

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (12/07/2010 - 12/10/2010 Session)

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09-5085	<a href="#">Briefs</a>	CRIMINAL: Whether district court reversibly erred by permitting bolstering by the prosecution; denying motion for judgment of acquittal; and finding drug quantity at sentencing.
US v. O'Benson Sesere ( Conrad )		
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09-2346	<a href="#">Briefs</a>	INSURANCE LAW: Whether insurer owed defense obligation based on EPA letter; whether exception applied to pollution exclusion; other issues.
Industrial Enterprises, Incorp v. Penn America ( Bennett ) Associations: 09-2397		
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09-7442	<a href="#">Briefs</a>	HABEAS CORPUS: Whether United States v. Santos, 553 U.S. 507, 128 S. Ct. 2020 (2008), applies retroactively to cases on collateral review; validity of conspiracy to commit money laundering conviction in light of Santos.
US v. Ronald Halstead ( Keeley )		
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09-8051	<a href="#">Briefs</a>	PRISON LITIGATION REFORM ACT: Whether an action dismissed in part under 28 U.S.C. § 1915(e)(2)(B) (2006) qualifies as a "strike" for purposes of denying PLRA status.
Eric Tolbert v. Stevenson		

Tuesday, December 07, 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 (12/07/2010 - 12/10/2010 Session)

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09-2308 [Briefs](#) CIVIL RIGHTS: Whether district court erred in denying qualified immunity to off-duty police officer for allegedly excessive use of force.  
Tim Brockington v. Antwan Boykins  
( Blake )

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08-2370 [Briefs](#) ATTORNEYS' FEES: Whether award of attorneys' fees was appropriate.  
Southern Alliance v. Duke Energy Carolinas, LLC  
( Thornburg )  
Associations: 09-2113, 09-1928

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10-1259 [Briefs](#) CIVIL RIGHTS: Challenge to Title IX regulations and state university implementation thereof.  
Equity in Athletics v. Department of Education  
( Conrad )

Tuesday, December 07, 2010

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

REVD 12/3/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (12/07/2010 - 12/10/2010 Session)

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09-7907 [Briefs](#) HABEAS CORPUS: Was grant of writ proper; was denial of motion to intervene proper.  
Donald Brandt v. Elizabeth Gooding  
( Floyd )  
Associations: 09-7909

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10-1008 [Briefs](#) CONSTITUTIONAL LAW: Whether qualified immunity defense was properly denied in 42 U.S.C. § 1983 (2006) action alleging  
Steven Witt v. West Virginia State Police  
( Bailey )  
excessive force during arrest.

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09-1821 [Briefs](#) CIVIL. Propriety of summary judgment on ERISA claim; NC Wage and Hour Act claim.  
Joseph Leone v. Tyco Electronics Corporation  
( Fox )

Tuesday, December 07, 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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Richmond, VA (12/07/2010 - 12/10/2010 Session)

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10-1104      [Briefs](#)      CONSTITUTIONAL LAW: Whether plaintiffs have standing to bring constitutional challenge to executive order and funding guidelines regarding embryonic stem cell research.  
Mary Doe v. Barack Obama  
( Williams )  
Associations: 10-1106

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10-1302      [Briefs](#)      FEDERAL PROCEDURE: Challenge to class certification ruling; other issues.  
William Gray, III v. Hearst Communications, Inc.  
( Anderson )

Tuesday, December 07, 2010      PANEL IV  
Courtroom 4  
Room 414-D (Tweed Carpet)  
9:30 a.m.

REVD 12/3/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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Richmond, VA (12/07/2010 - 12/10/2010 Session)

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08-1972	<a href="#">Briefs</a>	CIVIL: Whether, in a case involving the death of an inmate, the district court erred in granting summary judgment for defendants on claims of failure to protect; provide medical care.
Melissa Rodriguez v. State of Maryland ( Davis )		
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08-4475	<a href="#">Briefs</a>	CRIMINAL. Whether the district court erred in failing to conduct a hearing under 21 U.S.C. Section 851(c) and in enhancing sentence based on prior conviction; other issues.
US v. Jason Simmons (Thornburg)		
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10-1182	<a href="#">Briefs</a>	INSURANCE LAW: Issues regarding insurance coverage, punitive damages, and waiver of unfair trade practices claims.
North American Precast, Inc. v. General Casualty ( Copenhaver )		
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10-1373	<a href="#">Briefs</a>	INSURANCE: Challenge to grant of summary judgment in favor of insurance company in action seeking declaration of entitlement to underinsured motorist coverage.
Stanley McWhite v. ACE American Insurance ( Harwell )		

