Opinions for the week of May 4 – May 8, 2020

Lamonte Ealy v. Brea Griffin No. 19-3454
Submitted April 30, 2020 — Decided May 4, 2020
Case Type: Prisoner
Eastern District of Wisconsin. No. 19-C-1630 — **William C. Griesbach**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* DIANE S. SYKES, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Lamonte Ealy, a Wisconsin prisoner, sued police officers, prosecutors, his defense attorneys, and others under 42 U.S.C. § 1983 based on events occurring before, during, and after his criminal trial. The district court dismissed the complaint at screening for failing to state a claim, 28 U.S.C. § 1915(e)(2)(B), and we affirm.

Elizabeth Peters v. Zhihong Zhang No. 19-2434
Submitted April 30, 2020 — Decided May 4, 2020
Case Type: Civil
Central District of Illinois. No. 17-cv-01494-JES-JEH — **James E. Shadid**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge.*

ORDER
Elizabeth Peters, proceeding pro se, sued two employees of a state mental health institution under 42 U.S.C. § 1983, alleging that they deprived her of social security benefits and personal property without due process. The district court dismissed her suit, concluding that she was statutorily ineligible for the benefits and that it lacked jurisdiction over the remaining claims. We affirm the judgment, though we modify it to
clarify that the dismissal is not jurisdictional.

USA v. Russell Sievert No. 19-2337
Submitted April 30, 2020 — Decided May 4, 2020
Case Type: Criminal
Central District of Illinois. No. 01-cr-10015-001 — **Michael M. Mihm**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge.*

ORDER
More than a year after serving a prison term for unlawful possession of a firearm, 18 U.S.C. § 922(g), Russell Sievert tested positive for marijuana and was arrested for violating the conditions of his supervised release. He was released on bond, but a few months later again violated his supervision when he used marijuana on two more occasions and failed to comply with substance-abuse treatment. After Sievert admitted to all of the violations, the district court revoked his supervised release and sentenced him to 18 months in prison without any further supervision. Sievert filed a notice of appeal, but his attorney asserts that the appeal is frivolous and seeks to withdraw under *Anders v. California*, 386 U.S. 738 (1967). At the outset we note that Sievert does not have an unqualified constitutional right to counsel when appealing a revocation order, *see Gagnon v. Scarpelli*, 411 U.S. 778, 789–91 (1973), so the safeguards in *Anders* need not govern our review. Even so, our practice is to follow them. *See United States v. Brown*, 823 F.3d 392, 394 (7th Cir. 2016). Because counsel's analysis appears thorough, we limit our review to the subjects he discusses… For these reasons, we GRANT the motion to withdraw and DISMISS the appeal.

Maria Rosas v. Advocate Health and Hospitals No. 19-1434
Submitted March 26, 2020 — Decided May 4, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 18 C 5340 — **Gary Feinerman**, *Judge*.
Before DAVID F. HAMILTON, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Maria Rosas contends that a state agency and others wrongfully institutionalized her ten years ago. The district court correctly ruled that the agency is not a "person" subject to suit and the two-year statute of limitations blocks her claims, so we affirm.

USA v. Anthony Howell
Argued February 27, 2020 — Decided May 4, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:13-cr-250 — **Gary Feinerman**, *Judge*.
Before BRENNAN, SCUDDER, and ST. EVE, *Circuit Judges*.

