RECENT FEDERAL CASES OF INTEREST TO GOVERNMENTAL ENTITIES

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INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION
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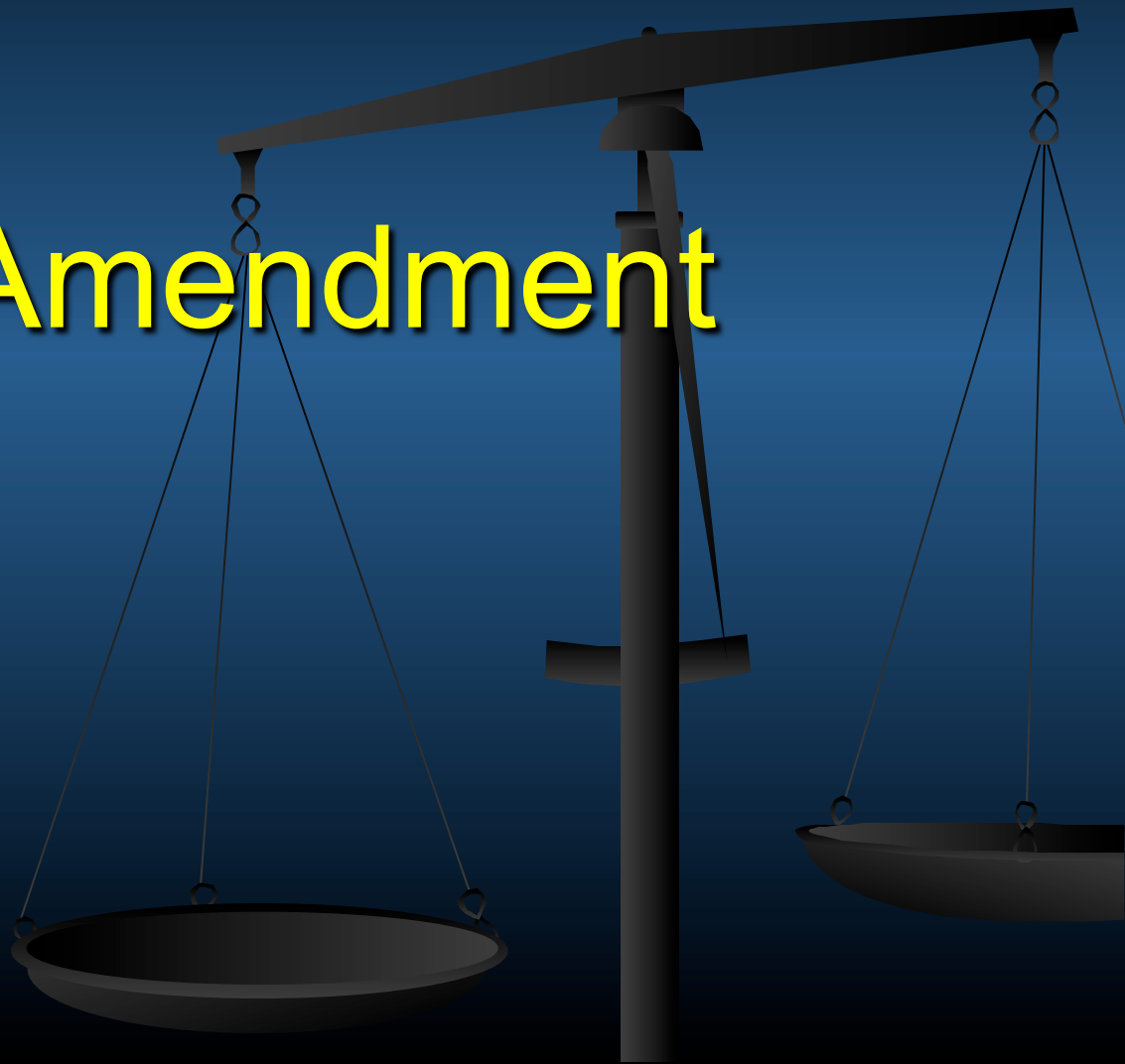
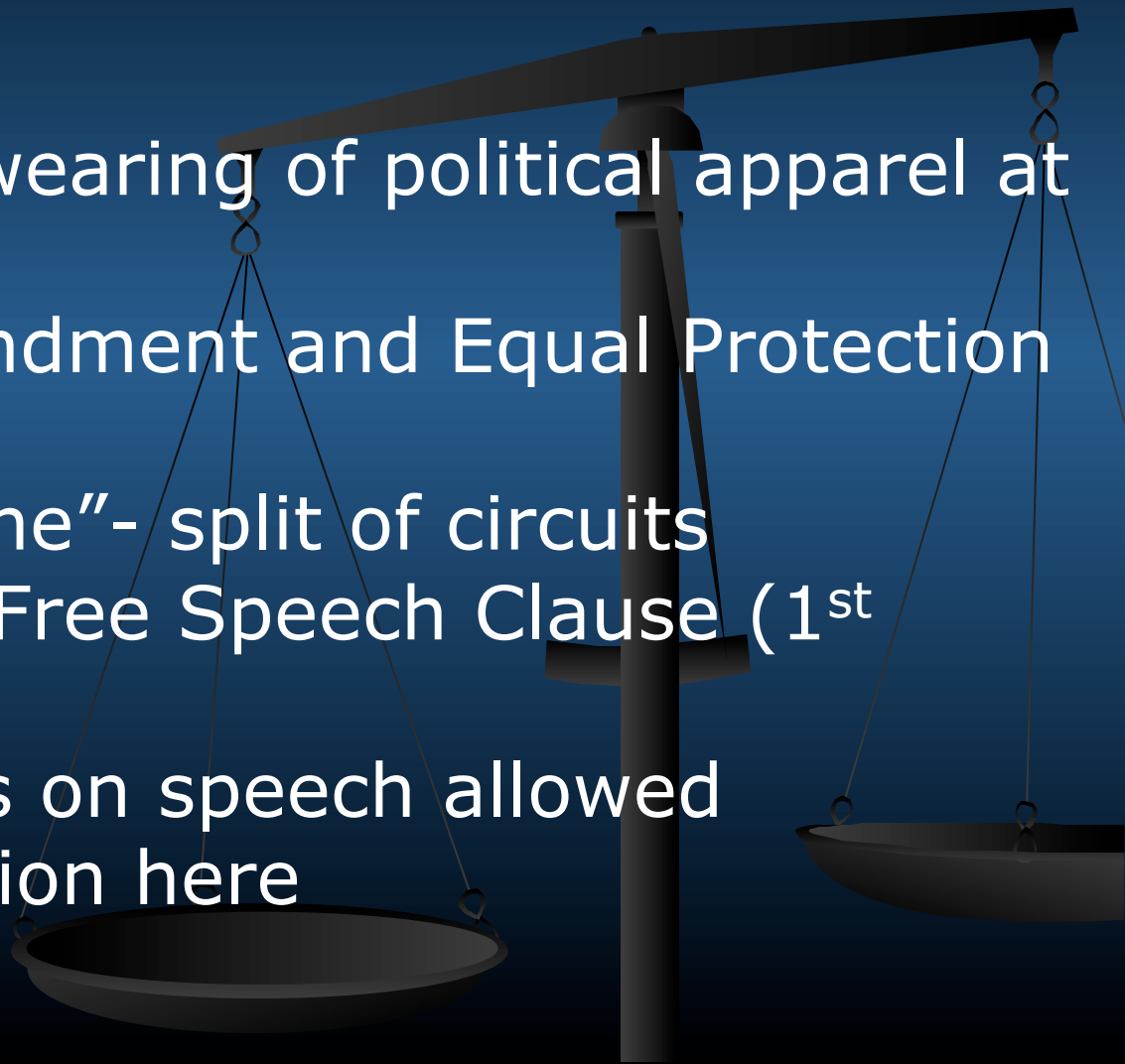
First Amendment



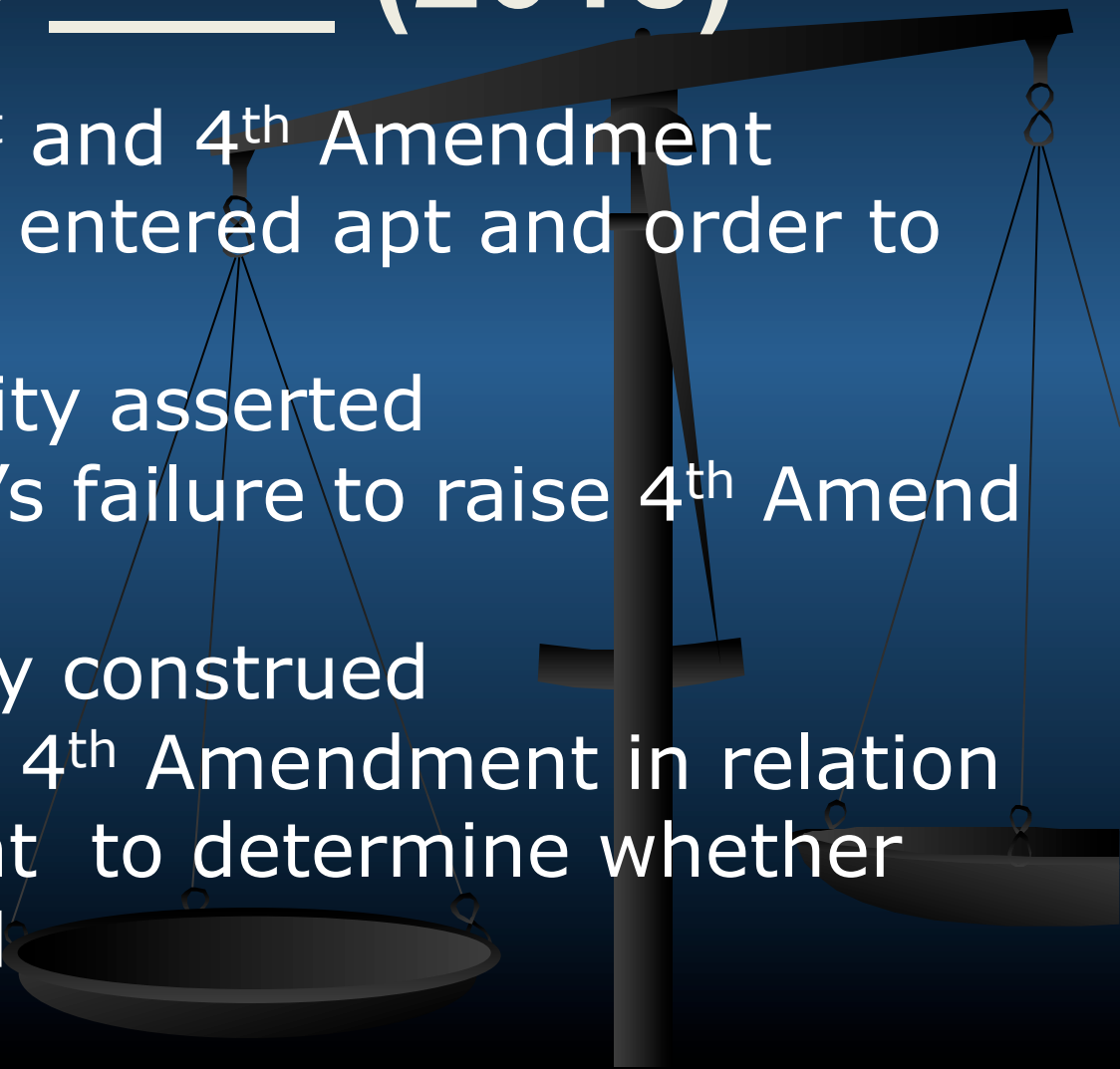
Minnesota Voters Alliance v. Mansky, 585 US_____ (2018)



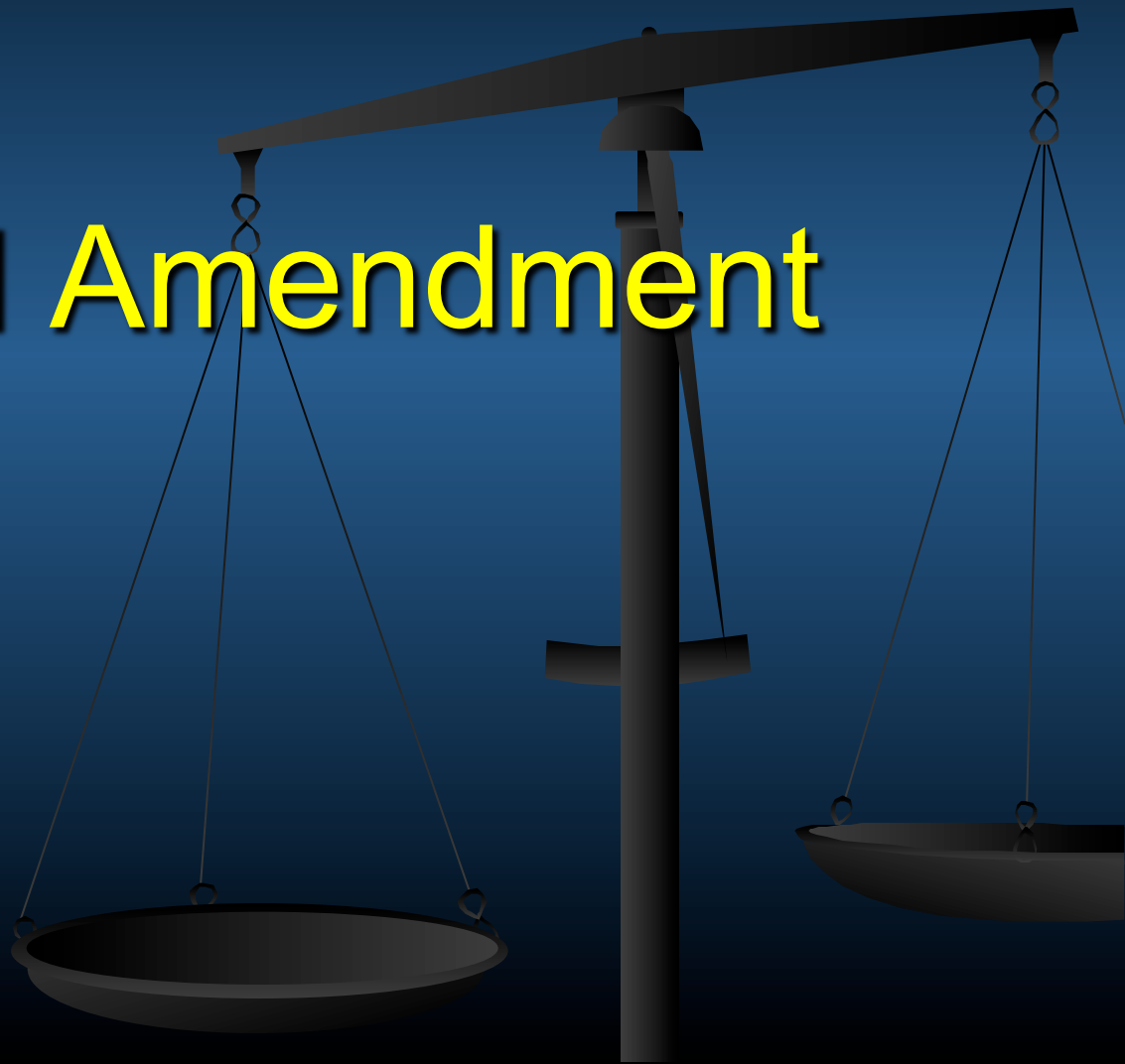
- Prohibited from wearing of political apparel at polls
- Claimed 1st Amendment and Equal Protection violations
- "Speech-Free Zone"- split of circuits
- 7-2: violation of Free Speech Clause (1st Amendment)
- Reasonable limits on speech allowed
- Too much discretion here

Sause v. Bauer, 585 US ___ (2018)

- 42 USC 1983, 1st and 4th Amendment
- Noise complaint- entered apt and order to stop praying
- Qualified Immunity asserted
- Whether Plaintiff's failure to raise 4th Amend claim was a bar
- Pleadings liberally construed
- Need to consider 4th Amendment in relation to 1st Amendment to determine whether presence allowed

