FEDERAL CASE LAW UPDATE

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By

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A. U. S. SUPREME COURT

***Bostock v. Clayton Cty.**, __U.S.__, No. 17-1618 (Jun. 15, 2020)*
Firing a person merely for being homosexual or transgender violates Title VII.

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

***County of Maui v. Hawaii Wildlife Fund**, __U.S.__, No. 18-260 (Apr. 23, 2020).*
A county wastewater reclamation facility that collects and treats sewage and then discharges the treated water into the ground where it migrates to the ocean must obtain an EPA permit to do so if the discharge either directly enters navigable waters or if there is a "functional equivalent" of a direct discharge into navigable waters, as determined by EPA guidance and future courts.

***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 also the owner of the vehicle was reasonable and provided him with the reasonable suspicion he needed to justify a traffic stop.

***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.

B. U. S. CIRCUIT COURTS

1. FIRST AMENDMENT

A. Public/Private Speech Cases

Javitz v. Luzerne County, *__F.3d__, No. 18-2389 (3rd Cir., Oct. 10, 2019).*
An employee's conversation 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.

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.

Mertins v. Mt. Clemens, *__Fed. Appx. __, No. 19-1416 (6th Cir., Jun. 5, 2020) (unpub.).*
Statements by a utilities department employee to the FBI about her city's practice of overbilling its residents for water and covering up such actions were a "matter of public concern" for First Amendment purposes.

****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 fellow officers 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 impeded his ability to perform his job duties and had a negative effect on department efficiency and trust.

Joritz v. Gray-Little, *__F.3d__, No. 19-3078 (10th Cir., Jul. 27, 2020).*
An employee's complaints of discrimination, motivated primarily by personal grievances, are not matters of public concern for First Amendment retaliation purposes, even if the employee also references the discrimination of others.

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 is motivated by a concern for public safety.

B. Religious Speech/Establishment Clause Cases

***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 a legislative chamber requesting guests to "please rise" is not coercive.

***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 on public transportation, but allowing secular associations to do so, facially discriminates on the basis of viewpoint, in violation of the First Amendment.

***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 that accommodation unreasonable.

***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, this may violate the First Amendment's free speech and free exercise clauses.

C. Laws/Regulation Cases

***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 a hospital or healthcare facility at which "congregating, patrolling, picketing or demonstrating" was prohibited did not significantly burden the First Amendment. It protected the speech of sidewalk counsellors by not prohibiting leafletting or their one-on-one conversations with persons entering or leaving these facilities.

***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 the policy was sensibly designed to minimize interference with pedestrian flow. However, restrictions on profanity and amplified sound within these designated areas were unreasonable under the First Amendment.

***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.

***Billups v. Charleston**, __F.3d__, No. 19-1044 (4th Cir., Jun. 11, 2020).*
An ordinance that prohibits unlicensed persons from giving tours in a city's historic districts burdens protected speech and must be narrowly tailored to survive an intermediate scrutiny analysis.

***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.

***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.

***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.

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

***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.

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

***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.

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

****Aptive Environmental v. Castle Rock***, *__F.3d__, No. 18-1166 (10th Cir., May 15, 2020).*
A 7:00 p.m. curfew on commercial, but not non-commercial, door-to-door solicitation violated the First Amendment as a content-based restriction on protected speech absent a demonstration that it advanced the city's substantial interests in safety and privacy in a direct and material way.

D. Other Cases

****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.

Welton v. Durham Cty., *__Fed. Appx. __, No. 18-2340 (4th Cir., Aug. 28, 2019) (unpub.).*
The First Amendment does not protect an employee's "general course of conduct" that lacks an 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 against a public official who did not possess final decision-making authority to approve or deny a charter school application.

Louisiana v. Natchitoches, *__Fed. Appx.__, No. 19-30223 (5th Cir., Jul. 30, 2020)(unpub.).*
No First Amendment violation occurred when a not-for-profit corporation simply complied with a mayor's suggestion that a Confederate flag should not be allowed in an annual parade coordinated and undertaken by the corporation per an agreement with the city.

****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.

****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.

****Brindley v. Memphis***, *__F.3d__, No. 19-5753 (6th Cir., Aug. 13, 2019).*
A privately-owned street can constitute 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 signs of private ownership.

****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.

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."

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.

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

Shay v. Huntington Beach, *__Fed Appx. __, No. 18-56644 (9th Cir., May 14, 2020) (unpub.).*
Tackling a person to stop him from video-recording an arrest establishes the elements of a First Amendment retaliation claim. However, an officer who pointed a Taser gun at the face of an unresisting and non-threatening suspect and threatened to use it if the suspect did not comply was entitled to qualified immunity on an "excessive force" claim.

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.

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.

****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.

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.

2. FOURTH AMENDMENT

A. Traffic Stop Cases

***US v. Garner**, __F.3d__, No. 19-1038 (3rd Cir., May 29, 2020).*
A police officer did not unnecessarily prolong a traffic stop by calling for a back-up in a high crime area when it was approaching dusk and the car occupants were bigger than him, or by waiting to call a K-9 unit until after the occupants denied him consent to search their vehicle.

***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. 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 approached.

***US 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. 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 and a K-9 unit while on the side of the highway, and was asked if he would continue speaking with the officers.

***US v. Jackson**, __F.3d__, Nos. 19-2928/3153 (7th Cir., Jun. 17, 2020).*
An air freshener handing from a rear view mirror provided the "reasonable suspicion" necessary for an officer to pull over a vehicle for violating an ordinance prohibiting any object obstructing a driver's "clear view" through the windshield of his/her vehicle.

***US v. Barker**, __Fed. Appx. __, No. 19-1880 (8th Cir., May 21, 2020) (unpub.).*
For Fourth Amendment purposes, requiring a driver to sit in a squad car while writing him a ticket does not unlawfully extend his traffic stop.

***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 that vehicle.

***US v. Johnson**, __F.3d__, No. 17-3776 (8th Cir., Apr. 13, 2020).*
Officers who told a vehicle owner that he had the right to refuse to consent to its search, it but that a warrant would be sought whether or not he consented and that he was not free to enter his vehicle, did not make his subsequent consent to search unconstitutional.

***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. Malik**, __F.3d__, No. 19-10166 (9th Cir., Jul. 6, 2020).*
The subjective motivations of an officer who pulls over a truck are not relevant for Fourth Amendment purposes when he has reasonable suspicion to make the stop.

***US v. Mayville**, __F.3d__, No. 19-4008 (10th Cir. Apr. 7, 2020).*
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. Morales**, __F.3d__, No. 19-5059 (10th Cir., Jun. 8, 2020).*
A 15-minute delay in a traffic stop to allow the officer, who reasonably suspected that drug activity was afoot, to call a nationwide law enforcement database did not unduly prolong the stop for Fourth Amendment purposes, as the officer was acting diligently conducting his investigation.

***US v. Orzco-Rivas**, __F.3d__, No. 19-6074 (10th Cir., Apr. 21, 2020).*
A 51-minute delay in a traffic stop to await the arrival of a drug dog was reasonable for Fourth Amendment purposes given the remoteness of the site of the stop.

***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.

***Jernigan v. Montgomery**, __Fed. Appx. __, No. 19-13814 (11th Cir., Apr. 10, 2020) (unpub.).*
Qualified immunity against a "false arrest" claim was granted to an officer who mistakenly read information on his in-car computer as indicating that there was an outstanding warrant for the plaintiff's arrest, when there actually was only an outstanding criminal summons. This was a good faith mistake.

***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. Delaney**, __F.3d__, No. 18-3093 (D.C. Cir., Apr. 17, 2020).*
A Fourth Amendment "seizure" occurred when officers pulled into a parking lot, partially blocked a vehicle, and trained a light on it.

B. Dog Cases

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, since the dog was tethered and incapable of reaching or harming the officer.

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.

