Congressional Research Service
Informing the legislative debate since 1914

Majority, Concurring, and Dissenting Opinions by Judge Neil M. Gorsuch

Updated March 1, 2017

Congressional Research Service
https://crsreports.congress.gov
R44772

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

On January 31, 2017, President Trump announced the nomination of Judge Neil M. Gorsuch of the U.S. Court of Appeals for the Tenth Circuit (Tenth Circuit) to fill the vacancy on the Supreme Court left by the death of Justice Antonin Scalia on February 13, 2016. Judge Gorsuch has served as a judge on the Tenth Circuit since August 2006, and has also sat, by designation, on the U.S. Court of Appeals for the Ninth Circuit and the U.S. Court of Appeals for the District of Columbia Circuit.

This report provides a tabular listing of cases in which Judge Gorsuch authored a majority, concurring, or dissenting opinion. The opinions are categorized into three tables: **Table 1** identifies opinions authored by Judge Gorsuch on behalf of a unanimous panel; **Table 2** contains controlling opinions authored by Judge Gorsuch in which one or more panelists wrote a separate opinion; and **Table 3** lists cases where Judge Gorsuch wrote a concurring or dissenting opinion (decisions where Judge Gorsuch wrote both the majority opinion *and* a separate concurrence are included in this final table). Opinions are identified and briefly discussed in each table in reverse chronological order. The opinions are also categorized by their primary legal subject.

While this report identifies and briefly describes judicial opinions authored by Judge Gorsuch during his time on the federal court, it does not analyze the implications of his judicial opinions or suggest how he might approach legal issues if appointed to the Supreme Court. Those matters will be discussed in a forthcoming CRS report. Key CRS products related to the Supreme Court vacancy and Judge Gorsuch's nomination are collected in CRS Legal Sidebar WSLG1526, *Vacancy on the Supreme Court: CRS Products*, by Kate M. Manuel and Andrew Nolan.

Contents

Tables

Table 1. Opinions Authored by Judge Gorsuch for a Unanimous Panel 5
Table 2. Majority Opinions Authored by Judge Gorsuch for Which Another Judge Wrote a Concurrence or Dissent 111
Table 3. Concurring and Dissenting Opinions Authored by Judge Gorsuch 123

Contacts

Author Information 154

On January 31, 2017, President Trump announced the nomination of Judge Neil M. Gorsuch of the U.S. Court of Appeals for the Tenth Circuit (Tenth Circuit) to fill the vacancy on the Supreme Court left by the death of Justice Antonin Scalia on February 13, 2016.[1] Judge Gorsuch has served as an appellate judge for the Tenth Circuit since August 2006, and has also sat, by designation,[2] on both the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) and the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

During his tenure on the bench, Judge Gorsuch has served on three-judge or en banc Tenth Circuit panels that have issued over 2,700 judicial decisions.[3] He has also sat, by designation, on Ninth Circuit panels that issued decisions in 11 cases (in which Judge Gorsuch authored dissenting opinions in two cases) and D.C. Circuit panels that issued decisions in six cases (for which Judge Gorsuch authored no opinions).[4]

The Tenth Circuit, like appellate courts for other numbered circuits, generally reviews cases initiated within the geographic region over which the circuit has jurisdiction; in the case of the Tenth Circuit, this includes the states of Colorado, Kansas, Mexico, Wyoming, and Utah, along with portions of Yellowstone National Park reaching into Idaho and Montana.[5] While the Tenth Circuit's docket includes cases touching upon a wide range of legal topics, including administrative law, bankruptcy, contract disputes, immigration, intellectual property, and Indian Law, a significant portion of the docket involves criminal law and claims brought by federal or state prisoners concerning their convictions or subsequent incarceration.[6] Unlike the Supreme Court, which enjoys "almost complete discretion" in selecting its cases, the federal courts of appeals are required to adjudicate many cases as a matter of law and, as a result, tend to hear

[1] The White House, President Trump Announces Supreme Court of the United States Nominee, https://www.whitehouse.gov/featured-videos/video/2017/01/31/president-trump-announces-supreme-court-united-states-nominee (last accessed Feb. 22, 2017).

[2] U.S. Court of Appeals for the Tenth Circuit, General Information, https://www.ca10.uscourts.gov/clerk (last accessed Feb. 22, 2017).

[3] When responding to a questionnaire from the Senate Committee on the Judiciary, Judge Gorsuch estimated that he had sat on panels that had issued "approximately 2,750" decisions. U.S. Senate Committee on the Judiciary, Responses to Questionnaire for the Nominee of the Supreme Court (public version), at 25, https://www.judiciary.senate.gov/imo/media/doc/Neil%20M.%20Gorsuch%20SJQ%20(Public).pdf. CRS searched all federal cases in the Westlaw legal database using the search strategy *pa(Gorsuch) or ju(Gorsuch) or wb(Gorsuch)*, which are the segments for "Panel," "Judge," and "WrittenBy," and which would presumably identify all cases identified by Westlaw editors on which Judge Gorsuch sat on a circuit panel (including, but not limited to, those cases where he wrote the panel's opinion) and retrieved 2,731 results. However, searching federal cases in LexisAdvance, another legal database, for *ju(gorsuch)*, which would identify the cases where Lexis editors identified Judge Gorsuch as a member of a panel that issued an opinion, retrieved 2,860 results. A review of these results revealed instances where a single case generated multiple documents. For example, a Tenth Circuit ruling in *Allen v. Workman* appeared in the LexisAdvance results as two separate documents: *Allen v. Workman*, 464 F. App'x 768 (10th Cir. Apr. 19, 2012) and Allen v. Workman, *2012 U.S. App. Lexis 20121* (10th Cir. Apr. 12, 2012). However, Westlaw returned only one of these documents, 464 F. App'x 768 (10th Cir. 2012).

[4] The Chief Justice of the U.S. Supreme Court "may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit." 28 U.S.C. § 291(a). Judge Gorsuch's designation to sit as a visiting judge was pursuant to this process. *See* Hurt v. United States Dist. Court Judges, 258 F. App'x 341, n.1 (D.C. Cir. 2007).

[5] General Information on the Tenth Circuit, *supra* note 2.

[6] Admin. Office of the U.S. Courts, Federal Court Management Statistics, *U.S. Court of Appeals - Judicial Caseload Profiled*, at 23 (Sept. 2016), http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_appprofile0930.2016_2.pdf (categorizing appeals filed with, and terminated by, the Tenth Circuit between Sept. 2010 and Sept. 2016, and showing that over 40 percent, and in some years more than half, of the appellate docket consisted of criminal cases or claims brought by prisoners).

"many routine cases in which the legal rules are uncontroverted."[7] Perhaps indicative of the nature of federal appellate work, the vast majority of cases decided by three-judge panels of federal courts of appeals are decided without dissent,[8] and the Tenth Circuit is no exception.[9]

This report provides tabular listings of the roughly 854 cases in which Judge Gorsuch authored a majority, concurring, or dissenting opinion. Arguably, these written opinions provide the greatest insight into Judge Gorsuch's judicial approach, as a judge's vote or decision to join an opinion authored by a colleague may not necessarily represent full agreement with a colleague's views.[10] Accordingly, this report does not include cases in which Judge Gorsuch sat on a reviewing judicial panel, but did not author an opinion. Additionally, instances where Judge Gorsuch was part of a panel that issued a per curiam opinion, in which no particular judge was credited as an author, are omitted from this report.[11] The report also does not address subsequent legal proceedings that may have occurred after a cited decision was issued.[12]

The opinions discussed in this report are categorized into three tables: **Table 1** identifies opinions authored by Judge Gorsuch on behalf of a unanimous panel; **Table 2** contains controlling opinions authored by Judge Gorsuch in which one or more panelists wrote a separate opinion; and **Table 3** lists cases where Judge Gorsuch wrote a concurring or dissenting opinion, including cases where Judge Gorsuch wrote both the majority opinion and a separate concurrence.[13] A concurring opinion is identified as a "concurrence in the judgment"—that is, an opinion where the author agrees with the ultimate conclusion reached by the majority but not the manner in which it was reached—only when the concurrence is expressly labeled as such.[14]

---

[7] Louis J. Sirico, Jr., *The Citing of Law Reviews by the United States Courts of Appeals: An Empirical Analysis*, 45 U. MIAMI L. REV. 1051, 1052 n.8 (1991); *see generally* HON. RICHARD A. POSNER, THE FEDERAL COURTS: CHALLENGE AND REFORM 367 (2009) (observing that "more of the work of [the federal appellate] courts really is technical.... Most of the appeals they get can be decided uncontroversially by the application of settled principles").

[8] *See* FRANK B. CROSS, DECISION MAKING IN THE U.S. COURTS OF APPEALS 160 (2007) (noting the "relative paucity of circuit court panel dissents").

[9] *See* Christopher A. Cotropia, *Determining Uniformity Within the Federal Circuit by Measuring Dissent and En Banc Review*, 43 LOY. L.A. L. REV. 801, 815 (2010) (noting that from 1998 to 2009, 2.54% of the opinions issued by the Tenth Circuit garnered a dissent); Hon. Neil M. Gorsuch, *Law's Irony*, 37 HARV. J.L. & PUB. POL'Y 743, 753 (2014) ("Over ninety percent of the decisions issued by my court are unanimous; that's pretty typical of the federal appellate courts.").

[10] *See* Hon. Ruth Bader Ginsburg, as quoted in Irin Carmon, *Opinion, Justice Ginsburg's Cautious Radicalism*, N.Y. TIMES (Oct. 24, 2015), http://www.nytimes.com/2015/10/25/opinion/sunday/justice-ginsburgs-cautious-radicalism.html (observing that "an opinion of the court very often reflects views that are not 100 percent what the opinion author would do, were she writing for herself"); Steven D. Smith, *Lessons from Lincoln: A Comment on Levinson*, 38 PEPP. L. REV. 915, 924 (2011) ("[T]he fact that a judge joins in a majority opinion may not be taken as indicating complete agreement. Rather, silent acquiescence may be understood to mean something more like 'I accept the outcome in this case, and I accept that the reasoning in the majority opinion reflects what a majority of my colleagues has agreed on.'").

[11] This report also does not attempt to identify the various rulings made by circuit panels on procedural issues during the course of litigation (e.g., granting a litigator's request for an extension of time to file a brief), which are not captured by searches of Lexis or Westlaw databases.

[12] A forthcoming CRS report analyzing Judge Gorsuch's jurisprudence will provide a listing of Tenth Circuit decisions subsequently reviewed by the Supreme Court in which Judge Gorsuch had been a member of the reviewing circuit court panel.

[13] Gutierrez-Brizuela v. Lynch, 834 F.3d 1142 (10th Cir. 2016); Browder v. City of Albuquerque, 787 F.3d 1076 (10th Cir. 2015).

[14] James F. Spriggs II & David R. Stras, *Explaining Plurality Decisions*, 99 GEO. L.J. 515, 519-520 (2011) ("[A] simple concurring opinion indicates that the [judge] writing separately agrees with the legal rule and its application in the majority opinion but that there is some aspect of the case worthy of further discussion.... [A]n opinion concurring in the

Cases are listed in reverse chronological order. In each case, the key ruling or rulings of the case are succinctly described. Judicial opinions discussed in this report are categorized using the following 18 legal subject areas:

- Administrative Law
- Bankruptcy
- Civil Rights
- Civil Liability (e.g., tort, preemption, arbitration, class actions, statutory right to sue)
- Contracts
- Criminal Law and Procedure
- Education
- Environmental Law
- Federal Courts (e.g., standing to sue, civil procedure)
- First Amendment (including both constitutional protections and closely related statutory protections contained in the Religious Freedom Restoration Act)
- Habeas
- Immigration
- Indian Law
- Insurance
- Intellectual Property
- Labor and Employment
- Public Benefits (e.g., eligibility for Social Security disability)
- Tax

Where appropriate, multiple subject areas are identified as relevant to a particular case. However, the list above is not an exhaustive accounting of all possible legal subjects addressed in judicial writings of Judge Gorsuch. Moreover, the fact that a case is categorized under a particular legal subject area does not necessarily mean that some observers might not deem other categories to be pertinent. For example, the "Habeas" category is used for cases that involve review (or consideration of whether to review) petitions for a writ of habeas corpus from state or federal prisoners. However, some observers might also argue that such cases could properly fall under the "Criminal Law and Procedure" category (because habeas petitions are typically brought by criminal defendants challenging their convictions or subsequent incarceration) or, alternatively, the "Federal Courts" category (because habeas proceedings are civil in nature and often turn on questions of when or whether courts may review a habeas claim). Accordingly, while the categorizations employed in this report are intended to provide a helpful guide to readers in

---

judgment is the functional equivalent of a dissent from the [controlling opinion's] reasoning even if it represents agreement with the result reached in the case."). The nature of a concurring opinion, including the legal significance that should be given to whether the opinion labels itself a "concurrence" or a "concurrence in the judgment," is a matter of scholarly discussion and occasional judicial importance, particularly in cases where there is a question as to whether a majority of the court shared the same legal rationale to support the court's ruling. *See generally* Sonja R. West, *Concurring in Part & Concurring in the Confusion*, 104 MICH. L. REV. 1951, 1955-1956 and 1958 (2006) (arguing that "the phrase following the comma" after the authoring judge's name—e.g., "concurring" or "concurring in the judgment"—has been "used in an inconsistent, unclear, and often contradictory manner" that has led to confusion among commentators and courts regarding the degree to which the judge endorses the analysis of the majority opinion).

locating decisions dealing with major legal topics, the categories do not necessarily reflect the full range of legal issues a judicial opinion may involve.

While this report identifies and briefly describes those opinions authored by Judge Gorsuch during his tenure on the federal bench, it does not analyze the implications of his judicial opinions or suggest how he might approach legal issues if appointed to the Supreme Court. Those matters will be discussed in a forthcoming CRS report.

Methodology

The cases included in this report were compiled by searching all federal cases in the LexisAdvance legal database for *writtenby(Gorsuch)*,[15] *concurby(Gorsuch)*[16] and *dissentby(Gorsuch)*.[17] Because editors of different legal databases may vary in how they identify cases,[18] a subsequent search was conducted of all federal cases in the Westlaw legal database using *wb(Gorsuch)* as a cross-check to those results.[19] These results were last compared on February 22, 2017. Ultimately, this methodology identified approximately 854 instances in which Judge Gorsuch is credited as an author of a judicial opinion in cases either before the Tenth Circuit (approximately 852 cases) or the Ninth Circuit (two cases).[20] It should be noted that in a handful of cases, an opinion authored by Judge Gorsuch was subsequently republished with minimal, and sometimes only stylistic, changes. Depending upon the nature of these modifications, duplicative decisions are either listed in separate table rows (i.e., when there is a substantive change to the original opinion[21]) or, alternatively, a single table row is used to identify and discuss both decisions (e.g., when the difference between the two opinions consists of stylistic changes necessary for official publication[22]).

[15] The "WrittenBy" segment in LexisAdvance restricts searches to the names of the judge(s) writing an opinion, as identified by Lexis editors.

[16] The "ConcurBy" segment restricts searches to the names of the judge(s) writing a concurring opinion, including opinions concurring in part and opinions concurring in part and dissenting in part, as identified by Lexis editors.

[17] The "DissentBy" segment restricts searches to the names of the judge(s) writing a dissenting opinion, an opinion dissenting in part, or an opinion concurring in part and dissenting in part, as identified by Lexis editors.

[18] *See supra* note 3 (observing differences in search results for the number of panel decisions in which Judge Gorsuch participated, depending upon whether the Westlaw or LexisAdvance database was used).

[19] The "WB" or "Writtenby" segment in Westlaw restricts searches to the names of the judge(s) writing an opinion, as identified by Westlaw editors.

[20] Not every case identified using this methodology actually proved relevant. For example, a February 22, 2017, search of LexisAdvance using the methodology described above identified Judge Gorsuch as the author of the court opinion in *Jaramillo v. Vallejos*, 220 F. App'x. 838 (2007), though the opinion credits another judge on the panel.

[21] *See, e.g.*, United States v. Henry, No. 15-6181, 2017 U.S. App. LEXIS 2020 (Feb. 3, 2017) (republishing opinion originally published in 839 F.3d 1271 (10th Cir. 2016), but adding a substantive footnote).

[22] *See, e.g.*, Smith v. McCord, 707 F.3d 1161 (10th Cir. 2013) (modified, by order published by No. 12-2041, 2013 U.S. App. LEXIS 3549 (10th Cir. Jan. 29, 2013), to make "stylistic changes" necessary for official publication).

Table 1. Opinions Authored by Judge Gorsuch for a Unanimous Panel

Case Name	Citation	Year	Role	Subject	Holding
United States v. Henry	No. 15-6181, 2017 U.S. App. LEXIS 2020	2017	Authored majority	Criminal Law & Procedure	*Remanded*: In revoking defendant's supervised release and imposing a new sentence after finding that the defendant, after his release from federal prison, had engaged in two assaults and lied to his probation officer, the district court did not apply the standards required under Tenth Circuit precedent concerning the admission of certain hearsay evidence. The district court inappropriately relied upon hearsay in finding the defendant committed one of the assaults. Remand was therefore required for a new sentencing analysis by the lower court. This opinion is a reissuance of an earlier opinion in 839 F.3d 1271 (10th Cir. 2016), discussed below, with an additional footnote.
United States v. Marshall	No. 16-7068, 2017 U.S. App. LEXIS 401	2017	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right because petitioner was not sentenced under the "residual clause" of the Armed Career Criminal Act that was invalidated as unconstitutionally vague by the Supreme Court in *Johnson v. United States*.
Bigham v. Allbaugh	No. 16-7068, 2017 U.S. App. LEXIS 389	2017	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
Hammond v. Stamps.com, Inc.	844 F.3d 909	2016	Authored majority	Administrative Law	*Order vacated and remanded*: A class action suit against a postage subscription service sufficiently alleged an amount in controversy to support federal jurisdiction under the Class Action Fairness Act (CAFA); the legally possible minimum damages based on each potential class member exceeded the jurisdictional minimum of the CAFA regardless of whether the class action would likely recover damages.
United States v. Rivera	No. 15-1228, 2016 U.S. App. Lexis 21915	2016	Authored majority	Criminal Law & Procedure; Federal Courts	*Affirmed*: There was no plain error in allowing prosecution to ask a question on cross-examination implying the existence of certain facts that were not supported in the record.

Case Name	Citation	Year	Role	Subject	Holding
Smith v. Farris	No. 16-5115, 2016 U.S. App. LEXIS 21623	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
United States v. Mendoza-Haro	Nos. 15-1276 & 16-1023, 2016 U.S. App. LEXIS 21611	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: District court acted within its discretion and committed no error in denying a motion for reconsideration by defendant for sentence reduction based on her post-sentencing conduct.
White v. Deere & Co.	No. 16-1098, 2016 U.S. App. LEXIS 21287	2016	Authored majority	Federal Courts	*Affirmed*: In a product liability suit, district court did not err in its jury instructions, required under Colorado law, concerning a presumption that the product was free from defect.
Hopper v. Fenton	No. 16-5006, 2016 U.S. App. LEXIS 21292	2016	Authored majority	Criminal Law & Procedure; Civil Rights	*Affirmed*: No constitutional violation occurred under 42 U.S.C. §1983 because the failure to include certain facts in the affidavit did not vitiate the probable cause that supported the defendant's arrest.
United States v. Tarango	No. 16-2015, 2016 U.S. App. LEXIS 21038	2016	Authored majority	Habeas; Criminal Law & Procedure	*Affirmed*: A writ of *coram nobis* to invalidate a guilty plea entered 17 years prior to the instant petition was not available because the defendant failed to exercise due diligence in raising his ineffective counsel claim in prior proceedings.
Lancaster v. Sprint/United Mgmt. Co.	No. 16-6056, 2016 U.S. App. LEXIS 21037	2016	Authored majority	Labor & Employment	*Affirmed*: Plaintiff-employee failed to meet her evidentiary burden to survive defendant's motion for summary judgment on employment discrimination and retaliation claims under the Americans with Disabilities Act.

Case Name	Citation	Year	Role	Subject	Holding
Garman v. Garaychochea	No. 16-4096, 2016 U.S. App. LEXIS 20920	2016	Authored majority	Criminal Law & Procedure; Civil Rights	*Affirmed*: Police officers did not deny plaintiff his due process rights during his pretrial detention; evidence clearly demonstrated that contrary to plaintiff's claim, the officers did not prevent him from changing his soiled clothes.
Morris v. Dowling	No. 16-5131, 2016 WL 6871874	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Moore v. McCollum	No. 16-6167, 2016 U.S. App. LEXIS 19307	2016	Authored majority	Habeas	*Certificate of appealability denied:* Petitioner did not make a substantial showing that he was denied constitutionally effective counsel, as appellate counsel did not err in omitting a due process claim.
United States v. Henry	839 F.3d 1271	2016	Authored majority	Criminal Law & Procedure	*Remanded*: In revoking defendant's supervised release and imposing a new sentence after finding that the defendant, following his release from federal prison, had engaged in two assaults and lied to his probation officer, the district court did not apply the standards required under Tenth Circuit precedent concerning the admission of certain hearsay evidence. The court inappropriately relied upon hearsay in finding that the defendant committed one of the assaults. Remand was therefore required for a new sentencing analysis by the lower court. This opinion was subsequently reissued with an additional footnote as No. 15-6181, 2017 U.S. App. LEXIS 2020 (Feb. 3, 2017) discussed above.
Alvarez v. Grosso	No. 15-1398, 2016 U.S. App. LEXIS 18656	2016	Authored majority	First Amendment; Federal Courts	*Affirmed*: An order barring entry onto a military base was upheld because the appellant, who did not question the military commander's authority to bar civilians from the base, failed to preserve a First Amendment claim that any portion of the base was used as a public forum, and he did not suggest that the announced grounds for the bar were arbitrary or discriminatory.

Case Name	Citation	Year	Role	Subject	Holding
Hodge v. Utah	No. 16-4043, 2016 U.S. App. LEXIS 18567	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
United States v. Espinoza	No. 16-2176, 2016 U.S. App. LEXIS 18521	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Parker v. Dowling	No. 16-6219, 2016 U.S. App. LEXIS 17900	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right because, under Oklahoma law, the power to commute a sentence is in the sole discretion of the governor and not subject to a due process challenge.
United States v. Tolliver	No. 16-5057, 2016 U.S. App. LEXIS 16950	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel. The trial counsel was not ineffective for failing to challenge the constitutional sufficiency of petitioner's indictment, and counsel's sentencing calculation error did not result in prejudicial error.
UTE Indian Tribe of the Uintah & Ouray Reservation v. Myton	835 F.3d 1255	2016	Authored majority	Federal Courts; Indian Law	*Reversed and reassigned*: District court erred when it dismissed the Ute Indian Tribe's suit alleging that a town was improperly prosecuting tribal members in state court for offenses on land that had been restored to tribal jurisdiction. The tribe stated a plausible claim for relief premised on prior judicial decisions that determined the boundaries of tribal jurisdiction. Reassignment to a different judge was also appropriate given judge's failure to give effect to court's earlier mandate in the litigation. This decision is a reissuance, with a sua sponte amendment of a single sentence, of UTE Indian Tribe of the Uintah & Ouray Reservation v. Myton, 832 F.3d 1220 (10th Cir. 2016).

Case Name	Citation	Year	Role	Subject	Holding
Watson v. Missouri	No. 16-3095, 2016 U.S. App. LEXIS 15690	2016	Authored majority	Federal Courts	*Affirmed*: Eleventh Amendment and the doctrine of abstention set forth by the Supreme Court in *Younger v. Harris* barred claims that defendants violated plaintiff's constitutional and state law rights by ordering him to provide child support and health insurance.
Winkel v. Heimgartner	No. 16-3177, 2016 U.S. App. LEXIS 15351	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel because his attorney did not act contrary to defendant's interests by requesting competency proceedings, and the finding of incompetence to stand trial did not violate his right to a speedy trial.
Glaser v. Raemisch	No. 16-1228, 2016 U.S. App. LEXIS 15211	2016	Authored majority	Habeas; Civil Rights	*Affirmed, certificate of appealability granted:* District court's order dismissing the claim that the defendant was unconstitutionally denied good time credits was affirmed because a prisoner cannot use 42 U.S.C. §1983 to challenge the validity of his sentence. The court also properly dismissed his habeas petition because his petition for certiorari was still pending before the Colorado Supreme Court. However, a certificate of appealability was granted because his state remedies would be exhausted once the state court denied his petition for certiorari.
United States v. Gronski	No. 16-1228, 2016 U.S. App. LEXIS 15005	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: Defendant was precluded from requesting a reduction in his sentence as a result of a retroactive change in U.S. Sentencing Guidelines, because he made a request for reduction the prior year but did not appeal the denial; further, his sentence, which arose from a plea agreement, was not "based on" the guideline range.
United States v. Ackerman	831 F.3d 1292	2016	Authored majority	Criminal Law & Procedure	*Reversed and remanded*: The National Center for Missing and Exploited Children (NCMEC) is a government actor for Fourth Amendment purposes, so its review of the defendant's emails qualified as a Fourth Amendment search for which a warrant was required; remand was necessary for the district court to determine whether the warrantless search was nonetheless reasonable. * Judge Hartz did not join the portion of the panel opinion that discussed the potential application of the Supreme Court's ruling in *United States v. Jones*, but did not author a separate opinion.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Reed	654 F. App'x 935	2016	Authored majority	Habeas; Criminal Law & Procedure	*Affirmed*: Appeal of denial of motion to amend defendant's forfeiture motion was denied for failure to raise the claim properly, and any challenge to defendant's conviction could not be appealed, but required a 28 U.S.C. §2255 habeas corpus order.
Ellis v. Lemons	No. 16-4031, 2016 U.S. App. LEXIS 12536	2016	Authored majority	Federal Courts	*Affirmed*: District court's decision to abstain from proceeding on the merits pending resolution of a closely related and ongoing state court proceeding was appropriate, so long as the pending state court proceeding existed before the federal district court had begun its own proceedings on the merits.
United States v. Johnson	No. 15-7070, 2016 U.S. App. LEXIS 12178	2016	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
United States v. Mitchell	653 F. App'x 651	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: Evidence obtained from a GPS device installed without a warrant did not need to be excluded under the Fourth Amendment. The officer acted reasonably in relying on existing precedent that authorized him to install and monitor a GPS device.
Lawton v. Patton	Nos. 15-4022 & 15-4084, 2016 U.S. App. LEXIS 11049	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
United States v. Marshall	652 F. App'x 719	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: A court-imposed prohibition upon defendant affiliating with known gangs and the requirement that he live in a home with a surveillance system were properly imposed conditions of supervised release. The conditions were reasonably related to the need to protect the public and were specific to the defendant's character.
El Encanto, Inc. v. Hatch Chile Co.	825 F.3d 1161	2016	Authored majority	Federal Courts; Intellectual Property	*Reversed*: District court erred in granting respondent's motion to quash a subpoena in a trademark suit because requesting a deposition was not a necessary precondition to a document demand.

Case Name	Citation	Year	Role	Subject	Holding
Galbreath v. Patton	654 F. App'x 378	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
Sellers v. Cline	651 F. App'x 804	2016	Authored majority	Civil Liability	*Affirmed*: Damage claims against state correction officers acting in their official capacity, which arose from an assault on an inmate by two other inmates, were barred by Eleventh Amendment. The correction officers were entitled to qualified immunity because there was no evidence that their actions created substantial risk of harm to the prisoner or that they were aware of and indifferent to that risk.
United Planners Fin. Servs. of Am., L.P. v. Sac & Fox Nation	654 F. App'x 376	2016	Authored majority	Federal Courts; Indian Law	*Affirmed*: Appellant failed to exhaust its tribal court remedies and so could not invoke federal jurisdiction.
Tong v. New Mexico	651 F. App'x 798	2016	Authored majority	Civil Rights	*Affirmed*: Federal officer defendants were entitled to remove the plaintiff's case to federal court because the claims arose from the exercise of their official duties.
Chavez v. Colvin	654 F. App'x 374	2016	Authored majority	Public Benefits	*Affirmed*: Administrative law judge did not fail to provide adequate reasons for denying Social Security disability benefits and Supplemental Security Income payments.
Requena v. Roberts	650 F. App'x 939	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right, as a disciplinary decision imposed by prison officials was supported by sufficient evidence of battery and attempted assault by the petitioner on a prison guard.
Caring Hearts Pers. Home Servs. v. Burwell	824 F.3d 968	2016	Authored majority	Administrative Law; Public Benefits	*Vacated and remanded*: Centers for Medicare & Medicaid Services (CMS) inappropriately compelled a provider to repay government for services rendered. CMS failed to apply the regulations in force at the time the provider rendered the services, and the provider reasonably believed its services were reasonable, necessary, and consistent with the rules in effect at the time.
United States v. Gomez-Olivas	650 F. App'x 631	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: The prisoner was precluded and ineligible to modify his sentence under 18 U.S.C. §3582(c)(2) because he failed to raise the issue on appeal and his sentence was based on a plea agreement and not the U.S. Sentencing Guidelines.

Case Name	Citation	Year	Role	Subject	Holding
Craine v. NSF	647 F. App'x 871	2016	Authored majority	Federal Courts; Labor & Employment	*Remanded*: National Science Foundation's order, which denied petitioner's claim that a university's termination of his employment constituted illegal retaliation for accusing colleagues of academic misconduct, lacked sufficient analysis or reasoning for appellate review.
Freres v. Xyngular	647 F. App'x 861	2016	Authored majority	Federal Courts; Civil Liability	*Affirmed*: Under the invited error doctrine, the district court correctly ruled that the plaintiff cannot challenge a putative error when she had failed to object to proposed jury instructions permitting fees as consequential damages and agreed that the jury should be allowed to determine attorneys' fees.
United States v. Wallace	647 F. App'x 842	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: A typographical error in the indictment did not deny defendant fair notice of the charges or prevent the government from prosecuting the specific crime on which the grand jury indicted.
United States v. Arthurs	647 F. App'x 846	2016	Authored majority	Criminal Law & Procedure	*Affirmed, remanded for sentencing*: District court did not err or abuse its discretion in instructing the jury that circumstantial evidence could be considered and that voluntary intoxication was not a legal defense against possession of a firearm by a felon. The district court also permissibly issued a two-level enhancement in sentencing based on the evidence presented at trial.
Harvey v. Segura	646 F. App'x 650	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: District court correctly determined that the prisoner failed to allege any facts suggesting that the strip search was conducted in an abusive fashion or with excessive force, and, accordingly, failed to plead a claim under the Eighth Amendment. Further, the claims were barred by sovereign immunity under the Eleventh Amendment for prison officials acting in their official capacity.
Broughton v. Merit Sys. Prot. Bd.	639 F. App'x 574	2016	Authored majority	Federal Courts	*Affirmed*: Plaintiff failed to satisfy Fed. R. Civ. P. 8 because she did not adequately assert the basis for the court's jurisdiction, provide a short and plain statement of her claims, identify which claims were asserted against which defendants, or allege specific facts as to how any specific federal law was violated.
United States v. Lancaster	646 F. App'x 589	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right because he failed to raise at trial claims of ineffective counsel.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Taylor	639 F. App'x 571	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.
Jordan v. Allbaugh	639 F. App'x 569	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right because claims not raised in district court are waived.
Johnson v. Okla. Dep't of Transp.	645 F. App'x 765	2016	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: Former employee failed to establish a prima facie case of racial discrimination, as the evidence provided a strong inference that the employer's explanation that plaintiff was dismissed for poor performance was not pretexual. The state officials acting in official capacity were protected from claims arising under 42 U.S.C. §1983.
Walton v. Powell	821 F.3d 1204	2016	Authored majority	Federal Courts; First Amendment; Civil Rights	*Affirmed*: A newly elected public official's qualified immunity claim was properly denied on summary judgment because a former public employee presented sufficient evidence to support her political association retaliation claim; the court on interlocutory appeal could properly assess the facts de novo and not accept as true the facts the district court determined a reasonable jury could find at trial.
Kontgis v. Salt Lake City Corp.	645 F. App'x 750	2016	Authored majority	Federal Courts	*Affirmed*: City ordinance limiting the standard of review of the city's employee appeals board did not expressly conflict with the state statutory law that provides a discharged employee a right to appeal, and the employee's due process rights were not violated as a result of the discharge.
Garrett v. Branson Commerce Park Cmty. Improvement Dist.	645 F. App'x 710	2016	Authored majority	Federal Courts; Contracts	*Affirmed*: Plaintiffs' claim that their conditional guarantees were based on unlawfully discriminatory contracts due to their marital status was properly dismissed because the claim was time-barred under the Equal Credit Opportunity Act.
Gilyard v. Chrisman	644 F. App'x 863	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right, as his complaints were untimely and no basis existed for statutory or equitable tolling.
United States v. Reed	644 F. App'x 847	2016	Authored majority	Federal Courts	*Affirmed*: District court lacked jurisdiction to revise a mandate from the court of appeals that denied the motion to supplement the appellate record, and the reviewing appellate panel similarly lacked the power to revise the ruling of a previous panel.

Case Name	Citation	Year	Role	Subject	Holding
Estate of Bleck v. City of Alamosa	643 F. App'x 754	2016	Authored majority	Civil Liability	*Affirmed*: Plaintiff failed to establish municipal liability for a claim that police officers used excessive force when entering a hotel room with their guns drawn. The officers drew their guns in reasonable response to a counselor's report that his patient was holed up in the room, intoxicated, suicidal, and possibly armed. Further, the court properly denied municipal liability for a gunshot wound that resulted from the officer's failure to reholster this gun before tackling the plaintiff, as the accident was not the result of faulty training.
Vreeland v. Zupan	644 F. App'x 812	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings when the court denied his bail.
Du Merac v. Colo. Sch. of Mines	643 F. App'x 709	2016	Authored majority	Labor & Employment; Civil Rights	*Affirmed*: Petitioner had not shown a prima facie case of discrimination by the school for suspending him from work after a meritorious sexual harassment claim was brought against him, and the petitioner also had not shown that the school's proffered reasons for the suspension were pretextual.
Gordon v. Farris	644 F. App'x 804	2016	Authored majority	Habeas	*Affirmed*: The petitioner-prisoner failed to exhaust state administrative remedies and establish good cause for his procedural defaults in state court; his petition for federal habeas relief challenging a state court petition was untimely.
Robinson v. Estrada	637 F. App'x 531	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right because he repeatedly disregarded court deadlines without a colorable excuse.
Gilkey v. Marcantel	637 F. App'x 529	2016	Authored majority	Federal Courts; Criminal Law & Procedure	*Affirmed*: Claims were barred by the doctrine of res judicata because the prisoner admitted that both suits involved the same alleged "denial of classification" of confinement after segregation ended, and they each were premised on the same alleged violation of a prison policy providing for classification review within five days.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Stout	637 F. App'x 528	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not commit plain error when it calculated the U.S. Sentencing Guidelines' range of 5-11 months and properly considered the sentencing factors, applied those factors in imposing its sentence, and provided specific reasons supported by uncontroverted evidence for issuing a sentence above the Guidelines' range.
United States v. Hinson	637 F. App'x 526	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: District court correctly concluded that no relief is available to reduce the sentence because the binding U.S. Sentencing Guidelines prevented the court from reducing a defendant's sentence to a term below the amended Guidelines' range.
Lopez v. Roark	637 F. App'x 520	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: Prisoner's Eighth Amendment constitutional rights were not violated by housing him with the general prison population, as there was no evidence that the prison officials were deliberately indifferent to his safety. Further, the First Amendment claim that the defendants retaliated against him failed because the prison officials afforded considerable process before he was found guilty of a drug infraction.
Fry v. Am. Home Assur. Co.	636 F. App'x 764	2016	Authored majority	Contracts; Insurance	*Affirmed*: Summary judgment in favor of an insurance company was affirmed because the insurance policy did not cover death resulting from the employer's alleged knowing misconduct; the policy covered only bodily injury by accident.
United States v. Hernandez-Martinez	637 F. App'x 512	2016	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
United States v. Hai Gan	641 F. App'x 833	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: Government presented sufficient evidence at trial to convict the defendant of transferring false identification documents or aiding and abetting their transfer.
Aslan v. Colvin	637 F. App'x 509	2016	Authored majority	Public Benefits	*Affirmed*: Denial of Social Security disability benefits was affirmed because the claimant failed to point to any medical records confirming that he suffered from a presumptive medical condition; the residual functional capacity determination was supported by substantial evidence; and the administrative law judge did not err in relying on the Medical-Vocational Guidelines.

Case Name	Citation	Year	Role	Subject	Holding
Wahpekeche v. Colvin	640 F. App'x 781	2016	Authored majority	Public Benefits	*Affirmed*: Substantial evidence, including inconsistencies between the claimant's allegations and the medical records, supported the administrative law judge's adverse credibility finding in a Social Security disability benefits case; the claimant's residual functional capacity assessment adequately specified the frequency of her need to alternate sitting and standing.
United States v. Brooks	634 F. App'x 669	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
United States v. Anderson	634 F. App'x 666	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make substantial showing that he was denied constitutionally effective counsel.
Gambrill v. Unified Gov't of Wyandotte Cty./Kan. City	636 F. App'x 981	2016	Authored majority	Federal Courts	*Reversed and dismissed*: After supplemental briefing, the court determined that recent precedent controlled, and it reversed the district court's denial of qualified immunity to the individual defendants and dismissed the Unified Government's appeals for lack of jurisdiction.
United States v. Yazzie	633 F. App'x 703	2016	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make substantial showing that he was denied constitutionally effective counsel.
Jordanoff v. Lester	628 F. App'x 624	2016	Authored majority	Federal Courts	*Affirmed:* District court committed no error in dismissing claims against the sheriff as outside the statute of limitations and in dismissing claims against the prosecutor on the basis of immunity.
United States v. Rubio-Ayala	628 F. App'x 622	2016	Authored majority	Criminal Law & Procedure	*Affirmed*: District court properly recalculated the defendant's sentencing range after the sentencing commission amended the U.S. Sentencing Guidelines applicable to his crime.
Espinoza v. Ark. Valley Adventures, LLC	809 F.3d 1150	2016	Authored majority	Contracts; Civil Liability	*Affirmed*: Summary judgment in favor of a rafting company in a negligence case was affirmed because the release signed by the deceased did not violate Colorado's public policy that allows private parties to assume certain risks associated with recreational activity.
Feinberg v. Comm'r	808 F.3d 813	2015	Authored majority	Federal Courts; Civil Rights; Tax	*Petition denied*: In an ongoing tax court case involving marijuana business deductions, a writ of mandamus was not warranted because the petitioners, who alleged that an order to produce the requested discovery violated the Fifth Amendment against self-incrimination, were not facing irreparable injury without an immediate remedy and they could appeal the final tax court judgment.

