INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION

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Virtual Event

WHAT'S NEW?
THE LATEST FEDERAL COURT CASES

(April 8, 2019 through April 8, 2020)

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FEDERAL CASE LAW UPDATE

(April 8, 2019 through April 8, 2020)

By

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A. U. S. SUPREME COURT

American Legion v. American Humanist, *__U.S.__, No. 17-1717 (Jun. 20, 2019).*
Public maintenance of a cross honoring World War I veterans does not violate the Establishment Clause. The cross took on an added secular meaning when it was used in a WWI war memorial and took on historical importance with the passage of time. Destroying it now would not further the ideals of respect and tolerance embodied in the First Amendment.

Comcast v. NAAAOM, *__U.S.__, No. 18-1171 (Mar. 23, 2020).*
A Section 1981 plaintiff bears the burden of showing that his or her race was a but-for cause of his or her injury, and that burden remains constant throughout the life of his lawsuit.

Fort Bend County v. Davis, *__U.S.__, No. 18-525 (Jun. 3, 2019).*
Title VII's charge-filing requirement is not jurisdictional and can be forfeited.

Franchise Tax Bd. v. Hyatt, *__U.S.__, No. 17-1299 (May 13, 2019).*
A private citizen cannot sue one state in the courts of another state.

Kahler v. Kansas, *__U.S.__, No. 18-6135 (Mar. 23, 2020).*
Due process does not require a state to adopt an "insanity test" that turns on a defendant's ability to recognize that his crime is morally wrong.

Kansas v. Glover, *__U.S.__, No. 18-556 (Apr. 6, 2020).*
A police officer's common sense inference that the driver of a vehicle was the owner of the vehicle was reasonable and provided more than the reasonable suspicion needed to justify the stop.

Knick v. Scott Township, *__U.S.__, No. 17-647 (Jun. 21, 2019).*
The government violates the Takings Clause when it takes private property without compensation. A property owner can bring a Fifth Amendment claim as soon as the taking occurs, regardless of whether other post-taking remedies may be available.

LampsPlus v. Varela, *__U.S.__, No. 17-988 (Apr. 24, 2019).*
Under the FAA, an ambiguous agreement cannot provide the contractual basis for concluding that the parties agreed to class arbitration.

Manhatten Comm. Access v. Halleck, *__U.S.__, No. 17-1702 (Jun. 17, 2019).*
A private, non-profit corporation designated by a city to operate its public access channels is not a "state actor" subject to the First Amendment.

Mitchell v. Wisconsin, *__U.S.__, No. 18-6210 (Jun. 27, 2019).*
When a driver is unconscious and unable to take a breath test, the "exigent-circumstances" doctrine generally permits a warrantless blood test.

Nieves v. Bartlett, *__U.S.__, No. 17-1174 (May 28, 2019).*
If probable cause exists to arrest an individual, his subsequent "retaliatory arrest" claim fails as a matter of law.

Rotkiske v. Klemm, *__U.S.__, No. 18-328 (Dec. 10, 2019).*
Absent the application of an equitable doctrine, the Fair Debt Collections Practices Act's statute of limitations period begins to run on the date on which its alleged violation occurs.

Rucho v. Common Cause, *__U.S.__, No. 18-422 (Jun. 27, 2019).*
Partisan gerrymandering claims present political questions beyond the reach of federal courts.

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.

Tennessee Wine v. Thomas, *__U.S.__, No. 18-96 (Jun. 26, 2019).*
Durational-residency requirements applicable to retail liquor store license applicants violate the Commerce Clause and are not saved by the Twenty-First Amendment.

B. U. S. CIRCUIT COURTS

1. FIRST AMENDMENT

Johnson v. Town of Duxbury, *__F.3d__, No. 18-2098 (1st Cir., Jul. 29, 2019).*
For First Amendment purposes, a police officer had no reasonable expectation of privacy in a phone service provider's record of the phone numbers from which he dialed or received calls.

Shurtleff v. Boston, *__F.3d__, No. 18-1898 (1st Cir., Jun. 27, 2019).*
A preliminary injunction based upon Establishment Clause, Free Speech, and Equal Protection claims, seeking to prevent a city from refusing to allow the temporary raising of a Christian flag on a government-owned flagpole, was denied.

Knight v. Trump, *__F.3d__, No. 18-1691 (2nd Cir., Jul. 9, 2019).*
The First Amendment does not permit a public official who utilizes a social media account for official purposes to exclude persons from an otherwise open on-line dialogue simply because they express views with which the public official disagrees.

Vugo v. NYC, *__F.3d__, No. 18-807 (2nd Cir., Jul. 16, 2019).*
A city's ban on advertisements in for-hire vehicles such as Uber, but allowance of certain advertisements in taxi cabs, does not violate the First Amendment because it directly advances the governmental interest in improving passenger experiences.

Adams Outdoor v. PADOT, *__F.3d__, No. 18-2409 (3rd Cir., Jul. 15, 2019).*
A law prohibiting "off premises" billboards within 500 feet of a highway interchange is not void for vagueness under the First Amendment.

Baloga v. Pittston Area Sch. Dist., *__F.3d__, No. 18-1344 (3rd Cir., Jun. 25, 2019).*
Under the First Amendment, there is no need to make a showing of "public concern" for a pure union association claim. Membership in a public union is always a "matter of public concern".

Briggs v. Potter Cty., *__Fed. Appx.__, Nos. 18-3559 & 3668 (3rd Cir., Sept. 12, 2019)(unpub.).*
A First Amendment political discrimination claim can be based upon a job termination made on the basis of membership in a different faction of the same political party.

Bruni v. Pittsburgh, *__F.3d__, No. 18-1084 (3rd Cir., Oct. 18, 2019).*
An ordinance that created a 15-foot buffer zone outside the entrance to any hospital or healthcare facility at which "congregating, patrolling, picketing or demonstrating" were prohibited did not significantly burden the First Amendment – because it protected the speech of sidewalk counsellors by not prohibiting their one-on-one conversations and leafletting.

Fields v. Speaker of PA House of Rep., *__F.3d__, No. 18-2974 (3rd Cir., Aug. 23, 2019).*
A legislative body that invites guest chaplains to offer an opening prayer but excludes non-theists because prayer pre-supposes a higher power does not violate the Establishment Clause. Moreover, a sign outside the legislative chamber requesting guests "please rise" is not coercive.

Freedom From Religion v. LeHigh Cty., *__F.3d__, No. 17-3581 (3rd Cir., Aug. 8, 2019).*
A city seal that contains a Latin Cross surrounded by numerous secular symbols significant to a community does not violate the Establishment Clause. After 75 years of use, the seal had obtained a broader meaning than any one of its symbols, and as a whole, the seal suggested little of the sacred. Removing it could constitute an unconstitutional hostility towards religion.

Fulton v. Philadelphia, *__F.3d__, No. 18-2574 (3rd Cir., Apr. 22, 2019).*
A city's refusal to refer foster children to a Catholic agency that did not comply with its sexual orientation non-discrimination laws did not violate the First Amendment.

Javitz v. Luzerne County, *__F.3d__, No. 18-2389 (3rd Cir., Oct. 10, 2019).*
An employee's talk with public officials about a possible crime was not ordinarily within the scope of her job duties, but simply related to those duties. Therefore, she was engaged in speech as "a citizen speaking on a matter of public concern" for First Amendment purposes.

NEPA Freethought Society v. Lackawanna, *__F.3d__, No. 18-2743 (3rd Cir., Sept. 17, 2019).*
A transit policy prohibiting atheistic and religious associations from advertising their organizational philosophy, existence, and location, but allowing secular associations to do so, facially discriminates on the basis of viewpoint, in violation of the First Amendment.

Philadelphia COC v. Philadelphia, *__F.3d__, Nos. 18-2175 & 2176 (3rd Cir., Feb. 6, 2020).*
For First Amendment purposes, a local legislative body need not provide legislative certainty or empirical proof that its legislation will achieve its stated purpose even under a strict scrutiny analysis.

Pomicter v. Luzerne Cty., *__F.3d__, No. 18-2380 (3rd Cir., Sept. 23, 2019).*
A public sports and entertainment arena could limit protesters to two designated areas on the arena's concourse, since the concourse's purpose was to facilitate pedestrian movement and a policy sensibly designed to minimize interference with pedestrian flow was not unreasonable for First Amendment purposes. However, restrictions on profanity and amplified sound within these designated areas were unreasonable.

Reilly v. Harrisburg, *__Fed. Appx.__, No. 18-2884 (3rd Cir., Oct. 23, 2019)(unpub.).*
A content-neutral ordinance creating a 20-foot buffer zone for sidewalk counsellors at health care facilities does not significantly burden free speech for First Amendment purposes.

Williams v. Allentown, *__Fed. Appx.__, No. 19-1444 (3rd Cir., Mar. 11, 2020)(unpub.).*
For First Amendment purposes, an officer was engaged in "private speech on a matter of public concern" when, while off duty, he told a subordinate officer that he saw no reason why the officer should not run for the office of mayor.

AAPC v. FCC, *__F.3d__, No. 18-1588 (4th Cir., Apr. 24, 2019).*
The "debt-collection exception" to the TCPA contravenes the Free Speech Clause of the First Amendment and must be severed from the Act's automated call ban.

McCaffrey v. Chapman, *__F.3d__, No. 17-2198 (4th Cir., Apr. 9, 2019).*
Under the *Elrod-Branti* exception, a claim filed by a deputy sheriff after he was fired for supporting his sheriff's political opponent did not violate his First Amendment rights to freedom of political association and speech.

Overbey v. Baltimore, *__F.3d__, No. 17-2444 (4th Cir., Jul. 11, 2019).*
A non-disparagement clause contained in a civil rights settlement agreement was void and unenforceable as constituting an unlawful waiver of an employee's First Amendment rights.

Welton v. Durham Cty., *__Fed. Appx.__, No. 18-2340 (4th Cir., Aug. 28, 2019)(unpub.).*
The First Amendment does not cover an employee's "general course of conduct" that lacks the intent to convey a particularized message.

Clarkston v. White, *__F.3d__, No. 18-31099 (5th Cir., Dec. 4, 2019).*
Qualified immunity was granted against a First Amendment retaliation claim seeking to attach liability to a public official who did not possess final decision-making authority to approve or deny a charter school application.

Doe v. McKesson, *__F.3d__, No. 17-30864 (5th Cir., Aug. 8, 2019).*
The First Amendment may not insulate the leader of a demonstration who intentionally leads demonstrators to unlawfully block a public highway from liability under state law for not taking reasonable care in conducting his demonstration.

Freedom From Religion v. Abbott, *__F.3d__, No. 18-50610 (5th Cir., Apr. 3, 2020).*
Under the First Amendment, prior restraints on speech in limited public forums must include neutral criteria sufficient to prevent the censorship of speech to the extent that such censorship is unreasonable in light of the purposes served by the forum and is viewpoint-based.

Griggs v. Chickasaw Cty., *__F.3d__, No. 18-60401 (5th Cir., Jul. 25, 2019).*
A plaintiff's First Amendment job elimination claim was not estopped simply because he indicated on his unemployment benefits application that he had been "laid off".

Harmon v. Dallas Cty., *__F.3d__, No. 18-10353 (5th Cir., Jul. 9, 2019).*
A public employee's grievance relating to his termination does not normally constitute a "matter of public concern" for First Amendment purposes. However, a police officer's First Amendment rights were violated when he was fired for cooperating with outside law enforcement personnel.

Horvath v. City of Leander, *__F.3d__, No. 18-51011 (5th Cir., Jan. 9, 2020).*
For Title VII religious discrimination purposes, the refusal of an employee to comply with a direct order to choose one of his employer's two proffered reasonable accommodations for his religious beliefs created a legitimate, non-discriminatory reason for his discharge. Moreover, a reasonable accommodation that causes an employee to lose his second, outside job does not render the accommodation unreasonable.

Robinson v. Hunt County, *__F.3d__, No. 18-10238 (5th Cir., Apr. 15, 2019).*
A county sheriff's office Facebook page cannot, consistent with the First Amendment, delete comments and ban persons from the page on the basis of viewpoint, or limit input to positive comments, even if the Facebook page claims that it is a "non-public forum".

US v. Mecham, *__F.3d__, No. 19-40319 (5th Cir., Feb. 13, 2020).*
Morphed child pornography (children's heads superimposed on adults engaging in sexual activity) is not First Amendment protected speech.

Barrow v. Hillview, *__F.3d__, No. 18-5045 (6th Cir., May 31, 2019).*
Officers were speaking as "private citizens" for First Amendment purposes when they reported allegations of public corruption within their department to outside FBI investigators.

Brindley v. Memphis, *__F.3d__, No. 19-5753 (6th Cir., Aug. 13, 2019).*
A privately-owned street can be a public forum for First Amendment purposes when it connects to a busy street, is used by the general public to access many buildings, and displays no sign of private ownership.

Novak v. City of Parma, *__F.3d__, No. 18-3373 (6th Cir., Jul. 29, 2019).*
Qualified immunity was granted to officers on a First Amendment claim that their Facebook announcements, made during an ongoing criminal investigation and that identified the plaintiff as a suspect, violated his right to speak anonymously.

Sensabaugh v. Halliburton, *__F.3d__, No. 18-6329 (6th Cir., Aug 27, 2019).*
Being served with directives to follow in order to avoid discipline, and being suspended with pay, are not "adverse actions" for purposes of a First Amendment claim.

Thomas v. Bright, *__F.3d__, No. 17-6238 (6th Cir., Sept. 11, 2019).*
A highway sign law that excepts out signs related to the use or purpose of the property on which they are located is content-based and violates the First Amendment.

Vaduva v. City of Xenia, *__Fed. Appx.__, No. 18-3939 (6th Cir., Aug. 7, 2019)(unpub.).*
The court rejected an argument that qualified immunity for local elected officials on a First Amendment claim should be denied because passing an unconstitutional ordinance "is not within the sphere of legitimate legislative activity." Whether an act is "legislative" turns on the nature of the act.

Youkhanna v. Sterline Heights, *__F.3d__, No. 18-1874 (6th Cir., Aug. 14, 2019).*
A city council did not violate the First Amendment by requiring public comments to be relevant to the issue under discussion.

Holleman v. Zatecky, *__F.3d__, No. 19-1326 (7th Cir., Mar. 6, 2020).*
Establishing the causation element of a First Amendment retaliation claim requires a showing that the *fact* of the plaintiff's engagement in protected activity was a motivating factor in an adverse action, not merely that the *substance* of the plaintiff's complaint motivated a response that the plaintiff did not like. Moreover, the transfer of a prisoner from one maximum security prison to another is not, without more, an adverse action.

Leibundguth Storage v. Downer's Grove, *__F.3d__, No. 16-3055 (7th Cir., Sept. 24, 2019).*
A municipality's content-neutral "size and no-paint-on-walls" sign limits did not violate the First Amendment.

Lett v. Chicago, *__F.3d__, No. 19-1463 (7th Cir., Jan. 6, 2020).*
The refusal of a police investigator to obey his superior's order to add to his report that the police had "planted a gun" on a victim is not protected First Amendment speech.

Henry v. Johnson, *__F.3d__, No. 18-3298 (8th Cir., Feb. 20, 2020).*
Although an officer's non-testimonial remarks regarding the integrity of his department were made as a private citizen, no First Amendment violation occurred when he was ordered into counseling and threatened with demotion and transfer, because his remarks would impede his ability to perform his job duties and have a negative effect on department efficiency and trust.

Jones v. Jegley, *__F.3d__, No. 19-2260 (8th Cir., Jan. 27, 2020).*
A preliminary injunction was granted on First Amendment grounds against the enforcement of a law that prohibited making donations to a candidate more than two years before election day.

Mogard v. City of Milbank, *__F.3d__, No. 18-2730 (8th Cir., Aug. 8, 2019).*
For First Amendment purposes, a public employee's speech can be "pursuant to his official job duties" although the same is not included in his job description or is made in response to his employer's request.

Thurairajah v. Hallenbeck, *__F.3d__, No. 17-3419 (8th Cir., Jun. 3, 2019).*
Qualified immunity was denied on First Amendment retaliation and Fourth Amendment "unreasonable seizure" claims stemming from an officer's arrest of an individual who yelled "f*ck you" out of his car window while driving past the officer.

Willson v. City of Bel-Nor, *__F.3d__, No. 18-1753 (8th Cir., May 20, 2019).*
A municipal sign ordinance was enjoined as being content-based because it contained an exception for one flag "used as a symbol of a government or institution."

ATU Local 1015 v. Spokane Transit Auth., *__F.3d__, No. 17-35955 (9th Cir., Jul. 2, 2019).*
The court declined to accept the First and Sixth Circuits' approach of giving deference to a transit authority's application of its advertising policy consistent with the "general reasonableness" standard applied to speech restrictions in limited public forums, holding that a transit authority's application of its "public issue" advertising ban to exclude a union advertisement was unreasonable.

Borawick v. Los Angeles, *__Fed. Appx._, No. 18-56233 (9th Cir., Feb. 13, 2020)(unpub.).*
First and Fourth Amendment liability under Section 1983 is predicated upon an officer's "integral participation" in the violation of a constitutional or statutory right.

Camfield v. Redondo Bch., *__Fed. Appx.__, No. 17-56072 (9th Cir., Sept. 18, 2019)(unpub.).*
Requiring a disruptive parent to give 24-hours notice before she entered the school campus was a reasonable regulation not related to First Amendment viewpoint discrimination.

Capp v. San Diego Cty., *__F.3d__, No. 18-55119 (9th Cir., Oct. 4, 2019).*
Being subjected to an investigation by county child welfare workers is not a violation of a parent's liberty interest in familial relations under the Fourteenth Amendment. However, a social worker who threatens to terminate a parent's custody over his children due to her retaliatory animus against him for his criticisms of the county may violate the First Amendment.

Courthouse News v. Planet, *__F.3d__, Nos. 16-55977/56714 (9th Cir., Jan. 17, 2020).*
The court found that a county's "no access before process" policy violated the First Amendment right of the Press to timely review court filings, as the policy caused delays of up to two weeks before new complaints were made available for Press review.

CTIA v. Berkeley, *__F.3d__, No. 16-15141 (9th Cir., Jul. 2, 2019).*
An ordinance requiring cell phone retailers to warn cell phone purchasers of the potential radio-frequency radiation risks of using the cell phone survives a preliminary injunction demand based upon First Amendment and federal preemption claims.

Edge v. Everett, *__F.3d__, No. 17-36038 (9th Cir., Jul. 3, 2019).*
Injunctive relief was denied as against a city dress code ordinance that required the covering of "minimum body areas" at drive-through restaurants. Wearing pasties and g-strings while serving drive-through fare is not First Amendment protected expressive conduct.

Greisen v. Hanken, *__F.3d__, No. 17-35472 (9th Cir., May 31, 2019).*
In the context of a First Amendment retaliation claim, a police chief does not necessarily act as a police chief (rather than as a private citizen) whenever he interacts with high-ranking city officials.

L.F. v. Lake Washington Sch. Dist. #414, *__F.3d__, No. 18-35792 (9th Cir., Jan. 17, 2020).*
A school district did not violate the First Amendment when it limited a parent to communicating only with specific staff members at specified times and places.

Lions Club v. City of Albany, *__Fed. Appx.__, No.18-17046 (9th Cir., Dec. 18, 2019)(unpub.).*
The First Amendment does not support the governmental invalidation of an easement between two private parties involving ingress and egress to an illuminated cross simply because the government acquired ownership of the property subject to the easement.

