

## **Opinions for the week of February 22 – February 26, 2020**

### **Clint Krislov v. Karen Yarbrough** No. 20-1928

Argued February 18, 2021 — Decided February 22, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 20 C 469 — **Virginia M. Kendall**, *Judge*.

Before EASTERBROOK, WOOD, and ST. EVE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. In March 2020 Clinton Krislov sought to run in the Democratic primary for a position on the Supreme Court of Illinois. To get on the ballot he needed 5,050 valid signatures, or 0.4% of the votes cast in the same district for the same party's candidate in the most recent gubernatorial election. 10 ILCS 5/7-10(h). He submitted about 9,500 signatures, but many were ruled invalid and his total fell about 100 short. (Six other candidates passed the mark.) Krislov could have protested the election officials' decision in state court, which is required by law to render a prompt decision. 10 ILCS 5/10-10.1(a). Instead he sued in federal court, contending that Illinois violated the Constitution by not giving him the benefit of the doubt... The district court saw this as a state-law challenge to a state-law requirement, which Krislov had forfeited by not using his state remedies. The judge observed that "close enough for government work" is not an available doctrine in Illinois, which requires candidates to submit all of the required signatures... Because the 2020 election season is over, Krislov is entitled to decision in federal court only if the legal issues that arose in 2020 are both capable of repetition with respect to Krislov personally and bound to evade judicial review if they recur. He has not satisfied either of these requirements, so this litigation is moot. We vacate the judgment of the district court and remand with instructions to dismiss for lack of a justiciable controversy.

### **USA v. Martell Ford** No. 19-3486

Submitted October 29, 2020 — Decided February 22, 2021

Case Type: Criminal

Eastern District of Wisconsin. No. 2:18-CR-00182-JPS-3 — **J.P. Stadtmueller**, *Judge*.

Before FLAUM, KANNE, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Defendant Martell Ford pleaded guilty to armed robbery of a taxi driver, brandishing a firearm in furtherance of that crime of violence, and attempted armed robbery of a gas station. He was sentenced to 114 months in prison. He challenges his below-guideline sentence, arguing that the district court made a guideline error by imposing a six-level enhancement under U.S.S.G. § 2B3.1(b)(2)(B) to the gas station attempt because his co-defendant, Marquel Johnson, "otherwise used" a firearm. We affirm.

### **USA v. Kevin Walker** No. 20-2489

Submitted February 23, 2021 — Decided February 23, 2021

Case Type: Criminal

Southern District of Illinois. No. 15-CR-30068-NJR-01 — **Nancy J. Rosenstengel**, *Chief Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

## **ORDER**

Kevin Walker seeks to challenge the district court's revocation of his supervised release, as well as the 18-month prison sentence it imposed. His attorney moves to withdraw, arguing that the appeal is frivolous. The Constitution does not guarantee counsel in a revocation proceeding if the defendant concedes the alleged violations and does not contest revocation or assert substantial and complex arguments in mitigation. *See Gagnon v. Scarpelli*, 411 U.S. 778, 787 (1973); *United States v. Eskridge*,

445 F.3d 930, 932–33 (7th Cir. 2006). But Walker did contest revocation, and when a defendant does so our practice is to apply the safeguards of *Anders v. California*, 386 U.S. 738 (1967), in reviewing counsel’s motion to withdraw. See *United States v. Wheeler*, 814 F.3d 856, 857 (7th Cir. 2016). Counsel’s brief explains the nature of the case and addresses the issues that an appeal of this kind might involve. Because counsel’s analysis appears thorough, and Walker did not respond to the motion, we limit our review to the subjects counsel discusses. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). We conclude that the appeal is frivolous, grant the motion, and dismiss the appeal.

**USA v. Lynard Joiner** No. 20-2361

Argued January 26, 2021 — Decided February 23, 2021

Case Type: Criminal

Central District of Illinois. No. 16-cr-30016 — **Sue E. Myerscough**, *Judge*.

Before SYKES, *Chief Judge*, and EASTERBROOK and KIRSCH, *Circuit Judges*.

KIRSCH, *Circuit Judge*. Lynard Joiner appeals the district court’s denial of his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). On appeal, he raises one issue: whether the district court procedurally erred by not specifically addressing his argument that his skin color “elevates his risk from COVID-19.” In the district court, Joiner supported this contention by citing to three articles discussing disparities in health care outcomes based on race. Those articles, however, pointed to a multitude of societal factors that are not relevant to Joiner’s individual situation in federal prison. Extrapolating direct relevance to Joiner’s situation requires leaps of logic that do not necessarily follow from the broad societal information he presented. Without any factual basis tying these broader societal concerns to Joiner’s individual situation, the district court was not required to address the argument. Thus, because the district court did not procedurally err, we affirm.

**Jennifer Karr v. Andrew Saul** No. 20-1939

Argued January 26, 2021 — Decided February 23, 2021

Case Type: Civil

Northern District of Indiana, Fort Wayne Division. No. 1:19-cv-179 — **Philip P. Simon**, *Judge*.