Case Name	Citation	Year	Role	Subject	Holding
Ramos-Hernandez v. Lynch	624 F. App'x 677	2015	Authored majority	Immigration	*Petition denied*: Immigration judge's factual finding about the nature of the alien petitioner's former employment with a company associated with the Guatemalan government, which was relevant to the credibility of the alien's claim that he suffered past persecution in that country, was legally sustainable because it was based on the substantial record evidence and not premised on a factual mistake.
Robinette v. Fender	624 F. App'x 664	2015	Authored majority	Federal Courts	*Affirmed*: Arguments on appeal were not inadequately presented, and independent scrutiny of the record affirmed the district court's disposition.
Fogg v. Colvin	622 F. App'x 767	2015	Authored majority	Public Benefits; Administrative Law	*Affirmed*: The administrative law judge did not err in denying petitioner's request for disability benefits and supplemental security income payments; the petitioner's admission that he is capable of performing heavy work negated a presumption that older claimants with limited education and work experience and severe impairments should be found disabled.
McClaflin v. Burd	622 F. App'x 769	2015	Authored majority	Federal Courts	*Affirmed*: Plaintiff failed to present any properly preserved arguments on appeal.
Jemaneh v. Univ. of Wyoming	622 F. App'x 765	2015	Authored majority	Federal Courts	*Affirmed*: Even assuming (without granting) the district court erred by permitting successive Fed. R. Civ. P. 12(b) motions to dismiss, the pleadings failed to state a claim.
United States v. Falcon-Sanchez	622 F. App'x 766	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: District court properly recognized that it lacked authority to revise the defendant's sentence, which was based on his plea agreement and not on the U.S. Sentencing Guidelines' range that had been lowered by the Sentencing Commission.
United States v. Makkar	810 F.3d 1139	2015	Authored majority	Criminal Law & Procedure; Federal Courts	*Vacated and remanded*: Despite defendant's failure to object, the jury instructions given at trial resulted in plain error, because the government conceded that it did not prove the requisite *mens rea* for a violation of the Controlled Substances Act or the Analogue Act, and the district court abused its discretion by excluding testimony that was relevant to defendants' *mens rea*.
United States v. Davis	622 F. App'x 758	2015	Authored majority	Criminal Law & Procedure	*Remanded*: Government conceded that the condition prohibiting Internet use, which the district court had imposed on the criminal defendant as a condition of his supervised released, was in error based on judicial precedent.

Case Name	Citation	Year	Role	Subject	Holding
Duran v. Marathon Asset Mgmt., LP	621 F. App'x 553	2015	Authored majority	Federal Courts; Civil Liability; Contracts	*Affirmed*: District court appropriately exercised diversity jurisdiction because the amount in controversy exceeded the statutory requirement when punitive damages were considered, but the complaint was properly dismissed because a forum selection clause in an agreement between the parties specified that the venue for disputes would be New York state court.
United States v. Avalos-Chavez	621 F. App'x 552	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: Defendant's sentencing could not be revised, because the district court anticipated the amended U.S. Sentencing Guidelines' range at his original sentencing hearing, and the defendant received a sentence well below the range.
United States v. Camargo-Chavez	630 F. App'x 835	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: The denial of appellant's motion to suppress was affirmed because officers had probable cause to open the sealed case of beer based on evidence discovered from the consensual search of the rest of the vehicle.
De Niz Robles v. Lynch	803 F.3d 1165	2015	Authored majority	Immigration; Administrative Law	*Petition for review granted and case remanded for further administrative proceedings*: A presumption of prospectivity that applies whenever an agency exercises delegated legislative policymaking authority, along with due process and equal protection concerns, prevented the retroactive application of a decision by Board of Immigration Appeals (BIA) concerning the interplay between two federal immigration statutes, when the effect of that decision would be to deny the availability of relief to a previously eligible alien who applied for relief prior to the decision's issuance.
LTF Real Estate Co. v. Expert S. Tulsa, LLC (In re Expert South Tulsa, LLC)	619 F. App'x 779	2015	Authored majority	Bankruptcy; Contracts	*Affirmed*: Funds placed in escrow pursuant to a contract prior to debtor filing for bankruptcy were not part of the bankruptcy estate.
Chapman v. Lampert	616 F. App'x 889	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.

Case Name	Citation	Year	Role	Subject	Holding
Adams v. Colvin	616 F. App'x 393	2015	Authored majority	Public Benefits	*Affirmed*: In denying a claim for Social Security disability benefits, the administrative law judge had sufficient evidence to support findings regarding the claimant's residual functional capacity to return to work as an electronic scanner operator, and the claimant failed to meet her burden to establish that she is unable to perform her past relevant work.
Rader v. Comm'r	616 F. App'x 391	2015	Authored majority	Federal Courts	*Affirmed*: U.S. Tax Court committed no clear error when it held that the defendant was liable for unpaid taxes and penalties.
Muathe v. Fifth Third Bank	627 F. App'x 732	2015	Authored majority	Federal Courts	*Affirmed*: District court did not abuse its discretion in determining that the plaintiff's complaint failed to provide the defendants with fair notice of the claims against them and the relevant facts underlying those claims because, among other things, the plaintiff failed to connect alleged facts in any fairly discernible way to the legal claims.
Perez-Carrera v. Stancil	616 F. App'x 371	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: Prisoner was not entitled to relief under 28 U.S.C. §2241 because he could not establish that 28 U.S.C. §2255's remedy was inadequate or ineffective to test the legality of his detention.
Barrera-Estrada v. United States	616 F. App'x 371	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel when he entered his guilty plea.
United States v. Spring	614 F. App'x 386	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: Petitioner was not entitled to a writ of *audita querela* to reverse his federal sentence, as other remedies supplied the exclusive means for petitioner to challenge his conviction and sentence collaterally.
United States v. Handy	614 F. App'x 379	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
United States v. McAlpine	613 F. App'x 766	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: There was no error in the district court's decision not to reduce the defendant's sentence as a result of a change in the U.S. Sentencing Guidelines when the defendant was already given a sentence below the recommended guideline range.
Stauffer v. Blair	613 F. App'x 760	2015	Authored majority	Federal Courts	*Affirmed*: Court lacked subject matter jurisdiction to entertain federal suits that amount to appeals of state-court judgments.

Case Name	Citation	Year	Role	Subject	Holding
Patriot Mfg., LLC v. Hartwig, Inc.	613 F. App'x 753	2015	Authored majority	Federal Courts	*Affirmed*: Appellant failed to argue that estoppel was unwarranted when responding to the motion for summary judgment in district court and forfeited his right to challenge the judgment.
United States v. Butler	611 F. App'x 517	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: Prisoner waived his challenge to the district court's decision to deny his request to revise his sentence because he failed, among other things, to state his basis for challenging the court's decision.
Gen. Steel Domestic Sales, LLC v. Chumley	627 F. App'x 682	2015	Authored majority	Intellectual Property; Civil Liability	*Affirmed*: District court did not err in ruling that General Steel was entitled to relief under the Lanham Act after its competitor, Armstrong, produced false advertising to boost its reputation and give it a competitive edge. Nor did the court err in ordering the defendant to disgorge profits made during that period, and placing the burden on the defendant to show which profits weren't attributable to its Lanham Act violations.
Carlson v. Pryor	611 F. App'x 514	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
Serna v. Commandant	608 F. App'x 713	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: District court correctly held that the prisoner had not demonstrated a lawful cause excusing his failure to pursue his present claims before the military's appellate courts, a prerequisite to seeking habeas relief in federal court.
United States v. Mendez	618 F. App'x 930	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: The court lacked subject matter jurisdiction for ineffective assistance of counsel claim given that the appellant failed to seek and obtain a certificate of appealability. There was no error in the conviction based on the supporting evidence and the jury instructions, because the defendant's counsel expressly stipulated to the instruction in question or the instructions were based on judicial precedent.
United States v. Mackay	610 F. App'x 797	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: In a remanded case, the district court's order vacating defendant's two convictions for distributing a controlled substance that resulted in death was affirmed because, while the appellate mandate allowed the district court to reconsider only defendant's sentence, not his convictions, the Supreme Court's intervening decision in *Burrage v. United States* modified the controlling legal authority.

Case Name	Citation	Year	Role	Subject	Holding
Energy & Env't Legal Inst. v. Epel	793 F.3d 1169	2015	Authored majority	Environmental Law	*Affirmed*: Colorado law that required electricity generators to ensure that 20% of electricity sold to state consumers comes from renewable sources did not violate the Dormant Commerce Clause; the law did not involve a discriminatory price control statute, a discriminatory act linking prices in Colorado to those paid out of state, or other types of price discrimination against out-of-state entities.
Loveridge v. Hall (In re Renewable Energy Dev. Corp.)	792 F.3d 1274	2015	Authored majority	Bankruptcy; Civil Liability; Federal Courts	*Vacated and remanded*: District court's decision to send to an Article I bankruptcy court a lawsuit that alleged that a bankruptcy trustee breached professional duties was unconstitutional, as the parties were entitled to have the case resolved by an Article III court. None of the state law claims necessarily could have been resolved in the bankruptcy claims allowance process, and the plaintiff did not consent to suit in a non-Article III court.
Elnicki v. Kansas	609 F. App'x 542	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
United States v. Jenkins	608 F. App'x 710	2015	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Because the prisoner pled guilty to a federal drug offense and expressly waived his right to appeal any sentence up to the statutory maximum, he could not appeal a certain condition of supervised release.
United States v. Fishman	608 F. App'x 711	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
Mata v. Jackson Cty. Third Judicial Dist. Court	611 F. App'x 513	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.

Case Name	Citation	Year	Role	Subject	Holding
Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah	790 F.3d 1000	2015	Authored majority	Indian Law; Criminal Law & Procedure	*Reversed*: A tribe was entitled to temporarily enjoin state and county officials from prosecuting tribal members for crimes allegedly committed on Indian land. The tribe's success on the merits was likely based on previous judicial decisions that determined tribal land boundaries; a threat to tribal sovereignty was irreparable harm; on balance the harms to tribal self-government outweigh the state and county's interest in prosecuting tribal members on tribal land; and the Anti-Injunction Act authorized enjoining a state court proceeding to effectuate a previous federal judgment.
CCPS Transp., LLC v. Sloan	611 F. App'x 931	2015	Authored majority	Federal Courts	*Appeal dismissed*: District court improperly issued a Fed. R. Civ. P. 54(b) certification for interlocutory appeal of a declaration of rights under a contested easement, because Rule 54(b) permits certification only for single claims in multiclaim cases. No other cause of action remained in the case because the plaintiffs' request for other remedies arising from the same alleged violation are not considered separate claims.
Backcountry Hunters & Anglers v. U.S. Forest Serv.	612 F. App'x 934	2015	Authored majority	Environmental Law; Federal Courts	*Dismissed*: The petition for review was dismissed for lack of standing because the advocacy organization seeking to reduce vehicle access to a national park would not be redressed by a favorable decision.
Beers v. Maye	611 F. App'x 933	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: District court properly denied the prisoner's request to credit against his federal sentence the time he spent in Nebraska state prisons because federal sentences presumptively run consecutively to (not concurrently with) state prison terms.
United States v. Gutierrez-Carranza	604 F. App'x 750	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not abuse its discretion when it imposed a term of supervised release upon defendant, despite the likelihood that defendant would be deported or extradited to Mexico after his incarceration, because the record showed that he previously defied one deportation order and that he possesses a violent criminal history.
Kenney v. Oklahoma	601 F. App'x 761	2015	Authored majority	Federal Courts; Labor & Employment	*Affirmed*: The complaint failed to set forth factual allegations from which the court could infer some plausible basis for relief.
Brown v. McCollum	600 F. App'x 630	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.

Case Name	Citation	Year	Role	Subject	Holding
Farris v. Frazier	599 F. App'x 851	2015	Authored majority	Civil Rights	*Affirmed*: Prisoner failed to exhaust administrative remedies for any of his claims, as required by the Prison Litigation Reform Act of 1995, through the Oklahoma Department of Corrections grievance process.
United States v. Rogers	599 F. App'x 850	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Chavez v. Franco	609 F. App'x 527	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Franco v. Bd. of Cty. Comm'rs	609 F. App'x 957	2015	Authored majority	Civil Rights	*Affirmed*: Plaintiff's false imprisonment claims against the Board of County Commissioners and public employees were properly dismissed on summary judgment because he failed to show they intentionally confined him with knowledge that they lacked lawful authority to do so.
United States v. Herrera	782 F.3d 571	2015	Authored majority	Criminal Law & Procedure	*Reversed and remanded*: District court erred in granting the motion to suppress because its factual findings about misstatements in the warrant application were erroneous, and the court did not assess whether, without the alleged misstatements, probable cause supported the warrant.
ACAP Fin., Inc. v. U.S. SEC	783 F.3d 763	2015	Authored majority	Administrative Law; Civil Liability	*Petition for review denied*: Fines levied by Financial Industry Regulatory Authority (and sustained by the Securities and Exchange Commission [SEC]) against a penny stock brokerage firm, as well as the firm's head trader and compliance manager, for violating federal securities laws were not excessive for exceeding the commission the firm earned on its unlawful stock sales, given that profit is only one factor the SEC considers when imposing a sanction. Additionally, the trader's six-month suspension from the securities industry—allowed for in egregious cases—was permissible because the SEC could expand its definition of egregious in its review, and the sanction was comparable to similar cases.

Case Name	Citation	Year	Role	Subject	Holding
Alejandre-Gallegos v. Holder	598 F. App'x 604	2015	Authored majority	Immigration; Federal Courts	*Petition for review dismissed*: Petitioner's counsel's failure to comply with several federal rules of appellate procedure warranted dismissal of the petition to review the Board of Immigration Appeal's decision to deny cancellation of removal. Additionally, the court clerk was directed to initiate disciplinary hearings against counsel.
Vigil v. Morgan	598 F. App'x 594	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not err when it dismissed a claim under the Eighth Amendment for inadequate medical care because the prison officials' actions that allegedly delayed his access to treatment for hemorrhoids did not exhibit "deliberate indifference" or result in substantial harm.
David v. Sirius Comput. Sols., Inc.	779 F.3d 1209	2015	Authored majority	Civil Liability	*Remanded*: Plaintiff who was awarded damages relating to economic losses or injuries for a negligent misrepresentation claim was entitled to prejudgment interest because state statute permitted interest in any action seeking compensation for personal injury without consideration to nature of compensatory damages the jury awarded.
Walters v. Colvin	604 F. App'x 643	2015	Authored majority	Public Benefits	*Affirmed*: Substantial evidence supported administrative law judge's adverse credibility determination for Social Security disability benefits because, among other things, claimant did not seek treatment for his neurological disorder until two years after diagnosis; claimant's claims of illness were not supported by medical evidence; and there was evidence that he went camping, canoeing, and rock climbing despite his claim of total disability.
United States v. Scott	594 F. App'x 560	2015	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not present newly discovered evidence suggesting his innocence or identify a new rule of constitutional law retroactively applicable to his case to warrant a second or successive collateral challenge to his sentence.
Pippin v. Elbert Cty.	604 F. App'x 636	2015	Authored majority	First Amendment	*Affirmed*: District court's entry of summary judgment in favor of county commissioners was affirmed because the commissioners had a reasonable basis for seeking the protective order and did not infringe on the plaintiff's First Amendment rights.
Calvert v. Denham	594 F. App'x 545	2015	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not err in its calculations for the prisoner's good time credit to determine his release date.

Case Name	Citation	Year	Role	Subject	Holding
Macias v. Holder	590 F. App'x 829	2015	Authored majority	Immigration	*Affirmed*: The Board of Immigration Appeals correctly denied as untimely the petitioner's motion to reopen removal proceedings to adjust status or for deferred action, and equitable tolling was not warranted because he had not shown that he was prevented from filing in a timely fashion.
Tarpley v. Colvin	601 F. App'x 641	2015	Authored majority	Public Benefits	*Affirmed*: Claimant was properly denied Social Security disability benefits because substantial evidence supported the administrative law judge's decision to reject the opinions of claimant's treating physicians, and the judge did not err in affording significant weight to the opinion of the nontreating agency physician.
Banks v. Am. Baptist Churches	594 F. App'x 544	2015	Authored majority	Federal Courts	*Affirmed*: District court did not err when it dismissed appellants' complaint for failure to state a claim, as the appellants' briefs failed to list any issues for appeal, did not explain why the district court erred in dismissing their claims, and lacked citations to authority.
Miller v. Scott	592 F. App'x 747	2015	Authored majority	Civil Rights	*Affirmed*: Prisoner failed to exhaust administrative remedies through the Oklahoma Department of Corrections (ODOC) grievance process for his claims. The ODOC did not violate the prisoner's constitutional rights when the prison chaplain denied his requests for a halal or a kosher diet after failing to contest the finding that the prisoner's voluntary food purchases at the prison canteen belied his claim of a sincere religious scruple about his diet.
Lee v. Maye	589 F. App'x 416	2015	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: District court did not err in dismissing the prisoner's action as frivolous; the conclusory assertions in the filings as to the conditions of his confinement were baseless.
United States v. Denson	775 F.3d 1214	2014	Authored majority	Criminal Law & Procedure	*Affirmed*: Based on the circumstances of the case, police officers lawfully entered the defendant's home and conducted a protective sweep such that the firearms seized during the sweep did not need to be suppressed. Notwithstanding the officers' warrantless use of Doppler radar (before entering the home) to detect human breathing and movement inside the home, the officers had specific and articulable reasons to initiate a protective sweep. Finally, the officers had probable cause to believe that the seized firearms were contraband.

Case Name	Citation	Year	Role	Subject	Holding
Myers v. Knight Protective Serv.	774 F.3d 1246	2014	Authored majority	Labor & Employment; Civil Rights; Public Benefits	*Affirmed*: Plaintiff's representations in his application for Social Security disability benefits belied his claim of discrimination under the Americans with Disabilities Act, because they showed he could not perform the essential job functions of an armed security guard with or without a reasonable accommodation.
Brown v. Metro. Tulsa Transit Auth.	588 F. App'x 849	2014	Authored majority	Federal Courts	*Affirmed*: The record supported the district court's determination that the plaintiff failed to offer proof of anything more than nominal damages related to his overturned ban from riding public buses.
United States v. Truby	588 F. App'x 847	2014	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
United States v. Storey	595 F. App'x 822	2014	Authored majority	Criminal Law & Procedure	*Affirmed*: Fourth Amendment did not protect against searches performed by private FedEx employees when the state did not coerce or demand the search. The court did not commit sentencing error by holding the defendant responsible for all the drugs found inside the packages or by imposing a sentence within the range contemplated under the U.S. Sentencing Guidelines.
Bruton v. United States	587 F. App'x 504	2014	Authored majority	Federal Courts	*Affirmed*: The appellant's brief failed to directly address the district court's ruling and did not identify any defect in it.
Green v. Patton	587 F. App'x 503	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
United States v. Sabillon-Umana	772 F.3d 1328	2014	Authored majority	Criminal Law & Procedure	*Remand for resentencing*: District court erred by starting with a conclusion about the appropriate U.S. Sentencing Guidelines range for the criminal defendant involved in a drug conspiracy before it had considered the facts surrounding the defendant's role in the conspiracy, which properly inform an assessment of the appropriate guidelines range. The district court also erroneously concluded that the government, rather than the court, has the power to determine the appropriate sentencing reward for a defendant who provided assistance to the government.
Mattox v. McKune	588 F. App'x 833	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Taylor	585 F. App'x 751	2014	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not err in determining sentencing based on the defendant's history, the need to protect the public, and other appropriate considerations under existing law.
Yarbary v. Martin, Pringle, Oliver, Wallace & Bauer, LLP	584 F. App'x 918	2014	Authored majority	Federal Courts	*Affirmed*: District court did not err in dismissing the complaint because the plaintiff failed to state a claim supported by facts even after four rounds of amendment.
Gregory v. Denham	581 F. App'x 728	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner failed to petition the appropriate court of appeals.
Nowlin v. United States	581 F. App'x 722	2014	Authored majority	Criminal Law & Procedure; Indian Law; Habeas	*Affirmed:* Writ of *coram nobis* to set aside the petitioner's conviction was denied because there was sufficient evidence that confirmed his status as an "Indian" to support the federal assault conviction by an "Indian" against "another Indian or other person" within "Indian country."
Lee v. Maye	581 F. App'x 721	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner failed to petition the appropriate court of appeals.
Silva v. Colvin	580 F. App'x 678	2014	Authored majority	Public Benefits; Civil Rights	*Affirmed*: Application of res judicata was not flawed; providing notice of time to appeal only in English did not violate due process because petitioner's inability to understand the notice was readily remediable by obtaining an accurate translation at her Social Security office.
Veren v. United States	575 F. App'x 841	2014	Authored majority	Federal Courts	*Affirmed*: Affective disorder and clinical depression were not sufficient to establish mental incompetence under the standard required to toll the statute of limitations for the plaintiff's damages suit.
Garcia v. Lind	574 F. App'x 857	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.
Morgan v. Addison	574 F. App'x 852	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.
McKay v. Hayes	577 F. App'x 848	2014	Authored majority	Federal Courts	*Affirmed*: District court did not err in dismissing the case because the appellant failed to respond to the motion for summary judgment.

Case Name	Citation	Year	Role	Subject	Holding
Kobel v. Lansing Corr. Facility	577 F. App'x 844	2014	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not err in denying request to reinstate claims because, even if the plaintiff did not receive court notices to correct his complaint after changing addresses, nothing prevented him from apprising the court of his new location or inquiring about his lawsuit.
Teamsters Local Union No. 455 v. NLRB	765 F.3d 1198	2014	Authored majority	Labor & Employment; Administrative Law	*Petition for review denied*: Employer's threat to hire permanent replacements during a lockout resulting from stalled collective-bargaining negotiations violated 29 U.S.C. §158(a)(1), but, because the employer did not follow through on the threat, the National Labor Relations Board (NLRB) was not required to hold the lockout unlawful and award back pay. Rather, the NLRB's order directing the company to desist from future threats and posting a notice promising the same was sufficient.
Nouri v. Farris	585 F. App'x 944	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
Oliver v. Cline	573 F. App'x 814	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
United States v. Lee-Speight	576 F. App'x 801	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Entek GRB, LLC v. Stull Ranches, LLC	763 F.3d 1252	2014	Authored majority	Environmental Law	*Vacated and remanded:* Mineral rights leaseholder could cross the surface owner's estate to service a well in an adjacent surface estate owned by the government, because, pursuant to a unitization agreement, the leaseholder could reenter and occupy so much of the surface in the unitized area as might be reasonably incident to extracting minerals from the unit.
MHC Mut. Conversion Fund, L.P. v. Sandler O'Neill & Partners, L.P.	761 F.3d 1109	2014	Authored majority	Civil Liability; Federal Courts	*Affirmed*: Plaintiff company failed to state a claim for relief because the security issuers' failed market predictions were insufficient to allege that they made false or misleading statements under Sections 11 and 10(b) of the Securities Act of 1933.
Griffin v. Smith	572 F. App'x 625	2014	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not err in dismissing prisoner's complaints for failure to state a claim.

Case Name	Citation	Year	Role	Subject	Holding
Chavez-Vasquez v. Holder	572 F. App'x 627	2014	Authored majority	Immigration; Federal Courts	*Petition for review denied:* Petitioner became subject to removal upon his conviction, and his pending motion in state court seeking to vacate his conviction does not preclude his removal.
Jones v. Kansas	572 F. App'x 648	2014	Authored majority	Civil Rights; Federal Courts	*Affirmed*: District court correctly denied the plaintiff's motion to reconsider under Fed. R. Civ. P. 60(b) because the motion did not identify exceptional circumstances warranting relief and, instead, tried to relitigate the merits of his 42 U.S.C. §1983 suit.
United States v. Ramsey	572 F. App'x 604	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
United States v. Hendrix	571 F. App'x 661	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Trugreen Cos., LLC v. Mower Bros.	570 F. App'x 775	2014	Authored majority	Labor & Employment; Contracts; Federal Courts	*Affirmed*: District court correctly denied attorneys' fees and costs to former employees of TruGreen based in Utah, because their new employer paid for those costs and TruGreen, by contract, was liable only for costs that the employees incurred in the lawsuit. Further, the court did not abuse its discretion in awarding the former employees based in Idaho only the amount they specified as the costs their attorneys paid toward their defense and not fees the attorneys otherwise charged.
Van De Weghe v. Chambers	569 F. App'x 617	2014	Authored majority	Civil Rights; Federal Courts	*Affirmed*: Officers were entitled to qualified immunity on charges of malicious prosecution because probable cause existed to pursue at least one charge against the plaintiff, and the plaintiff did not identify any clearly established law suggesting that a claim for malicious prosecution is actionable when other additional charges arising from the same set of facts are not supported by probable cause. Also, the district attorney was entitled to Eleventh Amendment immunity as an arm of the state.
Ali v. Wingert	569 F. App'x 562	2014	Authored majority	Civil Rights; First Amendment	*Affirmed*: Prisoner's right to exercise his sincere religious beliefs under Religious Land Use and Institutionalized Persons Act was not violated by prison mail room staff, who required him, when sending and receiving mail, to use the name he had when he was initially incarcerated alongside the religious name he adopted thereafter.

Case Name	Citation	Year	Role	Subject	Holding
Barrett v. Salt Lake City	754 F.3d 864	2014	Authored majority	Civil Rights; Labor & Employment	*Affirmed in part, vacated and remanded in part*: The county could not dispute the jury's finding of unlawful employment retaliation using the framework set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*; intervening Supreme Court case law did not upset the jury's verdict; and the district court did not abuse its discretion in ordering the county to reinstate the plaintiff's preretaliatory demotion pay grade as an equitable remedy. However, the district court's award of fees incurred during an optional, internal grievance process was improper because that process was not a prerequisite to suit.
Carr v. Miller	563 F. App'x 656	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
Hwang v. Kan. State Univ.	753 F.3d 1159	2014	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: Plaintiff's former employer did not violate the Rehabilitation Act by refusing to allow her to take more than six months of sick leave because an absence of that length would not allow her to perform her essential job functions (teaching at a university) and did not qualify as a reasonable accommodation for her disability (cancer treatment).
United States v. Reese	559 F. App'x 777	2014	Authored majority	Civil Rights; Criminal Law & Procedure	*Reversed and remanded*: Government acknowledged that plaintiff's federal conviction for being a felon unlawfully in possession of firearms was unsustainable because his civil rights had been restored, including the right to vote, serve on a jury, seek public office, and possess firearms under state law.
United States v. Chon	559 F. App'x 779	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings, nor was a successive collateral proceeding justified.
Lube v. NCO Fin. Servs.	566 F. App'x 713	2014	Authored majority	Federal Courts	*Affirmed*: There was no reversible error in the district court's decision to deny a motion for reconsideration, and the deadline for appeal to the original dismissal of the plaintiff's suit passed.
Genberg v. Porter	566 F. App'x 719	2014	Authored majority	Labor & Employment	*Affirmed*: The arbitration clause in the plaintiff's employment agreement did not apply to claims against the employer's senior directors, board of directors, and outside counsel.

Case Name	Citation	Year	Role	Subject	Holding
Hogan v. Utah Telecomm. Open Infrastructure Agency	566 F. App'x 636	2014	Authored majority	Civil Liability; Labor & Employment	*Affirmed in part and remanded in part*: Utah state law wrongful discharge claim applied to all employees, not only at-will employees.
Robles v. RMS Mgmt. Solutions, LLC	565 F. App'x 718	2014	Authored majority	Federal Courts	*Affirmed*: Other than the Supreme Court, federal courts lack jurisdiction to hear appeals from final state court judgments deciding federal questions under Supreme Court doctrine in *Rooker v. Feldman*.
Duran v. Att'y Gen. of New Mexico	565 F. App'x 719	2014	Authored majority	Criminal Law & Procedure	*Affirmed*: Defense counsel's decision not to consider a psychologist's report suggesting that the defendant was not on his antipsychotic medication at the time of the crime did not amount to a denial of effective assistance of counsel under the Sixth Amendment.
Stirling v. Stirling	565 F. App'x 676	2014	Authored majority	Civil Rights	*Affirmed:* Pro se plaintiff failed to state a claim for violation of her constitutional rights against her ex-husband and new wife under 42 U.S.C. §1983 because the defendants were not state actors.
Taber v. Farris	565 F. App'x 677	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
Crabtree v. Oklahoma	564 F. App'x 402	2014	Authored majority	Civil Rights	*Affirmed*: Individual convicted of sexually abusing two children failed to state a claim against the State of Oklahoma under 42 U.S.C. §1983 for false arrest, false imprisonment, and malicious prosecution.
Howard v. Ferrellgas Partners, L.P.	748 F.3d 975	2014	Authored majority	Civil Liability	*Vacated and remanded*: When there are material facts as to whether the parties intended to arbitrate the dispute, the Federal Arbitration Act requires the court to hold a summary trial on the issue before proceeding to trial on the merits.
United States v. Bergman	746 F.3d 1128	2014	Authored majority	Criminal Law & Procedure	*Vacated and remanded*: After defendant's conviction was vacated for ineffective assistance of counsel, the district court abused its discretion in refusing to permit a new trial without first finding that the circumstances made it impossible for the defendant to obtain effective assistance in a retrial.
Lawrence v. Sch. Dist. No. 1	560 F. App'x 791	2014	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: District court did not err in dismissing the plaintiff's claims for retaliation under 42 U.S.C. §1981 when there was no showing of municipal liability and an independent arbitrator found the termination of employment was warranted.

Case Name	Citation	Year	Role	Subject	Holding
Lately v. Colvin	560 F. App'x 751	2014	Authored majority	Public Benefits; Administrative Law	*Affirmed*: The administrative law judge did not commit reversible error in denying petitioner's request for disability and supplemental security benefits after determining that, although she suffered from vestibular disorder, depression, and panic disorder, the petitioner retained residual functional capacity to perform a restricted range of light work, including her past jobs.
United States v. Arrowgarp	558 F. App'x 824	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
StorageCraft Tech. Corp. v. Kirby	744 F.3d 1183	2014	Authored majority	Civil Liability; Intellectual Property	*Affirmed*: There was no error in awarding $2.92 million as damages because Utah law allowed for reasonable royalties as damages for misappropriation of trade secrets, and there was no error in the admission of the testimony of the plaintiff's damages expert.
Coats v. Utah	557 F. App'x 795	2014	Authored majority	Labor & Employment; Federal Courts	*Affirmed*: The Utah Department of Workforce Services did not waive its Eleventh Amendment immunity from suit for alleged violations of the federal Age Discrimination in Employment Act.
United States v. Brown	555 F. App'x 838	2014	Authored majority	Criminal Law & Procedure	*Affirmed*: A traffic stop was not extended beyond the period permitted by the Fourth Amendment when the officer detected the odor of marijuana emanating from the defendant's car and took further investigative action, and subsequent events provided the officer with probable cause to search the defendant's vehicle.
United States v. Herrera-Cruz	555 F. App'x 831	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel or otherwise denied a constitutional right.
United States v. Baldwin	745 F.3d 1027	2014	Authored majority	Criminal Law & Procedure; Administrative Law	*Affirmed*: Federal regulations prohibiting disobeying a federal police officer and disrupting performance of official duties constituted valid criminal prohibitions, were not unconstitutionally vague, and were subject to a "knowingly" *mens rea* for which there was sufficient evidence to convict the defendant; and the lack of proof of "posted" notice of the regulations was not plain error by the district court.
Dixon v. Colvin	556 F. App'x 681	2014	Authored majority	Administrative Law; Public Benefits	*Affirmed*: Administrative law judge's decision that plaintiff was not entitled to certain Social Security disability benefits was supported by substantial evidence and applied the correct legal standards.

Case Name	Citation	Year	Role	Subject	Holding
Winfield v. Utah	556 F. App'x 669	2014	Authored majority	Habeas	*Certificate of appealability denied*: When the defendant, who was convicted in a state court criminal proceeding, asserted arguments that were procedurally barred under the law of the state in which he was convicted, federal courts could not consider the barred arguments in habeas proceedings.
United States v. Escobar	554 F. App'x 711	2014	Authored majority	Criminal Law & Procedure	*Affirmed*: Admission of statements allegedly made prior to a *Miranda* warning did not constitute grounds for reversal of a conviction when it was clear beyond a reasonable doubt that any putative *Miranda* error did not contribute to the jury verdict.
Defazio v. Starwood Hotels & Resorts Worldwide, Inc.	554 F. App'x 692	2014	Authored majority	Labor & Employment	*Affirmed*: Former at-will employee's claims for wrongful termination were correctly dismissed because, under Colorado law, an at-will employment relationship generally can be terminated for any reason, and no exceptions applied.
Moral v. Hagen	553 F. App'x 839	2014	Authored majority	Civil Rights; Criminal Law & Procedure	*Affirmed*: District court properly dismissed the plaintiff's claim that her arrest violated her First and Fourth Amendment rights on qualified immunity grounds when the undisputed material facts showed there was probable cause for the arrest.
Lin Yan v. Holder	559 F. App'x 658	2014	Authored majority	Immigration	*Petition for review dismissed in part and denied in part*: An alien was properly denied asylum when there was sufficient evidence to support the finding that he was not credible and he failed to exhaust his administrative remedies related to his claim of denial of due process.
Sanders v. Miller	555 F. App'x 750	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
United States v. Contreras-Hernandez	552 F. App'x 850	2014	Authored majority	Criminal Law & Procedure	*Affirmed*: There was no error by the district in ordering a 24-month sentence for the criminal defendant even though the government recommended an 18-month sentence when the defendant had, among other relevant factors, a record of recidivism.
Martinez v. Williams	553 F. App'x 806	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.
Lollis v. Archuleta	553 F. App'x 798	2014	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.

Case Name	Citation	Year	Role	Subject	Holding
Yellowbear v. Lampert	741 F.3d 48	2014	Authored majority	First Amendment; Indian Law	*Vacated and remanded*: On a motion for summary judgment, the Colorado prison had not met its burden under the Religious Land Use and Institutionalized Persons Act of 2000 to show that it could deny a Native American inmate access to a sweat lodge for use as part of the inmate's religious practice.
Simon v. Jones	550 F. App'x 670	2014	Authored majority	Civil Rights	*Certificate of appealability denied*: District court correctly concluded that prison officials properly revoked an inmate's administrative privileges and did not deny the inmate's constitutional rights based on the evidence of the case.
United States v. Madrid-Apodaca	556 F. App'x 664	2013	Authored majority	Criminal Law & Procedure	*Affirmed:* When the defendant pled guilty and agreed to a sentence of between two and eight months, the district court did not err in ordering a nine-month sentence based on applicable sentencing factors, including the record of recidivism and need for deterrence.
Amerson v. United States	550 F. App'x 603	2013	Authored majority	Civil Rights; Federal Courts	*Denied and dismissed*: A prisoner's state court action against his warden and other defendants based on the Uniform Commercial Code was without merit and constituted a frivolous filing under the Prison Litigation Reform Act.
United States v. Green	548 F. App'x 557	2013	Authored majority	Habeas	*Certificate of appealability denied*: The defendant, who was convicted on federal drug charges, did not make a substantial showing of ineffective assistance of counsel.
Ali v. Province	550 F. App'x 619	2013	Authored majority	Civil Rights; Federal Courts	*Affirmed*: District court correctly dismissed an inmate's claim under 42 U.S.C. §1983 when the inmate's counsel failed to respond to a motion for summary judgment and the inmate did not exhaust administrative remedies.
United States v. Gomez	550 F. App'x 613	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: When the defendant pled guilty to participating in a methamphetamine distribution conspiracy, there was no error on the part of the district court in its determination of the applicable advisory sentencing guidelines or imposition of a sentence within the range of the guidelines.
United States v. Pursley	550 F. App'x 575	2013	Authored majority	Habeas	*Certificate of appealability denied*: The defendant did not make a substantial showing of ineffective assistance of counsel.
Arellano v. Medina	547 F. App'x 912	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.

Case Name	Citation	Year	Role	Subject	Holding
Gardner v. Arrowichis	543 F. App'x 891	2013	Authored majority	Habeas; Indian Law	*Affirmed*: District court properly dismissed petitioners' request for habeas relief against tribal officials when it was unclear whether the petitioners were in custody of the tribal officials and the petitioners did not comply with the court's order to file a new pleading that more clearly described the essential facts.
United States v. Castillo-Najer	541 F. App'x 895	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: After he was convicted for aiding in the distribution of marijuana, the defendant did not present sufficient basis to mandate a new trial.
United States v. Harris	735 F.3d 1187	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: No Fourth Amendment violation occurred when law enforcement officers discovered an illegal gun and drugs belonging to the defendant in the course of carrying out a valid warrant to search defendant's property for evidence of a different crime.
Blackmon v. Sutton	734 F.3d 1237	2013	Authored majority	Civil Rights	*Affirmed in part and reversed in part*: Juvenile detention officials were properly denied summary judgment based on qualified immunity in a 42 U.S.C. §1983 claim based on the use of a restraining chair for purely punitive purposes and on denial of access to mental health medical care, but the plaintiff did not allege sufficient facts to support his failure-to-transfer claim against the detention facility director.
Roberts v. IBM	733 F.3d 1306	2013	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: The evidence supported the district court's grant of summary judgment to defendants on the plaintiff's claims for age discrimination under the Age Discrimination in Employment Act and state tort law.
Fitzgerald v. United States Bank	537 F. App'x 811	2013	Authored majority	Contracts	*Affirmed*: In a claim for breach of contract and other civil claims, the district court properly considered the relevant contracts and dismissed the complaint when the plaintiffs' claims were inconsistent with the contracts at issue.
United States v. Zaler	537 F. App'x 808	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner's application for a certificate of appealability was untimely and was properly denied.
Zisumbo v. Ogden Reg'l Med. Ctr.	536 F. App'x 832	2013	Authored majority	Federal Courts	*Affirmed*: District court properly denied the plaintiff's motion to amend his complaint to add a new legal theory because it was untimely, and it correctly dismissed plaintiff's subsequently filed second lawsuit asserting that new theory based on the rule against claim-splitting.

