

Monday, May 3, 2021

19-4137 [Briefs](#)  
US v. Allen Loughry, II  
( Copenhaver )

REHEARING EN BANC

Chief Judge Gregory  
Judge Wilkinson  
Judge Niemeyer  
Judge Motz  
Judge Agee  
Judge Keenan  
Judge Wynn  
Judge Diaz  
Judge Floyd  
Judge Harris  
Judge Richardson  
Judge Quattlebaum

En Banc Panel  
9:30 a.m.

Monday, May 3, 2021

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Tuesday, May 4, 2021

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20-1408 [Briefs](#) CONSTITUTIONAL LAW: Whether Knick v. Township of Scott, 139 S. Ct. 2162 (2019), calls into question state's Eleventh Amendment immunity against takings claims.  
Michael Zito v. N.C. Coastal Resources Comm.  
( Dever )

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19-1693 [Briefs](#) IMMIGRATION: Propriety of denying relief based on failure to proffer family members' corroborating statements when circuit precedent supports the agency discrediting the same; other issues.  
Ingrid Nolasco-Figueroa v. Merrick Garland

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20-1329 [Briefs](#) TORT: Whether district court erred by concluding that statements were defamatory per se; additional issues related to personal jurisdiction, excessive damages, and attorney's fees.  
Fredric Eshelman v. Puma Biotechnology, Inc.  
( Dever )

Associations: 20-1376

PANEL I  
Chief Judge Gregory, Judge Motz, and Judge Thacker  
9:30 a.m.

Tuesday, May 4, 2021

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19-2327 [Briefs](#) IMMIGRATION: Whether counsel was ineffective in removal proceedings; whether denial of motion to reopen was abuse of discretion.  
Elvis Cardenas-Martinez v. Merrick Garland

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19-2127 [Briefs](#) EMPLOYMENT: Whether the district court erred by granting summary judgment in favor of Defendants on Plaintiff's discrimination, retaliation, and hostile work environment claims.  
Kyle Dawson v. Washington Gas Light  
( Hilton )

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19-4370 [Briefs](#) CRIMINAL: Whether district court erred in admitting defendant's recorded telephone conversations; other issues.  
US v. Marion Campbell  
( Hendricks )

PANEL II  
Judge Wilkinson, Judge Wynn and Judge Harris  
9:30 a.m.

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20-1485 [Briefs](#)  
Servando Galvan v. Merrick Garland

IMMIGRATION: Whether this Court retains jurisdiction to review agency's hardship determination under 8 U.S.C. section 1252(a)(2)(D).

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20-1568 [Briefs](#)  
Timothy Edgar v. Avril Haines  
( Hazel )

CONSTITUTIONAL LAW: Whether district court erred by dismissing claims that prepublication review policies of federal agencies violated First and Fifth Amendments; standing.

PANEL III  
Judge Niemeyer, Judge Keenan and Senior Judge Traxler  
2:00 p.m.

Tuesday, May 4, 2021

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20-6163 [Briefs](#)  
In re: Precious Oliphant  
( Mullen )

CRIMINAL: Whether defendant preserved objections to magistrate judge's summary contempt order.

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20-6194 [Briefs](#)  
US v. Lexy Herrera-Pagoada  
( Howard )

CRIMINAL: Whether the immigration judge's failure to advise alien of the possible relief of voluntary departure invalidates the removal order; related issues.

PANEL IV  
Judge King, Judge Diaz and Judge Floyd  
2:00 p.m.

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19-4801 [Briefs](#)  
US v. Tekoa Glover  
( Cain )

CRIMINAL: Whether district court violated Sixth Amendment by failing to appoint replacement counsel at plea withdrawal hearing.

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20-1377 [Briefs](#)  
Tina Smith v. CSRA  
( O'Grady )

EMPLOYMENT: Whether the district court erred in granting Defendant summary judgment on Plaintiff's disability discrimination and retaliation claims; other issues.

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20-1530 [Briefs](#)  
Chelsea Eline v. Town of Ocean City, Maryland  
( Bredar )

CONSTITUTIONAL LAW: Whether ordinance prohibiting public display of female breast is constitutional; evidentiary and other issues related to grant of summary judgment in city's favor.

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20-1707 [Briefs](#)  
Sharon Bauer v. Marc Elrich  
( Messitte )

CIVIL: Whether 8 U.S.C. section 1621 may be enforced by private litigants under Maryland's taxpayer-standing doctrine; subject matter jurisdiction; additional issues.

PANEL I  
Chief Judge Gregory, Judge Keenan and Judge Quattlebaum  
9:30 a.m.

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19-1209 [Briefs](#)  
Carey Hixson v. Michael Moran  
( Urbanski )

CIVIL: Whether district court adjudicated Hixson's deliberate indifference claim as it pertained to Moran's failure to prescribe non-insulin medication; other issues.

