

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/26/2010 - 10/29/2010 Session)

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09-1335	Briefs	TORT LAW. Whether the defendant government contractors are entitled to immunity.
Suhail Al Shimari v. CACI International, Inc. (Lee)		
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10-1891	Briefs	Tort Law: Whether government contractor was immune from liability for abuse allegedly inflicted on detainees at military bases in Iraq.
Wissam Al-Quraishi v. L-3 Services, Inc. (Messitte)		
Associations: 10-1921		
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10-1543	Briefs	TORT LAW: Whether dismissal of negligence action brought against contractor for injuries sustained in Iraq was proper under political question doctrine & combatant exception to FTCA.
Peter Taylor v. Kellogg Brown & Root Services (Doumar)		
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08-4933	Briefs	SENTENCING: Whether explanation for chosen sentence was sufficient; if not, whether error may be deemed harmless when Government has not pursued such contention.
US v. April Garrett (Herlong)		

REVD 10/27/10

Tuesday, October 26, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/26/2010 - 10/29/2010 Session)

09-8111	Briefs	HABEAS CORPUS: Whether district court erred in granting habeas corpus relief.
William Bauberger v. Grady Haynes (Schroeder)		

09-6484	Briefs	HABEAS. Whether district court properly concluded that admission of three erroneously admitted pieces of evidence did not have a substantial and injurious impact on jury's verdict.
Rae Wiggins v. Bonnie Boyette (Mullen)		

09-4446	Briefs	CRIMINAL. Whether state court documents sufficiently established that defendant was subject to sentencing under Armed Career Criminal Act.
US v. James Washington (Legg)		

09-1691	Briefs	INSURANCE. Whether the district court erred in finding that appellee had no fiduciary relationship with appellant and partially granting appellee's motion for judgment as a matter of law.
Lumbermans Mutual Casualty Ins. v. First Ins. (Howard)		

Tuesday, October 26, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (10/26/2010 - 10/29/2010 Session)

09-1518	Briefs	CIVIL: Whether the district court erred in granting summary judgment on Appellant's 42 U.S.C. § 1983 (2006) complaint; other issues.
Amanda Smith v. R. Ray (Smith)		

09-2301	Briefs	CIVIL: Whether the district court erred in granting defendant's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).
John Bennison v. Western Surety Company (Brinkema)		

09-2179	Briefs	EMPLOYMENT LAW: Whether federal research physician stated discrimination or retaliation claims following termination for alleged misconduct.
Duane Bonds v. Michael Leavitt (Titus)		

REVD 10/20/10

Tuesday, October 26, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-2303	Briefs	CIVIL RIGHTS: Whether police officers are entitled to qualified immunity for alleged failure to provide exculpatory information.
Eric Lynn v. Edward Tarney (Messitte)		

09-2135	Briefs	TORT LAW: Whether district court erred in dismissing RICO and common law claims as time-barred; other issues.
CSX Transportation, Inc. v. Robert Gilkison (Stamp)		

09-2027	Briefs	IMMIGRATION: Whether substantial evidence supports the agency finding that Lizama failed to qualify for relief from removal.
Carlos Lizama v. Eric Holder, Jr.		

09-2359	Briefs	TORT LAW: Whether provision of National Defense Authorization Act violates plaintiffs' equal protection rights; whether Death on High Seas Act provides exclusive remedy.
Olivia Rux v. Republic of the Sudan (Doumar)		

Tuesday, October 26, 2010

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

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09-1679 [Briefs](#) CIVIL: Whether trial court erred in limiting Plaintiff's theories of liability in personal injury claim; jury instructions.
Glen Fletcher v. Pizza Hut of America, Incorpor
(Trenga)

09-2272 [Briefs](#) SECURITIES: Whether investors demonstrated that correction of alleged securities fraud caused drop in Defendant corporation's
Robert Katyle v. Penn National Gaming, Incorpor stock price.
(Messitte)

10-1103 [Briefs](#) ANTITRUST: Whether geographic market and exclusionary conduct allegations were sufficient.
E I du Pont de Nemours and Co v. Kolon
(Payne)
Associations: 10-1275

09-1860 [Briefs](#) CIVIL: Appealability of the denial of qualified immunity; whether the district court erred in denying qualified immunity defense.
Jeffrey Gray v. Board of County Commissioners
(Quarles)

