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CIRCUIT BREAKER 2024
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by

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U. S. SUPREME COURT

Bissonnette v. LePage Bakeries Park St., LLC, 601 U.S. ____ (April 12, 2024)

A transportation worker does not have to work in the transportation industry to fall within that exemption from the Federal Arbitration Act.

Chiaverini v. City of Napoleon, 602 U.S. ____ (June 20, 2024)

When a government official brings multiple charges, only one of which lacks probable cause, the valid charges do not protect him from a malicious prosecution claim on the invalid charge.

City of Grants Pass v. Johnson, 603 U.S. ____ (June 28, 2024)

The enforcement of a generally applicable ordinance regulating camping on public property does not constitute “cruel and unusual punishment” under the Eighth Amendment.

Culley v. Marshall, 601 U.S. ____ (May 9, 2024)

When police seize and seek the civil forfeiture of a vehicle used in the commission of a drug offense, the Constitution does not require a preliminary hearing to determine whether the owner may retain the car until the forfeiture hearing.

Gonzalez v. Trevino, 602 U.S. ____ (June 20, 2024)

Plaintiffs do not need to produce specific comparator evidence to demonstrate that they fall within the *Nieves* exception in retaliatory arrest cases.

Lindke v. Freed, 601 U.S. ____ (March 15, 2024)

When a government official posts about job-related topics on her personal social media account, her speech is attributable to the government only if she possesses actual authority to speak on the government's behalf and purports to exercise that authority in her post. Otherwise, a citizen's First Amendment rights are not violated when the official deletes his comments and blocks him from further comment on his social media account.

Muldrow v. City of St. Louis, 601 U.S. ____ (April 17, 2024)

An employee challenging a job transfer under Title VII must show that the transfer brought about harm with respect to an identifiable term or condition of his employment. However, that harm need not be significant.

National Rifle Association of America v. Vullo, 602 U.S. ____ (May 30, 2024)

The NRA claimed that Vullo violated its First Amendment rights by pressuring regulated entities to disassociate from it and other gun-promotion advocacy groups. The Court held that the First Amendment prohibits government officials from wielding their power selectively to punish or suppress speech, either directly or indirectly through private intermediaries.

Sheetz v. El Dorado County, 601 U.S. ____ (April 12, 2024)

The plaintiff wanted to build a prefabricated home on his residential parcel of land. However, in order to obtain a land-use permit, he was required to pay a substantial fee to mitigate local traffic congestion. He challenged this fee as an unlawful “exaction” of money under the Takings Clause, arguing that the fee charged should only be the amount needed to offset the traffic congestion attributable to his specific construction. The Court held that the County’s predetermined fee schedule did not meet this requirement, and that the Takings Clause of the Fifth Amendment prohibits government agencies from imposing unconstitutional conditions on land-use permits.

Smith v. Spizzirri, 601 U.S. ____ (May 16, 2024)

The Federal Arbitration Act does not permit a court to dismiss a case instead of issuing a stay when a dispute is subject to arbitration and a party requests a stay pending arbitration.

Snyder v. United States, 603 U.S. ____ (June 26, 2024)

18 U.S.C. §666 does not make it a crime for local government officials to accept gratuities given as a token of appreciation for an official act.

United States v. Rahimi, 602 U.S. ____ (June 21, 2024)

An individual found by a court to pose a credible threat to the physical safety of another person may be temporarily disarmed consistent with the Second Amendment.

CIRCUIT COURTS

FIRST AMENDMENT

PUBLIC/PRIVATE SPEECH

Ciarametaro v. City of Gloucester, No. 22-1780 (1st Cir., Nov. 28, 2023)

Qualified immunity was granted to public officials who threatened retaliation against an employee whose expert testimony would harm the city’s relationship with its community. The employee’s free speech right as a private citizen did not clearly outweigh the effect that his testimony would have on the public’s perception of his municipality.

MacRae v. Mattos, No. 23-1817 (1st Cir., June 28, 2024)

A teacher was fired due to memes she posted on her personal TikTok account regarding gender identities and racism. While these posts touched upon matters of public concern, an interest in preventing disruption in the learning environment outweighed her First Amendment rights

DiMarco v. St. Clair Borough, No. 22-2865 (4th Cir., Sept. 29, 2023)

An officer who used Facebook to promote the tasing of a volunteer as part of a fundraiser may have been speaking as a private citizen, but his First Amendment interest was outweighed by his department's interest in maintaining order and discipline.

Massaro v. Fairfax County, No. 22-1287 (4th Cir., March 19, 2024)

A promotion complaint made via an internal grievance is not a matter of public concern.

Bevill v. Wheeler, No. 23-40321 (5th Cir. May 30, 2024)

Signing an affidavit suggesting bias between a prosecutor, judge, and sheriff constituted speech as a private citizen on a matter of public concern outweighing the government's interest in the efficient provision of public services.

Ashford v. University of Michigan, No. 22-2057 (6th Cir., Jan. 9, 2024)

An officer who spoke outside of his chain of command with a reporter about his department's apparent mishandling of a sexual assault case spoke on a matter of public concern and not pursuant to his official duties. Public safety employers do not have a greater interest in regulating employee speech to promote department efficiency than any other government employer.

Dusterhoft v. City of Austin, No. 23-50313 (5th Cir., Oct. 13, 2023)

An employee who complains to another municipal employee outside his chain of command does not thereby speak as a "private citizen."

Hayes v. Nashville, Nos. 23-5027/5075 (6th Cir., Dec. 13, 2023)

The mere fact that an employee shares non-confidential information learned during his employment does not make his speech "government speech" for purposes of the First Amendment.

Mackey v. Rising, No. 22-2165 (6th Cir. July 1, 2024)

A city official with no authority to threaten physical force on the city's behalf spoke as a private citizen when he made such threats.

Middleton v. Lexington-Fayette County, No. 22-6040 (6th Cir., Feb. 20, 2024)

An officer who was disciplined for disclosing confidential information to his cousin did not suffer a First Amendment violation.

Noble v. Cincinnati & Hamilton County Pub. Library, No. 23-3853 (6th Cir., August 9, 2024)

A guard at a public library shared an insensitive meme on his personal Facebook page during the BLM riots and was terminated. He spoke on a matter of public concern and his interest in expressing his views outweighed the library's interest in maintaining workplace efficiency, especially since there was public disruption nor any significant impact on the library's operations.

Hicks v. Illinois Department of Corrections, No. 23-1091 (7th Cir. July 23, 2024)

An officer whose Facebook posts were deemed to be "Islamophobic" was properly suspended, as his posts were not on matters of public concern, and his department's interest in maintaining discipline and the public's confidence outweighed his speech interests.

Oldridge v. Layton, No. 22-3284 (10th Cir. May 2, 2024)

Speech about alleged criminal behavior by law enforcement personnel is of public concern.

RELIGIOUS SPEECH/ESTABLISHMENT CLAUSE

Maryland Shall Issue v. Anne Arundel County, No. 23-1351 (4th Cir., Jan. 23, 2024)

An ordinance requiring gun retailers to distribute to their customers literature related to gun safety, suicide, mental health, and conflict resolution does not violate the First Amendment, as it is factual, uncontroversial, and not unduly burdensome.

Association of Club Exct v. Dallas, No. 22-10556 (5th Cir., Oct. 12, 2023)

An ordinance that requires SOBs to close between 2 am and 6 am in order to deter crime is likely constitutional and does not substantially limit speech, as the clubs are still open 20 hours each day.

Animal Legal Defense Fund v. Reynolds, No. 22-3464 (8th Cir., Jan. 8, 2024)

A law prohibiting the placement of cameras on trespassed property is not facially unconstitutional.

Sessler v. City of Davenport, IA, No. 22-3459 (8th Cir. May 23, 2024)

The court rejected the contention that, although a government may designate a non-public forum to serve as a public forum, a government cannot change the status of a traditional public forum by permitting a private party to erect fences and put it to a temporary and different use. A city street can become a limited public forum during a municipal festival as evidenced by its actual use, governmental intent, and physical barrier, so long as restrictions on speech and other conduct therein are content neutral and reasonable.

Krishna Lunch v. Beck, No. 23-55072 (9th Cir., Sept. 21, 2023)

In a limited public forum such as a school campus, limiting groups to four reserved spots per quarter and charging them a \$500 fee are likely constitutional restrictions on free speech.

Long v. Sugai, No. 22-15997 (9th Cir., Feb. 5, 2024)

Summary judgment was denied on a First Amendment claim stemming from the early delivery of a meal to a Muslim prisoner that got cold before he could break his fast, which action may substantially burden his free exercise of religion.

Meinecke v. City of Seattle, No. 23-35481 (9th Cir. April 18, 2024)

A street preacher was arrested for refusing to move from public locations where he was reading Bible passages to the dismay of nearby protestors. The restrictions on the preacher's speech were content-based heckler's vetoes. There were less speech-restrictive alternatives to achieve public safety, such as requiring the protestors to step back, calling for more officers, or arresting those assaulting the preacher.

Young Israel v. Hillsborough, No. 22-11787 (11th Cir., Jan. 10, 2024)

A regional transit authority's policy on advertisements promoting a religious faith violated the First Amendment because its terms were vague, there was no official guidance, and it vested too much discretion in those who applied it.

LAWS, PLANS, POLICIES

Satanic Temple v. City of Boston, No. 23-1642 (1st Cir. 2024)

The city council practice of selecting invocation speakers based on their contributions to the community was constitutional and did not show evidence of religious discrimination.

Camp Hill Borough Republican v. Borough of Camp Hill, No. 23-1746 (3d Cir. May 9, 2024)

An ordinance violated the First Amendment by classifying signs based upon their content, and by favoring commercial expression over non-commercial expression and holiday signs over non-holiday signs.

Perez v. City of San Antonio, No. 23-50746 (5th Cir., April 11, 2024)

Members of a Native American church claimed that a park development plan would prevent them from performing religious ceremonies in the park. The plan did not substantially burden religious exercise because it served the public interests in public health and safety and its tree removal and bird deterrence were the least restrictive means of fulfilling those interests.

Turco v. City of Englewood, No. 22-2647 (3rd Cir., Jan. 31, 2024)

An ordinance creating an 8 – foot buffer zone outside the entrances to health care and transactional facilities survived a First Amendment challenge, as it was narrowly tailored and not overbroad.

National Federation of the Blind v. City of Arlington, No. 23-10034 (5th Cir. July 17, 2024)

An ordinance regulating the placement and maintenance of nonprofit donation boxes through setback requirements did not violate the First Amendment.

GEFT Outdoor v. City of Evansville, No. 23-1182 (7th Cir., August 1, 2024)

A sign ordinance that distinguished between on-premises and off-premises signs but whose permit and variance criteria that did not request information as to a sign's message, survived a First Amendment challenge.

Cajune v. Independent School District 194, No. 23-3115 (8th Cir., June 26, 2024)

It was viewpoint discrimination to allow "BLM" but not "All Lives Matter" school posters.

McGriff v. Miami Beach, No. 22-12863 (11th Cir., Oct. 27, 2023)

The First Amendment does not require the government to display any particular artwork in an art exhibition that it funds, organizes and promotes as government speech.

OTHER CASES

Crystal Harris v. Larry Krasner, No. 23-2068 (3d Cir. June 6, 2024)

A person has no unqualified right to testify in any trial she pleases, nor to compel the District Attorney's Office to prosecute her cases.

Falcone v. Dickstein, Nos. 22-2701/2702 (3rd Cir., Feb. 5, 2024)

Refusing to wear a mask at a school board meeting is not First Amendment expressive conduct.

Ruttle v. Brady, No. 22-3000 (4th Cir., Aug. 29, 2023)

The verbal censure of a public official by other public officials is not an "adverse retaliatory act" that could form the basis of a First Amendment claim.

Bailey v. Iles, No. 22-30509 (5th Cir., Nov. 21, 2023)

A Facebook poster's First and Fourteenth Amendment rights were violated when he was arrested for "terrorizing" by means of a false post stating that county sheriffs were ordered to shoot on sight anyone infected with COVID and urging others to share the post, since it did not direct or initiate "imminent" lawless action.

Jackson Mun. Airport Auth. v. Harkins, No. 21-60312 (5th Cir., Aug. 25, 2023)

Legislative privilege may apply to communications with third parties outside of the legislative forum if the communication pertains to potential legislation.

National Press v. McCraw, No. 22-50337 (5th Cir., Oct. 23, 2023)

There is no First Amendment right to use unmanned drones to film private citizens and their property without their consent.

Villarreal v. City of Laredo, No. 20-40359 (5th Cir., Jan. 23, 2024)

Officers are entitled to qualified immunity on First and Fourth Amendment claims that arose when they arrested a citizen reporter for releasing to the public confidential law enforcement information about a suicide and deceased motor vehicle accident victims.

Glenn Whiting v. City of Athens, TN, No. 23-6082 (6th Cir. July 25, 2024)

Statements made regarding publicly available information do not constitute "adverse actions."

DeMian v. St. Louis, No. 22-3000 (8th Cir., Nov. 16, 2023)

No First Amendment violation occurred when police officers pepper-sprayed a crowd of protestors that included a non-protesting photographer, as there is no evidence that the officer recognized her or sprayed her in retaliation for her taking pictures.

Felts v. Green, No. 23-1042 (8th Cir., Jan. 29, 2024)

An alderman who blocked a complaining citizen from accessing a Twitter account that she used primarily for official government business thereby violated the First Amendment by engaging in viewpoint discrimination.

Camenzind v. CA Exposition, No. 22-15931 (9th Cir., Oct. 31, 2023)

An enclosed, ticketed portion of a fairground constitutes a non-public forum.

Jamgotchian v. Ferraro, No. 23-55735 (9th Cir., Feb. 26, 2024)

When naming a horse, a state agency's decision to deny the name "Malpractice Meuser" did not preclude the horse owner from bringing an action alleging a First Amendment violation.

StreetMediaGroup v. Stockinger, No. 21-1448 (10th Cir., Aug. 25, 2023)

A regulatory scheme treating billboards differently depending upon whether their message is paid for or not does not violate the First Amendment - - as it furthers the legitimate governmental objective of promoting roadside safety and aesthetics.

US v. Martinez, No. 22-1167 (10th Cir, Dec. 20, 2023)

A detective's testimony about the accused's Santa Muerte ("Our Lady of Holy Death") shrine did not violate the First Amendment.

Vogt v. McIntosh County Board, No. 22-7061 (10th Cir. April 15, 2024)

A public official cannot condition a subordinate's employment on her political beliefs, affiliation, or non-affiliation, or for not publicly supporting her reelection campaign, unless the government has a vital interest in doing so.

McDonough v. Garcia, No. 22-11421 (11th Cir., Jan. 10, 2024)

Swearing at officers and making obscene gestures are protected speech under the First Amendment. However, barring someone from future Council meetings held in a designated public forum violates the First Amendment when the trespass order is not narrowly tailored and does not provide alternative channels of communication.

People for the Ethical Treatment of Animals v. Tabak, No. 23-5110 (D.C. Cir. July 30, 2024)

Government social media pages that use keyword filters to automatically hide comments containing specific words lacked objective, workable standards and was inflexible as to context, and was thus unreasonable in light of the purpose of the public platform.

SECOND AMENDMENT

Lara v. Commissioner, PA State Police, No. 21-1832 (3rd Cir., Jan. 18, 2024)

The Second Amendment right to bear arms applies to 18- to 21-year-olds.

US v. Cash, No. 22-2713 (4th Cir., Oct. 6, 2023)

The Second Amendment does not protect a person who possesses a firearm in his house for unlawful purposes.

Grisham v. Valenciano, No. 22-50915 (5th Cir., Feb. 26, 2024)

Probable cause existed to arrest Second Amendment protesters for standing on a street corner with AK-47s, as officers could have rightfully thought that they were engaging in criminal activity.

