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ADA & THE COURTS

Ashley M. Ulbricht
Carmel Assistant City Attorney
1 Civic Square, City Hall
Carmel, Indiana 46032
(317) 571-2472; aulbricht@carmel.in.gov

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ADA & THE COURTS

I. THE ADA

The Americans with Disabilities Act ("ADA") was signed into law on July 26, 1990.[1] Its overall purpose is designed to make American Society more accessible to disabled persons. In 2008, the ADA Amendments Act (the "ADAAA") was passed.[2] The law was enacted to broaden the definition of the term "disability," which had been narrowed by U.S. Supreme Court decisions.[3] The ADA's protection only applies to individuals who meet the ADA's definition of "disability." An individual has a disability under the ADA if they: (1) have a physical or mental impairment that substantially limits one or more major life activities; (2) have a history or record of such impairment; or (3) are perceived by others as having such impairment[4]. A physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limit one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself. The term disability does not include: (1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; (2) compulsive gambling, kleptomania, or pyromania; or (3) psychoactive substance use disorders resulting from current illegal use of drugs.

[1] 29 C.F.R. § 1630.1 (2011).
[2] 29 C.F.R. § 1630.2 (2011).
[3] *Sutton v. United Airlines Inc*., 527 U.S. 471 (1999); *Toyota Motor Mfg. Ky. Inc. v. Williams*, 534 U.S. 184 (2002).
[4] 42 U.S.C.A. § 12102 (2009).

Under the ADA, to state a prima facie case for disability discrimination against a public entity, a plaintiff must prove that he: (1) suffers from a disability; (2) is a qualified individual; (3) is being denied the benefits of services, programs, or activities for which the public entity is responsible, or is otherwise discriminated against by the public entity; and (4) that such discrimination is by reason of his disability.[5]

In providing any aid, benefit, or service, a public entity may not, directly or through contractual, licensing, or other arrangements, on the basis of disability: (1) deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit or service; (2) afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (3) provide a qualified individual with a disability an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others; (4) provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such an action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others; (5) aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit or service to beneficiaries of the public entity's program; (6) deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; (7) otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others.[6]

[5] 28 C.F.R. §35.130(a)2010); *Frame v. City of Arlington*, 575 F.3d 432, 435 (5th Cir. 2009); *Culvahouse v. City of LaPorte*, 679 F.Supp.2d 937 (N.D. Ind. 2009).
[6] 28 C.F.R. §35.130(b)(1)(2010).

a. Application to the Courts

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities and services of public entities.[7] The ADA thus applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments. This includes the court systems of each state and local government.

i. ADA Requirements for Court Accessibility

Individuals with disabilities may not be excluded from services, programs, and activities because existing buildings are inaccessible.[8] Court programs, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "Program Accessibility", applies to court facilities that existed on January 26, 1992. Courts do not necessarily have to make each of their existing facilities accessible if the service, program, or activity can be made accessible in another manner.

ii. Standard of Review

The specific judicial system will be viewed in its entirety when determining accessibility.[9] Therefore, if the court system in particular jurisdiction consists of numerous facilities, and a specific proceeding or program can be moved within reason from an inaccessible facility to an accessible facility, the specific judicial system would be in compliance with the program accessibility requirements.[10]

[7] 28 C.F.R. §35.130 (2010); 42 U.S.C. § 12132 .
[8] 28 C.F.R. §35.149 (2010).
[9] 42 U.S.C.A. § 12131; 28 C.F.R. §35.150(a)(1)(2010).
[10] 28 C.F.R. §35.150(a)(1)(2010).

iii. Program Accessibility Requirement[11]

A public entity does not have to take any action that it can demonstrate would result in a fundamental alteration to the nature of its program or activity, or is an undue financial or administrative burden.[12] Determination of the financial or administrative burden can only be made by the head of the public entity or his or her designee, and must be accompanied by a written statement. The written statement must contain the reasons for reaching that conclusion. The public entity must then take any other action necessary to ensure that individuals with disabilities receive the benefits and services of the program or activity. For this reason, a denial of a requested modification because of undue financial or administrative burden would be extremely rare, and entities are cautioned about the use of this limitation.