Tuesday, October 26, 2010

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-1383	Briefs	CIVIL: Whether failure to object to magistrate judge's report styled as final order waives further review; other issues.
Hilda Solis v. Roma Malkani (Quarles)		
Associations: 10-1061		

09-2353	Briefs	TAX LAW: Whether overstatement of basis of sold property can constitute an "omission" under I.R.C. section 6501(e)(1)(A); other issues.
Home Concrete & Supply, LLC v. US (Flanagan)		

09-2393	Briefs	JURISDICTION: Whether Soldiers' and Sailors' Civil Relief Act creates an implied private cause of action; other issues.
Andre Gordon v. Pete's Auto Service of Denbigh (Smith)		

10-1115	Briefs	CIVIL RIGHTS: Whether police officers were entitled to qualified immunity; other issues.
Tametta Bellotte v. Tracy Edwards (Bailey)		
Associations: 10-1123		

Wednesday, October 27, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

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09-1968	Briefs	ADMINISTRATIVE LAW: Whether district court had jurisdiction to review challenge to agency's "biological opinion"; other issues.
Dow Agrosciences L.L.C. v. National Marine (Williams)		

09-1941	Briefs	ADMINISTRATIVE LAW: Challenge to Natural Marine Fisheries Service "biological opinion" regarding EPA's registration of certain pesticides.
Dow Agrosciences LLC v. National Marine (Williams)		

09-4580	Briefs	SENTENCING: Whether upward departure sentence is within scope of appeal waiver, propriety of departure, sufficiency of explanation of sentence; other issues.
US v. Ahmed Shawakha (Fox)		

09-2390	Briefs	FIRST AMENDMENT: Propriety of summary judgment for defendants in action challenging school's prohibition of clothing depicting confederate battle flag
C. H. v. Martha Heyward (Wooten)		

Wednesday, October 27, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-4458 [Briefs](#) CRIMINAL: Whether district court abused its discretion in admitting evidence surrounding defendant's prior unrelated arrest.
US v. Ehren Van Wart
(Titus)

09-4865 [Briefs](#) CRIMINAL: Whether a sufficient factual basis supported defendant's guilty plea to 18 U.S.C. Section 924(c)(1)(a).
US v. Albert Edgerton
(Britt)

10-1264 [Briefs](#) FOIA: Whether the names of law enforcement officers conducting an immigration enforcement operation are exempt from
Casa De Maryland, Incorporated v. US Dept of disclosure under the Act; other issues.
(Messitte)

09-4704 [Briefs](#) CRIMINAL: Whether evidence was sufficient to prove bank fraud; challenge to jury instructions.
US v. Richard Forde
(Trenga)

Wednesday, October 27, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
9:30 a.m.

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09-1825 [Briefs](#) CIVIL: Whether evidence was legally sufficient to support existence of oral contract; propriety of jury instructions and evidentiary
Trademark Properties v. A&E Television rulings; other issues.
(Houck)

10-4012 [Briefs](#) CRIMINAL: Whether district court erred in denying request for Franks hearing and denying motion to suppress; other issues.
US v. Terrell Allen
(Motz)

09-2259 [Briefs](#) CIVIL RIGHTS: Challenge to denial of state officials' motion to vacate consent decree and to entry of modified decree.
L.J. v. Baltimore City Department of S
(Motz)

09-2141 [Briefs](#) CIVIL: Whether district court erred in granting Defendants' motion for summary judgment in case of medical malpractice based
Mark McEwen v. Baltimore Washington Medical on doctor's failure to diagnose risk of stroke; other issues.
(Motz)

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Wednesday, October 27, 2010

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

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09-4924 US v. Celina Lord (Cacheris)	Briefs	CRIMINAL: Whether evidence is sufficient to support conviction for willful failure to collect, account for, or pay over payroll taxes; propriety of responsible person testimony, jury instruction, and restitution order.
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09-1491 Vernell Lloyd v. New Hanover Regional Medical (Dever)	Briefs	CIVIL. Whether the district court erred in granting defendant's motion for summary judgment in employment discrimination action; other issues.
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09-2147 Ma'Lissa Simmons v. United Mortgage and Loan (Mullen)	Briefs	CIVIL: Whether district court properly denied request to certify collective action and dismissed action under Fair Labor Standards Act and state wage and hour act.
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09-1837 Chauncey Payne v. City of Laurel, Maryland (Bennett)	Briefs	CIVIL: Whether police officer's affidavit in support of request for warrant exhibited reckless disregard for truth; whether officer was entitled to qualified immunity.
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Wednesday, October 27, 2010

