AROUND THE CIRCUITS IN 60 MINUTES

(September 1, 2021 through September 1, 2022)

by:

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A. U. S. SUPREME COURT

Austin, TX v. Reagan National Advertising, __ US __, No. 20-1029(April 21, 2022).

A City Code section that permitted the digitizing of on-premises signs, but not off-premises signs, was facially "content-neutral" for First Amendment purposes even if it requires the city to read the signs at issue, since it does not discriminate based on the topic or message expressed

Badgerow v. Walter, __ US __, No. 20-1143 (March 31, 2022).

Under the FAA, the "look through" provisions found in Section 4 regarding petitions to compel arbitration do not apply to petitions to confirm or vacate an arbitration award under Sections 9 and 10 of the Act. In such cases, a court must look only to the application actually submitted, and not to the underlying substantive controversy, in assessing its jurisdiction.

Carson v. Makin, __ 596 US __, No. 20-1088 (Jun. 21, 2022).

Maine's "non-sectarian" requirement for otherwise generally available tuition assistance payments violates the Free Exercise Clause.

Hemphill v. New York, __ US __, No. 20-637 (January 20, 2022)

A trial court's admission, over objection, of part of the transcript of another's plea allocution that contained out-of-court statements not subject to cross-examination, violated a defendant's Sixth Amendment right to confront the witnesses against him.

Houston Comm. College System v. Wilson, __ US __, No. 20-804 (March 24, 2022).

A community college director does not possess an actionable First Amendment claim under Section 1983 arising from the college's board of director's verbal censure of him for his "reprehensible" statements.

Kennedy v. Bremerton Sch. Dist., __ *597 US __, No. 21-418 (Jun. 27, 2022).*

The Free Exercise and Free Speech Clauses of the First Amendment protect persons engaged in personal religious observances from government reprisal. The government cannot suppress such religious expression.

Morgan v. Sundance, __ *US __, No. 21-328 (May 23, 2022).*

Under the FAA, the Eighth Circuit erred in conditioning a waiver of the right to arbitrate on a showing of prejudice to the other party when a party litigated an employment pay dispute for eight (8) months before moving to compel arbitration.

NYS Rifle & Pistol Assoc. v. Bruen, __ *597 US __, No. 20-843 (Jun. 23, 2022).*

New York's "proper cause" limitation on firearm carry outside the home violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense purposes.

Shurtleff v. Boston, __ *US __, No. 20-1800 (May 2, 2022).*

When a city allows community groups to raise their particular group flag on a city flagpole when holding an event in the city's public plaza but is not meaningfully involved in the selection of these group flags or their messages, these third-party flag raisings are private speech, not government speech. As such, the city's refusal to allow a Christian group to raise a Christian flag on the city's flagpole during their plaza event constitutes "viewpoint discrimination" in violation of the First Amendment's Free Speech Clause.

Thompson v. Clark, __ *US __, No. 20-659 (April 4, 2022).*

To demonstrate the favorable outcome of a criminal prosecution for purposes of a Section 1983 "malicious prosecution" claim, a plaintiff need not show that the criminal prosecution ended with an affirmative indication of innocence, but merely that it ended without a conviction.

B. U. S. CIRCUIT COURTS

1. FIRST AMENDMENT

A. Public/Private Speech Cases

Bruce v. Amalgamated Transit, *__ F3d. __, Nos. 21-1293 & 21-1300 (1st Cir., May 18, 2021).*

The court declines invitation to hold that a public employee is never speaking "pursuant to her official duties" for purposes of a *Garcetti* analysis whenever she is speaking as a union official - - even when that speech occurs at work during work hours. However, just because an employee made comments to a news reporter while in uniform, while driving a public bus while on her employer's property in the middle of her workday does not prove that her speech was made "pursuant to her official duties" and not as a private citizen.

Shara v. Maine-Endwell Cent. Sch. Dist.*, __ F3d. __, No. 20-2088 (2nd Cir., Aug. 18, 2022)*

An employee's position as a union officer does not automatically transform his employment-related conversations with management into citizen-speech for purposes of a *Garcetti* analysis.

Specht v. NYC*, __ F3d. __, No. 20-4211 (2nd Cir., Oct. 6, 2021).*

A firefighter who refused his superior's demand that he falsely assert that a fire was a result of a "faulty boiler "despite an admonition that his refusal to do so would be "career suicide," and, after being removed from the fire investigation, publicly voiced his view that the report, which had been re-drafted to erroneously conclude that the fire was caused by a faulty boiler, contained false conclusions, was demoted. While his complaints to other fire marshals were internal workplace grievances and not matters of public concern, his complaints outside of his department to the Press and other government officials touched upon matters of public concern and were subject to First Amendment protection.

Dankovich v. Pratt*, __ Fed. Appx. __, No. 21-1003 (3rd Cir., Dec. 9, 2021)(Unpub.).*

Employees had standing to sue their municipal employer for a First Amendment violation when they were warned by the municipal attorney to keep their allegations of city official fraud confidential or disobey at "their own risk" – thus forcing them to remain silent out of fear of punishment. However, this legal admonition, without more, did not establish a unconstitutional municipal policy or custom for *Monell* liability purposes.

Bevill v. Fletcher, __ *F3d. __, No. 20-40250 (5th Cir., Feb. 11, 2022).*

A police officer was acting as a private citizen for First Amendment purposes when he filed an affidavit in support of his friend's venue transfer request that contained unflattering comments about a judge, the district attorney, and the sheriff and was terminated for this protected speech.

Forster v. Bless, __ *F3d. __, No. 20-20583 (5th Cir., Jan. 4, 2022).*

Employee speech, made within or without the chain of command, that would otherwise be unprotected and thus a legitimate basis for workplace discipline, is not transformed into protected speech simply by expressing the same concerns to outside parties.

Rushing v. MS Dept. of Child Protection, __ *F3d. __, No. 20-60105 (5th Cir., Mar. 24, 2022).*

The fact that an employee's job description did not include lecturing another employee did not necessarily lead to the conclusion that she was speaking as a private citizen.

Anderson v. City of Jellico, __ *Fed. Appx. __, No. 21-5704 (6th Cir., May 2, 2022)(Unpub.).*

Garcetti does not look to the subjective impression of observers of a speech when determining whether an officer spoke as a citizen or as an employee. It asks whether an individual spoke in connection with his official duties.

DeCrane v. Eckart, __ *F3d. __, No. 20-3620 (6th Cir., Sept. 1, 2021).*

A firefighter who secretly tipped off the Press to a falsehood being promulgated by his superior was acting as a private citizen for *Garcetti* purposes. Going outside the chain of command in secret reinforces the fact that his was not an official communique.

Myers v. City of Centerville, __ *F3d. __, No. 21-3850 (6th Cir., Jul. 21, 2022).*

Whether employee speech addresses "matters of public concern" does not turn on whether the speech was communicated to the public.

Hernandez v. City of Phoenix, __ *F3d. __, No. 21-16007 (9th Cir., Aug. 5, 2022).*

A police officer's First Amendment rights may have been violated when he was disciplined for posting content on his personal Facebook profile that denigrated Muslims and Islam – a matter of public concern.

Tofsrud v. City of Spokane, __ *Fed. Appx. __, No. 21-35450 (9th Cir., May 9, 2022)(Unpub.).*

An officer spoke as an employee not as a private citizen when he approached the prosecuting attorney about the arrest of his confidential informant and its impact on pending cases.

Davis v. State of Utah, __ *Fed. Appx. __, No. 20-4042 (10th Cir., Sept. 2, 2021)(Unpub.).*

The court explained, *in dictum*, that speech normally falls outside of an employee's official job duties and is thus protected under the first element of *Garcetti* if the subject of the speech is not within the employee's assigned responsibilities and the employee has no duty to report to the person with whom the employee discusses the issue.

Lamb V. Montrose Cty. , __ *Fed. Appx. __, No. 19-1275 (10th Cir., Feb. 17, 2022)(Unpub.).*

A deputy's text message to a friend "Racism, good Ole boy, no professionalism" is a general statement about supposed racism and not directed at any unlawful employment practice and does not enjoy First Amendment protection nor establish a *prima facie* case of retaliation.

Cotriss v. City of Roswell, __ *Fed. Appx. __, No. 19-12747 (11th Cir., Jun. 29, 2022)(Unpub.).*

While an officer's flying a Confederate battle flag at her home constituted speech made by a government employee acting as a private citizen, her interest in the speech was outweighed by the city's legitimate interests in effective and efficient operations and a good public reputation.

Gomez v. City of Doral, __ *Fed. Appx. __, No. 21-11093 (11th Cir., Jan. 3, 2022)(Unpub.).*

An employee who provided a sworn statement to a law enforcement agency investigating possible official corruption touched on matters of public concern for *Garcetti* purposes.

O'Laughlin v. Palm Beach Cty., __ *F3d. __, No. 20-14676 (11th Cir., Apr. 1, 2022).*

For employee speech to touch a matter of public concern, it need not involve a misuse of public funds (union funds involved here) nor be a public communication. Afire department's social media policy was impermissibly overbroad for First Amendment purposes by prohibiting content that "could be reasonably interpreted as having an adverse effect upon Fire Rescue morale, discipline, operations, the safety of the staff, or the perception of the public."

B. Religious Speech/Establishment Clause Cases

Kane v. DeBlasio, *__ F3d. __, No. 21-2678 (2nd Cir., Nob. 28, 2021).*

A city mandate requiring all public-school employees to be vaccinated against COVID-19 does not facially violate the First Amendment. However, requiring employees seeking a masking exemption to obtain a letter from a religious official does not survive strict scrutiny because it is not narrowly tailored to serve government interest in preventing the spread of the virus.

We The Patriots USA v. Hochul, *__ F3d. __, No. 21-2566 (2nd Cir., Nov. 12, 2021).*

An employer may accommodate medical employees seeking a religious exemption from a municipal COVID-19 vaccination rule by employing them, unvaccinated, in a manner that would not expose others to the risk of infection should an unvaccinated employee contract the virus.

Lavelle v. Las Vegas, *__ Fed. Appx. __, No. 21-16666 (9th Cir., Aug. 12, 2022)(Unpub.).*

A street preacher may have a valid First Amendment claim against a police department for its policy of "mis-enforcement" when officer manuals instructed officers to enforce the city's noise ordinance without mentioning a "non-commercial speech" exception.

C. Laws/Policies Cases

Jingrong v. Chinese Anti-Cult World, *__ F3d. __, No. 18-2626 (2nd Cir., Oct. 14, 2021).*

Under the Freedom of Access to Clinic Entrances Act of 1994, a "place of religious worship" means anywhere that religious adherents collectively recognize, or religious leadership designates, as a space primarily to gather for or hold religious worship activities. Sidewalk tables did not meet this definition.

Picard v. Magliano, *__ F3d. __, No. 20-3161 (2nd Cir., Jul. 27, 2022).*

A state law prohibiting certain speech within 200 feet of a courthouse is enjoined as violative of the First Amendment as applied to a single individual engaged in general leafletting unrelated to a specific case and advocating his point of view on jury nullification.

Nunez v. McCool, __ *Fed. Appx. __, No. 21-332 (3rd Cir., May 3, 2022)(Unpub.).*

A policy requiring inmates to pay for the transfer of property over a certain weight when they are transferred to a new facility could constitute an "adverse action" for First Amendment retaliation purposes where the property consists of legal documents, because an inability to access these documents could deter a person from exercising his right to access the courts.

Ness v. City of Bloomington, __ *F3d. __, No. 20-2571 (8th Cir., Sept. 2, 2021).*

A city ordinance prohibiting the photographing of children in a park without parental consent is a content-based restriction on free speech when the photographer intends to use the photos to record and place on her internet blog the over-use of the park, and police had to view her film to determine whether children had been captured thereon. The ordinance was over-inclusive as regards its purported purpose of protecting children from intimidation or exploitation.

Brewer v. City of Albuquerque, __ *F3d. __, No. 19-2140 (10th Cir., Nov. 24, 2021).*

A municipal ordinance prohibiting congregating within six (6) feet of a highway entrance or exit ramp occupying any median deemed "unsuitable" for pedestrian use, and from engaging in any kind of exchange with motorists in a traffic lane violated the First Amendment because it was not narrowly tailored to address pedestrian safety concerns and because alternatives that would be less burdensome on protected expressive speech and activities was not seriously considered.

Cardinale v. City of Atlanta, __ *Fed. Appx. __ No. 21-10958 (11th Cir., Jul. 28, 2022)(Unpub.).*

In a limited public forum such as a council meeting, the First Amendment is not violated by prohibiting speakers from discussing their candidacy for public office so long as this policy does not discriminate based upon viewpoint.

Club Madonna v. Miami Bch., __ *F3d. __, No. 20-14292 (11th Cir., Aug. 1, 2022).*

An ordinance requiring strip clubs to keep records, have strippers produce two (2) forms of identification indicating their age before being allowed on stage, and check in whenever they leave and return to the club does not violate the First Amendment. Requiring the club to make these records available to the city upon request does not violate the Fourth Amendment.

Lacroix v. Town of Ft. Meyers Bch., __ *F3d. __, No. 21-10931 (11th Cir., Jun. 28, 2022).*

A city ordinance prohibiting all portable signs in all locations, although content neutral, almost surely violates the First Amendment because it entirely forecloses a venerable form of speech and does not leave open alternative channels of communication.

Guffey v. Mauskopf, __ *F3d. __, No. 20-5183 (D.C. Cir., Aug. 16, 2022).*

Regulations preventing employees from attending political party fundraisers, candidate campaign events, driving voters to the polls, organizing political events, wearing political buttons, supporting a candidate on social media, or contributing to a candidate - - even when off work and away from the office -- violates the Free Speech Clause of the First Amendment.

D. Other Cases

Courthouse News Service v. Quinlen, __ *F3d. __, Nos. 21-1624/1642 (1st Cir., Apr. 25, 2022).*

A court may violate a newspaper's qualified public right to access any complaints filed with it when such access is delayed for up to six (6) days to allow the court to process the complaints and determine whether they are in the proper format and accompanied by the appropriate filing fees, where the court could not show that each of these processing stops (and the delay they caused) served an important governmental interest.

Croft v. Donegal Tshp., __ *Fed. Appx. __, No. 21-1812 (3rd Cir, Aug. 26, 2022)(Unpub.).*

For First Amendment qualified immunity purposes, there is not clearly established right against retaliation by other elected officials for speech made by an elected official within the scope of her official duties by disparaging her voting power.

Lasche v. New Jersey, __ *Fed. Appx. __, No. 20-2325 (3rd Cir., Mar. 1, 2022)(Unpub.).*

A person's religious opposition to same-sex marriage is constitutionally protected by the Free Exercise Clause. A county agency's revocation of a couples' foster care license due to their religious beliefs may constitute an illegal conspiracy to invidiously discriminate against them actionable under Section 1985.

Otero v. Port Authority, __ *F3d. __, No. 21-2772 (3rd Cir., Jul. 20, 2022)(Unpub.).*

Officers did not allege a viable First Amendment "freedom of association" claim when they alleged that remaining "apolitical" cost them promotions and job positions given to others through nepotism, personal favors, power-brokering, support of preferred candidates, or association with influential people. Their complaints were based upon office politics and interpersonal relationships, not on the content of government or public policies.

Barilla v. City of Houston, __ *F3d. __, No. 20-20535 (5th Cir., Sept. 10, 2021).*

In pre-enforcement cases alleging a First Amendment Free Speech Clause violation, chilled speech or self-censorship is enough to plead a justiciable inquiry and avoid a motion to dismiss.

Garza v Molina, __ *Fed. Appx. __, No. 21-40805 (5th Cir. May 20, 2022)(Unpub.).*

Qualified immunity against First Amendment claims was denied to a mayor and three councilors against allegations by a public employee that they fired her because she was not a member of their political faction.

Rogers v. Hall, __ *F3d. __, No. 21-60533 (5th Cir., Aug. 19, 2022).*

To defeat qualified immunity on a First Amendment retaliation claim, a plaintiff must show that the defendants violated a right that was not just arguable, but beyond debate.

Virden v. City of Austin, TX, __ *F3d. __, No. 21-50597 (5th Cir., Oct. 25, 2021).*

A political candidate has a First Amendment right of political expression, and to spend money to do so, but a temporal restriction on a candidate receiving money from contributors (here one year before the general election) does not violate the Constitution.

Gerber v. Herskovitz, __ *F3d. __, No. 20-1870 (6th Cir., Sept. 15, 2021).*

The First Amendment's "captive audience" exception applies to protests at a private residence, not a house of worship.

Lindke v.Freed, __ *F3d. __, No. 21-2977 (6th Cir., Jun. 27, 2022).*

A city manager maintained a Facebook page open to the general public whereon he listed his city accomplishments and activities as well as his personal posts. He blocked a resident from commenting on his Facebook page or posts, including those involving policies he initiated in the city as its city manager. This did not violate the First Amendment, as his Facebook activity did not derive from his municipal duties nor depend upon his governmental authority, and thus he was acting in his personal capacity. *This ruling is contrary to those of the Second, Fourth, Eighth, and Eleventh circuits.*

Perole v. Huber, __ *Fed. Appx. __, No. 21-3202 (6th Cir., Nov. 19, 2021)(Unpub.).*

While filing a citizen's complaint is protected activity, the First Amendment does not protect a person who makes knowing or reckless lies or threats.

Stevenov v. Mich. St. Court __ *Fed. Appx. __, No. 21-1727 (6th Cir., Aug. 18, 2022)(Unpub.).*

The First Amendment does not require citizen access to court audio recordings.

Wood v. Eubanks, __ *F3d. __, No. 20-3599 (6th Cir., Feb. 8, 2022).*

The plaintiff, who wore a shirt to a county fair that read: "F*CK THE POLICE," engaged in protected First Amendment speech.

Oliver v. Lyerla, __ *Fed. Appx. __, No. 20-2487 (7th Cir., Feb. 22. 2022)(Unpub.).*

When a prisoner started putting the honorific title of "King" before his name, a guard harassed him about it and the prisoner demanded grievance forms. In response, the guard said, "I double dog dare you to file those grievances." This comment, for First Amendment purposes, was unlikely to chill protected conduct.

J.T.H. v. Cook, __ *F3d. __, No. 21-2433 (8th Cir., Jul. 1, 2022).*

Qualified immunity was granted to a child-welfare investigator on a First Amendment claim. The law is not clearly established as to whether a retaliatory investigation is unlawful.

Ballentine v. Tucker, __ *F3d. __, No. 20-16805 (9th Cir., Mar. 8, 2022).*

Qualified immunity was denied to an officer who arrested individuals for chalking anti-police messages on sidewalks in violation of their First Amendment protected speech rights.

Boquist v. Courtney, __ *F3d. __, No. 20-35080 (9th Cir., Apr. 21, 2022).*

An elected government official may raise a triable claim of First Amendment retaliation when, due to a speech he gave that allegedly involved "fighting words," his political adversaries demanded that he give them 12-hours advance notice before entering the state capitol so that they could take "security measures."

David v. Kaulukukui, *__ F3d. __, No. 21-15731 9th Cir., Jun. 27, 2022).*

A public employee may have violated a mother's constitutional "right to familial association" when she deliberately omitted mention of a custody order making the mother the sole custodial parent when preparing the father's TRO petition seeking to prevent the mother from seeing her child and by assisting in the placement of the child with the father without a court order.

Garnier v. O'Connor-Ratcliff, *__ F3d. __, Nos. 21-5518 & 21-55157 (9th Cir., Jul. 27, 2022).*

School district trustees who created public Facebook and Twitter pages to promote their campaigns for office violated the First Amendment by blocking critical commenters from these social media pages that were otherwise open for public comment.

Lietz v. Wilpher, *__ Fed. Appx. __, No. 19-35593 (9th Cir., Jun. 6, 2022)(Unpub.).*

The court refuses to recognize a *Bivens* cause of action for a First Amendment retaliation claim.

Mann v. Sacramento, *__ Fed. Appx. __, No. 2115440 (9th Cir., Jun. 14, 2022)(Unpub.).*

Qualified Immunity was granted to officers against a First Amendment right of familial association, as no court has applied such a right to non-cohabitating siblings.

Mecinas v. Hobbs, *__ F3d. __, No. 20-16301 (9th Cir., Apr. 8, 2022).*

Dismissal was unwarranted in a lawsuit alleging that the placement of candidates on a ballot based upon political affiliation may violate the First and Fourteenth Amendments by giving candidates from one political party the benefit of "position bias."

Miller v. Sawant, *__ F3d. __, No. 21-35004 (9th Cir., Nov. 10, 2021).*

The court reversed the dismissal of defamation claims brought by officers against a council member who publicly stated that a police shooting was blatant murder and that the officers involved should be held liable for their individual actions.

Riley's Amer. Heritage Farms v. Elsasser, *__ F3d. __, No. 20-5599 (9th Cir., Mar. 17, 2022).*

Qualified immunity was granted to school officials who severed a contract with a field trip provider in retaliation for his personal, protected First Amendment expressive conduct, as no prior cases put them on notice that reacting to parental complaints and media attention arising from the plaintiff's tweets was unconstitutional.

Saved Magazine v. Spokane P.D., *__ F3d. __, No. 20-26073 (9th Cir., Dec. 9, 2021).*

Qualified immunity was granted to an officer on a First Amendment claim stemming from the police separating protesters and counter-protesters into separate zones during the library's "Drag Queen Story Hour," even if this prevented a journalist from a conservative magazine from interviewing a counter-protester.

Stewart v. City of Scottsdale, *__ Fed. Appx. __, No. 21-15504 (9th Cir., Jun. 1, 2022)(Unpub.).*

Qualified immunity was denied to a councilmember who ordered the plaintiff to "stop talking" during the public comment portion of a council meeting and then ordered him ejected from the meeting, as this restriction on his First Amendment rights may not have been reasonable and viewpoint neutral.

Wagner v. U. of WA, *__ Fed. Appx. __, No. 20-35808 (9th Cir., May 25, 2022)(Unpub.).*

A union member has no First Amendment right to refuse to pay her voluntarily authorized union dues nor any Fourteenth Amendment right stemming from her employer's remittance of those payments to the union.

Zhou v. Breed, *__ Fed. Appx. __, No. 21-15554 (9th Cir., Jan. 14, 2022)(Unpub.).*

Under the First Amendment, public officials can criticize or call for the removal of specific billboards so long as there is no actual or threatened imposition of government power or sanction in doing so.

Avent v. Doke, *__ Fed. Appx. __, No. 21-7031 (10th Cir., Jun. 23, 2022)(Unpub.).*

The First Amendment protects against employer retaliation for protected speech as well as for "perceived speech" that the adverse action taker mistakenly *thought* an employee said.

Brandt v. Crone, *__ Fed. Appx. __, No. 21-1093 (10th Cir., Mar. 28, 2022)(Unpub.).*

Qualified immunity was granted to an officer on First, Fourth, and Fourteenth Amendment claims stemming from his forcing the plaintiff to leave the sheriff's office lobby under threat of arrest because of the plaintiff's perceived disruption of office operations.

Bustillos v. City of Carlsbad, __ *Fed. Appx. __, No. 21-2129 (10th Cir., May 9, 2022)(Unpub.).*

The fact that a person has a First Amendment right to film the police during their encounters with the public does not allow him to disobey lawful police commands or conceal his identity.

Dear v. Nair, __ *Fed. Appx. __, No. 21-2124 (10th Cir., Jun. 16, 2022)(Unpub.).*

Vindictive prosecution taken in retaliation for the exercise of First Amendment rights is not limited to criminal prosecutions.

Irizarry v. Yehia, __ *F3d. __, No. 21-1247 (10th Cir., Jul. 11, 2022).*

Qualified immunity was denied as to a First Amendment claim stemming from an officer standing in front of reporters filming a DUI stop, then shining his flashlight into their cameras and driving his squad car at them.

Swanson v. Griffin, __ *Fed. Appx. __, No. 21-2034 (10th Cir., Feb. 24, 2022)(Unpub.).*

Qualified immunity is granted to an elected official on a claimed First Amendment violation stemming from his blocking a critic from his Facebook page. The law is unclear as to if and when an individual government official's social media profile becomes a "public forum" and subject to viewpoint discrimination liability.