Case Name	Citation	Year	Role	Subject	Holding
Hess v. Trammell	535 F. App'x 765	2013	Authored majority	Habeas	*Certificate of appealability denied and appeals dismissed*: Criminal defendant failed to establish that his convictions were attributable to ineffective assistance of counsel, and there was no error in the district court's decision to deny appointment of counsel in the habeas petition.
United States v. Martinez	543 F. App'x 770	2013	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: There was no error in the district court's decision to apply the statutory mandatory minimum sentence of 60 months in jail for a guilty plea for possession of cocaine with intent to distribute, and the criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Ferguson v. Shinseki	543 F. App'x 750	2013	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: When the undisputed record demonstrated that the plaintiff was not qualified for the job for which she applied, the district court correctly granted summary judgment for the defendants on the plaintiff's claim for discrimination on the basis of gender.
Warner v. Ed Bozarth Chevrolet	533 F. App'x 861	2013	Authored majority	Federal Courts	*Affirmed*: When a pro se plaintiff chose to use a facsimile transmission to deliver a pleading without any cover sheet, time stamp, or certificate of service, she assumed the risk that it would not be timely delivered and that her case would be dismissed.
United States v. Goodwin	541 F. App'x 851	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
United States v. Willis	533 F. App'x 849	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: The defendant's motion to suppress was correctly denied because law enforcement officers had reasonable suspicion to stop and question the defendant.
United States v. Summers	539 F. App'x 877	2013	Authored majority	Habeas	*Certificate of appealability denied:* After a conviction for conspiracy to possess methamphetamine with intent to distribute, the petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Sudduth v. Raemisch	532 F. App'x 823	2013	Authored majority	Habeas	*Affirmed*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.

Case Name	Citation	Year	Role	Subject	Holding
Novell, Inc. v. Microsoft Corp.	731 F.3d 1064	2013	Authored majority	Civil Liability	*Affirmed*: Microsoft's decision to withdraw certain previously extended information that would have allowed developers to create, prior to the release of the Windows 95 operating system, applications that would be compatible with that system did not amount to anticompetitive behavior under the Sherman Act, and the district court correctly entered a directed verdict in favor of Microsoft on that claim.
Dale K. Barker Co., P.C. v. Plaza	541 F. App'x 810	2013	Authored majority	Federal Courts	*Affirmed*: The date of filing of an amended complaint, adding a defendant in his individual capacity, related back to the date of original filing, and the district court did not err or abuse its discretion in other contested rulings.
Fletcher v. United States	730 F.3d 1206	2013	Authored majority	Indian Law	*Reversed*: Members of the Osage tribe had a statutory right to compel the government to provide an accounting of the funds held by the government in trust pursuant to a 1906 law that directed royalties earned by the mineral estate in lands belonging to the Osage tribe to be held in trust with a portion to be distributed to tribe members.
United States v. Washington	F. App'x 810	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: A damaged cell phone left in a hotel bathroom after checkout time was properly treated as abandoned; therefore, the phone could be admitted as evidence in a criminal prosecution even though it was obtained in a warrantless search of the hotel room.
Lopez v. Holder	532 F. App'x 797	2013	Authored majority	Immigration	*Petition for review denied*: A Guatemalan citizen's request to reopen his deportation proceedings for the third time was correctly dismissed as untimely and "number barred."
Shue v. Custis	531 F. App'x 941	2013	Authored majority	Civil Rights	*Affirmed*: Plaintiff's claims under 42 U.S.C. §1983 against his former public defender and the attorney's former employer failed as a matter of law because the public defender did not act under color of state law, as required for recovery under the statute, while providing legal assistance to a client accused of criminal wrongdoing.
Niemi v. Lasshofer	728 F.3d 1252	2013	Authored majority	Civil Liability; Federal Courts	*Vacated and remanded*: District court erred in granting a preliminary injunction freezing certain defendants' assets and ordering them to deposit $2.18 million in escrow because the plaintiffs lacked standing under the state statute that potentially authorized the injunctive relief.

Case Name	Citation	Year	Role	Subject	Holding
Buck v. CF&I Steel, L.P.	531 F. App'x 936	2013	Authored majority	Labor & Employment	*Affirmed*: District court correctly concluded that there was no genuine issue of material fact to support a possible breach of the collective bargaining agreement, and the union did not act in a discriminatory, dishonest, arbitrary, or perfunctory fashion.
Rodriguez v. Colorado	531 F. App'x 921	2013	Authored majority	Federal Courts	*Affirmed*: The district court properly dismissed the plaintiff's case when, after the pro se plaintiff filed three different complaints that did not meet minimum pleading standards, the district court offered the opportunity for the filing of a fourth version of the complaint, and the plaintiff allowed two months to pass without filing a new pleading.
Keeler v. ARAMARK	536 F. App'x 771	2013	Authored majority	Labor & Employment; Civil Rights	*Affirmed*: The employer offered legitimate, nonretaliatory, and nonpretextual reasons for firing the plaintiff, including intimidation of coworkers, a threatened riot, and refusal to cooperate with investigations, and there was no error by the district court in refusing to allow the plaintiff's state law civil claims to proceed to trial.
Genova v. Banner Health	734 F.3d 1095	2013	Authored majority	Health Law & Civil Liability	*Affirmed*: An emergency room doctor who claimed his superiors terminated him for reporting overcrowded emergency room conditions in which patients should have been transported to other hospitals did not present a valid claim for violation of the Emergency Medical Treatment and Active Labor Act, and the district court did not err in dismissing the plaintiff's state law tort and contract claims.
United States v. Munoz-Pena	530 F. App'x 846	2013	Authored majority	Criminal Law & Procedure; Immigration	*Affirmed*: The convicted criminal defendant's sentence of 56 months in prison for unlawfully reentering the United States was less than the range suggested under the U.S. Sentencing Guidelines, and the district court did not err by taking into consideration crimes committed within 10 years of the defendant's act of reentry or by choosing not to further depart downward from the advisory sentencing range.
Singleton v. Ploughe	530 F. App'x 843	2013	Authored majority	Federal Courts	*Affirmed*: When a pro se inmate attempted to seek relief from a district court without first filing a complaint and opening a civil case, and did not abide by the court's instructions on how to correctly file within 30 days, the district court properly dismissed the case.

Case Name	Citation	Year	Role	Subject	Holding
Decker v. Roberts	530 F. App'x 844	2103	Authored majority	Habeas	*Certificate of appealability denied and appeal dismissed:* Petitioner did not make a substantial showing that he was denied constitutionally effective counsel or otherwise denied a constitutional right.
United States v. Esquivel-Rios	725 F.3d 1231	2013	Authored majority	Criminal Law & Procedure	*Remanded*: District court should have conducted further fact-finding with regard to whether the officer had reasonable suspicion for a traffic stop based on the lack of a valid vehicle registration, when the stop was based on a database that "usually" did not return accurate vehicle registration information, but the defendant's remaining objections to admission of evidence and the conduct of the trial were either without merit or harmless error.
Larrieu v. Best Buy Stores LP	517 F. Appx' 635	2013	Authored majority	Civil Liability	*Reversed and remanded*: Following an answer by the Colorado Supreme Court to a question certified to it by the Tenth Circuit concerning the scope of liability under a Colorado statute at issue in the case, district court's summary judgment in favor of the defendant was reversed and the case was remanded for further proceedings consistent with the state court ruling.
Wood v. Milyard	721 F.3d 1190	2013	Authored majority	Habeas; Criminal Law & Procedure	*Remanded*: The convicted criminal defendant's constitutional arguments were not procedurally barred in a federal habeas petition based on the state law procedural rules in effect at the time of conviction and appeal; the Double Jeopardy Clause prohibited simultaneous convictions for first and second degree murder in a case involving the death of a single victim conviction; further proceedings were necessary to determine which conviction should be terminated; but the defendant waived his Sixth Amendment claim for a right to a jury trial during prior proceedings.
Jensen v. Solvay Chems.	721 F.3d 1180	2014	Authored majority	Insurance; Contracts	*Affirmed*: The retirement plan administrator and sponsor's failure to meet statutory notice requirements under the Employee Retirement Income Security Act of 1974 was not "egregious" within the meaning of the act, and therefore the plaintiffs were not permitted to a restoration of certain lost retirement benefits as a remedy.
Montano-Vega v. Holder	721 F.3d 1175	2013	Authored majority	Immigration	*Affirmed*: A federal regulation which deemed appeals to the Board of Immigration Appeals abandoned if the appellant leaves the country was not inconsistent with federal statute and did not violate the petitioner's due process rights.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Nelson	517 F. App'x 619	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: There was no error in the district court's sentencing of an individual who pled guilty to sexual abuse of his minor daughter.
Osborn v. Lampert	516 F. App'x 712	2013	Authored majority	Civil Rights	*Affirmed*: An inmate had not been denied a constitutional right to access to courts as a result of an allegedly inadequate prison library when he could not show an actual injury resulting from the prison's library policy.
United States v. Dyke	718 F.3d 1282	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: A government's undercover sting operation was not "outrageous government conduct" that violated the defendants' due process rights.
Acker v. Dinwiddie	516 F. App'x 692	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
Jenner v. Faulk	516 F. App'x 691	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
United States v. Bly	518 F. App'x 599	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: The convicted defendant was not entitled to a reduction in his sentence because the postsentencing change in the U.S. Sentencing Guidelines did not apply to his convictions.
Goosby v. Trammell	515 F. App'x 776	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.
Whitmore v. Parker	525 F. App'x 865	2013	Authored majority	Habeas; Criminal Law & Procedure	*Certificate of appealability denied:* Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings and failed to exhaust administrative remedies before bringing a claim under 42 U.S.C. §1983 arising from his treatment while incarcerated.
United States v. Petersen	525 F. App'x 808	2013	Authored majority	Criminal Law & Procedure	*Reversed and remanded*: At the time of the search of defendant's vehicle, law enforcement officers had probable cause to believe a burglary had been committed, and evidence gathered during the search should not have been suppressed.
United States v. Bell	526 F. App'x 880	2013	Authored majority	Habeas	*Certificate of appealability denied:* District court correctly dismissed the petitioner's motion to reconsider a prior denial of his attempt to attack a state court criminal conviction collaterally because the motion to reconsider was not filed within a reasonable time.

Case Name	Citation	Year	Role	Subject	Holding
Heinrich v. City of Casper	526 F. App'x 862	2013	Authored majority	Federal Courts; Civil Rights	*Affirmed*: Designation as a corporate designee for a deposition on behalf of a municipality, on its own accord, does not render an individual a final policymaker in such a manner that the deponent can formulate an official municipal policy or custom sufficient to create liability under 42 U.S.C. §1983.
United States v. Avitia-Bustamante	514 F. App'x 827	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings, and there was no plain error in the district court's sentence of 46 months in prison for a guilty plea of reentering the country unlawfully under 8 U.S.C. §1326(a)
Palmerin v. Johnson Cty.	524 F. App'x 431	2013	Authored majority	Labor & Employment; Civil Liability	*Affirmed*: District court did not err in entering judgment against the at-will employee plaintiff on his state law retaliation claim under Kansas law.
United States v. Chapman	521 F. App'x 710	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: There was no error in the district court's decision to issue a 70-month sentence to a former employee of the New Mexico Department of Corrections who pled guilty to soliciting bribes in a case in which the defendant's efforts to prevent a witness from speaking to investigators and to mask bribes as loans constituted obstruction of justice.
United States v. Mills	514 F. App'x 769	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
United States v. Cornelio-Legarda	514 F. App'x 771	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel or otherwise denied a constitutional right.
Carani v. Meisner	521 F. App'x 640	2013	Authored majority	Federal Courts; Civil Rights	*Affirmed*: District court correctly granted summary judgment dismissing the constitutionally based false arrest and false imprisonment claims because law enforcement officials had probable cause for the arrest; the remaining claims in the complaint either were not cognizable or not supported by sufficient facts to state a claim on which relief could be granted; and the award of attorney fees to certain defendants was not erroneous.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Johnson	565 F. App'x 771	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: When a defendant, who was serving a term of a supervised relief for a prior criminal conviction, was arrested and pled guilty to new criminal drug charges, the district court did not err in its decision to impose consecutive sentences for the new drug offense and for violation of the supervised relief.
United States v. Alter	512 F. App'x 744	2013	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Stewart Title Guar. Co. v. Dude	708 F.3d 1191	2013	Authored majority	Civil Liability	*Affirmed*: The plaintiff title company justifiably relied on the defendants' representations that there were no preexisting liens on a parcel of property, and its reliance was sufficient to support the jury's verdict that the defendants were liable for fraudulent misrepresentation.
Ciempa v. Jones	511 F. App'x 781	2013	Authored majority	First Amendment	*Affirmed*: There was no reversible error in the district court's decision granting summary judgment dismissing the plaintiff-inmate's claims alleging violations of his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) because, among other reasons, RLUIPA does not create a claim against prison employees in their individual capacities and the district court did not abuse its discretion in adjudicating certain procedural matters.
United States v. Ramos-Carrillo	511 F. App'x 739	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: There was insufficient evidence in the record to support the defendant's arguments that the grand jury heard false testimony or that the government deliberately prompted a coconspirator to testify falsely, and the jury's decision to render a guilty verdict before the court provided an answer to questions the jury posed to the court during deliberations demonstrated that the jury was able to resolve its own question without the court's assistance.
Anchondo v. Dunn	511 F. App'x 736	2013	Authored majority	Civil Liability; Federal Courts	*Affirmed*: When counsel for a corporation that was ordered to pay the plaintiff's fees and costs in a class action case acted in bad faith by concealing the existence of a professional liability insurance policy, an award of sanctions against the attorney for the unpaid attorneys' fees in the class action was appropriate.

Case Name	Citation	Year	Role	Subject	Holding
Newsom v. Ottawa Cty. Bd. of Comm'rs	511 F. App'x 718	2013	Authored majority	Civil Rights; Federal Courts	*Affirmed*: The plaintiff's amended complaint, which recited the elements of the causes of action without explaining which defendants committed which wrong or how, failed to state a claim on which relief could be granted.
McDonald v. Colorado	510 F. App'x 747	2013	Authored majority	Federal Courts	*Affirmed*: District court correctly abstained from hearing plaintiff's complaint against two state court judges, and the defendant-judges were correctly protected under the doctrines of judicial and Eleventh Amendment immunity.
Winbush v. Faulk	510 F. App'x 746	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
ClearOne Commc'ns v. Bowers	509 F. App'x 798	2013	Authored majority	Civil Liability; Federal Courts; Intellectual Property	*Affirmed*: There was no error in, among other rulings, dissolving a temporary restraining order allowing the plaintiff to purge its stolen trade secrets from the defendant's computers when the process of removing the information became protracted and unmanageable, or awarding attorney's fees against a defendant after an automatic stay in bankruptcy court was lifted. However, a separate award of appellate attorney's fees was vacated and remanded for further consideration of the scope of contempt liability under the Utah Liability Reform Act.
Jelitto v. Astrue	509 F. App'x 712	2013	Authored majority	Administrative Law; Public Benefits	*Affirmed*: There was no reversible error in the administrative law judge's (ALJ's) conclusion that the applicant was able to perform light work and was thus not entitled to supplemental security benefits; the opinion of the applicant's treating doctor was not adequately supported, and the ALJ did not err in its treatment of competing opinions from psychologists.
United States v. Shobe	508 F. App'x 845	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: Following a conviction for two bank robberies and associated conspiracy and federal firearms charges, there was no error in the district court's sentencing, which included a downward deviation, of a total of 397 months' imprisonment.

Case Name	Citation	Year	Role	Subject	Holding
Smith v. McCord	707 F.3d 1161	2013	Authored majority	Federal Courts	*Affirmed*: Summary judgment was correctly granted on the plaintiff's excessive force claim under 42 U.S.C. §1983 because plaintiff's counsel failed to respond to defendants' arguments that they were entitled to qualified immunity. This opinion was modified by Smith v. McCord, No. 12-2041, 2013 U.S. App. LEXIS 3549 (10th Cir. Jan. 29, 2013) to make "stylistic changes" necessary for publication. That opinion is not listed here.
Arnold Oil Props., L.L.C. v. Schlumberger Tech. Corp.	508 F. App'x 715	2013	Authored majority	Civil Liability	*Affirmed*: The prevailing party on a breach of contract claim to recover for "labor and services rendered" was entitled to recoup its attorneys' fees under an Oklahoma state statute, and there was no requirement that fees be apportioned when the same amount of time necessarily would have been devoted to the case even if the non-fee-bearing claims were not included.
United States v. Dority	508 F. App'x 709	2013	Authored majority	Criminal Law & Procedure	*Affirmed*: The petitioner for a writ of *audita querela* was properly denied because 28 U.S.C. §2555 was the exclusive remedy to test the validity of the prior criminal sentence and the petitioner did not demonstrate that there had been a complete miscarriage of justice.
United States v. Cano	507 F. App'x 805	2013	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Griffin v. Kastner	507 F. App'x 801	2013	Authored majority	Criminal Law & Procedure; Federal Courts	*Affirmed*: When an inmate who alleged that his involuntary medication order, transfer, and detention were unlawful failed to object to a magistrate judge's recommendation of dismissal and there was no plain error in the ruling, the district court's decision to adopt the magistrate's recommendation was not subject to reversal.
Beck v. Rudek	507 F. App'x 803	2013	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make substantial showing that he was denied constitutionally effective counsel in connection with his plea dealings.

Case Name	Citation	Year	Role	Subject	Holding
Gaff v. St. Mary's Reg'l Med. Ctr.	506 F. App'x 726	2012	Authored majority	Labor & Employment	*Affirmed*: The district court did not err in granting summary judgment for the defendant on the plaintiff's claim that she was subject to a hostile work environment and fired for opposing discrimination; the complained-of statements in the work environment were not severe or pervasive enough to sustain a hostile environment claim, and there was no evidence the employer's proffered reason for firing her—a threat of violence against a coworker—was pretextual.
Apodaca v. Medina	505 F. App'x 780	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that his transfer from a correction facility in Colorado to one in Oklahoma denied him a constitutional right.
United States v. Marquez-Reveles	505 F. App'x 771	2012	Authored majority	Criminal Law & Procedure; Immigration	*Affirmed*: The district court's sentence of 30 months' imprisonment followed by 24 months' supervised release for unlawfully reentering the country following a previous deportation was not substantively unreasonable.
Swain v. Seaman	505 F. App'x 773	2012	Authored majority	Civil Rights; Federal Courts	*Affirmed*: Because the inmate, who alleged that he was denied a constitutional right to access courts by virtue of a deficient prison law library, did not respond to the district court's bases for dismissing his claim, the Tenth Circuit affirmed the dismissal.
United States v. Reese	505 F. App'x 733	2012	Authored majority	Federal Courts; Civil Rights	*Question of state law certified*: The court certified a question to the New Mexico Supreme Court addressing whether an individual who has completed a deferred sentence for a felony offense is barred from holding public office (and thus also barred from possessing a firearm under federal law) without a pardon or certificate from the governor, or whether the restoration of the right to vote automatically restores the right to hold office without gubernatorial approval.
Landrith v. Gariglietti	505 F. App'x 701	2012	Authored majority	Federal Courts	*Affirmed*: The *Rooker-Feldman* doctrine precluded federal courts from reviewing a state court custody decision, and there was no error in the district judge's decision not to recuse herself or in dismissing the case as frivolous under 28 U.S.C. §1915(e)(2).
Tinner v. Foster	491 F. App'x 936	2012	Authored majority	Federal Courts	*Affirmed*: The court lacked jurisdiction to hear plaintiff's appeal because his notice of appeal was not timely filed.

Case Name	Citation	Year	Role	Subject	Holding
Kaiser v. Colo. Dep't of Corr.	504 F. App'x 739	2012	Authored majority	Labor & Employment; Civil Rights	*Affirmed*: When the employee failed to produce evidence that his employer's stated reasons for the employee's firing—absenteeism and poor performance during training—were pretextual, the district court's grant of summary judgment on the plaintiff's claim for discrimination under Title VII of the Civil Rights Act of 1964 was appropriate.
Weeks v. Kansas	503 F. App'x 640	2012	Authored majority	Labor & Employment; Civil Rights	*Affirmed*: The district court correctly concluded that plaintiff, a lawyer for a state agency, could not establish a prima facie case of retaliation under Title VII of the Civil Rights Act of 1964 when she alleged she was terminated from employment as in-house counsel for providing legal advice regarding employee complaints of discrimination. The plaintiff's stipulation that she was simply performing her duties as legal counsel, rather than engaging in protected opposition to discrimination that might give rise to a retaliatory claim, meant that her conduct did not fall under the scope of Title VII.
United States v. E.V.	503 F. App'x 627	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: The government's conclusion that the defendant did not comply with the terms of his plea deal, and thus was not entitled to a recommendation of a reduced sentence, was rationally related to a legitimate government end and was not made in bad faith when the government concluded that the defendant offered changing and inconsistent factual accounts that were false or incomplete.
United States v. Garton	501 F. App'x 838	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel or that he was otherwise denied a constitutional right during prior criminal proceedings.
United States v. Hood	501 F. App'x 812	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Kilgore v. Weatherly	500 F. App'x 799	2012	Authored majority	Civil Rights	*Affirmed*: The district court properly dismissed as frivolous a claim that a former state prosecutor and court stenographer violated the plaintiff's constitutional rights by not responding to his request for a full transcript of his state court murder trial for use in his legal challenge to a separate murder conviction.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Diaz	500 F. App'x 798	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Villa v. Dona Ana Cty.	500 F. App'x 790	2012	Authored majority	Federal Courts	*Affirmed*: The district court did not abuse its discretion in dismissing the complaint and ordering plaintiffs to pay the defendants' attorneys as a sanction following plaintiffs' discovery violations and failure to comply with court orders.
Patterson v. Williams	500 F. App'x 792	2012	Authored majority	Contracts	*Affirmed*: Applying Kansas choice-of-law rules, the Kansas statute of limitations on breach of contract applied to the case, and the plaintiff's claim was time-barred.
Jobira v. Holder	487 F. App'x 465	2012	Authored majority	Immigration	*Petition for review denied*: The asylum-seekers' motion to reopen their deportation proceedings was denied as untimely.
Coburn v. Regents of the Univ. of California	500 F. App'x 779	2012	Authored majority	Labor & Employment	*Affirmed*: The plaintiff failed to demonstrate that exceptions to a state law rule providing that an at-will employee could be terminated for any reason applied to his case, and the plaintiff's claim for breach of an implied employment contract was correctly dismissed.
Bennett v. Johnson	500 F. App'x 776	2012	Authored majority	Civil Rights	*Affirmed*: The district court correctly granted summary judgment for the defendants on plaintiff's claim under 42 U.S.C. §1983 because there was no genuine issue of material fact that the defendants were either entitled to qualified immunity or were not acting under color of state law.
United States v. Fields	500 F. App'x 755	2012	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Lorentzen v. Omer	486 F. App'x 749	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings, and he failed to show that he exhausted his claims in state court before seeking federal relief.
United States v. Friedman	499 F. App'x 807	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: When the advisory U.S. Sentencing Guidelines called for a sentence of between 151 and 188 months, there was no error on the part of the district judge in sentencing the defendant to 151 months of incarceration.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Martinez	485 F. App'x 334	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel or that he was otherwise denied a constitutional right during prior criminal proceedings.
United States v. Sullivan	498 F. App'x 831	2012	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: The defendant waived his right to appeal directly his sentence in his plea agreement; the government did not relinquish its right to enforce the plea agreement; and the appellate waiver was enforceable.
United States v. Allen	497 F. App'x 853	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel or that he was otherwise denied a constitutional right during prior criminal proceedings.
United States v. Rendon-Martinez	497 F. App'x 848	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Elwell v. Okla. ex rel. Bd. of Regents of the Univ. of Oklahoma	693 F.3d 1303	2012	Authored majority	Civil Rights	*Affirmed*: Title II of the Americans with Disabilities Act does not create a cause of action for employment discrimination cases, and the plaintiff's claim under the Oklahoma Anti-Discrimination Act was correctly dismissed because the defendant did not waive its sovereign immunity.
Brooks v. Whiteaker	478 F. App'x 529	2012	Authored majority	Civil Rights	*Affirmed*: Summary judgment for the defendants was correctly granted on the prison inmate's claim under 42 U.S.C. §1983 because the inmate failed to exhaust the prison's grievance procedure.
Wyttenbach v. Parrish	496 F. App'x 796	2012	Authored majority	Federal Courts	*Affirmed*: The plaintiff's suit against his former domestic partner for breach of the terms of a child custody order from a Texas state court fell into the "domestic relations exception" to congressional statutes granting jurisdiction to federal courts.
Banks v. Workman	692 F.3d 1133	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: There was no reversible error in the trial and sentencing proceedings that led to defendant's murder conviction and sentence of death when, among other things, the trial judge allowed ongoing questioning of a witness who had invoked his Fifth Amendment rights and the defendant did not preserve his ineffective assistance of counsel claim arising from an allegedly intoxicated expert witness.

Case Name	Citation	Year	Role	Subject	Holding
Woolsey v. Citibank, N.A. (In re Woolsey)	696 F.3d 1266	2012	Authored majority	Bankruptcy	*Affirmed*: Under rule set forth in *Dewsnump v. Timm*, the Bankruptcy Code does not void a second mortgage on a parcel of property with a fair market value that is too low to satisfy the balance due on the first mortgage, leaving no value for the second mortgage.
Hassan v. Colorado	495 F. App'x 947	2012	Authored majority	Civil Rights	*Affirmed*: Article II, Section I, clause 5 of the Constitution, which states that only a natural-born citizen is eligible to be President, does not conflict with any other provision of the Constitution, and barred the appellant for accessing the ballot as a presidential candidate.
Gee v. Pacheco	495 F. App'x 942	2012	Authored majority	Civil Rights; Federal Courts	*Affirmed*: The district court did not err in dismissing the inmate's suit and declining to appoint counsel to hear his 42 U.S.C. §1983 claim when the prison policy restricting the size of legal materials that could be kept in the prisoner's cell was reasonable and did not excuse the failure to file an amended pleading as ordered.
Rounds v. Clements	495 F. App'x 938	2012	Authored majority	First Amendment; Civil Rights; Federal Courts	*Affirmed:* Taking the allegations in the complaint as true at the motion to dismiss stage, the plaintiff-inmate alleged sufficient facts in his retaliatory transfer claim such that the prison official would not be entitled to Eleventh Amendment immunity under the *Ex parte Young* exception.
Public Serv. Co. v. NLRB	692 F.3d 1068	2012	Authored majority	Labor & Employment	*Petition for review denied and cross-petition for enforcement of agency order granted*: In a discovery dispute between a labor union and an employer, the employer waived certain objections by failing to raise them during administrative proceedings, and, for those objections that were preserved, the administrative law judge and National Labor Relations Board correctly ruled that the requested information was relevant and discoverable.
United States v. Reed	481 F. App'x 448	2012	Authored majority	Civil Rights; Federal Courts	*Appeal dismissed*: The inmate's appeal of and motion to correct the district court's sentencing decisions were untimely.
United States v. Sierra	499 F. App'x 742	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel or otherwise denied a constitutional right.
United States v. Buckley	508 F. App'x 698	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: There was sufficient evidence in the record to support the finding that the defendant exchanged funds with his supplier of marijuana as alleged in the indictment.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Shippley	690 F.3d 1192	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: When the jury returned a guilty verdict on a conspiracy charge but stated in response to special interrogatories that the defendant had not conspired to distribute any of the drugs listed in the indictment, there was no reversible error by the district court in, among other rulings, instructing the jury to deliberate further and correct its inconsistent positions.
Palecek v. Jones	473 F. App'x 866	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely.
Diperna v. Icon Health & Fitness, Inc.	491 F. App'x 904	2012	Authored majority	Civil Liability; Contracts	*Motion to dismiss denied, reversed, and remanded*: The district court award of $45,000 in fees to the law firm lacked an adequate basis, but the law firm did not waive its right to appeal the fee amount by accepting and cashing a check from the former client that was accompanied by a letter saying the check was tendered "in full settlement."
United States v. Gehringer	474 F. App'x 751	2012	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that he was denied constitutionally effective counsel.
United States v. Huizar	688 F.3d 1193	2012	Authored majority	Criminal Law & Procedure; Immigration	*Vacated and remanded*: When calculating the defendant's sentence for unlawfully reentering the United States after previously being deported, the district court erred in applying a 16-level upward adjustment to the base offense level because it was not clear whether a former California conviction for burglary was a "crime of violence."
United States v. Izenberg	481 F. App'x 444	2012	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that he was denied constitutionally effective counsel at sentencing.
United States v. Thompson	470 F. App'x 715	2012	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that he was denied constitutionally effective counsel or that his guilty plea was involuntary.
BancFirst v. Ford Motor Co.	489 F. App'x 264	2012	Authored majority	Federal Courts	*Affirmed*: District court did not err in concluding that proposed expert testimony did not meet standards set forth by the Supreme Court in *Daubert v. Merrell Dow Pharm., Inc.*, making the testimony inadmissible.
Blake v. Aramark Corp.	489 F. App'x 267	2012	Authored majority	Federal Courts	*Appeal dismissed:* Prisoner's appeal was dismissed for failing to file a timely notice of appeal.

Case Name	Citation	Year	Role	Subject	Holding
Alvarado v. Donley	490 F. App'x 932	2012	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: Plaintiff did not show that the Air Force's reason for firing him (insubordination) was a pretext for either unlawful employment discrimination on the grounds of race or retaliation for engaging in protected activity under Title VII of the Civil Rights Act.
Cinnamon Hills Youth Crisis Ctr., Inc. v. St. George City	685 F.3d 917	2012	Authored majority	Civil Rights	*Affirmed*: Plaintiffs did not show that the city discriminated against or failed to provide a reasonable accommodation for the disabled by refusing to grant a zoning variance that would have permitted the plaintiffs to run a residential treatment facility on the top floor of a motel.
Larrieu v. Best Buy Stores, L.P.	491 F. App'x 864	2012	Authored majority	Federal Courts; Civil Liability	*Question of state law certified:* Federalism and comity interests necessitated that the Colorado Supreme Court, not the Tenth Circuit, decide the scope of liability under the Colorado Premises Liability Act.
Bias v. Astrue	484 F. App'x 275	2012	Authored majority	Administrative Law; Public Benefits	*Affirmed*: Claimant was not entitled to Social Security disability benefits because the administrative law judge correctly determined that the claimant could perform light work with few restrictions and perform jobs that exist in significant numbers in the national economy.
United States v. Burgdorf	466 F. App'x 761	2012	Authored majority	Criminal Law & Procedure	*Affirmed:* Defendant's sentence above that recommended under the U.S. Sentencing Guidelines—the statutory maximum for racketeering—was not substantively unreasonable based on his extensive, serious criminal history.
Buckland v. Buckland	486 F. App'x 704	2012	Authored majority	Civil Rights; Federal Courts	*Affirmed:* Civil-rights suit was not filed within the statute of limitations.
Winzler v. Toyota Motor Sales U.S.A., Inc.	681 F.3d 1208	2012	Authored majority	Civil Liability; Federal Courts	*Vacated and remanded*: Plaintiff's claims were moot based on prudential considerations, given that she was seeking equitable relief (for the court to order Toyota to notify certain car owners about a defect and create a fund to pay for repairs), yet, since the lawsuit had been filed, Toyota had issued a recall that was being overseen by the National Highway Transportation Safety Administration.
Tilley v. McFarland	467 F. App'x 804	2012	Authored majority	Federal Courts	*Affirmed:* Plaintiff's complaint alleging that an attorney, judge, and clerk intimidated him during a court appearance failed to state a claim for relief.

Case Name	Citation	Year	Role	Subject	Holding
Burke v. Rudek	483 F. App'x 516	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
United States v. Maldonado-Ortega	467 F. App'x 797	2012	Authored majority	Habeas	*Certificate of appealability denied*: Movant's collateral attack on his conviction and sentence was barred by his plea agreement.
Sisneros v. Office of Pueblo Cty. Sheriff	466 F. App'x 755	2012	Authored majority	Civil Rights	*Affirmed:* Officers were entitled to qualified immunity, for substantially the reasons the district court provided.
Kiker v. Cmty. Health Sys. Prof'l Servs. Corp.	484 F. App'x 215	2012	Authored majority	Federal Courts	*Affirmed:* District court properly awarded fees and costs to plaintiff for defendant's wrongful removal to federal court.
White v. Mullins	466 F. App'x 754	2012	Authored majority	Civil Rights	*Affirmed:* Prisoner did not exhaust available administrative remedies and thus could not pursue his suit under 42 U.S.C. §1983 against various prison officials.
Tindall v. Freightquote.com, Inc.	466 F. App'x 752	2012	Authored majority	Federal Courts; Contracts	*Affirmed:* The district court did not err by enforcing an oral settlement agreement between the plaintiff and her former employer, because the plaintiff offered no evidence to demonstrate that the contract should be voided.
United States v. Coleman	483 F. App'x 419	2012	Authored majority	Criminal Law & Procedure	*Affirmed:* Defendant did not show that a police officer acted with discriminatory purpose when deciding to inspect his truck at the border and therefore no equal protection violation occurred. Thus, the district court correctly concluded that the drugs found in defendant's truck need not be suppressed.
W. World Ins. Co. v. Markel Am. Ins. Co.	677 F. 3d 1266	2012	Authored majority	Civil Liability; Insurance	*Reversed and remanded*: Oklahoma's doctrine of equitable contribution required Markel, as a coinsurer to a haunted house operation where an employee was injured, to reimburse the other insurer for its fair share of the attorneys' fees and costs of the settlement in the employee's lawsuit against the haunted house.
Davis v. Newton-Embry	478 F. App'x 525	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not show that the trial court committed an error under the standard set forth by the Supreme Court in *Bruton v. United States* by failing to sever the trial from her codefendant, nor did she show that the prosecutor improperly commented on her Fifth Amendment right to remain silent.

