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Section 1983 Update: What You Need to Know in 2024

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I. INTRODUCTION

In *Monell v. New York City Department of Social Services*, 436 U.S. 658, 689 (1978), the Supreme Court of the United States held that "municipalities and other local governmental bodies are 'persons' within the meaning of § 1983." The Court further held that § 1983 "cannot be easily read to impose liability vicariously on governing bodies solely on the basis of the existence of an employer-employee relationship with a tortfeasor" and has "consistently refused to hold municipalities liable under a theory of *respondeat superior*." *Id*. Instead, the Supreme Court has "required a plaintiff seeking to impose liability on a municipality under §1983 to identify a municipal 'policy' or 'custom' that caused the plaintiff's injury." *Board of the County Commissioners of Bryan County, Okla. v. Brown,* 520 U.S. 397, 404 (1997).

Subsequent Supreme Court cases have added a "practice" component to the elements of a *Monell* claim. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390 (1989). Therefore, municipal liability under *Monell* requires a showing that a policy, practice, or custom of the municipality caused Plaintiff's alleged injury. *Board of the County Commissioners,* 520 U.S. at 403. However, "it is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged." *Id*. In other words, "a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights." *Id*.

II. *MONELL* IN THEORY: WHAT IS IT?

Pursuant to 42 U.S.C. § 1983:

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The landmark case of *Monell v. New York City Department of Social Services*, held that "municipalities and other local governmental bodies are 'persons' within the meaning of § 1983."

Monell, 436 U.S. at 689. Thus, *Monell* provided an avenue for Plaintiffs seeking redress against their local governments for the deprivation of any Constitutional right. Under *Monell*, a local government can be held liable for its or its employee's violation of an individual's Constitutional rights under the color of law.

To impose Section 1983 liability on a municipality, a plaintiff must show: (1) that her constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation. *City of Canton*, 489 U.S. at 388. "A municipality can be liable under §1983 only where its policies are the 'moving force [behind] the constitutional violation'." *Id*. at 388-89.

Under Monell, the word "policy" refers to the decision of a "duly constituted legislative body or those officials whose acts may fairly be said to be those of the municipality". *Monell*, 436 U.S. at 694. "[T]he word 'policy' generally implies a course of action consciously chosen from among various alternatives." *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 822 (1985).

In *McMillian v. Monroe County, Alabama*, 520 U.S. 781 (1997), the Supreme Court of the United States held that, "A court's task is to 'identify those officials or governmental bodies who speak with final policymaking authority for the local government actor concerning the action alleged to have caused the particular constitutional or statutory violation at issue." *McMillian*, 520 U.S. at 785. "The challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in that area of the City's business." *Id*.

Furthermore, "[i]t is not enough for a § 1983 plaintiff merely to *identify* conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its *deliberate* conduct, the municipality was the "moving force" behind the injury alleged." *Board of the County Commissioners*, 520 U.S. at 404 (emphasis in original). "A showing of simple or even heightened negligence will not suffice." *Id*. at 407.

III. *MONELL* IN PRACTICE

A. Qualified Immunity

Qualified immunity "is both a defense to liability and a limited entitlement not to stand trial or face the other burdens of litigation."

Ashcroft v. Iqbal, 556 U.S. 662, 672 (2009). "Questions of qualified immunity must be resolved 'at the earliest possible stage in litigation.'" *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). "When properly applied, qualified immunity protects all but the plainly incompetent or those who knowingly violate the law." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011).

