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WHAT'S NEW?
THE LATEST FEDERAL COURT CASES

(Through September 30, 2018)

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By

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A. U. S. SUPREME COURT

Byrd v. US, *__U.S.__, No. 16-1371 (May 14, 2018).*
The fact that a driver in lawful possession of a rental car is not listed on the rental agreement does not defeat his otherwise reasonable expectation of privacy against searches of that vehicle.

Carpenter v. US, *585 __U.S.__, No. 16-402 (June 22, 2018).*
Under the Fourth Amendment, the government conducts a "search" when it accesses historical cell phone records that chronicle a user's past movements. The government must therefore obtain a warrant supported by probable cause before acquiring such records.

Class v. US, *__U.S.__, No. 16-424 (Feb. 21, 2018).*
A guilty plea, in and of itself, does not bar a federal criminal defendant from challenging on direct appeal the constitutionality of his statute of conviction.

Collins v. Virginia, *__U.S.__, No. 16-1027 (May 29, 2018).*
The Fourth Amendment's "automobile exception" does not allow the warrantless entry into a home's curtilage in order to search a vehicle located therein.

District of Columbia v. Wesby, *__U.S.__, No. 15-1485 (Jan. 22, 2018).*
In determining whether police officers have probable cause to arrest partygoers for their unlawful entry into a vacant house, a court cannot dismiss from the "totality of the circumstances" any circumstance that is susceptible of innocent explanation, but must consider all circumstances, including the plausibility of a later explanation, in determining whether there was a substantial chance of criminal activity justifying the arrests.

Epic Systems v. Lewis, *__U.S.__, No. 16-285 (May 21, 2018).*
The NLRA does not nullify the Federal Arbitration Act's requirement that arbitration agreements providing for individualized proceedings be enforced, and employees subject to such agreements cannot litigate FLSA claims against their employer through a class action.

Hamer v. Neighborhood Housing Svcs, *__U.S.__, No. 16-658 (Nov. 8, 2017).*
FRAP Rule 4(a)(5) is not a jurisdictional time proscription but a court-made claim processing rule that can be waived or forfeited.

James v. AFSCME, *585 __U.S.__, No. 16-1466 (June 27, 2018).*
The First Amendment is violated when agency fees are taken from non-consenting employees and paid to a public sector union.

Kisela v. Hughes, *__U.S.__, No. 17-467 (Apr. 2, 2018).*
A police officer was entitled to qualified immunity from an excessive force claim after he shot, without warning, a knife-wielding woman who, although composed, had refused numerous demands to drop her weapon and posed a threat of serious harm to others.

Lamar Archer & Cofrin v. Appling, *585 __U.S.__, No. 16-1215 (June 4, 2018).*
A debtor's misrepresentation regarding a single asset, but not regarding his overall financial condition, can constitute a "statement respecting the debtor's financial condition," making the debt arising from such misrepresentation non-dischargeable in bankruptcy.

Lozman v. Riviera Beach, *585 __U.S.__, No. 17-21 (June 18, 2018).*
The existence of probable cause to arrest an individual for disruptive conduct at a council meeting does not bar his later First Amendment claim for retaliatory arrest.

McCoy v. Louisiana, *__U.S.__, No. 16-8255 (May 14, 2018).*
Under the Sixth Amendment, a criminal defendant has the right to choose the objective of his defense and to insist that his counsel not concede his guilt.

Minnesota Voters v. Mansky, *585 __U.S.__, No. 16-1435 (June 14, 2018).*
A state law violates the First Amendment by prohibiting the wearing of campaign buttons inside a polling place on Election Day.

National Institute v. Becerra, *585 __U.S.__, No.17-965 (June 26, 2018).*
A state cannot, consistent with the First Amendment, require pro-life crisis pregnancy centers to provide pregnant women with notice of low cost abortions.

South Dakota v. Wayfair, *585 __U.S.__, No. 17-494 (June 21, 2018).*
Physical presence in a state is no longer required in order for a state to collect sales tax from out-of-state purchasers.

B. U. S. CIRCUIT COURTS

1. FIRST AMENDMENT

Saunders v. Town of Hull, *__F.3d__, No. 17-1174 (1st Cir., Oct. 27, 2017).*
A town board does not "ratify" the allegedly discriminatory hiring recommendation of its police chief, for purposes of a First Amendment claim, merely by going along with and not investigating the basis for that recommendation.

Sindi v. El-Moslimany, *__F.3d__, No. 16-2347 (1st Cir., July 11, 2018).*
A court order enjoining persons from making future defamatory statements constitutes a prior restraint on speech in violation of the First Amendment.

Halleck v. Manhattan Comm. Access Corp., *__F.3d__, No. 16-4155 (2nd Cir., Feb. 9, 2018).*
Public access TV channels are public forums for First Amendment discrimination purposes.

Montero v. Yonkers, *__F.3d__, No. 17-76 (2nd Cir., May 16, 2018).*
A police officer's remarks, made at a union meeting, were not made as part of his responsibilities as a police officer and were therefore remarks made as a private citizen for purposes of a First Amendment retaliation claim. The court declines to adopt a categorized rule that whenever an officer speaks in his capacity as a union member, he speaks as a private citizen.

Wandering Dago v. Destito, *__F.3d__, No. 16-622 (2nd Cir., Jan. 3, 2018).*
Governmental officials' denial of a food truck application to participate in a city lunch program with a truck called "Wandering Dago", on ethnic-slur branding grounds, violated the vendor's First Amendment and equal protection rights and amounts to viewpoint discrimination.

Conard v. PA State Police, *__F.3d__, No. 16-3346 (3rd Cir., Aug. 28, 2018).*
Officers violated a dispatcher's First Amendment rights when, after she resigned, they gave false and negative employment references to her prospective employers in retaliation for her prior workplace complaints.

Palardy v. Milburn Township, *__F.3d__, No. 17-2597 (3rd Cir., Sept. 28, 2018).*
The court enlarges a Circuit split by holding that neither *Connick's* "public concern" requirement nor *Garcetti's* "private citizen" requirement applies to pure associational claims arising from a public employee's union membership, as union membership alone is worthy of First Amendment protection.

American Entertainers v. Rocky Mount, *__F.3d__, No. 17-1577 (4th Cir., Apr. 27, 2018).*
An ordinance that allowed a police chief to deny a SOB permit application if he determined that the proposed business would not comply with "all applicable laws" is an unconstitutional prior restraint because it failed to constrain this review to building codes and health and safety laws, and therefore gave the chief unbridled discretion. Prohibiting persons under 21 years of age from obtaining a SOB permit does not violate their equal protection or free expression rights.

Amer. Humanist v. Maryland Nat. Pk., *__F.3d__, No. 15-2597 (4th Cir., Oct. 18, 2017).*
Summary judgment is denied to the defendant on a claim that a 40-foot cross at a World War I memorial located on public land violates the Establishment Clause.

Borzilleri v. Mosby, *__F.3d__, No. 16-1751 (4th Cir., Oct. 17, 2017).*
An assistant state's attorney was a policymaker exempt from First Amendment protection against her patronage dismissal.

Hunter v. Town of Mocksville, *__F.3d__, No. 17-1374 (4th Cir., July 26, 2018).*
For purposes of determining municipal liability, an "official policy" need not be committed to writing, and may be created through a single decision regarding a cause of action so long as the government unit making the decision possesses final authority to create official policy.

Lumpkin v. Arkansas County, TX, *__F.3d__, No. 17-40060 (5th Cir., Oct. 13, 2017).*
The fact that text messages occasionally refer to public matters does not change their predominant theme from that of private employee grievances for purposes of a *Garcetti* analysis. However, giving deposition testimony pursuant to a subpoena in a case where the deponent is not a party to the case is a matter of public concern for purposes of such an analysis.

Polk v. Sinegal, *__F.3d__, No. 16-41521 (5th Cir., Mar. 14, 2018)(unpub).*
A county commissioner who fired an employee after she ran for office against an incumbent judge was not entitled to qualified immunity against her First Amendment retaliation claim.

Sims v. Madisonville, *__F.3d__, No. 16-20440 (5th Cir., June 28, 2018).*
Clarifying the law in the Circuit, the court held that if an individual defendant's animus against a co-employee's exercise of his First Amendment rights is a link in the causal chain that leads to the co-employee's termination, that defendant may be liable even if he is not the final decision maker.

Zimmerman v. Austin, Texas, *__F.3d__, No. 16-51366 (5th Cir., Feb. 1, 2018).*
A local law prohibiting candidates for mayor or city council from accepting campaign contributions of more than $300 per contributor per election, or over $30,000 in aggregate per election, does not unconstitutionally limit free speech as it furthers a legitimate governmental interest in limiting corruption and the appearance of corruption. However, limiting a candidate's solicitation of contributions to 180 days before an election, and requiring the candidate to disgorge to a charity or back to contributors any monies received but not spent on election expenses, does violate both the candidate's and the contributor's First Amendment rights.

Bagi v. City of Parma, *__F.3d__, No. 16-4011 (6th Cir., Oct. 26, 2017).*
A letter complaining about fire department personnel and internal policy issues did not address matters of public concern for purposes of a First Amendment retaliation claim.

Faraone v. Heath, *__F.3d__, No. 17-1426 (6th Cir., Feb. 13, 2018).*
Internal personnel disputes, even wherein there is some mention of government waste, are not "matters of public concern" for First Amendment retaliation claim analysis.

Hagedorn v. Phillips, *__F.3d__, No. 16-4254 (6th Cir., Nov. 7, 2017).*
Calling a police officer an "idiot" and an "asshole" is First Amendment protected speech.

Henderson v. Flint, *__F.3d__, No. 17-2031 (6th Cir., Sept. 20, 2018).(unpub).*
A city administrator terminated after she reported potentially unethical or unlawful behavior by her city's mayor did so as part of her official duties and therefore could not prevail on her First Amendment retaliation claim.

Jones v. Wilson Cty., *__F.3d__, No. 17-5615 (6th Cir., Jan. 24, 2018).*
For First Amendment retaliation claim analysis purposes, a public employee's court testimony is not always "a matter of public concern" when it is part of her job duties.

Lexington Services v. Lexington Fayette, *__F.3d__, No. 17-5562 (6th Cir., Jan. 9, 2018).*
The court refused to enjoin a municipal ordinance that limited the delivery of unsolicited written material to six specific locations, which did not include a residential lawn or driveway. Under an intermediate scrutiny analysis, the ordinance was held to not violate the First Amendment free speech and free press rights of free newspaper distributors, and to serve the substantial interests of reducing litter and visual blight.

McGlone v. Nashville, *__F.3d__, No. 12-6291 (6th Cir., Sept. 19, 2018)(unpub).*
A police officer who ordered a preacher to leave a public sidewalk because he was preaching against homosexuality outside a LGBTQ festival did so because of the content of the preacher's speech in violation of the First Amendment.

Comsys v. Pacetti, *__F.3d__, No. 17-2053 (7th Cir., June 20, 2018).*
Just as a public employee, under *Garcetti*, cannot block his discharge when it results from things the employee said as part of his job, so too a contractor cannot block a contract termination based upon things he said as part of his contractual relations within the city with whom he has the contract.

Davis v. Chicago, *__F.3d__, No. 16-1430 (7th Cir., May 8, 2018).*
An investigator's refusal to change his investigatory findings of police misconduct, as requested by his supervisor, is not protected speech for purposes of a First Amendment retaliation claim.

HH-Indianapolis v. Indianapolis, *__F.3d__, No. 17-3023 (7th Cir., May 7, 2018).*
The court refused to apply strict scrutiny to an "as-applied" challenge to the otherwise constitutional time, place, and manner regulation of an adult business.

Milliman v. McHenry Cty., *__F.3d__, No. 17-2687 (7th Cir., June 19, 2018).*
A fitness for duty evaluation provided an independent basis for terminating an officer after he engaged in protected speech, since he would have been fired even absent the protected speech.

Tagami v. Chicago, *__F.3d__, No. 16-1441 (7th Cir., Nov. 8, 2017).*
An ordinance that bans women from exposing their breasts in public does not violate their First Amendment freedom of speech rights nor constitute an impermissible sex-based classification in violation of the Equal Protection Clause.

Morgan v. Robinson, *__F.3d__, No. 17-1002 (8th Cir., Feb. 2, 2018).*
Campaign statements made by a deputy sheriff about poor radio coverage and communication issues in his department are matters of public concern protected by the First Amendment and the sheriff who terminated him for these statements and for the "uneasiness" they caused in his department is not entitled to qualified immunity against an unlawful retaliation claim.

Ross v. City of Jackson, *__F.3d__, No. 17-1390 (8th Cir., July 26, 2018).*
Officers were not entitled to qualified immunity on First and Fourth Amendment claims stemming from their arrest of a 20-year old Facebook user who posted "which one do I need to shoot up a kindergarden?" (in relation to guns). No exigent circumstances prevented further investigation prior to the arrest and even minimal inquiry would have shown that no threat existed.

AFDI v. King Cty., *__F.3d__, No. 17-35897 (9th Cir., Sept. 27, 2018).*
A transit authority's policy of prohibiting patently false advertisements from being placed on the outside of its busses does not violate the First Amendment. However, its policy of prohibiting ads that contain "disparaging material" discriminated on its face on the basis of viewpoint, while its policy of prohibiting ads with content that "may disrupt the transit system" was facially valid.

Barone v. Springfield, *__F.3d__, No. 17-35355 (9th Cir., Sept. 5, 2018).*
An officer stated a valid First Amendment prior restraint claim when her police chief made her sign a "last chance" agreement that barred her from saying or writing anything negative about the police department or the city, even as a private citizen.

Epona v. Ventura County, *__F.3d__, No. 17-55472 (9th Cir., Dec. 7, 2017).*
A zoning ordinance that requires a conditional use permit to be obtained in order to hold a wedding on private property zoned for agricultural use violates the First Amendment when it provides no specific, definite guidelines for the permitting officials, and no time limit for their permitting decision.

Erotic Service Providers v. Gascon, *__F.3d__, No. 16-15927 (9th Cir., Jan. 17, 2018).*
Prostitution does not constitute protected commercial speech under the First Amendment.

Italian Colors v. Becerra, *__F.3d__, No. 15-15873 (9th Cir., Jan. 3, 2018).*
A local law that prohibits retailers from imposing a surcharge on credit card purchases, but permits them to offer discounts for cash payments, violates the First Amendment as a content-based restriction on commercial speech.

Bailey v. Indep. Sch. Dist. No. 69, *__F.3d__, No. 17-6110 (10th Cir., July 24, 2018).*
A letter written by a public employee seeking a reduced sentence for a relative is speech on a matter of public concern for First Amendment purposes.

Lincoln v. Maketa, *__F.3d__, No. 16-1127 (10th Cir., Jan. 17, 2018).*
For purposes of a First Amendment retaliation claim, speech can be considered "official" even if it is not part of a public employee's formal job duties. Placing an employee on paid administrative leave and escorting him out of the building, and then conducting a criminal investigation into his actions, are not "adverse employment actions".

Trimble v. Tulsa County, *__F.3d__, No. 17-5058 (10th Cir., Mar. 14, 2018).*
The proper focus in a public employee's First Amendment speech retaliation claim is on whether the speech is part of the employee's job duties, not on the recipient of the communication.

Ft. Lauderdale Food v. Ft. Lauderdale, *__F.3d__, No.16-16808 (11th Cir., Aug. 22, 2018).*
A non-profit organization that hosts weekly events in a public park under a "Food Not Bombs" banner, by offering free food to anyone who wants it, engages in expressive conduct protected by the First Amendment.

Kondratyev v. Pensacola, *__F.3d__, No. 17-13025 (11th Cir., Sept. 7, 2018).*
The city's maintenance of a Latin cross located in a public park violates the First Amendment's Establishment Clause.

Stardust v. City of Brookhaven, *__F.3d__, No. 16-17176 (11th Cir., Aug. 10, 2018).*
The First Amendment does not prevent a city from prohibiting SOBs within 100 feet of each other or from restricting SOB product display and arrangement, as these are reasonable time, place, and manner restrictions on free speech. Such restrictions also do not impede an individual's due process right to private sexual intimacy.

2. *SECOND AMENDMENT; FIREARMS*

NYS Rifle & Pistol Assoc. v. NYC, *__F.3d__, No.15-638 (2nd Cir., Feb. 23, 2018).*
City restrictions on the removal of handguns from the premises for which they are licensed do not violate the Second Amendment, the Commerce Clause, the fundamental right to travel, or the First Amendment.

Teixeira v. Alameda Cty., *__F.3d__, No. 13-17132 (9th Cir., Oct. 10, 2017).*
A county zoning ordinance that restricts the ability of a gun merchant to open a store in the county does not violate the Second Amendment because it does not impede the ability of residents to purchase firearms. The Second Amendment does not protect the right of commercial proprietors to sell firearms.

3. *FOURTH AMENDMENT*

Boudreau v. Lussier, *__F.3d__, No. 16-1049 (1st Cir., Aug., 21, 2018).*
Police officers did not violate the Fourth Amendment when they impounded and removed the vehicle of a just-terminated employee from his employer's parking lot so that he had "no reason to return" to the property and to prevent possible theft or vandalism to the vehicle or its contents. This action fell under the "community caretaker" exception to the Fourth Amendment's warrant and probable cause requirements.

US v. Aiken, *__F.3d__, No. 17-1036 (1st Cir., Dec. 18, 2017).*
A guest of a guest who sleeps in a hotel room but who is not an overnight guest does not have a reasonable expectation of privacy in that room for Fourth Amendment purposes.

US v. Favreau, *__F.3d__, No. 17-1261 (1st Cir., Mar. 23, 2018).*
A three minute delay after a traffic stop license check to allow a drug dog to circle a car reasonably suspected of carrying hidden illegal drugs is reasonable under the Fourth Amendment.

Berg v. NYCP Commissioners, *__F.3d__, No. 16-3416 (2nd Cir., July 25, 2018).*
Detaining protestors for two hours in order to protect the President constitutes a "special need" warranting this temporary seizure.

Bruno v. City of Schenectady, *__F.3d__, No. 16-1131 (2nd Cir., Mar. 16, 2018)(unpub.).*
The restraint of a homeowner from entering her home while a fire that took place on the premises was under investigation does not constitute a "seizure" of the contents of the home (including her pet dogs) for Fourth Amendment purposes.