Oakland Tactical Supply v. Howell Township, No. 23-1179 (6th Cir. May 31, 2024)

The Second Amendment protects one's right to engage in firearms training but not to such training in a specific location. Thus, zoning restrictions prohibiting commercial shooting ranges are lawful.

Bevis v. Naperville, Nos. 23-1353/1793/1825 (7th Cir., Nov. 3, 2023)

An ordinance banning assault rifles and high-capacity magazines probably does not violate the Second Amendment.

United States v. Gay, No. 23-2097 (7th Cir. April 12, 2024)

A felon on parole does not have a constitutional right to carry a firearm.

Worth v. Jacobson, No. 23-2248 (8th Cir. July 16, 2024)

Law-abiding 18 to 20-year-olds are protected by the Second Amendment.

Brizuela v. City of Sparks, No. 22-16357 (9th Cir., Aug. 25, 2023)

While the Supreme Court has held that the Second Amendment allows a person to retain a firearm in his home, it is unclear as to his right to possess a firearm at a particular time and place - - such as when he is shot by officers because he is observed holding a firearm on his front porch.

USA V. Duarte, No. 22-50048 (9th Cir. May 9, 2024)

A handgun is an "arm" within the meaning of the Second Amendment.

FOURTH AMENDMENT

TRAFFIC STOP

US v. Delvonte Harris, No. 21-4657 (4th Cir. August 11, 2023)

Officers who had reasonable suspicion to believe that a person had driven under the influence of alcohol or drugs, also had reasonable suspicion that he was armed and dangerous, given the "indisputable nexus between drugs and guns."

US v. Fishbourne, No. 21-4200 (4th Cir., Sept. 6, 2023)

A traffic checkpoint established after speeding complaints were received did not violate the Fourth Amendment when the checkpoint was visible from 500 feet away, marked with a sign and lit, and every vehicle was stopped and subjected to a driver's license, registration and insurance request.

US v. Alkhegani, No. 21-10966 (5th Cir, Aug. 17, 2023)

Minor inconsistencies in eyewitness accounts do not automatically render an officer's reasonable suspicion and resultant traffic stop invalid.

USA v. Gonzalez, No. 23-10963 (5th Cir. July 9, 2024)

Time spent performing necessary computer checks to confirm the ownership and insurance status of the vehicle and reviewing the driver's criminal record, and his questioning during this time, did not extend the duration of the stop

USA v. Wilson, No. 22-20100 (5th Cir. August 2, 2024)

When a passenger exited a vehicle during a traffic stop, officers observed the grip of a pistol in plain view protruding from underneath a backpack on the passenger-side floorboard. This provided the officers with reasonable suspicion that the vehicle might contain contraband and justified an extension of the stop to conduct an exterior K-9 sniff of the vehicle.

US v. Tellez, No. 22-5902 (6th Cir., Nov. 17, 2023)

When an officer asks the driver of a vehicle during a traffic stop: "Do you have your wallet? Let me see it for a minute," the driver's handing the wallet to the officer implies consent to search it.

US v. Hays, No. 22-3294 (7th Cir., Jan. 12, 2024)

Under the 'automobile exception' to the Fourth Amendment's warrant requirement, officers may conduct a warrantless search of a vehicle as long as they have probable cause to believe that it may contain contraband. This includes the vehicle's air filter.

US v. Ho, No. 22-50294 (9th Cir., Jan. 31, 2024)

A driver who, after giving police permission to search his vehicle then asked: "Can I consent not to search the vehicle?" thereby withdrew his consent to the search.

US v. Dawson, No. 22-8064 (10th Cir., Jan. 22, 2024)

An officer does not violate the Fourth Amendment by checking the rental agreement of a car pulled over for speeding.

Johnson v. Nocco, No. 21-10670 (11th Cir., Oct. 2, 2023)

The Supreme Court has never ruled that an officer, during a traffic stop, cannot ask a vehicle passenger to identify herself without reasonable suspicion or a reason to believe that she poses a risk to his safety.

USA v. Derrick S. Lewis, No. 22-12938 (11th Cir. July 10, 2024)

Although the defendant's name was on a truck rental agreement, he lacked standing to challenge a traffic stop of the vehicle when it was being driven by another person and the defendant was not in the vehicle. The traffic stop did not interfere with any possessory interest he had in it.

K-9

USA v. Perkins, No. 23-40356 (5th Cir. July 11, 2024)

When officers had already developed probable cause through their observance of marijuana in vehicle, the fact that a K-9 failed to alert did not dissipate that probable cause, especially when it was windy, the dog was not trained to detect marijuana, and it did not sniff the car's interior.

United States v. Plancarte, No. 23-2224 (7th Cir. June 28, 2024)

A dog sniff in a public area during a traffic stop does not disrupt and reasonable expectation of privacy, and the fact that the dog could not distinguish between legal and illegal marijuana products is irrelevant to a sniff used only to detect narcotics.

Irish v. McNamara, No. 23-3034 (8th Cir. 2024)

It is not clearly established that an officer can "seize" another officer with his K-9 without subjectively intending to do so.

Whitworth v. Kling, No. 22-3051 (8th Cir., Jan. 17, 2024)

An accidental K-9 bite suffered while visiting a handler's home is not a "seizure."

US v. Moore, No. 22-30009 (9th Cir., Oct. 20, 2023)

A drug dog may conduct a warrantless search of a car's exterior and, once probable cause exists to believe that the car contains contraband, enter the car's interior as well.

EXIGENT CIRCUMSTANCES

Banks v. Herbrick, No. 23-20107 (5th Cir., Jan. 3, 2024)

The mere possibility of future damages is not enough of an "exigency" to justify the warrantless removal of a child from her mother.

Farris v. Oakland County, No. 23-1739 (6th Cir. March 22, 2024)

A female arrestee was offered the opportunity to remove her street clothes for a strip search. She refused, so a female officer forcibly removed them. "Exigent circumstances" permitted a male officer to assist her in order to physically control this uncooperative and suicidal arrestee.

US v. Maxwell, No. 22-2655 (8th Cir., Dec. 27, 2023)

Warrantless entry into a private residence was permitted due to "exigent circumstances," as two small children were present in the home either unattended or with a suspect, and it would have taken hours to obtain a warrant.

US. v. Williams, No. 223023 (8th Cir., Aug. 16, 2023)

A suspect who has just fired a gun is on a different Fourth Amendment footing from someone who merely possesses a gun. No violation occurred when officers made a warrantless entry into a house occupied by a man who illegally fired a gun a few minutes prior and patted him down to ensure that he was not armed before questioning him.

Zeigler v. County of San Luis Obispo, No. 23-55381 (9th Cir., June 21, 2024)

“Exigent circumstances” justified the warrantless removal of a child from a home when officers had reasonable cause to believe that she was in imminent danger of serious bodily injury.

United States v. Elmore, No. 22-1432 (10th Cir. May 21, 2024)

The seizure of a house became unreasonable when officers extended the seizure for 8 hours, much longer than was reasonably necessary to obtain a search warrant.

Bailey v. Swindell, No. 21-14454 (11th Cir., Jan. 8, 2024)

Absent “exigent circumstances” or a warrant, an officer who tackles a suspect through the front door of his parent’s house and then arrests him inside the house is not entitled to qualified immunity on a Fourth Amendment claim.

US v. Kensico Grant, No. 23-12573 (11th Cir. August 5, 2024)

When a woman opened the door to a house and officers smelled marijuana, the danger that someone else inside the house might destroy this evidence arose, providing the “exigent circumstances” required to justify a warrantless search of the house.

EXPECTATION OF PRIVACY

Hughson v. Chemung County, No. 21-2998 (2nd Cir., Sept. 21, 2023)

If a misdemeanor arrestee is subjected to an *ad hoc* strip search without reasonable suspicion or a universal policy requiring such a search of all detainees, his Fourth Amendment rights are violated.

US v. Chatrie, No. 22-4489 (4th Cir. July 9, 2024)

There is no expectation of privacy in location history data voluntarily exposed to Google by opting into its “location history,” which data could lawfully be obtained by the police from Google.

US v. Montalvo-Flores, No. 22-1752 (4th Cir., Aug. 28, 2023)

A drug dealer who had control of a rental car with his girlfriend’s permission had a reasonable “expectation of privacy” in it for Fourth Amendment purposes.

US v. Timothy Green, No. 19-4348 (4th Cir. July 2, 2024)

While the “overnight” aspect of a visitor’s home visit is a key factor in determining her expectation of privacy, what matters most is the social/commercial nature of the relationship and the visit.

US v. Moore, No. 21-10345 (5th Cir. August 6, 2024)

A person has no legitimate expectation of privacy in items that he has pawned.

United States v. Rogers, No. 22-1432 (6th Cir. April 10, 2024)

A person has no reasonable expectation of privacy in a vehicle of which he is not the owner or driver, and over which he does not have complete control.

US v. Ostrum, No. 23-1364 (7th Cir., April 25, 2024)

A person has no reasonable expectation of privacy in a stolen car or his contents and cannot object to its search.

Foxhoven v. Stacy, No. 23-1692 (8th Cir., Dec. 21, 2023)

Police need not have a warrant to enter a driveway. A person cannot bring a Fourth Amendment claim to vindicate the constitutional rights of another.

US v. Vittetoe, No. 22-2930 (8th Cir., Nov. 30, 2023)

Because a vehicle was reported stolen, officers could conduct a warrantless search of it seeking evidence of it being stolen.

US v. Winder, No. 23-1829 (8th Cir. April 4, 2024)

A person lawfully evicted from a hotel room has no expectation of privacy therein and an officer can thereafter search a backpack left in the room and already searched by the motel manager.

US v. Carter, Nos. 21-30254/30257/30258 (9th Cir., Aug. 25, 2023)

Throwing away a gun and satchel when confronted by police constitutes their abandonment.

Yarofalchuw v. Cabrera, No. 23-15279 (9th Cir., Mar. 8, 2024)

Qualified immunity was granted to officers who arrested a man at the end of his driveway as against a curtilage violation claim.

Becerra v. City of Albuquerque, No. 23-2053 (10th Cir., Nov. 7, 2023)

Officers who were able to view a suspect's vehicle license plate from their vantage point in his driveway did not thereby conduct a Fourth Amendment search.

US v. Ronquillo, No. 22-1247 (10th Cir., Mar. 7, 2024)

A detached garage was in the curtilage of a house when it was close to the residence, enclosed by a fence, shielded from public view, and used for domestic activities.

US v. Vasquez, No. 22-1294 (10th Cir., Jan. 3, 2024)

For purposes of a warrantless search, neither a home's front yard nor driveway is curtilage.

US v. Carmody, No. 22-12539 (11th Cir., Oct. 25, 2023)

An individual does not have a reasonable expectation of privacy in an IP address.

US v. Demetrius Rahmings, No. 23-12931 (11th Cir. July 31, 2024)

A defendant abandoned any reasonable expectation of privacy in his backpack when he left it with a friend while fleeing from the police.

US v. Harris, No. 10887 (11th Cir., Sept. 28, 2023)

A person has no expectation of privacy in a FedEx package for which he is neither the sender nor the listed addressee, nor an expectation of privacy in the apartment to which the package is addressed and delivered.

US v. Michael Young, No. 23-10464 (11th Cir. July 19, 2024)

Given that anyone could access the common area in a multi-unit apartment complex, a visitor had no reasonable expectation of privacy therein.

ARREST : SEIZURE

Kassim Mouzone v. Brian Ahlert, No. 22-2885 (3d Cir., March 27, 2024)

Even absent reasonable suspicion, officers may approach individuals, pose questions, and ask for identification” without violating the Fourth Amendment. However, a violation may occur if they do not merely ask for identification but compel its provision through threats of arrest.

US v. Goerig, No. 23-1582 (3d Cir. 2024)

A person is not seized when he voluntarily answers questions.

Armstrong v. Hutcheson, No. 22-1082 (4th Cir., Sept. 13, 2023)

No Fourth Amendment violation occurred when officers responding to a domestic disturbance call briefly detained the husband, when there were guns in the house, and he was argumentative.

Wade v. City of Houston, No. 24-20026 (5th Cir. August 6, 2024)

The size and location of protests supplied arresting officers with probable cause to “kettle” and arrest protestors for blocking roadways and sidewalks in violation of state law, thus negating any First, Fourth, or Fourteenth Amendment violations.

US v. Bonilla, No. 22-3006 (8th Cir., Nov. 20, 2023)

Hand-cuffing the driver of a vehicle subject to a traffic stop did not turn an investigatory stop into a *de facto* arrest when the officers had a legitimate concern that the driver might flee the scene.

US v. Mara, No. 23-1132 (8th Cir., Dec. 4, 2023)

For Fourth Amendment purposes, a driver is not “in custody” during a traffic stop when he is asked to briefly sit in the front seat of a patrol car and is questioned about his itinerary and rental car.

US v. Sanford, No. 23-2108 (8th Cir. July 16, 2024)

The fact that officers arrived in uniform, armed, and with lights flashing, and then parked so as to make it difficult for the defendant to drive away, was insufficient to make the defendant reasonably believe he was not free to leave the area.

Wolk v. David Hutchinson, No. 23-2939 (8th Cir. July 12, 2024)

It is not clearly established that the use of force to disperse a crowd constitutes a “seizure.”

Farber v. City of Los Angeles, No. 23-55541 (9th Cir. 2024)

A woman’s arrest did not violate the Fourth Amendment when the arresting officers had a good faith, reasonable belief that she was the subject of a warrant, and her protestations of innocence, without more, did not make the officers’ belief unreasonable.

Cooke v. Brashears, No. 23-10191 (11th Cir., Nov. 13, 2023)

Officers need not sift through conflicting evidence or resolve credibility issues during a probable cause arrest.

USA v. Gonzalez, No. 23-10578 (11th Cir. July 19, 2024)

The Fourth Amendment does not require a misdemeanor to occur in an officer’s presence to justify a warrantless arrest.

US v. Larson, No. 22-12031 (11th Cir., Aug. 25, 2023)

When an officer asks for identification, this alone does not turn an encounter into a detention. He can ask questions of anyone on the street unless he induces cooperation by coercive means.

US v. Bryant, No. 21-3064 (D.C. Cir. August 6, 2024)

Officers are permitted to approach a person in a public place and have reasonable suspicion to detain and search him upon seeing a bulge in his waistband.

PROTECTIVE SWEEP

United States v. McMullen, No. 23-3656 (6th Cir., June 7, 2024)

Officers can take reasonable protective measures during a traffic stop, and a gun in the car remains readily accessible even if it is behind a closed car door.

US v. Ackerman, No. 23-1298 (8th Cir., Dec. 8, 2023)

Officers who arrested an individual at the bottom of a staircase could search the rooms adjoining the staircase landing as part of their protective sweep.

Sims v. Brown, No. 23-35545 (9th Cir. April 29, 2024)

A protective sweep cannot extend to an inaccessible locked trunk.

UNLAWFUL EXTENSION OF TRAFFIC STOP

US v. Hunter, No. 21-3316 (3rd Cir., Dec. 5, 2023)

A criminal history check lasting two minutes was a reasonable safety precaution related to the mission of the traffic stop and did not unlawfully extend the stop.

Nazario v. Gutierrez, No. 23-1620 (4th Cir. May 31, 2024)

It may violate the Fourth Amendment to hold a person at prolonged gunpoint when he is compliant and presents no danger. The officer's threatening conduct unreasonably prolonged the traffic stop.

US v. Phillips, No. 22-50745 (5th Cir., Jan. 29, 2024)

Making a driver wait 21 minutes for a drug dog did not unreasonably prolong the stop

US v. Jordan, No. 23-3334 (6th Cir. May 1, 2024)

An officer has reasonable suspicion to extend a traffic stop based upon suspicious travel plans, implausible explanations and the vehicle occupants' heavy breathing.

