

Tuesday, May 3, 2022

Check-in at Room 101 (Library) at: 9:00 for the First Case; 9:30 for the Second Case; 10:00 for the Third Case; 10:30 for the Fourth Case

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20-2370      [Briefs](#)  
NCO Financial Systems, Inc. v. Montgomery  
( Russell )      CONTRACT: Whether district court erred on remand in assessing reasonableness of lessor's efforts to relet commercial property after breach and in determining lessor's damages; related issues.

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20-6351      [Briefs](#)  
Berman Justus, Jr. v. Harold Clarke  
( Moon )      POSTCONVICTION: Whether petitioner was entitled to equitable tolling on his section 2254 petition due to mental illness.

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20-2303      [Briefs](#)  
Eddah Gachuma v. Merrick Garland  
IMMIGRATION: Whether the Board abused its discretion in denying the motion to reconsider.

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20-1253      [Briefs](#)  
Saudia Scott v. Old Navy, LLC  
( Russell )      CIVIL: Whether the district court erred in granting summary judgment in favor of Defendants on claims of negligence and false imprisonment; other issues.

PANEL I  
Red Courtroom (Room 412)  
Chief Judge Gregory, Judge Niemeyer, and Judge Harris  
9:30 a.m.

Tuesday, May 3, 2022

[LISTEN](#)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
Richmond, VA (5/3/2022 - 5/5/2022 Session)

Tuesday, May 3, 2022

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19-1759 [Briefs](#) CIVIL: Whether district court correctly concluded that Defendants did not owe contractual or other duty to  
Dianna Nidy v. U.S. Bancorp Plaintiff; other issues.  
( Copenhaver )  
Associations: 20-2163, 20-2171, 20-2172 [Briefs](#)

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20-2202 [Briefs](#) EMPLOYMENT: Whether district court erroneously determined that Plaintiff failed to notify Defendant of his  
Kasey Roberts v. Gestamp West Virginia, LLC need for FMLA leave; other issues.  
( Berger )

PANEL II  
Butzner Courtroom (Room 201)  
Judge Diaz, Judge Rushing, and Judge Heytens  
9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
Richmond, VA (5/3/2022 - 5/5/2022 Session)

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21-1478 [Briefs](#)  
William Garey v. James S. Farrin, P.C.  
( Biggs )

CIVIL: Whether lawyers violated Driver's Privacy Protection Act by obtaining drivers' information for advertising purposes.

Associations: 21-1480 [Briefs](#)

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21-1972 [Briefs](#)  
R.A. v. Brady Johnson  
( Bell )

CIVIL: Whether public school administrators are entitled to public official immunity for their failure to report an incident in which a teacher allegedly put a student in a trash can.

Associations: 21-1973

PANEL III  
Blue Courtroom (Room 339)  
Judge Wilkinson, Judge Motz, and Judge Thacker  
9:30 a.m.

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18-2180 [Briefs](#)  
Teresa Lavis v. Reverse Mortgage Solutions Inc  
( Berger )  
CIVIL: Whether the district court properly construed *Jesnoski v. Countrywide Home Loans, Inc.*, 135 S. Ct. 790 (2015) to mean that Appellee was not required to tender back loan proceeds following rescission under the Truth in Lending Act.

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21-6448 [Briefs](#)  
US v. Lance Whitaker  
( Dever )  
SENTENCING: Whether Whitaker established judicial vindictiveness when district court declined to reduce supervised release term after appeal of partial grant of First Step Act relief.

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21-2205 [Briefs](#)  
Justice 360 v. Bryan Stirling  
( Lewis )  
CONSTITUTIONAL LAW: Whether South Carolina statute prohibiting disclosure of certain execution protocols violates appellant's First Amendment free speech rights; related issues.

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21-1678 [Briefs](#)  
Tyrone Henderson, Sr. v. The Source for Public  
( Hudson )  
CIVIL: Whether sec. 230 of the Communications Decency Act immunizes consumer reporting agency from liability under the Fair Credit Reporting Act.

