

Opinions for the week of January 27 – January 31, 2020

USA v. Mario Caviedes-Zuniga No. 19-1104

Submitted January 21, 2020 — Decided January 27, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:15-CR-00197(1) — **Robert W. Gettleman**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Mario Caviedes-Zuniga pleaded guilty to distributing 140 grams of heroin. 21 U.S.C. § 841(a)(1), (b)(1)(B). He was sentenced to 111 months' imprisonment and four years of supervised release. Caviedes-Zuniga appealed, but his lawyer now moves to withdraw, arguing that the appeal is frivolous. See *Anders v. California*, 386 U.S. 738 (1967). Caviedes-Zuniga did not file a response raising potential issues for appeal, see CIR. R. 51(b), but he apparently apprised counsel of the arguments he wants raised on his behalf. Counsel's brief explains the nature of the case and addresses the issues that an appeal of this kind might be expected to raise. Because the analysis appears thorough, we limit our review to those issues. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014). Between April 2010 and August 2013, Caviedes-Zuniga was involved in four drug transactions between Colombia (where he lived at the time) and Chicago, each involving a large quantity of heroin or methamphetamine. Unbeknownst to him, one of the people he coordinated with in Chicago was working for law enforcement. In April 2015, Caviedes-Zuniga was charged with four counts of either distributing or attempting to distribute controlled substances. See 21 U.S.C. §§ 841(a)(1) and 846. A month later, he was arrested in Colombia and detained for 9 months in Bogotá until his extradition....Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

[Full text](#)

Rosee Torres v. Judicial Sales Corporation Nos. 18-3686, 19-2114 &19-1657

Submitted January 21, 2020 Decided January 27, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-05279 — **Edmond E. Chang**, *Judge*.
Northern District of Illinois, Eastern Division. No. 19-cv-00112 — **Andrea R. Wood**, *Judge*.
Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Rosee and Noel Torres sought to void the foreclosure of the mortgage backed by their Chicago home by filing a bankruptcy action. They also filed an original civil suit in the district court, seeking money damages and the reversal of the state court's foreclosure judgment. In each case, the couple advanced over a dozen theories of relief under state and federal law stemming from their allegation that Wells Fargo and others used fraudulent and discriminatory practices to foreclose on their residence. The Torreses did not prevail in either case. We previously consolidated their two appeals arising from the bankruptcy proceeding, and we now consolidate those with a third, arising out of the civil suit, for the benefit of judicial economy....we VACATE and REMAND appeals number 18-3686 and number 19-2114 with instructions to dismiss the bankruptcy appeal as moot. In appeal number 19-1657, we AFFIRM the district court's judgment dismissing for lack of subject matter jurisdiction.

[Full text](#)

Brandi Lutes v. United Trailers, Inc. No. 19-1579

Argued November 13, 2019 — Decided January 27, 2020

Case Type: Civil

Northern District of Indiana, South Bend Division. No. 2:17-CV-00304 RLM — **Robert L. Miller, Jr.**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*.

ORDER

Buddy Phillips (now deceased) injured his ribs while playing with his grandchildren. Over the next two weeks he called his employer, United Trailers, to report he would miss work. Eventually Phillips stopped calling in and did not appear for work on three consecutive days so United fired him. He sued, alleging United failed to properly notify him of his rights under the Family Medical Leave Act (“FMLA”) and that he was fired in retaliation for attempting to exercise his right to seek leave under that Act. The district court granted summary judgment for United. This appeal presents a complicated fact pattern under the FMLA in which the employee (through unreported absences) and the employer (by failing to inform the employee of requisite information about FMLA leave) may have violated the FMLA....For these reasons, we AFFIRM IN PART the district court’s judgment on Phillips’s retaliation claim and REMAND IN PART Phillips’s interference claim for further proceedings consistent with this order.

[Full text](#)

Lexington Insurance Company v. RLI Insurance Company No. 19-1426

Argued November 7, 2019 — Decided January 27, 2020

Case Type: Civil

Central District of Illinois. No. 1:17-cv-01514-JBM-JEH — **Joe Billy McDade**, *Judge*.

