

## **Opinions for the weeks of December 21, 2020 – January 1, 2021**

### **Jonathan Okere v. USA** No. 19-3380

Submitted December 16, 2020 — Decided December 21, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:18-cv-5024 — **Joan B. Gottschall**, *Judge*.  
Before WOOD, SCUDDER, and ST. EVE, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Jonathan Okere and Stella Oluchi Okere are United States citizens who have spent years trying to get their eight-year-old son from Nigeria to the United States. The Okeres sued in 2018 and in an amended complaint asserted that, although their son had finally received a travel document from the State Department, he has been prevented from boarding a flight to the United States. The district court dismissed the Okeres' complaint for lack of subject matter jurisdiction and we affirm.

### **Ashley Nettles v. Midland Funding, LLC** No. 19-3327

Argued June 4, 2020 — Decided December 21, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-7766 — **Edmond E. Chang**, *Judge*.  
Before SYKES, *Chief Judge*, and EASTERBROOK, *Circuit Judge*.

SYKES, *Chief Judge*. After Ashley Nettles defaulted on her credit-card account, Midland Funding LLC acquired the debt. Midland sued Nettles in state court, and the parties entered a consent judgment requiring a monthly repayment plan with modest automatic draws from her bank account. The automatic draws ceased after three months when Midland's law firm went out of business. A Midland affiliate then sent Nettles a collection letter that overstated her remaining balance by about \$100. That prompted this suit under the Fair Debt Collection Practices Act ("FDCPA" or "the Act"), 15 U.S.C. §§ 1692 et seq... Midland moved to compel arbitration. The district judge denied the motion, concluding that the arbitration clause does not cover this claim. As permitted by the Federal Arbitration Act, Midland appealed, asking us to reverse and remand with instructions to grant the motion to compel arbitration... Because Nettles has not alleged that she suffered an injury from the claimed FDCPA violations, she has failed to plead facts to support her standing to sue. We VACATE the order denying Midland's motion to compel arbitration and REMAND with instructions to dismiss the case for lack of jurisdiction.

### **Hubert Hill v. Madison County, Illinois** No. 20-1307

Argued December 8, 2020 — Decided December 22, 2020

Case Type: Prisoner

Southern District of Illinois. No. 19-cv-00555-JPG — **J. Phil Gilbert**, *Judge*.  
Before EASTERBROOK, KANNE, and HAMILTON, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Hubert Hill filed a suit in state court, asking a judge to compel Randy Young, his prison's warden, to mail two complaints that Hill wanted to file in federal court. Young and Madison County, the other defendant, removed Hill's suit to federal court, as they were entitled to do because Hill based his claim on the First Amendment... The district judge dismissed the complaint for failure to state a claim on which relief may be granted, observing that Hill had not alleged that the prison prevented him from filing a federal suit. To the contrary, the judge stated, the district court's records show that the two complaints to which Hill referred had been filed. The judge gave Hill a second opportunity to present a viable claim, and when Hill did not amend his complaint the judge dismissed the suit with prejudice... Hill does not contest that decision. Instead he asks us to vacate this language from the judgment: "This dismissal shall count as one of [Hill's] allotted 'strikes' under the provisions of 28 U.S.C. § 1915(g)." ...Appeal is proper when a litigant suffers a legal injury from a decision. A strike notice causes such an injury whether or not it is conclusive. By disapproving that notice, we relieve Hill of a potential

obstacle to a future suit. The contested statement in the district court's judgment is vacated, and the equivalent statements in the opinions are disapproved.

**Federated Mutual Insurance Com. v. Coyle Mechanical Supply Inc.** No. 20-1207

Argued November 3, 2020 — Decided December 22, 2020

Case Type: Civil

Southern District of Illinois. No. 3:17-cv-00991 — **Staci M. Yandle**, *Judge*.

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

ST. EVE, *Circuit Judge*. This insurance dispute comes to us in an unusual procedural posture. The plaintiff in this case, Federated Mutual Insurance Company, sued its insured, Coyle Mechanical Supply Inc., seeking a declaration that it had no duty to defend or indemnify Coyle in a separate law-suit pending against Coyle in state court. After Coyle answered Federated's complaint, Federated moved for judgment on the pleadings. Coyle opposed the motion, and later moved for leave to file two supplemental briefs bringing new facts to the district court's attention. In Coyle's view, these new facts showed that the state-court action potentially fell within Federated's coverage obligations. The district court denied Coyle's motions to file supplemental briefs and granted Federated's motion for judgment on the pleadings. In granting Federated's motion, however, the court relied on some of the new facts that Coyle had unsuccessfully moved to introduce through supplemental briefs, while ignoring other facts—including facts that worked in Coyle's favor. Coyle now appeals. It points out, correctly, that the district court's handling of the case ran afoul of both local rules and the Federal Rules of Civil Procedure. Worse, the court's errors deprived Coyle of its right to present material factual evidence bearing on the central issue in the case. We reverse and remand so that Coyle may have a full and fair opportunity to defend against Federated's lawsuit.