Simon v. NYC, *__F.3d__, No. 17-1281 (2nd Cir., June 21, 2018).*
Officers executing a warrant to bring a material witness to court at a certain time and date, who instead detained her at the police station for 18 hours, violated her Fourth Amendment rights against false arrest.

US v. Iverson, *__F.3d__, No. 16-3829 (2nd Cir., July 31, 2018).*
A defendant who expressly consented to officers entering his apartment also implicitly consented to the entry of the drug dog who was with them. As the defendant had no reasonable expectation of privacy in the odors in his apartment, to which the drug dog alerted, no Fourth Amendment violation occurred.

US v. Santillan, *__F.3d__, No. 16-1112 (2nd Cir., Aug. 24, 2018).*
Placing a passenger from a stopped vehicle in the back of a squad car while officers took steps to confirm or dispel their reasonable suspicions was not an arrest when it was done for safety reasons.

Haberle v. Troxell, *__F.3d__, No. 16-2074 (3rd Cir., Mar. 20, 2018).*
An officer knocked and announced at the door of an armed, emotionally disturbed individual instead of waiting for crisis negotiators, which resulted in the disturbed individual committing suicide. These actions did not effectuate a Fourth Amendment seizure nor constitute a Fourteenth Amendment state-created danger.

US v. Clark, *__F.3d__, No. 17-2739 (3rd Cir., Aug. 30, 2018).*
An officer's inquiry into a driver's criminal history, when not tied to his traffic stop, unlawfully prolongs a traffic stop for Fourth Amendment purposes.

US v. Graves, *__F.3d__, No. 16-3995 (3rd Cir., Dec. 13, 2017).*
An officer's removal of drugs from the pocket of an individual, which occurred before he determined that the individual was unarmed, does not violate the Fourth Amendment.

US v. Green, *__F.3d__, No. 17-1576 (3rd Cir., July 25, 2018).*
Prolonging a traffic stop for 15 minutes to allow for the arrival of a drug dog, based upon an officer's reasonable suspicion the illegal drugs are secreted in the vehicle, did not violate the Fourth Amendment.

US v. Williams, *__F.3d__, No. 16-3547 (3rd Cir., Aug. 1, 2018).*
A consensual search may be restricted and consent may be withdrawn, but not retroactively after the discovery of evidence.

Walker v. Coffey, *__F.3d__, No. 17-2172 (3rd Cir., Sept. 20, 2018).*
For Fourth Amendment purposes, an employee does not have a reasonable expectation of privacy in work e-mails and her employer could independently consent to a search thereof.

Sims v. Labowitz, *__F.3d__, No. 16-2174 (4th Cir., Mar. 14, 2018).*
An officer may have violated a 17-year old boy's Fourth Amendment privacy rights when, in executing a search warrant to obtain a picture of the boy's erect penis as part of a criminal investigation, he ordered the boy to manually manipulate his penis in order to obtain an erection.

US v. Bowman, *__F.3d__, No. 16-4848 (4th Cir., Mar. 1, 2018).*
Telling a ticketed motorist located in an officer's squad car to "hang tight, okay" while the officer questioned the motorist's companion turned the encounter into a non-consensual seizure.

US v. Meador, *__F.3d__, No. 18-4088 (4th Cir., Sept. 5, 2018)(unpub).*
After a suspect gave officers consent to search his house, an officer's preventing him from entering his house to retrieve a shirt and cigarettes did not serve to revoke the consent when the suspect never asked the officers to stop their search.

US v. Mitchell, *__F.3d__, No. 17-4317 (4th Cir., Mar. 28, 2018)(unpub).*
Officers who sniffed the outside window frame and door of an apartment to determine whether marijuana was being burned inside the apartment did not engage in a Fourth Amendment search.

US v. Kolsuz, *__F.3d__, No. 16-4687 (4th Cir., May 9, 2018).*
Warrantless searches at a border or "border equivalent" (such as an airport) do not violate the Fourth Amendment even when a passenger seeks to leave, not enter, the United States and even if the searches take place away from the actual border or border equivalent.

Bustillos v. El Paso County Hosp. Dist., *__F.3d__, No. 17-50022 (5th Cir., May 23, 2018).*
A medical professional has no constitutional duty to independently evaluate the Fourth Amendment determinations of law enforcement officers.

Gerhart v. Barnes, *__F.3d__, No. 17-60287 (5th Cir., Mar. 12, 2018)(unpub).*
Officers who were leading a "buy-bust" drug interdiction operation but failed to absorb critical details of the plan (such as the correct home address) and therefore entered the wrong home, may not have taken reasonable efforts to correctly identify their search target and therefore are not entitled to qualified immunity from a Fourth Amendment wrongful entry claim.

Gerhart v. McLendon, *__F.3d__, No. 17-60331 (5th Cir., Oct. 25, 2017).*
A SWAT team officer was not entitled to qualified immunity from Fourth, Fifth, and Fourteenth Amendment claims stemming from the raid of the wrong house simply because he did not plan or lead the raid. Each officer must make a reasonable effort to correctly identify the target of a search.

Gorman v. Sharp, *__F.3d__, No. 17-60515 (5th Cir., June 6, 2018).*
The Fourth Amendment concerns only intentional searches and seizures, not accidental fatal shootings during an officer training session.

Johnson v. Thibodaux City, *__F.3d__, No. 17-30088 (5th Cir., Apr. 17, 2018).*
Officers were not free to detain a vehicle passenger until she provided proper identification - - absent reasonable suspicion - - after the purpose for their traffic stop itself had ended.

Lincoln v. Scott, *__F.3d__, No. 17-10201 (5th Cir., Apr. 5, 2018).*
Police officers violated the Fourth Amendment by holding a witness for four hours "for investigatory purposes", without consent or probable cause, even if she was the sole witness to a shooting.

US v. Lin, *__F.3d__, No. 17-30469 (5th Cir., July 31, 2018).*
Giving officers consent to enter a house does not equate to *carte blanche* consent to search the entire house.

US v. Perales, *__F.3d__, No. 14-40005 (5th Cir., Mar. 30, 2018).*
An officer did not act coercively in violation of the Fourth Amendment by placing a stopped motorist in the front seat of his police cruiser while he ran a computer check on that individual or by then asking him for consent to search his vehicle.

US v. Reddick, *__F.3d__, No. 17-41116 (5th Cir., Aug. 17, 2018).*
In a case of first impression in the Circuit, the court holds that, under the "private search" doctrine, a police officer's review of the results of a private company's viewing and comparison of the hash values of a suspected child pornographer's computer files did not violate the Fourth Amendment. It did not involve the government conducting any search of its own, but just reviewing information already discovered in a private search wherein any expectation of privacy had already been compromised.

US v. Villafranco-Elizondo, *__F.3d__, No. 17-30530 (5th Cir., July 27, 2018).*
The failure of a drug dog to alert on a stopped vehicle does not deprive officers of other existing probable cause derived from the totality of the circumstances.

US v. Wise, *__F.3d__, No. 16-20808 (5th Cir., Dec. 6, 2017).*
A bus passenger lacks standing to challenge a bus driver's decision to allow officers to search the bus interior, as he only has a privacy expectation in his own luggage.

Windham v. Harris County, *__F.3d__, No. 16-20686 (5th Cir., Nov. 13, 2017).*
Detaining a suspected impaired driver for 90 minutes in order for a second officer to arrive and administer a gaze nystagmus test does not turn the seizure into an arrest. Moreover, requiring this test to be performed by a person with an unknown neck injury does not violate the ADA when that person neither asks for an accommodation nor refuses to participate in the test.

Greer v. Highland Park, *__F.3d__, No. 17-1281 (6th Cir., Mar. 2, 2018).*
Executing a search warrant at 4:00 AM to search for drugs does not justify not knocking and announcing before busting down a homeowner's door.

Grise v. Allen, *__F.3d__, No. 17-5221 (6th Cir., Oct. 26, 2017).*
A police officer did not violate the Fourth Amendment by entering a residence over a husband's objections and without a warrant, upon observing his wife on the floor in apparent distress, under the emergency aid exception. The officer was also entitled to conduct a limited protective sweep of the home after entry.

Hardrick v. Detroit, *__F.3d__, No. 16-2704 (6th Cir., Nov. 22, 2017).*
An officer who entered a private back yard and seized a dog without a warrant 53 days after receiving a complaint alleging that the dog had bitten another dog cannot avoid a Fourth Amendment claim by claiming "exigent circumstances."

Harris v. Klare, *__F.3d__, No. 17-6051 (6th Cir., Sept. 5, 2018).*
While the failure of a drug dog to alert may not always dispel probable cause, it does dispel reasonable suspicion absent some reason to question the dog's reliability.

Liberty Coins v. Williams, *__F.3d__, No.16-3735 (6th Cir., Jan. 22, 2018).*
Because the precious metals business is closely regulated, a law that allows the police to conduct warrantless searches of precious metal dealers' purchasing records and of the precious metals themselves does not violate the Fourth Amendment.

Morgan v. Fairfield Cty., *__F.3d__, No. 17-4027 (6th Cir., Sept. 6, 2018).*
The immediate perimeter surrounding a house is part of its curtilage even if there is no fence enclosing the house perimeter. A general concern for officer safety does not allow officers to enter a home's curtilage without a warrant absent the presence of a risk of immediate harm or another exception to the Fourth Amendment's warrant requirement.

US v. Castro, *__F.3d__, No. 17-1590 (6th Cir., Feb. 7, 2018).*
A search warrant with an overbroad "catch all" sentence at its end does not require the suppression of all evidence obtained pursuant to the warrant, but only of the evidence obtained pursuant to the overbroad sentence.

US v. Slaughter, *__F.3d__, No. 17-6191 (6th Cir., Sept. 27, 2018)(unpub).*
During a *Terry* stop, once an officer discovers a weapon that may be used to assault him, he is justified, without probable cause, to remove suspects from their vehicle immediately and to handcuff them as a precaution.

Adams v. Peoria, *__F.3d__, No. 17-1535 (7th Cir., Mar. 13, 2018)(unpub).*
A police officer who does not participate in or enable, but simply fails to stop, a law violation by one private party against another does not thereby violate the Fourth Amendment.

Hurt v. Wise, *__F.3d__, No. 17-1771 (7th Cir., Jan. 23, 2018).*
For purposes of a Fourth Amendment false-arrest claim, the key inquiry is whether the statements upon which the arrest was predicated were reliable, not whether they were coerced, although the existence of coercion informs reliability.

Manuel v. Joilet, Illinois, *__F.3d__, No. 14-1581 (7th Cir., Sept. 10, 2018).*
The end of a prisoner's detention starts the period of limitations for filing a Fourth Amendment wrongful custody suit.

Naperville Smart Meter v. Naperville, *__F.3d__, No. 16-3766 (7th Cir., Aug. 16, 2018).*
The collection by a city utility of a home's smart-meter energy consumption data at 15 minute intervals constituted a warrantless search under the Fourth Amendment but, since the data was not shared with third parties and was part of an effort to modernize the city's electronic grid, constituted a reasonable non-prosecutorial search.

Swanigan v. Chicago, *__F.3d__, No. 16-1568 (7th Cir., Feb. 2, 2018).*
The Fourth Amendment is not violated by placing a suspect already in custody in a police line-up. Moreover, no due process violation occurs based upon a mistaken line-up identification that is never used at trial, or because of the potential stigma of labelling a suspect a "bandit" in police files that are subject to open records law requests.

US v. Johnson, *__F.3d__, No. 15-1366 (7th Cir., Oct. 27, 2017).*
Two police cars that bathed a parked vehicle in bright lights thereby implied that its occupants were not free to drive away - - resulting in a Fourth Amendment seizure.

US v. Jones, *__F.3d__, No. 16-4158 (7th Cir., Nov. 21, 2017).*
Lawfully arresting a driver and then swiftly having a drug dog sniff his car does not violate the Fourth Amendment.

US v. Rodriguez-Escalera, *__F.3d__, No. 17-2334 (7th Cir., Mar. 7, 2018).*
For Fourth Amendment purposes, it is unreasonable to extend a traffic stop just because a drug dog is tied up on another stop.

US v. Stewart, *__F.3d__, No. 16-4105 (7th Cir., Sept. 5, 2018).*
A 15-minute time period between the beginning of a traffic stop and a drug dog's alert, during which an officer was actively involved in conducting the traffic stop, was not an unconstitutional prolongment of the stop for Fourth Amendment purposes. Moreover, shaking one's head from side to side does not affirmatively and unequivocally invoke a person's right to remain silent.

US v. Class, *__F.3d__, No. 16-4503 (8th Cir., Feb. 26, 2018).*
An officer's "plain view" seizure of illegal drugs secreted in the engine compartment of a car with its hood open does not violate the Fourth Amendment.

US v. Crumble, *__F.3d__, No. 16-4308 (8th Cir., Jan. 2, 2018).*
An individual who crashed his car and then fled the scene, leaving his cell phone on the front seat had, for Fourth Amendment purposes, abandoned the phone and forfeited any expectation of privacy therein.

US v. Edwards, *__F.3d__, No. 17-1455 (8th Cir., May 31, 2018).*
The failure of a drug dog to alert is not determinative as to a probable cause determination. Officers may also consider other pre-existing information when objectively determining whether there is a fair probability that evidence of a drug crime is contained in a stopped vehicle.

US v. Espinoza, *__F.3d__, No. 16-4485 (8th Cir., Mar. 13, 2018).*
An officer did not unconstitutionally extend a traffic stop in order to delve into topics not related to the stop when he had the driver accompany him to his squad car after discovering that he lacked a valid driver's license.

US v. Ford, *__F.3d__, No. 17-1225 (8th Cir., Apr. 25, 2018).*
A protective sweep can include moving house furniture and even returning to a room already searched immediately after the arrest of a house occupant.

US v. Houck, *__F.3d__, No. 17-3045 (8th Cir., Apr. 26, 2018).*
The fact that an RV is being used as a temporary residence, when it is properly licensed and could be made roadworthy in 30 minutes, does not remove it from the scope of a search warrant limiting a search to "vehicles."

US v. Parks, *__F.3d__, No. 17-1914 (8th Cir., Aug. 30, 2018).*
When police were aware that a young girl was missing and was presumably in the defendant's custody, the search of his van was warranted under the "community caretaker" exception to the need for a warrant or consent to search.

US v. Pulido-Ayala, *__F.3d__, No. 17-1371 (8th Cir., June 15, 2018).*
No Fourth Amendment violation occurred when a drug dog instinctively lunged into a vehicle through a car door that the driver had left open, especially when the dog had alerted while still outside of the vehicle.

US v. Tuton, *__F.3d__, No. 17-1493 (8th Cir., June 25, 2018).*
An officer did not unconstitutionally "seize" a bus passenger when the bus driver consented to the officer's search of the bus and the passenger himself was not himself seized during the resultant search of luggage.

Recchia v. LA Dept. of Animal Svcs., *__F.3d__, No. 13-57002 (9th Cir., May 1, 2018).*
The warrantless seizure of seemingly healthy pigeons, a sea gull, and a crow, all being kept by a homeless man in boxes on a sidewalk, absent exigent circumstances, may violate the Fourth and Fourteenth Amendments.

Rodriguez v. Swartz, *__F.3d__, No. 15-16410 (9th Cir., Aug. 7, 2018).*
A Mexican boy had a Fourth Amendment "excessive force" claim against a border agent when, while standing on United States soil, the agent shot the boy while he was standing on Mexican soil.

Smith v. Santa Clara, *__F.3d__, No. 14-15103 (9th Cir., Nov. 30, 2017).*
Once the police have probable cause to believe that a probationer on probation for a serious violent crime has committed another violent crime and is at large, they can conduct a warrantless search of the probationer's residence in an effort to find her over the objections of a third party who shares the residence.

US v. Johnson, *__F.3d__, No. 15-30222 (9th Cir., May 14, 2018).*
The suppression of items discovered during an automobile inventory search was upheld when the impoundment and search of the vehicle was motivated by a desire to find incriminating evidence.

US v. Reinke, *__F.3d__, No. 17-30025 (9th Cir., Mar. 9, 2018).*
For Fourth Amendment purposes, an officer does not unreasonably prolong a traffic stop when he calls for a K-9 search as he is returning to his squad car to write a citation and the search is over before he gives the passenger the citation.

US v. Reynolds, *__F.3d__, No. 17-3145 (9th Cir., Apr. 2, 2018).*
A 20-minute traffic stop delay caused by the driver giving false names and thus hampering the determination of his true identity did not violate the Fourth Amendment.

US v. Schram, *__F.3d__, No. 17-30055 (9th Cir., Aug. 21, 2018).*
A boyfriend had no Fourth Amendment privacy expectations in the search of his girlfriend's home when a "no-contact" order prevented him from entering the home.

Gadd v. Campbell, *__F.3d__, No. 16-4048 (10th Cir., Oct. 26, 2017).*
Qualified immunity against a Fourth Amendment seizure claim is granted to an officer who misinterpreted a legal document and then conveyed his misinterpretation to a prosecutor who relied upon it in filing charges that resulted in the plaintiff being detained and fingerprinted.

Mayfield v. Harvey Cty., *__F.3d__, No. 17-3197 (10th Cir., Apr. 30, 2018).*
An officer's temporary seizure of a holstered gun to ensure the safety of the officer and others did not violate the Fourth Amendment even if the weapon was not posing a threat and the officer did not have to make a split second decision.

Sandberg v. Englewood, *__F.3d__, No. 17-1147 (10th Cir., Mar. 7, 2018).*
Detaining a suspect without consent or reasonable suspicion after the purpose of an investigatory stop has been fulfilled, even for a brief period of time, violates the Fourth Amendment.

US v. Bagley, *__F.3d__, No. 16-3305 (10th Cir., Dec. 18, 2017).*
Officers can only conduct a protective sweep incident to an arrest. They cannot, consistent with the Fourth Amendment, arrest someone and then later conduct a protective sweep of the area the arrestee was in at the time of his arrest.

US v. Dunn, *__F.3d__, No. 15-1475 (10th Cir., Dec. 12, 2017).*
A search warrant that lists specific items to be searched but contains the catch-all phrase "include but are not limited to" lacked particularity and therefore violated the Fourth Amendment.

US v. Sanchez, *__F.3d__, No. 17-4000 (10th Cir., Jan. 17, 2018).*
A car impoundment policy is not violative of the Fourth Amendment when it requires inventory searches even in cases where those searches do not fulfill a "community caretaker" function and it prohibits a property owner from retrieving custody of personal property located in the vehicle.

