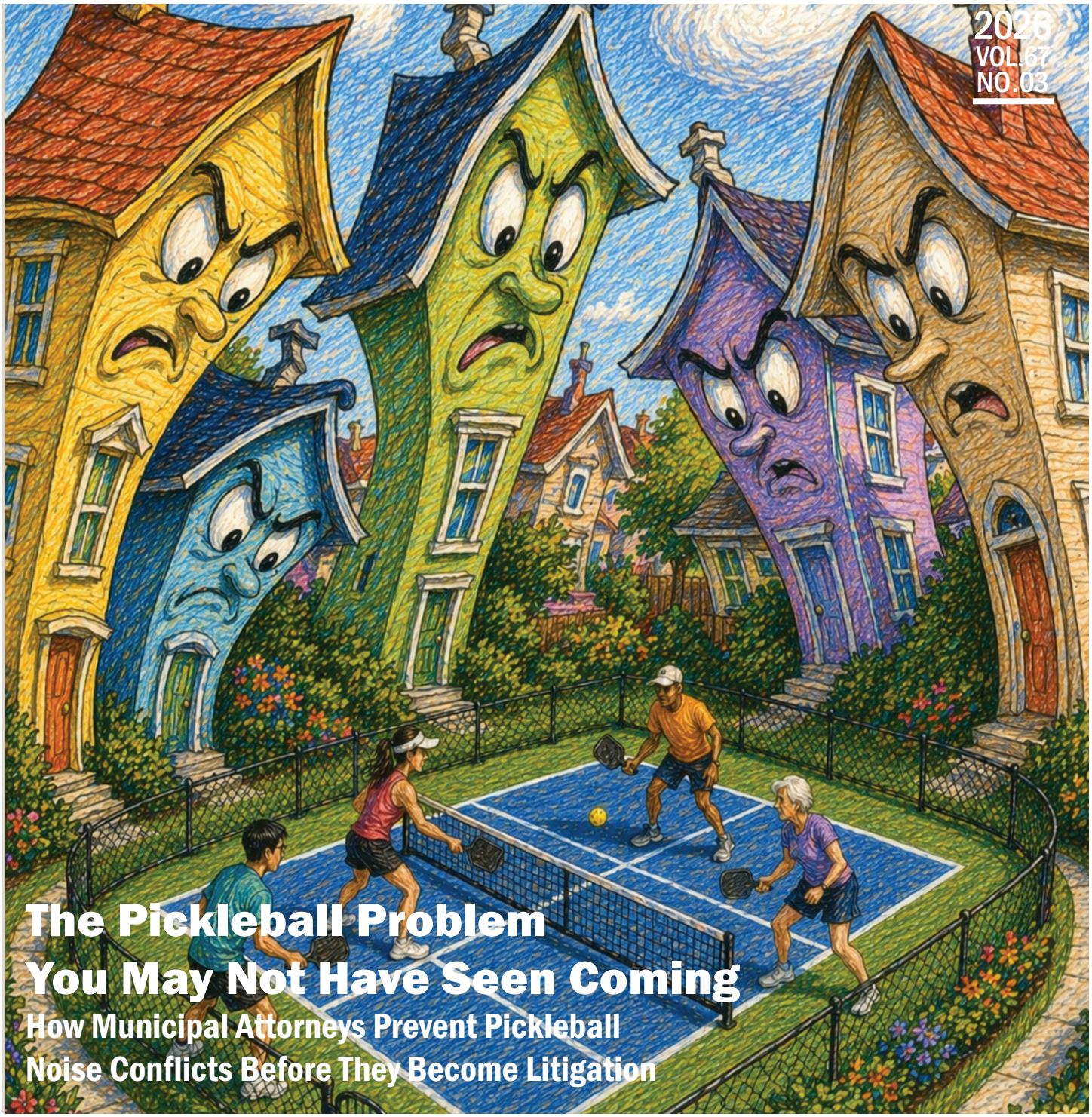
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The Pickleball Problem You May Not Have Seen Coming

How Municipal Attorneys Prevent Pickleball Noise Conflicts Before They Become Litigation



Dispositive Motions in Use of Force Cases

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Officers need our protection from civil rights lawsuits. Depositions and trials take them away from their jobs and require other officers to cover for them when the lawsuit makes the defendant officer unavailable. This increases costs to the city while the officer faces potentially life-changing litigation.

