

Opinions for the week of June 8 – June 12, 2020

Marzieh Bastani v. Wells Fargo Bank, N.A. No. 20-1373

Submitted May 27, 2020 — Decided June 8, 2020

Case Type: Bankruptcy from District Court

Northern District of Illinois, Eastern Division. No. 19 C 6513 — **Edmond E. Chang**, *Judge*
Before EASTERBROOK, SYKES, and ST. EVE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. After filing a petition under Chapter 13 of the Bankruptcy Code, Marzie Bastani asked the judge to stay a foreclosure proceeding pending in state court. The judge's aid was essential, because Bastani's previous bankruptcy had been dismissed less than a year earlier, and 11 U.S.C. §362(c)(3)(C)(i)(II) treats this timing as creating a presumption that the new filing is not in good faith. This means that the automatic stay ends 30 days after the new proceeding begins. 11 U.S.C. §362(c)(3)(B). That 30-day window gives the debtor time to ask for judicial relief, but Bastani's request for a further stay of foreclosure was denied by a bankruptcy judge and then by a district judge. Her appeal asks us to block the ongoing state proceedings... Someone without income may seek relief under Chapter 7. Petitioners under Chapter 7 must surrender their non-exempt assets and be content with the fresh start provided by the discharge of their debts. By trying to achieve a principal benefit of Chapter 13 (keeping her home) without the detriment (paying her debts), Bastani has demonstrated that she is not entitled to the relief she seeks. The motion for leave to proceed on appeal *in forma pauperis* is denied, and the decision of the district court is summarily affirmed.

[Full text](#)

Radica Whitefoot v. William Barr No. 19-2711

Submitted May 29, 2020 — Decided June 8, 2020

Case Type: Agency

Petition for Review of an Order of the Board of Immigration Appeals. No. A096-702-815.

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

Order

More than three years after the entry of a final removal order, Radica Whitefoot asked the Board of Immigration Appeals to reopen her proceedings and grant cancellation of removal, see 8 U.S.C. §1229b, on the basis of ten years' presence in the United States plus the Supreme Court's opinion in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), which according to Whitefoot shows that the Notice to Appear that began the removal proceeding is invalid. The Board stated that, even if it were willing to accept an untimely motion (a question it did not resolve), it would not afford Whitefoot any relief. It gave two reasons: first, that *Pereira* does not make Whitefoot eligible for cancellation of removal; second, that even if Whitefoot were eligible, she would not receive that benefit because she has not shown that her removal would cause the necessary degree of hardship to a qualifying relative in the United States. Whitefoot's petition for review addresses only the first of these issues... The petition for review is denied.

[Full text](#)

Andre Powell v. John Galipeau No. 19-2571

Submitted May 28, 2020 — Decided June 8, 2020

Case Type: Prisoner

Northern District of Indiana, South Bend Division. No. 3:19-CV-297-RLM-MGG — **Robert L. Miller, Jr.**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Andre Powell petitioned for a writ of habeas corpus challenging the revocation of his placement in a community re-entry program without notice or a hearing. The district court denied the petition and Powell appealed. Because Powell has since been released from prison, a live controversy no longer exists and we therefore vacate and remand to the district court with instructions to dismiss the case as moot.

[Full text](#)

Ronald Schroeder v. Kimberly Malone No. 19-2105

Submitted May 28, 2020 — Decided June 8, 2020

Case Type: Prisoner

Eastern District of Wisconsin. No. 17-C-1676 — **Lynn Adelman**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; DIANE S. SYKES, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

Order

The district court dismissed this suit for want of prosecution after plaintiff Ronald Schroeder repeatedly failed to respond to the defendants' motion for summary judgment. Dismissal for want of prosecution is presumptively with prejudice, see Fed. R. Civ. P. 41(b), but a district court may provide otherwise. The judge twice warned Schroeder that failure to respond would lead to dismissal without prejudice and, when Schroeder persisted, the judge carried through. Both the judge's explanation for his action and the judgment entered by the district court state that the dismissal is without prejudice. Dismissal without prejudice is not a final decision and therefore cannot be appealed under 28 U.S.C. §1291. See, e.g., *Alejo v. Heller*, 328 F.3d 930, 935 (7th Cir. 2003). But Schroeder appealed anyway—and, without discussing the finality problem, appellees' brief asserts that we have jurisdiction. Still, we must consider that question even though the parties have bypassed it... The appeal is dismissed for want of jurisdiction.

[Full text](#)

Alnoraindus Burton v. Partha Ghosh No. 19-1360

Argued December 3, 2019 — Decided June 8, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:12-cv-08443 — **Andrea R. Wood**, *Judge*.