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20-1583 [Briefs](#)  
US ex rel. Stephen Gugenheim v. Meridian  
( Boyle )

CIVIL: Appeal from dismissal of qui tam action under False Claims Act alleging that adult care homes committed Medicaid fraud related to claims for personal care services.

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20-1976 [Briefs](#)  
American Fed Gov. Emp. v. Office of Special  
( Xinis )

JURISDICTION: Whether district court erred by dismissing for lack of subject matter jurisdiction First Amendment pre-enforcement challenge to policy restricting speech by federal employees as unripe.

PANEL II  
Judge Wilkinson, Judge Rushing and Senior Judge Traxler  
9:30 a.m.

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|----------------------------------------------------------|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20-1334                                                  | <a href="#">Briefs</a> | TORT: Whether Defendants had duty to warn Plaintiff of danger of developing sinonasal cancer from exposure to wood dust; other issues.                                                               |
| Christopher Lightfoot v. Georgia-Pacific<br>( Flanagan ) |                        |                                                                                                                                                                                                      |
| <hr/>                                                    |                        |                                                                                                                                                                                                      |
| 19-4019                                                  | <a href="#">Briefs</a> | CRIMINAL: Whether court erred by permitting attorney to represent Government witness when Defendant had been represented by attorney in same office on related matters; other issues.                |
| US v. Anthony Caldwell<br>( Cogburn )                    |                        |                                                                                                                                                                                                      |
| <hr/>                                                    |                        |                                                                                                                                                                                                      |
| 19-6412                                                  | <a href="#">Briefs</a> | POSTCONVICTION: Whether petitioner's constitutional rights were violated by the delay in adjudicating direct appeal, trial court's coercive remarks to the jury, and prosecutor's closing arguments. |
| Charles Plymail v. Patrick Mirandy<br>( Chambers )       |                        |                                                                                                                                                                                                      |

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Judge Niemeyer, Judge Wynn and Judge Richardson  
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|-------------------------------------------------------|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20-1783                                               | <a href="#">Briefs</a> | ADMINISTRATIVE LAW: Whether Clean Air Act, 42 U.S.C. section 7604(e), bars federal government from removing state air-pollution enforcement action to federal court; other issues. |
| State of North Carolina v. US<br>( Boyle )            |                        |                                                                                                                                                                                    |
| <hr/>                                                 |                        |                                                                                                                                                                                    |
| 20-1845                                               | <a href="#">Briefs</a> | CIVIL: Propriety of district court's dismissal of qui tam action under False Claims Act alleging fraudulent conduct by government contractor.                                      |
| United States ex rel A. Fzco v. Supreme<br>( Alston ) |                        |                                                                                                                                                                                    |
| <hr/>                                                 |                        |                                                                                                                                                                                    |
| 20-1035                                               | <a href="#">Briefs</a> | IMMIGRATION: Whether single death threat by armed gang members amounts to past persecution.                                                                                        |
| Felix Moreno-Osorio v. Merrick Garland                |                        |                                                                                                                                                                                    |

PANEL IV  
Judge Motz, Judge King and Judge Agee  
2:00 p.m.

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18-0006 [Briefs](#)  
Sammie Stokes v. Bryan Stirling  
( Harwell )

POSTCONVICTION: Conflict of interest and ineffective assistance of counsel challenges to state capital conviction and sentence.

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20-1871 [Briefs](#)  
Drummond Coal Sales v. Norfolk Southern  
( Urbanski )  
Associations: 20-1920

CONTRACT: Cross-appeals challenging district court's orders upholding jury's verdict on breach-of-contract claim and denying request for rescission of contract; statute of limitations.

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18-2213 [Briefs](#)  
Lorenzo Pledger v. Loretta Lynch  
( Bailey )

CIVIL: Applicability of West Virginia's certificate-of-merit requirement to FTCA medical negligence claim; propriety of grant of summary judgment to Defendants on inmate's deliberate indifference claim.

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19-7447 [Briefs](#)  
Mark Wright v. Harold Clark  
( Jones )

POSTCONVICTION: Whether counsel was ineffective for allowing jury instruction that included crime that was not lesser included offense of charged crime; other issues.

PANEL I  
Chief Judge Gregory, Judge Harris and Judge Quattlebaum  
9:30 a.m.

