Current Circuit Splits

CIVIL MATTERS

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BANKRUPTCY

Claim Preclusion – Fair Debt Collection Practices Act (FDCPA); *Simon v. FIA Card Services, North America, 732 F.3d 259 (3d Cir. 2013)*

The 3rd Circuit addressed whether "the Bankruptcy Code precludes FDCPA claims arising from communications to a debtor sent in the bankruptcy context." *Id.* at 271. The court noted that the 9th Circuit took a "broad approach, holding that a debt collector's communications to a consumer debtor in a pending bankruptcy proceeding cannot be the basis of a FDCPA claim," while the 2nd Circuit reached a similar result on the issue without taking a "broad analytical approach." *Id.* at 271–73. The court also noted that the 7th Circuit assessed whether there is an "irreconcilable conflict between the [FDCPA and the Bankruptcy Code] or a clearly expressed legislative decision that one replace the other." *Id.* at 273 (internal quotation marks omitted). The 3rd Circuit agreed with the 7th Circuit in finding that the proper inquiry is "whether the FDCPA claim raises a direct conflict between the Code or Rules and the FDCPA, or whether both can be enforced." *Id.* at 274. Thus, the 3rd Circuit held that when "FDCPA claims arise from communications a debt collector sends a bankruptcy debtor in a pending bankruptcy proceeding" regardless of whether the "communications are alleged to violate the Bankruptcy Code or Rules, there is no categorical preclusion of the FDCPA claims." *Id.*

Forum Selection Clause – Interpretation and Enforceability; *Martinez v. Bloomberg LP, 740 F.3d 211 (2d Cir. 2014)*

The 2nd Circuit addressed "whether a federal court sitting in diversity should apply federal or state law to determine the enforceability of a forum selection clause designating a domestic forum . . . ." *Id.* at 222. The 2nd Circuit noted that the 5th, 6th, 7th, and 10th Circuits have "applied federal law . . . to decide the [forum selection] clause's enforceability." *Id.* The 2nd Circuit, however, opined that there was not "as clear a prevailing approach on the question of what law governs the *interpretation* of forum selection clauses." *Id.* The 2nd Circuit noted that the 4th Circuit had "applied the body of law identified in a choice-of-law clause . . . to an interpretive question raised by the forum selection clause" and thereafter assessed the clause's enforceability under federal law. *Id.* at 223. The court disagreed with the 5th, 6th, 7th, and 10th Circuits because "[these] courts tend[ed] to blur the distinction between enforceability and interpretation." *Id.* at 222. The 2nd Circuit agreed with the 4th Circuit in finding there was no reason "to prevent a court from first interpreting the forum selection clause under the law selected by the contracting parties . . . before turning to federal law to determine whether the clause should be enforced." *Id.* Thus, the 2nd Circuit concluded that although questions of enforceability should be resolved under federal law, interpretative questions concerning the forum selection clause should be resolved under the law designated by that contractual choice-of-law clause. *Id.* at 224.

Standard of Review – Intentional Discrimination; *S.H. v. Lower Merion School District, 729 F.3d 248 (3d Cir. 2013)*

The 3rd Circuit addressed whether the court should apply the discriminatory animus or deliberate indifference standard in cases of claims of compensatory damages for intentional discrimination under § 504 of the Rehabilitation Act (RA), and § 202 of the Americans with Disabilities Act (ADA). *Id.* at 262. The court noted that the 2nd, 8th, 9th, 10th and 11th Circuits have "generally applied a two-part standard for deliberate indifference, requiring both (1) knowledge that a harm to a federally protected right is substantially likely,' and (2) 'a failure to act upon that likelihood," while the 1st and 5th Circuits have held that "plaintiffs seeking compensatory damages must demonstrate a higher showing of intentional discrimination than deliberate indifference, such

as discriminatory animus" in which a plaintiff must show "prejudice, spite or ill will." *Id.* at 263. The court agreed with the 2nd, 8th, 9th, 10th and 11th Circuits, asserting that the "standard of deliberate indifference, rather than one that targets animus, will give meaning to the RA's and the ADA's purpose to end systematic neglect." *Id.* at 264. The court agreed with the reasoning that "a lower standard would fail to provide the notice-and-opportunity requirements to RA defendants, while a higher standard—requiring discriminatory animus—would run counter to congressional intent as it would inhibit §504's ability to reach knowing discrimination in the absence of animus." *Id.* at 265 (internal quotation marks omitted). Thus, the 3rd Circuit joined the 2nd, 8th, 9th, 10th and 11th Circuits in holding that "a showing of deliberate indifference may satisfy a claim for compensatory damages under § 504 of the RA and § 202 of the ADA." *Id.* at 263.

