

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
US v. Curtis Davis warrant.
(Groh)

22-1793 [Briefs](#) CIVIL: Whether agent must allege student athlete had been declared ineligible by NCAA to challenge applicability of
Zion Williamson v. Prime Sports Marketing N.C.'s Uniform Athlete Agent Act to parties' contract.
(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
US v. Kevin Forrest guilty plea; other issues.
(Blake)

22-1895 [Briefs](#) ARBITRATION: Whether the district court erred in concluding that Petitioners failed to show that the arbitration panel
Stanley Friedler v. Stifel, Nicolaus, & Co manifestly disregarded the law.
(Gallagher)

PANEL I
Red Courtroom (Room 412)
9:30 a.m.

Tuesday, October 24, 2023

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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)		
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22-1835	Briefs	CIVIL: Multi-issue challenge to district court's dismissal of relator's claims alleging fraud in Medicaid and IDEA/Title I billing.
US ex rel. Patrick Donohue v. Loudoun (Trenga)		
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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	
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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
Butzner Courtroom 201
9:30 a.m.

Tuesday, October 24, 2023

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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)		
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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)		
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22-6607	Briefs	POSTCONVICTION: Whether the district court abused its discretion in denying compassionate release.
US v. Angel Centeno-Morales (Dillon)		
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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
Blue Courtroom (Room 339)
9:30 a.m.

Tuesday, October 24, 2023

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21-2021 Larry Philpot v. Independent Journal Review (Trenga)	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.
22-1930 Virginia Garcia Cortes v. Merrick Garland	Briefs	IMMIGRATION: Whether agency improperly assessed hardship to U.S. citizen child in denying cancellation of removal.
22-1815 Gabrielle Barbour v. Merrick Garland (Ellis)	Briefs	EMPLOYMENT: Whether the district court erroneously determined that Appellant failed to adequately plead a Title VII retaliatory refusal-to-hire claim; other issues.
22-2000 Conflict Kinetics, Inc. v. Bagira Systems, LTD. (Nachmanoff)	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.

PANEL IV
Gold Courtroom (Room 348)
9:30 a.m.

Tuesday, October 24, 2023

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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

22-1804 [Briefs](#) IMMIGRATION: Whether this Court has jurisdiction due to untimely petition for review; related issues.
Luis Flores-Bacigalupo v. Merrick Garland

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
Tweed Courtroom (Room 414-D)
9:30 a.m.

Tuesday, October 24, 2023

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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 entirety; 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
Tan Courtroom (Room 223)
9:30 a.m.

Tuesday, October 24, 2023

Wednesday, October 25, 2023

21-2193	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.
Daniella Easterbrook v. Kilolo Kijakazi (Hilton)		
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22-4381	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.
US v. Victor Berry (Dever)		
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22-4309	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.
US v. Robert McCabe (Allen)		
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22-1368	Briefs	IMMIGRATION: Whether Board abused its discretion in declining to reconsider the denial of Yemeni citizen's third motion to reopen.
Hussein Mouns v. Merrick Garland		

PANEL I
Red Courtroom (Room 412)
9:30 a.m.

Wednesday, October 25, 2023

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20-4133 [Briefs](#) CRIMINAL: On remand from Supreme Court, whether Ruan v. United States, 142 S. Ct. 2370 (2022), alters disposition of
US v. George Naum, III appeal.
(Keeley)

22-1762 [Briefs](#) BANKRUPTCY: Whether money owed pursuant to a presuit settlement agreement for a willful and malicious tort is
Yasuko Yagi v. Lee Hilgartner dischargeable under 11 U.S.C. section 523(a)(6); other issues.
(Alston)
Associations: 22-1778

22-1837 [Briefs](#) CIVIL: Whether Virginia State Corporation Commission is a "court" for purposes of removal under 28 U.S.C. section 1441;
Zayo Group, LLC v. Norfolk Southern Railway preemption; other issues.
(O'Grady)

22-1554 [Briefs](#) ARBITRATION: Whether lease provision for determining fair market value using panel of appraisers was an agreement
Norfolk Southern Railway Company v. Zayo to arbitrate.
(O'Grady)

PANEL II
Butzner Courtroom 201
9:30 a.m.

Wednesday, October 25, 2023

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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.

21-1030 [Briefs](#)
Yureily Barahona-Flores v. Merrick Garland IMMIGRATION: Whether petitioners established that exceptional circumstances prevented their attendance at the immigration hearing.

22-4113 [Briefs](#)
US v. William Wilson
(O'Grady) CRIMINAL: Challenges to late disclosure of discovery, sufficiency of evidence, and leadership enhancement in case involving charges of bribery in government contracting.

PANEL III
Blue Courtroom (Room 339)
9:30 a.m.

Wednesday, October 25, 2023

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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
Currituck County, NC v. Elizabeth LeTendre County, 787 S.E. 2d 835 (2016); other issues.
(Boyle)

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

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

PANEL IV
Gold Courtroom (Room 348)
9:30 a.m.

