

Opinions for the week of June 13 - June 17, 2016

Cincinnati Insurance Company v. Estate of Toni Chee No. 15-3243

Argued April 13, 2016 — Decided June 13, 2016

Case Type: Civil

Central District of Illinois. No. 12-3236 — **Richard Mills**, *Judge*.

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

EASTERBROOK, *Circuit Judge*. Sam Chee was driving and his wife Toni Chee was a passenger in August 2010 when their car slammed into a tree. Toni was seriously injured and taken to a hospital, where she died within a week. Her estate has filed two suits in courts of Illinois: one against Sam accusing him of negligent driving, and the other against the hospital and the attending physicians, accusing them of malpractice. The defendants in the second suit filed third-party actions against Sam, seeking contribution or other recompense from him should they be held liable to the estate. State Farm Mutual Automobile Insurance Company is defending Sam's interests in both suits. Its policy promises indemnity of \$250,000 per person (and \$500,000 total) for auto accidents. State Farm has offered to pay the policy limits, but its offer has not been accepted because of a dispute about the terms of the release it wants the estate to sign... The judgment of the district court is affirmed to the extent that it requires Cincinnati to defend Sam's interests in the suit between the estate and the medical defendants. Otherwise the judgment is reversed, and the case is remanded for the entry of a declaratory judgment consistent with this opinion.

USA v. Chukwuemeka Ikegwuonu Nos. 15-2407, 15-2408

Argued April 27, 2016 — Decided June 13, 2016

Case Type: Criminal

Western District of Wisconsin. No. 3:15-CR-00021 — **William M. Conley**, *Chief Judge*.

Before FLAUM, MANION, and WILLIAMS, *Circuit Judges*.

FLAUM, *Circuit Judge*. Twin brothers Ifeanyichukwu "Jack" and Chukwuemeka "William" Ikegwuonu appeal their sentences for Hobbs Act robbery, 18 U.S.C. § 1951(a), and brandishing a firearm during a crime of violence, § 924(c)(1). For the robberies, Jack and William received below-guidelines sentences of thirty months and twenty-four months, respectively. For brandishing a firearm, both men received a consecutive, statutory minimum sentence of seven years' imprisonment. Defendants now argue for the first time on appeal that the district court, in determining appropriate sentences for the robberies, should have been free to take into account fully the mandatory, consecutive nature of the § 924(c)(1) sentence, a position we rejected in *United States v. Roberson*, 474 F.3d 432 (7th Cir. 2007). *Roberson* holds that a district judge must determine the appropriate sentence for the underlying crime "entirely independently of the section 924(c)(1) add-on" *Id.* at 437. Because defendants have not presented compelling reasons to overturn *Roberson*, we affirm their sentences.

Lora Wheatley v. Factory Card and Party Outlet No. 15-2083

Argued November 30, 2015 — Decided June 13, 2016

Case Type: Civil

Central District of Illinois. No. 3:11-cv-03414-SEM-EIL — **Sue E. Myerscough**, *Judge*.

Before ROVNER and WILLIAMS, *Circuit Judges* and SHAH, *District Judge*.

ROVNER, *Circuit Judge*. Lora Wheatley worked for Factory Card and Party Outlet ("Factory Card") from 1996 until her employment was terminated on July 11, 2009, for failure to report to work. Wheatley filed an action against Factory Card alleging that it violated the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., when it terminated her employment. The district court granted Factory Card's motion for summary judgment, and Wheatley appeals... Dr. Fleischli's Attending Physician Statement

thus was properly considered, and provides evidence that Wheatley was not capable of working at the time of her termination. But as discussed above, even absent that statement, the evidence presented by Wheatley is insufficient to allow a jury to conclude that she could perform the essential duties of the position if permitted to wear the medical boot and forego the ladder duties. Her mere hope or belief, unsupported by evidence supporting those conclusions, is insufficient to permit a jury to conclude that she would have been able to perform the essential functions of her job with a reasonable accommodation. Accordingly, the district court properly granted summary judgment for the defendant. AFFIRMED

USA v. Donald Ridley No. 15-1309

Argued December 9, 2015 — Decided June 13, 2016

Case Type: Criminal

Southern District of Illinois. No. 3:13-CR-30084-DRH-002 — **David R. Herndon**, *Judge*.

Before EASTERBROOK and HAMILTON, *Circuit Judges*, and PALLMEYER, *District Judge*.