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

HAMILTON, *Circuit Judge*. Almost seven years into this lawsuit, after discovery had closed and with a summary judgment deadline looming, defendants raised the affirmative defense of res judicata for the first time, in an unexpected motion to dismiss an amended complaint. When plaintiff responded that the defense had been waived or forfeited, defendants argued that our opinion in *Massey v. Helman*, 196 F.3d 727 (7th

Cir. 1999), requires a district court to allow any and all new affirmative defenses whenever a plaintiff amends a complaint in any way. The district court agreed and granted defendants' motion to dismiss. We reverse and remand.

[Full text](#)

USA v. Brian Carter No. 18-3713

Argued October 2, 2019 — Decided June 8, 2020

Case Type: Criminal

Central District of Illinois. No. 4:18-cr-40004-JES-JEH-1 — **James E. Shadid**, *Judge*.

Before BAUER, RIPPLE, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Brian Carter pleaded guilty to possessing a firearm as a felon, see 18 U.S.C. § 922(g), after police officers arrested him and found a stolen handgun in his possession. At sentencing, the district court calculated his Sentencing Guideline range based on a finding that he had previously sustained at least two felony convictions for “crimes of violence.” U.S.S.G. § 2K2.1(a)(2). The court imposed a sentence of 105 months in prison, at the top of the resulting guideline range. Carter appeals, arguing that the district court erred in classifying two of his prior convictions as crimes of violence. We affirm.

[Full text](#)

Harry O'Neal v. James Reilly No. 19-2981

Argued May 21, 2020 — Decided June 9, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 1:15-cv-10526 — **Virginia M. Kendall**, *Judge*.

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

BARRETT, *Circuit Judge*. Harry O'Neal was convicted of aggravated battery of a police officer after an altercation during a traffic stop. While incarcerated and while his criminal conviction was pending on direct appeal, O'Neal filed a pro se lawsuit that asserted § 1983 claims against the police officers who had arrested him. Under *Heck v. Humphrey*, however, O'Neal's § 1983 suit was barred unless his conviction was reversed or expunged. 512 U.S. 477, 486–87 (1994). *Heck*-barred suits are usually stayed or dismissed without prejudice, but O'Neal's suit took a different course. After he failed to comply with court-ordered briefing deadlines, the district court issued an order directing O'Neal to show cause why his case should not be dismissed for want of prosecution. When O'Neal didn't respond, the district court dismissed his claims with prejudice for failure to prosecute... In sum, the district court correctly concluded that O'Neal waived any argument that he may have had under Rule 60(b). And because the case had been terminated on the merits, the district court was right to deny his Rule 15 motion for leave to file an amended complaint. The judgment is AFFIRMED.

[Full text](#)

Erin Johnson v. Enhanced Recovery Company, LLC No. 19-1210 & 19-1334

Argued September 13, 2019 — Decided June 9, 2020

Case Type: Civil

Northern District of Indiana, Hammond Division. No. 16 CV 330 — **Philip P. Simon**, *Judge*.

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

ROVNER, *Circuit Judge*. Erin Johnson filed this putative class action against Enhanced Recovery Company, LLC (ERC), alleging that it sent her a misleading collection letter in violation of the Fair Debt Collection Practices Act (“FDCPA”). 15 U.S.C. §§ 1692-1692p. ERC moved to dismiss Johnson's claim on the grounds that no reasonable consumer could have been misled by its letter. The district court denied ERC's motion and certified a class composed of all individuals in Indiana who had received a collection letter like Johnson's from ERC between July 2016 and August 2017. *See* Fed. R. Civ. P. 23(a) and (b)(3) (describing class certification requirements). On the parties' cross motions for summary judgment, the district court entered judgment for ERC. Johnson appeals, and ERC cross appeals from the denial of its motion to dismiss Johnson's complaint under Federal Rule of Civil Procedure 12(b)(6).

Because Johnson failed to present any evidence beyond her own opinion that ERC's letter was misleading, we affirm the judgment of the district court.

[Full text](#)

USA v. Shawn Lee No. 19-1300

Argued September 26, 2019 — Decided February 18, 2020 — Amended June 9, 2020

Case Type: Criminal

Central District of Illinois. No. 3:18-cr-30011 — **Sue E. Myerscough**, *Judge*.

Before BAUER, MANION, and ST. EVE, *Circuit Judges*.