iv. New Court Buildings vs. Old Court Buildings:

Hummel v. St. Joseph Cty. Bd. Of Comm'rs, *57 F.Supp. 3d 902 (N. D. Ind. 2014).*

Disabled plaintiffs of the County who have or had cases pending before the St. Joseph County, Indiana, Superior Court challenged the accessibility of the counties buildings under the ADA. The District Court held 1) the plaintiffs lacked standing to bring claims against city for past damages under the ADA; 2) plaintiffs lacked standing to pursue prospective relief under ADA against city; 3) plaintiffs lacked standing to pursue prospective relief under ADA against city; 4) plaintiffs failed to establish ADA claim against county; and 5) a permanent injunction requiring county to maintain accessible bathrooms in courthouse was not warranted.

[11] 28 C.F.R. §35.150(a)(3)(2010); 28 C.F.R. §35.164(2010).
[12] *King v. Indiana Supreme Court*, 2015 WL 2092848

Kirola v. City and County of San Francisco, 74 F.Supp.3d 1187 (N.D. Cal. 2014).

Mobility-impaired Plaintiff brought class action against Defendants, alleging that city violated the ADA and Rehabilitation Act ("RA") and discriminated against mobility-impaired persons by failing to eliminate access barriers or ensure accessibility to city buildings and public rights-of-way. The District Court held that Plaintiff (1) lacked standing to sue for alleged denial of meaningful access to Defendant's programs, services, and activities under the ADA; (2) failed to establish deprivation of program access with regard to Defendant's public right-of-way; and (3) did not demonstrate that Defendant failed to meet its obligation under ADA regulation to maintain accessible facilities and equipment in operable working condition.

v. Funding Sources

Funding for structural modifications to existing buildings may be available through the Community Development Block Grant program (CDBG) at the U.S. Department of Housing and Urban Development. This funding may be used for accessible purposes, such as installation of ramps, curb cuts, wider doorways, wider parking spaces, and elevators.

b. Effective Communication in Courts

A court must ensure that its communications with disabled individuals are as effective as communications with non-disabled individuals.[13] A court must make available appropriate auxiliary aids and services where necessary to ensure effective communication.[14] The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.[15] Auxiliary aids must be provided for both visual impairments and hearing impairments. The ADA does not require

[13] 28 C.F.R. §35.160(a)(1)(2010).
[14] 28 C.F.R. §35.160(b)(1)(2010).
[15] 28 C.F.R. §35.160(b)(2)(2010).

provision of any auxiliary aid that would result in an undue financial or administrative burden or that would fundamentally alter the nature of court services. A court is not relieved from this duty if an alternative auxiliary aid is available.

i. Court Interpreters[16]

A public entity shall not:

1. Require an individual with a disability to bring another individual to interpret for him or her;

2. Rely on an adult accompanying an individual with a disability to interpret or facilitate communication except:
    a. In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available or:

    b. Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.

3. Rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

[16] 28 C.F.R. §35.160(c)(1)(2010)

ii. Sign Language

Sign language interpreters must be provided to court spectators or court observers upon request. Courtroom spectators with disabilities are participants in the court program and are entitled to such aids or services that will afford them an equal opportunity to follow the court proceedings.

iii. Relevant Case Law

Taylor v. City of Mason, 970 F.Supp.2d 776 (S.D. Ohio 2013).

Deaf Plaintiff brought action against Defendants, alleging that denial of a qualified interpreter violated the Americans with Disabilities Act ("ADA") and Rehabilitation Act ("RA"). While officers requested a certified American Sign Language ("ASL") interpreter, the officers did not wait for the interpreter to arrive before questioning the Plaintiff. Upon arrival to the jail, the Plaintiff expressed dissatisfaction with the non-certified sign language interpreter and indicated he did not fully understand his Miranda warnings. The District Court held that the Defendants denied plaintiff the benefit of effectively communicating with the officers by failing to provide Plaintiff an appropriate auxiliary aid.

