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A YEAR'S WORTH OF FEDERAL CASES FOR THE MUNICIPAL LAWYER

(THROUGH SEPTEMBER 18, 2017)

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By

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A. U. S. SUPREME COURT

Bank of America v. Miami, *__U.S.__, No. 15-1111 (May 1, 2017).*
In a FHA suit against national banks, a city is an aggrieved party authorized to bring suit. However, a city does not meet the FHA's "proximate-cause requirement" merely because its financial injuries (diminished tax revenue and increased demand for municipal services) were foreseeable results of the banks' alleged misconduct in engaging in racially discriminatory real estate transactions.

Bethune-Hill v. Virginia, *__U.S.__, No. 15-680 (Mar. 1, 2017).*
The Equal Protection Clause can be violated in a voting district re-alignment if race is the predominant factor motivating the legislature to place voters within a particular district, even if the redistricting plan otherwise respects traditional redistricting criteria and principles.

Bravo-Fernandez v. US, *__U.S.__, No. 15-537 (Nov. 11, 2016).*
Issue preclusion under the Double Jeopardy Clause does not preclude the retrial of a defendant after a jury returns irreconcilably inconsistent verdicts of conviction and acquittal and the conviction is later vacated for legal error unrelated to the inconsistency.

Expressions Hair v. Schneiderman, *__U.S.__, No. 15-1391 (Mar. 29, 2017).*
A general business law that prohibits a merchant from imposing a surcharge on a buyer who uses a credit card implicates the First Amendment because it regulates how merchants who are using single sticker pricing communicate with their customers.

Endrew F. v. Douglas County, *__U.S.__, No. 15-827 (Mar. 22, 2017).*
To meet its substantive obligations under IDEA, a school must offer an IEP reasonably calculated to enable a child to make appropriate progress in light of his or her circumstances.

Fry v. Napoleon Community Schools, *__U.S.__, No. 15-497 (Feb. 22, 2017).*
When a student brings an ADA claim challenging a school's refusal to allow a service dog to accompany the child in school, the exhaustion of the IDEA's administrative procedures is not necessary when the claim does not involve the denial of a FAPE.

Lewis v. Clarke, *__U.S.__, No. 15-1500 (Apr. 25, 2017).*

A tribe's sovereign immunity does not extend to a suit brought against a tribal employee in his individual capacity.

Los Angeles County v. Mendez, *__U.S.__, No.16-369 (May 30, 2017).*
The Ninth Circuit's "provocation rule," which makes an otherwise reasonable use of force unreasonable if a police officer intentionally and recklessly provokes a violent confrontation and that provocation is an independent Fourth Amendment violation, is incompatible with the Court's "excessive force" jurisprudence, which is based upon an analysis of whether the "totality of the circumstances" justifies a particular action.

Manuel v. Joliet, *__U.S.__, No. 14-9496 (March 21, 2017).*
An arrestee can challenge his pre-trial detention on Fourth Amendment grounds.

Murr v. Wisconsin, *__U.S.__, No.15-214 (June 23, 2017).*
A local ordinance that effectively merged two adjoining lots under common ownership so as to bar their individual sale unless they each have at least one acre of land suitable for development requires the lots to be analyzed as a single parcel for purposes of a Fifth and Fourteenth Amendment regulatory takings claim.

Trinity Lutheran Church v. Comer, *__U.S.__, No. 15-577 (June 26, 2017).*
The denial of a church preschool and daycare facility's application for a government grant for playground renovations, on the grounds that it is a religious organization, violated that entity's First Amendment Free Exercise Clause rights.

White v. Pauly, *__U.S.__, No. 16-67 (Jan. 9, 2017).*
No settled Fourth Amendment principle requires a police officer who arrives late to the scene to second guess the earlier actions of other officers or not to assume that proper procedures, such as officer identification, have already been followed.

B. U. S. CIRCUIT COURTS

1. FIRST AMENDMENT

March v. Mills, *__F.3d__, No. 16-1771 (1st Cir., Aug. 8, 2017).*
Law prohibiting noise that can be heard within an abortion clinic and that was made with intent of jeopardizing the health of the patients therein did not violate an outside protestor's First Amendment rights, since it did not regulate the content of her speech.

Rideout v. Gardner, *__F.3d__, No. 15-2021 (1st Cir., Sept. 28, 2016).*
A state law prohibiting voters from photographing and publishing pictures of their marked ballots is an unconstitutional restriction on free speech that fails to meet an intermediate scrutiny analysis based upon the state's professed desire to avoid vote-buying and voter intimidation.
Centro de la Comunidad v. Oyster Bay, *__F.3d__, No. 15-2914 (2nd Cir., Aug. 22, 2017).*

Ordinance that prohibits the stopping of a vehicle for the purpose of soliciting employment is a content-based restriction on free speech that is not narrowly drawn because it prohibits speech that poses no danger to public safety on streets and sidewalks.

Ricciuti v. Gyzenis, *__F.3d__, No. 12-432 (2nd Cir., Aug. 24, 2016).*
A patrol officer who shared her concerns about supervisory over-time padding with local political leaders was speaking on a matter of public concern, and therefore the police commissioners who terminated her for these comments were not entitled to qualified immunity against her First Amendment claim.

Fields v. Philadelphia, *__F.3d__, No. 16-1650 (3rd Cir., July 7, 2017).*
The First Amendment protects the act of photographing, filming, or otherwise recording police officers who are performing their official duties in public.

Mirabella v. Montgomery Tshp. , *__F.3d__, No. 15-3171 (3rd Cir., Apr. 4, 2017).*
A township that, in response to a citizen's request for assistance in a dispute against a neighbor that was coupled with a threat of litigation against the township, barred the requesting citizen from communicating directly with any member of the township government other than its legal counsel, may have engaged in First Amendment retaliation and a denial of the right to petition the government.

Zaloga v. Borough of Moosic, *__F.3d__, No. 15-2723 (3rd Cir., Oct. 24, 2016).*
For purposes of a First Amendment retaliation claim, the law is not clearly established as to whether a government official who pressures another person to retaliate against an individual, but who does not retaliate himself, can be held personally liable.

Bucker v. Howard County, *__F.3d__, No. 15-2066 (4th Cir., Mar. 20, 2017).*
A firefighter terminated for his Facebook posts that, while partially touching upon matters of public concern, disrupted department efficiency, internal harmony, and trust, and were insubordinate and diminished his department's standing with the public, was not protected by the First Amendment.

Crouse v. Town of Moncks Corner, *__F.3d__, No. 16-1039 (4th Cir., Feb. 15, 2017).*
Police officers, by encouraging an arrestee to file suit against a fellow officer that they did not like, did not engage in protected speech.

Liverman v. City of Petersburg, *__F.3d__, No. 15-2207 (4th Cir., Dec. 15, 2016).*
A police department social networking policy that prohibited speech critical of the government employer by forbidding any comments unfavorable of the department's operations or policies is facially overbroad, and violates an officer's right to comment on matters of public concern.

Loftus v. Bobzien, *__F.3d__, No.15-2164 (4th Cir., Feb. 8, 2017).*
Terminating an assistant county attorney after she was elected to the city council does not violate her First Amendment right to hold elected office. Public employers can bar their employees from running for public office.
Lund v. Rowan County, *__F.3d__, No. 15-1591 (4th Cir., July 14, 2017).*

Practice of board of commissioners in beginning each public meeting by inviting the public to rise and join them in an invariably Christian prayer composed and delivered by one of the commissioners violates the Establishment Clause.

***Anderson v. Valdez**, __F.3d__, No. 15-40836 (5th Cir., Nov. 9, 2016).*
A public attorney's letter to the State Commission on Judicial Conduct, made outside of his chain of command and his job duties, was subject to First Amendment protection for purposes of a retaliation claim against the judges who refused to hire him after he sent the letter.

***Childers v. Iglesias**, __F.3d__, No. 16-10442 (5th Cir., Feb. 9, 2017).*
Arresting an individual who did not obey a lawful order, even if the non-compliance was due to his being in the middle of explaining his views to the officer, does not violate the First Amendment. The arrest was due to his conduct, not his speech.

***Coker v. Wittington**, __F.3d__, No. 16-30679 (5th Cir., May 23, 2017).*
Sheriffs who swapped wives (and residences) without first getting divorced from their current wives, and who were then terminated for violating their employer's code of conduct, did not have a viable "freedom of association" claim. Sexual decisions between consenting adults take on a different color when the adults are law enforcement officers. *Obergefell* does not create "rights" based upon relationships that mock marriage.

***Gibson v. City of Drew**, __F.3d__, No. 15-60583 (5th Cir., Sept. 20, 2016).*
A lawsuit by a police chief against a mayor in his personal capacity, and asking only for personal relief, although it contained a First Amendment retaliation allegation, was not a matter of public concern because the police chief was not acting as a whistleblower in bringing the lawsuit, but sought merely to redress a personal dispute and to obtain rectification for himself.

***Heaney v. Roberts**, __F.3d__, No. 15-31088 (5th Cir., Jan. 23, 2017).*
A councilman who, at a public meeting, prohibited a non-lawyer citizen, during the public comment section of the meeting, from challenging the opinion of the parish attorney, and then ejected him from the meeting, may have engaged in viewpoint discrimination in a limited public forum in violation of the First Amendment.

***Moore v. Brown**, __F.3d__, No. 16-11335 (5th Cir., Aug. 22, 2017).*
Park rules requiring a permit for any structure larger than 4' x 4' are valid time, place, and manner restrictions on free speech when applied to an artist's sketch board.

***Rodriquez v. Corpus Christi**, __F.3d__, No.16-41004 (5th Cir., Apr. 25, 2017).*
For purposes of a *Garcetti* analysis, an employee who voluntarily submits a statement regarding a workplace incident when asked to do so by a supervisor and pursuant to her general duty to cooperate in workplace investigations, was engaged in official duty speech.

***Turner v. Driver**, __F.3d__, No. 16-10312 (5th Cir., Feb. 16, 2017).*
The First Amendment protects the right for a citizen to record police activities, subject to reasonable time, place, and manner restrictions.
***Bormuth v. Jackson County**, __F.3d__, No. 15-1869 (6th Cir., Sept. 6, 2017).*

A board of commissioner's practice of opening its public meetings with a short invocation given by a commissioner based upon the dictates of his own conscience does not violate the Establishment Clause even if all of the commissioners are Christian.

Dibrito v. St. Joseph, *__F.3d__, No. 16-1357 (6th Cir., Jan. 13, 2017).*
A complaint by one employee that another has defamed him is not a matter of public concern for First Amendment *Garcetti* purposes.

Gillis v. Miller, *__F.3d__, No. 16-1245 (6th Cir., Jan. 6, 2017).*
A correctional officer who, during an investigation into drug trafficking at his jail, distributed a memorandum to his fellow officers advising them about their right to union representation during the investigation and was terminated as a result did not engage in First Amendment protected speech. His memo did not involve a matter of public concern and, in any event, his free speech interests were outweighed by the officers' need to comply with the investigation.

Hendrix v. Dekalb County, *__F.3d__, No. 16-5771 (6th Cir., Mar. 3, 2017).*
In a First Amendment retaliation case, a 27-month gap between protected conduct and an adverse employment action is too large to establish causation.

Mayhew v. Town of Smyrna, *__F.3d__, No. 16-5103 (6th Cir., May 11, 2017).*
While allegations of federal and state regulation violations should be taken seriously, when an employee's explicit job responsibilities are to oversee and report any issues regarding a municipal plants' water-sanitizing procedures, reporting those issues is speech as a public employee, not a private citizen, for purposes of a *Garcetti* analysis.

Naghtin v. Montgague Fire Dist. Bd. , *__F.3d__, No. 16-1552 (6th Cir., Dec. 30, 2016).*
A firefighter who circulated a petition for the reinstatement of another firefighter to the position of unit captain, presented this petition to the fire board, and was subsequently terminated, was not engaged in speech on a matter of public concern for First Amendment retaliation purposes.

Wagner v. Garfield Heights, *__F.3d__, No. 13-3474 (6th Cir., Jan. 13, 2017).*
A city's six foot limit on political signs does not survive strict scrutiny under *Town of Gilbert*.

Aldous v. Galena, Illinois, *__F.3d__, No. 16-3212 (7th Cir., July 12, 2017).*
Firing a municipal code inspector for criticizing his municipality for failing to enforce its code requirements and ADA accessibility standards does not violate the First Amendment.

Higher Society v. Tippecanoe Cty., *__F.3d__, No. 17-1089 (7th Cir., June 7, 2017).*
A city policy of allowing only county board of commissioner's-sponsored events to take place on its courthouse grounds, when that policy is not viewpoint neutral, likely violates the First Amendment.

Patriotic Veterans v. Zoeller, *__F.3d__, No. 16-2059 (7th Cir., Jan. 3, 2017).*

An anti-robo-call law is not content-based or discriminatory against political speech under ***Reed*** because it exempts messages from school districts, subscribers with which the recipient has a current relationship, or employer messages to employees about work schedules from its general prohibition against robocalls absent advance consent of the recipient.

Roake v. Forest Preserve Dist. *, __F.3d__, No. 16-2976 (7th Feb. 17, 2017).*
An officer's internal complaint about the alleged racial profiling activities of fellow officers is not protected speech under the First Amendment.

Ball v. SMG*, __F.3d__, No. 16-3210 (8th Cir., Aug. 29, 2017).*
A policy of prohibiting leafleting, signature-gathering, picketing, and distribution of promotional materials in a non-public plaza adjoining a public sports complex is viewpoint neutral and reasonable for First Amendment purposes, even if it allows plaza tenants to engage in these activities pursuant to the terms of their facility lease.

Hill v. IMLA*, __F.3d__, No. 16-3377 (8th Cir., July 26, 2017).*
An ordinance that prohibits all commercial activity in a park without a permit - - which costs $100 and requires a two day wait before it is issued - - is consistent, neutral, narrowly-tailored, and serves legitimate government interests. It does not violate a commercial photographer's First Amendment rights.

Lee v. Driscoll*, __F.3d__, Nos. 16-3139 & 16-3236 (8th Cir., Sept. 7, 2017).*
There is no First Amendment right to participate in a non-public government meeting as a member of the public. However, qualified immunity on a First Amendment retaliation claim was denied to township officials who excluded a citizen who had complained about the township board's handling of FEMA funds from a public meeting by wrongfully closing that meeting to the public, as well as on a First Amendment association claim brought by an elected township official who was also excluded from the meeting.

Scott v. Tempelmeyer*, __F.3d__, No. 16-2404 (8th Cir., Aug. 16, 2017).*
Qualified immunity on a First Amendment free speech claim is granted to municipal code enforcement officers. Landlords have no constitutional right to be free from even the retaliatory enforcement of a building code that is otherwise supported by probable cause.

Thompson v. Shock*, __F.3d__, No. 16-1643 (8th Cir., Mar. 28, 2017).*
In a First Amendment freedom of expression case, if the employee is discharged because of his or her expressive conduct, the *Pickering Connick* test is applied. If the employee is discharged because of his or her political affiliation, the *Elrod-Branti* test is applied. When a political-affiliation employee gets discharged for his or her expressive conduct, the *Pickering-Connick* is applied.

Young v. Mercer County Commission*, __F.3d__, No. 16-1324 (8th Cir. Feb. 27, 2017).*

Decisions about whether to approve or disapprove a proposed budget item fall squarely within the discretion of a county commission, and, therefore, the commissioners were entitled to legislative immunity against a Section 1983 claim premised upon their actions in voting to deny a budgetary request. Moreover, placing a street address sign on private property is not a taking in violation of the Fifth Amendment.

Brandon v. Maricopa County, *__F.3d__, No. 14-16910 (9th Cir., Feb. 23, 2017).*
A county attorney who told a reporter that the county increased its settlement offers to avoid having key county officials testify was not engaged in protected citizen speech.

CITA v. Berkeley, *__F.3d__, No. 16-15141 (9th Cir., Apr. 21, 2017).*
A city ordinance that required cell phone retailers to inform their customers that carrying a cell phone in certain ways may cause them to exceed FCC guidelines for exposure to radio-frequency radiation does not violate the First Amendment.

Contest Promotions v. San Francisco, *__F.3d__, No. 17-15909 (9th Cir., Aug. 16, 2017).*
Reed v. Gilbert does not change *Central Hudson's* intermediate scrutiny analysis of laws that restrict only commercial speech. Therefore, a planning code ordinance that regulates outdoor billboard advertising, but exempts non-commercial billboards, survives a First Amendment challenge under an intermediate scrutiny analysis.

First Resort v. Herrera, *__F.3d__, No. 15-15434 (9th Cir., June 27, 2017).*
An ordinance designed to protect indigent women from false or misleading advertising by limited services pregnancy centers (centers that do not perform abortions) does not violate the First Amendment because it only regulates constitutionally unprotected false or misleading commercial speech.

Moonon v. Yarnall, *__F.3d__, No. 15-16571 (9th Cir., Aug. 22, 2017).*
A police department policy prohibiting its officers from discussing its K-9 program with any non-department person or entity covered speech outside of the officers' official duties and on matters of public concern, in violation of the First Amendment.

Real v. Long Beach, *__F.3d__, No. 15-56158 (9th Cir., Mar. 29, 2017).*
A plaintiff had standing to bring an unlawful prior restraint First Amendment challenge to a zoning ordinance that gave city officials unfettered discretion over whether to permit a tattoo parlor - - a protected expressive activity - - to operate in a specific zoned location.

Recycle for Change v. Oakland, *__F.3d__, No. 16-15295 (9th Cir., May 9, 2017).*
Injunction relief was denied on a claim that a municipal ordinance that required a permit in order to place, operate, or maintain an unstaffed drop-off box violated the plaintiff's First Amendment protected speech or expressive conduct. The ordinance was content-neutral and survived an intermediate scrutiny analysis.

Santopietro v. Howell, *__F.3d__, No. 14-16324 (9th Cir., May 24, 2017).*

An officer had no probable cause to arrest a "street performer" who posed in a "sexy cop" costume for tips for conducting business without a license. This "expressive conduct" was protected by the First Amendment in a public forum, and does not lapse because of what a companion "street performer" does or says.

Cvancara v. Reams, *__F.3d__, No. 16-1093 (10th Cir., Jan. 23, 2017).*
A deputy who was terminated after going outside her chain of command and accusing a fellow deputy of performing private work on public time did not engage in speech on a matter of public concern, especially when her contentions were weakly supported and were not motivated by broader public purposes but were instead the airing of a grievance.

Denton v. Yancy, *__F.3d__, No. 15-5114 (10th Cir., Oct. 3, 2016).*
A government's public release of an employee's arbitration testimony was not retaliation for his free speech because that testimony was not on a matter of public concern.

Ellison v. Roosevelt Cty., *__F.3d__, No. 16-2270 (10th Cir., July 12, 2017).*
An officer's arguing about the legality of an arrest with fellow officers is not protected speech because it was part of an officer's official duties.

Felix v. Bloomfield, *__F.3d__, No. 14-2149 (10th Cir., Nov. 9, 2016).*
Placing an equivocal "disclaimer sign" near a Ten Commandments monument located on public property is not enough to secularize its primarily religious message.

Griffin v. Bryant, *__F.3d__, No. 16-2164 (10th Cir., Jan. 27, 2017).*
Refusing to place the plaintiff on the Council agenda, but letting him speak for five-minutes during the public comment section of the meeting, does not restrain his speech in violation of the First Amendment.

Helget v. City of Hays, *__F.3d__, No. 15-3093 (10th Cir., Jan. 4, 2017).*
No First Amendment violation occurred when an officer was terminated after she voluntarily provided an affidavit in support of a former officer's lawsuit against her employer. The city's interests as a public employer outweighed her interest in speaking about a former employee's civil litigation.

Muhammad v. Hall, *__F.3d__, No. 16-6046 (10th Cir., Jan. 4, 2017).*
Qualified immunity is granted to an employee on a First Amendment retaliation claim. The law is unclear as to whether a subordinate employee can be liable for First Amendment retaliation when she merely acts at the direction of a supervisor who desires to retaliate.

Bailey v. Wheeler, *__F.3d__, No. 15-11627 (11th Cir., Nov. 27, 2016).*
An officer who had a BOLO issued against him allegedly in retaliation for his reporting his fellow officers illegal racial profiling survived a motion to dismiss his First Amendment retaliation claim against the issuing officer.

Cornell v. Oakland Park, *__F.3d__, No. 16-15270 (11th Cir., Mar. 8, 2017).*

A City's SOB licensing regulations, forbidding full nudity, patron-dancer physical contact, and alcohol consumption, survives an ***O'Brien*** analysis, and are amply supported by relevant judicial opinions and studies from other municipalities so as to satisfy the First Amendment.

Henry v. Sandy Springs, *__F.3d__, No. 16-14428 (11th Cir., Aug. 14, 2017).*
Reed v. Gilbert does not abrogate the "secondary effects doctrine" as it relates to adult entertainment ordinances.

