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CRUISIN' THE CIRCUITS 2023

(August 15, 2022 through August 15, 2023)
by
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A. U. S. SUPREME COURT

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

Dupree v. Younger, *598 __U.S.__, No. 22-210) May 25, 2023).*
A post-trial motion under FRCP 50 is not required to preserve for appellate review a purely legal question that was resolved at summary judgment.

Glacier Northwest v. Teamsters, *598 __U.S.__, No. 21-1449 (Jun. 1, 2023).*
The NLRA does not preempt tort claims against a union that called for a work stoppage that foreseeably resulted in damage to an employer's property.

Groff v. DeJoy, *600 __U.S.__, No. 22-174 (Jun. 29, 2023).*
Showing more than a *de minimis* cost does not establish "undue hardship" to a business under Title IV - - which is shown when a burden is substantial in the overall context of the business after considering all relevant factors, including the requested accommodation and its practical impact on the conduct of the business. Title VII requires an employer to "reasonably accommodate" an employee's practice of religion, not just assess the reasonableness of a particular accommodation. Other options must be considered.

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.

Natn'l Park Procedures Council v. Ross, *598__U.S.__, No. 21-468 (May 11, 2023).*
The Court rejects the assertion that the Dormant Commerce Clause forbids the enforcement of laws that have the practical effect of controlling out-of-state commerce even if they do not purposely discriminate against out-of-state economic interests.

Sackett v. EPA, *598__U.S.__, No. 21-454 (May 25, 2023).*
"Wetlands" are covered by the CWA only when they have a continuous surface connection to bodies that are "waters of the United States" in their own right so as to be indistinguishable from those waters.

Students for Fair Admission v. Harvard, *600 __U.S.__, No. 20-1199 (Jun. 29, 2023).*
Race-based college admissions programs violate the Equal Protection Clause.

303 Creative v. Elenis, *600 __U.S.__, No. 21-476 (Jun. 30, 2023).*
The First Amendment prohibits a state from forcing a website designer to create expressive designs for same-sex marriages and thereby express messages with which she disagrees.

Tyler v. Hennepin Cty., *598__U.S.__, No. 22-166 (May 25, 2023).*
A county that sold a seized home to satisfy a tax bill - - keeping the monies in excess of the amount of tax indebtedness --- violated the Fifth Amendment by taking this excess money without just compensation.

B. U. S. CIRCUIT COURTS

1. FIRST AMENDMENT

A. Public/Private Speech

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.

Patra v. PA State System of Higher Ed., *No. 20-2320 (3rd Cir., Jul. 19, 2023) (Unpub.).*
An employee's speech regarding her employer, limited to internal e-mails and private conversations with colleagues, is not protected by the First Amendment.

Marquardt v. Carlton, *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 due to the overriding city interest in preventing disruption to its EMS services.

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.

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.

Marlow v. City of Claredon, *__ F.4th __, No. 22-2533 (8th Cir., Aug. 14, 2023).*
An officer was not engaging in First Amendment protected speech when he gave a video of a police pursuit to a fellow officer.

Lathus v. Huntington Beach, *__ F.4th __, 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.

Ryan v. Putnam, *Nos. 22-55144/55406 (9th Cir., Jun. 23, 2023) (Unpub.).*
The First Amendment does not allow an employer to suppress employee speech made as a private citizen because of the employee's other unrelated workplace conduct.

Rogers v. Riggs, *__F.4th__, No. 22-2106 (10th Cir., Jun. 27, 2023).*
For First Amendment purposes, a petition by a jail employee sent to county commissioners and alleging the poor treatment of jail employees was not a "matter of public concern."

Darlow v. Babineck, *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.

Green v. Finkelstein, *__F.4th__, No. 21-13894 (11th Cir., Jul. 17, 2023).*
The First Amendment does not protect a public employee's statements attacking her supervisor during a political campaign that would decide the supervisor's successor. The effective management of the office outweighed this employee's own interests.

Wright v. Kay County, *No. 22-11621 (11th Cir., Jun. 8, 2023) (Unpub.).*
Speech made outside of the chain of command and in violation of internal policy is likely not speech made as part of an employee's "official duties" for purposes of the First Amendment.

B. Religious Speech/Establishment Clause

Swartz v. Sylvester, *__ F.4th __, 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 the legitimate governmental interest in publicizing the fire department and promoting the integrity of this governmental institution.

FFR v. Mack, *__ F.4th __, No. 21-20279 (5th Cir., Sept. 29, 2022).*
No First Amendment violation occurred when a judge opened his courtroom with a non-denominational prayer in which a person could choose not to participate with no adverse consequences.

***Redlich v. St. Louis**, __ F.4th __, No. 21-2894 (8th Cir., Oct. 12, 2022).*
Church members who distribute food to homeless people must comply with a municipal health code ordinance. Requiring such compliance does not violate the Free Exercise or Free Speech Clauses of the First Amendment.

***Keene v. San Francisco**, No. 22-16567 (9th Cir., May 15, 2023) (Unpub.).*
A religious belief need not be consistent, rational, or scientifically accurate to be protected.

***Waln v. Dysart Sch. Dist.**, __ F.4th __, No. 21-15737 (9th Cir., Dec. 9, 2022).*
A school district violated the First Amendment when it forbade 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 cap.

C. Laws/Policies

***Tyler v. City of Kingston**, __F.4th__, No. 22-664 (2nd Cir., Jul. 18, 2023).*
The court upheld the dismissal of a First Amendment challenge to a city's prohibition against bringing signs and posters into open-to-the-public common council meetings. In this limited public forum, the city was able to reasonably restrict speech posing the potential for disruption or distraction from the purpose of the forum.

***Mazo v. New Jersey**, __ F.4th __, 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 can be used, did not violate the First Amendment.

***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 Adver. v. City of Austin**, __ F.4th __, 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 an intermediate scrutiny analysis, a First Amendment challenge.

***International Outdoor v. City of Troy**, __ F.4th __, No. 21-1544 (6th Cir., Aug. 10, 2023).*
An ordinance requiring a permit and fee for the erection of a sign, but exempts street signs, small ground signs, flags, real-estate signs, garage, estate or yard sale signs, political signs and holiday signs, contained content-based exceptions that did not survive a strict scrutiny analysis based upon the city's desire to reduce sign proliferation creating traffic hazards, reduces light and air availability, and diminishes property value - - not compelling government interests.

***Sistersforlife v. Louisville-Jefferson**, __ F.4th __, Nos. 22-5150/5151 (6th Cir., Dec. 21, 2022).*
The court enjoins as likely violative of the First Amendment an 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., *__ F.4th __, 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 is unlikely to pose constitutional problems when operating alongside a variance scheme that affords limited discretion to local officials.

Mahwikizi v. CDC, *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 cause it to violate the Free Exercise Clause.

Santopietro v. Howell, *__F.4th__, No. 14-16324 (9th Cir., Jul. 18, 2023).*
The First Amendment may protect from arrest for "operating a business without a license" women dressed in "sexy cop" outfits and accepting tips in exchange for photos, the same constituting "expressive association".

Stewart v. San Francisco, No. 22-16018 (9th Cir., Feb. 17, 2023) (Unpub.)
An ordinance requiring a permit 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, *__ F.4th __, 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 goal of reducing racial injustice and housing barriers.

Christmas v. Nabors, *__ F.4th __, No. 21-14230 (11th Cir., Aug. 8, 2023).*
Requiring a pretrial detainee to scan his legal mail into a computer with a memory chip may violate the detainee's First Amendment rights.

Discotheque v. Augusta, *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 the original holder does not violate the First Amendment.

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.

Tinius v. Choi, *__F.4th__, Nos. 22-7047-53 (D.C. Cir., Jul. 7, 2023).*
Officers did not violate the First Amendment by arresting protesters who violated a neutral curfew order - - a valid "time, place, and manner" restriction on free speech.

D. Other Cases

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

Croft v. Donegal Tshp., *No. 21-1812 (3rd Cir, Aug. 26, 2022) (Unpub.).*
For First Amendment qualified immunity purposes, there is no clearly established right against retaliation by elected officials for speech made by a fellow 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 First Amendment purposes.

Hullbert v. Pope, *__F.4th__, No. 21-1608 (4th Cir., Jun. 14, 2023).*
Qualified immunity on First and Fourth Amendment claims was granted to an officer who arrested picketers who disobeyed his order to back up off from a sidewalk and go to an adjoining square, when his order was given due to his concerns about safety and his belief that his order constituted a valid "time, place, and manner" restriction on free speech. His attempts to mitigate safety risks are confirmed by common sense and the circumstances he faced on the ground.

Kessler v. Parrott, *No. 20-1704 (4th Cir., Dec. 9, 2022) (Unpub.).*
A municipality did not impose a "heckler's veto" when it declared a rally to be an "unlawful assembly" after rally attendees engaged in violence against counter- protesters.

Jackson Mun. Airport Auth. v. Harkins, *__F.4th__, No. 21-60312 (5th Cir., May 10, 2023).*
A local legislature does not automatically forfeit its legislative privilege by communicating with advocacy groups about potential legislation, which is part of the modern "legislative process."

Kallinen v. Neuman, *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 posting 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, *__ F.4th __, 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 themselves that took place during a governmental investigation into alleged police misconduct.

Lemaster v. Lawrence Cty., *__F.4th__, No. 22-5135 (6th Cir., Apr. 11, 2023).*
Taking a towing company off a rotation list due to the owner's negative Facebook postings about a county leader may violate the First Amendment,

***MacIntosh v. Clous**, __F.4th__, No. 22-1015 (6th Cir., May 31, 2023).*
A county commissioner displaying a rifle to the audience in response to a public comment deriding the Commissions' endorsement of the Proud Boys may constitute an "adverse action" that may deter a person of ordinary firmness from exercising her First Amendment rights.

***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.

***In re: N.D. Legislative Assembly**, __F.4th__, No. 22-1600 (8th Cir., Jun. 6, 2023).*
The "legislative privilege" extends to a legislator's communications with constituents and advocacy groups.

***Molina v. St. Louis**, __ F.4th __, No. 21-1830 (8th Cir., Feb. 2, 2023).*
A protestor's criticism of officers, even with the use of profanity, is protected speech.

***Rinne v. Camden County**, __F.4th__, No. 21-3858 (8th Cir, Apr. 13, 2023).*
Qualified immunity was denied to a county commissioner on a First Amendment retaliation claim when he cast the deciding vote to unlawfully ban from county property a resident who spoke at county meetings and criticized the commission's actions.

***Porter v. Martinez**, __F.4th__, No. 21-55149 (9th Cir., May 22, 2023).*
A car horn "honk" can, in some circumstances, constitute "expressive conduct" protected by the First Amendment.

***Kando v. Long Beach**, No. 21-56199 (9th Cir., Apr. 26, 2023) (Unpub.).*
Qualified immunity was denied to an animal control officer on a First Amendment retaliation claim that arose when a citizen protested the conduct of another animal control officer and this officer threatened to sue her if she filed a complaint against her fellow officer.

***Roberts v. Springfield Utility Bd.**, __F.4th__, No. 21-36052 (9th Cir., May 15, 2023).*
The First Amendment is not violated when an employee is ordered not to discuss his own alleged work rule violation with potential witnesses or fellow employees while his workplace conduct was being investigated by his employer - - a matter of private and personal concern.

***Spirit of Aloha v. Maui Cty**, __ F.4th __, Nos. 19-16839, 20-15871 (9th Cir., Sept. 22, 2022).*
An 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 applied to a use involving expressive conduct.

***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.

***Watkins v. Sullivan**, 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 anti-gay songs.

Hall v. Merda, *__F.4th__, No. 21-14247 (11th Cir., May 17, 2023).*
Spraying an inmate with gas may supply the "use of force" action needed to satisfy the "adverse action" prong of a First Amendment retaliation claim.

