

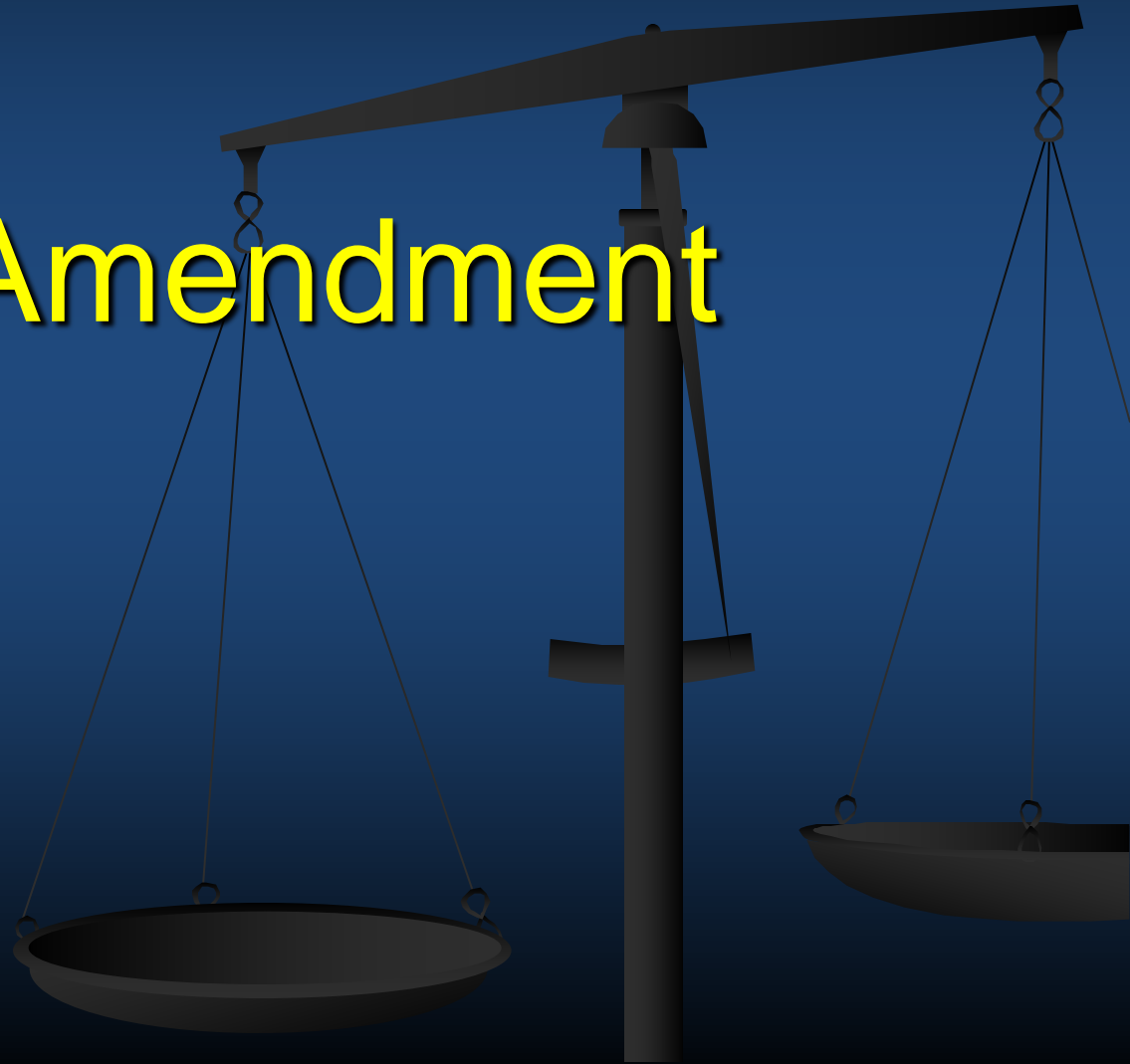
RECENT FEDERAL CASES OF INTEREST TO GOVERNMENTAL ENTITIES



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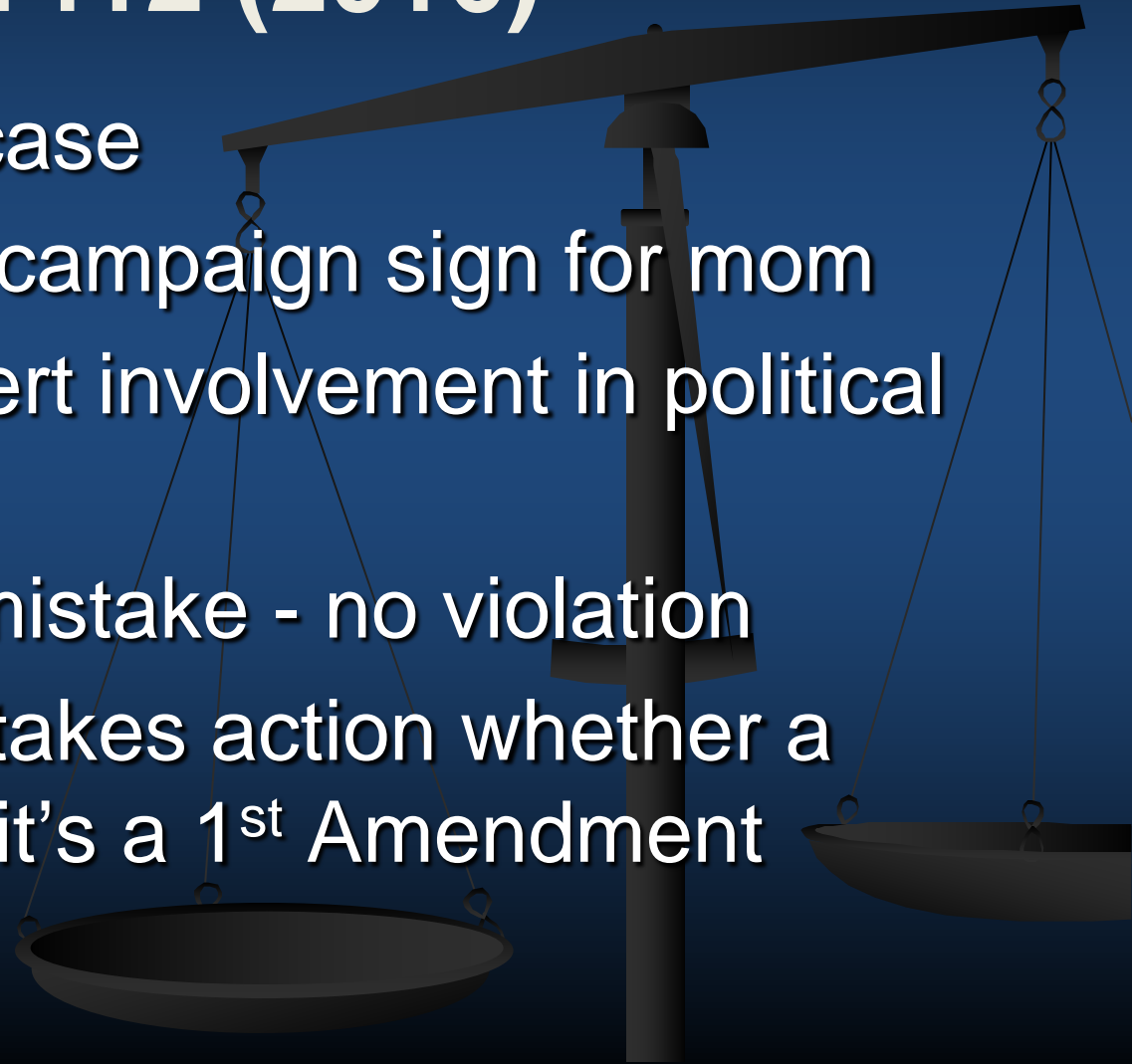
**TCAA FALL CONFERENCE
AUSTIN, TEXAS
OCTOBER 6, 2016**

First Amendment



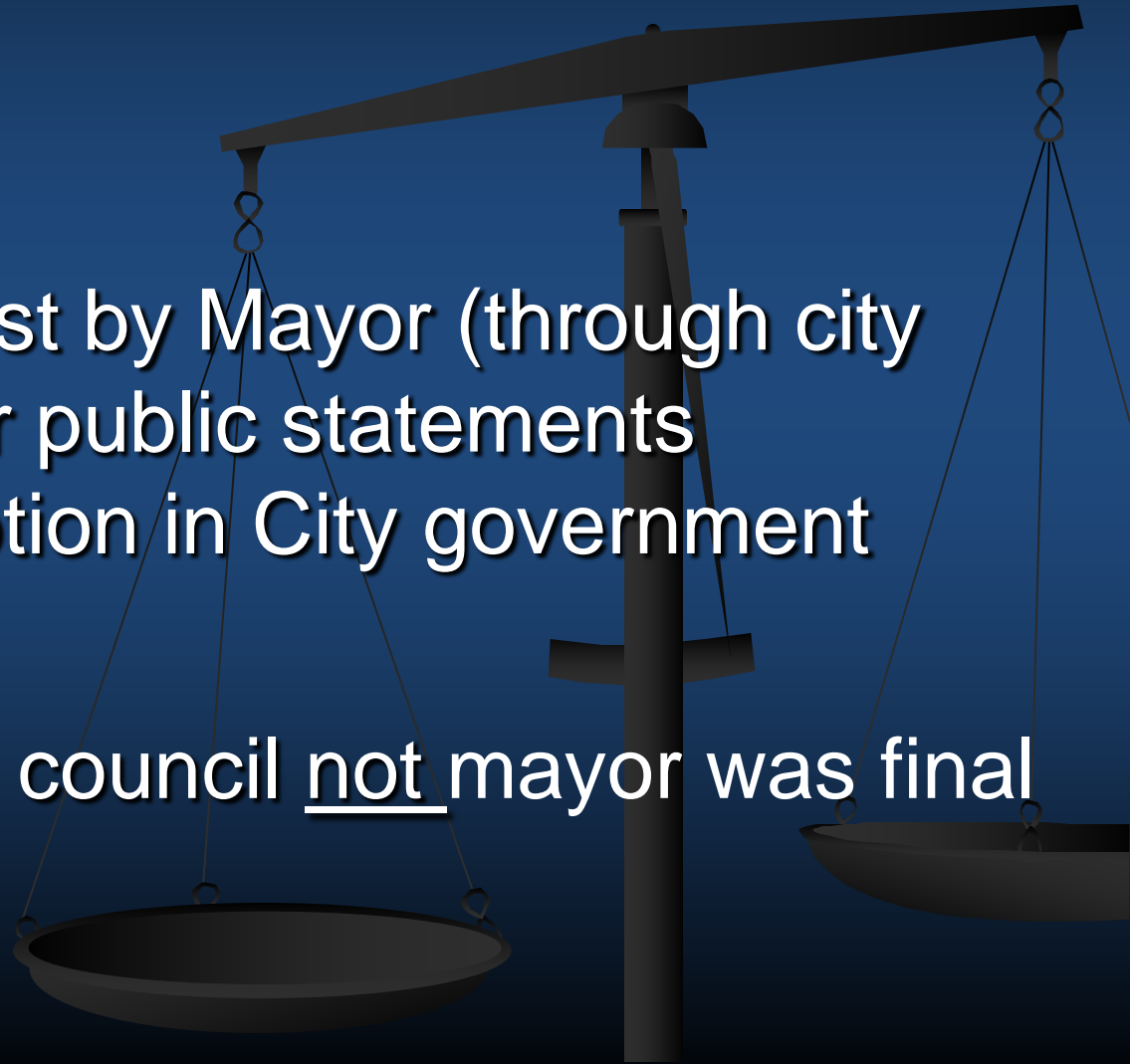
Jeffrey J. Hefferman v. City of Paterson, New Jersey, 136 S. Ct.1412 (2016)

- 1st Amendment case
- Seen picking up campaign sign for mom
- Demoted for “overt involvement in political activities”
- City says since mistake - no violation
- When employer takes action whether a mistake or not – it’s a 1st Amendment violation



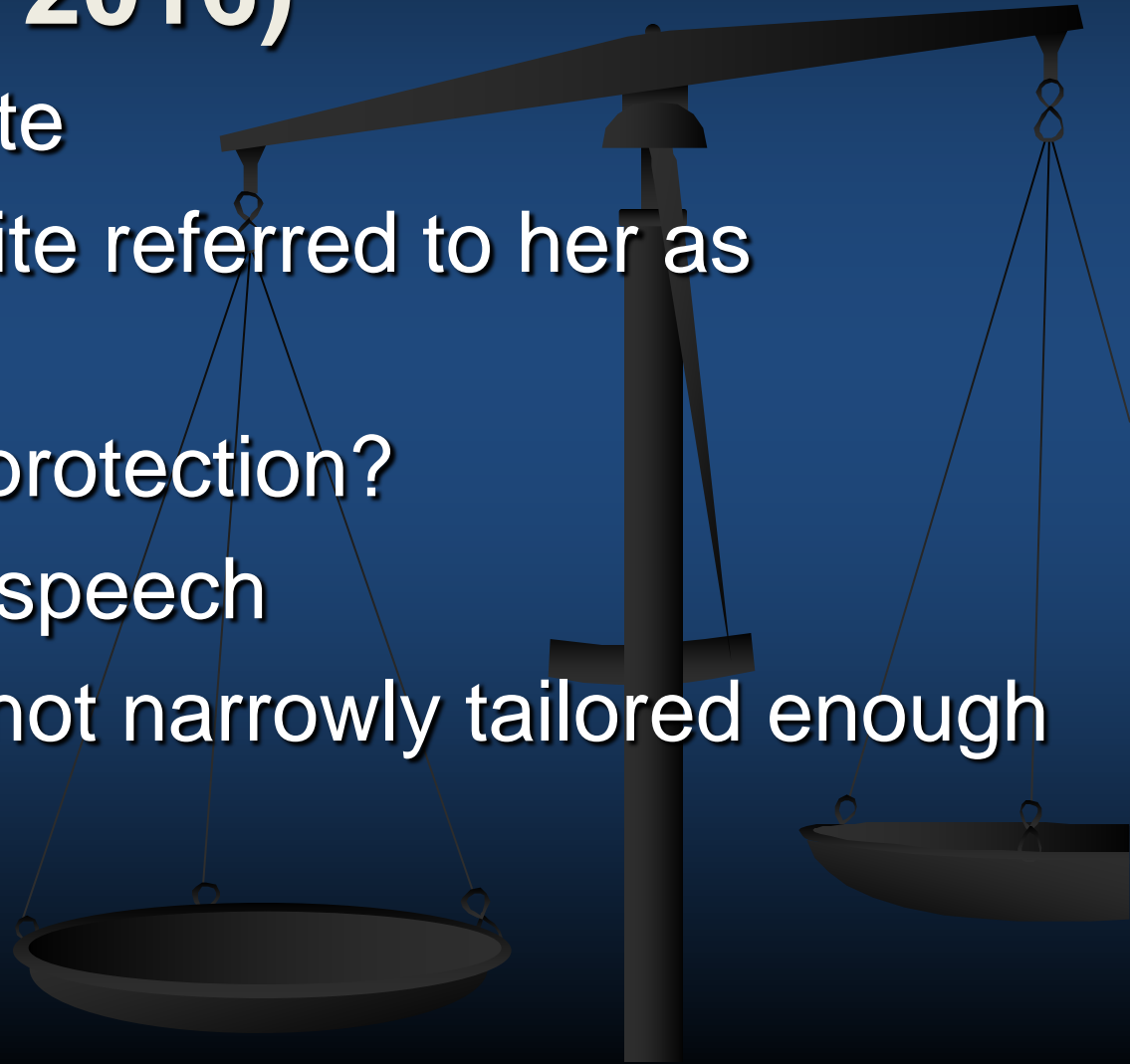
Advanced Technology Building Solutions, L.L.C. v. City of Jackson, Mississippi, 817 F.3d 163 (5th Cir. 2016)

- 1st Amendment
- Retaliated against by Mayor (through city employees) after public statements regarding corruption in City government
- Court found City council not mayor was final policymaker

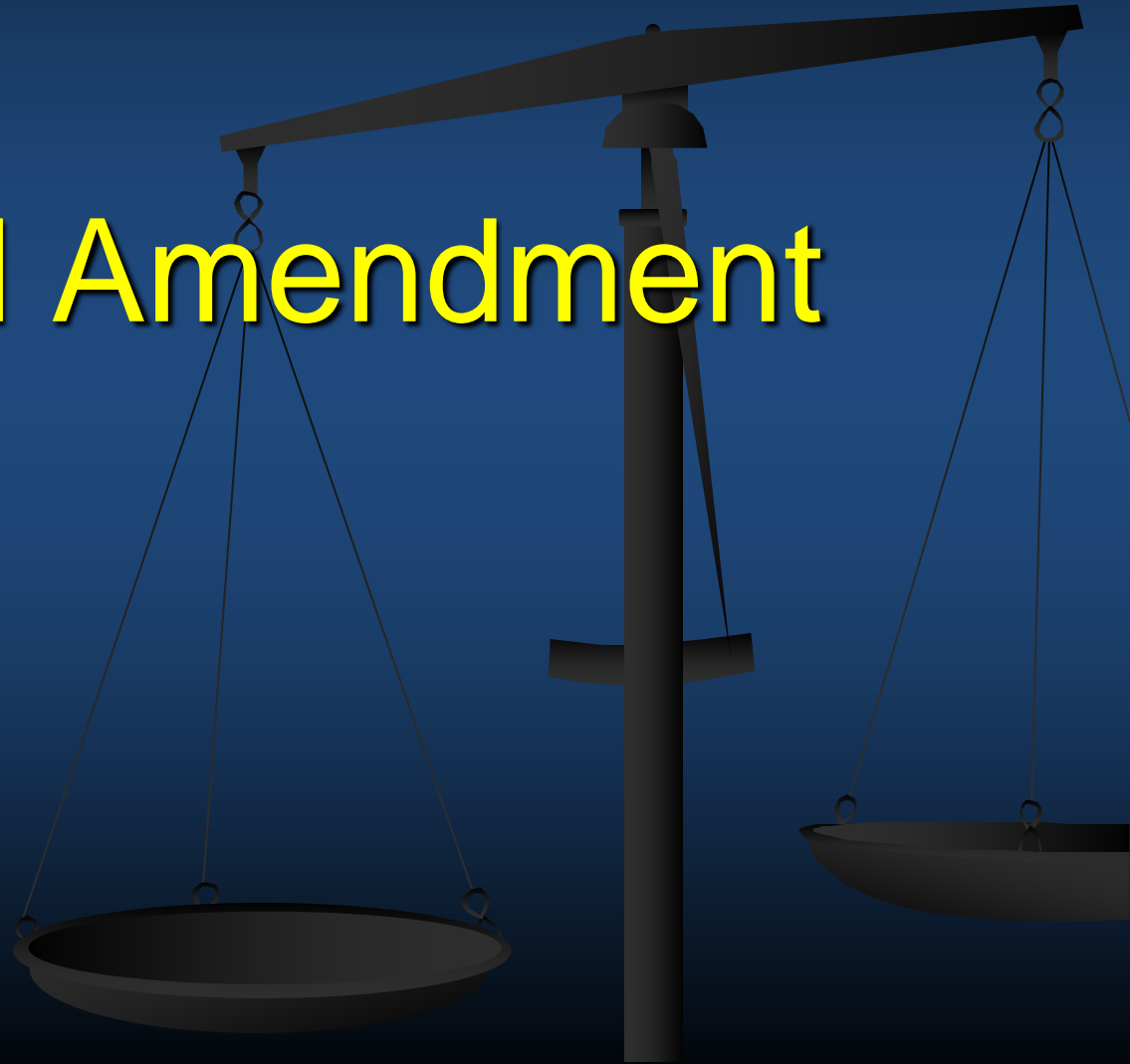


Dr. Mary Louise Serafine v. Tim F. Branaman, 810 F.3d 354 (5th Cir. 2016)

- Political candidate
- Campaign website referred to her as psychologist
- 1st Amendment protection?
- Not commercial speech
- Prohibition was not narrowly tailored enough