The Finality Requirement – Conditional Dismissal; *Page Plus of Atlanta, Inc. v. Owl Wireless, LLC, 733 F.3d 658 (6th Cir. 2013)*

The 6th Circuit addressed whether "a party's conditional dismissal of unresolved claims, in which the party reserves the right to reinstate those claims if the case returns to the district court after an appeal of the resolved claims, create[s] a final order under 28 U.S.C. § 1291." *Id.* at 659. The court noted that the 3rd, 7th, 8th, and 9th Circuits determined "that a conditional dismissal does not meet § 1291's finality requirement," while the 2nd Circuit determined that the possibility of finality was sufficient to establish finality. *Id.* at 662. The 6th Circuit agreed with the 7th Circuit finding that "finality either exists at the time an appellate court decides the appeal or it does not." *Id.* Thus, the 6th Circuit joined the 3rd, 7th, 8th, and 9th Circuits in holding that the conditional dismissal of unresolved claims does not create a final order under § 1291. *Id.*

FED. R. CIV. P. 68 – Unaccepted Settlement Offers; *Diaz v. First American Home Buyers Protection Corp., 732 F.3d 948 (9th Cir. 2013)*

The 9th Circuit addressed "whether an unaccepted Rule 68 offer that would have fully satisfied a plaintiff's claim is sufficient to render the claim moot." *Id.* at 952. The court noted that the 7th Circuit has held "that an unaccepted Rule 68 offer for complete relief will moot a plaintiff's claim and the plaintiff outright." *Id.* The court noted that the 6th Circuit has held that that an offer of judgment that satisfies a plaintiff's entire demand moots the case . . . [but the court] should enter judgment in favor of the plaintiffs in accordance with the defendants'

Rule 68 offer of judgment." *Id.* (internal quotation marks omitted). In contrast, the court noted that the 2nd Circuit has held that "an unaccepted Rule 68 offer from complete relief [does not] moot[] a plaintiff's claim . . . . but [the 2nd Circuit] agrees with the [6th] Circuit that when such an offer has been made, the better resolution is to enter judgment against the defendant." *Id.* (internal quotation marks omitted). The 9th Circuit agreed with the 2nd Circuit finding that the court was

"consistent with the language structure and purposes of Rule 68 and with fundamental principles governing mootness. *Id.* at 955. Thus, the 9th Circuit joined the 2nd Circuit in holding "that an unaccepted Rule 68 offer that would fully satisfy a plaintiff's claim is insufficient to render the claim moot." *Id.* at 950.

CONSTITUTIONAL LAW

Civil Rights – Freedom of Religion; *Autocam Corp. v. Sebelius, 730 F.3d 618 (6th Cir. 2013)*

The 6th Circuit addressed whether a for-profit corporation is a "person" capable of "religious exercise" as intended by the Religious Freedom Restoration Act (RFRA). *Id.* at 625. The court noted that the 10th Circuit determined that for-profit corporations were not excluded from RFRA's protection, while the 3rd Circuit found that because a for-profit corporation is incapable of exercising religion, it cannot assert a claim under RFRA. *Id*. The court agreed with the 3rd Circuit in finding that when Congress enacted RFRA, its express purpose was fundamentally personal and did not include "corporations primarily organized for secular, profit-seeking purposes." *Id.* at 626. The court disagreed with the 10th Circuit as reading the term "person" in such a way that "would lead to a significant expansion of the scope of the rights the Free Exercise Clause protected" when RFRA was passed. *Id*. Thus, the 6th Circuit concluded that a for-profit corporation "is not a 'person' capable of 'religious exercise' as intended by RFRA." *Id.* at 625.

