

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (09/22/2009 - 09/25/2009 Session)

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06-0023 [Briefs](#) HABEAS CORPUS. Whether petitioner's mental retardation precludes imposition of death penalty under Eighth Amendment as interpreted in *Atkins v. Virginia*, 536 U.S. 304 (2002).  
Darick Walker v. Loretta Kelly  
( Hilton )

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08-0011 [Briefs](#) HABEAS CORPUS. Whether the district court erred in holding that petitioner had not established a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).  
Darick Walker v. Loretta Kelly  
( Hilton )

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08-4045 [Briefs](#) CRIMINAL LAW & PROCEDURE. Whether investigatory stop and protective search of vehicle violated Fourth Amendment.  
US v. Antonio Griffin  
( Conrad )

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08-1864 [Briefs](#) IMMIGRATION. Whether substantial evidence supports the Immigration Judge's finding that petitioner did not suffer past persecution despite evidence she underwent FGM; related issues.  
Fatoumata Kourouma v. Eric Holder, Jr.

Tuesday, September 22, 2009

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 (09/22/2009 - 09/25/2009 Session)

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08-2063 [Briefs](#) TITLE VII. Whether the district court erred in granting summary judgment for employer; denial of motion to strike.  
Tiffanye Wesley v. Arlington County  
( Hilton )

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08-1635 [Briefs](#) FREEDOM OF INFORMATION ACT. Whether documents sought under FOIA were properly determined to be inter-agency or intra-  
Hunton & Williams v. United States Department agency documents exempt from disclosure; other issues.  
( Spencer )

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08-1236 [Briefs](#) LONGSHORE. Whether the Administrative Law Judge properly relied on an audiogram that did not comply with the AMA Guides in  
Arthur Brown v. Sealand Service, Incorporated determining the percentage of work-related hearing loss.

Tuesday, September 22, 2009  
PANEL II  
Courtroom 2  
Room 201 (Green Carpet)  
9:30 a.m.

REVD 9/19/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (09/22/2009 - 09/25/2009 Session)

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08-1945 [Briefs](#) HAGUE CONVENTION. Whether district court erred in determining children's place of habitual residence in denying petition for return of minor children.  
Andrew Maxwell v. Kristina Maxwell  
( Conrad )

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08-1740 [Briefs](#) CIVIL. Whether removal jurisdiction was proper; whether state law claims were preempted by federal labor law; timeliness of Shirley Barbour v. International Union, United Au action.  
( Davis )

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08-1477 [Briefs](#) CIVIL RIGHTS. Whether summary judgment was appropriate in case involving use of deadly force; other issues.  
Thomas Sherwood, Sr. v. State of Maryland  
( Davis )

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Tuesday, September 22, 2009

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

REVD 9/18/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (09/22/2009 - 09/25/2009 Session)

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08-1129	<a href="#">Briefs</a>	LONGSHORE. Whether the Board properly determined that Newport News failed to rebut the section 20(a) presumption of the LHWCA; whether the Board erred in calculating the fee award.
Newport News Shipbuilding v. Harry Holiday Associations: 08-1122		
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08-5000	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Whether search of computer, which uncovered images of child pornography, exceeded scope of search warrant; other issues.
US v. Curtis Williams ( Brinkema )		
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08-2249	<a href="#">Briefs</a>	IMMIGRATION. Whether substantial evidence supports the Board's decision reversing the Immigration Judge's grant of asylum.
Asmaa Ashqar v. Eric Holder, Jr.		
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08-2108	<a href="#">Briefs</a>	CIVIL RIGHTS LAW. Whether plaintiff presented requisite evidence of racial animus; challenges to evidentiary rulings, failure to give jury instructions, and punitive damages award.
Worldwide Network Services, LL v. Dyncorp ( Lee ) Associations: 08-2166		
		PANEL IV Courtroom 4 Room 414-D (Tweed Carpet) 9:30 a.m.
Tuesday, September 22, 2009		