May v. Sasser, *__F.3d__, No. 15-15766 (11th Cir., Nov. 15, 2016).*
A firefighter who spoke at a public hearing about the prospect of his own termination did not speak on a matter of public concern for First Amendment retaliation purposes.

Rodriquez v. City of Doral, *__F.3d__, No. 15-11595 (11th Cir., July 19, 2017).*
For purposes of a First Amendment claim, the court will assume that a job resignation is voluntary unless the claimant shows that the resignation was forced by coercion or duress or by her employer's deception or misrepresentation of a material fact to the employee.

Snipes v. Volusia Cty., *__F.3d__, No. 16-14221 (11th Cir., Aug. 21, 2017).*
An officer who made racially insensitive comments on his Facebook page and in a group text message was not terminated for this conduct in violation of the First Amendment.

Trigo v. City of Doral, *__F.3d__, No. 15-14657 (11th Cir., Oct. 21, 2016).*
For First Amendment retaliation claim analysis purposes, a public records request lacked any intent to convey a message. The act of seeking to obtain public records is not inherently protected by the First Amendment.

Wollschlaeger v. Florida, *__F.3d__, No. 12-14009 (11th Cir., Feb. 16, 2017).*
A law that prohibits doctors from discriminating against patients who own firearms does not violate the First Amendment.

Act Now v. District of Columbia, *__F.3d__, No. 12-7139 (D.C. Cir., Jan. 24, 2017).*
An ordinance that allows posted signs on public lampposts for 180 days, but signs related to "events" for only 30 days after the event, even if this meant they were posted for less than 180 days, was not content-based, but a reasonable time, place, and manner restriction that was narrowly tailored to further the legitimate governmental interest in avoiding visual clutter.

A.N.S.W.E.R. v. Basham, *__F.3d__, No. 16-5047 (D.C. Cir., Jan. 17, 2017).*
A regulation that allows the Inaugural Committee to erect spectator bleachers in Freedom Plaza does not regulate speech but the places in which speech may occur, and applies to all demonstrators, regardless of viewpoint or speech content.

2. SECOND AMENDMENT; FIREARMS

***Ezell v. Chicago**, __F.3d__, No. 14-3312 (7th Cir., Jan. 18, 2017).*
Municipal zoning regulations that dramatically limit the ability of a shooting range to exist within the City of Chicago and limit access to shooting ranges to persons eighteen years old or older, when one hour of range training is a prerequisite to obtaining a gun permit, unconstitutionally burdens Second Amendment rights.

***Silvester v. Harris**, __F.3d__, No. 14-16840 (9th Cir., Dec. 14, 2016).*
A local law requiring a 10-day waiting period for all lawful gun purchases is a reasonable safety precaution that does not violate the Second Amendment.

***Wrenn v. DC**, __F.3d__, Nos. 16-7025 & 16-7067 (D.C. Cir., July 25, 2017).*
District's "good reason" gun control law, which severely limits the ability of citizens to obtain gun carry licenses, is enjoined. The individual right to carry common firearms beyond the home for self-defense - - even in densely populated areas when no special self-defense need exists - - falls within the core of Second Amendment protections.

3. FOURTH AMENDMENT

***Alfano v. Lynch**, __F.3d__, No. 16-1914 (1st Cir., Feb. 1, 2017).*
Qualified immunity for an officer was denied on a Fourth Amendment claim that arose when he took a person into protective custody, hand-cuffed, and transported him to the police station, and jailed him all without probable cause to believe that he was incapacitated or likely to harm either person or property.

***US v. Hillaire**, __F.3d__, No. 15-1692 (1st Cir. May 18, 2017).*
The warrantless swiping of credit cards through a card reader does not violate the Fourth Amendment.

***US v. Bolin**, __F.3d__, No. 15-2192 (1st Cir., Aug. 22, 2017).*
Reasonable suspicion existed justifying a "stop and frisk" when officers responded to a "fight in progress" call and recognized the plaintiff as a local gang member who was nervously attempting to avoid contact with the responding officers.

***US v. Huertas**, __F.3d__, No. 15-4014 (2nd Cir., July 24, 2017).*
For purposes of a motion to suppress, an officer who responded to a report of a man with a gun, shone his flashlight on the suspect and asked him questions that led to the discovery of contraband, does not amount to the suspect's submission to police authority or to a seizure.

***Andrews v. Scuilli**, __F.3d__, No. 15-3393 (3rd Cir. Apr. 10, 2017).*
Summary judgment in favor of a police officer on a false arrest claim is denied when his probable cause affidavit hid from the judge a discrepancy that potentially undermined the sole crime witness' reliability.
***Smith v. Munday**, __F.3d__, Nos. 15-1092 & 1496 (4th Cir., Feb. 3, 2017).*

A person's criminal history, common name, gender, and race are not enough to establish the probable cause needed to arrest her for participation in a drug sale that occurred eleven miles from her residence.

***US v. Bullette**, __F.3d__, No. 15-4408 (4th Cir., Apr. 20, 2017).*
The government need not provide a written inventory policy in order to prove that its law enforcement agency conducts its inventory searches according to routine and standard procedures, so long as this can be shown by other evidence, for purposes of the use of the "inevitable discovery" doctrine to defend against a Fourth Amendment unlawful search claim.

***US v. Robinson**, __F.3d__, No. 14-4902 (4th Cir., Jan. 23, 2017).*
Under the Fourth Amendment, an officer can frisk a person that he has lawfully stopped and whom he believes to be armed regardless of whether that person is legally entitled to carry a firearm.

***Blair v. Sallas**, __F.3d__, No. 16-10202 (5th Cir., Nov. 15, 2016).*
Qualified immunity was granted to officers on a wrongful seizure claim brought by the wife and child of a suspect that was premised upon their inability to exit their apartment while the officers were shooting at the suspect after he opened the door with a flashlight that the officers considered to be a weapon.

***Davidson v. Stafford**, __F.3d__, No. 16-20217 (5th Cir., Feb. 7, 2017).*
For Section 1983 municipal liability purposes, evidence that a police chief investigated the contested action of two police officers in arresting a protester and found discipline unwarranted does not constitute his ratification of that conduct.

***Jones v. Lopez**, __F.3d__, No. 16-20290 (5th Cir., May 15, 2017).*
Privately owned dogs are "effects" that are subject to Fourth Amendment protection from unlawful seizure, such as being shot by police officers.

***Lincoln v. Barnes**, __F.3d__, No. 16-10327 (5th Cir., Apr. 20, 2017).*
Police officers violated the Fourth Amendment rights of a witness to a SWAT team shooting when they handcuffed her, drove her to the police station, interrogated her for five hours, and forced her to complete a written statement - - all absent probable cause or her consent.

***Mabry v. Lee County**, __F.3d__, No. 16-60231 (5th Cir., Feb. 21, 2017).*
Requiring a twelve-year-old student who was arrested for assaulting another student and taken to a juvenile detention center to undertake a strip search and visual body cavity inspection does not violate the Fourth Amendment.

***McLin v. Ard**, __F.3d__, No. 16-30201 (5th Cir., Aug. 8, 2017).*
The issuance of an arrest warrant does not insulate an officer from Fourth Amendment liability when the officer submitted false and misleading affidavits for the purpose of obtaining the warrant.

***Melton v. Phillips**, __F.3d__, No. 15-10604 (5th Cir., Sept. 14, 2016).*

An officer who recklessly provided false material information can be liable for a Fourth Amendment violation even if he neither prepared nor signed the affidavit in support of the arrest warrant that relied upon this information.

Morrow v. Washington, *__F.3d__, No. 15-41233 (5th Cir., Dec. 2, 2016).*
The subjective intentions of police officers play no role in an ordinary probable cause analysis.

US v. Rodriquez-Mendoza, *__F.3d__, No. 16-41550 (5th Cir., Sept. 8, 2017).*
An individual who had permission to stay in a drop house but had no house key and could not control who came in and out of the house did not have standing to challenge the search of the house.

Rogers v. Lee County, *__F.3d__, No. 16-60537 (5th Cir., Apr. 3, 2017).*
The court adopts the *Leon* good faith exception to warrantless searches and finds that it applies to officers who believed that they were executing a valid telephonically-obtained warrant based upon what a district attorney told them in a training class and because they had previously obtained warrants telephonically, even though this method was, unknown to them, not recognized in their state.

Thorn v. McGary, *__F.3d__, No. 16-30700 (5th Cir., Apr. 5, 2017).*
The dismissal of a ticket and a refusal to prosecute the ticketed charge does not compel the conclusion that the underlying traffic stop and arrest violated the Fourth Amendment.

US v. Badillo, *__F.3d__, No. 16-40418 (5th Cir., June 15, 2017).*
For Fourth Amendment purposes, consent to search a bag includes consent to search the soles of the boots located within that bag.

US v. Berry, *__F.3d__, No. 15-30196 (5th Cir., Dec. 1, 2016).*
The mere length of a vehicle search conducted during a traffic stop does not dissipate the probable cause justifying that stop and search.

US v. Escamilla, *__F.3d__, No. 16-40333 (5th Cir., Mar. 29, 2017).*
An arrestee who handed an officer his cell phone impliedly consented to its search. However, that implied consent ended when the officer handed the phone back to the arrestee, and a second search, without renewed consent, violated the Fourth Amendment.

US v. Jarman, *__F.3d__, No. 16-30468 (5th Cir., Feb. 1, 2017).*
The four months taken by the government to review several computers and their hard drives pursuant to a search warrant does not require the Fourth Amendment suppression of the evidence discovered thereon.

US v. Martinez, *__F.3d__, No.16-40817 (5th Cir., Apr. 28, 2017).*
A state database indication of "unconfirmed" as to a vehicle's insurance status may establish reasonable suspicion for a traffic stop when the officer using the database is familiar with it and the system itself is reliable.
US v. Monsivais, *__F.3d__, No. 15-10357 (5th Cir, Feb. 2, 2017).*

For Fourth Amendment purposes, an officer "seized" a motorist when he announced that he was going to "pat him down." The actions of the motorist in walking past an officer's patrol car did not provide reasonable suspicion that he had or was going to commit a crime so as to justify seizing and searching him.

US v. Silva, *__F.3d__, No. 16-40167 (5th Cir., June 14, 2017).*
Searching a wooden box that was large enough to hide a person as part of a protective sweep does not violate the Fourth Amendment.

US v. Toussaint, *__F.3d__, No. 15-30748 (5th Cir., Sept. 22, 2016).*
Pulling over a vehicle being driven by an individual who the police were actively looking for after they received word that a credible threat had been made against his life does not require the suppression of the evidence later found on his person. The traffic stop was legal under the "exigent circumstances" warrant exception.

US v. Walker, *__F.3d__, No. 16-31045 (5th Cir., Aug. 23, 2017).*
The police could not rely upon consent to search a rental car given by a passenger in that vehicle when the person who rented it had not given such consent.

US v. Zuniga, *__F.3d__, No. 14-11304 (5th Cir., June 14, 2017).*
A fifteen minute delay between a turn-signal offense and a traffic stop for that offense does not negate the reasonable suspicion justifying that stop or the resultant search.

Beckham v. City of Euclid, *__F.3d__, No. 16-3089 (6th Cir., May 10, 2017).*
A police officer did not violate the Fourth Amendment when he arrested and detained two individuals in the mistaken belief that they had failed to report for court-ordered community service, since he had probable cause to believe that they had failed to do so.

Brown v. Battle Creek, *__F.3d__, No. 16-1575 (6th Cir., Dec. 19, 2016).*
In a case of first impression in the Circuit, the court joins the Second, Third, Fourth, Seventh, and Tenth Circuits in holding that the Fourth Amendment protects against the unreasonable seizure of a pet dog.

Creech v. Pater, *__F.3d__, No. 16-4703 (6th Cir., July 13, 2017).*
A judge's retroactive signature on the "command page" of an otherwise valid search warrant does not destroy probable cause for purposes of a Fourth Amendment analysis.

Marshall v. Farmington Hills, *__F.3d__, No. 15-2380 (6th Cir., June 1, 2017).*
For Fourth Amendment purposes, a traffic stop is not unnecessarily prolonged when the traffic offender insists that the officer detaining him bring the officer's supervisor to the scene.

Middaugh v. Three Rivers, *__F.3d__, No. 15-1140 (6th Cir., Mar. 29, 2017).*

Officers "crossed the line" into state action for purposes of a Fourth Amendment unlawful seizure analysis when, in assisting an individual with her private repossession of an automobile over which possession rights were in question, they drove her onto private property and physically "screened her" from the property owner's view until she drove off in the vehicle.

***US v. Jackson**, __F.3d__, No. 16-5599 (6th Cir., June 26, 2017).*
The appearance of an unfamiliar car in the middle of the night at the scene of a home invasion can provide reasonable suspicion to stop that car weeks later when there are indications that this particular vehicle contained evidence of the home invasion crime.

***US v. Jimmy Jail Abernathy**, __F.3d__, No. 16-5314 (6th Cir., Dec. 6, 2016).*
No probable cause existed for the search of a house based upon drug paraphernalia being found in a trash pull in front of the house.

***US v. Jones**, __F.3d__, No. 16-6811 (6th Cir., Aug. 29, 2017).*
A search warrant is not invalid just because it has the wrong street address on it, if it otherwise contains a correct description of the house to be searched.

***US v Lash**, __F.3d__, No. 15-4220 (6th Cir., Dec. 6, 2016).*
No Fourth Amendment violation occurred when officers extended the length of a traffic stop in order to check a driver's car rental agreement – a routine incidental request.

***US v. Lewis**, __F.3d__, No. 16-5181 (6th Cir., Aug. 25, 2017).*
The Fourth Amendment does not require a search warrant for an officer, not investigating any crime, to open the passenger door of a parked truck to ask the sleeping occupant if he would be able to drive his drunk girlfriend home - - a natural act of community service.

***US v. Powell**, __F.3d__, No. 14-2506 (6th Cir., Feb 6, 2017).*
Surveillance of an unobstructed warehouse for a 90 day period by means of cameras placed atop public utility poles located in a non-residential area does not violate the Fourth Amendment.

***US v. Riley**, __F.3d__, No. 16-6149 (6th Cir., June 5, 2017).*
The police do not violate the Fourth Amendment when, in attempting to serve an arrest warrant, they detect an individual's location by tracking his cell phone's GPS coordinates.

***Bell v. Chicago**, __F.3d__, No. 15-2833 (7th Cir., Aug. 30, 2016).*
An ordinance authorizing the warrantless seizure of a vehicle whenever a police officer has probable cause to believe that the vehicle was used in a law violation is not unreasonable under the Fourth Amendment.

***Green v. Newport**, __F.3d__, No. 16-1536 (7th Cir., Aug. 22, 2017).*
An officer who observes a vehicle "casing" a store around closing time has reasonable suspicion to conduct a *Terry* stop of that vehicle.

***Hamilton v. New Albany**, __F.3d__, No. 16-3901 (7th Cir., June 16, 2017).*

An individual does not have to own allegedly improperly impounded vehicles in order to bring a Fourth Amendment claim regarding their seizure. A possessory interest in the vehicles is sufficient.

***Howell v. Smith**, __F.3d__, No. 16-1988 (7th Cir., Apr. 10, 2017).*
Placing an unarmed suspected "road rage" driver in hand-cuffs for 30 minutes while investigating the matter did not violate the Fourth Amendment. An officer can protect himself from the residual anger and irrationality that often accompanies "road rage" episodes.

***US v. Castetter**, __F.3d__, No. 17-1327 (7th Cir., Aug. 4, 2017).*
The Fourth Amendment does not concern state boarders. Federal courts do not use the exclusionary rule to enforce state laws regarding whether police can extraterritorially acquire the information used to support a search warrant.

***US v. Jenkins**, __F.3d__, No. 15-3068 (7th Cir., Mar. 13, 2017).*
During an arrest, the arrestee's cell phone, which is not on his person nor within reaching distance, could not be searched without a warrant or his consent under the "search incident to arrest" doctrine and the Fourth Amendment.

***US v. Mojica**, __F.3d__, No. 16-2985 (7th Cir., July 14, 2017).*
The fact that a spouse has no key to a detached garage and had not been in it for 45 days does not negate her apparent authority to consent to its search.

***US v. Radford**, __F.3d__, No. 16-3768 (7th Cir., May 22, 2017).*
No Fourth Amendment violation occurred when a police officer asked an individual questions, since he did not tell her that she had to answer them or threaten her if she did not. Moreover, "I guess so" constitutes consent to a search when voluntarily made.

***US v. Schreiber**, __F.3d__, No. 16-3847 (7th Cir., Aug. 7, 2017).*
The police do not violate the Fourth Amendment by taking a buccal swab of an arrestee after his probable cause arrest.

***US v. Webster**, __F.3d__, No.*14-2913 (7th Cir., Feb. 17, 2017).
No Fourth Amendment right of privacy existed for arrestees whose incriminating statements were made and recorded while they were seated in a marked police transport van.

***Azam v. Columbia Heights**, __F.3d__, No. 16-1588 (8th Cir., July 31, 2017).*
City housing code inspectors did not violate a landlord's Fourth Amendment or substantive due process rights by entering common areas of an apartment complex to look for code violations without a warrant or by increasing their level of surveillance on his rental properties in response to numerous community complaints.

***Doe v. ICE**, __F.3d__, No. 16-2100 (8th Cir., May 25, 2017).*

Qualified immunity is granted on a Fourth Amendment claim arising from the search of a suspect's rented room located within the single-family dwelling whose address was set forth in the search warrant.

Hansen v. Black, *__F.3d__, No. 16-4162 (8th Cir., Sept. 18, 2017).*
An officer who shoots a dog that is running unleashed and unsupervised on an interstate highway and that eludes his seizure attempts does not violate the Fourth Amendment.

Johnson v. City of Ferguson, *__F.3d__, No. 16-1697 (8th Cir., July 25, 2017).*
A suspect who stopped after an officer blocked his path with his squad car is "seized" even if he later flees the scene.

Schaffer v. Beringer, *__F.3d__, No. 15-3438 (8th Cir., Nov. 21, 2016).*
For Fourth Amendment qualified immunity purposes, the issue is not probable cause "in fact", but "arguable" probable cause.

US v. Ahumada, *__F.3d__, No. 16-1391 (8th Cir., June 5, 2017).*
An eight and one half minute extension of a traffic stop after a warning citation is issued, to allow for the arrival of a drug dog, does not violate the Fourth Amendment.

US v. Alatorre, *__F.3d__, No. 16-4184 (8th Cir., July 12, 2017).*
A protective sweep of a residence after an arrest made outside of that residence does not violate the Fourth Amendment when there was a reasonable belief that others could be inside the residence.

US v. Cervantes, *__F.3d__, No. 16-1788 (8th Cir., Aug. 21, 2017).*
Probable cause existed for a warrant and the search was conducted in good faith even though the signing magistrate had not been designated to issue warrants for property located outside of his jurisdiction.

US v. Council, *__F.3d__, No. 16-1472 (8th Cir., June 9, 2017).*
It was lawful to arrest an individual without a warrant but with probable cause after he voluntarily came to the door of his camper and was arrested in the doorway.

US v. Craddock, *__F.3d__, No. 15-3705 (8th Cir., Nov. 8, 2016).*
During a pat-down search, feeling a key fob in a suspect's pocket did not allow the officer to reasonably infer that it belonged to a stolen vehicle so as to remove the fob from the pocket.

US v. Davis, *__F.3d__, No. 16-3345 (8th Cir., Aug. 15, 2017).*
When criminal activity is ongoing, a 10-day period between last observed activity and warrant execution does not make that information fatally stale.

US v. Horton, *__F.3d__, Nos. 16-3976 & 16-3982 (8th Cir., July 24, 2017).*
The use of the Network Investigative Technique (NIT) to search websites and extract user IP addresses requires a warrant.
US v. Jefferson, *__F.3d__, No. 16-1019 (8th Cir., Nov. 4, 2016).*

Parking next to a suspect's car does not implicate the Fourth Amendment when it does not limit the suspect's freedom of movement.

US v. Lewis, *__F.3d__, No. 16-3308 (8th Cir., July 27, 2017).*
For Fourth Amendment purposes, a desk and waiting area are sufficient to alert the public that work areas behind the desk are not open to the public. An officer may temporarily seize a weapon in plain sight if he or she believes, based upon specific and articulable facts, that it poses an immediate threat to others.

US v. Morgan, *__F.3d__, No. 16-1525 (8th Cir., Dec. 1, 2016).*
No Fourth Amendment expectation of privacy existed when a plaintiff voluntarily displayed his cell phone screen in the presence of detectives.

US v. Peoples, *__F.3d__, No. 16-2044 (8th Cir., Apr. 24, 2017).*
Evidence observed by an officer when assisting in an eviction from a hotel room formed a valid basis for later obtaining a search warrant for that room.

US V. Russell, *__F.3d__, No. 16-1700 (8th Cir., Feb. 1, 2017).*
The mere fact that a vehicle is rented by one's girlfriend at your request does not give you, as a mere passenger, a reasonable expectation of privacy in the vehicle or standing to challenge a search thereof.

