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Case Summaries: Fourth Circuit Court of Appeals (June 6, 8, 13, 14, 22, 23, and 30, 2023)

No *Bivens* remedy against BOP officials for alleged First Amendment, procedural due process, or race-based discrimination violations

Mays v. Smith, 70 F.4th 198 (June 6, 2023). The plaintiff was a federal inmate in the Eastern District of North Carolina and worked as a lead mechanic through an employment program at the prison. He complained to the regional director of the Bureau of Prisons ("BOP") that the manager in the facility engaged in racial discrimination. He later complained that prison officials retaliated against him for his complaint by giving him poor work performance reviews. The BOP regional director instructed the plaintiff to direct his complaints to prison administrators, which he did. Prison officials met with the plaintiff and attempted informal resolution of the dispute. He was later fired from his job and placed into administrative detention for over two months, allegedly as improper retaliation for the complaints. Prison officials ultimately did not proceed with any disciplinary action but did transfer the plaintiff to a new BOP facility. He filed fresh administrative complaints relating to a lack of due process for his placement in detention, his firing, and his transfer. He later filed in federal court for money damages, alleging a First Amendment retaliation claim, a procedural due process claim, and an equal protection claim. The district court granted the prison officials' motion to dismiss, finding that the claims were not cognizable under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

The plaintiff abandoned his First Amendment claim on appeal, given *Egbert v. Boule*, 142 S. Ct. 1793, 1807 (2022) (holding that *Bivens* does not apply to First Amendment retaliation claims). As to the other claims, both represented new *Bivens* context. "The Supreme Court has never authorized a *Bivens* claim for procedural due process or race-based discrimination." *Mays* Slip op. at 9. The claims would also involve "a new category of defendants." *Id*. Multiple special factors also counselled against extending *Bivens* to this context, including separation of powers concerns, the existence of other administrative alternatives for inmates to seek relief, and the potential for systemic burdens on prison officials were such claims to be authorized. *Id*. at 13. Concluding, the court observed: "Because this matter does not fit within the precise confines of the Supreme Court's *Bivens* cases, we must adhere to the Supreme Court's direction and affirm the district court's grant of Defendant's motion to dismiss." *Id*. at 16.

Prosecution of defendant residing outside of the country for production of child pornography was a permissible domestic application of law to extraterritorial conduct when the victim lived in the U.S.; strict liability and mandatory sentencing provisions of the production of child pornography statute do not violate due process

U.S. v. Skinner, 70 F.4th 219 (June 8, 2023). The defendant was 24 years old when he began an online relationship with a 13-year-old girl. He was in New Zealand, and she was in the Eastern District of Virginia. The girl initially told the defendant that she was 16. The relationship quickly became sexual, with the pair having online sex over video chats. Unbeknownst to the child, the defendant took pictures and videos of the chats showing her engaged in sexual conduct. She eventually cut off all contact with him. The defendant then arranged to travel to the child's home in Virginia, armed with duct tape, pepper spray, and a knife. When the child's mother refused him entry, the defendant attempted to break into the home. The child's mother shot him in the neck, leading to his apprehension. Analysis of the defendant's cell phones showed they had been used to access email accounts containing pornographic images of the child. More images were found on his computer in New Zealand, and the defendant was charged with multiple counts of producing child pornography, as well as multiple kidnapping offenses. He moved to dismiss pretrial, arguing that the court lacked subject

matter jurisdiction over the child pornography counts, since his conduct in support of those charges occurred while he was in New Zealand. He also argued that the child pornography offense violated due process insofar as it imposes strict liability and does not permit a mistake-of-age defense, particularly given the harsh penalties associated with the charge. In support, he pointed to the fact that he never met the child face-to-face. The district court denied the motion and the defendant entered a conditional guilty plea to one count of production of child pornography. He was sentenced to 252 months and appealed.

As to the defendant's jurisdictional argument, the court acknowledged the presumption against the extraterritorial application of federal law. The language of the production of child pornography offense did not overcome that presumption. Nonetheless, the prosecution was a "permissible domestic application" of the law, given the statute's focus on the producing and transmitting of images of sexual activity by a minor. *Skinner* Slip op. at 9. The images at issue here were produced in both places, Virginia and New Zealand, and were transmitted from and through the U.S. "So ample conduct relevant to the statute's focus. . . occurred in Virginia," where the minor resided. *Id*. at 13. The district court properly denied the jurisdictional argument.