US v. Thomas, *__F.3d__, No. 17-2033 (10th Cir., Apr. 16, 2018).*
An officer had probable cause to arrest an individual whom she knew was the subject of an arrest warrant a week prior, even though she did not first determine whether the warrant was still valid.

Velayo v. Talamayan, *__F.3d__, No. 18-3103 (10th Cir., Aug. 17, 2018).*
An officer does not violate a person's privacy rights by knocking on his door and looking in his apartment after the door is opened.

Welch v. Saunders, *__F.3d__, No. 17-1202 (10th Cir., Dec. 29, 2017).*
In order to take advantage of the "quasi-judicial immunity doctrine" against a Fourth Amendment claim, officers executing a facially valid court order need not research the law, check court records, or do anything beyond looking at the face of the order.

Chmielewski v. St. Pete Beach, *__F.3d__, No. 16-16402 (11th Cir., May 16, 2018).*
A city violated the Fourth Amendment when it encouraged the public occupation of private beach property by placing beach access signs, clearing vegetation, creating nearby parking spaces, hosting an event on the premises, and refusing to remove trespassers from it.

Cozzi v. Birmingham, *__F.3d__, No. 17-11011 (11th Cir., June 19, 2018).*
An arrest was unreasonable when an officer failed to view the plaintiff's body to ascertain whether it contained the numerous visible tattoos present on the body of the alleged perpetrator.

Crocker v. Beatty, *__F.3d__, No. 17-13526 (11th Cir., Apr. 2, 2018).*
The Fourth Amendment did not allow a police officer to seize and retain the cell phone of a curious bystander who was taking pictures of a car accident's aftermath, and exigent circumstances do not excuse this warrantless seizure just because the "nature" of cell phones allows any photos taken thereon to be quickly deleted.

McCants v. City of Mobile, *__F.3d__, No. 17-14834 (11th Cir., Sept. 27, 2018)(unpub).*
An officer who screamed at and punched a woman in the chest at the scene of a traffic accident was entitled to qualified immunity against her Fourth and Fourteenth Amendment claims.

Montanez v. Carvajal, *__F.3d__, No. 16-17639 (11th Cir., May 9, 2018).*
If officers have probable cause to suspect a residential burglary is ongoing or recently concluded, they may conduct a brief warrantless search of the home to look for suspects and potential victims of that crime.

US v. Coffell, *__F.3d__, No. 16-17427 (11th Cir., Dec. 14, 2017).*
No Fourth Amendment violation occurred when a maintenance man, without law enforcement's knowledge, entered a locked room in an effort to replace an oven - - since he was not an instrument or agent of the government. Therefore, the police could lawfully use the information about what was in that room that he relayed to them to obtain a search warrant.

US v. Dixon, *__F.3d__, No. 15-14354 (11th Cir., Aug. 24, 2018).*
For purposes of the Fourth Amendment and the right to challenge a car search, a passenger does not have a "possessory interest" in a car just because he can use it whenever he wants, has a spare key, keeps his clothes in it, and pays for car repairs and fees.

US v. Johnson, *__F.3d__, No. 16-15690 (11th Cir., Mar. 22, 2018).*
A *Terry* search does not allow an officer to remove a single bullet from an individual's pocket since a bullet is neither a weapon nor contraband.

US v. Jones, *__F.3d__, No. 17-10679 (11th Cir., Feb. 13, 2018).*
Presence in a high crime area, coupled with fleeing when an officer approaches, provides reasonable suspicion to stop a fleeing person.

US v. Joyner, *__F.3d__, Nos. 17-10289 & 17-10826 (11th Cir., Aug. 14, 2018).*
Cell phone data obtained by court order pursuant to the Stored Communications Act does not violate the Fourth Amendment even though the required showing necessary to obtain a SCA order is less than the probable cause required for a search warrant.

US v. Sanders, *__F.3d__, No. 17-10596 (11th Cir., Oct. 5, 2017).*
Bedding large enough to hide a person can be searched during a warrantless protective sweep without violating the Fourth Amendment.

US v. Touset, *__F.3d__, No. 17-11561 (11th Cir., May 23, 2018).*
The Fourth Amendment does not require reasonable suspicion to conduct a forensic border search of a person's electronic devices.

US v. Vergara, *__F.3d__, No. 16-15059 (11th Cir., Mar. 15, 2018).*
Border searches never require a warrant or probable cause but, at most, reasonable suspicion.

US v. Wright, *__F.3d__, No. 16-12979 (11th Cir., Oct. 18, 2017).*
Although *Terry* pat-downs are normally limited to outside clothing, no Fourth Amendment violation occurred when officers lifted a person's shirt high enough to allow them to search his waistband for weapons when they reasonably believed him to be armed.

Holton v. Dept. of Navy, *__F.3d__, No. 2017-1430 (Fed. Cir., Mar. 9, 2018).*
"Reasonable suspicion" for purposes of ordering a post-accident employee drug test is not limited to public employees who take affirmative actions, but can also include employees who fail to take action that may have prevented an accident. The Fourth Amendment does not require written notice to public employees prior to subjecting them to a drug test.

4. *FOURTH AMENDMENT "EXCESSIVE FORCE"*

Kane v. Barger, *__F.3d__, No. 17-3027 (3rd Cir., Aug. 22, 2018).*
Qualified immunity was denied to an officer who, when investigating an alleged sexual assault, touched the victim inappropriately and used his cell phone to photograph her intimate areas. Such actions violated her Fourth Amendment right to bodily integrity.

Wilson v. Prince George's Cty., *__F.3d__, No. 17-1856 (4th Cir., June 18, 2018).*
Qualified immunity was granted to an officer against an "excessive force" claim premised upon his shooting a man who was standing 20 feet away from him armed with a pocket knife that he was using solely on himself, when the man stumbled forward towards the officer.

Johnson v. Hollins, *__F.3d__, No. 17-30393 (5th Cir., Dec. 1, 2017).*
Briefly handcuffing a person believed to be disturbing the peace in order to calm the situation and to aid in investigation was objectively reasonable and not "excessive force".

Lincoln v. Turner, *__F.3d__, No. 16-10856 (5th Cir., Oct. 31, 2017).*
An officer's handcuffing of a police shooting witness, jerking her to her feet, throwing her over his shoulder, and placing her, hand-cuffed, into a squad car for two hours, when she did not fight, struggle, or resist, is "excessive force".

Sam v. City of Opelousas, *__F.3d__, No. 17-30593 (5th Cir., Apr. 12, 2018).*
Even *de minimis* injuries can support an "excessive force" claim if the force used is unreasonable.

Samples v. Vadzemnieks, *__F.3d__, No. 17-20350 (5th Cir., Aug. 17, 2018).*
Officers violated the plaintiff's right to be free from "excessive force" when, after finding him in the road in his undershorts in freezing weather and mumbling incoherently, they Tazed him when he started walking towards a retention pond and then "tensed up" and clenched his fists when an officer touched him, since the plaintiff was not committing a crime, seeking to flee, or posing a threat of danger to them.

Shumpert v. Tupelo, *__F.3d__, No. 17-60774 (5th Cir., Sept. 25, 2018).*
Mere proof that an injury could have been prevented with more training does not support *Monell* liability on an "excessive force" claim.

Barton v. Lincoln Park, *__F.3d__, No. 17-1073 (6th Cir., Mar. 1, 2018)(unpub.).*
Mere presence at the scene of a commotion does not support a "failure to intervene" or "excessive force" claim against an officer.

Carter v. Carter, *__F.3d__, No. 17-1448 (6th Cir., Mar. 15, 2018)(unpub).*
An officer who applied three or four modest punches to a suspect who was balled up on the ground, in order to place him in handcuffs, did not engage in "excessive force".

Reed v. Memphis, *__F.3d__, No. 17-5892 (6th Cir., May 30, 2018) (unpub.).*
Following a police department policy requiring detainees to have one leg handcuffed to a bench did not require officers to employ "unreasonable force" for Fourth Amendment "excessive force" purposes. However, handcuffing pursuant to this policy is not *per se* reasonable and may be unreasonable in some circumstances.

Smith v. City of Troy, *__F.3d__, No. 16-4719 (6th Cir., Nov. 1, 2017).*
Tasing a non-violent and passively resisting suspect not under arrest eight times in two minutes may constitute "excessive force", as might bringing him to the ground with a leg sweep and then landing on him.

Stillwagon v. City of Delaware, *__F.3d__, No. 17-3873 (6th Cir., Aug. 24, 2018)(unpub).*
Taping plastic bags around a suspect's hands so tight that they cut off circulation to his wrists may constitute "excessive force".

Thomas v. Barr, *__F.3d__, No. 16-2594 (6th Cir., Oct. 6, 2017).*
Qualified immunity on an "excessive force" claim is granted to an officer who Tased a suspect without warning after the suspect ignored his order to "stop and get on the ground" and instead continued to walk away from the officer.

Avina v. Bohlen, *__F.3d__, No. 17-1902 (7th Cir., Feb. 14, 2018).*
Placing an unresisting arrestee's arm behind his back incident to handcuffing, using enough force to break the arm, is not objectively reasonable as a matter of law for purposes of an "excessive force" analysis.

Burton v. City of Zion, *__F.3d__, No. 17-1557 (7th Cir., Aug. 24, 2018).*
When considering the amount of force to use against a suspect, an officer must consider both the suspect's own prior bad acts as well as her own prior bad acts against the suspect and how that might influence her actions.

Horton v. Pobjecky, *__F.3d__, No. 17-1757 (7th Cir., Feb.27, 2018).*
It was not "excessive force" for an off-duty police officer to shoot four would-be robbers who entered a pizza parlor, demanded money, and then struggled with the officer for his gun, when one of the robbers was armed and the others could have been, given the intense pressure the officer was under during the 45 second encounter - - even though the officer shot one robber in the back as he was attempting to escape and did not warn him before he shot.

Mason-Funk v. City of Neenah, *__F.3d__, No. 17-3380 (7th Cir., July 10, 2018).*
No "excessive force" existed when officers shot and killed, without warning, an escaping hostage whom they mistook for the hostage-taker, as the hostage was also armed during this tense and dangerous situation.

Sanzone v. Gray, *__F.3d__, No. 17-2103 (7th Cir., Mar. 8, 2018).*
It is not "excessive force" to shoot an agitated man who points a gun at officers but tells them that he is "only going to fire a warning shot".

Thompson v. Cope, *__F.3d__, No. 17-3060 (7th Cir., Aug. 14, 2018).*
Qualified immunity is granted to a paramedic on an "excessive force" claim premised upon the fact that, during a medical emergency and in the exercise of his medical judgment, he administered a sedative to a man high on amphetamines and running naked in the street.

Burnikel v. Fong, *__F.3d__, No. 16-3930 (8th Cir., Apr. 2, 2018).*
Dropping someone face first on the concrete after he has been handcuffed and subdued is "excessive force."

Church v. Anderson, *__F.3d__, No. 17-2077 (8th Cir., Aug. 3, 2018).*
In an "excessive force" case, the court rejects the suggestion that, when a plaintiff has no memory of an incident, the court should presume that the force used against him was excessive if the officer fails to activate available recording equipment.

Cravener v. Shuster, *__F.3d__, No. 17-1971 (8th Cir., Mar. 27, 2018).*
Tasing a mentally-challenged individual five times in drive-stun mode is not "excessive force" when less intrusive methods fail and the individual is warned to stop struggling or be Tased.

Kelsay v. Ernst, *__F.3d__, No. 17-2181 (8th Cir., Sept. 27, 2018).*
Qualified immunity is granted to an officer who took a person to the ground after she refused his order to "get back there" and continued to walk towards a potential crime scene.

Michael v. Trevena, *__F.3d__, No. 17-1946 (8th Cir., Aug. 7, 2018).*
It was "excessive force" to grab a non-violent, non-resisting misdemeanant by the throat and lever him with a baton, breaking his arm.

Neal v. Ficcadenti, *__F.3d__, No. 17-2633 (8th Cir., July 12, 2018).*
The use of an arm-bar take down technique on a non-threatening and non-resistant person may constitute "excessive force".

Rokusek v. Jansen, *__F.3d__, No. 17-3203 (8th Cir., Aug. 8, 2018).*
It was "excessive force" for an officer to throw a non-violent, non-resisting misdemeanant face first into the ground.

Rugers v. King, *__F.3d__, No. 16-4209 (8th Cir., Mar. 23, 2018).*
Qualified immunity from an "excessive force" claim is granted to an officer who shot and killed an armed and suicidal individual after she refused to drop her gun and pointed the gun towards the officer's shins, although the individual was not warned that she could be shot if she did not put her gun down.

Thomson v. Singleton, *__F.3d__, No. 16-4080 (8th Cir., July 6, 2018).*
Intentionally Tasing, without notice, an individual who was stopped for a nonviolent misdemeanor and who was not resisting or fleeing and had his hands visible constitutes "excessive force".

Wenzel v. City of Bourbon, *__F.3d__, No. 17-2028 (8th Cir., Aug. 9, 2018).*
No "excessive force" occurred when an officer shot and killed an angry and knowingly violent person who charged him, even though the officer could see that the person's hands were empty.

Wilson v. Lamp, *__F.3d__, Nos. 16-4275 & 4337 (8th Cir., Aug. 28, 2018).*
It was "excessive force" for officers to continue drawing and pointing their weapons at a non-resisting, non-threatening suspect whom they had already patted down for weapons.

Easley v. Riverside, *__F.3d__, No. 55941 (9th Cir., May 18, 2018).*
It was not "excessive force" for an officer to shoot a fleeing suspect who drew a gun from his pants pocket, even if he flung the gun away a few seconds before he was shot.

Felarca v. Birgeneau, *__F.3d__, Nos. 16-15298 & 15294 (9th Cir., May 31, 2018).*
Police officers' use of batons on protesters was not "excessive force" when the force applied was minimal and no protester required medical treatment or was prevented from returning to the protest. Minimal force was needed in order to maintain order and enforce school policies.

Reese v. Sacramento County, *__F.3d__, Nos. 16-16195 & 16230 (9th Cir., Apr. 23, 2018).*
Qualified immunity was granted to an officer against an "excessive force" claim premised upon his shooting of a suspect who held an upraised knife within striking distance of him in the seconds before the suspect was shot, whether or not the suspect was still holding the knife when shot.

Thompson v. Rahr, *__F.3d__, No. 16-35301 (9th Cir., Mar. 13, 2018).*
Pointing a gun at the head of an unarmed suspect who was calm and compliant, and was guarded by another armed officer, constituted "excessive force".

Vos v. Newport Beach, *__F.3d__, No. 16-56791 (9th Cir., June 11, 2018).*
Qualified immunity on an "excessive force" claim was granted to officers who shot and killed a mentally unstable man who charged them with a metal object (wrongly thought to be a pair of scissors) in his hand, even though the officers were behind their squad cars and outnumbered the man eight to one.

Clark v. Colbert, *__F.3d__, No. 17-7046 (10th Cir., July 17, 2018).*
It was not "excessive force" for an officer to shoot a person with pepper balls after he, in the midst of a psychotic episode, charged the officer with a large kitchen knife.

Lee v. Tucker, *__F.3d__, No. 17-1236 (10th Cir., Sept. 24, 2018).*
For "excessive force" purposes, the court declines to hold that all calls to the police involving domestic violence allegations entitle officers to respond with substantial force.

McCoy v. Meyers, *__F.3d__, No. 17-3093 (10th Cir., Apr. 10, 2018).*
Subduing a potentially dangerous arrestee using a carotid restraint and then hand-cuffing his hands and zip-tying his ankles was not "excessive force", but hitting him after he was so subdued may be "excessive force."

Pauly v. New Mexico Dept. of Pub. Safety, *__F.3d__, No. 14-2035 (10th Cir., Oct. 31, 2017).*
"Excessive force" may exist when an officer shoots an armed home resident without warning when the resident poses no danger to the officer at the exact moment of the shooting.

Brand v. Casal, *__F.3d__, No. 16-10256 (11th Cir., Dec. 19, 2017).*
Qualified immunity on an "excessive force" claim is denied to an officer who Tased a distraught homeowner during the execution of an arrest warrant against her son, when she was not violent, aggressive, or resisting arrest. The officer's refusal to allow the homeowner to cover her exposed breast also violated her Fourth Amendment right to personal privacy.

Callwood v. Jones, *__F.3d__, No. 16-17454 (11th Cir., Feb. 20, 2018).*
Tasing an aggressively resisting arrestee 14 times and then hog-tying him is not "excessive force" when officers repeatedly tell him to calm down and he continues to struggle.

Glasscox v. City of Argo, *__F.3d__, No. 16-16804 (11th Cir., Sept. 12, 2018).*
Tasing a non-resisting driver suspected of impaired driving four times because he did not exit his vehicle, but not giving him any chance to do so between Tasings, could constitute "excessive force".

Horn v. Barron, *__F.3d__, No. 16-16166 (11th Cir., Jan. 4, 2018).*
It was not "excessive force" for an officer to use a soft hands straight arm bar takedown technique to handcuff an arrestee who pulled her arm away from him.

J.W. v. Birmingham Bd. of Educ., *__F.3d__, No. 15-14669 (11th Cir., Sept. 24, 2018).*
Qualified immunity is granted to officers on students' "excessive force" claims alleging that the officers failed to decontaminate the students after spraying them with Freeze +P solution.

McCroden v. Volusia County, *__F.3d__, No. 17-12331 (11th Cir., Feb. 12, 2018).*
Using an arm-bar takedown maneuver on a resisting arrestee is not "excessive force".

Pena v. Marcus, *__F.3d__, No. 16-17635 (11th Cir., Nov. 6, 2017).*
Officers are entitled to qualified immunity on an "excessive force" claim brought after a resident was hurt because she was standing behind a door that was forcibly entered during the conduct of a search. The forcible entry was justified by an exigency and the officers did not know that she was behind the door.

Shaw v. City of Selma, *__F.3d__, No. 17-11694 (11th Cir., Mar. 7, 2018).*
Shooting a disturbed man who was advancing on an officer with an un-raised hatchet in his hand was not "excessive force" after the man refused 26 commands to "put the axe down".

Trotter v. Shull, *__F.3d__, No. 17-13295 (11th Cir., Dec. 19, 2017).*
An officer does not violate the Fourth Amendment by placing tight handcuffs on an arrestee and ignoring his complaints about the tightness.

