

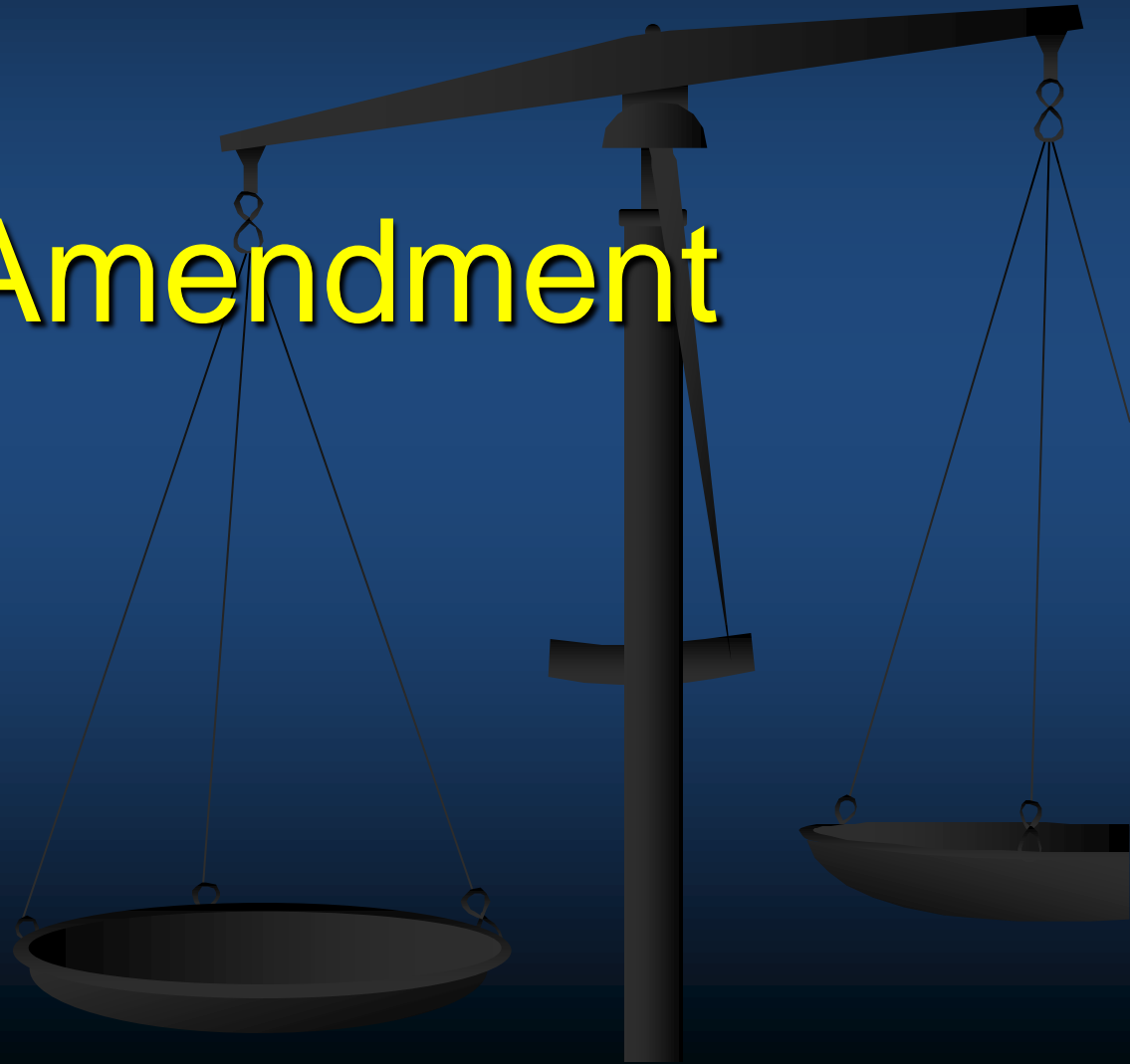
RECENT FEDERAL CASES OF INTEREST TO GOVERNMENTAL ENTITIES



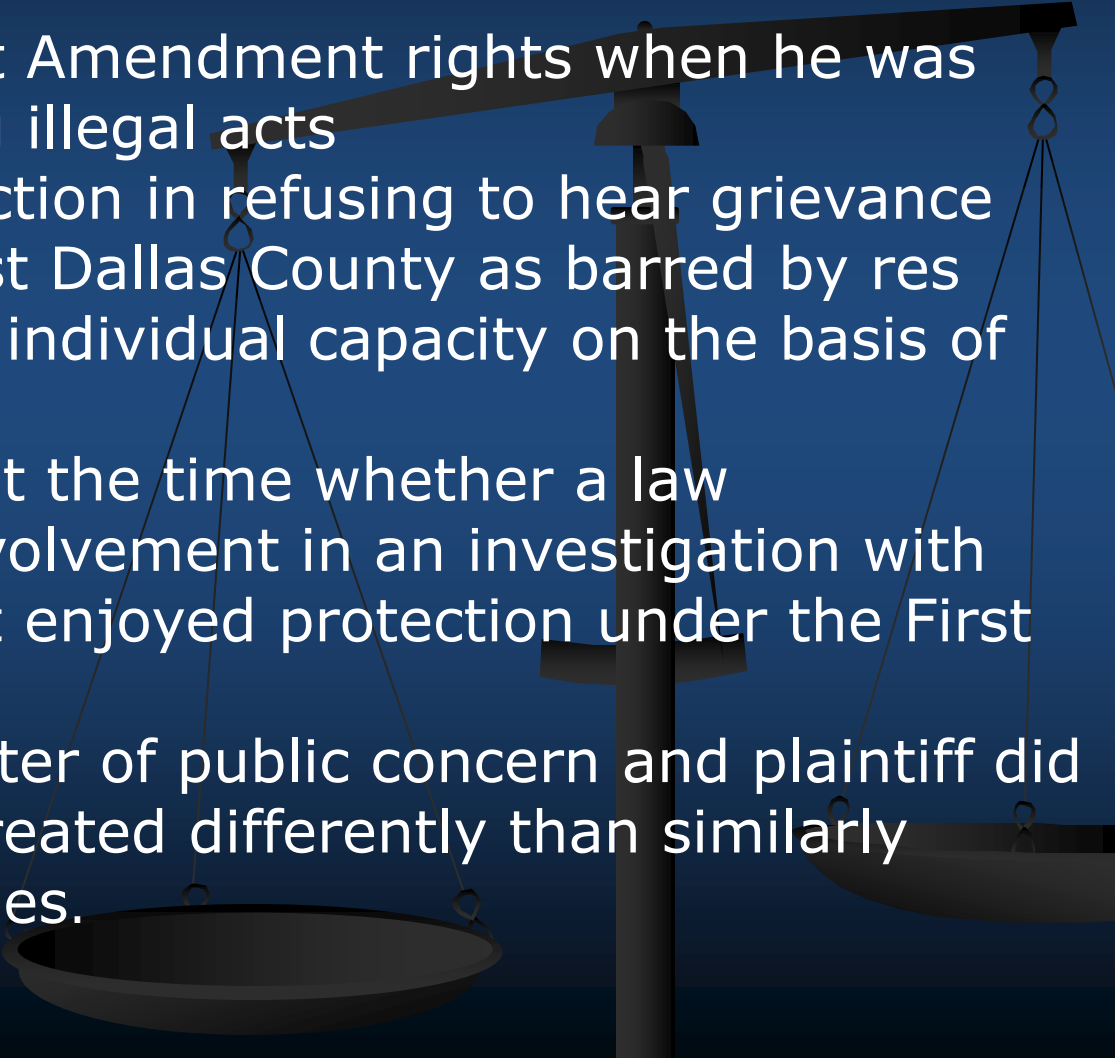
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**TCAA ANNUAL MEETING
SAN ANTONIO, TEXAS
OCTOBER 10, 2019**

First Amendment



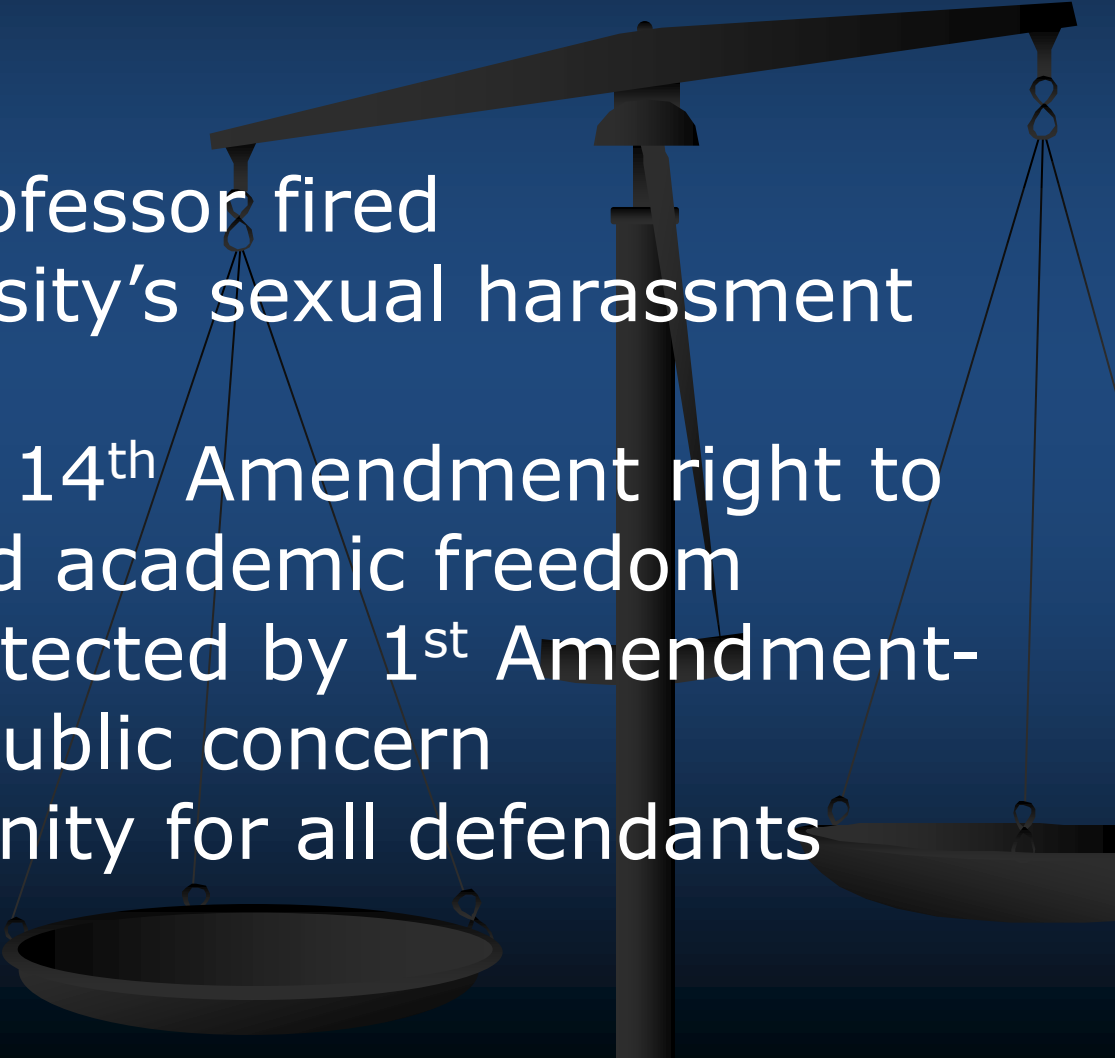
Harmon v. Dallas County, No. 18-10353 (5th Cir., July 9, 2019)

- Alleges violated his First Amendment rights when he was terminated for reporting illegal acts
 - Denied him equal protection in refusing to hear grievance
 - Dismissed claims against Dallas County as barred by res judicata, and dismissed individual capacity on the basis of qualified immunity
 - Not clearly established at the time whether a law enforcement officer's involvement in an investigation with outside law enforcement enjoyed protection under the First Amendment
 - Did not constitute a matter of public concern and plaintiff did not allege that he was treated differently than similarly situated deputy constables.
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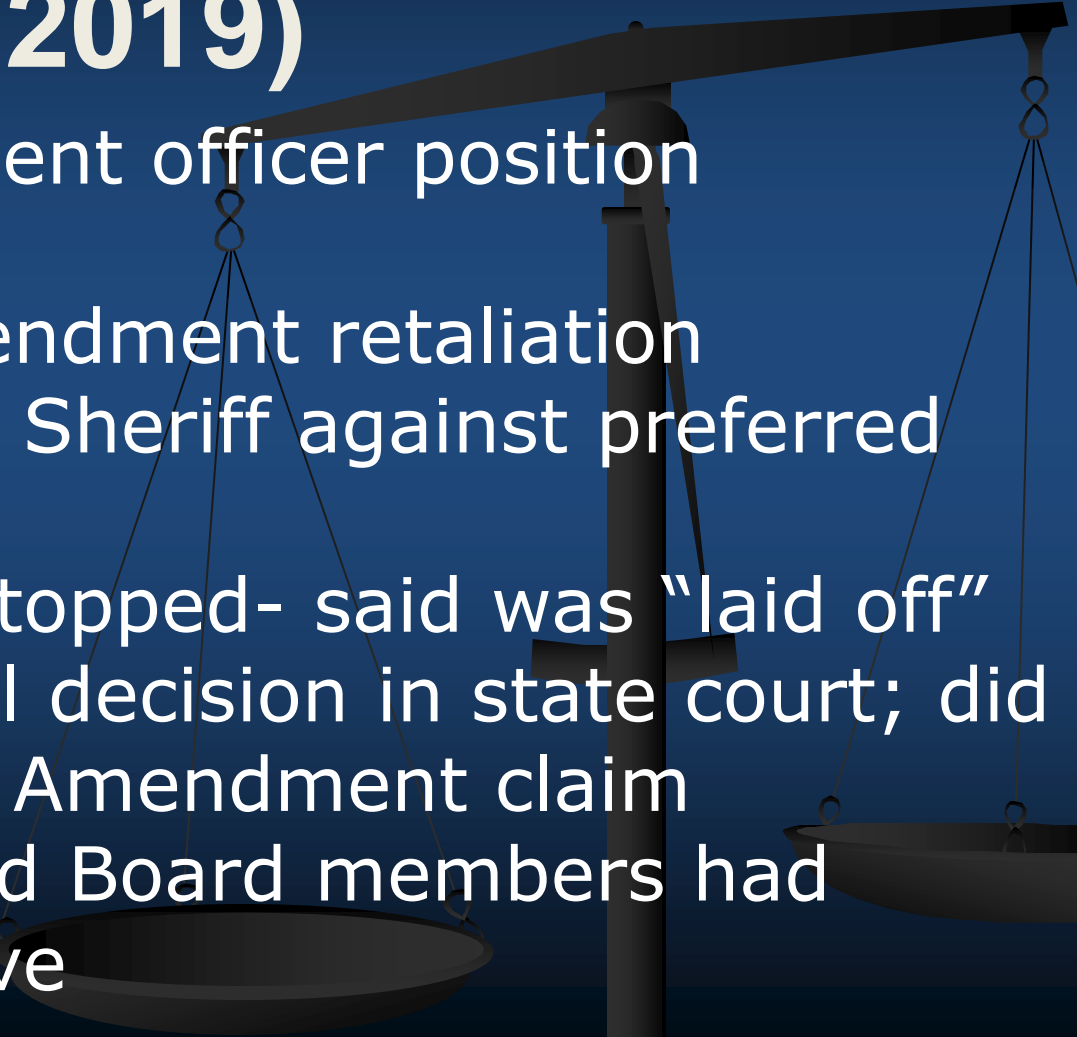
***Robinson v. Hunt County*, No. 18-10238 (5th Cir., April 15, 2019)**

- Alleged unconstitutional censorship on Hunt County Facebook page
 - Sufficiently pleaded official policy of viewpoint discrimination
 - Declaratory judgment claims and injunctive relief claims not redundant
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- A silhouette of a balance scale is positioned on the right side of the slide. The scale's beam is tilted upwards towards the right, and its two pans are visible. The background is a dark blue gradient.