Valanzuolo v. City of New Haven, 972 F.Supp.2d 263 (D. Conn. 2013).

Plaintiff with severe hearing impairment brought action against Defendant in state court, alleging violations of the ADA and state law, arising out of his arrest on a warrant for failing to appear at municipal housing court. Action was removed to federal court. The District Court held that (1) law enforcement officers' use of pen and paper to communicate with Plaintiff prior to executing arrest warrant was reasonable accommodation, under the ADA; (2) officers effectively communicated with Plaintiff during his approximate 10-hour hospital stay following his arrest; and (3) failure to provide Plaintiff a sign language interpreter or other means to explain the procedure for transporting to the jail did not violate the ADA.

Lacy et al. v. Dart et al., *WL1995576 (N.D. Ill. 2015).*

Plaintiffs are wheelchair bound detainees who seek, individually and on behalf of the proposed class, preliminary and permanent injunctive relief. Plaintiffs contend that they attend court each month in connection with their underlying criminal cases and are subject to numerous ADA and RA violations in connection with their criminal court appearances. The District Court held an evidentiary hearing on Plaintiffs' request for preliminary injunctive relief and to certify a class defined as: "all persons presently confined at the jail who have been classified by jail officials as requiring a wheelchair". Defendants oppose class certification. The District Court held that Plaintiffs have satisfied the class certification requirements of Fed. R. Civ. P. 23(a) and 23(b)(2) and Plaintiff's motion for class certification was granted.

Williams v. City of New York, 2015 WL 4660691 (S.D. N.Y. 2015). Plaintiff who communicates primarily through ASL was arrested and detained overnight by the New York City Police Department (NYPD). The NYPD never provided Plaintiff with an ASL interpreter or any auxiliary communication aid to inform her why she was under arrest or how long she would be held in custody. The District Court held that law enforcement officers, who are acting in an investigative or custodial capacity, are performing "services, programs, or activities" within the scope of Title II of the ADA. Whether a disabled individual succeeds in proving discrimination under Title II will depend on whether the officer's accommodations were reasonable under the circumstances. The Court also found that a cause of action under 42 U.S.C. §1983 to enforce rights protected by Title II of the ADA, may be filed by a plaintiff.

Updike v. City of Gresham, ___ F. Supp.3d___, 2015 WL 1311666 (D. Oregon 2015).

Deaf Plaintiff brought action against county alleging violation of the ADA for failure to provide him with an ASL interpreter and auxiliary aids for communications while he was detained. The District Court granted summary judgment in favor of the county and held that a one (1) day delay in providing a sign language interpreter did not violate the ADA.

Reed v. State of Ill., et al., *__F. Supp.3d__, 2015 WL 4727754 (N.D. Ill. 2015).*

Plaintiff alleges that Defendants violated the ADA and the RA. Plaintiff has Tardive Dyskinesia, Post Traumatic Stress Disorder ("PTSD"), bipolar disorder, and acute anxiety. Plaintiff requested numerous accommodations by the court in regards to hearings associated with probate cases with which the Plaintiff was involved. These accommodations included allowing the Plaintiff to participate in hearings via teleconference. Plaintiff alleged that while the state had accommodated her physical disability, the state did not accommodate her neurological disability. The District Court held that genuine issues of material fact existed as to whether the state failed to accommodate Plaintiff's disability by failing to provide her an attorney or someone to provide assistance effectively communicating to the court.