Case Name	Citation	Year	Role	Subject	Holding
Johnson v. Jones	465 F. App'x 811	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
United States v. Bayazeed	465 F. App'x 810	2012	Authored majority	Habeas	*Certificate of appealability denied*: Movant's waiver of the right to attack his guilty plea and sentence collaterally was made knowingly and voluntarily.
United States v. Rivera	478 F. App'x 509	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not abuse its discretion by giving the jury a curative instruction for improper testimony rather than granting a mistrial. Nor did the government improperly fail to disclose a change in a witness's account of the crime in violation of the standard set forth by the Supreme Court in *United States v. Bagley* because the defendant could not show that the testimony was material.
Laidley v. City & Cty. of Denver	477 F. App'x 522	2012	Authored majority	Civil Rights	*Affirmed*: Under the community caretaking doctrine, the city properly seized and towed plaintiff's car after citing him for driving without a license and thus did not violate the Fourth Amendment. Nor did the police violate the substantive component of the Due Process Clause of the Fourteenth Amendment by forfeiting the car through a provision of the city municipal code.
Proffit v. Wyoming	464 F. App'x 772	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.
United States v. Johnson	2012 U.S. App. Lexis 2006	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: The defendant's crime of possessing a weapon in prison, and his particular conduct when committing the crime, was a crime of violence potentially subject to a sentencing enhancement under the U.S. Sentencing Guidelines. For amended order following the denial of an en banc rehearing, see below at 475 F. App'x 288.
United States v. Johnson	475 F. App'x 288	2012	Authored majority	Criminal Law & Procedure	*Affirmed:* The defendant's crime of possessing a weapon in prison, and his particular conduct when committing the crime, was a crime of violence potentially subject to a sentencing enhancement under the U.S. Sentencing Guidelines. The crime would still be one of violence even if the court, as the defendant requested, applied the categorical approach in determining whether his crime was one of violence, because the indictment charged the defendant with possessing a weapon in prison, and that categorically is a crime of violence under circuit precedent.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Summers	479 F. App'x 159	2012	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to the rule set forth by the Supreme Court in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Hand v. Walnut Valley Sailing Club	475 F. App'x 277	2012	Authored majority	Federal Courts	*Affirmed*: It was not an abuse of discretion for the district court to dismiss the case with prejudice as a sanction for the plaintiff violating the court rule requiring participants in court-ordered mediation to keep information from the proceedings confidential.
Church v. Okla. Corr. Indus.	459 F. App'x 806	2012	Authored majority	Civil Rights; Habeas	*Affirmed*: The claims for relief the plaintiff sought, such as that he was actually innocent of the charges for which he had been convicted, were not appropriate for suit under 42 U.S.C. §1983, but rather should have been brought in a petition for a writ of habeas corpus.
United States v. Maytubby	472 F. App'x 877	2012	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that his appellate counsel was constitutionally ineffective, and thus he could not escape the procedural bar for claims he failed to present on direct appeal.
United States v. Rutherford	472 F. App'x 863	2012	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that his conviction for drug trafficking violated the Commerce Clause or the Tenth Amendment because judicial precedent foreclosed his argument that Congress exceeded its constitutional power in enacting the crimes of conviction.
Mitchell v. Medina	459 F. App'x 800	2012	Authored majority	Civil Rights; Federal Courts	*Affirmed*: Prisoner's complaint, contending that the Colorado Court of Appeals erred during his state postconviction proceedings, failed to state a claim for relief because the judges were immune from suit and the claims, otherwise, were barred by the rule set forth in *Heck v. Humphrey*.
McCormick v. Schmidt	469 F. App'x 661	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus could not proceed because it contained both exhausted and unexhausted claims.
Nozlic v. Romano	459 F. App'x 790	2012	Authored majority	Civil Rights	*Affirmed*: Plaintiff failed to allege facts supporting an arguable claim of discrimination based on disability and thus the district court properly dismissed the complaint.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Moser	466 F. App'x 713	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: The government's evidence was sufficient to support the jury's guilty verdicts for bank fraud and conspiracy to commit bank fraud.
Smith v. Franklin	465 F. App'x 788	2012	Authored majority	Habeas	*Certificate of appealability denied*: The district court did not err by failing to convert the prisoner's petition under 28 U.S.C. §2241 into civil suit under 42 U.S.C. §1983 because his allegations related to his parole hearing could have properly been brought in a petition for a writ of habeas corpus.
George v. United States	672 F.3d 942	2012	Authored majority	Federal Courts; Administrative Law	*Affirmed*: Plaintiff's claim under the Quiet Title Act, concerning a dispute with the Forest Service about an easement running through a portion of her property that she wanted to fence in, was barred by the 12-year statute of limitations, which began running when the predecessor in interest of the property should have known about the government's claim to a fence-free road, and that had happened about three decades earlier.
United States v. Coulter	461 F. App'x 763	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: District court correctly denied motion to suppress because, even assuming police detention of defendant outside his home was unlawful, there was no but-for causation between the detention and the subsequent discovery of an unlawfully possessed firearm inside the defendant's home, as police permissibly approached the defendant's house for safety reasons, and thereafter obtained consent to enter from defendant's girlfriend who was present there.
Johnson v. Ezell	448 F. App'x 861	2012	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing of the denial of a constitutional right.
Hinton v. Bowers	458 F. App'x 755	2012	Authored majority	Civil Rights	*Affirmed*: Prisoner failed to exhaust administrative remedies before filing suit under 42 U.S.C. §1983 against prison officials.
Trujillo v. Williams	460 F. App'x 741	2012	Authored majority	Civil Rights	*Affirmed*: The prisoner-plaintiff waived any objection on appeal to the remedial plan that New Mexico proposed in response to his allegation that the state unlawfully required him to pay postage to access legal materials.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Braden	458 F. App'x 751	2012	Authored majority	Criminal Law & Procedure	*Affirmed:* There was no reason to disturb the district court's finding crediting testimony that the defendant had the requisite awareness while under the influence of methamphetamine to voluntarily waive her Fifth Amendment rights, and thus her confession did not require suppression. Additionally, the district court correctly calculated the amount of drugs attributable to the defendant for the purpose of applying the U.S. Sentencing Guidelines.
United States v. Moore	456 F. App'x 762	2012	Authored majority	Criminal Law & Procedure	*Affirmed*: The defendant's criminal-history category did not substantially overstate the seriousness of his criminal history, and thus he did not rebut the presumption that his imposed sentence, which was less than recommended under the U.S. Sentencing Guidelines, was reasonable.
George v. Astrue	451 F. App'x 767	2011	Authored majority	Administrative Law; Public Benefits	*Reversed and Remanded*: The administrative law judge (ALJ) correctly determined that claimant did not suffer from a disability that would allow him to obtain disability and supplemental Social Security income benefits because the claimant could still perform light work and jobs existed in the national economy that he could perform. But the ALJ erred by failing to consider whether claimant suffered from a mental disability that would preclude him from working.
United States v. Seals	450 F. App'x 769	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: Defendant failed to preserve his argument that his criminal proceedings violated the Speedy Trial Act.
Cook v. Cent. Utah Corr. Facility	446 F. App'x 134	2011	Authored majority	Federal Courts; Civil Rights	*Affirmed*: District court did not abuse its discretion in applying procedural rules to dismiss plaintiff-prisoner's 42 U.S.C. §1983 suit, given that plaintiff failed to follow the court's orders despite repeated warnings.
United States v. Rochin	662 F.3d 1272	2011	Authored majority	Criminal Law & Procedure	*Affirmed:* Police officer did not exceed the scope of a constitutionally permissive frisk when he removed objects (which turned out to be drug paraphernalia) from defendant's pockets because a reasonable officer would have feared that the detected objects were firearms given that the defendant was suspected of being involved in a drive-by shooting.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Cruz-Arellanes	442 F. App'x 408	2011	Authored majority	Criminal Law & Procedure; Federal Courts	*Affirmed*: District court did not abuse its discretion in denying the defendant's motion under 18 U.S.C. §3582(c)(2) to reduce his sentence for illegal reentry after the Sentencing Commission amended the U.S. Sentencing Guidelines to discuss when a court may opt to consider imposing a lesser sentence for reentry based on the defendant's cultural assimilation, as that amendment did not qualify for a potential sentence reduction under §3582(c)(2).
Pennington v. Uinta Cty.	442 F. App'x 409	2011	Authored majority	Civil Rights; Civil Liability	*Affirmed*: The record contained no evidence that the sheriff or county were aware that a prison guard who sexually assaulted an inmate posed a danger of sexually assaulting inmates, and thus they could not be held civilly liable.
Stine v. Davis	442 F. App'x 405	2011	Authored majority	Criminal Law & Procedure	*Affirmed:* Petitioner could not pursue a habeas petition under 28 U.S.C. §2241 for when a 28 U.S.C. §2255 motion was inadequate or ineffective to test the legality of his detention; the petitioner could have raised his argument that his prior escape convictions did not merit a career-offender enhancement when he filed his initial §2255 motion.
Elkins v. Astrue	442 F. App'x 406	2011	Authored majority	Administrative Law; Public Benefits	*Affirmed*: Administrative law judge (ALJ) did not err in denying Social Security disability benefits because the ALJ permissibly gave the claimant's treating physician's testimony little weight and did not find the claimant's testimony credible about the severity of her impairments.
Carrera v. Tyson Foods, Inc.	449 F. App'x 753	2011	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: Plaintiff could not succeed on a hostile-work environment claim under Title VII of the Civil Rights Act because her employer took remedial and preventative actions reasonably calculated to end the harassment.
Bork v. Carroll	449 F. App'x 719	2011	Authored majority	Federal Courts	*Affirmed:* District court correctly dismissed the lawsuit by a member of the U.S. Army Reserve challenging personnel decisions made by his sergeant, superior officers, and the Secretary of Defense for lack of subject matter jurisdiction because of the government's sovereign immunity.

Case Name	Citation	Year	Role	Subject	Holding
Almond v. Unified Sch. Dist. #501	665 F.3d 1174	2011	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: Plaintiffs' claims under the Age Discrimination Employment Act were untimely, and plaintiffs also could not take advantage of the Ledbetter Act's more generous claim accrual rules, because the Ledbetter Act applies only to claims alleging actual discrimination in compensation (i.e., unequal pay for equal work), not any instance of discrimination that merely relates to compensation in some way.
Lopez-Fisher v. Abbot Labs.	441 F. App'x 602	2011	Authored majority	Civil Rights	*Affirmed:* Summary judgment on plaintiff's claims of discrimination was proper because there was no evidence that the reason offered for her termination (poor performance) was pretextual, given the circuit's presumption that when an employee is hired and fired by the same person within a short time span, the firing decision isn't motivated by discrimination.
TW Telecom Holdings Inc. v. Carolina Internet Ltd.	661 F.3d 495	2011	Authored majority	Bankruptcy	*Appeal stayed*: Circuit precedent was overruled to join the majority of circuits in holding that §262 of the Bankruptcy Code automatically stays the continuation of judicial proceedings against a debtor when the proceedings were initiated before the filing of a bankruptcy petition, and there is no exception for the debtor to pursue an appeal even if it is an appeal from a creditor's judgment against the debtor.
United States v. Soto	660 F.3d 1264	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: District court's finding that defendant lied during his hearing to withdraw his guilty plea was not clearly erroneous. Based on that finding, the court also did not err when calculating the recommended sentence under the U.S. Sentencing Guidelines and refusing to grant a reduction for accepting responsibility. Nor did the defendant rebut the presumption of reasonableness for his within-guidelines sentence.
Ciempa v. Standifird	446 F. App'x 95	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner's claims about his good-time credits were procedurally defaulted.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Koch	444 F. App'x 293	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not err by refusing to dismiss the indictment on the ground that it was issued a month before the statute of limitations expired, nor did the court violate due process because there was no evidence that the government had purposefully delayed the indictment or that the defendant suffered actual prejudice from the delay. Additionally, there was sufficient evidence for the jury to return a guilty verdict for conspiracy to commit bank fraud.
Miller v. Trammell	439 F. App'x 766	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
United States v. Leyva	442 F. App'x 376	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: Government presented sufficient evidence for the jury to return a guilty verdict for drug charges. The sufficiency of the evidence also rendered harmless the alleged error of admitting expert testimony that purportedly violated evidentiary rules, and the court did not err by interrupting defense counsel's closing argument to instruct the jury that he was arguing facts not in evidence.
Lucas v. Liberty Life Assur. Co.	444 F. App'x 243	2011	Authored majority	Insurance; Contracts	*Affirmed*: Insurance company's denial of ERISA long-term disability benefits was not arbitrary and capricious, because, under the terms of the plaintiff's plan, he must have been unable to perform, with reasonable continuity, the material and substantial duties of any occupation, and there was substantial medical evidence showing that he could engage in full-time work despite his impairment.
United States v. Lopez-Estrada	446 F. App'x 81	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: District court correctly denied the motion to suppress drugs found in defendant's car after he consented to a search, because the officer had reasonable suspicion to believe that the defendant had committed two traffic infractions.
Alexander v. Foegen	443 F. App'x 333	2011	Authored majority	Civil Rights; Federal Courts	*Affirmed*: Civil-rights suit was barred by the statute of limitations.
United States v. Wilson	442 F. App'x 370	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: Criminal appeal was dismissed pursuant to the rule set forth by the Supreme Court in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.

Case Name	Citation	Year	Role	Subject	Holding
Blazier v. Larson	443 F. App'x 334	2011	Authored majority	Civil Rights	*Affirmed*: Prosecutor was entitled to absolute prosecutorial immunity for claims alleging unlawful prosecution and threat of future prosecution. The defendant was not entitled to injunctive relief against future witness-retaliation charges because the possibility of such charges being filed was too speculative.
United States v. Meeks	439 F. App'x 736	2011	Authored majority	Habeas	*Certificate of appealability denied*: Prisoner waived his right to collaterally attack his sentence in his plea agreement, and he did not argue that he made that waiver unknowingly or involuntarily.
Wright v. Franklin	438 F. App'x 728	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right to a fair trial or effective assistance of counsel.
Litteral v. Marshall	437 F. App'x 749	2011	Authored majority	Habeas	*Certificate of appealability denied*: Prisoner was not denied a protected interest in earned good-time credits and a parole hearing because the New Mexico Supreme Court had held that inmates serving a life sentence cannot be released on parole before serving 30 years, regardless of good-time accrued.
United States v. Powell	433 F. App'x 693	2011	Authored majority	Habeas	*Affirmed*: Federal inmate's motion under 28 U.S.C. §2255 to vacate, set aside, or correct his sentence could not succeed on the ground that he received ineffective assistance of trial and appellate counsel because he had two prior convictions for a felony drug offense, and thus his lawyers were not obligated to argue that he was ineligible for a mandatory life sentence under 21 U.S.C. §841(b)(1)(A).
United States v. Robinson	437 F. App'x 733	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: There was sufficient evidence, including eye witnesses that the jury could credit, to support the guilty verdict for distributing crack cocaine. Additionally, the defendant's sentence was within the range recommended by the U.S. Sentencing Guidelines and was presumptively reasonable.
Wallin v. Estep	433 F. App'x 689	2011	Authored majority	Habeas	*Certificate of appealability denied*: Claims in the petition for a writ of habeas corpus were time-barred or procedurally defaulted.
United States v. Fernandez	437 F. App'x 647	2011	Authored majority	Habeas	*Certificate of appealability denied*: Movant waived his right to attack his conviction collaterally in his plea agreement and did not demonstrate that the waiver was not made knowingly and voluntarily.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Hernandez	655 F.3d 1193	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: The maximum terms of imprisonment upon the revocation of supervised release listed in 18 U.S.C. §3583(e)(3) govern each new sentence of reimprisonment, not the aggregate terms for when a person violates supervised release multiple times and is reimprisoned on multiple occasions.
Johnson v. Liberty Mut. Fire Ins. Co.	648 F.3d 1162	2011	Authored majority	Federal Courts; Civil Liability; Insurance	*Affirmed*: It was not reasonably foreseeable for the defendant insurance company to know that the plaintiffs wanted it to retain tail lights that may have helped them win a personal injury lawsuit they intended to bring, and thus the insurance company could not be found liable for a tort.
Scherer v. U.S. Forest Serv.	653 F.3d 1241	2011	Authored majority	Administrative Law; Environmental Law	*Affirmed*: Plaintiff's facial challenge to the Forest Service's amenity fee that it charges many visitors of Mount Evans could not succeed because, in the Recreation Enhancement Act, Congress authorized the Forest Service to impose amenity fees in certain outdoor recreation areas in which there are substantial federal investments and certain amenities, and the service did not exceed that authority.
United States v. Fraser	647 F.3d 1242	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not err by refusing to allow the defendant—charged with possessing a firearm as a felon—to present a "necessity defense" at trial to argue that violating the firearm law was necessary to defend against a lethal threat. Assuming such a defense was available, the defendant could not satisfy the necessary burden of showing that he obtained possession of the firearm at issue because he lacked any reasonable lawful alternative.
United States v. Manatau	647 F.3d 1048	2011	Authored majority	Criminal Law & Procedure	*Vacated and remanded*: Intended loss, for the purpose of calculating a defendant's sentence for an economic crime using the U.S. Sentencing Guidelines, means a loss the defendant purposely sought to inflict.
Kay Elec. Coop. v. City of Newkirk	647 F. 3d 1039	2011	Authored majority	Civil Liability	*Reversed and remanded*: Oklahoma did not authorize the City of Newkirk to install a municipal monopoly, and therefore the city was not immune from federal antitrust liability under the Sherman Act.
United States v. Fulton	431 F. App'x 732	2011	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to the rule set forth by the Supreme Court in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.

Case Name	Citation	Year	Role	Subject	Holding
Banks v. United States	431 F. App'x 755	2011	Authored majority	Habeas	*Vacated and remanded*: Remand was appropriate so that the district court could consider whether petitioner's claims were properly brought in a habeas petition or should have been brought in a *Bivens* action. And if habeas was the appropriate action, the district court would need to consider whether the petitioner, as a military petitioner, exhausted all available military remedies.
United States v. Vazquez	430 F. App'x 741	2011	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that he was denied a constitutional right.
Bustos v. A&E TV Networks	646 F.3d 762	2011	Authored majority	Federal Courts; Civil Liability	*Affirmed*: A substantially true statement is not actionable in defamation. Therefore, the district court correctly granted summary judgment against the plaintiff for his claim that the defendant called him a member of the Aryan Brotherhood prison gang, when the plaintiff only conspired with the Brotherhood in a criminal enterprise.
Peace v. Jones	450 F. App'x 697	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right.
Bouziden v. Addison	433 F.3d 643	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.
United States v. Livingston	429 F. App'x 751	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: Police officers did not violate the Fourth Amendment by searching a motel room after receiving consent from someone who had been staying in the room for the previous two days, and thus the district court correctly denied defendant's motion to suppress evidence seized during that search.
Tyler v. Arellano	427 F. App'x 681	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing of the denial of a constitutional right regarding those claims that were not procedurally defaulted.
United States v. Dawes (In re Dawes)	652 F.3d 1236	2011	Authored majority	Bankruptcy; Tax	*Reversed*: Federal income taxes are not "incurred" by a Chapter 12 "estate" for the purposes of 11 U.S.C. §503(b)(1)(B)(i) but, instead, are incurred by the petitioners personally and thus are outside the bankruptcy. Therefore, the postpetition income tax liabilities were not eligible for treatment as unsecured claims under §1222(a)(2)(A) and must be paid to the IRS.

Case Name	Citation	Year	Role	Subject	Holding
Ellis v. Parker	426 F. App'x 683	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred and did not qualify for statutory or equitable tolling.
DeMillard v. Municipality of Denver	426 F. App'x 670	2011	Authored majority	Federal Courts	*Affirmed*: District court correctly dismissed the complaint under 28 U.S.C. §1915(e), which directs courts to dismiss frivolous actions brought by plaintiffs proceeding *in forma pauperis*.
Raley v. Hyundai Motor Co.	642 F.3d 1271	2011	Authored majority	Federal Courts; Civil Liability	*Dismissed*: In the district court proceedings, Raley moved to substitute BancFirst (a state probate-court appointed guardian for her and her minor children) as the real party in interest in her product-liability suit, and thus she could not file a notice of appeal on BancFirst's behalf when it so declined.
United States v. Carnegie	426 F. App'x 640	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: There was sufficient evidence for a jury to return a guilty verdict for making false statements to the Department of Housing and Urban Development to obtain loans insured by the Federal Housing Administration. Additionally, the defendant's sentence within the range contemplated by U.S. Sentencing Guidelines was substantively reasonable, and the district court was not required to impose probation based only on defendant's assertion that prison doctors could not treat her medical and psychiatric problems. Further, her coconspirator's cooperation with the government explained the disparity in their sentences.
United States v. Heckard	427 F. App'x 627	2011	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to the rule set forth by the Supreme Court in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
United States v. Washington	425 F. App'x 735	2011	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that he was denied constitutionally effective assistance of counsel.
United States v. Chon	434 F. App'x 730	2011	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that he was denied constitutionally effective assistance of counsel or that there had been prosecutorial misconduct during his criminal proceedings.
United States v. Ratliff	423 F. App'x 834	2011	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that he was denied constitutionally effective assistance of counsel.

Case Name	Citation	Year	Role	Subject	Holding
Aragon v. City of Albuquerque	423 F. App'x 790	2011	Authored majority	Civil Rights	*Affirmed*: Defendant officers were entitled to qualified immunity on plaintiff's Fourth Amendment claims that they arrested him for disorderly conduct without probable cause and entered his home without a warrant to effectuate the arrest. The officers had reason to believe that plaintiff had engaged in conduct violating a disorderly conduct statute, and the defendants' warrantless entry into plaintiff's home was justified, as the officers reasonably could have believed that the plaintiff fled to arm himself.
United States v. Powell	422 F. App'x 751	2011	Authored majority	Criminal Law & Procedure	*Vacated and remanded*: Government conceded that the district court erred by failing to provide defendant with his right to allocution before imposing the sentence and also in determining the drug quantity for which the defendant should be held responsible.
Chi. Ins. Co. v. Hamilton	422 F. App'x 740	2011	Authored majority	Federal Courts	*Affirmed*: Plaintiff could not challenge the magistrate judge's factual or legal conclusions on appeal since she did not timely object in the district court.
Francis v. Standifird	422 F. App'x 729	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred and did not qualify for statutory or equitable tolling.
Reed v. Holinka	422 F. App'x 704	2011	Authored majority	Habeas	*Affirmed*: Petitioner was not entitled to early release on his federal sentence because there had not been a miscalculation as to when he stopped serving his state sentence and began serving his federal sentence.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Ludwig	641 F.3d 1243	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: District court correctly denied defendant's motion to suppress evidence because there was probable cause to stop his car for speeding based on the radar gun and visual estimation of speed. And prolonging the stop beyond the time needed to issue a traffic ticket was justified because the officer had reasonable suspicion to believe that the defendant was engaged in other criminal activity, given that he did not immediately pull over, and, once he did, the officer believed that a strong cologne was being used to mask the smell of drugs, among other things. Further, the dog sniff of the outside of the car was not a Fourth Amendment search, and, once the dog alerted the officer to the presence of narcotics, there was probable cause to search the trunk. Finally, the police's routine destruction of a third officer video tape of the police encounter did not require dismissal of the indictment given that the defendant could have obtained comparable evidence by other means.
United States v. Phelps	422 F. App'x 681	2011	Authored majority	Habeas	*Certificate of appealability denied*: Movant was not given authority to pursue a successive 28 U.S.C. §2255 motion.
Del Real v. Kansas	422 F. App'x 675	2011	Authored majority	Civil Rights; Federal Courts	*Affirmed*: District court correctly dismissed the civil-rights suit for lack of subject-matter jurisdiction, given that Kansas is not a person within the meaning of 42 U.S.C. §1983, and the claims were also barred by the Eleventh Amendment and the *Rooker-Feldman* judicial doctrine.
Humphrey v. Shannon	422 F. App'x 661	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing of the denial of her Sixth Amendment right to a speedy trial when the government allowed 561 days to pass between charging and trying her for murder since there was no prejudice, nor was she denied substantive due process in violation of the Fourteenth Amendment based on the 24 years between the first and second time the state charged her.
United States v. Banuelos-Barraza	639 F.3d 1262	2011	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to the rule set forth by the Supreme Court in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Haynes v. Wilson	425 F. App'x 680	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Krause (In re Krause)	637 F.3d 1160	2011	Authored majority	Bankruptcy; Tax; Federal Courts	*Affirmed*: The IRS properly attached liens under 26 U.S.C. §6321 to assets that the defendants' father fraudulently conveyed to trusts in their name. Further, the children did not have standing to contest the sanctions issued by the bankruptcy court that directly affected their parents.
United States v. Caraway	417 F. App'x 828	2011	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that he was denied constitutionally effective counsel.
Farris v. Broaddus	418 F.3d 694	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that she was denied a constitutional right during her state criminal proceedings. Additionally, her claim that the state trial court violated state law was not cognizable on habeas review.
United States v. Lyons	416 F. App'x 720	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: The sentence imposed by the district court was procedurally and substantively reasonable.
McClenahan v. Metro. Life Ins. Co.	416 F. App'x 693	2011	Authored majority	Insurance; Contracts	*Affirmed*: District court correctly reviewed for abuse of discretion the denial of benefits under the plaintiff's ERISA plan, because a recent Colorado statute requiring de novo review could not be applied retroactively to her claim. And the district court did not abuse its discretion in concluding that the insurance company did not act unreasonably by denying benefits after the claimant failed to provide continuing evidence of a medical disability.
Sharp v. Ritter	415 F. App'x 944	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that she was denied a constitutional right, and the district court correctly denied her motion under Fed. R. Civ. P. 60(b) because such a motion cannot be used to bring new and unrelated claims to the original petition.
Richison v. Ernest Grp., Inc.	634 F.3d 1123	2011	Authored majority	Federal Courts; Civil Liability	*Affirmed*: Tort claims were barred by the applicable statute of limitations and the appellant could not pursue a new legal theory to advance his claims without showing that it would be plain error not to reverse.

Case Name	Citation	Year	Role	Subject	Holding
Gorny v. Salazar	413 F. App'x 103	2011	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: District court correctly granted summary judgment against the plaintiff for her claim against the Bureau of Land Management (BLM) for unlawful retaliation for filing multiple employment discrimination complaints. The BLM offered several legitimate, nondiscriminatory reasons for the adverse employment actions (failing to get a promotion and eventual termination), including the chosen candidate's qualifications for the position and the plaintiff's unavailability to work a full-time schedule, and the plaintiff failed to demonstrate that those reasons were a pretext for unlawful discrimination.
Atwood v. City & Cty. of Denver	413 F. App'x 88	2011	Authored majority	Federal Courts; Civil Liability	*Reversed and remanded*: Denver was immune from suit in this tort action because plaintiff's claims—arising out of an injury that occurred on a moving walkway at Denver International Airport—did not fall under an exception to immunity that permits suits when a public entity negligently maintained a public facility, given that the plaintiff alleged only negligent operation of the walkway.
Reg'l Air, Inc. v. Canal Ins. Co.	639 F.3d 1229	2011	Authored majority	Federal Courts; Insurance; Contracts	*Affirmed in part, vacated and remanded in part*: When conducting a prevailing party inquiry under Oklahoma law, a court is statutorily limited to comparing the insurer's settlement offer against the judgment achieved by the insured. In determining that Regional Air, as the prevailing party, was not entitled to attorneys' fees and costs, the district court erred by requiring Regional Air to submit proof of loss to the insurer rather than a notice of loss that complies with the contract's terms. Finally, interest is to be determined not on the final judgment award, but on the verdict award only.
United States v. Santistevan	412 F. App'x 142	2011	Authored majority	Criminal Law & Procedure	*Affirmed*: When the defendant pleaded guilty to three counts of Hobbs Act robbery, the district court did not commit reversible error in failing to recite the elements of the offenses during the plea colloquy because the defendant learned of the offense elements from multiple other sources.

Case Name	Citation	Year	Role	Subject	Holding
Madron v. Astrue	646 F.3d 1255	2011	Authored majority	Administrative Law; Public Benefits	*Affirmed*: District court did not abuse its discretion in denying the claimant attorneys' fees and expenses under the Equal Access to Justice Act based on her successful appeal of denied disability benefits, given that she did not show that the government's efforts to defend the Social Security Administration's decision was unreasonable despite being wrong. This opinion is a redesignation for publication of the decision found in 411 F. App'x 175 (10th Cir. 2011).
Grist v. United States	408 F. App'x 206	2011	Authored majority	Habeas	*Affirmed*: Prisoner could not invoke a writ of *corum nobis* or writ of *audia querela* because the remedy for testing the validity of his conviction is a motion to vacate his sentence under 28 U.S.C. §2255.
United States v. Mojica-Fabian	410 F. App'x 126	2011	Authored majority	Habeas	*Certificate of appealability denied*: District court correctly denied petitioner's motion under Fed. R. Civ. P. 60(b), as it was primarily an attempt to bring an unauthorized successive habeas petition.
United States v. Del Cid-Rendon	407 F. App'x 342	2011	Authored majority	Habeas	*Certificate of appealability denied*: Movant did not make a substantial showing that he was denied constitutionally effective trial and appellate counsel.
DeMillard v. No Named Defendant	407 F. App'x 332	2011	Authored majority	Federal Courts	*Affirmed*: The district court correctly dismissed the plaintiff's lawsuit that sought to compel a criminal prosecution against a third party because the plaintiff lacked standing.
Twitty v. Davis	407 F. App'x 331	2011	Authored majority	Habeas	*Affirmed*: District court correctly dismissed the 28 U.S.C. §2241 petition because the petitioner had an adequate and effective remedy under 28 U.S.C. §2255.
Turner v. Jones	407 F. App'x 289	2011	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective trial and appellate counsel.
Wilson v. Astrue	411 F. App'x 130	2010	Authored majority	Administrative Law; Public Benefits	*Affirmed*: The administrative law judge correctly denied disability and Supplemental Security Income benefits after concluding that the claimant could perform unskilled and low-skilled work dealing primarily with objects rather than with data or people, despite some physical and mental impairments, and that he could perform work that existed in significant numbers in the national economy.

Case Name	Citation	Year	Role	Subject	Holding
Graves v. Mazda Motor Corp.	405 F. App'x 296	2010	Authored majority	Federal Courts; Civil Liability	*Affirmed*: District court did not abuse its discretion in excluding the plaintiffs' expert after applying the standards set forth by the Supreme Court in *Daubert v. Merrell Dow Pharm., Inc.* and concluding that they did not establish the expert's reliability, given that the expert did not provide any data or industry standard, or conduct any testing to confirm the expert's view that the gear shift design was defective. Nor did the district court err in awarding costs to defendant because the discovery efforts extended were reasonably necessary to the litigation of the case.
Shayesteh v. Raty	404 F. App'x 298	2010	Authored majority	Civil Rights; Federal Courts	*Affirmed*: The district court correctly granted summary judgment to the defendants in this action alleging Fourth Amendment violations related to government forfeiture of assets in a safety deposit box that were believed to be the proceeds of unlawful drug activity, and also alleging violations of the Right to Financial Privacy Act of 1978 (RFPA) for the bank's role in maintaining the safety deposit box. First, neither the agent nor other named FBI defendants were involved with the seizure of the safety deposit box. Second, the RFPA claims were barred by claim preclusion because the plaintiff could have brought them in an earlier forfeiture suit. Finally, the district court did not abuse its discretion by judicially estopping the plaintiff from pursuing claims against the bank for purportedly losing money in the safety deposit box, because in an earlier criminal prosecution he lied to the court claiming to be indigent, notwithstanding the existence of tens of thousands of dollars in the safety deposit box, and allowing the claims to proceed would have rewarded his earlier fraud.
Neyra-Martinez v. Holder	410 F. App'x 85	2010	Authored majority	Immigration	*Petition for review denied*: Petitioner (a native of Peru who overstayed his nonimmigrant visitor visa) did not qualify for asylum or withholding of removal because, among other things, there was sufficient record evidence to support the conclusion of the Board of Immigration Appeals (BIA) that a guerilla group persecuted him because he refused to provide chemicals from his worksite to the group, and not on account of his political opinions. Further, circuit precedent supported the BIA's conclusion that one letter received by petitioner containing two racial slurs did not rise to the level of religious persecution or a threat of future persecution.

Case Name	Citation	Year	Role	Subject	Holding
Wallin v. Dycus	420 F. App'x 787	2010	Authored majority	Civil Rights; Federal Courts	*Affirmed*: Prisoner's civil-rights suit was claim precluded.
McCarthy v. Warden, USP Florence	403 F. App'x 319	2010	Authored majority	Habeas	*Affirmed:* District court correctly denied the prisoner's 28 U.S.C. §2241 petition contesting the Bureau of Prison's refusal to credit his time served in state prison toward his federal sentence as well as his claim contesting the legality of his conviction for firearms offenses because that must be brought in a motion under 28 U.S.C. §2255.
Bixler v. Foster	403 F. App'x 325	2010	Authored majority	Federal Courts; Civil Liability	*Affirmed*: District court did not abuse its discretion by awarding defendant attorneys' fees under 28 U.S.C. §1927 based on the court's conclusion that the plaintiffs' attorney recklessly multiplied proceedings by opposing a motion to dismiss a patently meritless claim.
United States v. Wampler	624 F.3d 1330	2010	Authored majority	Criminal Law & Procedure; Federal Courts	*Appeal dismissed*: Criminal defendants could not pursue an interlocutory appeal to argue that the district court erred in denying their motion to dismiss the indictment and, if forced to proceed to trial, they would effectively lose their right not to be tried, because there was no statutory or constitutional provision guaranteeing that a trial would not occur. Rather, the defendants relied on an earlier promise made by prosecutors in related plea negotiations.
Thompson v. Williams	401 F. App'x 398	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing of the denial of a constitutional right.
Porro v. Barnes	624 F.3d 1322	2010	Authored majority	Immigration; Civil Rights	*Affirmed*: When a federal immigration detainee alleges that state jail employees used excessive force, that claim must be analyzed under the Due Process Clause of the Fourteenth Amendment. Under that standard, the plaintiff did not have a meritorious claim against the county sheriff because there was no evidence of the sheriff's direct personal responsibility for the force used against the plaintiff (multiple applications of a Taser). Further, the failure to enforce a federal policy banning the use of Tasers on immigration detainees did not present a triable question as to whether county officials were deliberately indifferent to the plaintiff's due-process rights, because the government's creation of a prophylactic rule did not create a constitutional floor that the county ignored.

Case Name	Citation	Year	Role	Subject	Holding
Garcia-Carbajal v. Holder	625 F.3d 1233	2010	Authored majority	Immigration; Administrative Law	*Petition for review dismissed*: Petitioner failed to exhaust his administrative procedures by failing to present his arguments to the Board of Immigration Appeals (BIA), and he did not qualify for a limited exception where the BIA clearly raises an issue sua sponte and decides the issue in full.
United States v. Lee	401 F. App'x 336	2010	Authored majority	Criminal Law & Procedure	*Affirmed*: There was sufficient evidence to support the jury's guilty verdicts for conspiracy, odometer tampering, and securities fraud, based on witness testimony. The district court did not erroneously admit evidence of prior bad acts, because the acts in question showed intent, preparation, plan, or absence of mistake, and the court instructed the jury not to consider that evidence as a propensity to commit the criminal acts.
United States v. Riggs	400 F. App'x 408	2010	Authored majority	Habeas	*Certificate of appealability denied*: Movant's claims were procedurally defaulted.
United States v. Chavez-Cadenas	400 F. App'x 409	2010	Authored majority	Criminal Law & Procedure; Habeas	*Certificate of appealability denied*: By pleading guilty, defendant waived his Fourth Amendment claims, and he identified no alleged deficiency in his plea or the plea process.
United States v. Zeigler	400 F. App'x 328	2010	Authored majority	Habeas	*Affirmed*: Appeal was actually a request for a successive motion for collateral relief, which was denied because a statutory scheme mandating life imprisonment did not violate the Eighth Amendment.
Jackson v. Green	399 F. App'x 417	2010	Authored majority	Habeas	*Certificate of appealability denied*: District court correctly held that a petition for habeas corpus was time-barred.
United States v. Walker	399 F. App'x 409	2010	Authored majority	Habeas	*Certificate of appealability denied*: Appeal amounted to a successive federal habeas claim for which there was no authorization or jurisdiction.
Parkhurst v. Pittsburgh Paints Inc.	399 F. App'x 341	2010	Authored majority	Civil Liability	*Appeal dismissed*: Arguments in motions for relief from judgment and motions to disqualify several district court judges were frivolous.
United States v. Rendon-Alamo	621 F.3d 1307	2010	Authored majority	Criminal Law & Procedure	*Affirmed*: Sentence enhancement under U.S. Sentencing Guidelines was properly based on aggregation of nine-month initial and six-month probation-violation sentences for prior offense.
Freeman v. Colo. Dep't of Corr.	396 F. App'x 543	2010	Authored majority	Civil Rights	*Affirmed*: District court did not abuse discretion in dismissing complaint without prejudice where complainant did not pay initial partial filing fee or show cause why she could not pay the fee.

Case Name	Citation	Year	Role	Subject	Holding
Scott v. Green	397 F. App'x 464	2010	Authored majority	Habeas	*Certificate of appealability denied*: District court correctly ruled that habeas petitioner failed to exhaust claims in state court.
Anderson v. Cline	397 F. App'x 463	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petition for habeas corpus was time-barred.
Gonzales v. Hartley	396 F. App'x 506	2010	Authored majority	Habeas	*Certificate of appealability denied*: District court correctly held that habeas corpus petitioner had failed to exhaust his state remedies, and procedural defaults were not excused by any fundamental miscarriage of justice.
Ly v. McKune	394 F. App'x 502	2010	Authored majority	Habeas	*Certificate of appealability denied*: No reasonable jurist could doubt the correctness of the district court's disposition of the habeas corpus petitioner's various claims.
McKissick v. Yuen	618 F.3d 1177	2010	Authored majority	Contracts; Labor & Employment	*Affirmed in part and reversed in part*: District court correctly held that a broadly worded release in a separation agreement barred a former employee's fraud claims; however, the district court incorrectly awarded attorneys' fees to the company for its counterclaim and to individual defendants, neither of which fell within the agreement.
Jackson v. Jackson	392 F. App'x 664	2010	Authored majority	Federal Courts	*Affirmed*: The Supreme Court's *Rooker-Feldman* doctrine prevented the court from hearing a case seeking to undo the outcome of prior state court divorce and related proceedings.
Rizzuto v. Wilner	392 F. App'x 636	2010	Authored majority	Criminal Law & Procedure	*Affirmed*: District court properly applied a conspiracy's termination date for sentencing purposes.
United States v. Magnesium Corp. of Am.	616 F.3d 1129	2010	Authored majority	Administrative Law	*Vacated:* Because EPA never previously adopted a definitive interpretation of a regulation exempting certain wastes from application of specified requirements of the Resource Conservation and Recovery Act, the agency remained free to issue a new interpretation of its own regulations without notice and comment.
Valley Forge Ins. Co. v. Health Care Mgmt. Ptnrs, LTD.	616 F.3d 1086	2010	Authored majority	Insurance	*Affirmed:* Colorado law permitted insurers to recoup defense costs under the circumstances, but insurers did not meet their burden of establishing that state law required an award of prejudgment interest.

Case Name	Citation	Year	Role	Subject	Holding
Davis v. Jones	390 F. App'x 803	2010	Authored majority	Civil Rights	*Affirmed:* Prisoner did not comply with Oklahoma's Inmate/Offender Grievance Process to exhaust administrative remedies as required under the Prison Litigation Reform Act.
United States v. Martin	613 F.3d 1295	2010	Authored majority	Criminal Law & Procedure	*Affirmed:* It was proper to deny a suppression motion where the arresting officers had probable cause to arrest the appellant, and they faced exigent circumstances sufficient to justify effecting that arrest inside the appellant's apartment building's entryway.
BP Am., Inc. v. Okla. ex rel. Edmondson	613 F.3d 1029	2010	Authored majority	Federal Courts	*Petition for leave to appeal granted*: A statute authorized the circuit court to accept an appeal of a district court's remand to state court of a purported mass action under the Class Action Fairness Act, and pertinent factors weighed in favor of doing so.
United States v. Mullins	613 F.3d 1273	2010	Authored majority	Criminal Law & Procedure	*Affirmed:* After fact-intensive inquiry, there was no reversible error on any of the various procedural, legal, and constitutional grounds on which two defendants challenged their convictions for defrauding the Department of Housing and Urban Development.
Dunn v. Parker	389 F. App'x 787	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petition was untimely, and appeal deemed frivolous.
United States v. Pope	613 F.3d 1255	2010	Authored majority	Criminal Law & Procedure; Federal Courts	*Affirmed*: In a felony case for possession of a gun after previous conviction for a domestic violence crime, the defendant's summary judgment motion was properly denied as the argument for an affirmative defense and, based on circuit precedent and requirements under Fed. R. Crim. P. 12(b)(2), was not eligible for resolution before trial. The substance of the defendant's as-applied Second Amendment argument was not reached.
Henderson v. Obama	388 F. App'x 794	2010	Authored majority	Civil Rights; Federal Courts	*Affirmed*: District court properly dismissed complaint for failure to state a claim and did not abuse its discretion when imposing restrictions on the appellant's ability to file future complaints in light of the plaintiff's history of abusive litigation.
Iliev v. Holder	613 F.3d 1019	2010	Authored majority	Immigration	*Petition for review denied in part and dismissed in part*: Board of Immigration Appeals (BIA) applied proper legal standard in evaluating hardship waiver claim brought by alien in removal proceedings seeking to adjust to unconditional permanent resident status, and the court of appeals lacked jurisdiction under the applicable statute to review BIA's credibility determinations.