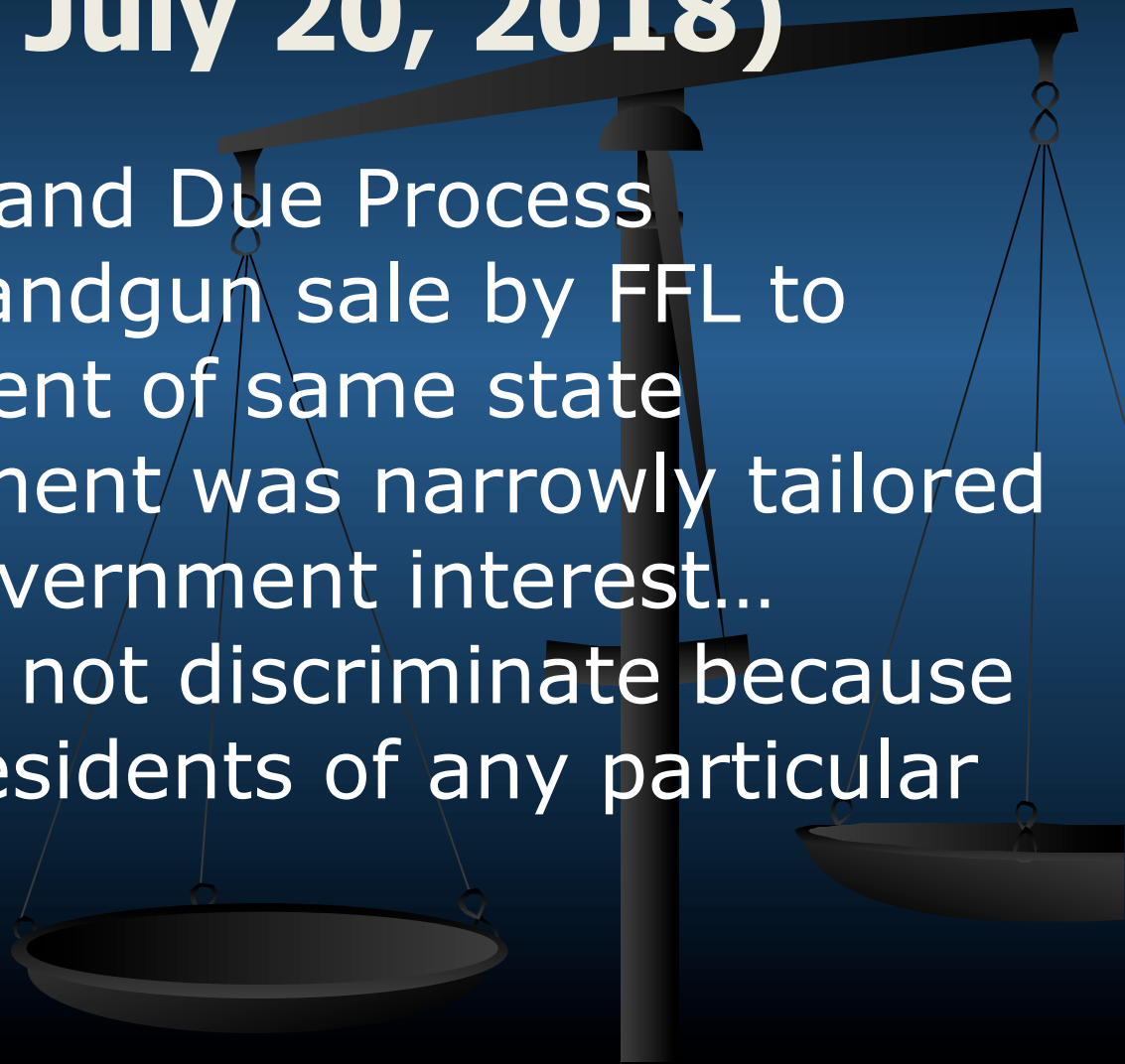


Second Amendment

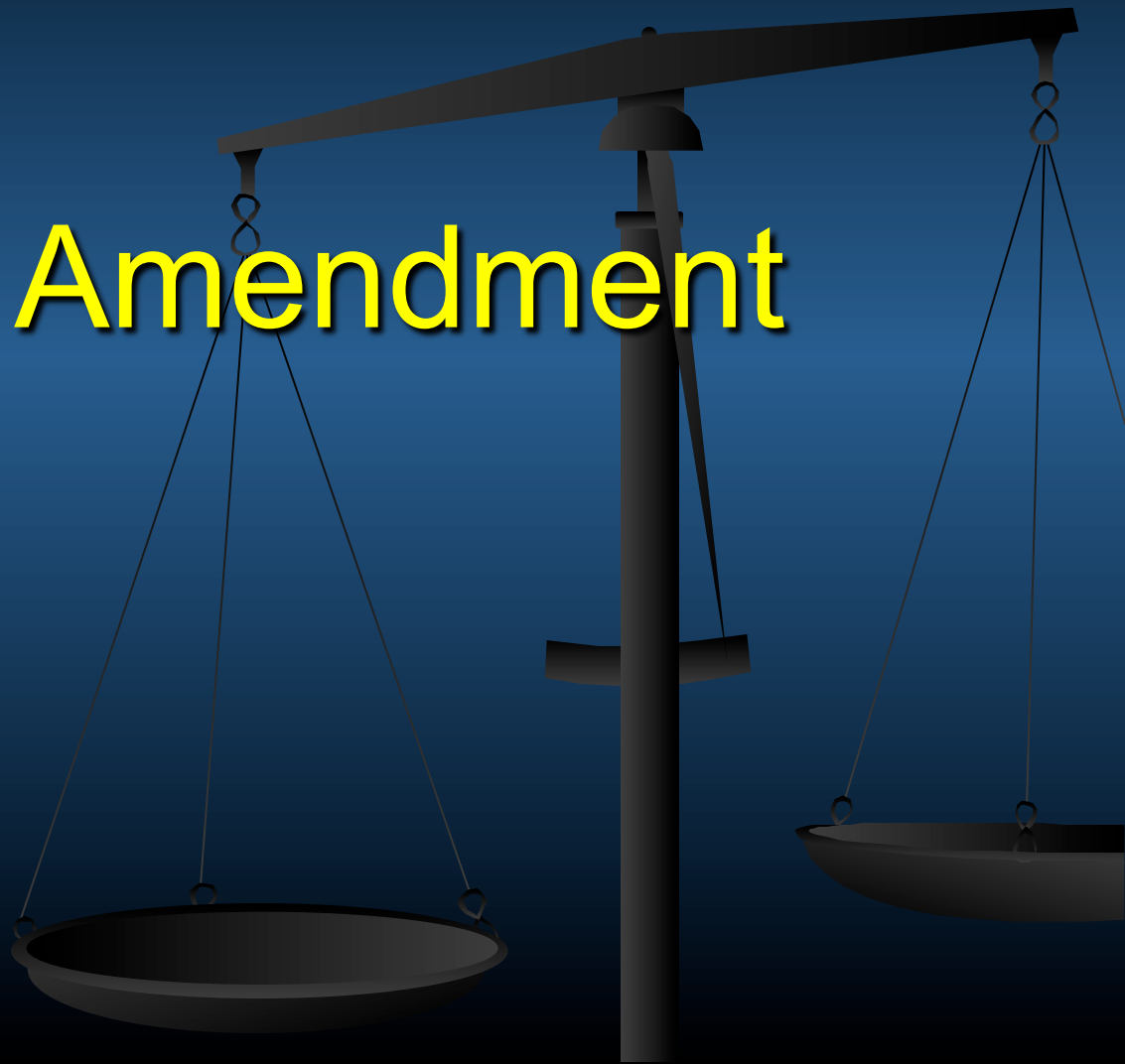


Mance v. Sessions, -- F.3d -- Docket No. 15-10311 (5th Cir., July 20, 2018)

- 2nd Amendment and Due Process
- Prohibit direct handgun sale by FFL to person not resident of same state
- In state requirement was narrowly tailored to compelling government interest…
- Requirement did not discriminate because didn't disfavor residents of any particular state

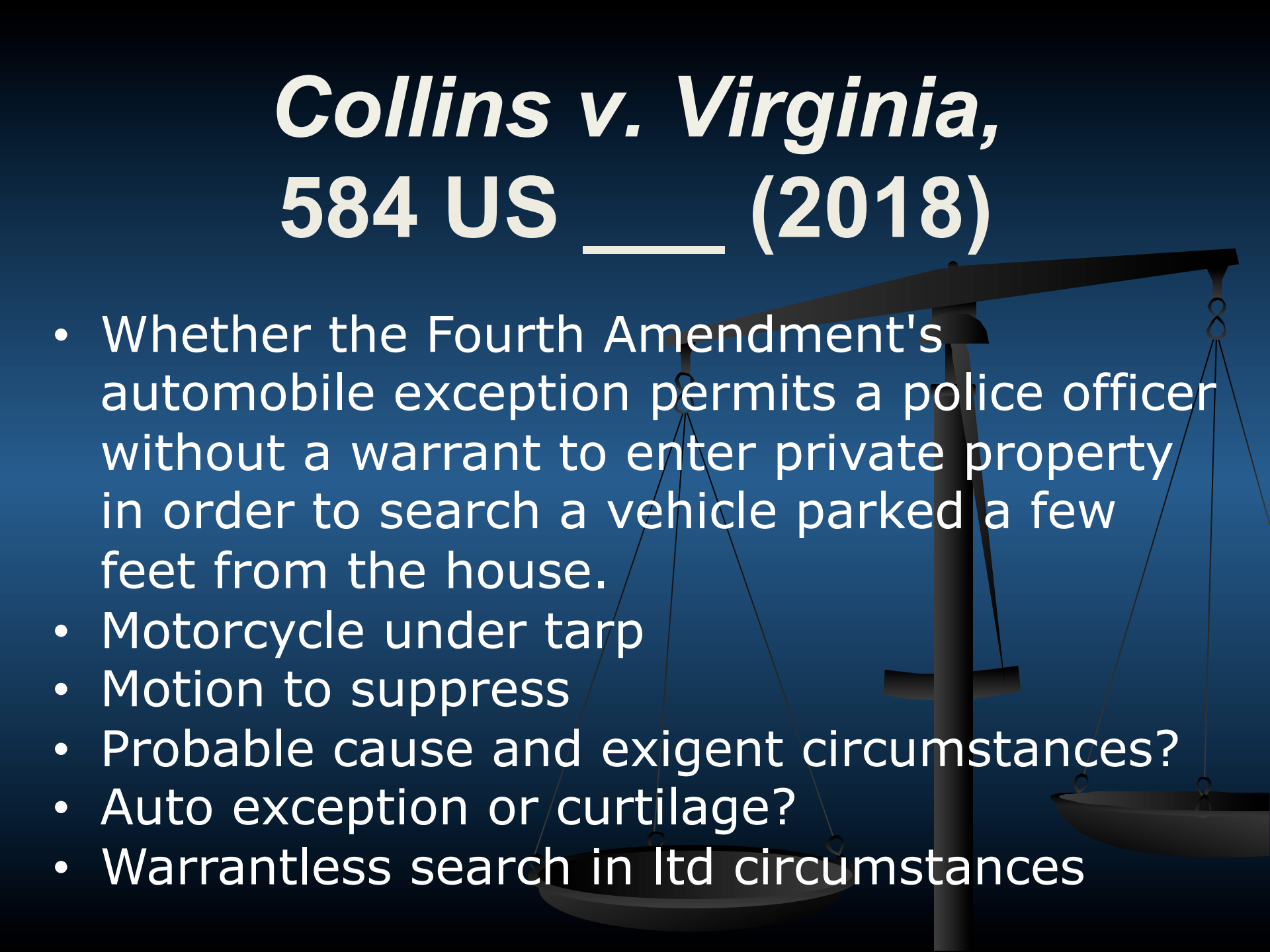


Fourth Amendment



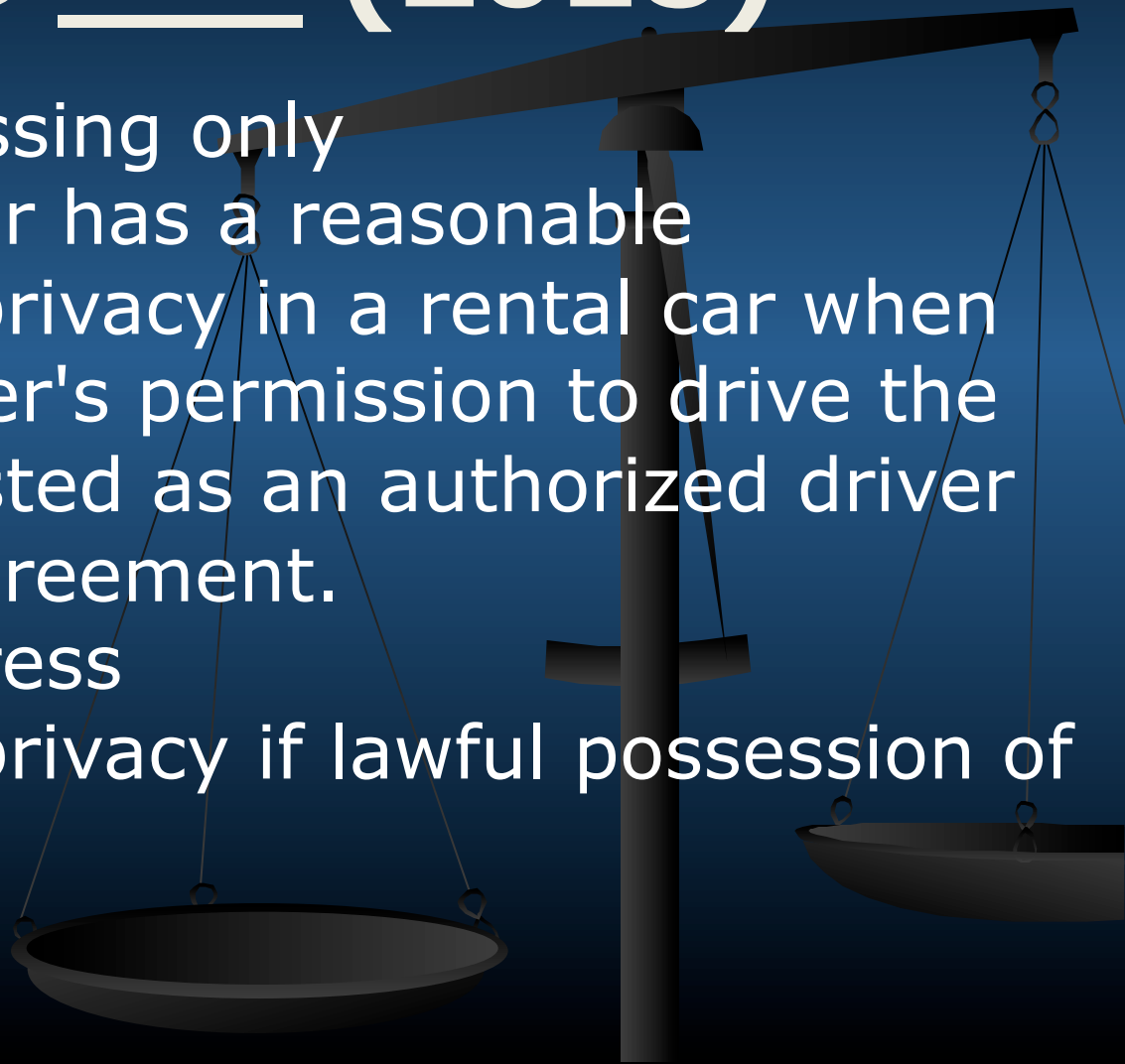
Collins v. Virginia, 584 US ___ (2018)

- Whether the Fourth Amendment's automobile exception permits a police officer without a warrant to enter private property in order to search a vehicle parked a few feet from the house.
- Motorcycle under tarp
- Motion to suppress
- Probable cause and exigent circumstances?
- Auto exception or curtilage?
- Warrantless search in ltd circumstances



Byrd v. United States, 584 US ___ (2018)

