RECENT FEDERAL CASES OF INTEREST TO GOVERNMENTAL ENTITIES

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TEXAS CITY ATTORNEYS ASSOCIATION
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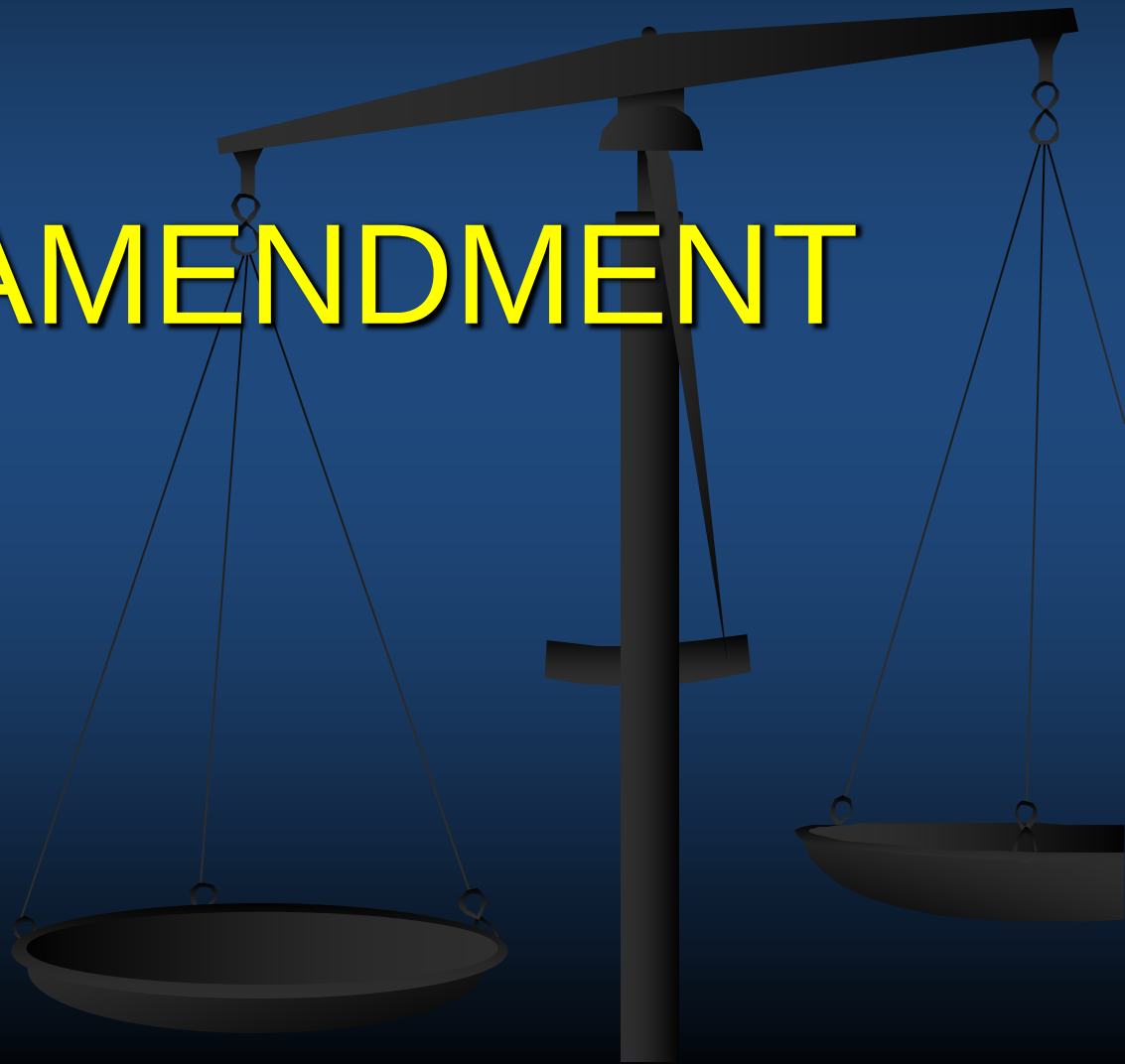
FIRST AMENDMENT



Garza v. Escobar, No. 19-40664 (5th Cir. August 28, 2020)

- 1st Amendment case
- Fired because of political disagreements with boss the DA
- “Suspended without pay pending the outcome of a current election fraud investigation in Starr County.”
- Garza later learned employment was terminated.
- Garza sued alleging political retaliation in violation of the First Amendment.
- The Fifth Circuit affirmed dismissal of plaintiff's First Amendment claim alleging political retaliation, concluding Garza could be subjected to patronage dismissal without violating the Constitution.
- In this case, plaintiff's position as CVU Coordinator is a confidential or policymaking role, and one for which "party affiliation is an appropriate requirement for effective performance."

Reagan National Advertising of Austin, Inc. v. City of Austin, No. 19-50354 (5th Cir. August 25, 2020)

- 1st Amendment case
- Both filed applications to digitize existing billboards. The City of Austin denied the applications because its Sign Code does not allow the digitization of off-premises signs.

- Sign Code's distinction between on-premises and off-premises signs violates the First Amendment.

- The Fifth Circuit held that the City's Sign Code's on-premises/off-premises distinction is content based and the commercial speech exception does not apply.

- Code runs afoul of the First Amendment because the relevant provisions of the Sign Code are not narrowly tailored to serve the compelling government interest of protecting the aesthetic value of the City and public safety.

Barr v. American Association of Political Consultants Inc., 591 US _ (2020)

- 1st Amendment case
- 3rd exception for calls made to cell phones "to collect a debt owed to or guaranteed by the United States."
- In this matter, the Court was tasked with determining whether a provision of the Telephone Consumer Protection Act of 1991 exempting government debt collection calls from the ban on automated calls violates the First Amendment, and, if so, whether that provision severable from the rest of the Act.
- The Court affirmed the Fourth Circuit's judgment that it violates the First Amendment but is severable from the remainder of the statute.
- Believed that the statute at issue regulated speech based on its content and was thus subject to strict scrutiny.
- Under strict scrutiny, a law must be "necessary" to achieve a "compelling" state interest and must be "narrowly tailored" to achieve that interest.

Batyukova v. Doege, No. 20-50425 (5th Cir. April 21, 2021)

- 1st Amendment case and excessive force
- Batyukova was sitting in her stopped vehicle in the left lane of a road
- Doege opened his door and yelled at her to show him her hands.
- Doege pulled his gun and ordered her to stop.
- Reached behind her back, towards her waist. Doege fired his gun five times.
- Sued alleging excessive force as well as retaliation for engagement in activity protected by the First Amendment.
- District Court granted summary judgment based on qualified immunity.
- 5th Circuit affirmed, finding that Doege made a split second decision to use deadly force against a non-compliant person

- The Court further agreed with the District Court that Batyukova failed to present evidence that her speech was a but-for cause of the shooting. Doege did not fire at Batyukova when she was cursing at him but when she reached behind her back towards her waistband.

Hutcheson v. Dallas County, No. 20-10383 (5th Cir. April 12, 2021)

- 1st Amendment case

- High on cocaine and methamphetamine

- Hutcheson began resisting. It took several officers to restrain him
- Discovered that Hutcheson had stopped breathing. The medical examiner's report listed the manner of death as "homicide" and that he died from a combination of narcotics and the stress

- District Court denied Plaintiffs' request for limited discovery and granted Defendants' motion to dismiss and summary judgment as to qualified immunity.

- Fifth Circuit affirmed the dismissal of the excessive force claim, finding that the officers used only the force necessary to restrain Hutcheson, rather than striking or using other force against him.
- Fifth Circuit also affirmed the denial of limited discovery. Before limited discovery is permitted, a plaintiff seeking to overcome qualified immunity must assert facts that, if true, would overcome that defense.

Cloud v. Stone, No. 20-30052 (5th Cir. April 6, 2021)

- Excessive force case
- Refused to sign the speeding ticket.
- Told Cloud to get out of the car and Cloud began to resist and the two struggled, with the officer deploying his taser to no avail. Cloud managed to grab a revolver from his truck. The two continued to struggle, with the revolver going off, The officer was able to wrest the revolver away from Cloud Cloud lunged past the officer, diving for the gun, at which point the officer shot Cloud twice in the back.
- The Fifth Circuit affirmed, concluding that the officer had reasonable ground to tase Cloud after Cloud continued to resist arrest.
- Officer was justified to use deadly force when Cloud lunged for the revolver that had already discharged and struck the officer in the chest. At a minimum, the officer knew that a loaded revolver lay on the ground behind and to his side and that Cloud's movement was towards the gun.
- Accordingly, the Fifth Circuit found no constitutional violation.

Roque v. Harvel, No. 20-50277 (5th Cir. April 1, 2021)

- Jason Roque called 9-1-1 to report a shirtless man waiving a gun (himself). His mother then called 9-1-1 to report her son wanted to kill himself.
- After one officer told him to put his hands up, Jason pulled the gun out (which was a BB gun) and stuck it to his head. An officer then ordered him to put the gun down. Harvel claimed he didn't see the gun fall and thought he was still a threat to his mother. Harvel then fired another shot, which missed, and seconds later, fired a third shot, which was fatal.
- Sued Harvel for excessive force.
- Fifth Circuit stated that they had jurisdiction but only to the extent the appeal concerned the purely legal question as to whether Harvel was entitled to qualified immunity on the facts that the District Court found sufficiently supported in the summary judgment record.
- Regarding shots number two and three, the Fifth Circuit found that there was a factual dispute as to whether Jason was incapacitated after the first shot. If he was, then the second and third shots were excessive and unreasonable. Thus, the Fifth Circuit agreed that material fact disputes precluded summary judgment on the second and third shots.

