

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (10/25/2016 - 10/28/2016 Session)

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16-0003 [Briefs](#) POST-CONVICTION: Appeal from district court's grant of habeas corpus challenge to state capital conviction and  
Johnny Bennett v. Bryan Stirling sentence of death.  
( Gergel )

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15-2104 [Briefs](#) CIVIL: Whether claim for violation of North Carolina's Unfair and Deceptive Trade Practices Act was barred by  
Dreamstreet Invs., Inc. v. MidCountry Bank statute of limitations; other issues.  
( Eagles )

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15-2148 [Briefs](#) CIVIL: Propriety of district court's denial of award offset and deferral to FINRA's resolution of challenge to  
UBS Fin. Services, Inc. v. Gary T. Padussis selection of arbitration panel.  
( Quarles )

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15-1753 [Briefs](#) CIVIL: Application of apparent manufacturer doctrine; other issues.  
Stephen Bilenky v. Ryobi Technologies, Inc.  
( Jackson )

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

Tuesday, October 25, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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15-1457 [Briefs](#)  
Keystone Northeast, Inc. v. Keystone Ret.  
( Hendricks )

CONTRACT: Whether licensee exercised right of first refusal; whether transfer agreements were separate from license agreement; other issues.

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16-1539 [Briefs](#)  
Margaret Lucas v. US  
( Chasanow )

CIVIL: Whether filing claim with state alternative dispute resolution office constitutes "action" under Federal Tort Claims Act; equitable tolling.

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14-1217 [Briefs](#)  
John Raplee, Jr. v. US  
( Grimm )

CIVIL: Whether filing claim with state alternative dispute resolution office constitutes filing "action" under Federal Tort Claims Act; equitable tolling.

PANEL II  
Butzner Courtroom 201  
9:30 a.m.

Tuesday, October 25, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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15-2008      [Briefs](#)      CIVIL: Whether district court erred in granting summary judgment in suit raising legal malpractice claims arising  
Larry Southern v. Richard H. Bishoff, PC      from asbestosis litigation.  
( Anderson )

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15-1204      [Briefs](#)      IMMIGRATION: Whether Matter of Alyazji, 25 I. & N. Dec. 397 (B.I.A. 2011) is entitled to Chevron deference.  
Ashish Sijapati v. Loretta E. Lynch  
Associations:    15-1804

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15-2028      [Briefs](#)      CIVIL: Whether the district court erred in dismissing North Carolina unjust enrichment and quantum meruit claims.  
Law Off. of John J. Juliano v. John W. Jensen  
( Eagles )

PANEL III  
Blue Courtroom (Room 339)  
9:30 a.m.

Tuesday, October 25, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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16-1222 [Briefs](#) CONSTITUTIONAL: Whether Maryland prohibition on gun ownership based on out-of-state non-violent conviction  
James Hamilton v. William Pallozzi for which rights have been restored violates Second Amendment.  
( Bredar )

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15-1702 [Briefs](#) CIVIL: Constitutionality of North Carolina's Private Protective Services Act; qualified immunity; other issues.  
Justin Kelly v. Sarah Conner  
( Cayer )

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15-2301 [Briefs](#) LANHAM ACT: Whether the district court erred in granting summary judgment on counterclaims alleging false  
First Data Merchant Serv. v. SecurityMetrics advertising, tortious interference and antitrust violations.  
( Bennett )

Associations: 15-2364

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

Tuesday, October 25, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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| 15-2263  | <a href="#">Briefs</a> | CIVIL: Whether wrongful death claim for use of hazardous materials as fill for reclaimed land is barred by Maryland statute of repose for improvements to real property.                      |
| Janet Leichling v. Honeywell International,<br>( Bennett ) |                        |   |
| <hr/>  |                        |   |
| 15-2164  | <a href="#">Briefs</a> | CONSTITUTIONAL LAW: Whether the district court erred in dismissing former county employee's complaint alleging First Amendment and state law wrongful termination claims.                     |
| Nancy Loftus v. David Bobzien<br>( Hilton )                |                        |   |
| <hr/>  |                        |   |
| 15-1678  | <a href="#">Briefs</a> | CONTRACT: Whether the district court erred in dismissing claims brought under the Financial Institutions Reform, Recovery and Enforcement Act for failure to exhaust administrative remedies. |
| Michael Willner v. James Dimon<br>( Trenga )               |                        |   |
| <hr/>  |                        |   |
| 15-4311  | <a href="#">Briefs</a> | CRIMINAL: Whether sufficient evidence supported the convictions; whether the jury instructions constructively amended the indictment.   |
| US v. Jonathan Pinson<br>( Norton )                        |                        |   |

PANEL V  
Tweed Courtroom (Room 414-D)  
9:30 a.m.