Cities are exposed to potentially unlimited damages based on claims that should never go to trial and should, on the contrary, be eliminated early after filing. The federal rules provide us with procedural mechanisms to dispose of civil rights lawsuits at or near the front end of the case, avoiding trial and often even avoiding discovery. This article covers some of the more frequently used dispositive motions under Federal Rule of Civil Procedure 12(b)(1), Rule 12(b)(6), and Rule 56 that can protect officers and municipalities against use-of-force claims.

Rule 12(b)(1) provides for motions to dismiss for lack of subject-matter jurisdiction. Rule 12(b)(6) allows dismissal for failure to state a claim upon which relief can be granted. And Rule 56 governs summary judgments. Each of these motions can be filed on behalf of individual officers or the municipality. The claims against the city will differ from the claims against the officers, as will the challenges for the plaintiffs to overcome qualified immunity to reach the officers and to satisfy the *Monell* elements for municipal liability.

Rule 12(b)(1): Motion to Dismiss for Lack of Subject Matter Jurisdiction

Some advantages to a Rule 12(b)(1) motion to dismiss are that the defense can attach evidence, the court can weigh credibility, and the plaintiff then has a burden to attach controverting evidence.

12(b)(1) Standard of Review

A motion to dismiss under Rule 12(b)(1) challenges a federal court's subject matter jurisdiction.[1] "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."[2] "'A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case.'"[3] The Court "must presume that a suit lies outside [its] limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum."[4] The party asserting jurisdiction must allege the jurisdictional basis "affirmatively and distinctly"; it cannot be "established argumentatively or by mere inference."[5]

Several useful applications

These motions are useful for officers who did not participate in the use of force, who fired but missed, or who did not personally and intentionally cause a legitimate constitutional injury. They also can challenge claims that are, at most, recklessness on the part of an officer—i.e., when the plaintiff's allegations do not state a constitutional or statutory deprivation resulting from conduct that was intentional or due to deliberate indifference.[6] "The guarantee of due process has never been understood to mean that the State must guarantee due care on the part of its officials."[7] "[T]he Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property."[8]

They are also useful for the City when the alleged City policy or custom did not cause the alleged use-of-force injury. "It is well established that in a §1983 case a city or other local governmental entity cannot be subject to liability at all unless the harm was caused in the implementation of 'official municipal policy.'"[9] The injury must be caused by the City to establish standing. The Supreme Court has held it is not enough for the plaintiff to identify a constitutional problem in some City policy.[10] Nor can she "identify one injury and then bootstrap it to complain about others."[11] For example, if the absence of the City's alleged restraint policy would not have prevented the only physical injury that the plaintiff claimed, the plaintiff has not alleged facts to establish subject-matter jurisdiction.[12]

Getting a video before the judge

Rule 12(b)(1) also enables the defense to get a video before the judge. If the video were attached to a Rule 12(b)(6) motion, that would require converting it to a Rule 56 motion for summary judgment. Even where a complaint presents a false narrative that would survive a 12(b)(6) motion, the 12(b)(1) with a video attached can change the perspective and pressure the plaintiff and can even dispose of the case.

