

Tuesday, October 24, 2023

22-4088	Briefs	CRIMINAL: Whether the district court erred by denying Davis' motion to suppress evidence seized pursuant to a search warrant.
US v. Curtis Davis (Groh)		

22-1793	Briefs	CIVIL: Whether agent must allege student athlete had been declared ineligible by NCAA to challenge applicability of N.C.'s Uniform Athlete Agent Act to parties' contract.
Zion Williamson v. Prime Sports Marketing (Biggs)		
Associations: 22-1946		

22-4343	Briefs	CRIMINAL: Whether the district court abused its discretion in denying, on remand, Defendant's motion to withdraw his guilty plea; other issues.
US v. Kevin Forrest (Blake)		

PANEL I
Chief Judge Diaz, Senior Judge Traxler, Judge Walker*
Red Courtroom (Room 412)
9:30 a.m.

Tuesday, October 24, 2023

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*Hon. Jamar K. Walker, United States District Judge, Eastern District of Virginia

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21-2060	Briefs	CIVIL: Whether district court abused its discretion in denying Fed. R. Civ. P. 60(b) motion based on defendant's failure to disclose similar excessive force complaint.
Frank Morgan v. J. Tincher (Johnston)		

22-1999	Briefs	CIVIL: Challenge to summary judgment in favor of university in case alleging student's expulsion was based on content of student's speech during on-campus event.
Kieran Bhattacharya v. James Murray, Jr. (Moon)		
Associations:	22-2064	

22-6338	Briefs	CIVIL COMMITMENT: Whether petitioner is required to exhaust constitutional claims in commitment proceeding prior to filing 28 U.S.C. sec. 2241 petition. Other issues.
Gerald Timms v. U. S. Attorney General (Boyle)		

PANEL II
Judge Thacker, Judge Quattlebaum, Senior Judge Keenan
Butzner Courtroom 201
9:30 a.m.

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21-7257	Briefs	CRIMINAL: Whether district court applied proper analytical framework for determining whether VICAR assault, 18 U.S.C. section 1959(a)(3), qualifies as crime of violence; other issues.
US v. Dearnta Thomas (Jackson)		

20-6767	Briefs	POSTCONVICTION: Whether convictions for violent crime in aid of racketeering qualify as crimes of violence under force clause of 18 U.S.C. section 924(c); other issues.
US v. Cesar Castillo (Conrad)		

22-6607	Briefs	POSTCONVICTION: Whether the district court abused its discretion in denying compassionate release.
US v. Angel Centeno-Morales (Dillon)		

22-1808	Briefs	IMMIGRATION: Whether Petitioner demonstrated nexus between extortion and family-based particular social group; other issues.
Jose Lopez-Benitez v. Merrick Garland		

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

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21-2021	Briefs	COPYRIGHT: Whether photograph of Ted Nugent, taken from Wikimedia Commons and used in an article without direct attribution, violated copyright or was fair use; other issues.
Larry Philpot v. Independent Journal Review (Trenga)		

22-1815	Briefs	EMPLOYMENT: Whether the district court erroneously determined that Appellant failed to adequately plead a Title VII retaliatory refusal-to-hire claim; other issues.
Gabrielle Barbour v. Merrick Garland (Ellis)		

22-2000	Briefs	CIVIL: Whether forum non conveniens ruling in prior action precludes subsequent action which names an additional party who is not subject to foreign jurisdiction.
Conflict Kinetics, Inc. v. Bagira Systems, LTD. (Nachmanoff)		

PANEL IV
Judge King, Judge Wynn, Judge Rushing
Gold Courtroom (Room 348)
9:30 a.m.

