RECENT FEDERAL CASES OF INTEREST TO CITIES

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TEXAS CITY ATTORNEYS ASSOCIATION
GRAPEVINE, TEXAS
NOVEMBER 15,2012

Snyder v. Phelps, 131 S.Ct. 1207 (2011)

- Political picketing at a military funeral
- Protected if it addresses important public issues
- First Amendment shields from tort liability for picketing
- Obeyed the orders given by police for the protest
- Majority of the Court declined to react emotionally to the message or the context of Westboro's choice to convey the message at the service member's funeral
- "As a nation, we have chosen a different course — to protect even hurtful speech on public issues to ensure that we do not stifle public debate"

McKinley v. Abbott, 643 F.3d 403 (5th Cir. 2011)

- Upholds provisions of the Texas Penal Code which limit solicitation of employment during the first 30 days following an accident
- Provisions do not violate the free speech portions of the Texas and United States Constitutions
- Texas has a substantial interest in protecting the privacy of accident victims
- This case addresses the 2009 amendments, which include solicitations by telephone and in person, in addition to written solicitations

United States v. Cardenas-Guillen v. Hearst Newspapers, LLC, 641 F.3d 168 (5th Cir. 2011)

- Sentencing of a notorious Mexican drug kingpin
- Prosecution moved to close hearings; Houston Chronicle objected; trial court held closed hearings without notice to public
- First Amendment requires that the media and public have access to sentencing hearings

United States v. Olivares-Pacheco, 633 F.3d 399 (5th Cir. 2011)

- Border Patrol agents noticed dragging some brush.
- None of the passengers would make eye contact
- Appellant moved to suppress contending no reasonable suspicion and was in violation of the Fourth Am.
- In order to temporarily detain must be aware of specific articulable facts together with rational inferences that warrant a reasonable suspicion.
- Fifth Circuit emphasizes eight factors:
- Facts known to the officers unremarkable and suspicionless situation.

Granger v. Aaron's, Inc., 636 F.3d 708 (5th Cir. 2011)

- Claimed store manager sexual harassment
- Attorney filed complaints of discrimination with the Office of Federal Contract Compliance Programs ("OFCCP")
- Never advised they filed with wrong agency until after 300-day period expired
- Aaron's filed motion to dismiss, claiming failed to file a charge of discrimination with the EEOC within 300 days
- Argued that their claims were constructively filed; alternatively, argued that 300-day deadline should be equitably tolled because of the OFCCP's representations that they were processing their claims
- Exercised due diligence in pursuing rights

EEOC v. Philip Services Corp., 635 F.3d 164 (5th Cir. 2011)

- Nine employees of PSC filed racial discrimination
- EEOC found reasonable cause to support the charges and initiated conciliation process as required by Title VII
- PSC withdrew from negotiations after two weeks
- EEOC alleged breach of contract against the PSC, arguing that there was a verbal agreement.
- Suit dismissed as Title VII's confidentiality provision was an "insurmountable impediment" to EEOC's attempts to enforce the oral conciliation agreement
- Fifth Circuit declined to create any type of exception to the confidentiality provision of Title VII

Thompson v. N. Am. Stainless, L.P., 131 S.Ct. 863 (2011)

- Thompson's fiancée filed sex discrimination charge Thompson subsequently fired.
- Thompson filed suit contending that his firing was retaliation for his fiancée's EEOC charge.
- Summary judgment on the ground that third-party retaliation claims were not permitted by Title VII
- Supreme Court reversed, deciding that an employer may no more fire an employee for a relative or close associate's sex discrimination claim than it can fire the complaining employee.
- The Court took a common sense approach to this analysis
- Court attempted to limit the reach of its decision by making clear that the "close family member" might extend to spouses and future spouses

Kasten v. Saint-Gobain Performance Plastics Corp., 131 S.Ct. 1325 (2011)

- Anti retaliation suit under FLSA, claiming discharge because of oral complaints regarding placement of clocks in locations that prevented workers from receiving credit for time spent putting on and taking off work-related protective gear.
- Whether, for purposes of the FLSA, an oral complaint was formal enough to be considered "filed"
- Purpose of the Act would be undermined if all complaints were required to be written
- The Court did not decide issue of whom oral complaint could be made to be considered "filed"

Staub v. Proctor Hospital, 131 S.Ct. 1186 (2011)

- Lawsuit claiming that supervisor was out to get him as a result of disapproval of his military service
- Ultimate firing decision was made by more senior executive, not Staub's supervisor
- No evidence that the decision-maker shared the supervisor's anti-military bias
- Employer can be found liable for the discriminatory acts of supervisors, who do not themselves make employment decisions but do influence
- So long as the supervisor intends that the adverse action occur for discriminatory reasons

Frame v. City of Arlington 657 F.3d 215 (5th Cir. 2011)

- Plaintiffs rely on motorized wheelchairs for mobility
- Sued Arlington alleged failure to make sidewalks accessible
- Originally dismissed complaint as time-barred: cause of action accrued from date of City's construction or alteration of sidewalks; accordingly, complaint was time-barred under two-year personal-injury statute of limitations
- Fifth Circuit held that sidewalks are "services, programs, or activities" under the ADA, and plaintiffs not required to plead dates of construction
- Individuals are granted private rights of action to ensure ADA compliance so long as accommodations sought are reasonable
- ADA action does not accrue until plaintiffs knew, or should have known, of inaccessible sidewalks, not when non-compliant sidewalk was built or altered