5. ***FIFTH AMENDMENT; SIXTH AMENDMENT***

US v. Handa, *__F.3d__, No. 17-1961 (1st Cir., June 8, 2018).*
For Sixth Amendment speedy trial purposes, the speedy trial clock begins to run from the filing of an indictment.

Curry v. Klee, *__F.3d__, No. 17-1422 (6th Cir., Dec. 19, 2017).*
There is no Supreme Court precedent for the assertion that being drunk, high on drugs, and sleep-deprived renders a confession involuntary.

Turner v. US, *__F.3d__, No. 15-6060 (6th Cir., Mar. 23, 2018).*
The court refuses to extend the Sixth Amendment right to counsel to pre-indictment plea negotiations.

US v. Hampton, *__F.3d__, No. 16-4094 (7th Cir., Mar. 21, 2018).*
The statement "I haven't even gotten a chance to get a lawyer or anything" does not invoke an arrestee's Fifth Amendment right to counsel.

US v. Quiroz, *__F.3d__, Nos. 16-3510 & 16-3518 (7th Cir., Oct. 28, 2017).*
Miranda rights do not have to be given in writing in order to be properly given.

Rhines v. Young, *__F.3d__, Nos. 16-3360 & 17-1060 (8th Cir., Aug. 3, 2018).*
A confession is not invalid just because an officer did not specifically tell a suspect that he could cut off questioning whenever he wanted, that he had the right to have an attorney present before and during questioning, and that an attorney would be appointed to him, when the totality of the officer's warning reasonably conveyed these *Miranda* rights to him.

US v. Mitchell, *__F.3d__, No. 17-1698 (8th Cir., Mar. 19, 2018)(unpub.).*
An on-the-scene show-up identification is not unduly suggestive for Fifth Amendment purposes when witnesses are shown the defendant in hand-cuffs, near a squad car, and with a police light shining on him.

US v. Obak, *__F.3d__, No. 16-10362 (9th Cir., Mar. 13, 2018).*
A defendant's Sixth Amendment and Article III right to be tried in the state or district where the crime was committed was not violated when he was tried in Guam - - neither a state nor a district.

Land of Lincoln v. US, *__F.3d__, No. 2017-1224 (Fed. Cir., June 14, 2018).*
No statutory obligation to pay money, even when unchallenged, can create a property interest within the meaning of the Takings Clause.

6. ***FOURTEENTH AMENDMENT; DUE PROCESS***

Kando v. Rhode Island St. State Bd., *__F.3d__, No. 17-1635 (1st Cir., Jan. 22, 2018).*
In some circumstances, even an at-will public employee with no constitutionally protected property interest in continued employment has a separate liberty interest under the Due Process Clause in having a name-clearing hearing to dispute stigmatizing allegations made against him.

Allah v. Milling, *__F.3d__, No. 16-1443 (2nd Cir., Nov. 22, 2017).*
A detainee's substantive due process rights are violated when he is placed in administrative segregation without specific evidence that he constitutes a risk to institutional security.

Edrei v. Bratton, *__F.3d__, No. 17-2065 (2nd Cir., June 13, 2018).*
The police use of a sound gun that caused hearing loss to the protesters they were dispersing could constitute "excessive force" in violation of the Fourteenth Amendment.

Hancock v. Rensselaer County, *__F.3d__, No. 16-2888 (2nd Cir., Feb. 9, 2018).*
Even public employees with non-stigmatizing medical conditions have a Fourteenth Amendment privacy interest in not having their medical records improperly accessed by other employees.

Giuliani v. Springfield Tshp., *__F.3d__, No. 17-1675 (3rd Cir., Mar. 6, 2018)(unpub).*
The focus of a procedural due process claim is on the adequacy of the remedial procedure, not on the government's actual actions that deprived an individual of his liberty or property interests.

Jutrowski v. Riverdale Township, *__F.3d__, No. 17-2594 (3rd Cir., Sept. 12, 2018).*
A plaintiff alleging that officers engaged in "excessive force" must establish the "personal involvement" of each named defendant to avoid summary judgment. However, an after-the-fact conspiracy amongst officers to hide which officer committed "excessive force" could constitute a separate due process violation as an attempt to deprive the plaintiff of access to the courts.

Hopper v. Plummer, *__F.3d__, No. 17-3175 (6th Cir., Apr. 12, 2018).*
A civil detainee's Section 1983 claim is governed by the Fourteenth, not the Eighth, Amendment.

Khaled v. Dearborn Heights, *__F.3d__, No. 17-1041 (6th Cir., Oct. 4, 2017).*
The Fourteenth Amendment does not create a right to an adequate police investigation. Moreover, the fact that the plaintiff, an Arab-American, was the only person who was known to have received a citation for trash does not establish discriminatory selective enforcement against Arab-Americans.

Myers v. Village of Oxford, *__F.3d__, No. 17-2169 (6th Cir., June 27, 2018)(unpub.)*
Volunteer reserve officers who were removed from their post had a due process right to a name-clearing hearing even though they were not employees *per se*.

Przybysz v. City of Toledo, *__F.3d__, No. 18-3139 (6th Cir., Aug. 20, 2018)(unpub).*
For substantive due process purposes, a "state-created danger" does not exist where a private actor correctly guesses the identity of a confidential informant from the totality of the circumstances, but only when an officer identifies a confidential informant by name.

Seales v. Detroit, *__F.3d__, No. 17-1096 (6th Cir., Jan. 31, 2018).*
Officers who detained an arrestee for 14 days despite his protestations of misidentification could have violated the Fourteenth Amendment by not making a reasonable inquiry into whether the person being held was the person listed in an arrest warrant.

Stevens-Rucker v. Columbus, *__F.3d__, Nos. 17-3384 & 3475 (6th Cir., July 10, 2018)(unpub.)*
Officers' failure to personally provide CPR to a victim whom they shot, because they believed that trained medical personnel had been summoned, does not constitute deliberate indifference for Fourteenth Amendment due process purposes. Moreover, an officer need not wait until a person holding a knife is within "striking distance" before shooting him for "excessive force" analysis purposes.

Ayoubi v. Dart, *__F.3d__, No. 17-1561 (7th Cir., Feb. 2, 2018).*
No due process "deliberate indifference" violation occurred by placing an arrestee in the vicinity of other jailed persons who exhibited flu-like symptoms.

Beley v. Chicago, *__F.3d__, No. 17-1449 (7th Cir., Aug. 23, 2018).*
The ability of a homeless sex offender to register under SORA is not a cognizable liberty interest under the Due Process Clause.

Elizarri v. Cook Cty., *__F.3d__, No. 17-1522 (7th Cir., Aug. 24, 2018).*
The theft of a prisoner's property is a "due process" violation, as it deprives one of property with no process at all.

Manley v. Law, *__F.3d__, No. 16-3846 (7th Cir., May 10, 2018).*
The Due Process Clause does not protect a person's interests in a "feeling of fair dealing" in his interactions with the government, in his mental and emotional well-being, or in his right to demand that the government comply with state and local procedural rules.

US v. Whitewater, *__F.3d__, Nos. 17-1258 & 1259 (8th Cir., Jan. 3, 2018).*
Due process was not denied, and a photo line-up was not impermissibly suggestive, simply because the defendant was the only local resident and attendee at the event that led to his arrest and placement in the photo array.

American Bankers v. Heryford, *__F.3d__, No. 16-16103 (9th Cir., Mar. 15, 2018).*
A District Attorney did not violate federal due process principles when he hired private counsel on a contingency-fee basis to pursue state law civil penalties against a defendant.

Gordon v. Orange County, *__F.3d__, No. 16-56005 (9th Cir., Apr. 30, 2018).*
Objective, not subjective, indifference is the correct standard of review in "right to adequate medical care" due process claims.

King v. Los Angeles Cty, *__F.3d__, No. 14-55320 (9th Cir., Mar. 12, 2018).*
A civil detainee in a county jail who was placed in administrative segregation along with criminal detainees under conditions more severe than other civil detainees were confined may have had his substantive due process rights violated.

Percy v. Roseville, *__F.3d__, No. 15-16430 (9th Cir., Feb. 9, 2018).*
The court rejects Fifth and Tenth Circuit opinions to the contrary in finding that the termination of a married police officer for having an extra-marital affair with a fellow officer may violate her Fourteenth Amendment right to privacy and intimate association, when the affair did not impact the performance of her official duties.

Gutteridge v. Oklahoma, *__F.3d__, No. 16-6321 (10th Cir., Jan. 3, 2018).*
State actors are liable under the Due Process Clause and the "special-relationship doctrine" for injuries caused to a foster child only if they fail to exercise professional judgment and do so in a manner that shocks the conscience.

M.A.K. Investment v. Glendale, *__F.3d__, No. 16-1492 (10th Cir., July 31, 2018).*
Due process was violated when a city designated a land parcel as blighted (which gave it the right to begin condemnation proceedings against the parcel and started the clock on the right to seek a review of that decision), but never notified the parcel owner of this designation.

Rife v. Jefferson, *__F.3d__, Nos. 17-7037 & 7038 (10th Cir., Aug. 2, 2018).*
When an arrestee notifies an officer of internal symptoms of a serious medical condition and displays outward signs of the need for medical attention, the officer's failure to seek medical care violates the Fourteenth Amendment.

Villareal v. Bureau of Prisons, *__F.3d__, No. 2017-2275 (Fed. Cir., Aug. 24, 2018).*
Absent a showing of harm to an employee's defense, a decision to terminate an employee three and one half years after the start of an investigation into his workplace conduct does not violate due process.

7. EQUAL PROTECTION

Progressive Credit v. New York, *__F.3d__, No. 17-1251 (2nd Cir, May 1, 2018).*
No equal protection violation existed as a result of a city regulating medallion taxicabs and for-hire vehicles differently, even if new technology allowed patrons of the latter to essentially "hail" a ride, a benefit previously enjoyed only by medallion cabs. The two types of for-hire vehicles were still not similarly situated and a rational basis existed for treating them differently.

Winston v. Syracuse, *__F.3d__, No. 17-1017 (2nd Cir., Apr. 11, 2018).*
A city policy of allowing only landlords to open city water accounts survives an equal protection clause attack. The transitory nature of tenants and the city's ability to place a lien on a landlord's, but not a tenant's, real property in the event of an unpaid water bill, as well as the impossibility of creating separate water accounts for multi-unit apartments measured by a single water meter, provided a rational basis for treating property owners and tenants differently. However, a city policy of requiring a tenant to pay a landlord's unpaid water bill in order to retain or restore water service may violate the Equal Protection Clause and also constitute a substantive due process violation because treating tenants differently because of their landlord's water bill payment status is not rationally related to a legitimate governmental interest.

Newark Cab Assn. v. Newark, *__F.3d__, No. 17-1358 (3rd Cir., Aug. 20, 2018).*
Cab drivers could use the Takings Clause, the Due Process Clause, or the Equal Protection Clause to contest an allegedly unfair situation created by an agreement between a city and Uber that contained less onerous regulations than those imposed upon cabs and limousines. They failed to allege a protectable property interest of which they were unlawfully deprived.

Siena Corp v. Mayor of Rockville, *__F.3d__, No. 16-1732 (4th Cir., Oct.13, 2017).*
A city ordinance prohibiting self-storage facilities within 240 feet of a public school does not violate the Equal Protection Clause.

Cannici v. Melrose Park, *__F.3d__, No. 17-1424 (7th Cir., Mar. 15, 2018).*
The Equal Protection Clause does not apply when a government employee is alleged to have made an individualized, subjective personnel decision in an arbitrary or irrational manner.

Forgue v. Chicago, *__F.3d__, No. 16-2857 (7th Cir., Oct. 17, 2017).*
Police officers speak as public employees and not as private citizens when they file internal complaints of police misconduct, and cannot bring "class of one" equal protection claims based upon their interactions with superiors or co-workers.

McCoy v. Chicago Heights, *__F.3d__, No. 16-3463 (7th Cir., Jan. 22, 2018).*
Absent the use of discriminatory criteria, re-drawing aldermanic districts to retain their historic configuration, while increasing their compactness and easing voter district boundary confusion, does not violate the Equal Protection Clause despite an overall population deviation of 12.65%.

Checker Cab v. Miami-Date Cty., *__F.3d__, No. 17-11955 (11th Cir., Aug. 2018).*
Taxi cab medallions create a license to offer for hire taxicab services, not a right to exclude competition. A regulatory scheme that is rationally related to improving the quality and safety of for-hire transportation services, even if it does not impose the same conditions on Uber and Lyft drivers, does not violate either the Takings Clause or the Equal Protection Clause.

Walker v. City of Calhoun, *__F.3d__, No. 17-13139 (11th Cir., Aug. 22, 2018).*
Indigency determinations for purposes of setting bail are presumptively constitutional against a equal protection and due process challenge if they are made within 48 hours of arrest. Such claims should be analyzed using a rational basis standard.

8. ***EEOC; TITLE VII; DISCRIMINATION***

Hardaway v. Hartford Public Works, *__ F.3d__, No. 16-3074 (2nd Cir., Jan. 12, 2018).*
A Title VII complaint need not plead facts relating to administrative exhaustion - - an affirmative defense.

Haughton v. Town of Cromwell, *__F.3d__, No. 17-2412 (2nd Cir., Aug. 23, 2018)(unpub).*
"Superior writing skills" is a legitimate, non-discriminatory reason for promoting one officer over another.

Jacobs v. Bd. of Ed., *__F.3d__, No. 17-2045 (2nd Cir., Sept. 18, 2018)(unpub).*
Eleven incidents over five years are not severe or pervasive enough to create a hostile work environment under Title VII.

Fallon v. Mercy Catholic Med. Ctr., *__F.3d __, No. 16-3573 (3rd Cir., Dec. 14, 2017).*
Strongly held beliefs about vaccines are not religious in nature and cannot support a Title VII religious discrimination claim.

Hughes v. Allegheny Cty Airport, *__F.3d__, No. 17-2535 (3rd Cir., Mar. 15, 2018) (unpub).*
The placement of an employee on paid leave three months after he engaged in a protected activity is neither an "adverse employment action" nor suggestive of retaliatory animus.

Savage v. Sewell, *__F.3d__, Nos. 17-1636, 17-1779, & 17-1989 (4th Cir., July 13, 2018).*
An African-American Police officer who was at a trial preparation meeting wherein the prosecutor read out loud letters penned by the suspects that contained racial epithets could not use these facts to allege a racially hostile work environment.

Allen v. Envirogreen Landscape, *__F.3d__, No. 16-31247 (5th Cir., Nov. 28, 2017).*
An employee's wage and hour workplace complaint and subsequent discharge do not support his Title VII complaint when his pay and hour discrepancies were not tied to discrimination based upon a protected classification.

Davenport v. Edward D. Jones, *__F.3d__, No. 17-30388 (5th Cir., May 16, 2018).*
Quid pro quo sexual harassment can be premised upon a manager's request that an employee date a customer in return for a work bonus.

Odeh v. Baton Rouge, *__F.3d__, No. 17-30793 (5th Cir., Apr. 24, 2018) (unpub.).*
A written reprimand consisting of a notation in an employment file that "further incidents of the same nature will result in greater discipline", and a job transfer that does not make an employee's job worse, are not "adverse employment actions," even if the employee subjectively considers his new position less desirable.

Pete v. City of Houston, *__F.3d__, No. 17-20293 (5th Cir., Jan. 18, 2018).*
A Title VII retaliation claim can establish "but for" causation using the cat's paw theory of liability.

Rayborn v. Bossier Parish, *__F.3d__, No. 16-30903 (5th Cir., Feb. 2, 2018).*
For Title VII purposes, it is not an adverse employment action to transfer an employee to another job position without loss of pay, benefits, or responsibilities.

Rodriguez v. Brownsville, *__F. Appx.__, No. 17-41115 (5th Cir., June 22, 2018)(unpub).*
Under Title VII, it is not retaliation for a school not to promote a teacher to a position he never applied for, unless it is shown that his application would have been a futile gesture.

EEOC v. Dolgencorp, *__F.3d__, No. 17-6278 (6th Cir., Aug. 7, 2018).*
An employer may not deny an employee a reasonable accommodation to a general policy and then use that same policy as a basis for firing her. Moreover, while a legitimate, non-discriminatory rationale can be a shield against indirect or circumstantial evidence of discrimination, it provides no defense to direct evidence of discrimination.

EEOC v. Harris Funeral Homes, *__F.3d__, No. 16-2424 (6th Cir., Mar. 7, 2018).*
Discrimination on the basis of transgender and transitioning status is discrimination "on the basis of sex" under Title VII.

Kubik v. Central Michigan University, *__F.3d__, No. 16-2783 (6th Cir. Nov. 30, 2017).*
Under Title VII, a five month gap between the end of a pregnancy and an adverse employment action does not preclude relief, but requires additional evidence of discrimination.

Mys v. Michigan, *__F.3d__, No. 17-1445 (6th Cir., Mar. 28, 2018).*
Transferring a state trooper to a post 180 miles from her home to give her a "fresh start" after she filed three hostile work environment claims is illegal retaliation even though she experienced no change in her rank, pay, or duties.

Neff v. East Lansing, *__F.3d__, No. 17-1818 (6th Cir., Mar. 12, 2018)(unpub).*
Choosing a male candidate for promotion due to his better "immeasurable" qualities (leadership skills, team player) over a female candidate with better "measurable" qualities (length of employment, more training classes) is a legitimate, non-discriminatory reason sufficient to defeat a claim of sex discrimination in promotion.

Peeples v. Detroit, *__F.3d__, Nos. 17-1222 & 1250 (6th Cir., June 1, 2018).*
Employee claims of "race" discrimination are not "substantially similar" to another employee's claim of "national origin" discrimination so as to justify applying the "single filing rule" and thus allowing these employees, who had not obtained right to sue letters from the EEOC, to piggy-back on the claim of the employee who had properly obtained a right to sue letter.

Rogers v. Henry Ford Health Svcs., *__F.3d__, No. 17-1998 (6th Cir., July 31, 2018).*
Transferring an employee after she made an EEOC complaint in order to "give her some space" from the person involved in her complaint, when the new position had the same pay but less interaction with senior management, may support a retaliation claim.