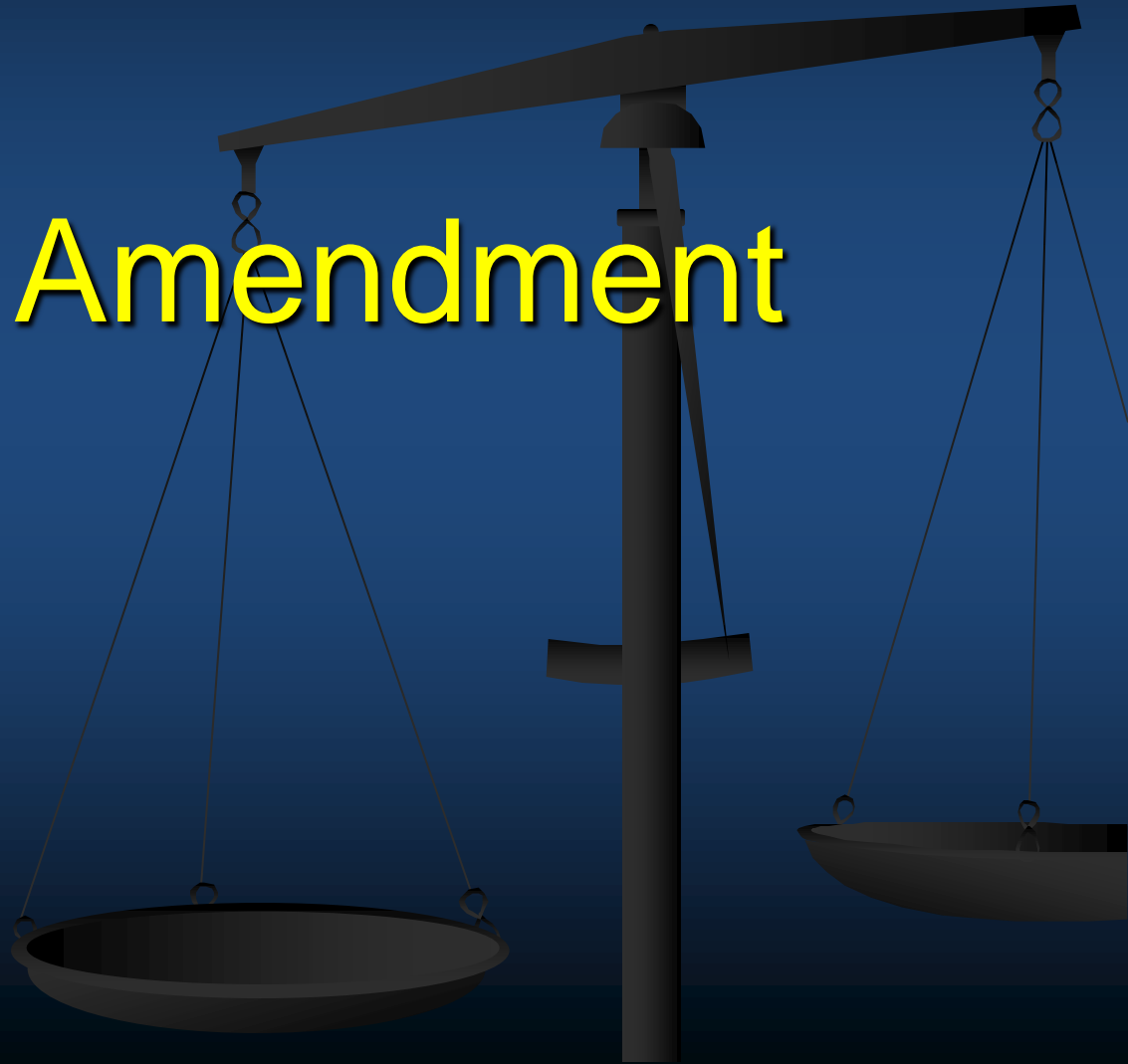
Buchanan v. Alexander, No. 18-30148 (5th Cir., March 22, 2019)

- Former LSU professor fired
 - Violated university's sexual harassment policy
 - Alleged 1st and 14th Amendment right to free speech and academic freedom
 - Speech not protected by 1st Amendment— not matter of public concern
 - Qualified immunity for all defendants
- 

Griggs v. Chickasaw County, No. 18-60401 (5th Cir., July 18, 2019)

- Waste enforcement officer position eliminated
 - Claimed 1st Amendment retaliation
 - Was running for Sheriff against preferred candidate
 - Not judicially estopped- said was “laid off”
 - Failure to appeal decision in state court; did not preclude 1st Amendment claim
 - Evidence showed Board members had retaliatory motive
- 

Fourth Amendment

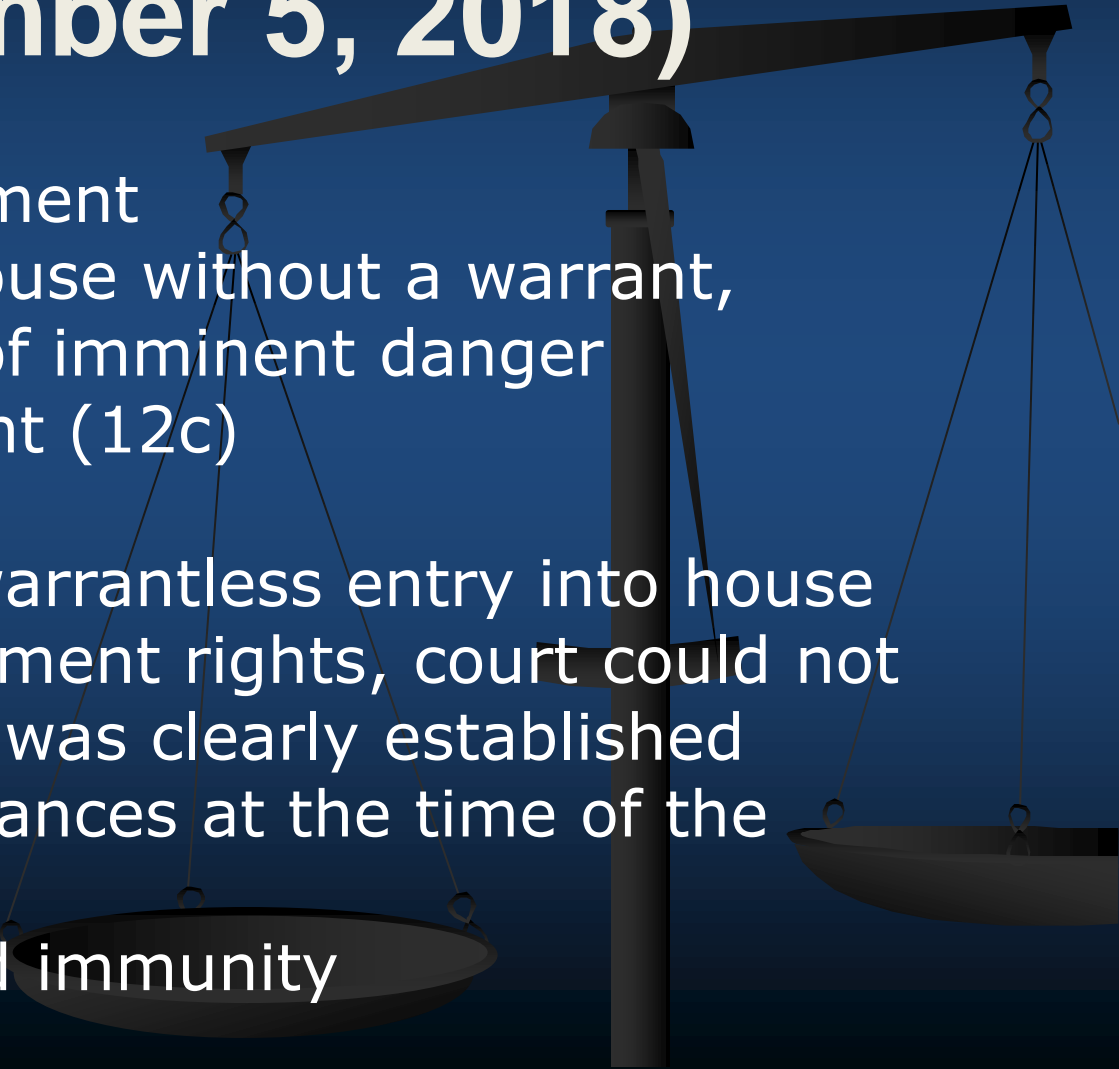


***Blake v. Lambert*, No. 18-60176 (5th Cir., April 5, 2019)**

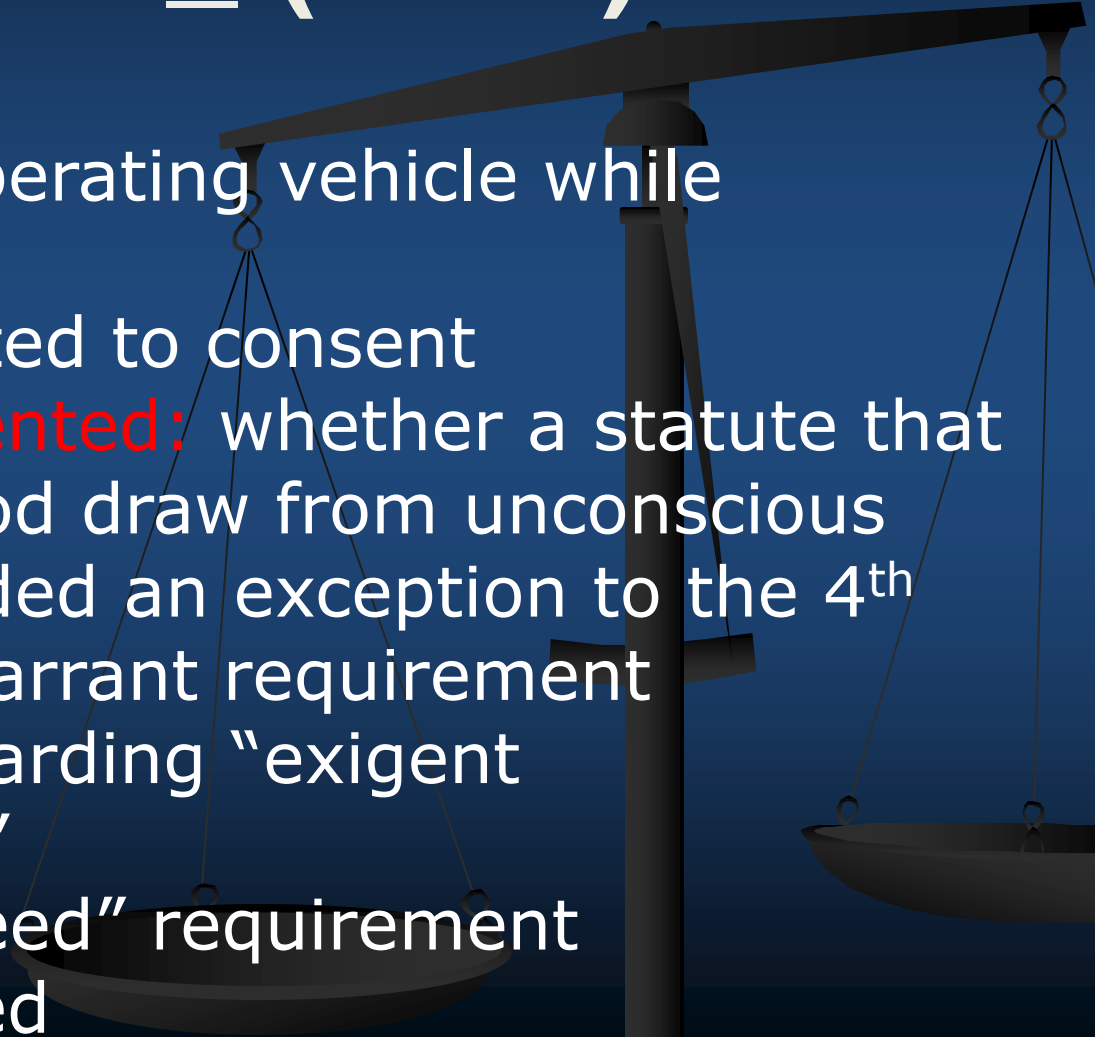
- Sworn arrest affidavit against Plaintiff
- Alleged 4th Amendment rights violated due to lack of probable cause and untruthful statements
- Plaintiff can't hold officer liable for intentionally omitting exculpatory information and presented facially deficient warrant affidavit



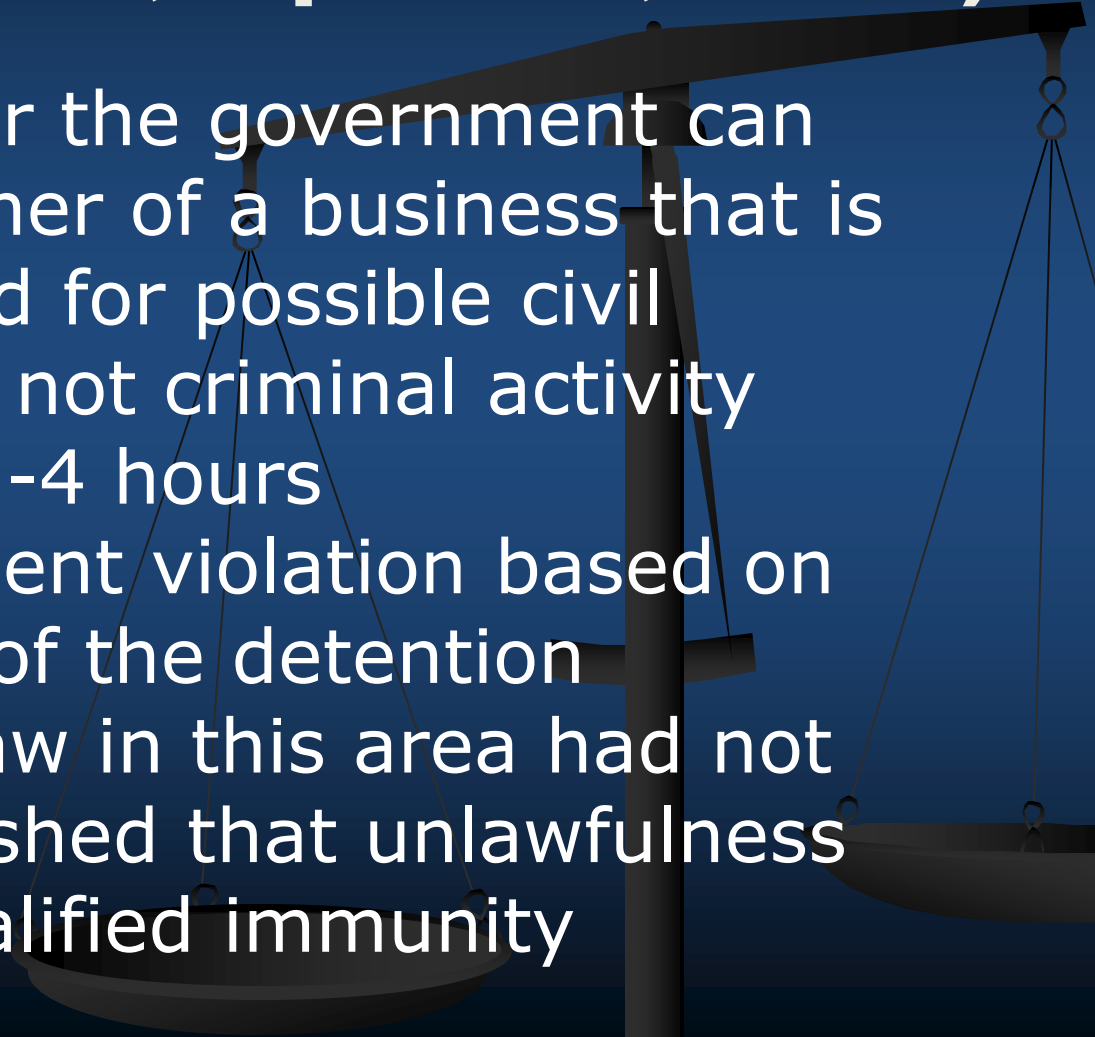
Linicomn v. City of Dallas, No. 17-10101 (5th Cir., September 5, 2018)

- §1983- 4th Amendment
 - Forcibly entered house without a warrant, consent, or belief of imminent danger
 - Motion for judgment (12c)
 - Fact intensive
 - Although officers warrantless entry into house violated 4th Amendment rights, court could not conclude this right was clearly established under the circumstances at the time of the officer's entry
 - Entitled to qualified immunity
- 

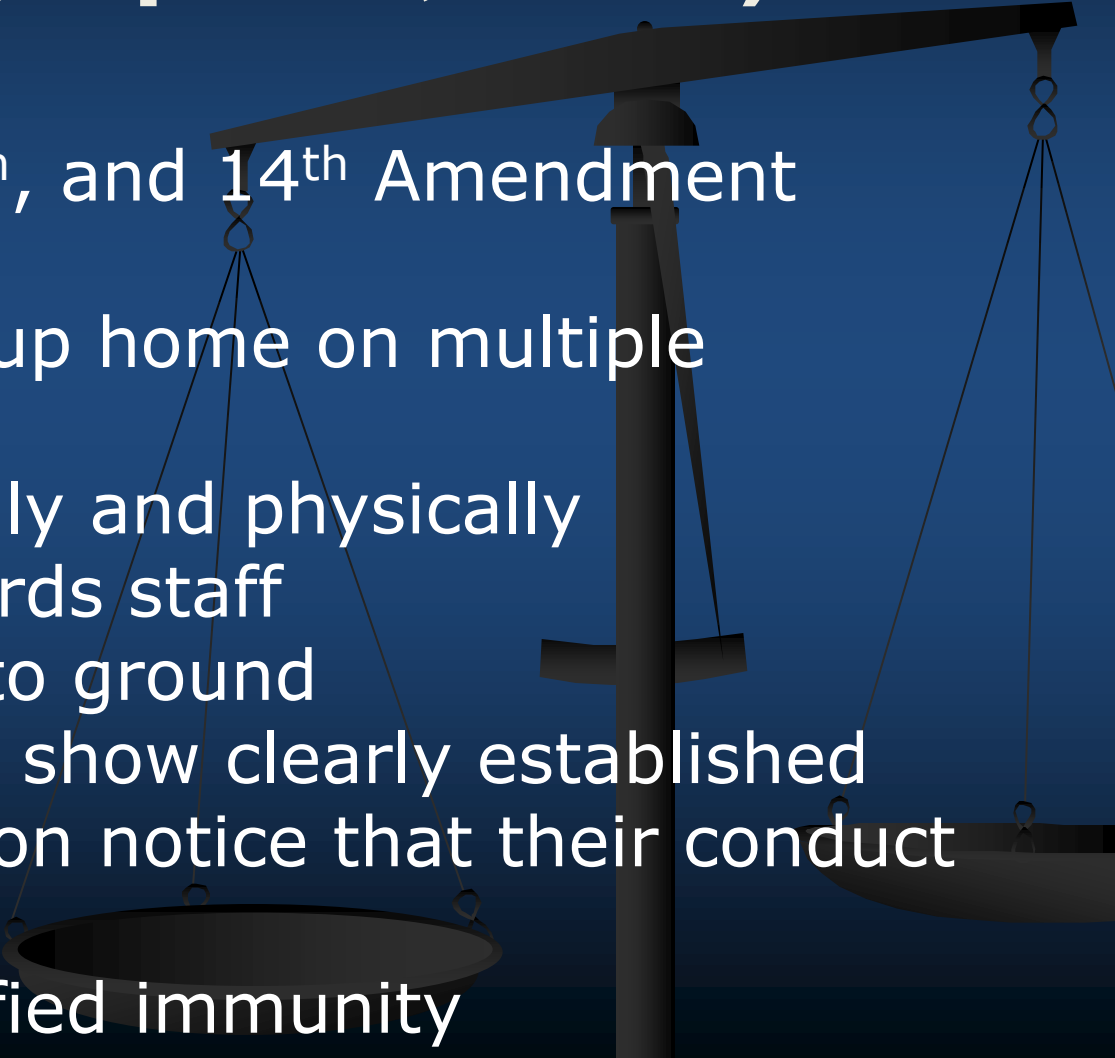
Mitchell v. Wisconsin, 588 US _ (2019)