Hale v. King, 642 F.3d 492 (5th Cir. 2011)

- Prisoner ADA case
- ADA: conditions in question must limit one or more major life activities
- Court held that Plaintiff's allegations and medical files that accompanied them were sufficient only to show that Plaintiff had specified conditions—not that they impaired any major life activity
- Title II also allows if Plaintiff can show discrimination due to mistaken belief that disabilities limited one or more of his major life activities
- Court determined that complaint established only that Defendants denied Plaintiff access to prison facilities and programs because of his disability and the facilities' inability to treat him, not because they believed his disability limited his major life functions
- However, Fifth Circuit remanded case to allow Hale to amend his Title II allegations

Fox v. Vice, 131 S.Ct. 2205 (June 6, 2011)

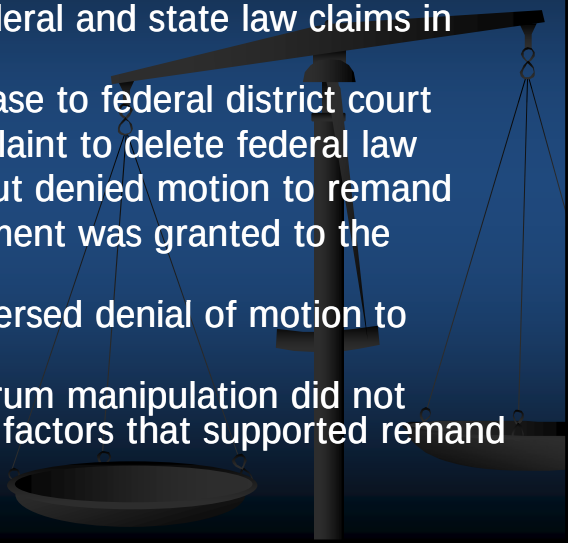
- Section 1983 suit included both frivolous and non-frivolous claims
- Sued opponent (incumbent Vice) over campaign "dirty tricks"
- Fox brought state and federal law claims in state court; Vice removed
- Fox conceded federal claims were invalid; federal court remanded to state court
- District court awarded Vice all fees done by his attorneys in the case and Fifth Circuit affirmed award, despite state law claims pending in state court
- The Supreme Court vacated and remanded for consideration of what fees Section 1988 permits: "if the defendant would have incurred [attorneys' fees] anyway, to defend against non-frivolous claims, then a court has no basis for transferring the expense to the plaintiff."
- That is, a prevailing defendant can receive only that portion of fees that he would not have paid but for the frivolous claim
- The Court gave district courts significant discretion to achieve what it described as "the essential goal in shifting fees:" "to do rough justice."

Carnaby v. City of Houston, 636 F.3d 183 (5th Cir. 2011)

- Carnaby identified himself to police, as "CIA Agent."
- Carnaby no weapon but did have three guns in car
- The family sued the officers for excessive force along with a host of other claims
- The district court granted motions for summary judgment based on qualified immunity as well as the City's motion for summary judgment because the City cannot be liable if the officers did not violate the Fourth Amendment
- The Fifth Circuit examined the Fourth Amendment excessive force claim on the basis of whether the use of deadly force was unreasonable in that situation
- The Fifth Circuit stated that they had yet to address whether a municipality can ever be held liable for failure to train its officers when the officers did not commit any constitutional violation

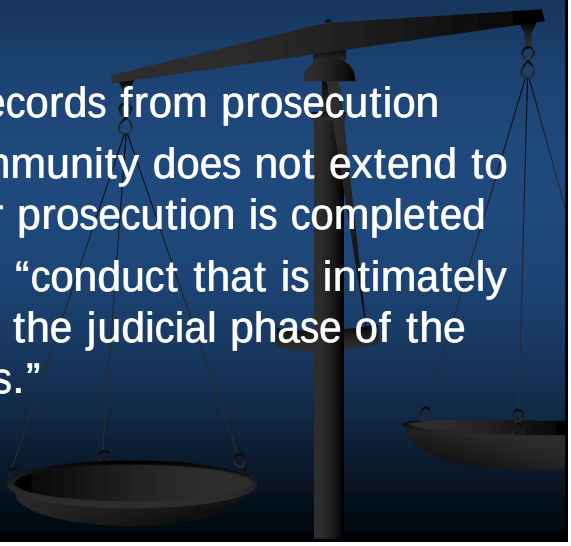
Enochs v. Lampasas County, 641 F.3d 155 (5th Cir. 2011)

- Enochs filed federal and state law claims in state court
- Removed the case to federal district court
- Amended complaint to delete federal law
- District Court but denied motion to remand
- Summary judgment was granted to the County
- Fifth Circuit reversed denial of motion to remand
- Possibility of forum manipulation did not outweigh other factors that supported remand to state court.

