

## LexisNexis Appeals Data Review (Data Received March 13, 2019)

### Issues Requiring Response from LexisNexis

#### Duke University, University of Michigan Appeals Project

- Decrease in case incidence through study period
  - The total number of cases in the data for 1996 was 44,659. Between 1996 and 2004, the data have a fairly steadily decreasing number of cases, to a low of 27,379 in 2004. The LN client on the Web has similar numbers. The decrease seems to be associated with occurrence of cases that have no classification (neither civil nor criminal). A review of caseload data for those years on the Administrative Office of the US Courts website indicates that there was no decrease in case load at either the district court or the appellate court level during this time period. The Westlaw database indicates no decrease, either.
  - Questions
    - \* What causes a case to be without classification (civil or criminal)?
    - \* Was there a change in the type of cases included in the United States Courts of Appeals database that started to take effect around 1996?
    - \* Are there separate databases (for example, Bankruptcy Courts or Court of Appeals for Veterans Claims) that were created around this time that include cases that were formerly included within the United States Courts of Appeals database?
  - Figures 1 and 2 show the distribution of cases in the supplied data by case type, court, and year.
- Panel size
  - Figures 3 and 4 show the distribution of cases by panel size in aggregate and by court. A problem of empty panel (zero judges) and two judge panels is clearly visible. Example cases with missing panel are:
    - \* 3XNJ-6V30-0038-X1MH-00000-00, Wilder v. United States, 182 F.3d 934, 1999-04-29
    - \* 3S4X-D540-003B-5011-00000-00, Carter v. Lack, 869 F.2d 1489, 1989-02-13
    - \* 3S4X-3S60-003B-G10W-00000-00, Silverman v. Hannah Inland Waterways, 671 F.2d 1376, 1982-03-04
    - \* 3S4X-2NB0-001B-K4DV-00000-00, U.S. v. Bridger, 845 F.2d 1027, 1988-02-22
    - \* 3S4X-BT70-003B-P36H-00000-00, Saephanh v. Shalala, 9 F.3d 1553, 1993-10-28
    - \* 3S4X-38D0-003B-P171-00000-00, Cooley v. Whitley, 35 F.3d 560, 1994-08-25
    - \* 4G0T-GYC0-0038-X427-00000-00, Drain v. Rumsfeld, 126 Fed. Appx. 463, 2004-12-14
    - \* 3S4X-4C00-008H-V500-00000-00, UNITED STATES v. RHYMES, 960 F.2d 153, 1992-04-16
    - \* 3S4X-FY40-001T-D4P0-00000-00, Levy v. Lerner, 52 F.3d 312, 1995-03-31
    - \* 3S4X-5XK0-008H-V329-00000-00, United States v. Brown, 953 F.2d 640, 1992-02-03
    - \* 4J3X-M570-TVSH-535T-00000-00, Mogyorossy v. Dep't of the Air Force, 161 Fed. Appx. 956, 2006-01-12
  - An attempt was made to identify, for each case record with missing panel, a separate case record for the same case, but one with a panel. To accomplish this, the reporter was removed from case titles, all title text was converted to lower case, and abbreviations were standardized (“u.s.” to “united states”, “co.” to “company”, etc.). 38% of cases with missing panel were found to be duplicated by a case record with panel.

- Following are examples, from the 9th Circuit on 5-13-1988, of apparent duplicate cases, each pair having one record with and one without a panel
  - \* Friedman v. United States (1988 U.S. App. LEXIS 22018, with panel; 1988 U.S. App. LEXIS 6749, no panel)
  - \* United States v. Crabtree (1988 U.S. App. LEXIS 22076, with panel; United States v. Crabtree, 846 F.2d 1383, no panel)
- Figure 5 plots the distribution (count) of cases with no panel in the LN data, by court and year. The solid line represents all cases that have no panel. The dashed line is limited to cases with no panel, but with a matching case (court, date, title) that does have a panel. In addition to the appearance of spikes by court and year, many non-panel cases for court IDs 1, 4, 8, and 10 appear to have matching cases with a panel. Court IDs and names appear in table 1.
- Figure 6 plots cases with missing panel as a proportion of total cases by court and year. The similarity of total missing panel and duplicated with panel lines for court IDs 1, 4, 8, and 10 is seen here as in figure 5. For all courts, the proportion of cases with no panel, but duplicated with panel, is near zero prior to approximately 1990.
- Cases with difference in panel size when compared to LN on-line or Westlaw
- A random sample of two hundred cases was examined for panel size. Many cases occurring with a panel of size other than three are reported on-line as having a three judge panel. Following are examples
  - \* Missing judges
    - 1975; 3S4X-3RD0-0039-M292-00000-00 Wolf v. Jane Phillips Episcopal-Memorial Medical Center (Only Seth appears in the data, missing Judge Lewis and McWilliams)
    - 1991; 3S4X-BPJ0-008H-V351-00000-00 Love v. Love (Only Brorby appears in the data, missing Judge Anderson and Tacha)
    - 1979; 3S4W-WJ90-0039-M01F-00000-00 St. Regis Paper Co. v. Marshall (Only Seth appears in the data, missing Judge Lewis and McWilliams)
    - 1998; 3S3D-VVD0-0038-X18P-00000-00 Brown v. Gome (Only Leavy and Canby appear, missing Pregerson)
    - 1990; 3S4X-1NY0-003B-51X8-00000-00 Pledger v. Frank (Only Russell and Butzner appear, missing Phillips)
    - The list goes on. For the majority of these cases, it seems that missing judges do not have hyperlinks.
- One hundred and ten cases of one hundred and fifteen sampled, having two judge panels in the data, were found to have three in on-line references.
- Redundant judges
  - \* Judge of different court level included in the panel
    - 1987; 3S4X-BKC0-001B-K27G-00000-00 Richard A. Plehn, Inc. v. Gould (Hilton and Merhige, district court judges prior to appeal, included in the panel in addition to the three judges)
    - 1988; 3S4W-YDM0-001B-K27K-00000-00 MARTIN v. UNITED STATES (Scalia, the Supreme court judge, is included in the panel when Scalia appears in the opinion text as reference)
  - \* One judge counted multiple times
    - 1989; 3S4X-C640-003B-555C-00000-00 Vaccaro v. Stephens (Herbert Y.C. Choy appears twice as Herbert Y.C. Choy and Herbert Young Cho Choy)
  - \* One judge leads to multiple judges with the same last name
    - 1985; 3S4X-JKR0-0039-P50D-00000-00 Weems v. Ball Metal & Chemical Div., Inc. (Bailey Brown and Jones Brown both included in the panel. Only Brown shows up in LN search result. The hyperlink to Brown leads to Bailey Brown, suggesting that Jones Brown may be added by mistake)

