

Opinions for the week of August 24 – August 28, 2020

Apex Mortgage Corporation v. Great Northern Insurance Company No. 19-2525

Argued February 20, 2020 — Decided August 24, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:17-cv-03376 — **Virginia M. Kendall**, *Judge*.

Before BAUER, EASTERBROOK, and MANION, *Circuit Judges*.

MANION, *Circuit Judge*. Federal Insurance Company refused to cover Apex Mortgage for the settlement of state tort claims filed against Apex. Apex sued but the district court granted summary judgment for Federal. Because the record contains an open question of material fact, summary judgment should not have issued and remand is necessary.

[Full text](#)

Marcus Harrington v. Derek Duszak Nos. 16-4120 & 19-2379

Submitted April 9, 2020 — Decided August 24, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 08277 — **John Z. Lee**, *Judge*.

Before BAUER, FLAUM, and KANNE, *Circuit Judges*.

BAUER, *Circuit Judge*. Marcus Harrington brings this appeal requesting us to reverse the district court's admitting evidence of his firearm, prohibiting him from arguing racial animus in closing arguments, failing to sanction the Appellees, and denying his motion for post-trial discovery. Because the district court did not abuse its discretion or commit legal error, we affirm.

[Full text](#)

Scottsdale Insurance Company v. Columbia Insurance Group, Inc. No. 19-3315

Argued May 28, 2020 — Decided August 26, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:18-CV-03657 — **John Z. Lee**, *Judge*.

Before MANION, KANNE, and WOOD *Circuit Judges*.

MANION, *Circuit Judge*. While performing HVAC work at a construction site in Chicago, Eduardo Guzman fell approximately 22 feet through an unguarded opening in the second floor, sustaining serious injuries. Guzman sued Rockwell Properties (the owner), Prairie Management & Development (the manager), and others in state court. The issue before us is whether Columbia Insurance Group (Guzman's employers' insurer) owes a duty to defend Rockwell and Prairie. Scottsdale Insurance Company (Rockwell's insurer) wants Columbia to take over the defense. The district court granted Scottsdale judgment on the pleadings, declaring Columbia has a duty to defend Rockwell and Prairie, and ordering Columbia to reimburse prior defense costs. We affirm.

[Full text](#)

Sarah Johnson v. Northeast School Corporation No. 19-2870

Submitted May 20, 2020 — Decided August 26, 2020

Case Type: Civil

Southern District of Indiana, Terre Haute Division. No. 2:18-cv-68 — **James R. Sweeney, II**, *Judge*.

Before SYKES, *Chief Judge*, and RIPPLE and KANNE, *Circuit Judges*.

KANNE, *Circuit Judge*. Sarah Johnson sued North Central High School and Northeast School Corporation ("NESC") in 2018, claiming that their inadequate response to her allegations of sexual harassment violated Title IX, 20 U.S.C. § 1681(a). The district court entered summary judgment for North Central1 and NESC on all claims. Johnson now takes issue with two of the district court's evidentiary

determinations and its disposition of her Title IX claim. Because Johnson has waived any arguments regarding the district court's evidentiary rulings and because NESC was not deliberately indifferent to Johnson's claims of sexual harassment, we affirm.

[Full text](#)

Melcina Blanton v. Roundpoint Mortgage Servicing No. 19-2781

Argued June 2, 2020 — Decided August 26, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 15-cv-3156 — Robert W. Gettleman, Judge.

Before JOEL M. FLAUM, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

RoundPoint Mortgage Servicing erred in calculating Melcina Blanton's private mortgage insurance ("PMI") for a few months in 2014. As a result, RoundPoint charged Blanton more for her mortgage than she actually owed; she responded by not paying RoundPoint for her property taxes and hazard insurance for the rest of the year. Blanton then sued RoundPoint in state court. Locke Lord LLP, in its representation of RoundPoint, attempted to settle Blanton's claims by offering her a loan modification. She refused and sued both RoundPoint and Locke Lord in federal court. The district court held that RoundPoint and Locke Lord were entitled to summary judgment on all Blanton's claims. We agree.

