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

USA v. Nathaniel Ruth No. 20-1034
Argued June 3, 2020 — Decided July 20, 2020
Case Type: Criminal
Central District of Illinois. No. 19-cr-20005 — **Michael M. Mihm**, *Judge*.
Before SYKES, *Chief Judge*, and BAUER and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. In what is becoming an all-too-familiar subject, this appeal raises a question about whether a state drug statute sweeps more broadly than its federal counterpart because the former includes a particular isomer of a substance that the latter does not. Nathaniel Ruth pleaded guilty to federal gun and drug charges and received an enhanced sentence due to his prior Illinois conviction for possession with intent to deliver cocaine. The Illinois statute defines cocaine to include its positional isomers, whereas the federal definition covers only cocaine's optical and geometric isomers. Ruth now appeals and claims that the district court erred in sentencing him because, using the categorical approach, the overbreadth of the Illinois statute disqualifies his prior conviction as a predicate felony drug offense. We agree and therefore vacate Ruth's sentence and remand for resentencing.

USA v. Bruce Rhodes No. 19-3539
Submitted July 8, 2020 — Decided July 20, 2020
Case Type: Criminal
Western District of Wisconsin. No. 07-cr-94-bbc-1 — **Barbara B. Crabb**, *Judge*.
Before DIANE P. WOOD, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Bruce Rhodes, who was convicted of a federal child-pornography crime, appeals his resentencing after the district court revoked his supervised release. He contends that the district court based his new sentence on two inaccurate findings. In the first finding (made orally without objection and later corrected in writing), the court said that he violated his conditions of federal release while on state supervision, when the fact is that Rhodes committed his underlying pornography *crime* while on state supervision. In the second finding, the court concluded that Rhodes had not participated adequately in sex-offender treatment. Neither finding justifies another resentencing, and so we affirm.

Ysole Krol v. Teri Kennedy No. 19-3371
Argued July 8, 2020 — Decided July 20, 2020
Case Type: Prisoner
Northern District of Illinois, Eastern Division. No. 16 CV 11595 — **Manish S. Shah**, *Judge*.
Before DIANE P. WOOD, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge;* AMY J. ST. EVE, *Circuit Judge.*

ORDER
Ysole Krol was convicted in Illinois of first-degree murder under an accountability theory; she was sentenced to 35 years' imprisonment. After unsuccessfully appealing her conviction and sentence, and after exhausting her state postconviction remedies, she filed a federal petition for a writ of habeas corpus under 28 U.S.C. § 2254. The district court denied her petition but issued a certificate of appealability on one issue: whether there was sufficient evidence of her intent to aid and abet the murder. Because the Illinois Appellate Court's conclusion that Krol had the requisite intent was not objectively unreasonable, we affirm the district court's denial of Krol's habeas corpus petition.

Daniel Sarauer v. International Association of M No. 19-3142
Argued April 15, 2020 — Decided July 20, 2020
Case Type: Civil
Eastern District of Wisconsin. No. 2:16-cv-00361-DEJ — **David E. Jones**, *Magistrate Judge*.
Before MANION, HAMILTON, AND BARRETT, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Private labor relations in this country are governed almost exclusively by federal law. This case is about the "almost." Under federal law, unions and employers may enter into collective bargaining agreements with "union security" clauses, which require employees either to become union members after being hired or, if they do not join, to pay fees to the union for representing them, as federal law requires of the union. Congress has allowed states to take a different view of such clauses, however. More than half the states today have "right to work" laws prohibiting unions and employers from entering into union security agreements. Wisconsin's Act 1 enacted in 2015 is a right-to-work law. Plaintiffs are ten Wisconsin employees who contend that Act 1 invalidated the union security clause in the 2015–2018 collective bargaining agreement between their employer and their bargaining unit's union, both defendants here. Plaintiffs filed this suit in a Wisconsin state court, and defendants removed to federal district court. The district court held that removal was proper because the case arises under federal law, not state law. The court then held as a matter of federal law that defendants' collective bargaining agreement was formed before Act 1 took effect so that plaintiffs are not entitled to relief. The court granted summary judgment for the defense. We affirm as to both jurisdiction and the merits.