NAGR v. Mangan, *__F.3d__, No. 18-35010 (9th Cir., Aug. 12, 2019).*
The First Amendment does not limit election disclosure requirements to the regulation of express advocacy for or against a specific candidate.

Perez v. Roseville, *__F.3d__, No. 15-16430 (9th Cir., May 21, 2019).*
City officials were entitled to qualified immunity on First, Fourth, and Fourteenth Amendment "right to privacy" and "intimate association" claims when they terminated a police officer due to her continued participation in an extra-marital relationship with a married officer with whom she worked and for her inappropriate on-duty cell phone usage in connection with that relationship.

Victory Processing v. Fox, *__F.3d__, No. 18-35163 (9th Cir., Sept. 10, 2019).*
A robocall statute restricting political messages and designed to protect personal privacy does not survive a strict scrutiny analysis and a First Amendment challenge.

Evans v. Sandy City, *__F.3d__, No. 17-4179 (10th Cir., Jul. 5, 2019).*
An ordinance prohibiting persons from sitting or standing on medians that are unpaved or less than 36 inches wide is a valid "time, place, and manner" restriction on First Amendment rights.

Singh v. Cordle, *__F.3d__, Nos. 17-3230 & 3244 (10th Cir., Aug. 28, 2019).*
No First Amendment violation occurred when a school administrator took an adverse employment action against a teacher for submitting a binder to an ombudsman seeking the reinstatement of his teaching contract because, even if the administrator was wrong, it was reasonable for him to believe that the teacher's primary motive for submitting the binder was a personal grievance, even if some portions of the binder addressed an issue of public concern.

Batz v. City of Sebring, *__Fed. Appx.__, No. 17-11399 (11th Cir., Dec. 12, 2019)(unpub.).*
A city employee's complaints to other government officials about the city's failure to comply with the safety code he was responsible for enforcing does not become "private speech" for First Amendment purposes even if his speech was motivated by a concern for public safety.

Cambridge v. FHSAA, *__F.3d__, No. 17-12802 (11th Cir., Nov. 11, 2019).*
While the loudspeaker at a high school football stadium is a non-public forum, if a Christian team is arbitrarily and haphazardly denied access to that forum to say a communal prayer while secular messages are not controlled by the school, this can violate the First Amendment's free speech and free exercise clauses.

Williamson v. Brevard Cty., *__F.3d__, No. 17-15769 (11th Cir., Jul. 8, 2019).*
A county's practice of selecting invocation speakers in a way that favored certain monotheistic religions violated the Establishment Clause.

2. *SECOND AMENDMENT; FIREARMS*

Worman v. Healey, *__F.3d__, No. 18-1545 (1st Cir., Apr. 25, 2019).*
The Second Amendment does not prohibit a law proscribing the sale, transfer, and possession of semiautomatic assault weapons and large-capacity magazines.

Drummond v. Robinson Tshp., *__Fed. Appx.__, No. 19-1394 (3rd Cir., Nov. 14, 2019)(unpub.).*
In the Third Circuit, it is improper to use a "time, place, and manner" test to determine whether an ordinance places a burden on Second Amendment rights.

Kelly v. Conner, *__ Fed. Appx.__, No. 18-1067 (4th Cir., Apr. 18, 2019)(unpub.).*
Officers did not violate a defendant's Second Amendment rights by retaining his legally seized firearms until the criminal charges against him and related thereto were dismissed.

3. *FOURTH AMENDMENT*

Caniglia v. Strom, *__F.3d__, No. 19-1764 (1st Cir., Mar. 13, 2020).*
In a case of first impression in the Circuit, the court extended the Fourth Amendment "community caretaker" exception to police officers performing community caretaker functions on private property - - including private homes.

US v. Moran, *__F.3d__, No. 18-1876 (1st Cir., Nov. 27, 2019).*
Leaving one's bags with a family member and telling her that she could "move them" did not establish that she had actual authority to consent to their search.

US v. Morel, *__F.3d__, No. 17-1696 (1st Cir., Apr. 19, 2019).*
The "third party doctrine" applies to IP address information that the government gathers from a smart-phone messaging company for purposes of a "reasonable expectation of privacy" Fourth Amendment challenge.

US v. Rodriguez-Pacheco, *__F.3d__, No. 18-1391 (1st Cir., Jan. 15, 2020).*
The fact that officers knew that a gun was in a house, without more, did not create the "exigent circumstances" needed to justify their warrantless entry and search of the house.

Hernandez v. US, *__F.3d__, No. 18-1103 (2nd Cir., Sept. 17, 2019).*
A Section 1983 claim under the Fourth and Fourteenth Amendments may exist when local authorities honor a federal immigration detainer without engaging in any inquiry when put on explicit notice that the detainer was issued in error.

Jones v. Suffolk Cty., *__F.3d__, No. 18-1602 (2nd Cir., Sept. 4, 2019).*
A county agent's home visits to verify the addresses of registered sex offenders may constitute a "seizure" under the Fourth Amendment, but are constitutional under the "special needs" doctrine.

Sloley v. Van Bramer, *__F.3d__, No. 16-4213 (2nd Cir., Dec. 12, 2019).*
Visual body cavity searches performed incident to arrest must be justified by specific, articulable facts supporting reasonable suspicion that an arrestee is secreting contraband within the body cavity to be searched.

US v. Williams, *__F.3d__, No. 17-3741 (2nd Cir., Jul. 9, 2019).*
A second inventory search of a vehicle does not violate the Fourth Amendment simply because officers expect to find evidence of a crime during the search.

Smith v. Clinton Tshp., *__Fed. Appx.__, No. 18-3151 (3rd Cir., Nov. 6, 2019)(unpub.).*
Qualified immunity was granted to a police officer who relied in good faith on an assistant prosecutor's opinion that there was probable cause to arrest an individual against a Section 1983 claim premised upon his alleged lack of probable cause.

US v. Morgan, *__Fed. Appx.__, No. 19-4017 (3rd Cir., Mar. 26, 2020)(unpub.).*
To search a vehicle for drugs consistent with the Fourth Amendment, an officer need not have probable cause to believe that the vehicle contains distribution-level quantities of narcotics, but only that additional contraband is located in the vehicle.

US v. Small, *__Fed. Appx.__, No. 19-1344 (3rd Cir., Jan. 6, 2020)(unpub.).*
For purposes of a probable cause to arrest determination, a tip from a reliable informant is not "stale" after six months when the crime is on-going and the officers have spoken to the informant in the interim.

Ray v. Roane, *__F.3d__, No. 18-2120 (4th Cir., Jan. 22, 2020).*
Qualified immunity was denied to an officer against a Fourth Amendment claim arising from his actions in allegedly shooting a dog located in its owner's yard when the dog was tethered and incapable of reaching or harming the officer.

US v Aigbekaen, *__F.3d__, No. 17-4109 (4th Cir., Nov. 21, 2019).*
The warrantless forensic search of a person's digital device during a border search violates the Fourth Amendment absent individualized suspicion.

US v. Curry, *__F.3d__, No. 18-4233 (4th Cir., Sept. 5, 2019).*
No Fourth Amendment violation resulted when officers, responding immediately to an active shooter situation in a densely populated area, shone flashlights on men walking away from where the shots were fired and instructed them to stop, raise their hands and lift their shirts to expose their waist bands.

US v. Jones, *__F.3d__, No. 18-4448 (4th Cir., Mar. 3, 2020).*
A search conducted pursuant to a search warrant did not violate the Fourth Amendment simply because it was not limited in geographic scope to the kitchen of a house where a marijuana cigarette was smoldering, since there remained a fair probability that other evidence of the presence of marijuana would be found in the house.

US v. Moore, *__F.3d__, No. 18-4606 (4th Cir., Mar. 4, 2020).*
A police checkpoint was valid under the Fourth Amendment when it was established to check driver's licenses and vehicle registrations and officers checked every vehicle that came to the checkpoint.

Jones v. Perez, *__F.3d__, No. 17-11242 (5th Cir., Oct. 16, 2019).*
A Fourth Amendment "false arrest" claim is ultimately about whether probable cause existed rather than about the validity of an arrest warrant.

Keller v. Fleming, *__F.3d__, No. 18-60081 (5th Cir., Feb. 20, 2020).*
Qualified immunity was granted to an officer who persuaded an incoherent, mentally challenged individual walking down the highway to sit in his squad car while he was driven to the county line, as the law is not clear that such conduct constitutes an unlawful "seizure" under the Fourth Amendment instead of an exercise of the officer's community caretaker responsibilities.

US v. Beverly, *__F.3d__, No. 18-20729 (5th Cir., Nov. 14, 2019).*
The Supreme Court's decision in *Carpenter v. US* only applies to cell phone records that can reveal a person's physical movements over time, not to a person's toll records and subscriber information.

US v. Daniels, *__F.3d__, No. 18-30791 (5th Cir., Jul. 10, 2019).*
The sounds of running back and forth and of a toilet flushing provided the "exigent circumstances" needed to justify the warrantless search of a hotel room by officers conducting a "knock and talk" with a suspected drug dealer.

US v. Darrell, *__F.3d__, No.19-60087 (5th Cir., Dec. 23, 2019).*
Reasonable suspicion existed to detain an individual for less than one minute when he was present in a high crime area, attempted to quickly walk away from arriving officers, and the officers reasonably feared that he may draw a weapon or warn the target of their arrest warrant.

USA v. Edmond, *__Fed. Appx.__, No. 19-30078 (5th Cir., Dec. 12, 2019)(unpub.).*
When a pat-down of a person was reasonably related to the safety of officers and others, the pat-down of his vehicle was also justified, even if he remained handcuffed during the traffic stop.

US. v. Morrow, *__F.3d__, No. 19-50112 (5th Cir., Oct. 2, 2019).*
A 6-month gap between investigators downloading illicit materials from the defendant's IP address and the issuance of a search warrant for his computer did not make the information obtained from the download "stale" for purposes of determining whether probable cause existed for the issuance of the warrant.

US v. Storm, *__Fed. Appx.__, No. 18-11458 (5th Cir., Sept. 18, 2019)(unpub.).*
The presence of multiple police officers and the use of handcuffs to restrain a suspect do not, without more, create a coercive environment that render his consent to a warrantless search of his bedroom "involuntary".

US v. Thompson, *__F.3d__, No. 18-30861 (5th Cir., Aug. 8, 2019).*
An anonymous tip is not automatically "stale" for Fourth Amendment purposes just because it is made six months before an arrest, if it is corroborated by behavior consistent with the criminal activity alleged in the tip.

US v. Williams, *__F.3d__, No. 18-30902 (5th Cir., Aug. 27, 2019).*
No Fourth Amendment "seizure" or "undue coercion" occurred when, during a traffic stop, a driver was asked to exit his vehicle, was flanked by two officers on the side of the highway with a drug dog nearby, and was asked if he would continue speaking with the officers.

Voss v. Goode, *__F.3d__, No. 19-20167 (5th Cir., Mar. 24, 2020).*
An arrest did not violate the Fourth Amendment simply because the arresting officer erroneously told the arrestee that he was arresting her for one offense, so long as he had probable cause to arrest her for a different crime.

Barton v. Martin, *__F.3d__, No. 18-1614 (6th Cir., Feb. 7, 2020).*
Under the Fourth Amendment, an officer needs more than a "shots fired" report to justify his warrantless entry into a home.

Bullman v. Detroit, *__Fed. Appx.__, No. 18-1278 (6th Cir., Sept. 26, 2019)(unpub.).*
When dogs were separated from police officers by a wooden fence and never lunged at or attacked the officers, they posed no immediate threat and therefore shooting them was unreasonable under the Fourth Amendment.

Christopher Lee-Murray Bey, *__F.3d__, Nos. 18-1285 & 1376 (6th Cir., Dec. 31, 2019).*
Nothing in the collective-knowledge-doctrine related to Fourth Amendment arrest claims requires an officer to act solely on another officer's knowledge when effectuating a stop.

Hernandez v. Boles, *__F.3d__, No. 18-6281 (6th Cir., Jan. 30, 2020).*
A drug dog's failure to alert while inside a vehicle, after first alerting outside of the vehicle, provided the officers with the kind of information that dissipated the probable cause created by the initial alert.

King v. Montgomery Cty., *__Fed. Appx.__, No. 19-5500 (6th Cir., Jan. 3, 2020)(unpub.).*
"Exigent circumstances" justifying a warrantless entry into a home and the removal of the dogs found therein existed when an officer smelled ammonia fumes and was told that dogs were inside the house without food or water and needed immediate veterinary care. The court declined to extend a homeowner's "right to privacy" to shield suspected dog abusers from the public dissemination of unaltered photographs of their abused dogs.

Rayfield v. Grand Rapids, *__Fed. Appx.__, No. 18-1927 (6th Cir., Apr. 15, 2019)(unpub.).*
"Qualified immunity" was granted on a claim that officers of one municipality violated the Fourth Amendment when they did not provide an arrestee with a timely probable cause hearing due to the failure of another municipality to adequately inform them of the status of the arrestee's detention.

Schulkers v. Kammer, *__F.3d__, No. 19-5208 (6th Cir, Mar. 30, 2020).*
Under the Fourth Amendment, social workers investigating child abuse must possess definite, articulable evidence giving rise to their reasonable suspicion that a child has been abused or is in imminent danger of abuse before they can seize her from her classroom without a warrant.

Taylor v. Saginaw, *__F.3d__, No. 17-2126 (6th Cir., Apr. 25, 2019).*
Officers who placed chalk marks on the tires of parked vehicles engaged in warrantless searches not subject to the Fourth Amendment's "community caretaker" or "motor-vehicle" exceptions.

US v. Alexander, *__F.3d__, No. 19-5607 (6th Cir., Apr. 1, 2020).*
The "inventory search" exception to the Fourth Amendment's warrant or consent requirement in order to search a vehicle is inapplicable when a police department has guidelines for determining *when* to conduct an inventory search, but no guidelines for determining *how* to do so.

US v. Belakhdhar, *__F.3d__, No. 18-1884 (6th Cir., May 28, 2019).*
A vehicle driving in tandem with a vehicle suspected of drug activity can create "reasonable suspicion" of criminal activity regarding the former vehicle.

US v. Coleman, *__F.3d__, No. 18-1083 (6th Cir., May 3, 2019).*
A sign at the entry to a condominium complex stating "Private Property" does not, without more, require officers to obtain a search warrant before entering the complex.

US v. Ickes, *__F.3d__, No. 18-5708 (6th Cir., Apr. 25, 2019).*
If the "stalking horse" caveat to the "special needs" exception to the need for officers to obtain a warrant or consent to search a home still exists, it does not apply to cases where a probationer is subject to a valid search condition of probation and officers have reasonable suspicion to believe that he is engaged in illegal activity.

US v. Jones, *__F.3d__, No. 19-5633 (6th Cir., Mar. 23, 2020).*
The Fourth Amendment does not bar investigatory stops prompted by completed misdemeanors.

US v. Wooden, *__F.3d__, No. 19-5189 (6th Cir., Dec. 19, 2019).*
As a general matter, neither the fact that an officer is not in uniform nor that he does not identify himself after knocking on the front door of a house constitutes "improper deception" under the Fourth Amendment in the absence of any affirmative steps taken to deceive.

Vanderhoef v. Dixon, *__F.3d__, No. 18-5993 (6th Cir., Aug. 21, 2019).*
An off-duty police officer violated the Fourth Amendment when he pointed his gun at a non-fleeing teenager suspected of speeding and reckless driving and held him at gunpoint for two minutes.

Hall v. Chicago, *__F.3d__, No. 19-1347 (7th Cir., Mar. 23, 2020).*
Police officers may, consistent with the Fourth Amendment, execute "home checks" on individuals incidental to a valid *Terry* stop, so long as the resulting delay is reasonable.

Henry v. Reynolds, *__F.3d__, No. 16-4234 (7th Cir., Jul. 16, 2019).*
The Fourth Amendment does not apply to the visual inspection of prisoners.

US v. Eatman, *__F.3d__, No. 18-2525 (7th Cir., Nov. 1, 2019).*
For Fourth Amendment purposes, placing someone in handcuffs is not an "arrest" when done to deescalate a domestic quarrel and allow officers to investigate the incident.

US v. Haldorson, *__F.3d__, No. 18-2279 (7th Cir., Oct. 23, 2019).*
A three-week delay between a tip and an arrest does not make the information "stale" for purposes of determining the legality of a warrantless arrest.

US. v. Holly, *__F.3d__, No. 19-1216 (7th Cir., Oct. 18, 2019).*
No Fourth Amendment violation occurred when an officer spoke to an individual in public, without stopping or obstructing him, and asked him if he had drugs or a gun.

US v. Sawyer, *__F.3d__, No. 18-2923 (7th Cir., Jul. 9, 2019).*
A trespasser had no "expectation of privacy" in a backpack he brought into a residential unit.

US v. Simon, *__F.3d__, No. 18-2442 (7th Cir., Aug. 21, 2019).*
The fact that a drug dog alerted on a car in which no drugs were found does not, alone, mean that his alert did not provide officers with probable cause to search the vehicle.

US v. Yancey, *__F.3d__, No. 18-2935 (7th Cir., Jun. 27, 2019).*
Officers can detain passengers in a car while a traffic stop is ongoing if they have a lawful reason to seize the driver of the car.

Chestnut v. Wallace, *__F.3d__, No. 18-3472 (8th Cir., Jan. 21, 2020).*
Qualified immunity was denied to an officer against a Fourth Amendment claim stemming from his stopping, frisking, and handcuffing a person who was watching another officer perform traffic stops.

Lewis v. Gardner, *__F.3d__, No. 18-2555 (8th Cir., Jul. 26, 2019).*
Qualified immunity is granted to a city attorney on Fourth and Fourteenth Amendment claims stemming from the detention of a prisoner after the charges against him had been dismissed. There is no constitutional duty imposed upon a city attorney to do more than file a *nolle prosequi* to ensure the release of a person against whom no charges are pending.

Oglesby v. Lesau, *__F.3d__, No. 18-1827 (8th Cir., Jul. 3, 2019).*
An officer did not "seize" an individual by telling him to "wait here" while she checked his identification, since she did not stop him from leaving, use force, or exert authority over him. Moreover, the Fourth Amendment is not violated just because an officer affects an arrest in violation of state law if he has probable cause to do so.

Thiel v. Korte, *__F.3d__, No. 19-1860 (8th Cir., Apr. 2, 2020).*
An officer did not violate the Fourth Amendment when, pursuant to a search warrant that authorized him to search a house and "seize a stolen vehicle," he also removed the keys to that vehicle from a bedroom drawer.

US v. Bettis, *__F.3d__, No. 18-2407 (8th Cir., Jan. 10, 2020).*
For Fourth Amendment purposes, an unlicensed, unauthorized driver who has permission from the renter of a car to drive it has a reasonable expectation of privacy in the vehicle.

US v. Green, *__F.3d__, No. 18-1707 (8th Cir., Jul. 12, 2019).*
When an officer follows his department's tow policy, and his sole reason for ordering the impoundment of a disabled vehicle is not to investigate criminal activity, an inventory search of the vehicle does not violate the Fourth Amendment.

US v. Houston, *__F.3d__, No. 18-1516 (8th Cir., Apr. 10., 2019).*
Police pursuit in an attempt to seize a person does not amount to a Fourth Amendment seizure.

US v. Sanchez, *__F.3d__, No. 18-1890 (8th Cir., Apr. 3, 2020).*
The Fourth Amendment allows an officer to look at the under-carriage of a vehicle without probable cause.

US v. Turner, *__F.3d__, No. 18-2262 (8th Cir., Aug. 16, 2019).*
An officer's shining a flashlight to illuminate a person in the darkness is not a Fourth Amendment arrest.