US v. Betts, No. 23-1012 (8th Cir., Dec. 14, 2023)

An officer had probable cause to extend a traffic stop based upon the driver's sweating, fast talking, rotted teeth, possession of a butane "torch" lighter, shallow breathing and odd travel plans.

US v. Beltran, No. 22-50179 (9th Cir., Jan. 30, 2024)

An officer did not impermissibly extend a traffic stop by asking the driver about his parole and probation status.

US v. Contreras, No. 22-50187 (9th Cir., Dec. 21, 2023)

Asking a driver about his supervisory release status, checking his criminal record, and waiting for a partner to arrive before performing a "pat down" search do not unlawfully extend a traffic stop.

US v. Gray, No. 23-1076 (9th Cir. April 18, 2024)

If an officer has reasonable suspicion to ask a driver if there is anything illegal in his car, he does not thereby unconstitutionally prolong the stop

US v. Ramirez, No. 22-50045 (9th Cir. April 18, 2024)

Asking a driver about his parole status does not unlawfully prolong a traffic stop, as it reasonably relates to the officer's safety and imposes a negligible burden on the driver

US v. Williams, No. 22-10052 (9th Cir., Sept. 12, 2023)

An additional three minutes added at the end of a traffic stop caused by an independent on-site investigation into drug possession without reasonable suspicion unlawfully extended the stop.

US v. Baker, No. 23-8042 (10th Cir. July 23, 2024)

Requesting a driver to exit his car and directing its occupants to roll up their windows were valid safety concerns that did not divert the officer from his traffic mission nor unlawfully extend the traffic stop.

US v. Leon, No. 22-1070 (10th Cir., Sept. 11, 2023)

Reasonable suspicion to extend a traffic stop is not shown by a combination of factors such as the state being a known drug hub, unusual but not logistically unrealistic travel plans, a messy car interior, ordinary nervousness, a single ignition key, and the recent registration of a newly purchased car.

Joseph Smith v. Mark Sohn, No. 23-13566 (11th Cir. 2024)

As a dog sniff occurred while an officer was still writing citations, it did not prolong the stop.

CONSENT

Efunnuga v. Farley, No. 23-2405 (3d Cir. June 18, 2024)

The mere fact that a homeowner does not object to an officer entering his house is insufficient to show that he consented to such entry.

US v. Latorre-Cacho, No. 23-2351 (3d Cir. May 6, 2024)

A person's decision to only skim across the language in a consent form when he had the opportunity to read it in its entirety does not invalidate the consent.

Quinn v. Zerkle, No. 22-2187 (4th Cir. August 1, 2024)

Officers cannot assume consent to enter a home merely because the door opened.

Rush v. Philadelphia, No. 21-1298 (4th Cir., Aug. 30, 2023)

Qualified immunity was denied to officers who shot an unarmed driver after he attempted to escape by driving his vehicle at slow speed into a squad car.

US v. Timothy Green, No. 19-4348 (4th Cir. July 2, 2024)

While the overnight aspect of a visit is a key "factor" in determining whether a guest has standing to bring a Fourth Amendment challenge to the officers' entry onto a homeowner's property, what matters most is the social as opposed to the commercial nature of the visit and whether there was any previous connection between the visitor and the homeowner.

US v. Javarius Mann, No. 23-5994 (6th Cir. June 12, 2024)

Absent more, the fact that an officer had already begun to frisk someone before he consented to the search is insufficient to conclude that the consent was not given voluntarily and freely.

Bulfin v. Rainwater, No. 23-2357 (8th Cir. June 17, 2024)

Qualified immunity was granted to officers who seized and destroyed a dog with the consent of a person having apparent authority to authorize this action.

US v. Bermel, No. 22-3092 (8th Cir., Dec. 14, 2023).

No *per se* rule exists prohibiting a minor from consenting to the search of his parent's property.

US v. Williams, No. 23-1505 (8th Cir. April 1, 2024)

A towel placed over a rifle stock is not a closed container, since it does not hold or enclose the rifle. All an officer needs to look under the towel is consent to search the car.

Morrison v. Ramos, No. 22-55684 (9th Cir., Oct. 16, 2023)

Qualified immunity was granted to officers on a Fourth Amendment claim that arose after they entered an apartment on the resident mother's consent but over her resident adult child's objection.

US v. Esqueda, No. 22-50170 (9th Cir., Dec. 12, 2023).

An undercover agent who enters a room with consent but secretly records what he can see and hear therein does not engage in an unlawful search.

US v. Parkins, No. 22-50186 (9th Cir., Feb. 14, 2024)

Under the Fourth Amendment, a defendant must be physically present and expressly refuse consent in order to nullify a co-tenant's consent to a warrantless search of their apartment.

US v. Shephard, No. 21-50194 (9th Cir. May 10, 2024)

The fact that a defendant is in custody does not itself negate "voluntariness" when it comes to consent to search.

US v. Hankerson, No. 23-11609 (11th Cir. August 6, 2024)

A homeowner's consent to search her house was not vitiated by an officer's statement that searching her house without consent would result in damage to it.

INVENTORY SEARCH

Castro v. Kory, No. 23-50268 (5th Cir. April 11, 2024)

The Fourth Amendment permits warrantless inventory searches of impounded vehicles. However, officers cannot circumvent the warrant requirement if an inventory search is evidentiary in nature rather than a caretaking function. Circumstances showing an evidentiary purpose include officers creating no log of items searched or located within the impounded vehicle, calling in a K-9 unit to search for narcotics, and never actually impounding the car.

United States v. Garza, No. 23-1293 (6th Cir. June 4, 2024)

An officer's search is not limited to those areas routinely checked during an inventory search.

US v. Andersen, No. 20-50345 (9th Cir. May 2, 2024)

An officer's failure to comply with administrative procedures is relevant when assessing her motivation for conducting an inventory search.

OTHER CASES

US v. Perez, No. 22-1121 (1st Cir., Dec. 28, 2023)

When a suspect fled from police wearing a backpack, it was part of his “person” and fell within the “search-incident-to-arrest” exception to the Fourth Amendment’s warrant requirement.

US v. Hagood, No. 22-588 (2nd Cir., Aug. 30, 2023)

Reasonable suspicion to stop an individual was created when he appeared to be nervous, wore a fanny pack across his chest that contained something with a straight line on top, the hour was late, and he was in a high crime neighborhood.

Brandon v. Cambria County Transit Authority, No. 23-2106 (3d Cir. April 3, 2024)

The Constitution only protects the general right to travel, not travel via any particular method, as the denial of a single mode of transportation does not deny the right to interstate travel.

US v. Goerig, No. 23-1582 (3d Cir. May 21, 2024)

An officer did not “seize” a driver until he ordered him to step out of his car.

US v. Pritchett, No. 23-2005 (3d Cir., May 13, 2024)

A person’s furtive movements and flight in a high crime neighborhood created reasonable suspicion as a matter of law.

Milla v. Brown, No. 21-1379 (4th Cir. July 19, 2024)

Proximity to a crime scene and closing a car door did not, without more, constitute reasonable suspicion that a person was involved in a stabbing.

US v. Amos, No. 20-3298 (4th Cir. Dec. 14, 2023)

For Fourth Amendment purposes, a person’s two second pause and halfway hand raise before fleeing did not indicate his submission to an officer’s show of authority.

US v. Davis, No. 22-4088 (4th Cir., Jan. 25, 2024)

Cell phones in plain view during the service of a search warrant may not always be seized as instrumentalities of a crime. Seizure justification is dependent upon the nature of the crime and the totality of the circumstances.

US v. DeSantis, No. 23-4421 (4th Cir. July 16, 2024)

The probable cause exception permits officers to search a car for evidence of any crime, not just the crime of arrest.

Jimerson v. Lewis, No. 22-10441 (5th Cir., Feb. 1, 2024)

A SWAT team leader who erred after making significant efforts to identify the correct house to search was entitled to qualified immunity on a Fourth Amendment claim.

SO Apartments v. City of San Antonio, No. 23-50706 (5th Cir. July 23, 2024)

San Antonio's Proactive Apartment Inspection Program was created to address property maintenance code violations and requires multifamily apartment complexes to enroll in it if they receive three code citations over a six-month period that are not cured. Enrolled complexes are subject to monthly inspections. This program does not authorize warrantless searches, as it does not explicitly say that city officials can conduct searches without a warrant.

Akima v. Peca, No. 22-2058 (6th Cir., Oct. 26, 2023)

An arrest based upon a reasonable mistake does not violate the Fourth Amendment. However, an officer reading a breathalyzer at .22 when it was actually .02 is not a reasonable mistake.

Mitchell v. Hamilton County, TN, No. 23-5387 (6th Cir. March 21, 2024)

Qualified immunity was denied to an officer when, conducting a search incident to arrest, required a suspect to take off his pants, pull down his boxers, and submit to a search of his anal area while located on the side of a public road and in view of another person. The court rejected the argument that the search was reasonable because it was at night, exposure was short, and the officer had probable cause to believe the subject was hiding contraband in his boxers.

US v. Hutchins, No. 22-3655 (6th Cir., Nov. 13, 2023)

The fact that officers briefly lost sight of the vehicle they were pursuing does not undermine the reasonableness of their belief that they stopped the right car, since it was the same make and color and was travelling on the same street.

US v. Johnson, No. 22-1621 (6th Cir. August 14, 2023)

Probable cause does not require a crime to have occurred at the location of the search, only a fair probability that evidence of the crime will be found there.

US v. Kirtdoll, No. 23-1585 (6th Cir. May 8, 2024)

The Fourth Amendment does not require perfection, but only that a warrant give enough detail to, with reasonable effort, identify the place to be searched.

US v. Neal, No. 23-5299 (6th Cir. July 1, 2024)

An affidavit supporting a search warrant must establish a "minimally sufficient nexus between the item sought and the place to be searched.

US v. Sherrell, No. 23-3562 (6th Cir. July 24, 2024)

An officer awaiting a drug shipment called a FedEx facility to confirm the arrival of a package and then went to investigate it the same day. FedEx employees did not "seize" the package.

Madero v. McGuinness, No. 23-2574 (7th Cir. April 1, 2024)

Later witness recantations do not dispel the probable cause needed at the time of arrest.

US v. Hudson, No. 23-1108 (7th Cir., Nov. 16, 2023)

A nurse treating a gunshot victim was not acting as a government agent conducting a warrantless search when she asked the victim to spit out what was in his mouth in order to provide him with necessary medical care.

US v. Mendez, No. 23-1460 (7th Cir. June 10, 2024)

Joining other circuits, the court held that the search of electric devices at the border does not require a warrant or probable cause.

Buschmann v. Kansas City Police Department, No. 22-2815 (8th Cir. August 10, 2023)

Given the behavior of a dog, and the failure of its owner to control the animal, a reasonable officer could have perceived it to be an imminent threat, making shooting the dog a reasonable “seizure.”

Irish v. McNamara, No. 23-3034 (8th Cir. July 18, 2024)

It is not clearly established that an officer can seize a fellow officer with a K-9 without subjectively intending to do so.

US v. Dankemeyer, No. 22-2850 (8th Cir., Aug. 23, 2023)

A search warrant was not “facially deficient” when it authorized the search of all cars on a property but the search itself was limited to cars belonging to the property owners.

US v. Ralston, No. 22-3352 (8th Cir., Dec. 14, 2023)

No probable cause or *Leon* exception applied when officers entered a property that contained two residences and searched the residence in which their suspect did not reside.

US v. Green, No. 22-50293 (9th Cir. April 25, 2024)

The “single-purpose container exception” is a variation of the ‘plain view’ exception, with the distinctive configuration of a container proclaiming its contents, which are not hidden from a searching officer’s view. Packages do not need to be transparent to announce their contents

Lowther v. Children Youth and Family Department, No. 23-2056 (10th Cir. May 7, 2024)

Officers with reasonable suspicion that children have been abused and are in imminent danger justifies their warrantless entry into a home and the removal of children located therein.

Montgomery v. Lore, No. 23-1106 (10th Cir., Dec. 13, 2023)

An officer who had probable cause to seize stolen wipes from a shoplifter had no right to continue patting him down seeking other stolen items.

US v. Hay, No. 22-3276 (10th Cir. March 19, 2024)

The use of the pole camera is not a search, as it only captures activities in public view.

US v. Minners, No. 23-5066 (10th Cir. April 2, 2024)

A six-day gap between a report of gun possession and a search and its seizure did not render the information too stale to contribute to reasonable suspicion for the search.

Land v. Allen, No. 22-12324 (11th Cir., Oct. 31, 2023)

A warrant issued based on an affidavit that contained several factual errors was not invalid if, absent those errors, it still supplied probable cause for the plaintiff’s arrest.

US v. Long, No. 23-10511 (11th Cir., Nov. 6, 2023)

A warrant authorizing the search of a computer for child pornography executed over two months after issuance was not stale, because pedophiles rarely delete their pornographic pictures.

Martin v. Duran, No. 23-10841 (11th Cir. April 3, 2024)

Officers cannot arrest someone for merely walking through a parking lot at night. When an officer, without reasonable suspicion, approaches someone, she can simply ignore him. Her refusal to cooperate, without more, does not furnish the justification needed for an arrest.

Plowright v. Miami Dade County, No. 23-10425 (11th Cir. June 5, 2024)

In a matter of first impression in the Circuit, the court held that the use of deadly force against a domestic animal constitutes a “seizure” of its owner’s property.

US v. Gonzalez, No. 23-10578 (11th Cir. July 19, 2024)

While an in-the-presence observation may be sufficient for a warrantless misdemeanor arrest, the Fourth Amendment does not limit such arrests to those committed in an officer’s presence.

US v. Waiters, No. 21-12492 (11th Cir. May 31, 2024)

The Fourth Amendment protection against unreasonable searches and seizures does not provide a constitutional right to be arrested.

US v. Young, No. 23-10464 (11th Cir. July 19, 2024)

A visitor had no reasonable expectation of privacy in the common area of an apartment complex, even if officers had to climb over a perimeter fence to get to it.

Asinor v. District of Columbia, No. 22-7129 (D.C. Cir. August 9, 2024)

The Fourth Amendment requires the continued retention of personal property seized incident to a lawful arrest to be reasonable. The retention of seized property for up to a year without a legitimate investigatory or protective purpose could constitute an unreasonable seizure.

Vasquez v. District of Columbia, No. 23-7050 (D.C. Cir. August 9, 2024)

The plaintiff was detained by the police because he shares the same name and birthdate as a wanted criminal. He survived summary judgment on his Section 1983 false imprisonment claim, as differing social security numbers indicated that he was not the criminal,

FOURTH AMENDMENT “EXCESSIVE FORCE”

GUN/KNIFE

Kelly v. O’Malley, No. 22-1688 (3rd Cir., Dec. 22, 2023)

No “excessive force” existed when an officer shot a suspect who refused his commands, killed his K-9, injured a fellow officer, ignored several Taser strikes, and pointed a knife at an officer.

Saintil v. Borough of Carteret, No. 22-2898 (3d Cir. July 29, 2024)

A display of firearms was objectively reasonable and did not constitute “excessive force” when a SWAT team entered the premises of a person suspected of murder, and the display lasted only until the suspect was handcuffed.

Caraway v. City of Pineville, No. 22-2281 (4th Cir. August 6, 2024)

A suspect who was reaching into his jacket to discard his gun was shot. No “excessive force,” because the gun was pointed at the officers in the moment before their shooting.

Craven v. Christopher Novelli, No. 23-1393 (4th Cir., May 3, 2024)

A police officer is not required to wait until a gun is pointed at him before using deadly force when other factors indicate an imminent threat to life.