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-1847	Briefs	CIVIL: Whether district court erred in granting summary judgment in action asserting retaliation for activity alleged to be protected under the False Claims Act; other issues.
Jason Mann v. Heckler & Koch Defense, Incorp (Cacheris)		

09-2166	Briefs	ATTORNEY FEES: Whether government was substantially justified in its position that midshipman at U.S. Naval Academy was not on active duty for purpose of naturalization.
Andrew Cody v. Richard Caterisano (Garbis)		

09-5229	Briefs	CRIMINAL: Denial of request to voir dire jury regarding burden of proof and reasonable doubt in prosecution for theft of fuel from U.S. Army in Baghdad; other issues.
US v. Robert Jeffrey (Hilton)		

09-2097	Briefs	CIVIL: Whether district court erred in applying equitable estoppel against county as a matter of law.
Petroleum Traders Corporation v. Baltimore (Legg)		

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Thursday, October 28, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
9:30 a.m.

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09-2155	Briefs	CIVIL: Whether remand order based on forum selection clause is reviewable on appeal; propriety of district court's interpretation of forum selection clause.
Findwhere Holdings, Inc. v. Systems (Lee)		

09-2216	Briefs	ADA: Whether employer violated the ADA; whether amendments apply retroactively; other issues.
Austine Fink v. James Richmond (Chasanow)		
Associations: 09-2269		

09-2361	Briefs	IMMIGRATION: Whether substantial evidence supports the agency finding that petitioner failed to demonstrate a well-founded fear of persecution.
Konjit Amenu v. Eric Holder, Jr.		

09-2080	Briefs	CIVIL. Whether court properly allowed amendment of complaint; enforceability of hypothecation agreement and promissory note executed in settlement of prior litigation.
Paul Braunstein v. Thomas Pickens, III (Duffy)		

Thursday, October 28, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
9:30 a.m.

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09-2238	Briefs	DECLARATORY JUDGMENT: Standing and ripeness issues; whether district court erred in its interpretation of county agreement; other issues.
County Commissioners v. Panda-Brandywine (Williams)		

09-2214	Briefs	IMMIGRATION: Whether the Board erred in finding that Petitioner was convicted of marijuana possession in Virginia for immigration purposes and is therefore ineligible for a § 212(h) waiver.
Franklin Crespo v. Eric Holder, Jr.		

09-2239	Briefs	CLEAN WATER ACT: Challenge to Corps of Engineers' finding that wetland comes within the purview of the Clean Water Act.
Precon Development Corp. Inc. v. US Army (Smith)		

REVD 10/27/10

Thursday, October 28, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
8:30 a.m.

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09-2161	Briefs	CIVIL: Propriety of summary judgment on hostile work environment claim based on Plaintiff's race and gender.
Tiffany Mosby-Grant v. City of Hagerstown (Legg)		

09-2245	Briefs	LABOR LAW: Whether NLRB administrative law judges lack authority to conduct in camera inspection regarding privilege questions; other issues.
NLRB v. Interbake Foods, LLC (Bennett)		

07-2066	Briefs	TELECOMMUNICATIONS LAW. Whether local exchange carrier was entitled to receive promotional bill credits.
dPi Teleconnect LLC v. Edward Finley, Jr. (Dever)		
Associations: 09-1617		

09-4280	Briefs	CRIMINAL: Admission of uncharged conduct; propriety of prosecutor's statement during closing argument; other issues.
US v. Kenneth Johnson (Norton)		

Thursday, October 28, 2010

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-1639	Briefs	INSURANCE: Under Maryland law, whether plaintiff's allegedly tortious conduct was excluded from coverage such that defendant's duty to defend never arose.
Marvin J Perry, Inc. v. Hartford Casualty (Titus)		

09-4355	Briefs	CRIMINAL: Whether speeding to evade arrest under North Carolina law is a violent felony for purposes of the ACCA?
US v. Tyrell Bellamy (Flanagan)		