MANION, *Circuit Judge*. Shawn Lee sold a staggering amount of ice methamphetamine in Central Illinois from early 2015 until his arrest in January 2018. He now appeals his sentence after pleading guilty to one count of possessing 50 grams or more of methamphetamine with intent to distribute and one count of possessing firearms in furtherance of a drug-trafficking crime. Lee contends he should not have received two extra criminal history points under U.S.S.G. § 4A1.1(d) for dealing methamphetamine while on supervision for a drunk driving offense. He also challenges the district judge's imposition of a fine and a term of supervised release that will prohibit him from interacting with known felons unless he receives the probation officer's permission. Because this supervision term commits an impermissible delegation of Article III power relating to Lee's liberty interest in familial association, we vacate the condition and remand for reassessment. We affirm on all other grounds.

[Full text](#)

Cook County, Illinois v. Chad F. Wolf No. 19-3169

Argued February 26, 2020 — Decided June 10, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 19 C 6334 — **Gary Feinerman**, *Judge*.

Before WOOD, *Chief Judge*, and ROVNER and BARRETT, *Circuit Judges*.

BARRETT, *Circuit Judge*, dissenting.

WOOD, *Chief Judge*. Like most people, immigrants to the United States would like greater prosperity for themselves and their families. Nonetheless, it can take time to achieve the American Dream, and the path is not always smooth. Recognizing this, Congress has chosen to make immigrants eligible for various public benefits; state and local governments have done the same. Those benefits include subsidized health insurance, supplemental nutrition benefits, and housing assistance. Historically, with limited exceptions, temporary receipt of these supplemental benefits did not jeopardize an immigrant's chances of one day adjusting his status to that of a legal permanent resident or a citizen. Recently, however, the Department of Homeland Security (DHS) issued a new rule designed to prevent immigrants whom the Executive Branch deems likely to receive public assistance in any amount, at any point in the future, from entering the country or adjusting their immigration status. The Rule purports to implement the "public-charge" provision in the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(4). States, cities, and nonprofit groups across the country have filed suits seeking to overturn the Rule. Cook County, Illinois, and the Illinois Coalition for Immigrant and Refugee Rights, Inc. (ICIRR) brought one of those cases in the Northern District of Illinois. They immediately sought a preliminary injunction against the Rule pending the outcome of the litigation. Finding that the criteria for interim relief were satisfied, the district court granted their motion. We conclude that at least Cook County adequately established its right to bring its claim and that the district court did not abuse its discretion by granting preliminary injunctive relief. We therefore affirm.

[Full text](#)

Brian Hughes v. Southwest Airlines Company No. 19-3001

Submitted May 13, 2020 — Decided June 10, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-05315 — **Sara L. Ellis**, *Judge*.

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

HAMILTON, *Circuit Judge*, concurring in the judgment.

FLAUM, *Circuit Judge*. Brian Hughes brought a purported class action suit against Southwest Airlines for breach of contract after it canceled his flight to Chicago because it lacked sufficient de-icing solution at Midway Airport. The district court dismissed the complaint for failure to state a claim and because the contract barred the claimed damages. Hughes appealed. Because Hughes failed to adequately identify any breach, we now affirm.

[Full text](#)

USA v. Lawrence Manyfield, Sr. No. 19-2096

Submitted April 28, 2020 — Decided June 11, 2020

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 1:09-cr-00157-1 — **Matthew F. Kennelly**, *Judge*.
Before EASTERBROOK, RIPPLE, and SCUDDER, *Circuit Judges*.

RIPPLE, *Circuit Judge*. After Lawrence Manyfield admitted several violations of his supervised release, the district court revoked his term of supervision and sentenced him to twenty-four months in prison followed by a lifetime term of supervised release. The parties agree on appeal that the court neither gave adequate notice of the conditions of supervision (many of which we have deemed vague) nor sufficiently explained its reasons for imposing them. They disagree, however, about the proper scope of the remand. We conclude that the court properly justified the prison sentence and term of supervised release and, therefore, remand only for further consideration of the release conditions.

[Full text](#)

USA v. Terrance Brasher No. 18-1997

Argued January 8, 2020 — Decided June 11, 2020

Case Type: Criminal

Southern District of Indiana, New Albany Division. No. 4:15-cr-00028-TWP — **Tanya Walton Pratt**, *Judge*.

Before FLAUM, ROVNER, and SCUDDER, *Circuit Judges*.