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

21-2214	Briefs	CIVIL: Propriety of district court's rulings related to denial of Plaintiff's post judgment motion for leave to file a third amended complaint; other issues.
Anila Daulatzai v. State of Maryland (Bredar)		
Associations: 22-1816		

22-1945	Briefs	CIVIL: Whether district court properly determined that Appellant breached parties' agreement; other issues.
Advanced Trng Grp Worldwide, Inc. v. Pro-Active (Giles)		

PANEL V
Judge Niemeyer, Judge Gregory, Judge Harris
Tweed Courtroom (Room 414-D)
9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (10/24/2023 - 10/27/2023 Session)

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22-4360 US v. Thuy Luong (Bell)	Briefs	CRIMINAL: Whether district court erred in applying vulnerable victim enhancement under USSG section 3A1.1(b)(1) in prosecution for forced labor offense; other issues.
22-1542 Susan Harriman v. Associated Industries (Norton)	Briefs	INSURANCE: Whether district court reversibly erred in finding that, under South Carolina law, excess insurer owed no duty to defend; other issues.
Associations: 22-1694		
22-1964 Ronald Morgan v. Daniel Bruton (Biggs)	Briefs	BANKRUPTCY: Whether IRS is entitled to obtain prepetition lien on real property owned by debtor and non-debtor spouse as tenants by the entireties; other issues.
22-1954 Yagoub Mohamed v. Bank of America, N.A. (Blake)	Briefs	CIVIL: Whether prepaid account for pandemic-related unemployment is excluded by the Electronic Funds Transfer Act as "qualified disaster relief payment" exempted by Regulation E.

PANEL VI
Judge Heytens, Judge Benjamin, Judge Hanes*
Tan Courtroom (Room 223)
9:30 a.m.

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*Hon. Elizabeth W. Hanes, United States District Judge, Eastern District of Virginia

Wednesday, October 25, 2023

21-2193 Daniella Easterbrook v. Kilolo Kijakazi (Hilton)	Briefs	SOCIAL SECURITY: Whether the ALJ's decision to accord less than controlling weight to Appellant's treating physician's opinions is supported by substantial evidence.
22-4381 US v. Victor Berry (Dever)	Briefs	CRIMINAL: Whether Defendant's understanding of the District of Columbia Youth Rehabilitation Act is relevant to the knowledge-of-status element under 18 U.S.C. section 922(g)(1); other issues.
22-4309 US v. Robert McCabe (Allen)	Briefs	CRIMINAL: Propriety of instructing jury that stream of benefits in exchange for official acts could be considered bribery absent explicit promise to perform; other issues.
22-1368 Hussein Mouns v. Merrick Garland	Briefs	IMMIGRATION: Whether Board abused its discretion in declining to reconsider the denial of Yemeni citizen's third motion to reopen.

PANEL I
Judge King, Judge Gregory, Judge Goodwin*
Red Courtroom (Room 412)
9:30 a.m.

Wednesday, October 25, 2023

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*Hon. Joseph R. Goodwin, United States District Judge, Southern District of West Virginia

Wednesday, October 25, 2023

22-1762 [Briefs](#)
Yasuko Yagi v. Lee Hilgartner
(Alston)
Associations: 22-1778

BANKRUPTCY: Whether money owed pursuant to a presuit settlement agreement for a willful and malicious tort is dischargeable under 11 U.S.C. section 523(a)(6); other issues.

22-1837 [Briefs](#)
Zayo Group, LLC v. Norfolk Southern Railway
(O'Grady)

CIVIL: Whether Virginia State Corporation Commission is a "court" for purposes of removal under 28 U.S.C. section 1441; preemption; other issues.

22-1554 [Briefs](#)
Norfolk Southern Railway Company v. Zayo
(O'Grady)

ARBITRATION: Whether lease provision for determining fair market value using panel of appraisers was an agreement to arbitrate.

PANEL II
Judge Harris, Judge Quattlebaum, Judge Bell
Butzner Courtroom 201
9:30 a.m.

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22-4147 [Briefs](#)
US v. Malek Lassiter
(Davis)

CRIMINAL: Whether VICAR attempted murder is section 924(c) predicate; application of mandate rule and plain error standard after Supreme Court's Taylor decision; other issues.