**USA v. Carlos Meza** No. 19-2243

Argued September 24, 2020 — Decided December 23, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:17-CR-00281 — **Elaine E. Bucklo**, *Judge*.

Before EASTERBROOK, MANION, and KANNE, *Circuit Judges*.

MANION, *Circuit Judge*. Carlos Meza played two parts in a bizarre scam: stooge and swindler. Deep in debt, he fell for fraudulent international trading programs promising incredible profits. He then tricked people he knew into investing in these programs. The scam was a total hoax, with ridiculous promises. The district judge called the dupes "the most improbable victims" she had ever seen. Meza stood trial on two counts of wire fraud. The jury acquitted him on Count I and convicted him on Count II. The judge sentenced him to 19 months in prison and ordered him to pay \$881,500 in restitution. The only issues before us involve the amount of loss for purposes of the Sentencing Guidelines and restitution. Meza challenges the judge's aggregation of losses under the Guidelines and her restitution calculation. We affirm.

**Donald Trump v. Wisconsin Elections Commission** No. 20-3414

Submitted December 21, 2020 — Decided December 24, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 2:20-cv-1785 — **Brett H. Ludwig**, *Judge*.

Before FLAUM, ROVNER, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Two days after Wisconsin certified the results of its 2020 election, President Donald J. Trump invoked the Electors Clause of the U.S. Constitution and sued the Wisconsin Elections

Commission, Governor, Secretary of State, and several local officials in federal court. The district court concluded that the President's challenges lacked merit, as he objected only to the administration of the election, yet the Electors Clause, by its terms, addresses the authority of the State's Legislature to prescribe the manner of appointing its presidential electors. So, too, did the district court conclude that the President's claims would fail even under a broader, alternative reading of the Electors Clause that extended to a state's conduct of the presidential election. We agree that Wisconsin lawfully appointed its electors in the manner directed by its Legislature and add that the President's claim also fails because of the unreasonable delay that accompanied the challenges the President now wishes to advance against Wisconsin's election procedures.

**USA v. Jacqueline Tuanqui** No. 19-3054

Argued November 18, 2020 — Decided December 28, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:15-CR-00715(1) — **Andrea R. Wood**, *Judge*.

Before DIANE S. SYKES, *Chief Judge*; MICHAEL S. KANNE, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*.

**ORDER**

A jury convicted Jacqueline Tuanqui of Medicare fraud, in part because she paid for patient referrals in violation of the Medicare Anti-Kickback Statute, 42 U.S.C. §1320a-7b(b)(2)(A), while operating a home-healthcare company. Tuanqui challenges the sufficiency of the evidence, arguing that no rational jury could have concluded that her fixed monthly payments to a recruiter constituted illegal per-patient referral fees. But the jury, in rendering a guilty verdict, was not required to find that Tuanqui made kickback payments on a per-patient basis. Because the government presented ample evidence that Tuanqui paid money for patient referrals, we affirm.

**USA v. Hector Saul Castro-Aguirre, et al.** Nos. 19-1074, 19-1110, 19-1126, & 19-1188

Argued September 15, 2020 — Decided December 28, 2020

Case Type: Criminal

Southern District of Indiana, Indianapolis Division. No. 1:16-cr-00123-TWP-DML — **Tanya Walton Pratt**, *Judge*.

Before FLAUM, ROVNER, and WOOD, *Circuit Judges*.

WOOD, *Circuit Judge*. Illegal drugs often do not originate in the community where they are consumed, and so the drug business—like its legitimate counterparts—commonly includes a complex distribution network. That was true of the arrangement before us, which involved large quantities of cocaine and methamphetamine that moved throughout the southwestern and northeastern United States. Eventually the government caught up with the participants. Among those it indicted were four who chose to go to trial: Jose Manuel Carrillo-Tremillo, Hector Saul Castro-Aguirre, John Ramirez-Prado, and Rafael Rojas-Reyes. These four have joined in the present appeal, in which they challenge rulings the district court made at the guilt phase, as well as some of its sentencing decisions. For the most part, we find no reversible error. The only exception is Carrillo-Tremillo's conviction for conspiracy to launder money, which we set aside... We AFFIRM the convictions of all the defendants, except for Carrillo-Tremillo's conviction on Count 4 for conspiracy to launder money. We also AFFIRM the sentences of all the defendants, once again with the exception of Carrillo-Tremillo. We VACATE Carrillo-Tremillo's sentence in appeal No. 19-1110, and REMAND his case for further proceedings consistent with this opinion.