07-4885	Briefs	CRIMINAL: Whether the indictment sufficiently stated a violation of 18 U.S.C. § 924(c)(1)(a); sufficiency of the evidence; Brady violation: other issues.
US v. Lamont C. King (Faber)		
Associations:	08-4405	

09-2215	Briefs	LABOR: Whether district court erred in granting summary judgment for company, declining to compel arbitration of two issues.
United Food and Comm Workers v. Mountaineer (Stamp)		

Thursday, October 28, 2010

PANEL V
Courtroom 5
Room 339 (Spencer)
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-5027 [Briefs](#) CRIMINAL: In light of Begay v. United States, 553 U.S. 137 (2008), does possession of sawed-off shotgun, in violation of North Carolina law, constitute "crime of violence" as defined in USSG Section 4B1.2(a).
US v. Cedrick Hood
(Schroeder)

09-4116 [Briefs](#) CRIMINAL. Whether Crawford's speedy trial rights were violated; sentencing; other issues.
US v. Vern Crawford
(Wilson)

08-4932 [Briefs](#) SENTENCING GUIDELINES: Whether the district court plainly erred in applying three-level enhancement for a supervisory or managerial role, USSG Section 3B1.1(b); propriety of Guidelines calculation.
US v. Kevin Slade
(Flanagan)

REVD 9/10/10

Friday, October 29, 2010

PANEL I
Courtroom 1
Room 412 (Red Carpet)
8:30 a.m.

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09-4887	Briefs	SENTENCING: Whether district court properly found Defendant lacked prior convictions to qualify as armed career criminal.
US v. Lonnie Russell (Boyle)		
09-4520	Briefs	CRIMINAL: Whether the district court abused its discretion by limiting the scope of cross-examination of a Government witness; other issues.
US v. Thomas Yu (Lee)		
08-4432	Briefs	CRIMINAL: Whether request for sentence at low end of Guidelines range sufficiently preserved Carter claim where defendant received sentence at high end of Guidelines range.
US v. Raymond Leech (Quarles)		
09-4944	Briefs	CRIMINAL: Whether counsel was ineffective for failing to challenge sex offender registration requirement following conviction for firearms offense; other issues.
US v. Anthony Sims (Reidinger)		

REVD 8/19/10

Friday, October 29, 2010

PANEL II
Courtroom 2
Room 201 (Green Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-4400	Briefs	SENTENCING: Whether conviction for resisting arrest under Maryland law is a conviction of a crime of violence pursuant to U.S. Sentencing Guidelines Manual sections 4B1.1, 4B1. 2.
US v. Rodney Jenkins (Legg)		

08-5129	Briefs	CRIMINAL: Sufficiency of evidence to establish single conspiracy; limitation of cross-examination; other issues.
US v. Jonathon Patterson (Voorhees)		
Associations:	09-4374	

09-4419	Briefs	CRIMINAL: Propriety of restitution order where district court did not consider defendant's financial needs or ability to pay.
US v. June Leftwich (Titus)		

09-4543	Briefs	CRIMINAL: Sufficiency of evidence supporting convictions for conspiracy to commit identification document fraud and for aggravated identity theft; jury instructions; other issues.
US v. Chinedu Luke (Motz)		

Friday, October 29, 2010

PANEL III
Courtroom 3
Room 223 (Tan Carpet)
8:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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09-4487 [Briefs](#) CRIMINAL LAW: Whether defendant's income from real estate transactions constituted ordinary income or capital gains.
US v. Henry Cole
(Bennett)

08-4965 [Briefs](#) CRIMINAL: Whether information underlying search warrant was stale; Fed. R. Evid. 404(b); sentencing issues.
US v. Michael Comstock
(Fox)

09-4556 [Briefs](#) SENTENCING: Propriety of including recovered property in loss calculation; reasonableness of sentence.
US v. Joseph Clemons
(Dever)

09-4455 [Briefs](#) CRIMINAL: Whether a passenger was lawfully ordered out of a vehicle stopped for a traffic violation; if so, whether reasonable suspicion supported his subsequent frisk; sentencing issues.
US v. Michael Hampton
(Currie)

Friday, October 29, 2010

PANEL IV
Courtroom 4
Room 414-D (Tweed Carpet)
8:30 a.m.