Mendez and § 1983

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES/RULES

OTHER AUTHORITIES

TREATISES

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Mendez and § 1983

Plaintiffs Angel Mendez and Jennifer Garcia (now Mrs. Mendez) slept soundly on a futon in their home; a 7' x 7' x 7' wood and plywood shack. In the doorway hung a blue blanket to keep the conditioned air from escaping through the wooden door to the outside. Mr. Mendez slept with his BB gun pointed towards his feet, opposite the pregnant Garcia. Mendez awoke to the wooden door opening—he thought it was the woman who allowed him to stay in her yard, and picked up his BB-gun as he rose from the futon to greet her. "GUN!" a man yelled. Fifteen gunshots rang out into the shack. Mr. and Mrs. Mendez were shot multiple times and suffered severe injuries.

Mendez and Garcia have a powerful, unequivocally tragic tale that can captivate sympathetic peers. However, their legal battle was and is more complicated than the short summary above would suggest. They must successfully navigate the nuances of 42 U.S.C. § 1983 in federal court, where the law reigns even against a plaintiff's moving narrative.

This paper will walk through the *Mendez* case, the Ninth Circuit's Provocation Rule, and use the *Mendez* case to examine different causation standards under 42 U.S.C. § 1983.

I. A Brief Overview of 42 U.S.C. § 1983

Section 1983 allows a plaintiff to redress deprivations under color of state law of rights, privileges, and immunity secured by federal statutes as well as by the United States Constitution:

> § 1983. Civil Action for Deprivation of Rights
>
> 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, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

"By its terms, of course, the statute creates no substantive rights; it merely provides remedies for deprivations of rights established elsewhere." *Okla. City v. Tuttle*, 471 U.S. 808, 816, (1985); *see Baker* v. *McCollan*, 443 U.S. 137, 140, 144, n. 3 (1979).

In general, to state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48-49 (1988).

The Supreme Court has repeatedly stated that § 1983 claims sound in tort. Just as common-law tort actions provide redress for interference with protected personal or property interests, § 1983 provides relief for invasions of rights protected under federal law. Recognizing the essential character of the statute, "'[the Supreme Court has] repeatedly noted that 42 U.S.C. § 1983 creates a species of tort liability,'" *City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 709-10, (1999); *Heck* v. *Humphrey,* 512 U.S. 477, 483 (1994) (quoting *Memphis Community School Dist.* v. *Stachura*, 477 U.S. 299, 305 (1986)), and have interpreted the statute in light of the "background of tort liability," *Monroe* v. *Pape,* 365 U.S. 167, 187 (1961) (overruled on other grounds, *Monell* v. *New York City Dept. of Social Servs.*, 436 U.S. 658 (1978)).

"Over the centuries the common law of torts has developed a set of rules to implement the principle that a person should be compensated fairly for injuries caused by the violation of his legal rights. These rules, defining the elements of damages and the prerequisites for their recovery, provide the appropriate starting point for the inquiry under § 1983 as well." *Heck v. Humphrey*, 512 U.S. 477, 483 (1994) (*quoting Carey v. Piphus*, 435 U.S. 247, 257-258 (1978).

"In *Wilson* v. *Garcia*, the Supreme Court explicitly identified § 1983 as a personal-injury tort, stating that '[a] violation of [§ 1983] is an injury to the individual rights of the person,' and that 'Congress unquestionably would have considered the remedies established in the Civil Rights Act [of 1871] to be more analogous to tort claims for personal injury than, for example, to claims for damages to property or breach of contract.' *City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 727-29 (1999) (*quoting Wilson* v. *Garcia*, 471 U.S. 261, 277 (1985)).

The Supreme Court has routinely used § 1983's identity as a personal-injury tort to aide analyses otherwise left unaddressed by the statute's text. *See id*.; *see also*, *e.g*., *Wilson*, 471 U.S. at 277 (to determine the relevant statute of limitations under 42 U.S.C. § 1988(a)); *see also*, *e.g*., *Kalina* v. *Fletcher*, 522 U.S. 118, 124-125 (1997) (to determine the scope of immunity).

