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Case Summaries: Fourth Circuit Court of Appeals (August 1, 5, 13, 14, 18, 19, & 27, 2025)

Defendant failed to show that traffic stop was motivated by racial animus; district court's finding of an equal protection violation reversed

U.S. v. Moore, 145 F.4th 572 (Aug. 1, 2025). Local police in Richmond, Virginia, noticed the defendant driving a car with a temporary license tag they suspected of being fake, having encountered two other vehicles with the exact same tag number earlier that day. The officers attempted to stop the car, but the defendant tried to evade the police. He ran through multiple stop signs before hitting a curb and crashing his car. The defendant then fled on foot. The police officers quickly apprehended him and eventually found a firearm in plain view in the defendant's car. The defendant was subsequently indicted in the Eastern District of Virginia for possession of firearm by a felon. He moved to suppress, arguing Fourth Amendment and *Miranda* violations.

During the hearing, the defendant (who was Black) presented evidence that the officers' traffic stops on the day in question were exclusively done in a primarily Black neighborhood, raising an issue as to whether the officers had stopped him based on his race. The district court ordered the parties to further investigate and brief the potential racial discrimination issue. In supplemental briefing, the defendant explicitly argued an equal protection violation. In further proceedings, the defendant presented expert statistical evidence showing that "Black drivers were 5.13 times more likely to be stopped in Richmond than White drivers . . .." *Moore* Slip op. at 4. He also presented evidence on the city's history of racial discrimination. The government presented expert testimony attacking the defense expert's methodology and conclusions.

The district court found that officers had grounds to stop the defendant under the Fourth Amendment and denied the motion in part on those grounds. The district court granted the motion in part on *Miranda* grounds, suppressing some (but not all) of the defendant's statements to the officers. Regarding the equal protection issue, the district court found that, while the traffic stop was supported by probable cause and the defendant did not present evidence of bad faith on the part of the officers, the statistical evidence, coupled with the legacy of racial discrimination in the city, met the requirements for a selective enforcement claim under the Equal Protection Clause of the Fourteenth Amendment. The district court dismissed the indictment on this basis. The government appealed, and a unanimous panel of the Fourth Circuit reversed.

To succeed on a selective enforcement claim, the defendant must show "(1) that the officers' enforcement had a discriminatory *effect* and (2) that it was motivated by a discriminatory *purpose*." *Id*. at 13 (citations omitted) (emphasis in original). A defendant advancing such a claim must show "clear evidence of racially animated selective law enforcement," meeting a "demanding and rigorous [standard]." *Id*. Here, the officers stopped the defendant due to his suspicious tag. The officers had stopped two other drivers earlier for the same fake tag and had only given those drivers warnings. The defendant fled the police instead of stopping and left his car door open, which allowed the officers to

spot the gun inside. There was no evidence in the record that the officers stopped or charged the defendant based on his race—a video of the encounter showed that the officers treated the defendant "with great respect" during the incident. This was fatal to the defendant's selective enforcement claim. In the words of the court:

> Based on these facts of record and the district court's findings, we conclude that there is a complete absence of evidence that the officers acted with discriminatory purpose. And because Moore's equal protection claim requires *clear evidence* that he was stopped because he was Black, it should fail for that reason alone. *Id*. at 16 (emphasis in original).

Regarding the circumstantial evidence that Richmond police generally stopped more Black drivers than others, the court found that the link between being Black and getting stopped for a traffic violation was not strong, noting that "naked statistical disparit[ies]" are not enough to show that the officers involved in the defendant's case were acting with discriminatory intent. *Id*. at 18. The court categorized the evidence comparing the respective rates of traffic stops for Black versus White drivers as "weak," since no evidence was presented about the percentage of drivers in the city who were Black. The defense experts' testimony admittedly did not control for any number of factors like poverty, neighborhood, or outstanding arrest warrants. This greatly reduced the probative value of their testimony. Lastly, the fact that officers had probable cause for the stop also weighed against the defendant here. According to the court:

> When an officer has probable cause to effect a stop, particularly for an unusual and glaring traffic offense such as the one at issue here, we do not think it inevitable or even likely that the officer's first thought will concern the race of the suspect, as opposed to, for instance, the offense transpiring before his eyes. Thus, where, as here, officers have probable cause to stop a defendant, it is 'even less likely' the defendant's selective enforcement claim could succeed. *Id*. at 20 (citation omitted).