****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 that was 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 the homeowner's "right to privacy" to shield his suspected animal abuse from the public through the dissemination of unaltered photographs of the abused dogs.

****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.

C. "Exigent Circumstances/Medical Emergency" Cases

****US v. Rodriquez-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.

****Chamberlain v. White Plains***, *__F.3d__, No. 16-3935 (2nd Cir., May 29, 2020).*
The "medical emergency" exception to the need for consent or a warrant to enter a private dwelling was not available to officers who could hear that a resident was in psychological distress but not physical danger and yet took down the front door and entered, not with medical equipment, but with Tasers and guns drawn.

US v. Curry, *__F.3d__, No. 18-4233 (4th Cir., Jul. 15, 2020).*
The Fourth Amendment's "exigent circumstances" exception may permit suspicionless seizures when officers are able to narrowly target their seizures based upon specific information of a known crime in a controlled geographic area.

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.

Machan v. Olney, *__F.3d__, No. 18-1691 (6th Cir., May 14, 2020).*
The Fourth Amendment was not violated when a school resource officer, after a student disclosed that she was having suicidal thoughts and was worried about hurting herself, took the student into protective custody for a mental evaluation that included a blood draw.

****US v. Shelton***, *__F.3d__, No. 19-2112 (10th Cir., Jun. 23, 2020).*
An officer's "reasonable suspicion" ripened into "probable cause" when a suspect ran away from him, thus justifying the officer's warrantless entry onto private property to search for him based upon "exigent circumstances."

Ellison v. Hobbs, *__Fed. Appx. __, No. 18-14142 (11th Cir., Aug. 29, 2019) (unpub.).*
Qualified immunity was granted to EMTs and 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.

US v. Evans, *__F.3d__, No. 17-15323 (11th Cir., May 6, 2020).*
The Fourth Amendment's "emergency aid" exception allowed the warrantless entry into a home to check on a whimpering sound from within that sounded like a person in distress, although it turned out to be coming from a dog.

D. "Community Caretaker" Cases

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's "community caretaker" exception to police officers performing community caretaker functions on private property - - including private homes.

Castagna v. Jean, *__F.3d__, No. 19-1677 (1st Cir., Apr. 10, 2020).*
No Fourth Amendment violation occurred when officers responding to a noise and underage drinking complaint entered the open door of an apartment to address the noise and check on the safety of the underage drinkers under the "community caretaker" exception.

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 such conduct may not constitute an unlawful "seizure" under the Fourth Amendment but an exercise of an officer's "community caretaker" responsibilities.

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.

***US v. Sanders**, __F.3d__, No. 19-1497 (8th Cir., Apr. 14, 2020).*
The "community caretaker" exception to the Fourth Amendment allowed officers to enter a residence without a warrant when responding to a domestic disturbance call from a child and, they heard crying from inside the home and entered it to check on the welfare of the child.

***US v. Neugin**, __F.3d__, No. 19-7043 (10th Cir., May 1, 2020).*
An officer who responded to a domestic disturbance taking place in a parking lot by splitting up a couple and helping the female retrieve her belongings by opening the back camper door of her boyfriend's truck, thereby observing ammunition and a firearm in the vehicle, was not acting in his "community caretaker" role, since she was capable of opening the truck door herself.

E. Staleness Cases

***US v. Smith**, __F.3d__, No. 17-2446 (2nd Cir., Jul. 28, 2020).*
Waiting 31 days after seizing a computer suspected of containing child pornography before seeking a search warrant for the computer's contents was unreasonably long for Fourth Amendment purposes.

***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.

***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. 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.

F. "Expectation of Privacy" Cases

***US v. Ferebee**, __F.3d__, No. 18-4266 (4th Cir., Apr. 22, 2020).*
For Fourth Amendment purposes, an individual can "abandon" an article even while it is in his physical possession, by disavowing ownership of it.

***US v. Gratkowski**, __F.3d__, No. 19-50492 (5th Cir., Jun. 30, 2020).*
A Bitcoin user does not have a reasonable expectation of privacy in his personal information contained on a Bitcoin blockchain.

***US v. Trice**, __F.3d__, No. 19-1500 (6th Cir., Jul. 21, 2020).*
The Fourth Amendment was not violated when police officers placed a hidden camera in the unlocked common hallway of an apartment building that recorded only what the officers could have learned through ordinary visual surveillance.

***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 claimant's name, address, and telephone number.

***US v. Yang**, __F.3d__, No. 18-10341 (9th Cir., May 4, 2020).*
A person does not have a "reasonable expectation of privacy" in a rental vehicle after he fails to return it by its return due date, and there was no car rental company policy or practice of allowing lessees to keep their vehicles beyond their rental period and charge them for any extra days of possession.

***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.

***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.

G. Inventory Search Cases

***Marling v. Littlejohn**, __F.3d__, No. 19-3077 (7th Cir., Jul. 13, 2020).*
If an officer unreasonably damages a closed box in the process of opening it as part of an inventory search, this could justify a tort claim, but not the suppression of the incriminatory evidence found therein.

***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. Magdirila**, __F.3d__, No. 18-50430 (9th Cir., Jun. 23, 2020).*
Under the Fourth Amendment, an officer's non-material deviation from his department's policy for inventorying property located in an impounded vehicle did not make the search invalid.

H. "No Arrest" Cases

***US v. Curry**, __F.3d__, No. 18-4233 (4th Cir., Sept. 5, 2019).*
No Fourth Amendment violation resulted when officers, responding 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. Darrell, *__F.3d__, No.19-60087 (5th Cir., Dec. 23, 2019).*
Reasonable suspicion existed to briefly detain an individual who was present in a high crime area, and 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.

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. 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. 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. 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 an "arrest."

****US v. Gobel***, *__F.3d__, No. 19-2125 (10th Cir., May 26, 2020).*
A homeowner is not "detained" for Fourth Amendment purposes when a squad car blocked his driveway for 10 seconds in order to get the license number from his unoccupied vehicle.

I. Other Cases

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 give her authority to consent to their search.

US v. Rivera-Morales, *__F.3d__, No. 17-1258 (1st Cir., May 29, 2020)*
Under the "private search" doctrine, no search warrant was needed when a wife found disturbing videos on her husband's cell phone and disclosed them to the police.

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. Walker**, __F.3d__, No. 18-3729 (2nd Cir., Jul. 14, 2020).*
Arresting a person based upon a photograph that provided little specific identifying information except race violated the Fourth Amendment.

***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.

***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. 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 because it was not limited in geographic scope to the kitchen of a house where a marijuana cigarette was observed, since there remained a fair probability that other evidence of the presence of marijuana would be found in other areas of the house.

***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 exists rather than about the validity of an arrest warrant.

****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 toll records and subscriber information.

***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 renders his consent to the warrantless search of his bedroom "involuntary".

****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 offense.

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

***Cox v. City of Jackson**, __Fed. Appx. __, No. 19-6162 (6th Cir., Apr. 22, 2020) (unpub.).*
One-day detentions based upon probable cause do not establish a Fourth Amendment claim.

Jones v. Clark Cty., *__F.3d__, No. 19-5143 (6th Cir., May 18, 2020).*
Probable cause existed to arrest a person who owned the router used to upload child pornography because it was reasonable to believe that he may have been the person who uploaded the unlawful material.

Schulkers v. Kammer, *__F.3d__, No. 19-5208 (6th Cir, Mar. 30, 2020).*
Social workers investigating suspected 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.

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.

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 briefly held him at gunpoint.

Williams v. Dart, *__F.3d__, No. 19-2108 (7th Cir., Jul. 23, 2020).*
A sheriff who, instead of following the terms of court-ordered releases, prolonged the detention of pre-trial detainees based upon his own independent review of these court orders, without purpose or plan for their release, violated the Fourth Amendment.

