

Majority, Concurring, and Dissenting Opinions Authored by Judge Merrick Garland

R. Chuck Mason, Coordinator
Legislative Attorney

May 2, 2016

Congressional Research Service

7-5700

www.crs.gov

R44484

Summary

On March 16, 2016, President Obama nominated Judge Merrick Garland of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to fill the vacancy on the Supreme Court left by the death of Justice Antonin Scalia on February 13, 2016. Judge Garland was appointed to the D.C. Circuit in April 1997, and since February 2013 has served as the circuit court's Chief Judge, an administrative position that rotates among the active judges on the circuit. To assist Members and committees of Congress and their staff in their ongoing research into Judge Garland's approach to the law, CRS attorneys have prepared tabular listings of cases in which Judge Garland authored an opinion. These opinions are categorized into two tables: one table identifying opinions authored by Judge Garland on behalf of the reviewing court, and the other table identifying opinions authored by Judge Garland that concur with or dissent from the majority opinion.

While this report identifies and briefly describes judicial opinions authored by Judge Garland during his tenure on the federal court, it does not analyze the implications of his judicial opinions or suggest how he might approach legal issues if appointed to the Supreme Court. Those matters are discussed in CRS Report R44479, *Judge Merrick Garland: His Jurisprudence and Potential Impact on the Supreme Court*, coordinated by Andrew Nolan, Kate M. Manuel, and Brandon J. Murrill.

Contents

Introduction	1
Methodology	3

Tables

Table 1. Majority Opinions Authored by Judge Garland.....	5
Table 2. Concurring and Dissenting Opinions Authored by Judge Garland.....	58

Contacts

Author Contact Information	65
----------------------------------	----

Introduction

On March 16, 2016, President Obama nominated Judge Merrick Garland of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to fill the vacancy on the Supreme Court left by the death of Justice Antonin Scalia on February 13, 2016. Judge Garland was appointed to the D.C. Circuit in April 1997, and since February 2013 has served as the circuit court's Chief Judge, an administrative position that rotates among the active judges on the circuit.¹ During his nearly two decades on the bench, Judge Garland has served on three-judge or en banc D.C. Circuit panels that have made rulings in well over 1,000 cases.² He has also served on a few panel decisions at the district court level.³ Cases considered by Judge Garland have concerned a wide range of legal topics ranging from rulemaking by federal administrative agencies, to criminal law and procedure, to the review of legal challenges arising under the local laws of the District of Columbia.

To assist Members and committees of Congress and their staff in their ongoing research into Judge Garland's approach to the law, this report identifies and briefly summarizes each of the more than 350 cases in which Judge Garland has authored a majority, concurring, or dissenting opinion. Arguably, these written opinions provide the greatest insight into Judge Garland's judicial approach, as a judge's vote in a case or decision to join an opinion authored by a colleague may be based upon a number of considerations and may not necessarily represent full agreement with a joined opinion.⁴ This report does not address instances when Judge Garland sat

¹ See U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT, HANDBOOK OF PRACTICE AND INTERNAL PROCEDURES, UNITED STATES COURT FOR THE DISTRICT OF COLUMBIA CIRCUIT, AS AMENDED THROUGH MARCH 1, 2016, 2, [https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20Handbook%202006%20Rev%202007/\\$FILE/HandbookMarch2016Final.pdf](https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20Handbook%202006%20Rev%202007/$FILE/HandbookMarch2016Final.pdf) (last visited April 20, 2016).

² The D.C. Circuit often considers many hundreds of cases a year, though only a minority of such cases may have a written opinion. See Hon. Douglas H. Ginsburg, *Remarks Upon Receiving the Lifetime Service Award of the Georgetown Federalist Society Chapter Georgetown University Law Center*, April 26, 2011, 10 GEO. J.L. & PUB. POL'Y 1, 7 (2012) (noting that in 2010, panels of the D.C. Circuit, then composed of nine active and four senior judges, "disposed of 873 cases, 191 of them with published opinions"). Over his 19-year tenure on the D.C. Circuit, Judge Garland would have participated in a significant number of cases, either as part of a three-judge circuit panel or through considering or participating in the en banc rehearing of a case. An attempted search of the Lexis database for cases in the D.C. Circuit between April 1997 and April 2016, in which Lexis editors identified Judge Garland as one of the judges of the circuit panel presiding over the case, proved unsuccessful, as Lexis does not complete searches that are likely to return more than 3,000 results. Incremental searches of D.C. Circuit cases where Judge Garland is listed as a panel judge by Lexis editors, and which excluded cases where "Garland" is written in the opinion text within 10 words of "took no part" or "did not participate," yielded more than 5,000 combined results, but did not capture instances where, for example, an indication that Judge Garland took no part in the case was stated in a place other than the opinion. A separate search of the Westlaw database for instances in which the Westlaw editors identified Judge Garland as a panelist on a D.C. Circuit case, between April 1997 and April 2016, and which excluded instances where "Garland" appeared in the text of the opinion within 10 words of the phrase "took no part" or "did not participate," yielded more than 2,700 results. In any event, it should be noted that circuit panels may make rulings on numerous procedural issues within the course of litigation which are not captured by searches of Lexis or Westlaw.

³ See 28 U.S.C. §2284 (providing for three-judge district court panels to be convened with respect to certain actions, including challenges to the constitutionality of the apportionment of congressional districts or state legislative bodies, and that at least one judge on the panel be a circuit judge).

⁴ See Hon. Ruth Bader Ginsburg, as quoted in Irin Carmon, *Opinion, Justice Ginsburg's Cautious Radicalism*, N.Y. TIMES (October 24, 2015), <http://www.nytimes.com/2015/10/25/opinion/sunday/justice-ginsburgs-cautious-radicalism.html> (noting that "an opinion of the court very often reflects views that are not 100 percent what the opinion author would do, were she writing for herself"); Steven D. Smith, *Lessons from Lincoln: A Comment on Levinson*, 38 PEPP. L. REV. 915, 924 (2011) ("[T]he fact that a judge joins in a majority opinion may not be taken as indicating complete agreement. Rather, silent acquiescence may be understood to mean something more like 'I accept the outcome in this case, and I accept that the reasoning in the majority opinion reflects what a majority of my colleagues has agreed on.'").

on a reviewing judicial panel but did not author an opinion. Accordingly, instances where Judge Garland was part of a panel that issued a per curiam opinion, which did not credit a particular judge as the author, are omitted from this report. The report also does not address subsequent legal proceedings that may have occurred after a cited decision was issued.⁵

The opinions listed in this report are categorized into two tables: one table identifying opinions authored by Judge Garland on behalf of the reviewing court, and the other table identifying opinions authored by Judge Garland separate from the majority opinion. Cases are listed in reverse chronological order by date of decision. In each case, the key ruling or rulings of the case are succinctly described. Judicial opinions discussed in this report are categorized using the following 19 legal subject areas:

- Administrative law
- Civil liability (e.g., tort preemption, arbitration, class actions, statutory right to sue)
- Civil rights
- Criminal law/procedure
- D.C. local government
- Election law
- Environmental law
- Energy
- Federalism
- Federal courts (e.g., standing to sue, civil procedure)
- First Amendment (e.g., freedom of speech, freedom of the press)
- Government information (e.g., claims concerning the Freedom of Information Act)
- Health care (e.g., Medicare or Medicaid reimbursement)
- International law
- Labor law
- National security
- Separation of powers
- Tax law
- Transportation

Where appropriate, multiple subject areas are identified as relevant to a particular case. The list above is not an exhaustive accounting of all possible subject areas addressed by the cases below, but focuses on those legal topics that have most frequently arisen in cases adjudicated by Judge Garland. Moreover, the fact that a case is categorized under a particular legal subject area does not necessarily mean that some observers might not deem other categories to be pertinent. For example, several cases concerning the disposition of challenges brought by wartime detainees

⁵ For a listing of D.C. Circuit decisions subsequently reviewed by the Supreme Court in which Judge Garland had been a member of the reviewing circuit court panel, see CRS Report R44479, *Judge Merrick Garland: His Jurisprudence and Potential Impact on the Supreme Court*, coordinated by Andrew Nolan, Kate M. Manuel, and Brandon J. Murrill, at “Table 1. Judge Garland and the Supreme Court.”

held at the U.S. Naval Station at Guantanamo Bay, Cuba, are categorized solely under the legal subject area of “National security,” though some observers may believe that such cases also could be deemed to fall under the “Separation of powers” category (because they arguably concern judicial review of executive discretion in wartime matters) or the “Administrative law” category (because such cases often involve review of determinations made through an administrative process employed by the U.S. military to assess whether a person is properly detained as an enemy belligerent). Accordingly, while the categorizations employed by this report may provide a helpful guide to readers in locating decisions dealing with particular topics, they do not necessarily reflect the full range of legal issues raised by a judicial opinion.

While this report identifies and briefly describes those opinions authored by Judge Garland during his tenure on the federal court, it does not analyze the implications of his judicial opinions or suggest how he might approach legal issues if appointed to the Supreme Court. Those matters are discussed in CRS Report R44479, *Judge Merrick Garland: His Jurisprudence and Potential Impact on the Supreme Court*, coordinated by Andrew Nolan, Kate M. Manuel, and Brandon J. Murrill.

Methodology

The cases included in this report were compiled utilizing the following methodology:

- The majority opinions were found by searching the District of Columbia Circuit—U.S. Court of Appeals database on Lexis for *OpinionBy(Garland)*.⁶
- The concurring opinions were found by searching the District of Columbia Circuit—U.S. Court of Appeals database on Lexis for *ConcurBy(Garland)*.⁷
- The dissenting opinions were found by searching the District of Columbia Circuit—U.S. Court of Appeals database on Lexis for *DissentBy(Garland)*.⁸
- Concurring or dissenting opinions issued in cases where Judge Garland wrote the majority opinion were found by searching the District of Columbia Circuit—U.S. Court of Appeals database on Lexis for *OpinionBy(Garland)*,⁹ and limiting those results by searching for *Judges(concur! or dissent!)*.¹⁰
- District court opinions in which Judge Garland is credited as an author were found by searching the District of Columbia Circuit—U.S. District Court Cases database on Lexis for *Judges(Garland)*.¹¹

⁶ The “OpinionBy” segment restricts searches to the names of the judge(s) writing the majority opinion, as identified by Lexis editors.

⁷ The “ConcurBy” segment restricts searches to the names of the judge(s) writing a concurring opinion, including opinions concurring in part and opinions concurring in part and dissenting in part, as identified by Lexis editors.

⁸ The “DissentBy” segment restricts searches to the names of the judge(s) writing a dissenting opinion, an opinion dissenting in part, or an opinion concurring in part and dissenting in part, as identified by Lexis editors.

⁹ The “OpinionBy” segment restricts searches to the names of the judge(s) writing majority, dissenting, or concurring opinions, as identified by Lexis editors.

¹⁰ The “Judges” segment restricts searches to the names of the judges of the court hearing the case, as identified by Lexis editors.

¹¹ The use of this methodology to identify federal district court cases that Judge Garland was involved in generated six results in a Lexis search done on April 28, 2016, including a single case, *Little v. King*, 768 F. Supp.2d 56 (D.D.C. 2011), in which Judge Garland was credited as an author of an opinion. In contrast, a search done on April 28, 2016, of the District of Columbia Circuit—U.S. Court of Appeals database on Lexis for “OpinionBy(Garland)” yielded only two results, *Adams v. Clinton*, 90 F. Supp. 2d 35 (D.D.C. 2000), and *Adams v. Clinton*, 40 F. Supp. 2d 1 (D.D.C. 1999). In (continued...)

Not all results from these searches ultimately proved to be relevant, such as when the D.C. Circuit declined a petition for en banc rehearing in a one-sentence decision joined by all of the reviewing judges.¹² That decision and similar rulings are not discussed in this report. Ultimately, this methodology resulted in the identification of 355 instances in which Judge Garland is credited as an author of a judicial opinion in cases either before the D.C. Circuit (354 cases) or the U.S. District Court for the District of Columbia (a single case).

(...continued)

both cases, a per curiam opinion, which Judge Garland joined, was issued by the district court.

¹² *See, e.g.*, United States v. Goree, No. 02-3094, 2004 U.S. App. LEXIS 17297 (petition for panel rehearing denied); United States v. Goree, No. 02-3094, 2004 U.S. App. LEXIS 17298 (petition for en banc rehearing denied); In re Miller, No. 04-7117, 2004 U.S. App. LEXIS 17303 (motion for temporary restraining order and permanent injunction denied); Gray v. Poole, 2001 U.S. App. LEXIS 7238 (order issued without published opinion).

Table 1. Majority Opinions Authored by Judge Garland

Case Name	Citation	Year	Role	Subject	Holding
Fed. Election Comm'n (FEC) v. Craig for U.S. Senate	No. 14-5297, 2016 U.S. App. LEXIS 4094	2016	Authored Majority	Election law	<i>Affirmed:</i> A former U.S. Senator's conversion of campaign funds for his legal defense violated the Federal Election Campaign Act.
Minter v. District of Columbia	809 F.3d 66	2015	Authored Majority	Labor law	<i>Motion Denied:</i> District court summary judgment in favor of the District of Columbia was affirmed; former city employee had challenged her firing under the Americans with Disabilities Act (ADA) and the Rehabilitation Act.
United States v. Law	806 F.3d 1103	2015	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The district court did not err in sentencing a drug offender; the sentence was substantively reasonable and it did not violate the Eighth Amendment.
Spurlino Materials, LLC v. Nat'l Labor Relations Bd. (NLRB)	805 F.3d 1131	2015	Authored Majority	Labor law	<i>Petition for review Denied; cross-application for enforcement of order Granted:</i> Substantial evidence supported a NLRB ruling that an employer engaged in an unfair labor practice.
Pac. Coast Supply, LLC v. NLRB	801 F.3d 321	2015	Authored Majority	Labor law	<i>Petition for review Denied; cross-application for enforcement of order Granted:</i> Substantial evidence supported a NLRB order that determined employer violated the National Labor Relations Act (NLRA) when it unilaterally withdrew recognition from a union; and NLRB did not wrongly bar employer from supporting its position with post-withdrawal evidence.
Cause of Action v. Fed. Trade Comm'n (FTC)	799 F.3d 1108	2015	Authored Majority	Government information	<i>Reversed and Remanded:</i> District court applied incorrect analysis in rejecting nonprofit's application for waiver of two Freedom of Information Act (FOIA) request fees; a third application was not moot.
Intercollegiate Broad. Sys. v. Copyright Royalty Bd. & Librarian of Cong.	796 F.3d 111	2015	Authored Majority	Separation of powers	<i>Affirmed:</i> Properly appointed Copyright Royalty Board's de novo review of prior decision by improperly appointed officials did not violate the Appointments Clause; and Board's decision setting a fee was not arbitrary and capricious.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Schmuckler	792 F.3d 158	2015	Authored Majority	Criminal law/procedure	<i>Affirmed in part and Vacated and Remanded in part:</i> The court vacated one count of a conviction because of insufficient evidence, but denied request for remand to the district court to inquire into jury selection.
Wagner v. FEC	793 F.3d 1	2015	Authored Majority	Election law & First Amendment	<i>Ordered by en banc Court of Appeals:</i> A federal statute that prohibited individuals and companies, who at the time were performing or negotiating contracts with the federal government, from contributing to a federal political campaign did not violate the First Amendment or equal protection requirements of the Fifth Amendment.
United States v. Kaufman	791 F.3d 86	2015	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The sentence imposed by the district court for embezzlement conviction was within the range of the U.S. Sentencing Guidelines, reasonable, and thoroughly explained.
United States v. Gray-Burris	791 F.3d 50	2015	Authored Majority	Criminal law/procedure	<i>Affirmed in part and Remanded in part:</i> Lower court erred in excluding evidence; D.C. Circuit remanded for reconsideration of whether this evidence should affect the defendant's sentence and for further factual development regarding defendant's ineffective assistance of counsel claims.
Harris v. D.C. Water & Sewer Auth.	791 F.3d 65	2015	Authored Majority	Labor law & Civil rights	<i>Reversed:</i> The court reversed the district court's dismissal of plaintiff's retaliation suit under Title VII of the Civil Rights Act of 1964, because plaintiff alleged facts that made the claim plausible.
United States v. Sanders	778 F.3d 1042	2015	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Conviction was affirmed because, among other things, the district court did not err in instructing defendant regarding his rights; and any assumed error in jury instructions did not prejudice the defendant.
Robinson v. Wash. Metro. Area Transit Auth. (WMATA)	774 F.3d 33	2014	Authored Majority	Civil liability	<i>Affirmed:</i> Under the common law of the District of Columbia, there was insufficient evidence for a reasonable jury to hold a bus company liable for a passenger's injuries.