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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08-1813	<a href="#">Briefs</a>	IMMIGRATION. Whether Board of Immigration Appeals abused its discretion in denial of motion to reopen.
Jean Nken v. Eric Holder, Jr.		
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08-1483	<a href="#">Briefs</a>	CIVIL. Whether Baltimore City Zoning Code created a constitutionally protected property interest; other issues.
Lucile Horne v. Mayor and City Council of Balt ( Bennett )		
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08-1279	<a href="#">Briefs</a>	CIVIL. Whether the district court properly granted summary judgment on finding claims barred under Noerr-Pennington doctrine.
BCD v. BMW Manufacturing Company, LLC ( Anderson ) Associations: 08-1448		
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08-1287	<a href="#">Briefs</a>	FTCA. Whether jurisdictional issue concerning scope of employment intertwines with merits and renders dismissal under Rule 12(b)(1) inappropriate; other issues.
Stacia Kerns v. US ( Blake )		

Tuesday, September 22, 2009

PANEL V  
Courtroom 5  
Room 339 (Spencer)  
9:30 a.m.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (09/22/2009 - 09/25/2009 Session)

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08-4493      [Briefs](#)      SENTENCING. Whether defendants' variance sentences were procedurally and substantively reasonable.  
US v. Martin Baucom  
( Mullen )  
Associations: 08-4512

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08-4497      [Briefs](#)      SENTENCING. Whether variance sentence district court imposed was substantively reasonable.  
US v. Frederick Engle  
( Mullen )

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06-2125      [Briefs](#)      CRIMINAL LAW & PROCEDURE: Whether entities were properly found in contempt for failure to comply with grand jury  
US v. Under Seal      subpoena; whether collective fines are impermissibly punitive.  
( Lee )  
Associations: 06-2220, 06-2313, 07-1646

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08-4816      [Briefs](#)      GRAND JURY. Appeal from civil contempt order entered in connection with grand jury subpoena duces tecum.  
US v. Under Seal  
( Lee )

Wednesday, September 23, 2009

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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Richmond, VA (09/22/2009 - 09/25/2009 Session)

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08-1508	<a href="#">Briefs</a>	BANKRUPTCY. Whether the bankruptcy court properly determined that Moore personally was responsible for a debt owed by his solely-owned corporation to appellee, and that this debt was non-dischargeable in Moore's bankruptcy.
Ultra Litho Pyt, Limited v. Jeffrey Moore ( Garbis )		
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08-1608	<a href="#">Briefs</a>	CIVIL. Whether the district court erred in finding as a matter of law that a real estate agent was an independent contractor in a negligence case based on Virginia state law.
Horst Schwinn v. Long and Foster ( Brinkema )		
Associations: 08-1663		
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08-4792	<a href="#">Briefs</a>	FOURTH AMENDMENT. Propriety of district court's decision to grant defendant's suppression motion.
US v. Shon McHugh ( Spencer )		
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08-1564	<a href="#">Briefs</a>	TAX LAW. Whether taxpayer was a person "responsible" within meaning of IRC Section 6672 for paying over taxes withheld from corporation's employees; whether taxpayer willfully failed to pay over the taxes.
Charles Erwin v. US ( Beaty )		

Wednesday, September 23, 2009

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

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
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09-0002 [Briefs](#)  
Leon Winston v. Loretta Kelly  
( Wilson )

HABEAS CORPUS. Multiple issues arising out of state capital murder conviction and sentencing.

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08-5110 [Briefs](#)  
US v. Stanaus McCoy  
( Lee )

CRIMINAL LAW & PROCEDURE. Whether district court erred in declining to reopen suppression hearing based on claimed Brady violation.

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09-1212 [Briefs](#)  
US v. Heidi Myers  
( Bailey )

RECALCITRANT WITNESS. Whether crime-fraud exception vitiated attorney-client and work product privileges; whether scope of subpoena was too broad; Fifth Amendment considerations.

Wednesday, September 23, 2009

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

REVD 9/3/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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08-1908	<a href="#">Briefs</a>	CIVIL LAW. Whether the district court erred in dismissing, under Fed. R. Civ. Proc. 12(b)(6), plaintiffs' complaint alleging violations of Fourth Amendment, civil, and due process rights; other issues.
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08-1647	<a href="#">Briefs</a>	EMPLOYMENT DISCRIMINATION. Propriety of grant of summary judgment on race and gender discrimination claims.
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08-1970	<a href="#">Briefs</a>	SARBANES-OXLEY ACT. Whether law grants right to de novo review in district court if no final decision has issued from Secretary of Labor with 180 days; other issues.
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08-2177	<a href="#">Briefs</a>	BANKRUPTCY. Whether Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 eliminates "Ride-through" option recognized in <i>In re Belanger</i> , 962 F.2d 345 (4th Cir. 1992).