Russ v. Memphis Light, *__F.3d__, No. 16-6570 (6th Cir., Dec. 21, 2017).*
A Title VII retaliation claim cannot be premised upon allegations of disability discrimination because Title VII does not prohibit disability discrimination.

EEOC v. Costco, *__F.3d__, Nos. 17-2432 & 2454 (7th Cir., Sept. 10, 2018).*
Under Title VII, an employee who prevails on a hostile work environment claim may be entitled to back pay for the period of unpaid leave she took as a result of workplace harassment just prior to her termination.

Madlock v. WEC Energy Group, *__F.3d__, No. 17-1278 (7th Cir., Mar. 14, 2018).*
The fact that an employee and her fellow employees subjectively feel that her lateral transfer to another position is "humiliating" or "equivalent to a demotion" does not alone make that transfer an "adverse employment action" for purposes of a racial discrimination claim.

Moreland v. Nielsen, *__F.3d__, No. 17-3113 (7th Cir., Aug. 15, 2018).*
An employer who paid two of its employee witnesses for the time and expenses spent in attending a discrimination charge hearing, but not those of an employee testifying against the employer, did not thereby take an "adverse action" against the latter for Title VII retaliation purposes.

Pearson v. Advocate Health, *__F.3d__, No. 17-2815 (7th Cir., Apr. 4, 2018) (unpub.).*
For purposes of a racially hostile work environment claim, "harassment" through yelling, deleting documents, and requiring an employee to cover for other absent employees is not "racial" in character or "racially-based" simply because the employee is the sole Black employee in her department.

Robinson v. Spangler, *__F.3d__, Nos. 16-2291 & 3390 (7th Cir., July 2, 2018).*
A supervisor's use of apophasis to place the word "n_____" in front of a subordinate may have created a hostile work environment if such use was meant to distance the supervisor from liability while still allowing him to derive the desired effect of disturbing the listener.

Wilson v. Brennan, *__F.3d__, No. 17-2378 (7th Cir., Jan. 31, 2018).*
A cancelled day off and one time shift change do not rise to the level of "adverse employment actions" for Title VII purposes.

Humphrey v. Eureka Gardens, *__F.3d__, No. 17-1265 (8th Cir., June 6, 2018).*
For statute of limitations purposes, a resident's Title VII claim of discrimination premised upon a city's decision to install a grinder sewer system, instead of a gravity sewer system, in his home occurred when he was first notified of this decision, and not later when the system was installed or later still when he was required to pay a fee for system upkeep.

Moses v. Dassault Falcon Jet Corp., *__F.3d__, Nos. 16-4343 & 17-1056 (8th Cir., July 3, 2018).*
An employee was fired after receiving his right to sue letter on his hostile work environment claim, but never filed a new EEOC charge based upon his termination. His federal claims relating to his termination were therefore beyond the scope of his prior EEOC charge and subject to dismissal.

Rodriguez v. Wal-Mart, *__F.3d__, No. 17-1737 (8th Cir., June 11, 2018).*
An employer's failure to respond to a settlement demand made 10 days before the statutory deadline for filing an EEOC claim did not excuse missing this deadline for filing such a claim.

Rooney v. Rock Tenn, *__F.3d__, No. 16-3631 (8th Cir., Jan. 9, 2018).*
Title VII does not impose a legal obligation on an employer to provide an employee with an articulated basis for his dismissal at the time of his firing, and an employer is not bound as a matter of law to whatever reasons may have been provided to the employee at that time. An employer may later elaborate on its explanation for an employment decision.

Rush v. Arkansas DWS, *__F.3d__, No. 17-1457 (8th Cir., Dec. 8, 2017).*
A plaintiff likely exhausted her administrative remedies when she submitted an unverified letter to the EEOC and then submitted a properly verified charge of discrimination two days after she received her right to sue letter - - as a charge can be amended to correct technical mistakes.

Scott v. Gino Morana, *__F.3d__, No. 16-56200 (9th Cir., Apr. 27, 2018).*
The 90-day period for filing a Title VII civil suit begins on the date a claimant is given notice of his right to sue by the EEOC, not when he becomes eligible to receive a right to sue letter.

US v. Maricopa County, *__F.3d__, No. 15-17558 (9th Cir., May 7, 2018).*
Title VI authorizes "policymaker liability" for a sheriff's racially discriminatory traffic stop policy.

Christmon v. B&B Airparts, *__F.3d__, No. 17-3209 (10th Cir., May 24, 2018).*
Permitting an employee to not come in on his Sabbath was a reasonable accommodation under Title VII even if it required him to miss out on overtime work that he was not allowed to earn on other days. This accommodation allowed him to avoid a conflict between his work and his religious beliefs.

Garcia v. City of Farmington, *__F.3d__, No. 17-2001 (10th Cir., Oct. 20, 2017).*
It is not unlawful to fire someone for being divisive, frustrating, and controversial.

Laul v Los Alamos Nat. Lab., *__F.3d__, No. 16-2245 (10th Cir., Oct. 23, 2017).*
When a gap of 18 months exists between a complaint of discrimination and an allegedly adverse employment action, additional evidence must be presented to tie the two actions together for purposes of Title VII and ADEA retaliation claims.

Milaim v. Pafford EMS, *__F.3d__, No. (10th Cir., Mar. 30, 2018).*
An overheard comment referring to the plaintiff as a "f*cking Jew" and one incident wherein a supervisor told the plaintiff not to "pull the Jew card" when discussing his availability for work, are isolated incidents that do not establish the presence of a "hostile work environment" on the basis of the plaintiff's religion or Israeli origin.

Montano v. Brennan, *__F.3d__, No. 17-2053 (10th Cir., Dec. 20, 2017).*
Changing one's tone of voice to a "high-pitched victim-like voice" after speaking with a female employee does not show mocking "because of gender" for Title VII purposes.

Nealis v. Coxcom, *__F.3d__, No. 17-5042 (10th Cir., Apr. 24, 2018).*
A 4-month gap between a protected act and employment termination is too long, standing alone, to infer a retaliatory purpose under Title VII.

Panicker v. Compass Grp., *__F.3d__, No. 17-6049 (10th Cir., Oct. 23, 2017).*
Equitable tolling on a Title VII claim is not warranted when a claimant does not receive his right to sue letter from the EEOC because the EEOC sent it to the incorrect address of record he provided to the Commission.

Sotunde v. Safeway, *__F.3d__, No. 16-1494 (10th Cir., Nov. 24, 2017).*
A comment by an employee's manager that he "could call the employee into work whenever he wanted," and that the employee "could not call him racist because he (the manager) hired him," can support a claim of pretext as related to an adverse employment action taken against the employee allegedly because of his race and national origin.

Tabura v. EEOC, *__F.3d__, No. 16-4135 (10th Cir., Jan. 17, 2018).*
Accommodating conflicts between religious Sabbath observances and work schedules through a combination of allowing the use of paid time off and shift swaps may, under some circumstances, constitute a reasonable accommodation under Title VII.

Young v. City of Idabel, *__F.3d__, No. 16-7018 (10th Cir., Jan. 17, 2018).*
Insubordination and disrespect, without a showing of a racial or other unlawful bias, does not create a hostile work environment for purposes of Title VII.

EEOC v. Catastrophic Management, *__F.3d__, No. 14-13482 (11th Cir., Dec. 5, 2017).*
Banning dreadlocks in the workplace is a neutral grooming policy that does not constitute race-based discrimination. Dreadlocks are not an immutable characteristic of African-Americans.

Gogel v. Kia Motors, *__F.3d__, No. 16-16850 (11th Cir., Sept. 24, 2018).*
When a human resources officer tries to use her employer's internal reporting system and only gives a fellow employee the name of a workplace discrimination attorney after such efforts proved insufficient to address the employee's complaint, such efforts furthered the purposes of Title VII and constituted protected activity.

Patterson v. Walgreen Co., *__F.3d__, No. 16-16923 (11th Cir., Mar. 9, 2018)(unpub).*
A Seventh Day Adventist's demand that his employer guarantee that he will never have to work on his Sabbath is not a reasonable accommodation request, as it imposes an undue burden on his employer's business operation.

Smelter v. Southern Home Care Svcs., *__F.3d__, No. 16-16607 (11th Cir., Sept. 24, 2018).*
The fact that an employee does not report racist comments to her supervisor does not necessarily prove that she did not perceive her work environment as hostile or abusive.

Wilcox v. Corrections Corp., *__F.3d__, No. 17-11919 (11th Cir., June 25, 2018).*
For purposes of employer liability for workplace harassment, an employer's actions were sufficiently prompt when it immediately ordered an alleged perpetrator not to be around the complainant, interviewed the complainant six weeks later and fired the perpetrator two weeks after the complainant's interview.

Trinkl v. MSPB, *__F.3d__, No. 2017-1378 (Fed. Cir., Mar. 30, 2018).*
In light of an employee's allegation that he received multiple threats of workplace violence at the hands of his supervisors (which intensified his PTSD), forcing him to thereafter continue working with those supervisors may create a "hostile work environment."

9. ADA;REHABILITATION ACT

Sepulveda-Vargas v. Caribbean Restaurants, *__F.3d__, No. 16-2451 (1st Cir., Apr. 30, 2018).*
Where rotating shifts are an essential function of a job, an employee suffering from depression and PTSD who insists upon one permanent shift is not a "qualified individual" under the ADA.

Demirayak v. New York City, *__F.3d__, No. 17-3709 (2nd Cir., Aug. 24, 2018)(unpub).*
The unavailability of one of several ADA compliant bathrooms does not support an ADA or RA claim.

Berardelli v. Allied Svcs. Inst., *__F.3d__, No. 17-1469 (3rd Cir., Aug. 14, 2018).*
Under the Rehabilitation Act, an epileptic student's request to bring her service dog to school as an accommodation was *per se* reasonable absent exceptional circumstances.

McGann v. Cinemark, *__F.3d__, No. 16-2160 (3rd Cir., Oct. 6, 2017).*
A movie theater may be required under the ADA to provide ASL tactile interpreters to patrons with vision, hearing, and speech disabilities.

Molden v. East Baton Rouge Parish S.B., *__F.3d__, No. 17-30344 (5th Cir., Oct. 6, 2017).*
A school's alleged failure to engage in the interactive process did not violate the ADA when the school did, in fact, provide a disabled employee with a reasonable accommodation by reassigning him to a vacant job position that did not require prolonged standing, even if the new position caused him to lose his seniority and work longer hours.

Providence Behavioral v. Grant Road, *__F.3d__, No. 17-20571 (5th Cir., Aug. 28, 2018).*
The denial of utility service to a proposed facility that would serve disabled persons does not amount to a reasonable accommodation refusal under either the ADA or FHA, as it did not create a situation where disabled persons had an unequal ability to use and enjoy the facility.

Valentine v. Varco, *__F.3d__, No. 17-20191 (5th Cir., Oct. 13, 2017).*
For purposes of a "failure to rehire" claim under the ADA and ADEA, hiring a non-disabled person for a similar but different job position that contained additional primary responsibilities does not establish that the employer continued to seek job applicants with the plaintiff's qualifications after failing to rehire him.

Williams v. Torrent County, *__F.3d__, No. 16-11804 (5th Cir., Jan. 18, 2018).*
An employee's ability to perform her job does not prevent a finding of disability under the ADA.

Barlia v. MWI Veterinary Supply, *__F.3d__, No. 17-1185 (6th Cir., Jan. 9, 2018).*
A person suffering from hypothyroidism can be disabled for ADA purposes.

Bedford v. Michigan, *__F.3d__, No. 17-1344 (6th Cir., Jan. 30, 2018).*
The ADA does not recognize "litigation stress" as a disability.

Brown v. Nashville, *__F.3d__, No. 17-5603 (6th Cir., Feb. 1, 2018).*
Work restrictions that hamper an employee in the performance of his job duties do not alone establish a "hostile work environment" under the ADA.

Bullington v. Bedford Cty., *__F.3d__, No. 17-5647 (6th Cir., Sept. 25, 2018).*
The ADA does not preclude the bringing of a parallel Section 1983 equal protection claim for alleged disability discrimination. However, an ADA claim was properly dismissed for the failure to file a claim with the EEOC, with the court rejecting an equitable tolling argument premised upon the alleged incorrect advice of the claimant's counsel.

Cooley v. East Tennessee Human Resource, *__F.3d__, No. 17-5355 (6th Cir., Dec. 22, 2017).*
Under the ADA, when an employee would not have accepted an accommodation, she cannot contend that that accommodation would have been reasonable if provided. Moreover, while additional unpaid leave can be a reasonable accommodation, it is so only when an employee can demonstrate a clear prospect for recovery and an estimated date on which she can resume her essential job duties.

Fritz v. Allegon Cty., *__F.3d__, No. 17-2145 (6th Cir., Aug. 29, 2018)(unpub).*
Claiming to have a "diagnosed invisible disability" that substantially limits one's major life activities does not allege a cognizable disability under the ADA. Moreover, having "anxiety during court proceedings" does not support an ADA complaint.

Get Back Up v. Detroit, *__F.3d__, No. 17-1824 (6th Cir., Mar. 30, 2018)(unpub).*
Merely showing that a local BZA, when considering whether to grant a conditional use permit to a residential rehabilitation center that wanted to house hundreds of recovering addicts and alcoholics, hears from residents who harbor discriminatory animus against the center does not unlawfully taint its subsequent decision for ADA, FHA, and RA purposes when it relies upon non-discriminatory factors (trash and debris, disruptive behavior, number of addicts/alcoholics housed, fears of lower property values) when making its decision.

McDonald v. UAW-GM Center, *__F.3d__, No. 17-1875 (6th Cir., June 21, 2018)(unpub.)*
An employee who requested a longer lunch break so that she could work-out longer in the employee's gym to accommodate her alleged disability did not establish an ADA claim when she failed to show that a longer lunch break was necessary to accommodate her disability.

Koty v. DuPage Cty., *__F.3d__, No. 17-3159 (7th Cir., Aug. 16, 2018).*
An officer's inability to drive one model of car due to a hip injury is not a disability under the ADA. Transferring him to court duty to accommodate his hip pain after he filed an EEOC complaint was not unlawful retaliation even if some officers considered court duty to be "less prestigious".

Rowlands v. UPS, *__F.3d__, No. 17-3281 (7th Cir, Aug. 24, 2018).*
Under the ADA, an employee can be disabled even if she is cleared to work without restrictions.

Wright v. R L Liquor, *__F.3d__, No. 17-1133 (8th Cir., Apr. 4, 2018).*
Under Title III of the ADA, a plaintiff must present evidence that a barrier removal method he suggests is readily achievable under the circumstances.

Faidley v. UPS, *__F.3d__, No. 16-1073 (8th Cir., May 11, 2018).*
Having to work more than eight hours a day can be an "essential function" of a job, and an employer is not required to reallocate "essential" job functions as an ADA accommodation.

EEOC v. BNSF Railway, *__F.3d__, No. 16-35457 (9th Cir., Aug. 29, 2018).*
Requiring a job applicant perceived to be disabled to submit an MRI exam at his own expense, as part of a post-offer medical review and as a condition of employment, violates the ADA.

Gardenhire v. Johns Manville, *__F.3d__, No. 17-3048 (10th Cir., Feb. 7, 2018).*
Allowing an injured employee almost eight months of leave for medical care and treatment before terminating his employment constitutes a reasonable accommodation under the ADA.

Mielnicki v. Wal-Mart, *__F.3d__, No. 17-1396 (10th Cir., June 20, 2018).*
Under the ADA, a job function does not become "non-essential" simply because an employer, for an extended period of time, excuses an employee from performing it.

Billups v. Emerald Coast, *__F.3d__, No. 17-10391 (11th Cir., Oct. 26, 2017).*
Nothing in the ADA requires an employer to wait for an indefinite period of time for an accommodation to accomplish its intended purpose. A reasonable accommodation must presently or in the immediate future allow an employee to perform her essential job functions.

Boston v. Salvation Army, *__F.3d__, No. 16-11788 (11th Cir., July 31, 2018).*
Under the ADA, in the absence of a specific accommodation request and denial, an employee cannot establish a discrimination claim based upon her employer's "intent" to withhold an accommodation.

Crane v. Lifemark Hosp., *__F.3d__, No. 16-17061 (11th Cir., Aug. 2, 2018).*
A hospital's failure to provide an ASL interpreter for a deaf patient may prevent the patient from effectively communicating important medical information, and thus violate the ADA and RA.

Snead v. FAMU, *__F.3d__, No. 17-10338 (11th Cir., Feb. 21, 2018).*
Reducing an employee's work shift from 12 to 8 hours can be a reasonable accommodation request under the ADA when the longer hours raise the employee's blood pressure and cause him to experience symptoms related to his hypertension.

10. FMLA; PDA; EPA

D'Onofrio v. Vacation Publications, *__F.3d__, No. 16-20628 (5th Cir., Apr. 23, 2018).*
Giving employees the un-coerced option to continue working while on FMLA leave is not "interference" with FMLA rights so long as it is not a condition of continued employment.

Groening v. Glen Lake, *__F.3d__, No. 17-1848 (6th Cir., Mar. 12, 2018).*
An employer's periodic criticism of an employee's actions does not amount to a constructive discharge under the FMLA. Moreover, employers are able to investigate their employees for wrongdoing, even when that wrongdoing is related to protected FMLA leave, without thereby "interfering" with an employee's FMLA rights.

McClellan v. Midwest Mach., *__F.3d__, No. 17-1992 (6th Cir., Aug. 16, 2018).*
The common law "tender back" doctrine does not apply to claims brought under Title VII or the Equal Pay Act.

Freelain v. Village of Oak Park, *__F.3d__, No. 16-4074 (7th Cir., Apr. 30, 2018).*
Granting an employee's FMLA right to unpaid leave cannot constitute a retaliatory "adverse action" under the FMLA or ADA absent some evidence that an employer targeted the employee for unpaid rather than paid leave because the employee asserted his statutory rights.

Guzman v. Brown Cty, *__F.3d__, No. 16-3599 (7th Cir., Mar. 7, 2018).*
Having sleep apnea, without more, does not establish a "serious health condition" under the FMLA.

Balding v. Sunbelt Steel, *__F.3d__, No. 16-4095 (10th Cir., Mar. 13, 2018).*
The *McDonnell Douglas* burden-shifting analysis does not apply to FMLA interference claims -- for which no pretext analysis is necessary.