**Jose Rodriguez v. Jeffrey A. Rosen** No. 20-2190

Submitted December 22, 2020 — Decided December 29, 2020

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A200-142-031

Before FRANK H. EASTERBROOK, *Circuit Judge*; DIANE P. WOOD, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

#### ORDER

Jose Luis Rodriguez has been ordered removed to Mexico, his native country. He asked for cancellation of removal on the ground that a change of nations would cause hardship to his five-year-old daughter, a citizen of the United States. See 8 U.S.C. §1229b(b)(1)(D). Both an immigration judge and the Board of Immigration Appeals rejected that request, ruling that petitioner does not meet the statutory standard: “exceptional and extremely unusual hardship to ... [a] child, who is a citizen of the United States”. The sorts of economic and social hardships that petitioner asserts are ordinary, the IJ and BIA concluded, rather than “exceptional and extremely unusual”... The petition for review is denied to the extent it contends that the removal proceeding should have been closed and is dismissed for lack of jurisdiction to the extent it seeks review of the order denying petitioner’s request for cancellation of removal.

#### **USA v. Anthony Barrera** No. 20-1659

Argued December 15, 2020 — Decided December 29, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:19-CR-00439(1) — **Robert W. Gettleman**, *Judge*.  
Before KANNE, HAMILTON, and BRENNAN, *Circuit Judges*.

PER CURIAM. Anthony Barrera sold a handgun to a fellow gang member who turned out to be a confidential informant. Barrera pleaded guilty to unlawful possession of a firearm, 18 U.S.C. § 922(g)(1), and was sentenced to 110 months’ imprisonment—a term at the bottom of his guideline range. Critical to Barrera’s sentence was his post-arrest conduct, which included publicizing the informant’s identity on social media. Barrera, who has cancer, appeals his sentence as unreasonable. But the district court adequately explained the sentence in light of the 18 U.S.C. § 3553(a) factors, so we affirm.

#### **Kathleen O’Donnell v. Andrew Saul** No. 20-1481

Argued December 4, 2020 — Decided December 29, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17 cv 8931 — **Susan E. Cox**, *Magistrate Judge*.  
Before KANNE, WOOD, and SCUDDER, *Circuit Judges*.

KANNE, *Circuit Judge*. After Kathleen O’Donnell successfully challenged the denial of her application for disability benefits, her lawyer was awarded attorney fees under a series of statutes. But for reasons too complex for an introduction, the magistrate judge’s order awarding fees puts the attorney in the unenviable position of having to seek part of what he is owed from his disabled client rather than the Social Security Administration. He doesn’t want to do that, so he appealed. The question we face is whether the magistrate judge abused her discretion in entering the order and denying the attorney’s request that she alter it. The facts are complicated, but the answer is clear. The magistrate judge acted well within her discretion, so we affirm.

#### **USA v. Jermaine Stamps** No. 20-1336

Argued December 3, 2020 — Decided December 29, 2020

Case Type: Criminal

Western District of Wisconsin. No. 19-cr-00102 — **William M. Conley**, *Judge*.  
Before SYKES, *Chief Judge*, and FLAUM and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Jermaine Stamps pled guilty to possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1). Because his conduct involved more than 50 grams of methamphetamine, Stamps faced a statutory minimum 60-month prison sentence unless he qualified for the “safety-valve” provision of 18 U.S.C. § 3553(f). The district court sentenced Stamps to 60 months in prison—the lowest sentence possible—based on its finding that Stamps possessed a firearm in connection with his drug offense, therefore disqualifying him from safety-valve relief. There is no question that Stamps illegally owned a gun. The district court’s finding that Stamps possessed the gun in connection with his drug offense, however, was based on a legal error. Rather than evaluating whether Stamps had shown by a preponderance of evidence that the gun was unrelated to his drug offense, the district court found only that Stamps could not prove that it was “clearly improbable” that the gun was connected to his drug offense, imposing a higher burden on Stamps than is required for him to prove safety-valve eligibility. The district court’s error was not harmless. We thus vacate Stamps’s sentence and remand for resentencing.