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|---------------------------------------------------------|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20-2184                                                 | <a href="#">Briefs</a> | CLASS ACTION: Challenge to district court's order approving certification of the direct purchaser class in pharmaceutical antitrust case.              |
| Zetia (Ezetimibe) Antitrust v. Merck & ( Smith )        |                        |                                                                                                                                                        |
| <hr/>                                                   |                        |                                                                                                                                                        |
| 19-7346                                                 | <a href="#">Briefs</a> | CIVIL RIGHTS: Whether district court erred in dismissing prisoner's complaint challenging denial of in-person visitation with his minor daughter.      |
| James Desper v. Harold Clarke ( Conrad )                |                        |                                                                                                                                                        |
| <hr/>                                                   |                        |                                                                                                                                                        |
| 20-1246                                                 | <a href="#">Briefs</a> | JURISDICTION: Whether interested stakeholder's citizenship may be used to create diversity for jurisdictional purposes in statutory interpleader suit. |
| AmGuard Insurance Co v. SG Patel and Sons II ( Childs ) |                        |                                                                                                                                                        |
| <hr/>                                                   |                        |                                                                                                                                                        |
| 20-1034                                                 | <a href="#">Briefs</a> | IMMIGRATION: Whether substantial evidence supports the finding that the particular social group is not socially distinct; related issues.              |
| German Nolasco v. Merrick Garland                       |                        |                                                                                                                                                        |

PANEL II  
Judge Niemeyer, Judge Floyd, Judge Rushing  
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19-1685 [Briefs](#)  
Amy Bryant v. Jim Woodall  
( Osteen )

JURISDICTION: Whether district court erred by finding that medical providers had standing to challenge constitutionality of state statute restricting access to abortions after twenty weeks.

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20-1249 [Briefs](#)  
Biejan Arvon v. Liberty Mutual Fire Insurance  
( Gesner )

CIVIL: Whether the district court erred by granting summary judgment to Defendant insurer on Plaintiff's claims that insurer misrepresented or concealed the at-fault party's identity.

PANEL III  
Judge Motz, Judge Diaz, and Judge Richardson  
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20-7797 [Briefs](#)  
US v. Gary Curbow  
( Britt )

CRIMINAL: Whether appellant was ineligible for civil commitment under 18 U.S.C. section 4246 because government's commitment certificate was untimely; application of United States v. Wayda, 966 F.3d 294 (4th Cir. 2020).

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20-1584 [Briefs](#)  
Mitch Yawn v. Dorchester County  
( Seymour )

CIVIL: Propriety of district court's determination that Takings Clause was not implicated because defendant was exercising police power and not power of eminent domain.

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20-1655 [Briefs](#)  
NC Department of Environmental v. FERC

ADMINISTRATIVE LAW: Challenges to agency's issuance of license and determination that state waived its authority to issue water quality certification under Section 401 of Clean Water Act.

Associations: 20-1671

PANEL IV  
Judge King, Judge Thacker and Senior Judge Traxler  
2:00 p.m.

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20-4120 [Briefs](#)  
US v. Alan Williams  
( Groh )

SENTENCING: Whether district court failed to make individual assessment when imposing sentence; other issues.

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20-4025 [Briefs](#)  
US v. Rodrigo Martinez-Mendoza  
( Hudson )

CRIMINAL: Whether court erred in denying motion to dismiss indictment under 8 U.S.C. section 1326(d).

PANEL I  
Judge Agee, Judge Harris and Judge Rushing  
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|---------------------------------------------------------------------------------|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20-1860<br>Dakota Nelson v. Mac Warner<br>( Chambers )<br>Associations: 20-1861 | <a href="#">Briefs</a> | JURISDICTION: Whether district court lacked subject matter jurisdiction over challenge to West Virginia's ballot order statute based on justiciability and standing; whether statute is unconstitutional. |
| 19-4466<br>US v. Marysa Comer<br>( Cogburn )                                    | <a href="#">Briefs</a> | SENTENCING: Whether special condition of supervised release constitutes unlawful delegation of judicial authority; other issues.                                                                          |
| 20-4054<br>US v. Santario Boyd<br>( Conrad )                                    | <a href="#">Briefs</a> | SENTENCING: Whether district's standard conditions of supervised release, including special conditions listed in USSG section 5G1.3, were sufficiently narrowly tailored to appellant's circumstances.    |
| 20-4096<br>US v. Robert Stencil<br>( Cogburn )                                  | <a href="#">Briefs</a> | SENTENCING: Whether the district court erred in determining that the vulnerable victim sentencing enhancement applied; related issues.                                                                    |

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PANEL II  
Judge Keenan, Judge Wynn and Judge Thacker  
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|-------------------------------------------------------------------|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 20-1940<br>Peter Vlaming v. West Point School Board<br>( Gibney ) | <a href="#">Briefs</a> | JURISDICTION: Propriety of determination that Title IX was not a "law providing for equal rights" that would provide basis for removal jurisdiction under 28 U.S.C. section 1443(2). |
| 19-4850<br>US v. Richa Narang<br>( Brinkema )                     | <a href="#">Briefs</a> | CRIMINAL: Whether previously dismissed counts were properly reinstated under 18 U.S.C. section 3296; sufficiency of the evidence.                                                    |
| 20-4105<br>US v. Maximo Gondres-Medrano<br>( Russell )            | <a href="#">Briefs</a> | CRIMINAL: Whether seizure of drugs from vehicle stopped to execute immigration warrant violated Fourth Amendment; other issues.                                                      |

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PANEL III  
Judge Floyd, Judge Richardson and Judge Quattlebaum  
2:00 p.m.

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