Frivolous cases

Moreover, 12(b)(1) motions are available to dismiss federal claims that are wholly insubstantial and frivolous. It is rarely used but can be appropriate—for example, in response to certain pro se complaints. In federal question cases, a district court will not have subject matter jurisdiction over any claim that "clearly appears to be immaterial . . . or where such claim is wholly insubstantial and frivolous."[13]

Facial and Factual Attacks

The Fifth Circuit recognizes two types of challenges to a federal court's subject-matter jurisdiction: "facial" attacks, which are based solely on the pleadings, and "factual" attacks, which are based on affidavits, testimony, and other evidentiary material.[14] Whether the attack is facial or factual, however, the plaintiff seeking a federal forum "constantly bears the burden of proof that jurisdiction does in fact exist."[15]

When a defendant files a Rule 12(b)(1) motion to dismiss without evidentiary materials supporting it, the attack is facial, and the Court need only consider the sufficiency of the allegations in the plaintiff's complaint.[16] If the defendant makes a factual challenge, on the other hand, to defeat it, "a plaintiff 'must prove the existence of subject-matter jurisdiction by a preponderance of the evidence' and is 'obliged to submit facts through some evidentiary method to sustain his burden of proof.'"[17]

Rule 12(b)(6): Motion to Dismiss for Failure to State a Claim

Rule 12(b)(6) is a powerful tool for disposing of cases early in the process. Plaintiffs must plead facts that, if true, would entitle them to the relief requested. Defense counsel must carefully evaluate the complaint for conclusory allegations and allegations of facts that would be immaterial. The two primary guiding cases from the Supreme Court are *Ashcroft v. Iqbal*[18] and *Bell Atlantic Corp. v. Twombly*.[19] In addition to those and some other Supreme Court cases, this article cites Fifth Circuit cases that follow *Iqbal* and *Twombly*. Municipal attorneys will find that their own circuits might apply *Iqbal* and *Twombly* differently from the Fifth, leading to variable contours of pleading analysis and Rule 12(b)(6) dismissal.

Rule 12(b)(6) Standard of Review

The court of appeals reviews *de novo* a grant or denial of a Rule 12(b)(6) motion to dismiss.[20]

A complaint may be dismissed as a matter of law if it fails to state a claim upon which relief can be granted.[21] A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims stated in the complaint and must be evaluated solely on the pleadings.[22] Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief."[23] "An unadorned, the defendant-unlawfully-harmed-me accusation" will not suffice.[24] Thus, "dismissal is appropriate only if the complaint fails to plead enough facts to state a claim of relief that is plausible on its face."[25]

Plausibility

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.[26] A claim is plausible on its face only "when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[27] "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully."[28]

Threadbare Recitals

"When considering a motion to dismiss, the court accepts as true the well-pled factual allegations in the complaint and construes them in light most favorable to the plaintiff."[29]

However, courts are not bound to accept as true "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," or legal conclusions couched as factual assertions.[30] And courts need not "accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions."[31]

A "plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and formulaic recitation of the elements of a cause of action."[32] Dismissal is therefore appropriate if the complaint lacks an allegation regarding a required element necessary to obtain relief.[33] Conclusory allegations or legal conclusions masquerading as factual conclusions cannot prevent dismissal.[34]

Not limited to pleadings

In reviewing a 12(b)(6) motion, the court is not limited to the pleadings; it can also consider documents the defendant attaches to the motion that are referenced in the pleadings and central to the claims (such as videos or offense reports). These attachments are considered part of the complaint for purposes of 12(b)(6). It also includes records subject to judicial notice; judicial records are particularly useful to establish a *Heck* bar or the independent



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intermediary doctrine—e.g., a judicial probable cause finding, a warrant issued by a judge, an indictment, or a plea agreement.[35]

Qualified Immunity—Officers

To state a claim under 42 U.S.C.S. § 1983, a plaintiff is required to allege facts demonstrating that: (1) the defendant violated the Constitution or federal law; and (2) the defendant was acting under the color of state law while doing so.[36]

Governmental officials performing discretionary functions are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.[37] Qualified immunity is an "immunity from suit rather than a mere defense to liability."[38] In this manner, "one of the most important benefits of the qualified immunity defense is 'protection from pretrial discovery, which is costly, time-consuming, and intrusive.'"[39]

Once a defendant has invoked the defense of qualified immunity, the plaintiff carries the burden of demonstrating its inapplicability.[40] The threshold inquiry in resolving an issue of qualified immunity is whether, taking the facts in the light most favorable to the plaintiff, the officer's conduct violated a constitutional right.[41]