Frederick Douglas Foundation v. D. C., *__ F. 4th. __, No. 21-7108 (D.C. Cir., Aug. 15, 2023).*
The First Amendment may be violated by the selective enforcement of a defacement ordinance based on viewpoint. Discriminatory motive is not an element of a free speech selective enforcement claim.

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.

Teter v. Lopez, *__ F.4th __, No. 20-15948 (9th Cir., Aug. 7, 2023).*
The Second Amendment guarantees the keeping and bearing of pocketknives - - the term "arms" extends to bladed weapons.

3. FOURTH AMENDMENT

A. Traffic Stops

US v. Balser, *__F.4th__, No. 21-1813 (1st Cir., Jun. 16, 2023).*
A police officer can rely upon a directive by a DEA agent to stop a vehicle, as the agent's probable cause can be attributed to the officer.

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

Brown v. West, *__ F.4th __, No. 22-1763 (8th Cir., Aug. 10, 2023).*
Qualified immunity was granted to officers on an "excessive force" claim that arose when the vehicle's passenger put his hands up as ordered but the driver took off and led the police on a high-speed chase, ran over one officer's legs and drove towards another, at which time both he and his cooperating passenger were killed in a hail of bullets.

Clinton v. Garrett, *__ F.4th __, No. 21-2763 (8th Cir., Sept. 21, 2022).*
Driving with a nervous passenger through a high crime neighborhood in a car sporting a temporary tag is not enough to provide reasonable suspicion to stop the vehicle.

***US v. Romero**, No. 22-1105 (8th Cir., Oct. 12, 2022) (Unpub.).*
Consent to search a car includes 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.

***US v. Howard**, 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

***McKinney v. City of Middletown**, __ F.4th __, No. 19-1765 (2nd Cir., Sept. 26, 2022).*
Using a K-9 for a purpose outside of its training is not the same as using an untrained K-9 for purposes of an "excessive force" analysis. Qualified immunity was justified although the officers did not give a warning before releasing the dog during a violent struggle.

***Putman v. Harris**, __F.4th__, No. 22-1360 (4th Cir., Apr. 19, 2023).*
Qualified immunity was granted to K-9 officers who released a dog on an allegedly armed suspect. Although the officers' bodycams did not show that the suspect was armed, the full record showed that this assumption was reasonable.

C. "Exigent Circumstances"

***US v. Washington**, 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.

***US v. Song**, No. 21-51229 (5th Cir., Aug. 1, 2023) (Unpub.).*
Exigent circumstances allowed the warrantless search and seizure of a cellphone containing sexual assault images that were easily destructible. Moreover, a three-day delay in seeking a warrant after seizing the cellphone did not warrant the suppression of evidence found therein.

***Sanders v. Genesee Cty.**, No. 22-1596 (6th Cir., Jul. 14, 2023) (Unpub.).*
"Exigent circumstances" permitted the warrantless seizure of dogs from private property when they were left in the sun with no shelter, little water, and in an area rife with trash and feces. Pulling a gun on the dog's owner when it appeared that he was about to unleash an aggressive dog is not "excessive force."

***Cotter v. Miller,** __F.4th__, No. 22-2872 (8th Cir., Jul. 24, 2023).*
The warrantless entry into an apartment due to an "exigency" causing officers to believe that domestic violence had occurred therein was not dispelled by a denial through a closed door that "anything had happened."

Hill v. Fountain Valley, *__F.4th__, No. 21-55867 (9th Cir., Jun. 1, 2023).*
No Fourth Amendment violation occurred when police, in response to a 911 call stating that a vehicle was driving erratically with a blind-folded female passenger inside, to order the vehicle's owner out of his house and handcuff him before learning that he was simply taking his wife out for a surprise anniversary dinner.

D. "Community Caretaker"

US v. Treisman, *__F.4th__, No. 21-4687 (4th Cir., Jun. 23, 2023).*
The warrantless search of a van was justified under the Fourth Amendment's "community caretaker" exception when officers reasonably believed that someone in the van needed medical assistance.

US v. Morgan, *__F.4th__, No. 22-1445 (6th Cir., Jun. 26, 2023).*
The "community caretaker" exception does not justify an officer, observing a sleeping or unconscious person slumped over his steering wheel, from opening his car door without a warrant, a warning, or an exigency.

Untalen v. Stanley, *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" exception is inapplicable when officers without a warrant impounded a backpack when the suspect's friend repeatedly offered to retain the backpack during the suspect's arrest process.

E. "Expectation of Privacy"

US. V. John, *__ F.4th __, No. 21-1862 (1st Cir., Feb. 3, 2023).*
A domestic partner who left the house and was told he was no longer welcome therein had no reasonable expectation of privacy in the premises.

Cannarozzo v. West Hazelton, *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. Small**, No. 22-1469 (3rd Cir., Jul. 7. 2023)(Unpub.).*
Trying to stuff a backpack under a car seat suggests an ownership interest, but the same is overridden by a person's express denial of ownership. He thereafter had no Fourth Amendment "expectation of privacy" therein.

***US v. Pridgen**, No. 19-4864 (4th Cir., Oct. 3, 2022) (Unpub.).*
A bank robber who abandoned his getaway vehicle and left his cell phone in it thereafter had no Fourth Amendment expectation of privacy in those items.

***US v. Thomas**, No. 21-4366 (4th Cir., Jul. 5, 2023) (Unpub.).*
A person has no reasonable "expectation of privacy" in a stolen item no matter the degree of his possession and control.

***US v. Castillo**, __F.4th__, No. 21-50406 (5th Cir., Jun. 19, 2023).*
No reasonable suspicion is necessary to conduct a routine manual cell phone search at the border.

Doe v. City of Mansfield, No. 22-3052 (6th Cir., Feb. 8, 2023) (Unpub.).
Qualified immunity on a "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 the officer's prior unnatural sexual behavior.

***US v. Miller**, __F.4th__, No. 22-1896 (7th Cir., May 23, 2023).*
Using a key fob to identify a car did not violate the Fourth Amendment, as the car owner had no reasonable expectation of privacy in the identity of his car.

***US v. Salazar**, __F.4th__, No. 22-2696 (7th Cir., Jun. 2, 2023).*
A suspect who claimed a jacket hanging over his bar chair was "not his" abandoned the jacket for Fourth Amendment warrantless search purposes.

***US v. Thomas**, __F.4th__, No. 21-3169 (7th Cir., Apr. 19, 2023).*
For Fourth Amendment purposes, a tenant can exclude others from his condominium even when his landlord consents to its search, he used an alias to sign his lease, and he breached the lease, none of which automatically deprives him of a legitimate "expectation of privacy" therein.

***US v. Conley**, __F.4th__, No. 22-2282 (8th Cir., Jun. 6, 2023).*
An individual who presented himself at a hospital emergency room and who was restrained due to his conduct and to protect the medical staff had no reasonable "expectation of privacy" in his jacket that was removed to provide him with medical care and in which a pistol was discovered.

***US v. Dewilfond**, __ F.4th __, 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.

US v. Fisher, *__ F.4th __, 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 remove them was fear of detection by law enforcement. They had no reasonable "expectation of privacy" in these items.

US v. Langford, *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.

O'Kelley v. Curran, *No. 22-10600 (11th Cir., Apr. 11, 2023) (Unpub.).*
For Fourth Amendment warrantless search purposes, "curtilage" is not limited to a single building but can include numerous structures that together make up a home.

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

F. "Arrest/No Arrest"

Herrera v. Acevedo, *No. 21-20520 (5th Cir., Dec. 9, 2022) (Unpub.).*
Qualified immunity was denied to officers on First, Fourth, and Fourteenth Amendment claims arising when they converged on a group of protestors and employed a maneuver called "kettling" 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 blocking a street.

Sweetin v. Texas City, *__ F.4th __, No. 21-40784 (5th Cir., Sept. 2, 2022).*
A municipal "permit officer" who told ambulance drivers operating without permits that they "were detained" until the Fire Marshall - - who had authority to issue them citations - - arrived, could be liable under the Fourth Amendment, as he had no power to detain the drivers.

US v. Scott, *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 tugs on his shirt sleeve to move him out of a doorway - - not to seize him.

Gray v. Shelby Cty., *Nos. 22-5542/43/44 (6th Cir., Aug. 15, 2023) (Unpub.).*
Qualified immunity on a Fourth Amendment false arrest claim is denied to an officer who claimed that he was simply "following orders" in making the arrest. A reasonable officer must also consider the known facts and circumstances before making an arrest.

US v. Childers, *__F.4th__, No. 22-2743 (8th Cir., Jul. 18, 2023).*
Placing a suspect in a squad car when officers had reasonable suspicion that a firearm was in his vehicle did not turn a *Terry* stop into an arrest.

US v. Trenton, *__ F.4th __, No. 22-1476 (8th Cir., Jan. 18, 2023).*
The use of force and handcuffs did not turn a detention into an "arrest" when the subject was promptly released and repeatedly told that he was not under arrest and free to leave.

***US v. Vance**, No. 21-12194 (11th Cir., May 22, 2023) (Unpub.).*
Detention of a homeowner, handcuffed and placed in a police car, during a warrant search of his home does not constitute a "seizure" under the Fourth Amendment.

***US v. Gamble**, __ F.4th __, No. 22-3017 (D.C. Cir., Aug. 1, 2023).*
A person was "seized" when a uniformed and armed officer said "let me see your waistband" in a manner that suggested that compliance was mandatory.

G. "Protective Sweep"

***US v. Fischer**, 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 in either location.

***US v. Canada**, No. 21-3202 (10th Cir., Aug. 8, 2023) (Unpub.).*
A furtive motion and the slow stopping of a vehicle during a traffic stop was enough to warrant a "protective sweep" of the vehicle.

H. "Unlawful Extension of Stop"

***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 was not illegal, when signs of drug impairment, the 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 on the welfare of both driver and passenger.

***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 his car and was not a suspect in a criminal matter, he made the driver wait an hour for his supervisor to arrive.

***US v. Howell**, __F.4th__, No. 21-4634 (4th Cir., Jun. 22, 2023).*
The arrival of a drug dog within five minutes of a traffic stop and the completion of a dog sniff within eleven minutes thereafter did not constitute an illegal extension of the stop.

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

***US v. Podbielski**, No. 22-4084 (4th Cir., Aug. 1, 2023) (Unpub.).*
An officer unlawfully extended a traffic stop by, after issuing the driver a traffic citation, making him wait for one minute to allow the K-9 handler to put his dog back and report the dog's positive alert.

***US v. Rederick**, __F.4th__, No. 22-1787 (8th Cir., Apr. 20, 2023).*
A 17-minute delay between a traffic stop and a drug dog alert was not an unreasonable extension of the stop when the officers diligently pursued the mission of the stop during this time.

***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. Cates**, __F.4th__, No. 22-8038 (10th Cir., Jul. 10, 2023).*
During a traffic stop, an officer's 10-second texting to ask for a drug dog did not illegally prolong the stop.

***US v. Hayes**, __ F.4th __, No. 22-8010 (10th Cir., Mar. 17, 2023).*
The court declined 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, she violates the Fourth Amendment by unlawfully extending the stop.

***Baxter v. Roberts**, __ F.4th __, 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 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**, No. 21-11622 (11th Cir., Sept. 29, 2022) (Unpub.).*
Questioning a driver about his travel plans did not unlawfully prolong a traffic stop.

I. Other Cases

***Punsky v. City of Portland**, __ F.4th __, 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.

***US v. Sheehan**, __F.4th__, No. 21-1983 (1st Cir., Jun. 8, 2023).*
A search warrant that permitted the search of a residence but not of any persons located therein except for a named suspect did not require the suppression of a cell phone grabbed from the hand of the suspect's wife - - as this did not constitute a "search."