22-1617 [Briefs](#)
Remy Holdings International, LLC v. Fisher
(Dillon)

CONTRACT: Whether parties' core policy agreement violated the Virginia statute of frauds; whether district court erred in dismissing Remy's unjust enrichment claim, calculating damages, and admitting testimony of an expert witness; other issues.

PANEL III
Judge Agee, Judge Wynn, Judge Richardson
Blue Courtroom (Room 339)
9:30 a.m.

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22-1340	Briefs	LABOR: Whether supervisor's antiunion animus was properly imputed to corporate review team; other issues.
Bardon, Inc. v. NLRB		
Associations: 22-1421		

22-1785	Briefs	CIVIL: Whether N.C. Gen. Stat. section 153A-346(b) and a Building Code Council decision abrogated Long v. Currituck County, 787 S.E. 2d 835 (2016); other issues.
Currituck County, NC v. Elizabeth LeTendre (Boyle)		

22-1253	Briefs	ARBITRATION: Whether district court had subject matter jurisdiction to confirm arbitration award; whether injunction was overly broad or vague; other issues.
Smartsky Networks, LLC v. DAG Wireless, LTD. (Schroeder)		

22-6437	Briefs	CIVIL RIGHTS: Whether complaint failed to state a due process claim related to inmate's placement in the Rehabilitative Diversion Unit and progression through that unit.
William Kimble v. Gregory Swink (Reidinger)		

PANEL IV
Chief Judge Diaz, Judge Thacker, Judge Rubin*
Gold Courtroom (Room 348)
9:30 a.m.

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*Hon. Julie R. Rubin, United States District Judge, District of Maryland

Wednesday, October 25, 2023

22-1877 Briefs Sara Zito v. Strata Equity Group, Inc. (Hendricks)	CIVIL: Whether court erred in concluding tenants failed to exhaust existing administrative remedy regarding landlord's billing of water and sewer services; other issues.
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22-1827 Briefs Stephanie Walker v. Petsense, LLC (Biggs) Associations: 22-2133	CIVIL: Whether plaintiff must be afforded opportunity to review district court's terms of dismissal before entry of order dismissing action without prejudice under Rule 41(a)(2).
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22-4291 Briefs US v. Richard Lewis (Hudson)	SENTENCING: Whether Chapter Seven of the Sentencing Guidelines is ultra vires and therefore void; other issues.
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22-6118 Briefs US v. James Vandivere (Dever)	CIVIL COMMITMENT: Propriety of determination that petitioner committed under Adam Walsh Act bore burden by preponderance to show discharge entitlement under 18 U.S.C. section 4247(h).
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PANEL V
Judge Wilkinson, Judge Niemeyer, Judge Benjamin
Tweed Courtroom (Room 414-D)
9:30 a.m.

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20-4565	Briefs	CRIMINAL: Consolidated direct appeal by four defendants following multi-day jury trial; multiple issues including challenges to pretrial and evidentiary issues, sentencing, and sufficiency of evidence.
US v. Dricko Huskey (Whitney)		
Associations: 20-4572, 20-4573, 20-4574		

22-6285	Briefs	CRIMINAL: Whether assault under 18 U.S.C. section 1959(a)(3) or under N.C. Gen Stat. section 14.33(c)(1) is a crime of violence under 18 U.S.C. section 924(c)(3)(A).
US v. Carlos Kinard (Mullen)		

22-2106	Briefs	CIVIL: Whether fees demanded by Defendants before Plaintiff sold properties were transfer fees under North Carolina law prohibiting such fees; other issues.
Susan Carpenter v. William Douglas (Conrad)		

PANEL VI
Judge Rushing, Judge Heytens, Senior Judge Keenan
Tan Courtroom (Room 223)
9:30 a.m.

