CIRCUIT SCRAMBLE 2023

(April 1, 2022 through April 1, 2023)

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 required the city to read the signs, since it did not discriminate based upon the topic or message expressed.

Bartenwerfer v. Buckley, *__ US __, No.21-908 (Feb. 22, 2023).*
The Bankruptcy Code's exemption from discharge of debts involving fraud also prevents the partner of the fraudster from discharging the debt, regardless of her own culpability.

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.

Helix Energy v. Hewitt, *__598 US__ No. 21-984 (Feb. 22, 2023).*
The Court declines to exempt from the FLSA's overtime pay requirements a highly compensated worker paid on a daily basis with no guarantee of any weekly amount of pay.

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 or suppression.

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 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 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, the 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

Shara v. Maine-Endwell Cent. Sch. Dist., __ *F.3d. __, 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.

Marquardt v. Carlton, __ *Fed. Appx. __, No. 21-3832 (5th Cir., Jan. 25, 2023)(Unpub.).*
An EMS captain's private, off-duty Facebook posts expressing a desire to have been the one to kill a 12-year-old "ghetto rat" was protected First Amendment speech but his termination was justified given the overriding city interest in preventing the actual and predicted disruptive effect to its EMS services.

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.

Kirkland v. City of Maryville, __ *F4th. __, No. 21-5569 (6th Cir., Dec. 5, 2022).*
A police officer who criticized a county sheriff on her personal Facebook page was terminated after she was told to stop by her superiors, who felt that the posts would undermine the police department's relationship with the sheriff's office. She nevertheless continued to post. Citing the heightened need for order, loyalty, and efficiency in law enforcement, the court found that the city's legitimate interests outweighed the officer's free speech rights.

Myers v. City of Centerville, __ *F.3d. __, 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.

Bresnahan v. City of St. Peters, __ *F4th. __, No. 21-3910 (8th Cir, Jan. 19, 2023).*
A First Amendment retaliation claim survived dismissal when it alleged that an officer was forced to resign after he posted to an officers' group text a video critical of the BLM protests and the Press coverage thereof. This speech was unrelated to the officer's official duties and involved a matter of public concern.

Lathus v. Huntington Beach, __ *F4th. __, No. 21-56197 (9th Cir., Jan. 5, 2023).*
The First Amendment does not protect a volunteer member of a municipal advisory board from dismissal by the city councilperson who appointed her and was authorized by ordinance to remove her without cause.

Hernandez v. City of Phoenix, __ *F.3d. __, 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.

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.

Darlow v. Babineck, __ *Fed. Appx. __, No. 21-13020 (11th Cir., Oct. 27, 2022) (Unpub.).*
Posting a meme of George Floyd with white skin was speech that involved a matter of public concern for First Amendment purposes.

O'Laughlin v. Palm Beach Cty., __ *F.3d. __, 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

Swartz v. Sylvester, __ *F4th. __, No. 21-1568 (1st Cir., Nov. 21, 2022).*
Qualified immunity was granted to a fire chief on a Free Exercise Clause claim stemming from a firefighter being disciplined for refusing on religious grounds to have his picture taken pursuant to a general order related to a legitimate governmental interest in publicizing the fire department and promoting the integrity of this governmental institution.

FFR v. Mack, __ *F4th. __, No. 21-20279 (5th Cir., Sept. 29, 2022).*
No First Amendment violation for a judge to open his courtroom with a non-denominational prayer in which anyone could choose not to participate with no adverse consequences.

Redlich v. St. Louis, __ *F4th. __, No. 21-2894 (8th Cir., Oct. 12, 2022).*
Church members who distribute food to homeless people must comply with a municipal health code ordinance, and requiring this does not violate the Free Exercise or Free Speech Clauses of the First Amendment.

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.

Waln v. Dysart Sch. Dist., __ *F4th. __, No. 21-15737 (9th Cir., Dec. 9, 2022).*
A school district violated the First Amendment when it forbid a student from wearing an eagle feather in her cap at graduation in accommodation of her religious beliefs yet allowed other students to wear secular messages on their graduation caps.

C. Laws/Policies Cases

Picard v. Magliano, __ *F.3d. __, 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 but advocating his point of view on jury nullification.

Mazo v. New Jersey, __ *F4th. __, No. 21-2630 (3rd Cir., Nov. 23, 2022).*
A law permitting primary election candidates to add a six-word slogan designed to differentiate them from other candidates, but requiring consent from individuals or corporations named in the slogan before it could be used, did not violate the First Amendment.

Nunez v. McCool, __ *Fed. Appx. __, No. 21-332 (3rd Cir., May 3, 2022) (Unpub.).*
A policy requiring inmates to pay for the transfer of their property over a certain weight when they are transferred to a new facility could constitute an "adverse action" for First Amendment retaliation purposes when 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.

Grimmett v. Freeman, __ *F.4th. __, No. 22-1844 (4th Cir., Feb. 8, 2023).*
A law forbidding derogatory reports about candidates for public office that are false or in reckless disregard for their truth or falsity likely violates the First Amendment.

Reagan Natn'l Advertising v. City of Austin, __ *F4th. __, No. 19-50354 (5th Cir., Mar. 30, 2023).*
An ordinance prohibiting both off-premises commercial and non-commercial signs is "content neutral" and survives, under intermediate scrutiny, a First Amendment challenge.

Sistersforlife v. Louisville-Jefferson, __ *F4th. __, Nos. 22-5150/5151 (6th Cir., Dec. 21, 2022).*
Court enjoins as likely violative of the First Amendment on ordinance creating a 10-foot buffer zone around all hospitals, abortion clinics, and dental facilities and forbidding anyone not a patient or an employee or agent of same from entering therein during business hours.

GEFT Outdoor v. Monroe Cty., __ *F4th. __, Nos. 21-3328 & 22-1004 (7th Cir., Mar. 9, 2023).*
The court declines to find that sign permits and variances cannot be used together. A non-discretionary land use permit scheme that promptly provides applicants with sign permits is unlikely to pose constitutional problems even when operating alongside a variance scheme that affords limited discretion to local officials.

Mahwikizi v. CDC, *__ Fed. Appx. __, No. 22-1776 (7th Cir., Dec. 19, 2022) (Unpub.).*
A COVID mask mandate was a neutral restriction that applied to all ride-share drivers equally. The fact that it may incidentally affect a driver's religious belief does not violate the Free Exercise Clause.

Stewart v. San Francisco, *__ Fed. Appx. __*, No. 22-16018 (9th Cir., Feb. 17, 2023) (*Unpub.*)
An ordinance requiring a permit in order to use sound-amplifying equipment in a public park is a content neutral "time, place, and manner" restriction on free speech that does not violate the First Amendment.

Yim v. Seattle, *__ F4th. __, No. 21-35567 (9th Cir., Mar. 21, 2023).*
An ordinance prohibiting any discussion between landlords and prospective tenants regarding the latter's criminal history impinged upon landlords' First Amendment rights and was not narrowly tailored to achieve the city's goals of reducing racial injustice and reducing housing barriers.

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., *__ F.3d. __, 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. Moreover, requiring the club to make these records available to the city upon request does not violate the Fourth Amendment.

Discotheque v. Augusta, *__ Fed. Appx. __, No. 21-13218 (11th Cir., Oct. 5, 2022)(Unpub.).*
A "non-transferability" clause in an ordinance preventing existing nude dancing establishments operating as grand-fathered non-conforming uses from transferring their adult-entertainment permits upon the death of their original holders does not violate the First Amendment.

Lacroix v. Town of Ft. Meyers Bch., *__ F.3d. __, 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, *__ F.3d. __, 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, *__ F.3d. __, 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.

Friend v. Gasparino, *__ F.4th. __, No. 20-3644 (2nd Cir., Feb. 27, 2023).*
Officers who arrested a person who stood down the street from where they were conducting a "distracted driver" enforcement exercise holding a sign that said "Cops Ahead" for "interfering with an officer," infringed upon that person's freedom of speech.

Croft v. Donegal Tshp., *__ Fed. Appx. __, No. 21-1812 (3rd Cir, Aug. 26, 2022) (Unpub.).*
For First Amendment qualified immunity purposes, there is no clearly established right against retaliation by other elected officials for speech made by an elected official within the scope of her official duties.

Errington v. City of Reading, *_ Fed Appx. _, No. 22-1073 (3rd Cir., Nov. 30, 2022)(Unpub.).*
An officer who voluntarily retired rather than risk the loss of his pension by fighting his termination did not suffer an "adverse employment action" for purposes of a First Amendment claim brought under Section 1983.

Otero v. Port Authority, *__ F.3d. __, 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.

Kessler v. Parrott, *__ Fed. Appx. __, No. 20-1704 (4th Cir., Dec. 9, 2022) (Unpub.).*
A municipality did not impose a "heckler's veto" forbidden by the First Amendment when it declared a rally on unlawful assembly after rally attendees engaged in violence against counter-protesters.

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.

Kallinen v. Neuman, *__ Fed. Appx.. __, No. 22-20383 (5th Cir, Mar. 27, 2023)(Unpub.).*
A judge who used his personal Facebook page to support his political campaign did not violate the First Amendment by blocking a lawyer who often appeared before him and was making negative comments about him.

Rogers v. Hall, __ *F.3d. __, 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.

Hils v. Davis, __ *F4th. __, No. 22-3224 (6th Cir., Nov. 7, 2022).*
The First Amendment does not give police officers and their union representatives the right to record internal interviews of them that took place during a governmental investigation into alleged police misconduct.

Lindke v.Freed, __ *F.3d. __, 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, including posts involving policies he initiated as 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 is contrary to Second, Fourth, Eighth, and Eleventh Circuit opinions.*

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.

J.T.H. v. Cook, __ *F.3d. __, 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.

Molina v. St. Louis, __ *F4th. __, No. 21-1830 (8th Cir., Feb. 2, 2023).*
A protestor's criticism of officers, even with the use of profanity, is protected speech.

Boquist v. Courtney, __ *F.3d. __, 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, __ *F.3d. __, 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, __ *F.3d. __, 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, *__ F.3d. __, 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."

Spirit of Aloha v. Maui County, *__ F4th. __, Nos. 19-16839, 20-15871 (9th Cir., Sept. 22, 2022).*
A municipal ordinance that gives a commission unbridled discretion to grant or deny a special use permit based upon whether the proposed use "would adversely affect surrounding property" is too arbitrary a standard to survive a challenge when it is applied to a special use involving expressive conduct.

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.

Sullivan v. U. of Washington, *__ F. 4th. __, No. 22-35338 (9th Cir., Feb. 17, 2023*).
No First Amendment violation occurred when a university, pursuant to a records request, disclosed committee appointment letters that contained personal identifying information required to ensure diverse representation on the committee.

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 dues payments to the union.

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.

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 his encounters with the public does not allow him to disobey lawful police commands nor 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, __ *F.3d. __, No. 21-1247 (10th Cir., Jul. 11, 2022).*
Qualified immunity was denied on a First Amendment claim stemming from an officer standing in front of reporters who were filming a DUI stop, then shining his flashlight into their cameras and driving his squad car at them.

Watkins v. Sullivan, __ *Fed. Appx. __, No. 21-12396 (11th Cir., Oct. 19, 2022) (Unpub.).*
An objectively lawful reason for issuing a park guest a no-trespass citation is not invalidated by an officer's subjective reason that she did not like the guest singing an anti-gay song.

2. SECOND AMENDMENT

Frein v. PA State Police, __ *F.3d. __, No. 21-1830 (3rd Cir., Aug. 30, 2022).*
Keeping, without compensation, the weapons of the parents of a convicted killer after his criminal case has ended violates both the Takings Clause and the Second Amendment.

Jones v. Bonta, __ *F.3d. __, 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.

3. FOURTH AMENDMENT

A. Traffic Stop Cases

US v. Runner, __ *F.3d. __, 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.

Klaver v. Hamilton Cty., __ *Fed. Appx. __, Nos. 22-5083/5084 (6th Cir., Nov. 3, 2022) (Unpub.).*
Reasonable suspicion of drug possession was not created during a traffic stop based solely upon the driver's hands shaking, a suspicion that he was a "sovereign citizen," and his polite refusal to cooperate.

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, __ *F.3d. __, 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.

Clinton v. Garrett, __ *F4th. __, No. 21-2763 (8th Cir., Sept. 21, 2022).*
Driving with a nervous passenger through a high crime neighborhood with a temporary tag does not provide reasonable suspicion to stop a vehicle.

US v. Banks, __ *F.3d. __, 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, __ *F.3d. __, 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 is permissible as part of that search.

US v. Farrington, __ *F.3d. __, 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."

US v. Romero, __ *Fed. Appx. __, No. 22-1105 (8th Cir., Oct. 12, 2022) (Unpub.).*
Consent to search a car included the right to search a car speaker not wired to the vehicle.

DeMarest v. City of Vallejo, __ *F.3d. __, 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.

Hodge v. Bartram, __ *F4th. __, No. 21-2125 (10th Cir., Feb. 2, 2022) (Unpub.).*
No "excessive force" resulted when an officer, after a driver stopped for a traffic violation and refused to produce her driver's license or exit her vehicle, dragged her from her vehicle by her arm and used a "pain hold" on her in order to get her handcuffed.