- Observations
  - \* The first and last names of judges appear in the supplied data while, typically, only the last name appears in LN on-line hyperlinks
  - \* Judges who are missing in panels tend to have missing hyperlinks on-line
  - \* District court judges tend to appear in panels
  - \* Panels may repeat a single judge
  - \* A judge may appear in a panel reported within the supplied data, but does not appear in the on-line record of the panel
- Comment: Perhaps LexisNexis created panels in the supplied dataset by using the last name of judges as reported in their web data and matching them to a judge database for more information, such as complete names. This would explain why judges without on-line hyperlinks are missing in dataset panels, since they are likely to have not been linked to their judge database. It would also explain why judges of different court level (either in the prior history or opinion sections) appear in panels. However, it does not explain how a judge with hyperlink leads to two different judges (e.g. in one of the cases, searching for “Brown” results in two judges in the data - Bailey Brown and Jones Brown, while the “Brown” hyperlink is linked to Bailey Brown). Perhaps LN’s method of establishing the names of judges in panels and identifying exact records within their judge database results in selection of multiple judges, leading to four judge panels, when the correct number is three.
- Missing legal topics. Over 600,000 cases have no legal topics. Table 2 contains a random sample of 100 cases from those that are missing legal topics.
- Legal topic definitions. LN is conducting a review of our request to provide complete text of legal topics.
- Missing Shepard’s treatments (examples)
  - Case: 3S4X-64W0-001B-K0KB-00000-00; Bouchillon v. Collins, 907 F.2d 589  
Citation: LN client lists two “criticizing” cases that do not appear in the data (Phillips v. Lane, 787 F.2d 208 and Brown v. Warden, Great Meadow Correctional Facility, 682 F.2d 348).
  - Case: 3S4X-JWW0-003B-H2GP-00000-00; Exxon Co. v. Sofec, Inc., 54 F.3d 570  
Citation: LN Client lists Grace Line, Inc. v. Todd Shipyards Corp., 500 F.2d 361, 366 (9th Cir. 1974) as “distinguished,” which seems correct, but is not included in the data.
  - Case: 3S4X-6TM0-0039-N3J9-00000-00; United States v. Nunez-Aguilar, 1998 U.S. App. LEXIS 8537  
Citation: LN client shows United States v. Medina-Gasca, 739 F.2d 1451, 1454 (9th Cir. 1984), as criticized, but is not included in the data.
- Obsolete treatment codes. Several treatment codes used in citations within the supplied data are labeled as “obsolete” in the supplied treatment definition table. The are &qab, &qabp, \*c, \*d, \*e, \*f, \*o, \*q, ab, abp, cf, Ltd, mi, pd, pg, qab, qabp, qr, qv, qw. For each “qr” and “qv” citation, a corresponding “q” citation was searched for as a possible replacement. None were found. Should citations with “obsolete” treatments be ignored?
- Authoring judge IDs. IDs for authoring (opinion, concurring, and dissenting) judges are required. Note that a similar request was made for panel judges, and they were supplied.
- Missing court. Forty cases are missing a court identifier (they follow). The court for each can be determined using LN on-line, indicating that LN possesses this information and that there exists some flaw in the query that generated the supplied data. Ideally, the error would be corrected, as opposed to our backfilling from data they possess. Often, missing data are merely a symptom of flawed query logic and correction of the logic may resolve not only the apparent error, but also others that remain, lurking, to be identified later.

3S4X-BYM0-001B-K3HW-00000-00  
 5RK7-J161-DYFH-X0W8-00000-00  
 5NMN-RCM1-DYTB-X1V5-00000-00  
 5NMN-RDC1-JCB9-61DX-00000-00  
 3S4W-WSK0-0039-M0TG-00000-00  
 5NMN-RGW1-DYTB-X1VV-00000-00  
 5NMN-RCY1-DYTB-X1VF-00000-00  
 5NYK-PXX1-DYTB-X4XM-00000-00  
 5NMN-RDF1-JCB9-61F0-00000-00  
 5NMN-RCT1-DYTB-X1V9-00000-00  
 5RJ8-3DP1-F04K-S2GK-00000-00  
 3S12-VYB0-0038-X3BN-00000-00  
 5NMN-RDR1-JCB9-61F4-00000-00  
 5NYK-PY01-DYTB-X4XR-00000-00  
 3S4X-6M00-008H-V0GV-00000-00  
 5NMN-RDN1-JCB9-61F1-00000-00  
 5NMN-RJ41-JCB9-61GJ-00000-00  
 3S4X-5JR0-003B-50T8-00000-00  
 5NMN-RFF1-DYTB-X1VK-00000-00  
 5NMN-RD71-JCB9-61DG-00000-00  
 3RV5-KSB0-003B-50M4-00000-00  
 3S4X-0650-0039-W4RT-00000-00  
 5NMN-RH41-JCB9-61G4-00000-00  
 3S4W-T920-0039-M08N-00000-00  
 5NMN-RD91-JCB9-61DP-00000-00  
 3S4X-C0G0-001T-D46N-00000-00  
 5NMN-RCT1-DYTB-X1VC-00000-00  
 5NMN-RJ11-JCB9-61GD-00000-00  
 3S4X-1PS0-001B-K1XV-00000-00  
 5NMN-RD81-JCB9-61DM-00000-00  
 5NRR-WCV1-F04K-W0B6-00000-00  
 4F7Y-YXX0-TVRV-K31B-00000-00  
 3RHM-PKM0-0038-X3K4-00000-00  
 4KND-FMG0-TVRV-K3DG-00000-00  
 5NYK-PXX1-DYTB-X4XP-00000-00  
 4G24-T8Y0-TVRV-K2NF-00000-00  
 3S4X-6M00-008H-V0GW-00000-00  
 3S4X-CSF0-003B-5370-00000-00  
 3RV5-KP00-008H-V07P-00000-00  
 5NYK-PX51-DYTB-X4WP-00000-00  
 5NMN-RH11-JCB9-61FX-00000-00

