Opinions for the week of March 9 – March 13, 2020

Stephen Grant v. Richard Heidorn No. 19-2387
Submitted March 4, 2020 — Decided March 9, 2020
Case Type: Prisoner
Eastern District of Wisconsin. No. 17-C-1579 — **William C. Griesbach**, *Judge*.
Before DIANE S. SYKES, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Stephen Grant, a state prisoner, alleges that from 2009 to 2016, three successive primary-care doctors at Green Bay Correctional Institution refused to order an MRI or orthopedic consultation for his left knee despite persistent complaints of pain. After finally obtaining an MRI and ultimately having a knee replacement, he sued the doctors under 42 U.S.C. § 1983 claiming that they were deliberately indifferent to his pain by continuing ineffective treatments for years. He now appeals the district court's entry of summary judgment for the doctors. Because Grant presented no evidence suggesting that the doctors failed to exercise their professional judgment in treating him, we affirm.

Maurice Salem v. Diane Egan No. 19-2477
Argued March 3, 2020 — Decided March 10, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 18 C 7708 — **Rubén Castillo**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Maurice Salem sued Diane Egan in federal district court under diversity-of- citizenship jurisdiction, 28 U.S.C. § 1332, alleging that Egan defamed him. The district court dismissed the case for lack of subject-matter jurisdiction, concluding that the parties were not diverse because both were citizens of Illinois. On appeal, Salem contends that the district court erred in concluding that Illinois is his domicile; he says that, although he is a longtime resident of Illinois, he has forever been a citizen of New York and intends to move back there one day. Because district court did not clearly err in concluding that Salem is a citizen of Illinois, this court affirms the dismissal.

USA v. Monique Bowling No. 19-2110
Argued February 27, 2020 — Decided March 10, 2020
Case Type: Criminal
Northern District of Indiana, Hammond Division. No. 2:16-cr-00153-PPS-JEM-1 — **Philip P. Simon**, *Judge*.
Before BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Monique Bowling purchased over $1.3 million worth of computer equipment on the City of Gary, Indiana's vendor accounts and then sold the devices for cash, leaving the city to foot the bill. This all occurred at a time when the City of Gary was already in dire financial condition. The grand jury returned an indictment against Bowling for theft from a local government that received federal funds, 18 U.S.C. § 666. A jury convicted Bowling of the charge and the district court sentenced her to 63 months in prison. On appeal, Bowling contends that the district court lacked subject- matter jurisdiction, abused its discretion in admitting certain testimony, and erred in enhancing her sentence for obstructing justice through her malingering. We affirm the conviction and sentence.

Harry Morrison, Jr. v. Andrew M. Saul No. 19-2028
Argued March 3, 2020 — Decided March 10, 2020

Case Type: Civil
Northern District of Indiana, South Bend Division. No. 3:17 CV 914 MGG — **Michael G. Gotsch, Sr.**, *Magistrate Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Harry Morrison, Jr., challenges the denial of his application for disability insurance benefits. He argues that the administrative law judge ("ALJ") erred by failing to adequately account for his moderate limitations in concentration, persistence, and pace, and by erroneously discrediting his testimony about his limitations. The district court upheld the ALJ's decision. Because substantial evidence supports the ALJ's decision, we affirm the district court's judgment.

Ali Alkady v. Corinna Luna No. 19-1838
Argued December 4, 2019 — Decided March 10, 2020
Case Type: Civil
Northern District of Indiana, Fort Wayne Division. No. 1:18-CV-1-TLS — **Theresa L. Springmann**, *Chief Judge*.
Before DANIEL A. MANION, *Circuit Judge;* MICHAEL S. KANNE , *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
Ali Alkady filed I-130 Petitions for Alien Relatives for three of his alleged children in 2000. Nearly two decades later, having received no decisions, Alkady and the three sued for mandamus and other relief. Defendants1 moved to dismiss because the government already denied the petitions in 2003. The district court dismissed the case for mootness and the resulting lack of standing and lack of subject matter jurisdiction. We affirm.

USA v. Monica Hernandez No. 19-1505
Argued March 3, 2020 — Decided March 10, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:13-cr-00949-2 — **Virginia M. Kendall**, *Judge*.
Before EASTERBROOK, KANNE, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. A jury found Monica Hernandez guilty of mail fraud for her participation in a fraudulent mortgage trust company. Hernandez appeals her conviction, arguing that the government did not prove that she used the mails in furtherance of the scheme to defraud. Her sentence also includes sizable restitution, and she contends that the district court improperly delegated its authority to the Bureau of Prisons by not entering a specific payment schedule for her to follow while serving her prison sentence. But sufficient evidence supports the mail fraud convictions, and the district court permissibly deferred Hernandez's restitution payments until after her release, so we affirm the judgment.