As to the defendant's evidence of historical racial discrimination in the city, the defense expert admitted that the data he used to reach that conclusion was only current through 1989. According to the court: "This concession renders [the expert's] testimony virtually irrelevant." *Id*. at 21.

The district court erred by focusing on general concerns about potential racial discrimination in Richmond. The proper focus is whether this defendant was stopped by the specific officers involved based on the defendant's race. The order of the district court was therefore reversed, and the case was remanded with instructions to reinstate the indictment.

Canine sniff of apartment door did not violate the defendant's reasonable expectation of privacy and did not amount to physical trespass of the defendant's curtilage

U.S. v. Johnson, 148 F.4th 287 (Aug. 5, 2025). In this case from the District of Maryland, a local task force was working with the Drug Enforcement Administration to investigate drug trafficking. Through widespread surveillance and wiretap efforts, the task force believed that the defendant was distributing drugs from his apartment in Owning Mills, Maryland. Before obtaining a search warrant for the apartment, task force officers conducted a canine sniff of the defendant's apartment door at 3:00 a.m. The apartment

was on the second floor of the apartment building. The apartment door was set back from the main hallway of the floor by about three and a half feet. Residents, maintenance workers, and others could all move freely past the apartment door. The canine alerted on the door, and police obtained a search warrant for the apartment based on the sniff and other information previously known by the officers. Inside, law enforcement found a heroin-fentanyl mixture, a gun, ammo, cash, and other evidence of drug distribution.

The defendant was indicted on various gun and drug offenses. He moved to suppress, arguing that the canine sniff of his apartment door violated his reasonable expectation of privacy and that the sniff amounted to an unlawful trespass into the curtilage of his residence. The district court rejected these arguments, finding that there was no reasonable expectation of privacy in the open air surrounding the apartment and that the defendant's apartment door did not qualify as curtilage. At trial, the defendant was convicted on all counts and was sentenced to 150 months in prison. He appealed, renewing his arguments for suppression.

In support of his argument that the canine sniff violated his reasonable expectation of privacy, the defendant pointed to *Kyllo v. U.S.*, 533 U.S. 27 (2001). In *Kyllo*, the Court held that the use of a specialized technological device not commonly used by the public (there, a thermal imaging device) to detect the interior of a home was a Fourth Amendment search. Here, the defendant argued that the use of a canine to detect the odors emanating from his apartment was akin to the imaging device in *Kyllo*. The Fourth Circuit squarely rejected this argument. "Because a dog sniff can only reveal the presence of contraband, and there is no reasonable expectation of privacy in contraband, a dog sniff is not a search—period." *Johnson* Slip op. at 9. Although Justice Kagan has opined in a concurrence that a canine sniff at the door of a residence could violate a reasonable expectation of privacy, the majority opinion decided that case on other grounds and did not adopt Justice Kagan's view. *Florida v. Jardines*, 569 U.S. 1, 12-16 (Kagan, J., concurring). Consistent with their decisions in prior unpublished cases, the Fourth Circuit affirmed that the canine sniff did not violate the defendant's reasonable expectation of privacy.

As to the defendant's trespass argument, the *Jardines* majority held that the use of a canine to sniff the front door of a home amounted to a Fourth Amendment search because it amounted to an unlawful intrusion into the protected curtilage of the home, going beyond a normal knock and talk. The four-factor test from *U.S. v. Dunn*, 480 U.S. 294, 301 (1987) is used to determine whether an area can be considered curtilage. Courts must examine "the proximity of the area claimed to be curtilage from the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by." *Id*. The essential question in the curtilage inquiry is whether the area is properly considered part of the residence. Here, the area in front of the apartment's front door could not be considered part of the curtilage.