- Judge names. Twenty judges are missing a name (they follow). Although none appear in panels at present, they may appear once the missing panel issue is resolved. Also, as stated, missing data can be caused by flaws in query logic. Ideally, the root cause of apparent data errors should be corrected.

urn:entity:jud-500000312  
 urn:entity:jud-500000557  
 urn:entity:jud-500000563  
 urn:entity:jud-500000660  
 urn:entity:jud-500000860  
 urn:entity:jud-500000946  
 urn:entity:jud-500002100

urn:entity:jud-500002286  
urn:entity:jud-500002313  
urn:entity:jud-500002359  
urn:entity:jud-500002376  
urn:entity:jud-500002486  
urn:entity:jud-500002575  
urn:entity:jud-500002595  
urn:entity:jud-500002615  
urn:entity:jud-500002937  
urn:entity:jud-500003017

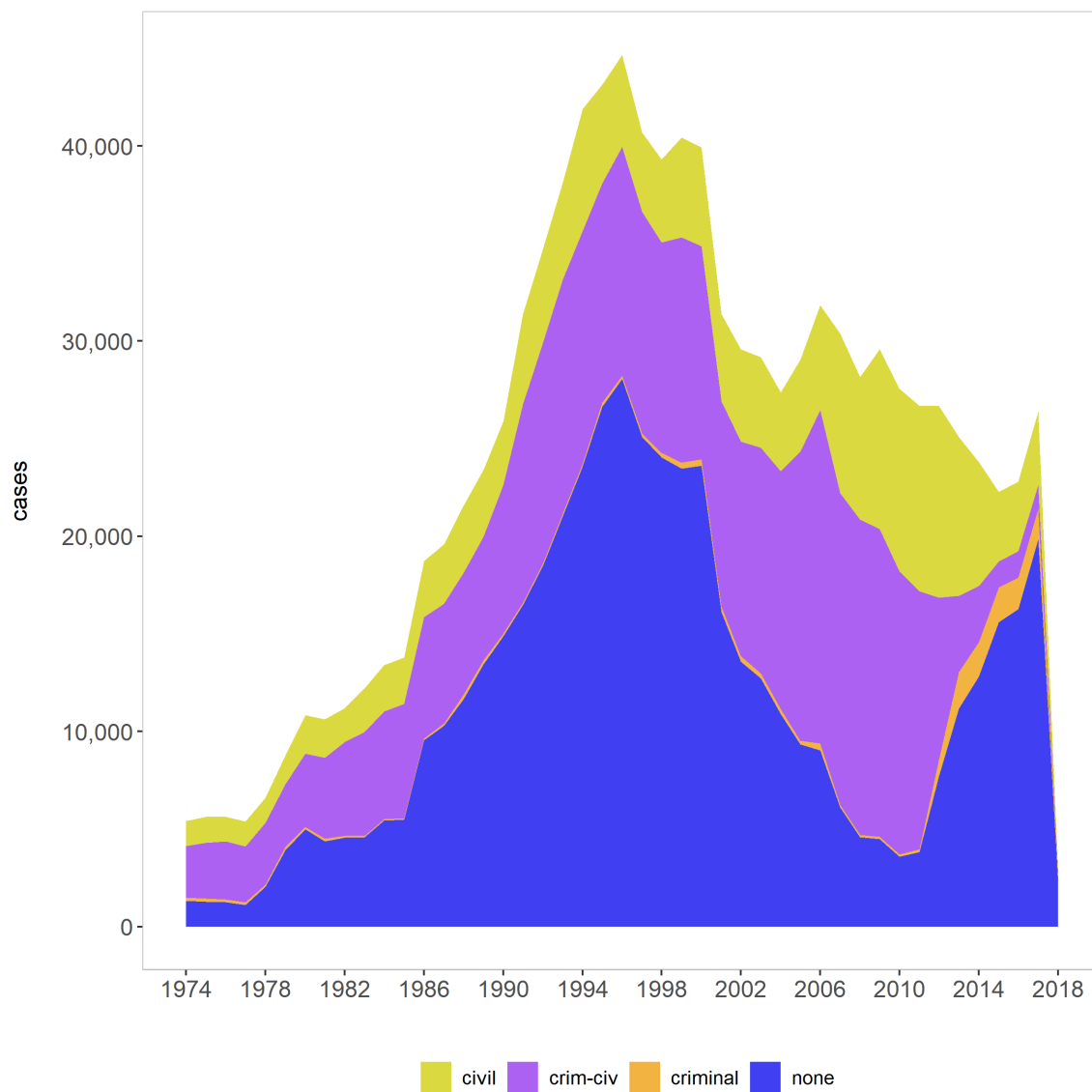


Figure 1: Stacked distribution of cases by year and type

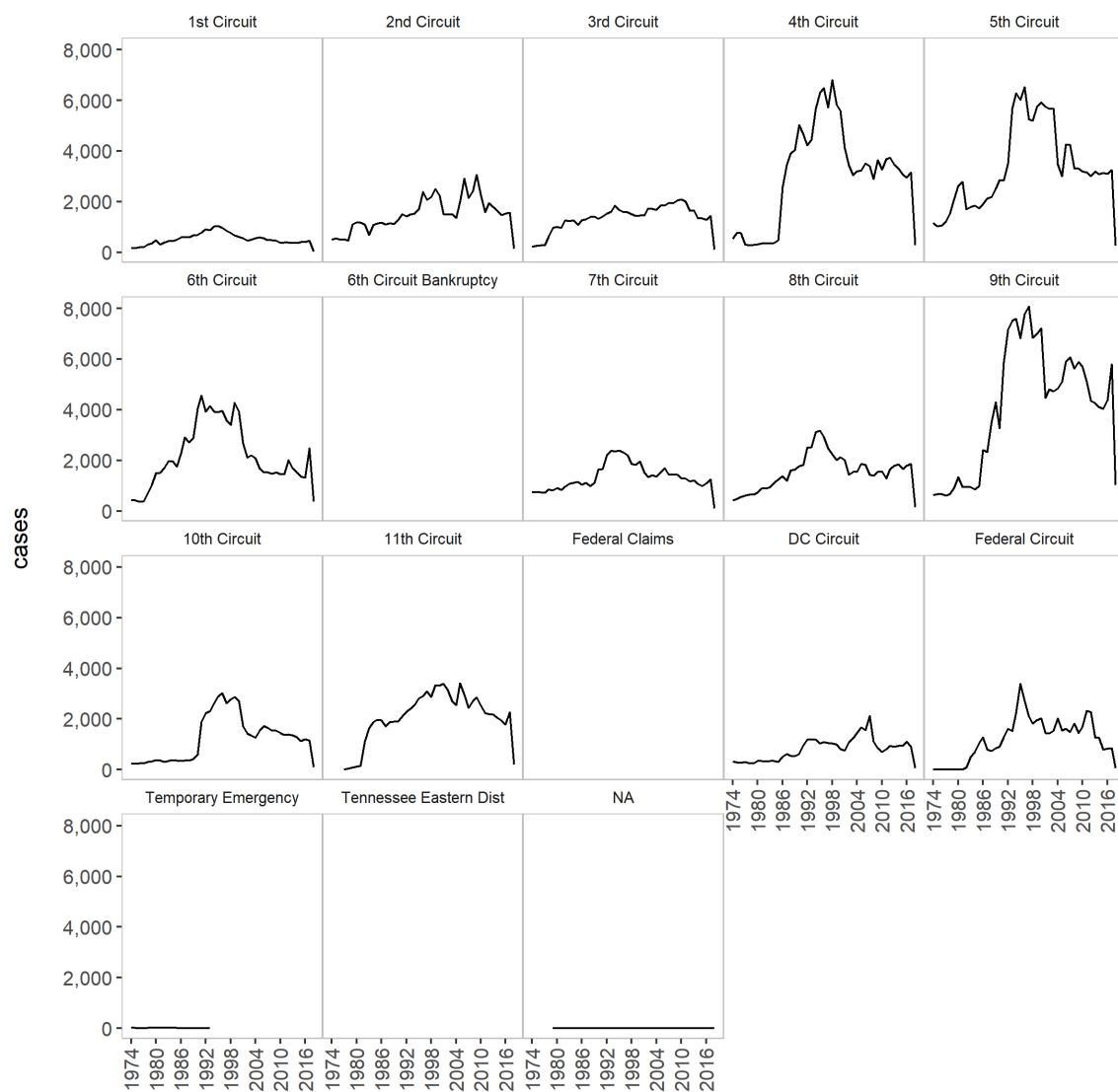


Figure 2: Cases by court and year

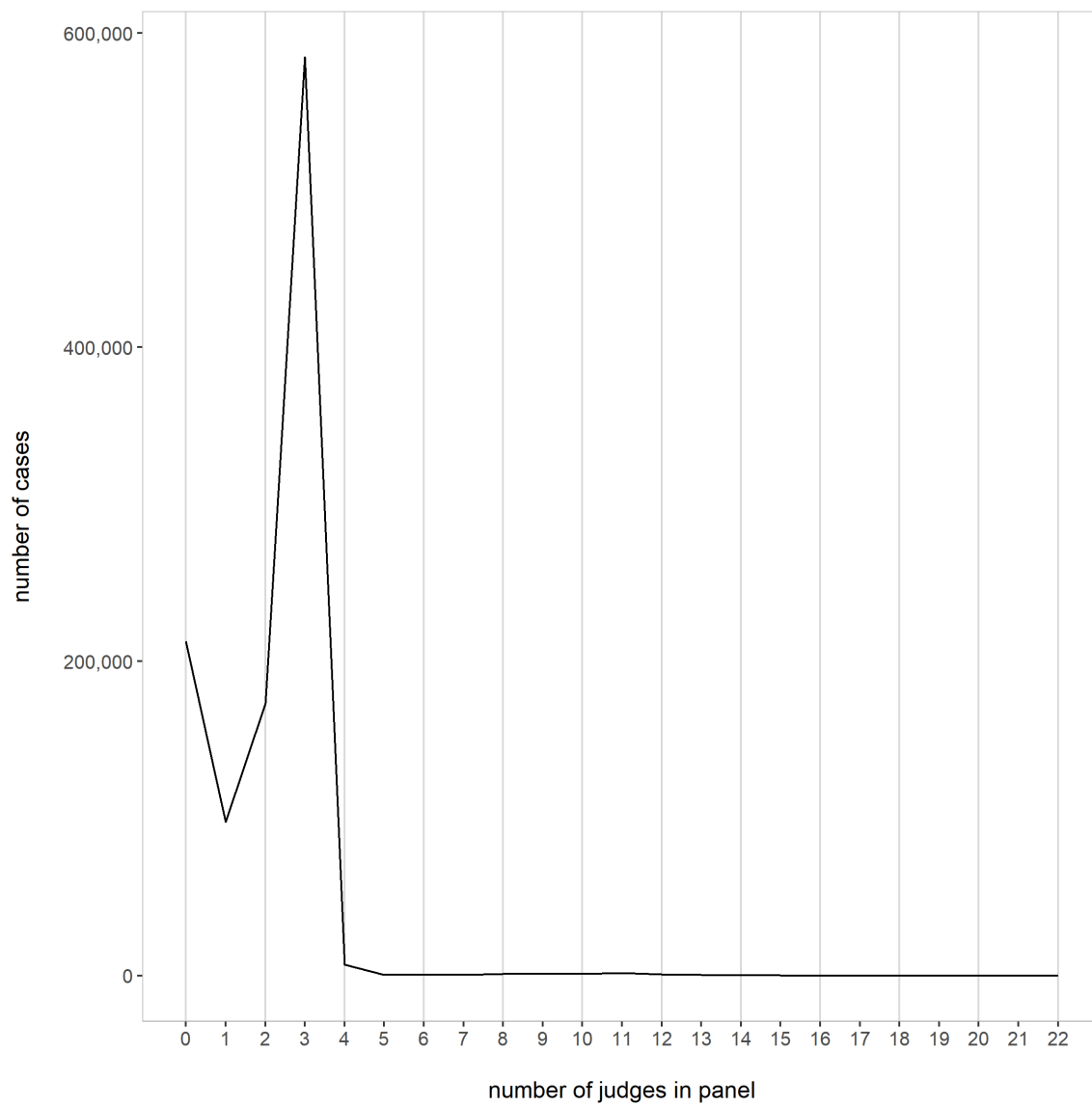


Figure 3: Distribution of cases by panel size



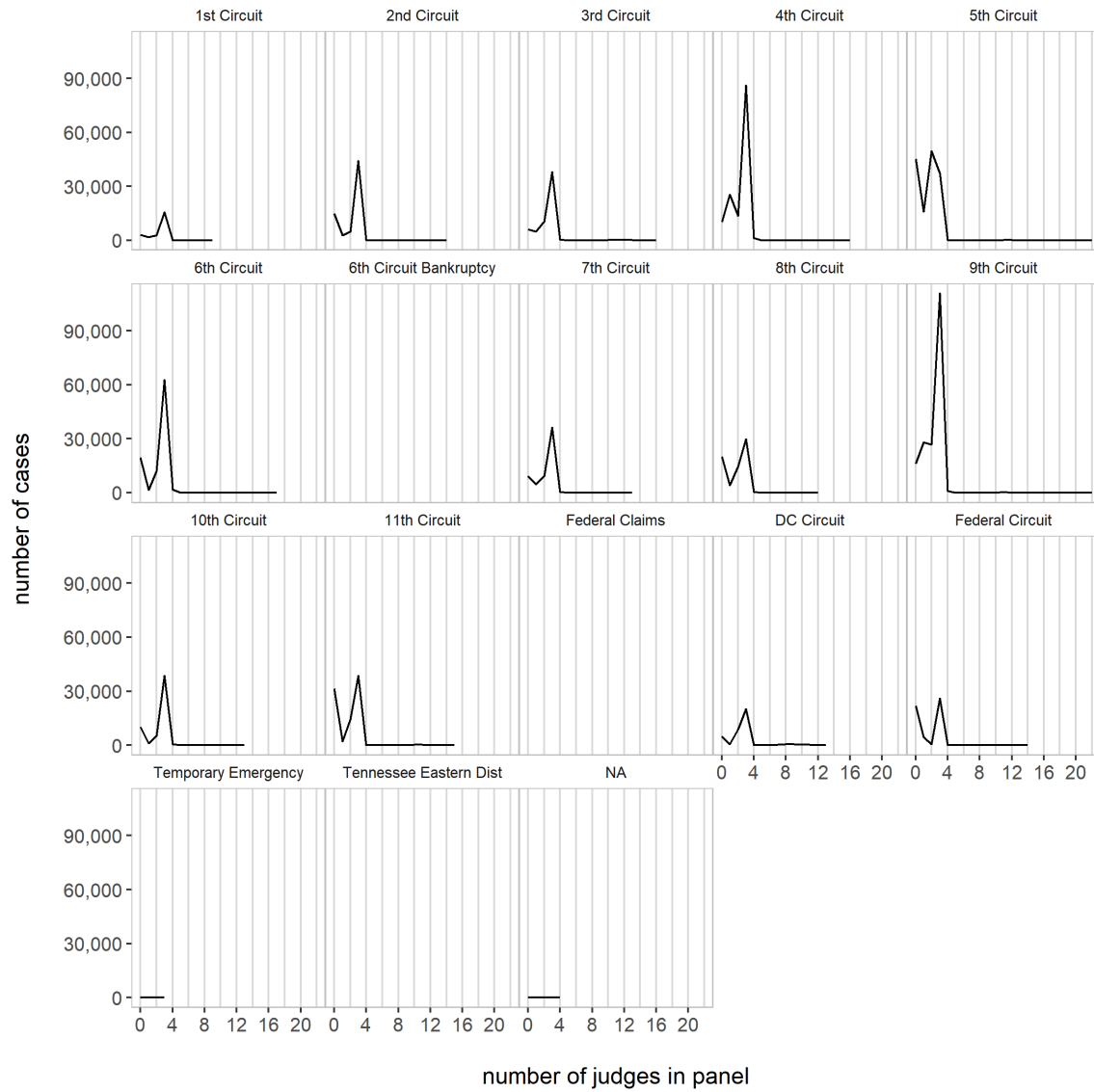


Figure 4: Distribution of panel size by court

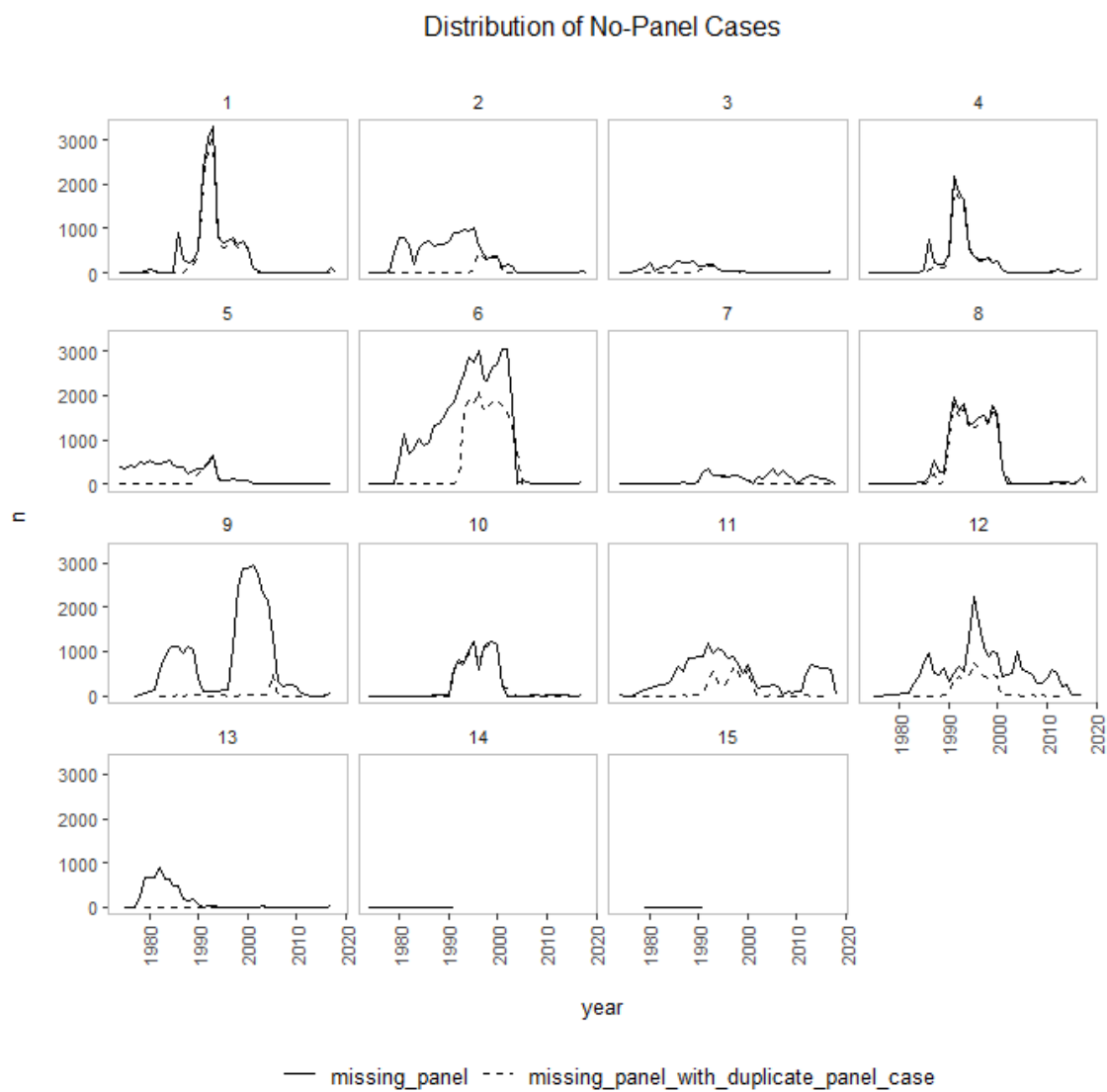


