

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2022 - 10/28/2022 Session)

Page 1 of 22
REVD 10/27/22

Tuesday, October 25, 2022

19-7795	Briefs	SENTENCING: Whether district court erred by failing to give defendant notice of negative information considered in imposing First Step Act sentence; other issues.
US v. John Jackson (Chambers)		
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21-2184	Briefs	CIVIL: Whether complaint sufficiently alleged that discharge of dead fish and dredged material in navigable waters violates the Clean Water Act.
North Carolina Coastal v. Captain Gaston LLC (Flanagan)		
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21-2130	Briefs	CONSTITUTIONAL LAW: Whether district court erred in denying qualified immunity to officer involved in fatal shooting.
Deborah Bygum v. The City of Montgomery (Copenhaver)		
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21-6422	Briefs	CIVIL RIGHTS: Appeal following ten-day jury trial on deliberate indifference claims against warden related to inmate assault by correctional officers, resulting in damages award to inmate.
Kevin Younger v. Tyrone Crowder (Bennett)		

PANEL I
Judge Richardson, Judge Rushing, Judge Lydon
Red Courtroom (Room 412)
9:30 a.m.

Tuesday, October 25, 2022

[LISTEN](#)

*Hon. Sherri A. Lydon, United States District Judge, District of South Carolina

Tuesday, October 25, 2022

22-1008	Briefs	MOUNTAIN VALLEY PIPELINE: Challenge to WV Department of Environmental Protection's issuance of Clean Water Act sec. 401 certification.
Sierra Club v. West Virginia DEP		

19-7354	Briefs	POSTCONVICTION: Whether the district court abused its discretion in dismissing Defendant's Fed. R. Civ. P. 60(b)(3) motion as time-barred.
US v. Roderick Williams (Bell)		

20-7593	Briefs	POSTCONVICTION: Whether trial counsel rendered ineffective assistance by failing to file suppression motion based on Government's allegedly unlawful acquisition of repoll number data.
US v. Gloria Taylor (Chuang)		

PANEL II
Chief Judge Gregory, Judge Wynn, Judge Thacker
Butzner Courtroom 201
9:30 a.m.

Tuesday, October 25, 2022

[LISTEN](#)

Tuesday, October 25, 2022

21-2061 Speech First, Inc. v. Timothy Sands (Urbanski)	Briefs	CONSTITUTIONAL LAW: Whether plaintiff is entitled to preliminary injunction in First Amendment challenge to university's bias-incidents policy and informational-activities policy.
21-2077 Avail Vapor, LLC v. FDA	Briefs	CIVIL: Multi-issue appeal related to FDA's issuance of marketing denial order on premarket tobacco application.
21-7066 US v. Keanan Bond (Flanagan)	Briefs	POSTCONVICTION: Whether district court abused its discretion in considering plea agreement a factor in denying compassionate release.
21-4059 US v. Escovio Rios (Reidinger)	Briefs	CRIMINAL: Whether district court plainly erred in exercising jurisdiction over supervised release revocation where Defendant had been transferred to Mexico to complete sentence; related issues.

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

Tuesday, October 25, 2022

[LISTEN](#)

Tuesday, October 25, 2022

20-1927	Briefs	CIVIL: Whether leases' purchase options obligated Appellees to sell Appellants' real property.
Walmart Real Estate Business v. Quarterfield (Boardman)		
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21-1858	Briefs	BANKRUPTCY: Whether liability insurer has standing to appeal order confirming joint plan of reorganization; whether appeal is equitably moot.
Truck Insurance Exchange v. Kaiser Gypsum (Mullen)		
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21-1632	Briefs	BANKRUPTCY: Whether the bankruptcy court abused its discretion in imposing sanctions against Delafield.
U. S. Trustee v. Darren Delafield (Urbanski)		
BEFORE Judge King, Quattlebaum, Judge Lauck*		

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

Tuesday, October 25, 2022

[LISTEN](#)

*Hon. M. Hannah Lauck, United States District Judge, Eastern District of Virginia

Tuesday, October 25, 2022

21-7092	Briefs	POSTCONVICTION: Whether district court sufficiently explained decision to deny compassionate release; other issues.
US v. Jose Gutierrez (Russell)		

21-2166	Briefs	CONSTITUTIONAL LAW: Whether SC statutes prohibiting disturbing schools and engaging in disorderly conduct in schools are unconstitutionally vague.
Carolina Youth Action Project v. Alan Wilson (Seymour)		

21-6109	Briefs	CONSTITUTIONAL LAW: Whether Bivens remedy presently exists for Eighth Amendment claims alleging unlawful conditions of confinement.
Raymond Tate v. D. J. Harmon (Moon)		

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

Tuesday, October 25, 2022

[LISTEN](#)

Wednesday, October 26, 2022

21-2172 [Briefs](#)
Martin Smiley v. Anshu Bhatnagar
(Grimm)

CIVIL: Whether district court erred in holding plaintiffs' corporate injuries were not direct and that they did not have standing to file shareholder derivative suit based on special injuries.

