

:: Precydent Search Engine, 05-30-2009**Search results for the query: sotomayor****1. 426 F.3d 540 ZHANG v. GONZALES**

Jurisdiction: Second Circuit Decided: 04-28-2005

SOTOMAYOR, Circuit Judge. Yueqing Zhang petitions for review of an August 28, 2002 order of the Board of Immigration Appeals ("BIA") affirming without opinion an August 23, 2001 order of an Immigration Judge ("IJ") denying Zhang's claims for asylum under 8 U.S.C. § 1158(a) and withholding of removal under 8 U.S.C. § 1231(b)(3).¹ Of relevance to this appeal, the IJ denied Zhang's claims for asylum and statutory withhold¹. Zhang has abandoned any challenge to the IJ's denial of his claim for withholding of removal under the United Nations Convention Against Torture and its implementing regulations, see 8 C.F.R. § 208.16(c) (2001), by failing to discuss this claim anywhere in his brie...

2. 445 F.3d 127 LIN v. GONZALES

Jurisdiction: Second Circuit Decided: 03-03-2006

SOTOMAYOR, Circuit Judge. Rui Ying Lin ("Lin") petitions for review of an April 25, 2003 order of the Board of Immigration Appeals ("BIA") summarily affirming a December 27, 2001 order of Immigration Judge Barbara A. Nelson (the "IJ") denying Lin's application for asylum, withholding of removal, and relief under the United Nations Convention Against Torture ("CAT").¹ The primary question presented on this appeal is whether the IJ erred in relying on a false document Lin used to evade persecution in China, but did not submit in support of her asylum claim, to require corroboration of, and to disregard Lin's documentary evidence. We hold that the IJ erred. We grant the petition for review and...

3. 363 F.3d 130 BRISSETT v. ASHCROFT

Jurisdiction: Second Circuit Decided: 02-05-2004

SOTOMAYOR, Circuit Judge. Petitioner Calvin Brissett ("Brissett") appeals from an order of the Board of Immigration Appeals ("BIA"), finding him removable under 8 U.S.C. §§ 1227(a)(2)(A)(iii) and 1227(a)(2)(B)(i), as an alien convicted of an aggravated felony and a controlled substance offense. Brissett argues that, because his parents, who were Jamaican nationals living in New York, separated in 1972, he acquired citizenship automatically upon his mother's naturalization in 1977, and that he is therefore not a removable alien. Brissett relies on 8 U.S.C. § 1432(a)(3) (repealed 2000), which provides that an alien child automatically acquires citizenship upon the ...

4. 232 F.3d 153 COMPAGNIE FINANCIERE v. MERRILL LYNCH

Jurisdiction: Second Circuit Decided: 09-29-2000

SOTOMAYOR, Circuit Judge: Plaintiffs-appellants Compagnie Financiere de CIC et de L'Union Europeenne ("CFC") and Management Investment Funding Limited ("MIF") (collectively "plaintiffs") appeal from a grant of summary judgment entered on February 14, 2000, in the United States District Court for the Southern District of New York (Sand, J.) in favor of interpleader-defendant-appellee Calex Ltd. ("Calex"). The district court determined that the parties' agreement securing a guarantee of a loan is governed by the termination provision of a related document, which provides that the obligations under the guarantee terminate upon "payment in full" by the debtor of its obligations under the loan a...

5. 481 F.3d 152 BLAKE v. GONZALES

Jurisdiction: Second Circuit Decided: 03-28-2007

481 F.3d 152 Durant BLAKE, a/k/a Terrel Camer, a/k/a Durant Stanley, Petitioner, v. Alberto GONZALES, Attorney General of the United States, Respondent. Docket No. 05-2586-AG. United States Court of Appeals, Second Circuit. Argued: January 24, 2007. Decided: March 28, 2007. Susan V.H. Degrave, Law Office of Susan V.H. DeGrave, Springfield, MA, for petitioner. Victoria S. Shin, Assistant United States Attorney (Kevin J. O'Connor, United States Attorney for the District of Connecticut, William J. Nardini, Assistant United States Attorney, on the brief), New Haven, CT, for respondent. Before KEARSE and SOTOMAYOR, Circuit Judges, and CEDARBAUM, District Judge. SOTOMAYOR, Circuit Judge...

6. 346 F.3d 44 DICKSON v. ASHCROFT

Jurisdiction: Second Circuit Decided: 05-15-2003

SOTOMAYOR, Circuit Judge. Petitioner John Dickson petitions for review of the decision of the Board of Immigration Appeals ("BIA") ordering him removed for having been convicted of an aggravated felony.

Under the categorical approach to criminal statutory interpretation, we hold that the state-law crime of unlawful imprisonment in the first degree is divisible into crimes that are categorically grounds for removal and others that are not. Accordingly, the BIA was permitted to consult the record of conviction to determine the specific crime for which Dickson was convicted. In assessing whether Dickson's conviction was for a removable offense, however, the BIA improperly relied upon the narra...