Angela Tonyan v. Dunham's Athleisure Corporation No. 19-2939
Argued May 19, 2020 — Decided July 20, 2020
Case Type: Civil
Western District of Wisconsin. No. 18-cv-00402 — **Barbara B. Crabb**, *Judge*.
Before EASTERBROOK, BRENNAN, and ST. EVE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Angela Tonyan worked as a store manager at Dunham's Athleisure Corporation (Dunham's) when she suffered a series of injuries, requiring multiple surgeries and temporary restrictions to her shoulder, arm, and hand movement. After her doctor imposed permanent restrictions, including one preventing her from lifting more than two pounds with her right arm, Dunham's fired her. Dunham's asserts, because of its lean staffing model, that store managers must perform various forms of physical labor, such as unloading and shelving merchandise, as essential functions of their job duties. Tonyan, on the other hand, argues that physical tasks were not essential functions of her job and that, in any event, she was able to perform her job's essential functions. We conclude that physical tasks were essential functions of Tonyan's job. As a result, in light of the severe restrictions on her movement, no reasonable factfinder could determine that Tonyan was capable of performing the essential functions of her position. We therefore affirm.

USA v. Finas Glenn No. 19-2802
Argued July 7, 2020 — Decided July 20, 2020
Case Type: Criminal
Central District of Illinois. No. 18-cr-20061— **James E. Shadid**, *Judge*.
Before SYKES, *Chief Judge*, and EASTERBROOK and KANNE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Police investigating drug trafficking in Vermilion County, Illinois, sent an informant to buy two ounces of cocaine at the home of Finas Glenn. The transaction was recorded on audio and video. About a month later the police asked for a warrant to search Glenn's home. A state judge put agent Pat Alblinger under oath, took his testimony (which was recorded), and issued a warrant. A search turned up cocaine and guns. Indicted on drug and weapons charges, Glenn moved to suppress the evidence seized in the search. A district judge held a hearing and concluded that the warrant was

supported by probable cause. 2019 U.S. Dist. LEXIS 89507 (C.D. Ill. May 29, 2019). Glenn then pleaded guilty to one firearms charge, see 18 U.S.C. §922(g)(1), and the prosecutor dismissed the remaining counts. The plea reserved Glenn's right to contest on appeal the denial of his motion to suppress. See Fed. R. Crim. P. 11(a)(2). The judge sentenced Glenn to 102 months' imprisonment… Glenn contends that the evidence provided by the controlled buy was stale by the time the agents searched his house. Yet the passage of time does not necessarily imply that a retail site for drug sales has ceased to be so. See *United States v. Lamon*, 930 F.2d 1183, 1187–88 (7th Cir. 1991). If the house had been sold in the interim, or if there were some reason to think that Glenn had changed his line of business, then the passage of time would provide reason to doubt the inference that a place used to distribute drugs in the recent past is still used for that purpose. But there is no such evidence. To the contrary, in an interview shortly before agent Alblinger applied for the warrant, Glenn conceded that he sold cocaine from his home—and although Glenn said that he sold only "small quantities," retail drug sales are retail drug sales. Alblinger did not present this confession to the state judge, so it does not factor into the finding of probable cause, but it negates any possibility that Alblinger knew that the information after the controlled buy implied that Glenn's house no longer contained cocaine. Alblinger told the federal court that the delay was designed to prevent Glenn from inferring the informant's identity. That's a good reason to wait, and Glenn was not injured by the delay. AFFIRMED

