

Tuesday, January 24, 2023

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16-7168 US v. Andra Green (Smith)	<a href="#">Briefs</a>	POSTCONVICTION: Timeliness of appellant's Johnson/Davis challenge; validity of appellant's 18 U.S.C. section 924(c), (j)(1) convictions following Davis; other issues.
21-2425 Sierra Club v. State Water Control Board	<a href="#">Briefs</a>	MOUNTAIN VALLEY PIPELINE: Challenge to Virginia State Water Control Board's issuance of sec. 401 water quality certification for pipeline's in-stream construction.
20-2129 Chris Hill v. Certex USA, Inc. (Eagles)	<a href="#">Briefs</a>	CIVIL: Whether the district court properly granted Defendant summary judgment on Plaintiff's implied warranty of merchantability and negligent failure to warn products liability claims.
20-0221 In re: Kenneth Graham	<a href="#">Briefs</a>	POSTCONVICTION: Whether the limitations imposed by 28 U.S.C. section 2244(b)(1) on previously-presented claims apply to motions filed under 28 U.S.C. section 2255.

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PANEL I  
Chief Judge Gregory, Judge Wynn, Judge Thacker  
Red Courtroom (Room 412)  
9:30 a.m.

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22-1360	<a href="#">Briefs</a>	CONSTITUTIONAL LAW: Whether court properly denied qualified immunity to officer who, during welfare check, directed dog to bite plaintiff for refusing to comply with orders.
Dillard Putman v. Quentin Harris (Jones)		
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22-6495	<a href="#">Briefs</a>	CIVIL RIGHTS: Whether, under PLRA, incarcerated plaintiffs with disabilities must exhaust both BOP grievance process and EEO complaint procedure before bringing Rehabilitation Act claim.
Webster Williams, III v. Michael Carvajal (Flanagan)		
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21-2078	<a href="#">Briefs</a>	SOCIAL SECURITY: Whether the ALJ's decision not to include an absenteeism limitation in Appellant's RFC is supported by substantial evidence; other issues. (15 mins.)
Faith Dennis v. Kilolo Kijakazi (Gibney)		
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22-4193	<a href="#">Briefs</a>	CRIMINAL: Whether cross-designated agency's knowledge of alien's presence can be imputed to the United States for purpose of statute of limitations on illegal reentry prosecution.
US v. Omar Alas (Payne)		

PANEL II  
Judge Wilkinson, Judge Diaz, Judge Cogburn\*  
Butzner Courtroom 201  
9:30 a.m.

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\*Hon. Max O. Cogburn, Jr., United States District Judge, Western District of North Carolina

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22-4063 [Briefs](#) CRIMINAL: Whether district court erred in denying motion to suppress based on finding of reasonable, US v. Daniel Critchfield articulable suspicion. (Keeley)

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22-1121 [Briefs](#) CIVIL: Whether South Carolina statute of repose for improvements to real property bars product liability claim Eddie Lane v. New Gencoat, Inc. arising from injury caused by industrial equipment. (Childs)

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21-2328 [Briefs](#) EMPLOYMENT: Whether district court erroneously granted summary judgment on Plaintiff's retaliation and Ashley Noonan v. Consolidated Shoe Company, Title VII wage disparity discrimination claims; other issues. (Moon)

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

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22-1399 [Briefs](#)  
Judith Shears v. Ethicon, Inc.  
(Keeley)

TORT: Whether district court correctly applied West Virginia pattern jury instructions in products liability case; other issues.

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21-1402 [Briefs](#)  
Vir2us, Inc. v. Sophos Inc.  
(Morgan)

CONTRACT: Whether the district court erred in construing contract provisions defining products subject to royalty payments.

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

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22-1304 [Briefs](#) TORT: Whether district court erred by dismissing FTCA action for lack of subject matter jurisdiction pursuant to an exception to FTCA's waiver of sovereign immunity.  
Reba Myers v. Alejandro Mayorkas  
(Dillon)

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21-2344 [Briefs](#) IMMIGRATION: Whether substantial evidence supports the Board's denial of reopening based on changed country conditions; related issues.  
Beatrice Anagho v. Merrick Garland

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21-1348 [Briefs](#) IMMIGRATION: Whether petitioner demonstrated that imputed anti-gang political opinion was one central reason for her past persecution; other issues.  
Hilda Sanchez-Diaz v. Merrick Garland

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21-2273 [Briefs](#) IMMIGRATION: Whether petitioner failed to establish that Honduran government was unwilling or unable to protect her.  
Lucinda Larios-Vargas v. Merrick Garland

PANEL V  
Judge Niemeyer, Judge Quattlebaum, Senior Judge Floyd  
Tweed Courtroom (Room 414-D)  
9:30 a.m.