HAMILTON, *Circuit Judge*. A jury found appellant Donald Ridley guilty on several felony charges for participating in a bank robbery. On appeal he challenges his convictions on three separate grounds: the sufficiency of the evidence that he brandished a firearm during the robbery; admission of an FBI agent's lay testimony regarding cell phone tracking information; and the district court's supplemental instruction to jurors when they said they were at an impasse. We affirm.

Candice McCurdy v. David Fitts No. 15-1212

Argued November 3, 2015 — Decided June 13, 2016

Case Type: Civil

Southern District of Illinois. No. 13-cv-455-SMY-SCW— **Staci M. Yandle**, *Judge*.

Before WOOD, *Chief Judge*, EASTERBROOK, *Circuit Judge*, and BRUCE, *District Judge*.

EASTERBROOK, *Circuit Judge*. Candice McCurdy, a patrol deputy with the Williamson County Sheriff's Department, applied for a job as an inspector with the Southern Illinois Enforcement Group, which investigates drug crimes. She was selected, subject to a background check. While that check was conducted, she remained in her deputy's post. Agent Barbee Braddy, who conducted the check, recommended that she not be hired. Braddy discovered that McCurdy had recently filed for bankruptcy and was in a long-term relationship with Jon Mohring, who belonged to a biker gang associated with criminal activity. Braddy thought that these facts made McCurdy unsuitable for a more responsible job, particularly given what had happened when the Group hired Caleb Craft. He, too, had been in financial difficulty and had some criminal associates, and he was fired when the Group discovered that he was stealing drugs and money from the unit. McCurdy wanted to fill the Craft vacancy; following the adage "once burned twice shy" the Group decided to look elsewhere. In this suit under 42 U.S.C. §1983, McCurdy contends that the officers who made these decisions engaged in sex discrimination. She offers two theories: first, that she would have been promoted immediately had she been a man; second, that the Group gave her background and associates more scrutiny than it does for male applicants. She does not deny that the Group had legitimate reasons for thinking that someone else would be more suitable; instead she contends that the Group would not have discovered these matters had the applicant been male. The district court, however, granted summary judgment for the defendants, ruling that McCurdy was treated the same as a male applicant would have been... The judgment of the district court is affirmed to the extent it rejects McCurdy's hiring theory but vacated to the extent it rejects her delay theory, and the case is remanded for further proceedings consistent with this opinion.

Robert Sobczak-Slomczewski v. WDH, LLC No. 15-1162

Submitted December 4, 2015 — Decided June 13, 2016

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 14 C 7297 — **Edmond E. Chang**, *Judge*.
Before RIPPLE, ROVNER, and WILLIAMS, *Circuit Judges*.

PER CURIAM. Debtor Robert Sobczak-Slomczewski appeals the district court's dismissal of his untimely appeal from a bankruptcy court's order. The district court determined that he failed to file his notice of appeal within the 14-day period required by FED. R. BANKR. P. 8002(a)(1) and dismissed the appeal for lack of jurisdiction. Because the district court did not err, we affirm.

Tri-Corp Housing Incorporated v. Robert Bauman No. 14-1358

Argued December 9, 2015 — Decided June 13, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 12-C-216 — **C.N. Clevert, Jr.**, *Judge*.

Before EASTERBROOK and HAMILTON, *Circuit Judges*, and PALLMEYER, *District Judge*.

EASTERBROOK, *Circuit Judge*. Tri-Corp Housing, a nonprofit corporation, offered low-income housing to mentally disabled persons in Milwaukee County, Wisconsin. Its principal lender, the Wisconsin Housing and Economic Development Authority, filed a foreclosure action in state court. Tri-Corp blamed many other persons and entities for its financial problems and named several of them as third-party defendants. The state judiciary allowed the lender to foreclose and ruled against Tri-Corp on all of the third-party claims except those against Robert Bauman, one of Milwaukee's aldermen. *Wisconsin Housing & Economic Development Authority v. Tri Corp Housing, Inc.*, 2011 WI App 99. Bauman then removed to federal court what remained of the case... *New West*, 491 F.3d at 721–22, holds that the *Noerr-Pennington* doctrine applies to claims under the Fair Housing Act—and in *New West*, just as in this case, officials of one governmental body tried to persuade officials of a different public body to act in a particular way. Tri-Corp does not contend that any exception to the *Noerr-Pennington* doctrine applies to Bauman's speech and lobbying. That's all one needs to say to show why Tri-Corp cannot prevail against Bauman. AFFIRMED

USA v. Cameron Patterson No. 15-3022

Argued April 19, 2016 — Decided June 14, 2016

Case Type: Criminal

Northern District of Indiana, Fort Wayne Division. No. 1:13-cr-00065-TLS-SLC-2 — **Theresa L.**

Springmann, *Judge*.

