

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
FOR THE FOURTH CIRCUIT
Richmond, VA (5/7/2019 - 5/9/2019 Session)
Tuesday, May 07, 2019

18-1454 [Briefs](#) CIVIL: Whether plaintiffs advanced sufficient evidence of discriminatory effect of alleged selective enforcement
Bianca Johnson v. Andrew Holmes in violation of Fourteenth Amendment.
(Moon)

18-1525 [Briefs](#) IMMIGRATION: Whether substantial evidence supports denial of asylum and withholding of removal.
Gloria Aguilar-Avila v. William Barr

18-4214 [Briefs](#) CRIMINAL: Admissibility of evidence found during vehicle search; whether 21 U.S.C. section 846 conspiracy
US v. Thomas Norman conviction qualifies as controlled substance offense under USSG section 2K2.1.
(Herlong)

18-2127 [Briefs](#) SECURITIES FRAUD: Whether class action complaint plausibly alleged falsity, materiality, scienter, and loss
Amalgamated Bank v. Maximus causation to survive dismissal at pleading stage.
(Trenga)

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

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17-7416	Briefs	POSTCONVICTION: Whether district court erred in denying Johnson-based challenge to ACCA sentence as barred by the concurrent sentence doctrine.
US v. Roger Charles, II (Reidinger)		
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18-1769	Briefs	EMPLOYMENT: Whether district court correctly entered judgment in Plaintiffs' favor on claim seeking rescission of employee incentive investment plan based on Defendants' alleged breach of restrictive covenants; other issues.
Allegis Group, Inc. v. Justin Jordan (Russell)		
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18-1951	Briefs	CLASS ACTION: Challenge to finding of subject matter jurisdiction under Class Action Fairness Act and dismissal of damage claims under Maryland Commercial Law section 12-1018(a)(2).
Delphine Campbell v. Toyota Motor Credit (Grimm)		
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18-2194	Briefs	CIVIL: Challenge to district court's Rule 12(b)(6) dismissal of plaintiffs' fraud-based claims as lacking sufficient particularity; other issues.
Xia Bi v. Terry McAuliffe (Hilton)		

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

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18-1827 [Briefs](#) CIVIL: Appeal from denial of motion to dismiss for lack of jurisdiction based on arm-of-the-tribe sovereign immunity of entities owned by Indian tribe.
Lula Williams v. Big Picture Loans, LLC
(Payne)

18-1782 [Briefs](#) INSURANCE: Whether district court erred by determining that recovery was barred by insurance policy's "Impaired Property" exclusion; related issues.
Schnabel Foundation Company v. National
(Xinis)

18-2155 [Briefs](#) ERISA: Appeal from district court's ruling that benefit plan trustees lacked constitutional standing to sue for violation of the Coal Industry Retiree Health Benefit Act.
Michael Holland v. CONSOL Energy,
(Johnston)

18-1931 [Briefs](#) CIVIL: Appeal from dismissal of FTCA claims alleging government negligence in performing background checks as barred by FTCA's "discretionary function" exception and Brady Act immunity.
Felicia Sanders v. US
(Gergel)

Associations: 18-1932, 18-1933, 18-1935, 18-1936, 18-1937, 18-1938, 18-1939, 18-1940, 18-1941, 18-1942, 18-1943, 18-1944, 18-1945, 18-1946, 18-1948
PANEL III
Blue Courtroom (Room 339)
9:30 a.m.

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18-1693 [Briefs](#) CIVIL: Government challenge to liability finding and damages award following bench trial on plaintiff's medical malpractice claims under Federal Tort Claims Act.
Kayla Butts v. US
(Groh)

18-1302 [Briefs](#) IMMIGRATION: Whether substantial evidence supports denial of petitioner's request for withholding of removal based on claimed persecution on account of the particular social group of his family.
Guadalupe Diaz-Velasquez v. William Barr

18-2187 [Briefs](#) INSURANCE: Appeal from declaratory judgment that insurance carrier need not provide coverage notwithstanding presence of surety agreement (MCS-90 endorsement) required by Motor Carrier Act.
Trustgard Insurance Company v. Sharon
(Childs)

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

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18-1398 [Briefs](#) ERISA: Whether the Trustees substantially complied with ERISA's full and fair review requirements; other issues.
Veda Odle v. UMWA 1974 Pension Plan
(Jones)

18-1285 [Briefs](#) INSURANCE: Appeal from ruling that insurance company had no duty to defend insured for advertising injury
Pennsylvania National v. Beach Mart, Inc. claims based on insurance policies' prior publication exclusion.
(Boyle)

18-1477 [Briefs](#) CIVIL: Challenge to application of licensee estoppel in naked licensing context to bar trademark cancellation
Beach Mart, Inc. v. L&L Wings, Inc. claims; sanctions and attorney's fees; other issues.
(Boyle)

Associations: 18-1486, 18-1517, 18-1975

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

Tuesday, May 07, 2019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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18-0005 [Briefs](#) HABEAS: Whether improper external influence tainted sentencing deliberations requiring that capital sentence
William Barnes v. Edward Thomas be vacated.
(Schroeder)

18-1850 [Briefs](#) IMMIGRATION: Authority of Board and immigration judges to administratively close cases following In re Castro-
Jesus Zuniga Romero v. William Barr Tum, 27 I. & N. Dec. 271 (A.G. 2018).

