

**SUPREME COURT CASES PENDING DURING OCTOBER TERM 2009 WORKED ON BY  
ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER LLP**

**July 23, 2010**

**Granted Cases**

No.	Caption and Status	Attorneys	Description
09-479	<p><i>Kevin Abbott v. United States</i></p> <p>Cert. granted January 25, 2010</p> <p>Petitioner’s brief filed April 30, 2010</p> <p>To be argued October 4, 2010</p>	M. Stancil	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a cert. petition on behalf of Mr. Abbott, which the Court granted on January 25, 2010. We argue that 18 U.S.C. § 924(c) – which requires an additional sentence of at least five years for any person convicted of a drug-trafficking crime or crime of violence who possesses a firearm in furtherance of the crime unless “a greater minimum sentence is * * * provided * * * by any other provision of law” – includes as an “other provision of law” either the underlying drug trafficking offense or crime of violence, or another offense for possessing the same firearm in the same transaction, so that Mr. Abbott’s sentence did not need to be enhanced by an additional five years under Section 924(c). In granting cert., the Court consolidated <i>Abbott</i> with <i>Gould v. United States</i>, No. 09-7073.</p>

No.	Caption and Status	Attorneys	Description
09-893	<p><i>AT&amp;T Mobility LLC v. Vincent Concepcion and Liza Concepcion</i></p> <p>Cert. granted May 24, 2010</p> <p>Amicus brief due August 9, 2010</p>	<p>R. Englert B. Pérez-Daple M. Hiller</p>	<p>We represent the Chamber of Commerce of the United States of America, which participated at the cert. stage and will participate at the merits stage as an amicus supporting petitioner. The question presented is whether the Federal Arbitration Act preempts States from conditioning the enforcement of an arbitration agreement on the availability of particular procedures – here, class-wide arbitration – when those procedures are not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims.</p>
08-876	<p><i>Conrad M. Black et al. v. United States</i></p> <p>Cert. granted May 18, 2009</p> <p>Amicus brief filed August 6, 2009</p> <p>Argued December 8, 2009</p> <p>Vacated and remanded June 24, 2010</p>	<p>L. Robbins D. Walfish</p>	<p>We filed an amicus brief on behalf of the Chamber of Commerce of the United States of America, supporting petitioners’ position that 18 U.S.C. § 1346 does not apply to the conduct of a private individual whose alleged “scheme to defraud” did not contemplate economic or other property harm to the private party to whom honest services were owed. Specifically, we argued that § 1346 is unconstitutionally vague. On June 24, 2010, the Court by a 9-0 vote ruled that the statute would be unconstitutionally vague without a limiting construction, by a 6-3 vote held that a limiting construction rendered the statute not unconstitutionally vague, and ruled that, so construed, the statute rendered the honest-services jury instructions given in Black’s case incorrect.</p>

No.	Caption and Status	Attorneys	Description
08-728	<p><i>Taylor James Bloate v. United States</i></p> <p>Cert. granted April 20, 2009</p> <p>Opening merits brief filed June 18, 2009</p> <p>Reply brief filed September 11, 2009</p> <p>Argued October 6, 2009</p> <p>Reversed and remanded March 8, 2010</p>	<p>M. Stancil B. Pérez-Daple</p>	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we represented Mr. Bloate, who was convicted of various federal drug- and weapons-related offense. The question, which had divided the Circuits, was whether time spent preparing pretrial motions is excludable under the Speedy Trial Act. Mark Stancil argued the case on October 6, 2009. On March 8, 2010, our position prevailed by a 7-2 vote.</p>
08-1423	<p><i>Costco Wholesale Corp. v. Omega, S.A.</i></p> <p>Cert. granted April 19, 2010</p> <p>Petitioner’s brief filed July 2, 2010</p>	<p>R. Englert A. Lavinbuk</p>	<p>The Court granted our cert. petition urging it to overturn a Ninth Circuit decision. Reversing the district court, the Ninth Circuit held that Omega may block Costco from selling its “copyrighted” goods (watches with a small globe on the back, added for the sole purpose of being able to use copyright law to restrict distribution) even though Omega sold the watches in Switzerland and Costco bought them lawfully in the United States. We argue that the first-sale doctrine applies, that Omega exhausted its copyright rights when it sold the watches, and that plain statutory language as well as <i>Quality King Distributors, Inc. v. L’anza Research Int’l, Inc.</i>, 523 U.S. 135 (1998), precludes the result the Ninth Circuit reached.</p>