Fuller v. Carollo, __ *Fed. Appx. __, No. 21-11746 (11th Cir., Feb. 4, 2022)(Unpub.).*

A city commissioner who harassed the businesses of persons who supported his political opponent by photographing their business patrons, soliciting neighbors to raise noise complaints against them, and having code enforcement shut down the properties they owned was denied both legislative and qualified immunity on the resultant First Amendment claim.

Leake v. Drinkard, __ *F3d. __, No. 21-13868 (11th Cir., Sept. 28, 2021).*

A city parade constituted "government speech" and the city that organized and funded it could prohibit a Confederate battle flag to be flown therein.

McClendon v. Long, __ *F3d. __, No. 21-10092 (11th Cir., Jan. 19, 2022).*

The First Amendment rights of registered sex offenders were violated when a sheriff placed "Stop. No Trick or treat at this address" signs in their yards. No evidence was presented that the residents posed a danger to trick or treating children or that the signs would prevent such danger.

2. SECOND AMENDMENT

Frein v. PA State Police, __ *F3d.* __, *No. 21-1830 (3rd Cir., Aug. 30, 2022).*

Keeping, without compensation, the weapons of the parents of a convicted killer after his criminal case ended violates both the Takings Clause and the Second Amendment.

US v. Goolsby, __ *Fed. Appx.* __, *No. 21-3087 (6th Cir. Mar. 7, 2022)(Unpub.)*

The Second Amendment does not prohibit the government from forbidding felons from carrying firearms even if they claim a heightened need for personal self-defense.

US v. Williams, __ *F3d.* __, *No. 20-3311 (8th Cir., Feb. 1, 2022).*
The Second Amendment does not invalidate a federal law prohibiting the possession of a firearm by a felon even if the weapon was kept for self-defense within the home.

Duncan v. Bonta, __ *F3d.* __, *No. 1955376 (9th Cir., Nov. 30, 2021).*
Limiting large capacity magazines only interferes minimally with the Second Amendment's core right of self-defense, survives an intermediate scrutiny analysis and furthers the important state interest in reducing gun violence.

Jones v. Bonta, __ *F3d.* __, *No. 20-56174 (9th Cir., May 11, 2022).*

California's ban on the purchase of semiautomatic centerfire rifles to anyone under 21 in unlawful. The Second Amendment protects the rights of young Americans to keep and bear arms, which includes the right to purchase them.

Martinez v. Villanueva, __ *Fed. Appx.* __, *No. 20-56233 (9th Cir., Jan. 20, 2022)(Unpub.).*

A Second Amendment claim may exist when a county orders all gun and ammunition stores closed for eleven (11) days due to COVID-19, when less restrictive alternatives may exist.

McDougal v. Ventura County, __ *F3d.* __, *No. 20-56220 (9th Cir., Jan. 20, 2022).*

A Second Amendment claim may exist where a county orders all gun and ammunition stores closed for 48 days due to COVID-19, when they posed no more risk of spreading the virus than other businesses subjected to lesser restrictions, and less restrictive alternatives may exist.

3. FOURTH AMENDMENT

A. Traffic Stop Cases

US v. Guerrero, __ *F3d.* __, *No. 21-1244 (1st Cir., Dec. 6, 2021).*

Officers conducting *Terry* stops can perform a protective car frisk when it is objectively reasonable to believe that a suspect is dangerous, even if the officers do not subjectively fear for their safety.

US v. Manubolu, __ *F3d.* __, *No. 20-1871 (1st Cir., Sept. 14, 2021).*

The court refuses to recognize a *per se* exigency for late-night DUI stops that would always excuse warrantless blood draws due to the delays inherent in attempting to obtain a warrant in the wee hours of the morning and before a suspected drunk drivers BAC dissipates. However, an officer need not pursue a warrant immediately when pressing investigative duties required his attention and when health needs and other resource limitations prevented the officer from immediately doing so.

US v. Miles, __ *F3d.* __, *No. 20-2031 (1st Cir., Nov. 17, 2021).*

A trooper did not violate the Fourth Amendment by stopping a car based essentially on a "hunch" since the reasonableness of an investigatory stop depends upon objective criteria, not an officer's subjective motive.

US v, Patterson, __ *F3d.* __, *No. 19-4332 (2nd Cir., Feb. 4, 2022).*

Pointing firearms at, shouting toward, and blocking any exit route during an investigatory stop supported by reasonable suspicion did not transform the investigatory stop into a *de facto* arrest. These actions were reasonable safety precautions for officers investigating an incident that involved a firearm.

US v. Coleman, __ *F3d.* __, *No. 20-4093 (4th Cir., Nov. 9, 2021).*

A school resource officer had reasonable suspicion to stop a vehicle parked haphazardly on school property, with its motor running and the driver asleep or passed out at the wheel, and a crossbow visible in the back seat.

Us v. Lackey, __ *Fed. Appx. __, Nos. 20-2977 & 20-2978 (3rd Cir., Feb. 2, 2022)(Unpub.).*

When officers are working together on a traffic stop and one smells the odor of marijuana while another, who does not smell marijuana searched the vehicle, the search did not violate the Fourth Amendment because the collective knowledge of the officers created the probable cause needed to justify the search.

US v. Runner, __ *F3d. __, No. 21-4085 (4th Cir., Aug. 8, 2022).*

The plain view observation of a glass stem pipe in a vehicle during a traffic stop justified the warrantless search of the vehicle, although such pipes can also be put to innocent non-drug uses.

US v. Lawson, __ *Fed. Appx. __, No. 21-5914 (6th Cir., Jul. 19, 2022)(Unpub.).*

An Automated Vehicle Information System ("AVIS") advisory to check the insurance status of a vehicle, coupled with an officer's experience with the system and its reliability, gave the officer reasonable suspicion to stop a vehicle to see if the owner had mandatory car insurance.

US v. Stevenson, __ *F3d. __, No. 21-3856 (6th Cir., Aug. 9, 2022).*

Probable cause to search a stopped vehicle does not end when drugs are discovered in one location. The entire vehicle can be searched for drugs.

US v. Seay, __ *Fed. Appx. __, No. 21-1104 (7th Cir., Dec. 22, 2021)(Unpub.).*

Under the "collective-knowledge" doctrine, the officer who conducted the traffic stop need not specify precisely which of his fellow officers saw the traffic violation and ordered the stop.

US v. Banks, __ *F3d. __, No. 21-2781 (8th Cir., Aug. 9, 2022).*

An officer's observance of a traffic violation - - no matter how minor - - gives him probable cause to initiate a stop.

US v. Dabney, __ *F3d. __, No. 21-2111 (8th Cir., Aug. 3, 2022).*

A *Terry* frisk of a car is permissible even when the suspect is out of the vehicle. Using a flashlight to probe a hole large enough to hold a weapon was permissible as part of that search.

US v. Farrington, __ *F3d. __, No. 21-2974 (8th Cir., Aug. 1, 2022).*

A delay of three (3) hours after the seizure of lockboxes during a traffic stop, in order to obtain a search warrant before opening and searching them, does not violate the Fourth Amendment under its "automobile exception."

DeMarest v. City of Vallejo, __ *F3d. __, No. 20-15872 (9th Cir. Aug. 16, 2022).*

A city's addition of a driver's license check to its otherwise valid sobriety checkpoint protocol was objectively reasonable under the Fourth Amendment.

US v. Hylton, __ *F3d. __, No. 21-10026 (9th Cir., Apr. 8, 2022).*

During a lawful traffic stop, officers may perform a criminal history check on the driver without independent suspicion and without unreasonably prolonging the stop.

US v. Nault, __ *F3d. __, No. 20-30231 (9th Cir., Jul. 21, 2022).*

A traffic stop was not unlawfully extended by officers who engaged in a routine document check because the request fell within the mission of the stop, even when the suspicion that justified the stop was based upon an outstanding warrant instead of a traffic violation.

US v. McReynolds, __ *Fed. Appx. __, No. 20-10115 & 10125 (9th Cir., Nov. 23, 2021)(Unpub.).*

Following a lawful traffic stop, officers can ask questions of the vehicle's occupants without any independent reasonable suspicion, so long as it does not prolong the stop.

US v. Alexander, __ *Fed. Appx. __, No. 20-3238 (10th Cir., Feb. 11, 2022)(Unpub.).*

The court held that a "protective search" during a traffic stop was warranted by the officers' reasonable suspicion that the driver could gain immediate access to a weapon even though he was seated on a curb ten (10) feet from his vehicle and outnumbered by two (2) police officers.

B. K-9 Cases

US v. McKenzie, *__ F3d. __, No. 18-1018 (2nd Cir., Sept. 9, 2021).*

A canine sniff outside of the closed door of a commercial storage unit is not a "search" within the meaning of the Fourth Amendment, as a commercial storage unit has no "curtilage" and a renter has no privacy expectation in the air outside of his/her storage unit.

Jarvela v. Washtenau Cty., *__ F3d. __, No. 21-2820 (6th Cir., Jul. 22, 2022).*

The Constitution does not require a K-9 handler to always shout out a warning to a fleeing suspect when he is tracking him with a leashed K-9.

Brooker v. Abate, *__ Fed. Appx. __, No. 20-3123 (7th Cir., Oct. 7, 2021)(Unpub.).*

Killing a suspect's pit bull during a police raid did not violate the Fourth Amendment when the dog lunged at the officer and the officers who conducted the raid did not have time to devise a different home entry plan that would allow them to handle the dog without killing it.

LeMays v. Mays, *__ F3d. __, No. 20-2632 (8th Cir., Nov. 15, 2021).*

Qualified immunity was denied to an officer on a Fourth Amendment unlawful seizure claim stemming from his shooting of two (2) dogs who were not acting aggressively nor presenting an imminent danger to him during his home security check.

C. "Exigent Circumstances" Cases

Allen v. City of Ecorse, *__ Fed. Appx. __, No. 21-1268 (6th Cir., Nov. 16, 2021)(Unpub.).*

The "hot pursuit" exception to the Fourth Amendment's warrant requirement for home entry applies whether the flight is after an arrest during an attempted traffic stop.

Hopkins v. Nichols, *__ F3d. __, No. 21-5686 (6th Cir., Jun. 16, 2022).*

Words that compel compliance with an officer order to exit a house constitutes a seizure under the Fourth Amendment.

US v. Hearn, *__ Fed. Appx. __, No. 22-5093 (6th Cir., Aug. 9, 2022)(Unpub.).*

The "imminent-injury" exception to the warrant requirement applies even if officers could have looked through a window instead of entering the apartment from which the screams emanated.

US v. Meyer, *__ F3d. __, No. 20-2958 (8th Cir., Dec. 2, 2021).*

The warrantless search of a residence was warranted pursuant to the "exigent circumstances" exception when suspected child pornography could have been erased if home computers were not immediately seized.

D. "Community Caretaker" Cases

Dahl v. Kilgore, *__ F3d. __, No. 20-6392 (6th Cir., Sept. 2, 2021).*

The warrantless search by an off-duty officer of the cell phone of a suspicious man walking around an apartment complex allegedly to pick up his "date" is not excused by the Fourth Amendment's "community caretaker" exception. The Court also opined that this exception would not apply outside of a vehicular search scenario.

US v. Mason, *__ Fed. Appx. __, No. 21-3225 (6th Cir., Mar. 23, 2022)(Unpub.).*

A gun found when police, responding to a call stating that two persons were slumped over in their car and non-responsive and, after failing to awaken them, opened the car door to remove the occupants for medical aid, was a justified warrantless entry because the officers were acting in their "community caretaker" role.

E. "Expectation of Privacy" Cases

French v. Merrill, *__ F3d. __, No. 20-1650 (1st Cir., Oct 1, 2021).*

Officers violated the Fourth Amendment when, after two "knock and talk" attempts did not persuade the residents of a home to come to the door, but instead caused them to turn off lights and close drapes, they entered the curtilage of the home a third time and shone their flash lights into the bedroom windows, continued knocking on both the front door and the bedroom window frame, and yelled for a resident to come out of the house. Without a warrant, there is no Fourth Amendment implied social license to continue to invade the curtilage of a home, knock on doors and window frames, and urge residents to exit their home, absent exigent circumstances.

US v. Daniels, __ *F3d. __, No. 194812 (4th Cir., Jul. 25, 2022).*

An unauthorized driver of a rental car has no reasonable expectation of privacy therein after he exits the vehicle.

US v. Grantz, __ *Fed. Appx. __, No. 20-4498 (4th Cir., Nov. 15, 2022)(Unpub.).*

A suspect who threw aside his suitcase in an attempt to move quickly and avoid capture abandoned it and no longer had any reasonable expectation of privacy in the luggage.

US v. Smith, __ *F3d. __, No. 20-4290 (4th Cir., Dec. 17, 2021).*

Under the Fourth Amendment, a person must have a reasonable expectation of privacy in the place searched. If the passenger in a car asserts no property or possessory interest in the car and disavows any interest in its contents - - he has no legitimate expectation of privacy regarding the same.

US v. Dennis, __ *F3d. __, No. 19-50855 (5th Cir., Jul. 27, 2022).*

Video surveillance of areas open to public view does not violate any Fourth Amendment protected privacy interest.

US v. Edwards, __ *F3d. __, No. 20-3297 (7th Cir., May 16, 2022).*

A driver has no Fourth Amendment privacy interest in a vehicle that he abandons after a high-speed chase and flees on foot.

US v. Lewis, __ *F3d. __, No. 21-1614 (7th Cir., Jun. 21, 2022).*

For Fourth Amendment purposes, a hotel guest has no expectation of privacy in the hotel's exterior hallway, where a drug dog's sniff occurred.

US v. Mattox, __ *F3d. __, No. 20-3065 (8th Cir., Mar. 4, 2022).*

Since an officer investigating a shooting may lawfully enter the victim's hospital room to interview the victim, the victim has no reasonable expectation of privacy in his hospital room for Fourth Amendment purposes.

A.C. v. Cortez, *__ F3d. __, No. 19-55895 (9th Cir., May 13, 2022).*

The Fourth Amendment was not violated when social workers interviewed minors without a court order or parental consent during the course of a child-abuse investigation. Even if the parents had a privacy right in these interviews, it was outweighed by the County's interests.

Johnson v. Morro Bay, *__ Fed. Appx. __, No. 21-55666 (9th Cir, Jun. 17, 2022)(Unpub.).*

A homeowner takes himself out of the physical "zone of privacy" of his residence when he crosses its threshold and meets officers in his "common-area" driveway.

US v. Fernandez, *__ F3d. __, No. 20-2106 (10th Cir., Dec. 17, 2021).*

For Fourth Amendment purposes, a bus rider abandons any privacy interest in a duffle bag when he is asked if he has any luggage and says "Nah."

US v. Johnson, *__ F3d. __, No. 21-2058 (10th Cir., Aug. 8, 2022).*

An officer engaged in an illegal search when he reached inside an arrestee's open backpack and felt a bundle located therein in an exploratory manner but without a warrant.

US v. Sanchez, *__ F3d. __, No. 19-2092 (10th Cir., Sept. 14, 2021).*

A suspect who dropped his trench coat as he fled the police effectively abandoned it for Fourth Amendment purposes even if he intended to come back and pick it up. Moreover, when an officer picked up the coat, he yelled to his fellow officer "Hey, I think we have a gun." For Fifth Amendment purposes, the suspect's immediate reply "That's why I ran," was spontaneous and not the result of custodial interrogation.

Smith v. City of Pelham, *__ Fed. Appx. __, No. 20-13210 (11th Cir., Dec. 10, 2021)(Unpub.).*

No Fourth Amendment reasonable "expectation of privacy" existed when an employee plugged her cellphone to her workplace computer and her iPhone backups became accessible on the city's network. However, her employer's subsequent forensic search of her work computer could be considered an "adverse employment action" supporting a later Title VII retaliation claim.

US v. Cohen, *__ F3d. __, No. 21-10741 (11th Cir., Jul. 6, 2022).*

Operating a rental vehicle without a license or authority does not defeat the driver's reasonable expectation of privacy, giving him standing to challenge the lawfulness of its search.

US v. Fortson, __ *Fed. Appx. __, No. 2110303 (11th Cir., Apr. 25, 2022)(Unpub.).*

Because a suspect denied ownership of a car, he has no Fourth Amendment right to challenge an officer's use of a key fob found in his apartment to locate, open, and then search the vehicle to which the fob belonged.

F. Inventory Search Cases

US v. Kendall, __ *F3d. __, No. 19-1465 (10th Cir., Sept. 29, 2021).*

Under the Fourth Amendment, officers conducting an inventory search prior to vehicle impoundment cannot lawfully remove interior vehicle panels simply because there might be something hidden behind them.

G. "Arrest/No Arrest" Cases

US v. O'Neal, __ *F3d. __, No. 20-1184 (1st Cir., Nov. 4, 2021).*

The presence of three (3) officers in an interrogation room and two more outside the door does not, *per se*, establish that an interviewee was "in custody" and entitled to *Miranda* warnings.

Triolo v Nassau Cty., __ *F3d. __, No. 19-4107 (2nd Cir., Jan. 21, 2022).*

For purposes of a qualified immunity determination as regards an officer charged with a Fourth Amendment unlawful arrest, the fact that the officer lacked actual probable cause because he completely ignored exculpatory evidence and information undermining the veracity of the alleged victim's does not preclude a finding of "arguable" probable cause justifying the arrest.

US v. Gist-Davis, __ *F3d. __, No. 19-4887 (4th Cir., Jul. 18, 2022).*

Placing a known gang member in handcuffs and searching his fanny pack during an investigatory detention did not violate the Fourth Amendment because it was a justifiable protective search.

Loftin v. City of Prentiss, __ *F3d. __, No. 21-60611 (5th Cir., May 12, 2922).*

Officers had probable cause to arrest a man who admitted to shooting a person, even if he claimed that his actions were in self-defense.

Stokes v. Matranga, __ *F3d. __, No. 21-30129 (5th Cir., Apr. 19, 2022).*

Qualified immunity was granted to officers on a "false arrest" claim stemming from their arrest of a juvenile whose picture and caption "future school shooter" were placed on the web and sparked concern in the community.

US v. Coulter, __ *F3d. __, No. 20-10999 (5th Cir., Jul. 18, 2022).*

Merely hand-cuffing a driver for officer safety during a traffic stop does not render a roadside interview custodial *per se*, thus triggering the need for *Miranda* warnings.

US v. Prigmore, __ *F3d. __, No. 20-3989 (6th Cir., Oct. 12, 2021).*

There was no Fourth Amendment "seizure" when an officer ordered a driver back into his vehicle in order to "remain in command" of the situation.

US v. Zabel, __ *F3d. __, No. 21-5766 (6th Cir., May 23, 2022).*

The fact that officers did not permit a suspect to use the bathroom is evidence suggestive of an arrest but was not sufficient by itself to turn a custodial interview into an arrest when other factors cut strongly against such a determination.

US v. Ahmad, __ *F3d. __, No. 19-3490 (7th Cir, Dec. 22, 2021).*

Under the Fourth Amendment, an officer's brief possession of a person's driver's license and truck rental agreement does not transform an otherwise consensual encounter into a "seizure."

Haynes v. Minndram, __ *F3d. __, No. 20-1777 (8th Cir., Sept. 21, 2021).*

Officers may violate the Fourth Amendment by handcuffing a motorist during a traffic stop without having an objective safety concern during the encounter.

Irwin v. Richardson, __ *F3d. __, Nos. 19-2364 & 19-2610 (8th Cir., Dec. 16, 2021).*

A lawful *Terry* stop did not turn into an arrest when subjects ignored commands to stop and get on the ground and officers then drew down on them.

Martinez v. Sasse, __ *F3d. __, No. 21-1704 (8th Cir., Jun. 16, 2022).*

Pushing a person is not a Fourth Amendment "seizure."

US v. Johnson, __ *F3d. __, No. 21-1788 (8th Cir., Apr. 13, 2022).*

Officers' protective actions in drawing weapons and handcuffing a driver during a traffic stop did not automatically turn a *Terry* stop into an arrest.

US v. Herran, __ *Fed. Appx. __, No. 20-10157 (9th Cir., Oct. 29, 2021)(Unpub.).*

Simply telling a homeowner that he is "free to leave" does not render an interrogation non-custodial *per se* if the length of the interrogation, the number of armed officers present, and the way they escorted the homeowner around his own property reasonably suggested that he was not, in fact, "free to leave."

Montgomery v. Brukbacher, __ *Fed. Appx. __, No. 21-1073 (10th Cir., Sept. 8, 2021)(Unpub.).*

Under the Fourth Amendment, a panhandler was not unlawfully seized when, during a *Terry* stop, an officer retained his identification card while writing him a citation for impeding traffic.

Montgomery v. Calvano, __ *Fed. Appx. __, No. 21-1134 (10th Cir., Apr. 18, 20220(Unpub.).*

Qualified immunity on an unlawful arrest claim was granted to an officer who observed a person leave a grocery store with an unbagged item, asked if it was paid for, and receiving a non-committal answer, confirmed with the store that item was not purchased, and arrested the "shoplifter." The shoplifter then produced a receipt for the item. Nevertheless, the officer had reasonable suspicion to stop him and probable cause to arrest him.

US v. Gates, __ *Fed. Appx. __, No. 20-4106 (10th Cir., Dec. 20, 2021)(Unpub.).*

A suspect is not "seized" when an officer sitting in his squad car simply asks him what he is doing at a car wash but neglects to advise him that he is "free to leave."

US v. Jeffers, __ *Fed. Appx. __, No. 216017 (10th Cir., Feb. 3, 2022)(Unpub.).*

No Fourth Amendment seizure occurred when a driver during a traffic stop ignored an officer's orders and kept switching seats when the officer tried to speak with him. The car occupant had not submitted to authority and was not "seized" until the officer got tired of playing "musical chairs" and tased him.

US v. Philpot, __ *Fed. Appx. __, No. 21-12655 (11th Cir., May 16, 2022)(Unpub.).*

The mere societal pressure to stop and speak to a police officer is not sufficient to establish a Fourth Amendment "seizure."

Johnson v. Lewis, __ *Fed. Appx. __, No. 20-13125 (11th Cir., Dec. 29, 2021)(Unpub.).*

Summary judgment was granted to a court officer against a Fourth Amendment "false arrest" claim. The presence of multiple signs in the courtroom prohibiting the use of electronic tablets gave the officer probable cause to arrest the plaintiff, who was using the same in the courtroom, although such use was technically not prohibited but within the court's discretion.

H. "Protective Sweeps" Cases

US v. Gurrier, __ *Fed. Appx. __, No. 21-725 (3rd Cir., Dec. 7, 2021)(Unpub.).*

Under the Fourth Amendment, the upstairs bedrooms in a house can be included in a protective sweep if the size and lay-out of the house is such that they are immediately adjacent to the location of an arrest and are places from which an attack could be immediately launched.

US v Lozano, __ *Fed. Appx. __, No. 21-50391 (5th Cir., Jun. 17, 022)(Unpub.).*

Although "protective sweeps" are often performed incident to an arrest, for Fourth Amendment analysis purposes, an arrest is not a condition precedent to performing a protective sweep.

I. "Unlawful Extension of Stop" Cases

Summerville v. Fuentes, __ *Fed. Appx. __, No. 19-3240 (3rd Cir., Sept. 10, 2021)(Unpub.).*

Detaining persons for 90 minutes may constitute a violation of the Fourth Amendment where a lack of officer diligence extended the stay by 30 minutes due to an officer waiting 30 minutes before starting to view a parking lot surveillance video detailing the actions of the detainees. The officer could have, in the exercise of due diligence, reviewed the tape sooner.

US v. Hurtt, *__ F3d. __, No. 20-2494 (3rd Cir., Apr. 13, 2022).*

An officer's pause in his field sobriety test of a suspected DUI driver in order to ensure the safety of his partner, who had gone "off mission" and entered the stopped vehicle without reasonable suspicion, thus placing himself in danger was a police-created exigency that unlawfully extended the stop and violated the Fourth Amendment right of the vehicle passenger subsequently searched, to be free from unreasonable searches and seizures.

Evans v. Lindley, *__ F3d. __, No. 21-20118 (5th Cir., Dec. 2, 2021).*

During a *Terry* stop, asking a suspect about his dog did not violate the Fourth Amendment, although it was unrelated to the purpose of the stop. Grabbing the suspect's wallet for five (5) seconds to check for identification after the suspect refused to identify himself was also consistent with a *Terry* stop and did not amount to unlawful detention.