Case Name	Citation	Year	Role	Subject	Holding
Metz v. Bae Sys. Tech. Solutions & Servs.	774 F.3d 18	2014	Authored Majority	Federal courts	<i>Affirmed:</i> The court affirmed the lower court's denial of the plaintiff's motion to certify question of whether District of Columbia law recognizes cause of action for tortious interference with at-will employment against a third party former employer who procured the plaintiff's discharge from his new employer.
United States v. Williams	773 F.3d 98	2014	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Evidence was seized in compliance with the Fourth Amendment; the prosecutor's plain error did not affect the outcome of the case; and sentencing guidelines were properly followed.
Daniel v. Fulwood	766 F.3d 57	2014	Authored Majority	Criminal law/procedure	<i>Reversed and Remanded:</i> The prisoners plausibly alleged that retroactive application of federal parole guidelines constituted significant risk of prolonging their incarceration.
United States v. Verrusio	762 F.3d 1	2014	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> A congressional aide's indictment did not omit a necessary charge, there was sufficient evidence to support the conviction, and the lower court's exclusion of evidence was not prejudicial.
Schnitzler v. United States	761 F.3d 33	2014	Authored Majority	Federal courts	<i>Reversed and Remanded:</i> Prisoner had standing and his claim that the federal government violated his constitutional rights by refusing to allow him to renounce his U.S. citizenship was not moot.
United States v. Baxter	761 F.3d 17	2014	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The court granted motion for certificates of appealability on two of three claims, but affirmed dismissal of defendant's motion to vacate convictions.
Vill. of Barrington v. Surface Transp. Bd.	758 F.3d 326	2014	Authored Majority	Administrative law	<i>Petition Denied:</i> The D.C. Circuit lacked jurisdiction to consider a petition to review a Surface Transportation Board (STB) acquisition decision; STB did not abuse its discretion by refusing to reopen the proceeding.
Mpoy v. Rhee	758 F.3d 285	2014	Authored Majority	First Amendment	<i>Affirmed:</i> Public school officials were protected from a wrongful termination suit by qualified immunity, and a fired teacher's speech was not protected by the First Amendment.

Case Name	Citation	Year	Role	Subject	Holding
Mittleman v. Postal Regulatory Comm'n	757 F.3d 300	2014	Authored Majority	Administrative law & Federal courts	<i>Ordered:</i> Petitions to review the Postal Service Commission's decision to close certain post offices were either nonreviewable or moot.
All. for Safe, Efficient & Competitive Truck Transp. v. Fed. Motor Carrier Safety Admin.	755 F.3d 946	2014	Authored Majority	Administrative law & Transportation	<i>Dismissed:</i> Challenges to the agency's Safety Measurement System and explanatory Power Point presentations posted on the agency's website were time-barred.
Util. Air Regulatory Grp. v. Env'tl. Prot. Agency (EPA)	744 F.3d 741	2014	Authored Majority	Administrative law	<i>Denied:</i> Petition for review of challenges to final regulations concerning new source performance standards for steam-generating units was denied because the EPA's rule was not arbitrary and capricious and certain challenges were not properly before the court. <i>Concurring (Kavanaugh, J.):</i> Exhaustion/finality rule described in the majority opinion most likely should not be considered jurisdictional in light of recent Supreme Court rulings.
Blanca Tel. Co. v. Fed. Commc'n Comm. (FCC)	743 F.3d 860	2014	Authored Majority	Administrative law	<i>Petition Denied:</i> FCC's order, declining to waive deadline requirements or liability for tardy compliance with respect to requirements for digital wireless service providers to offer telephone handsets compatible with hearing aids, was not arbitrary and capricious.
McKinley v. Fed. Hous. Fin. Agency	739 F.3d 707	2014	Authored Majority	Government information	<i>Affirmed:</i> District court's determination that plaintiff was not eligible under FOIA to be awarded legal costs was not an abuse of discretion.
United States v. Cross	766 F.3d 1	2013	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Criminal conviction was affirmed because any errors made in jury instructions or by the prosecutor were harmless.
Judicial Watch, Inc. v. U.S. Secret Serv.	726 F.3d 208	2013	Authored Majority	Government information & Separation of powers	<i>Reversed in part, Affirmed in part, and Remanded:</i> White House Access Control Systems records that would disclose information concerning visitors to the Office of the President were not agency records under the Freedom of Information Act (FOIA); records that would disclose visitors to offices in the White House Complex covered by FOIA were agency records.

Case Name	Citation	Year	Role	Subject	Holding
Conservation Force, Inc. v. Jewell	733 F.3d 1200	2013	Authored Majority	Administrative law	<i>Remanded with instructions to Dismiss complaint and Vacate order:</i> Challenges to Fish and Wildlife Service actions were non-justiciable.
United States v. Swangin	726 F.3d 205	2013	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Fair Sentencing Act's new mandatory minimum sentence for a criminal offense did not apply retroactively to defendant who was sentenced before its enactment.
Gentiva Healthcare Corp. v. Sebelius	723 F.3d 292	2013	Authored Majority	Administrative law & Health care	<i>Affirmed:</i> D.C. Circuit affirmed lower court's judgment that the Department of Health and Human Services' (HHS's) interpretation of ambiguous statute was reasonable and entitled to deference under <i>Chevron U.S.A., Inc. v. Natural Resources Defense Council</i> , 467 U.S. 837 (1984).
Lacson v. U. S. Dep't of Homeland Sec.	726 F.3d 170	2013	Authored Majority	Administrative law	<i>Affirmed in part, set aside in part:</i> Substantial evidence supported most of the Transportation Security Administration's (TSA's) order terminating employee for disclosing Safety Sensitive Information.
Taylor v. Huerta	723 F.3d 210	2013	Authored Majority	Administrative law	<i>Petition Denied:</i> Federal Aviation Administration's (FAA's) decision to revoke pilot and medical certificates was not arbitrary and capricious and revocation process afforded plaintiff due process.
United States v. Caso	723 F.3d 215	2013	Authored Majority	Criminal law/procedure	<i>Reversed:</i> Reversed the lower court's denial of motion to vacate criminal conviction and sentence because plaintiff was innocent of convicted offense and was not compelled to prove innocence on a "less serious" (per sentencing guidelines) offense for which he was not charged.
Luan v. United States	722 F.3d 388	2013	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Application for a restraining order complied with procedural due process and federal statutory forfeiture protections.
Sibert-Dean v. WMATA	721 F.3d 699	2013	Authored Majority	Federal courts	<i>Affirmed:</i> Error in jury instructions was harmless.

Case Name	Citation	Year	Role	Subject	Holding
Millard Refrigerated Servs. v. Sec'y of Labor	718 F.3d 892	2013	Authored Majority	Administrative law	<i>Denied:</i> Petition for review of challenges to findings of fact and citations issued by the Occupational Safety and Health Administration (OSHA), relating to the escape of anhydrous ammonia from one of the petitioner's storage facilities, was denied.
United States v. Legg	713 F.3d 1129	2013	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Supervised release conditions imposed by the lower court restricting use of Internet and computer access were affirmed.
United States v. Davis	711 F.3d 174	2013	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Defendant's supervised release term did not begin until the day that defendant was sentenced.
Am. Civil Liberties Union (ACLU) v. Cent. Intelligence Agency (CIA)	710 F.3d 422	2013	Authored Majority	Government information	<i>Reversed and remanded:</i> The CIA's decision to neither confirm nor deny the existence of documents requested under FOIA, pertaining to the use of unmanned aerial vehicles to engage in targeted killing, was unjustified; court remanded for further consideration of whether other FOIA exemptions might apply.
United States v. Blackson	709 F.3d 36	2013	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> District court understood its resentencing authority on remand and did not commit error in applying its authority.
United States v. Purvis	706 F.3d 520	2013	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Lower court's judgment was affirmed because jury instructions were not plainly erroneous.
United States v. Gaskins	690 F.3d 569	2012	Authored Majority	Criminal law/procedure	<i>Reversed and remanded:</i> There was insufficient evidence for a reasonable juror to find that the government proved, beyond a reasonable doubt that the defendant had knowingly entered into a conspiracy with the specific intent to further an unlawful objective of drug distribution.
Miller v. Clinton	687 F.3d 1332	2012	Authored Majority	Civil rights	<p><i>Reversed and remanded:</i> District court's order dismissing Age Discrimination in Employment Act (ADEA) claim was reversed and remanded for further consideration.</p> <p><i>Dissenting (Kavanaugh, J.):</i> An existing statutory exception to ADEA allowed the State Department to negotiate employment contracts with mandatory retirement at age 65 for employees working abroad.</p>

Case Name	Citation	Year	Role	Subject	Holding
Taylor v. Reilly	685 F.3d 1110	2012	Authored Majority	Civil liability	<i>Affirmed:</i> Application of Parole Commission regulations did not violate a clearly established constitutional right that a reasonable official at the time of the hearing would have known, so parole board officials were entitled to qualified immunity. <i>Concurring (Kavanaugh, J.):</i> While the court did not address the argument that the parole officials were entitled to absolute immunity for their decision to deny parole to the appellant, such an argument would fail under Supreme Court precedents.
Newport Aeronautical Sales v. Dep't of the Air Force	684 F.3d 160	2012	Authored Majority	Government information	<i>Affirmed:</i> Exemption 3 of FOIA applies to all technical data with a military or space application covered by 10 U.S.C. §130(a).
Burke v. Air Serv. Int'l, Inc.	685 F.3d 1102	2012	Authored Majority	Federal courts	<i>Affirmed:</i> Under the <i>Erie</i> doctrine regarding choice of law, D.C. Circuit was required to apply District of Columbia's expert testimony requirement for proof of the standard of care in a suit for negligence.
Nat'l Ass'n of Home Builders v. EPA	682 F.3d 1032	2012	Authored Majority	Administrative law	<i>Denied petition for review:</i> EPA's amendment to a rule eliminating an opt-out provision to that rule was not arbitrary and capricious.
United States v. Rubio	677 F.3d 1257	2012	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Guilty plea could not be vacated based on defendant's claim of not understanding her plea where defendant was provided with a translation of the plea deal and a translator.
Alsabri v. Obama	684 F.3d 1298	2012	Authored Majority	National security	<i>Affirmed:</i> Lower court did not commit a clear error in finding sufficient evidence that foreign national held at U.S. Naval Station at Guantanamo Bay, Cuba, was lawfully detained as an enemy belligerent on account of being part of the Taliban or Al Qaeda.
Salazar v. Dist. of Columbia	671 F.3d 1258	2012	Authored Majority	Federal courts	<i>Appeal Dismissed:</i> Lower court decision was not an appealable "order refusing to dissolve an injunction" because another issue remained unresolved.

Case Name	Citation	Year	Role	Subject	Holding
Monmouth Care Ctr. v. NLRB	672 F.3d 1085	2012	Authored Majority	Labor law	<i>Denied petition for review:</i> NLRB's decision concerning employer's failure to meet with union was upheld because there was substantial evidence supporting NLRB's finding that there was no bargaining impasse or bad faith on the part of the union that would excuse employer's failure to bargain.
Nat'l Auto. Dealers Ass'n v. FTC	670 F.3d 268	2012	Authored Majority	Administrative law & Federal courts	<i>Denied petition for review:</i> A judicial appeal of FTC rulemaking under the Fair Credit Reporting Act must first be heard in federal district court.
Braintree Elec. Light Dep't v. Fed. Energy Regulatory Comm'n. (FERC)	667 F.3d 1284	2012	Authored Majority	Administrative law	<i>Agency order Affirmed:</i> FERC's interpretation of a settlement agreement within its jurisdiction was entitled to deference.
McGrath v. Clinton	666 F.3d 1377	2012	Authored Majority	Civil rights & Labor law	<i>Affirmed:</i> Evidence offered no reasonable grounds for a juror to conclude that an employee's termination was due to unlawful retaliation.
Holistic Candlers & Consumers Ass'n v. Food & Drug Admin. (FDA)	664 F.3d 940	2012	Authored Majority	Administrative law	<i>Affirmed:</i> Warning letters issued by the FDA did not constitute final agency action subject to judicial review under the Administrative Procedure Act.
PSEG Energy Res. & Trade, LLC v. FERC	665 F.3d 203	2011	Authored Majority	Administrative law	<i>Petition for review Granted and Remanded to agency for further consideration:</i> Because a FERC order was based on a finding that the statute was clear but the agency subsequently agreed that the statute was ambiguous, and FERC failed to address legitimate objections to the order, reconsideration by the agency was warranted.
Waynview Care Ctr. v. NLRB	664 F.3d 341	2011	Authored Majority	Labor law	<i>Denied petition for review and granted cross-application for enforcement:</i> Substantial evidence supported NLRB's finding that a lawful impasse in collective bargaining negotiations had not been reached.

Case Name	Citation	Year	Role	Subject	Holding
ACLU v. U.S. Dep't of Justice (DOJ)	655 F.3d 1	2011	Authored Majority	Government information	<i>Affirmed in part and Remanded in part:</i> A list of case names, docket numbers, and courts where the DOJ had used cell phone location data in criminal prosecutions did not fall under any exemption to FOIA; however, remand was appropriate for further factual development as to other material.
Khan v. Obama	655 F.3d 20	2011	Authored Majority	National security	<i>Affirmed:</i> Sufficient evidence existed to find that the petitioner, a detainee held at Guantanamo as an enemy belligerent, was lawfully held on account of membership in Al Qaeda or the Taliban; denial of petition for habeas corpus upheld.
Katz v. Sec. & Exch. Comm'n. (SEC)	647 F.3d 1156	2011	Authored Majority	Administrative law	<i>Denied petition for review:</i> SEC's decision sustaining a New York Stock Exchange disciplinary action against the petitioner was reasonable and supported by substantial evidence.
Jones v. Astrue	647 F.3d 350	2011	Authored Majority	Administrative law	<i>Reversed and Remanded:</i> The failure of an administrative law judge to explain his rejection of treating physician's testimony violated the treating physician rule, and newly available evidence should have been admitted because there was good cause for failure to initially incorporate the evidence.
Spectrum Health—Kent Cmty. Campus v. NLRB	647 F.3d 341	2011	Authored Majority	Labor law	<i>Denied petition for review:</i> NLRB properly interpreted a collective bargaining agreement to have taken effect less than three years prior, triggering the conclusive presumption that the union had the support of a majority of employees.
Bally's Park Place v. NLRB	646 F.3d 929	2011	Authored Majority	Labor law	<i>Denied petition for review and granted cross-application for enforcement:</i> Substantial evidence supported NLRB decision finding that company committed an unfair labor practice.
United States v. Salahmand	651 F.3d 21	2011	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Lower court correctly interpreted the U.S. Sentencing Guidelines.
Al Alwi v. Obama	653 F.3d 11	2011	Authored Majority	National security	<i>Affirmed:</i> Sufficient evidence existed to find that the petitioner was a member of Al Qaeda or the Taliban; denial of petition for habeas corpus upheld.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Stubblefield	643 F.3d 291	2011	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Defendant's trial did not violate the Speedy Trial Act and any error that may have been committed by the lower court was harmless.
United States v. Jones	642 F.3d 1151	2011	Authored Majority	Criminal law/ procedure	<i>Affirmed in part and Remanded in part:</i> It was not an abuse of discretion for the district court to deny defendant's motion to withdraw his guilty plea. The D.C. Circuit remanded for a hearing regarding ineffective assistance of counsel claim.
Am. Bus. Ass'n v. Rogoff	649 F.3d 734	2011	Authored Majority	Administrative law & First Amendment	<i>Reversed:</i> Appropriations restriction on agency's ability to enforce a rule did not violate petitioners' right to petition the government or Fifth Amendment right to equal protection under the law.
Dickson v. Nat'l Transp. Safety Bd. (NTSB)	639 F.3d 539	2011	Authored Majority	Administrative law	<i>Denied petition for review:</i> NTSB's denial of an application because the applicant was not medically qualified was not arbitrary and capricious and was supported by substantial evidence.
Chamber of Commerce of U.S. v. EPA	642 F.3d 192	2011	Authored Majority	Administrative law & Federal courts	<i>Dismissed:</i> The court lacked jurisdiction to hear challenge to the EPA's decision granting California a waiver from preemption under the Clean Air Act because plaintiffs did not have standing and the petition was moot.
Peterson v. Archstone Cmtys., LLC	637 F.3d 416	2011	Authored Majority	Federal courts	<i>Vacated and Remanded:</i> Lower court had not sufficiently justified its decision to dismiss the plaintiff's claim based on alleged violation of the ADEA.
In re Zdravkovich	634 F.3d 574	2011	Authored Majority	Federal courts	<i>Order:</i> Attorney was disbarred for misappropriation of client trust funds.
Figueroa v. Dist. of Columbia Metro. Police Dep't	633 F.3d 1129	2011	Authored Majority	Administrative law & Labor Law	<i>Affirmed in part and Reversed and Remanded in part:</i> The court remanded for consideration of claims alleging violations of the Fair Labor Standards Act (FLSA) that the district court erroneously interpreted to be time-barred.