US v. Howard, __ *Fed. Appx. __, No. 21-11101 (11th Cir., Jan. 30, 2023)(Unpub.).*
The smell of burnt marijuana from a vehicle provides probable cause to search it even if marijuana is not ultimately found therein.

B. K-9 Cases

McKinney v. City of Middletown, __ *F4th. __, No. 19-1765 (2nd Cir., Sept. 26, 2022).*
Using a canine for a purpose outside of his training is not the same as using an untrained canine for purposes of a Fourth Amendment "excessive force" analysis. Qualified immunity was justified although officers did not give a warning before releasing the dog, because they deployed him during a violent struggle with an inmate.

Jarvela v. Washtenau Cty., __ *F.3d. __, 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.

C. "Exigent Circumstances" Cases

US v. Washington, __ *Fed. Appx. __, No. 20-2970 (3rd Cir., Nov. 30, 2022)(Unpub.).*
No Fourth Amendment violation for an officer who had entered an apartment without a warrant under "exigent circumstances" and observed illegal drugs therein to remain in the apartment to prevent the destruction of the drugs while a search warrant was obtained.

D. "Community Caretaker" Cases

Untalen v. Stanley, __ *Fed. Appx. __, No. 22-55007 (9th Cir., Feb. 22, 2023) (Unpub.).*
Denying a licensed driver *all* access to her impounded car for thirty days, including forbidding her access to her personal possessions or the ability to perform car maintenance, is not a permissible exercise of the "community caretaker" function.

US v. Anderson, __ *F.4th. __, No. 20-50345 (9th Cir., Dec. 29, 2022).*
The "community caretaker" exception applied when officers impounded and inventory searched a truck that was parked in a private driveway and that they had an objectively reasonable belief was parked illegally.

US v. Braxton, __ *F.4th. __, No. 21-1149 (10th Cir., Mar. 7, 2023).*
The "community caretaker" warrantless impounding of a suspect's backpack to "safeguard" it is inapplicable when an individual at the scene at the suspect's request repeatedly offers to retain the backpack during the suspect's arrest process.

E. "Expectation of Privacy" Cases

US. V. John, __ *F4th. __, No. 21-1862 (1st Cir., Feb. 3, 2023).*
A domestic partner who left a house and was told he was no longer welcome therein had no reasonable expectation of privacy in the premises.

Cannarozzo v. West Hazelton, __ *Fed. Appx. __, No. 22-1079 (3rd Cir., Nov. 29, 2022)(Unpub.).*
Firefighters who responded to a stove fire did not violate the Fourth Amendment by their warrantless entry into a locked basement to ascertain whether the fire had spread and to access the circuit breaker.

US v. Daniels, __ *F.3d. __, 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. Pridgen, __ *Fed. Appx. __, No. 19-4864 (4th Cir., Oct. 3, 2022)(Unpub.).*
A bank robber who abandoned his getaway vehicle and left his cell phone in it had no Fourth Amendment expectation of privacy in those items which were searched and introduced at trial.

US v. Dennis, __ *F.3d. __, 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.

Doe v. City of Mansfield, __ *Fed Appx.. __, No. 22-3052 (6th Cir., Feb. 8, 2023)(Unpub.).*
Qualified immunity on a constitutional "right of privacy" claim was granted to an officer who released another officer's personnel file in response to a records request even though that file contained a brief graphic admission to prior unnatural sexual behavior.

US v. Edwards, __ *F.3d. __, 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.

US v. Lewis, __ *F.3d. __, 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. Dewilfond, __ *F4th. __, No. 22-1066 (8th Cir., Dec. 2, 2022).*
A plaintiff did not have a reasonable expectation of privacy in his movements and location while travelling in a *borrowed* vehicle equipped with a GPS tracker.

A.C. v. Cortez, __ *F.3d. __, 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. Fisher, __ *F4th. __, No. 20-10098 (9th Cir., Dec. 21, 2022).*
Defendants abandoned devices concealed in their crawlspace that they forgot to remove before selling their house, even if the reason they failed to claim them was fear of detection by law enforcement. They had no reasonable expectation of privacy in these items for purposes of a Fourth Amendment challenge to their admission at trial.

US v. Langford, __ *Fed. Appx. __, No. 22-10041 (9th Cir., Jan. 17, 2023)(Unpub.).*
A passenger in a U-Haul truck who was not at the scene when the truck was searched had no reasonable "expectation of privacy" in the truck.

US v. Johnson, __ *F.3d. __, 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. Cohen, __ *F.3d. __, 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 a search of the vehicle.

US v. Fortson, __ *Fed. Appx. __, No. 2110303 (11th Cir., Apr. 25, 2022) (Unpub.).*
Because a suspect denied ownership of a car, he had no Fourth Amendment right to challenge an officer's use of a key fob found in his apartment to locate, open, and search the vehicle to which the fob belonged.

US v. Lawson, __ *Fed. Appx. __, No. 21-13272 (11th Cir., Oct. 27, 2022) (Unpub.).*
A suspect abandoned any expectation of privacy in a car key in in the car to which it belonged when he denied ownership of the key and voluntarily walked away without taking the car or key.

F. "Arrest/No Arrest" Cases

US v. Gist-Davis, __ *F.3d. __, 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.

Herrera v. Acevedo, __ *Fed. Appx. __, No. 21-20520 (5th Cir., Dec. 9, 2022) (Unpub.).*
Qualified immunity was denied to officers on First, Fourth, and Fourteenth Amendment claims arising when officers converged on a group of persons protesting George Floyd's death and employed a maneuver called "kittling" by forcing them into a small space and surrounding them so that they were unable to leave, zip-tying their hands, and arresting them for allegedly blocking a street. At the motion to dismiss stage, factual disputes still remained as to probable cause to chill otherwise protected speech.

Loftin v. City of Prentiss, __ *F.3d. __, 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, __ *F.3d. __, 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.

Sweetin v. Texas City, __ *F4th. __, No. 21-40784 (5th Cir., Sept. 2, 2022).*
A municipal "permit officer" who told ambulance drivers without permits that they "were detained," and could not leave until the Fire Marshall - - who had authority to issue them citations - - arrived, could be liable for Fourth Amendment violations, as he had no power to detain the drivers.

US v. Coulter, __ *F.3d. __, No. 20-10999 (5th Cir., Jul. 18, 2022).*
Merely handcuffing a driver for officer safety during a traffic stop does not make a roadside interview custodial *per se*, thus triggering the need for *Miranda* warnings.

US v. Scott, __ *Fed. Appx. __, No. 21-51084 (5th Cir., Nov. 29, 2022) (Unpub.).*
A person is not "seized" by a "show of authority" when he runs away from police officers or when an officer tugged on his shirt sleeve to move him out of a doorway - - not to seize him.

US v. Zabel, __ *F.3d. __, 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 is not sufficient by itself to turn a custodial interview into an arrest when other factors cut strongly against such a determination.

Martinez v. Sasse, __ *F.3d. __, No. 21-1704 (8th Cir., Jun. 16, 2022).*
Pushing a person is not a Fourth Amendment "seizure."

US v. Johnson, __ *F.3d. __, 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. Trenton, __ *F4th. __, No. 22-1476 (8th Cir., Jan. 18, 2023).*
The use of force and handcuffs did not make a detention an "arrest" when the subject was promptly released and repeatedly told that he was not under arrest and free to leave.

Montgomery v. Calvano, __ *Fed. Appx. __, No. 21-1134 (10th Cir., Apr. 18, 2022(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. Philpot, __ *Fed. Appx. __, No. 21-12655 (11th Cir., May 16, 2022) (Unpub.).*
Mere societal pressure to stop and speak to a police officer is not sufficient to establish a Fourth Amendment "seizure."

G. "Protective Sweep" Cases

US v Lozano, __ *Fed. Appx. __, No. 21-50391 (5th Cir., Jun. 17, 2022) (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.

US v. Fischer, __ *Fed Appx. __, No.19-30142 (9th Cir., Feb. 9, 2023)(Unpub.).*
Officers who arrested a suspect in the doorway of his hotel room were justified in searching not only his adjoining bedroom but also his adjacent bathroom, since an attack could have been launched by someone hiding there.

H. "Unlawful Extension of Stop" Cases

US v. Harrington, __ *F.4th.* __, *No. 22-1067 (1st Cir., Dec. 28, 2022).*
For Fourth Amendment purposes, a "welfare check" on persons sleeping or unconscious in a vehicle need not have ended when an officer determined that they were conscious, even though sleeping in a car is not illegal, when signs of drug impairment, an unusual hour to be sleeping, and location in a high crime area gave rise to a reasonable suspicion of illegal drug use. The stop was not unreasonably prolonged by checking the welfare of both driver and passenger.

US v. Hurtt, __ *F.3d.* __, *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.

Hicks v. Ferreyra, __ *F.4th.* __, *No. 22-1339 (4th Cir., Mar. 29, 2023).*
An officer unlawfully extended a traffic stop when, after he ascertained that the driver of a parked vehicle was authorized to carry the gun visible on the passenger's seat of the car and was not a suspect in a criminal matter, he made the driver wait an hour for his supervisor to arrive.

US v. Miller, __ *F.4th.* __, *No. 21-4086 (4th Cir., No. 29, 2022).*
Tapping one's finger and taking four seconds to start braking after a squad car turned on its overhead lights, while travelling in a known drug corridor, are insufficient grounds for extending a traffic stop to conduct a drug dog walk-around.

US v. Kennedy, __ *F.3d.* __, *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. Ceja, __ *Fed. Appx.* __, *No. 2130178 (9th Cir., Jul. 18, 2022) (Unpub.).*
No unlawful extension of a traffic stop occurs just because writing a citation and conducting a drug investigation are not performed simultaneously, when both are supported by independent reasonable suspicion.

US v. Hylton, __ *F.3d.* __, *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, __ *F.3d.* __, *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 it 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. Taylor, __ F.4th __, No. 21-10377 (9th Cir., Mar. 1, 2023).
Asking a suspect the same question twice did not unreasonably extend a traffic stop. There is no "asked and answered" prohibition in the Fourth Amendment, the touchstone of which is "reasonableness."

US v. Frazier, *__ F.3d. __, No. 20-4131 (10th Cir., Apr. 13, 2022).*
An officer unlawfully prolonged a traffic stop by, rather than beginning his standard citation issuance procedure, he first spent time trying to contact a drug dog's 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.

US v. Hayes, *__ F.4th. __, No. 22-8010 (10th Cir., Mar. 17, 2023).*
The court declines to adopt a *per se* rule that, during a traffic stop, anytime an officer goes "off-course" from the mission of the stop, even for a few seconds, violates the Fourth Amendment as an unlawful extension of the stop.

Baxter v. Roberts, *__ F4th. __, No. 21-11428 (11th Cir., Nov. 30, 2022).*
An officer may have unlawfully prolonged a traffic stop when, after typing out a ticket, he failed to deliver the ticket to the to the driver but instead ordered him out of his car and conducted a drug dog sniff unrelated to the purpose of the traffic stop.

US v. Sims, *__ Fed, Appx. __, No. 20-12744 (11th Cir., Sept. 12, 2022)(Unpub.).*
A 10-minute delay in summoning a drug dog did not impermissibly prolong a traffic stop.

US v. Turner, *__ Fed. Appx. __, No. 21-11622 (11th Cir., Sept. 29, 2022) (Unpub.).*
Questioning a driver during a traffic stop about travel plans did not unlawfully prolong the stop.

I. Other Cases

Punsky v. City of Portland, *__ F4th. __, No. 21-2007 (1st Cir., Nov. 29, 2022).*
No Fourth or Fourteenth Amendment violation occurred when officers investigating a domestic violence incident involving the plaintiff made him stand outside in freezing temperatures in his stockinged feet after he refused to put on shoes.

Juzumas v. Nassau Cty, *__ F.3d. __, 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 extend to the seizure of his personal effects.

Onuekwusi v. Graham, *__ Fed. Appx. __, No. 21-1770 (3rd Cir., Sept. 28, 2022)(Unpub.).*
Qualified immunity was denied to a detective on a Fourth Amendment claim alleging arrest without probable cause and a Fourteenth Amendment due process claim stemming from his use of a 15-year-old photo of the plaintiff in a photo line-up, falsely telling witnesses that the plaintiff was connected to the number used to contact them, and not disclosing to witnesses the plaintiff's heavy accent.

US v. Madziarek, *__ Fed. Appx. __, No. 21-3324 (3rd Cir., Dec. 12, 2022)(Unpub.).*
A camping tent's "curtilage" did not extend to items thirty feet away, not concealed or enclosed, and visible from a shared road.

US v. Peters, *__ F.4th. __, No. 19-4904 (4th Cir., Feb. 14, 2023).*
Officers who asked a suspect fifteen times to lift his shirt, inferred that he should submit to a "pat down" twice, and asserted that the suspect could go to jail for trespass twice before the suspect raised his shirt and disclosed a gun located in his waistband did not have reasonable suspicion to "seize" him for being armed before he raised his shirt.