21-1848 [Briefs](#)
Elizabeth Polak v. Virginia DEQ
(Gibney)

EMPLOYMENT: Whether district court erred in holding that Appellant did not identify proper comparator to support Equal Pay Act claim; other issues.

PANEL I
Judge Niemeyer, Judge Diaz, Judge Rushing
Red Courtroom (Room 412)
9:30 a.m.

Wednesday, October 26, 2022

[LISTEN](#)

Wednesday, October 26, 2022

20-2052	Briefs	CIVIL: Whether district court erred in finding question of insurance coverage moot; whether West Virginia
Westfield Insurance Company v. Sistersville		would apply continuous trigger theory of insurance coverage.
(Bailey)		

21-6602	Briefs	POSTCONVICTION: Whether the district court abused its discretion in denying compassionate release.
US v. Rayco Bethea		
(Anderson)		

21-1839	Briefs	JURISDICTION: Whether plaintiffs lacked standing to challenge rule reducing environmental analysis and
Wild Virginia v. Council on Environmental Qlty		disclosure requirements under National Environmental Protection Act; whether challenge is ripe for review.
(Jones)		

PANEL II
Judge Agee, Judge Wynn, Senior Judge Motz
Butzner Courtroom 201
9:30 a.m.

Wednesday, October 26, 2022

[LISTEN](#)

Wednesday, October 26, 2022

21-1181	Briefs	EMPLOYMENT: Whether district court erred in granting summary judgment for defendant in race discrimination case.
Trinette Coleman v. John Whitley (Gallagher)		

21-7039	Briefs	POSTCONVICTION: Whether First Step Act and/or Declaratory Judgment Act permit reclassification of defendant with completed sentence as misdemeanor rather than felon.
US v. Darwyn Payne (Brinkema)		

21-6733	Briefs	POSTCONVICTION: Whether defendant's sentencing challenges are cognizable as "extraordinary and compelling reasons" for compassionate release; whether issue exhaustion requirement applies to compassionate-release proceedings.
US v. Dwayne Ferguson (Payne)		

21-1697	Briefs	CIVIL: Whether Military Lending Act applies to bundled financing that includes loan products that would not otherwise be subject to the Act.
Jerry Davidson v. United Auto Credit Corporation (Brinkema)		

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

Wednesday, October 26, 2022

[LISTEN](#)

Wednesday, October 26, 2022

18-0006	Briefs	POSTCONVICTION: Whether section 2254(e) was waived; impact of Shinn v. Martinez Ramirez, 142 S. Ct. 1718 (2022).
Sammie Stokes v. Bryan Stirling (Harwell)		

21-1779	Briefs	CIVIL: Whether jury was properly instructed in First Amendment retaliation suit.
Rebecca Snoeyenbos v. Marcia Curtis (Novak)		

21-2245	Briefs	CIVIL: Challenge to district court decision regarding applicable statute of limitations in standalone IDEA fee actions.
Jemie Sanchez v. Arlington County School Board (Ellis)		

PANEL IV
Chief Judge Gregory, Judge Harris, Judge Quattlebaum
Gold Courtroom (Room 348)
9:30 a.m.

Wednesday, October 26, 2022

[LISTEN](#)

Wednesday, October 26, 2022

21-2392	Briefs	CIVIL: Whether Church stated a claim for RLUIPA and First Amendment violations where County required Church to obtain ABC license to meet on Church property.
Alive Church v. Prince William (Brinkema)		
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19-7246	Briefs	SENTENCING: Whether victims whose losses included drug proceeds qualify as victims under the Mandatory Victims Restitution Act, 18 U.S.C. section 3663A.
US v. Marcus Taylor (Blake)		
Associations: 21-4422		
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21-2048	Briefs	AGENCY: Whether case considered by ALJ appointed in violation of Appointments Clause should have been assigned to new ALJ on remand; other issues.
Camille Brooks v. Kilolo Kijakazi (Davis)		
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21-4436	Briefs	CRIMINAL: Whether district court erred in declining to order a competency evaluation or continue sentencing to allow counsel to obtain mental health records.
US v. Maurice Rakestraw (Conrad)		

PANEL V
Judge King, Judge Heytens, Judge Lydon*
Tweed Courtroom (Room 414-D)
9:30 a.m.