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

***US v. Hicks**, __F.4th__, No. 19-4707 (4th Cir., Apr. 5, 2023).*
Probable cause does not require experienced officers to test crack cocaine after a controlled buy to confirm its illicit nature before seeking a search warrant for the dealer's residence.

***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**, __ F.4th __, No. 21-30489 (5th Cir., Nov. 17, 2022).*
The court declined to find a Fourth Amendment "search incident to arrest" exception as it relates to religious headgear.

***Carraco v. Henkell**, No. 22-50439 (5th Cir., May 5, 2023) (Unpub.).*
Qualified immunity was granted to an officer who failed to mention on his probable cause affidavit that two other men with the same name were also potential suspects.

***McMurry v. Brunner**, No. 21-50888 (5th Cir., Dec. 7, 2022) (Unpub.).*
Qualified immunity was denied to an officer who 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.

***Spencer v. Harrison Cty.**, No. 22-40548 (5th Cir., Aug. 7, 2023) (Unpub.).*
Qualified immunity on a claim of unnecessary and excessive restraint was granted to officers who handcuffed and leg shackled a 10-year-old boy during his transit to juvenile court.

***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**, __ F.4th __, 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 thereby conducted a private search not subject to Fourth Amendment analysis.

***US v. Malagerio**, __ F.4th __, 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.

***US v. Ramirez**, __F.4th__, No. 22-50042 (5th Cir., May 10, 2023).*
Tossing a jacket over a fence and onto a relative's property did not manifest an intent to abandon it for Fourth Amendment search purposes.

***US v. Wilson**, No. 22-40591 (5th Cir., May 5, 2023) (Unpub.).*
The inadvertent error of typing the wrong address on a search warrant, when officers were very familiar with the correct property at issue, is a mere technical, not Fourth Amendment, violation.

***US v. Wright**, __F.4th__, No. 21-404849 (5th Cir. Jul. 25, 2023).*
The Fourth Amendment is not an insuperable barrier to legitimate police work.

***Habich v. Wayne Cty.**, No. 22-1517 (6th Cir., Apr. 12, 2023) (Unpub.).*
Qualified immunity against a Fourth Amendment claim was granted to officers who impounded a vehicle located in a driveway and about three feet from a home's side door after they observed police-style lights on it that were clearly visible from the road.

***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.

***Rieves v. Town of Smyrna**, __F.4th__, No. 23-5106 (6th Cir., May 16, 2023).*
A sheriff's inter-dependent decision-making with a DA's office in planning and executing raids that resulted in the confiscation of CBD products legal under state and federal law may support a Section 1983 civil conspiracy claim alleging false arrest and unlawful seizure and prosecution.

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

***US v. Witherspoon**, No. 21-4167 (6th Cir., Nov. 14, 2022) (Unpub.).*
No Fourth Amendment violation occurred 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, *__ F.4th __, 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.

Mwangangi v. Nielsen, *__ F.4th __, 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 to believe that a person may be involved in this crime.

US v. Coates, *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.

Buschmann v. K.C. Bd. Of Public Comm., *__ F.4th __, No. 22-2815 (8th Cir., Aug. 10, 2023).*
Qualified immunity was granted on an "unlawful seizure" claim that arose when an officer shot a dog that was barking, growling, and running toward him.

US v. Hayes, *__ F.4th __, No. 22-3247 (8th Cir., Jul. 31, 2023).*
Although officers could have left a home and obtained a warrant before seizing the Molotov Cocktails located therein did not invalidate their seizure when they were in plain view.

US v. Jimenez, *__F.4th__, No. 22-2670 (8th Cir., Jul. 28, 2023).*
Officers at a bus terminal who forcefully removed a blanket from a person's shoulders without first patting him down to see if there were any weapons or hidden objects under the blanket violated the Fourth Amendment when such actions were not supported by reasonable suspicion.

US v. Kinsey, *No. 22-2046 (8th Cir., May 18, 2023) (Unpub.).*
The court declined to recognize a need under the Fourth Amendment for the government to obtain a warrant to conduct a routine border search of an electronic device.

US v. Mathes, *__ F.4th __, 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. Nielsen, *__F.4th__, No. 22-2965 (8th Cir., Jul. 18, 2023).*
When officers conduct an inventory search of a vehicle according to standardized police procedures, the "reasonableness" requirement is generally met even if they have the discretion to release the vehicle to a licensed, insured driver rather than towing it, so long as that discretion is exercised according to standard criteria and for a reason other than suspicion of evidence of criminal activity. Once impounded, officers can be required by policy to open all containers in the vehicle, whether open or closed.

Brown v. Dept. of Children Svcs., *No.21-55393 (9th Cir., May 24, 2023) (Unpub.).*
An officer did not violate the Fourth Amendment when he followed social workers into a house that they were entering to conduct a child welfare check.

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, *No. 21-16826 (9th Cir., Nov. 8, 2022) (Unpub.).*
No Fourth Amendment violation occurred when an officer shot a 56-pound pit bull running in the officer's direction and barking, when the officer had only 12 seconds to react.

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 their enforcement of time limits in city parking spots.

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.

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, *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 right, and qualified immunity was granted to the officer who did so.

US v. Vedrune, *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. Wrenn, *No. 22-12621 (11th Cir., Jun. 23, 2023) (Unpub.).*
Waiting two hours in vain for an alternative driver to arrive to take possession of an arrestee's car was more than sufficient to justify the subsequent impoundment and inventory search of the vehicle.

4. FOURTH AMENDMENT "EXCESSIVE FORCE"

A. Guns

Penate v. Sullivan, *__F.4th__, No. 22-1427 (1st Cir., Jul. 11, 2023).*
Pointing a gun during the warranted entry into a residence suspected of housing an armed assailant is not "excessive force."

***Bygum v. City of Montgomery**, 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 empty-handed, stationary, and 25 feet away.

***Franklin v. City of Charlotte**, __F.4th__, No. 21-2402 (4th Cir., Apr. 4, 2023).*
Qualified immunity was denied to an officer who shouted conflicting commands too ambiguous to transform a suspect's hesitation into recalcitrance and then shot him dead when he complied with her order to drop his gun by removing it from his jacket by gripping only its barrel.

***Baker v. Coburn**, __F.4th__, No. 21-10303 (5th Cir., May 17, 2023).*
For excessive force purposes, officers facing no immediate threat from a vehicle that has already passed them may not thereafter use deadly force by continuing to shoot at it until it is disabled.

***Hines v. Lowndes Cty**, No. 22-60548 (5th Cir., Aug. 10, 2023) (Unpub.).*
Qualified immunity on an "excessive force" claim was granted to officers who shot a suspect after he had led them on a city-wide chase, abandoned his vehicle and stole a squad car, narrowly missed one officer, and drove straight toward another.

***Joseph v. Lopinto**, No. 21-30672 (5th Cir., Jun. 27, 2023) (Unpub.).*
Qualified immunity was granted on an "excessive force" claim to officers who shot into and killed the occupants of a car when its driver put the car into reverse and drove towards an officer in its path. An "excessive force" analysis is the same for both the car's driver and passenger, as a court examines the actions of the vehicle being used as a weapon, not the driver.

***Campbell v. Cheatham County**, __ F.3d __, No. 21-5044 (6th Cir., Aug. 29, 2022).*
An officer responding to 911 hang-ups by knocking on a residential door, not announcing himself as a police officer, and then firing 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**, No. 22-3251 (6th Cir., Feb. 1, 2023) (Unpub.).*
In a tense, fast-moving and physical encounter with an armed suspect, 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.

***Kilnapp v. City of Cleveland**, No. 22-4059 (6th Cir., Jul. 21, 2023) (Unpub.)*
Qualified immunity was denied to an officer who blindly fired his weapon when no suspect posed a threat to him. Moreover, a person is "seized" for Fourth Amendment purposes when she is shot by an officer aiming at another person.

Sawyer v. City of Soddy Daisy, *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.

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.

Ching v. City of Minneapolis, *__F.4th__, No. 22-3157 (8th Cir., Jul. 13, 2023).*
Qualified immunity on an "excessive force" claim was granted to an officer who continued to shoot at an emotionally disturbed man holding a knife for one second after he dropped the knife and fell to the ground. The officer had no time to observe and process the situation and reassess the threat the man posed.

Bernal v. Sacramento Cty. Sheriff's Dept., *__F.4th__, No. 22-15690 (9th Cir., Jul. 7, 2023).*
Qualified immunity on an "excessive force" claim was denied to officers who pointed a gun at a person, kicked his knees, and pushed his head into the hood of a car after they were on notice that he was holding a cell phone and not a weapon.

Estate of Strickland v. Nevada Cty., *__F.4th__, No. 22-15761 (9th Cir., May 31, 2023).*
No "excessive force" occurred when officers shot a man who disregarded several warnings to drop his gun and instead pointed it at the officers, even if the gun was later found to be a toy.

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

Hopson v. Alexander, *__F.4th__, No. 21-16706 (9th Cir., Jun. 16, 2023).*
Qualified immunity was granted to officers on an "excessive force" claim stemming from their pointing their guns at a suspect before identifying themselves as police officers and using moderate force to remove him from his vehicle based upon their reasonable suspicion that he was about to commit an armed robbery.

Lu v. Jackson, *Nos. 22-55457/55683 (9th Cir., Jul. 26, 2023) (Unpub.).*
It was not "excessive force" for officers to point a gun at an individual during the execution of a valid search warrant and before he could be handcuffed.

Peck v. Montoya, *__ F.4th __, 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, *__ F.4th __, 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, *__ F.4th __, 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.

J.I.W. v. Dorminey, *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 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. Tasers

Austin v. City of Pasadena, *__F.4th__, No. 22-20341 (5th Cir., Jul. 18, 2023).*
Tasing a pre-trial detainee multiple times when she was experiencing an epileptic seizure and not actively resisting may constitute "excessive force," and doing so may also constitute "deliberate indifference" to her serious medical condition in violation of the Fourteenth Amendment.

Cobbins v. Sollie, *No. 22-30692 (5th Cir., Jun. 14, 2023) (Unpub.).*
Excessive force exists when an unarmed, passively resisting misdemeanant surrounded by officers, pinned to the ground, and unable to escape, is tased.

Bernabe v. Rosenbaum, *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, *__ F.4th __, No. 21-20544 (5th Cir., Oct. 12, 2022).*
No "excessive force" for an officer to tase a fleeing suspect after he suddenly stopped and turned towards the officer, moving his hands in a manner that suggested he was reaching for a weapon.

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 not to be tased while in a stairwell from which he could fall.

Pollreis v. Marzolf, *__F.4th__, No. 21-3267 (8th Cir., Apr. 27, 2023).*
Drawing a Taser and pointing it at a person who did not obey an officer's orders, in order to gain control at the scene, was not "excessive force."

C. Pepper/Mace Spray

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.

Aldridge v. City of St. Louis, *__F.4th__, Nos. 22-1735/19101/2213 (8th Cir., Jul. 28, 2023).*
No "excessive force" occurred when officers pepper-sprayed a crowd of protesters, even if a few members of the crowd were not protesting. It was impossible for officers to single out these people, who did not differentiate themselves from the protesting crowd.

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

D. Handcuffs

Rogers v. NJDOC, *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."

Schoonover v. Clay Cty. Sheriff's Dept., *No. 20-1680 (4th Cir., Jun. 15, 2023) (Unpub.).*
Qualified immunity on an excessive force claim was granted to deputies who handcuffed the 65-year-old plaintiff's right wrist to his right ankle during his arrest for minor traffic violations.

Leftwick v. Driscoll, *Nos. 22-1572/1575 (6th Cir., May 19, 2023) (Unpub.).*
Racking a firearm in one's own front doorway, without making threats or pointing the weapon at anyone, does not justify the use of deadly force against the person doing so.