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22-1619	Briefs	CLASS ACTION: Whether district court erred in granting class certification in action brought under the Fair Credit Reporting Act; other issues.
Marco Fernandez v. RentGrow, Inc. (Bredar)		

22-1707	Briefs	IMMIGRATION: Whether Board erred in adopting mixed credibility finding; nexus between extortion and family membership.
Luis Ayala-Osegueda v. Merrick Garland		

22-1403	Briefs	CONTRACT: Whether district court erred in finding that obtaining land use approval was a condition precedent for real estate development contract; other issue.
Metropolitan Devlmt. Grp v. Cool Spring Rd (Hazel)		

21-2284	Briefs	CIVIL: Whether plaintiff plausibly alleged due process claims and defendants' section 1983 liability under Monell based on denial of rezoning application; other issues.
Scratch Golf, LLC v. Beaufort County (Gergel)		

PANEL I
Judge Niemeyer, Judge Quattlebaum, Judge Rushing
Red Courtroom (Room 412)
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22-1402	Briefs	CIVIL: Whether plaintiff sufficiently alleged racial discrimination under 42 U.S.C. section 1981 to survive motion to dismiss.
Alexis Guerrero v. Ollie's Bargain Outlet, Inc. (Bennett)		
22-1621	Briefs	INSURANCE/CONTRACT: Whether a criminal indictment constitutes a "claim" for a "wrongful act" under professional liability insurance policies; other issues.
Jeremy Schulman v. Axis Surplus Insurance (Griggsby)		
23-1526	Briefs	JURISIDCITION: Whether this Court has jurisdiction to review 6-month stay entered pursuant to Younger v. Harris, 401 U.S. 37 (1971); propriety of abstention.
Samuel Orlando v. Donald Smith (Urbanski)		
22-1720	Briefs	ERISA: Whether the district court erred in finding that appellant's medical conditions were insufficient to meet insurance plan's definition of disability.
Tracy Penland v. Metropolitan Life Insurance (Herlong)		

PANEL II
Judge Wynn, Judge Harris, Judge Benjamin
Butzner Courtroom 201
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22-1546	Briefs	IMMIGRATION: Whether substantial evidence supports the finding that the Honduran government was not unable or unwilling to protect Petitioner; related issues.
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22-1584	Briefs	CONSTITUTIONAL LAW: Constitutionality of former version of CARES Act, which precluded child-based economic stimulus payment when one parent lacked a Social Security number.
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20-4534	Briefs	CRIMINAL: Whether district court erred denying motion to dismiss for speedy trial violation where magistrate judge did not articulate whether extension served ends of justice.
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Lilian Escobar-Hernandez v. Merrick Garland		
Juana Rueda v. Janet Yellen (Hollander)		
US v. Kenneth Hart (Messitte)		

PANEL III
Judge King, Judge Thacker, Judge Richardson
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22-1788 [Briefs](#)
Kewon English v. Joseph Clarke
(Childs)
Associations: 22-1817

CIVIL RIGHTS: Propriety of order granting Defendants summary judgment on Plaintiff English's claims; whether cross-appeal related to Defendant Clarke's qualified immunity defense is immediately appealable.

22-4159 [Briefs](#)
US v. Kevlin Jackson
(Chambers)

CRIMINAL: Whether appellate waiver precludes challenge to substantive reasonableness of supervision condition; reasonableness of warrantless search condition following conviction for unlawful possession of a firearm.

PANEL IV
Judge Diaz, Judge Wilkinson, Judge Heytens
Gold Courtroom (Room 348)
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20-1888	Briefs	BLACK LUNG: Propriety of ALJ's findings of clinical and legal pneumoconiosis; whether Employer forfeited Appointments Clause challenge.
Island Creek Coal Company v. Daniel Looney		

22-1420	Briefs	CIVIL: Whether district court correctly granted summary judgment to Defendant on tort, quasi-tort, and contract claims; other issues.
M.D. Russell Const., Inc. v. Consolidated Staffing (Boyle)		

21-4235	Briefs	SENTENCING: Propriety of enhancements for possessing firearm in connection with another felony offense, USSG section 2K2.1(b)(6)(B), and reckless endangerment during flight, USSG section 3C1.2. 15 mins.
US v. Eric Henderson (Bell)		

PANEL V
Judge Gregory, Judge Agee, Judge Ballou*
Tweed Courtroom (Room 414-D)
9:30 a.m.