Bey v. Prator, *__ F4th. __, No. 21-30489 (5th Cir., Nov. 17, 2022).*
The court declines to find a Fourth Amendment "search incident to arrest" exception as it relates to religious headgear.

McMurry v. Brunner, *__ Fed. Appx. __, No. 21-50888 (5th Cir., Dec. 7, 2022) (Unpub.).*
Qualified immunity was denied to an officer against a Fourth Amendment claim that arose when he removed a 14 year-old from her home for questioning and instructed her not to respond to calls from her father, all without a court order, exigent circumstances, or parental consent.

US v. Alvarez, *__ F.3d. __, 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. Dixon, *__ F.3d. __, 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.

US v. Durham, *__ Fed Appx. __, No. 22-20057 (5th Cir., Mar. 6, 2023)(Unpub.).*
The search of an arrestee's vehicle was not a valid "search incident to arrest" when the suspect had already been arrested and taken into custody before the search occurred.

US v. Espenoza, *__ F4th. __, No 21-50518 (5th Cir., Sept. 30, 2022).*
A motel operator who, without prompting, opened a hotel room door that police officers had been knocking on, conducted a private search not subject to Fourth Amendment analysis.

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. Malagerio, *__ F4th. __, No. 21-10729 (5th Cir., Sept. 23, 2022).*
Arresting a suspect pursuant to an administrative warrant in the doorway of his house trailer was in a "public place" and not inside his home or within its curtilage for Fourth Amendment purposes.

Harris v. City of Saginaw, __ *F.4th. __, No. 22-1504/1505 (6th Cir., Mar. 20, 2023).*
Qualified immunity was denied to officers who may have already made up their minds to arrest a suspect before investigating the incident.

Hopkins v. Nichols, __ *F.3d. __, No. 21-5686 (6th Cir., Jun. 16, 2022).*
Words that compel compliance with an officer's order to exit a house constitute a "seizure" under the Fourth Amendment.

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.

US v. Grant, __ *Fed. Appx. __, No. 21-3186 (6th Cir., Jan. 6, 2023)(Unpub.).*
Under the Fourth Amendment, the mere fact that a person is a known drug dealer is insufficient reason to search his residence absent some nexus between the dealing and the property.

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 screams emanated.

US v. Sanders, __ *F.4th. __, No. 21-5945 (6th Cir., Feb. 6, 2023).*
Entering and exiting an apartment, by itself, provides no indication of criminal activity to establish probable cause for its search.

US v. Witherspoon, __ *Fed. Appx. __, No. 21-4167 (6th Cir., Nov. 14, 2022) (Unpub.).*
No Fourth Amendment violation existed when a car mechanic found and opened a secret compartment in a vehicle and called the police, who seized the drugs that were in the compartment but were now in plain view.

Braun v. Village of Palatine, __ *F4th. __, No. 20-3227 (7th Cir., Dec. 29, 2022).*
No Fourth Amendment failure to provide medical care claim arose when, unbeknownst to the officer, a driver suffered a seizure and crashed into a telephone pole. Since the driver could not remember what happened and showed signs of intoxication, there was probable cause to arrest him for DUI, and after he declined medical assistance.

Gaddis v. DeMattee, __ *F.3d. __, 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" although this 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.

Mitchell v. Doherty, __ *F.3d. __, 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.

Mwangangi v. Nielsen, __ *F4th. __, Nos. 21-1576/1577/1971 (7th Cir., Sept. 15, 2022).*
The crime of "impersonating an officer," by its very nature, is so suggestive of the presence and use of weapons that a "frisk" is always reasonable when an officer has reasonable suspicion that a person may be involved in this crime.

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 confinement presents a Fourth Amendment claim.

US v. Banks, __ *F.4th. __, No. 22-1312 (7th Cir., Feb. 13, 2022).*
A front porch is part of a home's curtilage, and an officer's entry thereon without a warrant for the purpose of arresting a suspect was unlawful.

US v. Coates, __ *Fed. Appx. __, No. 22-1924 (7th Cir., Mar. 15, 2023)(Unpub.).*
Seeing one hand-rolled cigarette containing a brown substance that was emitting no distinctive odor does not establish probable cause to arrest anyone.

US v. Segoviano, __ *F.3d. __, 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.

Davis v. Spear, __ *F.3d. __, 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 and prohibited from going to the hospital wherein their relative was dying. *Terry* has not been applied to custodial interrogations, and the officers were not entitled to qualified immunity on the family's Fourth Amendment "unreasonable seizure" claims.

Hartman v. Bowles, __ *F.3d. __, 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, __ *F.3d. __, 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. Mathes, __ *F4th. __, No. 22-1834 (8th Cir., Jan. 26, 2023).*
Probable cause does not require an officer to exclude all reasonable possibilities, only that he determines that there is a fair probability that a law has been broken.

US v. Williams, __ *F.3d. __, 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 hanging on the doorknob of the bedroom she shared with the suspect to which she had access and never denied ownership.

Webster v. Westlake, *__ F.3d. __, 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.

Manriquez v. Ensley, *__ F.3d. __, 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.

Miller v. Nye County, *__ Fed. Appx. __, No. 21-16826 (9th Cir., Nov. 8, 2022) (Unpub.).*
No Fourth Amendment violation for an officer to shoot a 56-pound pit bull running in the officer's direction and barking, when the officer had only 12 seconds to react.

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.

Sanchez v. LADOT, *__ F.3d. __, 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. 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, *__ F.3d. __, 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, a police officer's subsequent warrantless search of the computer is lawful to the extent that it merely mimics this prior private search.

Verdun v. San Diego, *__ F.4th. __, No. 21-55046 (9th Cir., Oct. 26, 2022).*
Under the Fourth Amendment, municipalities are not required to obtain a search warrant before chalking tires as part of its enforcement of time limits in city parking spots.

Harris v. Denver, *__ F.4th. __, No. 22-1007 (10th Cir., Jan. 25, 2023).*
There is no established Fourth Amendment prohibition against an officer entering a home with an unattended baby inside and carrying the infant from inside the home outside to its mother.

Montgomery v. Gerdjakian, *__ Fed. Appx. __, No. 22-1126 (10th Cir., Feb. 10, 2023)(Unpub.).*
Detaining a person for 16 minutes in order to prepare and issue him a shopping mall trespass warning did not violate any clearly established constitutional rights, and qualified immunity was granted to the officer who did so.

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 his county's officer training program.

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. Vedrune, __ *Fed. Appx. __, No. 20-13259 (11th Cir., Nov. 29, 2022) (Unpub.).*
A 14-day delay between an arrest and the issuance of a warrant for an arrestee's seized cell phones was not unreasonable under the Fourth Amendment.

US v. Veney, __ *F.3d. __, 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

Bygum v. City of Montgomery, __ *Fed. Appx. __, No. 21-2130 (4th Cir., Feb. 24, 2023)(Unpub.).*
Qualified immunity was denied to an officer who, after his taser proved ineffective, shot a misdemeanant five times as he tried to avoid arrest, since the person shot was allegedly empty-handed, stationary, and 25 feet away.

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 an officer in the van's plausible escape path.

Campbell v. Cheatham County, __ *F.3d. __, No. 21-5044 (6th Cir., Aug. 29, 2022).*
An officer who responded to 9-1-1 hang-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 what the officer believed was a gun (it was a cell phone) may have engaged in "excessive force."

Cooper v. Columbus, OH, __ *Fed. Appx. __, No. 22-3251 (6th Cir., Feb. 1, 2023)(Unpub.).*
In a tense, fast-moving and physical encounter with a suspect who was in possession of a gun, an officer need not wait for the suspect to grip his handgun or point it at the officer before resorting to deadly force.

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 their commands to drop his weapon.

Lee v. Russ, *__ F.3d. __, No. 21-5919 (6th Cir., May 6, 2022).*
Qualified immunity was denied on an "excessive force" claim brought after a suspect was confronted by two officers who pulled their guns after he became belligerent, pulled out a knife, ignored their commands to "drop it," and walked towards the officers waving the knife. However, he stopped 30 feet from the officers and stopped waving his knife. Then he took a step forward and was shot.

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 be armed, ignored the officer's commands, and rushed towards him, only to be met by a volley of bullets, one of which hit him in the back.

Sawyer v. City of Soddy Daisy, *__ Fed. Appx. __, No. 22-5568 (6th Cir., Feb. 7, 2023)(Unpub.).*
No "excessive force" occurred when an officer confronted a mentally challenged individual in a dark room who pointed a gun at him and refused to drop it in the two seconds that elapsed before he was shot.

Doxtater v. O'Brien, *__ F.3d. __, No. 21-2101 (7th Cir., Jul. 12, 2022).*
An arrestee, by keeping one hand inside his shirt and telling officers that if they came any closer he would "do it," and who was then shot, 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., *__ F.3d. __, No. 20-1526 (8th Cir., May 31, 2022).*
After fleeing an officer, a suspect entered his car and shut the door. Turning to face the pursuing officer, he moved his hands to his waist and, without warning, was then 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.

Harris v. City of Tulare, *__ Fed. Appx. __, No. 22-15142 (9th Cir., Mar. 17, 2023)(Unpub.).*
Qualified immunity was granted to officers who shot a suspect who had just seized a weapon from another officer, was standing and facing the officers, was not disabled, and was within striking distance of them.

Peck v. Montoya, *__ F4th. __, No. 20-56413 (9th Cir., Oct. 18, 2022).*
Under the Fourth Amendment, officers may not shoot persons who are armed but pose no immediate threat to their safety or the safety of others.

Smith v. Agdeppa, *__ F4th. __, No. 20-56254 (9th Cir., Dec. 20, 2022).*
Qualified immunity against an "excessive force" claim was denied to an officer who had time to yell "stop" but did not do so before using deadly force.

Lewis v. City of Edmond, __ *F4th. __, No. 21-6081 (10th Cir., Sept. 16, 2022).*
Qualified immunity on an "excessive force" claim was granted to an officer who shot an unarmed man four times after three Taser applications failed to deter him from pummeling a fellow officer in the face and neck with his fists.

Davis v. Waller, __ *F.3d. __, 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.

J.I.W. v. Dorminey, __ *Fed. Appx. __, No. 21-12330 (11th Cir., Dec. 1, 2022) (Unpub.).*
A school resource officer was entitled to qualified immunity on an "excessive force" claim arising when he broke a teenage student's arm after the student became disruptive, resisted arrest, and wrestled with him.

Robinson v. Sauls, __ *F.3d. __, 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 the suspect unconscious.

B. Taser Cases

Bernabe v. Rosenbaum, __ *Fed. Appx. __, No. 21-10396 (5th Cir., Jan. 13, 2023) (Unpub.).*
Using a Taser on a fleeing suspect was not "excessive force" although he slowed to a walk just before he was struck. The officers could have reasonably questioned whether this action was a legitimate attempt to surrender.

Henderson v. Harris County, __ *F4th. __, No. 21-20544 (5th Cir., Oct. 12, 2022).*
No "excessive force" for an officer who Tased a fleeing suspect after he suddenly stopped and turned towards the officer, moving his hands in a manner that the officer felt suggested that he was reaching for a weapon.

Remirez v. Escajeda, __ *F.3d. __, 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.

Roberts v. Cruz, __ *Fed Appx. __, No. 22-5687/5701 (5th Cir., Feb. 28, 2023)(Unpub.).*
Qualified immunity was granted to an officer on an "excessive force" claim, as there is no clearly established right for an individual who disobeys an officer's command to drop his weapon and then flees to not be tased while in a stairwell from which he could fall and hurt himself.

Salazar v. Molina, *__ F.3d. __, 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.

US v. Nyah, *__ F.3d. __, 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 was tased. While this was a warrantless arrest, it was supported by probable cause, as the officer reasonably believed that the person tased was the vehicle's driver, although he was the passenger.

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 mace into a prisoner's cell ventilation system, creating a "gas chamber" effect in the cell.

Fairchild v. Coryell Cty., *__ F.3d. __, 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 and 390 pounds, respectively, sat on her with a knee in her back and a forearm against her neck for two (2) minutes.

Getzen v. Long, *__ Fed. Appx. __, No. 21-16437 (9th Cir., Jan. 6, 2023) (Unpub.).*
Pepper-spraying a non-threatening, not actively resisting, unarmed suspect may constitute "excessive force."

Wilkins v. City of Tulsa, *__ F.3d. __, 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, as he was not actively resisting and posed no immediate threat.

D. Handcuff Cases

Rogers v. NJDOC, *__ Fed. Appx. __, No. 21-2891 (3rd Cir., Sept. 28, 2022)(Unpub.).*
Tight handcuffs causing a wrist scrape and a small amount of blood are not suggestive of "excessive force."

Smith v. Heap, *__ F.3d. __, 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.

Burnett v. Griffith, __ *F.3d. __, 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, as he was trying to control this person as he attempted to break free from the officer's grasp.