Waters v. Coon Rapids, *__F.3d__, No. 17-3827 (8th Cir., Apr. 11, 2019).*
Officers can handcuff a suspect and briefly place him in their squad car in order to preserve the *status quo* at the scene without thereby turning a *Terry* stop into an arrest.

Ioane v. Noll, *__F.3d__, No. 16-16089 (9th Cir., Sept 19, 2019).*
An agent violated a homeowner's Fourth Amendment right to bodily privacy when, during the execution of a warrant, he insisted upon watching the homeowner go to the bathroom without a legitimate governmental justification for doing so.

Jessop v. City of Fresno, *__F.3d__, No. 17-16756 (9th Cir., Sept. 4, 2019).*
Qualified immunity was granted to officers against Fourth and Fourteenth Amendment claims based upon their alleged theft of the plaintiff's property during the execution of a search warrant.

Padron v. City of Parlier, *__Fed. Appx.__, No. 18-15938 (9th Cir., Aug. 27, 2019)(unpub.).*
No Fourth Amendment right of privacy was violated when a city disclosed a tort claim that contained the plaintiff's name, address, and telephone number.

US v. Brown, *__F.3d__, No. 17-30191 (9th Cir., Jun. 5, 2019).*
In response to an anonymous tip that "a Black man was carrying a gun," reasonable suspicion to stop and frisk a Black man did not exist simply because he ran away when approached.

US v. Cano, *__F.3d__, No. 17-50151 (9th Cir., Aug. 16, 2019).*
Manual cell phone searches may be conducted by border officials without reasonable suspicion, but forensic cell phone searches require reasonable suspicion.

US. v. Norris, *__F.3d__, No. 17-10354 (9th Cir., Nov. 4, 2019).*
No "search" occurred when officers used wireless tracking software to detect the signal strength of the address of a resident's wireless device, as no right of privacy exists predicated on the unauthorized use of a third-party's internet access.

West v. Caldwell, *__F.3d__, No. 18-35300 (9th Cir., Jul. 25, 2019).*
Police officers who received consent to enter a house to apprehend a dangerous felon did not exceed the scope of that consent by shooting tear gas canisters into the house prior to their physical entry therein.

Crall v. Wilson, *__Fed. Appx.__, No. 18-1313 (10th Cir., Apr. 19, 2019)(unpub.).*
For Fourth Amendment purposes, it is not clearly established that entering a third party's residence to execute a valid search warrant against an individual temporarily staying in that residence violates the third party's rights.

Oliver v. Nielsen, *__Fed. Appx.__, No. 19-4064 (10th Cir., Mar. 24, 2020)(unpub.).*
There was no unlawful seizure of property, for Fourth Amendment purposes, when a person was arrested and jailed and the currency in his possession was confiscated, even if, upon release, he was not given his cash back but instead a debit card for the same amount of money.

Torres v. Madrid, *__Fed. Appx.__, No. 18-2134 (10th Cir., May 2, 2019)(unpub.).*
No seizure occurred when officers fired their weapons into a stolen moving vehicle and hit the suspect driving the vehicle but did not stop her from driving away and evading capture.

US v. Gurule, *__F.3d__, No. 18-4039 (10th Cir., Jul. 11, 2019).*
A vehicle passenger may, consistent with the Fourth Amendment, be detained for the duration of an otherwise lawful traffic stop.

US v. Jackson, *__Fed. Appx.__, No. 19-1191 (10th Cir., Mar. 26, 2020)(unpub.).*
For Fourth Amendment purposes, a person fleeing from police effectively "abandoned" his firearm and had no expectation of privacy therein when he dropped it in plain view, it made a metallic sound, and an officer yelled "gun," yet he chose to continue fleeing from the police.

US v. Loera, *__F.3d__, No. 17-2180 (10th Cir., May 13, 2019).*
The Fourth Amendment does not require police officers to stop executing an electronic search warrant for a computer when they discover evidence on the computer of an ongoing crime outside of the scope of their warrant, so long as their search remains directed at uncovering the evidence specified in the warrant.

US v. Mayville, *__F.3d__, No. 19-4008 (10th Cir. Apr. 7, 2020).*
For Fourth Amendment purposes, it was not unreasonable for an officer to run a driver's record check through dispatch rather than through his in-car computer. Reasonableness, not efficiency, is the touchstone of the Fourth Amendment.

US v. Serna, *__Fed. Appx.__, No. 19-2114 (10th Cir., Mar. 30, 2020)(unpub.).*
Under the Fourth Amendment, an officer's suspicions need not prove to be correct in order for his *Terry* stop to be lawful.

US v. Torres, *__F.3d__, No. 18-2026 (10th Cir., Aug. 23, 2019).*
The presence of a single car air freshener can contribute to reasonable suspicion.

Bailey v. Swindell, *__F.3d__, No. 18-13572 (11th Cir., Oct. 16, 2019).*
An officer violated the Fourth Amendment when he stepped over the doorstep of a home in order to make a warrantless arrest.

Brown v. Atlanta, *__F.3d__, No. 18-10436 (11th Cir., Jun. 25, 2019).*
"Keep out" and "Private Club" signs do not preclude the application of the "administrative search" exception to the warrantless search of a private business site when other circumstances reasonably suggest that a business subject to licensing is operating therein.

Ellison v. Hobbs, *__Fed. Appx.__, No. 18-14142 (11th Cir., Aug. 29, 2019)(unpub.).*
Qualified immunity against a Fourth Amendment claim was granted to EMTs and police officers who responded to a 911 call for medical assistance and who subsequently restrained and transported to the hospital for evaluation a person who was then incapable of making an informed decision about her health.

Gill v. Judd, *__F.3d__, No. 17-14525 (11th Cir., Oct. 21, 2019).*
The warrantless entry into a home was justified when a father, in response to an officer's statement that he "was there to arrest his [the father's] daughter," did not respond verbally but opened the door and took a step backwards, indicating his acquiescence to the officer's entry.

Henly v. Payne, *__F.3d__, No. 18-13101 (11th Cir., Dec. 30, 2019).*
Heck does not bar a § 1983 Fourth Amendment unlawful arrest [for criminal trespass] claim when the charge is dismissed as part of a plea bargain in which the plaintiff pled guilty to totally unrelated charges.

O'Kelley v. Craig, *__F.3d__, No. 18-14512 (11th Cir., Jul. 16, 2019).*
The failure of a homeowner to comply with a deputy's unlawful orders cannot, by itself, give rise to the "exigent circumstances" needed to justify the warrantless entry into the curtilage of his home or his seizure therein.

US v Babcock, *__F.3d__, No. 17-13678 (11th Cir., May 24, 2019).*
Officers' two-day detention of a cell phone was not an investigatory "stop" of that object that would be permitted based upon reasonable suspicion alone. By that time, the "stop" had "ripened" into a full-blown seizure requiring probable cause.

US v. Bishop, *__F.3d__, No. 17-15473 (11th Cir., Oct. 11, 2019).*
A passenger's refusal to obey a lawful order to exit his vehicle during a traffic stop, coupled with his known criminal history, argumentativeness, agitation, and nervous behavior, gave officers probable cause to pat him down for potential weapons.

US v. Johnson, Jr., *__F.3d__, No. 16-15690 (11th Cir., Apr. 16, 2019).*
An officer did not violate the Fourth Amendment when he removed a round of live ammunition from a suspect's pocket during a *Terry* frisk in order to protect himself and others.

US v. Ross, *__F.3d__, No. 18-11679 (11th Cir., Oct. 29, 2019).*
A guest does not "abandon" his hotel room for Fourth Amendment purposes when he runs from it to evade the police, but he loses his expectation of privacy in the room after "check-out time."

Washington v. Rivera, *__F.3d__, No. 17-13811 (11th Cir., Sept. 25, 2019).*
An officer was entitled to qualified immunity against a Fourth Amendment complaint that she had erroneously had the plaintiff arrested for non-payment of a fine, when she did not receive a telephone call from the clerk's office stating that the fine had been paid, and did not conduct her investigation into the facts that resulted in the arrest in a biased fashion nor ignore easily discoverable facts.

4. ***FOURTH AMENDMENT "EXCESSIVE FORCE"***

Cugini v. NYC, *__F.3d__, No. 18-1378 (2nd Cir., Oct. 25, 2019).*
Qualified immunity was granted to police officers on an "excessive force" claim stemming from the handcuffing of a woman who voluntarily surrendered to police custody in connection with a misdemeanor complaint of domestic stalking, despite the fact that she posed no flight risk or physical threat to the officers or others.

Kelley v. O'Malley, *__Fed. Appx.__, No. 18-3283 (3rd Cir., Sept. 24, 2019)(unpub.).*
Qualified immunity was denied to officers on an "excessive force" claim that stemmed from the shooting death of a homeless man who was cited for an open container law violation, refused to put down a knife when surrounded by 16 officers with weapons drawn, as well as a trained K-9 attack dog, and stabbed the dog when it was released on him. He posed no threat to the officers or others when he was shot.

Randolph-Ali v.Minium, *__Fed. Appx.__, No. 19-1909 (3rd Cir., Dec. 4, 2019)(unpub.).*
Qualified immunity is granted to an officer on an "excessive force" claim after he tackled and used a Taser in "drive stun" mode on an individual he was attempting to arrest after she refused to let the officer into her home to ensure the safety of her house occupants from a domestic violence perpetrator the officer had reason to believe was inside.

Russell v. Richardson, *__Fed. Appx.__, No. 18-3004 (3rd Cir., Jul. 25, 2019)(unpub).*
Qualified immunity was granted to an officer on an "excessive force" claim stemming from his fatal shooting of a person who suddenly appeared before him after the officer received credible evidence that this person could be armed and dangerous.

Betton v. Belue, *__F.3d__, No. 18-1974 (4th Cir., Nov. 5, 2019).*
Police officers who used a battering ram to enter a residence to serve a warrant, and who did not announce themselves, could have engaged in "excessive force" when the homeowner pulled a gun and had 29 shots directed at him in response, striking him nine times.

Brooks v. Hill Finklea Detention Ctr., *__F.3d__, Nos. 17-7261 & 7448 (4th Cir., May 10, 2019).*
Tasing a prisoner three times in 61 seconds, after he refused to hold still for an identification photograph, may constitute "excessive force" under the Eighth Amendment.

Amador v. Vasquez, *__F.3d__, No. 17-51001 (5th Cir., Mar 11, 2020).*
Qualified immunity against an "excessive force" claim was denied to officers who shot a man with a knife who was standing 30 feet away from them, motionless, with his hands in the air.

Ayala v. Aransas Cty., *__F.3d__, No. 18-40698 (5th Cir., Jul. 2, 2019).*
Qualified immunity was granted to an officer who struck a man with her flashlight, since he was verbally aggressive, physically close to her, and drunk.

Howse v. Hodous, *__F.3d__, No. 19-3418 (5th Cir., Mar. 18, 2020).*
Qualified immunity was granted to an officer against an "excessive force" claim stemming from his tackling the plaintiff after the plaintiff disobeyed his order to put his hands behind his back, and then resisted being handcuffed.

McCoy v. Alamu, *__F.3d__, No. 18-40856 (5th Cir., Feb. 11, 2020).*
Qualified immunity against an "excessive force" claim was granted to a correctional officer whose single use of pepper spray against an inmate did not clearly violate any clearly established law that found such action to be more than a *de minimus* use of force.

Ratliff v. Aransas Cty., *__F.3d__, No. 19-40121 (5th Cir., Jan. 15, 2020).*
Qualified immunity was granted to officers against an "excessive force" claim stemming from the shooting of an armed man who ignored repeated warnings to drop his gun, whether or not the gun was pointing towards the officers when he was shot.

Robles v. Ciarletta, *__Fed. Appx.__, No. 18-40736 (5th Cir., Dec. 19, 2019)(unpub.).*
Engaging in "passive resistance" incident to an arrest does not prohibit the use of some force by an arresting officer, but only varies the amount of force that will be deemed "reasonable."

Valderas v. City of Lubbock, *__F.3d__, No. 18-11023 (5th Cir., Aug. 26, 2019).*
For purposes of an "excessive force" claim, an officer's use of deadly force is reasonable when he reasonably believes that a suspect is attempting to use or reach for a weapon.

Ashford v. Raby, *__F.3d__, No. 19-1677 (6th Cir., Mar. 5, 2020).*
Using a police dog to drag a suspect from his car after he refused to come out voluntarily was not a clearly established, unreasonable use of force.

Butler v. Detroit, *__F.3d__, No. 18-1605 (6th Cir., Aug. 22, 2019).*
For purposes of an "excessive force" claim, the Constitution does not give a "free pass" for one gratuitous shove against the wall.

Coffey v. Carroll, *__F.3d__, No. 18-1314 (6th Cir., Aug. 5, 2019).*
Qualified immunity was denied against an "excessive force" claim that arose when officers investigating a suspect for his possible misdemeanor offense allegedly punched him in the face to wake him up so that he could be hand-cuffed.

Hodge v. Blount Cty., *__Fed. Appx.__, No. 18-5391 (6th Cir., Aug. 27, 2019).(unpub.).*
Yanking a driver out of a car and onto the pavement after he passively resisted an officer's repeated orders to exit his vehicle constituted "excessive force."

Jones v. City of Elyria, *__F.3d__, No. 18-4157 (6th Cir., Jan. 17, 2020).*
An officer who arrived at the scene as other officers were already struggling with an arrestee, and who merely held the suspect's feet to help secure the scene, did not engage in "excessive force," as she could reasonably have believed that the suspect posed a threat to the other officers.

Judd v. City of Baxter, *__Fed. Appx.__, No. 18-5748 (6th Cir., Aug. 21, 2019)(unpub.).*
For purposes of an "excessive force" claim, paramedics who act in a law enforcement capacity are held to the same standard as police officers.

McGrew v. Duncan, *__F.3d__, No. 18-2022 (6th Cir., Sept. 4, 2019).*
Bruising caused by too-tight handcuffs may be enough to support an "excessive force" claim.

Nelson v. City of Battle Creek, *__Fed. Appx.__, No. 18-1282 (6th Cir. ,Feb. 26, 2020)(unpub.).*
Qualified immunity was granted against an "excessive force" claim arising when an officer ordered an individual to raise his hands and then shot him after he pulled a black BB gun from his waistband, even if the individual threw his gun away and started to raise his hands just before he was shot.

Reich v. Elizabethtown, *__F.3d__, No. 18-6296 (6th Cir., Dec. 19, 2019).*
No "excessive force" resulted when officers shot a schizophrenic man approaching them with a raised knife shouting "you're going to have to kill me mother**kers!," even if he turned around and took a couple of steps away before he was shot.

Rudolph v. Babinec, *__F.3d__, No. 18-1901 (6th Cir., Sept. 20, 2019).*
For purposes of an "excessive force" claim, the court refused to adopt a bright line rule that tight handcuffing for 10 minutes or less was reasonable as a matter of law.

Shanaberg v. Licking Cty., *__F.3d__, No. 18-3916 (6th Cir., Aug. 23, 2019).*
It was not "excessive force" for an officer to tase a potentially armed and dangerous driver who became verbally hostile, refused commands to get on the ground, and tried to reach into his truck, after he was warned that he could be tased.

Studdard v. Shelby Cty., *__F.3d__, No. 19-5084 (6th Cir., Aug. 12, 2019).*
Police officers may not shoot an uncooperative individual who presents an immediate risk of harm only to himself.

US v. Parrish, *__F.3d__, No. 18-3446 (6th Cir., Nov. 1, 2019).*
A search warrant authorizing the search of "digital media" encompassed cell phones.

Day v. Wooten, *__F.3d__, No. 19-1930 (7th Cir., Jan. 10, 2020).*
Qualified immunity against an "excessive force" claim was granted to officers who handcuffed behind his back an "out of breath" arrestee who complained of difficulty breathing.

Johnson v. Rogers, *__F.3d__, No. 19-1366 (7th Cir., Dec. 17, 2019).*
A police officer who allegedly kicked an arrestee in the leg in an effort to gain control over him and to prevent him from running away was entitled to qualified immunity on an "excessive force" claim, even if he also subjectively kicked him in retaliation for his abusive language towards the officer.

Clark v. Clark, *__F.3d__, No. 18-1324 (8th Cir., Jun. 13, 2019).*
Pointing a firearm at a suspect for a few seconds while removing him from his vehicle does not constitute "excessive force".

Jackson v. Stair, *__F.3d__, No. 18-2617 (8th Cir., Sept. 12, 2019).*
Qualified immunity was denied to an officer who tased a suspect again before he had time to show compliance with the officer's order after the first tasing.

Kelsay v. Ernst, *__F.3d__, No. 17-2181 (8th Cir., Aug. 13, 2019).*
Qualified immunity was granted to an officer on an "excessive force" claim premised upon the officer having used a takedown maneuver on a suspect who ignored the officer's command to "get back here" and continued to walk away from him.

Murphy v. Engelhart, *__F.3d__, No. 18-3054 (8th Cir. Aug. 14, 2019).*
Using an arm bar to take down a stopped motorist after she refused to comply with orders to return to an officer's squad car during his license check, and was uncooperative when the officers grabbed her and told her to turn around, was not "excessive force."

Partridge v. Benton, *__F.3d__, No. 18-1803 (8th Cir., Jul. 3, 2019).*
Qualified immunity on an "excessive force" claim was denied to an officer who shot a non-resisting, non-threatening minor after the minor moved his gun in compliance with the officer's commands.

Rochell v. Ross, *__Fed. Appx.__, No. 17-3608 (8th Cir., Apr. 25, 2019)(unpub.).*
Qualified immunity was denied to an officer on an "excessive force" claim filed because he pointed his weapon at the head of a suspect after the suspect had dropped his weapon, submitted to arrest, and was no longer an immediate threat.

Swearingen v. Judd, *__F.3d__, No. 18-1126 (8th Cir., Jul. 18, 2019).*
Qualified immunity was granted to an officer facing an "excessive force" claim when he shot a non-compliant suspect who suddenly confronted him in close quarters while armed with a knife.

Z.J. v. Kansas City, *__F.3d__, No. 17-3365 (8th Cir., Jul. 25, 2019).*
Qualified immunity was denied to SWAT team members who used a flash-bang grenade when there was no basis for them to believe that they would face a threat of violence and they made no effort to determine whether innocent bystanders were in the area in which the grenade was deployed.

H.B. v. City of Torrance, *__Fed. Appx.__, No.18-56180 (9th Cir., Dec. 23, 2019)(unpub.).*
For purposes of an "excessive force" claim, the fact that the decedent was in an "impaired mental state" does not render an officer's conduct in shooting him less reasonable when the decedent posed a significant and immediate threat to the officers or others.

Hernandez v. Huntington B., *__Fed. Appx.__, No. 18-56127 (9th Cir., Dec. 24, 2019)(unpub.).*
Qualified immunity was granted to officers against an "excessive force" claim stemming from them shooting an individual who was brandishing a sharp stick a few feet away from bystanders and who disobeyed their orders.

Kendrick v. San Diego Cty., *__Fed. Appx.__, No. 18-55480 (9th Cir., Aug. 30, 2019)(unpub.).*
Qualified immunity was denied in an "excessive force" case where officers shot an armed but mentally unstable individual not suspected of any wrongdoing who was standing with his arms outstretched and parallel to the ground. Moreover, holding a material witness for almost seven hours is an unreasonable seizure under the Fourth Amendment.

