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NEWS RELEASE

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United States Court of Appeals for the Ninth Circuit Docket Summaries for Arizona Sitings March 6-12, 2007

The docket for the March 6 sitting in Tucson at the UA James E. Rogers College of Law consists of these three cases:

- *Ray v. Tucson Old Pueblo*, in which Bernadine Ray appeals the Arizona district court's summary judgment in favor of Tucson Old Pueblo Credit Union (TOPCU) in Ray's action alleging unlawful age discrimination under federal and state law. The district court also denied Ray's motion to vacate judgment. The district court held that Ray may have presented sufficient evidence to establish a prima facie case, but that TOPCU articulated legitimate, non-discriminatory reasons for Ray's termination which she failed to rebut or show that they were pretextual. Case 05-15838
- *Hall v. Ruggill*, in which Mitchell Hall appeals the dismissal for failure to state a claim of his diversity action against Jane Ruggill alleging that Ruggill defamed Hall when she helped write a letter from Dr. Sandra Smith to Edward Hanway, the CEO of CIGNA. The letter alleged that Hall was misappropriating funds meant for patient care and funneling them to the refurbishment of a restaurant in Tucson and that Dr. Smith had the supporting documents to back up the allegation. The Arizona district court held that Ruggill did not "publish" the letter, because she herself never sent the letter, and therefore she is not liable for defamation under Arizona law. Case 05-16379.
- *Lopez v. Stewart*, in which George M. Lopez, an Arizona state prisoner, appeals the denial of his habeas corpus petition challenging his jury conviction for child abuse felony murder and his capital sentence. Case 06-99000.

The docket for the March 7 sitting in Phoenix at the Sandra Day O'Connor U.S. Courthouse consists of these eight cases:

- *Kimani v. Gonzales*, in which Ephantus Wahome Kimani, a native and citizen of Kenya, petitions for review of the Board of Immigration Appeals' decision dismissing his appeal from an immigration judge's decision finding him removable as an aggravated felon. Case 05-74982.
- *U.S. v. Thomas*, in which Sylvester Thomas appeals the Arizona district court's order revoking his supervised release and imposing a term of custody. Thomas originally was

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convicted for bank robbery and was sentenced to 137 months of imprisonment and 5 years of supervised release. Case 06-10283.

- *U.S. v. Reed*, in which Nevada prisoner Andre Reed appeals his conviction by conditional guilty plea in Nevada district court to being a felon in possession of firearm. Case 06-10406.
- *U.S. v. Cardenas*, in which Arizona prisoner Manuel Francisco Cardenas appeals his jury trial conviction in Arizona district court for possession with intent to distribute approximately 28 kilograms of marijuana. Case 06-10037.
- *U.S. v. Taylor*, in which Andrew Taylor appeals his jury conviction in the Arizona district court and the sentence imposed for making false declarations and concealing property in a bankruptcy proceeding and committing bankruptcy fraud. Case 05-10822.
- *Braunstein v. U.S. Postal Service*, in which David Braunstein appeals the Arizona district court's summary judgment in favor of the U.S. Postal Service, the U.S. Department of Justice, Postal Inspector Charles Smith and Assistant U.S. Attorney Darcy Cerow in Braunstein's action. Braunstein was a former defendant in a criminal matter and Cerow moved to dismiss the indictment. Braunstein alleged that he was a victim of malicious prosecution and brought this action alleging claims under Bivens, the Federal Tort Claims Act and common law tort. The district court found that Braunstein's action was barred by the applicable two-year statute of limitations. Case 05-16390.
- *U.S. v. Bond*, in which Neil Rusty Bond appeals his jury conviction in the Arizona district court for theft of government property and Social Security fraud. Case 06-10205.
- *Pyramid Lake Paiute v. Nevada State*, in which the Pyramid Lake Paiute Tribe of Indians appeals, after numerous remands from this court, the Nevada district court's order granting Richard Bass' motion to enforce a settlement agreement. In the underlying litigation, Bass sought to transfer some Carson River water rights, which has since been extensively litigated. In response to the subsequent litigation, the district court remanded all pending transfer applications to the Nevada State Engineer. Case 06-15738.

The docket for the March 8 sitting in Tempe at the ASU College of Law consists of these seven cases:

- *Farall v. Schriro*, in which Arizona state prisoner Richard Farrall appeals the district court's denial of his habeas petition challenging his conviction by guilty plea to sexual conduct with a minor under 15 and sexual conduct with a minor over 15. Case 05-15152.
- *Hrabko v. Provident Life*, in which Randall Hrabko, MD, appeals the Arizona district court's summary judgment in favor of Provident Life and Accident Insurance Company in his diversity disability insurance bad faith and breach of contract action. Hrabko, a surgeon, was injured in a skiing accident in 1994, and later became disabled for multiple reasons. Provident paid him disability benefits between January 1995 and May 1999, and

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September 2002 and December 2004. Provident terminated benefits after obtaining videotape surveillance showing Hrabko performing strenuous physical activities he claimed he could not do. In 1995, Hrabko had his medical license revoked due to dishonest and corrupt acts, including felony insurance fraud and a drug addiction. Case 05-15924.

