RECENT FEDERAL CASES OF INTEREST TO CITIES

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SOUTH PADRE ISLAND, TEXAS
JUNE 6-8, 2012

Harris v. Pontotoc County Sch. Dist., 635 F.3d 685 (5th Cir. 2011)

- Eighth grader hacking into school's computer
- Student sent to alternative school; his mother reassigned
- Student sued for violation of his due process rights and defamation; mother sued for wrongful termination in retaliation for protected First Amendment speech.
- Transfer to alternative school does not deny access to public education or violate the Fourteenth Amendment;
- First Amendment protects a public employee's speech only if the speech addresses a matter of "public concern"
- In this case, mother's speech was about matters that were personal – the treatment of her son

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

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

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

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

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

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

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

- Noticed that truck was dragging some brush.
- No eye contact. Passengers admitted in US illegally
- Moved to suppress contending that it was not supported by reasonable suspicion and was in violation of the Fourth Am.
- In order to temporarily detain must be aware of specific articulable facts together with rational inferences that warrant a reasonable suspicion.
- Fifth Circuit emphasizes eight factors: (1) the area's proximity to the border; (2) the characteristics of the area; (3) usual traffic patterns; (4) the agents' experience in detecting illegal activity; (5) the driver's behavior; (6) the aspects or characteristics of the vehicle; (7) information about recent illegal trafficking of aliens in the area; and (8) the number of passengers and their behavior.
- Truck was stopped over 200 miles from the border
- Facts known to the officers unremarkable and suspicionless situation.

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

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

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

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

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

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

NASA v. Nelson, 131 S.Ct. 746 (2011)

- Contract employees sued over requirement of a standard background check to federal contract employees with long-term access to federal facilities.
- Court held that NASA's background checks on independent governmental contractors were constitutional
- Supreme Court determined that questions about a history of counseling, drug treatment, or drug use did not violate any right to informational privacy as they were reasonable

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

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

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

- Hospital fired Staub in 2004, and he later filed a lawsuit claiming that his supervisor was out to get him as a result of disapproval of his military service
- Ultimate firing decision was made by more senior executive, not Staub's supervisor
- Seventh Circuit held there was no evidence that the decision-maker shared the supervisor's anti-military bias
- Supreme Court reversed: Employer can be found liable for the discriminatory acts of supervisors, who do not themselves make employment decisions but do influence the employment decision-makers
- So long as the supervisor intends that the adverse action occur for discriminatory reasons, that intent is sufficient to impose liability on the employer

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

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

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

- Prisoner ADA case
- Alleged discrimination on basis of physical and mental disabilities
- Court's analysis focused on whether Plaintiff sufficiently stated a claim that he had qualifying disability
- ADA: conditions in question must limit one or more major life activities
- Court held that Plaintiff's allegations and medical files that accompanied them were sufficient only to show that Plaintiff had specified conditions—not that they impaired any major life activity
- Title II also allows for relief if Plaintiff can show discrimination due to mistaken belief that disabilities limited one or more of his major life activities
- Court determined that complaint established only that Defendants denied Plaintiff access to prison facilities and programs because of his disability and the facilities' inability to treat him, not because they believed his disability limited his major life functions
- "It is possible that the Appellees denied Hale access to these facilities because they mistakenly perceived Hale's impairments as substantially limiting his ability to go to school or work in the prison kitchen, but we cannot say that such a conclusion would be plausible on these facts."
- However, Fifth Circuit remanded case to allow Hale to amend his Title II allegations

Black v. Pan American Laboratories, LLC, 646 F.3d 254 (5th Cir. 2011)

- Black brought sex discrimination claims and Title VII retaliatory termination claim against employer
- Alleged discriminatory sales quota, compared to similar male employee
- Vice president's allegedly replied "you're not the breadwinner anyway"
- Black also complained about sexually explicit remarks made by management about her body; some of these same executives involved in decision to terminate Black
- At trial, jury returned verdict for Black on all three discrimination claims (discriminatory sales quota, termination, and retaliation)
- Fifth Circuit found ample evidence to support the jury's finding of sex discrimination
- Fifth Circuit also found there was sufficient evidence to support quota discrimination verdict, given the evidence that Black had higher sales quota than similarly situated male employee
- Back pay award on quota claim reversed and remanded for calculation based on what commission should have been had Black had similarly situated male employee's quota
- Damage caps apply to the total of claims by party rather than to each claim

