

**RECENT FEDERAL CASES
OF INTEREST TO GOVERNMENTAL ENTITIES**

**TCAA
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**D. RANDALL MONTGOMERY
ASHLEY SMITH
ALYSSA BARRENECHE**
D. Randall Montgomery & Associates, P.L.L.C.
12400 Coit Road, Suite 560
Dallas, Texas 75251
(214) 292-2600
Rmontgomery@drmlawyers.com
asmith@drmlawyers.com
abarreneche@drmlawyers.com

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I. FIRST AMENDMENT

Bailey v. Ramos, No. 23-50185 (5th Cir. January 10, 2025)

Bailey and his friends went to downtown San Antonio to film the police. Angered by a recent arrest of a friend, they planned for one member of the group to be a jerk to a police officer while Bailey filmed. With cameras rolling, they approached Officers Ramos and Dech, who were guarding an ambulance. An altercation ensued wherein Ramos attempted to walk Bailey away from the ambulance, Bailey swatted Ramos' hand away and Ramos pushed Bailey in the chest before taking him to the ground. Bailey was arrested for interfering with the duties of a public servant.

Bailey brought various constitutional claims against the City and the two Officers, including unlawful arrest and seizure, violation of the First Amendment and excessive force. Ramos moved for summary judgment based on qualified immunity, but it was denied. On appeal, the Court noted that when video evidence is available, the Court is required to view the facts in the light depicted by the video. In doing so, the Court found that Ramos could have reasonably believed he had probable cause to arrest Bailey for interference with public duties, even if mistaken. The Court also found that the force used by Ramos was not clearly established as unlawful at the time of the incident. The Court remanded the case with instructions to grant summary judgment in favor of Ramos.

Bevill v. Wheeler, No. 23-40321 (5th Cir., May 30, 2024)

This case involves a First Amendment retaliation claim by Terry Bevill, a former Quitman Police Captain, against several government officials who he alleges conspired to terminate his employment.

By way of background, in 2017, Bevill signed an affidavit supporting a venue transfer

motion for his friend and former colleague David McGee, who was facing criminal charges while employed at the Wood County Jail. In the affidavit, Bevill stated that McGee couldn't receive a fair trial in Wood County due to alleged close personal relationships between Sheriff Tom Castloo, District Attorney James Wheeler, and Judge Jeffrey Fletcher.

The affidavit caused significant controversy. Following an investigation, Quitman Mayor David Dobbs, having concluded that Bevill's voluntary submission of his affidavit violated two Quitman Police Department policies regarding interference with courts and discrediting the department, terminated Bevill's employment.

Bevill filed suit pursuant to 42 U.S.C. § 1983, asserting a First Amendment retaliation claim against Dobbs. Bevill further alleged that Defendants conspired to terminate his employment in retaliation for his speech. This interlocutory appeal was the second one in this matter. In the first appeal, a panel of the Fifth Circuit affirmed the District Court's denial of the Rule 12(b)(6) motions to dismiss with relation to qualified immunity. See *Bevill v. Fletcher*, 26 F.4th 270 (5th Cir. 2022) [hereinafter *Bevill I*].

Despite their previously unsuccessful efforts on appeal, the individual defendants filed motions for summary judgment, referencing the parties' evidentiary submissions and the undisputed facts of the case, and asserted: (1) there was insufficient evidence of a conspiracy among them to terminate Bevill in retaliation for his affidavit; and (2) qualified immunity applied to Bevill's claims. In tandem with these efforts, Mayor Dobbs, for the first time in this case, claimed qualified immunity with respect to Bevill's claims against him for First Amendment retaliation and conspiracy to commit First Amendment retaliation. And DA Wheeler additionally argued that he, as a prosecutor, was entitled to pretrial dismissal on grounds of absolute immunity.

The District Court disagreed with Defendants. It first held that the record supported the conclusion that Bevill's First Amendment rights were violated. It went on to find that there was sufficient evidence for a jury to "infer that the individual Defendants reached an agreement, expressly or tacitly, that Bevill should be fired for filing his affidavit." Consistent with the Fifth Circuit's prior holding in *Bevill I*, the District Court further held that Bevill's constitutional rights were clearly established. Finally, the District Court held that DA Wheeler was not entitled to prosecutorial immunity. This second appeal followed.

On appeal, several Defendants contended that Bevill had produced insufficient summary judgment evidence that a conspiracy to terminate him existed even if the Court took Bevill's version of the facts as true. Defendants' jurisdictional arguments were foreclosed by *Kinney v. Weaver*, 367 F.3d 337 (5th Cir. 2004), and its progeny, which held that the Fifth Circuit lacked jurisdiction to consider Defendants' arguments that there was insufficient evidence for a jury to conclude that they did, in fact, reach such an agreement. *Kinney*, 367 F.3d at 346–47. Thus, the Court's task in this appeal was limited to determining whether such an agreement would be objectively unreasonable in light of clearly established law.

Because the conspiracy claims asserted under § 1983 require a deprivation of the asserted civil right, Defendants' arguments regarding the viability of Bevill's First Amendment claim were at the heart of this interlocutory appeal. Defendants maintained that Bevill could not show that he spoke as a citizen on a matter of public concern, or that his interest in the speech outweighed the government's interest in the efficient provision of public services.

Viewing the evidence in the light most favorable to him, the Fifth Circuit determined that Bevill's personal interest in helping his friend did not outweigh the factors that clearly weighed in favor of a determination that Bevill spoke on a matter of public concern - namely, that Bevill provided sworn testimony, in the

context of a well-publicized judicial proceeding, that raised an issue of potential governmental misconduct affecting a criminal defendant's right to a fair trial. Accordingly, the Court agreed with the District Court that Bevill spoke as a citizen on a matter of public concern. The Court next addressed whether Bevill's interest in his speech outweighed the government's interest in the efficient provision of public services. In considering Defendants' motions for summary judgment, the District Court, as it previously had, determined that Bevill's interest in his speech regarding potential malfeasance in Texas's criminal justice system outweighed the government's interest, particularly relative to only hypothetical, unrealized adverse consequences of Bevill's affidavit.

With regard to qualified immunity, the Fifth Circuit held that Bevill's First Amendment rights were clearly established based on prior precedent. The Fifth Circuit agreed with the District Court that Bevill was not required to point to a case with such rigid factual analogies, and that existing precedent provided sufficient notice to *Dobbs* that a public employee's opinion testimony alleging governmental misconduct, made as a citizen in a judicial proceeding, is protected speech.

Finally, the Court addressed and rejected DA Wheeler's contention that the District Court erred in concluding that Wheeler did not establish his entitlement to the absolute prosecutorial immunity recognized by the Supreme Court, in *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976), from civil suits seeking damages under § 1983. The Court elaborated:

While DA Wheeler may assert prosecutorial immunity in his decisions to prosecute or forgo prosecution generally, this immunity does not cover his alleged act of wielding his prosecutorial authority as a threat to influence a public employment decision over which he had no lawful authority. Such a threat cannot reasonably be considered "intimately associated with the judicial phase of the criminal process." *Imbler*, 424 U.S. at 430. We agree with the district court that DA Wheeler is not shielded by absolute prosecutorial immunity.

For all those reasons, the Fifth Circuit affirmed the District Court’s order denying Defendants’ motions for summary judgment.

Hines v. Pardue, No. 23-40483 (5th Cir., September 26, 2024)

Dr. Hines, a disabled, retired, Texas-licensed veterinarian, operates from his home in Texas providing email-based veterinary advice to pet owners worldwide. He never physically examines animals, performs procedures, or prescribes medications—he simply sends informational emails. In 2012, the Texas State Board of Veterinary Medical Examiners determined this violated state law requiring veterinarians to establish a veterinarian-client-patient relationship (VCPR) through physical examination before practicing veterinary medicine.

In 2013, Dr. Hines challenged the physical-examination requirement on First Amendment grounds. Over the last decade, his case has come before the Fifth Circuit twice—and now, a third time. After the Court remanded this case to the District Court nearly four years ago, the parties cross-moved for summary judgment. The District Court granted the State’s motion and denied Dr. Hines’s. It made three key determinations: The law (1) regulated Dr. Hines’s speech, rather than his conduct; (2) did so in a content-neutral way, warranting intermediate scrutiny; and (3) survived intermediate scrutiny because it was “narrowly tailored to the [State’s] substantial interests, which [were] unrelated to the suppression of speech.” Dr. Hines appealed.

The court determined Texas directly regulates Dr. Hines's speech, and not merely incidentally to his conduct. The regulation is triggered by his communication of individualized diagnoses and treatment plans - the State only penalized him when he shared his veterinary opinions via email. The Court did not definitively determine the issue of content neutrality because the law could not withstand even intermediate scrutiny - the lowest tier of scrutiny available for its analysis based on the facts in this case. Accordingly, the Court

assumed without deciding that the law regulated Dr. Hines’s speech in a content-neutral manner, meaning it applied intermediate rather than strict scrutiny. The Court found that the regulation failed to survive intermediate scrutiny, because the State failed to demonstrate that the alleged harms were real or that the law effectively alleviated those harms. Additionally, the Court highlighted the inconsistency in Texas law, which permits telemedicine for humans without a prior physical examination, questioning why animals should be subject to stricter requirement, specifically, why does Texas mandate tougher telehealth rules for veterinarians treating animals than for physicians treating people? The State did not say. The Court also found that the law was not narrowly tailored, as Dr. Hines proposed less restrictive alternatives that the State did not adequately address.

Because the State of Texas had failed to meet its burden under intermediate scrutiny, the Fifth Circuit reversed the District Court’s judgment and remanded with instructions that the District Court enter judgment for Dr. Hines.

Little v. Llano County, No. 23-50224 (5th Cir., May 23, 2025 En Banc Opinion)

This is a First Amendment case concerning the removal of 17 books from the Llano County, Texas public library system. Seven patrons of the Llano County library system (“Plaintiffs”), brought this suit against Llano County, the members of the County’s Commissioners Court, the County’s library system director, and the library board (collectively, “Defendants”).

Books were removed after complaints from residents Rochelle Wells and Bonnie Wallace, who objected to content they deemed inappropriate. Wallace subsequently sent a list of books in the Llano County library system that appeared on Texas Representative Matt Krause’s list of objectionable material, referring to the books as “pornographic filth” (“the Wallace list”). Library Director Amber Milum removed the books allegedly as part of routine “weeding” using MUSTIE criteria, but evidence suggested

this was pretextual. Milum testified that she would not have pulled the books had it not been for her receipt of the Wallace list. In fact, she had pulled no other books for review during that time period.

In January 2022, the existing library board was dissolved and a new board was created, which included appointees Wells and Wallace. The new board implemented several policy changes, including prohibiting Milum from attending their meetings and requiring her to seek approval before purchasing any new books.

Plaintiffs brought this suit alleging that Defendants removed the seventeen books because they disagreed with the books' content, in violation of the First Amendment. Plaintiffs sought a preliminary injunction requiring, among other things, that Defendants replace the seventeen books. The District Court granted Plaintiffs' motion for a preliminary injunction. Based upon a standard from the Fifth Circuit's 1995 decision *Campbell v. St. Tammany Parish School Board*, in which it was held that libraries may not "remove books from school library shelves 'simply because they dislike the ideas contained in those books.'" 64 F.3d 184, 188 (5th Cir. 1995) (quoting *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982) (plurality opinion)). As such, the District Court ordered Defendants to "(1) return all print books that were removed because of their viewpoint or content," including the seventeen books at issue; (2) "update all Llano County Library Service's catalogs to reflect that these books are available for checkout"; and (3) refrain from "removing any books from the Llano County Library Service's catalog for any reason during the pendency of this action." Defendants timely appealed the District Court's injunction. They also moved to expedite the appeal and for an injunction pending appeal. A motions panel of the Fifth Circuit agreed to expedite and carried the motion for an injunction with the case. When this panel was assigned the case, it granted an administrative stay of the District Court proceedings pending its decision.

In an opinion filed on June 6, 2024, a majority of the panel held that the district court applied the correct standard under *Campbell* and did not abuse its discretion in granting Plaintiffs' request for a preliminary injunction; however, it did hold the preliminary injunction to be overbroad and not narrowly tailored to the remedy the injury of which Plaintiffs complained. Thus, the majority modified the District Court's order to reflect the limited scope of the relief, and affirmed the injunction as modified. Defendants' motions to stay the District Court proceedings pending appeal and to stay the preliminary injunction pending appeal were denied as moot.

Defendants filed a petition for rehearing en banc. A member of the Court requested a poll on the petition, and a majority of the Circuit Judges in regular active service and not disqualified voted in favor. Accordingly, in an order dated July 3, 2024, the Court announced that it would rehear the case en banc. Pursuant to 5th Circuit Rule 41.3, the panel opinion in this case dated June 6, 2024, was vacated.

The En Banc Fifth Circuit reversed the District Court's preliminary injunction and dismissed the plaintiffs' Free Speech claims. The Court held that the right to receive information does not apply to a library's decision to remove books, as the First Amendment does not guarantee access to Government-provided information. The Court also determined that a library's collection decisions are considered Government speech, which is not subject to Free Speech challenges. The Court overruled the precedent set by *Campbell v. St. Tammany Parish School Board*, 64 F.3d 184 (5th Cir. 1995), which allowed challenges to book removals in school libraries, stating it was based on a misinterpretation of precedent.

National Federation of the Blind of Texas, Inc. v. City of Arlington, No. 23-10034 (5th Cir. July 17, 2024)

The National Federation of the Blind of Texas and Arms of Hope are two nonprofit organizations that use donation boxes to collect

items for fundraising. The City of Arlington enacted an ordinance regulating the placement and maintenance of these donation boxes, including zoning restrictions and setback requirements. The nonprofits challenged the ordinance, claiming it violated the First Amendment by restricting their ability to place donation boxes in certain areas of the city. The district court granted summary judgment in favor of the City on several counts, including the constitutionality of the setback requirement and the ordinance not being overbroad or a prior restraint. However, the court found for the nonprofits on the zoning provision, finding that it was not narrowly tailored and thus violated the First Amendment. The court enjoined the City from enforcing the zoning provision against the nonprofits.

On review, the Fifth Circuit that the ordinance was content-neutral and subject to intermediate scrutiny. It found that the zoning provision, which limited donation boxes to three of the City's 28 zoning districts, was narrowly tailored to serve the City's significant interests in public health, safety, welfare, and community aesthetics. It also upheld the setback requirements, finding it did not burden more speech than necessary and left ample alternative channels of communication. The Court vacated the district court's judgment and rendered judgment in favor of the City.

Siders v. City of Brandon, No. 23-60381 (5th Cir. December 11, 2024)

Siders sought to "share the gospel" outside of a public amphitheater owned and operated by the City of Brandon. The City had enacted an ordinance restricting protests and demonstrations near the amphitheater during events. Siders challenged the ordinance as unconstitutional and he was directed by police to a designated protest area which she found to be unsuitable for her activities. The district court denied her request for a preliminary injunction finding that she failed to demonstrate a likelihood for success on the merits of her claim.

On review, the Fifth Circuit found that the ordinance was narrowly tailored to serve the

significant government interest of public safety and traffic control during events at the amphitheater. The ordinance also left open ample alternative channels for communication, as Siders could still engage in her activities in a designated area for protests.

Stanley v. Morgan, No. 24-30119 (5th Cir., October 28, 2024)

On August 11, 2020, Lafayette Police Department (LPD) suspended police officer David Stanley for 14 days following an investigation into his Facebook posts. Before the suspension took effect, Stanley took sick leave which lasted for approximately a year. On September 18, 2020, during his leave, LPD transferred Stanley from the K-9 division to the Uniform Patrol division. Stanley returned to work on June 11, 2021. That day, he received and signed formal written notice of the suspension, which became effective on June 14, 2021.

Stanley pursued multiple remedies, including appealing the suspension to the Municipal Civil Service Board; filing state court petitions seeking injunctive relief to prevent the suspension and transfer; and eventually filing a federal § 1983 lawsuit alleging First Amendment violations and retaliation on June 14, 2022. LPD filed a Rule 12(b)(6) motion to dismiss, arguing that Stanley's claims were prescribed. The magistrate judge found that the applicable Louisiana one-year prescriptive period commenced when Stanley was notified of each disciplinary action, which occurred - at the latest - on the date he signed notice of the suspension, June 11, 2021. The magistrate judge also concluded that Stanley's state court petitions did not interrupt prescription because they failed to assert any federal claims or seek monetary damages. Stanley filed objections to the Report and Recommendation. He asserted for the first time in the objections that his § 1983 claims did not accrue until February 9, 2022, when the Civil Service Board adjudicated his appeal.