SCUDDER, *Circuit Judge*. On an afternoon in December 2012, the Chicago Police Department received an anonymous 911 call reporting a Hispanic man in a black sweater and black hat, carrying a bag, and climbing under a warehouse fence. Officers arrived and found someone who matched the description, but after stopping and frisking him, determined he was not engaged in any crime. The initial suspect then pointed the officers to someone else nearby who was crossing the street and walking toward the police. This man, Anthony Howell, was white and wearing a black jacket and dark hat. When an officer approached to ask what was going on, How- ell did not answer, looked panicked, and put his hands in his pockets. The officer reacted by patting down Howell and found a gun in his jacket. A federal gun charge followed, and Howell moved to suppress the gun as the fruit of an unconstitutional stop-and-frisk. The district court denied the motion, Howell proceeded to trial, and a jury found him guilty. Howell now appeals from the denial of the suppression motion. In evaluating his position, we also confront a question about the proper scope of the record on review. The question is whether we limit our review to the pretrial record or expand our look to consider the arresting officer's trial testimony as well. The answer matters because the facts in the pre-trial record differed in a material way from those that emerged at trial, where the arresting officer testified that he decided to proceed with the pat down only after Howell ignored a directive to remove his hands from his pockets. In the end, we limit ourselves to the pretrial record, for that is the only source of facts the district court considered in denying Howell's motion. Viewing that record as a whole, we conclude that police lacked reasonable suspicion to frisk Howell. We therefore reverse the denial of his suppression motion and vacate his conviction for possessing that gun. Our reversal is only partial, however, because Howell was also convicted on a second gun charge. Three months after the December 2012 stop-and-frisk, police executed a warrant to search Howell's apartment, where they found more guns and ammunition. There was ample evidence for the jury to find that Howell possessed the guns in his apartment, so we affirm his conviction for this separate offense.

Christine Bryant v. Compass Group U.S.A., Inc. No. 20-1443
Argued April 24, 2020 — Decided May 5, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 19 C 6622 — **Virginia M. Kendall**, *Judge*.
Before WOOD, *Chief Judge*, and RIPPLE and ROVNER, *Circuit Judges*.

WOOD, *Chief Judge*. Section 15(b) of Illinois's Biometric Information Privacy Act (BIPA), 740 ILCS 14 (2008), regulates the collection, use, and retention of a person's biometric identifiers or information. It requires collectors of this material to obtain the written informed consent of any person whose data is acquired. This regime is designed to protect consumers against the threat of irreparable privacy harms, identity theft, and other economic injuries arising from the increasing use of biometric identifiers and information by private entities. As a matter of state law, anyone "aggrieved" by a violation of the disclosure and informed consent obligations is entitled to bring a private action against the alleged offender. The question now before us is whether, for federal-court purposes, such a person has suffered the kind of injury-in-fact that supports Article III standing. We conclude that a failure to follow section 15(b) of the law leads to an invasion of personal rights that is both concrete and particularized. See *Spokeo, Inc. v. Rob- ins,* 136 S. Ct. 1540 (2016). We therefore reverse the district court's order remanding this case to state court and remand for further proceedings.

Access Living of Metropolitan v. Uber Technologies, Inc. No. 19-2116
Argued December 9, 2019 — Decided May 5, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:16-cv-9690 — **Manish S. Shah**, *Judge*.
Before EASTERBROOK, ROVNER, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Whether the Americans with Disabilities Act's public accommodation provisions apply to ridesharing companies like Uber is unsettled. The lawsuit underlying this appeal presents that question and the many complexities that come with considering Uber's business model and the discrimination proscribed by the ADA. Before us are antecedent questions about whether certain plaintiffs—disability rights advocacy organization called Access Living as well as an individual named Rahnee Patrick—have alleged injuries sufficient to show Article III standing and to state causes of action under § 12188(a)(1) of Title III of the ADA. The district court answered no for both plaintiffs. We affirm.