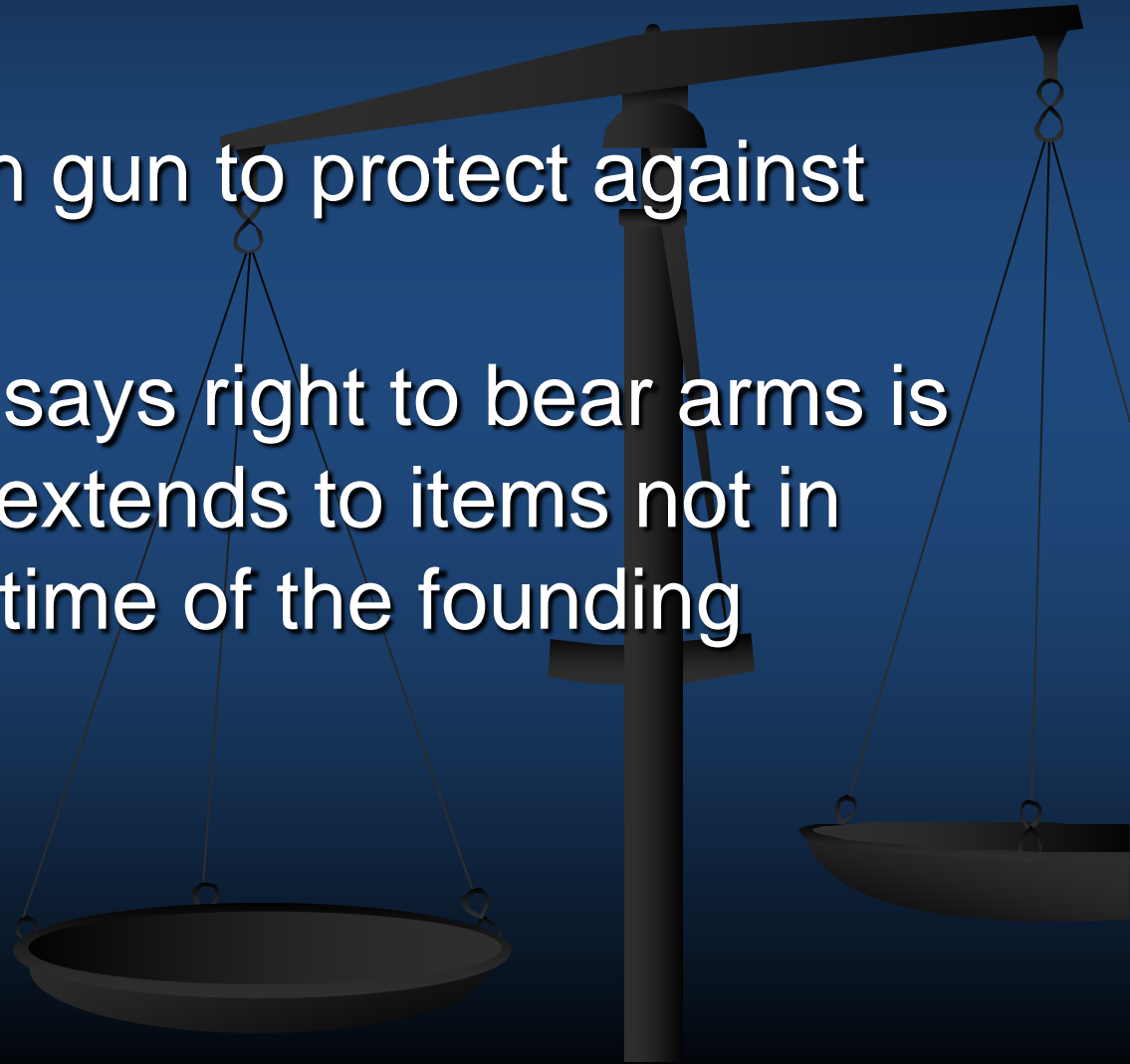


Second Amendment

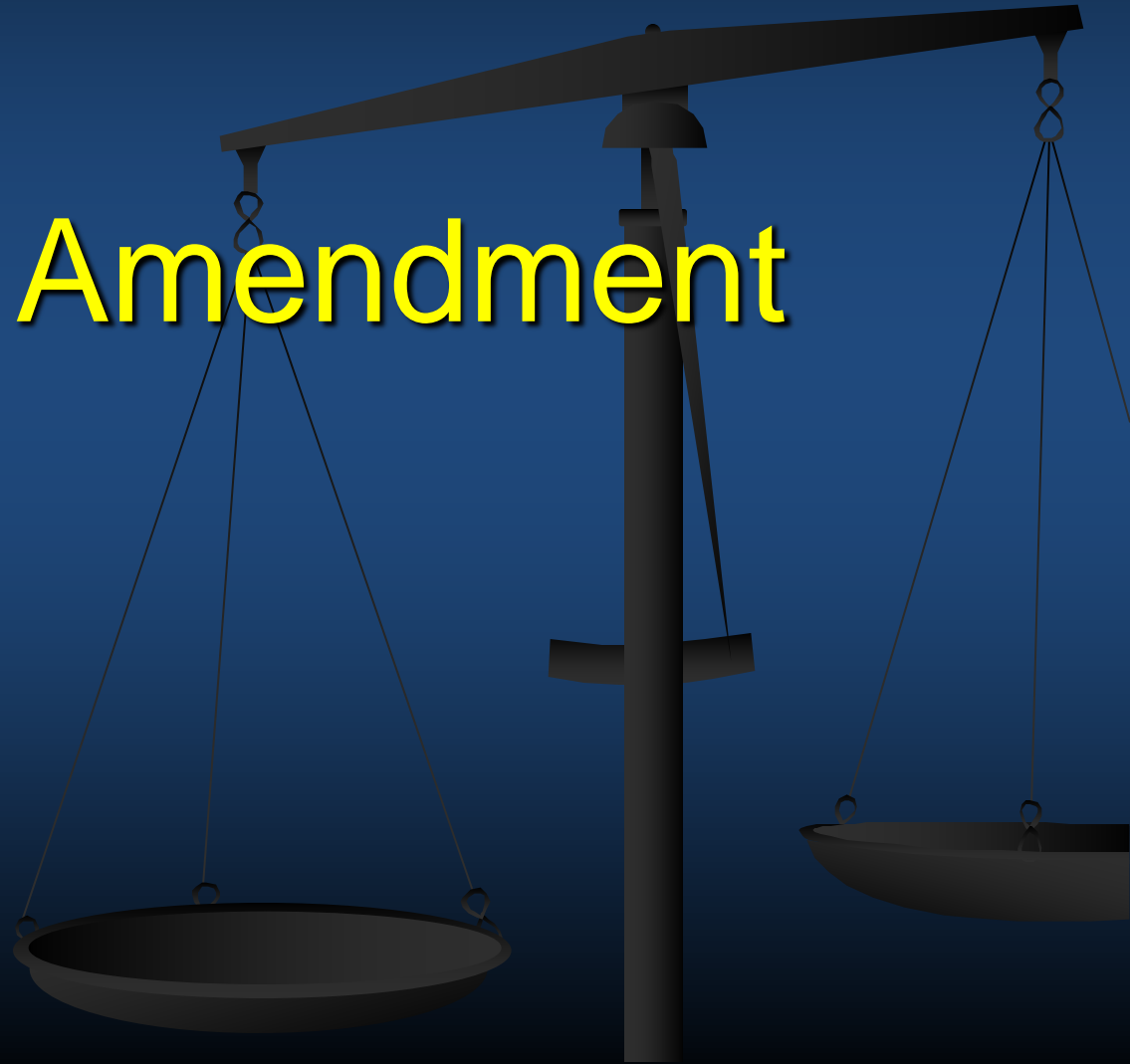


Jaime Caetano v. Massachusetts— 136 S.Ct. 1027 (2016)

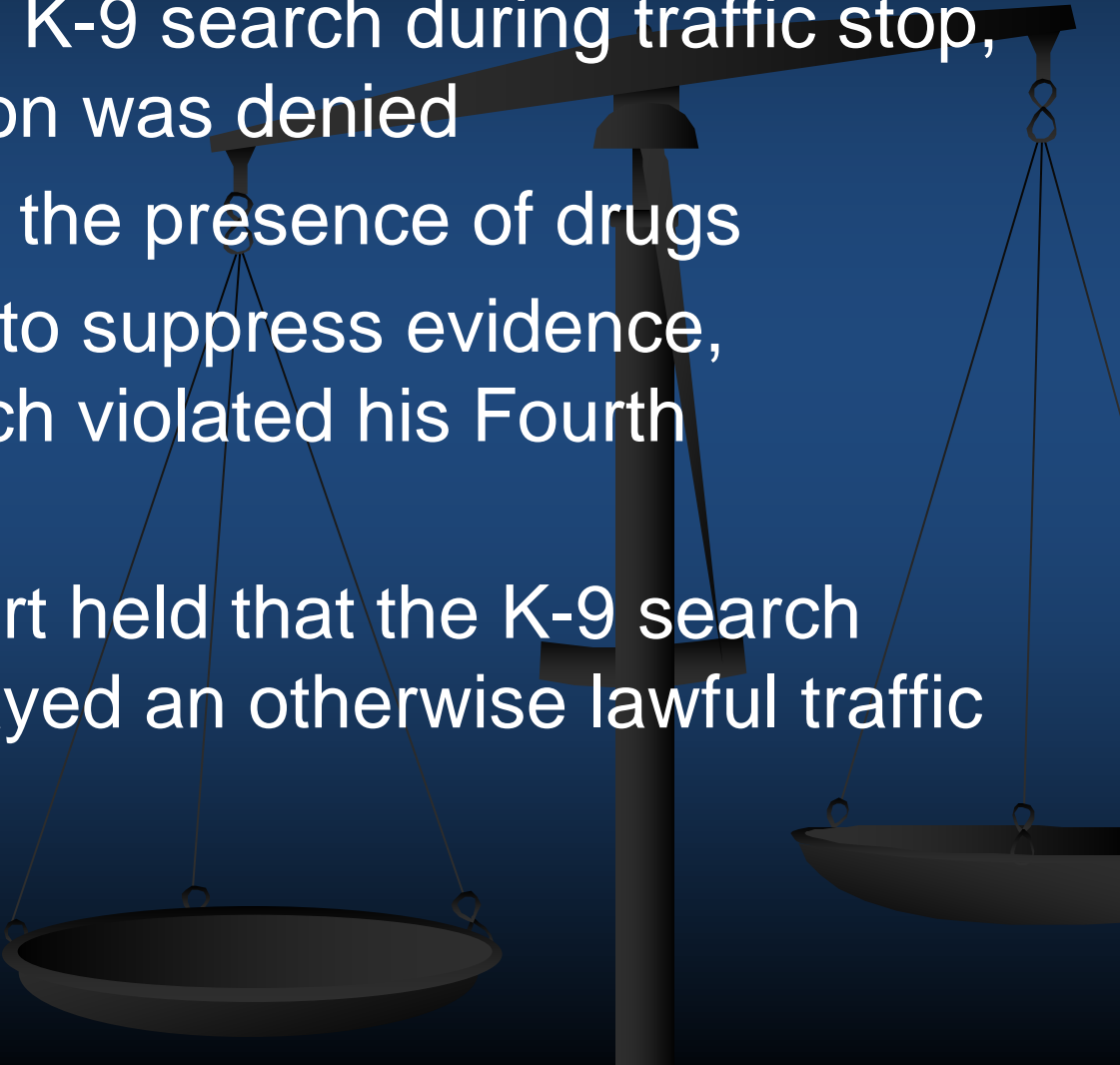
- 2nd Amendment
- Possessed stun gun to protect against boyfriend
- Supreme Court says right to bear arms is broad and even extends to items not in existence at the time of the founding



Fourth Amendment

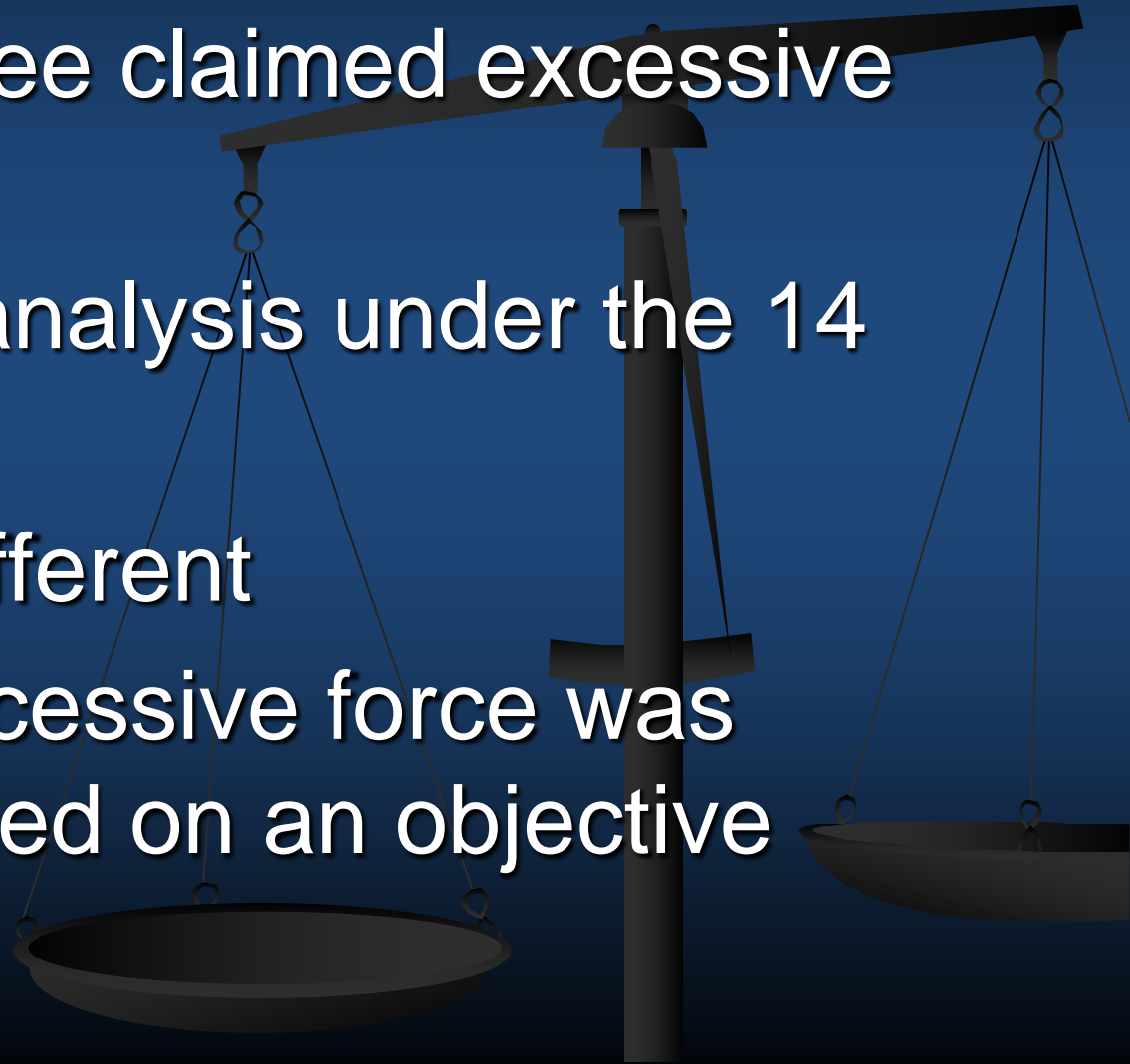


Rodriguez v. United States, 575 U.S. ____ (2015).

- Police employed a K-9 search during traffic stop, although permission was denied
 - The dog alerted to the presence of drugs
 - Rodriguez moved to suppress evidence, claiming dog search violated his Fourth Amendment rights
 - The Supreme Court held that the K-9 search unreasonably delayed an otherwise lawful traffic stop
- 

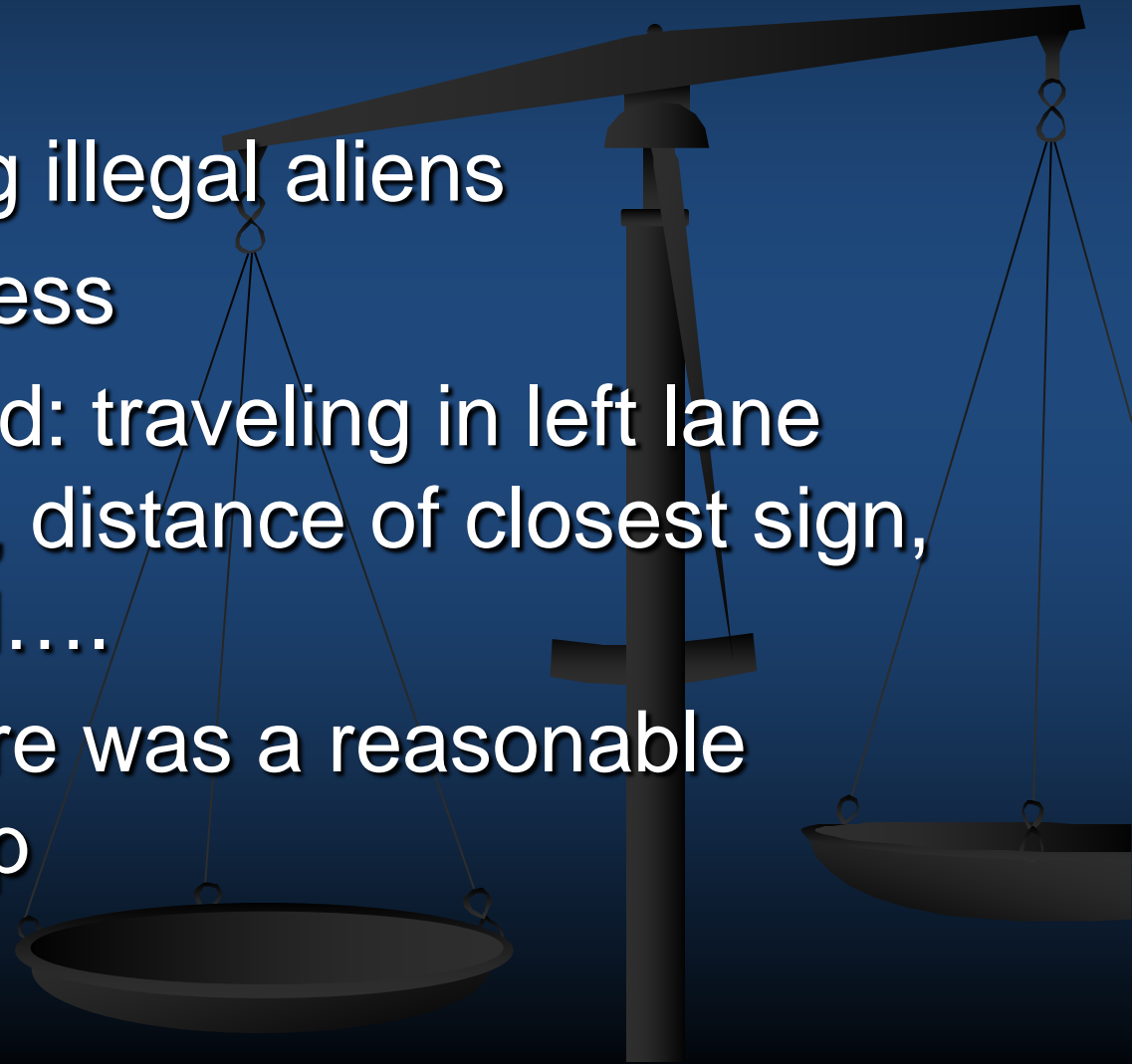
Kingsley v. Hendrickson, 135 S. Ct. 2466 (2016)

- Pretrial detainee claimed excessive force
- Due process analysis under the 14 Amendment
- Standard is different
- Must show excessive force was excessive based on an objective standard



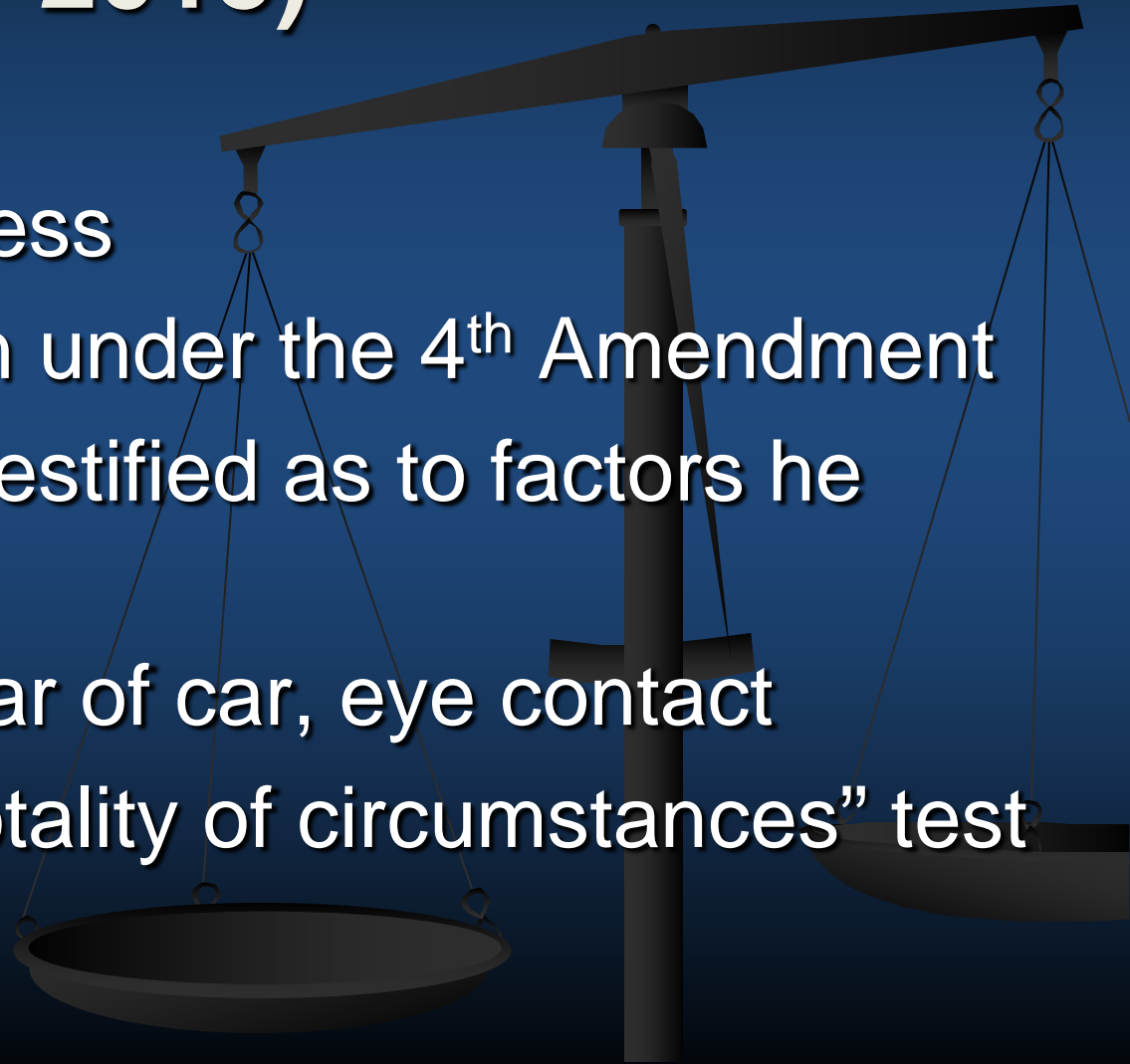
United States v. Joe Angel Castillo, 804 F.3d 361 (5th Cir. 2015)

- Traffic stop
- Found harboring illegal aliens
- Motion to suppress
- Factors analyzed: traveling in left lane without passing, distance of closest sign, length observed....
- Court found there was a reasonable suspicion to stop



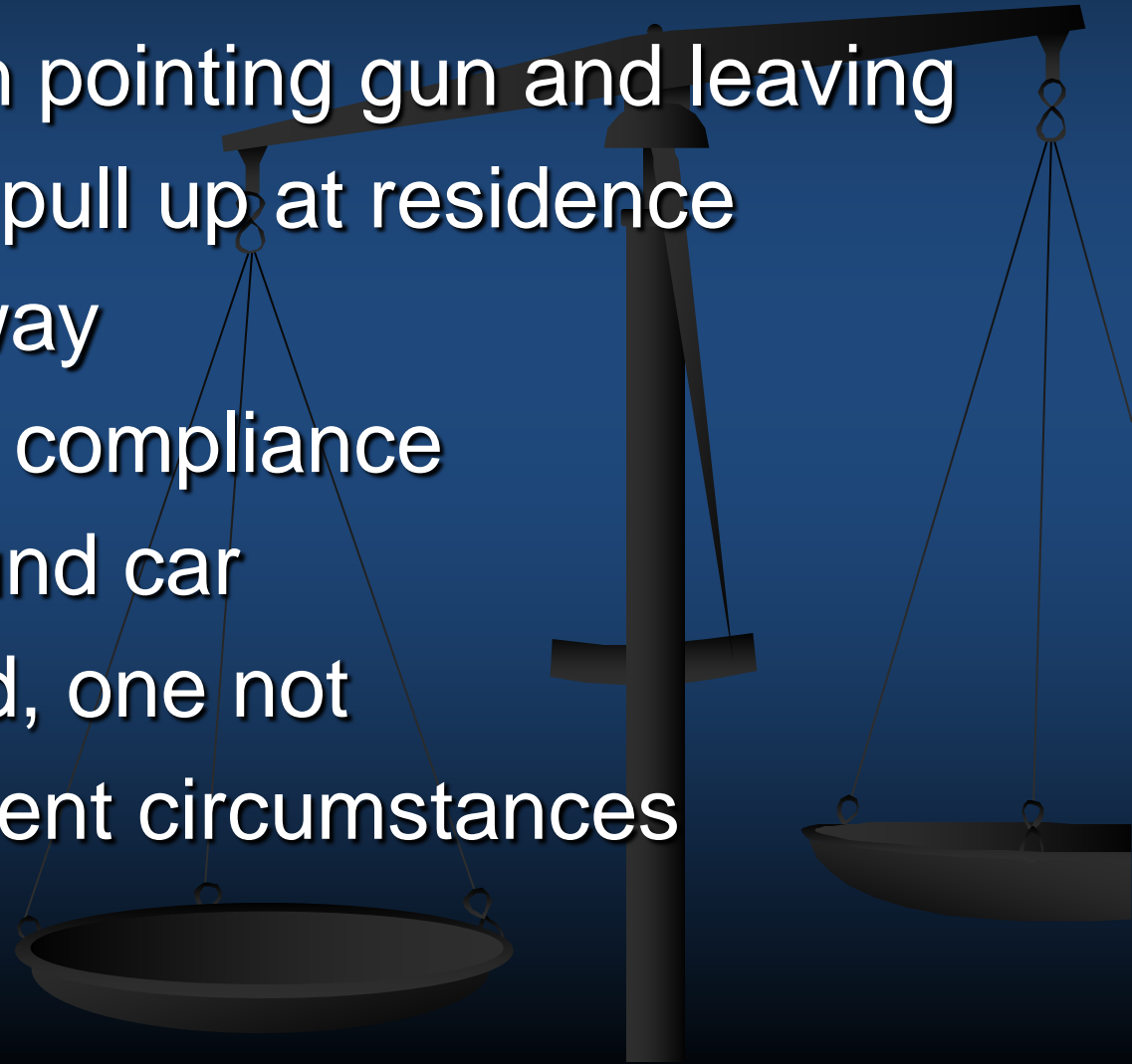
***United States v. Luis Gerard Cervantes*, 797 F.3d 326 (5th Cir. 2015)**