The District Court stayed the proceedings pending resolution of the Fifth

Circuit's certified question to the Louisiana Supreme Court concerning interruption. See *Kling v. Hebert* (Kling I), 60 F.4th 281 (5th Cir. 2023). Following an answer from the Louisiana Supreme Court in *Kling v. Hebert* (Kling II), 378 So. 3d 54 (La. 2024), the District Court reopened Stanley's case and accepted supplemental briefing on Kling II's application. The District Court then adopted the Report and Recommendation, dismissing Stanley's claims as prescribed. Stanley timely appealed. Stanley first insisted that his § 1983 claims could not have accrued until an administrative appeal of the adverse actions concluded. Second, and alternatively, Stanley contended that his state court petitions interrupted prescription under Louisiana law.

The Fifth Circuit affirmed the judgment of the District Court. It first found that Stanley's § 1983 claims accrued when he received notice of the adverse employment actions, not when the administrative appeal concluded. The Court also noted that it is a "settled rule" that "exhaustion of state remedies is not a prerequisite to an action under § 1983," which provides immediate access to federal courts. *Knick v. Twp. of Scott*, 588 U.S. 180, 185 (2019) (citations omitted). The Court next noted that Stanley's argument for delayed accrual was forfeited because it was not raised before the magistrate judge. Finally, the Court concluded that Stanley's state court petitions did not interrupt prescription because they did not assert Federal claims or seek monetary damages, thus failing to fully apprise the defendants of the nature of the § 1983 claims. The Fifth Circuit affirmed the District Court's decision, holding that Stanley's race against the clock for a timely § 1983 claim ended no later than June 11, 2022. Because he filed suit three days later, the complaint was prescribed on its face.

Texas Tribune v. Caldwell County, No. 24-50135 (5th Cir., November 15, 2024)

The Texas Tribune, Caldwell/Hays Examiner (news organizations), and Mano Amiga (advocacy organization) (hereinafter collectively the "Organizations") challenged Caldwell County's policy of categorically

closing pretrial "magistration" proceedings to the press and public. Under Texas law, magistrations are proceedings where arrestees are informed of charges, advised of constitutional rights, and have bail set within 48 hours of arrest. The plaintiffs sought declaratory and injunctive relief, arguing the closure policy, which restricted public access to such criminal proceedings, violated the First and Fourteenth Amendments. The district court granted a preliminary injunction, finding the policy likely violated the First Amendment.

In reaching its decision, the District Court found the Organizations had shown a substantial likelihood of establishing that the County's policy violates the First Amendment, the policy caused the Organizations irreparable harm, and the balance of the equities and the public interest weighed in favor of injunctive relief. The District Court made no finding as to the Organizations' Fourteenth Amendment claim. Citing its finding of a viable First Amendment claim, the District Court rejected the County's position that the Organizations lack standing to challenge the policy. Based on these findings, the District Court preliminarily enjoined the County "from (a) enforcing [its] policy of closing all magistration proceedings under Article 15.17 to the press and public and (b) from closing any magistration proceeding, except in extraordinary circumstances and as constitutionally permitted, under Article 15.17 without first providing reasonable notice and an opportunity to be heard, as practicable." The County appealed, arguing that the District Court erred in finding that the Organizations have Article III standing and that they succeeded in showing a substantial likelihood of success on the merits of their First Amendment claim.

The Fifth Circuit affirmed the District Court's ruling granting a preliminary injunction and temporarily enjoining the County's policy of categorically excluding the press and the public from accessing magistrations. The Court first found that the plaintiffs did have standing because they suffered an injury in fact due to being denied access to magistrations, which impedes their ability to report on and advocate regarding the criminal justice system. The Court

also found that the plaintiffs showed a substantial likelihood of success on the merits, as the First Amendment right of access extends to pretrial proceedings, including magistrations, under the “experience and logic” test established by the Supreme Court in *Press-Enter. Co. v. Superior Ct. of Cal. for Riverside Cnty.*, 478 U.S. 1, 7, 106 S. Ct. 2735 (1986) (*Press-Enter. II*). The Fifth Circuit found that the experience and logic prongs both weighed in favor of open bail hearings. The Court’s analysis emphasized the historical openness of pretrial proceedings and the positive role public access plays in ensuring fairness and transparency in the judicial process. The Court concluded that magistrations, which involve critical decisions such as informing arrestees of charges and setting bail, fall under the First Amendment’s right of access protections.

II. FOURTH AMENDMENT

Bakutis v. Dean, No. 24-10271 (5th Cir., February 25, 2025)

On October 12, 2019, Fort Worth police officer Aaron Dean responded to a neighbor's call about an "open structure" at Atatiana Jefferson's home at 2:25 a.m. Jefferson had opened her front door while playing video games with her nephew to let in a breeze. Dean arrived and conducted a perimeter search of the property, ultimately shining his flashlight through a window. When Jefferson appeared at the window to investigate the noise outside, Dean drew his weapon and shot her without identifying himself as police or completing his command for her to show her hands. Jefferson died from the gunshot wound.

David Bakutis, as administer of Jefferson’s estate, sued Dean under § 1983 for excessive force and unreasonable search claims. Dean moved to dismiss based on qualified immunity. The district court denied the motion, and Dean appealed.

A panel majority of the Fifth Circuit affirmed the District Court’s judgment on the excessive force claim but reversed and remanded the decision on the unreasonable

search claim. With regard to the excessive force claim, the court found it was clearly established law that officers cannot use deadly force without warning when feasible. The Court noted that Dean failed to identify himself as police; failed to complete his warning before shooting; and failed to establish Jefferson posed an immediate threat. Jefferson was in her own home, not fleeing, showed no violence or aggression, and Dean didn't claim she appeared armed or threatening. Under these circumstances, it is clearly established that Dean was required to announce himself as an officer and issue a warning, prior to employing deadly force. See, e.g., *Garner*, 471 U.S. at 11 (“A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.”); *Allen v. Hays*, 65 F.4th 736, 744–45 (5th Cir. 2023). That said, the Court indicated that this did not foreclose Dean from re-asserting qualified immunity at the summary judgment stage or even at trial, if facts reveal that deadly force might have been objectively reasonable and a warning could not be given. See *Flores v. City of Palacios*, 381 F.3d 391, 402 (5th Cir. 2004).

The Court, however, determined that Dean’s actions during the search did not violate clearly established law, granting him qualified immunity on the unreasonable search claim. The Court found that Dean was performing a community caretaking function and that there was no clearly established law indicating his actions were unreasonable. Because Dean was entitled to qualified immunity, and his motion to dismiss the unreasonable search claim should be granted, the Fifth Circuit reversed the District Court on this point.

Benfer v. City of Baytown, No. 23-20543 (5th Cir. November 1, 2024)

Officer Calvert was on patrol when he received an alert for a stolen vehicle. He spotted the Benfer’s car and believed that it matched the description. He activated his lights and followed the car into an apartment complex. Calvert immediately exited his vehicle as did Mr. Benfer. Mr. Benfer ignored Calvert’s commands and walked toward Calvert. Calvert tried to restrain him and a tussle ensued. Calvert warned

Benfer that he had a dog that would bite if he continued to resist. At this point, Mrs. Benfer exits the vehicle and approaches Calvert. Calvert pushed Mr. Benfer to the ground and Mrs. Benfer pushed Calvert. Calvert yelled at her to backup and called for an assist from his K-9. The K-9 bit and subdued Mr. Benfer but when Calvert attempted to handcuff him, the bodycam footage is unclear as to whether Benfer resisted or whether the K-9 biting his arm impeded his movement. Calvert commanded the K-9 to release his bite but he maintained his hold. Calvert had to pull the K-9 off of Benfer.

Benfer sued Calvert for stopping him without reasonable suspicion, arresting him without probable cause, instituting prosecution against him without probable cause, excessive force, and assault. He also sued the City asserting its policies governing the use of a K-9 were unconstitutional and failure to train. The district court dismissed finding that Calvert had not violated Benfer's constitutional rights and had failed to plead sufficient facts to support municipal liability.

On review, the Fifth Circuit affirmed. Calvert's stop was justified in that Benfer's vehicle, while the wrong make and model, looked similar to the description of the stolen vehicle. It was also dark and raining, cutting down on visibility. Calvert also had probable cause to arrest Benfer for resisting arrest because the video shows Benfer repeatedly pulling out of Calvert's grasp. Use of the K-9 was not excessive force in that Benfer repeatedly resisted arrest and walked away, Calvert warned him that he had a dog who would bite him if he continued to resist, and he did not deploy the dog until after Mrs. Benfer made physical contact with him while he was trying to restrain Mr. Benfer. Likewise, the use of the dog to restrain Benfer until he was handcuffed was a constitutional use of force.

Barnes v. Felix, No. 23-1239 (US Supreme Court May 15, 2025)

Harris County Constable Felix pulled Barnes, a Black male, over because his girlfriend's rental car he was driving had unpaid

tolls. When Barnes attempted to drive away with his driver's door open, Felix jumped on the running board and fired twice, killing Barnes at the scene. Barnes' mother filed a civil rights suit but the district court found that Felix had not used excessive force, applying the Fifth Circuit's "moment of threat" rule. The Fifth Circuit affirmed, explaining that the "moment of threat" rule requires asking only whether an officer was "in danger at the moment of the threat that resulted in [his] use of deadly force." Under this rule, events leading up to the shooting are "not relevant." Per the Fifth Circuit, the precise moment of threat was the two seconds when Felix was clinging to a moving car.

The Supreme Court disagreed with this standard, holding that the reasonableness of police force requires analyzing the totality of the circumstances and has no time limit. Courts can consider the facts and events leading up to the use of force, because they "may bear on how a reasonable officer would have understood and responded to later ones." "A court deciding a use of force case cannot review the totality of the circumstances of it has put on chronological blinders." The Supreme Court did not address the issue as to whether or how an officer's own "creation of a dangerous situation" factors into the reasonableness analysis as the courts below never confronted that issue and it was not the basis of the petition for cert.

Degenhardt v. Bintliff, No. 24-40034 (5th Cir., September 24, 2024)

Marc Degenhardt (18) and Augustus Degenhardt (20) were pulled over by Corpus Christi Police Lieutenant Phillip Bintliff while driving their parents' Dodge Challenger. Bintliff claimed he observed the vehicle "peeling out" and racing another car, though the Degenhardts alleged they simply made a normal left turn and merged smoothly into traffic.

During the traffic stop, officers observed an open box of White Claw Hard Seltzers in plain view and discovered both brothers were under 21. Officer Armando Cisneros conducted a Terry frisk and found a vape pen on Marc. The officers became frustrated with the brothers'

perceived defiant attitude (smirking and laughing) and ultimately impounded the vehicle. According to the complaint, Cisneros explicitly told Bintliff they should impound the car “because [the Degenhardt]s were laughing.” Both Degenhardt]s were charged with possessing alcohol as minors, and Marc was issued a warning for reckless driving. The officers did not arrest the Degenhardt]s; rather, they dropped them off at a nearby convenience store. The charges were later dropped.

The Degenhardt]s sued under 42 U.S.C. § 1983, asserting four claims. The Degenhardt]s alleged that (1) Bintliff unlawfully initiated the traffic stop and that both officers (2) unlawfully searched the car, (3) unlawfully seized the car, and (4) retaliated against the brothers for engaging in protected free speech. Bintliff and Cisneros moved to dismiss, arguing that the Degenhardt]s had not stated actionable claims and could not overcome qualified immunity. The District Court granted the motion. The Degenhardt]s appealed.

The Fifth Circuit affirmed in part, reversed in part, and remanded for further proceedings. The Court first found that the Degenhardt]s had sufficiently stated a claim regarding the unlawful initiation of the traffic stop, as the facts alleged did not support a reasonable suspicion of wrongdoing. However, the Court found that the officers had probable cause to search the vehicle due to the visible presence of alcohol in plain view, which justified the search under the Fourth Amendment. The Court also addressed the impoundment of the vehicle, concluding that while the officers failed to articulate a lawful basis for the seizure under the community caretaker exception, the Degenhardt]s could not overcome the officers’ qualified immunity defense on this point, as it was not clearly established that such an impoundment was unconstitutional. Regarding the First Amendment retaliation claim, the Court found that the Degenhardt]s failed to show that the officers’ actions were substantially motivated by their protected speech, as the officers had lawful grounds to search the vehicle and cite the Degenhardt]s for possessing alcohol as minors.

The Court noted that the officers’ probable cause to arrest the Degenhardt]s for possessing alcohol was not sufficient to justify the impoundment of the vehicle, but the officers were entitled to qualified immunity because the law was not clearly established in this context.

Dilley v. Domingue, No. 23-30914 (5th Cir. October 4, 2024)

Trooper Domingue pulled over a vehicle in the early morning hours. After the driver and a passenger fled, Dilley, a passenger in the back seat, got out and was almost immediately shot in the back by Domingue. Domingue did not have her body cam on, her vehicle did not have a dash cam, and a security camera nearby captured some of the details of the shooting. Inexplicably, after shooting Dilley, Domingue radioed in that she had deployed her taser. When other officers arrived on scene, they left Dilley bleeding on the ground because they did not know he had been shot. Approximately ten minutes later, Domingue confessed to another officer that she shot Dilley but also stated that she took a defensive position, went down on one knee, and fired. The surveillance footage showed she was not in a defensive position or down on one knee.

After Domingue was terminated for repeatedly failing to use her body cam, lying about her actions and criminal negligence, Dilley sued her for excessive force in violation of the Fourth Amendment. The district court denied qualified immunity based on disputed material facts. The Fifth Circuit affirmed finding that officers cannot use deadly force against a fleeing suspect “where the suspect poses no immediate threat to the officer and no threat to others.” Further, “shooting an unarmed and nonthreatening man in the back without a warning would violate clearly established law.”

Estevis v. Cantu, No. 24-40277 (5th Cir. April 16, 2025)

Estevis led a high speed car chase through the streets of Laredo late one night, reaching speeds of over 100 mph. At one point, officers were ordered to disengage, but several re-engaged the pursuit with officers from other

agencies, including Border Patrol. Eventually, Officer Cantu was able to use his vehicle to force Estevis off the road and into a ditch. Cantu and another officer exited their vehicles with guns drawn. Estevis threw his truck into reverse and rammed the squad car. Officers fired three shots into the cab of the truck. The truck lurched forward and collided with a fence, engine revving. The officers advanced on the truck and, just as the engine stopped, one officer fired three more times. Two seconds later, Officer Cantu fired three more times. Estevis was struck twice, once in the spine, likely paralyzing him permanently.

Estevis sued the two officers, who moved for summary judgment based on qualified immunity. The district court found that the officers had immunity as to the first three shots only. After that, Estevis had stopped revving his engine and was no longer an immediate threat. On review, the Fifth Circuit reversed, finding that the officers did not violate clearly established law by firing the additional shots under those circumstances. The situation was dangerous and unpredictable, and the officers had reason to believe they were still under threat. The Court further found that existing precedent did not clearly establish that the officers' actions were unlawful.

Hall v. Trochessett, No. 23-40362 (5th Cir. June 20, 2024)

Randall Hall's wife was in a minor car accident in a parking lot. She and the other party exchanged info and both went on their way. Officer Trochessett later showed up at the Hall's home and informed Mrs. Hall that he was investigating the accident. He asked to see her driver's license and insurance information. Instead of providing this, she called her husband who was 90 miles away in his car. Randall Hall then spoke with Trochessett on the phone, telling him that she would not provide the requested information and that the Halls would bring the information and provide it to the Police Chief. Mr. Hall explained that his wife had previously been a victim of stalking and did not want her address disseminated.

Officer Trochessett left the home and went to the Justice of the Peace and got a Warrant of Arrest for Randall Hall for interfering with public duties. He was arrested but the DA later dropped the charges. Hall filed suit against Trochessett, alleging that he violated Hall's Fourth and Fourteenth Amendment rights because he was arrested without probable cause. Trochessett moved to dismiss, and the district court found that probable cause existed. The Fifth Circuit agreed, stating that probable cause to arrest is a "low bar" and applied the independent intermediary doctrine, which states that an officer who presents all relevant facts to an impartial intermediary is not liable if the intermediary's independent decision leads to an arrest.

Hankins v. Wheeler, No. 23-30711 (5th Cir. August 1, 2024)

At 11:30pm, Hankins, a college student, and two other youths went looking for a lost dog in Hankins' BMW. They drove up to Officer Wheeler, a private security detail for the neighborhood, and asked for his assistance in locating the dog. Hankins gave his address, pointed in the direction of his house two blocks away, and asked Wheeler to let them know if he spotted the dog. When the car drove off, Wheeler ran the plates and found the car was not stolen but was registered to a woman who lived in a different neighborhood of the city. Wheeler decided "something wasn't right," followed the car and stopped it by announcing over his intercom – "Driver, get the f--- out of the car." After an exchange between Hankins and Wheeler, Wheeler checked Hankins' ID and allowed the group to leave with Wheeler stating, "you know, three young men, in a nice car, in this neighborhood."