Prakel v. Indiana, __F.Supp.3d___, 2015 WL 1455988 (S.D. Ind. 2015). An adult deaf child was a spectator at court proceedings for his mother who was a criminal defendant. The mother brought action alleging that Defendants violated Title II of the ADA and RA by failing to provide interpreter services. The District Court held: (1) mother had associational standing to pursue ADA claim against county defendants; (2) spectator had standing to pursue ADA claim against county defendants; (3) plaintiffs lacked standing to pursue ADA claims against state defendants; (4) mother waived her claims under ADA and RA; (5) judicial defendants were not entitled to absolute immunity; and (6) fact issue existed as to whether county defendants were deliberately indifferent in failing to provide interpreter to the spectator.

c. Service Animals[17]

A public entity must modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.[18] However, a public entity may ask an individual with a disability to remove a service animal from the premise if either the animal is out of control and the animal's handler does not take effective action to control it, or the animal is not housebroken.[19] If a public entity properly excludes a service animal, it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.[20]

A service animal must be under the control of its handler and shall have a harness, unless either the handler is unable because of a disability to use a harness, or the use of a harness would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be

[17] 28 C.F.R. §35.136 (2010).
[18] 28 C.F.R. §35.136(a)(2010).
[19] 28 C.F.R. §35.136(b) (2010).
[20] 28 C.F.R. §35.136 (c) (2010).

otherwise under the handler's control.[21] The public entity is never responsible for the care or supervision of a service animal.[22]

While a public entity may inquire whether an animal qualifies as a service animal, it shall not ask about the nature or extent of a person's disability[23]. The public entity may also ask if the animal is required because of a disability, and what work or task the animal has been trained to perform. [24] However, a public entity shall not require documentation that the animal has been certified, trained or licensed as a service animal.[25]

Individuals with disabilities shall be permitted to be accompanied by the service animals in all areas of a public entity's facilities where members of the public are allowed.[26] A public entity may not require an individual with a disability to pay a surcharge for their pet, but may charge for any damage caused by the service animal.[27]

d. Other Exotic Service Animals[28]

A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

[21] 28 C.F.R. §35.136(d) (2010).
[22] 28 C.F.R. §35.136 (e)(2010).
[23] 28 C.F.R. §35.136 (f)(2010).
[24] Id.
[25] Id.
[26] 28 C.F.R. §35.136 (g)(2010).
[27] 28 C.F.R. §35.136 (h)(2010).
[28] 28 C.F.R. §35.136 (i)(2010).

e. Relevant Case Law

Anderson et al. v. City of Blue Ash, *__ F.3d__, 2015 WL 4774591 (6th Cir. 2015)*

Plaintiff sought to keep miniature horse at her house as a service animal for her disabled minor daughter. Plaintiff sued Defendant asserting that municipal ordinance banning horses from residential property violated the ADA and the FHAA. City was granted summary judgment. Plaintiffs appealed. The Court of Appeals held 1) Plaintiff's administrative proceedings before city council did not have preclusive effect in this lawsuit; 2) Plaintiff's criminal convictions for violating ordinance did not have preclusive effect in this lawsuit; 3) Plaintiffs demonstrated that miniature horse was trained to assist resident's daughter with her disability, within meaning of ADA regulations; 4) disputed issues of material fact existed as to the reasonableness of Plaintiff's requested modification under the ADA; 5) Plaintiffs failed to establish a prima facie case of intentional discrimination under Title II of the ADA; 6) genuine disputes of material fact existed as to whether requested accommodation of keeping miniature horse at Plaintiff's house was reasonable and necessary to afford her and her daughter an equal opportunity to use and enjoy their dwelling, within meaning of FHAA; and 7) Plaintiffs failed to establish that ordinance had a disparate impact on disabled individuals.

Sherrer v. Miami-Dade County, 2015 WL 4396784 (S.D. Fl. 2015).