Wednesday, December 08, 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 (12/07/2010 - 12/10/2010 Session)

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09-1423 [Briefs](#) IMMIGRATION: Whether the Court has authority to remand and order a unified decision; whether the Board erred sustaining the Orlando Crespín-Valladares v. Eric Holder, Jr. Government's appeal; to what extent may the Court review the order denying reconsideration; related issues.

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10-1191 [Briefs](#) MEDICAID ACT: Whether defendants violated the "reasonable promptness" provisions of the statute and regulations; other Sue Doe v. Linda Kidd issues.  
( Seymour )

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10-1132 [Briefs](#) FIRST AMENDMENT: Whether City of Charlotte's Picketing and Public Assembly Ordinances are constitutional.  
Philip Benham v. City of Charlotte, NC  
( Conrad )

Wednesday, December 08, 2010

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

REVD 11/12/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (12/07/2010 - 12/10/2010 Session)

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09-4698 [Briefs](#) CRIMINAL: Applicability of fugitive entitlement doctrine; venue; sentencing.  
US v. John Curtiss  
( Williams )

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09-8161 [Briefs](#) CIVIL RIGHTS: Whether prisoner satisfied exhaustion of administrative remedies requirement; whether grievance process was  
William Graham v. Sheriff Gentry "available"; other issues.  
( Smith )

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09-4926 [Briefs](#) CRIMINAL: Whether district court erred in finding that defendant's prior conviction was an aggravated felony for purposes of 8  
US v. Jose Savillon-Matute U.S.C. § 1326(b)(2) (2006).  
( Motz )

Wednesday, December 08, 2010

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

REVD 11/19/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (12/07/2010 - 12/10/2010 Session)

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09-2317 [Briefs](#) CIVIL: Whether police officer's employment discipline and termination contravened his First Amendment rights; qualified immunity.  
Scott Stickley v. Tim Sutherly  
( Wilson )

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10-1089 [Briefs](#) ERISA: Whether district court applied proper standards in overturning plan administrator's denial of disability benefits.  
Rebecca DuPerry v. Life Insurance Company  
( Flanagan )

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09-1921 [Briefs](#) IDEA. Propriety of grant of summary judgment finding school district failed to provide free and appropriate public education and finding parental placement appropriate; related issues.  
Sumter County School District v. Joseph Heffernan  
( Anderson )

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09-4909 [Briefs](#) CRIMINAL: Whether 42 U.S.C. § 16913(d) (2006) constitutes an impermissible delegation of legislative power to the Attorney General; other issues.  
US v. Keith Burns  
( Turk )

Wednesday, December 08, 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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09-1172 [Briefs](#) CIVIL § 1983. Whether forced entry into locked bathroom exceeded scope of co-tenant's invitation for police to access common areas of the residence; qualified immunity; other issues.  
Lawrence Trull v. Francis Smolka  
( Hudson )

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09-1546 [Briefs](#) CIVIL: Whether takings claim was precluded for failure to timely pursue state remedies or was meritless; other issues.  
Aubrey Henry v. Jefferson County Commission  
( Bailey )  
Associations: 09-2021

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09-4839 [Briefs](#) CRIMINAL: Whether Appellant should have received the benefit of post-conduct amendment to the regulation governing his offense; if not, whether Appellant was convicted in violation of the 2nd Amendment.  
US v. Sean Masciandaro  
( Ellis )

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09-2263 [Briefs](#) CIVIL: Whether the district court properly ordered Appellant to comply with administrative subpoena.  
EEOC v. Washington Suburban Sanitary  
( Williams )

