Opinions for the weeks of December 23, 2019 – January 3, 2020

Andrew Dollard, Larry Lay & Ronald Vierk & v. Gary Whisenand Nos. 19-1602, 19-1604 & 19-1605
Argued November 5, 2019 — Decided December 23, 2019
Case Type: Civil
Southern District of Indiana, Indianapolis Division. Nos. 16-cv-01721 & 16-cv-01908 — **Richard L. Young**, *Judge*.
Before FLAUM, ROVNER, and HAMILTON, *Circuit Judges*.

FLAUM, *Circuit Judge*. In 2013, the Drug Enforcement Administration (DEA) began investigating Dr. Larry Ley and his opioid addiction treatment company, Drug Opiate Recovery Network, Inc. (DORN), for dealing a controlled substance. After conducting undercover surveillance, lead agent Gary Whisenand decided Dr. Ley did not have a legitimate medical purpose in prescribing Suboxone, a drug used to treat opioid addiction. After finding probable cause, two Indiana courts issued a series of warrants that culminated in twelve separate arrests of five medical providers (four physicians and one nurse) and seven non-provider DORN employees. In the ensuing prosecution, the Indiana courts quickly dismissed the charges against all the non-providers and the nurse. The State eventually proceeded to a bench trial against Dr. Ley, where an Indiana court ultimately acquitted him. Following this acquittal, the State dismissed the rest of the charges against the three remaining providers. Together, DORN's providers and non-provider employees sued the DEA agent and others in federal court alleging false arrest, malicious prosecution, and civil conspiracy. The district court entered summary judgment for the defendants on all claims, holding probable cause supported the warrants used to arrest the plaintiffs. We affirm the district court's judgment as to every plaintiff except Joseph Mackey. With respect to Mackey, we reverse and remand the judgment because the undisputed facts at the summary judgment stage do not establish that officers had probable cause to arrest Mackey or even that reasonable officers could believe probable cause existed.

USA v. Michael A. Allgire No. 19-2348
Argued December 11, 2019 — Decided December 26, 2019
Case Type: Criminal
Southern District of Illinois. No. 3:06-cr-30138-4 — **Staci M. Yandle**, *Judge*.
Before FLAUM, HAMILTON, and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. The district court revoked Michael Allgire's supervised release after Allgire skipped out one month into his six-month term at a halfway house. The district court sentenced him to reimprisonment—24 months on one count of his original conviction and 17 months on another count, set to run concurrently. He now argues both that his total 24-month sentence was unreasonable and that the district court committed reversible error by imposing two concurrent sentences. We disagree with both contentions.

Elvira Garcia-Arce v. William Barr Nos. 19-1453 & 19-2312
Argued December 11, 2019 — Decided December 30, 2019
Case Type: Agency
Board of Immigration Appeals. No. A079-775-996
Before FLAUM, HAMILTON, and BARRETT, *Circuit Judges*.

FLAUM, *Circuit Judge*. Elvira Garcia-Arce seeks withholding of removal to Mexico under the Immigration and Nationality Act and the Convention Against Torture. She has filed two petitions for review of orders of the Board of Immigration Appeals (the "Board"). We deny both petitions. As to the first petition, the Board's decision affirming the denial of Garcia-Arce's withholding application was supported by substantial evidence. As to the second petition, the Board did not abuse its discretion in concluding that

Garcia-Arce's prior counsel's assistance was not so deficient that Garcia-Arce was prevented from reasonably presenting her case….For the foregoing reasons, we DENY both petitions for review.

Thomas Dennis v. Niagara Credit Solutions, Inco No. 19-1654
Argued December 11, 2019 — Decided December 30, 2019
Case Type: Civil
Southern District of Indiana, New Albany Division. No. 18-cv-00339 — **Richard L. Young**, *Judge*.
Before FLAUM, HAMILTON, and BARRETT, *Circuit Judges*.

FLAUM, *Circuit Judge*. The plaintiff Thomas Dennis received a debt collection letter listing "original" and "current" creditors, which he claims violated the Fair Debt Collection Practices Act (FDCPA). The FDPCA requires that a debt collector send the debtor a written notice containing "the name of the creditor to whom the debt is owed." Because the letter accurately and clearly identified the creditor to whom Dennis's debt was owed, we affirm the district court's judgment on the pleadings in favor of defendants.

