Opinions for the week of January 20 – January 24, 2020

Sarah Steffek v. Client Services, Incorporated No. 19-1491
Argued December 11, 2019 — Decided January 21, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 1:18-cv-00160-WCG — **William C. Griesbach**, *Judge*.
Before FLAUM, HAMILTON, and BARRETT, *Circuit Judges*.

HAMILTON, *Circuit Judge*. The Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., requires the collector of a consumer debt to send the consumer-debtor a written notice containing, among other information, "the name of the creditor to whom the debt is owed." § 1692g(a)(2). Plaintiffs Sarah Steffek and Jill Vandenwyngaard received form notices from defendant Client Services, Inc. subject to this requirement. On each, a header stated only "RE: CHASE BANK USA, N.A." with an account number, and the letters continued: "The above account has been placed with our organization for collections." The letters did not say whether Chase Bank still owned the accounts in question or instead had sold the debts to another entity. Steffek and Vandenwyngaard sued Client Services for violating § 1692g(a)(2), arguing that these letters failed to identify clearly the current holder of the debt. The district court certified a plaintiff class of Wisconsin debtors who received substantially identical notices from Client Services. The court then found that undisputed facts showed that Chase Bank was actually the current creditor and granted summary judgment to Client Services. *Steffek v. Client Servs., Inc.*, No. 1:18-cv-00160-WCG, 2019 WL 1126079, at *5 (E.D. Wis. Mar. 12, 2019). The actual identity of the current creditor, however, does not control the result. Regardless of who then owned the debts, the question under the statute is whether the letters identified the then-current creditor clearly enough that an unsophisticated consumer could identify it without guesswork. See *Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317, 321 (7th Cir. 2016). Undisputed facts show that the notices here failed that test. We therefore reverse and remand for entry of summary judgment in the plaintiffs' favor as to liability.

USA v. Ronald Van Den Heuvel No. 19-1236
Submitted January 21, 2020 — Decided January 21, 2020
Case Type: Criminal
Eastern District of Wisconsin. No. 17-CR-160 — **William C. Griesbach**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Ronald Van Den Heuvel pleaded guilty to one count of wire fraud. *See* 18 U.S.C. §§ 1343, 1349. He received a sentence of 90 months in prison, below the recommended guidelines range of 108 to 135 months and the 20-year statutory maximum. He also was sentenced to three years' supervised release and ordered to pay restitution of about $9.5 million. In his plea agreement, he waived his right to appeal both his conviction and sentence, but he has nonetheless appealed. His appointed lawyer asserts that Van Den Heuvel no longer wishes to pursue the appeal; Van Den Heuvel has not, however, submitted his consent to a voluntary dismissal. Counsel therefore moves to withdraw under *Anders v. California*, 386 U.S. 738 (1967), stating that the appeal is frivolous. Van Den Heuvel has not responded. *See* CIR. R. 51(b). Because Van Den Heuvel told counsel that he does not want his guilty plea set aside, counsel correctly forgoes discussion of possible challenges to the voluntariness of the plea or the adequacy of the plea colloquy. *See United States v. Konczak*, 683 F.3d 348, 349 (7th Cir. 2012); *United States v. Knox*, 287 F.3d 667, 670–71 (7th Cir. 2002). But counsel does discuss whether Van Den Heuvel could challenge his sentence and whether the government breached the plea agreement. We limit our review to these questions because counsel's brief explains the nature of this case and addresses the types of issues that we would expect an appeal of this sort to involve… We GRANT counsel's motion to withdraw and DISMISS the appeal.

Neal Preston v. Midland Credit Management No. 18-3119
Argued May 29, 2019 — Decided January 21, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:18-cv-01532 — **Sara L. Ellis**, *Judge*.
Before RIPPLE, ROVNER, and BARRETT, *Circuit Judges*.
ROVNER, *Circuit Judge*, concurring.

