

RECENT FEDERAL CASES OF INTEREST TO GOVERNMENTAL ENTITIES



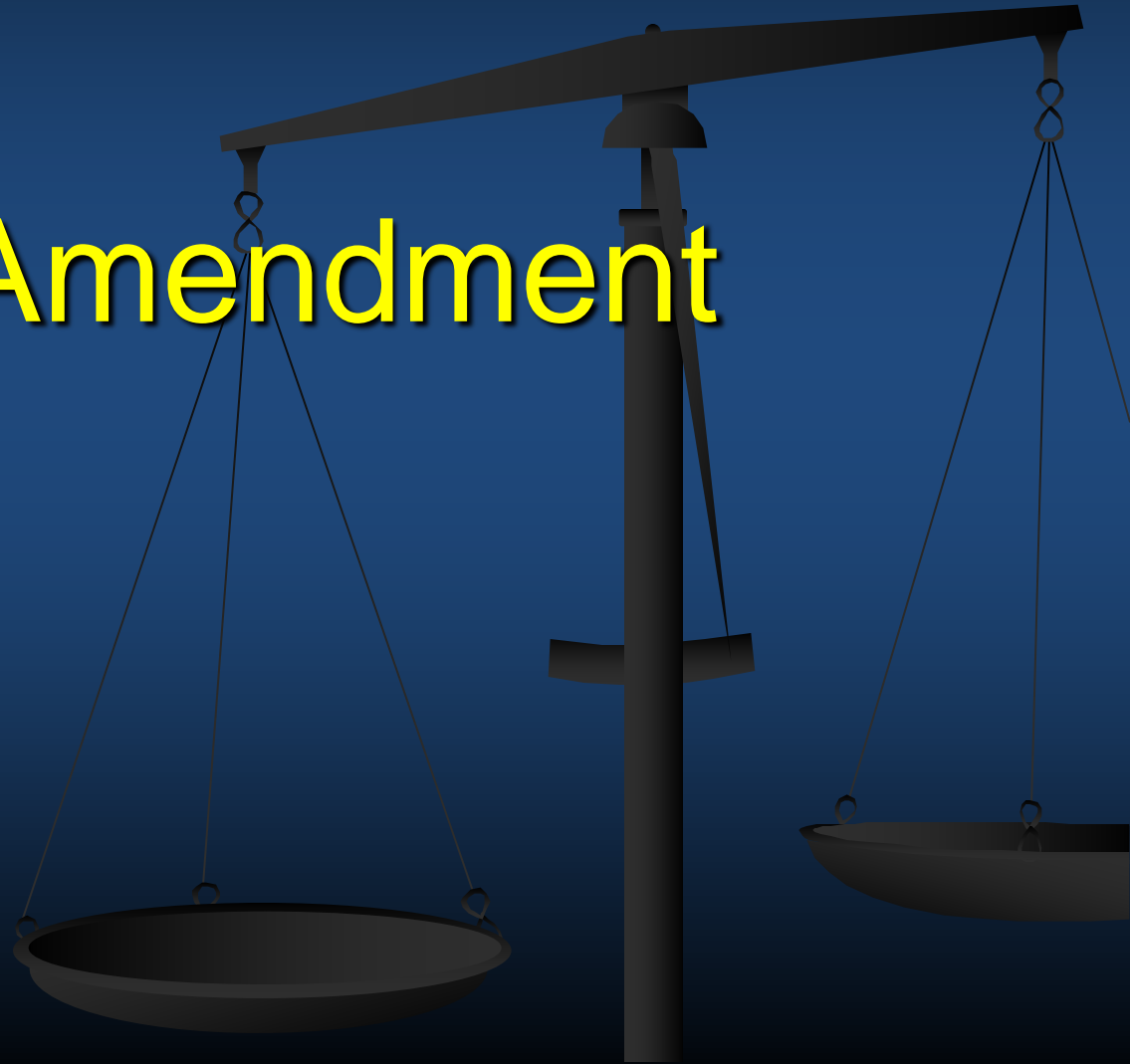
RANDY MONTGOMERY
D. Randall Montgomery & Associates P.L.L.C.
Rmontgomery@drmlawyers.com

**TEXAS CITY ATTORNEYS ASSOCIATION
2017 SUMMER CONFERENCE
SOUTH PADRE ISLAND, TEXAS
JUNE 14-16, 2017**



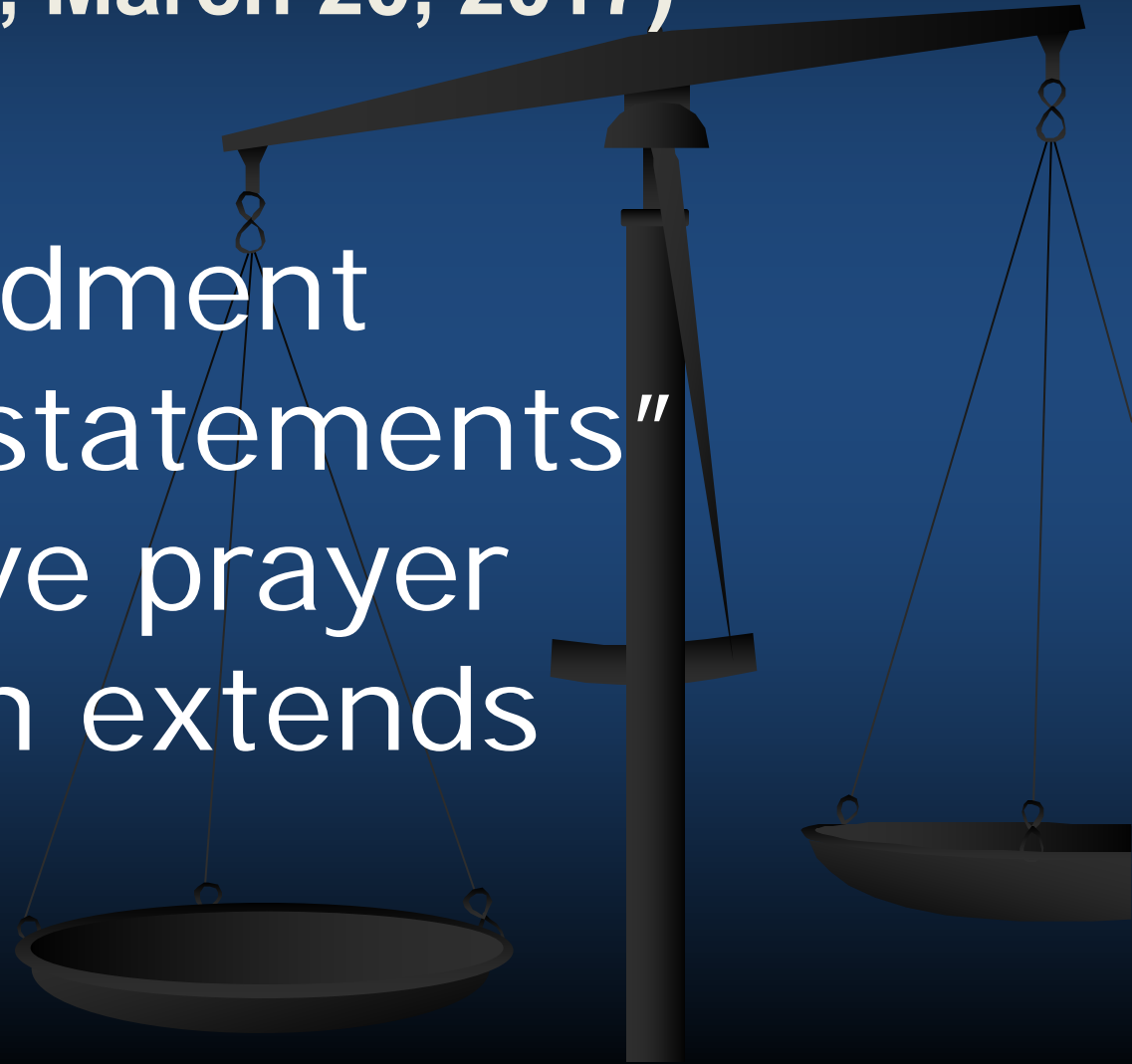


First Amendment



American Humanist Assoc. v. Birdville
I.S.D. – F.3d – No. 15-11067 c/w 16-11220
(5th Cir., March 20, 2017)

- 1st Amendment
- Prayer, “statements”
- Legislative prayer exception extends



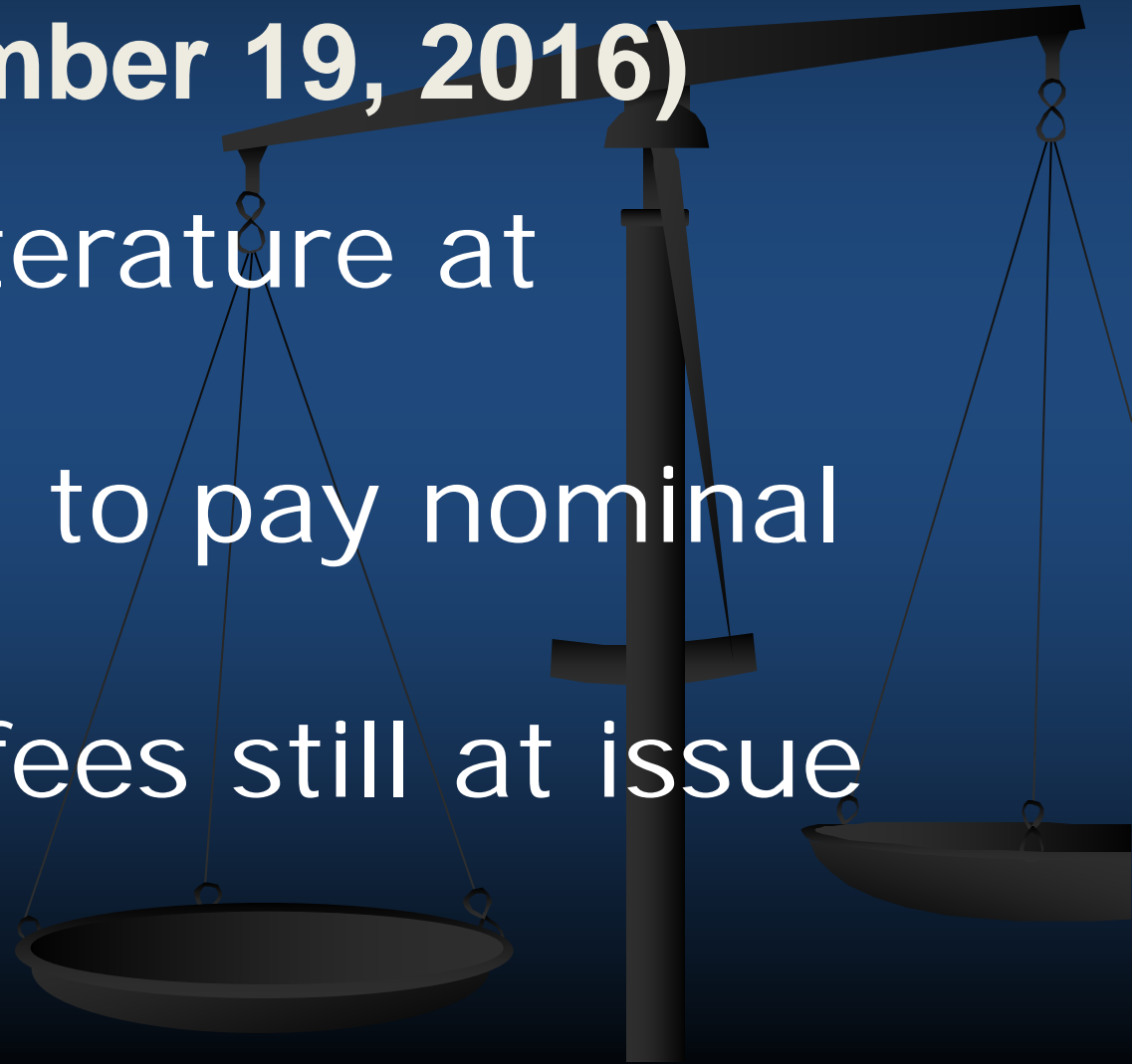
***Moss v. Harris County Constable
Precinct One; Alan Rosen; and Harris
County*** – F.3d – No. 16-20113 (5th Cir.,
March 15, 2017)

- ADA, 1st Amendment
- Terminated while on leave for surgery
- Political opponent went beyond
- FMLA leave
- Not qualified
- Need evidence of protected speech

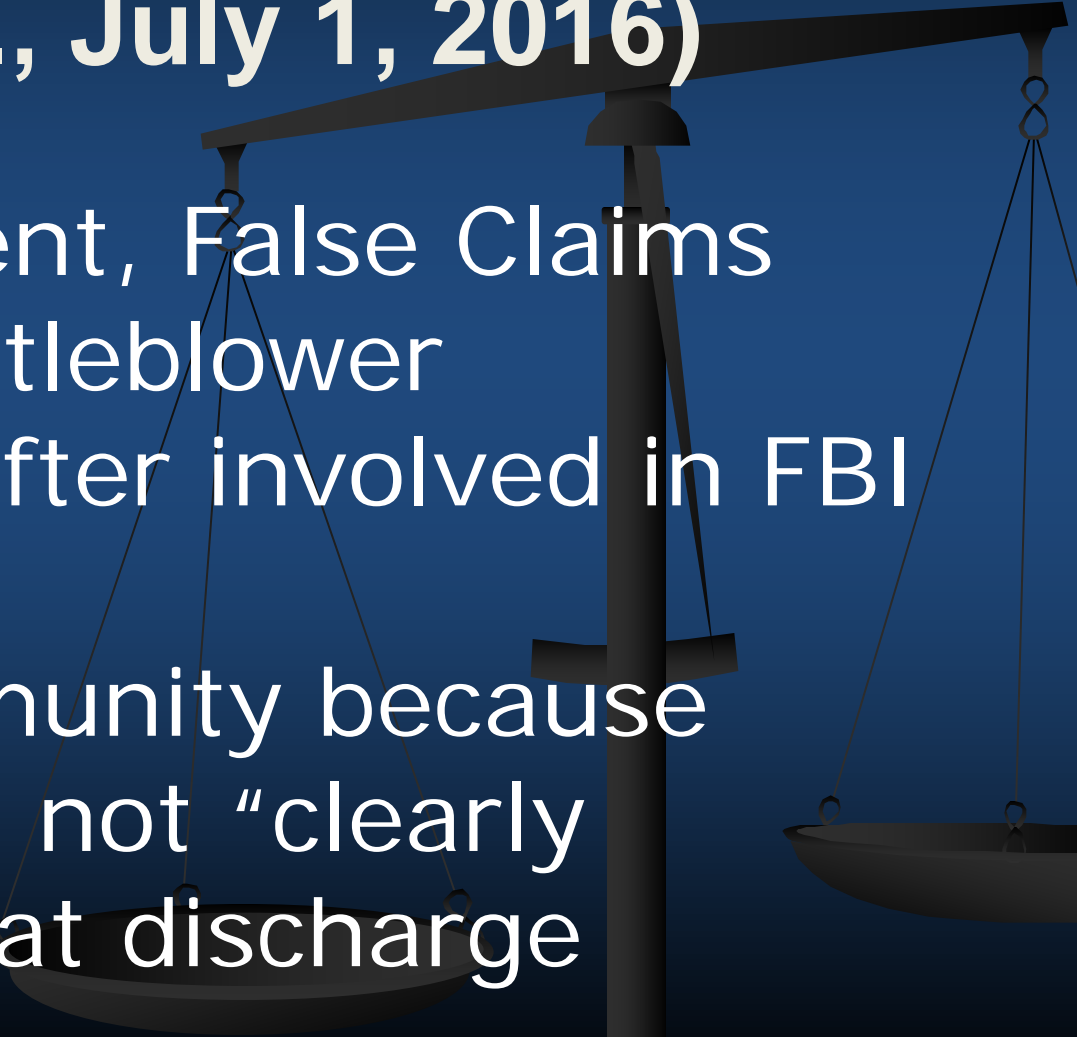


Grisham v. City of Fort Worth
**F.3d – No. 15-10960 (5th Cir.,
September 19, 2016)**

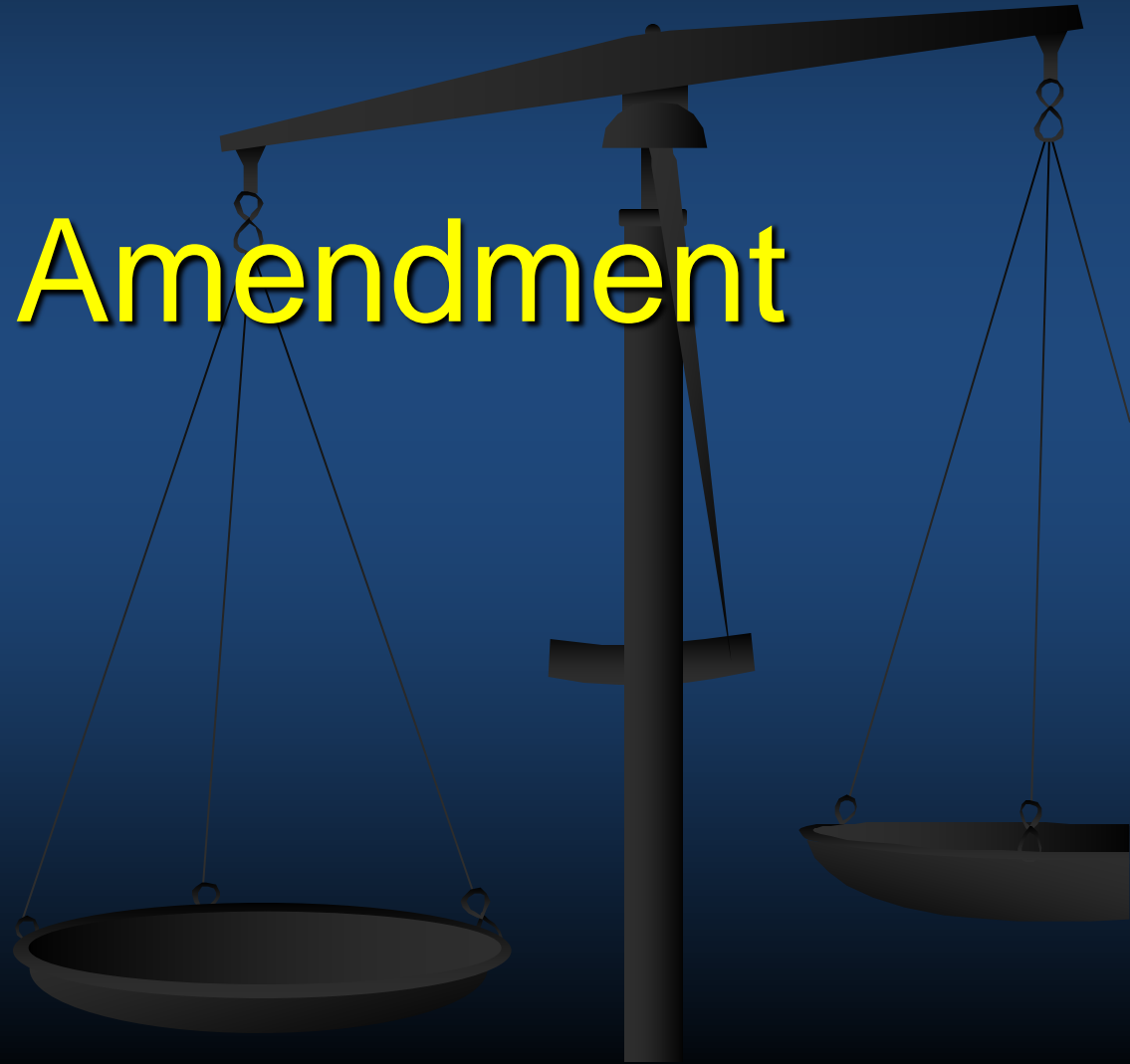
- Religious literature at festival
- City agreed to pay nominal damages
- Attorney's fees still at issue



Howell v. Town of Ball
F.3d – No. 15-30552
(5th Cir., July 1, 2016)

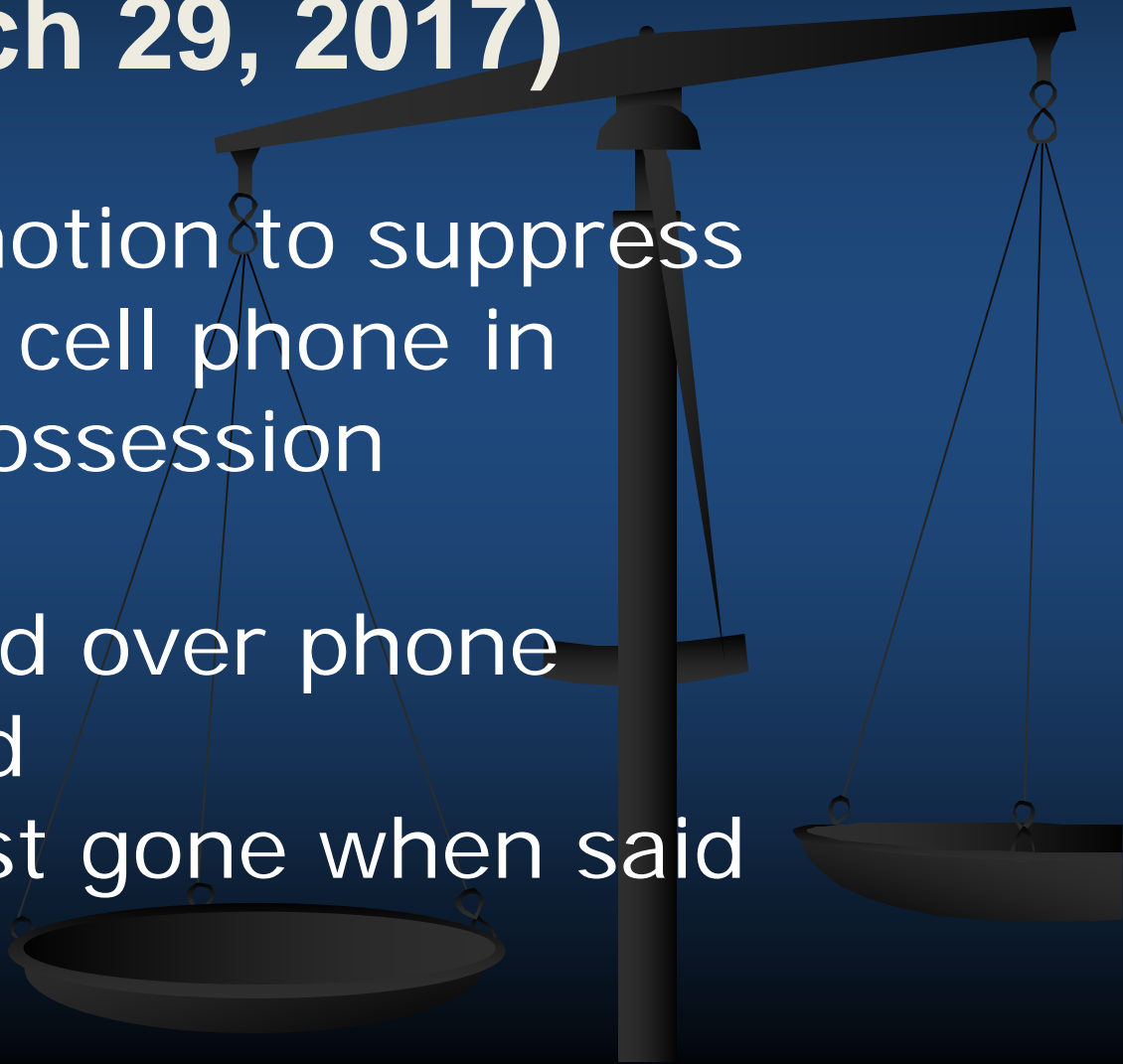
- 1st Amendment, False Claims Act and Whistleblower
 - Terminated after involved in FBI investigation
 - Qualified immunity because right at issue not “clearly established” at discharge
- 