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Wednesday, January 25, 2023

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21-1756 [Briefs](#)  
Damian Stinnie v. Richard Holcomb  
(Moon)

REHEARING EN BANC (30 mins. per side)

Butzner En Banc Courtroom 201  
Chief Judge Gregory, Judge Niemeyer, Judge King, Judge Agee,  
Judge Wynn, Judge Diaz, Judge Thacker, Judge Harris, Judge  
Richardson, Judge Quattlebaum, Judge Rushing  
9:00 a.m.

Wednesday, January 25, 2023

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22-4252 [Briefs](#)  
US v. Bijan Rafiekian  
(Trenga)

CRIMINAL: Whether district court erred in ordering new trial, concluding that convictions were against the weight of the evidence.

PANEL I  
Judge Niemeyer, Judge Wynn, Chief Judge Bredar\*  
Red Courtroom (Room 412)  
After the en banc session

Wednesday, January 25, 2023

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\*Hon. James K. Bredar, Chief United States District Judge, District of Maryland

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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

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22-1721 [Briefs](#) CIVIL: Interlocutory challenge to partial summary judgment and injunction requiring defendants to reinstate  
Maxwell Kadel v. Dale Folwell provision in state health plan providing medically necessary treatment for gender dysphoria.  
(Biggs)

PANEL II  
Chief Judge Gregory, Judge Agee, Judge Diaz  
Butzner Courtroom 201  
After the en banc session

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22-1362 [Briefs](#)  
AFSCME Maryland Council 3 v. State of Md.  
(Messitte)

CIVIL: Whether district court erred in dismissing active Maryland state employees from Plaintiffs' action challenging State of Maryland's changes to prescription drug coverage for retirees.

PANEL III

Judge Wilkinson, Judge Thacker, Judge Harris  
Blue Courtroom (Room 339)  
After the en banc session

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21-2134 [Briefs](#) LABOR: Whether material factual dispute should have precluded summary judgment in action regarding  
Sheet Metal Wkrs' Hlth & Welfare. v Stromberg multiemployer pension funding.  
(Boyle)

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21-2421 [Briefs](#) SOCIAL SECURITY: Whether substantial evidence supports ALJ's rejection of consultative examiner's opinion  
Renard Oakes v. Kilolo Kijakazi as to applicant's need for assistive device. (15 mins.)  
(Numbers)

PANEL IV  
Judge King, Judge Rushing, Senior Judge Floyd  
Gold Courtroom (Room 348)  
After the en banc session

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21-2003 [Briefs](#) CIVIL: Propriety of decision granting summary judgment to school district in IDEA case.  
Cheri Miller v. Charlotte-Mecklenburg Schools  
(Cogburn)

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22-1505 [Briefs](#) CIVIL: Challenge to Rule 12(b)(6) dismissal of attorney's contract and quasi-contract claims against former  
Halscott Megaro, P.A. v. Henry McCollum  
(Boyle)

PANEL V  
Judge Richardson, Judge Quattlebaum, Judge Heytens  
Tweed Courtroom (Room 414-D)  
After the en banc session

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22-4282 [Briefs](#)  
US v. Ronald Gordon, Jr.  
(Nachmanoff)

CRIMINAL: Propriety of district court's reliance on police report, not admitted into evidence at suppression hearing, to support reasonable suspicion; whether inventory search was lawful.

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22-1106 [Briefs](#)  
William Bulger v. Hugh Hurwitz  
(Bailey)

CIVIL RIGHTS: Whether Bivens claims for failure to protect inmate are cognizable following Zigler v. Abbasi; other issues.

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20-6508 [Briefs](#)  
US v. Jermaine Wood  
(Lauck)

SENTENCING: Whether sentencing package doctrine and nonretroactive Sentencing Guidelines amendments apply in First Step Act resentencing; disclosure requirements for First Step Act Worksheet; other issues.