RIPPLE, *Circuit Judge*. Neal Preston brought this putative class action in which he claimed that Midland Credit Management, Inc. ("Midland"), had sent him a collection letter that violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692–1692p. Specifically, he claimed that the words "TIME SENSITIVE DOCUMENT" on the envelope violated § 1692f(8)'s prohibition against "[u]sing any language or symbol," other than the defendant's business name or address, on the envelope of a debt collection letter. He also claimed that these words, and other language employed in the body of the letter, were false and deceptive, in violation of § 1692e(2) and (10). On Midland's motion, the district court dismissed the complaint. The district court noted that the plain language of § 1692f(8) prohibited any writing on the envelope, but nevertheless concluded that there was a benign-language exception to the statutory language. Because the language "TIME SENSITIVE DOCUMENT" did not create any privacy concerns or expose Mr. Preston to embarrassment, the district court held that it fell within this exception. The district court found no merit with respect to Mr. Preston's claims under § 1692e. We now reverse in part and affirm in part.

Ryan Krueger v. State of Wisconsin No. 19-2609
Submitted January 21, 2020 — Decided January 22, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 19-C-1148 — **William C. Griesbach**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge.*

ORDER
Ryan Krueger sued the state of Wisconsin and a family-court commissioner, alleging violations of his right—which he says arises under the Americans with Disabilities Act—to have an "advocate" accompany him during state-court proceedings. The district court dismissed his complaint at screening, concluding that Krueger failed to state a claim upon which relief could be granted. *See* 28 U.S.C. § 1915(e)(2)(B). Because intervening events have rendered the appeal moot, we vacate the district court's judgment and remand with instructions to dismiss.

Louisa Rasheed v. Indiana Department of Child Services No. 19-2456
Submitted January 21, 2020 — Decided January 22, 2020
Case Type: Civil
Southern District of Indiana, New Albany Division. No. 4:18-cv-00156-RLY-DML — **Richard L. Young**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

Order
Louisa Rasheed contends that a state judge wrongfully removed her son from her care as a result of perjury committed by employees of "Floyed County CPS". (The child-care agency located in Floyd County is part of the state's Department of Child Services, which we have substituted as the proper defendant. See *Townsley v. Marion County Department of Child Services*, 848 N.E.2d 684, 686 n.5 (Ind. App. 2006).) She sought relief under 42 U.S.C. §1983, but the district court held that states and their agencies are not "persons" for the purpose of that statute. See 2019 U.S. Dist. LEXIS 117714 (S.D. Ind. July 16,

2019), relying on *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989). After dismissing the federal claim, the district court declined to entertain state-law theories… AFFIRMED

USA v. James Assad No. 19-2077
Submitted January 21, 2020 — Decided January 22, 2020
Case Type: Criminal
Central District of Illinois. No. 07-30099-001 — **Sue E. Myerscough**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
James Assad pleaded guilty to possession with the intent to distribute methamphetamine. *See* 21 U.S.C. § 841(a)(1), (b)(1)(C). After completing his term of incarceration, he began serving six years of supervised release. Following violations of the conditions of release, the district court revoked his supervised release three times, twice in 2018 and once in 2019. He now appeals the 12-month prison sentence that he received for the 2019 violation. His lawyer, however, moves to withdraw from the appeal, arguing that it is frivolous. *See Anders v. California*, 386 U.S. 738 (1967). We grant the motion to withdraw and dismiss the appeal.

USA v. Christopher L. Hamilton No. 19-1914
Submitted January 21, 2020 — Decided January 22, 2020
Case Type: Criminal
Central District of Illinois. No. 96-20044 — **Harold A. Baker**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Christopher Hamilton, who had been convicted of serious drug charges, jointly moved with the government under the First Step Act to reduce his life sentence to time served. The district court granted the motion and, over Hamilton's objection, imposed eight years of supervised release. Hamilton appeals, arguing for the first time that the First Step Act mandates the district court to conduct a plenary resentencing hearing. We affirm the judgment.