Fourth Amendment



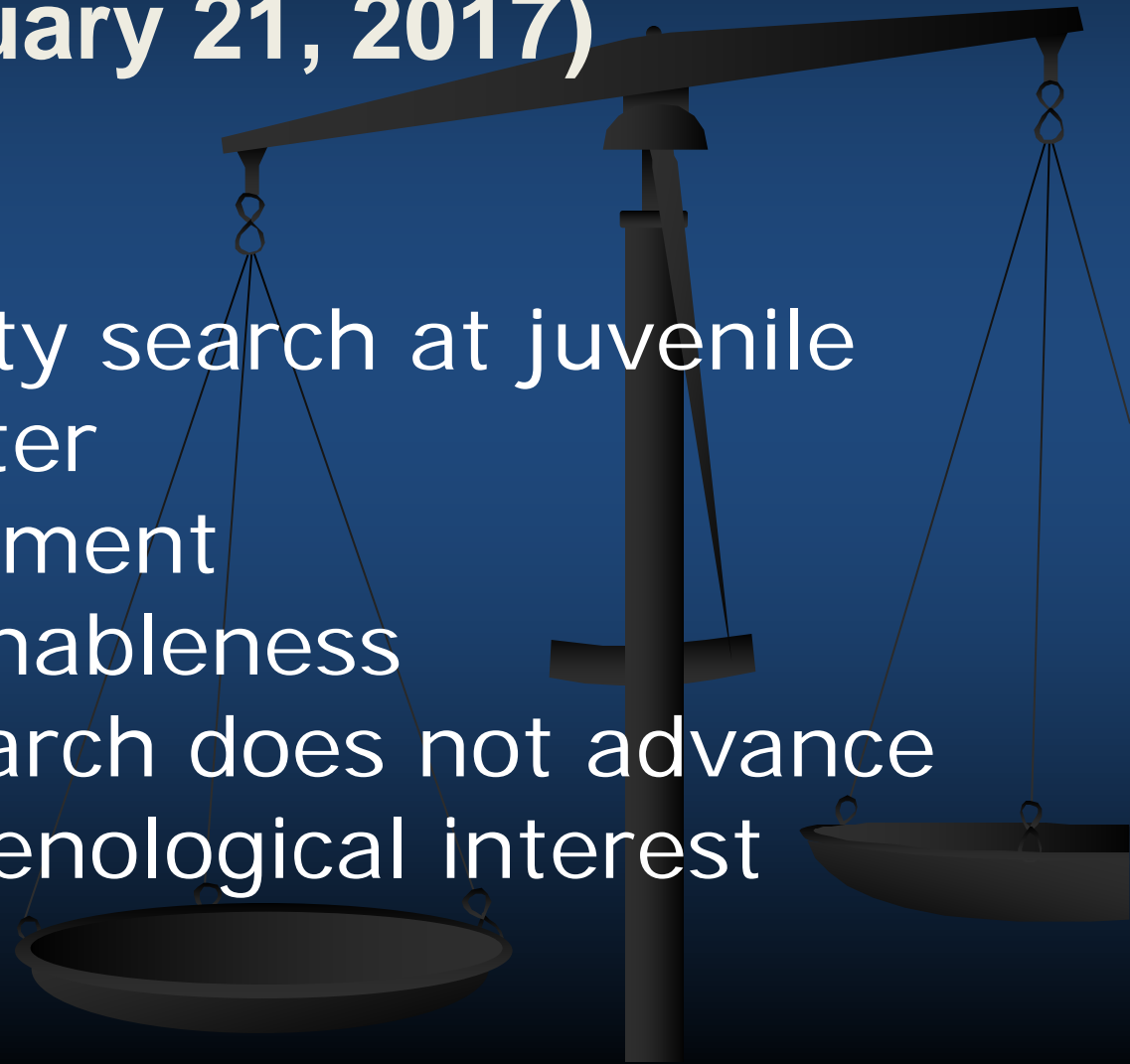
United States v. Escamilla Jr.
F.3d – No. 16-40333 (5th Cir.,
March 29, 2017)

- Traffic stop- motion to suppress
- Post search of cell phone in Defendant's possession
- Factors used
- Silently handed over phone
- Consent ended
- Privacy interest gone when said phone not his



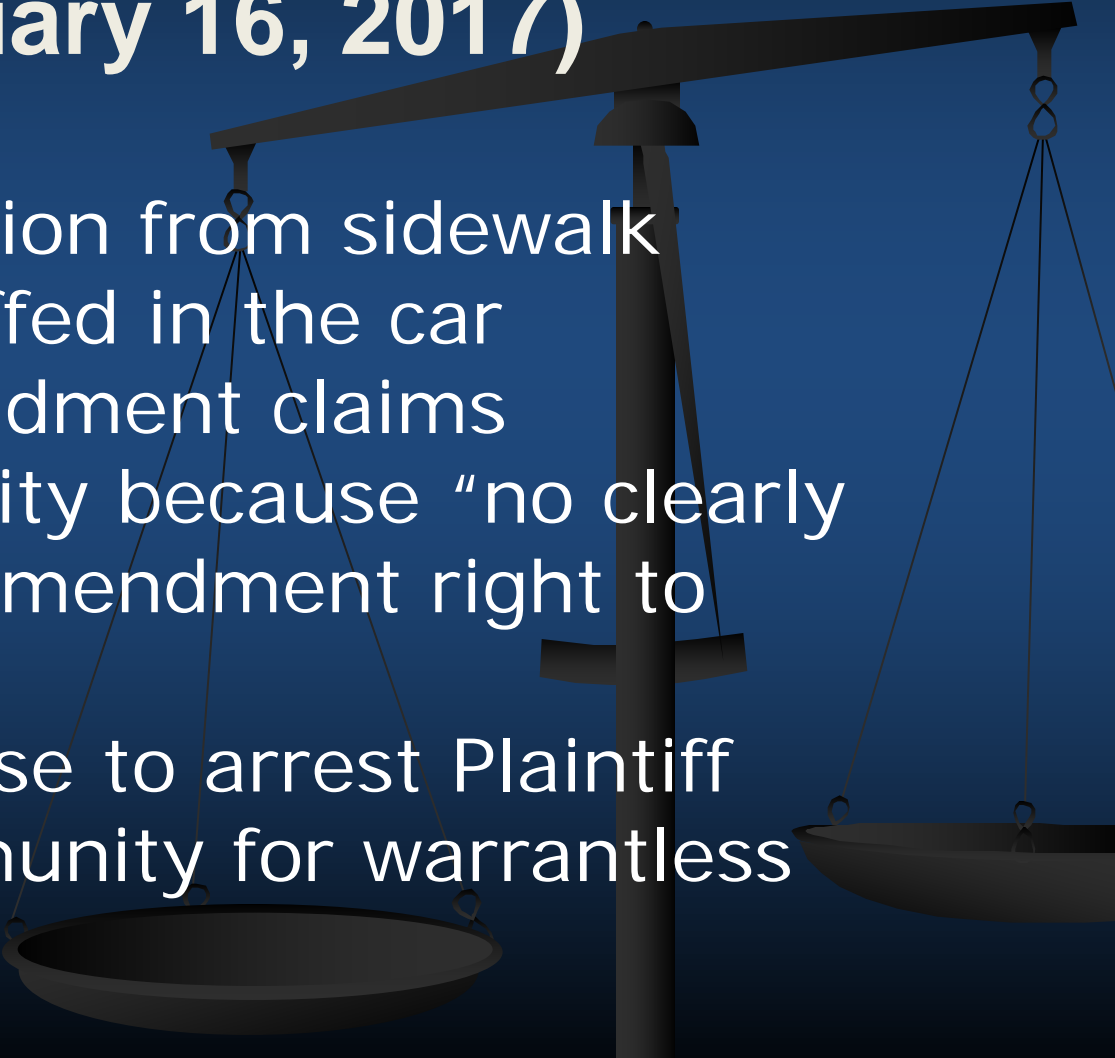
Mabry v. Lee County
**F.3d – No. 16-60231 (5th Cir.,
February 21, 2017)**

- School fight
- Strip and cavity search at juvenile detention center
- Fourth Amendment
- Test for reasonableness
- Must show search does not advance a legitimate penological interest



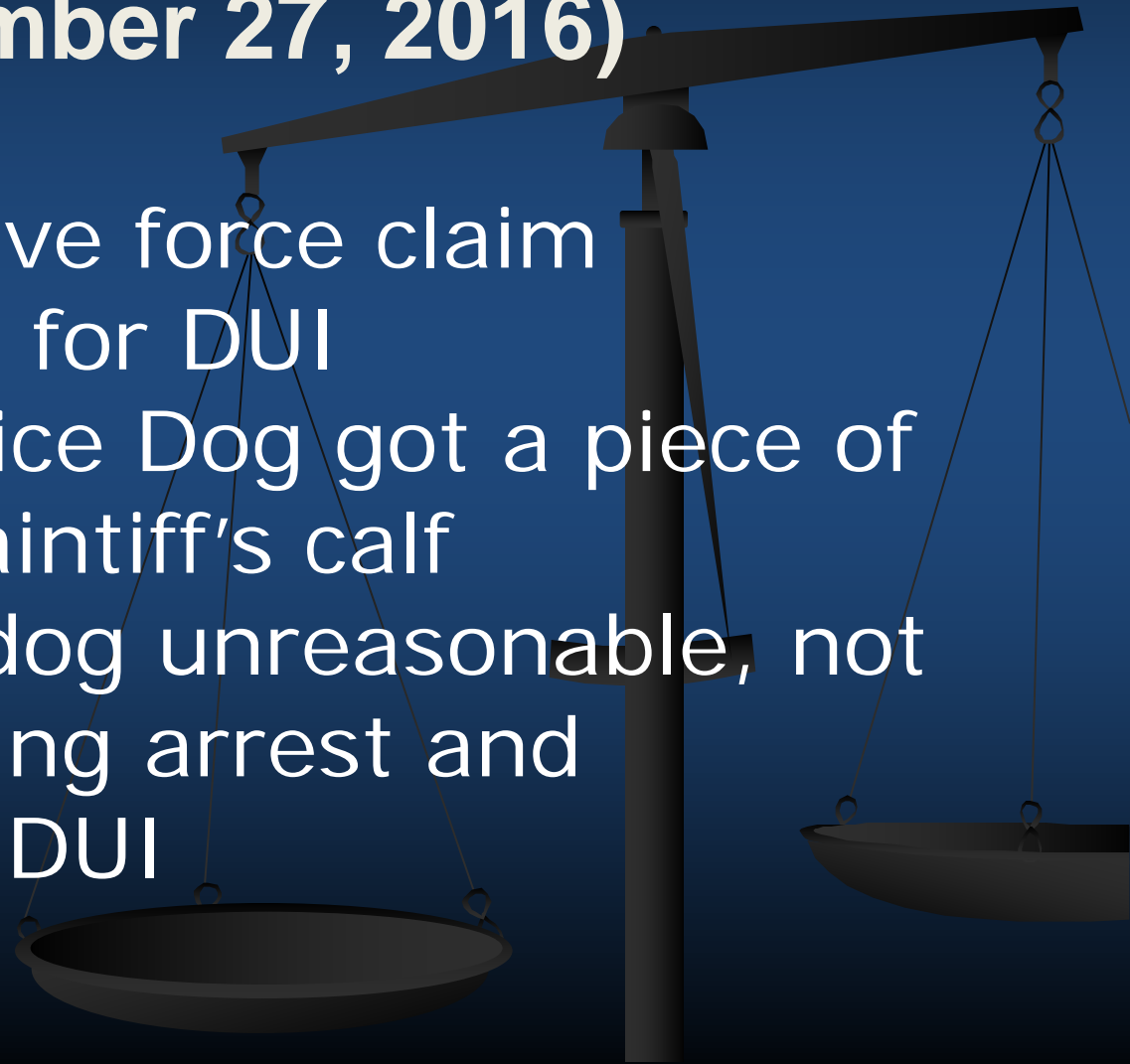
Turner v. Driver

**F.3d – No. 16-10312 (5th Cir.,
February 16, 2017)**

- Video police station from sidewalk
 - Arrested and cuffed in the car
 - 1st and 4th Amendment claims
 - Qualified immunity because “no clearly established 1st Amendment right to record police”
 - No probable cause to arrest Plaintiff
 - No qualified immunity for warrantless arrest
- 

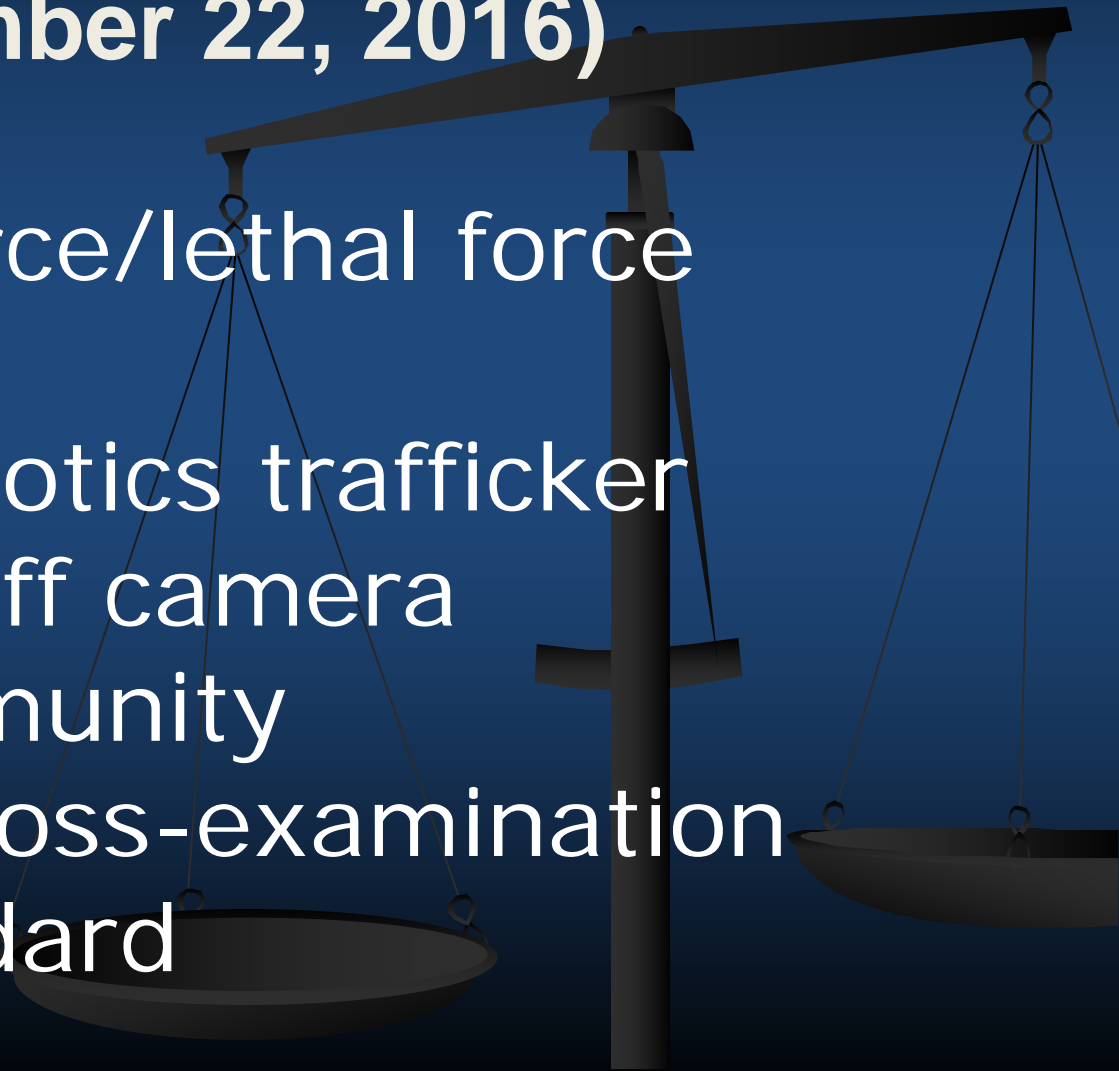
Cooper v. Brown
**F.3d – No. 16-60042 (5th Cir.,
December 27, 2016)**

- §1983 excessive force claim
- Ran after stop for DUI
- Sunny the Police Dog got a piece of the action- Plaintiff's calf
- Use of police dog unreasonable, not actively resisting arrest and misdemeanor DUI



Orr v. Copeland
F.3d – No. 16-50023 (5th Cir.,
December 22, 2016)

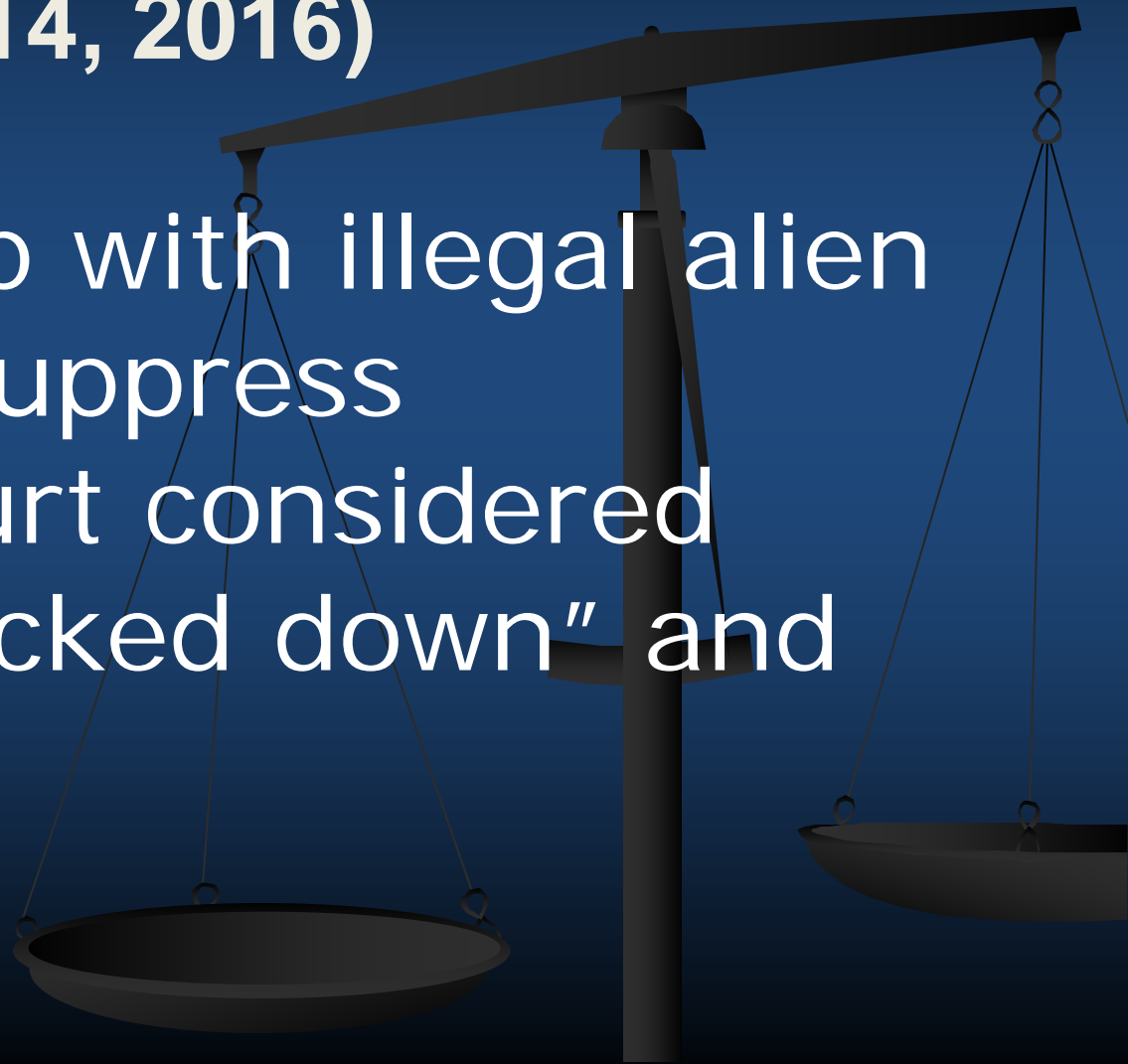
- Excessive force/lethal force
- 3 shots fired
- Possible narcotics trafficker
- On camera/off camera
- Qualified immunity
- Subject to cross-examination
not the standard



United States v. Ramirez

F.3d – No. 15-40887 (5th Cir., October 14, 2016)

