitution prohibit the sentence of 2,880 months when the district court imposed upon Mr. Eckstrom? *United States v. Eckstrom*, No. 15-2108.

Whether, given the fact that the drug guidelines have been generally lowered by two levels since the district court last expressed an opinion about whether it would impose the same sentence on Mr. Bell if the case were remanded for resentencing, this Court should make an additional limited remand of this case to the district court for the purposes of determining whether it would impose the same sentence on Mr. Bell knowing about the further lowering of the drug quantity table? *United States v. Bell*, No. 15-2670.

When the defense, the government, and the probation office all argue that a guideline range should be adjusted to account for a defense counsel's failure, but the district court addresses only concerns already factored into that guideline range, would "anyone acquainted with the facts have known without being told why the judge did not accept the argument" of the parties and of the probation office? *United States v. Harris*, No. 16-1023.

Q. Reasonableness

1. *Procedural*

Whether the district court procedurally erred in sentencing Mr. Harris by failing to adequately address his arguments in support of a sentence to be run concurrent to his undischarged state prison sentence. *United States v. Harris*, No. 13-2216

Did the District Court procedurally err when it failed to mention or take into consideration the advisory guideline range under the Guidelines? *United States v. Patrick*, No. 13-2463

Did the District Court err when it failed to make findings or specifically address Patrick's "history and characteristics" under 18 U.S.C. §3553(a)(1) in determining a reasonable sentence under the Guidelines? *United States v. Patrick*, No. 13-2463

Did the court err when it failed to state on the record any appropriate reason for a sentence above the high end of the guideline range, and more than ten times higher than the 30 days the government and the probation officer recommended? *United States v. Patrick*, No. 13-2463

Stanciu and Isac, both non-citizens, argue that the district court did not address the likelihood of deportation after serving their sentences, thereby failing to address an important factor under Title 18 USC §3553(a) and that the resulting sentence was unreasonable. *United States v. Stanciu*, No. 13-1149

Whether Mr. Husti's sentencing was procedurally proper where the district court did not state the reason for Mr. Husti's sentence, which because it is one day over a year, prevents him from seeking legal resident status. *United States v. Husti*, No. 13-1431

Whether the district court erred when it failed to address the defendant's potentially meritorious argument at sentencing, and whether the defendant's middle-of-the-range sentence was unreasonable? *United States v. Davis*, No. 13-2143

The sentence of 235 months' imprisonment, just six months short of the statutory maximum and four years in excess of the top end of the advisory sentencing guideline range, is procedurally unreasonable since the district court did not fully consider or explain Ms. Crundwell's non frivolous mitigating arguments. *United States v. Crundwell*, No. 13-1407

The district court erroneously combined psychological harm to non victims and significant disruption of government function to impose an upward variance of four years. Since the district court did not weigh the effect of each factor, this Court is unable to determine if the district court abused its discretion. *United States v. Crundwell*, No. 13-1407

Whether the district court erred as a matter of law when it concluded it had no authority or discretion to consider in mitigation of the sentence, the impact of Mr. Patterson's drug use on the offense, so long as the drug use did not negate the mens rea element of the offense. *United States v. Patterson*, No. 13-1517

Should Mr. Ramirez-Ortega be resentenced because the district court failed to address his argument that the court should impose a concurrent sentence and give him credit for the lost opportunity to serve a portion of his federal sentence concurrently with his state sentence due to the government's delay in charging him? *United States v. Ramirez-Ortega*, No. 13-1286

Whether Mr. Johnson's sentence is procedurally unreasonable where it is unclear whether the district court presumed that the United States Sentencing Guidelines ("Guidelines") were reasonable, and used a presentence investigation report ("PSR") that referred to improper documents to determine whether a divisible prior conviction was a career offender predicate? *United States v. Johnson*, No. 12-3092

Did the district court err by failing to meaningfully consider a defendant's principal sentencing argument – made in both sentencing memoranda and oral argument at the sentencing hearing – that a custodial sentence would create an unwarranted disparity between the defendant and others sentenced for theft of trade secrets convictions in violation of §1832? *United States v. Jin*, No. 12-3013

Whether the district court's sentence was unreasonable because the court sentenced the defendant as if he was convicted of a dismissed count, when that count was already factored into the Guideline range? *United States v. Jones*, No. 11-3864

Whether the court failed to meaningfully address a mitigation argument based upon the deportation consequences of the defendant's sentence? *United States v. Ramirez-Fuentes*, No. 12-1494

Whether the district court committed procedural error by considering an erroneous fact during Mr. Miller's sentencing: that the jury found Mr. Miller

committed repeated acts of tax evasion when the jury only found Mr. Miller committed at least one act of tax evasion? *United States v. Miller*, No. 13-3062

Whether the district court committed procedural error by failing to consider a required sentencing factor under 18 U.S.C. § 3553(a) when it failed to address Mr. Miller's arguments that he presented a low risk of recidivism? *United States v. Miller*, No. 13-3062

Whether the district court procedurally erred by failing to consider Mr. Camacho-Montalvo's principal sentencing arguments in mitigation under 18 U.S.C. § 3553(a), as evidence by the court's failure to address them at all or in any meaningful way? Furthermore, was the sentence imposed substantively unreasonable? *United States v. Camacho-Montalvo*, No. 14-1220.

Whether the district court procedurally erred by failing to consider Mr. Miranda-Camarena's principal sentencing arguments in mitigation under 18 U.S.C. § 3553(a), as evidenced by the court's failure to address any of them, in imposing an enhanced, mid-range sentence of 34 months imprisonment? Furthermore, was the sentence imposed substantively unreasonable? *United States v. Miranda-Camarena*, No. 14-1265.

Whether the district court procedurally erred by failing to make an individualized assessment of Mr. Miranda-Camarena's offense conduct, basing its sentence on erroneous facts and other improper considerations, and failing to adequately explain the sentence imposed, in imposing an enhanced, mid-range sentence of 34 months imprisonment? *United States v. Miranda-Camarena*, No. 14-1265.

Whether the district court plainly erred when it used incorrect information that Mr. Brewster "repeatedly forced" a child to perform sex acts as a basis to impose a 420 month sentence? *United States v. Brewster*, No. 14-1285.