Helen Overton v. Andrew M. Saul No. 19-1873
Argued December 18, 2019 — Decided January 22, 2020
Case Type: Civil
Central District of Illinois. No. 4:17-cv-04259-SLD-JEH — **Sara Darrow**, *Chief Judge*.
Before DAVID F. HAMILTON, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, JR., *Circuit Judge.*

ORDER
Helen Overton applied for Social Security disability benefits based on a host of impairments, eventually including chronic migraines. An administrative law judge denied Overton's application on the ground that, despite her many severe impairments (not including migraines), she retained the residual functional capacity ("RFC") to perform light work with some limitations. The district court upheld that decision. On appeal, Overton winnows her arguments, contending only the ALJ failed to properly consider the limiting effects of her migraines. Because the ALJ's decision was supported by substantial evidence, we affirm.

PCA Capital Partners, Inc. v. G&M International, LLC No. 19-1575
Submitted January 21, 2020 — Decided January 22, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 16 C 11470 — **John Z. Lee**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
G&M International, LLC, defaulted on a financing agreement with PCA Capital Partners. PCA (at the time, PCS Receivables Corporation) sued G&M and its manager for breach of contract and sought the outstanding balance. The defendants raised several affirmative defenses in response, but the district court rejected them and entered summary judgment for PCA. We affirm because, regarding the two affirmative defenses G&M presses on appeal, G&M has not established that PCA waived its breach of contract claim or should be equitably estopped from suing over the breach.

USA v. Jose Trinidad Garcia, Jr., Alfonso Pineda-Hernandez Nos. 18-1890 & 18-2261
Argued September 20, 2019 — Decided January 22, 2020
Case Type: Criminal
Southern District of Indiana, Indianapolis Division. No. 1:15CR00200 — **Jane Magnus-Stinson**, *Chief Judge*.
Before WOOD, *Chief Judge*, and MANION and ROVNER, *Circuit Judges*.

MANION, *Circuit Judge*. Police found over 80 grams of red methamphetamine in a car. The ensuing investigation— dubbed "Code Red"—lead to the indictment of 12 people for a drug-distribution conspiracy. Eleven, including Garcia, pleaded guilty. Garcia argues the judge improperly enhanced his sentence based on a prior drug conviction. We agree with Garcia. Pineda-Hernandez alone stood trial. He claims multiple errors involving an alleged language-interpretation debacle. He also argues the judge improperly augmented his sentence based on his role. We disagree with Pineda-Hernandez… Garcia's prior conviction cannot enhance the mandatory minimum for his sentence. We VACATE Garcia's sentence and REMAND for resentencing. Regarding Pineda-Hernandez, we AFFIRM.

USA v. Ismael Rangel-Rodriguez, Eleazar Hernandez-Perdomo, Nos. 19-1964 & 19-2113
Argued December 6, 2019 — Decided January 23, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 18-cr-744 — **Elaine E. Bucklo**, *Judge*.
Northern District of Illinois, Eastern Division. No. 18-cr-581 — **Matthew F. Kennelly**, *Judge*.
Before ROVNER, BRENNAN, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Ismael Rangel-Rodriguez and Eleazar Hernandez-Perdomo are both Mexican citizens who have never been lawfully admitted to the United States. Several years ago, immigration authorities served both of them with Notices to Appear ("NTA") for removal proceedings. These NTAs—like many—were defective because they did not list a date or time for an initial removal hearing. For different reasons, Rangel and Hernandez were not present at their respective removal hearings, and the immigration judges ordered them removed *in absentia*. United States Immigration and Customs Enforcement ("ICE") eventually enforced these orders and removed both men to Mexico, but they each illegally returned to the United States and were indicted for illegal reentry in violation of 8 U.S.C. § 1326(a). In light of the Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), they moved to dismiss their respective indictments by collaterally attacking their underlying removal orders under 8 U.S.C. § 1326(d) based on the defective NTAs. The district courts denied their motions, and each defendant entered a conditional plea of guilty to the illegal reentry charge and reserved his right to appeal the denial of the motion to dismiss the indictment. We have consolidated the cases for decision. We

conclude that Rangel and Hernandez have failed to demonstrate that they satisfy any of the requirements set out in § 1326(d). We therefore affirm the judgments.