The exterior of the door was in a common hallway frequented by other residents, guests, and building staff, who all had a right to be present in front of or around the defendant's front door. Relatedly, the defendant had no right to exclude anyone from the area in front of his door. Although the canine sniff was performed in very close proximity to the home, it was still done within a common area of the building. This distinguished the defendant's situation from the facts of *Jardines* and other cases where the claimed curtilage was near a stand-alone residence where the occupants "had a right to exclude others from the area immediately surrounding [the] dwelling." *Johnson* Slip op. at 12.

Many other courts have focused on the "right to exclude others" in the context of curtilage questions, and courts generally agree that common and shared areas of an apartment building will not typically count as curtilage. Nonetheless, the court acknowledged that a different apartment building layout could lead to a different result, depending on the specifics of the case. "We hold only that on the facts as found by the district court and disputed by neither party, the police did not intrude onto Fourth Amendment-protected curtilage when they conducted a dog sniff in the common hallway just outside Johnsons' apartment door." *Id*. at 15.

The judgment of the district court was therefore unanimously affirmed.

Motion to withdraw guilty pleas based on missing pages of the search warrant and alleged attorney error was properly denied; 300-month below-Guidelines sentence was reasonable on the facts

U.S. v. Milam, ___ F.4th ___; 2025 WL 2325632 (Aug. 13, 2025). The defendant was the leader of a White nationalist street gang in Onslow County, North Carolina. Law enforcement was tipped off to watch the defendant's residence and stopped the defendant when he left his home in an uninsured car. A search of the car revealed more than $14,000 in cash, drug distribution paraphernalia, and other contraband. The defendant admitted ownership of the currency. Later the same day, police stopped another car that had recently departed from the defendant's home and discovered methamphetamine inside. Based on these two stops, the police sought and received a search warrant for the defendant's house. Inside the home, police discovered guns, ammo, heroin, meth, scales, and other paraphernalia. The defendant was indicted in the Eastern District of North Carolina for possession of firearm by felon and pleaded guilty to that charge without a plea bargain.

Around five months later, the defendant was indicted for drug distribution offenses. The defendant again pled guilty, this time pursuant to a negotiated agreement. The defendant was detained in the Pamlico County jail while he awaited sentencing on these crimes. In jail, the defendant began receiving drugs in the mail from his associates, who labeled the mail "legal mail" and listed the defendant's attorney's address as the return address. The defendant sold these drugs inside the jail. The attorney who represented the defendant and whose address was used to facilitate the drug distribution scheme within the jail withdrew from her involvement in the case after she inadvertently discovered the defendant's activities, and the defendant was assigned a new attorney. When detention center guards tried to move the defendant to another cell, the defendant attacked and injured them. defendant was subsequently indicted for assaulting and inflicting injury on persons assisting law enforcement in performance of their official duties. When reviewing the discovery, the new attorney noticed that the search warrant for the defendant's home was missing every other page. This was a scanning error on the part of the government, and the government quickly provided the defense attorney a full copy of the warrant. The defendant moved to withdraw both of his earlier guilty pleas to the drug and gun offenses. He argued that his plea was not knowing and voluntary because he did not have a complete copy of the search warrant at the time, and that his counsel at the time was ineffective for failing to notice that error.

The district court conducted a hearing on the motion to withdraw the guilty pleas. The defendant's former attorney testified that she had repeatedly met with the defendant and discussed his case, and that she had never handled a case where the defendant was more adamant about pleading guilty as soon as possible. She cautioned the defendant that he may have potential defenses or suppression issues, but the defendant was not interested in pursuing those avenues. He apparently hoped to avoid life imprisonment and to disincentivize the authorities from further investigating his activities. The district court ultimately

denied the motion. The defendant then entered an open plea to the assault charge. He was sentenced for all three cases at the same time and received a 300-month sentence. He appealed, arguing that the district court erred in denying his motion to withdraw his plea and that his sentence was unreasonable. The Fourth Circuit rejected both arguments.