Brickstructures, Inc. v. Coaster Dynamix, Inc. No. 19-2187
Argued December 9, 2019 — Decided March 11, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:16-cv-10969 — **Joan B. Gottschall**, *Judge*.
Before EASTERBROOK, ROVNER, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Brickstructures, Inc. and Coaster Dynamix, Inc. joined forces to create a LEGO-compatible roller coaster set. The venture later soured, and Brickstructures filed a lawsuit in federal court against its former partner. The two companies had signed an agreement that contained an arbitration provision. Coaster Dynamix invoked that provision in a second motion to dismiss. Brickstructures viewed the motion as untimely (indeed frivolous) and stated so in a letter that threatened

sanctions if Coaster Dynamix did not withdraw its motion. The tactic worked, and Coaster Dynamix withdrew its arbitration demand. When Coaster Dynamix renewed the argument in a motion to compel arbitra- tion, the district court denied the resurrected request on the ground that the earlier withdrawal amounted to a waiver of the right to arbitrate. We agree.

USA v. Terrill Rickmon, Sr. No. 19-2054
Argued February 19, 2020 — Decided March 11, 2020
Case Type: Criminal
Central District of Illinois. No. 18-cr-10046 — **James E. Shadid**, *District Judge*.
Before WOOD, *Chief Judge*, and FLAUM and RIPPLE, *Circuit Judges*.
WOOD, *Chief Judge*, dissenting.

FLAUM, *Circuit Judge*. One hundred police departments use a surveillance network of GPS-enabled acoustic sensors called ShotSpotter to identify gunfire, quickly triangulate its location, and then direct officers to it. As a matter of first impression, this case requires us to consider whether law enforcement may constitutionally stop a vehicle because, among other articulable facts, it was emerging from the source of a ShotSpotter alert. The district court held that the totality of the circumstances provided the officer responding to the scene with reasonable suspicion of criminal activity to justify the stop. We affirm.

Jose Vargas v. Cook County Sheriff's Merit Bo No. 19-1686
Argued December 2, 2019 — Decided March 11, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 18 CV 1598 — **Charles R. Norgle**, *Judge*.
Before BAUER, EASTERBROOK, and SYKES, *Circuit Judges*.

SYKES, *Circuit Judge*. This § 1983 case arises out of disciplinary decisions issued by the Cook County Sheriff's Merit Board between 2013 and 2016. The plaintiffs are current and former sheriff's deputies and correctional officers who were disciplined for violating various departmental policies and rules. Seven of the eight plaintiffs were fired; the remaining officer was suspended. They seek to represent a class of officers who were disciplined during the relevant time period. The complaint alleges two claims for deprivation of due process. The first rests on a defect in the composition of the Merit Board: at the time of the challenged disciplinary decisions, certain Board members held their appointments in violation of Illinois law. The second alleges that Cook County Sheriff Thomas Dart and Nicholas Scouffas,his General Counsel, assumed control of the Board through political means and pressured its members to make decisions contrary to Illinois law. The plaintiffs also seek relief under multiple state-law theories. The district judge dismissed the due-process claims and relinquished jurisdiction over the state-law claims. We affirm that judgment.

Florence Mussat v. IQVIA, Inc. No. 19-1204
Argued September 27, 2019 — Decided March 11, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 17 C 8841 — **Virginia M. Kendall**, *Judge*.
Before WOOD, *Chief Judge*, and KANNE and BARRETT, *Circuit Judges*.

WOOD, *Chief Judge*. Florence Mussat, an Illinois physician doing business through a professional services corporation, received two unsolicited faxes from IQVIA, a Delaware corporation with its headquarters in Pennsylvania. These faxes failed to include the opt-out notice required by federal statute. Mussat's corporation (to which we refer simply as Mussat) brought a putative class action in the Northern District of Illinois under the Telephone Consumer Protection Act, 47 U.S.C. § 227, on behalf of itself and all persons in the country who had received similar junk faxes from IQVIA in the four previous years. IQVIA moved to strike the class definition, arguing that the district court did not have personal jurisdiction over the non-Illinois members of the proposed nationwide class. The district court granted the motion to strike, reasoning that under the Supreme Court's decision in *Bristol-Myers Squibb Co. v. Superior Court*,