US v. Wright, *__F.3d__, No. 15-3237 (8th Cir., Dec. 23, 2016).*
A person who does not live in an apartment complex and who is not a guest of someone who does cannot vicariously assert the Fourth Amendment rights of an apartment complex resident.

White v. Jackson, *__F.3d__, No. 16-3897 (8th Cir., Aug. 1, 2017).*
Pepper-spraying, kicking, punching, and holding under water the head of a hand-cuffed, non-resisting arrestee is objectively unreasonable under the Fourth Amendment.

Brewster v. Beck, *__F.3d__, No. 15-55479 (9th Cir., June 21, 2017).*
The Fourth Amendment may be violated by a state law that generally requires vehicles driven by an unlicensed driver to be impounded for 30-days, absent a valid justification for this delay.

Davis v. US, *__F.3d__, No. 15-55671 (9th Cir., Apr. 13, 2017).*
Qualified immunity is denied to officers on a Fourth Amendment wrongful detention claim when they detained an elderly woman in a busy public parking lot for two hours, while she stood in urine-soaked pants, regarding a paperweight she possessed and was trying to sell.

Woodward v. Tucson, *__F.3d__, No. 16-15784 (9th Cir., Sept. 15, 2017).*
A plaintiff shot while growling and attacking officers with a broken hockey stick after they made a warrantless entry into a vacant apartment in which he was squatting had no standing to bring a Fourth Amendment unlawful seizure claim, since he has no privacy rights to assert in the vacant apartment.

Cox v. Cache County, *__F.3d__, No. 14-4123 (10th Cir., Nov. 2, 2016).*

Qualified immunity is granted to a government inspector against a Fourth Amendment claim stemming from his conduct in approaching and opening bee hives in order to determine who owned them.

Gutierrez v. Luna County Sheriff, *__F.3d__, No. 15-2161 (10th Cir., Nov. 15, 2016).*
Qualified immunity is granted to officers for their warrantless entry into a home because the law is currently unsettled as to whether, for Fourth Amendment purposes, the "hot pursuit" exception applies when a misdemeanor suspect is involved.

Rife v. Oklahoma, *__F.3d__, No. 16-7019 (10th Cir., Apr. 12, 2017).*
An officer who observed a motorcyclist who had just been involved in an accident and had slurred speech, but who denied being injured, and then examined him and determined that he did not exhibit symptoms of a head injury, had probable cause to arrest the motorcyclist for intoxication by medication.

Stoedter v. Gates, *__F.3d__, No. 15-4020 (10th Cir., Aug. 3, 2017).*
Mere suspicion of an individual's possession of a firearm, without any indication that such possession is illegal, does not justify his investigatory detention.

US v. Cantu, *__F.3d__, No. 16-2191 (10th Cir., Apr. 5, 2017).*
Mounting a video camera on a utility pole located 70 yards from a residence, when the camera did not record sound or allow officers to see inside the property, did not violate the Fourth Amendment.

Us v. Cone, *__F.3d__, No. 16-5125 (10th Cir., Aug. 24, 2017).*
No Fourth Amendment violation for officers, during a traffic stop, to briefly question driver about his criminal history.

US v. Hawley, *__F.3d__, No. 16-1000 (10th Cir., Nov. 14, 2016).*
For purposes of determining reasonable suspicion to justify a traffic stop, the "fellow officer" (or "collective knowledge") rule has both horizontal and vertical components - - vertical when one officer with reasonable suspicion directs another to take an action, and horizontal when the collective knowledge of several officers, taken together, creates the reasonable suspicion needed to justify the action.

US v. Hernandez, *__F.3d__, No. 15-1116 (10th Cir., Feb. 9, 2017).*
A uniformed officer who pulled alongside a pedestrian and asked him questions as he walked did not commit a Fourth Amendment seizure. However, a seizure occurred when he asked the pedestrian to stop walking, under circumstances where the pedestrian was being closely followed by a police car, it was dark, he was alone, and he was not told that he could terminate the encounter.

US v Juszczyk, *__F.3d__, No. 15-3323 (10th Cir., Jan. 3, 2017).*
An individual who threw his backpack on a neighbor's roof had no Fourth Amendment reasonable expectation of privacy in it for purposes of a later search.
US v. Lopez, *__F.3d__, Nos. 15-3130 & 3134 (10th Cir., Feb. 27, 2017).*

No reasonable suspicion existed to detain a motorist until a drug dog could be summoned after the driver had been given a warning ticket and wished safe travels and the officer then returned to the vehicle and asked a few more questions after which the motorist refused consent to the search of her vehicle. General nervousness and unusual travel plans - - absent lies or inconsistencies - - do not provide reasonable suspicion sufficient to prolong a traffic stop.

US v. Morgan, *__F.3d__, No. 16-4015 (10th Cir., May 2, 2017).*
Under the Fourth Amendment, a police officer has the authority to order a person to step off his bicycle or be Tased when he fears that the bicyclist may flee the scene of a valid traffic stop.

US v. Roberson, *__F.3d__, No. 16-6136 (10th Cir., July 25, 2017).*
For purposes of a Fourth Amendment motion to suppress, a suspect did not "submit to authority" when officers made a show of authority by shining bright lights on him, but did so when he later obeyed an officer's command to put his hands on his steering wheel.

US v. Soza, *__F.3d__, No. 16-2182 (10th Cir., Apr. 21, 2017).*
Officers unlawfully arrested a defendant when, without probable cause, they handcuffed him despite his obeying their directions, making no threatening or suspicious moves, and placing his hands on his head, all while he was outnumbered by police officers and there were no other people in the vicinity.

US v. Windom, *__F.3d__, No. 16-1027 (10th Cir., July 24, 2017).*
Using a felony takedown procedure when making a *Terry* stop does not turn a stop into an arrest without probable cause when a car occupant is possibly armed and a gang member.

Washington v. Wyandotte County, *__F.3d__, No. 15-3181 (10th Cir., Feb. 6, 2017).*
A county's random drug test of an employee did not violate the Fourth Amendment, since drug use among the tested individuals would threaten workplace or public safety - - in this case the juveniles this case worker had to train and supervise.

May v. City of Nahunta, *__F.3d__, No. 15-11749 (11th Cir., Jan. 19, 2017).*
The Fourth Amendment right of a mental health detainee to personal security may be violated when, prior to transporting her to the hospital for an evaluation, the responding officer detained her in a locked room for twenty minutes and required her to disrobe.

Milwood v. Shaheen, *__F.3d__, No. 15-15240 (11th Cir., Oct. 4, 2016).*
Transvaginal ultrasounds are Fourth Amendment searches.

US v. Aponte, *__F.3d__, No. 14-15208 (11th Cir., Oct. 26, 2016).*
An officer's retention of a motorist's drivers' license was not a Fourth Amendment seizure since the motorist's car was disabled and he could not go anywhere while waiting for a tow.

US v. Ortega, *__F.3d__, No. 16-13400 (11th Cir., Feb. 8, 2017).*

An individual, for Fourth Amendment purposes, does not have a reasonable expectation of privacy in subscriber information that was voluntarily transmitted and stored by a third party internet service provider.

***Us v. Spivey**, __F.3d__, No. 15-15023 (11th Cir., June 28, 2017).*
Deception by law enforcement officer (posing as a crime-scene technician) does not necessarily render a suspect's consent to search involuntary.

***US v. Vargas**, __F.3d__, No. 16-14714 (11th Cir., Feb. 16, 2017).*
The extended length of a traffic stop did not violate the Fourth Amendment when it was due to no person being present who could lawfully operate the stopped vehicle.

***Young v. Borders**, __F.3d__, No. 14-14673 (11th Cir., Mar. 16, 2017).*
Simply knocking on an apartment door, albeit loudly and early in the morning, without more of a "show of authority" indicating to the apartment residents that they had to open their door, or would not be permitted to close their door and remain in their apartment, dos not violate the Fourth Amendment's "knock and talk" exception.

***Corrigan v. D.C.**, __F.3d__, No. 15-7098 (D.C. Cir., Nov. 8, 2016).*
Qualified immunity against a Fourth Amendment claim was denied to officers who entered a home and conducted a valid protective sweep but, after securing the scene, conducted a second thorough search of the premises, absent a warrant or exigent circumstances.

***Hall v. DC**, __F.3d__, No. 16-7056 (D.C. Cir., Aug. 11, 2017).*
Detaining someone for 45 minutes to investigate a "dine and dash" allegation, without even asking her about the bill she allegedly refused to pay, turned the stop into an arrest for which no probable cause existed.

***Pollard v. DC**, __F.3d__, No. 16-7075 (D.C. Cir., Aug. 1, 2017).*
Neither the Fourth nor Fifth Amendment prohibits officers from engaging an intellectually disabled person in a drug "buy and bust" operation or from arresting him for purchasing illegal drugs.

***US v. Griffith**, __F.3d__, No. 13-3061 (D.C. Cir., Aug. 18, 2017).*
The mere fact that cell phones contain much useful information is not sufficient probable cause to support a search warrant authorizing a home search for any such devices.

4. EXCESSIVE FORCE

***Ciolino v. Gikas**, __F.3d__, No. 16-2107 (1st Cir., June 28, 2017).*
No qualified immunity on an excessive force claim brought after an officer conducted a forceful takedown of an individual who was taunting his K-9 dog.

***Davenport v. Schweitzer**, __F.3d__, No. 16-3892 (3rd Cir., Aug. 29, 2017).*

Given the threat of immediate harm to innocent pedestrians, police officers did not use excessive force in shooting at a swerving motor vehicle involved in a low speed pursuit that ran a red light and refused to pull over.

Johnson v. Philadelphia, *__F.3d__, No. 15-2346 (3rd Cir., Sept. 20, 2016).*
Allegedly improper actions by an officer in initiating a one-on-one confrontation with an individual, which eventually led to the individual's death, do not establish a causal link between those actions and the death, when the individual's violent attack of the officer during the confrontation constituted a superseding cause that justified the officer's use of lethal force.

Aaron Brothers v. Zoss, *__F.3d__, No. 15-51204 (5th Cir., Sept. 14, 2016).*
The fact that officers, who pulled an intoxicated driver from the cab of his truck, precipitated the fall that left him paralyzed does not, in itself, prove that excessive force was used. Moreover, all actions that result in serious injury are not tantamount to deadly force.

Alexander v. Round Rock, *__F.3d__, No. 16-50839 (5th Cir., Apr. 18, 2017).*
A motorist's refusal to exit his vehicle upon command may warrant his physical removal from that vehicle, but may not support throwing him to the concrete, kneeing him in the back, and pushing his face into the ground.

Cooper v. Brown, *__F.3d__, No. 16-60042 (5th Cir., Dec. 27, 2016).*
Allowing a police dog to continue biting a compliant and non-threatening arrestee constitutes excessive force under the Fourth Amendment.

Darden v. Fort Worth, *__F.3d__, No. 16-11244 (5th Cir., Aug. 9, 2017).*
The "eggshell skull rule" is applicable to Section 1983 constitutional tort cases brought under an excessive force theory.

Griggs v. Brewer, *__F.3d__, No. 16-10221 (5th Cir., Oct. 28, 2016).*
No excessive force exists when an officer uses non-deadly punches to gain control of the arms of a drunken, resisting suspect.

Guerra v. Bellino, *__F.3d__, No. 15-51252 (5th Cir., June 19, 2017).*
For "excessive force" claim purposes, running towards a police officer from a car's length away creates a reasonable perception of being a threat of serious harm.

Hanks v. Rogers, *__F.3d__, No. 15-11295 (5th Cir., Apr. 5, 2017).*
Applying a "half spear" take-down of a motorist who could not provide proof of insurance, after he took a small lateral step while keeping his hands visible behind his back, was excessive force absent any active resistance or attempt to flee.

Harris v. Jackson Cty, *__F.3d__, No. 16-60432 (5th Cir., Apr. 7, 2017).*
Striking a person in the back and elbow during a police raid, even if he is in the process of complying with an order to get on the ground, does not constitute excessive force.

Hatcher v. Bement, *__F.3d__, No. 16-10488 (5th Cir., Jan. 19, 2017).*

It may be excessive force to shoot an unarmed suspect who, after struggling with a police officer, was pepper-sprayed and then was slowly walking away from the officer while bent over and wiping his eyes.

Thomas v. Pohlmann, *__F.3d__, No. 16-30798 (5th Cir., Mar. 15, 2017).*
An excessive force claim is not barred by *Heck* if it is temporally and conceptually distinct from the claimant's conviction.

Zimmerman v. Cutler, *__F.3d__, No. 15-50424 (5th Cir., Sept. 20, 2016).*
Qualified immunity against an excessive force claim is granted to an officer who Tased a fleeing non-violent misdemeanant who fell down and broke his arm as a result.

Thomas v. Pohlmann, *__F.3d__, No. 16-30798 (5th Cir., Mar. 15, 2017).*
An excessive force claim is not barred by *Heck* if it is temporally and conceptually distinct from the claimant's conviction.

Alexander v. Merrow, *__F.3d__, No. 16-1583 (6th Cir. May 19, 2017).*
An officer who was being dragged down the street by a traffic law violator who tried to flee in his vehicle with the officer clinging to its steering wheel did not use excessive force when he shot and killed him.

Brackens v. Lettie, *__F.3d__, No. 15-6142 (6th Cir., Feb. 21, 2017).*
Reasonable force does not become "excessive" when it hurts a person with a medical condition of which the responding officers were unaware. Moreover, in making a high-risk stop, officers can rely upon information from dispatch that turns out to be wildly inaccurate.

Carden v. Gerlach, *__F.3d__, No. 17-5157 (6th Cir., July 12, 2017).*
Qualified immunity denied on an excessive force claim stemming from an officer shooting a suspected car thief in the back when he turned to flee from the officer.

Estate of Corey Hill v. Miracle, *__F.3d__, No. 16-1818 (6th Cir., Apr. 4, 2017).*
A deputy sheriff did not use excessive force when he Tased a diabetic individual in drive-stun mode, when that individual was combative and disoriented while suffering a hypoglycemic episode, in order to allow the paramedics to gain control of him so that they could stabilize his life-threatening condition.

Evans v. Plummer, *__F.3d__, No. 16-3826 (6th Cir., Apr. 19, 2017).*
Qualified immunity was granted to an officer on a claim that his mere pointing of a Taser at a person constituted excessive force.

Folks v. Petitt, *__F.3d__, No. 16-3596 (6th Cir., Jan. 23, 2017).*
Summary judgment was denied to an officer on an excessive force claim that stemmed from him forcefully removing a cooperative, non-aggressive driver suspected of driving on a suspended license from his vehicle and slamming him against the windshield of his car.

Grey v. Romines, *__F.3d__, No. 16-6100 (6th Cir., Apr. 25, 2017).*

Qualified immunity was denied to a correctional officer on an excessive force claim when the officer sprayed a non-threatening pre-trial detainee with a chemical agent after she did not comply with the officer's verbal orders and then passively resisted the officer's open-handed escort by hesitating and stopping to ask the officer a question.

Jackson v. Lubelan, *__F.3d__, No. 15-2563 (6th Cir., Sept. 16, 2016).*
No excessive force arises from overly tight handcuffing in the absence of a physical injury caused by the handcuffing.

Jackson v. Washtenaw County, *__F.3d__, No. 15-1250 (6th Cir., Jan. 31, 2017).*
Tasing a struggling arrestee four times in five minutes was not excessive force, and neither was punching him in the face when he tried to bite an officer.

Jelsma v. Knox County, *__F.3d__, No. 16-6202 (6th Cir., Jan. 20, 2017).*
No qualified immunity for an officer who forcefully took a woman he was interviewing to the ground after she began to record the interview on her cell phone.

Jennings v. Fuller, *__F.3d__, No. 15-1870 (6th Cir., Sept. 9, 2016).*
Qualified immunity was denied to an officer for his vicious take-down, pepper-spraying, Tasing, and 3-hour restraint of an arrestee who lowered his left hand (and thereby removed it from a wall during his pat-down) in response to the officer touching his groin area.

Kulpa v. Cantea, *__F.3d__, No. 16-2521 (6th Cir., Sept. 6, 2017).*
A 300 pound officer, by kneeling on a 63 year old hand-cuffed detainee's back for 45 seconds after the detainee stopped moving, may constitute excessive force.

Littlejohn v. Myers, *__F.3d__, No. 16-3608 (6th Cir., Apr. 4, 2017).*
On an excessive force claim, qualified immunity is denied to an officer who shot an unarmed fleeing suspect who posed no threat to the officer or to bystanders.

Moore v. Memphis, *__F.3d__, No. 16-5552 (6th Cir., Apr. 10, 2017).*
Use of flash-bangs to enter a house is reasonable and not excessive force when officers have reason to believe that the resident will pose an immediate threat to their safety and there is no evidence that the resident has any health conditions that make him vulnerable to loud noises or blinding light or that the home being entered contains any substances that could easily ignite.

Scott v. Kent County, *__F.3d__, No. 16-1587 (6th Cir., Feb. 17, 2017).*
No excessive force existed when an officer, attempting to remove a disruptive arrestee from a jail cell, took him to the ground after he stepped towards the officer with clenched fists.

Presnall v. Huey, *__F.3d__, No. 16-1105 (6th Cir., Sept. 22, 2016).*
Officers who shot and killed a man after he pointed a gun at them and pulled the trigger - - only to have the gun misfire - - did not use excessive force.

Roth v. Viviano, *__F.3d__, No. 16-1781 (6th Cir., Aug. 22, 2017).*

First responders did not engage in excessive force by hand-cuffing a seizing patient to a stretcher in order to allow the EMTs to render medical aid to her.

Thomas v. Columbus, OH, *__F.3d__, No. 16-3375 (6th Cir., Apr. 19, 2017).*
It was not excessive force for a police officer to shoot an armed individual approaching him from 40 feet away even though the advancing individual never raised his weapon.

Woodcock v. Wiles, *__F.3d__, No. 16-5322 (6th Cir., Feb. 16, 2017).*
Summary judgment was denied to an officer who shot and killed a man who appeared to be intoxicated, ignored orders to stop, and kept his hand behind his back, since, even if he had a gun, he gave no indication that he would use it, threatened no one, and posed no imminent threat of serious harm to anyone. The officer's partner, who did not stop the shooting, was also denied summary judgment on failure to supervise and failure to intervene claims. Finally, the court declined to apply the "intra-corporate conspiracy doctrine" to the plaintiff's Section 1983 civil conspiracy claim.

Ehlers v. Dirkes, *__F.3d__, No. 16-1834 & 1835 (7th Cir., Jan. 25, 2017).*
An arrestee who continues to lay on his hands in defiance of an officer's instructions could reasonably be believed to be resisting and Tasering him was therefore not "excessive force." Using an arm bar in taking down and handcuffing a resisting arrestee is also not excessive force.

Boude v. City of Raymore, *__F.3d__, No. 16-1183 (8th Cir., May 5, 2017).*
An officer is justified in using force to remove a suspected impaired driver from her vehicle when she refuses to exit, even after he took away her keys so that she could not start the vehicle or flee in it.

Lancaster v. Compass Health, *__F.3d__, No. 15-3769 (8th Cir., July 28, 2017).*
It is objectively unreasonable, for purposes of an excessive force analysis, for an officer to punch in the jaw and shoot a compliant and non-threatening suspect, regardless of the nature of his suspected crime.

Malone v. Hinman, *__F.3d__, No. 15-3465 (8th Cir., Feb. 7, 2017).*
No excessive force for an officer to shoot a suspect as he ran towards another officer while holding a gun.

Perry v. LT, *__F.3d__, No. 16-3229 (8th Cir., June 5, 2017).*
No qualified immunity granted on an excessive force claim regarding an officer who observed, and then assisted in, her partner's violent take down of a suspect who did not struggle, resist arrest, or threaten anyone's safety.

Tatum v. AR, *__F.3d__, No. 16-1908 (8th Cir., May 30, 2017).*
It was not reasonable for an officer to use pepper spray a few seconds after a shoplifter refused an order to place his hands on a clothes rack. This conduct could support an "excessive force" claim.

Vester v. Hallock, *__F.3d__, No. 16-3389 (8th Cir., July 25, 2017).*

The use of the "arm bar technique" on a disarmed suspect who was threatening and disobeyed orders and who could have another concealed weapon on his person was not objectively "excessive force," especially for an officer who was making an arrest without back-up.

Ames v. King County, *__F.3d__, No. 14-36035 (9th Cir., Jan. 13, 2017).*
Qualified immunity was granted to deputies against a Fourth Amendment excessive force and warrantless search claim that stemmed from their response to a 911 call regarding a possible suicide, wherein they were denied entry into the apartment where the victim was located, withdrew, saw the homeowner exit and load an unconscious victim into her truck, then forced their way into the truck, took down the resisting driver by a hair hold, searched the vehicle, and transported the victim to the hospital.

Hughes v. Kisela, *__F.3d__, No. 14-15059 (9th Cir., Nov. 28, 2016).*
Summary judgment is denied to a police officer on an excessive force claim stemming from the shooting of the plaintiff for walking down her driveway and approaching a third party while holding a kitchen knife, although she did not comply with police orders to drop the knife. She never raised the knife and maintained a composed and non-threatening demeanor.