- Traffic stop
- Motion to suppress
- Alleged violation under the 4th Amendment
- Border Patrol testified as to factors he used
- Saw sagging rear of car, eye contact
- Court used a “totality of circumstances” test

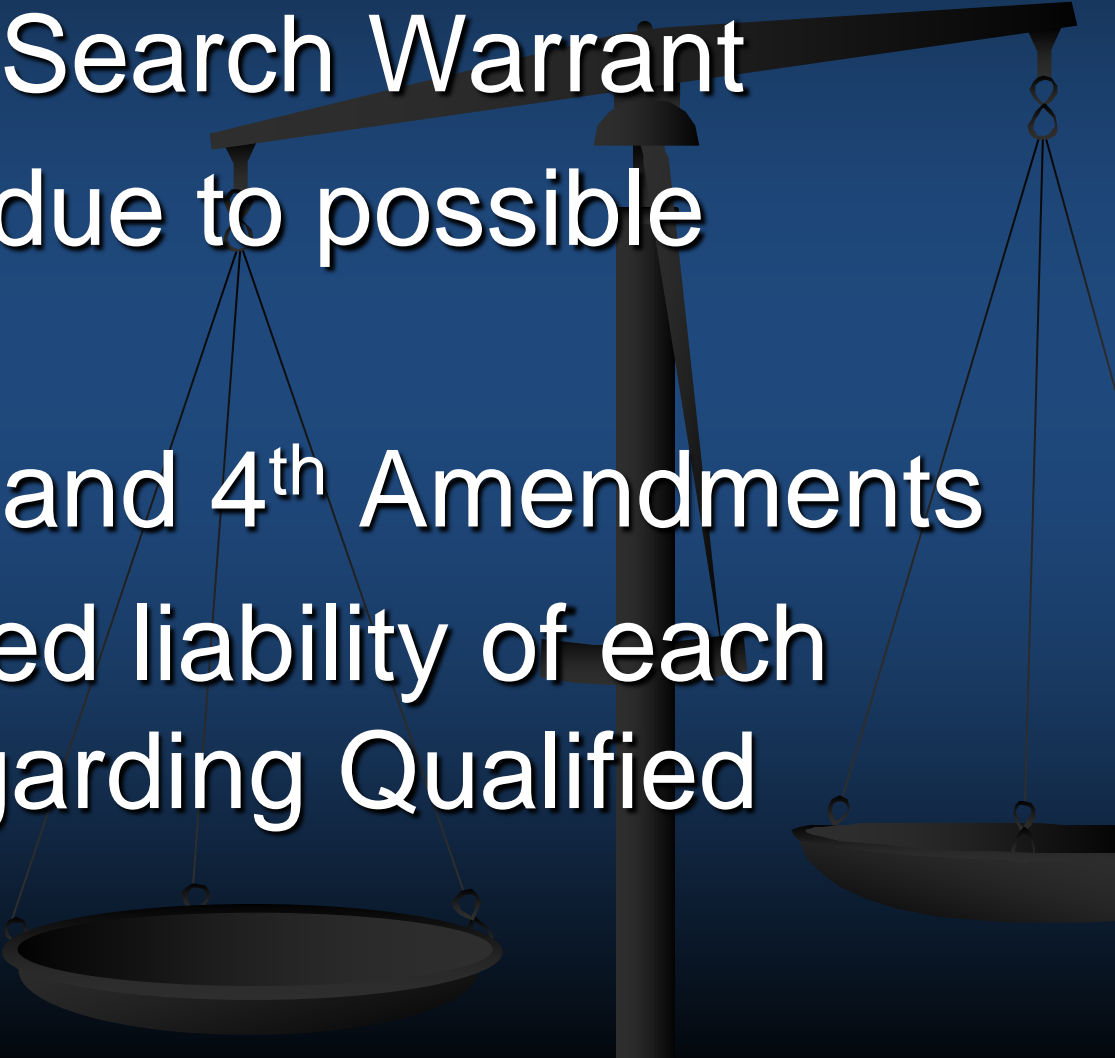


United States v. Beene, – F.3d – 2016 WL 890127 (5th Cir. 2016)

- Report of person pointing gun and leaving
- Officer sees car pull up at residence
- Parked in driveway
- Arrested for non compliance
- Dog sniffed around car
- One search valid, one not
- Question of exigent circumstances

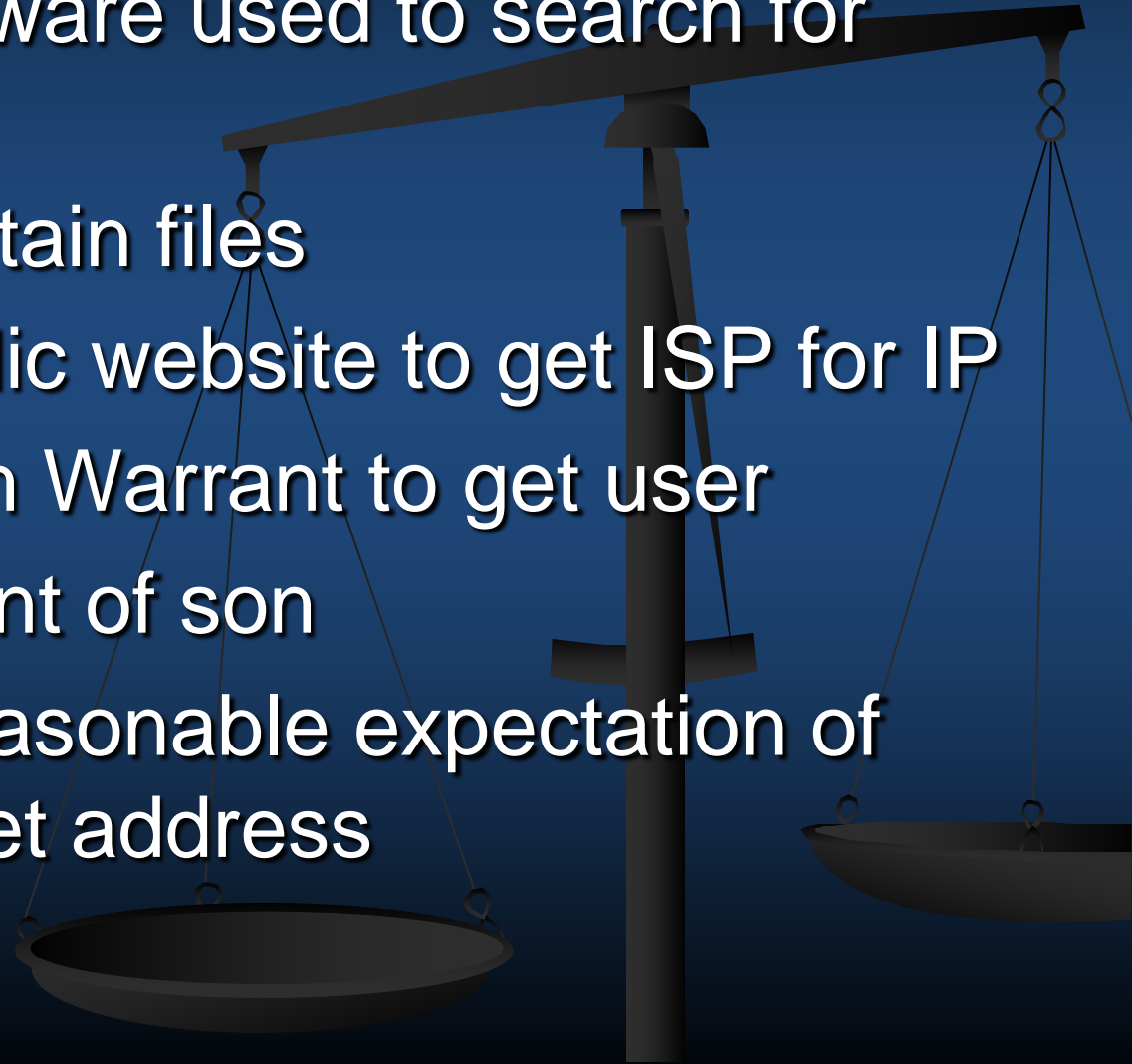


Tammy Cass v. City of Abilene, 814 F.3d 721 (5th Cir. 2016)

- Execution of Search Warrant
 - Guns drawn due to possible danger
 - Claims of 1st and 4th Amendments
 - Court analyzed liability of each individual regarding Qualified Immunity
- 

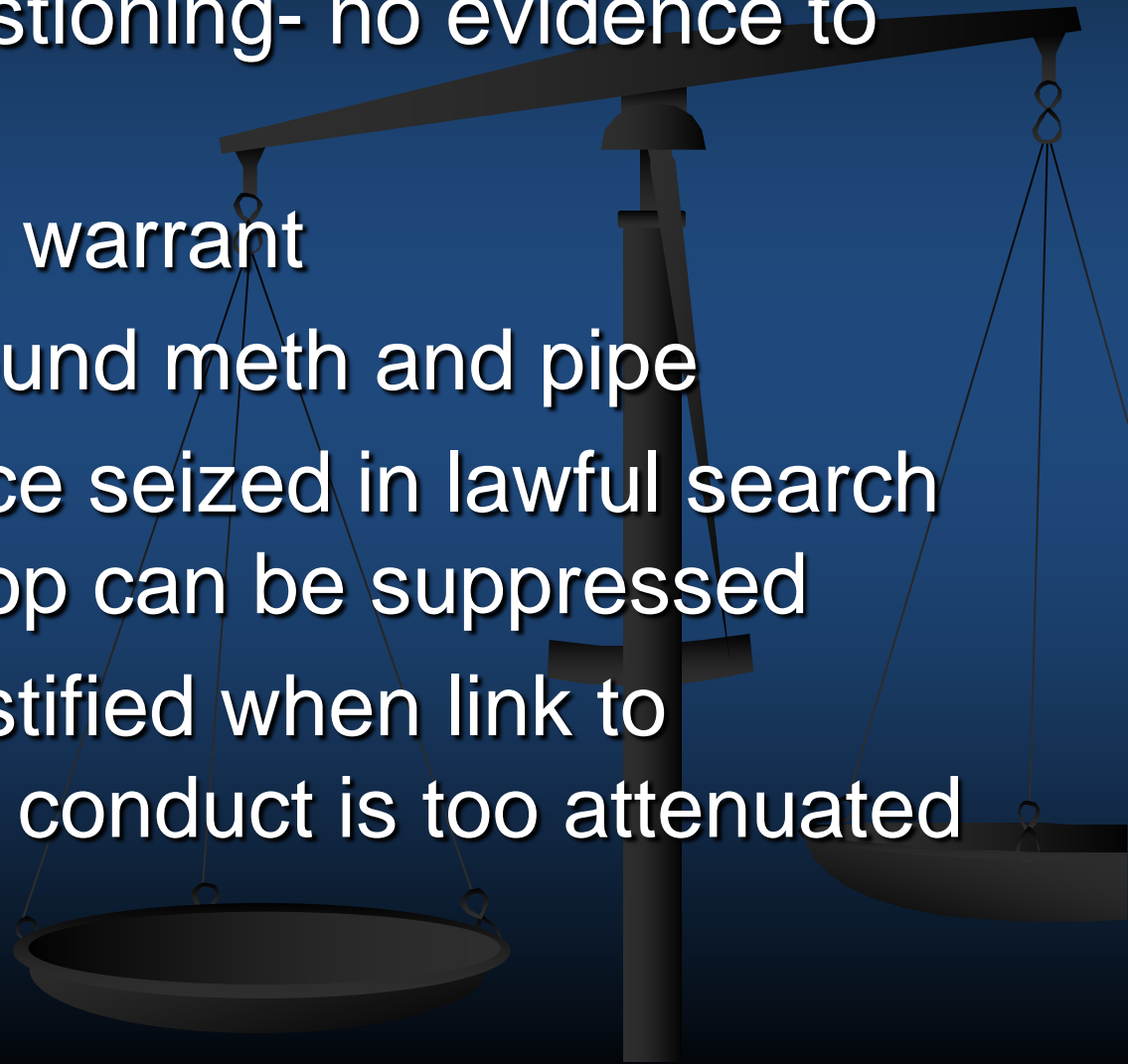
***United States v. Christopher Robert Weast*, 811 F.3d 743 (5th Cir. 2016)**

- File sharing software used to search for child porn
- Downloaded certain files
- Police used public website to get ISP for IP
- Obtained Search Warrant to get user
- Seized equipment of son
- Court said no reasonable expectation of privacy in internet address

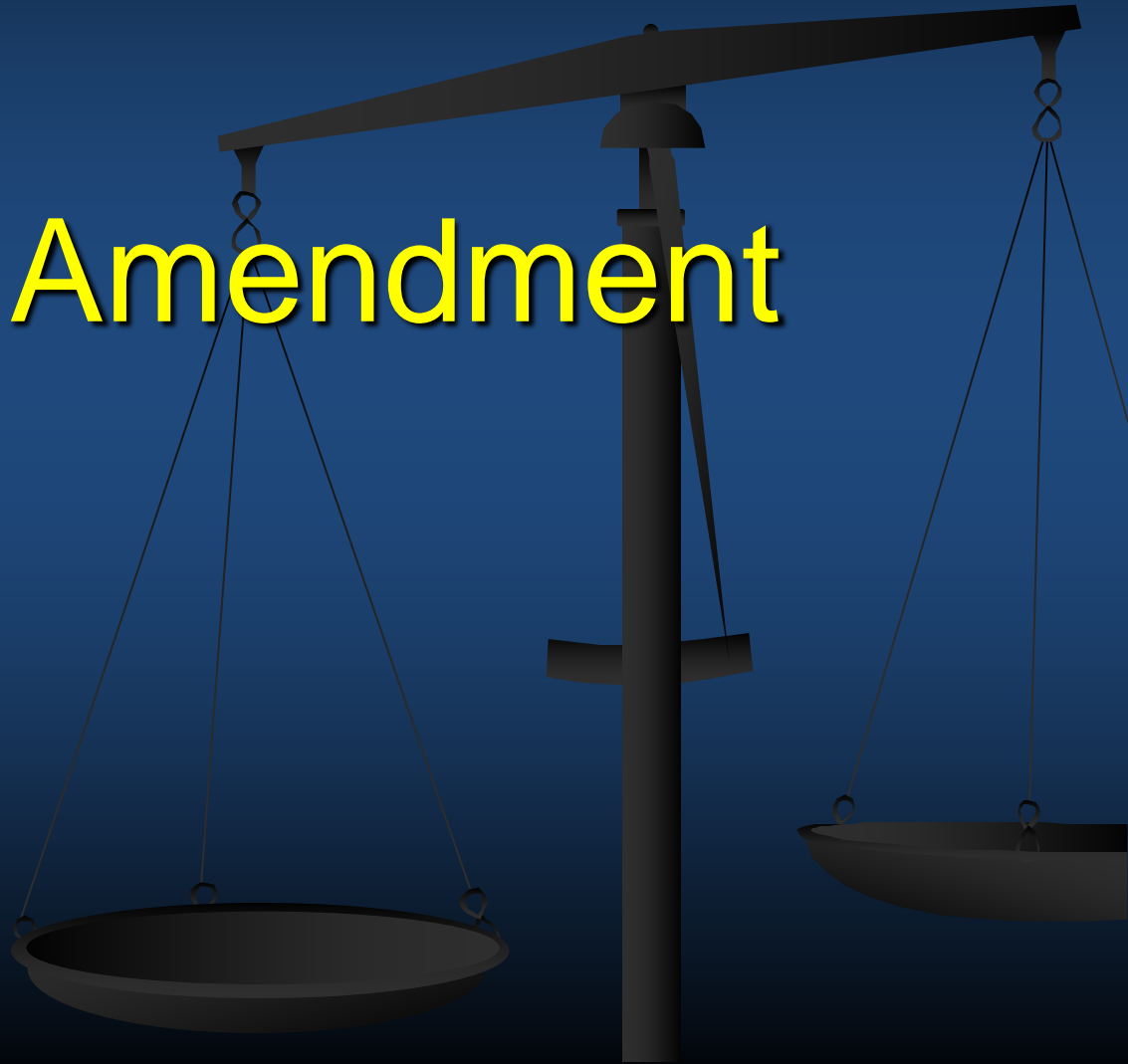


Utah v. Strieff, 579 U.S. _____, 2016 WL 3369419 (June 20, 2016)

- Stopped for questioning- no evidence to stop
- Had outstanding warrant
- Lawful search found meth and pipe
- Whether evidence seized in lawful search after unlawful stop can be suppressed
- Exclusion not justified when link to unconstitutional conduct is too attenuated

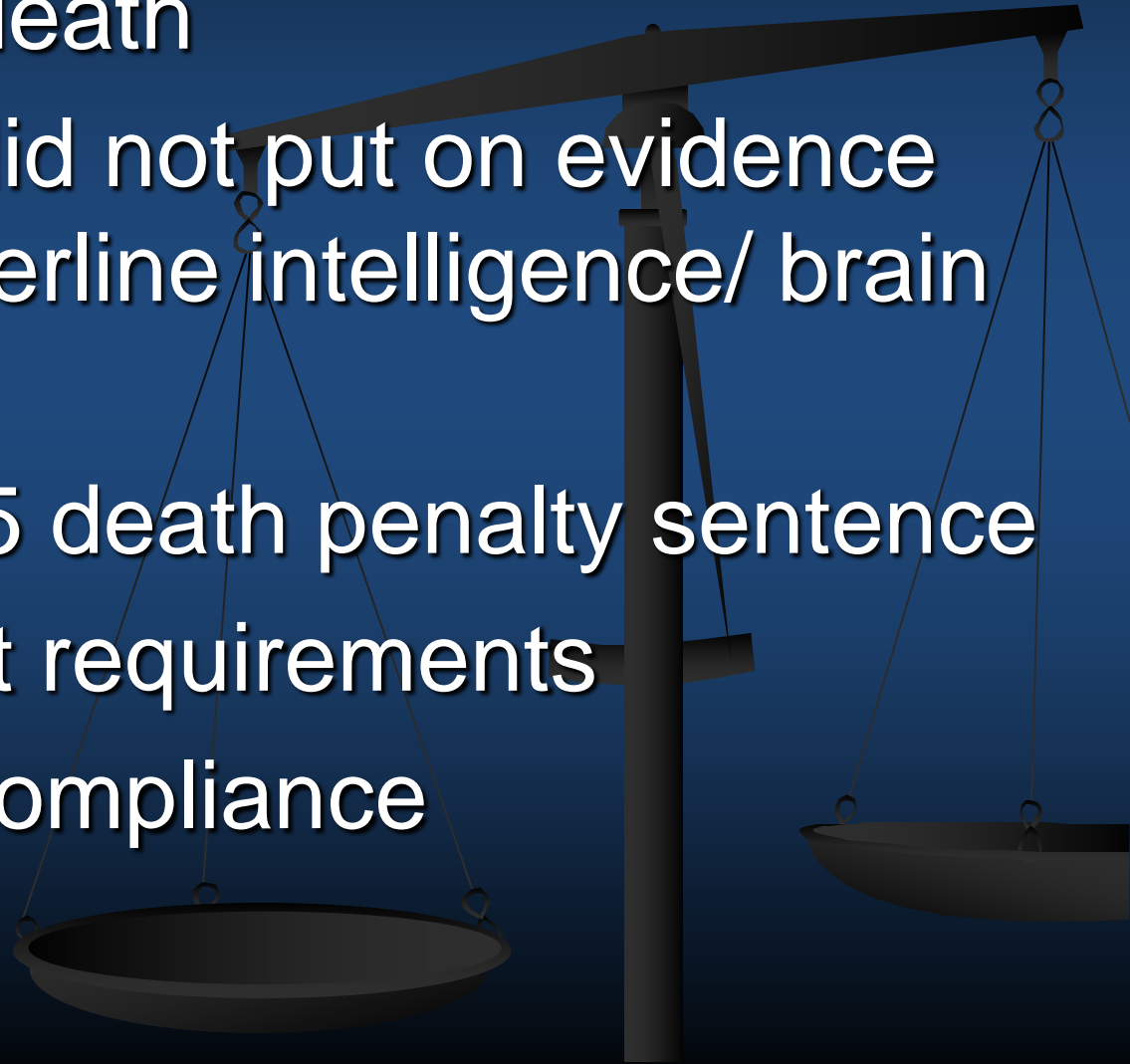


Eighth Amendment



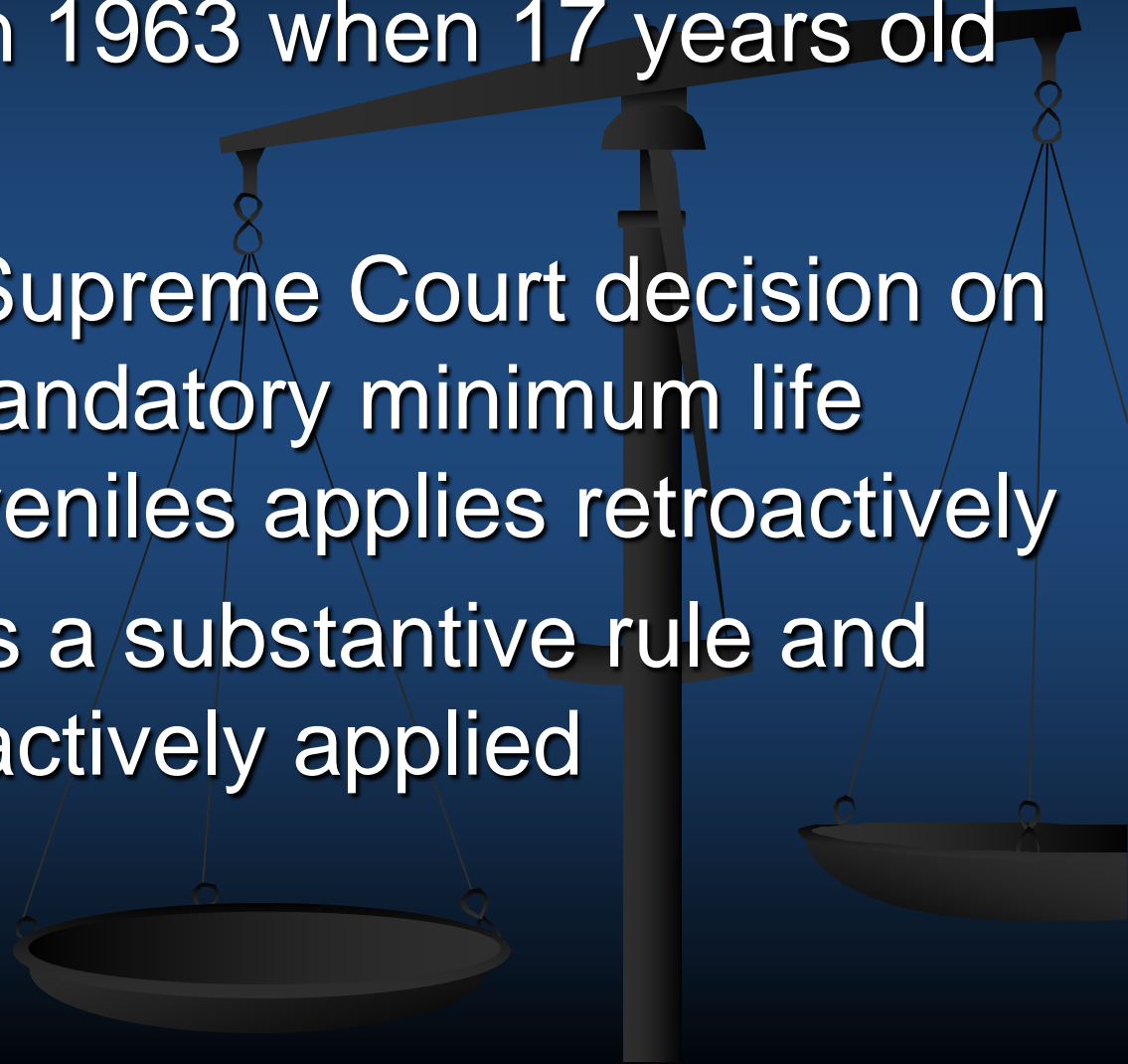
Timothy Lee Hurst v. Florida, 136 S.Ct. 616 (2016)