7. 228 F.3d 171 SUTHERLAND v. RENO

Jurisdiction: Second Circuit Decided: 09-15-2000

SOTOMAYOR, Circuit Judge: Felix Sutherland, a citizen of Trinidad and a permanent resident of the United States, petitions this Court for review of an order of the Board of Immigration Appeals ("BIA") affirming that he is eligible SUTHERLAND v. RENO Cite as 228 F.3d 171 (2nd Cir. 2000) for removal under 8 U.S.C. § 1227(a)(2)(E)(i) as an alien convicted of a crime of domestic violence based upon his July 1998 conviction in Massachusetts for indecent assault and battery on a person over the age of fourteen. Petitioner claims that his conviction does not satisfy either of the two requisite elements for a "crime of domestic violence" under 8 U.S.C. § 1227(a)(2)(E)(i). Specifically, he cont...

8. 446 F.3d 289 DEPARTMENT OF HOMELAND SECURITY v. DEPARTMENT OF HOMELAND SECURITY

Jurisdiction: Second Circuit Decided: 04-05-2006

PER CURIAM. We consider here principally (1) whether an IJ's adverse credibility finding is supported by substantial evidence where petitioner's written asylum application and 292 446 FEDERAL REPORTER, 3d SERIES subsequent testimony contain material inconsistencies that "reach[] to the heart of the claim" of persecution; (2) whether an IJ was required to afford petitioner an opportunity to respond before basing an adverse credibility determination on such inconsistencies; (3) whether the BIA engaged in improper fact-finding by relying on evidence in the record not cited in the IJ's decision; (4) whether the BIA erred in declining to make administrative findings regarding the "c...

9. 420 F.3d 111 U.S. v. GONZALEZ

Jurisdiction: Second Circuit Decided: 03-17-2004

RAGGI, Circuit Judge. Defendant-appellant Manuel Gonzalez appeals from a judgment of conviction entered on June 4, 2003, in the United States District Court for the Southern District of New York (John S. Martin, Jr., Judge) based on defendant's guilty plea to a single-count indictment charging a conspiracy to distribute and possess with intent to distribute fifty grams or more of cocaine base, commonly referred to as "crack." See 21 U.S.C. §§ 812, 841(a)(1), 841(b)(1)(A), 846, 851. Gonzalez is presently serving a twenty-year term of incarceration, a downward departure from his 262-to-327 month Sentencing Guidelines range. That incarceratory term was not selected by the district court in the...

10. 428 F.3d 132 SASH v. ZENK

Jurisdiction: Second Circuit Decided: 09-20-2005

SOTOMAYOR, Circuit Judge. This case deals with the interpretation of 18 U.S.C. § 3624(b), which governs the calculation of credits awarded to federal prisoners for good behavior. The petitioner argues that the interpretation of this provision by the Bureau of Prisons (BOP), set forth in 28 C.F.R. § 523.20, contravenes the clear language of the statute. He further argues that the rule of lenity requires that credits be awarded on the basis of the sentence originally imposed rather than on the amount of time actually served and that, even if Chevron deference applies here, the BOP's interpretation of the statute is not reasonable. We apply Chevron deference to the BOP's interpretation of § 36...

11. 206 F.3d 240 TERWILLIGER v. TERWILLIGER

Jurisdiction: Second Circuit Decided: 10-29-1999

MINER, Circuit Judge: Defendants-Appellants-Cross-Appellees Donald L. Terwilliger, III ("Donald") and John Terwilliger ("John") (collectively "the Sons") appeal from so much of a summary judgment as awards payment in the sum of \$351,586.74, entered in the United States District Court for the Southern District of New York (Casey, /.) on the motion of their father, plaintiff-appellee-cross-appellant Donald L. Terwilliger, Jr. ("Terwilliger"). Terwilliger cross-appeals from so much of the judgment as denied him prejudgment interest. Terwilliger sued the Sons for breach of contract, alleging that the Sons failed to fulfill their obligations under a stock redemption agreement ("Agreement") enter...

12. 430 F.3d 518 U.S. v. VAUGHN

Jurisdiction: Second Circuit Decided: 09-23-2005

SOTOMAYOR, Circuit Judge. Defendants-appellants Derek A. Vaughn and Zaza Leslie Lindo appeal from judgments entered on November 10, 2004, and September 23, 2004, respectively, in the District Court for the Southern District of New York (Jones, J.) sentencing Vaughn principally to 97 months' imprisonment and Lindo to 121 months' imprisonment for conspiring to distribute at least fifty kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 846. In a concurrently filed

summary order, we address the appellants' challenges to the district court's ruling pursuant to Fed. R.Evid. 404(b) and its application of the Sentencing Guidelines ("the Guidelines"). ! The Honorable ...