Whether the district court erred in failing to address specifically the evidence of Mr. Johnson's reform during his period of incarceration as it is evidence of the likelihood that he would respond positively to a lower sentence and the likelihood that he would reoffend? *United States v. Johnson*, No. 14-1465

Whether the district court erred in failing to address specifically the evidence of Mr. Johnson's reform during his period of incarceration as it is evidence of the likelihood that he would respond positively to a lower sentence and the likelihood that he would not reoffend? *United States v. Johnson*, No. 14-1465.

Mr. Moore's non-frivolous argument that the personal and historical circumstances by which he began drug dealing merited a sentence below the advisory guideline range? *United States v. Moore*, No. 14-1859.

Whether the district court procedurally erred by not providing an explanation for the sentence imposed commensurate with the departure from the range of imprisonment recommended by the Sentencing Guidelines? *United States v. Rodriguez-Sanchez*, No. 14-2456.

Whether the district court's failure to adequately explain its reasons for refusing to grant a variance based on a government policy of delaying indictment for Illegal Reentry until the defendant completed his state sentence was procedural error? *United States v. Lazcano-Leon*, No. 14-2036.

Whether the district court erred at the resentencing hearing by not weighing or addressing Mr. Lomax's mitigating arguments? *United States v. Lomax*, No. 14-2237.

Whether the district court unreasonably relied on Mr. Smart's juvenile criminal history when considering the 18 U.S.C. § 3553(a) sentencing factors? *United States v. Smart*, No. 14-3053.

Whether the district court committed procedural error in failing to consider the unwarranted sentencing disparities as a result of its 25 month upward variance from the sentencing guidelines range supported by the government and 39 month upward variance from the sentence recommended by the Probation Office? *United States v. Smart*, No. 14-3053.

Whether the district court procedurally erred when it failed to adequately explain why it imposed a top of the guidelines, 235 month sentence? *United States v. Evanick*, No. 13-3476

Cunningham's sentence of 128 months is unreasonable because in imposing it, the district court misapplied the mandatory factors under Title 18 U.S.C. § 3553(a) in that it failed to understand and consider that his criminal history was overstated due to the addition of two criminal history points pursuant to § 4A1.1(e) which had the effect of increasing his criminal history category, repeatedly relied on the same factors in the guideline calculations and § 3553(a) analysis and it was longer than necessary to meet the sentencing goals pursuant to § 3553(a)(2). *United States v. Cunningham*, No. 15-1607.

Whether the district court procedurally erred when it failed to adequately explain its reasons for imposing a sentence at the top of the advisory guidelines range? *United States v. Burke*, No. 15-1882.

Whether the district court procedurally erred when it failed to address Mr. Burke's principal argument in mitigation that his failure to report to a halfway house because of his drug use did not deserve the punishment assigned to more serious escapes in which the defendant commits an additional felony offense or escapes from a secure institution? *United States v. Burke*, No. 15-1882.

Whether the district court committed procedural error in deciding to apply an upward variance from the advisory guidelines range? *United States v. Vasquez-Hernandez*, No. 14-3622.

Whether remand for resentencing is required where the district court failed to adequately explain its choice of sentence? *United States v. Vasquez-Hernandez*, No. 14-3622.

Whether the district court ignored Murphy's reasonable policy argument regarding the sentencing guidelines' treatment of the style of firearm he possessed? *United States v. Murphy*, No. 15-1602.

Whether a district court must explain its rejection of a defendant's principal, nonfrivolous arguments in mitigation of sentence? *United States v. Murphy*, No. 15-1602.

Whether the 108 month sentence must be vacated because the district court imposed the sentence without addressing Mr. Armand's crack/powder disparity argument, incorrectly believing that it was a within-guidelines sentence and gave no justification for what was actually an above-guidelines sentence? *United States v. Armand*, No. 14-3757.

Whether the district court erred when it erroneously believed itself bound to a certain theory of punishment, namely retribution, in imposing what it considered to be a "harsh" and "stiff" sentence of ten years for a first-time, nonviolent drug offense? *United States v. Haynes*, No. 15-1301.

Whether the district court procedurally erred when it failed to respond to Mr. Haynes's primary arguments in mitigation, namely (1) the unwarranted disparity between how federal sentencing law treats pseudoephedrine and methamphetamine, and (2) the need to avoid sentencing disparities among similarly-situated defendants around the country? *United States v. Haynes*, No. 15-1301.



Whether the district court procedurally erred by failing to consider Mr. Plada's non-frivolous § 3553(a) arguments in mitigation advanced at sentencing including the nature and circumstances of the offense and his personal characteristics other than his criminal history. Furthermore, whether the sentence in this case was substantively unreasonable? *United States v. Plada*, No. 14-3803.

Whether the district court imposed a manifestly unreasonable sentence by failing to properly take the decreased guidelines range into account on resentencing? *United States v. Bostic*, No. 15-1198.

Where a sentencing range based on an ambiguous guideline, which produces arbitrary results, lacks the force of a statute but has a strong "anchoring effect" on a defendant's ultimate sentence, is that provision inconsistent with Congress's directive to the sentencing commission to promulgate guidelines which promote fairness and certainty in sentencing, and which lessen sentencing disparity? *United States v. McGuire*, No. 15-2071.

Whether the district court violated Mr. Johnson's Due Process right to be sentenced based on accurate information, and committed procedural error by imposing a 180-month (65 months above the guidelines range) sentence based on its belief that the defendant engaged in additional drug sales that the government failed to prove by a preponderance of evidence under the sentencing guidelines? *United States v. Johnson*, No. 15-1161.

Whether the district court misapplied the sentencing guidelines? *United States v. Jones*, No. 15-2555.

Whether the district court procedurally erred when it failed to address Mr. Blackman's principal arguments in mitigation concerning the crack/powder disparity, and the nature of the offense under 18 U.S.C. § 3553(a), resulting in a substantively unreasonable sentence that was greater than necessary to meet the sentencing goals? *United States v. Blackman*, No. 15-2003.

Whether the district court committed procedural error by (1) failing to adequately explain why it imposed a sentence at the top of the sentencing guidelines for a run-of-the-mill drug offense, (2) failing to respond to a principal argument in mitigation concerning the crack/powder disparity, and (3) failing to ensure the sentence was based upon accurate information? *United States v. Liles*, No. 15-2214.