The due process challenge also failed. Existing circuit precedent holds that the defendant need not know the child's age to be convicted of producing child pornography and that mistake of age is not a defense. *U.S. v. Malloy*, 568 F.3d 166, 171 (4th Cir. 2009). The statute's mandatory minimum 15-year sentence is consistent with those rules, and the fact that the defendant never personally met the child did not impact that sentence. Throughout their online interactions, the child repeatedly emphasized her status as a minor. She indicated she was underage by U.S. standards, referred to the defendant as a "pedo," and told him that he would be thrown in jail in the U.S. for having a sexual relationship with her. The two also specifically discussed a Virginia law that prohibited sexual interaction between them. According to the court:

> Yet despite these many indications that his conduct was illegal, Skinner persuaded [the child] to perform sexually explicit acts during video calls, which themselves provided clear opportunities for him to recognize that [the child] was underage. On these facts, Skinner can hardly claim that he lacked the ability to ascertain [the child's] age simply because their encounters took place on a computer screen rather than in person. *Skinner* Slip op. at 18-19.

A challenge to a sentencing enhancement was likewise rejected, and the district court's judgment was affirmed per curiam.

More serious offense charged in superseding indictment was based on new information and was not a vindictive response to the defendant's successful motion to suppress; no speedy trial or pre-accusation delay violations where defendant was promptly tried on a superseding indictment based on new evidence; fingerprints obtained for administrative and not investigatory purposes were not subject to suppression

U.S. v. Villa, 70 F.4th 704 (June 13, 2023). The defendant was suspected of involvement in drug trafficking. Police performed a traffic stop in the Western District of North Carolina and the defendant ultimately consented to a search of the car, leading to the discovery of cash and a marijuana vape pen. He admitted to being in the country illegally and to having firearms in his home. He consented to a search of his house, where officers found more cash, guns, ammo, and drug paraphernalia. He was arrested on state charges and a federal immigration detainer was filed. He was eventually charged with possession of a firearm by an illegal immigrant and illegal entry. No criminal history was found under his given name and birthdate. Probation later discovered that he had been charged with illegal entry before and that he had two prior felony drug convictions. The defendant was then indicted for the firearms offense only. The defendant moved to suppress. His motion was granted as to the evidence obtained from his home but denied as to the evidence seized from his car.

Prior to obtaining a ruling on the suppression motion, the defendant sought and received several continuances, and consented to two more sought by the Government. During this time, the prosecutor learned that the defendant had

been removed from the country before under an alias. Within days of receiving the documentation in support of this discovery, the Government obtained a new indictment for illegal reentry after conviction of an aggravated felony, an offense carrying double the statutory maximum penalty of the initial charge (possession of firearm by an illegal immigrant). The defendant moved to dismiss, claiming that the more severe offense was unconstitutionally vindictive as an improper response to the partial success of his suppression motion. He also claimed a Speedy Trial violation, a pre-accusation delay due process violation, and a Fourth Amendment violation regarding his fingerprints and the government background check records. The motions were all denied. The defendant was convicted, sentenced to 42 months, and appealed.

The district court correctly denied the prosecutorial vindictiveness motion. The defendant could not show actual vindictiveness and the circumstances here did not raise a presumption of vindictiveness. The Government learned more of the defendant's past while preparing for trial on the initial charges and quickly brought the more severe offense after determining that probable cause existed to believe the defendant had committed the different crime. While this occurred around the same time that the motion to suppress was granted, the new charge was based on separate conduct from the first charge, which in turn was based on evidence not available to the prosecution sooner. According to the court:

> …prosecutors (like defense attorneys) will uncover additional information during their investigation and trial preparation or may come to realize that information they already possess has a broader significance than previously understood. To find vindictiveness in these kinds of routine pretrial developments would be an ill fit with both Supreme Court precedent and our caselaw concerning vindictive-prosecution claims. *Villa* Slip op. at 11-12 (cleaned up).

The court rejected the Speedy Trial claim as well. The defendant's speedy trial rights regarding the second indictment began running when that indictment issued and did not "relate back to Villa's initial arrest for different crimes." *Id*. at 14. A different result could arise where the defendant could show that the superseding indictment was obtained to circumvent speedy trial rights, but that was not the case here. The defendant was tried within six months of the issuance of the second indictment, and this failed to meet the threshold for triggering a speedy trial analysis. Similarly, there was no improper pre-accusation delay relating to the second indictment. The Government acted in a timely manner to obtain that indictment once it discovered probable cause for that offense (within four days of obtaining the immigration files). Assuming arguendo that there was an improper delay, the defendant could not show substantial actual prejudice resulting from it, a requirement for pre-accusation delay claims.