Lowry v. San Diego, *__F.3d__, No. 13-56141 (9th Cir., June 6, 2017).*
A city policy of training its police dogs to "bite and hold" does not violate the Fourth Amendment. No "excessive force" existed when an officer followed a K-9 closely and called her off quickly after initial her contact with the suspect.

Shafer v. Santa Barbara Cty., *__F.3d__, No. 15-56548 (9th Cir., Aug. 29, 2017).*
Qualified immunity granted to an officer on an excessive force claim that arose after he performed a leg sweep on a college student who refused the officer's orders to drop the water balloons he was holding.

Carabajal v. Cheyenne P.D. , *__F.3d__, No. 15-8139 (10th Cir., Feb. 6, 2017).*
An officer did not use excessive force when he shot the driver of a vehicle after the driver disobeyed the officer's command and slowly drove his vehicle towards the officer. The officer was not required to "stand down and hope for the best."

Clark v. Bowcutt, *__F.3d__, No. 14-4163 (10th Cir., Jan. 5, 2017).*
An officer who stepped in front of a moving vehicle to stop it from leaving the traffic stop, and then shot the driver after he ignored the officer's numerous commands to stop, did not engage in excessive force despite his opportunity to move aside and let the vehicle exit prior to shooting the driver.

Harte v. CATO Institute, *__F.3d__, No. 16-3014 (10th Cir., July 25, 2017).*
Excessive force may exist when a SWAT-type raid is made on the home of a family who had no criminal record and who (including their small children) were held at gunpoint for over two hours during a search for marijuana that turned out to be loose tea.

Johnson v. Peay, *__F.3d__, No. 16-4160 (10th Cir., Aug. 1, 2017).*

It was not excessive force to shoot the driver of a truck who repeatedly ignored officer demands to exit her vehicle and who instead bumped squad cars with her vehicle with some force, especially when the shooting officer could not tell if she may be driving into or over another officer.

Malone v. Las Cruces, *__F.3d__, No. 16-2222 (10th Cir., Sept. 8, 2017).*
No excessive force to shoot an armed suspect who ignored orders to drop his weapon, even if he lowered his arms as he backed away from the officers.

Clemons v. Knight, *__F.3d__, No. 16-12239 (11th Cir., Oct. 12, 2016).*
No excessive force existed when officers shot a motorist during a traffic stop after he tried to flee the scene in his vehicle and one officer was in or near the path of that vehicle.

Collar v. Austin, *__F.3d__, No. 15-14482 (11th Cir., Sept. 2, 2016).*
An officer was justified, for purposes of an excessive force claim, in using a firearm to stop a rapidly advancing assailant when there was no time for him to unholster and use his pepper spray, and despite another officer being located nearby.

Davidson v. City of Opelika, *__F.3d__, No. 16-10857 (11th Cir., Jan. 17, 2017).*
No excessive force for an officer to shoot a driver during a traffic stop when the driver, although unarmed, exited his vehicle holding a wallet in his hand that looked like a weapon.

Dukes v. Deaton, *__F.3d__, No. 15-14373 (11th Cir., Jan. 26, 2017).*
An officer who threw a "flash bang" in a dark room occupied by two sleeping persons, without first visually inspecting the room, did not engage in "excessive force," even though the device burned one of the sleepers.

Hart v. Logan, *__F.3d__, No. 16-10556 (11th Cir., Nov. 22, 2016).*
No excessive force existed when an officer shot an individual who was advancing towards him and refused to show his hands.

Hendrickson v. Cervone, *__F.3d__, No. 15-11100 (11th Cir., Sept. 26, 2016).*
Painful handcuffing, without more, is not excessive force.

Jacoby v. Baldwin County, *__F.3d__, No. 14-12773 (11th Cir., Nov. 7, 2016).*
Qualified immunity against an excessive force claim is denied to officers who left an arrestee in a restraint chair wearing pepper-spray and urine-soaked clothes for over eight hours, although their initial pepper-spraying and restraint were justified.

Johnson v. Lucas, *__F.3d__, No. 16-12129 (11th Cir., May 15, 2017).*
Handcuffing a pre-trial detainee so that his hands went numb, and pulling him off the ground to transport him to a disciplinary cell in a manner that caused his shoulder "excruciating pain," did not constitute excessive force.

Montanez v. City of Orlando, *__F.3d__, No. 15-15211 (11th Cir., Feb. 2, 2017).*

"Clotheslining" a bicyclist who disobeyed an officer's order to stop and who was apparently attempting to flee the scene was not excessive force.

Nigro v. Carrasquillo, *__F.3d__, No. 16-10193 (11th Cir., Oct. 4, 2016).*
Two short bursts of pepper spray shot at a woman who violently kicked a patrol car door and then resisted arrest is not excessive force.

Santana v. Miami-Dade, *__F.3d__, No. 15-14338 (11th Cir., May 17, 2017).*
No excessive force occurred when an officer shot an armed individual who disobeyed her commands and then dropped his weapon a split second before he was shot.

Sexton v. Mangiaracina, *__F.3d__, No. 16-11403 (11th Cir., Sept. 16, 2016).*
An excessive force claim survives summary judgment when a person who had been drinking and had a handgun in his pocket was allegedly shot as he began to kneel in compliance with an officer's instructions to do so.

Shuford v. Conway, *__F.3d__, No. 16-12128 (11th Cir., Nov. 18, 2016).*
Qualified immunity was denied to an officer who shot with pepperballs and a Taser a non-violent arrestee who had been placed in a holding cell and who was obeying the officer's orders to kneel and put his hands on his head. A supervisor who had viewed numerous videotapes of past instances of this type of conduct was also not immune from liability against a Fourteenth Amendment claim.

Stephens v. Degiovanni, *__F.3d__, No. 15-10206 (11th Cir., Mar. 30, 2017).*
When an officer's conduct is plainly objectively unreasonable, a court does not need prior case law to determine that the force he used was excessive and unlawful, because it was disproportionate.

Wate v. Kubler, *__F.3d__, No. 15-15611 (11th Cir., Oct. 12, 2016).*
Qualified immunity is denied to officers on an excessive force claim when they Tased an individual five times, at least twice after he had ceased resisting and was no longer a flight risk.

Williams v. Luecke, *__F.3d__, No. 14-14183 (11th Cir., Oct. 26, 2016).*
It was not excessive force for an officer, during a traffic stop, to grab and attempt to push back in his car a motorist who exited his vehicle and then ignored the officer's order to return to it.

5. FIFTH AMENDMENT

Denault v. Other Police Officers, *__F.3d__, No. 15-2423 (1st Cir., May 16, 2017).*
To the extent a plaintiff challenges on federal constitutional grounds the government's retention of his personal property after it was lawfully seized during a crime investigation, that challenge sounds in the Fifth Amendment, not the Fourth Amendment.

US v. Gomez, *__F.3d__, No. 16-40733 (5th Cir., Aug. 9, 2017).*

Absent police officer deceit, the Fifth Amendment does not require a suspect to be informed of the object of an investigation before he can knowingly waive his ***Miranda*** rights.

Cole v. Memphis, *__F.3d__, Nos. 15-5725 & 5999 (6th Cir., Oct. 17, 2016).*
A city policy of requiring all persons to immediately leave the sidewalks and street at 3:00 am every morning despite the lack of any present threat to police officer safety, violated these persons' fundamental liberty right to intra-state travel and was not sufficiently tailored so as to survive an intermediate scrutiny analysis.

US v. Calvetti, *__F.3d__, Nos. 15-1526 & 1558 (6th Cir., Sept. 8, 2016).*
An individual's consent to search her residence is not an incriminating statement under the Fifth Amendment because it is not testimonial or communicative evidence.

US v. Mays, *__F.3d__, No. 16-3177 (6th Cir., Mar. 23, 2017).*
A single statement during a police interview: "I really should have a lawyer, huh?" is not an unequivocal request for counsel for Fifth Amendment purposes.

US v. Miller, *__F.3d__, No. 16-3557 (6th Cir., June 13, 2017).*
Statement that a suspect "prefers not to answer any more questions" was not, in context, the invocation of his right to counsel.

US v. Ray, *__F.3d__, No. 16-1785 (6th Cir., June 8, 2017).*
Asking some new or amplifying questions during a post-***Miranda*** warning interrogation does not make that warning effective when a pre-***Miranda*** interrogation along similar lines has already occurred, for purposes of a "midstream" ***Miranda*** warning analysis.

US v. Saylor, *__F.3d__, No. 16-6085 (6th Cir., Aug. 9, 2017).*
An individual was not "in custody" for ***Miranda*** purposes when he was informally questioned for 15-30 minutes in his home and not physically restrained, even if he was never told that he did not have to answer questions and was confronted with incriminating evidence.

Bell v. Country Club Hills, *__F.3d__, No. 16-1245 (7th Cir., Nov. 8, 2016).*
A city's repeal of an ordinance that provided a 25% tax rebate to qualified homeowners did not violate the Fifth Amendment because this tax rebate program did not confer vested property rights to these homeowners.

Gill v. Milwaukee, *__F.3d__, No. 16-2846 (7th Cir., Mar. 7, 2017).*
Detectives were entitled to qualified immunity against Fifth and Fourteenth Amendment claims stemming from their use of interrogation techniques such as social isolation, confrontation, theme development, minimization, and falsely stating that a suspect had been identified by an eyewitness and failed a polygraph test in order to coerce a confession from the functionally illiterate suspect.

Joe Sanfelippo Cabs v. Milwaukee, *__F.3d__, No. 16-1008 (7th Cir., Oct. 7, 2016).*

Removing the cap on the number of taxicab permits issued by a city does not violate the Fifth Amendment because there is no property interest in a taxicab permit.

US v. Giddins, *__F.3d__, No. 15-4039 (9th Cir., June 6, 2017).*
Police interview of a suspect, during which they wrongfully suggested that the suspect had to submit to questioning in order to recover his vehicle, and telling him that he was not "in trouble" when he was actually the subject of an arrest warrant, amounted to unlawful coercion for purposes of a Fifth Amendment *Miranda* rights waiver analysis.

US v. Loucious, *__F.3d__, No. 16-10121 (9th Cir., Feb. 7, 2017).*
Miranda warnings are not constitutionally deficient because they did not explicitly inform an arrestee of his right to consult with an attorney before questioning when that right is reasonably inferred from the warning given. *Miranda* warnings need not follow a precise formulation.

US v. Zapien, *__F.3d__, No. 14-10224 (9th Cir., July 3, 2017).*
Even after an arrestee has invoked his Fifth Amendment rights, the "booking exception" allows officers to ask him biographical questions that have no relation to his suspected crime and that are not reasonably likely to elicit an incriminating response.

US v. McNeal, *__F.3d__, No. 16-1054 (10th Cir., July 10, 2017).*
Officers do not "coerce" a suspect into giving up her Fifth Amendment rights by warning her that lying will subject her to prosecution.

Vogt v. City of Hays, *__F.3d__, No. 15-3266 (10th Cir., Jan. 4, 2017).*
The Fifth Amendment right against self-incrimination applies to compelled statements used both at trial and in probable cause hearings. Such a Fifth Amendment violation can serve as the basis for Section 1983 liability.

Etherton v. City of Rainsville, *__F.3d__, No. 15-15147 (11th Cir., Sept. 26, 2016).*
A municipality's enforcement of its zoning law against private property did not "take" without due process a landowner's contract with a potential purchaser of that property even though this action discouraged the purchaser from going forward with the purchase.

Pollard v. DC, *__F.3d__, No. 16-7075 (D.C. Cir., Aug. 1, 2017).*
Neither the Fourth nor Fifth Amendment prohibits officers from engaging an intellectually disabled person in a drug "buy and bust" operation or from arresting him for purchasing illegal drugs.

6. FOURTEENTH AMENDMENT; DUE PROCESS

***Ferrari v. Suffolk County**, __F.3d__, No. 15-975 (2nd Cir., Dec. 7, 2016).*
When a sports car is impounded after its driver is arrested for operating while impaired, due process is met when, at a post-seizure hearing, the county makes out a *prima facie* case for its retention in order to protect its interests in the financial value of the vehicle and to protect the public from further illegal driving. The title owner is then required to meet its burden of identifying alternative measures that would satisfy the county's interests.

***Palakovic v. Wetzel**, __F.3d__, No. 16-2726 (3rd Cir. April 14, 2017).*
In a case alleging that a prison official should be liable for failing to prevent a pre-trial detainee's suicide, brought under the Due Process Clause, a plaintiff must show that: (1) the individual had a particular vulnerability to suicide, (2) the prison official knew or should have known of this vulnerability, and (3) the official acted with reckless or deliberate indifference to this vulnerability.

***Steele v. Cicchi**, __F.3d__, No. 14-3127 (3rd Cir., May 3, 2017).*
The transfer of a pretrial detainee to administrative segregation for security, not disciplinary, reasons did not violate his due process rights even though it interfered with his ability to telephone persons who might co-sign for his bail.

***US v. Penn**, __F.3d__, No. 16-3779 (3rd Cir., Aug. 30, 2017).*
Replacing a juror who was facing scheduled surgery with an alternate did not violate an accused's due process or equal protection rights.

***Safar v. Tingle**, __F.3d__, No. 16-1420 (4th Cir., June 7, 2017).*
There is no due process obligation on a police officer who learns, after an arrest warrant is properly issued based upon probable cause, that the charges upon which the warrant was issued are meritless, to take affirmative steps to have the warrant withdrawn.

***Duarte v. Lousiville**, __F.3d__, No. 15-41456 (5th Cir., May 30, 2017).*
An ordinance that restricts where certain sex offenders can live within the city does not violate a convicted sex offender's due process or equal protection rights even if it does not provide him with the right to a hearing to demonstrate that he is not dangerous to children.

***Hackbelt 27 v. City of Coppell**, __F.3d__, No. 15-11109 (5th Cir., Sept. 27, 2016).*
For substantive due process purposes, a city council's concerns that a zoning request for a mixed use development lacked cohesiveness and that a proposed hotel was not the best use for the property were sufficiently related to the city's interests in promoting the general welfare and were neither arbitrary or unpredictable reasons for its denial of this request.

***Montano v. Orange County**, __F.3d__, No. 15-41432 (5th Cir., Nov. 29, 2016).*
A custom and practice of leaving persons in a detox cell for five to six days, without medical care, supports an unconstitutional "condition of confinement" claim.

***Reyes v. North Texas Tollway**, __F.3d__, No. 16-10767 (5th Cir., June 27, 2017).*

An administrative fee of $25 added to the fine for failure to pay a highway toll does not violate substantive due process, since the fee was rationally related to recovering costs of collection.

Rivera v. Bonner, *__F.3d__, No. 16-10675 (5th Cir., July 16, 2017).*
Hiring a jailer who had been twice arrested as a juvenile for indecency with a child and who subsequently sexually assaulted a prisoner does not support a "deliberate indifference in hiring" claim.

Boler, et al. v. City of Flint, et al., *__F.3d__, No. 16-1684 (6th Cir., July 28, 2017).*
The Safe Drinking Water Act does not preempt Section 1983 claims against a municipality and its municipal officials for the breach of their duty to protect against state-created dangers, breach of equal protection and due process rights, and similar constitutional violations as a result of a tainted municipal water supply.

Caminata v. Wexford County, *__F.3d__, No. 16-1451 (6th Cir., Nov. 17, 2016).*
Mere negligence in a fire investigation does not support a Fourth and Fourteenth Amendment claim stemming from the plaintiff's arrest for alleged arson.

Engler v. Arnold, *__F.3d__, No. 16-4201 (6th Cir., July 10, 2017).*
County children's services officer's failure to investigate a claim of alleged child abuse is not an "affirmative action" for purposes of a "state-created danger" analysis under the Due Process Clause.

Nelson v. Madison Heights, *__F.3d__, No. 15-2441 (6th Cir., Jan. 9, 2017).*
Summary judgment is denied against a Section 1983 substantive due process claim brought against an officer when he disclosed the name of a drug informant to a drug dealer's associate, which led to the informant's death.

Parisi v. Heck, *__F.3d__, No. 16-3114 (6th Cir., Nov. 16, 2016).*
A county prosecutor's office did not violate an attorney's substantive due process right of privacy when it shared with a bar association evidence of the attorney's possible unethical conduct despite no professional obligation on its part to do so.

Pesci v. City of Niles, *__F.3d__, No. 16-2057 (6th Cir., Jan. 5, 2017).*
The duty to supervise is not a duty to micro-manage, and a municipality does not open itself up to Section 1983 liability under the Fourth or Fourteenth Amendments whenever it delegates power to employees.

Canen v. Chapman, *__F.3d__, No. 16-1621 (7th Cir., Jan. 27, 2017).*
The failure of a detective to disclose that he was not trained as a latent print examiner, when his mis-identification of a print led to the plaintiff's conviction, does not violate any clearly established right for purposes of a Section 1983 due process claim.

Milwaukee Police v. Milwaukee, *__F.3d__, No. 16-4151 (7th Cir., May 3, 2017).*

A city does not violate the Fourteenth Amendment by requiring its public safety personnel to live within the city's corporate limits.

***Wilson-Trattner v. Campbell**, __F.3d__, No. 16-2509 (7th Cir., July 11, 2107).*
Mere police indifference or inaction in the face of private violence does not support a "state-created danger" substantive due process claim.

***Bolderson v. Wentzville**, __F.3d__, No. 15-3846 (8th Cir., Nov. 1, 2016).*
The fact that a municipal official had discretion to hire and fire does not necessarily mean that he had responsibility for establishing related policy so as to transform him into a "policymaker" for Section 1983 municipal liability purposes.

***Hughes v. Cedar Rapids**, __F.3d__, No. 15-2703 (8th Cir., Nov. 2, 2016).*
A government agency's regulations do not set the legal standard for procedural due process, and their mere violation does not constitute a federal due process violation.

***Jenkins v. Anderson**, __F.3d__, No. 15-3273 (8th Cir., Oct. 3, 2016).*
The fact that a woman does not immediately report the inappropriate advances of her supervisor towards her does not indicate that his advances were welcome for purposes of a Section 1983 Fourteenth Amendment sexual harassment claim.

***MacMann v. City of Columbia**, __F.3d__, No. 15-3400 (8th Cir., Dec. 9, 2016).*
The right to a municipal referendum is not protected by the Due Process Clause.

***Bracken v. Chung**, __F.3d__, No. 14-16886 (9th Cir., Aug. 23, 2017).*
Summary judgment is denied on a "failure to intercede" Due Process Clause claim brought against an officer working as a special duty officer at a private event. Although he was in uniform, his police department considered him to be off-duty at the time.

***Hardwick v. Orange County**, __F.3d__, No. 15-55563 (9th Cir., Jan. 3, 2017).*
Qualified immunity was denied to social workers who allegedly used perjured testimony and fabricated evidence to effectuate the plaintiff's removal from her mother's home.

***Kirkpatrick v. Washoe County**, __F.3d__, No. 12-15080 (9th Cir., Dec. 9, 2016).*
Social workers who suspect child abuse must pursue a warrant before seizing a child if they have time to do so without risking the child's well-being - - absent imminent danger of serious bodily injury. However, a parent with no enforceable parental rights at the time of the child's removal had no standing to bring a Fourteenth Amendment claim challenging the removal.

***Pauluk v. Savage**, __F.3d__, No. 14-15027 (9th Cir., Sept. 8, 2016).*
The due process "state-created danger" doctrine can be applied to dangers that result from a physical condition (such as mold) in a government employee's workplace.

***Yagman v. Garcetti**, __F.3d__, No. 14-56223 (9th Cir., Jan. 20, 2017).*

A municipal procedure for contesting parking citations, which requires the penalty to be paid or proof of inability to pay before an administrative hearing is held on the citation, does not violate an offender's procedural due process rights.

Onyx v. Bd. Of Commsrs. *, __F.3d__, Nos. 15-1141 & 1197 (10th Cir., Oct. 3, 2016).*
The adoption of a comprehensive zoning ordinance is a legislative act that does not require a due process hearing for the landowners affected by the ordinance.

T.D. v. Denver DHS*, __F.3d__, No. 16-1092 (10th Cir., Aug. 28, 2017).*
A social worker violated a child's substantive due process rights by temporarily placing him with his father despite her concerns over his safety and the father's criminal history and current suspicion of sexual abuse.

Thomas v. White-Gordon*, __F.3d__, No. 16-1042 (10th Cir., Dec. 6, 2016).*
Having a duty to protect the "public at-large" does not establish a special relationship with a particular member of the public for purposes of a substantive due process claim.

Browder v. Casaus*, __F.3d__, No. 16-2092 (10th Cir., Jan. 11, 2017).*
Summary judgment was denied to a police officer on a substantive due process claim brought by a plaintiff who was seriously injured when an off-duty police officer, for no legitimate law enforcement purpose, activated his emergency lights, sped through red lights, and collided with the plaintiff's vehicle.