US v. Richard, *__ Fed. Appx. __, No. 21-30213 (5th Cir. Mar. 2, 2022)(Unpub.).*

A traffic stop was not "unreasonably prolonged" when an officer, after additional reasonable suspicion arose during the course of the stop, spent eight (8) minutes asking questions unrelated to the traffic stop until his additional reasonable suspicion was dispelled or confirmed.

US v. Foster, *__ F3d. __, No. 20-1241 (8th Cir., Oct. 12, 2021).*

An officer did not unlawfully extend a traffic stop by asking the vehicle occupants for identification after he determined that the reason for his stop - - a cracked windshield - - did not violate applicable law.

US v. Kennedy, *__ F3d. __, No. 21-2377 (8th Cir., Jun. 3, 2022).*

Raising one's arms in response to an officer's request to search can constitute consent even without verbal or written consent. Officers do not unnecessarily prolong a traffic stop by waiting at the scene until a lawful driver arrives.

US v. Goodwill, *__ F3d. __, No. 20-3188 (7th Cir., Jan. 21, 2022).*

An officer does not need a driver's permission to conduct a dog sniff during a lawful traffic stop if it does not prolong the stop.

US v. Ceja, __ *Fed. Appx. __, No. 2130178 (9th Cir., Jul. 18, 2022)(Unpub.).*

No unlawful prolongation of a traffic stop occurred just because writing a citation and conducting a drug investigation were not performed simultaneously, since both were supported by independent reasonable suspicion.

US v. Chavez, __ *Fed. Appx. __, No. 19-4121 (10th Cir., Sept. 28, 2021)(Unpub.).*

Under the Fourth Amendment, to overcome an "unlawful extension of a traffic stop" allegation, an officer need not ask dispatch for the driver's criminal history report before he asks for a K-9 drug dog, as the issue is one of reasonableness, not order of request. A dog sniff that precedes receipt of the criminal history report does not unreasonably extend the traffic stop.

US v. Frazier, __ *F3d. __, No. 20-4131 (10th Cir., Apr. 13, 2022).*

Officer unlawfully prolonged a traffic stop by, rather than begin the standard citation issuance procedure, he first spent time trying to contact the drug dog's canine handler and ask him to come to the scene. This "investigative detour" unsupported by reasonable suspicion required the suppression of the contraband later found in the vehicle.

J. Other Cases

Juzumas v. Nassau Cty,m NY, __ *F3d. __, No. 20-0086 (2nd Cir., May 12, 2022).*

While an officer may "seize" a person by a mere show of authority, the "show of authority" doctrine does not appear to have been extended to the seizure of personal effects.

Torcivia v. Suffolk Cty., __ *F3d. __, No. 19-4167 (2nd Cir., Nov. 9, 2021).*

A county policy that required officers to temporarily seize, without a warrant, weapons from the home of any person involved in a domestic incident when that person is transported for a mental health evaluation does not violate the Fourth Amendment. Such seizures fall within the "special needs" exception to the Fourth Amendment's warrant requirement.

Washington v. Napolitano, __ *F3d. __, No. 20-455 (2nd Cir., Mar. 23, 2022).*

Absolute prosecutorial immunity does not apply to a police officer who swore to and executed an arrest warrant at the direction of a prosecutor, as such actions are traditional police functions.

US v. Wheeler, *__ Fed. Appx. __, No. 16-3780 (3rd Cir., Sept. 10, 2021)(Unpub.).*

The Court rejected, under a Fourth Amendment "trespass theory," the argument that inserting a key in a door lock constitutes an unlawful warrantless search. Such an action may not be a search at all -- or is at best a minimal invasion of privacy not requiring a warrant.

Trail v. Cressell, *__ Fed. Appx. __, No. 20-2219 (4th Cir., Oct. 26, 2021)(Unpub.).*

Qualified immunity on a Fourth Amendment claim of an improper procurement of an arrest warrant not supported by probable cause was denied when an officer failed to inform a grand jury that his informant provided a name different from that listed in the indictment, and that she could not identify the arrestee as the person who sold her drugs.

Gomez v. Galman, *__ F3d. __, No. 20-30508 (5th Cir., Nov. 18, 2021).*

Whether an officer is acting "under color of law" for purposes of a Section 1983 claim does not depend on his duty status at the time of the action. Officers may have misused their official power when they, while off duty at a bar, ordered their victim to stop, forced him to the ground, placed his hands behind his back, and otherwise led him to believe that they were police officers and that he was under arrest.

Kokesh v. Curlee, *__ F3d. __, No. 20-30356 (5th Cir., Sep. 21, 2021).*

An officer stopped to provide roadside assistance to a vehicle with its hazard lights flashing and its hood up. One of the passengers in the disabled vehicle began video-taping the incident and, refused to identify himself, and all vehicle occupants gave odd responses to reasonable officer questions. The uncooperative vehicle occupant was then arrested for refusing to provide identification. The court held that qualified immunity was warranted, as the officer's conduct was in accord with reasonable expectations. The Fourth Amendment should not be employed as a daily quiz tendered by videotaping hopefuls seeking to turn officers from being investigators and public protectors into mere spectators or federal defendants.

Westfall v. Luna, *__ Fed. Appx. __, No. 21-10159 (5th Cir., Aug. 12, 2022)(Unpub.).*

The lateness of the hour does not render an officer's "knock and talk" *per se* unlawful.

US v. Alvarez, *__ F3d. __, No. 21-40091 (5th Cir., Jul. 13, 2022).*

"A Hispanic male fleeing on a bike with large handlebars in the area of Leopard and Up River" at some unspecified time was insufficient to create the "reasonable suspicion" needed to stop a Hispanic man who was riding a bicycle with large handlebars in the area described.

US v. Martinez, *__ Fed. Appx. __, No. 21-30068 (5th Cir, Feb. 1, 2022)(Unpub.).*

A 17-day delay between the detention of a package based upon reasonable suspicion and its search does not constitute an unreasonable warrantless seizure for Fourth Amendment purposes.

US v. Dixon, *__ F3d. __, No. 21-6001 (5th Cir., Jun. 13, 2022).*

Under the Fourth Amendment, the execution of a search warrant before it is filed with the court is proper. Otherwise, search warrants could not be executed after hours, on weekends, or on holidays when the court is closed.

Wilson v. City of Bastrop, *__ F3d. __, No. 21-30204 (5th Cir., Feb. 21, 2022).*

The fact that state law permits "open carry" does not permit an armed suspect to flee from officers and disobey their verbal commands to drop his weapon.

US v. Baker, *__ Fed. Appx. __, No. 21-3159 (6th Cir., Apr. 5, 2022)(Unpub.).*

The Fourth Amendment circumscribes the issuance, not the filing, of warrants.

Gaddis v. DeMattee, *__ F3d. __, No. 20-2424 (7th Cir., Apr. 1, 2022).*

The Fourth Amendment was not violated when officers stated to a homeowner whom they had probable cause to believe had engaged in disorderly conduct and refused to come out of his house that he "could also be charged with resisting arrest" which prompted him to come outside and be arrested for disorderly conduct. Such conduct did not violate the Fourth Amendment's prohibition against routine warrantless arrests within a personal residence.

US V. Roberts, *__ Fed. Appx. __, No. 20-4272 (6th Cir., Oct. 12, 2021)(Unpub.).*

An affidavit for a search warrant to search a suspected drug house does not have to allege that it is the location of "regular, repeated drug trafficking," as a single controlled purchase is sufficient to establish probable cause that there are illegal drugs in the house.

McWilliams v. Chicago, *__ Fed. Appx. __, No. 20-1770 (7th Cir., Jan. 14, 2022)(Unpub.).*

Officers do not need probable cause to approach and question a person.

Mitchell v. Doherty, __ *F3d. __, No. 21-1764 (7th Cir., Jun. 22, 2022).*

In a case of first impression, the court held that the Fourth Amendment does not require a bail hearing within 48 hours of arrest.

Smith v. Chicago, __ *Fed. Appx. __, No. 19-2725 (7th Cir., Jul. 14, 2022)(Unpub.).*

An allegation that police fabricated a story to justify an illegal search but for which the plaintiff would not have been placed in pre-trial detainment presents a Fourth Amendment claim.

US v. Segoviano, __ *F3d. __, No. 20-2930 (7th Cir., Apr. 1, 2022).*

Apartments within a building are individual homes entitled to the same Fourth Amendment protections as houses on a street. A mere suspicion that a person may be in an apartment building does not allow the police to seize the residents of all the apartments in that building.

Baude v. Leyshock, __ *F3d. __, No. 20-2864 (8th Cir., Jan. 27, 2022).*

When officers, without warning, surrounded all the people located in a protest area - - protestors, observers, passers-by, etc., and refused to let anyone leave, this constituted a Fourth Amendment seizure whose reasonableness required a trial court's determination.

Central Specialties v. Large, __ *F3d. __, No. 20-3027 (8th Cir., Nov. 24, 2021).*

No Fourth or Fourteenth Amendment violation occurred when a county engineer facilitated the seizure of trucks that he believed were operating above the posted weight limit to keep them from passing over or damaging the county roads over which he had oversight.

Davis v. Spear, __ *F3d. __, No. 21-2419 (8th Cir., May 10, 2022).*

Family members whose relative had been stabbed were, without probable cause or consent, taken to a police station to be questioned for three (3) hours and prohibited from going to the hospital wherein their relative was dying. *Terry* has not been applied to custodial interrogations, and these officers were not entitled to qualified immunity on the family's Fourth Amendment "unreasonable seizure" claims.

Hartman v. Bowles, __ *F3d. __, No. 21-1365 (8th Cir., Jul. 5, 2022).*

An officer does not violate the Fourth Amendment by omitting information from a warrant application that he does not actually know, even if it is due to his own reckless investigation.

Street v. Leyshock, __ *F3d. __, No. 21-1524 (8th Cir., Jul. 27, 2022).*

Officers were entitled to qualified immunity on a Section 1983 conspiracy claim resulting from their department's plan to address protest activities by boxing individuals into a downtown intersection. The law is unsettled as to the scope of the "intracorporate conspiracy doctrine."

US v. Hanson, __ *F3d. __, No. 21-1403 (8th Cir., Mar. 3, 2022).*

No Fourth Amendment violation occurred when an officer conducted a "trash pull" on a trash container that was readily accessible to the public on trash pick-up day.

US v. Neadeau, __ *F3d. __, No. 20-2967 (8th Cir., Sept. 27, 2021).*

An officer need not actually see or smell drugs/drug paraphernalia before reasonably concluding that a vehicle might contain them. Probable cause deals in possibilities, not certainties.

US v. Williams, __ *F3d. __, No. 21-2006 (8th Cir., Jun. 9, 2022).*

For Fourth Amendment purposes, the girlfriend of a suspect had common authority to consent to a search of her apartment, including a bag handing on the doorknob of the bedroom she shared with the suspect and to which she had access and never denied ownership.

Webster v. Westlake, __ *F3d. __, No. 21-1552 (8th Cir., Jul. 27, 2022).*

Officers were not entitled to qualified immunity on their arrest of a mother who, in response to their child abuse investigation, would not let them in her house to check on her children. The Fourth Amendment requires a warrant or removal order under these circumstances.

Garcia v. Los Angeles, __ *F3d. __, No. 20-55522 (9th Cir., Sept. 2, 2021).*

An ordinance allowing the city to discard without notice "bulky items" not used as a homeless shelter but stored on public property was enjoined as likely violative of the Fourth Amendment's prohibition against unreasonable seizures.

Lull v. Sacramento Cty., __ *Fed. Appx. __, No. 20-16599 (9th Cir., Jan. 19, 2022)(Unpub.).*

Disconnecting the electricity from a residence may not involve a Fourth Amendment seizure, because it does not interfere with a person's possessory interests in their property. Moreover, any property interest in continued electric service extends only as far as state law provides.

Manriquez v. Ensley, __ *F3d. __, No. 20-16917 (9th Cir., Aug. 30, 2022).*

The Fourth Amendment is violated when a judge orally approves the search of a home, but the language of the written warrant is not modified to include this fact.

O.L. v Java, __ *Fed. Appx. __, No. 21-55740 (9th Cir., May 12, 2022)(Unpub.).*

Qualified immunity was granted to an officer who copied electronic data from the cell phone of a person who had voluntarily agreed to the search of the device.

Rodriguez v. Cty. of Hawaii, __ *Fed. Appx. __, No. 20-15097 (9th Cir., Sept. 14, 2021)(Unpub.).*

When a person is arrested for multiple offenses, the Fourth Amendment is satisfied if probable cause existed to arrest her or any one of the offenses.

Sanchez v. LADOT, __ *F3d. __, No. 21-55285 (9th Cir., May 23, 2022).*

A municipal permitting program requiring e-scooters to disclose real-time location data does not violate the Fourth Amendment, as users voluntarily disclose scooter location data to e-scooter businesses each time they rent an e-scooter.

US v. Castellanos, __ *Fed. Appx. __, No. 19-50342 (9th Cir., Jan. 18, 2022)(Unpub.).*

Only an overnight guest may claim the protection of the Fourth Amendment in the curtilage of a home. Mere permission to use the home's driveway or garage is insufficient.

US v. Martin, __ *Fed. Appx. __, No. 21-10128 (9th Cir, May 19, 2022)(Unpub.).*

The "knock-and-talk" exception to the need for a warrant to enter the curtilage of a residence was inapplicable when six officers, three with guns drawn, positioned themselves around the front door, one officer knocked, and another shouted "open the door."

US v. Phillips, __ *F3d. __, No. 20-10304 (9th Cir., Apr. 29, 2022).*

Under the Fourth Amendment, when a private party conducts a private computer search and then notifies the police of her findings, the police officer's subsequent warrantless search of the computer is lawful to the extent that it merely mimics the prior private search.

Soza v. Demsich, __ *F3d. __, No. 19-2176 (10th Cir., Sept. 16, 2021).*

Qualified immunity was granted to officers on a Fourth Amendment claim stemming from their warrantless entry into the curtilage of a private residence for a seizure (not search) only.

Goldring v. Henry, __ *Fed. Appx. __, No. 19-13820 (11th Cir., Nov. 12, 2021)(Unpub.).*

The "any crime" rule does not apply to malicious prosecution claims, where probable cause must exist for each of the charged crimes to avoid Fourth Amendment and common law liability.

Orr v. Rogers, __ *Fed. Appx. __, No. 21-10397 (11th Cir., Sept. 8, 2021)(Unpub.).*

Qualified immunity was granted to officers against a Fourth Amendment claim stemming from their execution of an *ex parte* order, searching a husband in his home, and redistributing his property to his soon-to-be-ex-wife.

Sosa v. Martin Co., __ *F3d. __, No. 20-12781 (11th Cir., Sept. 20, 2021).*

Under the Fourth Amendment, a sheriff may be liable on an "over-detention" claim that arose when he took no action for three (3) days after receiving information that raised significant doubts as to the identity of the person he arrested on a wanted person warrant.

Thompson v. Sheriff, __ *Fed. Appx. __, No. 21-13393 (11th Cir., Apr. 15, 2022)(Unpub.).*

Fourth Amendment "failure to train" liability cannot be based upon a county official not fully incorporating the laws of other jurisdictions into the county's officer training program.

US v. Brown, __ *Fed. Appx. __, No. 20-14750 (11th Cir., Oct. 26, 2021)(Unpub.).*

Drugs were suppressed when they were found in a bag that was searched without a warrant and after the suspect had been hand-cuffed and was sitting in a chair away from the bag, since the officers' safety was not shown to have required its search.

US v. Ligon, __ *Fed. Appx. __, No. 21-11351 (11th Cir., Jun. 10, 2022)(Unpub.).*

An "encounter" turned into a Fourth Amendment "investigatory stop" when an officer told the subject he was talking with to "stay with" a fellow officer.

US v. Veney, __ *F3d. __, No. 20-3081 (D.C. Cir. Aug. 12, 2022).*

For Fourth Amendment purposes, an individual did not submit to an officer's show of authority when he ignored his order to stop and continued walking away.

4. FOURTH AMENDMENT "EXCESSIVE FORCE"

A. Gunshot Cases

Jefferson v. Lias, __ *F3d. __, No. 20-2526 (3rd Cir., Dec. 16, 2021).*

Qualified immunity was denied against a Fourth Amendment "excessive force" claim involving an officer who shot a suspect when the suspect drove his vehicle past him in an attempt to escape, when all the officer knew was that the vehicle might be stolen.

Harmon v. City of Arlington, TX, __ *F3d. __, No. 20-10830 (5th Cir., Oct. 26, 2021).*

Qualified immunity was granted to an officer on an "excessive force" claim stemming from his shooting the driver of a vehicle who disregarded his orders to stop and accelerated his vehicle while the officer was clinging to the passenger window and standing on the running board. The officer could have reasonably believed that he was at risk of serious physical harm.

Irwin v. Santiago, __ *F3d. __, No. 20-10020 (5th Cir, Oct. 21, 2021).*

Qualified immunity against an "excessive force" claim was granted to an officer who fired at the driver of a vehicle that was moving in the officer's general direction at the time of the shooting.

Anderson v. City of Fulton, __ *Fed. Appx. __, No. 21-5001 (6th Cir., Sept. 24, 2021)(Unpub.).*

Qualified immunity on an "excessive force" claim was granted to an officer who shot a man acting erratically and swinging a steel pike towards him. He was also justified in shooting him again when he started to stand up, continued to be non-compliant and erratic, and could reach the officer with the pike. Probable cause existed to believe that he remained an imminent threat.

Burghardt v. Ryan, __ *Fed. Appx. __, No. 21-3906 (6th Cir., Jun. 1, 2022)(Unpub.).*

Qualified immunity was granted against an "excessive force" claim that arose when officers opened fire on a van that, driving in reverse, had passed them but that they reasonably believed would pull forward again and strike any officer in the van's plausible escape path.

Campbell v. Cheatham County, __ *F3d. __, No. 21-5044 (6th Cir., Aug. 29, 2022).*

An officer who responded to 9-1-1 hand-ups by knocking on a residential door, not announcing himself as a police officer, and then firing a total of eight shots into the door after the homeowner opened it holding whet the officer believed was a gun (it was a cell phone) may have engaged in "excessive force" under these facts.

Gordon v. Bierenga, __ *F3d. __, No. 20-2013 (6th Cir., Dec. 14, 2021).*

Qualified immunity was granted on an "excessive force" claim arising when an officer shot a driver he had trapped in a drive-through lane adjacent to a major roadway at rush hour near a residential neighborhood, after the driver drove forward into his squad car and then backwards into a civilian's car in an effort to escape and ignored the officer's demand to "stop," thus posing a risk to the surrounding public.

Grant v. Wilson, __ *Fed. Appx. __, Nos. 21-5642/5750 (6th Cir., Aug. 18, 2022)(Unpub.).*

The fact that an armed individual did not aim his weapon at officers did not prevent a finding of qualified immunity in their favor on an "excessive force" claim that arose after they shot him when he did not respond to commands to drop his weapon.

Lee v. Russ, __ *F3d. __, No. 21-5919 (6th Cir., May 6, 2022).*

Qualified immunity was denied on an "excessive force" claim brought after a suspected thief was confronted by two officers who pulled their guns after he became belligerent, pulled out a knife, ignored commands to "drop it," and walked towards one of the officers, waving the knife. He stopped 30 feet from the officers and stopped waving his knife. Twenty seconds later, he took a step forward and was shot dead.

Reynoldo v. Addis, __ *Fed. Appx. __, No. 21-1454 (6th Cir., Apr. 11, 2022)(Unpub.).*

Qualified immunity against an "excessive force" claim was granted to an officer who, when a suspect who had stabbed his parents and who may still have been armed, ignored the officer's commands, and rushed towards him, only to be met by a volley of bullets, three of which hit him in the front, and one in the back.

Rodrick v. City of Akron, __ *Fed. Appx. __, No. 21-3027 (6th Cir., Nov. 15, 2021)(Unpub.).*

In an "excessive force" case, if the need for deadly force could have been avoided by a simple command to "drop the weapon," an officer's failure to attempt such less-than-lethal means makes his use of deadly force unreasonable.

Doxtater v. O'Brien, __ *F3d. __, No. 21-2101 (7th Cir., Jul. 12, 2022).*

An arrestee, by keeping one hand inside his shirt, telling officers that if they came any closer, he would "do it," and who was then shot in an apparent attempt to avoid capture, justified the officers' conduct by leading them to believe that he was armed and ready to "do it."

Esker v. Lutz, __ *Fed. Appx. __ No. 21-2574 (7th Cir., Aug. 18, 2022)(Unpub.).*

No "excessive force" existed when officers shot a man approaching within 15 feet of them holding a running chainsaw and ignoring commands to put it down.

H.S. v. Kansas City Bd. of Pol. Comm., __ *F3d. __, No. 20-1526 (8th Cir., May 31, 2022).*

After fleeing an officer, a suspect entered his car and shut the door. Turning to face his pursuing officer, the suspect moved his hands to his waist and, without warning, was shot by the officer. Qualified immunity was granted to the officer on an "excessive force" claim even if the suspect may, in hindsight, have been trying to surrender.

Weber v. Reif, __ *Fed. Appx. __, No. 21-15649 (9th Cir., Feb. 16, 2022)(Unpub.).*

Qualified immunity was granted to an officer who shot an armed individual who made two (2) serious verbal threats, disobeyed police orders and made a sudden movement.

Davis v. Waller, __ *F3d. __, No. 21-11333 (11th Cir., Aug. 12, 2022).*

Qualified immunity was granted on an "excessive force" claim arising from the shooting of an innocent abductee being forced by a felon to drive a truck in a manner that threatened immediate harm to others.

Robinson v. Sauls, __ *F3d. __, No. 21-11280 (11th Cir., Aug. 30, 2022).*

Qualified immunity on an "excessive force" claim was denied to an officer who shot an armed suspect after a flash-bang device had rendered him unconscious.

Schantz v. DeLoach, __ *Fed. Appx. __, No. 20-10503 (11th Cir., Oct. 26, 2021)(Unpub.).*

After a motorcyclist led police on a 30-mile chase at speeds up to 130 MPH, briefly stopping but then engaging his throttle and trying to escape. At that point, he was shot by an officer. Qualified immunity was granted on an "excessive force" claim because shooting the motorcyclist was a reasonable response to the threat he posed if he were allowed to resume his high-speed gambit.

Tillis v. Brown, __ *F3d. __, No. 19-15098 (11th Cir., Sept. 7, 2021).*

No "excessive force" occurred when an officer stepped out of his squad car to make an arrest after the vehicle that he had been chasing at high speeds crashed. As he approached the vehicle, it started backing up and the officer fired 11 shots into its rear and side windows and then re-loaded and fired ten (10) more shots into the vehicle. During both volleys, the officer could have reasonably believed that his life was in danger, as the car passed within a few feet of him when he shot the first volley and could have switched gears and tried to ram him when he shot the second volley. Courage in the line of duty should be commended, not condemned. It certainly should not subject an officer to liability for damages.

Underwood v. City of Bessemer, __ *F3d. __, No. 19-13992 (11th Cir., Sept. 2, 2021).*

An officer may have violated a motorist's Fourth Amendment rights by engaging in "excessive force" when he shot the motorist shot without warning after he disobeyed the officer's order to stop and very slowly moving his car towards an officer, being eight (8) feet from the officer when shot.

B. Taser Cases

Dorsey v. Sokoloff, __ *Fed. Appx. __, No. 19-1671 (4th Cir., Nov. 12, 2021)(Unpub.).*

Qualified immunity on an "excessive force" claim was denied when officers continued to administer electrical shocks to an individual after he was disarmed and secured.

Betts v. Brennan, __ *F3d. __, No. 21-30101 (5th Cir., Jan. 11, 2022).*

No "excessive force" arose when an officer, during a traffic stop, tased the driver after he mouthed off, adopted a confrontational stance, ignored numerous orders, batted away the officer's hand, refused to move away from the driver's compartment of his vehicle, and called the officer a liar, questioned his authority, and dared the officer to tase him.