- Arrested for operating vehicle while intoxicated
 - Too incapacitated to consent
 - **Question presented:** whether a statute that authorizes blood draw from unconscious motorist provided an exception to the 4th Amendment warrant requirement
 - Discussion regarding “exigent circumstances”
 - “Compelling need” requirement
 - Plurality allowed
- 

Okorie v. Crawford, No. 18-60335 (5th Cir., April 12, 2019)

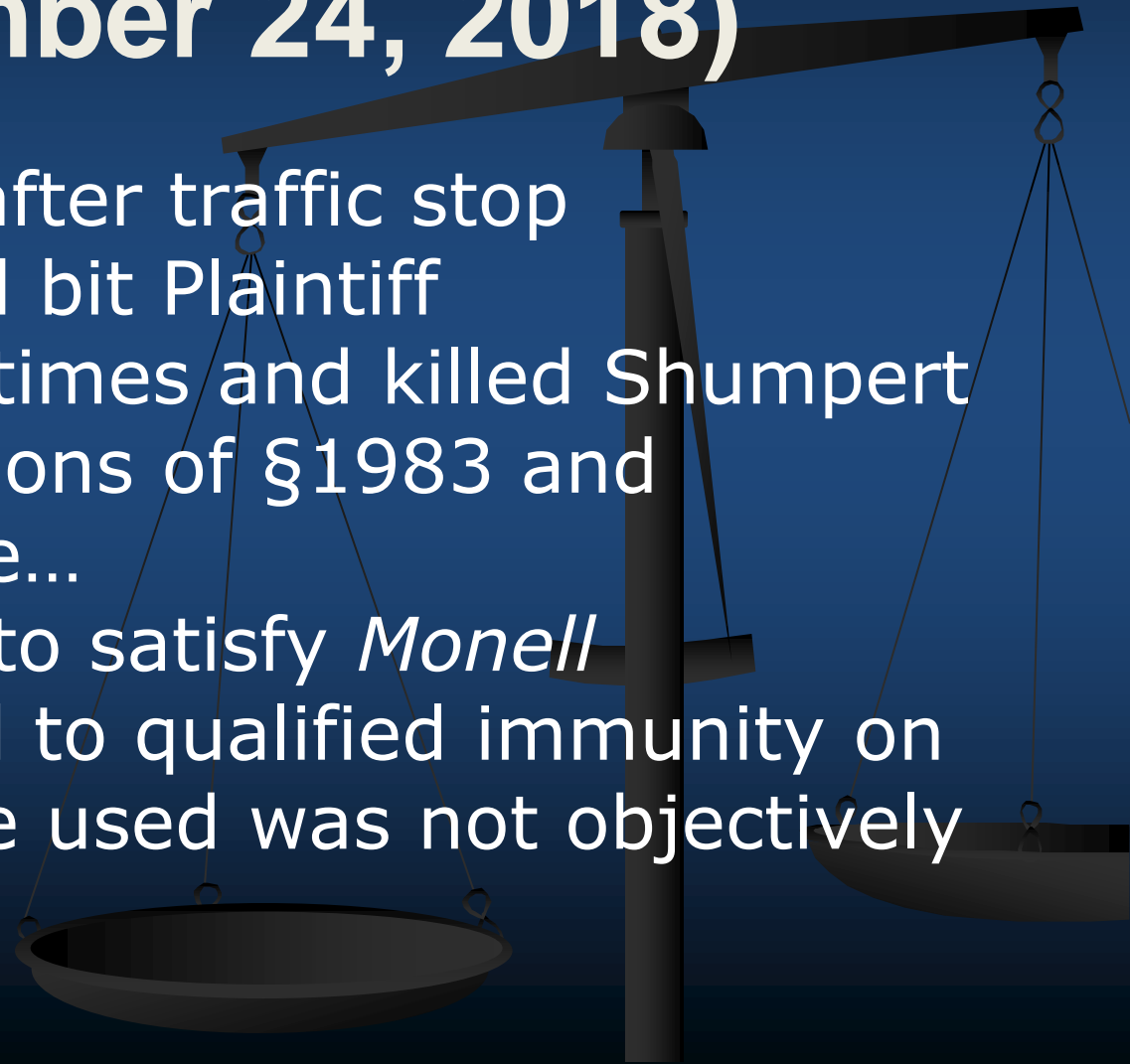
- Issue: whether the government can detain the owner of a business that is being searched for possible civil violations and not criminal activity
 - Detained for 3-4 hours
 - A 4th Amendment violation based on intrusiveness of the detention
 - Sparse case law in this area had not clearly established that unlawfulness
 - Entitled to qualified immunity
- 

Rich v. Palko, No. 18-40415 (5th Cir., April 3, 2019)

- Claims of 4th, 8th, and 14th Amendment rights
 - Trouble at a group home on multiple occasions
 - Mays was verbally and physically aggressive towards staff
 - Hit head as fell to ground
 - Plaintiff failed to show clearly established law put officers on notice that their conduct was illegal
 - Entitled to qualified immunity
- 

Shumpert v. City of Tupelo, No. 17-60774 (5th Cir., September 24, 2018)

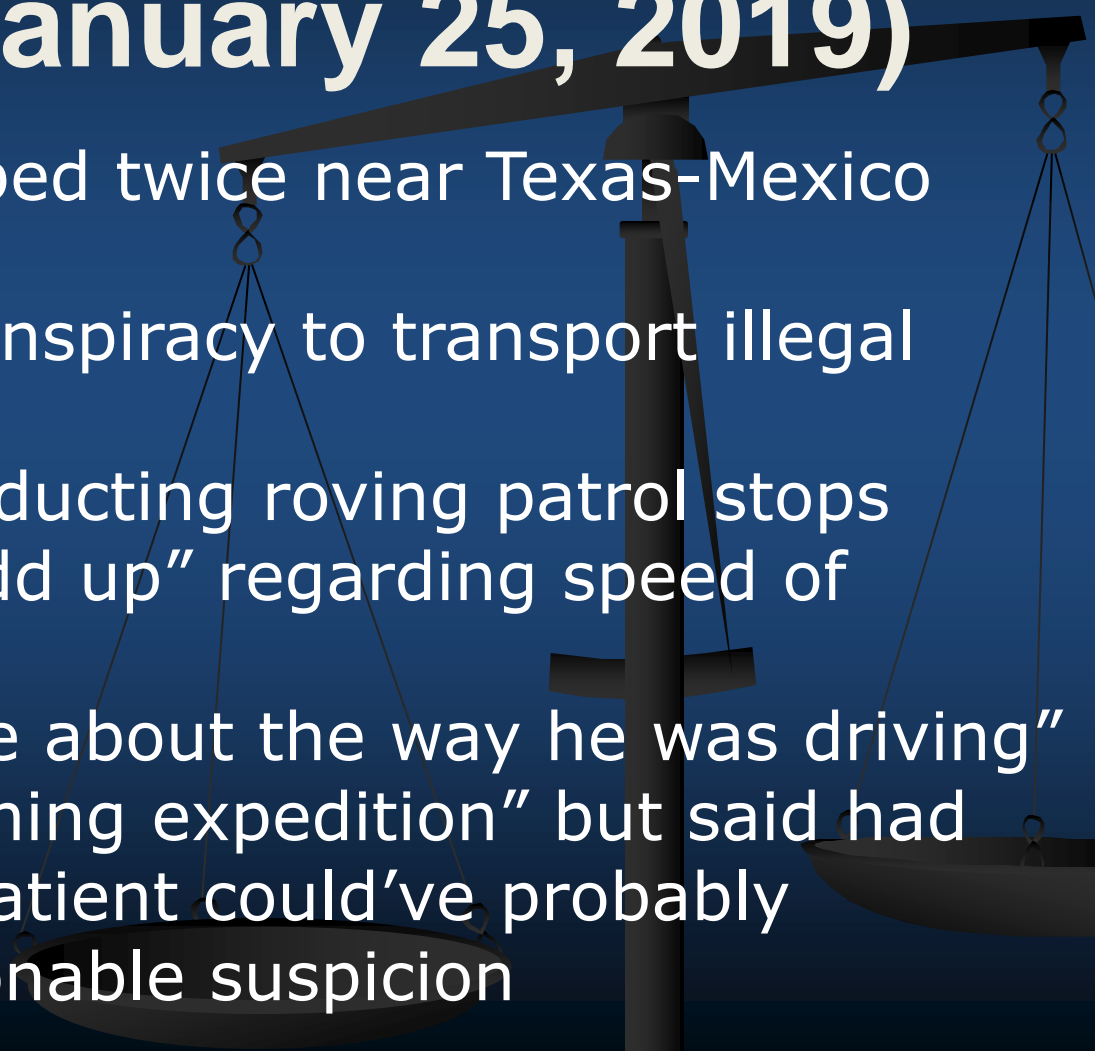
- Ran from car after traffic stop
- K9 located and bit Plaintiff
- Officer shot 4 times and killed Shumpert
- Claimed violations of §1983 and excessive force...
- Plaintiff failed to satisfy *Monell*
- Officer entitled to qualified immunity on K9 where force used was not objectively unreasonable



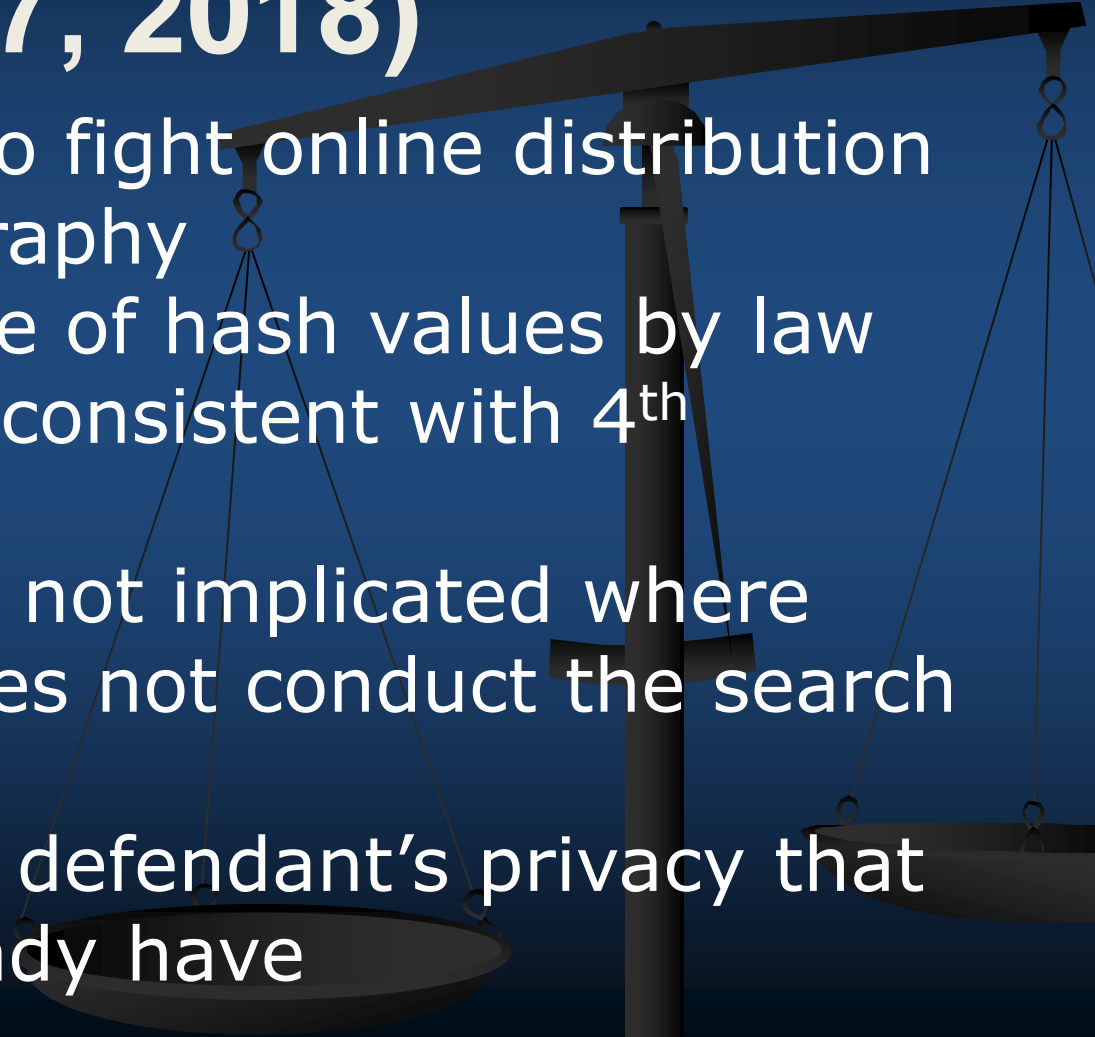
United States v. Freeman,

No. 17-40739

(5th Cir., January 25, 2019)

- Defendant stopped twice near Texas-Mexico border
 - Charged with conspiracy to transport illegal alien
 - Admitted to conducting roving patrol stops
 - “Math did not add up” regarding speed of vehicle
 - “Nothing evasive about the way he was driving”
 - Court found “fishing expedition” but said had he been more patient could’ve probably developed reasonable suspicion
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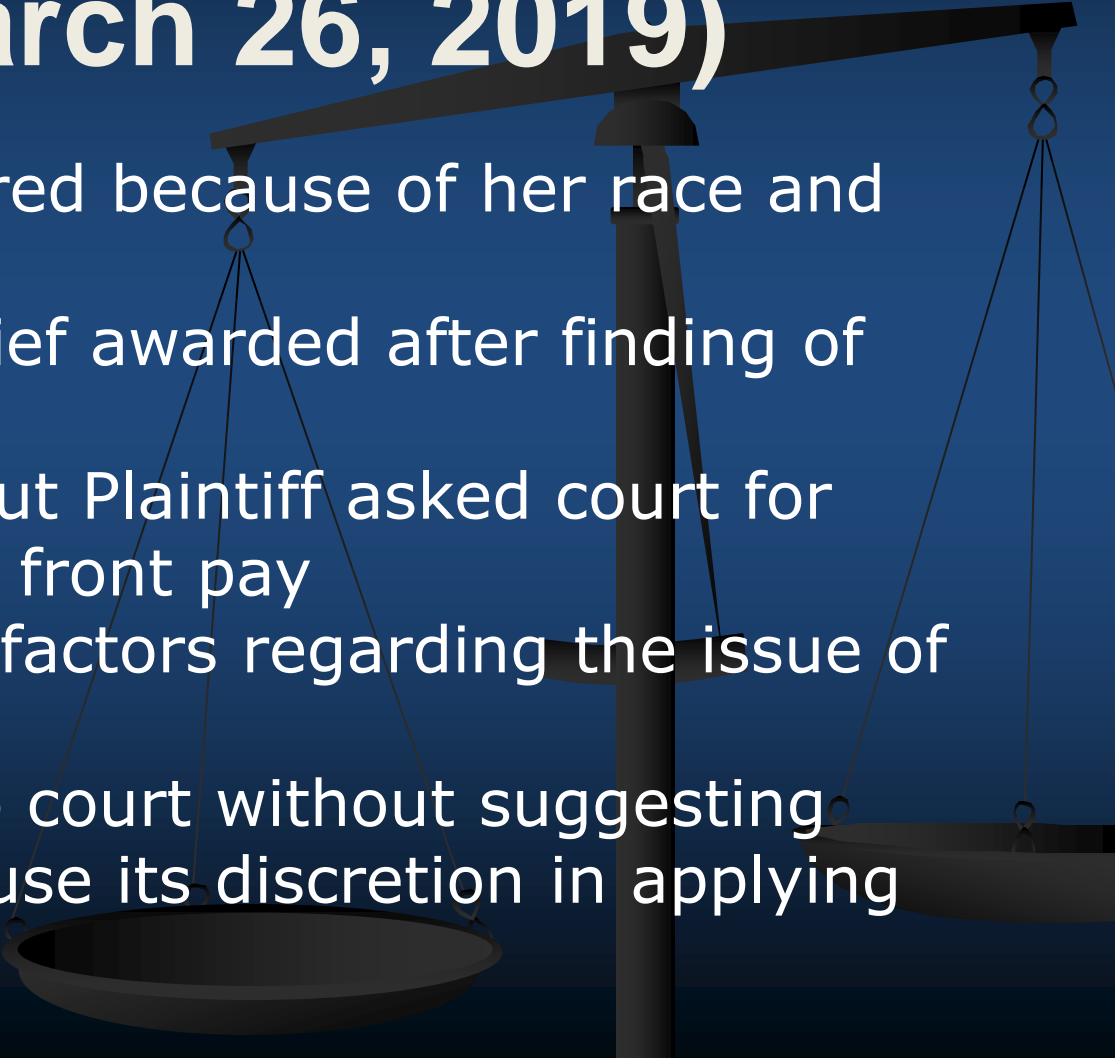
United States v. Reddick, No. 17-41116 (5th Cir., August 17, 2018)