****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.

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. Ringland, *__F.3d__, No. 19-2331 (8th Cir., Jul. 16, 2020).*
Following a child pornography reporting requirement does not transform Google into a government agent for Fourth Amendment purposes.

****US v. Sherrod***, *__F.3d__, No. 18-2976 (8th Cir., Jul. 17, 2020).*
The Fourth Amendment does not require officers to "knock and announce" their presence before entering an open door to a house.

***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.

***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. Grey**, __F.3d__, No. 18-50328 (9th Cir., May 27, 2020).*
When officers are asked to assist in the execution of an administrative search warrant, they violate the Fourth Amendment when their "primary purpose" in executing the warrant is to gather evidence in support of a criminal investigation.

***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.

****Bronnenberg v. Egger**, __F.3d__, No. 19-8055 (10th Cir., Jun. 16, 2020).*
Qualified immunity was granted to an officer on a Fourth Amendment claim stemming from his arrest of an individual in reliance upon a facially valid arrest warrant, even when the arrestee showed him a court order vacating that warrant.

****Oliver v. Nielsen**, __Fed. Appx. __, No. 19-4064 (10th Cir., Mar. 24, 2020) (unpub.).*
No unlawful seizure of property occurred 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.

****US v. Cortez**, __F.3d__, Nos. 19-2058/2059 (10th Cir., Jul. 14, 2020).*
The mere fact that an officer could have performed a task more quickly does not create a Fourth Amendment violation.

****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.

***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.

***Barnett v. MacArthur**, __F.3d__, No. 18-12238 (11th Cir., Apr. 15, 2020).*
The Fourth Amendment may have been violated when a woman suspected of DUI registered .000 on two breathalyzer tests, showed no evidence of drug use, and posted bond, but was nevertheless detained for 8 hours due to a Sheriff's department policy of holding all DUI arrestees for 8 hours before release.

***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 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.

***Henley 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.

***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.

***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. Yarbrough**, __F.3d__, No. 18-10624 (11th Cir., Jun. 11, 2020).*
The Fourth Amendment allows officers to conduct a warrantless protective sweep of an arrestee's house even after they have secured the arrestees outdoors, if the officers have a reasonable suspicion that a dangerous person may still be located inside the house.

3. FOURTH AMENDMENT; "EXCESSIVE FORCE"

A. Gunshot Cases

***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 his 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, because he posed no threat to the officers or others when he was shot.

Jones v. Martinsburg, *__F.3d__, No. 18-2142 (4th Cir., Jun. 9, 2020).*
If a suspect is secured, it is "excessive force" to release him, back away, and then shoot him.

Amador v. Vasquez, *__F.3d__, No. 17-51001 (5th Cir., Jun. 3, 2020).*
Qualified immunity was denied when officers shot a knife-wielding man who, at the time he was shot, was standing almost 30 feet from them, motionless, and with his hands in the air.

Bryant v. Gillem, *__F.3d__, No. 19-11284 (5th Cir., Jul. 9, 2020).*
Qualified immunity on an "excessive force" claim was granted to an officer who unintentionally shot a suspect while handcuffing him, as there was no intent to harm him.

Garcia v. Blevins, *__F.3d__, No. 19-20494 (5th Cir., Apr. 30, 2020).*
Qualified immunity was granted to an officer who, when responding to a "man with a gun" complaint, shot a man who refused to drop his weapon and instead ducked down between parked cars, even though he may have put his hands up at some point during the incident.

****Malbrough v. Stelly***, *__Fed. Appx. __, No. 19-30269 (5th Cir., May 14, 2020) (unpub.).*
For purposes of an "excessive force" analysis, it is not relevant whether an officer, in hindsight, was ever in danger. The question is whether it would have appeared to a reasonable officer that he or others were in danger at the moment that the complained of conduct occurred. Moreover, an officer's continued shooting at a driver of a vehicle even after it passed the officer was not "excessive force" if the vehicle continued to pose a severe threat to public safety.

****Ratliff v. Aransas Cty.***, *__F.3d__, No. 19-40121 (5th Cir., Jan. 15, 2020).*
Qualified immunity was granted to officers who shot 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.

****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.

Hicks v. Scott, *__F.3d__, No. 19-3410 (6th Cir., May 1, 2020).*
Qualified immunity was granted to a police officer who shot an apartment resident when he pointed a rifle at her face from five feet away, even if pointing the weapon at the officer was incidental and not intentional as the resident panned the gun across his doorway entrance.

Nelson v. Battle Creek, *__Fed. Appx. __, No. 18-1282 (6th Cir., Feb. 26, 2020) (unpub.).*
Qualified immunity was granted to an officer who 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 just before he was shot.

***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.

***Cole v. Hutchins**, __F.3d__, No. 19-1399 (8th Cir., May 28, 2020).*
Qualified immunity was denied to an officer who shot without warning an armed man who was pointing his gun to the sky or the ground and posed no "immediate threat" to anyone.

***Goffin v. Ashcraft**, __F.3d__, No. 18-1430 (8th Cir., Apr. 24, 2020).*
Qualified immunity was granted to an officer when she shot a suspect after an unproductive pat down search. The fact that the search found nothing did not eliminate the officer's probable cause to believe that the suspect posed a threat of serious bodily harm.

***Kong v. City of Burnsville**, __F.3d__, No. 19-1101 (8th Cir., May 29, 2020).*
It was not "excessive force" to shoot a knife-wielding individual who was observed sitting in his car waving around a knife and who, after an officer broke his car window and tased him, stumbled out of his car and ran through the parking lot with knife in hand, - - even if the officer's actions caused him to leave his car and become a threat to others.

***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 officer or others.

***Hernandez v. Huntington B.**, __Fed. Appx. __, No. 18-56127 (9th Cir., Dec. 24, 2019) (unpub.).*
Qualified immunity was granted to officers who shot 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 to officers who 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 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 other teenagers who were with that teenager, 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 was denied to an officer who shot into the side and rear of a car during a slow speed chase when the driver did not speed, 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.

***Easter v. Cramer**, __F.3d__, No. 17-7069 (10th Cir., Sept. 19, 2019).*
Qualified immunity was granted to an officer who shot an unarmed suspect after the suspect pushed the officer under water and the officer believed that the suspect was trying to drown him.

***Reavis v. Frost**, __F.3d__, No. 19-7042 (10th Cir., Jul. 28, 2020).*
Qualified immunity was denied to an officer on an "excessive force" claim that arose after he shot into the side and back of a truck that had just passed him while fleeing the scene, since the officer was not then facing a threat of harm to himself or others.

***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.

***Valverde v. Dodge**, __F.3d__, No. 19-1255 (10th Cir., Jul. 30, 2020).*
An officer did not use "excessive force" when he had only a split second to act after a suspect drew a weapon, and he decided to shoot rather than wait and see if the suspect had taken a gun from his pocket to throw it away or to shoot the officer.

***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".

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

B. Taser Cases

***Jones v. Treubig**, __F.3d__, No. 18-3775 (2nd Cir., Jun. 26, 2020).*
It was "excessive force" for an officer to use his taser on a suspect who was only engaged in passive resistance, and again after he stopped resisting.

***Randolph-Ali v.Minium**, __Fed. Appx.__, No. 19-1909 (3rd Cir., Dec. 4, 2019)(unpub.).*
Qualified immunity is granted to an officer who 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.

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.

****Boudoin v. Harsson***, *__F.3d__, No. 19-2192 (8th Cir., Jun. 22, 2020).*
Qualified immunity was granted to officers on an "excessive force" claim arising after they tased, without warning, a suspect they perceived as attempting to flee from them to avoid arrest.

Franklin v. Franklin Cty., *__F.3d__, No. 19-1854 (8th Cir., Apr. 24, 2020).*
Using a Taser in drive-stun mode on a handcuffed detainee who continued to struggle with police was not "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.

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.

C. Pepper Spray Cases

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

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.