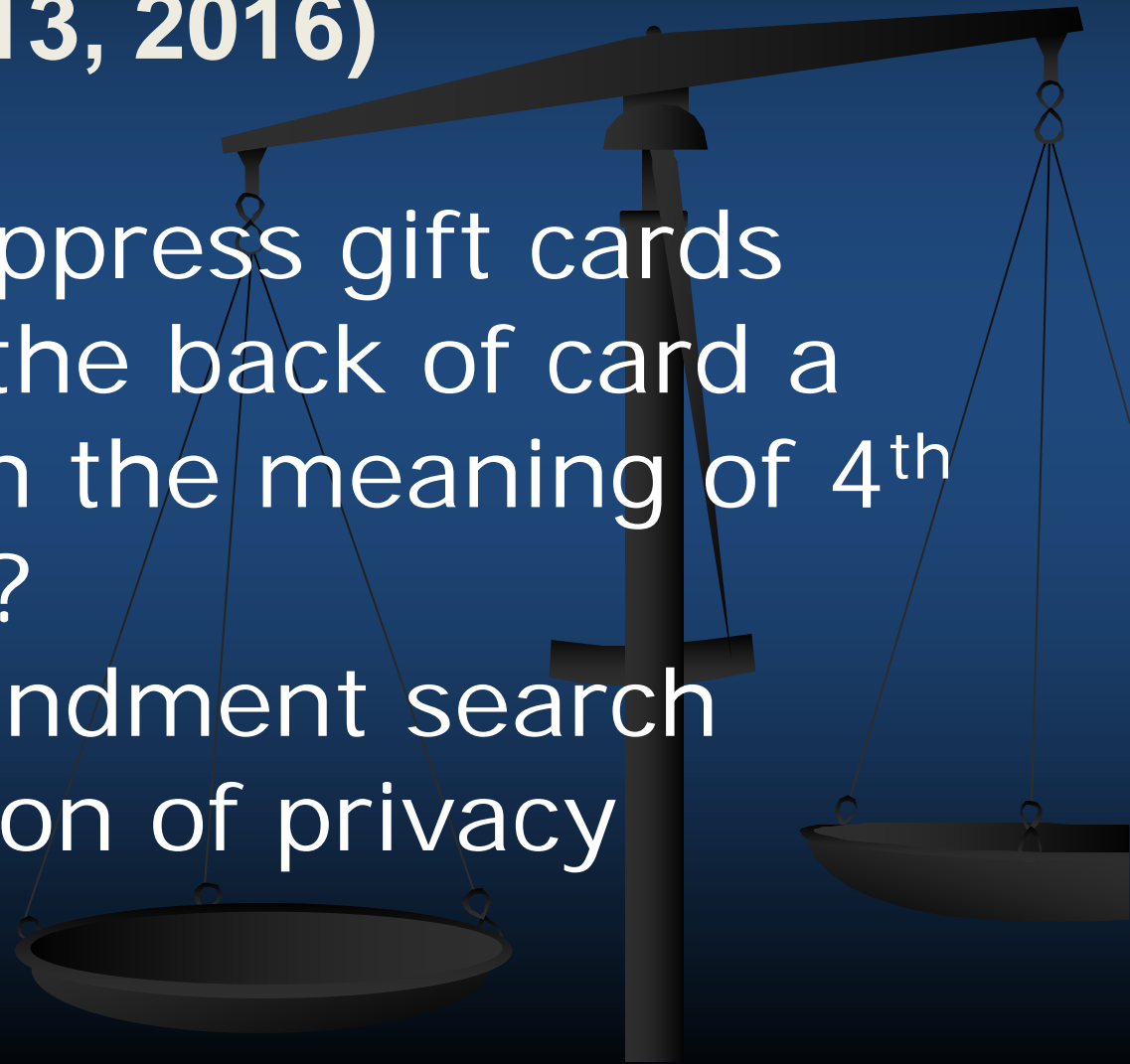
- Vehicle stop with illegal alien
- Motion to suppress
- Factors Court considered
- “Kind of ducked down” and swerved



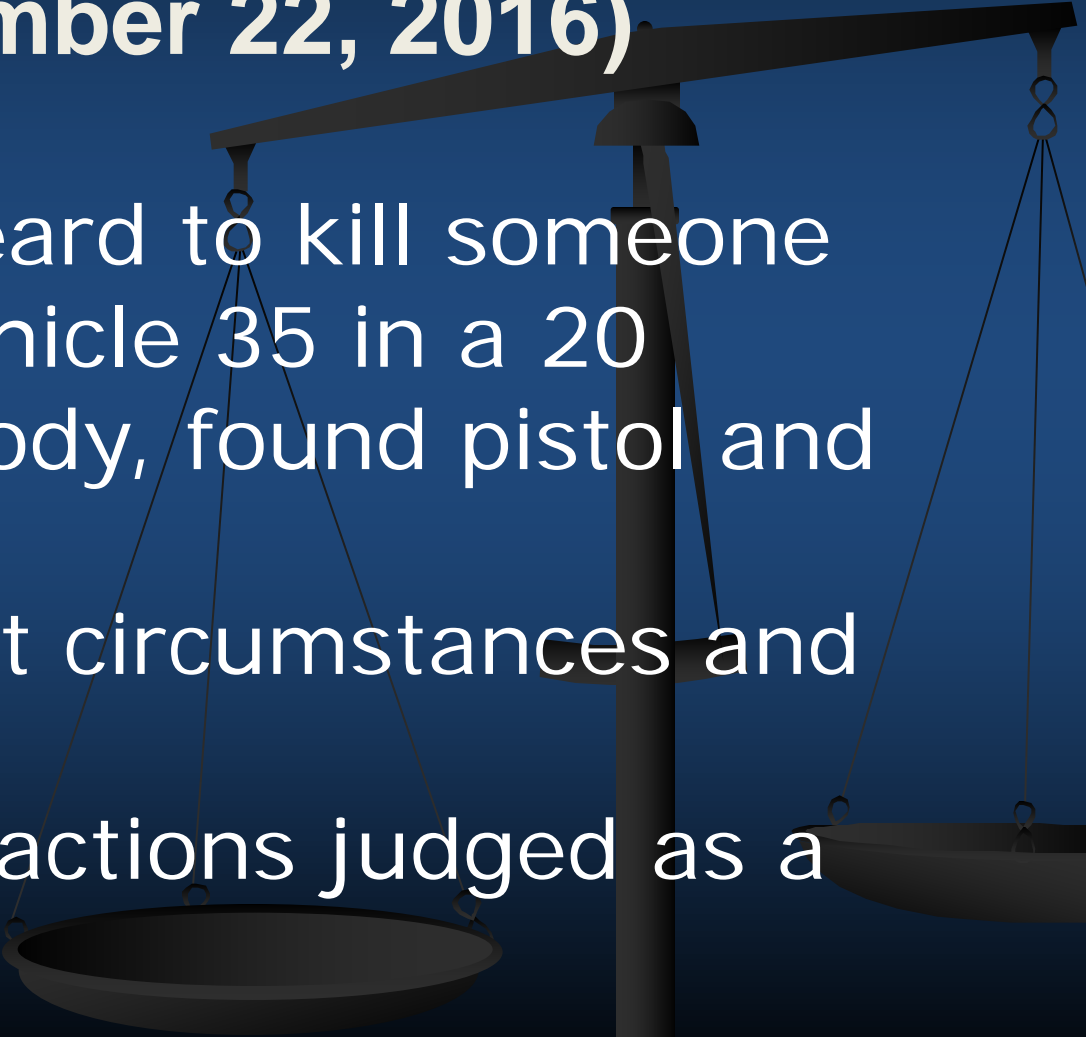
United States v. Turner

F.3d – No. 15-50788 (5th Cir., October 13, 2016)

- Motion to suppress gift cards
- Is scanning the back of card a search within the meaning of 4th Amendment?
- Not 4th Amendment search
- No expectation of privacy



United States v. Toussaint
**F.3d – No. 15-30748 (5th Cir.,
September 22, 2016)**

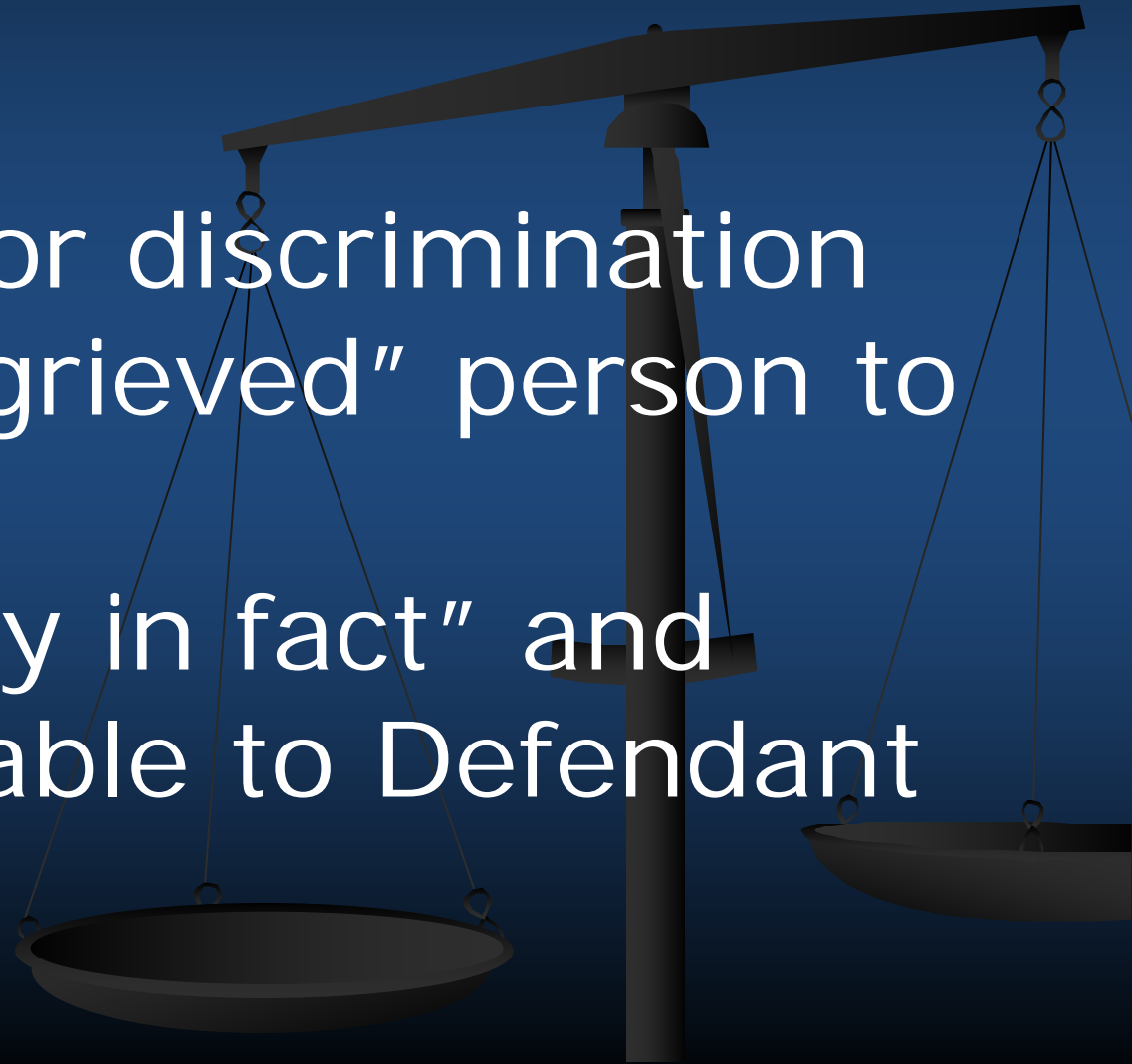
- FBI wiretap heard to kill someone
 - Pulled over vehicle 35 in a 20
 - Took into custody, found pistol and crack cocaine
 - Argued exigent circumstances and speeding
 - Court-officers actions judged as a whole
- 

Fair Housing Act



Bank of America Corp. v. City of Miami,
15-1111 – S.Ct. – (May 1, 2017)

- FHA Case for discrimination
- Who is “aggrieved” person to bring suit?
- Need “injury in fact” and fairly traceable to Defendant



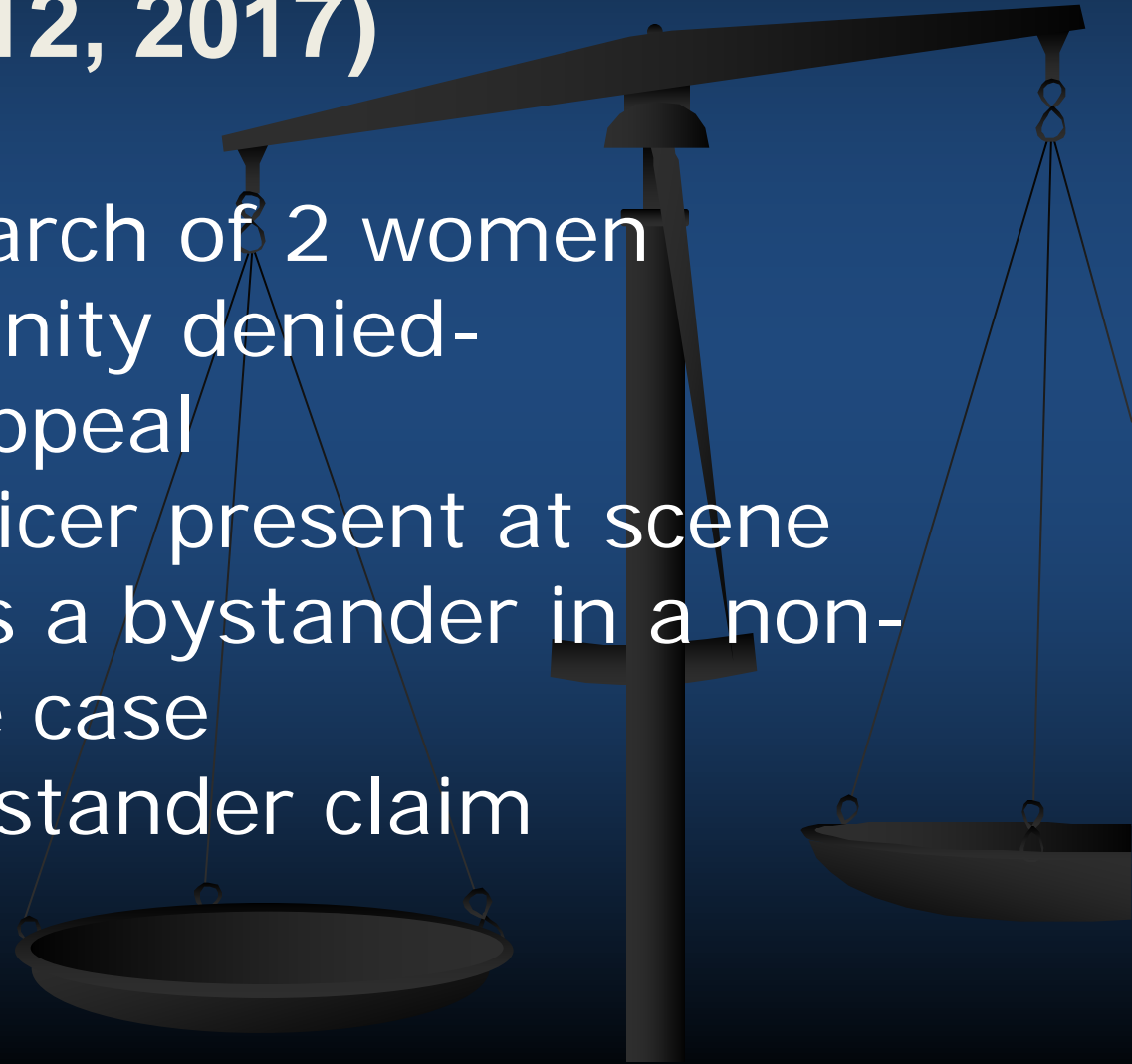
Section 1983



Hamilton v. Kindred

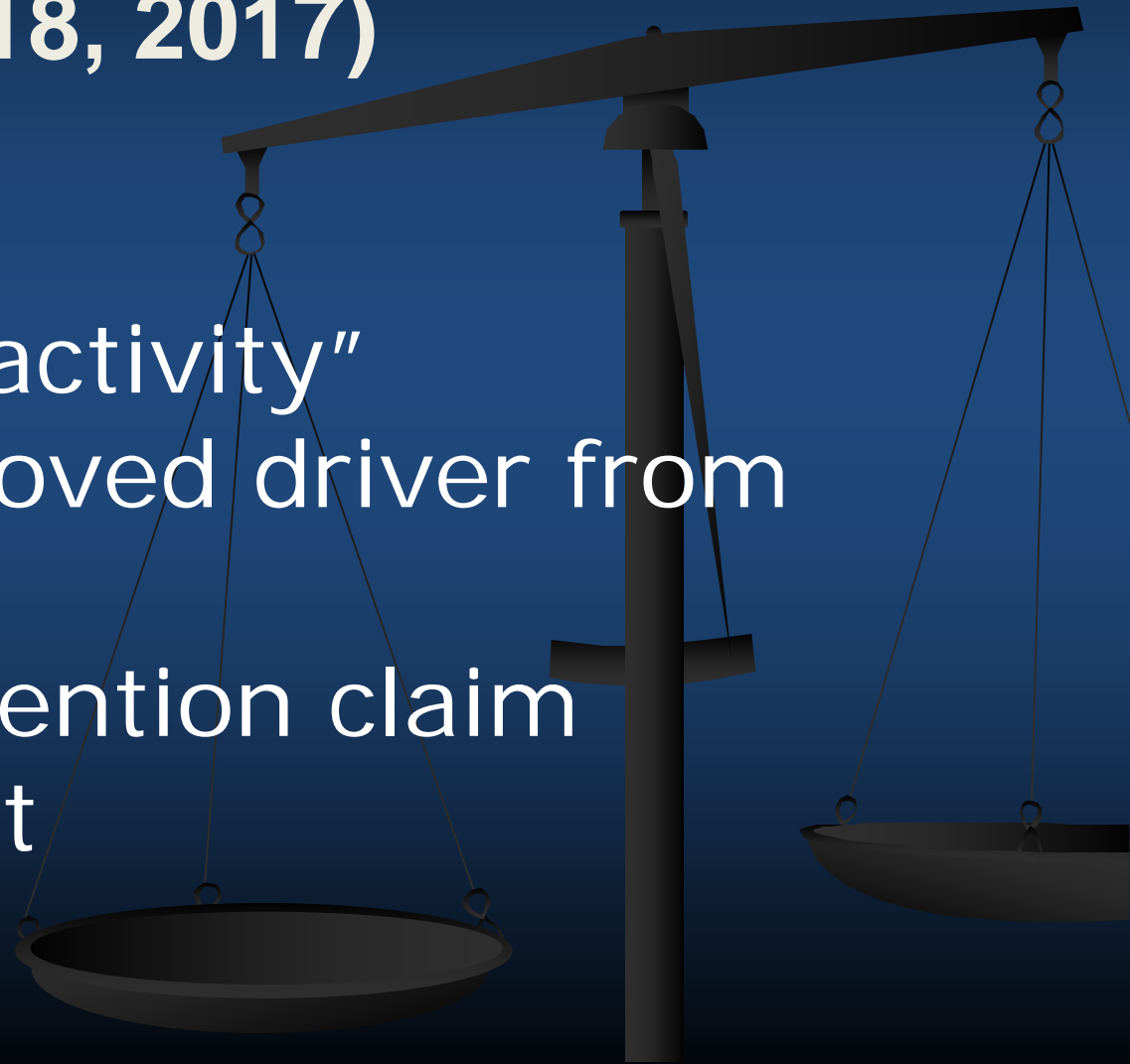
F.3d – No. 16-40611 (5th Cir., January 12, 2017)

- Body cavity search of 2 women
- Qualified immunity denied-interlocutory appeal
- Whether an officer present at scene can be liable as a bystander in a non-excessive force case
- Elements of bystander claim
- Liable if knew



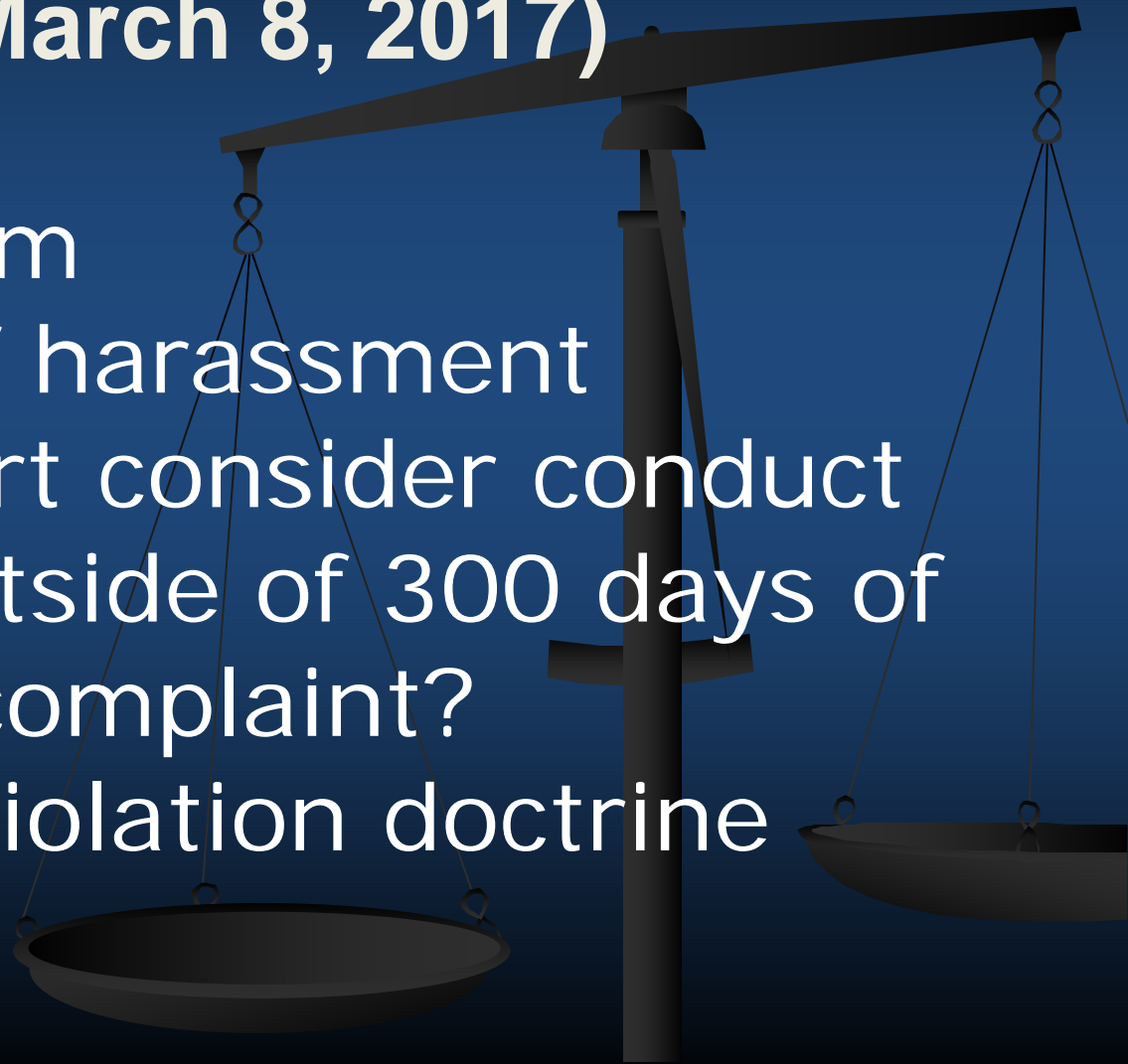
Alexander v. City of Round Rock
F.3d – No. 16-50839 (5th Cir., April
18, 2017)