- “Hash values” to fight online distribution of child pornography
 - Whether the use of hash values by law enforcement is consistent with 4th Amendment
 - 4th Amendment not implicated where government does not conduct the search itself
 - No intrusion on defendant’s privacy that he did not already have
- 

Title VII



Bogan v. MTD Consumer Group, Inc., No. 17-60697 (5th Cir., March 26, 2019)

- Alleged she was fired because of her race and sex
 - No prospective relief awarded after finding of discrimination
 - Awarded just \$1 but Plaintiff asked court for reinstatement and front pay
 - Court discussed 4 factors regarding the issue of reinstatement
 - Remanded back to court without suggesting how court should use its discretion in applying 2 of the factors
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Cicalese v. University of Texas Medical Branch -- F.3d – Docket No. 18-40408 (5th Cir., May 16, 2019)

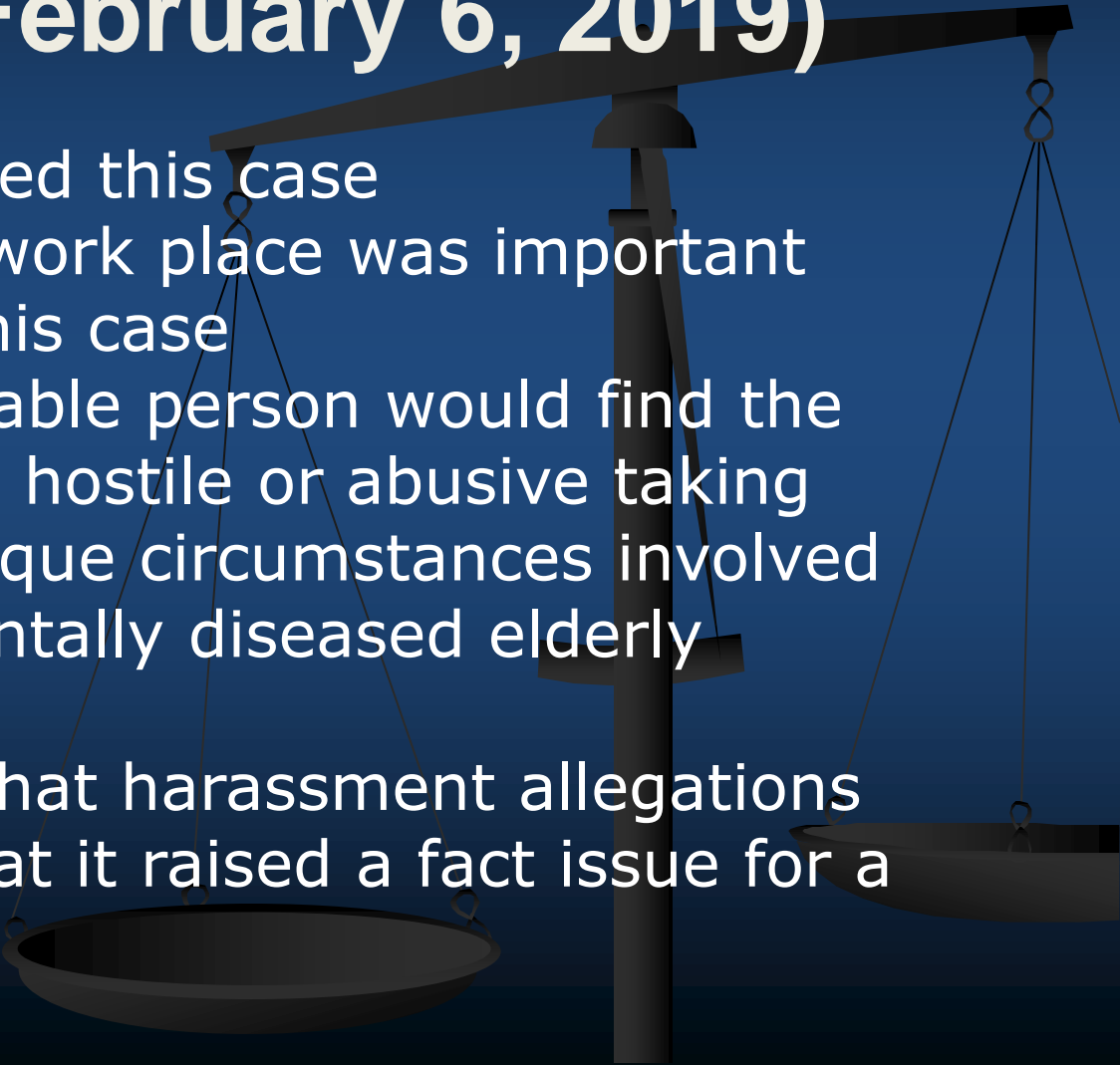
- Claimed discriminated against because of their national origin in violation of Title VII
- Originally from Italy and came to work at UTMB
- Derogatory comments regarding Italians, job performance
- Another doctor also made demeaning comments about Plaintiffs and excluded them from departmental activities, demoted and reduced pay
- District court improperly applied heightened pleading standard
- Fifth Circuit held Plaintiffs alleged sufficient facts that University's actions were motivated by anti-Italian bias

Fort Bend County, Texas v. Davis, 587 US _ (2019)



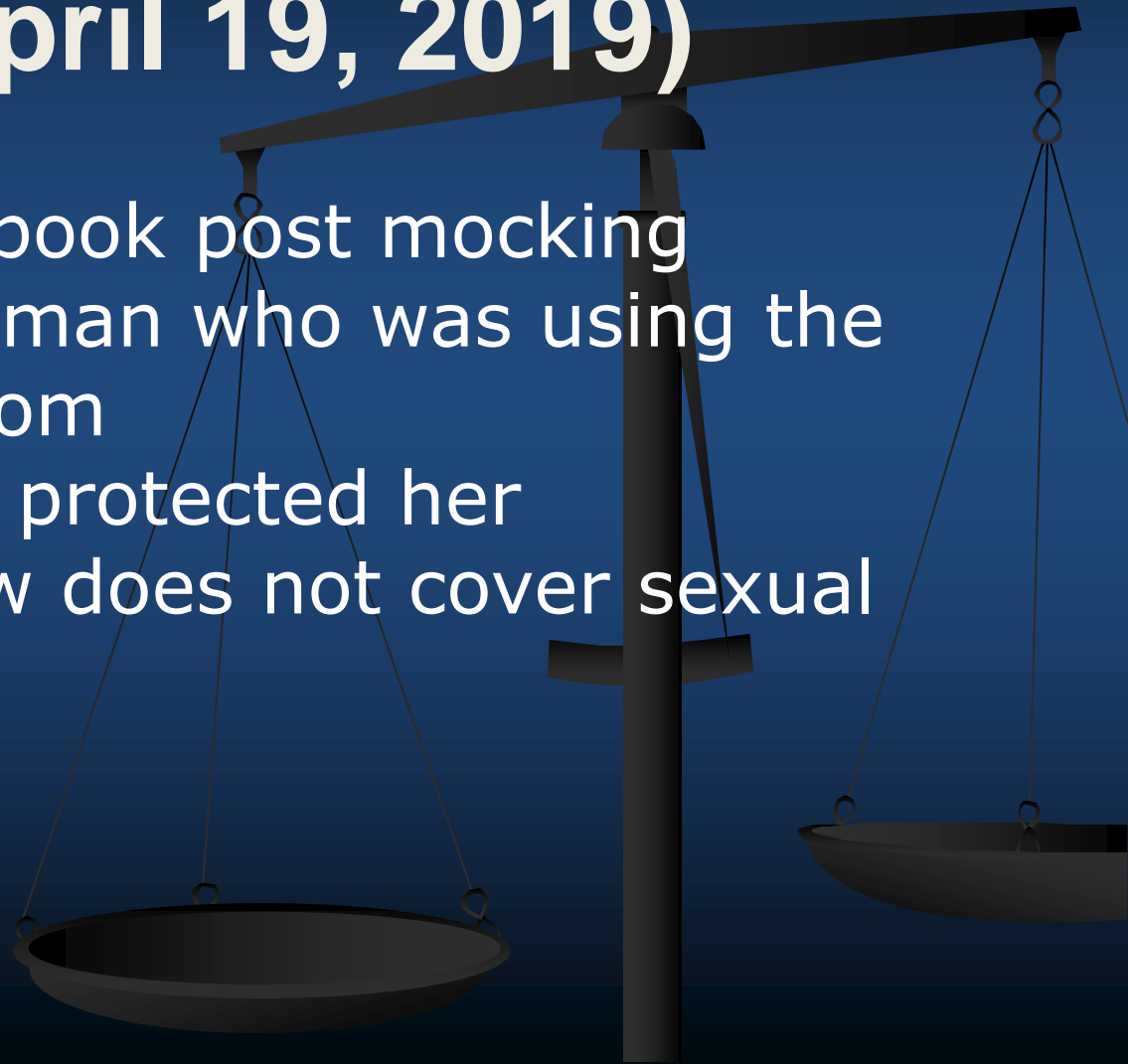
- IT supervisor claimed sexually harassed and assaulted
- “Previous religious commitment”-terminated
- Intake questionnaire- “religion”
- Whether Title VII’s administrative-exhaustion requirement is a jurisdictional prerequisite to suit or a waivable claim
- Unanimous opinion
- Is a waivable claim not a jurisdictional prerequisite to suit

Kymerli Gardner v. CLC of Pascagoula, L.L.C., No. 17-60072 **(5th Cir., February 6, 2019)**

- Previously discussed this case
 - Unique nature of work place was important consideration in this case
 - Whether a reasonable person would find the work environment hostile or abusive taking account of the unique circumstances involved and caring for mentally diseased elderly patients
 - Fifth Circuit held that harassment allegations were so severe that it raised a fact issue for a jury to decide
- 

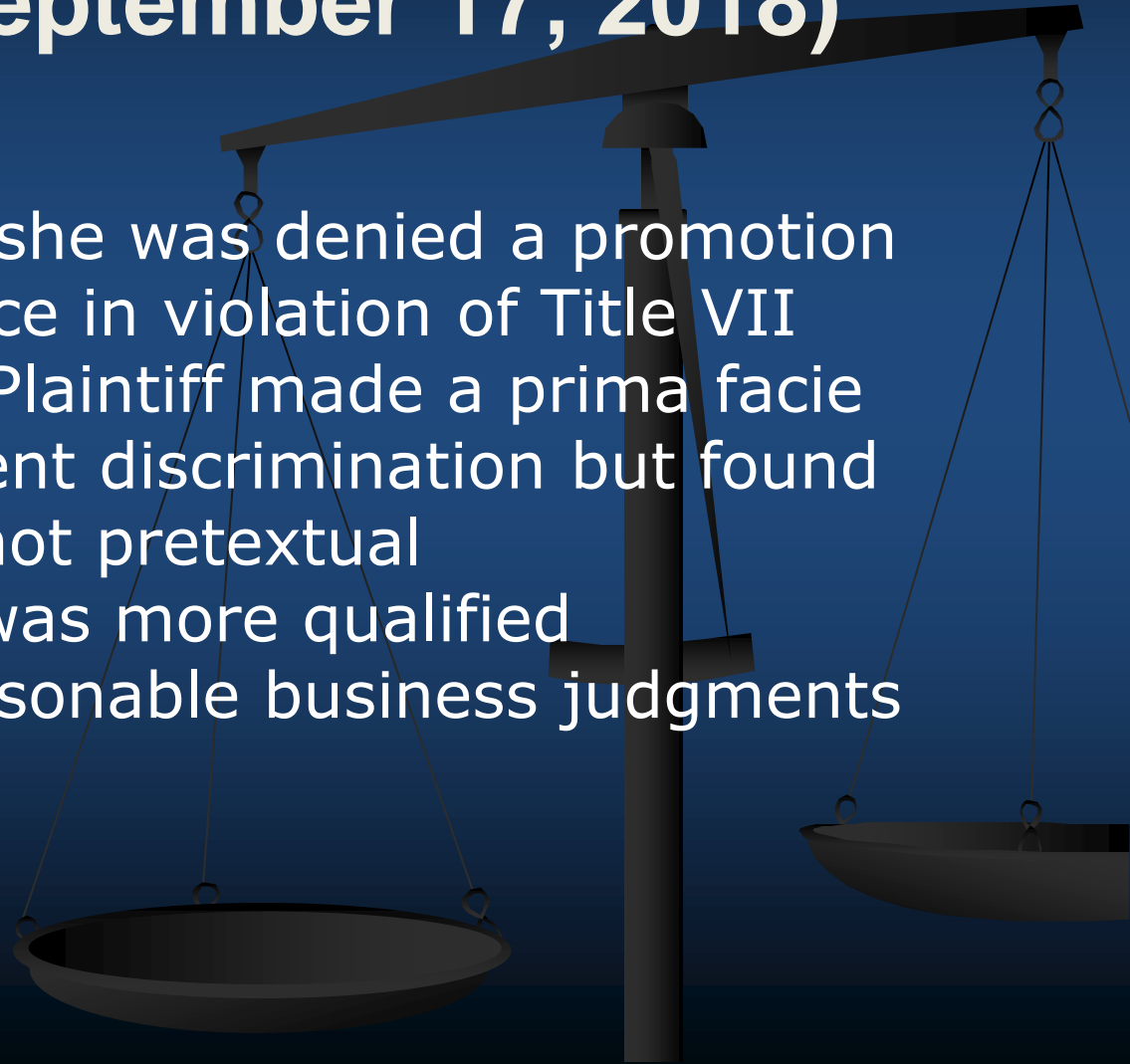
O'Daniel v. Industrial Service Solutions, No. 18-30136 (5th Cir., April 19, 2019)

- Fired over Facebook post mocking transgender woman who was using the women's restroom
- Claims Title VII protected her
- Fifth Circuit: law does not cover sexual orientation

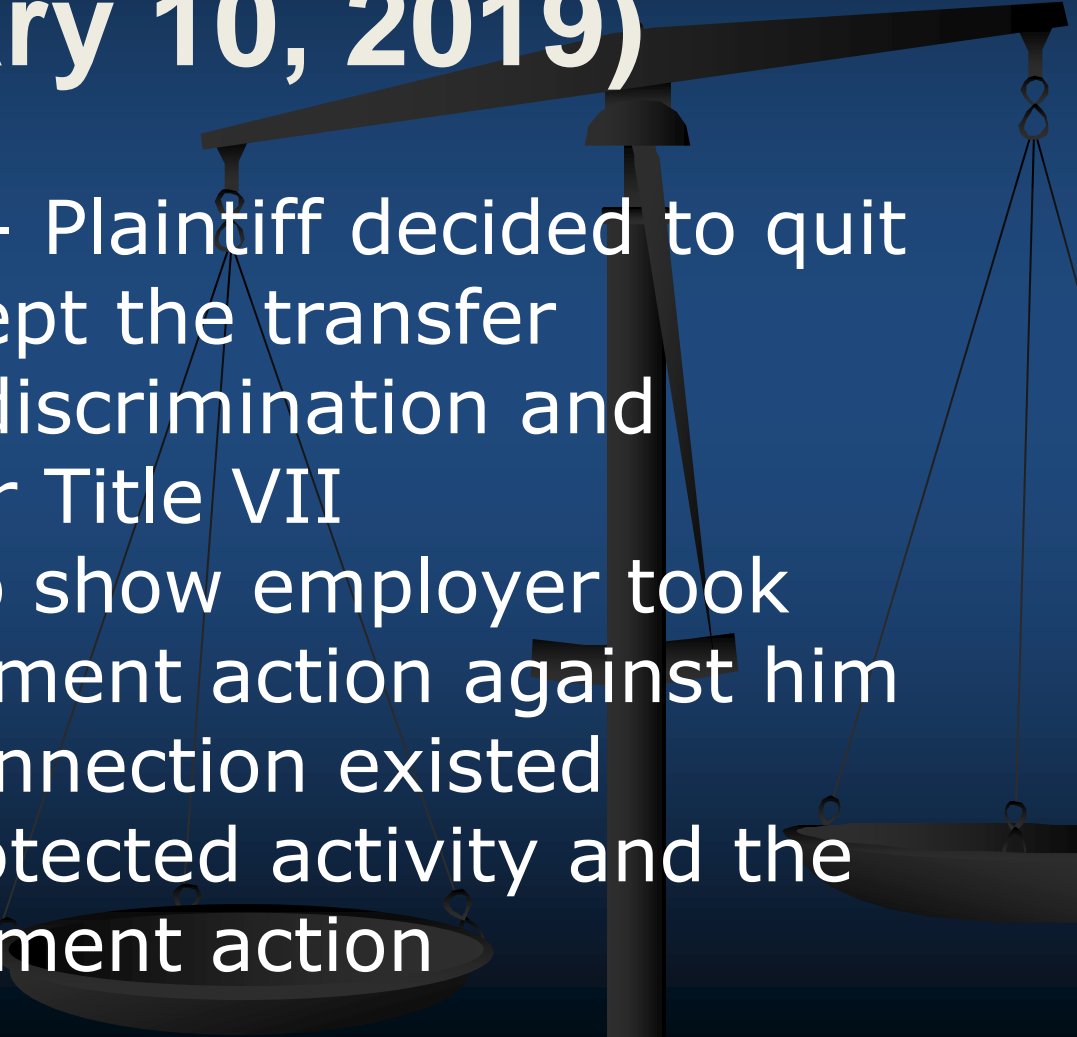


***Roberson-King v. Louisiana
Workforce Commission, No. 17-30899
(5th Cir., September 17, 2018)***

- Counselor claims she was denied a promotion because of her race in violation of Title VII
- Court found that Plaintiff made a prima facie case of employment discrimination but found justification was not pretextual
- White candidate was more qualified
- Court allowed reasonable business judgments

