

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 Fisheries Reform Group (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
Red Courtroom (Room 412)
9:30 a.m.

Tuesday, October 25, 2022

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

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

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

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

Tuesday, October 25, 2022

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

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

Tuesday, October 25, 2022

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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)

20-1927 [Briefs](#) CIVIL: Whether leases' purchase options obligated Appellees to sell Appellants' real property.
Walmart Real Estate Business v. Quarterfield
(Boardman)

21-1892 [Briefs](#) LABOR: Challenge to NLRB order requiring Frontier to participate in collective bargaining related to company's
NLRB v. Frontier Communications Corporation requirement that employees provide new I-9 forms and supporting documentation.

Associations: 21-1977

21-1858 [Briefs](#) BANKRUPTCY: Whether liability insurer has standing to appeal order confirming joint plan of reorganization;
Truck Insurance Exchange v. Kaiser Gypsum whether appeal is equitably moot.
(Mullen)

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

Tuesday, October 25, 2022

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

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

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

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

Tuesday, October 25, 2022

Wednesday, October 26, 2022

21-1297 [Briefs](#)
Theron Vinson v. Covil Corporation
(Biggs) CIVIL: Propriety of district court's determinations that plaintiffs failed to show causation meeting Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156 (4th Cir. 1986), test.

21-1298 [Briefs](#)
William Brock v. Covil Corporation
(Biggs) CIVIL: Propriety of district court's determinations that plaintiffs failed to show causation meeting Lohrmann v. Pittsburgh Corning Corp., 782 F.2d 1156 (4th Cir. 1986), test.

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

Wednesday, October 26, 2022

Wednesday, October 26, 2022

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

20-6884 [Briefs](#)
David Firewalker-Fields v. Bruce Albertson
(Moon) CIVIL RIGHTS: Whether Heck v. Humphrey, 512 U.S. 477 (1994), bars challenge to conditions of state probation or parole.

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

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

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

Wednesday, October 26, 2022

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21-1181	Briefs	EMPLOYMENT: Whether district court erred in granting summary judgment for defendant in race discrimination case.
Trinette Coleman v. John Whitley (Gallagher)		
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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)		
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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)		
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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
Blue Courtroom (Room 339)
9:30 a.m.

Wednesday, October 26, 2022

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

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

21-1797 [Briefs](#) LABOR: Whether substantial evidence supports Administrative Review Board decision in complainant's favor
Greatwide Dedicated Transport v. Dept. of Labor on retaliatory discharge claim, brought pursuant to Surface Transportation Assistance Act; other issues.

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

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

Wednesday, October 26, 2022

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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 of the Nazarene, Inc. v. Prince (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
Tweed Courtroom (Room 414-D)
9:30 a.m.

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

Thursday, October 27, 2022

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

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

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

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

Associations: 21-1765

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

Thursday, October 27, 2022

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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
Butzner Courtroom 201
9:30 a.m.

Thursday, October 27, 2022

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21-4487 [Briefs](#) CRIMINAL: Challenge to district court's conclusions following Remmer hearing conducted upon remand from
US v. Gerald Johnson this court; related issues.
(Bredar)
Associations: 21-4488, 21-4489

21-1636 [Briefs](#) ADMINISTRATIVE LAW: Whether provider submitted data "capable of being audited" under 42 C.F.R. section
Lancaster Hospital Corporation v. Xavier Becerra 413.24(c) in support of reimbursement request under Medicare program.
(Lewis)

21-2351 [Briefs](#) SECURITIES: Whether class action complaint met heightened pleading standard for securities fraud; whether
James Boykin v. K12, Inc. Defendants acted with scienter; other issues.
(O'Grady)

21-1615 [Briefs](#) IMMIGRATION: Whether the court erred in finding that Virginia law does not extend comity to spouse's
Michael Adjei v. Alejandro Mayorkas foreign divorce.
(O'Grady)

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

Thursday, October 27, 2022

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21-1169	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.
Yuriy Mikhaylov v. Dept. of Homeland Security		
Associations: 21-2429		
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21-2044	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.
T.H.E. Insurance Company v. Melyndia Davis (Russell)		
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21-2170	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.
Just Puppies, Inc. v. Brian Frosh (Hollander)		
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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)		