Rush v. Philadelphia, No. 21-1298 (4th Cir., Aug. 30, 2023)

Qualified immunity was denied to officers who shot an unarmed driver after he attempted to escape by driving his vehicle at slow speed into a squad car.

Arqueta v. Jaradi, No. 22-40781 (5th Cir., Nov. 17, 2023)

Qualified immunity was granted to officers who shot a suspect who held his arm at his side while running from the police -- a “furtive gesture” akin to reaching for one’s waistband.

Barnes v. Felix, No. 22-20519 (5th Cir., Jan. 23, 2024)

Once a driver put his car into gear and started to move, the officer who initiated his traffic stop was entitled to qualified immunity when he shot inside the moving vehicle without being able to see where he was aiming, which resulted in the death of the driver.

Castro v. Kory, No. 23-50268 (5th Cir., April 11, 2024)

Officers who pointed their guns at an unarmed, confused, and only mildly disruptive suspect were not entitled to qualified immunity on an “excessive force” claim.

Hines v. Lowndes County, MS, No. 22-60548 (5th Cir. August 10, 2023)

No “excessive force” occurred when officers used deadly force against a suspect driving directly toward one of their colleagues during an attempt to escape.

Lewis v. Inocencio, No. 23-20098 (5th Cir., Jan. 22, 2024)

Qualified immunity was denied to officers who shot a fleeing felon in the back without warning and facing no immediate threat.

Singleton v. Casanova, No. 22-50327 (5th Cir. June 10, 2024)

If an officer unintentionally discharges his gun, whether by accident or negligence, and the bullet hits someone, that person has not been “seized” for Fourth Amendment purposes.

Springs-Hutchinson v. City of Austin, No. 23-50471 (5th Cir. July 18, 2024)

A suspect was armed, shot at officers, then fled the scene. The fact that officers briefly continued firing at this suspect who had just shot at them while fleeing is not “excessive force.”

Raimey v. City of Niles, OH, No. 22-3285 (6th Cir. August 10, 2023)

Qualified immunity on an “excessive force” claim was denied to an officer who shot and killed a suspect who was driving very slowly and braking to comply with his orders to stop, when the officer could have easily stepped away from the slowly braking car.

Estate of De'Angelo Brown v. E.C. West, No. 22-1763 (8th Cir. August 10, 2023)

Although a suspect had his hands up at the time he was shot, no “excessive force” existed because he had just led police on a high-speed chase that involved swerving into oncoming traffic, hitting a police car, running over one officer’s legs and heading toward them.

Morgan-Tyra v. St. Louis, No. 22-3193 (8th Cir., Jan. 8, 2024)

No “excessive force” existed when an officer, without warning, shot a woman wielding a gun in a menacing fashion and appearing ready to discharge it.

Quinones v. City of Edina, No. 22-2818 (8th Cir., Aug. 16, 2023)

Officers who shot a man charging towards them with a knife after he disobeyed orders to “drop it” and a Taser strike had no effect on him did not engage in “excessive force.”

Watkins v. City of St. Louis, Missouri, No. 22-3248 (8th Cir., May 29, 2024)

Qualified immunity was denied to officers who continued to pepper spray a woman after she was restrained and pinned in a vehicle

Andrich v. Kostas, No. 16226 (9th Cir., Sept. 21, 2023)

A suspect resisted arrest, was unfazed by Taser strikes, avoided handcuffing, and turned towards a pursuing officer with the protruding claw of one handcuff in his hand. He was shot. No “excessive force” occurred under these circumstances.

Calonge v. City of San Jose, No. 22-16495 (9th Cir. June 7, 2024)

When a man is walking down the street carrying a gun in his waistband but posing no immediate threat, officers cannot shout conflicting commands at him and then shoot him.

Cuevas v. City of Tulare, No. 23-15953 (9th Cir. July 10, , 2024)

The court found that none of the cases cited by Cuevas clearly established that officers violated her rights when they shot her while defensively returning fire during an active shooting.

Dominguez v. Pina, No. 23-15554 (9th Cir. May 10, 2024)

Using deadly force was inappropriate when a man did not appear to be reaching for a gun or making other furtive movements when he dropped his hands, leaned forward, and raised his hands.

Eyre v. City of Fairbanks, No. 23-35206 (9th Cir. August 7, 2024)

The fact that officers failed to warn a suspect that they might employ deadly force and used no less intrusive alternatives are factors relevant to an assessment of the reasonableness of using deadly force. Here the officers’ actions were reasonable in light of the imminent threat the suspect posed by threatening to kill them and pointing a gun at them.

Garcia v. Napa County, No. 23-15056 (9th Cir., April 23, 2024)

No “excessive force” occurred when a man, during a traffic stop, ignored officer commands to return to his car, and advanced with one hand behind his back, ignoring commands to stop.

Hart v. City of Redwood City, No. 22-17008 (9th Cir. April 19, 2024)

No “excessive force” when officers shot a man who was rapidly approaching them while brandishing a knife and refusing commands to “drop it.”

Langfitt v. Pierce County, No. 23-35121 (9th Cir. 2024)

No “excessive force” occurred when an officer shot a mentally disturbed man who charged him and then tried to enter a running patrol car located near bystanders.

Lopez v. City of Mesa, No. 22-15278 (9th Cir. July 6, 2024)

Qualified immunity was denied to an officer who shot a man who ignored his commands to not to put his car into drive but slowly (6 mph) reversed his car and collided with the officers squad car, which momentarily knocked the officer back, who, quickly regained his footing, fired his weapon.

Rosalia v. City of Hayward, No. 22-16135 (9th Cir., Sept. 11, 2023)

Qualified immunity was granted to officers when a man yelled at them, retreated into his garage, emerged with a knife, refused to drop it, took a martial-arts stance, was Tased and then shot.

Serrano v. Sanders, No. 23-35437 (9th Cir. May 16, 2024)

Qualified immunity was granted on an “excessive force” claim arising when an officer threatened to use deadly force and gripped his holstered firearm while moving towards the plaintiff, who was unarmed, non-threatening, and had his hands in the air.

Smith v. Agdeppa, No. 20-56254 (9th Cir., Aug. 30, 2023)

Qualified immunity was granted to officers who shot a man after he ignored their orders to stand down, was unfazed by Taser strikes, and attacked them, even if no “final warning” was given.

Williams v. City of Sparks, No. 23-15465 (9th Cir. August 9, 2024)

Considering the 42-minute duration, speeds up to 70 mph, the running of red lights, striking police cars, and other hazards of a fleeing suspect, he posed a public safety risk, and officers did not engage in “excessive force” by shooting him to end that risk.

Yearick v. Leatham, No. 22-16310 (9th Cir., Sept. 12, 2023)

Qualified Immunity was granted to officers who shot a man advancing towards them holding a gun pointed at the ground and refusing their commands to stop.

Flores v. Henderson, No. 23-1049 (10th Cir., May 14, 2024)

No “excessive force” existed when a man emerged from a bedroom with a machete and was shot and killed, as officers had only a split second to respond to a deadly threat.

Hausen v. Dailey, No. 21-3235 (10th Cir., Nov. 2, 2023)

There was no “excessive force” when an officer shot the driver of a vehicle who, after being surrounded at the end of a high-speed chase, ignored orders to turn off his car, revved its engine, and began backing up towards the officer.

Saint George v. City of Lakewood, CO, No. 22-1333 (10th Cir. August 7, 2024)

No “excessive force” for officers responding to reports of a serious crime with “shots fired” and identifying themselves to a suspect advancing on them in a threatening manner, to shoot him without a prior warning.

Franklin v. Popovich, No. 22-13326 (11th Cir. August 6, 2024)

Officers who did not know that a suspect had thrown away his gun, but knew of the severity of his crimes, his recent shootout with police, and his sudden movements, could reasonably have believed that he posed an immediate threat, and it was not “excessive force” to shoot him.

Howard v. DeKalb County, No. 23-11035 (11th Cir. March 19, 2024)

By the time an officer discharged his weapon, the plaintiff, knife in hand, had come within one-and-a-half parking spaces of him. When deadly force is justified, there is no duty to use non-deadly alternatives first.

Jones v Rieben, No. 23-13072 (11th Cir. August 6, 2024)

No “excessive force” occurred when an officer, after a driver refused to roll down her window, returned with a window-breaking tool and shot the driver after she put her car into drive, accelerated, made an aggressive U-turn, and drove towards him.

Leonard v. Tony, No. 23-10244 (11th Cir., Sept. 20, 2023)

There was no “excessive force” when officers shot a man who, after ignoring their warnings, charged towards them with a sharp broken piece of plexiglass and a sharp pencil.

Taser/Pepper Spray/Bean Bags

Bagley v. Guillen, No. 22-20644 (5th Cir., Jan. 10, 2024)

For “excessive force purposes”, an officer may not Tase a subject that he has pulled over for a minor traffic violation and who is obeying his commands.

Saalim v. Walmart, Inc., No. 23-3217 (6th Cir., April 3, 2024)

In this case, qualified immunity was denied to an officer when a man he was trying to handcuff turned around to face him with both hands visible and empty, at which point the officer Tased him twice within an eight second period of time. Merely turning to face the officer did not constitute active resistance to being handcuffed.

Brumitt v. Smith, No. 23-1321 (7th Cir., May 20, 2024)

When fewer than four seconds elapsed between the moment a suspect went limp and the time an officer stopped using force, there was no “excessive force”, since a reasonable officer need not reassess the force that he is using that quickly.

Jimmie Culley, Jr. v. Rodney Miller, No. 22-3197 (7th Cir., May 29, 2024)

Shoving someone to the ground after he lunged at an officer and resisted arrest was not a violation of a clearly established Fourth Amendment right.

Drew v. City of Des Moines, No. 23-2656 (8th Cir. 2024)

No “excessive force” occurred when an officer, without prior notice, pepper-sprayed a person suspected of a serious crime after he refused to comply with the officer’s orders and warned the officer not to touch him.

Marks v. Bauer, No. 23-1420 (8th Cir. July 12, 2024)

Qualified immunity was denied to an officer who shot a non-threatening suspect with a chemical-filled projectile at close range.

Melvin v. Colorado Springs, No. 23-1070 (10th Cir., Dec. 11, 2023)

Qualified immunity was denied to officers when, after informing an unarmed individual that he was being detained and having him struggle, flee and ignore their commands to “stop resisting,” Tased him 7 times, pepper-sprayed him twice, and struck him twice with their fists before handcuffing him, all in a span of eleven minutes.

Merrill v. Fell, No. 23-7018 (10th Cir., Dec. 21, 2023)

Qualified immunity was granted to an officer on a “failure to intervene” claim when another officer Tased a suspect “without warning,” as he had no realistic opportunity to stop the Tasing.

Acosta v. Miami-Dade County, No. 22-11675 (11th Cir. March 28, 2024)

Officers used “excessive force” when they Tased and kicked a suspect who was already subdued, on the ground, and no longer resisting arrest.

K'Cee Kinard Odom v. Tobias Boisvert, No. 23-11226 (11th Cir. August 5, 2024)

After a waiter told officers that a patron hit her, and they observed him struggling and breaking free from a man’s grasp and rushing toward a group of people, pushing furniture out of the way, and heard him yell at them “get the f*ck outta here” the officers could have believed that he presented an immediate threat to others and did not engage in “excessive force” by Tasing him.

K-9

Sligh v. City of Conroe, No. 22-40518 (5th Cir., Nov. 21, 2023)

Qualified immunity was granted to officers who released their K-9 on a mentally disturbed woman who had committed no crime, did not pose an immediate safety threat, and needed emergency medical treatment due to her self-harm, after she slipped free from their attempt to seize her.

Rosenbaum v. City of San Jose, No. 22-16863 (9th Cir. July 11, 2024)

“Excessive force” was shown when a police dog bit a suspect for over twenty seconds after he had surrendered and lay prone on his stomach with his arms outstretched.

HANDCUFFS

McNeal v. City of Katy, No. 23-20054 (5th Cir., Nov. 16, 2023)

No “excessive force” occurred when an officer pushed to the ground and dragged by her arms a suspect who was belligerent and resisted being handcuffed, even if at that time she was not under arrest and no charges were subsequently filed against her.

Stewart v. Precythe, No. 22-3297 (8th Cir., Jan. 30, 2024)

No “excessive force” or “cruel and unusual punishment” existed by handcuffing prisoners to a steel bench for several hours in order to preserve order, discipline and institutional security.

Hampton v. Nevada, No. 22-16843 (9th Cir., June 7, 2024)

Summary judgment was granted to an officer on an “excessive force” claim because the plaintiff failed to present any evidence that he sought or received treatment for any injuries caused thereby.

Taylor v. City and County of Honolulu, No. 23-15507 (9th Cir. June 26, 2024)

Handcuffing a small and calm child who was surrounded by adults, complied with an officer’s instructions, and was not likely to flee, was completely unnecessary. The officer who did so was denied qualified immunity on an “excessive force” claim.

Brooks v. Miller, No. 21-10590 (11th Cir., Aug. 22, 2023)

Qualified immunity was granted to an officer who, instead of loosening the handcuffs of an arrestee complaining that they were causing him pain and numbness, instead drove him 25 miles to a jail where he could receive medical attention.

Leach v. Sarasota County Sheriff, et al, No. 23-10357 (11th Cir. May 14, 2024)

In general, painful handcuffing, without more, is not “excessive force.”

OTHER CASES

Thompkins v. Penn Hills, No. 22-3012 (4th Cir., Oct. 23, 2023)

No “excessive force” occurred when an officer used a holding technique on a domestic violence perpetrator who resisted arrest, even if in doing so he broke her nose.

Salinas v. Loud, No. 22-11248 (5th Cir., Jan. 12, 2024)

No “excessive force” occurred when a suspect was taken to the ground and his lip started bleeding, but who later claimed that he was not hurting and refused medical treatment.

Walls v. Caddo Parish Sheriff’s Office, No. 23-30353 (5th Cir., Dec. 6, 2023)

Qualified immunity was denied to an officer who believed that a senior citizen was filming him on his cell phone and proceeded to grab him, slam him against his squad car and push him inside, although the man committed no crime, made no attempt to actively resist, and no exigency existed.

Zavala v. Harris County, No. 22-20611 (5th Cir., Nov. 21, 2023)

No “excessive force” occurred by hog-tying an arrestee after she started yelling for help and exhibited disorderly and injurious behavior.

Chaney-Snell v. Young, No. 22-1990 (6th Cir., April 15, 2024)

The court rejected a claim that the Constitution is not concerned with a *de minimis* level of force.

Cunningham v. Packard, No. 22-2112 (6th Cir., Oct. 24, 2023)

For purposes of an “excessive force” analysis, reasonable force remains reasonable regardless of the injuries it may cause.

Lunneen v. Village of Berrien Springs, Nos. 22-2044/2046 (6th Cir., Sept. 21, 2023)

“Excessive force” existed when officers, while attempting to handcuff him, applied pressure to the back of a prone and not actively resisting subject that created asphyxiating conditions.

Mitchell v. Hamilton County, TN, No. 23-5387 (6th Cir., March 21, 2024)

Qualified immunity was denied to an officer who, incident to arrest, took an arrestee’s pants off, pulled down his boxers, and exposed and reached into his anal area while they were on the side of a public road and seen by another person, even if it was a dark night, the exposure was brief, and the officer had probable cause to believe that he was hiding contraband in his boxers.

Reed v. Campbell County, No. 22-5751 (6th Cir., Aug. 30, 2023)

Retreating into one’s home rather than coming outside to talk to officers does not constitute “active resistance” for purposes of an “excessive force” analysis.

Bell v. Williams, No. 22-16580 (9th Cir., July 18, 2024)

A pretrial detainee with an amputated leg established “excessive force” when, during a cell extraction, he was not provided with a wheelchair, forcing him to hop on one leg until he fell.