May v. City of Nahunta*, __F.3d__, No. 15-11749 (11th Cir., Nov. 15, 2016).*
Qualified immunity was denied to an officer who was justified in conducting a mental health seizure but who may have violated the seized individual's Fourth Amendment rights to personal security by the unreasonable manner in which he conducted this otherwise justified seizure.

Reid v. Webber*, __F.3d__, No. 16-14710 (11th Cir., June 21, 2017).*
Waiting over four hours to provide an arrestee with medical care for his broken hand - - until his investigatory interview was over - - may violate the Fourteenth Amendment and allow recovery from the offending officers in their individual capacities.

7. EQUAL PROTECTION

Davidson, et al., v. City of Cranston*, __F.3d__, No. 16-1692 (1st Cir., Sept. 21, 2016).*
Using total population data to divide a city into six nearly equal-in-population voting districts does not violate the Equal Protection Clause even though much of the population contained in one district consisted of prisoners housed in an adult correctional facility.

Public Integrity Alliance v. Tucson*, __F.3d__, No. 15-16142 (4th Cir., Sept. 2, 2016).*

A city's system for electing members to its common council, which uses a ward-based primary and an at-large general election, does not violate the Equal Protection Clause.

***Quinn v. Queen Anne County**, __F.3d__, No. 16-1890 (4th Cir., July 7, 2017).*
No equal protection claim exists for a developer when a city's comprehensive plan, in an effort to limit overdevelopment, did not extend its sewer system to all of his property.

***Integrity Collision v. City of Fulshear**, __F.3d__, No. 15-20560 (5th Cir., Sept. 20, 2016).*
A class-of-one equal protection claim is inappropriate in the context of a local government's discretionary decision as to whether to include a towing company on its non-consent tow list. The quality and quantity of towing companies that a municipality needs in order to fulfill its non-consent towing obligations is not for the court to decide or the Equal Protection Clause to inform. That the police chief requires only two towing companies to satisfy this need is sufficient to survive a rational-basis review.

***Illinois Transp. Trade Assoc. v. Burgess**, __F.3d__, No. 16-2009 (7th Cir., Oct. 7, 2016).*
"Property" does not include the right to be free from competition. Taxicabs and transportation network providers provide different services, and a city's different licensing and fare rules for taxicabs and Uber drivers does not violate the Equal Protection Clause or the Fifth Amendment.

***American Family Insur. v. Minneapolis**, __F.3d__, No. 15-3216 (8th Cir., Sept. 6, 2016).*
A municipality did not violate the Equal Protection Clause when, after a city water main break caused damage, it paid all claimants who were natural persons or business entities whose insurance did not cover their loss and refused to pay all claims by insurance companies for similar losses suffered by their insureds.

***Leatherwood v. Rios**, __F.3d__, No. 16-6370 (10th Cir., Aug. 6, 2017).*
It is not an Equal Protection Clause violation for one prison commissary to charge more for items than another prison commissary.

8. EEOC; TITLE VII; DISCRIMINATION

***Jones v. City of Boston**, __F.3d__, No. 15-2015 (1st Cir., Dec. 28, 2016).*
For Title VII purposes, a police department's "hair test" requirement, which tested for drug use, was job-related and consistent with business necessity although it was not 100% accurate. However, the employer's refusal to adopt a more accurate "hair test plus urinalysis" procedure may result in disparate impact liability if this alternative procedure would have produced less of a disparate impact based upon race yet have still served the employer's legitimate needs.

***Christiansen v. Omnicom**, __F.3d__, No. 16-748 (2nd Cir., Mar. 27, 2017).*
Under Title VII, an employee's claim that he was perceived by his supervisors as effeminate and submissive, and harassed for those reasons, state a cognizable gender stereotyping claim.

***Shultz v. Congregation Shearith Isreal**, __F.3d__, No. 16-3140 (2nd Cir., Aug. 10, 2017).*

A Title VII action can still lie when an employee is given a termination of employment notice that is then revoked before it becomes effective.

***Atron Castleberry v. STI Group**, __F.3d__, No.16-3131 (3rd Cir., July 14, 2017).*
Section 1981 hostile work environment claim plaintiffs must establish that the discrimination alleged was severe or pervasive, not severe and pervasive.

***Carvalho-Grevious v. Delaware St.** , __F.3d__, No. 15-3521 (3rd Cir., Mar. 21, 2017).*
In a Title VII retaliation claim, the plaintiff at the *prima facie* stage need only provide evidence sufficient to raise an inference that her protected activity was a likely reason for her adverse employment action - - not the "but for" reason.

***Moody v. Atlantic City BOE**, __F.3d__, No. 16-4373 (3rd Cir., Sept. 6, 2017).*
For purposes of a Title VII claim, an individual can be a "supervisor" when he is empowered to determine whether a plaintiff worked at a school, which had a direct impact upon her pay, especially when no one else provides the plaintiff with supervision.

***EEOC v. Consol Energy**, __F.3d__, No. 16-1230 (4th Cir., June 12, 2017).*
A company violated Title VII when it failed to reasonably accommodate a Christian employee whose religious beliefs prevented him from submitting to a biometric hand scanner used to track employees.

***Burgess v. Hattiesburg**, __F.3d__, No. 16-60171 (5th Cir., Nov. 5, 2016).*
Mere workplace harassment, without evidence that it was race or disability related, does not support a Title VII or ADA claim.

***Cabral v. Brennan**, __F.3d__, No. 16-50661 (5th Cir., Apr. 10, 2017).*
Placing an employee on 2 days of unpaid leave is not an adverse employment action for purposes of a Title VII retaliation claim.

***Outley v. Luke & Assoc.** , __F.3d__, No. 16-60223 (5th Cir., Oct. 19, 2016).*
A lateral job transfer is not an adverse employment action under Title VII merely because it changes an employee's working hours or imposes a heavier workload.

***Panagiota Heath v. Bd. Of Supervisors**, __F.3d__, No. 16-30625 (5th Cir., Mar. 8, 2017).*
Under Title VII, the continuing violation doctrine applies even when a claimant knew or should have earlier been aware of a duty to assert her rights, thus allowing the claimant to support her harassment claim with evidence of conduct that occurred more than 300 days before she filed her EEOC charge. The continuing violation doctrine applies the same to both Title VII and Section 1983 hostile work environment claims.

***Adamov v. US Bank**, __F.3d__, No. 16-5458 (6th Cir., Mar. 7, 2017).*

In a Title VII national-origin discrimination case, a less than one month gap between an employee's protected conduct and his adverse employment action, coupled with increased work scrutiny, created an inference of causation and pretext.

***EEOC v. Autozone**, __F.3d__, No. 16-6387 (6th Cir., June 9, 2017).*
A store manager is not a "supervisor" under Title VII when he has no authority to hire, fire, promote, reassign or cause a significant change in employee benefits.

***Frazier v. Richland Public Health**, __F.3d__, No.16-3765 (6th Cir., Apr. 7, 2017).*
Under Title VII, a reassignment of job duties can constitute retaliation even if the new and old job duties both fall within the same job description. Every job has duties that are less desirable than others.

***Graves v. Dayton**, __F.3d__, No. 15-4049 (6th Cir., Sept. 13, 2016).*
The fact that a female employee received two sex-based texts that did not evince an anti-female animus, and that the sender of these texts was angry at her for reporting them to her supervisor but not for her being female, does not establish a Title VII hostile work environment.

***Lee v. Cleveland Clinic**, __F.3d__, No. 16-3901 (6th Cir., Jan. 20, 2017).*
Increased surveillance and discipline, whether warranted or not, do not constitute a material change in a terms of employment in a discrimination context. However, a suspension without pay, once issued and even if not yet served, can constitute an adverse employment action under Title VII.

***Presley v. Ohio Dept. of Rehab.** , __F.3d__, No. 16-3563 (6th Cir., Jan. 6, 2017).*
Under Title VII, a constructive discharge did not occur when a nurse was temporarily assigned to an administrative position pending an investigation into her conduct, when that temporary assignment was not "objectively intolerable."

***Cole v. NIV**, __F.3d__, No. 15-2305 (7th Cir., Sept. 27, 2016).*
Forms of harassment that might seem neutral in terms of a protected status can still contribute to a hostile work environment claim if the evidence supports a reasonable inference tying the harassment to a plaintiff's protected status.

***EEOC v. Autozone**, __F.3d__, No. 15-3201 (7th Cir., June 20, 2017).*
The court rejects the EEOC's argument that Title VII, which prohibits employers from limiting or classifying employees by race, sex, or other protected classification, does not require a claimant thereunder to prove that an alleged discriminatory action adversely affected his employment status or opportunities.

***EEOC v. Union Pacific**, __F.3d__, No. 15-3452 (7th Cir., Aug. 15, 2017).*
Neither the issuance of a right to sue letter nor the entry of judgment in a lawsuit brought by the individual who initially brought a discrimination charge bars the EEOC from continuing its own investigation into the conduct alleged.

***Eppinger v. Caterpillar**, __F.3d__, No. 16-3891 (7th Cir., Mar. 29, 2017).*

An employee's termination almost five months after she filed an EEOC charge does not raise an inference of retaliation due solely to this temporal proximity.

Hively v. Ivy Tech, *__F.3d__, No. 15-1720 (7th Cir., Apr. 4, 2017).*
Sexual orientation discrimination is a form of sex discrimination under Title VII.

Owens v. Old Wisconsin, *__F.3d__, No. 16-3875 (7th Cir., Aug. 31, 2017).*
A supervisor's refusal to answer her employer's questions about her relationship with a subordinate male employee whom she supervised, which led to her termination, did not support her sex discrimination claim when male supervisors were similarly questioned.

Volling v. Kurtz, *__F.3d__, No. 15-3572 (7th Cir., Oct. 19, 2016).*
Providing notice of a job opening to some employees but not to those who had previously been involved in protected activity may be an actionable adverse employment action even though the latter group of employees never applied for the open position at issue.

Blake v. MJ Optical, *__F.3d__, No. 16-3100 (8th Cir., Aug. 31, 2017).*
Fifteen years of "I love you" comments and an occasional butt slap by a supervisor to an employee who did not openly complain about them do not establish a hostile work environment.

Liles v. McCrossan, *__F.3d__, No. 15-3801 (8th Cir., Mar. 21, 2017).*
Title VII retaliatory causation is not shown where adverse employment actions took place between eight and fifteen months after the claimant's complaints of discrimination.

Abdel-Ghani v. Target, *__F.3d__, Nos. 16-2395 & 16-2397 (8th Cir, May 5, 2017).*
The occasional use of racial epithets by employees in a backroom ("camel jockey," "Muslim," and "nigger") was morally repulsive but not physically threatening and did not create a hostile work environment for a Palestinian employee.

Tovar v. Essentia Health, *__F.3d__, No. 16-3186 (8th Cir., May 24, 2017).*
Title VII does not allow an employee to bring a discrimination claim against her employer based upon a protected characteristic of the employee's child.

Wilson v. Arkansas DHS, *__F.3d__, No. 16-1174 (8th Cir., Mar. 1, 2017).*
In a retaliatory discharge case, a six-week period between an employee filing an EEOC charge and his termination plausibly alleges the "but-for" causal connection needed to survive a summary judgment challenge.

Fuller v. ID DOC, *__F.3d__, No. 14-36110 (9th Cir., July 31, 2017).*
An employee who was raped by a co-worker and then punished for taking time off to deal with her assault, while her rapist was supported upon his return to work, established a triable issue as to the existence of a hostile work environment.

Reynaga v. Roseburg, *__F.3d__, No. 14-35028 (9th Cir., Jan. 21, 2017).*

To avoid vicarious liability for the discriminatory actions of its employee, an employer's remedial measures must be both prompt and effective.

Zetwick v. County of Yolo, *__F.3d__, No. 14-17341 (9th Cir., Feb. 23, 2017).*
A sheriff who hugged the men and women who worked for him differently could thereby create a hostile work environment, despite the absence of sexual comments or other touching.

Clincy v. Transunion, *__F.3d__, No. 16-4029 (10th Cir., Apr. 4, 2017).*
An inference of racial discrimination does not exist merely because a terminated employee was the only African-American in a 500-person workforce. His employer's general employment practices are not closely related to its decision to terminate this particular employee.

EEOC v. Equal Employment Advisory, *__F.3d__, No. 16-2053 (10th Cir., Feb. 27, 2017).*
When subpoenaing documents from an employer, the EEOC must show the relevancy to its investigation of the requested information. Courts must be careful not to read "relevancy" so broadly as to make this requirement a nullity.

Tilghman v. Kirby, *__F.3d__, No. 16-6010 (10th Cir., Oct. 7, 2016).*
Speaking to an employee about her tardiness and personal activities at work is not an adverse employment action under Title VII.

Black v. Reynolds, *__F.3d__, No. 16-10481 (11th Cir., Dec. 22, 2016).*
An employee's e-mail, complaining of bullying and harassment but not tying this conduct to race or sex, contained no protected activity under Title VII for purposes of a retaliation claim.

Brown v. Davis, *__F.3d__, No. 15-15693 (11th Cir., Apr. 11, 2017).*
For purposes of a Section 1983 race and gender discrimination claim, suspicion alone - - without a logical nexus - - does not rebut a proffered nondiscriminatory reason for an employee's termination.

Cheatham v. Dekalb Cty. , *__F.3d__, No. 16-11068 (11th Cir., Mar. 20, 2017).*
Under Title VII, an employee does not engage in protected activity by participating in her employer's internal, in-house investigation.

EEOC v. Catastrophic Mgmt. Solutions, *__F.3d__, No. 14-13482 (11th Cir., Sept. 15, 2016).*
Title VII protects persons with respect to their immutable characteristics, not their cultural practices - - such as wearing dreadlocks - - which were prohibited by the employer's grooming policy.

Evans v. Georgia Regional, *__F.3d__, No. 15-15234 (11th Cir., Mar. 10, 2017).*
Discrimination based upon gender nonconformity is actionable under Title VII. However, a sexual orientation claim is not.

Furcron v. Mail Centers, *__F.3d__, No. 15-14595 (11th Cir., Dec. 16, 2016).*

A hostile work environment can exist under Title VII when a male employee continually walks up to and bumps into a female employee while sporting an erection.

***Jones v. Allstate**, __F.3d__, No. 16-15628 (11th Cir., Sept. 6, 2017).*
Under the ADA, FMLA, and Title VII, a hostile work environment is not shown by mere evidence that co-employees will not talk to you and that your employer does not give you enough breaks upon your return from medical leave.

***Marria v. England**, __F.3d__, No. 15-14453 (11th Cir., Feb. 10, 2017);*
***Shi v. Montgomery**, __F.3d__, No. 15-14837 (11th Cir., Feb. 10, 2017).*
Under Title VII, an employer's termination decision need not be prudent or fair, as long as it is not discriminatory.

***Perry v. Avon Park**, __F.3d__, No. 15-14525 (11th Cir., Nov. 18, 2016).*
A single stale statement by a male supervisor that "women do not belong in the workplace" is insufficient as direct evidence that this supervisor would, three years later, terminate a female employee on account of her sex in violation of Title VII.

***Smith v. Mobile Shipbuilding**, __F.3d__, No. 16-10321 (11th Cir., Oct. 4, 2016).*
General unfair workplace treatment is not protected by Title VII.

***Zarza v. Tallahassee Housing Auth.** , __F.3d__, No.15-15348 (11th Cir., Apr. 26, 2017).*
Having unpleasant working conditions and an unfair and unpleasant boss is not enough to establish the presence of a "hostile work environment" based upon a protected classification.

9. ADA;REHABILITATION ACT

***Martinez v. Fresenius Health**, __F.3d__, No. 16-1453 (1st Cir., Apr. 7, 2017).*
An employee's request to be "returned to work" does not constitute his meaningful engagement in the interactive reasonable accommodation process.

***B.C. v. Mt. Vernon Sch. Dist.** , __F.3d__, No. 14-3603 (2nd Cir., Sept. 16, 2016).*
For purposes of an ADA disparate impact claim, data that concerns students with disabilities under IDEA is insufficient to show that a school district's policies adversely affected individuals protected by the ADA, as IDEA disability does not necessarily constitute ADA disability.

***Arthur v. BNSF**, __F.3d__, No. 16-10270 (5th Cir., July 6, 2017).*
Under the ADA, an employer who indicates that an employee "might be able to perform light-duty jobs" does not thereby admit that it considers her disabled from performing medium and heavy duty jobs.

***Caldwell v. KHOU-TV**, __F.3d__, No. 16-20408 (5th Cir., Mar. 6, 2017).*
An employee claiming ADA and FMLA violations raised evidence of pretext when he showed that his employer's reasons for firing him were inconsistent, erroneous, and changed over time.
***Credeur v. Louisiana**, __F.3d__, No. 16-30658 (5th Cir., June 23, 2017).*

The court refuses to construe the ADA as requiring employers to offer unlimited telecommuting to their disabled employees as a reasonable accommodation.

***EEOC v. Vicksburg Healthcare**, __F.3d__, No. 15-60764 (5th Cir., Oct. 12, 2016).*
The fact that an employee claimed to be "temporarily totally disabled" for purposes of a private insurance disability claim does not necessarily establish that, for ADA purposes, she could not perform her job duties with reasonable accommodation.

***Moss v. Harris County**, __F.3d__, No. 16-20113 (5th Cir., Mar. 15, 2017).*
Being granted extra leave and then being allowed to retire are not reasonable accommodations under the ADA, as they would not allow an employee to perform the essential functions of his job.

***Spencer v. KS Mgmt. Svcs.** , __F.3d__, No.16-20553 (5th Cir., Feb. 27, 2017).*
At trial, an ADA plaintiff need not prove a *prima facie* case under McDonnell Douglas, but must instead prove the ultimate question of discrimination.

***Bush v. Compass Grp.** , __F.3d__, No. 16-6258 (6th Cir., Mar. 23, 2017).*
Under the ADA, reasonable accommodation does not include removing an essential job function or promoting an employee to another position.

***Michigan Flyer v. Wayne County**, __F.3d__, No. 16-1205 (6th Cir., June 22, 2017).*
A suit for retaliation under Title V of the ADA applies to individuals and does not protect corporate entities.

***Roell v. Hamilton Cty.**, __F.3d__, No. 16-4045 (6th Cir., Sept. 5, 2017).*
The ADA does not require officers confronting a mentally unstable individual who has committed a series of property crimes and poses a continuing threat to them to accommodate his disability by using verbal de-escalation techniques and calling EMS services before Tazing him.

***Sharp v. Profitt**, __F.3d__, No. 14-3959 (6th Cir., Dec. 28, 2016).*
An employer did not violate the ADA or the FMLA when it terminated an employee for violating a work rule that required him to immediately report any work incidents - - including any work-related injury that he allegedly suffered while on the job.

***Williams v. AT&T**, __F.3d__, No. 16-6078 (6th Cir., Jan. 27, 2017).*
An employee suffering from depression and panic attacks was not entitled, under the ADA, to additional leave from work, flexible scheduling, and additional work breaks as accommodations, because these requests sought to eliminate an essential job function - - regular attendance and punctuality.

***Atkinson v. SG Americas**, __F.3d__, No. 17-1059 (7th Cir., May 9, 2017).*
The ADA does not require an employer to provide a disabled employee everything he asks for in the way of a work accommodation, but only a reasonable accommodation for his disability.

***Bell v. Bd. Of Education**, __F.3d__, No. 16-1365 (7th Cir., Sept. 22, 2016).*

An employer who fired an employee because it believed that she had abandoned her job does not violate the ADA.

Brown v. Milwaukee Board, *__F.3d__, No. 16-1971 (7th Cir., May 4, 2017).*
The ADA does not require an employer to promote a disabled employee as a reasonable accommodation.

Whitaker v. WI Dept. of Health Svcs. , *__F.3d__, No. 16-1807 (7th Cir., Feb. 27, 2017).*
Under the Rehabilitation Act, mere evidence that an employee was under medical treatment was insufficient to establish that the treatment was effective or that it was medically likely that the treatment would allow her to return to work regularly - - with regular attendance being an essential function of her job.

Faidley v. UPS, *__F.3d__, No. 16-1073 (8th Cir., Apr. 4, 2017).*
Under the ADA, an employer who rejects as an accommodation a disabled driver's bid for a full-time position and offers him only part time positions may thereby engage in disability discrimination - - because forcing a driver to reduce his hours and benefits constitutes an adverse employment action.

Guenther v. EEOC, *__F.3d__, No. 16-1760 (8th Cir., Jan. 19, 2017).*
A claim for compensatory damages under the ADA survives the death of the aggrieved party.

Parker v. Crete Carrier, *__F.3d__, No. 16-1371 (8th Cir., Oct. 12, 2016).*
A motor carrier did not violate the ADA by requiring all of its drivers with a BMI of 35 or above to submit to a medical examination to determine whether they had obstructive sleep apnea - - a condition that imposes an increased public safety risk.

Los Angeles v. AECOM, *__F.3d__, No. 15-56606 (9th Cir., Apr. 24, 2017).*
Third party claims brought by a city for breach of contract and contribution against contractors alleged to have breached their contractual duty to perform services in compliance with federal disability regulations are cognizable under the ADA and the RA.