Wednesday, October 26, 2022

[LISTEN](#)

*Hon. Sherri A. Lydon, United States District Judge, District of South Carolina

Wednesday, October 26, 2022
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2022 - 10/28/2022 Session)

Page 11 of 22

Thursday, October 27, 2022

21-1827 [Briefs](#) CONSTITUTIONAL LAW: Whether policy prohibiting the livestreaming of a traffic stop from inside the stopped
Dijon Sharpe v. Winterville Police Department vehicle violates the First Amendment; related issues.
(Dever)

21-2317 [Briefs](#) JURISDICTION: Whether plaintiffs lack standing to bring suit against HHS for lack of post-deprivation process
Richard Alvarez v. Xavier Becerra in violation of Fifth Amendment.
(Blake)

21-1855 [Briefs](#) EMPLOYMENT: Whether magistrate judge erred in granting Defendants summary judgment on Plaintiffs'
Kenneth Robinson v. Priority Automotive unlawful demotion, retaliation, and hostile work environment constructive discharge claims; other issues.
(Cayer)

21-1753 [Briefs](#) EMPLOYMENT: Whether district court erred in finding liability and awarding damages in gender
Chandra Balderson v. Lincare Inc. discrimination case under the West Virginia Human Rights Act.
(Johnston)

Associations: 21-1765

PANEL I
Judge Niemeyer, Judge Richardson, Judge Nachmanoff*
Red Courtroom (Room 412)
9:30 a.m.

Thursday, October 27, 2022

[LISTEN](#)

*Hon. Michael S. Nachmanoff, United States District Judge, Eastern District of Virginia

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (10/25/2022 - 10/28/2022 Session)

Page 12 of 22

Thursday, October 27, 2022

21-4091 [Briefs](#) SENTENCING: Whether district court erred in applying enhancement under USSG section 3C1.2 for creating risk
US v. Shamauri Shivers of death or serious injury during flight from law enforcement.
(Reidinger)

21-2218 [Briefs](#) CONTRACT: Whether receiving bank was entitled to indemnification under U.C.C. 4A-211(f) from sender of
Blue Flame Medical LLC v. Chain Bridge Bank reversed wire transfer.
(Brinkema)
Associations: 21-2219

21-1980 [Briefs](#) CIVIL: Whether adoption agency functioned as state actor when it placed ward of state into abusive adoptive
E.R.L. v. Adoption Advocacy, Inc. home; qualified immunity; discovery issues.
(Gergel)

PANEL II
Judge Agee, Judge Harris, Judge Griggsby*
Butzner Courtroom 201
9:30 a.m.

Thursday, October 27, 2022

[LISTEN](#)

Thursday, October 27, 2022

21-4487 US v. Gerald Johnson (Bredar)	Briefs	CRIMINAL: Challenge to district court's conclusions following Remmer hearing conducted upon remand from this court; related issues.
Associations: 21-4488, 21-4489		
PANEL CHANGE Judge Wilkinson, Judge Heytens, Judge Young*		

21-1636 Lancaster Hospital Corporation v. Xavier Becerra (Lewis)	Briefs	ADMINISTRATIVE LAW: Whether provider submitted data "capable of being audited" under 42 C.F.R. section 413.24(c) in support of reimbursement request under Medicare program.
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21-2351 James Boykin v. K12, Inc. (O'Grady)	Briefs	SECURITIES: Whether class action complaint met heightened pleading standard for securities fraud; whether Defendants acted with scienter; other issues.
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21-1615 Michael Adjei v. Alejandro Mayorkas (O'Grady)	Briefs	IMMIGRATION: Whether the court erred in finding that Virginia law does not extend comity to spouse's foreign divorce.
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PANEL III
Judge Wilkinson, Judge Heytens, and Senior Judge Motz
Blue Courtroom (Room 339)
9:30 a.m.