Eighth Amendment – Consent Defense; *Graham v. Sheriff of Logan County, 741 F.3d 1118 (10th Cir. 2013)*

The 10th Circuit addressed whether "consent is a defense to an Eighth Amendment claim based on sexual acts" between a prisoner and the prisoner's custodians or guards. *Id.* at 1125. The court noted that the 6th and 8th Circuits have held that sexual intercourse between guards

and inmates that is consensual and voluntary "does not rise to the level of an Eighth Amendment violation." *Id.* at 1124. In contrast, the 9th Circuit adopted a "middle ground" approach by creating a "rebuttable presumption of nonconsent," whereby "[t]he state official can rebut the presumption by showing that the sexual interaction involved no coercive factors." *Id.* at 1125 (internal quotation marks omitted). The court "agree[d] with the 9th Circuit's reasoning that "the power dynamics between prisoners and guards make[s] it difficult to discern consent from coercion" but declined to adopt the same rebuttable presumption. *Id.* at 1126. Thus, the 10th Circuit concluded that sexual abuse of prisoners should be treated as a "species of excessive-force claim, requiring at least some form of coercion (not necessarily physical) by the prisoner's custodians." *Id.*

EMPLOYMENT LAW

Americans with Disabilities Act (ADA) Title II – Employment Discrimination; *Brumfield v. City of Chicago, 735 F.3d 619 (7th Cir. 2013)*

The 7th Circuit addressed "whether Title II of the . . . [ADA] cover[s] employment related disability discrimination." *Id.* at 622. The court noted that the 9th and 10th Circuits have held that Title II does not "appl[y] to disability discrimination in public employment . . . leaving Title I as the exclusive ADA remedy for claims of disability discrimination in both public and private employment," while the 11th Circuit has "reached the opposite conclusion." *Id.* The court agreed with the 9th and 10th Circuits reasoning that "employment-discrimination claims must proceed under Title I of the ADA, which addresses itself specifically to employment discrimination and, among other things requires the plaintiff to satisfy certain administrative preconditions to filing suit." *Id.* at 630. The court disagreed with the 11th Circuit's failure to "consider[] the specific definition of 'qualified person with a disability' found in Title II. *Id.* at 629. Thus, the 7th Circuit "join[ed] the [9th] and [10th] Circuits . . . in hold[ing] that Title II of the ADA does not cover disability-based employment discrimination." *Id.* at 630.

Affirmative Defenses – Concilation; *EEOC v. Mach Mining, LLC, 738 F.3d 171 (7th Cir. 2013)*

The 7th Circuit addressed whether an alleged failure to engage in good faith conciliation creates an implied affirmative defense to the substantive merits of an employment discrimination lawsuit and, if so, what is the proper judicial standard of review for such a defense be. *Id.* at 172. The court noted that although six other circuits agree that there is "an implied affirmative defense of failure to conciliate," there is a circuit split on the level of scrutiny that should be applied in reviewing the alleged conciliation. *Id.* at 182–83. The court noted that 2nd, 5th and 11th Circuits utilize a three-part test, whereas the 4th, 6th and 10th Circuits "inquire into the good faith of the EEOC's efforts." *Id.* at 183. The court was not persuaded to join either side of the circuit split. *Id.* at 182–83. The court noted that the statute itself did not contain an express provision for an affirmative defense nor did it contain a standard of review that could be used by courts when evaluating the defense. *Id.* at 174. The court reasoned that an applied affirmative defense would not "fit well with the broader statutory scheme of Title VII" because it encourages employers to use the conciliatory process to undermine Title VII instead of resolving the dispute. *Id.* at 178–79. Thus, the 7th Circuit held that "alleged failures by the EEOC in the conciliation process simply did not support an affirmative defense for employers charged with employment discrimination." *Id.* at 184.

Religious Freedom – Patient Protection and Affordable Care Act (ACA); *Korte v. Sebelius, 735 F.3d 654 (7th Cir. 2013)*

ISSUE ONE; The 7th Circuit addressed "whether business owners and their closely held corporations may assert a religious objection to the [ACA] contraception mandate." *Id.* at 659. The 7th Circuit noted that the 10th Circuit determined "that two closely held, for-profit businesses and their owners are likely to succeed on a claim for an exemption from the mandate under" the Religious Freedom Restoration Act (RFRA), while the 3rd and 6th Circuits found that although the owners of two closely-held, for-profit businesses are likely to succeed on a RFRA challenge to the mandate, their *corporations*—which arguably do not qualify as "persons" under the RFRA—are not. *Id.* at 665 (emphasis added). The 7th Circuit agreed with the 10th Circuit finding that the RFRA does not actually define "person," and that under the Dictionary Act, Congress's use of the word "person" may generally be understood to include corporations. *Id.* at 674. Further, the court reasoned that there

was "nothing in the Supreme Court's free-exercise jurisprudence" to foreclose a profit-seeking entity from making a RFRA claim. *Id*. at 681. Thus, the 7th Circuit concluded that the plaintiffs—both the business owners and their companies—may challenge the mandate because "corporate plaintiffs are 'persons' under the RFRA and may invoke the statute's protection." *Id.* at 666.