Plaintiff maintained a pet sheep as a comfort animal, in order to alleviate the symptoms of her depression. The Defendant cited Plaintiff for keeping the sheep on her residential property which was in violation of the zoning code. Plaintiff sued and alleged violations of the FHAA, the RA, and the ADA. The District Court held Plaintiff's claims that the Defendant failed to grant her a reasonable accommodation to keep her sheep are not yet ripe, but that her claims the Defendant failed to grant her a reasonable accommodation from the usual zoning variance process may proceed.

Riley v. Bd. of Comm'ners of Tippecanoe Cty, 2015 WL 3605443 (N.D. Ind. 2015).

Plaintiff was barred from entering the Tippecanoe County Courthouse with his service dog, Bella. The District Court dismissed Plaintiff's claims with leave to re-file an amended complaint to include allegations of Bella's training as a service animal.

Chavez v. Aber, __F.Supp.3d__, 2015 WL 4724807 (W.D. Tex, 2015).

Plaintiff sued and alleged housing discrimination on the basis of disability and sought damages for Defendant's refusal to accommodate Plaintiff's minor son's mental health disabilities. Plaintiff's minor son allegedly had a mixed breed pit bull as an emotional support animal. Defendant's argue that as a matter of law, it is not a reasonable accommodation to keep a dangerous dog on a rental premises. The Court held that whether the pit bull poses a direct threat that cannot be mitigated by another reasonable accommodation is not a question of law, but is distinctly a question of fact.

Cartwright v. Bartling, 2015 WL 3822362 (D. Nebr. 2015).

Plaintiff and live-in boyfriend collectively owned four (4) dogs, two of which were service dogs that were prescribed by Plaintiff's doctor to assist her in coping with her PTSD. Plaintiff's service dogs were found to be in violation of a city ordinance that prohibited keeping three (3) or more dogs on a residential property. The District Court held that Plaintiff properly alleged that the City discriminated against her on the basis of her disability because the City refused to grant her request for a reasonable accommodation.

II. CODE ENFORCEMENT CASE LAW UPDATE

A. ADA

Coppi v. City of Dana Point, __F.Supp.3d__, 2015 WL 757241 (C.D. Cal. 2015).

Plaintiff, who required use of wheelchair for mobility to access the public beach, brought action against Defendants, alleging violations of the ADA. The District Court held (1) the Defendants were required to provide reasonable access to public beach and boardwalk; (2) not running a train to transport patrons to beach and boardwalk during the off-season violated the ADA; and (3) the proposed accommodations were not reasonable.

Van Velzor v. City of Burleson, 43 F.Supp.3d 746 (N.D. Tex. 2014).

Plaintiff with degenerative bone and joint disorder brought putative class action against Defendant, alleging violations of the ADA based on city's alleged failure to enforce traffic and parking laws related to persons with disabilities. The Court held the ADA requires a police department to exercise its discretion of law enforcement in a manner that treats disabled and non-disabled persons equally.

Cohen v. City of Culver City, *754 F.3d 690 (9th Cir., 2014)*

Plaintiff who required cane for mobility brought action against city under the ADA after he tripped and fell while attempting to access a city sidewalk. The District Court granted summary judgment in favor of Defendants. Plaintiff appealed. The Ninth Circuit affirmed that regulations governing public entities' obligations when modifying existing facilities and constructing new facilities to achieve ADA compliance did not apply to plaintiff's action.

Daveri Development Group, LLC. v. Village of Wheeling, 934 F. Supp.2d 987 (N.D. Ill., 2013).

Plaintiff applied to the Defendant's zoning commission for a variance to build an apartment building for individuals with mental disabilities. The application was denied. Plaintiff sued alleging disability discrimination in violation of the FHA, ADA, and RA. The Court held that FHA, ADA, and RA prohibitions against disability discrimination all apply to municipal zoning decisions.