Wednesday, December 08, 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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10-1896 Eric Levin v. Alms and Associates, Inc. ( Garbis )		STAY PENDING APPEAL: Does appeal from denial of motion to stay judicial proceedings and compel arbitration divest district court of jurisdiction over claims that are allegedly subject to mandatory arbitration.
10-1896 Eric Levin v. Alms and Associates, Inc. ( Garbis )	<a href="#">Briefs</a>	ARBITRATION. Does appeal from denial of motion to stay judicial proceedings and compel arbitration divest district court of jurisdiction over claims that are allegedly subject to mandatory arbitration.
09-1774 WW, LLC v. The Coffee Beanery LTD ( Davis )	<a href="#">Briefs</a>	CIVIL PROCEDURE: Whether the district court should have granted Fed. R. Civ. P. 60(b)(5) motion after arbitration award was vacated.
10-6086 Steven Kanai v. John McHugh ( Messitte )	<a href="#">Briefs</a>	HABEAS CORPUS: Whether the district court properly granted habeas relief to conscientious objector applicant.

REVD 11/8/10

Thursday, December 09, 2010

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

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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10-1048 [Briefs](#) FLSA: Whether school employee, when acting as a school coach, was an employee or volunteer under the FLSA; propriety of summary judgment.  
James Purdham v. Fairfax County School Board  
( O'Grady )

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10-1135 [Briefs](#) CIVIL: Whether district court erred in granting summary judgment on Plaintiff's claims of discrimination, hostile work environment, constructive discharge, breach of contract, and intentional infliction of emotional distress.  
Geraldine Lauture v. Saint Agnes Hospital  
( Blake )

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10-1153 [Briefs](#) CONTRACT CLAUSE: Whether termination of retired police officers' supplemental pensions violated constitutional rights.  
Dennis Crosby v. City of Gastonia  
( Conrad )

Thursday, December 09, 2010

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

REVD 11/16/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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10-1046	<a href="#">Briefs</a>	CIVIL: Whether district court properly concluded the basis for Appellants' unjust enrichment claim was identical to subject matter of contract and thus not actionable under West Virginia law; other issues.
Orin Johnson v. Samuel Ross, II ( Goodwin )		
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09-2304	<a href="#">Briefs</a>	CONSTITUTIONAL: Whether Maryland's election law imposes constitutionally permissible limitations on the right of referendum; other issues.
Paul Kendall v. Ann Balcerzak ( Motz )		
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09-2352	<a href="#">Briefs</a>	CONSTITUTIONAL LAW: Issues regarding constitutional challenge to West Virginia's mandatory vaccination requirement and immunity defense.
Jennifer Workman v. Mingo County Bd. of Educ. ( Goodwin )		
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10-1164	<a href="#">Briefs</a>	LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT: Did employer's voluntary payment for medical treatments toll the one year statute of limitations in 33 U.S.C. Section 922.
Stephanie Wheeler v. Newport News Shipbldg.		

Thursday, December 09, 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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09-1499 [Briefs](#) CIVIL: Whether, under Virginia law, the agreement between the parties is an installment contract or an indivisible contract.  
Allen F. Johnson & Associates v. Port Security  
( Ellis )

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09-5136 [Briefs](#) CRIMINAL LAW: Sufficiency of evidence to convict under 50 U.S.C. § 783(a) and 18 U.S.C. § 1001.  
US v. James Fondren, Jr.  
( Hilton )

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10-1155 [Briefs](#) CIVIL: Whether the district court erred in granting summary judgment for Defendants; other issues.  
Henry McLaurin v. Vulcan Threaded Products  
( Fox )

Thursday, December 09, 2010

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

REVD 11/16/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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09-4705	<a href="#">Briefs</a>	CRIMINAL LAW: Challenge to procedural and substantive reasonableness of sentence, including Sixth and Eighth Amendment challenge.
US v. Ahmed Abu Ali ( Lee )		
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09-2319	<a href="#">Briefs</a>	LABOR LAW: Whether OSHA Directive regarding steel erection safety standards is subject to judicial review.
Steel Erectors Association v. OSHA		
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10-1082	<a href="#">Briefs</a>	INSURANCE LAW: Whether, under South Carolina law, "absolute pollution exclusion" applied to exclude coverage for personal injuries.
NGM Insurance Company v. Carolina's Power ( Norton )		
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10-1156	<a href="#">Briefs</a>	CIVIL RIGHTS: Whether alleged racial harassment is actionable under Title VII; other issues.
EEOC v. Xerxes Corporation ( Blake )		