Byrd v. Lamb, No. 20-20217 (5th Cir. March 9, 2021)

- 1st Amendment case
- Trying to find out why his ex-girlfriend was kicked out of a bar
- Byrd claims that Agent Lamb threatened him with a gun
- Agent Lamb identified himself as an agent with Homeland Security and Byrd was immediately handcuffed and detained
- Reviewed security footage and released Byrd. They also arrested Agent Lamb for aggravated assault with a deadly weapon.
- Byrd filed a Bivens action against Agent Lamb for excessive
- Fifth Circuit pointing out that there are only three situations where Bivens applies
- "Virtually everything else is a 'new context,'" including Byrd's claim. The Fifth Circuit rejected Byrd's request to extend Bivens and reversed and remanded to the District Court with instructions to dismiss the claims against Agent Lamb.
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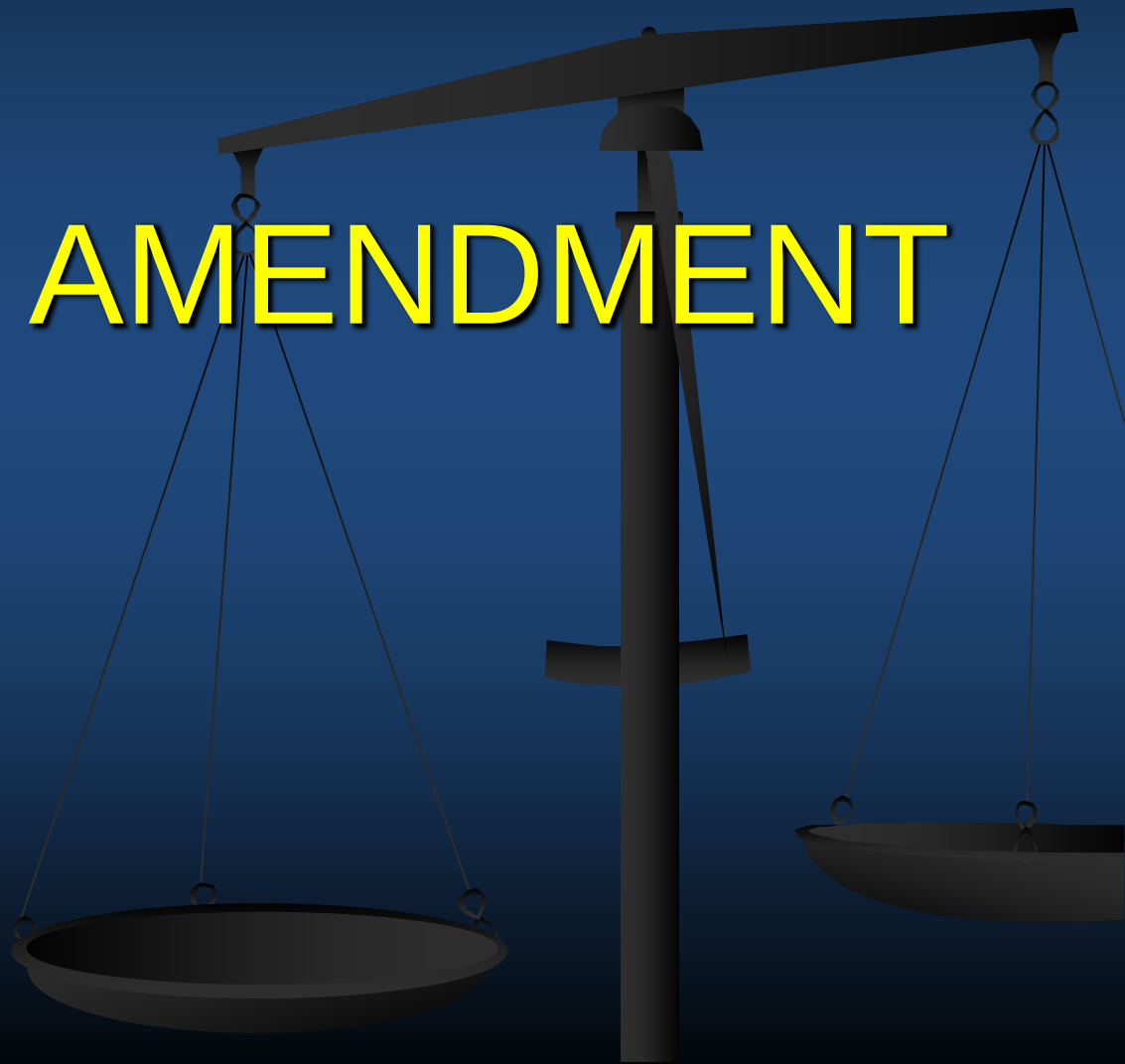
FOURTH AMENDMENT



United States v. Reyes, No. 19-10291 (5th Cir. June 5, 2020)

- Reyes was pulled over for speeding.
- Reyes initially refused but finally agreed to sit in the patrol car while he ran her information.
- Based on his training, education and experience, the officer suspected Reyes of trafficking narcotics and asked if he could search the vehicle.
- Reyes declined so the officer called a narcotics dog to sniff. Found 127.5 grams of meth and a loaded gun.
- Claimed officer lacked reasonable suspicion to detain her beyond the time reasonably necessary to conduct an investigation of the traffic violation.
- Fifth Circuit found that the officer had reasonable suspicion to extend the traffic stop when looking at the totality of the circumstance
- Further, because the traffic stop did not have the quality of a formal arrest – the officer encouraged her to bring her coffee and sit in the front seat, she wasn't patted down or restrained, and he let her leave the car to smoke a cigarette – Reyes was not entitled to the safeguards of *Miranda*.

United States v. Norbert, No. 20-60106 (5th Cir. March 16, 2021)

- 4th Amendment case
- Phone call from an informant claiming to be the manager of an apartment complex where Norbert was stopped was not reliable.
- Caller did not provide her name or phone number and had no history of reliable reports of criminal activity.
- Officers also did not attempt to determine who made the call.
- Further, the information provided was not an emergency reported to 911 that required immediate action nor did it provide sufficient detail to be reliable in its assertion of illegality.
- Finally, the officers failed to corroborate or verify the information in any way.

- In affirming the District Court's grant of Norbert's motion to suppress evidence, the Fifth Circuit found that the officers did not have reasonable suspicion to conduct an investigatory stop.

United States v. Nelson, No. 19-41008 (5th Cir. March 12, 2021)

- Fifth Circuit concluded that the totality of the circumstances supported a finding that the law enforcement agent had reasonable suspicion to justify stopping defendant's vehicle.

- Agent noticed irregularities with the vehicle where the seal on the trailer was likely incompatible with a scan that seemingly showed a small amount of personal equipment inside, and Vehicle and Cargo Inspection System images of the trailer were consistent with images of bundles of narcotics.

- The court also concluded that defendant was not subject to custodial interrogation and thus he was not entitled to Miranda warnings.

United States v. Morton, No. 19-10842 (5th Cir. January 5, 2021)

- The Fifth Circuit was presented with the question of whether the good faith exception to the Fourth Amendment's exclusionary rule does not allow officers to search the photographs on a defendant's cellphones for evidence of drug possession, when the affidavits supporting the search warrants were based only on evidence of personal drug possession and an officer's generalized allegations about the behavior of drug traffickers—not drug users.

- Fifth Circuit held that the officers' affidavits did not provide probable cause to search the photographs stored on the defendant’s cellphones.
- Good faith exception did not apply because the officers' reliance on the defective warrants was objectively unreasonable.
- Therefore, the digital images found in defendant's cellphones were determined to be inadmissible

Joseph v. Bartlett, No. 19-30014 (5th Cir. November 20, 2020)

- Reported that Joseph was acting "strange" near the school
- Joseph ran into a nearby convenience store .The school resource officers followed, with twelve additional officers joining them.

- About eight minutes after Joseph entered the store, the officers apprehended him and carried him to a police car after which he became unresponsive and was taken to the hospital, where he died two days later.
- Joseph was not suspected of committing any crime, was in the fetal position, and was not actively resisting.
- Nonetheless, Officers Martin and Costa inflicted twenty-six blunt-force injuries on Joseph and tased him twice, all while he pleaded for help and reiterated that he was not armed.
- Plaintiffs alleged violations of Joseph's Fourth Amendment rights, as well as claims of excessive force and failure to intervene.
- Actions of Officers Martin & Costa were disproportionate to the situation, in violation of the Fourth Amendment and the clearly established law.
- Court held that nine "bystander officers" are entitled to qualified immunity where plaintiffs failed to meet their burden

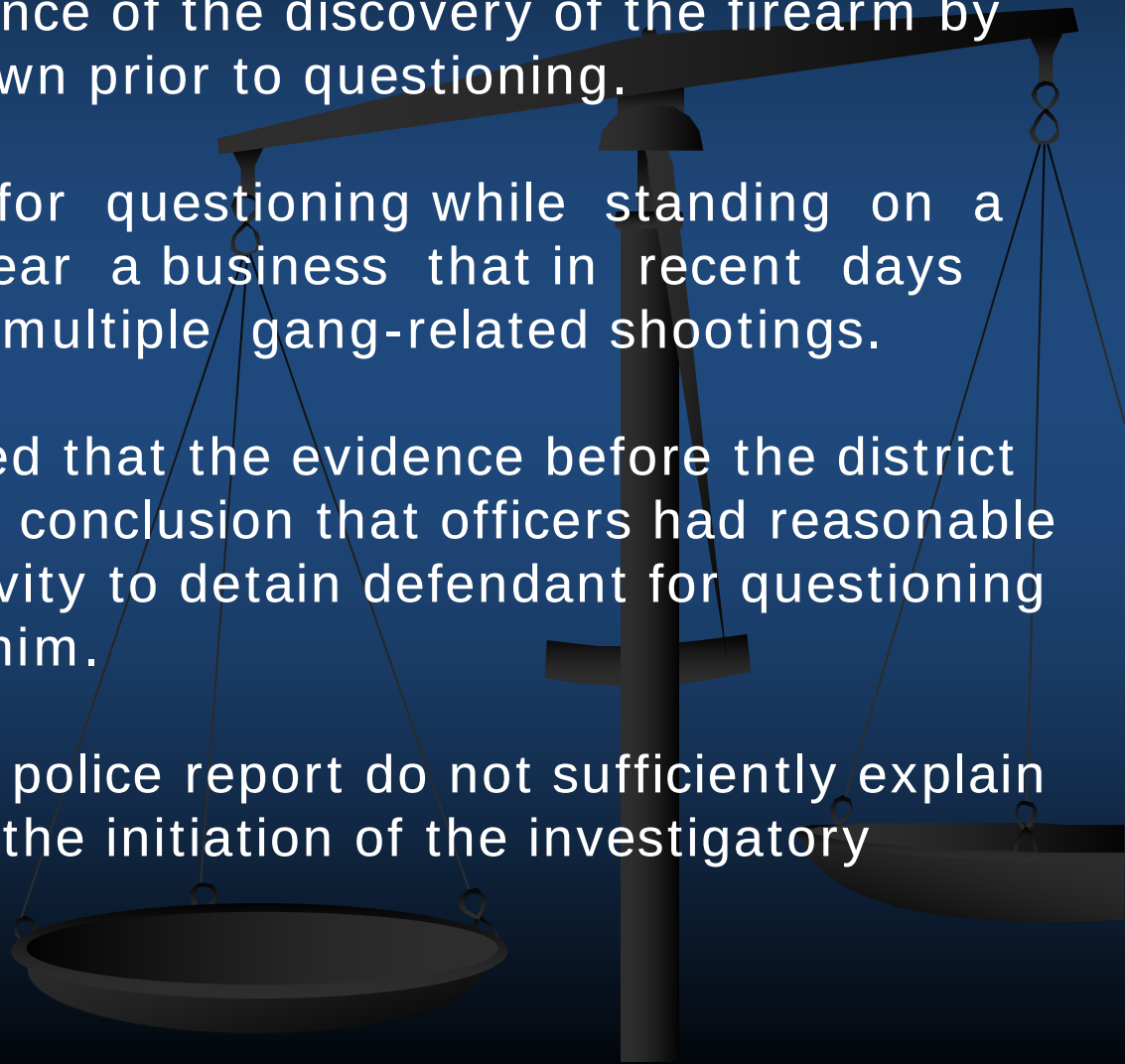
United States v. McKinney, No. 19-50801 (5th Cir. November 16, 2020)