- Sentenced to death
- Prior counsel did not put on evidence regarding borderline intelligence/ brain damage
- Retried and 7-5 death penalty sentence
- 6th Amendment requirements
- Florida not in compliance
-



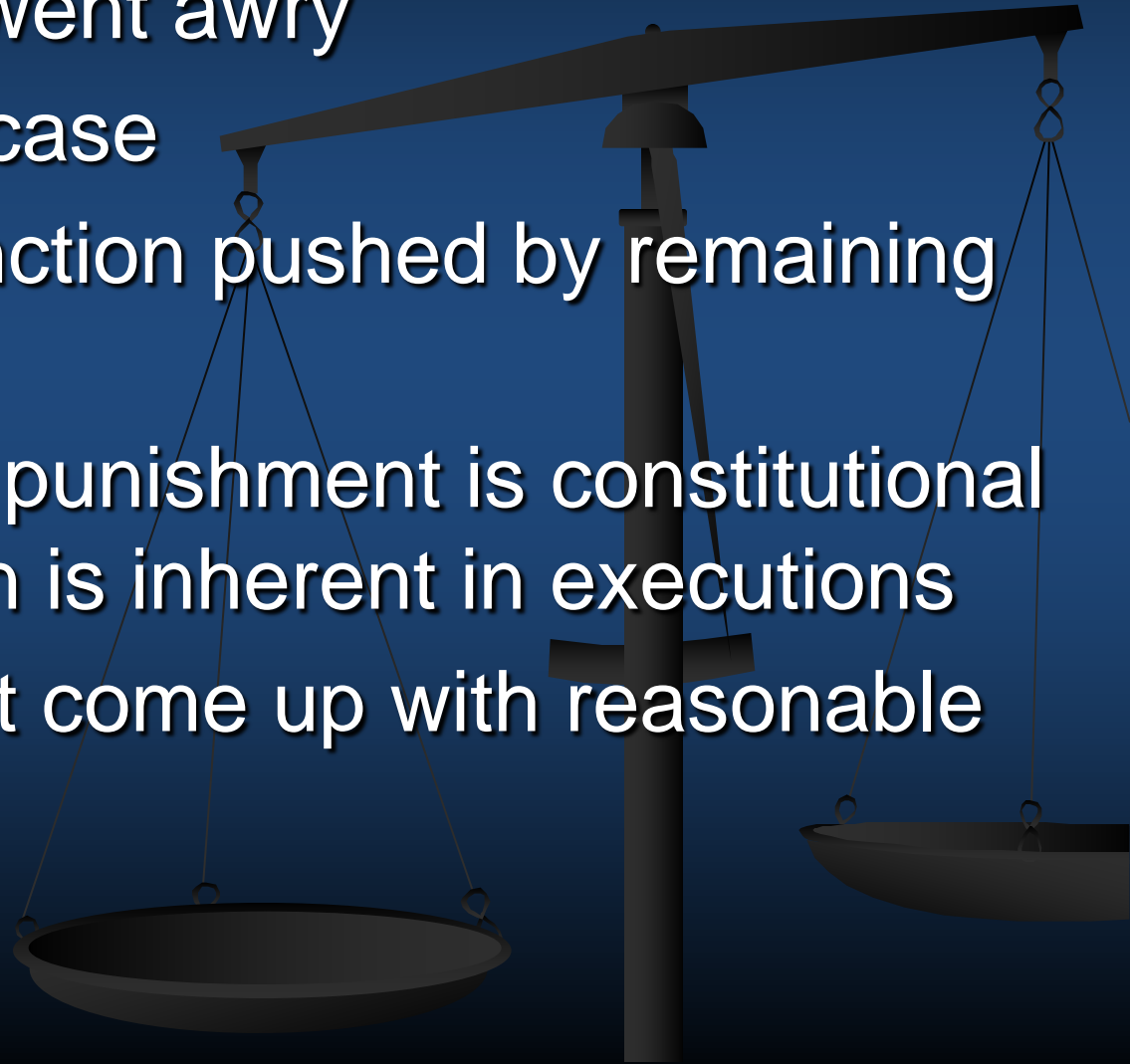
Henry Montgomery v. Louisiana, 136 S.Ct. 718 (2016)

- Death penalty in 1963 when 17 years old
- Issue:
- Whether 2012 Supreme Court decision on prohibition of mandatory minimum life sentence for juveniles applies retroactively
- Court found was a substantive rule and should be retroactively applied

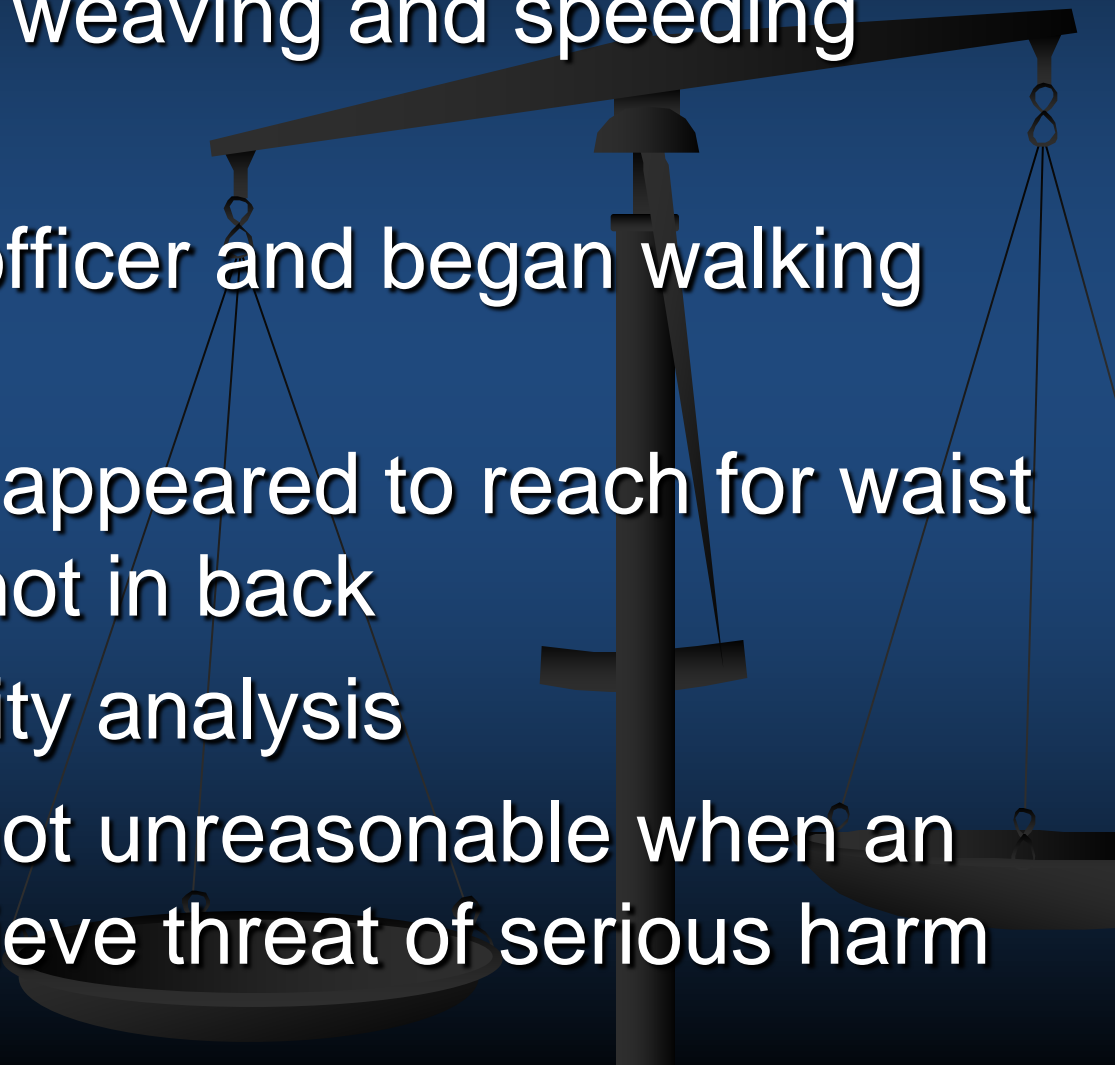


Richard E. Glossip v. Kevin J. Gross, 135 S.Ct. 2726 (2015)

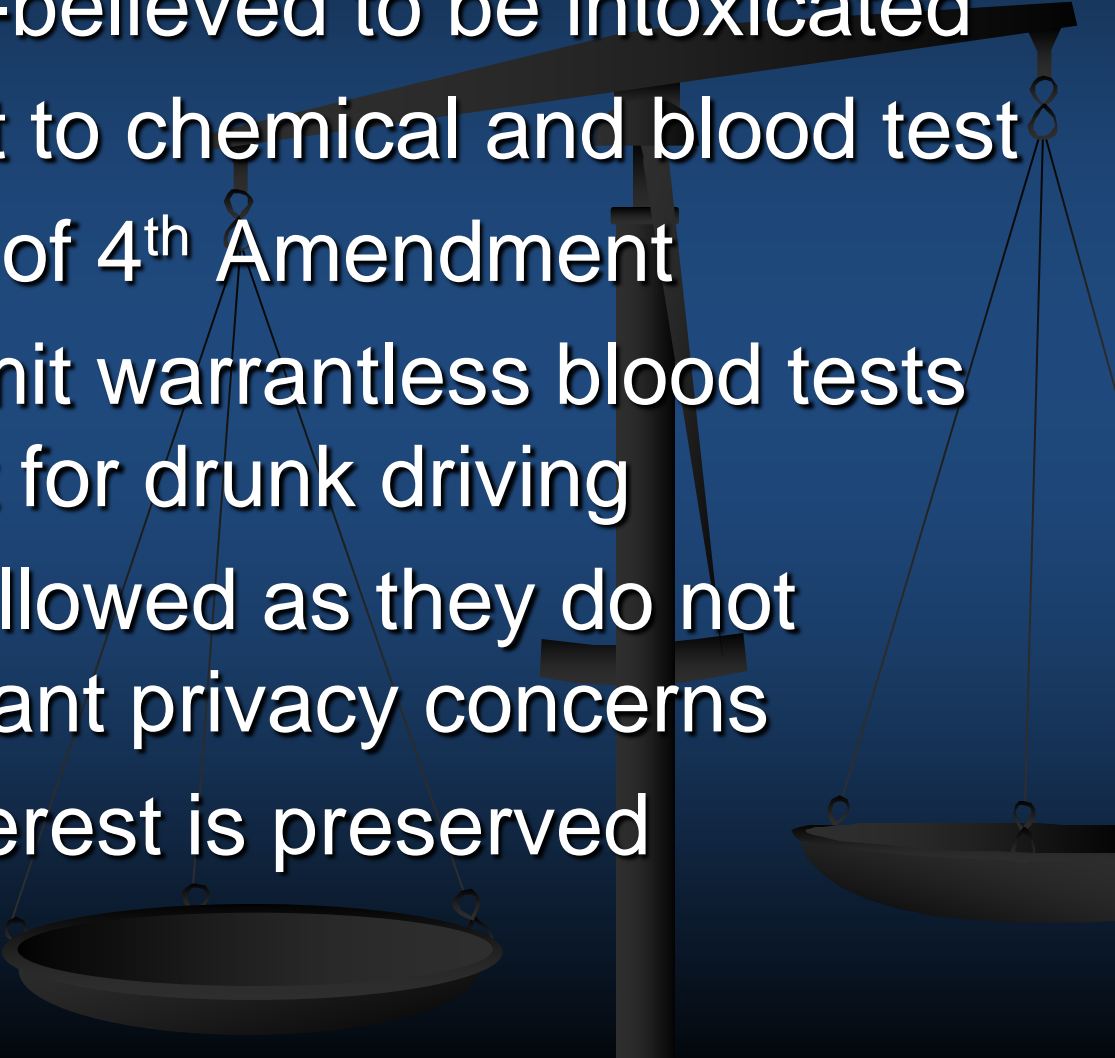
- Lethal injection went awry
- 8th Amendment case
- Preliminary injunction pushed by remaining Plaintiffs
- Because capital punishment is constitutional some risk of pain is inherent in executions
- Plaintiffs couldn't come up with reasonable alternative



Salazar-Limon v. City of Houston, --- F.3d --- , 2016 WL 3348794 (5th Cir. June 15, 2016)

- Pulled over after weaving and speeding
 - Struggle ensued
 - Turned back to officer and began walking away
 - Told to stop and appeared to reach for waist band and was shot in back
 - Qualified Immunity analysis
 - Deadly force is not unreasonable when an officer would believe threat of serious harm
- 

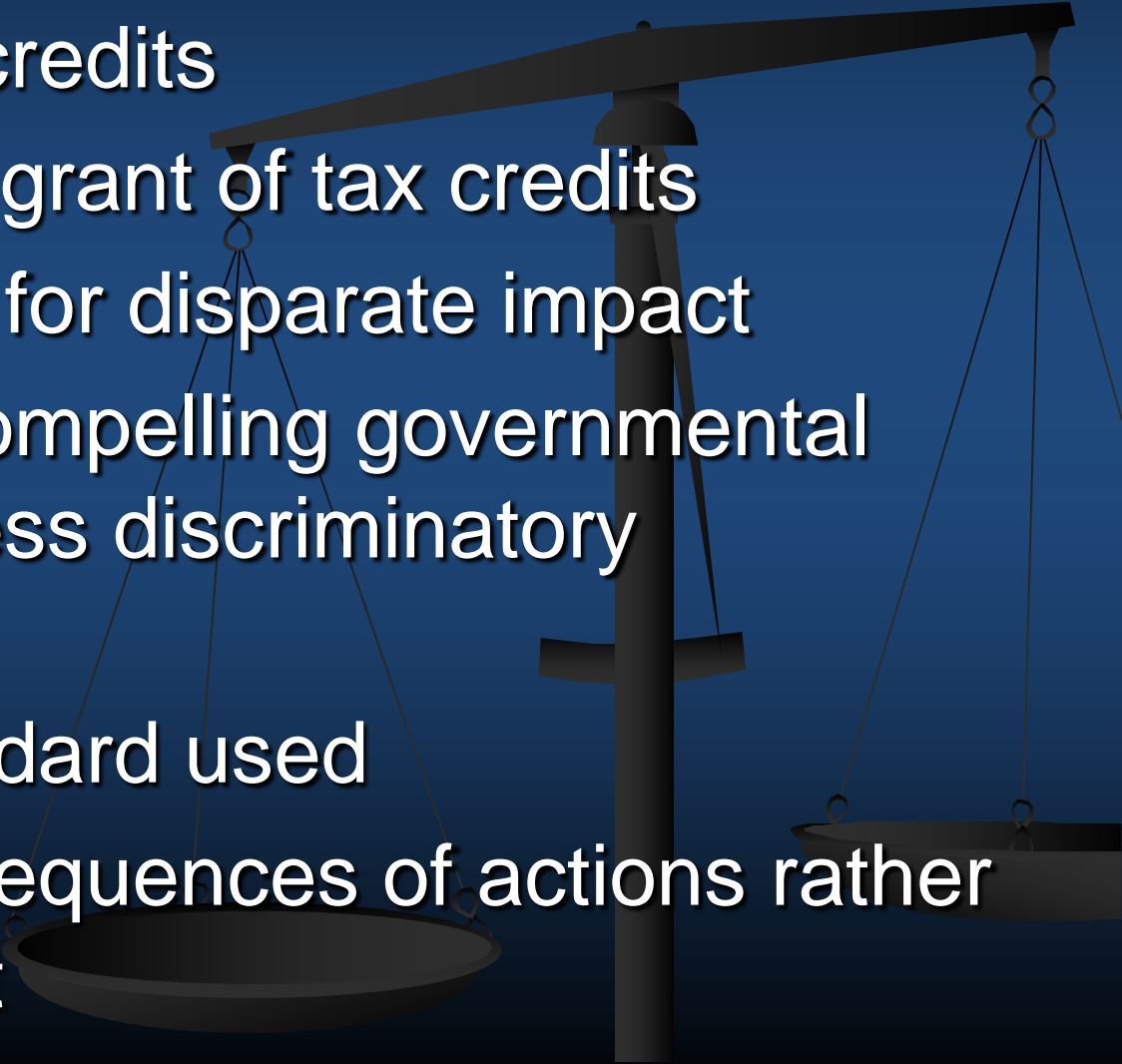
Birchfield v. North Dakota, 579 U.S. _____, 2016 WL 3434398 (June 2, 2016)

- Drove into ditch -believed to be intoxicated
 - Refused consent to chemical and blood test
 - Argued violation of 4th Amendment
 - 4th does not permit warrantless blood tests incident to arrest for drunk driving
 - Breath test are allowed as they do not implicate significant privacy concerns
 - Government interest is preserved
- 

Fair Housing Act



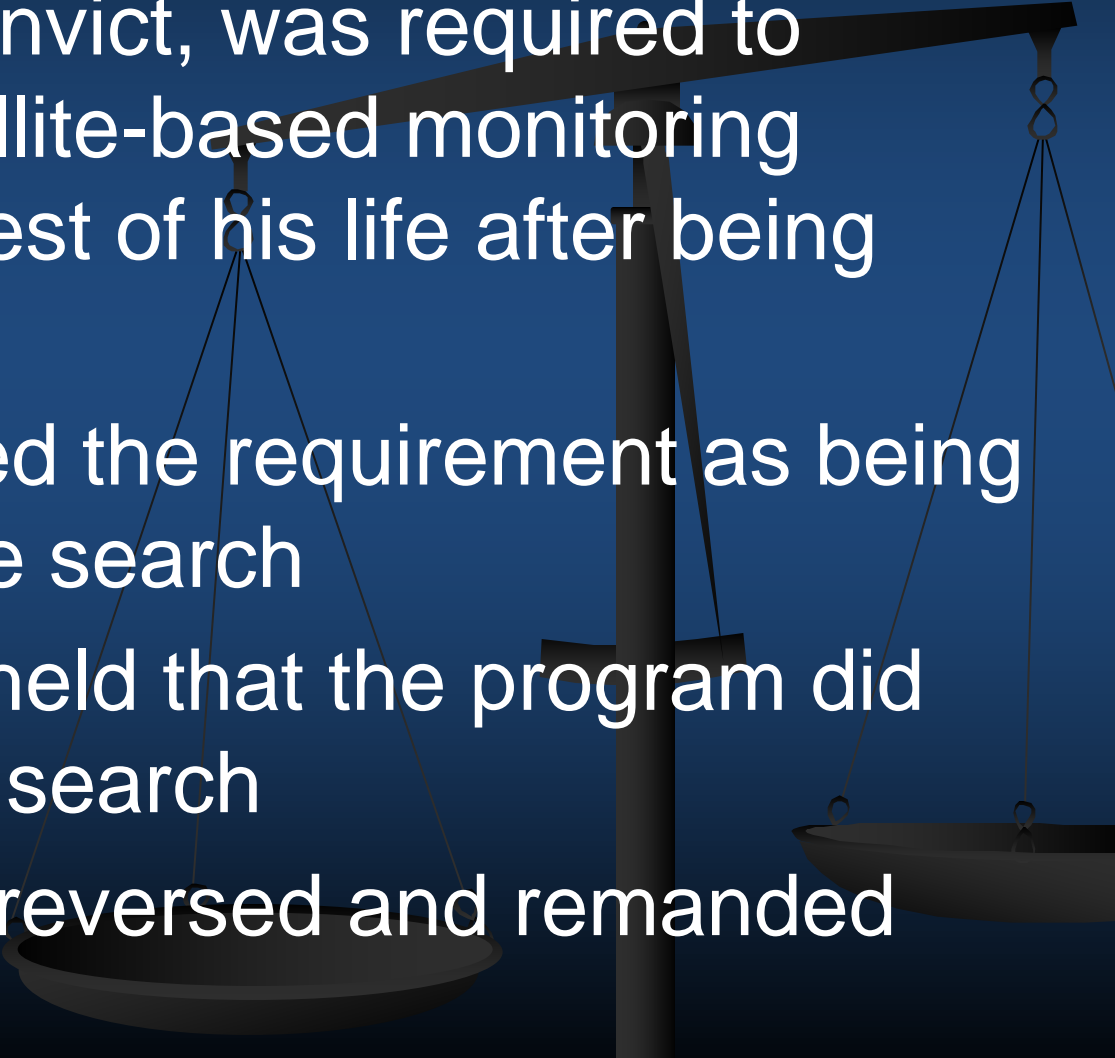
Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc., 135 S. Ct. 2507 (2015)

- Low income tax credits
 - Disproportionate grant of tax credits
 - Prima facie case for disparate impact
 - Burden shift to compelling governmental interest and no less discriminatory alternative
 - Was correct standard used
 - Focus is on consequences of actions rather than actors intent
- 