- Left lane for passing only
- Whether a driver has a reasonable expectation of privacy in a rental car when he has the renter's permission to drive the car but is not listed as an authorized driver on the rental agreement.
- Motion to Suppress
- Expectation of privacy if lawful possession of rental car

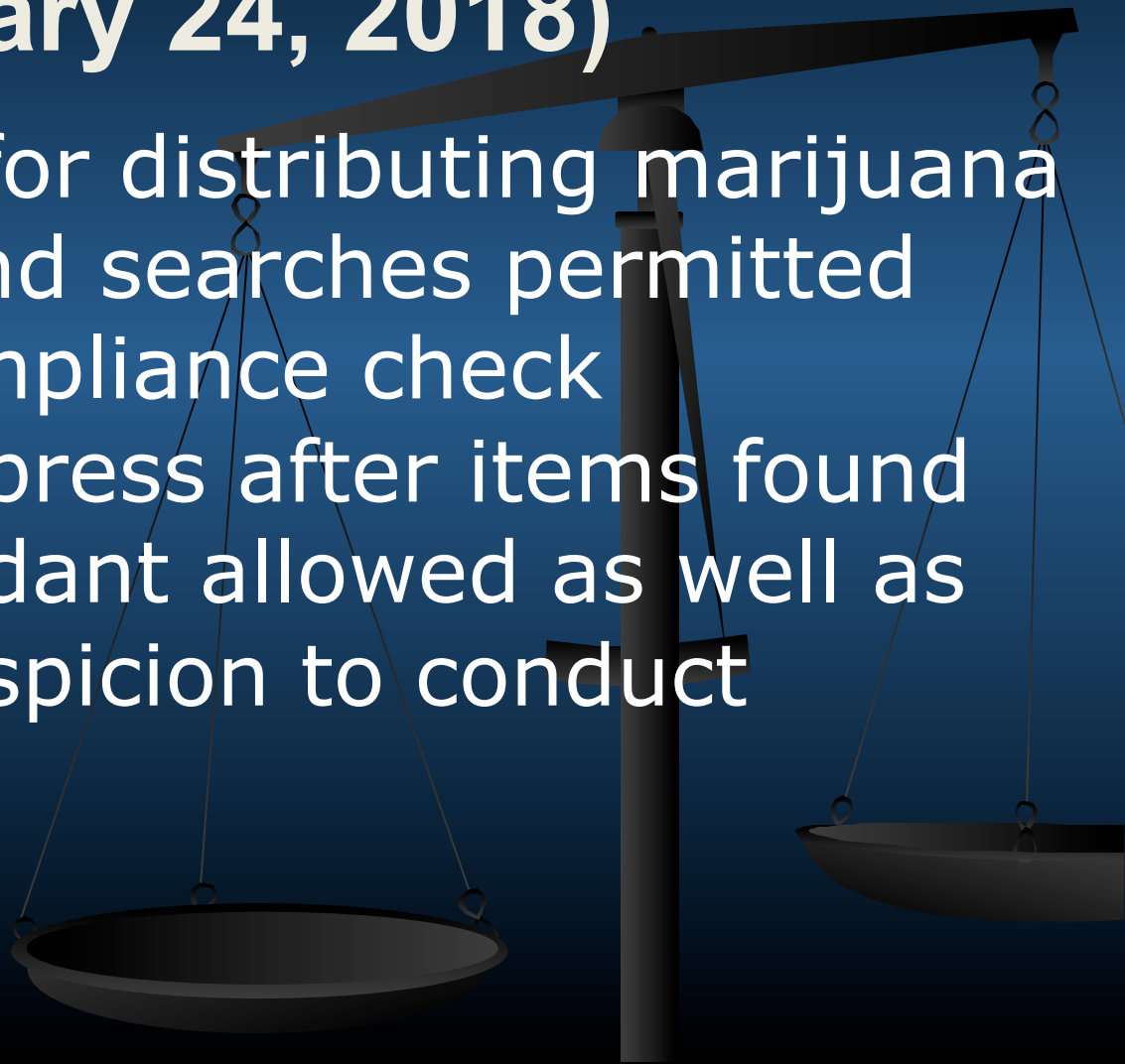


Carpenter v. United States, 585 US ___ (2018)

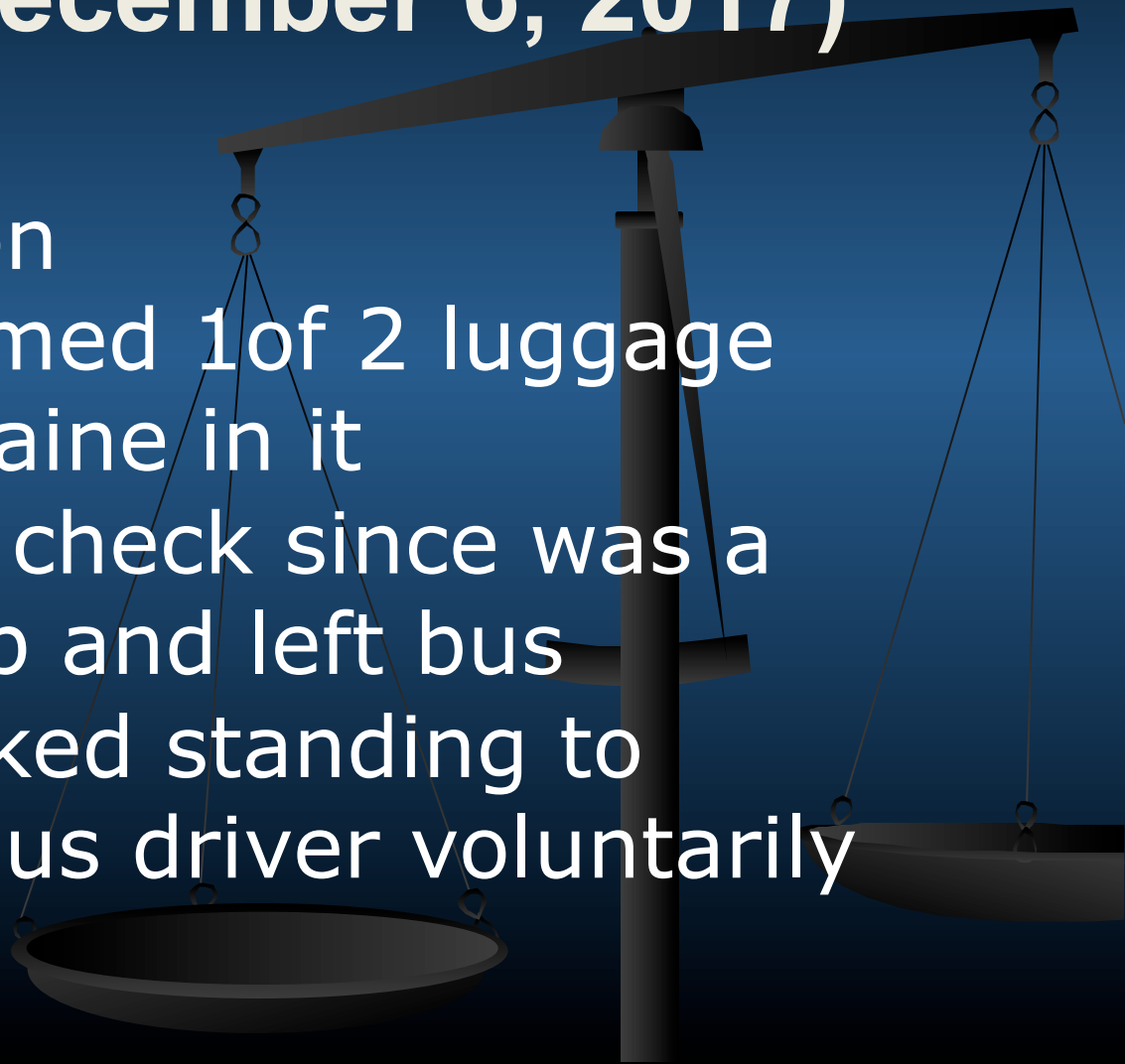
- Whether the warrantless search and seizure of cell phone records, which include the location and movements of cell phone users, violated the Fourth Amendment.
- 4 men in series of armed robberies
- 4th Am search – warrant required
- 5-4 opinion with strong dissents
- Government will generally need a warrant to access cell site location information

United States v. Williams, -- F.3d -- Docket No. 17-30198 (5th Cir., January 24, 2018)

- On probation for distributing marijuana
- Home visits and searches permitted
- Performed compliance check
- Motion to Suppress after items found
- Frisk of Defendant allowed as well as reasonable suspicion to conduct searches

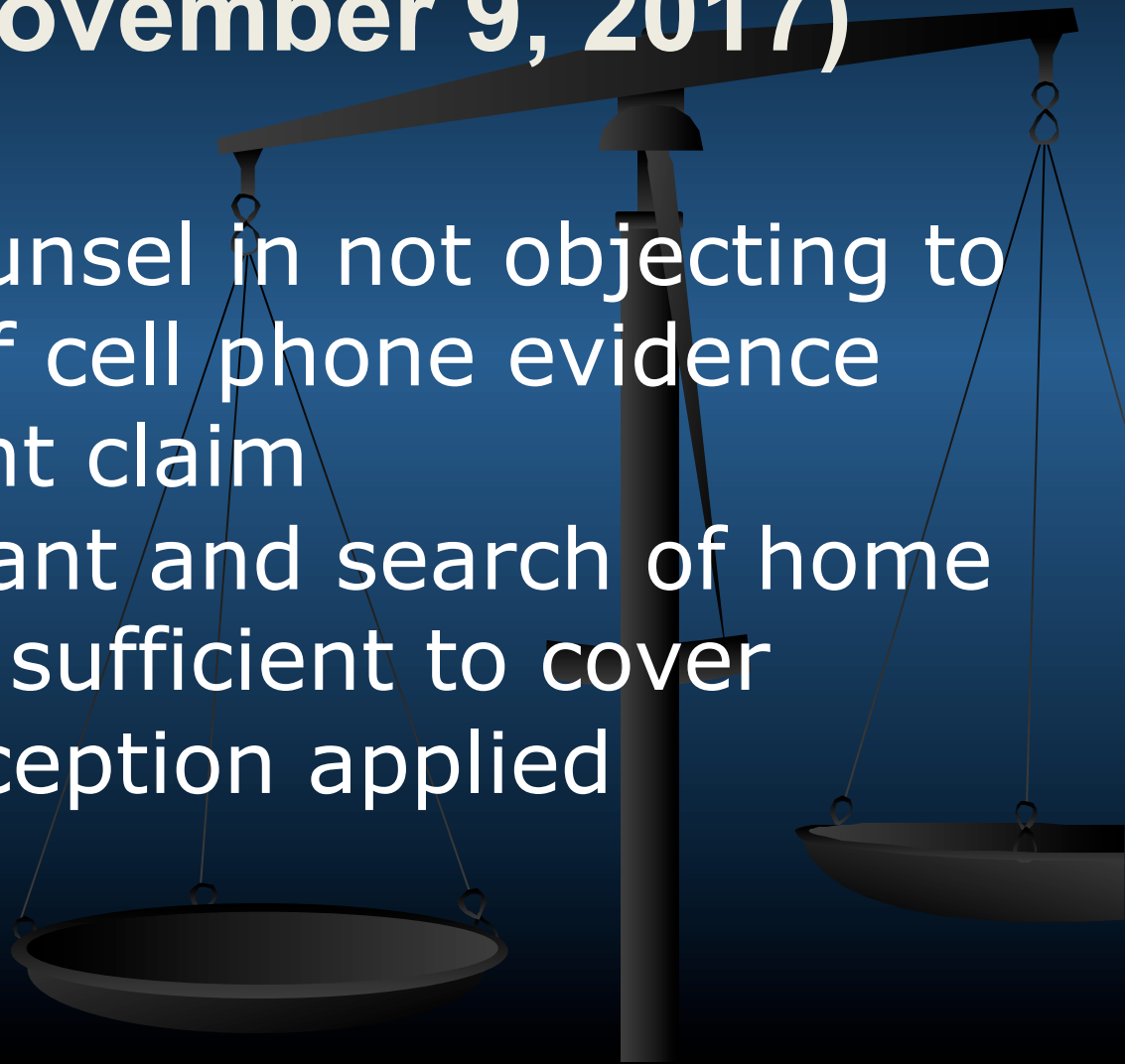


United States v. Wise, -- F.3d -- Docket No. 16-20808 (5th Cir., December 6, 2017)



- Bus interdiction
- Wise only claimed 1of 2 luggage
- Other had cocaine in it
- Constitutional check since was a scheduled stop and left bus
- Defendant lacked standing to challenge as bus driver voluntarily consented

Evans v. Davis, -- F.3d -- Docket No. 150-11066 (5th Cir., November 9, 2017)

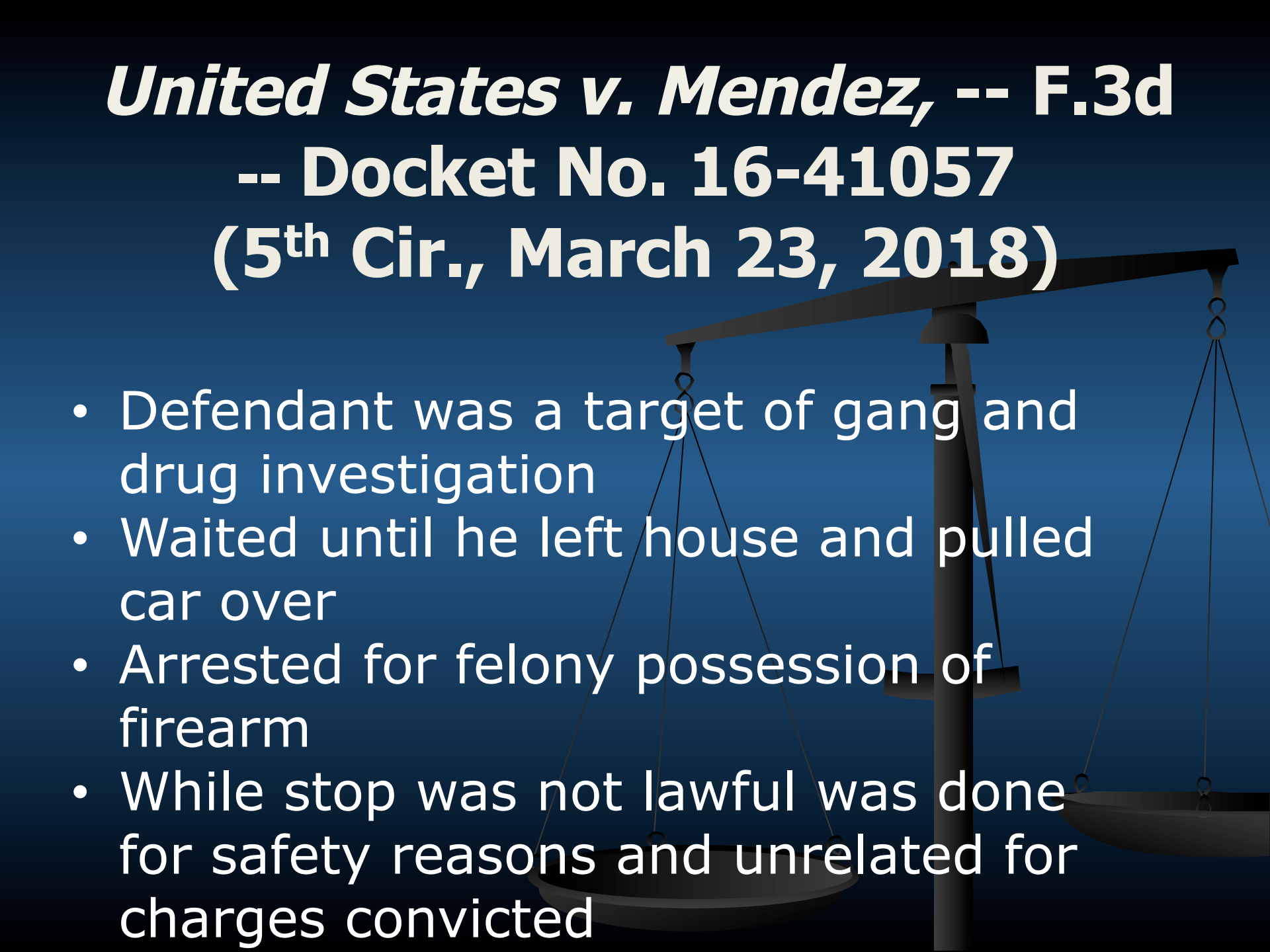


- Ineffective counsel in not objecting to suppression of cell phone evidence
- 4th Amendment claim
- Ct found warrant and search of home was generally sufficient to cover
- Good faith exception applied

Lincoln v. Colleyville, Texas, -- F. 3d -- Docket No. 17-10201 (5th Cir., April 5, 2018).