- 4th Amendment case
- Motion to suppress evidence of the discovery of the firearm by an officer patting him down prior to questioning.

- McKinney was detained for questioning while standing on a sidewalk with others near a business that in recent days had been the location of multiple gang-related shootings.

- The Fifth Circuit concluded that the evidence before the district court did not support the conclusion that officers had reasonable suspicion of criminal activity to detain defendant for questioning or to subsequently frisk him.

- Body-camera videos and police report do not sufficiently explain the events leading up to the initiation of the investigatory detention.



United States v. Aguilar, No. 19-40554 (5th Cir. September 2, 2020)

- 4th Amendment case
- Coming from Mexico with two female associates both of whom carried large cans filled with methamphetamine.
- After detaining Aguilar, agents forensically searched his cell phone without a warrant.
- The Fifth Circuit held that the border agents had a good faith, reasonable belief that they could search defendant's phone without obtaining a warrant.

- In this case, the CBP agent knew defendant had attempted to cross the border with two women who were carrying four cans that physical inspection and x-rays revealed to be suspicious; a K-9 unit had alerted the agents to the presence of narcotics in the cans, and defendant had implicated himself as the purchaser of the cans' contents;

- There was clearly a particularized and objective basis for suspecting defendant of criminal activity.

United States v. Burgos-Coronado, No. 19-60294 (5th Cir. August 18, 2020)

- Set up a "driver's safety checkpoint“
- Stopped Toyota with a Florida license plate
- Noticed that the female’s Venezuelan passport did not have a stamp indicating her entry into the United States.
- The trooper further believed that because of the seating arrangement had a concern about the trip being abnormal
- Ultimately, the troopers searched the Toyota and the Volkswagen and found evidence of credit card skimming in both.
- The Fifth Circuit held that the troopers had the minimum level of objective justification to support a reasonable suspicion of criminal activity sufficient to justify prolonging the stop
- During the justified extension, the Court explained that more facts were discovered to support reasonable suspicion and, eventually, a search of the vehicles.

United States v. Gallegos-Espinal, No. 19-20427 (5th Cir. August 17, 2020)

- (DHS) suspected Gallegos of participating in his mother's alien-smuggling conspiracy.
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- Federal agents persuaded Gallegos voluntarily to consent to a thorough search of his iPhone discovered evidence of and possession of child pornography.

- The court ruled that Gallegos's written consent to a "complete search" of the iPhone could not support a review of extracted data three days after the phone was returned. The government filed this interlocutory appeal challenging the district court's suppression ruling.
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- The Fifth Circuit held that defendant signed a consent form that, in its broad terms, encompasses the search and seizure conducted. Furthermore, defendant failed affirmatively to limit the scope of his broad consent.

Torres v. Madrid, 592 US _ (2021)

- Operating a vehicle under the influence of methamphetamine
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- The question presented to the Court was whether physical force used to detain a suspect must be successful to constitute a “seizure” under the Fourth Amendment.
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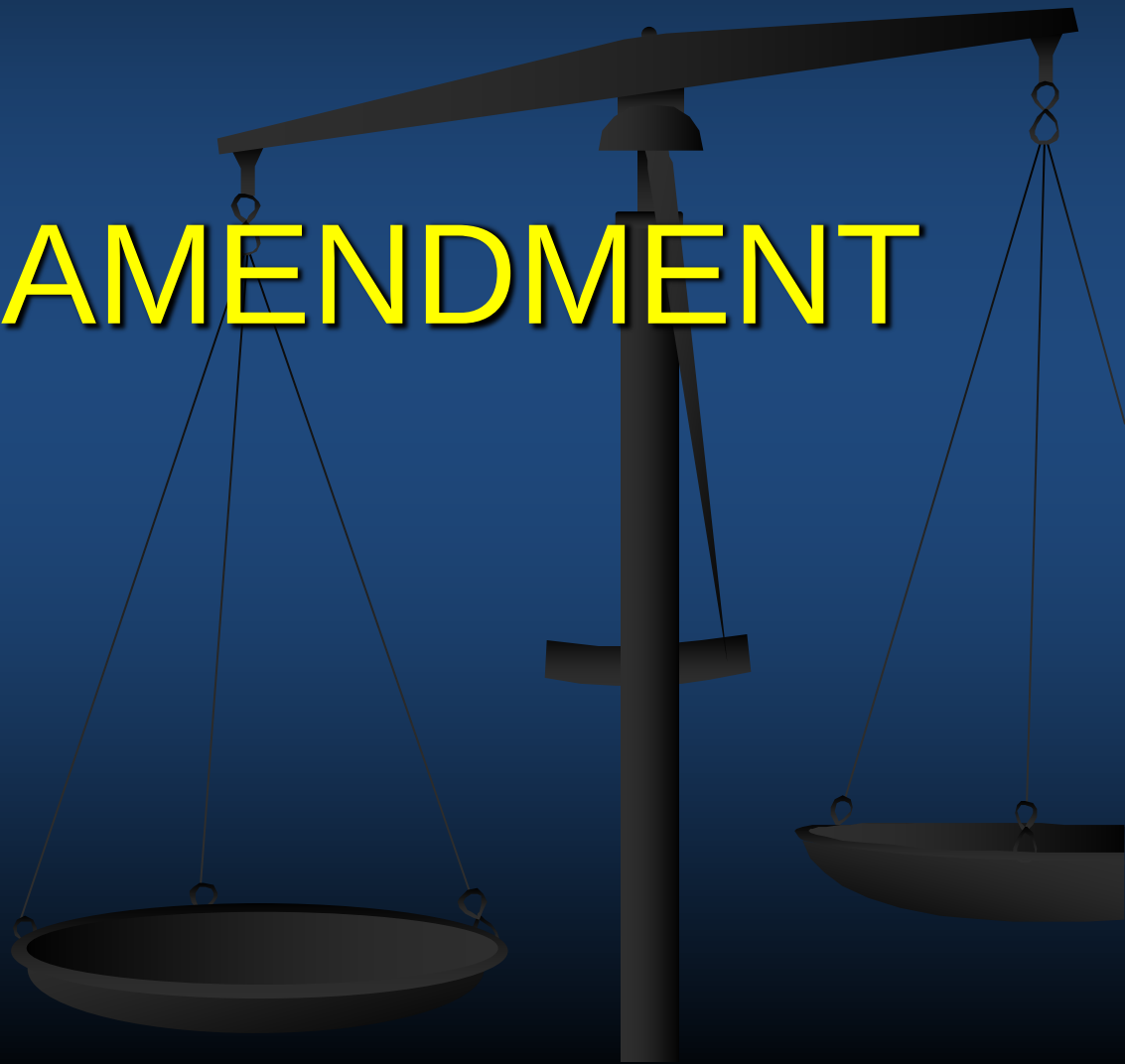
- The Court held that the application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person.

- Under the Court’s precedents, common law arrests are considered seizures under the Fourth Amendment, and the application of force to the body of a person with intent to restrain constitutes an arrest even if the arrestee escapes.

- The use of a device, here, a gun, to effect the arrest, makes no difference in the outcome; it is still a seizure.

EIGHTH AMENDMENT



Oliva v. United States, No. 19-50795 (5th Cir. September 2, 2020

- 8th Amendment case
- Oliva attempted to enter a VA hospital While Oliva stood in line for the metal detector, he spoke with an officer. The conversation escalated into a physical altercation. VA police wrestled Oliva to the ground in a chokehold and arrested him.
- Sued for damages under "*Bivens*" and sued the United States under the Federal Tort Claims Act.
- The security video is inconsistent with Oliva's account of the facts in certain respects.
- "this case does not present a new *Bivens* context" and allowed the claims to proceed.
- The Fifth Circuit reversed and remanded for dismissal of the claims against the officers.
- Extending *Bivens* to new contexts is a "disfavored judicial activity."

