Opinions for the week of July 13 – July 17, 2020

Luis Viramontes v. Christine Brannon No. 20-1249
Argued July 8, 2020 — Decided July 13, 2020
Case Type: Prisoner
Northern District of Illinois, Eastern Division. No. 1:18-cv-04929 — **Mary M. Rowland**, *Judge*.
Before DIANE P. WOOD, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
An Illinois jury found Luis Viramontes guilty of the first-degree murder of his wife, Sandra. In a state postconviction petition, Viramontes asserted that his trial counsel was ineffective for failing to call a medical expert to testify that Viramontes did not use "substantial force" when he beat Sandra shortly before her death and that something else (such as cocaine toxicity) caused her death. The state appellate court concluded that counsel's decision to confront the medical evidence by cross-examining the State's witnesses was not unreasonable or prejudicial. The district court denied Viramontes's petition for a writ of habeas corpus, and we affirm.

Eugeniusz Wojciechowicz v. William Barr No. 19-3460
Argued July 8, 2020 — Decided July 13, 2020
Case Type: Agency
Petition for Review of an Order of the Board of Immigration Appeals. No. A 029-604-552
Before DIANE P. WOOD, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge*.

ORDER
Eugeniusz Wojciechowicz, a 62-year-old citizen of Poland who moved to the United States more than three decades ago, sought a waiver of inadmissibility under 8 U.S.C. § 1182(h) after he was denied admission in 2019 for having been convicted of a crime involving moral turpitude. The immigration judge denied Wojciechowicz's application because he did not show extreme hardship and he failed to demonstrate that he merited a favorable exercise of discretion. The Board of Immigration Appeals, without reaching the question of hardship, upheld the decision to deny his application as a matter of discretion. Because we lack jurisdiction to review Wojciechowicz's challenge to the Board's discretionary determination, we dismiss his petition.

Wesley Purkey v. USA No. 19-3318
July 13, 2020
Case Type: Prisoner
Southern District of Indiana, Terre Haute Division. No. 2:19-cv-00414-JPH-DLP — **James P. Hanlon**, *Judge*.
Before DIANE P. WOOD, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Wesley Ira Purkey, a death-row inmate at the U.S. Penitentiary in Terre Haute, currently has a scheduled execution date of July 15, 2020, two days from now. As we explain further below, this court heard oral argument in Purkey's appeal from the district court's order denying him relief under 28 U.S.C. § 2241 on June 16, 2020. Recognizing the gravity of the matter, the court *sua sponte* expedited its consideration of the appeal and issued its opinion affirming the district court on July 2, 2020, just 16 days after oral argument. In that opinion, although we rejected Purkey's arguments on the merits, we recognized that at least two of them presented serious issues. Applying the approach dictated by *Nken v. Holder*, 556 U.S.

418 (2009), we concluded that a brief stay permitting the orderly conclusion of proceedings in this court was warranted. Sl. op. at 26–27. The government has taken two steps in response to that holding: first, it has asked us to reconsider this stay; and second, it has filed an application with the Supreme Court asking that court to set aside the stay. See *Watson v. Purkey*, U.S. No. 20A4 (filed July 11, 2020). We explain further in this order why we issued the temporary stay, which by its terms is limited to this litigation and does not affect any other cases Purkey has filed in other courts, and why we are not persuaded that it should be set aside… Only the Supreme Court can tell us whether this is a proper application of its decisions, but we deem Purkey's chances of success on this point to be strong enough to satisfy *Nken*'s first requirement, and as we stated before, there can be no debate about the irreparable harm he will experience if the government executes him on Wednesday, July 15. We therefore DENY the government's motion for reconsideration. All relevant deadlines associated with a petition for rehearing remain in place for Purkey.