H.A.L. NY Holdings, LLC v. Joseph Guinan, Jr. No. 19-1942
Argued January 23, 2020 — Decided May 5, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:18-cv-07615 — **Robert W. Gettleman**, *Judge*.
Before ROVNER, HAMILTON, and SCUDDER, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Plaintiff H.A.L. NY Holdings, LLC is in the business of trading securities. It set up a brokerage account with Advantage Futures, LLC in Chicago. H.A.L.'s trading losses led Advantage to issue margin calls, which H.A.L. failed to meet. Advantage then liquidated H.A.L.'s account, leaving a negative balance of more than $75,000. When H.A.L. failed to pay, Advantage sued in federal court in Chicago. H.A.L. responded with an offer of judgment under Federal Rule of Civil Procedure 68 for the entire amount in dispute, plus attorney fees and costs. Advantage accepted and judgment was entered. One might expect that to have been the end of the story. But H.A.L. did not actually pay the judgment it had offered. Instead, H.A.L. filed this new lawsuit against the CEO of Advantage claiming damages of more than $25 million arising from the same transactions. The Advantage CEO invoked the defense of res judicata based on the prior judgment. The district court agreed and dismissed this case. H.A.L. has appealed. We affirm.

USA v. Courtney Norwood No. 19-3273
Submitted April 30, 2020 — Decided May 6, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:19-cv-01238 — **Gary Feinerman**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge;* DIANE S. SYKES, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
The United States filed suit against Courtney Norwood to enjoin him from providing tax-preparation services to others because, it alleged, he repeatedly violated federal tax law. After Norwood failed three times to meet a deadline for producing his initial discovery disclosures, the district court entered default judgment against him as a sanction. The court also permanently enjoined him from providing tax-preparation services. Because the judge did not abuse his discretion, we affirm.

Acheron Medical Supply, LLC v. Cook Medical Incorporated Nos. 19-2315 & 19-2410
Argued January 16, 2020 — Decided May 6, 2020
Case Type: Civil
Southern District of Indiana, Indianapolis Division. No. 15-cv-01510 — **William T. Lawrence**, *Judge*.
Before FLAUM, MANION, and KANNE, *Circuit Judges*.

MANION, *Circuit Judge*. This set of cross-appeals arises from a distribution agreement that each party asserts the other breached. The district court concluded the plaintiff breached the agreement and the defendant did not, but it also held the plaintiff was not liable for its breach. Neither party was content with the outcome. We conclude the district court reached the correct result, and we affirm.

Aaron Miller v. Wexford Health Sources No. 18-3314
Submitted April 30, 2020 — Decided May 6, 2020
Case Type: Prisoner
Southern District of Illinois. No. 15-cv-1077-SCW — **Stephen C. Williams**, *Magistrate Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Aaron Miller, an Illinois inmate, developed bacterial and fungal infections at the site of an open abdominal wound where a feeding tube had been removed. He sued prison doctors and officials for deliberate indifference to his serious medical needs, as well as for retaliation under the First Amendment after he filed grievances over those needs. The district court ruled that the record did not support a finding of any constitutional violations and entered summary judgment for the defendants. We affirm.

USA v. Malcolm Carpenter No. 18-2934
Argued April 8, 2020 — Decided May 6, 2020
Case Type: Criminal
Eastern Division. No. 1:13-cr-00930-1 — **Rebecca R. Pallmeyer**, *Chief Judge*.
Before KENNETH F. RIPPLE, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
A jury found Malcolm Carpenter guilty of multiple offenses related to his role in a 2013 bank robbery. In his briefs on appeal, he argued his trial counsel was constitutionally ineffective for failing to file reply briefs for two pre-trial motions. Carpenter also asserted the jury instructions used by the district court deprived him of his Sixth Amendment right to a fair trial. After oral argument, Carpenter withdrew his ineffective assistance of counsel claim in order to preserve it for post-conviction review, leaving only his jury instruction claim before this court. We conclude that Carpenter's remaining claim fails because he waived the right to object to the jury instruction he now challenges. Even under plain error review, Carpenter's

jury instruction argument lacks merit because he fails to show the jury instruction at issue misled the jury… For these reasons, we DISMISS WITHOUT PREJUDICE Carpenter's ineffective assistance of counsel claim. In all other respects, this appeal is AFFIRMED.

Albert Kirkman v. Scott Thompson No. 19-1904
Argued January 15, 2020 — Decided May 7, 2020
Case Type: Prisoner
Northern District of Illinois, Eastern Division. No. 14 C 02398 — **Thomas M. Durkin**, *Judge.*
Before BAUER, EASTERBROOK, and HAMILTON, *Circuit Judges*.