II. Section 1983's Ambiguous Causation Requirement

The text of the statute includes a causation requirement: "*subjects, or causes to be subjected* […] to the deprivation of any rights, privileges, or immunities […]." 42 U.S.C. § 1983 (emphasis added). However, section 1983 is merely an enabling statute; it does not specify what *kind* of causation is required for a valid claim. One answer finding support in the case law is that the causation requirement is addressed in the underlying substantive deprivation. For example, a valid municipal liability claim requires that the Plaintiff prove that an unconstitutional policy, practice or custom was the *moving force* behind the alleged injury. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Bishop v*. *Arcuri*, 674 F.3d 456, 467 (5th Cir. 2012). A valid First Amendment Retaliation claim requires that a state actor "caused injury" and that the official's actions were "substantially motivated" by the exercise of protected speech. *See Izen v*. *Catalina*, 398 F.3d 363, 367 (5th Cir. 2005) (*quoting Keenan v*. *Tejeda*, 290 F.3d 252, 260 (5th Cir. 2002)).

The United States Constitution often provides the flesh and bones of a § 1983 claim. By their very nature, these constitutional claims can ebb and flow with the multitude of cases and novel circumstances being brought into federal court. These claims are defined through groups of phrases and cliques of case law and underlying factual circumstances that together demarcate the elements to a meritorious constitutional cause of action. It is not surprising that courts might not perfectly navigate the winding intersections of Qualified Immunity, Municipal Liability and the different sets of elements underlying Constitutional claims.

Just a few months ago in March of 2017, the United States Supreme Court struck down an alternative analytical framework for navigating Fourth Amendment excessive force causation out of the Ninth Circuit: the "Provocation Rule."

III. The Ninth Circuit's Provocation Rule

The Provocation Rule apparently owes its genesis to *Alexander v*. *City and County of San Francisco*, where the Ninth Circuit reversed summary judgment in favor of police officers who shot a mentally ill man in the course of forcibly entering his house to arrest him. *Alexander*, 29 F.3d 1355 (9th Cir. 1994); *see Billington v*. *Smith*, 292 F.3d 1177, 1188 (9th Cir. 2002). The court held that if the police committed an independent Fourth Amendment violation by using unreasonable force to enter the house, then they could be held liable for shooting the man - even though they reasonably shot him at the moment of the shooting - because they 'used excessive force in creating the situation which caused [the man] to take the actions he did.' *Billington*, 292 F.3d at 1188-89 (*quoting Alexander*, 29 F.3d at 1366).

Subsequent case law fleshed out more definition for the "Provocation Rule," as the Ninth Circuit limited the rule's application and attempted to reconcile it with the Fourth Amendment's objective reasonableness standard. *See Billington*, 292 F.3d at 1188-90. When the United States Supreme Court granted certiorari in the *Mendez* case, the Provocation Rule had carved a definitive space in the Ninth Circuit's Fourth Amendment case law:

> The Ninth Circuit's provocation rule permits an excessive force claim under the Fourth Amendment where an officer intentionally or recklessly provokes a violent confrontation, if the provocation is an independent Fourth Amendment violation. The rule comes into play after a forceful seizure has been judged to be reasonable under *Graham*. Once a court has made that determination, the rule instructs the court to ask whether the law enforcement officer violated the Fourth Amendment in some other way in the course of events leading up to the seizure. If so, that separate Fourth Amendment violation may "render the officer's otherwise *reasonable* defensive use of force *unreasonable* as a matter of law."
>
> *Cty*. *of L.A*. *v*. *Mendez*, ___ U.S. ___, 137 S. Ct. 1539, 198 L.Ed.2d 52, 59 (2017) (internal citations omitted).

The Provocation Rule mixes and matches elements from proximate cause, Qualified Immunity and Fourth Amendment reasonableness under *Graham*. Perhaps contributing to the rule's longevity, it borrows

component parts from valid analytical structures that have been re-arranged; therefore, the end result may not stray far from where it would be without applying the rule. However, the *Mendez* case supplied the necessary ingredients to warrant certiorari for the Supreme Court to decide whether a prior Fourth Amendment violation can transform a later, reasonable use of force into an unreasonable seizure.