Raymond Marling v. Richard Brown No. 19-3077
Argued April 28, 2020 — Decided July 13, 2020
Case Type: Prisoner
Southern District of Indiana, Terre Haute Division. No. 2:19-cv-00002-JRS-DLP — **James R. Sweeney II**, *Judge*.
Before EASTERBROOK, RIPPLE, and SCUDDER, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. After Raymond Marling was arrested, on a warrant, while driving his car, police in Indiana took an inventory of its contents. The trunk held a locked box. An officer opened the box with a screwdriver and found illegal drugs. Together with other evidence (including the fact that Marling was armed, despite felony convictions that made this unlawful), these drugs played a role in his convictions and 38-year sentence, which includes a 20-year enhancement for being a habitual criminal… The officer who opened and inventoried the contents of this box acted within the scope of discretion granted by General Order 49. As Wells requires, discretion under the policy is unrelated to beliefs about the container's contents. If the officer did too much ("unreasonable") damage, that could have been the basis for a tort claim under state law. It is not a basis for a conclusion that the Fourth Amendment required the suppression of incriminating evidence. It follows that counsel did not violate the Sixth Amendment by omitting this line of argument. REVERSED

Sharon Brown v. Polk County, Wisconsin No. 19-2698
Argued April 28, 2020 — Decided July 13, 2020
Case Type: Civil
Western District of Wisconsin. No. 3:18-cv-391 — **William M. Conley**, *Judge*.
Before EASTERBROOK, RIPPLE, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Sharon Brown was a detainee at the Polk County Jail who underwent a physical search of her body cavities. The institution had a written policy authorizing such a search to be conducted by medical personnel when there was reasonable suspicion to believe an inmate was internally hiding contraband. Fellow inmates had reported that Brown was concealing methamphetamine inside her body, and that prompted jail staff to invoke the policy. Officers took Brown to a hospital, where a doctor and nurse inspected both her vagina and rectum. The search revealed no drugs. Brown sued Polk County and several jail officials under 42 U.S.C. § 1983 alleging a violation of her Fourth Amendment rights. The defendants moved for summary judgment, and the district court granted the motion, concluding that the defendants had reasonable suspicion that Brown was concealing contraband, their suspicion justified the cavity search, and the ensuing search was reasonable. We agree and affirm.

USA v. Airrion S. Blake No. 19-2508

Argued May 13, 2020 — Decided July 13, 2020
Case Type: Criminal
Northern District of Indiana, Hammond Division No. 2:16-cr-00074 — **Joseph S. Van Bokkelen**, Judge.
Before RIPPLE, BARRETT, and BRENNAN, Circuit Judges.

BRENNAN, Circuit Judge. A defendant convicted of tax fraud challenges his sentence, disputing the loss amount which set the applicable range for his case under the Sentencing Guidelines. The district court did not commit reversible error, so we affirm the defendant's sentence. The defendant also appeals the denial of his claim of ineffective assistance of trial counsel. Because on direct appeal such a claim is limited to the original trial record, it is often better raised on collateral review. The defendant agrees, so we dismiss that claim without prejudice.

J.S.T. Corporation v. Foxconn Interconnect Technology, Ltd., et al. No. 19-2465
Argued February 12, 2020 — Decided July 13, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:19-cv-300 — **Virginia M. Kendall**, *Judge*.
Before BAUER, KANNE, and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*. J.S.T. Corporation, which is based in Illinois, produces a type of electronic equipment called a connector. Bosch, an engineering company, asked J.S.T. to design and manufacture a connector that Bosch could incorporate into a part that it builds for General Motors. For a time, Bosch retained J.S.T. as its sole supplier of those connectors. Then, according to J.S.T., Bosch wrongfully acquired J.S.T.'s proprietary designs and provided them to J.S.T.'s competitors. The competitors used the stolen designs—allegedly with full knowledge of their provenance—to build their own knockoff connectors and eventually to displace J.S.T. from its role as Bosch's supplier. After filing various lawsuits against Bosch, J.S.T. filed this suit in Illinois against the competitors, alleging misappropriation of trade secrets and unjust enrichment. The district court dismissed the case for lack of personal jurisdiction. The competitors' only link to Illinois is that they sell their connectors to Bosch, knowing that the connectors will end up in General Motors cars and parts that are sold in Illinois. For personal jurisdiction to exist, though, there must be a causal relationship between the competitors' dealings in Illinois and the claims that J.S.T. has asserted against them. Because no such causal relationship exists, we affirm the judgment of the district court.