No.	Caption and Status	Attorneys	Description
09-475	<p><i>Monsanto Co. et al. v. Geertson Seed Farms et al.</i></p> <p>Cert. granted January 15, 2010</p> <p>Respondents' merits brief filed March 29, 2010</p> <p>Argued April 27, 2010</p> <p>Reversed and remanded June 21, 2010</p>	<p>L. Robbins D. Russell A. Untereiner E. Temkin L. Helvin</p>	<p>We represented respondents. Petitioners challenged a nationwide injunction that restricts the further planting of genetically engineered alfalfa, until such time as the government issues an Environmental Impact Statement regarding the proposed deregulation of that crop. We prepared the respondents' brief, and Larry Robbins argued the case in April 2010. On June 21, 2010, the Court by a 7-1 vote reversed the nationwide injunction as overbroad, but the Court's rationale was the our clients' interests were sufficiently protected (as we ourselves argued) by other relief that Monsanto did not challenge.</p>
08-1394	<p><i>Jeffrey K. Skilling v. United States</i></p> <p>Cert. granted October 13, 2009</p> <p>Amicus brief filed December 9, 2009</p> <p>Argued March 1, 2010</p> <p>Affirmed in part, vacated in part, and remanded June 24, 2010</p>	<p>L. Robbins D. Walfish</p>	<p>We filed an amicus brief on behalf of the Chamber of Commerce of the United States of America, supporting petitioners' position that 18 U.S.C. § 1346 either requires the government to prove that the defendant's conduct was intended to achieve "private gain" (rather than to advance the employer's interests), or is unconstitutionally vague. We argued that § 1346 is unconstitutionally vague. On June 24, 2010, the Court by a 9-0 vote ruled that the statute would be unconstitutionally vague without a limiting construction, by a 6-3 vote held that a limiting construction rendered the statute not unconstitutionally vague, and ruled that, so construed, the statute does not cover Skilling's alleged misconduct.</p>

No.	Caption and Status	Attorneys	Description
08-724	<p><i>Keith Smith, Warden v. Frank G. Spisak, Jr.</i></p> <p>Cert. granted February 23, 2009</p> <p>Amicus brief filed August 14, 2009</p> <p>Argued October 13, 2009</p> <p>Reversed January 12, 2010</p>	<p>R. Englert E. Temkin</p>	<p>We represented the authors of manuals and treatises on trial advocacy, and other leading authorities on trial advocacy, as amici curiae supporting respondent. We argued that respondent’s counsel’s argument at the penalty phase of his capital trial – in which counsel presented graphic detail concerning what he called the “aggravating circumstances” of his client’s multiple murders, disclaimed the existence of many “mitigating circumstances,” and offered only a vague discussion of his client’s evidence of diminished capacity to appreciate the wrongfulness of his actions – fell below minimum standards of professional competence. On January 12, 2010, the Court unanimously reversed the judgment below, but it did not reach our argument that counsel’s performance was deficient, instead determining that any deficient performance did not prejudice respondent.</p>

No.	Caption and Status	Attorneys	Description
08-1314	<p data-bbox="275 326 863 391"><i>Delbert Williamson, et al. v. Mazda Motor of America, Inc.</i></p> <p data-bbox="275 440 632 472">Cert. granted May 24, 2010</p> <p data-bbox="275 513 764 545">Amicus brief due September 28, 2010</p>	A. Untereiner	<p data-bbox="1278 326 1986 886">On behalf of the Chamber of Commerce of the United States of America, we will file an amicus brief supporting respondent Mazda. We will argue that a California state court correctly held that plaintiffs' tort claims are preempted by federal law. More specifically, plaintiffs' claims including a wrongful-death claim stemming from a front-end collision are preempted because they conflict with Federal Motor Vehicle Safety Standard 208, which authorizes automobile manufacturers to install either a lap-only seatbelt or lap/shoulder seat belt assembly at a vehicle's inboard seating positions. The Solicitor General, speaking on behalf of the National Highway Traffic Safety Administration, argued at the cert. stage that plaintiffs' claims are not preempted.</p>

