

## **Opinions for the week of May 31 - June 3, 2016**

**Thomas Carter v. J.P. Morgan Chase Bank, N.A.** No. 16-1082

Submitted May 31, 2016 — Decided May 31, 2016

Case Type: Civil

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

Northern District of Illinois, Eastern Division. No. 15 C 2256 — **Matthew F. Kennelly**, *Judge*.

### **ORDER**

Thomas Carter, a retired Army officer, was invited to interview for a job with a company performing contract work for JPMorgan Chase. When he arrived at the Chase facility where the interview was to be conducted, Carter was turned away by the building manager and a security guard employed by U.S. Security Associates. They had concluded—incorrectly, as it turned out—that, under Chase protocol for that building, Carter’s military ID was not a suitable form of identification to gain entry. The interview went forward (off site), but Carter was not hired. He later filed this lawsuit against Chase and U.S. Security Associates, essentially alleging that their employees’ miscue had cost him the job. In his operative complaint Carter raised a litany of claims, including “employment discrimination,” “age discrimination,” violation of the Uniformed Services Employment and Reemployment Rights Act, see 38 U.S.C. § 4311, and even racketeering. The district court dismissed the action on the defendants’ motion, reasoning that Carter had not alleged a plausible claim... AFFIRMED.

**Calumet River Fleeting, Incor v. International Union of Operation** No. 15-3174

Argued February 23, 2016 — Decided May 31, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14-cv-00133 — **Sharon Johnson Coleman**, *Judge*.

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

HAMILTON, *Circuit Judge*. In July 2013, plaintiff Calumet River Fleeting, Inc. fired a boat operator, and defendant International Union of Operating Engineers, Local 150, AFL-CIO (“the Union”) filed a grievance with Calumet over the termination. Calumet refused to participate in the arbitration, saying that although it was once a party to a collective bargaining agreement with the Union, Calumet had terminated its participation in that agreement before the dispute arose over the firing. When the Union took steps to start the arbitration, Calumet filed this suit to stop it. The Union counterclaimed for an order compelling arbitration. The district court granted summary judgment to Calumet, holding that it was no longer a party to any agreement with the Union that might have required arbitration. The Union has appealed, arguing that an earlier arbitration award in an unrelated proceeding had found that Calumet was an alter ego of Selvick Marine Construction, LLC, a company that was a party to the collective bargaining agreement. By virtue of the alter ego relationship, the Union contends that Calumet had to submit to arbitration. We affirm. We first find that we have appellate jurisdiction over this matter despite the lack of a separate judgment. On the merits, the arbitration award on which the Union relies does not show that Calumet was still a party to the collective bargaining agreement. Calumet is entitled to judgment as a matter of law.

**Luis Aparicio-Brito v. Loretta E. Lynch** Nos. 14-3062, 15-1270, and 15-1769

Argued January 6, 2016 — Decided May 31, 2016

Case Type: Agency

Board of Immigration Appeals. No. A 076-879-145

Before POSNER and WILLIAMS, *Circuit Judges*, and PALLMEYER, *District Judge*.

WILLIAMS, *Circuit Judge*. Following petitioner Luis Aparicio-Brito’s fourth arrest for driving under the influence, the U.S. government commenced deportation proceedings against him. Aparicio-Brito, a native

and citizen of Mexico, did not challenge removability; instead, he focused his efforts on suppressing the government's evidence regarding his alienage and applying for cancellation of removal. But an immigration judge (IJ) denied his suppression motions and his application, as well as his request for voluntary departure. In doing so, the IJ concluded that the government sufficiently demonstrated that Aparicio-Brito had entered the United States without inspection, and that cancellation of removal and voluntary departure would be improper because of Aparicio-Brito's inability to demonstrate continuous presence in the United States, good moral character, and extreme hardship on family members upon deportation. Aparicio-Brito appealed the IJ's decision to the Board of Immigration Appeals (BIA), arguing that the IJ and the government had violated his due process rights in various ways before and during the proceedings, and challenging the IJ's conclusions regarding alienage, cancellation of removal, and voluntary departure. The BIA dismissed this appeal and denied Aparicio-Brito's later request to reopen proceedings. We find that the IJ and the government complied with their statutory responsibilities relating to Aparicio-Brito's removal proceedings. Also, the IJ properly concluded that a summary of Aparicio-Brito's statements to government officials adequately demonstrated his alienage. And the IJ correctly denied Aparicio-Brito's application for cancellation of removal based on his inability to demonstrate ten years of continuous physical presence in the United States. So we deny Aparicio-Brito's petition for review.