Case Name	Citation	Year	Role	Subject	Holding
Kavel v. Romero	387 F. App'x 846	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus raised state law issues not cognizable on federal habeas review, and remaining issue was barred as successive.
United States v. Zamora-Solorzano	387 F. App'x 848	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel or that denial of motion for consideration was clearly erroneous.
Penk v. Hickenlooper	387 F. App'x 830	2010	Authored majority	Federal Courts	*Affirmed*: There was no abuse of discretion in the district court's issuance of a conditional injunction against abusive litigant barring filing of future complaints.
Brown v. United States	384 F. App'x 815	2010	Authored majority	Civil Rights; Civil Liability	*Affirmed*: Federal Tort Claims Act did not waive sovereign immunity for prisoner's claim to recover for lost personal items that were detained by officers, and the prisoner failed to allege adequate facts to establish bailment contract claim.
United States v. Quaintance	608 F.3d 717	2010	Authored majority	Criminal Law & Procedure; First Amendment	*Affirmed*: District court's finding of insincerity of religious belief in sacredness of marijuana was not clearly erroneous.
United States v. Gutierrez	383 F. App'x 736	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner's collateral attack on his conviction and sentence was barred by his plea agreement.
Henderson v. Astrue	383 F. App'x 700	2010	Authored majority	Public Benefits	*Reversed and remanded*: Administrative law judge erred in failing to explain the basis for concluding that the applicant for Social Security benefits was not disabled.
United States v. Adame-Orozco	607 F.3d 647	2010	Authored majority	Immigration; Criminal Law & Procedure	*Affirmed*: Conviction for illegal reentry after prior deportation upheld because the prior deportation proceedings did not deprive the defendant of the opportunity for judicial review of the deportation order itself; appellate or collateral proceedings on the underlying felony did not operate to stay deportation.
Garcia v. Commandant	380 F. App'x 762	2010	Authored majority	Criminal Law & Procedure	*Affirmed*: Military court "fully and fairly reviewed" petitioner's claims, so the district court was correct to deny a writ of habeas corpus.
Littlesun v. Parker	380 F. App'x 758	2010	Authored majority	Habeas; Criminal Law & Procedure	*Certificate of appealability denied*: Petition for a writ of habeas corpus was properly denied on the merits because no reasonable jurist could debate the trial court's Fifth Amendment "harmless error" analysis.

Case Name	Citation	Year	Role	Subject	Holding
Portley-El v. Brill	380 F. App'x 744	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petitions for writs of habeas corpus were procedurally barred.
Yellowbear v. Att'y Gen. of Wyoming	380 F. App'x 740	2010	Authored majority	Habeas; Indian Law	*Affirmed*: Petitioner for writ of habeas corpus did not give any reason to find that state supreme court had incorrectly decided jurisdictional question as to whether crime had occurred within an Indian reservation.
York v. Fed. Bureau of Prisons	379 F. App'x 737	2010	Authored majority	Criminal Law & Procedure; Federal Courts	*Affirmed*: Prisoner's claims were properly dismissed because he had not exhausted administrative remedies, and groups' motions to intervene in the appeal were denied because they did not meet the standard of "imperative reasons."
Allen v. Colorado	378 F. App'x 855	2010	Authored majority	Habeas	*Affirmed*: District court properly denied successive petition for writ of habeas corpus.
United States v. Quaintance	2010 U.S. App. LEXIS 10218	2010	Authored majority	Criminal Law & Procedure; First Amendment	*Affirmed*: District court's finding of insincerity of religious belief in sacredness of marijuana was not clearly erroneous. See above for later publication of this opinion at 608 F.3d 717 (10th Cir. 2010).
Richard v. Bokor	379 F. App'x 719	2010	Authored majority	Civil Rights	*Affirmed*: Prisoner failed to state an actionable constitutional claim on the basis of "deliberate indifference to [his] serious medical needs."
Veal v. Jones	376 F. App'x 809	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petition for writ of habeas corpus was procedurally barred and there was no plain error.
Mayes v. Province	376 F. App'x 815	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred, and lack of access to "adequate law library" was not sufficient impediment to toll limitations period or establish constitutional violation.
Smith v. Addison	373 F. App'x 886	2010	Authored majority	Habeas	*Certificate of appealability denied*: The district court correctly held that it was barred from reviewing the petition for writ of habeas corpus because a state court resolved the underlying claim on an independent and adequate state law ground. Arguments premised on legal rather than factual innocence did not satisfy the fundamental miscarriage of justice exception.
Banks v. Trani	373 F. App'x 857	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred and petitioner was not entitled to tolling of the limitations period.

Case Name	Citation	Year	Role	Subject	Holding
Webb v. Vratil	372 F. App'x 909	2010	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Case against judge was properly dismissed as frivolous or malicious.
United States v. Blacknoll	372 F. App'x 911	2010	Authored majority	Criminal Law & Procedure	*Affirmed*: District court's finding that defendant had failed to provide complete and truthful cooperation to the government, as required by sentencing "safety valve" provisions of U.S. Sentencing Guidelines, was not clearly erroneous.
Marshall v. Colorado	371 F. App'x 966	2010	Authored majority	Habeas	*Certificate of appealability denied*: Treating a mistaken certificate of appealability application as an application to file a successive petition for a writ of habeas corpus, the court found that the petitioner did not meet the criteria for a successive petition.
United States v. Livesay	600 F.3d 1248	2010	Authored majority	Criminal Law & Procedure	*Affirmed*: After a jury found a defendant not guilty by reason of insanity, the district court correctly held that it lacked statutory authority to afford the defendant a precommitment conditional release.
Ellis v. Brown	374 F. App'x 776	2010	Authored majority	Criminal Law & Procedure; Federal Courts	*Affirming in part and vacating and remanding in part*: The district court did not err in dismissing prisoners' conspiracy claims, but one prisoner's challenge to parole procedures was not barred by the doctrine of issue preclusion.
Dorman v. Astrue	368 F. App'x 864	2010	Authored majority	Administrative Law; Public Benefits	*Vacated and remanded*: Administrative law judge's conclusion, that Social Security disability benefits applicant had the residual functional capacity to return to his past relevant work, lacked sufficient evidentiary support in the record; the appealed opinion considered only physical, and not mental, demands of the work.
United States v. Watkins	366 F. App'x 969	2010	Authored majority	Habeas	*Certificate of appealability denied*: On two claims, petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings. Other claims had been either procedurally defaulted or waived.
Williams v. Zavaras	2010 U.S. App. LEXIS 3805	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that she was denied a constitutional right during her state criminal proceedings.
Jones v. Hartley	366 F. App'x 964	2010	Authored majority	Habeas	*Certificate of appealability denied*: The district court correctly determined that the petitioner had failed to make a substantial showing of the denial of a constitutional right.

Case Name	Citation	Year	Role	Subject	Holding
Johnson v. Weld Cty.	594 F.3d 1202	2010	Authored majority	Labor & Employment; Civil Rights	*Affirmed*: Summary judgment for defendant employer was proper because the plaintiff failed to rebut the employer's evidence that the male candidate it hired had superior qualifications, as well as its evidence that plaintiff was not, at the time of the hiring decision, disabled within the meaning of the Americans with Disabilities Act.
Swimmer v. Sebelius	364 F. App'x 441	2010	Authored majority	Labor & Employment; Federal Courts	*Affirmed*: There was no reversible error in trial court's grant of summary judgment against plaintiff's Title VII and age discrimination claims where demotion claim was time-barred and the standards for the constructive discharge claim were not met.
Laborers' Int'l Union, of N. Am., Local 578 v. NLRB	594 F.3d 732	2010	Authored majority	Labor & Employment	*Petition for review denied and cross-petition seeking enforcement of agency order granted*: National Labor Relations Board decision must be affirmed because substantial evidence existed in the record to support its findings of unfair labor practices.
Prof'l Solutions Ins. Co. v. Mohrlang	363 F. App'x 650	2010	Authored majority	Contracts; Insurance	*Affirmed*: The district court properly held that two professional insurance claims against the same attorney were unrelated to one another for purposes of calculating the liability limit.
United States v. Olivas-Porras	363 F. App'x 637	2010	Authored majority	Criminal Law & Procedure	*Affirmed*: Sufficient evidence existed in the record to suggest that the defendant was involved in the indicted conspiracy, and the district court did not err in declining to grant request for a sentence below the level suggested in the U.S. Sentencing Guidelines.
Kiiker v. Astrue	364 F. App'x 408	2010	Authored majority	Public Benefits	*Affirmed*: When the Commissioner of Social Security dismisses a claim without a hearing due to the claimant's unexcused failure to appear, federal courts lack jurisdiction to review the dismissal, and the appellant failed to present a colorable constitutional claim to apply an exception to this rule.
United States v. Tapia	2010 U.S. App. LEXIS 1812	2010	Authored majority	Criminal Law & Procedure	*Affirmed*: The district court did not err in denying defendant's motions to suppress evidence. The defendant's initial encounter with a police officer was consensual; incriminating statements were voluntary; and searches were supported by probable cause.
Lambeth v. Miller	363 F. App'x 564	2010	Authored majority	Criminal Law & Procedure; Federal Courts	*Affirmed with limited purpose remand*: The district court dismissed the plaintiff's complaint with prejudice primarily on the basis of the *Rooker-Feldman* doctrine, but the dismissal was affirmed on appeal on the basis of the *Younger v. Harris* abstention doctrine instead, and remanded for the limited purpose of dismissing without prejudice.

Case Name	Citation	Year	Role	Subject	Holding
Gordon v. Astrue	361 F. App'x 933	2010	Authored majority	Federal Courts; Public Benefits	*Affirmed*: District court did not abuse its considerable discretion in reducing claimed attorneys' fees for a Social Security disability benefits case.
Herrera v. Bernalillo Cty. Bd. of Cty. Comm'rs	361 F. App'x 924	2010	Authored majority	Civil Liability; Civil Rights	*Affirmed*: Sherriff's deputies were not entitled to qualified immunity because a jury could find their use of force excessive, and the law clearly established that the gratuitous use of force against a person, who was not resisting arrest, violated the Fourth Amendment.
Trujillo v. Tapia	359 F. App'x 952	2010	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.
United States v. Evans	361 F. App'x 4	2010	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal; plea agreement barred challenge to sentence.
United States v. Burgess	357 F. App'x 974	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: The district court's denial of a pretrial suppression motion was affirmed because a reasonably well-trained officer "could have reasonably relied upon" the affidavit underlying the warrant.
Raymond v. Astrue	621 F.3d 1269	2009	Authored majority	Administrative Law; Public Benefits	*Affirmed*: Social Security Commissioner's decision applied correct legal standards, and factual findings were supported by substantial evidence in the record. This opinion was also issued at 356 F. App'x 173 (10th Cir. 2009).
Silerio-Nunez v. Holder	356 F. App'x 151	2009	Authored majority	Immigration	*Petition for review denied*: Board of Immigration Appeals correctly concluded that it lacked jurisdiction to reopen petitioner's removal proceedings, because immigration regulations prohibited review of motions to reopen removal proceedings after an alien has departed from the United States. The alien was not successful in challenging the regulation, which the Tenth Circuit had recently upheld in a similar case.
Herd v. Tapia	356 F. App'x 140	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
United States v. Campos-Guel	2009 U.S. App. LEXIS 26181	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.

Case Name	Citation	Year	Role	Subject	Holding
Lujan v. Cty. of Bernalillo	354 F. App'x 322	2009	Authored majority	Civil Liability; Civil Rights	*Affirmed*: Sherriff's deputies were entitled to qualified immunity because the plaintiff did not present evidence of a link between the deputy and the alleged constitutional violation; county had immunity because there was no evidence that the challenged conduct was the execution of an official policy rather than a gross deviation from such policy.
Torres-Villa v. Davis	354 F. App'x 311	2009	Authored majority	Habeas	*Affirmed*: The district court correctly ruled that the petitioner failed to exhaust administrative remedies in his challenge to the prison's transfer policies, and rejected his arguments that exhaustion would be futile.
United States v. Tapia-Parra	353 F. App'x 161	2009	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Wyoming v. U.S. Dep't of the Interior	587 F.3d 1245	2009	Authored majority	Administrative Law; Federal Courts	*Vacated, appeal dismissed as moot*: New temporary Park Service regulation for snowmobiles in Yellowstone National Park mooted a tangled dispute over a previous rule and district court order.
Payless Shoesource, Inc. v. Travelers Cos., Inc.	585 F.3d 1366	2009	Authored majority	Insurance; Contracts	*Affirmed*: Despite a misplaced modifier in an insurance policy, the policy's meaning was unambiguous and the insured had no claim for coverage against the insurer.
United States v. Plexico	352 F. App'x 267	2009	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
United States v. Velazquez	349 F. App'x 339	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: The district court properly denied the defendant's motion to suppress evidence because at the time the evidence was found, the detention had become a consensual encounter between a private citizen and a law enforcement official.
Nanodetex Corp. v. Defiant Techs.	349 F. App'x 312	2009	Authored majority	Civil Liability	*Affirmed*: Under New Mexico tort law and on the facts, the jury's verdict and damages award for malicious abuse of process were reasonable. The district court did not err in granting summary judgment against a tortious interference claim, where the general rule exempting corporations from liability for the torts of their promoters or incorporators was applicable; nor did it err in granting summary judgment against a claim for conversion, which was not ripe.

Case Name	Citation	Year	Role	Subject	Holding
Vann v. Broaddus	349 F. App'x 265	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied due process during his criminal proceedings; other claims in petition for a writ of habeas corpus were procedurally barred.
United States v. Woods	351 F. App'x 259	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: A motion to suppress evidence was properly denied where there were objective indicia of a traffic violation, reasonable suspicion for the defendant's extended detention, and probable cause for the subsequent search of his car.
McGhee v. Biamont	348 F. App'x 418	2009	Authored majority	Civil Rights; Civil Liability	*Affirmed*: There was no evidence in the record for reckless disregard of due process rights to support an award of punitive damages where prison employee withdrew funds from prisoner's account to pay for damage to a law book.
United States v. Luster	346 F. App'x 353	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Four Corners Nephrology Assocs., P.C. v. Mercy Med. Ctr. of Durango	582 F.3d 1216	2009	Authored majority	Civil Liability	*Affirmed*: Under federal and state law, a doctor's monopolization and attempted monopolization claims against a hospital failed as a matter of law; refusal to share facilities was competitive conduct, and the claimed injury did not involve harm to competition.
Harrison v. Warden of the Fremont Corr. Facility	345 F. App'x 361	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner's application for review of habeas denial failed to provide non-frivolous arguments and merely restated earlier arguments that had already been rejected.
United States v. Satterfield	344 F. App'x 487	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner's purported motion for relief from a final judgment pursuant to Fed. R. Civ. P. 60(b) was in fact a successive effort to vacate, set aside, or correct his sentence under 28 U.S.C. §2255, which was ineligible for an appeal.
Wackerly v. Workman	580 F.3d 1171	2009	Authored majority	Habeas	*Affirmed*: As the district court found, the petitioner could not demonstrate a reasonable probability that the evidence counsel failed to amass and present would have affected the jury's ultimate assessment of the aggravating and mitigating evidence in the case.
Garcia v. Hatch	343 F. App'x 316	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Rabadan-Rivas	342 F. App'x 412	2009	Authored majority	Criminal Law & Procedure	*Affirmed:* Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Matthews v. Workman	577 F.3d 1175	2009	Authored majority	Habeas	*Affirmed, petition for rehearing and request for en banc consideration denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings; extraneous material to which a juror was exposed did not have a "substantial and injurious effect" on the verdict, and plaintiff did not establish that the trial was fundamentally unfair or that counsel provided ineffective assistance. This decision is a reissuance with minor sua sponte amendment of Matthews v. Workman, 571 F.3d 1065, below.
Rashaw-Bey v. United States	341 F. App'x 449	2009	Authored majority	Civil Liability	*Affirmed*: Federal Tort Claims Act retains sovereign immunity for cases involving detention of goods by any law enforcement officer.
Barnum v. Hilfiger	340 F. App'x 508	2009	Authored majority	Civil Rights; Civil Liability	*Affirmed*: District court properly dismissed claims against state judge, state prosecutors, and attorneys under 42 U.S.C. §1983 for failure to state a claim on which relief may be granted.
United States v. Wittig	575 F.3d 1085	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: At interlocutory stage, double jeopardy did not categorically foreclose a new trial where conspiracy charges in the indictment were considerably broader in scope than the wire fraud charges on which defendants had been acquitted.
Jenner v. Zavaras	339 F. App'x 879	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: Prisoners' complaint was correctly dismissed for failure to state a claim, in part because an inmate does not have a constitutional right to a particular custody classification under Colorado state law.
United States v. Hutchinson	573 F.3d 1011	2009	Authored majority	Criminal Law & Procedure	*Affirmed in part and Reversed and remanded in part*: Convictions for both drug conspiracy and continuing criminal enterprise violated the Double Jeopardy Clause of the Fifth Amendment because the former was a lesser included offense of the latter. Defendants' various other arguments for reversal were unavailing.
Evans-Carmichael v. United States	343 F. App'x 294	2009	Authored majority	Civil Liability; Federal Courts	*Affirmed*: District court did not abuse its discretion in striking plaintiffs' motion after noting their lengthy and abusive litigation history and giving appropriate notice. Requests to review other rulings were time-barred.

Case Name	Citation	Year	Role	Subject	Holding
Lipari v. U.S. Bancorp NA	345 F. App'x 315	2009	Authored majority	Civil Liability	*Affirmed*: District court properly dismissed business damages lawsuit. District court had jurisdiction over lawsuit while separate claims were on appeal, and the complaint did not contain sufficient facts to state a plausible claim for relief. Plaintiff's only asserted ground for recusal rested on adverse rulings, which cannot themselves form appropriate grounds for disqualification.
United States v. Osuna	341 F. App'x 356	2009	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Matthews v. Workman	571 F.3d 1065	2009	Authored majority	Habeas	*Affirmed*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings; extraneous material to which a juror was exposed did not have a "substantial and injurious effect" on the verdict, and plaintiff did not establish that the trial was fundamentally unfair or that counsel provided ineffective assistance.
United States v. Dolan	571 F.3d 1022	2009	Authored majority	Criminal Law & Procedure; Federal Courts	*Petition for rehearing en banc denied.* See earlier opinion at 567 F.3d 618 (10th Cir. 2009), below; panel filed corrected opinion to add a footnote discussing an earlier case.
United States v. Swenson	335 F. App'x 751	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: Convictions for possession and attempted distribution of child pornography were not plain error with respect to their interstate commerce elements.
Allen v. Briggs	331 F. App'x 603	2009	Authored majority	Habeas	*Affirmed, certificate of appealability denied*: As the district court found, two lawsuits brought against trial attorneys and sheriff were frivolous.
United States v. Ramirez	326 F. App'x 484	2009	Authored majority	Federal Courts	*Appeal dismissed*: Unopposed motion to dismiss for mootness.
Perez-Hernandez v. Holder	332 F. App'x 458	2009	Authored majority	Immigration	*Petition for review dismissed*: Pursuant to a statutory jurisdictional bar, the court lacked jurisdiction to review the merits of a removal order that the Board of Immigration Appeals had issued against an alien on the basis that he had been convicted of an aggravated felony. A guilty plea constitutes a "conviction" for purposes of the jurisdictional bar, and the crime at issue was an "aggravated felony."

Case Name	Citation	Year	Role	Subject	Holding
Wade Pediatrics v. HHS	567 F.3d 1202	2009	Authored majority	Administrative Law	*Petition for review denied*: Agency's revocation of laboratory certification was justified by the laboratory's violation of clear and unambiguous terms of a federal statute, and the petitioner did not meet the high burden to support an estoppel claim against the agency.
United States v. Dolan	567 F.3d 618	2009	Authored majority	Criminal Law & Procedure; Federal Courts	*Affirmed*. Although the district court's sentence for assault included a restitution order made past the deadline prescribed by the Mandatory Victims Restitution Act, that deadline did not operate as a jurisdictional bar. The district court did not abuse its discretion in setting the amount of restitution to be paid.
United States v. Matteson	327 F. App'x 791	2009	Authored majority	Criminal Law & Procedure	*Vacated and remanded*: The government conceded that the challenged condition of supervised release requiring computer monitoring was impermissibly vague; the court deferred other questions regarding the intrusiveness of the condition until after remand.
In re Martel	328 F. App'x 585	2009	Authored majority	Bankruptcy	*Affirmed*: There was no abuse of discretion in the Bankruptcy Appellate Panel's dismissal of appeal of bankruptcy order for failure to prosecute.
United States v. Sands	329 F. App'x 794	2009	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
C & M Props., L.L.C. v. Burbidge (In re C & M Props., L.L.C.)	563 F.3d 1156	2009	Authored majority	Federal Courts	*Writ of mandamus granted*: An order, issued years prior, had remanded the case in its entirety to state court and thus divested the federal courts of subject matter jurisdiction over the parties' dispute. District court and bankruptcy court were instructed to vacate all orders they entered after the remand order.
United States v. Uscanga-Mora	562 F.3d 1289	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: The defendant's arguments against his sentence were reviewed for plain error because they were not raised in the district court, and the court found no plain error.
United States v. Windrix	322 F. App'x 629	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Rayas	322 F. App'x 618	2009	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Simmons v. Zavaras	325 F. App'x 652	2009	Authored majority	Habeas	*Reversed in part, certificate of appealability granted in part*: Petitioner stated a valid claim of denial of a constitutional right to effective assistance of counsel where his papers appeared to allege that his trial lawyer had a conflict of interest and failed to inform him adequately about one of the charges against him.
United States v. Bacon	322 F. App'x 591	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: Any error by the district court in failing to provide defendant with a letter it received prior to sentencing was harmless error.
Hostetler v. Green	323 F. App'x 653	2009	Authored majority	Civil Rights	*Affirmed*: In a case against a jailer pursuant to 42 U.S.C. §1983, the district court properly denied the jailer's motion for summary judgment because it was clearly established that an inmate has an Eighth Amendment right to be protected against prison guards taking actions that are deliberately indifferent to the substantial risk of sexual assault by fellow prisoners.
Kornfeld v. Kornfeld	321 F. App'x 745	2009	Authored majority	Federal Courts	*Affirmed*: Summary judgment was appropriate where the district court made correct evidentiary rulings and found that any mistake regarding a stock settlement agreement was unilateral, not mutual.
United States v. Hernandez-Lopez	320 F. App'x 832	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: The district court did not abuse its discretion in rejecting the defendant's request for a downward departure for sentencing under the U.S. Sentencing Guidelines, and the sentence was procedurally reasonable.
Whittenburg v. Werner Enters. Inc.	561 F.3d 1122	2009	Authored majority	Civil Liability; Federal Courts	*Reversed and remanded*: A new trial was required in light of pervasive and improper remarks by the plaintiff's counsel in closing argument to the jury.
United States v. Page	317 F. App'x 806	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: Evidence of agreement to violate the law was sufficient to support the guilty verdict on a conspiracy charge.
Bynum v. Howard	317 F. App'x 788	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred and there was no basis for tolling.

Case Name	Citation	Year	Role	Subject	Holding
Rudd v. Werholtz	318 F. App'x 625	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
Markwest Hydrocarbon, Inc. v. Liberty Mut. Ins. Co.	558 F.3d 1184	2009	Authored majority	Insurance	*Affirmed*: The insurance policy in dispute did not cover the plaintiff's costs incurred to maintain, as opposed to construct or repair, a pipeline pursuant to a government order following a pipeline explosion, so summary judgment was appropriate.
United States v. Jones	315 F. App'x 714	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: The district court did not abuse its discretion in denying the defendant's motion for a new trial or his attendant request for an evidentiary hearing; the written record sufficed to support credibility determinations regarding a recantation of trial testimony.
Tollefsen v. US Bank Nat'l Ass'n (In re Tollefsen)	315 F. App'x 683	2009	Authored majority	Bankruptcy	*Affirmed*: The appellant's failure to comply with rules requiring an adequate record provided grounds for the Bankruptcy Appellate Panel's summary dismissal of his appeal.
United States v. DeWilliams	315 F. App'x 81	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
Energy West Mining Co. v. Oliver	555 F.3d 1211	2009	Authored majority	Administrative Law; Labor & Employment; Public Benefits	*Petition for review denied*: Department of Labor Benefits Review Board's award to miner of black lung benefits was supported by substantial evidence, including adequately supported credibility determinations. Office of Workers' Compensation Programs' destruction of the miner's case file from his first black lung claim in 1980 did not violate the Due Process Clause where the mining company was unable to demonstrate bad faith or prejudice.
Hailey v. Ray	312 F. App'x 113	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings, and as an independent basis for supporting the district court's judgment, the petition for writ of habeas corpus was time-barred.
United States v. Phillips	311 F. App'x 137	2009	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal; sentence was procedurally and substantively reasonable.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Foreman	2009 U.S. App. LEXIS 2512	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel, nor show cause and prejudice to overcome procedural default on prosecutorial misconduct claim.
Jackson v. Brummett	311 F. App'x 114	2009	Authored majority	Civil Rights	*Affirmed*: Complaint under 42 U.S.C. §1983, against various state public defenders as well as their employer, the New Mexico Public Defender's Office, did not state a plausible claim for relief under law.
United States v. Walker	307 F. App'x 230	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel.
Montez v. Owens	307 F. App'x 160	2009	Authored majority	Civil Rights; Federal Courts; Contracts	*Remanded*: Where disability discrimination settlement agreement did not expressly authorize appeals, the appropriate course was to remand to the district court to determine whether plaintiffs had agreed to waive the right to appeal.
United States v. Muldrow	306 F. App'x 427	2009	Authored majority	Criminal Law & Procedure	*Affirmed*: Prisoner was statutorily ineligible for a reduction in sentence.
Vallez v. Hartley	305 F. App'x 505	2009	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred; limitations period was not tolled or restarted.
United States v. Barajas-Garcia	303 F. App'x 677	2008	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
Russo v. Ballard Med. Prods.	550 F.3d 1004	2008	Authored majority	Intellectual Property; Contracts	*Affirmed*: Medical device inventor's state law claims for misappropriation of trade secrets and breach of confidentiality agreement were not preempted by federal patent law; neither his liability claims nor the damages he sought were "irreconcilable" with federal law. The jury's award had sufficient evidentiary basis, and various other arguments of the defendant/appellant were rejected. The district court did not err in declining to add postverdict, prejudgment interest to the plaintiff/cross-appellant's jury award.
United States v. Gerhartz	303 F. App'x 601	2008	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner's collateral attack on his sentence was barred by his plea agreement and by waiver.

Case Name	Citation	Year	Role	Subject	Holding
Raifsnider v. Colo.	299 F. App'x 825	2008	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings; even if the court erred, it did not implicate a constitutional right.
Wickham v. Friel	299 F. App'x 813	2008	Authored majority	Habeas	*Affirmed*: Petitioner did not make a substantial showing that he was denied constitutionally effective counsel where counsel did not seek the production of his victim's mental health records, in part because of the high standard required to access mental health records in Utah.
Byington v. Astrue	299 F. App'x 782	2008	Authored majority	Public Benefits	*Affirmed*: Denial of Supplemental Security Income payments was based on correctly applied legal standards, and the court deferred to the fact finder's credibility determinations.
Aquila, Inc. v. C.W. Mining	545 F.3d 1258	2008	Authored majority	Contracts	*Affirmed*: The district court's factual findings and legal conclusions were correct that (1) a coal supplier failed to prove that its performance was excused by virtue of a force majeure labor dispute; (2) the plaintiff utility did not have notice that the supplier considered geological problems to be force majeure events; (3) the supplier did not show that the utility had waived its right to sue for breach of contract; and (4) the utility properly mitigated its damages.
Green v. Sirmons	299 F. App'x 763	2008	Authored majority	Civil Rights	*Affirmed*: The prisoner did not meet the requirements of the Prison Litigation Reform Act to exhaust administrative remedies.
United States v. Harper	545 F.3d 1230	2008	Authored majority	Criminal Law & Procedure; Habeas	*Affirmed*: Federal inmate's motion under 28 U.S.C. §2255 to set aside, vacate, or correct his sentence was successive and unauthorized by the appellate court, and thus had been properly dismissed by the district court for lack of jurisdiction.
United States v. Poole	545 F.3d 916	2008	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not abuse its discretion in denying defendant's motion for a new trial; although the defendant alleged that the jury had disregarded the court's instructions and, as a result, rendered an ambiguous verdict, the court had taken sufficient measures to render the verdict free from ambiguity.

Case Name	Citation	Year	Role	Subject	Holding
Lowber v. City of New Cordell	298 F. App'x 760	2008	Authored majority	Civil Rights; Labor & Employment	*Reversed and remanded*: Plaintiff's gender discrimination claim against the city was erroneously dismissed by district court on the ground that the plaintiff failed to exhaust her administrative remedies; the district court had mistakenly conflated plaintiff's gender discrimination claim with a second claim for which remedies had not been exhausted.
Warren v. Gartman	297 F. App'x 767	2008	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner's claims had been properly dismissed by the district court because those claims predominantly concerned allegations of state law violations, which could not be the basis for federal habeas relief.
Stanko v. Davis	297 F. App'x 746	2008	Authored majority	Civil Rights; Federal Courts	*Reversed and remanded*: Federal prisoner's pro se complaint, which alleged constitutional violations and retaliation by the prison warden and others, provided adequate notice under Fed. R. Civ. P. 8 to defendants as to the claims against them.
Houston v. Colorado	296 F. App'x 699	2008	Authored majority	Civil Rights; Federal Courts	*Affirmed*: District court did not abuse its discretion when it dismissed state prisoner's constitutional tort claims against Colorado and state prison officials; the plaintiff had been adequately warned that his failure to comply with a court-ordered payment plan relating to court filing fees would result in case dismissal.
Flores v. GEO Sec.	296 F. App'x 628	2008	Authored majority	Civil Rights	*Affirmed*: State prisoner's lawsuit against prison officials for not voluntarily segregating him from other prisoners was properly dismissed without prejudice, as the plaintiff had failed to exhaust his administrative remedies.
Green v. Sirmons	295 F. App'x 270	2008	Authored majority	Habeas	*Certificate of appealability denied*: Review of state prisoner's consolidated habeas petitions was not warranted because, among other things, the district court had concluded that the inmate had not asserted constitutional violations and the petitioner did not provide reasons why appellate review of the district court's decision should be granted; the district court also properly concluded that a retroactive adult certification hearing could be held in a state juvenile court rather than in a state district court.
United States v. Sears	294 F. App'x 383	2008	Authored majority	Habeas	*Certificate of appealability denied*: Habeas petitioner did not make a substantial showing that he was denied constitutionally effective counsel.

Case Name	Citation	Year	Role	Subject	Holding
Kearl v. Rausser	293 F. App'x 592	2008	Authored majority	Contracts; Federal Courts	*Reversed and remanded*: In litigation concerning a dispute over the sharing of stock proceeds, the district court's judgment and dismissal of certain claims was supported by adequate evidence, but the jury had inappropriately calculated damages owed to plaintiffs without reference to the date when the parties' contract with one another had been breached.
United States v. Quintana-Navarette	317 F. App'x 742	2008	Authored majority	Habeas	*Certificate of appealability denied*: Federal inmate's motion under 28 U.S.C. §2255 to vacate, set aside, or correct his sentence was untimely and did not qualify for equitable tolling.
Herlik v. United States	291 F. App'x 208	2008	Authored majority	Civil Liability	*Affirmed*: Military officer's suit against superior for libel was barred or otherwise precluded from being brought under the Federal Tort Claims Act.
Thompson R2-J Sch. Dist. v. Luke P.	540 F.3d 1143	2008	Authored majority	Education	*Reversed and remanded*: School district acted consistently with the Individuals with Disabilities Education Act and was not required to reimburse parents for the placement of their autistic child in a private school; the school district had established a plan reasonably calculated to ensure the child's continued educational progress, and the record demonstrated that some progress had been shown by the child.
Shook v. Bd. of Cty. Comm'rs of El Paso	543 F.3d 597	2008	Authored majority	Civil Rights; Federal Courts	*Affirmed*: District court did not abuse its discretion in denying jail inmates' request for certification of a class representing current and future mentally ill inmates at the county jail; the relief sought required a level of specificity to the conditions and treatment of individual plaintiffs that would render a class action unmanageable.
Uecker v. Romero	290 F. App'x 154	2008	Authored majority	Habeas	*Certificate of appealability denied*: Habeas petition by inmate challenging his criminal conviction was time-barred.
Queen v. McIntire	290 F. App'x 162	2008	Authored majority	Civil Rights; Federal Courts	*Affirmed*: Federal prisoner had failed to exhaust his administrative remedies before filing suit against prison officials for alleged constitutional violations.
Zapata v. Brandenburg	291 F. App'x 150	2008	Authored majority	Civil Rights; Federal Courts; First Amendment	*Affirmed*: There was no discernable error in the district court's dismissal of state inmate's claims against prison officials for infringing on the inmate's free exercise of religion; the plaintiff failed to show a policy that substantially burdened his religious beliefs, and any burden imposed was supported by a legitimate penological interest.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Farr	536 F.3d 1174	2008	Authored majority	Criminal Law & Procedure; Tax	*Reversed and remanded*: Defendant's conviction for tax evasion was reversed because the grand jury had indicted the defendant for a particular crime, but the government had constructively amended the indictment to involve another offense via evidence introduced at trial and related jury instructions.
Cook v. Medical Sav. Ins. Co.	287 F. App'x 657	2008	Authored majority	Civil Liability; Insurance	*Affirmed*: In case where health insurer was sued for fraud and breach of duty and good faith, the jury could plausibly conclude that the presented evidence supported the plaintiff's theory of fraud and its award of damages was not so extreme as to shock the conscience.
Big Sky Network Canada, Ltd. v. Sichuan Provincial Gov't	533 F.3d 1183	2008	Authored majority	Federal Courts	*Affirmed*: District court did not abuse its discretion in enlarging the period for removal to federal court of a suit that had been filed by a foreign corporation with a domestic parent against Chinese subnational foreign government entities; the district court's dismissal for lack of jurisdiction under the Foreign Sovereign Immunities Act was also proper, as harms suffered by the corporation's American parent company did not provide the court with jurisdiction over the claims.
Lindsey v. Estep	287 F. App'x 644	2008	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
Surefoot LC v. Sure Foot Corp.	531 F.3d 1236	2008	Authored majority	Intellectual Property; Federal Courts	*Reversed and remanded*: Interactions between plaintiff and defendant, including defendant's repeated threats to sue if plaintiff did not change its name, gave rise to a "case or controversy" permitting consideration of a trademark action seeking declaratory judgment.
United States v. Sandoval-De Lao	283 F. App'x 621	2008	Authored majority	Criminal Law & Procedure	*Dismissed*: Criminal appeal was dismissed pursuant to rule established in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
United States v. Harper	282 F. App'x 727	2008	Authored majority	Criminal Law & Procedure	*Remanded with instructions*: Because no sentence reduction was authorized for the criminal defendant under 18 U.S.C. §3582(c)(2), the district court lacked jurisdiction to consider the defendant's motion for resentencing.

