

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (12/7/2020 - 12/11/2020 Session)  
Monday, December 7, 2020

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19-2273 [Briefs](#)  
NC NAACP State Conference v. Philip Berger  
( Biggs )

REHEARING EN BANC

Monday, December 7, 2020, Panel I, 9:30 a.m.

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19-4770 [Briefs](#) CRIMINAL: Whether trial counsel rendered ineffective assistance that is apparent from the face of the record.  
US v. Dennis Sturdivant  
( Whitney )  
Associations: 19-4772

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19-1974 [Briefs](#) CIVIL: Whether district court committed evidentiary errors warranting a new trial on damages for breach of  
Legacy Data Access, Inc. v. Cadrillion, LLC  
( Whitney )

Monday, December 7, 2020, Panel II, after en banc session, 2:00 p.m.

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18-2148      [Briefs](#)  
Jason Thomas v. City of Annapolis, Maryland  
( Gesner )

EMPLOYMENT: Whether a genuine dispute of material fact precluded summary judgment as to Thomas' ADA and Title VII claims.

Monday, December 7, 2020, Panel III, after en banc session, 2:00 p.m.

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18-4940 [Briefs](#)  
US v. Sheldon Myers  
( Doumar )

CRIMINAL: Whether the district court erred in denying motion to suppress.

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19-4498 [Briefs](#)  
US v. Antonio McKoy  
( Dever )

CRIMINAL: Whether special verdict form is necessary for continuing criminal enterprise charge; evidentiary issue and standard of review; myriad of claims related to life sentence.

Monday, December 7, 2020, Panel IV, after en banc session, 2:00 p.m.

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19-1904 [Briefs](#) IMMIGRATION: Whether IJ has heightened duty in pro se cases to develop the record to determine whether Miguel Arevalo-Quintero v. William Barr facts presented fit within a cognizable particular social group.

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19-4190 [Briefs](#) CRIMINAL: Whether defendant's removal hearing was fundamentally unfair, requiring dismissal of his illegal US v. Angel Vasquez Flores reentry charge; scope of immigration judge's duty to develop the record. ( Dillon )

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18-1811 [Briefs](#) CIVIL: Multiple issues arising from judgment against defendants following jury trial on government's claims US, et.al v. Latonya Mallory under False Claims Act. ( Gergel )  
Associations: 18-1812, 18-1813

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19-2147 [Briefs](#) CIVIL: Whether district court erred by determining that bank accounts were assets subject to supersedeas US v. Hunter Dent appeal bond; whether court's order is final and appealable. ( Gergel )

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19-2194 [Briefs](#) CIVIL: Whether district court erred by determining that section 702(a) of the Surface Mining Control and Reclamation Act barred plaintiffs' claims.  
Southern Appalachian Mountain v. Red River  
( Jones )

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19-6524 [Briefs](#) POSTCONVICTION: Whether this Court's decision in *Lenear v. Wilson*, 937 F.3d 257 (4th Cir. 2019), applies retroactively.  
Gary Wall v. Jeffrey Kiser  
( Dillon )

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19-1700 [Briefs](#) CIVIL RIGHTS: Whether there was reasonable suspicion to stop and probable cause to arrest appellant; applicability of qualified immunity.  
George Wingate v. Scott Fulford  
( Trenga )

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19-2151 [Briefs](#) ADMINISTRATIVE LAW: Propriety of district court's ruling that Environmental Impact Statement and permitting decision did not violate National Environmental Policy Act and Clean Water Act.  
National Audubon Society v. US Army Corps of  
( Flanagan )

Tuesday, December 8, 2020, Panel II, 9:30 a.m.