- Stray cat
- “Suspicious activity”
- Forcibly removed driver from car
- Unlawful detention claim
- Did not resist



***Heath v. Southern University
System, – F.3d – No. 16-30625 (5th
Cir., March 8, 2017)***

- Title VII Claim
- Campaign of harassment
- Can the Court consider conduct occurring outside of 300 days of filing EEOC complaint?
- Continuing violation doctrine



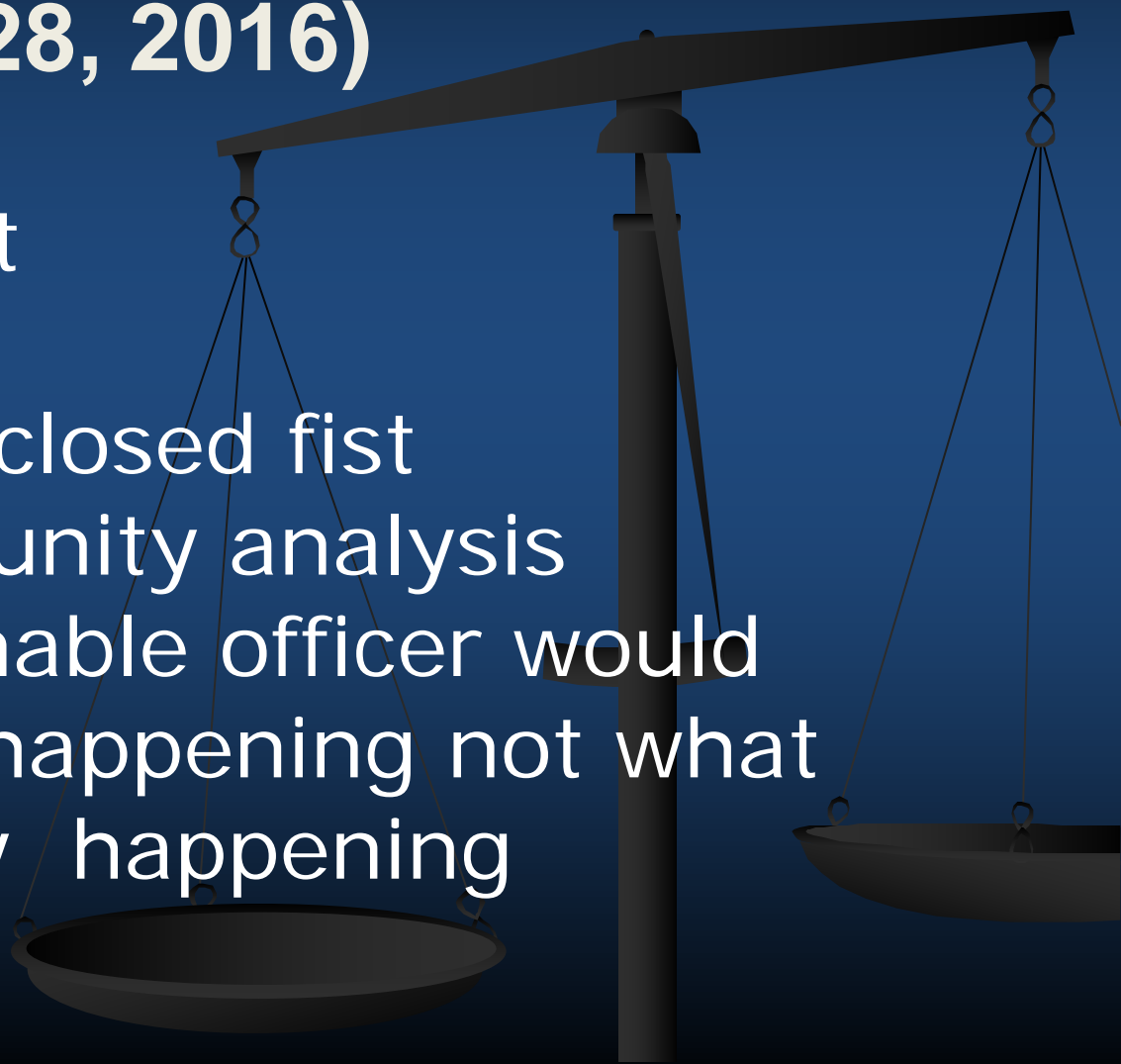
Qualified Immunity



Griggs v. Brewer

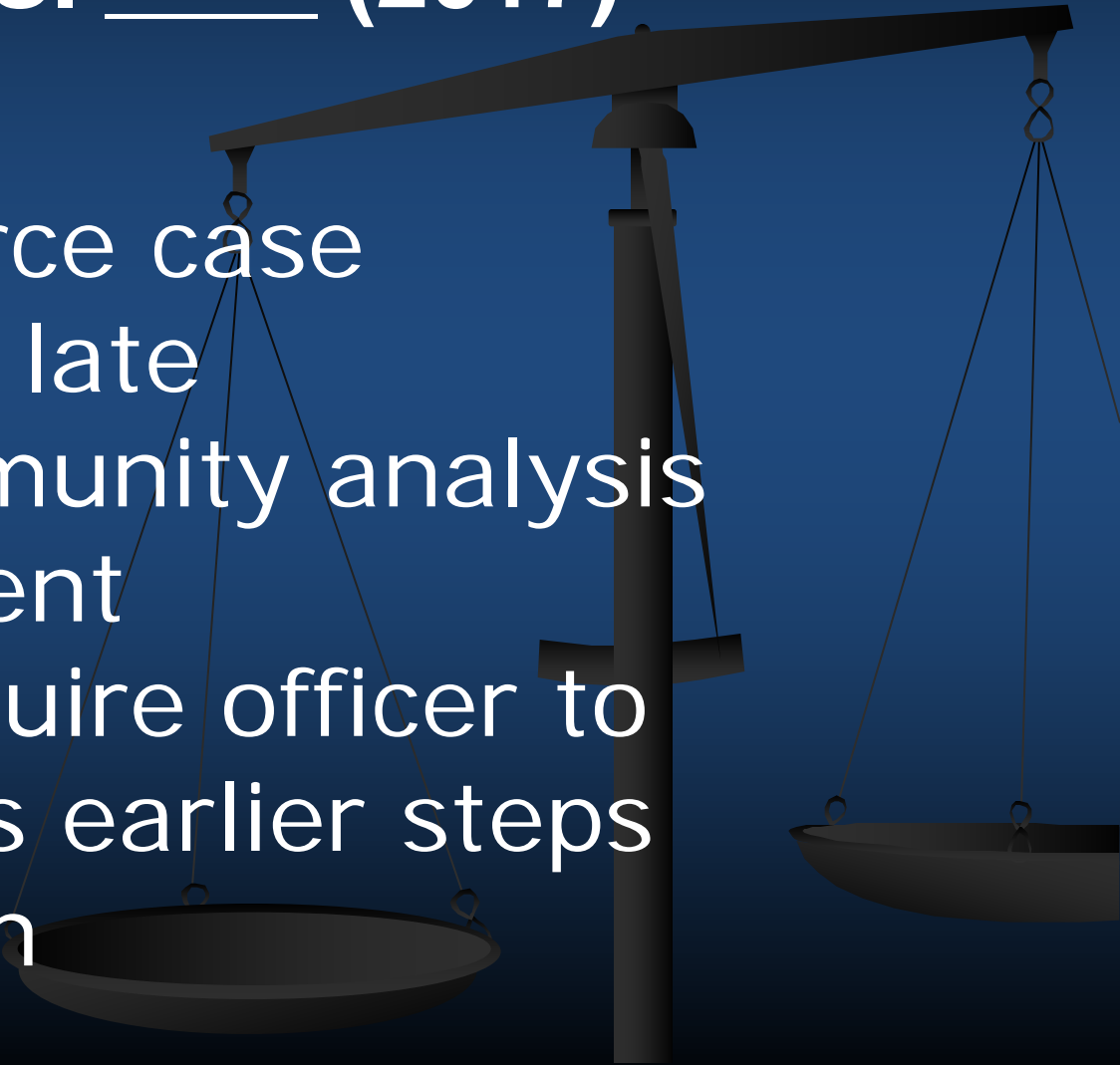
F.3d – No. 16-10221 (5th Cir., October 28, 2016)

- Ran a red light
- Take down
- Punched with closed fist
- Qualified immunity analysis
- What a reasonable officer would perceive was happening not what was ultimately happening

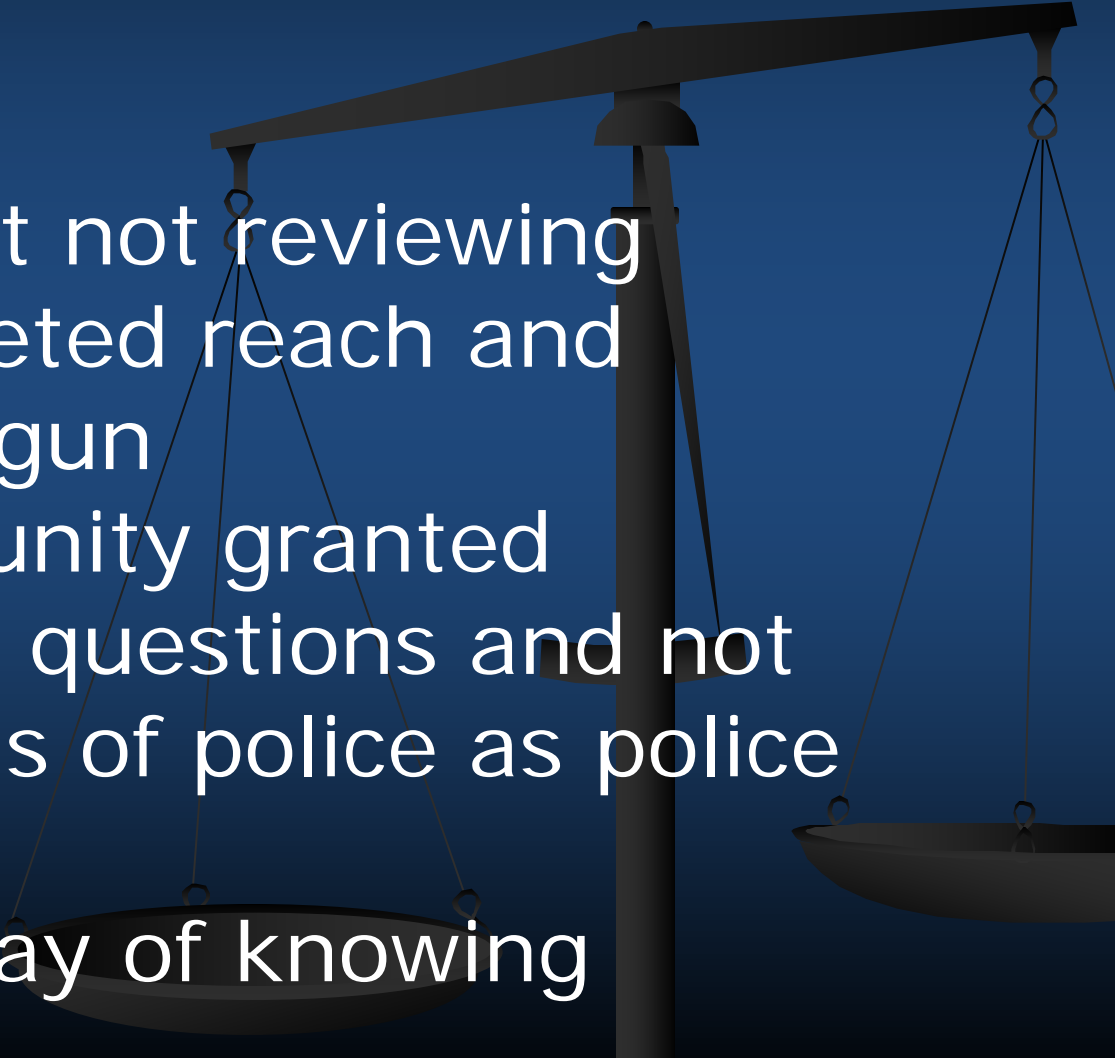


Ray White, et al. v. Daniel T. Pauly 580 U.S. ____ (2017)

- Excessive force case
- Officer came late
- Qualified immunity analysis
- 4th Amendment
- Does not require officer to second guess earlier steps already taken

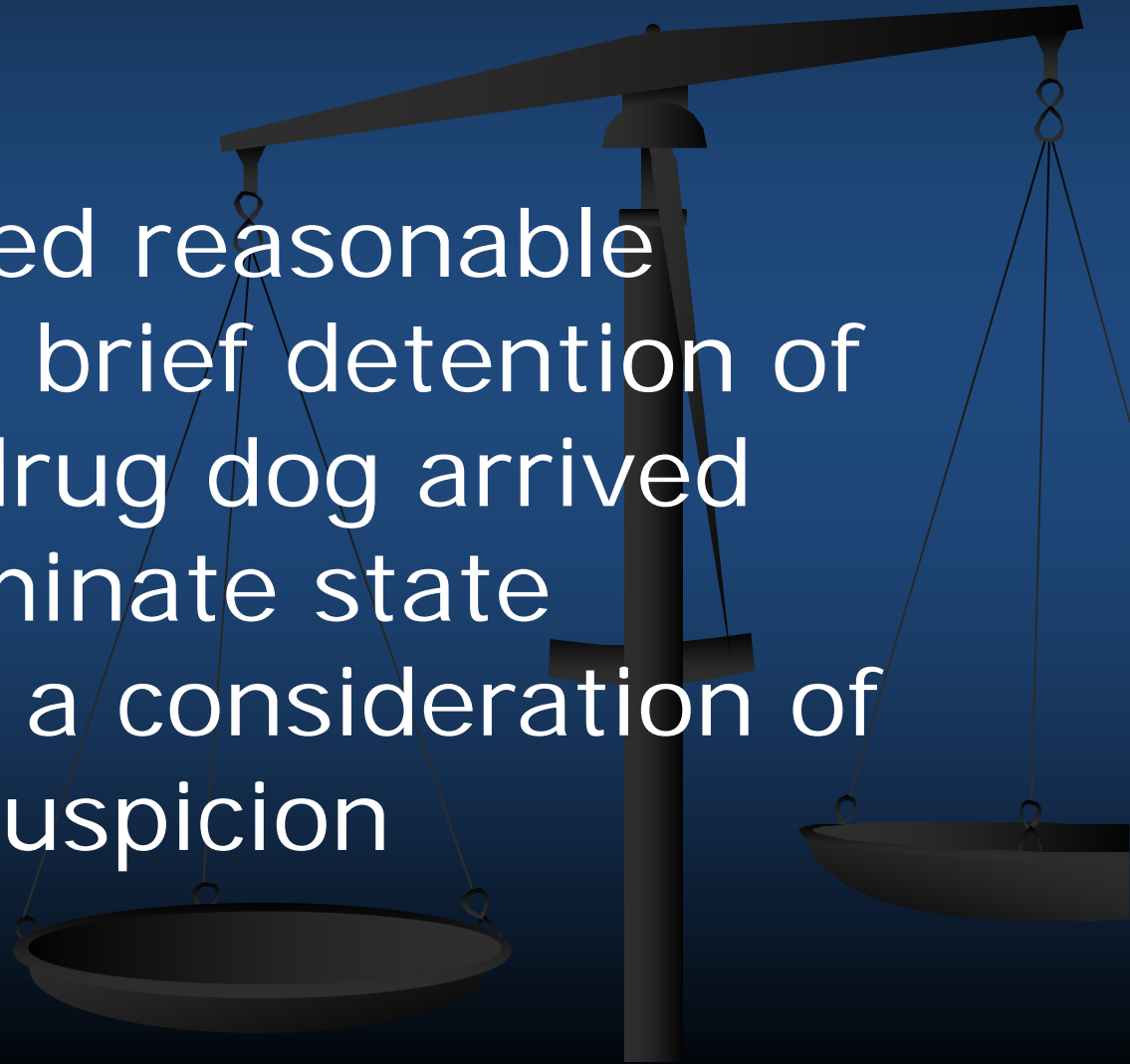


Salazar-Limon v. City of Houston, 15-1406, – S. Ct. – (April 24, 2017)

- Supreme Court not reviewing
 - Officer interpreted reach and waistband for gun
 - Qualified immunity granted
 - Some feel fact questions and not treating victims of police as police are treated
 - Thomas- no way of knowing
- 

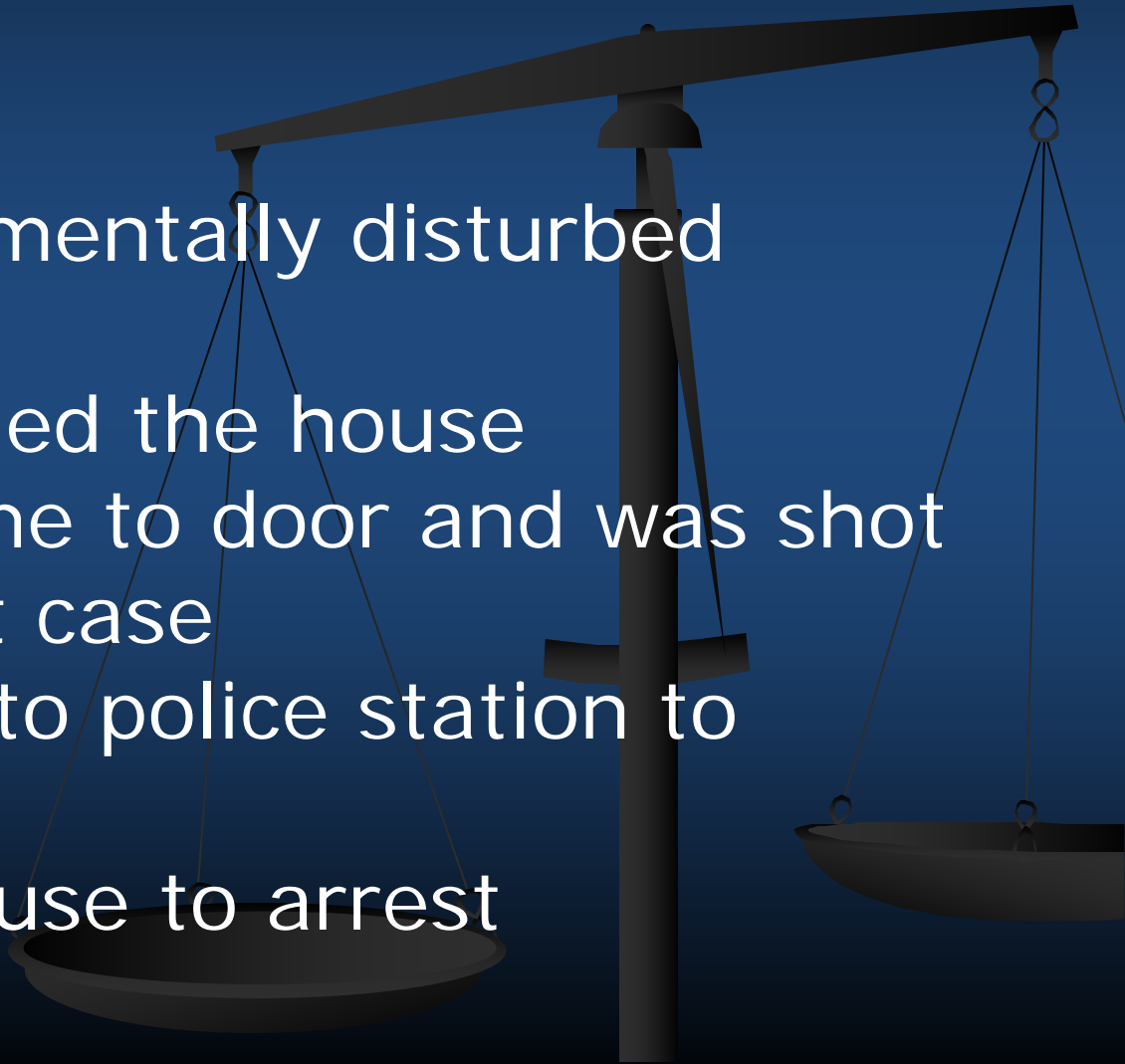
***Lewis v. Vasquez*, 16-805, – S. Ct.
– (April 17, 2017)**

- Officers lacked reasonable suspicion for brief detention of driver until drug dog arrived
- Formally eliminate state residency as a consideration of reasonable suspicion