Figure 5: Frequency distribution of cases with missing panel, by court and year

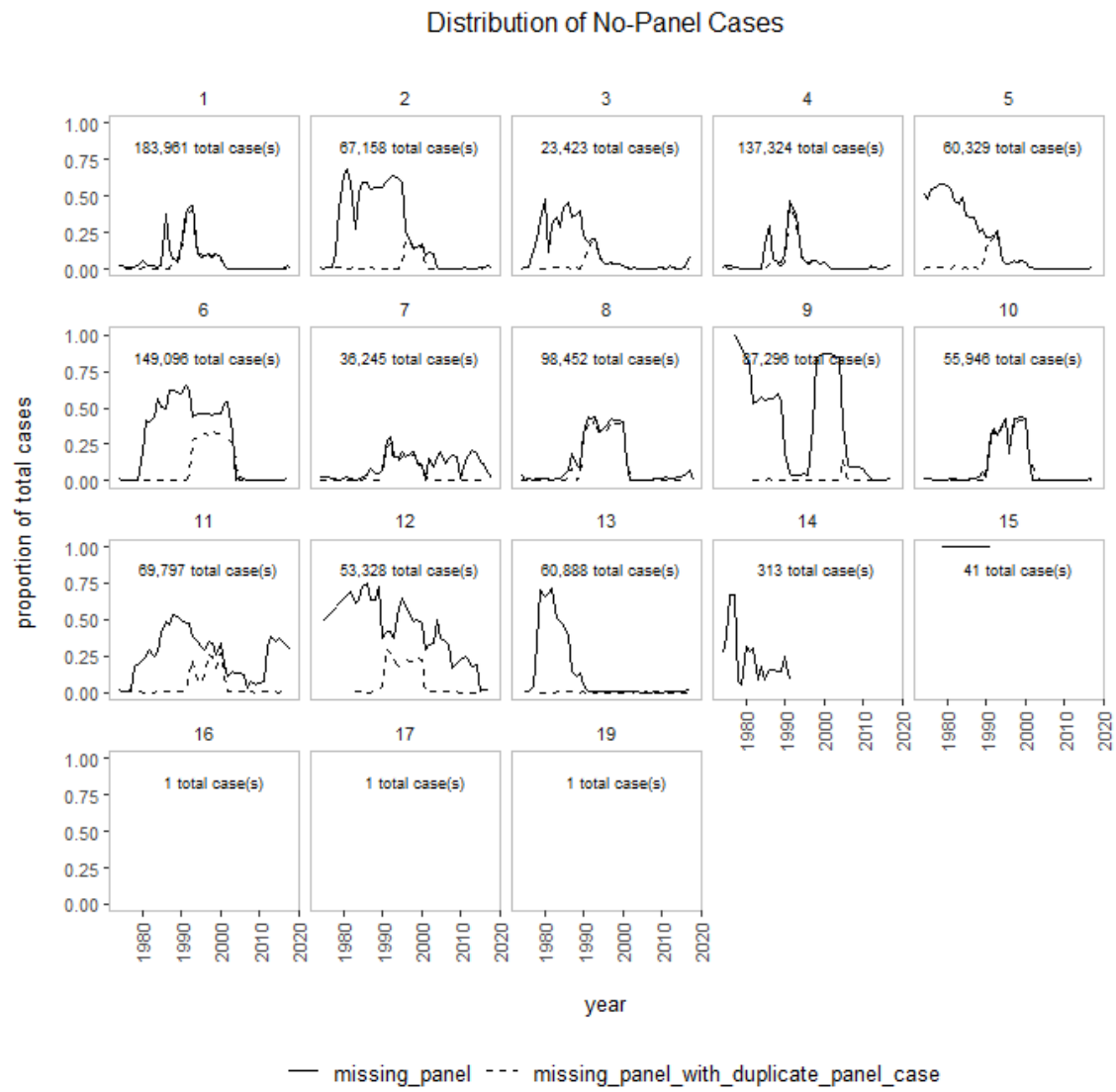


Figure 6: Proportion distribution of cases with missing panel, by court and year

Table 1: Court IDs for figures 5 and 6

ID	Court
1	9th Circuit Court of Appeals
2	2nd Circuit Court of Appeals
3	1st Circuit Court of Appeals
4	4th Circuit Court of Appeals
5	7th Circuit Court of Appeals
6	5th Circuit Court of Appeals
7	DC Circuit Court of Appeals
8	6th Circuit Court of Appeals
9	11th Circuit Court of Appeals
10	10th Circuit Court of Appeals
11	8th Circuit Court of Appeals
12	Federal Circuit Court of Appeals
13	3rd Circuit Court of Appeals
14	Temporary Emergency Court of Appeals
15	
16	6th Circuit Bankruptcy Appellate Panel
17	Tennessee Eastern District Court
18	Court of Federal Claims

Table 2: Sample of cases with no legal topics

LNI	Case Title
3RR4-V7T0-00B1-D45F-00000-00	Lutin v. New Jersey Steel Corp., 122 F.3d 1056
3RS7-P8W0-006F-M398-00000-00	USA v. Acklen, 1996 U.S. App. LEXIS 23537
3RV5-HWT0-0038-X2TH-00000-00	United States v. Kimbrough, 1998 U.S. App. LEXIS 698
3S3V-G7T0-0038-X1TD-00000-00	United States v. Randall, 1998 U.S. App. LEXIS 2902
