

## **Opinions for the week of May 18 – May 22, 2020**

### **Raul Plaza-Ramirez v. William Barr** Nos. 19-2122 & 19-2945

Submitted May 14, 2020 Decided May 18, 2020

Case Type: Agency

Petitions for Review of Orders of the Board of Immigration Appeals. No. A087-947-839

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

#### **Order**

Two years ago, this court denied Raul Plaza-Ramirez's petition for review of a final order for his removal from the United States to Mexico. *Plaza-Ramirez v. Sessions*, 908 F.3d 282 (7th Cir. 2018). While that petition was pending, Plaza-Ramirez filed with the Board of Immigration Appeals both a motion to reopen and a motion to reconsider. The Board denied those motions, and Plaza-Ramirez did not seek judicial review. Then he filed a second motion to reopen, contending that he is now the father of a child, who would suffer hardship if her father were removed to Mexico. He cited *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), in support of his request for cancellation of removal, though he did not explain how that decision helped him... As we observed in *United States v. Manriquez-Alvarado*, 953 F.3d 511 (7th Cir. 2020), the question presented in *Pereira* had been kicking around for years, and the Court's decision was based on a statute enacted in 1996, long before Plaza-Ramirez's removal proceedings began. The petitions for review are denied.

### **USA v. Troy S. Richter** No. 19-2721

Submitted May 19, 2020 — Decided May 19, 2020

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:18CR00184-001 — **James R. Sweeney II**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

#### **ORDER**

Troy Richter pleaded guilty to one count of traveling with the intent to engage in illicit sexual conduct, 18 U.S.C. § 2423(b), three counts of sexual exploitation of a child, *id.* § 2251(a), and one count of possession of child pornography, *id.* § 2252A(a)(5)(B). The district court sentenced him, then 38 years old, to 30 years' imprisonment to be followed by 10 years' supervision. Richter filed a notice of appeal, but his lawyer asserts that the appeal is frivolous and seeks to withdraw from representation. See *Anders v. California*, 386 U.S. 738 (1967). Richter has not responded to this motion. See CIR. R. 51(b). Counsel's brief explains the nature of the case and addresses potential issues that this kind of appeal might involve. The analysis in counsel's brief appears thorough, so we limit our review to the subjects she discusses... We GRANT counsel's motion to withdraw and DISMISS the appeal.

### **USA v. James Nickels** No. 19-2100

Submitted May 19, 2020 — Decided May 19, 2020

Case Type: Criminal

Eastern District of Wisconsin. No. 18-CR-116 — **William C. Griesbach**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

#### **ORDER**

James Nickels bilked dozens of investors out of millions of dollars by making misrepresentations about the profitability of his business and perpetuating those misrepresentations by paying interest to investors using money from other investors. He pleaded guilty to one count of money laundering in violation of 18 U.S.C. § 1957(a) and one count of wire fraud in violation of 18 U.S.C. § 1343. His plea agreement included a broad appeal waiver. The district court sentenced him to 84 months' imprisonment and three years of supervised release and ordered him to pay \$3,227,138 in restitution. Nickels filed a notice of appeal, but his appointed counsel asserts that the appeal is frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738 (1967). Nickels has not responded to counsel's motion. *See* CIR. R. 51(b). Counsel's brief explains the nature of the case and addresses the potential issues that an appeal of this kind might involve. Because her analysis appears thorough, we limit our review to the subjects that counsel discusses... Accordingly, we GRANT counsel's motion to withdraw and DISMISS the appeal.

**Scott Hildreth v. Kim Butler** No. 18-2660

Argued September 19, 2019 — Decided May 19, 2020

Case Type: Prisoner

Southern District of Illinois. No. 3:15-cv-00831-NJR-DGW — **Nancy J. Rosenstengel**, *Chief Judge*.

Before SYKES, HAMILTON, and BRENNAN, *Circuit Judges*.

HAMILTON, *Circuit Judge*, dissenting.

BRENNAN, *Circuit Judge*. Scott Hildreth, an inmate at an Illinois maximum-security prison, suffers from Parkinson's disease. He takes a prescription medication distributed by the prison three times a day to manage his symptoms. On three occasions Hildreth received his medication refill a few days late, causing him to experience withdrawal symptoms. His symptoms also render his handwriting illegible, so Hildreth uses a typewriter to draft documents. He requested to keep that typewriter in his cell, which the prison denied because it was considered contraband. Instead, the prison provided Hildreth with an assistant to help him draft documents and increased access to the library where he can use a typewriter. Feeling his treatment was lacking, Hildreth sued Wexford Health Sources, Inc. and two jail administrators under 42 U.S.C. § 1983 and the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, alleging they violated his constitutional and statutory rights. The district court granted summary judgment to the defendants. Because Hildreth has not shown medication delays were a widespread practice or custom at the prison, and he received reasonable accommodations for his Parkinson's disease, we affirm the district court's decision.