Case Name	Citation	Year	Role	Subject	Holding
Calhoun v. Johnson	632 F.3d 1259	2011	Authored Majority	Civil rights & Labor law	<i>Affirmed in part and Reversed in part:</i> An employee's claim of discrimination based on her race was remanded for trial where a reasonable jury could find that she was not only reasonably qualified but was substantially more qualified than the person ultimately selected for the position.
Little v. King	768 F. Supp.2d 56	2011	Authored Majority (as part of federal district court panel)	Election law & Federal courts	<i>Dismissed in part, Remainder of case Transferred:</i> The plaintiff brought suit under the Voting Rights Act, arguing that the act required federal pre-approval of an Alabama law that, among other things, mandated the disclosure of campaign contributions to state judges. The court dismissed the U.S. Attorney General (AG) as a defendant because the plaintiff did not state a claim against, or seek relief, from the AG. The court transferred the remainder of the plaintiff's claims to the Middle District of Alabama as this was consistent with the convenience of the parties and witnesses and in the interest of justice.
Payne v. Salazar	619 F.3d 56	2010	Authored Majority	Administrative law & Labor law	<i>Affirmed in part and Reversed in part:</i> Employee was not required to appeal claim that she had won before an administrative law judge to obtain review of the claim that she had lost in that same administrative case.
Sigmund v. Starwood Urban Retail VI, LLC	617 F.3d 512	2010	Authored Majority	Civil liability	<i>Affirmed:</i> In a civil negligence action, an intervening criminal act was not foreseeable, precluding third-party liability.
TNA Merch. Projects, Inc. v. FERC	616 F.3d 588	2010	Authored Majority	Administrative law	<i>Vacated and Remanded:</i> FERC had not properly addressed in its order petitioner's argument that its filed rate could not be a "changed rate" under the statute.
United States v. Tepper	616 F.3d 583	2010	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Defendant's sentence could not be reduced because Sentencing Commission had not reduced sentences for the crime on which his sentence was based.
Phillips v. Fulwood	616 F.3d 577	2010	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Because there was no significant risk that application of the 2000 U.S. Sentencing Guidelines rather than the 1987 Guidelines would have elongated defendant's sentence, dismissal was affirmed.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Project on Gov't Oversight	616 F.3d 544	2010	Authored Majority	Criminal law/ procedure	<p><i>Reversed:</i> Contrary to the district court's finding, intent is a required element for violations of 18 U.S.C. §209(a), concerning unauthorized compensation of a government employee by a non-government entity.</p> <p><i>Concurring in judgment and Concurring in part in the opinion (Edwards, J.):</i> The judge could not concur in the majority's disposition of the government's cross-appeal challenging the district court's civil penalty determination. The majority's construction of the ambiguous civil penalty provision was only marginally better than the government's interpretation.</p>
United States v. Shabban	612 F.3d 693	2010	Authored Majority	Criminal law/ procedure	<p><i>Affirmed in part and Remanded in part:</i> There was sufficient evidence of defendant's guilt that a reasonable juror could have been persuaded, but because the trial record did not conclusively show whether the defendant had a viable claim for ineffective assistance of counsel, the case was remanded for an evidentiary hearing on that issue.</p>
Mogenhan v. Napolitano	613 F.3d 1162	2010	Authored Majority	Labor law	<p><i>Reversed in part and Affirmed in part:</i> The court reversed the lower court's grant of summary judgment because there was sufficient evidence that a reasonable juror could have found that employer's retaliatory actions would have dissuaded an employee from engaging in protected activity, but it affirmed the grant of summary judgment for the employer on a failure-to-accommodate claim.</p>
United States v. Battle	613 F.3d 258	2010	Authored Majority	Criminal law/ procedure	<p><i>Affirmed in part and Remanded in part:</i> Evidence was sufficient to support the defendant's convictions, but two of the convictions merged and to uphold both would violate the Due Process Clause of the Constitution. One of the convictions was, therefore, remanded to district court to be vacated.</p>

Case Name	Citation	Year	Role	Subject	Holding
United States v. Coughlin	610 F.3d 89	2010	Authored Majority	Criminal law/ procedure	<i>Reversed in part, Affirmed in part, and Remanded:</i> Defendant was acquitted of committing a number of counts of mail fraud, but the jury could not reach a decision on other mail fraud counts as well as counts of false claim and theft of public funds. Double jeopardy attached to the undecided counts of mail fraud, but not to the false claim and theft of public funds counts.
United States v. Motley	587 F.3d 1153	2009	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> The government's refusal to file a motion authorizing the court to sentence defendant to a length of time less than the mandatory minimum sentence was not irrational or a violation of due process where the motion the government did file complied with the plea deal signed by the defendant.
Kersey v. WMATA	586 F.3d 13	2009	Authored Majority	Civil rights	<i>Affirmed:</i> WMATA's reliance on binding settlement agreement to deny employee a promotion when the statute of limitations to challenge that agreement had passed was not a pretext for discrimination and retaliation in violation of the Rehabilitation Act.
Skinner v. DOJ	584 F.3d 1093	2009	Authored Majority	Government information	<i>Affirmed and Affirmed on alternate grounds:</i> The court affirmed district court's dismissal of plaintiff's Privacy Act amendment claim because records were exempt. The court also affirmed dismissal of plaintiff's claim for damages under the Privacy Act because that they were not cognizable unless plaintiff first secured relief via a writ of habeas corpus.
Rempfer v. Sharfstein	583 F.3d 860	2009	Authored Majority	Administrative Law & Federal courts	<i>Affirmed:</i> The FDA's finding of vaccine effectiveness was not arbitrary and capricious; and plaintiffs lacked standing to challenge the subsection of military members to mandatory immunization by the Department of Defense.

Case Name	Citation	Year	Role	Subject	Holding
Nat'l Ass'n of Mfrs. v. Taylor	582 F.3d 1	2009	Authored Majority	Election law & First Amendment	<i>Affirmed:</i> Lobbying disclosure statute satisfied strict scrutiny and was upheld.
Malik v. District of Columbia	574 F.3d 781	2009	Authored Majority	Civil rights & Federal courts	<i>Reversed and Remanded:</i> The provision of the Prison Litigation Reform Act requiring prisoners to exhaust their administrative remedies before filing suit is inapplicable in instances where “there [is] no administrative process to exhaust.”
Abington Crest Nursing & Rehab. Ctr. v. Sebelius	575 F.3d 717	2009	Authored Majority	Administrative law & Health care	<i>Affirmed:</i> Skilled nursing facilities were properly denied reimbursement from the Secretary of HHS for certain bad debt costs pursuant to the Medicare statute and accompanying regulations.
Lucas v. Duncan	574 F.3d 772	2009	Authored Majority	Federal courts	<i>Vacated:</i> Statements made by attorney in pleadings filed on behalf of client did not warrant imposition of sanctions under Rule 11 of the Federal Rules of Civil Procedure.
Oveissi v. Islamic Republic of Iran	573 F.3d 835	2009	Authored Majority	Federal courts & International law	<i>Reversed and Remanded:</i> The lower court correctly determined that it had jurisdiction over the plaintiff's suit under the terrorism exception of the Foreign Sovereign Immunities Act (FSIA), but erred in application of D.C. choice-of-law rules when it applied California and British law, rather than French law, in dismissing the plaintiff's intentional infliction of emotional distress and wrongful death claims.
Se. Ala. Med. Ctr. v. Sebelius	572 F.3d 912	2009	Authored Majority	Administrative law & Health care	<i>Affirmed in part, Reversed and Remanded in part:</i> HHS properly included certain types of costs in its reimbursement payments to hospitals under Medicare statute and implementing regulations, but it failed to provide a reasonable explanation regarding its treatment of certain postage costs in its calculations.

Case Name	Citation	Year	Role	Subject	Holding
Robinson-Reeder v. Am. Council on Educ.	571 F.3d 1333	2009	Authored Majority	Civil rights & Federal courts	<i>Dismissed:</i> D.C. Circuit lacked jurisdiction to hear plaintiff's claims against her employer under Title VII of the 1964 Civil Rights Act, as the district court had not entered a final judgment in the case.
United States v. Blalock	571 F.3d 1282	2009	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Appellant was properly subject to an enhanced sentence under the U.S. Sentencing Guidelines for possessing a firearm in connection with another felony offense.
Guard Publ'g Co. v. NLRB	571 F.3d 53	2009	Authored Majority	Labor law	<i>Petition Denied in part and Granted in part, and Remanded:</i> NLRB correctly determined that a company committed unfair labor practices when it disciplined employees for engaging in certain activities related to their union participation, but the Board erred in holding that the company acted lawfully when it disciplined one of the employees for using company email to solicit on behalf of the union.
Novak v. Capital Mgmt. & Dev. Corp.	570 F.3d 305	2009	Authored Majority	Civil liability & D.C. local government	<i>Affirmed:</i> A reasonable jury could find that a nightclub owed an injured patron a duty of care, and the evidence presented could establish foreseeability of this injury.
Horning v. SEC	570 F.3d 337	2009	Authored Majority	Administrative law	<i>Affirmed:</i> SEC's order to sanction president and director of an investment company pursuant to Securities Exchange Act was not arbitrary and capricious.
Entergy Servs., Inc. v. FERC	568 F.3d 978	2009	Authored Majority	Administrative law & Energy	<i>Petition Denied:</i> FERC's order regarding a contract dispute over a public utility holding company's billing rates was not arbitrary and capricious.
United States v. Berkeley	567 F.3d 703	2009	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The denial of a criminal defendant's motion to withdraw his guilty plea was not an abuse of discretion, and the calculation of his sentence was not erroneous.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Jones	567 F.3d 712	2009	Authored Majority	Criminal law/procedure	<i>Affirmed and Remanded:</i> The appellant was not entitled to a new trial, as the district court did not err in failing to suppress the appellant's statements at the time of arrest, and it was not clear that the government presented inadmissible evidence to the jury. However, the case was remanded to give the appellant an opportunity to request a reduced sentence.
Dean Transp. v. NLRB	551 F.3d 1055	2009	Authored Majority	Labor law	<i>Petition denied and cross-application for enforcement of order Granted:</i> NLRB properly determined that a transportation company's refusal to recognize and bargain with the union representing employees of a school district facility (and instead bargaining with the union representing bus drivers at other facilities) violated the NLRA.
Montgomery v. Chao	546 F.3d 703	2008	Authored Majority	Civil rights	<i>Affirmed:</i> Pension Benefit Guaranty Corporation's (PBGC's) decisions not to promote or appoint employee to certain positions did not constitute unlawful discrimination or retaliation in violation of Title VII of the Civil Rights Act of 1964.
Feemster v. BSA Ltd. P'ship	548 F.3d 1063	2008	Authored Majority	D.C. local government	<i>Affirmed in part, Reversed in part:</i> Property owner unlawfully refused to accept tenants' federal vouchers as payment for rent in violation of federal housing statutes and the District of Columbia Human Rights Act.
Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.	534 F.3d 772	2008	Authored Majority	Administrative law & Labor law	<i>Petition Denied:</i> Federal Labor Relations Authority's decision to reject a disputed contract provision as a violation of the Federal Services Labor-Management Relations Act was entitled to judicial deference.
Steele v. Schafer	535 F.3d 689	2008	Authored Majority	Civil rights	<i>Reversed and Remanded:</i> Lower court wrongly dismissed employee's claims against her former employer for creating a hostile work environment and unlawfully retaliating against her in violation of Title VII of the Civil Rights Act of 1964.
Klamath Water Users Ass'n v. FERC	534 F.3d 735	2008	Authored Majority	Energy & Federal courts	<i>Dismissed:</i> Water users association lacked standing to challenge a FERC order because it failed to demonstrate that a favorable decision by the court would redress its injury.

Case Name	Citation	Year	Role	Subject	Holding
Pac. Gas & Elec. Co. v. FERC	533 F.3d 820	2008	Authored Majority	Energy & Federal courts	<i>Petition Dismissed:</i> Court lacked jurisdiction to hear case, as company's petition for review of certain FERC orders was an impermissible collateral attack on orders issued in earlier years.
Public Citizen v. Rubber Mfrs. Ass'n	533 F.3d 810	2008	Authored Majority	Government information	<i>Affirmed:</i> A provision of the Transportation Recall Enhancement, Accountability, and Documentation Act limiting the disclosure of certain early warning reporting data did not exempt the data from disclosure under FOIA.
United States v. Andrews	532 F.3d 900	2008	Authored Majority	Criminal law/Procedure	<i>Affirmed:</i> The government did not violate the defendant's rights by failing to produce certain exculpatory evidence prior to trial, and no error was committed under the U.S. Sentencing Guidelines and the Constitution's Ex Post Facto Clause by calculating defendant's sentence based on the 2006 Sentencing Guidelines Manual, rather than on an earlier version. <i>Concurring (Rogers, J.):</i> The defendant failed to show plain error with respect to prosecution's failure to produce certain exculpatory evidence and calculation of the defendant's sentence. With respect to the defendant's ex post facto challenge to her sentence, there was no need for the court to address the timing of the termination of the conspiracy.
United States v. Cassell	530 F.3d 1009	2008	Authored Majority	Criminal law/Procedure	<i>Affirmed:</i> Because the district court properly treated the defendant's possession of a particular type of firearm as a sentencing factor, his counsel did not err in failing to request a jury instruction on the issue.
Aliron Int'l v. Cherokee Nation Indus.	531 F.3d 863	2008	Authored Majority	Civil liability	<i>Affirmed:</i> Subcontractor was compelled to arbitrate its claims against the primary contractor in a breach of contract dispute.