TITLE VII

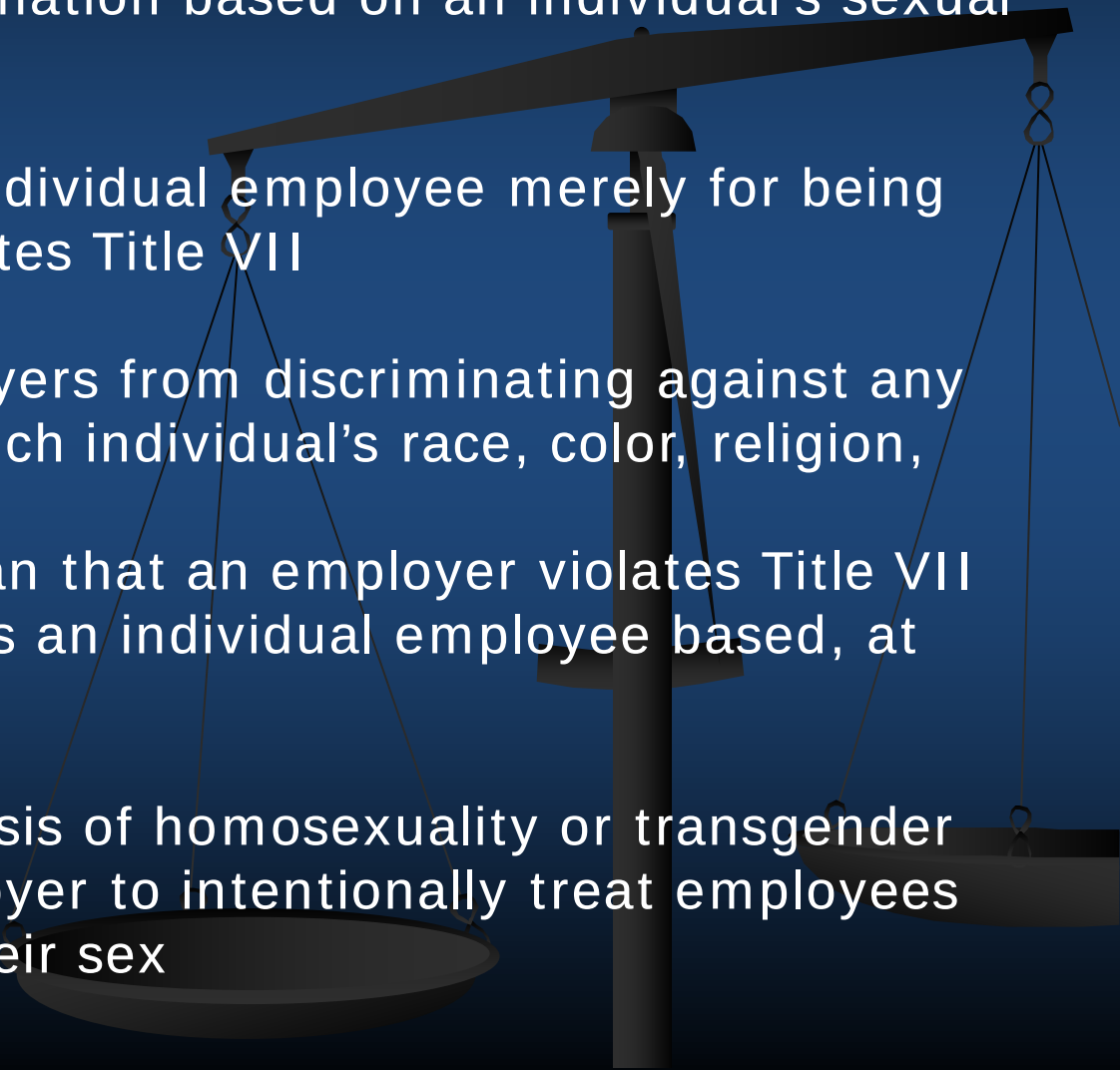
Bostock v. Clayton County, 590 US _ (2020)

- Whether Title VII of the Civil Rights Act of 1964, which prohibits against employment discrimination "because of . . . sex" encompass discrimination based on an individual's sexual orientation.

- Employer who fires an individual employee merely for being gay or transgender violates Title VII

- Title VII prohibits employers from discriminating against any individual "because of such individual's race, color, religion, sex, or national origin."
- Court interpreted to mean that an employer violates Title VII when it intentionally fires an individual employee based, at least in part, on sex.

- Discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat employees differently because of their sex



Lyons v. Katy Independent School District, No. 19-20293 (5th Cir. June 29, 2020)

- Must coach three sports.
- The principal then reassigned Lyons from PE to ISS
- Lyons claimed her reassignment constituted disability-based discrimination and then filed a charge with the EEOC.
- The Fifth Circuit affirmed, finding that Lyons' claim for "regarded as disabled" did not apply to impairments that are transitory and minor (an impairment with an actual or expected duration of 6 months of less).
- Plaintiff failed to point to evidence that Katy ISD's legitimate, non-discriminatory reason for its actions were pretextual.
- Katy ISD proffered that Lyons was removed from coaching basketball because she had stated she didn't want to coach basketball.

Newburry v. City of Windcrest, No. 20-50067 (5th Cir. March 22, 2021)

- Newburry was a female police trainee for the City.
- In her first "probationary" year, she had several encounters with another female officer which resulted in Newburry alleging sexual harassment.
- Newburry resigned and filed suit alleging, sexual harassment in violation of Title VII
- In affirming the dismissal, the Fifth Circuit reviewed the factors in determining whether the alleged conduct was sex discrimination in a same-sex situation: (1) was the harasser homosexual and motivated by sexual desire; (2) was the harassment framed "in such sex-specific and derogatory terms…as to make it clear that the harasser was motivated by general hostility to the presence" of a particular gender in the workplace; or (3) did the plaintiff offer direct evidence about how the alleged harasser treated members of both sexes in a mixed-sex workplace."

Miller v. Sam Houston State University, No. 19-20752 (5th Cir. January 29, 2021)

- SHSU as a tenure-track Assistant Professor
- According to SHSU, Miller was “lacking in collaborative and attentive generosity towards her colleagues
- Miller filed charges of sex discrimination and retaliation
- Plaintiff filed suit against SHSU and TSUS under Title VII & Equal Pay Act, alleging sex discrimination, retaliation,& hostile work envir.
- Court noted that from the outset of Miller’s suit, the district judge’s actions showed a prejudgment of Miller’s claims
- The Fifth Circuit reversed the district court's dismissal of all of plaintiff's claims and remanded, directing that plaintiff's cases be reassigned to a new district judge for further proceedings. The court noted that a litigant has the fundamental right to fairness in every proceeding; avoiding even the appearance of partiality; and when a judge's actions stand at odds with these basic notions, the court must act or suffer the loss of public confidence in our judicial system.

Lindsley v. TRT Holdings, Inc., No. 20-10263 (5th Cir. January 7, 2021)

- Sixteen-year career with Omni Hotels
- Supervised by David Morgan. She alleges that Morgan engaged in inappropriate behavior, including running his fingers through her hair and sexually harassing other female servers.
- Plaintiff filed suit alleging (1) pay discrimination under Title VII, the Texas Labor Code, and the Equal Pay Act; (2) promotional discrimination under Title VII and the Texas Labor Code; and (3) retaliation for filing a charge with the EEOC and for taking leave under the Family Medical Leave Act (FMLA), Title VII, the Texas Labor Code, and the Equal Pay Act.
- Fifth Circuit concluded district court erred in concluding that plaintiff failed to establish a prima facie case. Rather, plaintiff showed that she held the same position as two other employees did, at the same hotel, just a few years after they did, and that she was paid less than they were (as well as being paid less than some males that she supervised). The Court further concluded that Omni failed to set forth a plausible, non-discriminatory explanation for the pay disparity

Simmons v. UBS Financial Services, Inc., No. 20-20034 (5th Cir. August 24, 2020)

- Allegedly in retaliation for his daughter's complaints, UBS revoked Simmons's right of access to the UBS offices and then eventually forbade him from doing business with its clients.
- He theorized that the company "retaliated against his daughter by taking adverse actions against him."
- UBS promptly moved to dismiss, contending that because Simmons was not a UBS employee, he could not sue under Title VII.
- The Fifth Circuit affirmed the district court's dismissal of plaintiff's complaint alleging retaliation under Title VII, based on lack of statutory standing.
- The court agreed with the district court and held that plaintiff's nonemployee status forecloses his statutory standing to sue because Title VII claims require an employment relationship between plaintiff and defendant. The court held that plaintiff's daughter's status as an employee is not enough to deposit plaintiff into federal court.

Brown v. Wal-Mart Stores East, LP, No. 19-60719 (5th Cir. August 14, 2020)

- Fired after she reported her supervisor for sexually harassing other Wal-Mart employees. According to Wal-Mart, Brown was terminated because she violated Wal-Mart's Investigation and Detention of Shoplifters Policy
- Brown sued Wal-Mart for retaliation and wrongful termination.
- Fifth Circuit affirmed the district court's grant of summary judgment for defendants, holding that plaintiff has met her prima facie burden of causation by showing close enough timing between the protected activity and the adverse employment action.
- However, the temporal proximity between plaintiff's protected activity and her termination is relevant to, but not alone sufficient to demonstrate, pretext.
- The court also held that a reasonable jury could not find that the supervisor's actions were the but-for cause of Wal-Mart's termination of plaintiff based on the record.

Olivarez v. T-Mobile USA, Inc., No. 20-20463 (5th Cir. May 12, 2020)

- Plaintiff filed suit alleging transgender discrimination under Title VII
- The Fifth Circuit held that, under Bostock v. Clayton County, 140 S. Ct. 1731 (2020), a plaintiff who alleges transgender discrimination is entitled to the same benefits—but also subject to the same burdens—as any other plaintiff who claims sex discrimination under Title VII.

- In this case, the court concluded that plaintiff does not allege facts sufficient to support an inference of transgender discrimination—that is, that T-Mobile would have behaved differently toward an employee with a different gender identity.

- The court explained that, where an employer discharged a sales employee who happens to be transgender—but who took six months of leave, and then sought further leave for the indefinite future, that is an ordinary business practice rather than discrimination.

Watkins v. Tregre, No. 20-30176 (5th Cir. May 7, 2020)

- Watkins is a black woman suffering from severe medical condition

- Two days after receiving notice of Watkins's medical condition, her supervisor filed a disciplinary-review-board request, seeking review of the charges against Watkins.
- Board only reviewed the claim of Watkins' sleeping on the job and recommended that she be fired.
- White male dispatch supervisor, also was caught, but he was not fired; he had only received "counseling."
- Plaintiff filed suit against the Sheriff for race discrimination under Title VII and for retaliatory discharge under FMLA.
- Fifth Circuit concluded that there is a genuine dispute of material fact- sleeping on the job -- is pretext for Title VII race discrimination and FMLA retaliation.
- Plaintiff's Title VII claim- court explained that plaintiff has produced substantial evidence of pretext based on disparate treatment.