Michael Gibbons v. Andrew M. Saul No. 19-1885
Argued December 18, 2019 — Decided January 23, 2020
Case Type: Civil
Central District of Illinois. No. 17-2224 — **Eric I. Long**, *Magistrate Judge*.
Before DAVID F. HAMILTON, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
In 2011, a sheet of ice struck Michael Gibbons in the head and exacerbated a preexisting neck injury. By 2013, the pain in his neck, shoulders, and arms had worsened to the point he could no longer work. He applied for disability benefits. An administrative law judge determined Gibbons had several severe impairments related to neck and shoulder pain but nonetheless denied benefits, concluding Gibbons could still perform light work with limitations. The ALJ's findings were based on the opinion of an agency physician who reviewed Gibbons's application for benefits but did not examine him. Because that opinion had several flaws the ALJ did not address, and because the ALJ did not support her decision with other medical evidence, the ALJ's decision was not based on substantial evidence. The ALJ further erred by relying on her own lay interpretation of medical findings to discount a treating surgeon's opinion Gibbons could never reach overhead. We therefore vacate the ALJ's decision and remand to the agency for further proceedings.

Jorge Baez-Sanchez v. William Barr No. 19-1642
Argued January 15, 2020 — Decided January 23, 2020
Case Type: Agency
Petition for Review of a Decision of the Board of Immigration Appeals. No. A206 017 181.
Before BAUER, EASTERBROOK, and HAMILTON, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Jorge Baez-Sanchez, a citizen of Mexico, is removable as a criminal alien. His conviction for aggravated battery of a police officer renders him inadmissible. 8 U.S.C. §1182(a)(2)(A)(i)(I). He applied to the Department of Homeland Security for a U visa, which would allow him to remain in the United States. The U visa is available to some admissible aliens who have been victims of crime in this country. Baez-Sanchez asked the immigration judge assigned to his case to grant him a waiver of inadmissibility, which would allow the Department of Homeland Security to rule favorably on his visa application. A statute, 8 U.S.C. §1182(d)(3)(A)(ii), permits the Attorney General to waive an alien's inadmissibility. Exercising that authority, an immigration judge twice granted the request for waiver. After the initial grant, the Board of Immigration Appeals remanded with instructions to consider an additional issue. The immigration judge did so and reaffirmed her decision. On appeal to the Board, the Department of Homeland Security contended that the immigration judge erred in finding that Baez-Sanchez had shown the extraordinary circumstances needed to justify a waiver and had abused her discretion in light of Baez-Sanchez's criminal history and other negative equities. The Board did not address either contention… Because the Board had not addressed any other question, principles of administrative law meant that we could not do so either. See *SEC v. Chenery Corp*., 318 U.S. 80, 87–88 (1943). We remanded with instructions to consider two possibilities that the Attorney General had raised in defense of the Board's decision: first, that some statute, regulation, or reorganization plan transferred to the Secretary the Attorney General's power to waive inadmissibility; second, that the power to waive inadmissibility may be exercised only in favor of aliens who apply from outside the United States. 872 F.3d at 856–57. We added that the Board also (or perhaps instead) could "decide whether to exercise in favor of, or against, Baez-Sanchez whatever discretion the Attorney General possesses." *Id*. at 857. What happened next beggars belief. The Board of Immigration Appeals wrote, on the basis of a footnote in a letter the Attorney General issued after our opinion, that our decision is incorrect... Baez-Sanchez has

filed a second petition for review… The petition for review is granted, and the Board's decision is vacated. This leaves the immigration judge's decision in force. The Executive Branch must honor that decision, which grants Baez-Sanchez a waiver of inadmissibility so that he may seek a U visa from the Department of Homeland Security.

Thomas Ames v. Morgan Hudson No. 19-1035
Submitted January 21, 2020 — Decided January 23, 2020
Case Type: Prisoner
Northern District of Illinois, Eastern Division. No. 16 C 9213 — **Rubén Castillo**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Thomas Ames, an inmate, was abruptly discharged from his job in the kitchen at Stateville Correctional Center in Crest Hill, Illinois, after he filed a grievance against a corrections officer. Ames brought a First Amendment action against that officer (and another officer), asserting that they dismissed him in retaliation for his grievance. The district court granted summary judgment for the defendants, concluding that Ames had not produced any evidence that would allow a jury to return a judgment in his favor. We affirm.