Rebecca Gysan v. Steven Francisko No. 19-1471
Argued January 9, 2020 — Decided July 13, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 16-cv-8254 — **Jorge L. Alonso**, *Judge*.
Before EASTERBROOK, WOOD, and BARRETT, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. On the first day of deer-hunting season in 2013, Officer Steven Francisko was checking hunters' licenses to prevent poaching. He saw a van parked on the side of a road; immediately across the road, armed hunters had just emerged from the woods. Francisko approached the driver, who turned out to be Shane Cataline. Francisko thought that Cataline was acting strangely and was reluctant to answer questions, though he handed Francisko his driver's license. While Francisko was in his car doing a license check, Cataline called 911 and said: "I am in a lot of trouble right now. … I think I am going to be disappearing or something." He hung up without requesting assistance. Francisko found that Cataline's license was valid and that he was not wanted on a warrant, so he told Cataline that he was free to go—though he thought that Cataline looked tired. By the time Cataline drove away, Francisko had been joined by State Trooper Luke Kuehl in a second car… Francisko jumped onto the hood of Kuehl's car and shot Cataline, who died at the scene. The video continued, and Kuehl can be seen limping. Rebecca Gysan, Cataline's mother and the executor of his estate, filed this suit under 42 U.S.C. §1983. She contended that the police thrice violated the Fourth Amendment (applied to the states

by the Fourteenth): first by asking questions while Cataline's van was stopped, next by directing Cataline to stop driving while his van was moving, and finally by shooting him. The district court granted summary judgment to both defendants—Francisko and Marc Miller, director of the state agency that employed Francisko. 2019 U.S. Dist. LEXIS 23805 (N.D. Ill. Feb. 14, 2019). The judge rejected the first two theories on the merits and the third after concluding that Francisko is entitled to qualified immunity because existing precedent would not have made clear to all reasonable officers that the use of deadly force was forbidden. On appeal Gysan has abandoned any claim based on the initial encounter between Francisko and Cataline, and her brief does not so much as mention Miller. Our discussion is limited to the remaining theories… Gysan denies that the van crossed the fog line, but again that contention is unsupported by evidence. The officers' testimony is the only evidence that we will ever have about that subject. The stop was a reasonable one and compatible with the Fourth Amendment. AFFIRMED

Gabriela Escobedo-Marquez v. William P. Barr No. 19-1025
Argued July 7, 2020 — Decided July 13, 2020
Case Type: Agency
Petition for Review of an Order of the Board of Immigration Appeals. Nos. A208-592-740 and A208-592-741.
Before SYKES, *Chief Judge*, and EASTERBROOK and KANNE, *Circuit Judges*.

PER CURIAM. Gabriela Escobedo Marquez and her minor daughter, Diana Julieta Sanchez Escobedo, citizens of Mexico, petition for review of the denial of their application for asylum under the Immigration and Nationality Act. Escobedo Marquez sought relief based on threats of physical violence she had received because of her gay sexual orientation. An immigration judge, and later the Board of Immigration Appeals, concluded that threats to Escobedo Marquez's life did not rise to the level of past persecution, and that she could not show that she faced a well-founded fear of future persecution if she returned to Mexico. Because substantial evidence supports the agency's decision, we deny the petition for review.

Marc Norfleet v. Donald Gaetz No. 18-3711
Submitted June 22, 2020 — Decided July 13, 2020
Case Type: Prisoner
Southern District of Illinois. No. 3:15-cv-00160-SCW — **Stephen C. Williams**, *Magistrate Judge*.
Before KENNETH F. RIPPLE, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Marc Norfleet, an inmate who uses a wheelchair, says he was denied access to equipment that he needs to exercise meaningfully, including free weights, a sports wheelchair, and palm-padded gloves. He filed this action against corrections officials and the Illinois Department of Corrections (IDOC) for violating the Americans with Disabilities Act, 42 U.S.C. § 12132, the Rehabilitation Act, 29 U.S.C. § 794, and the First and Eighth Amendments. The district court entered summary judgment for the defendants, finding that Mr. Norfleet had not offered evidence that his requested accommodations were necessary, that defendants denied him access to exercise, or that defendants took an adverse action against him. We affirm.