- In regard to the FMLA claim, the court explained that the record reflects that "sleeping on the job" is not an infraction that results in termination

SECTION 1983

Caniglia v. Strom, 593 US _ (2021)

- Heated argument, during which Canaglia displayed a gun

- Canaglia agreed to a psychiatric evaluation,
- While Canaglia was at the hospital, the ranking officer (with telephone approval from a superior officer) seized two of guns, (knowing Canaglia did not consent to their seizure.

- The question presented to the Court was whether the "community caretaking" exception to the Fourth Amendment's warrant requirement extend to the home.

- In a unanimous opinion authored by Justice Thomas, the Court held that the "community caretaking" exception to the Fourth Amendment's warrant requirement, described in *Cady v. Dombrowski*, 413 U.S. 433 (1973), does not extend to the home.

- As such, the police officers' seizure of the petitioner's guns from his home violated his Fourth Amendment right against warrantless searches and seizures.

Alvarez v. Akwitti, No. 20-50464 (5th Cir. May 5, 2021)

- Alvarez, a Texas state prisoner, filed a handwritten complaint, alleging that he needed protection from a sexually violent predator inmate.

- After that same inmate attacked Alvarez, Alvarez filed a Section 1983 suit against Akwitti, alleging a violation of his Eighth Amendment rights by Akwitti in deliberately failing to protect him. However, the District Court dismissed Alvarez's suit sua sponte before Akwitti filed a response.

- The Fifth Circuit vacated the dismissal and remanded to the District Court for consideration of Alvarez's allegations as well as any response from Akwitti.
- In doing so, the Fifth Circuit pointed out that the District Court did not consider whether Alvarez had stated a valid Eighth Amendment claim by alleging that Akwitti deliberately exposed him to an excessive risk of harm by refusing his transfer request and calling him a "snitch."

Anokwuru v. City of Houston, No. 20-20295 (5th Cir. March 16, 2021)

- Anokwuru filed suit against the City asserting claims for false arrest and malicious prosecution under both Section 1983 and state law.
- Anokwuru claimed that he was wrongfully arrested based on the similarity of his name “to the real suspect” and Houston PD’s failure to use a line up procedure before his arrest.
- After several rounds of 12(b)(6) motions to dismiss and amended complaints, the District Court finally granted the motions.
- Fifth Circuit found that Anokwuru’s constitutional claims for false arrest failed, because the arrest was reasonable.
- Failed to allege anything akin to the officer “deliberately or recklessly” providing false information to either the grand jury or the magistrate judge.
- The Fifth Circuit further held that there is no free-standing right under the Constitution to be free from malicious prosecution.

Cunningham v. Castloo, No. 20-40082 (5th Cir. December 18, 2020)

- Sheriff Castloo's subordinates – Chief Deputy Sanders, Lieutenant Burge, and Captain Holland – met with Cunningham and fired her for "improper use of chain of command and lying," without further explanation.
- Cunningham asked "to speak with the Sheriff," but Sheriff Castloo's subordinates did not "allow" her to do so. Sheriff Castloo was not present at the meeting,
- The Court held that the law was not clearly established that plaintiff's request "to speak with" Sheriff Castloo constituted a request for a name-clearing hearing in the context of the court's "stigma-plus-infringement" test, such that denying the request would amount to a procedural-due-process violation.

- The Fifth Circuit reversed the district court's denial of qualified immunity to defendant in an action brought by plaintiff, alleging 42 U.S.C. 1983 claims premised on the denial of a name-clearing hearing in violation of procedural due process. The court held that the alleged violative nature of Defendant Sheriff Castloo's "particular conduct" was not clearly established as unconstitutional.

Arnold v. Williams, No. 19-30555 (5th Cir. October 23, 2020)

- Sidney Arnold and his brother lived in a garage apartment attached to a house while they worked for the homeowner.
- awoke around 2:00 AM to discover Deputy Steven Williams
- Deputy Williams then “told” Arnold to come to his police car so he could determine Arnold’s identity. Arnold declined
- Arnold ran towards the backyard and Deputy Williams gave chase. Arnold attempted to climb a fence, but instead he fell over it and dislocated his shoulder. Arnold was apprehended and taken to the hospital. Arnold was ultimately arrested and jailed for twenty days.
- Arnold sued Williams pursuant to 42 U.S.C. § 1983 for violation of various constitutional rights
- The Fifth Circuit reversed the district court's dismissal of the unreasonable search claim and remanded for the district court to consider qualified immunity before proceeding to the merits of the case. The court held that plaintiff's complaint plausibly alleges a trespassory search of his home where the officer's search of the curtilage of plaintiff's home was unreasonable.

Cotropia v. Chapman, No. 19-20688 (5th Cir. October 22, 2020)

- 42 U.S.C. 1983 action against defendant, an investigator for the Texas Medical Board (TMB), alleging that defendant searched his medical office and seized documents without a warrant.

- The Fifth Circuit affirmed the district court's grant of defendant's motion for summary judgment based on qualified immunity. The court held that defendant violated plaintiff's constitutional rights when she copied documents in plaintiff's office without any pre-compliance review of the administrative subpoena.

- However, at the time, it was not clearly established that defendant's search per Texas Occupations Code 153.007(a) and 168.052, and Administrative Code 179.4(a) and 195.3 was unconstitutional.

- Therefore, defendant's right to a pre-compliance review was not clearly established at the time of the search.

Taylor v. McDonald, No. 18-11572 (5th Cir. October 15, 2020)

- During imprisonment at the Robertson Unit of TDCJ, he overdosed on an unknown number of pills.

- Taylor consented to be admitted to Montford, which provides in-patient psychiatric care.
- Taylor filed suit under 42 U.S.C. 1983, alleging that defendants' failure to transfer him back to his normal housing without commitment proceedings violated his due process rights under *Vitek v. Jones*, 445 U.S. 480 (1980).

- The Fifth Circuit affirmed based on qualified immunity.

- In this case, defendants did not violate plaintiff's clearly established rights by keeping him in a normal cell in the Montford Unit after moving him from the A1-3 Row Suicidal Prevention Program.

Walsh v. Hodge, No. 19-10785 (5th Cir. September 15, 2020)

- Filed suit against various professors and school administrators under 42 U.S.C. 1983, alleging that they violated his Fourteenth Amendment procedural due process rights.

- Defendants recommended firing plaintiff after conducting a hearing to address a student's sexual harassment claim against him. Plaintiff asserted that Defendants denied him both a fair tribunal and a meaningful opportunity to be heard.

- The Fifth Circuit reversed the district court's denial of qualified immunity and rendered judgment in favor of defendants, holding that plaintiff's deprivations of due process were not clearly established constitutional rights.

- In this case, the court found no merit in plaintiff's claim that one of the defendants was not impartial because the defendant knew the accuser in a university proceeding, and concluded that this was not enough to establish a due process claim of bias.

Nerio v. Evans, No. 19-50793 (5th Cir. September 10, 2020)

- Case of mistaken identity.
- Carlos Nerio argues that narcotics officers violated the Constitution when they mistakenly arrested him instead of his half-brother—also named Carlos Nerio.

- The district court granted qualified immunity to the officers

- Appellant Nerio then sued Evans and King under 42 U.S.C. § 1983. He framed his complaint in terms of false arrest and false imprisonment and claimed that the pair of officers violated his rights under the Fourth and Fourteenth

- The Fifth Circuit affirmed grant of qualified immunity to police alleging that the officers violated the Constitution when they mistakenly arrested him instead of his half-brother

- Court held entitled to qualified immunity where it was not clearly established at the time that Evans' conduct was unconstitutional.

Sewell v. Monroe City School Board, No. 18-31086 (5th Cir. September 10, 2020)

- Alleging discriminated against him because he is an African American
- First day of high school asked teachers to send students with dyed hair to his office. All the students sent were African American.
- Although many students of all races, male and female, wore dyed hair to school, plaintiff was the only one disciplined
- Fifth Circuit held that plaintiff's intentional discrimination claim was untimely, but his harassment claim was timely based on the continuing violation doctrine. The court reversed the dismissal of plaintiff's harassment claims under Title VI and Title IX against the Board, holding that plaintiff plausibly alleged that the Dean's harassment of plaintiff stemmed from a discriminatory view of African American males
- Court held that plaintiff has not pleaded that the school board officials were deliberately indifferent to the Dean's retaliatory conduct. Therefore, the court affirmed the dismissal of plaintiff's retaliation claim.

Morgan v. Chapman, No. 18-40491 (5th Cir. August 7, 2020)

- The Fifth Circuit began its opinion by noting that this matter "is another in a long line of cases involving the Texas Medical Board serving instanter subpoenas on medical clinics."

