

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

REVD 9/23/21

Friday, September 17, 2021

21-6217 [Briefs](#)
Clinton Folkes v. Warden Nelsen
(Gergel)

POSTCONVICTION: Whether district court erred in finding petitioner was denied effective assistance of counsel during pendency of state court appeal of right.

PANEL I
Judge Agee, Judge Wynn, and Judge Volk*

Friday, September 17, 2021, 9:30 a.m.

[LISTEN](#)

*Hon. Frank W. Volk, United States District Judge, Southern District of West Virginia

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Tuesday, September 21, 2021

20-1937 [Briefs](#) INSURANCE: Whether ensuing loss clause in defective design and construction exclusion provides coverage for damages from defective design and subsequent settlement of building.
Jowite Limited Partnership v. Federal
(Boardman)
-Judge Motz is replaced by Judge Alston* in this case.

20-1958 [Briefs](#) EMPLOYMENT: Whether the district court erroneously granted Defendants' motion to dismiss Plaintiff's Title VII discrimination, harassment, and retaliation claims; other issues.
Charles Holloway v. State of Maryland
(Bennett)

20-1423 [Briefs](#) IMMIGRATION: Whether BIA erred by rejecting proposed particular social group consisting of "prosecution witnesses"; other issues.
Walter Herrera-Martinez v. Merrick Garland

20-1943 [Briefs](#) IMMIGRATION: Whether Petitioner was due the rebuttable presumption of good cause for a continuance with a prima facie approvable U visa; related issues.
Patricia Garcia Cabrera v. Merrick Garland

PANEL I

Judge Motz, Judge Quattlebaum, and Judge Rushing

Tuesday, September 21, 2021, 9:30 a.m.

[LISTEN](#)

*Hon. Rossie D. Alston, Jr., United States District Judge, Eastern District of Virginia

20-1937 – Judge Motz is replaced by Judge Alston in this case.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Tuesday, September 21, 2021

19-6524 [Briefs](#)
Gary Wall v. Jeffrey Kiser
(Dillon)

POSTCONVICTION: Whether this Court's decision in *Lenear v. Wilson*, 937 F.3d 257 (4th Cir. 2019), applies retroactively.

20-1712 [Briefs](#)
West Virginia State University v. The Dow
(Copenhaver)

JURISDICTION: Whether district court erred by determining that it lacked federal-officer or federal question jurisdiction over state law claims challenging RCRA cleanup.

21-1005 [Briefs](#)
B.R. v. F.C.S.B.
(Alston)

CIVIL: Whether failure to obtain leave to file complaint pseudonymously is a jurisdictional defect precluding relation back of subsequent order granting leave to proceed pseudonymously.

20-1710 [Briefs](#)
White Coat Waste Project v. Greater Richmond
(Lauck)

CIVIL RIGHTS: Whether district court erred by determining that Greater Richmond Transit Company is a state actor for purposes of section 1983; additional issues on cross-appeal.

Associations: 20-1740

PANEL II
Chief Judge Gregory, Judge Niemeyer, and Judge Richardson

Tuesday, September 21, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Tuesday, September 21, 2021

19-6849 [Briefs](#)
US v. William Slate
(Smith)

SENTENCING: To what extent should the district court consider Apprendi v. New Jersey, 530 U.S. 466 (2000) when resentencing under the First Step Act; related issues.

20-1915 [Briefs](#)
ContraVest Inc. v. Mt. Hawley Insurance
(Norton)

CIVIL: Appeal from summary judgment entered in favor of excess insurance carrier on breach of contract and bad faith claims arising out of handling of insurance claim.

PANEL III
Judge Wilkinson, Judge King, and Judge Diaz

Tuesday, September 21, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Tuesday, September 21, 2021

20-1878 [Briefs](#)
Carol Clendening v. US
(Britt)

CIVIL: Whether former Marine officer's post-service failure-to-warn claim is barred by the discretionary function exception.

20-7024 [Briefs](#)
US v. Christopher Perkins
(Britt)

CIVIL: Whether district court erred by revoking appellant's conditional release under 18 U.S.C. section 4246(f); whether clear and convincing or preponderance evidentiary standard applies.

17-4737 [Briefs](#)
US v. Melvin Thomas Lewis
(Cogburn)

SENTENCING: Propriety of district court's application of bodily-injury enhancement under U.S. Sentencing Guidelines Manual section 2B3.1(b)(3)(A); adequacy of sentencing explanation.

PANEL IV
Judge Agee, Judge Wynn, and Judge Volk*

Tuesday, September 21, 2021, 2:00 p.m.

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*Hon. Frank W. Volk, United States District Judge, Southern District of West Virginia

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Tuesday, September 21, 2021

19-4841 [Briefs](#)
US v. Robert George
(Mullen)

SENTENCING: Whether court based sentence on clearly erroneous facts that conflict with jury verdict; if not, whether downward variant sentence of probation is substantively reasonable.