As to the defendant's motion to suppress his immigration records and fingerprints, the court again affirmed. Under circuit precedent, even when fingerprints are obtained by law enforcement as the result of an illegal arrest, they are not subject to suppression unless police exploited the illegal arrest to obtain the prints. *U.S. v. Oscar-Torres*, 507 F.3d 224, 227 (4th Cir. 2007). *Oscar-Torres* distinguishes between fingerprints obtained as an administrative function during the normal arrest process and fingerprints obtained by an illegal arrest *designed to* obtain the suspect's prints. *Id*. "[W]hen fingerprints are administratively taken for the purpose of simply ascertaining the identity or immigration status of the person arrested, they are sufficiently unrelated to the unlawful arrest that they are not suppressible." *Oscar-Torres* at 19-20. Here, the defendant's initial arrest was supported by probable cause and was not illegal. Even if it had been, there was no indication that the Government exploited any illegality by obtaining his prints or files.

The district court's judgment was therefore unanimously affirmed.

Determination that guilty plea was knowing and voluntary was not unreasonable or contrary to clearly established federal law

Currica v. Miller, 70 F.4th 718 (June 14, 2023). In this habeas case from the District of Maryland, the defendant complained that his guilty plea to carjacking and second-degree murder was not knowingly and voluntarily entered. Defense counsel relayed the terms of the plea offer in writing to the defendant, includingthat the client's overall

sentencing exposure was up to 90 years and that the sentencing guidelines for the offenses called for a sentence of 30-51 years. The defendant accepted the plea. During the plea colloquy, the judge explained the max possible sentences and that the guidelines were discretionary. In the words of the plea judge: "Once again, I can impose whatever sentence, including jail time and a period of suspended jail time, if I wish to do so. You understand that?" *Currica* Slip op. at 4. After the plea was accepted, the State provided a presentence report indicating a guidelines range was 45-70 years (instead of the 30-51 years range advised by defense counsel). The trial court ultimately imposed an 85-year sentence.

The defendant testified in state post-conviction proceedings that he believed the plea judge's reference to the guidelines being discretionary was a "mere formality" and that no one told him prior to the entry of the plea that he could be sentenced outside of the guidelines range. The state post-conviction court found that the defendant was not credible and that the trial court adequately explained the discretionary nature of the sentencing guidelines range. The state appellate division declined to review the matter, and the defendant filed for habeas relief, largely repeating his arguments.

The district court denied relief and the Fourth Circuit affirmed. "While the plea court (and Currica's plea counsel) may have muddied the waters, the substantial deference we owe state courts under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") forecloses relief." *Id.* at 8. Because the trial court correctly advised the defendant of the potential maximum sentences for his crimes, the state post-conviction court's findings were not objectively unreasonable. Nor was the state post-conviction court's decision contrary to, or an unreasonable application of, clearly established federal law, and the district court correctly denied relief. In the words of the unanimous court: "At bottom, Currica's petition relies on an unannounced rule that would require plea courts to probe the minds of defendants in search of myths to bust." *Id.* at 14.

Officer's determination that sidewalk protestors near the state legislature presented a safety risk and could be asked to move a few feet back was reasonable; denial of qualified immunity reversed

Hulbert v. Pope, 70 F.4th 726 (June 14, 2023). In this case from the District of Maryland, the plaintiffs were a pair of brothers who regularly conducted protests in favor of gun rights near the state legislature. One evening, the brothers and six others were picketing on a section of sidewalk near the building. Capitol police were called and determined that the protest may need to be moved in the interest of public safety. Only one person, the first brother, remained on scene when an officer arrived, and he informed the officer that the other protestors had left to eat. The officer suspected that the others may return and that they would block the sidewalk or otherwise create a traffic or safety risk. The officer asked the first brother to move a few feet back away from the sidewalk and onto the grass. The officer then left. He came back an hour later to find that the demonstrators were back and still protesting on the sidewalk. He asked the group to back up onto the grass. Some initially did, but the second brother announced that they would not move. The officer again told the group to leave the sidewalk and threatened arrest for noncompliance. The demonstrators did not move, so the officer sought backup and arrested one of the brothers. Several people, including the other brother, filmed the arrest. They were again ordered to leave the sidewalk. All did except for the other brother, and he too was arrested. Both men were charged with disobeying a lawful order under state law. The next day, additional charges were brought for refusing to leave public grounds and hindering passage in a public place. All charges were dismissed three days later. The brothers sued the officer and the chief of the Capitol Police, alleging First and Fourth Amendment violations (among other claims). The officers moved for summary judgment based on qualified immunity. The district court granted the motion in part, dismissing all claims except for four constitutional claims against the arresting officer. The officer appealed on the question of qualified immunity, and a unanimous panel of the Fourth Circuit reversed and remanded.