3S4V-JP00-0039-V3CP-00000-00	A.N. Deringer, Inc. v. United States, 832 F.2d 592
3S4V-JVN0-0039-V4V2-00000-00	Connelly v. DOT, 802 F.2d 468
3S4V-JW40-0039-V518-00000-00	Yamamoto v. U.S., 795 F.2d 1018
3S4W-TVW0-003B-G19W-00000-00	Miller v. Bestline Corp., 749 F.2d 731
3S4W-XNG0-003B-G49F-00000-00	UNITED STATES v. MATOOK, 729 F.2d 1464
3S4W-Y700-003B-G2ND-00000-00	Myles v. Commissioner, IRS, 719 F.2d 373
3S4W-YP00-001B-K4CY-00000-00	Bajoa v. U.S. Dep't of Immigration & Naturalization, 855 F.2d 860
3S4X-1720-0039-M53W-00000-00	Burleigh House Condominium, Inc. v. Buchwald, 546 F.2d 57
3S4X-1JK0-001B-K1BF-00000-00	United States v. Jefferson, 843 F.2d 1388
3S4X-1NK0-003B-P49D-00000-00	United States v. Hicks, 37 F.3d 1496
3S4X-1RF0-003B-P4W3-00000-00	Harvey v. Gramley, 37 F.3d 1501
3S4X-1X10-006F-M154-00000-00	Wooden v. Oliver, 91 F.3d 136
3S4X-1XN0-006F-M1D0-00000-00	Cawley v. Mony Life Ins. Co., 95 F.3d 47
3S4X-2C20-006F-M1PY-00000-00	United States v. Whittlesey, 85 F.3d 639
3S4X-2CF0-003B-G0B3-00000-00	Lewis v. U.S.A., 691 F.2d 503
3S4X-2FK0-008H-V4Y3-00000-00	UNITED STATES v. BERBESSI-ACOSTA, 972 F.2d 1332
3S4X-2N70-006F-M0ST-00000-00	United States v. Mickle, 1996 U.S. App. LEXIS 7001