Brown v. San Bernadino Cty., __ *Fed. Appx. __, No. 21-56357 (9th Cir., Feb. 7, 2023)(Unpub.).*
"Excessive force" may exist when officers, during a traffic stop, forced an unarmed and compliant 83-year-old woman to get on her knees for a few seconds and be handcuffed for a few minutes.

Uzun v. Santa Monica, __ *Fed. Appx. __, No. 21-55785 (9th Cir., Nov. 8, 2022) (Unpub.).*
No "excessive force" occurred due to an officer's failure to double-lock handcuffs, allowing them to tighten when a suspect was placed in his squad car.

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, __ *F.3d. __, 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."

Craig v. Martin, __ *F4th. __, No. 19-10013 (5th Cir., Sept. 8, 2022).*
Kicking an arrestee's leg into a squad car when both of the officer's hands were otherwise occupied, and the arrestee had been commanded to get into the car, was not "excessive force."

Crene v. City of Arlington, __ *F4th. __, No. 21-10644 (5th Cir., Oct. 4, 2022).*
Bystanders have no standing to bring an "excessive force" claim for what they witnessed as passengers in a vehicle.

Davis v. Richardson, __ *Fed. Appx. __, No. 22-30298 (5th Cir., Nov. 9, 2022) (Unpub.).*
It was not "excessive force" to perform a "sternum rub" on an unresponsive passenger in a vehicle or to lift her up to put on her pants to cover her nakedness.

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 after they brought to the ground and restrained a verbally and physically aggressive pre-trial detainee when he ignored their verbal commands.

Ramirez v. Martin, __ *Fed. Appx. __, No. 22-10011 (5th Cir., Oct. 31, 2022)(Unpub.).*
For purposes of an "excessive force" analysis, a court cannot ignore a suspect's actions in attempting to evade capture when deciding whether an officer's conduct was appropriate after the suspect's "surrender."

Solis v. Serrett, __ *F.3d. __, 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 colloquy 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!"*

Soto v. Bautista, __ *Fed Appx. __, No. 21-40803 (5th Cir., Mar. 24, 2023)(Unpub.).*
Slamming an arrestee to the ground hard enough to break bones and kneeing him in the spine was "excessive force" in response to being spit on.

Vardeman v. City of Houston, __ *F4th. __, No. 22-20109 (5th Cir., Dec. 21, 2022).*
An airport officer who swore at a father picking up his family and delayed moving his vehicle despite the officer's directive to do so because his family had just arrived at his car, who shoved the father's daughter, was then shoved by the father and responded by hitting the father in the face and standing over his now-prone body menacingly, may have thereby "seized" the father for Fourth Amendment "excessive force" purposes.

Waller v. Hoeppner, _ *Fed. Appx. _, Nos. 10-129/457/458 (5th Cir., Sept. 27, 2022) (Unpub.).*
City policies and customs not related to alleged improper officer conduct are not relevant to an "excessive force" analysis if they did not directly influence the use of such force.

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 a 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.

Serenski v. Artfitch, __ *Fed. Appx. __, Nos. 21-1391/1402 (6th Cir., Jul. 20, 2022)(Unpub.).*
An 83 year-old 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, only to be violently taken down by the officer, may have been subject to "excessive force."

Wiley v. City of Columbus, OH, __ *F.3d. __, 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.

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."

Shirley v. Rabensteine, __ *Fed. Appx. __, No. 22-2147 (7th Cir., Jan. 9, 2023)(Unpub.).*
No "excessive force" for officers to continue to use non-lethal force to subdue a fleeing suspect who, after 2 hours of resistance, suddenly said "I give up," because they could not readily determine if his mid-chase surrender was sincere.

Fuller v. Hafska, __ *Fed. Appx. __, No. 21-2854 (8th Cir., Feb. 3, 2023) (Unpub.).*
An agitated pre-trial detainee who complied with a jail officer's last directive and posed no immediate threat to himself or others has a right not to be violently taken to the ground without warning.

Laney v. St. Louis, __ *F4th. __, No. 21-3530 (8th Cir., Jan. 6, 2023).*
An officer's subjective intentions do not make a Fourth Amendment violation out of an objectively reasonable use of force.

Lankford v. City of Plumerville, __ *F.3d. __, 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 officer had probable cause to believe that the motorcyclist posed a threat of serious bodily harm to innocent bystanders.

Lombardo v. St. Louis, __ *F.3d. __, No. 19-1469 (8th Cir., Jun. 29, 2022).*
Qualified immunity was granted to officers on an "excessive force" claim because a pre-trial detainee has no clearly established right to be free from prone restraint while resisting an officer.

McDaniel v. Neal, __ *F.3d. __, 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.

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.

Alston v. Sacramento Cty., __ *Fed. Appx. __, No. 21-15328 (9th Cir., Mar. 7, 2023)(Unpub.).*
An officer's threat to put a suspect in his patrol car "by force or any means necessary" does not constitute "excessive force."

Andrews v. City of Henderson, __ *F.3d. __, 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 performed a "leg sweep" on a person fleeing from him trying to avoid arrest and ignoring his orders to "stop."

Roberson v. City of Hawthorne, __ *Fed Appx. __, No. 21-55134 (9th Cir., Mar. 22, 2023)(Unpub.).*
Qualified immunity on an "excessive force" claim was denied to an officer who threw an individual against a wall, took him to the ground in a headlock, and held him on the ground by applying pressure to his neck, all without any basis for suspecting him of a crime.

Seidner v. DeVries, __ *F.3d. __, 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, __ *F.3d. __, No. 21-7045 (10th Cir., Jul. 19, 2022).*
Punching, tackling, and using a chokehold on a non-violent, non-threatening, non-resisting misdemeanant, without warning, constituted "excessive force."

Torres v. Madrid, __ *F.4th. __, No. 22-2001 (10th Cir., Feb. 17, 2023).*
Facts unknown to the officer at the moment he uses force are not relevant to a qualified immunity analysis on an "excessive force" claim.

Ashley v. Bennett, __ *Fed. Appx. __, No. 21-14178 (11th Cir., Oct. 27, 2022) (Unpub.).*
Roughly grabbing an arrestee's elbow, yanking him into the air, and dragging him to a squad car was not "excessive force."

Ingram v. Kubik, __ *F.3d. __, No. 20-11310 (11th Cir., Apr. 7, 2022).*
Qualified immunity on an "excessive force" claim was denied to an officer who body-slammed an un-armed person to the ground although he stated his willingness to be arrested. 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.

Wade v. Daniels, __ *F.3d. __, 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.

5. FIFTH AMENDMENT; SIXTH AMENDMENT; SEVENTH AMENDMENT

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.

Netrilov v. Jersey City, __ *F.3d. __, 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 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 violates the Fifth Amendment.

US v. Arce, __ *F4th. __, No. 20-4557 (4th Cir., Sept. 8, 2022).*
"Keeping an eye" on a home-dweller while his house was being searched was not enough to show that he was "in custody" for purposes of a Fifth Amendment *Miranda* warning inquiry.

US v. Foster, __ *Fed. Appx. __, No. 21-4437 (4th Cir., Sept. 20, 2022)(Unpub.).*
Recorded statements made by a suspect to other suspects while they were awaiting police interrogation are not subject to Fifth Amendment protection.

US v. Leggette, __ *F4th. __, No. 21-4175 (4th Cir., Jan. 10, 2023).*
Miranda warnings are not required every time a person has his freedom of movement restrained by a public officer, or an officer's questioning imposes some sort of pressure on a suspect to confess to his crime, but only when the person's freedom of movement is restrained to the extent that they do not feel free to terminate the encounter or the questioning exerts the same coercive pressures as did the station house questioning in *Miranda*.

US v. Linville, __ *F.4th. __, No. 21-4559 (4th Cir., Feb. 24, 2023).*
A person's conditional release, premised upon his truthful answer to all questions from his probation office, did not create a "penalty situation" wherein his Fifth Amendment rights were self-executing - - applicable whether or not expressly invoked.

Lafaye v. New Orleans, __ *F.3d. __, 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.

Ruiz v. Wills, __ *Fed Appx. __, No. 20-3528 (7th Cir., Feb. 27, 2023)(Unpub.).*
The court rejects an argument that a *Miranda* warning must specifically state that a suspect "has a right to a lawyer *before* questioning."

Scott v. Hepp, __ *F.4th. __, No. 22-1314 (7th Cir., Mar. 19, 2023).*
No *Miranda* violation occurred when an accused person requested a lawyer upon arrest but was later questioned while in custody, as a suspect cannot cut-off questioning before any attempt to question him is attempted. *Miranda* does not extend beyond custodial interrogations.

US v. Bleuler, __ *F.4th. __, Nos. 21-20658 & 22-20377 (5th Cir., Feb. 8, 2023).*
For purposes of a Fifth Amendment analysis, a person who was summoned to an interview with his lawyer present, and who was reminded that he was merely a witness, would not have equated this interview with his arrest.

US v ERR, __ *F.3d. __, 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.

US v. Rubio, __ *Fed. Appx. __, No. 21-50886 (5th Cir., Nov. 28, 2022) (Unpub.).*
Text messages sent by co-conspirators to operate the conspiracy - - not to inculpate anyone -- are not testimonial in nature for purposes of a Confrontation Clause analysis.

Barber v. Springfield, MI, __ *F.3d. __, 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.

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 that property.

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.

Billie v. Channahon Village, __ *F4th. __, No. 22-1660 (7th Cir., Jan. 24, 2023).*
The Constitution does not entitle private parties to accurate enforcement of local, state, or federal laws, even when a village violates a local ordinance and a federal regulation by approving the plat of a residential subdivision lying within a flood hazard zone.

US v. Alt, __ *F4th. __, No. 21-2724 (7th Cir., Jan. 25, 2023).*
"On the appointed lawyer, do you have a lawyer here?" does not indicate a present and certain desire to consult with counsel for Fifth Amendment purposes.

Chessen v. City of San Rafael, __ *Fed. Appx. __, No. 22-15615 (9th Cir., Feb. 10, 2023)(Unpub.).*
A rent control ordinance does not constitute a "taking" under the Fifth Amendment. All misapplications of state law resulting in an economic loss do not constitute federal regulatory "taking" claims.

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.

Behrons v. Heintz, __ *F.4th. __, No. 2022-1277 (Fed. Cir., Feb. 13, 2023).*
Railroad easements granted for "railroad purposes" do not encompass the use of an abandoned railroad line as a trail, nor railbanking under the Trails Act, and such use constitutes a Fifth Amendment "taking."

Vega v. Tekoh, __ *597 US __, No. 21-499 (Jun. 23, 2022).*
A violation of *Miranda* does not provide the basis for a Section 1983 claim.

6. FOURTEENTH AMENDMENT*; DUE PROCESS*

A. "Deliberate Indifference" Cases

Baez v. Town of Brookline, __ *F.3d. __, 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.

Tarashuk v. Givens, __ *F4th. __, No. 21-1930 (4th Cir., Nov. 8, 2022).*
Qualified immunity was denied to officers on a Fourteenth Amendment substantive due process claim. Pretrial detainees have a right to adequate medical care and freedom from deliberate indifference to their serious medical needs.

Aucoin v. Terrebonne, __ *Fed. Appx. __, No. 21-30322 (5th Cir., Nov. 3, 2022) (Unpub.).*
Making a pre-trial detainee miss one meal and spend six nights sleeping in accommodations that caused him temporary pain and discomfort do not constitute a "deliberate indifference" to his basic human needs.

Helphenstine v. Lewis County, __ *F.4th. __, No. 22-5407 (6th Cir., Feb. 9, 2023).*
For pretrial detainees, the subjective prong of a "deliberate indifference" claim requires a showing of recklessness, not actual knowledge. A claimant need only show that a jail employee, facing a detainee's serious medical need, acted deliberately and recklessly in addressing a known or obvious unjustifiably high risk of detainee harm.

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.

George v. Beaver Cty., __ *F.3d. __, 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."

Thomas v. City of Americus, __ *Fed. Appx. __, No. 22-11398 (11th Cir., Mar. 14, 2023)(Unpub.).*
Outside of a custodial context, "deliberate indifference" by officers not removing a trespassing ex-boyfriend from a house does not rise to the level of a substantive due process violation.

B. "State-Created Danger" Cases

Fisher v. Moore, __ *F.4th. __, No. 21-20553 (5th Cir., Mar. 16, 2023).*
The court declines to apply the "state-created danger" exception to the general rule that governments have no duty under the Due Process Clause to protect people from privately-inflicted harm.

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.

McGee v. Parsano, __ *F4th. __, No. 20-2414 (7th Cir., Dec. 15, 2022).*
Qualified immunity on a Fourteenth Amendment due process claim was granted to jail officers who relied upon a nurse's medical judgment to remove a prisoner from the jail's medical unit, although shortly thereafter the prisoner died.

Perkins v. Edgar, __ *Fed. Appx. __, No. 21-55552 9th Cir., Oct. 25, 2022) (Unpub.).*
Qualified immunity was awarded to officers on a Fourteenth Amendment due process claim stemming from their not directing paramedics to a struggling individual since the paramedics were already busy assisting other victims.