Remirez v. Escajeda, __ *F3d. __, No. 21-50858 (5th Cir., Aug. 10, 2022).*

A man was tased when he failed to respond to an officer's order to show his hands - - because he was in the process of hanging himself. Qualified immunity was granted to the officer on an "excessive force" claim, since it was dark, and the officer feared that the man might be armed.

Salazar v. Molina, *__ F3d. __, No. 20-40334 (5th Cir., Jun. 16, 2022).*

After leading the police on a high-speed chase through residential subdivisions, a car was blocked in. The driver exited the car and lay on the ground. Three seconds later, a squad car arrived and an officer tased him in the back. Qualified immunity was granted on an "excessive force" claim. A suspect cannot refuse to surrender and lead police on a high-speed chase and then turn around and appear to surrender and receive the same Fourth Amendment protection from intermediate force as he would have received if he had initially surrendered. The officer could have reasonably believed that this belated "surrender" was a ploy and that the driver still hoped to escape.

Browning v. Edmonson County, *__ F3d. __, No. 20-6078 (6th Cir., Nov. 17, 2021).*

An officer who pursued a fleeing traffic offender and, when the offender's car crashed, tased the driver when he failed to obey the officer's order to show his hands was not entitled to qualified immunity on an "excessive force" claim, since the driver had been knocked unconscious and had to be mechanically removed from his car.

Gambrel v. Knox County, *__ F3d. __, No. 20-6027 (6th Cir., Feb. 8, 2022).*

Officers were entitled to qualified immunity from an "excessive force" claim that arose after they tased and hit with a flashlight an incoherent and resisting father who was walking down the road carrying his kidnapped daughter after recovering her.

Palma v. Johns, *__ F3d. __, No. 21-3315 (6th Cir., Feb. 28, 2022).*

Qualified immunity on an "excessive force" claim was denied to an officer who tased and then shot a mentally disabled individual who refused to take his hands out of his pockets and continued to walk towards the officer, never speaking, even after being tased and shot. There were arguably less lethal options available, such as handcuffs or a night stick.

US v. Nyah, *__ F3d. __, No. 21-1490 (8th Cir., May 27, 2022).*

After a high-speed chase, a driver and passenger fled on foot. After ignoring orders to stop, one suspect was tased. While this was a warrantless arrest, it was supported by probable cause, as the officer reasonably believed him to be the vehicle's driver -- although he was actually the passenger.

Hyde v. City of Wilcox, *__ F3d. __, No. 21-15142 (9th Cir., Jan. 6, 2022).*

Tasing and putting a suspect in a head restraint after he was shackled and handcuffed was "excessive force."

Heard v. Dulayev, *__ F3d. __, No. 191461 (10th Cir., Mar. 29, 2022).*

Qualified immunity was granted to an officer on an "excessive force" claim that arose when she ordered the plaintiff to crawl out of the bushes and then stop, but he instead rose to his feet and walked towards the officer, who then tased him and took him to the ground.

Charles v. Johnson, *__ F3d. __, No. 20-12393 (11th Cir., Nov. 16, 2021).*

A civilian's rendering of brief, *ad hoc* assistance to an officer is not state action absent proof of a conspiracy to violate the constitutional rights of another. The use of a taser is not categorically unconstitutional.

C. Pepper Spray Cases

Williams v. N. Carolina, *__ Fed. Appx. __, No. 22-6064 (4th Cir., Aug. 19, 2022)(Unpub.).*

"Excessive force" may have occurred when a deputy sprayed made into a prisoner's cell ventilation system, creating a "gas chamber" effect in the cell.

Fairchild v. Coryell Cty., *__ F3d. __, No. 20-50237 (5th Cir., Jul. 14, 2022).*

Qualified immunity was denied to jailers against an "excessive force" claim that resulted when, after a pre-trial detainee refused to turn around in her cell to be hand-cuffed, they pepper-sprayed her four (4) times and then, weighing 230 and390 pounds, respectively, sat on her with a knee in her back and a forearm against her neck for two (2) minutes, after which she died.

Young v. Kent Cty. Sheriff Ofc., *__ F3d. __, No. 21-1222 (6th Cir., Jan. 10, 2022).*

In an "excessive force" case, "binding authority" is not required in order to put officers on notice that using pepper spray or a taser on a subdued, partially incapacitated pre-trial detainee who did not obey an officer's orders is constitutionally impermissible.

Senn v. Smith, *__ Fed. Appx. __, No. 21-35293 (9th Cir., Mar. 18, 2022)(Unpub.).*

Even during a mass protest, an officer engages in "excessive force" when she pepper-sprays a protester in the face although the protestor committed no serious crime and was no threat to anyone's safety, but simply touched the officer's sleeve.

Wilkins v. City of Tulsa, __ *F3d. __, No. 21-5052 (10th Cir., May 3, 2022).*

Qualified immunity on an "excessive force" claim was denied to officers who pepper-sprayed the face of a DUI suspect whom they had taken to the ground, hand-cuffed, kneeled on, and effectively subdued, in that he was not actively resisting and posed no immediate threat.

D. Handcuff Cases

Smith v. Heap, __ *F3d. __, No. 21-20329 (5th Cir., Apr. 14, 2022).*

Whether deputies violated state law does not answer the question of whether they violated the Fourth Amendment. Hand-cuffing a fellow officer for two (2) minutes while the deputies secured the scene was not "excessive force" when he was stopped for allegedly brandishing a weapon.

Templeton v. Jarmillo, __ *F3d. __, No. 21-50299 (5th Cir., Mar. 11, 2022).*

Tighter handcuffing alone, even when it causes minor injuries, is not "excessive force."

Burnett v. Griffith, __ *F3d. __, No. 21-1242 (6th Cir., May 12, 2022).*

Qualified immunity was granted to an officer on an "excessive force" claim that arose after he threw a handcuffed person headfirst to the floor of a room occupied by other jail officials, as he was trying to control this person as he attempted to break free from the officer's grasp.

Williamson v. City of National City, __ *F3d. __, No. 20-55966 (9th Cir., Jan. 24, 2022).*

No Fourth Amendment "excessive force" arose when protesters were handcuffed and carried from a city council meeting after they refused to leave on their own and "went limp" when they were being removed from the room.

Grissom v. Palm, __ *Fed. Appx. __, No. 3194 (10th Cir., Aug. 19, 2022)(Unpub.).*

Qualified immunity was granted to an officer on an "excessive force" claim stemming from his placing regular-sized handcuffs on an inmate who may have needed larger handcuffs.

E. K-9 Cases

White v. Detroit, *__ F3d. __, No. 21-1746 (6th Cir., Jun. 17, 2022).*

A K-9 Officer was entitled to qualified immunity on an "excessive force" claim stemming from her shooting a pit bull that had her K-9 by the snout, killing one dog to save the other.

F. Other Cases

Greene v. Kelly, *__ Fed. Appx. __, No. 20-2847 (3rd Cir., Apr. 6, 2022)(Unpub.).*

"Excessive force" may exist when officers hit and kicked a handcuffed and non-resisting prone arrestee to prevent him from turning his head to see "what's going on."

Rosser v. Donovan, *__ Fed. Appx. __, No. 20-3278 (3rd Cir., Nov. 1, 2021)(Unpub.).*

In assessing the appropriateness of an officer's use of force, his perception of what an arrestee might do is not dispositive. The standard is objective -- what a reasonable officer would do.

Wilson v. Painter, *__ Fed. Appx. __, No. 21-1083 (4th Cir., Dec. 9, 2021)(Unpub.).*

"Excessive force" may exist when an officer orders a driver to exit his vehicle but 15 seconds later, punches the stationary but otherwise compliant and non-threatening driver in the face.

Buehler v. Deer, *__ F3d. __, No. 20-50822 (5th Cir., Mar. 3, 2022).*

When a person films a traffic stop and continuously refuses to keep at arm's length from the officers, being arrested for interference and taken to the ground after trying to pull away from an arresting officer is not "excessive force."

Craig v. Martin, *__ F3d. __, No. 19-10013 (5th Cir., Feb. 15, 2022).*

An officer did not engage in "excessive force" by kicking an arrestee's leg into his squad car when both of the officer's hands were occupied and the suspect had been ordered to get in the squad car but continued to resist.

Doe v. Harris County, __ *F3d. __, No. 21-2025 (5th Cir., Jan. 24, 2022).*

A sheriff did not use "excessive force" on a prisoner who touched him, prompting the officer to instruct him to "keep his hands off of him." Despite this warning, the prisoner grabbed onto the Sheriff, causing him to slam the prisoner against the wall. This was true even if, unbeknownst to the officer, the prisoner was having a seizure and grabbed onto the Sheriff for support.

Holm v. Sassenhagen, __ *Fed. Appx. __, No. 20-50074 (5th Cir., Aug. 26, 2022)(Unpub.).*

Qualified immunity was granted to officers on an "excessive force" claim arising when they brought to the ground and restrained a verbally and physically aggressive pre-trial detainee after he ignored their verbal commands.

Solis v. Serrett, __ *F3d. __, No. 21-20256 (5th Cir., Apr. 21, 2022).*

In an "excessive force "case, the court placed little weight on the plaintiff's attempt to parley her minimal injuries into more serious ones by making allegations of psychological suffering. Pulling away when officers asked her for cell phone and stepping back are sufficient to establish "actively resisting arrest." The officer's colloquy with the plaintiff was classic:

Officer: "Can I see your phone for a second please?"

Suspect: "No, you can't!"

Officer: "Well, I don't want you to drop it when I arrest you!"

Timpa v. Dillard, __ *F3d. __, No. 20-10875 (5th Cir, Dec. 15, 2021).*

An officer who engaged in an objectively unreasonable application of body weight force by continuing to kneel on the back of a subdued individual - - in this case for an additional five (5) minutes - - was denied qualified immunity from an "excessive force" claim.

Hale v. Boyle County, __ *F3d. __, No. 20-6195 (6th Cir., Nov. 18, 2021).*

A guard who had allegedly consensual sex with a prisoner can still be guilty of "excessive force" if he coerced her to have sex with him through promises of assistance and in exchange for cigarettes, sodas, sunshine, etc.

Hoogland v. City of Maryville, *__ Fed. Appx. __, No. 21-5863 (6th Cir., Jun. 1, 2022)(Unpub.).*

Officers who received a call from a daughter claiming that her mother was suicidal, which was supported by a suicide note, and who later came to reasonably suspect that the mother was also homicidal, and who then forcefully removed her from her car, handcuffed her, and involuntarily admitted her into the hospital, were entitled to qualified immunity against her "excessive force" claims. The court rejected an invitation to extend the "state-created danger" doctrine to a claim that one state actor should have protected the claimant from harm caused by another state actor.

Moser v. Etowah Police Dept., *__ F3d. __, No. 21-5162 (6th Cir., Mar. e, 2022).*

Placing a hand on an officer's arm does not necessarily indicate "active resistance," and an officer who then took the person to the ground with significant force and then kneeled on her back may have engaged in "excessive force."

Serenski v. Artfitch, *__ Fed. Appx. __, Nos. 21-1391/1402 (6th Cir., Jul. 20, 2022)(Unpub.).*

An elderly motorist's refusal to obey a direct order to stop, and who instead continued to walk towards an officer with his hands visible and in an otherwise non-threatening manner did not preclude the officer's violent takedown of the 83-year-old from constituting "excessive force."

Wiley v. City of Columbus, OH, *__ F3d. __, No. 21-3615 (6th Cir., Jun. 2, 2022).*

Qualified immunity was granted to officers on an "excessive force" case arising from their actions in bringing a resisting drug-overdosed individual to the ground and using a "maximum resistor technique" -- placing him on his side, crossing his legs, and pushing them against his buttocks for 90 seconds -- so that he would stop kicking and allow paramedics to treat him.

Esker v. Lutz, *__ Fed. Appx. __, No. 21-2574 (7th Cir., Aug. 18, 2022)(Unpub.).*

No "excessive force" occurred when officers shot a man approaching within 15 feet of them holding a running chain saw and ignoring their commands to put it down.

Johnson v. Gullickson, *__ Fed. Appx. __, No. 22-1016 (7th Cir., Jul. 1, 2022)(Unpub.).*

On a search warrant entry into a home in search of illegal drugs, no "excessive force" existed when officers pointed their weapons at the resident until he was hand-cuffed and used vulgar language in telling him to "shut the F-up." The Fourth Amendment does not protect against "rude behavior."

Hennings v. Milone, *__ Fed. Appx. __, No. 21-1533 (7th Cir., Nov. 19, 2021)(Unpub.).*

Grabbing the hair and punching a driver who likely committed a serious offense, could have been armed, and appeared to be trying to flee, was reasonable and not "excessive force."

Lankford v. City of Plumerville, *__ F3d. __, No. 21-1639 (8th Cir., Aug. 2, 2022).*

Pulling a police SUV in front of a suspect fleeing from officers on a motorcycle was not "excessive force" when the SUV operator had probable cause to believe that the motorcyclist posed a threat of serious bodily harm to innocent bystanders.

Lombardo v. St. Louis, *__ F3d. __, No. 19-1469 (8th Cir., Jun. 29, 2022).*

Qualified immunity was granted to officers on an "excessive force" claim because past precedent does not demonstrate that a pre-trial detainee has a clearly established right to be free from prone restraint while resisting an officer.

McDaniel v. Neal, *__ F3d. __, No. 21-2467 (8th Cir., Aug. 15, 2022).*

Qualified immunity on an "excessive force" claim was granted to an officer who, after wrapping his arms around a fleeing suspect to prevent him from leaving, threw him to the floor with enough force to break his collarbone and cause a brain injury.

Mitchell v. Kirchneier, *__ F3d. __, No. 21-1071 (8th Cir., Mar. 14, 2022).*

Under the Fourth Amendment, shooting a protestor with lead-filled bean bags when she was not threatening anyone, fleeing, or resisting arrest, may constitute "excessive force."

A.B. v. San Diego Cty., *__ Fed. Appx. __, No. 20-56140 (9th Cir., Apr. 8, 2022)(Unpub.).*

Two prior incidents of an officer's use of excessive force on an individual who was prone and subdued is insufficient for a jury to find that there was a "pattern" of similar constitutional violations for purposes of a "failure to train" claim against his county employer.

Andrews v. City of Henderson, *__ F3d. __, No. 20-17053 (9th Cir., May 23, 2022).*

Qualified immunity was denied against an "excessive force" claim that arose after the officer tackled an unarmed, calm, and non-resisting suspect as he left the courthouse.

Larkin v. Kennison, __ *Fed. Appx. __, No. 20-16573 (9th Cir, Jun. 1, 2022)(Unpub.).*

Qualified immunity was granted to an officer on an "excessive force" claim arising after he conducted a "leg sweep" on a person fleeing from him, trying to avoid arrest and ignoring his orders to "stop."

Seidner v. DeVries, __ *F3d. __, No. 20-17403 (9th Cir., Jun. 30, 2022).*

Qualified immunity was granted to an officer on an "excessive force" claim stemming from his swerving in front of a fleeing bicyclist riding at night without a light (or brakes, as it turned out), causing him to crash into the squad car.

McWilliams v. Dinapoli, __ *F3d. __, No. 21-7045 (10th Cir., Jul. 19, 2022).*

Punching, tackling, and using a choke hold on a non-violent, non-threatening, non-resisting, and misdemeanant, without warning, constituted "excessive force."

Ingram v. Kubik, __ *F3d. __, No. 20-11310 (11th Cir., Apr. 7, 2022).*

Qualified immunity on an "excessive force" claim was denied when an officer body-slammed an un-armed person to the ground although he stated his willingness to be arrested. However, vicarious liability is not available under Title II of the ADA.

Lambert v. Herrington, __ *Fed. Appx. __, No. 21-10452 (11th Cir., Jun. 29, 2022)(Unpub.).*

Absent probable cause to arrest, an officer's use of even *de minimus* force constitutes "excessive force" under the Fourth Amendment.

Powell v. Snook, __ *F3d. __, No. 19-13340 (11th Cir., Feb. 8, 2022).*

The court declines the invitation to hold that an officer must always issue a warning before using deadly force.

Wade v. Daniels, __ *F3d. __, No. 1812371 (11th Cir., Jun. 13, 2022).*

Qualified immunity was denied to an officer who pistol-whipped a suspect that a fellow officer had just shot because he sat up after stating that he had to sit up because he could not breathe with blood filling his mouth.

5. FIFTH AMENDMENT; SIXTH AMENDMENT; SEVENTH AMENDMENT

Us v. Cruz-Rivera, __ *F3d.* __, *Nos. 19-1465& 19-1509 (1st Cir., Sept. 15, 2021).*

For Fifth Amendment *Miranda* warning purposes, while a highway is not *per se* "police dominated" in the same way as an interrogation room, this does not mean that it is *per se* neutral, and when police are controlling the situation during a traffic stop, the neutrality of the site may be called into question.

Academy Hill v. Lambertville, __ *Fed. Appx.* __, *No. 20-1618 (3rd Cir., Apr 12, 2022)(Unpub.).*

A city, by passing a resolution declaring the plaintiff's property to be an area in need of redevelopment, but not requiring the city to condemn the property, did not effect a "taking" without just compensation in violation of the Fifth Amendment Takings Clause.

Netrilov v. Jersey City, __ *F3d.* __, *No. 21-1786 (3rd Cir., Aug. 16, 2022).*

A city did not violate a business owner's rights under the Takings Clause, the Contract Clause, or the Due Process Clause when it passed an ordinance legalizing short-term rentals - - which prompted him to purchase rental properties - - and then passed a second ordinance curtailing the business owner's ability to operate those short-term rental properties. Not every municipal act legalizing a business activity vests a business owner with a cognizable property right.

US v. Forde, __ *Fed. Appx.* __, *No. 19-3654 (3rd Cir., June 1, 2022)(Unpub.).*

Statements made by a tourist during secondary inspection questioning at a border outpost, after he was in custody but before he received his *Miranda* warnings, do not fit within the "border exception" to the Fourth Amendment and are not allowed under the Fifth Amendment.

US v. McIntosh, __ *Fed. Appx.* __, *No. 18-2696 (3rd Cir., Jan. 25, 2022)(Unpub.).*

No Sixth Amendment violation occurred by proceeding to trial with a juror who was not on the final jury list but not objected to during *voir dire*.

US v. Wilson, __ *Fed. Appx.* __, *No. 18-2727 (3rd Cir., Jan. 25, 2022)(Unpub.).*

The Sixth Amendment was not violated by a jury mix-up that seated venireperson #22 (who had accidently been given #35) – resulting in the selection of #22 as a juror instead of #35, since the seating of the wrong person did not result in an impartial jury.

US v. Teachey, __ *Fed. Appx. __, No. 18-4461 (4th Cir., Oct. 13, 2021)(Unpub.).*

Under the Fifth Amendment, an investigator's failure to advise a suspect that he has a right to have an attorney appointed to represent him if he cannot afford one is not a constitutional violation when the suspect is known to have an attorney or ample funds to secure one.

Lafaye v. New Orleans, __ *F3d. __, No. 21-30358 (5th Cir., Jun. 1, 2022).*

A city's failure to honor a state court judgment ordering the return of unlawfully seized personal property does not constitute a "taking" under the Fifth or Fourteenth Amendments.

Oberer v. Sugarcreek Tshp, __ *Fed. Appx. __, No. 21-3834 (6th Cir., Jun. 1, 2022)(Unpub.).*

The Takings Clause does not guarantee a return on investment for private property developers who are denied a rezoning of their property, making it unprofitable to develop the property under its current zoning classification.

US v. Duke, __ *F3d. __, No. 20-30489 (5th Cir., Sept. 14, 2021).*

An officer saying "no" when asked by an interrogee if the interrogee's talking was "making his situation worse" did not alter the validity of his earlier *Miranda* waiver.

US v ERR, __ *F3d. __, No. 21-30028 (5th Cir., May 26, 2022).*

A wastewater treatment facility alleged to have polluted the Mississippi River in violation of the Oil Pollution Act is entitled to a jury trial pursuant to the Seventh Amendment.

Barber v. Springfield, MI, __ *F3d. __, No. 20-2297 (6th Cir., Apr. 11, 2022).*

A claim for injunctive relief is ripe if the government has rendered a final decision that will enable a future physical taking of property without just compensation. Here a township intended to remove a dam that would have resulted in the flooding of the plaintiff's property.

F.P. Development v. Canton Tshp, __ *F3d. __, Nos. 20-1447/20-1466 (6th Cir., Oct. 13, 2021).*

A township ordinance required a permit and agreement to replant a set number of trees or contribute a set fee to a "replanting fund" before a resident could remove trees from her property. While a nexus exists between these requirements and the township's legitimate interest in natural resource preservation, its reliance on pre-set assumptions, rather than on an individualized impact assessment, violated the Takings Clause as applied through the Fourteenth Amendment.

Golf Village North v. City of Powell, __ *F3d. __, No. 20-4117 (6th Cir., Sept. 23, 2021).*

A private development transferred one of its lots to the city for a public park and then experienced an increase in the use of its private streets by the city and the general public. This did not constitute an unlawful taking without just compensation, since the development's residents could still use their streets and could keep out the public by building a gate.

US v. Davis, __ *Fed. Appx. __, No. 20-5835 (6th Cir., Dec. 7, 2021)(Unpub.).*

Miranda is not so broad as to prevent the police from making any declaratory statement about the nature of charges or the evidence related thereto. "Subtle compulsion" is not "interrogation."

US v. Lee, __ *Fed. Appx. __, No. 21-2216 (7th Cir., Jan. 21, 2022)(Unpub.).*

"I feel like I should have a lawyer" and "even if I say I want a lawyer" are not unambiguous requests for a lawyer. The Fifth Amendment does not require officers to ask clarifying questions in response to ambiguous references to an attorney.

US v. Washington, __ *Fed. Appx. __, No. 21-5745 (6th Cir., Apr. 26, 2022)(Unpub.).*

Simply being intoxicated or high on drugs is not enough to overcome a *Miranda* waiver.

Tyler v. Minnesota, __ *F3d. __, No. 20-3730 (8th Cir., Feb. 16, 2022).*

A county foreclosed on a property tax debt, sold the property, and kept the proceeds, even though they exceeded the tax debt. The Takings Clause does not forbid a governmental entity from retaining the entire sale proceeds, so long as adequate steps are taken to notify the property owner of the taxes due and the foreclosure process.

Hill v. AZ Attorney General, __ *Fed. Appx. __, No. 20-17369 (9th Cir., May 10, 2022)(Unpub.).*

The court rejected the plaintiff's Confrontation Clause challenge to the admission of a statement made by the now-deceased victim of a sexual assault to a sexual assault nurse examiner.

US v. Baker, __ *Fed. Appx. __, No. 21-30042 (9th Cir., Dec. 13, 2021)(Unpub.).*

A taunted confession made five (5) days before a *Mirandized* confession was sufficiently attenuated when made to a different officer with a different agency and there was no flagrant officer misconduct.

DeKalb Event Ctr. v. City of Chamblee, __ *F3d. __, No. 20-10659 (11th Cir., Oct. 14, 2021).*

A liquor license does not guarantee that its holder can sell liquor at all times. A city ordinance stopping alcohol sales at 2:00 AM on Monday through Saturday and at Midnight on Sunday did not violate the license-holder's vested property rights.

Vega v. Tekoh, __ *597 US __, No. 21-499 (Jun. 23, 2022).*

A violation of the *Miranda* rules does not provide a basis for a Section 1983 claim.

6. FOURTEENTH AMENDMENT*; DUE PROCESS*

A. "Deliberate Indifference" Cases

Baez v. Town of Brookline, __ *F3d. __, No. 21-1278 (1st Cir., Aug. 11, 2022).*

A municipality is not "deliberately indifferent" under the Fourteenth Amendment's Equal Protection Clause simply because it does not employ independent civilians to review complaints of discriminatory policing. Moreover, claimants cannot prove "deliberate indifference" by refusing to cooperate with a municipality's investigations or appeals procedures.

Jaines v. Cook County, __ *Fed. Appx. __, No. 21-1958 (7th Cir., Jul. 18, 2022)(Unpub.).*

A standard of "deliberate indifference" cannot mean that the government has a duty, in practice, to prevent all constitutional injuries.