137 S. Ct. 1773 (2017), not just the named plaintiff, but also the unnamed members of the class, each had to show minimum contacts between the defendant and the forum state. Because IQVIA is not subject to general jurisdiction in Illinois, the district court turned to specific jurisdiction. Applying those rules, see *Walden v. Fiore*, 571 U.S. 277, 283–86 (2014), it found that it had no jurisdiction over the claims of parties who, unlike Mussat, were harmed outside of Illinois. We granted Mussat's petition to appeal from that order under Federal Rule of Civil Procedure 23(f). We now re-affirm the Rule 23(f) order, and we hold that the principles announced in *Bristol-Myers* do not apply to the case of a nationwide class action filed in federal court under a federal statute. We reverse the order of the district court and remand for further proceedings.

Muhannad Mustafa Salim v. William P. Barr No. 18-1760
Submitted March 4, 2020 — Decided March 11, 2020
Case Type: Agency
Petition for Review of an Order of the Board of Immigration Appeals. No. A078-872-478
Before DIANE S. SYKES, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Muhannad Mustafa Salim, a 51-year-old citizen of Jordan, applied for asylum, withholding of removal, and protection under the Convention Against Torture because he fears harm in Jordan based on his conversion to Christianity. An immigration judge, followed by the Board of Immigration Appeals, denied relief. The Board ruled that a prior state conviction was an aggravated felony and a "particularly serious crime," 8 U.S.C. §§ 1158(b)(2)(A)(ii) and 1231(b)(3)(B)(ii), so Salim was ineligible for asylum and withholding of removal. It also ruled that Salim failed to establish under the CAT that it was more likely than not that he would face torture in Jordan. Salim now rightly argues that his burglary conviction is no longer a categorical aggravated felony; he says, therefore, that he is eligible for asylum and withholding relief. But because the Board's unreviewable discretionary ruling that his conviction was a "particularly serious crime" (for purposes of withholding of removal) applies to his asylum eligibility, we deny his petition. We also affirm the Board's determination that Salim failed to meet his burden for relief from removal under the CAT.

USA v. Sheila Geary No. 19-2299
Argued February 26, 2020 — Decided March 13, 2020
Case Type: Criminal
Northern District of Indiana, Hammond Division. No. 2:17-cr-169-2 — **Joseph S. Van Bokkelen**, *Judge*.
Before WOOD, *Chief Judge*, and ROVNER and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. This case is the culmination of a grotesque history of sexual abuse in the Geary household. Over a number of years, David Geary—Sheila Geary's husband—raped, sexually abused, and took pornographic photos of the Gearys' youngest daughter when she was between the ages of 5 and 8. During a period in which the couple hoped to "spice up their marriage," Sheila viewed the pornographic photos that David took of their daughter— identified as "MF-2"—and also found other images of child pornography to share with David. In addition, Sheila kept the illicit photos of MF-2 on a thumb drive hidden behind a mirror in their home. She kept them, she said, in case "[s]hit hit the fan and [she] needed some proof." Ultimately, David and Sheila were indicted as codefendants, and Sheila pleaded guilty to one count of possession of child pornography. She was sentenced to 57 months' imprisonment and 5 years' supervised release, and she was ordered to pay $55,600 in restitution jointly and severally with David. On appeal, she argues both that the district court incorrectly applied a Sentencing Guidelines provision that enhanced her recommended sentencing range and that the district court failed to adequately explain her restitution liability. We disagree with both arguments… AFFIRMED

Benjamin N. Omorhienrhien v. William P. Barr No. 19-2175
Argued January 8, 2020 — Decided March 13, 2020

Case Type: Agency
Petition for Review of an Order of the Board of Immigration Appeals. No. A200-381-476
Before FLAUM, ROVNER, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Benjamin Omorhienrhien is a Nigerian citizen who received conditional permanent resident status based on his marriage to a United States citizen. The two later divorced, and Omorhienrhien sought to remain in the country by submitting a petition to remove the conditions on his residency. An obstacle loomed—the petition must ordinarily be jointly filed by the non-citizen and his spouse, but Omorhienrhien's former spouse was no longer in the picture. To sidestep the roadblock, Omorhienrhien requested a discretionary waiver of the joint-filing requirement, which is available to non-citizens who entered their failed marriages in good faith. After hearing all the evidence, an immigration judge was not persuaded that Omorhienrhien married his wife in good faith and denied him the waiver. The Board of Immigration Appeals agreed and dismissed the appeal. Omorhienrhien now asks us to step in. Because our review is limited to legal errors and we find none, we decline to do so.