ISSUE TWO; The 7th Circuit addressed "whether forcing . . . [business owners and their closely held corporations] to provide . . . [contraception] coverage substantially burdens their religious exercise rights." *Id.* at 659. The court noted that the 10th Circuit held that religious exercise rights were substantially burdened by the contraception mandate, while the 3rd and 6th Circuits held that business owners and their closely held corporations "do not have viable claims against the contraception mandate because the mandate does not actually require them to do anything." *Id.* at 687. The court agreed with the 10th Circuit's reasoning "that the substantial-burden test under the RFRA focuses primarily on the *intensity of the coercion* applied by the government to act contrary to religious beliefs." *Id.* at 683 (internal quotation marks omitted). Thus, the 7th Circuit held that the contraception mandate imposes a substantial burden on the . . . religious exercise of business owners and their closely held corporations." *Id.* at 683.

FAMILY LAW

Hague Convention – Article 12; *Yaman v. Yaman, 730 F.3d 1 (1st Cir. 2013)*

The 1st Circuit considered "[w]hether equitable tolling applies to the one-year period that triggers the availability of the 'now settled' defense under Article 12" of the Hague Convention (Convention). *Id.* at 4. The court noted that the 2nd Circuit has held that "Article 12's one-year period does not operate as a statute of limitations," while the 9th and 11th Circuits have "considered the one-year period to be a statue of limitations." *Id.* at 13, 15. The court agreed with the 2nd Circuits reasoning that while "the text of Article 12 does not address equitable tolling explicitly . . . it does however, suggest that equitable tolling does not apply." *Id.* at 12. The court reasoned that the 9th and 11th Circuits' view that Article 12 imposes a "statute of limitations . . . because to

[hold] otherwise would be inconsistent with the Convention's emphasis on prompt return . . . [contains] no textual support . . . ." *Id.* at 13. Thus, the 1st Circuit joined the 2nd Circuit in "hold[ing] that the Convention does not allow a federal district court to toll equitably the one-year period that must elapse before a parent can assert the 'now settled' defense." *Id.* at 4.

IMMIGRATION LAW

Statutory Interpretation – Illegal Immigration Reform and Immigrant Responsibility Act; *Tobar-Barrera v. Holder, No. 11-1447, 2013 U.S. App. LEXIS 22040 (4th Cir. Oct. 29, 2013)*

The 4th Circuit addressed whether the term "actions taken" under § 321(c) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) applied retroactively. *Id*. at *8. The court noted that the 3rd and 5th Circuits determined that "Congress intended that section 321(c) apply retroactively to all adjudications occurring on and after the date of enactment," while the 6th Circuit determined that "the term 'action taken' . . . derives from the point at which the removal action begins for purposes of determining whether the pre- or post-IIRIRA definition of aggravated felony applies." *Id.* at *8–9. The 4th Circuit disagreed with the 3rd and 5th Circuits finding that "Congress did not say . . . that the amended definition would apply in all proceedings." *Id.* at *10. Thus, the 4th Circuit agreed with the 6th Circuit in holding that the amended definition was given limited retroactive application and would apply to "actions taken" on and after the date of enactment. *Id.* at *11.

Asylum Petition – Due Process; *Angov v. Holder, 736 F.3d 1263 (9th Cir. 2013)*

The 9th Circuit considered whether an immigration judge violates an asylum petitioner's due process by relying on a State Department letter summarizing the investigation of the asylum petitioner's claim. *Id.* at 1266. The court noted that the 3rd, 4th, 6th, and 8th Circuits have held it is unconstitutional for an immigration judge or the Bureau of Immigration Appeals to rely on a consular letter. *Id.* at 1268. The court noted that the 2nd Circuit has held that federal statutes prohibit reliance on consular letters in immigration appeals. *Id.* The court stated that in immigration cases "[f]raud, forgery and fabrication are so common–and

so difficult to prove–that they are routinely tolerated." *Id.* at 1269. The court posited that the reliance on a consular letter would not violate the asylum petitioner's due process, because "[w]here the petitioner has the burden of proof, there's nothing unfair about having a U.S. government agent check out some of his basic facts and inform the [immigration judge] of possible discrepancies." *Id.* at 1275. The court remarked that the permissive standards of the 2nd, 3rd, 4th, 6th, and 8th Circuits, rather than "allow[ing] more of the world's oppressed" to obtain asylum, do more to "favor[] the canny, the dishonest, the brazen and those who have the means and connections to purchase fraudulent documents." *Id.* at 1281. Thus, the 9th Circuit rejected the reasoning of the 2nd, 3rd, 4th, 6th, and 8th Circuits, and held the immigration judges admission of the State Department Letter did not violate the asylum petitioner's due process. *Id.*