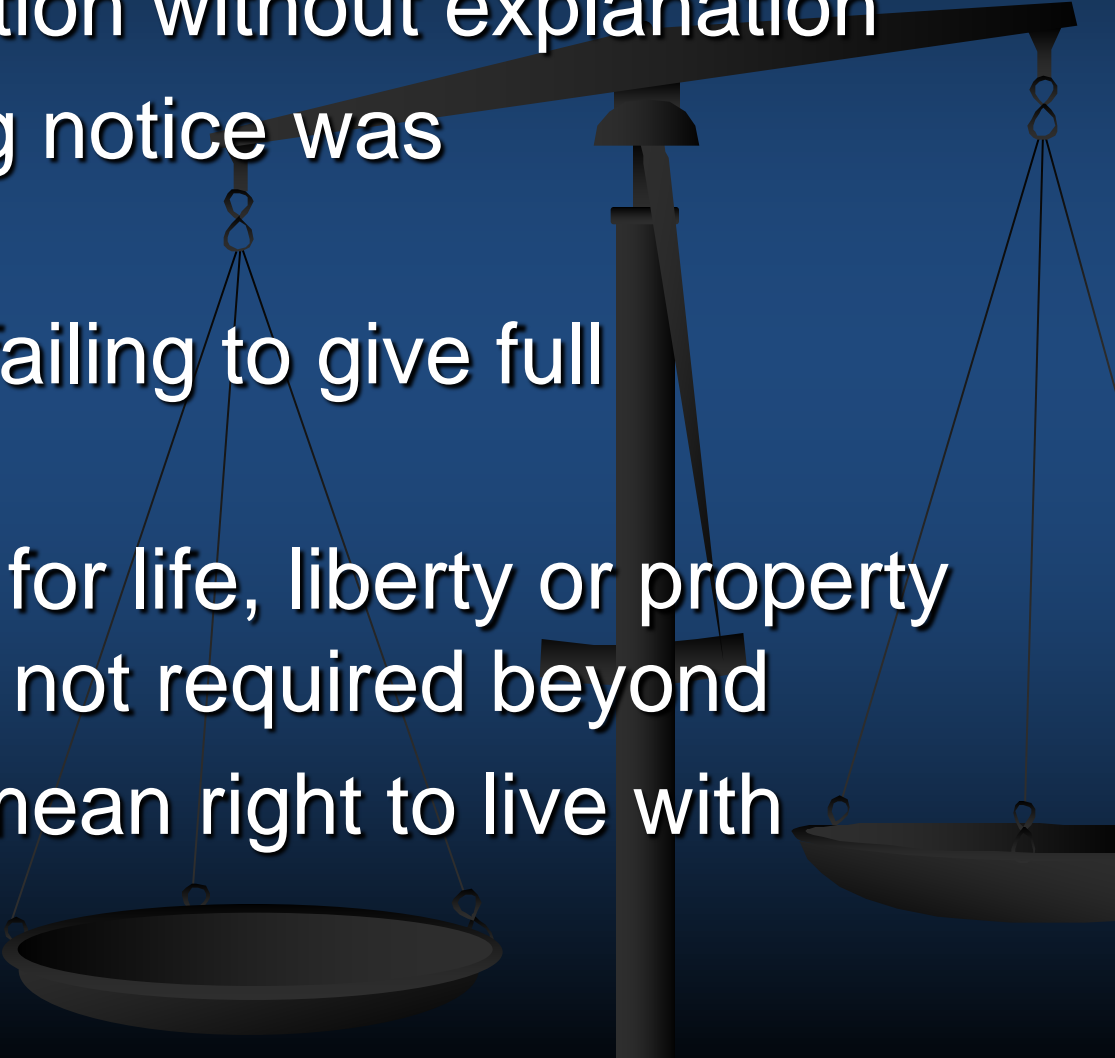
Section 1983



Grady v. North Carolina, 135 S.Ct. 1368 (2015)

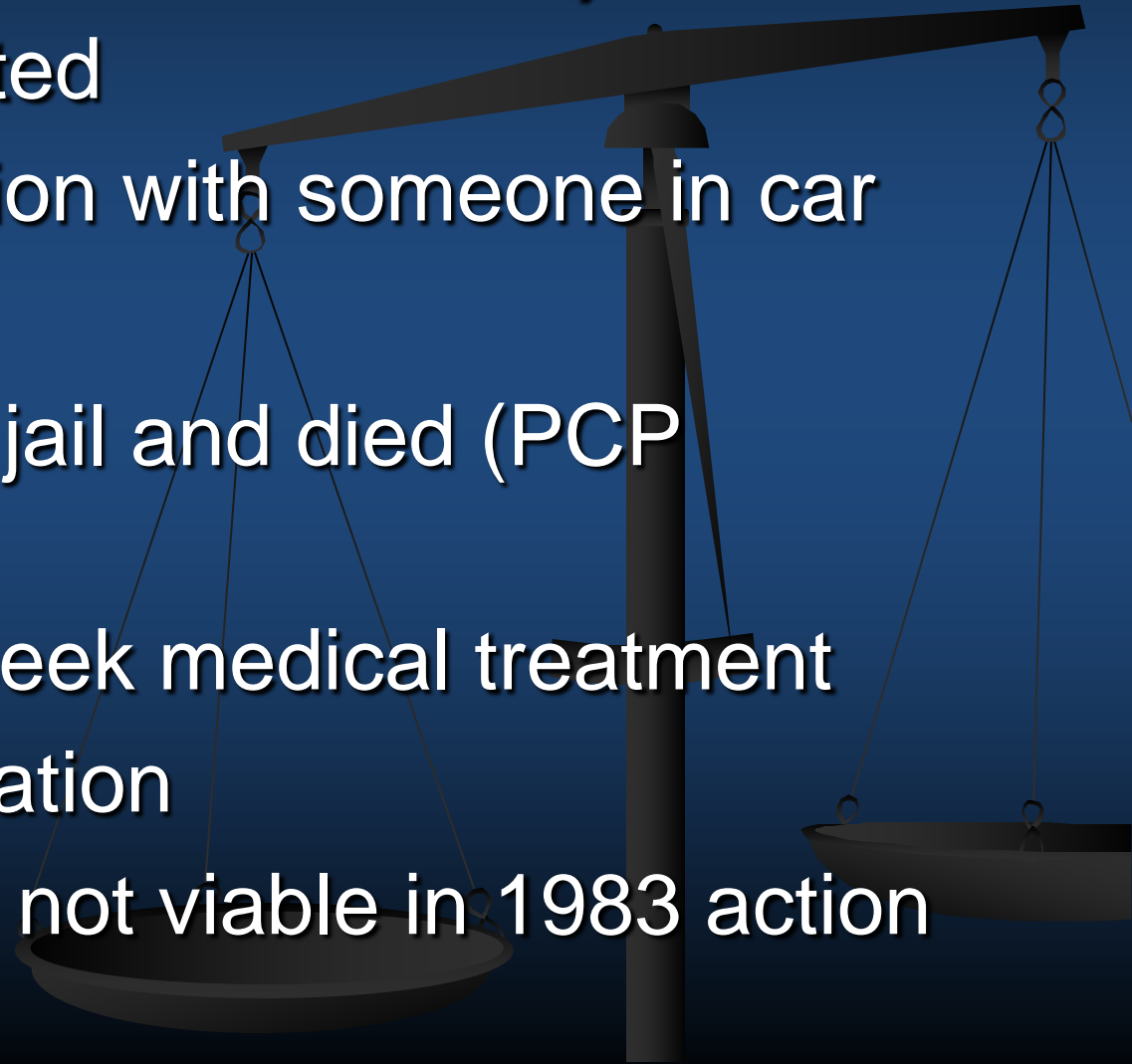
- Grady, an ex-convict, was required to submit to a satellite-based monitoring system for the rest of his life after being released
 - Grady challenged the requirement as being an unreasonable search
 - The trial courts held that the program did not amount to a search
 - Supreme Court reversed and remanded
- 

John F. Kerry v. Fauzia Din, 135 S.Ct. 2128 (2015)

- Denied visa petition without explanation
 - Claimed denying notice was unconstitutional
 - No violation for failing to give full explanation
 - 4th Amendment for life, liberty or property but due process not required beyond
 - Liberty doesn't mean right to live with spouse
- 

***Slade v. City of Marshall* – 814 F.3d 263 (5th Cir. 2016)**

- Naked and agitated
- Physical altercation with someone in car
- Taser
- Unresponsive at jail and died (PCP Toxicology)
- 1983- failure to seek medical treatment
- Must prove causation
- “Loss of chance” not viable in 1983 action

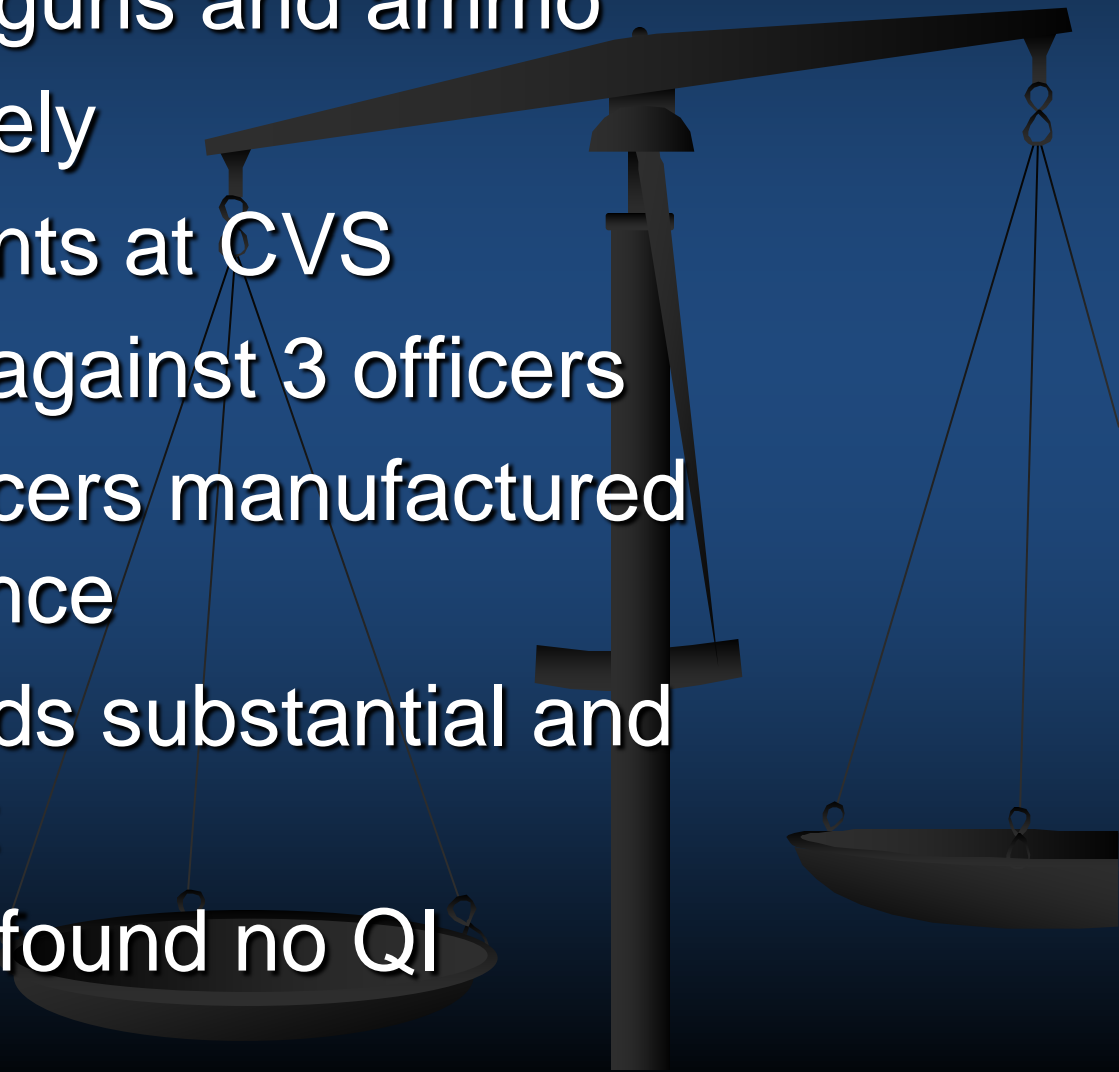


Qualified Immunity

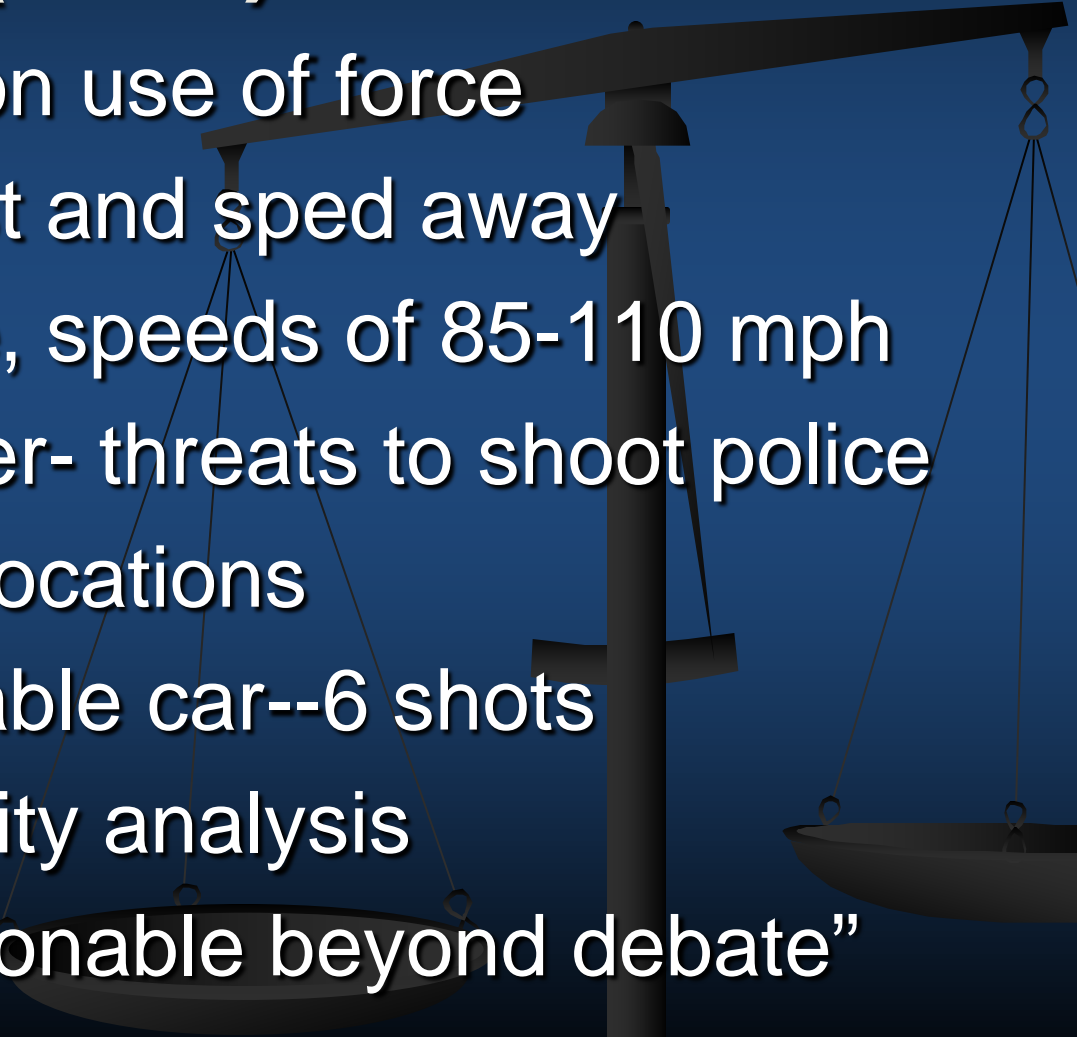


***Cole v. Carson*, 802 F.3d 752 (5th Cir. 2015)**

- 17 year old took guns and ammo
- Acting aggressively
- Meet grandparents at CVS
- Excessive force against 3 officers
- Also claimed officers manufactured concealed evidence
- Use of force needs substantial and immediate threat
- Factual analysis found no QI

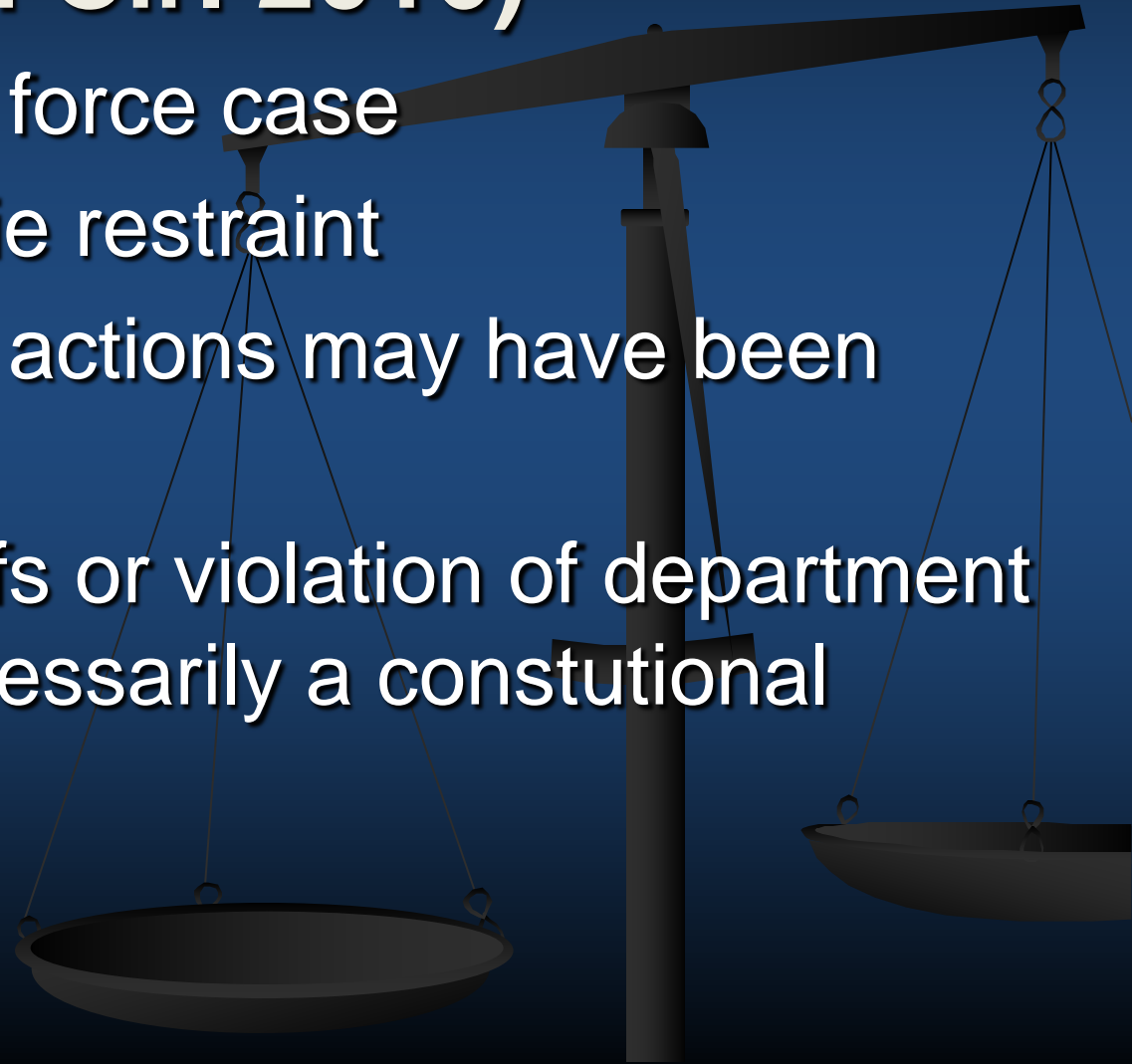


Mullenix v. Luna, 136 S.Ct. 305 (2015)

- Important case on use of force
 - Told under arrest and sped away
 - 18 minute chase, speeds of 85-110 mph
 - Called Dispatcher- threats to shoot police
 - Tire spikes in 3 locations
 - New tactic: Disable car--6 shots
 - Qualified Immunity analysis
 - Must be “unreasonable beyond debate”
- 

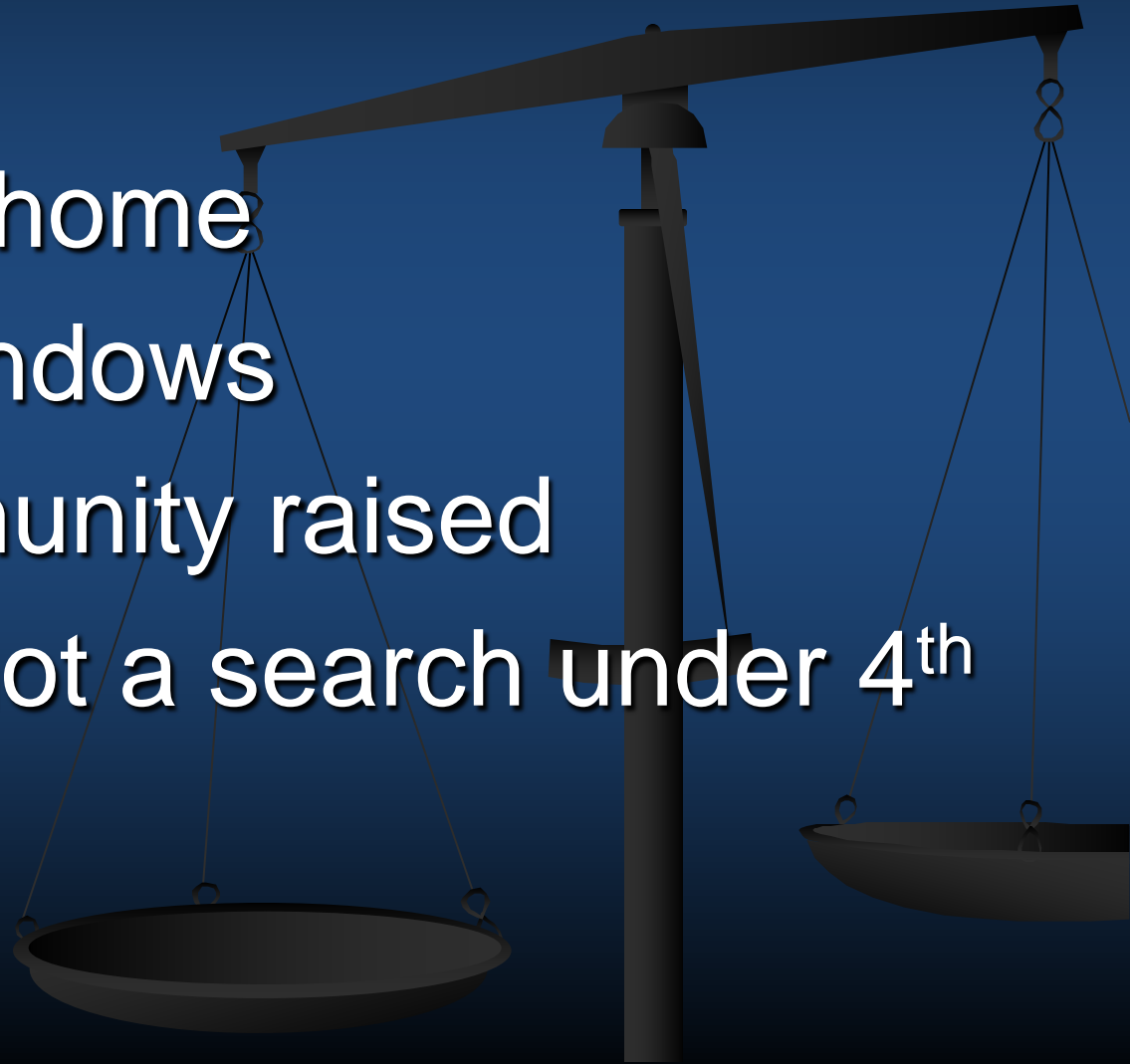
Erony Pratt v. Harris County, ***Texas, -- F.3d – 2016 WL 2343032*** ***(5th Cir. 2016)***

