# Defending Local Governments: Tackling Section 1983 Claims with Employment Law Challenges



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# Strategies for Litigating and Trying Public Safety Cases

During the first part of this two-part session, we will delve into the general defenses available for liability claims under 42 U.S.C. § 1983. You will gain knowledge about landmark cases that have shaped litigation surrounding § 1983. Additionally, you will learn practical considerations for litigating, trying, and ultimately winning public safety cases.

# Pre-Litigation: What to Think About

- ❑ Reviewing Department Policies
- ❑ Insurance v. Plan of Defense
- ❑ Internal Affairs Discipline Review?
- ❑ Ante Litem Review
- ❑ When to settle?
- ❑ Golden Rule!

# You’ve Been Served!

Complaint has been filed, now what?



# Questions to Ask

- Does the plaintiff(s) have standing?
- Can/should you remove?
  - 28 U.S.C. Sec. 1446; F.R.C.P. 81
- Is it filed by an inmate (pre-trial detainee)?



# Questions to Ask (Cont.)

- What immunity defenses are at play?
- Can you file a motion to dismiss or a motion for judgment on the pleadings?
- Are there body worn camera videos available?



# Inmate Litigation: Prisoner Litigation Reform Act

- Applies to Pre-Trial Detainees
  - *Kingsley v. Hendrickson*, 576 U.S. 389, 402 (2015)
- Initial Screening by Judge
- Exhaustion of All Administrative Remedies?
  - 42 USC 1997e(a)
  - *Bryant v. Rich*, 530 F.3d 1368, 1372-1378 (11th Cir. 2008)
  - *Sims v. Sec'y, Fla. Dep't of Corr.*, 75 F.4th 1224, 1229 (11th Cir. 2023)
- Three Strike Rule
  - 28 USC § 1915(g)
  - *Daker v. Comm'r, Georgia Dep't of Corr.*, 820 F.3d 1278, 1284-86 (11th Cir. 2016)
- O track discovery

# Filing your Motion to Dismiss or Motion for Judgment on the Pleadings



- Tone and Tenor
- Building your strongest legal case
- Raise all immunities arguments
  - *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)
  - *Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019)
- Include alternative arguments
- Think about what this will look like on appeal



# Using Body Worn Camera Videos on Initial Motions



- How to Get In: Incorporation by Reference Doctrine
  - Plaintiff refers to document in complaint
  - Documents are central to Plaintiff's claims
  - Documents are undisputed (not factually, but are "authentic")
  - *Baker v. City of Madison, Alabama*, 67 F.4th 1268, 1276-1278 (11th Cir. 2023)
- Standard of Review
  - "[W]hile reviewing the district court's ruling on the defendants' motions to dismiss, we have credited, as we must, Baker's factual allegations where no obviously contradictory video evidence is available. But the footage plainly contradicts Baker's alleged version of events, leading us to view most of the facts as depicted by the video." *Baker,* 67 F.4th at 1278.
- Our strategy: attach BWC to answer, then file motion for judgment on the pleadings
  - *Cantrell v. McClure*, 805 F. App'x 817, 820 (11th Cir. 2020)
  - *Johnson v. City of Atlanta*, No. 1:21-cv-01977, 2022 WL 836300, *1-2 (N.D. Ga. Mar. 21, 2022)
  - *Howard v. DeKalb County*, 1:22-cv-01550-scj, 2023 WL 2782315 (N.D. Ga. Mar. 1, 2023)

# Immunities

| | **Individuals – Official Capacity** | **Individuals – Individual Capacity** | **Local Government Entity** | **Arms of the State – i.e. Sheriff's Office** |
|---|---|---|---|---|
| Federal Claims | Duplicative of Entity Claims – so use same "Monell" argument | Qualified Immunity | "Monell" | * *Possible* Eleventh Amendment Immunity |
| State Claims | * Sovereign Immunity | Official Immunity | * Sovereign Immunity | * Sovereign Immunity |

* Jurisdictional

# Qualified Immunity on an MTD

"Qualified immunity attaches when an official's conduct does not violate ***clearly established*** statutory or constitutional rights of which a reasonable person would have known."

*Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5–6 (2021)

## Clearly Established Rules Per SCOTUS and the Eleventh Circuit

- Prong can be considered first, before deciding if there is a constitutional violation
- Show a right was clearly established in 3 ways:
  - citing case law with *indistinguishable facts* that clearly establishes the constitutional right;
  - pointing to a broad statement of principle within the Constitution, statute, or case law that clearly establishes the constitutional right; or
  - alleging conduct *so egregious* that a constitutional right was clearly violated, even in the total absence of case law."
- The right's contours must be "sufficiently definite that *any reasonable official* in the defendant's shoes would have understood that he was violating it."
- Although "this Court's case law does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question *beyond debate*."
- This inquiry "must be undertaken in light of the *specific context of the case*, not as a broad general proposition."

*Rivas-Villegas v. Cortesluna*, 595 U.S. 1 (2021)
*City of Tahlequah, Oklahoma v. Bond*, 595 U.S. 9 (2021)
*City of Escondido v. Emmons*, ––– U.S. ––––, 139 S. Ct. 500 (2019)
*Myrick v. Fulton Cnty., Georgia*, 69 F.4th 1277 (11th Cir. 2023)

# Common Public Safety Claims and Qualified Immunity Standards

## Excessive Force

"Whether an officer has used excessive force depends on "the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

- *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6, 142 S. Ct. 4, 8, 211 L. Ed. 2d 164 (2021)
- *Brooks v. Miller*, 78 F.4th 1267, 1282–83 (11th Cir. 2023)

## Unlawful Arrests/Seizures/Searches

Arguable probable cause exists where " 'a reasonable officer, looking at the entire legal landscape at the time of the arrests, could have interpreted the law as permitting the arrests.'

- *Edger v. McCabe*, No. 21-14396, 2023 WL 6937465, at *4 (11th Cir. Oct. 20, 2023)
- *Garcia v. Casey*, 75 F.4th 1176, 1187 (11th Cir. 2023)

## Arrested Wrong Person

"Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments, and protects all but the plainly incompetent or those who knowingly violate the law."

- *Williams v. City of Montgomery*, 839 F. App'x 356, 360 (11th Cir. 2020)

## Deliberate Indifference

"Appellants must show (1) that May had an objectively serious medical need; (2) that the Officers acted with subjective deliberate indifference to that need; and (3) that the Officers' deliberate indifference caused May injury."

- *Myrick v. Fulton Cnty., Georgia*, 69 F.4th 1277, 1304–05 (11th Cir. 2023)

# Addressing Government Liability on an MTD ("Monell" Claim)

- No vicarious Liability
- Plaintiff has the burden to allege:
  - Constitutional Rights were Violated: No Violation = No Government Liability
  - The entity had a custom or policy that constituted deliberate indifference to that constitutional right -> other similar incident required, pattern of behavior
  - the policy or custom caused the violation
- In public safety context, often see failure to train or "covering up" other incidents claims
- Good public safety cases granting MTD:
  - *Weiland v. Palm Beach Cnty. Sheriff's Off.,* 792 F.3d 1313, 1328–30 (11th Cir. 2015) (Count two does not allege a pattern of similar constitutional violations by untrained employees. Although it need contains the conclusory allegation that the Sheriff's Office was "on notice" of the to "promulgate, implement, and/or oversee" policies pertaining to the "use of force" appropriate for "the seizure of mentally ill persons and their transportation to mental health facilities," no facts are alleged to support that conclusion.)
  - *Grider v. Cook*, 522 F. App'x 544, 547-48 (11th Cir. 2013) (affirming dismissal of the complaint where plaintiff "did not provide any specific facts about any policy or custom that resulted in his alleged constitutional deprivation");
  - *Gurrera v. Palm Beach Cnty. Sheriff's Off.,* 657 F. App'x 886, 892–93 (11th Cir. 2016) ("Setting aside these conclusory allegations, Plaintiff fails to identify any examples beyond his own arrest of widespread unconstitutional conduct").