20-2015 [Briefs](#)
Ana Lidia Vasquez v. Merrick Garland

IMMIGRATION: Whether the Court lacks jurisdiction to review dispositive issues not raised before the Board; related issues.

20-1924 [Briefs](#)
Javier Chavez Gonzalez v. Merrick Garland

IMMIGRATION: Agency's general authority to terminate removal proceedings following In re S-O-G-, 27 I. & N. Dec. 462 (A.G. 2018); other issues.

PANEL V
Judge Floyd, Judge Thacker, and Judge Harris

Tuesday, September 21, 2021, 2:00 p.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Wednesday, September 22, 2021

20-1252 [Briefs](#) ERISA: Whether district court erred by holding appellant liable for violating ERISA's fiduciary and prohibited-
Marty Walsh v. Adam Vinoskey transaction provisions; damages issue.
(Moon)

19-1738 [Briefs](#) BLACK LUNG: Whether Board improperly required Administrative Law Judge to consider the preamble to the
Consolidation Coal Company v. Terri Shipley regulations in assessing weight and credibility of employer's physician's opinions; other issues.

20-6330 [Briefs](#) POSTCONVICTION: Whether, in violation of Brady v. Maryland, 373 U.S. 83 (1963), the Government's failure to
US v. Donald Blankenship disclose certain evidence deprived Appellant of a fair trial.
(Berger)

PANEL I
Judge Niemeyer, Judge Diaz, and Judge Quattlebaum

Wednesday, September 22, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Wednesday, September 22, 2021

20-0006	Briefs	POSTCONVICTION: Ineffective assistance, involuntariness, and other challenges to guilty plea and capital sentence.
Quincy Allen v. Michael Stephan (Coggins)		
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20-1549	Briefs	INSURANCE: Whether, under North Carolina law, claim for breach of insurance contract accrued at date of loss or date of breach; other issues.
Skyline Restoration, Inc. v. Church Mutual (Boyle)		
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20-1759	Briefs	ARBITRATION: Whether the district court erred in denying Appellant's motion to vacate an arbitration award; application of res judicata and collateral estoppel.
Constellium Rolled Products v. United Steel, (Johnston)		
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20-1201	Briefs	IMMIGRATION: Standard of review of immigration court's ruling in reasonable-fear review hearing; whether alien has right to counsel's participation at such a proceeding; other issues.
Adan Tomas-Ramos v. Merrick Garland		

PANEL II
Chief Judge Gregory, Judge Harris, and Judge Rushing

Wednesday, September 22, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Wednesday, September 22, 2021

19-2012 [Briefs](#)
Sara Conner v. Cleveland County, NC
(Reidinger)

LABOR: Whether employee adequately alleged a violation of the Fair Labor Standard Act's overtime provisions; other issues.

20-1654 [Briefs](#)
Carlos Escobar Gomez v. Merrick Garland

IMMIGRATION: Propriety of the agency's ruling that Petitioner's proposed social groups were not cognizable, as a matter of law, because they lacked particularity.

20-1620 [Briefs](#)
JoAnn Britt v. Louis DeJoy
(Bennett)

JURISDICTION: Whether the Court has jurisdiction over the appeal; other issues.

20-4618 [Briefs](#)
US v. Harold Hall, Jr.
(Anderson)

CRIMINAL: Whether the district court erred by denying Defendant's motions to suppress statements made during traffic stop and evidence seized during home search.

PANEL III
Judge Wilkinson, Judge Wynn, and Judge Floyd

Wednesday, September 22, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Wednesday, September 22, 2021

20-1120 [Briefs](#) CIVIL: Whether the district court erred in determining that the action was barred by the statute of limitations;
Wendy Wellin v. Thomas Farace related issues.
(Norton)

20-2146 [Briefs](#) CONTRACT: Whether federal contractor claim is barred by the Election Doctrine.
East Coast Repair v. United States of America
(Allen)

20-1767 [Briefs](#) CIVIL: Multiple issues arising from district court's dismissal of plaintiffs' tort and contract claims related to
J.R. v. Walgreens Boots Alliance, Inc. corporation's use of their personally identifiable prescription information; personal jurisdiction.
(Norton)

PANEL IV
Judge Motz, Judge Agee, and Senior Judge Keenan

Wednesday, September 22, 2021, 3:00 p.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Wednesday, September 22, 2021