13. 383 F.3d 34 SADALLAH v. CITY OF UTICA

Jurisdiction: Second Circuit Decided: 04-12-2004

SOTOMAYOR, Circuit Judge. Defendants-appellants Edward Hanna ("Hanna") and City of Utica (the "City") (collectively, "defendants") appeal from an order of the United States District Court for the Northern District of New York (Hurd, J.) denying Hanna qualified immunity. Because we find that plaintiffs have failed to allege facts sufficient to make out a constitutional claim under the "stigma plus" doctrine, see *Morris v. Lindau*, 196 F.3d 102, 114 (2d Cir.1999), we reverse the district court's denial of qualified immunity to Hanna. Moreover, because our holding concerning Hanna's entitlement to qualified immunity is "inextricably intertwined" with plaintiffs' claims against the City, see Sw...

14. 448 F.3d 102 ZHI WEI PANG v. BUREAU OF CITIZENSHIP

Jurisdiction: Second Circuit Decided: 02-27-2006

CEDARBAUM, District Judge: Petitioner Zhi Wei Pang, a citizen of the People's Republic of China, petitions for review of a July 24, 2003 order of the Board of Immigration Appeals ("BIA") affirming the order of Immigration Judge Roxanne C. Hladylowycz (the "IJ") denying petitioner's request for asylum under section 208 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158, and for withholding of removal pursuant to INA Section 241(b)(3), 8 U.S.C. § 1231(b)(3). Pang argues that the IJ erred by relying on a number of improper grounds in making an adverse credibility finding. The questions presented on this petition for 1 The Honorable Miriam Goldman Cedarbaum, District of Ne...

15. 356 F.3d 261 U.S. v. STULTZ

Jurisdiction: Second Circuit Decided: 01-15-2004

CARDAMONE, Circuit Judge. The United States appeals from a judgment of conviction, insofar as it imposed sentence on defendant Norman Washington Stultz (defendant or appellee), entered in the United States District Court for the District of Connecticut (Dorsey, J.) on October 1, 2002. The appeal from this conviction requires us to interpret United States Sentencing Guidelines (U.S.S.G. or Guidelines) § 2L1.2 in light of recent Congressional amendments. Defendant Stultz pled guilty to one count of illegal reentry into the United States after deportation in violation of 8 U.S.C. § 1326(a) (2000). The district court enhanced Stultz's sentence 16 levels due to a prior conviction for drug traffi...

16. 451 F.3d 140 DEMORET v. ZEGARELLI

Jurisdiction: Second Circuit Decided: 06-08-2006

CARDAMONE, Circuit Judge: The case before us on this appeal has as one of the named defendants the Village of Sleepy Hollow (Village), a small municipality located on the banks of the Hudson River in Westchester County, New York. The very name Sleepy Hollow evokes shades of the Headless Horseman, Ichabod Crane, and Katrina Van Tassel—all fictional figures made famous by Washington Irving in *The Legend of Sleepy Hollow* (Wildside Press 2004) (1917). According to the legend, the Headless Horseman haunts this tranquil village. Its ghost is reportedly responsible for numerous frightful encounters, including one in which the specter scared the schoolmaster, Ichabod Crane, out of town. In this cas...

17. 286 F.3d 622 U.S. v. OUTEN

Jurisdiction: Second Circuit Decided: 04-12-2002

BERTELSMAN, District Judge.* SOTOMAYOR, Circuit Judge. Defendant Herbie Noel appeals from a judgment of conviction entered by the United States District Court for the Eastern District of New York (Frederic Block, Judge) on two counts of possession of marijuana with intent to distribute, for each of which defendant was principally sentenced to 60 months' imprisonment, and one count of conspiracy to possess with intent to distribute marijuana, for which he was sentenced principally to 110 months' imprisonment, all sentences to run concurrently. The indictment did not charge, nor did the jury find, either the quantity of marijuana involved in any of the counts or whether the defendant receive...

18. 439 F.3d 61 SASH v. ZENK

Jurisdiction: Second Circuit Decided: 09-20-2005

SOTOMAYOR, Circuit Judge! ON PETITION FOR REHEARING Appellant Eliot S. Sash petitions the panel for rehearing to reconsider its decision in *Sash v. Zenk*, 428 F.3d 132 (2d Cir.2005). We assume familiarity with our original decision and its underlying facts. Because Sash has failed to show "point[s] of law or fact that ... the court has overlooked or misapprehended," Fed. R.App. P. 40(a)(2); see *Treadway Cos., Inc. v. Care Corp.*, 638 F.2d 357, 386 (2d Cir.1980) (denying petition for rehearing), the petition is denied. We write to address an issue not raised in the briefs or oral argument in this case, but which Sash argues arises as a result of our earlier opinion. I. The Rule of Lenity a...