Olmetti v. Kent Cty., *No. 22-1834 (6th Cir., Jun. 7, 2023) (Unpub.).*
Qualified immunity on an "excessive force" claim was denied to an officer who placed handcuffs on a pretrial detainee so tight that they left ring marks, bruising, swelling, and/or wrist numbness, even if the detainee's pain level and numbness were subjective.

Brown v. San Bernadino Cty., *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 and be handcuffed.

Uzun v. Santa Monica, *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.

Watkins v. Wunderlich, *No. 22-1358 (10th Cir., Jun. 23, 2023) (Unpub.).*
No "excessive force" for officers to handcuff an arrestee and refuse to loosen the cuffs for hours, during which time the arrestee experienced pain and bruising but no lasting damage.

E. K-9

Smith v. Lee, *__F.4th__, No. 22-30241 (5th Cir., Jul. 14, 2023).*
For "excessive force" purposes, no precedent exists for how long a trained K-9 can bite a person it is detaining before it has to release. Qualified immunity was granted for a one-minute bite.

Adams v. Trimble, *__F.4th__, No. 22-3234 (8th Cir., Jul. 24, 2023).*
An officer's failure to give a warning and a chance to surrender to a suspect before deploying a K-9 trained to "bite and hold" may constitute "excessive force."

Martinez v. Jenneiahn, *No. 22-1219 (10th Cir., Jul. 12, 2023) (Unpub.).*
No "excessive force" for an officer to use a K-9 to secure a suspect who had eluded police for 2 hours and was now hidden in a closet with the door closed and out of the officer's sight.

F. Other Cases

Craig v. Martin, *__ F.4th __, 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."

Crane v. City of Arlington, *__ F.4th __, 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, *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, *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 after he ignored their verbal commands.

Ramirez v. Martin, *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."

Soto v. Bautista, *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, *__ F.4th __, No. 22-20109 (5th Cir., Dec. 21, 2022).*
An airport officer who swore at a father picking up his family and who delayed moving his vehicle despite the officer's directive to do so because his family had just arrived at the 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, *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.

Parsons v. City of Ann Arbor, *No. 22-1338 (6th Cir., May 12, 2023) (Unpub.)*
Qualified immunity on an "excessive force" claim was granted to an officer who executed a takedown maneuver on a detainee who removed his hand from behind his back, stood up, and started walking away.

VanPelt v. Detroit, *__F.4th__, No. 22-1680 (6th Cir., Jun. 6, 2023).*
Tackling and then attempting to lift from the ground a fleeing suspect not then known to be injured by the takedown does not constitute "excessive force."

Shirley v. Rabensteine, *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 the officers could not readily determine if his mid-chase surrender was sincere.

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

Laney v. St. Louis, *__ F.4th __, 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.

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.

Alston v. Sacramento Cty., *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."

Armenta v. City of Goodyear, *No. 22-15965 (9th Cir., Jul. 19, 2023) (Unpub.).*
Qualified immunity was granted to an officer on an "excessive force" claim that arose after he punched an arrestee when she pulled away from him and went back into her vehicle.

Roberson v. City of Hawthorne, *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.

Williams v. Baskett, *No. 22-35054 (9th Cir., Jul. 19, 2023) (Unpub.).*
Qualified immunity on an "excessive force" claim was granted to an officer who rammed and disabled the vehicle of a suspect he reasonably expected to flee, then broke his car window, tased him and pulled him out through the broken window after the suspect got back in his car and the officer reasonably believed him to be armed.

Jordan v. Adams Cty. Sheriff's Ofc., *__F.4th__, No. 22-1154 (10th Cir., Jul. 18, 2023).*
Utilizing a takedown maneuver on a bystander who continued to criticize the police during a traffic stop was "excessive force" and arresting him for his protected conduct was unlawful.

Knighten v. Ransey, *No. 22-5078 (10th Cir., Apr. 19, 2023) (Unpub.).*
A jail officer who mistakenly believed that a detainee was faking his injury and dumped him out of his wheelchair, causing him pain, may have engaged in "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.

Wise v. Caffey, *__F.4th__, Nos. 22-5069/5086 (10th Cir., Jul. 11, 2023).*
A knee strike to the face of a seated and handcuffed pre-trial detainee is "excessive force."

Ashley v. Bennett, *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."

Lucibella v. Town of Ocean Ridge, *No. 22-11056 (11th Cir., Apr. 7, 2023) (Unpub.).*
Poking an officer in the chest with a finger in response to being pushed by the officer does not justify an officer taking a suspect violently to the ground without notice and then performing a "knee drop" on him.

Williams v. Radford, *__F.4th__, No. 20-13364 (11th Cir., Apr. 4, 2023).*
"Excessive force" may exist when an officer struck a handcuffed, restrained, and unarmed prisoner because he raised his voice.

5. FIFTH AMENDMENT; SIXTH AMENDMENT; SEVENTH AMENDMENT

US v. Monson, *__F.4th__, No. 21-1612 (1st Cir., Jun. 26, 2023).*
The 60-minute length of an interrogation is a factor that weighs against its "custodial" nature for purposes of a *Miranda* analysis.

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

***US. V Colon**, __F.4th__, Nos. 4187/4192 (4th Cir., Apr. 11, 2023).*
The Sixth Amendment's "fair cross-section" requirement does not apply to a court's decision to strike unvaccinated potential jurors "for cause" related to COVID-19 safety risks. This requirement applies to jury venires, not petit juries.

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

***US v. Leggette**, __ F.4th __, 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 a person's freedom of movement is restrained to the extent that he does not feel free to terminate the encounter or the questioning exerts the same coercive pressures on him as does station house questioning.

***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.

***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. Guia-Lopez**, No. 22-50234 (5th Cir., Aug. 15, 2023) (Unpub.).*
Text messages themselves do not qualify for Fifth Amendment protection if they are not a result of governmental compulsion - - any more than are gang symbol tattoos on a person's body.

***US v. Rubio**, 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.

***Gibbs v. Carl**, No. 22-1348 (6th Cir., Jun. 1, 2023) (Unpub.).*
Absent proof of prejudice to the accused, the Sixth Amendment is not violated when the court temporarily closes a courtroom to members of the public arriving after jury selection has begun.

***Horton v. Chapman**, No. 22-1084 (6th Cir., Apr. 28, 2023) (Unpub.).*
Comments like "a very good lawyer can beat this," that he would have to see what an attorney could "simmer up" regarding his explanations to the police, and that a lawyer "would know loopholes," do not evidence a suspect's Fifth Amendment request for an attorney.

***Knight v. Nashville**, __F.4th__, No. 21-6179 (6th Cir., May 10, 2023).*
The court agreed with landowners on a Fifth Amendment takings claim that the Supreme Court's *Nollan* test should apply to both legislative and administrative conditions imposed by a city on building permits issued pursuant to its sidewalk ordinance.

***Billie v. Channahon Village**, __ F.4th __, 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.

***Garcia v. Hepp**, __F.4th__, No. 21-3268 (7th Cir., Apr. 25, 2023).*
Under the Sixth Amendment, the right to counsel is triggered when a court commissioner, outside of the arrestee's presence, finds probable cause for his detention, sets bail, and starts the judicial machinery of the state's adversarial process.

***Jones v. Cromwell**, __F.4th__, No. 22-2084 (7th Cir., Jul. 28, 2023).*
A suspect's question to officers as to whether they "could get a public pretender right now" was too ambiguous to invoke his Fifth Amendment right to counsel.

***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. Alt**, __ F.4th __, 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.

***US v. Jackson**, __F.4th__, No. 21-2811 & 22-1003 (7th Cir., Jun. 16, 2023).*
Further uncoerced statements by a suspect after he says "I'd rather have a lawyer" need not be suppressed as violative of the Fifth Amendment.

Wilson v. City of Evanston, *No. 21-2888 (7th Cir., Apr. 20, 2023) (Unpub.).*
A jail policy of destroying or selling an arrestee's property seized when entering custody if, after receiving notice of such policy, the arrestee did not claim it or have someone designated by him claim it within 30 days, did not violate the Fifth or Fourteenth Amendment.

US v. Elliott, *No. 22-2210 (8th Cir., Jun. 1, 2023) (Unpub.).*
A request to search a stopped motorist's vehicle does not require officers to first *Mirandize* him.

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

US v. Springfield, *No. 22-50031 (9th Cir., Jun. 29, 2023) (Unpub.).*
Drug use does not make a suspect's statement "involuntary" when it is a product of a rational intellect and a free will.

US v. Mcrae, No. *21-13905 (11th Cir., Aug. 8, 2023) (Unpub.).*
The" public safety exception" permitted officers to question an overnight guest about the location of the gun that went with the gun clip in his pocket out of concern that children in the house could gain access to it. Such questioning did not violate *Miranda*.

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."

Bd. Of Supervisors v. US, *No. 2022-2026 (Fed. Cir., Aug. 4, 2023) (Unpub.).*
A county failed to state a Fifth Amendment "takings" claim when it alleged that the inactions of the United States led to flooding which reduced economic activity and deprived it of tax revenue.

Jenkins v. US, *__F.4th__, No. 22-1378 (Fed. Cir., Jun. 28, 2023).*
While "police power" may initially preclude liability under the Fifth Amendment for a seizure of property, it does not preclude takings liability after the property is no longer needed for criminal proceedings.

Bd. Of Supervisors v. US, *No. 2022-2026 (Fed. Cir., Aug. 4, 2023) (Unpub.).*
A county failed to state a Fifth Amendment "takings" claim when it alleged that the inactions of the United States led to flooding which reduced economic activity and deprived it of tax revenue.

6. FOURTEENTH AMENDMENT*; DUE PROCESS*

A. "Deliberate Indifference"

Tarashuk v. Givens, *__ F.4th __, 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.

Allen v. Hays, *__F.4th__, No. 21-20337 (5th Cir., Apr. 14, 2023).*
A motion to dismiss a Fourteenth Amendment "deliberate indifference" claim is denied when an officer shot a man five times and watched him then crash his vehicle into a tree yet waited six minutes before calling for emergency medical care and never himself attempted to provide the man with any life-saving measures.

Aucoin v. Terrebonne, *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.

DeLeon v. Nueces Cty., *No. 23-40004 (5th Cir., Jul. 11, 2023) (Unpub.).*
A single prior incident of not providing training to an officer alleged to have engaged in "excessive force" does not constitute a "pattern" of failure to train officers in the proper use of force for purposes of a Section 1983 "failure to train" claim.

Reed v. Nacogdoches Cty., *No. 22-40126 (5th Cir., May 19, 2023) (Unpub.).*
Qualified immunity on a Fourteenth Amendment "deliberate indifference" claim was granted to an officer who ignored a pretrial detainee's emergency intercom calls for 3 minutes and 14 seconds while handling a personal phone call.

Reynolds v. Wood Cty., *No. 22-40381 (5th Cir., May 1, 2023) (Unpub.).*
Qualified immunity against a "deliberate indifference" claim was granted to jail officers who kept a kicking and spitting arrestee in a restraint chair for 14 hours during which he wet himself.

Thompson v. Texas DCJ, *__F.4th__, No. 21-20241 (5th Cir., May 5, 2023).*
Medical malpractice by a jail doctor is a civil matter, not a depravation of constitutional rights based upon a "deliberate indifference" claim.

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.

Howell v. Naphcare, *__F.4th__, Nos. 21-4132 & 22-3306 (6th Cir., May 1, 2023).*
The diagnosis of a pre-trial detainee as having a generic "psychiatric episode" does not shield a nurse from liability for her "deliberate indifference" to the detainee's serious medical need.

McGowan v. Herbert, *No. 22-2033 (6th Cir., Apr. 14, 2023) (Unpub.).*
Moving a pre-trial detainee who is a known "snitch" from protective custody into the general jail population, where he was assaulted by other detainees, may constitute "deliberate indifference."