IV. *The County of Los Angeles v. Mendez*

A. Facts

In October 2010, deputies from the Los Angeles County Sheriff's Department were searching for a parolee-at-large named Ronnie O'Dell. A felony arrest warrant had been issued for O'Dell, who was believed to be armed and dangerous and had previously evaded capture. *Mendez*, ___ U.S. at ___, 198 L.Ed.2d at 57. Based on a tip from an informant, officers planned out and approached the home of Paula Hughes in Lancaster, California. *Id*. The plan included some officers approaching the front door while Deputies Christopher Conley and Jennifer Pederson circle around back to search the yard and cover the back door. *Id*.

During this briefing, it was announced that a man named Angel Mendez lived in the backyard of the Hughes home with a pregnant woman named Jennifer Garcia (now Mrs. Jennifer Mendez). *Id*. Pederson heard this announcement; at trial Conley testified that he did not remember it. *Id*.

Around midday, three officers knocked on the front door while Conley and Pederson circled to the back. *Id*. Hughes asked the officers if they had a warrant, and a sergeant informed her of their warrant and search for O'Dell. *Id*. One officer heard what he thought were sounds of someone running inside the house. *Id*. As the officers prepared to open the door by force, Hughes opened the door and stated that O'Dell was not in the house. *Id*. Hughes was placed under arrest and the house was searched; O'Dell was not in the house.

Meanwhile, Deputies Conley and Pederson, with guns drawn, searched the rear of the residence, which was cluttered with debris and abandoned automobiles. *Id*. Conley and Pederson searched and cleared three metal sheds, then moved to the wooden shack. *Id*. Mendez had built the 7' x 7' x 7' structure ten months prior from wood and plywood. *Id*. The shack had a single doorway covered by a blue blanket. *Id at* ___, 198 L.Ed.2d at 58. An electric cord ran to the north side of the shack, leading to an air conditioner. A gym storage locker and clothes and other possessions were visible nearby. Mendez kept a BB rifle in the shack for use on rats and other pests. *Id*. The BB gun "closely resembled a small caliber rifle." *Id*.

Conley and Pederson approached with their weapons drawn, not knowing Mendez and Garcia slept inside. *Id*. The deputies did not have a search warrant and did not knock and announce their presence. *Id*. When Deputy Conley opened the wooden door and pulled back the blanket, Mendez thought it was Ms. Hughes and rose from the bed, picking up the BB gun so he could stand up and place it on the floor. *Id*. As a result, when the deputies entered, he was holding the BB gun, and it was "point[ing] somewhat south towards Deputy Conley." *Id*. Deputy Conley yelled "Gun" and the Deputies immediately opened fire. *Id*. Mendez and Garcia "were shot multiple times and suffered severe injuries," and Mendez's right leg was later amputated below the knee. *Id*. O'Dell was not in the shack or anywhere on the property. *Id*.

B. Suit and Appeal

Mendez and his wife filed suit under 42 U.S.C. § 1983 against the County of Los Angeles and Deputies Conley and Pederson. *Id*. The three Fourth Amendment claims are relevant for our discussion:

> (1) First, they claimed that the deputies executed an unreasonable search by entering the shack without a warrant (the "**warrantless entry claim**");
>
> (2) Second, they asserted that the deputies performed an unreasonable search because they failed to announce their presence before entering the shack (the "**knock-and-announce claim**"); and
>
> (3) Third, they claimed that the deputies effected an unreasonable seizure by deploying excessive force in opening fire after entering the shack (the "**excessive force claim**").
>
> *Id*.

After a bench trial, the District Court for the Central District of California ruled largely in favor of the plaintiffs. *Id*. The Court found Deputy Conley liable on the warrantless entry claim, and the court also found both deputies liable on the knock-and-announce

claim. *Id*. However, the court awarded nominal damages for these violations because "the act of pointing the BB gun" was a superseding cause "as far as damage [from the shooting was] concerned." *Id*.

