

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/12/2017 - 9/15/2017 Session)
Tuesday, September 12, 2017

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| 16-0018 | Briefs | HABEAS: Multiple challenges to state capital conviction and sentence. |
| Thomas Porter v. David Zook (Spencer) | | |
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| 16-6096 | Briefs | CONSTITUTIONAL LAW: Whether prisoners have a constitutional right to file prison grievances; other issues. |
| Wayne Savoy v. Frank Bishop (Russell) | | |
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| 16-6389 | Briefs | POST-CONVICTION: Whether state court applied correct standard of review to claim that trial counsel failed to preserve objection. |
| Santiago Rios v. Warden (Cain) | | |
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| 16-1767 | Briefs | CIVIL RIGHTS: Whether intervening Supreme Court decisions alter analysis employed in Ross v. Early; other issues. |
| Kenneth Lucero v. Wayne Early (Motz) | | |

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

Tuesday, September 12, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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15-2056 [Briefs](#) CONSTITUTIONAL LAW: Whether case is moot; whether restroom regulation discriminates against transgender student in violation of Title IX and 24 C.F.R. 106.33.
Gavin Grimm v. Gloucester County School
(Doumar)

16-6332 [Briefs](#) POST-CONVICTION: Whether petitioner is excused from exhausting administrative remedies; whether petitioner alleged due process claim regarding second disciplinary hearing after acquittal.
Osiel Rodriguez v. Charles Ratledge
(Moon)
Associations: 17-6301

16-6625 [Briefs](#) CIVIL: Whether district court erred in finding release-dismissal agreement valid and enforceable, state law claims federally preempted; other issues.
William Cox v. Duke Energy
(Hendricks)

16-2037 [Briefs](#) BANKRUPTCY: Whether equitable mootness applies; whether creditor received "indubitable equivalent" of claim; other issues.
Bate Land & Timber LLC v. Bate Land Company
(Boyle)

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

Tuesday, September 12, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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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)

16-1655 [Briefs](#) TAX: Propriety of contempt finding in face of noncompliance with IRS summons where taxpayer asserted Fifth
US v. Melina Ali Amendment defense based on lack of possession of documents.
(Grimm)

16-1849 [Briefs](#) BLACK LUNG: Whether operator was properly determined to be successor operator; whether statutory
Frontier-Kemper Constructors, v. DOWCP amendment was properly applied retroactively.

16-4316 [Briefs](#) CRIMINAL: Whether West Virginia aggravated robbery is a crime of violence under U.S. Sentencing Guidelines
US v. Blain Salmons, Jr. Manual section 2K2.1(a), 4B1.2(a) & cmt. n.1 (2015).
(Johnston)

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

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16-1783 [Briefs](#) CIVIL: Whether district court erred in bench trial factual findings and conclusion that Appellee's negligence caused Appellant's Nicolau syndrome but not her avascular necrosis.
Patricia Markle v. US
(Groh)

16-1836 [Briefs](#) IMMIGRATION: Whether INA's reinstatement provision bars asylum relief; related issues.
Francisco Lara-Aguilar v. Jefferson B. Sessions III

16-1638 [Briefs](#) CIVIL RIGHTS: Whether district court erred in determining plaintiff did not have standing to bring ADA claim.
John Nanni v. Aberdeen Marketplace, Inc.
(Nickerson)

16-4231 [Briefs](#) CRIMINAL: Propriety of conviction of aggravated identity theft; other issues.
US v. Paramjit Ajrawat
(Chasanow)

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

Tuesday, September 12, 2017

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16-2131 [Briefs](#) IMMIGRATION: Whether this Court has jurisdiction to review agency's interpretation of the changed
Edwin Zambrano v. Jefferson B. Sessions III circumstances exception in 8 U.S.C. section 1158(a)(2)(D) (2012); other issues.

16-2066 [Briefs](#) LABOR: Whether substantial evidence supports the NLRB's findings; other issues.
S. Freedman & Sons, Inc. v. NLRB
Associations: 16-2270

16-4183 [Briefs](#) CRIMINAL: Whether district court properly revoked Appellant's pro se status based on pretrial conduct; whether
US v. Makeshia Glover district court properly denied motions for judgments of acquittal on mail fraud charges; other issues.
(Lewis)
Associations: 16-4211, 16-4185, 16-4212, 16-4213

16-1460 [Briefs](#) BLACK LUNG: Whether substantial evidence supports ALJ's decision that miner timely filed claim and is entitled
Westmoreland Coal Company v. Herskel Stallard to benefits.