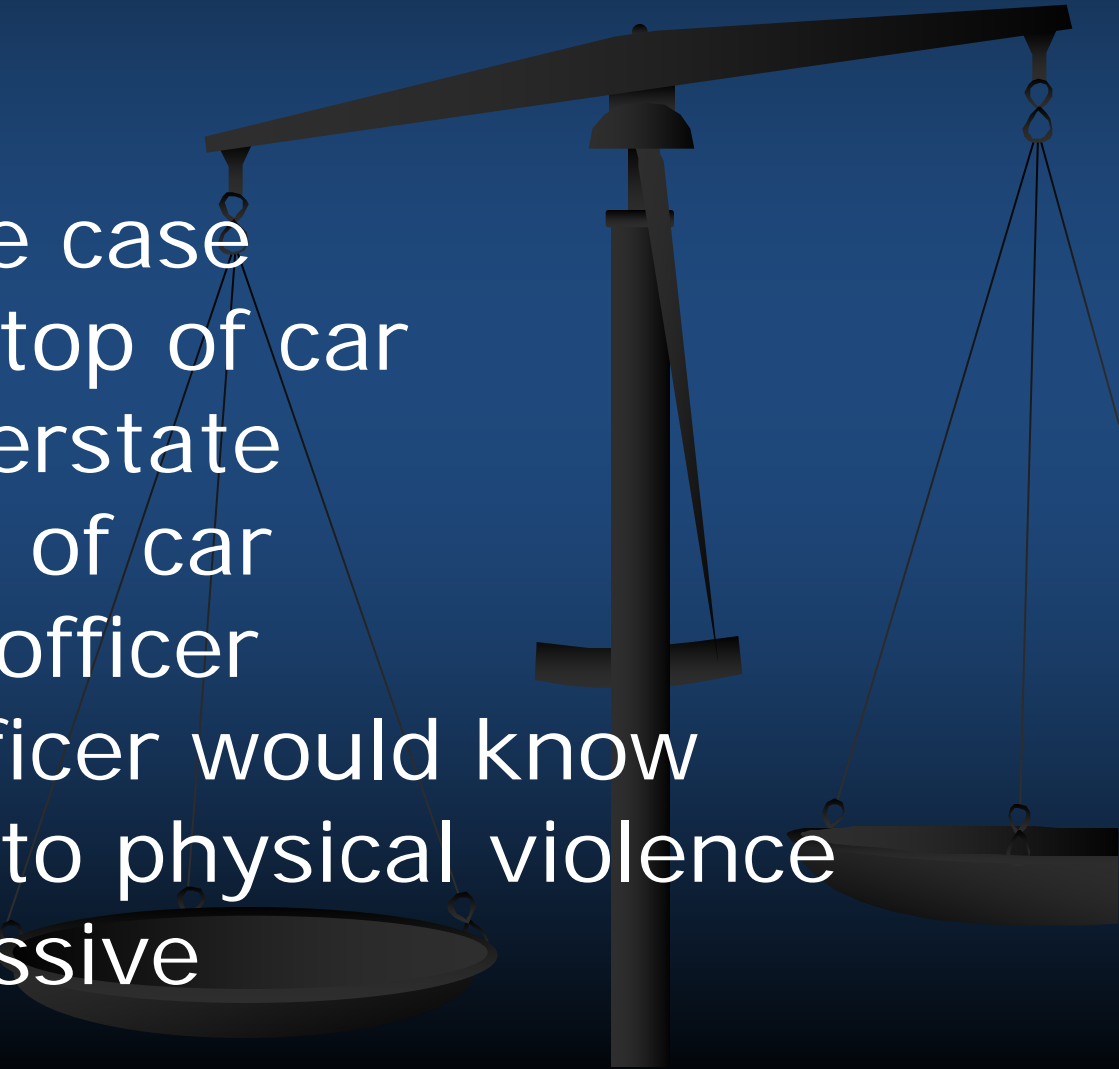
Lincoln v. Barnes, – F.3d – No. 16-10327 (5th Cir., April 20, 2017)

- Call regarding mentally disturbed brother
- SWAT surrounded the house
- Repeatedly came to door and was shot
- 4th Amendment case
- Took daughter to police station to interrogate
- No probable cause to arrest



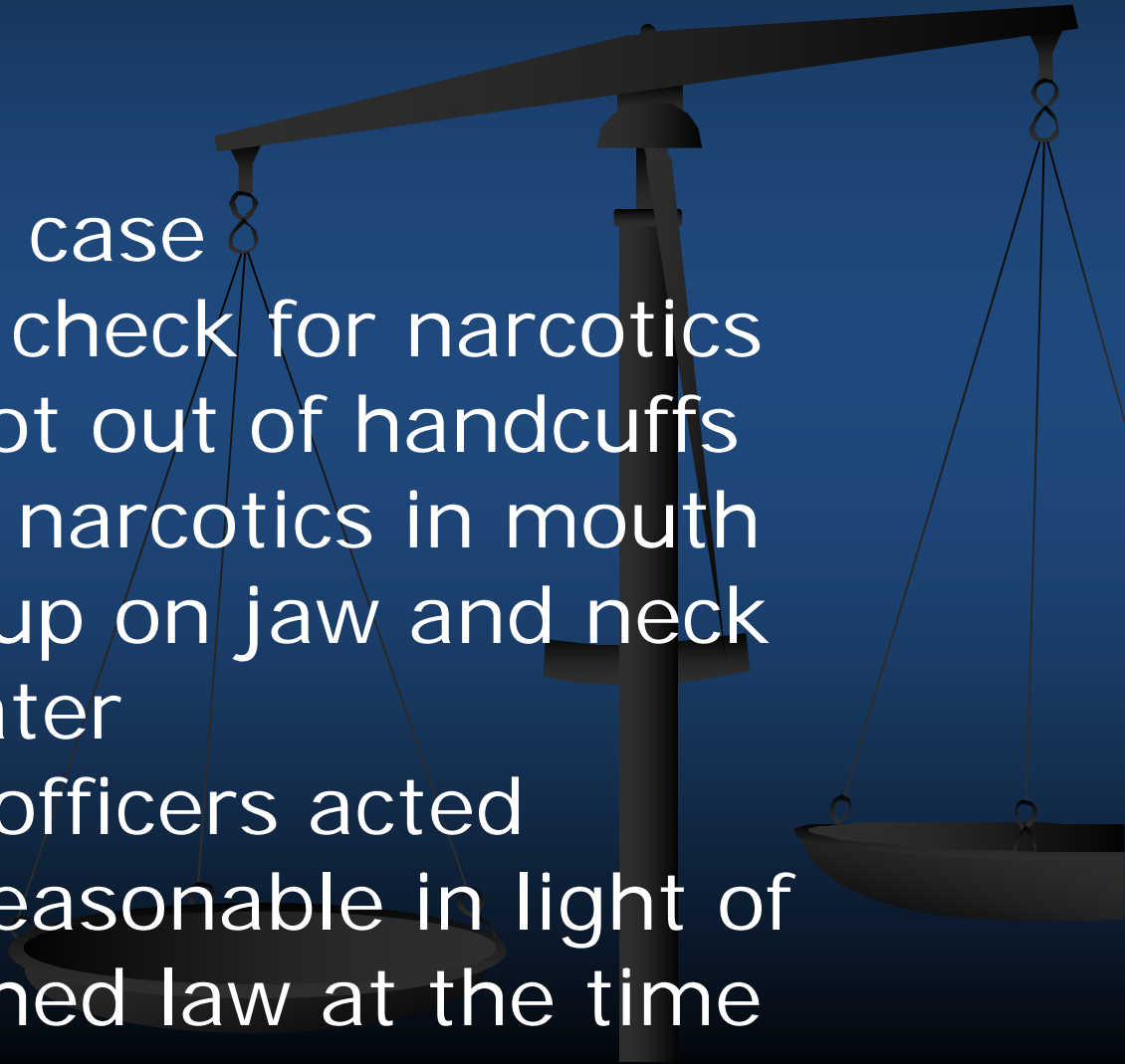
Hanks v. Rogers, – F.3d – No. 15-11295 (5th Cir., April 5, 2017)

- Excessive force case
- Left phone on top of car
- 20 mph on interstate
- Told to get out of car
- Take down by officer
- Reasonable officer would know sudden resort to physical violence would be excessive



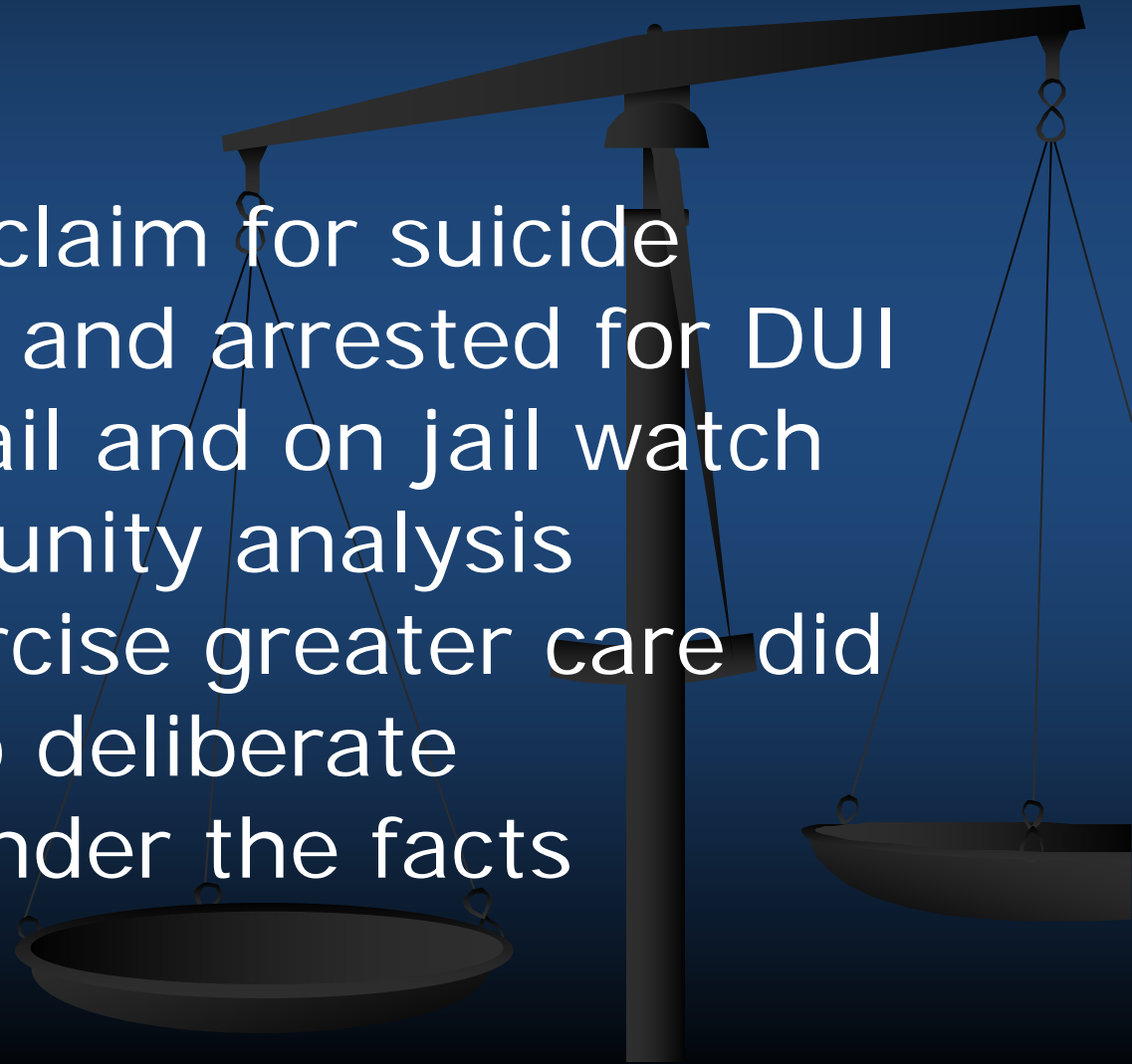
Surratt v. McClarin, – F.3d – No. 15-40486 (5th Cir., March 14, 2017)

- Excessive force case
- Pretext stop to check for narcotics
- Arrested and got out of handcuffs
- Small baggy of narcotics in mouth
- Office pressed up on jaw and neck
- Died 13 days later
- Failed to show officers acted objectively unreasonable in light of clearly established law at the time

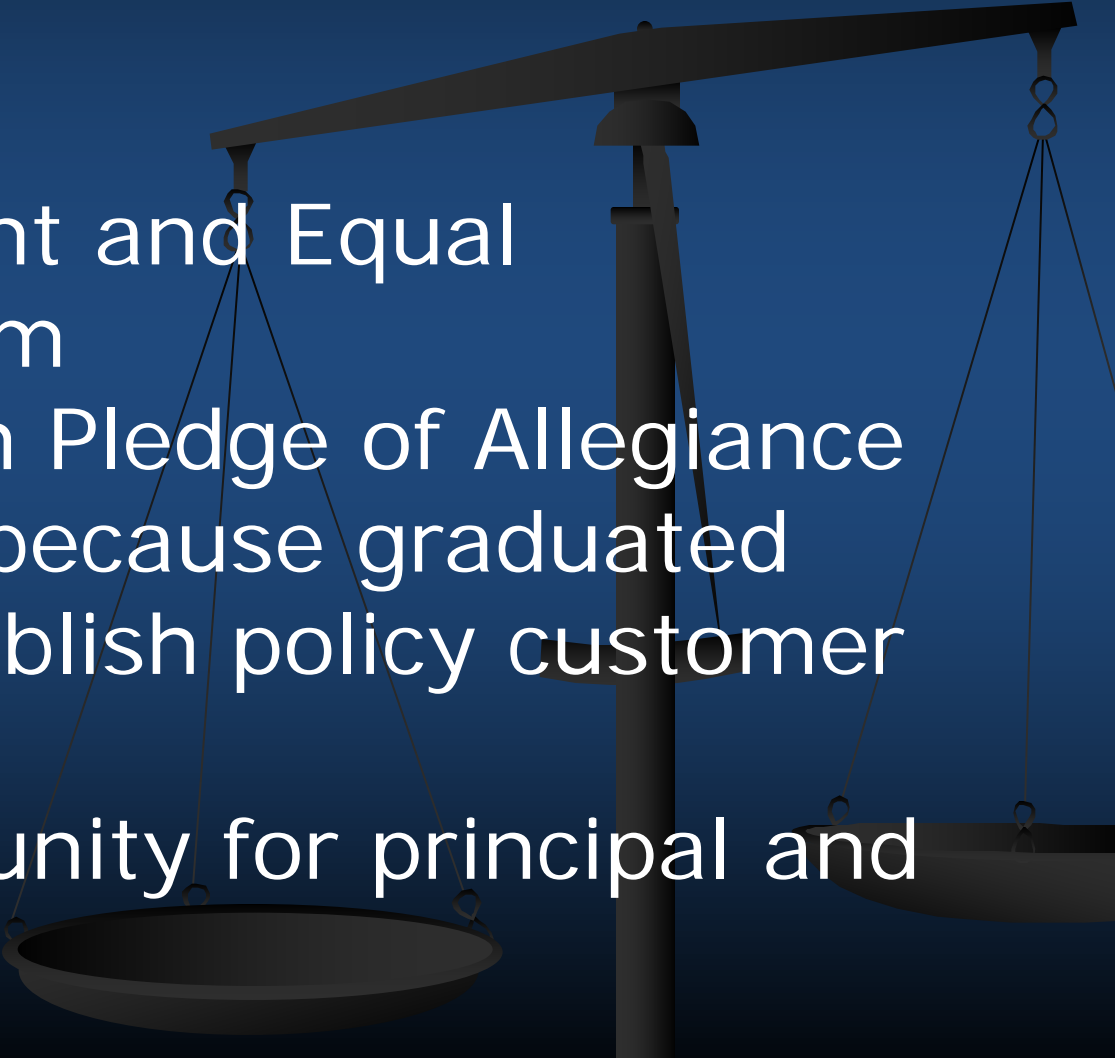


Hyatt v. Thomas, – F.3d – No. 15-10708 (5th Cir., November 18, 2016)

- Section 1983 claim for suicide
- Welfare check and arrested for DUI
- Screened at jail and on jail watch
- Qualified immunity analysis
- Failure to exercise greater care did not amount to deliberate indifference under the facts



***Brindson v. McAllen I.S.D.*, – F.3d – No. 15-40160 (5th Cir., August 9, 2016)**

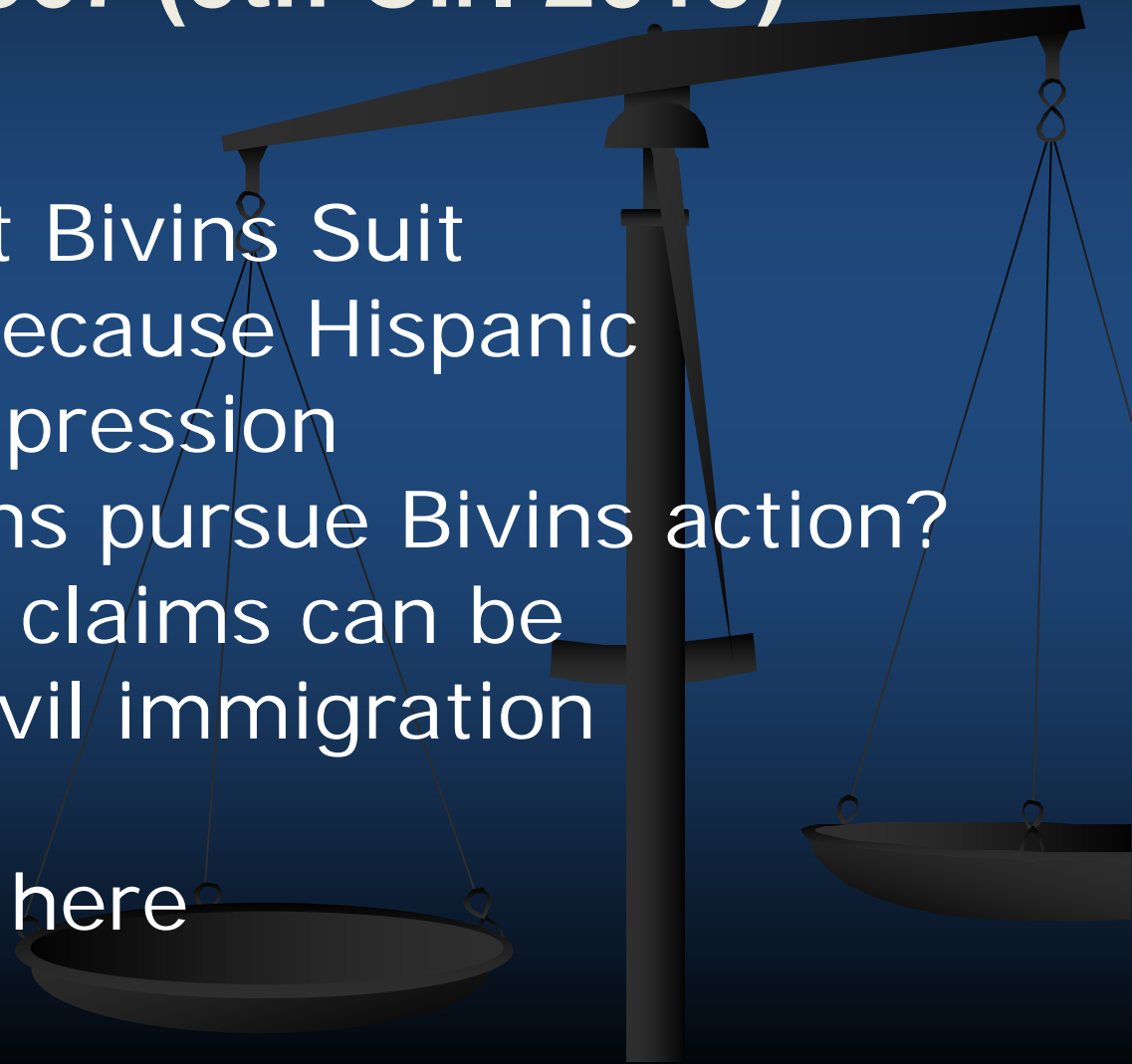
- 1st Amendment and Equal Protection claim
 - Recite Mexican Pledge of Allegiance
 - Law standing because graduated
 - Could not establish policy customer practice
 - Qualified immunity for principal and teacher
- 
- A silhouette of a balance scale is positioned on the right side of the slide. The scale is tilted, with the right pan being higher than the left pan. The background is a solid dark blue color.