Michael Sosh v. Andrew Saul No. 19-3313
Argued July 7, 2020 — Decided July 14, 2020
Case Type: Civil
Northern District of Indiana, Fort Wayne Division. No. 1:18-CV-249-HAB — **Holly A. Brady**, *Judge*.
Before DIANE S. SYKES, *Chief Judge;* FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge.*

ORDER
Michael Sosh applied for disability benefits, asserting that he was unable to work because of various mental and physical impairments, including chronic obstructive pulmonary disease (COPD). After weighing the medical evidence, an administrative law judge denied Sosh's application, concluding that Sosh could perform a range of light work with limitations. On appeal, Sosh contends that the ALJ erred by (1) failing to include enough restrictions in his residual functional capacity to accommodate his COPD, and (2) improperly rejecting the opinion of a nurse practitioner who treated his COPD. Because substantial evidence supports the ALJ's conclusions, we affirm.

USA v. Nehemiah Felders No. 19-2867
Case Type: Criminal
Northern District of Indiana, South Bend Division.
No. 3:18CR109-001 — **Robert L. Miller, Jr.**, *Judge*.

ARGUED JULY 7, 2020 — DECIDED JULY 14, 2020
Before SYKES, *Chief Judge*, and EASTERBROOK and KANNE,
Circuit Judges.
PER CURIAM. A jury convicted Nehemiah Felders of possessing a firearm, despite a felony conviction making this unlawful. 18 U.S.C. §922(g)(1). He was sentenced to 96 months' imprisonment. His sole argument on appeal is his statements should have been suppressed, because the police did not give him the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966)… Felders does not contend that the state distributed some cards that satisfy *Miranda* and some that do not. Nor does he contend that someone else, such as *The Onion*, has produced wallet cards purporting to be from the state police but containing doctored warnings. Evidence that the card in Price's possession could have been defective or satirical might have persuaded us to remand for a hearing. But we are not aware of any reason to believe that Indiana, or any other state, distributes warning cards that fail to satisfy the Supreme Court's requirements. AFFIRMED

Rae McCann v. Badger Mining Corporation No. 19-2420
Argued April 8, 2020 — Decided July 14, 2020
Case Type: Civil
Western District of Wisconsin. No. 3:18-cv-00073 — **James D. Peterson**, *Chief Judge*.
Before RIPPLE, BRENNAN, and SCUDDER, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Rae McCann brought this action against her former employer Badger Mining Company ("Badger") under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12112, and the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621–634. She alleged that Badger discriminated against her on the basis of her age and disability when it failed to transfer her to a position in a different department and when it eliminated her position as part of a reduction in force. After discovery, Badger moved for summary judgment on all claims. The district court granted the motion. Before us, Ms. McCann maintains only that the district court erred in granting summary judgment to Badger on her disability claim related to the elimination of her position. Under the ADA, Ms. McCann was required to come forward with evidence that, but for her disability, Badger would not have eliminated her position. She did not meet that burden, and we therefore affirm the judgment of the district court.

USA v. Detrick Layfield No. 19-1212
Argued July 7, 2020 — Decided July 14, 2020
Case Type: Criminal
Southern District of Illinois. No. 17-CR-30174-MJR — **Michael J. Reagan**, *Judge*.

Before DIANE S. SYKES, *Chief Judge;* FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge.*

Order
A jury convicted Detrick Layfield of assault with a dangerous weapon, with intent to do bodily harm, while he was a federal prisoner, and of two additional offenses. See 18 U.S.C. §§ 113(a)(3), 1512(c)(1), 1791(a)(2). The judge sentenced him to 92 months' imprisonment. His sole argument on appeal is that the evidence does not support the conviction on the dangerous-weapon charge, because none of the witnesses testified that they saw the whole weapon when Layfield wielded it… Layfield observes that Shute and Serio had different recollections about the time of day that Shute learned of and discovered the knife. But the jury was entitled to decide that this inconsistency did not diminish their credibility about other aspects of the discovery. Layfield's final observation that the record lacks DNA, fingerprint, or conclusive video evidence is merely an argument that the case might have been stronger; it is not an argument that the eyewitness testimony of the victim and two fellow inmates was deficient. AFFIRMED

Leif Hinterberger v. City of Indianapolis No. 19-3365
Argued June 1, 2020 — Decided July 15, 2020
Case Type: Civil
Southern District of Indiana, Indianapolis Division. No. 1:16-cv-1341 — **Sarah Evans Barker**, *Judge*.
Before RIPPLE, WOOD, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Courts expect parties to know and follow local rules of practice. Failing to do so can prove fatal. Leif Hinterberger's case shows how and why. The district court rejected his statement of facts for violating the Southern District of Indiana's rule governing summary judgment practice. The statement misrepresented the evidence, contained inaccurate and misleading citations to the record, and presented improper arguments rather than materially disputed facts. We empathize with the district court's exasperation and see no abuse of discretion in its striking Hinterberger's statement. Nor did the district court commit any error in entering summary judgment against Hinterberger on each of his claims. So we affirm.