LABOR LAW

Labor Management Relations Act (LMRA) – Union Employee Pay; *Titan Tire Corp. of Freeport v. United Steel, Paper, & Forestry, Rubber Manufacturing, Energy, Allied Industrial & Service Workers International Union, 734 F.3d 708 (7th Cir. 2013)*

The 7th Circuit addressed "whether a company may legally pay the full-time salaries of the President and Benefit Representative of the union representing the company's employees" under LMRA § 302. *Id*. at 710–11. The court noted that the 3rd Circuit determined "that paying the full-time salaries of the union's grievance chairmen did not violate Section 302 of the LMRA because such payments were by reason of the union representatives' former employment," while the 9th Circuit held "that a company could legally pay a union's full-time [union worker representative] where [such representative] was subject to the employer's control and thereby still an employee of the company." *Id*. at 711–12 (internal quotation marks omitted). The court also noted that the 2nd Circuit, in up-holding a no-docking provision, determined that "an employer could not legally pay the full-time salary of a union employee." *Id.* at 712. The 7th Circuit disagreed with the 3rd Circuit finding that "an employee must receive the compensation or other payment *because of* his or her service for the employer" in order for the by reason of "exception" of § 302(c)(1) to encompass the payments. *Id.* at 719–20. Thus, the 7th Circuit held that the plain language of the § 302(c)(1)

exception does not encompass an employer's "[p]aying the full-time union salaries of [the] . . . President and Benefit Representative," since such "payments are by reason of the union's President's and Benefit Representative's service to [its union] members." *Id*. at 712.

SECURITIES LAW

Securities Act Section 13 – Pleading Requirements; *Pension Trust Fund for Operating Engineers v. Mortgage Asset Securities Transactions, Inc., 730 F.3d 263 (3d Cir. 2013)*

The 3rd Circuit considered whether a plaintiff is required "to plead with particularity compliance with the applicable statutes of limitations" under § 13 of the Securities Act of 1933. *Id.* at 270. The court noted that the 1st, 8th, and 10th Circuits have "held that a Securities Act plaintiff must plead compliance with Section 13." *Id.* The court stated that the 7th, 9th, and 11th Circuits "have recently held that a plaintiff need not plead compliance with the statute of limitations in the Securities Exchange Act of 1934 . . . ." *Id.* The court observed that the 7th Circuit rejected the requirement to plead compliance with the statute of limitations "because the statute of limitations isn't even found in the statute that creates the substantive right." *Id.* at 270 (internal quotation marks omitted). The 3rd Circuit agreed with the 7th Circuit and stated "requiring a plaintiff to plead compliance with a statute of limitations would effectively ensure that a timelines issue would always appear on the face of the complaint, thereby shifting the burden to the plaintiff to negate the applicability of the affirmative defense." *Id.* at 271. Thus, the 3rd Circuit rejected the position adopted by the 1st, 8th, and 10th, Circuits and held "that a Securities Act plaintiff need not plead compliance with Section 13." *Id.* at 280.

CRIMINAL MATTERS

CONSTITUTIONAL LAW

Second Amendment – Domestic Violence Convictions; *United States v. Chovan, 735 F.3d 1127 (9th Cir. 2013)*