As to the motion to withdraw the plea, the pages of the search warrant that the defendant had at the time of his first two guilty pleas recounted the first traffic stop where the defendant was found with drug distribution materials and a large amount of money. The missing pages of the search warrant only added to the probable cause needed to justify the search of the defendant's home. Had the defendant been in possession of the complete warrant, it was even more likely that he would have pleaded guilty to the charges. Further, the court credited the testimony of the defendant's former attorney that the defendant did not wish to pursue suppression and wanted to plead guilty as soon as possible. The defendant also received material benefits from the plea bargain in the drug case. "In short, we conclude that [the defendant] has not shown that the government's scanning error was material to his decision to plead guilty." *Milam* Slip op. at 13. Any argument that his former attorney was ineffective for failing to notice the missing pages and that the defendant would have proceeded differently if the full warrant had been provided was speculative.

The district court's sentence was also reasonable. The district court imposed a downward variance and a below-Guidelines sentence, which was appropriate given the facts of the cases.

The district court's judgment was therefore unanimously affirmed in all respects.

No error to qualify expert witness on MS-13 history and practices; testimony of gang expert did not violate the Confrontation Clause; imposition of mandatory life imprisonment on 18-year-old defendant did not violate the Eighth Amendment; knock and talk at back door of residence was not improper where police observed people coming and going from that entrance; defendant's mother voluntarily consented to police entry during the knock and talk; defendant validly waived his *Miranda* protections; any error stemming from general background questions before the *Miranda* warning was harmless

U.S. v. Contreras, ___ F.4th ___; 2025 WL 2348709 (Aug. 14, 2025). In this case from the Eastern District of Virginia, a group of defendants were jointly tried for offenses stemming from two murders. The defendants were members of the La Mara Salvatrucha gang, also known as MS-13, who conspired to kidnap and murder two low ranking members of their clique on two different occasions. One of the victims was 17-years old at the time of his death; the other victim was 14. Following a jury trial, the defendants were each convicted of all counts and sentenced to life imprisonment. On appeal, the defendants individually and collectively raised several arguments, none of which were successful.

At trial, a detective was allowed to testify to the "history, rules, and activities of MS-13" as an expert witness over the defendants' objections. *Contreras* Slip op. at 9. The detective had investigated more than 20 MS-13 killings, several of which occurred in the same geographic area as the present case. He had also received training in the U.S. and in Central America on MS-13 activities. The district court did not err by qualifying the witness as an expert.

The same expert witness's testimony was also challenged as a violation of the defendants' Confrontation Clause rights. The court disagreed. In its words:

> [The expert witness's] testimony was based on his extensive experience, knowledge, and personal observations, much of which was not shaped by his exposure to testimonial hearsay. The fact that [the expert witness's] expertise was in some way shaped by his exposure to testimonial hearsay does not mean that the Confrontation Clause was violated when he presented his independent assessment to the jury. Appellants' counsel had the opportunity to cross-examine him, and did so. *Contreras* Slip op. at 11-12.

One defendant challenged the imposition of multiple mandatory life sentences as an Eighth Amendment violation. The defendant was barely 18-years old at the time of the crimes and argued that a mandatory life sentence was inappropriate in light of his still-developing brain. The court rejected this argument. "Our governing precedents draw a bright-line at age eighteen in the imposition of these serious penalties. . . Accordingly, the district court did not err in imposing mandatory life sentences without the possibility of parole . . ." *Id*. at 30.

Another defendant challenged the district court's denial of his motion to suppress. Once law enforcement had a warrant for the defendant's arrest, a SWAT team raided a house in hopes of finding the defendant, but he was not present in the home. Law enforcement officers then travelled to the defendant's mother's apartment. There, they saw people coming and going from the apartment through the rear door. Law enforcement knocked on the back window of the apartment and informed the mother of their presence and purpose. The defendant's mother allowed the officers to enter her home and eventually told the authorities that the defendant was present in the apartment.