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

Tuesday, September 12, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-1274 [Briefs](#) IMMIGRATION: Whether it was a violation of due process to order petitioner's removal without a hearing; related
Gustavo Nardea v. Jefferson Sessions III issues.

16-2115 [Briefs](#) ERISA: Whether arbitrator erred in placing burden of proof on pension fund rather than employer; other issues.
Penske Logistics v. Freight Drivers and Helpers
(Motz)

16-2247 [Briefs](#) CIVIL: Whether forum-selection clause selecting county where there is no federal courthouse precluded removal
Jeanne Bartels v. Saber Healthcare Group, LLC to federal court; related issues.
(Boyle)
Associations: 16-2416

16-4020 [Briefs](#) CRIMINAL: Propriety of convictions for mail and wire fraud and money laundering; whether criminal activity was
US v. David Mayhew otherwise extensive under USSG section. 3B1.1; other issues.
(Fox)

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

Wednesday, September 13, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-1895 [Briefs](#)
June Stearns v. The Walter E. Campbell Co.
(Blake)
CIVIL: Whether the district court abused its discretion in remanding state law claims while retaining jurisdiction over third-party claims.

16-1712 [Briefs](#)
Karen Bagheri v. Dwight Bailey
(Jones)
CIVIL: Whether the district court erred in denying mistrial/new trial based on jury exposure to extrajudicial communications; other issues.

16-4066 [Briefs](#)
US v. Mark Landersman
(Brinkema)
CRIMINAL: Multiple challenges to conviction for conspiracy to commit unlicensed manufacture of firearms, unregistered shipment of firearms, and mail fraud.

16-4067 [Briefs](#)
US v. Lee Hall
(Brinkema)
CRIMINAL: Multiple challenges to conviction for conspiracy to commit unlicensed manufacture of firearms, unregistered shipment of firearms, and mail fraud.

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

Wednesday, September 13, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-1782 [Briefs](#)
Norma Xiloj-Chan v. Jefferson B. Sessions III

IMMIGRATION: Whether INA's reinstatement provision bars asylum relief; related issues.

16-2135 [Briefs](#)
Estate of Robert Saylor v. Richard Rochford
(Nickerson)

CIVIL RIGHTS: Whether officers were entitled to qualified immunity in section 1983 action arising out of death of individual with Down Syndrome during encounter with police.

16-4727 [Briefs](#)
US v. Julian Zuk
(Voorhees)

CRIMINAL: Whether defendant's sentence is substantively reasonable.

16-1732 [Briefs](#)
Siena Corporation v. Mayor and City Council
(Titus)

CONSTITUTIONAL LAW: Whether the district court's ruling regarding challenge to zoning text amendment was in error; other issues.

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

Wednesday, September 13, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-4522 [Briefs](#) CRIMINAL: Whether district court properly considered element of health care fraud for first time in denying
US v. Beth Palin motions for new trial.
(Jones)
Associations: 16-4540

16-1606 [Briefs](#) ERISA: Did district court err in holding amendment to "top-hat" plan applied to retired plan participants; did court
Jeffrey Plotnick v. Computer Sciences abuse its discretion in declining to certify class.
(Ellis)

16-2107 [Briefs](#) CIVIL: Whether arbitration decision is mutual, final, and definite award.
Norfolk Southern Railway v. Sprint
(Allen)

16-2122 [Briefs](#) WHISTLEBLOWER PROTECTION ACT: Whether Merit Systems Protection Board administrative judge erred in
Rory Flynn v. SEC holding that federal employee's disclosures were not protected; other issues.