Morad v. Long Beach, *__Fed. Appx.__, No. 18-56586 (9th Cir., Mar. 20, 2020)(unpub.).*
A police chief did not "ratify" an officer's unconstitutional acts, for municipal liability purposes, by deciding not to discipline him after investigating his shooting of a suspect but instead implementing remedial measures to prevent shootings of that kind in the future.

Nicholson v. Los Angeles, *__F.3d__, No. 17-56648 (9th Cir. Aug. 21, 2019).*
Qualified immunity on an "excessive force" claim was granted to an officer who shot a teenager who was carrying a toy gun that he mistook for a real weapon. However, handcuffing and detaining for five hours teenagers who were with the teenager who was shot, during which time the police investigated the shooting, violated the Fourth Amendment.

Orn v. Tacoma, *__F.3d__, No. 18-35379 (9th Cir., Feb. 3, 2020).*
Qualified immunity on an "excessive force" claim was denied to an officer who shot into the side and rear of a vehicle during a slow speed car pursuit when the driver drove the speed limit, stopped for stop signs, and never targeted the officer, forced other vehicles off the road, or posed a threat to the officer or anyone else.

Tuuamalemalo v. Green, *__F.3d__, No. 18-15665 (9th Cir., Dec. 24, 2019).*
Qualified immunity was denied against an "excessive force" claim when an officer used a chokehold on a non-resisting, restrained suspect.

Easter v. Cramer, *__F.3d__, No. 17-7069 (10th Cir., Sept. 19, 2019).*
Qualified immunity was granted to an officer against an "excessive force" claim stemming from his shooting of an unarmed suspect after the suspect pushed the officer under water and the officer believed that the suspect was trying to drown him.

Lynch v. Muskogee Cty., *__F.3d__, No. 18-7020 (10th Cir., Sept. 6, 2019).*
Officers may have used "excessive force" by tasing and continuing to keep a knee on the back of a suspect who already had his hands and feet shackled.

McCowan v. Morales, *__F.3d__, No. 18-2169 (10th Cir., Dec. 27, 2019).*
Qualified immunity was denied against an "excessive force" claim arising when a police officer drove erratically in order to toss an arrestee (who he knew had a bad shoulder) back and forth across the backseat of his squad car.

Smart v. City of Wichita, *__F.3d__, No. 18-3242 (10th Cir., Feb. 26, 2020).*
No "excessive force" occurred when officers shot a man without first giving him a verbal warning under circumstances that involved an active shooter in a crowded public place.

Waller v. Denver, *__F.3d__, No. 17-1234 (10th Cir., Aug. 5, 2019).*
Municipal liability, for purposes of a Section 1983 "excessive force" claim, cannot turn on a single similar incident to establish a "pattern" of conduct giving rise to an inference of "deliberate indifference".

Alston v. Swarbrick, *__F.3d__, No. 18-10791 (11th Cir., Mar. 26, 2020).*
An officer may have used "excessive force" when he sprayed the face of a non-resisting and handcuffed detainee with pepper spray for several minutes.

Corbitt v. Vickers, *__F.3d__, No. 17-15566 (11th Cir., Jul. 10, 2019).*
Qualified immunity is granted to an officer on an "excessive force" claim stemming from his unintentional shooting of a child while intentionally shooting at a dog.

Hinson v. Bias, *__F.3d__, No. 16-14112 (11th Cir., Jun. 14, 2019).*
Qualified immunity was granted to officers on an "excessive force" claim when they took a possibly armed and non-compliant suspect to the ground and fist-struck him in order to get him to produce his hands for cuffing.

Huebner v. Bradshaw, *__F.3d__, No. 18-12093 (11th Cir., Aug. 22, 2019).*
Painful handcuffing, without more, is not "excessive force."

Hunter v. City of Leeds, *__F.3d__, No. 17-11939 (11th Cir., Nov. 1, 2019).*
Continuing to fire at an armed suspect after he drops his gun and is no longer resisting can constitute "excessive force".

Marantes v. Miami-Dade Cty., *__Fed. Appx.__, No. 18-12439 (11th Cir., Sept. 5, 2019)(unpub.).*
An officer who briefly administered distractionary kicks to an arrestee who was only partially secured and restrained in order to effectuate his arrest did not engage in "excessive force."

Piazza v. Jefferson Cty., *__F.3d__, No. 18-10487 (11th Cir., May 9, 2019).*
Tasing an uncooperative prisoner, and thereby causing him to fall to the ground and remain motionless, may be justified, but Tasing him again eight seconds later because he did not roll over when asked to do so may constitute "excessive force."

Sparkes v. Sunrise, *__F.3d__, No. 18-14781 (11th Cir., July 1, 2019).*
No "excessive force" resulted when an officer shot a knife-wielding suspect who swiped his knife at the officer and refused to drop it even after being Tased and bitten by a K-9 unit.

Vicente-Abad v. Sonnenberg, *__Fec. Appx.__, No. 19-13080 (11th Cir., Mar. 20, 2020)(unpub.).*
Qualified immunity is denied against an "excessive force" claim stemming from an officer who, without warning, firing ten (10) rounds into a vehicle slowly approaching him but not on a trajectory to collide with him.

5. 5TH AMENDMENT; 6TH AMENDMENT; 7TH AMENDMENT; 9TH AMENDMENT

US v. Carpentino, *__F.3d__, No. 18-1969 (1st Cir., Jan. 17, 2020).*
For Fifth Amendment purposes, a suspect's statement that he "wanted to talk with his lawyer after he spoke to the police officers" was not an unambiguous statement that he would not talk to the officers without an attorney present.

Mara v. Rilling, *__F.3d__, No. 17-3326 (2nd Cir., Apr. 9, 2019).*
Two photo arrays are not unduly suggestive for Fifth Amendment purposes simply because the defendant is the only person in both the arrays.

Dennis v. Administrator NJS, *__Fed. Appx.__, No. 18-1132 (3rd Cir., Dec. 13, 2019)(unpub.).*
After giving a suspect his *Miranda* warnings, letting him take a nap and talk to his brother, and moving his interrogation to another room, are not circumstances that would require officers to re-read his *Miranda* rights to him.

US v. Ludwikowski, *__F.3d__, No. 18-1881 (3rd Cir., Dec. 5, 2019).*
A man who voluntarily visited a police station to report threats of extortion was not "in custody" and not required to be read his *Miranda* rights even though he was at the station for seven hours, since he was offered food and water, made several unaccompanied bathroom trips, used his cell phone, and the four hours of his actual interview were punctuated by several breaks.

US v. Hood, *__ Fed. Appx.__, No. 17-4759 (4th Cir. Apr. 16, 2019)(unpub.).*
An arrestee's misapprehension of the evidence against him that was in police possession did not render his statements involuntary for Fifth Amendment purposes.

US v. Warren, *__ Fed. Appx.__, No. 18-4562 (4th Cir., May 17, 2019)(unpub.).*
The presence of five police officers, by itself, does not create a "police-dominated atmosphere" or a "custodial interrogation" triggering the need for a Fifth Amendment warning prior to questioning.

Jones v. Davis, *__F.3d__, No. 17-70003 (5th Cir., Jun. 18, 2019).*
Miranda violations are subject to a "harmless-error" analysis.

US v. Alvarado-Palacio, *__F.3d__, No. 17-51030 (5th Cir., Mar. 2, 2020).*
A suspect who, when signing a *Miranda* waiver, said, when asked if he understood it, "Yes, that I may have an attorney, it says," made a free and deliberate choice to waive his rights.

US v. Clayton, *__F.3d__, No. 18-2237 (6th Cir., Aug. 30, 2019).*
No *Miranda* violation occurred when a suspect was not told that he could have an attorney with him "during questioning," when he was told that his right to counsel began at the outset, before any questioning.

Janusiak v. Cooper, *__F.3d__, No. 19-1198 (7th Cir., Aug. 22, 2019).*
A suspect's voluntary statement need not be suppressed because officers truthfully told her that she might lose custody of her children if she had harmed another child that she had been watching, since they did not threaten that she would lose her children unless she confessed.

Subdiaz v. Humphreys, *__F.3d__, No. 18-1061 (7th Cir., Jan. 9, 2020).*
"How can I get an attorney here because I don't have enough to afford one" is not an unequivocal invocation of an arrestee's right to counsel under the Fifth Amendment.

US v. Giles, *__F.3d__, No. 18-3126 (7th Cir., Aug. 15, 2019).*
The Fifth Amendment does not require the suppression of an inmate's confession on the grounds that his prolonged solitary confinement made him incapable of voluntarily and knowingly waiving his rights.

US v. Johnson, *__F.3d__, Nos. 18-2929/3156 (8th Cir., Apr. 2, 2020).*
The Fifth Amendment did not require a *Miranda* warning to be given before an officer asked a motorist who was sitting in his patrol car during a record check the standard questions he asked during all of his routine traffic stops, since the motorist was not "in custody" at that time.

US v. Robertson, *__F.3d__, No. 18-3375 (8th Cir., Jan. 23, 2020).*
The admission of a 911 call into evidence did not violate the Confrontation Clause of the Sixth Amendment because the call was not testimonial in nature.

BIA Bay Area v. Oakland, *__Fed. Appx.__, No. 18-15368 (9th Cir., Aug. 21, 2019)(unpub.).*
An ordinance that requires developers to display public accessible art or pay into a city fund established to do so does not violate the Fifth Amendment's Takings Clause because it regulates how developers may use their property, rather than forces developers to cede property rights to the city.

Bridge Aina Le'a v. Hawaii Land, *__F.3d__, Nos. 18-15738/15817 (9th Cir., Feb. 19, 2020).*
There was no "taking," for Fifth Amendment purposes, when a state commission returned certain land to an agricultural use classification from an urban use classification after promised development of the property did not occur, since the property retained substantial economic value and the change did not deprive the owner of all economically viable uses of this property.

Lach v. Jackson, *__Fed. Appx.__, No. 18-1051 (10th Cir., Oct. 29, 2019)(unpub.).*
When a state acts pursuant to its police power, rather than its power of eminent domain, its actions in seizing and destroying an innocent homeowner's house do not constitute a "taking" under the Fifth Amendment's Takings Clause. "Police power" includes actions to enforce a law, as well as actions that establish a law.

US v. Hano, *__F.3d__, No. 18-10510 (11th Cir., Apr. 30, 2019).*
In a case of first impression in the Circuit, the court held that neither the Confrontation Clause nor the Due Process Clause prohibit the use of the nontestimonial statements of a non-testifying criminal defendant against his co-defendant in a joint trial.

US v. Ochoa, *__F.3d__, No. 18-10142 (11th Cir., Oct. 25, 2019).*
Under the "public safety" exception, asking a potentially armed and dangerous suspect "if there's anything that could hurt my guys before we go in (the house)" does not require *Miranda* warnings to be given to the occupant of the house.

US v. Williams, *__Fed. Appx.__, No. 19-10214 (11th Cir., Aug. 16, 2019)(unpub.).*
The "public safety" exception to *Miranda* applies when an officer responds to a domestic disturbance involving a possibly armed and dangerous felon and asked a resident where a firearm is located in the house prior to giving him his *Miranda* warnings.

6. *FOURTEENTH AMENDMENT; DUE PROCESS*

Charles v. Orange Cty., *__F.3d__, No. 17-3506 (2nd Cir., May 24, 2019).*
A county may have violated the substantive due process rights of civil detainees suffering from mental illness by releasing them from jail without first engaging in discharge planning or providing them with a discharge plan.

Shakir v. Stankye, *__Fed. Appx.__, No. 18-242 (2nd Cir. Mar. 24, 2020)(unpub.).*
A pre-trial detainee's brief exposure to cold air from his cell's air conditioner does not rise to the level of a Fourteenth Amendment violation.

ABC v. Northampton, *__Fed. Appx.__, Nos. 19-2168/2169/2170/2171 (3rd Cir., Apr. 3, 2020)(unpub.).*
A city ordinance that required contractors to certify that they participated in a "Class A Apprenticeship Program" (which most union contractors do and most non-union contractors do not) did not violate the Fourteenth Amendment's Equal Protection Clause, since the city had a legitimate governmental interest in ensuring a "well-trained work-force."

Abernathy v. Pittsburgh, *__Fed. Appx.__, No. 19-1061 (3rd Cir., Jan. 10, 2020)(unpub.).*
For procedural due process purposes, a car owner is not entitled to a hearing prior to the towing from a city street of his seemingly abandoned vehicle, so long as he has a post-towing right to a hearing, given the need for "quick action" by the city.

Hampshire v. Bard, *__Fed. Appx.__, No. 19-1565 (3rd Cir., Nov. 25, 2019)(unpub.).*
Due process was afforded a public employee who had two pre-termination meetings with his police chief, with a union representative present, wherein he was informed of the reasons for his recommended termination. The fact that neither the employee nor union representative asked questions is not a denial of due process, since they had the opportunity to do so.

Harper v. Delaware Cty., *__Fed. Appx.__, No. 18-3378 (3rd Cir., Aug. 12, 2019)(unpub.).*
Qualified immunity was granted to government officials against a Section 1983 claim that an adult child has a constitutional right to live with and care for his elderly parents in their home.

Joey's Auto v. Fayette Cty., *__Fed. Appx.__, No. 18-3087 (3rd Cir., Aug. 29, 2019)(unpub.).*
Allegedly unnecessary zoning enforcement actions do not generally "shock the conscience" for purposes of a substantive due process claim.

Quiero v. Ott, *__Fed. Appx.__, No. 18-2171 (3rd Cir., Jan. 9, 2020)(unpub.).*
No due process liberty interest was violated by placing a pre-trial detainee in segregated confinement for 10 days without a pre-confinement hearing.

Tate v. Parks, *__Fed. Appx.__, No. 19-6260 (4th Cir., Nov. 12, 2019)(unpub.).*
A pre-trial detainee may raise a substantive due process challenge to his conditions of confinement when those conditions are so disproportionate or arbitrary that they are not related to legitimate penological objectives and amount to punishment.

Turner v. Thomas, *__F.3d__, No. 18-1733 (4th Cir., Jul. 19, 2019).*
Qualified immunity against a substantive due process claim was granted to officers who did not intervene in a clash between protesters, because the law is not clearly established that a failure to intervene violates any particular protester's due process rights.

Cadena v. El Paso Cty., *__F.3d__, No. 18-50765 (5th Cir., Jan. 3, 2020).*
Under the ADA, providing an inmate with a broken leg with crutches may not be a reasonable accommodation if she could not safely ambulate the facility by using them.

Cook v. Dallas, *__F.3d__, No. 19-10217 (5thCir. Nov. 8, 2019).*
The Court refused to adopt the "state-created danger" theory of liability and found no substantive due process violation when a frantic 911 caller did not have police arrive at her home for almost an hour after her call - - and after they had stopped at a convenience store for refreshments - - by which time she had been murdered by her attacker, since no state-actor impinged upon her liberty or instructed her to barricade herself in her bathroom instead of fleeing from the house.

Hernandez v. Bexar Cty., *__F.3d__, No. 18-50622 (5th Cir., May 28, 2019).*
A pretrial detainee's due process claim failed because it was not "deliberately indifferent" for jail officials to maintain a recreation yard that became slippery after a rain.

Romero v. Brown, *__F.3d__, No. 18-20157 (5th Cir., Aug. 27, 2019).*
A social worker violated a mother's due process rights when she removed children from her home for 24 hours without a court order or exigent circumstances.

Roy v. City of Monroe, *__F.3d__, No. 18-31063 (5th Cir., Feb. 13, 2020).*
An ordinance prohibiting "violent, boisterous, and provocative conduct" is sufficiently clear to satisfy the "fair notice" requirements of the Due Process Clause of the Fourteenth Amendment.

Soto v. Brock, *__F.3d__, No. 18-40568 (5th Cir., Nov. 20, 2019).*
The father of a minor offender attending a "boot camp" was denied due process when his letter to his son was rejected without adequate notice to him and an opportunity to appeal.

Ermold v. Davis, *__F.3d__, Nos. 17-6119/6120/6226/6233 (6th Cir., Aug. 23, 2019).*
Obergefell did not suggest that government officials may flout the Constitution and the Fourteenth Amendment by enacting religion-based policies to accommodate their own religious beliefs.

Green v. Southfield, *__F.3d__, Nos. 18-1758 & 1775 (6th Cir., May 28, 2019).*
No cognizable First or Fourteenth Amendment "access to courts" claim arose when officers responding to a traffic accident failed to canvas the area for the identity of additional witnesses or to solicit additional witness statements.

Halpern 2012 v. Center Line, *__Fed. Appx.__, No. 19-1921 (6th Cir., Mar. 16, 2020)(unpub.).*
The Fourteenth Amendment Due Process Clause does not require the refund of registration and inspection fees paid to a city pursuant to an unconstitutional section of its property management ordinance, since the underlying fee schedule was lawful and the complainant could not show that he would not have paid the same fees if the ordinance, now amended, had been constitutional from the start.

Korthals v. Huron Cty., *__Fed. Appx.__, No. 19-1119 (6th Cir., Jan. 13, 2020)(unpub.).*
Qualified immunity was granted to an officer against a Fourteenth Amendment claim arising from his failure to hold on to an intoxicated and handcuffed arrestee who fell in a stairway.

Manolios v. Macomb Cty., *__Fed, Appx.__, No. 18-1799 (6th Cir., Aug. 22, 2019)(unpub.).*
An officer's public misidentification of the plaintiff as the driver in a fatal crash did not violate a fundamental liberty interest rooted in the Fourteenth Amendment.

Tollbrook v. City of Troy, *__Fed. Appx.__, No. 18-1139 (6th Cir. May 21, 2019)(unpub.).*
Under the Fourteenth Amendment, a developer has no constitutionally protected liberty interest in an expectation that a municipality will follow its own ordinance and make a rezoning decision by resolution rather than by a mere up-down vote.

Williams v. City of Georgetown, *__Fed. Appx.__, No. 18-6182 (6th Cir., May 24, 2019)(unpub.).*
No Fourteenth Amendment "deliberate indifference" violation occurred when officers dropped off a man acting oddly, but who did not appear to be of danger to himself or others, at a well-lit restaurant to await pick-up by a relative, although he later left and was struck by a car.

ADS v. Orland Fire Protection Dist., *__F.3d__, No. 18-2926 (7th Cir., Jul. 15, 2019).*
Municipalities that require commercial buildings to send their fire alarm signals to a local 911 center through a single alarm-system provider do not violate the substantive due process rights of other alarm-service providers when a rational basis exists for choosing an exclusive provider through a public bidding process.

Donaldson v. Chicago, *__Fed. Appx.__, No. 19-1115 (7th Cir., Nov. 22, 2019)(unpub.).*
The Due Process Clause does not establish a right to police assistance.

GEFT Outdoor v. Westfield, *__F.3d__, No. 18-3236 (7th Cir., Apr. 25, 2019).*
There is no constitutional procedural due process right to have a city comply with the procedures promised in its ordinances. Moreover, a municipal attorney's unlawful threats to arrest persons erecting a billboard in violation of a local ordinance did not "shock the conscience" for substantive due process purposes.

Her v. Hoeppner, *__F.3d__, No. 18-3524 (7th Cir., Sept. 26, 2019).*
No Fourteenth Amendment "state-created danger" existed when a city operated a public pool but did nothing to increase the danger to a young drowning victim.

Knight v. Grossman, *__F.3d__, No. 19-1740 (7th Cir., Oct. 31, 2019).*
The court adopts the Second Circuit's reasoning in holding that prisoners have a Fourteenth Amendment right to informed consent prior to undergoing a medical procedure.