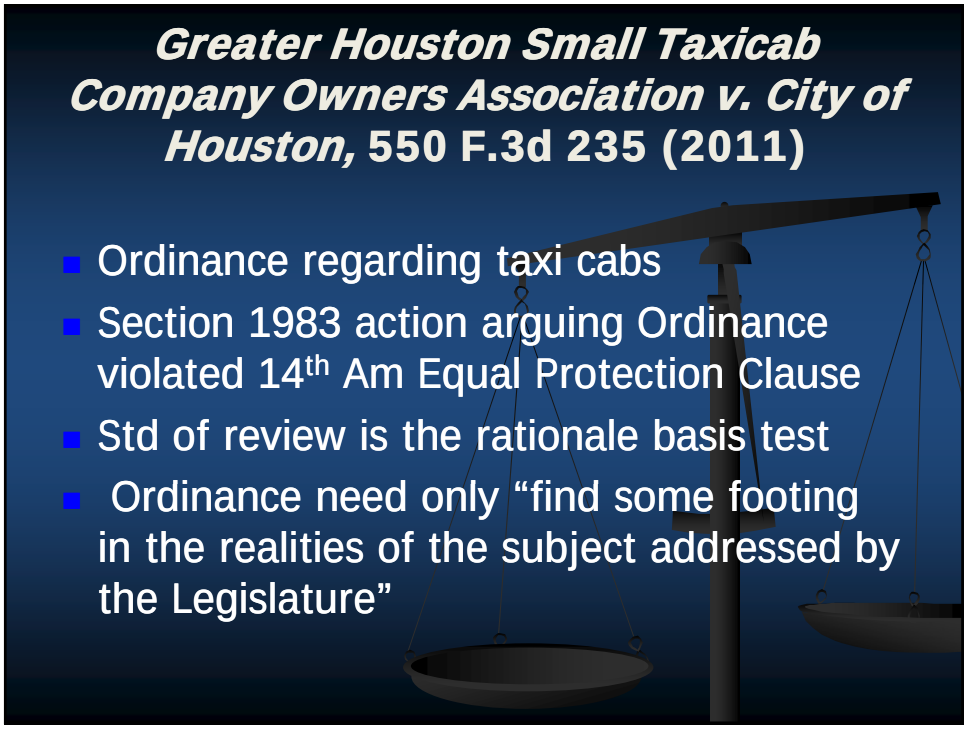


Lampton v. Diaz, 639 F.3d 223 (5th Cir. 2011)

- Copies of tax records from prosecution
- Prosecutorial immunity does not extend to acts taken after prosecution is completed
- Extends only to "conduct that is intimately associated with the judicial phase of the criminal process."

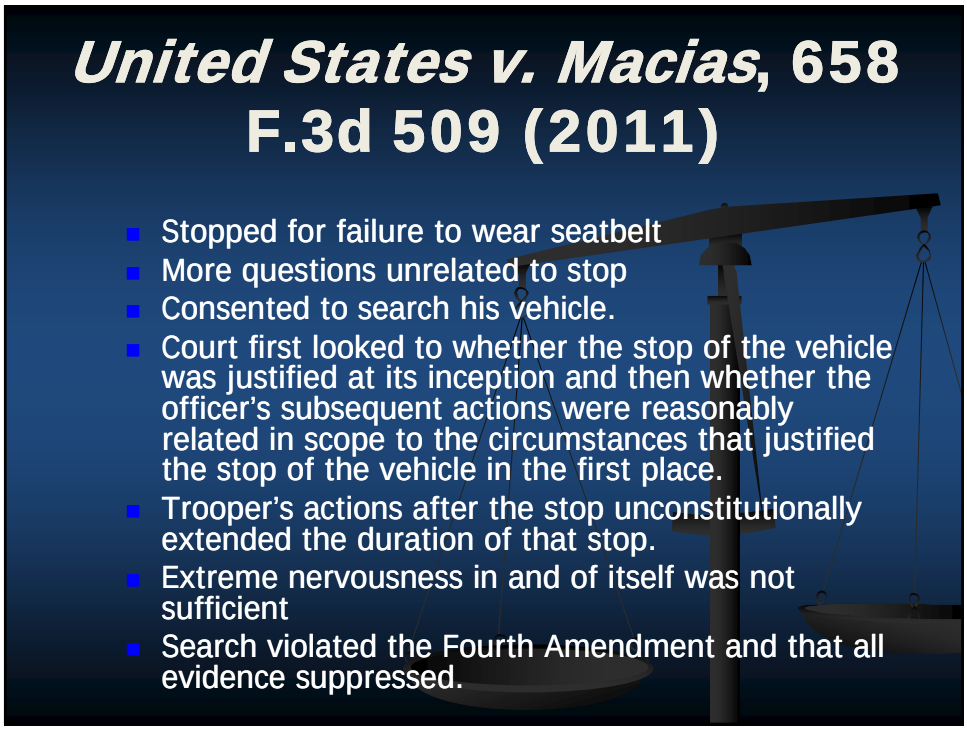


Greater Houston Small Taxicab Company Owners Association v. City of Houston, 550 F.3d 235 (2011)



- Ordinance regarding taxi cabs
- Section 1983 action arguing Ordinance violated 14th Am Equal Protection Clause
- Std of review is the rationale basis test
- Ordinance need only "find some footing in the realities of the subject addressed by the Legislature"

United States v. Macias, 658 F.3d 509 (2011)



- Stopped for failure to wear seatbelt
- More questions unrelated to stop
- Consented to search his vehicle.
- Court first looked to whether the stop of the vehicle was justified at its inception and then whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop of the vehicle in the first place.
- Trooper's actions after the stop unconstitutionally extended the duration of that stop.
- Extreme nervousness in and of itself was not sufficient
- Search violated the Fourth Amendment and that all evidence suppressed.