Carder v. Continental Airlines, 636 F.3d 172 (5th Cir. 2011)

- Reserve and National Guard pilots filed class action over allegedly discriminatory treatment regarding military service and leave obligations
- "Continental is your big boss, the Guard is your little boss"
- Sole issue on appeal was the trial court's dismissal of the plaintiffs' hostile environment claim on the basis that USERRA does not provide for such a claim
- Fifth Circuit affirmed dismissal of the hostile environment claim: USERRA's language does not permit a hostile environment claim absent a denial of a tangible benefit
- NOTE: Eighth and Ninth Circuits have recognized constructive discharge claims under USERRA

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

- When a Section 1983 suit includes both frivolous and non-frivolous claims, a court may award reasonable attorneys' fees to a defendant that the defendant would not have incurred, but for the frivolous claims
- Police chief (Fox) sued opponent (incumbent Vice) over campaign "dirty tricks"
- Vice later convicted of extortion for campaign conduct
- Fox brought state law claims and federal claims in state court; Vice removed
- Fox conceded federal claims were invalid; federal court remanded to state court
- Vice sought attorneys' fees under 42 U.S.C. § 1988 in federal District Court
- District court awarded Vice all fees done by his attorneys in the case and Fifth Circuit affirmed award, despite state law claims pending in state court
- The Supreme Court vacated and remanded for consideration of what fees Section 1988 permits: "if the defendant would have incurred [attorneys' fees] anyway, to defend against non-frivolous claims, then a court has no basis for transferring the expense to the plaintiff."
- That is, a prevailing defendant can receive only that portion of fees that he would not have paid but for the frivolous claim
- The Court gave district courts significant discretion to achieve what it described as "the essential goal in shifting fees:" "to do rough justice."

Rundus v. City of Dallas, 634 F.3d 309 (5th Cir. 2011)

- Rundus attempted to hand out free Bible tracts at the Texas State Fair
- Suit against State Fair of Texas ("SFOT"), a private corporation that runs the Fair, and the City of Dallas, alleging that they had violated his First Amendment rights
- To show state action by SFOT, Rundus most show either:
  (1) restriction represents an official City policy or custom, or
  (2) SFOT's conduct in enacting & enforcing restriction is "fairly attributable" to City
- Joint venture between the City and the SFOT?
- No. SFOT is a private corporation that runs a private event on public property. No state action was involved and thus no First Amendment violation

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

- When Carnaby identified self as "CIA Agent."
- Carnaby had three guns in his car
- The family sued the officers for excessive force along with a host of other claims
- The district court granted the officers' motions for summary judgment based on qualified immunity as well as the City's motion for summary judgment because the City cannot be liable if the officers did not violate the Fourth Amendment
- The Fifth Circuit examined the Fourth Amendment excessive force claim on the basis of whether the use of deadly force was unreasonable in that situation
- The Fifth Circuit stated that they had yet to address whether a municipality can ever be held liable for failure to train its officers when the officers did not commit any constitutional violation, and declined to address this issue here

Connick v. Thompson, 131 S.Ct. 1350 (2011)

- Thompson was convicted, sentenced to death, and served seventeen years in prison. A crime lab report was discovered which would have exonerated Thompson in the armed robbery case
- § 1983 suit alleging that the prosecutors failed to disclose crime lab report
- Thompson contended that this violation was caused by the DA's deliberate indifference to an obvious need to train prosecutors to avoid such constitutional violations. The jury found the DA's office liable for failure to train and awarded damages to Thompson, and the Fifth Circuit affirmed.
- Supreme Court reversed in a 5-4 split. While the prosecutors should have given Thompson's attorneys the blood evidence, misconduct by prosecutors which leads to a wrongful conviction can lead to liability for the DA's office only if there is awareness of a pattern of similar bad behavior, but a training program for prosecutors addressing the problem is not put in place.
- The failure to train must constitute deliberate indifference to the rights of persons with whom the untrained prosecutors come into contact; without notice that a training program is deficient (*i.e.* that there is a pattern of similar constitutional violations), decision-makers cannot be said to have deliberately chosen a training