D. Handcuff Cases

****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.

Howse v. Hodous, *__F.3d__, No. 19-3418 (5th Cir., Mar. 18, 2020).*
Qualified immunity was granted to an officer who tackled the plaintiff after he disobeyed an order to put his hands behind his back, and then resisted being handcuffed.

Tennyson v. Villarreal, *__Fed. Appx. __, No. 19-20556 (5th Cir., Apr. 14, 2020) (unpub.).*
Taking a non-compliant detainee to the ground while attempting to handcuff him is not "excessive force."

****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.

****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.

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

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

E. K-9 Cases

****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.

Zuress v. City of Newark, *__Fed. Appx. __, No. 19-3945 (6th Cir., May 28, 2020) (unpub.).*
No "excessive force" occurred when a K-9 unit bit a subdued suspect for 11 seconds before his handler attempted to get it to release and for another 13 seconds before the dog released.

Hartsell v. San Diego Cty. *, __Fed. Appx.__, No. 19-55379 (9th Cir., Apr. 21, 2020)(unpub.).*
Qualified immunity was denied to an officer who failed to call off his K-9 unit after a suspect showed his hands and was within the officer's control.

F. Other Cases

****Lennox v. Miller***, *__F.3d__, No. 19-1675 (2nd Cir., Jul. 29, 2020).*
Qualified immunity on an "excessive force" claim was granted to an officer when no clearly established law required him to abandon his crowd control duties in order to intervene in another officer's use of force.

Williams v. City of York, *__F.3d__, No. 18-3682 (3rd Cir., Jul. 24, 2020).*
In order to survive summary judgment on an "excessive force" claim, a plaintiff must establish the personal involvement of each named defendant.

***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.

***Goode v. Baggett**, __Fed. Appx. __, No. 19-60350 (5th Cir., Apr. 24, 2020) (unpub.).*
For purposes of an "excessive force" claim, a plaintiff need not prove that "hog-tying" an arrestee was the sole cause of his death or that his death was foreseeable, only that it was a contributing factor in his death.

***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."

****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.

***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.

****Wright v. City of Euclid**, __F.3d__, No. 19-3452 (6th Cir., Jun. 18, 2020).*
Brandishing a firearm without a justifiable fear that a suspect is fleeing or dangerous, or tasing a suspect who is only passively resisting and not under arrest, can constitute "excessive force."

***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.

***Lombardo v. St. Louis**, __F.3d__, No. 19-1469 (8th Cir., Apr. 20, 2020).*
It was not "excessive force" for officers to keep an arrestee in the prone position until he stopped resisting, although he died as a result of his struggle combined with his meth intoxication and heart disease.

Kelsay v. Ernst, *__F.3d__, No. 17-2181 (8th Cir., Aug. 13, 2019).*
Qualified immunity was granted to an officer who 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 a license check and was uncooperative when the officers grabbed her and told her to turn around, was not "excessive force."

****Liberti v. Scottsdale***, *__Fed. Appx. __, No. 18-16938 (9th Cir., Jun. 5, 2020) (unpub.).*
Grabbing a suspect's elbow in an effort to get him to sit down is not "excessive force."

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

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

Marantes v. Miami-Dade, *__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."

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.

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".

4. FIFTH AMENDMENT; SIXTH 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.

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.

Donaldson v. SEPTA, *__Fed. Appx.__, No. 19-2573 (3rd Cir., Jul. 30, 2020)(unpub.).*
There is no recognized constitutional right to the effective assistance of counsel in a civil case.

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. 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 when 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.

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.

Smith v. Titus, *__F.3d__, No. 18-2915 (8th Cir., May 5, 2020).*
The Sixth Amendment was not violated when a judge closed his courtroom briefly to explain the parameters of his earlier order on evidentiary issues to the parties before the jury was sworn.

****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 publicly 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 and does not force 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 property development did not occur, since the property retained substantial economic value and the change did not deprive its owner of all economically viable uses of the 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 to establish a law.

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 [his house]" does not require a *Miranda* warning.

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 asks a resident "where a firearm is located" in the house.

5. FOURTEENTH AMENDMENT; DUE PROCESS

A. "Deliberate Indifference" Cases

Baldwin v. Dorsey, *__F.3d__, No. 19-20465 (5th Cir., Jul. 1, 2020).*
Qualified immunity was granted to an officer facing a "deliberate indifference" claim after she waited three hours to take a suicidal arrestee for medical help, when the delay was caused by her attempt to gather information about the arrestee's level of intoxication, and the arrestee was handcuffed to a bench to prevent him from harming himself.

****Converse v. City of Kemah***, *__F.3d__, No. 17-41234 (5th Cir., Jun. 12, 2020).*
Qualified immunity was denied on a Fourteenth Amendment "deliberate indifference" claim against an officer who removed a suicidal arrestee's shoelaces but left him with a blanket with which he later hung himself. Taking some reasonable precautions does not necessarily mean that an officer, on the whole, acted reasonably.

***Dyer v. Houston**, __F.3d__, No. 19-10280 (5th Cir., Apr. 9, 2020).*
Qualified immunity on a "deliberate indifference" claim was denied to an officer who allowed an arrestee high on LSD to bang his head on a squad car cage 40 times and then sought no medical care for him once they arrived at the jail.

***Downard v. Martin**, __F.3d__, No. 20-3046 (6th Cir., Jul. 31, 2020).*
In pre-trial detainee suicide cases, to succeed on a Fourteenth Amendment "deliberate indifference" claim, a plaintiff must show that an officer acted with deliberate indifference to a "strong likelihood" of a detainee's suicide, not to a "possibility" or "likelihood" of suicide.

***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 continued to use a notification system that contained significant weaknesses even after it had taken affirmative steps to (unsuccessfully) address those weaknesses.

***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.

B. "State-Created Danger" Cases

***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.

***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.

***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, in fact, have been alive. Qualified immunity is designed to protect such errors in judgment.

***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.

C. Procedural Due Process Cases

****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 any recommended termination. The fact that neither the employee nor his union representative asked any questions is not a denial of due process, since they had the opportunity to do so.

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 her children from their home for 24 hours without a court order or exigent circumstances.

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.

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.

****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.

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 was not "published" when it was sent from the municipality to a state agency.

***Georgia Electronic v. Sandy Springs**, __F.3d__, No. 19-10121 (11th Cir., Jul. 17, 2020).*
An ordinance subjecting alarm companies to a fine whenever a false alarm sounds on a property they serve is rationally and substantially related to a legitimate governmental interest in reducing the number of false alarms that burden police and fire resources. As an economic regulation, it does not burden any suspect classification or fundamental right.

D. Substantive Due Process Cases

***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.

***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.

***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 instead amount to punishment.

***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 her house.

***Gary B. v. Whitmer**, __F.3d__, Nos. 18-1855/1871 (6th Cir., Apr. 23, 2020).*
A basic minimum education is a fundamental right subject to a substantive due process challenge.

***Gorokhovsky v. Chicago**, __Fed. Appx. __, No. 19-1506 (7th Cir., May 11, 2020) (unpub.).*
A substantive due process claim does not arise when a city impounds a vehicle for unpaid parking tickets and then does not immediately have a technician available to remove the "boot" placed on the vehicle once the tickets are paid.

***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 taxicab 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's value. The medallions authorized taxi drivers to own and operate a taxi, not to avoid competition by other transportations services.

***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 when he forbids bystanders from performing emergency CPR on a person, unless it is found that his actions constituted more than a reckless interference with their rescue efforts.

E. Other Cases

***Dailey v. Philadelphia**, __Fed. Appx.__, No. 19-3409 (3rd Cir., Jun. 23, 2020)(unpub.).*
Disqualifying a retiree from receiving municipal pension benefits pursuant to a "malfeasance in office" provision did not violate the Fourteenth Amendment as being too vague to provide adequate notice to the retiree of the conduct proscribed, when the retiree stole $73,000 from the city while an employee.