B. FHA cases

Texas Dept. of Housing and Community Affairs et al. v. the Inclusive Communities Project*, 135 S.Ct. 2507 (2015).*

Plaintiff brought claim under FHA against Defendants, alleging their allocation of low income housing tax credits resulted in a disparate impact on African-American residents. The District Court granted defendants partial summary judgment but found discriminatory impact in the allocation of housing credits. Defendants appealed. The Fifth Circuit held that disparate-impact claims were cognizable under the FHA, but reversed and remanded. *Certiorari* was granted. The United States Supreme Court then held that disparate-impact claims are cognizable under the FHA.

Austin Apartment Association v. City of Austin*, __F.Supp.3d__; 2015 WL 918504 (W.D. Tex. 2015).*

Plaintiffs brought action in state court challenging the validity of city ordinance that prohibited landlords from refusing to rent to prospective tenants on the basis of "source of income," which included housing vouchers and subsidies. Action was removed to federal court, and recipients of federal housing vouchers intervened. Plaintiffs moved for preliminary injunction. The District Court held the plaintiff failed to demonstrate likelihood of success on the merits that: 1) ordinance was preempted by state law; 2) ordinance was preempted by federal law; 3) ordinance violated provision of Texas constitution which prohibited any law impairing the obligation of contracts; 4) ordinance violated due process; and 5) ordinance amounted to regulatory taking.

***Bloomingburg Jewish Education Center et al. v. Village of Bloomingburg, NY et al.**, __F.Supp.3d__; 2015 WL 3604300 (S.D. N.Y. 2015).*

Jewish Plaintiffs brought action alleging that Defendants attempted to prevent Jewish people from moving to the village by preventing the opening of a religious school. Defendants moved to dismiss for failure to state a claim. The District Court held: 1) Plaintiff's claim that Defendant obstructed opening of school was not ripe; 2) Plaintiffs did not suffer injury in fact as result of village's stop-work order associated with construction site; 3) Plaintiff's properly stated free exercise and freedom of association claims; 4) Plaintiff properly stated equal protection claim; 5) Plaintiffs had standing to bring Fair Housing Act claim against Defendant; 6) Defendant's officials were entitled to legislative and qualified immunity.

C. Other cases of interest

***Reed, et al. v. Town of Gilbert, Az.**, 135 S.Ct. 2218 (2015).*

Plaintiffs, whose Sunday church services are held at various temporary locations, posted signs early each Saturday bearing the church name and time and location of the next service. Plaintiff did not remove signs until midday on Sundays. Plaintiff was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Defendant, Plaintiff filed suit, claiming the ordinance abridged their free speech. The District Court denied Plaintiff's motion for a preliminary injunction and the Ninth Circuit affirmed. Both courts ultimately concluded that the ordinances sign categories were content neutral and it satisfied the intermediate scrutiny accorded to content neutral regulations of speech. The United States Supreme Court reversed and held: 1) sign ordinance was subject to strict scrutiny, and 2) sign ordinance violated free speech guarantees.

***City of Los Angeles, California v. Patel, et al.**, 135 S.Ct. 2443 (2015).*

Plaintiffs brought action challenging municipal code provision requiring hotel operators to provide police officers with specified information concerning guests upon demand. Following a bench trial, the District Court entered judgment for Defendant. Plaintiffs appealed. The Ninth Circuit affirmed. On rehearing en banc, the Ninth Circuit reversed. *Certiorari* was granted. The United States Supreme Court held that: 1) facial challenges under the Fourth Amendment are not categorically barred, and 2) the code provision on its face violated the Fourth Amendment.

***Shoemaker v. City of Howell**, __F.3d__; 2015 WL 4548336 (6th Cir. 2015).*

Plaintiff challenged constitutional validity of city ordinance that required homeowners or occupants to maintain the grassy area adjacent to their property, between sidewalk and street curb. The District Court granted summary judgment in favor of Plaintiff, denied the Defendant's motion for stay of judgment pending appeal, and Plaintiff's motion for relief from judgment or order. Defendant appealed. The Sixth Circuit held that: 1) notice to Plaintiff satisfied notice requirements of procedural due process; 2) procedures Defendant provided to Plaintiff to challenge ordinance violation did not violate Plaintiff's procedural due process rights; 3) Plaintiff was precluded from mounting procedural due process claim against defendant; 4) ordinance did not impair Plaintiff's fundamental rights; and 5) ordinance did not violate Plaintiff's substantive due process rights.