The District Court then considered the excessive force claim, holding that under *Graham v*. *Connor*, the deputies' use of force was reasonable "given their belief that a man was holding a firearm rifle threatening their lives." *Id*.; *see Graham v*. *Connor*, 490 U.S. 386 (1989). The court applied the Ninth Circuit's Provocation Rule, holding that the deputies' otherwise reasonable (and lawful) defensive use of force was unreasonable, because (1) the deputies intentionally or recklessly provoked a violent response and (2) their provocation was an independent constitutional violation." *Mendez*, ___ U.S. at ___, 198 L.Ed.2d at 58-59. Based on this rule, the District Court awarded Mendez and Garcia around $4 million in damages. *Id*.

The Court of Appeals for the Ninth Circuit affirmed in part and reversed in part. *Mendez v*. *Cty*. *of L.A*., 815 F.3d 1178, 1195 (9th Cir. 2016), *vacated and remanded by* 137 S. Ct. 1539. The Circuit Court held that the deputies were entitled to qualified immunity on the knock-and-announce claim. *Id*. at 1191-93. The Circuit Court held that both deputies violated clearly-established law when entered the shack without a warrant. *Id*. at 1191, 1195. The court affirmed the application of the provocation rule. The Court of Appeals also held, alternatively, that "basic notions of proximate cause" would support liability even without the provocation rule because it was "reasonably foreseeable" that the officers would startle a potentially armed homeowner when they "barged into the shack unannounced." *Id*. at 1194-95.

V. R.I.P. Provocation Rule

A. Graham – One Rule to Rule Them All

The Supreme Court once again reiterated in *Mendez* that *Graham* is the only game in town when it comes to analyzing excessive force. Justice Alito delivered the timeless language underpinning Fourth Amendment excessive force jurisprudence:

> "The Fourth Amendment prohibits "unreasonable searches and seizures." "[R]easonableness is always the touchstone of Fourth Amendment analysis," *Birchfield v*. *North Dakota*, 579 U.S. ___, ___, 136 S.Ct. 2160 (2016), and reasonableness is generally assessed by carefully weighing "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Tennessee v*. *Garner*, 471 U.S. 1, 8 (1985) (internal quotation marks omitted).
>
> Our case law sets forth a settled and exclusive framework for analyzing whether the force used in making a seizure complies with the Fourth Amendment. *See Graham*, 490 U.S. at 395. As in other areas of our Fourth Amendment jurisprudence, "[d]etermining whether the force used to effect a particular seizure is 'reasonable'" requires balancing of the individual's Fourth Amendment interests against the relevant government interests. *Id*. at 396. The operative question in excessive force cases is "whether the totality of the circumstances justifie[s] a particular sort of search or seizure." *Garner*, 471 U.S. at 8-9.
>
> The reasonableness of the use of force is evaluated under an "objective" inquiry that pays "careful attention to the facts and circumstances of each particular case." *Graham*, 490 U.S. at 396. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Id*. "Excessive force claims… are evaluated for objective reasonableness based upon the information the officers had when the conduct occurred." *Saucier v*. *Katz*, 533 U.S. 194, 207 (2001). That inquiry is dispositive: When an officer carries out a seizure that is reasonable, taking into account all relevant circumstances, there is no valid excessive force claim.
>
> *Mendez*, ___ U.S. at ___, 198 L.Ed.2d at 59-60.

The Supreme Court announced unequivocally that "[t]he provocation rule […] is incompatible with our excessive force jurisprudence. The rule's fundamental flaw is that it uses another constitutional violation to manufacture an excessive force claim where one would not otherwise exist." *Id*. at ___, 198 L.Ed.2d at 59. The rule provides a novel, unsupported path to liability in cases in which the use of force was reasonable; it mistakenly conflates distinct Fourth Amendment claims. *Id*. at ___, 198 L.Ed.2d at 60. The objective reasonableness analysis must be conducted

separately for each search or seizure that is alleged to be unconstitutional:

> "An excessive force claim is a claim that a law enforcement officer carried out an unreasonable seizure through a use of force that was not justified under the relevant circumstances. It is not a claim that an officer used reasonable force after committing a distinct Fourth Amendment violation such as an unreasonable entry."

