Opinions for the week of April 6 – April 10, 2020

Irma Rosas v. R.K. Kenzie Corporation No. 19-3040
Submitted April 2, 2020 — Decided April 6, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:19-cv-00005 — **John Robert Blakey**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* JOEL M. FLAUM, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
Irma Rosas brought a lawsuit against four of her previous employers, all restaurants, which, she alleged, discriminated against her based on her race, age, and disability (carpal tunnel syndrome), in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, the Age Discrimination in Employment Act, 29 U.S.C. § 623, and the Americans with Disabilities Act, 42 U.S.C. § 12112. The district court repeatedly warned her that she could not join unrelated claims against different defendants, and then dismissed the suit after she continued to disregard those instructions. Because the district court did not abuse its discretion in dismissing the suit, we affirm.

USA v. Bryan Toth No. 19-1792
Submitted April 2, 2020 — Decided April 6, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:17-CR-00805(1) — **Robert W. Gettleman**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* JOEL M. FLAUM, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
While Bryan Toth was on home confinement following his incarceration for a conviction for possession of child pornography, federal agents searched his home and found several images and a video of child pornography that he had shared and discussed with others. He later pleaded guilty to another count of possessing and transporting child pornography. 18 U.S.C. § 2252A(a)(1). Because of his first conviction, he was subject to a statutory minimum prison sentence of 15 years. *Id.* § 2252A(b)(1). The district court sentenced him to that term, which had become the low end of his guidelines range of 180 to 210 months. Without objection, the court also imposed 20 years' supervised release and, based on the parties' agreement, ordered a total of $75,000 in restitution to five victims… In light of this analysis, we deny Toth's request for substitute counsel, and we GRANT the motion to withdraw and DISMISS the appeal.

Sedrick Reed v. J.R. Bell No. 19-1656
Submitted April 2, 2020 — Decided April 6, 2020
Case Type: Prisoner
Southern District of Indiana, Terre Haute Division. No. 2:18-cv-00319-WTL-DLP — **William T. Lawrence**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* JOEL M. FLAUM, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
Sedrick Reed, a federal prisoner, was found guilty in a prison disciplinary proceeding of possessing an illegal cell phone and, as a result, lost good-time credit. He filed a petition for a writ of habeas corpus, arguing that the disciplinary proceeding violated his constitutional rights. The district court denied the petition, and we affirm.

SEC v. Timothy Durham No. 19-1653
Submitted April 2, 2020 — Decided April 6, 2020
Case Type: Prisoner
Southern District of Indiana, Indianapolis Division. No. 1:11-cv-00370-JMS-TAB — **Jane Magnus-Stinson**, *Chief Judge*.
Before DIANE P. WOOD, *Chief Judge;* JOEL M. FLAUM, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
Based on Timothy Durham's criminal convictions for violating the Securities Exchange Acts of 1933 and 1934, a judge found him civilly liable for those violations as well. Durham does not dispute the existence of the criminal judgment. Rather, he argues that this judgment is nonfinal, and thus has no preclusive force, because of his pending collateral attack on his convictions. We affirm because a criminal conviction is a final judgment with preclusive effect, despite any pending, post-judgment challenges.

Earl Conner v. Christopher Vacek No. 19-1160
Submitted April 2, 2020 — Decided April 6, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 17 C 7299 — **Rebecca R. Pallmeyer**, *Chief Judge*.
Before DIANE P. WOOD, *Chief Judge;* JOEL M. FLAUM, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
After police officers responding to a domestic-violence call broke down his door and arrested him in front of his daughter, Earl Conner sued a police sergeant and fire captain involved in the response. He asserts that they violated his Fourth Amendment rights when they entered his apartment and arrested him without a warrant. The district court entered summary judgment for the defendants, and we affirm.

Daniel Schillinger v. Josh Kiley No. 18-2404
Argued September 25, 2019 — Decided April 6, 2020
Case Type: Prisoner
Western District of Wisconsin. No. 16-cv-529-wmc — **William M. Conley**, *Judge*.
Before FLAUM, SYKES, and SCUDDER, *Circuit Judges*.

SYKES, *Circuit Judge*. Daniel Schillinger, a Wisconsin prisoner, was brutally assaulted by another inmate as the prisoners were walking back to their housing unit after recreation. He suffered a fractured skull, broken teeth, cuts, and other serious injuries. Schillinger sued three prison guards under 42 U.S.C. § 1983 for violating his Eighth Amendment rights by failing to protect him from the attack. The district judge screened the complaint and permitted Schillinger to proceed on a claim that the officers failed to take preventive action after learning of hostility between Schillinger and his attacker during the recreation period shortly before the attack. The judge later ruled that Schillinger had not exhausted his administrative remedies on this claim and entered summary judgment for the defendants. On appeal Schillinger argues that the judge should have gleaned from his complaint two additional factual grounds for a failure-to-protect claim against the officers: that they did not respond fast enough to an alarm about a medical emergency on his unit once the attack was underway and they stood by without intervening to stop the attack while it was ongoing. He also challenges the judge's exhaustion ruling. We reject these arguments and affirm.