**USA v. Ladonta Gill and Dana Bostic** Nos. 14-3205 & 15-1198

Argued January 5, 2016 — Decided May 31, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. Nos. 10 CR 673-7 & 10 CR 673-1 — **Matthew F. Kennelly, Judge.**

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

KANNE, *Circuit Judge*. Defendants-Appellants Ladonta Gill and Dana Bostic both pled guilty to participating in a heroin distribution conspiracy. Gill challenges his sentence as procedurally unsound, disputing his criminal history point assessment and supervised release conditions. Bostic challenges his sentence as procedurally unsound and substantively unreasonable. We vacate and remand Gill's sentence for complete resentencing, and we affirm Bostic's sentence.

**Jose Crespo v. Carolyn W. Colvin** No. 14-3779

Argued April 14, 2016 — Decided May 31, 2016

Case Type: Agency

Department of Health and Human Services No. A-14-63

Before POSNER, KANNE, and HAMILTON, *Circuit Judges*.

KANNE, *Circuit Judge*. Petitioner Jose Crespo served as the representative payee for his mother so that she could get Supplemental Security Income benefits. But Crespo's mother was not entitled to those benefits because she lived in Puerto Rico, a fact that Crespo hid from the Social Security Administration by falsely representing that she lived with him in Illinois. As a result, an ALJ imposed a \$114,956 civil monetary penalty on Crespo for the misrepresentations. Crespo appealed to the Departmental Appeals Board of the Department of Health and Human Services, which dismissed his appeal as untimely. We affirm.

**Lonzo Stanley v. USA** No. 15-3728

Case Type: Prisoner

Submitted May 31, 2016 — Decided June 1, 2016

Western District of Wisconsin. No. 15-cv-222-bbc — **Barbara B. Crabb, Judge.**

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

More than a decade ago, Lonzo Stanley was found to be a career offender under the sentencing guidelines, see U.S.S.G. § 4B1.1, and ordered to serve 200 months' imprisonment. After the Supreme Court issued its opinion in *Johnson v. United States*, 135 S. Ct. 2551 (2015), Stanley filed this action under 28 U.S.C. § 2255 challenging his sentence. Stanley reads *Johnson* as support for his contention that two of three convictions used in finding him to be a career offender were misclassified as crimes of violence, leaving him with fewer than the two qualifying convictions necessary for § 4B1.1 to apply. The government did not insist that its procedural defenses be addressed by the district court, instead arguing that Stanley's motion would fail on the merits. The district court agreed with the government that *Johnson* does not undermine the application of § 4B1.1 to Stanley, but issued a certificate of appealability authorizing him to bring this challenge to the denial of his § 2255 motion. We affirm that decision.

#### **Kyung Yano v. City Colleges of Chicago** No. 15-3374

Submitted May 6, 2016 — Decided June 1, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 08-cv-4492 — **Andrea R. Wood**, Judge.

Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

What started with a disputed grade spiraled into this litigation brought by a student and her mother against two professors and a dean at Harry S. Truman College in Chicago. Sayuri Yano, who was 11 when she was enrolled at Truman, claimed that the defendant professors had singled her out for arbitrary harassment, thus denying her equal protection and also committing the Illinois tort of intentional infliction of emotional distress. Both Sayuri and her mother, Kyung Hye Yano, also claimed that they suffered retaliation for complaining about the professors, in violation of the First Amendment. The district court granted summary judgment for the defendants of the First Amendment and equal-protection claims, and a jury found for them on the state-law claim. On appeal the plaintiffs challenge the adverse decision at summary judgment, as well as several evidentiary rulings made during the trial of Sayuri's tort claim. We affirm the judgment, though our reasoning differs from that of the district court.