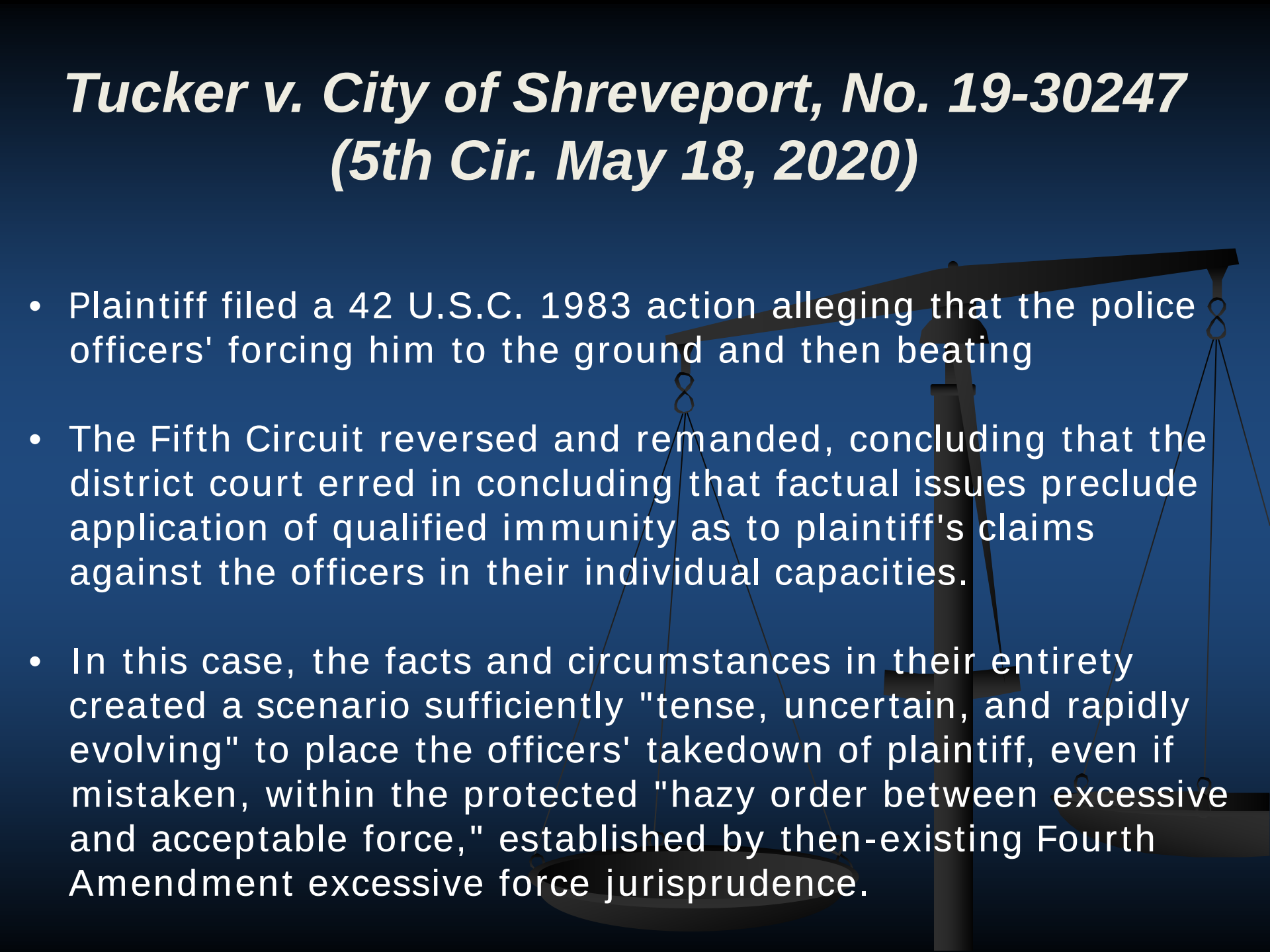
- It reiterated that it has previously held that those subpoenas - which do not allow for court review and demand immediate compliance - are unconstitutional.
- Plaintiff alleges that a team of law enforcement officers and Medical Board investigators locked down his clinic
- Plaintiff filed a civil suit under 42 U.S.C. 1983

- Fifth Circuit held that Chapman was not entitled to absolute immunity as an investigator and, because Chapman fulfilled the fact-finding role generally filled by law enforcement, she is only entitled to the level of immunity available to law enforcement -- qualified immunity.
- The court also held that malicious prosecution and abuse of process are not viable theories of constitutional injury.

Bryant v. Gillem, No. 19-11284 (5th Cir. July 9, 2020

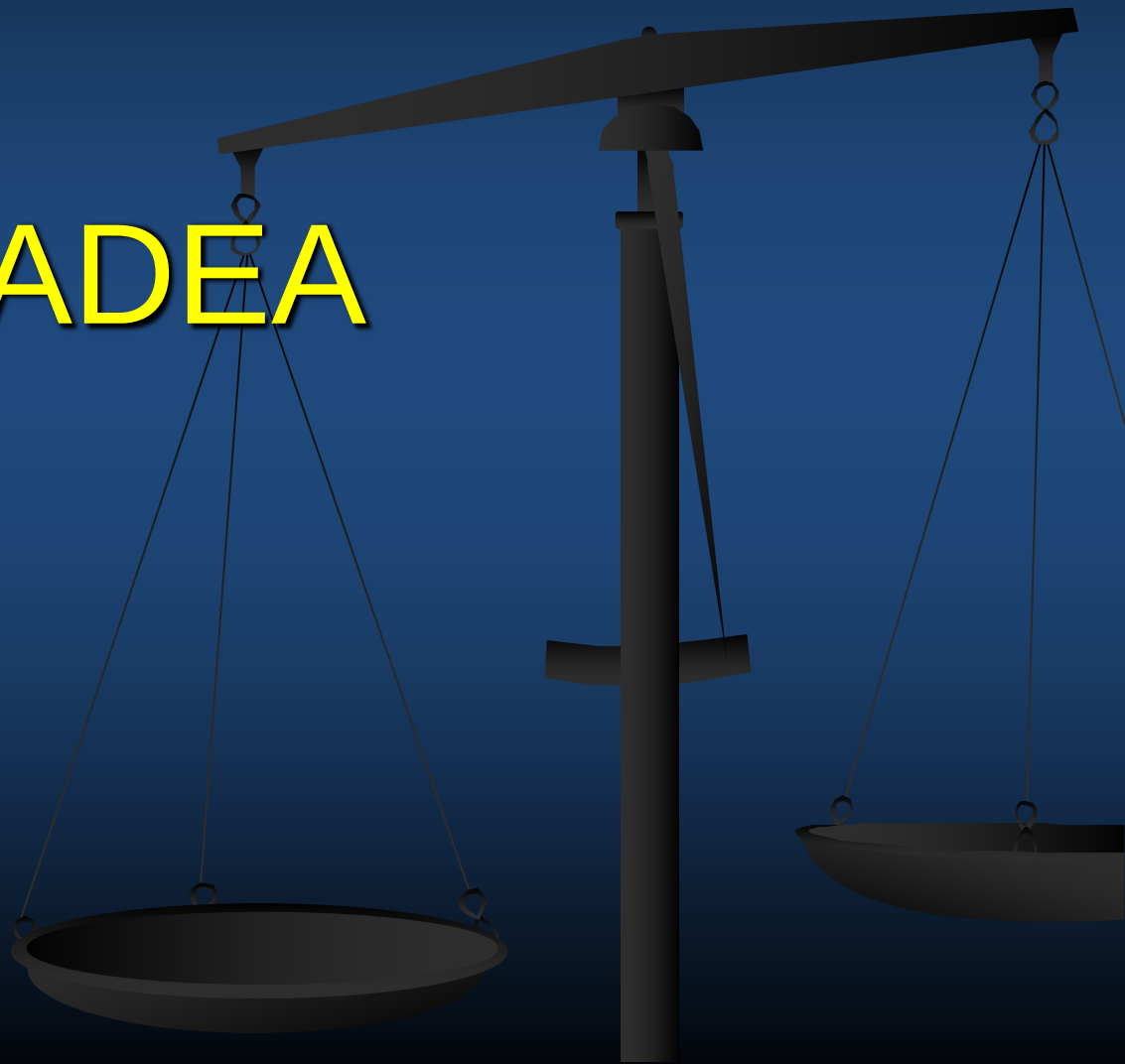
- 45 m.p.h. in a 35 m.p.h. zone on U.S. Highway 287 in Childress
- High speed chase lasting 14 minutes and reaching speeds over 115
- Chapman rammed into the rear of Bryant's vehicle, forcing it off the road into knee-high grass. Bryant and a passenger exited the vehicle with their hands raised and then laid on the ground in compliance with the officers' commands to do so.
- Still holding the firearm with his left hand and reaching with his right for Bryant's hands, Gillem fired his pistol into Bryant's left shoulder - accidentally, Gillem claims.
- The Fifth Circuit affirmed qualified immunity with relation to the accidental shooting. District court did not err in admitting opinion evidence that the shooting was accidental. The court also held that there is no fact dispute that the officer unintentionally kept his firearm in his hand as he sought to restrain Bryant. Therefore, plaintiff failed to show a violation of any Fourth Amendment rights.

Tucker v. City of Shreveport, No. 19-30247 (5th Cir. May 18, 2020)



- Plaintiff filed a 42 U.S.C. 1983 action alleging that the police officers' forcing him to the ground and then beating
- The Fifth Circuit reversed and remanded, concluding that the district court erred in concluding that factual issues preclude application of qualified immunity as to plaintiff's claims against the officers in their individual capacities.
- In this case, the facts and circumstances in their entirety created a scenario sufficiently "tense, uncertain, and rapidly evolving" to place the officers' takedown of plaintiff, even if mistaken, within the protected "hazy order between excessive and acceptable force," established by then-existing Fourth Amendment excessive force jurisprudence.

ADEA



Our Lady of Guadalupe School v. Morrissey-Berru, 591 US _ (2020)

- Age Discrimination in Employment Act (ADEA).

- Whether the First Amendment's religion clauses prevent civil courts from adjudicating employment-discrimination claims brought by an employee against her religious employer, when the employee carried out important religious functions but was not otherwise a "minister."
- The Court held that the "ministerial exception," which derives from the religion clauses of the First Amendment, prevents civil courts from adjudicating the former employee's discrimination claims in this case,
- The Court noted that courts generally try to stay out of matters involving employment decisions regarding those holding certain important positions with churches and other religious institutions
- However, the Court expressly declined "to adopt a rigid formula for deciding when an employee qualifies as a minister."
- The key inquiry is what the employee does.

Salazar v. Lubbock County Hospital District, No. 20-10322 (5th Cir. December 7, 2020)

- Age discrimination in violation of the ADEA

- At the time of her termination, Plaintiff has been employed by UMC for twenty-seven years and was 57 years old. Plaintiff claimed that she and several other elderly employees were fired and replaced by younger respiratory therapists, whom UMC paid at a lower rate.
- Both parties agreed that plaintiff demonstrated a prima facie case of age discrimination and that UMC articulated a legitimate, non-discriminatory basis for her termination.
- The Fifth Circuit affirmed the district court's judgment in favor of UMC, holding that plaintiff failed to adduce sufficient evidence to create a genuine dispute over the veracity of UMC's proffered reasons for plaintiff's discharge. In this case, UMC's articulated reasons for plaintiff's termination were her poor performance, which began to decline in 2016, and her demonstrated lack of effort to change her behavior.