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

Thursday, October 27, 2022

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20-0159 [Briefs](#) POSTCONVICTION: Whether, in light of Rehaif v. United States, 139 S. Ct. 2191 (2019), movant should be permitted to file successive 28 U.S.C. section 2255 motion.
In re: Randolph McNeill

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.
Danielle Washington v. Housing Authority
(Anderson)

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.
Emmanuel Shaw v. T. Foreman
(Hilton)

21-2042 [Briefs](#) SOCIAL SECURITY. Whether ALJ properly evaluated the opinion of treating physician. Other issues.
Shelley Cannon v. Commissioner of Social
(Wooten)

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

Thursday, October 27, 2022

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21-1508 [Briefs](#) CIVIL RIGHTS: Whether Bivens remedy exists for First and Fourth Amendment violations by TSA agents during
Dustin Dyer v. Shirrellia Smith airport security screening; whether qualified immunity precludes suit.
(Gibney)

21-1803 [Briefs](#) CIVIL: Whether district court erred in finding that borrower failed to plausibly allege reasonable and
Gregory Walker v. Sharon Hill justifiable reliance on lender's fraudulent representations.
(Lauck)

21-2151 [Briefs](#) TORT: Whether district court erred in concluding liability in context of plaintiff's negligence claim requires
Shawn Curran v. Axon Enterprise, Inc. the existence of a "special relationship" with defendant; related issues.
(Doumar)

20-9505 [Briefs](#) RECIPROCAL DISCIPLINE HEARING.
In re: Jason Rheinstein
Associations: 21-1176

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

Thursday, October 27, 2022

Friday, October 28, 2022

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

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

21-2013 [Briefs](#) IMMIGRATION: Whether Petitioner's particular social group is cognizable as a matter of law; related issues.
Mario Sierra-Rivera v. Merrick Garland

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

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

Friday, October 28, 2022

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19-7368 [Briefs](#) SENTENCING: Whether district court erred in denying First Step Act motion without a hearing; impact of
US v. Larry Reed Supreme Courts decision in Concepcion v. United States, 142 S. Ct. 2389 (2022).
(Jackson)

21-2211 [Briefs](#) CIVIL: Whether 42 USC 1981's alienage discrimination protections extend to all work-authorized noncitizens;
Aldo De Leon Resendiz v. Exxon Mobil related issues.
(Myers)

21-1887 [Briefs](#) EMPLOYMENT: Whether magistrate judge erred in granting Defendant summary judgment on Plaintiff's race
Duncan Giles v. Nat'l Railroad Passenger Corp. discrimination claim, brought pursuant to 42 U.S.C. section 1981; other issues.
(Keesler)

21-1565 [Briefs](#) EMPLOYMENT: Whether district court erred in granting summary judgment in age discrimination case based
Tammy Bandy v. City of Salem, Virginia on plaintiff's failure to show but for causation; other issues.
(Urbanski)

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

Friday, October 28, 2022

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

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

21-1399 [Briefs](#) EMPLOYMENT. Whether retaliation claim based on Giglio impairment was exhausted in administrative
Lori McLaughlin v. Merrick Garland complaint.
(Eagles)

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

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

Friday, October 28, 2022

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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 <i>Stoneledge at Lake Keowee Owners Assn v. IMK Dev. Co.</i> , 435 S.C. 109, 866 S.E.2d 542 (2021).
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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.
Associations: 22-1193		
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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.
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20-2306	Briefs	IMMIGRATION: Whether petitioners were entitled to rescission of the in absentia removal orders under <i>Niz-Chavez v. Garland</i> , 141 S. Ct. 1474 (2021).

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

Friday, October 28, 2022

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21-1317 [Briefs](#)
PEM Entities LLC v. County of Franklin
(Myers) 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.

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

21-4191 [Briefs](#)
US v. Sonny Mack
(Wooten) 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.

Associations: 21-4472 [Briefs](#)

PANEL V
Tweed Courtroom (Room 414-D)
8:30 a.m.

Friday, October 28, 2022

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21-4449	Briefs	SENTENCING: Whether forfeiture order imposed pursuant to 18 U.S.C. section 981(a)(1)(C) violates Honeycutt v. United States, 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
Tan Courtroom (Room 223)
8:30 a.m.

Friday, October 28, 2022