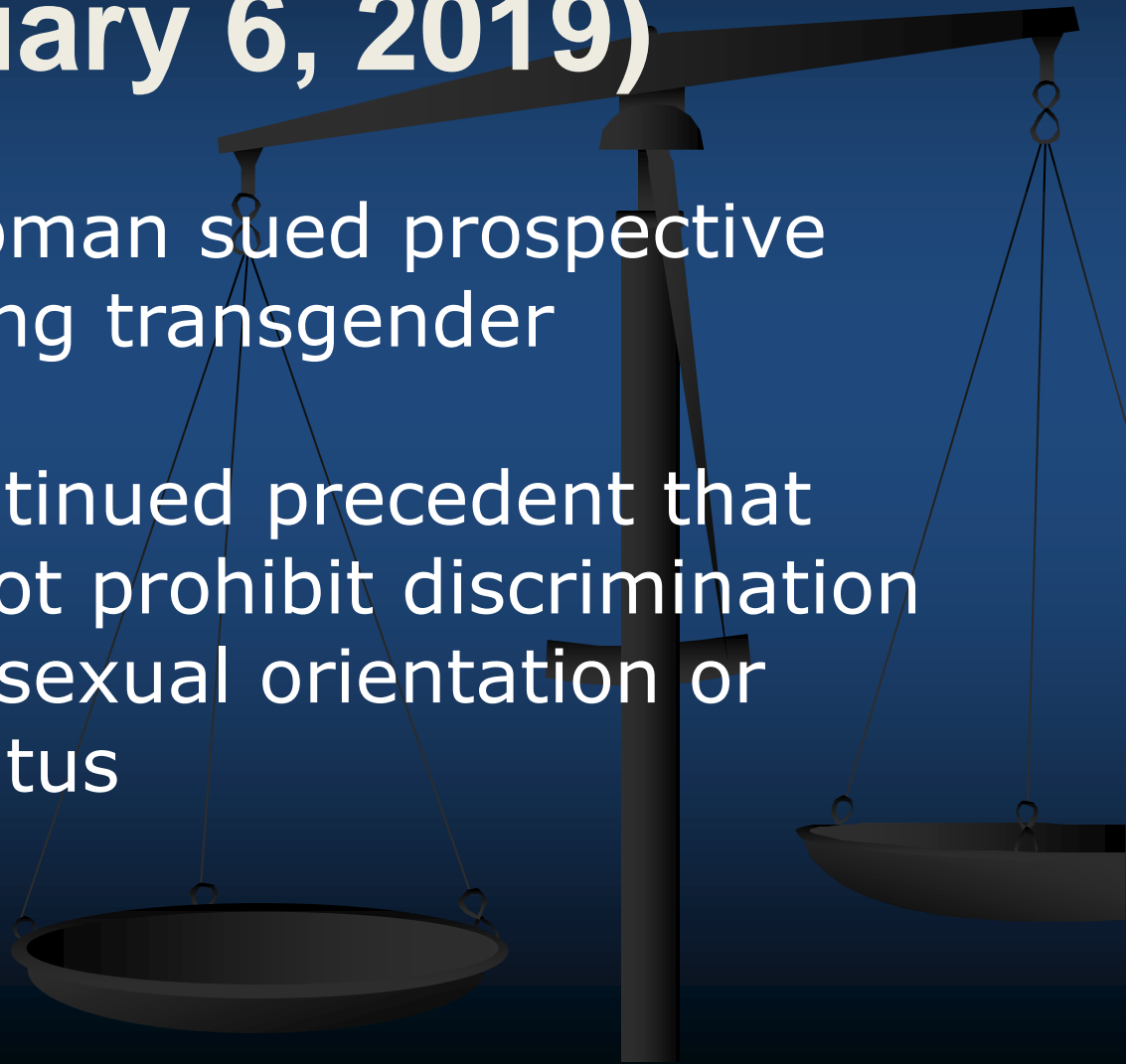


Thomas v. Tregre, No. 18-30577 (5th Cir., January 10, 2019)

- IA investigation- Plaintiff decided to quit rather than accept the transfer
 - Sued for racial discrimination and retaliation under Title VII
 - Plaintiff failed to show employer took adverse employment action against him that a causal connection existed between the protected activity and the adverse employment action
- 

Wittmer v. Phillips 66 Co., No. 18-20251 (5th Cir., February 6, 2019)

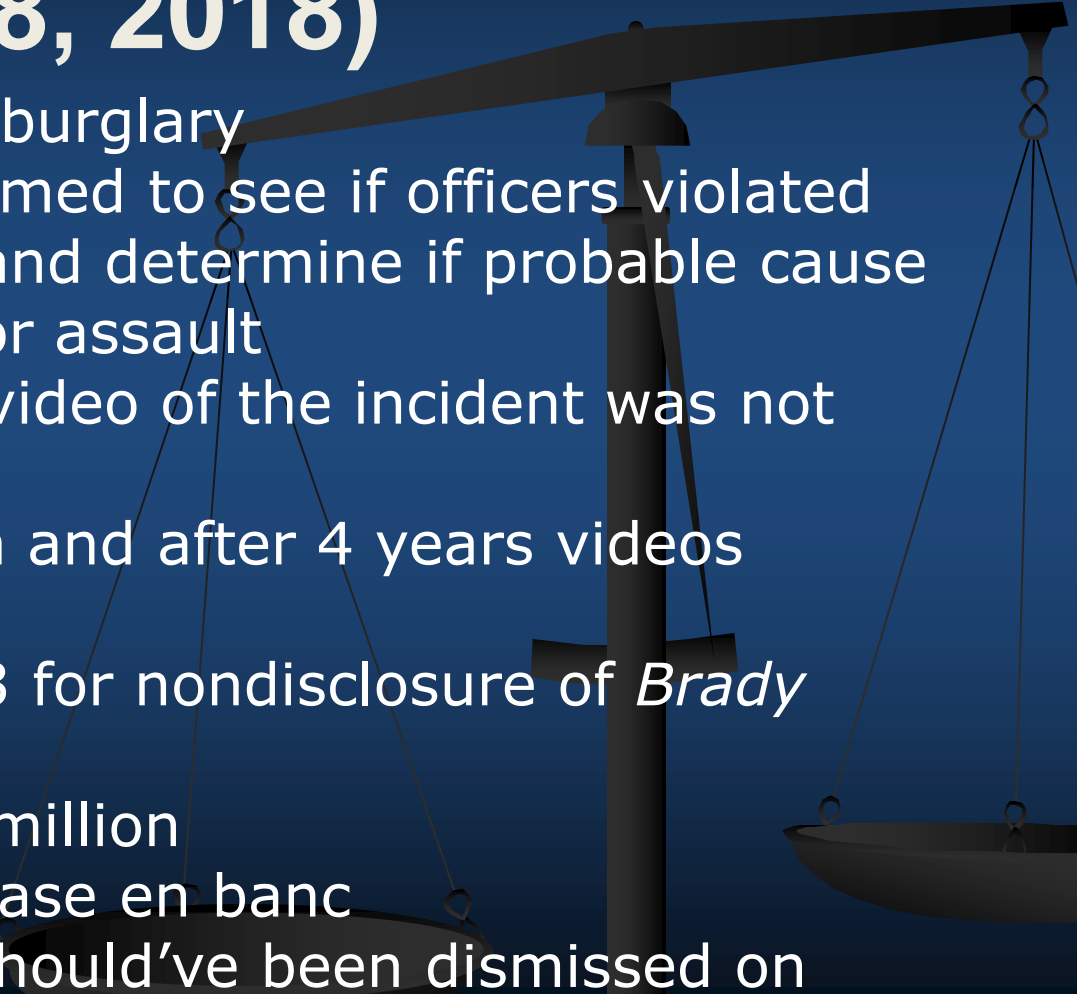
- Transgender woman sued prospective employer alleging transgender discrimination
- Fifth Circuit continued precedent that Title VII does not prohibit discrimination on the basis of sexual orientation or transgender status



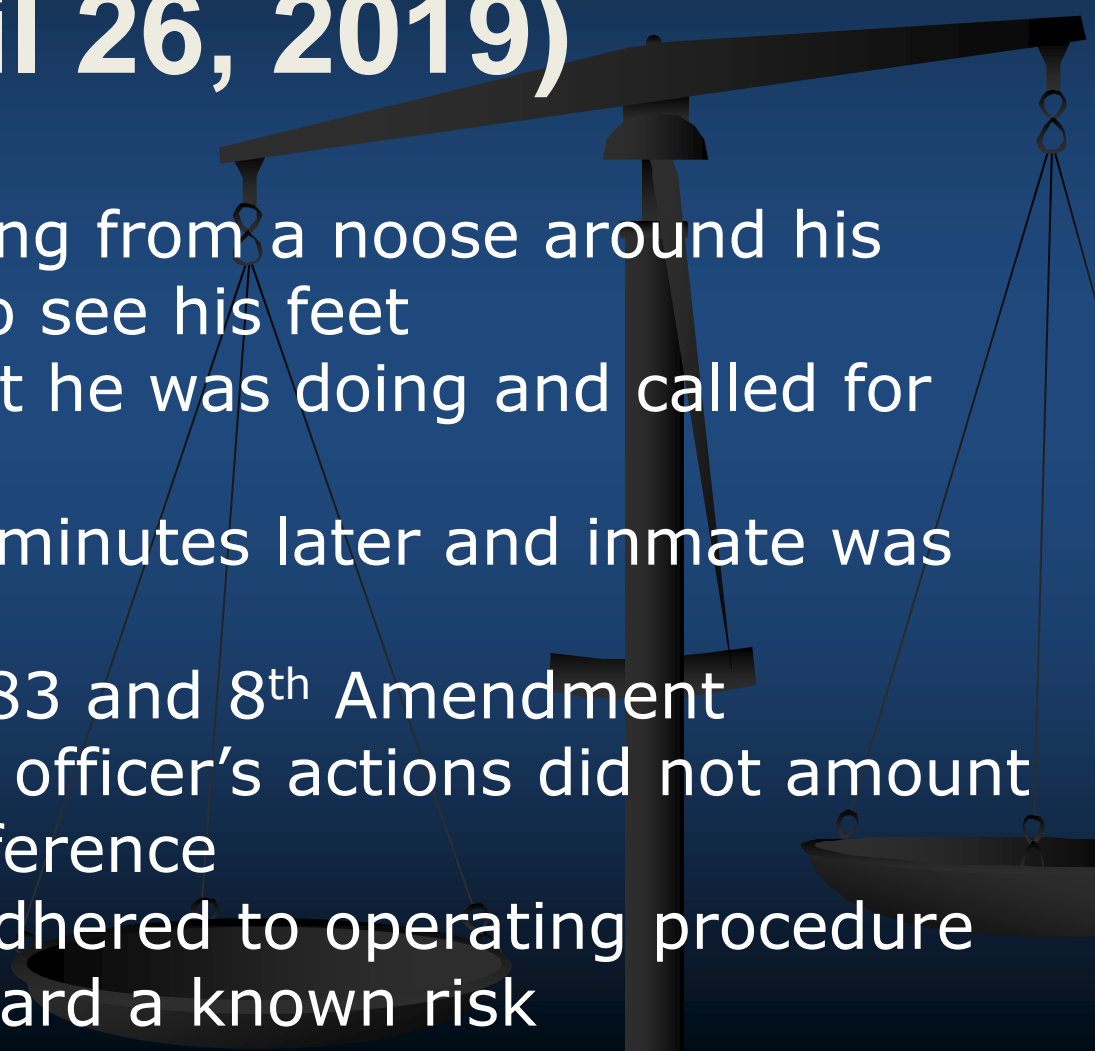
Section 1983



Alvarez v. City of Brownsville, No. 16-40772 (5th Cir., September 18, 2018)

- Arrested for PI and burglary
 - Investigation performed to see if officers violated use of force policy and determine if probable cause to charge Alvarez for assault
 - Due to “oversight” video of the incident was not produced
 - Sentenced to prison and after 4 years videos surfaced
 - Claims under §1983 for nondisclosure of *Brady* evidence
 - Jury awarded \$2.3 million
 - Fifth Circuit heard case en banc
 - Court found claim should’ve been dismissed on summary judgment regarding municipal liability
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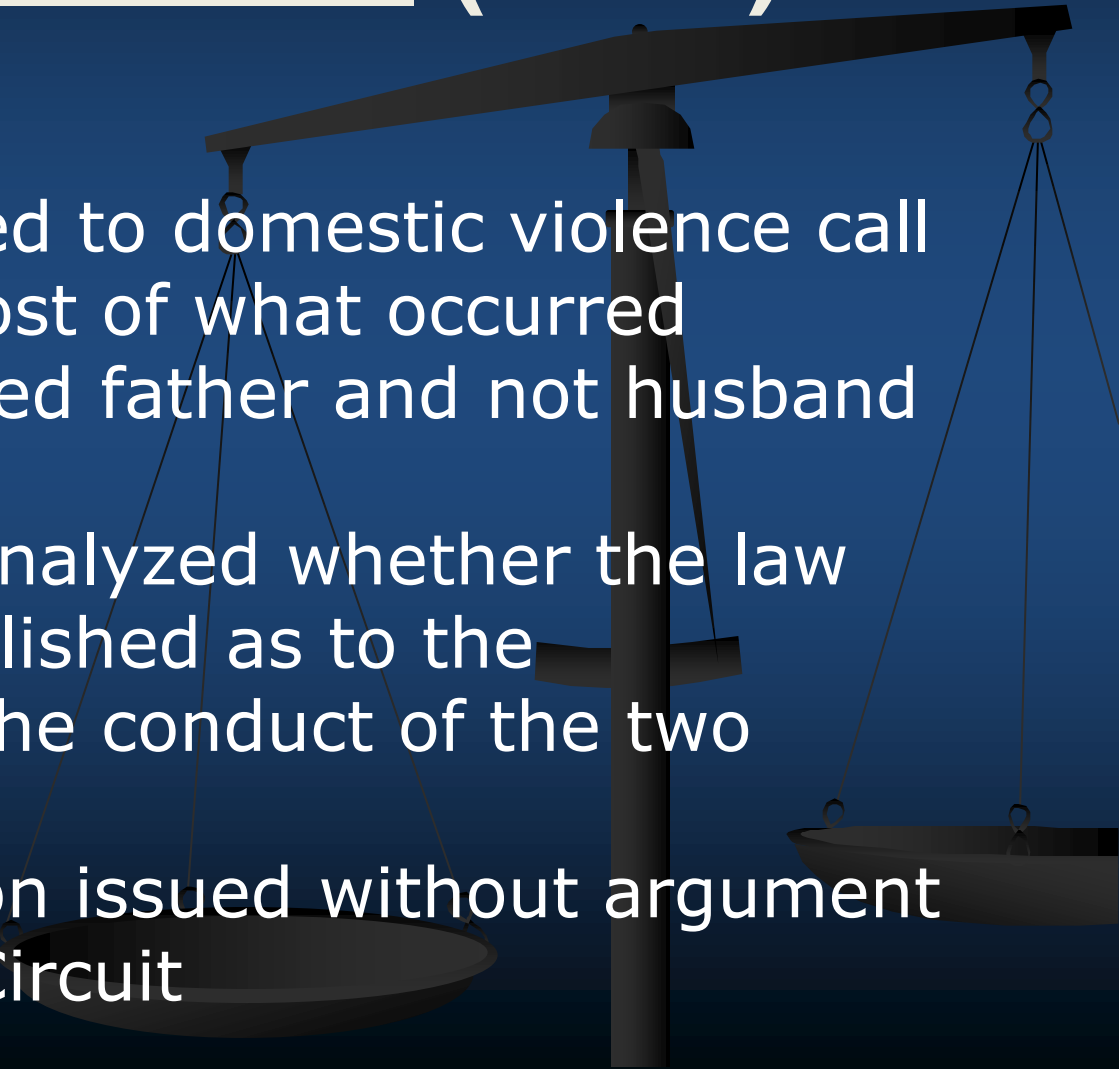
Arenas v. Calhoun, -- F.3d – Docket No. 18-50194 (5th Cir., April 26, 2019)