Case Name	Citation	Year	Role	Subject	Holding
In re Core Commc'ns, Inc.	531 F.3d 849	2008	Authored Majority	Administrative law	<p><i>Writ of mandamus Granted:</i> FCC was directed to respond to a remand order in an earlier case and explain the legal basis for certain rules applying to payment for dial-up Internet connections.</p> <p><i>Concurring (Griffith, J.):</i> The circumstances surrounding the majority's decision called into question the wisdom of the open-ended remand without vacatur; future panels should consider alternatives to this approach.</p>
Parhat v. Gates	532 F.3d 834	2008	Authored Majority	National security	<p><i>Petition Granted and motion Denied:</i> A Combatant Status Review Tribunal's determination that a detainee at the U.S. Naval Station at Guantanamo Bay, Cuba, was an "enemy combatant" was not supported by sufficient evidence and in a manner allowing a reviewing court to assess its reliability; the D.C. Circuit also denied without prejudice the government's motion to designate certain unclassified material in the tribunal record as "protected information."</p>
Muir v. Navy Fed. Credit Union	529 F.3d 1100	2008	Authored Majority	Civil liability	<p><i>Affirmed in part, Reversed in part:</i> With respect to credit union's use of funds deposited by plaintiff to satisfy a debt owed by the plaintiff's father, the district court appropriately granted summary judgment for the credit union on the plaintiff's breach of fiduciary duty claim, and properly denied the plaintiff's request for punitive damages; however, plaintiff's claims of tortious interference with a business expectancy, tortious conversion, and certain violations of the Fair Debt Collection Practices Act should not have been dismissed by the lower court.</p>
United States v. Johnson	519 F.3d 478	2008	Authored Majority	Criminal law/procedure	<p><i>Affirmed:</i> District court did not err in denying defendant's motion to suppress certain gun and drug evidence, admitting evidence of a prior firearms conviction at trial, denying a motion for judgment of acquittal based on the drugs at issue, and not granting defendant a new trial.</p>

Case Name	Citation	Year	Role	Subject	Holding
United States v. Pettiford	517 F.3d 584	2008	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> District court did not err in admitting evidence of a prior drug offense at trial, in denying defendant's motion for a new trial, and in denying defendant's motion for a judgment of acquittal on the basis of insufficient evidence to establish that the drug defendant possessed was crack cocaine.
United States v. Branham	515 F.3d 1268	2008	Authored Majority	Criminal law/procedure	<i>Conviction Affirmed; Remanded:</i> The evidence against the criminal defendant was sufficient to support his conviction, and the district court properly admitted expert testimony against defendant; the case was remanded for resentencing in light of the mandatory application of the U.S. Sentencing Guidelines at the defendant's original sentencing.
Kassem v. Wash. Hosp. Ctr.	513 F.3d 251	2008	Authored Majority	Civil liability, D.C. local government & Labor law	<i>Affirmed in part and Reversed in part:</i> The lower court correctly dismissed the appellant's wrongful discharge claim against his former employer, but improperly dismissed the claim of intentional infliction of emotional distress.
United States v. Ginyard	511 F.3d 203	2008	Authored Majority	Criminal law/procedure	<i>Affirmed in part and dismissed in part:</i> One defendant could be retried on certain lesser-included offenses without violating the Double Jeopardy Clause; the court lacked jurisdiction to hear the other defendant's challenge based on an aiding and abetting theory.
Segar v. Mukasey	508 F.3d 16	2007	Authored Majority	Civil rights & Labor law	<i>Interim injunction Vacated and Remanded:</i> A consent decree governing the promotion of special agents to positions in the Drug Enforcement Administration's (DEA's) Senior Executive Service (SES) was not ambiguous or invalid; it restricted the Administrator of the DEA from promoting an agent who was not on the list of best-qualified candidates to an SES position, but provided the Administrator with the discretion to choose which candidate to promote from that list.

Case Name	Citation	Year	Role	Subject	Holding
Kleiman & Hochberg v. U.S. Dep't of Agric. (USDA)	497 F.3d 681	2007	Authored Majority	Administrative law & Civil liability	<i>Petition Denied:</i> Secretary of Agriculture's revocation of wholesale produce merchant's license to do business under the Perishable Agricultural Commodities Act, which triggered certain employment restrictions on the company's president, was not arbitrary or unreasonable.
United States v. Bowman	496 F.3d 685	2007	Authored Majority	Criminal law/procedure	<i>Affirmed in part, Remanded in part:</i> The district court did not err in denying defendant's motion to dismiss his indictment; there was insufficient evidence to evaluate the constitutionality of the roadblock where defendant was arrested, so the case was remanded to lower court for an evidentiary hearing.
United States v. Edwards	496 F.3d 677	2007	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> District court's application of the U.S. Sentencing Guidelines was proper for defendant convicted of bribery and extortion.
Holland v. Williams Mt. Coal Co.	496 F.3d 670	2007	Authored Majority	Labor law	<i>Reversed and Remanded:</i> District court relied on improper grounds in awarding attorney's fees to a mining company following a lawsuit over the company's liability for retired miner's health benefits.
United States v. Curry	494 F.3d 1124	2007	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> District court did not abuse its discretion in denying defendant's request to withdraw his guilty plea or hold an evidentiary hearing.
Owner-Operator Indep. Drivers Ass'n v. Fed. Motor Carrier Safety Admin.	494 F.3d 188	2007	Authored Majority	Administrative law & Transportation	<i>Petition Granted in part and Denied in part:</i> The Federal Motor Carrier Safety Administration did not act arbitrarily or capriciously with respect to certain aspects of regulations relating to the hours of commercial motor vehicle operators, but the agency violated the Administrative Procedure Act when it failed to provide certain information and neglected to give interested parties an opportunity to comment on the regulations.

Case Name	Citation	Year	Role	Subject	Holding
Cement Kiln Recycling Coal. v. EPA	493 F.3d 207	2007	Authored Majority	Administrative law & Environmental law	<i>Petition Denied in part and Dismissed in part:</i> An EPA rule reasonably prescribed requirements relating to a permitting process for facilities that burn hazardous waste as fuel, as required by the Resource Conservation and Recovery Act, and a related guidance document was a non-binding statement of EPA policy that was outside the scope of the court's jurisdiction.
Muldrow v. Re-Direct, Inc.	493 F.3d 160	2007	Authored Majority	Civil liability	<i>Affirmed:</i> The defendant not entitled to a new trial, as the district court correctly excluded certain testimony as inadmissible hearsay, permitted the plaintiff's juvenile justice expert testimony, and properly instructed the jury regarding the standard for finding plaintiff's son contributorily negligent.
Devia v. Nuclear Regulatory Comm'n (NRC)	492 F.3d 421	2007	Authored Majority	Energy & Federal courts	<i>Case held in abeyance:</i> Because the petitioners' challenge to the NRC decision to issue a license allowing for the construction and operation of a nuclear waste facility was unripe, the case was held in abeyance.
Cambridge Holdings Grp., Inc. v. Fed. Ins. Co.	489 F.3d 1356	2007	Authored Majority	Federal courts	<i>Dismissed:</i> Corporation's appeal of its breach of contract claim against insurance company dismissed because it was untimely.
United States v. Bentley	489 F.3d 360	2007	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> An incident involving several items accidentally sent to the jury room during the course of the jury's deliberations constituted harmless error and did not have a "substantial and injurious effect or influence" on the jury's verdict.
In re Sealed Case No. 05-3030	488 F.3d 1011	2007	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Counsel's failure to correctly advise defendant regarding U.S. Sentencing Guidelines was not prejudicial; lower court's denial of defendant's motion to vacate his sentence was appropriate.

Case Name	Citation	Year	Role	Subject	Holding
Mueller v. Winter	485 F.3d 1191	2007	Authored Majority	Government information & Labor law	<i>Affirmed:</i> Lower court properly rejected a challenge under the Privacy Act and the Administrative Procedure Act to the Navy's refusal to remove a lieutenant's allegedly erroneous fitness report from his personnel record, as well as the lieutenant's request to convene a special selection board under 10 U.S.C. §628.
United States v. Bras	483 F.3d 103	2007	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Lower court committed no error in calculating criminal defendant's sentence.
Carpenters & Millwrights, Local Union 2471 v. NLRB	481 F.3d 804	2007	Authored Majority	Labor law	<i>Vacated and Remanded in part:</i> NLRB failed to cite sufficient evidence to reverse administrative law judge's decision and failed to explain why it disregarded contrary evidence.
Czekalski v. Peters	475 F.3d 360	2007	Authored Majority	Civil rights& Labor law	<i>Reversed:</i> The court found that there were genuine issues of material fact as to whether federal agency discriminated against employee on basis of her gender in violation of Title VII of the Civil Rights Act of 1964.
Flying Food Group, Inc. v. NLRB	471 F.3d 178	2006	Authored Majority	Labor law & Administrative law	<i>Petition Denied and cross-petition for enforcement Granted:</i> The NLRB did not err procedurally in reaching its decision; and the statute barred judicial consideration of petitioner's substantive argument because the company did not seek prior Board reconsideration of the issue.
United States v. Adewani	467 F.3d 1340	2006	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The lower court committed no legal error in calculating criminal defendant's sentence, and the record contained sufficient evidence to support his conviction.
Davis v. DOJ	460 F.3d 92	2006	Authored Majority	Government information	<i>Affirmed in part, Reversed in part, and Remanded:</i> Because the FBI did not make a "reasonable effort to ascertain" whether two subjects were dead, the agency may not have reasonably responded to the FOIA request; but the district court's denial of attorney's fees was correct.
Conseil Alain Aboudaram, S.A. v. De Groote	460 F.3d 46	2006	Authored Majority	Federal courts	<i>Affirmed:</i> The court upheld the lower court's decision in all respects regarding a contract dispute between a lender and a borrower.

Case Name	Citation	Year	Role	Subject	Holding
Charter Commc'ns, Inc. v. FCC	460 F.3d 31	2006	Authored Majority	Administrative law	<i>Petition Denied:</i> FCC's order refusing to rescind a rule restricting cable television operators from providing certain set-top devices was not arbitrary or capricious.
United States v. West	458 F.3d 1	2006	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The district court did not abuse its discretion in determining how to conduct the voir dire or in its denial of the defendant's motion to dismiss evidence because of a purported Fourth Amendment violation.
Alpharma, Inc. v. Leavitt	460 F.3d 1	2006	Authored Majority	Administrative law	<i>Judgment Set Aside and Remanded:</i> The FDA's response to an earlier remand to explain its approval of new animal drug applications raised new questions which prevented the court from concluding that the decision was the product of reasoned decisionmaking. <i>Concurring in part and Dissenting in part (Williams, J.):</i> The FDA's response to remand was insufficient, and the agency should have been compelled to explain how its use of single-dose study satisfied relevant standards.
Soc'y of Lloyd's v. Siemon-Netto	457 F.3d 94	2006	Authored Majority	Civil liability, D.C. local government & International law	<i>Affirmed:</i> Money judgment obtained in England for nonpayment of reinsurance premiums is enforceable against residents of the District of Columbia under the District's Uniform Foreign Money Judgments Recognition Act.
Trudeau v. FTC	456 F.3d 178	2006	Authored Majority	Administrative law, Federal court, & First Amendment	<i>Affirmed:</i> The district court erroneously dismissed the plaintiff's complaint against FTC for lack of subject-matter jurisdiction; but the allegations were nevertheless insufficient to state a claim upon which relief could be granted.
Kurke v. Oscar Gruss & Son, Inc.	454 F.3d 350	2006	Authored Majority	Civil liability	<i>Affirmed:</i> The arbitration award reached by an arbitration panel against a securities firm and firm executive was not made in manifest disregard of the law.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Project on Gov't Oversight	454 F.3d 306	2006	Authored Majority	Criminal law/procedure	<i>Reversed and Remanded:</i> Genuine issues of material fact existed regarding whether a non-profit political organization made a contribution, in violation of criminal statute, to the salary of a Department of the Interior economist as compensation for his services as a government employee.
Sec'y of Labor v. Twentymile Coal Co.	456 F.3d 151	2006	Authored Majority	Administrative law & Labor law	<i>Petition Granted, order Vacated:</i> The Secretary of Labor had prosecutorial discretion to cite an owner-operator of a mine for safety violations committed by its contractor; and the Federal Mine Safety and Health Review Commission generally lacked authority to review the Secretary's decisions.
In re Core Commc'ns, Inc.	455 F.3d 267	2006	Authored Majority	Administrative law	<i>Petitions Denied:</i> FCC's decisions regarding forbearance of its rules governing telecommunications traffic bound for Internet service providers were not arbitrary or capricious.
Consumer Fed'n of Am. v. USDA	455 F.3d 283	2006	Authored Majority	Government information	<i>Affirmed in part, Reversed in part:</i> Electronic appointment calendars of the five most senior USDA officials were "agency records" subject to production under FOIA, but an assistant administrator's appointment calendar was not covered. <i>Concurring (Henderson):</i> The majority should not have relied so heavily on earlier D.C. Circuit jurisprudence in reaching decision, as subsequent Supreme Court precedent called earlier circuit rulings into question; moreover, there were key differences between the facts of an earlier D.C. Circuit case and the present one.
United States v. Mejia	448 F.3d 436	2006	Authored Majority	Criminal law/procedure	<i>Affirmed in part and Remanded in part:</i> Criminal defendants' conviction for conspiracy to distribute cocaine with intent that it be unlawfully imported into the United States upheld; however, one of the defendant's sentence was instructed to be vacated and remanded for resentencing consistent with <i>United States v. Booker</i> , 543 U.S. 220 (2005), and the other defendant was entitled to an evidentiary hearing regarding his claim that his attorney had provided ineffective assistance of counsel.

Case Name	Citation	Year	Role	Subject	Holding
Boivin v. U.S. Airways, Inc.	446 F.3d 148	2006	Authored Majority	Administrative law & Labor law	<i>Vacated in part and Remanded in part:</i> Court dismissed claims against the PBGC regarding alleged errors in calculating benefits due to retired airline pilots under the Employment Retirement Income Security Act and corporate retirement income plan because the retirees had not yet exhausted their administrative remedies.
Messina v. Krakower	439 F.3d 755	2006	Authored Majority	Federal courts & First Amendment	<i>Affirmed:</i> The lower court committed no error when it found that the defendants (attorney and his law firm) were protected by the judicial proceedings privilege regarding content in a letter attorney wrote that contained allegedly defamatory matter about the plaintiff.
Washburn v. Lavoie	437 F.3d 84	2006	Authored Majority	Civil liability & First Amendment	<i>Affirmed:</i> The lower court committed no error in finding that defendants were protected by their qualified privilege of self-defense from liability for defamation and false-light invasion of privacy claims brought by a neighbor.
United States v. Fonseca	435 F.3d 369	2006	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The district court neither violated the Speedy Trial Act nor abused its discretion in limiting cross-examination of a government witness by the criminal defendant, who was convicted of unlawful possession of a firearm and ammunition.
Ceridian Corp. v. NLRB	435 F.3d 352	2006	Authored Majority	Labor law	<i>Petition Denied; cross-petition Granted:</i> The NLRB's conclusion that company unlawfully interfered with employees' choice of representatives for collective bargaining purposes was reasonable and supported by substantial evidence.
In re Zambrano	433 F.3d 886	2006	Authored Majority	Criminal law/procedure	<i>Application Denied:</i> Pro se defendant's request for leave to file a second motion to vacate his criminal sentence, on the assertion that the sentence is unconstitutional under <i>United States v. Booker</i> , was denied because the Supreme Court had not made <i>Booker</i> retroactive to cases on collateral review.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Simpson	430 F.3d 1177	2005	Authored Majority	Criminal law/procedure	<p><i>Affirmed:</i> The lower court committed no constitutional <i>Booker</i> error in calculating sentence for criminal defendant who reentered the United States unlawfully after having been deported following conviction for distributing a large amount of marijuana.</p> <p><i>Concurring (Silberman, J.):</i> Although the court correctly rested its decision on alternative grounds, it should have first considered whether, as the government contended, the appellant waived his right to appeal his sentence on <i>Booker</i> grounds.</p>
Initiative & Referendum Inst. v. U.S. Postal Serv.	417 F.3d 1299	2005	Authored Majority	First Amendment	<p><i>Reversed and Remanded:</i> Postal Service regulation wholly prohibiting the solicitation of signatures outside postal buildings did not withstand First Amendment scrutiny as a valid “time, place, and manner” regulation of speech, as the rule was “neither ... narrowly tailored nor ensure[d] ample alternative channels of communication.” The D.C. Circuit remanded the case—which involved a facial challenge to the Postal Service regulation—for a determination as to whether the regulation abridged a substantial amount of protected free speech in public forums.</p>
Edmonds v. Fed. Bureau of Investigation	417 F.3d 1319	2005	Authored Majority	Government information	<p><i>Reversed and Remanded:</i> A former FBI employee substantially prevailed on her FOIA claim by obtaining court-ordered, expedited processing of her FOIA request to obtain records related to the FBI’s decision to terminate her, and thus was eligible for attorney fees; remanded to the lower court to consider whether she was entitled to such fees.</p>
PPL Wallingford Energy LLC v. FERC	419 F.3d 1194	2005	Authored Majority	Energy	<p><i>Vacated and Remanded:</i> FERC’s order rejecting wholesale electricity seller’s agreement to provide power to an independent system operator was arbitrary and capricious.</p>

Case Name	Citation	Year	Role	Subject	Holding
Crawford v. FCC	417 F.3d 1289	2005	Authored Majority	Administrative law	<i>Petition for review Dismissed in part and Denied in part:</i> The court dismissed a petition for review of FCC's dismissal of two proposals to amend the Commission's Table of Allotments for FM radio channels; as to the first proposal, the petition was moot; the second was denied on the merits because the petitioner received adequate notice that one of his proposals could be precluded by another applicant's earlier-filed submission.
Mwani v. Bin Laden	417 F.3d 1	2005	Authored Majority	Federal courts	<i>Affirmed in part and Reversed in part:</i> Lower court properly dismissed Kenyan plaintiffs' claims against Afghanistan (relating to the 1998 bombing of an American embassy in Kenya) for lack of subject-matter jurisdiction under the FSIA; however, the court erred in concluding that it lacked personal jurisdiction to adjudicate their claims (under the Alien Tort Statute) against Osama bin Laden and Al Qaeda.
S. Co. Servs., Inc. v. FERC	416 F.3d 39	2005	Authored Majority	Administrative law & Energy	<i>One order Vacated as moot and the other order Vacated and Remanded:</i> Petition for review of FERC order rejecting an agreement to roll over transmission service was moot because the agreement had expired; however, FERC's order rejecting a similar agreement was arbitrary and capricious.
Sec'y of Labor v. Spartan Mining Co.	415 F.3d 82	2005	Authored Majority	Administrative law & Labor law	<i>Petition Granted; Vacated and Remanded:</i> Secretary of Labor's interpretation of Labor Department regulations regarding hazardous conditions in coal mines was not plainly erroneous or inconsistent with the regulations; thus, the court vacated a Federal Mine Safety and Health Review Commission's decision that adopted a conflicting interpretation.
Heartland Reg'l Med. Ctr. v. Leavitt	415 F.3d 24	2005	Authored Majority	Health care	<i>Affirmed:</i> Hospital was not entitled to "sole community hospital" status under the Medicare statute and to reimbursement in accordance with such status.