- Report of man with gun to kill and daughter with him at house
- "Come & take it" & "make your move"
- SWAT shoots him
- Removed,handcuffed,interviewed at station (4 hours)
- 4th Am claim of detention w/o probable cause
- QI: because not clearly established

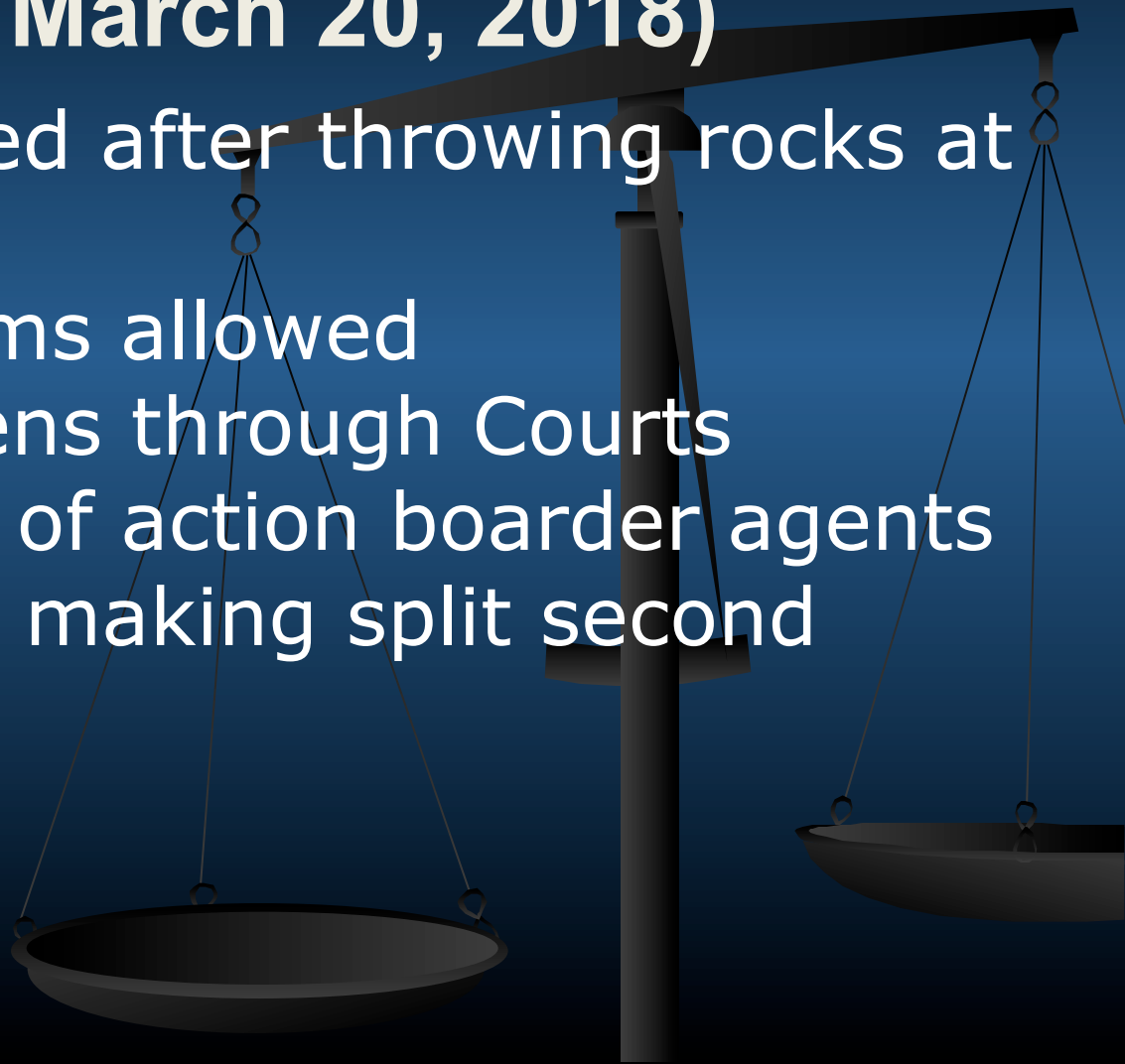
United States v. Mendez, -- F.3d -- Docket No. 16-41057 (5th Cir., March 23, 2018)



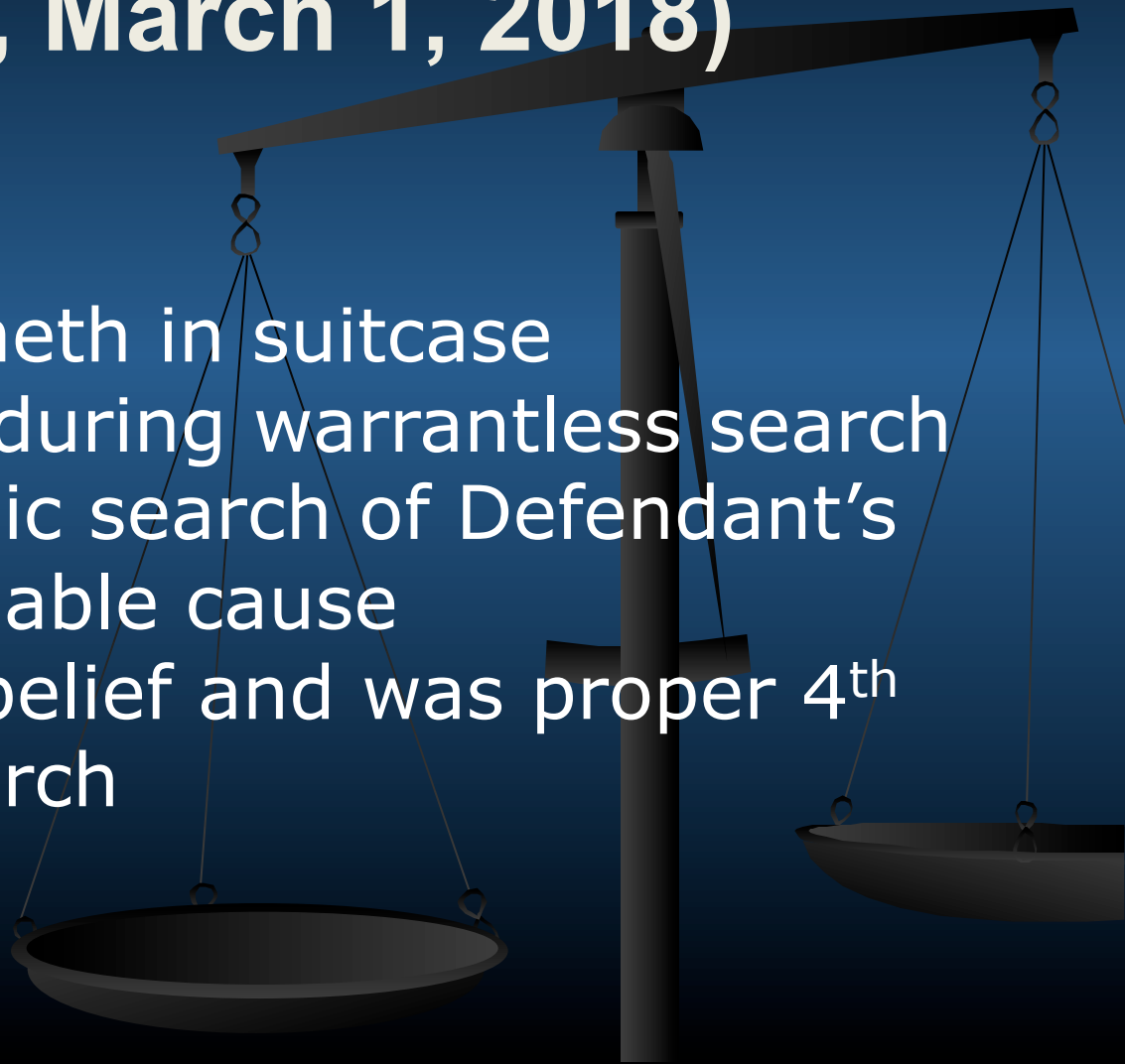
- Defendant was a target of gang and drug investigation
- Waited until he left house and pulled car over
- Arrested for felony possession of firearm
- While stop was not lawful was done for safety reasons and unrelated for charges convicted

Hernandez v. Mesa, Jr., -- F.3d -- Docket No. 12-50217 (5th Cir., March 20, 2018)

- 15 year old killed after throwing rocks at officer
- Only Biven claims allowed
- Analysis of Bivens through Courts
- If allowed right of action boarder agents will "hesitate in making split second decisions"
- Dismissed



United States v. Molina-Isidoro, -- F.3d -- Docket No. 17-50070 (5th Cir., March 1, 2018)



- Cellphone case
- Found kilos of meth in suitcase
- Looked at apps during warrantless search
- Here non-forensic search of Defendant's phone with probable cause
- Had good faith belief and was proper 4th Amendment search

Title VII



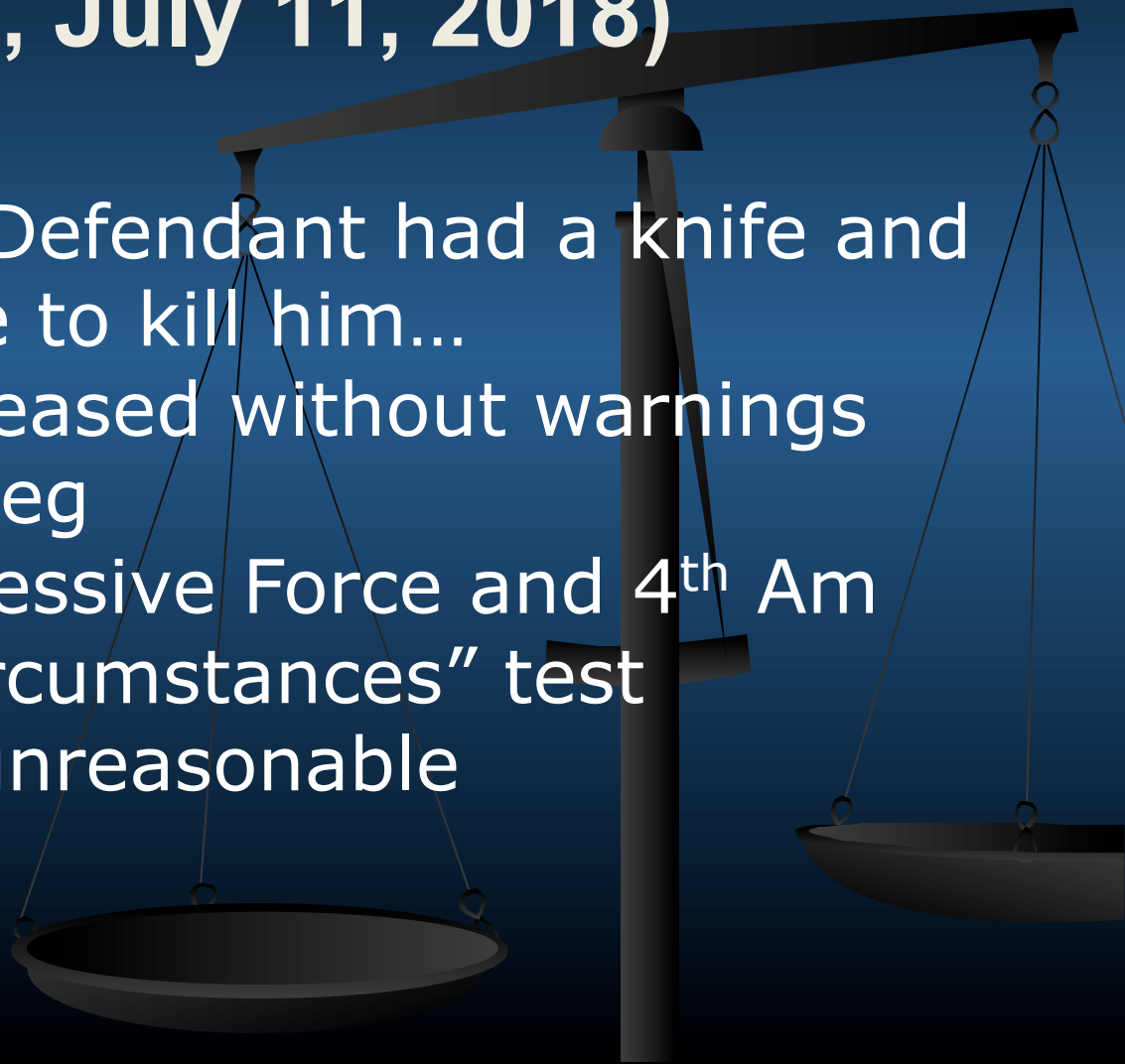
Gardner v. CLC of Pascagoula, LLC, --F.3d -- Docket No. 17-60072 (5th Cir., June 29, 2018)

- Title VII- Hostile work environment & retaliation
- Terminated for refusing to care for aggressive patient
- Employer took no action to fix
- Employer can be responsible for acts of nonemployees where knew or should have known and didn't stop
- "But- for" analysis on retaliation

Section 1983

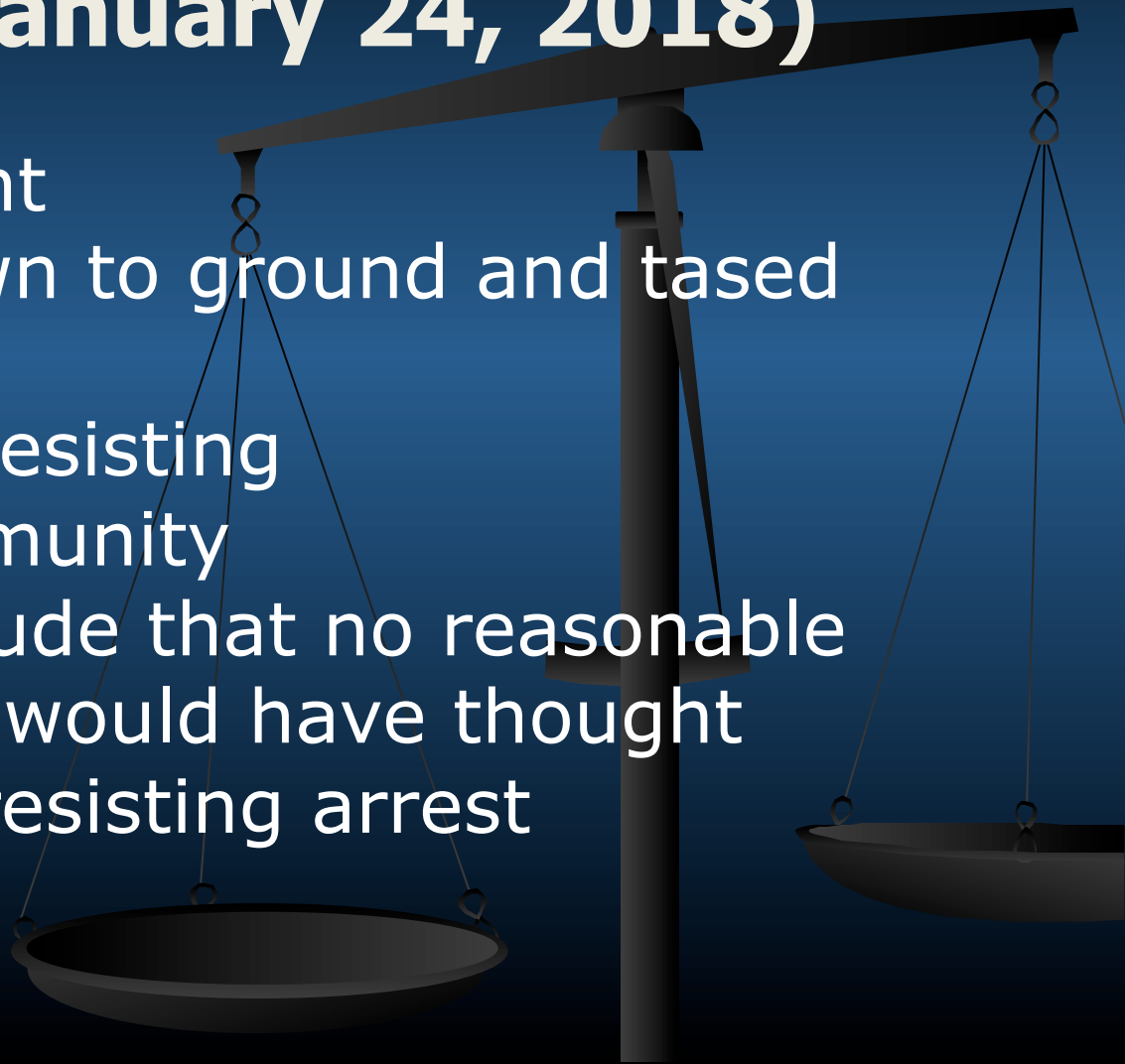


Escobar v. Montee, -- F.3d -- Docket No. 17-10467 (5th Cir., July 11, 2018)



