

Opinions for the week of May 2 - May 6, 2016

USA v. Julio Leija-Sanchez Nos. 14-1393, 14-1584 & 14-1589

Argued October 1, 2015 — Decided May 2, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 07 CR 224 — **Rebecca R. Pallmeyer**, *Judge*.
Before FLAUM, EASTERBROOK, and HAMILTON, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. An indictment charged four persons with arranging the murder of Guillermo Jimenez Flores (known as Montes) in Mexico in order to reduce competition against a Chicago-based criminal organization that created bogus immigration documents. The district court dismissed the principal count of this indictment, ruling that it proposed the extraterritorial application of U.S. law, but we reversed. *United States v. Leija-Sanchez*, 602 F.3d 797 (7th Cir. 2010). We held that 18 U.S.C. §1959(a)(1), a part of RICO that forbids murder in aid of racketeering, applies to gangs whose activities are designed to affect commerce in the United States, even though some important acts take place abroad. We relied on *United States v. Bowman*, 260 U.S. 94 (1922), which took the same view of a statute designed to protect the United States Treasury from frauds, no matter where in the world the fraud was hatched, and announced that extraterritorial application of criminal laws is proper—when the U.S. statute accords with the law of nations—even when extraterritorial application of civil laws would not be... The sentences on the §1962(d) count are reduced to 20 years, and the judgments otherwise are AFFIRMED.

Knauf Insulation, Inc. v. Southern Brands, Inc. No. 15-3157

Argued April 14, 2016 — Decided May 3, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:12-cv-00273-SEB-TAB — **Sarah Evans Barker**, *Judge*.
Before POSNER, KANNE, and HAMILTON, *Circuit Judges*.

POSNER, *Circuit Judge*. Knauf Insulation, Inc. (formerly named Knauf Insulation, GmbH), is the Delaware subsidiary of a German corporation. Its principal place of business is in Indiana, where it manufactures fiberglass insulation for sale to, among other types of customer, distributors of insulation, such as SBI, as the parties refer to defendant Southern Brands, Inc. (SBI is, or was, a broker as well as a distributor, because Knauf often delivered the insulation it sold SBI directly to the installers of the insulation, SBI's customers. But the parties call SBI a distributor and we'll stick with that term.) The other defendants, the Dowds, a married couple, are SBI's principals. For many years SBI was delinquent in paying Knauf for the insulation it bought. By 2012, when Knauf filed this suit against both SBI and the Dowds (who in 2003 had signed a personal guaranty of their company's debt to Knauf), SBI owed Knauf more than \$3.5 million. Originally filed in an Indiana state court, the suit was removed to federal district court, the parties being of diverse citizenship. Indiana law is agreed to govern the issues presented by the suit. The district judge granted summary judgment in favor of Knauf, and her final judgment awarded it the money owed by SBI plus interest on that debt... The defendants' final argument is that Knauf has failed to explain whether it credited some \$1.3 million that SBI paid it between October 2008 and January 2012 against SBI's debts to it. But SBI would surely have noticed had the account statements that it admits having received from Knauf during this period failed to reflect a \$1.3 million credit; nor did SBI plead the \$1.3 million or any part of it as a setoff to Knauf's claim or present any evidence that it had paid that amount, beyond a declaration by Mr. Dowd that it "may be that Knauf has not credited these \$1.3 million in payments," (emphasis added), which is pure speculation. And so the judgment of the district court is AFFIRMED.

Timothy Vander Plaats v. Michael Barthelemy No. 15-3342

Argued April 26, 2016 — Decided May 4, 2016

Case Type: Civil

Northern District of Indiana, Hammond Division at Lafayette. No. 4:14-CV-9 JTM — **James T. Moody**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Timothy Vander Plaats appeals the grant of summary judgment on his claim that a police officer from Lafayette, Indiana, violated his Fourth Amendment rights by attacking him following a personal dispute. He contends that the district court erred both procedurally and substantively when it concluded that the evidence did not allow a reasonable inference that the police officer was acting under color of state law. Because the district court made no errors, we affirm.

USA v. David Crisp, Jr. No. 15-2694

Argued February 8, 2016 — Decided May 4, 2016

Case Type: Criminal

Central District of Illinois. No. 13-CR-20050 — **James E. Shadid**, *Chief Judge*.