Knutson v. Lakemoor, *__F.3d__, No. 18-3729 (7th Cir., Aug. 1, 2019).*
A municipal red light camera program does not violate due process when it limits the defenses that can be asserted before a hearing officer when contesting a citation to those that would refute or alleviate a driver's culpability.

Levy v. Marion County, *__F.3d__, No. 19-1424 (7th Cir., Oct. 18, 2019).*
No "deliberate indifference" existed for Fourteenth Amendment due process liability purposes when a prison used a notification system that contained significant weaknesses even after it had taken affirmative steps to address those weaknesses.

Weiland v. Loomis, *__F.3d__, No. 18-2054 (7th Cir., Sept. 18, 2019).*
The courts have not "clearly established" a constitutional obligation "to keep a prisoner under control" for purposes of a "state-created danger" claim.

Word v. Chicago, *__F.3d__, No. 19-1320 (7th Cir., Jan. 6, 2020).*
For purposes of a due process claim, there is no protected property interest in either a promotion within a police department or in a fair examination for such promotion.

Zummo v. Chicago, *__Fed. Appx.__, No. 18-3531 (7th Cir., Mar. 17, 2020)(unpub.).*
No substantive due process violation occurred when a city sold a limited number of taxi medallions and subsequently enacted regulations that allowed ride-share companies to compete with taxis, thus reducing the value of the taxi medallions, because taxi drivers held no property interest in their medallion value. The medallions authorized taxi drivers to own and operate a taxi, not to avoid competition by other transportations services.

Anderson v. Minneapolis, *__F.3d__, No. 18-1941 (8th Cir. Aug. 20, 2019).*
Fire department personnel were entitled to qualified immunity on a Fourteenth Amendment "state-created danger" claim when they in good faith declared a person found on the side of the road in freezing temperatures "dead," which caused EMTs to leave the scene without investigating him, when he may have been yet alive. Qualified immunity is designed to protect such errors in judgment.

Dillard v. Hoyt, *__F.3d__, No. 17-3284 (8th Cir., Jul. 12, 2019).*
The Fourteenth Amendment "right to privacy" against the public dissemination of highly personal information may have been violated when municipal officials released investigatory reports to the Press that allowed alleged child abuse victims to be identified.

Hamner v. Burls, *__F.3d__, No. 18-2181 (8th Cir., Sept. 11, 2019).*
Qualified immunity was granted to prison officials against a claim that an inadequate justification for administrative segregation, or shortcomings in the review of an inmate's placement, violates the Due Process Clause.

Lunon v. Botsford, *__F.3d__, No. 18-3314 (8th Cir., Dec. 27, 2019).*
Affirmative pre-deprivation notice was not required under the Fourteenth Amendment when an animal shelter held a stray dog for five days pursuant to local ordinance and then adopted and spayed the dog after her owner failed to timely claim her.

J.P. v Alameda Cty., *__Fed. Appx.__, No. 18-15963 (9th Cir., Mar. 2, 2020)(unpub.).*
Qualified immunity was granted to child welfare workers against a "state-created danger" and "special relationship" Fourteenth Amendment claim because no law clearly established that they could be liable for emotional distress to a sibling who suffered no direct injury as a result of the state-created danger or special relationship established with his brother.

Martinez v. City of Clovis, *__F.3d__, No. 17-17492 (9th Cir., Dec. 4, 2019).*
A "state-created danger" exists when an officer reveals a confidential domestic violence complaint to an alleged abuser while making disparaging remarks about the alleged victim, which emboldens the abuser to continue abusing the victim with impunity.

Alcorn v. Labarge, WY, *__F.3d__, No. 18-8060 (10th Cir., Aug. 29, 2019).*
For purposes of a Fourteenth Amendment "deprivation of liberty" claim based upon a municipal employer's transmittal of a statement indicating that an officer was terminated for violating various internal policies before he was given a name-clearing hearing, the statement is not "published" when it was sent from the municipality to a state agency.

Colbruno v. Kessler, *__F.3d__, No. 18-1056 (10th Cir., Jul. 2, 2019).*
Walking a prisoner through the public areas of a hospital clothed only in an orange pair of mittens may violate the Fourteenth Amendment as an invasion of personal privacy.

Coleman v. Long, *__Fed, Appx.__, No. 19-1039 (10th Cir., May 16, 2019)(unpub.).*
The revocation of a prisoner's visitation and telephone privileges does not implicate a constitutionally protected liberty interest.

Crittenden v. City of Tahlequah, *__F.3d__, No. 18-7036 (10th Cir., Sept. 6, 2019).*
Qualified immunity was granted to officers against a Fourteenth Amendment "deliberate indifference" claim when they decided to clear a potentially dangerous scene before allowing EMTs access to an individual with a gunshot wound to his head.

Waldron v. Spicher, *__F.3d__, No. 18-14536 (11th Cir., Mar. 25, 2020)*
Qualified immunity will be granted to a police officer against a substantive due process claim arising after he forbid bystanders from performing emergency CPR on a person, unless it is found that his actions constituted more than reckless interference with their rescue efforts.

7. EQUAL PROTECTION

Mahar v. Warren Cty., *__F.3d__, No. 18-1810 (2nd Cir., May 15, 2019).*
A voter is not denied equal protection of the law if he cannot vote directly for a County Board member because, under local law, the elected Town Supervisor is also automatically the County Board member representing his town. The voter can directly vote for the Town Supervisor, and that is sufficient.

Sanders v. USA, *__Fed. Appx.__, No. 18-1651 (3rd Cir., Oct. 30, 2019)(unpub.).*
For purposes of an Equal Protection claim of age discrimination, the denial of an inmate's request to participate in a post-secondary educational program was lawful because reserving the program for younger inmates was not irrational.

Lozano v. Shubert, *__ Fed. Appx.__, No. 18-20297 (5th Cir., May 23, 2019)(unpub.).*
The Equal Protection Clause is not violated when prison officials act as a conduit for the transfer from an outside third party of donated meals earmarked for Jewish inmates and not for other inmates of other religions.

Free the Nipple v. Springfield, *__F.3d__, No. 17-3467 (8th Cir., May 6, 2019).*
An ordinance treating men and women differently as to their right to expose their areolas and nipples in public survives an Equal Protection Clause challenge. The ordinance was substantially related to the important governmental interests of promoting decency and protecting morals, public order, health, and safety.

A.N. v. Alamogordo Police Dept., *__F.3d__, No. 18-2112 (10th Cir., Jul. 8, 2019).*
Qualified immunity was denied to police officials on an equal protection claim stemming from their allegedly intentional and irrational differentiation between juvenile arrestees and in the public release of their juvenile delinquency records.

8. EEOC; TITLE VII; DISCRIMINATION

Lenzi v. Systemax, *__F.3d__, No. 18-979 (2nd Cir., Dec. 6, 2019).*
In order to establish a *prima facie* pay discrimination claim under Title VII, a plaintiff need not first establish an Equal Pay Act violation, only that her employer discriminated against her with respect to her compensation because of her sex.

Naumovski v. Norris, *__F.3d__, No. 18-1556 (2nd Cir., Aug. 12, 2019).*
A Section 1983 claim for discrimination in public employment requires proof that the defendant's discriminatory intent was a "but for" cause of an adverse employment action, and cannot be premised upon a "respondeat superior" ("cat's paw") theory to establish that defendant's liability.

Rasmy v. Marriott, *__F.3d__, No. 18-3260 (2nd Cir., Mar. 6, 2020).*
Under Title VII, a "hostile work environment" claim does not require the showing of a physical threat, or that an employee's work performance suffered as a result of the work environment, and discriminatory conduct not directly aimed at the employee can contribute to an actionable claim.

Brown v. Children's Hospital, *__Fed. Appx.__, No. 18-3685 (3rd Cir., Feb. 14, 2020)(unpub.).*
To establish a *prima facie* case under Title VII of an employer's "failure to accommodate" a sincerely held religious belief by requiring an employee to obtain a flu shot, it is not enough that an employee holds a sincere opposition to vaccinations that is not tied to a religious belief.

Chinery v. American Airlines, *__Fed. Appx.__, No. 18-3118 (3rd Cir., Jul. 25, 2019)(unpub).*
For purposes of determining whether conduct is "severe or pervasive" harassment so as to support a Title VII hostile work environment claim, Facebook posts are not inherently pervasive simply because they are public and permanent.

Hukman v. American Airlines, *__Fed. Appx.__, No. 19-1934 (3rd Cir., Dec. 31, 2019)(unpub).*
National origin discrimination under Title VII was not shown when a job promotion applicant was asked "where do you come from," which was immediately clarified to mean "what is your prior work experience?"

Medlin v. American Airlines, *__Fed. Appx.__, No. 18-3117 (3rd Cir., Sept. 17, 2019)(unpub.).*
Crude and thoughtless Facebook comments made by employees with whom the plaintiff does not work are insufficient to support a Title VII hostile work environment claim.

Miller v. Port Authority, *__Fed. Appx.__, No. 18-3710 (3rd Cir., Oct. 11, 2019)(unpub.).*
For purposes of a Title VII "reasonable accommodation" claim, once an employer offers any reasonable accommodation, the employee's statutory injury ends.

Biggs v. NCDPS, *__F.3d__, No. 18-2437 (4th Cir., Mar. 10, 2020).*
The court refused to dismiss as moot a Section 1983 racial discrimination suit brought by an employee who had since retired, since the employee had agreed to return to work if he was reinstated in his old job position.

Dortch v. Cellco, *__ Fed. Appx.__, No. 18-2108 (4th Cir., May 16, 2019)(unpub.).*
An employee forced to work a less desirable shift due to her poor work performance was not thereby subjected to an "adverse employment action" under Title VII, since she was not forced to work additional hours for less pay and her job duties were unchanged.

Haynes v. Does 1-25, *__F.3d__, No. 17-2431 (4th Cir., Apr. 23, 2019).*
Evidence that an employer's reason for terminating an employee changed substantially over time is sufficient evidence of pretext to avoid summary judgment on a Title VII wrongful termination claim.

Nnadozie v. Manorcare, *__Fed. Appx.__, No. 19-1369 (4th Cir., Nov. 14, 2019)(unpub.).*
A Title VII "hostile work environment" is not shown by one occasion of rude treatment by a supervisor who did not use profanity or refer to race, or by the assignment of extra undesirable work tasks.

Abbood v. Texas HHSC, *__F.3d__, No. 18-11655 (5th Cir., Nov. 7, 2019).*
Title VII does not prohibit improper decisions, only non-retaliatory ones.

Caycho Melgar v. T.B. Butler, *__Fed. Appx.__, No. 18-41080 (5th Cir., Jul. 10, 2019)(unpub).*
An intake questionnaire that does not contain a clear and concise statement of facts constituting an alleged unlawful employment practice does not suffice as an EEOC charge of discrimination or constitute a proper exhaustion of administrative remedies as is required as a prerequisite to filing a Title VII lawsuit.

EEOC v. Vantage Energy, *__F.3d__, No. 19-20541 (5th Cir., Apr. 3, 2020).*
An EEOC intake questionnaire was sufficient to constitute a "charge," even if it was verified outside of the statutory filing period.

Hassen v. Ruston, *__F.3d__, No. 18-30856 (5th Cir., Aug. 1, 2019).*
In a Title VII racial discrimination case, a legitimate, non-discriminatory reason for not hiring a person can be that she never applied for the job.

Matthews v. Pilgrims Pride, *__Fed. Appx.__, No. 18-40984 (5th Cir., Aug. 7, 2019)(unpub.).*
Under Title VII, no "adverse employment action" occurred when an employee was temporarily allowed to serve as a "back-up" for a higher grade position and then returned to her regular job.

O'Daniel v. Industrial Service Solutions, *__F.3d__, No. 18-30136 (5th Cir., Apr. 19, 2019).*
Title VII does not protect against discrimination in employment on the basis of sexual orientation.

Welsh v. Fort Bend, *__Fed. Appx.__, No. 19-20239 (5th Cir., Oct. 30, 2019)(unpub.).*
For purposes of a Title VII claim, placing a teacher in a "growth plan" to improve upon her weaknesses is not an "adverse employment action."

Crawford v. Chipotle, *__Fed. Appx.__, No. 18-3360 (6th Cir., May 28, 2019)(unpub).*
An employee telling a supervisor that he "was discriminating" against a fellow employee and "needed to stop harassing him," coupled with prior complaints from this employee to this supervisor that he was favoring Hispanic over African American employees, may constitute Title VII protected activity.

Hudson v. Highland Park, *__F.3d__, No. 19-1036 (6th Cir., Nov. 22, 2019).*
Under Title VII, people of faith cannot be treated differently by their employer because they criticize behavior on moral grounds stemming from their religious convictions as opposed to moral grounds stemming from their secular convictions.

Logan v. MGM Grand, *__F.3d__, No. 18-1381 (6th Cir., Sept. 25, 2019).*
In a case of first impression, the court held that Title VII's statute of limitations may not be contractually shortened for litigation.

Barnes v. U. of Ill., *__F.3d__, No. 19-1781 (7th Cir., Jan. 3, 2020).*
Just because job interviews are unstructured and not cookie-cutter does not mean that they are discriminatory for purposes of a Title VII claim.

Joll v. Valparaiso Comm. Schls., *__F.3d__, No. 18-3630 (7th Cir., Mar. 20, 2020).*
For purposes of a Title VII sex discrimination analysis, the "stray remarks" rationale only applies to hiring decisions when they are not part of the decision-making process itself.

Levitin v. NW Comm. Hosp., *__F.3d__, No. 16-3774 (7th Cir., May 8, 2019).*
An independent physician with practice privileges at a hospital is not an "employee" of that hospital for Title VII purposes.

Denning v. Washoe Cty., *__Fed. Appx.__, No. 18-16880 (9th Cir., Apr. 2, 2020)(unpub.).*
A Title VII "hostile work environment" claim was not proven on the basis of two derogatory statements about an employee's disability over a three-year period, her assignment to longer shifts and less desirable tasks, or by subjecting her to "excessive scrutiny."

Schwartz v. Clark Cty., *__Fed. Appx.__, No. 18-15930 (9th Cir., Aug. 26, 2019)(unpub.).*
Qualified immunity was granted to a supervisor against Section 1983 age and disability discrimination claims because it is not clearly established that a county official violates an employee's constitutional rights when she manipulates job titles to affect the seniority of an employee for purposes of engaging in allegedly discriminatory lay-off decisions.

Ade v. Conklin Cars, *__F.3d__, No. 19-3131 (10th Cir., Jan. 30, 2020).*
When the same person hires and fires an employee within a six month period, the "same actor inference" applies and infers that the employer's stated reason for the termination action is not pretextual or based upon the employee's sex.

Braxton v. North, *__Fed. Appx.__, No. 18-6076 (10th Cir., Apr. 23, 2019)(unpub.).*
Under Title VII, feelings of "humiliation" alone are not enough to establish an "adverse employment action." Also, placing a metal barrier between work stations to hinder employee interaction is a mere "inconvenience," not an actionable "change in working conditions."

Davis v. Unified Sch. Dist. 512, *__Fed. Appx.__, No. 18-3199 (10th Cir., Nov. 7, 2019(unpub.).*
The law is not clearly established, for purposes of a Title VII claim, that the mere reassignment of an employee constitutes an "adverse employment action."

Jackson v. Kansas City Pub. Sch., *__F.3d__, No. 19-3094 (10th Cir., Jan. 7, 2020).*
An employer did not have notice of sexual harassment for purposes of a Title VII sexually hostile work environment claim by virtue of a workplace harassment claim it received from an employee that did not disclose that this harassment was sexual in nature.

Sasser v. Salt Lake City Corp., *__Fed. Appx.__, No. 17-4198 (10th Cir., May 20, 2019)(unpub.).*
Keeping a separate file on an African-American worker and recording therein his mis-steps, even if taken solely as a precautionary matter, is still undertaken for racial reasons and may support a claim of invidious animus.

Zu v. Avalon Health Care, *__Fed. Appx.__, No. 18-4153 (10th Cir., Mar. 23, 2020)(unpub.).*
A person's thick accent can provide, in the context of a Title VII national origin discrimination claim, a valid objective reason for choosing one job applicant over another for a job position for which the ability to communicate was particularly important.

Davis v. District of Columbia, *__F.3d__, No. 17-7071 (D.C. Cir., Jun.7, 2019).*
Nothing in Title VII suggests that an employer's lay-off practices, even if they are dubbed "reductions in force," are exempt from "disparate impact" scrutiny.

Figueroa v. Pompeo, *__F.3d__, No. 18-5064 (D.C. Cir., May 10, 2019).*
The court adopts a new test for the second prong of a *McDonnell-Douglas* analysis - - holding that an employer at the second prong must proffer admissible evidence showing a legitimate, non-discriminatory, clear, and reasonably specific explanation for its actions - - evidence sufficient to raise a triable issue of fact as to intentional discrimination. When its explanation involves subjective criteria, the employer must also provide fair notice as to how it applied these subjective criteria to an employee's own circumstances.

9. *RETALIATION CLAIMS*

Williams v. Newburgh, *__Fed. Appx.__, No. 18-3282 (2nd Cir., Mar. 6, 2020)(unpub.).*
For purposes of a Title VII retaliation claim, statements made in 2012 do not give rise to an inference of discrimination regarding a 2014 failure to hire decision.

Chhim v. Houston, *__Fed. Appx.__, No. 19-20153 (5th Cir. Sept. 26, 2019)(unpub.).*
A city's refusal to hire a job applicant because he had been previously terminated by the city was legitimate and non-retaliatory for purposes of a Title VII claim.

Wilson v. Houston Com. College System, *__F.3d__, No. 19-20217 (5th Cir., Apr. 7, 2020).*
The censure of a publicly elected official in retaliation for his engaging in official speech while addressing a matter of public concern is a cognizable injury under the First Amendment.

Robertson v. Wisconsin DHS, *__F.3d__, No. 19-1179 (7th Cir., Feb. 7, 2020).*
Statements by a supervisor that he had to "clean up the morale" caused by an employee who reported another employee's discriminatory misconduct, and thereafter giving the reporting employee "the cold shoulder," were insufficient to establish retaliation under Title VII.

Liscomb v. Boyce, *__F.3d__, No. 18-1314 (8th Cir., Apr. 3, 2020).*
In a case of first impression, the court held that the FLSA's anti-retaliation provision does not apply to actions involving a prospective employee and a prospective employer.

Head v. Wilkie, *__F.3d__, No. 17-55942 (9th Cir., Sept 5, 2019).*
A plaintiff's allegation that employees retaliated against him for his testimony in a colleague's, and in his own, Section 1985 civil rights lawsuits alleged a cognizable injury.

Callahan v. Jacksonville, *__Fed. Appx.__, No. 19-11432 (11th Cir., Feb. 26, 2020)(unpub.).*
For purposes of a Title VII retaliation claim, incidents that occurred eight, five, and three months before an employee's allegedly retaliatory shift transfer were too remote in time to justify an inference of causation.

Herron-Williams v. Alabama St., *__Fed. Appx.__, No. 18-10875 (11th Cir., Feb. 7, 2020)(unpub.).*
A several months gap between a complaint and an allegedly retaliatory pay reduction was sufficient to negate any " but-for" causation connection between the two actions for purposes of a Title VII retaliation claim.

Johnson v. Miami-Dade Cty., *__F.3d__, No. 18-11479 (11th Cir., Jan. 30, 2020).*
For purposes of a Title VII retaliation claim resulting from an officer reporting another officer's misconduct, a negative monthly evaluation that affected the reporting officer's terms and conditions of employment, but would not dissuade him from reporting future retaliatory conduct, was not a material "adverse employment action."

