

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

14-1646	Briefs	CIVIL: Whether district court erred in remanding to agency to conduct a final interview; other issues.
Walter Nielsen v. Chuck Hagel (Brinkema)		
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15-1578	Briefs	SOCIAL SECURITY: Sufficiency of ALJ's explanation for according little weight to opinion of claimant's treating physician.
Amy Sharp v. Carolyn Colvin (Hudson)		
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14-7297	Briefs	POST-CONVICTION: Whether counsel was ineffective in failing to object to the trial court's rejection of a plea agreement off the record.
Nicanor Rodriguez v. Dennis Bush (Wooten) Associations: 15-6716		
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15-1604	Briefs	CIVIL RIGHTS: Propriety of admission of evidence of plaintiff's prior arrests in trial on claims for Federal constitutional and state-law violations.
Makia Smith v. Baltimore City Police Dept. (Motz)		

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

Tuesday, September 20, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

14-2117 [Briefs](#) EMPLOYMENT: Whether McCray exhausted her administrative remedies prior to filing suit under Title VII; other
Marie McCray v. Maryland Dept of Transp issues.
(Hollander)

15-1092 [Briefs](#) CIVIL RIGHTS: Whether district court erred in finding probable cause to support issuance of arrest warrant.
April Smith v. Jason Munday
(Voorhees)
Associations: 15-1496

15-1879 [Briefs](#) IMMIGRATION: Whether substantial evidence supports the finding that petitioner did not have a well-founded
Zhikeng Tang v. Loretta Lynch fear of persecution; related issues.

15-1839 [Briefs](#) CIVIL: Scope of absolute immunity in defamation claim; bounds of 42 U.S.C. section 1981 liability of
Cimenga Tshibaka v. John Sernulka nonsupervisory coworker; propriety of summary judgment.
(Motz)

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

Tuesday, September 20, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-1795 [Briefs](#)
Jerome C. Newkirk, Sr. v. James B. Enzor
(Gergel)
Associations: 15-1797
CIVIL RIGHTS: Whether this court has jurisdiction over appeals; whether district court erred in denying qualified immunity to police officer in section 1983 action.

15-1617 [Briefs](#)
Adrian Scott v. Maryland State Dept. of
(Motz)
EMPLOYMENT: Whether plaintiff properly completed service of process; whether the Workforce Investment Act of 1998 contains a conditional waiver of sovereign immunity; other issues.

15-2182 [Briefs](#)
Wells Fargo Equipment Finance v. Nabil
(Grimm)
FEDERAL PROCEDURE: Issue regarding commencement of statute of limitations on registered judgment from sister district court; other issues.

15-1395 [Briefs](#)
Richard Beck v. Robert McDonald
(Wooten)
Associations: 15-1715
CIVIL: Whether plaintiffs have standing to pursue claims under the Privacy Act or Administrative Procedures Act.

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

Tuesday, September 20, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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15-6832	Briefs	POST-CONVICTION: Whether Roper v. Simmons, 543 U.S. 551, may be applied retroactively to invalidate guilty plea where, pre-Roper, appellant allegedly pled guilty to avoid death penalty.
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15-6910	Briefs	CIVIL RIGHTS: Propriety of summary judgment grant on pre-trial detainee's claim for denial of due process in connection with placement in disciplinary segregation; other issues.
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15-1878	Briefs	CIVIL RIGHTS: Propriety of district court's rulings in favor of police officers and various state officials on appellant's 42 U.S.C. section 1983 (2012) complaint alleging excessive force.
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15-4103	Briefs	CRIMINAL: Whether district court erred in relying on facts outside search warrant affidavit to reject defendant's Franks challenge for lack of materiality.

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

Tuesday, September 20, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

14-6682 [Briefs](#)
Jason Clem v. Leslie Fleming
(Wilson)

CONSTITUTIONAL LAW: Whether sentence of life without parole for homicide committed as a juvenile violates the Eighth Amendment.

15-1115 [Briefs](#)
Nancy Morris v. Andrew Bland
(Gergel)

CIVIL: Denial of post-trial motions alleging failure to establish deliberate indifference to prisoner's medical needs; excessiveness of punitive damages award.

15-4121 [Briefs](#)
US v. Tyrone Williams
(Boyle)

CRIMINAL: Whether district court had jurisdiction to resentence defendant to 360 months after imposing a 480-month sentence; propriety of convictions under the Commerce Clause.

15-4023 [Briefs](#)
US v. David Parker
(Lee)

CRIMINAL: Whether the Government breached the plea agreement; applicability of appeal waiver; other issues.