QUALIFIED IMMUNITY

Converse v. City of Kemah, No. 17-41234 (5th Cir. June 12, 2020)

- Chad Silvis threatened to commit suicide by jumping off a bridge

- The arresting officer were present when Silvis was booked in the jail. One of the arresting officers prepared the cell and gave Silvis a blanket, but Silvis' shoes were taken away from him.

- Silvis used the blanket to hang himself from the top bunk of the bed
- Suit against the police officers alleging that the officers were deliberately indifferent to Silva's serious medical needs in violation of the Fourteenth Amendment.

- The Fifth Circuit holding that the complaint contains sufficient factual allegations to state a claim for relief.

- In this case, plaintiffs have pleaded sufficient facts that allow the court to draw the reasonable inference that the officers are not entitled to qualified immunity because they were subjectively aware that Silvis was at a significant risk of suicide and responded unreasonably to that risk by failing to remove the blanket from Silvis's cell, in violation of the Fourteenth Amendment.

Dyer v. City of Mesquite, No. 19-10280 (5th Cir. July 6, 2020)

- 18-year-old Graham, died after being arrested on LSD and bashing his head over 40 times against the interior of a patrol car while being transported to jail. The cause of death was craniocerebral trauma due to extensive blunt force injuries to Graham's head.

- With respect to the officers involved, the Fifth Circuit found that a reasonable jury could find that (1) Graham violently bashed his head against the interior of Officer Heidelburg's car over 40 times while en route to the jail; (2) Officers Heidelburg, Gafford and Scott were fully aware of Graham's actions and of their serious danger; (3) the Officers sought no medical attention for Graham; and (4) upon arriving at jail, the Officers failed to inform jail officials what Graham had done to himself, telling them only that Graham had been "medically cleared" at the scene.

- From this evidence, the Fifth Circuit concluded that a reasonable jury could conclude that the Officers were either aware or should have been aware of the unjustifiably high risk to Graham's health and did nothing to seek medical attention.

Wigginton v. Jones, No. 19-60268 (5th Cir. July 1, 2020)

- Dr. Wigginton was denied tenure during his sixth year as an assistant professor at the University of Mississippi.
- Alleged violated his substantive due process rights when they evaluated his eligibility for tenure in an arbitrary and capricious manner.
- Fifth Circuit reversed and rendered judgment in favor of defendants, holding that the District Court had erred when it denied their motions for qualified immunity.
- In reviewing a substantive due process claim, the existence of a protected property right is a threshold issue. Because Wigginton failed to identify any state or federal law that placed defendants on notice that his alleged contractual right to a fair tenure review process was a constitutionally protected interest, Wigginton failed to demonstrate a clearly-established property right.
- That is, a discretionary tenure policy does not give rise to a protected property interest because, by definition, discretionary tenure policies give universities flexibility to grant or deny tenure based on subjective criteria.

Sanchez v. Oliver, No. 20-50282 (5th Cir. April 26, 2021)

- Gauna took his own life while being held in the Bell County jail as a pretrial detainee.

- On appeal, the Fifth Circuit considered whether Oliver, an employee of the private company, Correctional Healthcare Companies, could assert qualified immunity.
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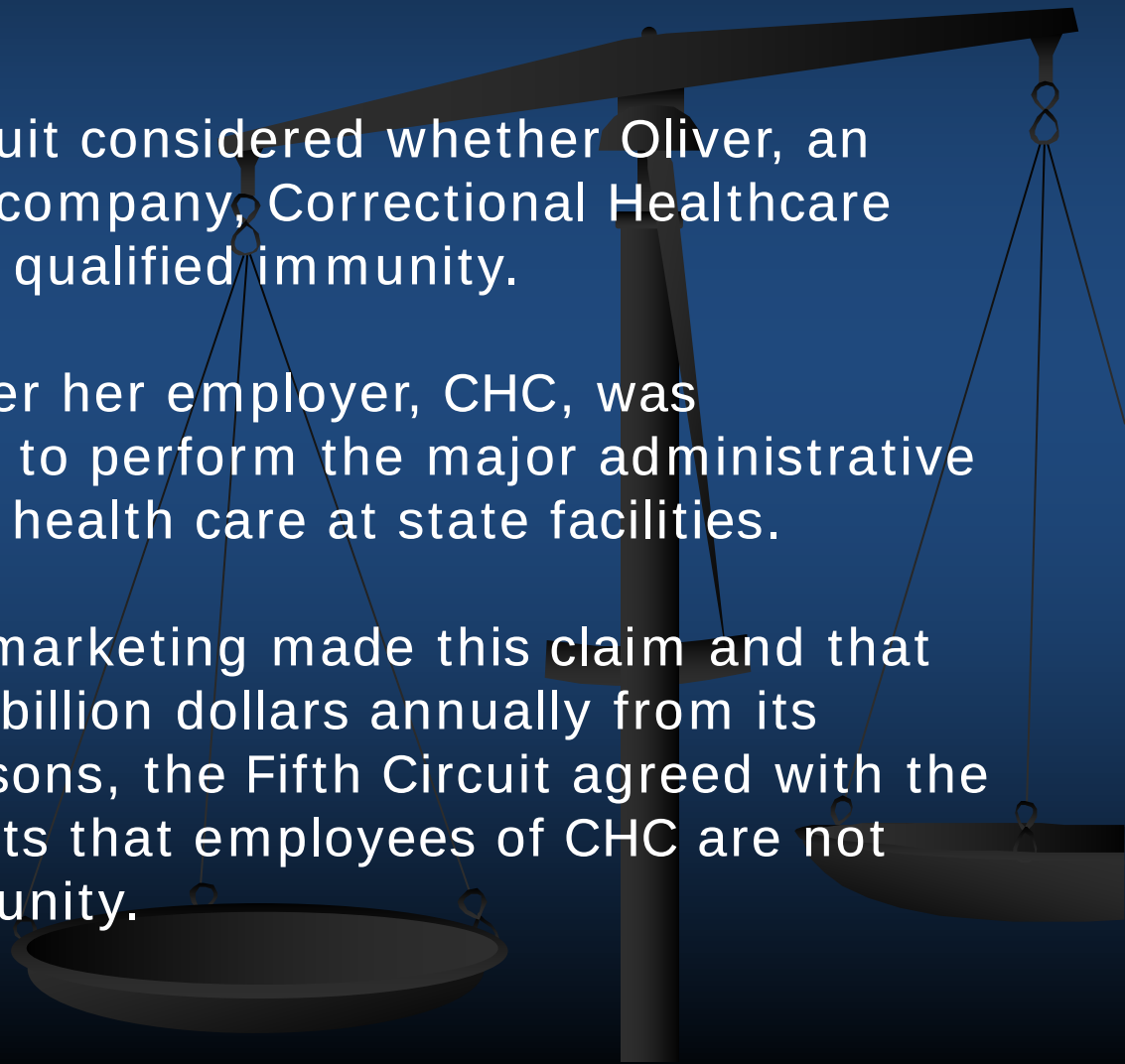
- The question was whether her employer, CHC, was systematically organized to perform the major administrative task of providing mental health care at state facilities.

- Finding that CHC's own marketing made this claim and that CHC derived well over a billion dollars annually from its contracts in jails and prisons, the Fifth Circuit agreed with the Sixth and Seventh Circuits that employees of CHC are not entitled to qualified immunity.



Aguirre v. City of San Antonio, No. 17-51031 (5th Cir. April 22, 2021)

- SAPD responded to a call of a mentally disturbed man walking along the median of a busy highway. Video did not show any resistance on the part of Aguirre.

- After the officers pulled Aguirre over the median, where he landed on his head, they placed him on the ground and in a hog-tie position known as a “maximal-restraint” position. Aguirre wasn’t breathing. Aguirre was not able to be resuscitated.

- Aguirre’s family filed suit against the City of San Antonio, alleging that the officers violated Aguirre’s constitutional rights by causing his death through the use of excessive force

- The Fifth Circuit affirmed as to the City but reversed and remanded as to the excessive force claims against the officers. In doing so, the Court reviewed the excessive force claim and the Graham factors

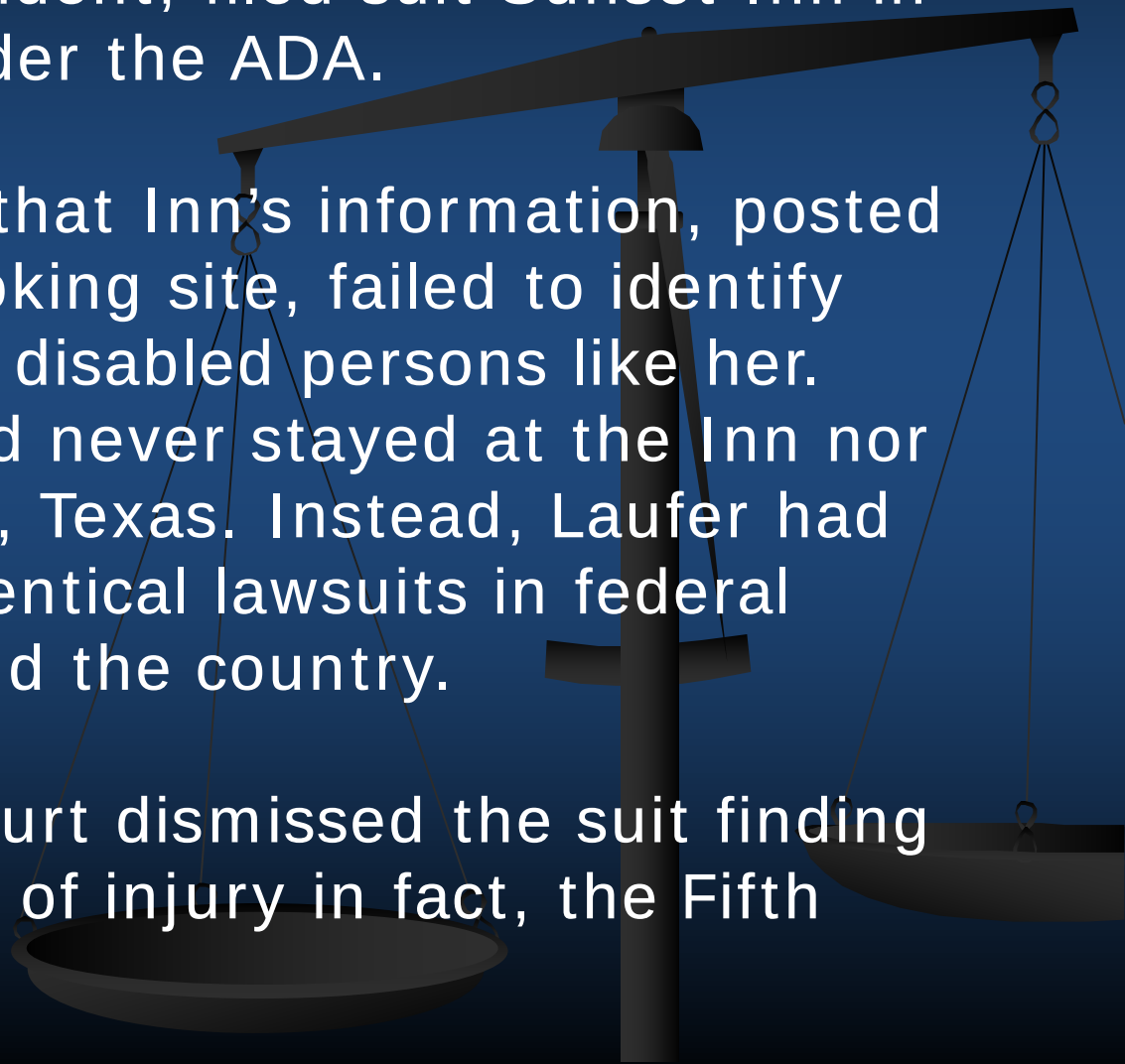
Estate of Rosa Bonilla v. Orange County, No. 19-41039 (5th Cir. December 3, 2020)