Case Name	Citation	Year	Role	Subject	Holding
Johnson v. Fed. Bureau of Prisons	281 F. App'x 851	2008	Authored majority	Habeas; Federal Courts	*Affirmed*: Federal inmate did not demonstrate in the course of an interlocutory appeal raised while his habeas petition was pending that district court's denial of preliminary injunctive relief, mandamus, or immediate declaratory relief were erroneous.
United States v. Marquez-Ramirez	281 F. App'x 847	2008	Authored majority	Criminal Law & Procedure	*Dismissed*: Criminal appeal was dismissed pursuant to rule established in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Meshwerks, Inc. v. Toyota Motor Sales U.S.A.	528 F.3d 1258	2008	Authored majority	Intellectual Property	*Affirmed*: Utah corporation's copyright infringement suit, alleging misuse of digital wire-frame models it had produced for defendant's advertising campaign for new car models, was properly dismissed; the digital models were not original works that could be copyrighted, but instead were created using designs that the defendant had produced.
United States v. Montes	280 F. App'x 784	2008	Authored majority	Criminal Law & Procedure	*Affirmed*: Criminal defendant did not satisfy the evidentiary threshold to obtain discovery of police records relating to his traffic stop; further, the 15-minute roadside detention between the defendant's initial stop by police for a traffic violation and a police dog's detection of drugs in defendant's vehicle was reasonable under the Fourth Amendment.
Brown v. Dinwiddie	280 F. App'x 713	2008	Authored majority	Habeas	*Certificate of appealability denied*: Habeas petition was properly dismissed as statutorily time-barred, and the petitioner's ignorance of the law did not entitle him to equitable tolling.
Leyba v. Hartley	280 F. App'x 690	2008	Authored majority	Criminal law; Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
Ardese v. DCT, Inc.	280 F. App'x 691	2008	Authored majority	Bankruptcy; Federal Courts; Labor & Employment	*Affirmed*: Plaintiff employee was judicially estopped from pursuing certain claims for damages against a former employer because she failed to disclose the pending lawsuit as an asset in bankruptcy proceedings.
Strickland v. Murphy	279 F. App'x 673	2008	Authored majority	Habeas	*Request for leave denied*: State prisoner had not presented factual predicates for new claims that would permit a successive habeas petition.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Hasan	526 F.3d 653	2008	Authored majority	Criminal Law & Procedure	*Remanded*: District court had committed plain error warranting remand when it ruled that the Court Interpreters Act, which applies with equal force in all proceedings initiated by the United States, required an interpreter's presence only at the defendant's criminal trial and not at the grand jury proceedings.
Regan-Touhy v. Walgreen Co.	526 F.3d 641	2008	Authored majority	Federal Courts	*Affirmed*: District court had properly granted summary judgment in favor of defendant pharmacy where plaintiff claimed that it had wrongfully disclosed her health information; the plaintiff's case relied upon inadmissible hearsay that was insufficient to establish a triable question for the jury.
Travis v. Park City Police Dep't	277 F. App'x 829	2008	Authored majority	Civil Rights; Federal Courts	*Affirmed*: An artist who had been ejected from a park where he was displaying artwork lacked standing to challenge a city ordinance on First Amendment grounds because the artist had not brought himself within the scope of conduct prohibited by the ordinance; rather, his ejection had resulted from a police officer misapplying the ordinance.
United States v. Espinoza	277 F. App'x 789	2008	Authored majority	Habeas	*Certificate of appealability denied*: Prisoner did not make a substantial showing that he was denied constitutionally effective counsel.
United States v. Powell	277 F. App'x 782	2008	Authored majority	Criminal Law & Procedure	*Affirmed*: The totality of the circumstances surrounding defendant's stop by law enforcement, including the odor emanating from the defendant's rental vehicle and the inconsistency between the duration of his rental agreement and stated travel plans, provided police with sufficient basis to detain the defendant beyond the initial traffic stop period and perform a canine sniff of his vehicle which resulted in the detection of illegal drugs.
United States v. Olivares-Campos	276 F. App'x 816	2008	Authored majority	Criminal Law & Procedure	*Affirmed*: Even assuming that police officer's retention of defendant's license and registration transformed a consensual encounter into a seizure under the Fourth Amendment, the officer had reasonable suspicion of criminal activity that justified an investigative detention, and the defendant's subsequent consent to search his vehicle, which led to the discovery of illegal drugs, was therefore not tainted by an illegal seizure.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Sanchez	Nos. 06-2099 & 06-2216, 2008 U.S. App. LEXIS 27651	2008	Authored majority	Criminal Law & Procedure	*Vacated and remanded*: In light of intervening Supreme Court decisions concerning the application of the U.S. Sentencing Guidelines, remand to the district court was warranted with instructions to follow those intervening decisions related to a district court's discretion vis-à-vis the guidelines.
Sayles v. Astrue	275 F. App'x 790	2008	Authored majority	Administrative Law; Public Benefits	*Affirmed*: Administrative law judge's denial of plaintiff's application for Social Security disability benefits, based on the conclusion that plaintiff was capable of finding and retaining employment, was supported by substantial evidence in the record; the opinion of plaintiff's treating physician was not dispositive when it conflicted with other evidence, and the administrative law judge was not compelled to accept a vocational expert's opinion in response to a hypothetical question as a controlling assessment of the plaintiff's residual functional capacity.
Taumoepeau v. Mfrs. & Traders Trust Co. (In re Taumoepeau)	523 F.3d 1213	2008	Authored majority	Bankruptcy; Federal Courts	*Affirmed*: Although the debtors' appeal with the Bankruptcy Appellate Panel (BAP) had been filed outside the normal window for filing a notice of appeal, the debtors still gave timely notice within the period allowed under the Federal Rules of Appellate Procedure, because the BAP's judgment was not set forth in a separate document from the BAP's explanation of its reasoning; nonetheless, the BAP's judgment on the merits of the case was proper.
Sydnes v. United States	523 F.3d 1179	2008	Authored majority	Civil Liability; Labor & Employment	*Affirmed*: Civilian contractors' wrongful termination suit against the United States was barred because decisions regarding employment and termination involved discretionary functions for which the government's sovereign immunity had not been waived under the Federal Tort Claims Act.

Case Name	Citation	Year	Role	Subject	Holding
Hinds v. Sprint/United Mgmt. Co.	523 F.3d 1187	2008	Authored majority	Labor & Employment	*Affirmed*: The plaintiff, who alleged that he was wrongfully terminated on account of age-based discrimination and retaliation when his employer had eliminated his department as part of a reduction in force, had failed to establish either a triable question of pretext regarding the motives for his termination or present evidence from which a jury reasonably could infer a retaliatory motive. Although plaintiff alleged pretext could be discerned from a spreadsheet created by the defendant company, which included a hidden cell listing employees' ages and other characteristics, uncontested evidence indicated that the decisionmakers responsible for the reduction in force did not produce or have access to the information contained in the hidden cells.
United States v. Martinez	273 F. App'x 744	2008	Authored majority	Criminal Law & Procedure	*Dismissed*: Criminal appeal was dismissed pursuant to rule established in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Pino v. United States	273 F. App'x 732	2008	Authored majority	Civil Liability	*Reversed and remanded*: Lower court's grant of summary judgment for defendant United States in a wrongful death suit was based on an erroneous belief that no cause of action existed under Oklahoma law; a subsequent clarification by the Oklahoma Supreme Court that the state wrongful death statute applied to a nonviable, stillborn fetus necessitated reversal and remand.
Garcia v. Bd. of Educ. of Albuquerque Pub. Schs.	520 F.3d 1116	2008	Authored majority	Education; Federal Courts	*Affirmed*: Lower court did not abuse its discretion in dismissing former student's claim against school board under the Individuals with Disabilities Education Act (IDEA); while the former student's claim for compensatory damages had not been rendered moot, the IDEA permitted the lower court to take into account equitable considerations and therefore deny the former student the requested remedy, based on her current refusal to attend school and the demonstrated likelihood that she would not take advantage of any compensatory education services granted.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Hernandez-Hernandez	519 F.3d 1236	2008	Authored majority	Criminal Law & Procedure; Immigration	*Affirmed*: An alien criminal defendant, charged with unlawfully reentering the United States, did not have his Fifth and Sixth Amendment rights violated when the district court excluded evidence supporting his contention that his voluntary intoxication rendered him unable to remember how he unlawfully entered the country. Defendant had not argued that his intoxication negated the requisite mental state required for conviction, and the jury's consideration of his argument would require it to guess whether defendant willingly entered the country or was unwillingly transferred by others.
United States v. Gonzalez-Carballo	266 F. App'x 799	2008	Authored majority	Criminal Law & Procedure	*Dismissed*: Criminal appeal was dismissed pursuant to rule established in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
United States v. Lopez	518 F.3d 790	2008	Authored majority	Criminal Law & Procedure; Federal Courts	*Reversed*: Based on circuit precedent, the government's material, but nonformal, compliance with the certification requirements for an interlocutory suppression appeal under 18 U.S.C. §3731 permitted consideration of its appeal; as for the merits, the events witnessed by government agents gave them reasonable suspicion to justify the investigatory stop of the defendant's truck, which ultimately led to the discovery of drugs within the vehicle.
United States v. Martinez	518 F.3d 763	2008	Authored majority	Criminal Law & Procedure	*Affirmed:* State trooper did not act unreasonably under the Fourth Amendment when he conducted a traffic stop of the defendant's vehicle because its out-of-state registration permit was not displayed in manner required by state law.
United States v. Jolivet	267 F. App'x 736	2008	Authored majority	Habeas	*Certificate of appealability denied:* Motion under 28 U.S.C. §2255 filed by former federal prisoner incarcerated in Canada was properly dismissed for lack of jurisdiction; under the U.S.-Canada extradition treaty, any accrual of good time credits following defendant's extradition was governed by Canadian rather than U.S. law.
United States v. Cervantes	267 F. App'x 741	2008	Authored majority	Habeas	*Certificate of appealability denied:* Federal inmate's motion under 28 U.S.C. §2255 to vacate, set aside, or correct his sentence was properly denied by district court for failing to demonstrate ineffective assistance of counsel.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Azubuike	267 F. App'x 731	2008	Authored majority	Habeas	*Certificate of appealability denied:* Federal inmate's motion under 28 U.S.C. §2255 to vacate, set aside, or correct his sentence was time-barred.
Morris v. St. John Nat'l Bank (In re Haberman)	516 F.3d 1207	2008	Authored majority	Bankruptcy	*Affirmed:* A bankruptcy trustee, who successfully avoided a lien through statutory strong-arm powers, had preserved for the bankruptcy estate the value of the avoided lien, but the use of these powers did not automatically confer other rights possessed by the original lienholder against the debtor.
United States v. Todd	515 F.3d 1128	2008	Authored majority	Criminal Law & Procedure	*Remanded:* District court's erroneous calculation of the total drug quantity attributable to the defendant caused it to miscalculate the sentencing range under the U.S. Sentencing Guidelines; reliance on this range by the district court constituted more than a harmless error, and compelled remand for resentencing.
Dudnikov v. Chalk & Vermilion Fine Arts	514 F.3d 1063	2008	Authored majority	Federal Courts; Intellectual Property	*Reversed and remanded:* The online retailer plaintiffs, who had sued the defendant copyright owners for a declaratory judgment of noninfringement, had satisfied the burden at the complaint stage to establish defendants' minimum contacts with the forum state of Colorado; though the defendants sent a notice of claimed infringement to the California company of eBay to suspend plaintiffs' online auction, the intended consequences of this notice would be incurred by the plaintiffs' Colorado business.
Foldenaur v. Franklin	261 F. App'x 93	2008	Authored majority	Criminal law; Habeas	*Certificate of appealability denied:* Inmate's habeas petition challenging his criminal conviction was time-barred.
Wilkins v. Packerware Corp.	260 F. App'x 98	2008	Authored majority	Labor & Employment	*Affirmed:* No reversible error was found in the district court's conduct of a trial that resulted in a jury verdict in favor of the defendant, who was alleged by the plaintiff to have wrongfully terminated him in violation of the Family and Medical Leave Act and Kansas common law.
Custard v. Lappin	260 F. App'x 73	2008	Authored majority	Civil Rights; Federal Courts	*Affirmed:* Inmate's lawsuits against various persons were properly dismissed by the district court, and the inmate was warned that additional frivolous or abusive filings would put him at risk of sanctions.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Rakes	510 F.3d 1280	2007	Authored majority	Criminal Law & Procedure	*Affirmed:* A jury was presented with sufficient evidence to convict the defendant of conspiring to injure or impede an officer of the United States; additionally, the district court's failure to notify parties during deliberations on a plea agreement of its possession of a victim impact letter was, at most, harmless error, and the district court analogized to the defendant's crime with the appropriate offense in the U.S. Sentencing Guidelines when assessing the proper sentence.
Alexander v. Lucas	259 F. App'x 145	2007	Authored majority	Civil Rights; Federal Courts	*Dismissed:* State prisoner's suit challenging state procedural bar to further review of his conviction either (1) failed to state a cognizable claim under 42 U.S.C. §1983, as the statute could not be used to invalidate the defendant's underlying conviction, or (2) was barred by Supreme Court doctrine because it sought review of a state court's final judgment.
United States v. Gay	509 F.3d 1334	2007	Authored majority	Criminal Law & Procedure	*Dismissed*: Criminal appeal was dismissed pursuant to rule established in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal. This decision was republished at 265 F. App'x 688 (2007).
United States v. McComb	519 F.3d 1049	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: District court's factual findings provided an adequate basis for imposing a sentence within the range recommended by the U.S. Sentencing Guidelines, notwithstanding the defendant's argument that his mental and physical conditions warranted a lesser sentence.
Davis v. Warden, Fed. Transfer Ctr.	259 F. App'x 92	2007	Authored majority	Habeas	*Affirmed*: The district court correctly denied as untimely petitioner's motion under Fed. R. Civ. P. 60(b) contesting the denial of his petition for a writ of habeas corpus.
Niedens v. Cont'l Cas. Co.	258 F. App'x 216	2007	Authored majority	Insurance	*Affirmed*: ERISA plan administrator's decision to terminate plaintiff's long-term disability benefits was not arbitrary and capricious, and the administrator's consideration of a third-party survey in concluding that plaintiff could engage in gainful employment was within the continuum of reasonableness, notwithstanding the plaintiff's challenge to its adequacy.
United States v. Trejo-Alvarez	2007 U.S. App. LEXIS 28318	2007	Authored majority	Criminal Law & Procedure	*Dismissed*: Criminal appeal was dismissed pursuant to rule established in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Buckaloo	257 F. App'x 88	2007	Authored majority	Habeas	*Certificate of appealability denied*: Federal inmate's motion under 28 U.S.C. §2255 to vacate, set aside, or correct his sentence was time-barred and did not qualify for equitable tolling.
Biehl v. Salina Police Dep't	256 F. App'x 212	2007	Authored majority	Civil Rights	*Affirmed*: Plaintiff's civil-rights suit against police officer and municipality for violating his Fourth Amendment rights was properly dismissed by the district court; the officer was entitled to qualified immunity and he had probable cause to arrest the plaintiff for drunk driving.
United States v. Golden	255 F. App'x 319	2007	Authored majority	Habeas	*Certificate of appealability denied in part and granted in part*: While the prisoner did not make a substantial showing that she was denied constitutionally effective counsel during her criminal trial and that her guilty plea was involuntary, she did make a substantial showing that counsel's failure to file a notice of appeal despite petitioner's instructions constituted a denial of her Sixth Amendment right to effective assistance of counsel.
Garcia v. Archuleta	253 F. App'x 802	2007	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred and did not qualify for equitable tolling.
United States v. Hernandez-Solis	253 F. App'x 767	2007	Authored majority	Criminal Law & Procedure	*Dismissed*: Criminal appeal was dismissed pursuant to rule established in *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Simmons v. Uintah Health Care Special Serv. Dist.	506 F.3d 1281	2007	Authored majority	Civil Rights; Labor & Employment	*Reversed and remanded*: In a case where the plaintiff alleged that she had been terminated without due process from her position of administrator at a nursing home owned and operated by a municipality, the municipality could potentially be liable for actions taken by its policymaking board that had been responsible for plaintiff's termination, regardless of whether the board's actions conformed with preexisting rules.
Pino v. United States	507 F.3d 1233	2007	Authored majority	Civil Liability	*Question of state law certified*: A question to the Oklahoma Supreme Court was certified concerning whether a cause of action existed under state law for the wrongful death of a stillborn, nonviable fetus, because resolution of the question could potentially determine outcome of plaintiffs' federal suit against United States based on medical care at federal hospital.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Sanchez	252 F. App'x 900	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: Denial of motion to suppress was proper where facts reasonably found by the district court indicated that one of the defendants invited the officers to enter, and consent was not coerced. The district court also did not abuse its discretion in denying a mistrial where a reference to defendant's invocation of the right to counsel was followed by curative instructions to the jury from the court; and the court's denial of a "minor participant" reduction in sentence was not "clear error" and, if any error, harmless in light of other findings.
United States v. Lopez-Gamez	251 F. App'x 590	2007	Authored majority	Criminal Law & Procedure	Appeal dismissed: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal as to validity of guilty plea or effectiveness of counsel.
Biehl v. Stoss	2007 U.S. App. LEXIS 24206	2007	Authored majority	Civil Liability; Federal Courts	*Affirmed*: Judges have immunity from claims for damages brought against them for actions taken in their official capacity, and no exception applied.
United States v. Swenson	250 F. App'x 838	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: Federal district court correctly denied a hearing on the defendant's violation of federal parole because the defendant was in state custody.
United States v. Sanchez-Marioni	250 F. App'x 840	2007	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal as to validity of guilty plea, sentence, or effectiveness of counsel.
Friedman v. Anderson	249 F. App'x 712	2007	Authored majority	Habeas	*Affirmed*: Habeas corpus was not an appropriate vehicle to challenge conditions of confinement; complaints should have been brought in a civil rights action.
United States v. Tucson	248 F. App'x 959	2007	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal as to prosecutorial misconduct or sufficiency of evidence.
Friedman v. Kennard	248 F. App'x 918	2007	Authored majority	Civil Rights	*Affirmed*: Prisoner's complaint failed to state a claim upon which relief could be granted. It did not allege a constitutionally cognizable denial of legal resources, or sufficient facts to state a claim for retaliation.

Case Name	Citation	Year	Role	Subject	Holding
Paige v. Okla. Dep't of Corr.	248 F. App'x 35	2007	Authored majority	Civil Rights	*Affirmed*: In a civil-rights suit brought under 42 U.S.C. §1983, the district court did not err in granting summary judgment to defendants on plaintiff-inmate's claim that he was denied a constitutional right to sex-offender treatment in prison; plaintiff's claims alleging violations of his plea agreement were not cognizable under §1983.
United States v. Guerrero-Cota	247 F. App'x 136	2007	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal as to ineffective assistance of counsel or reasonableness of sentence.
Meadows v. Okla. City Mun. Court	247 F. App'x 116	2007	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Some aspects of appeal were time-barred, and the remainder was barred by the federal jurisdiction doctrine set forth by the Supreme Court in *Rooker v. Fidelity Trust Co.* and *District of Columbia Court of Appeals v. Feldman,* which prohibits federal suits appealing state court judgments.
Price v. Reid	246 F. App'x 566	2007	Authored majority	Criminal Law & Procedure	*Certificates of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right by the magistrate during his criminal proceedings. Petitioner did not preserve remaining issues for appeal.
Heller v. Quovadx, Inc.	245 F. App'x 839	2007	Authored majority	Federal Courts	*Affirmed*: District court properly denied appellant shareholder's objection to the proposed class action settlement because both lacked standing and failed to raise any valid objection.
Penncro Assocs. v. Sprint Spectrum, L.P.	499 F.3d 1151	2007	Authored majority	Contracts	*Affirmed*: In case where contract breach was conceded, contract terms did permit plaintiff bill collection company to seek lost profits, which were unambiguously not "consequential"; contract also unambiguously required defendant to pay a certain amount per month such that, under state law, the court could not consider extrinsic evidence. It was not error to reduce damages for mitigation.
Jiayang Hua v. Univ. of Utah	242 F. App'x 603	2007	Authored majority	Federal Courts	*Affirmed*: Doctoral student's federal challenges to expulsion were barred by the federal jurisdiction doctrine set forth by the Supreme Court in *Rooker v. Fidelity Trust Co.* and *District of Columbia Court of Appeals v. Feldman*, res judicata (claim preclusion), and a state statute of limitations.

Case Name	Citation	Year	Role	Subject	Holding
Van Deelen v. Johnson	497 F.3d 1151	2007	Authored majority	First Amendment; Civil Rights	*Reversed and remanded*: The standard for summary judgment was not met where, on the facts, the plaintiff could show that (1) he was engaged in constitutionally protected activity, petitioning his government in a tax matter; (2) the defendants' actions caused the plaintiff to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity; and (3) the defendant's adverse action was substantially motivated as a response to the plaintiff's exercise of constitutionally protected conduct. The "public concern" test for defining constitutionally protected activity applied only to claims by government employees. Defendants were not entitled to qualified immunity because the constitutional right at issue was clearly established.
Montes v. Vail Clinic, Inc.	497 F.3d 1160	2007	Authored majority	Labor & Employment; Civil Rights	*Affirmed*: District court properly granted summary judgment to defendant hospital on eight former employees' civil rights claims. Five were time-barred; those plaintiffs did not meet the burden of showing that their earlier contacts with the state civil rights division qualified as "filing charges." On the merits, the hospital's narrow and business-motivated English-only policy for operating rooms did not give rise to a hostile work environment; there was no evidence that the hospital's explanation for expanding employees' duties was pretextual; and other claims similarly failed for lack of evidence.
United States ex rel. Boothe v. Sun Healthcare Group, Inc.	496 F.3d 1169	2007	Authored majority	Public Benefits	*Affirmed in part, reversed and remanded in part*: The *qui tam* plaintiff against a hospital allegedly engaged in Medicare fraud could not overcome the public disclosure bar under the Tenth Circuit standard for three of her claims, where similar allegations against the same hospital had been settled prior to the plaintiff's suit, and the plaintiff did not meet the "original source" test. However, the public information bar against those claims did not "spoil" the entire pleading, as jurisdiction had to be determined on a claim-by-claim basis; the remaining seven claims were remanded to the district court for such jurisdictional determination based on the facts.

Case Name	Citation	Year	Role	Subject	Holding
Williams v. W.D. Sports, N.M., Inc.	497 F.3d 1079	2007	Authored majority	Labor & Employment; Civil Rights	*Affirmed in part, reversed and remanded in part*: After the district court's decision, the Supreme Court issued a new rubric for analyzing Title VII retaliation cases by an employee subjected to employer conduct that could dissuade an objectively reasonable worker from making or supporting a charge of discrimination. On this basis, summary judgment against one plaintiff's retaliation claim was reversed and remanded for further proceedings. As to plaintiffs' other challenges, the district court's jury instructions were not plain error, and the court's evidentiary and discovery rulings were not an abuse of discretion.
Arnold v. Curtis	243 F. App'x 408	2007	Authored majority	Civil Rights	*Appeal dismissed*: Where unresolved and material factual disputes controlled the legal analysis of qualified immunity in a Fourth Amendment lawsuit against a law enforcement officer, the district court was correct to deny the officer's motion for summary judgment; the officer's interlocutory appeal was therefore dismissed in favor of further proceedings in the district court.
United States v. Cortez-Galaviz	495 F.3d 1203	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: State computer database containing vehicle insurance and registration data provided objective, particularized, and sufficient information to justify a brief traffic stop, despite being incomplete and dated. Because the stop complied with the Fourth Amendment, suppression motion was properly denied.
United States v. Diesel	238 F. App'x 398	2007	Authored majority	Tax; Criminal Law & Procedure	*Affirmed*: Appellant convicted of tax fraud did not show clear error on the jury's determination regarding *mens rea*, and appellant's other arguments lacked merit.
Copart, Inc. v. Admin. Review Bd.	495 F.3d 1197	2007	Authored majority	Administrative Law; Federal Courts	*Affirmed*: U.S. Department of Labor Administrative Review Board (ARB) award of attorneys' fees was affirmed; although the appellate court had issued a prior ruling in the case that said simply "Petitioner's Motion for Attorney Fees is denied," that ruling was not the law of the case because it neither explicitly nor implicitly decided that the petitioner was entitled to attorney fees under the applicable statute. ARB's award was not arbitrary or capricious or an abuse of the ARB's discretion.

Case Name	Citation	Year	Role	Subject	Holding
Helm v. Colorado	244 F. App'x 856	2007	Authored majority	Civil Rights; Administrative Law	*Affirmed*: As a matter of statutory interpretation, the district court correctly held that under the applicable state statute, the question of a convicted sex offender's placement and treatment was one of discretion.
Keck v. Zenon	240 F. App'x 815	2007	Authored majority	Civil Rights	*Affirmed*: Prisoner bringing due process claim had not presented a constitutionally protected liberty interest where facts did not suggest his prison conditions imposed an "atypical and significant hardship," and prison personnel followed prison regulations; the prisoner also failed to identify any other similarly situated prisoners for his equal protection claim.
Embrey v. United States	240 F. App'x. 791	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: The writ of *coram nobis* seeking to challenge a 1969 federal bank-robbery conviction was property denied because petitioner could have raised the arguments during the original proceedings, did not exercise the requisite diligence in pursuing the writ, and otherwise did not demonstrate a fundamental miscarriage of justice.
United States v. Jackson	493 F.3d 1179	2007	Authored majority	Criminal Law & Procedure; Civil Rights	*Affirmed*: While a district court was obliged to disregard a defendant's prior state misdemeanor jail sentence, it was free to consider the conviction itself and accompanying fine in assessing an appropriately tailored sentence. The right to receive the assistance of appointed counsel extends to cases involving a sentence of actual imprisonment.
Nasious v. Two Unknown B.I.C.E. Agents	492 F.3d 1158	2007	Authored majority	Civil Rights; Federal Courts	*Reversed and remanded*: District court erred in failing to consider the factors described by the Supreme Court in *Erickson v. Pardus* before dismissing with prejudice the pro se plaintiff-inmate's complaint alleging violations of various constitutional rights.
In re Bello	237 F. App'x. 363	2007	Authored majority	Federal Courts	*Affirmed*: District court acted in accordance with its rules and inherent authority and did not violate the attorney's due process rights when it prohibited the attorney from appearing before it in future proceedings as a result of professional misconduct.
United States v. Smith	238 F. App'x. 356	2007	Authored majority	Criminal Law & Procedure	*Reversed and remanded for dismissal for lack of jurisdiction*: District court lacked jurisdiction to hear the motion to correct sentence and petition for writ of mandamus because the requests were untimely.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Gonzalez	238 F. App'x. 350	2007	Authored majority	Criminal Law & Procedure	*Affirmed in part, vacated and remanded in part*: The defendant improperly pursued his ineffective assistance of counsel claim on direct appeal rather than through a petition for habeas corpus; the defendant was given a sentence that exceeded the statutory maximum sentence on one of the 63 counts for which he was convicted.
Magar v. Parker	490 F.3d 816	2007	Authored majority	Habeas	*Certificate of appealability denied*: The petitioner-inmate did not avail himself of potential state court recourse before instituting a federal habeas action challenging the adequacy of prison disciplinary proceedings.
Coulthrust v. Wells	236 F. App'x. 420	2007	Authored majority	Habeas; Immigration	*Dismissed for lack of jurisdiction*: The court lacked jurisdiction under 8 U.S.C. §1242(a)(2)(C) to hear, through a petition for habeas corpus, a challenge to the right of the Department of Homeland Security to deport the alien-petitioner following the completion of his prison sentence.
White v. Hesse	225 F. App'x. 769	2007	Authored majority	Habeas	*Certificates of appealability denied*: The petitioner's requests for certificates of appealability were denied under 28 U.S.C. §2244 when petitioner unsuccessfully filed six prior federal habeas petitions.
Leske v. Brill	236 F. App'x. 391	2007	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely.
Warren v. Tastove	240 F. App'x. 771	2007	Authored majority	Civil Liability; Federal Courts	*Affirmed*: In a personal injury action, there was no abuse of discretion when district court excluded a portion of plaintiff's expert witness's testimony regarding plaintiff's ability to resume his vocation as a truck driver because plaintiff offered no reason to believe the expert had a background sufficient to permit him to opine on vocational prospects.
United States v. Castro	225 F. App'x. 755	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: The defendant lacked standing to challenge the search of his former girlfriend's apartment; sufficient evidence was presented at trial to support the conviction for 11 narcotics felonies; and the district court did not err by making factual findings of the precise quantity of drugs at issue during sentencing proceedings.

Case Name	Citation	Year	Role	Subject	Holding
Hough v. Alderden	236 F. App'x. 350	2007	Authored majority	Habeas; Civil Rights	*Certificate of appealability denied*: The petitioner-inmate did not make a substantial showing that he was denied a constitutional right as a result of imprisonment, and the district court properly dismissed the claim for unconstitutional denial of access to courts because the inmate did not assert that the alleged lack of legal resources hindered his efforts to pursue litigation.
Miller v. Astrue	224 F. App'x. 859	2007	Authored majority	Public Benefits; Administrative Law	*Affirmed*: In affirming the administrative law judge's and the Social Security Administration Appeals Council's decision to deny supplemental Social Security income benefits, the district court committed no reversible error in concluding that petitioner did not have a severe impairment or combination of impairments as required in order to award supplemental Social Security income.
Energy West Mining Co. v. Johnson	233 F. App'x. 860	2007	Authored majority	Public Benefits; Administrative Law	*Affirmed*: The administrative law judge did not err in resolving conflicting evidence in petitioner's favor regarding his smoking history in a claim under the Black Lung Benefits Act alleging that petitioner became disabled as a result of his employment in a coal mine.
Yates v. Arkin	242 F. App'x. 478	2007	Authored majority	Federal Courts	*Affirmed*: When plaintiff failed to appear for multiple proceedings before a magistrate, district court did not err in accepting the magistrate's recommendation that the case be dismissed under 28 U.S.C. §636(b).
Johnson v. Christopher	233 F. App'x. 852	2007	Authored majority	Civil Rights; Federal Courts	*Affirmed*: Plaintiff-inmate's claim under 42 U.S.C. §1983 was correctly dismissed because the inmate, defendants, and all relevant events were located in a different venue from where plaintiff filed suit.
Folsom v. Franklin	234 F. App'x. 856	2007	Authored majority	Habeas; Criminal Law & Procedure	*Affirmed*: On appellate review following a grant of a certificate of appealability, petitioner did not establish that the factual and legal issues during his state court criminal proceedings had resulted in an unreasonable application of clearly established federal law or an unreasonable determination of facts based on the evidence presented.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Cardenas-Alatorre	485 F.3d 1111	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: A law enforcement officer did not act in an objectively unreasonable manner in pulling over a vehicle based on a New Mexico statute that prohibited obscuring a license plate by "foreign material" even if the statute was assumed to be unconstitutionally vague as-applied.
Watson v. United States	485 F.3d 1100	2007	Authored majority	Federal Courts; Civil Liability	*Affirmed*: In a claim against the federal government under the Federal Tort Claims Act for alleged negligent response to an inmate's medical condition, there was no reversible error in allowing the government to present a doctor as an expert witness even though the expert demurred during deposition when asked to profess his expertise and did not produce a written report prior to trial.
Thomas v. Bruce	233 F. App'x. 815	2007	Authored majority	Civil Rights; Federal Courts	*Affirmed*: The pro se plaintiff-inmate alleging that his Eighth Amendment rights were violated as a result of deliberate indifference to medical needs was not permitted to request an opportunity to file a Fourth Amendment complaint through his appeal when he did not make the request before district court.
Omar-Muhammad v. Williams	484 F.3d 1262	2007	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
Bergersen v. Shelter Mut. Ins. Co.	229 F. App'x. 750	2007	Authored majority	Labor & Employment	*Affirmed*: Plaintiff-employee failed to present evidence that the employer's stated reasons for termination of the employee were a pretext to cover up retaliation for the employee's filing of a complaint with the Kansas Insurance Department.
Andrews v. Heaton	483 F.3d 1070	2007	Authored majority	Federal Courts	*Affirmed in part, judgment modified*: The pro se serial litigant's lawsuits arising out of a state custody proceeding were correctly dismissed as a result of, among other reasons, judicial immunity, but the injunction preventing plaintiff from filing future lawsuits without counsel or judicial permission was modified to preclude only filings with the same subject matter as the prior federal lawsuits.
United States v. Pelayo-Torres	221 F. App'x. 801	2007	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.

Case Name	Citation	Year	Role	Subject	Holding
Graham v. Att'y Gen. of Kansas	231 F. App'x. 790	2007	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
Berry v. Ray	229 F. App'x. 697	2007	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was untimely and did not qualify for equitable tolling.
Brown v. McKune	227 F. App'x. 755	2007	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make a substantial showing that he was denied a constitutional right during his criminal proceedings.
Briggs v. Astrue	221 F. App'x. 767	2007	Authored majority	Public Benefits; Administrative Law	*Affirmed*: District court and administrative law judge did not err in denying plaintiff's applications for federal disability insurance benefits and Social Security income benefits under the Social Security Act.
United States v. Le	228 F. App'x. 827	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: The evidence presented at trial was sufficient to support a guilty verdict for knowing possession of marijuana with intent to distribute.
Nez v. BHP Navajo Coal Co.	227 F. App'x. 731	2007	Authored majority	Civil Rights; Labor & Employment	*Affirmed*: Summary judgment in favor of the defendant on plaintiff's employment discrimination case was appropriate when plaintiff failed to identify a genuine issue of fact suggesting that she was discharged due to her race, gender, or in retaliation for her activities on behalf of female employees, or that she was subject to a hostile work environment.
United States v. Mullane	226 F. App'x. 810	2007	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make substantial showing that he was denied constitutionally effective counsel or otherwise denied a constitutional right.
Bernat v. Allphin	220 F. App'x. 891	2007	Authored majority	Habeas	*Certificate of appealability denied*: The minor-plaintiffs did not make a substantial showing that they were denied a constitutional right by virtue of Utah's two-tiered criminal court system in which certain minor misdemeanors could be tried in courts of limited jurisdiction and then could be appealed to a court of general jurisdiction.
Martinez v. Carr	479 F.3d 1292	2007	Authored majority	Civil Rights; Criminal Law & Procedure	*Reversed*: Issuing a criminal misdemeanor citation and telling an individual that he would be arrested if he declined to sign the citation did not amount to a seizure within the meaning of the Fourth Amendment.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Vaca-Perez	221 F. App'x. 737	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: District court did not err in declining to issue a sentence below the range specified in the U.S. Sentencing Guidelines, and the imposed sentence was not substantively unreasonable.
Bolton v. Roberts	219 F. App'x. 761	2007	Authored majority	Habeas	*Certificate of appealability denied*: Petition for a writ of habeas corpus was time-barred.
United States v. Duran	219 F. App'x. 762	2007	Authored majority	Habeas	*Certificate of appealability denied*: Petitioner did not make substantial showing that he was denied constitutionally effective counsel or otherwise denied a constitutional right.
Hill v. Kemp	478 F.3d 1236	2007	Authored majority	First Amendment; Civil Rights; Tax	*Affirmed in part, reversed and remanded in part*: The Tax Injunction Act precluded the court from hearing claims that Oklahoma violated plaintiffs' constitutional rights by making it easier for drivers to obtain license plates bearing pro-life messages than pro-choice messages, but state sovereign immunity under the Eleventh Amendment prevented the district court from considering plaintiffs' claims that Oklahoma impermissibly refused to use the proceeds from its license program to fund certain adoption-related efforts.
Officer v. Sedgwick Cty.	226 F. App'x. 783	2007	Authored majority	Labor & Employment; Civil Rights	*Affirmed*: District court did not err in granting summary judgment to the employer on the employee's claim that she suffered an adverse employment action based on race when the employer identified multiple bases for termination in a pretermination memorandum that were either true or were reasonably believed to be true.
United States v. Ruiz-Terrazas	477 F.3d 1196	2007	Authored majority	Criminal Law & Procedure; Immigration	*Affirmed*: District court did not err in denying the defendants' request to receive a sentence below the U.S. Sentencing Guidelines after the defendant, who had a criminal history, pled guilty to illegally reentering the country after a prior deportation.
United States v. Torres-Laranega	476 F.3d 1148	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: The jury was properly instructed on requisite elements for a continuing criminal enterprise and for possession with intent to distribute of 1,000 kilograms or more of marijuana, and there was sufficient evidence in the record that the defendant himself, rather than the drug-running enterprise, obtained substantial income or resources from the enterprise.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Earle	216 F. App'x. 824	2007	Authored majority	Criminal Law & Procedure; Federal Courts	*Affirmed*: Under Tenth Circuit precedent, Congress possesses the power under the Commerce Clause to criminalize intrastate manufacturing of child pornography.
Bank of Oklahoma v. Monumental Life Ins. Co.	230 F. App'x. 788	2007	Authored majority	Contracts; Insurance; Civil Liability	*Affirmed*: The insurance policy at issue in the case terminated, by its terms, when a premium payment was not received within 31 days of it being due. In addition, the district court correctly granted summary judgment to the defendant on the plaintiff's alternative theories of a breach of a marketing contract and promissory estoppel.
United States v. Acosta-Quinones	213 F. App'x. 749	2007	Authored majority	Criminal Law & Procedure; Immigration	*Appeal dismissed*: Criminal appeal of conviction for illegally reentering the United States after a previous deportation was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.
Casey v. W. Las Vegas Indep. Sch. Dist.	473 F.3d 1323	2007	Authored majority	First Amendment; Civil Rights	*Remanded*: In a school superintendent's First Amendment retaliation claim against her employer, certain reports of misconduct and alleged violation of the law were made within the scope of the superintendent's official duties giving rise to qualified immunity for the defendants, but the superintendent's report to the attorney general regarding a violation of the New Mexico Open Meetings Act was not an official obligation for which qualified immunity was available.
United States v. Shaffer	472 F.3d 1219	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: The term "distribute" in a child pornography statute captured the act of storing material in a shared folder that was accessed by other users on a peer-to-peer computer network, and there was no error in the district court's treatment of expert witnesses, admission of evidence, or jury instructions.
United States v. Diaz	213 F. App'x. 647	2007	Authored majority	Criminal Law & Procedure	*Affirmed*: The evidence presented at trial was sufficient to support defendant's criminal conviction, and there was no plain error in the district court's sentencing decision.
United States v. Mendivil	208 F. App'x. 647	2006	Authored majority	Criminal Law & Procedure	*Appeal dismissed*: Criminal appeal was dismissed pursuant to *Anders v. California* because there were no nonfrivolous arguments to be made on appeal.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Urias-Bojorquez	205 F. App'x. 706	2006	Authored majority	Criminal Law & Procedure	*Affirmed*: Following a criminal conviction, the defendant failed to show that his counsel's joint representation with a codefendant presented a conflict of interest and adversely impacted the lawyer's performance.
Young v. Dillon Cos.	468 F.3d 1243	2006	Authored majority	Labor & Employment; Civil Rights	*Affirmed*: When plaintiff-employee offered no evidence to show that the employer's stated reason for terminating his employment—seeking pay for hours not actually worked—was pretextual, the district court correctly awarded summary judgment to the defendant on plaintiff's claim under Title VII of the Civil Rights Act of 1964 and claims under state law.
United States v. Gutierrez-Palma	201 F. App'x. 576	2006	Authored majority	Criminal Law & Procedure	*Affirmed*: There was no reversible error in the district court's sentence of 57 months' incarceration for the defendant's criminal conviction when the U.S. Sentencing Guidelines called for a sentence in the range of 57 to 71 months.

Source: Congressional Research Service, based upon an examination of court decisions compiled through a search of the Lexis database.