Tuesday, October 25, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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16-4193 [Briefs](#)  
US v. Donald Blankenship  
( Berger )

CRIMINAL: Challenge to jury instructions; to sufficiency of superseding indictment for failure to identify specific mine safety regulations; to ruling denying recross-examination.

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15-1408 [Briefs](#)  
Cissy Mazzi v. Loretta Lynch

IMMIGRATION: Whether substantial evidence supports the agency's ruling that petitioner failed to demonstrate the objective reasonableness of her fear of future persecution.

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15-2209 [Briefs](#)  
Charles M. Ivey, III v. First Cit. Bank & Trust  
( Osteen )

BANKRUPTCY: For fraudulent transfer claims must trustee prove that assets of the estate were diminished; whether diminution is restricted to loss of asset value.

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15-4366 [Briefs](#)  
US v. Carmen Johnson  
( Hazel )

CRIMINAL: Whether district court correctly denied defendant's motion for release of seized funds; other issues.

Associations: 15-4379

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

Wednesday, October 26, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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15-1690 [Briefs](#) SOCIAL SECURITY: Whether substantial evidence supported administrative law judge's determination; other  
Scott Delk v. Carolyn Colvin issues.  
( Smith )

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15-2106 [Briefs](#) TORT: Whether district court properly dismissed complaint for lack of subject matter jurisdiction based on FTCA  
Laurie Wood v. US discretionary function exception.  
( Jackson )

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15-2562 [Briefs](#) CIVIL: Whether district court properly granted motion to dismiss based on discretionary function exception to  
Seaside Farm, Inc. v. US FTCA; other issues.  
( Houck )

PANEL II  
Butzner Courtroom 201  
9:30 a.m.

Wednesday, October 26, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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15-2099 [Briefs](#) CIVIL: Propriety of summary judgment grant in declaratory judgment action and counterclaim for breach of  
Statoil USA Onshore Prop. v. Pine Resources contract under West Virginia law.  
( Berger )

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15-6826 [Briefs](#) CIVIL RIGHTS: Whether district court erred in granting summary judgment on deaf prisoners' claims under  
Thomas Heyer v. U.S. Bureau of Prisons Religious Freedom Restoration Act and the Constitution.  
( Dever )

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15-2348 [Briefs](#) CIVIL: Whether district court erred in denying motion to remand to state court and in granting motion to dismiss  
Richard Pressl v. Appalachian Power for failure to exhaust administrative remedies.  
( Moon )

PANEL III  
Blue Courtroom (Room 339)  
9:30 a.m.

Wednesday, October 26, 2016

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|---|------------------------|---|
| 15-2589   | <a href="#">Briefs</a> | CONSTITUTIONAL: Whether district court erred in holding city occupancy ordinance vague as applied.  |
| Adams Housing, LLC v. City of Salisbury, MD<br>( Motz ) |                        |   |
| <hr/>   |                        |   |
| 15-4750   | <a href="#">Briefs</a> | CRIMINAL: Whether district court plainly erred by categorizing 18 U.S.C. section 922(q) conviction as felony for purposes of supervised release; other issues.      |
| US v. Levelle Grant<br>( Norton )                       |                        |   |
| <hr/>   |                        |   |
| 15-1800   | <a href="#">Briefs</a> | BANKRUPTCY: Whether creditor retains anti-modification protection when the deed of trust is secured by extrinsic collateral in addition to the principal residence. |
| Gregory Birmingham v. PNC Bank, N.A.<br>( Grimm )       |                        |   |
| <hr/>   |                        |   |
| 15-1454   | <a href="#">Briefs</a> | CIVIL: Whether plaintiffs' action is barred by the statute of limitations under the Utah Product Liability Act.   |
| Sharrene Timothy v. Boston Scientific<br>( Goodwin )    |                        |   |

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

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15-2192 [Briefs](#) TAX: Whether Tax Court erred in invalidating deduction for employee compensation under 26 U.S.C. section  
Qinetiq US Holdings, Inc. v. Commissioner 83(h) for corporate stock.