20-2125	Briefs	CIVIL: Whether amendment to county's Water and Sewer Plan involved a zoning or landmarking law subject to regulation under RLUIPA; related issues.
The Redeemed Christian Church v. Prince		
(Chasanow)		
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20-2185	Briefs	CIVIL: Whether County's refusal to extend sewer service to property on which Appellant's intended to build a church violates RLUIPA, Free Exercise Clause; related issues.
Canaan Christian Church v. Montgomery		
(Chuang)		
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20-1418	Briefs	CIVIL: Whether, under McDonough v. Smith, 139 S. Ct. 2149 (2019), district court erred in dismissing Section 1983 claim as untimely.
Fernando Smith v. Michael Travepiece		
(Groh)		
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20-1745	Briefs	CIVIL: Propriety of district court's determination that borrower correspondence to loan servicer did not trigger servicer's obligations under Real Estate Settlement Procedures Act.
Rogers Morgan v. Caliber Home Loans, Inc.		
(Xinis)		

PANEL V
Judge King, Judge Thacker, and Judge Richardson

Wednesday, September 22, 2021, 2:00 p.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Thursday, September 23, 2021

19-7391 [Briefs](#)
John Walters v. Michael Martin
(Stamp)

HABEAS: Whether Walters was prejudiced by counsel's failure to timely relay favorable plea offer or seek reopening of plea offer.

20-2028 [Briefs](#)
Jose Canales Granados v. Merrick Garland

IMMIGRATION: Whether violation of Va. Code Ann. section 46.2-817(B), felony eluding, categorically qualifies as crime of moral turpitude, other issues.

PANEL I
Judge Wilkinson, Judge Nieymeyer, and Judge Agee

Thursday, September 23, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

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19-7340 [Briefs](#)
Eric Moss v. Buddy Harwood
(Whitney)

CIVIL RIGHTS: Propriety of district court's conclusion that pretrial detainee failed to exhaust administrative remedies and failed to demonstrate deliberate indifference to serious medical needs.

20-1149 [Briefs](#)
Mutual Assurance Society of VA v. Federal
(Lauck)

INSURANCE: Whether district court properly ignored policies' "other insurance" provisions; whether court correctly predicted how Virginia Supreme Court would resolve dispute between dueling excess policies.

PANEL II
Judge Motz, Judge Diaz, and Judge Harris

Thursday, September 23, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

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20-1879	Briefs	CIVIL RIGHTS: Whether Maryland Election Law section 3-506, which limits use of Maryland's registered voter list to purposes related to electoral process, violates the First Amendment.
Dennis Fusaro v. Charlton T. Howard, III (Hollander)		
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20-1683	Briefs	CONSTITUTIONAL LAW: Whether no trespass ban against parent of public school students violated right to due process; other issues.
Brian Davison v. Deborah Rose (Trenga)		
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21-4127	Briefs	CRIMINAL: Whether District Court possessed extraterritorial jurisdiction over appellant regarding section 1956(h) money-laundering conspiracy charge; related issues.
US v. Seun Ojedokun (Grimm)		

PANEL III
Chief Judge Gregory, Judge King and Judge Floyd

Thursday, September 23, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

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20-6075 [Briefs](#) SENTENCING: Whether Garcia was sentenced under the Fair Sentencing Act and is therefore ineligible for
US v. Alejandro Garcia First Step Act relief.
(Bell)

20-2302 [Briefs](#) ARBITRATION: Whether the district court erred by finding parties' agreement to arbitrate illusory and
Michael Coady v. Nationwide Motor Sales unenforceable under Maryland law.
(Gallagher)

20-1718 [Briefs](#) SECURITIES FRAUD: Whether class action complaint plausibly alleged material misstatement or omission
KBC Asset Management NV v. DXC Technology and scienter to survive dismissal at pleading stage.
(Trenga)

PANEL IV
Judge Wynn, Judge Thacker, and Judge Rushing

Thursday, September 23, 2021, 2:00 p.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Thursday, September 23, 2021

20-1951	Briefs	CIVIL RIGHTS: Whether Virginia's lifelong sex offender registry requirement after conviction for indecent liberties violates Equal Protection Clause, Eighth Amendment, and Due Process Clause.
John Doe v. Gary Settle (Jackson)		
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20-1410	Briefs	CIVIL RIGHTS: Whether district court erred in dismissing 42 U.S.C. section 1983 action for due process violation based on failure to allege a state created danger.
John Callahan v. North Carolina Department (Howard)		
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20-1819	Briefs	JURISDICTION: Whether district court erred by dismissing IDEA claims for lack of subject matter jurisdiction because students had withdrawn from school district and complaints requested nonmonetary relief.
Stephanie Johnson v. Charlotte-Mecklenburg (Cogburn)		
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20-1770	Briefs	IMMIGRATION: Whether to transfer petition for review to the Fifth Circuit given Petitioner's physical presence in Louisiana during his televideo removal hearing; other issues.
Oscar Herrera-Alcala v. Merrick Garland		

Associations: 20-2338

PANEL V

Judge Richardson, Judge Quattlebaum, and Senior Judge Keenan

Thursday, September 23, 2021, 2:00 p.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Friday, September 24, 2021

20-0005 [Briefs](#)
John Burr v. Denise Jackson
(Osteen)

POSTCONVICTION: Appeal from denial of habeas relief in capital case.