Table 2. Majority Opinions Authored by Judge Gorsuch for Which Another Judge Wrote a Concurrence or Dissent

Case Name	Citation	Year	Role	Subject	Holding
Entek GRB, LLC v. Stull Ranches, LLC	840 F.3d 1239	2016	Authored majority	Environmental Law; Federal Courts; Civil Rights	*Majority (Gorsuch, J.), affirmed*: The "law of the case" doctrine barred the court from revisiting and revising the judgment from a prior appeal, which interpreted the Stock-Raising Homestead Act of 1916 and its regulations to allow the plaintiff to cross the defendant's surface estate to access minerals, and any Fifth Amendment due process claims were forfeited. *Concurring (Briscoe, J.)*: The due process challenge, based on lack of notice to the landowner that the government was reserving the right to cross the surface estate for access to other property and minerals, was forfeited because it was not raised until the brief in the current appeal.
McNeill v. United States	836 F.3d 1282	2016	Authored majority	Tax	*Majority (Gorsuch, J.), reversed and remanded*: District court erred in holding that the Tax Equity and Fiscal Responsibility Act of 1982 precluded a managing partner in a tax avoidance scheme from pursuing a partner-level reasonable cause/good faith defense after the IRS had rejected the partnership's separate assertion of similar claims during administrative proceedings. *Dissenting (Phillips, J.)*: Not all partner-level defenses should be unaffected by conclusions made by the IRS on the partnership level; the managing partner's role in the tax avoidance scheme was such that determinations regarding the partnership's lack of a reasonable cause/good faith defense could apply equally to him.
United States v. Sing	653 F. App'x 646	2016	Authored majority	Criminal Law & Procedure	*Majority (Gorsuch, J.), affirmed*: District court's tax loss calculation under U.S. Sentencing Guidelines §2T1.1(c)(1) was proper because the tax estimate used to calculate the sentence was based on a reasonable estimate, and a factfinder could reasonably infer from the evidence presented that defendants intended to shield their clients from collection of the taxes. *Concurring (Kelly, J.)*: Interest and penalties were properly included in the tax loss calculation.

Case Name	Citation	Year	Role	Subject	Holding
Lexington Ins. Co. v. Precision Drilling Co., L.P.	830 F.3d 1219	2016	Authored majority	Contracts	*Majority (Gorsuch, J.), reversed and remanded:* Wyoming's Anti-Indemnity Statute, which voids as a matter of law any agreement that indemnifies loss or liability related to oil, gas, and water wells, did not affect the validity of an indemnity provision in the disputed insurance contracts; the absurdity doctrine was not applicable because there was no plain ministerial error in the statute. *Concurring (Bacharach, J.)*: Insurer's argument related to the absurdity doctrine was waived.
A.F. v. Española Pub. Schs.	801 F.3d 1245	2015	Authored majority	Education; Civil Rights; Federal Courts	*Affirmed (Gorsuch, J.)*: District court correctly dismissed the plaintiff's suit brought under the Americans with Disabilities Act, the Rehabilitation Act, and 42 U.S.C. §1983. The suit was based on the school district's failure to address appropriately the minor's disabilities (which she had started to pursue administratively under the Individuals with Disabilities Education Act [IDEA] until she obtained a successful settlement), but the plaintiff had not exhausted the procedures set forth in the IDEA. *Dissenting (Briscoe, C.J.)*: The majority's holding effectively and wrongly required a litigant such as the plaintiff to forgo resolution of an IDEA claim in order to preserve other federal claims.

Case Name	Citation	Year	Role	Subject	Holding
Eizember v. Trammell	803 F.3d 1129 (en banc)	2015	Authored majority	Habeas	*Majority (Gorsuch, J.), affirmed*: Petitioner's claim that the trial court should have excluded two jurors for impermissible bias in favor of the death penalty failed because the Oklahoma Court of Criminal Appeals (OCCA) reasonably applied the Supreme Court's clearly established precedents regarding juror removal. Nor was there an error under the standards set forth by the Supreme Court in *Simmons v. South Carolina* because the jury was instructed that life without parole was an alternative to capital punishment, or an error under the standards set forth by the Supreme Court in *Beck v. Alabama* because the jury was instructed on lesser, noncapital offenses. *Concurring in the judgment (McHugh, J.)*: The OCCA did not apply the correct legal standard in evaluating whether one of the jurors was biased toward the death penalty. Nevertheless, the petitioner is not entitled to habeas relief because that claim was not properly exhausted, and even if it were, his claim would have failed under the correct standard. *Dissenting (Briscoe, J.)*: Petitioner's attempts to raise his juror claim, combined with the gravity of his death sentence, warranted discretionary review by the panel of his claim that the OCCA applied an incorrect standard; petitioner should have been granted relief because one of the jurors should have been stricken and that error was not harmless.
Cook v. Rockwell Int'l Corp.	790 F.3d 1088	2015	Authored majority	Environmental Law; Civil Liability	*Majority (Gorsuch, J.), affirmed*: The Price-Anderson Act did not preempt the landowners' nuisance claim because, among other things, nothing in the language or history of the act precluded a nuisance claim even if the landowners failed to prove that a statutorily defined "nuclear incident" occurred pursuant to the act. *Concurring in the judgment (Moritz, J.)*: An earlier panel decision in the case left no portion of the jury verdict intact, and the district court was powerless to reinstate any part of it. The potential for retrial required consideration of the district court's alternative ruling that the PAA preempted the plaintiff's nuisance claims.

Case Name	Citation	Year	Role	Subject	Holding
Caplinger v. Medtronic, Inc.	784 F.3d 1335	2015	Authored majority	Federal Courts; Civil Liability	*Majority (Gorsuch, J.), affirmed*: Plaintiff's tort suit against a medical device manufacturer, alleging that a company representative recommended using the device for an off-label use even though the company had evidence documenting the dangers of using the device for that use, was preempted by the Medical Device Amendments to the Federal Food, Drug, and Cosmetics Act because the requirements imposed under state law through its tort liability regime did not impose parallel duties in the federal law. *Concurring in part and dissenting in part (Lucero, J.)*: Some of plaintiff's claims likely were not preempted, including that the medical device was misbranded or adulterated in violation of federal and state law, resulting in harms with parallel state law remedies.
Monfore v. Phillips	778 F.3d 849	2015	Authored majority	Federal Courts; Civil Liability	*Majority (Gorsuch, J.), affirmed*: District court did not abuse its discretion by refusing to allow the defendant in a medical negligence suit to amend, two weeks before trial, the final pretrial order to pursue a new defense, including permission to introduce new jury instructions, exhibits, and witnesses; according to Fed. R. Civ. P. 16(e), those orders may be amended only to prevent manifest injustice, and the surprise of having his codefendants settle, creating a problem for the defendant's initial trial strategy, did not meet that standard. Further, Oklahoma law barred the defendant's request to reapportion the damages among the defendants who settled. *Concurring (Moritz, J.)*: The majority's conclusion that the district court did not abuse its discretion was correct, but the facts presented a very close case, as revealed by the application of four factors employed by the circuit court in other cases (which the majority did not individually consider) for determining whether a court erred in denying a motion to amend a pretrial order.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Smith	756 F.3d 1179	2014	Authored majority	Criminal Law & Procedure	*Majority (Gorsuch, J.), affirmed in part, vacated and remanded in part*: A sentencing judge is not required to disregard the mandatory sentence imposed for using a gun during or in relation to a crime of violence when choosing a consecutive sentence to impose for the underlying crime of violence. The mandatory factors in 18 U.S.C. §§3553(a) and 3661 authorize sentencing courts to look at the totality of the defendant's background, character, and criminal history. *Concurring in part and dissenting in part (Lucero, J.)*: Because an 18 U.S.C. §924(c) sentence is imposed in addition to the sentence for the underlying crime, a sentencing court cannot lower the sentence for the underlying crime on the belief that the §924(c) enhancement is too harsh.
Bettis v. Hall	543 F. App'x 819	2013	Authored majority	Civil Liability	*Majority (Gorsuch, J.), affirmed*: There was sufficient evidence to support the jury's award of damages, and the district court did not err in excluding a portion of the defendant's evidence of higher damages. *Concurring (Holmes, J.)*: Principal issue with cross-appellants' argument was not that it was based on a new theory presented too close to the time of trial, as evidence demonstrated theory had been presented earlier in litigation; rather, cross-appellants had attempted to submit readjusted damage calculations too close to the impending trial date.

Case Name	Citation	Year	Role	Subject	Holding
Grant v. Trammell	727 F.3d 1006	2013	Authored majority	Criminal Law & Procedure	*Majority (Gorsuch, J.), affirmed*: Considered individually or cumulatively, the lower court's errors at trial and during sentencing and the alleged deficient performance of the defendant's counsel did not warrant reversal of a death sentence for first degree murder, and there was no due process violation when the jury was not instructed on lesser included, noncapital offenses when the defendant did not request a change to the jury instructions at trial and the evidence did not a support a conviction for the lesser offenses. *Concurring in part and dissenting in part (Briscoe, C.J.)*: Reviewing de novo the petitioner's claims of ineffective assistance of counsel, the petitioner had identified sufficient errors to establish that he was deprived of effective assistance of counsel and entitled to a new sentencing proceeding.
United States v. Christie	717 F.3d 1156	2013	Authored majority	Criminal Law & Procedure	*Majority (Gorsuch, J.), affirmed*: A delay in searching the defendant's seized computer did not violate the Search and Seizure Clause of the Fourth Amendment when the defendant's husband consented to the seizure; the search warrant did not violate the Fourth Amendment's particularity requirement; there was no violation of the Sixth Amendment right to a public trial when the court excluded the husband from the courtroom during the testimony of his child because the testimony was brief and necessary to protect the child's well-being; and there was no reversible error in the court's dismissal of two assimilated homicide charges when the defendant was convicted of second-degree murder and child abuse. *Concurring (Briscoe, C.J.)*: While joining most of the majority's opinion and ultimate judgment, Chief Judge Briscoe believed applicable federal criminal statutes precluded assimilation of the of the state child-abuse-resulting-in-death statute in this case.

Case Name	Citation	Year	Role	Subject	Holding
Wilson v. City of Lafayette	510 F. App'x 775	2013	Authored majority	Civil Rights	*Majority (Gorsuch, J.), affirmed*: An officer who used a Taser upon an individual fleeing arrest was, under the facts of the case, entitled to qualified immunity. *Concurring in part in the result, and dissenting (Briscoe, C.J.)*: Majority failed to give sufficient weight to particular facts concerning the targeting function of the Taser, the proximity of the individual to the officer when the Taser was used, and specific warnings within the police training manual regarding the Taser's use. While facts supported the excessive force claim brought by the individual's estate, the district court's dismissal of the wrongful death claim, based upon it being brought by a third party, and its challenged evidentiary ruling were properly affirmed. *Concurring (Matheson, J.)*: While officer's conduct was excessive, it did not reach a level of egregiousness comparable to that found in prior cases where qualified immunity was found not to attach.
United States v. Collins	461 F. App'x 807	2012	Authored majority	Criminal Law & Procedure	*Affirmed (Gorsuch, J.)*: The defendant was given adequate notice of his conditions of supervised release, so he could not contest the revocation of his release on that ground. Also, the district court did not plainly err when, during resentencing, the court stated that the new prison term would allow the defendant to participate in sex-offender treatment program, because the defendant did not show any such error affected his substantial rights and his sentence would have been different but for that error. *Concurring in part and dissenting in part (Holloway, J.)*: The district court plainly erred by seeking to promote the defendant's rehabilitation when imposing a sentence above that recommended by the U.S. Sentencing Guidelines, given that the prosecution's request for the above-guidelines sentence was based on the availability of sex-offender treatment in prison.

Case Name	Citation	Year	Role	Subject	Holding
Hernandez v. Story	459 F. App'x 697	2012	Authored majority	Civil Rights	*Majority (Gorsuch, J.), reversed and remanded*: Although plaintiff argued that the defendant police officers, who brought battery charges against him following a fight with another individual, had engaged in a malicious prosecution on account of the battery victim's sons also being police officers, the plaintiff's constitutional rights were not violated in a manner that was clearly established law at the time of the alleged malicious prosecution. *Concurring (Lucero, J.)*: The holding should have been limited to the proposition that there was no constitutional violation; there was no need to assess whether the alleged violation was clearly established.
Secsys, LLC v. Vigil	666 F.3d 678	2012	Authored opinion of the court	Civil Rights	*Opinion of the court (Gorsuch, J.), affirmed:* The Equal Protection Clause of the Fourteenth Amendment does not protect against extortion by a public official, whose demands applied to all contract bidders without distinction based on group membership. *Concurring in the result (Murphy and Brorby, JJ.)*: The record in the case revealed no intentional discrimination against the plaintiff contract bidder, resolving its equal protection claims.
Kerns v. Bader	663 F.3d 1173	2011	Authored majority	Civil Rights	*Majority (Gorsuch, J.), reversed and remanded*: An officer was entitled to qualified immunity because he did not violate clearly established Fourth and Fourteenth Amendment rights by asking a veterans' hospital to share the plaintiff's records. Further, the investigators and forensic expert were entitled to qualified immunity for claims of false arrest, false imprisonment, and malicious prosecution because there was probable cause to arrest and detain the plaintiff before the charges against him were dropped. *Dissenting (Holloway, J.)*: District court's denial of qualified immunity for the officer should have been affirmed because the officer violated the plaintiff's clearly established constitutional right to have his medical information protected from police access that was based on a generalized interest in whether a crime might have occurred. Additionally, the court should have affirmed the denial of qualified immunity to the investigators and forensic expert because the plaintiff's arrest and prosecution were not supported by probable cause, given the inclusion of false statements and forensic analysis in the arrest warrant.

Case Name	Citation	Year	Role	Subject	Holding
Lee v. Max Int'l, LLC	638 F.3d 1318	2011	Authored majority	Federal Courts	*Majority (Gorsuch, J.) affirmed*: District court did not abuse its discretion by dismissing plaintiff's case as a sanction for failing to produce documents in response to a discovery request and then violating two court orders compelling production of those materials. *Concurring (Hartz, J.)*: District court's explanation of its dismissal with prejudice due to discovery violations was inadequate, but plaintiff's conduct was sufficiently obvious and egregious to make remand for further explanation unnecessary.
Prost v. Anderson	636 F.3d 578	2011	Authored majority	Habeas	*Majority (Gorsuch, J.), affirmed*: Petitioner could not pursue a statutory interpretation argument about his crime of conviction in a 28 U.S.C. §2241 petition because he failed to raise those arguments in his trial proceedings, direct appeal, or original 28 U.S.C. §2255 motion, notwithstanding an intervening Supreme Court interpretation of that statute. Further, a §2255 motion was not an inadequate or ineffective means of testing an argument, even when the argument to be made would have been foreclosed by circuit precedent. *Concurring in part and dissenting in part (Seymour, J.)*: Petitioner had an adequate and effective opportunity to test the legality of his conviction in his earlier habeas proceedings, and thus the petition should have been dismissed for lack of jurisdiction. The majority should have ended its analysis there without creating a circuit split as to the interpretation of §2255(e)'s savings clause.

Case Name	Citation	Year	Role	Subject	Holding
McClendon v. City of Albuquerque	630 F.3d 1288	2011	Authored majority	Federal Courts; Civil Rights	*Appeal Dismissed (Gorsuch, J.)*: District court's order withdrawing approval of a class action settlement agreement concerning prison overcrowding was not a final, appealable decision. Further, an earlier settlement agreement's promise against future litigation is not sufficient to warrant an interlocutory appeal because the Supreme Court recognized in *Cohen v. Beneficial Industries Loan Corp.* that the only time a claimed right not to stand trial will warrant interlocutory appeal is when a statutory or constitutional provision guarantees that claimed right. *Concurring (Lucero, J.)*: Majority's discussion of *Cohen,* although *dicta,* misconstrues the case and, if followed, would produce adverse litigation consequences, including an end to interlocutory review of the denial of qualified immunity.
Flood v. ClearOne Commc'ns., Inc.	618 F.3d 1110	2010	Authored majority	Contracts	*Majority (Gorsuch, J.), reversed*: Preliminary injunction requiring advance of legal fees was based on a misinterpretation of two main contract provisions. *Concurring (Tymkovich, J.)*: The majority properly interpreted one contract provision, but their interpretation of the other would render the contract illusory.
Painter v. City of Albuquerque	383 F. App'x 795	2010	Authored majority	Civil Rights	*Affirmed (Gorsuch, J.)*: The arresting officers possessed probable cause when they arrested the plaintiff following his attempt to cash a fraudulent cashier's check, despite the plaintiff's claim that he was not aware it was fraudulent; even if the officers lacked probable cause, the officers were entitled to qualified immunity because the plaintiff did not show the officers violated clearly established law in effectuating the arrest. *Concurring in part and dissenting in part (McKay, J.)*: Although the officers were entitled to qualified immunity, under the totality of the circumstances test, probable cause was not present for the arrest.

Case Name	Citation	Year	Role	Subject	Holding
Hydro Res., Inc. v. EPA	608 F.3d 1131 (en banc)	2010	Authored majority	Environmental Law; Indian Law; Federal Courts	*Majority (Gorsuch, J.), panel opinion vacated, petition for review granted, and agency determination vacated*: EPA incorrectly concluded that petitioner's property was part of "Indian lands" such that the EPA, and not a state agency, was authorized to issue a Safe Drinking Water Act permit allowing petitioner to mine for uranium; petitioner company had an injury in fact sufficient to meet the requirement for Article III standing to challenge which agency had authority to issue the permit because of the costs associated with securing the permit. *Dissenting (Ebel, J.)*: The majority incorrectly relied on inapposite Supreme Court precedent, *Alaska v. Native Village of Venetie Tribal Government*, in determining that petitioner's property was not part of a "dependent Indian community" and therefore not part of "Indian lands." *Dissenting (Henry, J.)*: Judge Henry wrote separately to underscore his concerns that the majority opinion undid decades of settled Indian Law.
Lewis v. Tripp	604 F.3d 1221	2010	Authored majority	Criminal Law & Procedure; Civil Rights	*Majority (Gorsuch, J.), reversed and remanded*: The district court had held that the defendant medical examiner was not entitled to qualified immunity and thus denied summary judgment, but there was no evidence in the record to suggest that the defendant was personally involved in the Fourth Amendment violation alleged by the unlicensed doctor whose office was searched. *Dissenting (Briscoe, C.J.)*: The district court adequately set forth the facts it believed a reasonable jury could find, and the appellate court must accept as true the plaintiff's assertion of the defendant's involvement. Even looking to the record, there was sufficient evidence to withstand summary judgment.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Lovern	590 F.3d 1095	2009	Authored majority	Criminal Law & Procedure	*Majority (Gorsuch, J.), affirmed in part and reversed in part*: In an appeal from a joint jury trial, there was no evidence that one defendant, an employee of a pharmacy that was implicated in a drug conspiracy, had the requisite knowledge for criminal liability to attach. The other conviction was affirmed. *Dissenting (O'Brien, J.)*: While agreeing with the majority's decision affirming one defendant's convictions, Judge O'Brien disagreed that no reasonable jury could find the codefendant pharmacy employee guilty.
Orr v. City of Albuquerque	531 F.3d 1210	2008	Authored majority	Civil Rights; Labor & Employment	*Majority (Gorsuch, J.), affirmed in part, reversed and remanded in part*: In a suit brought by female police officers claiming discrimination based on their pregnancy, there was sufficient evidence to conclude that the defendants' explanation of how they implemented their maternity leave policy was pretextual for discriminatory animus based on plaintiffs' pregnancies. *Concurring (Hartz, J.)*: While joining the panel opinion, Judge Hartz wrote separately to emphasize his belief that the case turned on particular evidentiary items.
United States v. Taylor	514 F.3d 1092	2008	Authored majority	Criminal Law & Procedure; Indian Law	*Majority (Gorsuch, J,), affirmed:* District court did not plainly err by issuing an immediate corrective instruction to the jury after the prosecutor requested that they convict the defendant to "end the cycle of violence" on an Indian reservation rather than declaring a mistrial or taking some other corrective action. *Concurring (Briscoe, J.):* The defendant's conviction should be affirmed, but de novo rather than plain error review should have been applied to defendant's claim of prosecutorial misconduct.

Source: Congressional Research Service, based upon an examination of court decisions compiled through a search of the Lexis database.

Table 3. Concurring and Dissenting Opinions Authored by Judge Gorsuch

Case Name	Citation	Year	Role	Subject	Holding
Ragab v. Howard	841 F.3d 1134	2016	Authored dissent	Federal Courts; Contracts	*Majority (Kelly, J.)*, *affirmed*: A motion to compel arbitration was properly denied because there was no actual agreement to arbitrate under the Federal Arbitration Act among the six parties, and the conflicting details in the multiple arbitration provisions indicated that there was no meeting of the minds with respect to arbitration. *Dissenting (Gorsuch, J.)*: The six interrelated commercial agreements demonstrated a clear intention by the parties to arbitrate their disputes, and procedural inconsistencies among the agreements should not prevent the intent to resolve disputes through arbitration.
Planned Parenthood Ass'n of Utah v. Herbert	839 F.3d 1301	2016	Authored dissent	Federal Courts	*Majority (per curiam), rehearing en banc denied by sua sponte vote.* *Concurring in the judgment (Briscoe, J.)*: There was no justification to invoke the court's inherent authority to rehear, sua sponte, a case en banc when the parties had chosen not to seek en banc review, and the panel committed no legal error on the merits to justify granting a rehearing en banc. *Concurring in the judgment (Bacharach, J.)*: The denial of the preliminary injunction based on unconstitutional conditions should have been affirmed, and en banc consideration should have been denied because the panel's decision will not affect future appeals significantly. *Dissenting (Gorsuch, J.)*: An en banc hearing should have been granted because the panel impermissibly applied a de novo (rather than abuse of discretion) review to determine the Utah governor's intentions to defund Planned Parenthood; relaxed the burden of proof; and relied on arguments not raised by the party seeking the injunction or tested by the opposing party.

Case Name	Citation	Year	Role	Subject	Holding
Gutierrez-Brizuela v. Lynch	834 F.3d 1142	2016	Authored majority and concurrence	Administrative Law; Immigration	*Majority (Gorsuch J.), petition for review granted and case remanded for further administrative proceedings*: A presumption of prospectivity that applies whenever an agency exercises delegated legislative policymaking authority, along with due process and equal protection concerns, prevented the retroactive application of a decision by Board of Immigration Appeals (BIA) concerning the interplay between two federal immigration statutes, when the effect of that decision would be to deny the availability of relief to an alien who applied for relief prior to the decision's issuance. *Concurring (Gorsuch, J.)*: Established court jurisprudence concerning judicial deference to agency interpretations of ambiguous statutes they administer is in tension with separation of powers principles, and this deference has effectively permitted "executive bureaucracies to swallow huge amounts of core judicial and legislative power."
TransAm Trucking, Inc. v. Admin. Review Bd., U.S. Dep't of Labor	833 F.3d 1206	2016	Authored dissent	Administrative Law	*Majority (Murphy, J.), petition for review denied*: Court denied a petition for review of an administrative order finding that the petitioner was terminated in violation of the whistleblower provisions of the Surface Transportation Assistance Act (STAA), as his conduct was protected under the "refusal to operate" provision as reasonably interpreted by the Department of Labor. *Dissenting (Gorsuch, J.)*: Deference to an agency interpretation of ambiguous statutory terms, as explained by the Supreme Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, was unnecessary to interpret the term "operate" under the STAA whistleblower provisions because it was unambiguous, and the petitioner's conduct was not protected because he did operate the vehicle.

Case Name	Citation	Year	Role	Subject	Holding
A.M. ex rel. F.M. v. Holmes	830 F.3d 1123	2016	Authored dissent	Criminal Law & Procedure; Civil Liability; Civil Rights	*Majority (Holmes, J.), affirmed*: A police officer was entitled to qualified immunity for alleged Fourth Amendment violations arising from the arrest of a middle school student because the officer reasonably believed that he had probable cause to arrest the student for interfering with the educational process, based on the student's fake burping and other disruptive activity, and the officer acted under a reasonable belief that he could use handcuffs in arresting a minor. The assistant principal was also entitled to qualified immunity because the search was justified based on student reports and video evidence of possible drug activity, and the removal of outer wear was reasonable in scope. *Dissenting (Gorsuch, J.)*: Sufficient legal authority existed to alert any reasonable officer that arresting a student for burping was insufficient to support an arrest.
Webb v. Thompson	643 F. App'x 718 (en banc)	2016	Authored opinion concurring in part and dissenting in part	Civil Rights	*Majority (Lucero, J.), affirmed*: District court did not err in denying correctional officers qualified immunity as to a detainee's strip search claim, because the officers waived appellate review of their argument that the constitutionality of a strip search without reasonable suspicion was not clearly established at the time of plaintiff's arrest; nor did the court err in denying immunity as to a Fourth Amendment claim based on a delay in a probable cause hearing. *Concurring in part and dissenting in part (Gorsuch, J.)*: The officers qualified for immunity because the plaintiff did not identify any judicial decision that clearly established as a matter of federal law that the right to a timely arraignment imposes a correlative duty on correctional officers to ensure that the plaintiff was brought before a magistrate in a timely fashion.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Carloss	818 F.3d 988 (en banc)	2016	Authored dissent	Criminal Law & Procedure	*Majority (Ebel, J.), affirmed*: The denial of appellant's motion to suppress evidence was affirmed because the officers did not violate the Fourth Amendment when they went onto the front porch to knock on appellant's front door; the "No Trespassing" signs did not revoke the implied license to "knock and talk," and the court did not err in finding that the defendant voluntarily consented to officers following him into the house. *Concurring (Tymkovich, C.J.):* Determining whether a reasonable person would conclude that entry onto the curtilage by police or others was categorically barred by "No Trespassing" signs depends on the time, place, manner, and circumstance of the encounter. *Dissenting (Gorsuch, J.)*: Placement of the "No Trespassing" signs manifested a clear intention to revoke the implied license to "knock and talk."
Cordova v. City of Albuquerque	816 F.3d 645	2016	Authored concurrence	Federal Court; Criminal Law & Procedure	*Majority (Tymkovich, C.J.), affirmed*: Dismissal of assault charges under the Speedy Trial Act was based on procedural grounds and did not qualify as a favorable termination for purposes of a malicious prosecution cause of action, and the Fourteenth Amendment familial association claim was properly dismissed based on qualified immunity. *Concurring in the judgment (Gorsuch, J.):* Federal courts have reason to be skeptical of the existence to a constitutional right against malicious prosecution, and they should consider abstaining from hearing such claims and allow for their resolution as common law state tort claims.
Direct Mktg. Ass'n v. Brohl	814 F.3d 1129	2016	Authored concurrence	Civil Rights	*Majority (Matheson, J.), reversed and remanded*: Colorado law that imposed notice and reporting obligations on out-of-state retailers that did not collect sales tax, did not facially discriminate against interstate commerce under the dormant commerce clause because it distinguished retailers based on whether they collected Colorado sales or use taxes and not on in-state or out-of-state presence, and did not directly favor in-state economic interests. *Concurring (Gorsuch, J.)*: Plaintiffs failed to show that the notice and reporting burdens the Colorado law places on out-of-state mail order and Internet retailers compare unfavorably to the administrative burdens the state imposes on in-state brick-and-mortar retailers who must collect sales and use taxes.

Case Name	Citation	Year	Role	Subject	Holding
NLRB v. Cmty. Health Servs.	812 F.3d 768	2016	Authored dissent	Labor & Employment	*Majority (McHugh, J.), affirmed*: In awarding back pay under the National Labor Relations Act (NLRA) to employees whose hours had been unlawfully reduced in violation of the NLRA, the National Labor Relations Board (NLRB) acknowledged its inconsistent precedent and provided reasonable policy justifications for not deducting interim earnings from secondary employment from the backpay calculations. *Dissenting (Gorsuch, J.)*: In adopting a rule for hours-reduction cases that was different from wrongful termination cases, the NLRB failed to "respect boundaries of their congressional charters" and departed from their own existing rules and precedence without a persuasive explanation.
United States v. Krueger	809 F.3d 1109	2015	Authored concurrence	Criminal Law & Procedure	*Majority (Ebel, J.), affirmed*: District court correctly granted the defendant's motion to suppress evidence seized in Oklahoma pursuant to a warrant that was issued in Kansas because the warrant violated Fed. R. Crim. P. 41 concerning within-district limitations on warrants issued by magistrates, and the defendant established prejudice. The court declined to adopt the government's contention that prejudice can be established only if a judge in the proper jurisdiction could not have issued the warrant. *Concurring in the judgment (Gorsuch, J.)*: The Federal Magistrate Act specifying where a magistrate judge's powers are effective is a jurisdictional limit on its power, and the violation of a statutory jurisdictional rule is per se harmful. Also, the warrant was invalid under the Fourth Amendment.
United States v. Spaulding	802 F.3d 1110	2015	Authored dissent	Criminal Law & Procedure; Federal Courts	*Majority (Murphy, J.), vacated and remanded*: Fed. R. Crim. P. 11(e), regarding the finality of a guilty plea, is a jurisdictional rule that strips a district court of jurisdiction to set aside a guilty plea once the sentence has been imposed. And 18 U.S.C. §3231, which grants district court's original jurisdiction over federal criminal cases, does not give a district court jurisdiction to set aside a previously imposed criminal judgment that includes a term of imprisonment at any time for any reason. Rather, courts are limited to the circumstances outlined in 18 U.S.C. §3582(c) and Fed. R. Crim. P. 35. *Dissenting (Gorsuch, J.)*: Rule 11(e) and §3582(c) are claim-processing, not jurisdictional, rules, and thus there was no impediment to the district court agreeing to grant an uncontested motion to set aside a guilty plea.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Alisuretove	788 F.3d 1247	2015	Authored concurrence	Criminal Law & Procedure	*Majority (Briscoe, J.), affirmed in part, reversed in part, and remanded*: District court's loss calculation for defendant's conviction for conspiracy to commit wire fraud based on skimming debit card information from gas pumps was not clearly erroneous because it was a reasonable estimate of the loss based on the defendant's relevant conduct, but the court erred in its restitution calculation under the Mandatory Victims Restitution Act because that loss amount is limited to the objects, and temporal limits, of the charged conspiracy. *Concurring in the judgment (Gorsuch, J.)*: Even if the defendant's loss calculation was wrong, he still would have been eligible for the same upward adjustment in his U.S. Sentencing Guidelines calculation, making any error harmless. And the restitution award suffers from a lack of district court factual findings, and could have been reversed on that ground.
Browder v. City of Albuquerque	787 F.3d 1076	2015	Authored majority and concurrence	Civil Rights; Civil Liability	*Majority (Gorsuch, J.), affirmed*: District court correctly denied the officer qualified immunity in the 42 U.S.C. §1983 civil rights suit alleging due process violations when the officer used his squad car, while off duty, to speed and pass though through several intersections and at least one red light, which eventually led to an accident that caused the death of one passenger and serious injury to another, given clearly established Supreme Court precedent that due process claims may be brought for intentional misuse of a police vehicle. *Concurring (Gorsuch, J.)*: The defendant forfeited arguments raised pursuant to the Supreme Court's decision in *Parratt v. Taylor*, that held that the plaintiff must show that state law supplied no adequate remedial course before pursuing a §1983 claim, but the underlying facts of this case are the type that can be addressed by state tort law.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Nichols	784 F.3d 666	2015	Authored dissent	Criminal Law & Procedure	*Majority (per curiam), rejected petition for rehearing en banc.* *Dissenting (Lucero, J.)*: The Tenth Circuit should overrule its precedent concerning Sex Offender Registration and Notification Act's (SORNA's) notice provisions for offenders who leave the country by joining the Eighth Circuit to hold that updating registration to reflect a move out of the country is not required. *Dissenting (Gorsuch, J.)*: The court should rehear the case to consider whether Congress improperly delegated authority by allowing the Attorney General to decide whether and how sex offenders convicted before SORNA's enactment should be required to register.
Williams v. Trammell	782 F.3d 1184	2015	Authored concurrence	Habeas	*Majority (Phillips, J.), affirmed*: There was sufficient evidence for any rational trier of fact to find the defendant guilty beyond a reasonable doubt of malice-murder during a bank robbery (under a theory of aiding and abetting), based on testimony indicating that he knew his codefendant intended to shoot people at the bank if necessary, among other things. Additionally, the petitioner did not demonstrate that his trial counsel was constitutionally ineffective for failing to make certain objections because he did not show prejudice. Nor was counsel constitutionally ineffective during sentencing for failing to present better mitigating evidence because he did not show that additional evidence would have made a different sentencing outcome reasonably probable. *Concurring (Gorsuch, J.)*: The Oklahoma court's decision to overrule earlier precedents that required the government to prove that the defendant personally intended the death of the victim without substituting a new *mens rea* could become problematic by allowing capital punishment for a strict liability offense. However, as applied to the petitioner, relief is not warranted since the court found that the petitioner was guilty under its earlier formulation that required intent to kill, and thus the decision did not involve an unreasonable application of the Supreme Court's Eighth Amendment jurisprudence.

Case Name	Citation	Year	Role	Subject	Holding
Kerr v. Hickenlooper	759 F.3d 1186	2014	Authored dissent	Federal Courts	*Majority (per curiam), rejected petition for rehearing en banc.* *Dissenting (Hartz, J.)*: The claim that an amendment to the Colorado constitution (adopted by voter initiative) requiring advance voter approval of new taxes violated the Guarantee Clause of the U.S. Constitution is a nonjusticiable political question based on Supreme Court precedent. *Dissenting (Tymkovich, J.)*: The panel wrongly extended the doctrine of legislative standing by allowing the legislator-plaintiffs to allege injury on the ground that the constitutional provision diluted their core legislative prerogative to increase taxes, because that extension may provide standing for legislators to attack nearly any policy provision codified in the state constitution. *Dissenting (Gorsuch, J.)*: There were no judicially manageable standards for evaluating the plaintiffs' Guarantee Clause claim and thus it was nonjusticiable.
United States v. Law	572 F. App'x 644	2014	Authored majority	Criminal Law & Procedure	*Majority (Seymour, J.), affirmed*: District court's denial of defendant's motion to suppress and motion to dismiss was affirmed because the officer had a reasonable suspicion that the car in which defendant was a passenger was following too closely. *Concurring (Gorsuch, J.)*: Court was bound by precedent to accept that government did not have to prove that defendant knew he was a felon to convict him of violating federal law barring firearm possession by a felon, and defendant might have been more successful in his challenge to the traffic ordinance for which he was stopped if he had argued that it failed to afford reasonable notice regarding proscribed conduct.
Riddle v. Hickenlooper	742 F.3d 922	2014	Authored concurrence	Civil Rights; First Amendment	*Majority (Backarach, J.), reversed and remanded with instructions to vacate and award summary judgment to plaintiffs on as-applied Equal Protection claim*: A Colorado statute that capped individual contributions to write-in candidates and the nominees of minor parties at a lower amount than major party nominees violated the Fourteenth Amendment's Equal Protection Clause. *Concurring (Gorsuch, J.)*: Although there may be room for debate on whether the majority was correct in applying a strict scrutiny standard to the statute, the Colorado statute was unconstitutional under any of the potentially applicable standards.

Case Name	Citation	Year	Role	Subject	Holding
N.M. Off-Highway Vehicle Alliance v. United States Forest Serv.	540 F. App'x 877	2013	Authored dissent	Federal Courts; Environmental Law	*Majority (Anderson, J.), vacated and remanded with directions to grant motion to intervene:* Environmental groups were permitted intervention as a matter of right in a suit challenging the U.S. Forest Service's plan for reducing the number of roads in a national forest that could be used by motor vehicles. *Dissenting (Gorsuch, J.)*: The motion to intervene was properly denied because the case involved a single issue and there was no conflict between the existing government defendants and the intervening environmental groups.
United States v. Nicholson	721 F.3d 1236	2013	Authored dissent	Criminal Law & Procedure	*Majority (Briscoe, J.), reversed and remanded with directions to vacate*: When an officer gathered evidence of possession of illegal drugs and a weapon during a traffic stop that was premised on a misreading of a traffic ordinance, the district court should have granted a motion to suppress the evidence gained during the stop, and the convictions should be vacated. *Dissenting (Gorsuch, J.)*: The appellate court should have remanded the case for further investigation into whether the traffic stop was reasonable even if it was based on a misreading of the traffic ordinance.

Case Name	Citation	Year	Role	Subject	Holding
Hobby Lobby Stores, Inc. v. Sebelius	723 F.3d 1114 (en banc)	2013	Authored concurrence	First Amendment; Federal Courts	*Majority (Tymkovich, J.), with regard to issues discussed below, reversed and remanded with instructions*: Closely held commercial businesses were eligible for protection under the Religious Freedom Restoration Act (RFRA) and had established a likelihood of success on the merits that their religious exercise rights were substantially burdened by the contraceptive coverage requirement of the Patient Protection and Affordable Care Act (ACA). *Concurring (Hartz, J.)*: All corporations come within the protection of the Free Exercise Clause and RFRA, and, because the ACA compelled corporations to act contrary to religious beliefs, it imposed a "substantial burden" on free exercise. *Concurring (Gorsuch, J.)*: In addition to the businesses themselves, the businesses' owners were entitled to relief under RFRA, and the Anti-Injunction Act did not preclude the court from supplying such relief. *Concurring (Bacharach, J.)*: The matter should be remanded to the district court to perform the balancing of interests test necessary to decide whether to grant a preliminary injunction, and the individual business owners' claims should be dismissed on prudential-standing grounds because their claims were derivative of claims of their respective businesses. *Dissenting in part (Briscoe, C.J.)*: Because the commercial businesses did not produce sufficient evidence to establish likelihood of success on the merits, the district court properly denied the motion for preliminary injunction. *Concurring in part and dissenting in part (Matheson, J.)*: The district court did not abuse its discretion in denying a preliminary injunction to the corporate plaintiffs, as the corporate entities failed to meet their burden to show that RFRA applied to them, but remand was appropriate for further consideration of the individual plaintiffs' request for a preliminary injunction.