Hankins sued Officer Wheeler in his individual capacity for unreasonable seizure and excessive force. After the district court granted Wheeler summary judgment on qualified immunity, the Fifth Circuit reviewed. Wheeler conceded the stop was a seizure. Thus the only question is whether there was reasonable suspicion of criminal activity to justify the stop. Wheeler stated that there had been a history of

vehicle break-ins in the neighborhood. The Court found, however, that the recent criminal activity must have a “particular connection between the crime suspected in the area and the individual stopped.” Here, the evidence that the Court was permitted to rely upon was not enough to show reasonable suspicion – a college-aged male in a car registered to a woman in another neighborhood, driving slowly in a residential area and asking a security officer for help in locating a dog. The Court also noted that Wheeler’s statement – “you know, three young men, in a nice car, in this neighborhood,” if credited, would undermine Wheeler’s justification for the stop.

Langiano v. City of Fort Worth, No. 22-10974 (5th Cir. March 11, 2025)

Langiano was accused of sexually abusing his step-granddaughters. He vacated the home but left a suicide note, which his son found in a trash can. His son called the police and told them about the note, giving them a description of his father’s car and telling them he has a handgun. Police located Langiano at a motel. Without knocking, an officer entered the motel room with backup behind him. The officer, who was not wearing a body camera, stated that when he entered, he immediately saw that Langiano’s gun was pointed at him. Langiano disputed this saying he only had the gun in his hand. The officer shot at Langiano six times, striking him five times in the rearend. Langiano survived. A Fort Worth grand jury declined to take criminal action against the officer.

While his criminal case was pending, Langiano filed suit against the City of Fort Worth and the officer that shot him. At the close of discovery, the district court denied Langiano’s motion to stay the case pending the resolution of his criminal trial and granted summary judgment in favor of the City and the officer. On review, the Fifth Circuit found that the district court did not abuse its discretion in denying the stay as Langiano did not demonstrate substantial and irreparable prejudice. The Court also affirmed the summary judgment as to both defendants. The officer’s

use of force was reasonable given the circumstances, and Langiano’s Fourth Amendment rights were not violated.

McVae v. Perez, No. 23-50703 (5th Cir. October 30, 2024)

McVae was pulled over for following another vehicle too closely. He then proceeded to lie about his identity. Trooper Perez was unable to confirm his identity based off the fake name he provided and told McVae to exit the vehicle. Perez gave McVae another opportunity to tell him his real name but he declined. Perez told him he was being detained until his identity could be confirmed but when he went to place McVae in handcuffs, he broke free and ran across the interstate. Perez ran after him into a wooded area where the two got into a physical altercation. At one point Perez tasered McVae but it did not seem to phase him. McVae then stood up and ran to a pile of rocks. At this point, Perez’s body cam did not show McVae but a softball-sized rock could be seen whirling past Perez. Perez then immediately fired his gun 4 times, all within less than 2.5 seconds of the rock whizzing past him. An autopsy revealed that 3 shots had hit McVae, all from behind.

McVae’s parents sued Perez for excessive force. Perez moved for summary judgment based on qualified immunity, and based on his body cam footage, the district court granted it. On review, the Fifth Circuit affirmed. The only contested material fact was whether McVae threw the rock that flew past Perez. Perez testified that McVae threw it and the body cam footage shows a rock coming from the direction from where McVae had been standing. No one else was in the area. Once McVae threw the rock, it became aggravated assault on a public servant, a first-degree felony that includes threatening an officer with a weapon and serious physical harm. When McVae threw the rock, Perez had to make an immediate reflexive decision of how to protect himself in a rapidly evolving situation. Perez was not obligated to give McVae a second chance.

Nevarez v. Dorris, No. 23-30103 (5th Cir., April 18, 2025)

On October 13, 2020, on October 13, 2020, police officers approached Mr. Nevarez when responding to a complaint of a person illegally discharging a weapon. At the time, Mr. Nevarez was in a car parked in a driveway. Miguel Nevarez was fatally shot by police officers in his front yard following a standoff that began when an officer investigating reports of gunshots approached Nevarez, who was sitting in his car in his own driveway and refused to exit. The police unsuccessfully attempted to negotiate with Mr. Nevarez, who eventually fled the vehicle. The officers attempted to subdue Mr. Nevarez with “less lethal attempts” before they ultimately “responded to the threat” of Mr. Nevarez raising a firearm toward the police officers by “discharg[ing] their weapons,” after which Mr. Nevarez, who “was struck,” “succumbed to his injuries.” The incident escalated rapidly, involving nearly 50 officers, and resulted in Nevarez being shot approximately 17-20 times.

After the shooting, Louisiana State Police (LSP) Troopers Justin Leonard and Anthony Dorris obtained search warrants for the Nevarez home and vehicle (October 14, 2020); Mrs. Nevarez's cell phone (October 19, 2020); and the home DVR security system. The troopers justified these searches by claiming they were investigating “aggravated assault upon a peace officer” allegedly committed by the deceased Mr. Nevarez.

Julie Nevarez, individually and on behalf of her minor children, sued the troopers under 42 U.S.C. § 1983, alleging the searches violated the Fourth Amendment. The troopers filed three motions to dismiss based on qualified immunity. The District Court denied the Troopers’ third motion to dismiss, concluding they were not entitled to qualified immunity. The District Court found that the affidavits for the search warrants lacked probable cause and were pretextual, as they were investigating the officers’ use of force rather than an active criminal investigation. The District Court reasoned that a reasonable officer would understand there was no probable cause to support the search warrants. The Troopers appealed the denial of qualified immunity.

A panel majority of the Fifth Circuit reversed and remanded the case for further proceedings. The majority emphasized that no law clearly established the Fourth Amendment violation alleged by Plaintiffs at the time the warrants were sought, so the Troopers were entitled to qualified immunity.

The dissent argued that the Court did not need a case squarely addressing that specific factual scenario because it already had numerous cases squarely addressing the issue of probable cause that the warrants here fail under and that the district court relied on. See *Hope v. Pelzer*, 536 U.S. 730, 740-41 (2002) (prior cases with “notable factual distinctions” are capable of “giving fair and clear warning”). It also highlighted that the warrants lacked a nexus between the items sought and the alleged crime or officer-involved shooting.

Ramirez v. Killian, No. 22-10401 cons. w/ No. 22-11060 (5th Cir., August 15, 2024)

On the afternoon of June 20, 2016, Deputy James Killian responded to a domestic disturbance call. After arriving at the home of Ramirez and Gonzales (“Plaintiffs”), Killian heard sounds of a fight. Two minutes after arriving, he turned on his body camera and entered the home through the living room. Bodycam shows Killian pepper spraying Plaintiffs (despite some signs of compliance) and shooting two dogs. After a struggle, Killian’s body camera fell off briefly and went black. Plaintiffs claim that during this time, Killian slammed Ramirez’s head against the floor, though the video was still black at that point and did not show it.

Ramirez and Gonzales filed a lawsuit under 42 U.S.C. § 1983 against Killian in the Northern District of Texas. Relevant to this appeal, they claimed that Killian had violated their constitutional rights by conducting an unreasonable search and seizure and using excessive force in violation of the Fourth Amendment. Killian moved for summary judgment, asserting qualified immunity as a defense. The District Court granted Killian’s motion for summary judgment as to all of

Ramirez's and Gonzales's claims except for the unreasonable seizure claim for Killian's shooting of one of the dogs.

The unreasonable-seizure claim proceeded to trial. The jury found that Killian had "acted in an objectively unreasonable manner" and that "no reasonable officer could have believed that shooting the dog was lawful." Killian then filed another motion for judgment as a matter of law. This time, the District Court granted the motion, finding that because "Plaintiffs still fail to identify evidence that no reasonable officer would have shot the pit bull," they had "failed to satisfy the burden they bear" to overcome Killian's qualified immunity defense. The District Court denied Ramirez's and Gonzales's subsequent Rule 59(e) motion to amend the judgment. Ramirez and Gonzales appealed the District Court's summary judgment dismissal of their warrantless-entry and excessive-force claims and its post-verdict judgment as a matter of law in favor of Killian.

The Fifth Circuit affirmed the District Court's summary judgment on the warrantless entry claim, agreeing that exigent circumstances justified Killian's initial entry into the home. However, the Court reversed the summary judgment on the excessive force claims, finding that there were genuine issues of material fact regarding whether Killian's use of pepper spray and physical force was excessive and unreasonable. The Court highlighted that the video evidence showed potential compliance by Plaintiffs, and that the force used may have been disproportionate given the circumstances. Regarding the unreasonable seizure claim, the Court also reversed the District Court's post-verdict judgment as a matter of law. It found that the legal standard for evaluating the reasonableness of shooting a pet dog was clearly established among circuit courts (even without controlling Fifth Circuit precedent), and the jury had sufficient evidence to conclude that Killian's actions were not justified, especially considering that the body camera footage showed that the dog displaying no signs of aggression before being shot. The court was particularly critical of the district court's demand for "reasonable officer evidence" to overcome

qualified immunity, clarifying that once a case survives summary judgment, the jury's factual findings on officer conduct are generally dispositive.

In conclusion, the Court affirmed the summary judgment on the warrantless entry claim, reversed the summary judgment on the excessive force claims, and remanded those claims for further proceedings. Additionally, the Court reversed the judgment as a matter of law on the unreasonable seizure claim and rendered judgment on the jury's verdict in favor of Ramirez and Gonzales.

***Salinas v. City of Houston*, No. 23-20617 (5th Cir. May 23, 2025)**

Houston Police Officers on patrol received a dispatch call with vehicle information. The officers located the vehicle, that was driven by Salinas. At the time, Salinas had just filled up with gas and was on the phone with a friend. The officers turned on their lights and Salinas took off. When he crashed into a cement pillar, the two officers surrounded the car and ordered Salinas to show his hands. Salinas kept raising and lowering his hands and reaching around. The officers continued to yell commands for him to raise his hands and to stop reaching. Salinas yelled not to shoot and that he was looking for his phone. When Salinas reached for something behind the driver's seat, the officers fired. 11-12 rounds were fired into the car by the two officers. No gun was found. In total, the officers yelled 33 commands for Salinas to show his hands and to stop reaching. The total time from the officers approaching the vehicle and firing the first shots was 38 seconds.

After the district court granted summary judgment based on qualified immunity and dismissed the claims as meritless against the City, the Fifth Circuit affirmed. The Court found that the officers had reasonable suspicion to detain Salinas based on the identifying information on his vehicle and his refusal to stop when the officers engaged their lights. The officers also reasonably believed that Salinas

posed an immediate threat when he continuously reached within his vehicle despite their commands to show his hands.

Santander v. Salazar, No. 24-10275
(5th Cir. April 4, 2025)

Santander and his wife went to a sports bar in Fort Worth. Salazar, an off-duty Fort Worth police officer, was working as a security guard at the bar and wearing his FWPDP badge and service weapon. Santander, who may or may not have been drunk, claims that while he was walking down a set of stairs, Salazar pushed him from behind. Santander got up and pushed Salazar who then took Santander to the ground, punched him several times to the head, caused Santander to lose consciousness, and then handcuffed and arrested Santander for public intoxication.

The charge was later dropped against Santander. After an IA investigation, FWPDP determined the Salazar falsified the arrest affidavit by stating that Santander had taken a fighting stance and omitted the fact that Salazar started the confrontation.

Santander filed suit against Salazar alleging excessive force, false arrest and malicious prosecution. Salazar moved to dismiss, which was granted by the district court, holding that Santander failed to cite any legal authority for his excessive force claim and failed to offer relevant analogous authority to support his false arrest and malicious prosecution claims.

On appeal, the Fifth circuit affirmed the dismissal of the false arrest and malicious prosecution claims but reversed on the dismissal of the excessive force claims. In doing so, the Court stated that the Supreme Court has expressly rejected the idea that it is the plaintiff's burden to "identify the universe of statutory or decisional law from which the district court can determine whether the right allegedly violated was clearly established." The district court's scrutinizing of Santander's pleading for relevant legal authority – an approach effectively requiring plaintiffs to brief legal authority in support of their claims within

their initial pleadings in anticipation of qualified immunity – was erroneous.

United States v. Smith, No. 23-60321
(5th Cir., August 9, 2024)

On February 5, 2018, three individuals, Jamarr Smith; Thomas Iroko Ayodele; Gilbert McThunel, II, acting in concert robbed a postal service employee (Cobbs). After arriving at the Lake Cormorant Post Office, Cobbs backed his mail truck up to the back door, where he would retrieve mail bags waiting for him inside the post office. However, before he could open the back door to the post office, an unknown assailant - later determined to be Gilbert McThunel - sprayed Cobbs with pepper spray, struck Cobbs multiple times with a handgun, threatened to kill him, and grabbed the registered mail bags from Cobbs's truck.

No suspect was arrested in connection to the robbery on the day of the occurrence. Initial investigation revealed a video of the incident taken from a camera located at a farm office across the street from the post office. The video showed a red Hyundai and a large white SUV in the area. The video revealed the assailant getting out of the SUV before the robbery, walking behind the building, and waiting for Cobbs to arrive. While behind the building, the assailant had his "hand up to his ear and elbow[] out" for multiple minutes, consistent with talking on a cell phone. However, the video did not show an actual cell phone. Later, after assaulting Cobbs, the assailant went back behind the building, squatted down, and began "looking at something in his hand" which appeared "indicative of" cell phone use. Based upon his examination of the video, it was believed that three suspects were involved.

Sometime after obtaining the video footage, but prior to applying for any warrants, a witness, who lived across the street, was interviewed. He reported seeing a red Hyundai "circling the area back and forth." He spoke with the driver (Smith), who indicated he was lost, and provided him instructions back to the highway, after which he heard a bunch of

commotion at the post office. The witness was able to describe the driver.

By November 2018, nine months after the robbery, the investigation failed to identify any suspects and a geofence warrant was considered. Geofence warrants involve law enforcement using Google's extensive Location History database to identify individuals present at a crime scene. Believing that this warrant could help them rekindle their investigation, a geofence warrant seeking information from Google to locate potential suspects and witnesses in connection to the robbery was initiated. The warrant failed to identify any specific Google accounts, instead providing only specific coordinates, which covered approximately 98,192 square meters.

The search of Google's 592 million accounts returned three anonymous device IDs within the requested parameters. De-anonymized information from Google allowed law enforcement to identify Jamarr Smith's and Gilbert McThunel's email accounts. Through a search of Jamarr Smith's phone records and his friends on Facebook, the investigators were able to identify Thomas Iroko Ayodele as a suspect. Finally, on July 1, 2019, Postal Inspector Dwayne Martin reapproached the witness and asked him to participate in a photo lineup. Although unable to identify McThunel or Ayodele in their respective lines, the witness did identify Smith as the person he saw driving the red Hyundai. All evidence connecting all three Defendants to this crime was derived from information obtained from Google pursuant to the geofence warrant.

Prior to trial, Defendants filed a motion to suppress all evidence derived from the geofence warrant which was used to identify them as suspects based upon reasonable expectation of privacy; that the warrant lacked probable cause and particularity; even if the warrant was valid, the government did not undertake "further legal process" to obtain additional information from Google as required by the warrant; and that the good faith exception did not excuse the defects of the warrant. The District Court denied Defendants' motion to

suppress and, after trial, all three Defendants were convicted and sentenced to prison. After a four-day trial, a jury returned a guilty verdict against all three Defendants as to both counts. Defendants filed a Motion for New Trial and a Motion for Judgment of Acquittal. The District Court denied the motions. Defendants appealed.

The Fifth Circuit held that the use of geofence warrants - at least as used in this case - are unconstitutional under the Fourth Amendment. In doing so, the Court parted ways with the Fourth Circuit. See *United States v. Chatric*, 107 F.4th 319 (4th Cir. 2024). The Court agreed that Defendants correctly contended that they had a "reasonable expectation of privacy" in their respective data. The Court explained that geofence warrants present the exact sort of "general, exploratory rummaging" that the Fourth Amendment was designed to prevent. *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). It noted that "while the results of a geofence warrant may be narrowly tailored, the search itself is not."

Despite the Court's rulings on geofence warrants, the Court agreed with the District Court that, here, law enforcement acted in good faith in relying on this type of warrant. Accordingly, the Court affirmed the District Court's denial of Defendants' motion to suppress.

