

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA (ALLENTOWN)

DANIEL BINDERUP, ) Case No:  
Plaintiff, ) 5:13-cv-06750-JKG  
vs. )  
ERIC H. HOLDER, JR., Attorney )  
General of the United States, )  
and B. TODD JONES, Director of )  
the Bureau of Alcohol, Tobacco,) )  
Firearms, and Explosives, ) June 16, 2014  
Defendants. ) 10:08 a.m.

TRANSCRIPT OF MOTIONS HEARING  
BEFORE THE HONORABLE JAMES KNOLL GARDNER  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: ALAN GURA, ESQUIRE  
GURA & POSSESSKY, PLLC  
105 Oronoco Street, Suite 305  
Alexandria, VA 22314  
(703) 835-9085  
alan@gurapossessky.com  
DOUGLAS T. GOULD, ESQUIRE  
THE LAW OFFICES OF DOUGLAS GOULD  
925 Glenbrook Avenue  
Bryn Mawr, PA 19010  
(610) 520-6181  
dgould@gouldlawpa.com

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Philadelphia, PA 19103  
(888) 777-6690

1 APPEARANCES (continued):

2 For Defendants: DANIEL RIESS, ESQUIRE  
3 U.S. DEPT OF JUSTICE  
4 Room 6122  
5 20 Massachusetts Avenue NW  
6 Washington, DC 20001  
7 (202) 353-3098  
8 daniel.riess@usdoj.gov

9 LESLEY FARBY, ESQUIRE  
10 U.S. DEPT OF JUSTICE CIVIL DIVISION  
11 Room 7220  
12 20 Massachusetts Avenue NW  
13 Washington, DC 20530  
14 (202) 514-3481  
15 lesley.farby@usdoj.gov

16 ESR OPERATOR: JENNIFER FITZKO

17 TRANSCRIBER: JUDI Y. OLSEN, RPR

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1                   And we've looked at the docket sheet,  
2   which we'd be happy to submit, if the court wishes to  
3   review. It shows no involvement of any counsel  
4   except for counsel for the plaintiff.

5                   So we would submit that the -- the  
6   subsequent case brought by the plaintiff here  
7   actually shows very little, and therefore, we would  
8   disagree with plaintiff's statement that the Bond  
9   case is highly -- both highly relevant here and that  
10   it indicates that plaintiff should prevail.

11                  THE COURT: Thank you.

12                  MR. RIESS: Thank you, Your Honor.

13                               - - -

14                               (Pause)

15                               - - -

16                  THE COURT: Mr. Riess, does your order  
17   of argument, with Barton coming first and Marzzarella  
18   argued as a second alternative option, reflect your  
19   assessment and prediction that the Third Circuit  
20   would find Barton to be controlling in plaintiff's  
21   as-applied challenge here?

22                  MR. RIESS: To be honest, Your Honor,  
23   we're not certain. Our guess is that Barton would  
24   because it speaks to -- to what -- it talked about,  
25   to proceed on an as-applied challenge.

1                   But we have conflicting panel decisions.  
2   Marzzarella didn't say that it was either -- didn't  
3   say that it was a facial decision, and it set forth a  
4   general standard for applying the two-step test to --  
5   to cases. Also, Marzzarella actually set forth a  
6   standard, whereas it's difficult to discern some sort  
7   of judicially manageable standard from Barton.

8                   So to answer your question, Your Honor,  
9   in an abundance of caution, we did it under both.  
10   Since Barton talks about, to succeed on as-applied,  
11   we briefed it under that. We think it's probably  
12   Barton over Marzzarella, but we are honestly not  
13   sure.

14                  THE COURT: Okay. Well, that's honest.  
15   I appreciate it.

16                                 - - -

17                                 (Pause)

18                                 - - -

19                  THE COURT: All right. I'm going to  
20   declare a recess for deliberations of 30 minutes.  
21   And then it's my intention to return to court and  
22   either decide the case from the bench, if I -- the  
23   argument from the bench, if I am able, or to take the  
24   matter under advisement, if that's more appropriate.

25                  You may declare a 30-minute recess.