Opinions for the week of July 27 – 31, 2020

USA v. Antonio Brown No. 19-3478
Argued July 7, 2020 — Decided July 27, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:19-CR-00072(1) — **Ronald A. Guzmán**, *Judge*.
Before DIANE S. SYKES, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*.

ORDER
Antonio Brown pleaded guilty to unlawful possession of a firearm, 18 U.S.C. § 922(g)(1), and was sentenced to 82 months in prison—a length twice the high end of the Guidelines range. Because the district court adequately justified its above-Guidelines sentence, we affirm the judgment.
Full text

Gary Hapner v. Andrew Saul No. 19-3207
Submitted June 1, 2020 — Decided July 27, 2020
Case Type: Civil
Northern District of Indiana, South Bend Division. No. 3:18-cv-00360-PPS-MGG — **Philip P. Simon**, *Judge*.
Before KENNETH F. RIPPLE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER
Since February 2015, Gary Hapner has been seeking disability insurance benefits and supplemental security income from the Social Security Administration. He asserts that he has been disabled for some time: initially, he claimed an onset date of May 12, 2012, but he later moved that up to January 16, 2015. After the state agency denied his applications, he had a hearing before a Social Security administrative law judge. There, too, he was unsuccessful, and even though he secured a full review from the Appeals Council, the result remained the same. The district court found that the agency's decision was supported by substantial evidence and so upheld it. We do the same: it was up to the agency to weigh the conflicting medical opinions in the record; the ALJ's assessment of Hapner's residual functional capacity was consistent with the credited opinions; and the agency had no duty to pursue Hapner's additional theories….We conclude that substantial evidence supports the agency's decision that Hapner is not qualified for either disability insurance benefits or supplemental security income. We therefore AFFIRM the judgment of the district court.
Full text

USA v. Kalvin Stewart No. 19-2619
Argued June 9, 2020 — Decided July 27, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 18-CR-485 — **Ronald A. Guzmán**, *Judge*.
Before DIANE S. SYKES, *Chief Judge*; MICHAEL S. KANNE, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER
On August 30, 2018, a grand jury returned an indictment charging Kalvin Stewart with four drug-related offenses. He pleaded guilty to one: conspiracy to distribute and to possess with intent to distribute 500 grams or more of a substance containing a detectable amount of cocaine in violation of 21 U.S.C. § 846. The Sentencing Guidelines apply the career-offender enhancement when the defendant (in addition to requisites not at issue here) "has at least two prior felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. § 4B1.1(a). The presentence investigation report determined that Stewart had two prior felony convictions for controlled-substance offenses and thus recommended

that he be sentenced as a career offender. Upon application of the enhancement, the Guidelines calculation yielded a range of 188 to 235 months in prison….Stewart hasn't asked us to revisit our holding in Adams, and the decision squarely controls here. Because the definition of "controlled substance offense" in the career-offender guideline encompasses inchoate offenses, the Wisconsin controlled-substances statute is a valid predicate. Stewart had two predicate controlled-substance offenses, and the judge correctly sentenced him as a career offender. AFFIRMED
Full text

Dorothy Perkins v. Megan J. Brennan No. 14-2896
Argued June 9, 2020 — Decided July 27, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 13-C-5226 — **Thomas M. Durkin**, *Judge*.
Before DIANE S. SYKES, *Chief Judge*; MICHAEL S. KANNE, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER
Invoking the Rehabilitation Act of 1973, 29 U.S.C. § 794, Dorothy Perkins sued the United States and the United States Postal Service after her mother died from a heart attack while at work. The district court dismissed her claim, ruling that it was untimely because Perkins had not exhausted her administrative remedies. Perkins's central argument on appeal is that the limitations period should be equitably tolled because the Postal Service failed to provide her with documents that she requested. But Perkins did not need those documents to exhaust and her mother did not initiate administrative charges herself, so we affirm.
Full text

Speech First, Inc. v. Timothy L. Killeen No. 19-2807
Argued February 27, 2020 — Decided July 28, 2020
Case Type: Civil
Central District of Illinois. No. 3:19-cv-03142-CSB-EIL — **Colin S. Bruce**, *Judge*.
Before BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.
BRENNAN*, Circuit Judge*, concurs and dissents.

ST. EVE, *Circuit Judge*. Colleges and universities unquestionably benefit from the free flow of ideas, debate, and deliberation on campus. These institutions should strive to foster an environment where critical thought, and sometimes strong disagreement, can flourish. Indeed, "[f]reedom of expression and academic freedom are at the very core of the mission of colleges and universities, and limiting the expression of ideas would undermine the very learning environment that is central to higher education." Erwin Chemerinsky & Howard Gillman, Free Speech on Campus x (Yale Univ. Press 2017). Speech First—a national advocacy organization dedicated to promoting the exercise of free speech on college campuses—alleges that three distinct policies at the University of Illinois at Urbana-Champaign ("the University") threaten these ideals and impermissibly chill the speech of student members of its organization. It seeks a preliminary injunction to put a halt to these policies. When a party seeks a preliminary injunction before the district court, the burden rests on that party to demonstrate that it has standing to pursue its claims. Speech First failed to meet that burden for two of the policies it challenges; namely, it failed to demonstrate that its members face a credible fear that they will face discipline on the basis of their speech as a result of those two policies. And for its challenge to the third policy, that claim is moot. The district court therefore correctly denied the motion for a preliminary injunction, and we affirm.
Full text

USA v. Kevin Kizart No. 19-2641
Argued February 27, 2020 — Decided July 28, 2020
Case Type: Criminal
Central District of Illinois. No. 4:18-cr-40009-SLD-1 — **Sara Darrow**, *Chief Judge*.