Flexible Steel Lacing Company v. Conveyor Accessories, Inc. No. 19-2035

Argued February 19, 2020 — Decided April 7, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:17-cv-05540 — **Ruben Castillo**, *Judge*.
Before WOOD, *Chief Judge*, and FLAUM and RIPPLE, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Flexible Steel Lacing Co. ("Flexco") brought this action for trade dress infringement and unfair competition against Conveyor Accessories, Inc. ("CAI"). Flexco alleges that CAI infringed its registered and common law trade dress by promoting and selling conveyor belt fasteners with a product design that is confusingly similar to the product design of Flexco's fasteners. In its complaint. Flexco set forth claims brought under the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), claims for common law unfair competition and trademark infringement, and a claim brought under the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2.1 CAI answered the complaint and asserted counterclaims seeking cancellation of Flexco's registered trademarks and seeking a declaratory judgment of invalidity, unenforceability, and noninfringement. CAI moved for summary judgment, contending that Flexco's trade dress is functional and therefore invalid. Flexco moved for partial summary judgment on other grounds. The district court granted summary judgment in favor of CAI, holding that Flexco's trade dress was functional. It denied Flexco's motion for partial summary judgment and dismissed CAI's remaining counterclaims as moot. Flexco filed a timely notice of appeal seeking reversal of the district court's grant of summary judgment in favor of CAI with respect to one of its registered marks. We agree with the district court's ruling and hold that Flexco's trade dress is invalid because it is functional. We accordingly affirm the district court's judgment.

Lydia Vega v. Chicago Park District Nos. 19-1926 & 19-1939
Argued January 9, 2020 — Decided April 7, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:13-cv-451 — **Jorge L. Alonso**, *Judge*.
Before WOOD, *Chief Judge*, and EASTERBROOK and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. Lydia Vega sued her former employer, the Chicago Park District, alleging that the Park District discriminated against her due to her national origin in violation of Title VII and 42 U.S.C. § 1983. After a seven-

day jury trial, the jury returned a verdict in Vega's favor on both claims and awarded her $750,000 in compensatory damages. The Park District moved for judgment as a matter of law on both claims; the district court granted the motion with respect to the § 1983 claim but denied it with respect to the Title VII claim. With the § 1983 claim gone, the district court remitted Vega's award to $300,000, which is the statutory maximum under Title VII. It then conducted a bench trial on equitable remedies and granted Vega back pay, benefits, and a tax-component award. On appeal, the Park District challenges the district court's denial of its motion for judgment as a matter of law on Vega's Title VII claim, several evidentiary rulings, the statutory maximum damages award, and the calculation of equitable remedies. Vega cross-appeals the district court's entry of judgment as a matter of law on her § 1983 claim. We affirm all of the district court's rulings except its grant of the tax-component award, which we vacate and remand for the district court to explain its calculation.

Dixon O'Brien v. Village of Lincolnshire No. 19-1349
Argued September 4, 2019 — Decided April 7, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:18-cv-01310 — **John Robert Blakey**, *Judge.*
Before ROVNER, SCUDDER, and ST. EVE, *Circuit Judges*.

ROVNER, *Circuit Judge.* Dixon O'Brien, John Cook, and the unions to which they belong sued the Village of Lincolnshire and the Illinois Municipal League claiming violations of their rights under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, as well as violations of state law. The district court dismissed their federal claims under Federal Rule of Civil Procedure 12(b)(6) and declined to exercise supplemental jurisdiction over their remaining state law claims. We affirm.

USA v. Allen Young No. 18-3679
Argued February 26, 2020 — Decided April 7, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:17-cr-82 — **Edmond E. Chang**, *Judge*.
Before WOOD, *Chief Judge*, and ROVNER and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. Allen Young was indicted for the sex trafficking of four minors and the attempted sex trafficking of a fifth. Three weeks before his trial was scheduled to start, Young fired his attorney and invoked his right to represent himself. The result was predictable. The government presented compelling evidence—including the testimony of each victim—that Young knowingly facilitated the prostitution of vulnerable minors and profited from their exploitation. Young, appearing pro se, failed to mount a serious defense to the government's case, and the jury convicted him on all counts. He now appeals eight issues from the trial. None of his arguments has merit, and we affirm the judgment across the board.