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

HAMILTON, *Circuit Judge*. In this contract dispute, two insurers of New Prime, Inc., a trucking company, accuse a third insurer of not paying its share toward two multimillion-dollar personal injury settlements. Plaintiffs Lexington Insurance Company and National Union Fire Insurance Company contend that defendant RLI Insurance Company underpaid according to the policy it sold to New Prime, leaving National Union to make up the difference. In the district court, Lexington and National Union sought a declaratory judgment as to the meaning of the RLI Policy and equitable contribution of \$2.5 million from RLI toward the settlements in question. Both sides moved for summary judgment. Both based their motions on the language of the RLI Policy and on extrinsic evidence of the parties’ intent. The district court granted summary judgment to RLI, relying exclusively on contract language that it found unambiguous. We affirm. The text of the RLI Policy is not as clear to us as it was to the district court, but undisputed extrinsic evidence shows that RLI’s position is correct.... On this ground, the judgment of the district court is AFFIRMED.

[Full text](#)

Menominee Indian Tribe of Wis v. EPA No. 19-1130

Argued September 5, 2019 — Decided January 27, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 1:18-cv-108 — **William C. Griesbach**, *Judge*.

Before SYKES, HAMILTON, and SCUDDER, *Circuit Judges*.

HAMILTON, *Circuit Judge*, concurring.

SCUDDER, *Circuit Judge*. For the Menominee Indian Tribe, the river that bears its name is a place of special importance. The Menominee River runs along the border between Northern Wisconsin and Michigan’s Upper Peninsula. According to its origin story, the Tribe came into existence along the banks of the River thousands of years ago. This birthplace contains artifacts and sacred sites of historic and cultural importance to the Tribe. All these years later, the Tribe returns to the riverbanks for ceremonies and celebrations. Sometime before 2017, the Tribe learned that Aquila Resources intended to embark on a mining project known as the Back Forty alongside the Menominee River and in close proximity to Wisconsin’s northeast border. Aquila successfully applied for several necessary permits from the state of Michigan. Concerned the project would disrupt and dislocate aspects of tribal life, the Tribe wrote letters to the Environmental Protection Agency and Army Corps of Engineers asking both agencies to reconsider its 1984 decision to allow Michigan, instead of the federal government, to issue certain permits under the

Clean Water Act. The EPA and Army Corps responded not by revisiting the prior delegation of permitting authority but instead by informing the Tribe of what it already knew—that Michigan would decide whether to issue a so-called dredge-and-fill permit to authorize Aquila’s Back Forty project....For now, however, the EPA’s 1984 delegation of authority over this stretch of the Menominee River to Michigan remains in effect. For that reason, we must affirm. The Tribe must ask the EPA, the Michigan ALJ, and Michigan courts to examine alleged infirmities in the Section 404 permit for the mine.

[Full text](#)

USA v. Mario Caviedes-Zuniga No. 19-1104

Submitted January 21, 2020 — Decided January 27, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:15-CR-00197(1) — **Robert W. Gettleman**, *Judge*.
Before EASTERBROOK, BRENNAN, and SCUDDER, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Mario Caviedes-Zuniga pleaded guilty to distributing 140 grams of heroin. 21 U.S.C. §841(a)(1), (b)(1)(B). He was sentenced to 111 months’ imprisonment, a term 77 months below the low end of the range (188 to 235 months) recommended by the Sentencing Guidelines. After filing a notice of appeal, he told his lawyer that he wants a trial. He also told counsel that he does not wish to contest his sentence, if the conviction remains in place. Counsel evaluated the potential arguments and has asked to withdraw, representing that he deems the appeal frivolous. See *Anders v. California*, 386 U.S. 738 (1967). Caviedes-Zuniga received a copy of this submission but did not respond. See Circuit Rule 51(b).... As we mentioned earlier, Caviedes-Zuniga did ask his lawyer to challenge the guilty plea. Counsel reviewed several potential arguments but concluded that all are frivolous. For the reasons given in a nonprecedential order issued contemporaneously with this opinion, we agree with counsel’s assessment. We therefore grant counsel’s motion to withdraw and dismiss the appeal as frivolous.

[Full text](#)

USA v. Shawn Karst No. 18-3675

Argued November 4, 2019 — Decided January 27, 2020

Case Type: Criminal

Eastern District of Wisconsin. No. 17-CR-215 — **William C. Griesbach**, *Judge*.
Before WOOD, *Chief Judge*, BAUER and BRENNAN, *Circuit Judges*.