Thursday, October 27, 2022

[**LISTEN**](#)

*Hon. Roderick C. Young, United States District Judge, Eastern District of Virginia (first case)

Thursday, October 27, 2022

21-1169 Yuriy Mikhaylov v. Dept. of Homeland Security	Briefs	EMPLOYMENT: Whether protected disclosures contributed to discipline; whether substantial evidence supports finding, by clear and convincing evidence, that agency would have imposed discipline absent disclosures.
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Associations: 21-2429

PANEL Judge Wilkinson, Judge Heytens, Judge Young for first case*

21-2044 T.H.E. Insurance Company v. Melyndia Davis (Russell)	Briefs	INSURANCE: Whether district court properly struck expert's opinion; whether court correctly held that plaintiffs were "alighting" from hot air balloon when electrocuted; other issues.
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21-2170 Just Puppies, Inc. v. Brian Frosh (Hollander)	Briefs	CIVIL: Whether district court erred by dismissing claims that Maryland's 2021 Retail Pet Store Ban violated dormant Commerce Clause and federal preemption; other issues.
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PANEL IV
Judge Wilkinson, Judge Heytens, Senior Judge Motz
Gold Courtroom (Room 348)
9:30 a.m.

Thursday, October 27, 2022

[LISTEN](#)

*Hon. Roderick C. Young, United States District Judge, Eastern District of Virginia

Thursday, October 27, 2022

21-2059	Briefs	CONSTITUTIONAL LAW: Whether sec. 1983 action arising from death by carbon monoxide poisoning requires allegation that defendant public housing authority knew of dangerous conditions.
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20-7185	Briefs	CIVIL RIGHTS: Whether the district court erred by granting summary judgment in favor of Defendants on inmate's First Amendment retaliation claim.
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21-2042	Briefs	SOCIAL SECURITY. Whether ALJ properly evaluated the opinion of treating physician. Other issues.
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Danielle Washington v. Housing Authority (Anderson)		
Emmanuel Shaw v. T. Foreman (Hilton)		
Shelley Cannon v. Commissioner of Social (Wooten)		

PANEL V
Judge King, Judge Rushing, Senior Judge Traxler
Tweed Courtroom (Room 414-D)
9:30 a.m.

Thursday, October 27, 2022

[LISTEN](#)

Thursday, October 27, 2022

21-1508 Dustin Dyer v. Shirrellia Smith (Gibney)	Briefs	CIVIL RIGHTS: Whether Bivens remedy exists for First and Fourth Amendment violations by TSA agents during airport security screening; whether qualified immunity precludes suit.
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21-2151 Shawn Curran v. Axon Enterprise, Inc. (Doumar)	Briefs	TORT: Whether district court erred in concluding liability in context of plaintiff's negligence claim requires the existence of a "special relationship" with defendant; related issues.
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20-9505 In re: Jason Rheinstein	Briefs	RECIPROCAL DISCIPLINE HEARING.
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Associations: 21-1176

PANEL VI
Chief Judge Gregory, Judge Wynn, Senior Judge Floyd
Tan Courtroom (Room 223)
9:30 a.m.

Thursday, October 27, 2022

[LISTEN](#)

Friday, October 28, 2022

21-2116	Briefs	CIVIL: Whether district court violated the mandate rule by reconsidering factual findings previously affirmed by this Court; other issues.
Lula Williams v. Matt Martorello (Payne)		

21-4086	Briefs	CRIMINAL: Whether district court erred in determining that driver's nervousness and manner of stopping vehicle provided reasonable suspicion justifying extension of traffic stop; other issues.
US v. Teresa Miller (Keeley)		

21-1967	Briefs	IMMIGRATION: Whether a violation of Va. Code Ann. section 18.2-186.3(A)(2) is categorically a crime involving moral turpitude; other issues.
Jose Salazar v. Merrick Garland		

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

Friday, October 28, 2022

[LISTEN](#)

Friday, October 28, 2022

19-7368 US v. Larry Reed (Jackson)	Briefs	SENTENCING: Whether district court erred in denying First Step Act motion without a hearing; impact of Supreme Courts decision in Concepcion v. United States, 142 S. Ct. 2389 (2022).
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21-2211 Aldo De Leon Resendiz v. Exxon Mobil (Myers)	Briefs	CIVIL: Whether 42 USC 1981's alienage discrimination protections extend to all work-authorized noncitizens; related issues.
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21-1887 Duncan Giles v. Nat'l Railroad Passenger Corp. (Keesler)	Briefs	EMPLOYMENT: Whether magistrate judge erred in granting Defendant summary judgment on Plaintiff's race discrimination claim, brought pursuant to 42 U.S.C. section 1981; other issues.
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21-1565 Tammy Bandy v. City of Salem, Virginia (Urbanski)	Briefs	EMPLOYMENT: Whether district court erred in granting summary judgment in age discrimination case based on plaintiff's failure to show but for causation; other issues.
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PANEL II
Judge Richardson, Judge Quattlebaum, Senior Judge Floyd
Butzner Courtroom 201
8:30 a.m.