Salih Baker v. John Fermon No. 18-2484
Submitted January 21, 2020 — Decided January 23, 2020
Case Type: Prisoner
Central District of Illinois. No. 16-cv-1358 — **Joe Billy McDade**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
After a police officer thought that Salih Baker swallowed a small bag of drugs, he arrested Baker. A judge ordered that probable cause justified detaining Baker without bond for obstruction of justice, and later a grand jury indicted Baker on that charge. A doctor reported that it could take up to a week for the bag to pass from Baker's system. After a week in an observation cell at the jail, no bag was recovered, and Baker was released from observation, though he remained in jail on unrelated charges. He now sues the officer and his employer under 42 U.S.C. § 1983 for an unreasonable search and seizure in violation of the Fourth Amendment and malicious prosecution under Illinois law. The district court entered summary judgment for defendants. The officer had probable cause to arrest Baker, qualified immunity blocks any claim about later detention, and the indictment defeats the malicious-prosecution claim. Thus, we affirm.

USA v. Albert Dowthard No. 18-2088
Argued December 17, 2019 — Decided January 23, 2020
Case Type: Criminal
Northern District of Illinois, Western Division. No. 3:16-cr-50061-1 — **Philip G. Reinhard**, *Judge*.
Before RIPPLE, SYKES, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Albert Dowthard pleaded guilty to being a felon in possession of a firearm. 18 U.S.C. § 922(g). Because of his prior state convictions, he was sentenced under the Armed Career Criminal Act (ACCA) to 186 months in prison. *See id.* § 924(e). Although he raised no such argument in the district court, he now contends that *Rehaif v. United States*, 139 S. Ct. 2191 (2019), invalidates his plea because he was not informed that knowledge of his status as a previously convicted felon was an element of his § 922(g) charge. Alternatively, he disputes his classification as an Armed Career Criminal,

arguing that two of the four prior offenses used to sentence him do not qualify as violent felonies. Dowthard has the burden of showing that a misunderstanding of the elements of his offense affected his substantial rights, yet he does not even *assert* that he would not have pleaded guilty if he had properly understood the elements. Thus, he has failed to carry that burden. And his prior Illinois conviction for attempted aggravated domestic battery has as an element the attempted use of physical force and therefore counts as a "violent felony" under the ACCA. With that conviction and the two he does not challenge, he has the three necessary predicates for an enhanced sentenced under § 924(e). Accordingly, we affirm both his conviction and his sentence.

Marshaun Boykin v. Steve Sandholm No. 18-1154
Argued December 10, 2019 — Decided January 23, 2020
Case Type: Prisoner
Northern District of Illinois, Western Division. No. 3:16-cv-50162 — **Frederick J. Kapala**, *Judge.*
Before MICHAEL S. KANNE, *Circuit Judge;* DIANE S. SYKES, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
Marshaun Boykin filed this lawsuit under 42 U.S.C. § 1983, alleging that the defendants, officer Steve Sandholm and eight unnamed officers, violated his Eighth Amendment rights. The defendants moved to dismiss the lawsuit under the Prison Litigation Reform Act, arguing that Boykin had never filed a grievance complaint with the prison and had therefore failed to exhaust his administrative remedies. Boykin countered that he had, in fact, filed an emergency grievance complaint—but he said that the prison never responded to it, rendering his administrative remedies "unavailable." After an evidentiary hearing on exhaustion, the district court dismissed the suit. It concluded that Boykin never filed an emergency grievance complaint and that even if he had, he failed to take advantage of his available remedies because he did not resubmit his complaint through the non-emergency grievance process. On appeal, Boykin challenges this ruling, as well as the denials of his two requests for recruitment of counsel. While this appeal was pending, the defendants notified us that the grievance log they produced during the exhaustion hearing did not include the inmates' emergency grievance complaints. In light of this error, they have asked us to remand this case to give the district court an opportunity to reconsider its exhaustion determination. Given the defendants' concession, we vacate the district court's exhaustion ruling and remand without reaching the merits of Boykin's two challenges to it. We affirm, however, the denials of Boykin's requests for recruitment of counsel.