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22-1472 [Briefs](#)  
Ashley Albert v. Global TelLink Corp.  
(Griggsby)

CIVIL: Challenge to dismissal of plaintiff's RICO claims and denial of leave to amend complaint related to telephone services for inmates.

PANEL I  
Judge Díaz, Judge Thacker, Judge Eagles\*  
Red Courtroom (Room 412)  
9:30 a.m.

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Hon. Catherine C. Eagles, United States District Judge, Middle District of North Carolina

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21-1647 [Briefs](#)  
Jay Hannah v. UPS  
(Goodwin)

EMPLOYMENT: Whether district court erred in determining that unpaid leave was a reasonable accommodation for a workplace injury under the Americans with Disabilities Act.

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21-1919 [Briefs](#)  
Neuhtah Opiotennione v. Bozzuto Management  
(Messitte)

CIVIL RIGHTS: Whether appellant lacked standing to bring housing discrimination suit against housing providers who steered Facebook ads away from people in her age group.

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22-1674 [Briefs](#)  
Norma Winffel v. Montgomery Mall Owner, LLC  
(Griggsby)

TORT: Whether district court erred concluding mall owner and security company had no duty to protect mall patrons from shooting in parking lot.

PANEL II  
Judge Niemeyer, Judge Rushing, Judge Heytens  
Butzner Courtroom 201  
9:30 a.m.

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19-7240 US v. Thomas Waters (Hendricks)	<a href="#">Briefs</a>	POSTCONVICTION: Whether the district court's holding - that Rehaif was not a potentially viable basis for federal habeas relief from section 922(g) conviction - is debatable.
21-2182 Adnet, Inc. v. Rohit Soni (Nachmanoff)	<a href="#">Briefs</a>	CONTRACT: Whether employees breached duty of loyalty by submitting a competing proposal for a project on which their employer submitted a bid.
22-1048 Hind Bouabid v. Charlotte-Mecklenburg (Conrad)	<a href="#">Briefs</a>	CIVIL: Challenge to grant of summary judgment; whether ALJ's final decision regarding student's IEP was "regularly made" and thus due deference in the district court.
21-7161 Thomas Torrence v. Scott Lewis (Harwell)	<a href="#">Briefs</a>	POSTCONVICTION: Whether district court properly construed Petitioner's second claim for habeas relief, which related to state agency's prior parole ineligibility determination; other related issues.

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

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21-1835 [Briefs](#) SOCIAL SECURITY: Whether substantial evidence supports ALJ's rulings as to Appellant's limitations on three  
Devin Maravel v. Kilolo Kijakazi of the Paragraph B criteria; other issues.  
(Eagles)

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21-2390 [Briefs](#) EMPLOYMENT: Whether university's nonrenewal of faculty member's term, the year after her promotion to full  
Eva Palmer v. Liberty University, Incorporated professor, was based on age discrimination; whether ministerial exception applies.  
(Moon)  
Associations: 21-2434

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22-1537 [Briefs](#) CIVIL: Whether 26 U.S.C. 7502's provisions related to mailed tax returns supplant the common-law mailbox  
Stephen Pond v. US rule.  
(Biggs)

PANEL IV  
Judge King, Judge Richardson, Senior Judge Motz  
Gold Courtroom (Room 348)  
9:30 a.m.

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

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20-7131 [Briefs](#) POSTCONVICTION: Whether Va. Code Ann. section 18.2-53.1 offenses are ACCA violent felonies; whether  
US v. Joseph Williams Defendant's Virginia robbery convictions remain ACCA violent felonies after United States v. White, 24 F.4th  
(Brinkema) 378.

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21-0278 [Briefs](#) POSTCONVICTION: Whether the movant's allegation of recovered memory qualifies as newly-discovered  
In re: Weldon Stewart, Jr. evidence warranting authorization to file a successive petition.

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21-1371 [Briefs](#) IMMIGRATION: Jurisdiction to review untimely asylum application; whether substantial evidence supports  
Zuowei Chen v. Merrick Garland the denial of withholding of removal and CAT protection.