Lemmons v. Chanbers, *__ F.4th __, No. 23-2318 (8th Cir., Aug. 11, 2023).*
A prisoner may state a valid "deliberate indifference" claim when he was detained in a jail cell with a mold problem for 7 months, during which he developed respiratory problems.

Presson v. Reed, *__F.4th__, No. 22-1198 (8th Cir., Apr. 12, 2023).*
Qualified immunity on a "deliberate indifference" claim was denied to deputies who substituted their controlled substance policy and its schedule for administering medication for that of a pre-trial detainee's treating physician's orders.

US. v. Jones, *__F.4th__, No. 22-2776 (8th Cir., Jun. 15, 2023).*
Two mistakes do not establish a "pattern" of outrageous conduct sufficient to show 'deliberate indifference' in support of a substantive due process violation.

Reyes v. Fowlks, *No. 22-4028 (10th Cir., Jul. 12, 2023) (Unpub.).*
Qualified immunity on a Fourteenth Amendment "deliberate indifference" claim was granted to officers transporting an un-seat-belted pre-trial detainee who was injured when the transport vehicle hit a fence post.

Valdez v. MacDonald, *__F.4th__, Nos. 21-1401/1415 & 22-1152 (10th Cir., Apr. 24, 2023).*
The court rejects the argument that if there has been some officer training on deadly force, a municipality can never be "deliberately indifferent" for purposes of a "failure to train" claim.

Thomas v. City of Americus, *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"

Cuvo v. Pocono Mtn. Sch. Dist., *No. 22-1576 (3rd Cir, Aug. 4, 2023) (Unpub.).*
Qualified immunity was granted to a high school coach who allowed his team to participate in a rough contact game without protective gear. This did not constitute a "state-created danger."

Fisher v. Moore, *__F.4th__, No. 21-20553 (5th Cir., Jul. 14, 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.

Zinsou v. Ft. Bend Cty., *No. 22-20423 (5th Cir., Jul. 17, 2023) (Unpub.).*
The mere fact that someone is placed in an ambulance does not amount to "custody" nor establish a "special relationship" for Fourteenth Amendment purposes.

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, *__ F.4th __, 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.

Garcia v. Mirabal, *No. 22-35773 (9th Cir., Jul. 26, 2023) (Unpub.).*
An officer may have violated a suicidal individual's Fourteenth Amendment rights when he promised the individual that the other officers surrounding him would retreat and then broke his promise, which agitated the individual and became a "state-created danger."

Perkins v. Edgar, *No. 21-55552 9th Cir., Oct. 25, 2022) (Unpub.).*
Qualified immunity was awarded to officers on a Fourteenth Amendment substantive 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., *Nos. 22-15132-37 (9th Cir., Mar. 8, 2023) (Unpub.).*
Declining to arrest an individual is not an "affirmative act" nor a "state-created danger."

C. Procedural Due Process

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.

Barnes v. NYC, *__F.4th__, No. 21-33 (2nd Cir., May 22, 2023).*
Under the Fourteenth Amendment, the prosecution of an individual based upon fabricated evidence may itself constitute a deprivation of liberty for purposes of his due process rights to a fair trial, even if he is not detained nor convicted.

Hamstead v. Walker, *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 who were present at the scene to testify about the incidents recorded on these devices.

US v. Bailey, *__F.4th__, No. 22-4134 (4th Cir., Jul. 17, 2023).*
A police officer may violate a drug dealer's due process rights when he assures the dealer that, if he turns over his drugs, they will be "squared away," yet later reneges by obtaining an arrest warrant against the dealer.

S.R. v. Scott Cty., *No. 22-60124 (5th Cir., Apr. 14, 2023) (Unpub.).*
The Constitution does not require all criminal suspects under the influence of drugs or alcohol to be taken to an emergency room instead of a detention center in order to satisfy due process.

Cremeans v. Taczale, *No. 22-3730 (6th Cir., Aug. 14, 2023) (Unpub.).*
A delay of 19 months between a seizure of cash and the filing of a forfeiture action is an "unreasonable delay" that violates the Fourteenth Amendment's due process obligations.

Patel v. Glenn, *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.

Rice v. Village of Johnstown, *No. 22-3974 (6th Cir., Aug. 3, 2023) (Unpub.).*
The court declines to find that a village violated a private property owner's due process rights by delegating its legislative authority to its Planning and Zoning Commission, who rejected the property owner's rezoning application. Nondelegation claims have historically been limited to the delegation of legislative authority to self-interested private parties.

Sterling Hotels v. McKay, *__F.4th__, No. 22-1345 (6th Cir., Jun. 22, 2023).*
A hotel stated a due process claim when an elevator inspector sealed its elevators without notice or an opportunity to object - - an unconstitutional regulatory taking.

US v. Beard, *No. 22-2462 (8th Cir., Apr. 26, 2023) (Unpub.).*
The destruction of dash cam videos, without bad faith and in accordance with departmental policy, did not violate a suspect's due process rights.

Rueter v. DOC, *__F.4th__, No. 21-2216 (Fed. Cir., Apr. 3, 2023).*
An employee was not denied due process when an agency official had three *ex parte* communications with the hearing officer in his employment termination case, since these communications provided no new and material information and did not exert undue pressure on the deciding official.

D. Substantive Due Process

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

Linden v. City of Southfield, *__F.4th__, No. 22-1681 (6th Cir., Jul. 26, 2023).*
No substantive due process violation occurred when first responders erroneously believed that a subject was dead and allowed a funeral home to put him in a body bag while yet alive. There was no indifference to the person's serious medical needs.

R.S. v. Lucas Cty *, 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 substantive due process analysis.

Simmons v. Beshear, *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 requirements was not arbitrary and did not "shock the conscience."

Christiansen v. Eral, *__ F.4th __, 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, *__ F.4th __, 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 a legitimate governmental interest in protecting public health and safety.

Reece v. Hale, *__ F.4th __, 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).

Shaw v. City of Norman, *No. 22-6106 (10th Cir., Apr. 13, 2023) (Unpub.).*
High-speed police chases wherein the pursuing officer has no time to deliberate and no intent to harm a fleeing suspect do not give rise to substantive due process liability.

Watkins v. Azael, *No. 22-11648 (11th Cir., Jul. 10, 2023) (Unpub.).*
Qualified immunity was granted to a corrections officer against a Fourteenth Amendment claim stemming from the officer verbally threatening to rape a pre-trial detainee.

E. Other Cases

Adams v. Harahan, *__F.4th__, No. 22-30218 (5th Cir., Apr. 4, 2023).*
There is no recognized Fourteenth Amendment liberty interest in a police officer's career in law enforcement.

***Carmouche v. Hooper**, __ F.4th __, No. 21-30082 (5th Cir., Aug. 10, 2023).*
Courts should apply a nuanced analysis of the length and conditions of an inmate's confinement to determine whether they give rise to a Due Process Clause liberty interest.

***Edwards v. Black Springs**, __F.4th__, No. 22-10269 (5th Cir., Jun. 9, 2023).*
A local government's official written policy on the use of deadly force is not *per se* unconstitutional when it does not affirmatively allow or compel unconstitutional conduct.

***Garcia v. City of Lubbock**, No. 21-11134 (5th Cir., Jul. 20, 2023) (Unpub.).*
A county jail's policy of leaving intoxicated detainees in detox cells for several hours does not violate the Fourteenth Amendment, although a stopping point for detaining intoxicated persons does exist. Moreover, while previously litigated instances of liability are helpful in determining whether a supervisor has notice of unconstitutional behavior, such instances are not required for a plaintiff to prevail on a "failure to train or supervise" claim.

***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 from continuing his marriage-like relationship with a felon or face termination and despite the general constitutional right to "intimate association."

***Burrell v. Tipton Cty.**, 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 interest in exposing candidates to the scrutiny of the electorate, having them familiar with local issues, and avoiding outsiders not committed to the community. It does not violate a potential candidate's Fourteenth Amendment right to travel.

***Williams v. Detroit**, __ F.4th __, 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**, 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.

***Doe v. Gray**, __F.4th__, No. 22-1501 (7th Cir., Jul. 28, 2023).*
Under the Fourteenth Amendment, there is no established privacy right in one's sexual preference or gender identity during a criminal or child welfare investigation.

7. FOURTEENTH AMENDMENT; EQUAL PROTECTION

***Presidents v. Philadelphia**, 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**, 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**, __ F.4th __, 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.

***The Bail Project v. Cmmsr., IN DOI**, __ F.4th __, No. 22-2183 (7th Cir., Aug. 3, 2023).*
The payment of cash bail does not violate the First Amendment or the Equal Protection Clause.

***Parada v. Anoka County**, __ F.4th __, 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.

***Hall v. Maioho-Pohina**, No. 22-15698 (9th Cir., May 3, 2023) (Unpub.).*
No equal protection supervisory liability claim exists when it is premised upon a supervisor's "acquiescence" through inaction to a past constitutional wrong.

***Handley v. Aranas**, 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.**, 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.

***Seaplane Adven. v. Marin Cty.**, __F.4th__, Nos. 21-17105 & 22-15027 (9th Cir., Jun. 26, 2023).*
A county did not violate the Equal Protection Cause by citing only one air carrier for violating its COVID-19 restrictions when it was unaware that other carriers were also violating them.

***Countryman-Roswurm v. Muma**, No. 22-3160 (10th Cir., May 15, 2023) (Unpub.).*
Qualified immunity was granted against an equal protection claim stemming from a supervisor failing to act on a sexual harassment complaint while his institution was separately investigating the same complaint.

Adams v. Sch. Bd. Of St. John's Cty., *__ F.4th __, 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.

8. TITLE VII; DISCRIMINATION

A. "Hostile Work Environment"

Tassy v. DOT, *__ F.4th __, 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 an employee smelled bad, and a supervisor cursing at him is insufficient to establish a Title VII "hostile work environment" claim.

Nitkin v. Main Line health, *__F.4th__, No. 21-3107 (3rd Cir., May 11, 2023).*
Seven unprofessional and inappropriate sexual remarks over a 42 – month period does not create a "hostile work environment."

Szyper v. American Medical, *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."

Brown v. Bratton, *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, *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."

Racklin v. Zeta Global, *No. 22-2077 (4th Cir., Aug. 11, 2023) (Unpub.).*
A supervisor who was blunt, abrasive and rude to all employees does not support a "hostile work environment" claim nor discrimination based upon gender, disability, or other protected activity.

Robinson v. Priority Automotive, *__F.4th__, No. 21-1855 (4th Cir., Jun. 5, 2023).*
Telling an employee to stop hanging around with "that group of thugs" and another to "come over to the White side" is insufficient to create a "hostile work environment."

Allen v. Our Lady of the Lake, *No. 22-30546 (5th Cir., May 5, 2023) (Unpub.).*
Ten minor incidents regarding abusive language, a shift and a meeting denial over a seven-year period does not create a "hostile work environment."

Bryant v. McDonough, *__F.4th__, No. 22-3836 (6th Cir., Jun. 28, 2023).*
No "hostile work environment" existed under the RA simply by assigning a rude and obnoxious person to work the same shift as the plaintiff.

Pfau v. Yellen, *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.

Quintero v. Texas HHS Comm., *No. 22-50916 (5th Cir., Aug. 15, 2023) (Unpub.).*
An "uncomfortable" workplace does not constitute a "hostile work environment."

Walker v. Harmony Pub. Sch., *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, *__ F.4th __, 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."

Sharp v. S & S Activewear, *__F.4th__, No. 21-17138 (9th Cir., Jun. 7, 2023).*
Sexually graphic and misogynistic music played throughout an employer's warehouse could create a Title VII "hostile work environment" even if it was offensive to both men and women.