19. 274 F.3d 655 U.S. v. THOMAS

Jurisdiction: Second Circuit Decided: 12-12-2001

JOSE A. CABRANES, Circuit Judge: The question presented is whether, in light of the United States Supreme Court's decision in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and our Circuit's decision in *United States v. Trcm*, 234 F.3d 798 (2d Cir.2000), the District Judge was empowered to impose on defendant Ramse Thomas a sentence beyond the otherwise applicable statutory maximum based on his findings, under a preponderance of the evidence standard, concerning the quantity of drugs involved in Thomas's offense when the indictment made no mention of quantity and the questions of quantity was not presented to the jury. On remand from the Supreme Court, ...

20. 313 F.3d 768 TAYLOR v. VERMONT DEPT. OF EDUC

Jurisdiction: Second Circuit Decided: 02-04-2002

SOTOMAYOR, Circuit Judge. We are presented with the question of who is entitled to exercise the rights afforded to a "parent" under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 et seq., and the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. Plaintiff* The Honorable Lewis A. Kaplan, of the Dis- York, sitting by designation, trict Court for the Southern District of New 772 313 FEDERAL REPORTER, 3d SERIES appellant Pam Taylor alleges that the defendants have violated statutory rights she possesses.as the natural mother of a child who suffers from a disability. The United States District Court for the District of Vermo...

21. 255 F.3d 65 HIZBULLAHANKHAMON v. WALKER

Jurisdiction: Second Circuit Decided: 06-15-2001

SOTOMAYOR, Circuit Judge: Petitioner-appellant Qabail Hizbullahankhamon appeals from a judgment of the United States District Court for the Southern District of New York (Shira A. Sheindlin, Judge) dismissing his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254(d)(l) on the ground that the petition was time-barred pursuant to 28 U.S.C. § 2244(d)(l). *Hizbullahankhamon v. Walker*, 105 F.Supp.2d 339 (S.D.N.Y. 2000). Petitioner argues that his petition was timely filed because the one-year limitations period for filing habeas petitions should be tolled (i) during the pendency of his applications to the New York Court of Appeals for leave to appeal the Appellate Division's orders...

22. 354 F.3d 124 U.S. v. RYBICKI

Jurisdiction: Second Circuit Decided: 10-16-2002

SACK, J., filed an opinion in which CALABRESI, STRAUB, POOLER, and SOTOMAYOR, JJ., joined, and in which KATZMANN, J., joined except for parts II.A and V.E thereof, as to which he filed a separate opinion. RAGGI, J., filed an opinion concurring in the judgment. JACOBS, J., filed a dissenting opinion in which JOHN M. WALKER, JR., C.J., and JOSE A. CABRANES and B.D. PARKER, JR., JJ., joined. JOHN M. WALKER, JR., C.J., and JOSE A. CABRANES, J., also filed an opinion ' concurring in the dissent. SACK, Circuit Judge. We agreed to rehear this case in banc in order to consider whether 18 U.S.C. § 1346, which provides that "[f]or the purposes of th[e] chapter [of the United States Code that pr...

23. 428 F.3d 387 U.S. v. ESTRADA

Jurisdiction: Second Circuit Decided: 09-19-2005

SOTOMAYOR, Circuit Judge. Defendants-appellants Makene Jacobs and Daniel Herredia appeal from judgments entered in the District Court for the District of Connecticut (Underhill, J.) sentencing both defendants to mandatory terms of life imprisonment for conspiring to possess with intent to distribute heroin in excess of 1000 grams, in violation of 21 U.S.C. §§ 841(a)(l), (b)(l)(A), and 846. In a concurrently filed summary order, we address the appellants' challenges to the district court's rulings on evidentiary matters, a trial motion for severance, the appellants' claims of ineffective assistance of counsel at trial, lack of a fair trial, and various sentencing issues. Here, we hold that p...

24. 457 F.3d 217 MIRZOYAN v. GONZALES

Jurisdiction: Second Circuit Decided: 02-27-2006

PER CURIAM. In this case, the petitioner's applications for asylum and withholding of removal were denied, in part, because Immigration Judge Barbara A. Nelson ("the IJ") concluded that the economic mistreatment the petitioner claims to have suffered in her native country does not constitute "persecution" under 8 U.S.C. § 1101(a)(42)(A). The Board of Immigration Appeals ("BIA") has not clearly identified the statutory construction of the word "persecution" it applies when assessing claims of economic persecution. We remand so that *MIRZOYAN v. GONZALES* Cite as 457 F.3d 217 (2nd Cir. 2006) 219 the BIA may address this important question. BACKGROUND Serine Mirzoyan petitions for revi...

25. 305 F.3d 120 BANK BRUSSELS LAMBERT v. FIDDLER GONZALEZ

Jurisdiction: Second Circuit Decided: 04-25-2002

SOTOMAYOR, Circuit Judge. This case returns to us a second time following proceedings on remand from this Court in the United States District Court for the Southern District of New York (McKenna, J.). In our prior opinion, we vacated the district court's dismissal of the complaint for lack of personal jurisdiction, holding that the district court erred when it determined that the situs of the alleged injury was outside of New York for purposes of CPLR § 302(a)(3), and we remanded for further consideration of the personal jurisdiction question. *Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 171 F.3d 779, 794 (2d Cir.1999) ("BBL I"). On remand, the district court held that personal ju...