The officer could have reasonably believed his commands for the protestors to move away from the sidewalk to be legal as a time, place, and manner restriction. "Any unlawfulness of Pope's conduct with respect to the picketers' First Amendment right to demonstrate was not clearly established at the time, or beyond debate." *Hulbert* Slip op. at 10 (cleaned up). He was therefore entitled to qualified immunity on that claim. Similarly, the officer was entitled to qualified immunity on the First Amendment right-to-film claim. Asking one of the brothers to move off the sidewalk while he was

filming and arresting him when he failed to comply did not clearly violate any right to film, as it too was a reasonable time, place, or manner limitation on the plaintiff's ability to film. "The right to film police, to the extent one existed, was not the right to a close-up." *Id*. at 18 (cleaned up). Given that the contours of any right to film have not been clearly defined, the officer reasonably could have thought his conduct was permissible. For similar reasons, the officer was entitled to qualified immunity on the First Amendment retaliation claim and the Fourth Amendment illegal seizure claim.

Concluding, the court observed that time, place, and manner restrictions on protected speech—particularly protests on or near the grounds of a state legislature—remain significant considerations and are crucial for striking the appropriate balance between free speech rights on one hand, and public safety and legislative functioning on the other. "Capitol police are asked to preserve a delicate balance between protest and order. Neither that balance nor the officers who maintain it should ever be taken for granted." *Id*. at 22.

The case was therefore reversed and remanded for entry of judgment in the officer's favor.

Stop was supported by reasonable suspicion of drug trafficking; canine sniff was not an improper extension

U.S. v. Howell, 71 F.4th 195 (June 22, 2023). Local police in the Eastern District of Virginia received a tip from a known and reliable informant that a drug trafficking suspect would be coming to the area in a "dark-colored or black rental SUV" and would be staying overnight at a local hotel to engage in drug trafficking. The tip indicated that the vehicle would have out-of-state tags from a northern state and that the suspect would be with a Black woman. Law enforcement knew the hotel to be a place where drug dealers commonly met. Officers began watching the hotel the next morning, but the suspect vehicle never arrived. Officers then went inside the hotel and checked the guest logs for the suspect's name. They did not see that name but noticed other names on the list (including the defendant) who officers suspected of involvement in drug trafficking. In 2014, a controlled buy was conducted from a business in the area, and officers believed then that the defendant was a "director" of the drugs business there. No prosecution resulted from the 2014 incident, but the defendant had multiple drug arrests in other states, and he remained a person of interest to local law enforcement as someone likely involved in drug trafficking. Officers found an unserved arrest warrant for the defendant from Georgia, but the offense was not one for which the defendant could be extradited. Later the same day, a black SUV with Georgia plates arrived at the hotel with the defendant driving and a Black female accompanying him. The defendant went inside the hotel for around ten minutes, came back out carrying a bag, and left. Officers followed the truck and noticed the defendant driving "in an extremely cautious manner." *Howell* Slip op. at 4. A traffic officer, acting at the behest of drug investigators, stopped the defendant on the pretext of a license plate issue. A drug dog quickly arrived and alerted. Officers then searched the vehicle, finding two kilos of methamphetamine and other incriminating evidence. Officers then obtained a search warrant for an apartment linked to the defendant in the area, where they found more evidence relating to drug trafficking. The defendant was charged with various federal drug offenses and moved to suppress. He argued that officers lacked reasonable suspicion to stop his truck and that the stop was improperly extended. The district court denied the motion and the defendant was convicted at trial of all offenses. He received a 360-month sentence and appealed.