The defendant complained that officers exceeded the scope of a normal knock and talk by approaching the apartment from the back door, rather than the front. Given the circumstances, the district court did not err in upholding the knock and talk. In the words of the court:

> [An FBI agent] observed people enter and leave [the defendant's] mother's home through the back entrance. Testimony from the evidentiary hearing indicated that the back entrance was '[v]ery accessible' from the sidewalk and parking lot. Another witness testified that there were no signs, fencing, walls, or other indicators that the back entrance was not to be used. We discern no clear error with the district court's findings that the officers reasonably approached [the defendant's] mother's back entrance and that no trespass occurred. *Id*. at 34.

Similarly, the district court did not err in finding that the defendant's mother validly consented to the agents' entry into the apartment. The lead agent asked the mother if the law enforcement officers could come inside. The mother invited the officers inside in response. Although the defendant's mother testified at suppression that she felt threatened and pressured by the officers to divulge her son's location, the district court refused to credit that testimony based on its determination that her testimony was "contradictory and inconsistent." *Id*. at 35.

The same defendant also challenged the admission of his post-arrest statements to law enforcement. The court also rejected this argument. The defendant waived his right to remain silent after being read *Miranda* warnings slowly and in Spanish. The defendant was given time to digest the waiver, asked if he understood his rights, and was given the opportunity to ask questions of the officer conducting the interrogation. However, the officer asked the defendant general background questions prior to reading the *Miranda* warning, including where his family came from and how he came to enter the United States. The defendant

claimed that these questions (revealing his status as an undocumented person) were designed to elicit an incriminating response. The court noted that background booking questions generally fall within the routine booking exception to *Miranda*, but acknowledged that this circuit and others have recognized that routine booking questions can violate *Miranda* protections when the questions are designed to obtain incriminating information. *See, e.g. United States v. D'Anjou*, 16 F.3d 604, 608 (4th Cir. 1994). Without deciding whether the preliminary background questions here exceeded what is permitted under the routine booking exception, any error here was harmless on the facts of the case. The defendant's immigration status was not relevant to his charges and his answers to the agent about immigration were not admitted at trial. Thus, the district court's denial of the motion to suppress was affirmed in all respects.

The same defendant successfully challenged his sentence based on differences between the district court's written judgment and its oral pronouncement of the sentence in court. His sentence was therefore vacated, and the matter was remanded for a new sentencing hearing.

Various other challenges to the sufficiency of the evidence, certain evidentiary rulings, the jury instructions, joinder of defendants, and sentencing issues were similarly rejected, and the rulings of the district court were otherwise affirmed in full.

Officers had reasonable suspicion to believe that the defendant was the target of a felony arrest warrant, justifying the stop of his car; defendant validly consented to the search of his bag; pre-*Bruen* circuit precedent holding that the federal ban on possession of firearms by undocumented people did not violate the Second Amendment remains good law

U.S. v. Murillo-Lopez, ___ F.4th ___; 2025 WL 2383494 (Aug. 18, 2025). A state and federal joint task force was searching for an MS-13 gang member who was wanted for armed robbery. The officers had information that the target was present at one of the houses on a certain block. After surveilling the area, the officers saw a man matching the description of the suspect leave one of the homes and drive away in a Ford Explorer with one or two other men. Police trailed the vehicle to a convenience store, where another group of five men met the occupants of the Explorer. When the two cars left the store and went to a gas station, police stopped both cars. The defendant was in the driver's seat of the Explorer and matched the description of the target suspect. A U.S. Marshall discovered a gun in a satchel worn by the defendant, although police quickly determined that another person in the car was the target suspect (not the defendant). The defendant was charged and convicted of being an undocumented person in possession of a firearm under 18 U.S.C. 922(g)(5) in the Eastern District of Virginia. He moved to suppress the gun, arguing that the stop of the car and search of the satchel violated his Fourth Amendment rights. The district court denied the motion. After the deadline for pretrial motions and only a few days before trial, the defendant moved to dismiss the case, arguing that 922(g)(5) violated the Second Amendment. The district court denied that motion as well, finding it "untimely" and "unpersuasive." *Murillo-Lopez* Slip op. at 2. The defendant was convicted at trial. He appealed, renewing his arguments for dismissal and suppression (among other grounds).