26. 356 F.3d 365 LAMAR ADVERTISING OF PENN v. TOWN OF ORCHARD PARK

Jurisdiction: Second Circuit Decided: 11-05-2003

SOTOMAYOR, Circuit Judge. Lamar Advertising of Penn, LLC ("Lamar") filed suit in August 2001, challenging a local ordinance governing the erection and maintenance of signs in the Town of Orchard Park, New York ("Orchard Park" or "the Town"), as facially unconstitutional. Lamar thereafter moved for preliminary and permanent injunctions in conjunction with its motion for summary judgment. Just prior to filing its reply to Lamar's motion for summary judgment, however, Orchard Park amended the ordinance to address some—but not all—of Lamar's constitutional claims. In light of the amendments, the United States District Court for the Western District of New York (Arcara, J.) dismissed as moot tho...

27. 361 F.3d 112 AMNESTY AMERICA v. TOWN OF WEST HARTFORD

Jurisdiction: Second Circuit Decided: 04-29-2004

SOTOMAYOR, Circuit Judge. Plaintiffs-appellants William E. Waugh, Suzanne C. Verdi, R.N., Harry M. Ong, Eleanor Brady, and Edward Dombroski (collectively, the "plaintiffs") appeal from the decision of the United States District Court for the District of Connecticut (Dorsey, S.J.), granting summary judgment in favor of defendant-appellee, the Town of West Hartford ("defendant" or "the Town"). In 1992, plaintiffs filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging that they were the victims of excessive force perpetrated by the Town's police officers at two peaceful anti-abortion protests that took place in West Hartford in 1989. The district court held that, inter alia, plaintiffs had...

28. 386 F.3d 383 U.S. v. GEORGE

Jurisdiction: Second Circuit Decided: 03-15-2001

BERTELSMAN, District Judge.* SOTOMAYOR, Circuit Judge. Defendant Robert Ike George appeals from a judgment of the United States District Court for the Southern District of New York (Stein, J.) convicting him of one count of making a false statement in a passport application in violation of 18 U.S.C. § 1542. On September 26, 2001, this panel of the Court held that § 1542's "willfully and knowingly" mens rea provision required proof of a defendant's specific intent (as demonstrated by purpose) to make a false statement in a passport application and that the district court's jury instruction requiring George's actions to be compared to those of a "reasonable person" was prejudicial constituti...

29. 235 F.3d 804 FAMA v. COMMISSIONER OF CORRECTIONAL SERVICES

Jurisdiction: Second Circuit Decided: 12-21-2000

CALABRESI, Circuit Judge: Petitioner Joseph Fama, a New York State prisoner convicted of, among other things, murder in the second degree, New York Penal Law § 125.25[2], and riot in the first degree, New York Penal Law § 240.06, sought habeas corpus pursuant to 28 U.S.C. § 2254. In his habeas petition, Fama alleged, inter alia, that the State had produced insufficient evidence upon which a rational factfinder could conclude that he committed second-degree murder evincing depraved indifference to human life and that he was denied a fair trial due to publicity and juror intimidation. The district court (Johnson, /.) denied the petition, ruling that the insufficiency of the evidence claim ha...

30. 402 F.3d 130 U.S. v. D'OLIVEIRA

Jurisdiction: Second Circuit Decided: 02-10-2005

CEDARBAUM,* District Judge. CEDARBAUM, District Judge. Defendant-appellant Miguel D'Oliveira, who reentered the United States after having been removed following his conviction for an aggravated felony, appeals from the judgment of sentence entered May 12, 2004 in the United States District Court for the Eastern District of New York (John Gleeson, J.). Specifically, he contests the forty-four months' imprisonment portion of the sentence. We affirm the calculation under the United States Sentencing Guidelines ("Guidelines" or "U.S.S.G."), but in view of *United States v. Booker*, ----U.S. -----, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), remand in accordance with *United States v. Crosby*, 397 F...

31. 274 F.3d 90 ABRUSCATO v. EMPIRE BLUE CROSS AND BLUE SHIELD

Jurisdiction: Second Circuit Decided: 12-06-2001

PARKER, Circuit Judge. In this case brought pursuant to the Employee Retirement Income Security I.

BACKGROUND The sixteen appellants are former Empire employees who retired between 1989 and 1998. Six of the retirees retired from Empire pursuant to an early incentive program offered in 1992, known as the Voluntary Separation Opportunity Program ("VSOP").¹ Two of the appellants retired from Empire pursuant to a similar program offered in 1993, known as the Voluntary Incentive Program ("VIP").² Some of the remaining appellants retired in the normal course, not pursuant to any early retirement incentive program. Others re¹. These six appellants are Irma Alicea, Arthur English, Jose...