USA v. Michael Fredette No. 19-3306
Submitted January 24, 2020 — Decided January 24, 2020
Case Type: Criminal
Southern District of Indiana, Indianapolis Division. No. 1:11CR00191-005 — **Sarah Evans Barker**, *Judge*.
Before DANIEL A. MANION, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge;* DIANE S. SYKES, *Circuit Judge.*

ORDER
When Michael Fredette was a 51-year-old federal inmate with late-stage colon cancer, he appealed the denial of his emergency motion to reduce his sentence under 18 U.S.C. § 3582(c)(1)(A)(i), seeking compassionate release because of his terminal illness. A few weeks later, Fredette died in federal custody. Because Fredette's death moots this action, we *sua sponte* dismiss the appeal and vacate oral argument scheduled for January 30, 2020.

Susie Bigger v. Facebook, Inc. No. 19-1944
Argued September 27, 2019 — Decided January 24, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 17-cv-7753 — **Harry D. Leinenweber**, *Judge*.
Before WOOD, *Chief Judge*, and KANNE and BARRETT, *Circuit Judges*.

KANNE, *Circuit Judge*. The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* ("FLSA"), requires employers to pay overtime wages to certain employees, *see id.* §§ 207(a), 213. For enforcement, the Act allows employees to sue their employer for damages and to bring the action on behalf of themselves and other "similarly situated" employees, *id.* § 216(b), who may join the so-called "collective action." The court overseeing the action has discretion to authorize the sending of notice to potential plaintiffs, informing them of the opportunity to opt in. *Hoffmann–La Roche Inc. v. Sperling*, 493 U.S. 165, 170–71 (1989). But the court must respect judicial neutrality and avoid even the appearance of endorsing the action's merits. *Id.* at 174. This case presents the question whether a court may authorize notice to individuals who allegedly entered mutual arbitration agreements, waiving their right to join the action.
Facebook employee Susie Bigger sued Facebook for violations of the FLSA overtime-pay requirements. She brought the action on behalf of herself and all other similarly situated employees. The district court authorized notice of the action to be sent to the entire group of employees Bigger proposed. Facebook argued this authorization was improper because many of the proposed notice recipients had entered arbitration agreements precluding them from joining the action. Facebook also argued the court's authorization of notice was improper because Facebook is entitled to summary judgment. We hold that when a defendant opposing the issuance of notice alleges that proposed recipients entered arbitration agreements waiving the right to participate in the action, a court may authorize notice to those individuals unless (1) no plaintiff contests the existence or validity of the alleged arbitration agreements, or (2) after the court allows discovery on the alleged agreements' existence and validity, the defendant establishes by a preponderance of the evidence the existence of a valid arbitration agreement for each employee it seeks to exclude from receiving notice.
Because the district court here did not apply this frame-work, we vacate the court's order issuing notice and we remand for the court to apply the proper standard. We also affirm the court's denial of summary judgment to Facebook.

Levan Galleries LLC v. City of Chicago No. 19-1709
Argued January 9, 2020 — Decided January 24, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 18-cv-4580 — **Sara L. Ellis**, *Judge*.
Before DIANE P. WOOD, *Chief Judge;* FRANK H. EASTERBROOK, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge.*

ORDER
In 2012, Jemal Hancock tried to retain Sotheby's services to sell his art collection. He visited the Sotheby's Chicago office twice in two years and provided nearly 2,000 photographs of the pieces that he wished to sell. The Chicago office employees told Hancock that they would send the photographs to New York, where Sotheby's would assess whether the collection was worth selling. Four years later, Hancock still had not heard back. Frustrated, he began writing emails to two Sotheby's executives, inquiring about the company's disparate treatment of African Americans. The executives informed the Chicago office that they were being harassed; in response, Sotheby's hired two off-duty police officers for security. One afternoon, the security guards called the police station to report that Hancock had trespassed on Sotheby's property. After investigating, the officers who responded to the call filed a police report in which they suggested that Sotheby's seek a protective order—which it did, but a state court declined to issue one. Hancock then filed multiple lawsuits against Sotheby's, the officers, and the City of Chicago, all of which were dismissed by the district court. In the action that is the subject of this appeal, Hancock sued the security guards, the officers who responded to their call, and the City on the theory that the police report deprived him of his Fourteenth Amendment Due Process and Equal Protection rights. Hancock