J.K.J. v. City of San Diego, __ *F3d. __, No. 20-55622 (9th Cir., Nov. 15, 2021).*

A woman was arrested at a traffic stop and vomited in the officer's squad car. When asked if she was "detoxing" she said "no," that she was "pregnant." Qualified immunity was granted on a "deliberate indifference" claim to the officer who then cancelled his EMT request, although the arrestee was lying and later died.

George v. Beaver Cty., __ *F3d. __, No. 21-4006 (10th Cir., May 3, 2022).*

Failing to follow a county jail's suicide prevention policy does not, in and by itself, violate the Fourteenth Amendment without a showing of "deliberate indifference."

Turner v. Phillips, __ *Fed. Appx. __, No. 21-12370 (11th Cir., Feb. 15, 2022)(Unpub.).*

Qualified immunity was denied to officers on a Fourteenth Amendment "deliberate indifference" claim where they were aware that a pre-trial detainee had tried to commit suicide by hanging himself with his pants yet allowed him access to another pair of pants with which he took his life.

B. "State-Created Danger" Cases

Reynolds v. Szczesniak, __ *Fed. Appx. __, No. 21-2732 (6th Cir., Aug. 18, 2022)(Unpub.).*

No substantive due process "state-created danger" violation arose when police dropped two (2) intoxicated pedestrians off at a gas station, assuming by their actions that they were a couple, although one subsequently killed the other.

C. Procedural Due Process Cases

Chang v. Delaware, __ *Fed. Appx. __, No. 20-1601 (3rd Cir., Feb. 9, 2022)(Unpub.).*

The mere allegation that "white privilege" caused a judge to favor white defendants over the plaintiff is insufficient to question the judge's impartiality.

Dennis v. Philadelphia, __ *F3d. __, No. 19-2390 (3rd Cir., Nob. 23, 2021).*

A plaintiff alleging a due process claim against police officers due to their deliberate deception to the court need not bring a *Brady* claim. Qualified immunity was denied to officers who failed to correct testimony they knew was false and concealed evidence (a time stamp) that proved that trial testimony as false.

Pickel v. Lancaster County, __ *Fed. Appx. __, No. 20-3228 (3rd Cir., Sept. 14, 2021)(Unpub.).*

Qualified immunity was granted to county officials against Fourteenth Amendment substantive and procedural due process claims alleging their unlawful interference with the rights of grandparents in relation to their minor grandchildren. A liberty interest of grandparents in the case, custody, and management of their grandchildren has not yet been "clearly established."

Plymail v. Mirandy, __ *F3d. __, No. 19-6412 (4th Cir., Sept. 7, 2021).*

Prosecutor's remark that jurors should "send a message" to the community and to men on dates who have "the sweet tooth of sadomasochism" and to "womenkind and for all of us" was improper and rendered the trial so fundamentally unfair as to deny the defendant due process.

Engle v. Lumpkin, __ *F3d. __, No. 19-40356 (5th Cir., May 12, 2021).*

A prosecutor violated the Due Process Clause when he used the defendant's invocation of his *Miranda* rights as evidence of his sanity.

Jones v. Dallas Cty., __ *Fed. Appx. __, No. 21-10617 (5th Cir. Aug. 12, 2022)(Unpub.).*

A due process claim arises when pretrial detainees are housed with convicted detainees when security and space permit their separation.

Magnolia Isl. Plantation v. Whittington, __ *F3d. __, No. 20-30805 (5th Cir., Mar. 21, 2022).*

A sheriff was entitled to qualified immunity on a claim that the sale of property without advising the owner of the pending sheriff's sale and giving her a chance to be heard violated her due process rights, because she sued him individually when was not personally involved in the sale.

Phillips v. Whittington, __ *F3d. __, No. 20-30731 (5th Cir., Mar. 15, 2022).*

The fact that a supervisor is generally aware of another officer's investigatory strengths and weaknesses does not establish that he knew about the officer's withholding of exculpatory evidence in a specific case and failed to intervene.

Santos v. Bosworth, __ *F3d. __, No. 21-10323 (5th Cir., Mar. 11, 2022).*

Attorneys removed from a court "indigent defense list" had no Fourteenth Amendment due process claim because they had no property interest in these discretionary appointments.

US v. Hill, __ *F3d. __, No. 19-20251 (5th Cir., May 24, 2022).*

The jury's brief view of the defendant's shackles did not violate his due process rights absent a showing of actual prejudice.

Lewis v. Village of Alsip, *__ F3d. __, No. 21-2528 (7th Cir., Jan. 19, 2022).*

The Due Process Clause does not require municipalities to erect signs on every block warning motorists of the need to move their cars during snow emergencies. Municipal laws must be made available to the public, but a municipality need not ensure that everyone knows all the laws if they are clear. Many traffic rules are not set out in signs but still must be obeyed.

Lookout Mtn. Sites v. Pinkston, *__ F3d. __, No. 21-5324 (6th Cir., Sept. 22, 2021).*

The padlocking of an allegedly "flea bag" hotel after a prosecuting attorney filed an *ex parte* petition to abate it as a public nuisance but before the hotel owner had notice or an opportunity to contest the action did not constitute a Fourteenth Amendment unlawful taking because the court order and padlocking of the hotel was a result of justifiable and necessary "quick action."

Shandor v. City of Eastpointe, *__ Fed. Appx. __, No. 20-1385 (6th Cir., Oct. 13, 2021)(Unpub.).*

No procedural due process violation occurred when police officers gave a "notice of seizure" of the plaintiff's vehicle to its driver, the plaintiff's grandson, and mailed a copy of the notice to the address on the vehicle's title. Due process does not require the government to ensure that a vehicle owner receives actual notice.

Wooten v. Hayden, *__ Fed. Appx. __, No. 21-3065 (10th Cir., Dec. 2, 2021)(Unpub.).*

A pre-trial detainee's placement in solitary confinement did not violate his due process rights when it was not for punishment but to keep him from contact with his alleged victim.

Brucker v. City of Doraville, *__ F3d. __, No. 21-10122 (11th Cir., Jun. 24, 2022).*

While unwise for a city to rely on fines and fees to balance its budget, the importance of these income sources to a city does not make its procedures for imposing them unconstitutional or impose an unreasonable risk of judicial or prosecutorial bias in violation of a ticket recipient's procedural due process rights.

Favero Orchids v. Rivkees, *__ Fed. Appx. __, No. 19-14930(11th Cir., Jun. 22, 2022)(Unpub.).*

There is no federal constitutional "property right" to process itself - - in this case to have an application for a license reviewed.

D. Substantive Due Process Cases

Johnson-Krumm v. Seaford, __ *Fed. Appx. __, No. 21-1989 (3rd Cir., Jan. 31, 2022)(Unpub.).*

No substantive due process violation occurred when officers handcuffed an arrestee who then shoved an officer, fled, jumped into a river while still handcuffed and drowned. Although they tried, the police had no constitutional duty to rescue him after he fled custody and police control.

McGee v. Conyngham Tnshp, _ *Fed. Appx. _, No. 20-3229 (3rd Cir., Sept. 23, 2021)(Unpub.).*

Experiencing "momentary alarm" is not a constitutionally recognized deprivation of substantive due process rights. However, a public official who sends an unlawful demand for information regarding the business activities of a person who has submitted an open records request for information about the official's actions may have engaged in retaliatory action sufficient to deter a person of ordinary firmness from exercising his First Amendment rights.

Sherrill v. City of Hoboken, __ *Fed. Appx. __, No. 20-1251 (3rd Cir., Sept. 30, 2021) (Unpub.).*

While retaliation can support its own Section 1983 claim, there is no similar constitutional right. A Fourteenth Amendment substantive due process claim arises when a person exercises a constitutional right and suffers retaliation as a result, not when a person alleges that his Fourteenth Amendment rights were violated because he was retaliated against.

Tomko v. Baldwin Borough, __ *Fed. Appx. __, No. 21-2593 (3rd Cir., Jun. 1, 2022)(Unpub.).*

Complaints that city officials attempted to compel a landowner to relocate a sewer line running under his property by not approving a grading permit application, preventing employees from working on the landowner's property, and engaging in police presence, surveillance, and threats do not allege "conscience-shocking" behavior for substantive due process purposes.

Parker v. Blackwell, __ *F3d. __, No. 20-10398 (5th Cir., Jan. 13, 2022).*

A sheriff and county may be liable for deliberate indifference in rehiring and then failing to adequately supervise a deputy who had only recently been terminated for abusing prisoners and who subsequently abused another prisoner in violation of his substantive due process rights.

West Moreland v. Butler County, __ *F3d. __, No. 21-5168 (6th Cir., Mar. 28, 2022).*

A "failure-to-protect" claim brought by a pre-trial detainee under the Due Process Clause only requires a showing that the officer's use of force was objectively unreasonable. The court joins the Seventh and Ninth Circuits in holding that in applying this standard to individual officers, an officer must act intentionally in a manner that puts the pre-trial detainee at substantial risk of harm, without taking reasonable steps to abate that risk, and by failing to do so actually caused the detainee's injuries.

Hyman v. Lewis, __ *F3d. __, No. 21-2607 (6th Cir., Mar. 8, 2022).*

Failure to follow internal jail policies regarding checking on prisoners does not, alone, equate to "deliberate indifference" under the Fourteenth Amendment.

Pleasant v. Mirandei, __ *Fed. Appx. __, No. 21-55784 (9th Cir., Jun. 27, 2022)(Unpub.).*

No Due Process violation occurred by dropping an elderly man 100 yards from an agreed-upon courtesy ride destination, even if he then wandered back to the highway and was struck by a car.

Sanghvi v. San Bernardino, _ *Fed. Appx. _, No. 21-55422 (9th Cir., Feb. 17, 2022)(Unpub.).*

A county's removal of several government housing residents based upon later unproven allegations that they sexually assaulted other residents does not "shock the conscience" for substantive due process purposes.

Moses-El v. Denver, __ *Fed. Appx. __, No. 20-1102 (10th Cir., May 31, 2022)(Unpub.).*

Reading an interviewee his *Miranda* rights and informing him of the possibility that he could be charged with perjury for his prior contrary statements do not constitute "threats" or officer "malice" for Section 1983 substantive due process purposes.

Brown v. Greer, __ *Fed. Appx. __, No. 21-10694 (11th Cir., Nov. 2, 2021)(Unpub.).*

A high school coach who encouraged helmet-to-helmet contact during football practices was not deliberately indifferent to his players needs in a non-custodial setting so as to establish a valid substantive due process claim.

Kessler v. City of Key West, __ *Fed. Appx. __, No. 21-11069 (11th Cir., Feb. 28, 2022)(Unpub.).*

An executive act that is arbitrary and irrational in depriving one of a property right cannot support a substantive due process claim.

E. Other Cases

Edelstein v. City of Brownsville, __ *F3d. __, No. 20/40211 (5th Cir., Sept. 8, 2021).*

The Due Process Clause does not extend to protecting a liberty interest in being considered for a specific job position nor the "expectation" of an opportunity to pursue it.

Stevens v. City of Columbus, __ *Fed. Appx. __, No. 21-3755 (6th Cir., Jul. 27, 2022)(Unpub.).*

Language in a historic preservation ordinance requiring landscaping changes to be "compatible" with adjacent properties, open spaces, and the overall environment is not void for vagueness under the Due Process Clause.

Moutanocordoba v. Contra Costa, __ *F3d. __, No. 21-15711 (9th Cir., May 31, 2022)(Unpub.).*

An officer who dissuaded a friend of the plaintiff from taking custody of the plaintiff's child while the plaintiff was in jail, and who failed to advise Child Services of this friend's willingness to take custody of the child, was entitled to qualified immunity because his conduct did not "shock the conscience" for purposes of a "right to familial association" claim.

Shively v. Utah Valley U., __ *Fed. Appx. __, No. 20-4088 (10th Cir., Apr. 5, 2022)(Unpub.).*

The court declines an invitation to expand due process rights to include the "indirect economic effects" of an employee who was suspended for five (5) months with pay but killed himself on account of the emotional stress of his job suspension.

Kassa v. Fulton Cty., __ *F3d. __, No. 20-12281 (11th Cir., Jul. 18, 2022).*

A prosecutor was not entitled to absolute prosecutorial immunity against a Fourth and Fourteenth Amendment claim stemming from her failure to notify the trial judge that a material witness warrant was unnecessary and should be recalled, resulting in the witness's arrest and incarceration.

7. FOURTEENTH AMENDMENT; EQUAL PROTECTION

Alston v. Philadelphia, __ *Fed. Appx. __, No. 20-2906 (3rd Cir., Sept. 22, 2021)(Unpub.).*

A "hostile work environment" claim brought under the Equal Protection Clause is not shown through evidence that the plaintiff received by error one text message that "shocked" her and for which her supervisor apologized both by follow-up text and in person.

Morlock v. Philadelphia, __ *Fed. Appx. __, No. 20-2973 (3rd Cir., Jan. 26, 2022)(Unpub.).*

A city ordinance allowing non-EVs to occupy EV parking/charging spaces during a 12-hour period previously reserved for EVs, thus depriving EVs access to EV chargers during these hours, did not violate EV owners substantive due process or equal protection rights. The owners did not have a property interest in the EV spaces, and the ordinance was rationally related to the city's goal of increasing available parking spaces and thus furthered a legitimate state interest.

Tyson v. Sabine County, __ *F3d. __, No. 21-40590 (5th Cir., Jul. 28, 2022).*

Under the Fourteenth Amendment, physical force is not required for there to be a violation of the right to bodily integrity, which can be based upon mental coercion alone - - such as when an officer conducting a "welfare check" asks a female homeowner to disrobe for his enjoyment.

Edwards v. Swarthout, __ *Fed. Appx. __, No. 17-16019 (9th Cir., Feb. 18, 2022)(Unpub.).*

The Equal Protection Clause may have been violated when prison officials suspended exercise yard privileges for all White prisoners based upon the actions of two White prisoners.

Ballou v. McElvain, __ *F3d. __, No. 20-35416 (9th Cir., Sept. 28, 2021).*

The existence of a comparator is not a prerequisite to a disparate impact claim under the Equal Protection Clause.

Sturdivant v. Fine, __ *F3d. __, No. 20-3147 (10th Cir., Jan. 7, 2022).*

A student can be denied an "educational benefit or opportunity" in violation of the Equal Protection Clause if she is treated differently by her dance team coach because of her race.

Schultz v. Alabama, __ *F3d. __, No. 1813894 (11th Cir., Jul. 29, 2022).*

A county jail bail policy that allows arrestees with means to bail out of jail but requires the indigent to remain in custody pending their bail hearing does not violate the Equal Protection or Due Process Clause.

8. TITLE VII; DISCRIMINATION

A. Hostile Work Environment Cases

Friel v. Mnuchin, __ *Fed. Appx. __, No. 20-2714 (3rd Cir., Dec. 28, 2021)(Unpub.).*

One instance of a supervisor tugging on a subordinate's sleeve and saying that they should "get back together" after they ended their consensual office affair is insufficient to create an objectively hostile work environment under Title VII, even if the brief overture was unwanted.

Chapman v. Oakland Living, __ *F3d. __, No. 20-2361 (4th Cir., Aug. 30, 2022).*

A Title VII hostile work environment can be created by the six-year-old son of a supervisor who repeatedly called an employee a "n*gger."

Sowash v. Marshalls, __ *Fed. Appx. __, No. 21-1656 (4th Cir., Jun. 23, 2022)(Unpub.).*

No Title VII "hostile work environment" was shown by ten (10) instances of hugging or arm touching, one kiss on cheek, and one compliment on appearance, all without any sexual comment or innuendo, over several months. Such conduct was unprofessional, inappropriate, and distressful, but not severe or pervasive.

Abbt v. City of Houston, __ *F3d. __, No. 21-20085 (5th Cir., Mar. 11, 2022).*

Firefighters downloaded a personal intimate video taken by a female firefighter for her husband and then continued to watch it, without her consent. When she became aware of this several years later, she was unable to return to work due to PTSD by knowing that the firefighters she had to work, eat, and sleep near had or could have viewed the video. The court declined to find, as a matter of law, that a person must contemporaneously experience harassment for it to be actionable under Title VII.

Daniel v. LSU, *__ F3d. __, No. 21-30555 (5th Cir., Apr. 8, 2022).*

A "hostile work environment" was not shown by a supervisor's comment to a new African-American employee that "he didn't know that she was Black because she didn't sound Black on the phone" and, over a period of six years, by telling her that most "Blacks cannot keep up with the pace and content of veterinary school," and that students from a historically Black university were "not academically strong enough" to attend veterinary school.

Landry v. Leesville Rehab., *__ F3d. __, No. 21-30423 (5th Cir., Feb. 7, 2022).*

A "hostile work environment" is not shown by a patient put his hand on a nurse's buttocks for five (5) seconds and once telling her that she was a "sexy, Black, beautiful woman."

Wantou v. Wal-Mart, *__ F3d. __, No. 20-40284 (5th Cir., Jan. 11, 2022).*

Physical threats are not "indispensable elements" of a Title VII hostile work environment claim. For harassment to affect a condition of employment, it need not be both severe and pervasive.

Woods v. Cantrell, *__ F3d. __, No. 21-30150 (5th Cir., Mar. 24, 2022).*

A single incident where a supervisor called an employee a "n*gger" in front of other employees may be sufficient to raise a viable Title VII "hostile work environment" claim.

Hearn v. DeJoy, *__ Fed. Appx. __, No. 21-1790 (7th Cir., Nov. 23, 2021)(Unpub.).*

A "hostile work environment" is not shown by evidence that White employees yelled at and poked a Black co-employee when there was no evidence that this was on account of her race.

Peck v. City of Tucson, *__ Fed. Appx. __, No. 21-15198 (9th Cir., Dec. 16, 2021)(Unpub.).*

A "hostile work environment" was not shown by a supervisor's calling plaintiff Peck "Pecker" and commenting on another person's name of "Glasscock." While sexual in nature, there was no evidence that the remarks were made based on Peck's sex.

Durand v. Shull, *__ Fed. Appx. __, No. 21-1180 (10th Cir., Apr. 21, 2022)(Unpub.).*

A supervisor's use of the word "n*gger" when talking to others but overheard by the African American employee does not, *per se*, prove that she experienced objectively severe racial harassment sufficient to create a hostile work environment.

B. Adverse Employment Action Cases

McLintock v. Philadelphia, *__ Fed. Appx. __, No. 20-3453 (3rd Cir., Feb. 9, 2022)(Unpub.).*

The plaintiff did not suffer an "adverse employment action" when she never applied for an open job position, knew that the position would be open when its current occupant retired, and yet did not make a reasonable effort to convey her interest in the job to her employer and made no inquiries about the job application process or any effort to submit a job application.

Tutt v. Wormuth, *__ Fed. Appx. __, No. 19-2480 (4th Cir., Sept. 8, 2021)(Unpub.).*

A 15-to-16-month gap between protected activity and an adverse employment action significantly weakens any inference of causation based on temporal proximity in the context of a Title VII claim, but other facts may bridge this lack of temporal proximity.

Lockhart v. Republic Svcs., *__ F3d. __, No. 20-50474 (5th Cir., Oct. 25, 2021).*

Evidence that an employer's workplace investigation came to the wrong conclusion does not, alone, establish a racial motivation behind an adverse employment decision.

Okeke v. Tulane, *__ F3d. __, No. 21-30451 (5th Cir., Apr. 5, 2022).*

A "hostile work environment" is not shown by allegations that an employee was "yelled at" for raising scheduling issues, had to work a harder schedule, had her supervisor forget her name once and omit her from a congratulatory e-mail, and had other employees make negative assumptions or remarks about her.

Owens v. Circassia, *__ F3d. __, No. 21-10760 (5th Cir., May 13, 2022).*

Under Title VII, for purposes of a pretext analysis. a court need not evaluate whether an employer's practices were sufficient or correct, but only, when considered with other evidence, they tend to permit a rational inference that an employer's ultimate stated reason for taking an adverse employment action is unbelievable. The court rejected the idea that employers cannot use subjective criteria to evaluate employees.

Barnard v. Powell Valley, *__ Fed. Appx. __, No. 21-5447 (6th Cir., Apr. 28, 2022)(Unpub.).*

Terminating an employee for taking company records without permission is an independent, non-discriminatory, legitimate ground for such an adverse employment action even if the documents were relevant to her EPA complaints and not sensitive or confidential in nature.

Smith v. Chief Judge, __ *Fed. Appx. __, No. 21-1544 (7th Cir., Apr. 27, 2022)(Unpub.).*

A decision to keep an employee on his regular work schedule rather than agree to an alternate schedule that would allow him to take Spanish classes is not an "adverse employment action," as his pay and benefits remained the same and he could find another way to learn Spanish.

Muldrow v. St. Louis, __ *F3d. __, No. 20-2975 (8th Cir., Apr. 4, 2022).*

An employer's reassignment of an officer to a new division within the department did not constitute an "adverse employment action" when her pay and rank remained the same and her future job prospects were not adversely affected.

Alkins v. Ginnett Cty., __ *Fed. Appx. __, No. 2113746 (11th Cir., Aug. 22, 2022)(Unpub.).*

One unwanted open-mouthed kiss by a supervisor to an employee constituted sexual harassment, her reporting of the same was protected activity, and her subsequent termination was unlawful.

Davis v. Legal Services, __ *F3d. __, No. 20-12886 (11th Cir., Dec. 2, 2021).*

Placement on paid leave is not an "adverse employment action" under Title VII.

Garcia v. City of Grantville, _ *Fed. Appx. _, No. 21-10439 (11th Cir., Sept. 10, 2021)(Unpub.).*

Qualified immunity against a discriminatory discharge claim was denied where city officials directed racial insults at a Cuban employee and then entered a closed executive session -- after which the city attorney told the employee that "the Council had the votes to fire him" and handed him a paper on which the employee wrote his resignation, after which a public meeting was convened, and his resignation was accepted. Even if the executive session discussion and vote were "non-binding," no reasonable official could believe that using a non-binding vote to leverage a resignation motivated by racial animus would be lawful.

C. Temporal Proximity Cases

Sempowich v. Tactile Systems, __ *F3d. __, No. 20-2245 (4th Cir., Dec. 3, 2021).*

The application of the "same actor inference" is inappropriate in a Title VII employment discrimination case where the person who had allegedly reassigned an employee for discriminatory reasons had hired her eight (8) years and promoted her four (4) years prior.

Fisher v. Bilfinger, __ *Fed. Appx. __, No. 20-30265 (5th Cir., Nov. 11, 2021)(Unpub.).*

A three-to-four-month gap between filing an EEOC complaint and termination is not "temporally proximate" for a retaliation claim analysis. Calling an African American employee "boy" on several occasions is "sporadic use of abusive language" that is outside the purview of, and the employee's complaint to his union about his boss is not an activity protected by, Title VII.

Sanchez v. Chevron, __ *F3d. __, No. 20-30783 (5th Cir., Nov. 24, 2021).*

Temporal proximity of less than two (2) months between notice of an employee's EEOC complaint and an adverse employment action is sufficient to prevent claim dismissal.

Dixon v. DTA Svcs., __ *Fed. Appx. __, No. 20-12040 (11th Cir., Nov. 16, 2021)(Unpub.).*

A six (6) week gap between filing an EEOC complaint and reassignment/termination is sufficiently short as to be sufficient to establish causation in a Title VII retaliation case.

D. Other Cases

Boddie v. Cardone Ind., __ *Fed. Appx. __, No. 20-3058 (3rd Cir., Oct. 15, 2021)(Unpub.).*

Assigning a new African American employee to an "odorous" office containing a cockroach did not support a claim of "constructive discharge" or an "adverse employment action."

Green v. Philadelphia, __ *Fed. Appx. __, No. 21-1034 (3rd Cir., Apr. 20, 2022)(Unpub.).*

The plaintiff failed to provide statistically significant evidence that hair tests for illegal drugs had a disparate impact on African American officers. Moreover, awareness of the mere possibility of bias by one non-policy-making official does not prove that a city adopted a drug testing policy with a discriminatory intent.

Groff v. DeJoy, __ *F3d. __, No. 21-1900 (3rd Cir., May 25, 2022).*

Under Title VII, allowing employees to swap shifts with an employee who asked for Sundays off was not a reasonable religious accommodation when they would seldom swap shifts with him.