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

Tuesday, September 20, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-1088	Briefs	CIVIL: Propriety of summary judgment in False Claims Act action involving successor liability claim under fraudulent transaction theory; other issues.
US ex rel. Kurt Bunk v. Government (Trenga)		
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15-6467	Briefs	HABEAS: Whether counsel was constitutionally ineffective in failing to request instruction that jury may not convict Melvin of both murder and accessory after the fact.
Jihad Melvin v. Frank Perry (Fox)		
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15-6130	Briefs	POST-CONVICTION: Whether petitioner's Brady v. Maryland, 373 U.S. 83 (1963), claim was timely.
Alberto Cruz v. Bob Marshall (Beaty)		
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14-1660	Briefs	CIVIL: Whether proper state law was applied; other issues.
Jason Klein v. Verizon Online LLC (Lee)		

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

Wednesday, September 21, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-1656	Briefs	BLACK LUNG: Whether 20 C.F.R. section 725.495(c) impermissibly shifts burden of proof, in violation of Administrative Procedure Act; other issues.
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14-2214	Briefs	CIVIL: Whether the district court properly dismissed complaint alleging disability discrimination in housing at homeless shelter.
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15-1048	Briefs	CIVIL: Whether copying of resume in litigation was fair use; whether there existed a definite contract offer; other issues.
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15-1747	Briefs	EMPLOYMENT: Whether employee adduced sufficient evidence of pretext to survive summary judgment on FMLA retaliation claim; other issues.

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

Wednesday, September 21, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-2200	Briefs	CIVIL RIGHTS: Challenge to district court's denial of summary judgment on grounds of qualified immunity on Fourth Amendment claim of arrest without probable cause; other issues.
Gregory Robinson v. The City of South (Johnston)		
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15-6099	Briefs	POST-CONVICTION: Whether Johnson v. U.S., 135 S. Ct. 2551 (2015), applies retroactively on collateral review of ineffective assistance claim based on failure to object to consideration of prior conviction for unlawful wounding as crime of violence.
US v. Lamar Lee (Smith)		
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15-2170	Briefs	IMMIGRATION: Whether conviction for third-degree sexual offense under Md. Code Ann., Crim. Law section 3-307, qualifies as aggravated felony under 8 U.S.C. section 1101(a)(43).
Rafael Larios-Reyes v. Loretta Lynch		
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15-1988	Briefs	CONTRACT: Whether amount of early-termination fee in commercial lease was condition precedent to exercise of termination option; other issues.
NCO Financial Systems, Inc. v. Montgomery (Russell)		

Associations: 15-2071

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

Wednesday, September 21, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-2143 [Briefs](#)
Palmetto Prince George v. NLRB
Associations: 15-2221

LABOR: Whether substantial evidence supports NLRB's determination that the nurses are not "supervisors" within the meaning of 29 U.S.C. section 152(11).

15-1950 [Briefs](#)
Howard Nease v. Ford Motor Company
(Chambers)

PRODUCTS LIABILITY: Did district court err in allowing "expert" testimony; in ruling incorrect instruction was harmless; in ruling use of "other incident" evidence was harmless.

16-6026 [Briefs](#)
John Doe #1 v. Roy Cooper, III
(Beaty)
Associations: 16-1596

CONSTITUTIONAL: Whether the district court erred in holding North Carolina "sexual offender on premises" provisions unconstitutionally vague and overbroad.

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

Wednesday, September 21, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-2385 [Briefs](#) CONTRACT: Whether district court properly dismissed contract claims on grounds of standing and ripeness; other
L-3 Communications Corporation v. Serco, issues.
(Lee)

15-2133 [Briefs](#) CONSTITUTIONAL: Whether S.C. Code Section 16-17-530(b) is unconstitutionally vague or overbroad.
Krystal Johnson v. Jesse Quattlebaum
(Hendricks)

15-2285 [Briefs](#) NEPA/APA: Whether case is moot; whether vacatur of district court opinion is appropriate; whether defendants
Catawba Riverkeeper Foundation v. NC violated the National Environmental Policy Act and Administrative Procedure Act.
(Dever)

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

Wednesday, September 21, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

14-4902 [Briefs](#)
US v. Shaquille Robinson
(Groh)

REHEARING EN BANC

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

Thursday, September 22, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

16-0601 [Briefs](#)
In re: James Irby, III

POST-CONVICTION: Whether retaliatory murder in violation of 18 U.S.C. section 1513(a)(1)(B) (2012) qualifies as a predicate crime of violence under 18 U.S.C. section 924(c)(3)(A) (2012).

16-1605 [Briefs](#)
Barbara Lee v. VA State Board of Elections
(Hudson)

CONSTITUTIONAL LAW: Challenge to constitutionality of Virginia's voter identification law.

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

Thursday, September 22, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

PANEL II
Butzner Courtroom 201
After the en banc session

Thursday, September 22, 2016

****Panel will not convene****

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-1918 [Briefs](#)
Deborah Ripley v. Foster Wheeler LLC
(Allen)

FEDERAL PROCEDURE: Whether the federal officer removal statute, 28 U.S.C. section 1442(a)(1), entitled government defense contractor to remove case to federal court.