Before BAUER, POSNER, and FLAUM, *Circuit Judges*.

BAUER, *Circuit Judge*. *Miranda* warnings have taken a foothold in American culture largely via crime drama television and film. Defendant-appellant, Cameron E. Patterson, argues Federal Bureau of Investigation agents violated his Fifth Amendment right against self-incrimination when they failed to give him *Miranda* warnings prior to interviewing him. The sole issue is whether Patterson was “in custody” when he made his incriminating statements, thereby implicating the Fifth Amendment and necessitating *Miranda* warnings. We find Patterson was not in custody for purposes of *Miranda*, and therefore affirm the district court's order denying the motion to suppress his statements.

Eddie Townsend v. Matthew B. Wilson No. 15-2894

Submitted May 13, 2016 — Decided June 14, 2016

Case Type: Civil

Northern District of Indiana, Fort Wayne Division. No. 1:13cv315 — **Susan L. Collins**, *Magistrate Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Eddie Townsend sued the City of Fort Wayne, Indiana, and several city police officers after he was arrested (but not prosecuted) for driving while intoxicated. He claimed that the officers did not have probable cause to arrest him or to file a criminal complaint, and he sought damages under both 42 U.S.C. § 1983 and state tort law. The district court (a magistrate judge presiding by consent) granted summary judgment for the defendants on all claims. We affirm.

Ronald Oliva v. Blatt, Hasenmiller, Leibsker No. 15-2516

Argued November 12, 2015 — Decided June 14, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:14-cv-06447 — **Elaine E. Bucklo**, *Judge*.
Before BAUER, FLAUM, and MANION, *Circuit Judges*.

MANION, *Circuit Judge*. This appeal requires us to consider whether the Fair Debt Collection Practices Act's "bona fide error" defense, 15 U.S.C. § 1692k(c), protects a debt collector from liability for engaging in conduct that was expressly permitted under the controlling law in effect at the time, but that is later prohibited after a retroactive change of law. In 2013 Blatt, Hasenmiller, Leibsker & Moore, LLC, filed a collection lawsuit against Ronald Oliva in the first municipal district of the Circuit Court of Cook County. When Blatt filed the action, its choice of venue was expressly permitted under the FDCPA's venue provision as interpreted by *Newsom v. Friedman*, 76 F.3d 813 (7th Cir. 1996). We subsequently overruled *Newsom*, with retroactive effect, in *Suesz v. Med-1 Solutions, LLC*, 757 F.3d 636 (7th Cir. 2014) (en banc). Oliva then sued Blatt for violating the FDCPA's venue provision as newly interpreted by *Suesz*. The district court granted summary judgment for Blatt, finding that Blatt relied on *Newsom* in good faith and was therefore immune from liability under the FDCPA's bona fide error defense. That defense precludes liability for unintentional violations resulting from a good-faith mistake. On appeal, Oliva argues that the bona fide error defense does not apply because Blatt's violation resulted from its mistaken interpretation of the law. See *Jerman v. Carlisle*, 559 U.S. 573 (2010). We disagree. In abiding by our interpretation in *Newsom*, Blatt simply followed the controlling law of this circuit. Its failure to foresee the retroactive change of law heralded by *Suesz* was not a mistaken legal interpretation, but an unintentional bona fide error that precludes liability under the Act. We therefore affirm the district court's entry of summary judgment for Blatt.

James Mudd v. Allen County War Memorial Coli No. 16-1497

Submitted June 15, 2016 — Decided June 15, 2016

Case Type: Civil

Northern District of Indiana, Fort Wayne Division. No. 1:10-CV-52 — **William C. Lee**, *Judge*.
Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; JOEL M. FLAUM, *Circuit Judge*.

ORDER

James Mudd appeals from the denial of what he calls a "Motion for Clarification and Correct Errors." This submission relates to Mudd's unsuccessful effort nearly five years earlier to reopen a claim of employment discrimination that had ended in a settlement. We affirm the district court's ruling.

Susan Shott v. Rush University Medical Center No. 15-3767

Case Type: Civil

Argued April 26, 2016 — Decided June 15, 2016

Northern District of Illinois, Western Division. No. 11 C 50253 — **Frederick J. Kapala**, *Judge*.

Before MICHAEL S. KANNE, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; DAVID F. HAMILTON, *Circuit Judge*.

ORDER

Susan Shott, a tenured associate professor of biostatistics at Rush University Medical Center, appeals the grant of summary judgment for Rush in this employment discrimination suit. We affirm.