Shields v. USPS, *__F.3d__, No. 17-1394 (10th Cir., June 28, 2018).*
A plaintiff who states the elements of an EPA claim in her complaint need not also therein allege "willfulness", in anticipation of a statute of limitations defense, for purposes of a Rule 12(b)(6) dismissal motion.

Vira v. Crowley Liner, *__F.3d__, No. 16-17251 (11th Cir., Feb. 2, 2018).*
A 13-day gap between a protected activity and an adverse employment decision is close enough to suggest the causal relationship needed to establish a prima facie case of FMLA retaliation.

Gordon v. US, *__F.3d__, No. 2017-1845 (Fed. Cir., Sept. 7, 2018).*
Under the EPA, plaintiffs must show that their complaint of an illegal pay differential is based upon sex. They cannot merely insist that an "inference" of sex discrimination exists based upon the statutory elements of their *prima facie* EPA case.

11. FLSA; OSHA

Rodriguez-Depena v. Parts Authority, *__F.3d__, No. 16-3396 (2nd Cir., Dec. 12, 2017).*
Claims under the FLSA are subject to arbitration.

Wang v. Hearst Corp., *__F.3d__, No. 16-3302 (2nd Cir., Dec. 8, 2017).*
Mixed inferences as to *Glatt* "primary beneficiary test" factors do not foreclose a summary judgment ruling on a FLSA minimum wage claim brought by unpaid student interns.

US DOL v. Am. Future Systems, *__F.3d__, No. 16-2685 (3rd Cir., Oct. 13, 2017).*
The FLSA requires employers to pay employees for all rest breaks of 20 minutes or less even if the employees are free from any work-related duties during these time periods.

Bridges v. Empire Scaffold, *__F.3d__, No. 16-41493 (5th Cir., Nov. 9, 2017).*
For FLSA liability purposes, the court rejects the contention that the "predominant benefit test" is the correct legal framework to apply in analyzing the compensability of pre-shift work time under the Portal-to-Portal Act.

Mitchell v. Mills, *__F.3d__, No. 17-40737 (5th Cir., July 10, 2018).*
In a wage discrimination claim, a plaintiff must, absent direct evidence of discrimination, and consistent with the *McDonnell Douglas* framework, establish as part of his *prima facie* case that he was paid less than another employee not in his protected class. In doing so, the comparator employee's work circumstances must be "nearly identical" to the plaintiff's work circumstances.

Acosta v. Cathedral Buffet, *__F.3d__, No. 17-3427 (6th Cir., Apr. 16, 2018).*
To be considered an "employee" within the meaning of the FLSA, a worker must expect compensation - - volunteers have no such expectation.

Gaffers v. Kelly Svcs., *__F.3d__, No. 16-2210 (6th Cir. Aug. 15, 2018).*
Neither the NLRA nor the FLSA make an individual arbitration agreement unenforceable.

Hughes v. Gulf Interstate, *__F.3d__, No. 17-3112 (6th Cir., Dec. 19, 2017).*
Under the FLSA, to be exempt from overtime, an employee's qualifying minimum weekly salary must be guaranteed, regardless of actual hours worked.

Lauderdale v. IDHS, *__F.3d__, No. 16-3830 (7th Cir., Nov. 30, 2017).*
Under the Equal Pay Act, basing current pay on an employee's prior salary is not discriminatory unless discrimination led to the prior lower salary.

Douglas v. Xerox, *__F.3d__, No. 16-35425 (9th Cir., Nov. 15, 2017).*
In a case of first impression in the Circuit, the court holds that, under the FLSA, the proper unit for determining minimum wage compliance is the workweek as a whole and not each individual hour within a workweek.

Marsh v. Alexander, *__F.3d__, Nos. 15-15791, 15794, 16561, 16659 & 16-15003, 15004, 15005, 15118 & 16033 (9th Cir., Sept. 18, 2018).*
Under the FLSA, an employer is required to pay the full minimum wage to a tipped employee both for the time spent working at tasks unrelated to his tipped occupation and whenever the employee spends over 20% of his time per week on tasks related to his tipped occupation but that, in and of themselves, do not produce tips.

Asalde v. First Class Parking, *__F.3d__, No. 16-16814 (11th Cir., Aug. 3, 2018).*
Valet tickets used by valet parking attendants could constitute "materials" under the FLSA's "handling clause" and thus provide "enterprise coverage" under the Act.

Empire Roofing v. OSHA, *__F.3d__, No. 16-17309 (11th Cir., Oct. 19, 2017).*
Riding in an aerial lift is the same as "working from an aerial lift" for OSHA fall protection purposes.

Llorca v. Sheriff, Collier Cty., *__F.3d__, No. 17-10616 (11th Cir., June 27, 2018).*
Under the FLSA, deputies are not entitled to compensation for the time they spent donning and doffing their police gear and driving to and from work in their squad cars.

Mickles v. Country Club, *__F.3d__, No. 16-17484 (11th Cir., Apr. 18, 2018).*
An opt-in plaintiff in a FLSA class action need do no more than file a written consent form with the court to obtain party-plaintiff status.

12. MILITARY; USERRA

Mace v. Willis, *__F.3d__, No. 17-2130 (8th Cir., July 26, 2018).*
USERRA applies to returning veterans even if they had not been guaranteed any work assignments during their pre-service employment. Even temporary employees are covered by USERRA.

Scudder v. Dolgencorp, *__F.3d__, No. 17-2941 (8th Cir., Aug. 17, 2018).*
Under USERRA, a returning veteran can "seek reemployment" by applying for a position of employment with his former employer - - he need not apply for the same job position he left to go on active duty. Moreover, a veteran considered "disabled" under the Social Security Act could still be qualified for work with a reasonable accommodation and therefore entitled to reemployment under USERRA.

Huhmann v. Federal Express, *__F.3d__, No. 15-56744 (9th Cir., Nov. 2, 2017).*
The "escalator principle" and the "reasonable certainty test" are both applicable to "benefit of employment" claims brought under Section 4311(a) of USERRA.

McGreevey v. PHH Mortgage, *__F.3d__, No. 16-36045 (9th Cir., July 26, 2018).*
The federal "catch-all" four-year statute of limitations applies to private suits brought under the Servicemembers Civil Relief Act.

Wood v. Kelly, *__F.3d__, No. 17-11055 (11th Cir., Dec. 14, 2017).*
A plaintiff cannot borrow USERRA's unlimited limitations period and attach it to his Section 1983 claims asserting USERRA violations.

13. ADEA

EEOC v. Baltimore Cty., *__F.3d__, No. 16-2216 (4th Cir., Sept. 19, 2018).*
Upon a finding of liability, back pay awards are mandatory legal remedies under the ADEA.

Kleber v. CareFusion, *__F.3d__, No. 17-1206 (7th Cir., Apr. 26, 2018).*
The ADEA's "disparate impact" provision applies to both employees and job applicants.

Skiba v. Illinios Central, *__F.3d__, No. 17-2002 (7th Cir., Mar. 8, 2018).*
An ADEA retaliation claim fails when the underlying complaint does not directly or indirectly suggest that the claimant is protesting age discrimination, but instead complains of "personality conflicts" and an "abusive and disrespectful supervisor".

Hankishiyev v. Arup Laboratories, *__F.3d__, No. 17-4146 (10th Cir., Apr. 25, 2018).*
The Court refuses to read age discrimination allegations taken from an EEOC intake questionnaire into an EEOC charge when the charge itself did not allege ADEA age discrimination.

Drielak v. Pruitt, *__F.3d__, No. 16-5299 (D.C. Cir., May 15, 2018).*
Not inviting the plaintiff to a project meeting and giving his subordinate two projects without his permission are slights that do not constitute "adverse employment actions" for purposes of an ADEA claim.

Steele v. Mattis, *__F.3d__, No. 16-5236 (D. C. Cir., Aug. 10, 2018).*
Unless a matter involves a distinctly academic judgment, nothing in the ADEA supports the automatic imposition of a heightened pretext burden just because the defendant is an academic institution.

14. FHA; FHAA

Vorcheimer v. Philadelphia Owner's Assn., *__F.3d__, No. 17-1738 (3rd Cir., Sept. 5, 2018).*
A disabled tenant's need for ready access to her walker did not, under the Fair Housing Amendments Act, require her to be accommodated by allowing her to keep her walker in the lobby, since other alternatives were available and therefore this housing accommodation was not a "necessity."

Giron de Reyes v. Waples, *__F.3d__, No. 17-1723 (4th Cir., Sept. 12, 2018).*
A landlord may have violated the FHA when he required all of his tenants to prove that they were legal residents of the USA, as Latinos were disparately impacted by the policy due to their race or national origin.

Wetzel v. Glen St. Andrew Living Comm., *__F.3d__, No. 17-1322 (7th Cir., Aug. 27, 2018).*
The FHA's anti-retaliation provisions do not require a proof of discriminatory animus. A landlord can be liable for a hostile-housing claim if it has knowledge of severe harassment and is deliberately indifferent to it.

Cohen v. Monroe Cty., *__F.3d__, No. 17-15552 (11th Cir., Sept. 20, 2018)(unpub).*
Under the FHA, a county's low income program, requiring 70% of a resident's household income come from gainful employment in the county in order for the resident to be eligible for an apartment in one of its low income housing units, is lawful. It would not be a "reasonable accommodation" to allow a resident to "waive" this requirement.

15. RLUIPA; RFRA

Adorers of Blood v. FERC, *__F.3d__, No. 17-3163 (3rd Cir., July 25, 2018).*
A Religious Freedom Restoration Act claim by a religious order alleging that allowing a pipeline to cross their property violated its deeply held religious belief in caring for the Earth as God's creation was dismissed as an improper attempt to circumvent the normal procedures for challenging pipeline projects.

Tree of Life v. Upper Arlington, *__F.3d__, No. 17-4190 (6th Cir., Sept. 18, 2018).*
For purposes of a RLUIPA challenge to a zoning ordinance, "revenue maximization" is a legitimate regulatory purpose. Moreover, a comparator for an "equal terms" claim must be similarly situated with regard to the regulation at issue, and the Act's "equal terms" requirement does not require municipalities to extend preferential treatment to religious entities.

Reed v. Bryant, *__F.3d__, No. 17-6082 (10th Cir., Dec. 13, 2017).*
Under RLUIPA, the temporary suspension of a prisoner's kosher diet may constitute a "substantial burden" on his religious exercise.

Robertson v. McCullough, *__F.3d__, No. 17-3276 (10th Cir., June 28, 2018).*
Prohibiting a prisoner from donating a kidney to a fellow prisoner does not violate RLUIPA even if the prisoner felt called by God to do so.

Archdiocese v. Washington MATA, *__F.3d__, No. 17-7171 (D.C. Cir., July 31, 2018).*
The court refuses to enjoin a transit authority rule prohibiting advertisements that promote or oppose religion on the theory that the rule violates the Religious Freedom Restoration Act, since bus exteriors are a non-public forum.

16. SCHOOLS; IDEA; TITLE IX

Doe v. Boyertown Area School Dist., *__F.3d__, No. 17-3113 (3rd Cir., June 15, 2018).*
A preliminary injunction was denied to students who brought privacy and Title IX claims against their school district for allowing transgender students to use bathrooms and locker rooms inconsistent with their birth gender.

H.E. v. Palmer Leadership Learning Partners, *__F.3d__, No. 17-1271 (3rd Cir., Oct. 11, 2017).*
Under the IDEA, a prevailing party can have its attorney fees paid even if it only wins interlocutory procedural relief.

K.D. v. Dowingtown Area Sch. Dist., *__F.3d__, No. 17-3065 (3rd Cir., Sept. 18, 2018).*
The IDEA does not require advancement at a grade-level pace for students not fully integrated into regular classrooms.

Abbott v. Pastides, *__F.3d__, No. 17-1853 (4th Cir., Aug. 16, 2018).*
A school requiring an event organizer to attend a meeting to discuss complaints about the event did not thereby chill his speech in violation of the First Amendment.

E.W. v. Dolgos, *__F.3d__, No. 16-1608 (4th Cir., Feb. 12, 2018).*
A school resource officer who handcuffed a calm and compliant elementary school student because she allegedly fought with another female student three days earlier did not engage in "excessive force".

Krawietz v. Galveston Indep. Sch. Dist., *__F.3d__, No. 17-40461 (5th Cir., Aug. 17, 2018).*
A school violated its "child find" duty under the IDEA by its 4-month delay in complying with that duty.

Littell v. Houston Indep. Sch. Dist, *__F.3d__, No. 16-20717 (5th Cir., June 27, 2018).*
A school district that provided no training on how to conduct a lawful search may be liable for the strip search of 22 female students at the direction of a teacher looking for a missing $50.

Doe v. Baum, *__F.3d__, No. 17-2213 (6th Cir., Sept. 7, 2018).*
To satisfy the Due Process Clause, if a public school has to choose between competing narratives to resolve a case, it must give an accused student or his agent the right to cross examine the accuser and adverse witnesses in the presence of a neutral fact-finder.

Doe v. Miami U., *__F.3d__, No. 17-3396 (6th Cir., Feb. 9, 2018).*
An equal protection claim may lie when a student shows that he was disciplined for sexual misconduct but his female partner, who also engaged in reciprocal sexual misconduct, was not punished.

M.D. v. Bowling Green Indep. Sch., *__F.3d__, No. 17-5248 (6th Cir., Oct. 6, 2017).*
A school district was not deliberately indifferent to a female student's rights under Title IX when it sent the student who had groped her when she was sleeping on a school bus to another school for a semester and then let him return on the condition that he have no further contact with her.

Sophie G. v. Wilson Cty. Sch., *__F.3d__, No. 17-6209 (6th Cir., July 12, 2018)(unpub.)*
The mother of a student whose child was denied access to an after-school daycare because the child was not potty trained need not meet the IDEA's exhaustion requirements before bringing an ADA claim, because after-school care was separate and apart from the child's education.

Freedom from Religion v. Concord, *__F.3d__, Nos. 17-1683 & 1591 (7th Cir., Mar. 21, 2018).*
A school's winter program did not violate the First Amendment when it included a brief manger scene and two Christian Christmas songs in an otherwise secular performance.

Nelson v. Charles City Comm. Schls., *__F.3d__, No. 17-1164 (8th Cir., Aug. 15, 2018).*
If an RA complainant seeks relief available under IDEA, he must first exhaust IDEA's administrative remedies before bringing an RA lawsuit.

Smith v. Rockwood R-VI Sch. Dist., *__F.3d__, No. 17-2260 (8th Cir., July 11, 2018).*
Parents must first exhaust their administrative remedies before bringing a Section 1983 and Rehabilitation Act complaint alleging disability discrimination, when the gravamen of their complaint is the denial of a public education subject to relief under the IDEA.

Eagle Point v. Jackson County, *__F.3d__, No. 15-35704 (9th Cir., Jan. 26, 2018).*
A school policy prohibiting picketing on school property, striking teachers from coming onto school grounds even for non-strike-related purposes, and signs on school grounds without prior approval is strike-related, not government speech, non-neutral, and therefore an improper restriction on First Amendment free speech that is not reasonably needed to fulfill a legitimate need in this non-public forum.

Freedom from Religion v. Chino Valley, *__F.3d__, No. 16-55425 (9th Cir., July 25, 2018).*
A school board's policy and practice of using religious invocations to start the open portions of its board meetings violates the Establishment Clause and is not within the "legislative prayer" exception, especially since school children are often required to attend their meetings.

Frudden v. Pilling, *__F.3d__, No. 15-15448 (9th Cir., Dec. 11, 2017).*
An elementary school's student uniform policy, requiring the wearing of shirts containing the motto "Tomorrow's Leaders," is compelled speech that cannot survive a strict scrutiny analysis and thus violates the First Amendment, despite its exemption for uniforms of other organizations (Girl Scouts, Boy Scouts).

Scott v. San Bernardino Cty., *__F.3d__, No. 16-55518 (9th Cir., Sept. 10, 2018).*
Qualified immunity was denied to a school resource officer who, in violation of the Fourth Amendment, arrested without probable cause a group of middle school students in order to get their attention and teach them a lesson.

A.P. v. Lewis Palmer Sch. Dist., *__F.3d__, No. 17-1114 (10th Cir., Apr. 2, 2018).*
An ADA claim brought for student disability-related bullying was properly dismissed for a failure to exhaust administrative remedies, as required by the IDEA.

Durbrow v. Cobb Cty, *__F.3d__, No. 17-11400 (11th Cir., Apr. 17, 2018).*
Claims brought under the ADA and RA claiming student disability-based discrimination must first be administratively exhausted under the IDEA.

Halley v. Huckaby, *__F.3d__, Nos. 16-7079, 7080, & 7081 (10th Cir., Aug. 27, 2018).*
The Fourth Amendment requires the police to have reasonable suspicion of imminent abuse in order to seize a minor child while the child is at school. Moreover, Fourteenth Amendment "familial association" claims are grounded in the "shocks the conscience" approach to substantive due process claims challenging executive action.

Fernandez v. Miami-Dade Sch. Bd., *__F.3d__, No. 17-14319 (11th Cir., Aug. 10, 2018).*
A principal and assistant principal acted pursuant to their official duties, for a First Amendment purposes, when they undertook efforts to convert their public school into a charter school.

Z.B. v. D.C., *__F.3d__, No. 16-7113 (D. C. Cir., May 1, 2018).*
An inadequate IEP cannot be sustained simply because the school system as a whole may be able to provide more than the IEP provides. A plaintiff must only prove the shortcomings of the IEP the school actually offered.

17. COMMERCE CLAUSE;TRANSPORTATION

Del Grosso v. STB, *__F.3d__, No. 17-1794 (1st Cir., Aug. 6, 2018).*
Under the Interstate Commerce Commission Termination Act, the actions of vacuuming, screening, bagging, palletizing and shrink-wrapping wood pellets qualify as "transportation by rail carrier" that fall within the Surface Transportation Board's exclusive jurisdiction.

Daniels Sharpsmart v. Smith, *__F.3d__, No. 17-16424 (9th Cir., May 2, 2018).*
The Dormant Commerce Clause prevents a state from dictating the method by which waste generated in-state but treated out-of-state is disposed of when such disposal is in conformance with the laws of the state in which the waste is disposed.

US Chamber of Commerce v. Seattle, *__F.3d__, No. 17-35640 (9th Cir., May 11, 2018).*
The dismissal of a claim that an ordinance that authorized a collective bargaining process between Uber, Lyft and independent for-hire drivers was pre-empted by the Sherman Act as sanctioning the price-fixing of ride referral service fees by private cartels of drivers is reversed.