Brown v. Strain, 663 F.3d 245 (2011)

- Deputy stopped a vehicle driven by Brown. Arrested Brown and his two passengers, and began digitally recording the suspect's conversation.
- Brown moved handcuffed hands and reached into Lane's underwear, retrieving a plastic bag cocaine and one Soma pill. He proceeded to swallow the bag.
- Brown collapsed and no jail personnel offered medical attention
- Brown filed suit for negligence and for deliberate indifference based on the Eighth and Fourteenth Amendments under 42 U.S.C. §1983.
- Only two of the §1983 claims were appealed, regarding the qualified immunity defense.
- Steinert only appealed the district court's determination that the evidence Plaintiffs provided established at least a genuine issue of material fact as to whether Steinert was aware Brown had swallowed the bag of cocaine.
- Appellate court lacks jurisdiction to review factual conclusions on interlocutory appeal.

Rockwell v. Brown, 664 F.3d 985 (2011)

- Scott was 27-year old, who lived with his parents and suffered from schizophrenia and suicidal
- Parents called 911, fearing he had become a danger to himself and others..
- The officers attempted to communicate with Scott through his bedroom door. Scott began threatening the officers.
- As soon as the officer's breached the bedroom door, Scott rushed towards the officers holding two eight-inch knives, one in each hand.
- Fifth Circuit reiterated the law on qualified immunity and found that under the totality of the circumstances, it was objectively reasonable for the officers to believe that Scott posed a significant and imminent threat of serious physical harm to one or more of the officers
- Court addressed whether a threat a suspect poses to himself may constitute an exigent circumstance.

Cantrell v. City of Murphy, 666 F.3d 911 (2012)

- Cantrell was at home with two young sons, one wandered off
- Called 911 hysterically
- Noticed strangulation marks around neck
- Court granted summary judgment on all grounds, except as to Cantrell's "special relationship" theory of relief under the Due Process Clause and 4th Amendment
- Fifth Circuit reiterated that generally the Due Process Clause confers no affirmative right to governmental aid, even when necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual.
- Special relationship exception does exist for a certain class of people in the custody of the state (e.g., foster care). However, Cantrell failed to satisfy her burden of demonstrating the inapplicability of the officers' qualified immunity defense.

United States of America v. Cavazos, 668 F.3d 190 (2012)

- Early banging on his front door.
- Executing a search warrant, based on the belief that Cavazos had been sending sexually explicit texts to an underage female.
- Told that this was a "non-custodial interview" and that he was free to get something to eat and drink or use the restroom.
- Began questioning without reading Miranda rights..
- Cavazos eventually admitted to "sexting" several minor females and wrote out a statement. Thereafter, Cavazos was arrested and read his Miranda rights for the first time.
- Moved to suppress the statements he made before he was read his Miranda rights.
- Fifth Circuit found that under the totality of circumstances, Cavazos was in custody for Miranda right purposes. Court found no reasonable person in Cavazos' position would feel "he or she was a liberty to terminate the interrogation and leave."

Elizondo v. Green and City of Garland, 671 F.3d 506 (2012)

- 17 year-old Ruddy came home late at night and was found by his mother holding a knife to his abdomen.
- Officer responded to the 911 call.
- Refusing to put down the knife, Ruddy shouted "shoot me."
- Filed suit asserting excessive force under §1983.
- Fifth Circuit agreed use of deadly force was not clearly unreasonable.
- Ruddy ignored repeated instructions to put down the knife he was holding and seemed intent on provoking
- Considering the totality of the circumstances in which Green found himself, it was reasonable for him to conclude Ruddy posed a threat of serious harm.

Lindquist v. City of Pasadena, Texas, 669 F.3d 225 (2012)

- City enacted an ordinance adopting standards for used-car dealers.
- Lindquists wished to purchase two lots to expand their used-car dealership.
- Subsequently, the Lindquists discovered their competitors, had purchased the other lot. the City ultimately granted the Nielsens a license.
- Lindquists again applied for a used-car dealership license and were denied.
- City addressed another appeal for a different lot owned by Chambers. City granted Chambers a license.
- Lindquists, asserted violations of the Due Process Clause and Equal Protection Clause
- Lindquists argue that the City treated them differently than others similarly situated in violation of their constitutional right to equal protection. In order to be similarly situation, however, comparators must be *prima facie* identical in all relevant aspects.
- While a government actor's actions might be illegal under state or local law does not mean they are irrational for purposes of the Equal Protection Clause

Bishop v. Arcuri and City of San Antonio, 674 F.3d 456 (2012)

- No-knock search case, received informant's tip that a home was being used to "cook methamphetamine." Obtained a warrant to search from magistrate
- Decided to execute the warrant without knocking or announcing his team's identity and purpose. His supervising sergeant approved the no-knock.
- Alleging excessive force, false arrest, and unreasonable search pursuant to 42 U.S.C. §1983.
- The specific question before the Court, however, was whether exigent circumstances justified decision to enter the home without knocking and announcing.
- Arcuri argued two exigent circumstances justified his actions, namely evidence destruction and officer safety.
- Relied almost exclusively on generalizations that are legally inadequate to create exigent circumstances, the Court concluded that the no-knock entry was unreasonable under the Fourth Amendment.