Id. at ___, 198 L.Ed.2d at 60.

The Court proposed that the Provocation Rule was borne from the common-sense "notion that it is important to hold law enforcement officers liable for the foreseeable consequences of all of their constitutional torts." *Id*. at ___, 198 L.Ed.2d at 62. (*citing Billington*, 292 F.3d at 1190). While a progressive thought, the same objective is achieved through a proper application of the *Graham* reasonableness standard and proximate cause. The Court points out that even "[…] if the plaintiffs in this case cannot recover on their excessive force claim, that will not foreclose recovery for injuries proximately caused by the warrantless entry. The harm proximately caused by these two torts may overlap, but the two claims should not be confused." *Id*. at ___, 198 L.Ed.2d at 62.

B. *Send it Back Down*

Upon remanding, the Supreme Court provided some additional guidance to the Ninth Circuit. Respondents Mendez and Garcia argued that their $4 million judgment below should be affirmed under *Graham*. *See id*. at ___, 198 L.Ed.2d at 62, n. *. Their argument seemed logical, although perhaps an incomplete analysis: "On respondent's view, [an assessment of the deputies' reasonableness under the totality of circumstances] means taking into account unreasonable police conduct prior to the use of force that foreseeably created the need to use it." *See id*. The Court declined to address this point as they did not grant certiorari on that question.

The Court also remanded on the issue of proximate cause for the warrantless entry and knock-and-announce claim, taking issue with the Ninth Circuit's mixing and matching of the two claims. *See id*. at ___, 198 L.Ed.2d at 62-63. The Court of Appeals held that the deputies were entitled to qualified immunity on the knock-and-announce claim, yet supported their warrantless-entry proximate-cause conclusion with facts from the knock-and-announce claim: "[…] the situation in this case, where Mendez was holding a gun when the officers barged into the shack unannounced, was reasonably foreseeable." *See* 815 F.3d at 1195. The Ninth Circuit "did not identify the foreseeable risks associated with the *relevant* constitutional violation (the warrantless entry); nor did it explain how, on these facts, respondents' injuries were proximately caused by the warrantless entry. *See Mendez*, ___ U.S. at ___, 198 L.Ed.2d at 62-63.

C. *A Proximate Cause by Any Other Name*

From the *Mendez* Supreme Court:

> Proper analysis of this proximate cause question required consideration of the "foreseeability or the scope of the risk created by the predicate conduct," and required the court to conclude that there was "some direct relation between the injury asserted and the injurious conduct alleged." *Paroline v. United States*, 572 U.S. ___, ___, (2014) (internal quotation marks omitted).

Mendez, ___ U.S. at ___, 198 L.Ed.2d at 62.

The Fifth Circuit's *Doe v. Rains County Indep. Sch. Dist*. provides some perspective on the range of § 1983 causes of action that use similar causation analyses under different labels:

> "A municipality, for instance, cannot be held vicariously liable under § 1983; rather, plaintiffs must point to an official policy or custom that was the "**moving force**" of a constitutional injury. *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 6588, 694 (1978). Further, injuries resulting from a municipality's failure to train or to supervise its employees can give rise to § 1983 liability only where the inaction is indicative of an official policy or custom that manifests **deliberate indifference** toward the rights of the injured persons. *See City of Canton v. Harris*, 489 U.S. 378, 388 (1989). *Monell*'s moving force requirement for claims of failure to train means that "the identified deficiency in a city's training program must be **closely related** to the ultimate injury." *City of Canton*, 489 U.S. at 391. "[T]here must at least be an **affirmative link** between the training inadequacies alleged, and the particular constitutional violation at issue." *Oklahoma City v. Tuttle*, 471 U.S. 808, 824 n.8 (1985)."