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20-6426	<a href="#">Briefs</a>	POSTCONVICTION: Appeal from district court's grant of habeas corpus relief to state prisoner.
Matthew Horner v. Jeffery Nines ( Bredar )		
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19-2143	<a href="#">Briefs</a>	INSURANCE: Whether district court erred in granting summary judgment on various claims arising out of dispute involving settlement of workers' compensation claims.
Modern Automotive Network, LLC v. Eastern ( Biggs )		
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19-4599	<a href="#">Briefs</a>	SENTENCING: Whether 18 U.S.C. section 371 is a qualifying predicate under the forfeiture statute; related issues.
US v. Dawn Bennett ( Xinis )		
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19-2240	<a href="#">Briefs</a>	BANKRUPTCY: Cross-appeals from bankruptcy court's ruling regarding constitutionality of amended quarterly fee statute, 28 U.S.C. section 1930(a)(6), that increased fees payable to U.S. Trustees.
John P. Fitzgerald, III v. Alfred H. Siegel ( Huennekens ) Associations: 19-2255		

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19-2144 [Briefs](#) EMPLOYMENT: Whether employee is a "prevailing party" under 29 U.S.C. section 794a (2018) when there is no court-ordered change in the legal relationship between the parties.  
Yasmin Reyazuddin v. Montgomery County,  
( Chasanow )

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19-1276 [Briefs](#) CIVIL: Whether district court had jurisdiction over claim for veteran's benefits; if so, whether exhaustion was required.  
Arthur Hairston, Sr. v. Department of Veterans  
( Groh )

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19-7145 [Briefs](#) POSTCONVICTION: Jurisdictional challenge to conviction for using a facility of interstate commerce to entice a minor to engage in criminal sexual activity under 18 U.S.C. section 2422(b).  
US v. Daniel Harris  
( Davis )

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19-7668 [Briefs](#) SENTENCING: Whether district court erred in failing to address Defendants' mitigating arguments when deciding motions for sentence reduction under section 404 of First Step Act.  
US v. Timothy McDonald  
( Howard )

Associations: 19-7715, 19-7671, 19-7673

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19-1380 [Briefs](#) EMPLOYMENT: Whether district court erred in finding Appellant failed to sufficiently plead that she was an  
Shawna Lemon v. Myers Bigel, P.A. employee under Title VII; other issues.  
( Flanagan )

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20-1435 [Briefs](#) ADMINISTRATIVE LAW: Whether Defendant's decision to remove and failure to repost its Boards' decisions in  
National Veterans Legal Svc v. DOD Reading Room constituted an "agency action" under Administrative Procedures Act; other issues.  
( Alston )

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19-2122 [Briefs](#) CIVIL: Whether the district court properly dismissed Plaintiff's malicious prosecution claim; other issues.  
Julie Hamstead v. West Virginia State Police  
( Bailey )

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19-2277 [Briefs](#) SOCIAL SECURITY: Whether there is an apparent conflict between the acknowledgment of Billotta's inability to  
Antonio Bilotta v. Andrew Saul read and write in English and the Vocational Expert's testimony. 15-minute case  
( Whitney )

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19-1601	<a href="#">Briefs</a>	TRADEMARK: Cross-appeals from jury's finding of willful trademark infringement, district court's reassembly of jury for remedies trial, damage award, dismissal of state law claim.
Variety Stores, Inc v. Walmart Inc. ( Boyle )		
Associations:	19-1631	

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19-2140	<a href="#">Briefs</a>	BANKRUPTCY: Whether district court erred in dismissing Creditors' appeal as equitably moot and affirming bankruptcy court's damages award.
Paul Clark, Sr. v. Council of Unit Owners ( Gallagher )		
Associations:	19-2183	

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19-1524	<a href="#">Briefs</a>	CONSTITUTIONAL LAW: Whether private defendant in section 1983 action may assert good-faith defense based on reliance on presumptively valid law that is later deemed unconstitutional.
Ruth Akers v. Maryland State Education Assoc ( Bennett )		

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19-2141	<a href="#">Briefs</a>	SOCIAL SECURITY: Whether substantial evidence supports ALJ's assessment of treating physicians' opinions and claimant's subjective statements; whether ALJ sufficiently explained claimant's residual functional capacity. 15-minute case.
Lakenisha Dowling v. Commissioner of SSA ( Lewis )		

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18-2180 [Briefs](#) CIVIL: Whether Reverse Mortg. Solutions, Inc., has standing to pursue appeal; other issues.  
Teresa Lavis v. Reverse Mortgage Solutions Inc  
( Berger )