Phommathep v. Tehama., _ *Fed. Appx. _, Nos. 22-15132/15133/15134/15135/ 15136/15137 (9th Cir., Mar. 8, 2023)(Unpub.).*
Declining to arrest an individual is not an "affirmative act" for purposes of a "state-created danger" analysis.

C. Procedural Due Process Cases

Lawless v. Town of Freetown, __ *F.4th. __, No. 21-1251 (1st Cir., Mar. 22, 2023).*
It is not a procedural due process violation for pre-termination hearing officers to be biased against the employee subject to their employment decision, if there is notice of the hearing, a recitation of the employer's evidence, and a chance for the employee to rebut that evidence.

Hamstead v. Walker, __ *Fed. Appx. __, No. 20-1650 (4th Cir., Oct. 4, 2022)(Unpub.).*
An officer's failure to preserve his bodycam and dashcam recordings did not constitute a denial of due process rights under the Fourteenth Amendment when the plaintiff could have called witnesses at the scene to testify about the incidents recorded on these devices.

Patel v. Glenn, __ *Fed. Appx. __, No. 21-3499 (6th Cir., Nov. 3, 2022) (Unpub.).*
For purposes of an emergency pre-deprivation analysis regarding the closing of a hotel as unsafe for human occupation, a government's 30-day delay in addressing the issue does not necessarily negate the existence of an emergency.

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.

US v. Hill, __ *F.3d. __, 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.

Brucker v. City of Doraville, __ *F.3d. __, 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

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 his 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.

Washington v. Columbia Housing Auth., __ *F4th. __, No. 21-2059 (4th Cir., Jan. 19, 2023).*
A housing authority's failure to install carbon monoxide detection devices or conduct routine furnace maintenance despite the known risks of carbon monoxide poisoning, may support a Fourteenth Amendment substantive due process claim by the estate of a tenant who died from carbon monoxide poisoning.

R.S. v. Lucas Cty, __ *Fed. Appx. __, No. 22-3501 (6th Cir., Dec. 16, 2022) (Unpub.).*
A child welfare agent who initiated the removal and recommended the placement of children with an abusive couple committed an affirmative act for purposes of a Fourteenth Amendment substantive due process analysis.

Simmons v. Beshear, __ *Fed. Appx. __, No. 22-5404 (6th Cir., Dec. 9, 2022) (Unpub.).*
For purposes of a substantive due process "liberty interest" claim, an employer's decision to enforce a COVID-19 masking requirement was not arbitrary and did not "shock the conscience."

Christiansen v. Eral, __ *F4th. __, No. 21-3885 (8th Cir., Oct. 31, 2022).*
An officer's knowing violation of his department's PIT policy does not mean that he acted unreasonably from a constitutional perspective.

Danker v. Council Bluffs, *__ F4th. __, No. 21-3794 (8th Cir., Nov. 10, 2022).*
A city ordinance prohibiting pit bulls satisfied a rational basis review and substantive due process analysis. Even if it resulted in some inequalities, it was rationally related to the legitimate governmental interest in protecting public health and safety.

Reece v. Hale, *__ F4th. __, No. 21-4016 (8th Cir., Jan. 31, 2023).*
Qualified immunity was granted to jail officers on a substantive due process claim. Recognizing that someone is sick is not the same as knowing that he received inadequate care from a trained medical professional.

Murguia v. Langdon, *__ F.4th. __, No. 21-16709 (9th Cir., Mar. 14, 2023).*
The court declined to extend the exceptions to the general rule against "failure to act" substantive due process claims to include a failure to comply with a legally required duty (a welfare check).

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 wandered back on the highway and was struck by a car.

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.

E. Other Cases

Lewis v. Smith, *__ F4th. __, No. 19-30689 (5th Cir., Oct. 19, 2022).*
A police department policy forbidding officers from fraternizing with convicted felons survives a Fourteenth Amendment challenge under a rational basis analysis despite it forbidding an officer to continue his marriage-like relationship with a felon or face termination and despite the general constitutional right to "intimate association."

Burrell v. Tipton Cty., *__ Fed. Appx. __, No. 22-5867 (6th Cir., Oct. 18, 2022) (Unpub.).*
A county's six-month residency requirement to be on the ballot for local office was reasonably necessary to effectuate the important municipal interest in exposing candidates to the scrutiny of the electorate, having officeholders familiar with local issues, and avoiding outsiders not seriously committed to the community. It does not violate a potential candidate's Fourteenth Amendment right to travel.

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.

Williams v. Detroit, __ *F4th. __, No. 22-1344 (6th Cir., Dec. 2, 2022).*
No due process violation for a city to displace vendors whose vending locations fell within its new 300-foot buffer zone around a public sports arena. This new buffer zone was a rational way in which to advance the city's interest in avoiding congestion, ensuring sidewalk safety, reducing litter, and protecting arena operators from competition.

Yerkes v. Ohio St. Hwy. Patrol, _ *Fed. Appx. _, No. 22-3030 (6th Cir., Dec. 19, 2022)(Unpub.).*
The court grants qualified immunity, holding that a non-decisionmaker reporting a potential policy violation up his chain of command with the intent to cause a fellow officer to lose her job due to her sex and/or sexual orientation, is not a clean constitutional violation.

Moutanocordoba v. Contra Costa, __ *F.3d. __, 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., __ *F.3d. __, No. 20-12281 (11th Cir., Jul. 18, 2022).*
A prosecutor was not entitled to absolute prosecutorial immunity against Fourth and Fourteenth Amendment claims 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

Presidents v. Philadelphia, __ *Fed. Appx. __, No. 22-1116 (3rd Cir., Jan. 27, 2023)(Unpub.).*
No Equal Protection Clause violation occurred when a mayor redesignated "Columbus Day" as "Indigenous People's Day."

Byron v. Camo, __ *Fed. Appx. __, No. 22-50035 (5th Cir., Nov. 8, 2022) (Unpub.).*
An order closing all hotels to recreational guests but allowing other businesses serving the same clientele to remain open during COVID-19 survives an equal protection challenge under a rational basis review.

Golden Glow v. City of Columbus, __ *F4th. __, No. 21-60898 (5th Cir., Nov. 8, 2022).*
A city ordinance requiring the mandatory shutdown of tanning parlors but not liquor stores during the initial stages of COVID-19 did not violate the Equal Protection Clause nor the Takings Clause under a rational basis review.

Tyson v. Sabine County, __ *F.3d. __, 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.

Parada v. Anoka County, __ *F4th. __, No. 21-3082 (8th Cir., Nov. 30, 2022).*
A county jail that referred every detainee from outside the U.S. to ICE while immediately releasing persons from the U.S. violated the Equal Protection Clause through national-origin discrimination.

Handley v. Aranas, __ *Fed. Appx. __, No. 21-15757 (9th Cir., Jan. 12, 2023) (Unpub.).*
A transgender woman inmate stated a Fourteenth Amendment equal protection violation when a prison refused to issue her female underwear.

Kheriaty v. U. of Cal., __ *Fed. Appx. __, No. 22-55001 (9th Cir., Nov. 23, 2022) (Unpub.).*
No fundamental constitutional right exists to be free from a workplace vaccine mandate for purposes of a Fourteenth Amendment claim analysis.

Adams v. Sch. Bd. Of St. John's Cty., __ *F4th. __, No. 18-13592 (11th Cir., Dec. 30, 2022).*
A school board was enjoined from prohibiting a transgender boy from using the boy's bathroom in violation of the Equal Protection Clause.

Schultz v. Alabama, __ *F.3d. __, 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 either the Equal Protection Clause or the Due Process Clause.

8. TITLE VII; DISCRIMINATION

A. Hostile Work Environment Cases

Tassy v. DOT, __ *F4th. __, No. 21-1425 (2nd Cir., Oct. 20, 2022).*
The failure of employees to say "good morning" and expressing distaste for a fellow employee's artwork, a gesture suggesting that this employee smelled bad, and a supervisor cursing at him is insufficient to establish a Title VII "hostile work environment" claim.

Szyper v. American Medical, __ *Fed. Appx. __, No.21-3272 (3rd Cir., Mar. 22, 2023)(Unpub.).*
One incident where a supervisor grabbed an employee's wrist and made two crude and offensive sexual remarks to her did not create a "hostile work environment" under Title VII.

Brown v. Bratton, __ *Fed. Appx. __, No. 21-1998 (4th Cir., Nov. 30, 2022) (Unpub.).*
Three racially charged statements by a supervisor over a five-year period, two of which included the word "n*gger," do not establish a "hostile work environment," especially when the African American employee who heard or became aware of these statements worked for the employer for almost two years after the last such statement was made.

Chapman v. Oakland Living, *__ F.3d. __, 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."

Coleman v. Whitley, *__ Fed. Appx. __, No. 21-1181 (4th Cir., Nov. 2, 2022) (Unpub.).*
One statement that the plaintiff was only hired because she was African American and other rude co-employee behavior does not establish a "hostile work environment."

Sowash v. Marshalls, *__ Fed. Appx. __, No. 21-1656 (4th Cir., Jun. 23, 2022) (Unpub.).*
No Title VII "hostile work environment" was shown by ten instances of hugging or arm touching, one kiss on the cheek, and one compliment on appearance, all without any sexual comment or innuendo. Such conduct was unprofessional and inappropriate, but not severe or pervasive.

Daniel v. LSU, *__ F.3d. __, No. 21-30555 (5th Cir., Apr. 8, 2022).*
A "hostile work environment" was not shown by a supervisor's comments to a new African-American employee that "he didn't know that she was Black because she didn't sound Black on the phone," 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.

Okeke v. Tulane, *__ F.3d. __, 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.

Pfau v. Yellen, *__ Fed. Appx. __, No. 22-50542 (5th Cir., Nov. 23, 2022) (Unpub.).*
Off-color statements made in front of both male and female employees do not support a Title VII "hostile work environment" claim even if the plaintiff, a woman, was more offended by them than were male employees.

Walker v. Harmony Pub. Sch., *_ Fed. Appx. _, No. 22-20260 (5th Cir., Feb. 22, 2023)(Unpub.).*
Occasional workplace critiques or banter between employees that do not get along with each other do not establish a Title VII "hostile work environment."

Scaife v. Veterans Affairs, *__ F4th. __, No. 21-1152 (7th Cir., Sept. 27, 2022).*
One use of the "N-word" outside of a Black employee's presence does not create a Title VII "hostile work environment."

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."

Shine v. UAB, *_ Fed. Appx._, No. 22-10333 (11th Cir., Jan. 30, 2023) (Unpub.).*
A single incident of an employee carrying a gun in the workplace, without any threat or interference with job performance, does not establish a "hostile work environment."

B. Adverse Employment Action Cases

Bennett v. Rockland Cty., *__ F.4th. __, No. 21-2597 (2nd Cir., Mar. 7, 2023).*
For First Amendment retaliation claims, all employee reprimands are not, as a matter of law, an "adverse employment action."

Moore v. Jackson Pub. Sch. Dist., *_ Fed. Appx. _, No. 2260376 (5th Cir., Mar 14, 2023)(Unpub.).*
Being reprimanded in the presence of others, being assigned a specific seat in a meeting, being denied a chance to speak during open discussions, being peered at, and being directed to do another employee's responsibilities are not materially "adverse employment actions" for purposes of a Title VII retaliation claim.

Owens v. Circassia, *__ F.3d. __, 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.

Burton v. U. of Wisconsin, *__ Fed. Appx. __, No. 20-2910 (7th Cir., Nov. 15, 2022) (Unpub.).*
An employer can discipline an employee for expressing a Title VII grievance in a manner that violates neutral professional rules or norms.

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, *__ F.3d. __, 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.

Williams v. Aeroflex, *__ Fed. Appx. __, No.* 20-3230 (10th Cir., Mar. 8, 2023)(Unpub.).
Increased scrutiny of an employee and putting her on a PIP are not "adverse employment actions" under Title VII.

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.

Moore v. City of Homewood, __ *Fed. Appx. __, No. 21-11378 (11th Cir., Jan. 9, 2023) (Unpub.).*
The failure of a police department to offer a female officer a fully private location to nurse (breast pump) is not an "adverse employment action" under Title VII.

C. Temporal Proximity Cases

White v. Vance County, __ *Fed. Appx. __, No. 21-2424 (4th Cir., Feb. 28, 2023)(Unpub.).*
A four-month gap between a Title VII complaint and the complainant's termination is too long a time period to support an inference of causation based upon temporal proximity alone.

Lira v. Edward Jones Inv., __ *Fed. Appx. __, No. 22-50141 (5th Cir., Feb. 15, 2023)(Unpub.).*
For causal connection purposes, actions taken between four months and one year before an "adverse employment action" are too temporally removed to show causation based on timing alone regarding a Title VII race and national origin claim.

Paulin v. Mayorkas, __ *Fed. Appx. __, No. 22-30285 (5th Cir., Dec. 8, 2022) (Unpub.).*
For purposes of a Title VII retaliation claim, the court will not presume causation from the temporal proximity of an employment action to long-pending matters regarding protected activity.

D. Other Cases

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 Americans. 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, __ *F.3d. __, 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 fellow employees would seldom swap shifts.

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.