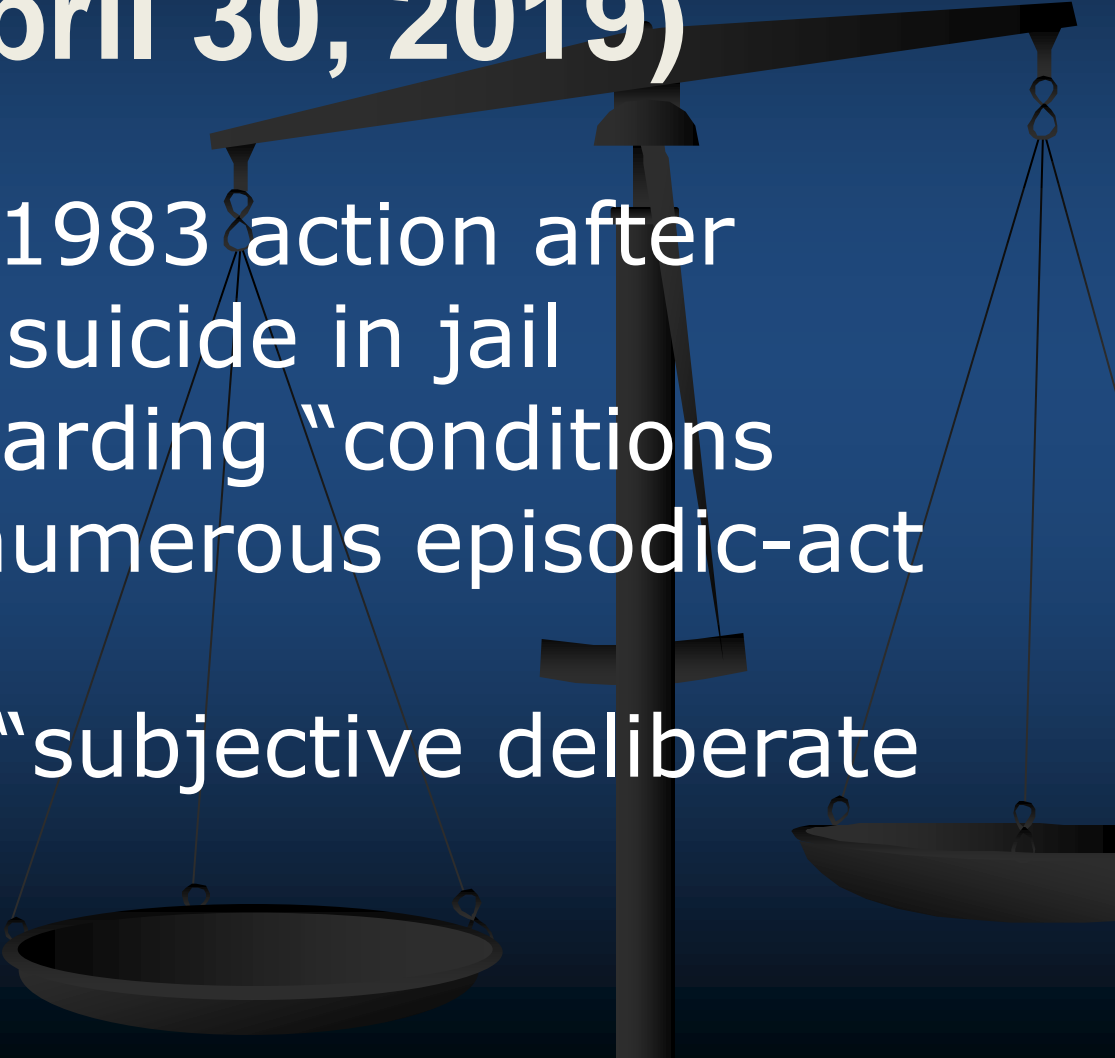
- Saw inmate hanging from a noose around his neck but unable to see his feet
- Could not tell what he was doing and called for back-up
- Officers arrived 7 minutes later and inmate was dead
- Claims under §1983 and 8th Amendment
- Fifth Circuit found officer's actions did not amount to deliberate indifference
- Officer faithfully adhered to operating procedure and did not disregard a known risk

City of Escondido v. Emmons, 586 US _____ (2019)

- Officers responded to domestic violence call
- Video showed most of what occurred
- Officers handcuffed father and not husband who then sued
- Supreme Court analyzed whether the law was clearly established as to the unlawfulness of the conduct of the two officers
- Per curiam opinion issued without argument reversing Ninth Circuit

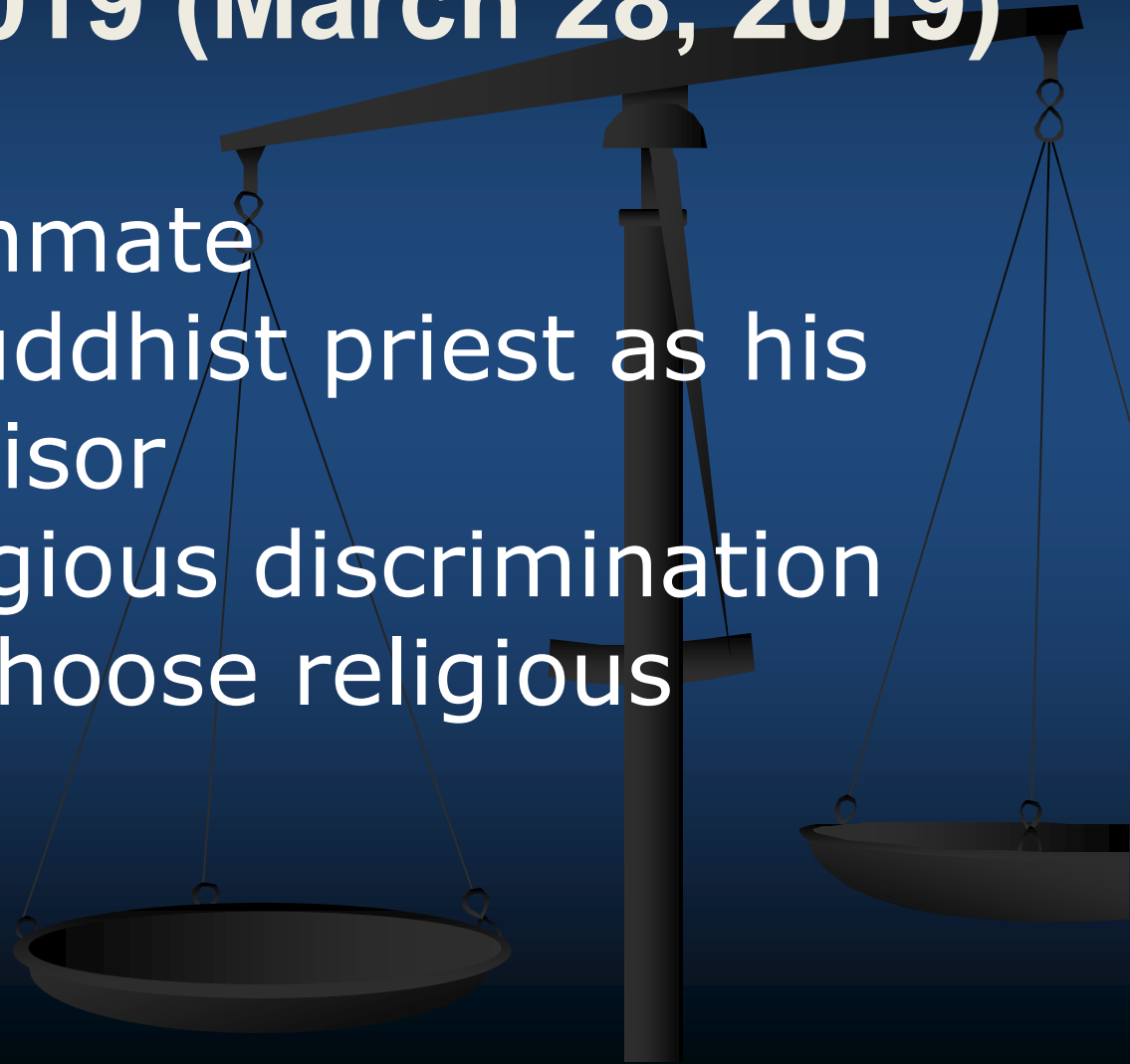


Garza v. City of Donna, -- F.3d – Docket No. 18-40044 (5th Cir., April 30, 2019)

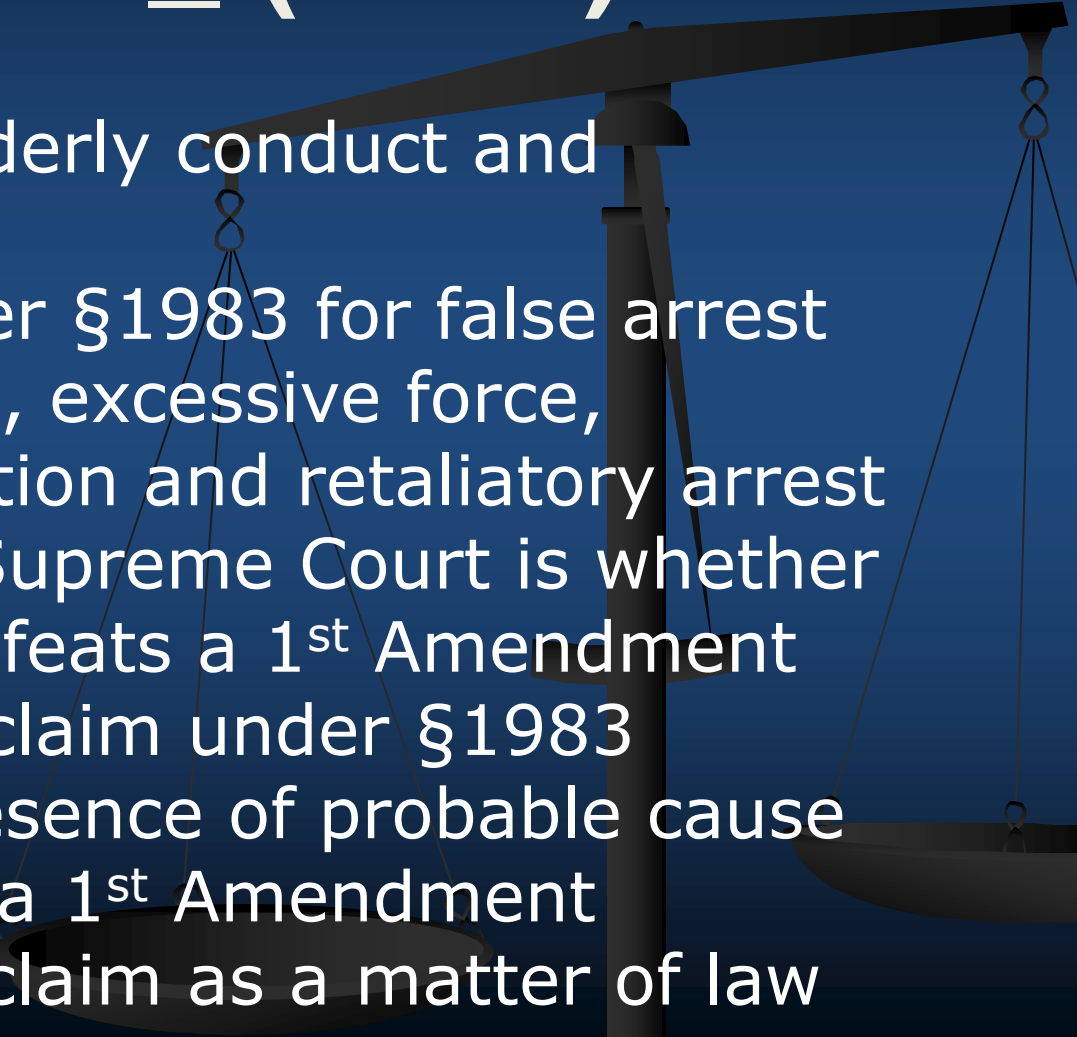
- Plaintiff filed §1983 action after Garza died by suicide in jail
 - Discussion regarding “conditions theory” and “numerous episodic-act theories”
 - Court defined “subjective deliberate indifference”
- 

***Murphy v. Collier*, No. 19-70007
(5th Cir., March 27, 2019); 587
U.S. _____ 2019 (March 28, 2019)**

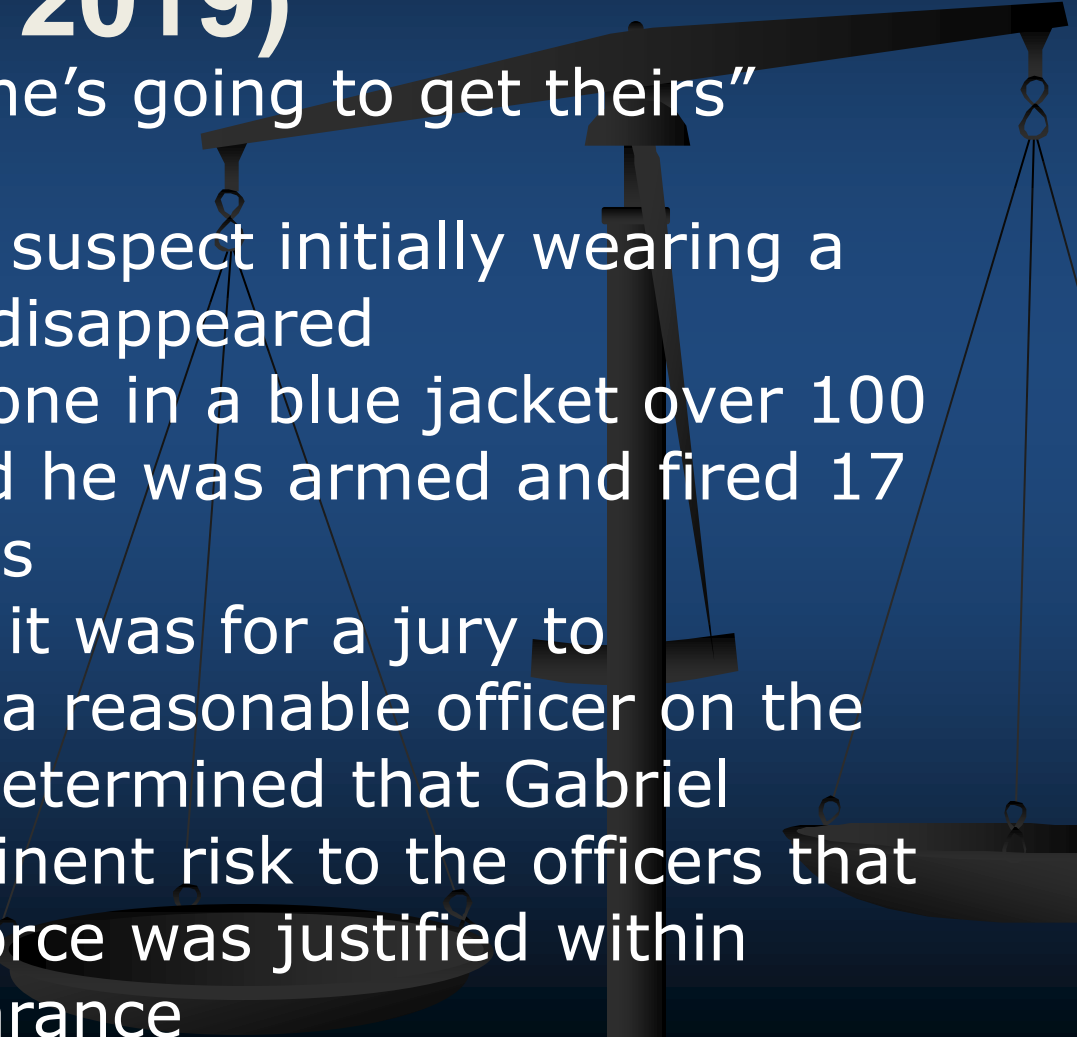
- Death row inmate
- Preferred Buddhist priest as his spiritual advisor
- Claimed religious discrimination
- Allowed to choose religious advisor



Nieves v. Bartlett, 587 US _ (2019)

- Arrested for disorderly conduct and harassment
 - Sued officers under §1983 for false arrest and imprisonment, excessive force, malicious prosecution and retaliatory arrest
 - Issue before the Supreme Court is whether probable cause defeats a 1st Amendment retaliatory arrest claim under §1983
 - Court held the presence of probable cause for arrest defeats a 1st Amendment retaliatory arrest claim as a matter of law
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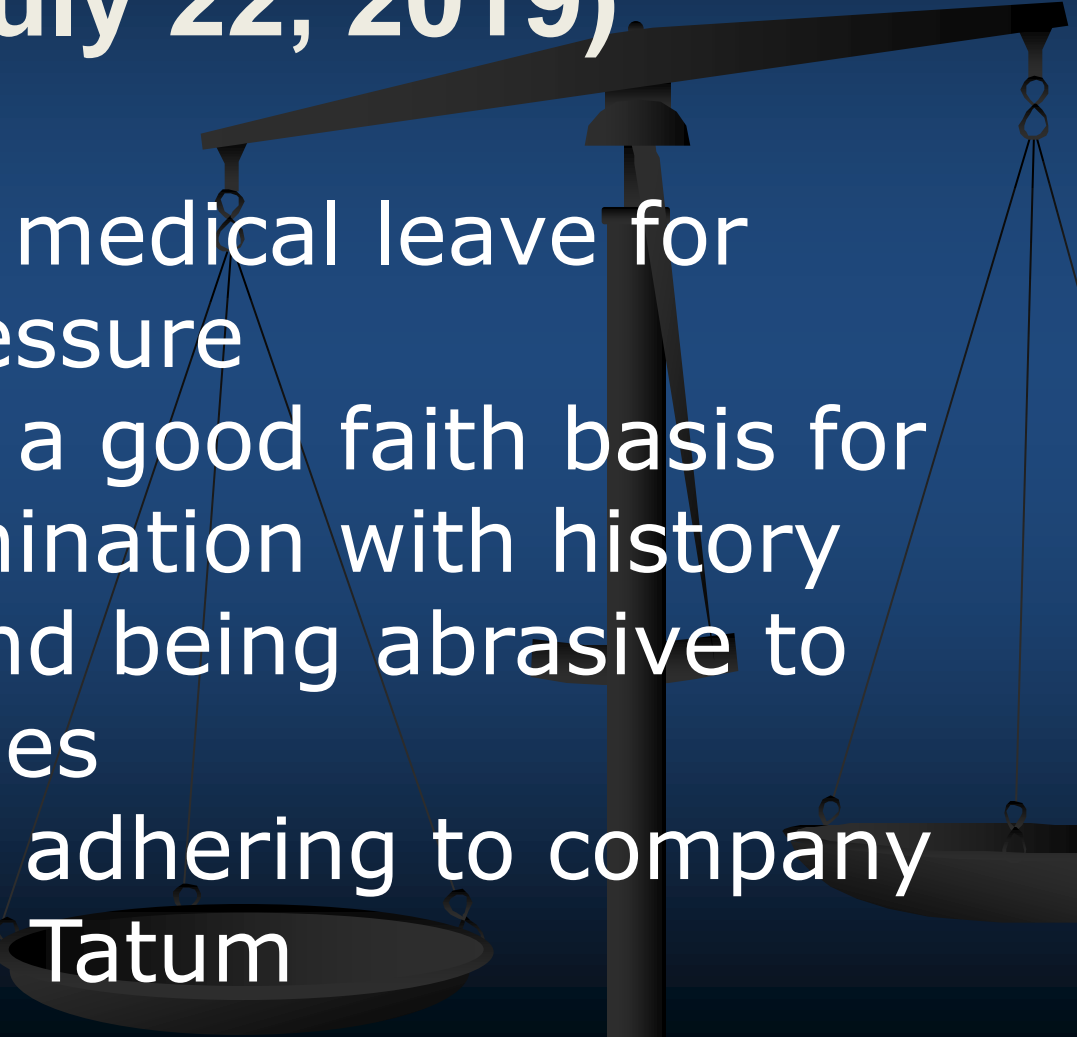
Winzer v. Kaufman County, No. 16-11482 (5th Cir., February 18, 2019)

- Received a “everyone’s going to get theirs” dispatch call
 - Officers observed a suspect initially wearing a brown shirt but he disappeared
 - Then spotted someone in a blue jacket over 100 yards away, claimed he was armed and fired 17 shots within seconds
 - Court believed that it was for a jury to determine whether a reasonable officer on the scene would have determined that Gabriel posed such an imminent risk to the officers that the use of deadly force was justified within second of his appearance
- 

A balance scale is shown against a dark blue background. The scale is tilted, with the left pan hanging lower than the right pan. The left pan is empty, and the text 'FMLA' is written in bright yellow, bold, sans-serif capital letters above it. The right pan is also empty and hangs higher. The scale's beam is dark grey, and the central pillar is also dark grey. The pans are dark grey and circular.