Case Name	Citation	Year	Role	Subject	Holding
ITT Indus. v. NLRB	413 F.3d 64	2005	Authored Majority	Administrative law & Labor law	<i>Petition Denied and application for enforcement Granted:</i> In finding that an employer committed an unfair labor practice due to its restrictions on offsite employees' union organization efforts, the NLRB's interpretation of an ambiguous provision of the NLRA was reasonable.
Edison Elec. Inst. v. OSHA	411 F.3d 272	2005	Authored Majority	Administrative law, Federal courts & Labor law	<i>Petition Dismissed:</i> The court lacked jurisdiction over petition challenging a compliance directive issued by OSHA because the directive did not promulgate a new occupational safety or health standard.
Minn. Christian Broads., Inc. v. FCC	411 F.3d 283	2005	Authored Majority	Administrative law	<i>Affirmed:</i> FCC's denial of a new entrant bidding credit to the winner of a FCC auction to construct a new FM radio station was based on a reasonable interpretation of its own regulations.
United States v. Dykes	406 F.3d 717	2005	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The lower court committed no constitutional error in denying criminal defendant's motion to suppress drugs and firearm found on his person in the course of his brief detention by police officers who had reason to suspect criminal activity was occurring; there was sufficient evidence to support the defendant's conviction for possession of marijuana.
Rooney v. Sec'y of the Army	405 F.3d 1029	2005	Authored Majority	Federal courts	<i>Decision Vacated:</i> The lower court lacked jurisdiction over serviceman's declaratory judgment action regarding the validity of his initial discharge from the Army and the Army's subsequent effort to revoke it, as the action must be treated as a habeas petition that can only be filed in the federal court with jurisdiction over the Army based where he was located.

Case Name	Citation	Year	Role	Subject	Holding
Columbia Gas Transmission Corp. v. FERC	404 F.3d 459	2005	Authored Majority	Energy	<i>Petition Granted; orders Vacated:</i> FERC exceeded its jurisdiction in ordering petitioner, a gas pipeline company, to install and pay for meters on certain natural gas wells.
Robertson v. Am. Airlines, Inc.	401 F.3d 499	2005	Authored Majority	Civil liability & International law	<i>Affirmed:</i> Airline passenger's claims against American Airlines for injuries she sustained during a flight were barred by an international civil aviation agreement's statute of limitations; lower court was correct that her flight qualified as "international transportation" within the meaning of the Warsaw Convention.
U.S. Telecom Ass'n v. FCC	400 F.3d 29	2005	Authored Majority	Administrative law	<i>Petitions for review Granted in part and Denied in part; Remanded:</i> FCC failed to follow notice-and-comment requirements of the Administrative Procedure Act in issuing an order establishing conditions under which wireline telecommunications carriers must transfer telephone numbers to wireless carriers, and also failed to comply with requirements under the Regulatory Flexibilities Act to prepare a final regulatory flexibility analysis regarding the order's impact on small entities.
United States v. Coumaris	399 F.3d 343	2005	Authored Majority	Criminal law/procedure	<i>Conviction Affirmed, Remanded for resentencing:</i> The lower court did not abuse its discretion in its rulings regarding the admissibility of evidence against criminal defendant; sentence vacated and remanded for resentencing in conformity with the Supreme Court's decision in <i>United States v. Booker</i> , which had been issued during the defendant's appeal.
United States v. Hewlett	395 F.3d 458	2005	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The criminal defendant's arrest was lawful, and therefore the lower court was correct in denying his motion to suppress evidence (firearm and ammunition) seized incident to that arrest.

Case Name	Citation	Year	Role	Subject	Holding
Haynes v. Williams	392 F.3d 478	2004	Authored Majority	Labor law	<i>Affirmed:</i> The evidence failed to raise a genuine issue of fact that a former budget analyst for the D.C. government had a disability within the meaning of the ADA, and thus the court affirmed the dismissal of his lawsuit against the District and its Mayor for alleged discrimination.
Boca Airport, Inc. v. FAA	389 F.3d 185	2004	Authored Majority	Administrative law & Transportation	<i>Concurring (Williams, J.):</i> The judge wrote separately to question the premise, assumed by all parties and not ruled upon by the court, that sleeping is a “major life activity” for purposes of the ADA. <i>Petition Denied:</i> Petitioner (a fixed-base operator that offers fueling, maintenance, and storage to aviators at public airports) had no federally enforceable right to compel the Boca Raton Airport Authority to construct, develop, and operate the last parcel of undeveloped aviation land at the Boca Raton airport. In addition, there was nothing arbitrary, capricious, or otherwise unlawful in FAA’s conclusion that the Airport Authority’s lease with a third party to develop the land was in compliance with federal requirements.
United States v. Edwards	388 F.3d 896	2004	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The lower court made no error in admitting police officer’s redirect testimony over criminal defendant’s relevance objection. In addition, the testimony’s probative value was not substantially outweighed by any danger of unfair prejudice.
Bucheit v. Palestinian Liberation Org.	388 F.3d 346	2004	Authored Majority	Federal courts	<i>Affirmed:</i> The calculation of the valuation of converted property may be based in part on offers to buy the property. The district court did not abuse its discretion when it denied recovery of pre-judgment interest.
Egan v. U.S. Agency for Int’l Dev.	381 F.3d 1	2004	Authored Majority	Administrative law	<i>Affirmed:</i> Grievances contesting the Foreign Service Grievance Board’s dismissal of an employee that were brought after the employee left the U.S. Agency for International Development were untimely under the Foreign Service Act.

Case Name	Citation	Year	Role	Subject	Holding
In re Sealed Case (Medical Records) No. 03-7021	381 F.3d 1205	2004	Authored Majority	Federal courts	<i>Vacated and Remanded:</i> Medical records were not required to be produced without first determining whether any were subject to the federal psychotherapist privilege and without weighing the probative value of non-privileged records against intruding into a patient's legitimate privacy interests.
United States v. Eli	379 F.3d 1016	2004	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Defendant who did in fact distribute crack cocaine did not suffer prejudice because of his counsel's alleged failure to argue that the substance he distributed was only a form of cocaine, rather than crack cocaine.
United States v. McLendon	378 F.3d 1109	2004	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The district court did not abuse its discretion in denying defendant's motion for a mistrial due to a government witness possibly having given improper testimony, so long as the witness's testimony was not unfairly prejudicial per se and the impact of the allegedly improper evidence was minimal when compared with the strength of the admissible evidence.
JMM Corp. v. District of Columbia	378 F.3d 1117	2004	Authored Majority	Federal courts	<i>Affirmed:</i> In a case involving zoning regulations, the District of Columbia was entitled to the benefit of the abstention doctrine recognized in <i>Younger v. Harris</i> , 401 U.S. 37 (1971), which provides that, except in extraordinary circumstances, a federal court should not enjoin a pending state proceeding that is judicial in nature and involves important state interests.
SEC v. Bilzerian	378 F.3d 1100	2004	Authored Majority	Federal courts	<i>Affirmed:</i> Among other things, the court held that the district court had jurisdiction over a Florida resident for collection on the principal and interest on a loan owed to the receivership estate. The receivership estate was created to satisfy a judgment for federal securities law violations.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Riley	376 F.3d 1160	2004	Authored Majority	Criminal law/procedure	<p><i>Set aside and Remanded:</i> The United States appealed a lower federal court's decision granting a defendant a downward departure in his sentence for a felony conviction. The court held that the departure was improper.</p> <p><i>Concurring in part and Dissenting in part (Rogers, J.):</i> The case should have been remanded to allow the lower court to make detailed findings in support of its decision to depart from the U.S. Sentencing Guidelines</p>
Advanced Commc'ns Corp. v. FCC	376 F.3d 1153	2004	Authored Majority	Administrative law	<p><i>Affirmed:</i> FCC did not abuse its discretion in declining to reopen a case when it decided that the "new evidence" was insufficient to reopen the proceedings.</p>
Kilburn v. Socialist People's Libyan Arab Jamahiriya	376 F.3d 1123	2004	Authored Majority	Civil liability, Federal courts & International law	<p><i>Affirmed in part. Court Declined Jurisdiction over remaining claims:</i> The terrorism exception of the FSIA stripped Libya of its defense of sovereign immunity in its motion to dismiss a case brought for wrongful death.</p>
Summers v. Howard Univ.	374 F.3d 1188	2004	Authored Majority	Federal courts	<p><i>Affirmed:</i> Magistrate judge did not abuse his discretion in denying motion to vacate a consent decree, and there was no clear error in magistrate's adoption of special master's calculations of fees and damages.</p>
Barbour v. WMATA	374 F.3d 1161	2004	Authored Majority	Civil liability, Federalism & Transportation	<p><i>Affirmed:</i> Sovereign immunity did not protect WMATA from suit under the Rehabilitation Act of 1973 because it waived its immunity when it accepted federal transportation funds. Congress had power under the Spending Clause to condition the receipt of federal funds on such a waiver of immunity.</p> <p><i>Dissenting (Sentelle, J.):</i> Congress lacks the power under the Spending Clause or the Fourteenth Amendment to subject states, or entities like WMATA treated as states for purposes of immunity, to suits for money damages for disability discrimination without a reasonably close nexus between the grant of funds and the imposed condition.</p>

Case Name	Citation	Year	Role	Subject	Holding
Francis v. Rodman Local Union 201 Pension Fund	367 F.3d 937	2004	Authored Majority	Labor law	<i>Affirmed:</i> An employee was entitled to pension benefits only for the time he actually worked, rather than time that he would have worked but for the union's discrimination.
United States v. Goree	365 F.3d 1086	2004	Authored Majority	Criminal law/procedure	<i>Remanded:</i> Additional information was needed to determine whether a search was constitutional.
United States v. Thomas	361 F.3d 653	2004	Authored Majority	Criminal law/procedure	<i>Affirmed in part, Remanded in part:</i> The criminal offense of escape is a crime of violence under the U.S. Sentencing Guidelines; D.C. Circuit remanded the question of whether an erroneous reference to a defendant's arrests affected his sentence.
United States v. Heard	359 F.3d 544	2004	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The lower court did not abuse its discretion in deciding on consecutive, rather than concurrent, sentences under the U.S. Sentencing Guidelines Manual.
Sierra Club v. EPA	356 F.3d 296	2004	Authored Majority	Environmental law	<i>Vacated in part, Remanded in part, Petitions for review otherwise Denied:</i> Among other things, the court held that EPA was not authorized to grant conditional approval to ozone control plans promising only to do later what the Clean Air Act required now.
Ciralsky v. CIA	355 F.3d 661	2004	Authored Majority	Federal courts	<i>Remanded:</i> The uncertainty of D.C. Circuit as to what district court would have ruled if it had known of the precise nature of a statute of limitations problem resulted in remand for further proceedings.
Singletary v. District of Columbia	351 F.3d 519	2003	Authored Majority	Administrative law & Labor law	<i>Affirmed in part, Reversed in part, and Remanded:</i> Among other things, the court held that the timeliness of the plaintiff employee's claim of a hostile work environment did not depend on whether the alleged acts by themselves were actionable.
Ranger Cellular v. FCC	348 F.3d 1044	2003	Authored Majority	Administrative law & Federal courts	<i>Affirmed in part, Dismissed in part:</i> Among other things, the court held that plaintiffs lacked standing to challenge FCC's licenses to provide cellular phone service.

Case Name	Citation	Year	Role	Subject	Holding
Shamrock Foods Co. v. NLRB	346 F.3d 1130	2003	Authored Majority	Labor law	<i>Petition for review Denied, cross-application for enforcement Granted:</i> Substantial evidence supported the NLRB's finding that a violation of the NLRA had occurred when a company discharged an employee for allegedly committing misconduct by soliciting co-workers for a union.
United States v. Pettigrew	346 F.3d 1139	2003	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> A defendant's claims that his conviction and sentence were unconstitutional, which the defendant did not raise at trial or on direct appeal, required showing of "cause and prejudice" to overcome procedural default.
United States v. Taylor	339 F.3d 973	2003	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> A defendant who was unable to show ineffective assistance of counsel on the basis that counsel had not complied with his instructions to appeal a lower court's judgment may not have his sentence reviewed.
United States v. Hanson	339 F.3d 983	2003	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Among other things, the court held that the lower court did not abuse its discretion when it gave little weight to a defendant's belated claim of entrapment.
Info. Handling Servs., Inc. v. Def. Automated Printing Services	338 F.3d 1024	2003	Authored Majority	Federal courts	<i>Reversed:</i> A private contractor may conduct discovery related to whether it might have provided products to the government at a cost lower than the system that the agency had developed.
Mo. Public Serv. Comm'n v. FERC	337 F.3d 1066	2003	Authored Majority	Administrative law & Energy	<i>Vacated and Remanded:</i> FERC orders that departed from basing rates on cost-based principles were vacated and remanded with instructions that FERC address the question of an appropriate refund.
Kappus v. Comm'r of Internal Revenue	337 F.3d 1053	2003	Authored Majority	International law & Tax law	<i>Affirmed:</i> A provision within a federal tax statute enacted after a tax treaty superseded any preexisting treaty obligation with which it conflicted.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Lafayette	337 F.3d 1043	2003	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Because the same mandatory punishment would be applied under a provision of the U.S. Sentencing Guidelines, there was no reason to remand a case for resentencing in which a harmless error occurred.
Lathram v. Snow	336 F.3d 1085	2003	Authored Majority	Civil rights & Labor law	<i>Affirmed in part, Reversed in part, and Remanded:</i> Among other things, the court held that an issue of discrimination exists when an employer does not use the same application and scoring process for similar positions.
United States v. Pindell	336 F.3d 1049	2003	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The D.C. Circuit found no error in challenged decisions of the lower court, and, among other things, ruled that the execution of a search warrant that included the phrase “evidence of a violation of 18 U.S.C. §242” at the end of a list of specific items to be seized did not violate the Fourth Amendment’s particularity requirement.
Trans. Intelligence, Inc. v. FCC	336 F.3d 1058	2003	Authored Majority	Administrative law	<i>Affirmed:</i> FCC’s denial of a company’s petition for reconsideration of an agency order authorizing its competitor to market a radio transmitter was neither arbitrary nor capricious.
United States v. Brown	334 F.3d 1161	2003	Authored Majority	Criminal law/procedure	<p><i>Affirmed:</i> The warrantless search of car was permissible based upon the totality of the circumstances; the resulting discovery of a firearm in the vehicle gave police probable cause to search the car’s trunk.</p> <p><i>Dissenting (Rogers, J.):</i> The failure of the government to offer evidence that the police had articulable suspicion to believe the suspect was engaged in criminal wrongdoing made the stop and frisk exception to the warrant requirement inapplicable. Additionally, even if it was a lawful stop, the search of the trunk was not limited in scope, and government failure to introduce evidence of probable cause to search the trunk made seizure of contraband contained therein unlawful.</p>