PANEL IV  
Gold Courtroom (Room 348)  
Judge Agee, Judge Richardson, and Judge Quattlebaum  
9:30 a.m.

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[LISTEN](#)

Richmond, VA (5/3/2022 - 5/5/2022 Session)

Tuesday, May 3, 2022

Check-in at Room 101 (Library) at: 9:00 for the First Case; 9:30 for the Second Case; 10:00 for the Third Case; 10:30 for the Fourth Case

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20-7144 [Briefs](#) CRIMINAL: Whether coram nobis relief is available to challenge 18 U.S.C. section 922(g) conviction under  
US v. Brooks Lesane United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc).  
( Boyle )

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20-4095 [Briefs](#) CRIMINAL: Whether district court sufficiently inquired into appellant's wife's invocation of Fifth Amendment  
US v. David Miller privilege against self-incrimination; sufficiency of the evidence; validity of indictment.  
( Ellis )  
Associations: 20-4121

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20-1762 [Briefs](#) IMMIGRATION: Whether single death threat on account of religion amounts to persecution; other issues.  
Zoila Sorto-Guzman v. Merrick Garland

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21-6553 [Briefs](#) CIVIL RIGHTS: Sufficiency of the evidence after bench trial on excessive force and related claims; whether  
Gary Wall v. E. Rasnick district court erred in denying spoliation motion.  
( Cullen )

PANEL V  
Tweed Courtroom (Room 414-D)  
Judge King, Judge Wynn, and Judge Floyd  
9:30 a.m.

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Richmond, VA (5/3/2022 - 5/5/2022 Session)

Tuesday, May 3, 2022

Check-in at Room 101 (Library) at: 1:30

22-1251 [Briefs](#)  
Madison Cawthorn v. Barbara Lynn Amalfi  
( Myers )

CONSTITUTIONAL LAW: Appeal from denial of intervention and grant of injunctive relief barring N.C. Board of Elections from considering voter challenges to candidacy, based on Section 3 of the Fourteenth Amendment.

PANEL VI  
Red Courtroom (Room 412)  
Judge Wynn, Judge Richardson, and Judge Heytens  
2:00 p.m.

Tuesday, May 3, 2022

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Wednesday, May 4, 2022

Check-in at Room 101 (Library) at: 9:00 for the First Case; 9:30 for the Second Case; 10:00 for the Third Case; 10:30 for the Fourth Case

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20-7702 [Briefs](#) POSTCONVICTION: Whether, after United States v. Davis, 139 S. Ct. 2319 (2019), movant may obtain section 2255 relief from career offender designation.  
US v. Derick Fallin  
( Bennett )

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20-4061 [Briefs](#) IMMIGRATION: Whether immigration judge's failure to advise alien about eligibility for voluntary departure is a due process violation that renders alien's removal order fundamentally unfair, warranting dismissal of criminal indictment.  
US v. Bonifacio Sanchez  
( Moon )

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20-2048 [Briefs](#) IMMIGRATION: Whether BIA's decision conflicts with In re Y-S-L-C-, 26 I. & N. Dec. 688 (B.I.A. 2015); whether the Immigration Judge contravened petitioner's due process rights.  
Rodolfo Tinoco Acevedo v. Merrick Garland

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20-1590 [Briefs](#) SOCIAL SECURITY: Propriety of Appeals Council's decision to exclude claimant's new evidence from record; other issues.  
Lawrence Wiebusch v. SSA  
( Childs )

PANEL I  
Red Courtroom (Room 412)  
Chief Judge Gregory, Judge Motz, and Judge Wynn  
9:30 a.m.

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21-1280 [Briefs](#)  
Diana Houck v. LifeStore Bank  
( Cayer )  
CIVIL: Whether district court lacked subject matter jurisdiction for claims under 11 U.S.C. 362(k); whether this court lacks jurisdiction to review order dismissing claims.

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21-1711 [Briefs](#)  
SEC v. Mark Johnson  
( Bennett )  
SECURITIES FRAUD: Whether district court erred in holding control person defendant jointly and severally liable for disgorgement in SEC civil enforcement action; other issues.