- 1983 Excessive force case
- Taser and hog tie restraint
- One officer said actions may have been unconstitutional
- Subjective beliefs or violation of department policy is not necessarily a constitutional violation

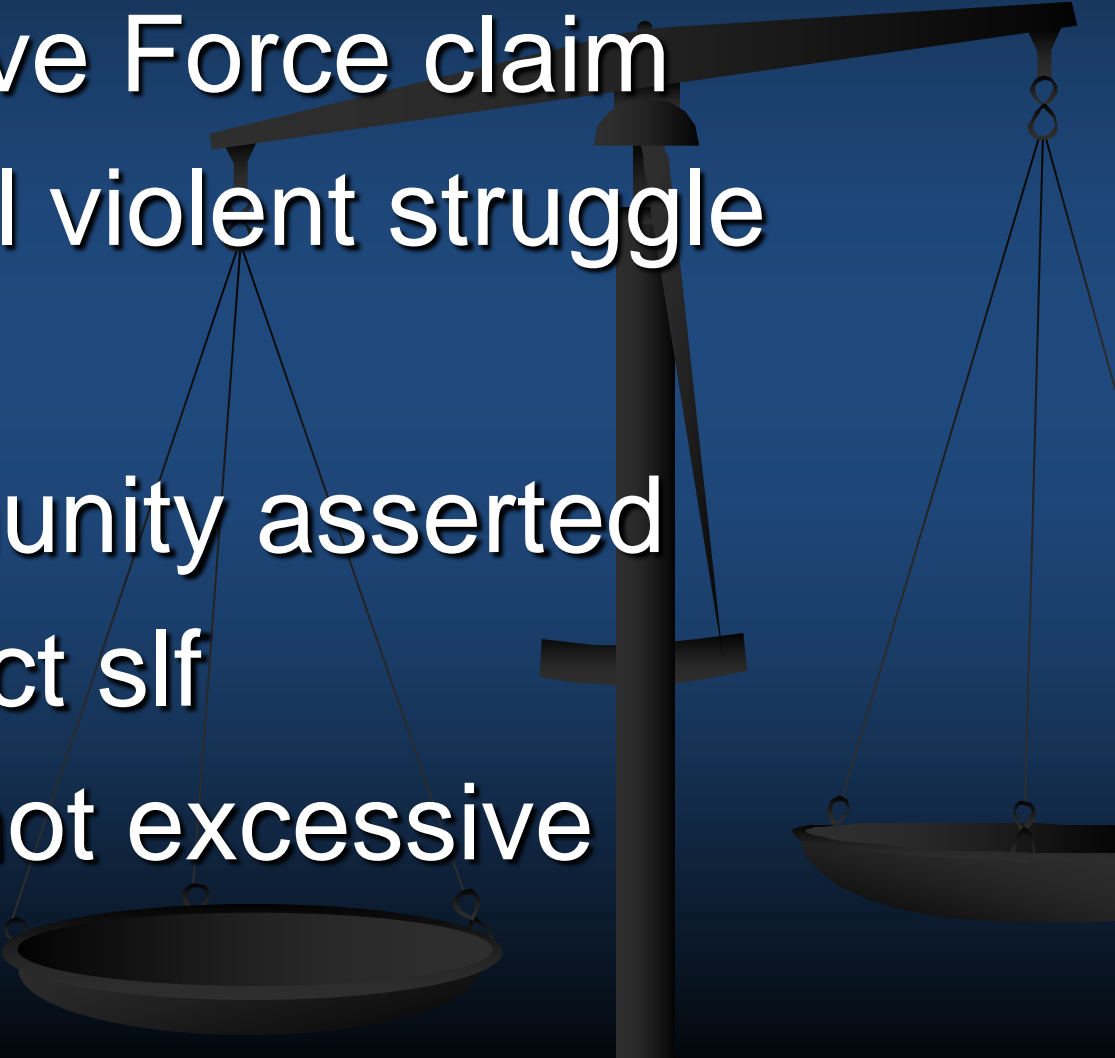


***Cary King, et al., v. Lloyd G. Handorf, --
F.3d – 2016 WL 2621454 (5th Cir. 2016)***

- Tax appraisal
- Inspection of home
- Looking in windows
- Qualified Immunity raised
- Court found not a search under 4th Amendment



Mendez v. Poitevent, -- F.3d – 2016 WL 2957851 (5th Cir. 2016)

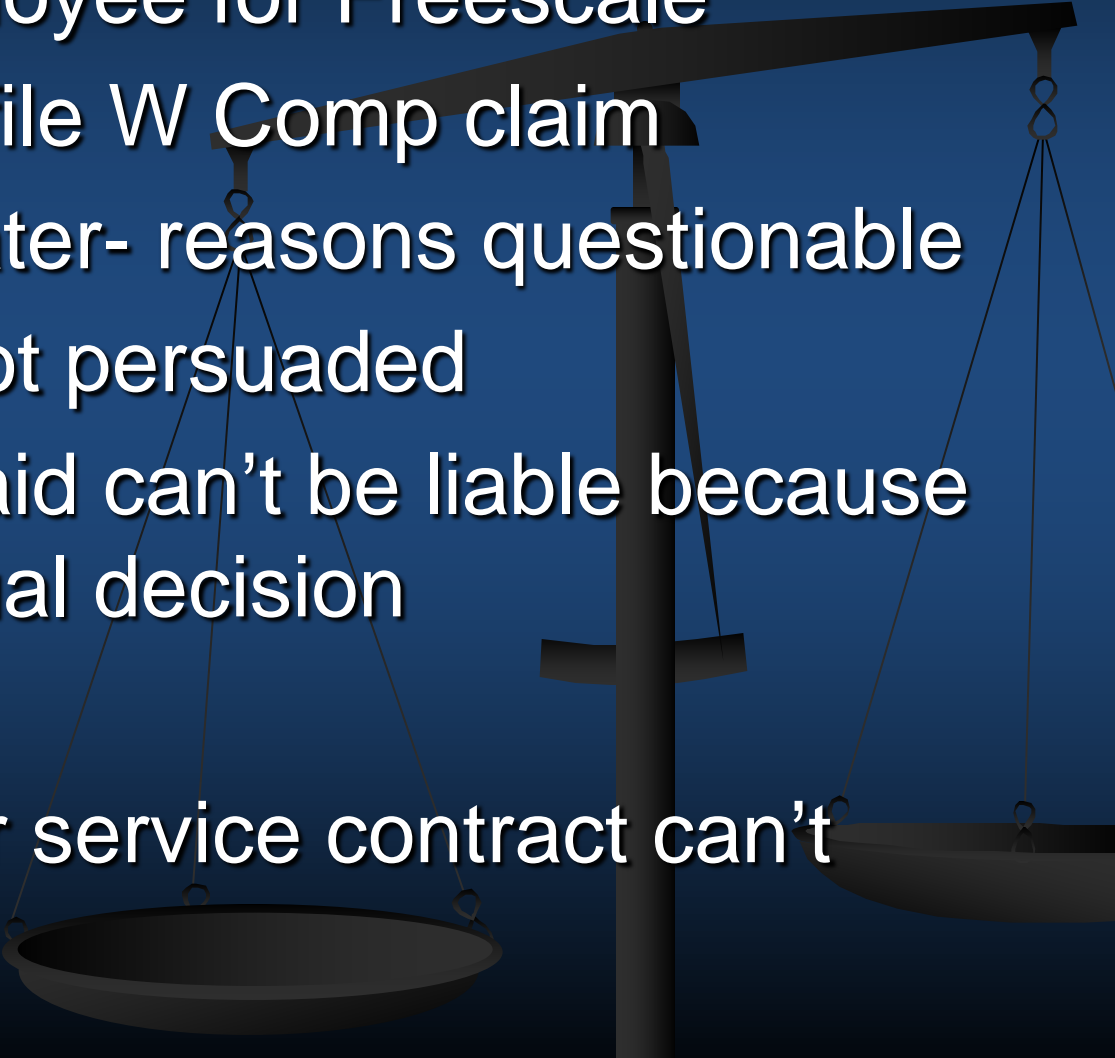
- 1983 Excessive Force claim
 - Border patrol violent struggle
 - Shot to death
 - Qualified Immunity asserted
 - Right to protect self
 - Use of force not excessive
- 

ADA

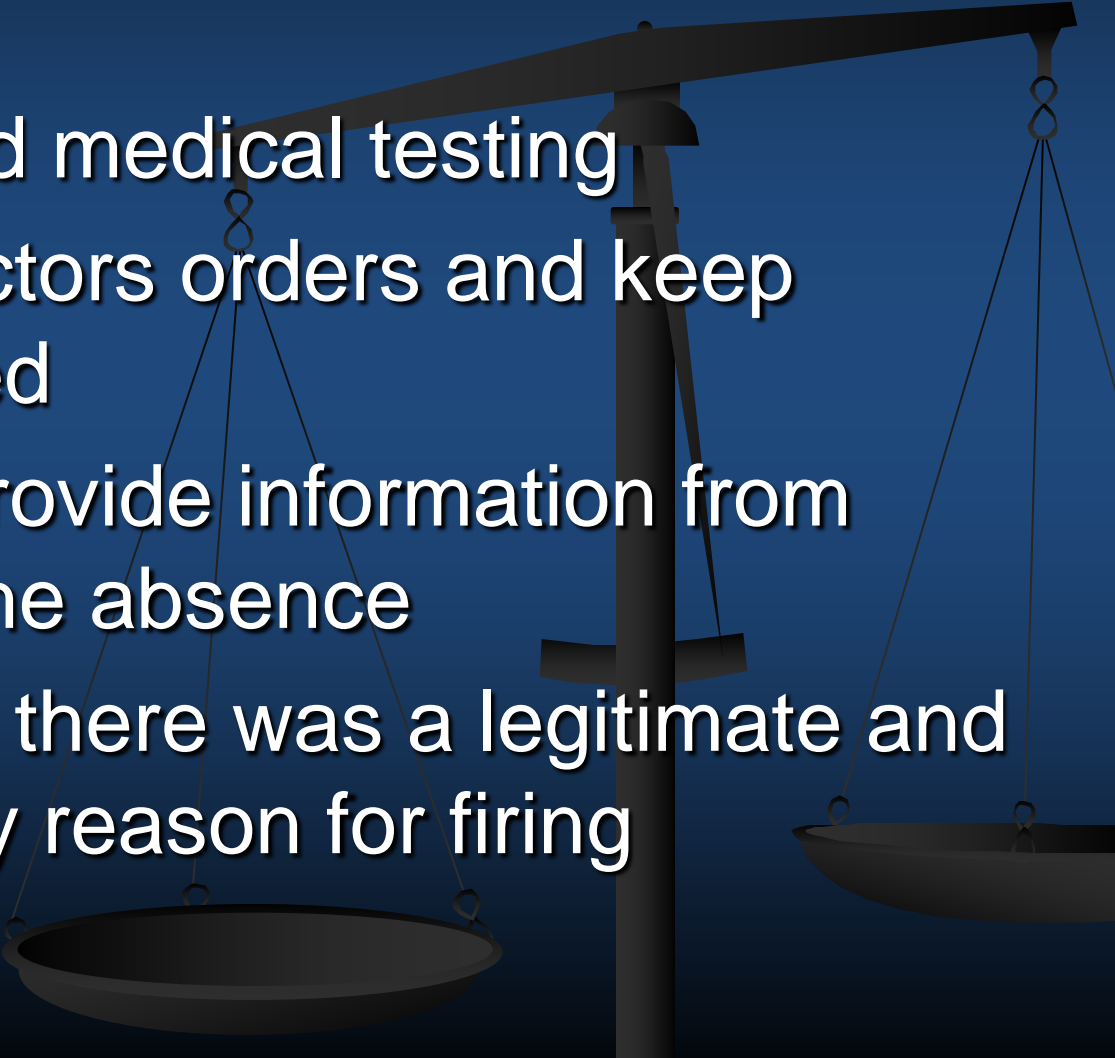


Burton v. Freescale Semiconductor, Inc.,

798 F.3d 222 (5th Cir. 2015)

- Temporary employee for Freescale
 - 2 ER visits and file W Comp claim
 - Fired 2 weeks later- reasons questionable
 - Temp agency not persuaded
 - Temp agency said can't be liable because didn't make actual decision
 - Joint employer?
 - Obligation under service contract can't trump ADA
- 

Delaval v. PTech Drilling Tubulars, – F.3d – 2016 WL 3031069 (5th Cir. 2016)

- ADA
 - Told boss needed medical testing
 - Told to follow doctors orders and keep company informed
 - Plaintiff did not provide information from doctor to justify the absence
 - Analysis to see if there was a legitimate and nondiscriminatory reason for firing
- 

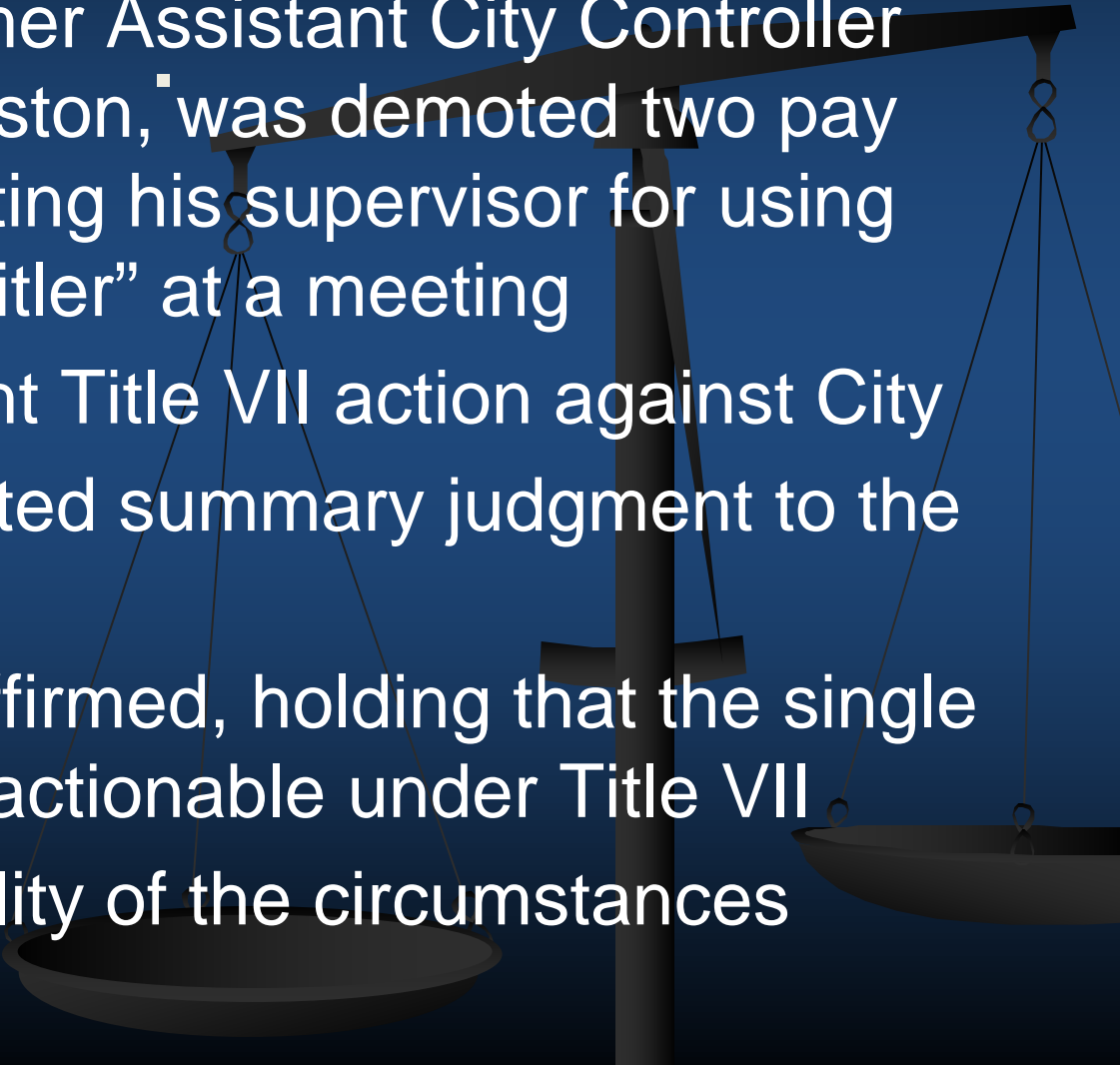
Title VII



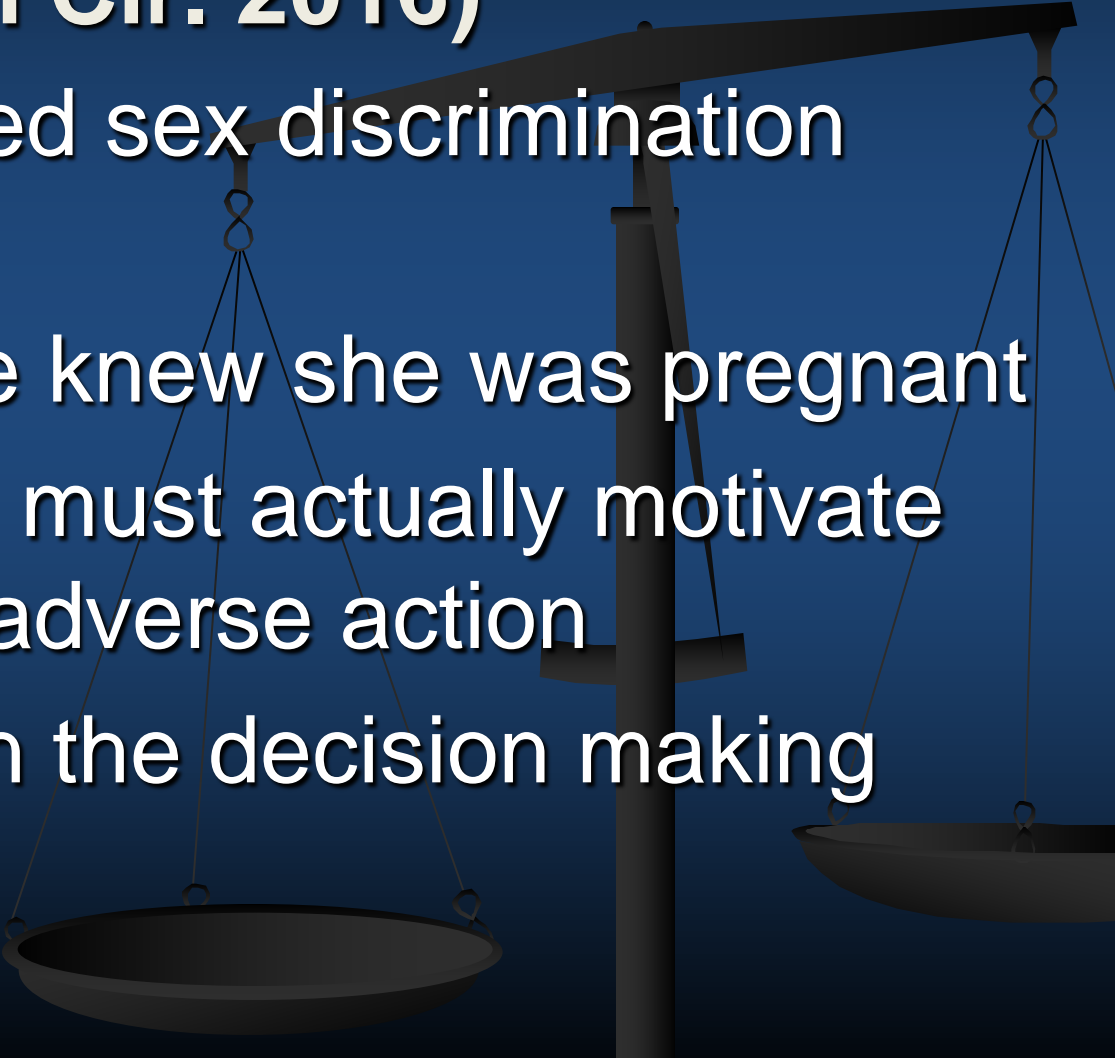
Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, **135 S. Ct. 2028 (2015)**

- Practicing Muslim filed an EEOC complaint against a retailer after she was denied a job for wearing a hijab
- Abercrombie's "Look Policy" required its store employees to meet a certain dress code and forbade "caps"
- Complainant wore the hijab during her interview and did not request an accommodation from the policy
- Supreme Court held that even though applicant did not inform management of a religious practice, the 1964 civil rights law may be enforced against the employer who refuses to make an exception

Satterwhite v. City of Houston, 602 Fed.Appx. 585 (5th Cir. 2015)

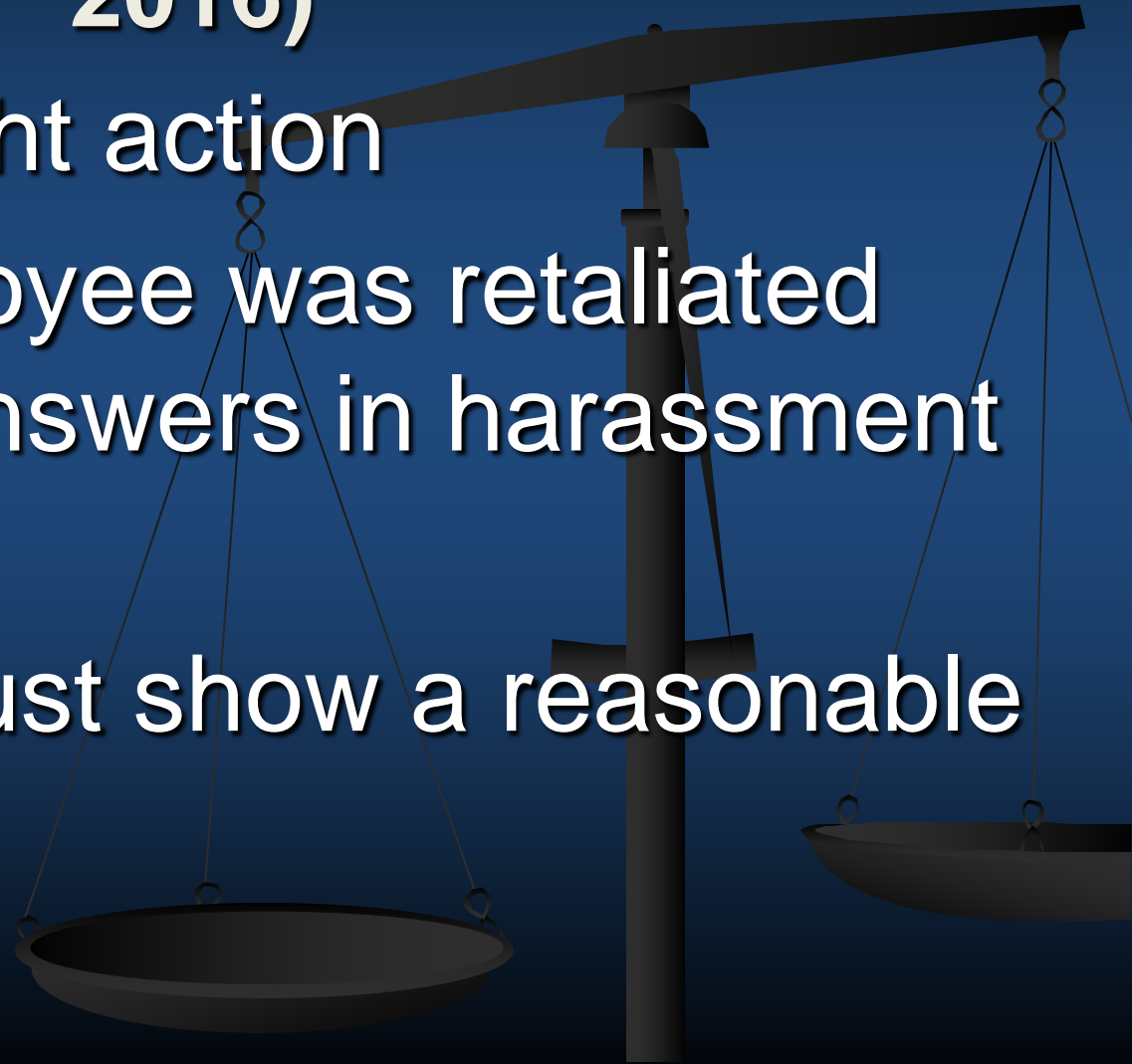
- Satterwhite, a former Assistant City Controller for the City of Houston, was demoted two pay grades after reporting his supervisor for using the phrase “Heil Hitler” at a meeting
 - Satterwhite brought Title VII action against City
 - District Court granted summary judgment to the City
 - The Fifth Circuit affirmed, holding that the single “Heil Hitler” is not actionable under Title VII
 - Must view the totality of the circumstances
- 