Central States, Southeast and Southwest Areas Health and Welfare Fund v. Shelby Haynes No. 19-2589
Argued May 22, 2020 — Decided July 20, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 17 C 6275 — **Virginia M. Kendall**, *Judge*.
Before BAUER, EASTERBROOK, and WOOD, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Doctors removed Shelby Haynes's gallbladder in 2013. She was injured in the process and required additional surgery that led to more than $300,000 in medical expenses. Her father's medical-benefits plan (the Fund) paid these because Haynes was a "covered dependent". The plan includes typical subrogation and re-payment clauses: on recovering anything from third parties, a covered person must reimburse the Fund. In 2017 Haynes settled a tort suit against the hospital, and others, for $1.5 million. But she and her lawyers refused to repay the Fund, which brought this action to enforce the plan's terms under §502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1132(a)(3)… Finally, Haynes's complaint about the district court's decision to exclude an expert's report, 2018 U.S. Dist. LEXIS 234265 (N.D. Ill. Oct. 24, 2018), is beside the point; this case has been resolved on legal grounds that are unaffected by any expert's conclusions, admissible or not. Neither the plan, the Act, nor the common law excuses Haynes from her obligation to reimburse the Fund. Her status as a beneficiary—whether minor or adult—doesn't deprive a fiduciary of the ability to obtain appropriate equitable relief under §502(a)(3) of the Act. AFFIRMED

Elijah Manuel v. Nick Nalley No. 18-3380
Argued February 20, 2020 — Decided July 20, 2020
Case Type: Prisoner
Southern District of Illinois. No. 3:15-cv-00783-SMY-RJD — **Staci M. Yandle**, *Judge.*
Before BAUER, EASTERBROOK, and MANION, *Circuit Judges*.

BAUER, *Circuit Judge.* Elijah Manuel sued prison personnel under 42 U.S.C. § 1983, claiming First Amendment violation when his cell was searched following a disagreement over a grievance procedure. The district court allowed Manuel to proceed on these claims, eventually granting summary judgment in favor of the prison personnel. For the following reasons, we affirm.

USA v. Elleck Christopher Vesey No. 19-3068
Argued May 20, 2020 — Decided July 21, 2020
Case Type: Criminal
Central District of Illinois. No. 4:18-cr-40048-SLD-1 — **Sara Darrow**, *Chief District Judge*.
Before SYKES, *Chief Judge*, and RIPPLE and KANNE, *Circuit Judges*.

RIPPLE, *Circuit Judge*. Elleck Christopher Vesey pleaded guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). He was sentenced to 72 months' imprisonment. He now challenges his sentence, contending that the district court based its sentencing calculations on an erroneous determination that his prior conviction for Illinois aggravated assault was a "crime of violence" within the meaning of the United States Sentencing Guidelines. Because the district court correctly classified Mr. Vesey's prior conviction as a crime of violence, we affirm the judgment of the district court.

USA v. Robert Hosler No. 19-2863
Argued May 22, 2020 — Decided July 21, 2020
Case Type: Criminal
Western District of Wisconsin. No. 18 CR 133 — **James D. Peterson**, *Chief Judge*.
Before BAUER, EASTERBROOK, and WOOD, *Circuit Judges*.

WOOD, *Circuit Judge*. Robert Hosler was convicted after a bench trial of using a facility or means of interstate commerce to attempt to "persuade[], induce[], entice[], or coerce[]" a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b). The charge stemmed from Hosler's communications over a period of several weeks with an undercover police detective posing as a mother offering her 12-year-old daughter for sex in exchange for money. Hosler argues that his conduct did not meet the requirements of the statute because he did not attempt to transform or overcome the supposed minor's will. Finding a sufficient basis in the record for Hosler's conviction, we affirm the district court's judgment.

Barbara Andersen v. Village of Glenview No. 19-2738
Argued May 18, 2020 — Decided July 21, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:17-cv-5761 — **John J. Tharp, Jr**., *Judge*.
Before DIANE P. WOOD, *Circuit Judge;* AMY C. BARRETT, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
This case is one stop in a long and lamentable ordeal stemming from the acrimonious divorce of Barbara Andersen and her former husband. Andersen brought this lawsuit after her ex-husband's complaints of harassment resulted in criminal charges, a night in jail, and the temporary loss of her children. The case proceeded in the district court and first was narrowed by motions to dismiss before the court eventually entered summary judgment in favor of the defendants on all remaining claims. Andersen appeals several of the district court's orders. Finding no error in any of them, we affirm.