***Davis v. Chalstrom**, 595 Fed.Appx. 627 (7th Cir. 2014).*

Plaintiff filed § 1983 action alleging that his Fourth Amendment rights were violated when a code enforcement officer inspected the exterior of his building without warrant. On interlocutory appeal, the Seventh Circuit held that in order for Plaintiff to prevail, he must (1) point to case law clearly establishing that a reasonable inspector would have known a mere visual inspection of the outside of a structure is unreasonably and (2) overcome the presumption that curtilage of a home has limited constitutional protection.

***Traditionalist American Knights of the Ku Klux Klan, et al. v. City of Desloge, Missouri**, 775 F.3d. 969 (8th Cir. 2015).*

Plaintiffs filed suit to enjoin Defendant from enforcing ordinance that prohibited pedestrians from soliciting or distributing material in roadways. Plaintiffs alleged the ordinance infringed on the Plaintiffs' free speech and was impermissibly vague under the Due Process Clause. Plaintiffs moved for a preliminary injunction, and the District Court granted the motion. Defendants appealed. The Eighth Circuit held that the District Court abused its discretion in granting a preliminary injunction and the ordinance was narrowly tailored to Defendant's strong interest in promoting pedestrian and traffic safety.

***California Tow Truck Association v. City and County of San Francisco**, __F.3d__ ; 2015 WL 4760001 (9th Cir. 2015).*

Defendant regulates the towing industry and provides a number of conditions and requirements concerning towing permits. Plaintiffs challenged Defendant's Permit Schemes contending it is pre-exempted by the Federal Aviation Administration Act of 1994 ("FAAAA"). The District Court did not properly analyze the Permit as required by Ninth Circuit precedent. The Ninth Circuit held as follows: 1)safety exception to FAAAA's express preemption clause was not limited to regulations related to "motor vehicle safety" of tow trucks themselves, but covered regulations seeking to prevent or mitigate danger a person experienced when his or her motor vehicle was being or had been towed; 2) Permit Scheme's requirements that tow truck operators and tow truck firms hold city-issued permits while operating in the city fell within the FAAAA's safety exception; 3) Permit Scheme's application and information-collection requirements, including criminal history disclosure requirements, fell within the safety exception; 4) Permit Scheme's permit fee and penalty provisions fell within the safety exception; 5) Permit Scheme's permit possession and display requirements were not preempted by the FAAAA; 6) Permit Scheme's complaint system requirement fell within the safety exception; and 7) Permit Scheme's business plan requirement did not fall within the safety exception and was therefore preempted.

Bey v. City of Tampa Code Enforcement, *607 Fed. Appx. 892 (11th Cir. 2015).*

Plaintiff is a "sovereign Moorish National" who practices Islam. Defendant inspected Plaintiff's property which was known as Al Morac Humanity Park. This park was used to practice the Islamic faith. Defendant cited Plaintiff for displaying unpermitted signs, building without a permit, and failing to obtain a special use permit to operate a private recreational facility. At the close of a violations hearing, a magistrate found Plaintiff in violation of city code. Plaintiff sued, alleging violation of Religious Land Use and Institutionalized Persons Act ("RLUIPA") and § 1983 claims for constitutional violations. The District Court dismissed for failure to state a claim. Plaintiff appealed. The Eleventh Circuit held: 1) First Amendment claim for violation of rights to exercise religion and to assemble was not sufficiently alleged; 2) procedural due process claim was not sufficiently alleged; 3) Plaintiff had standing to bring RLUIPA claims; 4) RLUIPA's equal terms claim was not sufficiently alleged; and 5) RLUIPA's nondiscrimination claim was not sufficiently alleged.