Monaghan v. Worldplay, *__F.3d__, No. 17-14333 (11th Cir., Apr. 2, 2020).*
For purposes of a Title VII retaliation claim, a Black supervisor's statements to a White subordinate that she was "blackballed" for complaining about the supervisor to her superiors, that she was "f*cked," had better "watch it, White girl," and that she was "training another to take her job" were sufficient to support such a claim.

Tebo v. City of DeBary, *__Fed. Appx.__, No. 18-13819 (11th Cir., Sept. 3, 2019)(unpub.).*
Terminating an employee 32 days after she filed an informal complaint with the EEOC is sufficient to establish a causal connection between her protected activity and her termination for purposes of a Title VII retaliation claim.

10. ADA;REHABILITATION ACT

G. v. Fay School, *__F.3d__, No. 18-1602 (1st Cir., Jul. 17, 2019).*
Damages are not available as a remedy for an ADA Title V retaliation claim premised upon an exercise of ADA Title III rights.

Melo v. Somerville, *__F.3d__, No. 19-1337 (1st Cir., Mar. 24, 2020).*
Under the ADA, biocular vision and the ability to drive a car at high speeds may not, in some circumstances, be essential job functions even if they are contained in an officer's job description.

Pena v. Honeywell, *__F.3d__, No. 18-1164 (1st Cir., Apr. 26, 2019).*
To avoid summary judgment, an employee alleging an ADA claim but accepting SSDI benefits for being "totally disabled" must do more than simply point out that different standards apply for the receipt of SSDI benefits and for determining whether an employee can perform the essential functions of her job with or without reasonable accommodation under the ADA.

Costabile v. NYC Health and Hospital Corp., *__F.3d__, No.18-2816 (2nd Cir., Feb. 25, 2020).*
There is no statutory basis for subjecting a Rehabilitation Act claim against a non-federal employer to an administrative exhaustion requirement. Moreover, knowledge that an employee is on disability leave for a work-related injury is not sufficient to provide notice to his employer that his injuries constituted a disability under the Act. Finally, the rights established by the Rehabilitation Act cannot be enforced through a Section 1983 action.

Kelleher v. Fred A. Cook, Inc., *__F.3d__, No. 18-2385 (2nd Cir., Sept. 24, 2019).*
"Associational discrimination" under the ADA may exist when a person is qualified for a job position but was fired because his supervisor assumed that he would be distracted by his daughter's disability and his need to occasionally leave work to care for her.

Woolf v. Strada, *__F.3d__, No. 19-860 (2nd Cir., Feb. 6, 2020).*
The ADA Amendments Act did not alter or erode the well-settled understanding that an inability to perform a single, particular job does not constitute a substantial limitation on the major life activity of "working."

Arana v. Temple U., *___Fed. Appx. ___ No. 18-2124 (3rd Cir., Jun. 5, 2019)(unpub.).*
Granting a FMLA leave request can sometimes count as an ADA accommodation.

Ehnert v. Washington Penn, *__Fed. Appx.__, No. 18-3364 (3rd Cir., Jul. 29, 2019)(unpub).*
While valid SSDI and ADA claims can both exist, when the two claims contradict as to an employee's ability to perform his essential job functions, he must proffer a sufficient explanation for the apparent contradiction in order to avoid the dismissal of his ADA claim.

Haberle v. Borough of Nazareth, *__F.3d__, No. 18-3429 (3rd Cir., Aug. 29, 2019).*
Under the ADA, a police department can be found to be deliberately indifferent by failing to enact policies accommodating mental disabilities.

Lewis v. U of Pennsylvania, *__Fed. Appx.__, No. 18-2706 (3rd Cir., Aug. 9, 2019)(unpub.).*
Requiring a medical certificate to be submitted by an employee every 60 days in order for him to continue to be exempt from his employer's "clean-shaven" policy may violate the ADA if there is no legitimate business purpose for requiring such submissions.

Smith v. U. of Scranton, *__ Fed. Appx.__, No. 18-2655 (3rd Cir., May 9, 2019)(unpub).*
An ADA request for accommodation does not immunize an employee from being fired for poor job performance.

Stansbury v. Annapolis, *__Fed. Appx.__, No. 18-1966 (4th Cir., Jun. 17, 2019)(unpub).*
Under the ADA, an employer is not liable for its failure to engage in the interactive process with an employee it knows needs a disability accommodation if the employee cannot show that, had the interactive process occurred, the parties could have found a reasonable accommodation that would have enabled the employee to perform his essential job functions.

Abshire v. Louisiana, *__ Fed. Appx.__, No.18-30671 (5th Cir., Apr. 11, 2019)(unpub.).*
Under the ADA, "24/7" availability can be an "essential function" of a police officer's job.

Clark V. Champion, *__F.3d__, No. 18-11613 (5th Cir., Mar. 10, 2020).*
The ADA was not violated when an employee was terminated for sleeping on the job, even if his unconsciousness was linked to his diabetes, since no accommodation would allow him to perform his essential job functions when asleep.

Cummings v. Premeir Rehab., *__F.3d__, No. 19-10169 (5th Cir., Jan. 24, 2020).*
Emotional distress damages are not available under the Rehabilitation Act.

Grant v. Harris Cty., *__F.3d__, Nos. 18-20353 & 20592 (5th Cir., Oct. 30, 2019).*
No ADA "failure to accommodate" claim exists when the plaintiff refuses to engage in the interactive process and denies needing any accommodations.

Kitchen v. BASF, *__F.3d__, No. 18-4119 (5th Cir., Feb. 28, 2020).*
For ADA purposes, fining an employee for reporting for work in an intoxicated condition and subsequently failing a breathalyzer test is not equivalent to firing him due to an unlawful prejudice against alcoholics.

Sanchez v. San Antonio, *__Fed. Appx.__, No. 19-50500 (5th Cir., Feb. 21, 2020)(unpub.).*
For ADA purposes, an employee does not show that he is qualified for his job by providing a doctor's slip that does not state that he can return to work.

Tucker v. Unitech, *__Fed. Appx.__, No. 19-30066 (5th Cir., Sept. 4, 2019)(unpub.).*
Under the ADA, a claim that you have to take "breathing breaks" when climbing stairs due to your weight is not enough to demonstrate that you are "disabled".

Wilson v. City of Southlake, *__F.3d__, No. 18-10342 (5th Cir., Aug. 28, 2019).*
Under the ADA and Rehabilitation Act, a school officer was denied summary judgment on a disability discrimination claim that resulted after he handcuffed and belittled an 8-year old autistic student who "threatened" him and tried to hit him with a jump rope, as no exigent circumstances existed and a jump rope in the hands of an eight year old was not a weapon.

Booth v. Nissan, *__F.3d__, No. 18-5985 (6th Cir., Jun. 7, 2019).*
To sue under the ADA, a plaintiff must be disabled. Having work restrictions does not necessarily mean that someone is disabled.

Morrissey v. Laurel Health, *__F.3d__, No. 18-1704 (6th Cir., Dec. 3, 2019).*
Pre-1988 cases are not good law as they relate to determining whether a plaintiff is disabled under the ADA.

Tchankpa v. Ascena Retail, *__F.3d__, No. 19-3291 (6th Cir, Mar. 6, 2020).*
The ADA is not a weapon that employees can wield to pressure their employers into granting unnecessary accommodations or reconfiguring their business operations.

Ford v. Marion County, *__F.3d__, No. 18-3217(7th Cir., Nov. 15, 2019).*
The court held that "hostile work environment" claims are cognizable under the ADA. Moreover, while removing alleged harassers permanently may bring an end to a workplace harassment claim, the incidental rotation of employees not designed to address their harassment may not do so.

Freeman v. Metro. Water Reclamation Dist., *__F.3d__, No. 18-3737 (7th Cir., Jun. 14, 2019).*
Firing an employee "due to" his alcoholism and his request that his employer accommodate that condition could constitute disability discrimination and retaliation under the ADA.

Graham v. Arctic Zone, *__F.3d__, No. 18-3508 (7th Cir., Jul. 23, 2019).*
If an employee fails to provide sufficient information for his employer to determine a reasonable accommodation, the employer cannot be liable under the ADA for failing to reasonably accommodate the employee's disability.

Richardson v. CTA, *__F.3d__, Nos. 17-3508 & 18-2199 (7th Cir., Jun. 12, 2019).*
Extreme obesity only qualifies as a disability under the ADA if it is caused by an underlying physiological disorder or condition.

Shell v BNSF, *__F.3d__, No. 19-1030 (7th Cir., Oct. 29, 2019).*
The ADA's "discrimination in hiring" prohibitions do not apply when an employer regards a job applicant as not currently having a disability, but merely at high risk of developing one later.

Childress v. Fox Assoc., *__F.3d__, No. 18-2577 (8th Cir., Aug. 7, 2019).*
Providing only one closed-captioned performance of a public play did not provide "meaningful access" to the hearing-impaired, in violation of the ADA.

Higgins v. Union Pacific, *__F.3d__, No. 18-1902 (8th Cir., Jul. 24, 2019).*
A request to take time off "as necessary" and to have at least twenty-four hours of rest between shifts is not reasonable under the ADA when job attendance is an essential job function.

McNeil v. Union Pacific, *__F.3d__, No. 18-2333 (8th Cir., Aug. 26, 2019).*
For purposes of an ADA claim, the ability to work mandatory overtime can be an "essential job function" of a call center dispatcher.

Lewis v. Clark Cty. Sch. Dist., *__Fed. Appx.__, No. 18-17060 (9th Cir., Mar. 30, 2020)(unpub.).*
An interval of approximately six months between an accommodation request and a job transfer does not, standing alone, establish causation for purposes of an ADA retaliation claim.

Murray v. Mayo Clinic, *__F.3d__, No. 17-16803 (9th Cir., Aug. 20, 2019).*
Title I ADA discrimination claims must be analyzed under a "but for" causation standard.

Tauscher v. Phoenix Bd of Realtors, *__F.3d__, No. 17-17218 (9th Cir., Jul. 25, 2019).*
While a public accommodation must provide appropriate assistance to persons with disabilities, the ADA does not require the provision of a specific aid.

Hamer v. City of Trinidad, *__F.3d__, No. 17-1456 (10th Cir., May 15, 2019).*
A public entity violates Title II of the ADA each day that it fails to remedy a non-compliant service, program, or activity - - not just when it initially constructs or creates the non-compliant service, program, or activity.

Hans v. Bd. of Comm'r's of Shawnee Cty., *__F.3d__, No. 18-3096 (10th Cir., Jul. 26, 2019).*
The court joins the First, Fifth, Ninth, and Eleventh Circuits in holding that a plaintiff cannot receive compensatory damages under Title II of the ADA absent a showing of intentional discrimination.

Kelley v. Smith's Food, *__Fed. Appx.__, No. 19-4006 (10th Cir., Nov. 27, 2019)(unpub.).*
The court declined an invitation to find that an ADA claim was not moot even though the two physical barriers at issue had been permanently modified to comply with the ADA, simply because the facility at issue did not also have policies and procedures in place to prevent further illegal barriers from being constructed or to quickly remedy any future barrier issues.

Rivero v. U. of New Mexico, *__F.3d__, No. 18-2158 (10th Cir., Feb. 24, 2020).*
Under the Rehabilitation Act, a "constructive discharge" claim could not be based upon something that happened to the plaintiff three years earlier.

Turner v. Phillips 66, *__F.3d__, No. 19-5030 (10th Cir., Oct. 16, 2019).*
A drug test for the illegal use of drugs does not become a "medical examination" in violation of the ADA simply because it reveals the possible legal use of drugs.

EEOC v. STME, *__F.3d__, No. 18-11121 (11th Cir., Sept. 12, 2019).*
In a case of first impression, the court held that, under the ADA, "regarded as having an impairment" does not include a potential future disability that a healthy person may later experience.

11. FMLA; PDA; EPA

Reagan v. Centre Lifelink, *__ Fed. Appx.__, No. 17-3056 (3rd Cir., May 24, 2019)(unpub.).*
The FMLA does not require an employee on FMLA leave to be "left alone". Terminating an employee while she is on FMLA leave for her failure to timely and meaningfully respond to a one-time discrete inquiry from her employer on a matter unrelated to her FMLA leave does not constitute FMLA "interference."

Amedee v. Shell, *__F.3d__, No. 19-30525 (5th Cir., Mar. 30, 2020).*
Employees cannot immunize themselves from a lawful termination by taking FMLA leave.

Santos v. Nixdorf, *__Fed. Appx.__, No. 19-50046 (5th Cir., Aug. 7, 2019)(unpub.).*
Under the PDA, "appropriate comparators" do not include non-pregnant employees who are similarly unable to work for the same duration of time and are at the same level of employment as the pregnant plaintiff.

Lovelace v. Washington Univ., *__F.3d__, No. 17-3673 (8th Cir., Jul. 25, 2019).*
The use of FMLA leave six months before you are terminated is insufficient to show that your termination was an act of discrimination.

Rizo v. Yovino, *__F.3d__, No. 16-15372 (9th Cir., Feb. 27, 2020).*
An employee's prior rate of pay is not a "factor other than sex" that allows her employer to pay her less than male employees performing the same work, as only job-related factors may serve as affirmative defenses to Equal Pay Act claims.

Reddy v. Alabama DOE, *__Fed. Appx.__, No. 18-14433 (11th Cir., Apr. 2, 2020)(unpub.).*
The EPA is not violated when a governmental agency is limited by codified rules and regulations from raising the post-hire pay of its female employees to match that of its male employees, when non-sex factors formed the basis for the pre-hire pay differences between these employees.

Salem v. City of Port St. Lucie, *__Fed. Appx.__, No. 18-14923 (11th Cir., Oct. 8, 2019)(unpub.).*
Nothing in the FMLA requires 12 weeks of undisturbed leave, and that leave is not "interfered" with when an employer asks an employee on FMLA leave to meet to discuss his employment status.

12. FLSA; OSHA; COBRA; HIPAA

Giguere v. Port Resources, *__F.3d__, No. 18-2073 (1st Cir., Jun. 19, 2019).*
A policy of not paying employees required to be on duty for 24 hours for "sleep time" scheduled during their 24-hour shift violates the FLSA.

Fisher v. SD Protection, *__F.3d__, No. 18-2504 (2nd Cir., Feb. 4, 2020).*
When a district court decides that a FLSA settlement agreement is unreasonable, it cannot simply re-write the agreement but must, instead, reject it or give the parties an opportunity to revise it.

Isett v. Aetna Ins., *__F.3d__, No. 18-3271 (2nd Cir., Jan. 14, 2020).*
When interpreting a FLSA exemption, a court must give the exemption a fair reading and not construe it narrowly against an employer.

Yu v. Hasaki Restaurant, *__F.3d__, No. 17-3388 (2nd Cir., Dec. 6, 2019).*
Judicial approval is not required on FRCP Rule 68(a) offers of judgment settling FLSA claims.

Coleman Hammons v. OSHA, *__F.3d__, No. 18-60559 (5th Cir., Nov. 6, 2019).*
It was an abuse of discretion for OSHA to deny a company's untimely response to a citation when the delay was caused by the citation notice being misplaced in the company's internal mail system.

Faber v. Ciox Health, *__F.3d__, No. 18-5896 (6th Cir., Dec. 5, 2019).*
The court declined an invitation to use common law to create a private right of action for HIPAA violations.

Morehouse v. Steak N Shake, *__F.3d__, No. 18-4186 (6th Cir., Sept. 13, 2019).*
A loss of work hours must lead to a loss in insurance coverage in order for COBRA's notice requirements to be triggered by a "qualifying event."

Stewart v. Parkview Hosp., *__F.3d__, No. 19-1747 (7th Cir., Oct. 22, 2019).*
HIPAA does not confer express or implied individual enforcement rights. Moreover, an officer's receipt of blood test results from medical personnel does not offend the Fourth Amendment.

Barbee v. Big River Steel, *__F.3d__, No. 18-2255 (8th Cir., Jun. 20. 2019).*
Any authority for the judicial approval of FLSA settlements does not extend to the review of settled attorney fee issues.

Bergelectric v. Sec. of Labor, *__F.3d__, No. 17-72852 (9th Cir., Jun. 6, 2019).*
Installing solar panels does not constitute "roofing work" under OSHA's safety standards.

Tijerino v. Stetson Desert Project, *__F.3d__, No. 18-16013 (9th Cir., Aug. 16, 2019).*
The requirement that plaintiffs must be employees under the FLSA is a merit-based, not a jurisdictional, determination.

Freier v. Colorado, *__F.3d__, No. 19-1347 (10th Cir., Feb. 14, 2020).*
The 2009 HIPAA amendments did not create a private right of action to address alleged HIPAA violations.

13. MILITARY; USERRA

Carson v. Williow Valley, *__Fed. Appx.__, No. 18-1554 (3rd Cir., Oct. 10, 2019)(unpub.).*
Neither VEVRAA nor OSHA provide a private cause of action.

Mueller v. City of Joliet, *__F.3d__, No. 18-3609 (7th Cir., Dec. 4, 2019).*
Full-time National Guard counter-drug activities constitute "service in the uniformed services" and are covered by USERRA.

14. ADEA

Ward v. Gray Television, *__Fed. Appx.__, No. 19-50255 (5th Cir., Dec. 16, 2019)(unpub.).*
Asking an older employee to color his hair black, when the request was made three years before his contract non-renewal, does not establish pretext under the ADEA.

Miles v. S. Central Human Resource, *__F.3d__, No. 19-5202 (6th Cir., Jan. 7, 2020).*
Providing additional non-discriminatory reasons for an employee's discharge that do not conflict with the reason stated at time of discharge does not constitute shifting justifications for purposes of an ADEA claim.

Stokes v. Detroit Pub. Sch., *__Fed. Appx.__, No. 19-1773 (6th Cir., Mar. 31, 2020)(unpub.).*
Evidence that one employee was "pre-selected" to fill a job vacancy before any job interviews were conducted created a genuine issue as to pretext under the ADEA and Title VII.

Fuller v. Kansas Dept., *__Fed. Appx.__, No. 19-3221 (10th Cir., Mar. 30, 2020)(unpub.).*
The ADEA only permits lawsuits against employers, not against supervisory employees.

Hicks v. Ft. Lauderdale, *__Fed. Appx.__, No. 19-12094 (11th Cir., Feb. 12, 2020)(unpub.).*
Under the ADEA, a single comment that an employee is "getting older" falls short of direct evidence of age discrimination.

15. FHA; FHAA; PUBLIC HOUSING

Summers v. Fitchburg, *__F.3d__, No. 18-1725 (1st Cir., Oct. 8, 2019).*
A city did not violate the ADA or FHAA by requiring sprinklers in a "sober house" when there was no proof that the sprinklers prevented recovering addicts from living in and benefiting from the house.

Francis v. Kings Park Manor, *__F.3d__, No. 15-1823 (2nd Cir., Dec. 6, 2019).*
A landlord may be liable under the FHA for intentionally discriminating against a tenant who complains about a racially hostile housing environment created by another tenant by refusing to take any action against the offending tenant.

Curto v. Country Place, *__F.3d__, No. 18-1212 (3rd Cir., Apr. 22, 2019).*
A FHA claim alleging that a gender-segregated pool swimming schedule discriminated against women because women had fewer open slots outside of conventional work hours than men survives summary judgment.

Crain v. City of Selma, *__F.3d__, No. 19-50490 (5th Cir., Mar. 12, 2020).*
Under the FHA, discrimination in housing is not shown merely by the fact that the complainant is Hispanic and the municipal employee involved in the decision to reject his bid for the purchase of municipal property is African-American.