Updike v. Multnomah Cty., *__F.3d__, No. 15-35254 (9th Cir, Aug. 31, 2017).*
Summary judgment is denied to a county on an ADA Title II claim that it did not provide a deaf arrestee with an ASL interpreter and other auxiliary aids needed for him to effectively communicate while in pretrial detainment and under pretrial supervision.

Cash v. Lockheed, *__F.3d__, No. 16-2194 (10th Cir., Apr. 13, 2017).*
Under the ADA, a face-to-face meeting between the parties is not required in order for an employer to fulfill its informal, interactive reasonable accommodation obligations.

DeWitt v. Southwestern Bell, *__F.3d__, No. 14-3192 (10th Cir., Jan. 18, 2017).*
The ADA does not require employers to reasonably accommodate an employee's disability by overlooking past employee misconduct - - irrespective of whether the misconduct resulted from the employee's disability.
Duty v. BNSF, *__F.3d__, Nos. 15-3259 & 3265 (10th Cir., Apr. 11, 2017).*

A functional hook grip on one hand does not make a person disabled in the major life activity of "working" for ADA purposes.

***Dye v. Moniz**, __F.3d__, No. 16-2024 (10th Cir., Dec. 6, 2016).*
No adverse employment action under the RA existed when an employee was given little or no work, or work outside of her area of expertise, and was threatened with a PIP, when these actions did not affect her salary, job prospects, or professional development.

***Ewing v. Doubletree**, __F.3d__, No. 16-4037 (10th Cir., Dec. 14, 2016).*
No ADA violation exists when a terminated employee claims that she is "somewhat mentally disabled" but never disclosed this to her employer, and her alleged mental disability is not otherwise obvious, since her employer has no knowledge of her alleged disability.

***Henson v. Amerigas**, __F.3d__, No. 16-7057 (10th Cir., Mar. 10, 2017).*
In an ADA termination case, an employee's self-assessment of his job performance is not enough to show pretext.

***Russell v. Phillips 66**, __F.3d__, No. 16-5063 (10th Cir., May 4, 2017).*
Depression may be an impairment, but it must be shown to affect a major life activity in order to constitute a disability under the ADA.

***Wickware v. Johns Manville**, __F.3d__, No. 15-6028 (10th Cir., Jan. 17, 2017).*
Court rejects arguments that an ADA claimant need only prove that he is qualified for his job position - - without any consideration for whether he can actually perform that position. It's not a reasonable accommodation proposal to request that the employer remove an essential job function from a disabled employee's job position.

***Williams v. FedEx**, __F.3d__, No. 16-4032 (10th Cir., Feb. 24, 2017).*
Requiring an employee to disclose all legally-prescribed medications he was taking may violate the ADA if it was required in order for his employer to learn if he suffered from any health defects.

***Yingar v. Postal**, __F.3d__, No. 16-3239 (10th Cir., June 8, 2017).*
Having a pacemaker that limits one's ability to lift, stand, and walk distances may make one disabled for ADA purposes.

***Bagwell v. Morgan County**, __F.3d__, No. 15-15274 (11th Cir., Jan. 18, 2017).*
Under the ADA, ensuring that a groundskeeper could each sit, stand, and walk for one third of her work shift was not a reasonable accommodation request.

***Banim v. State of Florida**, __F.3d__, No. 16-15401 (11th Cir., May 17, 2017).*
An employer who accommodated a disabled employee by allowing him to work from home could require him to complete daily activity reports without violating the RA, as long as these reports were required of all disabled employees being so accommodated.

***Childress v. Grady Mem. Hosp.**, __F.3d__, No. 16-13495 (11th Cir., Aug. 15, 2017).*

Working from home was not a reasonable ADA accommodation for an employee whose essential job duties included teaching, supervising employees, and visiting patients.

Cooper v. CLP Corp. *, __F.3d__, No. 16-10536 (11th Cir., Feb. 9, 2017).*
For purposes of an *Faragher/Ellerth* defense, an employer is not placed on notice of a supervisor's alleged ADA disability harassment complaint by an employee's informal complaints to supervisory individuals not designated by his employer to receive or process such complaints.

Garrison v. Tallahassee*, __F.3d__, No. 16-10114 (11th Cir., Nov. 9, 2016).*
An employee was not a "qualified individual" under the ADA when she was unable to perform an essential element of her job - - full-time physical attendance at work - - since telecommuting would not allow her to perform this essential job function.

Luke v. Florida A & M*, __F.3d__, No. 15-13995 (11th Cir., Dec. 22, 2016).*
Under the RA, a refusal to extend an employee's medical leave in order to allow her to be eligible for additional FMLA leave was not a reasonable accommodation because it would not have enabled her to perform her job duties in the present or immediate future.

Rayner v. VA*, __F.3d__, No. 16-13312 (11th Cir., Apr. 10, 2017).*
An admonishment and a reprimand issued to an employee by the targets of her RA discrimination complaint are not adverse employment actions *per se*.

Silva v. Baptist Health*, __F.3d__, No. 16-10094 (11th Cir., May 8, 2017).*
For an effective-communication claim brought against a hospital under the ADA and the RA, the relevant inquiry is whether the hospital's failure to offer an appropriate auxiliary aid impaired a patient's ability to exchange medically relevant information with the hospital's staff.

Sunderland v. Bethesda Hosp. *, __F.3d__, No. 16-10980 (11th Cir., Apr. 27, 2017).*
A hospital that relied upon its malfunctioning Video Remote Interpreting Services instead of in-person interpreters to accommodate its deaf patients may be liable for a failure to accommodate under the ADA and the RA.

Valdes v. City of Doral*, __F.3d__, No. 15-12401 (11th Cir., Oct. 31, 2016).*
For ADA purposes, an "essential function" of a police lieutenant's job was the ability to work outside of the office. Moreover, for purposes of a First Amendment retaliation claim, a police chief's increased scrutiny of, and demand that an officer comply with, his work schedule were not adverse employment actions.

10. FMLA; PDA; EPA

***Chase v. USPS**, __F.3d__, No. 16-1351 (1st Cir., Dec. 14, 2016).*
No FMLA violation occurred when an employee on FMLA leave was terminated by a decision-maker who did not know that the employee was on FMLA leave but believed him to be off work on worker's compensation leave. Moreover, institutional knowledge of FMLA leave cannot override a decision maker's actual lack of knowledge in an FMLA retaliation case.

***Coutard v. Municipal Credit U.** , __F.3d__, No. 15-1113 (2nd Cir., Feb. 9, 2017).*
Under the FMLA, an employee, in giving notice of leave, need not provide his employer at or before the time of the request with all of the necessary details needed to permit his employer to make a definitive determination of the FMLA's applicability. Such notice must only reasonably indicate that the FMLA may apply.

***Pollard v. New York Methodist Hospital**, __F.3d__, No. 15-3231 (2nd Cir., June 30, 2017).*
Under the FMLA, a foot growth could be a "serious health condition" because, although not life-threatening, it did require two doctor visits and could be pre-cancerous.

***Capps v. Mondelez Global**, __F.3d__, No. 15-3839 (3rd Cir., Jan. 30, 2017).*
An employer's honest belief that an employee is mis-using FMLA leave can defeat a FMLA retaliation claim. A request for intermittent leave under the FMLA may, depending upon the circumstances, also constitute an ADA request for reasonable accommodation.

***Egan v. Delaware R. Port Auth.**, __F.3d__, No. 16-1471 (3rd Cir., Mar. 21, 2017).*
Under the FMLA, a plaintiff bringing a retaliation claim need not provide direct evidence of retaliation in order to pursue a mixed-motive theory of liability.

***Acker v. General Motors**, __F.3d__, No. 16-11174 (5th Cir., Apr. 10, 2017).*
While on intermittent FMLA leave, an employee can be terminated for failing to follow his employer's call-in procedure.

***Mozingo v. Oil States**, __F.3d__, No. 16-60125 (5th Cir., Oct. 5, 2016).*
Under the FMLA, an employer's failure to send an employee the proper FMLA leave form does not support a finding that this conduct was "willful" so as to extend the statute of limitations from two to three years.

***Casagrande v. OhioHealth**, __F.3d__, No. 15-3292 (6th Cir., Dec. 20, 2016).*
An employer interfered with an employee's FMLA rights when it failed to advise him that his failure to obtain medical certification would result in the denial of his job restoration. It is irrelevant that the employer acted in good faith on its mistaken belief that the employee was not FMLA-eligible.

***Levaine v. Tower Automotive**, __F.3d__, No. 16-1782 (6th Cir., Feb. 22, 2017).*
An employee who claimed that he was entitled to FMLA leave, but who then prevented his employer from gathering the facts necessary to determine whether his work absence warranted excuse under the FMLA, thereby failed to establish that he was entitled to FMLA leave.
***Marshall v. Rawlings Co.** , __F.3d__, No. 16-5614 (6th Cir., Apr. 20, 2017).*

The court finds the "cat's paw theory" of liability to be available in FMLA retaliation cases.

***Mullendore v. City of Belding**, __F.3d__, No. 16-2198 (6th Cir., Aug. 23, 2017).*
The fact that a city council fired its city manager while she was on FMLA leave because it was politically expedient to then do so in order to avoid facing her in person does not establish a FMLA interference claim.

***Parkhurst v. American Healthways**, __F.3d__, No. 16-6502 (6th Cir., June 27, 2017).*
A four month time period between the end of an employee's FMLA leave and her termination does not, in and of itself, support an inference of discriminatory motive.

***Perkins v. Rock-Tenn**, __F.3d__, No. 16-1798 (6th Cir., June 30,2017).*
A wage differential resulting from an employee's status as a union member constitutes an acceptable "factor other than sex" for EPA purposes.

***Reeder v. Wayne County**, __F.3d__, No. 16-2257 (6th Cir., June 7, 2017).*
A county can be liable for FMLA rights "interference" simply by failing to advise an employee apparently suffering from a serious medical condition of his FMLA rights.

***Dindinger v. Allsteel**, __F.3d__, No. 16-1305 (8th Cir. Apr. 3, 2017).*
It is not a defense to an Equal Pay Act claim that a woman is being paid less than a man who is working in the same job position that either she is willing to work for less or that the man demands more.

***Branham v. Delta Airlines**, __F.3d__, No. 16-4092 (10th Cir., Feb. 3, 2017).*
An employer does not violate the FMLA when it terminates an employee for failing to comply with its work absence-notification policy, even if the absence at issue involves an FMLA-covered event.

***Jackson v. Simplot**, __F.3d__, No. 16-8044 (10th Cir., Dec. 15, 2016).*
No PDA discrimination occurred when an employer relied upon a pregnant employee's doctor's letter that objectively prevented her from working around chemicals to temporarily deny her work, even if that letter was not subjectively intended to forbid her from all work around chemicals.

***Diamond v. Hospice of Florida Keys**, __F.3d__, No. 15-15716 (11th Cir., Jan. 27, 2017).*
Sending an employee an e-mail telling her that her continued unpaid absence from work "compromises the quality of care we are able to provide as an organization" may constitute unlawful interference with her FMLA leave.

***Feise v. North Broward**, __F.3d__, No. 15-15261 (11th Cir., Mar. 24, 2017).*
The FMLA does not interfere with an employer's ability to manage its personnel and does not afford relief in the absence of evidence of retaliation as it pertains to an adverse employment action against an employee.

***Han v. Emory Univ.** , __F.3d__, No. 15-14858 (11th Cir., Sept. 29, 2016).*

The FMLA does not require employers to "accommodate" employees by changing their work hours so that they do not have to take intermittent FMLA leave. They can also terminate employees who still have available FMLA leave if they would do so regardless of the availability of such leave.

Hicks v. Tuscaloosa, *__F.3d__, No. 16-13003 (11th Cir., Sept. 7, 2017).*
The protections of the PDA extend to breastfeeding.

Jones v. Gulf Coast Healthcare, *__F.3d__, No. 16-11142 (11th Cir., Apr. 19, 2017).*
In a case of first impression in the circuit, the court holds that temporal proximity, for purposes of an FMLA retaliation claim, is measured from the last date of a claimant's FMLA leave to the date on which the adverse employment action at issue was taken against that claimant.

Kalu v. Fla. Dept. of Children & Families, *__F.3d__, No. 16-13265 (11th Cir., Feb. 27, 2017).*
Hiring a male nurse and paying him 10% more than a female nurse, because the need to fill the job vacancy was critical, he was the only qualified applicant, and he would not take the job absent the increased pay, was due to factors "other than sex" that did not violate the Equal Pay Act. Good timing is gender-neutral.

Neal v. T-Mobile, *__F.3d__, No. 16-16304 (11th Cir., June 22, 2017).*
Firing an employee on the mistaken belief that she had failed to timely file her return to work release form, as required by her employer, does not support a finding of FMLA retaliation.

11. FLSA; OSHA

Hill v. Delaware North Co. *, __F.3d__, No. 15-2109 (2nd Cir., Oct. 3, 2016).*
Under the FLSA, concessionaires at a baseball park need not be paid overtime pursuant to the Act's "amusement and recreational establishment" exception, even if they do not directly provide either amusement or recreation.

Smiley v. DuPont, *__F.3d__, No. 14-4583 (3rd Cir., Oct. 7, 2016).*
The FLSA does not allow an employer to use an employee's paid non-work meal time to offset some of his unpaid productive worktime so as to avoid paying overtime to him for all hours of work over forty that he performs in a given work week.

Pineda v. JTCH, *__F.3d__, No. 15-10932 (5th Cir., Dec. 19, 2016).*
Under the FLSA, only employees can bring suit, but they can recover for their emotional injuries resulting from unlawful retaliation.

Marlow v. US, *__F.3d__, No. 16-1134 (10th Cir., June 20, 2017).*
An employee properly paid her $12 hourly wage and her $18 overtime wage is not also entitled to a share of all the tips paid by her employer's customers.

Sharp v. CGG Land, *__F.3d__, No. 15-5113 (10th Cir., Nov. 4, 2016).*

An employer did not violate the FLSA by failing to include a $35 daily meal allowance that was paid to employees when they were working away from home in their "regular rate of pay" for overtime calculation purposes.

Freixa v. Prestige Cruise, *__F.3d__, No. 16-13745 (11th Cir., Apr. 13, 2017).*
For overtime calculation purposes, federal law bars an employer from allocating an employee's sales commission across weeks that fall outside of the period during which the payment was earned.

Meeks v. Pasco Cty, *__F.3d__, No. 16-16932 (11th Cir., May 15, 2017).*
A sheriff violated the FLSA when he failed to pay a deputy for the time he spent transporting his patrol car to and from a secured parking lot.

Johnson v. Interstate Mgmt. *, __F.3d__, No. 14-7164 (D.C. Cir., Mar. 3, 2017).*
OSHA Section 11(c) affords the Secretary of Labor a cause of action for retaliation claims involving employee complainants, but does not afford employees a private cause of action for such retaliation claims.

12. MILITARY; USERRA

Carroll v. Delaware River Port Auth. *, __F.3d__, No. 16-2492 (3rd Cir., Dec. 12, 2016).*
A plaintiff need not plead or prove that she is objectively qualified for her job position in order to meet her initial burden under USERRA. Her employer can raise her non-qualification as a non-discriminatory justification for its employment action.

Butts v. Prince William County, *__F.3d__, No. 15-1989 (4th Cir., Dec. 21, 2016).*
It is not an USERRA violation to re-employ a veteran in her "escalator position" upon her return to work, when she did not claim at the time of her re-employment that she was unqualified for that position and gave no notice at that time that she suffered from PTSD. The fact that the stress of her "escalator position" worsened her PTSD is irrelevant when her employer was unaware of her condition until after it had terminated her for job performance-related reasons.

Sibert v. Wells Fargo, *__F.3d__, No. 16-1568 (4th Cir., July 17, 2017).*
A servicemember who incurs a mortgage loan obligation during his period of military service is not entitled to Servicemember's Civil Relief Act protection against foreclosure on that loan.

Hernandez v. Results Staffing, *__F.3d__, No. 15-10602 (5th Cir., Jan. 30, 2017).*
An employee cannot avoid USERRA re-employment protections by re-employing a soldier upon his return from reserve duty and then terminating him later that day. Also, USERRA requires an employer to re-employ a soldier injured while on military maneuvers at the end of his period of convalescence for that injury.

Savage v. FedEx, *__F.3d__, No. 16-5244 (6th Cir., May 10, 2017).*

For purposes of a USERRA claim, a period of 33 days between a servicemember's protected activity and his job suspension, and of 41 days between such activity and his job termination, raises an inference that these adverse actions were taken in retaliation for his protected activity.

***Ziober v. BLB Resources**, __F.3d__, No. 14-56374 (9th Cir., Oct. 14, 2016).*
USERRA does not prohibit the compelled arbitration of claims brought under its provisions.

***Kitlinski v. MSPB**, __F.3d__, No. 2016-1498 (Fed. Cir., May 31, 2017).*
USERRA's retaliation prohibition is limited to discrimination in employment and adverse employment actions.

13. ADEA

***Karlo v. Pittsburgh Glass**, __F.3d__, No. 15-3435 (3rd Cir., Jan. 10, 2017).*
An ADEA disparate-impact claim is cognizable when it alleges that one sub-group of protected employees (those 50 years old or older) were disfavored relative to younger protected employees (those between 40 and 49 years old) during a RIF.

***Drechsel v. Liberty Mutual**, __F.3d__, No. 16-11651 (5th Cir., Aug. 17, 2017).*
The promotion of a younger employee two years before the time frame in which an alleged act of age discrimination occurred cannot be used as a valid comparator for ADEA purposes.

***Vaughan v. Anderson Regional Med. Ctr.** , __F.3d__, No. 16-60104 (5th Cir., Feb. 15, 2017).*
A plaintiff may not invoke the ADEA as the basis for recovering general compensatory damages for pain and suffering, or for punitive damages.

***Gamble v. JP Morgan**, __F.3d__, No. 16-6488 (6th Cir., May 9, 2017).*
A plaintiff's ADA and ADEA claims fail because he was neither a "qualified employee" under the ADEA nor a "qualified individual" under the ADA, in that he could not maintain regular work attendance, an essential function of his job position.

***Paulsin v. Lake County**, __F.3d__, No. 16-3665 (7th Cir., July 26, 2017).*
Terminating part-time employees based upon their participation in an insurance plan, in order to prevent further municipal financial hardship, does not violate ADEA even if age was a necessary factor in their insurance plan participation.

***Guido v. Mount Lemmon**, __F.3d__, No. 15-15030 (9th Cir., June 19, 2017).*
A political subdivision does not need to have 20 or more employees in order to be subject to the ADEA.

***DePaula v. Easter Seals**, __F.3d__, No. 16-2068 (10th Cir., June 12, 2017).*
"Financial hardship" is a legitimate non-discriminatory reason to terminate an employee, for purposes of ADEA and FMLA claim analysis.
***Forbes v. Kinder Morgan**, __F.3d__, No. 16-3081 (10th Cir., Apr. 21, 2017).*

A good faith business decision to terminate an employee does not violate the ADEA even if it is otherwise unwise, unfair, and incorrect.

Stapp v. Curry County Bd. *, __F.3d__, No. 16-2067 (10th Cir., Dec. 6, 2016).*
The *Ellerth/Faragher* defense applies in ADEA cases.

Burk v. Fannin Cty.*, __F.3d__, No. 16-13379 (11th Cir., June 28, 2017).*
Wanting to get rid of employees before they vest in a retirement plan is not evidence of ADEA pretext without evidence that their vesting was correlated with their age.

Villarreal v. RJ Reynolds*, __F.3d__, No. 15-10602 (11th Cir., Oct. 5, 2016).*
A job applicant cannot sue an employer for disparate treatment under the ADEA because he has no status as an employee.

DeJesus v. WP Company*, __F.3d__, No. 15-7126 (D.C. Cir., Nov. 15, 2016).*
Summary judgment is denied to an employer facing ADEA and Title VII claims when its supervisor's "no worries" reaction to an employee's conduct was followed a few days later by the employee's termination for insubordination, raising a reasonable doubt as to whether the proffered reason for termination was a pretext for discrimination.

14. FHA

Revock v. Cowpet Bay Invest*, __F.3d__, No. 14-4776 (3rd Cir., Mar. 31, 2017).*
A civil rights action brought under the Fair Housing Act and alleging the denial of the right to reasonable accommodation by virtue of an establishment's "no dogs" policy, which prohibited emotional support dogs, survives the death of the plaintiff.

Ellis v. Minneapolis*, __F.3d__, No. 16-2019 (8th Cir., June 27, 2017).*
A claim by for-profit, low income rental housing providers that a city's heightened enforcement of its housing and rental standards has a disparate impact upon available housing for individuals protected by the FHA fails because this municipal enforcement policy was not artificial, arbitrary, or unnecessary.