Sable v. Washington County, No. 21-35431 (9th Cir., Oct. 17, 2023)

A PIT maneuver may constitute “excessive force” when it creates a substantial risk of serious injury, the suspect does not pose an immediate threat, and less intrusive options are available.

Scott v. Smith, No. 23-15480 (9th Cir. July 30, 2024)

Officers used excessive force by bringing an unarmed man in mental distress and not suspected of a crime to the ground, using their body weight to restrain him, causing him to lose consciousness and die.

Anderson v. Colorado Springs, No. 22-1130 (10th Cir., Aug. 18, 2023)

Grabbing a suspect’s arm and wrist to prevent him from deleting incriminating evidence from his cell phone upon arrest was not “excessive force” when he refused to turn over his phone and officers had probable cause to believe that the phone contained such evidence.

Gilmore v. Neph, No. 23-3134 (10th Cir., Jan. 4, 2024)

“Excessive force” need not include an injury, as injury and force are not perfectly correlated.

Hall v. Brown, No. 22-4080 (10th Cir., Oct. 25, 2023)

No “excessive force” occurred when officers employed a take-down maneuver on a drunk and belligerent person who ignored their orders to calm down, advanced to within two feet of them, and raised his hand towards the officers with one finger extended.

FIFTH, SIXTH, SEVENTH, AND THIRTEENTH AMENDMENTS

US v. Cowette, No. 22-1534 (1st Cir., Dec. 12, 2023)

Under the Fifth Amendment, in a suspect’s statement “I guess I’ll wait until I have a lawyer,” the words “I guess” do not create any ambiguity in her unequivocal invocation of her rights to counsel.

Ituah v. City of Philadelphia, No. 23-3140 (3^d Cir., June 26, 2024)

The demolition of a crumbling structure to abate the danger it poses is an exercise of traditional police powers and is not a taking.

US v. Maynard, No. 22-4178 (4th Cir., Jan. 11, 2024)

A court’s mask requirement did not violate a defendant’s Sixth Amendment rights.

Baker v. City of McKinney, No. 22-40644 (5th Cir., Oct. 11, 2023)

The Takings Clause does not require compensation for property damaged when it was objectively necessary to do so during an active emergency in order to prevent imminent harm to persons.

US v. Clayton, No. 23-30231 (5th Cir. April 4, 2024)

Officers need not reissue *Miranda* warnings to an arrestee who did not properly invoke his rights, was continually detained, and questioned within a few hours of arrest. Moreover, a new recitation of rights is not required with every break in the questioning.

US v. Pennington, No. 23-30038 (5th Cir., Nov. 9, 2023)

Hand-cuffing an individual for 5 minutes while officers conduct a protective sweep does not mean that he is “in custody” for purposes of a Fifth Amendment *Miranda* claim.

Freed v. Gratiot County, Nos. 21-1248/1288/1339 (6th Cir., Sept. 6, 2023)

A property owner whose property is foreclosed and sold at tax sale is not entitled to receive the fair market value of her property – only the foreclosure sale price minus taxes due plus interest.

Monson v. City of Detroit, Nos. 22-2050/2122 (6th Cir., Jan. 8, 2024)

An arrestee’s statement, made after he waived his *Miranda* rights, can still be “unlawfully coerced” if it is made after an investigating officer makes false promises of leniency in return for the arrestee’s signed confession.

US v. Hitchings, No. 23-3265 (6th Cir. April 4, 2024)

An arrestee does not make a “simple, unambiguous statement” invoking his right to remain silent through body language alone.

US v. Lester, No. 22-6076 (6th Cir. April 16, 2024)

A suspect was asked: “Is there anything else on you, any other drugs, anything that would stick or harm me?” He responded with a self-incriminating statement about something that wasn’t on his person. This interaction did not transform a safety-directed question into an “interrogation” simply because the suspect voluntarily offered an unexpected and unresponsive answer.

US v. O’Lear, No. 22-3835 (6th Cir., Jan. 8, 2024)

The Sixth Amendment was not violated when persons not vaccinated for COVID were excluded from a jury pool.

Wesley v. Hepp, No. 22-2968 (7th Cir., Jan. 5, 2024)

“Ain’t nothing to talk about, hoe,” “I ain’t got shit to say about no homicide,” and “Can I go back to my cell now?” are not unequivocal assertions of an arrestee’s right to remain silent.

Watkins v. Lawrence County, AK, No. 23-1939 (8th Cir., May 28, 2024)

Farmers who alleged that a county bridge caused their fields to flood, and unlawful taking without compensation, were entitled to the fair rental value of their property during flood times.

Grimes v. Phillips, No. 21-56353 (9th Cir. June 26, 2024)

Officers are not required to give *Miranda* warnings to a suspect before placing him in a cell with an undercover informant.

Nielsen v. Thornell, No. 22-15302 (9th Cir. July 8, 2024)

The Thirteenth Amendment does not prohibit incarceration in a private prison, as doing so does not approximate chattel slavery.

Rancho Mirage v. Coachella Valley Water Dist., No. 22-55212 (9th Cir., Oct. 30, 2023)

When charging a user fee to water customers, the fact that the water district used a standard usage formula to determine a user's fee does not violate the Takings Clause even if the user may be charged more or less than they would under a perfect user fee system.

US v. Griffin, No. 23-774 (9th Cir. May 24, 2024)

When an officer did not use or threaten to use force or draw his weapon, the traffic stop occurred on a public highway, and the driver was not handcuffed or arrested, and although he could not leave while the officer held his driver's license, he was not "in custody" for *Miranda* purposes.

US v. Jones, No. 22-1031 (10th Cir., Aug. 28, 2023)

Mere drug use and lack of sleep do not necessarily mean that a suspect cannot knowingly and intelligently waive his *Miranda* rights.

Bowen v. Secretary, Florida DOC, No. 22-11744 (11th Cir., Feb. 15, 2024)

The placement of two crime suspects in the same room during an investigation does not necessarily violate *Miranda*.

Leitgeb v. SackWire, No. 22-13683 (11th Cir., Aug. 30, 2023)

Forcing someone to receive a COVID test to maintain employment does not amount to slavery in violation of the Thirteenth Amendment, as an employee can always work elsewhere.

Darby Development v. US, No. 22-1929 (Fed. Cir. August 7, 2024)

The CDC issued a nationwide COVID order temporarily halting residential evictions. A property owner's Fifth Amendment "takings" claim survived dismissal, as the order prevented him from evicting non-rent-paying tenants, infringing on his right to exclude others from his property.

FOURTEENTH AMENDMENT: DUE PROCESS

DELIBERATE INDIFFERENCE

Thomas v. City of Harrisburg, Nos. 21-3963/3964/3018 (3rd Cir., Dec. 6, 2023)

For purposes of a "deliberate indifference" analysis, when an officer is aware of the ingestion of narcotics by an arrestee under circumstances suggesting that the amount consumed poses a substantial risk to his health, he must take reasonable steps to render medical care.

Ford v. Hooks, No. 21-7647 (4th Cir. July 2, 2024)

An officer may have been "deliberately indifferent" to an inmate's safety by publicly questioning him about the threats he had received, as by doing so he knowingly exacerbated the risk to him and contributed to his being attacked by another inmate.

Lowe v. Johnson, No. 21-7443 (4th Cir., Nov. 1, 2023)

A prison doctor may be liable for “deliberate indifference” to an inmate’s epilepsy by waiting 14 days before prescribing anti-seizure medication, during which time the inmate was injured.

Ford v. Anderson County, No. 22-40559 (5th Cir. May 22, 2024)

Delaying care for a detainee in need of emergency medical intervention may constitute “deliberate indifference.”

Batton v. Sandusky County, No. 23-3168 (6th Cir. April 5, 2024)

The failure to deliver a prisoner’s medications to intake officers and to inform them of the prisoner’s odd behavior during transport or his need for medication demonstrated “deliberate indifference” to the prisoner’s serious medical needs.

Bryant v. Hensley, No. 23-5608 (6th Cir. March 19, 2024)

When a nurse indicated that a prisoner should be put on “suicide watch” but, rather than follow her advice, an officer asked the prisoner if he wanted to go on “suicide watch,” which he declined. This amounted to “deliberate indifference” when the prisoner later hung himself.

Heeter v. Bowers, No. 23-3296 (6th Cir. April 29, 2024)

When a suspect lay face down and bleeding from multiple gunshot wounds, it was unreasonable for an officer to stand idle waiting for paramedics to arrive rather than administer first aid.

Yarbrough v. Henderson County, No. 23-5117 (6th Cir., Jan. 22, 2024)

A prisoner being on a “psych hold” was sufficient to alert officers that he required more than average surveillance and assistance for purposes of a “deliberate indifference” analysis.

Cheeks v. Jakob, No. 22-2749 (8th Cir., Sept. 1, 2023).

Qualified immunity was denied to officers on a “deliberate indifference” claim stemming from their failure to call for medical assistance for a suspect who crashed his car after engaging in a high-speed chase. In cases where no medical aid is provided, a plaintiff need not demonstrate the detrimental effect of such a lack of aid.

Nelson v. Tompkins, No. 22-14205 (11th Cir., Jan. 5, 2024)

Qualified immunity was denied to a jail officer who learned that a Black prisoner had previously engaged in racially motivated violence against White men but did not pass this information along. His failure to do so constituted “deliberate indifference” to a substantial risk of harm to the White prisoner with whom the Black prisoner shared a cell, and who was later killed by the same.

Wappler v. Ivey, No. 22-13418 (11th Cir. July 8, 2024)

A jailer was not deliberately indifferent to the needs of a pretrial detainee by not providing him with utensils to eat his food.

STATE-CREATED DANGER

Johnson v. City of Biddeford, No. 23-1399 (1st Cir, Feb. 13, 2024)

No “state-created danger” was found when an officer told a landlord to stay away from an angry tenant, heard the landlord say “There gonna be a bloody mess,” but did not disclose this to the tenant, whom the landlord subsequently killed.

Walton v. City of Verona, No. 22-60231 (5th Cir., Sept. 13, 2023)

An officer has no “special duty” to protect a citizen from a drive-by shooting for purposes of a “state-created danger” analysis.

Hall v. Portland, No. 22-35705 (9th Cir., Aug. 28, 2023)

No “state-created danger” occurred when a citizen chose to enter Portland during a period of riots, as the danger from the riots was not particular to him.

Leeper v. City of Tacoma, No. 22-35502 (9th Cir., Sept. 1, 2023)

A city may be liable for an intentional sexual assault committed by one of its officers while he was in uniform working as a security guard, if it knew of past sexual complaints that made him unfit as an officer yet retained him, and that retention was the proximate cause of the plaintiff’s injuries.

PROCEDURAL DUE PROCESS

Rivera v. Edwards, No. 23-1286 (4th Cir., Nov. 21, 2023)

Qualified immunity was granted to officers on claim that arose when a woman was erroneously arrested on a bench warrant, shuffled between detention centers, and held for 10 days despite her repeatedly providing evidence that she was not the person described in the warrant. It is not clear as to how promptly an arrestee must be released after confirmation that she is not the person sought.

Todman v. The Mayor and City Council of Baltimore, No. 23-1201 (4th Cir., June 10, 2024)

An ordinance that stated that personal property left on the premises after eviction was immediately considered abandoned denied tenants of their property without due process.

Capen v. Saginaw County, MI, No. 23-1665 (6th Cir., June 5, 2024)

A refusal to submit to a fitness-for-duty exam is not conduct protected by the Due Process Clause.

Cremeans v Taczak, No. 22-3730 (6th Cir. August 14, 2023)

A person’s due process rights were violated when her money was kept pending trial for 19 months with no credible justification and despite her attempts to retrieve it.

Ingram v. Wayne County, No. 22-1262 (6th Cir., Aug. 31, 2023)

A county seized private vehicles and bullied their owners into paying a redemption fee or incurring storage costs while waiting months for a hearing. This practice violated the Due Process Clause.

Willow Way v. Village of Lyons, No. 22-1775 (7th Cir., Oct. 5, 2023)

The demolition of a public nuisance, after notice and the opportunity for a hearing, does not violate the Due Process Clause nor require compensation.

Joseph v. San Jose, No. 20-17458 (9th Cir., Oct. 12, 2023)

A city, by requiring a homeowner to strip his trees from ground level to five feet above ground level without a hearing, violated the Fourteenth Amendment.

Lobats v. Las Vegas MPD, No. 22-15440 (9th Cir., Oct. 11, 2023)

Qualified immunity on a Fourteenth Amendment claim was denied to an officer who deliberately mischaracterized a statement in an investigative report.

Stampfli v. Stump, No. 23-15346 (9th Cir. April 24, 2024)

A public employee who was afforded for-cause protection did not lose that protection solely due to offhand, mistaken remarks made at a board meeting and was thus denied due process.

Rhoades v. Stitt, No. 23-6048 (10th Cir. July 11, 2024)

An officer cannot claim that his employer deprived him of a constitutionally protected property interest in continued employment without due process of law when he voluntarily retired.

Lewis v. Federal Bureau of Prisons, No. 2023-2015 (Fed. Cir., Mar. 4, 2024)

A probationary employee need not receive notice of her termination before the end of her probationary period.

SUBSTANTIVE DUE PROCESS

Cohen v. City of Portland, No. 23-2026 (1st Cir., August 1, 2024)

A person suffering from a psychotic episode entered a lake and drowned. His substantive due process rights were not violated by officers who neither created nor enhanced the man's danger.

Dellucky v. St. George Fire Protection, No. 23-30810 (5th Cir. August 7, 2024)

A Fire Chief's termination of a firefighter for marrying another firefighter did not violate substantive due process because their relationship was causing trouble in the workplace. Maintaining workplace order and morale and ensuring that the chain-of-command operates effectively is a legitimate objective and satisfies a rational basis review.

Fouts v. Warren City Council, No. 23-1826 (6th Cir. April 2, 2024)

Running for public office does not constitute a fundamental right under the Constitution, and an incumbent mayor has no liberty interest impacted by a city council's term-limit resolution.

Davis v. Rook, No. 23-1655 (7th Cir. July 12, 2024)

An officer acted reasonably by waiting for backup before entering a pretrial detainee fight.

Nelson v. Town of Paris, No. 22-2485 (7th Cir., Aug. 16, 2023)

An ordinance limiting where certain designated sex offenders could live and forbidding them from living within 6,500 feet of certain protected areas where children congregated did not violate their substantive due process rights.

Robbin v. City of Berwyn, No. 23-1928 (7th Cir., July 28, 2024)

A city inspector's use of racial slurs did not engage in conduct that "shocked the conscience."

Cheesman v. Snyder, No. 23-35310 (9th Cir. July 26, 2024)

Child Protective Services did not violate a parent's substantive due process rights when it took her children for a medical examination without her consent or judicial authorization since a prompt examination was necessary out of concern for an urgent medical problem or the dissipation of evidence of internal injuries.

Calonge v. City of San Jose, No. 22-16495 (9th Cir. June 7, 2024)

An officer who waited three seconds before shooting a man did not allow time for actual deliberation within the meaning of a Fourteenth Amendment inquiry.

Martinez v. High, No. 22-16335 (9th Cir., Jan. 26, 2024)

An officer did not violate a woman's due process rights by disclosing her confidential domestic violence report to her abuser.

Wright v. Ponca City, No. 22-6137 (10th Cir., Sept. 7, 2023)

Qualified immunity was granted to paramedics who, after learning that a patient had a possible neck injury, moved him to an ambulance without a cervical collar or backboard, allowing his head to flop and causing his death. In this non-custodial and non-state created danger setting, it was unclear whether EMT's would be aware that their willfully defective services would amount to a substantive due process violation.

FOURTEENTH AMENDMENT: EQUAL PROTECTION

James v. Larcom, No. 22-51038 (5th Cir. 2023)

A citizen's equal protection rights were not violated when he was denied entry into a public office building for refusing to wear a COVID mask in contravention of a county order.