***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 alleging that an adult child has a constitutional right to live with and care for his elderly parents.

***Prillerman v. Philadelphia**, __Fed. Appx.__, No. 19-3685 (3rd Cir., Jul. 30, 2020)(unpub.).*
Case law does not support a contention that a defendant has a "due process" right to counsel during an extradition hearing.

***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.

***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.

***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 Fourteenth Amendment by enacting religion-based policies to accommodate their own religious beliefs.

***Halpern v. Center**, __Fed. Appx. __, No. 19-1921 (6th Cir., Mar. 16, 2020) (unpub.).*
The 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 this 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.

***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.

***Knight v. Grossman**, __F.3d__, No. 19-1740 (7th Cir., Oct. 31, 2019).*
Prisoners have a Fourteenth Amendment right to informed consent prior to undergoing a medical procedure.

***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 relating to that promotion.

***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, violate the Due Process Clause.

***Sterns v. Inmate Svcs.**, __F.3d__, No. 18-3707 (8th Cir., Apr. 29, 2020).*
The due process right of a pre-trial detainee not to be punished may have been violated when he was forced to spend 8 days shackled in a van for what should have been a 17-hour trip between detention facilities in Colorado and Mississippi.

***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.

***Urquhart-Bradley v. Mobley**, __F.3d__, No. 19-7116 (D.C. Cir., Jun. 30, 2020).*
The "fiduciary shield doctrine" plays no role in a personal jurisdiction analysis under the Due Process Clause.

6. FOURTEENTH AMENDMENT; EQUAL PROTECTION

***ABC v. Northampton**, __ Fed. Appx. __, Nos. 19-2168-71 (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."

***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.

***Kesterson v. Kent State**, __F.3d__, No. 18-4200 (6th Cir., Jul. 23, 2020).*
The court declined an invitation to hold that "qualified immunity" from an equal protection claim never protects a coach who violates a mandatory school policy.

7. TITLE VII; DISCRIMINATION

A. "Hostile Work Environment" Cases

****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 her work environment, and discriminatory conduct not directly aimed at the employee can contribute to an actionable claim.

***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 "hostile work environment" claim.

***Bazemore v. Best Buy**, __F.3d__, No. 18-2196 (4th Cir., Apr. 21, 2020).*
A Title VII harassment and hostile work environment claim is not shown by a single racist and sexually charged joke to other co-workers when no plausible evidence exists that the employer knew or should have known of the conduct, and the employer took corrective action once made aware of it.

***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.

***Collier v. Dallas Cty Hosp.**, __Fed. Appx. __, No. 19-10761 (5th Cir., Apr. 9, 2020) (unpub).*
Under Title VII, two instances of racial graffiti and one incident of being called "boy" are not enough to establish the presence of a "hostile work environment."

****Montgomery-Smith v. George**, __Fed. Appx. __, No. 30987 (5th Cir., Apr. 17, 2020) (unpub.).*
Under Title VII, denials of promotions, not being invited to office parties, and isolation from co-workers are not the types of severe and pervasive conduct that establish a "hostile work environment."

***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."

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.

B. "Adverse Employment Action" Cases

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 liability.

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."

****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."

Gogel v. Kia Motors, *__F.3d__, No. 16-16850 (11th Cir., Jul. 29, 2020).*
An employee's oppositional conduct loses its Title VII protection when the manner chosen to voice this opposition so interferes with the employee's performance of her job that it renders her ineffective in the position for which she is employed.

C. Other Cases

****Brandt v. Fitzpatrick***, *__F.3d__, No. 19-1174 (1st Cir., Apr. 22, 2020).*
The court rejected an African-American employee's argument that his supervisor violated Title VII, due to his unconscious "cognitive bias" against the employee as a result of his ingrained "Black dishonesty" stereotype that skewed his judgment and made him believe a White employee's word over that of this employee.

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.

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.

Brown v. Children's Hospital, *__Fed. Appx. __, No. 18-3685 (3rd Cir., Feb. 14, 2020) (unpub.).*
To establish a *prima facie* case 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.

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?"

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.

****Rumley v. Democracy Prep.***, *__Fed. Appx. __, No. 19-3540 (3rd Cir., May 1, 2020) (unpub.).*
Under Title VII, having a prior criminal conviction is not a "protected class."

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.

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

****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.

****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.

Jones v. MS Sec. of St., *__Fed. Appx.__, No. 19-60116 (5th Cir., Jun. 15, 2020)(unpub.).*
While the *prima facie* elements of a Title VII claim may also establish an employer's liability under Section 1983, a Section 1983 plaintiff must additionally plead and prove which actions of an individual defendant caused the harm alleged.

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.

Kenney v. Aspen Tech., *__F.3d__, No. 19-1027 (6th Cir., Jul. 6, 2020).*
A 75-day delay between a protected activity and termination does not, without more, establish causation for purposes of a Title VII retaliation claim.

Logan v. MGM Grand, *__F.3d__, No. 18-1381 (6th Cir., Sept. 25, 2019).*
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.

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.

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.

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.

Sampson v. Kane, *__F.3d__, No. 19-4095 (10th Cir., Apr. 30, 2020).*
For purposes of a retaliatory discharge claim, an African American employee was not "constructively discharged" when his pay was cut, he lost some job responsibilities, and he was suspended for a week without pay.

****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 is particularly important.

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.

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."

Knox v. Roper Pump, *__F.3d__, No. 18-11756 (11th Cir., Apr. 30, 2020).*
An employer may have retaliated against an employee, in violation of Title VII, by responding to his claim of discrimination by conditioning his continued employment on his release of claims and then firing him for refusing to do so.

Monaghan v. Worldplay, *__F.3d__, No. 17-14333 (11th Cir., Apr. 2, 2020).*
A Black supervisor's statements to a White subordinate that she was "blackballed" for complaining about the supervisor, 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 a retaliation 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.

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.

8. ADA; REHABILITATION ACT

A. Reasonable Accommodation Cases

****Trahan v. Wayfair***, *__F.3d__, No. 19-1961 (1st Cir., Apr. 21, 2020).*
The ADA does not require an employer to offer a disabled employee a "second chance" after she commits a dischargeable offense by acceding to her an after-the-fact accommodation request.

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.

***Keyhani v. U of Penn.**, __Fed. Appx. __, No. 19-2806 (3rd Cir., May 1, 2020) (unpub.).*
Under the ADA, when an employer accommodates an employee by allowing her to take two days off each week, it is not "retaliation" to not allow her to choose the days of the week when she is off.

***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.

****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.

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

****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.

***Hildreth v. Butler**, __F.3d__, No. 18-2660 (7th Cir., May 19, 2020).*
Providing a person suffering from Parkinson's disease with an assistant to help him draft letters rather than giving him a typewriter, does not violate the ADA.

***Lewis v. Clark Cty. Sch.**, __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.

B. "Essential Job Function" Cases

****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 contained in an officer's job description.

****Ehnert v. Washington Penn**, __Fed. Appx.__, No. 18-3364 (3rd Cir., Jun. 10, 2020)(unpub.).*
Summary judgment was granted to the employer on an employee's ADA claims when the employee was unable to explain how he could perform the essential functions of his job yet claim on his application for SSDI benefits that he was unable to perform work.

****Darby v. Childvine**, __F.3d__, No. 19-4214 (6th Cir., Jun. 30, 2020).*
To qualify as a disability under the ADA, a condition must do more than present a potential for substantially limiting a major life activity in the future. A genetic mutation merely capable of altering normal cell growth cannot be an impairment that presently "substantially limits" a major life activity.

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.

C. "Qualified Individual" Cases

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.

Moens v. Chicago, *__Fed. Appx. __, No. 1913- (7th Cir., May 20, 2020) (unpub.).*
Under the ADA, an employee who missed work 50 times in a single year even after she was accommodated with shortened workdays, delayed start times, and an extended leave, could not be a "qualified individual with a disability."