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

B. "Adverse Employment Action"

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

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

***Terry v. FBP**, No. 23-50130 (5th Cir., Jun. 27, 2023) (Unpub.).*
A lateral transfer is not an "adverse employment action" under Title VII unless it can be shown that one position is objectively better than the other.

***Burton v. U. of Wisconsin**, 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.

***Naes v. St. Louis**, No. 22-2021 (8th Cir., Jun. 14, 2023) (Unpub.).*
Transferring a straight police officer to a patrol slot and filling his now vacant position with a gay officer was not an adverse employment action under Title VII when the transferred officer's salary, rank, and chances for promotion remained the same.

***Williams v. Aeroflex**, No.* 20-3230 (10th Cir., Mar. 8, 2023) (Unpub.).
Increased scrutiny of, and placement on a PIP, are not "adverse employment actions."

***Alkins v. Ginnett Cty.**, 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**, 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

***Alberti v. UVA**, __F.4th__, No. 21-2385 (4th Cir., Apr. 14, 2023).*
Temporal proximity on a Title VII retaliation claim was not shown when a student complained to his school's EEOC officer about a teacher's disparaging remarks yet did not begin receiving bad grades until about 9 months later and was not dismissed from school until about 2 years later.

***White v. Vance County**, 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.**, No. 22-50141 (5th Cir., Feb. 15, 2023) (Unpub.).*
For causal connection purposes, actions taken between 4 and 12 months before an "adverse employment action" are too temporally removed to show causation based on timing alone.

***Jones v. Baylar**, No. 22-1296 (7th Cir., May 25, 2023) (Unpub.).*
A six-month gap between protected activity and an adverse action is too long a period to infer retaliation under Title VII.

***Paulin v. Mayorkas**, No. 22-30285 (5th Cir., Dec. 8, 2022) (Unpub.).*
For the purposes of a 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

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

Johnson v. Global Language, *No. 21-1638 (4th Cir., May 25, 2023) (Unpub.).*
A long and rambling employee e-mail that contained primarily personal grudges and gossip did not become protected speech for purposes of a Title VII retaliation claim by including vague and sporadic references to "harassment" and "retaliation," when the content and context of the e-mail did not reasonably raise Title VII concerns.

Laurent-Workman v. Wormuth, *__ F.4th __, 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, *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.

B.W. v. Austin Sch. Dist., *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.

Sneed v. Austin Indp. Sch. Dist., *__ F.4th __, No. 21-50699 (5th Cir., Oct. 4, 2022).*
A Title VII defendant is not "deliberately indifferent" when he actively responds to harassment, provided that this 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, *__ F.4th __, 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, *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.

Drerup v. Netjets, *No. 22-3475 (6th Cir., Jun. 27, 2023) (Unpub.).*
Title VII sex discrimination may be shown when an employer accommodates male employees who are tall but not a female employee who is short.

Fitzgerald v. Roncalli H.S., *__F.4th__, No. 22-2954 (7th Cir, Jul. 13, 2023).*
A Christian school can refuse employment to guidance counsellors in same sex relationships under Title VII's "ministerial" exception.

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, *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 and 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."

Brown v. Co Judicial Dept., *No. 22-1065 (10th Cir., Jul. 25, 2023) (Unpub.).*
Preselection for an open job position does not support a claim of race or age discrimination absent evidence that the preselection was based upon race or age.

Frank v. Heartland, *No. 22-3031 (10th Cir., Jul. 11, 2023) (Unpub.).*
Title VII does not impose an affirmative duty on employers to monitor their employees to ensure that they are behaving appropriately unless they know that an employee poses a risk to others.

Ponce v. Greater Salt Lake, *No. 22-4070 (10th Cir., Jun. 27, 2023) (Unpub.).*
The exhaustion of state administrative remedies is not required in order to seek Title VII relief.

EEOC v. Eberspaecher, *__F.4th__, No. 21-13799 (11th Cir., May 10, 2023).*
When an EEOC charge is limited to one facility, the EEOC's request for information on employees at other facilities not part of the EEOC's investigation is overbroad and not relevant to the charge.

Sheba Ethiopian Restaurant v. DeKalb Cty., *No. 21-13077 (11th Cir., Jun. 1, 2023) (Unpub.).*
Qualified immunity was granted to a county on a race discrimination claim because a public corporation does not have a race and cannot be discriminated against on account of race.

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

9. ADA; REHABILITATION ACT

A. "Reasonable Accommodation"

Hannah v. UPS, *__F.4th__, No. 21-1647 (4th Cir., Jul. 10, 2023).*
The fact that a temporarily disabled employee would prefer to be accommodated in some other manner from that provided by his employer does not support an ADA claim of discrimination.

Kinney v. St. Mary's Health, *__ F.4th __, No. 22-2740 (7th Cir., Agu. 7, 2023).*
Under the ADA, the fact that employees were able to temporarily work from home during the COVID-19 crisis does not mean that their jobs did not have essential functions that required their in-person work over the medium to long term.

***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.

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

***EEOC v. Charter Comm.**, __F.4th__, No. 22-1231 (7th Cir., Jul. 28, 2023).*
Under the ADA, if an employee's disability substantially interferes with her ability to get to work, and attendance at work is an essential job function, her employer may be required to provide a commute-related accommodation - - such as a modified work schedule.

***Hopman v, Union Pacific R.R.**, __F.4th__, No. 22-1881 (8th Cir., May 19, 2023).*
"Mitigating employee pain" through a service dog is not an employer-sponsored program or service for purposes of an ADA "reasonable accommodation" analysis.

***Conlan v. Costco**, 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**, __ F.4th __, 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**, __ F.4th __, 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**, 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."

***Belgrave v. Publix**, No. 13021 (11th Cir., May 16, 2023) (Unpub.).*
Asking for a "permanent helper" to perform one's essential job duties is not a reasonable accommodation request under the ADA.

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

B. Other Cases

Laufer v. Acheson Hotels, *__ F.4th __, 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.

Lehenky v. Toshiba, *No. 22-1475 (3rd Cir., May 19, 2023) (Unpub.).*
The ADA is not violated when an employer terminates an employee pursuant to its neutral drug policy after she tests positive for THC and thus is believed to have violated said policy, even if the employee was using CBD oil to treat an undisclosed disability and this caused the positive test result.

Basta v. Novant Health, *__ F.4th __, No. 21-2375 (4th Cir., Dec. 27, 2022).*
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 her 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. *The 2nd, 5th, and 10th Circuits agree, and the 1st and 11th Circuits disagree.*

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.

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 have her physician fill out a medical form confirming that she could drive safely on public roadways.

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.

Wilson v. Baucom, *No. 22-50066 (5th Cir., Jun. 30, 2023) (Unpub.).*
The ADA does not prohibit an officer from arresting a mentally ill person for an illegal act.

Bidani v. McDouough, *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.

Langer v. Kiser, *__ F.4th __, 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.

Beasley v. O'Reilly Auto, *__F.4th__, No. 21-18083 (11th Cir., May 24, 2023).*
Failure to provide an interpreter for a deaf employee at a company picnic, when his attending wife could interpret for him, did not violate the ADA.

Campbell v. Universal Partners, *__F.4th__, No. 22-10646 (11th Cir., Jul. 7, 2023).*
Compliance with state law does not relieve a defendant of its obligation under the ADA.

Sugg v. City of Sunrise, *No. 20-13888 (11th Cir., Sept. 19, 2022) (Unpub.).*
A plaintiff's testimony alone may be sufficient to establish an ADA-covered disability.

10. FMLA; GINA; PDA

Fanor v. Univ. Hosp., *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 leave request.

Jacobs v. Bucks Cty., *No. 22-2327 (3rd Cir., Jul. 10, 2023) (Unpub.).*
For an FMLA retaliation claim, forty-two days between a protected activity and an adverse action is not unduly suggestive of their causal connection.

Laurence v. Bayer Corp., *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.

Sawyer v. Tidelands Health, *No. 21-2161 (4th Cir., Jun. 15, 2023) (unpub).*
FMLA "interference" is not shown by corrective action that did not harm an employee's employment or employment benefits.

Adams v. Columbia/HCA, *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.

Carmona v. DeJoy, *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.

Raskin v. Dallas Indep. Sch. Dist., *__F.4th__, No. 21-11180 (5th Cir., Jun. 2, 2023).*
Imposing an absolute ban on *pro se* parent representation of her children in federal court is inconsistent with Section 1654 of GINA.

Turner v. Bd. Of Supervisors,*No. 22-30615 (5th Cir., Aug. 9, 2023) (Unpub.).*
Under the FMLA, employers cannot ask employees on intermittent leave more than once every 30 days to recertify their medical condition. However, more frequent recertifications can be required under an employer's paid leave policy.

***Erwin v. Honda North**, No. 22-3823 (6th Cir., Apr. 21, 2023) (Unpub.).*
Changing managers and the loss of remote work opportunities are retaliatory adverse employment actions under the FMLA.

***Milman v. Fieger & Fieger**, __ F.4th __, No. 21-2685 (6th Cir., Jan. 25, 2023).*
The FMLA protects the right of an employee to inquire about and request FMLA leave even if it turns out that she is not entitled to such leave.

***Render v. FCA US**, __ F.4th __, 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 but he successfully followed one of those instructions.

***Juday v. FCA US**, __ F.4th __, No. 21-1414 (7th Cir., Jan. 12, 2023).*
Married employees who had 21 days of FMLA leave and 27 partial day leave requests that overlapped, and who could not explain these coincidences, were suspended. Such an action did not violate the FMLA, as it was based upon an honest suspicion of FMLA abuse.

***Trahanas v. Northwestern**, __F.4th__, No. 21-3278 (7th Cir., Apr. 7, 2023).*
An employee's voluntary decision not to return to work or extend her leave was not a "tangible employment action" that supported a retaliation claim under either the FMLA or ADA.

***Saevik v. Swedish Med Ctr.**, No. 22-35023 (9th Cir., May 10, 2023) (Unpub.).*
Temporarily disconnecting an employee's work computer while she is on FMLA leave does not constitute FMLA leave interference.

***Parker v. United Airlines**, __ F.4th __, 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 an adverse employment action. This link is broken when an independent decision-maker conducts her own investigation and decides to terminate the employee.

***Graves v. Brandstar**, __F.4th__, No. 21-13469 (11th Cir., May 9, 2023).*
Under the FMLA, mere temporal proximity between an employee's father's decline in health and the employee's termination is not enough to show pretext.

11. FLSA

***Uronis v. Cabot Oil**, __ F.4th __, 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.

***Houston v. St. Luke's Health**, __ F.4th __, No. 22-1862 (8th Cir., Aug. 11, 2023).*
A time keeping system that rounds off time at the beginning and end of a work shift may violate the FLSA.

Bridges v. US, *__ F.4th __, 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

Garcia-Ascanio v. Spring Ind. Sch. Dist., *__F.4th__, No. 22-20363 (5th Cir., Jul. 17, 2023).*
USERRA's "mixed motive" defense applies to constructive discharge claims.

Kelly v. Omalia Pub. Power Dist., *__F.4th__, No. 22-2321 (8th Cir., Jul. 28, 2023).*
A company that denied tuition assistance under its educational assistance program to an employee whose tuition was fully paid under the G.I. Bill did not violate USERRA.

Myrick v. City of Hoover, *__F.4th__, No. 22-11621 (11th Cir., Jun. 8, 2023).*
Under USERRA, it does not matter whether an employer designates a service member as being on "paid" or "unpaid" leave for purposes of his or her accrual of benefits and holiday pay while on military leave.

Durr v. MSPB, *__ F.4th __, No. 2022-1072 (Fed. Cir., Nov. 15, 2022).*
The doctrine of laches applies to USERRA claims.