Case Name	Citation	Year	Role	Subject	Holding
Fontana v. White	334 F.3d 80	2003	Authored Majority	Federal courts	<i>Affirmed:</i> Military service obligations deriving from free undergraduate and medical school educations are to run consecutively, not concurrently.
Ark Las Vegas Rest. Corp. v. NLRB	334 F.3d 99	2003	Authored Majority	Labor law	<i>Order Enforced in part:</i> Substantial evidence supported the NLRB's findings that several actions by an employer countering union activities of employees were coercive and violated the NLRA.
Sec'y of Labor v. Excel Mining, LLC	334 F.3d 1	2003	Authored Majority	Administrative law	<i>Reversed:</i> Secretary of Labor's interpretation of the Mine Act's compliance methodology related to measuring mine dust was reasonable and therefore given deference. <i>Dissenting (Sentelle, J.):</i> The Secretary of Labor exceeded her statutory authority and therefore the reasonableness of her interpretation was irrelevant. The statute did not authorize manner of measurement utilized.
United States v. Powell	334 F.3d 42	2003	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The district court did not err when it admitted into evidence a prior consistent statement by a police officer who arrested the defendant.
Public Citizen, Inc. v. HHS	332 F.3d 654	2003	Authored Majority	Health care	<i>Affirmed:</i> The court found that a Medicare beneficiary who files a complaint with a Peer Review Organization must be provided more information than a form letter that states that the organization has examined the concerns and will take appropriate action if warranted.
United States v. Johnson	331 F.3d 962	2003	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The court concluded, among other things, that alleged procedural deficiencies in the trial and sentencing of a criminal defendant did not rise to the level of plain error, and a downward sentence departure in the defendant's criminal sentence was not justified because improper statements by the prosecutor did not have substantial and injurious effect or influence in determining the jury's verdict.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Hinds	329 F.3d 184	2003	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> A provision of the U.S. Sentencing Guidelines was not applicable to a defendant's claim that his sentence should be reduced due to entrapment when he showed no hesitation in selling drugs to undercover officers.
Morgan v. Fed.I Home Loan Mortg. Corp.	328 F.3d 647	2003	Authored Majority	Civil rights & Labor law	<i>Affirmed:</i> An employee failed to show critical elements of a prima facie case for discrimination or retaliation.
United States v. Hall	326 F.3d 1295	2003	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Defendant suffered no prejudice when the wrong provision of the U.S. Sentencing Guidelines was applied because the correct provision, like the one relied upon, mandated consecutive rather than concurrent sentences.
Rancho Viejo, LLC v. Norton	323 F.3d 1062	2003	Authored Majority	Environmental law & Federalism	<i>Affirmed:</i> The court declined to invalidate a provision of the Endangered Species Act as exceeding Congress's legislative powers under the Commerce Clause. <i>Concurring in opinion (Ginsburg, C.J.):</i> Supreme Court precedent requires that there be a logical stopping point to the court's rationale for upholding the constitutionality of Congress's exercise of its Commerce Clause power. Therefore, with respect to a species that is not an article in interstate commerce and does not affect interstate commerce, a take of the species can be regulated if and only if the take itself substantially affects interstate commerce.
Fund for Animals, Inc. v. Norton	322 F.3d 728	2003	Authored Majority	Federal courts	<i>Reversed:</i> A Mongolian government agency established standing and was permitted to intervene as a right in an endangered species listing because it satisfied such criteria of Federal Rules of Civil Procedure 24(a)(2) as showing an interest relating to the property or transaction that was the subject of the action.

Case Name	Citation	Year	Role	Subject	Holding
Waters v. Rumsfeld	320 F.3d 265	2003	Authored Majority	Labor law	<i>Affirmed in part, Vacated and Remanded in part:</i> Public law that exempts military commissary baggers from the FLSA is constitutional. FLSA claims for monetary damages based on baggers' additional duties were remanded to the district court with instructions to transfer claims to the U.S. Court of Federal Claims.
Lee Lumber & Bldg. Material Corp. v. NLRB	310 F.3d 209	2002	Authored Majority	Labor law	<i>Petition for review Denied and cross-application for enforcement Granted:</i> NLRB's unfair labor practice decision involving an unlawful refusal to bargain, among other practices, should be enforced and would not be reviewed because it was neither arbitrary nor unsupported by substantial evidence. <i>Concurring (Sentelle, J.):</i> Because the appellant was required to make a posting admitting its own violations, the judge suggested to the parties that, in fairness, appellant should also post D.C. Circuit opinions so that employees would know that unlawful acts of the NLRB deprived them of a right to choose a bargaining representative (or no representative) for many years.
United States v. Arrington	309 F.3d 40	2002	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Evidence supported the defendant's conviction, and the district court did not plainly err in instructing the jury as to the elements of the offense, including instructions as to when an automobile may be considered a "deadly or dangerous weapon" for purposes of heightening criminal penalties available under 18 U.S.C. §111(b).
United States v. Brooke	308 F.3d 17	2002	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> District court's refusal to depart downward from the applicable U.S. Sentencing Guidelines was not reviewable when the court did not act in violation of the law; the sentence did not result from an incorrect application of the Guidelines; and the court did not clearly err in finding facts relevant to the potential departure.
Sturm, Ruger & Co. v. Chao	300 F.3d 867	2002	Authored Majority	Administrative law, Federal courts & Labor law	<i>Affirmed:</i> Courts lack subject-matter jurisdiction to consider claims challenging OSHA's Data Collection Initiative. Such claims must be pursued through the administrative review process prescribed by the Occupational Safety and Health Act.

Case Name	Citation	Year	Role	Subject	Holding
Republican Nat'l Comm. v. Taylor	299 F.3d 887	2002	Authored Majority	Election law	<i>Affirmed:</i> The court affirmed summary judgment for the Republican National Committee because an advertisement that issued a challenge to readers was true and could not be disproved.
U.S. Air Tour Ass'n v. FAA	298 F.3d 997	2002	Authored Majority	Administrative law & Transportation	<i>Petition for review Granted in part and Denied in part, Remanded:</i> FAA rule limiting the number of air tours permitted to fly over the Grand Canyon National Park was not generally arbitrary and capricious with regard to the methodology used to evaluate noise. However, other aspects of the methodology, such as the exclusion of non-tour aircraft from the methodology, were arbitrary and capricious, and required reconsideration by the agency.
Waterhouse v. District of Columbia	298 F.3d 989	2002	Authored Majority	Civil rights & Labor law	<i>Affirmed:</i> Plaintiff's proffered evidence did not satisfy her burden of showing that a reasonable jury could conclude that she was terminated on account of her race.
United States v. Samuel	296 F.3d 1169	2002	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> A sentencing enhancement that resulted from defendant's commission of an offense while on release for another crime, and that did not increase the sentence above the statutory maximum for the offense of conviction, did not require submission to a jury or proof beyond a reasonable doubt.
World Wide Minerals, Ltd. v. Republic of Kazakhstan	296 F.3d 1154	2002	Authored Majority	Federal courts & International law	<i>Affirmed in part and Remanded in part:</i> Claims against Kazakhstan and its instrumentalities were dismissed because Kazakhstan did not waive its sovereign immunity; the court lacked subject-matter jurisdiction over the claims; and the act of state doctrine barred such claims. Claims against Nukem, a New York corporation, were remanded to determine whether personal jurisdiction could be established.

Case Name	Citation	Year	Role	Subject	Holding
Darrell Andrews Trucking, Inc. v. Fed. Motor Carrier Safety Admin.	296 F.3d 1120	2002	Authored Majority	Administrative law & Transportation	<i>Remanded:</i> Agency's order reflected a reasonable interpretation of its regulations, and commercial motor carrier was provided fair notice of that interpretation and appropriate process before downgrade in safety rating. However, because the agency failed to address a significant challenge to the rationality of its decision, the case was remanded to the agency for further proceeding.
A.E. Staley Mfg. Co. v. Sec'y of Labor	295 F.3d 1341	2002	Authored Majority	Labor law	<i>Petition for review Denied:</i> Substantial evidence supported determination that corn refiner was plainly indifferent to its violations of the Occupational Safety and Health Act.
U.S. Telecom Ass'n v. FCC	295 F.3d 1326	2002	Authored Majority	Administrative law	<i>Petition for review Denied:</i> FCC reasonably interpreted the Telecommunications Act and reasonably applied the applicable test when it determined that the Iowa Communications Network was a common carrier.
Watters v. WMATA	295 F.3d 36	2002	Authored Majority	Civil liability & Federalism	<i>Vacated and Remanded:</i> Sovereign immunity precluded claims against WMATA for breach of contract and breach of duty to enforce equitable lien.
Gerber v. Norton	294 F.3d 173	2002	Authored Majority	Environmental law	<i>Reversed and Remanded:</i> Agency violated the Endangered Species Act by issuing a permit in connection with a proposed residential development without allowing public comment on a key component of the developer's permit application, and without making a statutorily required finding that the developer's plan would minimize the negative impact on an endangered animal to the maximum extent practicable.
Ned Chartering & Trading v. Republic of Pakistan	294 F.3d 148	2002	Authored Majority	Federal courts	<i>Affirmed:</i> The district court did not abuse its discretion when it concluded that Pakistan had sufficient time to complete the discovery it needed to defend against plaintiff's summary judgment motion.
United States v. Wesley	293 F.3d 541	2002	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Defendant's arrest and the search of his car were not conducted in violation of the U.S. Constitution.

Case Name	Citation	Year	Role	Subject	Holding
Gorman v. Ameritrade Holding Corp.	293 F.3d 506	2002	Authored Majority	Federal courts	<i>Affirmed:</i> Courts in the District of Columbia may assert general jurisdiction over a defendant that conducts its business in the District over the Internet.
Power v. Barnhart	292 F.3d 781	2002	Authored Majority	Federal courts	<i>Affirmed:</i> Remedy of mandamus is inappropriate when, among other things, the party seeking relief failed to pursue an adequate alternative remedy.
Musengo v. White	286 F.3d 535	2002	Authored Majority	Administrative law	<i>Affirmed:</i> The Army Board for Correction of Military Records did not act arbitrarily or capriciously when it refused to expunge an Officer Evaluation Report.
Breen v. U.S. Dep't of Transp.	282 F.3d 839	2002	Authored Majority	Federal courts & Labor law	<i>Reversed and Remanded:</i> Summary judgment was not appropriate when there was a genuine issue of material fact with regard to the availability of a reasonable accommodation (such as an alternative work schedule) compatible with the essential functions of the position for an employee with obsessive-compulsive disorder.
Arizona v. Thompson	281 F.3d 248	2002	Authored Majority	Administrative law	<i>Reversed and Remanded:</i> Agency's directive was not entitled to deference when it involved an inaccurate interpretation of a statute and was not an exercise of the agency's own judgment.
United States v. Bookhardt	277 F.3d 558	2002	Authored Majority	Criminal law/ procedure	<i>Reversed:</i> Evidence obtained during a search incident to an arrest was admissible even if the reason for the arrest was later proven to be invalid, if there was probable cause to arrest the defendant for a different offense.
Antelope Valley Bus Co., Inc. v. NLRB	275 F.3d 1089	2002	Authored Majority	Labor law	<i>Petition for review Denied and cross-application for enforcement Granted:</i> The NLRB's findings that an employer violated the NLRA by refusing to bargain with a union were consistent with precedent and supported by substantial evidence. A union representation election was not invalid when the employer provided reasonable notice of the election to its employees, even if four employees were not provided election ballots.

Case Name	Citation	Year	Role	Subject	Holding
Curtin v. United Airlines, Inc.	275 F.3d 88	2001	Authored Majority	Federal courts	<i>Affirmed:</i> The district court did not abuse its discretion when it granted summary judgment for the defendant without first permitting discovery or ruling on class certification. A court is not barred from rendering an easy decision on an individual claim to avoid an unnecessary and more difficult decision on the propriety of certification.
RAG Cumberland Res. LP v. Fed. Mine Safety & Health Review Comm'n	272 F.3d 590	2001	Authored Majority	Administrative law & Labor law	<i>Petition for review Denied:</i> The Federal Mine Safety and Health Review Commission's decision to reinstate an order to withdraw all individuals from an unsafe area in a coal mine was supported by substantial evidence.
United States v. Venable	269 F.3d 1086	2001	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Defendant's conviction for unlawful possession of a firearm by a convicted felon will not be reversed when prosecutor's misstatement of the government's burden of proof, to which defense counsel did not object, was neither plain error nor prejudicial.
Glob. Crossing Telecomms., Inc. v. FCC	259 F.3d 740	2001	Authored Majority	Administrative law	<i>Petition for review Denied and order Affirmed:</i> FCC decision that compensation was owed to a local exchange carrier/payphone service provider was consistent with the Telecommunications Act and was neither arbitrary nor capricious.
Gilvin v. Fire	259 F.3d 749	2001	Authored Majority	Federal courts & Labor law	<i>Affirmed in part and Reversed in part:</i> The court held that the district court's grant of summary judgment to defendants on two of plaintiff's claims was erroneous when there were genuine issues of material fact with regard to plaintiff employee's suspension and subsequent termination.
Tourus Records, Inc. v. Drug Enf't Agency	259 F.3d 731	2001	Authored Majority	Administrative law	<i>Affirmed:</i> Agency's denial of an application to proceed in forma pauperis in a forfeiture proceeding was supported by substantial evidence. Internal agency memoranda that explained the rationale for the denial confirmed that the decision was not arbitrary or capricious.

Case Name	Citation	Year	Role	Subject	Holding
Pacific Bell v. NLRB	259 F.3d 719	2001	Authored Majority	Labor law	<i>Petition for review Denied and cross-application for enforcement Granted:</i> Substantial evidence supported a finding by the NLRB that an employer's refusal to bargain was not based on a good-faith reasonable doubt concerning the appropriate bargaining representative for its employees.
Students Against Genocide v. U.S. Dep't of State	257 F.3d 828	2001	Authored Majority	Government information	<i>Affirmed in part and Remanded in part:</i> Summary judgment in favor of agencies subject to FOIA request was affirmed where documents that fell within the requested group were either produced or exempt from the act's inspection requirements. Issue of attorneys' fees and costs was remanded to the district court.
Kirby Produce Co. v. USDA	256 F.3d 830	2001	Authored Majority	Administrative law	<i>Petition for review Granted and case Remanded:</i> Agency's revocation of license to operate as a merchant of perishable agricultural products was arbitrary and capricious.
United States v. Webb	255 F.3d 890	2001	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Among other things, the court held that neither <i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000), and its progeny, nor the U.S. Sentencing Guidelines, compelled a conclusion that defendant's sentence was reversible error.
CF Indus. v. Surface Transp. Bd.	255 F.3d 816	2001	Authored Majority	Administrative law	<i>Petitions for review Denied:</i> Agency's findings reflected a reasonable application of its guidelines. Agency did not abuse its discretion when it denied pipeline customer's request to amend its complaint to seek additional rate reductions.
Al-Fayed v. CIA	254 F.3d 300	2001	Authored Majority	Government information	<i>Affirmed:</i> District courts must apply de novo review to agency denials of expedited processing under FOIA.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Johnson	254 F.3d 279	2001	Authored Majority	Federal courts	<i>Order vacated and matter Remanded:</i> A 12-page “Memorandum and Order” did not satisfy Federal Rule of Civil Procedure 58, which requires a judgment to be set forth on a separate document, when the pages were stapled, a signature was included only on the twelfth page, and the document was file-stamped only once on the first page. <i>Concurring (Henderson, J.):</i> The judge cautioned against applying the majority’s approach to applying Federal Rule of Civil Procedure 58 too broadly.
Tenet Healthsystems Healthcorp. v. Thompson	254 F.3d 238	2001	Authored Majority	Administrative law & Health care	<i>Reversed:</i> Agency’s decision with regard to reimbursement for capital-related costs in providing Medicare services was supported by substantial evidence and was not arbitrary, capricious, or contrary to law.
United States v. Green	254 F.3d 167	2001	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Erroneous jury instruction that conflated the terms “using” and “carrying” in relation to the possession of a firearm was harmless error.
Tasty Baking Co. v. NLRB	254 F.3d 114	2001	Authored Majority	Labor law	<i>Petition for review Denied and cross-application for enforcement of order Granted:</i> Findings of the NLRB concerning unfair labor practices committed by producer of baked goods were supported by substantial evidence.
United States v. Saro	252 F.3d 449	2001	Authored Majority	Criminal law/ procedure	<i>Dismissed:</i> District court was plainly correct in ruling that defendant’s motion for leave to file a motion to vacate his sentence was time-barred.
United States v. Young	247 F.3d 1247	2001	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Amendment to the U.S. Sentencing Guidelines will not result in reduction of prior criminal sentence for conspiracy to manufacture and distribute phencyclidine (PCP) when the manner in which the sentence was calculated was not affected by the amendment.

