

Section 1983: Understanding the Basics

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Enacted by Congress in 1871 to ensure that, in the aftermath of the Civil War, state and local laws were not being used to obstruct the rights of newly-enfranchised Americans, "Section 1983" has increasingly become a principal mechanism of recourse against perceived wrongs committed by local government actors.

The Statute – 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 proceeding for redress ...."

1. Jurisdiction and Venue

Both federal and state courts have jurisdiction over claims under 42 U.S.C. § 1983.

In federal court, jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1343(3) (federal laws providing for equal rights). State courts have concurrent jurisdiction with the federal courts to adjudicate Section 1983 claims. *See Howlett by and Through Howlett v. Rose*, 496 U.S. 356, 358 (1990); *Maine v. Thiboutot*, 448 U.S. 1, 6 (1980); *Redevelopment Agency of City of San Bernardino v. Alvarez*, 288 F. Supp. 2d 1112, 1115 (C.D. Cal. 2003); *Koziara v. City of Casselberry*, 239 F. Supp. 2d 1245, 1257 (M.D. Fla. 2002). Indeed, states cannot divest their state courts of general jurisdiction from hearing claims brought under 42 U.S.C § 1983. *See Haywood v. Drown*, 556 U.S. 729, 736–737 (2009).

If the plaintiff files suit in federal court, the district court has supplemental jurisdiction to address any additional state law claims related to the federal claims. *See Voyticky v. Village of Timberlake, Ohio*, 412 F.3d 669 (6th Cir. 2005). If the plaintiff files the § 1983 action in state court, the defendant may remove to federal district court. *See Dorsey v. City of Detroit*, 858 F.2d 338, 340–341 (6th Cir. 1988).

With regard to the issue of venue, a civil action may be brought in "(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred ...;" or (3) if neither of the above apply, "any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C.A. § 1391(b). " 'For the purposes of venue, state officers 'reside' in the district where they perform their official duties.' " *Rush v. Fischer*, 923 F. Supp.2d 545, 556 (S.D.N.Y. 2013) (citation omitted). "[A] plaintiff's choice of forum 'should not be disturbed unless the balance of the factors tips heavily in favor of a transfer.' " *Id.* at 556–57.

2. Who can be a claimant?

A cause of action is available under § 1983 to "any citizen of the United States or other person within the jurisdiction thereof" who has suffered the deprivation of a federally protected right. Thus, in addition to citizens, aliens within the jurisdiction of the United States also may assert claims under § 1983. *See Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero*, 426 U.S. 572 (1976) (aliens could challenge under § 1983 statute prohibiting aliens from engaging in the private practice of engineering); *Bolanos v. Kiley*, 509 F.2d 1023, 1025–1026 (2d Cir. 1975) (due process and equal protection rights apply even to aliens who are present illegally in the United States); *Simon v. Lovgren*, 368 F. Supp. 265 (D.V.I. 1973), *overruled on other grounds by Mathurin v. Government of the Virgin Islands*, 398 F. Supp. 110 (D.V.I. 1975).

Corporations also may sue under § 1983 to vindicate their federal rights. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993); *Levy v. Pappas*, 510 F.3d 755, 762 (7th Cir. 2007), *abrogated by Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010); *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295, 1305 (11th Cir. 2006); *Discovery House, Inc. v. Consolidated City of Indianapolis*, 319 F.3d 277, 282 (7th Cir. 2003), *cert. denied*, 540 U.S. 879, 124 S. Ct. 301, 157 L. Ed. 2d 144 (2003); *Florida Right to Life, Inc. v. Lamar*, 273 F.3d 1318, 1323 (11th Cir. 2001).