The court found that law enforcement had reasonable suspicion that the defendant was involved in drug trafficking and that the stop was supported by that basis. While the defendant's truck did not exactly match the informant's information, the description of the vehicle was close "in substantial degree" and officers' presence at the hotel led to the discovery of the defendant's name in the hotel guest log. Based on that, along with officers' existing suspicion of the defendant as a likely dealer and their knowledge of the hotel as a place where drug dealers frequent, it was reasonable to suspect that the defendant was involved in drug trafficking. Further adding to reasonable suspicion was the defendant's "overly cautious driving." *Id*. at 10. According to the court:

> When all of these factors come together at a specific time—as they did here—they support a reasonable suspicion of ongoing criminal activity, justifying a brief stop to allay that suspicion. In this case, of course, the investigatory stop did not allay that suspicion but confirmed it. *Id.* at 11.

The court also disagreed that the stop was improperly extended. The canine was on scene within five minutes of the stop; the sniff occurred five or six minutes after that; and the dog alerted in less than a minute. In sum, officers developed probable cause to search the truck within 11 minutes of the initial stop. Because the defendant was being stopped on suspicion of drug trafficking (as opposed to a more mundane traffic stop), officers were entitled to investigate that offense. The 11-minute window of time it took to accomplish that investigation here was reasonable. "[T]he mission of the stop was to investigate potential drug-trafficking activity, and there is no evidence in the record to suggest that officers failed to 'diligently pursue'. . . [that mission]." *Id*. at 13.

The district court was therefore unanimously affirmed.

Community caretaking justified the warrantless search and impoundment of seemingly abandoned van with firearms, ammo, and explosive material in plain view

U.S. v. Treisman, 71 F. 4th 225 (June 23, 2023). A Kannapolis bank manager arrived at work one morning and noticed a van parked in the parking lot which had been in the same spot since the end of the previous day. She notified law enforcement, and a local officer arrived on the scene. The van had an expired out-of-state plate, but the officer was unable to determine ownership based on the tag. While the vehicle identification number was obscured from sight, the officer could see a rifle, a handgun container, a box of ammo, and Tannerite (a legal, exploding shooting target product that can also be used to build bombs) in plain view. He also saw a pill bottle and suitcase inside. An additional officer arrived who noticed these items, as well as that the side door of the van was partly open. The officers conferred with a supervisor, raising public safety concerns about the unsecured weapons in the car. The supervisor agreed with that assessment. He also opined that someone could be inside the van in need of assistance, given the out-of-state tags and the suitcase. It was hot outside, and the officers became concerned that the heat could present a danger to anyone inside the van. The supervisor pointed to G.S. 15A-285, which permits police to search based on medical emergency. The officers decided to search. They found additional guns inside. The bank manager asked the police to tow the van. While policy typically requires a zoning official to handle tow requests from private property owners, officers believed the zoning official would defer to the police in light of the guns. Officers had the van towed upon belief that the circumstances met the policy requirements. The police conducted an inventory search prior to the tow and found a large amount of cash in a bank bag, multiple electronic devices, and a drone, along with books on "survival, bombmaking, improvised weapons, and Islam." *Treisman* Slip op. at 6. At this point, officers stopped the inventory search and applied for a search warrant. Once the van was towed, the defendant showed up at the bank and inquired about the vehicle. Officers arrived and detained the man. The FBI later became involved. They obtained a search warrant for the defendant's phone based on the contents of the van. There, agents discovered child pornography (though no evidence of terrorism or the like). The defendant was charged with child pornography offenses in the Western District of North Carolina and moved to suppress. He argued that it was not reasonable to think a medical emergency was underway, that officers acted outside of the tow policy and beyond their authority in towing the van, and that the inventory search was improper.

The district court denied the motion, finding the initial search was justified as community caretaking, that it was reasonable to suspect a potential medical emergency, and that the towing and impoundment of the van was reasonable. It also found that the inventory search was undertaken for valid inventory purposes. The defendant then pled guilty, reserving the right to appeal the denial of the suppression motion, and received a 156-month sentence.