#### **Gabriel Buitron v. Loretta Lynch** No. 15-3335

Submitted May 31, 2016 — Decided June 1, 2016

Case Type: Prisoner

Southern District of Illinois. No. 14-CV-00875-DRH — **David R. Herndon**, Judge.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

Gabriel Buitron, a United States citizen, was convicted of aggravated homicide in Mexico and sentenced to 330 months in prison. As allowed by treaty, after serving 18 months in Mexico Buitron was transferred to the United States. The United States Parole Commission determined that Buitron would serve the remaining 312 months in prison, minus any earned good-conduct credits, plus a term of supervised release. The total sentence was capped by statute at 330 months—the full term of his foreign sentence. Imprisoned in Texas, Buitron appealed that sentence to the Fifth Circuit and lost. See *Buitron v. U.S. Parole Comm'n*, 73 F. App'x 759, 762–64 (5th Cir. 2003). Now in Illinois, Buitron has petitioned under 28 U.S.C. § 2241, contending that he “will be imprisoned in excess of the statutory maximum sentence.” The district court denied relief. Because his petition fails for procedural and substantive reasons, we affirm.

**Michael Wu v. Prudential Financial, Inc.** Nos. 15-2877 & 15-2880

Submitted May 31, 2016 — Decided June 1, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. Nos. 14 C 5392 & 15 C 2238 — **Milton I. Shadur**, *Judge*.  
Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

Michael and Christine Wu are contumacious litigants. After they purchased a Prudential variable annuity from a Citigroup representative in 2010, twice they brought suits against Prudential, Citigroup, and a host of other financial-services companies and related individuals alleging fraudulent practices in the management of the annuity. The first suit was dismissed after the Wus repeatedly failed to comply with pleading requirements under the Federal Rules of Civil Procedure, leaving the district court and the defendants with little idea of the nature of their claims. The second was barred by claim preclusion, after the district court expressed exasperation that the Wus had dishonored a promise to hire counsel and seek arbitration rather than file another suit pro se. The Wus appeal both judgments, and we affirm.

**Larry Latham v. William Wolfe** No. 15-2855

Submitted May 31, 2016 — Decided June 1, 2016

Case Type: Prisoner

Southern District of Indiana, Indianapolis Division. No. 1:14-cv-607-SEB-DML — **Sarah Evans Barker**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

Larry Latham, an Indiana prisoner at Pendleton Correctional Facility, brought this action under 42 U.S.C. § 1983 after the defendants, prison physicians William Wolfe and Michael Mitcheff, did not immediately meet his demand to see a cardiologist and also briefly delayed prescribing a medication recommended by one of the cardiologists who eventually treated him. (Rose Vaisvilas, a healthcare administrator for the Department of Corrections, also was named as a defendant, but she died while the case was pending in the district court, and Latham made no effort to substitute an estate representative after being notified of her death. See FED. R. CIV. P. 25(a)(1); *Atkins v. City of Chicago*, 547 F.3d 869, 870 (7th Cir. 2008); *Steffey v. Orman*, 461 F.3d 1218, 1220 n.2 (10th Cir. 2006).) Latham claimed that the doctors had been deliberately indifferent to his heart disease in violation of the Eighth Amendment. The district court granted summary judgment for the doctors, and Latham appeals. We affirm the judgment.

**USA v. Gilberto Laureano** No. 15-2802

Submitted May 31, 2016 — Decided June 1, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 10 CR 772 — **James B. Zagel**, *Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

Gilberto Laureano pleaded guilty to a conspiracy to distribute and to possess with the intent to distribute 9.7 kilograms of heroin, 21 U.S.C. § 841(a)(1), after

he enlisted a co-conspirator to drive with him to Mexico, pick up heroin, and drive back to Chicago with the drugs. Laureano was sentenced to 120 months' imprisonment, the statutory minimum, and 5 years' supervised release. Although his plea agreement included a broad appeal waiver, Laureano appealed. His lawyer asserts that the appeal is frivolous and seeks to withdraw. See *Anders v. California*, 386 U.S. 738, 744 (1967). We invited Laureano to comment on counsel's motion, but he has not responded. See CIR. R. 51(b). Counsel has submitted a brief that 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 to be thorough, we limit our review to the subjects that counsel discusses. See *United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014); *United States v. Wagner*, 103 F.3d 551, 553 (7th Cir. 1996)... We GRANT counsel's motion to withdraw and DISMISS the appeal.