15. RLUIPA; RFRA

Garrett v. Stephens*, __F.3d__, No.16-40354 (5th Cir, Jan. 12, 2017).*
The confiscation of an inmate's property, which forced him to modify his daily religious practice, did not violate RLUIPA because the seizure was not pursuant to a government policy infringing his free exercise of religion, but as part of a criminal investigation.

Ware v. Louisiana DOC*, __F.3d__, No. 16-31012 (5th Cir., July 28, 2017).*

A prison policy forbidding dreadlocks to be worn by Rastafarians violates RLUIPA because it does not apply to pretrial detainees and this under-inclusiveness belies the assertion that it serves a compelling interest in maintaining security.

***Livingston Christian Schools v. Genoa Tshp.**, __F.3d__, No. 16-2060 (6th Cir., June 2, 2017).*
Under RLUIPA, a religious school was not substantially burdened through the denial of its special use permit to construct a new facility at a new location when alternate locations are available only twelve miles away, even if these locations are not within the same local jurisdiction.

***US v. Barnes**, __F.3d__, No. 16-1188 (6th Cir., Jan. 26, 2017).*
Growing large quantities of marijuana is not central to the faith of the Oklevueha Native American Church for RFRA purposes in a challenge to a drug possession conviction.

***Affordable Recovery Housing v. Blue Island**, __F.3d__, No. 16-3677 (7th Cir., June 21, 2017).*
RLUIPA does not prevent a city from enforcing its fire safety code regulations relating to group recovery housing facilities.

***Watkins v. Secretary**, __F.3d__, No. 15-15543 (11th Cir., Oct. 28, 2016).*
Summary judgment for an inmate on his RLUIPA claim is affirmed when he was denied a kosher meal for cost containment reasons.

16. SCHOOLS; IDEA; TITLE IX

***Johnson v. Perry**, __F.3d__, No. 15-3671 (2nd Cir., June 8, 2017).*
A school principal is denied immunity from a First Amendment freedom of assembly claim brought by a parent when he barred the parent from attending school sporting events to which the public was invited, but is granted as to his actions in barring of parent from school property for other purposes.

***Doe v. Mercy Catholic**, __F.3d__, No. 16-1247 (3rd Cir., Mar. 7, 2017).*
A private retaliation claim exists for employees of federally funded programs under Title IX despite concurrent Title VII applicability.

***L.R. v. Philadelphia**, __F.3d__, No. 14-4640 (3rd Cir., Sept. 6, 2016).*
Qualified immunity is denied to a teacher against a Fourteenth Amendment "state-created danger" claim when she let a kindergarten student leave her classroom with an adult who failed to identify herself and who then molested the student.

***M. R. v. Ridley Sch. Dist.** , __F.3d__, No. 16-2465 (3rd Cir., Aug. 22, 2017).*
Parents who unsuccessfully challenged a school district's proposed educational placement of their child are still entitled to have their attorney fees paid because the court's temporary "stay put" order conferred "prevailing party" status upon them.
***Leiman v. ACLU**, __F.3d__, No. 15-1977 (4th Cir., Aug. 14, 2017).*

The IDEA does not require a school system to instruct a disabled student in the customs and practices of Orthodox Judaism as part of a FAPE.

***Am. Humanist v. McCarty**, __F.3d__, Nos. 15-11067 & 16-11220 (5th Cir., Mar. 20, 2017).*
Student-led invocations at school board meetings are akin to legislative prayers and do not violate the Establishment Clause.

***Dallas Indep. Sch. Dist. V. Woodey**, __F.3d__, No. 16-10613 (5th Cir., July 27, 2017).*
Appropriate relief under IDEA may not contravene the Act's plain language.

***Doe v. Columbia**, __F.3d__, No. 16-40882 (5th Cir., May 3, 2017).*
A school does not have a constitutional duty under the Due Process Clause to protect its students from abuse by private actors.

***Salazar v. South San Antonio**, __F.3d__, No. 15-50558 (5th Cir., June 15, 2017).*
Title IX does not impose liability on a school district when the only district representative with actual child molestation knowledge is the perpetrator, even if he has authority to institute corrective action on behalf of the district.

***Tumminello v. Rather Ryan H.S.**, __F.3d__, No. 16-5165 (6th Cir., Jan. 30, 2017).*
No Title IX liability exists for a school after it failed to enforce its anti-bullying policy and a bullied student committed suicide.

***Gerlich v. Leath**, __F.3d__, No. 16-1518 (8th Cir., Feb. 13, 2017).*
The First Amendment prohibits a university that created a limited public forum by making its trademark available for student organizations to use if they abided by certain conditions from engaging in viewpoint discrimination by refusing to let a campus NORML organization use that trademark.

***Avila v. Spokane**, __F.3d__, No. 14-35965 (9th Cir., Mar. 30, 2017).*
The two year statute of limitations for IDEA claims runs from the date a student's parents or the school knew or should have known about the actions giving rise to the claim, not necessarily two years from the date on which these actions occurred.

***C.R. v. Eugene Sch. Dist. 4J**, __F.3d__, No. 13-35856 (9th Cir., Sept. 1, 2016).*
A school has authority to suspend a student for his off-campus sexually harassing speech despite a First Amendment defense.

***Kennedy v. Bremerton**, __F.3d__, No. 16-35801 (9th Cir., Aug. 23, 2017).*
For First Amendment purposes, a high school coach was acting as a public employee and not a private citizen when he kneeled and prayed in the middle of a football field after a game and was suspended for such conduct.

***L.J. v Pittsburg**, __F.3d__, No. 14-16139 (9th Cir., Feb. 27, 2017).*

Under the IDEA, the mere fact that a student performs satisfactorily in general education classes does not mean that he does not need special education services.

R.E.B. v. Hawaii, *__F.3d__, No. 14-15895 (9th Cir., Sept. 13, 2017).*
A student was denied a FAPE because his vague IEP language made it impossible to use that IEP as a blueprint for enforcement and infringed upon his parent's opportunity to participate in the IEP process. The failure of the IEP to specify a specific teaching methodology also violates IDEA.

Yates v. Cobb County, *__F.3d__, No. 16-15882 (11th Cir., May 4, 2017).*
There is no established First Amendment right that would prevent a school from limiting a parent's private speech while the parent attends a school event.

17. COMMERCE CLAUSE;TRANSPORTATION

New York Pet v. NYC, *__F.3d__, No. 15-4013 (2nd Cir., Mar. 2, 2017).*
An ordinance requiring pet shops to purchase dogs and cats from federally licensed dealers does not violate the Dormant Commerce Clause.

Associated Builders v. Jersey City, *__F.3d__, No. 15-3166 (3rd Cir., Sept. 12, 2016).*
The dismissal of a claim that a municipal law that provided certain tax incentives to developers if they entered into agreements with labor unions that bound them to specified labor practices violated the NLRA, ERISA, and the Dormant Commerce Clause is reversed, where the city was acting as a regulator and not as a market participant.

City of Ozark v. Union Pacific R.R., *__F.3d__, Nos. 16-1186 & 1187 (8th Cir., Dec. 19, 2016).*
The Surface Transportation Board has exclusive jurisdiction (unless waived) of a city's claim that a railroad company must re-open a public at-grade railroad crossing or allow the city to condemn the railroad's land across that public crossing.

Delaware v. Surface Transportation Bd., *__F.3d__, No. 16-1121 (D.C. Cir., June 9, 2017).*
A state law limiting nighttime noise caused by idling locomotives in residential areas is preempted by the Interstate Commerce Act.

Phoenix v. Huerta, *__F.3d__, No. 15-1158 (D.C. Cir., Aug. 29, 2017).*
The FAA's actions in changing flight routes in and out of Phoenix Sky Harbor Airport were arbitrary and capricious.

18. JAILS; PRISONS; EIGHTH AMENDMENT

Mack v. Warden, *__F.3d__, No. 14-2738 (3rd Cir., Oct. 11, 2016).*
An oral grievance lodged by a prisoner is entitled to First Amendment protection.

Pearson v. Prison Health Svc. , *__F.3d__, No. 16-1140 (3rd Cir., Mar. 7, 2017).*

Forcing a screaming inmate to crawl to a wheel chair when he was unable to walk may violate the Eighth Amendment.

Dilworth v. Adams, *__F.3d__, No. 15-6910 (4th Cir., Nov. 7, 2016).*
Procedural due process entitles a pre-trial detainee to a hearing before he is punished by a detention facility officer for his alleged disciplinary infractions.

Martin v. Duffy, *__F.3d__, No. 16-6132 (4th Cir., June 1, 2017).*
Placing inmate in segregation for filing a grievance violates the First Amendment.

Hyatt v. Thomas, *__F.3d__, No. 15-10708 (5th Cir., Nov. 18, 2016).*
No due process violation existed for "deliberate indifference" to a suicidal pretrial detainee's serious medical condition when an officer negligently failed to inspect his holding cell for the plastic trash bag with which the detainee hung himself.

Omran v. Prator, *__F.3d__, No. 16-30034 (5th Cir., Dec. 30, 2016).*
No First Amendment right for a Muslim inmate to have a kosher meal made to his particularized requirements regarding meal content and preparation.

Sumpter v. Wayne County, *__F.3d__, No. 16-2102 (6th Cir., Aug. 18, 2017).*
A detention facility's policy of periodically conducting group strip searches when the number of jail inmates makes individual searches imprudent does not violate the Fourth Amendment.

Caffey v. Maue, *__F.3d__, No. 15-3772 (7th Cir., Feb. 15, 2017).*
A prisoner's insubordinate and profane name-calling is not protected speech. However, a guard's gratuitous striking him on the head with a stick, even if the force was *de minimus*, may violate the Eighth Amendment.

James v. Pfister, *__F.3d__, Nos. 16-4259 & 16-4237 (7th Cir., Sept. 1, 2017).*
An Eighth Amendment claim may be present when a warden deliberately denies yard privileges to an inmate knowing that this will adversely affect his health.

Perry v. Wenzel, *__F.3d__, Nos. 16-2353 & 16-3130 (7th Cir., Sept. 18, 2017).*
The fact that an arrestee is medically cleared for booking into a jail does not absolve jail officers of their obligation to provide him with necessary medical care once he is jailed, for purposes of an Eighth Amendment "deliberate indifference" claim.

Simpson v. Gorbett, *__F.3d__, No. 16-2899 (7th Cir., July 14, 2017).*
Assigning a morbidly obese man to a narrow upper bunk where he slept for several hours then convulsed, fell out, and died, does not establish the deliberate indifference of the jail staff for Eighth Amendment purposes.

Karow v. Fuchs, *__F.3d__, No. 16-3049 (7th Cir., June 16, 2017).*
Prisoners are not entitled to place advertisements in an effort to attract support for their proposal to change prison policies.
Mulvania v. Sheriff of Rock Cty. *, __F.3d__, No. 16-1711 (7th Cir., Mar. 9, 2017).*

A jail's "white or no underwear only" policy may violate the Fourteenth Amendment by denying prisoners their human dignity.

Zaya v. Good, *__F.3d__, No. 15-1470 (7th Cir., Sept. 6, 2016).*
Deliberate indifference may exist for Eighth Amendment purposes when a prison doctor disregards, rather than just disagrees with, another doctor's treatment recommendation.

Ingram v. Cole County, *__F.3d__, No. 16-1046 (8th Cir., Jan. 17, 2017).*
A jail laundry policy that leaves pre-trial detainees naked except for a bed sheet and blanket for seven hours every two to four nights may be punishment that violates the Eighth and Fourteenth Amendments.

Kulkay v. Roy, *__F.3d__, No. 16-1801 (8th Cir., Feb. 2, 2017).*
For purposes of an Eighth Amendment claim, the mere existence of state and federal safety regulations does not charge prison officials with knowledge of potentially unsafe conditions in their facility.

Mangiaracina v. Penzone, *__F.3d__, No. 14-15271 (9th Cir., Mar. 3, 2017);*
Hayes v. Idaho, *__F.3d__, No. 14-35078 (9th Cir., Mar. 3, 2017).*
When prisoners have a First Amendment right to have their legal mail opened only in their presence, a plaintiff need not allege a long-standing practice of First Amendment violations in order to state a claim for relief on a direct liability theory, nor allege any actual injury beyond the free speech violation itself.

Norwood v. Cate, *__F.3d__, No. 14-17059 (9th Cir., Feb. 15, 2017).*
Prison officials did not violate the Eighth Amendment by denying an inmate access to the exercise yard during a prison lock-down caused by a *bona fide* emergency.

Durkee v. Minor, *__F.3d__, No. 16-1003 (10th Cir., Nov. 14, 2016).*
A detention center supervisor cannot, as a matter of law, be held individually liable for the misconduct of a subordinate towards an inmate simply because the supervisor is in charge of the detention center.

Ernst v. Creek Cty. , *__F.3d__, No. 16-5148 (10th Cir., June 19, 2017).*
A prisoner's Eighth Amendment rights are not violated if a jail uses a medical professional other than a licensed physician or psychiatrist to make its suicide watch determinations.

Leek v. Miller, *__F.3d__, No. 16-3225 (10th Cir., June 7, 2017).*
Moving a prisoner from one cell to another and subjecting him to a strip search as part of the move, does not constitute actionable First Amendment retaliation.

Lewis v. Clark, *__F.3d__, No. 15-8135 (10th Cir., Oct. 18, 2016).*
A pretrial detainee was not denied his First and Fourteenth Amendment rights on the basis of a jail's policies against inmate-to-inmate communications (even if the inmates are related) or by its 10-page limit on mailed items.
Powers v. Federal BOP, *__F.3d__, No. 16-1490 (10th Cir., June 28, 2017).*

The use of a prisoner's trust fund account to pay his disciplinary fines and restitution obligations does not violate his right to retain his own attorney for post-conviction assistance, even if this leaves his prisoner account balance at zero.

Smith v. Duboise, *__F.3d__, No. 16-5004 (10th Cir., Oct. 7, 2016).*
Jailers who responded to a pretrial detainee's refusal to follow their directions by grabbing his arm behind his back and directing him where to go to complete his booking into an Oklahoma jail did not exercise excessive force or violate the ADA despite the arrestee's claim that his refusal was not due to his drunkenness or uncooperativeness, but because his mental condition made him think that he was "in a New Mexico restaurant."

US v. Pinkerton, *__F.3d__, No. 16-8072 (10th Cir., Oct. 6, 2016).*
Coram nobis relief is not available to prisoners currently in custody.

Winkel v. Hammond, *__F.3d__, No. 16-3290 (10th Cir., July 31, 2017).*
The Due Process Clause allows a prison to administer antipsychotic drugs to an inmate if he is dangerous to himself or others and doing so is in his best medical interests.

Johnson v. Co II Boyd, *__F.3d__, No. 15-13820 (11th Cir., July 12, 2017).*
Prison guards who allegedly failed for 10 minutes to intervene in a cellmate beating may be liable on an Eighth Amendment "failure to protect" claim.

Mitchell v. McKeithen, *__F.3d__, No. 16-12837 (11th Cir., Nov. 29, 2016).*
A jail nurse who referred an arrestee for a mental health evaluation based upon symptoms that were actually the result of him having a stroke committed no due process violation, as she was not deliberately indifferent to his medical needs.

Pearson v. Warden, *__F.3d__, No. 14-15459 (11th Cir., Dec. 20, 2016).*
Use of pepper spray, immediately followed by confinement to a small, poorly ventilated, pepper spray-filled cell, when an inmate is no longer resisting, can constitute excessive force.

Revere v. Owens, *__F.3d__, No. 14-15564 (11th Cir., Oct. 24, 2016).*
Placing a prisoner in a cell block with rival gang members may constitute an Eighth Amendment violation premised upon a deliberate indifference to the substantial risk of his serious harm.

Watkins v. Broward County, *__F.3d__, No. 16-12932 (11th Cir., Feb. 7, 2017).*
A pretrial detainee's Section 1983 claims for declaratory and injunctive relief against a jail became moot upon his release from custody.

Woodson v. Whitehead, *__F.3d__, No. 16-13278 (11th Cir., Dec. 20, 2016).*
The Due Process Clause creates neither an enforceable liberty interest in freedom from restrictive confinement for prisoners nor in the "mandatory" language of prison rules and regulations.

19. LABOR; UNIONS

Citigroup v. NLRB, *__F.3d__, No. 15-60856 (5th Cir., Dec. 8, 2016).*
An employer does not violate the NLRA by requiring its employees to sign an arbitration agreement containing a class action waiver.

Logisticare v. NLRB, *__F.3d__, No. 16-60029 (5th Cir., Aug. 9, 2017).*
Requiring employees and job applicants to sign a class/collective action lawsuit waiver does not violate the NLRA.

T-Mobile v. NLRB, *__F.3d__, No. 16-60284 (5th Cir., July 25, 2017).*
An employee handbook provision that prohibits "all photography and audio or video recording in the workplace" violates the NLRA because it discourages protected concerted activity.

NLRB v. Alt. Entertainment, *__F.3d__, No. 16-1385 (6th Cir., May 26, 2017).*
An arbitration provision that requires the individual arbitration of employee employment-related claims violates the NLRA.

Ohio Edison v NLRB, *__F.3d__, No. 15-1783 (6th Cir., Feb. 10, 2017).*
A union representative's generalized complaint about various reductions in employee benefits does not constitute a union request to bargain over a specific employee-recognition program for purposes of a "failure to bargain in good faith" charge.

United Automobile v. Harding County, *__F.3d__, No. 16-5246 (6th Cir., Nov. 18, 2016).*
A county ordinance that prohibits employers from requiring membership in a labor organization as a condition of employment is not preempted by the NLRA.

Zickes v. Cuyahoga Cty., *__F.3d__, No. 16-4180 (6th Cir., July 12, 2017).*
A union steward's First Amendment retaliation claim fails because his refusal to lobby colleagues to donate their sick time, and his writing on a union bulletin board, did not constitute protected speech on a matter of public concern.

Miklin Enterprises v NLRB, *__F.3d__, Nos. 14-3099 & 14-3211 (8th Cir., July 3, 2017).*
Union posters suggesting that an employer's sandwiches pose a public health risk are so disloyal that discharging the responsible employees does not violate their right to engage in concerted activities under the NLRA.

N. Mem. Health Care v. NLRB, *__F.3d__, Nos. 16-3433 & 16-3657 (8th Cir., June 21, 2017).*
An employer did not violate the NLRA by prohibiting non-employees on its premises from wearing union insignia.

Mercedes-Benz v. NLRB, *__F.3d__, No. 15-10291 (11th Cir., Oct. 3, 2016).*
Under the NLRA, a work rule prohibiting the solicitation or distribution of non-work related materials "during work time or in work areas" could be read as impermissibly prohibiting solicitation in work areas during non-working time.

Amer. Baptist Homes v. SEIU, *__F.3d__, No. 15-1445 (D.C. Cir., June 6, 2017).*

The court enforces a NLRB order over-ruling *Anheuser-Busch* and holding that it will now apply the *Detroit-Edison* balancing test when deciding whether an employer's confidentiality interest in protecting witness statements from disclosure overrides a union's need for this information in order to perform its duties.

***Banner Health v. NLRB**, __F.3d__, No. 15-1245 (D.C. Cir., Mar. 24, 2017).*
Under the NLRA, an employer's confidentiality agreement that forbid its employees from discussing their salaries and certain employee discipline with each other violated its employees right to share employment-related information with one another in an effort to improve their lot.

***Bellagio v. NLRB**, __F.3d__, No. 15-1327 (D.C. Cir., Apr. 25, 2017).*
Placing an employee on "suspension pending investigation" and removing him from the workplace during that investigation are not adverse actions that constitute retaliation under the NLRA, even if they took place after the employee invoked his *Weingarten* rights.

***NCR Corp v. NLRB**, __F.3d__, No. 15-1230 (D.C. Cir., Nov. 1, 2016).*
The court enforces the Board's order certifying the results of a mail-in union election and rejecting several outcome-determinative ballots that were postmarked prior to the election deadline but received two days after the deadline.

20. TELECOMMUNICATIONS

***Montgomery Cty. v. US Telecom Assoc.**, __F.3d__, No. 08-3023 (6th Cir., July 12, 2017).*
FCC orders applying the "mixed-use rule" (which limits local franchising authorities to only regulating the provision of cable services over "cable systems") to incumbent cable providers who are not common carriers is arbitrary and capricious and thus vacated.

***Page v. City of Wyandotte**, __F.3d__, No. 15-2442 (6th Cir., Nov. 17, 2016).*
A lawsuit against a city alleging constitutional violations related to its cable franchise and water franchise fees cannot be removed to federal court because these fees are taxes subject to the Tax Injunction Act.

***Robbins v. New Cingular**, __F.3d__, No. 16-5524 (6th Cir., Jan. 30, 2107).*
The TCA impliedly preempts tort claims brought by residents fearful of cell tower radio radio-frequency emissions.

***National Association v. FCC**, __F.3d__, No. 15-1295 (D.C. Cir., July 7, 2017).*
A petition to review an FCC order reversing its long-standing rebuttable presumption of "no effective competition," as related to a local franchising authority's ability to regulate basic cable service rates, is denied.