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

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21-6206 [Briefs](#) CIVIL RIGHTS: Whether there are genuine issues concerning finding that choice to deny assistive walking  
Edward Nellson v. John Doe device in the SHU was a medical decision; related issues.  
(Bailey)

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22-1339 [Briefs](#) CIVIL RIGHTS: Whether district court erred in ruling Appellee's claim was not an improper extension of Bivens  
Nathaniel Hicks v. Gerald Ferreyra remedy; other issues.  
(Grimm)

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20-7725 [Briefs](#) SENTENCING: Sufficiency of court's explanation for denying First Step Act sentence reduction motion; other  
US v. David Troy, III issues.  
(Wooten)

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22-4049 [Briefs](#) CRIMINAL: Whether the Confrontation Clause was violated when witnesses were ordered to wear masks;  
US v. Nedeltcho Vladimirov related issues.  
(Berger)

PANEL I  
Judge Harris, Senior Judge Motz, Senior Judge Keenan  
Red Courtroom (Room 412)  
8:30 a.m.

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22-4187 [Briefs](#)  
US v. Jose Colon  
(Novak)  
Associations: 22-4192

CRIMINAL: Whether exclusion from jury of non-vaccinated persons violated Sixth Amendment right to a jury venire that represents a cross-section of society.

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22-4397 [Briefs](#)  
US v. Darrin Miller  
(Goodwin)

CRIMINAL: Whether evidence of victim's age and relationship to defendant was relevant such that its exclusion was an abuse of discretion.

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22-4307 [Briefs](#)  
US v. Casey Evans  
(Reidinger)

CRIMINAL: Whether mens rea of "willfulness" in 18 U.S.C. 1855 extends to the element of government ownership of the subject property.

PANEL II  
Judge Agee, Judge Quattlebaum, Judge Rushing  
Butzner Courtroom 201  
8:30 a.m.

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21-4468 [Briefs](#) CRIMINAL: Whether Appellant's upward-variant sentence is procedurally and substantively reasonable; other  
US v. Jacquez Hill issues.  
(Boyle)

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21-1085 [Briefs](#) CIVIL: Challenge to district court order enjoining implementation of Corps' plan to bring the Savannah Harbor  
State of South Carolina v. US Army Corps Expansion Plan into compliance with the ESA.  
(Gergel)

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21-4322 [Briefs](#) SENTENCING: Whether Maryland third-degree sexual offense categorically relates to generic predicates in 18  
US v. Bruce Sturtz U.S.C. section 2252A(b)(2) for enhanced statutory penalties; other issues.  
(Grimm)

PANEL III  
Judge Niemeyer, Judge King, Judge Diaz  
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8:30 a.m.

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21-7737 [Briefs](#)  
Chad Langford v. Hector Joyner  
(Cain) CIVIL: Whether the district court erred in determining that Bivens complaint did not allege with sufficient specificity Defendants' personal knowledge of Plaintiff's medical condition.

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22-1459 [Briefs](#)  
Ramaco Resources, LLC v. Federal Insurance  
(Copenhaver) INSURANCE: Challenge to district court order overruling jury's damage award in case arising out of coal silo collapse.

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22-1712 [Briefs](#)  
Stephen Porter v. Board of Trustees of N. C.  
(Boyle) CONSTITUTIONAL LAW: Whether public university subjected tenured professor to retaliation for engaging in speech protected by the First Amendment.

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22-6410 [Briefs](#)  
David King v. Timothy Riley  
(Gossett) CIVIL: Whether defendants were entitled to qualified immunity for Eighth Amendment claim arising from murder of four inmates in one morning; other issues.

PANEL IV  
Judge Wynn, Judge Thacker, Judge Richardson  
Gold Courtroom (Room 348)  
8:30 a.m.

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20-4537 [Briefs](#)  
US v. Christopher Tucker  
(Schroeder)  
Associations: 21-4166, 22-4025, 22-4026  
CIVIL COMMITMENT: Multiple appeals arising out of involuntary medication orders and detention of pretrial committee whose commitment exceeds limit in 18 U.S.C. section 4241(d)(1).

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22-1465 [Briefs](#)  
Industrial Services Group, Inc. v. Josh Dobson  
(Reidinger)  
CIVIL: Whether North Carolina Department of Labor officials are entitled to sovereign immunity over Plaintiff's claims that State plan was unlawfully applied; other issues.

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21-4242 [Briefs](#)  
US v. Shannon Drake  
(Osteen)  
CIVIL: Whether Hyde Amendment claim for attorney's fees following acquittal was properly denied based on plaintiff's indictment by grand jury; other issues.

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Chief Judge Gregory, Judge Wilkinson, Judge Heytens  
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