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19-2162 [Briefs](#) SECURITIES FRAUD: Whether complaint plausibly alleged scienter based on false or misleading statements  
LifeWise Family Financial v. Triangle Capital  
to survive dismissal at pleading stage.  
( Flanagan )

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19-1391 [Briefs](#) CIVIL: Propriety of district court's duty and causation rulings on summary judgment in premises liability action  
Dorothy Smith v. Schlage Lock Company, LLC  
under North Carolina law.  
( Biggs )

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19-1883 [Briefs](#) CIVIL: Whether sufficient evidence supported the jury verdict; other issues.  
D. Baucom, Jr. v. DoALL Company  
( Cogburn )

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19-4753 [Briefs](#) SENTENCING: Whether the district court erred when it imposed offense level increase, pursuant to U.S. Sentencing Guidelines Manual section 2L1.2(b)(3)(C); other issues. 15-minute case.  
US v. Juan Velasquez-Canales  
( Dever )

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19-6655 [Briefs](#) CIVIL RIGHTS: Whether Bivens remedy is available in light of Ziglar v. Abbasi, 137 S. Ct. 1843 (2017); propriety of grant of summary judgment; other issues.  
Vernon Earle v. Shreves  
( Bailey )

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19-6222 [Briefs](#) POSTCONVICTION: Whether district court erred in denying 2255 motion alleging counsel was ineffective in failing to file a motion to suppress.  
US v. James Pressley  
( Boyle )

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19-7736 [Briefs](#) CIVIL: Whether the Equal Access to Justice Act applies to non-criminal immigration habeas proceedings.  
Jose Obando-Segura v. William Barr  
( Russell )

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19-1978	<a href="#">Briefs</a>	IMMIGRATION: Whether substantial evidence supports the finding that the Petitioner insufficiently corroborated her claim; related issues.
Maria Arita-Deras v. William Barr		
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19-2265	<a href="#">Briefs</a>	CIVIL: Whether district court erred by dismissing action under National Voter Registration Act seeking disclosure of public voting records.
Public Interest Legal v. NC State Board of ( Boyle )		
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19-1215	<a href="#">Briefs</a>	EMPLOYMENT: Whether plaintiff could demonstrate same sex sexual harassment under Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75 (1998); other issues.
Chazz Roberts v. Glenn Industrial Group, Inc. ( Mullen )		

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19-6823	<a href="#">Briefs</a>	POSTCONVICTION: Whether district court's Gary error requires vacating conviction in a 2255 proceeding; whether there is an adequate factual basis supporting guilty plea.
US v. Dupree Turner ( Boyle )		
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19-1621	<a href="#">Briefs</a>	EMPLOYMENT: Propriety of order granting summary judgment to employer on retaliation claims under the Uniformed Services Employment and Reemployment Rights Act; other issues.
Darek Kitlinski v. DOJ ( O'Grady )		
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19-2146	<a href="#">Briefs</a>	IMMIGRATION: Applicability of the doctrine of consular nonreviewability; propriety of district court's "bad faith" analysis under this doctrine; other issues.
Anthony Sesay v. US ( Chasanow )		
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19-1975	<a href="#">Briefs</a>	EMPLOYMENT: Whether district court correctly granted summary judgment to employer on Plaintiff's race discrimination claim, brought pursuant to 42 U.S.C. section 1981; other issues.
Michael Jones v. Lowe's Companies, Inc. ( Bell )		

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19-4496 [Briefs](#) CRIMINAL: Whether Bartow used "fighting words" outside the protection of the First Amendment.  
US v. Jules Bartow  
( Ellis )

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19-6843 [Briefs](#) CIVIL RIGHTS: Appeal from denial of qualified immunity to classification committee chairperson on due process claim arising from inmate's placement in security detention.  
Fred Halcomb, Jr. v. Tamarra Ravenell  
( Childs )

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19-1977 [Briefs](#) CIVIL: Appeal from district court's dismissal of antitrust claims based on state action immunity doctrine and refusal to apply market-participant exception to immunity.  
Western Star Hospital Auth. v. City of  
( Gibney )

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18-6627 [Briefs](#) POSTCONVICTION: Whether South Carolina carjacking is a violent felony under the force clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. section 924(e)(2)(B)(i).  
US v. Travis Croft  
( Childs )

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18-7315 [Briefs](#)  
David Goodman v. Z. Diggs  
( Trenga )

CIVIL RIGHTS: Whether district court erred in disregarding claims in verified complaints incorporated by reference in amended complaint and in denying discovery before summary judgment.