United States v. Palmer, No. 23-20403
(5th Cir. August 1, 2024)

Two Houston police officers pulled Palmer over in a residential neighborhood because his front windshield was tinted in violation of Texas law. After they ran his license and registration, one of the officers told Palmer that he smelled weed. Palmer admitted to having a "zip" - an ounce of marijuana in the car. The officer asked Palmer to step out of the vehicle and then asked if there was anything else in the car besides weed. Palmer admitted that he had an "AR" in the back seat and that he was a convicted felon.

After a grand jury indicted Palmer for unlawful possession of a firearm, Palmer moved to suppress the evidence from the traffic stop, arguing that the officers lacked reasonable suspicion to detain him and that his admission regarding the AR was a product of Miranda violations. The district court denied the motion to suppress, finding that the officers had reasonable suspicion to stop Palmer for the tinted windshield and that Miranda did not apply because Palmer's challenged statement was not made during a custodial interview.

On appeal, the Fifth Circuit affirmed, finding that the officers had reasonable suspicion to stop Palmer for a tinted front windshield. For a traffic stop to be justified, "an officer must have an objectively reasonable that some sort of illegal activity, such as a traffic violation, occurred or is about to occur, before stopping the vehicle." The illegal tint satisfied this illegal activity. As for Miranda, Palmer had to be "in custody" for the protection to apply. Here, Palmer was standing beside the road, was not under arrest and was not in handcuffs at the time he made the statement.

Von Derhaar v. Watson, No. 22-30710
(5th Cir. July 30, 2024)

Von Derhaar, a New Orleans Crime Lab employee, warned superiors about safety breaches and inaccuracies in a drug-testing method. Instead of addressing those concerns, his Lab supervisors told him that, as a new condition of his employment, he was required to take drug tests using the testing method that he had warned about. Von Derhaar requested leave without pay. One of his supervisors came to Von Derhaar's apartment the next day but no one answered (it was the wrong apartment.) The following day, the supervisor came back with two armed officers and told Von Derhaar that he was required to speak with them and would be escorted from his home. Von Derhaar agreed that he would get dressed and leave with them but suddenly the supervisor announced that he and the officers were entering the home to do a wellness check. Von Derhaar was then ordered to leave and get a squad car to which he refused. Officers then called the Police Integrity Bureau

(PIB) who then told Von Derhaar that there were concerns about his wellbeing and he was ultimately taken away in a police car. Once at the PIB headquarters, Von Derhaar resigned.

Von Derhaar sued the City of New Orleans, its police superintendent and the officers present for violating his fourth Amendment right to be free from unreasonable searches and seizures. After several motions for summary judgment were granted, on review the Fifth Circuit reached the merits of only the search claim against his supervisor, and the seizure claim against the supervisor and the two officers. As to the search claim, the Court found that the denial of qualified immunity was proper in that the supervisor did not have consent to enter the home and no exigent circumstances existed. While the supervisor argued that he wanted to make sure the occupants of the home were safe, he had engaged with Von Derhaar in conversation for a full minute and observed no safety threat. As to the seizure claim, the Court found that the district court did not err in denying summary judgment to the supervisor but did err in denying it as to the two accompanying officers. The two officers were following orders, and because these orders were not "facially outrageous," it was not objectively unreasonable for the officers to follow the orders.

III. FOURTEENTH AMENDMENT

Pipkins v. Stewart, No. 22-30687 (5th
Cir. June 20, 2024)

Three black citizens who were struck during voir dire filed suit against the District Attorney claiming that they were struck due to their race. After the district court granted summary judgment in the District Attorney's favor, the Plaintiffs appealed. The Fifth Circuit found that, because Plaintiffs had sued the District Attorney in his official capacity, this was really suit against the local government itself. The Court also found that the Plaintiffs could not establish a predicate constitutional violation, which is necessary for a Monell claim. The District Attorney had provided a race-neutral explanation for each Plaintiff's

dismissal, mainly showing their bias. The Court found these explanations sufficient and not pretext for race-based dismissals.

Stapleton v. Lozano, No. 24-40155 (5th Cir. January 14, 2025)

Stapleton was stopped by Officer Lozano for suspicion of drunk driving. He was arrested for public intoxication and a search of his vehicle found 4 hydrocodone, 2 diazepam, 1 acetaminophen and hydrocodone, and 2 gabapentin capsules. He also found a package labeled (hemp) and two burnt pipes. When Stapleton was booked into jail, he told Officer Lozano that he was not feeling well and was visibly swaying. He did not request or receive medical attention and was placed in a holding cell monitored by closed-circuit tv cameras. Lozano came by the holding cell several times to speak to Stapleton and another man in the cell. Two hours after entering the cell, Stapleton kneeled down on the floor, and leaned forward and began rocking back and forth. An hour later he was unresponsive in the same position. Officers performed chest compressions and administered Narcan but he died two hours later in the hospital from cardiac failure, circulatory failure and central nervous system failure from combined drug toxicity. The toxicology report found Stapleton had alcohol, fentanyl, Narcan, clonazepam, alprazolam, dihydrocodeine, hydrocodol, norfentanyl, and mitragynine in his system.

During the investigation, Lozano explained that the fire department has a tv in their kitchen that watches the CCTV cameras, but if the officers leave, there may be no one in the station to supervise the inmates. After he placed Stapleton in the holding cell, Lozano left to assist on a traffic stop. When he returned he realized that Stapleton was in medical distress.

Stapleton's family sued Lozano for deliberate indifference to Stapleton's serious medical needs. The district court denied Lozano's motion to dismiss based on qualified immunity. On review, the Fifth Circuit reversed, holding that Plaintiffs did not sufficiently allege a deliberate indifference claim against Lozano.

The symptoms exhibited by Stapleton – visible swaying and slightly unsteady on the feet - were initially ambiguous and did not suggest a need for immediate medical attention. An officer's failure to immediately recognize ambiguous symptoms as a medical emergency does not amount to deliberate indifference, although it might constitute negligence. Further, Stapleton never requested medical assistance and the Plaintiffs made no allegations that Lozano refused to treat Stapleton or ignored his complaints.

IV. SECTION 1983

Ambler v. Nissen, No. 23-50696 (5th Cir. September 10, 2024)

Javier Ambler was traveling on a Texas roadway in the early morning hours with his high beams on. A Texas sheriff's deputy noticed and signaled for Ambler to stop, but Ambler refused. After a 20-minute highspeed chase, Ambler crashed his vehicle. When he opened his car door, a deputy told him to get on the ground and discharged his taser. Ambler fell to the ground with two deputies trying to cuff him. Austin Police Officer Nissen then walked up on the scene with his gun drawn. Ambler was on the ground with a deputy pushing a taser in his neck, telling him to give them his hands or he will be tased again. Ambler, who was a large man, stated he had congestive heart failure and couldn't breathe. Nissen then applied force to Ambler's arms and the back of his head, pushing it into the pavement. The officers then handcuffed a limp Ambler. The officers placed Ambler in a seated position, checked his pulse and found none. He was pronounced dead at the hospital.

Nissen moved for summary judgment based on qualified immunity but was denied when the Western District found that the facts, when viewed most favorably to the plaintiffs, could support a finding of excessive force and failure to intervene and prevent the other officers from using excessive force. On appeal, the Fifth Circuit found that it lacked jurisdiction to review the district court's order as the appeal did not turn on a pure issue of law but rather on disputed

facts. While the Court has jurisdiction to determine whether factual findings by the district court have “legal significance,” the Court cannot judge the genuineness of the district court’s factual findings. The Court emphasized that factual disputes such as whether Ambler was resisting were material to plaintiffs’ claims and should be resolved by a jury.

Asante-Chioke v. Dowdle, No. 23-30694 (5th Cir. June 5, 2024)

Louisiana police officers shot and killed Asante-Chioke after a report that he was visibly distressed, on foot, and carrying what was later identified as a gun and knife. The officers, including Dowdle, initially attempted to apprehend Asante-Chioke but shot and killed him when Asante-Chioke pointed his gun in the direction of the officers. The autopsy revealed he had been shot 24 times.

Plaintiff’s daughter filed suit against the officers at the scene. Dowdle moved to dismiss for lack of subject matter jurisdiction and failure to state a claim. In the alternative, he moved for discovery to be limited to qualified immunity until that issue was determined through summary judgment. The district court denied the motion to dismiss as well as Dowdle’s assertion of qualified immunity at the pleading stage and his request to limit discovery, finding that it was not necessary.

On appeal, the Fifth Circuit determined it had jurisdiction to review the decision whether to limit discovery under the collateral order doctrine. Citing *Carswell*, the Court noted that one of the most important benefits of the qualified immunity defense is the protection from pretrial discovery which is costly, time-consuming and intrusive. In this case, the district court’s failure to limit discovery was tantamount to the denial of qualified immunity.

Ashley v. Clay County, No. 24-10005, (5th Circuit January 10, 2025)

Ashley was employed by Clay County Memorial Hospital, which operates under the oversight of the Clay County Commissioners’

Court. Ashely was the Chief Nursing Officer and, during her tenure, raised concerns about missing fentanyl and advocated for the Hospital to terminate its contract with Concord Medical Group and partner with ACPHealth instead. When she was fired, she alleged that the County and the Hospital retaliated against her, violating her First Amendment Rights. The County moved to dismiss on governmental immunity grounds, asserting it was not Ashley’s employer and had taken no adverse actions against her. Meanwhile, the Hospital moved to compel arbitration under an Agreement that the County was a nonsignatory to. The District Court sua sponte compelled the County to arbitration alongside the Hospital and denied the County’s motion to dismiss as moot.

On appeal, the Fifth Circuit looked at whether the immunity issue should have been decided first as governmental immunity operates as a jurisdictional bar. In this case, the County’s governmental immunity defense raised a jurisdictional inquiry because it potentially shields the County from suit altogether. By bypassing this threshold jurisdictional issue, the district court’s arbitration order failed to adhere to Fifth Circuit precedent. The Court reversed the district court’s order compelling arbitration insofar as it declined to address the County’s motion to dismiss based on governmental immunity and remanded with instructions for the district court to resolve that issue.

Doe v. Ferguson, No. 24-40231 (5th Cir. February 13, 2025)

Plaintiffs alleged that two Prosper ISD administrators, Superintendent Ferguson and former Transportation Director Hamrick, failed to take action to stop school-bus-driver Paniagua from sexually abusing Janie Doe 1 and Janie Doe 2 in violation of their Fourteenth Amendment rights to bodily integrity. Paniagua would pick up Does 1 and 2 first on his route. Before he would pick up any other children, he would take the bus off-route and make a stop, pretending to adjust the girls’ seatbelts as a pretext for reaching under their shirts and shorts. The bus’s onboard video system captured this as well as GPS data. This abuse occurred over 100

times. The surveillance footage and GPS data were in the possession and control of Prosper ISD administrators, including Ferguson and Hamrick. Plaintiffs contend that these two had actual, subjective knowledge of the abuse but failed to respond.

Plaintiffs filed suit against a host of people and entities. Relevant to this appeal is Plaintiffs' supervisory claims under Section 1983 against Hamrick and Ferguson. These defendants filed motions to dismiss, asserting qualified immunity, and were denied. The Eastern District concluded that defendants were aware of Paniagua's inappropriate behavior and demonstrated deliberate indifference by failing to take action. On appeal, the Fifth Circuit reversed, finding that Plaintiffs failed to plausibly allege that defendants had subjective knowledge of the abuse. The Court emphasized that mere access to information, such as surveillance footage and GPS data, does not equate to subjective knowledge. The Court vacated the district court's denial of qualified immunity and granted the same to these defendants.

***Gonzalez v. Trevino*, 602 US _ (2024)**

Sylvia Gonzalez, a resident of Castle Hills, Texas, was elected to the city council in 2019. During her campaign, she learned of widespread dissatisfaction with the current city manager. After taking office, she organized a nonbinding petition calling for the manager's removal. The petition was presented at a contentious council meeting, after which Mayor Edward Trevino questioned Gonzalez about the petition's location, which was found in her binder, and which Gonzalez claimed was accidental.

Two days later, Trevino initiated a criminal complaint against Gonzalez under Texas' anti-tampering statute for allegedly intentionally removing a government record, charges which were later dismissed. Despite an atypical legal process involving Chief-of-Police John Siemens and special detective Alex Wright, Gonzalez was arrested and spent a night in jail.

She is no longer on the council and has refrained from public political activity.

Gonzalez sued Trevino, Siemens, Wright, and the city (collectively, Defendants) under § 1983, claiming her arrest was retaliatory for her conduct protected by the First Amendment. While she conceded that there was probable cause for the arrest, she argued that her case fell within the Nieves exception. In support of her retaliation claim, she cited a decade-long review of misdemeanor and felony data in Bexar County that showed no similar cases.

Defendants moved to dismiss her lawsuit on grounds of the independent-intermediary doctrine and qualified immunity, but the district court allowed Gonzalez's claims to proceed. On appeal, the U.S. Court of Appeals for the Fifth Circuit reversed, finding that the outcome was controlled by the U.S. Supreme Court's decision in *Nieves v. Bartlett*, holding that, in general, the existence of probable cause will defeat a retaliatory arrest claim. The Fifth Circuit noted that Gonzalez's facts did not trigger the narrow exception recognized in *Nieves*, under which a plaintiff need not plead lack of probable cause "where officers have probable cause to make arrests, but typically exercise their discretion not to do so."

The question presented to the Court was whether the Fifth Circuit erred in requiring petitioner Sylvia Gonzalez to provide specific comparator evidence to support her retaliatory arrest claim – the Court concluded that it did. In a *per curiam* opinion, the Court held that the Fifth Circuit did not properly apply the principles described in *Nieves* as the only express limit the Court described in *Nieves* was that the evidence a plaintiff presents must be objective.

Justice Samuel Alito concurred with the Court's decision but wrote separately to provide additional guidance on the scope of the *Nieves* exception, emphasizing that it is a narrow exception to the no-probable-cause requirement for retaliatory arrest claims and that the rule applies to all such claims, not just those involving split-second decisions.

Justice Brett Kavanaugh also concurred with the per curiam opinion but argued that Gonzalez’s case does not actually involve the Nieves exception, as her claim is about probable cause regarding her mental state rather than a conduct-based comparison, making the Court’s grant of certiorari misplaced.

Justice Ketanji Brown Jackson, joined by Justice Sonia Sotomayor, concurred with the per curiam opinion but emphasized that plaintiffs can use various types of objective evidence beyond surveys to satisfy the Nieves exception, including unusual arrest procedures or indications of retaliatory motives in arrest documents.

Justice Clarence Thomas authored a dissenting opinion, arguing that plaintiffs bringing First Amendment retaliatory-arrest claims under § 1983 should be required to prove a lack of probable cause. He asserted that the common-law torts most analogous to retaliatory-arrest claims (false imprisonment, malicious arrest, and malicious prosecution) all required proving absence of probable cause. Thus, he rejects the abuse-of-process analogy and criticized the Court for expanding the Nieves exception, asserting that there is no historical basis for this exception and that the Court should not craft § 1983 rules as a matter of policy.

Hernandez v. Causey, No. 24-60080
(5th Cir. December 23, 2024)

A police officer observed one vehicle, driven by Hernandez, to come to a complete stop at a stop sign, while a second vehicle appeared to have an intoxicated driver. He pulled both over and initially started questioning the intoxicated driver while Hernandez stood by. After not receiving any responses from the intoxicated driver, the officer radioed for ICE agents asking for assistance with speaking Spanish. Hernandez then asked the officer what the problem was and told him the other driver, his brother, was drunk. As the ICE agents arrived, Hernandez decided to leave the area. The officer and agents gave pursuit, telling Hernandez to get down. A gunshot is heard on the officer’s body cam and the officer arrives on

scene to see Agent Causey shouting, “Man, you shouldn’t have put your hand in your f—ing pocket!” Hernandez claimed that his hands were raised in surrender at the time Agent Causey shot him.

Hernandez brought claims against Causey under Bivens, Section 1983, and state law. Causey moved for, but was denied, summary judgment on qualified immunity. He moved for reconsideration five years later, arguing that the Supreme Court’s ruling in *Eghert v. Boule*, 596 US 482 (2022) limited Bivens claims such as Hernandez’s. The district court agreed and then granted Causey’s motion to dismiss from the bench, concluding that Hernandez’s Section 1983 claims failed because he brought them under federal law. The court, however, granted leave to Hernandez to file a motion to amend his complaint to replead his Section 1983 claim against Causey under state law. However, when Hernandez filed his motion, to court denied it and dismissed his claims with prejudice.

The Fifth Circuit affirmed. Hernandez’s Bivens claim presented a new context and alternative remedies existed. Hernandez also failed to allege that Causey acted under color of state law or that there was a conspiracy between Causey and state officials. Finally, the Court found that further amendment would be futile.