Case Name	Citation	Year	Role	Subject	Holding
Halle Enters. v. NLRB	247 F.3d 268	2001	Authored Majority	Labor law	<i>Petition for review Denied and cross-application for enforcement Granted:</i> Substantial evidence supported the NLRB's findings that the employer's offer of reinstatement to its wrongly terminated employees was conditional. Consequently, the offer did not toll the employees' entitlement to back pay.
United States v. Greenfield	244 F.3d 158	2001	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> District court's refusal to depart downward from the sentence required by the U.S. Sentencing Guidelines was not based on a misunderstanding or misapplication of the Guidelines. A departure from the Guidelines was not appropriate when the defendant's evidence did not demonstrate that his mental capacity was significantly reduced.
Gray v. Poole	243 F.3d 572	2001	Authored Majority	Civil rights	<i>Affirmed:</i> Attorneys for the District of Columbia were absolutely immune from damages under 42 U.S.C. §1983 for their conduct in initiating and prosecuting civil child neglect actions.
United States v. McCoy	242 F.3d 399	2001	Authored Majority	Criminal law/ procedure	<i>Conviction Affirmed and Remanded for resentencing:</i> Ambiguity existed in the lower court record as to the legal standard utilized in application of the U.S. Sentencing Guidelines.
Dynaquest Corp. v. U.S. Postal Serv.	242 F.3d 1070	2001	Authored Majority	Federal courts	<i>Affirmed:</i> Doctrine of res judicata prohibited D.C. Circuit jurisdiction.
Sloan v. U.S. Dep't of Housing & Urban Dev. (HUD)	236 F.3d 756	2001	Authored Majority	Federal courts	<i>Affirmed:</i> HUD suspension of plaintiffs from government contracting work was discretionary act that was not subject to challenge under the Federal Tort Claims Act.
United States v. Gbemisola	225 F.3d 753	2000	Authored Majority	Criminal law/ procedure	<i>Affirmed:</i> Evidence obtained from the government's use of a mobile tracking device was admissible in criminal proceeding because, even in the absence of a valid warrant, the defendant had no reasonable expectation of privacy in activities he conducted within the view of government agents.

Case Name	Citation	Year	Role	Subject	Holding
Cone v. Caldera	223 F.3d 789	2000	Authored Majority	Administrative law	<i>Reversed:</i> The decision not to amend military officer's rating was not arbitrary and capricious.
United Food and Commercial Workers Int'l Union Local 400 v. NLRB	222 F.3d 1030	2000	Authored Majority	Labor law	<i>Petition Granted and Remanded:</i> Factual findings by the NLRB concerning alleged unfair labor practices were not supported by evidence.
Transitional Hosps. Corp. of La. v. Shalala	222 F.3d 1019	2000	Authored Majority	Administrative law & Health care	<i>Reversed and Remanded with instructions:</i> Congress left to HHS some discretion to determine how a hospital could qualify as a "long term care facility." Remand to the agency was appropriate so that the Secretary could determine how to exercise this authority.
Voss v. SEC	222 F.3d 994	2000	Authored Majority	Administrative law	<i>Affirmed:</i> SEC's order sanctioning petitioners for their involvement in securities violations was reasonable and supported by substantial evidence.
First Am. Disc. Corp. v. Commodity Futures Trading Comm'n	222 F.3d 1008	2000	Authored Majority	Administrative law	<i>Petition Denied:</i> The Commodity Futures Trading Commission's interpretation of a regulation was not plainly erroneous or inconsistent with the regulation. <i>Concurring in judgment (Randolph, J.):</i> The judge concurred in the court's opinion except the portion holding that the Commission's failure to give notice of an alteration in a proposed rule amounted to harmless error.
Daskalea v. District of Columbia	227 F.3d 433	2000	Authored Majority	Civil rights & D.C. local government	<i>Affirmed in part and Reversed in part:</i> The court upheld a jury's award of compensatory damages to a woman that had been a prisoner in a D.C. jail. However, the court held that D.C. law barred punitive damages awards against the District.
Hi-Tech Furnace Sys. v. FCC	224 F.3d 781	2000	Authored Majority	Administrative law	<i>Petition Denied:</i> FCC did not abuse its discretion when determining that revisions to tariffs were just and reasonable.
Nat. Res. Def. Council v. NRC	216 F.3d 1180	2000	Authored Majority	Administrative law	<i>Petition Denied:</i> The court declined to find that an NRC regulation's definition of "meetings" under the Sunshine Act, which adopted Supreme Court text verbatim, was inconsistent with the text and legislative history of the authorizing statute.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Johnson	216 F.3d 1162	2000	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Evidence sustained the petitioner’s criminal conviction, and erroneous jury instruction was harmless error.
United States v. Evans	216 F.3d 80	2000	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Among other things, the court concluded that even though inadmissible hearsay testimony was admitted, the error was harmless.
Sparrow v. United Air Lines, Inc.	216 F.3d 1111	2000	Authored Majority	Civil rights	<i>Reversed and Remanded:</i> The plaintiff was not required to set out a prima facie case in initial pleading for racial discrimination claim.
Allied Local & Reg’l Mfrs. Caucus v. EPA	215 F.3d 61	2000	Authored Majority	Administrative law & Federalism	<i>Petitions Denied:</i> Among other things, the court determined that Congress did not exceed its authority under the Commerce Clause in directing the EPA to promulgate regulations under the Clean Air Act. The court held that the regulations were not arbitrary and capricious, and the EPA’s promulgation of the regulations did not exceed its statutory authority.
Contemporary Media, Inc. v. FCC	214 F.3d 187	2000	Authored Majority	Administrative law	<i>Affirmed:</i> FCC’s character policy was rational and the revocation of licenses did not implicate the Excessive Fines Clause of the Eighth Amendment.
El-Hadad v. United Arab Emirates	216 F.3d 29	2000	Authored Majority	Federal courts	<i>Affirmed in part, Reversed in part, and Remanded:</i> Factual questions as to what constitutes “commercial activity” under the FSIA had to be resolved before the court could consider the merits of the plaintiff’s claims.
Mohave Elec. Coop., Inc. v. NLRB	206 F.3d 1183	2000	Authored Majority	Administrative law & Labor law	<i>Petition for Review Denied and enforcement Granted:</i> Among other holdings, the court upheld the NLRB’s determination that an employee was unlawfully discharged because the Board’s findings were supported by substantial evidence and the Board did not act arbitrarily or otherwise err in applying established law.
Lomak Petroleum, Inc. v. FERC	206 F.3d 1193	2000	Authored Majority	Energy	<i>Petition Denied:</i> FERC’s decision to disclaim regulatory jurisdiction over a natural gas facility was not arbitrary or capricious; the affected gas producer was not deprived of due process.
Borgo v. Goldin	204 F.3d 251	2000	Authored Majority	Civil rights & Federal courts	<i>Reversed and Remanded:</i> Factual questions concerning an employer’s motivation in terminating an employee should be resolved by a jury and not by the district court.

Case Name	Citation	Year	Role	Subject	Holding
Schoenbohm v. FCC	204 F.3d 243	2000	Authored Majority	Administrative law & Federal courts	<i>Affirmed in part and Dismissed in part:</i> Review of FCC's decision to deny application renewal was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The court lacked jurisdiction to review the agency's rejection of the appellant's petition for reconsideration of the decision.
McGill v. Munoz	203 F.3d 843	2000	Authored Majority	Civil liability & Civil rights	<i>Reversed and Remanded:</i> Failure to offer evidence sufficient to support discrimination claim requires reversal of district court's decision denying employer's post-trial motion for judgment as a matter of law.
Fort Sumter Tours, Inc. v. Babbitt	202 F.3d 349	2000	Authored Majority	Administrative law	<i>Vacated and Remanded with instructions to Dismiss in part and Affirmed in part:</i> The court held, among other things, that it lacked jurisdiction over a claim pertaining to a nonreviewable settlement decision of the National Park Service.
Panhandle E. Pipe Line Co. v. FERC	196 F.3d 1273	1999	Authored Majority	Administrative law & Energy	<i>Petition Granted and Remanded:</i> When FERC's orders concerning petitioner's proposed tariffs and criteria for the future construction of pipeline interconnections apparently represented a change of policy, the agency was required to provide an explanation of its reasoning.
Trunkline LNG Co. v. FERC	194 F.3d 68	1999	Authored Majority	Administrative law & Energy	<i>Orders Affirmed and petition for review Denied:</i> Review of FERC's conditions on approval of a liquefied natural gas project determined FERC did not act arbitrarily or capriciously.
Telecom*USA, Inc. v. United States	192 F.3d 1068	1999	Authored Majority	Administrative law & Tax law	<i>Affirmed:</i> Revenue rulings interpreting the Tax Reform Act were entitled to some degree of deference. For this reason, among others, the district court's decision rejecting the taxpayer's refund claims was affirmed.
Garvey v. NTSB	190 F.3d 571	1999	Authored Majority	Administrative law & Transportation	<i>Petition Granted; Reversed and Remanded:</i> NTSB was required to defer to FAA's reasonable interpretation of its own regulations.
In re United Mine Workers Int'l Union	190 F.3d 545	1999	Authored Majority	Federal courts & Labor law	<i>Order accordingly:</i> Failure to conclude rulemaking by the Department of Labor's Mine Safety and Health Administration violated timetable established by law; while writ of mandamus was not appropriate here, D.C. Circuit retained jurisdiction and required agency to file status reports until it discharged its responsibilities under the Mine Act.

Case Name	Citation	Year	Role	Subject	Holding
Novecon Ltd. v. Bulgarian-American Enter. Fund	190 F.3d 556	1999	Authored Majority	First Amendment	<i>Affirmed:</i> Among other things, the court held that an agreement to negotiate did not constitute an agreement to contract, and that D.C. law recognized a qualified privilege of self-defense to libel or defamation.
United States v. Christian	187 F.3d 663	1999	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The search of the defendant was part of a valid investigatory stop and weapons search recognized as permissible under <i>Terry v. Ohio</i> , 392 U.S. 1 (1968), and the ultimate seizure of a weapon did not violate the Fourth Amendment.
United States v. Gloster	185 F.3d 910	1999	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Among other things, the court found that the evidence supporting the appellant's weapons conviction was properly admitted.
United States v. Weathers	186 F.3d 948	1999	Authored Majority	Criminal law/procedure	<i>Remanded:</i> Defendant waived multiplicity (double jeopardy) claim by failing to raise it before trial. Ineffective assistance of counsel claim must be resolved in district court where defense counsel's decisions could have involved a reasoned tactical choice.
United States v. Clark	184 F.3d 858	1999	Authored Majority	Criminal law/procedure	<i>Affirmed in part and Remanded with instructions in part:</i> Among other things, the court held that the defendant had been convicted of two charges for a single offense, which required vacating one conviction and resentencing.
In re Sealed Case No. 99-3096	185 F.3d 887	1999	Authored Majority	Criminal law/procedure	<i>Reversed and Remanded:</i> The district court had an obligation to conduct an evidentiary hearing to resolve existence of potentially exculpatory or impeachable evidence covered by <i>Brady v. Maryland</i> , 373 U.S. 83 (1963), and determine whether such information was material.
United Seniors Ass'n v. Shalala	182 F.3d 965	1999	Authored Majority	Administrative law	<i>Affirmed:</i> The court was bound under the <i>Chevron</i> doctrine to defer to Secretary of HHS's reasonable interpretation of statute.
Pioneer Hotel, Inc. v. NLRB	182 F.3d 939	1999	Authored Majority	Labor law	<i>Enforcement Granted in part and Denied in part:</i> Evidentiary record did not support some of the NLRB's findings that an employer had committed unfair labor practices.

Case Name	Citation	Year	Role	Subject	Holding
In re Sealed Case No. 97-3112	181 F.3d 128	1999	Authored Majority	Criminal law/procedure	<p><i>Affirmed:</i> Absent a motion by the government, the district court may not grant a downward departure from the U.S. Sentencing Guidelines on the basis of the defendant's alleged substantial assistance.</p> <p><i>Concurring (Edwards, C.J. and Tatel, J.):</i> Courts should exercise caution before concluding that the Sentencing Commission has limited district judges' traditional sentencing discretion.</p> <p><i>Concurring (Sentelle, J.):</i> Canons of construction clearly dictated the result in this case, and thus the majority's more detailed analysis was unnecessary.</p> <p><i>Concurring (Henderson, J.):</i> The process leading up to the en banc affirmance of the district court disregarded the established procedure of the D.C. Circuit and the principle of stare decisis.</p>
Anderson v. Zubieta	180 F.3d 329	1999	Authored Majority	Civil rights	<i>Reversed and Remanded:</i> Plaintiffs' wage discrimination claims were timely and established prima facie case.
United States v. Bridges	175 F.3d 1062	1999	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> District court was not required to conduct a step-by-step analysis when the sentencing of a criminal defendant departed upwardly from the U.S. Sentencing Guidelines based on criminal history.
Davenport v. Int'l Bhd. of Teamsters	166 F.3d 356	1999	Authored Majority	Labor law	<i>Affirmed and Remanded:</i> Among other things, the court determined that union members were unlikely to succeed on the merits of their claim that the union's president lacked authority to enter into a temporary labor agreement. Thus, the district court's denial of a temporary injunction against implementation of the agreement was affirmed.
United States v. Dozier	162 F.3d 120	1998	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Among other things, the court held that the underlying reasons for denying a downward adjustment in the defendant's sentence were permissible and readily discernible from the record.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Perkins	161 F.3d 66	1998	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Applying the standard of review most favorable to the defendant, the court found that the criminal defendant suffered no prejudice.
Evans Fin. Corp. v. Director, Office of Workers' Compensation Programs	161 F.3d 30	1998	Authored Majority	Labor law	<i>Petition for review Granted; Vacated and Remanded:</i> Evidence did not support decision of the Department of Labor's Benefits Review Board that employer waived its right to a credit against liability for injured employee's medical expenses.
Nat'l Ass'n of Mfrs. v. U.S. Dep't of Labor	159 F.3d 597	1998	Authored Majority	Federal courts	<i>Affirmed and Remanded:</i> D.C. Circuit declined to adopt a per se rule regarding eligibility of a group and its members to receive attorney's fees under the Equal Access to Justice Act, but allowed the fees under the facts of this case.
Serono Labs., Inc. v. Shalala	158 F.3d 1313	1998	Authored Majority	Administrative law	<i>Injunction Vacated; Remanded:</i> Record did not support preliminary injunction ordered by district court to enjoin FDA approval of a generic drug.
Cassell v. FCC	154 F.3d 478	1998	Authored Majority	Administrative law	<i>Denied petitions for review:</i> FCC's decision to deny requests for "finder's preferences" was reasonable.
United States v. Glover	153 F.3d 749	1998	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The district court correctly refused to give the jury an entrapment instruction. There was sufficient evidence for conviction and no constitutional violations.