- Police chase and Defendant had a knife and mom said to have to kill him…
- Bullet the dog released without warnings
- Multiple bites on leg
- 42 USC 1983 Excessive Force and 4th Am
- "Totality of the circumstances" test
- Use of force not unreasonable

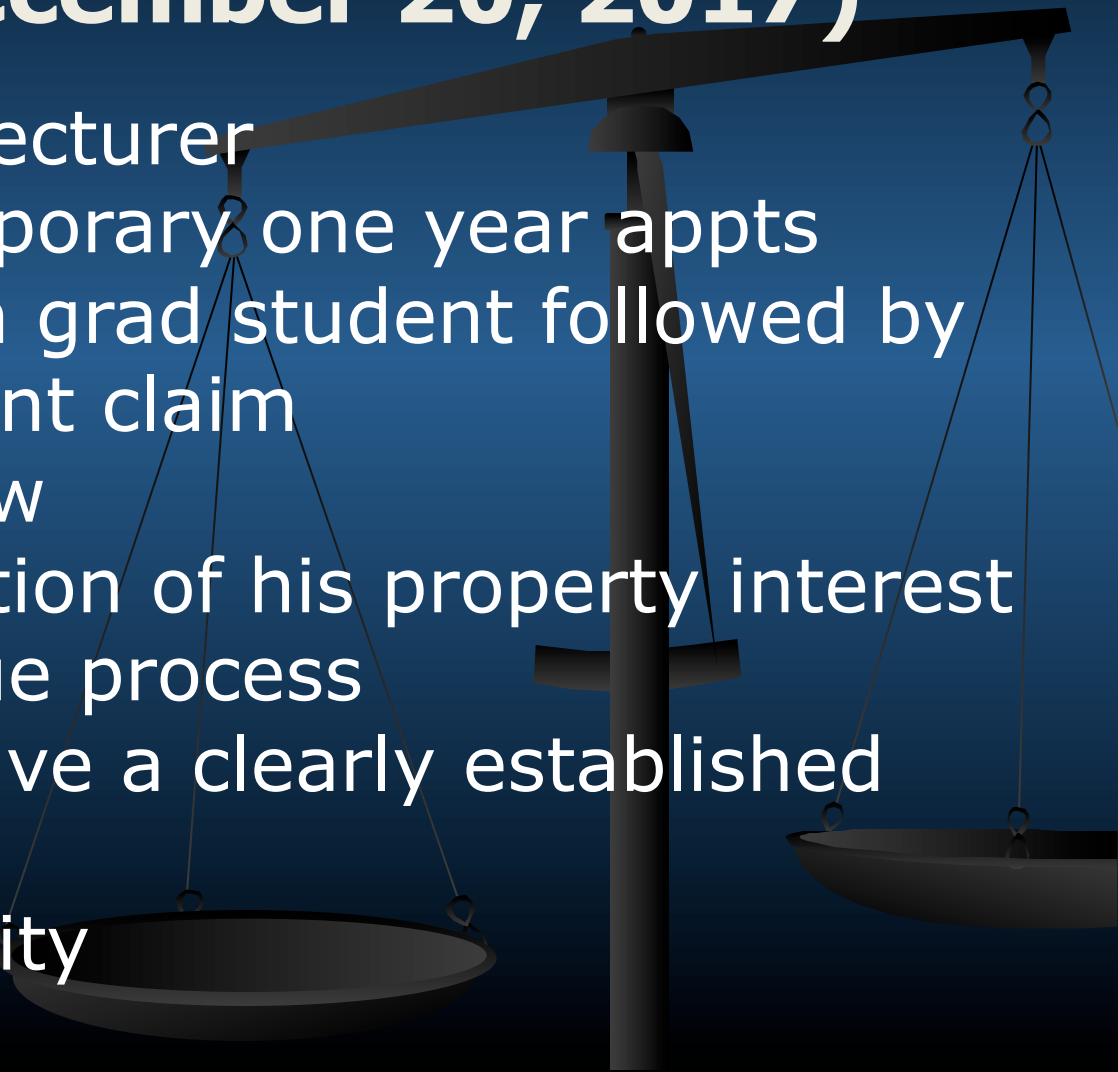
Darden v. City of Fort Worth, Texas, 800 F.3d 722 (5th Cir., January 24, 2018)



- No knock warrant
- Defendant thrown to ground and tased twice– and died
- No evidence of resisting
- No Qualified Immunity
- Jury could conclude that no reasonable officer on scene would have thought Defendant was resisting arrest

Wilkerson v. University of North Texas, 878 F.3d 147 (5th Cir., December 20, 2017)

- UNT untenured lecturer
- Contract for temporary one year appts
- Relationship with grad student followed by sexual harassment claim
- Declined to renew
- Claim of deprivation of his property interest in job without due process
- Plaintiff didn't have a clearly established property right
- Qualified Immunity

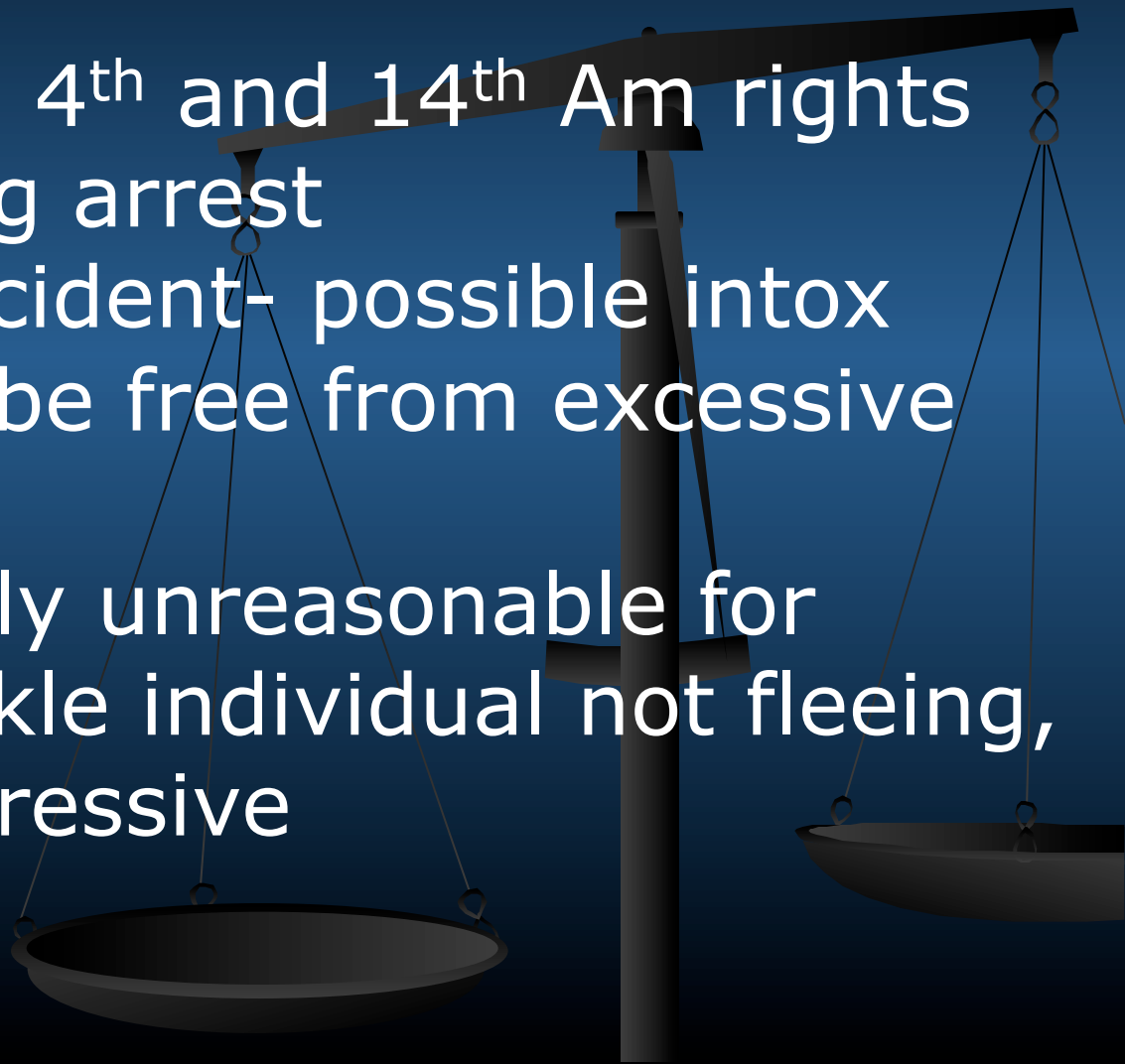


Lewis v. Secretary of Public Safety & Corrections, -- F.3d -- Docket No. 16-30037 (5th Cir., September 1, 2017)

- 42 USC 1983-unconstitutional strip searches
- WCC Garment Factory owned by prison
- @least 2 strip searches a day- no contact
- Prevent the flow of contraband and weapons
- Reasonable justification must be rebutted

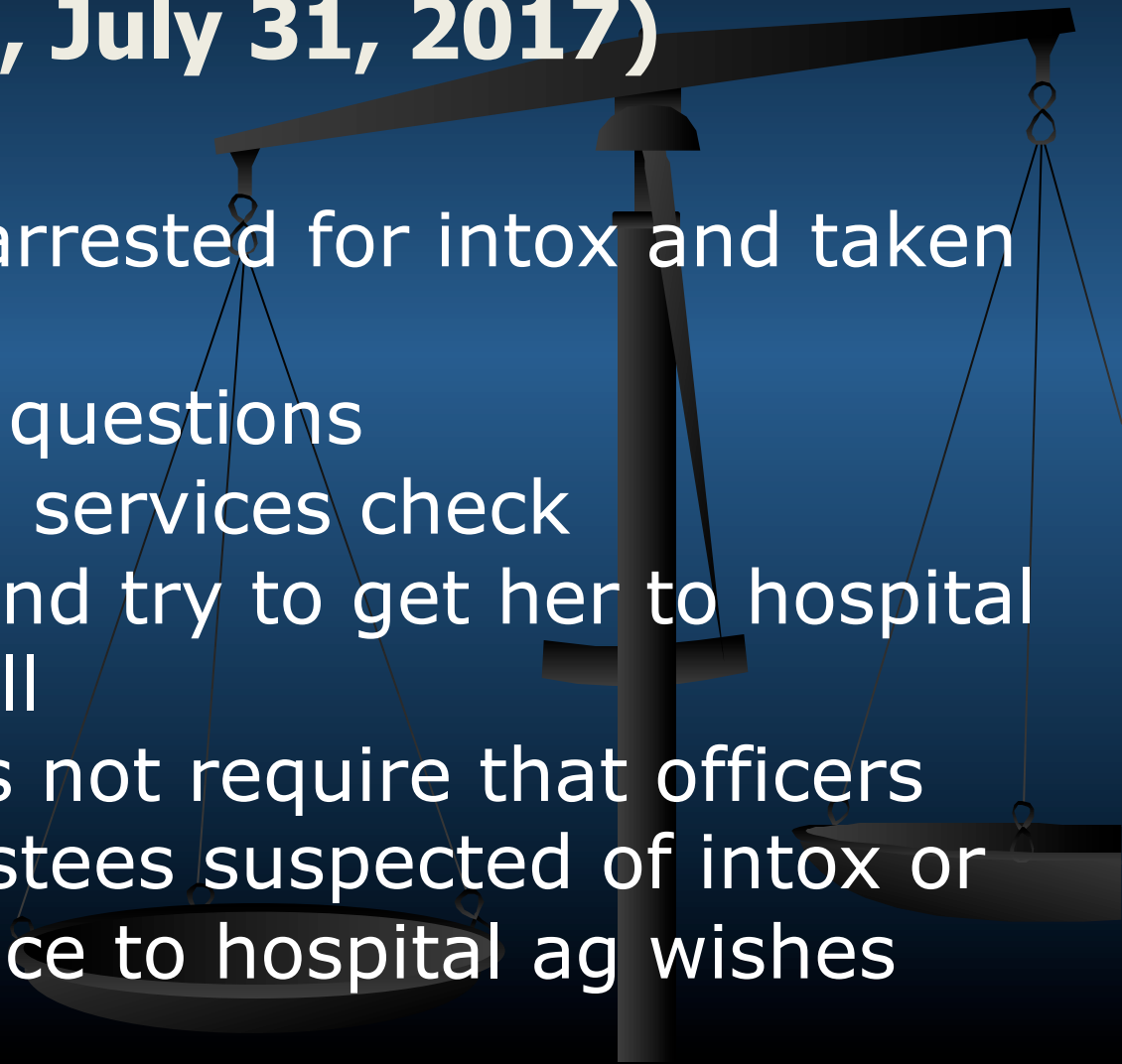
Trammell v. Fruge, 868 F.3d 332 (5th Cir., August 17, 2017)

- 42 USC 1983- 4th and 14th Am rights violated during arrest
- Motorcycle accident- possible intox
- Have right to be free from excessive right
- Was objectively unreasonable for officers to tackle individual not fleeing, violent or aggressive