18-1826 [Briefs](#) CIVIL: Cross-appeals from jury verdict in favor of defendants on claims that obstetrician breached standard of care
Sheena Dorman v. Annapolis OB-GYN during delivery, injuring infant; numerous evidentiary issues.
(Garbis)
Associations: 18-1872

18-1728 [Briefs](#) ATTORNEY'S FEES: Whether the district court properly applied this Court's guidance when calculating the award
Gregory Randolph v. Powercomm of attorney's fees.
(Hazel)

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

Wednesday, May 08, 2019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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18-2158 [Briefs](#) TAX: Appeal from dismissal of taxpayer's action seeking refund of Canadian taxes collected by the IRS under Paul Retfalvi v. US Article 26A of the U.S.-Canada Income Tax Convention.
(Dever)

18-1529 [Briefs](#) CIVIL: Whether indemnity provision in subcontract was unambiguous regarding apportionment of liability; W. C. English, Inc. v. Rummel, Klepper & related summary judgment issues.
(Moon)

18-2294 [Briefs](#) CIVIL: Appeal from dismissal for lack of standing because claims belonged to bankruptcy estate when complaint Paige Martineau v. Joel Wier filed, notwithstanding bankruptcy trustee's later abandonment of claims; judicial estoppel.
(Seymour)

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

Wednesday, May 08, 2019

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18-6403	Briefs	CIVIL RIGHTS: Whether there is a due process right to compel discovery of video evidence in a disciplinary proceeding; related issues.
Nicholas Lennear v. Eric Wilson (Davis)		
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17-4109	Briefs	CRIMINAL: Whether warrantless nonroutine border search necessitated a warrant; other issues.
US v. Raymond Aigbekaen (Bredar)		
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17-6374	Briefs	PLRA: Whether trial court dismissal only qualifies as a strike for PLRA purposes if it occurred in a different lawsuit.
Therl Taylor v. Virginia Grubbs (Gergel) Associations: 17-6375, 17-6376		
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18-4394	Briefs	CRIMINAL: Whether a conditional discharge pursuant to N.C. Gen. Stat. section 15A-1341(a4) (2017) is a conviction for purposes of 18 U.S.C. section 922(g) (2012).
US v. Tyrius Smith (Reidinger)		

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

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18-2225 [Briefs](#) ERISA: Whether district court erred by considering extrinsic evidence not available at time of final benefits
Fredrick Smith v. Reliance Standard Life Ins determination in order to evaluate adequacy of administrative record.
(Britt)

18-2116 [Briefs](#) CIVIL: Challenge to district court's determination that estoppel certificate did not amend parties' lease agreement
Expo Properties, LLC v. Experient, Inc because it lacked mutual assent and consideration.
(Russell)

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

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18-1996 [Briefs](#) BLACK LUNG: Whether substantial evidence supports ALJ's findings regarding length of coal mine employment
L B J Energy, Inc. v. Brenda Duty and smoking history in light of conflicting testimony and contradictory evidence.

18-1874 [Briefs](#) CIVIL: Whether district court erred in finding plaintiff's claims untimely, and in finding that plaintiff failed to
In re: Willis Towers Watson allege materiality of misstatements and omissions.
(Trenga)

18-1989 [Briefs](#) ERISA: Whether district court erred by concluding that employer was not acting as fiduciary under ERISA although
Rema Dawson-Murdock v. National it was the named plan fiduciary and administrator
(Gibney)

18-2024 [Briefs](#) CIVIL: Whether district court properly upheld scope of employment certification, application of foreign country
Barry Doe v. David Meron exception to FTCA, whether claims required improper extension of Bivens action.
(Xinis)

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

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19-6181 [Briefs](#)
US v. Oliver White
(Dever)

CIVIL COMMITMENT: Government appeal from district court's dismissal of civil commitment proceeding against an incompetent respondent who contests all three elements under Adam Walsh Act.

PANEL I
Red Courtroom (Room 412)
2:30 p.m.