Holmes v. Reddoch, No. 23-30424 (5th
Cir., September 6, 2024)

Michael Holmes, a photography club member, attended a public fair in Belle Chasse, Louisiana in September 2018 to test a new camera lens. After taking pictures of an amusement ride (some capturing children incidentally), Holmes was approached by Deputy Sheriff Corbett Reddoch, who demanded identification. When Holmes calmly asked “Why?”, Reddoch forcibly arrested him, throwing him to the ground and kneeling on his back. Reddoch told Holmes he was arrested for “taking pictures of children” and later threatened him about what would happen in prison. Holmes was only charged with resisting arrest.

Holmes filed suit in Federal Court, asserting various theories of liability under state and federal law. Pertinent to this appeal, he made claims under the Fourth Amendment for Reddoch's investigatory stop and his arrest of Holmes. On remand from the first appeal in this matter, in which another panel of the Fifth Circuit reversed the District Court's grant of summary judgment in favor of Reddoch, the case ultimately proceeded to trial. After Holmes finished his case-in-chief, Reddoch moved for judgment as a matter of law under Rule 50 of the Federal Rules of Civil Procedure. With respect to Holmes's federal claims for his unlawful stop and subsequent arrest, the motion was denied. At the close of trial, Holmes and Reddoch filed cross-motions for judgment as a matter of law under Rule 50, which were also denied.

The jury found that (1) Reddoch unreasonably stopped Holmes, in violation of the Fourth Amendment, but that he was entitled to qualified immunity; (2) Reddoch unreasonably arrested Holmes, in violation of the Fourth Amendment, and that qualified immunity did not shield him from liability; (3) Holmes failed to prove his Fourth Amendment excessive force claim by a preponderance of the evidence; and (4) Holmes failed to prove his First Amendment retaliation claim by a preponderance of the evidence. The jury also found in favor of Holmes on his state-law claims of battery, false imprisonment, and malicious prosecution, and awarded punitive damages. Reddoch filed a post-verdict motion for a new trial under Rule 59, which the District Court denied. Reddoch appealed the District Court's denial of his motions for judgment as a matter of law and for a new trial, primarily challenging whether there was sufficient evidence to support the jury's verdict with respect to Holmes's claims for unlawful investigatory stop and unlawful arrest under the Fourth Amendment, as well as the jury's award of punitive damages under § 1983.

The Fifth Circuit affirmed the District Court's judgment, emphasizing the distinct legal standards for investigatory stops and arrests, and the jury's role in determining the credibility of the evidence presented. The Court also noted

that Reddoch forfeited his qualified immunity claim with relation to the false arrest because he failed to raise it as a basis in his Rule 50 motions at trial. The Court upheld the jury's decision to award punitive damages, finding there was sufficient evidence to suggest that Reddoch acted with reckless or callous indifference to Holmes's rights, particularly given his post-arrest comments and actions.

Kovac v. Wray, No. 23-10284 (5th Cir., July 22, 2024)

The Plaintiffs are five Muslims who are United States citizens, four of whom reside in Dallas, Texas, and the fifth resides in New Jersey. They alleged they have been put on what is officially called the Terrorist Screening Dataset ("Watchlist"). In January 2017, the Plaintiffs sued the heads of various Federal agencies that maintain or use the Watchlist, in their official capacities (collectively, "Government"). The Plaintiffs alleged violations of their Fifth Amendment procedural and substantive due process and equal protection rights, unlawful agency action under the Administrative Procedure Act ("APA") and violations of the nondelegation doctrine.

The District Court dismissed the various constitutional claims leaving only the APA claims, which the District Court granted summary judgment for the government, finding clear statutory authority despite applying the major questions doctrine because of the Watchlist's "vast political significance." The Plaintiffs appealed, presenting the sole issue of whether the Government had statutory authority to create, maintain, and use the Watchlist to screen passengers boarding commercial aircraft.

The Fifth Circuit found that federal agencies possess clear congressional authorization to operate the watchlist for aviation security purposes. The Court specifically found that the statutory framework, including the Aviation and Transportation Security Act, the Homeland Security Act, and subsequent legislation, provided unambiguous authority for the Watchlist. The Court did not entertain the broader implications or

unauthorized uses alleged concerning other contexts like immigration or firearm purchases, as the Plaintiffs lacked standing on these issues. The Court refuted the Plaintiffs' arguments that their injuries from enhanced screenings and travel prohibitions stemmed from unauthorized actions through detailed statutory interpretation. Consequently, the Court affirmed the District Court's ruling that the agencies involved possessed the statutory authority to create, maintain, and use the Watchlist, thereby validating the system's framework and its application within the scope of passenger screenings for commercial air travel. The Court determined that the Government's creation, maintenance, and use of the Watchlist in screening passengers in commercial air travel did not exceed its statutory authority in violation of the APA. Finally, the Court concluded that the Plaintiffs had no standing as to the Watchlist uses unrelated to airport security.

Sims v. City of Jasper, No. 23-40369
(5th Cir., August 28, 2024)

On the night of January 28, 2019, emergency medical services took 28-year-old Steven Mitchell Qualls to Jasper Memorial Hospital in Jasper, Texas, for chest pains, agitation, and tachycardia. After treatment, Qualls refused to leave the hospital. Police were called. They escorted him outside and arrested him for public intoxication. Officers took him to the Jasper County Jail, where he was booked at around 10:22 p.m. and placed into a detox cell. The officers did not change Qualls out of his street clothes as would have been customary policy and at some point Qualls swallowed a baggie that likely contained methamphetamine. Over approximately 33 hours in custody, his condition deteriorated significantly - he vomited black liquid multiple times, screamed in pain, and called for help, but officers did not provide medical assistance despite his obvious distress and Qualls eventually died.

His mother, Frances Earline Sims, individually and as administrator of Qualls's estate, sued four officers involved, alleging they were deliberately indifferent to Qualls's serious medical needs and violated his rights under the

Fourteen Amendment. She sought damages for his wrongful death. She also claimed the City of Jasper was liable under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), and she asserted claims on behalf of Qualls's minor child. On Defendants' motion for summary judgment, the District Court dismissed the claims against one officer and the City of Jasper but denied summary judgment qualified immunity to the remaining three officers. The Fifth Circuit affirmed on interlocutory appeal. *Sims v. Griffin*, 35 F.4th 945, 952 (5th Cir. 2022).

Sims then filed a motion to bifurcate the liability and damages phases of trial. She argued that Defendants intended to introduce evidence of Qualls's prior bad acts and criminal and drug history and of the strained relationship between Sims and Qualls, as well as other prejudicial evidence. The District Court denied the motion. At trial, the jury heard testimony and evidence about Qualls's extensive criminal history and drug use, disputes with Sims that led her to call the police numerous times, and his strained relationship with his son and his son's mother. The jury found none of the defendants liable, and the District Court entered final judgment against Sims. It denied Sims's motion for new trial. Sims appealed.

On appeal, the Fifth Circuit affirmed. The primary issue on appeal was whether the District Court abused its discretion in denying Sims's motion to bifurcate the liability and damages phases of trial. The Court assessed each Rule 42(b) factor. As for the factors of convenience, expedition, and economy, the Court agreed with the District Court that those factors likely weighed against bifurcation. The most disputed factor was prejudice against Sims. In considering the motion to bifurcate, the District Court recognized this evidence might have "a lot of prejudicial" effect and "no probative value" as to liability. Nevertheless, the District Court refused to bifurcate based upon its experience with similar cases, prejudice to the defense in asserting certain defenses, and reasoning that any prejudice to Sims could be addressed with standard trial practices. Accordingly, the Fifth Circuit held that the

District Court did not abuse its discretion in denying Sims's bifurcation motion or motion for new trial.

Spiller v. Harris County, No. 22-20028
(5th Circuit August 30, 2024)

Spiller went at 4am to help his *girlfriend* who had a single car accident on a Houston elevated expressway. When Sgt. Lindsay arrived, he questioned the girlfriend and then rebuked Spiller for attempting to answer for her. Lindsay then directed the girlfriend to go with an officer to a nearby truck stop for further police procedures and told Spiller he could follow in his car. Spiller attempted to ask what was going to happen to his girlfriend when Lindsay became enraged, seized Spiller by the neck, and slammed him on his back on the hood of a parked car. The two tumbled to the ground and scuffled until other officers intervened. One officer tased Spiller in his back and Spiller was arrested and taken into custody but charges were later dropped.

Spiller sued Lindsay, the other officers, and Harris County for various constitutional violations and Monell. After the district court granted Lindsay summary judgment on qualified immunity and dismissed claims against Harris County, Spiller appealed. The Fifth Circuit reversed the summary judgment for Lindsay on excessive force, finding genuine disputes of material fact regarding whether Lindsay's use of force was excessive and whether Spiller's actions justified such force. The Court affirmed the rulings on the false arrest finding that Lindsay had probable cause to arrest Spiller. The Court also upheld the dismissal of the Monell claim against Harris County as Spiller failed to allege specific facts linking his injury to a County policy or custom.

Terrell v. Harris County, No. 23-20281
(5th Cir., August 30, 2024)

On February 23, 2020, Shanita Terrell left a Houston bar in an impaired state when she encountered two off-duty Harris County Sheriff's Office deputies, Michael Hines and Mark Cannon, who were working side jobs at

the bar while in uniform. The deputies ordered Terrell into Hines's patrol vehicle, stating they would take her home. Terrell initially protested but complied, believing she was under arrest or would be arrested if she resisted. Terrell awoke the next morning at home with vaginal pain and no memory of the night's events. A rape kit revealed DNA evidence that Hines had sexually assaulted her. Terrell suspected someone had slipped Rohypnol into her drink. Eighteen months later, Hines was charged with sexual assault (and later pled guilty, according to documents referenced in the case).

Terrell sued Deputy Cannon, Deputy Hines, Harris County Sheriff Ed Gonzalez, and Harris County under 42 U.S.C. § 1983. Hines was served but never responded, and Terrell later voluntarily dismissed her claims against him. Terrell's first amended complaint alleged that Cannon violated her Fourth and Fourteenth Amendment rights by forcing her into Hines's patrol vehicle. She alleged that Sheriff Gonzalez was liable as the deputies' supervisor and that Harris County was liable for inadequately training the deputies. The District Court dismissed the first amended complaint for failing to state a claim. Terrell then filed a second amended complaint, which the District Court dismissed with prejudice, concluding that Terrell's allegations were still deficient. Terrell appealed.

The Fifth Circuit held that because Terrell failed to show a clearly established violation of her rights, the District Court correctly granted qualified immunity to Cannon. With relation to the supervisory liability claims against Sheriff Gonzalez, the Court held that there was not sufficient evidence to establish deliberate indifference; a single prior incident did not establish a pattern of inadequate supervision; and the prior incident did not make the assault "highly predictable." As to the claims of municipal liability against Harris County for failure to adopt adequate training, the Court held that Terrell could not show a policy, custom, or practice was the moving force behind her injury because a single incident could not demonstrate the required "persistent and widespread" pattern.

Accordingly, the Fifth Circuit fully affirmed the judgment of the District Court finding that qualified immunity barred the claim against Cannon and that Terrell failed to adequately plead supervisory and municipal liability claims against the other defendants.

Verastique v. City of Dallas, No. 23-10395 (5th Cir., July 8, 2024)

In 2020, major metropolitan areas were consumed by demonstrations following the release of a video depicting the well-known George Floyd incident in Minneapolis. Various protestors claim they were shot with PepperBall rounds, physically assaulted, and arrested without reason. All were charged with various criminal offenses initially, though all charges were dropped approximately two weeks later.

Plaintiffs sued the City of Dallas; Dallas County; and the Dallas County Sheriff's Office, raising a myriad of claims under § 1983. All three defendants filed motions to dismiss for failure to state a claim. The District Court granted these motions and dismissed plaintiffs' claims with prejudice. Plaintiffs appealed.

On appeal, plaintiffs challenged only the dismissal of their Monell claims against the City. Those claims alleged that the City was liable for constitutional violations resulting from its (a) failing adequately to discipline its police officers and (b) promulgating General Order 609.00, which permitted officers to conduct arrests "as they saw necessary to quell civil unrest."

The Fifth Circuit held that plaintiffs had "utterly" failed to show that the city's failure to discipline amounted to deliberate indifference or show a causal link between the failure to discipline and the and the violation of their rights. Although the complaint listed nineteen incidents involving one officer, those incidents did not constitute "any pattern of conduct—much less a pattern of similar violations" as all nineteen incidents described in the complaint lacked "similarity and specificity" and did not "point to the specific violation in question." Further, even if all nineteen incidents listed in

the complaint had been sufficiently specific and similar, the Court explained that plaintiffs' failure-to-discipline claim still failed on an alternate ground as nothing in their complaint suggested that it was "obvious that 'the highly predictable consequence' of not supervising its officers was that they 'would apply force in such a way that the Fourth Amendment rights of [citizens] were at risk.'"

Insofar at the constitutionality of 609.00, the Fifth Circuit held that it was not facially unconstitutional as it did not affirmatively allow or compel unconstitutional conduct. The policy, while allowing officer discretion, did not cancel the existing constitutional protections and obligations of the officers. Thus, the District Court's dismissal of their claims premised on facial invalidity was proper.

V. TITLE VII

Ibanez v. Texas A&M University Kingsville, No. 23-40564 (5th Cir. October 8, 2024)

Ibanez, a Mexican-American male, was employed by the University as an assistant professor of communications/radio-television-film on a tenure-track position. Under the University rules, Ibanez had 5 years to prepare to apply for tenure and promotion to associate professor, which required him to meet certain minimum requirements, including the creation or completion of a minimum of two juried creative activities. At the end of his 5 years, Ibanez submitted his application for tenure and promotion. But while he had produced an extensive number of productions, performances and other creative works, only one of his works had been "juried." Long story short, after Ibanez's application was reviewed by a committee, the department chair, the dean and the provost, he was denied tenure and promotion.

Ibanez sued the University, alleging that it had denied him tenure and promotion based on his race and national origin. The University moved for summary judgment, which was granted. On review, the Fifth Circuit affirmed.

Ibanez failed to establish a prima facie case of discrimination because he did not meet the University's baseline requirements of two juried creative activities. The Court also found no genuine dispute of material fact suggesting that Ibanez had been denied tenure under circumstances permitting an inference of discrimination.

Lindsley v. Omni Hotels, No. 23-11167
(5th Cir., December 16, 2024)

Sarah Lindsley brought this discrimination lawsuit, after filing an Equal Employment Opportunity Commission complaint against her longtime employer, Omni Hotels Management Corporation. In the suit, she brought several claims, including, in relevant part, sex-based pay discrimination under the Equal Pay Act ("EPA"), and Title VII of the Civil Rights Act of 1964. According to Lindsley, Omni discriminated against her on the basis of her sex, setting her initial salary too low so that, despite subsequent raises and pay beyond that of her male colleagues, she continuously earned less than she otherwise would have.

The District Court initially granted summary judgment in favor of Omni on all claims, but Lindsley appealed, and the Fifth Circuit relevantly reversed and remanded as to the pay-discrimination claims under Title VII and the EPA. *Lindsley v. TRT Holdings, Inc.* (Lindsley I), 984 F.3d 460 (5th Cir. 2021). At trial, the jury found Omni not liable under the EPA but awarded Lindsley over \$25 million in Title VII damages despite finding no liability under Title VII. The District Court deemed the jury's answers inconsistent, amended the verdict form, and ordered further deliberation. The jury then found for Lindsley on her Title VII claim, again awarding over \$25 million in damages, but also found that any pay disparity resulted from "factors other than sex" - another inconsistency since this defense bars both EPA and Title VII claims. Omni appealed on several grounds.

The Fifth Circuit found that the District Court did not err in its handling of the first verdict form but did err with the second verdict

form, which contained inconsistencies, as the jury found that any pay disparity was due to a factor other than sex, which should have negated the Title VII claim, yet still awarded damages. The Court held that under Rule 49(b)(4), the district court had no power to enter judgment upon receipt of the second verdict form as it did. Rather, the proper course of action would have been to either order more deliberation or order a new trial. *Id.* The Fifth Circuit concluded that the District Court erred in entering judgment based on the second verdict form due to the inconsistencies. As such, the Court vacated the judgment, remanded the case for a new trial.

Of note, at the retrial of this matter in 2025, the new jury found Omni did not discriminate against Lindsley.