- *Morgan v. Gonzales*, in which Paul Durham Morgan, a native and citizen of England, petitions for review from a decision of the Board of Immigration Appeals which affirmed the Immigration Judge's order of deportation based on Morgan's drug trafficking conviction. Morgan was convicted for conspiracy to illegally import a controlled substance, and conspiracy to possess a controlled substance with intent to distribute. Morgan contends that the Drug Enforcement Agency made it clear to him that he would be allowed to stay and work in the United States in exchange for his testimony and assistance in connection with the criminal proceedings. Case 05-74378.
- *Redding v. SUSD #1*, in which Savana Redding, a minor by her mother and legal guardian, April Redding, appeal the Arizona district court's summary judgment in favor of the Safford Unified School District #1 and District officials in Redding's action alleging that her Fourth Amendment rights were violated when Savana, who was an eighth grade student at Safford Middle School, was subjected to a search in which she was made to undress to her underwear. Case 05-15759.
- *Hansen v. Dept. of Treasury*, in which Jonathan J. Hansen, on behalf of himself and his minor son Ethan Hansen, appeals the Nevada district court's dismissal for failure to state a claim of his complaint against the Department of Treasury, the Internal Revenue Service and the Social Security Administration. Hansen, who challenges the government's social security system pursuant to the Religious Freedom Restoration Act, and the free exercise and establishment clauses of the First Amendment, requested exemption for himself and his son from the social security. He also appeals the district court's denial of his motion for reconsideration. Case 05-16091.
- *Jacobs v. Clark County*, in which Kimberly Jacobs, Dwight Terry, Jr., and Shane Dresser and their families (collectively "Jacobs") appeal the district court's summary judgment in favor of Clark County School District and others in Jacobs' action arising from Liberty High School's attempt to enforce a mandatory dress code, and alleging the school uniform policy constituted impermissible restraint on speech under the First Amendment. Kimberly was suspended from Liberty High and eventually expelled; Dwight was repeatedly sent to the principal's office; and Shane has been threatened with expulsion and has complied with the dress code that is contrary to his religious beliefs. Case 05-16434.
- *U.S. v. Gonzalez*, in which Antonio Gonzalez appeals his jury conviction in the Arizona district court for making false statements in connection with the illegal acquisition of firearms. Case 06-10319.

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March 12 sitting in Phoenix at the Sandra Day O'Connor U.S. Courthouse consists of these cases:

- *Janik v. Saldate*, in which Nina Janik and her tenants appeal the district court's dismissal of their action regarding their eviction from their home by City of Tucson building inspectors who determined that the property was a danger to the appellants and to the public. Case 05-16105.
- *Alexander v. Manufacturing*, in which Michael Alexander appeals the district court's summary judgment in favor of his former employer, Manufacturing & Research Inc, (MRI), in Alexander's diversity action challenging the validity of a restrictive covenant consisting of non-competition and non-solicitation clauses prohibiting him from working for a competing employer or from contacting prospective clients. Alexander alleges that MRI fired him simply because MRI could not pay him, and that the restrictive covenant was thus void. Alexander was MRI's Director of New Business, and sought a position with MRI's chief competitor, Degania Silicone. Case 05-16296.
- *U.S. v. Andrews*, in which Martin Andrews appeals the sentence imposed following his violation of supervised release. Andrews had previously pleaded guilty to aggravated sexual abuse of a minor. Case 06-10174.
- *U.S. v. Blandin*, in which Christopher Blandin appeals the sentence imposed upon revocation of three terms of supervised release. He was convicted for bank robbery in Nevada, bank robbery in New Jersey, and escape in Nevada. All three cases were consolidated in Nevada district court. Case 06-10436.
- *U.S. v. Anderson*, in which Justin D. Anderson appeals his conviction by jury trial for possession of a firearm by a prohibited person. Case 06-10347.
- *Bankston v. Caldera*, in prior Case 02-15547, the court reversed and remanded the district court's dismissal for lack of subject matter jurisdiction of the complaint of James R. Bankston, a former employee at the Sierra Army Depot in California. Here, Bankston appeals the district court's summary judgment in favor of the Secretary of the Army. Bankston's complaint, brought under the Age Discrimination in Employment Act, alleged that he was the victim of age discrimination and retaliation when he was terminated from his Army civilian position. Case 05-15881.
- *U.S. v. Eljammal*, in which Moustapha Lotfi Eljammal appeals his Arizona jury conviction for conspiracy, altering or removing motor vehicle identification numbers, importation or exportation of stolen motor vehicles, transportation and sale and receipt of stolen vehicles, mail, wire and bank fraud, false loan and credit applications, and conspiracy to commit money laundering and promotional and transactional money laundering. Case 06-10001

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