Bivens Suit



De La Paz v. Coy, et al.
786 F.3d 367 (5th Cir. 2015)

- 4th Amendment Bivins Suit
- Stopped only because Hispanic
- Case of first impression
- Can illegal aliens pursue Bivins action?
- Not available if claims can be addressed in civil immigration proceedings
- Cannot pursue here

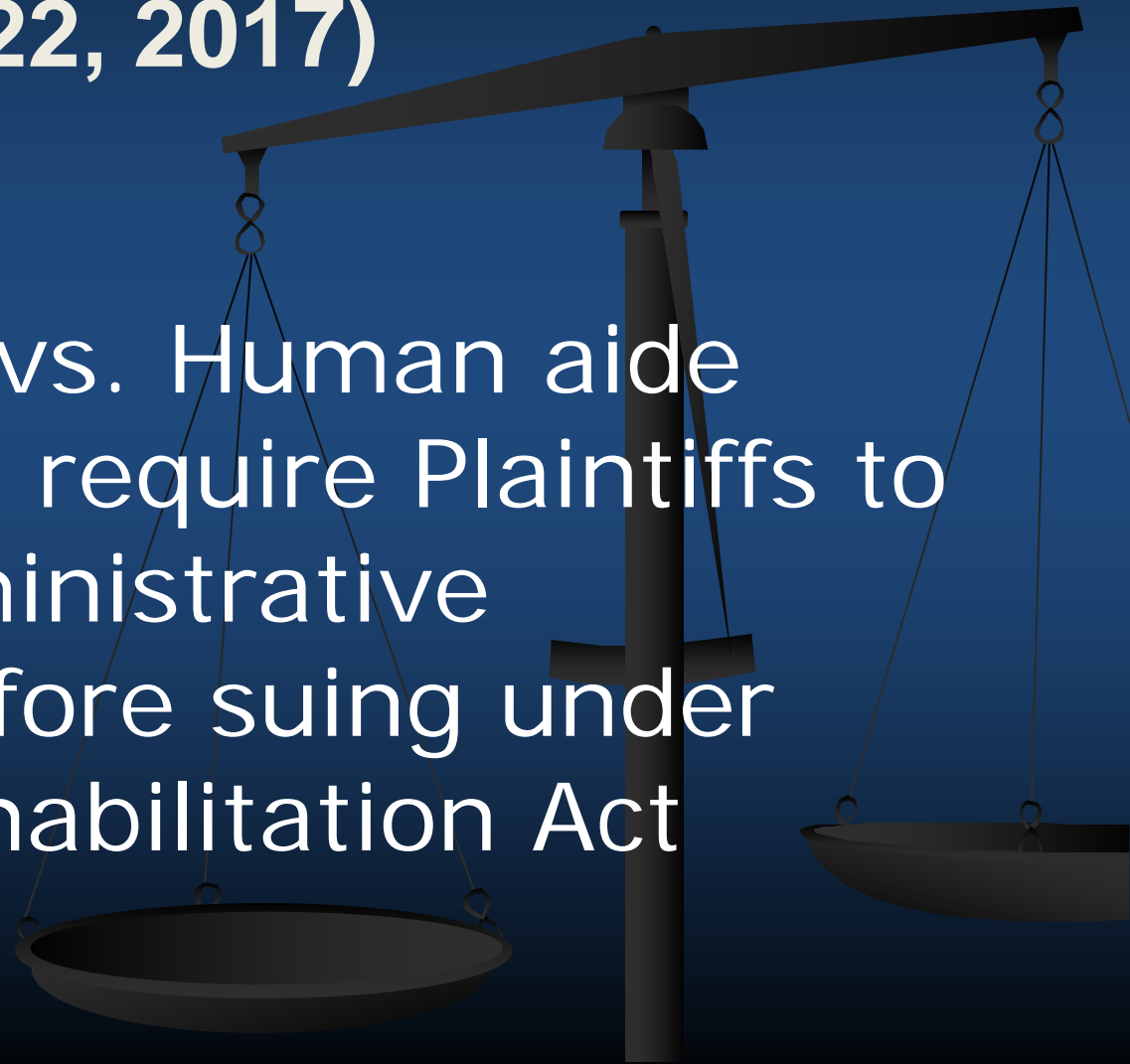


ADA

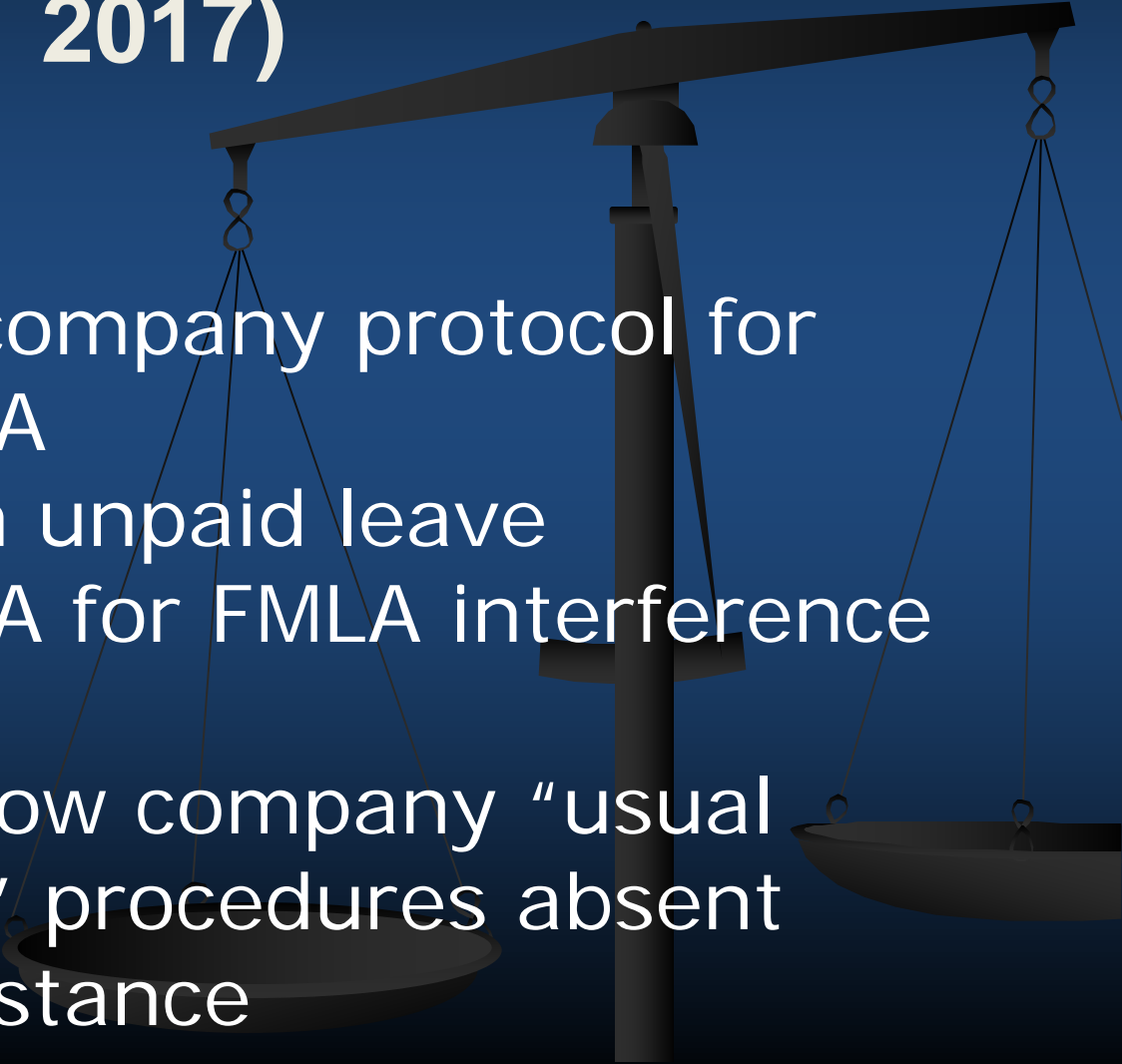


***Fry v. Napoleon Community
Schools, 15-497, – S. Ct. – (February
22, 2017)***

- ADA Case
- Service dog vs. Human aide
- IDEA did not require Plaintiffs to exhaust administrative remedies before suing under ADA and Rehabilitation Act

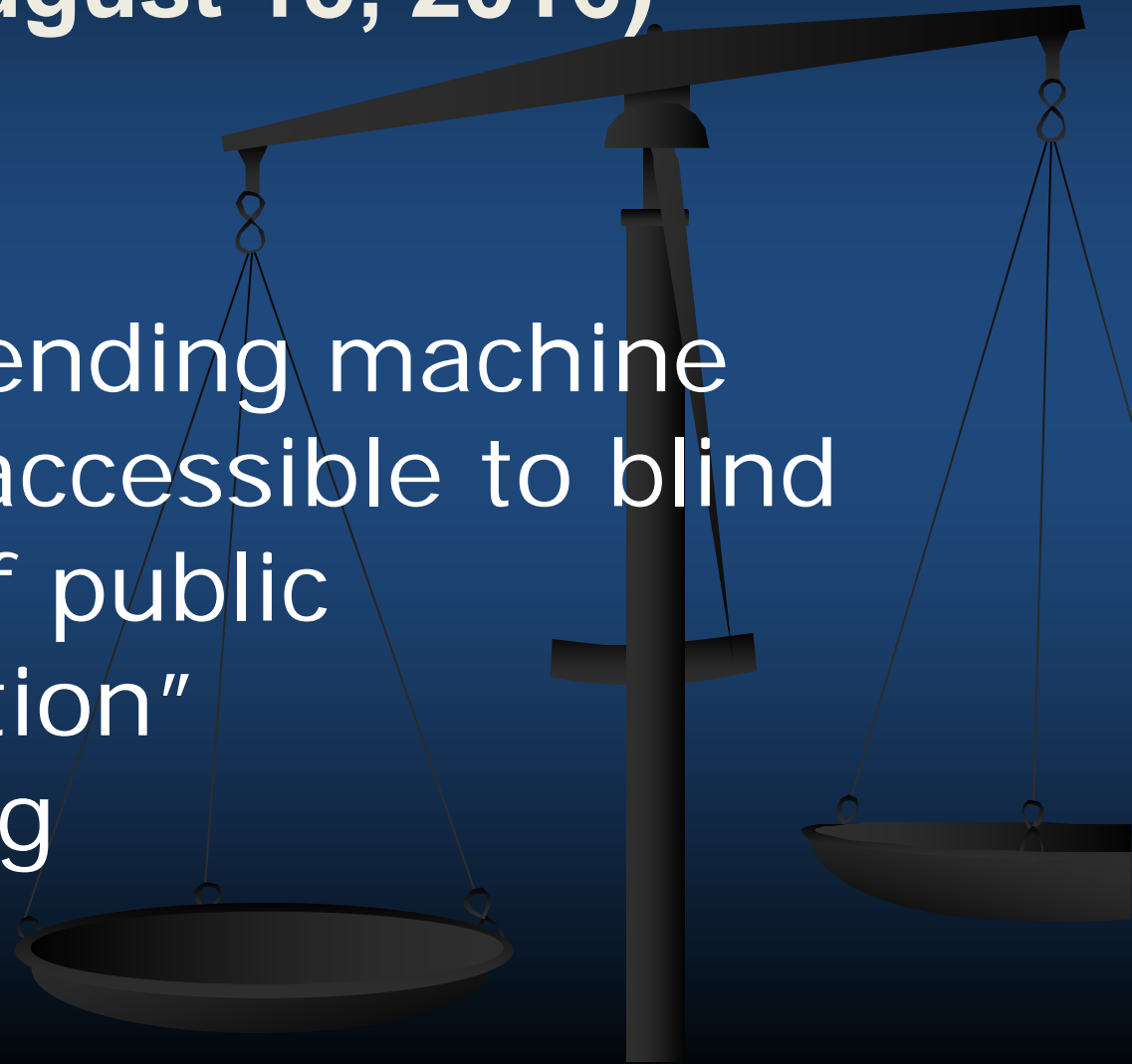


Acker v. General Motors, LLC F.3d – No. 16-11174 (5th Cir., April 10, 2017)

- FMLA
 - Did not follow company protocol for requesting FMLA
 - Disciplined with unpaid leave
 - Sued under ADA for FMLA interference and retaliation
 - Required to follow company “usual and customary” procedures absent unusual circumstance
- 

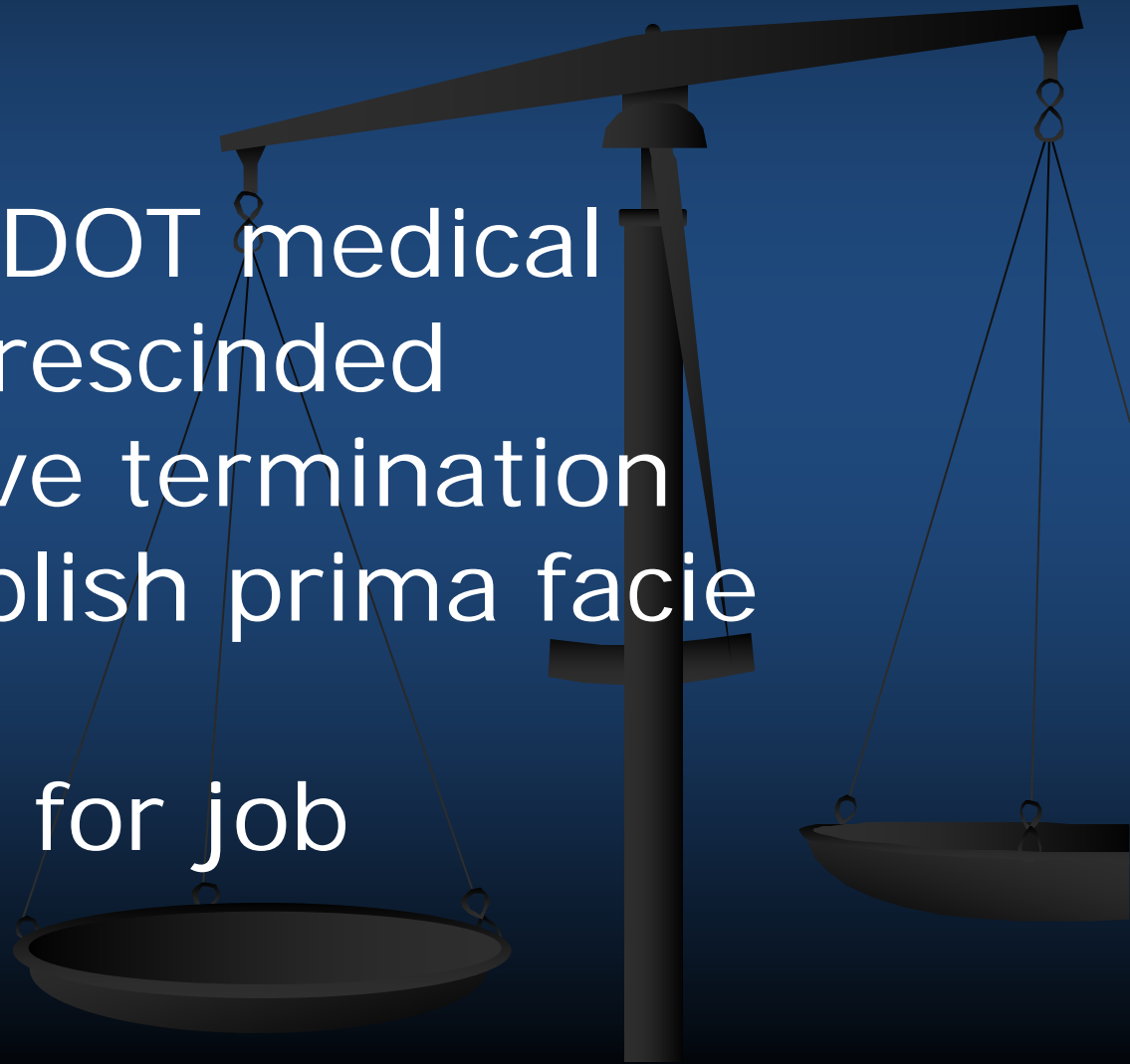
Magee v. Coca-Cola Refreshments USA Inc., – F.3d – No. 15-31018 (5th Cir., August 15, 2016)

- ADA
- Coca-Cola vending machine alleged not accessible to blind
- Not “place of public accommodation”
- Limited ruling



Williams v. J.B. Hunt Transport, Inc.
F.3d 15-20610 (5th Cir., June 20, 2016)

- Truck driver DOT medical certification rescinded
- Administrative termination
- Cannot establish prima facie case
- Not qualified for job

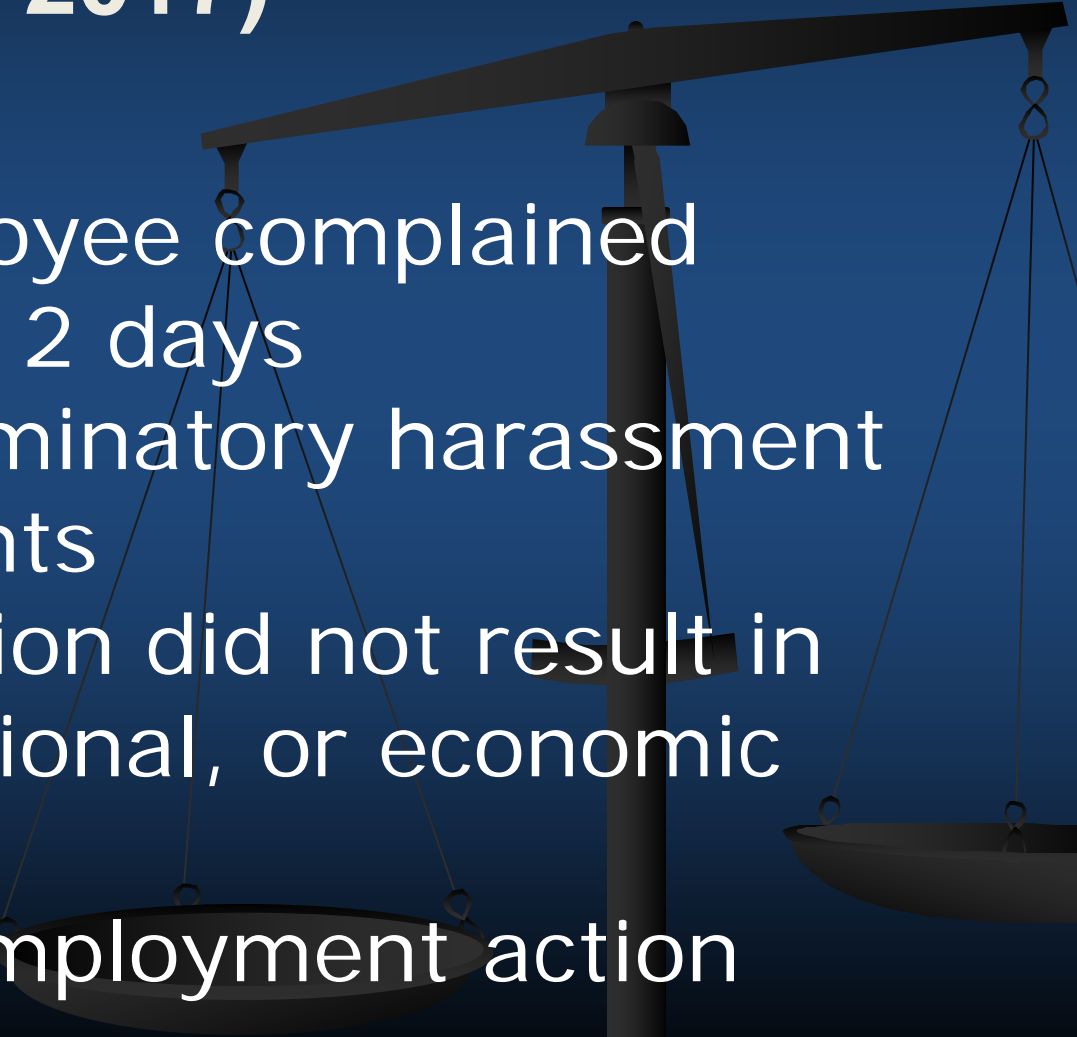


Title VII



Cabral v. Brennan

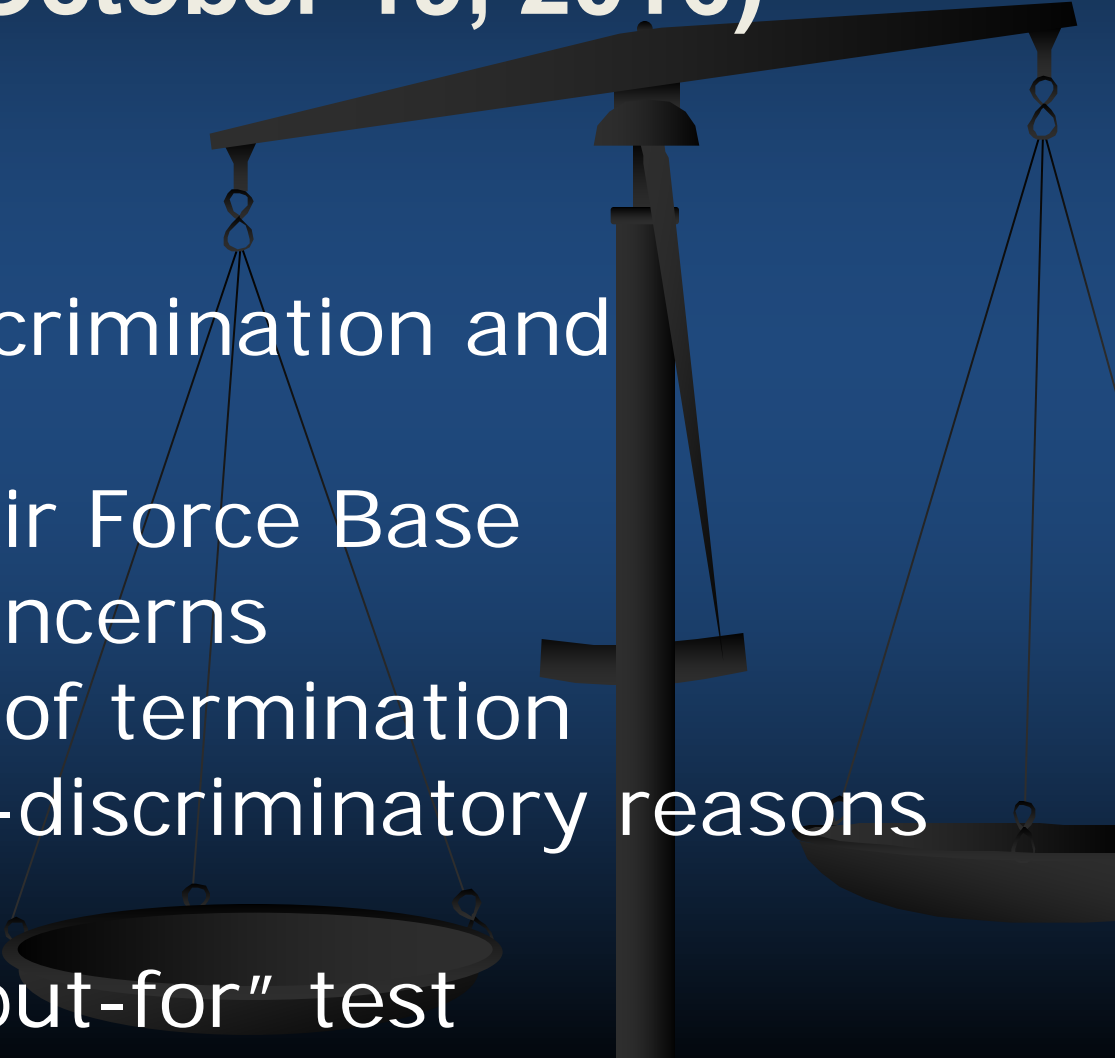
F.3d – No. 16-50661 (5th Cir., April 10, 2017)

- Troubled employee complained
 - Suspended for 2 days
 - Claimed discriminatory harassment
 - Various incidents
 - 2 day suspension did not result in physical, emotional, or economic harm
 - Not adverse employment action
- 