Restaurant Law Center v. Department of Labor, No. 23-50562
(5th Cir. August 23, 2024)

The Restaurant Law Center and the Texas Restaurant Association challenged a final rule by the Department of Labor that restricts when employers can claim a "tip credit" for "tipped employees" under the FLSA. The tip credit allows employers to pay tipped employees a lower hourly wage, assuming tips will make up the difference to meet the minimum wage. The DOL's final rule imposes limits on the amount of non-tip-producing work a tipped employee can perform while still allowing the employer to claim the tip credit. After the Western District denied Plaintiffs' motion for a preliminary injunction, the Fifth Circuit reversed, finding that Plaintiffs had shown irreparable harm and remanded the case for further consideration.

On remand, the Western District evaluated the merits and granted summary judgment in favor of the DOL, holding that the final rule was a permissible interpretation of the FLSA under the Chevron deference and was neither arbitrary nor capricious. On review, the Fifth Circuit found that the final rule was contrary to the clear statutory text of the FLSA and was arbitrary and capricious. The court held that the FLSA's definition of a "tipped employee" does not support the DOL's

restrictions on non-tip-producing work. The Court concluded that the final rule improperly focused on the pursuit of tips rather than the duties of the occupation itself. The Court reversed, rendered summary judgment for Plaintiffs, and vacated the final rule.

Rodriguez v. City of Corpus Christi, No. 23-40520 (5th Cir. March 3, 2025)

Rodriguez served as the Director of the City of Corpus Christi and Nueces County Public Health District at the pleasure of the Mayor and the Nueces County Judge. The City paid 60% of her salary while the County paid the rest. In 2019, Rodriguez received a sizable salary increase as the City was trying to raise the executive pay group to 85% of the market rate. In 2020, the District implemented a 24 hours a day, 7 days a week work schedule in response to Covid. During this time, the District originally agreed to pay overtime to exempt employees, including Rodriguez. However, after a few months, the City stopped paying the overtime while the County agreed to continue to pay it for the 40% portion of her salary the County was responsible for.

The following year, HR investigated allegations against Rodriguez that she created a hostile work environment. After a 2021 poor performance evaluation and after Nueces County agreed to give the City operational control of the District along with the sole control to hire and fire employees, Rodriguez was terminated. Rodriguez then sued the City alleging that the City had deprived her of a property right without due process, withheld overtime wages in the amount of \$200,000, retaliated against her under the Fair Labor Standards Act and discriminated and retaliated against her in violation of the Equal Pay Act and Title VII.

After the district court dismissed her Section 1983 claim on the pleadings, finding that she did not allege a constitutionally protected interest in continued employment, the court granted summary judgment to the City on the remaining claims, concluding that Rodriguez was exempt from FLSA overtime pay requirements, did not establish the equal-work or

equal-pay prongs of her Equal Pay Act claim, and failed to identify a proper comparator for her Title VII claims. On review, the Fifth Circuit affirmed, concluding that the City paid Rodriguez on a salary basis, maintaining her exempt status under the FLSA, despite receiving additional overtime pay temporarily. The Court also agreed that Rodriguez did not engage in a protected activity under the FLSA, failed to identify a proper comparator for her Title VII and EPA claims, and did not establish pretext for retaliation.

Shahrashoob v. Texas A&M University, No. 23-20618 (5th Cir. January 8, 2025)

Dr. Shahrashoob, an Iranian woman, was hired by Texas A&M University in 2018 for a non-tenure-track position in the Department of Chemical Engineering. Initially employed as a lecturer, she was later reclassified as an instructional assistant professor. In 2020, despite receiving a raise, Dr. Shahrashoob began to feel that the University was discriminating against her. She filed her first charge of discrimination in June 2020. In August 2020, the University offered Dr. Shahrashoob an instructional assistant professor appointment for a shortened term. The University also hired Dr. Mohammad Alam as an instructor in the Department. Dr. Shahrashoob then filed her second discrimination charge, citing the shortened term and her belief that Dr. Alam was hired to replace her.

After her term was completed and she was not renewed, the Doctor sued the University. The district court granted the University's summary judgment, finding that she failed to establish a prima facie case of discrimination and could not prove that the University's reasons for her nonrenewal were pretextual. On review, the Fifth Circuit affirmed finding that she had failed to make a prima facie case of discrimination as she did not provide sufficient evidence that Dr. Alam was similarly situated or that he even replaced her.

Weathers v. Houston Methodist Hospital, No. 23-20536 (5th Cir. September 4, 2024)

Weathers, a white woman, complained to her supervisor that she was being harassed and discriminated against because of her race. HR conducted interviews regarding her complaints and found nothing to substantiate her allegations but did receive negative feedback on Weathers' job performance. Weathers was placed on a PIP and later terminated for poor performance and for failing to meet expectations outlined in her PIP.

Weathers contacted the EEOC inquiring on how to schedule an interview. She then went back and forth in scheduling a phone interview, and even cancelled a scheduled call. The EEOC eventually reached out to her by email and advised her that the statute of limitations to file her charge would expire on August 1, 2022 and asked if she was still interested in filing a charge. Weathers responded with an affirmative and a telephone interview was scheduled for August 1st. Weathers was cautioned in an email scheduling the interview that answering questions in an interview was not the same thing as filing a charge. But the message did not warn her that a charge would not be filed promptly after the interview nor did it offer her any other method for submitting a charge. After the interview the EEOC requested Weathers provide a detailed timeline of events, which she did within two hours. On August 2, 2022, the EEOC asked for additional details, which she immediately supplied. And on August 3, 2022 (after limitations) the EEOC sent her a charge to sign followed by a right-to-sue letter on August 11, 2022. Weathers then sued the Hospital and her supervisor for discrimination and retaliation under Title VII.

After the district court dismissed Weathers' claims against her supervisor, citing that employees are not personally liable under Title VII, and dismissed her claims against the Hospital as time-barred, the Fifth Circuit took up review. The Court affirmed the dismissal of Weathers' claims against the individual but found that the district court erred in not applying

equitable tolling to Weathers' claims against the Hospital. The Court noted that the delays were partly due to the EEOC's actions and that Weathers had diligently pursued her claim.

Yates v. Spring Independent School District, No. 23-20441 (5th Cir. August 26, 2024)

Yates began working for the District during the 2021-2022 school year as a math teacher. A few weeks into the school year, the District placed Yates on a "support plan" based on alleged concerns with his performance and preparation. He later was placed on a second support plan which required him to observe other teachers daily, complete observation notes and practice activities, and undergo daily coaching sessions with educators. He was also moved into a "push-in" role where he was no longer a lead teacher responsible for his own classroom but was instead located inside another teacher's classroom and working with some of that teacher's students. Yates complied and worked in this role for a few weeks until another math teacher resigned. Yates initially was assigned to fill that position but was then soon replaced by a young woman in her twenties (Yates was 67). Yates continued to work and continued to receive support plans. During this time, Yates filed a Charge of Discrimination in March 2022 alleging that that he faced discrimination and retaliation on account of his race, national origin, color, age, and disability. In October 2022, he was placed on administrative leave following complaints from parents and students that he was yelling at the students and not allowing them to go to the restroom. Yates filed suit against the District.

The district court granted the District's summary judgment motion, rejecting Yates' discrimination claims on the ground that none of the employment actions Yates challenged amounted to actionable discrimination. It reached this conclusion using the "ultimate employment decision" standard for Title VII discrimination cases – which 13 days prior had been abandoned by the Fifth Circuit. Nonetheless, on appeal, the Fifth Circuit affirmed. While the district court applied an

outdated standard, the district had provided legitimate, nondiscriminatory reasons for its actions, and Yates failed to show that these reasons were pretextual.

VI. ADA

Dabbasi v. Motiva Enterprises, No. 23-20166 (5th Cir. July 16, 2024)

Dabbasi was hired at Motiva in 2014 at the age of 48. While he was placed on a Performance Improvement Plan (PIP) in 2015, he also was a “President’s Award” in 2015 and 2018. However, he also received subpar performance ratings for 2015-2017 annual reviews. In 2018, Dabbasi received a new supervisor who allegedly told Dabbasi that he wanted to “rotate younger people” into his department. Dabbasi did not report this comment to HR.

After several subpar reviews, Dabbasi was placed on another PIP in mid-2019. During the meeting Dabbasi got very loud, used a demeaning tone, and was very “animated.” After he signed his PIP, he was terminated for his unsatisfactory performance, poor attitude, and refusal to commit to improving his performance. Dabbasi filed a Charge of Discrimination with the EEOC and received his right-to-sue letter. He filed suit asserting claims under the Age Discrimination in Employment Act, the Texas Commission on Human Rights Act, and claimed he was also discriminated against because of his disability under the ADA. Motiva filed for summary judgment asserting that his TCHRA and ADEA claims were time-barred and arguing for dismissal of any other age-discrimination or disability claim. The district court found that Dabbasi failed to establish a prima facie case of age discrimination because he was not replaced by someone younger. The court also found that Dabbasi was not disabled at the time of his termination.

The Fifth Circuit reversed, finding that the district court erred in evaluating Dabbasi’s age-discrimination claim in isolation rather than considering the totality of the evidence. There was sufficient circumstantial evidence to create

a genuine dispute of material fact regarding whether Dabbasi was terminated because of his age. However, the Court did agree that Dabbasi failed to establish a prima facie case of disability discrimination as he was not disabled at the time of his termination.

Way v. City of Missouri City, No. 24-20144 (5th Cir. April 9, 2025)

Way was hired as an assistant city attorney. Within a year of her employment, she developed anxiety from her job. Way asked for specific accommodations, including clear expectations, timelines and workflows that worked for everyone. She later began to experience pelvic floor spasms and was diagnosed with fibroids. After Way took three separate FMLA leaves to deal with her anxiety and medical issues, she was informed that her position had been eliminated and that her employment was terminated. Way sued the City, alleging discrimination and retaliation under the ADA, retaliation in violation of the FMLA, and discrimination and retaliation in violation of the TCHRA.

The district court granted summary judgment to the City, finding that Way did not sufficiently inform the City about the limitations caused by her anxiety or fibroids and that the City had a legitimate, non-retaliatory reason for her termination. On review, the Fifth Circuit affirmed on Way’s fibroid-related ADA and TCHRA claims, ADA and TCHRA retaliation claims, and the FMLA interference claim. However, it reversed on Way’s anxiety-related ADA and TCHRA discrimination claims and her FMLA retaliation claim. The Court found that Way provided sufficient evidence to suggest that her anxiety was a qualifying disability, that she informed her employer of her condition, and that the City failed to accommodate her reasonably. Additionally, the Court found that the timing of her termination, shortly after her FMLA leave, and the City’s inconsistent explanations of her termination could support a finding of pretext for retaliation.

Winder v. Gallardo, No. 24-10017 (5th Cir., September 27, 2024)

Steve Winder became suicidal after discovering Facebook messages between his wife and her ex-husband. His wife Latrisha, who was out of state for National Guard training, called for a welfare check after Steve sent her pictures of himself holding a gun to his head. Deputy Joshua Gallardo responded to the call and, after hearing Steve shout from inside the home, opened the front door. Steve's mother-in-law informed the deputy that Steve was armed and approaching the bedroom door. Deputy Gallardo commanded Steve to put the gun down before fatally shooting him. The entire incident lasted approximately 28 seconds. Latrisha, on behalf of herself and other family members, sued for (1) warrantless entry, (2) excessive force, (3) supervisory liability, (4) Monell liability, and (5) Americans with Disabilities Act (“ADA”) violations. The District Court dismissed the case at the 12(b)(6) stage. Latrisha appealed.

The Fifth Circuit affirmed the District Court’s judgment holding that the dismissal was correctly granted based on Gallardo’s entitlement to qualified immunity. The Court first found that Steve’s suicidality, combined with his possession of the means to follow through (the gun), created exigent circumstances excusing the need for a warrant, thus defeating the warrantless entry claim. Next, the Court found that an objectively reasonable officer in Deputy Gallardo’s shoes would not need for Steve to point the gun at him before using deadly force under the facts as pled and from what could be seen in Deputy Gallardo’s body cam footage (showing the suspect was armed and dangerous), thus defeating the excessive force claim. Next, the Court found there was no underlying constitutional violation to support a claim for supervisory or Monell liability. And lastly, regarding the ADA claim, the Court held that the exigent circumstances of the situation, where Steve was a suicide risk with access to a gun, precluded ADA relief. The Court noted that the ADA does not apply to police actions in exigent circumstances, and there was no evidence that Steve was discriminated against due to his disability.

VII. MISCELLANEOUS

Amendment of Claims

Banks v. Spence, No. 22-11252 (5th Cir., August 20, 2024)

Holston Banks, a convicted prisoner, sued prison officer John Spence, in his individual capacity, for excessive use of force in violation of his Fourteenth Amendment rights. The incident occurred in 2017, and Banks filed his lawsuit in October 2019. In April 2022, Spence moved to extend the deadline for filing an amended pleading, which was initially set for May 2, 2022. The District Court denied the motion but later extended the deadline to May 25, 2022, after a joint motion for an agreed amended scheduling order. On May 24, 2022, Spence filed an amended answer to Banks’s complaint. Spence moved for judgment on the pleadings in September, arguing that Banks’s Fourteenth Amendment claim was not applicable to convicted prisoners and that Banks failed to state an Eighth Amendment claim. Banks’s counsel became aware of the Eighth/Fourteenth Amendment distinction in August. On October 6, 2022, 134 days after the deadline to amend and 38 days subsequent to Banks’s counsel becoming aware of the issue, Banks moved to amend his claim to assert an Eighth Amendment claim. The District Court denied the motion as untimely and granted judgment on the pleadings. Banks appealed.

The Fifth Circuit, in an opinion filed on June 26, 2024, upheld the District Court’s decision. In applying Federal Rule of Civil Procedure 16(b)(4), which requires the party seeking relief to show that the deadlines could not reasonably be met despite their diligence, the Court found that counsel’s error – whether characterized as legal inadvertence (not understanding the Eighth/Fourteenth Amendment distinction) or factual inadvertence (not knowing Banks’s status as a convicted prisoner) – was “tantamount to no explanation at all” under Fifth Circuit precedent. Citing to previous cases where a lack of explanation for delay was sufficient to deny amendment, the Fifth Circuit affirmed the denial of Banks’s

motion to amend for failure to show “good cause” for his untimely amendment.

EEOC; TWC; Failure to Exhaust Administrative Remedies

Bunker v. Dow Chemical, No. 24-20046 (5th Cir. August 7, 2024)

Bunker filed a Charge of Discrimination with the EEOC against Dow, alleging age discrimination and retaliation in violation of the ADEA. She left blank the line on the form where she could have written the name of the “state or local agency, if any” that should also receive the charge in addition to the EEOC. After filing her charge, she continued to work for Dow until she was discharged over a year later.

Bunker filed suit in state court, alleging age discrimination and retaliation in violation of the Texas Commission on Human Rights Act (TCHRA). Dow removed the case based on diversity and then filed a motion to dismiss for failure to exhaust administrative remedies before filing suit and that the time to cure this defect had passed. The district court granted the motion finding that Bunker had filed her charge with the EEOC and not the TWC.

On appeal, the Fifth Circuit affirmed, holding that Bunker’s failure to indicate on her EEOC charge that it should be filed with the TWC meant that she did not meet the TCHRA’s filing requirements. The Court noted that both Texas state and federal courts have consistently held that a charge filed with the EEOC must at least indicate that it is to be filed with the TWC to satisfy the TCHRA’s requirements. Thus, Bunker’s claims were rightfully dismissed with prejudice for failing to exhaust her administrative remedies.

Religious Land Use and Institutionalized Persons Act

Cole v. Collier, No. 23-40216 (5th Cir. September 11, 2024)

Cole, a resident in the Stiles Unit of the TDCJ, claims he does not eat pork due to his faith. The TDCJ provides three menu options for each meal: (1) a regular tray, which includes all items offered in the serving line for that meal; (2) a meat-free tray, which excludes any meat in the serving line; and (3) a pork-free tray, which excludes any pork that is in the serving line. Options (2) and (3) replace the excluded items with non-meat items such as cheese, beans, eggs or PBJ. However, TDCJ never replaces the excluded items with meat. Instead, inmates may purchase non-pork meat from the commissary. Cole alleges that he has spent hundreds of his own dollars over the years purchasing foods from the commissary.

After exhausting the TDCJ’s grievance procedure, Cole filed suit against TDCJ and various officials, alleging violations of the Religious Land Use and Institutionalized Persons Act by refusing to provide him with non-pork meat for each meal as required by his sincere religious beliefs. The Eastern District granted summary judgment in favor of the defendants, finding that TDCJ had a compelling interest in controlling costs and that its meal selection policy was the least restrictive means of furthering that interest. The Fifth Circuit disagreed. The Court found that TDCJ provided no evidence to support its claim of a compelling interest in controlling costs or that its policy was the least restrictive means. The Court emphasized that RLUIPA requires the government to demonstrate that it has no other means of achieving its goal without imposing a substantial burden on religious exercise. The Court vacated the summary judgment and remanded the case, noting that TDCJ’s unsupported assertions were insufficient to meet the strict scrutiny standard required under RLUIPA.