Whether the district court committed procedural error when it failed to address any of the defendant's arguments in mitigation, did not mention the 3553(a) factors, and allowed the Probation Officer to determine the appropriate sentence? *United States v. Hollins*, No. 15-3750.

Whether Bloom is entitled to be resentenced because the district court's loss calculation methodology was erroneous, resulting in an incorrect advisory guideline range? *United States v. Bloom*, No. 15-1445.

Whether the district court violated Mr. Seals's due process rights by holding a portion of his sentencing hearing during a telephone conference call without his presence? *United States v. Seals*, No. 15-2327.

Whether the district court reversibly erred by not making the necessary 18 U.S.C. § 3553(a) determinations and by inadequately explaining why Ms. Coppola should serve six months in prison and three years of supervised release? *United States v. Coppola*, No. 15-3490.

Is resentencing required when the district court mechanically applied the criminal history guidelines and failed to evaluate the defendant's argument that an analysis of the actual nature of the past crimes and the application of the 18 U.S.C. § 3553(a) factors to those crimes shows that long imprisonment is unwarranted? *United States v. Shockey*, No. 16-1145.

Whether the district court committed procedural error in resentencing Mr. Lockwood when it relied on erroneous facts, provided an insufficient justification for its above-guidelines sentence, and failed to address critical arguments in mitigation? *United States v. Lockwood*, No. 15-3856.

Whether the district court abused its discretion when it issued a substantively unreasonable sentence? *United States v. Lockwood*, No. 15-3856.

Whether the district court erred by imposing an identical sentence on defendants even though the guideline level calculated for Hussein was two levels higher than the guideline level calculated for Odeh? *United States v. Odeh & Hussein*, Nos. 15-3389 & 15-3392.

Whether the district court erred in failing to consider all of Mr. Thomas's mitigation arguments? *United States v. Thomas*, No. 15-2509

Whether the district court committed procedural error by failing to consider or explain her rejection of Fuller's non-stock arguments in support of a below-guidelines sentence, to wit: (1) he sincerely believed he had to commit the instant offense to protect himself from harm and (2) the administrative consequences of his offense, particularly his time spent in solitary confinement, were sufficiently punitive to lessen the need for a guideline term of incarceration to serve the goals of sentencing? *United States v. Fuller*, No. 16-1328.

Whether the district court procedurally erred because it lengthened Holman's prison term to promote rehabilitation? *United States v. Holman*, No. 15-3414.

Whether the court failed to properly apply the § 3553(a) factors presented by the appellant in sentencing in fashioning the appropriate sentence? *United States v. Chagoja-Morales*, No. 16-1198.

Whether Wright's sentence of 34 months is unreasonable because in imposing it, the district court misapplied the mandatory factors under § 3553(a) by repeatedly relying on the very same factors in calculating the advisory guidelines and again in the § 3553(a) analysis and the sentence was longer than necessary to meet the sentencing goals pursuant to § 3553(a)(2)? *United States v. Wright*, No. 16-1527.

Whether the district court committed procedural error when it failed to address the defendant's arguments in mitigation, allowed the probation officer to determine the appropriate sentence, and did not adequately address the § 3553(a) factors? *United States v. Hollins*, No. 16-1442.

Whether the district court's failure to address Mr. Freeman's principal non-frivolous argument that it should apply a 1:1 crack/powder ratio at sentencing constituted procedural error? *United States v. Freeman*, No. 15-3664.

Whether the district court erroneously relied on speculation about Mr. Freeman's criminal history, specifically, uncharged criminal conduct not accounted for by the guidelines, in determining his sentence? *United States v. Freeman*, No. 15-3664.

Whether the district court's frustration with Mr. Freeman's litigation tactics impermissibly influenced its sentencing decision? *United States v. Freeman*, No. 15-3664.

Whether a sentence of 180 months of imprisonment was imposed in a procedurally reasonable manner and was substantively reasonable when measured against 18 U.S.C. § 3553? *United States v. Lewis*, No. 16-1401.

The defense made two primary arguments at sentencing. One was dismissed by the district court out-of-hand and the other went unaddressed. The court also failed to describe the supervised release conditions on the record and didn't ask the parties if they objected to any of them, and it imposed several conditions that this Court has previously criticized as overly vague and broad. Do these errors require resentencing? *United States v. Anglin*, No. 15-3625.

Whether Mr. Covarrubias's 135 month sentence was unreasonable because the district court erred in applying § 3B1.2 and failed to correctly calculate the advisory guidelines range? *United States v. Covarrubias*, No. 16-1407.

Whether the district court is required to address meritorious arguments by the defense in its explanation of its sentence where the sentence was nearly three times the high end of the guideline range that had already been enhanced due to relevant conduct? *United States v. Carbajal*, No. 16-1681.

Whether the district court erred in treating the sentencing guidelines and application notes as mandatory when determining the most closely related substance to Alpha-PVP? *United States v. Moreno*, No. 15-3312.

Whether the district court is required to address meritorious arguments by the defense in its explanation of its sentence where the sentence was nearly three times the high end of the guideline range that had already been enhanced due to relevant conduct? *United States v. Carbajal*, No. 16-1681.

Whether the district court committed procedural error when it wrongfully determined that the total adjusted offense level in accordance with the sentencing guidelines was 26 resulting in an advisory applicable guidelines range as 63-72 months imprisonment? *United States v. Andry*, No. 16-1113.

Whether the district court failed to properly consider the factors enunciated in 18 U.S.C. § 3553 when it sentenced Ochoa-Montano to the maximum suggested sentence under the guidelines? *United States v. Ochoa-Montano*, No. 16-1849.

Whether the district court properly considered the factors enunciated in 18 U.S.C. § 3553 when it sentenced Ochoa-Montano to the maximum suggested sentence under the guidelines? *United States v. Ochoa-Montano*, No. 16-1849.