Karupaiyan v. Woodbridge, _ *Fed. Appx. _, No. 21-3339 (3rd Cir., May 3, 2022)(Unpub.).*

A single racial slur by a police officer, by itself, does not violate the Constitution.

Payne v. Prevention Point, __ *Fed. Appx. __, No. 21-2173 (3rd Cir., Mar. 15, 2022)(Unpub.).*

For purposes of a Title VII employment discrimination claim, an unpaid student intern who shadowed employees was not an "employee."

Felder v. MGM Natn'l Harbor, _ *Fed. Appx. _, No. 20-2373 (4th Cir., Jul. 21, 2022)(Unpub.).*

Under Title VII, a plaintiff may state a "colorable" claim for color-discrimination by alleging that her darker-toned supervisor terminated her due to her lighter skin.

Myles v. Johns Hopkins, __ *Fed. Appx. __, No. 20-1873 (4th Cir., Jul. 19, 2022)(Unpub.).*

Under Title VII, a supervisor's pre-selection of an employee for promotion is not evidence sufficient to establish that the employer's explanation for the selection was pretext, since pre-selection would work to the detriment of all other job applicants, regardless of race.

Alabbassi v. Whitley, __ *F3d. __, No. 21-20070 (5th Cir., Jan. 11, 2022).*

Asking a Kuwaiti job applicant "what brought you to Houston?" and writing "Kuwait" on his resume do not constitute direct evidence of Title VII national origin discrimination.

Hamilton v. Dallas Cty., __ *F3d. __, No. 21-10133 (5th Cir., Aug. 3, 2022).*

A policy whereby only male officers are given full weekends off appears to violate Title VII as being discriminatory to female officers as regards employment terms, conditions, and privileges.

Scott v. US Bank, __ *F3d. __, No. 21-10031 (5th Cir, Nov. 2, 2021).*

At the motion to dismiss stage, an employee who complained to HR that he had overheard a supervisor saying that he "was going to terminate four (4) Black employees," and who was thereafter terminated, successfully alleged facts supporting an allegation of unlawful retaliation.

Villarreal v. City of Laredo, __ *F3d. __, No. 20-40359 (5th Cir., Nov. 1, 2021).*

The "qualified immunity doctrine" does not permit government officials to invoke patently unconstitutional statutes to avoid liability for their actions.

Charleton-Perkins v. U. of Cincinnati, *__ F3d. __, No. 21-3840 (6th Cir., Jun. 3, 2022).*

A job applicant can suffer a "discrete harm" for Title VII purposes if he was discriminated against by not being hired because of his gender, even if the job opening was then retracted and nobody was hired for the job. He was nonetheless harmed by the unlawful denial regardless of whether someone else was hired for the job position.

Jokich v. Rush Medical Center, *__ F3d. __, No. 21-2691 (7th Cir., Jul. 28, 2022).*

For Title VII purposes, appearing as 1 of 112 persons on a list of potential witnesses does not constitute "participation" in a lawsuit or engagement in protected activity.

GTU v. Chicago Bd. of Ed., *__ F3d. __, No. 20-1167 (7th Cir. Sept. 2, 2021).*

A board of education that based teacher layoffs to declining school enrollment did not violate Title VII although the layoffs disparately impacted African American employees.

Mark One v. Kansas Cty., *__ F3d. __, No. 21-2564 (8th Cir., Aug. 15, 2022).*

A city's "personal net worth" limitation on eligibility for its minority and women's business enterprise city contract program was sufficiently tailored to survive a constitutional challenge as a race and gender-neutral eligibility requirement.

Aquino v. Mayorkas, *__ Fed. Appx. __, No. 20-55783 (9th Cir., Jan. 3, 2022)(Unpub.).*

A Title VII claim of employment discrimination accrues upon awareness of the adverse employment action, not when an employee later becomes aware of facts supporting her claim.

Silbaugh v. Buttigieg, *__ Fed. Appx. __, No. 21-35694 (9th Cir., May 24, 2022)(Unpub.).*

Title VII's participation clause does not protect lying during an internal investigation.

Battino v. Redi-Carpet, *__ Fed. Appx. __, No. 20-4081 (10th Cir., Sept 12, 2021)(Unpub.).*

Under Title VII, employees who have recently been pregnant or given birth remain members of a protected class even if they are not "with child" on the date of their adverse employment action. However, "childcare" does not fall within Title VII's discrimination prohibitions unless it involves medical conditions related to the pregnancy or childbirth.

Reznik v. Incontact, __ *F3d. __, No. 21-4007 (10th Cir., Dec. 1, 2021).*

Title VII protects against retaliation for complaining about a supervisor's ethnic slurs against Filipinos ("monkeys; not human"), whether or not an actual Title VII violation exists because the employees are illegal aliens.

Gibson v. Jetblue, __ *Fed. Appx. __, No. 20-10943 (11th Cir., Nov. 18, 2021)(Unpub.).*

While subjective performance evaluations should not be considered at the *prima facie* stage of a Title VII discrimination case, evaluations based upon objective criteria, such as work attendance, can be considered.

Patterson v. Georgia Pacifica, __ *F3d. __, No. 20-12733 (11th Cir., Jul. 5, 2022).*

The FLSA's "manager exception" does not apply to Title VII's opposition clause, which applies to all employees. There is nothing in this "opposition clause" that allows an employer to retaliate against an employee for opposing an unlawful employment practice of her former employer.

Breiterman v. US Capitol Police, __ *F3d. __, No. 20-5295 (D.C. Cir., Oct. 15, 2021).*

In an employment discrimination case, comparators were not "similar" when the plaintiff, a supervisor, was entrusted with greater authority than the comparator officers and therefore was disciplined more severely for similar workplace violations.

Chambers v. District of Columbia, __ *F3d. __, No. 19-7098 (D.C. Cir., Jun. 3, 2022).*

Title VII does not require an employee alleging discrimination in the denial of a job transfer to show "objectively tangible harm."

9. ADA; REHABILITATION ACT

A. Reasonable Accommodation Cases

Murphy v. New Hanover Cty., __ *Fed. Appx. __, No. 21-1471 (4th Cir., Oct. 8, 2021)(Unpub.).*

Under the ADA, taking less than two (2) months to provide an employee with a "reasonable accommodation" is not a delay sufficient to constitute a denial of an accommodation.

Allen v. USPS, __ *F3d. __, No. 21-30699 (5th Cir., Jul. 1, 2022).*

Under the RA, allowing an employee to take unpaid work breaks to meet his need "not to lift heavy items for more than an hour at a time" was a "reasonable accommodation" even if it effectively cut his pay due to his unpaid breaks.

Buchannon vl. Harris, __ *F3d. __, No. 20-20408 (5th Cir, Oct. 1, 2021).*

The ADA requires jails to provide "reasonable accommodations" for prisoner disabilities. A five (5) week period during which a disabled prisoner was denied grab bars on his toilet and sink, and an accessible bed, is sufficient to allege an ADA "failure to accommodate" claim.

Gamel v. Forum Energy, __ *F3d. __, No. 21-20479 (5th Cir., May 17, 2022).*

The ADA does not require an employer to provide an employee with a "retest" as a "reasonable accommodation" before firing him based upon a confirmed positive drug test result.

Luke v. Lee County, __ *F3d. __, No. 21-50791 (5th Cir., Aug. 19, 2022).*

The denial of a sigh language interpreter to a deaf arrestee during his arrest and criminal court proceedings violated the ADA.

Mechelle v. USA Industries, __ *F3d. __, No. 21-20481 (5th Cir., Apr. 28, 2022).*

An employer who made and largely implemented a termination decision before learning of an employee's disability and ADA accommodation needs did not fail to accommodate those needs.

Blanchet v. Charter Comm., __ *F3d. __, No. 21-5073 (6th Cir., Mar. 8, 2022).*

An employer cannot shield itself from ADA "failure to accommodate" liability by failing to engage in the interactive process and then claiming that an employee's proposed accommodation is "unreasonable."

Swain v. Wormuth, __ *F3d. __, No. 21-2938 (7th Cir., Jul. 25, 2022).*

Under the RA, a 21-month delay in installing requested automatic doors was reasonable and did not constitute a "failure to accommodate."

Schneider v. Harmon, *__ Fed. Appx. __, No. 21-2813 (7th Cir., Jun. 23, 2022)(Unpub.).*

Under the ADA, an employer lawfully denied an employee's accommodation request for a new chair and a "floor coach" that would speak to him periodically to relieve his "feelings of isolation," since the employee failed to provide a doctor's slip requiring such accommodations.

LeBlanc V. McDonnough, *__ F3d. __, No. 21-2965 (8th Cir., Jul. 14, 2022).*

Requested accommodations under the RA are presumptively unreasonable when they would force an employer to violate the provisions of its CBA with the union.

Conlan v. Costco, *__ Fed. Appx. __, No. 21-35517 (9th Cir., Aug. 26, 2022)(Unpub.).*

An employer did not violate the ADA when it refused to allow an employee to bring his service dog, Teddy, to work after the employee's doctor had cleared him to work without restrictions.

Brown v. Austin, *__ F3d. __, No. 20-1049 (10th Cir., Sept. 15, 2021).*

Under the RA, "telework, weekend work, and supervisor reassignment" are not reasonable accommodations. Regular on-site attendance can be an essential job function even if it is not specifically stated in a job description. Government employers need not consider a subjective "normal life" standard in fashioning accommodations under the RA.

Lamm v. James, *__ Fed. Appx. __, No. 19-3167 (10th Cir., Feb. 7, 2022)(Unpub.).*

An employee's ADA accommodation request - - that she be granted indefinite flexibility to work half-days whenever she was experiencing anxiety -- would not enable her to perform the essential functions of her job (regular/predictable attendance) and was unreasonable.

Bender v. DOD, *__ Fed. Appx. __, No. 21-12103 (11th Cir., Aug. 26, 2022)(Unpub.).*

Under the RA, the transfer from an incompatible to a compatible supervisor is not a "reasonable accommodation."

Edwards v. Wellster Medical, *_ Fed. Appx. __, No. 20-13866 (11th Cir., Jul. 29, 2022)(Unpub.).*

Under the ADA, an accommodation is "reasonable" only if it helps an employee perform the essential functions of her job - - not if it is merely "wanted" or would allow an employee to be "more productive."

Thomas v. Cobb Cty. , *__ Fed. Appx. __, No. 21-11325 (11th Cir., Nov. 2, 2021)(Unpub.).*

Under the ADA, when lifting ten (10) pounds is an essential job function, having other employees lift items for you or being transferred to a non-lifting position are not "reasonable accommodation" requests.

Wilson v. Sec. of VA, *__ Fed. Appx. __, No. 10799 (11th Cir., Jun. 3, 2022)(Unpub.).*

Under the RA, an employer's four (4) month delay in addressing an employee's accommodation request could constitute a "failure to accommodate."

B. Other Cases

Harty v. West Point Realty, *__ F3d. __, No. 20-2672 (2nd Cir., Mar. 18, 2022).*

A wheelchair-bound plaintiff did not allege a "concrete injury" when he did not allege that he visited a hotel website with the intention of staying there, but just visited the website to determine whether it complied with ADA regulations.

Williams v. Kincaid, *__ F3d. __, No. 21-2030 (4th Cir., Aug. 16, 2022).*

A claim that "gender dysphoria" does not fall within the ADA's "gender identity disorders not resulting from physical impairments" exception may be subject to judicial relief.

Chupka v. Pflugerville Ind. Sch. Dist., *__ F3d. __, No. 21-50356 (5th Cir., Apr. 8, 2022).*

A school did not violate the ADA when it called a student's parents rather than 911. The ADA does not provide a remedy for medical negligence.

Drerup v. Consolidated, *_ Fed. Appx. _, No. 21-10600 (5th Cir., Aug. 12, 2022)(Unpub.).*

Under the ADA, itchy eyes, congestion, and chest paid do not implicate any major life function.

Gosby v. Apache Ind. Svcs., *__ F3d. __, No. 21-40406 (5th Cir., Apr. 8, 2022).*

A six (6) day gap between an employee's diabetic episode and her termination established a *prima facie* case of discrimination under the ADA due to the temporal proximity of the two events, even if her employment was only short-term in nature.

Harley v. NextGen Healthcare, __ *F3d. __, No. 21-50132 (5th Cir., Jul. 15, 2022).*

Under the ADA, a woman who sleep-walked into another person's hotel room wearing only a bathrobe and was subsequently terminated was not fired because of a disability, but because of what happened when she sleep-walked.

Kennemer v. Parker Cty., __ *Fed. Appx. __, No. 21-10467 (5th Cir., Jul. 8, 2022)(Unpub.).*

The ADA does not permit individual liability.

Polak v. Starilite, __ *F3d. __, No. 21-10549 (5th Cir., Feb. 15, 2022).*

No ADA disability discrimination existed when an at-will employee was fired for a positive random drug test, even if he contended that the test was inaccurate.

Jones v. City of Detroit, __ *F3d. __, No. 21-1055 (6th Cir., Dec. 21, 2021).*

Neither the ADA nor the RA permit a claim of vicarious liability.

Post v. Trinity Healty - MI, __ *F3d. __, No. 21-2844 (6th Cir., Aug. 12, 2022).*

Neither the ADA nor the Civil Rights Act of 1871 allow a conspiracy claim to be brought against someone who is not the plaintiff's employer for its deprivation of a protected employment right.

Sublett v. Masonic Homes, __ *Fed. Appx. __, No. 21-5959 (6th Cir., Jul. 18, 2022)(Unpub.).*

Under the ADA, if an employer honestly believes that an employee has committed the actions which provided its non-discriminatory basis for her termination, this does not establish pretext even if the employer's belief is later shown to be mistaken, trivial, or baseless.

Segal v. Metro. Council, __ *F3d. __, No. 20-3728 (8th Cir., Mar. 28, 2022).*

Evidence that a blind and deaf citizen had experienced 150 episodes of a city bus not properly stopping at designated bus stops may constitute a "denial of service" under the ADA. However, a violation of a DOT regulation is not a *per se* ADA violation.

Arroyo v. Baseline, __ *Fed. Appx. __, No. 20-56151 (9th Cir., Feb. 8, 2022)(Unpub.).*

Title III of the ADA requires a lowered counter for customers in wheelchairs. It does not require a certain amount of clear counter space.

Csutoras v. Paradis H.S., __ *F3d. __, No. 19-17373 (9th Cir., Sept. 7, 2021).*

DOE "guidance letters" do not adjust the legal framework governing private party suits under the ADA or RA.

Ivchenko v. Scottsdale, __ *Fed. Appx. __, No. 20-17463 (9th Cir., Oct. 12, 2021)(Unpub.).*

The ADA does not require officers to refrain from arresting a disabled person when they have probable cause to do so.

LA Alliance v. LA County, __ *F3d. __, Nos. 21-55395/55404/55408 (9th Cir., Sept. 23, 2021).*

Wheelchair-bound persons who cannot traverse city sidewalks because of homeless encampments have standing to bring ADA claims against their municipality.

Perry v. Gottlieb, __ *Fed. Appx. __, No. 21-55513 (9th Cir., Mar. 14, 2022)(Unpub.).*

Nominal damages are not available under Title III of the ADA.

Shields v. Credit One Bank, __ *F3d. __, No. 20-15647 (9th Cir., May 6, 2022).*

Under the ADA, an impairment need not be permanent or long-term in order to "substantially limit" a major life activity – an impairment during a post-surgery period that does not allow a return to work is sufficient.

Where Do We Go v. Caltrans, __ *F3d. __, No. 21-16790 (9th Cir., Apr. 27, 2022).*

The ADA does not require government agencies to provide six (6) months advance notice before clearing homeless encampments to allow the homeless to relocate, when the balance of equities favors a prompt removal of these public health dangers.

Laufer v. Looper, __ *F3d. __, No. 21-1031 (10th Cir., Jan. 5, 2022).*

No Article III standing existed for an "ADA-tester" who filed suit against the owner of a public accommodation when she had no intention of using the accommodation and thus suffered no concrete and particularized injury.

Change v. Midtown __ *Fed. Appx. __, No. 21-11405 (11th Cir., Jun. 29, 2022)(Unpub.).*

Under the ADA, an employer may argue in the alternative, that: (i) it did not fire an employee and (ii) it had a legitimate non-retaliatory reason for the employee's termination.

Karantsalis v. Miami Springs, __ *F3d. __, No. 20-11134 (11th Cir., Nov. 12, 2021).*

Under the ADA and RA, the statute of limitations does not begin to run until a person with MS loses his mobility and ready access to public services, rather than when he first becomes aware of his diagnosis.

Laufer v. Aupair, __ *F3d. __, No. 20-14846 (11th Cir., Mar. 28, 2022).*

A plaintiff had standing to bring an ADA action against a hotel that omitted accessibility-related information from its website due to her "frustration and humiliation," although she had no intention of personally visiting the property. She suffered a "concrete intangible injury."

Perez v. Lake Cty. Rowing, __ *Fed. Appx. __, No. 21-10352 (11th Cir., Oct. 5, 2021)(Unpub.).*

Under Title II of the ADA, a contract between a municipality and a private vendor to provide an after-school service for students does not make the private vendor a "public entity" nor allow the municipality to be sued for the private vendor's actions in providing the contracted-for service.

10. FMLA

Conway v. Conectone Bank, __ *Fed. Appx. __, No. 21-1141 (3rd Cir, Apr. 6, 2022)(Unpub.).*

An employee does not provide his employer with "sufficient FMLA notice" by merely indicating an intention to work at home while caring for his wife - - he must actually request leave or indicate that he is unable to work.

Fanor v. Univ. Hosp., __ *Fed. Appx. __, No. 20-3611 (3rd Cir., Aug. 30, 2022)(Unpub.).*

Under the FMLA, an employer on notice of an employee's prospective leave request may interfere with his FMLA rights by firing him before he can file a formal FMLA leave request.

Pontes v. Rowan Univ., __ *Fed. Appx. __, No. 20-2645 (3d Cir., Sept. 13, 2021)(Unpub.).*

Temporarily withholding pay from an employee, without a concurrent disciplinary action against her, can constitute adverse employment action under the FMLA.

Price v. International Paper, __ *F3d. __, No. 21-30220 (5th Cir., Mar. 10, 2022).*

Under the FMLA, an employer cannot ask an employee to provide a medical release before allowing him to return to work from intermittent leave. A 16-day medical absence is not "continuous leave" *per se* and may be categorized as "intermittent leave."

King v. Steward Trumbull Mem. Hosp., __ *F3d. __, No. 21-3445 (6th Cir., Apr. 7, 2022).*

Under the FMLA, an employer cannot avoid a "failure to accommodate claim" by retroactively approving a period of medical leave for an employee it terminated in the interim, thus denying her the reinstatement rights it otherwise afforded employees on non-FMLA leave.

Nuttall v. Progressive, __ *Fed. Appx. __, No. 21-4199 (6th Cir., Jul. 26, 2022)(Unpub.).*

The failure of an employer to provide an employee with notice of her FMLA rights does not constitute FMLA "interference" when the employee had been provided with this information less than twelve (12) months earlier when she inquired about a different FMLA leave issue.

Ziccarelli v. Dart, __ *F3d. __, No. 19-3435 (7th Cir., June 1, 2022).*

FMLA "interference" need not result in the denial of FMLA rights to be actionable. An employer's discouragement of an employee seeking to take FMLA leave is sufficient.

Starling v. Univ. of Arkansas, __ *F3d. __, No. 21-2974 (8th Cir., Aug. 1, 2022).*

Qualified immunity may be available on a FMLA claim.

Whittington v. Tyson Foods, __ *F3d. __, No. 20-3518 (8th Cir., Dec. 29, 2021).*

Under the FMLA, an employer had a right to ask for a medical recertification when the original certification stated that leave would be taken in 5-day increments, but the employee then took a 16-day leave -- a significant "change in circumstances" justifying the recertification.

Martinez-Patterson v. AT & T, _ *Fed. Appx. _, No. 21-35766 (9th Cir., Jun. 27, 2022)(Unpub.).*

An informational "injury" due to a miscommunication between an employee and HR does not support an FMLA interference claim.

Blake v. Montgomery, __ *Fed. Appx. __, No. 20-14229 (11th Cir., Nov. 8, 2021)(Unpub.).*

Under the FMLA, "firefighter burnout" does not become a "qualifying condition" absent proof that it prevents a firefighter from being able to work for more than three (3) days.

Fonte v. Lee Memorial Health, __ *F3d. __, No. 20-13240 (11th Cir., Nov. 18, 2021)(Unpub.).*

Under the FMLA, close temporal proximity between the exercise of FMLA rights and termination is not sufficient to show causation when an employer contemplated termination before an employee's exercise of such rights.

11. FLSA; COBRA

Simmons v. Trans Express, __ *F3d. __, No. 19-438 (2nd Cir., Oct. 26, 2021).*

The FLSA does not preclude the application of *res judicata* to a wage and hour claim that had already been addressed in state small claims court.

Babin v. Parish, __ *Fed. Appx. __, No. 21-30417 (5th Cir., Aug. 3, 2022)(Unpub.).*

EMTs were entitled to overtime pay under the FLSA for time spent on standby awaiting calls.

Hargrave v. AIM, __ *F3d. __, No. 21-40496 (5th Cir. May 11, 2022).*

Making a person comply with safety protocols and forbidding him from contracting-out his work are not the types of "control" that indicate that he is not an independent contractor but an employee under the FLSA.

Randolph v. E. Baton Rouge Parish Sch., *__ F3d. __, No. 21-30022 (5th Cir., Nov. 30, 2021).*

Under COBRA, placement on unpaid leave is not a "qualifying event." However, retirement is.

Stramaski v. Lawley, *__ F3d. __, No. 20-20607 (5th Cir., Aug. 11, 2022).*

Public officials can be personally liable for FLSA retaliation stemming from an employee's complaint about being paid late.

Peterson v. Nelnet, *__ F3d. __, Nos. 19-1348 & 20-1418 (10th Cir., Oct. 8, 2021).*

Pre-shift booting up your computer and launching software is compensable work time under the FLSA if it is integral and indispensable to your principal job duties.

Compere v. Russet, *__ F3d. __, No. 20-12422 (11th Cir., Mar. 18, 2022).*

Under the FLSA, an employer's 18% "service charge" was not a tip and could be used to offset its wage obligations to tipped employees.

Hernandez v. Plastipak, *__ F3d. __, No. 19-12655 (11th Cir., Oct.13, 2021).*

An employer can pay a salaried employee shift premium and holiday pay under the FLSA without forfeiting its ability to use the "fluctuating workweek" method of overtime calculation.

McKay v. Miami-Dade Cty., *__ F3d. __, No. 20-14044 (11th Cir., Jun. 9, 2022).*

Under the FLSA, an individual who participated in a free 6-month county forensic photography training program that provided her with valuable training but did not promise her future county employment was an "intern," not an "employee."

Nelson v. MLB Hotel Mgr., *__ Fed. Appx. __, No. 21-10181 (11th Cir., July 3, 2022)(Unpub.).*

A service fee is not a tip and can be used to offset the employer's FLSA wage obligations.

12. USERRA

Moss v. United Airlines, __ *F3d. __, No. 20-3246 (7th Cir., Dec. 14, 2021).*

Under USERRA, sick time accrual is not a "seniority-based benefit" that employers must provide to servicemember employees who are absent on military leave.

Belaustegui v. ILWU, __ *F3d. __, No. 24-55434 (9th Cir., Jun. 7, 2022).*

"Hours credits" to measure employee seniority under a CBA are a "benefit of employment" to which a returning servicemember is entitled under USERRA.

Cooks v. Contra Costa Cty., __ *Fed. Appx. __, No. 20-17516 (9th Cir., Nov. 23, 2021)(Unpub.).*

USERRA does not cover acts of discrimination that do not have a person's military background as a motivating factor.

13. ADEA

Estle v. IBM, __ *F3d. __, No. 20-3372 (2nd Cir., Jan. 20, 2022).*

Severance agreement clauses under which an employee agrees not to join any collective actions against her employee address procedural, not substantive, rights and do not require special disclosures under the ADEA to be valid.

Fowler v. AT&T, __ *F3d. __, No. 20-2247 (3rd Cir., Nov. 26, 2021).*

An employee may not bring ADEA age claims connected to a job when, by her own admission, she was not qualified for the job.