characterizes the police report as a de facto protective order and says that this “order” was entered because of his race and in violation of his due process rights. The district court dismissed Hancock’s suit for failure to state a claim, a judgment that he asks us to reverse… AFFIRMED

USA v. Keith Melvin No. 19-1409
Argued September 27, 2019 — Decided January 24, 2020
Case Type: Criminal
Central District of Illinois. No. 18-CR-30045 — **Sue E. Myerscough**, *Judge*.
Before WOOD, *Chief Judge*, and KANNE and BARRETT, *Circuit Judges*.

KANNE, *Circuit Judge*. Keith Melvin hoped to obtain a copy of his presentence investigation report before his sentencing hearing. But the district court ordered the probation office not to give a copy to Melvin, who was instead allowed only to review the report with his attorney. At his sentencing hearing, Melvin asked for his own copy of the report, but the district court refused his request. Melvin appeals his sentence, arguing that the district court violated 18 U.S.C. § 3552(d) and Federal Rule of Criminal Procedure 32(e)(2) by denying him a copy of his presentence investigation report. We hold that the district court did not violate § 3552(d), but did violate Rule 32(e)(2), which means what it says: defendants should be given their presentence investigation report. Melvin did not receive his report, so this was error. But because the error was harmless, we affirm his sentence.

Ricardo Abellan v. Lavelo Property Management, LL No. 18-3695
Argued September 4, 2019 — Decided January 24, 2020
Case Type: Civil
Central District of Illinois. No. 1:16-cv-01037-MMM-JEH — **Michael M. Mihm**, *Judge*.
Before WOOD, *Chief Judge*, and BAUER and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. A New York owner of a fast-food property in Illinois, which was rented by an Arizona tenant, sold the property to buyers in California. Just after the sale, however, the tenant declared bankruptcy and never paid a
nickel in rent to its new landlord. This lawsuit followed. A jury found the purchase agreement rescindable for mutual mistake and the sellers liable for fraud and breach of contract. The buyer, plaintiff-appellee Ricardo Abellan, as trustee of a family trust, took his remedy in damages for a judgment of more than $2 million against defendant-appellant Lavelo Property Management, LLC. “It takes a lot to set aside a jury verdict,” *Valdivia v. Twp. High School Dist. 214*, 942 F.3d 395, 396 (7th Cir. 2019), and this appeal by Lavelo falls well short. We affirm.

Andrew Roberts v. Mark Jensen No. 18-2881
Argued January 7, 2020 — Decided January 24, 2020
Case Type: Prisoner
Eastern District of Wisconsin. No. 17-C-629 — **Lynn Adelman**, *Judge*.
Before MICHAEL B. BRENNAN, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Andrew Roberts, a Wisconsin inmate, had a series of medical issues he felt went unaddressed or were mishandled by prison medical officials. Roberts sued various members of the Waupun Correctional Institution medical staff alleging they violated his Eighth Amendment rights. In Roberts’s complaint he listed as defendants “Nurse Ann Tabb” and “Nurse Slinger.” The case proceeded against the various defendants, including Ann York, whose prior names included “Ann Tabb” and “Ann Slinger.” The district court granted the defendants summary judgment on Roberts’s claims, including the claim against nurse

Ann York. On appeal, Roberts seeks reversal because a different defendant he meant to sue, Mary Slinger, was never served. First we conclude the district court has issued a reviewable final judgment. We also decide that because Roberts failed to properly serve Mary Slinger, request an extension from the district court to do so, or show good cause to extend the time for service on appeal, the district court's decision should be affirmed.