Prosper v. Gov't of Virgin Isl., __ *Fed. Appx. __, No.21-3060 (3rd Cir., Mar. 29, 2023)(Unpub.).*
Policymakers are not protected by either Title VII or the Equal Pay Act.

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.

Laurent-Workman v. Wormuth, __ *F4th. __, No. 21-1766 (4th Cir., Nov. 29, 2022).*
Daily hostility is not the essence of a Title VII harassment claim. Repeated invectives of an overtly racial tenor - - such as the inability of African Americans to speak properly and referring to them as "you people," is sufficient.

Lee v. Belvac Production, __ *Fed. Appx. __, No. 20-1805 (4th Cir., Oct. 4, 2022)(Unpub.).*
In contrast to the EPA, a Title VII plaintiff is only required to show that her job and a proposed comparator's job are similar rather than equal - - but the comparator must still be similarly situated in all respects.

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 his explanation for the selection was pretext, since pre-selection would work to the detriment of all job applicants, regardless of race.

B.W. v. Austin Sch. Dist., __ *Fed. Appx. __, No. 22-50158 (5th Cir., Jan. 9, 2023)(Unpub.).*
Title VII does not support a claim of bullying not related to a protected class or characteristic nor protect against potential bullying.

Carmona v. DeJoy, __ *Fed. Appx. __, No. 22-20064 (5th Cir., Nov. 9, 2022) (Unpub.).*
Being placed on temporary unpaid leave after one's paid leave runs out during a pregnancy is not an "adverse employment action" for purposes of a Title VII and PDA sex discrimination claim.

Hamilton v. Dallas Cty., __ *F.3d. __, 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.

Sneed v. Austin Indp. Sch. Dist., __ *F4th. __, No. 21-50699 (5th Cir., Oct. 4, 2022).*
A Title VII defendant is not "deliberately indifferent" when he actively responds to harassment, provided that the response is not pretextual or knowingly ineffective, even if the response does not end the harassment and is not the most effective method available.

Wallace v. Performance Contractors, __ *F4th. __, No. 21-30482 (5th Cir., Jan. 3, 2023).*
Under Title VII, preventing an employee from working at elevation and keeping her at ground level because she is a woman supports a claim of sex discrimination.

Caldwell v. Gasper, __ *Fed. Appx. __, Nos. 22-1031/1032 (6th Cir., Nov. 1, 2022)(Unpub.).*
An officer's complaints about management practices, not alleged to be discriminatory or unlawful, are not protected activity under Title VII.

Charleton-Perkins v. U. of Cincinnati, __ *F.3d. __, 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.

Bidani v. McDouough, __ *Fed. Appx. __, No. 22-1534 (7th Cir., Mar. 9, 2023)(Unpub.).*
An employee's complaint about disability-related harassment is protected activity for purposes of a retaliatory discharge claim.

Jokich v. Rush Medical Center, __ *F.3d. __, 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.

Mark One v. Kansas Cty., __ *F.3d. __, 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.

Tisdall v. McDonough, __ *Fed. Appx. __, No. 24-2658 (8th Cir., Mar. 14, 2023)(Unpub.).*
No Title VII retaliation occurred when an employer moved an employee's desk to another department, away from others with the same job description and right next to her supervisor's office, even if her desk had no telephone. These are not materially "adverse employment actions."

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.

Patterson v. Georgia Pacifica, __ *F.3d. __, 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 clause that allows an employer to retaliate against an employee for opposing the unlawful employment practice of her former employer.

Wheale v. Polk Cty., __ *Fed. Appx. __, No. 21-13676 (11th Cir., Oct. 11, 2022) (Unpub.).*
Under Title VII and the EPA, an appointed judge is not normally an "employee" but a "policy maker."

Chambers v. District of Columbia, __ *F.3d. __, 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

Allen v. USPS, __ *F.3d. __, 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 these unpaid breaks.

EEOC v. Methodist Hospital, *__ F.4th. __, No. 17-10539 (5th Cir., Mar. 17, 2023).*
Absent special circumstances, the ADA does not require an employer to reassign a qualified disabled employee to a vacant job position in violation of its legitimate, neutral policy of hiring the most qualified candidate for its job positions.

Gamel v. Forum Energy, *__ F.3d. __, 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.

Luke v. Lee County, *__ F.3d. __, 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, *__ F.3d. __, 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.

Tomlinson v. Krauss-Maffei, *__ Fed. Appx. __, No.21-6245 (6th Cir., Feb. 8, 2023)(Unpub.).*
A request for a change in supervisor *could* be a reasonable request under the ADA.(!!)

Swain v. Wormuth, *__ F.3d. __, 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, *__ F.3d. __, 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 a labor 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 to work after the employee's doctor had cleared him to work without restrictions.

Brigham v. Frontier Airlines, *__ F4th. __, No. 21-1335 (10th Cir., Jan. 24, 2023).*
The "duty to accommodate" under the ADA does not require an employer to take steps inconsistent with a collective bargaining agreement.

Norwood v. UPS, *__ F4th. __, No. 21-3145 (10th Cir., Jan. 17, 2023).*
Under the ADA, an employer has no duty to immediately tell an employee of approved possible accommodations or to formally offer her these accommodations.

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."

Cooke v. Carpenter, __ *Fed. Appx. __, No. 20-14604 (11th Cir., Dec. 1, 2022)(Unpub.).*
Under the ADA, an employer can disrupt the interactive process by refusing to consider an accommodation lasting more than 30 days, and can interfere with FMLA leave by granting continuous leave when an employee requests intermittent leave.

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."

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

Laufer v. Acheson Hotels, __ *F4th. __, No. 21-1410 (1st Cir., Oct. 5, 2022).*
An ADA "tester" had Article III standing to bring suit against a hotel whose website did not identify accessible rooms although she had no real intention of booking a room at the hotel.

Basta v. Novant Health, __ *F4th. __, No. 21-2375 (4th Cir., Dec. 27, 2022).*
Under the RA, a hospital's refusal to provide a pregnant woman's husband with a live interpreter or a VRI device, when he was her only advocate during his wife's medical event, may constitute intentional discrimination or deliberate indifference to an individual's RA rights.

Laufer v. Naranda Hotels, __ *F.4th. __, No. 20-2348 (4th Cir., Feb. 15, 2023).*
Enlarging a split in the Circuits, the court holds that an ADA "tester" has Article III standing to pursue her claim even if she has no plans to travel to the city where the defendant's hotel is located. *This ruling is contrary to Second, Fifth, and Tenth Circuit opinions and consistent with First and Eleventh Circuit opinions.*

Williams v. Kincaid, __ *F.3d. __, 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., __ *F.3d. __, 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.

Clark v. Louisiana, __ *F.4th. __, No. 21-30709 (5th Cir., Mar. 28, 2023).*
The government did not violate the ADA by requiring a wheelchair-bound woman to have her physician fill out a medical form confirming that she could drive safely on public roadways.

Drerup v. Consolidated, *_ Fed. Appx. _, No. 21-10600 (5th Cir., Aug. 12, 2022) (Unpub.).*
Under the ADA, itchy eyes, congestion, and chest pain do not implicate any major life function.

Gosby v. Apache Ind. Svcs., *__ F.3d. __, 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, *__ F.3d. __, 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.

Post v. Trinity Healty - MI, *__ F.3d. __, 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 the 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.

Langer v. Kiser, *__ F4th. __, No. 21-55183(9th Cir., Jan. 23, 2023).*
For Article III standing to bring a Title III ADA claim, a plaintiff must show that he has actual knowledge of an access barrier or ADA violation at a place of public accommodation and a sufficient likelihood of future injury. His motive for going to the place is irrelevant to standing.

Shields v. Credit One Bank, *__ F.3d. __, 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, *__ F.3d. __, 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 in order to allow the homeless to relocate, when the balance of equities favors the prompt removal of these public health dangers.

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.

Sugg v. City of Sunrise, __ *Fed. Appx. __, No. 20-13888 (11th Cir., Sept. 19, 2022)(Unpub.).*
A plaintiff's testimony alone may be sufficient to establish the existence of a disability under the ADA.

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.

Laurence v. Bayer Corp., __ *Fed. Appx. __, No. 21-2764 (3rd Cir., Sept. 7, 2022) (Unpub.).*
Ambiguous statements cannot be used to demonstrate direct evidence of discriminatory retaliation under either the FMLA or Title VII.

Adams v. Columbia/HCA, __ *Fed. Appx. __, No.22-30389 (5th Cir., Mar. 4, 2023)(Unpub.).*
A supervisor's comment that an employee could not take FMLA intermittent leave to cover her work tardies may have unlawfully discouraged her from using FMLA leave when a serious health condition caused her to be late for work.

King v. Steward Trumbull Mem. Hosp., __ *F.3d. __, 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.

Milman v. Fieger & Fieger, __ *F4th. __, No. 21-2685 (6th Cir., Jan. 25, 2023).*
The FMLA protects the right of an employee to inquire about and request leave even if it turns out that she is not entitled to the 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.

Render v. FCA US, __ *F4th. __, No. 21-2851 (6th Cir., Nov. 16, 2022).*
An employee's FLMA leave notice was sufficient when his HR department sent contradictory call-in instructions and he followed one of its two call-in procedures.

Juday v. FCA US, __ *F4th.* __, *No. 21-1414 (7th Cir., Jan. 12, 2023).*
Married employees who had 21 common days of FMLA absence and 27 days on which their partial day leave requests overlapped, and who could not explain these coincidences, were suspended. Such action did not violate the FMLA, as it was based upon an honest suspicion of their FMLA abuse.

Ziccarelli v. Dart, __ *F.3d.* __, *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, __ *F.3d.* __, *No. 21-2974 (8th Cir., Aug. 1, 2022).*
Qualified immunity may be available against an FMLA claim.

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.

Parker v. United Airlines, __ *F4th.* __, *No. 21-4093 (10th Cir., Sept. 26, 2022).*
Under the FMLA, retaliation requires a causal link between an employee's use of FMLA leave and her adverse employment action. This link is broken when an independent decision-maker conducts her own investigation and decides to terminate the employee.

11. FLSA; COBRA

Uronis v. Cabot Oil, __ *F4th.* __, *No. 21-1874 (3rd Cir., Sept. 14, 2022).*
Under the FLSA, discrimination against an employee for being about to testify in an FLSA-related proceeding can exist even if he has not yet been scheduled or subpoenaed to testify.

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, __ *F.3d.* __, *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 under the FLSA.

Stramaski v. Lawley, __ *F.3d.* __, *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.

McKay v. Miami-Dade Cty., __ *F.3d.* __, *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 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.

Bridges v. US, __ *F4th. __, No. 2022-1140 (Fed. Cir., Nov. 29, 2022).*
Travel between a regular prison shift and an immediately following voluntary hospital shift is not a "principal activity" compensable under the FLSA.

12. USERRA

Belaustequi v. ILWU, __ *F.3d. __, 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.

Durr v. MSPB, __ *F4th. __, No. 2022-1072 (Fed. Cir., Nov. 15, 2022).*
The doctrine of laches applies to USERRA claims.

13. ADEA

Barr v. Stripes, __ *F.3d. __, 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.

Hoang v. Microsemi, __ *Fed. Appx. __, No. 22-20004 (5th Cir., Mar. 3, 2023)(Unpub.).*
A RIF in which those terminated have an average age 16.8 years older than those retained could support an age discrimination claim under the ADEA.

Duncan v. Sam's Club, __ *Fed. Appx. __, No. 22-3210 (6th Cir., Dec. 7, 2022) (Unpub.).*
Vague statements about older employees and their inability to adapt to new technology are insufficient to prove age bias under the ADEA.

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.

Markley v. US Bank, __ *F.4th. __, No. 21-1240 (10th Cir., Feb. 8, 2023).*
Under the ADEA, while an imperfect investigation may support an inference of pretext, there must be some other indicator of discrimination in order to establish pretext.

14. FHA; PUBLIC HOUSING

Phillips v. Acacia, *_ 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.

McClendon v. Bresler, *__ Fed. Appx. __, No. 22-55068 (9th Cir., Dec. 27, 2022).*
A landlord may violate the FHA by failing to reasonably accommodate a tenant's service dog.

Social Recovery v. City of Costa Mesa, *__ F4th. __, No. 20-55820 (9th Cir., Jan. 3, 2023).*
"Sober living" homes can satisfy the "actual disability" prong of the ADA, FHA, and FEHA on a collective basis, by demonstrating that they serve or intend to serve individuals with actual disabilities.

Sailboat Bend v. Ft. Lauderdale, *__ F.3d. __, 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 disabled persons more favorably by allowing them, but not similarly situated non-disabled persons, to live in a residential district.

15. RLUIPA; RFRA

Sabir v. Williams, *__ F4th. __, No. 19-3575 (2nd Cir., Oct. 28, 2022).*
At the motion to dismiss stage of litigation, a prison warden was not entitled to qualified immunity against a claim stemming from a policy requiring Muslim inmates to conduct group prayer only in the prison chapel, which was frequently closed. Denying a Muslim inmate the ability to engage in group prayer, without justification or compelling interest, violates RFRA.