Before POSNER, EASTERBROOK, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. In January 2014, appellant David L. Crisp, Jr. was convicted of possessing crack cocaine with intent to distribute. His initial sentence was reversed and remanded for resentencing based on issues with the conditions of supervised release. Crisp has appealed just one term of his new sentence: not the prison term but a condition of supervised release that directs him to participate in substance abuse treatment with the proviso: “You shall pay for these services, if financially able, as directed by the U.S. Probation Office.” Crisp argues that the district judge improperly delegated to the U.S. Probation Office the determination of his ability to pay for treatment. We affirm.

Francisco A. Romero Arrazabal v. Loretta E. Lynch No. 15-2413

Submitted March 10, 2016 — Decided May 4, 2016

Case Type: Agency

Board of Immigration Appeals No. A045-091-341

Before WOOD, *Chief Judge*, and POSNER and ROVNER, *Circuit Judges*.

WOOD, *Chief Judge*. Francisco Alberto Romero Arrazabal, a Salvadoran with ties to the Mara Salvatrucha gang, applied for withholding of removal and relief under the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT). Arrazabal fears that if he is returned to El Salvador, he will be persecuted by his gang, a rival gang, or the police. An immigration judge found his testimony incredible and denied all relief; the Board of Immigration Appeals upheld that decision. Arrazabal filed a timely petition for review, which we grant... We are also concerned about the manner in which the immigration judge rejected Arrazabal’s claim for CAT relief. The judge acknowledged that it was possible that Arrazabal would be tortured in El Salvador with at least the acquiescence of the police, yet he concluded without elaboration that Arrazabal had not met his burden of showing that result was “more likely than not.” See 8 C.F.R. § 1208.16(c)(2–3). But that oft-repeated phrase must be understood pragmatically in the immigration context, because there is no reliable data to show just how great an applicant’s risk of torture is... Given these problems, Arrazabal’s case must be remanded to the Board for further proceedings. Because this is so, we need not address the question whether the immigration judge abused his discretion in denying Arrazabal’s request for a continuance. Accordingly, we GRANT the petition for review, VACATE the order of removal, and REMAND for further proceedings consistent with this opinion.

USA v. David A. Resnick No. 14-3791

Argued October 26, 2015 — Decided May 4, 2016

Case Type: Criminal

Northern District of Indiana, Hammond Division. No. 2:11 CR 68 — **James T. Moody**, *Judge*.

Before WOOD, *Chief Judge*, and BAUER and SYKES, *Circuit Judges*.

BAUER, *Circuit Judge*, dissenting.

WOOD, *Chief Judge*. During the summer of 2008, David Resnick, a long-haul truck driver, took T.M., the nine-year old son of family friends, on a cross-country work trip that was supposed to end at Disneyland. They never got there. Instead, they traveled to Washington State and back to Indiana. Over the two-week trip, Resnick sexually abused T.M. repeatedly. Eventually, T.M. told his parents about Resnick's conduct and Resnick was charged with a variety of child-abuse and firearms offenses. After a four day trial, a jury convicted Resnick on all four counts. Resnick challenges his convictions on three bases. He argues that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that he was guilty of the charge of brandishing a firearm. He also contends that his remaining convictions should be reversed because the district court erred in admitting testimony of a second minor victim and in allowing testimony and argument about Resnick's refusal to take a polygraph. Ultimately, all of Resnick's arguments fail. With respect to the references to a polygraph (that never occurred), however, we stress that our result is heavily influenced by the fact that we are reviewing only for plain error. See *United States v. Olano*, 507 U.S. 725, 732 (1993); FED. R. CRIM. P. 52(b). This evidence, to the extent it is admissible at all, must be used with great caution. Resnick, however, forfeited his objection to this evidence at trial, and because we find no plain error, we affirm.

Jutta Spies v. Carolyn Colvin No. 15-2578

Argued April 26, 2016 — Decided May 5, 2016

Case Type: Civil

Western District of Wisconsin. No. 14-cv-568-jdp — **James D. Peterson**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON,

Circuit Judge.

ORDER

Jutta Spies applied for Disability Insurance Benefits and Supplemental Security Income claiming that her diabetes and related neuropathy, osteoarthritis, rheumatoid arthritis, and headaches prevent her from working. An administrative law judge denied benefits, finding that Spies could perform light work with several limitations. In this court Spies challenges the ALJ's adverse credibility finding and his refusal to give controlling weight to a treating physician's opinion. Because the ALJ's decision is supported by substantial evidence, we affirm the district court's order upholding the denial of benefits.