***Ambrea Fairchild v. All American
Check Cashing, Inc.* – 813 F.3d 959
(5th Cir. 2016)**

- Pregnancy based sex discrimination claim
 - Demoted before knew she was pregnant
 - “Protected trait” must actually motivate the employer's adverse action
 - Actor must be in the decision making chain
- 

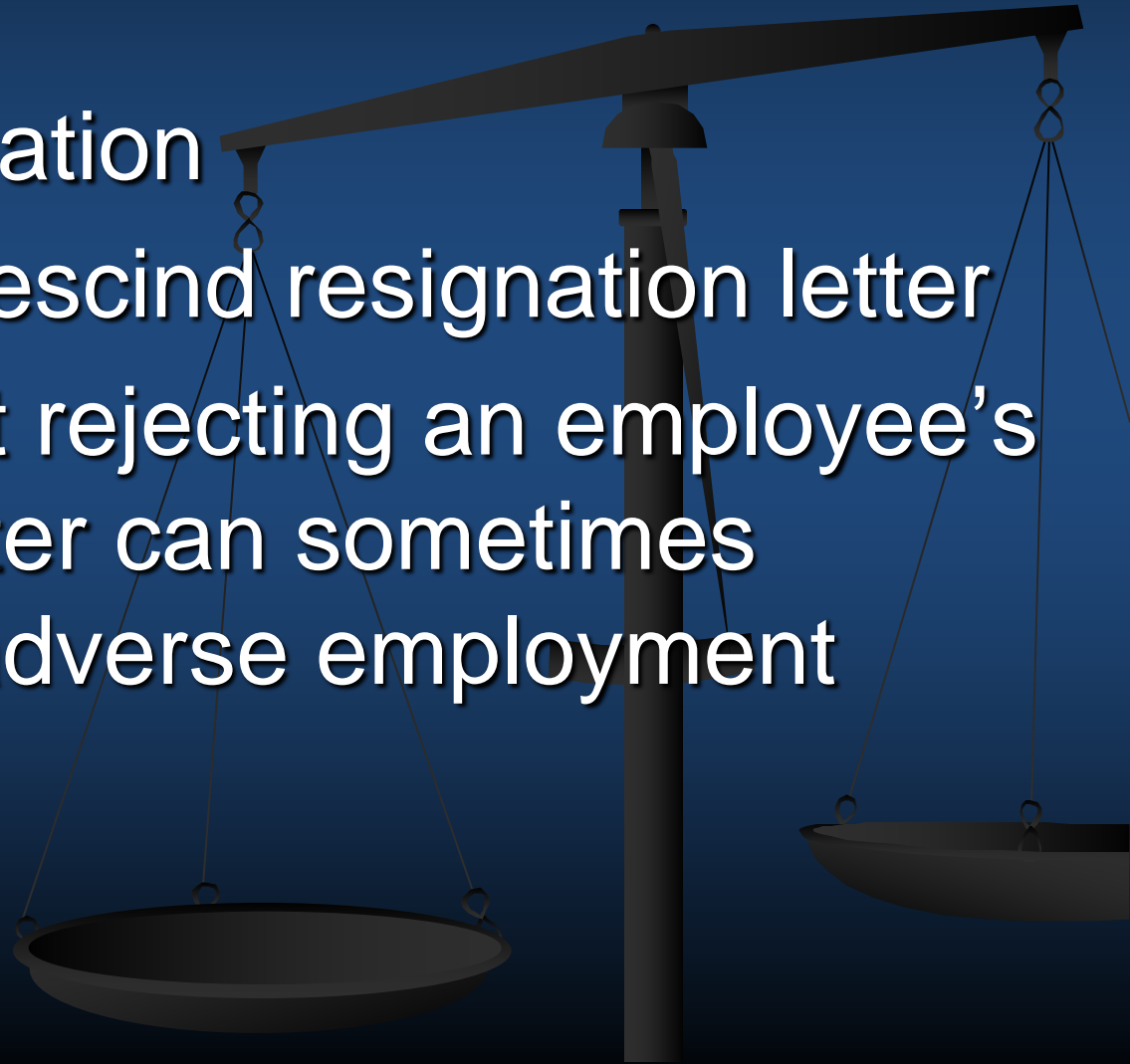
***E.E.O.C. v. Rite Way Service, Inc.* --
F.3d – 2016 WL 1397778 (5th Cir.
2016)**

- EEOC brought action
- Claims employee was retaliated against for answers in harassment investigation
- Standard: must show a reasonable belief



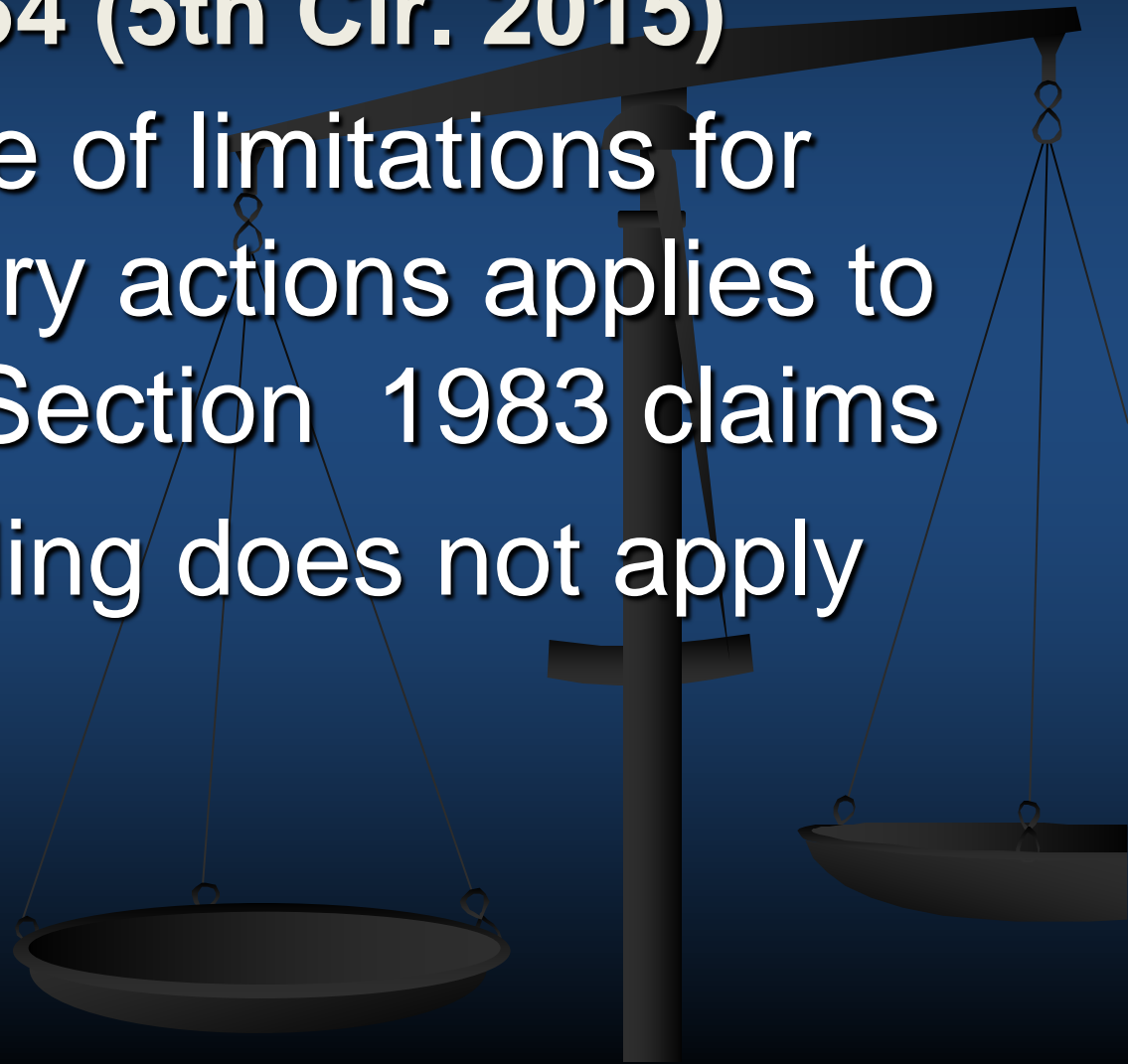
***Tyrikia Porter v. Houma Terrebonne
Housing Authority Board of
Commissioners, 810 F.3d 940 (5th Cir. 2015)***

- Claim for retaliation
- Attempted to rescind resignation letter
- Court held that rejecting an employee's resignation letter can sometimes constitute an adverse employment action



***Mary King-White v. Humble
Independent School District, 803
F.3d 754 (5th Cir. 2015)***

- 2 year statute of limitations for personal injury actions applies to Title IX and Section 1983 claims
- Equitable tolling does not apply

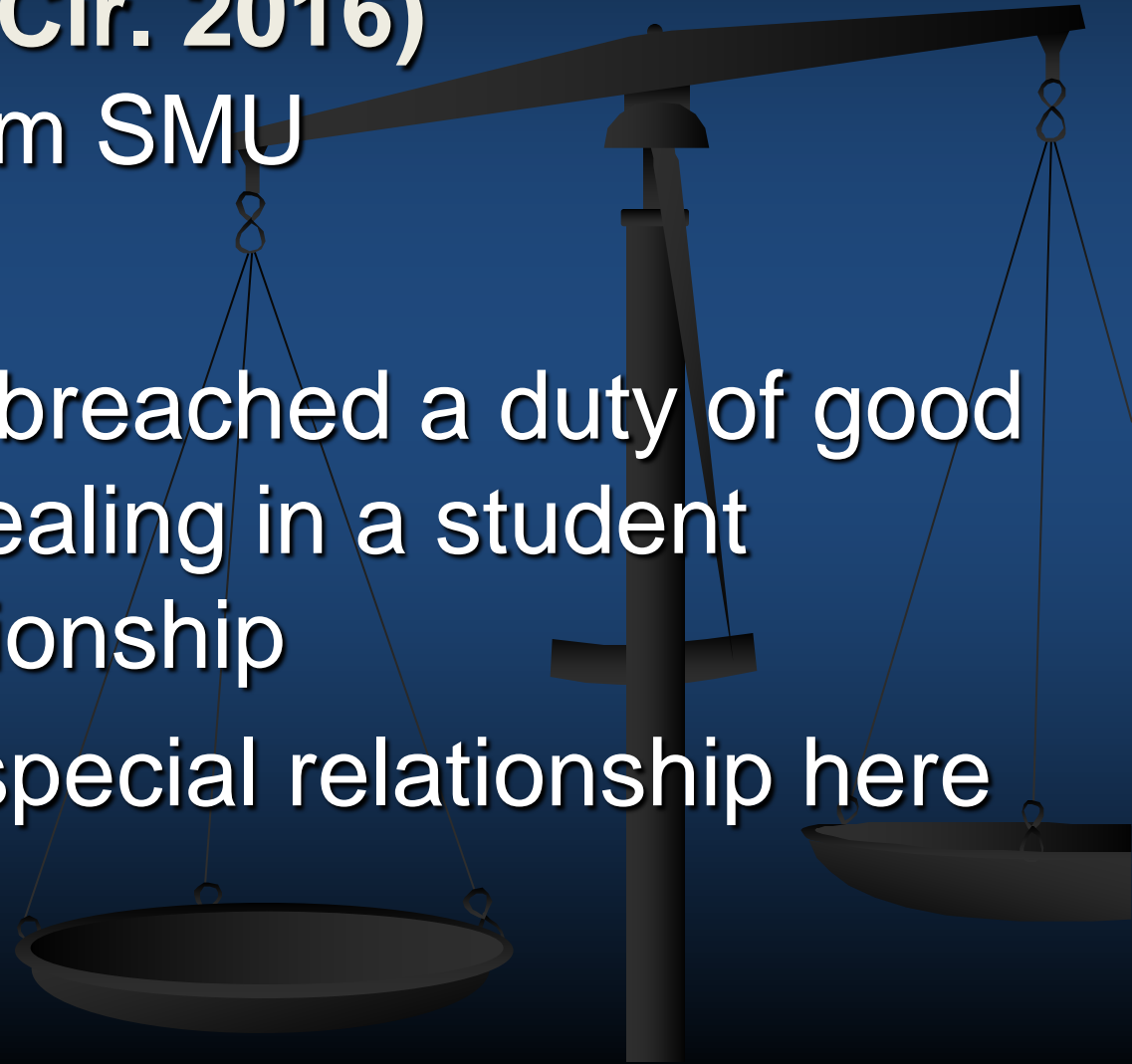


Good Faith and Fair Dealing



***Daniel Hux v. Southern Methodist University* –F.3d – 2016 WL 1621720
(5th Cir. 2016)**

- Terminated from SMU
- Contract case
- Whether SMU breached a duty of good faith and fair dealing in a student university relationship
- Court said no special relationship here

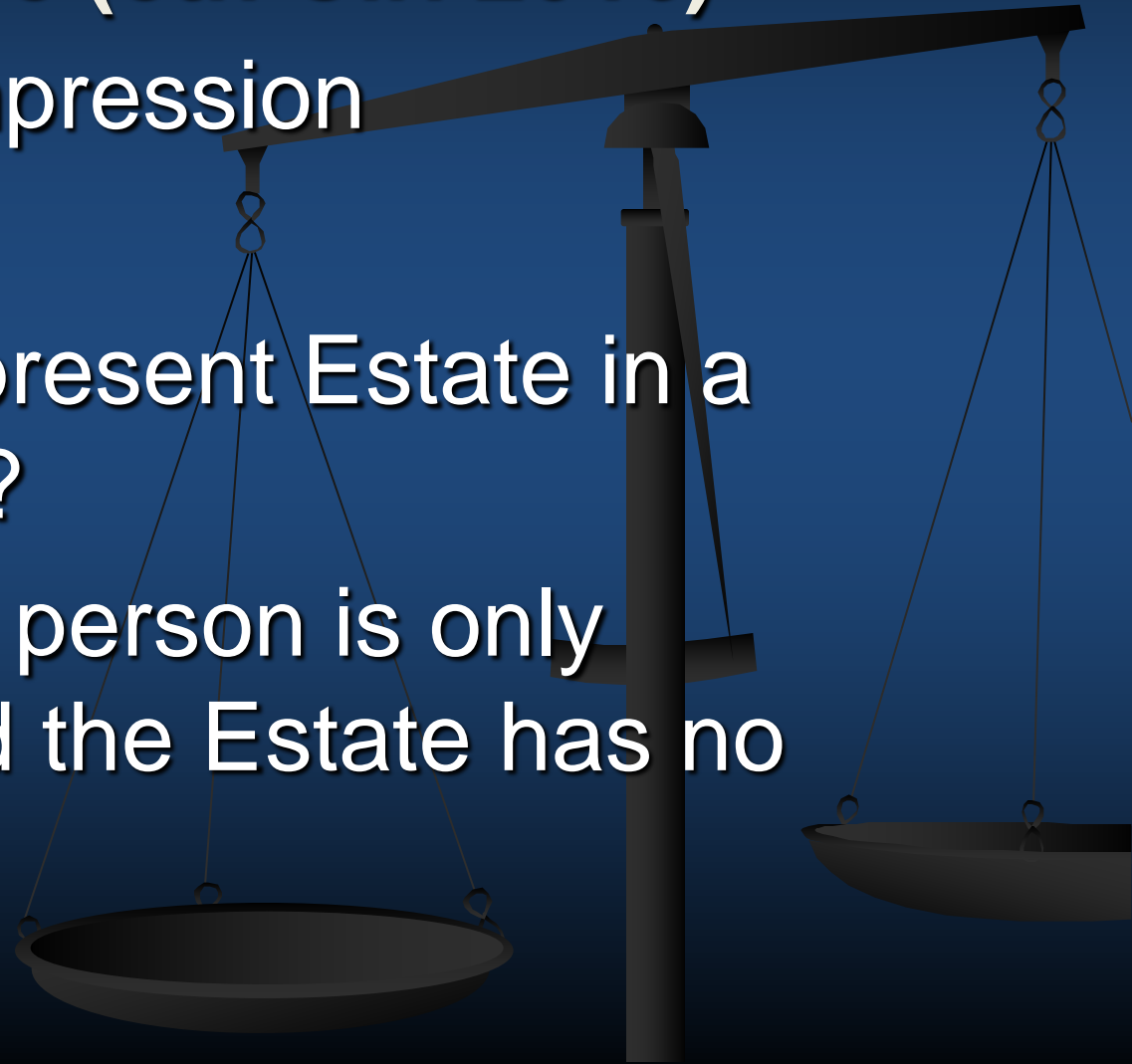


Wrongful Death



Chaz Z. Rodgers v. Lancaster Police & Fire Department –F.3d – 2016 WL 1392065 (5th Cir. 2016)

- Case of first impression
- Pro se
- Can Pro se represent Estate in a survival action?
- Only allowed if person is only beneficiary and the Estate has no creditors

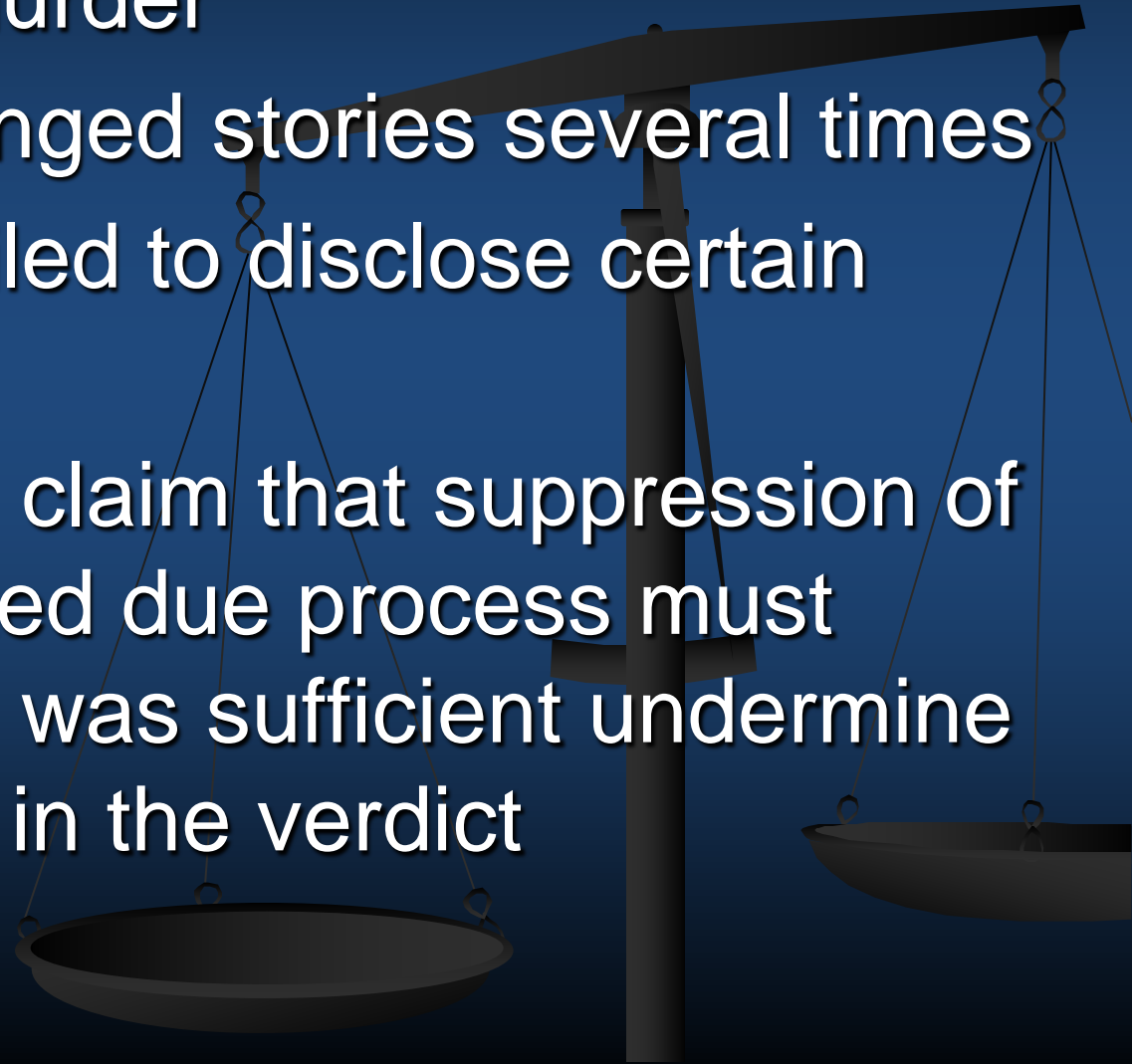


Due Process

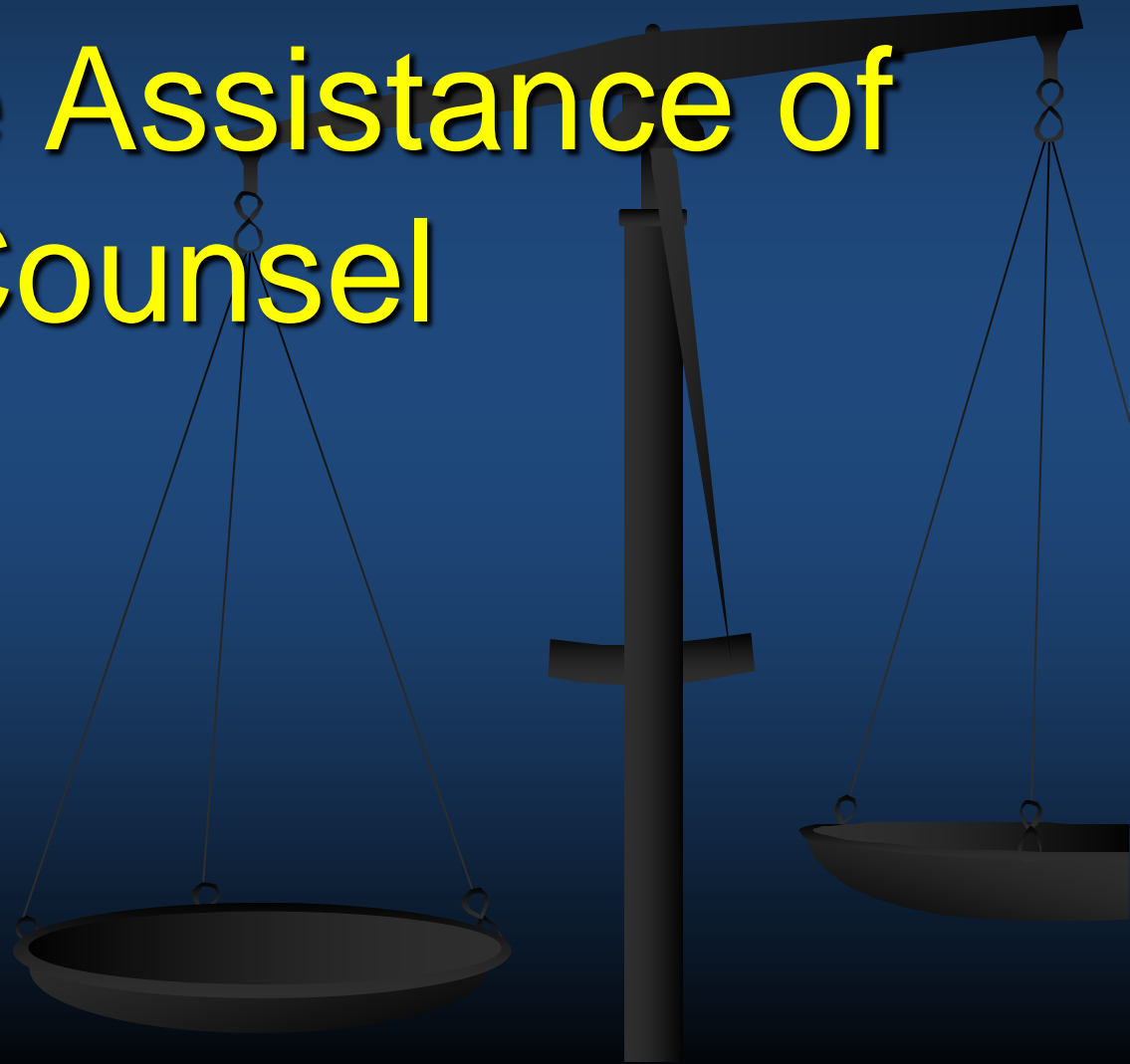


Michael Wearry v. Burl Cain, Warden, 136 S.Ct. 1002 (2016)