## Cert. Petitions, Appeals, And Miscellaneous Matters

No.	Caption and Status	Attorneys	Description
09-479	<p><i>Kevin Abbott v. United States</i></p> <p>Cert. petition filed October 19, 2009, docketed October 22, 2009</p> <p>Reply brief filed December 31, 2009</p> <p>Cert. granted January 25, 2010</p>	M. Stancil	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a cert. petition on behalf of Mr. Abbott. We argued that 18 U.S.C. § 924(c) – which requires an additional sentence of at least five years for any person convicted of a drug-trafficking crime or crime of violence who possesses a firearm in furtherance of the crime unless “a greater minimum sentence is * * * provided * * * by any other provision of law” – includes as an “other provision of law” either the underlying drug trafficking offense or crime of violence, or another offense for possessing the same firearm in the same transaction, so that Mr. Abbott’s sentence did not need to be enhanced by an additional five years under Section 924(c).</p>
09-117	<p><i>Apotex, Inc., and Apotex Corp. v. Sanofi-Synthelabo, et al.</i></p> <p>Cert. petition filed July 24, 2009, docketed July 28, 2009</p> <p>Reply brief filed October 13, 2009</p> <p>Cert. denied November 2, 2009</p>	R. Englert A. Untereiner D. Walfish	<p>We filed a petition for a writ of certiorari arguing that the Federal Circuit should have declared invalid as obvious a patent used to enforce a monopoly on clopidogrel bisulfate, an anti-blood-clotting drug that is used to treat or prevent heart attacks and strokes.</p>

No.	Caption and Status	Attorneys	Description
09-893	<p><i>AT&amp;T Mobility LLC v. Vincent Concepcion and Liza Concepcion</i></p> <p>Cert. petition filed January 25, 2010, docketed January 26, 2010</p> <p>Amicus brief filed February 25, 2010</p> <p>Cert. granted May 24, 2010</p>	<p>R. Englert B. Pérez-Daple</p>	<p>On behalf of the Chamber of Commerce of the United States of America, we have filed an amicus brief in support of the cert. petition in this case. The question presented is whether the Federal Arbitration Act preempts States from conditioning the enforcement of an arbitration agreement on the availability of particular procedures – here, class-wide arbitration – when those procedures are not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims.</p>
08-728	<p><i>Taylor James Bloate v. United States</i></p> <p>Cert. petition filed and docketed December 4, 2008</p> <p>Reply brief filed February 18, 2009</p> <p>Record requested February 23, 2009</p> <p>Cert. granted April 20, 2009</p>	<p>M. Stancil</p>	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a cert. petition on behalf of Mr. Bloate, who was convicted of various federal drug- and weapons-related offense. The question, which had divided the Circuits, was whether time spent preparing pretrial motions is excludable under the Speedy Trial Act.</p>

No.	Caption and Status	Attorneys	Description
09-1476	<i>Borough of Duryea, PA v. Charles J. Guarnieri</i> Cert. petition filed June 2, 2010, docketed June 4, 2010	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we assisted in the preparation of a cert. petition on behalf of the Borough challenging a Third Circuit rule that allows public employees to base retaliation claims under the First Amendment's Petition Clause on petitions that implicate matters of only private concern.

No.	Caption and Status	Attorneys	Description
09-980	<p><i>British American Tobacco (Investments) Ltd. v. United States</i></p> <p>Cert. petition filed February 19, 2010, docketed February 22, 2010</p> <p>Reply brief filed June 8, 2010</p> <p>Cert. denied June 28, 2010</p> <p>Rehearing petition filed July 23, 2010</p>	<p>A. Untereiner  R. Englert  M. Stancil  E. Temkin</p>	<p>We represent petitioner BATCo, which is one of the defendants in the government’s RICO case against the tobacco companies. BATCo’s petition argued that the D.C. Circuit incorrectly held that the traditional presumption against extraterritoriality is completely irrelevant to determining whether Congress intends a statute to reach the wholly foreign conduct of a foreign corporation, if such foreign conduct is alleged to have had a direct and substantial effect within the United States. The petition also argued that the D.C. Circuit, in concluding that RICO regulates BATCo’s wholly foreign conduct, improperly (a) ignored the presumption against extraterritoriality and affirmative evidence that Congress never intended RICO to apply extraterritorially; (b) borrowed from federal securities and antitrust cases the ill-suited “effects” test as a measure of RICO’s extraterritorial reach; (c) approved a watered-down version of that test that conflicts with the test used by other circuits; and (d) relied on the U.S. “effects” of the U.S. conduct of other co-defendants and of the “overall” alleged RICO scheme. BATCo’s rehearing petition, filed July 23, 2010, asks the Court to grant rehearing, grant certiorari, vacate the judgment below, and remand for further consideration in light of <i>Morrison v. National Australia Bank Ltd.</i>, No. 08-1191 (June 24, 2010).</p>