Gustavo Dominguez-Pulido v. Loretta Lynch Nos. 14-3557, 15-1298, & 15-2208

Argued March 29, 2016 — Decided May 5, 2016

Case Type: Agency

Petitions for Review of an Order of the Board of Immigration Appeals. No. A206-014-523

Before FLAUM, EASTERBROOK, and SYKES, *Circuit Judges*.

FLAUM, *Circuit Judge*. Petitioner Gustavo Dominguez-Pulido unlawfully entered the United States with his parents in or around 1993 without inspection. Approximately fifteen years after entering the United States, Dominguez-Pulido was convicted of a felony offense under Illinois law. Dominguez-Pulido was subsequently served with a Notice to Appear ("NTA"). An Immigration Judge ("IJ") concluded that he was removable as an alien present without admission and denied various forms of relief from removal. The Board of Immigration Appeals (the "Board") dismissed Dominguez-Pulido's appeal and denied his two motions to reopen proceedings. Dominguez-Pulido seeks review of the three decisions entered by the

Board of Immigration Appeals... We find no reason to upset the decision of the Board of Immigration Appeals, and so we deny Dominguez-Pulido's consolidated petitions for review.

Jeremy Cairel v. Jacob Alderden No. 14-1711

Argued May 27, 2015 — Decided May 5, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 09 C 1878 — **John F. Grady**, *Judge*.
Before POSNER, MANION, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. This appeal presents several issues concerning the scope of civil remedies available to people who are mistakenly arrested and charged with crimes. In 2007, plaintiffs Jeremy Cairel and Marvin Johnson were helping a friend repossess cars lawfully when they were stopped for a traffic violation. The officers conducting the stop, aware of a recent string of robberies in the area, grew suspicious and called a robbery victim to the scene. The victim identified Cairel and Johnson as the men who had robbed him the night before. The officers arrested them on the spot. When questioned later by detectives, Cairel eventually confessed to several robberies and implicated Johnson in one. Prosecutors filed charges against both Cairel and Johnson. Johnson pled guilty in exchange for probation. Further investigation, however, revealed that both Cairel and Johnson were actually innocent. Over a year after the arrests, prosecutors dismissed Cairel's case and allowed Johnson to withdraw his guilty plea. Neither Cairel nor Johnson was imprisoned; Cairel was never convicted. Plaintiffs Cairel and Johnson sued the defendant detectives under 42 U.S.C. § 1983 alleging three federal due process claims: fabricating Johnson's confession, failing to disclose a potential alibi witness, and coercing Cairel's confession. Plaintiffs also alleged state-law claims for malicious prosecution and intentional infliction of emotional distress. The district court granted summary judgment for defendants, and plaintiffs appealed. We affirm.

USA v. Jared Seats No. 15-3825

Submitted May 6, 2016 — Decided May 6, 2016

Case Type: Criminal

Southern District of Illinois. No. 3:15-CR-30080-DRH-1 — **David R. Herndon**, *Judge*.
Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

After an argument with his half-brother, Jared Seats twice fired a rifle from inside his house, at his half-brother and the half-brother's girlfriend, who were outside. Seats was arrested and eventually pleaded guilty to possessing a firearm as a felon, see 18 U.S.C. § 922(g)(1). He was sentenced to 92 months' imprisonment and 3 years' supervised release. He filed a notice of appeal, but his appointed lawyer asserts that the appeal is frivolous and seeks to withdraw... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

USA v. Darral Morris No. 15-3154

Argued April 12, 2016 — Decided May 6, 2016

Case Type: Criminal

Southern District of Illinois. No. 3:13-CR-30232 — **Michael J. Reagan**, *Chief Judge*.
Before WOOD, *Chief Judge*; FLAUM, and WILLIAMS, *Circuit Judges*.

FLAUM, *Circuit Judge*. Defendant-appellant Darral C. Morris pled guilty to unlawful possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). Morris later tried to withdraw his guilty plea, but the district court denied his motion. The district court found that Morris met the requirements of the Armed

Career Criminal Act, 18 U.S.C. § 924(e) (“ACCA”), and accordingly sentenced him to 180 months in prison. Morris appeals, arguing that the ACCA is unconstitutionally vague and challenging the district court’s denial of his motion to withdraw his guilty plea. We affirm.