Soo Line Railroad Company v. Consolidated Rail Corporation No. 19-3100
Argued June 3, 2020 — Decided July 15, 2020
Case Type: Civil
Northern District of Indiana, Hammond Division. No. 2:17-cv-106 — **Andrew P. Rodovich**, *Magistrate Judge*.
Before SYKES, *Chief Judge*, and BAUER and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Soo Line Railroad Company, which we refer to by its business name, Canadian Pacific, sought to bring state-law claims under the diversity jurisdiction of the district court. Its suit centered on a trackage rights agreement—a contract governing one railroad's use of another's track—that the Indiana Harbor Belt Railroad Company had signed with its majority shareholders at a price that Canadian Pacific, the minority shareholder, alleged was detrimental to Indiana Harbor's profitability. Canadian Pacific, though, had a problem. The Surface Transportation Board (STB) has exclusive authority to regulate trackage rights agreements, or to exempt such agreements from its approval process, and it had exempted Indiana Harbor's agreement. The defendants argued that, by effect of this exemption authority, two statutes—49 U.S.C. §§ 10501(b) and 11321(a)—independently preempted Canadian Pacific's claims. The district court agreed with both arguments, but in this appeal we focus on only one. The court concluded that § 11321(a) preempted the claims and noted that Canadian Pacific had made no argument otherwise. Because we agree that Canadian Pacific failed to contest this basis for dismissal, we affirm the judgment on grounds of waiver.

Zachary Pulera v. Victoria Sarzant No. 19-2291
Argued June 10, 2020 — Decided July 15, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 2:15-cv-00461-WCG — **William C. Griesbach**, *Judge*.
Before FLAUM, BARRETT, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Police arrested Zachary Pulera on suspicion of bail jumping and brought him to the Kenosha County Pre-Trial Facility. Just under forty-eight hours later, Pulera attempted to hang himself in his cell. Fortunately, correctional officers noticed, swiftly cut him down, and called for an ambulance that saved his life. Over his two days at the facility, Pulera never told any official that he was contemplating suicide. This appeal asks whether a long list of officials nevertheless unreasonably responded to other possible signs that Pulera was in distress, so that they may face liability for his injuries under 42 U.S.C.
§ 1983. The district court concluded there was no genuine dispute that all officials responded reasonably to the information each had, so it granted the defendants' motions for summary judgment. We affirm the judgment.

James Henderson v. Robert Wilkie No. 19-1369
Argued February 14, 2020 — Decided July 15, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:15-cv-04445 — **Sidney I. Schenkier**, *Magistrate Judge*.
Before SYKES, *Chief Judge*, and RIPPLE and SCUDDER, *Circuit Judges*.

RIPPLE, *Circuit Judge*. James Henderson filed this employment discrimination action against the Secretary of the Department of Veteran Affairs ("VA"). Mr. Henderson, who is African American, alleged race and age discrimination and retaliation claims, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, and the Age Discrimination in Employment Act, 29 U.S.C. § 621. The district court granted summary judgment to the VA in December 2016. Mr. Henderson appealed, and, in December 2017, a panel of this court vacated and remanded for further proceedings.1 The panel held that, on the record before it, there was a genuine issue of material fact as to whether the VA's explanations for not selecting Mr. Henderson for a criminal investigator position were pretext for racial discrimination. *See Henderson v. Shulkin*, 720 Fed. App'x 776, 786 (7th Cir. 2017). On remand, the parties consented to proceed before a magistrate judge. Mr. Henderson's race discrimination claim was tried by a jury in September 2018. The jury returned a verdict for the VA, and the district court entered final judgment. Mr. Henderson then moved for a new trial under Federal Rule of Civil Procedure 59(a), claiming error in two evidentiary rulings. The district court denied the motion. Mr. Henderson timely appealed. We now affirm the judgment of the district court because it did not abuse its discretion in ruling on the evidentiary issues.