D. Rehabilitation Act Cases

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.

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.

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

Wilson v. City of Southlake, *__F.3d__, No. 18-10342 (5th Cir., Aug. 28, 2019).*
Under the 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 is not a weapon.

McCray v. Wilkie, *__F.3d__, No. 19-3145 (7th Cir., Jul. 16, 2020).*
Under the Rehabilitation Act, an 11-month delay in reasonably accommodating a disability may not be "reasonable."

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

Scott v. Postmaster General, *__Fed. Appx.__, No. 19-12924 (11th Cir., Jun. 18, 2020)(unpub.).*
Under the Rehabilitation Act, an employer need not affirmatively assert "undue hardship" prior to a plaintiff-employee proving that there is a "reasonable accommodation" that the employer could provide.

E. Other Cases

Lopez v. The Robinson School, *__F.3d__, No. 19-1386 (1st Cir., May 11, 2020).*
Under the ADA, an employer can require an employee who suffers a psychiatric break to submit to a medical examination and medical treatment as a condition of her return to work so long as such actions are justified by business necessity.

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 is 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."

****Eshleman v. Patrick Ind.***, *__F.3d__, No. 19-1403 (3rd Cir., May 29, 2020).*
Under the ADA, a "regarded as" claim involving an impairment that lasts for less than 6 months may be "transitory" but "non-minor." To take advantage of the ADA's "transitory and minor" exception to a "regarded as" claim, a court must determine that a less than 6-month impairment is both transitory and minor before dismissing the claim.

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.

****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.

Lyons v. Katy Indep. Sch. Dist., *__F.3d__, No. 19-20293 (5th Cir., Jun. 29, 2020).*
For purposes of an ADA retaliation claim, a 9-month gap between the filing of an EEOC charge and the taking of an adverse employment action is, without more, insufficient evidence of causality so as to establish a *prima facie* case.

****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."

***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.

***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.

****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 end a workplace harassment claim, the incidental rotation of employees not designed to address their harassment does not.

****Mayle v. Chicago**, __Fed. Appx. __, No. 19-3208 (7th Cir., Apr. 29, 2020) (unpub.).*
An ADA regulation that limits "service animals" to dogs and miniature horses, and thus does not require hogs to be allowed into public places, does not violate a hog owner's right to equal protection and is rationally related to providing the public with predictability as to what animals to expect in public places and to preventing the disruption caused by a hog's presence.

****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 being at high risk of developing one.

***Rinehart v. Weitzell**, __F.3d__, No. 18-3263 (8th Cir., Jul. 2, 2020).*
Active and episodic diverticulitis constitutes a "disability" under the ADA.

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

***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 have policies and procedures in place to prevent further illegal barriers from being constructed or to quickly remedy any future barrier issues.

***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.

***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).*
Under the ADA, "regarded as having an impairment" does not include a potential future disability that a healthy person may later experience.

***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.

9. FMLA; PDA; EPA

***Gardiner v. Philadelphia**, __Fed. Appx. __, No. 19-2620 (3rd Cir., Apr. 23, 2020) (unpub.).*
Under the FMLA, an employee's e-mail message stating that her doctor "suggested that she take sick leave because of a stressful work environment and other medical issues" is insufficient notice to her employer that she will be off work on FMLA-qualifying leave.

***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.

***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.

***Durham v. Rural/Metro**, __F.3d__, No. 18-14687 (11th Cir., Apr. 17, 2020).*
Under the PDA, non-pregnant but injured employees who were temporarily unable to lift more than 20 pounds due to their injuries, and a pregnant employee who temporarily could not lift over 50 pounds due to her pregnancy, were similar in their inability to meet their job position's 100-pound lifting requirement.

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

***Waggel v. Geo. Washington U.**, __F.3d__, No. 18-7181 (D.C. Cir., May 8, 2020).*
Requests for FMLA leave need not be construed by an employer as requests for accommodation under the ADA. No provision in either statute suggests such an equivalency.

***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.

10. FLSA; OSHA; COBRA; HIPAA

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.

****Meadows v. United Services***, *__F.3d__, Nos. 19-3732/3820 (2nd Cir., Jun. 26, 2020).*
There is no express or implied private cause of action under HIPAA.

Thomas v. Bed, Bath, & Beyond, *__F.3d__, No. 19-1647 (2nd Cir., Jun. 15, 2020).*
Under the FLSA's "fluctuating workweek" method for calculating overtime compensation, employees' hours are not required to fluctuate above and below 40 hours per week. Also, allowing employees to take paid days off on later dates when they worked on holidays or on previously scheduled days off is consistent with this method.

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 an untimely response to a citation when the delay was caused by the citation notice being misplaced in a company's internal mail system.

Hewitt v. Helix Energy, *__F.3d__, No. 19-20023 (5th Cir., Apr. 20, 2020).*
Under the FLSA, an employee who is paid a daily rate is not paid on a "salary basis."

Houston Aquarium v. OSHA, *__F.3d__, No. 19-60245 (5th Cir., Jul. 15, 2020).*
Aquarium staff members who dive to feed fish and clean fish tanks are engaged in "scientific diving" for purposes of OSHA's Commercial Diving Operations Standard Exemption.

****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.

***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.

***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.

***Aquilar 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.

11. MILITARY

***Carson v. Williow Valley**, __Fed. Appx. __, No. 18-1554 (3rd Cir., Oct. 10, 2019) (unpub.).*
VEVRAA does not provide for a private cause of action.

****Harwood v. American Airlines**, __F.3d__, No. 18-2074 (4th Cir., Jul. 6, 2020).*
USERRA protection applies to returning servicemembers both before and after their re-employment, and waiting over two months to reemploy a veteran is not "prompt" for USERRA liability purposes.

***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.

12. ADEA

***Geoffroy v. Town of Winchendon**, __F.3d__, No. 19-1573 (1st Cir., May 13, 2020).*
The 21-day consideration period required before an employee signs a ADEA claim release does not apply to a separate agreement regarding the employee's resignation in lieu of termination.

***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.

***Cole v. Family Dollar**, __Fed. Appx. __, No. 18-2043 (4th Cir., Apr. 27, 2020) (unpub).*
A manager's repeated remarks mocking an employee's older age are insufficient to show that they were the "but for" cause of her termination for purposes of ADEA liability, when a non-age-related justification existed and was the determinative factor in that decision.

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.

Main v. Ozark Health, *__F.3d__, No. 19-1393 (8th Cir., May 11, 2020).*
Under the ADEA and Title VII, the fact that a terminated female employee's replacement is 22 years younger and male cannot, by itself, create an inference that she was terminated based upon her age and sex.

Anthony v. TRAX, *__F.3d__, No. 18-15662 (9th Cir., Apr. 17, 2020).*
A limitation on an employer's use of after-acquired evidence to excuse its discriminatory conduct under the ADEA does not extend to evidence showing that an ADA plaintiff is not a "qualified individual" as required to establish a *prima facie* case of disability discrimination.

****Frappied v. Affinity Gaming***, *__F.3d__, No. 19-1063 (10th Cir., Jul. 21, 2020).*
Sex-plus-age claims are cognizable under Title VII. A difference between the median age of new hires and discharged employees of between 12 and 29 years is sufficient to raise an inference of discrimination under the ADEA.

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.

13. FHA; FHAA; PUBLIC HOUSING

Summers v. Fitchburg, *__F.3d__, No. 18-1725 (1st Cir., Oct. 8, 2019).*
A city did not violate the FHAA by requiring sprinklers in a "sober house" when the sprinklers did not prevent 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.

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.

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 FHA extends to the chip sealing of a public street near the home of a woman who suffered medical distress when exposed to asphalt.

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

****HIS v. Cobb***, *__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 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.

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).*
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.

14. 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 Col. 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 his religious exercise.