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19-2212 [Briefs](#)  
US v. 269 Acres Located in Beaufort  
( Gergel )

CIVIL: Whether district court erred in determining amount of just compensation owed to landowners for taking of easement; additional issues on cross-appeal.

Associations: 20-1226, 20-1281

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19-4176 [Briefs](#) SENTENCING: Propriety of enhancements for leadership role and reckless endangerment during flight  
US v. Wayne Burnley enhancement; sufficiency of findings. 15-minute case.  
( Moon )

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19-4331 [Briefs](#) CRIMINAL: Whether the Government failed to preserve and disclose exculpatory evidence; other issues.  
US v. Kelvin Johnson  
( Groh )  
Associations: 19-4338

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19-1751 [Briefs](#) ARBITRATION: Whether parties can contractually waive judicial review of arbitration award governed by  
Beckley Oncology Associates v. Rami Federal Arbitration Act; whether district court erred in denying motion to vacate award.  
( Berger )

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19-4560 [Briefs](#) SENTENCING: Whether district court erroneously found defendant possessed silencer in connection with  
US v. Bobby Kobito another felony offense for Sentencing Guidelines enhancement; other issues. 15-minute case.  
( Tilley )

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19-0292 [Briefs](#) POSTCONVICTION: Whether United States v. Davis, 139 S. Ct. 2319 (2019), announced a new rule of  
In re: Dearnta Thomas constitutional law that applies retroactively on collateral review.

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19-2109 [Briefs](#) LABOR: Propriety of Board's findings that Tecnocap violated National Labor Relations Act in connection with  
Tecnocap, LLC v. NLRB lockout.  
Associations: 19-2191

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19-1263 [Briefs](#) LABOR: Whether district court erred in upholding arbitration awards that found grievance arbitrable under  
Tecnocap, LLC v. United Steel, Paper and Forest CBA and that employee's discharge was not for just cause.  
( Bailey )

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19-4852 [Briefs](#) SENTENCING: Whether certain conditions of lifetime term of supervised release are substantively  
US v. Paul Hamilton, Jr. unreasonable.  
( Groh )

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19-7692 [Briefs](#) CIVIL: Propriety of district court's imposition of conditions of release on appellant upon his release from civil  
US v. Kevin Shea commitment under the Adam Walsh Act.  
( Flanagan )

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17-6136 [Briefs](#) POSTCONVICTION: Whether claim under United States v. Hodge was preserved; whether district court erred in  
US v. Christopher Goins, Jr. finding that PSR's statement of ACCA predicates was typographical error.  
( Flanagan )

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19-4803 [Briefs](#) CRIMINAL: Government appeal from district court's grant of post-verdict motions for judgment of acquittal  
US v. Bijan Rafiekian and for new trial; multiple issues.  
( Trenga )

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19-4886 [Briefs](#) CRIMINAL: Whether United States v. Winston (holding Virginia common law robbery not crime of violence  
US v. Terry White under force clause), remains good law following Stokeling v. United States.  
( Tilley )

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19-1600 [Briefs](#)  
Sabein Burgess v. Gerald Goldstein  
( Bennett )  
Associations: 19-1602

CIVIL: Appeal from denial of post-judgment motions following \$15,000,000 verdict on plaintiff's due process and malicious prosecution claims; cross-appeal from dismissal of Monell claims.

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19-4510 [Briefs](#)  
US v. Seitu Kokayi  
( Brinkema )

CRIMINAL: Challenge to denial of motion to suppress evidence allegedly obtained in violation of Foreign Intelligence Surveillance Act; other issues.

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