3S4X-2V10-003B-51X6-00000-00	Collins v. Allied Chemical Corp., 912 F.2d 465
3S4X-3190-006F-M3YH-00000-00	Bivins v. Hudson, 81 F.3d 163
3S4X-3780-008H-V377-00000-00	Enemy Boy v. McCormick, 967 F.2d 585
3S4X-3C40-008H-V48F-00000-00	UNITED STATES v. CHACON, 966 F.2d 680
3S4X-3FM0-001B-K147-00000-00	Gradford v. AIG Consultants, Inc., 838 F.2d 473
3S4X-3K00-008H-V049-00000-00	Carter v. Demmy, 968 F.2d 12
3S4X-54S0-008H-V3RK-00000-00	UNITED STATES v. BRANHAM, 958 F.2d 369
3S4X-60P0-003B-P3W4-00000-00	Davidson v. Barratt, 24 F.3d 239
3S4X-8VB0-003B-P230-00000-00	United States v. Blackburn, 1994 U.S. App. LEXIS 2149
3S4X-9NP0-003B-P169-00000-00	DeTreville v. Department of the Army, 1993 U.S. App. LEXIS 37038
3S4X-BFG0-001T-D11W-00000-00	Hayden v. Parker, 68 F.3d 474
3S4X-C2X0-003B-54NP-00000-00	Coffin v. Murray, 875 F.2d 314
3S4X-CGR0-003B-51VD-00000-00	Hoang v. U.S. Office of Personnel Management, 873 F.2d 1443
3S4X-D140-003B-54B9-00000-00	NLRB v. USPS, 872 F.2d 1023
3S4X-DKM0-008H-V0W2-00000-00	UNITED STATES v. WERTS, 931 F.2d 57
3S4X-G2K0-001T-D0CJ-00000-00	Carter v. St. Louis Airport Officials, 50 F.3d 12
3S4X-G610-008H-V36B-00000-00	Williams v. Wells, 925 F.2d 1467