13. ADEA

In re: IBM Arbitration Agrmt., *__ F.4th __, No. 22-1728 (2nd Cir., Aug. 4, 2023).*
The "piggybacking rule" is not a substantive right under the ADEA.

Palmer v. Liberty Univ., *__F.4th__, No. 21-2390 (4th Cir., Jul. 5, 2023).*
The court joins the Fifth and Sixth Circuits in holding that questions about an employee's retirement do not amount to evidence that age was the motivation for his job termination.

Hoang v. Microsemi, *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, *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.

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.

***Waggoner v. Frito-Lay**, No. 22-3111 (10th Cir., Apr. 17, 2023) (Unpub.).*
A supervisor's alleged comments that "I know historically that older managers are let go," and that the company was going through a "youth movement" were sufficient for a plaintiff to avoid summary judgment on his ADEA claim.

14. FHA; FHAA; PUBLIC HOUSING

***Klossner v. IADU Table Mound MHP**, __F.4th__, Nos. 21-3503/3544 (8th Cir., Apr. 10, 2023).*
The FHAA requires landlords to make "reasonable" accommodations to ameliorate a tenant's handicap, but this obligation does not extend to alleviating a tenant's lack of money to pay rent.

***McClendon v. Bresler**, 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**, __ F.4th __, No. 20-55820 (9th Cir., Jan. 3, 2023).*
"Sober living" homes can satisfy the "actual disability" prong of the ADA and FHA on a collective basis, by demonstrating that they serve or intend to serve individuals with actual disabilities.

***Courage to Change v. El Paso Cty.**, __F.4th__, No. 21-1227 (10th Cir., Jul. 18, 2023).*
A city may have violated the FHAA by its zoning scheme that prohibited therapeutic activities in a group home for people recovering from drug and alcohol addiction but allowed the same for other residences located within the same single-family housing zone.

***Sailboat Bend v. Ft. Lauderdale**, __ F.3d __, No. 20-13444 (11th Cir., Aug. 26, 2022).*
A zoning ordinance that permits three 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 the district.

15. RLUIPA; RFRA

***Sabir v. Williams**, __ F.4th __, 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, *__ F.4th __, 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, *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, *__ F.4th __, 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.

Trinble v. VA, *No. 23-1307 (Fed. Cir., Jun. 30, 2023) (Unpub.).*
The selection of a non-veteran job applicant does not make out a *prima facie* case of discrimination under USERRA.

16. SCHOOLS

A. IDEA

Roe v. Healey, *__ F.4th __, No. 22-1740 (1st Cir., Aug. 14, 2023).*
A lawsuit under the IDEA claiming that the closure of schools during COVID-19 deprived students of a FAPE is dismissed as not cognizable.

Mendez v. Banks, *__F.4th__, No. 22-2663 (2nd Cir., Apr. 12, 2023).*
The IDEA's stay-put provisions do not entitle parties to automatic injunctive relief when such relief concerns educational funding, not placement.

Charlotte-Mecklenburg Cty. v. Brady, *__F.4th__, No. 22-1478 (4th Cir., Apr. 19, 2023).*
The statute of limitations does not bar an IDEA claim when a school district withholds necessary information from a student's parents. Moreover, a compulsory counterclaim under IDEA is not subject to IDEA's pre-suit requirements.

Miller v. Charlotte-Mecklenburg Sch. Bd., *__F.4th__, No. 21-2003 (4th Cir., Apr. 6, 2023).*
The IDEA does not require school districts to defer to the opinions of private evaluators hired by a student's parents.

Z.W. v. Harry Cty. Sch. Dist., *__F.4th__, No. 21-1596 (4th Cir., May 26, 2023).*
The court held that a father of an autistic child need not exhaust his administrative remedies under IDEA before filing a Rehabilitation Act claim against the school district.

Heaton v. Austin Indep. Sch. Dist., *__F.4th__, No. 22-50295 (5th Cir., Jun. 22, 2023).*
The IDEA does not require administrative exhaustion when a plaintiff brings a suit under another federal law for compensatory damages.

***S.B. v. Jefferson Parrish Sch. Bd.**, No. 22-30139 (5th Cir., May 30, 2023) (Unpub.).*
The parents of an autistic student cannot bring a "failure to accommodate" claim against a school board under either the ADA or RA when the accommodation requested is a school "de-escalation protocol" without first exhausting their IDEA administrative remedies.

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

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

***Davis v. Dist. Of Columbia**, __ F.4th __, No. 21-7134 (D.C. Cir., Aug. 15, 2023).*
Under the IDEA, the "stay put" provision does not impose an affirmative duty on an educational institution to provide a student with an alternative residential environment when the student's current placement becomes unavailable for reasons beyond its control.

***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

***Verdu v. Princeton**, 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.

***Roe v. Cypress-Fairbanks**, __ F.4th __, 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.

***Grabowski v. University of Arizona**, __F.4th__, No. 22-15714 (9th Cir., Jun. 13, 2023).*
Title IX bars sexual discrimination on the basis of perceived sexual orientation as well as actual sexual orientation.

***MacIntyre v. Carroll College**, __ F.4th __, 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, *__ F.4th __, 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 the vaccination of students of "ignorant" anti-vaxxer parents.

Radwan v. Manuel, *__ F.4th __, No. 20-2194 (2nd Cir., Nov. 30, 2022).*
Qualified immunity on a "freedom of expression" claim was granted to school administrators who disciplined a student for "giving the finger" to a camera broadcasting to a national audience.

Doe v. Manor College, 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. A jury verdict in the school's favor was upheld on appeal. (!!)

Menders v. Loudon Cty., *__F.4th__, No. 22-*1168 *(4th Cir., Apr. 14, 2023).*
Parents may have raised a valid First Amendment claim when their children were denied access to a "Student Equity Ambassador Program" due to their viewpoint.

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, *__ F.4th __, No. 21-30681 (5th Cir., Oct. 11, 2022).*
A student's lawsuit asking 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, *No. 21-10771 (5th Cir., Dec. 13, 2022) (Unpub.).*
Neither the RA nor the ADA provides a legal remedy for all unreasonable, inappropriate, unprofessional, and unduly harsh conduct by an SRO towards a misbehaving student whom the SRO did not know had a disability. His handcuffing and yelling at, berating, and mocking this student were unprofessional, but lawful. The SRO was responding to the student's misconduct, not his disability.

Kutchinski v. Freeland Community Sch. Dist., *__F.4th__, No. 22-1748 (6th Cir., Jun. 2, 2023).*
The First Amendment does not protect from school suspension a student who created a false Facebook page impersonating a teacher that soon invited comments from other students and quickly became graphic, harassing, and threatening.

A.C. v. Kutruff, *__ F.4th __, Nos. 22-1786/2318 (7th Cir., Aug. 1, 2023).*
The court upheld an injunction ordering schools to allow transgender boys access to the boy's bathrooms and locker rooms based on claims of sex discrimination under Title IX and violations of the Equal Protection Clause.

Kluge v. Brownsburg, *__F.4th__, No. 21-2475 (7th Cir., Apr. 7, 2023).*
A school did not violate a teacher's First Amendment religious rights when it refused to accommodate his objection to calling transgender students by their preferred name when they differed from names consistent with their recorded sex at birth, due to the disruption such an accommodation would cause in the learning environment.

Chen v. Albany Unified, *__ F.4th __, 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., *__ F.4th __, No. 21-35400 (9th Cir., Dec. 29, 2022).*
A school principal's 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.

Flores v. Bennett, *No. 22-16762 (9th Cir., Aug. 3, 2023) (Unpub.).*
A university's ban on flyers containing "inappropriate or offensive language or themes" was too broad and vague to pass muster under the First and Fourteenth Amendments.

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.

Gordon v. Jorden Sch. Dist., *No. 21-4044 (10th Cir., Jan. 4, 2023) (Unpub.).*
No Equal Protection Clause violation occurred when a school denied 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.

17. COMMERCE CLAUSE; TRANSPORTATION

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 was located. This new residency requirement violated the Dormant Commerce Clause because it discriminated against interstate commerce and out-of-state property owners.

18. JAILS; PRISONS; EIGHTHAMENDMENT

Burton v. Clinger, *No. 21-1586 (3rd Cir., Jul. 7, 2023) (Unpub.).*
A "demanding work schedule" is not enough to avoid an Eighth Amendment "deliberate indifference" claim involving a delay in providing medical care to an inmate.

Clark v. Coupe, *__ F.4th __, 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.

Moore v. Durand, *No. 22-2915 (3rd Cir, Aug. 1, 2023) (Unpub.).*
"Deliberate indifference" to an inmate's serious health needs may exist when he is housed with a smoking inmate despite his known sensitivity to environmental tobacco smoke.

Talley v. Griesmer, *No. 19-3796 (3rd Cir., Apr. 19, 2023) (Unpub.)*
An Eighth Amendment claim of deliberate indifference to the risk of suicide may exist when an inmate who had threatened to cut himself is left unsupervised while in possession of a razor.

Webb v. Butler, *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 day on which he filed yet another grievance. This temporal proximity creates an issue of material fact.

Biron v. Upton, *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.

DeMarco v. Bynum, *__ F.4th __, 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, *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, *__ F.4th __, 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, *__ F.4th __, 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.

Welsh v. Lamb Cty., *No. 22-10124 (5th Cir., Jun. 9, 2023) (Unpub.).*
A substantive due process violation may exist when a pre-trial detainee is allegedly forced to drink water out of his cell's toilet during his three days of confinement.

***Rager v. McMinn Cty.**, No. 21-5987 (6th Cir., Aug. 2, 2023) (Unpub.).*
Qualified immunity on a "failure to protect" claim stemming from one pre-trial detainee assaulting another was granted to an officer who knew of the assaulting detainee's violent history but had no indication that he would attack another detainee on the date in question.

***Balle v. Kennedy**, __F.4th__, No. 21-2393 (7th Cir., Jul. 14, 2023).*
A "deliberate indifference" claim under the Eighth Amendment may exist when an inmate is required to carry a pail of boiling water over a damaged floor, tripped, and was scalded.

***Kelly-Lomax v. Chicago**, __ F.4th __, 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**, __ F.4th __, 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**, __ F.4th __, 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 his serious medical needs in violation of the Eighth Amendment.

***Laughlin v. Hari**, 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**, __ F.4th __, No. 21-15089 (9th Cir., Oct. 11, 2022).*
No First Amendment Free Exercise Clause violation was committed when a prison refused to house a Muslim inmate only with other Muslims who would not harass him while he prayed.

***Davis v. DOC**, No. 23-35109 (9th Cir., May 24, 2023) (Unpub.).*
Transport drivers may have violated the Eighth Amendment when they drove an inmate with a neck injury recklessly and roughly from the hospital back to prison.

***Johnson v. City of Grants Pass**, __F.4th__, Nos. 20-35752/35881 (9th Cir., Jul. 5, 2023).*
A city cannot, consistent with the Eighth Amendment, enforce ordinances against homeless people who sleep outside with rudimentary protection from the elements or in a car when there is no other place in the city for them to go.

***Polanco v. Diaz**, __ F.4th __, No. 22-15496 (9th Cir., Aug. 7, 2023).*
Transferring inmates from a prison with a COVID-19 outbreak to another prison where no COVID-19 cases were present, without properly screening them for the virus, constituted a "state-created danger" that violated the inmates' substantive due process rights.

Jackson-Mackey v. Penrod, *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.

Garner v. Jamerson, *No. 23-10130 (11th Cir., Aug. 2, 2023) (Unpub.).*
Qualified immunity was denied to officers who failed to make timely safety checks on inmates who were on suicide watch and were thus "deliberately indifferent" to the prisoner's constitutional rights. The officer's supervisors were also denied qualified immunity when they allowed the officers to disregard these safety protocols because the prison was under-staffed.

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.