Before SYKES, *Chief Judge*, and EASTERBROOK and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Jennifer Karr applied for Social Security disability benefits based on her complaints of chronic lower-back pain and other ailments. An administrative law judge concluded that Karr was not disabled because she still could perform sedentary work with some restrictions. The district court upheld that determination. On appeal Karr maintains that the ALJ improperly discounted a statement from her treating neurosurgeon that she could not sit, stand, or walk for sustained periods. But because the ALJ’s decision was supported by substantial evidence, we affirm.

**Paramjit Singh v. Monty Wilkinson** No. 20-1660

Submitted February 23, 2021 — Decided February 23, 2021

Case Type: Agency

Petition for Review of Orders from the Board of Immigration Appeals. No. A205-935-074

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

**ORDER**

Paramjit Singh, a citizen of India, challenges the denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture. He maintains that he fears harm based on his political affiliation if he returns to India. Because substantial evidence supports the agency’s determination, we deny his petition for review.

**First Midwest Bank v. City of Chicago** No. 18-3049

Argued December 10, 2019 — Decided February 23, 2021

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 9665 — **Harry D. Leinenweber**, *Judge*.

Before SYKES, *Chief Judge*, and KANNE, *Circuit Judge*.

SYKES, *Chief Judge*. Patrick Kelly shot his friend Michael LaPorta in the head during an argument at the end of a night of drinking together. LaPorta's injuries left him severely and permanently disabled. Kelly, a Chicago police officer, was off duty and not acting under color of state law at the time of the shooting. LaPorta nevertheless sued the City of Chicago under 42 U.S.C. § 1983, which provides a federal remedy against state actors who deprive others of rights secured by the federal Constitution and laws. He sought damages for the injuries he suffered at Kelly's hands. The theory of the case was novel. LaPorta claimed that the City had inadequate policies in place to prevent the shooting—or more precisely, that the City's policy failures caused Kelly to shoot him. He identified several policy shortcomings: the failure to have an "early warning system" to identify officers who were likely to engage in misconduct, the failure to adequately investigate and discipline officers who engage in misconduct, and the perpetuation of a "code of silence" that deters reporting of officers who engage in misconduct. A jury found the City liable and awarded \$44.7 million in damages. The City moved for judgment as a matter of law, and the district court denied the motion. We reverse.

**USA v. Mario Leachman** No. 20-2607

Submitted February 23, 2021 — Decided February 24, 2021

Case Type: Criminal

Central District of Illinois. No. 16-cr-30042 — **Sue E. Myerscough**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge* DAVID F. HAMILTON, *Circuit Judge* THOMAS L.

KIRSCH II, *Circuit Judge*

**ORDER**

Mario Leachman, a federal inmate with significant medical conditions, moved for compassionate release based on his susceptibility to complications from COVID-19. See 18 U.S.C. § 3582(c)(1)(A). The district court denied his request, concluding that he had not shown sufficiently compelling reasons to justify release. Because the court did not abuse its discretion in denying the motion, we affirm.

**Jehan Mir v. State Farm Mutual Automobile Insurance** No. 20-1800

Submitted February 23, 2021 — Decided February 24, 2021

Case Type: Civil

Central District of Illinois. No. 1:19-cv-1225 — **Joe Billy McDade**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L.

KIRSCH II, *Circuit Judge*.

**ORDER**

Jehan Zeb Mir, a California resident, got into a car accident in Los Angeles and filed a claim with his Illinois-headquartered insurer. The insurer denied the claim as it related to underinsured-motorist benefits. After disagreements with Mir during the mandatory arbitration process, the insurer petitioned the California Superior Court to compel Mir's deposition. Mir violated several court orders to attend the deposition, and the case was eventually dismissed. While the case was pending, though, Mir sued the insurer in the Central District of Illinois for breach of contract and racial discrimination. The district court granted the insurer's motion to dismiss based on claim preclusion, issue preclusion, and other defenses.

Because federal court was the wrong forum for Mir's breach-of-contract claims, and Mir's conclusory allegations did not state any other claim, we affirm.

**USA v. Robert Marshall** No. 20-1152

Submitted February 23, 2021 — Decided February 24, 2021

Case Type: Criminal

Eastern District of Wisconsin. No. 18-CR-148 — **William C. Griesbach**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

**ORDER**

Robert Marshall sold drugs to a confidential informant, pleaded guilty to conspiring to distribute heroin, 21 U.S.C. §§ 841(b)(1)(B), 846, 18 U.S.C. § 2, and was sentenced to 18 months in prison and four years of supervised release. Marshall appealed, but his appointed counsel asserts that all potential arguments are frivolous and moves to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel's brief appears thorough; it explains the nature of the case and addresses the issues that an appeal of this kind may be expected to involve. We notified Marshall of counsel's motion, *see* CIR. R. 51(b), and he did not respond. We therefore limit our review to the subjects counsel has discussed... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

**Robert Alexander v. Shannon Withers** No. 20-1120

Submitted February 23, 2021 — Decided February 24, 2021

Case Type: Prisoner

Southern District of Illinois. No. 17-cv-545-NJR — **Nancy J. Rosenstengel**, *Chief Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

**ORDER**

Robert Alexander, who committed crimes in Georgia while on parole for a federal conviction, challenged the revocation of his parole in a petition under 28 U.S.C. § 2241. The district court dismissed it, and, because Alexander's notice of appeal is untimely, we lack jurisdiction over the appeal... DISMISSED

**Jamesetta McFarland-Lawson v. Matt Ammon** No. 19-2662

Submitted April 29, 2020 — Decided February 24, 2021

Case Type: Civil

Eastern District of Wisconsin. No. 16-CV-685 — **David E. Jones**, *Magistrate Judge*.