Blair v. Raemisch, *__F.3d__, No. 18-1349 (10th Cir., Mar. 2, 2020).*
Vegan patties given to a prisoner 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.

15. SCHOOLS

A. IDEA Cases

DePaulino v. NYC Dept. of Ed, *__F.3d__, No. 19-1662 (2nd Cir., May 18, 2020).*
Under IDEA, parents who unilaterally remove their child from one private school and enroll her in another are not entitled to public funding during their IEP dispute when the educational programs at both schools are substantially similar.

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.

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 nor insulate a student from experiencing hardships.

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.

Hestin v. Austin, *__Fed. Appx.__, No. 19-50664 (5th Cir., Jun. 9, 2020)(unpub.).*
A party is free to pursue claims apart from IDEA, but must exhaust IDEA's remedial process for any claims for relief that IDEA can provide.

McMillen v. New Caney Indep. Sch. Dist., *__F.3d__, No. 18-20420 (5th Cir., Oct. 2, 2019).*
IDEA's exhaustion requirement applies when a plaintiff is seeking a remedy 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 his 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 establishing a violation of the former.

***Osseo Area Sch. v. MNB**, __F.3d__, No. 18-3255 (8th Cir., Jul. 29, 2020).*
The IDEA does not require a school district to provide transportation to a non-resident student who enrolls in its school district under an open-enrollment program.

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

B. Title IX Cases

***Doe v. Univ. of the Sciences**, __F.3d__, No. 19-2966 (3rd Cir. May 29, 2020).*
A college student has a colorable Title IX claim when he is expelled after violating school policy but female students who also violated school policy are not investigated or disciplined

***Doe v. Edgewood Indep. Sch.Dist.**, __F.3d__, No. 19-50737 (5th Cir, Jul. 6, 2020).*
A school district is not liable under Title IX for teacher-on-student harassment unless it has actual notice of the misconduct through a school employee who has authority to institute corrective measures on the district's behalf.

***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.

***Clemons v. Shelby Cty.**, __Fed. Appx.__, No. 19-5846 (6th Cir., Jun. 22, 2020)(unpub.).*
Title IX does not provide a remedy for a school's decision to hold tennis tryouts for girls but not for boys, even if this has a negative effect on a female student with Asperger's Syndrome.

***Doe v. U. of Kentucky**, __F.3d__, No. 19-5156 (6th Cir., May 18, 2020).*
Under Title IX, a male student staring at a female student, standing by her at a party, following her home, and sitting near her in the library do not constitute actionable sexual harassment.

***Kollaritsch v. MSU**, __F.3d__, Nos. 17-2445 & 18-1715 (6th Cir, Dec. 12, 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.

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

***Parents for Privacy v. Barr**, __F.3d__, No. 18-35708 (9th Cir., Feb. 12, 2020).*
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.

***Schwake v. Arizona Bd. of Regents**, __F.3d__, No. 18-15725 (9th Cir., Jul. 29. 2020).*
A school that discriminates against one party to a sexual misconduct charge on the basis of that party's gender may violate Title IX.

C. Other Cases

***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 intended to make the employee 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. A constitutional right to the "meaningful use of a teaching license" has not been recognized by the courts.

***B.L. v. Mahanoy Area Sch. Dist.**, __F.3d__, No. 19-1842 (3rd Cir., Jun. 30, 2020).*
A school violated a cheerleader's First Amendment rights when it removed her from its cheerleading squad after she posted to her off-campus Snapchat account a picture of her with middle fingers raised above a caption "F*ck school…f*ck cheer…". She did not waive her rights by violating school and team rules prohibiting foul language and placing negative information about cheerleading on the internet.

***G. S. v. Penn. Trafford Sch.**, __Fed Appx. __, No. 19-3309 (3rd Cir., May 13, 2020)(unpub.).*
A school's failure to respond to reports of bullying did not give rise to Section 1983 liability because such failure was not an affirmative act.

***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.

***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, and only the former requires a fair hearing.

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.

Doe v. Pasadena Sch. Dist., *__Fed. Appx. __, No. 18-56436 (9th Cir., Apr. 16, 2020) (unpub.).*
For purposes of a First Amendment retaliation claim, a school official was entitled to qualified immunity for his conduct because parents do not have a clearly established right to be free from a school official's threats.

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 protected by the First Amendment.

****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.

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.

16. COMMERCE CLAUSE; TRANSPORTATION

****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.

17. JAILS; PRISONS; EIGHTH 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.

McCray v. Lee, *__F.3d__, No. 18-1144 (2nd Cir., Jun. 18, 2020).*
A prisoner can seek damages under the Eighth Amendment for a prison's failure to provide him with a place to exercise when its exercise yard is closed.

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, when his cell mattress was removed because he had eaten the foam out of it, because he was not given a pen to write out his grievance form - - even when that denial was due to safety reasons since he frequently ingested 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".

****Sanchez v. Young Cty.**, __F.3d__, No. 19-10222 (5th Cir., Apr. 22, 2020).*
Testimony about a *de facto* jail protocol of letting apparently drunk pre-trial detainees "sleep it off" before conducting a health assessment on them is sufficient to survive summary judgment on Eighth and Fourteenth Amendment claims brought after a detainee died of a drug overdose.

***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 has a medical need.

***Callahan v. Fed. B. of Prisons**, __F.3d__, No. 19-5210 (6th Cir., Jul. 16, 2020).*
The court refused to recognize a new *Bivens* cause of action for prison free speech claims.

***Kroger v. Mohr**, __F.3d__, No. 19-4020 (6th Cir., Jul. 7, 2020).*
A prison that recognizes and enforces a facially discriminatory distinction between Islam and Rastafarianism burdens a Rastafarian inmate's fundamental right to religious freedom and deprives him of equal protection under the law.

***Lumbard v. Lillywhite**, __Fed. Appx. __, No. 18-2335 (6th Cir., May 21, 2020) (unpub.).*
Placing a prisoner in a filthy "drunk tank" for days was an "adverse action" for purposes of a First Amendment retaliation claim.

***Small v. Brock**, __F.3d__, No. 19-1841 (6th Cir., Jun. 26, 2020).*
A prisoner states an Eighth Amendment claim when, without provocation, a prison guard threatens his life and brandishes a deadly weapon to make those threats credible.

***Stewart v. Warren Cty.**, __Fed, Appx.__, No.19-3937 (6th Cir., Jul. 30, 2020)(unpub.).*
The inadequate training of one employee is not enough to demonstrate Eighth Amendment "deliberate indifference" on the part of her employer.

Brown v. Polk County, *__F.3d__, No. 19-2698 (7th Cir., Jul. 13, 2020).*
When jail security is at stake, "reasonable suspicion" is all that is required to submit a prisoner to a physical search of her private parts by a medical practitioner.

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 brought after 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.

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 institution's 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 wherein medical staff use an inmate's known psychological vulnerability to cause her psychological anguish.

Manuel v. Nalley, *__F.3d__, No. 18-3380 (7th Cir., Jul. 20, 2020).*
A two-week delay between a prisoner's protected speech and the subsequent search of his cell does not, alone, establish a claim of retaliation under the First Amendment.

****Pulera v. Sarzant***, *__F.3d__, No. 19-2291 (7th Cir., Jul. 15, 2020).*
Officers who waited a few seconds for backup before entering a cell and cutting down an arrestee attempting suicide acted reasonably for Fourteenth and Fourth Amendment purposes. The Fourth Amendment requires reasonableness, not immediacy.

Mbonyunkiza v. Beasley, *__F.3d__, No. 18-3611 (8th Cir., Apr. 24, 2020).*
Four isolated incidents in which a Muslim inmate's food was touched by pork does not establish a "free exercise of religion" claim.

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.

Nesmith v. Olsen, *__Fed. Appx. __, No. 19-55457 (9th Cir., Apr. 13, 2020) (unpub.).*
For purposes of a "deliberate indifference" claim, observing a rope hanging from a light fixture was enough to send a clear warning that a prisoner was an imminent suicide risk.