Dawn Hanson v. Chris LeVan No. 19-1840
Argued May 28, 2020 — Decided July 21, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 15-cv-5354 — **Robert M. Dow, Jr.**, *Judge*.
Before MANION, KANNE, and WOOD, *Circuit Judges*.

KANNE, *Circuit Judge*. For some government jobs, political affiliation is an appropriate position requirement. But that's generally not the case. And unless political affiliation *is* an appropriate job

requirement, the First Amendment forbids government officials from discharging employees based on their political affiliation. *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 64 (1990) (citing *Elrod v. Burns*, 427 U.S. 347 (1976); *Branti v. Finkel*, 445 U.S. 507 (1980)). After stepping into his elected office as Milton Township Assessor, Chris LeVan dismissed a group of employees who were Deputy Assessors, allegedly because they supported his political rival and predecessor. The fired deputies sued LeVan, claiming the terminations violated their First Amendment rights. In a motion to dismiss for failure to state a claim, LeVan asserted a qualified-immunity defense. The district court concluded that LeVan is not entitled to qualified immunity at this pleading stage, and LeVan appealed. We affirm because, taking as true the plaintiffs' well-pleaded allegations about the characteristics of the Deputy Assessor position, a reasonable actor in LeVan's position would have known that dismissing the deputies based on their political affiliation violated their constitutional rights.

USA v. Ralphfield Hudson, David W. Vorties, Thaddeus Speed Nos. 19-2075, 19-2476 & 19-2708
Submitted April 9, 2020 — Decided July 22, 2020
Case Type: Criminal
Northern District of Illinois, Western Division. No. 01-CR-50025—**Philip G. Reinhard**, *Judge*.
Central District of Illinois. Nos. 04-CR-20027 & 08-CR-20066 — **James E. Shadid**, *Judge*.
Before BAUER, FLAUM, and KANNE, *Circuit Judges*.

KANNE, *Circuit Judge*. The First Step Act allows district courts to reduce the sentences of criminal defendants who have been convicted of a "covered offense." *See* Pub. L. No. 115-391, 132 Stat. 5194, § 404(a) (2018). A "covered offense" is a federal crime (committed before August 3, 2010) for which the statutory penalties were modified by the Fair Sentencing Act of 2010. *Id.* § 404(a). These consolidated appeals present two questions: First, if a defendant's aggregate sentence includes both covered and non-covered offenses, may a court reduce the sentence for the non-covered offenses? Second, if the Fair Sentencing Act did not alter the Guidelines range for a defendant's covered offense, may a court reduce the defendant's sentence for that offense? We answer both questions affirmatively… Because each defendant was eligible for a sentence reduction under the First Step Act, and because the district courts may reduce sentences for both non-covered offenses grouped with a covered offense and covered offenses for which the Guidelines range has not changed, we REVERSE and REMAND for review and rulings consistent with this opinion.

Pamela Veal-Hill v. CIR No. 19-2121
Submitted July 7, 2020 — Decided July 22, 2020
Case Type: Tax
Appeal from the United States Tax Court. No. 1517-17 — **Richard T. Morrison**, *Judge*.
Before DIANE S. SYKES, *Chief Judge*; FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge.*

ORDER
After reaching a settlement in a dispute with the Internal Revenue Service, Pamela Veal-Hill filed a motion for attorney's fees and administrative costs, as well as damages for intentional infliction of emotional distress. The Tax Court denied the motion, explaining that it lacked jurisdiction over her tort claim and that she could not recover fees or costs because she failed to exhaust administrative remedies. We affirm the judgment and order Veal-Hill's attorneys to show cause why they should not be sanctioned for filing briefs that do not remotely confront the issues in this appeal.