No.	Caption and Status	Attorneys	Description
08-1375	<p><i>Cassens Transport Co., et al. v. Paul Brown, et al.</i></p> <p>Cert. petition filed May 6, 2009, docketed May 7, 2009</p> <p>Motion for leave to file amicus brief (with accompanying brief) filed June 8, 2009</p> <p>Response requested September 2, 2009, filed November 2, 2009</p> <p>Motion for leave to file granted and cert. denied December 7, 2009</p>	A. Untereiner	<p>We were retained by the American Trucking Associations, Inc. to file an amicus brief in support of the petition in this case, which raised questions concerning the effect of the McCarran-Ferguson Act's anti-preemption provision on RICO actions that challenge the denial of worker's compensation claims under state law.</p>

No.	Caption and Status	Attorneys	Description
08-1283	<p><i>Choose Life Illinois, Inc., et al. v. Jesse White, Secretary of State of the State of Illinois</i></p> <p>Cert. petition filed April 16, 2009, docketed April 17, 2009</p> <p>Brief in opposition filed July 31, 2009</p> <p>Reply brief filed August 13, 2009</p> <p>Cert. denied October 5, 2009</p>	<p>A. Untereiner R. Englert D. Taaffe J. Windom</p>	<p>We represented 15 individuals and a non-profit organization in this lawsuit against the State of Illinois arising out of the State's refusal to issue a "Choose Life" speciality license plate. The district court held that the refusal was viewpoint discrimination in violation of the First Amendment and granted summary judgment in our favor. The Seventh Circuit reversed. The cert. petition raised issues concerning the Seventh Circuit's determinations that the denial of the plate was content rather than viewpoint discrimination, that speciality plates are a nonpublic forum rather than a limited public forum, and that Illinois's denial of the plate passed muster under the rules governing non-public fora. The petition also raised an issue relating to the Seventh Circuit's rejection of our clients' facial challenge to the licensing scheme as completely standardless.</p>
09-314	<p><i>City of Virginia Beach v. Tanner</i></p> <p>Brief in opposition filed December 14, 2009</p> <p>Cert. denied January 19, 2010</p>	<p>M. Stancil</p>	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a brief in opposition to this certiorari petition. The petition sought review of a decision of the Supreme Court of Virginia striking down a city anti-noise ordinance as unconstitutionally vague.</p>

No.	Caption and Status	Attorneys	Description
08-1423	<p><i>Costco Wholesale Corp. v. Omega, S.A.</i></p> <p>Cert. petition filed and docketed May 18, 2009</p> <p>Brief in opposition filed July 17, 2009</p> <p>Reply brief filed July 28, 2009</p> <p>Supplemental brief filed September 28, 2009</p> <p>Views of Solicitor General invited October 5, 2009</p> <p>SG brief recommending denial filed March 17, 2010</p> <p>Supplemental brief in response to SG's brief filed March 29, 2010</p> <p>Cert. granted April 19, 2010</p>	<p>R. Englert A. Lavinbuk</p>	<p>We filed a petition for a writ of certiorari urging the Court to review, and overturn, a Ninth Circuit decision. Reversing the district court, the Ninth Circuit held that Omega may block Costco from selling its "copyrighted" goods (watches with a small globe on the back, added for the sole purpose of being able to use copyright law to restrict distribution) even though Omega sold the watches in Switzerland and Costco bought them lawfully in the United States. We argue that the first-sale doctrine applies, that Omega exhausted its copyright rights when it sold the watches, and that plain statutory language as well as <i>Quality King Distributors, Inc. v. L'anza Research Int'l, Inc.</i>, 523 U.S. 135 (1998), precludes the result the Ninth Circuit reached.</p>

No.	Caption and Status	Attorneys	Description
09-631	<p><i>Elisa Encarnacion on behalf of Arlene George, et al. v. Michael J. Astrue, Commissioner of Social Security</i></p> <p>Cert. petition filed November 24, 2009, docketed December 2, 2009</p> <p>Reply brief filed March 16, 2010</p> <p>Cert. denied April 5, 2010</p>	<p>R. Englert D. Walfish</p>	<p>Along with lead counsel at Kramer Levin and disability-rights organizations, we represented the parents of poor children who, we contended, would be considered disabled and eligible for Social Security benefits but for an illegal policy of the Social Security Administration. We contended that the Second Circuit's decision below, upholding the policy, is contrary to a prior decision of the same court and to <i>Sullivan v. Zebley</i>, 493 U.S. 521 (1990).</p>
09-1499	<p><i>Feesers, Inc. v. Michael Foods, Inc., and Sodexo, Inc.</i></p> <p>Cert. petition filed June 2, 2010, docketed June 9, 2010</p> <p>Brief in opposition due August 9, 2010</p>	<p>R. Englert</p>	<p>We represent respondent Michael Foods in this Robinson-Patman Act case. Petitioner contends that the Third Circuit erred in holding that, as a matter of law, the favored and disfavored purchasers of Michael Foods' products were not in competition with each other.</p>