Red Door v. Ft. Lauderdale, No. 22-11489 (11th Cir., Aug. 30, 2023)

In Equal Protection Clause cases involving a distortion of or departure from the law, rather than selective enforcement due to unlawful animus, a similarly-situated comparator is not required.

Stanley v. City of Sanford, No. 22-10002 (11th Cir., Oct. 11, 2023)

Under the Equal Protection Clause, disabled persons are not a "suspect class" and government-paid health insurance is not a fundamental right. Under a rational basis analysis, a city's change in disability retiree health insurance benefits advanced the legitimate governmental interest in conserving public funds.

TITLE VII: DISCRIMINATION

HOSTILE WORK ENVIRONMENT

Norris v. NLMK Pennsylvania LLC, No. 22-3186 (3d Cir., March 21, 2024)

Over a five-year period, co-workers used a sex-based slur to refer to the plaintiff, smashed her coffee cup and chairs, threw away her jacket; and once posted pornography next to her locker. These allegations are insufficient, as a matter of law, to establish a “hostile work environment.”

Hubbard v. SC Dept. of Mental Health, No. 22-1374 (4th Cir., Sept. 1, 2023)

No “hostile” work environment” was shown by the isolated use of the work ni**er and the posting of a monkey picture, when management addressed the issue as soon as it became aware of it.

Souza v. Amazon, No. 22-3043 (4th Cir., Nov. 13, 2023)

A “hostile work environment” was not created when a supervisor made late night calls to an employee and asked intrusive questions, and then refused to answer her work calls, when his calls were not threatening, humiliating, or highly offensive and his failure to answer work calls did not impact the employee’s ability to do her job nor alter her terms and conditions of employment.

Price v. Valvoline, No. 20-3298 (5th Cir., Dec. 15, 2023)

No “hostile work environment” was created by the comments “Lazy boy” and “You people always want something for free.”

Wilkinson v. Pinnacle Lodging, No. 22-30556 (5th Cir., Oct. 5, 2023)

Hostile work environment” claims fail, even in the presence of severe harassment, if there is no evidence that the harassment interfered with an employee’s work.

EEOC v. Village at Hamilton Pointe LLC, No. 22-2806 (7th Cir. May 9, 2024)

The federal law governing racial harassment does not ensure wise and skilled superiors with a sharply honed sense of social justice and a mastery of personnel management skills.

Hambrick v. Kijakazi, No. 22-3217 (7th Cir., Aug. 18, 2023)

Dissatisfaction with supervisors, a heavy workload, and a lack of employee recognition do not create a “hostile work environment.”

Copeland v. Georgia Department of Corrections, No. 22-13073 (11th Cir. March 28, 2024)

Harassment may violate Title VII even though it does not interfere with an employee’s job performance.

ADVERSE EMPLOYMENT ACTION

Bart v. Golub Corporation, No. 23-238 (2d Cir. March 26, 2024)

Membership in a protected class need only be one factor in an “adverse employment action.”

Lemonia v. Westlake Management, No. 22-30630 (5th Cir, Oct. 18, 2023)

Neither placing an employee on a PIP nor verbally reprimanding him is, standing alone, an “adverse employment action.”

Fuller v. McDonough, No. 22-2478 (7th Cir., Oct. 18, 2023)

Verbal and written warnings under an employer’s progressive discipline policy are not “adverse employment actions.”

Klamrzynski v. Maricopa Cty. Comm. College, No. 22-16752 (9th Cir., Sept. 20, 2023)

Under Title VII, non-professional e-mails can constitute an “adverse employment action.”

Laster v. GA DOC, No. 22-13390 (11th Cir., Sept. 12, 2023)

Requiring an employee to perform an undesirable job is not an “adverse employment action” unless it constitutes a material change in the terms or benefits of employment.

McCarthy v. City of Cordele Georgia, No. 23-11036 (11th Cir., July 31, 2024)

A person campaigned for chairman of the City Commission, expressing his intention to replace White employees with Black employees and to have an all-black City Commission. After winning the election, the City Commission fired the White City Manager and replaced him with a Black City Manager and refused to allow the fired City Manager to return to his former position because he did not “look like” them. This was sufficient to infer that the “adverse employment action” was on account of his race.

Payne v. Savannah College of Art & Design, No. 22-11556 (11th Cir., Aug. 31, 2023)

Payne sued for race discrimination and retaliation after being fired from his position as *Head Fishing Coach*!

TEMPORAL PROXIMITY

Buhagiar v. Wells Fargo, No. 22-16232 (9th Cir. June 11, 2024)

A nine-month gap between a protected action and an “adverse employment action,” without more, does not support an inference of retaliation.

Johnson v. Iberia Medical, No. 23-30159 (5th Cir., Nov. 15, 2023)

A three-month gap between an employee’s complaint and her termination is sufficiently close in time to establish the causality element of her *prima facie* claim of discrimination.

Edwards-Yu v. DeJoy, No. 22-36009 (9th Cir., Dec. 20, 2023)

A two-month gap between an employee's protected activity and an "adverse employment action" is short enough to support a causal link between the two.

Ferrara v. Mayorkas, No. 22-55766 (9th Cir. May 3, 2024)

A three-month gap between the settlement of an EEOC complaint and an "adverse employment action" is sufficiently proximate to infer causation.

Kama v. Mayorkas, No. 23-55106 (9th Cir. July 18, 2024)

A 56-day gap between a plaintiff's EEO complaint and his termination was insufficient by itself to show pretext.

Clark v. 10 Roads Express, No. 23-3067 (10th Cir., Oct. 24, 2023)

A six-month gap between a protected action and an "adverse employment action" does not, standing alone, provide a causal connection between the two.

OTHER CASES

Boykin v. Genzyme, No. 23-1667 (1st Cir., Feb. 16, 2024)

A single racially tinged comment by an executive does not prove discriminatory intent.

Bart v. Golub Corporation, No. 23-238 (2^d Cir. March 26, 2024)

It is sufficient to show that an employee's membership in a protected class was one motivating factor for an "adverse employment action."

Fields v. American Airlines, No. 23-2962 (3^d Cir., July 25, 2024)

Being threatened with discipline for alerting one's employer to alleged safety violations does not constitute protected activity for the purposes of a Title VII retaliation claims.

Hayes v. New Jersey Department of Human Services, No. 23-1829 (3^d Cir. July 19, 2024)

An email from the EEOC to the plaintiff's lawyer did not start the 90-day clock running because it was not equivalent to a right-to-sue letter. The posting of the right-to-sue letter on the EEOC's online portal also did not start the clock without direct communication to the plaintiff or her lawyer.

Kebe v. Washington Township School District, No. 23-1366 (3rd Cir., Jan. 23, 2024)

No Title VII violation exists just because a school district lacks diversity and its employees are "not very friendly" towards those who do not look like them.

Abney v. SEPTA, No. 22-1351 (4th Cir., Oct. 5, 2023)

Being the subject of an EEO investigation does not exclude an employee from Title VII protection.

Bush v. Frederick County, No. 1127 (4th Cir., Feb. 15, 2024)

No Title VII discrimination occurred when a principal fired a coach who told her team that she was going to make them strong so that they could say “f*ck white people.”

Cosby v. S.C. Probation, No. 21-2275 (4th Cir., Feb. 27, 2024)

An internal complaint by an employee is not protected activity under Title VII’s retaliation provisions when it does not allege that the complainant was retaliated against because of gender.

Brown v. City of Anna, No. 23-40214 (5th Cir., Nov. 29, 2023)

A plaintiff cannot rely upon her initial EEOC charge as evidence of her exhaustion of administrative remedies for claims that are based upon subsequent events.

Hamilton v. Dallas County, No. 21-10133 (5th Cir., Aug. 18, 2023)

Although a gender-biased scheduling policy is not an “ultimate employment decision,” it is sex-based workplace bias that supports a plausible claim of discrimination

Hebrew v. Texas Dept. of Criminal Justice, No. 22-20517 (5th Cir., Sept. 15, 2023)

A facially neutral workplace grooming policy must give way to an employee’s Title VII religious accommodation request to maintain his long hair and beard.

Johnson v. LSUHSC, No. 22-30699 (5th Cir., Jan. 8, 2024)

Temporarily reassigning an employee while investigating her sexual harassment claim, in order to separate her from her alleged harasser, did not constitute unlawful retaliation under Title VII.

Amos v. Lampo Group, No. 24-5011 (6th Cir. August 6, 2024)

Title VII does not treat religious discrimination based on a plaintiff’s belief *simpliciter* differently than discrimination based on some expression of the belief.

Hammond v. Sysco, No. 23-5385 (6th Cir., Dec. 21, 2023)

In a Title VII “failure to promote” claim, in order to show pretext, an employee must, among other things, show that he was “significantly” better qualified for the job that he was passed over to fill.

Sampson v. Flex N Gate Nine Mile, LLC, No. 23-1717 (6th Cir., April 30, 2024)

An employee who assumes the job responsibilities of a terminated employee in addition to his original job responsibilities does not mean that he “replaced” the terminated employee for purposes of a Title VII analysis.

Williams v. Memphis Light, Gas & Water, No. 23-5616 (6th Cir. July 16, 2024)

Excluding an employee from meetings not related to her job, preventing her from eating for free at a retirement party, and prohibiting her from driving company vehicles at will were not “adverse employment actions” because they did not affect any “identifiable” conditions of her work.

Smith Patel v. DeJoy, No. 23-1344 (7th Cir., Feb. 28, 2024)

Summary judgment was awarded against an employee alleging that adverse employment actions were taken against her because of her color (brown), national origin (Indian), religion (Hindu), race (Asian), sex (woman), disability (knee injury) and previous discrimination complaints.

Vavra v. Honeywell International, Inc., No. 23-2823 (7th Cir., July 10, 2024)

A refusal to take an online “unconscious bias” training program is not protected activity.

McDonald v. St. Louis University, No. 23-2624 (8th Cir. July 30, 2024)

A Title VII claim was properly dismissed as untimely when the plaintiff filed it more than 90 days after she received her right-to-sue letter because her lawyer lost the password to access the EEOC’s Public Portal and thus did not know that a right to sue letter had been issued.

Rajaram v. Meta Platforms, No. 22-16870 (9th Cir. June 27, 2024)

42 U.S.C. § 1981 prohibits discrimination in hiring based upon citizenship.

Anya Weatherly v. ABC Legal, No. 23-11143 (11th Cir. May 24, 2024)

Title VII’s protection against retaliatory discrimination extends to adverse actions that are not ultimate employment decisions, such as calling an employee a “snitch” after her protected activity, isolating her at the office, and defacing her car.

Phillips v. Legacy Cabinets, No. 22-10057 (11th Cir., Dec. 8, 2023)

Summary judgment was denied to an employer on a race discrimination claim brought by a White employee who claimed that she was treated more harshly than Black employees for the same or similar workplace conduct.

ADA; REHABILITATION ACT

REASONABLE ACCOMMODATION

Kelly v. Town of Abingdon, No. 21-2261 (4th Cir., Jan. 2, 2024)

The employee’s letter to his employer entitled “Accommodation Requests” did not constitute an ADA accommodation request because the accommodations requested therein were not connected to the employee’s disabilities, but instead to general workplace issues.

Tartaro-McGowan v. Inova Home Health, No. 22-1825 (4th Cir., Jan. 17, 2024)

Under the ADA, an employer offered a nurse with arthritis in her knees her choice of which in-home visits she would make so as to limit the pain in her leg -- a “reasonable accommodation.”

EEOC v. Methodist Hospital, 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.

Narayanan v. Northwestern State, No. 22-11140 (5th Cir., Oct. 11, 2023)

Indefinite leave requests constitute an “undue hardship” under the ADA.

Taylor v. University of Mississippi, No. 23-60246 (5th Cir., Feb. 9, 2024)

An employer refusing to accommodate an employee's request for a lighter workload, because a heavy workload exacerbated his depression and anxiety, did not create a viable RA claim because the employee could not tie his depression to his workload.

Bennett v. Hersley Medical Center, No. 23-1162 (6th Cir., Nov. 9, 2023)

No ADA "failure to accommodate" occurred when a hospital refused to let a clinical student with panic attack issues work with her support dog, due to the hospital's concerns about the dog causing allergic outbreaks and compromising patient care.

Cooper v. Dolgencorp, No. 23-5397 (6th Cir., Feb. 15, 2024)

When an employee's Tourette Syndrome caused him to utter profanities, moving him to a position with no customer contact was a "reasonable accommodation" under the ADA.

Yanick v. Kroger Company of Michigan, No. 23-1439 (6th Cir. April 29, 2024)

An employee's accommodation request to be assigned less work hours so that she could have time to recuperate and get re-acclimated to her job's physical demands, and thus perform the essential functions of her job, may constitute a reasonable ADA request.

Bruno v. Wells-Armstrong, No. 22-2945 (7th Cir., Feb. 23, 2024)

A request to remove an education requirement from a firefighter's employment contract is not a request for "reasonable accommodation" under the ADA.

Ivens v. GK North, No. 23-2586 (7th Cir., Feb. 1, 2024)

Under the ADA, an unlimited leave request is not reasonable.

Leibas v. Dart, No. 23-1275 (7th Cir. July 29, 2024)

An ADA accommodation request for additional breaks was unreasonable for a correctional officer whose job required her to stand for long periods and immediately respond to emergencies.

Smithson v. Austin, No. 22-2566 (7th Cir., Nov. 20, 2023)

When in-person attendance is an essential job function, the RA is not violated when an employee's request that she be given a half-day of sick leave whenever she is late for work is denied.

Howard v. City of Sedalia, Missouri, No. 23-1068 (8th Cir. June 4, 2024)

Allowing a disabled employee to take her service dog to work is not an employment benefit.

Sanders v. Union Pacific Railroad, No. 22-2863 (8th Cir. July 25, 2024)

An employee who was required to take a fitness-for-duty evaluation, including a treadmill test which he could not complete due to arthritic knee pain, requested an alternative test on a bicycle, which was denied, preventing him from returning to his job. This refusal constituted a failure to provide reasonable accommodation.

Freeman v. City of Cheyenne, No. 23-8022 (10th Cir., Feb. 7, 2024)

Under the ADA, an employee must still show that a reasonable accommodation is possible, even if her employer does not engage in the interactive process.

Hampton v. Utah DOC, No. 21-4127 (10th Cir., Dec. 4, 2023)

A refusal to accept a handicapped officer's request to use a Springfield 1911 rather than a Glock 17 handgun in order to accommodate his disability may violate the RA.

Mastaw v. West Florida Medical Center Clinic, No. 22-12202 (11th Cir., Aug. 23, 2023)

Under the ADA a change in supervisor is not a "reasonable accommodation" request.

Thomas v. Walmart, No. 23-12890 (11th Cir. April 11, 2024)

Summary judgment for Walmart was entered on this failure-to-accommodate claim, as the plaintiff's request for medical leave was pending at the time of his termination. There is no cause of action for a failure to accommodate in the future.

OTHER CASES

Doherty v. Bice, No. 23-1217 (2d Cir. May 10, 2024)

Emotional distress damages are not available under Title II of the ADA.

Stephen Porter v. Merakey USA, No. 22-2986 (3d Cir. July 30, 2024)

Medical testimony is not necessary to establish that a condition substantially limits a major life activity.

Crews-Sanchez v. Frito-Lay, No. 22-1831 (4th Cir., Feb. 7, 2024)

A four-month gap between an ADA requested accommodation and job termination is too long, standing alone, to infer causation.

Israelitt v. Enterprise Services, No. 22-1382 (4th Cir., Aug. 16, 2023)

An employee with an arthritic toe was not disabled under the ADA. An ADA retaliation claim does not afford the plaintiff legal damages nor guarantee him a Seventh Amendment trial by jury.