21. ENVIRONMENTAL

***Catskill Mountains v. EPA**, __F.3d__, No. 14-1823 (2nd Cir., Jan 18, 2017).*
The court upholds, under *Chevron* deference, the EPA's "Water Transfers Rule," which holds that water transfers are not subject to regulation under the NPDES permitting system established by the CWA.

***Asarco v. Atlantic Richfield**, __F.3d__, No. 14-35723 (9th Cir., Aug. 10, 2017).*
A settlement agreement under statutory authority other than CERCLA may give rise to a CERCLA contribution action. A corrective measure under a different environmental statute can qualify as a response under CERCLA.

22. PROCEDURAL; EVIDENTIARY

***Sai v. TSA**, __F.3d__, No. 15-2526 (1st Cir., Dec. 7, 2016).*
The court declines an invitation to join its sister circuits and treat a decision to deny appointed counsel to an anti-discrimination claimant as an immediately reviewable collateral order.

***McLeod v. Jewish Guild for the Blind**, __F.3d__, No. 15-2898 (2nd Cir., July 19, 2017).*
A *pro se* plaintiff's failure to check the right box on her EEOC discrimination complaint form does not require entry of judgment against her when the body of her complaint alleged facts supporting such claims.

***Spak v. Phillips**, __F.3d__, No. 15-3525 (2nd Cir. May 22, 2017).*
In a Section 1983 lawsuit against a police officer for malicious prosecution, a plaintiff's claim began to run when the prosecutor dismissed the charges against him, not at that later date when all public records of his prosecution were destroyed pursuant to state law.

***EEOC v. Long Beach**, __F.3d__, No. 16-2514 (3rd Cir., Aug. 2, 2017).*
A proceeding to enforce an EEOC administrative subpoena is a dispositive motion that a magistrate judge cannot decide but only submit to the district court with recommendations.

***In re: Grand Jury Matter #3**, __F.3d__, No. 15-2475 (3rd Cir., Jan. 27, 2017).*
A court may continue to exercise jurisdiction over an appeal of an evidentiary ruling in a grand jury proceeding so long as the grand jury investigation continues - - even after the grand jury has returned an indictment.

***Williams v. Pennsylvania HRC**, __F.3d__, No. 16-4383 (3rd Cir., Aug. 30, 2017).*
Neither Title VII nor ADA claims may not be asserted under Section 1983.

***US v. McTaque**, __F.3d__, No. 15-4739 (4th Cir., Oct. 26, 2016).*

A trial court cannot summarily exclude grand jury testimony from use at trial without some showing of prosecutorial misconduct or bad faith and without providing a detailed explanation of its ruling and the parameters of any such exclusion.

***Wood v. US**, __F.3d__, No. 15-2106 (4th Cir., Jan. 4, 2017).*
A suit brought by a sheriff's deputy against the Navy under the FTCA after she was injured during a training exercise is properly dismissed because the Navy's conduct in allegedly negligently allowing a dangerous condition to exist regarding some mats placed next to a training structure, and its failure to warn of this condition, fell within the FTCA's discretionary function exception and sovereign immunity applied to her claim.

***Baker v. McHugh**, __F.3d__, No. 15-41439 (5th Cir., Dec. 5, 2016).*
The exhaustion of EEOC administrative remedies is not jurisdictional in Title VII cases.

***Buchanan v. CCA Tallahatchie Cty.**, __F.3d__, No. 17-60178 (5th Cir., July 20, 2017).*
The pendency of a work grievance does not justify the equitable tolling of the 180-day time limit for filing an EEOC charge.

***Orr v. Copeland**, __F.3d__, No. 16-50023 (5th Cir., Dec. 22, 2016).*
A trial court erred in holding that - - in the absence of video evidence - - eyewitness testimony should not be considered for summary judgment purposes because it could not be subjected to cross examination.

***Patton v. Jacobs Eng. Grp.**, __F.3d__, No. 16-30879 (5th Cir., July 17, 2017).*
An unverified EEOC intake questionnaire cannot be considered an EEOC charge for administrative exhaustion purposes. Moreover, "noise sensitivity" must be tied to a disability in order to trigger ADA protection. Finally, a hostile work environment claim fails as a matter of law when an employee fails to take advantage of corrective opportunities made available to her through her employee handbook.

***Sanchez v. Young County**, __F.3d__, No. 16-10227 (5th Cir., July 31, 2017).*
A plaintiff cannot bootstrap governmental entity liability from the individual failures of jail employees because there is no *respondeat superior* under Section 1983.

***US v. Castillo**, __F.3d__, No. 15-50762 (5th Cir., Nov. 2, 2016).*
The answers to special jury questions must be considered when evaluating the sufficiency of the evidence supporting a court judgment.

***Arabbo v. City of Burton**, __F.3d__, No. 16-2134 (6th Cir., May 12, 2017).*
In considering and rejecting a developer's proposal that the city purchase his financing note at a discount, councilmembers were acting in their legislative capacities and thus subject to absolute immunity against the developer's Section 1983 claim that their rejection of his proposal was due to anti-Arab animus.

***US v. Matthews**, __F.3d__, No. 15-2298 (6th Cir., May 8, 2017).*

An individual who threw his pistol thereby abandoned it for Fourth Amendment purposes, and its later seizure by the police was constitutional.

Carlson v. Christian Bros. *, __F.3d__, No. 15-3807 (7th Cir., Oct. 27, 2016).*
Filling out a "complaint information sheet" is not the same as filing a charge of discrimination with the EEOC for exhaustion of administrative remedies purposes.

Lavender v. UIC College of Denitstry*, __F.3d__, No. 16-3388 (7th Cir., Feb. 15, 2017).*
Dismissal of a lawsuit alleging that a dentist violated the plaintiff's civil rights by placing a miniature bomb in one of her teeth was upheld as too speculative to state a claim on which relief could be granted.

Tatum v. Foster*, __F.3d__, No. 14-3343 (7th Cir., Jan. 31, 2017).*
A court cannot refuse to allow a generally competent criminal defendant the right to self-representation.

US v. Wahi*, __F.3d__, No. 15-2094 (7th Cir., Mar. 2, 2017).*
A district court's ancillary jurisdiction does not permit it to exercise jurisdiction over a petition to expunge the judicial record in a criminal case on purely equitable grounds.

Heglund v. Friebe*, __F.3d__, No. 16-3063 (8th Cir., Sept. 7, 2017).*
John Doe pleadings are not "mistakes" subject to the relation-back provisions of FRCP 15(c).

Sample v. PLLP*, __F.3d__, No. 15-3213 (8th Cir., Sept. 6, 2016).*
Municipalities do not enjoy absolute immunity from suit under Section 1983.

US v. Cooke*, __F.3d__, Nos. 16-1381,& 16-1738 (8th Cir., Apr. 5, 2017).*
The Sixth Amendment's right to a speedy trial concerns the length of time between arrest and trial – not arrest and initial appearance.

US v. Skarda*, __F.3d__, No. 15-3889 (8th Cir., Dec. 22, 2016).*
The unintentional failure to record a telephone conversation later used to support the issuance of a search warrant, in violation of FRCRP 4.1(b)(2)(A), is not a violation of constitutional magnitude so as to require the suppression of the evidence discovered pursuant to that warrant.

Briseno v. ConAgra*, __F.3d__, No. 15-55727 (9th Cir., Jan.3, 2017).*
The FRCP does not require a demonstration of an administratively feasible way to identify class members as a prerequisite to class certification.

Chan Healthcare v. Liberty Mutual*, __F.3d__, No. 16-35210 (9th Cir., Jan. 3, 2017).*
In a case of first impression in the Circuit, the court finds that it lacks jurisdiction to review a district court's order in a class action case founded on federal question jurisdiction, remanding the case to the state court from which it was removed.

US v. Fryberg*, __F.3d__, No. 16-30013 (9th Cir., Apr. 21, 2017).*

A return of service used to prove that a defendant had been provided notice of a hearing is admissible under the "public record exception" to the hearsay rule and did not violate the defendant's rights under the Confrontation Clause.

***West v. US**, __F.3d__, No. 13-16909 (9th Cir., Apr. 3, 2017).*
The failure to name an appellee in a notice of appeal filed pursuant to Fed. R. App. P. 3(c)(1)(A) is not a jurisdictional bar to considering the appeal against that appellee.

***Whidbee v. Pierce Cty.**, __F.3d__, No. 14-36094 (9th Cir., May 26, 2017).*
Although FRCP 4(m) gives plaintiffs additional time to effect service, it does not extend or revive a state statute of limitations that expired before removal to federal court.

***Albuquerque v. Soto Enterprises**, __F.3d__, No. 16-2065 (10th Cir., July 25, 2017).*
A defendant waived his right to remove his case to federal court when he filed a motion to dismiss in state court.

***Baker v. Loveland**, __F.3d__, No. 16-1435 (10th Cir., Apr. 26, 2017).*
A 42-page single spaced complaint containing 398 paragraphs and 17 causes of action was properly dismissed without prejudice for its failure to satisfy FRCP Rule 8.

***BOSC v. Bd. Of County Commsrs.** , __F.3d__, No. 16-2031 (10th Cir., Apr. 11, 2017).*
A county board filed a lawsuit but refrained from serving process while determining if arbitration was available. The defendant nevertheless removed the case to federal court. The board then voluntarily dismissed its suit and demanded arbitration. Under these circumstances, the board did not abandon its right to arbitration by filing its lawsuit.

***US v. Bowline**, __F.3d__, No. 15-7053 (10th Cir., Dec. 30, 2016).*
An agreement by two people that one will transfer drugs to another cannot form the basis of a "conspiracy to distribute" charge.

***CSX v. General Mills**, __F.3d__, No. 15-12095 (11th Cir., Jan. 30, 2017).*
In a case of first impression in the Circuit, the court holds that federal common law adopts the relevant state rule of collateral estoppel when determining the preclusive effect of a federal court judgment.

***Mikko v. Ross**, __F.3d__, No. 15-15135 (11th Cir., May 26, 2017).*
Prosecutorial immunity does not apply when a prosecutor conspires to get a municipal employee terminated in retaliation for the exercise of his First Amendment rights.

***Reed v. Winn-Dixie**, __F.3d__, No. 16-11712 (11th Cir., Jan. 27, 2017).*
Talking to an EEOC counselor, completing an intake questionnaire, being in a state of depression, and allegedly mailing an EEOC charge to the agency do not satisfy the Title VII 180-day timely filing requirement when the EEOC did not receive any charge until after the 180-day period had expired.

***Stamper v. Duval Cty.**, __F.3d__, No. 15-11788 (11th Cir., July 18, 2017).*

The EEOC did not revive an employee's time-barred claim of discrimination by vacating its earlier dismissal of the employee's administrative charge or by issuing a new right to sue letter.

Thomas v. Home Depot, *__F.3d__, No. 15-15409 (11th Cir., Sept. 8, 2016).*
An amended complaint that did not include a jury demand did not cancel or supercede the jury demand made in the original complaint.

US v. Deluca, *__F.3d__, No. 15-12033 (11th Cir., Oct. 25, 2016).*
The court declines an invitation to remove the requirement that a plaintiff show prejudice due to the government's violation of his attorney-client privilege in order for him to obtain the dismissal of an indictment against him.

Williams v. Monroe Cty., *__F.3d__, No. 16-10282 (11th Cir., July 11, 2017).*
The lower court did not err in dismissing the plaintiff's complaint against the "Courthouse," a building, and the "Sheriff's Department," which lacks the capacity to be sued.

Crawford v. Duke, *__F.3d__, No. 16-5063 (D.C. Cir., Aug. 11, 2017).*
Information contained in attachments to an EEOC complaint form is an integral part of the complaint and can support an exhaustion of administrative remedies showing.

Winston & Strawn v. McClean, *__F.3d__, No. 14-7197 (D.C. Cir., Dec. 9, 2016).*
Under the Federal Rules of Civil Procedure, a motion for summary judgment cannot be "conceded" for want of opposition. The burden always remains on the movant to demonstrate why summary judgment is warranted.

23. ARBITRATION; CONTRACTS

Buntin v. Boston, *__F.3d__, No. 16-2265 (1st Cir., May 15, 2017).*
In a case of first impression in the circuit, the court holds that a plaintiff may not bring a claim for damages under Section 1981 against city employees sued in their official capacity.

Lawrence v. Sol G. Atlas Realty, *__F.3d__, No. 15-3087 (2nd Cir., Oct. 28, 2016).*
An arbitration clause in a CBA that required any disputes that arose under its non-discrimination clause to be arbitrated did not "clearly and unmistakably" require the arbitration of an employee's statutory discrimination claims.

Alpha Painting v. Delaware River Port Auth. , *__F.3d__, No. 16-3791 (3rd Cir., Apr. 6, 2017).*
A government agency was arbitrary and capricious when it rejected a bidder as "not responsible" when the bidder's only error was a failure to submit a couple of required forms. This made the bid "not responsive," but did not justify a failure to award for being "not responsible."

S. Jersey Sanitation v. Applied Underwriters, *__F.3d__, No. 14-4010 (3rd Cir., Oct. 25, 2016).*
A motion to compel arbitration is granted on appeal when the allegations at issue apply to the contract at large and not only to its arbitration provisions.
Woods v. Greensboro, *__F.3d__, No. 16-1044 (4th Cir., May 5, 2017).*

A minority-owned business may bring a Section 1981 racial discrimination claim against a city alleging that the city provided economic development loans to minority businesses on less favorable terms than those required of non-minority businesses.

Reyna v. International Bank, *__F.3d__, No. 16-40057 (5th Cir., Oct. 4, 2016).*
A court must consider a motion to compel arbitration prior to considering conditional class certification.

Bratton v. Trugreen, *__F.3d__, No. 16-5161 (6th Cir., Jan. 11, 2017).*
A dispute does not "arise under" an agreement that requires arbitration but that expired prior to the date of the events that are the subject of the dispute.

Watford v. Jefferson Cty., *__F.3d__, No. 16-6183 (6th Cir., Sept. 1, 2017).*
A collective bargaining agreement is retaliatory on its face when it requires an employee's grievance to be held in abeyance when the employee files an EEOC charge.

Catamaran v. Towncrest, *__F.3d__, No. 16-3275 (8th Cir., July 28, 2017).*
In a case of first impression, the court holds that courts, and not arbitrators, must determine whether an arbitration agreement authorizes class arbitration.

Pure Wafer v. City of Prescott, *__F.3d__, No. 14-15940 (9th Cir., Jan. 10, 2017).*
A municipality does not "impair" the obligations of its contract with a private party, in violation of the Contracts Clause, so long as both parties can pursue court-ordered remedies in the event either party breaches its contractual obligations.

Coleman v. Utah State Charter School Bd. , *__F.3d__, No. 15-4141 (10th Cir., Dec. 16, 2016).*
An "implied understanding to the contrary" cannot defeat express at-will contractual language.

CM South East Texas v. Careminders, *__F.3d__, No. 16-11054 (11th Cir., Oct. 7, 2016).*
An arbitration award will not be overturned just because an arbitrator refused to continue the arbitration hearing after both sides had agreed to postpone it.

Agility v. Mattis, *__F.3d__, No. 16-1265 (Fed. Cir., Apr. 4, 2017).*
The breach of the implied duties of good faith and fair dealing does not require a violation of an express contractual provision.

24. BANKRUPTCY; CREDITORS' RIGHTS

Premier Capital v. Crawford, *__F.3d__, No. 16-1285 (1st Cir., Oct. 24, 2016).*
Omitting the name of an asset, although disclosing its value on Bankruptcy Schedule B, justifies the denial of a petition for bankruptcy.

In re: Klaas, *__F.3d__, No. 15-3341 (3rd Cir., June 1, 2017).*

Bankruptcy courts have the discretion to grant brief grace periods and to discharge debtors who cure arrearages to their Chapter 13 payment plans after the expiration of the plan term.

***In re: Lansaw**, __F.3d__, No. 16-1867 (3rd Cir., Apr. 10, 2017).*
A creditor's repeated violation of the automatic stay through its continued collection efforts justified an award of punitive and emotional-distress damages.

***In Re: Michael Corrin**, __F.3d__, No. 16-5717 (6th Cir., Feb. 23, 2017).*
The court approves a Chapter 13 plan that called for 12% interest to be paid on overdue property taxes, although state law specified an 18% interest rate.

***Dingley v. Yellow Logistics**, __F.3d__, No. 14-60055 (9th Cir., Apr. 3, 2017).*
Civil contempt proceedings are exempt from the automatic stay when they are intended to effectuate a court's public policy interest in deterring litigation misconduct.

25. DRIVER'S PRIVACY PROTECTION ACT

***Bates v. Bates**, __F.3d__, No. 16-15129 (11th Cir., Feb. 28, 2017).*
DAVID access is not self-concealing, and the fact that an officer had a statutory duty to advise the plaintiff of unlawful DAVID access does not alone warrant the equitable tolling of the statute of limitations for purposes of bringing a claim under the DPPA.

***Ela v. Destefano**, __F.3d__, No. 16-11548 (11th Cir., Aug. 30, 2017).*
The DPPA's language does not require "per violation" liquidated damage awards.
***McCourtney-Bates v. Dawsy**, __F.3d__, No. 16-15136 (11th Cir., Feb. 8, 2017).*
DPPA violations are not "self-concealing" so as to trigger the equitable tolling of the statute of limitations.

***US v. Hastie**, __F.3d__, No. 15-14481 (11th Cir., Apr. 25, 2017).*
Under the DPPA, a driver's e-mail address is "personal information" not subject to general disclosure.

***Watts v. Miami**, __F.3d__, No. 16-15383 (11th Cir., Feb. 8, 2017).*
An officer who used the DAVID database to obtain personal information on a driver for other than law enforcement or criminal justice purposes was entitled to qualified immunity against a DPPA claim.

26. OTHER CASES OF INTEREST

***US v. Buffis**, __F.3d__, No. 16-1681 (1st Cir., Aug. 14, 2017).*
An extortion conviction of a former police chief who received $4,000 from a local brothel in exchange for halting prostitution prosecution was upheld over his argument that it wasn't extortion because the brothel owners were "glad to pay."

***US v. Catala**, __F.3d__, No. 17-1096 (1st Cir., Aug. 30, 2017).*
In a case of first impression, the court holds that the government has priority over a general creditor with respect to claims related to assets forfeited as being the proceeds of criminal activity.

***Friends of E. Hampton v. E. Hampton**, __F.3d__, Nos. 15-2334/2465 (2nd Cir., Nov. 4, 2016).*
A town must comply with the procedural requirements of the Airport Noise and Capacity Act of 1990 when enacting local laws affecting flights into a local airport even if it is willing to forego future federal funding for its airport.

***Virginia Properties v. T-Mobile**, __F.3d__, No. 16-2973 (2nd Cir., July 28, 2017).*
Judicial sanctions for bad faith are to be limited to the fees that an innocent party incurs as a result of that misconduct.

***Daugherty v. Convergent Outsourcing**, __F.3d__, No. 15-20392 (5th Cir., Sept. 8, 2016).*
A collection letter violated the Fair Debt Collection Practices Act when its statements could lead an unsophisticated consumer into believing that her time-barred debt was legally enforceable.

***United Motorcoach v. Austin**, __F.3d__, No.16-50115 (5th Cir., Mar. 17, 2017).*
Federal law does not preempt a city's exercise of its regulatory power over the inter-state operation of charter busses and its requirement that such busses obtain a city permit in order to operate within its municipal limits.

***D. O. v. Glisson**, __F.3d__, No. 16-5461 (6th Cir., Jan. 27, 2017).*
The federal Child Welfare Act creates a private right to foster-care maintenance payments enforceable by a foster-parent under Section 1983.

***Frazier v. Chattanooga**, __F.3d__, No. 15-6405 (6th Cir., Nov. 3, 2016).*
The fact that a city described its fixed 3% COLA as "guaranteed" does not prove that it intended to be bound by that fixed COLA amount forever, given that its city code did not state that this fixed COLA amount was either vested or accrued.

***Kominski v. Coulter**, __F.3d__, No. 16-1768 (6th Cir., July 25, 2017).*
In a case of first impression, the court holds that an alleged Contracts Clause violation cannot give rise to a Section 1983 claim.

***Debene v. Baycare**, __F.3d__, No. 16-12679 (11th Cir., May 31, 2017).*
A company satisfied its COBRA notification obligations when it showed evidence of its normal procedures for mailing COBRA election notices, that it had mailed such a notice to the plaintiff, and that no other former employees mailed notices on that same date reported that they had not received them or were unable to make their coverage elections.

***John Doe #1 v. Miami-Dade County**, __F.3d__, No. 15-14336 (11th Cir., Jan. 25, 2017).*
An ordinance that prohibits certain sexual offenders from residing within 2500 feet of a school may violate the *Ex Post Facto* Clause.
***Taylor v. Huerta**, __F.3d__, No. 15-1495 (D.C. Cir., May 19, 2017).*

The FAA lacked the authority to issue its Registration Rule, which required recreational drone operators to register with the Administration.

Mercifully, the END