Los Angeles County v. Humphries, 131 S.Ct. 447 (2011)

- The Humphries were accused of child abuse but were later exonerated
- No mechanism for removal of names from central child abuse index
- § 1983 action brought against the California Attorney General, LA County sheriff, two detectives, and LA County
- County argued that as a municipality, it could only be liable under *Monell* for § 1983 claims if a municipal policy or custom caused deprivation of a federal right. As it was a state—rather than county—policy that brought about any deprivation, the County contended it was entitled to the protection of *Monell*
- The Supreme Court agreed.
- *Monell* applies to § 1983 claims against municipalities for prospective relief as well as to claims for damages. Nothing in the text of § 1983 suggests that the causation requirement in the statute should change with the form of the relief sought. In the absence of a county policy or custom depriving people of their constutitional rights, the Humphries could not sue the County to recover damages

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

- Enochs filed federal and state law claims in state court against Lampasas County
- County removed the case to federal district court
- Enochs amended complaint to delete federal law claims and to remand case to state court for decision on remaining pendent state law claims
- District Ccourt granted motion to drop federal claims, but denied motion to remand
- Summary judgment was granted to the County
- Enochs appealed the decision to retain the case in federal court
- Fifth Circuit reversed denial of motion to remand
- Four factors in 28 U.S.C. § 1367(a):
  - (1) whether the state claims raise novel or complex issues of state law;
  - (2) whether the state claims substantially predominate over the federal claims; (3) whether the federal claims have been dismissed; or
  - (4) whether exceptional circumstances or other compelling reasons exist to decline jurisdiction.
- Possibility of forum manipulation did not outweigh other factors that supported remand to state court.

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

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

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

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

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

- Stopped for failure to wear seatbelt
- Began asking more questions unrelated to the reasons he stopped the defendant
- He asked the defendant for consent to search his vehicle. Ultimately gave consent
- Analyzed the legality of the stop based on the traditional *Terry v. Ohio* analysis. The Court first looked to whether the stop of the vehicle was justified at its inception and then whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop of the vehicle in the first place.
- Trooper's actions after the stop unconstitutionally extended the duration of that stop. Macias specifically noted that the trooper ran computer checks, engaged in detailed questioning about matters unrelated to Macias's driver's license, his proof of insurance, the vehicle registration, or the purpose of the itinerary of his trip that unreasonably prolonged the detention without developing reasonable suspicion of additional criminal activity.
- Extreme nervousness in and of itself was not sufficient to support the extended detention.
- Fifth Circuit concluded search violated the Fourth Amendment and that all evidence suppressed.

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

- Stopped a vehicle. Searched the vehicle and discovered an empty pill bottle and a plastic bag containing cocaine residue.
- Brown moved his handcuffed hands from behind his back and reached into Lane's underwear, retrieving a plastic bag of cocaine and swallowed the bag.
- Steinert did not ask if the suspects had swallowed anything or if they needed medical attention; nor did the suspects volunteer such information.
- After arriving at the jail, Brown collapsed on the floor. None of the jail personnel, however, proffered medical attention while the ambulance was being called
- Filed suit for negligence and for deliberate indifference based on the Eighth and Fourteenth Amendments under 42 U.S.C. §1983.
- Whenever a "district court denies an official's motion for summary judgment predicated upon qualified immunity, the district court can be thought of as making two distinct determinations, even if only implicitly...

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

- Scott's parents called 911, Scott's mother told the officers of Scott's medical condition and that he might be taking illegal substances.
- Decision was made to arrest Scott, based on the assault by threat made earlier in the evening and the concern he might harm his parents
- Scott rushed towards the officers holding two eight-inch knives, one in each hand Scott died from the gunshot wounds.
- Scott's parents sued the officers for excessive force, assault and battery, and unlawful entry
- Fifth Circuit reiterated the law on qualified immunity and found that under the totality of the circumstances, it was objectively reasonable for the officers to believe that Scott posed a significant and imminent threat of serious physical harm to one or more of the officers.
- Fourth Amendment right against a warrantless intrusion- unless there was probable cause or exigent circumstances, the officers' acted without authority. Court concluded "that, at the time of the incident in this case, it was not clearly established that it was unreasonable for the officers to believe that the threat Scott posed to himself constituted an exigent circumstance."