James v. AC Moore, __ *Fed. Appx. __, No. 21-1733 (3rd Cir., Feb. 3, 2022)(Unpub.).*

Under the ADEA, a seven-month gap between the filing of an internal complaint and an alleged act of retaliation is not "unusually suggestive" of an adverse employment action.

Barr v. Stripes, __ *F3d. __, No. 21-20278 (5the Cir., Apr. 7, 2022).*

Under the ADEA, a plaintiff does not assert a claim within the statutory 90-day period after receipt of a EEOC right-to-sue letter by filing a state court complaint alleging employment discrimination.

Merhulik v. Weltman, __ *Fed. Appx. __, No. 21-3773 (6th Cir., May 19, 2022)(Unpub.).*

Under the ADEA, the fact that an older employee meets the minimum requirements of an open job position does not alone show pretext, as an employer can legitimately search for someone with higher qualifications.

Reinebold v. Bruce, __ *F3d. __, No. 21-1092 (7th Cir., Nov. 18, 2021).*

Under the ADEA, an employer need not score telephone job candidate interviews according to only objective criteria.

Boden v. Nutrien AG, __ *Fed. Appx. __, No. 21-35100 (9th Cir., Dec. 17, 2021)(Unpub.).*

The court declined to apply the "same-actor" inference to an ADEA claim when the supervisor who hired an employee later made statements directly expressing a discriminatory attitude towards him as being "too old" and his need to find a "younger" guy.

14. FHA; PUBLIC HOUSING

Phillips v. Acacia on the Green, _ *Fed. Appx. _, No. 20-4182 (6th Cir., May 26, 2022)(Unpub.).*

A landlord is not required under the Fair Housing Act to engage in an "interactive process" with a tenant to discuss potential accommodations regarding his disability.

301 LLC v. Minneapolis, __ *F3d. __, No. 20-3493 (8th Cir., Mar. 14, 2022).*

The court refused to enjoin a city ordinance as an unlawful Taking and Due Process Clause violation when it regulated the requirements for denying tenant applications for rental housing. The ordinance did not constitute a "physical taking" by requiring landlords to rent to otherwise unqualified individuals, but only restricted their ability to use their property. As such, the ordinance survived a "rational basis" review because it served a legitimate government objective of ensuring that citizens have access to affordable housing.

Hicks v. Skaar, __ *Fed. Appx. __, No. 20-35918 (9th Cir., Sept. 23, 2021)(Unpub.).*

No FHA violation resulted from the refusal to renew the lease of a tenant who made repeated, unsubstantiated, and racially tinged complaints against her neighbor.

Oakland v. Wells Fargo, __ *F3d. __, No. 19-15169 (9th Cir., Sept. 28, 2021).*

Oakland's FHA claims against a bank for allegedly discriminatory lending practices were dismissed. The FHA does not support proximate cause for injuries (lost property tax revenue) occurred by persons beyond the first step of the causal chain.

SW Fair Housing v. Maricopa Water, __ *F3d. __, No. 20-15506 (9th Cir., Nov. 12, 2021).*

A water improvement district's policy increasing to $180 the refundable security deposit required before it would provide water service to public housing customers, while requiring non-public housing customers to post a $55 security deposit, had a disparate impact on African Americans, Native Americans, and single mothers. However, it served the district's legitimate business interests in protecting itself from unrecovered delinquent water bills, and no equally effective but less discriminatory alternative was available. As such, the policy did not violate the FHA's prohibition against disparate impact discrimination in housing.

Sailboat Bend v. Ft. Lauderdale, __ *F3d. __, No. 20-13444 (11th Cir., Aug. 26, 2022).*

A zoning ordinance that permits three (3) unrelated disabled persons to live together in a residential district so long as they comply with additional requirements not required of non-disabled residential district residents does not violate the FHA because it treats such disabled persons more favorably by allowing them, but not similarly situated non-disabled persons, to live in a residential district.

15. RLUIPA; RFRA

Green Haven v. NYC Dept. of Corrections, __ *F3d. __, No. 20-18 (2nd Cir., Oct., 18, 2021).*

A prison did not violate RLUIPA or the First Amendment by re-scheduling Quaker meetings from Saturday to a weekday, as Saturdays held no significant religious meaning to them. The fact that some un-incarcerated attendees had other commitments during the work week did not create a substantial burden on free exercise rights.

Sabir v. Williams, __ *F3d. __, No. 19-3575 (2nd Cir. Jun.17, 202-2).*

Denying a Muslim inmate the ability to engage in group prayer, without justification or compelling interest, violates RFRA.

St. Paul's Foundation v. Ives, __ *F3d. __, No. 21-1463 (1st Cir., Mar. 24, 2022).*

A municipality did not violate RLUIPA by refusing to reinstate a building permit until it could ensure that the person seeking the reinstatement was not constructing a project that involved a use not reflected in the plans submitted to obtain the permit.

Victory Temple v. Prince George's County, __ *F3d. __, No. 20-2125 (4th Cir., Nov. 3, 2021).*

Declaratory and injunctive relief was granted to a temple under RLUIPA when a county denied its application for a water and sewer category change due to "traffic safety" concerns. Assuming that "traffic safety" is a compelling governmental interest, the county failed to show that it had considered less restrictive means of satisfying its safety concerns, such as roadway improvements or additional traffic signs, before denying the temple's application.

Muhammad v. Wiles, __ *Fed. Appx. __, No. 20-50279 (5th Cir., Jan. 7, 2022)(Unpub.).*

Under RLUIPA, a prisoner who was offered a kosher meal, but demanded a more particularized menu meeting his understanding of the religious requirements of such a meal, did not state a claim warranting injunctive relief.

Ackerman v. Washington, __ *F3d. __, No. 20-1363 (6th Cir., Oct. 12, 2021).*

A prison policy that provided a vegan meal for all special religious diet requests violated RLUIPA by substantially burdening certain Jewish prisoners in exercising their religious convictions requiring a meal with Kosher meat and milk.

Al Saud v. Days, __ *F3d. __, No. 21-15089 (9th Cir., Jun. 8, 2022).*

Under RLUIPA, a prison need not house Muslim prisoners only with other Muslims, because to group prisoners based upon their religious beliefs and practices would likely violate the Equal Protection Clause. Avoiding RLUIPA and Equal Protection Clause liability is a compelling government interest and denying this request was the least restrictive means of doing so.

Austin v. Brown, __ *Fed. Appx. __, No. 20-50628 (9th Cir., May 16, 2022)(Unpub.).*

Cancelling a prison chapel's services for a few weeks did not constitute a *per se* "substantial burden" on a prisoner's religious exercise under RLUIPA or the First Amendment.

Bland v. Kernan, __ *Fed. Appx. __, No. 20-16565 (9th Cir., Sept. 21, 2021)(Unpub.).*

An inmate's RLUIPA claim fails without a showing that his denial of pornographic materials substantially burdened his religious practice, since the prison's policy furthered a legitimate penological interest.

Johnson v. Baker, __ *F3d. __, No. 20-17202 (9th Cir., Jan. 26, 2022).*

RLUIPA prohibits a prison from denying a prisoner a bit of scented oil for his prayer rituals.

Jones v. Slade, __ *F3d. __, No. 20-15642 (9th Cir., Jan. 24, 2022).*

A prison may violate RLUIPA by not allowing a prisoner to exercise his firmly held belief that reading texts by Elijah Muhammad is required by his faith.

New Harvest v. City of Salinas, __ *F3d. __, No. 20-16159 (9th Cir., Mar. 22, 2022).*

Under RLUIPA, a city land use regulation that prohibits religious services to be held on the first floor of buildings within a section of its downtown but allows theatres to so operate is facially invalid in treating religious assemblies on less than equal terms with non-religious assemblies.

US v. Bowman, __ *Fed. Appx. __, No. 20-30175 (9th Cir, May 23, 2022)(Unpub.).*

The RFRA does not permit a person to refuse to pay taxes because of his religious belief that he cannot contribute money for abortions, nor require an accommodation be provided to him.

Dorman v. Chaplains Ofc BSO, __ *F3d. __, No. 20-10770 (11th Cir. Jun. 10, 2022).*

A jail's requirement that a prisoner register forty-five (45) days in advance of an event in order to participate therein did not constitute a substantial burden on the prisoner's exercise of his faith under RLUIPA. Moreover, if a claim fails under RLUIPA, with its heightened standards for governmental restrictions on religious exercise, it necessarily fails under the First Amendment.

US v. O'Neill, __ *Fed. Appx. __, No. 20-13996 (11th Cir., Jun. 6, 2022)(Unpub.).*

Under RFRA, plaintiffs who illegally entered and vandalized a naval base as a "religious protest against nuclear weapons" were not entitled to have their indictments dismissed and to be permitted to practice "symbolic denuclearization" in a designated area on the base as a "less restrictive alternative," in light of the compelling governmental interest in base security.

16. SCHOOLS

A. IDEA Cases

D.D. V. LA Unif. Sch. Dist., __ *F3d. __, No. 19-55810 (9th Cir., Nov. 19, 2021).*

A student must exhaust the IDEA administrative process when alleging a FAPE denial even when seeking compensatory damages for emotional distress not available under the IDEA.

J.N. v. Jefferson Cty. Bd. of Educ., __ *F3d. __, No. 1914847 (11th Cir., Sept. 10, 2021).*

Under the IDEA, compensatory education is not an automatic remedy for a child-fund violation.

S.S. v. Cobb Cty., __ *F3d. __, No. 21-11048 (11th Cir., Aug. 5, 2022).*

Court remand orders to administrative agencies are not final and appealable under the IDEA.

B. Title IX Cases

Vengalattore v. Cornell Univ., __ *F3d. __, No. 20-1514 (2nd Cir., June 2, 2022).*

Title IX allows a private right of action for intentional gender-based discrimination against a faculty member.

Doe v. Princeton Univ., __ *F3d. __, No. 21-1458 (3rd Cir., Mar. 31, 2022).*

A university's encouragement of a female student to file a Title IX complaint against her boyfriend, while encouraging the boyfriend to seek mental health services rather than take his complaints against the girlfriend seriously, may violate Title IX, especially if the university was pressured by the DOE to protect female students at the expense of male students.

B.R. v. F.C.S.B., *__ F3d. __, No. 21-1005 (4th Cir., Nov. 2, 2022).*

In a Title IX suit claiming sexual abuse to a middle school child, the fact that the plaintiff violated FRCP 10(a) by using a pseudonym rather than her real name in her complaint was not relevant as regards the court's subject matter jurisdiction.

Peltier v. Charter Day School, *__ F3d. __, Nos. 20-1001 & 20-1023 (4th Cir., Jun. 14, 2022).*

A school imposing skirt rules for girls based upon gender stereotypes violated the Equal Protection Clause and are also subject to review under Title IX's anti-discrimination provisions.

Ruvalcaba v. Angleton Ind. Sch. Dist., *__ F3d. __, No. 20-40491 (5th Cir., Feb. 4, 2022).*

A sexist statement does not establish a denial of equal treatment. Title IX does not impose liability on school administrators based upon their knowledge of student remarks merely tinged with sexual connotations.

Arocho v. Ohio U., *__ Fed. Appx. __, No. 20-4239 (6th Cir., Mar. 18, 2022)(Unpub.).*

A non-student may bring a Title IX claim against a school if she was excluded from or discriminated against as regards one of its "education programs or activities."

Doe v. Nashville, *__ F3d. __, Nos. 20-6255 & 20-6228 (6th Cir., May 19, 2022).*

Under Title IX, a student can sue a school before she herself is sexually harassed if she can show that the school's deliberate indifference to earlier acts of student-on-student sexual harassment caused her to home school or face further harassment. Due to differing levels of oversight, there is a distinction between college and high school in student-on-student harassment claims.

Wamer v. U. of Toledo, *__ F3d. __, No. 20-4219 (6th Cir., Mar. 6, 2022).*

A student can satisfy Title IX's "causation" requirement by showing that, after her school's unreasonable response to her complaint about inappropriate sexual conduct by a teacher, she experienced more harassment or the objectively reasonable fear of more harassment that caused her to take specific reasonable avoidance steps depriving her of educational opportunities available to other students.

C.S. v. Madison Metro Sch. Dist., __ *F3d. __, No. 17-1521 (7th Cir., May 10, 2022).*

Under Title IX, a school administrator must act only after acquiring actual notice of conduct rising to the level of sex discrimination. Liability for his inaction cannot be based solely upon his knowledge of the risk of such misconduct.

Barlow v. Washington, __ *Fed. Appx. __, No. 21-35397 (9th Cir., Jun. 23, 2022)(Unpub.).*

In a "pre-assault claim" under Title IX, the court focuses upon whether an educational institution maintained an official or *de facto* policy of deliberate indifference to reports or an obvious risk of sexual misconduct. There is no requirement that the school have actual knowledge of a specific incident of sexual misconduct before liability attaches.

Brown v. Arizona, __ *F3d. __, No. 20-15568 (9th Cir., Jan. 25, 2022).*

A university was not liable under Title IX when one of its students was harassed by another student in an off-campus apartment, even if the harasser needed school permission to live off-campus and was on scholarship. Title IX's "control over contact" requirement was not met.

C. Other Cases

A.C. v. McKee, __ *F3d. __, No. 20-2082 (1st Cir., Jan. 11, 2022).*

The failure of a public school system to provide students with the civics education needed for them to participate effectively and intelligently in our open political system does not state a claim for the violation of the students' fundamental constitutional rights under the Fourteenth Amendment or under Article IV, Section 4 of the Constitution.

Doe v. Hopkinton Pub. Sch., __ *F3d. __, No. 20-1950 (1st Cir., Nov. 19, 2021).*

Students' Snap-Chat speech that actively encouraged direct or face-to-face bullying conduct towards another student is not protected by the First Amendment since it encouraged bullying or an environment in which bullying is acceptable and occurred, even if the students did not expect their messages to be viewed by the target of the bullying.

H.U. v. Northampton, __ *Fed. Appx. __, No. 20-2996 (3rd Cir., Oct. 15, 2021)(Unpub.).*

A school district was not liable under a substantive due process "state created danger" theory when a special needs bus monitor's approval of a female student's request to change bus seats resulted in her being sexually assaulted by her new seat partner. The monitor had no knowledge of the offending student's proclivity to commit sexual assaults and thus the risk of serious harm to the female student was not reasonably foreseeable and his approval of the seat change did not "shock the conscience." That special needs students present an abstract risk of such problems is insufficient to place liability on a school district for the same.

In Re: Aleckna, __ *F3d. __, No. 20-1309 (3rd Cir., Sept. 9, 2021)* A university's refusal to provide a student who had filed a pending Chapter 13 bankruptcy petition with a copy of her transcript until she satisfied the "financial hold" on her account violated the Bankruptcy Code's "automatic stay" provisions.

James v. Cleveland Sch. Dist., __ *F3d. __, No. 21-60688 (5th Cir., Aug. 17, 2022).*

A student has no Fourteenth Amendment property interest in her class ranking.

Yarbrough v. Santa Fe Ind. Sch. Dist., __ *F3d. __, No. 21-40519 (5th Cir., Mar. 25, 2022).*

A high school football player did not have his Fourteenth Amendment "right to bodily integrity" violated when he suffered a concussion at football practice. Football does not present such an immediate or specific danger that schools and coaches can be held liable for player injuries.

N.J. v. Sonnabend, __ *F3d. __, No. 21-1959 (7th Cir., Jun. 15, 2022).*

A student's free speech claim that arose after he was forbidden to wear t-shirts with images of guns to school must be reviewed under the *Tinker* test, not the less burdensome test used to review speech restrictions in a non-public forum.

Doe v. Aberdeen Sch. Dist., __ *F3d. __, No. 21-3269 (8th Cir., Aug. 1, 2022).*

Secluding special education students in a small room or "calm-down corner" constitutes a seizure under the Fourth Amendment.

IFCA v. San Jose Unif. Sch. Dist., *__ F3d. __, No. 22-15827 (9th Cir., Aug. 29, 2022).*

A school district was enjoined from decertifying the Fellowship of Christian Athletes as an official student club due to its likely selective enforcement under the Free Exercise Clause.

Sabra v. Maricopa Cty. Comm. College, *__ F3d. __, No. 20-16774 (9th Cir., Aug. 10, 2022).*

A community college may have violated the First Amendment by requiring a Muslim student to answer a true of false question in a manner that violates his religious beliefs or risks a bad grade.

C1G v. Siegfried, *__ F3d. __, No. 20-1320 (10th Cir, Jul. 6, 2022).*

A student's off-campus, outside school hours social media posting of a crude joke about the Holocaust, *sans* any threats, weapons, or speech directed toward the school or students, is arguably protected by the First Amendment even if the school considered it "hate speech." The speech was not harassing or contextually hateful and the school could not stand *in loco parentis*.

Thompson v. Ragland, *__ F3d. __, No. 21-1143 (10th Cir., Jan. 26, 2022).*

A school official may have violated a student's First Amendment free speech rights when it forbade him from contacting a professor or discussing his class conduct with other students.

Speech First v. Cartwright, *__ F3d. __, No. 21-12583 (11th Cir., May 2, 2022).*

The enjoining of a school "harassment" policy was upheld pending a First Amendment challenge because it made a reasonable student fearful of expressing unpopular viewpoints, covered any verbal, written, and other conduct that may be "humiliating," as well as "encouraging" or "not intervening to stop" expressions that "unreasonably alter" another student's educational experience. It contained none of the narrow tailoring required under a "strict scrutiny" analysis.

T.R. v. Lamar County, *__ F3d. __, No. 21-12424 (11th Cir., Feb. 4, 2022).*

Strip-searching a female student twice, once in a room with an uncovered window, violated her clearly established constitutional right and the offending school officials were not entitled to qualified immunity against the student's Fourth Amendment claim.

17. COMMERCE CLAUSE; TRANSPORTATION

Hignell-Stark v. New Orleans, __ *F3d. __, No. 21-30643 (5th Cir., Aug. 22, 2022).*

A city issued short-term rental licenses to property owners but subsequently amended its ordinance to only allow STR's in residential neighborhoods in a property owner's primary residence. This new residency requirement violated the Dormant Commerce Clause because it discriminated against interstate commerce and out-of-state property owners.

Union Pacific RR v. City of Palestine, __ *F3d. __, No. 21-40445 (5th Cir., Jul. 22, 2022).*

A contractual agreement between a municipality and a railroad company that required the latter to keep its railroad car repair shop and freight claims office in the city "forever" is preempted by the Interstate Commerce Commission Termination Act.

Paul's v. Goodhue Cty., __ *F3d. __, No. 21-2614 (8th Cir., May 27, 2022).*

A municipal ordinance requiring all garbage collected in the city to be deposited at a city plant, where it was converted into fuel, does not implicate the Dormant Commerce Clause even if it may indirectly affect commerce and increase costs for out-of-state garbage haulers.

BNSF v. Hiett, __ *F3d. __, No. 21-6000 (10th Cir., Jan. 11, 2022).*

Municipal officials could not fine railroad operators under a state "blocked crossing" law, because that law as pre-empted by the ICCTA.

Whiteru v. Washington METRO, __ *F3d. __, No. 20-7087 (DC Cir., Feb. 11, 2022).*

A common carrier cannot avoid liability for negligence if it knows that a passenger is injured, does not render first aid, and the passenger's injuries are exacerbated as a result - - even if the passenger's own actions caused the injuries.

18. JAILS; PRISONS; EIGHTH AMENDMENT

Reynolds v. Quiros, __ *F3d. __, No. 20-1158 (2nd Cir., Feb. 3, 2022).*

A prison rule limiting inmate access to "sexually explicit material" not "literary, artistic, educational, or scientific" in nature served valid penological purposes and was not violative of the First Amendment.

Bailey v. Kauffman, __ *Fed. Appx. __, No. 21-3357 (3rd Cir., Apr. 14, 2022)(Unpub.).*

No Fourteenth Amendment liberty interest was implicated when an inmate was placed in disciplinary custody for 45 days and had his mother's visitation rights suspended after she sent him a greeting card soaked in an illegal substance.

Rivera v. Monko, __ *F3d. __, No. 20-2531 (3rd Cir., Jun. 15, 2022).*

The court announces that, going forward, a prisoner's right to access basic legal materials in a law library does not end when he files a lawsuit contesting the conditions of his confinement.

Simpson v. Horning, __ *F3d. __, No. 20-3358 (3rd Cir., Dec. 9, 2021).*

No Eighth Amendment violation arose when a prison required an inmate with "anxiety issues" to eat his meals in the prison dining hall and refused his request to eat outside the hall.

US v. Jarmon, __ *F3d. __, Nos. 19-1652 & 20-1315 (3rd Cir., Sept. 15, 2021).*

The Court declined an invitation to expand the Fourth Amendment's protections to prison calls, since prisoners have no reasonable expectation of privacy during their incarceration.

Zamichieli v. PA DOC, __ *Fed. Appx. __, No. 19-3305 (3rd Cir., Mar. 14, 2022).(Unpub.).*

The Eighth Amendment may be violated when a known epileptic inmate is assigned a top bunk, on a "deliberate indifference" theory.

Brantner v. Freestone Cty Sheriff's Ofc., __ *F3d. __, No. 20-50528 (5th Cir., Jun. 9, 2022).*

Prisoners do not have a constitutionally protected right to a law library or legal assistance while locked in a jail.

Cortez-Burlingame v. Galveston County, __ *F3d. __, No. 20-40540 (5th Cir., Apr. 14, 2022).*

A policy of allowing inmates a lower bunk only with a doctor's slip is not deliberately indifferent and serves a legitimate governmental interest in keeping such bunks available when needed.

Hines v. Marshall, __ *Fed. Appx. __, No. 20-40444 (5th Cir., Oct. 12, 2021)(Unpub).*

A prisoner did not state a valid retaliation claim when he was temporarily deprived of several pieces of property and his tennis shoes, as these were *de minimus* injuries insufficient to deter a person of ordinary firmness from further exercising his constitutional rights.

Salas v. City of Galena Park, __ *F3d. __, Nos. 21-20170 & 21-20333 (5th Cir., May 11, 2022).*

Jail officers who knew that a pre-trial detainee was suicidal but ordered pizza and watched TV instead of making their rounds, while he hung himself in his cell, may have violated the detainee's constitutional rights by their complete indifference to his known risk of suicide.

Sims v. Griffin, __ *F3d. __, No. 21-40457 (5th Cir., Jun.1, 2022).*

Jail officers, knowing that a prisoner has ingested a bag of narcotics, yet failing to take action despite the prisoner's 62 cries for help over a period of 34 hours - - one even commenting that "I should have looked, but, you know, oh well" - - were denied qualified immunity against a claim by the prisoner's estate of deliberate indifference to the prisoner's serious medical needs.

Morgan v. Wayne County, __ *F3d. __, Nos. 21-1411 & 21-1450 (6th Cir., May 3, 2022).*

A county is not required by the Eighth Amendment to house male and female inmates who suffer from mental illnesses separately. Standing alone, the lack of such a policy does not show a deliberate indifference to female inmate vulnerabilities.

Steinke v. Krueger, __ *Fed. Appx. __, No. 21-2049 (7th Cir., Nov. 18, 2021)(Unpub.).*

Correctional officers were not liable under the Eighth Amendment for deliberate indifference when they refused an inmate's request, because they were not medical personnel, and the inmate had no medical restrictions in his profile folder.

Manning v. Ryan, __ *F3d. __, No. 20-3490 (8th Cir., Sept. 20, 2021).*

The court held that qualified immunity was appropriate in a case where a prison policy prevented a pre-trial detainee from seeing his own minor children but noted that the time was right to establish a rule that prison officials who permanently or arbitrarily prohibit prisoner visits with family members violate the prisoner's limited Constitutional right to intimate association.

Hoffman v. Preston, __ *F3d. __, No. 20-15396 (9th Cir., Feb. 28, 2022).*

Agreeing to a "modest extension" of *Bivens*, the court held that a guard who allegedly labeled a prisoner a "snitch," offered a "bounty" for assaulting him, and then allowed an assault to happen could be sued for an Eighth Amendment violation.

Hughes v. Rodriguez, __ *F3d. __, No. 17144 (9th Cir., Apr. 21, 2022).*

The Eighth Amendment applies to convicted prisoners both inside and outside the prison walls.