32. 295 F.3d 293 U.S. v. GAINES

Jurisdiction: Second Circuit Decided: 11-14-2001

CARDAMONE, Circuit Judge. Defendant James Games (defendant or appellant) was convicted, following a jury trial, of violating 18 U.S.C. § 922(g)(1), a statute that makes it unlawful for a person having previously been convicted of a felony to possess a firearm. Judgment on this conviction was entered on September 26, 2000 in the United States District Court for the Western District of New York (Skretny, J.), and defendant was sentenced to 188 months imprisonment. From this judgment, defendant appeals. We affirm. A crucial piece of evidence used by the prosecutor at trial was a statement Gaines made to the arresting officers. Because defendant is illiterate, his lawyer declares on appeal t...

33. 274 F.3d 76 DEVLIN v. EMPIRE BLUE CROSS AND BLUE SHIELD

Jurisdiction: Second Circuit Decided: 12-06-2001

PARKER, Circuit Judge. In 1998, defendant-appellee Empire Blue Cross and Blue Shield ("Empire") significantly lowered the amount of life insurance provided to retirees.¹ Plaintiffs-appellants are former employees of Empire who retired between 1989 and 1993. Plaintiffs seek to enforce the terms of the life insurance plan provided by Empire to its retirees, as those terms existed during . This action has spurred at least two lawsuits in the federal courts of this Circuit: the instant case and another case, *Abhruscato v. Empire Blue Cross*, 274 F.3d 90 (2d Cir.2001), which is also being decided today. These cases were heard in tandem by this Court. We issue two separate opinions in the...

34. 325 F.3d 93 U.S. v. HENRY

Jurisdiction: Second Circuit Decided: 12-14-2001

POOLER, Circuit Judge. Alexander Panek and Edmund Panek appeal from the judgment of the United States District Court for the Northern District of New York (Frederick J. Scullin, Jr., Judge) after a jury convicted both Alexander Panek and Edmund Panek of conspiracy to possess with intent to distribute and to distribute marijuana in violation of 21 U.S.C. § 846 and Alexander Panek of conspiracy to launder monetary instruments in violation of 18 U.S.C. § 1956(h). The district court sentenced Alexander Panek and Edmund Panek to 151 months and 78 months imprisonment, respectively. On appeal, defendants-appellants argue that: 1) their sentences are unconstitutional pursuant to *Apprendi v. New Jer...*

35. 442 F.3d 128 U.S. v. ROBERTS

Jurisdiction: Second Circuit Decided: 02-27-2006

PER CURIAM. Defendant-appellant Ernest Roberts appeals from a judgment of conviction and sentence, entered after a jury trial in the Southern District of New York (Kaplan, J.), finding Roberts guilty of dealing in " The Honorable Miriam Goldman Cedarbaum, United States District Judge for the Southern District of New York, sitting by designation. U.S. v. ROBERTS Cite as 442 F.3d 128 (2ndCir. 2006) 129 firearms without a license and conspiring to deal in firearms without a license in violation of 18 U.S.C. §§ 922(a)(1)(A) and 371. On November 12, 2004, Roberts was sentenced principally to fifty-four months of imprisonment, three years of supervised release, and a mandatory special ass...

36. 449 F.3d 470 FARRELL v. BURKE

Jurisdiction: Second Circuit Decided: 11-18-2005

EATON, Judge.* c The Honorable Richard K. Eaton, Judge, Unit-by designation, ed States Court of International Trade, sitting 476 449 FEDERAL REPORTER, 3d SERIES SOTOMAYOR, Circuit Judge. The principal question presented by this appeal is whether a special condition of parole that prohibited the possession of "pornographic material" would have given notice to a reasonable parolee who had been convicted of sexual crimes involving minors, or his parole officer, that the condition prohibited possession of the book *Scum: True Homosexual Experiences*, which contains sexually explicit pictures and lurid descriptions of sex between men and boys. Plaintiff-appellant Christopher J...

37. 240 F.3d 127 U.S. v. WHITE

Jurisdiction: Second Circuit Decided: 02-13-2001

KATZMANN, Circuit Judge: Luis Noel Cruz appeals from a final judgment of conviction entered on January 27, 2000, in the United States District Court for the Western District of New York (Arcara, Judge). He argues that: (1) his convictions for drug distribution under 21 U.S.C. § 841(a) must be dismissed as lesser included offenses of his convictions for drug distribution within 1000 feet of a school

under 21 U.S.C. § 860; (2) the district court misunderstood its authority to depart from a sentence of 240 years' imprisonment; (3) the district court's sentencing Mr. Cruz to 240 years based on its own findings of drug quantity by a preponderance of the evidence violated his right to due process...