Scott McCray v. Robert Wilkie No. 19-3145
Submitted April 7, 2020 — Decided July 16, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 2:18-cv-1637-DEJ — **David E. Jones**, *Magistrate Judge.*
Before ROVNER, HAMILTON, and BARRETT, *Circuit Judges*.

ROVNER, *Circuit Judge.* Scott McCray sued his employer, the Department of Veterans Affairs, for the failure to accommodate his disabilities as required by the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq*. The district court dismissed his complaint for failure to state a claim. We reverse in part and remand for further proceedings.

Democratic Party of Wisconsin v. Robin Vos No. 19-3138
Argued May 18, 2020 — Decided July 16, 2020
Case Type: Civil
Western District of Wisconsin. No. 19 C 142 — **James D. Peterson**, *Chief Judge*.
Before WOOD, BARRETT, and SCUDDER, *Circuit Judges*.

WOOD, *Circuit Judge*. In 2018, Democrats Tony Evers and Josh Kaul were elected as the governor and attorney general of Wisconsin. Both replaced Republican incumbents. Immediately after the election, while Wisconsin still had a Republican governor, the Republican-controlled legislature enacted two laws, 2017 Wisconsin Act 369 and 2017 Wisconsin Act 370 ("Acts"), which strip the incoming governor and attorney general of various powers and vest legislative committees that remained under Republican control with formerly-executive authority. The changes effected by the Acts include prohibiting the governor from re-nominating potential appointees who have been rejected once by the legislature; giving the legislature authority to suspend an administrative rule multiple times; removing the governor's ability to appoint the chief executive officer of the Wisconsin Economic Development Corporation; adding legislative appointees to the Economic Development Corporation; requiring that the attorney general obtain legislative approval before withdrawing from a lawsuit filed by the state government or settling a lawsuit for injunctive relief; and granting the legislature the unrestricted right to intervene in litigation to defend the constitutionality
or validity of state law. Dismayed by these measures, the Democratic Party of Wisconsin ("Party") and several of its individual members brought suit in federal court under 42 U.S.C. § 1983 claiming violations of the First Amendment, the Fourteenth Amendment's Equal Protection Clause, and the Guarantee Clause of Article IV, Section 4 of the United States Constitution... The district court granted the legislative defendants' motion to dismiss for lack of subject-matter jurisdiction, concluding that the plaintiffs "haven't pointed to any concrete harms they have suffered or will suffer because of Acts 369 and 370" and "are not entitled to any remedy under the United States Constitution. Any judicial remedy for the harms alleged in this case must come from the courts of Wisconsin." We affirm.

Aimee Apke v. Andrew Saul No. 19-2582
Argued June 2, 2020 — Decided July 16, 2020
Case Type: Civil
Central District of Illinois. No. 2:18-cv-02098-EIL — **Eric I. Long**, *Magistrate Judge*.
Before JOEL M. FLAUM, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge.*

ORDER
Aimee Apke, a 37-year-old former cashier, nurse assistant, and in-home health care provider, suffers from fibromyalgia and other physical and mental health impairments. She applied for disability insurance benefits and supplemental security income claiming she was unable to work due to chronic pain and severe symptoms from her fibromyalgia. The Social Security Administration denied her applications. Apke timely sought review of the denials, and an administrative law judge determined she was not disabled under the Social Security Act. After finding there was substantial evidence supporting the ALJ's decision, the district court affirmed the denial. We find no error in the consideration of Apke's claim, so we affirm.