Quincy Bioscience, LLC v. Ellishbooks No. 19-1799
Decided July 22, 2020
Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:17-cv-08292 — **Sharon Johnson Coleman**, *Judge*.
Before FLAUM, RIPPLE, and WOOD, *Circuit Judges*.

PER CURIAM. After our decision on the merits, *Quincy Bioscience, LLC v. Ellishbooks*, 957 F.3d 725 (7th Cir. 2020), we later granted Quincy Bioscience, LLC's ("Quincy") motion for sanctions. The order directed Quincy to submit a statement of its costs and fees incurred in the case within fourteen days and gave the appellants (collectively "Ellishbooks") fourteen days to raise any objections. Quincy has submitted its statement and requests $50,059.50 in attorneys' fees. Ellishbooks has responded in opposition and also seeks confirmation that sanctions were not imposed against its attorney, Robert DeWitty. Quincy sought, and was granted, leave to file a sur-reply to counter Ellishbooks's assertion that the sanctions were imposed only against Ellishbooks, and not its counsel… Ellishbooks also submits that the court should exercise its discretion and limit its liability to a much smaller amount than the requested fees because it is a "very small entity," with "essentially no assets." But as Quincy points out, Ellishbooks provides no support for its claim of insolvency. There is no basis for a reduction of an award on this basis. It is therefore ordered that sanctions are awarded against both the appellants and Mr. DeWitty in the amount of $44,329.50.

Jason Wells v. Angela Caudill No. 18-2617
Argued April 28, 2020 — Decided July 22, 2020
Case Type: Civil
Central District of Illinois. No. 14-cv-4048 — **Sara Darrow**, *Chief Judge*.
Before EASTERBROOK, RIPPLE, and SCUDDER, *Circuit Judges*.
RIPPLE, *Circuit Judge*, dissenting.

EASTERBROOK, *Circuit Judge*. Jason Wells was sentenced in Illinois for two drug offenses: he received two years' imprisonment for the first and one year for the second, to run consecutively. The sentencing judge gave him credit for pretrial detention: 255 days for the first sentence and 97 days for the second. Wells and the Illinois Department of Corrections promptly disagreed about how much time he needed to spend in prison. Wells calculated his term as three years (1095 days) less 255 days less 97 days, for a total of 743 days. The prison system calculated 1095 less 255, for a total of 840. It disregarded the 97-day credit because it believed that, after his arrest for the second offense (which he committed while on bail from the first), Wells had been in custody on both charges simultaneously… After his release, Wells filed this suit under 42 U.S.C. §1983, contending that Caudill and two other state employees violated the Cruel and Unusual Punishments Clause of the Eighth Amendment (applied to the states through the Fourteenth) by omitting the 97-day credit when determining his release date. The district court granted summary judgment to two of the defendants, ruling that they were not responsible for the calculation, and Wells has abandoned any claim against them… We have resolved this case as the litigants presented it. Because the district judge did not make a clearly erroneous finding when concluding that Wells had not shown that Caudill acted with the necessary state of mind, the judgment is AFFIRMED.

USA v. Jerry Green No. 19-3016
Submitted July 23, 2020 — Decided July 23, 2020
Case Type: Criminal
Central District of Illinois. No. 18-40059 — **James E. Shadid**, *Judge*.
Before KENNETH F. RIPPLE, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Jerry Green pleaded guilty to possessing unregistered destructive devices (pipe bombs), 26 U.S.C. §§ 5841, 5845(a)(8), (f), 5861(d); possessing a firearm both in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A), and after having been convicted of a felony, *id.* § 922(g)(1); and three counts of distributing methamphetamine, 21 U.S.C. § 841(a)(1). In the plea agreement, he waived "all rights to

appeal … his conviction and sentence," reserving only the right to bring a claim of ineffective assistance of counsel. The district court sentenced him to an aggregate term of 340 months in prison followed by five years' supervised release. Green filed a notice of appeal, but his attorney asserts that the appeal is frivolous and moves to withdraw under *Anders v. California*, 386 U.S. 738 (1967). Green did not respond to counsel's submission, *see* CIR. R. 51(b), which explains the nature of the case and addresses the issues that an appeal of this kind might be expected to involve. Because counsel's analysis appears thorough, we limit our review to the subjects he discusses… Therefore, we GRANT counsel's motion to withdraw and DISMISS the appeal.