No.	Caption and Status	Attorneys	Description
09-1183	<p><i>Little Rock Cardiology Clinic, P.A. v. Baptist Health, et al.</i></p> <p>Cert. petition filed March 29, 2010, docketed March 31, 2010</p> <p>Brief in opposition filed June 1, 2010</p> <p>Cert. denied June 28, 2010</p>	<p>R. Englert D. Russell</p>	<p>Along with lead counsel at Ober Kaler, we represented respondent Baptist Health in this antitrust case. The petition asked the Court to review the Eighth Circuit's holding that a complaint was properly dismissed for failure to allege either a proper product market or a proper geographic market.</p>
09-5844	<p><i>Tarry Cordell London v. United States</i></p> <p>Cert. petition filed and docketed August 11, 2009</p> <p>Reply brief filed November 24, 2009</p>	<p>M. Stancil</p>	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we have filed a reply brief on behalf of Mr. London, who petitioned for certiorari <i>pro se</i>. The <i>London</i> case raises the same issues as the <i>Abbott</i> case discussed above, and presumably is now being held pending disposition of <i>Abbott</i>, which was granted January 25, 2010.</p>

No.	Caption and Status	Attorneys	Description
09-490	<p><i>Mayo Collaborative Services (d/b/a Mayo Medical Laboratories) and Mayo Clinic Rochester v. Prometheus Laboratories, Inc.</i></p> <p>Cert. petition filed October 22, 2009, docketed October 26, 2009</p> <p>Amicus brief filed November 25, 2009</p> <p>Cert. granted, judgment vacated, and case remanded for further consideration in light of <i>Bilski v. Kappos</i>, No. 08-964 (June 28, 2010), on June 29, 2010</p>	R. Englert D. Walfish	We represent clinical laboratories that filed an amicus brief supporting petitioners. The question presented is whether 35 U.S.C. § 101 is satisfied by a patent claim that covers observed correlations between patient test results and patient health, so that the claim effectively preempts all uses of those naturally occurring correlations.
08-1482	<p><i>Tommy Zeke Mincey v. United States</i></p> <p>Cert. petition filed May 21, 2009, docketed June 2, 2009</p> <p>Brief in opposition filed September 2, 2009</p> <p>Reply brief filed September 15, 2009</p> <p>Cert. denied October 13, 2009</p>	M. Stancil	In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a petition for a writ of certiorari on behalf of Mr. Mincey raising the question whether Mincey had a reasonable expectation of privacy in his girlfriend's rental car, which he was driving with her permission but in alleged violation of the rental agreement. Our co-counsel on the case was Matthew R. Segal, Assistant Federal Defender in the Western District of North Carolina.

No.	Caption and Status	Attorneys	Description
08-1172	<p><i>Joseph P. Nacchio v. United States</i></p> <p>Cert. petition filed March 20, 2009, docketed March 23, 2009</p> <p>Amicus brief filed April 22, 2009</p> <p>Cert. denied October 5, 2009</p>	<p>L. Robbins G. Orseck M. Stancil</p>	<p>On behalf of the Chamber of Commerce of the United States of America, we filed an amicus brief in support of this cert. petition, which challenged the criminal insider-trading convictions of the former CEO of Qwest Communications. We argued that the en banc Tenth Circuit misapplied materiality standards to forward-looking internal corporate risk assessments when it upheld Nacchio's convictions.</p>
08-1453	<p><i>Tommy Ray Rollins, Jr. v. United States</i></p> <p>Cert. petition filed May 21, 2009, docketed May 26, 2009</p> <p>Waiver of right to respond filed June 2, 2009</p> <p>Response requested by Court June 16, 2009</p> <p>Brief in opposition filed September 16, 2009</p> <p>Reply brief filed September 29, 2009</p> <p>Cert. denied October 20, 2009</p>	<p>M. Stancil</p>	<p>In conjunction with the University of Virginia Supreme Court Litigation Clinic, we filed a petition for a writ of certiorari on behalf of Mr. Rollins. The question presented was whether a federal district court may order a federal sentence to be served consecutively to a not-yet-imposed state sentence arising from common events.</p>