As to the traffic stop, police had reasonable suspicion to believe that the defendant was the target suspect for whom officers had an arrest warrant. They had a photo and description of the man to be arrested, information about the city block on which he could be found and knew that he was an MS-13 member. The defendant matched the description of the subject of the arrest warrant, and the photograph that officers had did not clearly rule him out as the potential target. This information excluded from suspicion a wide range of people who did not match the description of the target. The officers' information also

excluded anyone who did not exit the surveilled houses that day. "This case is thus far different from those where officers stopped people based on vague (and often anonymous) physical descriptions in the general area of a suspected crime." *Id*. at 8.

As to the search of the defendant's satchel, the district court determined that the defendant consented to the search, and this was not clear error. The motion to suppress was therefore properly denied.

As to the defendant's Second Amendment challenge, a circuit case decided before *New York Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), held that Section 922(g)(5) was constitutional under the Second Amendment. *U.S. v. Carpio-Leon*, 701 F.3d 974, 979 (4th Cir. 2012). *Carpio-Leon* used historical analysis to reach its decision, as *Bruen* and other cases would later require, and was otherwise not inconsistent with the current Second Amendment jurisprudence. "We thus conclude that *Carpio-Leon's* Second Amendment holding survives *Bruen* and *Rahimi*, and that we as a panel lack the power to depart from it." *Murillo-Lopez* Slip op. at 10.

A challenge to the sufficiency of the evidence was also rejected and the district court was affirmed in all respects.

Judge Benjamin concurred in part and dissented in part. She agreed that 922(g)(5) did not violate the Second Amendment but would have reversed the district court's denial of the suppression motion on grounds that the traffic stop was conducted without reasonable suspicion.

Use of attorney-client privileged material against petitioner at retrial may have violated the petitioner's right to counsel; state appellate court's determination that any error in the use of the material did not prejudice petitioner was objectively unreasonable; denial of habeas petition vacated and remanded

Kaur v. Warden, ___ F.4th ___; 2025 WL 2394086 (Aug. 19, 2025). In this habeas petition from the District of Maryland, the petitioner was tried and convicted in Maryland state court for murder stemming from the killing of her husband's ex-wife. The petitioner sought and received a new trial based on ineffective assistance of counsel. One of her trial attorneys incorrectly informed her that marital privilege prevented her from testifying on her own behalf at the trial, he failed to obtain out-of-state evidence that would have helped the defense, he failed to adequately meet with the petitioner and prepare for trial, and he failed to give notice of expert witnesses to the prosecution (resulting in the trial court disallowing the defense experts from testifying), among other issues.

During the hearing on the motion for a new trial, the prosecution issued subpoenas for the trial attorneys' files relating to the case. The petitioner sought to limit that disclosure to evidence relevant to the ineffective assistance claims only, but the trial court rejected that request and ordered disclosure of the complete files of defense counsel to the state. Within the files there were communications between the petitioner and defense counsel discussing evidence of which the prosecution was unaware. The trial court granted the request for a new trial but denied the petitioner's request for a protective order regarding the use of the defense files by the prosecution at retrial. It found that the petitioner had waived all attorney-client privilege by asserting ineffective assistance of counsel claims. The trial court did prohibit the state from using the petitioner's testimony during the motion for a new trial as evidence in the prosecution's case-in-chief, but reserved ruling on whether the petitioner could be impeached with that testimony, should she testify at the retrial.

During the second trial, the prosecution advanced a new theory of the case, substantially relying on the new evidence it discovered in the files of former defense counsel. The petitioner refused to take the stand in her own defense at the retrial out of concern that her testimony from the motion for a new trial would be used to impeach her. The jury again convicted the petitioner of first-degree murder. On direct appeal, the state appellate court assumed without deciding that the trial court's decision to deny the protective order regarding the use of privileged information was error but found that the petitioner could not show prejudice and affirmed the verdict. The state supreme court denied review, and the petitioner sought federal habeas relief. The district court denied the petition but granted a certificate of appealability on whether the prosecution's use of privileged materials at the second trial violated the petitioner's right to counsel.