Thursday, December 09, 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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09-4806 [Briefs](#) CRIMINAL: Validity of Miranda waiver; whether prosecution for attempted murder and assault with intent to commit murder  
US v. John Bird, Jr. violated Double Jeopardy Clause.  
( Thornburg )

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09-4601 [Briefs](#) CRIMINAL: Challenge to search warrant; denial of Franks hearing; voluntariness of statement; evidentiary and sentencing issues;  
US v. Christopher Blauvelt denial of new trial motion.  
( Quarles )

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09-5047 [Briefs](#) CRIMINAL: Whether the district court erred by considering Martin's need for medical care in determining his original term of  
US v. Andre Martin imprisonment.  
( Jones )

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10-1360 [Briefs](#) QUALIFIED IMMUNITY: Challenge to district courts denial of deputy sheriff's motion for summary judgment in excessive force  
Charles Wernert, II v. Ryant Washington case.  
( Moon )

Friday, December 10, 2010

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

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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09-4853 [Briefs](#) CRIMINAL: Whether district court erred when it denied Portis's motion to suppress; other issues.  
US v. Brian Portis  
( Williams )

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09-4834 [Briefs](#) CRIMINAL: Whether Appellant's fugitive status extended district court's jurisdiction over supervised release violations occurring  
US v. William Buchanan  
( Ellis ) after expiration of original supervised release term.

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09-5114 [Briefs](#) CRIMINAL: Whether false statements or omissions tainted arrest and search warrants; other issues.  
US v. David Clenney  
( Ellis )

Friday, December 10, 2010

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

REVD 11/8/10

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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10-4142	<a href="#">Briefs</a>	CRIMINAL: Whether district court erred in denying Franks hearing; other issues.
US v. Pradeep Srivastava ( Titus )		
Associations: 10-4600, 10-4720		
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09-2029	<a href="#">Briefs</a>	FAIR LABOR STANDARDS ACT: Challenge to denial of motion to facilitate 29 U.S.C. § 216(b) notice and to grant of summary judgment to store on basis that named plaintiff was exempt employee under FLSA.
Grace et al. v. Family Dollar Stores, Inc. ( Mullen )		
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08-4486	<a href="#">Briefs</a>	CRIMINAL: Whether indictment properly charged Defendant with mailing threatening letter or was constructively amended; sufficiency of evidence.
US v. Scott Rendelman ( Titus )		
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09-4467	<a href="#">Briefs</a>	PLEA AGREEMENT: Whether district court erred in declining to impose a concurrent sentence as agreed upon by the parties.
US v. Lorenzo Lewis ( Flanagan )		

Friday, December 10, 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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09-1391	<a href="#">Briefs</a>	CIVIL. Whether question of malicious intent sufficient to overcome a defendant's conditional or qualified privilege is a legal or factual matter; alternatively, absolute immunity; propriety of summary judgment.
Michael Spence v. NCI Information Systems ( Legg )		
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09-4774	<a href="#">Briefs</a>	CRIMINAL: Whether district court erred in denying motion to suppress after finding that officers illegally seized Defendant prior to obtaining search warrants; other issues.
US v. Shirland Fitzgerald ( Wilson )		
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09-5161	<a href="#">Briefs</a>	CRIMINAL: Whether police had reasonable suspicion to seize defendant.
US v. David Foster ( Boyle )		
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09-5012	<a href="#">Briefs</a>	FOURTH AMENDMENT: Whether car inventory search was permissible; other issues.
US v. Omar Arellano ( Brinkema )		

Friday, December 10, 2010

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

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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09-5046 [Briefs](#) CRIMINAL: Whether 18 U.S.C. § 1326 permits a theory of constructive knowledge and, if so, whether it can be applied in this case.  
US v. Enrique Vargas  
( Williams )

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09-4723 [Briefs](#) SENTENCING: Whether sentence was procedurally unreasonable when court ordered variance without first considering departure.  
US v. Roberto Diosdado-Star  
( Fox )

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09-4959 [Briefs](#) CRIMINAL: Whether the district court committed plain error in polling the jury; other issues.  
US v. Eugene Penniegraft  
( Schroeder )

REVD 11/8/10

Friday, December 10, 2010

PANEL V  
Courtroom 5  
Room 339 (Spencer)  
8:30 a.m.