EEOC v. US Drug Mart, No. 23-50075 (5th Cir., Jan. 4, 2024)

Becoming frustrated with a young asthmatic employee, belittling him during a workplace discussion, and calling him "a disrespectful, stupid little kid" -- which caused him to cry -- is insufficient to support a "hostile workplace" claim under the ADA.

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Hughes v. Terminix Pest Control, No. 23-30617 (5th Cir., July 17, 2024)

The employees in this case argued they were disabled because their preexisting health conditions prevented them from safely receiving the COVID-19 vaccine, which in turn prevented them from working in jobs that mandate the vaccine. The court rejected this argument because the employees' disabilities themselves did not directly limit the life activity at issue.

Canter v. Disability Network, No. 22-1856 (6th Cir., Aug. 31, 2023)

Under the ADA, the mere failure to grant a plaintiff's request to correct a condition that he feels is unlawful does not constitute retaliation nor interference with his statutory rights.

Brown v. Meisner, No. 22-2458 (7th Cir., Aug. 25, 2023)

A plaintiff need not identify a particular ADA accommodation in his complaint.

Brown v. Brennan, No. 21-16154 (9th Cir., Jan. 17, 2024)

Taking two to four weeks to correct a payment error does not amount to an “adverse employment action” under the Rehabilitation Act.

Mattioda v. Nelson, No. 22-15889 (9th Cir. April 22, 2024)

A disability-based harassment claim is cognizable under the ADA and the RA.

Akridge v. Alfa Insurance, No. 22-12045 (11th Cir., Feb. 16, 2024)

The ADA does not incorporate Title VII’s “motivating factor” causation standard. An ADA plaintiff must prove that the adverse action was outcome determinative.

A.W. v. Coweta County School District, No. 22-14234 (11th Cir. August 7, 2024)

Title II of the ADA does not allow the recovery of damages for emotional distress.

Harrison v. Sheriff, Holmes County, No. 22-14288 (11th Cir., Feb. 6, 2024)

In this RA case, the court rejected the argument that a deputy was terminated “because of” his mental illness, since he had lied about his intimate relationship with a co-worker and he shot himself in the chin while drunk, on-duty, and in a county vehicle.

FMLA; EPA

Eisenhower v. Culinary Institute, No. 21-2919 (2nd Cir., Oct. 17, 2023)

Under the EPA, in order to establish a “factor other than sex” defense, a defendant need not prove that the factor is job related.

Murillo v. City of Granbury, No. 22-11163 (5th Cir., Oct. 2, 2023)

The FMLA’s protections continue after FMLA leave has been taken, and an employee who is fired shortly after his return to work may have a valid claim

Wayland v. OSF, No. 23-1541 (7th Cir., Feb. 28, 2024)

The FMLA is violated when an employee takes FMLA leave but her employer fails to adjust her performance expectations to reflect the employee’s reduced hours and then terminates her for not meeting performance expectations.

Eaton v. Montana Silversmiths, No. 22-35480 (9th Cir., Oct. 31, 2023).

A HR staff member who told an employee that he did not qualify for FMLA leave because he was already receiving worker’s compensation pay and then refused to provide him with a FMLA leave request form, did thereby unlawfully “discourage” him from taking FMLA leave.

Perez v. Barrick Goldstrike Mines, No. 23-15043 (9th Cir. June 28, 2024)

The FMLA does not require an employer to offer contrary medical evidence before contesting a doctor's certification of a serious health condition.

Ford v. Brennan, No. 21-4068 (10th Cir, Aug. 30, 2023)

Supervisor comments criticizing an employee's use of FMLA leave, without more, do not amount to an "adverse employment action" when the employee is allowed to take all of his FMLA leave.

Lapham v. Walgreen, No. 21-10491 (10th Cir., Dec. 13, 2023)

The proper causation standard for FMLA retaliation claims is "but-for" causation. A plaintiff must prove that an "adverse employment action" would not have occurred "but for" the alleged conduct.

Tanner v. Stryker Corporation, No. 22-14188 (11th Cir. June 20, 2024)

Time spent waiting for a child to be born is not covered under the FMLA.

Boyer v. US , No. 22-1822 (Fed. Cir. March 26, 2024)

Reliance upon prior compensation alone is not an affirmative defense to a prima facie case under the EPA. An employer can only rely on prior pay if either it can demonstrate that prior pay is unaffected by sex-based pay differentials or that prior pay is considered together with other non-sex-based factors.

FLSA: COBRA

Perry v. City of New York, No. 21-2095 (2nd Cir., Aug. 25, 2023)

Under the FLSA, an employer who requires, knows about, or should know about employee work must compensate the employee regardless of whether pay is requested, or the employee knows that his work is unpaid.

Scott v. Baltimore County, MD, No. 23-1731 (4th Cir. May 8, 2024)

There is no categorical rule that prisoners are not covered by the FLSA when working outside their detention facility for a third party for a primary purpose other than "rehabilitation and job training."

Tyger v. Precision Drilling, No. 22-1613 (4th Cir., Aug. 16, 2023)

Under the FLSA, whether changing in and out of protective gear and walking to and from a changing room is compensable time as tasks "integral" to one's work duties requires an inquiry into whether employees could change at home, whether changing into protective gear is required by law, and whether the gear is reasonably necessary to perform work safely and well.

Kelley v. Alpine Site Services, No. 23-20290 (5th Cir. August 8, 2024)

The Motor Carrier Act exemption to the FLSA requirement to pay overtime wages applies to employees whose principal job duties include loading vehicles, requires the exercise of judgment, and directly affects the safe operation of motor vehicles, even during workweeks in which they perform no safety - affecting duties.

Caudle v. Hard Drive, No. 23-1145 (6th Cir., Feb. 7, 2024)

Complaints related to a company's paid time-off policy are not protected by the FLSA.

Meadows v. NCR, No. 21-3309/22-1383 (7th Cir., Oct. 5, 2023)

The FLSA does not require the payment of overtime for the performance of "incidental activities." If an employer chooses to pay for these activities, it can place requirements upon such payment.

Houston v. St. Luke's Health System, No. 22-1862 (8th Cir. August 11, 2023)

A time-rounding policy that does not average out over time and under which most employees fared worse than had they been paid according to their exact time worked may violate the FLSA.

Cadena v. Customer Connexx, No. 23-15820 (9th Cir. July 10, 2024)

The *de minimis* doctrine is applicable to FLSA claims.

Sanders v. Ventura County, No. 22-55663 (9th Cir., Nov. 3, 2023)

Employees who opted out of an employer-sponsored health plan in favor of their receipt of a monetary credit should not have this credit considered as part of their "regular rate of pay" when calculating overtime compensation.

Austin v. Glynn County, No. 21-10162 (11th Cir., Sept. 14, 2023)

A lawsuit seeking overtime pay filed against a sheriff in his individual capacity was dismissed because a sheriff is not an "employer" under the FLSA.

USERRA

Ward v. Shelby County, No. 22-6054 (6th Cir. April 11, 2024)

A County fired an employee but later entered into a settlement agreement wherein the employee expressly released "any and all claims whatsoever." However, USERRA imposes a second requirement for the valid release of a USERRA claim – that the settlement agreement establishes rights that are more beneficial to the servicemember than the ones he gives up.

Arroyo v. Volvo Group, No. 23-1165 (7th Cir., Feb. 27, 2024)

PTSD, standing alone, does not raise a cognizable discrimination claim under USERRA.

Mustafa v. Yuma Regional Medical Center, No. 23-15169 (9th Cir. May 28, 2024)

The protections afforded by USERRA do not extend to independent contractors.

Payne v. MSPB, No. 23-2204 (Fed. Cir. July 16, 2024)

If a claimant delays bringing a USERRA claim and that delay is both (1) unreasonable and inexcusable, and (2) prejudicial, the doctrine of laches bars the claim.

ADEA

Liebau v. Dykema Gossett, No. 23-1301 (6th Cir. April 23, 2024)

Inquiries about retirement, birthday gifts that included a wheelchair, fake pill bottles, and adult diapers, and a repeated refusal to remove a wheelchair from an elderly employee's workstation provide an ample basis for an age-based discrimination claim.

Milczak v. General Motors, No. 23-1462 (6th Cir. May 21, 2024)

Three age-explicit comments in 3 years do not support an age-based harassment claim.

Redd-Oyedele v. Santa Clara County, No. 22-15728 (9th Cir., Oct. 26, 2023)

The mere fact that the plaintiff is older than the person chosen for promotion does not, standing alone, raise a material issue of pretext in an age discrimination case.

Gorgett v. Florida Department of Juvenile Justice, No. 21-13430 (11th Cir., Dec. 18, 2023)

Replacement by an employee who is 10 years younger is "substantially younger" for purposes of the ADEA. Yet, a temporary job assignment is not an "adverse employment action" under the Act.

FHA : FHAA : PUBLIC HOUSING

BMG v. Village of Monroe, No. 22-1047 (2nd Cir., Feb. 16, 2024)

An FHA claim alleging discrimination as a result of a village's failure to issue a developer building permits was unripe when the developer had not requested a variance and been denied, even if the village leaders indicated that they "might not be receptive" to such a request.

Women's Elevated Sober Living v. Jones, No. 22-40637 (5th Cir., Nov. 20, 2023)

Under the FHA, a sober house's request for an accommodation that would allow it to house 34 persons in an area zoned for 8-unit sober houses was properly denied when the plaintiff failed to demonstrate that such an accommodation was necessary to the facilitation of their residents' recovery. Being "therapeutically beneficial" to residents is not enough to show "necessity."

Cook County v. Bank of America, No. 22-1407 (7th Cir., Aug. 16, 2023)

A city's FHA lawsuit against banks who made loans to uncreditworthy borrowers who then defaulted and left vacant properties, thereby taking away city tax revenue, was dismissed because there was no showing of a direct relationship between the lending of money, the presence of abandoned properties, and a tax revenue loss.

RLUIPA : RFRA

Davis v. Wigen, No. 21-3162 (4th Cir., Sept. 19, 2023)

Under RFRA, preventing inmates from marrying placed a substantial burden on the exercise of their Christian faith.

Landor v. LA DOC, No. 22-30686 (5th Cir., Sept. 14, 2023)

Under RLUIPA, plaintiffs cannot recover monetary damages against prison guards in their individual capacities.

Catholic Healthcare v. Genoa, Nos. 22-2139/23-1060 (6th Cir., Sept. 11, 2023)

Denying a special use variance for a church to construct a “Stations of the Cross Trail” on its property, while allowing a city “Leopold the Lion Reading Trail” nearby, violated RLUIPA.

Muhammed v. Jones, No. 22-12563 (11th Cir., Aug. 25, 2023)

Summary judgment on a RLUIPA claim was denied to officers who, pursuant to policy, provided inmate meals after astrological twilight, requiring a Muslim inmate to choose between adhering to his religious beliefs or receiving adequate nutrition during Ramadan.

Vision Warriors v. Cherokee County Board, No. 22-10773 (11th Cir., Jan. 11, 2024)

Under RLUIPA, a city’s restriction on a residential faith-based recovery center could constitute a “substantial burden” even if the restriction does not remove all possibility that the center could operate nor bar the property’s use for religious exercise.

Edgewood High School v. City of Madison, WI, No. 23-1175 (7th Cir. March 15, 2024)

A city’s denial of a permit for a Christian school to install lights for nighttime activities does not violate RLUIPA because it can still operate without a substantial burden on its religious exercise.

SCHOOLS

IDEA

Pitta v. Medeiros, No. 23-1513 (1st Cir., Jan. 4, 2024)

A father had no First Amendment right to videotape a private meeting discussing his child’s IEP.

Doe v. Franklin Square Union Free Sch. Dist., No. 23-582 (2^d Cir. April 25, 2024)

Just because conduct arose in a school setting does not automatically transform an objection to that conduct into a FAPE denial claim.

Laboratory Charter School v. M. S., Nos. 23-2473 2642 & 3199 (3d Cir July 24, 2024)

A school's failure to develop and implement an IEP is a *per se* denial of a FAPE.

Le Pape v. Lower Merion School District, No. 22-2931 (3d Cir. June 4, 2024)

ADA and Section 504 discrimination claims seeking compensatory damages involving a FAPE denial should be resolved through summary judgement or trial.

Lartigue v. Northside Indep., No. 22-50854 (5th Cir., Nov. 16, 2023)

The IDEA's "exhaustion requirement" does not apply to ADA claims.

Bradley v. Kenton County Pub. Sch., Nos. 22-6091/5874 (6th Cir., Dec. 21, 2023)

Under IDEA, a school district is not required to provide special education classes after a student graduates from high school, nor to high school students who enroll in dual-credit classes offered at post-secondary institutions.

F.B. v. Francis Howell School District, No. 23-1073 (8th Cir., Nov. 16, 2023)

A parent need not exhaust IDEA's administrative processes before bringing a suit under the ADA seeking compensatory damages, as such damages are not available under the IDEA.

Kass v. Western Dubuque Community School District, No. 22-3506 (8th Cir. May 10, 2024)

Under the IDEA, a student's compensatory education may extend beyond his 21st birthday.

Osseo Independent Sch. Dist. No. 279 v. A.J.T., No. 22-3137 (8th Cir. March 21, 2024)

IDEA's protections are not limited to regular school hours, and a failure to provide evening classes based solely upon administrative concerns may deny students a FAPE.

Powell v. Volusia County School Board, No. 22-14083 (11th Cir., Nov. 13, 2023)

Parents need not exhaust IDEA's administrative remedies before filing an ADA complaint seeking compensatory and punitive damages.

TITLE IX

Soule ex rel. Stanescu v. CT Assoc. of Sch., No. 21-1365 (3rd Cir., Dec. 15, 2023)

Non-transgender athletes have standing under Title IX to challenge a policy allowing transgender girls to compete against biological girls.

Buettner-Hartsoe v. Baltimore Luth. H. Sch. Assoc., No. 23-1453 (4th Cir. March 27, 2024)

Tax-exempt status is not "federal financial aid" making a school subject to Title IX.

Reid v. James Madison University, No. 22-1441 (4th Cir., Jan. 9, 2024)

Under Title IX, the statute of limitations begins to run when a school denies a teacher's appeal, not earlier when an internal reprimand decision is made.

Murphy v. Northside Independent School District, No. 23-50369 (5th Cir. April 10, 2024)

The plaintiff sued her School District for sex discrimination under Title IX due to the severe and permanent injuries she sustained after her cheerleading coach forced her cheerleading squad to complete 150-200 “frog jumps” as punishment for being late to practice. She claimed that her injuries were the result of inequitable funding practices and inadequate training. The court dismissed her suit for failure to state a claim.

Doe v. University of Kentucky, No. 22-6012 (6th Cir. August 7, 2024)

A person can suffer adverse school-related actions even if she is not a current student. A University’s disciplinary proceedings are “educational programs” under Title IX.

S. C. v. Nashville & Davidson County, No. 22-5125 (6th Cir., Nov. 15, 2023)

Under Title IX, a school has an obligation to address student-on-student threats and harassment. It cannot remain deliberately indifferent.

Doe v. Loyola University Chicago, No. 22-2925 (7th Cir. May 3, 2024)

In Title IX cases, the use of pseudonyms must be justified on a case-by-case basis. A desire to keep embarrassing information secret does not alone justify anonymity.

Doe v. Manhattan Beach, No. 23-55233 (9th Cir., Feb. 22, 2024)

The court rejects an “erroneous outcome” theory of Title IX liability.

Doe v. Rocky Mountain Classical Academy, No. 22-1369 (10th Cir. April 30, 2024)

A school's dress code, which prohibited boys from wearing earrings, violated his rights under the Equal Protection Clause and Title IX absent an "exceedingly persuasive justification" for this sex-based classification.