Doe v. Rains Cty. Indep. Sch. Dist., 66 F.3d 1402, 1409 (5th Cir. 1995) (emphasis added).

These different labels all belong to this "proximate cause" family of causation elements, but rarely do they call it "proximate cause." The Fifth Circuit cautioned that causation under § 1983 is "not to be gauged by the standards of ordinary tort law." *Id.* at 1415; *Gonzalez v. Ysleta Indep. Sch. Dist.*, 996 F.2d 745, 755 (5th Cir. 1993) (*citing Martinez v. California*, 444 U.S. 277, 285 (1980)). Whether called an "affirmative link," a "moving force" or the need to be "closely related," the ultimate inquiry is whether there is a connection between action taken under color of state law and the constitutional harm. *Doe v. Rains*, 66 F.3d at 1415. Regardless of the name, the frameworks mirror that of proximate cause[1].

The Ninth Circuit acknowledged in its *Mendez* opinion that "[t]he Supreme Court has emphasized that § 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Mendez*, 815 F.3d at 1194; *Malley v. Briggs*, 475 U.S. 335, 344 n.7 (1986) (*quoting Monroe v. Pape*, 365 U.S. 167, 187 (1961)). "The courts are quite generally agreed that [foreseeable] intervening causes . . . will not supersede the defendant's responsibility." W. Prosser & W. Keeton, *The Law of Torts*, § 44, at 303-04 (5th ed. 1984). Courts look to the original foreseeable risk that the defendant created. *Sundance Land Corp. v. Community First Fed. Sav. & Loan Ass'n*, 840 F.2d 653, 662 (9th Cir. 1988) (citing Prosser & Keeton, *supra*, § 44, at 302). When one person's conduct threatens another, "the normal efforts of the other . . . to avert the threatened harm are not a superseding cause of harm resulting from such efforts," so as to prevent the first person from being liable for that harm. *White v. Roper*, 901 F.2d 1501, 1505-06 (9th Cir. 1990); Restatement (Second) of Torts, § 445 (1965).

In an interesting twist, the *Mendez* District Court completed a proximate cause analysis as one of the elements of the "Provocation Rule," then contradicted all previous analysis and awarded nominal damages for the warrantless entry and knock-and-announce claims because "the act of pointing the BB gun" was a superseding cause "as far as damage [from the shooting was] concerned." *Mendez*, ___ U.S. at ___, 198 L.Ed.2d at 58.

One would argue that this inconsistency could be attributed to mistake or perhaps a Freudian slip by a stubborn dissenting law clerk, but the opinion persistently drives home an analysis opposite to its final ruling:

> "Deputy Conley violated Mr. and Mrs. Mendez's Fourth Amendment right to be free from an unreasonable search in searching the shack without a warrant (or applicable warrant exception). Deputies Conley and Pederson violated Mr. and Mrs. Mendez's Fourth Amendment right to be free from an unreasonable search in and in failing to knock-and-announce before the search. As a result, Mr. Mendez picked up the BB gun rifle while sitting up on the futon within the shack, and Deputies Conley and Pederson fired their guns."
>
> *Mendez v. Cty. of L.A.*, 2013 U.S. Dist. LEXIS 115099, at *69 (C.D. Cal. 2013), *affirmed in part and reversed in part*, 815 F.3d 1178, *vacated and remanded by* 137 S. Ct. 1539.
>
> "[… I]t is inevitable that a startling armed intrusion into the bedroom of an innocent third party, with no warrant or notice, will incite an armed response. Any other ruling would be inconsistent with the Second Amendment […]."
>
> *Id.* at *82 (indicating that an armed response to an unannounced warrantless entry is foreseeable to the point of "inevitable").
>
> "In this case, it was foreseeable that opening the door to the shack without a warrant (or warrant exception) and without knocking-and-announcing could lead to a violent confrontation. **Mr. Mendez's "normal efforts" in picking up the BB gun rifle to sit up on the futon do not supersede Deputies Conley and Pederson's responsibility**. Therefore, the conduct of Deputies Conley and Pederson was the proximate cause of Mr. and Mrs. Mendez's injuries."