As to the initial search, the court observed: "…Police officers may conduct warrantless searches of vehicles when called on to discharge noncriminal community caretaking functions, such as responding to a disabled vehicle or investigating accidents." *Id.* at 12 (cleaned up). The district court found that officers reasonably believed a medical emergency was underway and, alternatively, that officers believed they needed to enter the van as a matter of ensuring public safety, given the presence of unsecured guns, ammo, and explosives inside the van. As to the towing and inventory search of the van, it was reasonable for officers to take custody of it under these circumstances in the interest of public safety. Nothing in the police department's policies on towing and impoundment prohibited the officers' actions here, and the

district court did not err in determining that the officers complied with the applicable policies. The district court correctly found that the inventory search was meant to secure the weapons and ammo and was not a pretext for a criminal investigation—evidenced in part by the fact that officers stopped the inventory search and obtained a search warrant when they began to suspect a crime. Concluding, the court observed:

> …[W]arrantless searches of vehicles carried out as a part of law enforcement's community caretaking functions do not violate the Fourth Amendment if reasonable under the circumstances. We find no error in the district court's determination that the officers searched Treisman's van in exercising those community caretaking functions and not as a pretext for a criminal investigatory search. *Id*. at 20.

The district court's denial of the motion to suppress was therefore unanimously affirmed.

Trial court's use of defendant's name during in-court identification was not structural or plain error; 55-year sentence for producing and possessing child pornography was not an Eighth Amendment violation

U.S. v. Ross, ___ F.4th ___; 2023 WL 4279316 (June 30, 2023). The defendant's ex-girlfriend contacted local law enforcement and notified them that the defendant was involved in child abuse. She showed the officers text messages from the defendant in support. Officers obtained a search warrant for the phone number from the texts, verifying the defendant's connection to the phone. There was already a warrant out for the defendant's arrest on unrelated charges, and police performed a traffic stop on that basis. The defendant consented to a search of another personal phone during the stop and officers discovered apparent child pornography. Forensic examination of the phone showed additional child pornography. Multiple email accounts connected to the defendant were also discovered, and search warrants were obtained for those as well. Further examination of the phone seized during the traffic stop showed images of child pornography screen-shotted from the communications platform What's App. Examination of the What's App application showed the defendant communicating with a woman in the Philippines. The defendant repeatedly encouraged the woman to sexually abuse a very young child on video and compensated her financially in return. The defendant would engage in sex with his adult female partners during these video chats. The defendant was charged with multiple counts of possessing and producing child pornography in the Western District of North Carolina.

Four former romantic partners of the defendant (including the ex who initially reported the abuse) testified at trial. Each recounted seeing the defendant discuss child sexual abuse or actively engage in it. The defendant had apparently grown a beard since his relationship with one of the women and was wearing a face mask during trial. That witness did not immediately recognize him. The trial court stated, "Mr. Ross, please remove your mask." *Ross* Slip op. at 6. The woman then identified him. He was convicted at trial of all counts and sentenced to 55 years. The defendant appealed, complaining that the trial court's involvement in the in-court identification amounted either structural error or plain error and that his sentence was unconstitutionally excessive under the Eighth Amendment. The Fourth Circuit unanimously rejected the arguments.

Structural errors are a narrow class of trial errors that render the proceedings fundamentally flawed and that are not subject to harmless error review. The U.S. Supreme Court has only identified six structural errors, none of which deal with identification evidence. This precluded the defendant's structural error argument. "The district court's decision to refer to Ross by name might well have been ill-advised, but it is not enough to call into question the court's objectivity." *Id*. at 11 (cleaned up). The plain error argument fared no better. The in-court identification here was reliable under the facts of the case, and appellate counsel conceded as much at oral argument. The identification was not overly suggestive, did not violate due process principles, and therefore did not constitute error, much less plain error.

As to the Eighth Amendment challenge, only once has the U.S. Supreme Court found a sentence unconstitutionally disproportionate. *Solem v. Helm*, 463 U.S. 277 (1983) (life sentence for a habitual offender convicted of passing a worthless check for $100 was unconstitutional). In all other cases, the Court has rejected arguments that life or functionally life sentences were grossly disproportionate. The Fourth Circuit declined to find an Eighth Amendment violation here. In its words:

A functional life sentence is a severe punishment by any measure. That said, the Supreme Court has instructed that rational legislative judgments to impose harsh sentences for serious offenses are generally entitled to deference in the proportionality analysis. Ross's sentence reflects Congress's legislative judgment—to which we defer—that child pornography is harmful to the physiological, emotional, and mental health of children, and that preventing the sexual exploitation of this uniquely vulnerable group constitutes a government objective of surpassing importance. *Ross*. Slip. op. at 19-20 (cleaned up).