Lonnie Jackson v. Ryan Kuepper No. 19-2693
Submitted July 23, 2020 — Decided July 23, 2020
Case Type: Prisoner
Eastern District of Wisconsin. No. 17-C-0627 — **Lynn Adelman**, *Judge*.
Before KENNETH F. RIPPLE, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Despite having unlimited clean drinking water in her cell, Lonnie Jackson, a Wisconsin inmate, drank unclean water from the melted ice in a medical bag intended only for topical use to treat her sore back. She appeals the entry of summary judgment against her on claims that prison officials violated the Eighth Amendment by giving her that ice. *See* 42 U.S.C. § 1983. Because no jury could reasonably conclude that any defendant recklessly ignored a serious risk to Jackson's health, we affirm the judgment.

Linda Robertson v. Ryan D. McCarthy No. 19-2665
Argued July 7, 2020 — Decided July 23, 2020
Case Type: Civil
Central District of Illinois. No. 4:18-cv-04204-SLD-JEH — **Sara Darrow**, *Chief Judge*.
Before DIANE S. SYKES, *Chief Judge;* FRANK H. EASTERBROOK, *Circuit Judge;* MICHAEL S. KANNE, *Circuit Judge.*

ORDER
Linda Robertson, a black civilian employee for the United States Army, believes she was denied a promotion in retaliation for having previously filed a complaint about her supervisor. She also claims that she was subjected to retaliation and discrimination when she received a three-day suspension for not completing a task assigned by that same supervisor. The district court entered summary judgment for the defendant, concluding that there was insufficient evidence of an unlawful motive. We affirm the judgment.

Taphia Williams v. Thomas Dart No. 19-2108
Argued March 31, 2020 — Decided July 23, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:18-cv-01456 — **Harry D. Leinenweber**, *Judge*.
Before KANNE, WOOD, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. "In our society," the Supreme Court has said, "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Not as a statistical matter, says the Bureau of Justice Statistics. See *Jail Inmates in 2018*, at 5 (2020), available at bjs.gov/content/pub/pdf/ji18.pdf (in 2018, 490,000 jail inmates (two thirds of total) had not been convicted of offense). To better enforce the norm and police the exceptions more carefully, Cook County, Illinois, like other jurisdictions across the country, recently revised its pre-trial detention policies in favor of broader access to pretrial release. The plaintiffs in this case allege that

defendant Thomas Dart, the Cook County Sheriff, disagreed with the revised policies and substituted in their place policies of his own making that denied them release. Plaintiffs are nine black residents of Chicago, arrested and charged with felonies, whom the Cook County trial courts admitted to bail subject to electronic monitoring supervised by the Sheriff… Plaintiffs allege federal constitutional and state-law claims on behalf of the nine named plaintiffs and a putative class of other arrestees whose bail orders were disregarded by the Sheriff. After three rounds of pleading, the district court dismissed most of the suit for failure to state a claim. Plaintiffs abandoned the balance and took this appeal. We reverse in part and remand. Plaintiffs' allegations are sufficient to proceed on federal constitutional claims for wrongful pretrial detention and denial of equal protection, and on state-law claims for contempt of court.