[Full text](#)

Mohammad Siddique v. Michael Laliberte No. 19-2580

Argued March 31, 2020 — Decided August 26, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 15-cv-1 — **J.P. Stadtmueller**, *Judge*.

Before KANNE, WOOD, and HAMILTON, *Circuit Judges*.

KANNE, *Circuit Judge*. In 2013, Mohammad Siddique applied for a temporary student-government position at the University of Wisconsin–Madison. His application was said to have been rejected because he did not meet a minimum enrollment requirement crafted for the position. Siddique offers an alternative narrative: his application was rejected not because of the enrollment criteria but because of his critical stances against members of the University administration who worked with the student government and who were involved with the application process, including the Defendants. Siddique sued University officials, Laliberte, Stockton, and Thomas, in their individual capacities, under the Civil Rights Act of 1871, 42 U.S.C. § 1983. He alleged that these Defendants' rejection of his application for the student-government position violated his First Amendment right to be free from governmental retaliation. The district court determined that qualified immunity prevented Siddique's claim from proceeding to trial and granted summary judgment to the Defendants. We affirm because federal law does not clearly establish that enforcing an enrollment requirement for a student-government position violates the First Amendment.

[Full text](#)

Charles Weinschenk v. Central Intelligence Agency No. 20-1859

Submitted August 26, 2020 — Decided August 27, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:20-cv-00829-TWP-MPB — **Tanya Walton Pratt**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Charles Weinschenk sued the Central Intelligence Agency, the Federal Bureau of Investigation, the Indiana State Police, and Noblesville Schools, alleging that they conspired for more than 20 years to force

him into “a life of poverty, carpentry, and deviant associations.” But the connection between the locations, dates, people, and events he mentions is unclear. The first incident in his amended complaint occurred in 1997, when, for reasons unknown, a “hacker” asked Weinschenk to delete a family photo; the last occurred in 2018, when FBI agents harassed him online and stalked him. Of its own accord, the district court dismissed the pro se amended complaint as frivolous, even though Weinschenk had paid the filing fee and was not subject to the screening requirement of 28 U.S.C. § 1915(e)(2)... Given the facially incredible nature of these allegations, the district court appropriately dismissed his suit as frivolous.

AFFIRMED

[Full text](#)

C. Griffin v. Board of Regents of the University of Wisconsin No. 20-1575

Submitted August 26, 2020 — Decided August 27, 2020

Case Type: Civil

Western District of Wisconsin. No. 19-cv-277-bbc — **Barbara B. Crabb**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

C. Griffin, an African American woman, sued the Board of Regents of the University of Wisconsin System and others for discrimination in the admissions process and tuition charges. The district court dismissed all but one claim on the pleadings. Later, after Griffin refused to obey discovery orders, it dismissed the suit with prejudice. The dismissed pleadings are legally deficient, and the court reasonably dismissed the surviving claim as a sanction for Griffin’s disobedience, so we affirm.

[Full text](#)

David Penny v. Lincoln's Challenge Academy No. 19-3168

Submitted August 26, 2020 — Decided August 27, 2020

Case Type: Civil

Central District of Illinois. No. 17-cv-2232 — **Colin S. Bruce**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Claiming that his employer fired him because he opposed an act of disability discrimination against a coworker, David Penny sued for retaliation under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12203. The district court entered summary judgment for the employer, explaining that Penny lacked evidence of a causal connection between his opposition and his termination. We see no error in that ruling, so we affirm the judgment.

[Full text](#)

Donald Bator v. District Council 4, Graphic Communications Conference No. 19-2626

Argued February 12, 2020 — Decided August 27, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-1770 — **John J. Tharp, Jr.**, *Judge*.

Before BAUER, KANNE, and BARRETT, *Circuit Judges*.

KANNE, *Circuit Judge*. Plaintiffs Donald Bator, Edmond W. Moses, Christopher O'Malley, Michael Anthony Pappa, and Rogelio Jimenez, Jr. are former members of a union, Local 458-M. The Union participated in an employee-benefit pension plan administered by a Board of Trustees. In 2014, the Plaintiffs discovered the financial health of their pension plan was deteriorating. Several years later, the Plaintiffs sued the Trustees and the Union under the Employee Retirement Income Security Act of 1974 (“ERISA”) for a breach of fiduciary duty. See 29 U.S.C. § 1132(a)(2). The Plaintiffs allege the Defendants’

actions and inaction resulted in an underfunding of their pensions. The district court dismissed the case for failure to state a claim under ERISA. We affirm.