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

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|---|------------------------|--|
| 16-1854 | Briefs | INSURANCE: Whether the district court erred in finding that the workmanship and earth movement exclusions barred coverage for building collapse. |
| Taja Investments LLC v. Peerless Insurance (Lee) | | |
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| 16-2168 | Briefs | ERISA: Whether the district court erred in holding Ascensus Trust had a duty to ensure the deposit of contributions into the plan; class certification and other issues. |
| Garibaldie Longo v. Ascensus Trust Company (Boyle) | | |
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| 16-2213 | Briefs | LABOR: Whether district court erred in granting summary judgment on claim of entitlement to overtime wages under the Technical Corrections Act of 2008; other issues. |
| Ronald Schilling, Jr. v. Schmidt Baking (Motz) | | |
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| 16-1496 | Briefs | CONSTITUTIONAL: Constitutional challenge by American-born child of undocumented parents to S.C. statutes and regulations addressing eligibility for in-state tuition rates and scholarship programs. |
| Angelica Herrera v. John Finan (Hendricks) | | |

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

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16-4313 [Briefs](#)
US v. William Chamberlain
(Howard)

HEARING EN BANC

Butzner En Banc Courtroom 201
9:00 a.m.

Thursday, September 14, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-1751 [Briefs](#)
Ken Borzilleri v. Marilyn Mosby
(Motz)

CONSTITUTIONAL LAW: Whether termination of state employee violated her First Amendment right to free speech on matter of public concern; other issues.

16-6452 [Briefs](#)
Adam Toghil v. Harold Clarke
(Urbanski)

HABEAS: Whether state supreme court's adjudication of petitioner's claim was contrary to or an unreasonable application of Lawrence v. Texas, 539 U.S. 558 (2003).

PANEL I
Red Courtroom (Room 412)
After the en banc session

Thursday, September 14, 2017

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16-0001 [Briefs](#)
US v. Carlos Caro
(Jones)

POST-CONVICTION: Multiple challenges to federal capital conviction and sentence.

16-1278 [Briefs](#)
Eddie Neal v. Lonnie Luedtke
(Bennett)

CIVIL RIGHTS: Whether arrest outside officer's territorial jurisdiction is a per se violation of Fourth Amendment;
other issues.

PANEL II
Butzner Courtroom 201
After the en banc session

Thursday, September 14, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-1986 [Briefs](#)
Norfolk Southern Railway v. Baltimore and
(Hendricks)

CIVIL: Whether federal courts have original jurisdiction concurrent with the Surface Transportation Board for claims subject to the Interstate Commerce Commission Termination Act Part A.

17-1751 [Briefs](#)
Jose Salguero v. Madonna Argueta
(Flanagan)

HAGUE CONVENTION: Whether district court correctly found that respondent failed to establish a grave risk of harm and ordered child returned to El Salvador.

PANEL III
Blue Courtroom (Room 339)
After the en banc session

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16-2174 [Briefs](#)
Trey Sims v. Kenneth Labowitz
(Hilton)

CIVIL RIGHTS: Whether detective's actions related to photographing minor while in custody violated his constitutional rights; qualified immunity; other issues.

17-6116 [Briefs](#)
US v. Timothy Williams
(Payne)

POST-CONVICTION: Whether defendant's prior convictions qualify as predicate felonies under ACCA.

PANEL IV
Gold Courtroom (Room 348)
After the en banc session

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-1123 [Briefs](#) CIVIL: Whether arbitration clause in marketing agreement applies to trademark infringement claim.
Simply Wireless, Inc v. T-Mobile US, Inc
(Hilton)
Associations: 16-1166

16-1852 [Briefs](#) CIVIL: Whether claim under Virginia Computer Crimes Act premised on theories of embezzlement, larceny, and
OpenRisk, LLC v. MicroStrategy Services conversion is preempted by the Copyright Act.
(Trenga)
Associations: 16-1906

PANEL V
Tweed Courtroom (Room 414-D)
After the en banc session

Thursday, September 14, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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13-0007 [Briefs](#) HABEAS: Multiple challenges to state capital conviction and sentence.
Anthony Juniper v. David Zook
(Gibney)
Associations: 16-0002

15-4376 [Briefs](#) CRIMINAL: Whether this court has authority to sua sponte dismiss criminal appeals as untimely and, if so, under
US v. Leonard Oliver
(Seymour)
what circumstances it may exercise that authority.