15-1419 [Briefs](#)
Kobe v. Nikki Haley
(Seymour)

CIVIL: Whether state defendants' Eleventh Amendment immunity was abrogated by Title II of the Americans with Disabilities Act; other issues.

PANEL III
Butzner Courtroom 201
After the en banc session

Thursday, September 22, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-1321 [Briefs](#) ADMINISTRATIVE LAW: Whether ALJ properly deemed foreman an agent of coal mine operator within meaning of
Consol Buchanan Mining Company v. Mine Act; other issues.

15-1420 [Briefs](#) CIVIL RIGHTS: Whether plaintiff sought relief properly characterized as prospective to fall within ex parte Young;
Joseph Jemsek v. Janelle Rhyne other issues.
(Boyle)

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

Thursday, September 22, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-4267 [Briefs](#)
US v. Martin Saldana
(Voorhees)

CRIMINAL: Sufficiency of evidence supporting drug conspiracy conviction and reasonableness of life sentence.

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

Thursday, September 22, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-1755 [Briefs](#) CIVIL: Whether action challenging land use ordinances was ripe; other issues.
Clayland Farm Enterprises, LLC v. Talbot
(Motz)

15-4470 [Briefs](#) CRIMINAL: Whether recorded conversations should have been excluded under Fed. R. Evid. 404(b); other issues.
US v. Amar Endris
(Brinkema)

15-1801 [Briefs](#) INSURANCE: Whether agency nurse was employee of hospital under defendant's professional liability
Interstate Fire and Casualty v. Dimensions agreement; other issues.
(Hazel)

15-4217 [Briefs](#) CRIMINAL: Whether the district court should have sentenced Williams under U.S. Sentencing Guidelines Manual
US v. Ernest Williams, Jr. section 2B2.1 (2015), rather than section 2B3.1.
(Howard)

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

Friday, September 23, 2016

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15-4479	Briefs	SENTENCING: Whether role in offense enhancements were based on relevant conduct for offense of conviction; other issues.
US v. Kofi Agyekum (Chambers)		
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15-4301	Briefs	CRIMINAL: Whether federal kidnapping offense is a crime of violence under 18 U.S.C. section 924(c)(3) after Johnson v. United States, 135 S. Ct. 2551 (2015).
US v. Donald Walker (Osteen)		
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15-1587	Briefs	CIVIL RIGHTS: Whether material issues of fact exist on deliberate indifference and cruel and unusual punishment claims.
Paul Scinto, Sr. v. Warden Stansberry (Dever)		
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15-4299	Briefs	CRIMINAL LAW: Applicability of adult intermediary doctrine in prosecution under 18 U.S.C. section 2422(b); other issues.
US v. William Clarke (Hilton)		

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

Friday, September 23, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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15-4739	Briefs	CRIMINAL: Whether district court abused its discretion by prohibiting government from calling certain witnesses after a finding of no prosecutorial misconduct.
US v. Maria Alvarado McTague (Urbanski)		
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15-4094	Briefs	CRIMINAL: Whether district court sufficiently explained reasons for maximum sentence imposed in revocation of supervised release.
US v. Andrew Wallace (Allen)		
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15-4187	Briefs	CRIMINAL: Whether record conclusively establishes that counsel was ineffective in advising appellant to reject new trial; other issues.
US v. Antonio Fuller (Jackson)		
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15-2335	Briefs	BANKRUPTCY: Whether district court erred in reversing judgment of bankruptcy court based upon its holding that debtor failed to issue required notice of termination; other issues.
Chesapeake Bay Enterprises v. Chesapeake (Lauck)		

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

Friday, September 23, 2016

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (9/20/2016 - 9/23/2016 Session)

15-4764 [Briefs](#) CRIMINAL: Whether South Carolina strong arm robbery is a violent felony under the Armed Career Criminal Act.
US v. Kareem Doctor
(Duffy)

15-4284 [Briefs](#) CONSTITUTIONAL LAW: Whether district court erred in denying motion to dismiss based on constitutional
US v. Samuel Robert Hosford challenge to 18 U.S.C. section 922(a)(1)(A).
(Chasanow)

15-7442 [Briefs](#) SENTENCING: Whether the district court correctly determined that Peters was ineligible for a sentence reduction
US v. Spencer Peters based on quantity of drugs involved in conspiracy.
(Payne)

16-6731 [Briefs](#) CIVIL COMMITMENT: Whether respondent was in legal custody of Bureau of Prisons when he was certified as a
US v. Richard Schmidt sexually dangerous person under the Adam Walsh Act.
(Boyle)

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

Friday, September 23, 2016