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19-4123 [Briefs](#)  
US v. Montana Barronette  
( Blake )  
Associations: 19-4562, 19-4160, 19-4180, 19-4181, 19-4328, 19-4408, 19-4726  
CRIMINAL: Consolidated direct appeal by eight defendants following six-week jury trial; multiple issues including challenges to pretrial and evidentiary rulings, sentencing, and sufficiency of evidence.

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22-1094 [Briefs](#)  
Eli Lilly and Company v. Novartis Pharma AG  
( Ellis )  
CIVIL: Challenge to order denying an application under 28 U.S.C. 1782 to obtain discovery in the United States for use in foreign proceedings.

PANEL II  
Butzner Courtroom 201  
Judge Niemeyer, Judge Diaz, and Senior Judge Floyd  
9:30 a.m.

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20-2251 [Briefs](#) CIVIL: Propriety of district court's grant of summary judgment to Government in civil action for forfeiture of  
US v. Dereck McClellan \$69,940.50 in United States currency.  
( Herlong )

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21-1932 [Briefs](#) CIVIL RIGHTS: Whether qualified immunity precludes suit against correctional facility management for  
Jacoby Garrett v. Harold Clarke requiring technology staff member to take random controlled substance test; other issues.  
( Payne )

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21-1623 [Briefs](#) BLACK LUNG: Whether Employer forfeited Appointments Clause challenge by raising issue for first time after  
Edd Potter Coal Company, Inc. v. DOWCP remand by Benefits Review Board.

PANEL III  
Blue Courtroom (Room 339)  
Judge Wilkinson, Judge Richardson, and Judge Rushing  
9:30 a.m.

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21-1549 [Briefs](#) CIVIL: Propriety of grant of summary judgment on claims under N.C. Gen. Stat. section 58-51-37 (pharmacy of  
Senderra RX Partners, LLC v. Blue Cross choice statute); other issues.  
( Eagles )

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21-1416 [Briefs](#) CONTRACT: Whether district court erred in interpreting staffing contract; whether gist of the action doctrine  
US Methanol, LLC v. CDI Corporation barred tort claims; other issues.  
( Goodwin )

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18-4819 [Briefs](#) CRIMINAL: Whether defendant's 18 U.S.C. section 922(g)(1) conviction is invalid in light of Rehaif v. United  
US v. Antwan Heyward States, 139 S. Ct. 2191 (2019); other issues.  
( Norton )

PANEL IV  
Gold Courtroom (Room 348)  
Judge King, Judge Agee, and Judge Heytens  
9:30 a.m.

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21-1756 [Briefs](#) CIVIL: Whether plaintiff qualified as prevailing party entitled to attorney's fees based on district court's grant of preliminary injunction.  
Damian Stinnie v. Richard Holcomb  
( Moon )

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21-2323 [Briefs](#) CONTRACT: Whether contract authorizing foreign transaction fees on "point-of-sale and ATM transactions made in foreign countries" unambiguously permits foreign transaction fees on transactions made by accountholders who never left the United States.  
Siobhan Morrow v. Navy Federal Credit Union  
( O'Grady )

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19-2004 [Briefs](#) EMPLOYMENT: Propriety of Merit Systems Protection Board's conclusion that employer would have terminated plaintiff's employment absent her whistleblowing activity.  
Susan Weber v. Department of Veterans Affairs

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21-1656 [Briefs](#) CIVIL: Whether district court erred granting summary judgment, concluding appellant could not prove "severe or pervasive" conduct under Title VII; related issues.  
Summer Sowash v. Marshalls of MA, Inc.  
( Urbanski )

PANEL V  
Tweed Courtroom (Room 414-D)  
Judge Thacker, Judge Harris, and Judge Quattlebaum  
9:30 a.m.

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19-2343      [Briefs](#)      EMPLOYMENT: Whether the district court erred in dismissing Appellant's Merit Systems Protection Board  
Robert Zachariasiewicz, Jr. v. DOJ      appeal for lack of jurisdiction.  
( Alston )

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21-1163      [Briefs](#)      IMMIGRATION: Jurisdiction to review denial of cancellation of removal for lack of moral character under  
Edwin Garcia Rogel v. Merrick Garland      "catch-all" provision in 8 U.S.C. section 1101(f).