**Josef Tsau v. U.S. Government** No. 20-1352

Submitted May 19, 2020 — Decided May 20, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 20-cv-1021 — **Sharon Johnson Coleman**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

**ORDER**

Josef Tsau sued the United States government, alleging that it has long funded the teaching of a religion in the guise of science, in violation of the First Amendment. Through a "breakthrough scientific discovery," Tsau says he has uncovered flaws in the theories that underlie mainstream physics, thereby proving that the discipline is not a science but a religion founded on unsupported beliefs about the universe. By funding physics research and education, he explains, the federal government has improperly promoted this religion. Tsau asked the district court to "stop the corruption of our government to save our science, science education, and to protect the law of the First Amendment[.]" The court dismissed the case for lack of subject-matter jurisdiction, concluding that Tsau lacked standing to sue because he had not alleged a concrete and particularized injury traceable to the government's conduct... This is Tsau's fifth suit against the government on the same theory, and each has been dismissed for lack of subject-matter jurisdiction. *See*,

*e.g.*, *Tsau v. Nat'l Sci. Found.*, No. 17 CV 3966 (N.D. Ill. May 14, 2018); *Tsau v. Nat'l Sci. Found.*, No. 10 C 6323 (N.D. Ill. Nov. 1, 2010); *Tsau v. Nat'l Sci. Found.*, 04 C 5634 (N.D. Ill. Dec. 27, 2004); *Tsau v. Nat'l Sci. Found.*, 00 CV 6 (N.D. Ill. Sept. 28, 2000). He is hereby warned that further frivolous litigation will subject him to fines and a possible filing bar under *Support Sys. Int'l, Inc. v. Mack*, 45 F.3d 185 (7th Cir. 1995). AFFIRMED

**Paul Nigl v. Michael Meisner** No. 19-3523

Submitted May 19, 2020 — Decided May 20, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 19-cv-105-bbc — **Barbara B. Crabb**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

**ORDER**

After waiving the right to challenge two conduct reports about his attempts to contact a former prison employee, Paul Nigl, a Wisconsin inmate, sued prison officials, arguing that the corresponding discipline violated his right to an “intimate association” with her. Because the district court correctly concluded that Nigl failed to exhaust his administrative remedies, we affirm the entry of summary judgment for the defendants.

**USA v. James Kaster** No. 19-3520

Submitted May 19, 2020 — Decided May 20, 2020

Case Type: Criminal

Eastern District of Wisconsin. No. 17-CR-27 — **William C. Griesbach**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

**ORDER**

James Kaster pleaded guilty to aggravated identity theft, 18 U.S.C. § 1028A(a)(1), and was sentenced to 24 months in prison followed by one year of supervised release. Just a few months after his release from prison, he was found at casinos on multiple occasions, in violation of the conditions of his release. After he admitted to those and other violations, the district court revoked his release and sentenced him to nine months' reimprisonment. Kaster appeals, but his lawyer moves to withdraw from the appeal, arguing that it is frivolous... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

**Isaac Atkins v. Andrew Saul** No. 19-2861

Submitted May 19, 2020 — Decided May 20, 2020

Case Type: Civil

Southern District of Indiana, New Albany Division. No. 4:18-cv-00193-RLY-DML — **Richard L. Young**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

**ORDER**

Isaac Atkins, who applied for disability benefits based chiefly on his complaints of hypersensitivity to chemicals and electromagnetic fields, appeals the district court's judgment upholding the denial of benefits. As the administrative law judge's and district judge's thorough and attentive decisions establish, the ALJ's ruling that Atkins was not disabled is supported by substantial evidence. We affirm.

**John Bumphus, Jr. v. Unique Personnel Consultants** No. 19-2621

Submitted May 19, 2020 — Decided May 20, 2020

Case Type: Civil

Southern District of Illinois. No. 16-CV-312-SMY-GCS — **Staci M. Yandle**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

**ORDER**

John Bumphus, Jr., seeks to contest the rejection of his claims for wrongful termination. After the district court entered its final judgment, Bumphus did not promptly appeal. Instead, he filed a motion under Federal Rule of Civil Procedure 60(b), which the district court denied, precipitating this appeal. We review only the district court's denial of that Rule 60(b) motion and, because the court reasonably decided that the motion did not warrant disturbing the underlying judgment, we affirm.

**David Slaughter v. Jean Lutsey** No. 19-2545

Submitted May 19, 2020 — Decided May 20, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 17-C-1448 — **Lynn Adelman**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

**ORDER**

David Slaughter, a Wisconsin inmate, sued a prison nurse and the health services manager, alleging that they provided inadequate medical treatment in violation of the Eighth Amendment by failing to schedule him an appointment with a prison doctor and by not conducting proper tests. The district court entered summary judgment for the defendants, concluding that no reasonable jury could find that the nurse's actions fell outside the bounds of accepted professional judgment or that the supervisor ignored complaints that put her on notice of a serious risk to his health. We affirm.