Mack v. Yost, *__ F.4th. __, No. 21-2472 (3rd Cir., Mar. 21, 2023).*
Qualified immunity can be asserted as a defense under RFRA.

Richardson v. Clarke, *__ F4th. __, No. 21-6507 (4th Cir., Nov. 7, 2022).*
A prison head-covering policy that would require an inmate to violate his religious beliefs substantially burdened him under RLUIPA.

Greene v. Teslik, *__ Fed. Appx. __, No. 21-2154 (7th Cir., Mar. 2, 2023)(Unpub.).*
Summary judgment on a RLUIPA claim was denied to prison officials who provided prayer oil to Muslim prisoners but not to Protestant prisoners.

West v. Radtke, __ *F4th. __, No. 20-1570 (7th Cir., Sept. 16, 2022).*
Under RLUIPA, requiring a Muslim inmate to undergo a strip search performed by a guard who was a transgender male, when cross-sex strip searches violate the tenants of his faith, is unlawful.

Al Saud v. Days, __ *F.3d. __, 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 housing 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.

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 that an accommodation be provided to him.

Dorman v. Chaplains Ofc BSO, __ *F.3d. __, 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

Doe v. Knox Cty BOE, __ *F4th. __, No. 22-5317 (6th Cir., Jan. 4, 2023).*
A student with hypersensitivity to the sounds of eating and chewing demanding a ban on the same in his classroom need not seek relief under IDEA before filing an ADA claim, as the relief he sought had nothing to do with educational instruction.

D.O. v. Escondido Union Sch. Dist., __ *F4th. __, No. 21-55498 (9th Cir., Jan. 31, 2023).*
A 4-month delay in proposing an autism assessment plan for a student was not a procedural FAPE violation. Some delay in complying with IDEA's procedural requirements is permissible.

S.S. v. Cobb Cty., __ *F.3d. __, No. 21-11048 (11th Cir., Aug. 5, 2022).*
Court remand orders to administrative agencies are not final and appealable under IDEA.

Perez v. Sturgis Pub. Sch., __ US __, No. 21-887 (Mar. 21, 2023).
The IDEA's exhaustion of administrative remedies requirement is inapplicable to lawsuits seeking compensatory damages under the ADA.

B. Title IX Cases

Vengalattore v. Cornell Univ., __ F.3d. __, 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.

Verdu v. Princeton, __ Fed. Appx. __, No. 20-1724 (3rd Cir., Sept. 27, 2022)(Unpub.).
Pressure on a school to enforce its sexual misconduct policies is insufficient to state a plausible claim against it under Title IX.

Peltier v. Charter Day School, __ F.3d. __, 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 is also subject to review under Title IX's anti-discrimination provisions.

Roe v. Cypress-Fairbanks, __ F4th. __, No. 20-20657 (5th Cir., Nov. 14, 2022).
A school district's lack of investigation of a student rape, despite awareness of a pre-assault abusive student-on-student relationship, and its failure to prevent subsequent in-person and cyber-attacks against the rape victim, causing her to drop out of school, may violate Title IX.

Doe v. Nashville, __ F.3d. __, 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.

C.S. v. Madison Metro Sch. Dist., __ F.3d. __, 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.

MacIntyre v. Carroll College, __ F4th. __, No. 21-35642 (9th Cir., Sept. 8, 2022).
The refusal to renew a coaching contract may be an adverse action under Title IX because it could deter employees from reporting discrimination.

C. Other Cases

M.A. v. Rockland Cty. Dept. of Health, *__ F4th. __, No. 21-551 (2nd Cir., Nov. 9, 2022).*
School parents' "free exercise" claim against a county for excluding non-vaccinated children from attending school, and barring such students from places of public assembly, survives summary judgment - - no religious exemption in this policy raises a factual issue as to whether this policy affected primarily children of religious objectors and whether it was to stop the spread of measles or to encourage vaccination by "ignorant" anti-vaxxer parents.

Radwan v. Manuel, *__ F4th. __, No. 20-2194 (2nd Cir., Nov. 30, 2022).*
Qualified immunity on a "freedom of expression" claim was granted to school administrators who disciplined a college student for "giving the finger" to a camera broadcasting to a national audience.

Doe v. Manor College, *___ Fed. Appx. ___*, No. 22-1474 (*3rd* Cir., Jan. 4, 2023)(*Unpub.*).
A student who was allegedly sexually assaulted and recorded a portion of the assault on her cellphone was disciplined by her school for violating state law by recording another person without his consent. Jury verdict in the school's favor was upheld on appeal. (!!)

James v. Cleveland Sch. Dist., *__ F.3d. __, No. 21-60688 (5th Cir., Aug. 17, 2022).*
A student has no Fourteenth Amendment property interest in her class ranking.

Jones v. Tulane, *__ F4th. __, No. 21-30681 (5th Cir., Oct. 11, 2022).*
A student suit for a partial refund of tuition when a college went from in-person to remote learning during COVID-19 survives a motion to dismiss for failure to state a claim.

Wilson v. City of Southlake, *__ Fed. Appx. __, No. 21-10771 (5th Cir., Dec. 13, 2022) (Unpub.).*
Neither the RA nor the ADA provide a legal remedy for all unreasonable, inappropriate, unprofessional, and unduly harsh conduct of an SRO towards a misbehaving student whom the SRO did not know had a disability. His handcuffing and yelling at, berating, and mocking the student were unprofessional, but lawful. The SRO was responding to the student's misconduct, not his disability.

N.J. v. Sonnabend, *__ F.3d. __, 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., *__ F.3d. __, 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.

Chen v. Albany Unified, *__ F4th. __, Nos. 16540/16541 (9th Cir., Dec. 27, 2022).*
A school did not violate the First Amendment by disciplining students for their off-campus media posts that constituted severe bullying and harassment targeting specific students.

Dodge v. Evergreen Sch. Dist., __ *F4th. __, No. 21-35400 (9th Cir., Dec. 29, 2022).*
A school principal's asserted administrative interest in preventing staff disruptions did not outweigh a teacher's First Amendment right to wear a MAGA cap into a teacher-only training session.

IFCA v. San Jose Unif. Sch. Dist., __ *F.3d. __, 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, __ *F.3d. __, No. 20-16774 (9th Cir., Aug. 10, 2022).*
A college may have violated the First Amendment by requiring a Muslim student to answer a true or false question in a manner that violates his religious beliefs or risks a bad grade.

C1G v. Siegfried, __ *F.3d. __, 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*.

Gordon v. Jorden Sch. Dist., __ *Fed. Appx. __, No. 21-4044 (10th Cir., Jan. 4, 2023)(Unpub.).*
No Equal Protection Clause violation for a school to deny a request to create an all-girls football team in favor of a co-ed football team.

Sasser v. Bd. Of Regents, __ *Fed. App. __, No.21-14433 (11th Cir., Mar. 10, 2023)(Unpub.).*
Qualified immunity was granted to school officials on a First Amendment claim regarding a student's punishment for using a racial slur on campus during a school-sponsored event.

Speech First v. Cartwright, __ *F.3d. __, 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.

17. COMMERCE CLAUSE; TRANSPORTATION

Immediato v. Postmates, __ *Fed. Appx. __, No. 22-1015 (1st Cir., Nov. 29, 2022) (Unpub.);*
Levine v. Grubhub, __ *Fed. Appx. __, No 22-1131 (1st Cir., Dec. 2, 2022) (Unpub.).*
Couriers who deliver meals and packaged goods from local restaurants to local customers are not transportation workers engaged in interstate commerce who are exempt from the FAA.

Hignell-Stark v. New Orleans, __ *F.3d. __, 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 the residential neighborhood where the property owner's primary residence is located. 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, __ *F.3d. __, 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., __ *F.3d. __, 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 is 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.

18. JAILS; PRISONS; EIGHTH 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.

Clark v. Coupe, __ *F4th. __, No. 21-2310 (3rd Cir., Nov. 28, 2022).*
Qualified immunity was denied to a warden on an Eighth Amendment claim stemming from the placement of a prisoner with manic depression and paranoid schizophrenia in solitary confinement for seven months and thus causing him pain that served no penological purpose.

Rivera v. Monko, __ *F.3d. __, 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.

Webb v. Butler, __ *Fed. Appx. __, No. 21-1441 (4th Cir., Mar. 22, 2023)(Unpub.).*
A pretrial detainee's First Amendment retaliation claim survives summary judgment when he was transferred to another facility nine days after filing a grievance and on the same day on which he filed a second grievance. This temporal proximity creates an issue of material fact.

Biron v. Upton, __ *Fed. Appx. __, No. 19-10862 (5th Cir., Dec. 15, 2022)(Unpub.).*
Seizing an inmate's manuscript addressing the morality of sexual conduct, even if a designation of the manuscript as "sexually explicit" was in error, does not violate the First Amendment because the prison's rule against sexually explicit materials was reasonably related to legitimate penological interests and did not pose a substantial burden on the inmate's religious exercise.

Brantner v. Freestone Cty Sheriff's Ofc., *__ F.3d. __, 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, *__ F.3d. __, 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.

DeMarco v. Bynum, *__ F4th. __, No. 20-11047 (5th Cir., Oct. 4, 2022).*
The confiscation of a prisoner's religious materials not stored in compliance with prison rules did not violate the Free Exercise Clause of the First Amendment.

Douthib v. Collier, *__ Fed. Appx. __, No. 20-20550 (5th Cir., Oct. 5, 2022)(Unpub.).*
Requiring a prisoner with an amputated leg to carry his belongings during a security "shakedown" may violate the ADA.

McWilliams v. City of Houston, *__ F4th. __, No. 21-20369 (5th Cir., Nov. 30, 2022).*
A jail officer's failure to seek medical attention for a prisoner who presented as intoxicated but later died of a drug overdose is not *per se* "deliberate indifference" for purposes of a Fourteenth Amendment analysis.

Peterson v. Johnson, *__ F4th. __, No. 21-20565 (5th Cir., Jan. 4, 2023).*
The duties owed to a pretrial detainee arising out of the "special relationship" between the state and the detainee do not extend beyond the confines of custody.

Salas v. City of Galena Park, *__ F.3d. __, 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, *__ F.3d. __, 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 officer 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, *__ F.3d. __, 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.

Kelly-Lomax v. Chicago, *__ F4th. __, No. 21-2891 (7th Cir., Sept. 28, 2022).*
A municipal policy providing those arrested 30 days to reclaim - - in person or by proxy - - the personal property that they surrendered when jailed, after which unclaimed property would be destroyed or sold, does not violate an arrestee's substantive due process rights.

Shaw v. Kemper, __ *F4th. __, No. 21-3265 (7th Cir., Oct. 25, 2022).*
A prisoner who was disabled but frequently unable to use the handicapped bathroom because it was being used by non-disabled prisoners may state an ADA "denial of access" claim.

White v Woods, __ *F4th. __, No. 21-2291 (7th Cir., Sept. 19, 2022).*
Failure to refer a prisoner complaining of knee pain for a complete examination or MRI for almost seven weeks could constitute "deliberate indifference" to serious medical needs in violation of the Eighth Amendment.

Laughlin v. Hari, __ *Fed. Appx. __, No. 22-1742 (8th Cir., Oct. 21, 2022) (Unpub.).*
Isolated incidents of prison interference with legal mail do not establish a free speech violation.

Al Saud v. Days, __ *F4th. __, No. 21-15089 (9th Cir., Oct. 11, 2022).*
No First Amendment Free Exercise Clause violation for a prison to refuse a request to house a Muslim inmate only with other Muslims that would not harass him while he prayed.

Hughes v. Rodriguez, __ *F.3d. __, No. 17144 (9th Cir., Apr. 21, 2022).*
The Eighth Amendment applies to convicted prisoners both inside and outside a prison's walls.

Johnson v. Grants Pass, __ *F4th. __, Nos. 35752/35881 (9th Cir., Sept. 28, 2022).*
An ordinance prohibiting homeless persons from using a blanket, pillow, or cardboard box for protection while sleeping was enjoined as violative of the Eighth Amendment.

Jackson-Mackey v. Penrod, __ *Fed. Appx. __, No. 22-8033 (10 Cir., Mar. 17, 2023)(Unpub.).*
Qualified immunity was granted to prison officials on a claim that the First Amendment gives a prisoner the right to be present when his mail is opened and to seal his own mail.

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 its forfeiture become challengeable as an excessive fine.

Rodriguez v. Burnside, __ *F.3d. __, 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

Peltz-Steele v. UMass Faculty Fed., __ *F.4th. __, No. 22-1466 (1st Cir., Feb. 14, 2023).*
No First Amendment violation occurred when a union was designated the exclusive bargaining representative within an employee's bargaining unit.

Easom v. US Well Svcs., __ *F.3d. __, 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.

Central States v. Transervice, __ *F4th. __, Nos. 20-3437/3438 (7th Cir., Dec. 22, 2022).*
In the context of a CBA's "evergreen clause," a letter from the union mentioning when a CBA would expire and expressing a desire to meet and discuss a new CBA did not suffice to terminate the existing CBA, which renewed pursuant to the evergreen clause.