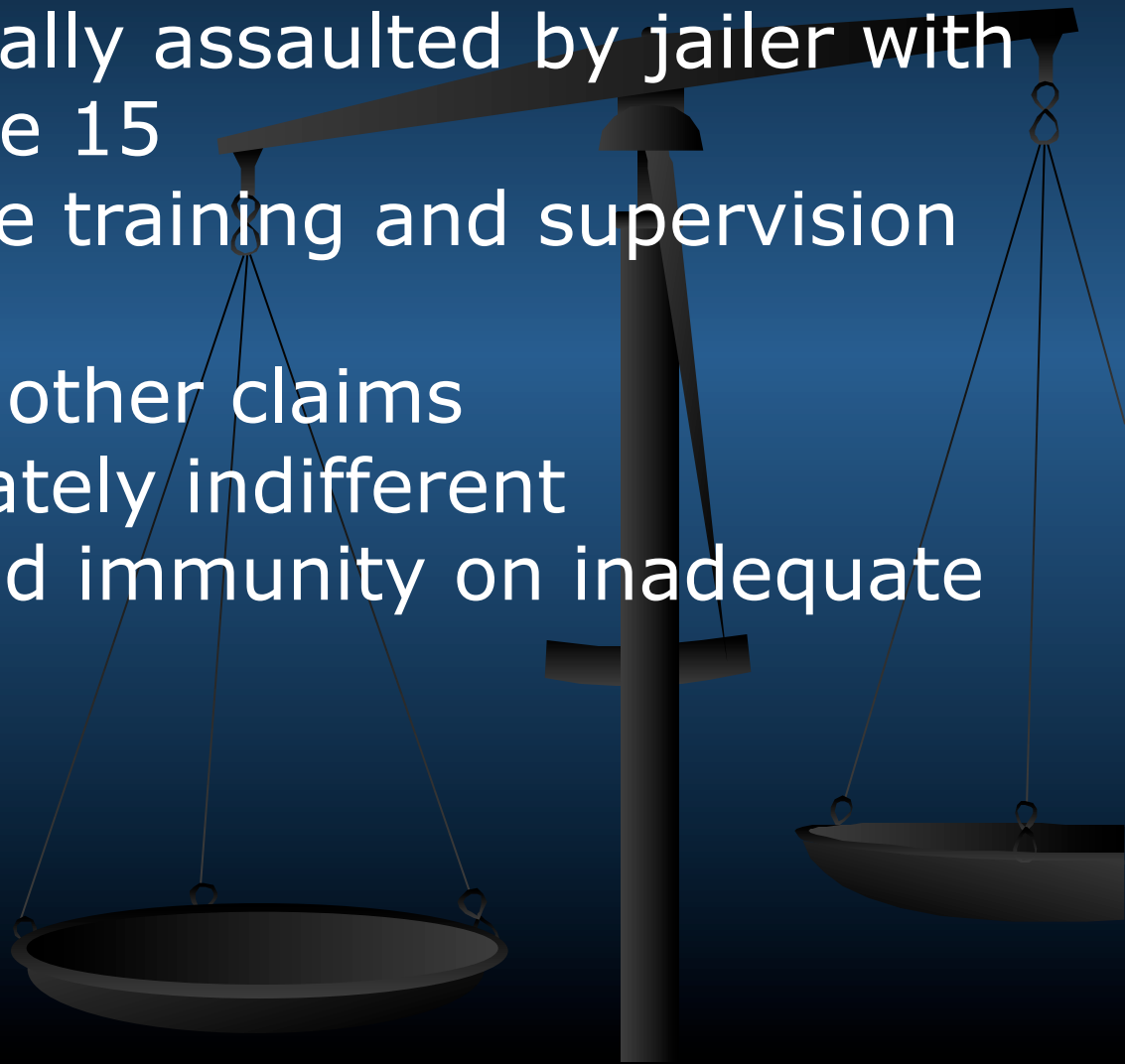
Sanchez v. Young County, Texas, 866 F.3d 274 (2017) (5th Cir., July 31, 2017)

- 42 USC 1983
- Impaired driver arrested for intox and taken to jail
- Answered intake questions
- No mental health services check
- Husband called and try to get her to hospital
- Found dead in cell
- Constitution does not require that officers always take arrestees suspected of intox or under the influence to hospital ag wishes



Rivera v. Bonner, -- F.3d -- Docket No. 16-10675 (5th Cir., July, 2017)

- Prisoner was sexually assaulted by jailer with prior history at age 15
- Alleged inadequate training and supervision given to jailers
- 42 USC 1983 and other claims
- Found not deliberately indifferent
- Entitled to qualified immunity on inadequate training claims

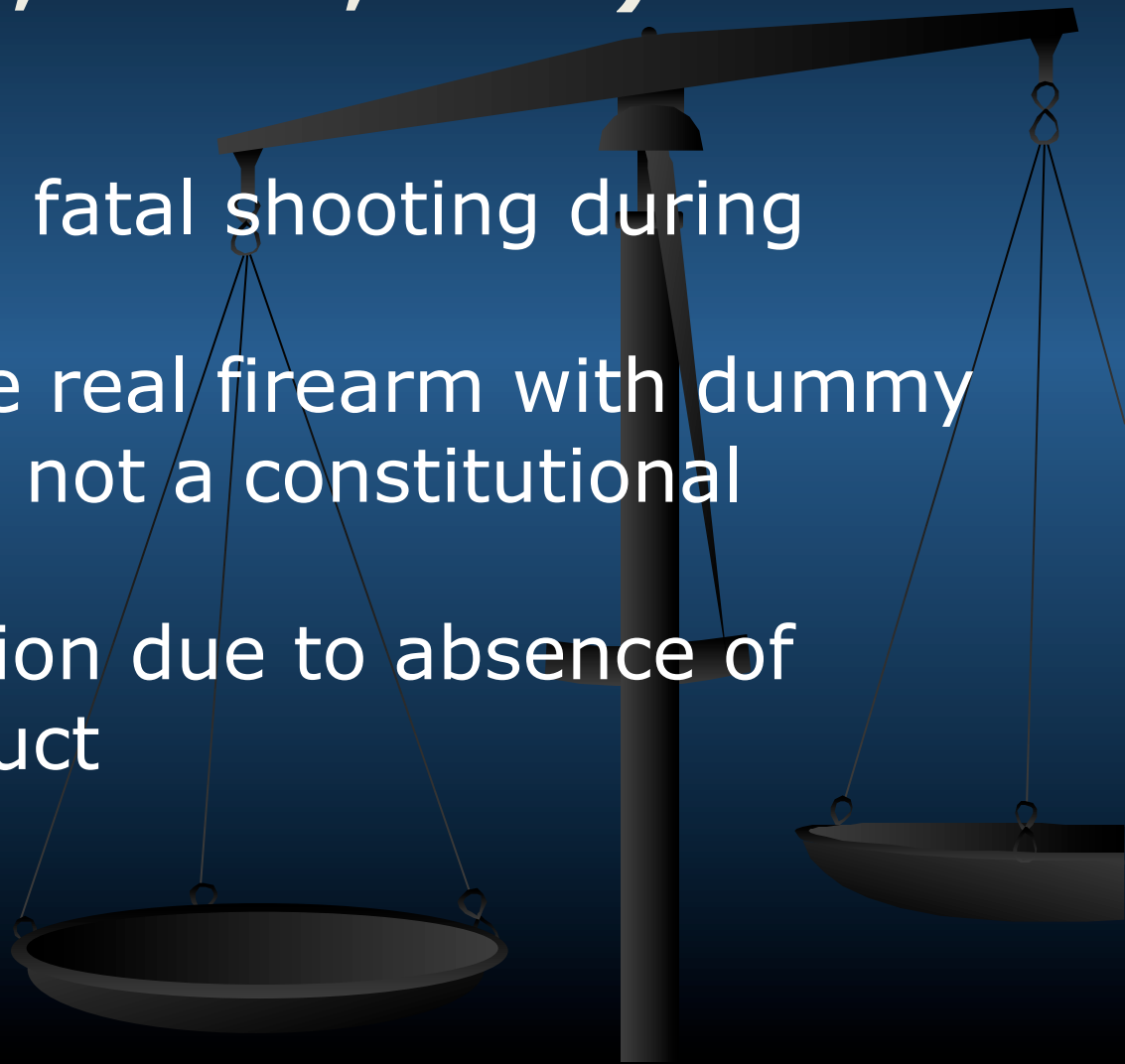


Hicks-Fields v. Pool, -- F.3d -- Docket No. 16-20003 (5th Cir., June 26, 2017)



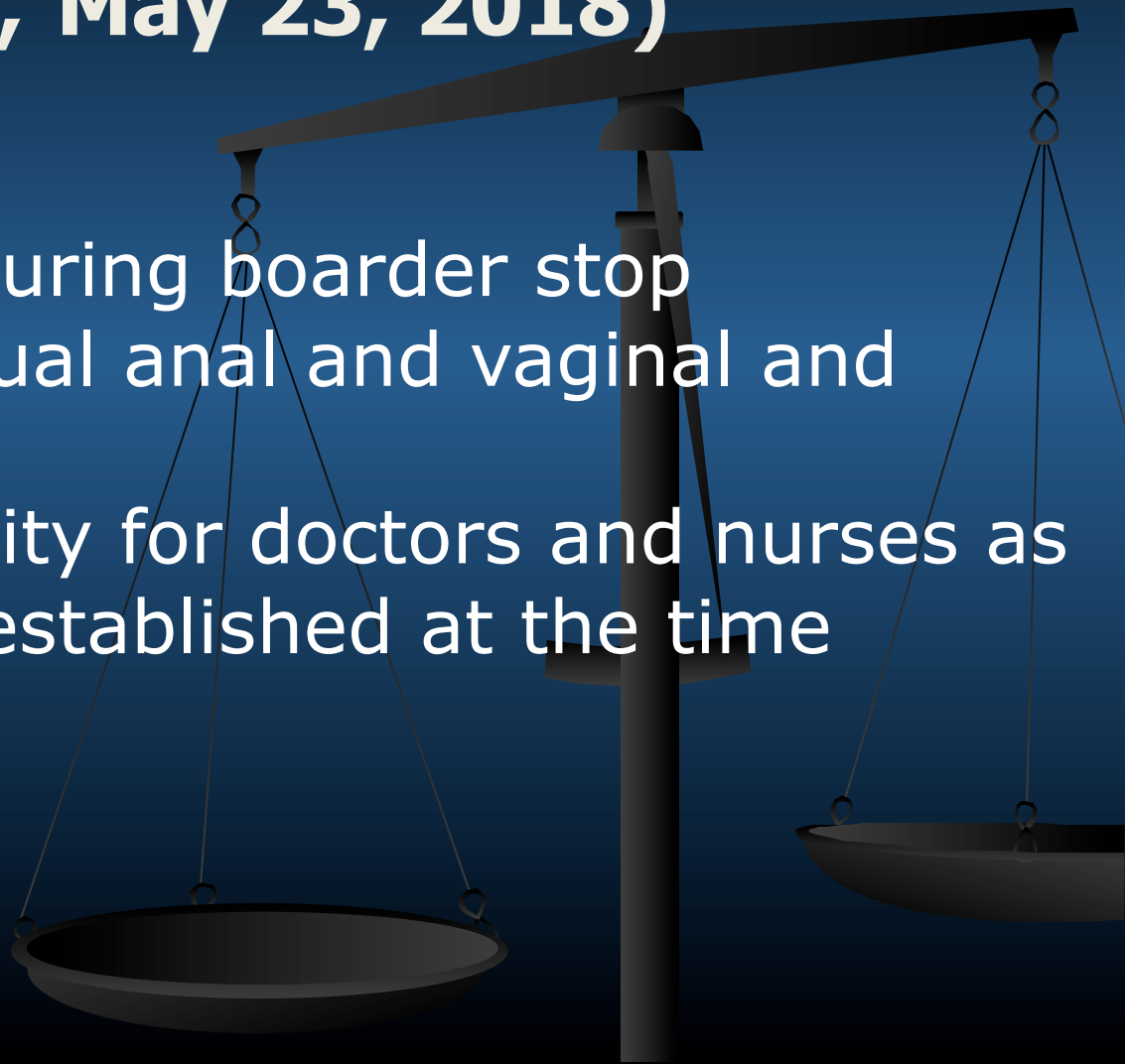
Gorman v. State of Mississippi, -- F. 3d -- Docket No. 17-60515 (5th Cir., June 6, 2018)

- 42 USC 1983
- Tragic accidental fatal shooting during training session
- Forgot to replace real firearm with dummy
- Negligent taking not a constitutional deprivation
- No 4th Am violation due to absence of intentional conduct



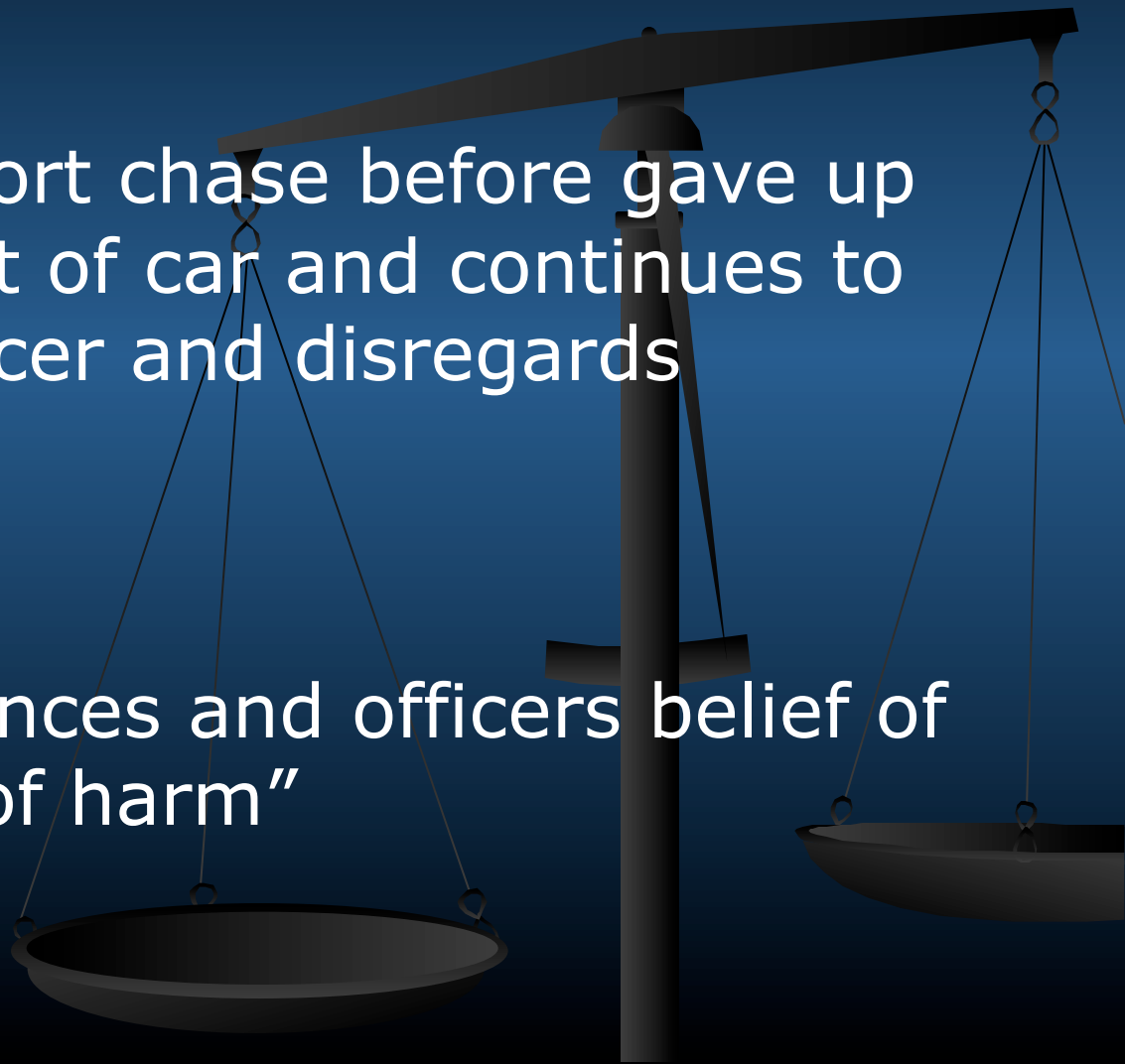
Bustillos v. El Paso County Hospital District, -- F.3d -- Docket No. 17-50022 (5th Cir., May 23, 2018)

- 42 USC 1983
- Body searches during boarder stop
- Pat down,K9,visual anal and vaginal and rectal
- Qualified immunity for doctors and nurses as was not clearly established at the time