**Scott Putnam v. Carolyn Colvin** No. 15-2321

Submitted May 31, 2016 — Decided June 1, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 13 C 1587 — **Mary M. Rowland**, *Magistrate Judge*. Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

**ORDER**

In pursuing disability insurance benefits from the Social Security Administration, Scott Putnam, age 40, asserts that he cannot work. He says that he was disabled during the 76 days between October 17, 2006 (the day after his first Social Security claim was denied, a decision that Putnam is precluded from relitigating, see *Meredith v. Bowen*, 833 F.2d 650, 652–53 & n.2 (7th Cir. 1987)), and December 31, 2006 (his date last insured). A year earlier, the Department of Veterans Affairs had determined that, under its disability-benefits program, Putnam was entitled to benefits for his service-related disability (rated at 100%). In seeking additional benefits from the Social Security Administration, he alleges two main sets of impairments: physical (knee pain) and mental (depression and anxiety). He has abandoned an appellate argument about other impairments, so we need not discuss them. An ALJ denied Putnam's application (and the district court agreed), concluding that Putnam's anxiety and depression were not severe impairments and that his knee pain did not render him disabled. The ALJ's decision is supported by substantial evidence, so we affirm.

**Trudi Puchalski v. Carolyn Colvin** No. 15-2103

Submitted May 31, 2016 — Decided June 1, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 14-C-869 — **Lynn Adelman**, *Judge*. Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

**ORDER**

Trudi Puchalski, 51-year-old woman who claims that she is disabled by chronic pain, obesity, and affective and anxiety disorder, appeals the district court's judgment upholding the Social Security Administration's denial of her application for disability insurance benefits, see 42 U.S.C. § 423(a), and supplemental security income, see *id.* § 1382(a). The ALJ concluded that Puchalski had not become disabled before her date last insured and had the residual functional capacity to perform light work. The ALJ further concluded that she was also not disabled after her date last insured because she could perform sedentary work. Like the district court, we conclude that the ALJ's analysis is supported by substantial evidence and affirm.

**USA v. Michael Highshaw** No. 15-2007

Submitted May 6, 2016 — Decided June 1, 2016

Case Type: Criminal

Eastern District of Wisconsin. No 14-CR-188-JPS-3 — **J. P. Stadtmueller**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

**ORDER**

Michael Highshaw pleaded guilty to a conspiracy involving 500 grams or more of crack and powder cocaine, 21 U.S.C. §§ 846, 841(a)(1), and to being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1). He was then sentenced below the guidelines to 180 months' imprisonment. Although the plea agreement included an appeal waiver, Highshaw filed a notice of appeal. His lawyer asserts that the appeal is frivolous and seeks to withdraw. *See Anders v. California*, 386 U.S. 738, 744 (1967). Counsel submitted a brief that explains the nature of the case and addresses the issues that an appeal of this kind might be expected to involve. Highshaw declined our invitation to respond to counsel's motion. *See* CIR. R. 51(b). Because counsel's analysis appears to be thorough, we limit our review to the subjects that counsel has discussed. *See United States v. Bey*, 748 F.3d 774, 776 (7th Cir. 2014); *United States v. Wagner*, 103 F.3d 551, 553 (7th Cir. 1996)... Counsel's motion to withdraw is GRANTED, and the appeal is DISMISSED.

**Carl Gallo v. Dr. Kul Sood** No. 15-1904

Submitted May 6, 2016 — Decided June 1, 2016

Case Type: Prisoner

Central District of Illinois. No. 12-cv-01533 — Michael M. Mihm, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

**ORDER**

Carl Gallo, an Illinois prisoner, appeals the grant of summary judgment against him in this suit under 42 U.S.C. § 1983 asserting that medical staff at Hill Correctional Center were deliberately indifferent in treating his ulcerative colitis (an inflammatory bowel disease affecting the lining of the colon and rectum) and lipomas (benign fatty tumors that form under the skin). At issue is whether a prison doctor and his staff deliberately withheld a particular medication for colitis and disregarded a serious health risk by not surgically removing Gallo's lipomas. We affirm.

**Kamat Damani v. Simer SP, Inc.** No. 15-1669

Submitted May 6, 2016 — Decided June 1, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 9862 — **Rebecca R. Pallmeyer**, *Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

**ORDER**

Kamat Damani appeals a judgment entered upon a jury verdict for his former employer, the owners of a Subway franchise, in this suit under the Americans with Disabilities Act, 42 U.S.C. §§ 12102, 12112. He also challenges the grant of summary judgment against him on his claim of defamation under Illinois law. We affirm.

**Omar Ramirez v. Magid Fahim** No. 15-1539

Case Type: Prisoner

Submitted May 6, 2016 — Decided June 1, 2016

Southern District of Illinois. No 12-cv-01197-MJR-SCW — **Michael J. Reagan**, *Chief Judge*.

Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

Omar Ramirez, an Illinois prisoner at Menard Correctional Center, alleged that Dr. Magid Fahim and Wexford Health Services had denied appropriate treatment for an injury to his left knee despite numerous complaints that the knee joint would dislocate, causing pain. He claimed that the course of treatment constituted deliberate indifference to a serious medical need under the Eighth Amendment, *see* 42 U.S.C. § 1983, and medical malpractice under Illinois law, *see Sullivan v. Edward Hosp.*, 806 N.E.2d 645, 653 (Ill. 2004). Three times Ramirez asked the district court to recruit a lawyer to assist him, but the court denied each request. The court also dismissed the malpractice claim because Ramirez had not submitted a physician's certification of "reasonable and meritorious cause" for that claim. *See* 735 ILCS 5/2-622(a). The defendants later prevailed at summary judgment on the Eighth Amendment claim, but in this appeal Ramirez challenges only the district court's refusal to recruit counsel and the dismissal of the malpractice claim. We affirm the judgment.

**Hubert Walker v. Trailer Transit, Inc.** No. 15-1482

Argued September 16, 2015 — Decided June 1, 2016

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 1:13-cv-00124-TWP-DKL — **Tanya Walton Pratt**, *Judge*.

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

EASTERBROOK, *Circuit Judge*. Trailer Transit relies on independent truckers, which following the parties' convention we call the Drivers (though they also provide the rigs that carry the cargo). Trailer Transit contracts with shippers for the movement of cargo, then contracts with Drivers to provide transportation. It promises Drivers 71% of the gross revenues, with exclusions. Here is the language: The parties mutually agree that [Trailer Transit] shall pay to [Driver], as rental for the equipment leased herein, for trips under [Trailer Transit]'s operating authorities or in [Trailer Transit]'s service, a sum equal to seventy one percent (71%) of the gross revenues derived from use of the equipment leased herein (less any insurance related surcharge and all items intended to reimburse [Trailer Transit] for special services, such as permits, escort service and other special administrative costs including, but not limited to, Item 889). In this suit a class of about 1,000 Drivers contends that Trailer Transit made a profit on its "special services" and owes 71% of that profit to the Drivers. The district court held otherwise. 1 F. Supp. 3d 879 (S.D. Ind. 2014); 2015 U.S. Dist. LEXIS 20250 (S.D. Ind. Feb. 19, 2015)... AFFIRMED

**CFTC v. Monex Deposit Company** No. 15-1467

Argued September 16, 2015 — Decided June 1, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 14 C 6131 — **Ronald A. Guzmán**, *Judge*.

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

EASTERBROOK, *Circuit Judge*. The Commodity Futures Trading Commission regulates contracts concerning commodities for future delivery when offered on margin or another form of leverage. 7 U.S.C. §2(c)(2)(D)(i)(II), (iii), §6, §6b. But the statute creates an exception for a contract that "results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved". 7 U.S.C. §2(c)(2)(D)(ii)(III)(aa). The CFTC opened an investigation to determine whether the precious-metals business conducted by Monex Deposit Co. and affiliates comes within this exception.

Monex refused to comply with a subpoena, arguing that since 1987, when it adopted its current business model (which it calls the Atlas program), the CFTC has deemed its business to be in compliance with all federal rules—and Monex adds that because (in its view) it satisfies the exception, the Commission lacks authority even to investigate. The district court enforced the subpoena, however, and Monex turned over the documents. It filed this appeal seeking to have them returned, and it also wants the court to enjoin the CFTC from using them in any enforcement proceeding. These potential remedies mean that the proceeding is not moot. See *Church of Scientology v. United States*, 506 U.S. 9 (1992)... AFFIRMED

**Beatrice Boyer v. BNSF Railway Company** Nos. 14-3131 & 14-3182

Argued January 4, 2016 — Decided June 1, 2016

Case Type: Civil

Western District of Wisconsin. No. 3:14-CV-00260-bbc— **Barbara B. Crabb**, *Judge*.