USA v. Steven Madden No. 15-3344

Submitted June 15, 2016 — Decided June 15, 2016

Case Type: Criminal

Southern District of Illinois. No. 3:09CR30063-003-DRH — **David R. Herndon**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; JOEL M. FLAUM, *Circuit Judge*.

ORDER

Steven Madden appeals from the denial of his motion under 18 U.S.C. § 3582(c)(2) for a sentence reduction based on the retroactive application of Amendment 782 to the federal sentencing guidelines. Because the district court did not abuse its discretion, we affirm the decision.

USA v. Ronald Haddad, Jr. No. 15-1398

Submitted June 15, 2016 — Decided June 15, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 09 CR 115-1 — **Virginia M. Kendall**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; JOEL M. FLAUM, *Circuit Judge*.

ORDER

Ronald Haddad, Jr., was found guilty by a jury on multiple counts of using the Postal Service or e-mail to send threatening communications. See 18 U.S.C. §§ 875(c), 876(c). He was sentenced to a total of 150 months' imprisonment. Haddad now appeals and is representing himself after twice refusing our offer to appoint counsel. We affirm his convictions and sentence.

C.G. Schmidt Incorporated v. Permasteelisa North America No. 15-3617

Argued April 12, 2016 — Decided June 16, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 14-cv-01553 — **J.P. Stadtmueller**, *Judge*.

Before WOOD, *Chief Judge*, and FLAUM and WILLIAMS, *Circuit Judges*.

FLAUM, *Circuit Judge*. Permasteelisa North America ("PNA"), a subcontractor, submitted a bid to C.G. Schmidt, Inc. ("CGS"), a general contractor, to provide a glass curtain-wall. CGS selected PNA's bid but after extensive negotiations, the parties did not enter into a formal subcontract. PNA backed out of the project at the last minute, requiring CGS to use a different subcontractor at a higher price. CGS filed suit against PNA alleging breach of contract and promissory estoppel. The district court granted summary judgment to PNA, finding that the parties did not intend to be bound until the execution of a formal subcontract. We agree with the district court that the parties never entered into a binding contract and that CGS's promissory estoppel claim fails as a matter of law. Accordingly, we affirm the district court's grant of summary judgment.

USA v. Luis Gil-Lopez No. 15-2650

Argued March 31, 2016 — Decided June 16, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:12-cr-203 — **Rebecca R. Pallmeyer**, *Judge*.
Before MANION and KANNE, *Circuit Judges*, and PEPPER, *District Judge*.

PEPPER, District Judge. Defendant-Appellant Luis Gil-Lopez ('Gil-Lopez') is a native and citizen of Mexico. He entered the United States in the late 1980s; in 2002, he was convicted of a felony offense in Idaho state court. As a result, in 2004 he was removed pursuant to an order entered by the immigration court. Several years later, however, he returned to this country, was arrested, and was charged in federal court with being illegally present in the United States after having been convicted of a felony. In the district court, Gil-Lopez entered a conditional guilty plea to the one-count indictment. Gil-Lopez's conditional guilty plea allowed him to pursue this appeal from the district court's order denying his motion to dismiss that indictment. Gil-Lopez argues that the district court erred in determining that his 2004 removal could form the basis for the current charge of unlawful reentry and that his prior conviction was for an aggravated felony, rendering him removable to Mexico. The government responds that Gil-Lopez cannot challenge the district court's decision, because he did not exhaust his administrative remedies with respect to the immigration court's 2004 removal order. We agree, and affirm.

USA v. Derrick Clinton No. 15-1346

Argued November 30, 2015 — Decided June 16, 2016

Case Type: Criminal

Eastern District of Wisconsin. No. 2:14-cr-00058-RTR-1 — **Rudolph T. Randa**, *Judge*.
Before ROVNER and WILLIAMS, *Circuit Judges*, and SHAH, *District Judge*.