B. Cases Across the Circuits: Notable Decisions

1. The "Legal-Mail Rule"

Christmas v. Nabors, 76 F.4th 1320 (11th Cir. 2023)
Excerpts from the case

When Plaintiff-Appellant Rickey Christmas was a pretrial detainee at that Jail, the Jail required him to scan his legal mail into a computer that contained a memory chip. Though Christmas does not know whether anyone other than he read his mail, he worried that the Jail could and may have, since it had access to the computer into which he had scanned his mail. Christmas sued Polk County and two employees who worked at the Jail. He alleged, among other things, that the Jail and its employees interfered with his right to communicate freely and confidentially with his attorneys by forcing him to scan his legal mail into a computer with a memory chip. In particular, he alleged that Lieutenant Nabors violated his First and Sixth Amendment rights by opening and scanning his mail into a computer. As a result, Christmas complained, Lieutenant Nabors and other employees at the Jail were able to read the contents of Christmas's mail when Christmas wasn't around.

"A simple rule has governed prison mail procedures in our Circuit for nearly 50 years: a prison official may not open an inmate's properly marked legal mail outside of his presence." *Mitchell v. Peoples*, 10 F.4th 1226, 1228 (11th Cir. 2021). 3 If a prison official does so, that official violates the inmate's First Amendment "right to free speech." *Id*. at 1230 (citing *Al-Amin v. Smith*, 511 F.3d 1317, 1334 (11th Cir. 2008)). Of course, the legal-mail rule anticipates that a prison official may open a prisoner's mail in the prisoner's presence—but only for the purpose of permitting that official to check the mail for contraband, not for allowing the official to read the mail. *Id*.

Here, Christmas alleged not only that Lieutenant Nabors and Sergeant Hill failed to stop their subordinates from acting unlawfully, but also that Nabors and Hill directed their subordinates to act unlawfully. In fact, Christmas alleged that Lieutenant Nabors

and Sergeant Hill continued to direct their subordinates to enforce the Jail's mail-scanning policy even after Christmas filed grievances and complained about the policy's illegality. As a result, Christmas has stated a First Amendment legal-mail claim against Nabors and Hill in their personal capacities. *See Mitchell*, 10 F.4th at 1231 (holding that a prisoner stated a claim under the legal mail rule against a prison's mailroom supervisor when the latter "apparently knew about the illegal conduct after [the prisoner] filed grievances, but still failed to stop that" conduct from continuing).

2. The "Special Relationship" Exception

Excerpts from the case

Thomas v. City of Americus, 2023 WL 2485464 (11th Cir. 2023) *unreported*

In February 2019, Dietri Nakee Reliford was murdered by her ex-boyfriend, Kenneth Lee Harvey, in front of her children. The plaintiffs, acting on behalf of Reliford's estate and individually as her children, filed an action against the City of Americus, Georgia, alleging that before Reliford's murder, she and her family "made numerous attempts and requests of the Americus Police Department to protect" her from Harvey.

Municipal governments may "be held liable for substantive due process violations for their failure to protect victims from harm caused by third parties where the state had a 'special relationship' with the victim." *White v. Lemacks*, 183 F.3d 1253, 1256 (11th Cir. 1999). The plaintiffs identify no such relationship between Reliford and the city. Instead, they imply that the officers' mere presence in Reliford's home when Harvey was there, coupled with knowledge that he intended her harm, gave rise to the sort of relationship that would trigger liability. Again, this is insufficient.

Outside the custodial context, "conduct by a government actor will rise to the level of a substantive due process violation only if the act can be characterized as arbitrary or conscience shocking in a constitutional sense." *Waddell v. Hendry Cnty. Sheriff's Off.*, 329 F.3d 1300, 1305 (11th Cir. 2003). "Acts intended to injure in some way unjustifiable by any government interest are most likely to rise to the conscience-shocking level." *Id*. (quotations omitted). The plaintiffs do not allege that the city intended to harm Reliford. Instead, they allege only that the officers acted with "deliberate indifference" toward her. But we've never held that "deliberate indifference is a sufficient level of culpability to state a claim of violation of substantive due process rights in a non-custodial context." *Waldron v. Spicher*, 954 F.3d 1297, 1309 (11th Cir. 2020).

Because this argument fails as well, the district court properly dismissed the plaintiffs' claim under section 1983.