United National Foods v. Teamsters 414, __ *F4th. __, No. 22-1469 (7th Cir., Jan. 31, 2023).*
A CBA grievance procedure is focused upon employee-initiated grievances, not upon an employer-initiated disputes regarding CBA terms.

SCHCC v. Culver City, __ *Fed. Appx. __, No. 22-55166 (9th Cir., Jan. 19, 2023)(Unpub.).*
A city ordinance requiring healthcare facilities to pay covered workers an additional $5 per hour while working at a covered facility during a three-month period was not preempted by the NLRA, the Contracts Clause, or the Equal Protection Clause.

AFL-CIO v. NLRB, __ *F4th. __, No. 20-5223 (D.C. Cir, Jan. 17, 2023).*
The NLRA's provision for direct review in appellate court of NLRB orders involving unfair labor practices does not divest a district court of jurisdiction over the review of NLRB rules that are exclusively concerned with representation elections.

Constellium v. NLRB, __ *F.3d. __, 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 to adhere 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 site clean-up costs for a site adjoining its storage facility even though the adjoining property owner was found to be solely responsible for a toxic spill, since the Commission's recalcitrance and unreasonable delays unnecessarily delayed the adjoining landowner's remediation efforts.

21. PROCEDURAL; EVIDENTIARY

Hollis v. Magnusson, __ *F.3d. __, 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.

Salmon v. Lang, __ *F.4th. __, No. 21-1104 (1st Cir., Dec. 15, 2022).*
The "Mount Healthy defense" is not strictly an "affirmative defense" that is ordinarily waived if not timely pled under FRCP Rules 8(c) and 12(h).

Publicola v. Lomenzo, __ *F4th. __, No. 22-795 (2nd Cir., Nov. 29, 2022).*
Under Federal Rule of Appellate Procedure 32(d), a litigant cannot file appellate pleadings under a pseudonym.

Village Green v. Town of Islip, __ *F.3d. __, 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.

Harmon v. Dept. of Finance, __ *Fed. Appx. __, No. 22-1556 (3rd Cir., Dec. 13, 2022)(Unpub.).*
Res judicata does not apply to events post-dating the filing of an initial complaint, even if it could have been amended to include later-arising claims.

Pinkney v. Meadville, PA, __ *F.3d. __, 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 that pleading.

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.

Allen v. Atlas Box, __ *F4th. __, No. 20-1910 (4th Cir., Feb. 3, 2023).*
A federal complaint is deemed filed when it is delivered to the district court clerk, whether or not the complainant timely pays the filing fee.

Britt v. DeJoy, __ *F.3d. __, No. 20-1620 (4th Cir., Aug. 17, 2022).*
When a district court dismisses a claim without leave to amend, that order is appealable without needing to evaluate the grounds for dismissal or speculate as to what the court meant by stating "without prejudice" in its order.

Cities 4 Life v. City of Charlotte, __ *F4th. __, No. 21-1322 (4th Cir., Nov. 1, 2022).*
A consent decree that modifies a municipality's behavior in a way that benefitted the plaintiff was sufficient to confer "prevailing party" status on the plaintiff for purposes of a fee-shifting analysis.

Bernstein v. Maximus, __ *F.4th. __, No. 22-10354 (5th Cir., Mar. 30, 2023).*
Equitable tolling may be appropriate when the EEOC affirmatively misleads a claimant about the time within which he must file a federal complaint.

Britt v. MS Farm Bureau, __ *Fed. Appx. __, No. 22-60094 (5th Cir., Dec. 6, 2022) (Unpub.).*
A party does not waive an issue simply by failing to move for summary judgment on it.

Carr v. City of Spring Valley Village, __ *F.3d. __, 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.

Dobbs v. Warden, __ *Fed. Appx. __, No. 21-10657 (5th Cir., Sept. 15, 2022)(Unpub.).*
A non-lawyer litigant proceeding in federal court cannot represent his child.

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, __ *F.3d. __, No. 20-11054 (5th Cir., Jun. 2, 2022).*
Rooker-Feldman does not apply when a state case is pending appeal at the time a federal suit is filed.

Ray v. Recovery Healthcare, __ *Fed. Appx. __, No. 22-10303 (5th Cir., Nov. 15, 2022) (Upub.).*
A court's modification of conditions of community supervision constitutes a "conviction of sentence" for purpose of a *Heck* analysis.

Ueckert v. Guerra, __ *F.3d. __, No. 22-40263 (5th Cir., Jun. 27, 2022).*
A bench ruling can be effective without a written order, and triggers appeal deadlines.

US v. Bryant, __ *Fed. Appx. __, No. 21-60960 (5th Cir., Jan. 6, 2023)(Unpub.).*
Evidence suppression is not the proper remedy for a violation of the "knock and announce" requirement during the execution of a search warrant.

US v. Walker, __ *F4th. __, No. 21-20385 (5th Cir., Sept. 21, 2022).*
An officer's reliance on computer records listing the defendant's warrants, but without other information that might have revealed the warrants to be invalid, was not deliberate, grossly negligent, or reckless for purposes of an evidence suppression analysis.

Carr v. Louisville-Jefferson Cty., __ *F.3d. __, 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.

Rodriguez v. Hirshberg, __ *F.4th. __, Nos. 20-2184/2247/2253 (6th Cir., Mar. 14, 2023).*
A court violated the FRCP by using an "administrative closure" to suspend and then dismiss a civil lawsuit.

Rover Pipeline v. Zwick, __ *Fed. Appx. __, No. 23-3370 (6th Cir., Nov. 30, 2022) (Unpub.).*
Third-party standing for a contractor's employees pursuing constitutional claims was not appropriate when the contractor's workforce was "decentralized" but they were paid by the contractor despite being allegedly unlawfully prohibited from working on a road project, as they suffered no pecuniary loss.

US v. Torres, __ *F4th. __, No. 21-6102 (6th Cir., Oct. 24, 2022).*
The court refuses to require the blanket suppression of all items found during a warrant search when officers searched a trailer that was just outside the property line of the house mentioned in the warrant and shared a driveway with that house.

US v. Wade, __ *F.4th. __, No. 21-5827 (6th Cir., Feb. 13, 2023).*
Video evidence was suppressed when police, investigating a fire, obtained a warrant and seized a neighbor's surveillance camera against his objection and without reliable evidence that the fire was due to criminal activity.

US v. Robinson, __ *F.4th. __, No. 21-6056 (6th Cir., Mar. 21, 2023).*
The exclusionary rule does not bar evidence illegally obtained from a supervised release hearing.

Klein v. Steinkamp, __ *F.3d. __, 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 it would be admissible in court.

Public Water Supply v. Springfield, MO., __ *F4th. __, No. 21-3618 (8th Cir., Oct. 24, 2022).*
For statute of limitations purposes, once a municipality begins serving a subdivision by providing it with water, this starts the clock, and such provision is not a "continuing violation", and the statute of limitations does not "reset" whenever the city continues to add and provide water service to new customers in a subdivision that it already serves.

Skender v. Eden Isle, __ *F.3d. __, 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, __ *F.3d. __, 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 his location. Credibility determinations are the purview of the trial court.

US v. White Owl, __ *F.3d. __, 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.

US v. Zahn, __ *F.4th. __, No. 22-1408 (8th Cir., Mar. 23, 2023).*
Evidence was not excluded based upon a sheriff's department's negligent failure to remove a recalled arrest warrant from its file and computer system. Such conduct was not so objectively culpable as to require the exclusion of the evidence obtained after the suspect's arrest.

Duarte v. Guttierrez, __ F.4th. __, No. 21-16929 (9th Cir., Feb. 16, 2023).
Heck does not bar "excessive force" and "false arrest" claims where criminal charges are dismissed after a "no contest" plea was held in abeyance pending compliance with certain conditions.

Kubiak v. Ravalli County, __ *F.3d. __, 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.

NACA v. Crossland, __ *F.3d. __, 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 limitations when it spends public money but does not seek to vindicate a distinct public right.

Senn v. Smith, __ *F.3d. __, 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. Baker, __ *F4th. __, No. 20-50314 (9th Cir., Jan. 30, 2023).*
After an officer stopped and frisked a suspect, he took a key fob from the suspect's belt and used it to identify a car in an adjacent parking lot, from which a firearm was seized. The weapon was suppressed at trial because the car search and its seizure were not intended to confirm or dispel the officer's suspicion that a crime had been committed or to secure the scene.

US v. Knight, __ *F4th. __, No. 21-10197 (9th Cir., Jan. 4, 2023).*
Remote (Zoom) participation in a trial by a juror does not automatically render the trial unfair or the judgment unreliable.

US v. Manaku, __ *F.3d. __, 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.

Bruce v. Denver, __ *F4th. __, No. 21-1388 (10th Cir., Jan. 10, 2023).*
The *Rooker-Feldman* doctrine applies to a party when a state court determines that his lien on property is inferior to that of the city, thus causing the dismissal of his federal constitutional claims against the city - - even though he was not a party to the state court litigation.

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.).*
A Title VII complaint was dismissed because plaintiff did not sign her EEOC Charge under oath.

Herrera v. City of Espanoa, __ *F.3d. __, No. 21-2030 (10th Cir., Apr. 27, 2022).*
Both the "continuing violation" and "repeated violation" doctrines are available in a Section 1983 claim.

Serna v. Denver P.D., __ *F4th. __, No. 21-1446 (10th Cir., Jan. 24, 2023).*
The Agriculture Improvement Act of 2018 does not create a private cause of action to sue a local police department when it prohibits a farmer from transporting hemp plants on a flight from Colorado to Texas.

Shaw v. Erich, __ *F.3d. __, 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.

US v. Murry, __ *F.3d. __, No. 20-1214 (10th Cir., Apr. 19, 2022).*
The court declines to adopt a presumption of juror bias for or against any racial or ethnic group.

Rogers v. Sheriff, __ *Fed Appx. __, No. 21-13994 (11th Cir, Mar. 20, 2023)(Unpub.).*
Individual liability under Section 1983 is not a necessary component of *Monell* liability.

22. ARBITRATION; CONTRACTS

Dalla-Longa v. Magnetar Capital, __ *F.3d. __, 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.

Franlink v. BACE Svcs., __ *F4th. __, No. 21-20316 (5th Cir., Sept. 28, 2022).*
Non-signatories to an agreement may be bound in equity by its "choice of forum" provisions if the same are "closely related" to the contract.

23. OTHER CASES OF INTEREST

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.

Wearry v. Foster, *__ F.3d. __, 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 in an investigatory role. Neither the prosecutor nor the officer assisting him gathering evidence is entitled to absolute immunity from claims of evidence fabrication.

Blackwell v. Allen, *__ Fed. Appx. __, No. 22-1300 (6th Cir., Dec. 21, 2022) (Unpub.).*
Outside counsel representing a municipality was not acting as a "state actor" when he sent discriminatory and cruel e-mails to the plaintiff without the city's knowledge or approval and not pursuant to any municipal law or policy. He was pursuing a private and personal interest in doing so, unaided by any indicia of actual or apparent state authority. The fact that the municipality paid his legal invoices that included the time spent on these improper e-mails did not mean that it tacitly approved those e-mails after the fact. The municipality was not liable under the ADA, the First Amendment, or the Equal Protection Clause, for the lawyer's conduct.

Howard v. Livingston Cty., *__ Fed. Appx. __, No. 21-1689 (6th Cir., Jan. 20, 2023)(Unpub.).*
Absolute prosecutorial immunity was denied to prosecutors who engaged in investigative and inquisitorial activities against an employee that strayed far beyond their core functions of preparing and presenting criminal cases in court.

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.

Kreuziger v. Milwaukee Cty., *__ F.4th. __, No. 22-2489 (7th Cir., Feb. 13, 2023).*
The riparian rights of waterfront property owners are subordinate to the government's authority to regulate navigable waterways under the "public trust doctrine." Homeowners have no property right to have a river remain at its present water level.

Faulk v. St. Louis, *__ F.3d. __, 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 know with any certainty that planning, designing, monitoring, or executing a "kettling plan" to contain protesters would expose them to damage liability under a conspiracy theory.

R.J. Reynolds v. City of Edina, *__ F.4th. __, No. 20-2852 (8th Cir., Feb. 27, 2023).*
The Family Smoking Prevention and Tobacco Control Act does not preempt a municipality from enacting an ordinance banning the sale of flavored tobacco products.

Borges v. Mendocino Cty., *__ Fed. Appx. __, No. 22-15673 (9th Cir, Mar. 6, 2023)(Unpub.).*
No federally protected property interest exists in cultivating marijuana.

City of Fernley v. Conent, __ *Fed. Appx. __, No. 22-15400 (9th Cir., Mar. 17, 2023)(Unpub.).*
A statutory claim under NEPA does not exist when a municipality alleges only economic harm as a result of a diminution in the amount of water seeping from a canal into a city's water system.

Yates v. Chicago, __ *F4th. __, Nos. 21-2953 & 22-1109 (9th Cir., Jan. 25, 2023).*
The Constitution does not ensure the correct application of state law.

MERCIFULLY, THE END

NOTES