ROVNER, *Circuit Judge*. A grand jury charged Terrance Brasher and 14 other defendants with engaging in a conspiracy to distribute narcotics in and around the Southern District of Indiana. See 21 U.S.C. §§ 846, 841(a)(1). Only Brasher proceeded to trial, and after hearing the government's evidence, a jury found him guilty. The district court ordered him to serve a term of life in prison. See 21 U.S.C. § 841(b)(1)(A) (2016). Brasher appeals, asserting that there was a material variance between the conspiracy as charged and as proven at trial, that the government's proof at trial constructively amended the indictment, that the government improperly exercised its peremptory challenges to exclude two African American venire members during the jury selection process, that the prosecutor made prejudicial remarks in closing argument, that the government made improper use of evidence obtained via court-authorized wiretaps, and that the district court erroneously precluded him from challenging one of the prior narcotics convictions which triggered his mandatory term of life imprisonment. Finding no merit to any of these arguments, we affirm Brasher's conviction and sentence.

[Full text](#)

Kevin Harer v. Shane Casey No. 19-3334

Argued May 26, 2020 — Decided June 12, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18-cv-06822 — **Robert W. Gettleman**, *Judge*.
Before FLAUM, SCUDDER, and ST. EVE, *Circuit Judges*.

FLAUM, *Circuit Judge*. Samantha Harer died from a gunshot wound to the head. The coroner concluded Samantha committed suicide. Samantha's parents, Kevin and Heather Harer, reject this finding. The Harers claim Samantha's boyfriend, Felipe Flores—a police officer for the town of Crest Hill, Illinois—murdered Samantha during an argument at her home in neighboring Channahon, Illinois. The Harers sued Flores and Crest Hill in federal court: Flores for wrongful death (among other torts) and Crest Hill for its alleged unconstitutional practice of concealing officers' misconduct, which the Harers allege emboldened Flores to kill Samantha. The Harers also sued the Town of Channahon and its Chief of

Police Shane Casey, its Deputy Chief of Police Adam Bogart, and Detective Andrew McClellan (collectively, the “Channahon defendants”), asserting these defendants denied the Harers their constitutional right of access to court when they engaged in a cover-up to protect Flores. The Channahon defendants moved to dismiss the access claim, arguing they did not prevent the Harers from initiating a wrongful death lawsuit against Flores within the statute of limitations. The district court denied the motion, holding that the Channahon defendants still frustrated their judicial access by delaying the Harers’ suit and costing them money. Additionally, the court ruled that clearly established law prohibited the officers’ conduct, so qualified immunity did not shield the officers from suit. We reverse the court’s judgment because the Harers have access to remedies—and therefore access to court—in their pending wrongful death suit. Accordingly, the Harers’ access claim (Count II) is not ripe for review, and we remand with instructions to dismiss it without prejudice.

[Full text](#)

Lora Simons v. Andrew Saul No. 19-2332

Argued May 26, 2020 — Decided June 12, 2020

Case Type: Civil

Southern District of Illinois. No. 18-cv-00961 **Donald G. Wilkerson**, *Magistrate Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; MICHAEL Y. SCUDDER, *Circuit Judge*; AMY J. ST. EVE, *Circuit Judge*.

ORDER

Plaintiff Lora Simons filed for Supplemental Security Income benefits, but an administrative law judge (ALJ) determined she was not disabled under the relevant regulations. Simons appeals this denial of benefits, and we affirm. Substantial evidence supports the ALJ’s decision that Simons was not disabled.

[Full text](#)

USA v. Jonathan Eymann and Gary Lyons Nos. 19-2090 & 19-2101

Argued January 22, 2020 — Decided June 12, 2020

Case Type: Criminal

Central District of Illinois. No. 3:15-cr-30021 — **Sue E. Myerscough**, *Judge*.

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

SYKES, *Circuit Judge*, concurring.

HAMILTON, *Circuit Judge*, dissenting.

WOOD, *Chief Judge*. Jonathan Eymann and his uncle, Gary Lyons, were flying from California to Pennsylvania when they stopped around midnight at a small public airport in Litchfield, Illinois. Suspecting drug trafficking, law enforcement officers followed the pair to a nearby hotel and confronted them in the hotel’s parking lot. The encounter ended in their arrests and the discovery of 65 pounds of marijuana in their airplane.

Asserting that the officers had violated the Fourth and Fifth Amendments in a number of ways, Eymann and Lyons filed a joint motion to suppress the evidence against them. After the district court denied the motion, Eymann conditionally pleaded guilty to conspiracy to distribute marijuana, reserving the right to appeal the district court’s ruling on their suppression motion. Lyons proceeded to trial, where a jury convicted him of conspiracy to distribute marijuana and aiding and abetting the possession of marijuana with the intent to distribute. Both men now appeal the district court’s denial of their motion to suppress. Finding no reason to set aside either the district court’s factual findings or its ultimate conclusion, we affirm.

[Full text](#)

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](#).