## 2. Substantive

Whether Mr. Adams' sentence, at more than double the guideline range, is substantively unreasonable? *United States v. Adams*, No. 13-1368

The issue is whether the sentence of 155 months of imprisonment is unreasonable where the defendant who is a drug addict has never had an opportunity for meaningful drug treatment. *United States v. Jemine*, No. 12-3857

Was a high-end, albeit within guideline, sentence of 87 months for illegal reentry by an aggravated felon inherently unreasonable given the District Court's emphasis upon Appellant's prior gang affiliations, involvement in transporting individuals unlawfully in the United States, and likelihood to re-offend, in light of the other sentencing factors raised by the defense: to include his lack of recidivism since returning to the United States, difficult childhood, and relatively young age? *United States v. Moran-Vazquez*, No. 12-3288

Is Hinton's 132-month sentence, which is disproportionate to the sentences of this co-defendant and others involved in a related drug conspiracy, unreasonable in violation of 18 U.S.C. § 3553? *United States v. Hinton*, No. 12-2885

Whether Mr. Johnson's sentence is substantively unreasonable in light of the district court's heavy reliance on the Guidelines, overemphasis on Mr. Johnson's criminal history, and the failure of the sentence to reflect Mr. Johnson's age and personal characteristics? *United States v. Johnson*, No. 12-3092

Whether the defendant's within the range sentence in excess of 24 years was substantively unreasonable in light of the mitigation evidence presented at sentencing? *United States v. Ramirez-Fuentes*, No. 12-1494

Whether the district court abused its discretion in imposing a 120 month sentence of imprisonment, a below-guidelines sentence, where, although Mr. Hardimon's criminal history was extensive, such a sentence significantly

overstated the seriousness of his offense and the nature of his criminal history? *United States v. Hardimon*, No. 14-1120.

Whether the district court's imposition of an above-guidelines, four-year sentence, based on Ms. Lockett's uncharged social security fraud and possible food stamp fraud, was unreasonable because the sentence significantly exceeded the guideline range that would have applied if she had been convicted for the uncharged fraud and where her life expectancy is reduced because she is in stage four kidney disease? *United States v. Lockett*, No. 14-1405.

Whether the district court significantly erred when it imposed Mr. Perez's sentence, resulting in a sentence that was greater than necessary to comply with the purposes of sentencing by (1) giving an undue presumption of reasonableness to the guidelines, (2) relying on inaccurate information when imposing sentence, (3) failing to adequately consider sentencing arguments, and (4) failing to adequately explain why the sentence was sufficient, but not greater than necessary? *United States v. Perez*, No. 13-2446.

Whether the district court's decision sentencing Mr. Jimenez to 77 months' imprisonment for illegal reentry, despite the nature and circumstances of his past and present offenses, is substantively unreasonable under 18 U.S.C. § 3553(a)? *United States v. Jimenez*, No. 14-1973.

Whether the district court committed substantive error by failing to adequately explain its reasons for sentencing defendant toward the high end of the advisory guidelines sentencing range? *United States v. Lazcano-Leon*, No. 14-2036.

Whether the district court failed to consider the argument regarding the risks of imposing a *de facto* life sentence and whether the resulting sentence was substantively unreasonable? *United States v. Jines*, No. 14-1861.

Whether the district court's sentence of 96 months' imprisonment, which constituted 25 months above the applicable guidelines range and 39 months above the precise sentence recommended by the Probation Office, was substantively unreasonable? *United States v. Smart*, No. 14-3053.

Whether the 235 month term of imprisonment for producing child pornography substantively unreasonable, when the offense conduct consisted of taking four photographs of a 17 year old female engaged in lawful sexual conduct with the defendant? *United States v. Evanick*, No. 13-3476.

Whether the specific facts presented in this case rebut the presumption of reasonableness created by Mr. Santiago's below-guidelines, thirty-month sentence? *United States v. Santiago*, No. 15-1364.

Whether the district court issued Capers a substantively unreasonable sentence? *United States v. Capers*, No. 14-1426.

Whether the district court abused its discretion by failing to impose a lesser sentence within the guideline range? *United States v. Booker*, No. 15-1726.

Whether the district court's above-guidelines sentence of 180 months is substantively reasonable under the facts of this case? *United States v. Johnson*, No. 15-1161.

Whether a sentence of 96 months of imprisonment was imposed in a procedurally reasonable manner and was substantively reasonable when measured against 18 U.S.C. § 3553? *United States v. Miller*, No. 15-2856.

Whether the district court imposed an unreasonable sentence? *United States v. Gutierrez*, No. 15-2762.

Whether the punishment, maximum sentences, of the defendants is excessive? *United States v. Gries & McCullars*, Nos. 15-2432 & 15-2447.

Ferguson was a juvenile when he carjacked a woman and shot her in the face. The judge sentenced him to eight years for the carjacking and 42 consecutive years for discharging the firearm. The Supreme Court has found that life sentences for juveniles violate the Eighth Amendment. Does Ferguson's 50-year de facto life sentence violate the Eighth Amendment or is it otherwise substantively unreasonable? *United States v. Ferguson*, No. 15-3753.

Ferguson's guidelines for discharging the firearm were ten years. In imposing a sentence 32 years above the guideline range, the Court did not give any reasons why the guidelines failed to accord adequate punishment or how Ferguson's status as a juvenile affected the need to punish him. Does the court's failure to make those findings or articulate a basis for a 32-year variance prevent this Court from reviewing the sentencing judge's use of discretion and necessitate a resentencing? *United States v. Ferguson*, No. 15-3753.

When defendant was sentenced to 40 months imprisonment largely on the basis of a criminal history driven by offenses related to his alcoholism rather than 18 U.S.C. § 3553 factors of seriousness and circumstances of the gun violation, defendant's characteristics as an alcoholic, deterrence, protection of the public and the need to provide correctional treatment in the most effective manner, was the sentence substantively unreasonable? *United States v. Shockey*, No. 16-1145.

Whether the punishment, maximum sentences, of the defendants is excessive? *United States v. Gries & McCullars*, No. 15-2432 & 15-2447.

Whether the court's sentence of 48 months was unreasonably excessive? *United States v. Chagoja-Morales*, No. 16-1198.

Whether the district court abused its discretion in sentencing defendant to an unreasonable sentence nearly double the high end of his applicable guideline range with probation, the prosecution and the defendant recommending a high end of the guideline range sentence of time served? *United States v. Taylor*, No. 16-1019.

Whether the 400 month term of imprisonment imposed for possession of 1.2 grams of crack cocaine and a firearm was substantively unreasonable under 18 U.S.C. § 3553(a)? *United States v. Poke*, No. 15-3659.