Michael Cooper v. Steven Haw No. 19-1661
Submitted March 13, 2020 — Decided March 13, 2020
Case Type: Prisoner
Eastern District of Wisconsin. No. 17-CV-1461 **William E. Duffin**, *Magistrate Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* ILANA DIAMOND ROVNER, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
While Michael Cooper was a pre-trial detainee at the Milwaukee County Jail, a corrections officer accused him of assaulting another detainee. Cooper sued two other officers who he believes violated his rights to due process during the resulting disciplinary proceedings. The district court entered summary judgment in favor of the officers, concluding that neither was responsible for the alleged deprivations of process and that, in any event, the denial of those processes was harmless. We affirm.

Levi A. Lord v. Joseph Beahm No. 19-1346
Submitted January 21, 2020 — Decided March 13, 2020
Case Type: Prisoner
Eastern District of Wisconsin. No. 2:18-cv-00351 — **J. P. Stadtmueller**, *Judge*.
Before EASTERBROOK, BRENNAN, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Levi Lord, an inmate in the Waupun Correctional Institution in Wisconsin, exposed himself to a female guard. After the guard told him that she would write him up and walked away, Lord began yelling that he had a razor blade and intended to kill himself. A short while later, a male guard went to Lord's cell, ordered him out, and saw he had minor scratches treatable with a gauze bandage. Lord nonetheless invoked 42 U.S.C. § 1983 and sued four guards for money damages, alleging that they acted with deliberate indifference to a material risk to his life by not responding faster to his suicide threat. The district court rejected the claim and entered summary judgment for the defendants. Prison suicide is very real and very serious, but any fair reading of this record, even in the light most favorable to Lord, shows that he leveled an insincere threat of suicide to get attention and demonstrated no recoverable injury. Other fact patterns may yield different outcomes, but here the reso- lution is clear. We affirm, as Lord (thankfully) did not hurt himself and that reality leaves nothing for a jury to decide.

USA v. Jessica Arong O'Brien No. 19-1004
Argued February 19, 2020 — Decided March 13, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 17-cr-00239-1 — **Thomas M. Durkin**, *Judge*.
Before WOOD, *Chief Judge*, and FLAUM and RIPPLE, *Circuit Judges*.

FLAUM, *Circuit Judge*. A jury found Jessica A. O'Brien guilty of both bank fraud and mail fraud affecting a financial institution based on her participation in a 2004-to-2007 mort- gage fraud scheme. She appeals her convictions, arguing that the charges against her were duplicitous and that under a properly pled indictment the statute of limitations would have barred three of the four alleged offenses. She also argues that the district court should not have admitted evidence offered to prove those time-barred offenses and that there was insufficient evidence to support the jury's guilty verdict. We affirm. The government appropriately acted within its discretion to allege an overarching scheme to commit both bank fraud and mail fraud affecting a financial institution. Each count included an execution of the fraudulent scheme within the applicable ten-year statute of limitations, and the jury's guilty verdict rested upon properly admitted and sufficient evidence of the charged offenses.

USA v. Hamza Dridi No. 18-3334
Argued December 4, 2019 — Decided March 13, 2020
Case Type: Criminal
Southern District of Indiana, Indianapolis Division. No. 16-cr-00167 — **William T. Lawrence**, *Judge*.
Before MANION, KANNE, and BARRETT, *Circuit Judges*.

KANNE, *Circuit Judge*. From 2012 to 2015, employees of Elite Imports, a car dealership, engaged in a variety of fraudulent activities. For his involvement in these illegal schemes, one employee, Hamza Dridi, was charged with conspiring to violate the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(d), and interstate transportation of stolen property, 18 U.S.C. § 2314. A jury found him guilty of both crimes. The district court sentenced him to 72 months in prison and ordered $1,811,679.25 in restitution. Dridi now challenges his sentence and the restitution or- der, arguing that the district court—before sentencing Dridi and ordering restitution—should have made specific factual findings about Dridi's participation in the conspiracy. We agree with Dridi that the district court erred both by not making specific factual findings prior to sentencing Dridi and by not adequately demarcating the scheme before imposing $1,811,679.25 in restitution. But because only the second error affected Dridi's substantial rights, we affirm Dridi's prison sentence, vacate the restitution order, and remand the issue of restitution for further proceedings consistent with this opinion.