20-1821 [Briefs](#)
Vicente Aleman-Medrano v. Merrick Garland

IMMIGRATION: Whether substantial evidence supports the finding that the Petitioners failed to show a nexus to the particular social group; related issues.

19-4722 [Briefs](#)
US v. Richard McCormick
(Boyle)

CRIMINAL: Whether a sufficient factual basis supported the guilty plea; other issues.

20-4290 [Briefs](#)
US v. Jabrell Smith
(Osteen)

CRIMINAL: Whether a former passenger has standing to contest search of vehicle; other issues.

PANEL I
Judge Wilkinson, Judge Wynn, and Judge Harris

Friday, September 24, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Friday, September 24, 2021

20-4002 [Briefs](#) SENTENCING: Whether district court properly attributed "ice" methamphetamine to defendants; whether
US v. Bradley Williams district court properly rejected defendants' challenges to Sentencing Guidelines' treatment of "ice"
(Jones) methamphetamine.
Associations: 20-4086, 20-4123, 20-4225

20-4093 [Briefs](#) CRIMINAL: Whether Virginia law prohibits possession of crossbow on school grounds, and whether law
US v. Devon Coleman enforcement officer could reasonably believe such possession is prohibited under Virginia law.
(Jones)

20-4340 [Briefs](#) SENTENCING: Whether district court properly applied murder cross reference; other issues.
US v. Travis Ball
(Hudson)

PANEL II
Judge Niemeyer, Judge Agee, and Judge Quattlebaum

Friday, September 24, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Friday, September 24, 2021

20-4306 [Briefs](#)
US v. Arun Dhavamani
(Faber)

CRIMINAL: Whether officers improperly manufactured federal jurisdiction warranting reversal of Defendant's conviction for traveling to engage in illicit sexual conduct; other issues.

20-4393 [Briefs](#)
US v. Kenneth Spirito
(Jackson)

CRIMINAL: Whether sufficient evidence supported convictions for federal program fraud in violation of 18 U.S.C. section 666(a)(1)(A); other issues related to jury instructions, evidentiary rulings, forfeiture.

20-4106 [Briefs](#)
US v. Ryan Kibble
(Faber)

CRIMINAL: Whether challenge to special assessment under 18 U.S.C. section 3014 falls within the scope of appellate waiver.

20-4256 [Briefs](#)
US v. Trey Campbell
(Groh)

SENTENCING: Propriety of relying on the Guidelines commentary to qualify a prior conviction for an inchoate offense as a career offender predicate; other issues.

PANEL III

Chief Judge Gregory, Judge Motz, and Judge Thacker

Friday, September 24, 2021, 9:30 a.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Friday, September 24, 2021

20-4390 [Briefs](#)
US v. Chikosi Legins
(Novak)

SENTENCING: Whether sentence is procedurally and substantively reasonable; other issues.

20-4032 [Briefs](#)
US v. Nahson Suggs
(Boyle)

SENTENCING: Whether, under standard set forth in Chavez-Meza v. United States, 138 S. Ct. 1959 (2018), explanation of sentence was adequate. (15 mins. per side)

19-4494 [Briefs](#)
US v. Terrance Dennis
(Davis)

CRIMINAL: Whether evidence was sufficient to support conspiracy conviction; other issues.

PANEL IV
Judge Diaz, Judge Floyd, and Judge Richardson

Friday, September 24, 2021, 2:00 p.m.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Richmond, VA (9/17/2021 - 9/24/2021 Session)

Friday, September 24, 2021

20-1793 [Briefs](#) CIVIL: Whether district court erred in interpreting West Virginia's "loss of chance" statute.
Janet Graham v. Sunil Dhar
(Faber)

19-7276 [Briefs](#) POSTCONVICTION: Whether defense counsel rendered ineffective assistance by not objecting to new
Lynel Witherspoon v. Donnie Stonebreaker
(Hendricks)
evidence presented during jury deliberations.

19-7482 [Briefs](#) POSTCONVICTION: Whether the district court possessed jurisdiction to adjudicate section 2241 petition when
Larry Slusser v. Acting Warden Vereen
(Coggins)
prisoner previously raised same issue in second or successive section 2255 motion.

PANEL V
Judge King, Judge Rushing, and Judge Gibney*

Friday, September 24, 2021, 2:00 p.m.

[LISTEN](#)

*Hon. John A. Gibney, Jr., United States District Judge, Eastern District of Virginia