Christel Van Dyke v. Linda Fultz No. 18-3501
Argued December 17, 2019 — Decided January 2, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:13-cv-05971 — **John Z. Lee**, *Judge*.
Before KENNETH F. RIPPLE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER
In 2013, employees of a social-services organization removed Christel Van Dyke's three-year-old grandson from foster-care placement in her home. Ms. Van Dyke sued the employees under 42 U.S.C. § 1983, asserting they violated her First and Fourth Amendment rights. The district court entered summary judgment for the employees. The court also denied Ms. Van Dyke's motion to reconsider. Ms. Van Dyke's appeal is timely only with regard to the denial of her post-judgment motion. Because the district court did not abuse its discretion in denying this motion, we affirm.

Jose Simental-Galarza v. William Barr No. 19-2126
Argued December 17, 2019 — Decided January 2, 2020
Case Type: Agency
Board of Immigration Appeals No. A206-274-723
Before RIPPLE, SYKES, and ST. EVE, *Circuit Judges*.

PER CURIAM. Jose Antonio Simental-Galarza, a 36-year-old citizen of Mexico, seeks relief from removal, contending that he is a battered spouse and would suffer extreme hardship if removed. The Immigration Judge and the Board of Immigration Appeals ruled that Simental-Galarza did not qualify for relief because he did not establish hardship. Because the IJ and Board adequately evaluated the relevant factors and the evidence that Simental-Galarza presented, we deny the petition for review.

USA v. Bharat Verma & Vibgyor Optical Systems Inc. Nos. 18‐2920 & 18‐2921
Argued December 4, 2019 — Decided January 2, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. Nos. 15−cr-18-1 & 15-cr-18−2 — **Elaine E. Bucklo**, *Judge*.
Before DANIEL A. MANION, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*.

ORDER
Vibgyor Optical Systems supplied parts used in American military equipment. For eight years, Vibgyor and its owner, Bharat Verma, breached American import and export controls by sending specifications of those parts to Chinese manufacturers and ordering from those manufacturers without a license. Vibgyor and Verma both pleaded guilty to conspiracy to violate the Arms Export Control Act, and Verma pleaded guilty to an additional charge of international money laundering. As part of their pleas, the defendants agreed to forfeit the proceeds traceable to their offenses in an amount that the district court would determine at sentencing. The government initially proposed that the defendants should be ordered to forfeit $690,513.00. The government then offered an alternative calculation of $514,279.65. Defense counsel raised substantive and procedural objections to the government's calculations, and in response, the district court ultimately lowered the forfeiture judgment to $430,701.12. On appeal, defendants argue that their counsel's performance at sentencing was constitutionally ineffective. We disagree and affirm the sentence.

Gregory Barnes v. Board of Trustees of the Unive No. 19-1781
Argued December 17, 2019 — Decided January 3, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division No. 1:16-cv-08278 — **Virginia M. Kendall**, *Judge*.
Before RIPPLE, SYKES, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Gregory Barnes, who is African American, sued the Board of Trustees of the University of Illinois and Mark Donovan, a former university administrator, for racial discrimination under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1983 after Donovan promoted a white applicant instead of Barnes. Barnes contests the district court's entry of summary judgment in favor of the defendants. Because Barnes did not present evidence that Donovan's stated reason for selecting this applicant was a pretext for discrimination, we affirm.

Rachel Ybarra v. City of Chicago No. 19-1435
Argued December 4, 2019 — Decided January 3, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 16-cv-08009 — **Virginia M. Kendall**, *Judge*.
Before FLAUM, RIPPLE, and HAMILTON, *Circuit Judges*.

FLAUM, *Circuit Judge*. HAMILTON, *Circuit Judge*, concurring in the judgment. Rachel Ybarra brought a lawsuit against the City of Chicago and Chicago Police Department Commander Francis Valadez and Officer Monica Reyes for excessive force and wrongful death based on the shooting death of her son, Rafael Cruz. The district court entered summary judgment for the defendants, holding that the officers could have reasonably believed, based on Cruz's involvement in a drive-by shooting and extremely reckless driving, that Cruz posed an imminent threat to others if allowed to escape from the parking lot where they shot him. We affirm. Under the circumstances present in this case, the officers had probable cause to believe that Cruz posed a threat of serious physical harm to others in the immediate vicinity. It was therefore not unreasonable for the officers to prevent Cruz's escape by using deadly force.