3. An Officer's Freedom of Speech

Ashford v. University of Michigan, 89 F.4th 960 (6th Cir. 2024)
Excerpts from the case

In late 2019, William Ashford ("Ashford"), a police officer employed by the University of Michigan-Dearborn ("UM-D"), spoke with a reporter at The Detroit Times about his concerns that the UM-D police department was mishandling a student's allegation that one of her professors had sexually assaulted her. After his supervisors at the University, including then-Vice Chancellor Jeffrey Evans ("Evans") and UM-D Police Chief Gary Gorski ("Gorski"), learned that he had taken his thoughts about the case to the media, they launched an inquiry into his actions in November 2019. At the conclusion of their investigation, UM-D suspended Ashford for ten days without pay. Ashford sued UM-D, the University of Michigan, Evans (in his individual and official capacities) and Gorski (in his individual and official capacities), bringing a 42 U.S.C. § 1983 First Amendment claim 1 that he had been unconstitutionally retaliated against for engaging in protected speech. Ashford sought to have the suspension removed from his employment record, as well as monetary damages.

The Defendants filed a motion for summary judgment on all of Ashford's claims. R. 22 (Def. Mot. Summ. J.) (Page ID #131). Relevant on appeal, the Defendants argued: (1) that Ashford's claims against the University, and the university officers in their official capacities, are barred by sovereign immunity; and (2) that Gorski and Evans have qualified immunity for the claims against them in their individual capacities. *Id.* at 12, 14 (Page ID #155, 157). The University, Gorski, and Evans now bring an interlocutory appeal of the district court's denial of sovereign and qualified immunity.

To determine whether a public employee like Ashford has engaged in private protected speech, we engage in a three-part inquiry: (1) was the relevant speech on a matter of public concern; (2) was the employee's speech made pursuant to their official duties; and (3) did the employee's interest in speaking, on balance, outweigh the government's interest in promoting an efficient workplace and providing public services ("*Pickering*" balancing). *DeCrane v. Eckart*, 12 F.4th 586, 594 (6th Cir. 2021). Applying these three factors to Ashford's speech to *The Detroit News*, we conclude that

our precedent clearly establishes that speech like Ashford's constitutes protected speech.

On the record before us, Ashford engaged in protected private speech when he agreed to speak with a reporter about the UM-D Police Department's handling of a sexual assault. He has made out a sufficient showing that he was retaliated against for doing so, which violated a clearly established right under our precedent.

4. *Monell* Liability for Wrongful Conviction

Chambers v. Sanders, 63 F.4th 1092 (6th Cir. 2023)
Excerpts from the case

Danny Lamont Chambers and Dontell Rayvon-Eddie Smith allege that Detective Ronald Sanders and his employer, the City of Detroit, violated their Fourteenth Amendment right to familial integrity by procuring the wrongful conviction and incarceration of their father, Danny Burton.

In 1987, a Michigan state court jury convicted Danny Burton of first-degree murder and a firearm charge. He was sentenced to life in prison without the possibility of parole. In December 2019, Burton was released from prison and his conviction was vacated on the prosecutor's motion, after key witnesses recanted and details of witness manipulation and intimidation were revealed. Detective Ronald Sanders's investigative tactics allegedly included threats and physical violence against witnesses, including minors, to secure their testimony against Burton. Plaintiffs allege that, as a result, Burton spent thirty-two years in prison.

His sons, Danny Lamont Chambers and Dontell Rayvon-Eddie Smith, allege that the wrongful conviction and incarceration of their father throughout their childhood and into adulthood violated their constitutional right to family integrity. The district court granted Sanders' motion to dismiss the § 1983 claim against him, finding no cognizable due process right for "interference with family integrity" when a party is indirectly harmed by a constitutional tort against a family member. The district court further granted the city's motion to dismiss Chambers and Smith's *Monell* claim because it relied on the same theory of due-process parental interference that the court dismissed against Sanders.