A unanimous panel of the Fourth Circuit found that the state appellate court's decision was objectively unreasonable. The state appellate court misread the factual record of the case, concluding that the state's theory of the crime was the same in both trials. The state appellate court also dismissed the significance of the new evidence discovered by the state within the files of defense counsel from the first trial. Further, the state appellate court wrongly concluded that the petitioner failed to make a proffer of what her testimony would be at the retrial and discounted the possibility that she could have been cross-examined on privileged matters, had she taken the stand. "Had [the petitioner] chosen to testify she would have placed herself at trial of being cross-examined with evidence that otherwise would have been protected by attorney-client privilege." *Kaur* Slip op. at 30. This was a compelling showing of prejudice and the state appellate court's conclusion to the contrary was unreasonable. The district court's denial of the habeas petition was therefore vacated. Because the state appellate court assumed without deciding that a right to counsel violation occurred, the court tasked the district court with determining de novo whether a right to counsel violation had in fact occurred.

Restriction on carrying firearms in county parks was not facially unconstitutional under the Second Amendment; plaintiffs lacked standing to challenge permitted-events restriction

Lafave v. County of Fairfax, Virginia, ___ F.4th ___; 2025 WL 2458491 (Aug. 27, 2025). A Fairfax County, Virginia local ordinance prohibits firearms in county parks and in or near any public place where an event that requires a county permit is occurring. There are 420 parks within Fairfax County, most of which are designed to attract families and children; about a quarter of all visitors to county parks are children. Three parks contain publicly operated preschools; another contains a privately operated preschool; another two parks provide county-run daycare facilities. Three plaintiffs sued in the Eastern District of Virginia, alleging that the prohibition on carrying firearms in county parks and at permitted county events violates the Second Amendment. They also argued that the restriction on carrying weapons at county-permitted events was unconstitutionally vague. The district court declined to grant the plaintiffs a preliminary injunction and later granted summary judgment to the County. It found that the ordinance only prohibited firearms in sensitive places, and such limitation was consistent with the Second Amendment. It also rejected the vagueness challenge. On appeal, the Fourth Circuit affirmed as to the parks restriction, but vacated the events portion of the district court holding, finding that the plaintiffs lacked standing to challenge it.

The U.S. Supreme Court has repeatedly recognized that firearms may be restricted in "sensitive places" consistent with the Second Amendment. *See, e.g., Heller v. District of Columbia*, 554 U.S. 570, 624 (2008). In *New York Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 30 (2022), the Court rejected the notion that the

entire island of Manhattan could be considered a sensitive place but reaffirmed the historical practice of restricting firearms in more narrowly defined sensitive places like "legislative assemblies, polling places, and courthouses." *Id.* The plaintiffs argued that the parks restriction was facially unconstitutional, meaning that the ordinance could not constitutionally be applied to any set of circumstances. This was fatal to the plaintiffs' challenge, because the restriction on carrying firearms could at least be constitutionally applied to the county parks containing preschools and preschool programs. While the Supreme Court has never squarely held that guns may be categorically banned at schools, it has repeatedly said so in dicta. "We therefore have no trouble concluding that restriction on carrying firearms at schools, including the four preschools located within the County's parks, are 'presumptively constitutional.'" *Lafave* Slip op. at 11 (citation omitted).

As to the permitted-events restriction, the plaintiffs lacked standing to challenge it. The plaintiffs merely speculated that they could potentially be prosecuted for violating the restriction without identifying a specific event they wished to attend while armed. The events restriction also provides that the county will post notices around permitted events to alert attendees of the ordinance, and the county agreed not to enforce the ordinance if notice was not posted, making it unlikely that the plaintiffs would be prosecuted for inadvertent violations of the rule. "Plaintiffs therefore haven't demonstrated the 'credible threat of prosecution' necessary to bring a pre-enforcement challenge to the events restriction." *Id*. at 16 (citation omitted).

The grant of summary judgment to the County was therefore affirmed as to the parks restriction, and the grant of summary judgment as to the events restriction was vacated and remanded with instructions to dismiss without prejudice.