USA v. Paul Carson No. 15-2899

Submitted January 19, 2016 — Decided May 5, 2016

Case Type: Criminal

Central District of Illinois. No. 14-10078-001 — **Joe Billy McDade**, *Judge*.

Before POSNER, EASTERBROOK, and SYKES, *Circuit Judges*.

POSNER, Circuit Judge, dissenting.

EASTERBROOK, *Circuit Judge*. Paul Carson pleaded guilty to one count of delaying the mail, 18 U.S.C. §1703(a), and was sentenced to one month’s imprisonment plus one year’s supervised release, three months of which must be spent in community confinement. The sole issue he raises on appeal is whether one condition of that supervised release was adequately justified by the district judge and consistent with the Constitution... AFFIRMED.

Michael Johnson v. Pushpin Holdings, LLC No. 15-2771

Argued March 30, 2016 — Decided May 6, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 7468 — **Charles P. Kocoras**, *Judge*.

Before WOOD, *Chief Judge*, and POSNER and ROVNER, *Circuit Judges*.

POSNER, *Circuit Judge*. This class-action suit, before us for the second time, had been filed in an Illinois state court and accused Pushpin Holdings, a debt collector... of having violated the Illinois Consumer Fraud and Deceptive Business Practices Act, and committed related torts, all in the course of attempting to collect debts in Illinois. Pushpin removed the case to federal district court under the provision of the Class Action Fairness Act of 2005 that authorizes such removal if (among other requirements; the only other one relevant to this case is discussed in the next paragraph) the amount in controversy exceeds \$5 million... The district judge remanded the case to the state court on the ground that the plaintiffs (who were resisting removal) had established that the amount in controversy fell below the removal threshold because it would be impossible for the class to establish a right to damages of more than \$5 million. We reversed the district judge’s order and remanded the case, holding not that the defendants had shown that the amount in controversy exceeded the \$5 million threshold but that the issue required further consideration... On remand the district judge, reversing his earlier ruling, ruled that the amount in controversy did exceed the threshold, because Pushpin had already obtained judgments totaling \$1.3 million that the plaintiffs wished to recoup and punitive damages equal to nine times that amount were also a possibility. But the judge later dismissed the suit on the merits for failure to state a claim, Fed. R. Civ. P. 12(b)(6), and the plaintiffs have again appealed... The judgment of the district court dismissing the complaint with prejudice is AFFIRMED.

Dual-Temp of Illinois, Inc. v. Hench Control, Inc. No. 15-2659

Argued March 29, 2016 — Decided May 6, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:09-CV-595 — **Sharon Johnson Coleman**, *Judge*.

Before FLAUM, EASTERBROOK, and SYKES, *Circuit Judges*.

FLAUM, Circuit Judge. Hench Control Corporation (“Hench I”), the predecessor to defendants Hench Control, Inc. (“Hench II”) and Caesar-Verona, Inc., contracted with plaintiff Dual-Temp of Illinois, Inc. to supply a refrigeration control system. However, the Hench refrigeration control system delivered to Dual-

Temp did not work properly, and Dual-Temp brought suit against defendants for breach of contract. After a bench trial, the district court held that defendants had breached the contract and awarded damages and attorneys' fees to Dual-Temp. Defendants appeal. We affirm the district court's conclusion that defendants breached the contract and its award of damages.

Bassam Assaf v. Trinity Medical Center No. 15-2587

Argued February 24, 2016 — Decided May 6, 2016

Case Type: Civil

Central District of Illinois. No. 4:10-cv-04021-JES— **James E. Shadid**, *Chief Judge*.