Whether an above guideline sentence at the statutory maximum for a defendant that is a first time offender in circumstances where she was being intimidate was a reasonable sentence? *United States v. Carbajal*, No. 16-1681.

Did the district court impose a substantively unreasonable sentence when it imposed the statutory maximum term of imprisonment and fine? *United States v. Mabie*, No. 15-1899.

Whether an above guideline sentence at the statutory maximum for a defendant that is a first time offender in circumstances where she was being intimidated was a reasonable sentence? *United States v. Carbajal*, No. 16-1681.



## R. Relevant Conduct

Did the government fail to prove its drug quantity allegations as relevant conduct? *United States v. Frias*, 15-1568.

Whether the district court erred in enhancing Mr. Blackman's guidelines for uncharged drug quantities and gun possession where the conduct alleged was neither relevant conduct as a matter of law, nor factually reliable or accurate as to warrant the enhancements? *United States v. Blackman*, No. 15-2003.

Whether the district court erred at sentencing when it found relevant conduct based on 10 vehicles stolen five to 17 months before the conduct for which Robey was tried? *United States v. Robey*, No. 15-2172.

Whether the district court misapplied U.S.S.G. § 5G1.3(b) when it determined that Counts 1 and 4 were not "relevant conduct" that required concurrent sentences with respect to Mr. Schrode's 18 year state prison term? *United States v. Schrode*, No. 15-3522.

Whether Mr. Jenkins was denied a fair sentencing hearing when the district court based its sentence on a clearly erroneous finding that Mr. Jenkins had participated in a large-scale conspiracy to distribute cocaine? *United States v. Jenkins*, No. 15-3068.

Whether the district court miscalculated Jones's guidelines range based on an erroneous interpretation of the relevant conduct provisions? *United States v. Jones*, No. 15-1792.

## S. Restitution

Whether the District Court erroneously ordered Mr. Munoz to pay a criminal penalty of \$20,100 as "restitution" to the government for the buy money used in the controlled buys that led to his convictions? *United States v. Munoz*, No. 12-3377

Whether the district court erred in issuing its order of restitution pursuant to 18 U.S.C. § 3663A, which does not permit orders of restitution for violations of Title 26 of the United States Code? *United States v. Miller*, No. 13-3062

Whether the Mandatory Victim’s Restitution Act violates the right to trial by jury both on its face and as applied in this case? *United States v. Robertson*, No. 13-3816.

Whether the district court erred by imposing restitution under 18 U.S.C. § 2259 to “Cindy” without considering Mr. Sainz’s relative role in the causal process underlying the losses experienced by “Cindy” as required by *Paroline v. United States*? *United States v. Sainz*, No. 13-3585

Whether the Mandatory Victim’s Restitution Act violates the right to trial by jury and violates the Sixth and Seventh Amendments to the United States Constitution? *United States v. Printz*, No. 14-1304.

Without an evidentiary hearing, the district court denied the government’s motion to reform the parties’ written settlement agreement to include an asset that was to be retained by the government as part of the parties’ oral agreement. The government proffered that the parties had expressly agreed that the government would retain that asset and requested an evidentiary hearing to demonstrate that there had been a drafting mistake in the agreement. Did the district court commit legal error and abuse its discretion? *United States v. Segal*. No. 13-3847

Whether the district court abused its discretion when it ordered Van Til to pay \$26,502.74 in restitution? *United States v. Van Til*, No. 15-1385.

Whether the district court erred by determining Mr. Henricks willfully failed to pay restitution immediately after sentencing and when he was incarcerated and by resentencing Mr. Henricks for failure to pay restitution pursuant to 18 U.S.C. § 3614? *United States v. Henricks*, No. 15-1865.

The Sentencing Guidelines and the Mandatory Victims Restitution Act both require the sentencing court to make a factual finding on the record that the conduct for which the defendant was convicted was the proximate cause of the investors’ losses. Here, the sentencing court failed to make that necessary finding. Should Burns’ sentence and restitution order be vacated? *United States v. Burns*, No. 15-2824.

Whether the trial court erred in entering its \$3,806,315 restitution order where defendant maintained that prior civil settlements included restitution waivers? *United States v. Kolbusz*, No. 15-2962.

Whether the lower court exercised proper statutory authority to order EMC to pay restitution, particularly to the estate of a participant in the putative crime? *United States v. Egan Marine Corp.*, No. 15-2477.

T. Rule 32 (Notice & Findings)

U. Statutory maximums and minimums  
Whether the district court committed plain error when it mistakenly sentence Mr. Davis in excess of the statutory maximum? *United States v. Davis*, 14-3109.

Whether Mr. Blackman's sentence violated the Fifth and Sixth Amendments to the Constitution where he was subjected to an enhanced sentence based on facts not found by a jury and based on facts not proved beyond a reasonable doubt? *United States v. Blackman*, No. 15-2003.

Whether the district court erred in finding that Mr. Elder's prior convictions for possession of precursors and paraphernalia qualify as prior "felony drug offenses" under 21 U.S.C. §§ 841(b)(1)(A) and 851 thereby requiring a mandatory life sentence in this case? *United States v. Elder*, No. 15-2584.

XXI. SUPERVISED RELEASE

Whether Mr. Pritchard's Fifth Amendment and Federal Rule of Criminal Procedure 32.1(b)(2)(C) right to confront adverse witnesses were violated when the district court denied him the ability to question witnesses whose hearsay testimony was offered by the Government? *United States v. Pritchard*, No. 13-2646

Whether the district court erred when it found there was a Grade A violation of supervised release? *United States v. Pritchard*, No. 13-2646

Whether the 92 month sentence that the district court imposed was plainly unreasonable since the Guideline range was, at worst, 46 to 57 months' imprisonment and perhaps as low as 7 to 13 months' imprisonment? *United States v. Pritchard*, No. 13-2646

Whether the 92 month sentence is substantively unreasonable because the district court relied on allegations that were not supported by evidence and were not contained in the revocation petition? *United States v. Pritchard*, No. 13-2646

Whether the district court imposed an illegal sentence upon the revocation of Mr. Neal's supervised release, where the total term of supervised release imposed less the term of imprisonment imposed exceeded the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release? *United States v. Neal*, No. 13-1536