BRENNAN, *Circuit Judge*. Leaving an untouched pizza on the table, Shawn Karst exited a restaurant with two men who wore Mesticas motorcycle club vests. The three drove off on their bikes, and a few minutes later one of the two men with Karst pulled the trigger in a drive-by shooting. At the time, Karst was on supervised release. Authorities petitioned for Karst’s revocation, but the request traveled a bumpy road. The magistrate judge vacated the petition after finding the evidence presented did not show probable cause to believe Karst violated the release conditions. The district judge quickly reinstated the proceedings. He later held a final hearing at which release was revoked, and Karst received 30 more months of imprisonment. On appeal Karst challenges the lack of a preliminary hearing on the reinstated revocation petition, whether the district court provided him with adequate notice of his allegedly violative conduct, and the district court’s failure to consult the sentencing guidelines when deciding his revocation term....we AFFIRM IN PART, REVERSE IN PART, and REMAND for further proceedings. We see no grounds for Karst’s call to reassign this case under Circuit Rule 36, so we decline that request.

[Full text](#)

Robert Collins Bey v. Tim Haines No. 18-3627

Submitted January 7, 2020 — Decided January 27, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 13-cv-618-jdp — **James D. Peterson**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Invoking 42 U.S.C. § 1983, Robert Collins Bey, a Wisconsin prisoner, seeks damages from two prison dentists for violating the Eighth Amendment by unduly delaying his dental care. He also seeks an injunction to compel prison officials to hire a full-time dentist to reduce wait times. The district court reasoned that although systemic problems, such as understaffing and long patient waitlists, may have complicated the dentists' work, the defendant dentists were not at fault for these problems, nor were they deliberately indifferent to Collins Bey's dental needs. The court also held that because the prison has now hired a full-time dentist, Collins Bey's request for an injunction request is moot. We affirm.

[Full text](#)

William B. Shipley v. Chicago Board of Elections No. 17-3511

Argued January 7, 2020 — Decided January 27, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16-cv-07424 — **John Robert Blakey**, *Judge*.

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

ST. EVE, *Circuit Judge*. Claims of election fraud are not new in Illinois. Plaintiffs William B. Shipley and Katherine Wuthrich were credentialed election monitors in Chicago during the 2016 Illinois primary election and Plaintiff Nina Marie voted in the election. They allege that during the statutorily mandated post-election audit of electronic voting machines, they witnessed rampant fraud and irregularities by the Chicago Board of Election Commissioners' (the "Board") employees conducting the audit. Plaintiffs filed suit in federal court under 42 U.S.C. § 1983 alleging this post-election audit fraud violated their right to vote. The problem with Plaintiffs' allegations, however, is that Illinois law expressly precludes the findings of the post-election audit from changing or altering the election results. In other words, no matter how improper the Board employees' conduct was during the audit, it could not have affected Plaintiffs' right to vote. For this reason, the district court dismissed the complaint for failure to state a claim. And for the same reason, we affirm the district court's judgment.

[Full text](#)

Jovan Williams v. Jose Reyes No. 19-1778

Submitted January 7, 2020 — Decided January 28, 2020

Case Type: Prisoner

Western District of Wisconsin. No. 3:17-cv-452-jdp — **James D. Peterson**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Jovan Williams, a Wisconsin prisoner, sued a correctional officer under the Eighth Amendment for failing to prevent his attempted suicide. A jury found in favor of the officer. On appeal, Williams challenges only the district court's denial of his request for recruited counsel to represent him at trial. The district court determined that the case presented a straightforward question that Williams appeared competent to litigate by himself. In light of all the relevant circumstances, we find no abuse of discretion and therefore affirm.

[Full text](#)

Urija Elston v. County of Kane No. 19-1746

Argued November 6, 2019 — Decided January 28, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 16-cv-4979 — **Sara L. Ellis**, *Judge*.