Florence v. Board of Chosen Freeholders of the County of Burlington, 132 S.Ct. 1510 (2012)

- Florence was arrested as found outstanding warrant for Florence's arrest. Florence had with him in the car a copy of a court record showing that, in fact, he had paid that fine.
- Held for six days, that no effort was made to check whether he had paid the fine, and that he was not taken before a judge.
- Over the course of six days, he was strip-searched twice, once in each county's jail.
- Claimed his Fourth Amendment rights had been violated by strip-searches done without any suspicion that he posed a threat to jail security.
- Strip searches for inmates entering the general population of a prison do not violate the Fourth Amendment. The Court concluded that a prisoner's likelihood of possessing contraband based on the severity of the current offense or an arrestee's criminal history is too difficult to determine effectively.
- The Court did note that there may be an exception to this rule when the arrestees are not entering the general population and will not have substantial contact with other inmates.

Filarsky v. Delia, 132 S.Ct. 1657 (2012)

- Can a private person hired by the government to provide services be sued for the things that he does while working for the government?
- Nicholas Delia, a firefighter, was injured on the job. While Delia was on leave to recover, city officials began to suspect that perhaps he was not so sick after all.
- When determining whether an individual can be sued under the civil rights laws, one important factor that the Court considers is whether the person who is trying to avoid liability could have been sued when the civil rights laws were enacted in 1871.
- Court reasoned providing private individuals with immunity from suit for their work on behalf of the government would be consistent with the rationale behind providing immunity in the first place.

Messerschmidt v. Millender, 132 S. Ct. 1235 (2012)

- Shot at his ex-girlfriend with a sawed-off shotgun.
- Prepared an affidavit and warrants to arrest Bowen and search the home of his former foster mother, Augusta Millender, where the ex-girlfriend said he might be hiding.
- SWAT team executed the warrant but found neither Bowen nor his gun; instead they seized Ms. Millender's shotgun and a box of ammunition
- Officers were entitled to qualified immunity as to both the firearms and gang-related materials sought in the warrant.
- Officers entitled to immunity for the search for gang-related material,.
- The Court found compelling the fact that the officers sought and obtained approval from a police superior and deputy district attorney, and that a magistrate had approved the warrant.

Rehberg v. Paulk, 132 S.Ct. 1497 (2012)

- Rehberg sued Paulk under Section1983, alleging that Paulk, a law enforcement officer, had committed perjury at various grand jury proceedings which had led to Rehberg being indicted several times
- Paulk asserted that just as a witness at trial is entitled to absolute immunity so too would he as a grand jury witness be shielded by absolute immunity.
- A unanimous Court, affirmed the Eleventh Circuit, holding that grand jury witnesses, like trial witnesses, are entitled to absolute immunity from any liability under Section 1983 arising from their testimony.
- Court looks to the nature of the function that was protected at common law, rather than at the identity of the person who performed the function.
- Justice Alito concludes that absolute immunity for grand jury testimony is necessary in order to safeguard the vital function that grand juries play in modern criminal procedure

Ryburn v. Huff, 132 S.Ct. 987 (2012)

- Rumored to be intending to "shoot-up" the school
- Officers went to Huff's home. After the police asked if there were any weapons in the house, Mrs. Huff ran back into the house.
- Officer followed because he believed Mrs. Huff's behavior was unusual and further believed that the officers were in danger.
- Huffs claimed that the officers entered their home without a warrant and violated Fourth Amendment rights.
- Officers had qualified immunity because Mrs. Huff's odd behavior made it reasonable for the police to believe that they were in imminent danger
- Court stated that the Fourth Amendment permits the police to enter a residence if an officer has a reasonable basis for concluding there is an imminent threat of danger.

Khan v. Normand, 683 F.3d 192 (5th Cir. 2012)

- 1983 action
- Running in store screaming
- Hog tying
- Qualified Immunity

Bowlby v. City of Aberdeen, 681 F.3d 215 (5th Cir. 2012)

- "Sno Cone " hut
- Permission to open and later revoked permits
- Due Process- taken without just compensation
- Property interest
- No fair notice given

Jones v. Lowndes County, 678 F.3d 344 (5th Cir. 2012)

- 1983 action claiming detained for over 48 hours without determination of probable cause
- Arrested on Friday- saw Judge on Tuesday
- "extraordinary circumstances" standard
- No policy or custom…
- Delay caused by Judge not Defendants

Ortiz v. Jordan, 131 S.Ct. 884 (2011)