PANEL I  
Red Courtroom (Room 412)  
Chief Judge Gregory, Judge Diaz, and Judge Thacker  
8:30 a.m.

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20-7320 [Briefs](#)  
US v. Leroy Goodwin  
( Currie )

Associations: 20-7362

SENTENCING: Whether, under the First Step Act, a district court may consider section 401's non-retroactive amendments when imposing a new sentence under section 404.

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20-4396 [Briefs](#)  
US v. Andrew Powers  
( Alston )

CRIMINAL: Adequacy of venue allegation for wire and mail fraud charges; whether district court reversibly erred in failing to consider policy challenge to fraud Guidelines.

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21-4196 [Briefs](#)  
US v. Nikia Tull  
( Doumar )

CRIMINAL: Whether district court erred in ruling that tax violations and wire fraud offenses were properly joined in indictment; other issues.

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21-4250 [Briefs](#)  
US v. Keith Nelson  
( Faber )

CRIMINAL: Whether the district court reversibly erred when it ordered that revocation sentence be followed by five years' supervised release; other issues.

PANEL II  
Butzner Courtroom 201  
Judge Wynn, Judge Harris, and Judge Rushing  
8:30 a.m.

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20-4280 [Briefs](#)  
US v. Demetrice Devine  
( Dever )  
Associations: 20-4327  
CRIMINAL: Propriety of denial of motion to sever; whether the imposed maximum, consecutive sentences were multiplicitous and/or violated double jeopardy; other issues.

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21-4554 [Briefs](#)  
US v. Tracy Brown  
( Jones )  
CRIMINAL: Whether district court erred in refusing to grant new trial when a juror alleged other jurors intimidated and harassed him to influence verdict.

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21-4085 [Briefs](#)  
US v. Ricky Runner  
( Bailey )  
CRIMINAL: Whether district court erred in finding that a glass pipe, without other evidence of related controlled substance use, supported probable cause to search vehicle.

PANEL III  
Blue Courtroom (Room 339)  
Judge Wilkinson, Judge Agee, and Judge Floyd  
8:30 a.m.

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21-4473 [Briefs](#) CONSTITUTIONAL LAW: Whether officers lacked probable cause to search appellant's cell phone and micro  
US v. David Orozco secure digital (SD) cards.  
( Dever )

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19-4887 [Briefs](#) CRIMINAL: Whether the district court erred in denying motion to suppress based on a finding of reasonable  
US v. Chandler Gist-Davis suspicion.  
( Tilley )

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21-4082 [Briefs](#) CRIMINAL: Propriety of warrantless search of backpack and multiple conditions of supervised release; other  
US v. Dewan Garris issues.  
( Conrad )

PANEL IV  
Gold Courtroom (Room 348)  
Judge King, Judge Richardson, and Judge Keenan  
8:30 a.m.

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21-4064 [Briefs](#) CRIMINAL: Whether district court plainly erred in failing to disclose and then considering ex parte statements  
US v. Thomas Combs made by defendant's ex-wife prior to revocation hearing.  
( Bennett )

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21-4445 [Briefs](#) SENTENCING: Whether district court erred in applying sentencing enhancement under USSG sec. 2K2.1(b)(6)(B)  
US v. Ronnie Montgomery and cross referencing 2B2.1 (burglary).  
( Eagles )

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21-1517 [Briefs](#) CIVIL: Whether district court erred in finding that plaintiffs were barred from bringing a Clean Water Act  
Naturaland Trust v. Dakota Finance LLC citizen suit; other issues.  
( Dawson )

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20-2250 [Briefs](#) INSURANCE: Multi-issue challenge to dismissal of action, including choice of law dispute and related issues.  
Redstone International, Inc. v. Liberty Mutual  
( Bailey )

Tweed Courtroom (Room 414-D)  
Judge Motz, Judge Quattlebaum, and Judge Heytens  
8:30 a.m.

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