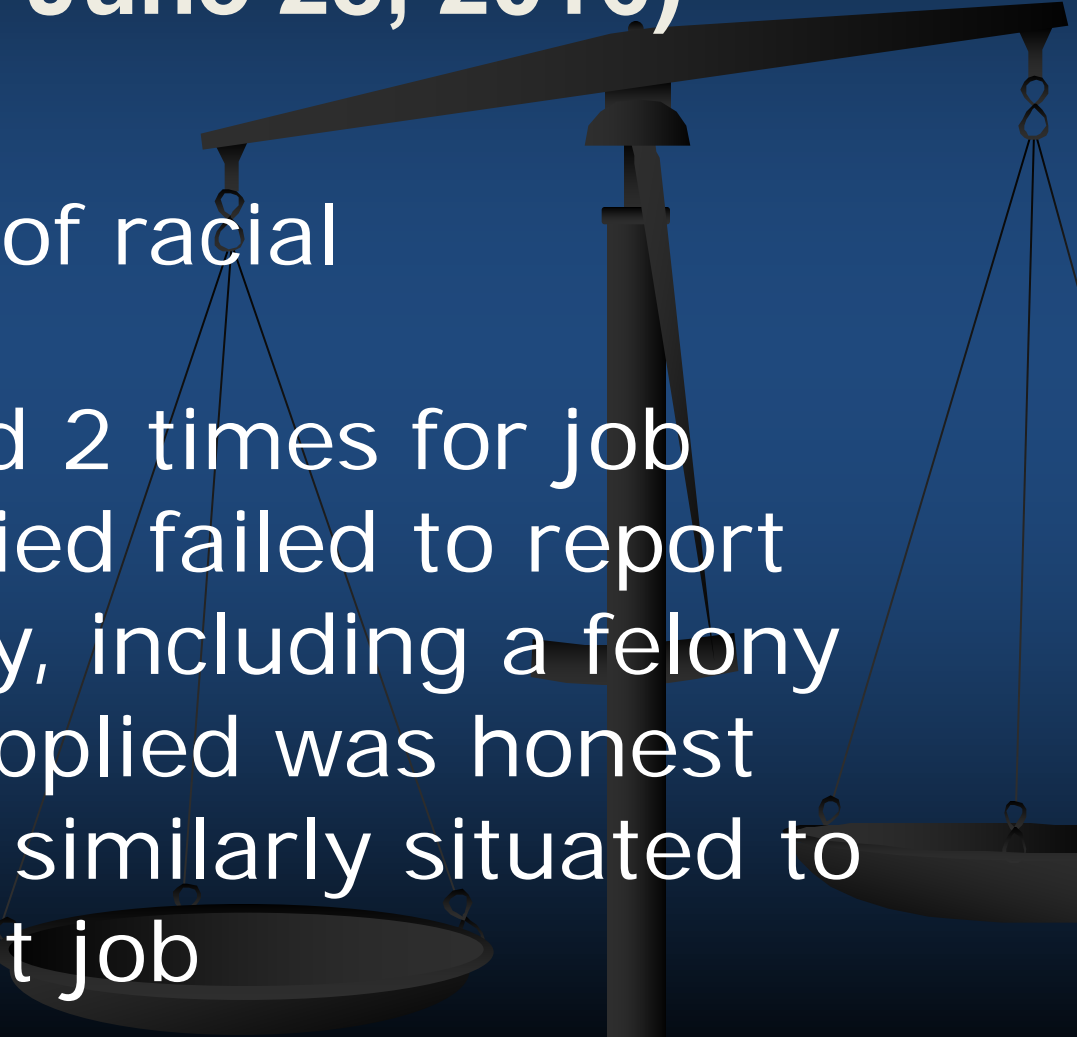
Outley v. Luke & Associates, Inc.

F.3d – No. 16-60223

(5th Cir., October 19, 2016)

- Title VII
 - Race-based discrimination and retaliation
 - Contract with Air Force Base
 - Performance concerns
 - Transfer in lieu of termination
 - Legitimate non-discriminatory reasons for transfer
 - Cannot meet “but-for” test
- 

Rogers v. Pearland, I.S.D.
F.3d – No. 14-41115
(5th Cir., June 28, 2016)

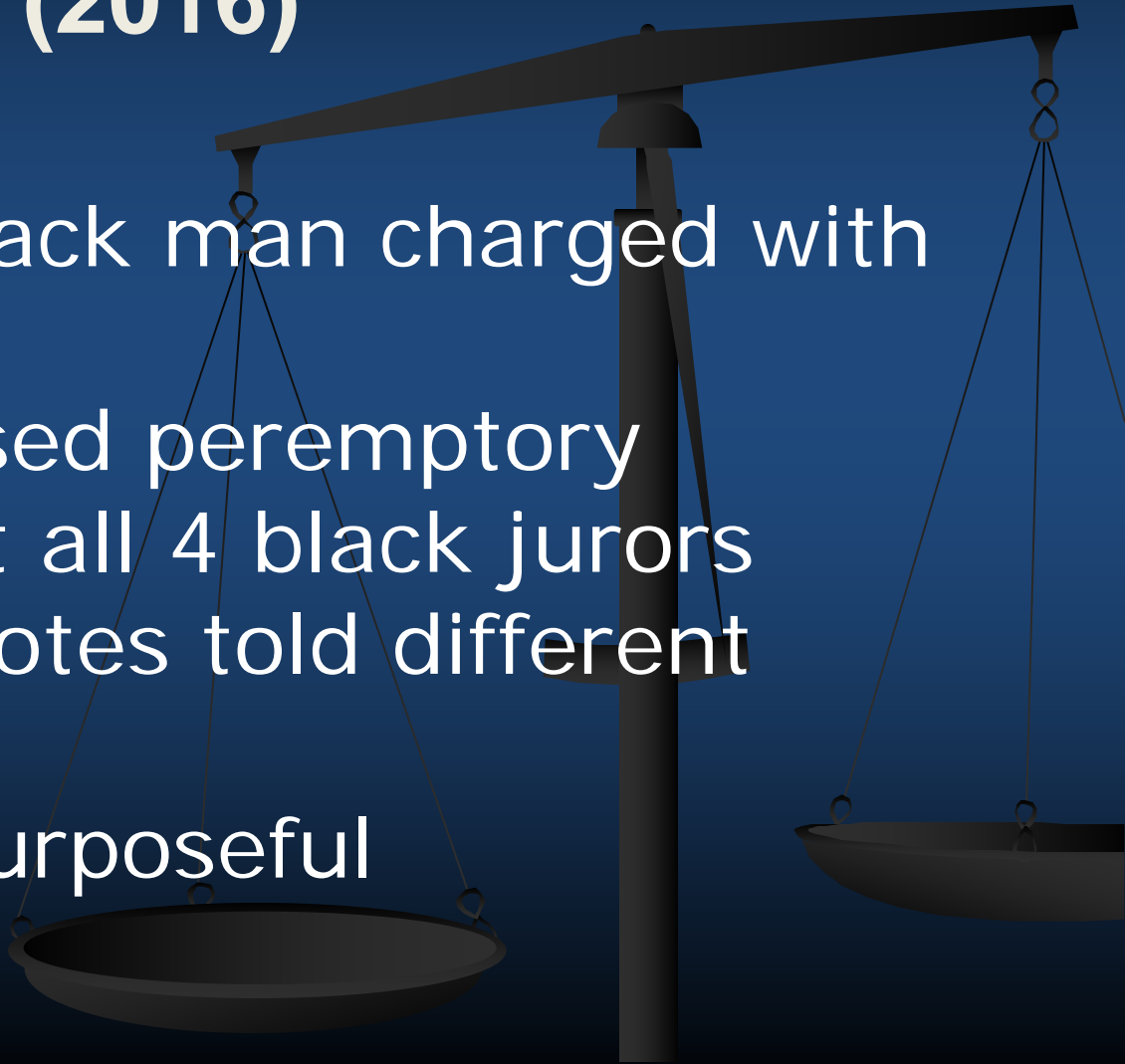
- Title VII claim of racial discrimination
 - Plaintiff applied 2 times for job
 - First time applied failed to report criminal history, including a felony
 - Second time applied was honest
 - Failed to show similarly situated to person who got job
- 

Batson



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

- 18 year-old black man charged with murder
- Prosecution used peremptory strikes against all 4 black jurors
- Prosecutor's notes told different story
- Court found purposeful discrimination

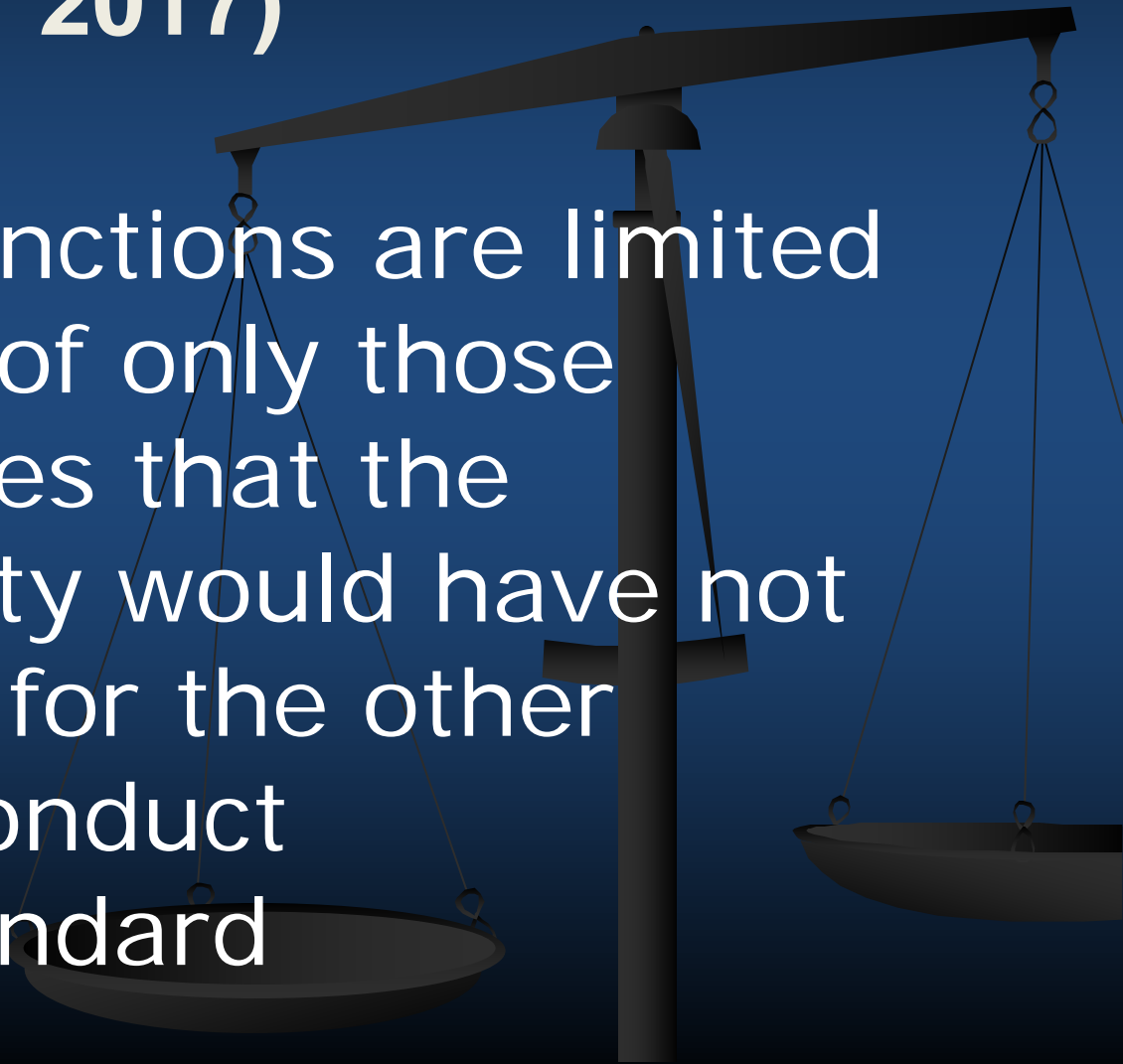


Discovery Sanctions

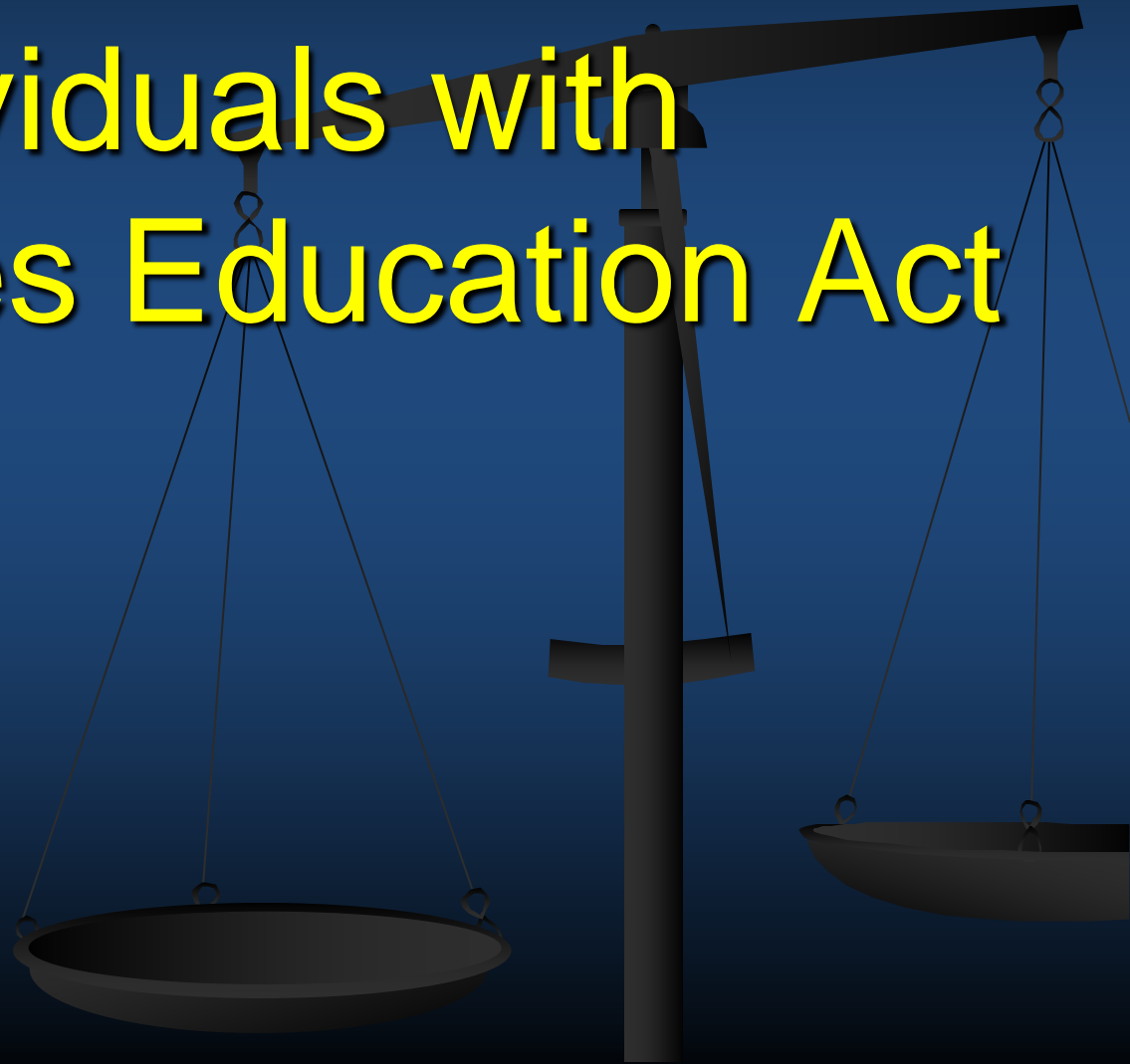


***Goodyear Tire & Rubber Co. v. Haeger*, 15-1406, – S.Ct. – (April 18, 2017)**

- Discovery sanctions are limited to an award of only those attorney's fees that the innocent party would have not incurred but for the other party's misconduct
- "But-for" standard

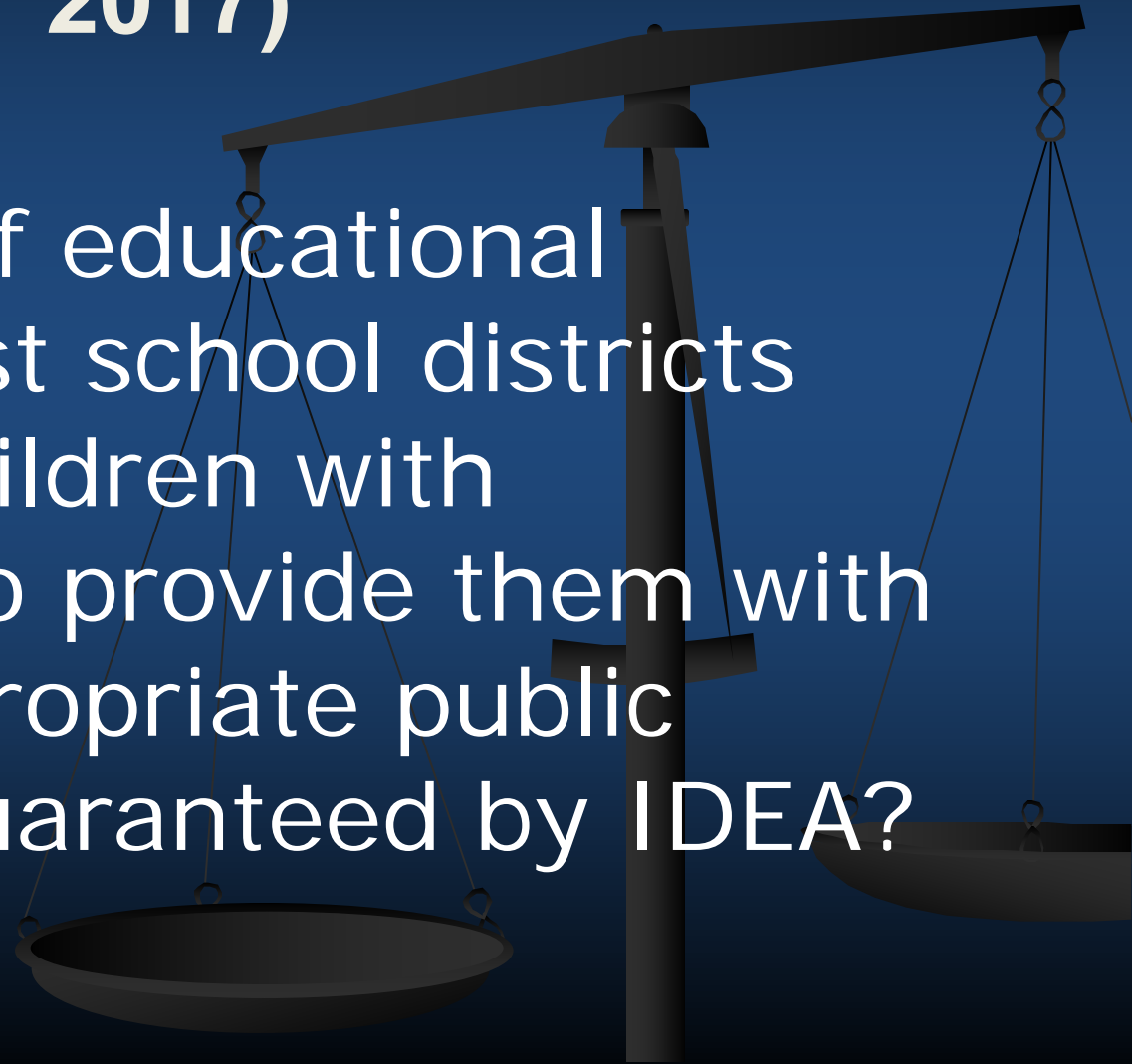


Individuals with Disabilities Education Act



Endrew F. v. Douglas City School District, 15-827, – S.Ct. – (March 22, 2017)

- What level of educational benefits must school districts confer on children with disabilities to provide them with the free appropriate public education guaranteed by IDEA?