Little v. Dean, et al., *606 Fed. Appx. 581 (11th Cir. 2015).*

Plaintiff brings § 1983 claim of false arrest against Defendants after Plaintiff was arrested for violating a city ordinance regarding blighted properties. The District Court held, and the Eleventh Circuit affirmed that: 1) Plaintiff's claims based on the actions of a code enforcement officer cannot go forward as false arrest claims, but rather must be decided under a claim for malicious prosecution; and 2) Plaintiff could not establish a claim of malicious prosecution.

Shanko v. Lake County, et al., *__F.Supp.3d__; 2015 WL 4538390 (N.D. Cal. 2015).*

Plaintiff who obtained building permits to begin construction of a small residential structure on his property brought a 42 U.S.C. § 1983 action alleging unreasonable seizure under the Fourth and Fifth Amendment. The District Court held: 1) the Fourth Amendment claims for damages and injunctive relief were not ripe for adjudication; 2) Plaintiff failed to state Fifth Amendment takings claim; 3) Plaintiff properly stated "class of one" equal protection clam against county Defendant; 4) Plaintiff failed to state "class of one" equal protection claim against individual Defendants; 5) Plaintiff properly stated procedural due process claim against county Defendant; and 6) Plaintiff properly stated substantive due process claim against county defendant.

Chase v. Town of Ocean City, MD., *2015 WL 4993583 (D. Md. 2015).*

Plaintiff is a self-described "spray paint can artist" and street performer who creates and sells his paintings during the spring and summer months on the boardwalk of Ocean City, Maryland. The Town of Ocean City has various ordinances regulating and restricting the use of the boardwalk. One such restriction requires all vendors and street performers to obtain a license and limit their activities to the ends of the streets for public safety reasons. Plaintiff filed suit against the Defendant alleging that the ordinances violate his right to free expression. Plaintiff was granted injunctive relief. The Defendant subsequently passed new ordinances which amended and reorganized the ordinance at issue. Defendants filed a motion to modify the preliminary injunction. The Court denied Defendant's motion based on the absence of case or controversy.

***Campbell v. Conroy, et al.**, 2015 WL 5007942 (W.D. Pa. 2015).*

Plaintiff contends that Defendants violated his constitutional rights as secured by the Fifth and Fourteenth Amendments by: (1) withholding insurance proceeds after a fire on his property, (2) failing to provide adequate police protection, (3) singling Plaintiff out for code violation enforcement, and (4) passing an ordinance that effectuated a total economic taking of his property. The District Court held: (1) Plaintiff failed to adequately allege he was denied a constitutionally adequate procedural remedy for the alleged deprivation of his insurance; (2) Plaintiff failed to sufficiently assert facts to establish a selective enforcement claim; (3) Plaintiff's claim does not rise to the level of a substantive due process violation; and (4) Plaintiff fails to properly allege that the ordinance has eliminated all economically viable options for his property.

***Jeffers v. City of Washington, et al.**, 2015 WL 4232662 (W.D. Pa. 2015).*

Plaintiff alleges her neighbor negligently constructed a building and thereafter, water from the neighbor's property damaged Plaintiff's property. Plaintiff asserts Defendants violated her constitutional rights by arbitrarily enforcing the law. The District Court found that Plaintiff failed to establish an equal protection claim and thus Plaintiff's § 1983 failure to train claim must also be denied.

***33 Seminary LLC v. City of Binghamton**, __F.Supp.3d__ ; 2015 WL 4546272 (N.D. N.Y. 2015).*

Plaintiff's building permits and variances for desired construction on two properties were denied by Defendant. Plaintiff alleges Defendant (1) violated Plaintiff's equal protection rights (2) violated Plaintiff's due process rights; (3) violated Plaintiff's substantive due process rights and (4) violated Plaintiff's procedural due process rights. The Court dismissed Plaintiff's claims and granted defendant's motion for Summary Judgment.