FMLA

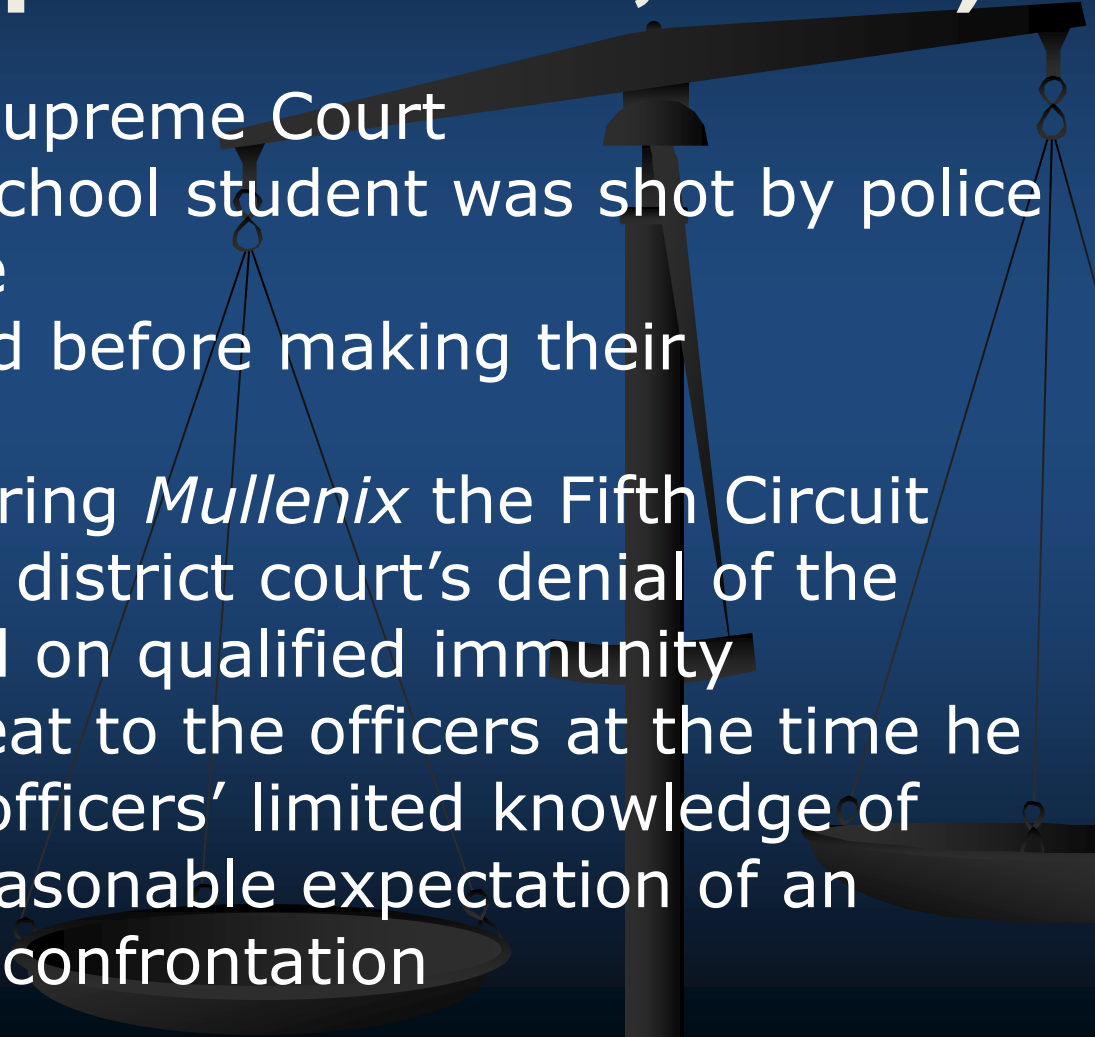
Tatum v. Southern Company Services, Inc., No. 18-40775 (5th Cir., July 22, 2019)

- Asked to take medical leave for high blood pressure
 - Company had a good faith basis for Plaintiff's termination with history of swearing and being abrasive to other colleagues
 - No liability for adhering to company policy in firing Tatum
- 

Qualified Immunity

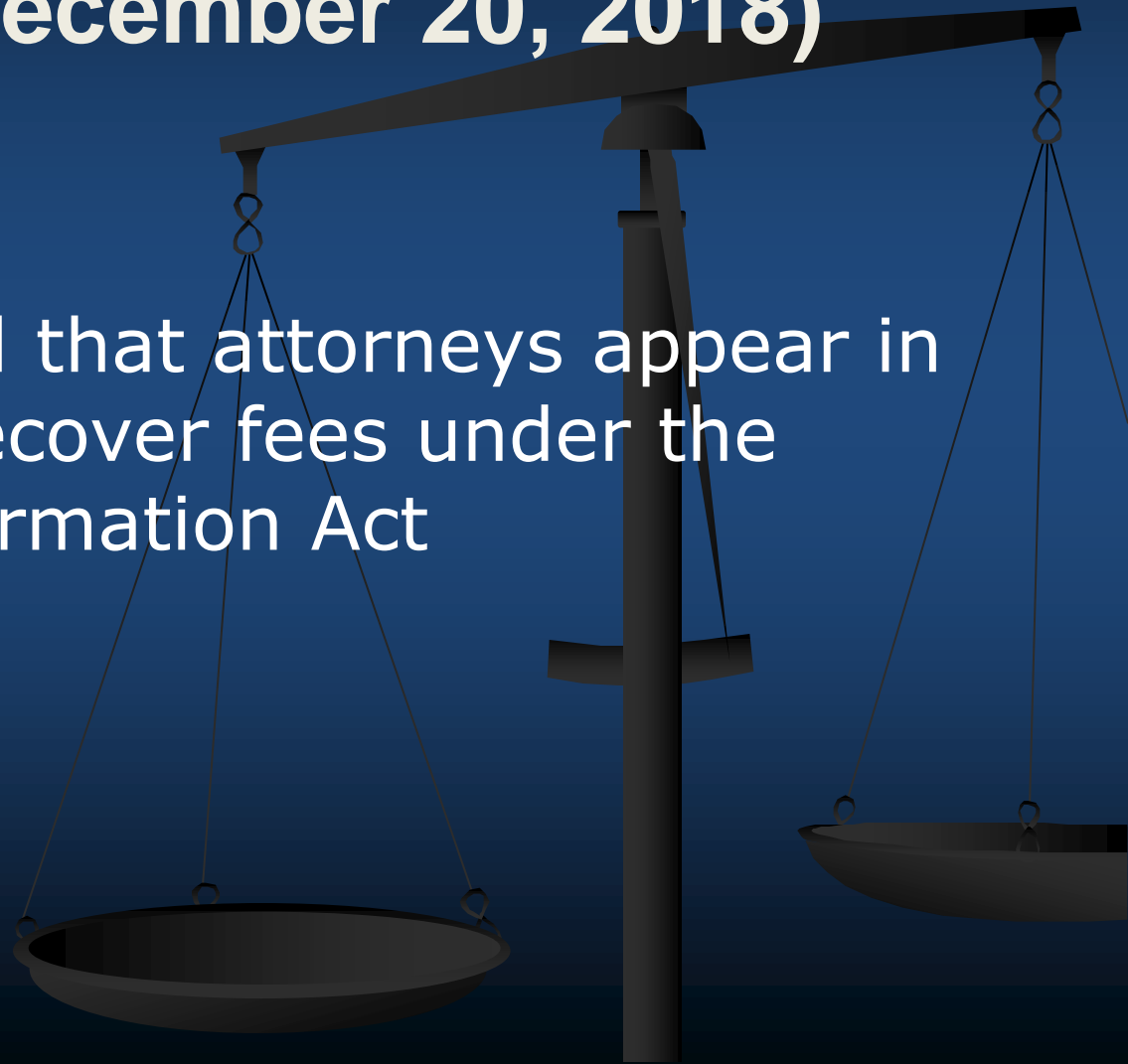


Cole v. Hunter, No. 14-10228 (5th Cir., September 25, 2018)

- On remand from Supreme Court
 - 17-year-old high school student was shot by police
 - Fact intensive case
 - 3 officers conferred before making their statements
 - Even after considering *Mullenix* the Fifth Circuit again affirmed the district court's denial of the officer's MSJ based on qualified immunity
 - Cole posed no threat to the officers at the time he was shot and the officers' limited knowledge of Cole created no reasonable expectation of an immediate violent confrontation
- 

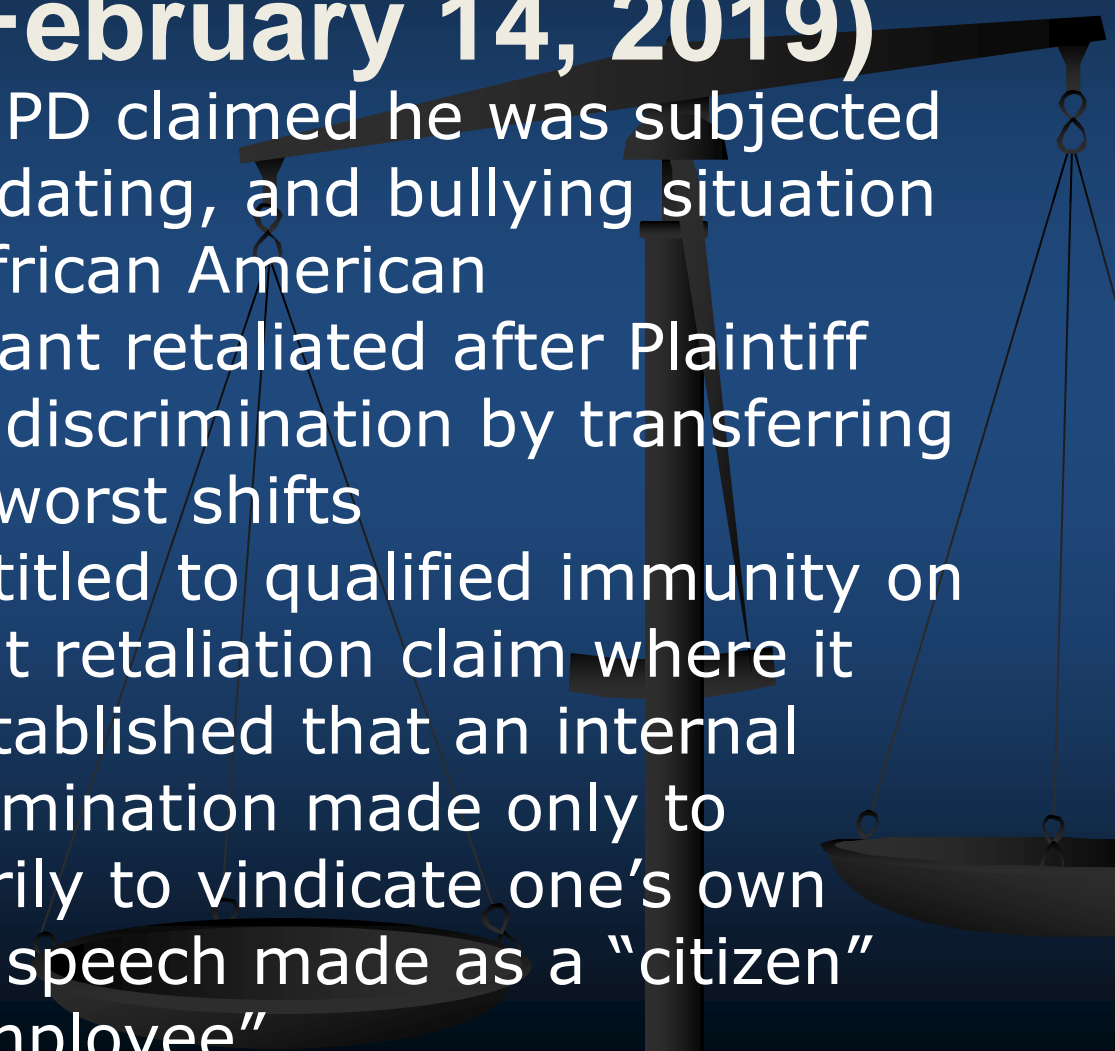
Gahagan v. US Citizenship & Immigration Services, No. 17-30898
(5th Cir., December 20, 2018)

- Fifth Circuit held that attorneys appear in pro se cannot recover fees under the Freedom of Information Act



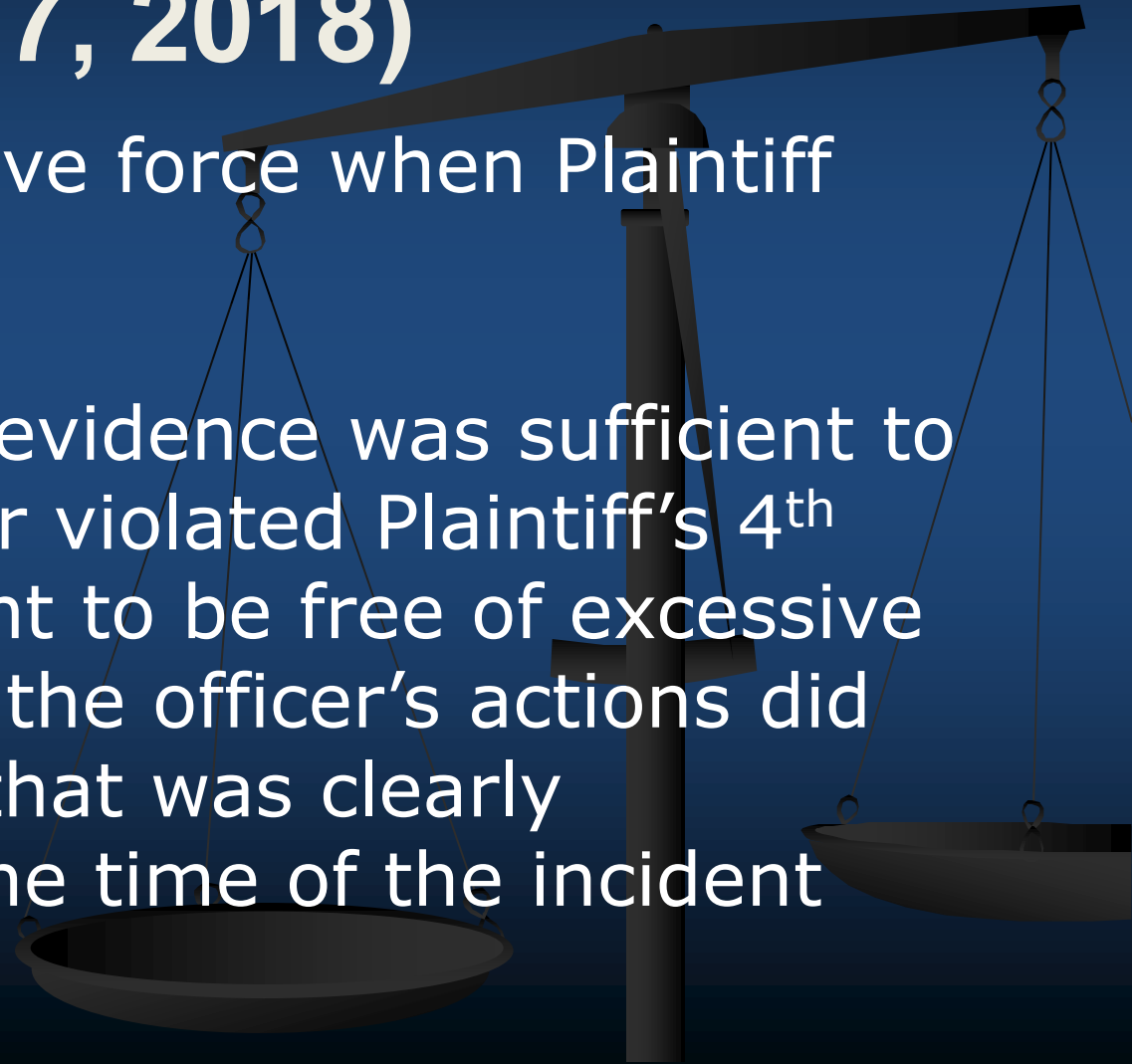
Johnson v. Halstead, No. 17-10223

(5th Cir., February 14, 2019)