3S4X-GCB0-001T-D2F3-00000-00	United States v. Leal, 1995 U.S. App. LEXIS 4978
3S4X-HC60-003B-P4D6-00000-00	Hassan v. FBI, 1993 U.S. App. LEXIS 12813
3S4X-JDV0-00B1-D3W4-00000-00	Rodriguez v. Quinn, 107 F.3d 873
3S4X-JRG0-00B1-D2X5-00000-00	United States v. Attar, 1997 U.S. App. LEXIS 79
3S65-BK00-0038-X4XV-00000-00	Smith v. Westlake PVC Corp., 132 F.3d 34
3T2G-V5X0-0038-X175-00000-00	United States v. Cornejo, 141 F.3d 1180
3TVN-0C70-0038-X3S8-00000-00	Meester v. Runyon, 1998 U.S. App. LEXIS 25459
3W24-DMG0-0038-X54B-00000-00	Milton v. Scott, 172 F.3d 868
3WJN-7W70-0038-X3JY-00000-00	United States v. Khachatryan, 172 F.3d 60
3WR2-1FB0-0038-X121-00000-00	Camastro v. City of Wheeling, 173 F.3d 849
3WVH-BFD0-0038-X45T-00000-00	Johnson v. Cain, 182 F.3d 914
3X6J-06G0-0038-X4F5-00000-00	United States v. Durham, 178 F.3d 1286
3X70-S4G0-003B-91K0-00000-00	Deggins v. United States, 178 F.3d 1308
3YK4-RK00-0038-X0XW-00000-00	COMSAT Corp. v. FCC, 2000 U.S. App. LEXIS 2002
4019-X3X0-0038-X440-00000-00	U.S. v. Jackson, 207 F.3d 663
405X-NKB0-0038-X1TH-00000-00	Foote v. Apfel, 2000 U.S. App. LEXIS 8637
42G6-HP00-0038-X430-00000-00	Revelles v. Stout, 238 F.3d 430