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18-2090 [Briefs](#)
Defenders of Wildlife v. U.S. Dept. of the

ATLANTIC COAST PIPELINE: Whether Fish and Wildlife Service's determination that pipeline would not jeopardize certain threatened or endangered species was arbitrary.

18-1458 [Briefs](#)
Thomas Sweeney v. Merit Systems
(Hilton)

CIVIL: Whether district court erred in finding that the Merit Systems Protection Board lacked jurisdiction over mixed claim challenging facially voluntary adverse employment action.

18-6283 [Briefs](#)
Marcus Hahn v. Bonita Moseley
(Anderson)

POSTCONVICTION: Whether requirements of 28 U.S.C. section 2255 savings clause have been met for purposes of challenging 18 U.S.C. section 924(c) conviction in 28 U.S.C. section 2241 petition.

18-4325 [Briefs](#)
US v. Clyde Peterson
(Messitte)

CRIMINAL: Whether the Government breached the plea agreement by recommending a sentence above the Guidelines range; related issues.

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

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18-1326 [Briefs](#) IMMIGRATION: Whether agency lacked jurisdiction under Pereira to enter voluntary departure order where Antonio Zambrano Reyes v. William Barr notice to appear did not designate specific time or place of removal proceeding; other issues.

19-4055 [Briefs](#) CRIMINAL: Appeal from denial of motion to dismiss illegal reentry indictment on ground that removal order was US v. Juan Cortez invalid under Pereira due to defective notice to appear.
(Moon)

17-4727 [Briefs](#) CRIMINAL: Whether Government breached covenant of good faith and fair dealing in plea agreement; other US v. Rick Anderson issues.
(Wooten)

18-1314 [Briefs](#) IMMIGRATION: Whether Virginia offense of criminal street gang participation is categorically a crime involving Melvin Rodriguez Cabrera v. William Barr moral turpitude.

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

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18-2335 [Briefs](#) CIVIL: Challenge to finding that non-signatory defendants were bound by forum-selection clause based on alter-ego or "closely-related" theory, precluding removal to federal court.
Joseph Pfohl v. Saber Healthcare Group, LLC
(Boyle)

17-4782 [Briefs](#) CRIMINAL: Fourth Amendment-whether Government failed to exhaust all reasonable investigative techniques pursuant to 18 U.S.C. sections 2510-2522 to support issuance of a wiretap; other issues.
US v. Demetrius Davis
(Blake)

17-6544 [Briefs](#) CRIMINAL: Whether Connecticut robbery qualifies as a violent felony for purposes of the Armed Career Criminal Act; whether law of the case doctrine applies; other issues.
US v. Irving Bennerman
(Boyle)

18-1729 [Briefs](#) CONTRACT: Whether judgment was properly entered in favor of Sprint on basis that contract terms unambiguously prohibited resale of inactive phones.
Sprint Nextel Corporation v. Wireless
(Blake)

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

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18-4652 [Briefs](#) CRIMINAL: In illegal reentry proceeding, whether statutory bar on judicial review of expedited removal order is unconstitutional; related issues.
US v. Omar Silva
(Lauck)

18-6264 [Briefs](#) POSTCONVICTION: Whether 28 U.S.C. section 2244(b)(1), requiring dismissal of claim presented in first habeas petition, applies to section 2255; ACCA issues.
US v. Bobby Dinkins
(Reidinger)

18-1448 [Briefs](#) EMPLOYMENT: Whether Plaintiff demonstrated dispute of material fact related to hostile work environment; other issues.
Deanna Evans v. International Paper
(Childs)

18-1507 [Briefs](#) EMPLOYMENT: Whether Plaintiff demonstrated dispute of material fact related to hostile work environment claim; other issues.
Matthew Perkins v. International Paper
(Wooten)

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

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18-4163 [Briefs](#) CRIMINAL: Whether the Government failed to establish venue in the Western District of Virginia; other issues.
US v. Nayna Taylor
(Moon)
Associations: 18-4169, 18-4342

18-1518 [Briefs](#) CLASS ACTION: Appeal from class judgment against DISH Network under the Telephone Consumer Protection Act
Thomas Krakauer v. Dish Network for telemarketing calls made by DISH retailer.
(Eagles)

18-4367 [Briefs](#) CRIMINAL: Propriety of district court's conclusion that prior MCDV convictions qualify as valid predicates for 18
US v. Brandon Locke U.S.C. section 922(g)(9) conviction; other issues.
(Ellis)

18-4355 [Briefs](#) CRIMINAL: Whether convictions for conspiracy to commit securities fraud and related counts are supported by
US v. Michael Kipp sufficient evidence; other issues.
(Cogburn)
Associations: 18-4366

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

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