The 9th Circuit addressed whether 18 U.S.C. § 922(g)(9), was constitutional under the Second Amendment. *Id.* at 1133. The court noted that the 1st, 3rd, 4th, and 7th Circuits applied intermediate scrutiny to uphold § 922(g)(9), while the 11th Circuit upheld § 922(g)(9) as a "presumptively lawful longstanding prohibition" without further constitutional analysis. *Id*. at 1134–36. The 9th Circuit agreed with the 1st, 3rd, 4th, and 7th, in adopting a "the two-step Second Amendment inquiry," which considers "first, whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee," and second, "applying an appropriate form of means-end scrutiny" "if the challenged regulation burdens conduct that was within the scope of the Second Amendment as historically understood . . . ." *Id.* at 1134, 1136–37. The court applied the intermediate scrutiny inquiry and reasoned, that "by prohibiting domestic violence misdemeanants from possessing firearms, § 922(g)(9) burdens rights protected by the Second Amendment. *Id.* at 1137. The court reasoned further that "the government ha[d] met its burden to show that § 922(g)(9)'s prohibition on gun possession by domestic violence misdemeanants is substantially related to the important government interest of preventing domestic gun violence." *Id.* at 1141. Thus, the 9th Circuit joined the 1st, 3rd, 4th, and 7th Circuits in holding that § 922(g)(9) is substantially related to the important government interest of keeping "firearms out of the hands of people whose past violence in domestic relationships makes them untrustworthy custodians of deadly force." *Id.* at 1139–41.

True Threats – Intent Requirement; *United States v. Martinez, 736 F.3d 981 (11th Cir. 2013)*

The 11th Circuit addressed whether *Virginia v. Black*, 538 U.S. 343 (2003) altered the *Watts v. United States*, 394 U.S. 705 (1969) framework of true threats "thereby overruling circuit precedent "defining true threats according to an objective standard." *Id.* at 986. The court noted that the 3rd, 4th, 6th, and 8th Circuits determined that *Black* did

not overrule precedent by introducing a specific-intent-to-threaten requirement into 18 U.S.C. § 875(c), while the 9th Circuit determined that *Black* requires that the speaker subjectively intended the speech to be a threat. *Id.* at 985–86. The 11th Circuit agreed with the 6th Circuit, finding that *Black* did not import a "requirement of subjective intent into all threat-prohibiting statutes," but rather was more concerned with the overbreadth of a specific statute. *Id.* at 986–87. Thus, the 11th Circuit joined the 6th Circuit in holding that "*Black* does not require a subjective-intent analysis for all true threats." *Id.* at 988.

CRIMINAL PROCEDURE

FED. R. CRIM. P. 43 – Playback Recordings; *U.S. v. Monserrate-Valentin, 729 F.3d 31 (1st Cir. 2013)*

The 1st Circuit considered whether it is proper for a district court to "allow[ ] the playback of certain audio recordings to the jury outside of [a criminal defendant's] presence." *Id.* at 36, 41. The court noted that 9th Circuit held that "a defendant has a right to be present when tape-recorded conversations are replayed to the jury during its deliberations." *Id.* at 58. The court also noted that the D.C. Circuit, held that tape replaying "was not a stage of trial implicating the confrontation clause or Rule 43(a)." *Id.* Thus, the 1st Circuit agreed with the D.C. Circuit in holding that a playback of an admitted recording to the jury does not violate rule 43 or the defendant's due process rights as a matter of law. *Id.* at 59.

JUDICIAL PROCEDURE

Savings Clause – Sentencing Claims; *Bryant v. Coleman, 738 F.3d 1253 (11th Cir. 2013)*

The 11th Circuit addressed whether the savings clause in 28 U.S.C. § 2255(e) "reaches not only an actual-innocence claim, but also [a] sentencing claim." *Id*. at 1279. The court observed that the 2nd, 4th, and 5th Circuits "limit the reach of the savings clause to actual-innocence claims," while the 1st, 6th, and 9th Circuits "held that the savings clause is available for actual-innocence claims," but not available for

"sentencing claims alleging that the district court misapplied the guidelines provisions but imposed a sentence within the statutory maximum penalty." *Id*. at 1280. The court reasoned that the 1st, 6th, and 9th Circuits did allow savings clause consideration if the sentence exceeded the maximum statutory penalty. *Id*. The court noted that the 7th Circuit is even more expansive in allowing savings clause claims alleging misapplication of sentencing guidelines within the maximum statutory penalty. *Id*. at 1280–81. The court further found that the 10th Circuit is the most restrictive in not allowing savings clause relief "for both actual-innocence claims and all sentencing claims." *Id*. at 1279. The court agreed with the 1st, 6th and 9th Circuits in finding that the "savings clause applies to sentencing claims because Congress's use of the term 'detention' is highly significant to the scope of the savings clause." *Id*. at 1281. The court also noted that "a sentence exceeding the authorized statutory maximum . . . is more akin to an actual-innocence claim." *Id*. at 1283. Thus, the 11th Circuit concluded that the savings clause can be applied to sentence claims alleging the sentence exceeded the maximum statutory penalty. *Id*. at 1283–84.