38. 393 F.3d 113 DURANT v. U.S. I.N.S

Jurisdiction: Second Circuit Decided: 11-02-2004

SOTOMAYOR, Circuit Judge. The Government moves to dismiss petitioner Kenneth Durant's petitions for review of a June 1999 final order of removal and an October 1999 order denying a motion to reopen the removal proceedings. The Board of Immigration Appeals ("BIA") determined that Durant was removable because of his conviction for a controlled substance offense, which they also classified as an aggravated felony.¹ We hold that this Court lacks jurisdiction to review the June 1999 final order of removal because 8 U.S.C. § 1252(a)(2)(C) prohibits review of such orders when an alien has been ordered removed because of a conviction of a controlled substance offense. We further hold that when an a...

39. 432 F.3d 115 U.S. v. HAMDI

Jurisdiction: Second Circuit Decided: 01-03-2005

SOTOMAYOR, Circuit Judge. Defendant-appellant Ali Hamdi appeals from an April 9, 2003 judgment of sentence imposed by the United States District Court for the Eastern District of New York (Trager, J.), following his plea of guilty pursuant to a plea agreement to one count of knowingly producing without lawful authority false identification docuU.S. v. HAMDI Cite as 432 F.3d 115 (2nd Cir. 2005) 117 ments, in violation of 18 U.S.C. §§ 1028(a)(1) and 1028(c)(3)(A). We hold that Hamdi's completion of his sentence and subsequent removal from the United States do not render his appeal moot. We also hold that a statement in Hamdi's plea agreement that "[t]he defendant's sentence is g...

40. 448 F.3d 119 PROTECTION v. MENTAL HEALTH

Jurisdiction: Second Circuit Decided: 02-28-2006

SOTOMAYOR, Circuit Judge. This case raises the question whether the Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI"),¹ 42 U.S.C. §§ 10801-10851 (2000), requires defendant-appellant the Connecticut Department of Mental Health and Addiction Services, through its commissioner, Thomas A. Kirk, ("the Department") to disclose peer review records to plaintiff-appellee the Connecticut Office of Protection and Advocacy for Persons with Disabilities ("OPA"). For the reasons that follow, we hold that PAIMI unambiguously grants OPA access to peer review records and affirm the district court's entry of a declaration and injunction requiring the Department to disclose to ...

41. 431 F.3d 395 GAL VIZ ZAPATA v. U.S.

Jurisdiction: Second Circuit Decided: 05-03-2005

WESLEY, Circuit Judge. Hugo Galviz Zapata appeals from the district court's denial of his petition for a writ of habeas corpus. Zapata presses an ineffective assistance of counsel claim. In his pro se petition of November 9, 2000, Zapata asserted that his trial counsel, Lisa Scolari, failed to file a notice of appeal after being instructed to do so. In an affidavit filed in support of the petition, Zapata also alleged that Scolari failed to consult with him regarding an appeal of his sentence. The district court subsequently appointed counsel to represent Zapata and held an evidentiary hearing on March, 9, 2001, at which both Zapata and Scolari testified. Zapata testified that he "told Ms. ...

42. 413 F.3d 239 U.S. v. MARTINEZ

Jurisdiction: Second Circuit Decided: 03-23-2005

SOTOMAYOR, Circuit Judge. Appellant David Martinez ("Martinez") appeals from a judgment entered on April 19, 2004, in the United States District Court for the Southern District of New York (Preska, J.), sentencing him principally to 115 months' imprisonment for violation of 18 U.S.C § 922(g)(1), which prohibits the possession of firearms by convicted felons. Martinez argues, inter alia, that the district court violated his right to confront witnesses and to a trial by jury under the Fifth and Sixth Amendments when it considered during sentencing several out-of-court statements that witnesses made to the police against Martinez. Because the constitutional right of confrontation does no...

43. 322 F.3d 147 OFFICIAL COMMITTEE v. COOPERS

Jurisdiction: Second Circuit Decided: 09-30-2002

MINER, Circuit Judge. The action giving rise to this appeal was commenced in the United States District Court for the Southern District of New York (Cedarbaum, /.) by plaintiff-appellant Official Committee of the Unsecured Creditors of Color Tile, Inc. ("Color Tile Committee"), as assignee of the bankruptcy estate of Color Tile, Inc., against defendant-appellee Coopers & Lybrand, LLP ("Coopers"), an accounting firm that provided auditing and consulting services for Color Tile and its controlling shareholders. The services were provided in connection with a merger and acquisition transaction (the "Transaction") and a public debt offering that was used to finance the Transaction. The gravamen...

44. 369 F.3d 113 RODAL v. ANESTHESIA GROUP OF ONONDAGA

Jurisdiction: Second Circuit Decided: 03-17-2004

RAGGI, Circuit Judge: Plaintiff-Appellant Stewart J. Rodal, M.D., appeals from an award of summary judgment entered in the United States District Court for the Northern District of New York (Howard G. Munson, Judge), in favor of the Defendant-Appellee, Anesthesia Group of Onondaga, P.C. (the "Anesthesia Group" or the "Group"), on Dr. Rodal's claims of employment discrimination under the Americans with Disabilities Act, 42 U.S.C. § 12112(a) ("ADA"), and New York's Human Rights Law, N.Y. Exec. Law § 296 (McKinney 2001). See *Rodal v. Anesthesia Group of Onondaga, P.C.*, 250 F.Supp.2d 78 (N.D.N.Y.2003). The district court ruled that, as a matter of law, Dr. Rodal could not demonstrate his abili...