Urban One, Inc. v. Dean Tucci Nos. 18-3335 & 18-3341
Argued June 9, 2020 — Decided July 23, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. Nos. 16 C 1867 & 17 C 7892 — **Virginia M. Kendall**, *Judge*.
Before DIANE S. SYKES, *Chief Judge;* MICHAEL S. KANNE, *Circuit Judge;* MICHAEL B. BRENNAN, *Circuit Judge.*

ORDER
Urban One, formerly known as Radio One, sold radio airtime to Direct Media Power, which then resold it to customers for broadcast commercials. When Direct Media defaulted on the purchase agreement, Urban One sued in federal court based on diversity jurisdiction and obtained a judgment for nearly $1.4 million. After Direct Media failed to pay, Urban One filed another suit, this time against Dean Tucci, Direct Media's sole owner, seeking to pierce the company's corporate veil and hold Tucci personally liable for its debt. The district court, again under diversity jurisdiction, entered a preliminary injunction freezing Tucci's assets pending the determination of his liability. Direct Media appealed the judgment against it in the first case, and Tucci appealed the preliminary injunction. We consolidated the appeals. While Tucci's appeal was pending, however, the district court granted Urban One's motion for summary judgment, from which Tucci did not file a timely notice of appeal. Tucci's appeal from the preliminary injunction is therefore moot. And the appellants waived any argument challenging the judgment against Direct Media. We therefore affirm the judgment against Direct Media and dismiss Tucci's appeal as moot.

Detlef Sommerfield v. Lawrence Knasiak No. 18-2045
Argued February 19, 2020 — Decided July 23, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 08 C 3025 — **Joan B. Gottschall**, *Judge*.
Before FLAUM, RIPPLE, and WOOD, *Circuit Judges*.

WOOD, *Circuit Judge*. After experiencing virulent anti-Semitic abuse at the hands of Sergeant Lawrence Knasiak, Officer Detlef Sommerfield of the Chicago Police Department (CPD) filed a lawsuit against Knasiak and the City of Chicago in which he alleged discrimination, harassment, and retaliation based on his German national origin and his Jewish ethnicity. After the City was dismissed from the case, a jury returned a verdict for Sommerfield and awarded him $540,000 in punitive damages; he also received a modest award representing pre-judgment interest for backpay and pension benefits he already had received. Knasiak has appealed, contending that he was entitled to judgment as a matter of law, or at least a new trial, and that the court should have reduced the punitive-damage award. We recognize that this was a closely contested case, but in the end we find no error in the district court's decisions, and so we affirm.

USA v. Vincent Corner No. 19-3517
Argued July 8, 2020 — Decided July 24, 2020

Case Type: Criminal
Western District of Wisconsin. No. 07-cr-104 — **Barbara B. Crabb**, *Judge*.
Before WOOD, BARRETT, and ST. EVE, *Circuit Judges*.

PER CURIAM. Vincent Corner violated the conditions of his supervised release, and he was sentenced to 18 months' imprisonment followed by 42 months' supervised release. Corner later moved for a reduced sentence under section 404 of the First Step Act of 2018. The district court did not assess Corner's eligibility for relief under the Act, explaining that it would not lower his sentence regardless of his eligibility because he had violated the terms of his release. Corner appeals, arguing that it was procedural error for the district court to deny relief without first determining whether the Act applied to his sentence and what the new statutory penalties would be. We agree, so we vacate the judgment and remand for further proceedings.

Moses Perez v. K & B Transportation, Inc. No. 19-2984
Argued June 5, 2020 — Decided July 24, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. No. 1:17-cv-02610 — **Mary M. Rowland**, *Judge*.
Before EASTERBROOK, HAMILTON, and SCUDDER, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Plaintiff Moses Perez was driving a sport-utility vehicle when he apparently hit a patch of ice, lost control, and was then hit from behind by defendant Kiara Wharton driving a tractor-trailer. After excluding Perez's expert witnesses on accidents and truck-driving, the district court granted summary judgment for Wharton and her employer, K & B Transportation, Inc. We conclude that this classic negligence case was inappropriate for summary adjudication. Under Illinois law, a reasonable jury could infer that Wharton was driving negligently based on the evidence that she rear-ended Perez and that she was driving too fast for the weather conditions. We reverse and remand for trial.