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15-1713 [Briefs](#) ERA: Did Administrative Review Board err in holding employer was entitled to "same decision" affirmative  
William Smith v. Department of Labor defense on retaliation claim; interpretation of Energy Reorganization Act.

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15-1931 [Briefs](#) CIVIL: Whether district court erred in denying motion to vacate arbitration awards; whether union is entitled to  
Brown & Pipkins, LLC v. Service Employees attorney's fees.  
( Hilton )  
Associations: 15-1987

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15-2145 [Briefs](#) FALSE CLAIMS ACT: Did district court properly reject use of statistical sampling and extrapolation; does  
United States ex rel. Michaels v. Agape government have unreviewable veto authority to reject settlement.  
( Anderson )  
Associations: 15-2147

PANEL V  
Tweed Courtroom (Room 414-D)  
9:30 a.m.

Wednesday, October 26, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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15-7298 [Briefs](#) CRIMINAL: Whether district court properly denied in part motion for reduction of sentence based on Commentary  
US v. William Muldrow to USSG section 1B1.10.  
( Chasanow )  
Associations: 15-7608

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16-0620 [Briefs](#) POST-CONVICTION: Whether arson under 18 U.S.C. section 844(i) (2012) is categorically a crime of violence.  
In re: Marcus Crandell

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15-4182 [Briefs](#) SENTENCING: Whether sentencing enhancement for maintaining drug related premises was supported by  
US v. Nicole Clark sufficient evidence; related issues.  
( Davis )

PANEL VI  
Tan Courtroom (Room 223)  
9:30 a.m.

Wednesday, October 26, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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15-2179 [Briefs](#) TORT: Propriety of summary judgment determination that Marriott did not exercise sufficient control over  
Mary DiFederico v. Marriott International franchised hotel for finding of liability in connection with terrorist bombing.  
( Titus )

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16-0433 [Briefs](#) POST-CONVICTION: Whether movant requires authorization to file numerically second habeas petition raising  
In re: William Gray, Jr. issues related to both his original conviction and the sentence imposed upon resentencing.

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15-1989 [Briefs](#) CIVIL: Propriety of summary judgment grant in action claiming violation of reemployment provisions of the  
Dianne L. Butts v. Prince William Co School Uniform Services Employment and Reemployment Rights Act.  
( Brinkema )

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

Thursday, October 27, 2016

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| 16-1172  | <a href="#">Briefs</a> | PRODUCT LIABILITY: Whether federal or state law applies in determining burden plaintiff must bear to overcome trade secret privileges asserted by defendants.              |
| Theodore Hartsock, Jr. v. Goodyear Dunlop<br>( Duffy ) |                        |  |
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| 15-2158  | <a href="#">Briefs</a> | BANKRUPTCY: Whether district court erred in finding claim brought pursuant to Fair Debt Collection Practices Act was precluded by bankruptcy code; other issues.           |
| Thomas Lovegrove v. Ocwen Home Loans<br>( Urbanski )   |                        |  |
| <hr/>  |                        |  |
| 15-4532  | <a href="#">Briefs</a> | CRIMINAL: Whether modified categorical approach was appropriate in determining state conviction qualified as controlled substance offense for Career Offender enhancement. |
| US v. Deshawn Dozier<br>( Berger )                     |                        |  |
| <hr/>  |                        |  |
| 16-7252  | <a href="#">Briefs</a> | CRIMINAL: Whether Virginia common-law robbery is crime of violence under the force clause of the ACCA.   |
| US v. Robert Winston<br>( Moon )                       |                        |  |

PANEL II  
Butzner Courtroom 201  
9:30 a.m.

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15-1973 [Briefs](#)  
Harley Hughes v. Immediate Response Tech.  
( Brinkema )  
CIVIL: Propriety of summary judgment on claims of fraudulent inducement and unjust enrichment; denial of treble damages on severance compensation; other issues.