Wednesday, October 25, 2023

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22-1877	Briefs	CIVIL: Whether court erred in concluding tenants failed to exhaust existing administrative remedy regarding landlord's billing of water and sewer services; other issues.
Sara Zito v. Strata Equity Group, Inc. (Hendricks)		
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22-1827	Briefs	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).
Stephanie Walker v. Petsense, LLC (Biggs)		
Associations: 22-2133		
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22-4291	Briefs	SENTENCING: Whether Chapter Seven of the Sentencing Guidelines is ultra vires and therefore void; other issues.
US v. Richard Lewis (Hudson)		
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22-6118	Briefs	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).
US v. James Vandivere (Dever)		

PANEL V
Tweed Courtroom (Room 414-D)
9:30 a.m.

Wednesday, October 25, 2023

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20-4565 [Briefs](#)

US v. Dricko Huskey

(Whitney)

Associations: 20-4572, 20-4573, 20-4574

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.

22-6285 [Briefs](#)

US v. Carlos Kinard

(Mullen)

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).

22-2106 [Briefs](#)

Susan Carpenter v. William Douglas

(Conrad)

CIVIL: Whether fees demanded by Defendants before Plaintiff sold properties were transfer fees under North Carolina law prohibiting such fees; other issues.

22-1050 [Briefs](#)

Jorge Alvarado-Perez v. Merrick Garland

IMMIGRATION: Whether petitioner established a reasonable possibility of persecution in his home country on account of his family ties.

PANEL VI
Tan Courtroom (Room 223)
9:30 a.m.

Wednesday, October 25, 2023

Thursday, October 26, 2023

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)		
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22-1707	Briefs	IMMIGRATION: Whether Board erred in adopting mixed credibility finding; nexus between extortion and family membership.
Luis Ayala-Osegueda v. Merrick Garland		
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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)		
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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
Red Courtroom (Room 412)
9:30 a.m.

Thursday, October 26, 2023

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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)		
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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)		
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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)		
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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
Butzner Courtroom 201
9:30 a.m.

Thursday, October 26, 2023

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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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22-1908	Briefs	CONSTITUTIONAL LAW: Whether district court properly dismissed for lack of standing and ripeness challenge to constitutionality of Va. Code Ann. section 37.2-416.
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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.

PANEL III
Blue Courtroom (Room 339)
9:30 a.m.

Thursday, October 26, 2023

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22-1144 [Briefs](#) EMPLOYMENT: Whether the district court reversibly erred when it granted Defendant's motion to dismiss Plaintiff's Title VII and ADEA claims; other issues.
Marthe Lattinville-Pace v. Intelligent Waves
(O'Grady)

22-1788 [Briefs](#) 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.
Kewon English v. Joseph Clarke
(Childs)
Associations: 22-1817

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

22-1141 [Briefs](#) IMMIGRATION: Whether misdemeanor impersonation under Delaware law is categorically a crime involving moral turpitude under Immigration and Nationality Act.
Roberto Belong v. Merrick Garland

PANEL IV
Gold Courtroom (Room 348)
9:30 a.m.

Thursday, October 26, 2023

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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.
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22-1420	Briefs	CIVIL: Whether district court correctly granted summary judgment to Defendant on tort, quasi-tort, and contract claims; other issues.
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22-1283	Briefs	INSURANCE: Whether the district court erroneously granted summary judgment on Plaintiff's breach of contract and bad faith claims; other issues.
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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.

PANEL V
Tweed Courtroom (Room 414-D)
9:30 a.m.

Thursday, October 26, 2023

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		
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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)		
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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)		
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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
Red Courtroom (Room 412)
8:30 a.m.

Friday, October 27, 2023

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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 State of West Virginia v. EPA West Virginia's implementation plan under National Ambient Air Quality Standard of Clean Air Act.

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

22-4125 [Briefs](#) CRIMINAL: Whether the district court erred by admitting witness' statement as a prior consistent statement; related US v. Kevin Smith issues. (Trenka)

22-4264 [Briefs](#) CRIMINAL: Whether the district court erred in imposing a sentencing enhancement under U.S. Sentencing Guidelines US v. Unique Brunson Manual section 2D1.1(b)(2) (2021) for making a credible threat to use violence. (15 mins.) (Wooten)

PANEL II
Butzner Courtroom 201
8:30 a.m.

Friday, October 27, 2023

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

PANEL III
Blue Courtroom (Room 339)
8:30 a.m.

Friday, October 27, 2023

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21-4312 [Briefs](#) SENTENCING: Whether district court improperly relied on conclusion that fentanyl is so potent merely touching it can
US v. Joshua Roy cause overdose; other issues.
(Kleeh)
Associations: 21-4327

19-4865 [Briefs](#) CRIMINAL: Whether the district court plainly erred by failing to inform the defendant about the significance of
US v. Darrius King supervised release during the guilty plea hearing.
(Coggins)

22-4178 [Briefs](#) CRIMINAL: Whether the Confrontation Clause was violated when witnesses were ordered to wear masks; related issues.
US v. Everett Maynard
(Berger)

22-4166 [Briefs](#) CRIMINAL: Whether defendant's untimely appeal may be excused when district court committed a Rogers error; other
US v. Gregory Brantley issues.
(Boyle)

PANEL IV
Gold Courtroom (Room 348)
8:30 a.m.

Friday, October 27, 2023