Next, the Court considers whether the allegedly violated right is "clearly established" in that "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."[42] "Answering in the affirmative requires the court to be able to point to controlling authority—or a robust consensus of persuasive authority—that defines the contours of the right in question with a high degree of particularity."[43] "This requirement establishes a high bar."[44]

When there is no controlling authority specifically prohibiting a defendant's conduct, the law is not clearly established for the purposes of defeating qualified immunity.[45] Officials "who reasonably but mistakenly commit a constitutional violation are entitled to immunity."[46]

On a motion to dismiss, "a district court must first find 'that the plaintiff's pleadings assert facts which, if true, would overcome the defense of qualified immunity.'"[47] "Thus, a plaintiff seeking to overcome qualified immunity must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a qualified immunity defense with equal specificity."[48]

Monell—Municipalities

Under 42 U.S.C. § 1983, a city may be held liable only for constitutional violations resulting from an official policy or custom.[49] A municipality may not be held vicariously liable for its employees' unconstitutional torts; unconstitutional conduct must be directly attributable to the municipality through official action.[50] Isolated unconstitutional actions by municipal employees will almost never trigger liability.[51]

To establish liability, a plaintiff must show: 1) a policymaker; 2) an official policy; and 3) a violation of constitutional rights whose "moving force" is the policy or custom.[52] The standard is stringent, and all elements must be established to impose liability. If the elements of the *Monell* test are not followed, the municipal liability inquiry will collapse into a respondeat superior analysis.[53] A municipality may not be subject to liability merely for employing a tortfeasor.[54] Municipal liability requires deliberate action attributable to the municipality that is the direct cause of the alleged constitutional violation.[55]

To show an official policy, there must be a written policy or policy statement announced by the policy maker, or a "persistent widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy."[56]

Rule 56: Motion for Summary Judgment

If the plaintiff survives the two earlier dispositive motions and the case proceeds to discovery, both the officers and the City still have an opportunity to avoid trial by filing motions for summary judgment. For the officers, the basic argument often would be that the plaintiff did not show a constitutional violation or that the law was not clearly established at the time. Of those two potential rulings, the more powerful is that there was no constitutional violation. That's the end of the case for the officers and for the City. The easier ruling, however, is that the law was not clearly established at that time. The officers are then free from liability, while there is at least a theoretical avenue for municipal liability.

An evidence-based argument would be that the plaintiff did not bring evidence to establish a genuine dispute of material fact about the officer's actions—e.g., whether the officer was involved in the use of force, or whether the amount of force was reasonable.

When evaluating the plaintiff's evidence and the plaintiff's arguments, defense counsel should focus on whether the plaintiff's disputed facts are actually material. This is often overlooked, even by district courts.

For the City, the argument would focus on the plaintiff's failure to satisfy the *Monell* factors listed above. If, for example, the discovery process did not uncover a policy or practice known to the policymakers and so widespread that it effectively constituted an unwritten policy of the City, then the plaintiff has not met the *Monell* standard.

Rule 56 Standard of Review

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Where the burden of proof at trial is on the non-moving party, the movant satisfies its initial burden by "'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case."[57] The nonmovant must then identify specific evidence in the record and articulate how that evidence supports the party's claim.[58]

Conclusory allegations, speculation, unsubstantiated assertions, and legalistic arguments are not an adequate substitute for specific facts showing a genuine issue for trial.[59] Although factual controversies are to be resolved in the nonmovant's favor, that is "only when . . . both parties have submitted evidence of contradictory facts."[60] The plaintiff is not entitled to go to trial on an allegation; instead, he must present significant probative evidence that makes it necessary to resolve the factual dispute at trial.[61]

Officers do not have to present evidence to support their qualified immunity defense. Once an officer raises the defense of qualified immunity, the burden shifts to nonmovants to establish that the officer's alleged wrongful conduct violated clearly established law and that no objectively reasonable officer could have thought the officer's actions were constitutional.[62] Summary judgment should be granted if no reasonable juror could properly find for the nonmoving party on the evidence presented.[63]

Defense counsel should remember that Rule 56 also allows for what is effectively a "no-evidence" motion for summary judgment: "A complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial and mandates the entry of summary judgment for the moving party."[64] This is particularly relevant when qualified immunity is properly invoked by showing that the officer is a government employee performing within her authority and exercising discretion.