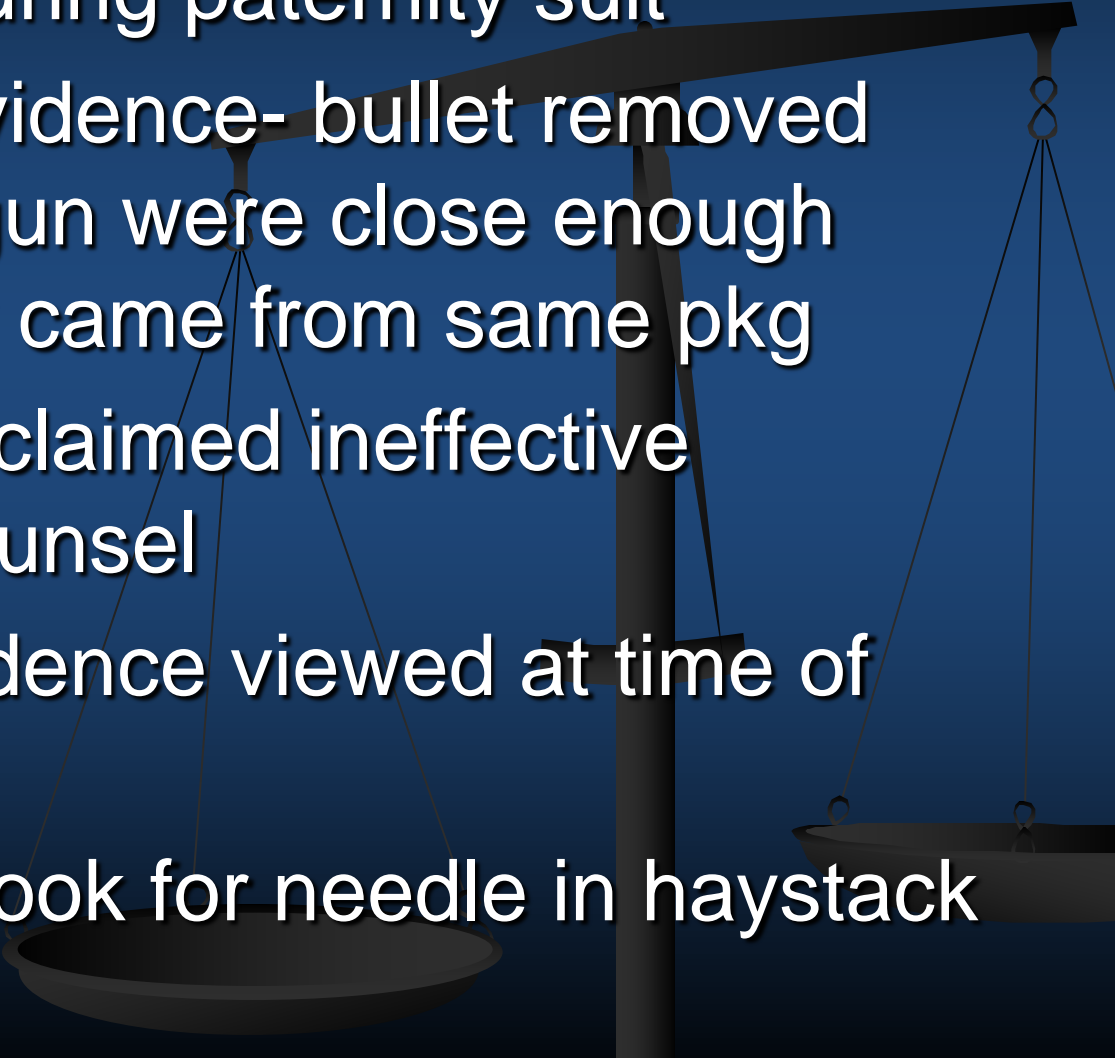
- Convicted of murder
- Witnesses changed stories several times
- Prosecutors failed to disclose certain evidence
- To prevail on a claim that suppression of evidence violated due process must show evidence was sufficient to undermine the confidence in the verdict



Effective Assistance of Counsel



Maryland v. James Kulbicki, 136 S.Ct. 2 (2015)

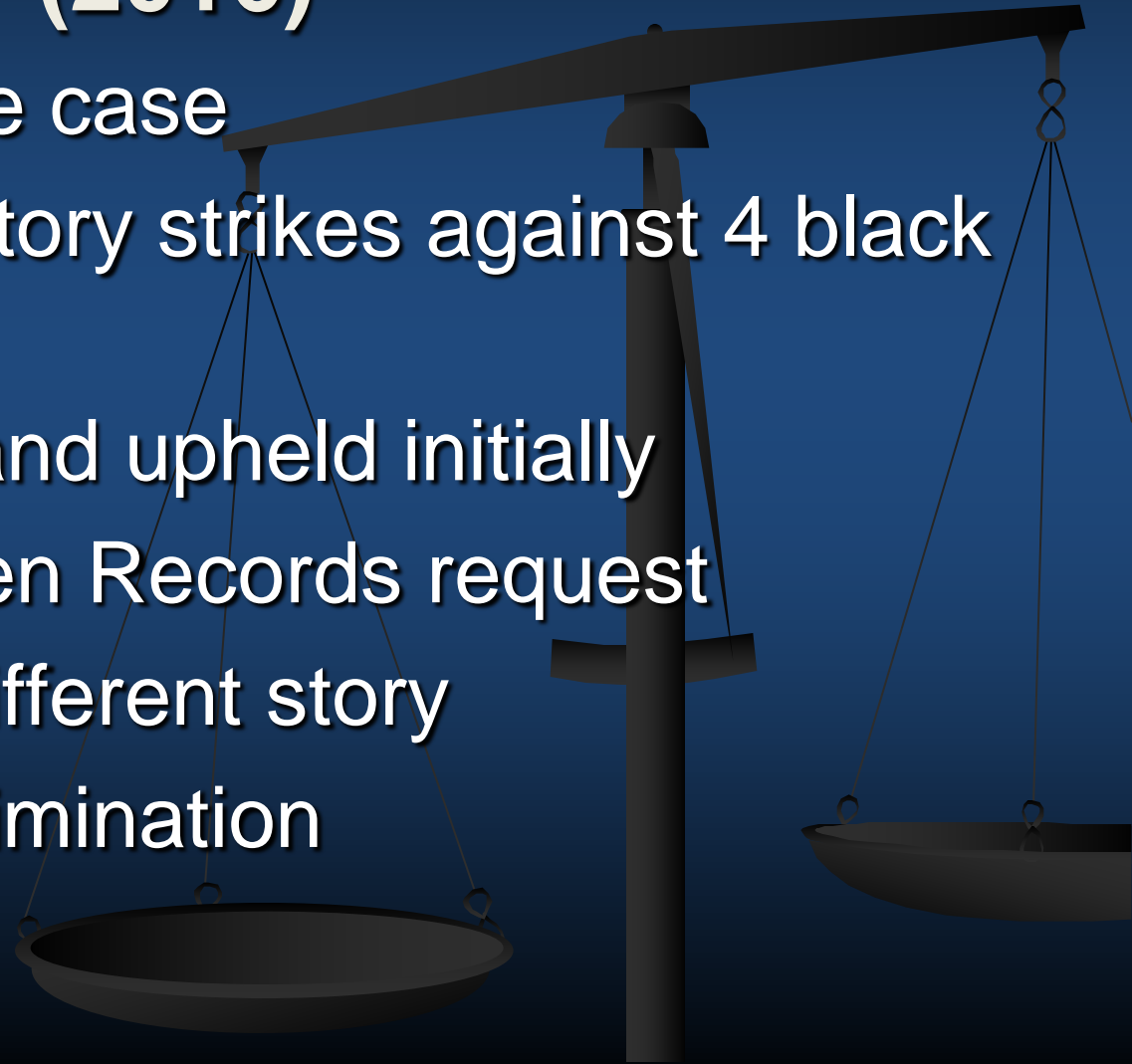
- Shot mistress during paternity suit
 - Prosecution's evidence- bullet removed from brain and gun were close enough match that likely came from same pkg
 - After conviction claimed ineffective assistance of counsel
 - Look at how evidence viewed at time of trial
 - Not required to look for needle in haystack
- 

Batson



***Timothy Tyrone Foster v. Bruce
Chatman, -- S.Ct. – 2016 WL 2945233
(2016)***

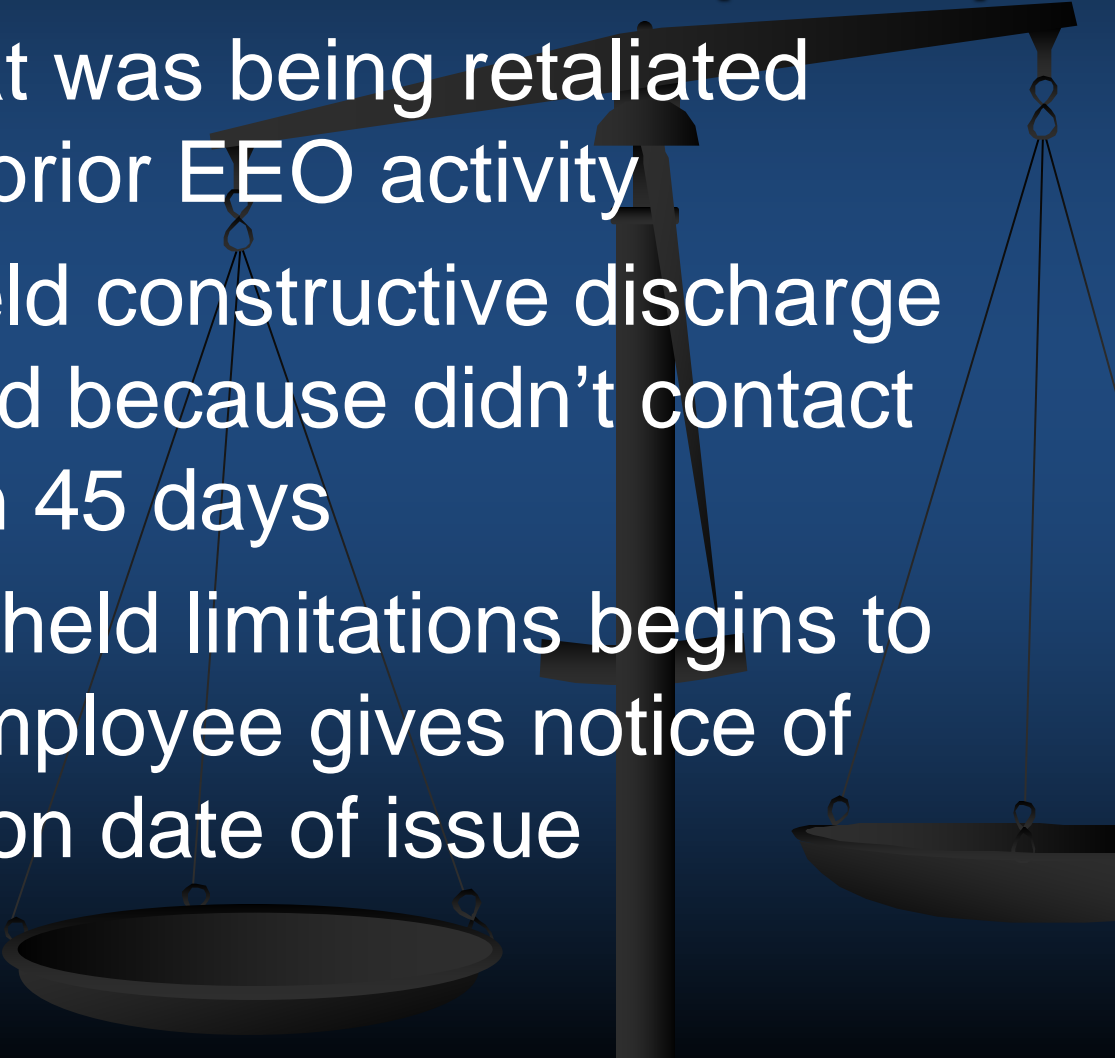
- Batson challenge case
- Used all peremptory strikes against 4 black jurors
- Reasons given and upheld initially
- Got notes in Open Records request
- Notes showed different story
- Purposeful discrimination



Federal Employment Discrimination Law



Marvin Green v. Megan J. Brennan, **-- S.Ct. – 2016 WL 2945236 (2016)**

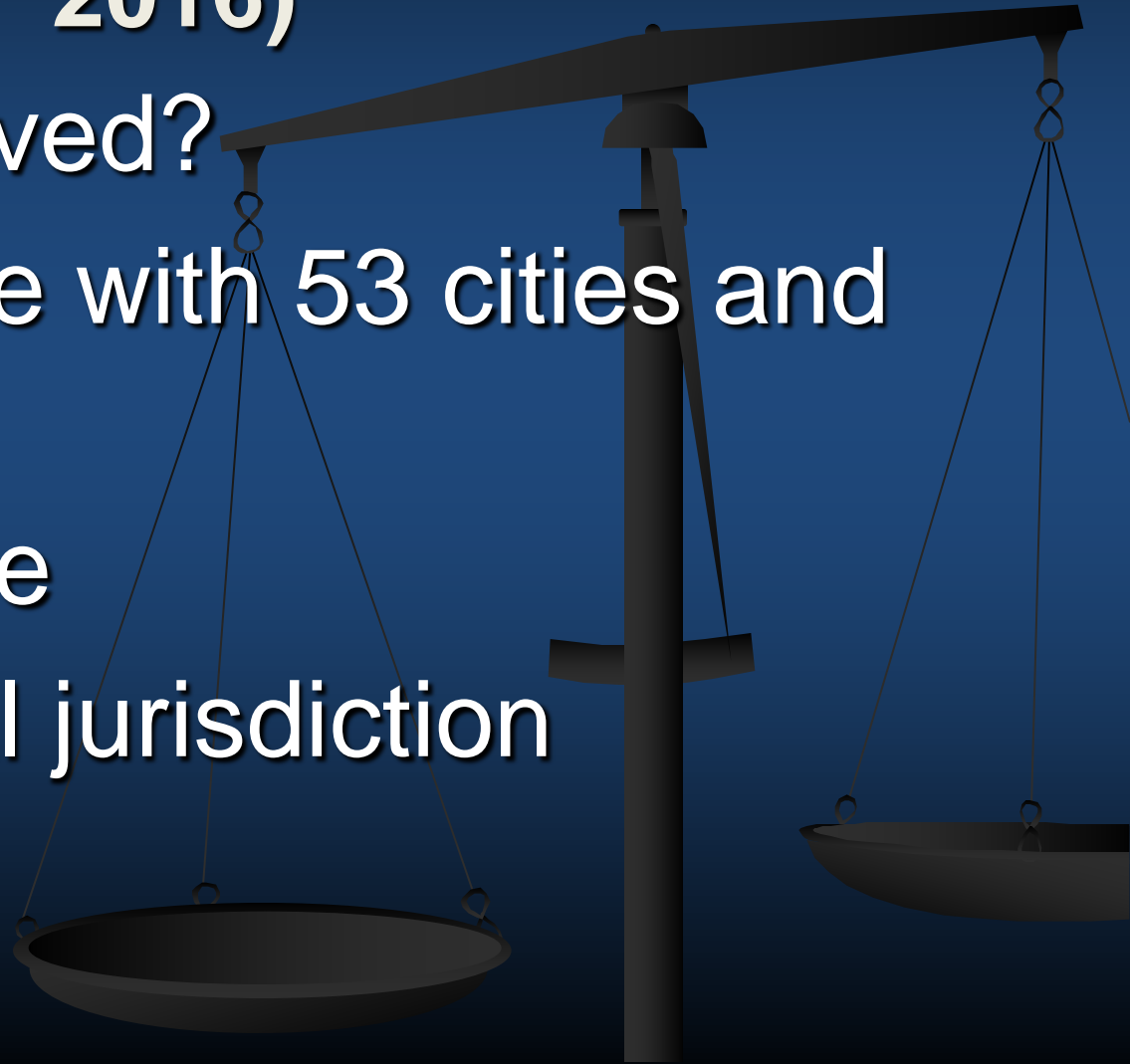
- EEO charge that was being retaliated against him for prior EEO activity
 - Lower courts held constructive discharge claim was barred because didn't contact counselor within 45 days
 - Supreme Court held limitations begins to run when the employee gives notice of resignation not on date of issue
- 

Remand



James H. Watson v. City of Allen, et al.
**-- F.3d – 2016 WL 2610169 (5th Cir.
2016)**

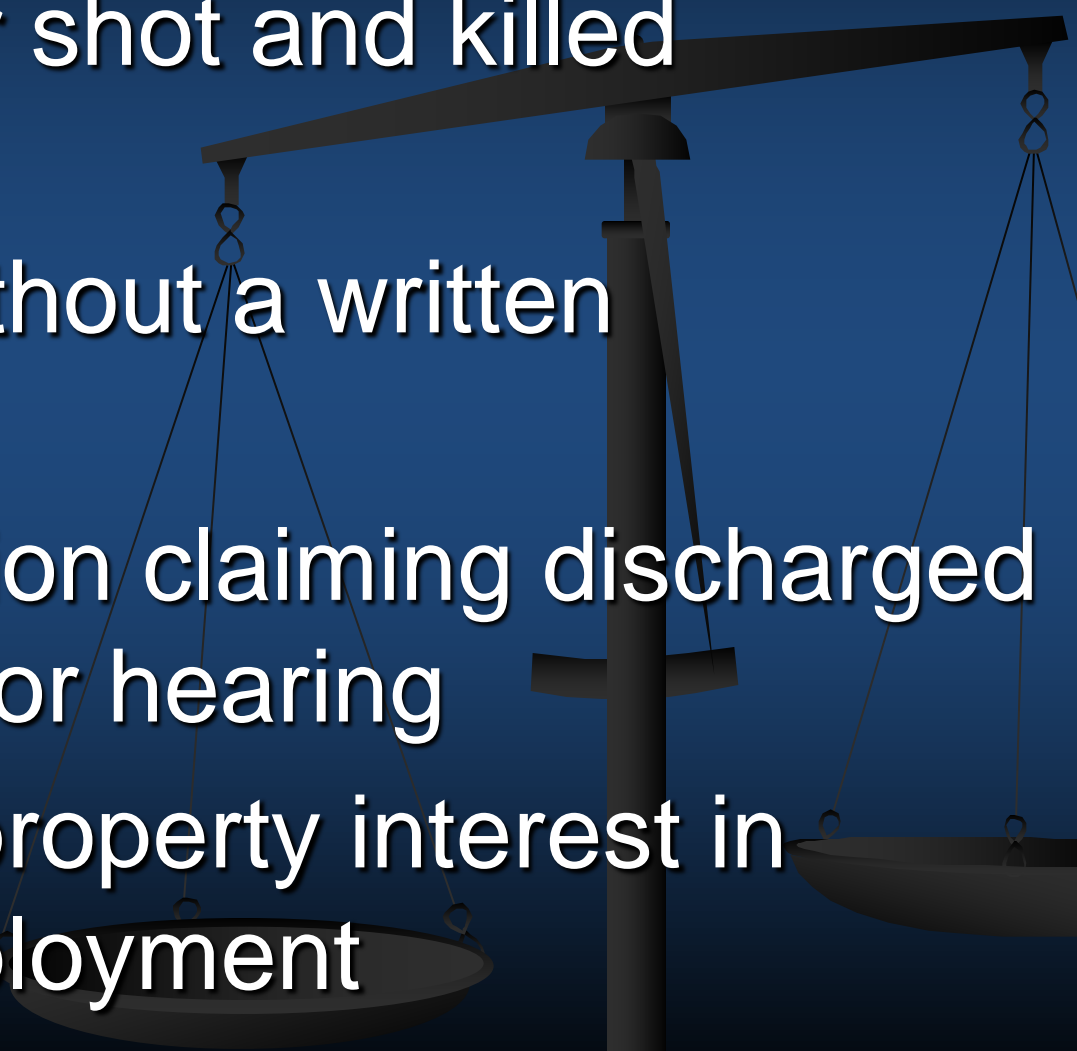
- Are you involved?
- Red light case with 53 cities and others
- Remand issue
- Supplemental jurisdiction



Employment



Stephen C. Stem v. Ruben Gomez, 813 F.3d 205 (5th Cir. 2016)

- 2nd year officer shot and killed individual
 - Discharged without a written complaint
 - Filed 1983 action claiming discharged without notice or hearing
 - No protected property interest in continued employment
- 

Rehabilitation Act



***Rochelle Flynn v. Distinctive Home Care, Inc.*, 812 F.3d 422 (5th Cir. 2016)**

- Case of 1st impression for 5th Circuit
 - Rehabilitation Act does NOT require ADA requirement that Defendant be Plaintiff's employer
 - The Act allows discrimination suits by independent contractors
- 