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15-2225 [Briefs](#)  
The State of North Carolina v. Alcoa Power  
( Boyle )  
FEDERAL JURISDICTION: Whether district court should have remanded case; whether relevant segment of river is "navigable"; other issues.

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15-2550 [Briefs](#)  
Michelle Haywood v. Ford Motor Credit  
( Motz )  
Associations: 16-1015  
CIVIL: Did district court err in dismissing action to allow appeal rather than staying action pending arbitration; whether court erred in ordering arbitration.

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15-1999 [Briefs](#)  
Brandon Pegg v. Grant Herrnberger  
( Bailey )  
CIVIL: Whether the district court erred in denying qualified immunity to defendant.

PANEL III  
Blue Courtroom (Room 339)  
9:30 a.m.

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| 15-1899 | <a href="#">Briefs</a> | CIVIL: In dispute between agents competing to represent NFL player, whether appellants produced triable evidence that appellees engaged in unfair business practices; other issues. |
| <hr/>   |                        |   |
| 15-2207 | <a href="#">Briefs</a> | CONSTITUTIONAL LAW: Whether police officers' Facebook comments were protected by the First Amendment; other issues.   |
| <hr/>   |                        |   |
| 15-2198 | <a href="#">Briefs</a> | FORCED LABOR: Whether district court erred in granting summary judgment in suit alleging forced labor violations under 18 U.S.C. section 1589.                                      |
| <hr/>   |                        |   |
| 15-4488 | <a href="#">Briefs</a> | CRIMINAL: Whether evidence was sufficient to support conviction; other issues.  |

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

Thursday, October 27, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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| 15-1915  | <a href="#">Briefs</a> | LABOR: Whether summary judgment was proper on claims under Fair Labor Standards Act based upon determination that defendant company was not an "employer"; other issues. |
| Mario Salinas v. Commercial Interiors, Inc<br>( Motz ) |                        |  |
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| 15-2526  | <a href="#">Briefs</a> | LANHAM ACT: Whether the district court erred in granting summary judgment to defendants on false advertising claim.  |
| VeriSign, Incorporated v. XYZ.COM LLC<br>( Hilton )    |                        |  |
| <hr/>  |                        |  |
| 15-1857  | <a href="#">Briefs</a> | EMPLOYMENT: Whether DIRECTV was a joint employer of appellants under the Fair Labor Standards Act; other issues.   |
| Marlon Hall v. DIRECTV, LLC<br>( Motz )                |                        |  |
| Associations: 15-1858                                  |                        |  |
| <hr/>  |                        |  |
| 15-2568  | <a href="#">Briefs</a> | STATE SECRETS PRIVILEGE: Propriety of summary judgment in favor of CIA based on state secrets privilege.   |
| Jacob E. Abilt v. CIA<br>( Lee )                       |                        |  |

PANEL V  
Tweed Courtroom (Room 414-D)  
9:30 a.m.

Thursday, October 27, 2016

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16-1024 [Briefs](#) ENVIRONMENTAL: Whether coal company that holds NPDES permit may be subject to citizen suit under Clean  
Ohio Valley Environmental Coal v. Fola Coal Water Act for discharge of pollutants; other issues.  
( Chambers )

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15-2105 [Briefs](#) ERISA: Whether district court erred in reviewing denial of disability benefits; standard of review; consideration of  
Stephen Wilkinson v. Sun Life and Health evidence outside administrative record; other issues.  
( Voorhees )

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15-4685 [Briefs](#) CRIMINAL: Whether North Carolina assault inflicting serious bodily injury is crime of violence under USSG section  
US v. Shawntanna Thompson 4B1.2.  
( Britt )

PANEL VI  
Tan Courtroom (Room 223)  
9:30 a.m.

Thursday, October 27, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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15-4640 [Briefs](#)  
US v. Joseph Simms  
( Boyle )

CRIMINAL: Whether conspiracy to commit Hobbs Act robbery is crime of violence under 18 U.S.C. section 924(c).

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16-0577 [Briefs](#)  
In re: Chong Chen

POST- CONVICTION: Whether the ruling in Johnson v. United States, 135 S. Ct. 2551 (2015) is applicable to convictions under 18 U.S.C. section 924(c).