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

BARRETT, *Circuit Judge*. Urija Elston and his friends were playing basketball at a park in DuPage County while Brian Demeter, an off-duty sheriff's deputy for neighboring Kane County, was watching his child's soccer game on an adjacent field. When Elston and his friends started heckling one another with salty language, Demeter confronted them and demanded that they stop using expletives. Flashing both his badge and gun from under his plainclothes, Demeter also warned the group to "watch who you're messing with." When the boys refused to clean up their language, Demeter grabbed Elston by the neck, threw him to the ground, and limbed on top of him. At some point during the struggle, Demeter tried to pull Elston's arms behind his back, as though attempting to arrest him. Bystanders separated Demeter and Elston, but not before Demeter could rip Elston's shirt in an attempt to keep hold of him....The district court's entry of summary judgment in favor of the County is AFFIRMED.

[Full text](#)

Quentin Crabtree v. Experian Information Solutions Nos. 18-3416 & 18-3405

Argued September 4, 2019 — Decided January 28, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:16-cv-10706 — **Charles R. Norgle**, *Judge*.

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

SCUDDER, *Circuit Judge*. We know from the Supreme Court's decision in *Spokeo, Inc. v. Robins* that a plaintiff claiming a statutory violation must allege a concrete and particularized injury for Article III standing. Recent years have shown that this principle is often easier to observe than to apply. The claim in this appeal falls on the easier side. Quentin Crabtree filed this suit against Experian for what he contends was an unauthorized release of his credit information under the Fair Credit Reporting Act. Experian responded by going on the offensive by itself bringing a FCRA counterclaim against Crabtree. The district court dismissed Crabtree's claim because any injury was exceedingly remote and speculative. We agree. We further conclude that Experian's counterclaim likewise fails for lack of standing and therefore affirm across the board.

[Full text](#)

USA v. Joel Holding No. 18-3270

Argued November 7, 2019 — Decided January 28, 2020

Case Type: Criminal

Western District of Wisconsin. No. 3:18-cr-39 — **William M. Conley**, *Judge*.

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

SCUDDER, *Circuit Judge*. Police seized 143.7 kilograms of marijuana from Joel Holding's car and apartment, and he pleaded guilty to possessing over 100 kilograms. But at sentencing, the district court held him responsible for the equivalent of 4,679.7 kilograms—over 32 times the amount seized. The additional quantity was based solely on the Presentence Investigation Report's account that confidential informants told law enforcement Holding was dealing significant quantities of methamphetamine during the relevant period. The drug quantity determination had a sizeable effect on Holding's advisory guidelines range, and it drove his ultimate sentence of 18 years' imprisonment. A sentencing court acts within its discretion when it credits confidential informants' statements about drug quantity, but when a defendant objects, the evidence supporting that quantity must be found to be reliable. While that step may prove modest, it needs to be taken, lest a defendant face the risk of being sentenced on the basis of unreliable information. The statements here, without more, fell short of that threshold. So we reverse and remand for resentencing.

[Full text](#)

Fox Valley/River Oaks Partners v. Maria Pappas Nos. 19-1971 & 19-1979

Argued December 11, 2019 — Decided January 29, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No.1:18-cv-4888 — **Charles P. Kocoras**, *Judge*.
Before FLAUM, HAMILTON, and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. The Equal Protection Clause entitles owners of similarly situated property to roughly equal tax treatment. *Allegheny Pittsburgh Coal Co. v. Cty. Comm'n*, 488 U.S. 336, 345–46 (1989). A group of taxpayers asserts that the tax assessor for Cook County violated that guarantee by assessing their properties at the rates mandated by local ordinance while cutting a break to other owners of similarly situated property. The taxpayers pursued a refund in Illinois court, where they remain tied up in litigation after more than a decade. Frustrated, they turned to federal court for relief, arguing that Illinois’s procedural rules for challenging property taxes prevent them from proving their federal constitutional claims in state court. The district court disagreed and held that the Tax Injunction Act, 28 U.S.C. § 1341, barred their federal suit. The Act strips federal district courts of jurisdiction over challenges to state and local taxes as long as the taxpayer has an adequate forum in state court to raise all constitutional claims. This appeal concerns whether Illinois courts offer a sufficient forum. The issue is made simpler by the County’s concession that Illinois’s tax-objection procedures do not allow the taxpayers to raise their constitutional claims in state court. We are left to conclude that this is the rare case in which taxpayers lack an adequate state-court remedy. The Tax Injunction Act therefore does not bar the taxpayers’ federal suit, so we reverse the district court’s dismissal.