Whether the district court committed reversible procedural error when it imposed sex offender treatment as a special condition of supervised release without providing any justification for the imposition of this special condition? *United States v. Rynearson*, No. 13-2064

Whether the district court abused its discretion when it imposed sex offender treatment as a special condition of supervised release under the particular facts of this case? *United States v. Rynearson*, No. 13-2064

Whether the District Court's New Term of Supervised Release Requiring Appellant to Submit to a Search of his Person, Residence, Real Property, Place of Business, Computer or Other Electronic Communication or Data Storage Device or Media, Vehicle, and Any Other Property Under his Control at a Reasonable Time and in a Reasonable Manner Based Upon a Reasonable Suspicion of Contraband or Evidence of a Violation of a Condition of Release Is Excessively Intrusive, and Not Sufficiently Justified by the Goals of Sentencing In Light of Appellant's Violations, History, and Characteristics. *United States v. Johnson*, No. 13-2094

Whether the court erred when it sentenced the defendant to two concurrent terms of imprisonment upon revocation of supervised release because, in a prior revocation proceeding, the court imposed only a single term of supervised release to follow his sentence of probation? *United States v. Ingram*, No. 12-3194

Whether the defendant's term of supervised release commenced after he had completed his prison term but while he was still being detained in connection with Adam Walsh Act civil commitment proceedings? *United States v. Maranda*, No. 13-3917.

Whether the district court's imposition of an 18 month sentence was illegal because Mr. DuPriest, who was on supervised release for a Class E felony, was

subject to a maximum sentence of one year imprisonment pursuant to 18 U.S.C. § 3583(e)(3)? *United States v. DuPriest*, No. 13-3914.

Whether the district court committed reversible procedural error by miscalculated the policy range of imprisonment recommended by the guidelines and failing to consider the factors set forth in 18 U.S.C. § 3553(a)? *United States v. DuPriest*, No. 13-3914.

Whether the district court abused its discretion by imposing an unconstitutionally vague and overbroad special condition of supervised release that Mr. Williams “shall not consume . . . any mood altering substances?” *United States v. Olivo*, No. 13-3479.

Whether the district court erred when it required Mr. Williams to pay for the treatment programs imposed as special conditions of supervised release? *United States v. Olivo*, No. 13-3479.

Whether the district court erred when it imposed as “special conditions” of supervised release a polygraph requirement, a restriction on where Mr. Brewster could go and who he could communicate with, and a ban on him accessing sexually stimulating/sexually oriented material or patronizing locations where such material is available? *United States v. Brewster*, No. 14-1285.

Whether the district court abused its discretion when it imposed a number of special conditions of supervised release that are not reasonably related to the offense of conviction, involve a greater deprivation of liberty than necessary, run afoul of the First Amendment to the United States Constitution, and are contrary to this Court’s decision in *United States v. Siegel*? *United States v. Sainz*, No. 13-3585.

Whether the district court erred by imposing standard conditions of supervised release without making any findings to support them? *United States v. Griffin*, No. 14-1833.

Whether the district court, when it imposed a special condition of supervised release requiring Mr. Griffin to perform community service, erred by failing to limit the total amount of community service to 400 total hours? *United States v. Griffin*, No. 14-1833.

Whether the district court erred by imposing non-mandatory supervised release conditions that were unsupported by any 18 U.S.C. § 3583(d) findings and which excessively infringe on Mr. Hall’s Fourth and Fifth Amendment rights? *United States v. Hall*, No. 14-1230.

Whether the standard conditions of supervised release, since they were never orally pronounced at sentencing, are a nullity? *United States v. Sulaski*, No. 14-1520.

Whether, irrespective of its failure to orally pronounce the standard conditions, the district court erred by imposing discretionary conditions that are vague, overbroad, involve excessive deprivations of liberty and lack the required 18 U.S.C. § 3583(d) findings? *United States v. Sulaski*, No. 14-1520.

Whether the district court erred when it imposed vague and overbroad discretionary conditions of supervised release? *United States v. Flores*, No. 14-1928.

Whether a district court has the discretion to impose a condition of supervision that a defendant take psychiatric medication when the district court did not receive any information regarding the defendant's prior use of psychiatric medication and the district court found that the defendant's offense was not affected by her psychiatric state? *United States v. Montgomery*, No. 14-1648.

Whether a district court has the discretion to impose a condition of supervision that a defendant take psychiatric medications when the district court did not receive any information regarding the defendant's prior use of psychiatric medication and the district court found that the defendant's offense was not affected by her psychiatric state? *United States v. Montgomery*, No. 14-1648.

Whether the district court erred when it imposed vague and overbroad discretionary conditions of supervised release regarding supporting dependents, employment, change in residence, use of alcohol, frequenting drug locations, association with felons, and notifying third parties of risks associated with Mr. Lewis's history and characteristics? *United States v. Lewis*, No. 14-2075.

Whether the district court abused its discretion when it imposed a condition of supervised release authorizing suspicionless searches of Mr. Conour's person, home, and effects when such condition is not authorized by 18 U.S.C. § 3583(d)? *United States v. Conour*, No. 13-3753 & 14-2629.

Whether the district court erred by imposing non-mandatory supervised release conditions that were unsupported by any 18 U.S.C. § 3583(d) findings and which excessively infringe on Mr. Conour's Fourth and Fifth Amendment rights? *United States v. Conour*, No. 13-3753 & 14-2629.

Whether the district court erred by entering a judgment that included 13 “standard conditions” of supervised release that were not in the PSR and were not orally pronounced at sentencing? *United States v. LaChappelle*, No. 14-2721.

Whether the district court procedurally erred by predetermining the sentence before revoking the defendant’s supervised release and by failing to address the defendant’s principal non-frivolous arguments in mitigation upon revocation of his supervised release? *United States v. Mares*, No. 14-3110.

Whether the district court erred by imposing discretionary supervised release conditions without making any 18 U.S.C. § 3583(d) findings to support them? *United States v. Langman*, No. 14-2925.

Whether the district court, by not calculating the guidelines range and stating that it “must” impose the lifetime supervised release recommended by the guidelines, committed significant procedural error? *United States v. Orlando*, No. 14-2949.