HIPAA

Disability Rights Texas v. Hollis, No. 23-2071 (5th Cir. June 5, 2024)

Disability Rights Texas (“DrTx”) is an advocacy organization designated to protect the rights of persons with mental illness pursuant to

the Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI Act”). DrTx brought suit on the behalf of G.S. when G.S. was detained in a psychiatric inpatient program at a Houston hospital. G.S. filed a complaint with DrTx, alleging that he had been abused while at the hospital and authorized DrTx to access his records. Initially, the hospital provided G.S.’s records to DrTx. However, the hospital refused to release surveillance footage, claiming that it was prohibited from releasing the footage because it depicts substance use disorder (“SUD”). DrTx filed suit against the hospital, seeking to compel the footage. After the district court entered an order compelling the hospital to produce it, the hospital appealed.

On review, the Fifth Circuit found that the video footage fell within the definition of “records” under the PAIMI Act. The Court also found that HIPAA did not prevent the disclosure of the records as the “required-by-law” exception in HIPAA permits the disclosure when another law, such as the PAIMI Act, requires it.

42 U.S.C. § 1988 (Attorney’s Fees)

Lackey v. Stinnie, 604 US _ (2025)

Under the so-called “American Rule,” each litigant pays their own attorney’s fees, regardless of whether they win or lose. However, certain statutes permit the payment of “a reasonable attorney’s fee” to “the prevailing party” in litigation; 42 U.S.C. § 1988 is one such statute, permitting the payment of attorney’s fees to parties that prevail in civil rights litigation.

Several indigent Virginia residents challenged in federal court a state statute that required automatic suspension of the driver’s licenses of those who failed to pay certain court fines and fees. Finding the plaintiffs were likely to succeed on the merits of their case, the district court granted a preliminary injunction ordering the state to remove the plaintiffs’ suspensions. The state did not appeal the injunction, so the plaintiffs were able to drive again. Before the case could go to trial, the Virginia legislature repealed the statute. The plaintiffs then

petitioned for attorney’s fees under Section 1988, but the district court rejected that request, citing a decision of the U.S. Court of Appeals for the 4th Circuit holding that a grant of a preliminary injunction does not render a plaintiff a “prevailing party.” The plaintiffs appealed. A panel of the U.S. Court of Appeals for the Fourth Circuit affirmed, but, on rehearing, the en banc 4th Circuit reversed.

The question presented to the Court is whether a party who obtains a preliminary injunction is a “prevailing party” for purposes of being entitled to attorney’s fees under 42 U.S.C § 1988. The Court concluded that it is not and is, therefore, not eligible to recover attorney’s fees under 42 U.S.C. §1988(b).

Chief Justice John Roberts authored the 7-2 majority opinion of the Court, which reasoned that the term “prevailing party” in §1988(b) refers to a party who obtains enduring judicial relief that conclusively resolves their claim on the merits. Preliminary injunctions do not qualify because they merely preserve the status quo temporarily while predicting likelihood of success—they do not conclusively determine rights. Importantly, a “prevailing party” traditionally means one who “successfully prosecutes the action” or “successfully maintains” their claim “at the end” of proceedings, not one who achieves temporary success at intermediate stages.

The Court further noted that external events that render a case moot do not transform a preliminary injunction into the kind of judicial success that warrants attorney’s fees. For a party to “prevail” under §1988(b), both the change in legal relationship between parties and the permanence of that change must result from judicial order, not from outside circumstances.

Justice Ketanji Brown Jackson authored a dissenting opinion, in which Justice Sonia Sotomayor joined. Justice Jackson argued that the majority’s categorical rule lacks textual support and contradicts § 1988(b)’s purpose of encouraging civil rights enforcement; contradicts all eleven Courts of Appeals that previously considered the issue; ignores

Congress’s intent to expand civil rights access; noted that some preliminary injunctions provide meaningful, lasting relief that should qualify for fee awards; and the decision creates perverse incentives for defendants to strategically moot litigation to avoid fee liability.

Defamation

Favre v. Sharp, No. 23-60610 (5th Cir., September 16, 2024)

Brett Favre, the Hall of Fame quarterback, sued Shannon Sharpe, another Hall of Fame player and sports commentator, for defamation arising from comments made on the "Undisputed" sports talk show. The case centers on a Mississippi welfare fraud scandal where over \$77 million in federal TANF (Temporary Assistance for Needy Families) funds were allegedly misused. Favre was accused of receiving \$1.1 million for speaking engagements he never performed (monies that were repaid by Favre), and being involved in diverting \$5 million in TANF funds for a University of Southern Mississippi volleyball facility construction project. Although others were criminally charged in the scandal, Favre has not. He was, however, named in a civil suit filed by Mississippi’s Department of Human Services. Local and national news outlets covered developments in the scandal and Favre’s alleged involvement.

Shannon Sharpe, along with Skip Bayless, hosted a nationally broadcast sports talk show called Undisputed in which they discussed Favre, the welfare scandal, and the civil suit. The discussion included colorful and derogatory views on the article. Favre viewed three of Sharpe’s statements as defamatory: (1) “The problem that I have with this situation, you’ve got to be a sorry mofo to steal from the lowest of the low;” (2) “Brett Favre is taking from the underserved” in Mississippi; and (3) Favre “stole money from people that really needed that money.” Favre sent Sharpe a letter demanding he retract those statements, apologize, and cease and desist from further defamatory falsehoods. Sharpe refused, and Favre sued Sharpe for defamation in Mississippi state court. Sharpe

removed the action to Federal Court on the basis of diversity jurisdiction and filed a motion to dismiss for failure to state a claim. The District Court granted the motion, concluding that Sharpe’s comments were “mere rhetorical hyperbole” that no reasonable person would interpret as factual assertions of criminal conduct, which made the comments “unactionable.” Favre appealed.

On appeal, the Fifth Circuit affirmed, albeit with different reasoning. The Court did not analyze whether the statements were rhetorical hyperbole and instead analyzed whether they were protected opinions based on disclosed factual premises. It held that “strongly stated [opinions] ... based on truthful established fact ... are not actionable under the First Amendment.” *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 493 (5th Cir. 2013) (quoting *Texas Beef Grp. v. Winfrey*, 201 F.3d 680, 688 (5th Cir. 2000)). The Court held that Sharpe’s statements in response to facts widely reported could not have been reasonably understood as declaring or implying a provable assertion of fact. His statements were better viewed as strongly stated opinions based on truthful established facts about the widely reported welfare scandal, and thus unactionable under the First Amendment and Mississippi law. As for supposed factual inaccuracies with which Favre took issue, those inaccuracies were corrected during the segment.

Section 1981, Section 1982, Title II

Hager v. Brinker Texas, No. 21-20235 (5th Cir., May 22, 2024)

This is a federal civil rights case involving racial discrimination at a Chili’s restaurant in Texas. Sharnez Hager, a Black woman, visited a Chili’s restaurant with her Black family members and was told there would be a 45-minute wait for seating at a large table that appeared available. Twenty minutes later, her white fiancé Kevin arrived and was immediately offered the same table. When confronted, the hostess claimed Kevin had reserved the table (which was false), then apologized. After being seated, the family

received poor service - staff huddled together pointing and whispering at them, and they ultimately left without being properly served.

Hager sued under 42 U.S.C. §§ 1981, 1982, and Title II of the Civil Rights Act. The magistrate judge issued a Memorandum and Recommendation (“M&R”) recommending issuance of summary judgment to Brinker on all of Sharnez’s claims. Purporting to apply the McDonnell Douglas burden-shifting framework, the M&R assumed without deciding that Sharnez had shown a prima facie violation of §§ 1981 and 1982 but advised that she “failed to meet her burden” of showing with “substantial evidence” that Brinker’s explanation for the conduct of its employees was pretextual. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The magistrate judge MJ recommended that Sharnez “produced no evidence to negate [Brinker’s] explanation that the restaurant was understaffed and busy,” which led to Sharnez being placed on a false wait. The magistrate judge then recommended dismissal of Sharnez’s Title II claim because she said that Sharnez, during her deposition, sought relief not authorized by Title II. The magistrate judge acknowledged that Sharnez’s complaint sought declaratory relief, which is permitted under Title II, but reasoned that because Sharnez testified at her deposition that she only wanted monetary damages, her claim should be dismissed for seeking a remedy not authorized by statute. In the alternative, the magistrate judge reasoned that Sharnez’s Title II claim failed for the same reason her §§ 1981 and 1982 claims did under the McDonnell Douglas framework. The district court granted summary judgment for the defendant restaurant based on the magistrate judge's recommendation, without assigning reasons, analysis, or any change, over Sharnez’s objection, in a three-sentence-long order.

The Fifth Circuit reversed, finding multiple errors, including the magistrate judge classifying Sharnez’s as entirely indirect, which necessitated the use of the McDonnell Douglas framework. The hostess’s statement “I apologize for discriminating against you” should have been classified as direct evidence and the

magistrate judge should have analyzed whether Brinker had produced a preponderance of evidence supporting its non-discriminatory reason for Sharnez’s treatment. Since the District Court did not, and instead analyzed the evidence under the McDonnell Douglas framework, the grant of summary judgment to Brinker was improper. Furthermore, the Fifth Circuit found that the magistrate judge erred in her application of the McDonnell Douglas framework because (a) Sharnez made out a prima facie case of racial discrimination; (b) the Venable declaration was not competent summary judgment evidence because it lacked personal knowledge and was prepared in anticipation of litigation, so Brinker did not state a nondiscriminatory reason for its conduct; and (c) Sharnez produced evidence of Brinker’s pretext. Finally, the Fifth Circuit held that it was error for the magistrate judge alternatively to urge dismissal of Sharnez’s Title II claim on account of her deposition testimony about damages when the complaint properly sought declaratory relief.

Remand

Palmquist v. Hain Celestial Group, No. 23-40197 (5th Cir., May 28, 2024)

Sarah Palmquist gave birth to Ethan in September 2014 after a healthy and uneventful pregnancy. During the first two years of his life, Ethan met or exceeded developmental milestones. The Palmquists allege that during this time, Ethan almost exclusively consumed Hain’s Earth’s Best Organic Products, which the Palmquists purchased from Whole Foods. When he was about thirty months old, Ethan’s “social, language, and behavior[al]” skills rapidly regressed. Medical tests revealed that Ethan suffered from several physical and mental disorders, which some physicians attributed to autism spectrum disorder or major neurocognitive disorder while others diagnosed Ethan with heavy-metal poisoning.

In 2021 – several years after Ethan’s heavy metal toxicity diagnosis – the House Oversight and Reform Committee released a report (“Committee Report”) demonstrating that

certain baby foods, including Hain's, contained elevated levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury. The Committee Report also revealed that: (1) Hain's Earth's Best Organic Products contained up to 129 parts per billion ("ppb") inorganic arsenic; (2) some of Hain's ingredients contained as much as 352 ppb lead; and (3) Hain did not test for mercury.

Attributing the high levels of toxic metals appearing in Ethan's blood tests to his consumption of Earth's Best Organic Products, the Palmquists sued both Hain and Whole Foods in Texas state court in 2021, alleging strict-products-liability and negligence claims against Hain and breach-of-warranties and negligence claims against Whole Foods.

Hain removed the case to Federal Court, contending that Whole Foods, a multinational supermarket chain headquartered in Austin, Texas, was improperly joined to defeat diversity jurisdiction. After removal, the Palmquists filed an amended complaint (the "second amended complaint") that purportedly "clarified their allegations against Whole Foods under the federal pleading standard." In their second amended complaint, the Palmquists sought to clarify that their breach-of-warranties cause of action included claims that Whole Foods expressly represented to the public and to the Palmquists that Hain's baby food was safe. The Palmquists also added a negligent-undertaking claim against Whole Foods. After amending their complaint, the Palmquists moved to remand the suit, countering that they had viable claims against Whole Foods under the Texas Products Liability Act and the Deceptive Trade Practices Act. The Palmquists based their remand motion on the details in their second amended complaint. The District Court determined that the Palmquists had improperly joined Whole Foods and dismissed their claims against it. As such, the Palmquists' claims against Hain proceeded in Federal Court.

The matter proceeded to trial. After the Palmquists rested, Hain filed a motion under Rule 50(a) requesting that the District Court enter a judgment as a matter of law. The District

Court granted the motion finding that the Palmquists had presented no evidence of general causation with relation to the ingestion of heavy metals and the array of symptoms suffered by Ethan.

The Palmquists appealed, both with relation to the District Court's holding that it improperly joined Whole Foods and its denial of the motion to remand. While the Palmquists conceded that Fifth Circuit precedent has recognized that plaintiffs cannot defeat removal by changing the substance of their pleadings, they nevertheless emphasized that removed plaintiffs are allowed to "clarify a petition that previously left the jurisdictional question ambiguous." *Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F.3d 256, 264–65 (5th Cir. 1995) (holding that jurisdiction is judged "on the basis of claims in the state court complaint as it exists at the time of removal"). They contended that longstanding Fifth Circuit precedent holds that plaintiffs may "clarify" and "amplify" their jurisdictional allegations after removal for purposes of improper joinder analysis. See *Griggs v. State Farm Lloyds*, 181 F.3d 694, 699–700 (5th Cir. 1999).

The Fifth Circuit agreed that the state court pleading was broad enough to encompass a claim for breach of express and implied warranties. Although the language in the as-removed complaint generally discussed Whole Foods' implied warranties, it also discussed Whole Foods' express representations regarding Hain's products. The Court therefore held that the District Court erred in concluding that the Palmquists added a new breach of express warranty claim in their second amended complaint. Additionally, with relation to the added negligent undertaking claim, the Fifth Circuit permitted the Palmquists to "clarify" their already averred jurisdictional allegations after removal for purposes of an improper joinder analysis. See *Griggs*, 181 F.3d at 700 (acknowledging that post-removal evidence may be considered when determining whether removal was proper "only to the extent that the factual allegations in [petitioner's] affidavit clarify or amplify the claims actually alleged in

the amended petition that was controlling when the suit was dismissed”).

Insofar as the improper joinder issue, the Fifth Circuit held that the Palmquists pleaded sufficient facts to proceed against their claims against Whole Foods, noting that the few that the Palmquists pointed to have found fairly generalized statements adequate enough to support a claim against a nonmanufacturing seller. See *Transcon. Ins. Co. v. Briggs Equip. Tr.*, 321 S.W.3d 685, 702 (Tex. App.—Houston [14th Dist.] 2010, no pet.).

Lastly, the Court had to consider whether the District Court’s refusal to remand the case to state court required it to vacate the take-nothing judgment. Hain and Whole Foods relied on *Caterpillar, Inc. v. Lewis*, 519 U.S. 61 (1996), to argue against remand. Hain argued that vacatur of the final judgment was not the correct remedy, under *Caterpillar* and *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826 (1989), because there was complete diversity jurisdiction at the time judgment was entered. However, the Palmquists argued that, unlike *Caterpillar*, the jurisdictional defect here was not cured prior to judgment. The Court agreed with the Palmquists, deciding that remand was proper in the instant case because the jurisdictional defect was never cured, and thus vacated the final judgment of the District Court, and remanded with instructions for the District Court to remand the case to state court. Because the Court determined that the District Court erred in denying the Palmquists’ motion to remand the case to the state court, it did not address whether the District Court erred in granting judgment as a matter of law in favor of Hain.

Vexatious Litigant

Reule v. Jackson, No. 23-40478 (5th Cir. August 19, 2024)

This is an appeal that was brought by a group of individuals declared to be vexatious litigants under Section 11.054 of the Texas Civil Practices & Remedies Code. When a litigant is declared vexatious under this statute, a court may enter a prefiling order precluding that

litigant from filing future suits pro se without first obtaining permission from a local administrative law judge. Appellants challenged the constitutionality of the statute, arguing that it permanently deprives them of their First Amendment right to petition, and therefore operates as an unlawful prior restraint. Appellants sued a state court judge, a state court clerk and a state official responsible for publishing the list of vexatious litigants.

The Fifth Circuit affirmed the Eastern District’s dismissal for lack of jurisdiction. The appellants lacked standing because their injuries were not fairly traceable to the defendants’ actions and would not be redressed by a favorable decision. The Court also upheld the finding that there was no case or controversy between the appellants and the state court judge as the judge’s role under the statute was strictly adjudicatory. The Court concluded that the appellants’ injuries were caused by the independent actions of state court judges who declared them vexatious litigants, not by the defendants’ enforcement of the statute.