Adam Delgado v. U.S. Department of Justice No. 19-2239
Argued April 7, 2020 — Decided July 16, 2020
Case Type: Agency
Petition for Review from the Merit Systems Protection Board in Docket No. CH-1221-14-0737-M-1 Docket No. CH-1221-18-0149-W-2
Before ROVNER, HAMILTON, and BARRETT, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Petitioner Adam Delgado is a special agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Since 2014, he has sought relief under the federal Whistleblower Protection Act for retaliation he believes he suffered after reporting his suspicions that another ATF agent may have committed perjury during a federal criminal trial. See 5 U.S.C. §§ 1214(a)(1)(A), 2302(b)(8). This is Delgado's second trip to this court. Two years ago, we held that the Merit Systems Protection Board had acted arbitrarily and capriciously in dismissing his administrative appeal under the Act… Again, we must find the Board has acted arbitrarily, capriciously, and contrary to law. The Administrative Judge (or AJ) paid only lip-service to our decision, ignoring critical holdings and reasoning. Delgado proved that he made a disclosure that was in fact protected under the Act. He also proved retaliation for his protected disclosure, which affected decisions to deny him several promotions. "After concluding that an administrative decision is flawed, a court of appeals normally must remand to the agency." *Baez-Sanchez v. Barr*, 947 F.3d 1033, 1036 (7th Cir. 2020), citing *Negusie v. Holder*, 555 U.S. 511 (2009), *Gonzales v. Thomas*, 547 U.S. 183 (2006), and *INS v. Orlando Ventura*, 537 U.S. 12 (2002). As in *Baez-Sanchez*, however, "we have already remanded, only to be met by obduracy." *Id.* We remand once more, but only on the extent of relief for Delgado. The government had the opportunity to offer evidence to support its affirmative defense, that it would have made the same decisions anyway. The government's showing on its defense fails as a matter of law, at least as to at least one March 2014 promotion denial and another in 2016 that was denied to Delgado even though he was the only candidate on its "best qualified" list. Delgado is entitled at least to pay and benefits as if he had been promoted to GS-14 effective March 4, 2014. Possible further relief will need to be considered on remand.

Carpenters Pension Trust Fund v. Allstate Corporation No. 19-1830
Argued September 18, 2019 — Decided July 16, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:16-cv-10510 — **Robert W. Gettleman**, *Judge*.
Before KANNE, HAMILTON, and BARRETT, *Circuit Judges*.

HAMILTON, *Circuit Judge*. The district court certified a plaintiff class in this securities fraud case against Allstate Corporation. We granted leave for defendants to pursue this interlocutory appeal of that order under Federal Rule of Civil Procedure 23(f). The class certification presents several challenging questions about how to apply the "Basic" fraud-on-the-market presumption of reliance in the wake of a series of more recent Supreme Court decisions… The district court's order granting leave to amend the complaint to add Providence Employee Retirement System as class representative is AFFIRMED. The district court's order certifying the plaintiff class is VACATED and the case is REMANDED for further proceedings consistent with this opinion.

USA v. Aga Khan & Charnpal Ghuman Nos. 19-1734 & 19-1745
Argued April 7, 2020 — Decided July 16, 2020
Case Type: Criminal
Northern District of Illinois, Eastern Division. No. 1:13-cr-00816 — **John J. Tharp, Jr.**, *Judge*.
Before ROVNER, HAMILTON, and BARRETT, *Circuit Judges*.

ROVNER, *Circuit Judge*. Charnpal "Paul" Ghuman and Aga Khan participated in a multi-million-dollar bank fraud scheme in which they helped to create fraudulent loan applications in order to convince a bank to issue mortgages to unqualified individuals who were purchasing gasoline stations from them. Both men pleaded guilty to one count of bank fraud, see 18 U.S.C. § 1344; Ghuman also pleaded guilty to one count of filing a false tax return, see 26 U.S.C. § 7206. Ghuman challenges the district court's decision to deny him credit for acceptance of responsibility, see U.S.S.G. § 3E1.1, and the imposition of a three-year term of supervised release on his false tax return conviction. Khan challenges the restitution he was ordered to pay. We affirm with one correction to Ghuman's sentence.