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

- Interlocutory appeal from the denial of qualified immunity.
- Discover Matthew strangled in an outdoor soccer net. Called 911
- Officers responded to the 911 dispatcher's call to the house.
- "foul play" may have been involved. Accordingly, Dacey designated the home a crime scene. Upon making this designation, the officers kept Cantrell in the master bedroom. Cantrell soon after began making suicidal threats and cursed at the officers.
- 42 U.S.C. §1983 alleging the officers violated her Fourth, Fifth, and Fourteenth Amendment rights. Cantrell also averred several state law claims. The district court granted the summary judgment except as to Cantrell's "special relationship" theory.
- Fifth Circuit reiterated that generally the Due Process Clause confers no affirmative right to governmental aid, even when necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual.

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

- Executing a search warrant, based on the belief that Cavazos had been sending sexually explicit texts to an underage female.
- Told that this was a "non-custodial interview" The officers began questioning Cavazos without reading him his Miranda rights.
- admitted to "sexting" Was arrested and read his Miranda rights
- Moved to suppress the statements he made before he was read his Miranda rights. Government filed interlocutory appeal.
- Fifth Circuit found that under the totality of circumstances, Cavazos was in custody for Miranda right purposes.
- No single circumstance is determinative in the inquiry required by Miranda. Court found no reasonable person in Cavazos' position would feel "he or she was a liberty to terminate the interrogation and leave."

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

- Holding a knife to his abdomen.
- Ruddy shouted to "shoot me." Shot Ruddy in the chest, shoulder, and abdomen. Ruddy died from his wounds.
- Ruddy's parents filed suit against Green and the City of Garland, asserting excessive force under §1983.
- Fifth Circuit agreed with the district court's finding that Green's use of deadly force was not clearly unreasonable. Ignored repeated instructions to put down the knife he was holding and seemed intent on provoking, was hostile, armed with a knife, in close proximity to Green, and moving closer.
- Considering the totality of the circumstances in which Green found himself, it was reasonable for him to conclude Ruddy posed a threat of serious harm.

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

- Long-term operators of use-car dealerships, bought claims for violation of their due process and equal protection
- Ordinance criminalizes the sale of used cars without a license and imposes a number of set-back rules for new licenses. The ordinance also contained a grandfather clause.
- Filed suit, asserting (1) unbridled discretion by the City in violation of the Due Process Clause and Equal Protection Clause; (2) that the City grants licenses to similarly situated dealers with no rational basis in violation of the right to equal protection; and (3) that the City's denial of the license application violated due process.
- Argued that the City treated them differently than others similarly situated in violation of their constitutional right to equal protection
- In addressing the unbridled discretion claim, the Fifth Circuit agreed with the district court when it pointed out that while a government actor's actions might be illegal under state or local law does not mean they are irrational for purposes of the Equal Protection Clause

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

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

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

- State trooper checked official records, and found outstanding warrant
- Held for six days, that no effort was made to check whether he had paid the fine,, he was strip-searched twice, once in each county's jail.
- Claimed Fourth Amendment rights had been violated by strip-searches done without any suspicion that he posed a threat to jail security.
- Whether the Fourth Amendment permits a jail to conduct a suspicion-less strip search whenever an individual is arrested, including minor offenses?
- Strip searches for inmates entering the general population of a prison do not violate the Fourth Amendment. The Court concluded that a prisoner's likelihood of possessing contraband based on the severity of the current offense or an arrestee's criminal history is too difficult to determine effectively. Correctional facilities have a strong interest in keeping their employees and inmates safe.
- A general strip search policy adequately and effectively protects that interest. The Court did note that there may be an exception to this rule....