Shorter v. Baca, __ *Fed. Appx. __, No. 19-56182 (9th Cir., Oct. 26, 2021)(Unpub.).*

Under the Fourteenth Amendment, jail officials have a duty to provide prisoners with adequate sanitation and failed to do so when a prisoner was only provided 3 showers in 32 days.

Culley v. Alabama, __ *Fed. Appx. __, Nos. 21-13805/13484 (11th Cir., Jul. 11, 2022)(Unpub.).*

The Eighth Amendment's prohibition against "excessive fines" does not apply to the temporary retention of property during litigation. Only after property is permanently forfeited and ownership changes does their forfeiture become challengeable as an excessive fine.

Rodriguez v. Burnside, __ *F3d. __, No. 20-11218 (11th Cir., Jun. 30, 2022).*

Prison regulations allowing three (3) showers per week and allowing men to go to shower dressed only in boxers and slippers do not unnecessarily burden a Muslim inmate's religious practices because they are reasonably related to legitimate penological interests.

19. LABOR; UNIONS; WARN ACT

Easom v. US Well Svcs., __ *F3d. __, No. 21-20202 (5th Cir., Jun. 15, 2022).*

COVID-19 does not qualify as a "national disaster" under the WARN Act's "natural disaster" notice exception.

AFGE v. FLRA, __ *F3d. __, No. 20-1398 (DC. Cir., Jan. 28, 2022).*

The court vacates a FLRA ruling that "zipper clauses" (forbidding mid-term CBA bargaining on subject not covered by the parties' labor agreement) are a mandatory subject of bargaining.

Constellium v. NLRB, __ *F3d. __, No. 21-1191 (D.C. Cir., Aug. 9, 2022).*

An employer may defend against allegations that its discipline of an employee engaged in protected activity violated the NLRA by demonstrating that its motive was an adherence to anti-discrimination laws.

20. TELECOMMUNICATIONS; ENVIRONMENTAL

Gould v. Livingston Cty., _ *Fed. Appx. _, Nos. 20-2257/2267 (6th Cir., May 10, 2022)(Unpub.).*

Under CERCLA, a county road commission could be apportioned 5% of the clean-up of a site adjoining its storage facility even though the adjoining property owner had been found solely responsible for a toxic spill, since the Commission's recalcitrance and unreasonable delays unnecessarily delayed the adjoining landowner's remediation efforts.

S. Side Quarry v. Louisville & Jefferson, __ *F3d. __, No. 21-5389 (6th Cir., Mar. 11, 2022).*

A municipal sewer district does not need a permit to "discharge a pollutant" when it diverts a creek into a retaining basin and then back into the same creek, because the waters from and back into the creek are not meaningfully distinct, and thus no CWA "discharge" occurs.

CA River Watch v. City of Vacaville, __ *F3d. __, No. 20-16605 (9th Cir., Sept. 28, 2021).*

Under the Resource Conservation and Recovery Act, "transportation" means movement in direct connection with the waste disposal process, such as shipping waste to hazardous waste treatment, storage, or disposal facilities, rather than the mere conveyance of hazardous waste. Therefore, the fact that hexavalent chromium, a hazardous substance, seeped through groundwater into a city's wells, and was then incidentally carried through its pipes when it pumped water, does not establish that the city should be held liable for the "transportation" of this waste.

Inland Empire Waterkeeper v. Corona Clay, _ *F3d. _, No. 20-55420 (9th Cir., Sept. 20, 2021).*

Under the Clean Water Act, if the required discharge of pollutants into waters of the United States has occurred, a civilian suit can be premised upon ongoing or reasonably expected water discharge monitoring or reporting violations.

Augusta County EMSD v. FCC, __ *F3d. __, No. 19-15072 (11th Cir., Oct. 26, 2021).*

The "911 Fee Parity Provision" of the New and Emerging Technologies 911 Improvement Act does not allow local governments to charge VOIP providers more than non-VOIP providers for the same amount of burden placed on their 911 systems.

Children's Health defense v.FCC, __ *F3d. __, No. 21-1075 (DC Cir., Feb. 11, 2022).*

The court upheld the right of the FCC to install on private property, with the property owner's consent, antennas that act as "hub sites" and relay service to other locations, regardless of state or local restrictions or citizen concerns about the health effects of increased radio frequency exposure.

21. PROCEDURAL; EVIDENTIARY

Hollis v. Magnusson, __ *F3d. __, No. 20-1160 (1st Cir., Apr. 19, 2022).*

No *Batson* violation occurred by the striking of an African American juror with an 11th grade education when all the other jurors had at least a 12th grade education.

US v. Agramonte-Quezada, __ *F3d. __, No. 20-1346 (1st Cir., Mar. 25, 2022).*

A court did not err in admitting evidence in a drug smuggling trial that a drug-sniffing dog had alerted to the defendant's vehicle 18 days prior to the date at issue as "other acts" evidence under Fed. R. Evid. 404(b).

US v. Pimentel, __ *F3d. __, No. 20-2024 (1st Cir., Feb. 17, 2022).*

The "good faith" exception to the "exclusionary rule." in a case where officers searched the second and third floors of an apartment building pursuant to a warrant that only mentioned the second floor, can apply to errors by searching officers as well as errors by the warrant's issuing magistrate. Here, although the officers acted outside of the scope of the warrant, their belief that it covered the third floor was objectively reasonable under the circumstances.

NRDC v. EPA, __ *F3d. __, No. 20-422 (2nd Cir., Nov. 29, 2021).*

The "deliberative process privilege" applies to otherwise deliberative records that relate to and precede a decision about how to communicate an agency's policies to the public.

US v. Rivera, __ *F3d. __, No. 17-59 (2nd Cir., Jul. 28, 2022).*

When a defendant has been found competent to stand trial, a judge need not, *sua sponte*, conduct further competency hearings or order further psychiatric exams before permitting the defendant to proceed *pro se*.

Taylor v. Medtronic, __ *F3d. __, No. 20-742 (2nd Cir., Sept. 20, 2021).*

The removal statute (28 USC §1446(b)(2)(B)) does not allow a defendant to consent to her removal of a civil action from state to federal court after the 30-day deadline for removal lapses.

US v. Yalincak, __ *F3d. __, No. 20-1540 (2nd Cir., Mar. 29, 2022).*

District courts can use a hybrid approach to craft restitution orders that apportion liability amongst multiple defendants and hold defendants jointly and severally liable for portions of the restitution amount. Therefore, a such a defendant's obligations are not satisfied until she has paid as much as she has been ordered to pay or the victim has been made whole.

Village Green v. Town of Islip, __ *F3d. __, No. 19-3353 (2nd Cir., Aug. 5, 2022).*

Federal suits in a land-use context are generally not ripe for adjudication until the landowner receives a final decision on her land-use application. However, it can ripen without a final decision when a municipality uses unfair and repetitive procedures to avoid a final decision - - such as denying an application without a final vote or further public proceedings.

Buston v. Schemp, __ *F3d. __, Nos. 19-2494 & 18-1174 (3rd Cir., Feb. 10, 2022).*

A magistrate judge cannot dismiss a complaint before the defendant is served and consents to magistrate judge jurisdiction.

Hall v. Nisbit, __ *Fed. Appx. __, No. 21-2139 (3rd Cir., Feb. 11, 2022)(Unpub.).*

A *Heck* bar only applies to existing criminal convictions present at the time a Section 1983 suit would normally accrue, not to "anticipated" convictions.

Pinkney v. Meadville, PA, __ *F3d. __, No. 21-1051 (3rd Cir., May 25, 2022).*

Although FRCP, Rule 12(b)(6) allows courts to consider only the allegations contained in a pleading, this also allows the consideration of documents integral to or explicitly relied upon in the pleading.

Russomanno v. Dugan, __ *Fed. Appx. __, No. 21-2004 (3rd Cir., Sept. 8, 2021)(Unpub.).*

Newly discovered evidence can constitute an exception to *res judicata* only when such evidence had been fraudulently concealed or could not have been discovered with due diligence.

US v. Dennis, __ *F3d. __, No. 19-4494 (4th Cir., Dec. 3, 2021).*

Striking one of three jurors who have dark skin did not trigger a *Batson* challenge.

Washam v. Superintendent, __ *Fed. Appx. __, No. 21-3073 (3rd Cir., May 4, 2022)(Unpub.).*

The dismissal of a federal complaint pursuant to FRCP, Rule 8 was affirmed when it sought to force prison employees to give an inmate legal title to his jail cell under theories of equitable conversion and condemnation.

Britt v. DeJoy, __ *F3d. __, No. 20-1620 (4th Cir., Aug. 17, 2022).*

When a district court dismisses a claim without leave to amend, that order is appealable without need to evaluate the grounds for dismissal or speculate as to what the court meant by stating "without prejudice" in its order.

US v. Dhavamari, __ *Fed. Appx. __, No. 20-4306 (4th Cir., Oct. 14, 2021)(Unpub.).*

Under the "manufactured jurisdiction doctrine," officers cannot change a meeting location in another state solely to create federal jurisdiction.

US v. Kerrera-Pagoda, __ *F3d. __, No. 20-6194 (4th Cir., Sept. 16, 2021).*

An alien has no due process right to be advised of his eligibility for discretionary relief during his removal hearing.

Carr v. City of Spring Valley Village, __ *F3d. __, No. 19-20373 (5th Cir., May 17, 2022).*

A policymaker who defends an officer's conduct later found to be unlawful does not thereby incur liability on behalf of his municipality unless he knowingly ratifies the unconstitutional conduct.

Green v. DeMoss, __ *Fed. Appx. __, No. 21-30044 (5th Cir., Aug. 29, 2022)(Unpub.).*

"Cut and paste" identical allegations against several defendants are not inherently improper.

Jackson v. Wilson, __ *Fed. Appx. __, No. 21-30142 (5th Cir., Jul. 5, 2022)(Unpub.).*

There is no entitlement to a default judgment as a matter of right.

Miller v. Dunn, __ *F3d. __, No. 20-11054 (5th Cir., Jun. 2, 2022).*

Rooker-Feldman does not apply when a state case is pending appeal when a federal suit is filed.

Ueckert v. Guerra, __ *F3d. __, No. 22-40263 (5th Cir., Jun. 27, 2022).*

A bench ruling can be effective without a written order, and triggers appeal deadlines.

Carr v. Louisville-Jefferson Cty., __ *F3d. __, No. 21-5736 (6th Cir., Jun. 16, 2022).*

Heck does not impose a prerequisite of actual innocence in order to seek Section 1983 relief, and a convicted murderer who received a full pardon from the governor could thereafter still proceed with her Section 1983 claims of coerced false statements and evidence fabrication.

US v. Russell, __ *F3d. __, No. 20-3756 (6th Cir., Feb. 16, 2022).*

The government's failure to raise a "standing" issue in District Court constituted a forfeiture, not a waiver, of the right to raise that issue on appeal.

In re: Cook Medical, __ *F3d. __, Nos. 20-3279/3280/3281/3282 (7th Cir., Feb. 28, 2022).*

An attorney's failure to respond to a motion to dismiss or seek reconsideration for over a year because "new filtering rules" on his e-mail inbox sent the court's dismissal orders to his junk folder is not an "exceptional circumstance" justifying relief under FRCP, Rule 60(b).

US v. Lovies, __ *F3d. __, No.20-2463 (7th Cir., Oct. 21, 2021).*

A plaintiff's *Batson* challenge failed against the actions of a prosecutor who exercised a peremptory challenge to remove a prospective juror who kept falling asleep.

Klein v. Steinkamp, __ *F3d. __, No. 21-3039 (8th Cir, August 16, 2022).*

The existence of probable cause in a civil action is measured on all the evidence known to the arresting officer, whether or not the same would be admissible in court.

Skender v. Eden Isle, __ *F3d. __, No. 21-2556 (8th Cir, May 4, 2022).*

A plaintiff was tendered an offer of judgment and the court subsequently entered an order granting summary judgment to the defendants. Under FRCP, Rule 68(a), the plaintiff had fourteen (14) days to accept the offer and it survived the court's grant of summary judgment.

US v. Stewart, __ *F3d. __, No. 20-3321 (8th Cir., Apr 28, 2022).*

A motion to suppress was denied when an officer's car cam could neither confirm nor refute that he could see the traffic offenses at issue from 100 feet away. Credibility determinations are the purview of the trial court.

US v. White Owl, __ *F3d. __, No. 21-1489 (8th Cir., Jul. 85, 2022).*

An exception to the "marital communications privilege" exists when one spouse is charged with a crime against a third party while in the course of victimizing the other spouse.

Kubiak v. Ravalli County, __ *F3d. __, No. 21-35542 (9th Cir., May 3, 2022).*

A defendant is bound by its FRCP Rule 68 offer of judgment for 14 days, even if the court enters summary judgment on the defendant's behalf in the interim.

Lee v. US, __ *Fed. Appx. __, No. 20-16722 (9th Cir., Sept. 21, 2021)(Unpub.).*

Requesting and receiving a second EEOC Right to Sue letter does not restart the clock on the 90-day window for filing a Title VII employment discrimination lawsuit.

NACA v. Crossland, __ *F3d. __, No. 21-2498 (9th Cir., Aug. 30, 2022).*

A public corporation's property interests are not transformed into public rights authorizing the application of *nullum tempus* to avoid the statute of limitation when it spends public money but does not seek to vindicate a distinct public right.

Senn v. Smith, __ *F3d. __, No. 21-35293 (9th Cir., Jun. 8, 2022).*

A plaintiff who has merely defeated a defendant's motion for qualified immunity on an "excessive force" claim is not thereby entitled to attorney fees under Section 1988(b).

US v. Galliher, __ *Fed. Appx. __, No. 20-30228 (9th Cir., Nov. 22, 2021)(Unpub.).*

Even if a person was stopped without reasonable suspicion, once it was discovered that he had absconded from probation, this intervening factor, under the "attenuation doctrine," allowed the evidence subsequently discovered during a search of his car by his probation officer to avoid suppression regardless of what had transpired prior to the discovery of his absconder status.

US v. Manaku, __ *F3d. __, No. 20-10069 (9th Cir., Jun. 14, 2022).*

No suppression of evidence recovered in a home search was required when officers provided only the cover sheet of their warrant to the homeowner, rather than the entire warrant as required by FRCrP 41(f), absent proof of a deliberate disregard of the Rule. Suppression is "automatic" only for fundamental violations of Rule 41.

US v. McCoy, __ *Fed. Appx. __, No. 20-10204 (9th Cir., Oct. 12, 2021)(Unpub.).*

The "collective knowledge" doctrine is not limited to active, sworn law enforcement officers.

Geddes v. Weber Cty., __ *Fed. Appx. __, No. 20-4083 (10th Cir., Aug. 16, 2022)(Unpub.).*

An arrestee cannot bring a Fourteenth Amendment "excessive force" claim if the alleged excessive force did not occur after a probable cause determination and before conviction. The Fourth Amendment is the proper legal basis for such a claim.

Glapion-Pressley v. Denver, __ *Fed. Appx. __, No. 21-1223 (10th Cir., Apr. 14, 2022)(Unpub.).*

Title VII complaint dismissed because the plaintiff did not sign her EEOC Charge under oath.

Herrera v. City of Espanoa, __ *F3d. __, No. 21-2030 (10th Cir., Apr. 27, 2022).*

Both the "continuing violation" doctrine and the "repeated violation" doctrine are available in a Section 1983 context.

Shaw v. Erich, __ *F3d. __, Nos. 21-3130 & 21-3131 (10th Cir., Jun. 6, 2022).*

Joining the consensus of other Circuits, the court held that the exclusionary rule and fruit-of-the-poisonous-tree doctrine do not apply in a Section1983 civil suit against police officers. Moreover, for "failure to intervene" analysis purposes, the law is not clear that an officer must intervene to prevent an unlawful search and seizure.

Taylor v. Salt Lake City, __ *F3d. __, No. 19-4085 (10th Cir., Oct. 26, 2021).*

The court joins the Ninth and Eleventh Circuits in holding that the exclusionary rule does not apply in Section 1983 civil litigation.

US v. Murry, __ *F3d. __, No. 20-1214 (10th Cir., Apr. 19, 2022).*

The court declines to adopt a presumption of juror bias for or against any particular racial or ethnic group, which would justify the direct examination of jurors on the subject.

US v. Campbell, __ *F3d. __, No. 1610128 (11th Cir., Feb. 16, 2022).*

The mere failure to raise an issue in an initial brief on direct appeal should be treated as a forfeiture (not waiver) of the issue, which can thereafter be raised by the court *sua sponte* under extraordinary circumstances.

Vinson v. Koch Foods, __ *F3d. __, No. 19-11994 (11th Cir., Sept. 3, 2021).*

As regards a *Batson* challenge, a company defending its manager's decisions in a civil Title VII discrimination lawsuit would naturally not want a current union member or a disgruntled worker's compensation claimant on the jury.

22. ARBITRATION; CONTRACTS

Air-Con v. Daikin, __ *F3d. __, No. 19-2248 (1st Cir., Dec. 20, 2021).*

District courts should apply summary judgment standards when evaluating motions to compel arbitration under the FAA.

McKenzie v. Brannan, __ *F3d. __, No. 20-2170 (1st Cir., Nov. 22, 2021).*

The question of whether a subsequent agreement supersedes a prior arbitration agreement is for a court, not an arbitrator, to decide.

Dalla-Longa v. Magnetar Capital, __ *F3d.* __, *No. 20-2978 (2nd Cir., May 12, 2022).*

Under the FAA, service of a notice to vacate an arbitration award by e-mail only on the last date to file was improper and untimely when opposing counsel has not consented to e-mail service.

Haus v. City of Sunbury, __ *Fed. Appx.* __, *No. 20-1933 (3rd Cir., Mar. 11, 2022)(Unpub.).*

Courts should typically rule on a motion to compel arbitration before resolving the case on non-jurisdictional grounds.

Richardson v. Babiskin, __ *Fed. Appx.* __, *No. 20-1909 (3rd Cir., Mar. 30, 2022)(Unpub.).*

The FAA does not itself provide for independent federal question jurisdiction.

Butler v. Z & H Foods, __ *F3d.* __, *No. 21-20086 (5th Cir., Sept. 7, 2021).*

A defendant who made no discovery requests or motions of its own yet waited nine (9) months before filing a motion to compel arbitration did not by such actions waive its arbitration rights.

Sitzar v. NAR, __ *F3d.* __, *No. 20-1779 (8th Cir., Sept. 10, 2021).*

A party waived its arbitration rights by litigating a dispute in federal court for a year before asserting its right to arbitration.

Lee v. City of Sacramento, __ *Fed. Appx.* __, *No. 20-17003 (9th Cir., Oct. 25, 2021)(Unpub.).*

An oral exchange in court agreeing to a claim release and dismissal in return for a sum of money created an enforceable contract.

23. OTHER CASES OF INTEREST

Perez-Sosa v. Garland, __ *F3d.* __, *No. 20-2083 (1st Cir., Jan. 7, 2022).*

In determining an attorney fee award in a Title VII case, time spent in settlement negotiations and on other distinct but related cases need not be categorically excluded.

NY v. Yellen, __ *F3d. __, No. 19-3962 (2nd Cir., Oct. 5, 2021).*

A $10,000 cap on the federal income tax deduction for money paid in state and local taxes does not violate the Tenth Amendment by requiring states to abandon their preferred fiscal policies.

Bardzell v. Gomperts, __ *Fed. Appx. __, No. 21-196 (3rd Cir., Mar. 22, 2022)(Unpub.).*

Absolute prosecutorial immunity shields more than just a decision to initiate a criminal prosecution and extends to the evaluation of potential trial evidence.

Duglas v. Hoang, __ *Fed. Appx. __, No. 21-2777 (3rd Cir., Jan. 14, 2022)(Unpub.).*

The court dismissed a complaint alleging that the plaintiff went to a dentist and asked if he could grow her teeth. He told her to use *Listerine*. She asked for relief in the amount of five (5) cents.

Jacob v. City of Philadelphia, __ *Fed. Appx. __, No. 21-2314 (3rd Cir., June 1, 2022)(Unpub.).*

A prosecutor who, when learning that an officer had consulted with counsel, ordered his superior to investigate and divulge the substance of the consultation, and threatened prosecution against the officer, is not entitled to absolute immunity from these non-prosecutorial actions.

King Flowers v. Delaware, __ *Fed. Appx. __, No. 22-1877 (3rd Cir., Jul. 18, 2022)(Unpub.).*

The court upholds the dismissal of a claim alleging that since God designated the plaintiff as a "chosen King," he should be relieved of all of his earthly financial obligations.

Saunders v. Arts Council, __ *Fed. Appx. __, No. 21-1118 (3rd Cir., Dec. 28, 2021)(Unpub.).*

A city ordinance preserved a section of the city and its African American heritage. The plaintiff claimed that a planned mural celebrating Hispanic heritage to be located in this African American district violated the National Historic Preservation Act. The court held that no private right of action exists under the NHPA.

US v. Allison, __ *F3d. __, No. 19-3806 (3rd Cir., Mar. 4, 2022).*

A public official's plan to steer a parking authority contract to a law firm in exchange for campaign contributions supported his bribery conviction. It is an "official act" for a public official to use his influence when awarding government contracts even if he lacks final decision-making power.

US v. Pawlowski, __ *F3d. __, No. 18-3390 (3rd Cir., Mar. 4, 2022).*

A mayor who accepted campaign contributions as the *quid pro quo* for zoning and inspection favors and city contracts violated the Hobbs Act.

Allen v. Vertafore, __ *F3d. __, No. 21-20404 (5th Cir., Mar. 11, 2022).*

The Driver's Privacy Protection Act was not violated when unauthorized users gained access to protected information stored on unsecured external servers. This was not a "disclosure" under the Act because it was not made knowingly or for an impermissible purpose.

Angel Bros. v. Walsh, __ *F3d. __, No. 20-60849 (5th Cir., Dec. 1, 2021).*

A road construction supervisor who allowed trenching to take place without a trench box, in order to keep from blocking an intersection, violated OSHA and his knowledge as a supervisor flowed to his employer under basic agency principles.

Wearry v. Foster, __ *F3d. __, No. 20-20406 (5th Cir., May 3, 2022).*

When a prosecutor joins police officers in gathering evidence, he acts outside of his quasi-judicial role and acts in an investigatory role. Neither the prosecutor nor the officer assisting him gather evidence is therefore entitled to absolute immunity from claims of evidence fabrication.

Breckenridge v. Goodell, __ *Fed. Appx. __, No. 21-1618 (7th Cir., Apr. 8, 2022)(Unpub.).*

A suit alleging that the Cleveland Browns were robbed of their rightful place in the Super Bowl and seeking an injunction requiring them to be allowed to compete therein, was dismissed without oral argument.

Comprehensive v. Nashville, _ *Fed. Appx. _, No. 21-5617 (6th Cir., Mar. 7, 2022)(Unpub.).*

Instead of having its officers moonlight for security companies, who pay nothing for the officers' training and experience, Nashville decided to restrict its officers' ability to obtain secondary employment and instead entered into the private security services itself by providing officers for community events. Such a practice did not violate the Sherman Act, by doing so, the Nashville police department did not gain monopoly power in the private security market.

PB & J Towing v. Hines, __ *F3d. __, No. 20-6170 (6th Cir., Feb. 9, 2022).*

A police department did not violate a towing company's property rights when it refused to place the company on its towing list. The department had the independent power to curate its list and refuse to add applicants whenever it felt that there were already enough towing companies on the list to satisfy the city's towing needs.

Faulk v. St. Louis, __ *F3d. __, No. 21-1116 (8th Cir., Apr. 6, 2022).*

Qualified immunity was granted to officers on a Section 1983 claim of conspiracy to violate civil rights because the use of the "intracorporate conspiracy doctrine" in such cases has not been clearly established and reasonable officers would not have known with any certainty that planning, designing, monitoring, or executing a "kettling plan" to contain protesters would expose them to damage liability under such a conspiracy theory.

Morens v. Interior, __ *F3d. __, No. 2020-1507 (Fed. Cir., Nov. 2, 2021).*

The court rejects the contention that an agency cannot charge an employee with AWOL regardless of the length of his absence so long as there is a medical reason for the absence.

THANKFULLY, THE END