- §1983 case alleging sexual assault by corrections officer and failure to protect against future assaults, as well as retaliation for reporting assaults in violation of the 8th & 14th Amendments
- Government moved for summary judgment on qualified immunity grounds, but district court denied, finding that qualified immunity defense turned on material facts in dispute.
- Authorities appealed denial of summary judgment, reversing jury verdict and appeals court held that qualified immunity applied.
- Party in federal case may not appeal denial of motion for summary judgment after Court has conducted full trial on the merits
- Prison officials should have filed interlocutory appeal. However, once case proceeded to trial, trial record superseded the summary judgment record, and qualified immunity defense must be evaluated in light of the evidence received by trial court

Sossamon v. Texas, 131 S.Ct. 1651 (2011)

- Inmate sued under RLUIPA, arguing he was denied access to the chapel and religious services while he was on cell restriction for disciplinary infractions
- District court held sovereign immunity barred claims for monetary relief. Fifth Circuit affirmed, holding the officials could not be sued in their individual capacities under RLUIPA
- Supreme Court affirmed the holdings of the lower courts: States, by accepting federal funds, "do not consent to waive their sovereign immunity to private suits for money damages under RLUIPA"
- Sovereign immunity bars suits for damages because no statue expressly and unequivocally includes such a waiver

Kentucky v. King, 563 U.S. __ (2011)

- "Exigent circumstances" exception to the Fourth Amendment
- Police officers followed suspect- heard a door shut, but the officers could not see which of two apartments the suspect entered.
- Smell marijuana coming from apartment, the officers knocked
- Hearing noises they believed constituted destruction of evidence, the officers kicked down the door, finding King (who was **not** the suspected drug dealer) with marijuana and cocaine
- King argued that the exigent circumstances rule does not apply when police effectively create the emergency
- Occupants of a residence have other protections against warrantless searches. If they fail to take advantage of those protections it is their own fault.
- This case is important as it helps resolve the inconsistent manner in which different states have treated police-created emergencies differently for purposes of the exigent circumstances rule.

The Elijah Group, Inc. v. City of Leon Valley, 643 F.3d 419 (5th Cir. 2011)

- Zoning code allowing churches to obtain Special Use Permits in certain business zones
- Elijah Group sought to purchase property and conduct religious activities but the City denied the rezoning request, permitting the Church to offer day care services on the property, but specifically disallowing "any church use."
- Church began to hold religious services on the property, at which time the City obtained a temporary restraining order against the Church.
- Church sued the City, claiming that the zoning restriction on religious use violated RLUIPA, as well as the U.S. Constitution and state law.
- Fifth Circuit reversed on the RLUIPA claim, finding that the imposition of the ordinance violated that statute's "Equal Terms Clause."
- The Fifth Circuit focused on the Equal Terms Clause in RLUIPA, which provides that "no government shall impose a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."

Michigan v. Bryant, 131 S.Ct. 1143 (2011)

- Confrontation Clause case
- Covington mortally wounded; told police he had been shot by "Rick" (referring to Bryant) outside Bryant's house
- Michigan S Court reversed the conviction under the Sixth Amendment's Confrontation Clause, holding the statements to be inadmissible testimonial hearsay
- The Supreme Court reversed, holding Covington's statements made during emergency are admissible
- Justice Scalia's dissent : Constitution prohibits out-of-court statements, even though evidentiary rules allow juries to hear them under some circumstances

United States v. Aguilar, 645 F.3d 319 (5th Cir. 2011)

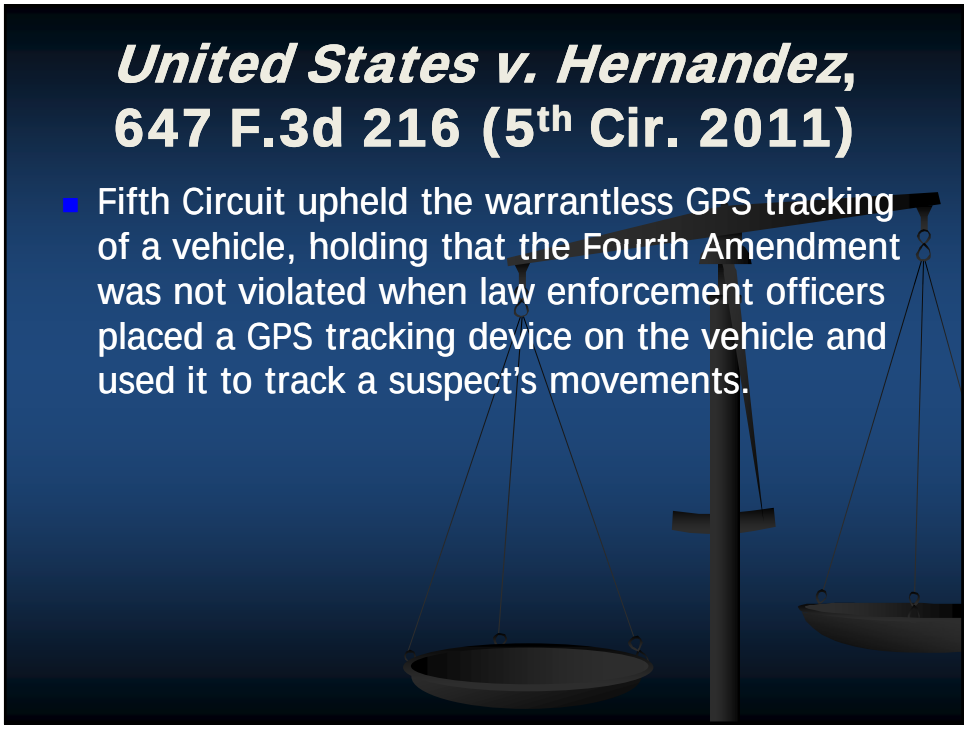
- Prosecutor's improper closing argument deprived drug defendant of fair trial
- Confession was not recorded, but DEA agents testified to it at trial
- Defense questioned motive and testimony of agents
- Prosecution improperly bolstered agents' credibility