"At summary judgment, the movant must show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The Court reviews all facts in the light most favorable to the nonmoving party. The City has the burden for its own motion against the *Monell* claims. The denial of a City's motion for summary judgment is not appealable by right, although a permissive appeal may sometimes be granted.

But it's different for the officer. When a public official asserts the qualified immunity defense, the burden shifts to the plaintiff to show that: (1) the official violated a statutory or constitutional right; and (2) the right was clearly established at the time of the challenged conduct. Under this burden shifting regime, the public official asserting qualified immunity does not bear the initial burden of showing an absence of genuine disputes of material fact and entitlement to judgment as a matter of law."[65] This is very different from summary judgment in other contexts, and plaintiffs' attorneys will sometimes argue that the officer did not meet his burden, even though the burden rests on the plaintiff. Some district courts apparently are uncomfortable with this, as well, so municipal attorneys should be prepared with the authorities cited herein (as well as those specific to the relevant federal circuit) to lay out how the burden shifting works with qualified immunity. And during the qualified immunity analysis, if the court concludes that the officer did not commit a constitutional violation, that is also the end of the *Monell* claims against the City. M.

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ENDNOTES

[1] Fed. R. Civ. P. 12(b)(1).

[2] Fed. R. Civ. P. 12(h)(3).

[3] Home Builders Ass'n of Miss., Inc. v. City of Madison, 143 F.3d 1006, 1010 (5th Cir. 1998)(*quoting* Nowak v. Ironworkers Local 6 Pension Fund, 81 F.3d 1182, 1187 (2d Cir. 1996)).

[4] Howery v. Allstate Ins. Co., 243 F.3d 912, 916 (5th Cir. 2001)(citations omitted); *see also* Pullen-Walker v. Roosevelt Univ., 405 F. App'x 46, 49 (7th Cir. 2010)("the incantation of a federal statute will not automatically trigger federal jurisdiction").

[5] Ill. Cent. Gulf R.R. Co. v. Pargas, Inc., 706 F.2d 633, 636 & n.2 (5th Cir. 1983)(citations omitted); *accord* Getty Oil Corp. v. Ins. Co. of N. Am., 841 F.2d 1254, 1259 (5th Cir. 1988).

[6] *See, e.g.*, Farmer v. Brenan, 511 U.S. 825, 828-29 (1994).

[7] Davidson v. Cannon, 474 U.S. 344, 348 (1986).

[8] Daniels v. Williams, 474 U.S. 327, 328 (1986).

[9] Lozman v. City of Riviera Beach, 585 U.S. 87, 95 (2018) (*quoting* Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978); and citing Los Angeles Cnty v. Humphries, 562 U.S. 29, 36 (2010)).

[10] In re Gee, 941 F.3d 153, 160 (5th Cir. 2019) (emphasis in original; citations omitted) (discussing the Supreme Court's holding in Lewis v. Casey, 518 U.S. 343, 358 (1996)).

[11] *Id*.

[12] *See* Parr v. Cougle, 127 F.4th 967, 975-76 (5th Cir. 2025) (*quoting* Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 107 (1998), "Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.").

[13] John Corp. v. City of Houston, 214 F.3d 573, 576 (5th Cir. 2000) (*quoting* Steel Co., 523 U.S. at 89 (*in turn quoting* Bell v. Hood, 327 U.S. 678, 682-83 (1946))).

[14] *See* Paterson v. Weinberger, 644 F.2d 521, 523 (5th Cir. May 1981); *see also* Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001) (per curiam) ("Lack of subject matter jurisdiction may be found in any one of three instances: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.") (citation omitted).

[15] *Ramming*, 281 F.3d at 161 (citation omitted).