[Full text](#)

Quavotis Harris v. John Baldwin No. 19-2475

Submitted August 26, 2020 — Decided August 27, 2020

Case Type: Prisoner

Southern District of Illinois. No. 18-cv-1439-NJR-MAB — Nancy J. Rosenstengel, Chief Judge.

Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Quavotis Harris, an Illinois prisoner who has sued prison officials under 42 U.S.C. § 1983, appeals the district court's judgment that he did not exhaust his administrative remedies. Harris alleges that the officials were deliberately indifferent to his medical needs, violated disability-rights laws by not accommodating his showering needs, and retaliated against Harris for filing grievances. After the defendants moved for summary judgment, raising the affirmative defense of lack of exhaustion, the district court held an evidentiary hearing to resolve the defense. See *Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008). The court found that Harris had not exhausted his remedies for any of his claims and entered summary judgment for the defendants. Because the district court did not clearly err by crediting the defendants' evidence, we affirm.

[Full text](#)

Quincy Blue v. Eric Williams No. 19-1112

Submitted August 26, 2020 — Decided August 27, 2020

Case Type: Prisoner

Southern District of Illinois. No. 17-cv-1215-DRH — **David R. Herndon**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Quincy Blue seeks collateral relief from his criminal sentence. After a federal jury in Kansas convicted Blue of bank robbery and using a firearm during a crime of violence, see 18 U.S.C. §§ 924(c), 2113(a), the sentencing court ruled that he was a "career offender." For the predicate offenses, the court cited his prior state convictions, which included two convictions for possessing drugs with intent to sell. He received a sentence of 30 years' imprisonment. After a failed appeal and two unsuccessful motions for collateral relief under 28 U.S.C. § 2255, Blue now seeks relief under 28 U.S.C. § 2241. He contends that he is entitled to relief under *Mathis v. United States*, 136 S. Ct. 2243 (2016), as reflected by a Tenth Circuit decision that he says relied on *Mathis* to hold that his drug crimes are not predicate offenses. The district court denied the § 2241 petition. Because the Tenth Circuit decision relied on pre-*Mathis* principles to hold that his drug crimes are not predicates, Blue could have raised the same arguments in his original motion under § 2255. He thus cannot use § 2241 to seek relief, so we affirm.

[Full text](#)

Sabina Burton v. Board of Regents of the University of Wisconsin No. 20-1579

Submitted August 26, 2020 — Decided August 28, 2020

Case Type: Civil

Western District of Wisconsin. No. 14-cv-274-jdp — **James D. Peterson**, *Chief Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER

Sabina Burton, formerly a tenured professor at the University of Wisconsin Platteville, appeals the denial of her second post-judgment motion seeking to set aside the dismissal of her employment-discrimination suit against the school's Board of Regents and three individual defendants. See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. The district court denied the motion as duplicative of an earlier motion it had denied and, in any case, inapplicable. We affirm.

[Full text](#)

USA v. Salvador Rosales No. 19-3525

Submitted August 26, 2020 — Decided August 28, 2020

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 06-cr-0896-2 — **Sharon Johnson Coleman**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C.

BARRETT, *Circuit Judge*.

ORDER

Nearly a decade after a jury found Salvador Rosales guilty of multiple cocaine offenses, see 21 U.S.C. §§ 841(a)(1), 846, he moved to reduce his sentence under 18 U.S.C. § 3582(c)(2), relying on Amendment 782 to the Sentencing Guidelines. The district court denied Rosales' motion because his 240 - month sentence was based on a statutory minimum, so Amendment 782 did not affect his sentencing range. We affirm.

[Full text](#)

Beauty Enterprises, Inc. v. Sara Gregory No. 19-3491

Submitted August 26, 2020 — Decided August 28, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16-cv-2523 — **Robert W. Gettleman**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C.