Edward Youngman v. Peoria County No. 18-2544
Argued September 11, 2019 — Decided January 24, 2020
Case Type: Civil
Central District of Illinois. No. 1:16-cv-01005-JBM-JEH — **Joe Billy McDade**, *Judge.*
Before RIPPLE, ROVNER, and BARRETT, *Circuit Judges*.

ROVNER, *Circuit Judge.* Edward Youngman was placed on medical leave from his job with the Peoria County Juvenile Detention Center after he informed his supervisor that he could no longer work shifts in the facility's control room. Youngman had rarely worked in the control room during his tenure with the detention center, but when changes in job rotations had resulted in his temporary assignment to the control room, he experienced headaches, nausea, and dizzi- ness, among other symptoms. Youngman asked that he not be assigned to the control room in the future as an accommodation, but was told that was not possible; he was instructed that he could return to work if and when his condition improved. After Youngman's leave time expired, his position was filled, and he found employment elsewhere, he filed this suit under the Americans with Disabilities Act, alleging that his employer had refused to accommodate his disability and forced him out of his position. The district court granted summary judgment to the defendants, reasoning that Youngman was responsible for the breakdown of the interactive process required by the ADA. *Youngman v. Kouri*, 2018 WL 3186920 (C.D. Ill. June 28, 2018). We affirm, but on a different ground.

Matthew Labrec v. Lindsay Walker No. 18-1682
Argued September 17, 2019 — Decided January 24, 2020
Case Type: Prisoner
Western District of Wisconsin. No. 3:16-cv-00774-jdp — **James D. Peterson,** *Chief Judge*.
Before FLAUM, ROVNER, and SCUDDER, *Circuit Judges*.

ROVNER, *Circuit Judge*. Matthew LaBrec brought an action under 42 U.S.C. § 1983 against a number of Wisconsin Department of Corrections employees, alleging that they violated his rights under the Eighth Amendment of the Constitution. Specifically, LaBrec, who is an inmate, alleged that the defendants were aware that his cellmate posed a danger to him and that they failed to protect him from that cellmate. The district court granted summary judgment in favor of the defendants and declined to exercise supplemental jurisdiction over the state claims that LaBrec also brought. LaBrec now appeals that grant of summary judgment. He also appeals the district court's denial of his request for appointed counsel. We review the court's grant of summary judgment de novo. *Sinn v. Lemmon*, 911 F.3d 412, 419 (7th Cir. 2018). As for the denial of the request for counsel, we review the court's decision only for abuse of discretion… Accordingly, the decision of the district court denying the request for counsel is AFFIRMED. The decision granting summary judgment is AFFIRMED as to Defendants-Appellees Jason Chatman and Dustin Meeker and is REVERSED as to the remaining Defendants-Appellees, Joshua Craft, Debra Wilson, and Lindsay Walker, and the case is REMANDED for further proceedings.

Dedrick Bufkin, Diamond Toney v. USA Nos. 17-3306, 17-3307
Argued December 9, 2019 — Decided January 24, 2020
Case Type: Prisoner

Northern District of Indiana, Hammond Division. Nos. 2:16-cv-00236-JVB & 2:16-cv-00181- JVB — **Joseph S. Van Bokkelen**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge;* ILANA DIAMOND ROVNER, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Dedrick Bufkin and Diamond Toney lured a victim from a dating website to a vehicle driven by Toney where the two defendants threatened the victim at gunpoint, robbed, bound, and gagged him, and drove him around in the trunk of the car for four hours before releasing him. A grand jury charged the two with kidnapping (18 U.S.C. § 1201(a)(1)) and with knowingly brandishing a firearm during and in relation to a crime of violence, kidnapping, in violation of 18 U.S.C. § 924(c). Both defendants pled guilty to the section 924(c) count and the government agreed to dismiss the kidnapping count. Section 924(c) increases the penalties for using or carrying a firearm during or in relation to certain crimes of violence and states… We dismiss this case for lack of jurisdiction and remand to the district court for resolution of the Motion to Reinstate Count I and any other unresolved business before it.

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.