Before BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.

BRENNAN, *Circuit Judge*. A police officer pulled over an individual for speeding and smelled burnt marijuana coming from the car. He proceeded to search for contraband or other evidence of illegal activity. We consider whether the scope of that search included the vehicle's trunk where the officer found illegal drugs….Because the totality of the circumstances, including the smell of burnt marijuana and Kizart's reaction and behavior when Russell asked Kizart about the trunk, provided probable cause to search his car's trunk, we AFFIRM the denial of the motion to suppress.
Full text

Standard Security Life Insuran v. FCE Benefit Administrators, In No. 19-2336
Argued May 28, 2020 — Decided July 28, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 19-CV-64 — **Ronald A. Guzmán**, *Judge*.
Before MANION, KANNE, and WOOD, *Circuit Judges*.

WOOD, *Circuit Judge*. This case had its origins in an Administrative Services Agreement that Standard Security Life Insurance Company of New York and Madison National Life Insurance Company, Inc. (collectively, the "Insurers") entered into with FCE Benefit Administrators, Inc. ("FCE"). Under that agreement, FCE administered health insurance policies underwritten by the Insurers. After a few years, however, the Insurers became dissatisfied with FCE's performance, and so they invoked the Agreement's arbitration clause. The arbitration proceeded in two phases. In Phase I, the arbitrators awarded the Insurers damages of more than five million dollars. The Insurers attempted to confirm this award in the Northern District of Illinois, but the district court concluded that this effort was premature because the case was not yet ripe for adjudication. This was so because the arbitrators had not yet resolved all matters that had been submitted to them. In Phase II, the arbitrators denied the Insurers' remaining claim and FCE's counterclaim. After the conclusion of Phase II, the Insurers once again sought confirmation. This time, the district court confirmed the arbitration results in their entirety, meaning both the Phase I and Phase II awards. FCE now appeals from the confirmation of the Phase I award. Finding no reason to set aside the district court's conclusion, we affirm its judgment.
Full text

Casimer Zablocki v. Merchants Credit Guide Co. No. 19-2045
Argued June 2, 2020 — Decided July 28, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 18-cv-8489 — **Rebecca R. Pallmeyer**, *Chief Judge*.
Before FLAUM, KANNE, and BRENNAN, *Circuit Judges*.

KANNE, *Circuit Judge*. As its name suggests, the Fair Debt Collection Practices Act ("FDCPA") prohibits debt collection practices that are "unfair." 15 U.S.C. § 1692f. This case tests the bounds of that term. Casimer Zablocki and Regina Johnson received medical services and did not remit their parts of the bills. The medical-service providers turned to Merchants Credit Guide for debt collection, and Merchants eventually reported the unpaid debts to a consumer reporting agency. When Merchants reported the debts, it listed separately the debt for each medical-service charge. Zablocki and Johnson sued Merchants on the theory that reporting the obligations separately, rather than aggregating them together, was an "unfair" way to collect the debts under § 1692f of the FDCPA. The district court dismissed this theory as unsupported by the FDCPA's prohibition of "unfair or unconscionable" means to collect a debt. 15 U.S.C. § 1692f. We affirm.
Full text

Christy Lentz v. Teri Kennedy No. 18-2659
Submitted June 10, 2020 — Decided July 28, 2020
Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 16-cv-09516 — **Gary Feinerman**, *Judge*.
Before FLAUM, BARRETT, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. For nearly a week Christy Lentz feigned ignorance as she pretended to help investigators locate her missing father. Officers soon discovered the father's decaying body hidden at the office building the two shared, and all signs pointed to Lentz as the murderer. Lentz, with her young daughter in tow, voluntarily accompanied officers to the police station under the pretense of follow-up questioning for the missing persons investigation. For the first hour and a half, officers asked general questions, like when and where she last saw her father, to commit Lentz to her story. They then took a cigarette break. When the interview resumed, the tone changed. The officers read Lentz her Miranda rights and confronted her with the mounting evidence against her. Over the next four hours, Lentz slowly confessed to shooting her father….Lentz claims the interrogation violated her constitutional rights in two ways: that she was "in custody" during the pre-Miranda portion of the interview, and that her confession was involuntary. Because our review is deferential and the state court's decision with respect to both issues was not an unreasonable application of clearly established federal law, we affirm the district court's denial of habeas relief.
Full text