Eighth Amendment

Ricks v. Khan, No. 20-20303 (5th Cir., April 25, 2025)

Mark Eugene Ricks was a Texas state prisoner. Proceeding in forma pauperis and pro se, he filed a lawsuit under 42 U.S.C. § 1983 against employees of the University of Texas Medical Branch, which provides the Texas Department of Criminal Justice (“TDCJ”) with healthcare services, for allegedly violating his Eighth Amendment rights by denying him treatment for chronic hepatitis C virus (“HCV”) based on nonmedical reasons. Ricks claimed that the TDCJ HCV Policy was the driving force behind the unconstitutional denial of treatment (as opposed to medical reasons). He sought injunctive and declaratory relief. The District Court dismissed Ricks’s claims for failure to state a claim, concluding that his allegations did not support a claim for deliberate indifference. Moreover, the District Court denied his motion for appointment of counsel. Ricks appealed.

The Fifth Circuit vacated the District Court's order granting the motion to dismiss after finding that the District Court erred in dismissing Ricks's complaint without allowing him an opportunity to amend his pleadings. The Court explained that Ricks's allegations, if liberally construed, could potentially raise a viable claim of deliberate indifference to his serious medical needs. The Court emphasized that District Courts should not dismiss pro se complaints without providing an opportunity to amend unless it is obvious from the record that the plaintiff has pled his best case. When it is not apparent that the plaintiff has pled his best case, remand is appropriate. In this case, dismissal of Ricks's complaint without allowing him further opportunity to elaborate on the factual and legal bases of his claims was error.

The Fifth Circuit also vacated the District Court's denying the appointment of counsel. The denial of a motion to appoint counsel is reviewed for abuse of discretion, considering factors set out in *Ulmer v. Chancellor*, 691 F.2d 209 (5th Cir. 1982), such as the complexity of the case and the plaintiff's ability to present his case. Here, the Court noted that Ricks's case involved a complex medical condition and a high legal standard, necessitating the appointment of counsel to aid in the efficient and equitable disposition of the case.

Accordingly, the Court remanded the case with instructions to allow Ricks to amend his pleadings and to appoint counsel to represent him.

Removal / Federal Question

Royal Canin U.S.A. v. Wullschleger, ***604 US _ (2025)***

Anastasia Wullschleger filed a class-action complaint in Missouri state court against Royal Canin and Nestle Purina ("Defendants"), alleging that their requirement for a prescription for specialized dog food was misleading and led to higher prices. Defendants removed the case to federal court, which remanded it back to state court, and then they appealed to the U.S. Court

of Appeals for the Eighth Circuit, which determined that the antitrust and unjust-enrichment claims raised substantial federal issues and belonged in federal court. Upon returning to the district court, Wullschleger amended her complaint to remove references to federal law, dropped the antitrust and unjust-enrichment claims, and added a civil-conspiracy claim. Despite these changes, the district court exercised federal-question jurisdiction and ultimately granted the manufacturers' motion to dismiss, leading to a second appeal. Reviewing the case de novo, the Eighth Circuit concluded that amending a complaint to eliminate the only federal questions destroys subject-matter jurisdiction and thus returned the case to state court.

The question presented to the Court is whether a plaintiff whose state-court lawsuit has been removed by the defendants to federal court seek to have the case sent back to state court by amending the complaint to omit all references to federal law. The Court concluded that when a plaintiff amends her complaint to delete the federal-law claims that enabled removal to federal court, leaving only state-law claims behind, the federal court loses supplemental jurisdiction over the state claims, and the case must be remanded to state court.

Justice Elena Kagan authored the unanimous opinion of the Court, which held that federal jurisdiction is based on the operative complaint, which means that when a plaintiff amends their complaint, courts look to that amended version to determine jurisdiction. Federal courts can exercise supplemental jurisdiction over state law claims when they are part of the same case as federal claims. However, this supplemental jurisdiction flows from the existence of federal jurisdiction; when federal claims are eliminated, there is no longer any basis for supplemental jurisdiction over the state law claims.

The Court noted that this principle applies equally to cases that were originally filed in federal court and those that were removed from state court, as the supplemental jurisdiction statute (28 U.S.C. § 1367) makes no distinction

between the two situations. When Wullschleger amended her complaint to remove all federal claims after removal, the federal court lost its basis for federal question jurisdiction. Without any federal claims remaining, the court also lost supplemental jurisdiction over the state law claims. Therefore, the entire case had to be remanded to state court.

This unanimous decision resolves a circuit split and clarifies that plaintiffs can effectively force remand by strategically amending their complaints to remove federal claims after removal, regardless of potential forum manipulation concerns.

Confrontation Clause of the Sixth Amendment

Smith v. Arizona, 602 US _ (2024)

In December 2019, law enforcement officers executed a search warrant at Jason Smith's father's property, which had multiple structures. They detected a strong odor of marijuana from a shed, where they found Smith and later discovered various drugs and paraphernalia. Smith was charged with multiple felonies related to drug possession. Analyst Elizabeth Rast tested the substances and prepared notes and a report concluding they contained methamphetamine, marijuana, and cannabis. However, Rast became unavailable for trial, so the state substituted another analyst, Gregory Longoni, as an expert witness. Longoni testified about Rast's testing procedures and results based on her records, then offered his own "independent opinion" that matched Rast's conclusions. Smith's defense argued he was merely at the property to care for his ill father and was not involved in any illegal activities. Smith was found guilty on several counts, including possession of marijuana for sale, and was sentenced to four years in prison.

Smith appealed the decision, claiming, among other things, that the admission of drug-analysis testimony violated his confrontation rights because the testifying expert relied on data generated by a non-testifying expert. The Arizona Court of Appeals allowed this

testimony under the theory that Rast's statements were admitted "not for their truth" but only to show the basis for Longoni's expert opinion.

The question presented to the Court was whether the Confrontation Clause of the Sixth Amendment permits the prosecution in a criminal trial to present testimony by a substitute expert conveying the testimonial statements of a non-testifying forensic analyst. The Court held that when an expert conveys an absent lab analyst's statements in support of the expert's opinion, and the statements provide that support only if true, then the statements come into evidence for their truth, and thus implicate the Sixth Amendment's Confrontation Clause as the jury cannot evaluate the expert's credibility without assessing the truth of the underlying statements.

Justice Elena Kagan authored the majority opinion of the Court, which held that the Confrontation Clause applies to "testimonial hearsay," that is, out-of-court statements introduced for their truth. The key question in this case is whether the non-testifying analyst's lab statements were introduced for their truth or for another purpose. The Court remanded for determination of whether the statements were testimonial by looking at each statement's "primary purpose."

Justices Clarence Thomas and Neil Gorsuch did not join the Court's analysis of when a statement is "testimonial," and each wrote separately to explain how they differed.

Justice Samuel Alito authored an opinion concurring in the judgment in which Chief Justice John Roberts joined, arguing that the majority unnecessarily complicated the matter and should have found that the testimony sought to prove the truth of the statements and was, therefore, inadmissible hearsay subject to the Confrontation Clause.

Federal Tort Claims Act

Spriggs v. United States, No. 24-30609 (5th Cir., March 21, 2025)

Perry Spriggs was struck by a U.S. Postal Service vehicle while riding his bicycle in New Orleans on March 23, 2022. On March 23, 2023, he faxed his SF-95 tort claim form and medical records to the correct Postal Service fax number, receiving a confirmation sheet stating “successful transmission.” He filed suit in March 2024, but the government moved to dismiss, arguing they never received his claim.

The district court granted the government's Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, finding no “affirmative evidence” of receipt and dismissing with prejudice based on the expired two-year statute of limitations for FTCA presentment. The Court reasoned that a fax confirmation is not probative evidence of receipt in light of *Barber v. United States*, 642 F. App'x 411 (5th Cir. 2016) (unpublished). In *Barber*, a panel of the Fifth Circuit in a summary calendar opinion found that a plaintiff's “evidence of mailing”—an affidavit from a receptionist that she had sent SF-95 by untrackable first-class mail—was not probative evidence that the plaintiff satisfied the FTCA's presentment requirement. *Id.* at 414.

The Fifth Circuit disagreed with the District Court's sweeping ruling and found *Barber* distinguishable. It pointed out that Spriggs proffered a fax confirmation sheet addressed to the correct fax machine and to the attention of the correct Postal Service employee, not an affidavit from a sender's receptionist stating that she merely sent something off for mailing. Unlike evidence of ordinary, untrackable postal mailing, a fax confirmation sheet confirms successful transmission. Critically, District Courts within the Fifth Circuit have unanimously found that Postal Service tracking information confirming successful transmission of a piece of mail to a physical mailing address is probative evidence of actual receipt. Postal Service tracking and fax confirmation share the same quality: a record of successful transmission. The Fifth Circuit therefore found that both types of evidence are probative of actual receipt. The court also noted that the district court erred by dismissing with prejudice rather than without prejudice when finding a lack of subject matter jurisdiction.

Accordingly, the Court vacated the District Court's judgment and remanded for further proceedings.

Texas Prompt Payment of Claims Act

Taylor v. Root Insurance, No. 23-50667 (5th Cir., July 4, 2024)

When Christa Taylor's vehicle was damaged in a hailstorm, her insurer paid her the vehicle's actual cash value in a total-loss settlement. At issue was whether her policy also required the insurer to pay her the equivalent of what the sales tax would be on the sale of an automobile at that price. The District Court agreed with the insurer that the policy did not require payment of an amount representing sales tax.

The insurance policy contains two relevant provisions:

- Limit of liability: Our limit of liability for loss will be the lesser of the:
 - o Actual cash value of the stolen or damaged property less the deductible; or
 - o Amount necessary to repair or replace the property with other property of like kind and quality less the deductible.
- Payment of loss – We may pay for loss in money or repair or replace the damaged or stolen property . . . If we return stolen property we will pay for any damage resulting from the theft. We may keep all or part of the property at an agreed or appraised value. If we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property. We may settle any loss with you or the owner or lienholder of the property.

On behalf of herself and as representative of a class, Taylor filed a putative class action against Root asserting its failure to pay her sales tax was a breach of the policy. She set forth causes of action for breach of contract and violation of the Texas Prompt Payment of Claims Act (“TPPCA”). See Tex. Ins. Code §§

542.051–.061. Root moved to dismiss Taylor’s claims under Federal Rule of Civil Procedure 12(b)(6). In a report and recommendation, the Magistrate Judge recommended the District Court grant Root’s motion and deny Taylor’s request for leave to amend her complaint. The District Court conducted a de novo review of the record, agreed with the Magistrate Judge, and dismissed the suit. Taylor appealed.

The Fifth Circuit agreed that no sales tax was applicable since Texas law does not consider a total-loss insurance settlement as a taxable retail sale. Thus, the plain language of the policy required Root to pay only the “applicable sales tax,” and there was no sales tax applicable here. Additionally, the Court held that Root satisfied its obligation to pay Taylor the actual cash value of the vehicle. As Taylor conceded - and as the Court recently held - actual cash value, which is the equivalent of “fair market value[,] does not include the taxes and fees payable to purchase a replacement vehicle” under Texas law. *Singleton v. Elephant Ins.*, 953 F.3d 334, 336–37 (5th Cir. 2020). Because there was no applicable sales tax owed under the policy, there could be no violation of the prompt payment statute. Finally, the Court noted that Taylor provided no analysis or caselaw in support of her contention that the District Court erred in rejecting her request for leave to amend her complaint. She, therefore, forfeited the contention by failing to provide adequate briefing. See Fed. R. App. P. 28(a)(8) (requiring appellant to include her “contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies”).

Federal Rule of Civil Procedure 41 / Federal Rule 60(b)

***Waetzig v. Halliburton Energy Services, Inc.*, 604 US _ (2025)**

In February 2020, Gary Waetzig sued his former employer Halliburton for age discrimination but voluntarily dismissed his suit without prejudice due to a contractual obligation to arbitrate. After an arbitrator granted summary judgment to Halliburton, Waetzig returned to

federal court. Instead of filing a new complaint under the Federal Arbitration Act, he moved to reopen his original case and vacate the arbitration award. The district court agreed to reopen the case using Rule 60(b), citing Mr. Waetzig’s mistaken dismissal and an intervening Supreme Court case that affected his ability to refile. The court then vacated the arbitrator’s order, finding the arbitrator had exceeded her powers, and remanded for further proceedings before a new arbitrator. The U.S. Court of Appeals for the Tenth Circuit reversed, concluding that the Waetzig’s voluntary dismissal without prejudice was not a “final proceeding” within the meaning of Rule 60(b).

The issue presented to the Court was whether a voluntary dismissal without prejudice under Federal Rule of Civil Procedure 41 was a “final judgment, order, or proceeding” under Federal Rule 60(b). The Court concluded that it was and, therefore, may be reopened by the district courts.

Justice Samuel Alito authored the unanimous opinion of the Court, which focused on interpreting the phrase “final judgment, order, or proceeding” in Rule 60(b). The Court held that a voluntary dismissal without prejudice qualifies as a “final proceeding” because it terminates the case, making it “conclusive” and the “last” filing on the docket. Although the term “final” is interpreted narrowly in appellate jurisdiction contexts, such narrow interpretation is improper here as Rule 60(b) serves a different purpose. Additionally, the term “proceeding” encompasses all steps taken in an action, including voluntary dismissals. To read “proceeding” as requiring judicial determination would strip the term of independent meaning, since judicial determinations would already be covered by “order.”

Historical context further supports this interpretation. Rule 60(b) was based on a California provision that had been interpreted to apply to voluntary dismissals. The rule speaks in ascending order of generality – “judgments,” then “orders,” then “proceedings” – suggesting “proceeding” should be broader than the preceding terms. This interpretation prevents

voluntary dismissals without prejudice from falling into a procedural “no man’s land,” where they would neither be considered interlocutory nor final, leaving parties without recourse to correct mistakes in dismissal.

Anti-SLAAP / Texas Citizens Participation Act

Abraham Watkins Nichols Agosto Aziz & Stogner v. Festeryga, No. 23-20337 (5th Cir., May 16, 2025 En Banc Opinion)

This case arose from a dispute between a Texas law firm (Abraham Watkins) and its former associate, Edward Festeryga. After Festeryga allegedly attempted to take clients and firm files to his new practice, Abraham Watkins terminated his employment and sued him in Texas state court for various state-law torts. During a 17-day period of state court proceedings, Festeryga filed a motion to dismiss under Texas's anti-SLAPP statute (TCPA) and agreed to a protective order. In what Festeryga described as an effort to “deescalate” the litigation, he specifically agreed to produce certain documents within several days after signing the protective order.

On the eve of his production deadline, Festeryga removed the case to federal court based on diversity jurisdiction (his Canadian citizenship). Abraham Watkins moved to remand on two grounds: (1) lack of complete diversity and (2) waiver of removal rights through Festeryga's state court participation. The district court granted remand based solely on waiver, finding that Festeryga's TCPA motion showed intent to invoke state court jurisdiction.

A Fifth Circuit panel dismissed Festeryga's appeal for lack of appellate jurisdiction, bound by the 45-year-old precedent *In re Weaver* (1980), which held that waiver-based remand orders are jurisdictional and therefore unreviewable under 28 U.S.C. § 1447(d).

Festeryga filed a petition for rehearing en banc, which was granted, thus vacating the panel opinion. In an opinion filed May 16,

2025, the En Banc Fifth Circuit clarified that waiver, being a common-law doctrine, does not affect subject-matter jurisdiction and is not a statutory defect under § 1447(c). The Court rejected Weaver’s flawed holding: A remand based on waiver is not jurisdictional. Basic legal principles and overwhelming precedent – not to mention Abraham Watkins’s concession – compelled that conclusion.

The Court reasoned that subject matter jurisdiction derives only from the Constitution and Congress, not from a party's litigation conduct. Waiver is a common-law doctrine that cannot confer or strip away jurisdiction. Further, unlike jurisdictional defects, waiver need not be raised sua sponte, can itself be waived, and is reviewed for abuse of discretion rather than de novo. Finally, the Court held that waiver is not a “defect” under § 1447 (c) as the statute's “defect” provision covers only violations of statutory removal requirements – waiver by participation is a judicially-created, common-law doctrine with no statutory basis. The Court noted that the conclusion that waiver is not jurisdictional follows from first principles and is confirmed by the overwhelming weight of circuit authority.

The Court overruled Weaver and held that waiver through state-court participation is neither jurisdictional nor a removal defect under § 1447(c). It thus falls outside § 1447(d)’s bar on appellate review. The court returned the case to the original panel to address the remaining issues (diversity of citizenship and whether waiver actually occurred), given that appellate jurisdiction was established.