W.A. Griffin v. Teamcare Nos. 19-2905 & 19-2906
Submitted July 23, 2020 — Decided July 24, 2020
Case Type: Civil
Northern District of Illinois, Eastern Division. Nos. 18 CV 1772 & 18 CV 8297 — **Robert W. Gettleman**, *Judge*.
Before KENNETH F. RIPPLE, *Circuit Judge* DAVID F. HAMILTON, *Circuit Judge* MICHAEL Y. SCUDDER, *Circuit Judge*

ORDER
In these consolidated appeals, W.A. Griffin challenges the amount of the penalty that the district court assessed against the defendants in two suits she filed under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B), (c)(1). Finding no abuse of discretion in the district court's determination, we affirm.

Charles Hart v. James Greer No. 19-2883
Submitted July 23, 2020 — Decided July 24, 2020
Case Type: Prisoner
Eastern District of Wisconsin. No. 18-C-0092 — **Lynn Adelman**, *Judge*.
Before KENNETH F. RIPPLE, *Circuit Judge;* DAVID F. HAMILTON, *Circuit Judge;* MICHAEL Y. SCUDDER, *Circuit Judge.*

ORDER
Charles Hart, an inmate with painful keloids, sued prison health-services supervisors under 42 U.S.C. § 1983 for deliberate indifference to his need for medical care in violation of the Eighth Amendment. During the litigation, Hart moved three times for recruited counsel; each time, the district court determined that Hart was able to represent himself. The court then entered summary judgment for the defendants, concluding that none had been personally involved in denying Hart treatment. Hart now appeals, arguing only that the district court erroneously denied his requests for counsel. We see no abuse of discretion in the court's decisions and, therefore, we affirm.

Nathan Sigler v. Geico Casualty Co. No. 19-2272
Argued December 10, 2019 — Decided July 24, 2020
Case Type: Civil
Central District of Illinois. No. 1:18-cv-01446-MMM-JEH — **Michael M. Mihm**, *Judge*.
Before SYKES, *Chief Judge*, and KANNE and BARRETT, *Circuit Judges*.

SYKES, *Chief Judge*. Nathan Sigler totaled his 2001 Dodge Ram and filed a claim with GEICO, his auto insurer, for the loss. GEICO paid him for the value of the car, adjusted for depreciation, minus his deductible. Sigler claims he is entitled to more—namely, sales tax and title and tag transfer fees for a replacement vehicle, though he did not incur these costs. He filed a proposed class action against GEICO seeking damages for breach of contract. Illinois law governs this dispute. The district court dismissed the suit, holding that neither the GEICO policy nor Illinois insurance law requires payment of these costs when the insured does not incur them. We affirm. The premise of Sigler's suit is that sales tax and title and tag transfer fees are *always* part of "replacement cost" in a total-loss claim—regardless of whether the insured incurs these costs. That misreads the policy and the relevant Illinois insurance regulation. GEICO's policy doesn't promise to pay sales tax or title and tag transfer fees, and the Illinois Administrative Code requires a settling auto insurer to pay these costs only if the insured actually incurs and substantiates them with appropriate documentation. Because Sigler did not do so, the judge properly dismissed the suit.

USA v. Wade Bonk No. 19-1948
Argued June 1, 2020 — Decided July 24, 2020
Case Type: Criminal
Central District of Illinois. No. 1:17-cr-10061-JES-JEH-1 — **James E. Shadid**, *Judge*.
Before RIPPLE, WOOD, and SCUDDER, *Circuit Judges*.

RIPPLE, *Circuit Judge*. A grand jury returned a superseding indictment charging Wade Bonk and his two codefendants, Darcy Kampas and Timothy Wood, with conspiracy to possess methamphetamine with

intent to distribute, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A), and with possession of methamphetamine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). Wood and Kampas pleaded guilty to the conspiracy count in accordance with their plea agreements. Mr. Bonk also pleaded guilty to the conspiracy count, but without the benefit of a cooperation plea agreement. He was sentenced to 262 months' imprisonment. Final judgment was entered, and Mr. Bonk timely filed a notice of appeal… AFFIRMED