BARRETT, *Circuit Judge*.

ORDER

Beauty Enterprises, a distributor, sued Sara Gregory, a market analyst in the beauty and personal care industry, for fraudulent misrepresentation and fraudulent concealment. Specifically, it alleged that Gregory made false statements about Carol's Express, a beauty-product brand, and that it purchased Carol's Express products in reliance on those statements. Beauty Enterprises further alleged that Gregory concealed a trademark infringement claim against Carol's Express. After a bench trial, the district court entered judgment in favor of Beauty Enterprises. We affirm.

[Full text](#)

Vladimir M. Gorokhovskiy v. Eleonora Stefantsova No. 19-2617

Submitted August 17, 2020 — Decided August 28, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 19-CV-453-JPS — **J.P. Stadtmueller**, *Judge*.

Before DIANE S. SYKES, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

ORDER

Vladimir Gorokhovskiy and Igor Kaiurov ask us to review the district court's dismissal of their case and the denial of their motion for sanctions against the defendant. We decline to do so. In this court, Gorokhovskiy (purporting to represent Kaiurov as well as himself) filed multiple false certifications and failed to furnish required documents. And Gorokhovskiy, an attorney, submitted documents so marginally competent that they raise concerns about his ability to represent others. We affirm the district court's judgment without

addressing the merits, and we direct Gorokhovsky to show cause why he should not be further sanctioned.

[Full text](#)

USA v. Scott Carnell No. 19-2207

Argued February 26, 2020 — Decided August 28, 2020

Case Type: Criminal

Southern District of Illinois. No. 4:18-cr-40066-JPG-1 — **J. Phil Gilbert**, *Judge*.

Before ROVNER, WOOD and BARRETT, *Circuit Judges*.

ROVNER, *Circuit Judge*. Scott Carnell pled guilty to a conspiracy to distribute a mixture containing methamphetamine. The United States Sentencing Guidelines (U.S.S.G.) distinguish between mixtures involving run-of-the-mill methamphetamine and methamphetamine that is at least 80% pure. U.S.S.G. 2D1.1, note C. The latter the Guidelines refer to as “ice,” and that definition carries with it sentences that are substantially higher than those for non-ice methamphetamine.¹ Carnell claims that the government failed to meet its burden of proving that the substance in which he dealt was ice methamphetamine, and therefore he should have been sentenced as though he was involved in a conspiracy to distribute methamphetamine that is less than 80% pure... The judgment of the district court is REVERSED in part and AFFIRMED in part, and we remand for further proceedings consistent with this opinion.

[Full text](#)

USA v. Byron Brown, et al. Nos. 17-1650 et al.

Argued June 3, 2020 — Decided August 28, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. Nos. 13 CR 288 & 13 CR 774 — **John J. Tharp, Jr.**, *Judge*.

Before SYKES, *Chief Judge*, and WOOD and ST. EVE, *Circuit Judges*.

WOOD, *Circuit Judge*. This case offers a window into the violent and ruthless world of the Hobos street gang, which operated in Chicago from 2004 to 2013. With the credo, “The Earth is Our Turf,” the Hobos worked to build their street reputation and control certain areas on Chicago’s south side. Ten gang members were charged and convicted for violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act, among other crimes. Nine of those defendants have joined in the present appeals: Byron Brown, Gabriel Bush, Gregory Chester, Arnold Council, William Ford, Rodney Jones, Paris Poe, Derrick Vaughn, and Stanley Vaughn. We find no reversible error in the convictions for any of the defendants. Nor do we find any error in any of the sentences, except for Chester’s, which must be revisited... In the end, almost the entirety of this complex criminal trial will remain undisturbed thanks to Judge Tharp’s excellent handling of the case. We AFFIRM the convictions of all the defendants. We also AFFIRM the sentences of all the defendants except for Chester. We VACATE Chester’s sentence in 13 CR 288, appeal No. 17-3063, and order a limited remand for further proceedings consistent with this opinion. In Jones’s case, No. 17-3449, we GRANT Counsel’s motion to withdraw and DISMISS the appeal.

[Full text](#)

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