We may assume for purposes of this case that plaintiffs have identified a liberty interest protected by the Fourteenth Amendment. Even so, it would not be violated here because plaintiffs have not

alleged that any state actor intruded on that right with the culpability required to state a due process violation. *Daniels*, 474 U.S. at 331, 106 S.Ct. 662; *Lewis*, 523 U.S. at 848, 118 S.Ct. 1708. This conclusion is supported by the majority of our sibling circuits and our own precedent. The Supreme Court has explained that "[h]istorically, the guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986) (collecting cases). The "Due Process Clause is violated by executive action only when it can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense." *Lewis*, 523 U.S. at 847, 118 S.Ct. 1708 (internal quotation marks and citation omitted).

Analogous cases from this circuit confirm that no constitutional violation of the right to family association exists without a state action directed at the family relationship. In § 1983 cases where family members of those wrongfully killed by police claim infringement of the right to familial association, we have rejected such claims as collateral. As we explained in *Claybrook v. Birchwell*, 199 F.3d 350 (6th Cir. 2000):

> In the Sixth Circuit, a section 1983 cause of action is entirely personal to the direct victim of the alleged constitutional tort. Accordingly, only the purported victim, or his estate's representative(s), may prosecute a section 1983 claim; conversely, no cause of action may lie under section 1983 for emotional distress, loss of a loved one, or any other consequent collateral injuries suffered personally by the victim's family members.

Our precedent and that of most other circuits lead us to conclude that substantive due process claims based on the right to family integrity require that the state official act with a culpable state of mind directed at the family relationship. The due process right of familial association does not protect against all forms of state action that impact parent-child relationships.

5. An Employee As An Expert Witness

Ciarametaro v. City of Gloucester, 87 F.4th 83 (1st Cir. 2023)
Excerpts from the case

Thomas Ciarametaro, the Harbormaster of the City of Gloucester, Massachusetts, claims that several Gloucester city officials (the "City Officials") violated his First Amendment rights because they retaliated against him for his expert testimony in a maritime tort dispute between several Gloucester fishermen and the United States Coast Guard. The district court granted summary judgment to the City Officials. Because we agree that the City Officials are entitled to qualified immunity, we affirm.

In January 2018, counsel for two Gloucester fishermen (and the estate of a third fisherman) approached Ciarametaro in his capacity as the owner of Five Fathoms Consulting. The fishermen were suing a Gloucester fishing captain andthe United States Coast Guard, alleging that both parties negligently sank the fishermen's stranded vessel during a botched rescue attempt.

Ciarametaro filed his expert report in June 2019. The report criticized the actions of both the rescuing fishing captain and the Coast Guard. Ciarametaro wrote that "everything about [the defendant-fishing captain's tow of the plaintiffs' vessel] was improper from the start." He also described the Coast Guard response as plagued by a "significant breakdown in communication ... up and down the chain of command."

Our own review also reveals no case clearly establishing that Ciarametaro's speech was categorically entitled to First Amendment protection. *See Elder v. Holloway*, 510 U.S. 510, 512, 114 S.Ct. 1019, 127 L.Ed.2d 344 (1994) ("[A]ppellate review of qualified immunity dispositions is to be conducted in light of all relevant precedents ...."). In fact, several appellate cases have held that a public employee's judicial testimony was not protected under *Pickering* when the testimony criticized third parties with whom the public employer wished to maintain a strong working relationship. *See, e.g., Worrell v. Henry*, 219 F.3d 1197, 1208 (10th Cir. 2000). To be clear, we need not (and therefore do not) decide whether the value of Ciarametaro's speech outweighed the City Officials' interests under Pickering balancing. We hold only that the City Officials could have reasonably concluded that it did not.