Whether the standard conditions contained in the Judgment, since they were not orally pronounced during the sentencing hearing, are null and must be vacated? *United States v. Orlando*, No. 14-2949.

Whether the district court erred by imposing discretionary supervised release conditions without making any 18 U.S.C. § 3583(d) findings to support them? *United States v. Orlando*, No. 14-2949.

Whether Mr. Lee’s constitutional right to due process and statutory right to confront adverse witnesses were violated at the hearing to revoke his term of supervised release where multiple layers of hearsay were admitted into evidence and the district court failed to balance Mr. Lee’s constitutional rights against the government’s reasons for presenting hearsay? *United States v. Lee*, No. 14-2231.

Whether the district court erred by entering a written Judgment where the special condition of supervised release imposing a payment schedule for restitution differed from the condition pronounced at the sentencing hearing? *United States v. Lewis*, No. 14-2324.

Whether the district court erred by imposing non-mandatory supervised release conditions that were unsupported by any 18 U.S.C. § 3583(d) findings and which excessively infringe on Ms. Lewis’s Fourth and Fifth Amendment rights? *United States v. Lewis*, No. 14-2324.

Did the district court abuse its discretion by denying Johnson's motion to terminate supervised release without considering the required 18 U.S.C. § 3553(a) factors? *United States v. Johnson*, No. 14-3095.

Did the district court abuse its discretion when it denied Johnson's motion after considering and relying upon an undisclosed report from the probation office? *United States v. Johnson*, No. 14-3095.

Whether the district court erred when it ordered 13 standard conditions and 3 special conditions of supervised release without providing any explanation why it imposed the conditions? *United States v. Dearborn*, No. 14-3032.

Whether the district court erred when it imposed, without justification, conditions of supervised release which are overly broad, vague, and ambiguous, and leave considerable justification to the probation officer? *United States v. Todd*, No. 14-2836.

Whether the district court erred when it imposed, without justification, conditions of supervised release which are overly broad, vague, and ambiguous and leave considerable discretion to the probation officer? *United States v. Miller*, No. 13-3657.

Whether the district court procedurally erred when it principally relied upon considerations in 18 U.S.C. § 3553(a)(2)(A) in imposing a sentence upon revocation of supervised release, when the statute governing revocation proceedings, 18 U.S.C. § 3583(e), specifically exempts those considerations? *United States v. Sumrall*, No. 14-2732.

Whether the district court procedurally erred at sentencing when it relied on inaccurate information to sentence Taylor to 24 months imprisonment at his revocation proceedings? *United States v. Taylor*, No. 15-1005.

Whether, in light of *United States v. Thompson*, the district court erred in imposing certain discretionary conditions of supervised release without complying with the statutory requirements in 18 U.S.C. §§ 3583(d) and 3553(a)? *United States v. Hussinger*, No. 14-2708.

Whether the district court erred by not providing any explanation as to why supervised release was necessary? *United States v. Paz*, No. 14-2791.

Whether the district court erred in imposing overbroad and vague special conditions of supervised release barring Mr. McLeod from receiving, transmitting, controlling, or viewing any material containing pornography, from



using the internet or visiting any website for the purposes of sexual arousal, from having any contact with minor females, requiring Mr. McLeod to install a computer and internet monitoring program, and requiring him to obtain a GED? *United States v. McLeod*, No. 14-2427

Whether, in light of *United States v. Thompson*, the district court erred by failing to consider the particular circumstances of this case and Mr. Cureton's characteristics when imposing conditions of supervised release and failed to define such conditions in a way that put Mr. Cureton on notice of proscribed behavior? *United States v. Cureton*, Nos. 14-2576 & 14-2586.

Whether the supervised release conditions that are included in the written judgment, but were not orally pronounced at sentencing, are null and must be vacated? *United States v. Parks*, No. 14-3629

Whether the district court's failure to make the necessary determinations as to the length and condition of Mr. Parks's supervised release requires that his sentence be vacated and that the case be remanded for a full resentencing? *United States v. Parks*, No. 14-3629.

Whether certain conditions of supervised release entered on the written judgment should be vacated because they were not imposed at sentencing? *United States v. Evanick*, No. 13-3476

Whether, in light of *United States v. Thompson*, the district court erred in imposing certain discretionary conditions of supervised release without complying with the statutory requirements in 18 U.S.C. § 3583(d)? *United States v. Evanick*, No. 13-3476.

Whether the imposition of conditions of supervised release deemed vague and improper by *United States v. Kappes* requires a full resentencing or a limited remand due to the error? *United States v. Miller*, No. 14-3644.

Whether the discretionary supervised conditions the district court imposed at sentencing should be vacated and Mr. Armand should be given a full resentencing hearing? *United States v. Armand*, No. 14-3757.

Whether, despite the appeal waiver in this case, the unconstitutional supervised conditions the district court imposed at sentencing should be vacated and Mr. Jones should be given a full resentencing hearing? *United States v. Jones*, No. 15-1129.

Whether the district court erred by not justifying the ten year term of supervised release with any 18 U.S.C. § 3553(a) factors? *United States v. Hoffman*, No. 15-1051.

Whether the supervised release conditions listed in the written judgment are null because the district court did not orally pronounce them when it actually imposed sentence? *United States v. Hoffman*, No. 15-1051.

Whether the district court erred by imposing a supervised release condition that deprive Mr. Hoffman of his First Amendment rights to free speech, assembly, and religious expression? *United States v. Hoffman*, No. 15-1051.

Whether summarily adopted supervised release conditions for which no 18 U.S.C. § 3583(d) findings were made are valid? *United States v. Juarez*, No. 15-1164.

Whether despite its inclusion in the written judgment, the condition banning “any other dangerous weapon” is null since it was not orally pronounced at sentencing? *United States v. Juarez*, No. 15-1164.

Whether the district court failed to make appropriate findings regarding whether Mr. Plada should receive a term of supervised release, and if so, whether the court failed to make appropriate findings regarding the conditions of supervised release, failed to impose such conditions at the sentencing hearing, and imposed multiple vague and overbroad conditions? *United States v. Plada*, No. 14-3803.

Whether the condition of supervised release prohibiting Mr. Jaimes from possessing a dangerous weapon is unconstitutionally vague, when the district court provided no definition of the term and the condition does not contain a scienter requirement? *United States v. Jaimes-Moreno*, No. 15-1718.