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

Friday, October 28, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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| 15-4384  | <a href="#">Briefs</a> | CRIMINAL: Sufficiency of evidence to support numerous financial crimes; willful blindness instruction; reasonableness of sentence.  |
| US v. Keith Vinson<br>( Reidinger )                      |                        |   |
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| 15-2584  | <a href="#">Briefs</a> | ADMINISTRATIVE LAW: Whether district court correctly found it lacked jurisdiction over claims asserting that SEC's administrative forum is unconstitutional.                |
| Dawn J. Bennett v. U.S. Securities and Ex.<br>( Grimm )  |                        |   |
| <hr/>  |                        |   |
| 16-1497  | <a href="#">Briefs</a> | SECURITIES LAW: Whether exhaustion of administrative remedies is required; FINRA's jurisdiction over disciplinary proceedings for alleged violations of the Securities Act. |
| Scottsdale Capital Advisors v. Financial<br>( Chasanow ) |                        |   |
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| 15-4638  | <a href="#">Briefs</a> | CRIMINAL: Whether North Carolina common-law robbery qualifies as crime of violence under USSG section 2K2.1 after U.S. v. Gardner.  |
| US v. Andre Haynes<br>( Reidinger )                      |                        |   |

PANEL II  
Butzner Courtroom 201  
8:30 a.m.

Friday, October 28, 2016

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15-2339 [Briefs](#)  
Exclaim Marketing, LLC v. DIRECTV, LLC  
( Flanagan )  
Associations: 15-2399

N.C. UNFAIR TRADE PRACTICES ACT: Did district court err in vacating plaintiff's jury award and increasing defendant's award on trademark infringement counterclaim.

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15-4468 [Briefs](#)  
US v. Denita Hill  
( Russell )

SENTENCING: Whether district court clearly erred in applying obstruction of justice enhancement.

PANEL III  
Blue Courtroom (Room 339)  
8:30 a.m.

Friday, October 28, 2016

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| 15-4610  | <a href="#">Briefs</a> | CRIMINAL: Effect of state court's order vacating predicate felonies on validity of removal, USSG section 2L1.2 enhancement.      |
| US v. Juan Moreno-Tapia<br>( Eagles )              |                        |  |
| <hr/>  |                        |  |
| 15-1270  | <a href="#">Briefs</a> | IMMIGRATION: Whether court has jurisdiction to review agency's denial of Upatcha's application for a good faith marriage waiver. |
| Juraluk Upatcha v. Loretta Lynch                   |                        |  |
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| 15-4517  | <a href="#">Briefs</a> | CRIMINAL: Whether district court erred in denying motion to dismiss based on deportation of a material witness; other issues.    |
| US v. Kaixiang Zhu<br>( Ellis )                    |                        |  |
| <hr/>  |                        |  |
| 16-1005  | <a href="#">Briefs</a> | PREEMPTION: Whether the federal Atomic Energy Act preempts a Virginia ban on uranium mining based on radiological safety.        |
| Virginia Uranium, Inc. v. John Warren<br>( Kiser ) |                        |  |

PANEL IV  
Gold Courtroom (Room 348)  
8:30 a.m.

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14-4768 [Briefs](#) CRIMINAL: Whether district court lacked jurisdiction to enter forfeiture order; propriety of substitution of assets  
US v. Lorene Chittenden pursuant to 21 U.S.C. section 853(p); other issues.  
( O'Grady )  
Associations: 14-4828, 15-4226, 15-4659

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15-6973 [Briefs](#) CIVIL RIGHTS: Whether it was an abuse of discretion to administratively close case pursuant to order in Germain  
Jean Germain v. Frank Bishop, Jr. v. Shearin, No. 1:13-cv-02267-JFM.  
( Motz )

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15-4436 [Briefs](#) CRIMINAL: Whether the district court improperly involved itself in plea negotiations; other issues.  
US v. Michael Rankins  
( Boyle )

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15-4252 [Briefs](#) CRIMINAL: Whether the Government plainly breached the plea agreement; applicability of appeal waiver; other  
US v. Brandon Tate issues.  
( Conrad )

PANEL V  
Tweed Courtroom (Room 414-D)  
8:30 a.m.

Friday, October 28, 2016