United States v. Potts, 644 F.3d 233 (5th Cir. 2011)

- Felon in possession of a firearm, discovered at traffic stop
- Potts handcuffed and asked whether the gun belonged to him- Potts did not respond
- At trial, Potts objected to prosecution's question to arresting officer about Potts' silence
- Trial court made curative instruction that Potts had no obligation to answer the officer's question rather than ruling on objection
- During closing argument, the prosecutor again brought up Potts' silence;
- The Fifth Circuit conducted a plain error review—rather than *de novo*
- Potts should have continued his objections to the testimony and moved for a mistrial rather than agreeing to the curative instruction.

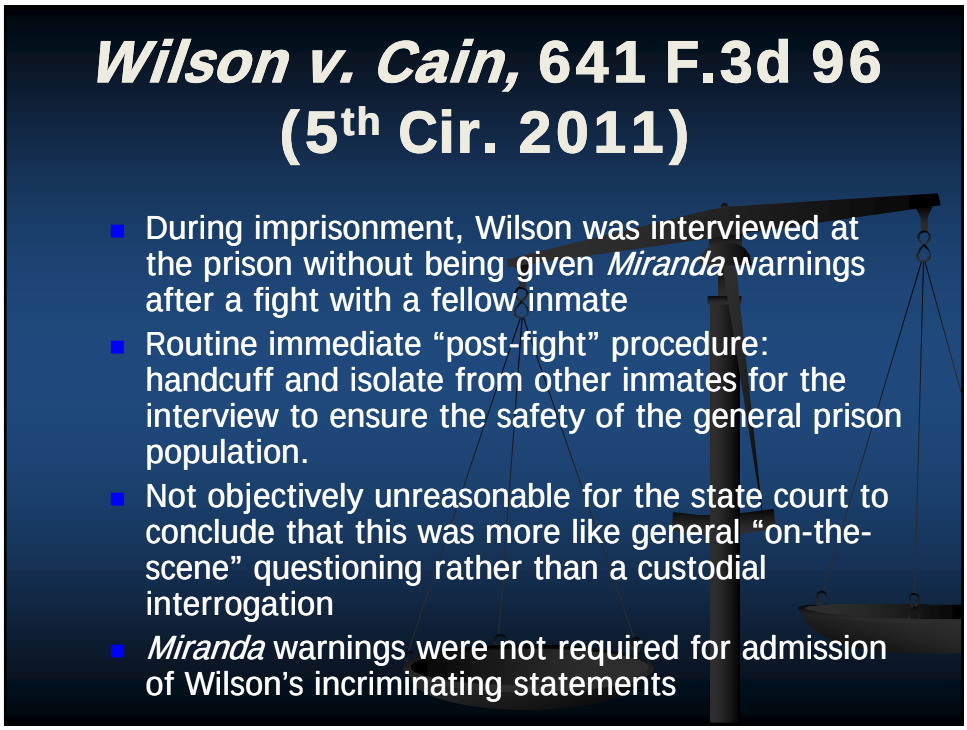
United States v. Hernandez, 647 F.3d 216 (5th Cir. 2011)

- Fifth Circuit upheld the warrantless GPS tracking of a vehicle, holding that the Fourth Amendment was not violated when law enforcement officers placed a GPS tracking device on the vehicle and used it to track a suspect's movements.



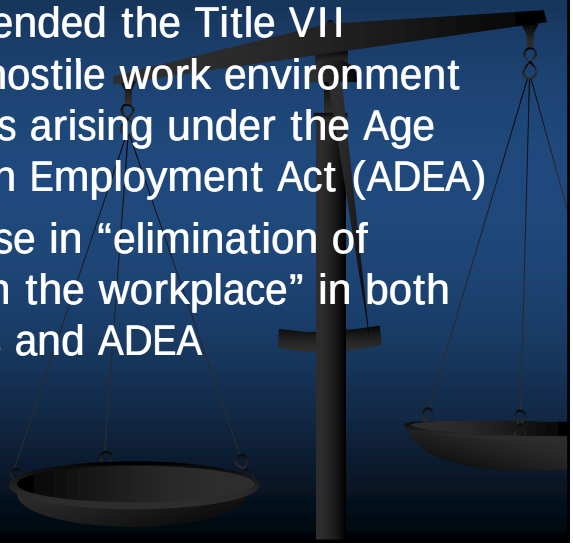
Wilson v. Cain, 641 F.3d 96 (5th Cir. 2011)

- During imprisonment, Wilson was interviewed at the prison without being given *Miranda* warnings after a fight with a fellow inmate
- Routine immediate "post-fight" procedure: handcuff and isolate from other inmates for the interview to ensure the safety of the general prison population.
- Not objectively unreasonable for the state court to conclude that this was more like general "on-the-scene" questioning rather than a custodial interrogation
- *Miranda* warnings were not required for admission of Wilson's incriminating statements