Nathaniel Jackson v. Alton Angus No. 19-1736
Submitted April 2, 2020 — Decided April 8, 2020
Case Type: Civil
Central District of Illinois. No. 12-cv-1084 — **Michael M. Mihm**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* JOEL M. FLAUM, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
This is the second time that Nathaniel Jackson's lawsuit—his third against staff at Pontiac and Dixon Correctional Facilities—comes to us on appeal. Jackson maintains that prison staff violated his constitutional rights when they transferred him twice to Dixon Special Treatment Center for mental-health

treatment against his will. See 42 U.S.C. § 1983. In a prior decision, we vacated the entry of summary judgment on claim-preclusion grounds and remanded the case for further proceedings on Jackson's claims (1) that certain mental-health officials at Pontiac and Dixon violated his due process rights during the transfers and (2) that, during the second transfer, Pontiac's tactical team used excessive force when extracting him from his cell. See *Jackson v. Angus,* 686 F. App'x 367 (7th Cir. 2017). On remand, the district court entered summary judgment for the remaining defendants. Jackson appeals, and we affirm.

Markel Insurance Company v. Lillian Rau No. 19-2433
Argued January 22, 2020 — Decided April 9, 2020
Case Type: Civil
Northern District of Indiana, Hammond Division. No. 2:16-cv-220-HAB — **Holly A. Brady**, *Judge*.
Before WOOD, *Chief Judge*, and SYKES and HAMILTON, *Circuit Judges*.

WOOD, *Chief Judge*. United Emergency Medical Services, LLC ("United") owns a fleet of ambulances. In 2016, Chester Stofko was driving his car when one of United's ambulances crashed into it; Stofko's injuries were fatal. Lillian Rau, as personal representative of Stofko's estate, filed a lawsuit in state court against United and the driver to recover damages. At the time of the accident, United was insured by Markel Insurance Company. The particular ambulance that crashed, however, was not listed on the policy. Rau argues that it was nevertheless covered by the policy because before the crash United sent Markel's agent, Insurance Service Center ("Center"), an email requesting that the vehicle be added to the policy. Markel insists that even if United had sent an email, it never endorsed the change, which the policy requires, and so it has no duty to indemnify United or the driver and no duty to defend with respect to Rau's suit.
Seeking a declaratory judgment to this effect, Markel filed the present suit in federal court. On cross-motions for summary judgment, the district court found that Markel had no obligation to United or its employee under the policy. We agree with this conclusion, and so we affirm.

USA v. Fernando Godinez No. 19-1215
Argued December 4, 2019 — Decided April 9, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:16-cr-00554-2 — **Jorge L. Alonso**, *Judge*.
Before FLAUM, RIPPLE, and HAMILTON, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Fernando Godinez pleaded guilty to conspiracy to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and to possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). The Government filed an information under 21 U.S.C. § 851, advising the district court that Mr. Godinez had a prior Ohio conviction for possession of cocaine. The district court determined that this prior state conviction made Mr. Godinez eligible for a mandatory minimum sentence of ten years' imprisonment rather than the otherwise applicable five-year mandatory minimum. *See* 21 U.S.C. § 841(b)(1)(B) (2010). Mr. Godinez now submits that, at the time of sentencing, the district court—and both parties—misapprehended the legal consequences of the Government's filing the § 851 information. Specifically, he submits that the First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194 (the "First Step Act"), enacted after the signing of Mr. Godinez's plea agreement but before his sentencing, rendered invalid both the information and the increased penalties it carried. In his view, the district court should not have characterized his previous Ohio conviction as a conviction for "possession with intent to distribute" cocaine, the qualifying requirement for the ten-year mandatory minimum. Therefore, Mr. Godinez submits, he is not subject to the higher mandatory minimum. Mr. Godinez is correct. By failing to recognize the changes implemented by the First Step Act, the district court premised its sentencing calculations on a mandatory minimum that was twice what it should have been. This oversight constitutes plain error and requires that Mr. Godinez be resentenced. Accordingly, we vacate the judgment of the district court and remand the case to the district court for sentencing.

USA v. Antoine Jackson No. 19-2109
Submitted April 10, 2020 — Decided April 10, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:18-CR-00137(1) — **Ronald A. Guzmán**, *Judge*.
Before MICHAEL S. KANNE, *Circuit Judge;* ILANA DIAMOND ROVNER, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge.*

ORDER
Antoine Jackson pleaded guilty to unlicensed dealing in firearms, 18 U.S.C. § 922(a)(1)(A), carrying a firearm during drug trafficking, 18 U.S.C. § 924(c)(1)(A), and distributing heroin, 21 U.S.C. § 841(a)(1), and was sentenced to 138 months' imprisonment. Jackson appealed, but his appointed counsel now argues that the appeal is frivolous and seeks to withdraw. *See Anders v. California*, 386 U.S. 738, 746 (1967). Counsel's brief explains the nature of the case and addresses potential issues that we might expect an appeal of this kind to involve, so we limit our review to the subjects she discusses and the arguments Jackson raises in his Circuit Rule 51(b) response… We GRANT counsel's motion to withdraw and DISMISS the appeal.