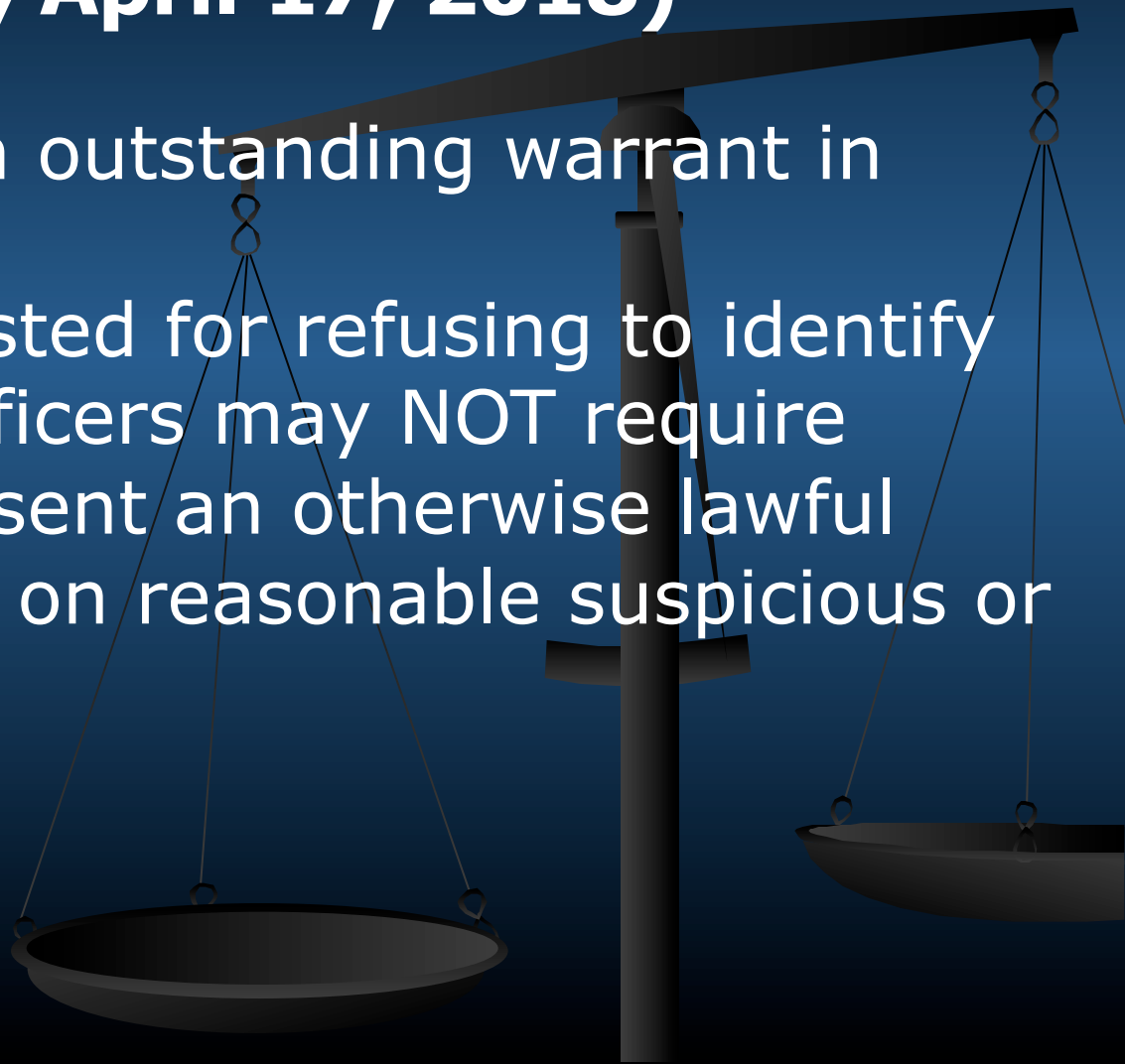
Romero v. Grapevine, Texas, 888 F.3d 170 (5th Cir., April 20, 2018)

- 42 USC 1983
- Burglary and short chase before gave up
- Suspect gets out of car and continues to walk toward officer and disregards instructions
- Shot 2 times
- Unarmed
- Given circumstances and officers belief of "serious threat of harm"



Johnson v. Thibodaux City, -- F.3d -- Docket No. 17-30088 (5th Cir., April 17, 2018)

- Saw person with outstanding warrant in truck
- All persons arrested for refusing to identify
- Under 4th Am officers may NOT require identification absent an otherwise lawful detention based on reasonable suspicious or probable cause

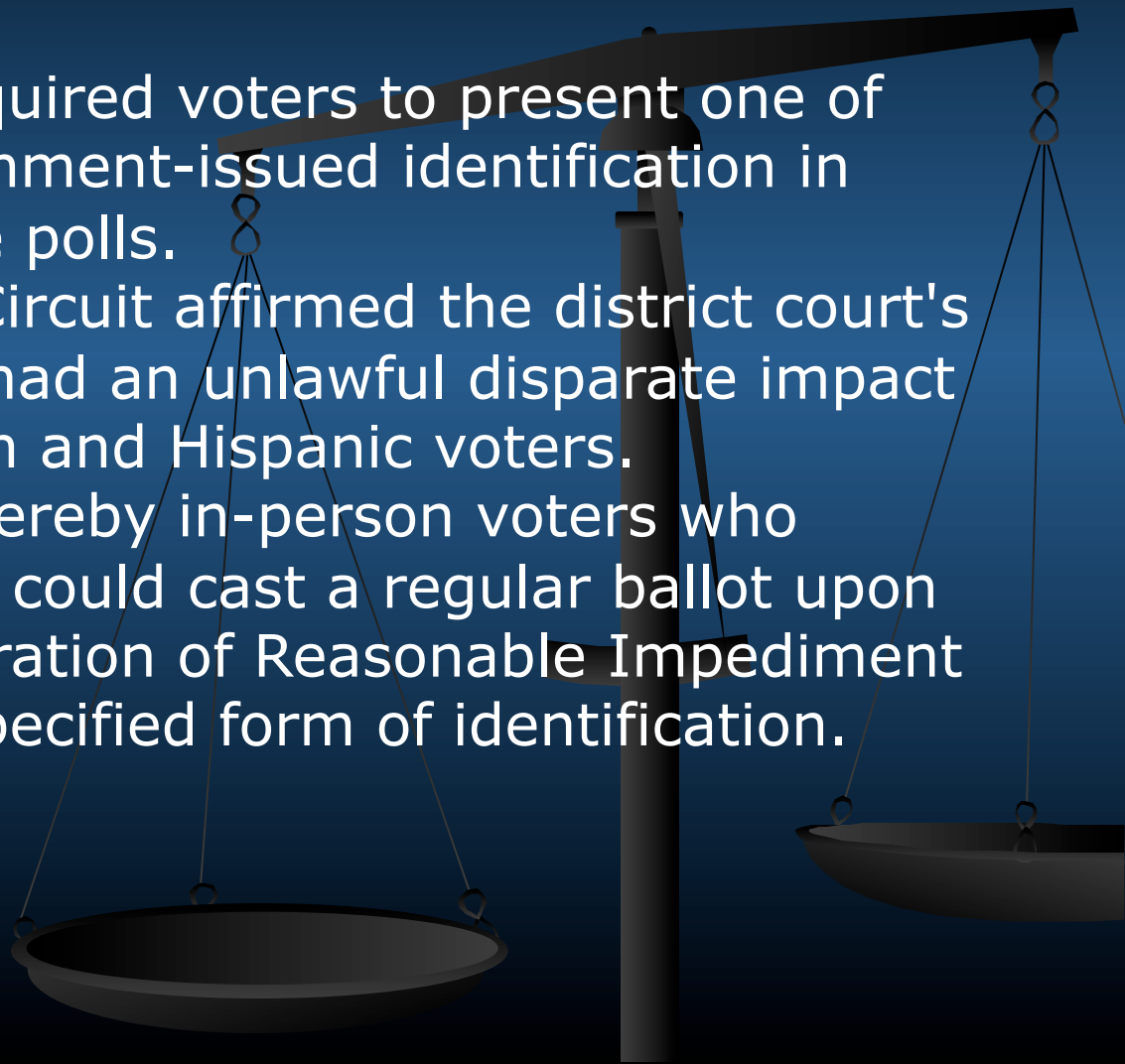


Vann v. City of Southhaven, -- F.3d -- Docket No. 16-60561 (5th Cir., March 5, 2018)



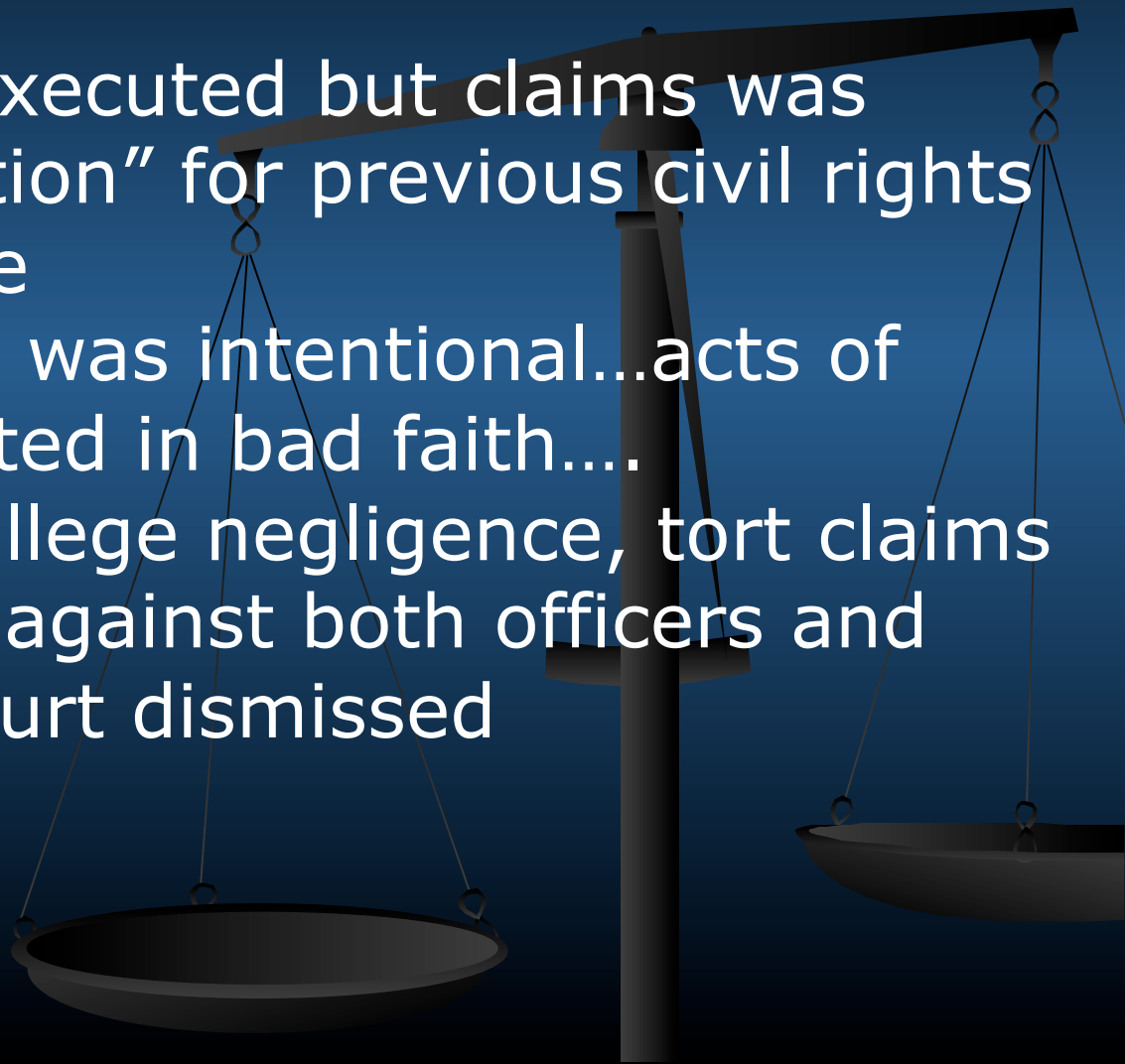
Veasey v. Abbott, 888 F.3d 792 (5th Cir., April 27, 2018)

- Voting ID Law
- SB 14 generally required voters to present one of five forms of government-issued identification in order to vote at the polls.
- In 2014, the Fifth Circuit affirmed the district court's finding that SB 14 had an unlawful disparate impact on African American and Hispanic voters.
- Interim remedy whereby in-person voters who lacked an SB 14 ID could cast a regular ballot upon completing a Declaration of Reasonable Impediment and presenting a specified form of identification.



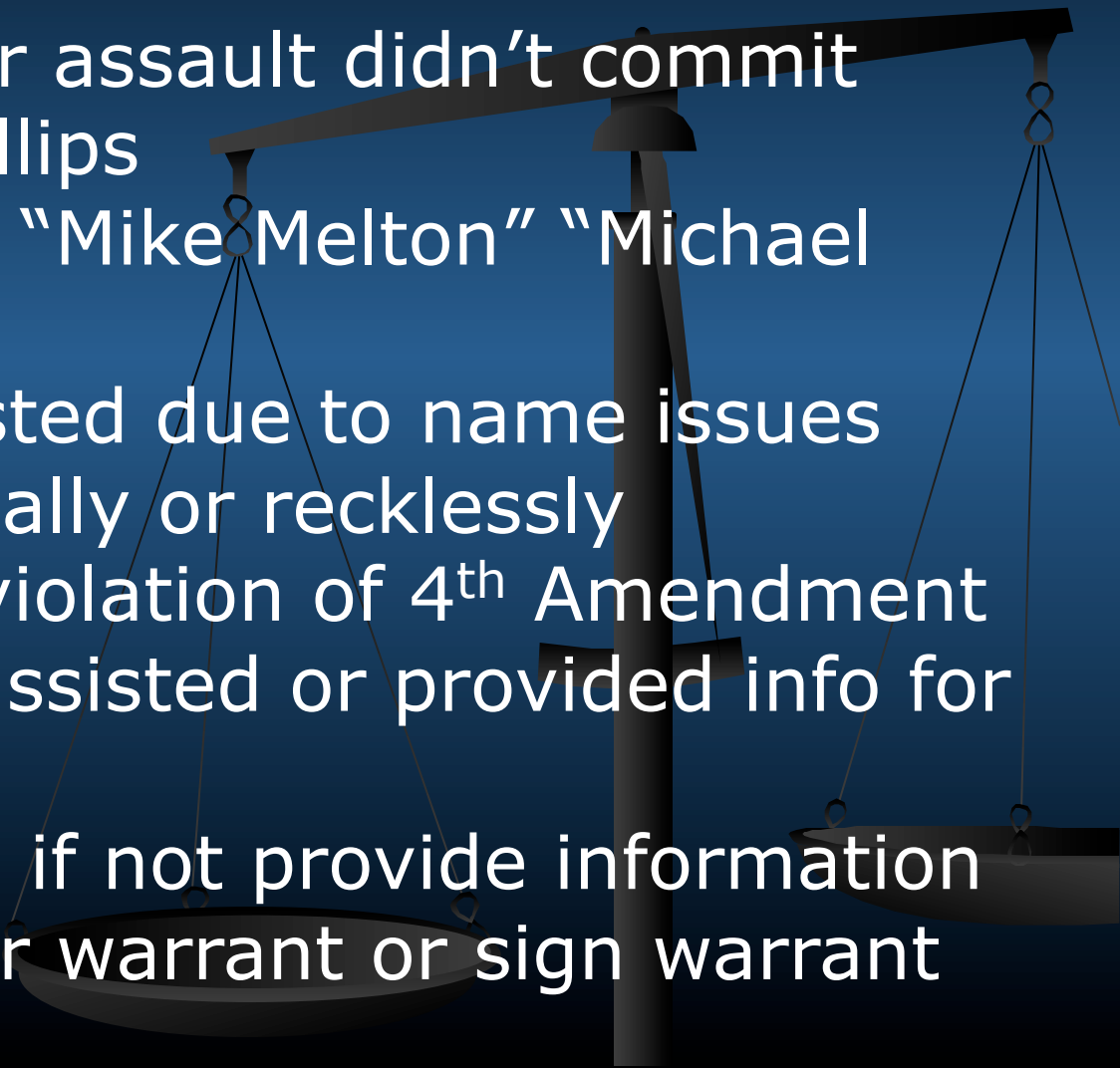
Quinn v. Guerrero, 863 F.3d 353 (5th Cir., July 10, 2017)

- Search warrant executed but claims was done for "retribution" for previous civil rights suit against police
- Claimed shooting was intentional…acts of terrorism conducted in bad faith….
- Plaintiff tried to allege negligence, tort claims and other claims against both officers and city which the Court dismissed



Melton v. Phillips, 875 F.3d 256 (5th Cir., November 13, 2017)