45. 246 F.3d 176 HENRIETTA D. v. GIULIANI

Jurisdiction: Second Circuit Decided: 04-09-2001

JACOBS, Circuit Judge: This appeal presents a threshold question as to whether we have appellate jurisdiction where the district court (i) found that injunctive relief against the defendants was warranted, (ii) directed the Clerk of the Court to close the case, and (iii) entered a "Judgment," but (iv) declined to order the defendants to do anything, leaving the terms of the injunction for a later determination by a magistrate * The Honorable William O. Bertelsman of the District of Kentucky, sitting by designation. United States District Court for the Eastern HENRIETTA D. v. GIULIANI Citeas246 F.3d 176 (2ndCir. 2001) 179 judge. We conclude that we lack jurisdiction, and dis...

46. 451 F.3d 71 EARLEY v. MURRAY

Jurisdiction: Second Circuit Decided: 01-25-2006

JOHN M. WALKER, JR., Chief Judge. Petitioner-Appellant Sean Earley was sentenced to six years' incarceration pursuant to a plea agreement. Unbeknownst to Earley, his counsel, the prosecutor, and the sentencing judge, New York had recently passed a law mandating a term of post-release supervision ("PRS") for convictions such as Earley's. Subsequently, the New York Department of Correctional Services ("DOCS"), without informing Earley, administratively added a five-year PRS term to Earley's sentence. More than a year later, upon learning of this addition to his sentence, Earley moved in state court to have the sentence amended to reflect the plea agreement by removing any term of supervision....

47. 411 F.3d 54 TWUM v. I.N.S

Jurisdiction: Second Circuit Decided: 01-07-2005

SOTOMAYOR, Circuit Judge. Petitioner Alexander Twum petitions for review of an April 29, 2002 order of the Board of Immigration Appeals ("BIA"), affirming without opinion a September 8, 1997 order of the Immigration Judge ("IJ") denying his motion to reopen his exclusion proceedings after he was ordered excluded in absentia. In his motion to reopen Twum claimed that, although he presented himself at the public entrance to the building that houses the Immigration Court several hours before the hearing, he was prevented from attending his hearing because guards would not admit him without a hearing notice that was in the possession of his attorney, who was inside the building. The IJ, determi...

48. 389 F.3d 386 DOBSON v. HARTFORD FINANCIAL SERVICES GROUP

Jurisdiction: Second Circuit Decided: 06-03-2003

LEVAL, Circuit Judge. Plaintiff Douglas Dobson appeals from those parts of the judgment of the United States District Court for the District of Connecticut (Arterton, J.) that denied his motion for class certification and granted summary judgment to defendant Hartford Life & Accident Insurance Company ("Hartford"). Dobson, who received payments of disability benefits after the date he alleges they were due to be paid, sued (for himself and on behalf of similarly situated persons) for interest on the overdue payments. We affirm the district court's ruling that Hartford did not breach its fiduciary duty to Dobson by failing to disclose that it had made gratuitous payments of interest on delay...

49. 396 F.3d 136 EMPIRE HEALTHCHOICE ASSUR. v. McVEIGH

Jurisdiction: Second Circuit Decided: 05-15-2004

SOTOMAYOR, Circuit Judge. Empire HealthChoice Assurance, Inc. ("Empire") appeals from a judgment entered in the United States District Court for the Southern District of New York (Cote, J.) dismissing for lack of subject matter jurisdiction Empire's contract action against Denise McVeigh, as administratrix of Joseph McVeigh's estate, for reimbursement of insurance benefits. Because the Federal Employees Health Benefits Act, 5 U.S.C. §§ 8901-8914, does not affirmatively authorize the creation of federal common law in this case, federal common-law rule-making is only appropriate if the operation of state law would " 'significantly] conflict'" with "uniquely federal interests]." *Boyle v. Unite...*

50. 424 F.3d 175 EUROPEAN COMMUNITY v. RJR NABISCO

Jurisdiction: Second Circuit Decided: 01-29-2003

SOTOMAYOR, Circuit Judge. This matter returns to us following a remand by the Supreme Court. See *European Cmty. v. RJR Nabisco, Inc.*, 355 F.3d 123 (2d Cir.2004) ("EC I"), vacated and remanded by *European Cmty. v. RJR Nabisco*, ---- U.S. -----, 125 S.Ct. 1968, 161 L.Ed.2d 845 (2005). Our previous decision held that civil suits brought by foreign sovereigns under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO"), to recover law enforcement costs and tax revenue lost to smuggling are barred by the revenue rule, under which United States courts generally may not interpret and enforce foreign revenue laws. See EC I, 355 F.3d at 127; *Attorney Gen. of Canada* ...

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