****Pimentel v. Los Angeles***, *__F.3d__, No. 18-56553 (9th Cir., Jul. 22, 2020).*
The Eighth Amendment's "excessive fines" clause applies to municipal parking fines.

****Contreras v. Dona Ana Cty. Bd.***, *__F.3d__, No. 18-2176 (10th Cir., Jul. 20, 2020).*
Credible threats of harm to a prisoner merit a reasonable response, but not perfection, from corrections officers.

Hinkle v. Beckham Cty., *__F.3d__, No. 18-6202 (10th Cir., Jun. 22, 2020).*
Under the Fourth Amendment, a county jail's strip-search policy, permitting strip searches before a jail official makes a determination as to whether a detainee will be housed in the jail's general population, is facially unconstitutional.

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.

****Grochowski v. Clayton Cty.***, *__F.3d__, No. 18-14567 (11th Cir., Jun. 22, 2020).*
Qualified immunity was granted to jail guards facing a Fourteenth Amendment "deliberate indifference" claim stemming from the murder of a pre-trial detainee, as there is no recognized constitutional duty on the part of a jail to perform in-person security screenings, to consider violent misdemeanors, to have jail officers conduct rounds more frequently than once an hour, or to constantly observe double-celled prisoners.

Mosely v. Zachery, *__F.3d__, No. 17-14631 (11th Cir., Jul 24, 2020).*
When an inmate claims that another inmate threatened to kill him, the Eighth Amendment does not always require the former inmate to be placed in protective custody.

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.

18. 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.

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 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.

Circus Circus v. NLRB, *__F.3d__, No. 18-1201 (D.C. Cir., Jun. 12, 2020).*
Weingarten requires an employee to affirmatively request union representation in a manner reasonably calculated to put his employer on notice. Nothing in *Weingarten* obligates employers to prophylactically inform employees of their right to representation.

19. TELECOMMUNICATIONS

US v. Brunson, *__F.3d__, No. 18-4696 (4th Cir., Jul. 31, 2020).*
Under the Wiretap Act, a warrant that identifies the authorizing official by title and by reference to the application wherein his name is identified is sufficient to meet the requirements of the Act.

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.

20. 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.

****Wagner v. Northern Berks**, __Fed. Appx.__, No. 18-2637(3rd Cir., Jul. 17, 2020)(unpub.).*
A police officer need not file all charges arising from common evidence at one time.

***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.

***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.

***Bradley v. St. Landry Parish Sheriff's Dept.**, __F.3d__, No. 18-30600 (5th Cir., May 7, 2020).*
A Section 1983 false arrest and imprisonment claim begins upon detention and ends upon the issuance of process or arraignment, not later upon acquittal, for statute of limitations purposes.

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 had died.

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.

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 a 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.

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 municipal liability against the city for which he worked for his allegedly discriminatory actions.

US v. Ivers, *__F.3d__, No. 19-1563 (8th Cir., Jul. 23, 2020).*
Threats made to attorneys assigned to help a *pro se* defendant in a civil matter are not protected by the attorney-client privilege.

Bahra v. San Bernadino Cty., *__F.3d__, No. 18-55789 (9th Cir., Dec. 30, 2019).*
An employee's Section 1983 claim of retaliatory discharge was dismissed due to his earlier administrative hearing before a county civil service commission, at which time he was represented by counsel, presented evidence, and received an adverse ruling which had a preclusive effect on his later 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 against him.

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

Roberts v. Fairbanks, *__F.3d__, No. 18-35938 (9th Cir., Jun. 26, 2020).*
When all convictions underlying Section 1983 claims are vacated (even administratively without any judicial determination as to whether the conviction was actually "invalid") and no criminal judgments remain, *Heck* does not bar those convicted 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 laws on constitutional grounds in federal court.

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.

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.

Corley v. Long-Lewis, *__F.3d__, No. 18-10474 (11th Cir., Jul. 16, 2020).*
An order granting a motion for voluntary dismissal without prejudice pursuant to FRCP 41(a)(2) is a "final decision" for purposes of appellate jurisdiction.

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. Especially when the lawsuit is taken in response to a plaintiff's own litigation or threat of litigation.

Hyde v. Irish, *__F.3d__, No. 15-13010 (11th Cir., Jun. 17, 2020).*
A district court can grant or deny sanctions under its inherent powers even if it lacks subject-matter jurisdiction over the underlying case.

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. Ross, *__F.3d__, No. 18-11679 (11th Cir., Jun. 24, 2020).*
A suspect's abandonment of his privacy or possessory interest in the object of a search or seizure implicates only the merits of his Fourth Amendment challenge, not his Article III standing, and if the government fails to argue abandonment, it waives the issue.

21. ARBITRATION; CONTRACTS

Belton v. GE Capital, *__F.3d__, No. 19-648 (2nd Cir., Jun. 16, 2020).*
The violation of a bankruptcy court's discharge order is not an arbitrable dispute.

****Mid-American Salt v. Morris County Co-op***, *__F.3d__, No. 18-2112 (3rd Cir., Jul. 6, 2020).*
A county is not liable for the damages it caused when it entered into an open-ended rock salt contract with the lowest bulk rock salt bidder but then purchased only 5% of its estimated salt needs from that contractor, since the county had no obligation to purchase all of the estimated quantity of salt set forth in the contract.

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.

Blanton v. Domino's Pizza, *__F.3d__, No. 19-2388 (6th Cir., Jun. 17, 2020).*
The incorporation of the AAA Arbitration Rules provides clear and unmistakable evidence that the parties have agreed to arbitrate "arbitrability."

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.

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

22. BANKRUPTCY; CREDITOR'S RIGHTS

***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.

***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 as the petitioning creditor in an involuntary bankruptcy proceeding under 11 U.S.C. § 303.

****Ordonez v. Canyons Sch.**, __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 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."

23. 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 premised upon a police chief obtaining the plaintiff's protected driver records for both a permissible and an impermissible reason.

24. OTHER CASES OF INTEREST

***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.

MPM v. Union Carbide, *__F.3d__, No. 17-3468 (2nd Cir, Jul.23, 2020).*
For CERCLA statute of limitations purposes, when determining the timeline of a cost recovery action, all remediation activities at a site need not be considered part of a single remediation.

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

Fogle v. Sokol, *__F.3d__, No. 19-1066 (3rd Cir., Apr. 20, 2020).*
A prosecutor who used an untrained "hypnotist" to make undue suggestions, and then participated in the post-hypnosis questioning of a man later exonerated of the crime for which he was convicted, is not entitled to absolute prosecutorial immunity from a Section 1983 claim.

****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.

Carey v. Maryland Nat. Resources Police, *__F.3d__, No. 19-1194 (4th Cir., Apr. 30, 2020).*
The Law Enforcement Officer Safety Act does not permit private lawsuits under Section 1983.

****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.

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.

Cerulli v. Dept. of Defense, *__Fed. Appx. __, No. 2019-2022 (Fed. Cir., Jun. 9, 2020) (unpub.).*
A job description that requires an ability to maintain alertness, self-control, and emotional stability contains medical standards implicating the need for a psychological assessment as part of a fitness-for-duty examination.

Martin v. DHS, *__Fed. Appx. __, No. 2019-1578 (Fed. Cir., Apr. 20, 2020) (unpub.).*
An adverse employment action can be taken based upon off-duty conduct if there is a nexus between the conduct and governmental efficiency.

Cerulli v. DOD, *__Fed. Appx.__, No. 2019-2022 (Fed. Cir., Jun. 9, 2020)(unpub.).*
An employee who armed himself with a knife and refused to work with another employee who made statements that he, but no other employee who heard them, felt were threatening, provided by his actions substantial evidence supporting an order that he undergo a fitness-for-duty examination.

Mercifully, THE END