44WB-FP70-0038-X0H1-00000-00	United States v. Fuell, 23 Fed. Appx. 173
462C-XH70-0038-X103-00000-00	USA v. Brown, 37 Fed. Appx. 713
47JD-5P70-0038-X3H8-00000-00	United States v. Hargrove, 54 Fed. Appx. 796
49WN-82S0-0038-X0M5-00000-00	Hall v. Sullivan, 67 Fed. Appx. 587
4CN6-8PT0-0038-X3C5-00000-00	Parker v. True, 100 Fed. Appx. 930
4D1M-W7T0-0038-X329-00000-00	United States v. Thorn, 2004 U.S. App. LEXIS 16253
4DN8-MH30-0038-X4GT-00000-00	Benson v. Thompson, 112 Fed. Appx. 283
4FPP-KVC0-0038-X1PB-00000-00	Hunt v. Johnson, 123 Fed. Appx. 122
4G0T-GYD0-0038-X439-00000-00	Leger v. Sec'y, DOC, 126 Fed. Appx. 463
4GG7-NHK0-0038-X3H9-00000-00	United States v. Cortes-Melendez, 135 Fed. Appx. 781
4GWB-4YN0-0038-X21F-00000-00	Blackwood v. Fairways & Greens, 138 Fed. Appx. 300
4PSD-3820-TX4N-G1B1-00000-00	United States v. Pina, 243 Fed. Appx. 574
4SJ9-SWV0-TXFX-82J3-00000-00	Sanchez v. City of Franklin, 278 Fed. Appx. 490
4TKB-9R40-TXFX-D39G-00000-00	D.A.D.S. Denim, Inc. v. Ramirez, 295 Fed. Appx. 206
4VNC-3S70-TXFX-D2TD-00000-00	United States v. Ramos, 312 Fed. Appx. 852
4VTK-1CY0-TXFX-D1VW-00000-00	Rimac v. Duncan, 2009 U.S. App. LEXIS 5143
4VXK-B4R0-TXFX-D31D-00000-00	Espinoza v. Holder, 320 Fed. Appx. 588
4W7S-J1C0-TXFX-D2VS-00000-00	Hall Family Props., Ltd. v. Gosnell Dev. Corp. (In re Gosnell Dev. Corp.), 331 Fed. Appx. 440
4WS8-H010-TXFX-D2F7-00000-00	United States v. Gregory Island, 336 Fed. Appx. 759
4XBP-SH50-TXFX-G1VC-00000-00	Louis v. United States AG, 333 Fed. Appx. 497
51CC-GV91-652R-1004-00000-00	Rolle v. United States, 399 Fed. Appx. 695
5561-CGN1-F04K-V2BY-00000-00	Johnson v. Chevron Corp., 472 Fed. Appx. 428
5578-7B61-F04K-P0WG-00000-00	Houston v. Logan, 674 F.3d 613
55WK-4P11-F04K-S10M-00000-00	Neely v. McDaniel, 2012 U.S. App. LEXIS 12159
59VN-MV31-F04K-M1FS-00000-00	James v. Chesapeake City Jail, 1986 U.S. App. LEXIS 37694
59VN-MX01-JCNH-X072-00000-00	Docter v. Brown (In re Sports Accessories, Inc.), 1986 U.S. App. LEXIS 37735
5B1M-8BC1-JCNH-X422-00000-00	Dammerau v. Wright, 1990 U.S. App. LEXIS 27067
5B5N-NF61-F04K-M4Y1-00000-00	Williams v. Brinkan, 2003 U.S. App. LEXIS 28742
5BNB-F5V1-F04K-M239-00000-00	McPhatter v. Wilson, 557 Fed. Appx. 250
5CVC-R6R1-F04K-M1C6-00000-00	Day v. Rogers, 1997 U.S. App. LEXIS 42420
5D6V-GC31-F04B-M0BJ-00000-00	Wagstaff v. United States, 2014 U.S. App. LEXIS 18507
5DX1-B9T1-JCNH-X25M-00000-00	Mochelle v. J. Walter, Inc., 1994 U.S. App. LEXIS 42121
5F5W-DJ01-JCNH-X109-00000-00	Solis v. Collins, 1993 U.S. App. LEXIS 40874
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