Friday, October 28, 2022

[LISTEN](#)

Friday, October 28, 2022

21-2220	Briefs	BANKRUPTCY: Whether the ACA shared responsibility payment in effect for the 2018 tax year is a tax entitled to priority under 11 USC 507(a)(8).
US v. Fabio Alicea (Flanagan)		

21-2375	Briefs	CIVIL: Challenge to district court's dismissal of disability-discrimination claim.
Neil Basta v. Novant Health Incorporated (Conrad)		

20-6598	Briefs	POSTCONVICTION: Whether the district court erred by denying petitioner's actual innocence gateway claim in light of the petitioner's new evidence.
Lamont McKoy v. Erik Hooks (Flanagan)		

PANEL III
Judge Wilkinson, Judge Niemeyer, Senior Judge Traxler
Blue Courtroom (Room 339)
8:30 a.m.

Friday, October 28, 2022

[LISTEN](#)

Friday, October 28, 2022

21-1441	Briefs	IMMIGRATION: Whether BIA decision must be vacated and remanded when it was issued by a temporary BIA member whose term had expired; related issues.
Manuel Orellana Alvarado v. Merrick Garland		
Associations: 22-1193		

19-2009	Briefs	CIVIL: Appeal from entry of summary judgment in favor of plaintiff in insurance coverage action; effect of South Carolina Supreme Court's decision in Stoneledge at Lake Keowee Owners Assn v. IMK Dev. Co., 435 S.C. 109, 866 S.E.2d 542 (2021).
Stoneledge at Lake Keowee v. Cincinnati (Hendricks)		

21-2286	Briefs	CLASS ACTION: Whether district court abused discretion in certifying class to challenge county's provision of free appropriate public education under IDEA.
G.T. v. The Board of Education of the County of (Berger)		

20-2306	Briefs	IMMIGRATION: Whether petitioners were entitled to rescission of the in absentia removal orders under Niz-Chavez v. Garland, 141 S. Ct. 1474 (2021).
Azucena Lazo-Gavidia v. Merrick Garland		

PANEL IV
Judge Wynn, Judge Rushing, Senior Judge Motz
Gold Courtroom (Room 348)
8:30 a.m.

Friday, October 28, 2022

[LISTEN](#)

Friday, October 28, 2022

21-1317	Briefs	JURISDICTION: Whether Appellant has property interest to support standing to pursue due process claims based on county's preliminary approval of subdivision plan; other issues.
PEM Entities LLC v. County of Franklin (Myers)		

21-2185	Briefs	JURISDICTION: Whether district court lacked subject matter jurisdiction to consider action for declaratory judgment regarding appellant's status under the Medicare Secondary Payer statute.
North Carolina Ins. Guar. Ass'n v. Becerra (Flanagan)		

21-4191	Briefs	CRIMINAL: Whether South Carolina first-degree assault and battery is a crime of violence under Sentencing Guidelines; whether South Carolina second-degree assault and battery and second-degree domestic violence are crimes of violence under Sentencing Guidelines.
US v. Sonny Mack (Wooten)		
Associations:	21-4472 Briefs	

PANEL V
Judge Thacker, Judge Heytens, Judge Griggsby*
Tweed Courtroom (Room 414-D)
8:30 a.m.

Friday, October 28, 2022

[**LISTEN**](#)

*Hon. Lydia K. Griggsby, United States District Judge, District of Maryland

Friday, October 28, 2022

21-4449	Briefs	SENTENCING: Whether forfeiture order imposed pursuant to 18 U.S.C. section 981(a)(1)(C) violates <i>Honeycutt v. United States</i> , 137 S. Ct. 1626 (2017); other issues.
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21-7362	Briefs	CIVIL: Whether administrative remedies are "available" for purposes of PLRA when prison policy limits number of grievances that will be processed at a time.
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21-1826	Briefs	CIVIL: Whether plaintiff's former attorneys had standing to move for attorney's fees under IDEA; whether court abused discretion in calculating fees.

PANEL VI
Judge King, Judge Harris, Judge Nachmanoff*
Tan Courtroom (Room 223)
8:30 a.m.

Friday, October 28, 2022

[LISTEN](#)

*Hon. Michael S. Nachmanoff, United States District Judge, Eastern District of Virginia