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

- Can a private person hired by the government to provide services be sued for the things that he does while working for the government?
- Firefighter injured on the job. On leave began to suspect that perhaps he was not so sick after all. Those suspicions were only heightened when the private investigator who the city hired to follow Delia saw him buy building supplies at a local store.
- 42 U.S.C. § 1983 suit contended that the order to produce the building materials violated his Fourth Amendment right to be free from unreasonable searches and seizures.
- Court considers is whether the person who is trying to avoid liability could have been sued when the civil rights laws were enacted in 1871. Because these individuals had been entitled to immunity for their work in government, the Court reasoned, an individual like Filarsky should as well. When private individuals like Filarsky are working closely with government employees who do have immunity; the private employee should not be the one "left holding the bag" for the actions of the whole group.

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

- Search warrant police obtained
- Affidavit sought all working firearms and ammunition, along with items showing Bowen's gang membership or affiliation. Both the affidavit and the warrant were reviewed by Messerschmidt's superiors and a deputy district attorney, and then approved by a magistrate.
- Section 1983 action, the en banc Ninth Circuit denied qualified immunity to the officers
- Supreme Court held that the officers were entitled to qualified .Rejected the notion that the officers were limited to seeking only the sawed-off shotgun because it was known to be the one used in the crime. Given all the facts set out in the warrant – including Bowen's gang membership and his attempted murder in public of someone because she had called the police on him – an officer would not be unreasonable in concluding that the sawed-off shotgun was not the only firearm Bowen owned.
- The Court found compelling the fact that the officers sought and obtained approval from a police superior and deputy district attorney, and that a magistrate had approved the warrant.

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

- Sued James Paulk under Section1983, alleging that Paulk, a law enforcement officer, had committed perjury
- Paulk asserted that just as a witness at trial is entitled to absolute immunity so too would he as a grand jury witness be shielded by absolute immunity. holding that grand jury witnesses are entitled to absolute immunity.
- Supreme Court held grand jury witnesses, like trial witnesses, are entitled to absolute immunity from any liability under Section 1983 arising from their testimony.
- Justice Alito concludes that absolute immunity for grand jury testimony is necessary in order to safeguard the vital function that grand juries play in modern criminal procedure, by assuring that witnesses may provide candid testimony without fear of a retaliatory suit, and guarding the sacrosanct secrecy of grand jury proceedings.

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

- Rumored to "shoot-up" the school.
- After the police asked if there were any weapons in the house, Followed Mrs. Huff in the house, because he believed Mrs. Huff's behavior was unusual and further believed that the officers were in danger.
- claimed that the officers entered their home without a warrant and thereby violate the Huff's Fourth Amendment rights.
- Ninth Circuit partially reversed the district court's ruling. Court concluded that the officer's belief they were in serious immediate danger was objectively unreasonable.
- S Court disagreed. Fourth Amendment permits the police to enter a residence if an officer has a reasonable basis for concluding there is an imminent threat of danger. The Court determined reasonable police officers could have come to the conclusion that violence was imminent and they were therefore permitted to enter the Huff's home without a warrant.

Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 132 S.Ct. 694 (2012)

- Fired after she became sick in 2004. urged her to resign and, when she refused, fired her.
- Argued that the "ministerial exception" under the First Amendment should apply in its case. The exception gives religious institutions certain rights to control employment matters without interference from the courts.
- Was a minister for the purposes of the Civil Rights Act's ministerial exception. Rejected the argument that these clauses of the First Amendment are irrelevant to the Hosanna-Tabor's right to choose its ministers.
- Chief Justice Roberts concluded that Perich indeed functioned as a minister in her role at Hosanna-Tabor, in part because Hosanna-Tabor held her out as a minister with a role distinct from that of its lay teachers.
- Reasoned that as the commissioned minister outweighed these secular aspects of her job.

Griffin v. United Parcel Service, Inc., 661 F.3d 216 (2011)

- "Accommodation Request" required schedule be adjusted to daytime working hours in order to accommodate his diabetes.
- "My diabetes is a condition that does not have to be a disability if I manage it properly, but to do so I will need UPS to make the accommodation to permit me to work days."
- By way of a letter notified Griffin that his accommodation request was being denied. Subsequently, Griffin announced his retirement from UPS. Griffin never made any complaints to the regional human resources department, and did not participate in the formal employee dispute resolution program.
- Claim that UPS failed to provide a reasonable accommodation as required by the ADA
- Fifth Circuit reiterated "[N]either the Supreme Court nor this court has recognized the concept of a *per se* disability under the ADA, no matter how serious the impairment; the plaintiff still must adduce evidence of an impairment that has actually and substantially limited the major life activity on which he relies."