[Full text](#)

Phillip Lay v. Andrew M. Saul No. 19-1893

Argued January 29, 2020 — Decided January 29, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 17 CV 8285 — **Young B. Kim**, *Magistrate Judge*.
Before WILLIAM J. BAUER, *Circuit Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL B. BRENNAN, *Circuit Judge*.

ORDER

Phillip Lay’s application for disability benefits under the Social Security Act was rejected administratively, with review culminating in an adverse decision by an administrative law judge. The dispute moved to district court, where the parties agreed to have a magistrate judge make the final decision. 28 U.S.C. §636(c). The magistrate judge concluded that the ALJ’s decision is supported by substantial evidence and does not reflect

a material legal error. 2019 U.S. Dist. LEXIS 41780 (N.D. Ill. Mar. 14, 2019). We substantially agree with the magistrate judge’s analysis, and on that basis the judgment is AFFIRMED.

[Full text](#)

Terez Cook v. Brian Foster No. 18-2214

Argued October 3, 2019 — Decided January 29, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 13-CV-989 — **Nancy Joseph**, *Magistrate Judge*.
Before WOOD, *Chief Judge*, and BARRETT and SCUDDER, *Circuit Judges*.

WOOD, *Chief Judge*. Federal courts do not lightly grant petitions for a writ of habeas corpus brought by state prisoners. As the Supreme Court put it in *Harrington v. Richter*, 562 U.S. 86 (2011), if the “standard [for relief] is difficult to meet, that is because it was meant to be.” *Id.* at 102. Nonetheless, “difficult” does not mean “impossible,” as the Court reaffirmed in *Richter*: “The writ of habeas corpus stands as a safeguard against imprisonment of those held in violation of the law.” *Id.* at 91. Our task in the present case is to decide whether petitioner Terez Cook demonstrated that Wisconsin’s court of appeals unreasonably assessed his contention that he did not receive the effective assistance of counsel guaranteed by the Sixth Amendment. See *Strickland v. Washington*, 466 U.S. 668 (1984). The district court thought that Cook’s showing fell short, but we conclude that he is entitled to relief. We therefore reverse.

[Full text](#)

Diane Parker v. Four Seasons Hotels No. 18-3438

Submitted January 28, 2020 — Decided January 30, 2019

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 CV 3207 — **Manish S. Shah**, *Judge*.

Before WILLIAM J. BAUER, *Circuit Judge*; ILLANA DIAMOND ROVNER, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

This is a successive appeal. Diane Parker was staying at the Four Seasons Hotel when a sliding glass door in her hotel room shattered and injured her. Four Seasons admitted to negligence, and the case proceeded to trial. (Judge Harry Leinenweber originally presided over the case, but it was transferred to Judge Manish Shah before trial.) Judge Shah declined to present to the jury a question of punitive damages, and the jury returned a verdict in favor of Parker and awarded her \$20,000 in compensatory damages. Parker appealed, and “we conclude[d] that Parker ha[d] the right to present her punitive damages claim to the jury. We therefore remand[ed] the case for further proceedings on the question of punitive damages.” *Parker v. Four Seasons Hotels, Ltd.*, 845 F.3d 807, 816 (7th Cir. 2017). On remand, the jury awarded no punitive damages. Parker again appeals, and we affirm the district court’s judgment.

[Full text](#)

USA v. Mitrel Y. Anderson and Rayshaun Roach Nos. 18-1870 & 18-3096

Argued December 18, 2019 — Decided January 30, 2020

Case Type: Criminal

Western District of Wisconsin. No. 3:17-cr-92 — **James D. Peterson**, *Chief Judge*; No. 3:17-cr-103 — **William M. Conley**, *Judge*.

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

SCUDDER, *Circuit Judge*. We have before us criminal defendants contending for the first time on appeal that a condition of their terms of supervised release is unconstitutionally vague. We have seen scores of similar appeals in the last six years. And in a series of recent opinions, we have held—in no uncertain terms—that a defendant who receives an opportunity to object to a proposed condition of supervised release at sentencing but fails to do so waives his objection. That binding precedent is the law of the Circuit. It resolves these appeals, so we affirm.

[Full text](#)