A § 1983 claim is personal to the person(s) injured by the deprivation of a federally-protected right; other persons may bring suit in a representative capacity of the injured individual (e.g., a parent as a representative of a minor child, the estate of a person who is deceased), but not to vindicate the rights of others in their own name. *See Jamieson By and Through Jamieson v. Shaw*, 772 F.2d 1205 (5th Cir. 1985) (automobile passenger who was injured when car collided with roadblock was entitled to assert that she was "seized" with excessive force in violation of her Fourth Amendment rights, but she had no standing to challenge arrest of car's driver); *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir. 1987) (while representative of decedent's estate could assert Fourth Amendment claim on decedent's behalf for use of excessive force, decedent's surviving children could not maintain personal actions under Fourth Amendment since they

were not directly subjected to use of force), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999); *Moats v. Village of Schaumburg*, 562 F. Supp. 624 (N.D. Ill. 1983) (union president could not maintain excessive force action based on arrest of two members of his union).

Although the sweep of § 1983 is broad, courts have found that the following entities may not assert claims under § 1983: the United States (*see United States v. City of Jackson, Miss.*, 318 F.2d 1 (5th Cir. 1963), *rehearing denied,* 320 F.2d 870 (5th Cir.1963); *United States v. Biloxi Municipal School Dist.*, 219 F. Supp. 691 (S.D. Miss. 1963), *aff'd*, 326 F.2d 237 (5th Cir. 1964)); an Indian tribe (*Inyo County, Cal. v. Paiute- Shoshone Indians of the Bishop Community of the Bishop Colony*, 538 U.S. 701, 708 (2003)); and a state agency (*Indiana Protection & Advocacy Servs. v. Indiana Family & Soc. Servs. Admin.*, 573 F.3d 548, 551 (7th Cir. 2009), *reh'g on other grounds*, 603 F.3d 365 (7th Cir. 2010)).

3. Who is a "person" subject to liability?
Any individual person may be sued under Section 1983. A "person" subject to liability under Section 1983 also includes a municipality or other local governing body, such as a county government. *See Monell v. Department of Soc. Servs.*, 436 U.S. 658, 690 (1978); *Hampton Co. Nat. Sur., LLC v. Tunica County, Miss.*, 543 F.3d 221, 224 (5th Cir. 2008). The District of Columbia, as a municipal corporation, is a "person" against whom a Section 1983 may be asserted. *Jones v. Horne*, 634 F.3d 588, 600 (D.C. Cir. 2011).

The United States and federal agencies are not "persons" that can be sued under Section 1983. *See Fountain v. United States*, 605 F. Supp. 2d 608, 611 (D. Del. 2009).

Under the Eleventh Amendment to the United States Constitution, the State and its departments and subdivisions are not "persons" subject to suit under Section 1983. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70 (1989); *Lapides v. Board of Regents of Univ. Sys. Of Ga.*, 535 U.S. 613, 617 (2002). A Territory of the United States also may not be sued under Section 1983. *Ngiraingas v. Sanchez*, 495 U.S. 182 (1990).

However, individual State and Territory employees can be sued under Section 1983 in their personal capacity. *Hafer v. Melo*, 502 U.S. 21 (1991); *Damron v. North Dakota Comm'r of Corrections*, 299 F. Supp. 2d 970, 979-80 (D. N.D. 2004), *aff'd* 127 Fed. Appx. 909 (8th Cir. 2005).

4. Personal Capacity Liability
A plaintiff who sues a "person" in their personal or individual capacity seeks to impose liability against the individual. There are two elements to such a claim: (1) the defendant deprived the plaintiff of a right "secured by an appropriate federal law" and (2) the defendant was acting "'under color of'" state law when depriving the plaintiff of this right. Section 1983 Actions—Scope of Action: Elements of Claim, Remedies, 13D Fed. Prac. & Proc. Juris. § 3573.2 (3d ed.).