[16] *Paterson*, 644 F.2d at 523.

[17] Superior MRI Servs., Inc. v. All. Healthcare Servs., Inc., 778 F.3d 502, 504 (5th Cir. 2015) (*quoting* Irwin v. Veterans Admin., 874 F.2d 1092, 1096 (5th Cir. 1989), aff'd sub nom., Irwin v. Dep't of Veterans Affairs, 498 U.S. 89 (1990)).

[18] 556 U.S. 662, 677 (2009).

[19] 550 U.S. 544, 555 (2007).

[20] Bradford v. Law Firm of Gauthier, Houghtaling & Williams, L.L.P., 696 F. App'x 691, 693 (5th Cir. 2017) (per curiam); Cousin v. Small, 325 F.3d 627, 631 (5th Cir. 2003).

[21] Fed. R. Civ. P. 12(b)(6).

[22] Jackson v. Procunier, 789 F.2d 307, 309 (5th Cir. 1986); Morin v. Caire, 77 F.3d 116, 120 (5th Cir. 1996).

[23] Fed. R. Civ. P. 8(a)(2); Iqbal, 556 U.S. at 677; Twombly, 550 U.S. at 555.

[24] Iqbal, 556 U.S. at 678-79.

[25] Leal v. McHugh, 731 F.3d 405, 410 (5th Cir. 2013) (*quoting* Twombly, 550 U.S. at 570; internal quotation marks omitted).

[26] Iqbal, 556 U.S. at 678 (*quoting* Twombly, 550 U.S. at 570).

[27] Montoya v. FedEx Ground Package Sys., Inc., 614 F.3d 145, 148 (5th Cir. 2010) (*quoting* Iqbal, 556 U.S. at 678).

[28] Iqbal, 556 U.S. at 678 (*quoting* Twombly, 550 U.S. at 556).

[29] Taylor v. Books A Million, Inc., 296 F.3d 376, 378 (5th Cir. 2002); *see also* U.S. ex rel. Willard v. Humana Health Plan of Tex., Inc., 336 F.3d 375, 379 (5th Cir. 2003) (citation omitted).

[30] Iqbal, 556 U.S. at 678; *see also* Hale v. King, 642 F.3d 492, 499 (5th Cir. 2011) ('Plaintiffs must allege facts that support the elements of the cause of action in order to make out a valid claim').

[31] Arnold v. Williams, 979 F.3d 262, 266 (5th Cir. 2020) (citing Gentilello v. Rege, 627 F.3d 540, 544 (5th Cir. 2010)).

[32] Twombly, 550 U.S. at 544.

[33] Apani Sw., Inc. v. Coca-Cola Enters., Inc., 300 F.3d 620, 624 (5th Cir. 2001) (*quoting* Blackburn v. City of Marshall, 42 F.3d 925, 931 (5th Cir. 1995)); *see also* Hale, 642 F.3d at 499.

[34] Taylor, 296 F.3d at 378 (*quoting* Fernandez-Montes v. Allied Pilots Ass'n., 987 F.2d 278, 284 (5th Cir. 1993)).

[35] Johnson v. Bowe, 856 F. App'x 487, 488 (5th Cir. 2021) ("Documents that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim. Documents can also be considered part of the pleadings if the court may take judicial notice of them."); Story v. Williamson Cty. Judge Bill Gravell, No. 1:23-CV-1120-DII, 2024 U.S. Dist. LEXIS 116709, at *12-13 (W.D. Tex. Apr. 25, 2024) ("Defendants attached to their Motion the video recording of the commissioners court meeting at which Story alleges Gravell violated his rights. Dkt. 11-1. A video recording of the meeting is also available at https://williamsoncountytx.new.swagit.com/videos/150724. Under Texas law, the recording is a public record. Tex. Gov't Code, § 551.022. "[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record." Norris v. Hearst Trust, 500 F.3d 454, 461, n. 9 (5th Cir. 2007). "[W]here video recordings are included in the pleadings, as is the case here, the video depictions of events, viewed in the light most favorable to the plaintiff, should be adopted over the factual allegations in the complaint if the video 'blatantly contradict[s]' those allegations." Harmon v. City of Arlington, 16 F.4th 1159, 1163 (5th Cir. 2021) (quoting Scott v. Harris, 550 U.S. 372, 380 (2007))."). *See also* Sligh v. City of Conroe, 619 F. Supp. 3d 735, 740-41 (S.D. Tex. 2022) (same, and collecting cases).