ROVNER, *Circuit Judge*. On March 11, 2014, a grand jury returned a two-count indictment against Derrick Clinton, charging him with possession of a firearm as a convicted felon in violation of 18 U.S.C. § 922(g), and possession with intent to distribute a mixture and substance containing cocaine base in the form of crack cocaine in violation of 21 U.S.C. § 841(a)(1). Pursuant to a plea agreement with the government, Clinton entered a plea of guilty to the felon-in-possession count, and the government agreed to dismiss the second count and to recommend a sentence within the advisory guidelines range. The district court ultimately sentenced Clinton to a term of imprisonment of 76 months followed by three years of supervised release and a \$100 special assessment. Clinton now appeals that sentence... Similarly, in *United States v. Webster*, 528 Fed.Appx. 648, 651 (7th Cir. 2013), we addressed remarks by the district court that people are basically "decent" or "indecent," which mirror the remarks in this case that there are "good people" and "bad people." In that case, we held that those remarks alone fell short of the litany of inflammatory remarks that would undermine the court's explanation for the sentence. *Id.* at 652. Therefore, we have repeatedly identified such remarks as straying beyond the proper § 3553(a) analysis whether or not the remarks required that the sentence be vacated. Because we are remanding on other grounds, we need not determine whether or not the remarks in this case would alone require that the sentence be vacated. We simply note the potential for such remarks to derail the sentencing hearing and require a subsequent remand for resentencing, so that the court can avoid that prospect in this resentencing. The sentence is VACATED and the case REMANDED for resentencing consistent with this opinion.

BMO Harris Bank N.A. v. Edward E. Gillen Company No. 15-1323

Argued October 28, 2015 — Decided June 16, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 10-C-564 — **Rudolph T. Randa**, *Judge*.

Before WOOD, *Chief Judge*, and EASTERBROOK and HAMILTON, *Circuit Judges*.

EASTERBROOK, Circuit Judge. BMO Harris Bank (the Bank for short) holds a security interest in almost all assets of Edward E. Gillen Company, formerly in the foundation-construction business. This appeal presents a multi-party dispute about who gets what share of money paid into the court's registry by one of Gillen's insurers. Gillen failed to perform on a subcontract with Meyne Company, which in arbitration received a net award of approximately \$1.8 million. Liberty Mutual, Gillen's primary insurer, wrote Meyne a check for \$1 million, the policy's limit. Meanwhile, Gillen asked a district court to set aside the arbitrator's award. Instead the court confirmed the award, and Gillen appealed to this court. In order to avoid execution of the judgment, Gillen had to post a supersedeas bond. Fed. R. Civ. P. 62(d). Fidelity and Deposit Company of Maryland (F&D) underwrote the bond. The appeal was settled and dismissed; as part of that agreement, F&D paid Meyne the remaining \$800,000 and stepped into its shoes as Gillen's creditor. Enter The Insurance Company of the State of Pennsylvania, which the parties call ICSOP and we call the Excess Insurer. The Excess Insurer, which had written a policy that took effect after Liberty Mutual's was exhausted, paid \$1.2 million into the court's registry. It expresses indifference about who gets the money. The Bank wants the whole \$1.2 million, arguing that its status as a secured creditor puts it ahead of F&D and Gillen, the other claimants. (Neither Meyne nor Liberty Mutual asserts any interest in the funds.) But the district court held that \$800,000 goes to F&D because it is subrogated to Meyne's rights, and Meyne could have collected from the Excess Insurer without impairing the Bank's security interest. 2015 U.S. Dist. LEXIS 7870 (E.D. Wis. Jan. 22, 2015). The judge concluded that the other \$400,000 belongs to Gillen and goes to the Bank as its secured creditor. The Bank contends in this court that it gets the whole \$1.2 million for a simple reason: Meyne was Gillen's unsecured creditor, and F&D's subrogation to Meyne's position makes it an unsecured creditor too. If the \$1.2 million were in Gillen's hands, then the superiority of the Bank's interest would be incontestable. The Bank insists that this must be true as well of funds used to retire Gillen's unsecured debt. The district court was not persuaded, and neither are we, because, as a matter of Wisconsin law (which governs this diversity litigation), insurance bypasses security interests. Consider what happened with Liberty Mutual's payment of the arbitration award's first \$1 million. Liberty Mutual paid Meyne, and the Bank has never asserted an interest in that money. Whatever the rule might be elsewhere, Wisconsin is a direct-action jurisdiction in which the victim of an insured wrong can collect from the insurer. See Wis. Stat. §632.24. In Wisconsin even the insolvency of the client and the presence of other creditors does not affect the victim's right to collect. Wis. Stat. §632.22; *Decade's Monthly Income & Appreciation Fund v. Whyte & Hirschboeck, S.C.*, 173 Wis. 2d 665, 676 (1993)... AFFIRMED

USA v. Destry Marcotte Nos. 15-1266 and 15-1271

Argued February 12, 2016 — Decided June 16, 2016

Case Type: Criminal

Southern District of Illinois. Nos. 13 CR 30053 and 14 CR 30107 — **Michael J. Reagan**, *Judge*.

Before WOOD, *Chief Judge*, ROVNER, *Circuit Judge*, and BLAKEY, *District Judge*.