Adetokunbo Fayemi v. Kess Roberson No. 19-1241
Argued April 28, 2020 — Decided July 16, 2020
Case Type: Prisoner
Central District of Illinois. No. 17-3210 — **Sue E. Myerscough**, *Judge*.
Before EASTERBROOK, RIPPLE, and SCUDDER, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. …In 2002 Alice Minter became ill and weakened; her hair fell out; while in a hospital she entered a coma and seemed on the brink of death. Medical tests superior to those available in 1961 revealed the cause: her blood and urine contained vastly more thallium than the natural concentration. For a few months her fiancé Adetokunbo Fayemi had been providing some of her food and drink (something that continued while she was in the hospital). Seven of Minter's friends and relatives who ate occasionally at her home or hospital room also suffered from thallium poisoning, though to a lesser degree. Her dog died of thallium poisoning after it ate scraps from her table. Evidence at Fayemi's trial for attempted murder showed that he had purchased 50 grams of thallium sulfate, enough to kill about 50 people. Fayemi falsely told the supplier that he needed the substance for research but asserted in court that he and Minter wanted it to kill rats and mice, a forbidden use. Fayemi's defense was that Minter had been careless with her share of the poison, but the fact that Fayemi often ate at Minter's house without showing any traces of thallium poisoning—and that a good deal of thallium was found in a salt shaker (thallium sulfate is a tasteless white powder that looks like salt) in Fayemi's kitchen—embarrassed that defense. A toxicologist testified that Fayemi's body contained only the amount of thallium that would be expected in one who handled the substance but did not ingest any. The jury also heard that Fayemi owned many other poisons and had threatened to kill Minter if she left him….Because the state court did not render a decision "contrary to" law clearly established by the Supreme Court, we ask whether it applied that established law "unreasonably". It did not. The state's appellate judges concluded that, whether or not counsel's performance was deficient, there was no possibility of prejudice. The decision did not turn on a line between "reasonable probability" and some other standard. Instead the court remarked that the evidence against Fayemi was "overwhelming" (¶49). The evidence we have mentioned deserves that label, and there was more. The trial judge told the jury to disregard Fayemi's decision not to testify. It is inconceivable that one sentence in the opening statement (counsel's sole mention that the jurors would hear from Fayemi) could have affected this verdict. AFFIRMED

Andrew Rees v. Marilyn O. Marshall No. 20-1258
Argued July 8, 2020 — Decided July 17, 2020
Case Type: Bankruptcy from District Court Northern District of Illinois, Eastern Division. No. 19-cv-3004 — **John Robert Blakey**, *Judge*.
Before DIANE P. WOOD, *Circuit Judge*; AMY C. BARRETT, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER
Andrew and Megan Rees appeal the denial of their motion to vacate the dismissal of their bankruptcy case. See FED. R. CIV. P. 60(b)(6). Because relief under Rule 60(b)(6) requires extraordinary circumstances that are not present here, we affirm the judgment.

Janet Kotaska v. Federal Express Corporation No. 19-2730
Argued April 13, 2020 — Decided July 17, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:16-cv-09321 — **Robert M. Dow, Jr.**, *Judge*.
Before SYKES, *Chief Judge*, and HAMILTON, and ST. EVE, *Circuit Judges*.
HAMILTON, *Circuit Judge*, dissenting.

ST. EVE, *Circuit Judge*. Federal Express Corporation (FedEx) twice fired Janet Kotaska because she could not lift up to 75 pounds. The first time, she was limited to lifting only 60 pounds after a shoulder injury. Eventually, her condition improved so that she could lift 75 pounds to her waist, and a FedEx supervisor rehired her "off the books." Within three weeks, though, FedEx discovered her capabilities above the waist remained severely limited and dismissed her again.
Kotaska contends that this second dismissal was a violation of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101–12213. The district court entered summary judgment for FedEx because Kotaska had not shown she was a qualified individual or that the second dismissal was in retaliation for her complaints about the first. Because we agree that Kotaska has not carried her burden, we affirm the judgment.

USA v. Marcus Durham No. 18-3283
Submitted April 28, 2020 — Decided July 17, 2020
Case Type: Criminal
Southern District of Illinois. No. 4:96-cr-40051 — **Staci M. Yandle**, *Judge*.
Before EASTERBROOK, RIPPLE, and SCUDDER, *Circuit Judges*.
RIPPLE, *Circuit Judge*, concurring.

SCUDDER, *Circuit Judge*. Marcus Durham received a 35-year sentence for a federal drug offense that was later reduced to 20 years due to subsequent amendments to the Sentencing Guidelines. Upon regaining his liberty, however, Durham violated the terms of his supervised release, including by committing a domestic battery. The district court sentenced him to 30 months' imprisonment for these violations—about twice the high end of the guidelines advisory range. In imposing this sentence, the district court emphasized the gravity of Durham's abuse of his ex-girlfriend. Durham contends that the 30-month sentence is too long and the product of the district court effectively penalizing him for benefiting from the amendments to the guidelines that reduced his original sentence. Having taken our own fresh look at the sentencing transcript, we see no errors and therefore affirm.