Associations: 08-2196

Wednesday, September 23, 2009

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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Richmond, VA (09/22/2009 - 09/25/2009 Session)

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09-1164	<a href="#">Briefs</a>	LABOR LAW. Whether Board order issued by two-member quorum is valid; whether substantial evidence supports findings of unlawful assistance in connection with decertification petition and coercive conduct; other issues.
Narricot Industries, L.P. v. NLRB		
Associations: 09-1280		
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08-2085	<a href="#">Briefs</a>	LABOR. Whether the district court's judgment denying injunctive relief under Section 10(j) of the NLRA should be vacated on grounds of mootness.
Patricia Timmins v. Narricot Industries, L.P. ( Smith )		
Associations: 08-2087		
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08-2097	<a href="#">Briefs</a>	CIVIL. Whether the district court properly determined Consumeraffairs.com was immune under the Communications Decency Act and dismissed the complaint under Rule 12(b)(6); other issues.
Nemet Chevrolet, LTD v. Consumeraffairs.Com, ( Lee )		
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08-2062	<a href="#">Briefs</a>	CIVIL. Whether district court erred in granting defendants' summary judgment motion on Plaintiff's Age Discrimination in Employment Act, state wrongful discharge, and North Carolina Wages and Hour Act claims; other issues.
William Hardin, Jr. v. Belmont Textile Machinery ( Mullen )		

Wednesday, September 23, 2009

PANEL V  
Courtroom 5  
Room 339 (Spencer)  
9:30 a.m.

REVD 9/18/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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08-1882      [Briefs](#)      CIVIL. Whether the district court erred in finding that appellant could not demonstrate that Klockner discharged him because of  
Dean Inman v. Klockner Pentaplast of America      age.  
( Moon )

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08-1718      [Briefs](#)      IMMIGRATION. Whether the Board erred finding petitioner was not eligible for INA Section 212(h) waiver; related issues.  
Mustafa Salama v. Eric Holder, Jr.

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09-1539      [Briefs](#)      CLEAN WATER ACT. Review of agency's denial of water quality certification for proposed liquefied natural gas marine terminal  
AES Sparrows Point LNG, LLC v. Shari Wilson      and associated natural gas pipeline in Maryland.

Thursday, September 24, 2009

PANEL I  
Courtroom 1  
Room 412 (Red Carpet)  
\*\*9:00 a.m. \*\*

REVD 9/23/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (09/22/2009 - 09/25/2009 Session)

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08-1673 [Briefs](#) IMMIGRATION. Whether the Board abused its discretion denying the motion to reconsider order denying motion to reopen;  
Clarisse Soghe v. Eric Holder, Jr. related issues.

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08-1700 [Briefs](#) IMMIGRATION. Whether the record compels a finding that petitioner suffered past persecution in Yemen.  
Ali Baharon v. Eric Holder, Jr.

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08-4700 [Briefs](#) CRIMINAL. Whether evidence was sufficient to convict under 18 U.S.C. Section 115; other issues.  
US v. Dwight Armel  
( Williams )

REVD 9/18/09

Thursday, September 24, 2009

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

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
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08-6347	<a href="#">Briefs</a>	HABEAS CORPUS. Whether counsel's actual conflict of interest had an adverse effect on the sentencing proceedings.
US v. Jack Nicholson ( Morgan )		
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09-1550	<a href="#">Briefs</a>	VOTING RIGHTS. Whether at-large non-partisan plurality election of school board members dilutes minority voting strength in violation of section 2 of Voting Rights Act.
R. Levy v. Lexington County, SC ( Seymour )		
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08-1948	<a href="#">Briefs</a>	CIVIL. Whether district court properly applied North Carolina voluntary payment doctrine to dismiss appellant's claims for breach of contract and violation of North Carolina Unfair and Deceptive Trade Practices Act: other issues.
Myra Johnson v. Sprint Solutions, Incorporated ( Mullen )		