- Sergeant with FW PD claimed he was subjected to a hostile, intimidating, and bullying situation because he was African American
 - Court held Defendant retaliated after Plaintiff complained about discrimination by transferring him to one of the worst shifts
 - Defendant was entitled to qualified immunity on the 1st Amendment retaliation claim where it was not clearly established that an internal complaint of discrimination made only to supervisors primarily to vindicate one's own rights qualified as speech made as a "citizen" rather than an "employee"
- 

Samples v. Vadzemnieks, No. 17-20350 (5th Cir., August 17, 2018)

- Claim of excessive force when Plaintiff was tased
- §1983 action
- Court held that evidence was sufficient to show that officer violated Plaintiff's 4th Amendment right to be free of excessive force; however, the officer's actions did not violate law that was clearly established at the time of the incident



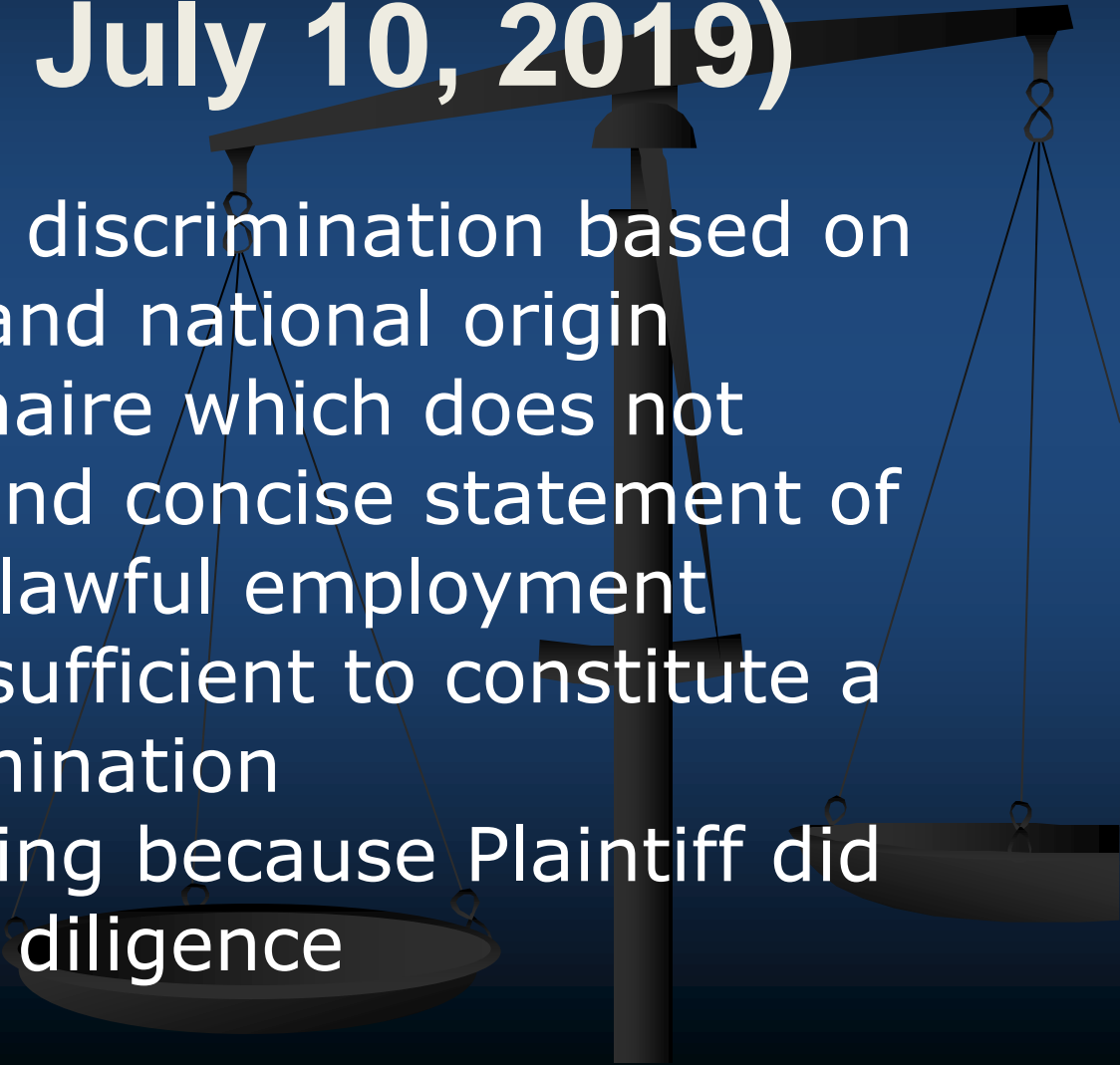
ADA



Miscellaneous



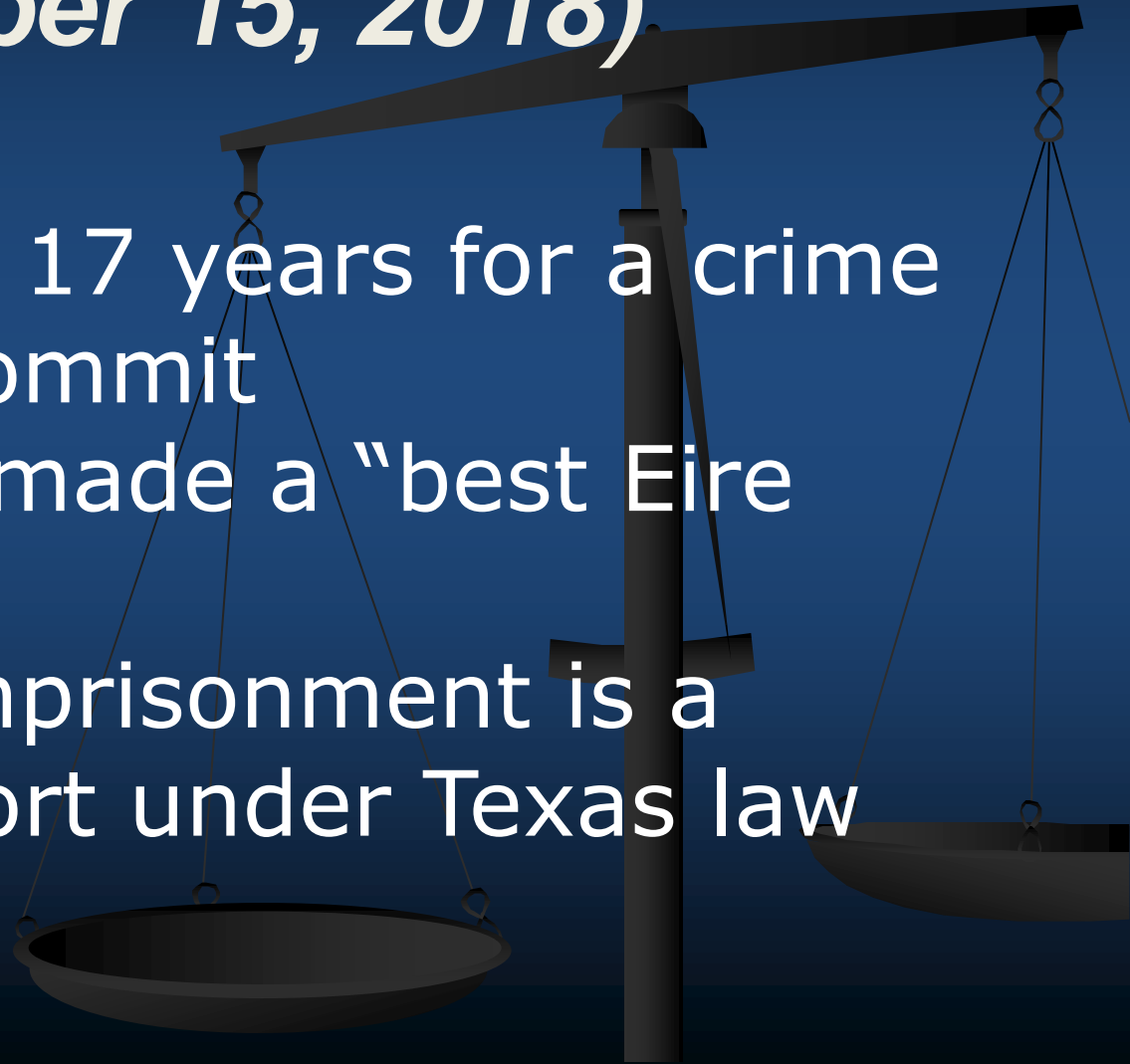
Caycho Melgar v. T.B. Butler Publishing Co., No. 18-41080 (5th Cir., July 10, 2019)



- Plaintiff claimed discrimination based on age, disability, and national origin
- Intake questionnaire which does not contain a clear and concise statement of facts alleging unlawful employment practices was insufficient to constitute a charge of discrimination
- No equitable tolling because Plaintiff did not act with due diligence

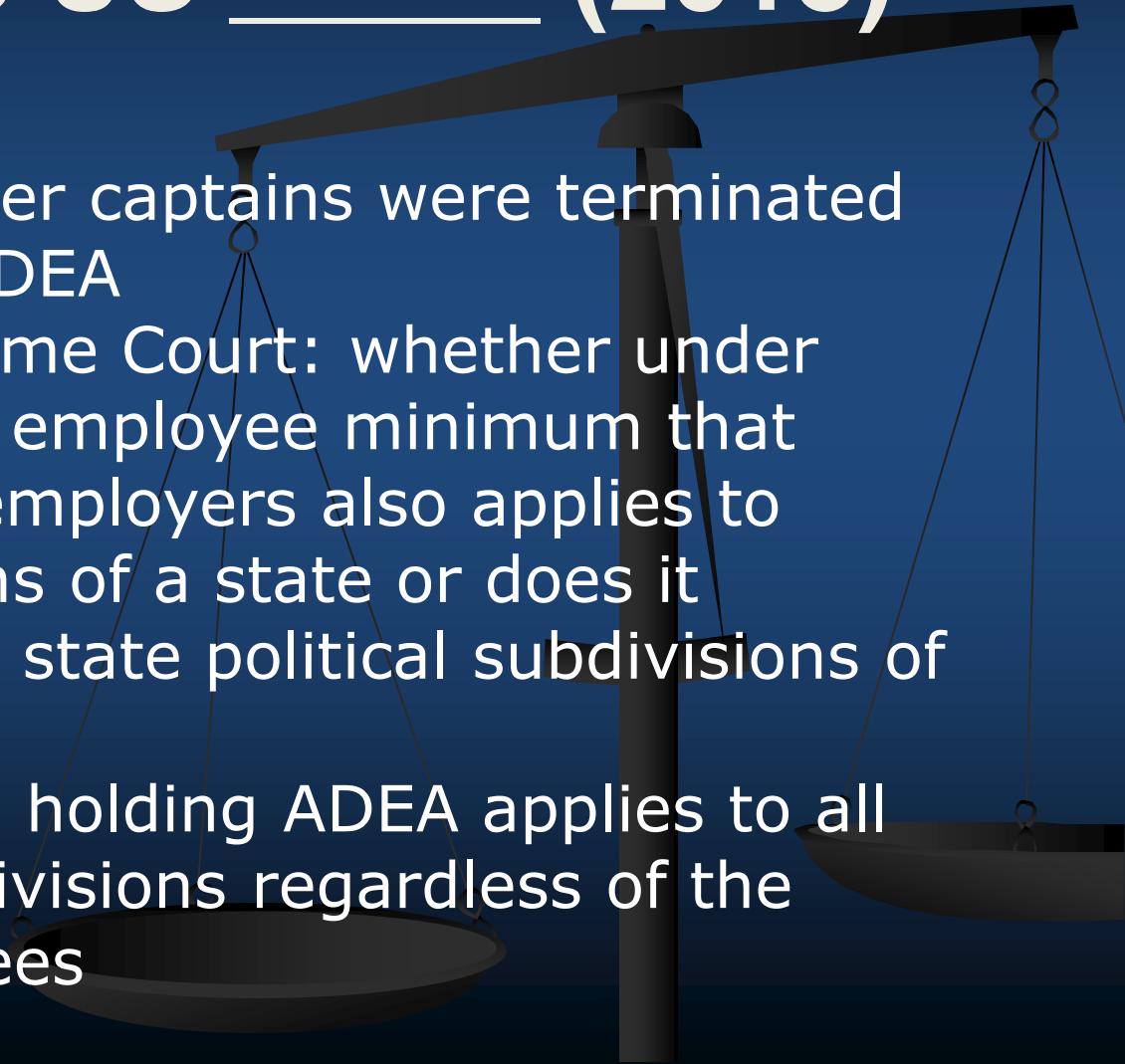
***Moon v. City of El Paso,
No. 17-50572 (5th Cir.,
October 15, 2018)***

- In prison for 17 years for a crime he did not commit
- Fifth Circuit made a “best Eire guess”
- Held false imprisonment is a continuing tort under Texas law



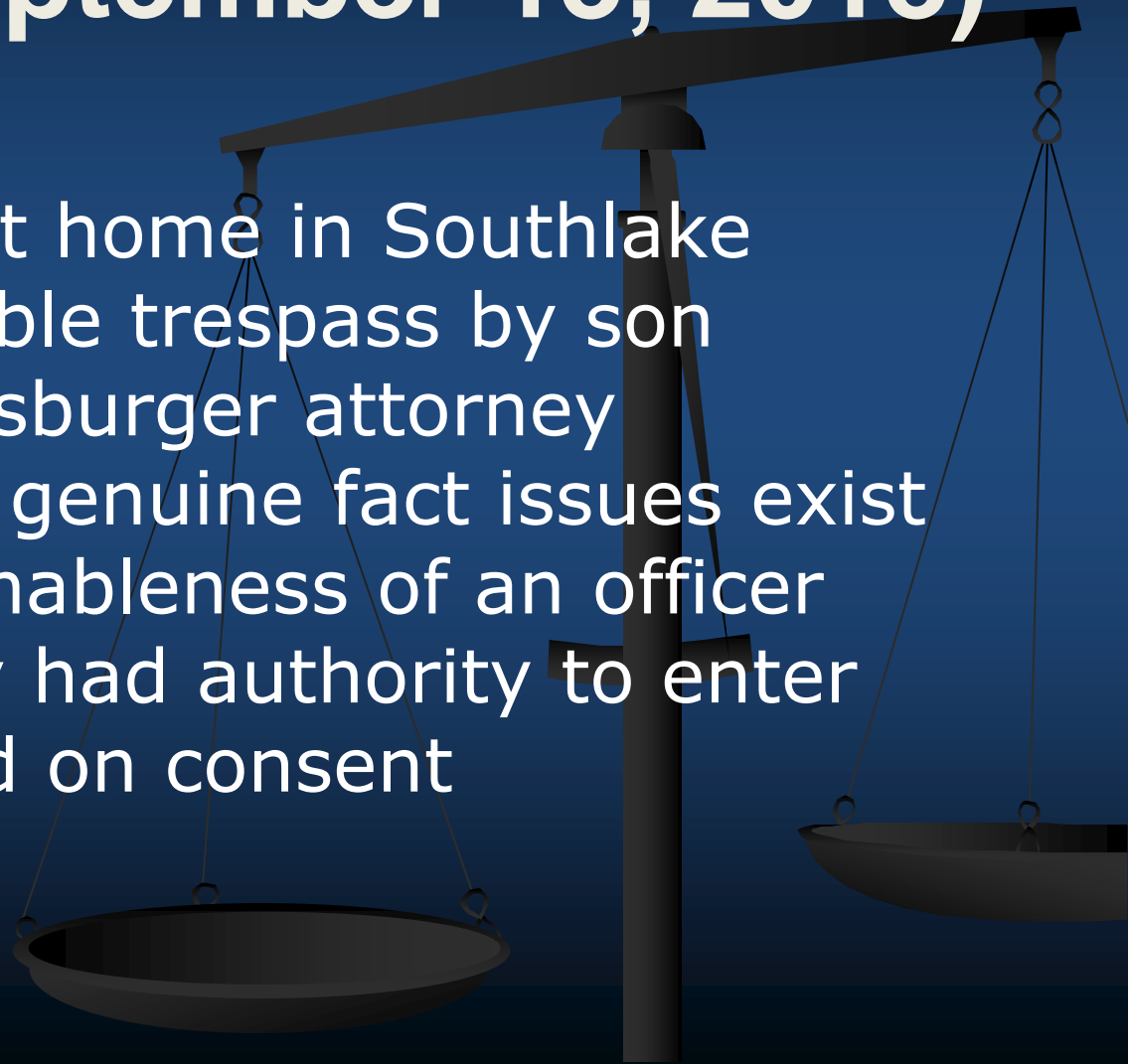
Mount Lemmon Fire District v. Guido, 586 US _____ (2018)

- Two oldest firefighter captains were terminated
- Claimed violated ADEA
- Issue before Supreme Court: whether under ADEA the same 20 employee minimum that applies to private employers also applies to political subdivisions of a state or does it instead apply to all state political subdivisions of any size
- Unanimous opinion holding ADEA applies to all state political subdivisions regardless of the number of employees



Westfall v. Luna, No. 16-11234 (5th Cir., September 13, 2018)

- Confrontation at home in Southlake regarding possible trespass by son
- Involved a Strasburger attorney
- Court held that genuine fact issues exist as to the reasonableness of an officer concluding they had authority to enter the home based on consent



United States v. Hathorn, No. 18-60380 (5th Cir., April 11, 2019)

- Court revoked Defendant's supervised release and imposed a special condition which allowed search of computers, cell phones, and all other electronics
 - Special condition was reasonably related to the nature and circumstances of his drug offense
 - The deprivation of Defendant's liberty was not more than what was reasonably necessary to advance deterrents, protect the public from him, and serve his correctional needs
- 