Case Name	Citation	Year	Role	Subject	Holding
In re Sealed Case 96-3167	153 F.3d 759	1998	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Warrantless entry and search were proper, and there was sufficient evidence to sustain weapons plea.
Grand Canyon Air Tour Coal. v. Fed. Aviation Admin.	154 F.3d 455	1998	Authored Majority	Administrative law, Federal courts & Transportation	<i>Denied petition for review:</i> FAA's rule intended to reduce aircraft noise from sightseeing tours was reasonable. Some of petitioners' claims were not yet ripe for review.
United States ex rel. Yesudian v. Howard Univ.	153 F.3d 731	1998	Authored Majority	D.C. local government & Labor law	<i>Reversed in part and Affirmed in part:</i> The court found sufficient evidence to support a jury's verdict that the employee satisfied the elements of a retaliation claim under the False Claim Act. An employee manual supported the employee's breach of contract claim under D.C. law. <i>Dissenting in part (Henderson, J.):</i> The district court's ruling granting the employer's motion for judgment as a matter of law on the employee's retaliation claim should be affirmed because Yesudian failed to introduce evidence that the employer was aware of protected activity.
LaRouche v. Fowler	152 F.3d 974	1998	Authored Majority	Election law & Federal courts	<i>Affirmed in part and Remanded in part:</i> Challenges to political party's change in rules for selection of delegates at its nominating convention were not moot or non-justiciable political questions. The court lacked jurisdiction to hear Voting Rights Act claims, and it affirmed the dismissal of appellants' constitutional claims, in part because the political party's rules advanced its legitimate interest in winning elections.
United States v. Gartmon	146 F.3d 1015	1998	Authored Majority	Criminal law/procedure	<i>Affirmed and Remanded for re-sentencing:</i> Evidence was properly admitted and the prosecutor's misstatement did not constitute plain error. The court remanded the case because part of the sentence exceeded the statutory limit.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Andrews	146 F.3d 933	1998	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> The Double Jeopardy Clause of the Fifth Amendment did not bar prosecution of a corporation's president, because he was not a party to a prior SEC civil lawsuit or the company's CEO, because no punishment had yet been imposed or attempted against him.
La. Energy & Power Auth. v. FERC	141 F.3d 364	1998	Authored Majority	Administrative law, Energy & Federal courts	<i>Denied petition for review:</i> FERC's approval of market-based tariff and its decision not to hold evidentiary hearing were not arbitrary or capricious.
Hunter-Boykin v. George Wash. Univ.	132 F.3d 77	1998	Authored Majority	Federal courts & Civil rights	<i>Reversed:</i> Racial discrimination claim was timely filed because D.C. law allowed private parties to agree to suspend the statute of limitations and a reasonable juror could interpret the agreement in the manner suggested by the plaintiff.
United States v. Davis	127 F.3d 68	1997	Authored Majority	Criminal law/procedure	<i>Concurring in reasoning and judgment (Edwards, C.J.):</i> The disputed tolling agreement has only one reasonable interpretation, and therefore it appeared the plaintiff would prevail as a matter of law if she moved for summary judgment on remand. <i>Affirmed:</i> The district court did not commit error when conducting an out-of-court demonstration that was not exactly like the actual event; in limiting cross-examination of a police officer; or in admitting witness testimony.
United States v. Turner	119 F.3d 18	1997	Authored Majority	Criminal law/procedure	<i>Affirmed:</i> Warrantless search of vehicle, including trunk, was permissible because the police officer had probable cause.

Source: Congressional Research Service, based upon an examination of court decisions compiled through a search of the Lexis database.

Table 2. Concurring and Dissenting Opinions Authored by Judge Garland

Case Name	Citation	Year	Role	Subject	Holding
In re Aiken Cty.	725 F.3d 255	2013	Authored Dissent	Administrative law & Separation of powers	<p><i>Majority (Kavanaugh, J.), Granted writ of mandamus: NRC must comply with law governing the Yucca Mountain licensing process.</i></p> <p><i>Dissenting: In light of the court's discretion to refrain from ordering the doing of a useless act, the writ should not have been granted because the agency had insufficient funds to comply.</i></p>
AKM LLC v. Sec'y of Labor	675 F.3d 752	2012	Authored Concurrence	Administrative law & Labor law	<p><i>Majority (Brown, J.), Granted petition for review and Vacated citations: Citations issued by OSHA were not timely under the statute or regulations, and the continuing violations doctrine did not apply.</i></p> <p><i>Concurring in the judgment: Citations were untimely under the regulations, but this does not mean the statute could never permit a continuing violation theory under different circumstances.</i></p>
Sottera, Inc. v. FDA	627 F.3d 891	2010	Authored Concurrence	Administrative law & Health care	<p><i>Majority (Williams, J.), Affirmed preliminary injunction: Under Supreme Court precedent and the Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Act), the FDA can only regulate customarily marketed tobacco products (including e-cigarettes) under the Tobacco Act, and not the Federal Food, Drug, and Cosmetic Act.</i></p> <p><i>Concurring in the judgment: Supreme Court precedent did not address the issue; rather, in the absence of contrary agency interpretation entitled to Chevron deference, the FDA generally could regulate e-cigarettes only under the Tobacco Act.</i></p>

Case Name	Citation	Year	Role	Subject	Holding
Bennett v. Islamic Republic of Iran	618 F.3d 19	2010	Authored Concurrence	National security	<p><i>Majority (Griffith, J.), Affirmed:</i> Terrorism Risk Insurance Act precluded writs of attachment against Iran’s former diplomatic properties.</p> <p><i>Concurring in the judgment:</i> Under the act, property was immune from attachment when leased to a foreign mission because it was “used exclusively” for diplomatic purposes. However, property leased to private parties did not meet this criteria.</p>
Saleh v. Titan Corp	580 F.3d 1	2009	Authored Dissent	Civil liability	<p><i>Majority (Silberman, J.), Affirmed in part and Reversed in part:</i> Federal law preempted state tort claims brought against private military contractors by Iraqi nationals detained at the Abu Ghraib facility; alleged actions did not give rise to cause of action under Alien Tort Statute.</p> <p><i>Dissenting:</i> No federal law preempted claims.</p>
FedEx Home Delivery v. NLRB	563 F.3d 492	2009	Authored Dissent	Administrative law & Labor law	<p><i>Majority (Brown, J.), Vacated order:</i> NLRB’s determination of employment status was legally erroneous.</p> <p><i>Dissenting in part:</i> Judge Garland disagreed with how the majority applied the common-law test for employment status but wrote that the court should have remanded the case due to the NLRB’s unexplained refusal to allow the company to introduce certain evidence.</p>
Ne. Beverage Corp. v. NLRB	554 F.3d 133	2009	Authored Dissent	Administrative law & Labor law	<p><i>Majority (Ginsburg, J.), Granted petition for review in part and Denied in part:</i> The court upheld part of the NLRB’s order because it was based on substantial evidence; however, the court vacated a separate part of the NLRB’s order because the agency erred in applying Supreme Court precedent to the facts of the case.</p> <p><i>Dissenting in part:</i> Judge Garland was unable to conclude that the NLRB’s determination was unreasonable.</p>

Case Name	Citation	Year	Role	Subject	Holding
Bismullah v. Gates	514 F.3d 1291	2008	Authored Concurrence	National security	<p><i>Majority (per curiam), Rejected petition for rehearing en banc.</i></p> <p><i>Concurring:</i> Rehearing the case would delay the Supreme Court's disposition of <i>Boumediene v. Bush</i>, 553 U.S. 723 (2008), which was contrary to the parties' and public's interest; Judge Garland thus concurred in the denial without reaching the merits.</p>
Citizens for Responsibility & Ethics in Wash. v. FEC	475 F.3d 337	2007	Authored Concurrence	Election law & Federal courts	<p><i>Majority (Randolph, J.), Affirmed:</i> Group did not have standing to challenge FEC's order dismissing a complaint.</p> <p><i>Concurring in the judgment:</i> Group lacked standing because there was no meaningful distinction between this case and the earlier case of <i>Common Cause v. FEC</i>, 108 F.3d 413 (D.C. Cir. 1997).</p>
Fin. Planning Ass'n v. SEC	482 F.3d 481	2007	Authored Dissent	Administrative law	<p><i>Majority (Rogers, J.), Vacated rule:</i> SEC rule exempting brokers and dealers from the Investment Advisers Act in certain circumstances was inconsistent with the act.</p> <p><i>Dissenting:</i> SEC's interpretation of the statute was reasonable.</p>
Valdes v. United States	475 F.3d 1319	2007	Authored Dissent	Criminal law/procedure	<p><i>Majority (Williams, J.), Reversed judgment of conviction:</i> The en banc court ruled that evidence was insufficient to convict the defendant of receipt of an illegal gratuity.</p> <p><i>Dissenting:</i> Judge Garland disagreed with the majority's interpretation of the statute as applied to the facts of the case.</p>

Case Name	Citation	Year	Role	Subject	Holding
Lee v. DOJ	428 F.3d 299	2005	Authored Dissent	First Amendment	<p><i>Majority (per curiam), Denied petitions for rehearing en banc.</i></p> <p><i>Dissenting:</i> Rehearing was appropriate because the court failed to weigh the public interest in protecting a reporter's sources against the private interest in compelling disclosure when deciding whether the reporter's privilege could be invoked in a Privacy Act case. [Tatel, J., issued a dissent that Judge Garland also joined.]</p>
United States ex rel. Totten v. Bombardier Corp.	380 F.3d 488	2004	Authored Dissent	Civil liability	<p><i>Majority (Roberts, J.), Affirmed:</i> False Claims Act liability required submission of a false or fraudulent claim for payment to be presented to the U.S. government and, since Amtrak was not the U.S. government, suit was properly dismissed.</p> <p><i>Dissenting:</i> Majority's interpretation of the statute was inconsistent with its text and legislative history.</p>
McDonnell Douglas Corp. v. U.S. Dep't of the Air Force	375 F.3d 1182	2004	Authored opinion concurring in part & dissenting in part	Administrative law & Government information	<p><i>Majority (Ginsburg, C.J.): Affirmed in part and Reversed in part:</i> Agency's decision to release some of a contractor's pricing information pursuant to a FOIA request was arbitrary and capricious.</p> <p><i>Concurring in part and Dissenting in part:</i> Deferral to the agency's decision to release the information was appropriate because contractor failed to prove that disclosure would likely cause substantial harm to its competitive position. The majority's opinion came perilously close to a per se rule that some pricing information may never be revealed under FOIA.</p>
United States v. Linares	367 F.3d 941	2004	Authored Concurrence	Criminal law/procedure	<p><i>Majority (Tatel, J.), Affirmed:</i> District court's erroneous admission of evidence relating to defendant's prior acts was harmless.</p> <p><i>Concurring in part:</i> Error, if it occurred, was harmless, and it was not necessary to decide whether the evidence was actually inadmissible.</p>

Case Name	Citation	Year	Role	Subject	Holding
Akinseye v. District of Columbia	339 F.3d 970	2003	Authored Dissent	Federal courts	<p><i>Majority (Henderson, J.), Reversed and Remanded:</i> District court lacked subject matter jurisdiction to hear a case seeking interest on late-paid attorneys' fees.</p> <p><i>Dissenting:</i> Validity of plaintiffs' claim to interest went to the dispute's merits and, because the issue of subject matter jurisdiction was not briefed before the court, Judge Garland would not have disposed of the appeal on a ground not raised in the parties' briefs.</p>
Am. Corn Growers Ass'n v. EPA	291 F.3d 1	2002	Authored opinion concurring in part & dissenting in part	Administrative law & Environmental law	<p><i>Majority (per curiam), Vacated rule in part, Sustained in part, and Remanded:</i> Part of EPA's haze rule was contrary to the act's text, structure and history, while other parts were consistent with the statute and reasonable.</p> <p><i>Concurring in part and Dissenting in part:</i> Entire rule reflected agency's reasonable interpretation of the statute.</p>
Wertheimer v. FEC	268 F.3d 1070	2001	Authored Concurrence	Election law & Federal courts	<p><i>Majority (Silberman, J.), Affirmed:</i> Plaintiffs lacked standing to challenge FEC's failure to act because they did not establish how a judicial ruling would result in anything more than a legal characterization or reporting of information that was already disclosed under existing law.</p> <p><i>Concurring in the judgment:</i> Plaintiffs failed to establish standing because they did not articulate how a judicial ruling would provide them with information beyond what was already disclosed.</p>

Case Name	Citation	Year	Role	Subject	Holding
United States v. Wilson	240 F.3d 39	2001	Authored opinion concurring in part & dissenting in part	Criminal law/procedure	<p><i>Majority (Williams, J.), Vacated sentence; Remanded ineffective counsel claim; otherwise Affirmed convictions:</i> Evidence did not support an enhanced sentence under the U.S. Sentencing Guidelines.</p> <p><i>Concurring in part and Dissenting in part:</i> Majority's interpretation of enhanced sentencing provision was too narrow; instead, Judge Garland would have used a totality of the circumstances test adopted by the majority of other circuits and affirmed the sentence.</p>
Ross Stores v. NLRB	235 F.3d 669	2001	Authored opinion concurring in part & dissenting in part	Administrative law & Labor law	<p><i>Majority (Henderson, J.), Petition for review Granted in part and Denied in part:</i> The court upheld one of the NLRB's findings against an employer because it was supported by substantial evidence; however, the court set aside another finding because the underlying allegation was statutorily time-barred and not closely related to a timely filed allegation.</p> <p><i>Concurring in part and dissenting in part:</i> Based on the facts of the case, the majority should have upheld that second finding. The underlying allegation was not time-barred because it was closely related to a timely filed allegation.</p>
Pub. Citizen Health Research Grp. v. FDA	185 F.3d 898	1999	Authored Concurrence	Government information	<p><i>Majority (Ginsburg, J.), Affirmed in part, Reversed in part, and Remanded:</i> FOIA release of confidential information in four drug applications would cause substantial harm to intervenor's competitive position; information in fifth application must be disclosed.</p> <p><i>Concurring in the result:</i> The majority should not have addressed the meaning of a FOIA exemption because it was not necessary to the ruling and the issue had not been fully briefed and argued.</p>

Case Name	Citation	Year	Role	Subject	Holding
Hutchins v. District of Columbia	188 F.3d 531	1999	Co-authored Concurrence	D.C. local government	<i>Plurality (Silberman, J.), Reversed and Remanded:</i> Juvenile curfew law did not implicate Fifth Amendment rights of minors and parents, and, even if it did, the law survived heightened scrutiny; also, the law did not violate the First or Fourth Amendments. <i>Concurring in part and Concurring in the result (authored jointly with Wald, J.):</i> Curfew implicated Fifth Amendment rights, and the correct standard of review was intermediate (rather than heightened) scrutiny, which curfew survived. [Judge Garland also joined, in part, separate opinions authored by Edwards, C.J., and Rogers, J.]
Berger v. Iron Workers Reinforced Rodmen, Local 201	170 F.3d 1111	1999	Authored opinion concurring in part & dissenting in part	Civil rights	<i>Majority (per curiam), Affirmed in part and Reversed and Remanded in part:</i> District court and special master made several errors in fashioning remedy for racial discrimination, including errors in benchmark determination and explanation of some damage awards. <i>Concurring in part and Dissenting in part:</i> Plaintiffs failed to show the benchmark determination was clearly erroneous.
United States v. Watson	171 F.3d 695	1999	Authored Dissent	Criminal law/procedure	<i>Majority (Rogers, J.) Reversed and Remanded:</i> Prosecutor's misstatement about witness testimony during closing arguments substantially prejudiced the defendant's right to a fair trial. <i>Dissenting:</i> Judge Garland was unable to conclude that the defendant suffered substantial prejudice due to the error.
United States v. Spinner	152 F.3d 950	1998	Authored Dissent	Criminal law/procedure	<i>Majority (Sentelle, J.), Reversed in part and Remanded in part:</i> Assault weapon conviction was a manifest miscarriage of justice due to insufficient evidence; narcotics conviction was reversed because the district court erred when it allowed the government to question a defense witness about a letter she wrote to the defendant. <i>Dissenting in part:</i> Evidence was sufficient to sustain the weapons charge, and the cross-examination was not prejudicial.

Source: Congressional Research Service, based upon an examination of court decisions compiled through a search of the Lexis database.

Author Contact Information

R. Chuck Mason, Coordinator
Legislative Attorney
rcmason@crs.loc.gov, 7-9294

David H. Carpenter
Legislative Attorney
dcarpenter@crs.loc.gov, 7-9118

Jared P. Cole
Legislative Attorney
jpcole@crs.loc.gov, 7-6350

Erika K. Lunder
Legislative Attorney
elunder@crs.loc.gov, 7-4538

Brandon J. Murrill
Legislative Attorney
bmurrill@crs.loc.gov, 7-8440

Emily E. Roberts
Law Librarian
eeroberts@crs.loc.gov, 7-8562

Kathleen Ann Ruane
Legislative Attorney
kruane@crs.loc.gov, 7-9135

Michael V. Seitzinger
Legislative Attorney
mseitzinger@crs.loc.gov, 7-7895

Jon O. Shimabukuro
Legislative Attorney
jshimabukuro@crs.loc.gov, 7-7990

Jennifer A. Staman
Legislative Attorney
jstaman@crs.loc.gov, 7-2610

Brian T. Yeh
Legislative Attorney
byeh@crs.loc.gov, 7-5182