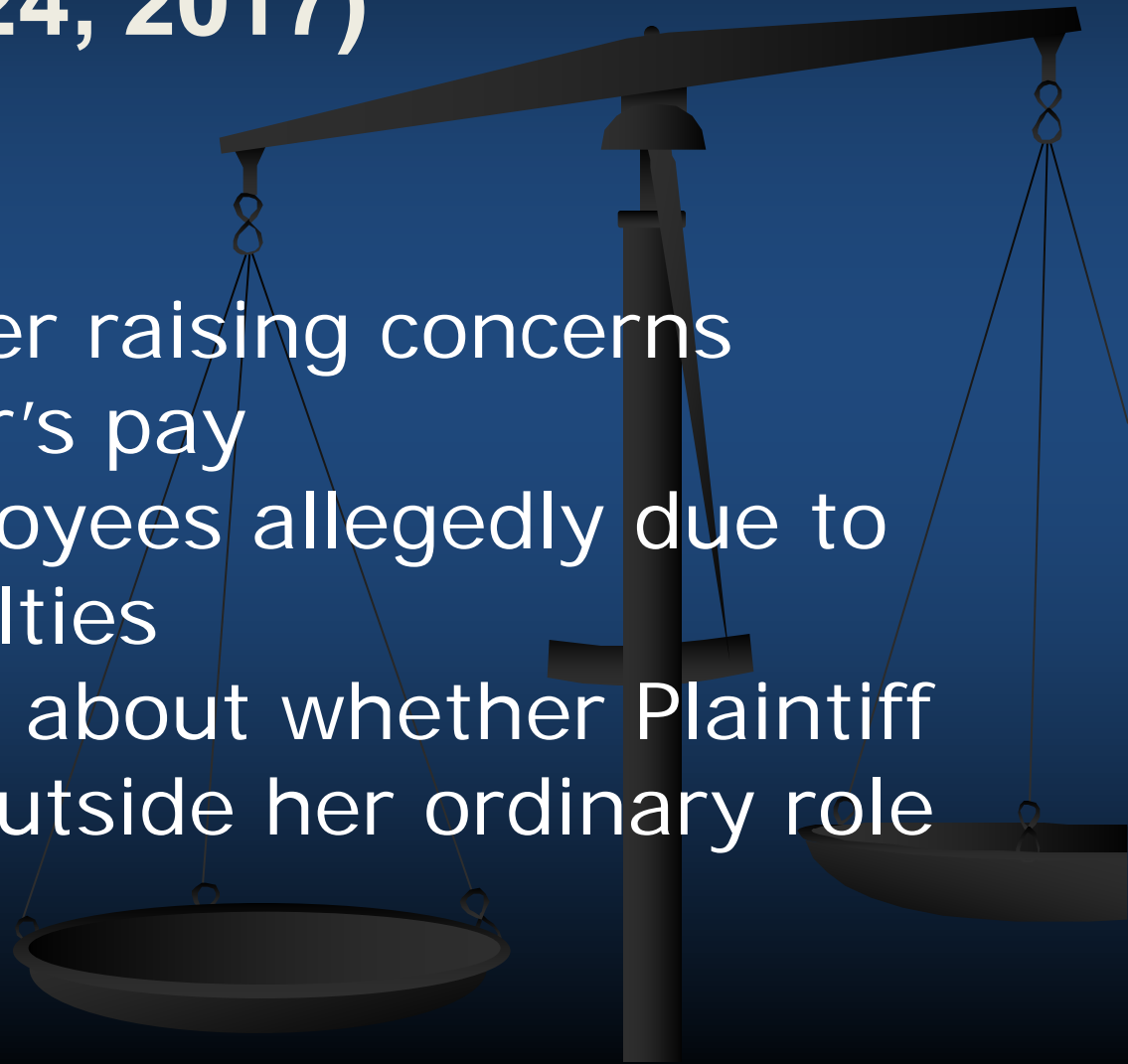
Fair Labor Standard Act



Starnes v. Wallace

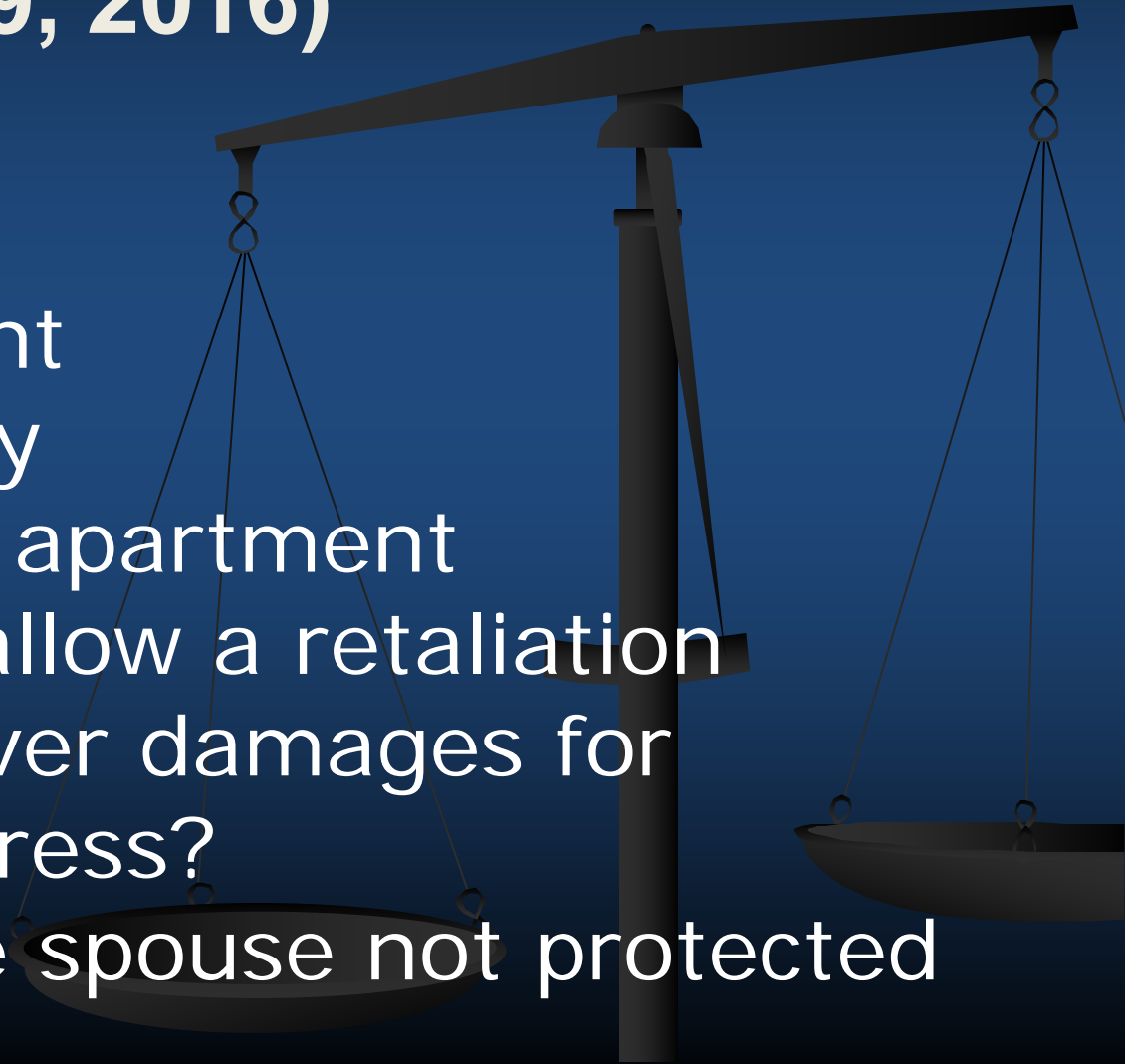
F.3d – No. 15-41341 (5th Cir., February 24, 2017)

- FLSA Case
- Terminated after raising concerns about coworker's pay
- Laid off 5 employees allegedly due to financial difficulties
- Factual dispute about whether Plaintiff was stepping outside her ordinary role as manager

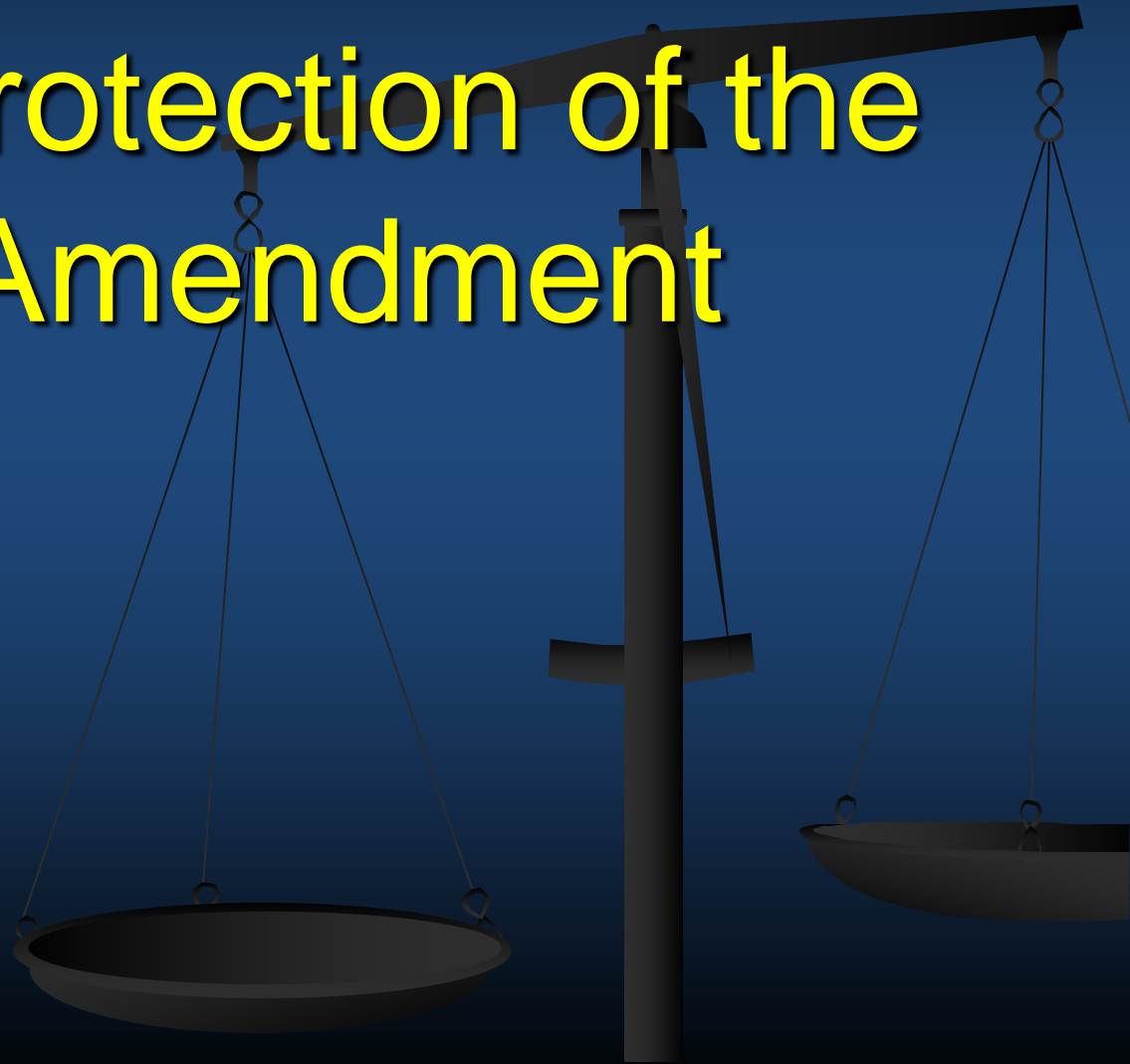


Pineda v. JTCH Apartments, LLC
F.3d – No. 15-10932 (5th Cir., December
19, 2016)

- FLSA Case
- Discounted rent
- Wanted OT pay
- Told to vacate apartment
- Does the Act allow a retaliation victim to recover damages for emotional distress?
- Non-employee spouse not protected

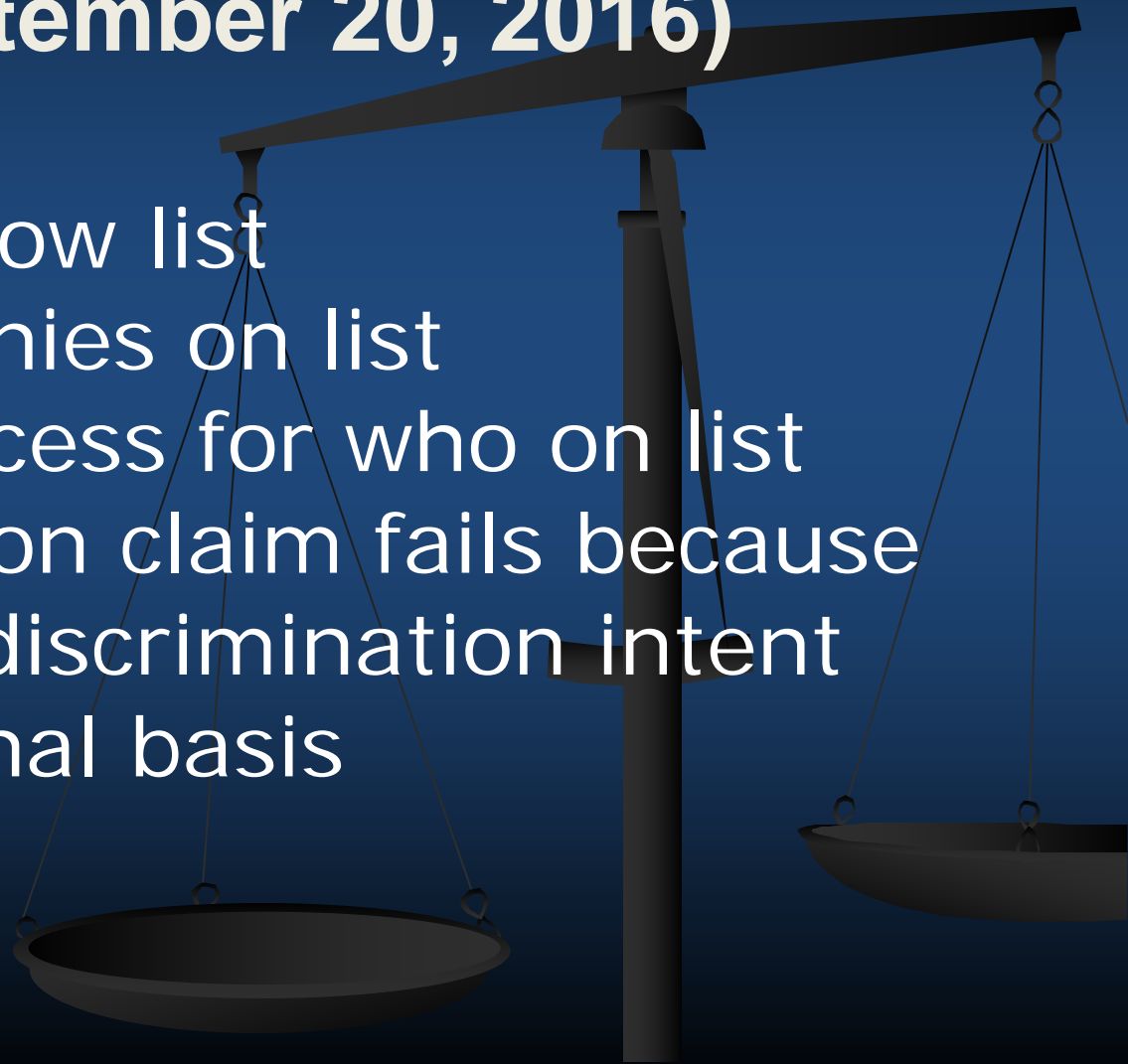


Equal Protection of the 14th Amendment

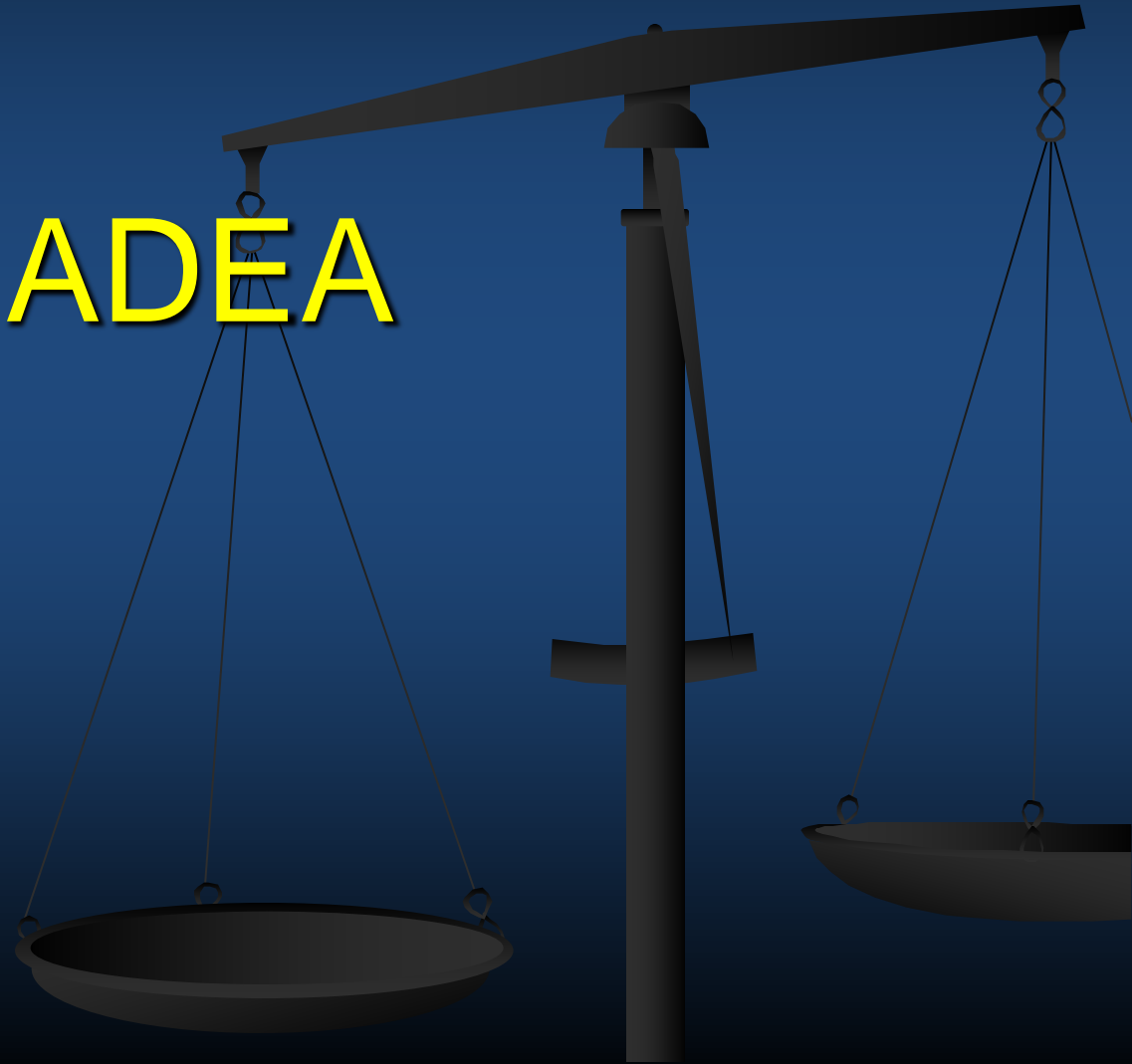


Integrity Collision Center v. City of Fulshear, – F.3d – No. 15-20560 (5th Cir., September 20, 2016)

- Non-consent tow list
- Only 2 companies on list
- No formal process for who on list
- Equal protection claim fails because did not show discrimination intent
- City had rational basis



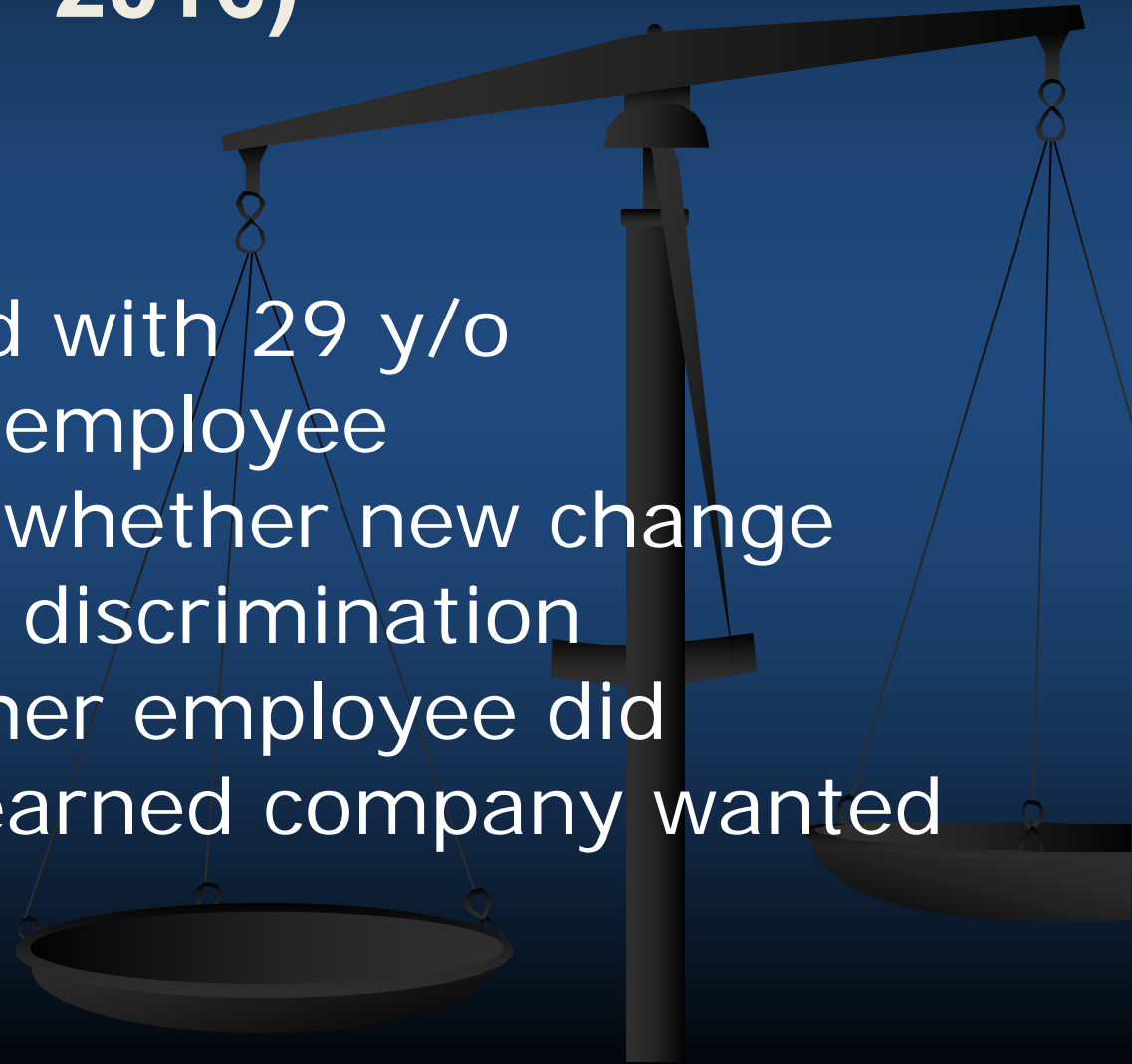
ADEA



Nicholson v. Securitas Security

F.3d – No. 15-10582 (5th Cir., July 18, 2016)

- ADEA Claim
- 83 y/o replaced with 29 y/o
- Staff company employee
- Question as to whether new change was age-based discrimination
- Question whether employee did enough once learned company wanted her terminated



§ 1981



Morris v. Town of Independence
**F.3d – No. 15-30986 (5th Cir., June 28,
2016)**

- Claim of racial discrimination
 - Water clerk terminated 7 months after hired
 - Claimed reasons were pretext
 - Plaintiff cannot prove other employees were retained with performance concerns
- 