18. JAILS; PRISONS; EIGHTH AMENDMENT

Rinaldi v. US, *__F.3d__, No. 16-1080 (3rd Cir., Sept. 12, 2018).*
Administrative remedies are "not available" under the PLRA when prison officials inhibit an inmate from reporting violations to them by threats of retaliation and bodily harm.

Hanrahan v. Mohr, *__F.3d__, No. 17-4316 (6th Cir., Sept. 26, 2018).*
Content neutrality is not required in a prison regulation. A rule forbidding face-to-face live recorded Press interviews with prisoners does not violate the First or Fourteenth Amendments.

McGaw v. Sevier County, *__F.3d__, No. 16-6729 (6th Cir., Oct. 31, 2017).*
Jail officers who relied upon a nurse's opinion that it was safe for an inmate to sleep off his alcohol and drug intoxication in a holding cell were entitled to qualified immunity on an Eighth Amendment "deliberate indifference" claim brought after the inmate died of a drug and alcohol-induced heart attack.

Cobian v. Mclaughlin, *__F.3d__, No.16-3141 (7th Cir., Nov. 20, 2017).*
An Eighth Amendment claim of "deliberate indifference" survives dismissal when a prisoner was allegedly forced to remain in a cell covered with another prisoner's feces for a month.

Hotchkiss v. David, *__F.3d__, No. 16-3934 (7th Cir., Nov. 1 2017).*
Providing a prisoner with pain relievers to mask, but not address, his underlying ailment may constitute "deliberate indifference" under the Eighth Amendment.

Perkins v. Pfister, *__F.3d__, No. 16-3190 (7th Cir., Oct. 6, 2017).*
The Eighth Amendment does not prohibit a jail from requiring inmates to navigate stairs with their hands handcuffed behind their back during periods of heightened security.

Sebolt v. Samuels, *__F.3d__, No. 17-2845 (7th Cir., Sept. 6, 2018)(unpub).*
A prisoner does not have an unrestricted First or Sixth Amendment right to consult with his counsel or to receive publications by electronic mail, so long as any restrictions of the same reasonably relate to legitimate penological interests.

Walker v. Clayton, *__F.3d__, No. 16-2898 (7th Cir., Mar. 26, 2018)(unpub).*
Restricting a civil detainee's access to the general jail population for nine days while police investigated his possible witness tampering did not violate due process nor deprive him of liberty, because this restriction was for managerial, non-punitive, reasons.

Ecclesiastical Washington v. Denny, *__F.3d__, No. 17-2747 (8th Cir., Aug. 13, 2018).*
A correctional facility violated the Eighth Amendment when it did not take reasonable steps to abate the risk of secondhand smoke to an asthmatic prisoner.

McAdoo v. Martin, *__F.3d__, No. 17-1952 (8th Cir., Aug. 7, 2018).*
Under the PLRA, an inmate need not show that his physical injury resulted from an unconstitutional action to avoid the dismissal of his claim on frivolousness grounds.

Simpson v. Cape Girardeau County, *__F.3d__, No. 16-3682 (8th Cir., Jan. 2, 2018).*
A jail's "postcard-only" incoming mail policy does not violate either the First or Fourteenth Amendment.

Townsend v. Murphy, *__F.3d__, No. 17-2783 (8th Cir., July 31, 2018).*
A prisoner's formal grievance procedure is "unavailable" to an inmate, for PLRA purposes, if a guard misleads the inmate as to the correct grievance process and the inmate is unable to independently verify the proper procedure.

Crime Justice v. Honea, *__F.3d__, Nos. 15-16119 & 16-17195 (9th Cir., Nov. 29, 2017).*
A jail's ban on unsolicited commercial mail serves a valid penological purpose and does not violate the First Amendment.

Entler v. Gregoire, *__F.3d__, No. 14-35053 (9th Cir., Oct. 6, 2017).*
The First Amendment does not allow prisoners to be punished for orally threatening litigation if their grievances are not addressed.

Hoard v. Hartman, *__F.3d__, No. 16-35738 (9th Cir., Sept. 13, 2018).*
An Eighth Amendment "excessive force" claim does not require proof that an abuser derived pleasure from his actions towards the person abused.

Martin v. Boise, *__F.3d__, No. 15-35845 (9th Cir., Sept. 4, 2018).*
A city ordinance violated the Eighth Amendment by imposing criminal sanctions on homeless persons sleeping on public property when no alternative shelter options were available to them.

Burnett v. Allbaugh, *__F.3d__, No. 17-6133 (10th Cir., Nov. 7, 2017).*
There is no independent constitutional right to a prison's administrative grievance procedures.

Crocker v. Glanz, *__F.3d__, No. 18-5038 (10th Cir., Sept. 24, 2018).*
For purposes of a Fourteenth Amendment "deliberate indifference" claim, a jail administrator who was aware that the jail's mental health services were inadequate was not thereby aware of the "specific risk" of sexually predatory prisoners attacking mentally vulnerable prisoners.

Crosby v. Fox, *__F.3d__, No. 18-1001 (10th Cir., Mar. 22, 2018).*
Obscene back talk from a prisoner to a guard is not First Amendment protected speech.

Dawson v. Jefferson County, *__F.3d__, No. 17-1118 (10th Cir., Mar. 9, 2018)(unpub).*
A pretrial detainee's right to be free from detention after he posts his court-ordered bond, but is awaiting the fulfillment of another court-ordered release condition, is not a fundamental right, and his substantive due process rights are not violated by a policy that requires him to remain in jail over the weekend until he can be fitted with a GPS unit the following Monday.

Fletcher v. Schwartz, *__F.3d__, No. 18-1013 (10th Cir., Aug. 2, 2018).*
A staff member's telling an inmate to "stop arguing" with her does not violate the inmate's First Amendment right of free speech – due to the penological need to maintain order.

Hockaday v. Core Civic, *__F.3d__, No. 18-1093 (10th Cir., July 16, 2018).*
No due process violation occurred when a prison administrator failed to make arrangements for a prisoner to participate in a judicial telephonic conference when the court cancelled the call for an unrelated reason.

Leiser v. Moore, *__F.3d__, No. 17-3206 (10th Cir., Sept. 6, 2018).*
Qualified immunity on a right of privacy claim is granted to a government employee who disclosed a prisoner's medical condition to family and friends, as the law is not clearly established as to whether a public employee's disclosure to his friends and family that a prisoner has cancer violates the prisoner's constitutional rights.

Poore v. Glanz, *__F.3d__, No. 16-5164 (10th Cir., Feb. 5, 2018).*
A sheriff violated a female inmate's Eighth Amendment rights when, knowing that juvenile female inmates are at a heightened risk of sexual abuse, nevertheless chose to house her in a part of the jail that was isolated, unmonitored, and lightly staffed, which facilitated her sexual abuse.

Rascon v. Douglas, *__F.3d__, No. 16-2251 (10th Cir., Nov. 20, 2017).*
Res ipsa loquitur and other tort theories, as well as criminal law theories such as "mistake of law," are not applicable to Eighth Amendment prisoner "conditions-of-confinement" claims, which are analyzed under a "deliberate indifference" standard.

Redmond v. Crowther, *__F.3d__, No. 16-4131 (10th Cir., Feb. 9, 2018).*
Prison officials who accidently exposed other prisoners to tear gas while trying to restrain a violent inmate were negligent, but did not violate the prisoners' Eighth Amendment rights.

Womble v. Harvamek, *__F.3d__, No. 17-7023 (10th Cir., Dec. 12, 2017).*
Lack of access to chilled water and ice does not support an Eighth Amendment "conditions of confinement" claim, but access to a sufficient supply of uncontaminated drinking water could support such a claim.

Matthews v. Paynter, *__F.3d__, No. 17-11750 (11th Cir., Sept. 27, 2018)(unpub).*
Placing a prisoner in 20 days of disciplinary confinement for being disrespectful to prison officials by telling them "liar, liar, pants on fire" in response to a grievance reply does not violate the First Amendment. The prisoner's statement is not protected speech.

Saunders v. Brevard Cty, *__F.3d__, No. 16-17607 (11th Cir, May 17, 2018) (unpub.).*
Prisoner "comfort" is not the test under the Eighth Amendment as long as prisoners have the minimal civilized measure of life's necessities.

19. LABOR; UNIONS

Cup v. Ampco, *__F.3d__, No. 17-2349 (3rd Cir., Aug. 29, 2018).*
A dispute over retiree benefits was not required to be arbitrated under the LMRA when the parties collective bargaining agreement contained no provision regarding such benefits.

InOutBurger v. NLRB, *__F.3d__, No. 17-60241 (5th Cir., July 6, 2018).*
An employer violated the NLRA by prohibiting its employees from wearing "Fight for $15" buttons that relate to the terms and conditions of their employment.

Mote v. Walthall, *__F.3d__, No. 17-40754 (5th Cir., Aug. 31, 2018).*
The First Amendment right to "associational protection" does not turn on whether a group meets the technical statutory definition of a labor union.

Fletcher v. Honeywell, *__F.3d__, No. 17-3277 (6th Cir., June 8, 2018).*
A CBA's general durational clause applies to retiree healthcare benefits unless it contains clear, affirmative language to the contrary.

IUOE Local 399 v. Lincolnshire, *__F.3d__, Nos. 17-1300 & 1325 (7th Cir., Sept. 28, 2018).*
The authority granted to states by Section 14(b) of the NLRA does not permit local municipalities to add or change through ordinance the NLRA's treatment of hiring halls and union dues check-off.

Tschiggfrie Properties v. NLRB, *__F.3d__, No. 17-1450 (8th Cir., July 24, 2018).*
The court rejects the NLRB's *Johnnie's Poultry* bright-line approach and *per se* rule regarding questioning employees in preparation for an unfair labor practice hearing. Not all union-related questioning by an employer is unlawfully coercive.

Coffman v. Queen of the Valley, *__F.3d__, No. 17-17413 (9th Cir., July 16, 2018).*
Under the NLRA, an employer cannot discontinue unconditional bargaining with a union when negotiations are not going well.

Capital Medical Center v. NLRB, *__F.3d__, No. 16-1320 (D.C. Cir., Aug. 10, 2018).*
Section 7 of the NLRA allows off-duty employees to distribute leaflets and hold stationary picket signs on their employer's property.

20. TELECOMMUNICATIONS

Superior Comm. v. Riverview, *__F.3d__, No. 17-1234 (6th Cir., Feb. 1, 2018).*
Under the Telecommunications Act, a city does not enact a "regulation" when it acts in its proprietary capacity to deny a broadcast company's request to upgrade its equipment on a city cell tower in accordance with the parties' license agreement.

Charter Advanced Svcs. v. Lange, *__F.3d__, No. 17-2290 (8th Cir., Sept. 7, 2018).*
VoIP service is an "information service" under the Telecommunications Act.

MCC Iowa v. Iowa City, *__F.3d__, No. 16-3696 (8th Cir., Apr. 4, 2018).*
A fiber-optic network is not a "cable system" subject to the franchise requirements of Title VI of the Communications Act when it does not provide nor propose to provide cable service.

Quest Corp. v. Des Moines, *__F.3d__, No. 17-1257 (8th Cir., July 17, 2018).*
A city ordinance adopting a new fee schedule for right-of-way access is not preempted by the Telecommunications Act.

Athens Cellular v. Oconee Cty, *__F.3d__, No. 15-12067 (11th Cir., Apr. 2, 2018).*
The TCA's statute of limitations began to run when a Board of Commissioners approved the minutes of its meeting at which it denied a cell tower construction application, not on that earlier date when, by custom, a clerk entered the Board's vote in a county ordinance book.

Sierra v. Hallendale Beach, *__F.3d__, No. 18-10740 (11th Cir., Sept. 27, 2018).*
The Twenty-First Century Communications and Video Accessibility Act of 2010 does not create an administrative exhaustion requirement that must be satisfied prior to bringing ADA and RA claims against a city for failing to have closed captioning on its website.

21. ENVIRONMENTAL

Sierra Club v. VA Electric, *__F.3d__, Nos. 17-1895 & 1952 (4th Cir., Sept. 12, 2018).*
A power plant's landfill and settling ponds were not "point sources" under the CWA simply because they allowed rain water to percolate through them to the groundwater. These sites were merely recipients - - like the rest of the soil - - of the precipitation and ground water that flowed through them and therefore not discrete "points" or conveyances of pollution that ultimately reached navigable waters.

Tn. Clean Water Network v. TVA, *__F.3d__, No. 17-6155 (6th Cir., Sept. 24, 2018);*
Ky. Waterway Alliance v. Ky. Utilities Co., *__F.3d__, No. 18-5115 (6th Cir., Sept. 24, 2018).*
The CWA does not extend liability to pollution that reaches surface waters via groundwater. However, the Resource Conservation and Recovery Act does govern such conduct.

Hawaii Wildlife Fund v. Maui County, *__F.3d__, No. 15-17447 (9th Cir., Mar. 30, 2018).*
A county that injects treated wastewater into its wells, and thus into groundwater some of which reaches the Pacific Ocean (a "navigable water of the United States"), is subject to NPDES regulation. The CWA does not require wells, as "point sources" for the discharge of pollutants, to convey pollutants directly into a navigable water of the United States in order for liability to be assessed thereunder.

Clarksville v. FERC, *__F.3d__, No. 16-1244 (D.C. Cir., Apr. 24, 2018).*
A municipality is exempt from FERC regulation under Section 7 of the Natural Gas Act.

22. PROCEDURAL; EVIDENTIARY

Keane v. HSBC Bank, *__F.3d__, No. 16-1045 (1st Cir., Oct. 31, 2017).*
In a civil procedure action, dismissing a case with prejudice for an attorney's failure to appear at a motion hearing, where his absence was unintentional, no prior neglect existed, and he was not warned that his failure to appear could have such a result, was an abuse of discretion.

Sexual Minorities v. Lively, *__F.3d__, No. 17-1593 (1st Cir., Aug., 10, 2018).*
A summary judgment winner cannot appeal her court judgment merely because there are passages in the court's opinion that displease her.

Skrabec v. Town of N. Attelboro, *__F.3d__, No. 17-1385 (1st Cir., Dec. 18, 2017).*
Excusable neglect is not a defense when it is the result of an attorney simply being wrong in his understanding of trial procedure.

Teixeira v. Town of Coventry, *__F.3d__, No. 17-1049 P-01A (1st Cir., Feb. 7, 2018).*
The *McDonnell Douglas* framework is appropriate for jury instructions as long as it is translated into everyday parlance.

US v. Pineda-Mateo, *__F.3d__, No. 17-1857 (1st Cir., Sept. 18, 2018).*
The court declines to recognize a "joint participant" exception to the spousal testimonial privilege.

Barrella v. Village of Freeport, *__F.3d__, No. 17-446 (2nd Cir., Mar. 13, 2018)(unpub).*
The court refuses to expand its prohibition against "golden rule" argumentation (asking jurors to place themselves in the position of a party) beyond the context of damages.

Delee v. Hannigan, *__F.3d__, No. 17-925 (2nd Cir., Mar. 28, 2018)(unpub).*
Not requiring a jury to report on a Saturday to deliberate is not an abuse of judicial discretion.

US v. Bradley, *__F.3d__, No. 16-601 (2nd Cir., Feb. 16, 2018).*
In a case of first impression in the Circuit, the court holds that, under FRAP Rule 4(a), the clock begins to run on filing a notice of appeal from the denial of a motion seeking relief from judgment or order under FRCP Rule 60 on the date the court enters its initial order announcing its decision, not on that later date on which it enters an order reaffirming its decision and explaining its reasoning.

Minarsky v. Susquehanna Cty., *__F.3d__, No. 17-2646 (3rd Cir., July 3, 2018).*
The *Faragher-Ellerth* defense requires a determination of reasonable care and action, which should be decided by a jury, not by the court as a matter of law.

Murray v. Philadelphia, *__F.3d__, No. 16-3145 (3rd Cir., Aug. 21, 2018).*
A non-attorney who is not an estate beneficiary may not bring an "excessive force" case *pro se* on behalf of the estate.

Russell v. Superior Ct. Marshall, *__F.3d__, No. 17-2255 (3rd Cir., Sept. 25, 2018).*
Quasi-judicial immunity applies to acts authorized by court order, such as the execution of a court order, but not to the manner in which the court order is executed.

Fawzy v. Wauquiez Boats, *__F.3d__, No. 16-2211 (4th Cir., Oct. 12, 2017).*
Dismissing a complaint does not result in a "final decision" when the plaintiff files an amended complaint an hour before his original complaint is dismissed.

Alvarez v. Brownsville, *__F.3d__, No. 16-40772 (5th Cir., Sept. 18, 2018).*
An accused has no right to be provided with *Brady* material during the plea bargaining process and before entering a guilty plea. Moreover, for purposes of a Section 1983 claim of municipal liability, a police department policy of allowing one person to be the sole decisionmaker relating to internal investigations, and thus providing no "safety net" for mistakes, does not prove "deliberate indifference" in adopting or implementing that policy.

Barrett v. American Airlines, *__F.3d__, No. 17-10649 (5th Cir., Oct. 27, 2017).*
Title VII discrimination claims that are alleged for the first time in an amended complaint filed in state court more than 90 days after receipt of an EEOC notice of right to sue letter are time-barred and do not relate back to the date of the original complaint.

Darden v. Forth Worth, *__F.3d__, No. 16-11244 (5th Cir., Jan. 24, 2018).*
The eggshell skull rule applies to Section 1983 "excessive force" claims.

EEOC v. BDO USA, *__F.3d__, No. 16-20314 (5th Cir., Nov. 16, 2017).*
All communications between employees and corporate counsel are not *per se* privileged, and the EEOC does not have to prove to the contrary in order to subpoena the documents contained on a privilege log.

Greene v. Greenwood Pub. Sch. Dist., *__F.3d__, No. 17-60157 (5th Cir., May 14, 2018).*
Even if state law prohibits a school district from providing a school official with a pre-termination hearing, that does not affect the viability of his federal procedural due process claim.

Griffith v. Alcon Research, *__F.3d__, No. 17-20290 (5th Cir., Dec. 6, 2017).*
A federal court has no subject-matter jurisdiction over a discrimination complaint that cites only state law, even though it references the plaintiff's dealings with the EEOC.