Before ILANA DIAMOND ROVNER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

**ORDER**

Jamesetta McFarland-Lawson appeals the dismissal of her suit against her former employer, the United States Department of Housing and Urban Development (HUD), alleging employment discrimination based on her disability, race, gender, and veteran status. Because the district court erred in dismissing for lack of jurisdiction and in resolving a factual dispute at the motion to dismiss stage, we affirm in part, vacate in part, and remand for further consideration.

**Calvin Jackson v. Regions Bank** No. 20-2624

Submitted February 23, 2021 — Decided February 26, 2021

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:19-cv-01019-JMS-MPB — **Jane Magnus-Stinson**, *Chief Judge*.  
Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

#### **ORDER**

Calvin Jackson appeals the district court's entry of summary judgment for Regions Bank on his claim that the bank violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, by contacting him about an overdrawn account without his consent. Because the district court correctly ruled that one of Jackson's claims was foreclosed by our recent decision in *Gadelhak v. AT&T Services, Inc.*, 950 F.3d 458 (7th Cir. 2020), and that he had abandoned the other, we affirm the judgment.

#### **USA v. Willie Jones** No. 20-2110

Submitted February 23, 2021 — Decided February 26, 2021

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 11 CR 469-1 — **Virginia M. Kendall**, *Judge*.  
Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

#### **ORDER**

Willie Jones, a federal inmate suffering serious medical conditions, sought compassionate release under 18 U.S.C. § 3582(c)(1)(A) based on his susceptibility to complications from COVID-19. The district court denied his request, concluding that he had not shown sufficiently compelling reasons to justify release. The court did not abuse its discretion in denying the motion, so we affirm.

#### **William Richter v. Wexford Health Sources, Inc.** No. 20-1742

Submitted February 23, 2021 — Decided February 26, 2021

Case Type: Prisoner

Northern District of Illinois, Eastern Division. No. 19 C 4681 — **Gary Feinerman**, *Judge*.  
Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

#### **ORDER**

William Richter, an Illinois inmate, appeals the district court's dismissal of his complaint, principally contesting the denials of his motions to recruit counsel. Because the district court reasonably found that Richter could proceed without counsel and had in any case abused the privilege of recruited counsel, we affirm.

#### **Roger Day, Jr. v. Subsecretario Del Sistema Penitenciario Federal** No. 20-1555

Submitted February 23, 2021 — Decided February 26, 2021

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:19-cv-00587-JPH-MJD — **James Patrick Hanlon**, *Judge*.  
Before FRANK H. EASTERBROOK, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*; THOMAS L. KIRSCH II, *Circuit Judge*.

#### **Order**

Roger Day, who is serving a prison sentence in the United States, was apprehended in Mexico in 2008 and confined there until his extradition in 2010. Contending that he was tortured while in Mexico, he seeks damages under the Torture Victim Protection Act, 28 U.S.C. §1350 note, and other statutes. After

screening under 28 U.S.C. §1915A, the district court dismissed the complaint on the ground that it lacks personal jurisdiction over any of the defendants... As a suit against Mexico, it is outside the subject-matter jurisdiction of the federal courts under the Foreign Sovereign Immunities Act. 28 U.S.C. §1604. One exception to that bar is for certain suits against nations that have been designated as sponsors of terrorism, see 28 U.S.C. §1605A(a), but Mexico is not on that list. None of the other exceptions is even arguably applicable... AFFIRMED

**Daphne Smith v. RecordQuest LLC** No. 19-2084

Argued January 13, 2021 — Decided February 26, 2021

Case Type: Civil

Eastern District of Wisconsin. No. 2:19-cv-00025 — **Lynn Adelman**, *Judge*.

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

BRENNAN, *Circuit Judge*. Federal courts defer to state courts on state-law issues, but not without reservation. In this case, Daphne Smith claimed RecordQuest, LLC charged excessive fees when satisfying her request for health records. So Smith sued, alleging violation of Wisconsin's health records statute and unjust enrichment. The district court dismissed Smith's claims. Soon after, the Wisconsin Court of Appeals decided a case in which it expressly disagreed with the district court's analysis of Smith's statutory claim. Although we have our own views on the proper interpretation of Wisconsin's health records statute, we defer to the decision of the Wisconsin Court of Appeals in these circumstances. We reverse the district court's judgment on Smith's statutory claim but affirm on different grounds the district court's judgment on Smith's unjust enrichment claim.

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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](#).