Did the district court err when it ordered conditions of supervised release without giving Mr. Caira an opportunity to object or providing reasons for imposing the conditions? *United States v. Caira*, No. 14-1003.

Whether, pursuant to *United States v. Kappes*, the district court improperly imposed numerous discretionary conditions of supervised release, when it did not provide advance notice of the conditions, did not justify the conditions at sentencing, did not explain how the conditions were tailored to Mr. Liles, and did not orally impose nearly half the conditions? *United States v. Liles*, No. 15-2214.

Whether the sentencing judge reversibly erred by failing to make 18 U.S.C. § 3553(a) findings that justified the five year period of supervision? *United States v. Anderson*, No. 15-2710.

Whether portions of the supervised release conditions that are listed in the written judgment are null because they were not orally pronounced at the sentencing hearing? *United States v. Anderson*, No. 15-2710.

Whether the district court had jurisdiction to modify the terms of Mr. Miller's supervised release and amend the judgment to correct conditions of supervised release while an appeal of that judgment was pending in this Court? *United States v. Miller*, Nos. 14-3644 & 15-2727.

Whether the imposition of conditions of supervised release deemed vague and improper by *United States v. Kappes*, 782 F.3d 828 (7th Cir. 2015) requires a full resentencing or a limited remand due to the error? *United States v. Miller*, Nos. 14-3644 & 15-2727.

Whether, pursuant to *United States v. Kappes*, the district court improperly imposed numerous discretionary conditions of supervised release, when it did not provide advance notice of the conditions, did not justify the conditions at sentencing, did not explain how the conditions were tailored to Mr. Zamora, and did not orally pronounce most of the conditions? *United States v. Zamora*, No. 15-2193.

Whether the district court improperly imposed numerous conditions of supervised release when it did not provide advance notice of the conditions, did not justify the conditions at sentencing, did not explain how the conditions were applicable to Mr. Gutierrez, and did not orally pronounce the conditions? *United States v. Gutierrez*, No. 15-2762.

Whether Mr. Schrode's lifetime supervised release is invalid because, despite 18 U.S.C. § 3583(c)'s statutory requirements, the judge did not address the 18 U.S.C. § 3553(a) factors that supported lifetime supervision and did not state adequate reasons for the lifetime supervision? *United States v. Schrode*, No. 15-3522.

Whether by giving the U.S. Probation Officer power to determine many of Mr. Schrode's supervised release requirements, those supervised release conditions

violate Article III of the Constitution's non-delegation principle? *United States v. Schrode*, No. 15-3522.

Whether, pursuant to *United States v. Kappes*, the district court improperly imposed numerous discretionary conditions of supervised release, when it did not provide advance notice of the conditions, did not justify the conditions at sentencing, did not explain how the conditions were tailored to Mr. Flournoy, and did not orally pronounce most of the conditions? *United States v. Flournoy*, No. 14-2325.

The judge imposed a five-year term of supervised release. He then told the parties that he would later amend his judgment to impose the conditions of release. As of the filing of this brief, no conditions have been imposed. Does the failure to set any conditions necessitate a full resentencing hearing? *United States v. Ferguson*, No. 3753.

Whether the district court procedurally erred by not justifying lifetime supervised release in accordance with 18 U.S.C. § 3583(c)? *United States v. Gabriel*, No. 15-3427.

Whether various discretionary supervised release conditions are invalid because the court imposed them without making any findings to justify them? *United States v. Gabriel*, No. 15-3427.

Whether the district court erred by imposing supervised release conditions that did not comply with the required sentencing procedures? *United States v. Coppola*, No. 15-3490.

Whether the district court erred in imposing conditions of supervised release without specific findings or justifications and without properly pronouncing the conditions at sentencing? *United States v. Thomas*, No. 15-2509.

Whether because the government failed to establish the elements of aggravated battery, the district court erred by relying on that offense to revoke Mr. Golden's supervised release? *United States v. Golden*, No. 16-1232.

Whether by incorrectly determining that Mr. Golden committed a Grade A violation of supervised release, the district court miscalculated the policy range? *United States v. Golden*, No. 16-1232.

Whether the three years of supervision should be vacated because the district court did not make 18 U.S.C. § 3583(c) findings? *United States v. Golden*, No. 16-1232.

Whether the supervised release conditions should be vacated because the district court did not make the necessary findings before imposing them? *United States v. Golden*, No. 16-1232.

Whether the district court imposed overly broad and restrictive conditions of supervised release without the findings necessary to justify them? *United States v. Wagner*, No. 15-3265.

Warren's child pornography offense took place in his own home, roughly twelve years ago, and he lives about one hour from the eastern and southern borders of the Western District of Wisconsin. Among the conditions imposed, the court limited Warren's travel outside of the Western District absent prior approval by the probation office, without further guidance. Did the court err in imposing the condition? *United States v. Warren*, No. 16-1492.

This Court has held that a no-contact-with-minors provision can be imposed when there are much more disturbing information "than just a desire to see young children have sex with adults." Here, Warren has never committed a hands-on offense and nothing in his background establishes that he has a particular interest in children. Did the district court err in imposing the no-contact-with-minors provision? *United States v. Warren*, No. 16-1492.

Whether the judge erred by making insufficient findings to justify the five-year term of supervised release? *United States v. Ranjel*, No. 15-3778.

Whether the district court adequately explained why it imposed the statutory maximum of 24 months for a term of supervised release? *United States v. Raney*, No. 15-3574.

Whether it was plain error for the district court to impose a term of supervised release that requires Mr. Raney to “notify third parties of risks that may be occasioned” by his criminal record and personal history and characteristics as directed by his probation officer? *United States v. Raney*, No. 15-3574.

Whether the judge erred by imposing vague supervised release conditions that require Mr. Dickson to remain in the “jurisdiction” and notify “third parties of risks that may be occasioned by the defendant’s criminal record or personal history or characteristics”? *United States v. Dickson*, No. 16-1039.

Did the district court abuse its discretion by revoking Cary’s supervised release for contact with a female person under the age of 18? *United States v. Cary*, No. 15-3858.

Whether the district court erroneously found it was required to impose a mandatory five year term of supervised release? *United States v. Rivera*, No. 16-1322.

## XXII. WAIVER