BLAKEY, District Judge. Five of our sister courts have held that 18 U.S.C. §3147, through §3C1.3 of the Sentencing Guidelines, can enhance a sentence for the crime of failing to appear under 18 U.S.C. §3146. *United States v. Duong*, 665 F.3d 364 (1st Cir. 2012); *United States v. Fitzgerald*, 435 F.3d 484 (4th Cir. 2006); *United States v. Dison*, 573 F.3d 204 (5th Cir. 2009); *United States v. Benson*, 134 F.3d 787 (6th Cir. 1998); and *United States v. Rosas*, 615 F.3d 1058 (9th Cir. 2010). Two others have reached the same conclusion, albeit in unpublished decisions. *United States v. Gause*, 536 Fed. Appx. 234 (3d Cir. 2013) (unpublished); *United States v. Clemendor*, 237 Fed. Appx. 473 (11th Cir. 2007) (unpublished). None has reached a different conclusion. Against this consensus, Appellant Destry J. Marcotte seeks to chart new territory in the Seventh Circuit on an issue of first impression here. We decline that invitation and AFFIRM the district court's sentence.

Paldo Sign and Display Company v. Wagener Equities, Incorporated No. 15-1267

Argued March 30, 2016 — Decided June 16, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:09-cv-07299 — **John J. Tharp, Jr.**, *Judge*.
Before WOOD, *Chief Judge*, and POSNER and ROVNER, *Circuit Judges*.

ROVNER, *Circuit Judge*. Paldo Sign and Display Company (“Paldo Sign”) filed suit under the Telephone Consumer Protection Act (the “Act”), 47 U.S.C. § 227(b)(1)(C), against Wagener Equities, Inc. and Daniel Wagener, seeking statutory damages after Paldo Sign received an unsolicited facsimile advertisement promoting Wagener Equities’ services. After the district court certified a class of more than ten thousand plaintiffs who had received the offending ad, a jury returned a special verdict finding that Wagener Equities had not “authorize[d] the fax broadcast transmission,” and that Daniel Wagener did not “have direct, personal participation in the authorization of the fax broadcast transmission.” On the basis of those findings, the court entered judgment in favor of the defendants. Paldo Sign appeals, claiming error in the jury instructions and also in an evidentiary ruling. We affirm.

Joseph Rutledge v. City of Chicago No. 15-3014

Case type: Civil

Submitted June 15, 2016 — Decided June 17, 2016

Northern District of Illinois, Eastern Division. No. 13 C 870 — **John Robert Blakey**, *Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; JOEL M. FLAUM, *Circuit Judge*.

ORDER

Joseph Rutledge alleged in this suit under 42 U.S.C. § 1983 that the City of Chicago and two of its building inspectors, Vallie Smith and Donald Kerksick, violated his Fourth Amendment rights by conducting a warrantless search of his home and discriminated against him by targeting his home for inspection because he is African-American. The district court granted summary judgment for the defendants, and Rutledge now asks us to overturn that decision. We affirm.

USA v. Clark Bickart and Jerlene Bickart Nos. 15-2890, 15-2946

Argued April 19, 2016 — Decided June 17, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 14-cr-00245 — **Thomas M. Durkin**, *Judge*.
Before BAUER, POSNER, and FLAUM, *Circuit Judges*.

FLAUM, *Circuit Judge*. Clark and Jerlene Bickart were convicted for tax fraud for submitting a falsified tax return supported by fabricated 1099-OID forms. The Bickarts challenge the imposition of the sophisticated means sentencing enhancement as well as their conditions of supervised release. For the following reasons, we vacate the third-party notification condition of Jerlene Bickart's supervised release and remand for resentencing. We affirm defendants' sentences and remaining conditions of supervised release in all other respects.

David Rhein v. John Coffman No. 15-2867

Argued May 31, 2016 — Decided June 17, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 843 — **Gary Feinerman**, *Judge*.
Before EASTERBROOK and WILLIAMS, *Circuit Judges*, and YANDLE, *District Judge*.