Doe v. Emory University, No. 22-13293 (11th Cir. August 1, 2024)

Pro-complainant bias is not prohibited under Title IX.

OTHER CASES

Der Sarkistan v. Austin Prep., No. 23-1040 (1st Cir., Nov. 7, 2023)

A teacher’s request that other teachers take on her teaching responsibilities is, on its face, an unreasonable ADA accommodation request.

L. M. v. Town of Middleborough, MA, No. 23-1535, 23-1645 (1st Cir. June 9, 2024)

No First Amendment violation for a school to deny a student the right to wear a “There are only two genders” shirt, as it was demeaning to the gender identities of other students and disrupted the learning environment.

McElhaney v. Williams, No. 22-5903 (6th Cir., Aug. 25, 2023)

When a school employee interacts with a student, speech by the student’s parent about that interaction enjoys First Amendment protection.

Hershey v. Jasinski, Nos. 22-1826/1941/2235 (8th Cir., Nov. 21, 2023)

An advance notice provision requiring pamphleteers to notify a school before distributing pamphlets on campus was content-neutral and not a prior restraint on speech, as only notice, not approval, was required.

JAILS; PRISONS; EIGHTH AMENDMENT

Wiggins v. Griffin, No. 21-539 (2nd Cir., Nov. 20, 2023)

A prison that failed to update its records, which denied an inmate the right to attend religious services, substantially burdened his religious exercise.

Rivera v. Redfern, No. 23-1554 (3d Cir., April 11, 2024)

It is not established that a prison official's decision to prioritize one prisoner's health and safety over another's violates the Eighth Amendment.

Williams v. Diven, No. 23-2712 (3rd Cir., Jan. 9, 2024)

A single incident in which an inmate's mail is mishandled is insufficient to support a First Amendment claim.

Amisi v. Brooks, Nos. 21-1960/1962 (4th Cir., Feb. 22, 2024)

The Fourth Amendment was violated when jail officers mistakenly strip-searched a nurse, believing that she was a prisoner.

Jones v. Soloman, No. 21-7239 (4th Cir., Jan. 3, 2024)

Placing an inmate in a "dry" cell for 17 hours with no water to wash his hands nor any utensils with which to eat his food does not violate the Eighth Amendment.

Safrit v. Stanley, No. 22-6902 (4th Cir., Feb. 5, 2024)

An Eighth Amendment claim may lie when a prison's head count policy deprives prisoners of adequate sleep and may exacerbate their mental health conditions.

Simmons v. Whitaker, No. 22-6233 (4th Cir. July 8, 2024)

The Fourteenth Amendment applies to pre-trial detainees.

Cope v. Coleman County, No. 23-10414 (5th Cir. June 26, 2024)

Plaintiffs alleged that several unconstitutional County policies caused a pre-trial detainee's death, to wit: staffing only one jailer on nights and weekends, forbidding jailers from entering an occupied cell alone, and maintaining long phone cords in jail cells, resulting in the denial of adequate medical care and protection. Summary judgement for the County was denied.

Garrett v. Lumpkin, No. 22-40754 (5th Cir. March 22, 2024)

Penological purpose is irrelevant as to whether an inmate has been shown “deliberate indifference.”

LaVergne v. Stutes, No. 22-30475 (5th Cir., Sept. 25, 2023)

Confinement in a cell for 23 hours a day does not violate the Eighth Amendment so long as a prisoner can converse with others, receive visitors, and get some exercise.

Alicea v. Cook County, No. 22-2863 (7th Cir., Dec. 18, 2023)

The use of cameras to record holding cell toilets in courthouses does not unlawfully infringe upon the privacy interests of pretrial detainees.

Johnson v. Murray, No. 23-1805 (7th Cir., Jan. 19, 2024)

While jail officials may punish pre-trial detainees for violating jail rules, they must afford them the procedural safeguards required by the Due Process Clause.

Passmore v. Nauman, No. 23-2848 (7th Cir. July 2, 2024)

Qualified immunity was granted to an officer on a “deliberate indifference” claim that arose when he required prisoners to remain outside while their cells were being disinfected, which caused them to become sunburned,

Covert v. Plummer, No. 23-1557 (8th Cir., Aug. 18, 2023)

Qualified immunity was granted to prison officers on a First Amendment claim that arose after they searched a cell after its occupant called the prison “tip line.” This one-time search was unlikely to prevent any prisoner from making further “tip line” calls.

Human Rights Defense Center v. Union County, AK, No. 23-1677 (8th Cir. August 6, 2024)

A postcard-only policy is rationally related to legitimate penological objectives, such as reducing contraband and promoting institutional efficiency, and does not violate the First Amendment by limiting unsolicited communications to prisoners.

Smith-Dandridge v. Geanolous, No. 21-2459 (8th Cir., March 29, 2024)

A detainee’s behavior may put officers on notice of signs of mental illness while not necessarily making it obvious that he is a suicide risk.

Artisani v. Iowa, No. 23-2984 (9th Cir., Jan. 22, 2024)

Pre-trial detainees cannot be punished without being afforded due process.

Franklin v. Anaya, No. 23-2026 (10th Cir., Sept. 18, 2023)

The court rejected the contention that the transfer of a prisoner between prisons, even if one has more restrictive conditions of confinement than the other, supported an Eighth Amendment claim.

Gilmore v. Georgia Department of Corrections, No. 23-10343 (11th Cir. July 29, 2024)

Correctional officers must have reasonable suspicion that a visitor is concealing contraband before strip-searching her.

Wade v. Georgia Correctional Health, No. 21-14275 (11th Cir. July 10, 2024)

To establish liability for “deliberate indifference,” one must show both an “objectively serious” deprivation, and that the defendant acted with subjective recklessness -- knowing that his own acts or omissions --put the plaintiff at substantial risk of serious harm.

LABOR : UNIONS : WARN ACT

Fleming v. Bayou Steel, No. 22-30260 (5th Cir., Sept. 27, 2023)

There is no right to a jury trial under the WARN Act.

Tesla v. NLRB, No. 22-60493 (5th Cir., Nov. 14, 2023)

The NLRA does not give the NLRB authority to deem company uniforms presumptively unlawful.

Stern Produce Company v. NLRB, No. 23-1100 (D.C. Cir. March 26, 2024)

The monitoring of drivers was not an unfair labor practice even if it creates an impression of surveillance of pro-union activity, since the employer had clear language in its manuals stating that drivers could be monitored at any time.

Troutbrook Company v. NLRB, No. 23-1025 (D.C. Cir. July 12, 2024)

An employer violated the NLRA by refusing to bargain over economic subjects, as this unreasonably fragmented negotiations and reduced bargaining flexibility.

ENVIRONMENT

Munoz v. Intercontinental Terminals, No. 22-20456 (5th Cir., Oct. 27, 2023)

CERCLA, not the Oil Pollution Act of 1980, applies to discharges of oil mixed with hazardous substances.

CRA v. City of Berkeley, No. 21-16278 (9th Cir., Jan. 2, 2024)

The Federal Energy Policy and Conservation Act preempts a local building code that bans natural gas piping in new buildings.

Baker v. Upson Regional Medical Center, No. 22-11381 (11th Cir., Mar. 8, 2024)

Under the EPA, a plaintiff does not have to prove discriminatory intent on behalf of her employer.

City of Lincoln v. FERC, No. 22-1205 (D.C. Cir., Jan. 2, 2024)

A public utility that invests in facilities that benefit one group of customers cannot recover its costs from customers who neither caused nor benefited from the investment.

PROCEDURAL : EVIDENTIARY

Town of Milton v. FAA, No. 22-1521 (1st Cir., Nov. 30, 2023)

A town does not have Article III standing to challenge new FAA flight routes over its residential neighborhoods based upon its contention that the money spent challenging the routes could have otherwise been spent on other municipal activities. This is not a relevant economic injury.

US v. Johnson, No. 22-1086 (2nd Cir., Feb. 27, 2024)

Evidence seized during the execution of a valid search warrant but not reviewed until after a defendant's sentencing can be used in a subsequent prosecution against him for another offense.

Yaakov Academy v. Town of Clarkstown, No. 22-1714 (2nd Cir., Dec. 8, 2023)

By declining to review a variance application, a zoning board thereby reached a decision that was sufficiently final for ripeness purposes.

Doriety v. Sletten, No. 23-1867 (4th Cir. July 29, 2024)

When a district court considers a video of a police encounter at the motion to dismiss stage, it must credit the plaintiff's version of the facts unless they are "blatantly contradicted" by the video.

US v. Vongphakdy, No. 22-4593 (4th Cir., Oct. 12, 2023)

The Fifth Amendment does not prohibit the introduction of evidence indicating that a suspect was able to respond to an English-language interrogation.

Culbertson v. Harris County, No. 20527 (5th Cir., Sept. 26, 2023)

In a Section 1983 retaliation case, standing depends upon the plaintiff's direct, non-derivative injury, not the defendant's motive.

Strunk v. Methanex, No. 23-30685 (5th Cir., Jan. 31, 2024)

Equitable tolling was not justified when a plaintiff filed her discrimination complaint late due to her being on bedrest for a difficult pregnancy.

Kovalchuk v. City of Decherd, No. 23-5229 (6th Cir. March 18, 2024)

Discovery cannot be used to bridge the gap between deficient pleading and the possibility that a claim may survive upon further investigation.

Reguli v. Russ, No. 23-5925 (6th Cir. July 31, 2024)

The statute of limitations begins when a plaintiff knows or should know of her injury, not later when she learns of the motive behind it.

US v. Whipple, No. 23-5126 (6th Cir., Feb. 8, 2024)

A warrant's execution date does not apply to the off-site investigation and analysis of the contents seized pursuant thereto.

US v. Echols, No. 23-1667 (7th Cir. June 26, 2024)

A prior consistent statement offered to rebut charges of falsehood must have been made before a motive to lie arose.

Gilbank v. Wood County Dpt. of Human Services, No. 22-1037 (7th Cir. August 1, 2024)

There is no "fraud exception" to the *Rooker-Feldman* doctrine.

Washington v. St. Louis, No. 22-1843 (8th Cir., Oct. 19, 2023)

Unsworn statements are no substitute for evidence at a summary judgment hearing.

Conway v. City of Palm Desert, No. 23-55756 (9th Cir. June 6, 2024)

One cannot allege that a county policy or custom violated a friend's rights. Under §1983, one must allege that the policy or custom was the moving force behind the violation of his own rights.

Cuviello v. City of Belmont, No. 23-16135 (9th Cir. May 20, 2024)

Success on a motion to dismiss does not establish a likelihood of success on the merits of a claim.

US v. Hernandez, No. 22-50134 (9th Cir. June 28, 2024)

A criminal defendant's belated realization that his safety-valve proffer could lead to reprisal in prison counts as a "fair and just" reason to withdraw his guilty plea.

US v. Kinney, No. 23-1051 (9th Cir. July 18, 2024)

The admission in a criminal case of social media evidence showing a defendant's possession of firearms did not violate FRE 404(b) nor penalize the exercise of his Second Amendment rights.

Davis v. Koch, No. 23-8029 (10th Cir., Aug. 25, 2023)

Under FRCP 4, regular mail is not an approved method of service, and if a plaintiff relies upon regular mail and a filing deadline is missed, a court is within its authority to dismiss an action.

Rywelski v. Biden, No. 23-5099 (10th Cir. May 1, 2024)

The Declaration of Independence is a statement of principles, not law, and does not grant enforceable rights.

Speech First v. Shrum, No. 23-6054 (10th Cir., Feb. 9, 2024)

Pseudonymous declarations can establish Article III standing.

Waetzig v. Halliburton Energy, No. 22-1252 (10th Cir., Sept. 11, 2023)

A district court cannot reopen a case under FRCP 60(b) after it has been voluntarily dismissed without prejudice - - because a voluntary dismissal is not a final judgment, order, or proceeding.

Harris v. Public Health Trust, No. 21-11016 (11th Cir., Oct. 4, 2023)

To rebut a "cat's paw" allegation of a biased disciplinary recommendation, one needs an unbiased investigation into the complaint against the employee, not into the bias of the recommender.

Spence v. DVA, No. 22-5273 (D.C. Cir. July 23, 2024)

The liberal pleading standard that applies for *pro se* litigants does not apply to licensed attorneys.

ARBITRATION: CONTRACTS

Aldea-Tirado v. PricewaterhouseCoopers, LLP, No. 22-1806 (1st Cir. May 10, 2024)

A plaintiff tacitly consents to an arbitration agreement by continuing to work for her employer after receiving the agreement by regular US mail and e-mail.

James Isernia v. Danville Regional Medical Center, No. 22-2224 (4th Cir. May 13, 2024)

A court, not an arbitrator, must determine whether a non-signatory to an agreement that contains an arbitration clause can enforce it against a signatory to the agreement.

Iten v. Los Angeles County, No. 22-55480 (9th Cir., Aug. 30, 2023)

A landlord had standing to bring a Contracts Clause claim against a county whose executive order impaired his lease with a tenant by altering the remedies the parties had agreed upon.

Davidson Oil Company v. City of Albuquerque, No. 23-2116 (10th Cir., July 19, 2024)

A city breached a contract with a fuel supplier by exercising its “termination for convenience” clause solely to obtain a better deal from another supplier. This violated the “implied covenant of good faith and fair dealing” inherent in the contract.

Bedgood v. Wyndham Vacation Resorts, No. 22-11504 (11th Cir., Dec. 19, 2023)

Persons who seek to arbitrate disputes but whose petitions are rejected by the AAA for a failure to follow AAA rules can proceed to trial.

COMMERCE CLAUSE: TRANSPORTATION

Resturant Law Center v. NYC, No. 22-491 (2nd Cir., Jan. 5, 2024)

A municipal law prohibiting the wrongful discharge of fast-food restaurant employees is not prohibited by the Dormant Commerce Clause.

Brandon v. Cambria County Transit Authority, No. 23-2106 (3d Cir. April 3, 2024)

The Constitution protects the general right to travel, not the right to travel via a particular mode of transportation.

OTHER CASES OF INTEREST (TO ME)

Kerson v. Vermont Law School, No. 21-2094 (2nd Cir., Aug. 18, 2023)

An artist's rights were not violated under the Visual Artists Rights Acts when a law school erected a wall around his artwork to keep it from public view but neither modified nor destroyed the work.

Roberts v. Lau, No. 22-2340 (3rd Cir., Jan. 11, 2024)

For purposes of an absolute immunity analysis, whether a prosecutor's actions were pre- or post-indictment, and whether those actions were connected to a judicial proceeding, are "relevant considerations" when determining whether such actions served a "quasi-judicial" function.

V.I. Carnival v. V.I. Department of Tourism, No. 22-2658 (4th Cir., Sept. 32, 2023)

Government officials could not be enjoined from using the phrases "St. Thomas Carnival" and "Virgin Island Carnival," as those terms are generic and not subject to trademark infringement.

Weimer v. Fayette County, No. 22-2363 (4th Cir., Nov. 2, 2023)

Qualified immunity was granted to an officer on a "malicious prosecution" claim stemming from his failure to disclose potentially exculpatory evidence and investigatory leads to a prosecutor before charging decisions were made.

Sun v. TETRA, No. 22-20646 (5th Cir., Oct. 19, 2023)

The fact that the same law firm filed pleadings in state court for one entity and in federal court for another entity regarding the same incident does not establish privity between the entities.

Elden v. Nirvana, No. 22-55822 (9th Cir. Dec. 21, 2023)

Nirvana's album cover showing a naked baby in a pool may constitute child pornography.

Saili v. Waste Management, No. 22-3268 (10th Cir., Sept. 18, 2023)

Judicial estoppel prevents the pursuit of claims not disclosed on a Chapter 13 property schedule.

MERCIFULLY, THE END

----- **NOTES** -----