- 16 days in jail for assault didn't commit
- Sued Deputy Phillips
- "Michael Melton" "Mike Melton" "Michael David Melton"
- Melton was arrested due to name issues
- Alleged intentionally or recklessly misidentified in violation of 4th Amendment
- May be liable if assisted or provided info for warrant
- Can not be liable if not provide information to be included for warrant or sign warrant



Littell v. Houston Independent School District, -- F.3d -- Docket No. 16-20717 (5th Cir., June 27, 2018)

- 6th grade choir class with 22 preteen girls were stripped searched after $50 missing
- All agree the search violated girls' constitutional rights
- Improper dismissal of 4th Am suit by the Court because properly alleged official policy in which 1983 liability for failure to train employees regarding searches

Qualified Immunity



District of Columbia v. Wesby, 583 US ___ (2018)

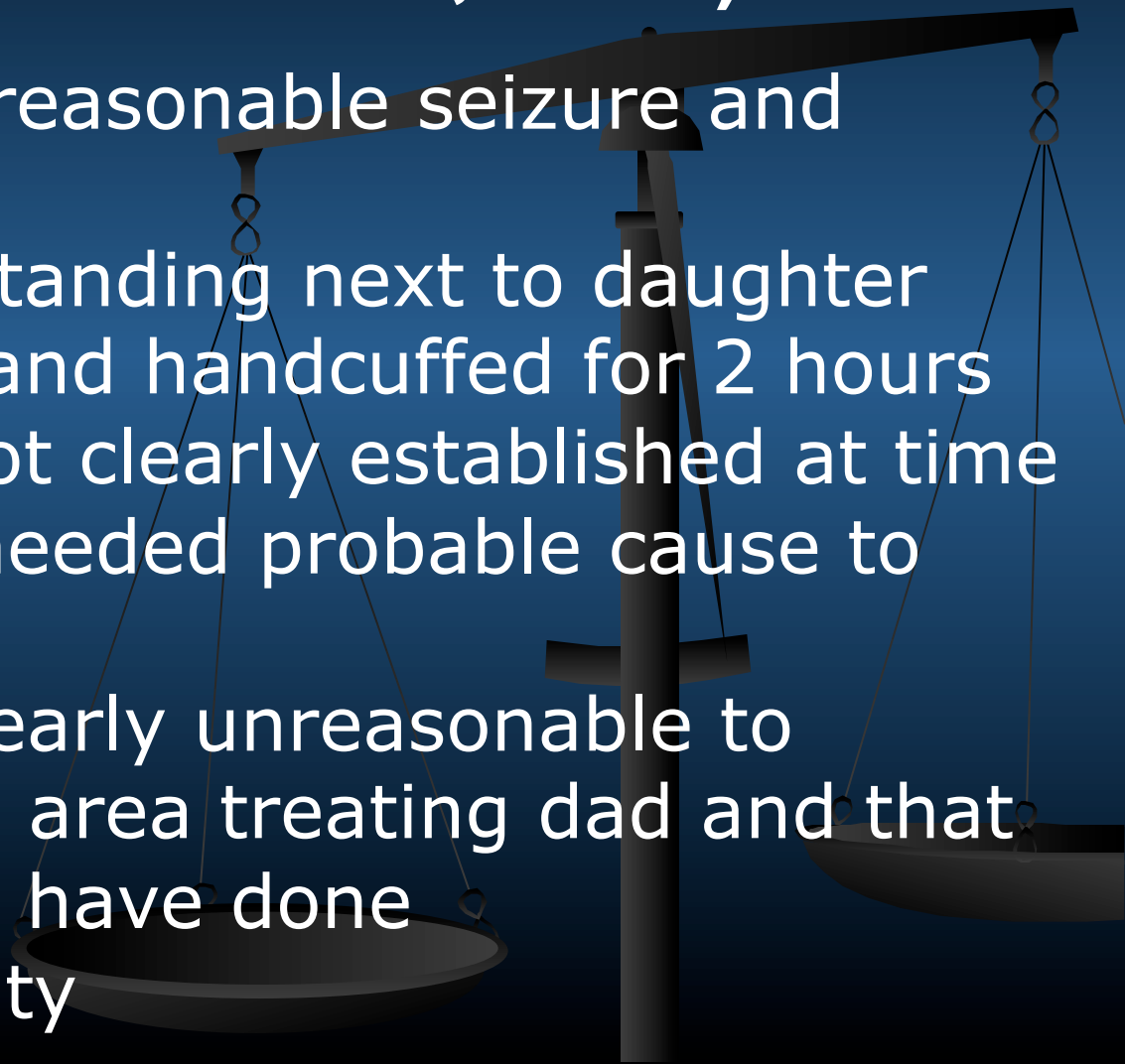
- Noise complaint at a party- 16 arrested
- Did the officers had probable cause to arrest for unlawful entry under D.C. law despite a claim of good-faith entry?
- Did the law sufficiently clearly established to justify the denial of immunity to the officers?
- In an unanimous decision, the Court held that the officers had probable cause to arrest the partygoers based on the totality of the circumstances
- Entitled to qualified immunity under 42 U.S.C. § 1983 because their actions were not "clearly" unlawful at the time.

Kisela v. Hughes, 584 US ___ (2018)

- 42 USC 1983 & 4th Am- excessive force
- Ninth Circuit
- Respond to call with lady and knife
- 2 commands to drop and then shot
- Did Officer Kisela's shooting of Hughes violate clearly established law, thus depriving the officer of qualified immunity.
- In a per curiam opinion the Court held that Officer Kisela's conduct did not violate clearly established law and he was entitled to qualified immunity.
- The Court reversed the Ninth Circuit, finding that Officer Kisela's actions were not obviously unconstitutional nor clearly proscribed by existing law in the Ninth Circuit.

Lincoln v. Turner, -- F.3d -- Docket No. 16-10856 (5th Cir., October 31, 2017)

- 42 USC 1983 unreasonable seizure and excessive force
- Shot and killed standing next to daughter
- Daughter taken and handcuffed for 2 hours
- Seizure claim- not clearly established at time that Defendant needed probable cause to detain daughter
- Couldn't show clearly unreasonable to remove her from area treating dad and that all officers would have done
- Qualified immunity



Artis v. District of Columbia, 583 US ___ (2018)

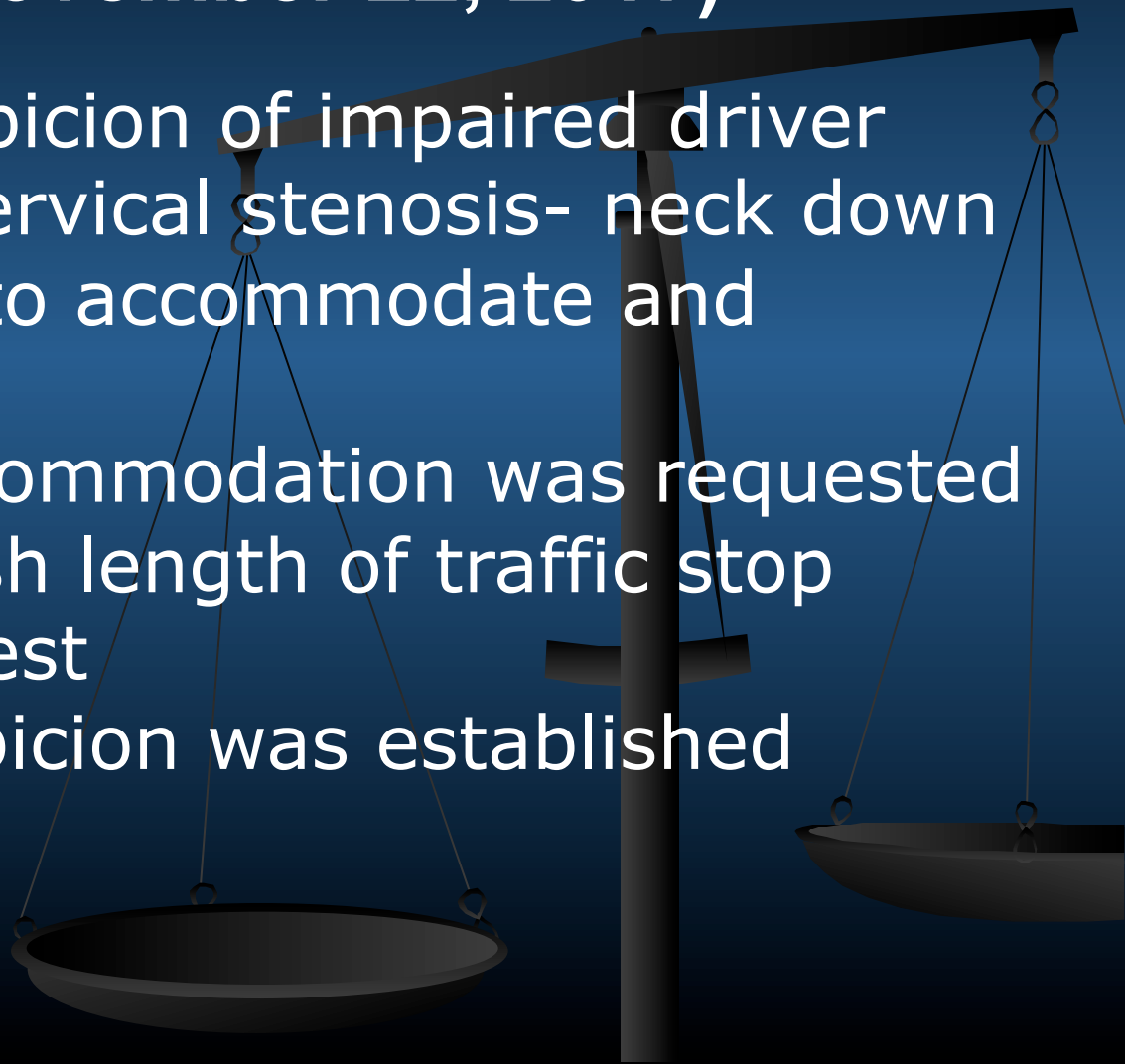
- Title VII -Inspector claimed unfair treatment
- EEOC claim and eventually fired
- Whether the tolling provision in 28 U.S.C. § 1367(d) suspends the limitations period for state-law claims while the claim is pending and for 30 days after the claim is dismissed, or does it merely provide 30 days beyond the dismissal for the plaintiff to refile.
- In a 5-4 decision, the Court found that the tolling provision of 28 U.S.C. § 1367 suspends or "stops the clock" on the limitations period for supplemental state law claims while the underlying case is pending in federal court and for 30 days thereafter, rather than merely providing a 30-day grace period after dismissal for the plaintiff to refile in state court.

ADA



Windham v. Harris County, Texas, 875 F. 3d 229 (5th Cir., November 22, 2017)

- Stopped for suspicion of impaired driver
- Suffered from cervical stenosis- neck down
- Claimed failure to accommodate and excessive force
- No evidence accommodation was requested
- Couldn't establish length of traffic stop evolved into arrest
- Reasonable suspicion was established



Deutsch V. Annis Enterprises, Inc., -- F. 3d – Docket No. 17-50231 (5th Cir., February 8, 2018)

- Plaintiff was a paraplegic
- 400 lawsuits in 300 days
- Couldn't remember any or to revisit any
- Couldn't say how violations to negatively affect live
- Plaintiff seeking injunctive relief under the ADA must show a real and immediate threat of repeated injury in order to establish standing – merely having suffered an injury in the past is not enough.



Miscellaneous



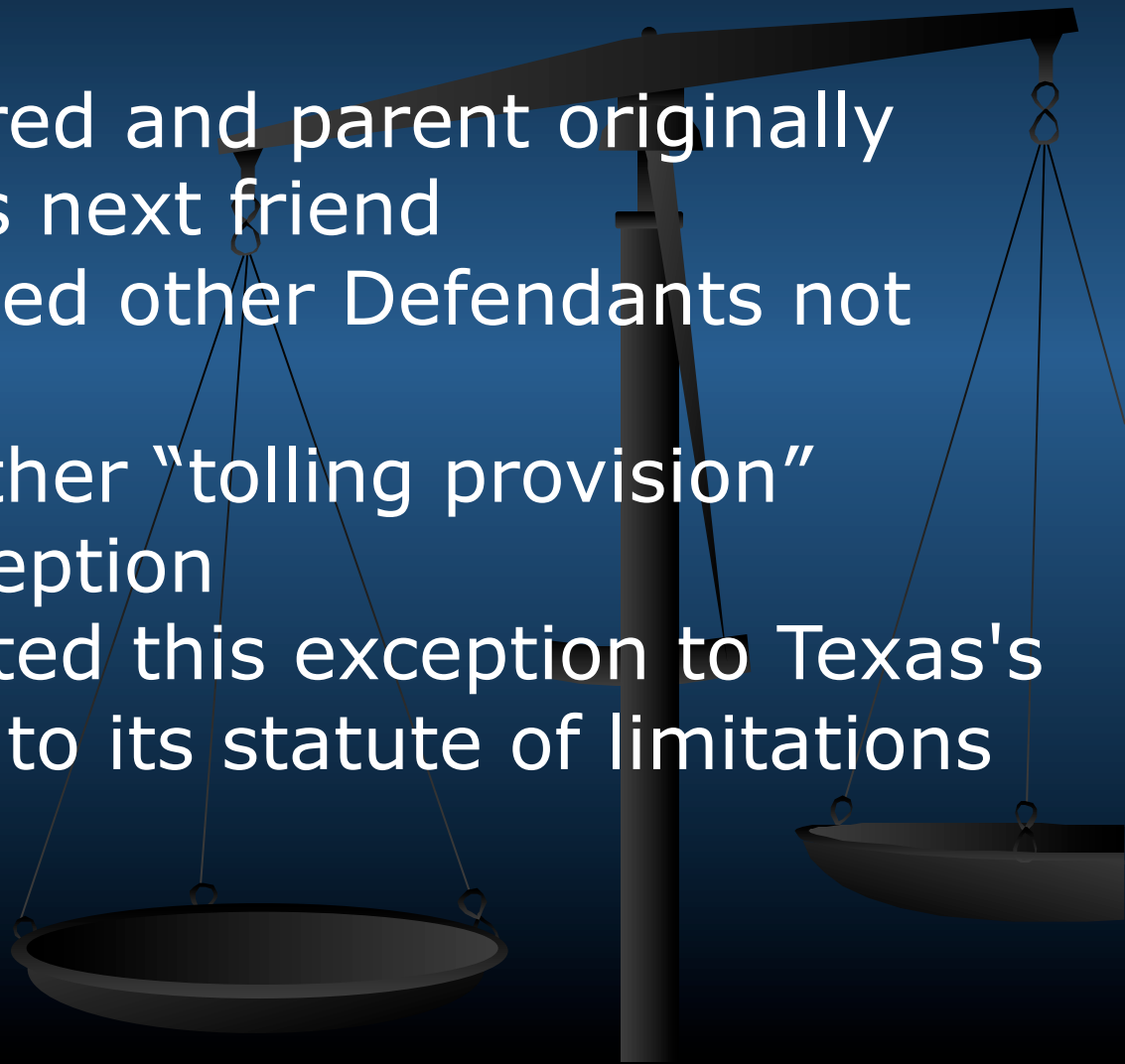
Murphy v. Smith, 583 US ___ (2018)



Jones v. TDCJ, -- F.3d -- Docket No. 17-10302 (5th Cir., January 29, 2018)



Clyce v. Butler, -- F.3d -- Docket No. 150-11010 (5th Cir., November 22, 2017)



- 13 year old injured and parent originally brought claim as next friend
- When was 19 sued other Defendants not previously sued
- Issue as to whether "tolling provision" applied or if exception
- Improperly created this exception to Texas's tolling provision to its statute of limitations

City of El Cenizo v. Texas, -- F.3d -- Docket No. 17-50762 (5th Cir., March 13, 2018)

- The Fifth Circuit upheld Senate Bill 4 (SB4), a Texas law that forbids "sanctuary city" policies throughout the state, and held that SB4's provisions, with one exception, did not violate the Constitution.
- Texas law enforcement agencies and local governments are blocked from choosing to limit their cooperation with the Department of Homeland Security's immigration efforts.