EASTERBROOK, *Circuit Judge*. David Rhein began calling and sending packets of papers to the office of Anthony DeLuca, a member of Illinois's House of Representatives. The packets accused DeLuca of violating the constitutions of the United States and Illinois and threatened violence unless DeLuca changed his ways. One document asserted, among other things: "Now you know why so many of you people or going to be shot because your too selfish too understand the truth." (Errors in original.) Two pages included hand-drawn crosshairs. Rhein visited DeLuca's local office and, in the course of what the manager described as an hour-long rant, said that he was "ready to start shooting people." DeLuca's staff reported these events to the Illinois State Police. Lieutenant John Coffman, then the Chief of its Bureau of Firearms Services, discovered that Rhein was licensed to own firearms and had some registered in his name. Illinois calls the license a Firearm Owners Identification Card or FOID Card; we call it a Card. State law permits summary revocation of a Card, with hearing to follow, if officials conclude that the licensee's "mental condition is of such a nature that it poses a clear and present danger to ... any other person". 430 ILCS 65/8(f). Coffman concluded that Rhein's statements meet this standard and on February 3, 2011, summarily revoked Rhein's Card. Police called at his house the next day and removed his weapons... We conclude that Coffman is not liable on the merits. This makes it unnecessary to consider whether it is "clearly established" (the central issue for an immunity defense) that the Illinois State Police as a whole took too long. The Supreme Court observed in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010), that many details about how to implement the Second Amendment need to be worked out. The timing of hearings on requests for the restoration of firearms is among those details. We know from *Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004), and similar decisions that the First Amendment requires prompt decisions when the question is whether speech can occur. Meanwhile *Barker v. Wingo*, 407 U.S. 514 (1972), and similar decisions hold that the Speedy Trial Clause of the Sixth Amendment allows years to pass before a criminal trial, even when the defendant is in custody. Where the Second Amendment fits on this spectrum is a novel question. The closest parallel may be a motion under Fed. R. Crim. P. 41(g) for the return of guns seized in a criminal prosecution. As far as we can see, courts have not established time limits for holding hearings and making decisions on motions to return firearms. We need not resolve the timing question in this case either. AFFIRMED

John Berron, Robert DeServi, Seth Ghantous, Fotios Moustakas v. Illinois Concealed Carry Licensing Review Board Nos. 15-2404, 15-2931, 15-2405, 15-2931, 16-1170

Argued May 31, 2016 — Decided June 17, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 2839 — **Charles R. Norgle**, *Judge*.

Northern District of Illinois, Eastern Division. No. 14 C 3881 — **Harry D. Leinenweber**, *Judge*.

Northern District of Illinois, Eastern Division. No. 14 C 3544 — **Harry D. Leinenweber**, *Judge*.

Northern District of Illinois, Eastern Division. No. 14 C 9294 — **James B. Zagel**, *Judge*.

Before EASTERBROOK and WILLIAMS, *Circuit Judges*, and YANDLE, *District Judge*.

EASTERBROOK, *Circuit Judge*. In the wake of *McDonald v. Chicago*, 561 U.S. 742 (2010), which held that the Second Amendment applies to the states, we concluded that the constitutional right to "keep and bear" arms means that states must permit law-abiding and mentally healthy persons to carry loaded weapons in public. *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). Illinois then enacted a system for issuing and enforcing permits to carry concealed firearms. 430 ILCS 66/1 to 66/95. We have consolidated four appeals filed by persons who asked for concealed-carry permits and were turned down. Three district judges, presiding in these four suits, all ruled against the applicants. Illinois issues a concealed-carry license to anyone who satisfies the statutory qualifications (see 430 ILCS 66/25), files the necessary paperwork, and pays the fees, unless the applicant would "pose a danger to himself, herself, or others, or a threat to public safety as determined by the Concealed Carry Licensing Review Board". 430 ILCS 66/10(a)(4). Law-enforcement agencies are entitled to present public-safety arguments against granting

an application. See also 430 ILCS 66/15 (details about objections by law-enforcement agencies), 66/20 (details about the Board's composition and operations)... In appeal No. 15-2931, filed by Seth Ghantous, the judgment is vacated, and the case is remanded with instructions to dismiss as moot. In the other appeals, the judgments are affirmed.

Winfred Oliver v. Randy Pfister No. 15-2886

Submitted May 23, 2016 — Decided June 17, 2016

Case Type: Prisoner

Central District of Illinois. No. 13-1457 — **James E. Shadid**, *Chief Judge*.

Before DIANE P. WOOD, *Chief Judge*; RICHARD A. POSNER, *Circuit Judge*; ILANA DIAMOND ROVNER, *Circuit Judge*.

ORDER

Winfred Oliver, an Illinois prisoner, challenges the dismissal of his complaint under 42 U.S.C. § 1983, alleging that his disciplinary proceeding on child pornography charges did not provide the process that he was due, and that his request for leave to amend his complaint was wrongly denied. We affirm.

Richard Bell v. Charles Lantz No. 15-2341

Argued January 19, 2016 — Decided June 17, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:13-cv-00035-TWP-DKL— **Tanya Walton Pratt**, *Judge*.