[1] "Proximate cause" – in itself an unfortunate term – is merely the limitation which the courts have placed upon the actor's responsibility for the consequences of the actor's conduct…As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. Black's Law Dictionary 250 (9th ed. 2009).

Id. at *87-88.

> "Here, Deputy Conley is liable for unreasonably searching the shack without a warrant or applicable warrant exception. Deputies Conley and Pederson are jointly and severally liable for unreasonably failing to knock-and-announce their presence."

Id. at *89.

After pages of well-supported reason advocating for a proximate cause finding, the District Court awarded Plaintiffs nominal damages on both the warrantless entry claim and the knock-and-announce claim. The Supreme Court finally supplied an explanation:

> "[t]he [District] court found Deputy Conley liable on the warrantless entry claim, and the court also found both deputies liable on the knock-and-announce claim. But the court awarded nominal damages for these violations because 'the act of pointing the BB gun' was a superseding cause[2] 'as far as damage [from the shooting was] concerned."

Mendez, ___ U.S. at ___, 198 L.Ed.2d at 58.

VI. Lessons to Take Back to the Office

We can take a few things away from the *Mendez* case.

A. Excessive Force; Graham

The Supreme Court reminded everyone:

> "*The* framework for analyzing excessive force claims is set out in *Graham*. If there is no excessive force claim under *Graham*, there is no excessive force claim at all. To the extent that a plaintiff has other Fourth Amendment claims, they should be analyzed separately."

Mendez, ___ U.S. at ___, 198 L.Ed.2d at 61; *see Graham*, 490 U.S. 386.

Each alleged unconstitutional search or seizure needs its own objective reasonableness analysis.

B. Proximate Cause for All

The Supreme Court expressly held that the Ninth Circuit's Provocation Rule "is incompatible with [Fourth Amendment] excessive force jurisprudence." *Id*. at ___, 198 L.Ed.2d at 59. While the Court expressly held that "a different Fourth Amendment violation cannot transform a later, reasonable use of force into an unreasonable seizure," (*Id*. at ___, 198 L.Ed.2d at 57), it also unequivocally stated the reverse is true:

> "[…P]laintiffs can—subject to qualified immunity—generally recover damages that are proximately caused by any Fourth Amendment violation.[….] Thus, there is no need to dress up every Fourth Amendment claim as an excessive force claim. **For example, if the plaintiffs in this case cannot recover on their excessive force claim, that will not foreclose recovery for injuries proximately caused by the warrantless entry.** The harm proximately caused by these two torts may overlap, but the two claims should not be confused."
>
> *Id*. at ___, 198 L.Ed.2d at 62 (internal citations omitted).

The Court here specifically addressed the Ninth Circuit Court of Appeals and the procedural posture on remand, but the phrasing suggests an underlying rule:

> Defendant's subsequent lawful use of force that injures a § 1983 Plaintiff will not, simply by its virtue of being a lawful use of force, foreclose recovery for injuries proximately caused by Defendant's prior unconstitutional act.

Put another way:

> Defendant's lawful use of force that injures a § 1983 Plaintiff does not, simply by its virtue of being a lawful use of force, qualify as a superseding cause that would foreclose recovery for injuries proximately caused by Defendant's prior unconstitutional act.

The Court's comments on this causation issue provides us less-skilled advocates useful tools when addressing § 1983 causation in our future cases.

VII. Conclusion

The United States Supreme Court struck down the Ninth Circuit's Provocation Rule, and left an avenue of recovery open to the Plaintiffs on remand. The Court reminds us all to use *Graham* and only *Graham* for excessive force objective reasonableness analyses, to

[2] Of note, a Lexis Advance search for ("superseding cause" and "§ 1983") returned one case—*Mendez*.

independently analyze all Fourth Amendment claims, and to not worry about that pesky subsequent lawful use of force; the plaintiff can still recover based on prior violations proximately causing injury.