Inclusive Communities v. Lincoln, *__F.3d__, No. 17-10943 (5th Cir., Apr. 9, 2019).*
The voluntary nature of a landlord's participation in the Section 8 housing voucher program does not render him immune from liability for discrimination in housing under the FHA.

Davis v. Echo Valley, *__F.3d__, No. 18-2405 (6th Cir., Dec. 19, 2019).*
Under the FHAA, banning smoking in a housing complex is not a "reasonable accommodation" to an asthmatic's enjoyment of her housing unit, because this would require a fundamental change to a housing policy.

Madej v. Maiden, *__F.3d__, No. 18-4132 (6th Cir., Feb. 24, 2020).*
In *dictum*, the court expressed doubt that the Fair Housing Act extends to the chip sealing of a public street near the home of a woman who suffered physical and emotional distress when exposed to asphalt.

Khan v. Minneapolis, *__F.3d__, No. 18-1654 (8th Cir., Apr. 30, 2019).*
A city's alleged "hyper-enforcement" of its housing code against for-profit landlords is not an "arbitrary, artificial, or unnecessary" policy that an FHA disparate-impact claim can remedy.

GA State Conf. of NAACP v. LaGrange, *__F.3d__, No. 18-10053 (11th Cir., Oct. 10, 2019).*
Section 3604(b) of the Fair Housing Act can apply to post-housing acquisition discriminatory conduct.

HIS Recovery v. Cobb Cty., *__Fed. Appx.__, No. 19-11613 (11th Cir., Mar. 26, 2020)(unpub.).*
A group home ordinance did not, on its face, discriminate against persons with disabilities under the FHA or the ADA when it treated recovering persons the same as non-recovering persons by limiting the number of residents allowed in group homes, requiring a resident caregiver and periodic inspections, and prohibiting persons on parole or probation from residing therein.

Miami v. Wells Fargo, *__F.3d__, No. 14-14544 (11th Cir., May 3, 2019).*
A lawsuit by a city alleging that local banks violated the FHA by engaging in predatory lending in the city's minority communities, which led to an increase in foreclosures and thereby in municipal expenses, survives a motion to dismiss. The complaint plausibly alleged FHA violations that were caused by the bank's misconduct.

Schaw v. Hab. For Hum., *__F.3d__, No. 17-13960 (11th Cir., Sept. 18, 2019).*
Under the FHAA, counting food stamps as "income" for purposes of a minimum-income requirement to secure public housing may constitute a "reasonable accommodation."

Yarbrough v. Decatur Housing Auth., *__F.3d__, No. 17-11500 (11th Cir., Aug. 22, 2019).*
The court reversed its earlier decision and held that neither the Housing Act of 1937 nor its implementing regulations created a private cause of action enforceable under Section 1983 regarding the termination of housing benefits.

16. RLUIPA; RFRA

Perrier-Bilbo v. US, *__F.3d__, No. 18-2085 (1st Cir., Apr. 3, 2020).*
Including the phrase "so help me God" in a naturalization ceremony did not violate RFRA or the First Amendment.

Congregation Rabbinical College v. Pomona, *__F.3d__, No. 18-0869 (2nd Cir., Dec. 20, 2019).*
Local zoning laws that do not totally exclude religious assemblies do not violate RLUIPA's "exclusion" provision.

Greenhill v. Clarke, *__F.3d__, No. 18-7300 (4th Cir., Dec. 6, 2019).*
Under RLUIPA, the denial of television privileges to an inmate that would have allowed him to attend religious services, solely because television access is considered a privilege that must be earned by good behavior, impermissibly placed a substantial burden on religious exercise.

Wright v. Lassiter, *__F.3d__, No. 18-6320 (4th Cir., Apr. 17, 2019).*
RLUIPA incorporates customary tort principles, including the need to show factual and proximate cause.

Blaire v. Raemisch, *__F.3d__, No. 18-1349 (10th Cir., Mar. 2, 2020).*
Vegan patties that were given to a prisoner who was on a vegan diet because of his religious beliefs, and that made him sick, may have "substantially burdened" those beliefs by putting pressure on him to abandon his vegan diet, in violation of RLUIPA and the First Amendment.

17. SCHOOLS; IDEA; TITLE IX

Doucette v. Georgetown Pub. Sch, *__F.3d__, No. 18-1160 (1st Cir., Aug. 26, 2019).*
A Rehabilitation Act claim arising when a disabled student was denied access to his seizure-alert service dog while in a classroom does not require IDEA exhaustion.

Parent v. Springfield, *__F.3d__, Nos. 18-1778/1813/1867&1976 (1st Cir., Aug. 8, 2019).*
The IDEA's exhaustion requirement applies to an ADA claim alleging that a school is violating the ADA by unnecessarily segregating students with mental health issues and thus failing to provide them with a FAPE.

Frierson v. Reinisch, *__Fed. Appx.__, No. 19-1740 (2nd Cir., Mar. 26, 2020)(unpub.).*
Qualified immunity against a First Amendment claim was denied to a school administrator who banned a parent from future high school basketball games after she expressed negative views about the basketball coach at an impromptu in-school meeting with disgruntled players.

Menaker v. Hofstra U., *__F.3d__, No. 18-3089 (2nd Cir., Aug. 15, 2019).*
When a student files a complaint of sexual misconduct against a school employee that is motivated by invidious discrimination and intends the employee to suffer an adverse employment action, and the school negligently or recklessly punishes the employee as a result of that complaint, the school may be liable under Title VII for sex discrimination.

Mudge v. Zugalla, *__F.3d__, No. 18-1298 (2nd Cir., Sept. 12, 2019).*
Qualified immunity was granted to school officials who terminated a teacher based upon sexual misconduct claims that were later deemed unproven as against a procedural due process claim alleging a denial of the teacher's right to a meaningful opportunity to seek other teaching positions. The constitutional right to the "meaningful use of a teaching license" has not been sufficiently recognized by the courts.

M.S. v. Hillsborough Tshp., *__Fed. Appx.__, No. 19-1510 (3rd Cir., Dec. 13, 2019)(unpub.).*
Under the IDEA, parents have no right to a publicly funded IEE for their child absent the existence of a disputed educational evaluation conducted by the school district.

E.S. v. Smith, *__Fed. Appx.__, No. 18-1977 (4th Cir., May 24, 2019)(unpub.)*
The violation of the procedural requirements of the IDEA does not necessarily deny a student a FAPE.

A.A. v. Northside Indep. Sch. Dist., *__F.3d__, No. 19-50007 (5th Cir., Mar. 5, 2020).*
An IEP under the IDEA need not be perfect and need not insulate a student from experiencing hardships while subject thereto.

Doe v. Dallas Indep. Sch. Dist., *__F.3d__, No. 18-10720 (5th Cir., Oct. 25, 2019).*
No IDEA exhaustion was required when a disabled person sought relief from an in-school rape, since the gravamen of the complaint was not about the denial of a FAPE.

Longoria v. San Benito, *__F.3d__, No. 18-41060 (5th Cir., Nov. 4, 2019).*
Qualified immunity was granted to school officials on a First Amendment claim based upon the dismissal of a cheerleader from the cheerleading squad after it was discovered that her Twitter posts contained profanity and sexual innuendo.

McMillen v. New Caney Indep. Sch. Dist., *__F.3d__, No. 18-20420 (5th Cir., Oct. 2, 2019).*
In a case of first impression, the court held that IDEA's exhaustion requirement applies when a plaintiff is seeking a remedy (damages for emotional distress) that the IDEA does not supply if the claim nevertheless relates to the alleged denial of a FAPE.

R.S. v. Highland Pk. Indep. Sch. Dist., *__F.3d__, No. 19-10458 (5th Cir., Feb. 26, 2020).*
A student's IEP was not rendered "non-individualized" due to a school's failure to "ensure his safety" simply because he fell five times in three years. Moreover, a claim challenging the sufficiency of an IEP must be linked to a specific act adopting, changing, or declining to change an IEP, and such a claim accrues when a parent knew or should have known that such action or inaction resulted in a deficient IEP.

Spring Branch Indep. Sch. Dist. v. O.W., *__F.3d__, No. 18-20274 (5th Cir., Sept. 16, 2019).*
Violations of the IDEA's "child find" and "expedited evaluation" requirements are separate and independent, with a violation of the latter not necessarily meaning a violation of the former.

Chisholm v. St. Marys, *__F.3d__, Nos. 19-3034/3100 (6th Cir., Jan. 7, 2020).*
A football coach who insulted (or motivated) his players by calling them "p*ssies" did not engage in sex-based discrimination under Title IX.

Endres v. NE Ohio Medical Univ., *__F.3d__, No. 18-3825 (6th Cir., Aug. 30, 2019).*
Qualified immunity is granted to a university on a due process claim arising from a student's dismissal for allegedly cheating on a test, since no case has yet held that cheating is a disciplinary matter rather than an academic matter, while only the former requires a fair hearing.

Kollaritsch v. MSU, *__F.3d__, Nos. 17-2445 & 18-1715 (6th Cir, Dec12, 2019).*
Under Title IX, a student-victim must prove that her school had actual knowledge of actionable sexual harassment and that the school's deliberate indifference to it resulted in further actionable sexual harassment against the student-victim, which cause her Title IX injuries.

K.W.P. v. Kansas Cty. Pub. Sch., *__F.3d__, No. 17-3602 (8th Cir., Aug. 1, 2019).*
An elementary school student involved in a classroom outburst did not have his Fourth Amendment rights violated when, after lesser efforts failed to calm him down, he was handcuffed until his parents could arrive.

Camfield v. Redondo Bch., *__Fed. Appx.__, No. 17-56072 (9th Cir., Jan. 27, 2020)(unpub.).*
No First Amendment violation occurred when a school required a disruptive parent to seek permission 24 hours before entering its campus.

Karasek v. U of CA, *__F.3d__, No. 18-15841 (9th Cir., Jan. 30, 2020).*
A student had a viable Title IX claim against his school that was allegedly deliberately indifferent to reports of sexual misconduct, which heightened the risk of sexual harassment in a context subject to the school's control.

Krishna Lunch v. Gordon, *__Fed. Appx.__, No. 18-55316 (9th Cir., Jan. 13, 2020)(unpub.).*
A religious organization's distribution of vegan/vegetarian lunches at a college while chanting hymns and talking with students was expressive conduct for First Amendment purposes.

Pangerl v. Peoria Sch. Dist., *__Fed. Appx.__, No. 18-17114 (9th Cir., Mar. 25, 2020)(unpub.).*
Under the IDEA, a school may have violated a parent's due process rights when it unilaterally disenrolled her son due to his unexcused absences.

Parents for Privacy v. Barr, *__F.3d__, No. 18-35708 (9th Cir., Feb. 12, 2020).*
The court held that Title IX was not violated when a school allowed transgender students to use the locker rooms, bathrooms, and showers that matched their gender identity but not their biological sex.

L.S. V. Broward Cty., *__F.3d__, No. 17-14824 (11th Cir., Jun. 26, 2019).*
The content outlined in an IEP is a proxy for the IDEA's educational guarantee, and a material deviation therefrom violates the law.

18. COMMERCE CLAUSE;TRANSPORTATION

CSX v. Sebree, KY, *__F.3d__, No. 18-5647 (6th Cir., May. 14, 2019).*
An ordinance requiring city council approval before the operator of a railroad line can raise the height of a railroad crossing is preempted by the Termination Act.

Regan v. City of Hammond, *__F.3d__, No. 18-3051 (7th Cir., Aug. 19, 2019).*
An ordinance that requires a residential property owner who wishes to make repairs to a residence to obtain a license or hire a licensed contractor, but exempts homeowners who wish to make repairs to the single family home that they occupy, does not violate the Dormant Commerce Clause.

Rosenblatt v. Santa Monica, *__F.3d__, No. 17-55879 (9th Cir., Oct. 3, 2019).*
An ordinance prohibiting property rentals of less than 30 days unless the primary resident stays in the residence does not violate the Dormant Commerce Clause.

19. JAILS; PRISONS; 8TH AMENDMENT

Brandon v. Kinter, *__F.3d__, No. 17-911 (2nd Cir., Sept. 10, 2019).*
Serving a Muslim prisoner several jail meals that contain pork may violate his First Amendment right to free exercise of religion.

Francis v. Fiacco, *__F.3d__, No. 18-1011 (2nd Cir., Nov. 12, 2019).*
Qualified immunity is granted to prison officials on a prisoner's Fourteenth Amendment due process claim stemming from their implementation of a state sentence without providing notice to the sentencing court and case attorneys.

Furgess v. Penn. DOC, *__F.3d__, No. 18-1758 (3rd Cir., Aug. 8, 2019).*
The failure to provide a handicapped accessible shower to a disabled inmate precluded him from participating in a "program, service, or activity" under the ADA.

Jones v. Capozza, *__F.3d__, No. 18-3671 (3rd Cir., Dec. 13, 2019).*
For purposes of a Section 1983 complaint, a prisoner must exhaust her prison's internal administrative remedies whether she sues from prison or after her release.

McMillian v. Wetzel, *__Fed. Appx.__, No. 18-1771 (3rd Cir., Nov. 4, 2019)(unpub.).*
In an Eighth Amendment "failure to protect" case, hearsay statements can be considered on a motion for summary judgment if they are capable of being admitted at trial.

Ned v. Kardin, *__Fed. Appx.__, No. 18-1825 (3rd Cir., Oct. 11, 2019)(unpub.).*
Simply telling a guard that you and your cellmate "are not getting along" and that you "would like to be moved" is not sufficient to put him on notice of an excessive risk to inmate health or safety for purposes of an Eighth Amendment "failure to protect" claim.

Peters v. Brown, *__Fed. Appx.__, No. 18-2796 (3rd Cir., Oct. 30, 2019)(unpub.).*
A non-medical prison official is not deliberately indifferent to a pretrial detainee's serious medical needs when the detainee was recently under the care of medical experts and there is no reason to believe that those experts mistreated or failed to treat him.

Thomas v. Tice, *__Fed. Appx.__, No. 18-1811 (3rd Cir., Nov. 12, 2019)(unpub.).*
When confinement to a "dry cell" for observation is not foul or inhuman and serves a legitimate penological intent, it does not violate the Eighth Amendment.

West v. Emig, *__Fed. Appx.__, No. 18-3806 (3rd Cir., Oct. 9, 2019)(unpub.).*
An inmate was excused from having to exhaust his administrative remedies, for purposes of an Eighth Amendment claim based upon the removal of his cell mattress because he had eaten the foam from inside the mattress, because he was refused the pen he needed to write out his grievance form - - even when the denial was due to safety reasons since he frequently ingested pens and other writing instruments.

Rivera v. Mathena, *__Fed, Appx.__, No. 18-6615 (4th Cir., Nov. 19, 2019)(unpub.).*
Under the Eighth Amendment, an inmate must have a meaningful opportunity to shower and exercise.

Alexander v. Texas Dept of Crim. Justice, *__F.3d__, No. 18-20278 (5th Cir., Feb. 20, 2020).*
A prisoner has no due process rights in the inmate grievance process.

Cleveland v. Bell, *__F.3d__, No. 18-30968 (5th Cir., Sept. 13, 2019).*
Evidence that a prison nurse sincerely thought an inmate was "faking" an illness is sufficient to grant her qualified immunity from a Section 1983 claim alleging "deliberate indifference" to the inmate's serious medical condition.

Gregory v. Baucum, *__F.3d__, No. 18-10291 (5th Cir., Sept. 20, 2019).*
An Eighth Amendment claim may lie when a prison official confiscated an inmate's dentures but did not thereafter provide him with dental treatments and a soft food diet.

Meeks v. Davis, *__Fed. Appx.__, No. 19-20257 (5th Cir., Nov. 26, 2019)(unpub.).*
Exposing a prisoner to extreme heat with poor ventilation may constitute Eighth Amendment "deliberate indifference".

Taylor v. Stevens, *__F.3d__, No. 17-10253 (5th Cir., Dec. 20, 2019).*
Qualified immunity was granted to prison officials on an Eighth Amendment claim stemming from a prisoner's having to remain in a cell covered with human waste for six days.

Adkins v. Morgan Cty., *__Fed. Appx.__, No. 19-5252 (6th Cir., Jan. 8, 2020)(unpub.).*
For purposes of an Eighth Amendment "deliberate indifference" claim, a layperson need not be able to medically diagnose the cause of obvious symptoms for those symptoms to put him on notice that an inmate had a medical need.

Campbell v. Kalles, *__F.3d__, No. 18-2075 (7th Cir., Aug. 19, 2019).*
Qualified immunity was granted to prison officials against an Eighth Amendment claim when they refused to provide an inmate with gender-dysphoria treatment beyond hormone therapy.

Hardeman v. Curran, *__F.3d__, No. 18-2672 (7th Cir., Aug. 12, 2019).*
Qualified immunity was denied to prison officials against Fourteenth Amendment due process claims stemming from their failure to provide pre-trial detainees with sufficient water for consumption and sanitation over a three-day period.

Hardin v. Baldwin, *__Fed . Appx__, No. 18-1999 (7th Cir., May 20, 2019)(unpub.).*
No Eighth Amendment violation occurred when an officer escorted a restrained inmate on an uneven sidewalk and aggravated the inmate's shoulder while helping him up after he tripped and fell.

Koger v. Dart, *__F.3d__, No. 19-2892 (7th Cir., Feb. 25, 2020).*
A jail's three-book limit for prisoners does not violate the First Amendment, but the jail's summary disposal of "extra" books may violate the Due Process Clause.

Larry v. Goldsmith, *__Fed. Appx.__, No. 19-1563 (7th Cir., Mar. 30, 2020)(unpub.).*
A prison policy prohibiting bunk-side prayer at night was reasonably related to the legitimate penological interest of "maintaining prison order" for purposes of a First Amendment "free-exercise" claim.

Leiser v. Kloth, *__F.3d__, No. 17-3378 (7th Cir. Aug. 1, 2019).*
Qualified immunity was granted to a non-medical correctional officer who refused to provide a prisoner suffering from PTSD with a medical accommodation that had not been ordered by the medical staff, when the need for the accommodation was not obvious to a layperson.

Lisle v. Wellborn, *__F.3d__, No. 18-1595 (7th Cir., Aug. 1, 2019).*
The Eighth Amendment can apply in cases where medical staff use an inmate's known psychological vulnerability to cause her psychological anguish.

Edmo v. Corizon, *__F.3d__, Nos. 19-35017/35019 (9th Cir., Feb. 10, 2020).*
The Eighth Amendment is violated when an inmate allegedly suffering from gender dysphoria is provided hormone therapy but denied sex reassignment surgery at the state's expense.

Aguilar v. MTC, *__F.3d__, No. 17-2198 (10th Cir., Feb. 4, 2020).*
Prison officers were entitled to compensation under the FLSA for their pre-shift security inspection and briefing and their post-shift return of keys and equipment, as these activities were integral to their principal activities of maintaining discipline and providing security.

Hunter v. Uintah Cty., *__Fed. Appx.__, No. 19-4086 (10th Cir., Apr. 3, 2020)(unpub.).*
Guards that took steps to ameliorate a prisoner's condition were not "deliberately indifferent" for Eighth Amendment purposes when they did not recognize the extent of his medical needs.

Kahn v. Barela, *__F.3d__, No. 19-2056 (10th Cir., Mar. 26, 2020).*
A jail may have substantially burdened the religious exercise of a Muslim prisoner in violation of the First Amendment when it served him ham and bread as a special Ramadan meal and forbid him access to a clock, prayer schedule, and Muslim calendar. It may also have violated the First Amendment by prohibiting him from reading hard cover books and newspapers.