Before EASTERBROOK, ROVNER, and SYKES, *Circuit Judges*.

ROVNER, *Circuit Judge*. This appeal concerns an award of attorney's fees by the district court to Charles Lantz, who was the defendant in a suit brought by Richard Bell under the Copyright Act, 17 U.S.C. § 501 et seq., which was later voluntarily dismissed. Bell does not challenge the court's decision to award fees, but contests the amount of fees awarded... the award of attorney's fees is VACATED and the case REMANDED for further proceedings consistent with this opinion.

City of Joliet v. Mid-City National Bank of Chicago No. 15-2183

Argued January 11, 2016 — Decided June 17, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 05 C 6746 — **Charles R. Norgle**, *Judge*.

Before EASTERBROOK, WILLIAMS, and SYKES, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. For more than a decade, the City of Joliet, Illinois, has been attempting to condemn the two buildings of the Evergreen Terrace housing complex. In 2005 it filed a condemnation action in state court, and the proceeding was removed to federal court. New West, the complex's owner, went on the offensive with a suit of its own under the Fair Housing Act and other federal statutes. We concluded in *New West, L.P. v. Joliet*, 491 F.3d 717 (7th Cir. 2007), and *Joliet v. New West, L.P.*, 562 F.3d 830 (7th Cir. 2009), that no rule of federal law unconditionally blocks the condemnation action, and we directed the district court to decide it with dispatch. 491 F.3d at 721; 562 F.3d at 839. About three and a half years after the second of these decisions, the condemnation suit finally went to trial. It took 100 days of court time, spread over more than a year and a half of calendar time. The district court then issued a lengthy opinion holding that Joliet is entitled to possess (and demolish) Evergreen Terrace. 2014 U.S. Dist. LEXIS 130800 (N.D. Ill. Sept. 17, 2014). This decision resolved the merits but not the amount of compensation. Illinois law (which applies under Fed. R. Civ. P. 71.1(k)) requires a jury for the valuation decision, though not for the decision whether the government is entitled to take the property. 735 ILCS 30/10-5-5(a). A jury concluded that New West and its affiliates (and lenders) are entitled to \$15,077,406

as just compensation. After additional delay caused by post-decision motions practice in the district court, the controversy has made its way back to us. New West (as we call all appellants collectively) contends that Evergreen Terrace is not dilapidated and that the City's suit should have been rejected on that ground, and on the further ground that razing the buildings would have a disparate impact on its predominantly black tenants, in violation of the Fair Housing Act. The district judge, as trier of fact, rejected both of these arguments. His conclusions—including the conclusions about the nonexistence of discriminatory intent or disparate impact—are findings of fact for the purpose of appellate review. See *Pullman-Standard v. Swint*, 456 U.S. 273 (1982). This means that they must stand unless clearly erroneous. See Fed. R. Civ. P. 52(a)(6); *Anderson v. Bessemer City*, 470 U.S. 564 (1985). We hold that none of the critical findings is clearly erroneous... AFFIRMED

USA v. John Bloch, III No. 15-1648

Argued January 21, 2016 — Decided June 17, 2016

Case Type: Criminal

Northern District of Indiana, South Bend Division. No. 12-CR-2 — **Robert L. Miller, Jr.**, *Judge*.
Before POSNER, EASTERBROOK, and KANNE, *Circuit Judges*.

KANNE, Circuit Judge. Defendant John W. Bloch III has had three sentencing hearings in four years. He now seeks a fourth. Bloch argues he is entitled to such relief because the district court committed error in imposing the length and conditions of supervised release... we AFFIRM.

USA v. Jose G. Herrera-Valdez No. 14-3534

Argued September 21, 2015 — Decided June 17, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:12-cr-928 — **Samuel Der-Yeghiayan**, *Judge*.
Before POSNER, WILLIAMS, and SYKES, *Circuit Judges*.

WILLIAMS, Circuit Judge. Jose Gustavo Herrera-Valdez was prosecuted for illegal reentry after being deported. Before trial, he filed a motion to disqualify Judge Der-Yeghiayan from presiding over his prosecution because the judge served as the District Counsel for the Immigration and Naturalization Service (INS) at the time Herrera-Valdez was deported. He also filed a motion to dismiss the indictment against him on various grounds, which was denied. Having pled guilty, but reserving the right to appeal these issues, he now appeals those rulings. Because we find that the district court should have granted Herrera-Valdez's motion to disqualify, we reverse his conviction.

Only the text of the opinions is used. No editorial comment is added. For back issues or to send a comment, please contact [Sonja Simpson](#).

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