Messer v. Bristol Compressors, *No. 21-2363 (4th Cir., Apr. 3, 2023) (Unpub.).*
The WARN Act does not require a plaintiff to establish that she was prejudiced by her employer's failure to provide her with the requisite notice.

NLRB v. Tri-County, *No. 21-60887 (5th Cir., Aug. 8, 2023) (Unpub.).*
The NLRB did not abuse its discretion by refusing to consider exceptions filed 30 minutes late due to confusion over the correct time zone applicable to the filing - - a mistake that did not rise to the level of excusable neglect.

McKinsey v. Starbucks, *__ F.4th __, No. 22-5730 (6th Cir., Aug. 8, 2023).*
An employer violated the NLRA by firing employees who represented 80% of a union organizing committee during a unionization campaign - - the temporary reinstatement of these employees as interim relief was just and proper.

Central States v. Transervice, *__ F.4th __, Nos. 20-3437/3438 (7th Cir., Dec. 22, 2022).*
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 its evergreen clause.

United National Foods v. Teamsters 414, *__ F.4th __, No. 22-1469 (7th Cir., Jan. 31, 2023).*
A CBA grievance procedure is focused upon employee-initiated grievances, not upon an employer-initiated dispute regarding CBA terms.

SCHCC v. Culver City, *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.

Winns v. Exela Enterprise, *No. 22-16342 (9th Cir., Aug. 4, 2023) (Unpub.).*
The WARN Act does not require an employer to transfer an employee.

AFL-CIO v. NLRB, *__ F.4th __, 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.

20. TELECOMMUNICATIONS; ENVIRONMENTAL

Cellco v. White Deer Tshp., *__F.4th__, No. 22-2392 (3rd Cir., Jul. 14, 2023).*
A township's denial of a variance from its zoning requirement that cell tower sites be on lots that met its one-acre size minimum and its setback restrictions violated the Telecommunications Act.

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.

Crown Castle v. City of Pasadena, *__ F.4th __, No. 22-20454 (5th Cir., Aug. 4, 2023).*
The Federal Communications Act preempts a municipality's spacing and undergrounding requirements applicable to telecommunication companies.

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

CRA v. City of Berkeley, *__F.4th__, No. 21-16278 (9th Cir., Apr. 17, 2023).*
A building code prohibiting natural gas piping in new houses and restaurants, thus rendering their gas appliances useless, is pre-empted by the Energy Policy and Conservation Act.

NMSURF v. Webber, *No. 22-2131 (10th Cir., Aug. 15, 2023) (Unpub.).*
An ordinance requiring telecommunication companies desiring to use public rights of way to provide wired internet services to apply for a franchise and, if granted, be subject to a 2% fee on all gross revenues from the provision of such services is not preempted by the Telecommunications Act of 1996 unless the fee is materially prohibitive to the provision of telecommunications services.

South River Watershed v. DeKalb County, *__F.4th__, No. 20-13651 (11th Cir., May 31, 2023).*
Entering into a consent decree for alleged CWA violations constitutes "diligent prosecution" on behalf of the EPA, thus foreclosing a citizen suit over the same alleged violations.

City of Wilmington v. US, *__F.4th__, No. 22-1581 (Fed. Cir., May 31, 2023).*
A municipal stormwater management fee violated the CWA when its runoff coefficient provided a fair approximation of a property's rate of run-off by assuming that a specific property contributes a volume of run-off similar to other properties within the same classification.

21. PROCEDURAL; EVIDENTIARY

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).

SEC v. Sargent, *__F.4th__, No. 22-1596 (1st Cir., Apr. 18, 2023).*
The court's denial of a defendant's right under FRCP 48(c) to individually poll jurors in a civil enforcement action is *per se* reversible.

Azadpour v. AMS Group, *__F.4th__, No. 22-2923 (2nd Cir., Jun. 16, 2023).*
Equitable tolling is not warranted when an employer gives an incomplete answer as to why an applicant's job offer was rescinded and then goes silent when asked for additional information regarding such recission, as the employer does not by such action engage in the kind of "active misleading" necessary to toll the time limitations for filing a discrimination complaint.

Havens v. James, *__ F.4th __, No. 20-664 (2nd Cir., Aug. 4, 2023).*
A party not named in an injunction and not identified with a named party is barred thereby only from acting for the benefit of, or to assist, an enjoined party in violating the injunction.

Publicola v. Lomenzo, *__ F.4th __, 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.

Rabinowitz v. Kelman, *__F.4th__, No. 22-1747 (2nd Cir., Jul. 24, 2023).*
Parties cannot contractually strip a district court of its subject matter jurisdiction through a "forum selection" clause.

Harmon v. Dept. of Finance, *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 the complaint could have been amended to include these later-arising claims.

Allen v. Atlas Box, *__ F.4th __, 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, *__ F.4th __, No. 21-1322 (4th Cir., Nov. 1, 2022).*
A consent decree that modifies a municipality's behavior in a way that benefits the plaintiff is sufficient to confer "prevailing party" status on the plaintiff for purposes of fee-shifting.

Resendiz v. Exxon, *__F.4th__, No. 21-2211 (4th Cir., Jul. 10, 2023).*
Section 1981 only protects against intentional discrimination, not from an employment policy that requires job applicants to have permanent US work authorization under federal law.

Stinnie v. Holcomb, *__ F.4th __, No. 21-1756 (4th Cir., Aug. 7, 2023).*
The court reverses its previous holdings and finds that a plaintiff who wins a preliminary injunction but does not secure a final judgment may still be able to qualify as the "prevailing party" for purposes of a fee award.

US v. Jackson, *Nos. 22-4703/4108/4111 (4th Cir., May 31, 2023) (Unpub.).*
The court rejected an argument that an officer's failure to follow his body-cam policy when executing a search warrant justified the suppression of the evidence found during the search.

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, *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.

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

Green v. DeMoss, *No. 21-30044 (5th Cir., Aug. 29, 2022) (Unpub.).*
"Cut and paste" identical allegations against several defendants are not inherently improper.

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

US v. Bryant, *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, *__ F.4th __, No. 21-20385 (5th Cir., Sept. 21, 2022).*
An officer's reliance on computer records listing the defendant's warrants, 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.

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

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

***US v. Torres**, __ F4th. __, No. 21-6102 (6th Cir., Oct. 24, 2022).*
The court refused 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. Waide**, __ 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 the use of evidence illegally obtained in a supervised release hearing.

***Luster v. Village of Ashmore**, __ F.4th __, No. 22-3065 (7th Cir., Aug. 2, 2023).*
When procedural due process is missing, damages can be a proper remedy under Section 1983 for the violation of this constitutional right.

***US v. Evans**, __F.4th__, No. 22-1195 (7th Cir., Jul. 24, 2023).*
A hearing on a motion for a new trial is granted when the defense counsel had never before tried a federal criminal case, had a long-standing drug and alcohol addiction, and used heroin both before and during trial.

***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.

***US v. Forjan**, __F.4th__, No. 21-3149 (8th Cir., Apr. 28, 2023).*
Although an officer's mistake of law made his traffic stop unlawful, the "attenuation doctrine" allowed the evidence seized from the vehicle to be admitted at trial, as the connection between the unlawful stop and the seizure of evidence was broken by the discovery that the driver had no valid driver's license or proof of insurance.

***US v. Pierson**, __F.4th__, No. 22-1918 (8th Cir. Jul. 11, 2023).*
The "exclusionary rule" does not apply to independent searches and seizures conducted by Mexican police in Mexico.

***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 the defendant's compliance with certain conditions.

***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.

***Parker v. Riverside Cty.**, __ F. 4th. __, No. 22-55614 (9th Cir., Aug. 15, 2023).*
The court rejects the argument that a *Brady* claim prejudice inquiry should determine whether the withheld evidence had a reasonable probability of affecting a defense counsel's strategy.

***Phillips v. US Customs**, __F.4th__, No. 21-55768 (9th Cir., Jul. 21, 2023).*
The government's mere retention of illegally obtained information is not an injury-in-fact for standing purposes.

***US v. Baker**, __ F.4th __, 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**, __ F.4th __, 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.

***Yoshikawa v. Sequirant**, __F.4th__, No. 21-15970 (9th Cir., Jul. 25, 2023).*
Section 1981 does not provide an implied cause of action against state actors – any action to enforce rights secured by Section 1981 against a state actor must be brought under Section 1983.

***Bruce v. Denver**, __ F.4th __, 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.

DIRTT v. Falkbuilt, *__F.4th__, Nos. 21-4078/4153 (10th Cir., Apr. 11, 2023).*
In a case of first impression, the court held that a district court cannot dismiss part of an action under the *forum non conveniens* doctrine while allowing the remainder to proceed.

Serna v. Denver P.D., *__ F.4th __, 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.

US v. Brown, *No. 21-6175 (10th Cir., Jul. 7, 2023) (Unpub.).*
Reply briefs are optional. Briefing a potentially dispositive legal issue is not.

US v. Capehart, *No.22-2076 (10th Cir., Jun. 30, 2023) (Unpub.).*
No new trial was justified when court staff inadvertently dismissed a juror and seated an alternate juror to decide a criminal case.

Aponte v. Sec. of Army, *No. 22-12818 (11th Cir., May 1, 2023) (Unpub.).*
Since Good Friday is not a legal holiday, failure to mail a complaint on that day and thus missing the filing deadline does not create the extraordinary circumstances excusing the late filing.

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

Rosell v. VMSB, *__F.4th__, No. 22-11325 (11th Cir., May 12, 2023).*
FRCP 41(a)(2) cannot be used to dismiss anything less than an entire lawsuit.

Smith v. Delwyn, *__F.4th__, No. 23-10178 (11th Cir., May 11, 2023).*
Under the Prison Litigation Reform Act, no court order is required for a plaintiff to voluntarily dismiss an action before the named defendants respond.

22. ARBITRATION; CONTRACTS

Advantage v. United Steel, *__F.4th__, No. 22-1268 (4th Cir., Jun. 15, 2023).*
A CBA that limits an arbitrator's power by requiring her to make a reasonable basis determination that draws its essence from the CBA does not require a reviewing court to use a highly deferential standard of review when determining the legitimacy of an arbitration award.

Affordable Care v. McIntyre, *No. 22-60245 (5th Cir., May 24, 2023) (Unpub.).*
The fact that an arbitrator and an attorney went to the same law school does not create a conflict of interest requiring the vacation of an arbitration award.

Franlink v. BACE Svcs., *__ F.4th __, 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 they are "closely related" to the contract.

Holly-Gallegly v. TA Operating, *__F.4th__, No. 22-55950 (9th Cir., Jul. 21, 2023).*
An agreement containing an arbitration clause that delegates to an arbitrator all questions regarding the interpretation and enforceability of the agreement is neither unconscionable nor unenforceable.

23. OTHER CASES OF INTEREST

Robinson v. City of Shamokiu, *No. 23-1612 (3rd Cir., Aug. 3, 2023) (Unpub.).*
A complaint by a candidate for county commissioner alleging that his political opponents tricked him into missing a court hearing, subjected him to malicious prosecution, caused him to be charged criminally and jailed, set his bail unconstitutionally high, and burned down his house was dismissed for failure to state a claim.

Blackwell v. Allen, *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., *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.

Washington Cty. Water v. City of Sparta, *__ F.4th __, No. 22-2942 (7th Cir., Aug. 8, 2023).*
Despite the Agriculture Act of 1961's prohibition against municipalities buying water from other municipalities in an area where a USDA indebted rural water association makes available its services, the Act does not prohibit such inter-municipality sales when the water association cannot provide enough water to satisfy the residential demand of the purchasing municipality.

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., *No. 22-15673 (9th Cir, Mar. 6, 2023) (Unpub.).*
No federally protected property interest exists in cultivating marijuana.

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.

NOTES