BAUER, *Circuit Judge.* Albert Kirkman ("Kirkman") was arrested and charged with the murders of two men and attempted murder of a third, Willie Johnson ("Johnson"). At trial, Johnson testified that Kirkman and his accomplice were the shooters. Kirkman was convicted and appealed his sentence. Fifteen years later, Johnson recanted his testimony and Kirkman again appealed his sentence. The Illinois Circuit Court ("circuit court") held an evidentiary hearing and found Johnson's recanted testimony not credible. The Illinois Appellate Court affirmed. Kirkman then filed an action with the Northern District of Illinois, which denied his petition for habeas corpus relief and for the following reasons, we affirm.

USA v. Shon L. Gibson No. 19-1402
Argued September 13, 2019 — Decided May 7, 2020
Case Type: Criminal
Northern District of Indiana, Fort Wayne Division. No. 1:16-cr-00086-TLS-SLC-1 — **Theresa L. Springmann**, *Chief Judge.*
Before BAUER, ROVNER, and SYKES, *Circuit Judges*.

BAUER, *Circuit Judge.* On December 14, 2016, Shon L. Gibson ("Gibson"), was arrested and charged with possessing with intent to distribute methamphetamine and being a felon in possession of a firearm. Gibson pleaded guilty but reserved his right to appeal the order denying his motion to suppress evidence seized from his home pursuant to a search warrant. On appeal, Gibson argues the indictment should be dismissed or the evidence suppressed because the evidence seized was the direct result of an illegal stop, search, and arrest. Since we find the evidence was not obtained as a result of violations of the Fourth Amendment, we affirm.

USA v. Roberta Draheim, Tom Lewis Nos. 19-1262 & 19-1911
Submitted April 9, 2020 — Decided May 7, 2020
Case Type: Criminal
Western District of Wisconsin. Nos. 18-cr-00058-1 & 18-cr-00058-6 — **William M. Conley**, *Judge*.
Before BAUER, FLAUM, and KANNE, *Circuit Judges*.

FLAUM, *Circuit Judge*. Roberta "Mama Bear" Draheim was a drug dealer in northern Wisconsin. Draheim's meth conspiracy was her proverbial cub. Between 2016 and 2018, she over- saw the shipment of nearly forty packages of multi-pound quantities of methamphetamine from sources in California to La Crosse, Wisconsin. During this time, Draheim supervised at least eleven associates in her trafficking organization, including defendant Tom Lewis. Caught up in the conspiracy, both eventually pleaded guilty to certain narcotics offenses. At sentencing, Draheim faced a mandatory-minimum sentence of ten years. She argued she qualified for "safety-valve relief," which would have authorized the district court to sentence her below the mandatory minimum. The court overruled Draheim's objection because she was the leader of her enterprise. Lewis contended that the court should only sentence him based on his conviction, not any other "relevant conduct." The court overruled his objection too. Lewis and Draheim now appeal their sentences, maintaining that the district court's safety-valve and relevant-conduct

decisions are wrong. We affirm the court's judgment in Draheim's case but vacate its judgment as to Lewis and remand for resentencing.

Timothy Fredrickson v. Dusty Terrill No. 19-3201
Submitted April 10, 2020 — Decided May 8, 2020
Case Type: Prisoner
Central District of Illinois. No. 4:19-cv-4080-SEM-TSH — **Sue E. Myerscough**, *Judge*.
Before KANNE, ROVNER, and HAMILTON, *Circuit Judges*.

PER CURIAM. Timothy Fredrickson, then awaiting his criminal trial, petitioned for a writ of habeas corpus, 28 U.S.C. § 2241, seeking release on bail. The district court denied the petition, determining that challenges to pretrial detention must be brought under the Bail Reform Act of 1984, 18 U.S.C. § 3142, rather than a habeas proceeding. We affirm.