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

ROVNER, *Circuit Judge*. This is the second appeal by Dr. Bassam Assaf concerning his breach of contract action against Trinity Medical Center ("Trinity Medical"). From 2005 to 2009, Assaf was employed by Trinity Medical as its medical director for the epilepsy clinic. Trinity Medical terminated his employment in August 2009, and Assaf filed an action for breach of contract on February 1, 2010. The parties entered into a settlement agreement on February 26, 2010, under which Assaf would be employed by Trinity Medical from 2009 until at least 2011 in the position of Director of the Neuroscience Program. Although the agreement was signed by both parties, the employment relationship never materialized, and Assaf sought summary judgment on his claim for breach of that settlement agreement. The district court granted summary judgment and the parties prepared for trial regarding damages. Assaf sought as damages the lost salary for the years in which he was to have been employed under the settlement agreement, as well as lost professional fees during that time. The district court rejected the claim for lost professional fees holding that Assaf failed to provide an adequate estimate of the loss during discovery. The district court then entered judgment without trial awarding Assaf his salary for the years 2009 through 2011 and compensatory damages totaling \$172,759 plus \$15,000 in attorneys' fees... The decision of the district court is AFFIRMED.

Robert Schindler v. Renaissance Hotel Management No. 15-2560

Submitted May 6, 2016 — Decided May 6, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 4392 — **Rebecca R. Pallmeyer**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

Robert Schindler appeals the dismissal of his suit under the Americans with Disabilities Act, see 42 U.S.C. § 12112(a), for failing to comply with discovery orders. We affirm.

LaVonya Moore v. Carolyn Colvin No. 15-2342

Submitted May 6, 2016 — Decided May 6, 2016

Case Type: Civil

Northern District of Indiana, Fort Wayne Division. No. 1:14cv113 — **Andrew P. Rodovich**, *Magistrate Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

ORDER

LaVonya Moore applied for Disability Insurance Benefits and Supplemental Security Income in 2011 because of pain in her knees, right shoulder, and back. This was Moore's third application for benefits asserting substantially the same impairments, and the results were mixed. This time, an administrative

law judge concluded that Moore was entitled to SSI as of the date of his decision, in November 2013. Moore filed an administrative appeal, but she challenged, not the 2013 decision, but the decision by a different ALJ in 2008 resolving the first of her applications for benefits. The Appeals Council denied review, and a magistrate judge, presiding by consent, upheld the ALJ's decision from 2013. See 42 U.S.C. § 405(g). The magistrate judge reasoned that it was too late for Moore to seek judicial review of the 2008 decision. We agree with that conclusion.

Joseph Roberts v. Columbia College Chicago No. 15-2079

Argued January 12, 2016 — Decided May 6, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 828 — **Jorge L. Alonso**, *Judge*.
Before BAUER and HAMILTON, *Circuit Judges*, and PETERSON, *District Judge*.

BAUER, *Circuit Judge*. Defendant-appellee, Columbia College Chicago (“Columbia”), terminated plaintiff-appellant, Professor Joseph Roberts (“Roberts”), after it discovered that Roberts plagiarized several chapters in a textbook that he composed in 2004. Roberts filed suit against Columbia and several Columbia faculty members. In his complaint, Roberts pleaded multiple theories of recovery. All defendants moved for summary judgment, which the district court granted. Roberts appealed the grant of summary judgment in regards to his claims for breach of contract and age discrimination in violation of the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621 et seq. For the following reasons, we affirm the district court’s ruling.

Clifton Morgan v. City of Chicago No. 14-3307

Argued September 29, 2015 — Decided May 6, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:11-cv-09271 — **Charles R. Norgle**, *Judge*.
Before WOOD, *Chief Judge*, and EASTERBROOK and RIPPLE, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Clifton Morgan was arrested by three Chicago Police Department (“CPD”) officers—Lieutenant Duane DeVries, Sergeant Christian Tsoukalas, and Sergeant Anthony Schulz—and charged with possession of crack cocaine and resisting arrest. The Circuit Court of Cook County dismissed the charges, and Mr. Morgan brought this civil action against the arresting officers and the City of Chicago (collectively, “the defendants”). Along with several state-law claims, he brought a claim under 42 U.S.C. § 1983 in which he alleged that the officers had conspired to violate and did violate his constitutional rights during the course of the arrest. Mr. Morgan’s claims were tried to a jury, which returned a verdict for the defendants. Mr. Morgan filed a motion for a new trial, arguing that the defendants had violated the Equal Protection Clause by exercising their peremptory strikes on a racially discriminatory basis during jury selection and that the district court had committed multiple procedural and substantive errors, which had deprived him of a fair trial. The court denied the motion, and Mr. Morgan timely appealed. For the reasons set forth in this opinion, we affirm the judgment of the district court.

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](#).