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

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

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

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

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

- "Exigent circumstances" exception to the Fourth Amendment
- Police officers followed a suspected drug dealer to apartment complex after undercover drug bust. Officers could not see which of two apartments the suspect entered. Smelling marijuana coming from one apartment, the officers knocked on that door, assuming the suspect had entered that apartment. No one came to the door.
- Hearing noises they believed constituted destruction of evidence, the officers kicked down the door, finding King (who was **not** the suspected drug dealer) with marijuana and cocaine
- King argued that the exigent circumstances rule does not apply when police effectively create the emergency justifying a warrantless search of a residence.
- Supreme Court disagreed. Unless the police threatened to do, or actually did, something that violated the Fourth Amendment, the "exigent circumstances" rule still applies.
- Court pointed out that occupants of a residence have other protections against warrantless searches.

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

- Special Use Permits in certain business zones until 2007
- The Church began to hold religious services on the property. City obtained TRO
- Church sued City, claiming zoning restriction on religious use violated RLUIPA
- Fifth Circuit focused on the Equal Terms Clause in RLUIPA, which provides "no government shall impose a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."
- Ordinance on its face completely prohibited the Church from applying for an SUP while allowing certain nonreligious and nonretail uses to apply for an SUP, it did not treat the Church on equal terms with nonreligious organizations.
- Does not allow a City to prohibit a church from applying for an SUP
- "At bottom, the ordinance treats the Church on terms that are less than equal to the terms on which it treats similarly situated nonreligious institutions."

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

- Confrontation Clause case
- Covington mortally wounded; told police he had been shot by "Rick" (referring to Bryant) outside Bryant's house
- Michigan Supreme Court reversed the conviction under the Sixth Amendment's Confrontation Clause, holding the statements to be inadmissible testimonial hearsay
- The Supreme Court reversed, holding that Covington's statements made during emergency are admissible because they had primary purpose to enable police assistance to meet an ongoing emergency

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

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

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

- Felon in possession of a firearm, discovered at traffic stop
- Potts handcuffed and asked whether the gun belonged to him- Potts did not respond
- At trial, Potts objected to prosecution's question to arresting officer about Potts' silence
- Trial court made curative instruction that Potts had no obligation to answer the officer's question rather than ruling on objection
- During closing argument, the prosecutor again brought up Potts' silence; Potts objected, not on Fifth Amendment grounds but argued that the prosecution was attempting to shift the burden of proof
- The Fifth Circuit conducted a plain error review—rather than *de novo*—of Potts' constitutional objection to the officer's testimony on his silence because Potts had not properly preserved his claim.
- To preserve his claim should have continued objections and move for mistrial rather than agreeing to the curative instruction.
- The Fifth Circuit determined no plain error as had not yet conclusively addressed whether the use of pre-*Miranda* silence as substantive evidence of guilt is a Fifth Amendment violation.

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

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

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

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

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

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

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

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

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

- Court's analysis centered on whether Portillo-Munoz was one of "the people" allowed to "keep and bear arms" under the 2nd Amendment
- Noting that illegal aliens are neither "law-abiding citizens," "members of the political community," nor "Americans," the Fifth Circuit held that illegal aliens are not protected by the Second Amendment
- Distinction between rights offered by the Second and Fourth Amendments: because the Fourth Amendment is at core a protective right, whereas the Second Amendment grants an affirmative right, the Court found it reasonable to think that fewer groups would be extended the Second Amendment right
- Congress has greater leeway to regulate the activities of illegal aliens than it does to regulate its citizens, and that Congress often makes laws that distinguish between citizens and aliens and between lawful and illegal aliens
- Fifth Circuit resolved that "the phrase 'the people' in the Second Amendment of the Constitution does not include aliens illegally in the US"