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

ROVNER, *Circuit Judge*. These consolidated appeals are successive to our decision in *Irish v. BNSF Ry. Co.*, 674 F.3d 710 (7th Cir. 2012). See 7th Cir. Internal Operating Proc. 6(b). After we concluded that the plaintiffs-appellants in *Irish* had forfeited the argument they presented on appeal, the plaintiffs' counsel assembled a (mostly) new group of plaintiffs and refiled the same litigation in Arkansas state court in order to pursue that argument. The new suit was removed to federal court and transferred to the Western District of Wisconsin, where the district court dismissed the complaint for failure to state a claim on which relief could be granted. The defendant asked the court to sanction the plaintiffs' counsel pursuant to Federal Rule of Civil Procedure 11 and/or 28 U.S.C. § 1927 for pursuing frivolous claims and engaging in abusive litigation tactics, but the court denied that request, reasoning that although the plaintiffs' claims were all but foreclosed by our decision in *Irish*, they were not frivolous. The parties have cross-appealed. We affirm the dismissal of the complaint but reverse the denial of sanctions. We believe the record makes clear that the plaintiffs' counsel unreasonably and vexatiously multiplied the proceedings by filing suit in Arkansas, which had absolutely no connection to this case. Pursuant to section 1927, the defendant is entitled to its fees and costs for removing the case to federal court and successfully seeking its transfer to the Western District of Wisconsin.

**Aman Singh v. Adam Gegare** No. 15-3639

Submitted May 31, 2016 — Decided June 2, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 14-cv-837 — **William E. Duffin**, *Magistrate Judge*.

Before FRANK H. EASTERBROOK, *Circuit Judge*; MICHAEL S. KANNE, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

**ORDER**

After his release from prison in Wisconsin, Aman Deep Singh brought this action under 42 U.S.C. § 1983, principally claiming that more than a dozen guards and administrators at two different facilities had penalized him for engaging in protected speech, impeded his access to the courts, and deprived him of liberty and property without due process. The district court (a magistrate judge presiding by consent) screened Singh's complaint, see *Rowe v. Shake*, 196 F.3d 778, 783 (7th Cir. 1999), but did not address our decisions stating that unrelated claims against unrelated defendants cannot be brought in the same complaint. See FED. R. CIV. P. 18, 20; *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 683 (7th Cir. 2012); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011). The action proceeded to summary judgment, which the district court granted in favor of the defendants on all claims. Singh appeals, but we uphold the district court's decision.

**Lincoln Brown v. Chicago Board of Education** No. 15-1857

Argued February 23, 2016 — Decided June 2, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12 C 1112 — **Manish S. Shah**, *Judge*.  
Before WOOD, *Chief Judge*, and SYKES and HAMILTON, *Circuit Judges*.

WOOD, *Chief Judge*. Justice Scalia once said that he wished all federal judges were given a stamp that read “stupid but constitutional.” See Jennifer Senior, *In Conversation: Antonin Scalia*, NEW YORK MAGAZINE, Oct. 6, 2013. As he was implying, not everything that is undesirable, annoying, or even harmful amounts to a violation of the law, much less a constitutional problem. Today’s case provides another illustration of that fact. The Chicago Board of Education has a written policy that forbids teachers from using racial epithets in front of students, no matter what the purpose. Lincoln Brown, a sixth grade teacher at Murray Language Academy, a Chicago Public School, caught his students passing a note in class. The note contained, among other things, music lyrics with the offensive word “nigger.” Brown used this episode as an opportunity to conduct what appears to have been a well-intentioned but poorly executed discussion of why such words are hurtful and must not be used. The school principal, Gregory Mason, happened to observe the lesson. Brown was soon suspended and brought this suit under 42 U.S.C. § 1983 against the Board and various school personnel. The district court dismissed a number of counts under Federal Rule of Civil Procedure 12(b)(6), and Brown has not pursued them further. But two of his theories of relief proceeded to summary judgment: that his suspension violated his First Amendment rights, and that the school’s policy was so vague that his suspension violated the substantive due process component of the Fourteenth Amendment. The district court granted summary judgment to the Board on both. Brown appeals. Because Brown’s suspension did not violate his constitutional rights, we affirm.

**Chiquita Newell v. Alden Village** No. 15-1245

Submitted May 6, 2016 — Decided June 2, 2016

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 12-cv-07185 — **Charles P. Kocoras**, *Judge*.  
Before JOEL M. FLAUM, *Circuit Judge*; DANIEL A. MANION, *Circuit Judge*; ANN CLAIRE WILLIAMS, *Circuit Judge*.

#### **ORDER**

Chiquita Newell, a former employee of a long-term care facility, appeals the district court’s grant of summary judgment against her in this suit under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 to 12213, as well as the court’s denial of her post-judgment motion to set aside that decision. The district court dismissed most of her claims at the pleading stage and later granted summary judgment for the defendant on her remaining claims that it failed to reasonably accommodate her disability and that it terminated her because of the disability. We affirm.