In Re: Itron, Inc., *__F.3d__, No. 17-60733 (5th Cir., Feb. 21, 2018).*
Merely filing a lawsuit effects no waiver of any attorney-client privilege.

In re: Laura M Sheedy, *__F.3d__, No. 17-1407 p. 01A (5th Cir., Nov. 16, 2017).*
The failure of an attorney to timely file an appeal due to his "involvement in church affairs" is not excusable neglect.

Meadows v. City of Crowley, *__F.3d__, No. 17-10752 (5th Cir., May 3, 2018).*
Although a plaintiff need not make out a *prima facie* claim of discrimination in order to survive a motion to dismiss, she must still allege facts sufficient to establish the elements of her claim.

Peeples v. Detroit, *__F.3d__, Nos. 17-1222 & 1250 (6th Cir., June 1, 2018).*
Because "national origin" and "race" discrimination are not "substantially similar," employees alleging the latter cannot piggyback on a timely filed EEOC charge alleging the former.

US v. Boucher, *__F.3d__, No. 18-5683 (6th Cir., Sept. 26, 2018).*
A plea agreement that waives a defendant's right to appeal his sentence does not thereby also waive the government's right to appeal that sentence.

US v. Farrad, *__F.3d__, Nos. 16-5102 & 6730 (6th Cir., July 17, 2018).*
Facebook social media photos are to be treated the same as traditional photographs for trial authentication purposes.

US v. Perkins, *__F.3d__, No. 17-5908 (6th Cir., Apr. 4, 2018).*
When an anticipatory warrant's triggering event requires the delivery of a package to a named individual, delivery to that individual's fiancé is not sufficient to trigger the warrant.

Brown v. Ill. DHS, *__F.3d__, No. 17-2509 (7th Cir., Apr. 4, 2018) (unpub.).*
A self-employed person fails to state a claim for employment discrimination against a governmental agency by which she is not employed.

Collins v. Village of Palatine, *__F.3d__, No. 16-3395 (7th Cir., Nov. 16, 2017).*
Statute of limitations tolling stops immediately when a class-action suit is dismissed - - with or without prejudice - - before the class is certified.

Cosgriff v. Winnebago County, *__F.3d__, No. 17-1396 (7th Cir., Dec. 1, 2017).*
Although Section 1983 appears to give a federal cause of action to state taxpayers, the legal principle of comity bars a state taxpayer from bringing a Section 1983 lawsuit in federal court.

Cunningham v. Montes, *__F.3d__, No. 17-2516 (7th Cir., Feb. 21, 2018).*
Not answering the door to your house when you are away from it, and refusing to disclose your current location to a deputy sheriff who calls you and asks for the same, do not constitute an "evasion of service" justifying notice by publication.

Freeman v. Pierce, *__F.3d__, No. 16-1229 (7th Cir., Dec. 27, 2017).*
A court cannot refuse to allow a defendant to represent himself on the basis of his lack of education and legal abilities.

King v. Ford Motor Co., *__F.3d__, No. 16-3391 (7th Cir., Oct. 2, 2017).*
Lapsed discrimination claims are not revived by the filing of a second EEOC claim in which they are incorporated.

Storey v. Alton, Illinois, *__F.3d__, No. 17-1978 (7th Cir., Feb. 2, 2018).*
A city's singular denial of a request to subdivide land is not a "continuing violation" so as to extend the statute of limitations for filing an equal protection claim.

Straw v. Streamwood Village, *__F.3d__, No. 17-1867 (7th Cir., May 3, 2018) (unpub.).*
The mere existence of an ADA violation does not establish an Article III injury-in-fact.

US v. Anderson, *__F.3d__, No. 16-3112 (7th Cir., Feb. 2, 2018).*
The Sixth Amendment right to a public trial is not absolute, and is not violated when a trial extends into the evening after the courthouse doors are closed and locked to the general public.

US v. Leonard, *__F.3d__, No. 17-1924 (7th Cir., Mar. 8, 2018).*
So long as a valid search warrant exists, the inadvertent presentation of the wrong warrant is not fatal to a search.

US v. Wimen, *__F.3d__, No. 16-3929 (7th Cir., Nov. 13, 2017).*
The court's failure to swear the venire to answer questions truthfully is harmless error that does not justify a new trial.

Banks v. Slay, *__F.3d__, Nos. 16-3459, 3461, 3462, & 4171 (8th Cir., Nov. 17, 2017).*
A properly served yet unnamed governmental entity may not evade a judgment obtained against its employee in his official capacity.

Hales v. Casey's Marketing, *__F.3d__, No. 16-3770 (8th Cir., Apr. 3, 2018).*
The pendency of an EEOC review does not toll a civil rights claim brought under state law.

Roberts v. City of Maplewood, *__F.3d__, No. 17-2381 (8th Cir., May 4, 2018).*
The immunity from suit of a municipality's policymakers does not shield the municipality itself from suit over its unconstitutional policies.

US v. Mosley, *__F.3d__, Nos. 16-4379, 4424, & 4889 (8th Cir., Dec. 21, 2017).*
There is no requirement that a definite or certain connection to specific criminal activity exist in order for information to support "reasonable suspicion."

Byrd v. Phoenix Police Dept, *__F.3d__, No. 16-16152 (9th Cir., Mar. 16, 2018).*
Claiming that officers "beat the crap out of him" is not too vague or conclusory a statement by a plaintiff to state a claim for "excessive force".

Chavez v. JP Morgan, *__F.3d__, No. 16-55957 (9th Cir., Apr. 20, 2018).*
The amount in controversy for diversity jurisdiction is not limited to the damages incurred prior to removal, but encompasses all the relief a court may grant to a victorious plaintiff.

Morales v. Fry, *__F.3d__, No. 14-35944 (9th Cir., Oct. 16, 2017).*
The court erred when, for qualified immunity analysis purposes, it submitted the question of whether a constitutional right was "clearly established" to the jury. This is a question of law.

US v. Raygoza-Garcia, *__F.3d__, No. 16-50490 (9th Cir., Aug. 31, 2018).*
The court declined a defendant's request that it take judicial notice of previous "unproductive" stops by border patrol agents in the same area as the stop at issue as evidence that the agents in the defendant's case did not properly apply the "reasonable suspicion" standard.

Williams v. King, *__F.3d__, No. 15-15259 (9th Cir., Nov. 9, 2017).*
A magistrate's dismissal of a cause of action before all defendants were served was improper because all parties named in a complaint must consent before a magistrate's jurisdiction vests.

Anderson Living T. v. Pritchett Living T., *__F.3d__, No. 17-2029 (10th Cir., Sept. 21, 2018).*
Voluntarily dismissing individual claims with prejudice after a settlement is reached does not convert a class-certification denial from an interlocutory order into a final decision.

Felders v. Bairett, *__F.3d__, No. 16-4173 (10th Cir., Mar. 9, 2018).*
Under FRCP Rule 68, a pre-trial offer of judgment is not effective in limiting liability when it is made before a defendant is served with a summons and complaint and becomes a "party" to a lawsuit.

Lincoln v. BNSF, *__F.3d__, No. 17-3120 (10th Cir., Aug. 17, 2018).*
A plaintiff's failure to file an EEOC charge regarding a discrete employment incident permits an employer to raise an affirmative defense of failure to exhaust, but does not prevent a federal court from assuming jurisdiction over a claim of discrimination.

Salemi v. Co Pub. Emp. Retirement Assn., *__F.3d__, No. 17-1085 (10th Cir., Aug. 17, 2018).*
The "continuing violation" theory is not available in the context of a Title II claim based upon discrete incidents of discrimination or retaliation, including allegations of a denial of opportunities for workplace advancement.

Smith v. Cheyenne Retirement, *__F.3d__, No. 17-8055 (10th Cir., Sept. 25, 2018).*
For relation back purposes, the scope of an administrative investigation into an EEOC charge is determined based upon the allegations in the charge itself, and is not expanded by statements made in an employer's response to that charge.

Soto v. Bd. Of Commsrs. of Caddo Cty., *__F.3d__, No. 17-6227 (10th Cir., Sept. 5, 2018).*
A Section 1983 municipal liability claim must establish factual allegations that a particular municipal custom or policy was the moving force behind a constitutional inquiry in order to avoid a Rule 12(b)(6) dismissal.

Xyngular v. Schenkel, *__F.3d__, No. 16-4193 (10th Cir., May 15, 2018).*
In a case of first impression in the Circuit, the court holds that case termination sanctions are permissible when pre-litigation conduct is aimed at manipulating the judicial process and is unrelated to the conduct that gave rise to the substantive claims in the case.

Haynes v. Hooters, *__F.3d__, No. 17-13170 (11th Cir., June 19, 2018).*
A plaintiff's ADA lawsuit is not mooted just because the defendant entered into a remediation plan as part of the settlement of an almost identical earlier filed lawsuit.

Manners v. Cannella, *__F.3d__, No. 17-10088 (11th Cir., June 4, 2018).*
Probable cause is not established by proof beyond a reasonable doubt, or by clear and convincing evidence, or even by a preponderance of the evidence. It is sufficient that a reasonable officer could believe that a defendant failed to stop when directed to do so to establish probable cause.

Perry v. Schumacher Group, *__F.3d__, No. 16-15400 (11th Cir., June 4, 2018).*
Under FRCP Rule 41(a)(1), a plaintiff may dismiss an action without a court order, but not a particular claim representing only one part of her lawsuit.

Pouyeh v. Pub. Health Trust, *__F.3d__, No. 17-12749 (11th Cir., Nov. 21, 2017).*
Nothing in FRCP Rule 12 suggests that an attorney's entry of an appearance on a defendant's behalf waives a Rule 12 affirmative defense.

Sherrard v. Macy's, *__F.3d__, No. 17-11766 (11th Cir., Feb. 5, 2018).*
A party's participation in litigation only to avoid a default judgment is not substantial enough participation to support a claim that the party waived its right to arbitration.

US v. Stein, *__F.3d__, No. 16-10914 (11th Cir., Jan. 31, 2018).*
An affidavit that satisfies FRCP Rule 56 may create an issue of material fact and thus prevent summary judgment even if it is self-serving and uncorroborated.

Ashbourne v. Hansbury, *__F.3d__, No. 17-5136 (D.C. Cir., June 29, 2018).*
A plaintiff's voluntary choice to keep her discrimination claims in the EEOC's administrative forum instead of joining them to her pending federal court action, even at a time when she had not yet received an EEOC right to sue letter, is subject to *res judicata* consequences just like any other strategic choice to withhold a claim from litigation.

23. ARBITRATION; CONTRACTS

Elliott v. Bd of Trustees, *__F.3d__, No. 16-4168 (7th Cir., Dec. 4, 2017).*
A new law eliminating teacher tenure rights violated the Contracts Clause to the extent it was applied to teachers tenured before the law took effect.

Golden v. CA Emerg. Physns., *__F.3d__, No. 16-17354 (9th Cir., July 24, 2018).*
A plaintiff was not required to sign a settlement agreement that he had verbally agreed to sign since it contained a material clause that violated state law.

Sanchez v. Elizondo, *__F.3d__, No. 16-17345 (9th Cir., Jan. 5, 2018).*
Under the Federal Arbitration Act, a party can appeal a court order that vacates an arbitration award and remands the case for a new arbitration.

Ground Maintenance v. Alabama Power, *__F.3d__, No. 16-16788 (11th Cir., Oct. 30, 2017).*
A Section 1981 claim of discrimination in awarding a contract was properly dismissed when the plaintiff missed the deadline for submitting its bid for the work.

Hernandez v. Acosta Tractors, *__F.3d__, Nos. 17-13057 & 13673 (11th Cir., Aug. 8, 2018).*
After a party ordered to arbitrate a FLSA claim, pursuant to an arbitration clause in his employment contract, failed to pay his share of the arbitration costs, a court could find that arbitration was no longer required before an opposing party could bring a federal lawsuit, but could not enter a default judgment in that suit solely based upon such failure.

JPay v. Kobel, *__F.3d__, No. 17-13611 (11th Cir., Sept. 19, 2018).*
In a case of first impression, the court holds that whether an arbitration can proceed on a class, not individual, basis is a "question of arbitrability" that presumptively goes to a court to decide.

24. BANKRUPTCY; CREDITORS' RIGHTS

In Re: Kimberly Ann Zizza, *__F.3d__, No. 17-1463 (1st Cir., Nov. 15, 2017).*
No discharge was granted to a debtor who failed to disclose in her bankruptcy schedules two lawsuits to which she was a party.

IRS v. Murphy, *__F.3d__, No. 17-1601 (1st Cir., June 7, 2018).*
An employee "willfully violates" a bankruptcy discharge order when he knows of the order and intentionally violates it. A good faith belief that he had a right to collect a discharged debt is irrelevant to such a determination.

Fornesa v. Fifth Third, *__F.3d__, No. 17-20324 (5th Cir., July 27, 2018).*
A debtor was judicially estopped from proceeding forward with his automatic stay violation claim against a creditor who foreclosed on real property that the debtor failed to disclose in his bankruptcy schedules.

Andrews v. MI Unemployment, *__F.3d__, Nos. 16-2383 & 2680 (6th Cir., May 29, 2018).*
A penalty assessed by a governmental unit against a debtor due to his fraudulent conduct is non-dischargeable in a Chapter 13 bankruptcy proceeding.

In re: Matter of Point Center, *__F.3d__, No. 56321 (9th Cir., May 29, 2018).*
In order to have standing to appeal a bankruptcy court order, a "person aggrieved" by the order need not have objected to the motion that resulted in the order nor attended the motion hearing.

Bennett v. Jefferson Cty., *__F.3d__, No. 15-11690 (11th Cir., Aug. 16, 2018).*
In a case of first impression, the court holds that the doctrine of "equitable mootness" applies in Chapter 9 municipal bankruptcies.

In re: Horne, *__F.3d__, No. 16-16789 (11th Cir., Dec. 5, 2017).*
In a case of first impression in the Circuit, the court holds that the Bankruptcy Code authorizes the payment of the attorney fees and costs incurred by a debtor in pursuing an action for damages resulting from a violation of the automatic stay and in defending that damages award on appeal.

Slater v. US Steel, *__F.3d__, No. 12-15548 (11th Cir., June 12, 2018).*
In determining whether a plaintiff's failure to list an employment discrimination claim on her bankruptcy schedules requires dismissal of that claim, a court may, among other things, consider the plaintiff's level of sophistication, whether and under which circumstances her disclosures were corrected, whether the plaintiff disclosed the claim to her bankruptcy attorney before her disclosures were forced, whether the trustee or creditors were aware of the claim before the plaintiff amended her disclosures, whether the plaintiff disclosed other lawsuits to which she was a party, and any findings or actions of the bankruptcy court after the failure to disclose was discovered.

Weakley v. Eagle Logistics, *__F.3d__, Nos. 17-14022 & 14023 (11th Cir., June 29, 2018).*
The fact that a bankruptcy petition was voluntarily dismissed does not moot a court's dismissal of the lawsuits that were not disclosed on the debtor's bankruptcy schedules upon a finding that the failure to do so was calculated to make a mockery of the judicial system.

25. DRIVER'S PRIVACY PROTECTION ACT

Baas v. Fewless, *__F.3d__, No. 17-11225 (11th Cir., Apr. 2, 2018).*
The DPPA excepts authorized acts of lobbying, wherein driver's license photos obtained from an electronic database are used, from its purview.

Truesdall v. Thomas, *__F.3d__, No. 16-16388 (11th Cir., May 2, 2018).*
The DPPA permits both punitive damages against municipal agencies and multiple awards of liquidated damages for separate violations.

26. OTHER CASES OF INTEREST

US v. Kahn, *__F.3d__, No. 17-8035 (1st Cir., May 17, 2018).*
The proper test for determining whether the seizure of property under a criminal forfeiture statute leaves a defendant with enough money to pay for his defense is whether he has sufficient unseized assets to pay for the reasonable cost of obtaining the counsel of his choice.

St. Pierre v. Retrieval-Masters, *__F.3d__, No. 17-1731 (3rd Cir., Aug. 7, 2018).*
Unpaid highway tolls are not the type of debt that can support a claim under the FDCPA.

DaVinci v. Arlington, *__F.3d__, No. 17-11158 (5th Cir., Aug. 27, 2018)(unpub).*
Unless an ordinance requires a city council to approve a development plan application whenever the plan meets all the required guidelines, the council retains its discretion to grant or deny the application.

Dunbar v. Kohl Law Firm, *__F.3d__, Nos. 17-2134 & 2165 (7th Cir., July 19, 2018)*
A debt collection letter that contains the warning that "This settlement may have tax consequences" does not violate the FDCPA.

Federal National Mortgage Assoc. v. Chicago, *__F.3d__, No. 16-4140 (7th Cir., Oct. 30, 2017).*
Federal tax exemptions do not prevent a city from charging a property transfer tax to individuals who purchase property from Fannie Mae, Freddie Mac, or the FHFA.

Village of Lombard v. Expedia, *__F.3d__, No. 16-3932 (7th Cir., Nov. 22, 2017).*
Local tax ordinances that place a use tax on owners, operators, and managers of hotels, and on persons engaged in the business of renting hotel rooms, do not apply to on-line travel agencies.

Werner v. Green Bay, *__F.3d__, No. 17-2426 (7th Cir., July 30, 2018)(unpub).*
Ordinances limiting where a sex offender can live in a city are not *ex post facto* laws even though they are passed after the date of the offender's conviction, because they are not both retroactive and penal in nature.

Coyne v. Messerli & Kramer, P.A., *__F.3d__, No. 17-2826 (8th Cir, July 16, 2018).*
A false representation of the amount of a debt that overstates what is actually owed violates the Fair Debt Collection Practices Act.

US v. Bravebull, *__F.3d__, No. 17-1978 (8th Cir., July 24, 2018).*
In a case of first impression, the court held that shoes can be "dangerous weapons."

Naruto v. State, *__F.3d__, No. 16-15469 (9th Cir., Apr. 23, 2018).*
While a monkey has constitutional standing to bring a lawsuit, he lacks statutory standing to bring a copyright infringement claim because the Copyright Act does not authorize animals to bring copyright infringement claims.

US v. Obando, *__F.3d__, No. 17-11202 (11th Cir., June 1, 2018).*
A flag painted on the side of a vessel does not "fly" for purposes of the Maritime Drug Law Enforcement Act.

Mercifully, THE END