Thursday, September 24, 2009

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

REVD 9/3/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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08-6725	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Challenge to district court's holding that the defendant be forcibly medicated in an effort to restore her competency to stand trial.
US v. Barbara Bush ( Legg )		
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08-1633	<a href="#">Briefs</a>	CIVIL RIGHTS. Challenge to grant of summary judgment in 42 U.S.C. Section 1983 suit against county officials involving zoning dispute and claims of equal protection violations.
David Sowers v. Powhatan County, Virginia ( Payne )		
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08-4994	<a href="#">Briefs</a>	CRIMINAL. Whether district court erred interpreting <i>Begay v. United States</i> , 128 S. Ct. 1581 (2008), to preclude use of state breaking and entering conviction as predicate offense under Armed Career Criminal Act.
US v. Michael Thompson ( Boyle )		

Thursday, September 24, 2009

PANEL V  
Courtroom 5  
Room 339 (Spencer)  
9:30 a.m.

REVD 9/23/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
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07-5040 [Briefs](#)  
US v. Jimmie Vance Grubbs  
( Conrad )

CRIMINAL. Whether significant departure from guidelines requires heightened standard of proof; whether Sixth Amendment violated by reliance on uncharged conduct at sentencing; other issues.

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06-4391 [Briefs](#)  
US v. Donna C. Johnson  
( Titus )

CRIMINAL LAW & PROCEDURE. Multiple issues including sufficiency of evidence, prosecutorial vouching, confrontation clause, and sentencing guidelines claims.

Associations: 06-4392, 06-4527

Thursday, September 24, 2009

PANEL VI  
Courtroom 6  
Room 348 (Payne)  
9:30 a.m.

REVD 9/3/09

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
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08-1397	<a href="#">Briefs</a>	CIVIL. Whether district court erred in applying Virginia law to survival claims; whether appellant may challenge order not designated in notice of appeal; other issues.
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07-4230	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Whether the district court erred when it determined that the government's search and seizure was within the scope of the search warrant and denied appellant's motion to suppress; other issues.
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07-4629	<a href="#">Briefs</a>	CRIMINAL. Whether murder victim's prior statements were properly admitted under forfeiture-by-wrongdoing exception to hearsay rule; whether testimony regarding victim's statements violated Confrontation Clause; other issues.

REVD 8/4/09

Friday, September 25, 2009

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

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (09/22/2009 - 09/25/2009 Session)

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06-4494 [Briefs](#)  
US v. Zacarias Moussaoui  
( Brinkema )

CRIMINAL LAW & PROCEDURE. Whether the defendant's fifth and sixth amendment rights were violated rendering his guilty plea involuntary; whether his guilty plea was obtained in violation of Rule 11.

Friday, September 25, 2009

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

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
FOR THE FOURTH CIRCUIT  
Richmond, VA (09/22/2009 - 09/25/2009 Session)

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08-0012	<a href="#">Briefs</a>	HABEAS CORPUS. Multiple issues arising out of state capital murder conviction and sentencing.
Cerron Hooks v. Gerald Branker ( Beaty )		
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07-4573	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Whether the district court improperly instructed the jury; other issues.
US v. Quenell Walters ( Anderson ) Associations: 07-4600		
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07-4890	<a href="#">Briefs</a>	SENTENCING GUIDELINES. Whether career offender status was properly based on facts in Maryland district court charging document that was superseded by circuit court document.
US v. Darryl Harcum ( Davis )		
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08-1690	<a href="#">Briefs</a>	IMMIGRATION. Whether substantial evidence supports the finding that petitioner failed to show well-founded fear of persecution on a protected ground.
Abebe Tolesa v. Eric Holder, Jr.		

Friday, September 25, 2009

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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08-2141	<a href="#">Briefs</a>	TORT LAW. Challenges to expert witness and other evidentiary rulings.
James Pugh, III v. Louisville Ladder, Incorporate ( Tilley )		
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09-4027	<a href="#">Briefs</a>	CRIMINAL. Whether pretrial restraint of funds violated defendant's Sixth Amendment right to counsel; whether funds are forfeitable substitute property.
US v. Robert Stokes ( Dever )		
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08-4576	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Whether district court erred in permitting joinder of carjacking charges with a separate felon in possession of a firearm charge; other issues.
US v. Collin Hawkins ( Davis )		
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08-4464	<a href="#">Briefs</a>	CIVIL LAW. Whether transport/sale of marijuana under California Health & Safety Code qualifies as a drug trafficking offense under USSG 2L1.2.
US v. Marvin Maroquin-Bran ( Flanagan )		

Friday, September 25, 2009

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