Thursday, October 26, 2023

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*Hon. Robert S. Ballou, United States District Judge, Western District of Virginia

Friday, October 27, 2023

23-1078	Briefs	CONSTITUTIONAL LAW: Whether West Virginia's categorical ban on transgender girls playing on girls' school sports teams violates Equal Protection Clause, Title IX.
B.P.J. v. West Virginia State Board of Ed (Goodwin)		
Associations:	23-1130	

22-1825	Briefs	EMPLOYMENT: In failure-to-accommodate claim arising under ADA and ADEA, whether performing field visits was an essential function of position.
Laura Tartaro-McGowan v. Inova Home (Alston)		

21-4181	Briefs	CRIMINAL: Propriety of sentencing enhancements for drug quantity and having a leadership role in the offense; other issues. 15 mins.
US v. Rodriques Evans (Bailey)		

20-4482	Briefs	CRIMINAL: Motion to suppress; sufficiency of evidence; whether Maryland robbery qualifies as crime of violence under USSG section 4B1.2 for career offender purposes.
US v. Robert Barnes (Jones)		

PANEL I
Judge Agee, Judge Harris, Judge Heytens
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23-1418	Briefs	CLEAN AIR ACT: Argument on motion to transfer or dismiss petition for review and motion to stay EPA final rule disapproving West Virginia's implementation plan under National Ambient Air Quality Standard of Clean Air Act.
State of West Virginia v. EPA		

22-1441	Briefs	CIVIL: Whether district court correctly determined date on which university employee's Title IX cause of action accrued, rendering her complaint untimely.
Alyssa Reid v. James Madison University (Dillon)		

PANEL II
Judge Niemeyer, Judge Thacker, Judge Quattlebaum
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22-1931 Tijuana Decoster v. Xavier Becerra (Chuang)	Briefs	EMPLOYMENT: Whether district court erred in finding former federal employee sought to challenge only the agency's remedy on her retaliation claim; other issues.
21-4504 US v. Alvin Johnson (Flanagan)	Briefs	CRIMINAL: Whether, on remand for resentencing, the Government plainly breached the plea agreement by moving for an upward departure or variance.
21-4684 US v. Adonis Perry (Smith)	Briefs	CRIMINAL: Whether the district court erred in denying defendant's motion to suppress evidence recovered from warrantless search of cell phone; other issues.
19-4761 US v. Joel Smithers (Jones)	Briefs	CRIMINAL: Whether sufficient evidence supports each of the defendant's 859 convictions for unlawful distribution of a controlled substance; other issues.

PANEL III
Judge Gregory, Judge Richardson, Judge Benjamin
Blue Courtroom (Room 339)
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21-4312 US v. Joshua Roy (Kleeh) Associations: 21-4327	Briefs	SENTENCING: Whether district court improperly relied on conclusion that fentanyl is so potent merely touching it can cause overdose; other issues.
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19-4865 US v. Darrius King (Coggins)	Briefs	CRIMINAL: Whether the district court plainly erred by failing to inform the defendant about the significance of supervised release during the guilty plea hearing.
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22-4178 US v. Everett Maynard (Berger)	Briefs	CRIMINAL: Whether the Confrontation Clause was violated when witnesses were ordered to wear masks; related issues.
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22-4166 US v. Gregory Brantley (Boyle)	Briefs	CRIMINAL: Whether defendant's untimely appeal may be excused when district court committed a Rogers error; other issues.
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PANEL IV
Chief Judge Diaz, Judge Wilkinson, Judge Ballou*
Gold Courtroom (Room 348)
8:30 a.m.

Friday, October 27, 2023

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*Hon. Robert S. Ballou, United States District Judge, Western District of Virginia