**USA v. Eduardo Ramirez** No. 20-1006

Argued December 15, 2020 — Decided December 29, 2020

Case Type: Criminal

Northern District of Indiana, South Bend Division. No. 3:19CR45-001 — **Damon R. Leichty**, *Judge*.  
Before KANNE, HAMILTON, and BRENNAN, *Circuit Judges*.

PER CURIAM. Eduardo Ramirez pleaded guilty to possessing a firearm as a felon, 18 U.S.C. § 922(g)(1), and was sentenced to 72 months in prison, 15 months above the top of the guidelines range. Ramirez raises two arguments on appeal. First, he contends that the district court procedurally erred by not fully addressing his argument that he, at 44, was aging out of crime. Second, he argues that his sentence was substantively unreasonable because the court overemphasized the danger he created when he evaded arrest and the seriousness of his past convictions. In our view the district court appropriately handled the “aging out” argument as no data supported it, and the court reasonably justified its above-guidelines sentence. We therefore affirm.

**USA v. Becky L. Peterson** No. 19-3461

Argued October 6, 2020 — Decided December 29, 2020

Case Type: Criminal

Western District of Wisconsin. No. 3:18CR00102-001 — **James D. Peterson**, *Chief Judge*.  
Before DIANE P. WOOD, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

**ORDER**

Becky Peterson and her boyfriend both pleaded guilty to conspiring to distribute over 50 grams of methamphetamine, see 21 U.S.C. §§ 841(b)(1)(B), 846, and each received a sentence of 66 months’ imprisonment. Peterson challenges her sentence as procedurally unsound. She argues that the district court wrongly thought itself obligated under 18 U.S.C. § 3553(a)(6) to impose the same sentence on her as it did on her co-defendant. By focusing on parity with his sentence, she argues, the court misunderstood § 3553(a)(6)’s command to avoid unwarranted sentencing disparities between similarly situated offenders nationally and overlooked important differences between their cases. If that is what the district court had done, then she would have a point. But reading the record as a whole, we are satisfied that the district court did not make such an error. Instead, it understood its discretion and adequately explained, on the basis of an individualized assessment of the factors under § 3553(a), why Peterson deserved the same term of imprisonment as her boyfriend. We therefore affirm.

**Paula McAllister v. Innovation Ventures, Inc.** No. 20-1779

Argued November 13, 2020 — Decided December 30, 2020

Case Type: Civil

Northern District of Indiana, South Bend Division. No. 17-CV-00867 — **Jon E. DeGuilio**, *Judge*.

Before FLAUM, ROVNER, and BRENNAN, Circuit Judges.

FLAUM, *Circuit Judge*. Plaintiff Paula McAllister suffered serious injuries in a car accident in June 2016. In the following months, her treating physicians repeatedly concluded she could not yet return to work for her employer, defendant Innovation Ventures, LLC. Innovation provided her with medical leave and short-term disability benefits while she sought treatment. Once it became clear that McAllister likely could not return to work until at least February 2017, Innovation terminated McAllister. McAllister sued Innovation. As relevant on appeal, she claimed Innovation failed to accommodate her during the summer of 2016 in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 *et seq.* Because we agree with the district court that McAllister was not a “qualified individual” under the ADA, we affirm.

**Kirk Szopinski v. John Koontz** No. 20-1615

Submitted December 7, 2020 — Decided December 30, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 18-CV-437-JPS — **J. P. Stadtmueller**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Kirk Szopinski, a Wisconsin prisoner, swallowed pieces of his eyeglasses after prison staff did not respond to his threats to do so. He sued several nurses and correctional officers, alleging that they violated the Eighth Amendment by failing to prevent his injuries or provide adequate medical care afterward. See 42 U.S.C. § 1983. The district court entered summary judgment for the defendants, and we affirm.

**Kimanna Whitehead v. Andrew M. Saul** No. 20-1528

Submitted December 10, 2020 — Decided December 30, 2020

Case Type: Civil

Southern District of Indiana, Evansville Division. No. 3:19-cv-00071-MPB-RLY — **Matthew P. Brookman**, *Magistrate Judge*.

Before DIANE P. WOOD, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Kimanna Whitehead seeks Social Security disability benefits based on a host of physical impairments, including vascular disease, a hernia, and chronic pain. An administrative law judge denied her application, concluding, as relevant to this appeal, that the vascular disease was not a severe impairment and that she could do sedentary work. The district court affirmed. On appeal, Whitehead contends that the ALJ erred by (1) failing to explain why her vascular disease did not prevent her from sedentary work, and (2) improperly discounting opinions from her treating physician and a consulting physician. Because Whitehead lacks evidence of limitations caused by her vascular disease, and the ALJ’s conclusion that she could work is supported by substantial evidence, 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](#).