Case Name	Citation	Year	Role	Subject	Holding
Wilson v. Trammell	706 F.3d 1286	2013	Authored concurrence	Criminal Law & Procedure	*Majority (Hartz, J.), affirmed*: Defendant given a sentence of death in Oklahoma state court for first-degree murder and robbery with a dangerous weapon failed to show in an evidentiary hearing that he was given ineffective assistance of counsel. *Concurring (Gorsuch, J.)*: No postconviction evidentiary hearing should have been held by the district court because the evidentiary hearing was granted based on a 10th Circuit decision interpreting the rules of the Oklahoma Court of Criminal Appeals (OCCA) that OCCA subsequently held was wrongly decided, and OCCA had the final say in explaining the meaning of state law.
United States v. Dutton	509 F. App'x 815	2013	Authored dissent	Criminal Law & Procedure	*Majority (Hartz, J.), reversed and remanded*: The warrant authorizing the search of the defendant's storage unit was defective because it lacked sufficient information connecting the use or ownership of the unit to the defendant, and the "good faith exception" did not apply because the defect was so apparent that the officers who executed the warrant lacked an objective good-faith basis to believe it was valid; therefore, the motion to exclude the results of the search should have been granted. *Concurring (Anderson, J.)*: While circuit precedent in *United States v. Gonzales*, 399 F.3d 1225 (10th Cir. 2005), required the result reached by the majority, *Gonzales* may have unintentionally restricted the application of the good faith exception. *Dissenting (Gorsuch, J.)*: The presumption that a law enforcement officer acts in good faith when executing a search warrant issued by a magistrate applied in this case, and the warrant at issue was not so lacking in indicia of probable cause so as to render official belief that probable cause existed entirely unreasonable.

Case Name	Citation	Year	Role	Subject	Holding
Jefferson Cty. Sch. v. Elizabeth E.	702 F.3d 1227	2012	Authored concurrence	Education	*Majority (Murphy, J.) affirmed*: A private school placement without the consent or referral of a school district is reimbursable under the Individuals with Disabilities Education Act (IDEA) if four conditions are met: (1) the public school district did not make a "free appropriate public education" available to the disabled child in a timely manner; (2) the placement is in a state-accredited school; (3) the private placement provides special education; and (4) additional services provided by the private placement are not "related services" under IDEA. Under this test, the district court did not err in concluding that the petitioner's claimed expenses were reimbursable. *Concurring in the judgment (Gorsuch, J.)*: The majority correctly concluded that the petitioner's claimed expenses were reimbursable under IDEA, but establishing a new-four part reimbursement test was unnecessary because the facts of the case satisfied any of the preexisting tests for reimbursement used in other circuits.
United States v. Mendiola	696 F.3d 1033	2012	Authored concurrence	Criminal Law & Procedure	*Majority (Briscoe, C.J.), reversed and remanded*: The district court committed plain error in basing the length of the defendant's sentence, following revocation of his supervised release, on the defendant's purported drug rehabilitation needs. *Concurring (Gorsuch, J.)*: The district court's error met all prongs of the plainly erroneous standard, and thus warranted reversal, because there was a reasonable probability the defendant's sentence would have been shorter but for consideration of drug rehabilitation needs, and the error was clear and obvious, rather than subject to a reasonable dispute, and called into question the fairness, integrity, or reputation of the judicial proceedings.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Games-Perez	695 F.3d 1104	2012	Authored dissent	Federal Courts; Criminal Law & Procedure	*Majority (per curiam), petition for rehearing en banc denied.* *Concurring (Murphy, J.)*: The petitioner waived the argument advanced in his petition for rehearing en banc when he entered his conditional guilty plea in district court without preserving the issue and further forfeited the argument by failing to raise it before the district court; the specific facts and legal issues in the case did not warrant en banc review. *Dissenting (Gorsuch, J.)*: An en banc rehearing should have been granted because prior Tenth Circuit precedent interpreting the statutory crime for which the defendant entered a conditional guilty plea—possession of a firearm by a felon—incorrectly concluded the crime did not require the defendant to have been aware of his status as a felon, and the defendant did not waive or forfeit the argument that this *mens rea* requirement applies.
Hooks v. Workman	689 F.3d 1148	2012	Authored opinion concurring in part and dissenting in part	Habeas	*Majority (Holmes, J.), affirmed in part and reversed in part*: District court correctly denied habeas relief for petitioner's claims that his counsel was constitutionally ineffective at his criminal murder trial, and that he was denied his constitutional rights to due process and a fair trial during his separate trial to determine mental retardation, a finding of which would have precluded the death penalty. However, the court granted a writ of habeas corpus for the petitioner's capital sentence on the ground that counsel failed to present adequate mitigating factors. *Concurring in part and dissenting in part (Gorsuch, J.)*: Judge Gorsuch declined to join the majority's discussion of whether the petitioner had a constitutional right to counsel in his postconviction proceeding to determine mental disability, and as well as its holding that petitioner's counsel was not constitutionally effective at the sentencing phase of the original trial. On the latter point, petitioner was not prejudiced by counsel's performance at sentencing because there was no reasonable probability that the jury would have concluded that capital punishment was not warranted had counsel presented additional evidence for mitigation purposes.

Case Name	Citation	Year	Role	Subject	Holding
Somerlott v. Cherokee Nation Distribs.	686 F.3d 1144	2012	Authored concurrence	Civil Rights; Indian Law	*Majority (Murphy, J.), affirmed*: Plaintiff could not show plain error in district court's application of an erroneous legal standard to determine tribal immunity to suit. *Concurring (Gorsuch, J.)*: Judge Gorsuch elaborated that a limited liability corporation organized under state law, but that is owned by a corporation that is owned and regulated by a tribe, is not entitled to tribal sovereign immunity.
United States v. Benard	680 F.3d 1206	2012	Authored opinion concurring in part and dissenting in part	Criminal Law & Procedure	*Majority (McKay, J.), reversed in part and remanded*: Police officer had probable cause to believe that defendant's car contained illegal drugs and thus the traffic stop was lawful. Also, defendant's consent to a pat down was not coerced and thus lawful. However, the district court erred in failing to suppress postarrest statements that defendant made without the benefit of *Miranda* warnings, and thus the defendant was entitled to withdraw his conditional plea of guilty. *Concurring in part and dissenting in part (Gorsuch, J.):* While defendant's postarrest statement was erroneously admitted as evidence, the suppression error was harmless, and thus the district court's ruling should have been affirmed.
United States v. Canas	462 F. App'x 836	2012	Authored concurrence	Criminal Law & Procedure	*Majority (Murphy, J.), affirmed*: District court correctly denied motion to suppress because the officers' warrantless entry into defendant's residence (where contraband was discovered) was lawful because the officers thought that the residence's occupants were destroying evidence, and thus the exigent circumstances exception to the warrant requirement was applicable. *Concurring in the judgment (Gorsuch, J.)*: Judge Gorsuch disagreed with the majority's view that the defendant waived his argument that the police created an exigency by threatening to enter without permission or a warrant. Nevertheless, that argument would have failed because the exigency did not arise from the officer's conduct at the house but, rather, from facts that the police learned before arriving there.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Rosales-Garcia	667 F.3d 1348	2012	Authored dissent	Criminal Law & Procedure; Immigration	*Majority (Holloway, J.), vacated and remanded*: When calculating the sentence for unlawful reentry under the U.S. Sentencing Guidelines, a 16-level upward adjustment under Guideline §2L1.2 (for previously committing a drug trafficking felony for which the sentence imposed exceeded 13 months) could not be applied when the sentence for the felony was imposed after the defendant committed the offense of illegal reentry. *Dissenting (Gorsuch, J.)*: Because the notes accompanying §2L1.2 instruct that, to determine the length of the sentence imposed, the court must include "any term of imprisonment given upon the revocation of probation, parole, or supervised release," that compels the inclusion of sentences imposed after the defendant unlawfully reentered.
United States v. Games-Perez	667 F. 3d 1136	2012	Authored concurrence	Criminal Law & Procedure	*Majority (Anderson, J.), affirmed*: In a prosecution for unlawfully possessing a weapon as a convicted felon in violation of 18 U.S.C. §922(g)(1), the government does not need to prove that the defendant knew of his felonious status. *Concurring in the judgment (Gorsuch, J.)*: Circuit precedent required the majority's holding, but that earlier ruling was erroneous, and the government should be required to prove knowledge for all elements of §922(g)(1), given the language of 18 U.S.C. §924(a)(2), which provides penalties for knowingly violating §922(g).
Compass Envtl., Inc. v. OSHRC	663 F.3d 1164	2011	Authored dissent	Administrative Law; Labor & Employment	*Majority (McKay, J.), affirmed*: The Occupational Safety and Health Review Commission did not abuse its discretion in finding a serious violation of safety regulations by petitioner for failing to train a deceased employee to recognize and avoid the electrocution hazard presented by a high-voltage power line at his worksite, and imposing a $5,500 penalty against the petitioner. *Dissenting (Gorsuch, J.)*: It was not shown that a reasonably prudent employer would have anticipated the electrical hazard the deceased encountered, and thus the employer was not required to train him to recognize and avoid it.

Case Name	Citation	Year	Role	Subject	Holding
Columbian Fin. Corp. v. BancInsure, Inc.	650 F. 3d 1372	2011	Authored concurrence	Federal Courts; Insurance	*Majority Opinion (Hartz, J.), vacated and remanded*: District court lacked jurisdiction to hear the dispute because the claim had been mooted by the time of the court's ruling, given that during the litigation the defendant insurance company had stipulated that the contested policy covered the plaintiff's claim, and there was no reason to believe that a related dispute would arise in the future to require the requested declaratory relief. *Concurring (Gorsuch, J.)*: An additional reason why there was no justiciable Article III case or controversy was that, during the pendency of the appeal, the insurance policy expired and no claims had been filed during the policy period on which the parties disagreed about insurance obligations.
Wyodak Res. Dev. Corp. v. United States	637 F.3d 1127	2011	Authored concurrence	Federal Courts; Tax	*Majority (Lucero, J.), vacated and remanded*: District court lacked jurisdiction to review the merits of the plaintiff's claims seeking a refund of coal reclamation fees it allegedly overpaid because the reclamation fee was not an internal revenue tax within the meaning of 28 U.S.C. §1346(a)(1) and, thus, by statute, the claims could be brought only in the U.S. Court of Federal Claims. *Concurring (Gorsuch, J.)*: The plain language of §1346(a)(1), using the terms "internal revenue tax" and "internal revenue law," were not ambiguous but, still, compelled reversal because the statute that provided for coal reclamation fees was not a revenue law, and the reclamation fee was not a tax, so the district court lacked jurisdiction to rule on the dispute.

Case Name	Citation	Year	Role	Subject	Holding
Wilderness Soc'y v. Kane Cty.	632 F.3d 1162 (en banc)	2011	Authored concurrence	Federal Courts; Environmental Law	*Majority (Kelly, J.), vacated and remanded*: The environmental groups' lawsuit challenging as preempted the county's assertion of a right of way over federal lands managed by the Bureau of Land Management and the National Park Service was dismissed because the groups lacked prudential standing to vindicate the property rights of the federal government. *Concurring in the judgment (Gorsuch, J.)*: The court lacked jurisdiction and the lawsuit should have been dismissed, given that the dispute had largely been mooted because the local ordinance at issue was no longer in force and the legislature had not expressed intent to reenact the challenged law. And the claims that were not moot could not be redressed by a favorable decision by the court because the dispute really involved competing federal entitlements, and thus there was no constitutional standing. *Dissent (Lucero, J.)*: The object of this lawsuit was not to enforce federal property rights but to enjoin a preempted local ordinance that conflicted with federal regulations banning off-highway vehicle use on protected federal lands and that was harming the environmental groups' aesthetic and recreational interests. The majority's decision allowed the United States to be stripped of its property rights outside of a Quiet Title Act claim. And the concurrence wrongly concluded that there was no evidence that the county would resume its unlawful activity. Further, the concurrence wrongly concluded that the plaintiffs' injuries could not be redressed because an injunction likely would have redressed the alleged injuries to their aesthetic and recreational interests.
Am. Atheists, Inc. v. Duncan	637 F. 3d 1095	2010	Authored dissent	First Amendment	*Majority (per curiam), petition for rehearing en banc denied*. *Dissenting (Kelly, J.)*: The panel misapplied the religious endorsement test to crosses placed by the Utah Highway Patrol Association on public property to memorialize troopers killed in action by incorrectly focusing on the religious nature of the crosses themselves and not the memorial message they conveyed. *Dissenting (Gorsuch, J.)*: The circuit had repeatedly misapplied the reasonable observer/endorsement test. And in this case, the panel's holding erroneously rested on the notion that it could imagine a hypothetical reasonable observer that could think that Utah, by allowing the crosses on public property, endorsed religion, allowing for the conclusion that the displayed crosses were unconstitutional.

Case Name	Citation	Year	Role	Subject	Holding
Flitton v. Primary Residential Mortg., Inc.	614 F.3d 1173	2010	Authored opinion concurring in part and dissenting in part	Labor & Employment; Federal Courts	*Majority (Tacha, J.), affirmed*: District court did not abuse its discretion in awarding attorneys' fees for both an initial trial and a less-successful postremand trial, and it correctly held that it could not award appellate attorneys' fees that had not been requested on appeal. *Concurring in part and dissenting in part (Gorsuch, J.)*: The district court did have jurisdiction over the plaintiff's request for appellate attorneys' fees; moreover, the claims processing procedure for such appellate attorneys' fees was unclear, so the plaintiff should not have been denied congressionally authorized fees. *Concurring in part and dissenting in part (McKay)*: The unsuccessful claims the plaintiff raised in the second jury trial were insufficiently related and should not have been awarded.
Mink v. Knox	613 F.3d 995	2010	Authored concurrence	First Amendment	*Majority (Seymour, J.), reversed and remanded*: Dismissal was improper because complaint plausibly alleged a violation of Fourth Amendment rights where parody would not constitute the crime of criminal libel for purposes of a probable cause determination. *Concurring (Gorsuch, J.)*: The majority was correct that probable cause did not exist to think that the column constituted "criminal libel," but the majority should simply have relied on precedent rather than wading into the thicket of justifying the precedent's treatment of parody.
Forest Guardians v. United States Fish & Wildlife Serv.	611 F.3d 692	2010	Authored concurrence	Environmental Law; Administrative Law	*Majority (Holmes, J.), affirmed*: Petition for review of Fish & Wildlife Service decision to reintroduce an experimental population of an endangered bird was properly denied, as the decision violated neither the Endangered Species Act nor the National Environmental Policy Act (NEPA). *Concurring (Gorsuch, J.)*: The court panel does not endorse looking outside the administrative record itself, absent limited circumstances; the panel's analysis as to whether review should be further restricted to the NEPA Environmental Assessment is nonessential dicta.

Case Name	Citation	Year	Role	Subject	Holding
Abdulhaseeb v. Calbone	600 F.3d 1301	2010	Authored concurrence	First Amendment	*Majority (Henry, J.), affirmed in part and vacated and remanded in part*: Dismissal for failure to exhaust administrative remedies and summary judgment for defendant were proper for most claims in Muslim inmate's lawsuit under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA). For two claims, the record contained insufficient evidence to determine whether the burden on the inmate's religious exercise was justified by a compelling governmental interest and was the least restrictive means of accomplishing that interest. *Concurring (Gorsuch, J.)*: Judge Gorsuch wrote to clarify that the court did not hold, for example, whether a prisoner who may eat the offered vegetarian diet but who is denied any access to halal-certified meats can state a RLUIPA claim.
United States v. Raymond	369 F. App'x 958	2010	Authored opinion concurring in part and dissenting in part	Criminal Law & Procedure	*Majority (Ebel, J.), affirmed in part and reversed and remanded in part*: The district court did not clearly err in dismissing five charges of an indictment after factually finding them precluded by an earlier plea agreement. However, the district court legally misinterpreted the earlier plea agreement in dismissing two other charges because the government knew only of the defendant's *status* as a member of the Aryan Brotherhood, not of his murder-related *conduct*. *Concurring in part and dissenting in part (Gorsuch, J.)*: The same logic that compelled the majority's reinstatement of the two charges also compelled the reinstatement of the five other charges. The record was devoid of evidence that any of the charges arose from conduct known to the government at the time of the earlier plea agreement.
Fisher v. City of Las Cruces	584 F.3d 888	2009	Authored concurrence	Civil Liability	*Majority (Tymkovich, J.), reversed and remanded*: Summary judgment was improper because a reasonable jury could find the plaintiff's injuries sufficient to satisfy the minimal threshold injury requirement for an excessive force claim, and clearly established law provided a triable claim of excessive force under the circumstances. *Concurring in the judgment (Gorsuch, J.)*: The majority did not need to evaluate whether the plaintiff suffered a non-de minimis injury, an inquiry previously required only in cases involving allegations of overly tight handcuffing.

Case Name	Citation	Year	Role	Subject	Holding
Williams v. Jones	583 F.3d 1254 (en banc)	2009	Authored dissent	Criminal Law & Procedure	*Majority (per curiam), petition for panel or en banc rehearing denied.* See earlier case below, 571 F.3d 1086 (10th Cir. 2009). *Concurring (Kelly, J.)*: The three concurring judges wrote to address Judge Gorsuch's dissent, saying that the panel opinion simply remanded the matter to the district court to craft a remedy for a Sixth Amendment violation, ineffective assistance of counsel in advising the defendant concerning a plea offer. *Dissenting (Gorsuch, J.)*: The denial "overturned a state jury verdict for first-degree murder when the defendant admits he received a fair trial and no one questions that his conviction is supported by overwhelming evidence," and furthered a split among courts by providing that a lawyer's advice to reject a plea agreement may constitute a violation of the Sixth Amendment, notwithstanding the lawyer's plea bargain advice having not infringed upon a legal entitlement owed to the defendant.

Case Name	Citation	Year	Role	Subject	Holding
Wilson v. Workman	577 F.3d 1284 (en banc)	2009	Authored dissent	Habeas	*Majority (McConnell), remanding after initial en banc review in one case and reinstating panel decision after rehearing en banc in another case*: A state rule of evidence for deciding ineffective assistance of counsel claims, Rule 3.11, did not allow supplemental evidence that would have been allowed under federal law. Thus, the state court did not "adjudicate" the defendant's claim "on the merits" because it did not consider evidence that was material, but not in the record, and its decision was not entitled to deference under the Antiterrorism and Effective Death Penalty Act (AEDPA). *Dissenting (Gorsuch, J.)*: The court should have certified the state law question to the state. The state court did adjudicate the defendant's ineffective assistance claim on the merits, and under AEDPA, a federal court should not review a state court's findings de novo where the substantive result is reasonable, without inquiring into the processes. *Dissenting (Tymkovich, J.)*: The majority erroneously construed Rule 3.11 as more burdensome on a criminal defendant than the federal standard for ineffective assistance of counsel, and crafted an unduly narrow definition of "adjudication on the merits" that sidelined the deferential standards of review of AEDPA. *Dissenting (Briscoe, J.)*: Judge Gorsuch's dissent was correct that the best method of resolving the questions would be certification, but Judge Tymkovich's dissenting analysis of Rule 3.11 was correct, and the majority applied an unduly narrow definition to the phrase "adjudicated on the merits."
Milne v. USA Cycling Inc.	575 F.3d 1120	2009	Authored concurrence	Civil Liability	*Majority (Ebel, J.), affirmed*: Applying Utah law to determine elements of claim and federal law to determine whether the plaintiffs provided sufficient evidence to withstand summary judgment, the court agreed with the district court's determination that the plaintiffs failed to provide evidence upon which a reasonable jury could conclude that race organizers were grossly negligent. Nor did the district court abuse its discretion by excluding plaintiffs' expert for lack of qualification and unreliability. *Concurring in part and concurring in the judgment (Gorsuch, J.)*: Judge Gorsuch would have affirmed the district court's exclusion of the plaintiffs' expert on the basis that his testimony was not relevant to the gross negligence claim.

Case Name	Citation	Year	Role	Subject	Holding
Green v. Haskell Cty. Bd. of Comm'rs	574 F.3d 1235	2009	Authored dissent	First Amendment	*Rehearing en banc denied on a 6-6 vote.* The three-judge panel had held that, in context, a Ten Commandments monument at a courthouse had the impermissible principal effect of endorsing religion in violation of the Establishment Clause. 568 F.3d 784 (10th Cir. 2009). *Dissenting (Kelly)*: The court should have reheard the case because the panel decision misconstrued Supreme Court precedent, particularly *Van Orden v. Perry*, to which the case was factually similar. The panel endorsed a "heckler's veto"; wrongly imputed the motives of a private citizen to the commissioners who accepted the citizen's proposal to find endorsement; and overemphasized community size to the disadvantage of smaller communities. *Dissenting (Gorsuch, J.)*: The court should have reheard the case for at least three reasons: (1) the court should have reconsidered en banc its earlier Establishment Clause precedent in light of other circuits' interpretations of Supreme Court precedent; (2) the panel misapplied its "reasonable observer" test; and (3) the Supreme Court had found factually analogous displays acceptable.
Williams v. Jones	571 F.3d 1086	2009	Authored dissent	Habeas	*Majority (per curiam), reversed and remanded*: Having determined that the criminal defendant received ineffective assistance of counsel in rejecting a plea offer, the state court of criminal appeals' remedy of sentence modification was insufficient in light of the due process violation. *Dissenting (Gorsuch, J.)*: The majority holding improperly recognized a constitutional right to a plea bargain. Even though defendant's counsel provided deficient assistance, there was not an independent showing of prejudice to support a Sixth Amendment claim. "Because the right to effective assistance exists to serve the underlying purpose of ensuring a fair trial, a violation of the right requires some showing that counsel's deficiency impacted the fair trial right," and the defendant in this case received a fair trial.

Case Name	Citation	Year	Role	Subject	Holding
Chelsea Family Pharm., PLLC v. Medco Health Solutions, Inc.	567 F.3d 1191	2009	Authored concurrence	Contracts	*Majority (Lucero, J.), affirmed in part and reversed in part*: Two factually distinct injuries pleaded in the same cause of action constituted distinct "controversies or claims," one of which fell within the scope of the contract's arbitration which, pursuant to circuit precedent, the court interpreted as narrow. *Concurring (Gorsuch, J.)*: Judge Gorsuch questioned the merit of Tenth Circuit precedent implicating classification of arbitration clauses as broad or narrow.
Barber v. Colo. Dep't of Revenue	562 F.3d 1222	2009	Authored concurrence	Civil Rights	*Majority (Kelly, J.), affirmed*: Summary judgment against claim under §504 of the Rehabilitation Act of 1973 was correct because the plaintiffs failed to present a genuine issue of material fact that the Department of Motor Vehicles acted with deliberate indifference with respect to a federally protected right; the department did act in response to the plaintiff's request for accommodation. *Concurring in the judgment (Gorsuch, J.)*: The law in question requiring certain supervision of 15-year-olds for driving practice did not discriminate against disabled parents to even trigger the need for any remedial process to find a reasonable accommodation. If it had discriminated, however, the state defendants' argument that they were bound to follow state law would be unavailing because "a state law at odds with a valid Act of Congress is no law at all."

Case Name	Citation	Year	Role	Subject	Holding
United States ex rel. Belt Con Constr., Inc. v. Metric Constr. Co.	314 F. App'x 151	2009	Authored opinion concurring in part and dissenting in part	Contracts	*Majority (Briscoe, J.), affirmed*: The district court did not err in denying two claims made in a counterclaimant's motion to amend judgment. On the first claim, there was insufficient evidence under California law to determine the value of the warranties that the other party breached; moreover, the counterclaimant did not provide evidence that it was likely that, for damages allegedly resulting from liability to a third party, that third party was likely to hold it liable. On the second claim, the district court appropriately declined to reduce the damages awarded to the other party because the counterclaimant did not allocate concurrent damages in good faith. *Concurring in part and dissenting in part (Gorsuch, J.)*: There was insufficient evidence to determine the value of the warranties that the counterclaimant breached, but the majority did not need to address the likelihood of third-party liability. As to the second claim, California law did permit the allocation of concurrent delay damages, and the court could and should have made factual findings to accomplish such allocation.
Strickland v. UPS	555 F.3d 1224	2009	Authored opinion concurring in part and dissenting in part	Civil Rights; Labor & Employment	*Majority (Murphy, J.), reversed and remanded*: In light of conflicting evidence, the plaintiff should have been able to take her Family Medical Leave Act (FMLA) retaliation and sex discrimination claims to the jury. *Concurring in part and dissenting in part (Gorsuch, J.)*: Judge Gorsuch joined the majority as to reversing the FMLA claim, but would have affirmed the district court regarding gender discrimination under Title VII. The record lacked evidence that the employer treated the plaintiff less favorably than similarly situated male employees.
Salmon v. Astrue	309 F. App'x 113	2009	Authored dissent	Administrative Law; Public Benefits	** Judge Gorsuch was sitting by designation on the U.S. Court of Appeals for the Ninth Circuit in this case.* *Majority (per curiam), reversed and remanded*: In determining that plaintiff was not entitled to Social Security disability insurance benefits, the administrative law judge (ALJ) failed to properly weigh evidence when rejecting the plaintiff's mental disability claim and her testimony regarding the severing of her physical pain. *Dissenting (Gorsuch, J.)*: The ALJ's decision was supported by substantial evidence and thus should have been upheld.

Case Name	Citation	Year	Role	Subject	Holding
Blausey v. U.S. Tr.	552 F.3d 1124	2009	Authored dissent	Bankruptcy	** Judge Gorsuch was sitting by designation on the U.S. Court of Appeals for the Ninth Circuit in this case.* *Majority (per curiam), affirmed*: While debtors' direct appeal of the bankruptcy court's dismissal of their bankruptcy petition was statutorily permitted, and it was appropriate for the appellate court to exercise discretion to consider the appeal, the bankruptcy court's dismissal was warranted because a presumption of abuse had been raised by the debtors' omission of private disability insurance benefits from their calculation of their current monthly income. *Dissenting (Gorsuch, J.)*: The petitioners' appeal should have been dismissed for lack of jurisdiction, and the majority's finding that jurisdiction existed ran afoul of Supreme Court directions concerning statutory limits on appellate jurisdiction and exacerbated a circuit split.
United States v. Ford	550 F.3d 975	2008	Authored dissent	Criminal Law & Procedure	*Majority (Tymkovich, J.), affirmed*: Where defendant was convicted for illegally selling or possessing a machine gun and his primary defense was entrapment, three emails between the defendant and the informant that were not disclosed by the government were not sufficiently material to cast doubt on the jury's verdict. *Concurring (Parker, J.)*: Of particular importance in demonstrating that the defendant was predisposed to possess the gun, and therefore not entrapped, was evidence that he knowingly possessed the gun before meeting the informant. The jury could have convicted on the possession count without even having to consider entrapment, even if the verdict on that count would be insupportable with respect to selling the gun. *Dissenting (Gorsuch, J.)*: The court misapplied the Supreme Court's *Brady v. Maryland* standard of review; at least one suppressed email was material to the defendant's entrapment defense. The court should have reversed and remanded for a new trial.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Hinckley	550 F.3d 926 (en banc)	2008	Authored concurrence	Criminal Law & Procedure	*Majority (Kelly, J.), affirmed*: Defendant's conviction for failing to register pursuant to the Sex Offender Registration and Notification Act (SORNA) was reviewed *de novo*. SORNA did apply to the defendant, who failed to register during the "gap period" between the law's enactment and the Attorney General's Interim Rule clarifying that SORNA requirements took effect upon enactment; the defendant was originally required to register under state law prior to the enactment of SORNA. SORNA also did not violate the Ex Post Facto, Due Process, or Commerce Clauses, and the defendant lacked standing to bring his nondelegation doctrine claim. *Concurring (Gorsuch, J.)*: The statutory provision regarding retroactive application to prior offenders was ambiguous, but based on traditional statutory interpretation tools, it was clear congressional intent that SORNA should apply to those in the defendant's circumstances. For example, "when presented with a statute with a potential misplaced modifier or clause that might apply to more than just one antecedent, we must consult the surrounding context and structure before reflexively enforcing any construction of the statute." *Dissenting (McConnell, J.)*: The statutory provision regarding retroactive application to prior offenders was not, as the court found, ambiguous, and its text could be read alone as grammatically clear. SORNA did not apply to prior offenders unless and until the Attorney General exercised his statutory authority to specify whether and how it would do so.
Hanson v. Wyatt	552 F.3d 1148	2008	Authored concurrence	Civil Liability; Federal Courts	*Majority (Hartz, J.), reversed and remanded*: A former colonel's challenge to nonretention decision by the Oklahoma Army National Guard did not invoke a recognized cause of action against the named defendant, the adjutant general of Oklahoma; the plaintiff also lacked a constitutionally protected liberty or property interest in continued National Guard employment. *Concurring in the judgment (Gorsuch, J.)*: Dismissal was warranted because the case concerned a military discharge decision and was therefore nonjusticiable; authority over discrete military personnel decisions was constitutionally committed to the political branches. This decision is a reissuance, with corrections therein, of 540 F.3d 1187, listed below.

Case Name	Citation	Year	Role	Subject	Holding
Hanson v. Wyatt	540 F.3d 1187	2008	Authored concurrence	Civil Liability; Federal Courts	*Majority (Hartz, J.), reversed and remanded*: A former colonel's challenge to nonretention decision by the Oklahoma Army National Guard did not invoke a recognized cause of action against the named defendant, the adjutant general of Oklahoma; the plaintiff also lacked a constitutionally protected liberty or property interest in continued National Guard employment. *Concurring in the judgment (Gorsuch, J.)*: Dismissal was warranted because the case concerned a military discharge decision and was therefore nonjusticiable; authority over discrete military personnel decisions was constitutionally committed to the political branches.
United States v. Huckins	529 F.3d 1312	2008	Authored concurrence	Criminal Law & Procedure	*Majority (Kelly, J.), affirmed*: Criminal sentence imposed for child pornography conviction, which was below the range suggested by the U.S. Sentencing Guidelines, was substantively reasonable. *Concurring (Gorsuch, J.)*: Judge Gorsuch wrote separately to emphasize the narrowness of court's holding, as the government's failure to contest the defendant's appeal under the standard established by a Supreme Court decision issued after its initial brief compelled the circuit court to affirm the district court's opinion.
United States v. Manning	526 F.3d 611	2008	Authored concurrence	Criminal Law & Procedure	*Majority (Henry, C.J.), vacated and remanded*: False statement made by criminal defendant to a probation officer who was preparing a presentence report constituted a prosecutable offense under federal law; the statutory exception for statements made in judicial proceedings did not apply, as the probation officer enjoyed discretion regarding what information to include in his presentence report to the court. *Concurring (Gorsuch, J.)*: While joining the majority opinion, Judge Gorsuch wrote separately to further elaborate on why he believed the plain text of the criminal statute covered the defendant's conduct. *Dissenting (Holloway, J.)*: The defendant's conduct fit into the parameters of the judicial proceedings exception.

Case Name	Citation	Year	Role	Subject	Holding
Pace v. Swerdlow	519 F.3d 1067	2008	Authored opinion concurring in part and dissenting in part	Civil Liability; Federal Courts	*Controlling (Briscoe, J.), Reversed and remanded*: The district court erred in dismissing plaintiffs' case against an expert witness whom they had hired in a medical malpractice case; the district court's decision was based on mistaken finding that the expert's change of position was not the proximate cause of summary judgment having been granted against the plaintiffs in the underlying medical malpractice case. *Concurring in part and dissenting in part (Gorsuch, J.)*: While agreeing with the majority on the matter of proximate cause, Judge Gorsuch argued that multiple other grounds existed for affirming the district court's dismissal, including a lack of factual allegations suggesting tortious conduct by the defendant.
Abilene Retail # 30, Inc. v. Bd. of Comm'rs	508 F.3d 958	2007	Authored dissent	First Amendment	*Majority (per curiam), rejected petition for rehearing en banc.* *Dissenting (Gorsuch, J.): Dissenting (Gorsuch, J.)*: An *en banc* rehearing should have been granted because the panel decision, addressing a challenge to the constitutionality of a local zoning ordinance that restricted an adult bookstore's location, created two circuit splits, differed from all circuits in its treatment of how rural jurisdictions could rely on "urban" studies regarding the secondary effects of adult businesses, and addressed a case of great practical importance. *Responding to dissent (Lucero, J.)*: The panel decision did not create a circuit split; under the circuit's local, a potential circuit split is not, standing alone, a sufficient reason to grant en banc review; and the panel decision does not preclude rural governments from relying on urban studies in appropriate contexts.

Case Name	Citation	Year	Role	Subject	Holding
United States v. Cos	498 F.3d 1115	2007	Authored dissent	Criminal Law & Procedure	*Majority (Henry, J.), affirmed*: The government's appeal was timely. However, the district court's factual findings were not clearly erroneous; defendant's friend lacked actual or apparent authority to consent to a warrantless search of the defendant's apartment, and the good faith exception to the exclusionary rule was inapplicable. The government could not meet its burden of demonstrating a third party's apparent authority because the officers, faced with an ambiguous situation, proceeded without making further inquiry. *Dissenting (Gorsuch, J.)*: The appeal should have been dismissed as time-barred. The 30-day appellate clock should have begun when the court rejected the government's first and second motions for reconsideration, not when it rejected the supplemental motion that the government filed thereafter; these filing deadlines are jurisdictional and not susceptible to equitable tolling.
WWC Holding Co. v. Sopkin	488 F.3d 1262	2007	Authored dissent	Civil Liability; Administrative Law	*Majority (Ebel, J.), reversed and remanded*: Federal law does not preempt a state from exercising its authority to impose conditions on wireless service providers seeking to be designated as an eligible telecommunications carrier (ETC) under 42 U.S.C. §214(e)(2), and ETC designations under this provision are not required to undergo a formal rulemaking procedure. *Dissenting (Gorsuch, J.)*: Majority had reversed district court on the basis of arguments that had not been raised by that court or advanced on appeal, and to which the appellee did not have an opportunity to respond.

Case Name	Citation	Year	Role	Subject	Holding
Zamora v. Elite Logistics, Inc.	478 F.3d 1160 (en banc)	2007	Authored concurrence	Labor & Employment; Civil Rights	*Affirmed in part by a majority and in part by an evenly divided court (Ebel, J.):* Because the en banc court was evenly divided as to whether plaintiff presented sufficient evidence that his employer's stated reason for his suspension was a pretext for actionable discrimination under Title VII of the Civil Rights Act of 1964, the district court's grant of summary judgment in favor of the defendant-employer was affirmed. As to the employee's claim that his postsuspension termination was based on discrimination, a majority affirmed the district court's conclusion that plaintiff failed to produce sufficient evidence that the employer's proffered reason was pretextual. *Concurring (Hartz, J.):* The judges joined Judge Ebel's opinion, but separately concurred to express the belief that the Tenth Circuit should no longer follow the test for qualified immunity set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*. *Concurring in the judgment (McConnell, J.)*: No reasonable factfinder could construe the proffered reason for both plaintiff's suspension and termination as pretext for discrimination. *Concurring (Gorsuch, J.)*: Although Judge Gorsuch joined Judge Ebel's opinion and much of Judge McConnell's concurrence, he wrote separately to note that the discussion of whether interpretations of Title VII should be informed by the antidiscrimination provision in the Immigration Reform and Control Act of 1986 in both Judge McConnell's opinion and the dissent was not necessary to the disposition of the case and was a novel legal argument that should not have been decided. *Dissenting in part (Lucero, J.)*: Plaintiff presented sufficient evidence to survive summary judgment on his claim that he was suspended and then terminated as a result of national origin.

Case Name	Citation	Year	Role	Subject	Holding
Cortez v. McCauley	478 F.3d 1108 (en banc)	2007	Authored opinion concurring in part and dissenting in part	Criminal Law & Procedure; Civil Liability; Civil Rights	*Majority (Kelly, J.) affirmed in part, reversed in part and remanded*: The en banc court held, among other things, that law enforcement officers were not entitled to qualified immunity on an unlawful seizure claim arising out of an arrest for potential child sexual abuse when the arrest was based on an uncorroborated double-hearsay statement from a two-year-old child; and the officers lacked reasonable suspicion for an investigative detention of the arrestee's spouse when the spouse was not implicated in any wrongdoing. As to the separate claims for excessive use of force, genuine issues of material fact existed as to whether the officers used excessive force against the spouse, but the officers were entitled to qualified immunity on the excessive force claim by the arrestee. *Concurring in part and dissenting in part (Gorsuch, J.)*: While the officers violated the arrestee's Fourth Amendment rights by arresting him without probable cause, the officers should have been given qualified immunity because the law on probable cause based on minor's reports of sexual abuse was not clearly established at the time; however, the officers were not entitled to qualified immunity on their seizure of the spouse because no reasonable officer would have thought that they were permitted to enter the home and perform a seizure under the circumstances. On the excessive force claims, the officers' use of force against both the arrestee and spouse was in the range of what was reasonable and should not have given rise to a separate claim for either plaintiff. *Concurring in part and dissenting in part (Hartz, J.)*: Judge Hartz agreed with Judge Gorsuch's dissent, but wrote separately to propose that each plaintiff's causes of action be treated as a unified claim for invasion of Fourth Amendment rights of the person. *Concurring in part and dissenting in part (McConnell, J.)*: Judge McConnell agreed with Judge Gorsuch's conclusion that the operative legal principles related to probable cause based on minor's statements were not clearly established at the time of arrest, but agreed with the majority in other respects.

Source: Congressional Research Service, based upon an examination of court decisions compiled through a search of the Lexis database.

Author Information

Michael John Garcia, Coordinator
Acting Section Research Manager

Stephen P. Mulligan
Legislative Attorney

Sarah S. Herman
Legislative Attorney

Linda Tsang
Legislative Attorney

Acknowledgments

Julia Taylor, the Section Head for the American Law Section of CRS's Knowledge Services Group, and Keri B. Stophel, a Law Librarian within the American Law Section, provided invaluable assistance in developing the methodology employed in this report and collecting the judicial opinions discussed therein. Alexandra M. Wyatt, former legislative attorney, also contributed to this report.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.