- Bonilla committed suicide while in custody at the Orange County, Texas, jail 10 hours after arriving.
- The screening form's guidance recommended against placing her on suicide watch, but the guard decided to discuss Bonilla's answers with a supervisor. They decided to keep her in a holding cell and observed her sleeping during subsequent cell checks. There were no other prisoners in the holding cell.
- Bonilla did not request medication or show any signs of distress until a guard found her hanging from a bed sheet tied around a phone conduit about two hours after delivering her supper.
- In this case, the circumstances of Bonilla's arrest, booking, and detention did not raise questions concerning her mental stability or capacity for self-harm; she had no suicidal tendencies; and evidence indicates that Bonilla did not request medical help, and her behavior in detention was unremarkable prior to her suicide.

ADA

Laufer v. Mann Hospitality, LLC, No. 20-50858 (5th Cir. April 28, 2021)

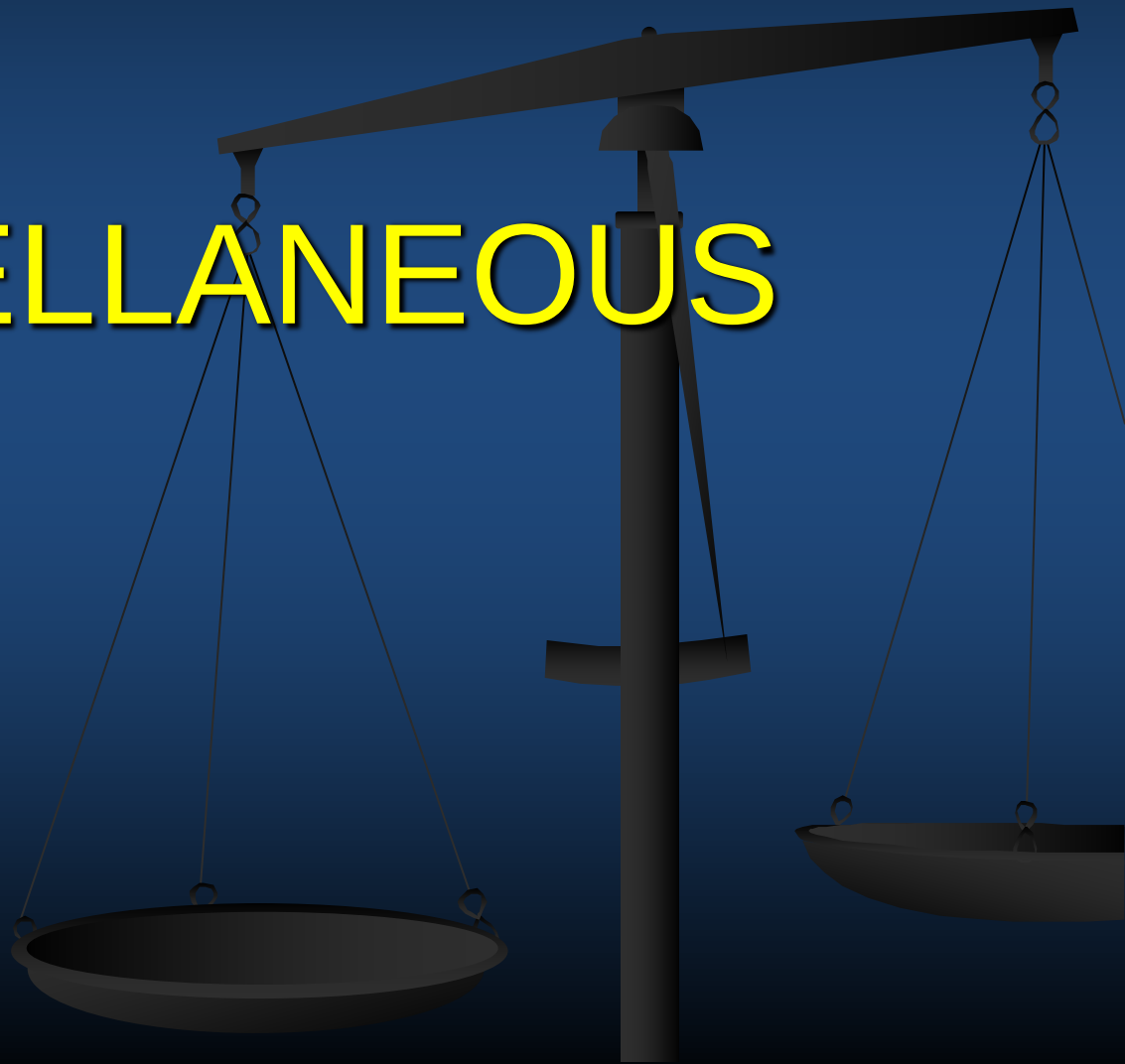
- Laufer, a Florida resident, filed suit Sunset Inn in Caldwell, Texas, under the ADA.
- Laufer alleged that that Inn's information, posted on a third-party booking site, failed to identify rooms accessible to disabled persons like her. Laufer, however, had never stayed at the Inn nor traveled to Caldwell, Texas. Instead, Laufer had filed hundreds of identical lawsuits in federal district courts around the country.
- After the District Court dismissed the suit finding no standing for lack of injury in fact, the Fifth Circuit affirmed.



Weber v. BNSF Railway Co., No. 20-10295 (5th Cir. February 24, 2021)

- Weber, a train dispatcher, was terminated for violating company attendance guidelines. Weber, an epileptic, sued, alleging that BNSF failed to provide reasonable accommodations for his disability.
- Sole issue was Weber's failure to accommodate claim which required Weber to establish he was a "qualified individual with a disability." The parties did not dispute that Weber had a disability.
- However, to be a "qualified individual" Weber had to show that he was one "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires."
- While reassignment can be a reasonable accommodation, Weber offered no evidence that he had the requisite qualifications for another position or that another position that he sought was vacant.
- Likewise, Weber failed to show that he could perform the essential functions of his train dispatcher position, with or without a reasonable accommodation.

MISCELLANEOUS



Espinoza v. Montana Department of Revenue, 590 US _ (2020)

- Petitioners Kendra Espinoza and others are low-income mothers who applied for scholarships to keep their children enrolled in programs.

- Supreme Court was tasked with determining whether a state law that allows for funding for education generally while prohibiting funding for religious schools violate the Religion Clauses or the Equal Protection Clause of the federal Constitution.

- It held that the application of the Montana Constitution's "no-aid" provision to a state program providing tuition assistance to parents who send their children to private schools discriminated against religious schools and the families whose children attend or hope to attend them in violation of the Free Exercise Clause.

- The Court noted that the Free Exercise Clause "protects religious observers against unequal treatment" and against "laws that impose special disabilities on the basis of religious status."

Doe v. Edgewood Independent School District, No. 19-50737 (5th Cir. July 6, 2020)

- Doe, a high school student, endured two years of repeated employee-on-student misconduct/sexual harassment by two school employees – a school peace officer and a teacher.

- Under *Gebser*, a school district is not liable under Title IX for teacher-on-student harassment unless the district, among other things, had "actual notice" of the misconduct and was "deliberately indifferent" to it. Actual notice does not mean the misconduct is reported to any employee, however. The reported-to employee must "at a minimum ha[ve] authority to institute corrective measures on the district's behalf."

- The Fifth Circuit disagreed with Doe's interpretation and stated that an "appropriate person" under Title IX is an official that has the authority to repudiate the conduct and eliminate the hostile environment. A school peace officer, while having the power to arrest an offender, has no power to implement policy or hire and/or fire school employees.

Ross v. Judson I.S.D., No. 20-50250 (5th Cir. April 1, 2021

- Ross, an African American woman, was a middle school principal
- Board of Trustees decided to not renew Ross' contract, which led to Ross filing suit alleging sex, race and age discrimination
- After she added two Section 1983 claims for retaliation and violation of her due process rights, JISD removed the suit & filed MSJ summary judgment.

- The Fifth Circuit affirmed. Regarding the state law claims, the Court concluded that Ross failed to establish a prima facie case of race and sex discrimination when she failed to show either that she was replaced by someone outside her protected class or treated less favorably than similarly situated individuals who were outside her protected class.
- Likewise, Ross' age discrimination failed because JISD rebutted the presumption of discrimination by offering a legitimate, nondiscriminatory reason for her nonrenewal and Ross failed to present evidence to show that this reason was pretextual.
- Finally, Ross' due process claim failed because she did not establish a protected liberty interest.