15-2310 [Briefs](#) CIVIL: Whether district court erred in dismissing South Carolina breach of contract and Unfair Trade Practices Act
PTA-FLA Inc v. ZTE Corporation
(Currie)
claims.

15-7680 [Briefs](#) CIVIL RIGHTS: Whether the district court properly held that defendant officers were entitled to qualified
Paul Thompson, Jr. v. Commonwealth of VA
(Smith)
immunity on inmate's Eighth Amendment claim.

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

Friday, September 15, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-7607 [Briefs](#)
US v. Walter Wooden
(Boyle)

ADAM WALSH ACT: Whether the district court erred in holding appellee no longer meets the criteria for commitment under the Act as a sexually dangerous person.

16-2214 [Briefs](#)
Arlean Brown v. Brian Elliot
(Childs)
Associations: 16-2218

CIVIL RIGHTS: Whether district court erred in granting qualified immunity after shooting incident; related issues.

16-1450 [Briefs](#)
Elkay Mining Company v. Hazel Smith

BLACK LUNG: Whether ALJ erred in finding that miner suffered from complicated pneumoconiosis.

16-2040 [Briefs](#)
Betsy Ross v. Mary Klesius
(Blake)

CIVIL: Propriety of grant of second motion for reconsideration of denial of summary judgment; other issues.

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

Friday, September 15, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-2035 [Briefs](#) CIVIL: Whether discretionary function exception precludes FTCA action arising out of hazardous waste disposal at
Angela Pieper v. US military base; other issues.
(Blake)

16-2211 [Briefs](#) ADMIRALTY: Whether unaddressed claims in amended complaint, filed one hour before dismissal, render appeal
Amr Fawzy v. Wauquiez Boats SNC interlocutory; whether economic loss rule applies to failure to warn claim.
(Bennett)
Associations: 16-2311

16-1301 [Briefs](#) SOCIAL SECURITY: Whether the ALJ correctly evaluated claimant's GAF score; other issues.
David Richard Sizemore v. Nancy A. Berryhill
(Cogburn)

16-4247 [Briefs](#) CRIMINAL: Whether district court erroneously instructed jury regarding materiality and intent requirements for
US v. Mohsin Raza wire fraud; whether court erred by failing to give individualized consideration instruction.
(Hilton)
Associations: 16-4261, 16-4262, 16-4259

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

Friday, September 15, 2017

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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16-2163 [Briefs](#) SECURITIES LAW: Whether plaintiffs sufficiently alleged "scienter" in federal securities class action; other issues.
Maguire Financial, LP v. Powersecure
(Dever)

16-4439 [Briefs](#) CRIMINAL: Whether "building" element in North Carolina's breaking or entering offense is broader than the
US v. Lazarus Beatty corresponding element of generic burglary for purposes of Armed Career Criminal Act.
(Beaty)

16-2034 [Briefs](#) CONSTITUTIONAL LAW: Whether district court properly rejected teacher's First Amendment retaliation and civil
Stanley Penley v. McDowell County Board conspiracy claims related to his past political activity.
(Cogburn)

16-1808 [Briefs](#) COMMERCIAL: Did district court err in denying permanent injunction and in holding Copyright Act not applicable;
SAS Institute, Inc. v. World Programming Ltd numerous cross-appeal issues regarding contract and deceptive trade practices claims.
(Flanagan)

Associations: 16-1857

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

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16-1780 [Briefs](#) BANKRUPTCY: Whether the one-year limitations period provided in 11 U.S.C. section 727(e)(1) is jurisdictional.
Richard Meabon v. R. Johnson
(Conrad)

16-4232 [Briefs](#) SENTENCING: Whether district court erred in imposing lifetime ban on federal benefits on defendant convicted
US v. Anthony Taylor
of conspiracy to distribute offense; other issues.
(Howard)

16-4546 [Briefs](#) SENTENCING: Whether sentence for second violation of revoked supervised release exceeded statutory
US v. Marcus Harris
maximum; other issues.
(Payne)

16-4413 [Briefs](#) CRIMINAL: Whether enticement of a minor to engage in criminal sexual activity requires proof that defendant
US v. Terrell Banker
knew victim was a minor; other issues.
(Conrad)

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

Friday, September 15, 2017