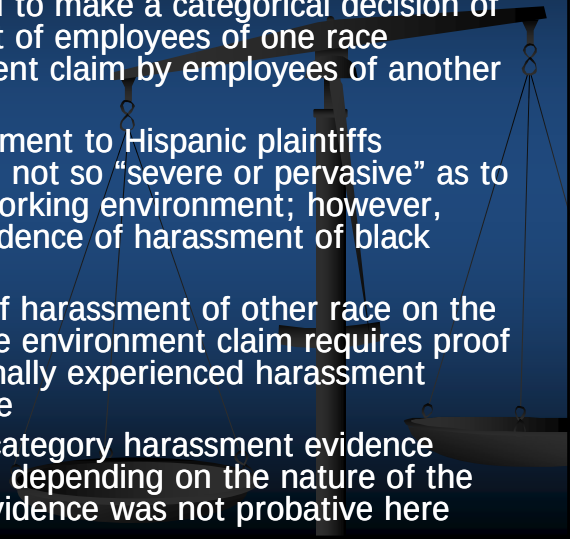
Dediol v. Best Chevrolet, Inc., ___ F.3d ___ (5th Cir. Sept. 12, 2011)

- Fifth Circuit extended the Title VII framework for hostile work environment claims to actions arising under the Age Discrimination in Employment Act (ADEA)
- Common purpose in "elimination of discrimination in the workplace" in both Title VII actions and ADEA

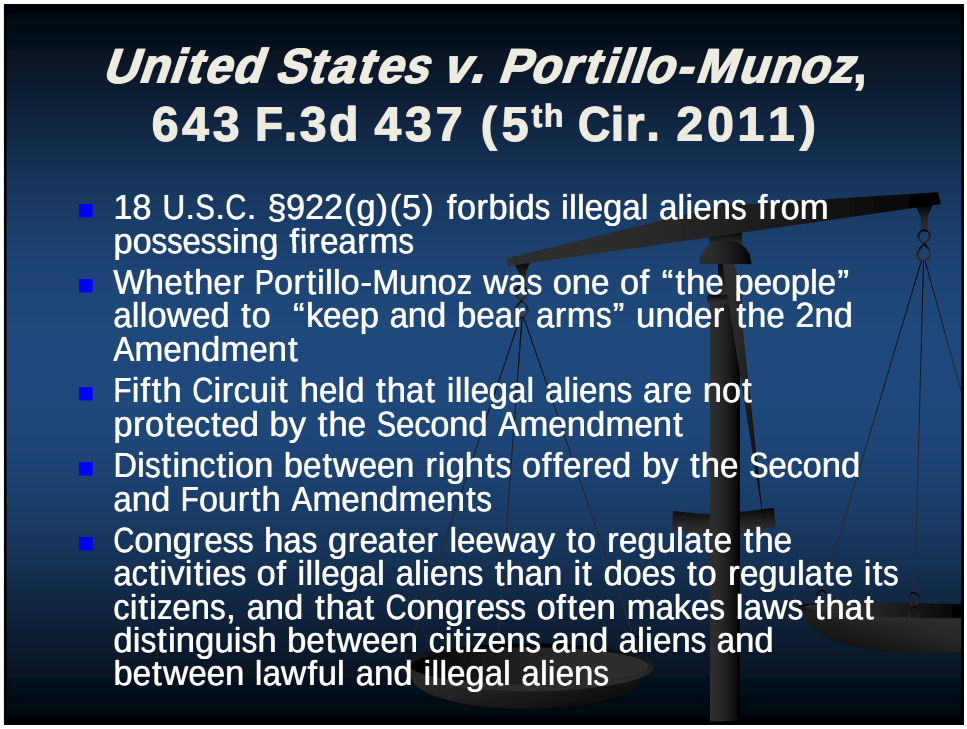


Hernandez v. Yellow Transportation, Inc., 641 F.3d 118 (5th Cir. 2011)

- Fifth Circuit declined to make a categorical decision of whether harassment of employees of one race supports a harassment claim by employees of another race
- Acts of racial harassment to Hispanic plaintiffs standing alone were not so "severe or pervasive" as to create an abusive working environment; however, plaintiffs offered evidence of harassment of black employees
- Rejected evidence of harassment of other race on the ground that a hostile environment claim requires proof that Plaintiffs personally experienced harassment because of their race
- Fifth Circuit: Cross-category harassment evidence might be persuasive depending on the nature of the evidence, but the evidence was not probative here



United States v. Portillo-Munoz, 643 F.3d 437 (5th Cir. 2011)



- 18 U.S.C. §922(g)(5) forbids illegal aliens from possessing firearms
- Whether Portillo-Munoz was one of "the people" allowed to "keep and bear arms" under the 2nd Amendment
- Fifth Circuit held that illegal aliens are not protected by the Second Amendment
- Distinction between rights offered by the Second and Fourth Amendments
- Congress has greater leeway to regulate the activities of illegal aliens than it does to regulate its citizens, and that Congress often makes laws that distinguish between citizens and aliens and between lawful and illegal aliens