**Carlos Alvarez-Espino v. William Barr** No. 19-2289

Argued January 7, 2020 — Decided March 6, 2020 — Amended May 20, 2020

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A200-557-981

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

SCUDDER, *Circuit Judge*. Carlos Alvarez-Espino entered the United States illegally in 1996, settled in Chicago, but later ran into legal trouble and came to the attention of immigration enforcement. During his time here, Alvarez-Espino assisted law enforcement by helping to solve a 2002 gas station robbery in which he was held at gunpoint. Helping the police made Alvarez-Espino potentially eligible for a U visa, which could allow him to stay in the United States. He hired immigration counsel, but his lawyer failed to realize that Alvarez-Espino had a chance at receiving a U visa and instead pursued another remedy without success. Alvarez-Espino changed lawyers, but it was too late to reverse course. After protracted proceedings, the Board of Immigration Appeals denied multiple requests for relief, leaving Alvarez-Espino at risk of removal. In denying relief, the Board held Alvarez-Espino to an unduly demanding burden on his allegation of ineffective assistance of counsel. But the law is equally clear that Alvarez-Espino's ability to continue pursuing a U visa means that he cannot show prejudice from his attorney's performance. So we are left to deny his petition for review.

**Elizabeth Moens v. City of Chicago** No. 19-1913

Submitted May 19, 2020 — Decided May 20, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17 C 4073 — **Matthew F. Kennelly**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

## ORDER

After she missed work hours over 50 times in a single year of employment, the City of Chicago fired Elizabeth Moens for absenteeism. She responded by suing the City under the Americans with Disabilities Act, alleging that she has a disability and that the City failed to accommodate it, harassed her because of it, and fired her because of it. She further stated that the City falsely told her that her final job had “career” protections. The district court entered summary judgment for the City. Moens was not qualified for ADA relief because she could not perform her job’s essential functions, and no evidence suggests that the City falsely stated that the job was a career position, so we affirm.

**Randy McCaa v. Todd Hamilton** No. 19-1603

Submitted April 10, 2020 — Decided May 20, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 2:16-cv-00175-JPS — **J.P. Stadtmueller**, *Judge*.

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

HAMILTON, *Circuit Judge*. Plaintiff Randy McCaa is a Wisconsin prisoner who alleges that prison officials violated his Eighth Amendment rights by responding with deliberate indifference to his threats to commit suicide or to harm himself in other ways. The district court granted summary judgment for defendants over McCaa’s pro se efforts to oppose the motion. In *McCaa v. Hamilton*, 893 F.3d 1027, 1034–35 (7th Cir. 2018), we ruled that in denying plaintiff’s fourth motion for recruitment of counsel, the district court had not addressed sufficiently McCaa’s ability to present his case himself. The district court had already denied earlier requests by McCaa to recruit counsel. We were most concerned about the effects of McCaa’s transfer to a different prison where he said he could not locate witnesses or obtain other discovery, as well as the effects of his fifth-grade reading level and serious mental illness. We remanded with instructions to the district court to reconsider recruitment of counsel, but we pointedly did not say that recruitment of counsel would be required. On remand, the district court took a fresh look at the issue and reached the same decision to not attempt to recruit counsel. McCaa has appealed again, arguing that the district court failed to comply with our mandate. We affirm. Judge Stadtmueller wrote a detailed and persuasive opinion explaining why he did not think this was an appropriate case for attempting recruitment of counsel. He complied with our mandate and did not abuse his discretion in reaching that decision.

**Craig Stingley v. John Chisholm** No. 19-2364

Submitted May 19, 2020 — Decided May 21, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 18-C-2014 — **Lynn Adelman**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

## ORDER

Craig Stingley sued Wisconsin prosecutors under 42 U.S.C. § 1983 alleging that they unlawfully failed to investigate and charge those responsible for his son’s murder. The district court correctly dismissed the complaint because the prosecutors are absolutely immune for these alleged acts, so we affirm.

**Gregory Scott v. Alfonso David** No. 19-1903

Submitted May 19, 2020 — Decided May 21, 2020

Case Type: Civil

Southern District of Illinois. No. 3:17-cv-638-RJD — **Reona J. Daly**, *Magistrate Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

**ORDER**

Gregory Scott, formerly an Illinois prisoner, appeals the entry of summary judgment in favor of two prison healthcare providers. Scott alleged that they were deliberately indifferent to his health by continuing a prescription for his high cholesterol despite his repeated complaints of discomfort. Scott later suffered a retinal artery occlusion, leading to loss of vision in one eye, which he attributed to a reaction to the medicine. Because Scott provides no legal argument for disturbing the district court's judgment in favor of the two defendants, however, we dismiss the appeal.

**USA v. Alfred L. Cross** No. 18-3633

Argued September 25, 2019 — Decided May 22, 2020

Case Type: Criminal

Southern District of Illinois. No. 3:17-cr-30047-NJR-1 — **Nancy J. Rosenstengel**, *Chief Judge*.

Before RIPPLE, ROVNER, and BRENNAN, *Circuit Judges*.

ROVNER, *Circuit Judge*. Alfred L. Cross pled guilty to five counts of bank fraud, in violation of 18 U.S.C. § 1344(1). Shortly before sentencing, he moved pro se to terminate his counsel, withdraw his guilty plea, and dismiss the case. The district court denied all three motions. He now appeals the court's denial of his motion to withdraw his plea, and we affirm.

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Only the text of the opinions is used. No editorial comment is added. For back issues or to send a comment, please contact [Sonja Simpson](#).