**USA v. Justin Hancock** No. 15-1779

Argued December 8, 2015 — Decided June 3, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 13 CR 217 — **Virginia M. Kendall**, *Judge*.  
Before WOOD, *Chief Judge*, and BAUER and WILLIAMS, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Justin Hancock was sentenced to 120 months in prison for distributing child pornography. He appeals his sentence on procedural grounds, arguing that the district judge inadequately addressed his arguments before imposing his sentence. We disagree. Because the judge adequately addressed Hancock’s arguments, we affirm.

**D. U. v. Kitty Rhoades** No. 15-1243

Argued March 30, 2016 — Decided June 3, 2016

Case Type: Civil

Eastern District of Wisconsin. No. 2:13-cv-01457 — **Nancy Joseph**, *Magistrate Judge*.  
Before WOOD, *Chief Judge*, and POSNER and ROVNER, *Circuit Judges*.

ROVNER, *Circuit Judge*. D.U. is a minor who was receiving the assistance of a Medicaid-funded private duty nurse for seventy hours each week after a catastrophic accident rendered her severely disabled. After many years of care, the State of Wisconsin determined that full-time skilled nursing assistance was no longer medically necessary for D.U.'s care, and the State denied further authorization of that level of care. D.U. then sued Kitty Rhoades, Secretary for the Wisconsin Department of Health Services ("DHS"), and Kelly Townsend, a nurse consultant in the Quality Assurance and Appropriateness Review Section ("QAARS") in the DHS Office of the Inspector General, asserting that the reduction in hours of her private duty nurse is a violation of the Medicaid Act. See 42 U.S.C. § 1396 *et seq.* D.U. moved for a preliminary injunction, asking the court to compel the State to provide seventy hours of private duty nursing care each week pending the outcome of the lawsuit. The district court denied the motion for a preliminary injunction. Although we conclude that the district court erred in assessing D.U.'s likelihood of success on the merits of her claim, we affirm because D.U. has failed to demonstrate that she will suffer irreparable harm if the injunction is denied.

**Jermaine Jackson v. City of Peoria, Illinois** No. 14-3701

Argued September 25, 2015 — Decided June 3, 2016

Case Type: Civil

Central District of Illinois. No. 13-1130 — **James E. Shadid**, *Chief Judge*.

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

EASTERBROOK, *Circuit Judge*. Clarence Heinz was the victim of a home invasion in October 2011. One burglar entered, punched Heinz and locked him in a closet, then was joined by a second burglar. They stole some of Heinz's possessions, including his car (they got the keys from his home). Police arrested Jermaine Jackson for this crime. After he was acquitted at trial, he turned the tables and sued the police under 42 U.S.C. §1983. The district court granted summary judgment for the defendants... AFFIRMED

**USA v. Juan Amaya** No. 14-2617

Argued September 9, 2015 — Decided June 3, 2016

Case Type: Criminal

Northern District of Illinois, Eastern Division. No. 12-cr-710 — **Rebecca R. Pallmeyer**, *Judge*.

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

WILLIAMS, *Circuit Judge*. For a time, Juan Amaya was a ranking officer in the Latin Kings, a vicious and well-organized street gang whose structure and operations we have previously described in detail. See generally *United States v. Garcia*, 754 F.3d 460, 465-68 (7th Cir. 2014). A jury convicted him of drug-related crimes (distributing cocaine, possessing cocaine with the intent to distribute it, and carrying a gun in furtherance of his cocaine distribution) and organized-gang-related crimes (conspiring to conduct racketeering activity and aiding and abetting a violent crime in aid of racketeering). On the gun count and the two racketeering counts, Amaya challenges the sufficiency of the government's evidence, but we find that the evidence sufficiently supported the jury's verdict. Amaya also challenges the admission of an out-of-court statement made by an undercover law-enforcement agent, but the statement was not hearsay

because it was not offered for its truth, and its admission was not unduly prejudicial. Finally, Amaya argues that the admission of an out-of-court statement made by a confidential informant violated Amaya's constitutional right to confront the witnesses against him. But the statement was not the type of "testimonial" statement covered by the Sixth Amendment's Confrontation Clause. For these reasons, we affirm Amaya's convictions.

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](#).