

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (09/12/2017 - 09/15/2017 Session)  
Tuesday, September 12, 2017

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16-6389 [Briefs](#)  
Santiago Rios v. Warden  
( Cain )

POST-CONVICTION: Whether state court applied correct standard of review to claim that trial counsel failed to preserve objection.

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16-1767 [Briefs](#)  
Kenneth Lucero v. Wayne Early  
( Motz )

CIVIL RIGHTS: Whether intervening Supreme Court decisions alter analysis employed in Ross v. Early; other issues.

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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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

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

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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 )

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

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15-4685	<a href="#">Briefs</a>	CRIMINAL: Whether North Carolina assault inflicting serious bodily injury is crime of violence under USSG section 4B1.2.
US v. Shawntanna Thompson ( Britt )		
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16-1655	<a href="#">Briefs</a>	TAX: Propriety of contempt finding in face of noncompliance with IRS summons where taxpayer asserted Fifth Amendment defense based on lack of possession of documents.
US v. Melina Ali ( Grimm )		
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16-1849	<a href="#">Briefs</a>	BLACK LUNG: Whether operator was properly determined to be successor operator; whether statutory amendment was properly applied retroactively.
Frontier-Kemper Constructors, v. DOWCP		
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16-4316	<a href="#">Briefs</a>	CRIMINAL: Whether West Virginia aggravated robbery is a crime of violence under U.S. Sentencing Guidelines Manual section 2K2.1(a), 4B1.2(a) & cmt. n.1 (2015).
US v. Blain Salmons, Jr. ( Johnston )		

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

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16-1638 [Briefs](#)  
John Nanni v. Aberdeen Marketplace, Inc.  
( Nickerson )

CIVIL RIGHTS: Whether district court erred in determining plaintiff did not have standing to bring ADA claim.

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16-4231 [Briefs](#)  
US v. Paramjit Ajrawat  
( Chasanow )

CRIMINAL: Propriety of conviction of aggravated identity theft; other issues.

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

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16-1460	<a href="#">Briefs</a>	BLACK LUNG: Whether substantial evidence supports ALJ's decision that miner timely filed claim and is entitled to benefits.
Westmoreland Coal Company v. Herskel		
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16-2066	<a href="#">Briefs</a>	LABOR: Whether substantial evidence supports the NLRB's findings; other issues.
S. Freedman & Sons, Inc. v. NLRB		
Associations: 16-2270		
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16-2131	<a href="#">Briefs</a>	IMMIGRATION: Whether this Court has jurisdiction to review agency's interpretation of the changed circumstances exception
Edwin Romero Zambrano v. Jefferson B.		
in 8 U.S.C. section 1158(a)(2)(D) (2012); other issues.		

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

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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 issues.  
Gustavo Nardea v. Jefferson Sessions III

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

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

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

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

Wednesday, September 13, 2017

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16-1895 [Briefs](#) CIVIL: Whether the district court abused its discretion in remanding state law claims while retaining jurisdiction over third-party claims.  
June Stearns v. The Walter E. Campbell  
( Blake )

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

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

Wednesday, September 13, 2017

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16-2135 [Briefs](#) CIVIL RIGHTS: Whether officers were entitled to qualified immunity in section 1983 action arising out of death of individual  
Estate of Robert Ethan Saylor v. Richard with Down Syndrome during encounter with police.  
( Nickerson )

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16-4727 [Briefs](#) CRIMINAL: Whether defendant's sentence is substantively reasonable.  
US v. Julian Zuk  
( Voorhees )

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16-1732 [Briefs](#) CONSTITUTIONAL LAW: Whether the district court's ruling regarding challenge to zoning text amendment was in error; other  
Siena Corporation v. Mayor and City Council issues.  
( Titus )

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

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16-4522 [Briefs](#) CRIMINAL: Whether district court properly considered element of health care fraud for first time in denying motions for new  
US v. Beth Palin trial.  
( Jones )

Associations: 16-4540

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

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16-2122 [Briefs](#) WHISTLEBLOWER PROTECTION ACT: Whether Merit Systems Protection Board administrative judge erred in holding that  
Rory Flynn v. SEC 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	<a href="#">Briefs</a>	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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16-2213	<a href="#">Briefs</a>	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	<a href="#">Briefs</a>	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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16-1751 [Briefs](#)  
Keri 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.

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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)  
9:30 a.m.

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

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

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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  
9:30 a.m.

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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.

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

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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.

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

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16-1123 [Briefs](#)  
Simply Wireless, Inc v. T-Mobile US, Inc  
( Hilton )

Associations: 16-1166

CIVIL: Whether arbitration clause in marketing agreement applies to trademark infringement claim.

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16-1852 [Briefs](#)  
OpenRisk, LLC v. MicroStrategy Services Corp.  
( Trenga )

Associations: 16-1906

CIVIL: Whether claim under Virginia Computer Crimes Act premised on theories of embezzlement, larceny, and conversion is preempted by the Copyright Act.

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

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13-0007	<a href="#">Briefs</a>	HABEAS: Multiple challenges to state capital conviction and sentence.
Anthony Juniper v. David Zook ( Gibney ) Associations: 16-0002		
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15-4376	<a href="#">Briefs</a>	CRIMINAL: Whether this court has authority to sua sponte dismiss criminal appeals as untimely and, if so, under what circumstances it may exercise that authority.
US v. Leonard Oliver ( Seymour )		
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15-2310	<a href="#">Briefs</a>	CIVIL: Whether district court erred in dismissing South Carolina breach of contract and Unfair Trade Practices Act claims.
PTA-FLA Inc v. ZTE Corporation ( Currie )		
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15-7680	<a href="#">Briefs</a>	CIVIL RIGHTS: Whether the district court properly held that defendant officers were entitled to qualified immunity on inmate's Eighth Amendment claim.
Paul Thompson, Jr. v. Commonwealth of VA ( Smith )		

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

Friday, September 15, 2017



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16-4546 [Briefs](#)  
US v. Marcus Harris  
( Payne )

SENTENCING: Whether sentence for second violation of revoked supervised release exceeded statutory maximum; other issues.

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16-4413 [Briefs](#)  
US v. Terrell Banker  
( Conrad )

CRIMINAL: Whether enticement of a minor to engage in criminal sexual activity requires proof that defendant knew victim was a minor; 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 military base; other issues.  
Angela Pieper v. US  
( Blake )

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

Associations: 16-2311

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

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16-4247 [Briefs](#) CRIMINAL: Whether district court erroneously instructed jury regarding materiality and intent requirements for wire fraud; whether court erred by failing to give individualized consideration instruction.  
US v. Mohsin Raza  
( 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	<a href="#">Briefs</a>	SECURITIES LAW: Whether plaintiffs sufficiently alleged "scienter" in federal securities class action; other issues.
Maguire Financial, LP v. Powersecure ( Dever )		
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16-2034	<a href="#">Briefs</a>	CONSTITUTIONAL LAW: Whether district court properly rejected teacher's First Amendment retaliation and civil conspiracy claims related to his past political activity.
Stanley Penley v. McDowell County Board of ( Cogburn )		
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16-1808	<a href="#">Briefs</a>	COMMERCIAL: Did district court err in denying permanent injunction and in holding Copyright Act not applicable; numerous cross-appeal issues regarding contract and deceptive trade practices claims.
SAS Institute, Inc. v. World Programming ( Flanagan )		

Associations: 16-1857

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

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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.

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

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

Associations: 16-2218

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

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

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

Friday, September 15, 2017