# Two Recent Cases We Handled (Appeals Still Pending)

*Hahnah Williams v. DeKalb County*, 1:23-cv-00736 (N.D Ga.): MTD Granted Sept. 21, 2023

*Howard v. DeKalb County*, 1:22-cv-01550-scj (N.D. Ga.): MTD Granted Mar. 1, 2023



# In DISCOVERY

## What now?



- Contention Interrogatories
- Requests for Admissions
- Depositions
  - Preparation
  - Attire
  - Be thinking about your MSJ
- Consider hiring an Expert
- Detour & Frolic

# Strategies for winning at MSJ

- RESEARCH! RESEARCH! RESEARCH!
- Argue alternative arguments taking Plaintiff's version of the facts as true
- Argue all Applicable immunities

- Use Seminal cases
  - Use for Force: *Kingsley v. Hendrickson,* 576 U.S. 389 (2015)
    - "Considerations such as the following may bear on the reasonableness or unreasonableness of the force used: the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting. See, *e.g., Graham v. Connor,* 490 U.S. 386,396 (1989). 1865. We do not consider this list to be exclusive. We mention these factors only to illustrate the types of objective circumstances potentially relevant to a determination of excessive force."

# Post-MSJ Denial Ruling

- To settle or not to settle?
- Go to TRIAL or APPEAL?
- Trial strategies
  - Using experts
  - “Read every word”
    - Examples:
      - *Nicholas Wade v. Jones, et. al.*
      - *Bradley v. Benton*

# Always remember to ….

- Check verdicts and settlements (Westlaw)
- Read the Daily Report to identify articles that discuss your practice area
- Read published 11th Circuit opinions to stay current on existing law



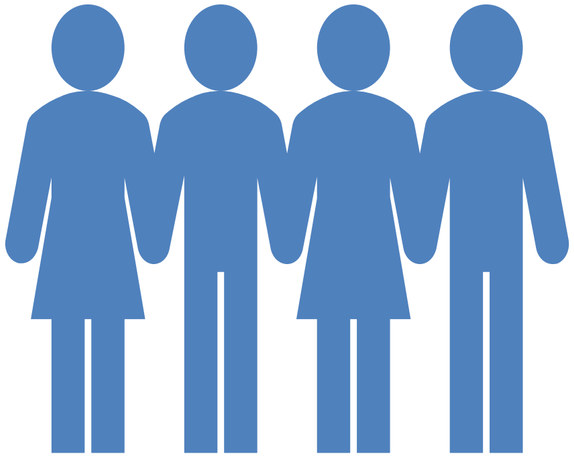
# EMPLOYMENT LAW CHALLENGES FACING MUNICIPALITIES AND TIPS TO AVOID SECTION 1983 CLAIMS

# *PERSONNEL MANAGEMENT CHALLENGES*

- **Hiring**
- **Training**
- **Discipline**
- **Termination**

# HIRING CHALLENGES

- Recruiting and Selecting Qualified Candidates
- Ensuring Diversity and Fair Hiring Practices
- Risks of Discriminatory Practices
- Legal Ramifications: Violation of Equal Protection Clause of the Fourteenth Amendment



# *SCENARIO: Allegation of Discriminatory Hiring*

The city of Springfield is hiring for a new position within its Parks and Recreation Department.

Among the applicants is Sarah, a highly qualified candidate with extensive experience in park management and a strong track record of community engagement.

However, despite Sarah's qualifications, she is passed over for the position in favor of a less experienced candidate, John who is 25.

Sarah, who is 50, begins to suspect that she may have been discriminated against in the hiring process due to her age.

Upon further investigation, Sarah discovers that several other candidates 50 and older with similar qualifications were also rejected in favor of less qualified candidates who were "millennials".

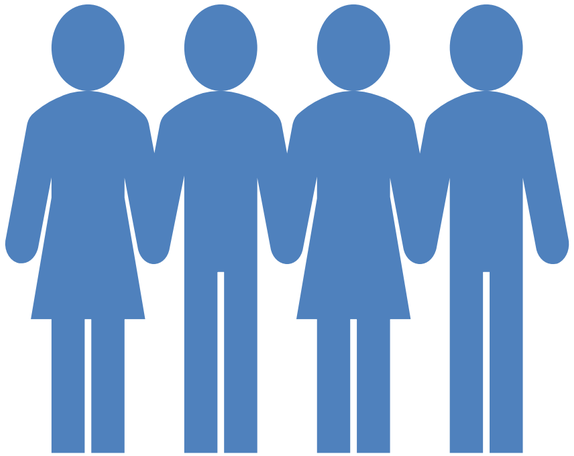
# MITIGATION STRATEGIES

- **Prioritizing Diversity and Fairness**
- **Implementing Robust Policies and Procedures**
- **Providing Adequate Training to Personnel and Monitoring Mechanisms**



# TRAINING CHALLENGES

- Ongoing Training and Development
- Inadequate or Improper Training
- Legal Ramifications: Potential liability for constitutional violations and Section 1983 claims.