[36] *See* Wilson v. Dallas Cty. Hosp. Dist., 715 F. App'x 319, 323 (5th Cir. 2017).

[37] Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

[38] Pearson v. Callahan, 555 U.S. 223, 237 (2009).

[39] Carswell v. Camp, 54 F.4th 307, 310 (5th Cir. 2022) (*quoting* Backe v. LeBlanc, 691 F.3d 645, 648 (5th Cir. 2012).

[40] Club Retro, L.L.C. v. Hilton, 568 F.3d 181, 194 (5th Cir. 2009).

[41] Saucier v. Katz, 533 U.S. 194, 201 (2001); Scott v. Harris, 550 U.S. 372, 377-78 (2007).

[42] Saucier, 533 U.S. at 201.

[43] Wyatt v. Fletcher, 718 F.3d 496, 503 (5th Cir. 2013).

[44] *Id*.

[45] *Id*.

[46] Collins v. Ainsworth, 382 F.3d 529, 537 (5th Cir. 2004) (*quoting* Bazan ex rel. Bazan v. Hidalgo County, 246 F.3d 481, 490 (5th Cir. 2001)).

[47] *Backe*, 691 F.3d at 648 (*quoting* Wicks v. Mississippi State Emp't Servs., 41 F.3d 991, 994-95 (5th Cir. 1995)).

[48] *Id*. at 648. *See also* Cole v. Carson, 935 F.3d 444, 474 (5th Cir. 2019) (Ho & Oldham, JJ., dissenting)(noting thirteen cases in the last sixteen years in which the Supreme Court applied the "extraordinary remedy of a summary reversal" to correct failures "not only to identify a clearly established rule of law, but to do so with great specificity."(emphasis added)).

[49] Bd. of Cnty. Comm'rs of Bryan Cnty., Okla. v. Brown, 520 U.S. 397, 403 (1997).

[50] *Monell*, 436 U.S. at 691 n.55.

[51] Piotrowski v. City of Houston, 237 F.3d 567, 578 (5th Cir. 2001).

[52] *Monell*, 436 U.S. at 693-94.

[53] *Brown*, 520 U.S. at 415.

[54] City of Canton, Ohio v. Harris, 489 U.S. 378, 392 (1989).

[55] *Id*. at 391-92.

[56] Webster v. City of Houston, 735 F.2d 838, 841 (5th Cir.), rev'd en banc on other grounds, 739 F.2d 993, 993-94 (1984).

[57] Celotex Corp. v. Catrett, 477 U.S. 317, 322-25 (1986).

[58] Baranowski v. Hart, 486 F.3d 112, 119 (5th Cir. 2007).

[59] TIG Ins. Co. v. Sedgwick James of Wash., 276 F.3d 754, 759 (5th Cir. 2002); Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc).

[60] Little, 37 F.3d at 1075.

[61] Celotex, 477 U.S. at 323.

[62] Estate of Davis v. City of North Richland Hills, 406 F.3d 375 (5th Cir. 2005); *see also* Pierce v. Smith, 117 F.3d 866, 872 (5th Cir. 1997). ("We do not require that an official demonstrate that he did not violate clearly established federal rights; our precedent places that burden upon plaintiffs.") (internal quotation marks omitted).

[63] Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251 (1986).

[64] Alvarez v. City of Brownsville, 904 F.3d 382, 389 (5th Cir. 2018) (en banc)(internal quotations and citations omitted).

[65] Donalson v. McLeaish, No. 22-40758, 2023 WL 8715368, at *1 (5th Cir. 2023)(internal footnotes and quotations marks omitted).