Violation of Federal Law. Section 1983 provides a remedy for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws ...." Section 1983 itself "is not a source of substantive rights; it provides only a remedy." Section 1983 Actions—Scope of Action: Elements of Claim, Remedies, 13D Fed. Prac. & Proc. Juris. § 3573.2 (3d ed.). Purely state-created rights cannot be vindicated under Section 1983. *See J.H. ex rel. Higgin v. Johnson*, 346 F.3d 788, 793 (7th Cir. 2003), *cert. denied*, 541 U.S. 975 (2004); *Jones v. City & County of Denver*, 854 F.2d 1206, 1209 (10th Cir. 1988) ("Section 1983 does not ... provide a basis for redressing violations of *state* law, but only for those violations of *federal* law done under color of state law.") The source of the right to be vindicated must be found in federal law.

"Not all federal laws—indeed, not even all constitutional provisions—confer rights that can be enforced through § 1983." Section 1983 Actions—Scope of Action: Elements of Claim, Remedies, 13D Fed. Prac. & Proc. Juris. § 3573.2 (3d ed.). *See id.* for a discussion of federal laws that do and do not confer rights enforceable under Section 1983.

Under Color of State Law. When depriving plaintiff of a federally-protected right, the defendant must have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia ...."—in short, under color of state law. This element is not usually an issue where the actor is a state or local officer in exercise of their authority or apparent exercise of their authority. *See* Section 1983 Actions—Scope of Action: Elements of Claim, Remedies, 13D Fed. Prac. Proc. Juris. § 3573.2 (3d ed.); *Stack v. Perez,* 248 F. Supp. 2d 106 (D. Conn. 2003). However, the Court has clearly stated "an action can be under color of state law even though it has not been authorized – and indeed is prohibited – by the state." Section 1983 Actions—Scope of Action: Elements of Claim, Remedies, 13D Fed. Prac. & Proc. Juris. § 3573.2 (3d ed.). *See Monroe v. Pape*, 365 U.S. 167 (1961), *overruled on other grounds by Monell v. Dep't of Soc. Servs. Of City of New York*, 436 U.S. 658 (1978).

But note, a private party may also be sued in circumstances in which the action is "under color of state law" though not "state action." Section 1983 Actions—Scope of Action: Elements of Claim, Remedies, 13D Fed. Prac. & Proc. Juris. § 3573.2 (3d ed.); *see Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922 (1982); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144 (1970). See Section 1983 Actions—Scope of Action: Elements of Claim, Remedies, 13D Fed. Prac. & Proc. Juris. § 3573.2 (3d ed.) for a discussion of private party liability.

5. Supervisory Capacity Liability
A supervisory liability claim seeks to hold a supervisor of a constitutional tortfeasor liable not because the supervisor directly violated the plaintiff's constitutional rights but because the supervisor (through action or inaction) facilitated, encouraged, condoned or acquiesced in the subordinate's constitutional violation. The claim traditionally has consisted of the following elements: "(1) a subordinate's direct responsibility for a constitutional tort; (2) 'causation'; and (3) the supervisor's possession of a culpable mens rea." William N. Evans, *Supervisory Liability in the Fallout of Iqbal*, 65 SYRACUSE L. REV. 103, 114 & n.25 (2014). "Causation" was met by showing the supervisor's "personal involvement" in the plaintiff's injury—an "affirmative link" between the supervisor's action or inaction and the constitutional violation. *Id.* at 116. Causation often came in the form of a supervisor's failure adequately to train, supervise or discipline the subordinate. The mens rea element, regardless of the constitutional right allegedly violated by the subordinate, was deliberate indifference, *i.e.*, the supervisor had actual or constructive knowledge that the subordinate posed

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an unreasonable risk of constitutional harm to others and consciously disregarded such risk. *Id.* at 117.