6. The COVID-19 Response Case

Ablordeppey v. Walsh, 85 F.4th 27 (1st Cir. 2023)
Excerpts from the case

In early 2020, the unprecedented SARS-CoV-2 virus ("COVID-19" or "virus") caused global disruption. Soldiers' Home, a state-funded healthcare facility that houses our nation's veterans in Holyoke, Massachusetts, faced the rapidly evolving nature of the widespread outbreak. Kwesi Ablordeppey ("Appellant") was a certified nursing assistant at Soldiers' Home at the time. Despite not contracting the virus, Appellant sued Soldiers' Home's supervisors – Bennett Walsh, the Superintendent; David Clinton, the Medical Director; Vanessa Lauziere, the Chief Nursing Officer; Vanessa Gosselin, the Infectious Disease Nurse; and Celeste Surreira, the Assistant Director of Nursing (collectively, "Appellees") -- alleging violations of his constitutional substantive due process rights to a safe work environment, to be free from a state-created danger, and to bodily integrity.

On March 6, 2020, the Massachusetts Department of Veterans' Affairs advised Bennett Walsh ("Walsh"), Soldiers' Home's Superintendent, to limit staff movement, assess veterans' symptoms daily, develop an isolation plan for suspected cases, and encourage social distancing. This directive was ignored. Walsh, over a loudspeaker, thanked staff who "showed up to work every day" and threatened that those who called in sick "[would] be penalized and [that] there [would] be disciplinary action." On March 17, 2020, Walsh informed staff via email that the executive team was keeping a "watchful eye" on PPE supplies. As a result, Lauziere and Gosselin informed staff that Soldiers' Home would not be distributing any more PPE because they were "running out," even though Soldiers' Home had a surplus of PPE at the time.

That same day, Appellant, a certified nursing assistant, reported to work. Because a nurse informed him that some veterans were experiencing COVID−19 symptoms, Appellant wore PPE to care for those patients. Gosselin reprimanded Appellant for his failure to maintain appropriate social distancing from the sick veterans. Three days later, Lauziere issued Appellant a formal written reprimand for caring for incontinent patients while wearing PPE and requested to meet with him the following Monday, March 23, 2020.

In order to establish a state-created danger claim, the plaintiff must show: "(1) that a state actor or state actors affirmatively acted

to create or enhance a danger to the plaintiff; (2) that the act or acts created or enhanced a danger specific to the plaintiff and distinct from the danger to the general public; (3) that the act or acts caused the plaintiff's harm; and (4) that the state actor's conduct, when viewed in total, shocks the conscience."

Appellant "has pointed to no precedent, and we have found none, establishing that the [Appellees' COVID-19 response] violates clearly established law." *Est. of Rahim by Rahim*, 51 F.4th at 418. Absent clearly established law, Appellees could not know beforehand that their alleged mismanagement of the COVID-19 outbreak at Soldiers' Home would violate Appellant's rights. While hindsight is 20/20, "[u]nder these circumstances, an objectively reasonable [government official] would not have understood the challenged conduct to violate [Appellant's rights]." *Id*. at 417. "It would be inhumane not to feel a sense of outrage over [the situation], or a sense of deep sympathy for [those who passed away]. But our question is one of federal law, not one of sympathy." *Rivera*, 402 F.3d at 30. As such, Appellees are entitled to qualified immunity.

C. The Circuit Courts and Beyond

Each of the aforementioned cases present issues that may be faced by municipal lawyers at some point in their career. Given the intricacies and complexities of *Monell* cases, remaining up-to-date on Circuit-specific and National cases is of utmost importance. Any of these cases could be next in line for a decision by the Supreme Court of the United States.

IV. CONCLUSION

The seminal case of *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978), birthed and shaped what is now known as the *"Monell"* theory of municipal liability. Since its inception, the theory has evolved into a catchphrase and catalyst for plaintiffs seeking to hold municipalities liable for the deprivation of a Constitutional right. This presentation serves as an overview of what municipal lawyers and lawyers who represent municipalities in 2024 and beyond should know and expect when faced with a *Monell* liability case.