Allen Surprise v. Andrew Saul No. 19-3233
Argued June 3, 2020 — Decided July 29, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 18-cv-01432-WCG — **William C. Griesbach**, *Judge*.
Before SYKES, *Chief Judge*, and BAUER and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Allen Surprise appeals the denial of his claim for disability insurance benefits and supplemental social security income. The initial ALJ assigned to his case determined that Surprise's residual functional capacity ("RFC") included a limitation regarding fine manipulation, but nevertheless concluded that Surprise was not entitled to benefits. Surprise challenged this decision in the United States District Court for the Eastern District of Wisconsin, which twice remanded the matter: once because the transcript of the vocational expert's testimony was incomplete and once in response to a stipulation from the parties. Surprise contests two aspects of the decision the second ALJ made upon remand: (1) that she failed to adequately account for a portion of the medical expert's opinion in the hypothetical question posed to the vocational expert, and (2) that her decision violated the law of the case doctrine by failing to adopt the fine manipulation limitation the initial ALJ found in the course of his RFC assessment. Surprise, however, has not identified any obvious conflict between the hypothetical question and the Dictionary of Occupational Titles ("DOT"), nor did the district court make any factual findings that became the law of the case when it entered its remand orders. We therefore affirm.
Full text

Oneida Nation v. Village of Hobart, Wisconsin No. 19-1981
Argued April 13, 2020 — Decided July 30, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 1:16-cv-01217 — **William C. Griesbach**, *Judge*.
Before SYKES, *Chief Judge*, and HAMILTON and ST. EVE, *Circuit Judges*.

HAMILTON, *Circuit Judge*. The Oneida Nation's Big Apple Fest has become a test of power and jurisdiction between the Nation and the Village of Hobart, Wisconsin. The Oneida Nation in Wisconsin hosts its annual Big Apple Fest on land partially located in the Village of Hobart. In 2016 the Village demanded that the Nation obtain a permit under a Village ordinance and submit to some of the Village's laws. The Nation sued for declaratory and injunctive relief, arguing that the Village may not subject the Nation to state and local law on its own reservation. In the meantime, the Nation held the festival without a permit, and the Village issued a citation for violating the ordinance….The Oneida Reservation defined by the 1838 Treaty remains intact, so the land within the boundaries of the Reservation is Indian country

under 18 U.S.C. § 1151(a). The judgment of the district court is REVERSED, and the case is REMANDED with instructions to enter judgment in favor of the Oneida Nation.
Full text

Kenneth Long v. Megan Brennan No. 20-1375
Submitted July 23, 2020 — Decided July 31, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 2:18-CV-1929-JPS — **J.P. Stadtmueller**, *Judge*.
Before KENNETH F. RIPPLE, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER
Kenneth Long, a former employee of the United States Postal Service, appeals the dismissal of his wrongful-discharge complaint against the agency. The district court dismissed the complaint after concluding that Long failed to oppose the agency's motion to dismiss. On appeal Long makes no meaningful challenge to that ruling, so we affirm the judgment.
Full text

Brenda Mitze v. Andrew Saul No. 19-3212
Submitted June 22, 2020 — Decided July 31, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 1:13-c-444 — **William C. Griesbach**, *Judge*.
Before RIPPLE, HAMILTON, and SCUDDER, *Circuit Judges*.

PER CURIAM. Years after Brenda Mitze unsuccessfully appealed the denial of her application for social security benefits, she moved to seal court decisions and other records claiming that their publication violated her right to keep her medical information private. The district court denied the motion and we affirm.
Full text

Estate of Joseph Biegert v. Thomas Molitor No. 19-2837
Argued June 4, 2020 — Decided July 31, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 18-cv-401 — **William C. Griesbach**, *Judge*.
Before SYKES, Chief Judge, and EASTERBROOK and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. Joseph Biegert's mother called the police for help because she was concerned that her son was attempting to kill himself. Officers went to Biegert's apartment to check on him, and when they arrived, Biegert initially cooperated. He began resisting, though, when the officers tried to pat him down. A scuffle ensued, and the officers tried to subdue Biegert with fists, Tasers, and a baton. All of these efforts to restrain Biegert failed, and Biegert armed himself with a kitchen knife. When he began to stab one of the officers, they shot him, and he died at the scene. Biegert's mother, on behalf of his estate, argues that the officers used excessive force both by restraining Biegert during a pat down and by shooting him. The district court disagreed, concluding that the officers reasonably restrained Biegert and that they reasonably resorted to lethal force when Biegert threatened them with a knife. We reach the same conclusion, so we affirm the district court's judgment.
Full text

USA v. Melvin Willis No. 19-2679
Submitted July 23, 2020 — Decided July 31, 2020
Case Type: Criminal
Southern District of Illinois. No. 4:10-CR-40059-JPG-1 — **J. Phil Gilbert**, *Judge*.

Before KENNETH F. RIPPLE, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

After he completed a prison term for his role in a conspiracy to distribute cocaine, Melvin Willis violated the conditions of his supervised release by committing acts of domestic violence and other infractions. The district court revoked Willis's supervised release and sentenced him to an above-range term of 48 months in prison, which he now challenges on appeal. Because the district court sufficiently explained its reasons for imposing a sentence well above the policy-statement range and because that sentence is reasonable, we affirm.

Full text