# *Training Solutions to Personnel Management Challenges*

- **Anti-Discrimination Training**
- **Diversity and Inclusion Workshops**
- **Legal Compliance Training**
- **Cultural Sensitivity Training**
- **Ongoing Professional Development**

# TRAINING PITFALLS

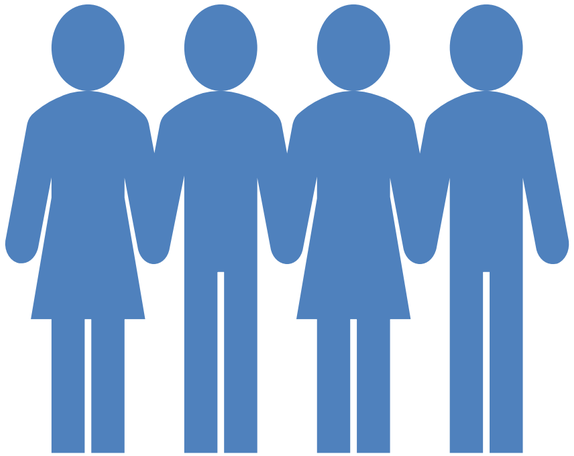
- Inadequate or Improper Training
- Potential for Constitutional Violations
- Section 1983 Claims

# CONNICK V. MYERS (1983)

- Highlights failure to train resulting in liability
- Need for comprehensive training programs to prevent Section 1983 claims

# DISCIPLINARY CHALLENGES

- Establishing Clear Disciplinary Procedures
- Fair and consistent enforcement Reducing risk of constitutional violations and section 1983 liability



- Legal Ramifications: liability for constitutional violations and Section 1983 claims.

## ***GARCETTI V. CEBALLOS (1983)***

## ***Pickering v. Board of Education (1968)***

- Emphasizes procedural fairness
- Importance of balancing employee speech rights with governmental interests and organizational efficiency

## ***Graziosi v. City of Greenville***

## ***Buker v. Howard County***

- Emphasizes procedural fairness
- Importance of balancing employee speech rights with governmental interests and organizational efficiency



# TERMINATION CHALLENGES

- Wrongful Termination Claims
- Retaliation, Discrimination, Due Process Violations
- Legal and Reputational Consequences

# *Mitigating Termination Risks*

- Legitimate, Non-Discriminatory Reasons
- Affording Procedural Rights to Employees
- Compliance with Constitutional and Employment Laws

# DUE PROCESS PROTECTIONS

- **Substantive and Procedural Due Process**
- **Constitutional Protection for Public Employees**

# Cleveland Bd of Education v. Loudermill (1985)

Establishment of “Loudermill hearing” Requirement

- Mandate for government employees facing termination to be provided with notice and an opportunity to respond before the termination becomes effective.

# *PREVENTATIVE MEASURES*

- **Policy Reviews**
- **Employee Training**
- **Documentation**
- **Conflict Resolution Mechanisms**
- **Legal Consultation**

# *Policy Reviews*

- **Regular Updates**
- **Proactive Approach**

**(See A23A1506. OLSEN v. THE STATE. Ga. App (March 12, 2024))**

# *Employee Training*

- **Comprehensive Training**
- **Proactive Approach**

## *Documentation*

- **Thorough Documentation**
- **Evidence in Defense**

## *Conflict Resolution Mechanisms*

- **Effective Mechanisms**
- **Internal Resolution**

# LEGAL STRATEGIES

- Early Intervention
- Litigation Defense
- Settlement Negotiations

# CONCLUSION

- Effective navigation of personnel-related challenges and Section 1983 claims requires a multifaceted approach

- Understanding constitutional principles, implementing preventive measures, and employing legal strategies are key to successful outcomes

- Safeguarding Municipal Interests and Public Trust



# QUESTIONS??