In 2009, the United States Supreme Court issued *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), where the Court cast doubt on the continuing viability and contours of a supervisory liability claim. In *Iqbal*, a prisoner sued federal officials under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), alleging, *inter alia*, that FBI Director Robert Mueller and Attorney General John Ashcroft "condoned and agreed" to their subordinates' discriminatory actions. The Supreme Court dismissed the claims against Mueller and Ashcroft, suggesting that "supervisory liability"—liability based on one's seniority over a torfeasor—does not exist. According to the Court, § 1983 liability can only be predicated on one's own misconduct, committed with the requisite mens rea. The Court stated:

> [*Iqbal*] argues that, under a theory of "supervisory liability," [Mueller and Ashcroft] can be liable for "knowledge and acquiescence in their subordinates' use of discriminatory criteria to make classification decisions among detainees."
>
> That is to say, respondent believes a supervisor's mere knowledge of his subordinate's discriminatory purpose amounts to the supervisor's violating the Constitution. We reject this argument. Respondent's conception of "supervisory liability" is inconsistent with his accurate stipulation that petitioners may not be held accountable for the misdeeds of their agents. In a § 1983 suit or a *Bivens* action—where masters do not answer for the torts of their servants—the term "supervisory liability" is a misnomer. Absent vicarious liability, each Government official, his or her title notwithstanding, is only liable for his or her own misconduct. In the context of determining whether there is a violation of clearly established right to overcome qualified immunity, purpose rather than knowledge is required to impose *Bivens* liability on the subordinate for unconstitutional discrimination; the same holds true for an official charged with violations arising from his or her superintendent responsibilities.

Iqbal, 556 U.S. at 677 (citation omitted).

After *Iqbal*, the circuit courts went their separate ways, all but one continuing to recognize supervisory liability, but under varying standards. See William N. Evans, *Supervisory Liability in the Fallout of Iqbal*, 65 Syracuse L. Rev. 103 (2014), for a thorough analysis of pre- and post-*Iqbal* supervisory liability case law.

6. Official Capacity and Municipal Liability

Just as an individual can be liable under § 1983, so too may a municipality. But the municipality is not liable merely because it employs a tortfeasor; there is no vicarious or *respondeat superior* liability under § 1983. Like an individual, the municipality can be liable only for its own misconduct. *See Monell v. Department of Social Services*, 436 U.S. 658, 691 (1978).

To establish § 1983 liability against a municipality, the plaintiff must prove that a municipal "policy or custom" is the "moving force" of a constitutional violation. *Monell*, 436 U.S. at 694. For direct municipal liability, the municipal policy or custom may take the form of a "policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers" or for "constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels." *Id.* at 690-91. Where an employee acts inconsistently with municipal policy, municipal liability should not be imposed because municipal policy is not the "moving force" of the constitutional violation. *See Monell*, 436 U.S. at 694.

A municipality may also be held liable under § 1983 for a failure to train (like pre-*Iqbal* supervisory liability that is indirect). *See City of Canton v. Harris*, 489 U.S. 378, 390 (1989). Municipal liability based on a failure to train theory, however, is actionable only when the failure "amounts to deliberate indifference to the rights of persons with whom the [employees] come into contact. *Id.* at 388. Deliberate indifference in this context means that the "need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *City of Canton*, 489 U.S. at 390.

A § 1983 claim asserted against an individual in his or her "official capacity" is synonymous with a § 1983 claim against the municipality that employs the individual. "[O]fficial-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent...." *Monell*, 436 U.S. at 690 n.55. If a plaintiff sues both an individual (i.e., the police chief) in his or her official capacity as well as the municipality itself, dismissal of the police chief may be obtained because the claims are duplicative. *See, e.g., Doe v. Douglas Cty. Sch. Dist.*, 775 F. Supp. 1414, 1416 (D. Colo. 1991) ("Where a suit contains both entity and official capacity claims, the only defendant is the entity.").

Leading cases on the subject of municipal liability include the following:

- *Monell v. Department of Social Services*, 436 U.S. 658, 691 (1978);
- *City of Canton v. Harris*, 489 U.S. 378, 390 (1989);
- *Board of Cty. Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397 (1997); and
- *Connick v. Thompson*, 563 U.S. 51 (2011).

Conclusion. This brief summary is by no means a complete study of the many intricacies of Section 1983. Hopefully it is a useful introduction to a fundamental feature of the legal landscape that most municipal lawyers, whether newly-minted or seasoned, will repeatedly encounter during their careers.



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