No.	Caption and Status	Attorneys	Description
09-1353	<p data-bbox="275 326 804 394"><i>Iron Thunderhorse v. Bill Pierce, Dir. of Chaplaincy Services, et al.</i></p> <p data-bbox="275 440 909 508">Cert. petition filed May 4, 2010, docketed May 7, 2010</p> <p data-bbox="275 553 753 586">Brief in opposition filed June 7, 2010</p> <p data-bbox="275 631 674 664">Reply brief filed June 11, 2010</p>	M. Stancil	<p data-bbox="1291 326 1974 959">In conjunction with the University of Virginia Supreme Court Litigation Clinic, we have filed a cert. petition on behalf of Mr. Thunderhorse challenging the treatment by the Texas Department of Criminal Justice of inmates seeking religious accommodation of their long hair. The question presented is: Did the Fifth Circuit misinterpret the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc <i>et seq.</i>, to require only a minimal showing that a prison rule against long hair was the least restrictive means of furthering a compelling government interest, contrary to the decisions of other circuits and contrary to undisputed evidence that the rule does not apply at all to female prisoners, is not followed in many prisons across the country, and is not uniformly enforced within the prison system itself?</p>

No.	Caption and Status	Attorneys	Description
09-978 and 09-994	<p><i>United States v. Philip Morris USA, Inc., et al.</i></p> <p>Cert. petition filed and docketed February 19, 2010</p> <p><i>Tobacco-Free Kids Action Fund, et al. v. Philip Morris USA, Inc., et al.</i></p> <p>Cert. petition filed February 19, 2010, docketed February 23, 2010</p> <p>Brief in opposition filed May 25, 2010</p> <p>Cert. denied June 28, 2010</p>	A. Untereiner R. Englert M. Stancil	We represented respondent BATCo. The government argued that RICO provides for the remedy of disgorgement and seeks some \$280 billion from respondent tobacco companies. The government's previous petition for certiorari on this issue was denied in 2005, but the government apparently contends that the denial of cert. when the case was in an interlocutory posture does not preclude another attempt. A private petition also raises additional issues concerning other remedies the D.C. Circuit did not order, and (as noted in part above) our client BATCo and the other defendants have also petitioned on liability issues.
09-196	<p><i>Joseph P. Ward v. International Union of Operating Engineers, Local 150, AFL-CIO</i></p> <p>Petition for a writ of certiorari filed and docketed August 14, 2009</p> <p>Brief in opposition filed September 4, 2009</p> <p>Reply brief filed September 15, 2009</p> <p>Cert. denied October 13, 2009</p>	L. Robbins M. Madden	We represented Mr. Ward, a union official sued by his union in federal court for an alleged breach of fiduciary duty under the Labor-Management Reporting and Disclosure Act (LMRDA). The question presented was whether Section 501 of the LMRDA provides an implied cause of action for labor organizations in addition to the express cause of action it provides union members. The Seventh Circuit reversed the district court and held that it does, contrary to the Ninth Circuit's position but in agreement with the Eleventh Circuit's.

No.	Caption and Status	Attorneys	Description
08-7757	<p><i>Darian Antwan Watts v. United States</i></p> <p>Cert. petition filed February 13, 2008, docketed December 15, 2008</p> <p>Reply brief filed May 19, 2009</p> <p>Supplemental brief of petitioner filed (in response to supplemental brief of the United States) December 8, 2009</p> <p>Petition granted, judgment vacated, and case remanded for further consideration “in light of the position asserted by the Solicitor General” January 19, 2010.</p>	<p>G. Poe R. Li Wai Suen M. Madden</p>	<p>Mr. Watts filed a <i>pro se</i> cert. petition, but we represented him for purposes of filing a reply to the government’s brief in opposition. Mr. Watts was convicted in a gun case and sentenced to a 15-year mandatory minimum sentence under the Armed Career Criminal Act (ACCA). ACCA provides for a mandatory minimum sentence in certain cases if the defendant has three qualifying prior convictions. One of Mr. Watts’s prior convictions is for carrying a concealed weapon. The questions presented were (1) whether such a conviction is a qualifying “violent felony” within the meaning of ACCA (the Eleventh Circuit having said yes, the Sixth and Eighth Circuits say no) and, (2) given the Government’s confession of error on the ACCA question, does a sentence greater than the statutory maximum amounts to a denial of due process sufficient to allow a certificate of appealability to issue (the Eleventh Circuit has recently held that it does not).</p>