Moore v. Little, *__F.3d__, No. 19-1041 (10th Cir., Oct. 1, 2019).*
Qualified immunity was granted to prison guards against an Eighth Amendment claim stemming from their 14-month disallowance of outdoor exercise to an inmate.

20. LABOR; UNIONS

Donohue v. Milan, *__F.3d__, No. 17-2832 (2nd Cir., Nov. 18, 2019).*
The First Amendment right to "freedom of association" applies to union members, but not to agency fee payers who are represented by the union during collective bargaining.

Hendrickson v. NLRB, *__F.3d__, Nos. 18-1144 & 1315 (6th Cir., Aug. 1, 2019).*
An employer's statement to its employees that, in the event of unionization, contract negotiations would begin "from scratch" did not constitute an unfair labor practice nor coerce these employees in the exercise of their Section 7 rights.

Ozburn-Hessey v. NLRB, *__Fed. Appx.__, Nos. 19-1054/1090 (6th Cir., Mar. 12, 2020)(unpub.).*
An employer's unilateral replacement of old push button timeclocks with new touch screen timeclocks was not a material, substantial, and significant change in the terms or conditions of employment.

NLRB v. IAB Local 229, *__F.3d__, No.17-73210 (9th Cir., Oct. 28, 2019).*
The Court refused to extend *Gilbert* to a union's "secondary boycott" communications so as to require a strict scrutiny analysis of NLRA Section 8(b)(4)(i)(B) violations.

NLRB v. Ingredion, *__F.3d__, No. 18-1155 (D.C. Cir, Jul. 19, 2019).*
An employer's chief negotiator, who spoke with five employees for a total of 25 minutes less than two months before the commencement of formal collective bargaining negotiations, engaged in "direct dealing" in violation of Section 8(a) of the NLRA.

21. TELECOMMUNICATIONS

Comcast v. Sacramento, *__F.3d__, Nos. 17-16847 & 16923 (9th Cir., May 8, 2019).*
A lawsuit by a telecommunications company against a municipality concerning the calculation and payment of cable franchise fees was dismissed as being barred by the Cable Television Consumer Protection and Competition Act of 1992.

Municipal Comm. v. Cobb Cty., *__Fed. Appx__, No. 18-11977 (11th Cir., Jan. 8, 2020)(unpub.).*
While a county's zoning laws can consider the aesthetic impact of a proposed cell tower, blanket generalized aesthetic objections, standing alone, are not enough to constitute "substantial evidence" under Section 332 of the Telecommunications Act of 1996.

Mozilla v. FCC, *__F.3d__, No. 18-1051 (DC Cir., Oct. 1, 2019).*
The court upheld the FCC's classification of broadband internet service as an "information service" under Title I of the Communications Act, as amended by the Telecommunications Act, thus departing from the Commissioner's earlier "utility-style" regulation of this service under Title II of the Act.

22. ***ENVIRONMENTAL***

Southwestern Electric Power v. EPA, *__F.3d__, No. 15-60821 (5th Cir., Apr. 12, 2019).*
The court vacated portions of the EPA's final rule regulating legacy wastewater and combustion residual leachate, holding that the same were not formulated through "reasoned decision making".

US v. Dico, Inc., *__F.3d__, No. 17-3462 (8th Cir., Apr. 11, 2019).*
CERCLA authorizes a court to assess government response costs against an entity that "arranges" for the disposal of hazardous materials.

23. ***PROCEDURAL; EVIDENTIARY***

US v. Cruz-Mercedes, *__F.3d__, No. 19-1082 (1st Cir., Dec. 18, 2019).*
Fingerprint evidence obtained for routine booking purposes need not be suppressed even if the underlying arrest is found to have been made without probable cause.

US v. Vazquez-Soto, *__F.3d__, No. 17-1879 (1st Cir., Oct. 1, 2019).*
The ordinary rules of photo identification apply to Facebook photos.

Lilly v. NYC, *__F.3d__, No. 17-2823 (2nd Cir., Aug. 14, 2019).*
A plaintiff's attorney who accepted a FRCP Rule 68 offer of judgment was denied the attorney fees he incurred in preparing his fee application when the offer of judgment limited reasonable fees to those incurred up to the date of the offer.

Lennear v. Wilson, *__F.3d__, No. 18-6403 (4th Cir., Aug. 23, 2019).*
Inmates at risk of being denied a liberty interest have a qualified right to obtain and compel consideration of video surveillance evidence unless doing so would be unduly hazardous to institutional safety or correctional goals.

Smith v. U. of Myld., *__ Fed. Appx.__, No. 18-2296 (4th Cir., Apr. 30, 2019)(unpub.).*
A discriminatory discharge claim brought under Section 1981 accrues when an employee receives notice of his termination, not on the last day of his employment.

US v. Boker, *__Fed. Appx.__, No. 18-4299 (4th Cir., Mar. 23, 2020)(unpub.).*
The suppression of search results was not required by Fed. R. Crim. P. 41(f)(i)(C) when an officer left the face sheet of a search warrant and an inventory of items seized during the search with the homeowner, but not the warrant attachments describing the premises to be searched and the items to be received, or the affidavit filed in support of the search warrant application.

US v. Lewis, *__Fed. Appx.__, No. 18-4729 (4th Cir., Sept. 11, 2019)(unpub.).*
It was no error for a judge to provide a juror with a magnifying glass.

US v. Marsh, *__F.3d__, No. 18-4609 (4th Cir., Dec. 9, 2019).*
FRCrP 4(b)'s deadline is a mandatory claim-processing rule that must be strictly applied.

Goné v. Smith, *__F.3d__, No. 18-20373 (5th Cir., Nov. 20, 2019).*
FRCP Rule 15 cannot be used to save a case from dismissal for "lack of standing" when the plaintiff's counsel filed suit after the plaintiff was dead.

Williams v. Catoe, *__F.3d__, No. 18-40825 (5th Cir., Jan. 7, 2020).*
In a Section 1983 action, a district court's interlocutory order denying a motion for appointment of counsel is not immediately appealable under the collateral-order doctrine.

Averett v. US DHHS, *__F.3d__, No. 18-5595 (6th Cir., Nov. 25, 2019).*
A statute's terms are not "ambiguous" simply because they are not defined in the statute.

Boxill v. O'Grady, *__F.3d__, No. 18-3385 (6th Cir., Aug. 16, 2019).*
A plaintiff can bring an action against a government actor in his individual capacity under Section 1983 that is premised upon a violation of Section 1981.

Morris v. Detroit, *__Fed. Appx.__, No. 19-1386 (6th Cir., Oct. 16, 2019)(unpub.).*
For purposes of a Section 1983 claim, an officer was not acting "under the color of law" when attempting to collect a strictly personal debt, although she was carrying her department – issued firearm, wearing her badge, carrying department-issued handcuffs, and was on duty at the time.

Mosley v. Kohl's, *__F.3d__, No. 19-1106 (6th Cir., Nov. 8, 2019).*
Under Title III of the ADA, a plaintiff need not provide a definitive plan for returning to a store with an unlawful disability accommodation, or visit it more than once, in order to establish a threat of future injury and standing for prospective injunctive relief.

Quality Assoc. v. P & G, *__F.3d__, No. 19-3137 (6th Cir., Feb. 10, 2020).*
A federal court cannot enforce a state compulsory counterclaim rule against a federal litigant while the relevant state litigation is still pending.

Stewart v. Memphis, *__Fed. Appx.__, No. 19-5174 (6th Cir., Oct. 11, 2019)(unpub.).*
Evidence that a specific officer was improperly trained does not, standing alone, prove that the city has an inadequate training program.

US v. Heard, *__F.3d__, No. 18-3411 (8th Cir., Mar. 3, 2020).*
A "show up" identification result was admissible at trial even though the person identified was in hand-cuffs and had a bright light shone on his face, as the identifying witness had a good look at the defendant in good light, was close to him, and made the identification only 90 minutes after his initial sighting of the defendant.

Meyers v. Sioux City, *__F.3d__, No. 18-2138 (8th Cir., Apr. 9, 2019).*
A person who neither owns a dog nor lives in Sioux City has no standing to contest that city's pit bull ordinance.

Ridgell v. City of Pine Bluff, *__F.3d__, No. 18-2663 (8th Cir., Aug. 29, 2019).*
A jury verdict in favor of an elected official on a race discrimination claim precludes a finding of liability on the part of the municipality for which he worked for his allegedly discriminatory actions.

US v. Nyah, *__F.3d__, No.17-3730 (8th Cir., Jun. 26, 2019).*
A violation of Fed.R.Crim.P. 41 does not require the suppression of evidence when probable cause supporting the issuance of a search warrant pertaining to that evidence continues to exist.

Bahra v. San Bernadino Cty., *__F.3d__, No. 18-55789 (9th Cir., Dec. 30, 2019).*
An employee's Section1983 claim of retaliatory discharge was dismissed because of his earlier administrative hearing before the County Civil Service Commission, at which time he was represented by counsel and presented evidence, and then received the Commission's adverse ruling (over which he did not seek judicial review) had a preclusive effect on his later Section 1983 claim.

Fidelity National v. Friedman, *__F.3d__, No. 17-15913 (9th Cir., Aug. 22, 2019).*
A court need not have personal jurisdiction over a judgment debtor in order to merely register a previously obtained judgment.

Gilmore v. Lockard, *__F.3d__, No. 17-15636 (9th Cir., Aug. 28, 2019).*
A party who consents to, and then withdraws consent to, magistrate judge jurisdiction before all parties have so consented does not have to meet the "good cause" standard under 28 U.S.C. § 636(c).

Mills v. City of Covina, *__F.3d__, No. 17-56343 (9th Cir., Apr. 24, 2019).*
The statute of limitations on bringing "false arrest" claims is not tolled during the pendency of an appeal from a criminal drug conviction related to the arrest.

Roberts v. Fairbanks, *__F.3d__, No. 18-35938 (9th Cir., Jan. 22, 2020).*
When all convictions underlying a Section 1983 claim are vacated and no outstanding criminal judgments remain, *Heck* does not bar a plaintiff from seeking Section 1983 relief.

San Juan Capistrano v. CPUC, *__F.3d__, No. 17-56693 (9th Cir., Sept. 11, 2019).*
Political subdivisions lack standing to challenge state law on constitutional grounds in federal court.

Weil v. Citizens Telecom, *__F.3d__, No. 16-35813 (9th Cir., Apr. 19, 2019).*
Under FRE Rule 801(d)(2)(D), hearsay does not include statements offered against an employer made by its employee on a matter within the employee's scope of employment so long as the statements were made while the person making them was still employed by that employer.

Harte v. Johnson Cty. Board of Commisrs., *__F.3d__, No. 18-3091 (10th Cir., Oct. 4, 2019).*
In applying a fractured appellate court panel's holding, a district court need only look to and adopt the result the panel reached, not the common reasoning of the panel.

Tesone v. Empire, *__F.3d__, No. 19-1026 (10th Cir., Nov. 8, 2019).*
Expert testimony is not required to establish a disability under the ADA.

US v. Lovato, *__F.3d__, No. 18-1468 (10th Cir., Feb. 27, 2020).*
A 13-minute 911 call was properly admitted into evidence under the "present sense impression" exception to the hearsay rule since all of the statements made during the call pertained to the same temporal event and other evidence supported the reliability of those statements.

DeMartini v. Town of Gulf Streams, *__F.3d__, No. 17-14177 (11th Cir., Nov. 21, 2019).*
The presence of probable cause will generally defeat, as a matter of law, a Section 1983 First Amendment retaliation claim based upon a civil lawsuit. This is especially true when the civil action is taken as a reasonable response to a plaintiff's own litigation or threat of litigation.

Sargeant v. Hall, *__F.3d__, No. 18-15205 (11th Cir., Mar. 2, 2020).*
FRCP Rule 41(d) does not apply when a plaintiff, after dismissing a federal action, files a subsequent action against the same defendant based upon the same claim in state court.

US v. Pavlenko, *__F.3d__, No. 17-15047 (11th Cir., Apr. 22, 2019).*
A criminal defendant lacks standing to appeal the dismissal, without prejudice, of his indictment.

Worthy v. Phenix City, *__F.3d__, No. 17-14718 (11th Cir., Jul. 18, 2019).*
A city's red light ordinance, because it imposes only civil penalties, does not have to afford alleged violators a "proof beyond a reasonable doubt" standard of proof.

24. ARBITRATION; CONTRACTS; CONTRACTUAL BIDDING

Kelly v. Honeywell, *__F.3d__, No. 17-675 (2nd Cir., Aug. 7, 2019).*
When a CBA contains unambiguous language vesting medical care benefits for retirees, that CBA's general durational clause does not prevent those benefits from vesting.

Lambert v. Tesla, *__F.3d__, No. 18-15203 (9th Cir., May 17, 2019).*
Racial discrimination claims under Section 1981 may be subject to compulsory arbitration.

Newirth v. Aegis, *__F.3d__, No. 17-17227 (9th Cir., Jul. 24, 2019).*
A plaintiff who had the right to compel arbitration chose a judicial forum instead. He could not thereafter change his mind and compel arbitration.

Western Surety v. US Engineering, *__F.3d__, No. 19-7003 (D. C. Cir., Apr. 7, 2020).*
A surety was relieved of its responsibilities under a bond when the bond required its holder to notify the surety *before* engaging in self-help measures to cure contractual defaults and the holder failed to do so, even if the bond did not specifically contain a "timely notice" requirement.

25. BANKRUPTCY; CREDITOR'S RIGHTS

***In re: Muhs**, __F.3d__, No. 18-1372 (4th Cir., May 8, 2019).*
For a debt to be non-dischargeable in a Chapter 7 bankruptcy under Section 523(a)(6) of the Bankruptcy Code, a deliberate or intentional *injury* must be shown, not merely a deliberate or intentional *act* that leads to an injury.

***Henry v. Educ. Financial Svcs.**, __F.3d__, No. 18-20809 (5th Cir., Dec. 16, 2019).*
Bankruptcy courts have the discretion to refuse to compel arbitration in proceedings seeking the enforcement of a discharge injunction.

***In re: Sterling**, __F.3d__, No. 18-2773 (7th Cir., Aug. 13, 2019).*
A company was liable for the actions of its attorney in continuing collection efforts on a debt that had been discharged in bankruptcy, because the company had notice of the discharge but failed to inform its attorney of this fact.

***Steenes v. Chicago**, __F.3d__, No. 17-3630 (7th Cir., Nov. 12, 2019).*
Vehicular fines incurred during a Chapter 13 bankruptcy are administrative expenses that must be paid timely and in full.

***Edwards v. Ferguson**, __F.3d__, No. 18-6032 (8th Cir., Jul. 3, 2019).*
The automatic stay provisions of the Bankruptcy Code prevent a city from arresting a debtor as a way of attempting to collect a debt, but do not require a city to recall an arrest warrant for the debtor that was issued pre-petition.

***Montana DOR v. Blixseth**, __F.3d__, No. 18-15064 (9th Cir., Nov. 26, 2019).*
A creditor with a claim that is partially disputed as to amount does not have standing to act on a petitioning creditor in an involuntary bankruptcy proceeding under 11 U.S.C. § 303.

***Ordonez v. Canyons Sch. Dist.**, __Fed. Appx.__, No. 18-4125(10th Cir., Nov. 7, 2019)(unpub.).*
The fact that a bankruptcy case was re-opened and creditors paid does not prevent the application of judicial estoppel to claims the debtor failed to disclose in her bankruptcy schedule.

***Harawood v. Miami-Dade Cty.**, __F.3d__, No. 18-10842 (11th Cir., Jul. 3, 2019).*
A debtor's "excessive force" claims were judicially estopped as a result of his failure to disclose them in his Chapter 13 bankruptcy schedules.

***Smith v. Haynes & Haynes**, __F.3d__, No. 17-14150 (11th Cir., Oct. 15, 2019).*
The failure of a debtor to list a claim on her bankruptcy schedules did not necessarily warrant the dismissal of that claim if the facts did not establish that the omission was calculated to "make a mockery of the judicial system."

26. DRIVER'S PRIVACY PROTECTION ACT; VISUAL ARTIST'S RIGHTS ACT

Castillo v. Cohen, *__F.3d__, Nos. 18-498 & 538 (2nd Cir., Feb. 21, 2020).*
Under the Visual Artists Rights Act, temporary aerosol artwork may achieve recognized stature and thus be protected from destruction by the Act.

Hedquist v. Walsh, *__F.3d__, No. 18-8034 (10th Cir., Aug. 23, 2019).*
Qualified immunity was granted against a Driver's Privacy Protection Act claim created when a police chief obtained the plaintiff's protected driver records for both a permissible and an impermissible reason.

27. OTHER CASES OF INTEREST

La Pointe v. Silko Motor, *__F.3d__, No. 18-1848 (1st Cir., Jun. 12, 2019).*
A plaintiff could not recover damages caused when he slipped on oil and hurt his knee, since he had been hired to clean up the very spill on which he slipped.

Providence v. DOJ, *__F.3d__, No. 19-1802 (1st Cir., Mar. 24, 2020).*
Enlarging a split in the Circuits, the court held that the DOJ does not have the authority to condition unrelated federal law enforcement grants on a local government's assistance in the enforcement of federal immigration laws.

Farrell v. Brady, *__Fed. Appx.__, No. 19-2763 (3rd Cir., Nov. 1, 2019)(unpub.).*
The court dismissed as frivolous a constitutional claim against government officials based upon an allegation that they had conspired to implant, without consent, radio frequency devices in the plaintiff's body for behavior modification and mind-altering purposes.

Miller v. PECO Exelon, *__Fed. Appx.__, No. 19-1569 (3rd Cir., Aug. 20, 2019)(unpub.).*
A utility's refusal to accept coupons as payment for utility services does not give rise to a federal cause of action.

US v. Mann, *__ Fed. Appx.__, No. 18-4162 (4th Cir., May 22, 2019)(unpub.);*
US v. Knowles, *__ Fed. Appx.__, No. 18-4103 (4th Cir., May 20, 2019)(unpub.).*
A court can consider future earning capacity when determining indigency.

Atakapa Indian v. Louisiana, *__F.3d__, Nos. 19-30032 & 30064 (5th Cir., Dec. 19, 2019).*
The claim of a plaintiff - -who was a lawyer, and a self-described monarch and deity - - that Louisiana was monopolizing "intergalactic foreign trade," was dismissed as frivolous.

US v. Varner, *__F.3d__, No. 19-40016 (5th Cir., Jan. 15, 2020).*
No authority supports the proposition that litigants, judges, court personnel, or anyone else has to refer to gender-dysphoric litigants with pronouns matching their subjective gender identity.

Williams v. Sherwood, *__F.3d__, No. 18-2982 (8th Cir., Jan. 28, 2020).*
The judicial decisions of a duly elected judge are not the kind of decisions that expose municipalities to Section 1983 liability.

Chemehuevi Indian Tribe v. McMahon, *__F.3d__, No. 17-56791 (9th Cir., Aug. 19, 2019).*
A county sheriff does not have authority to enforce state traffic laws within the boundaries of an Indian reservation.

Bahrampour v. Sec. of Air Force, *__F.3d__, No. 19-1254 (10th Cir., Feb. 21, 2020).*
A lawsuit alleging that the federal government was experimenting on the plaintiff with radiation through electromagnetic spectrum weapons was dismissed as frivolous.

Bledsoe v. Vanderbilt, *__F.3d__, No. 17-3191 (10th Cir., Aug. 16, 2019).*
A prosecutor does not enjoy absolute immunity when fabricating evidence during the investigation of a crime.

Mercifully, THE END