# Mendez and § 1983

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# Roadmap

- Overview of § 1983
- § 1983 Causation
- Examples: Municipal Liability Claims, First Amendment Retaliation
- Ninth Circuit's Provocation Rule
- *The County of Los Angeles v. Mendez*
- Facts, Procedural History and Analysis
- Hypotheticals and Lessons for the Office

# Overview of 42 U.S.C. § 1983

- Enabling statute
- No substantive rights, merely remedies
- Act under "color of state law"

"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 [...]."

42 U.S.C. § 1983

# § 1983 "Causation"

**Section** 1983 does not specify what kind of causation is required for valid claim.

"subjects, or causes to be subjected [...] to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws..."

What does that mean?

If we do not know, where can we look to figure it out?

# § 1983 is a Species of Tort

In *Wilson* v. *Garcia*, the Supreme Court explicitly identified § 1983 as a personal-injury tort.

*City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 727-29 (1999) (*quoting Wilson* v. *Garcia*, 471 U.S. 261, 277 (1985)).

- Purports to compensate plaintiff for violation of legal rights
- Legal rights derive from the Constitution and Federal law, instead of common law or state statutes
- In some cases the damages claimed are identical (excessive force)

# Tort-Claim Concepts Fill the Gap

The Supreme Court uses tort-claim concepts to aide in their analyses when § 1983 or federal common law remain silent.

- For Example:
- Statute of Limitations for § 1988
  - *See Wilson* v. *Garcia*, 471 U.S. 261, 277 (1985))
- Scope of Immunity
  - *See Kalina* v. *Fletcher*, 522 U.S. 118, 124-125 (1997)

# § 1983 Causation – Where Are the Gaps?

Federal common law has developed certain causation requirements for certain constitutional claims.

- For Example:
  - Municipal Liability Claims
  - First Amendment Retaliation Claims

# Municipal Liability Claims

Elements:

(1) a policymaker;

(2) an official policy; and

(3) violation of constitutional rights whose *moving force* is the policy or custom."

*Bishop v. Arcuri*, 674 F.3d 456, 467 (5th Cir. 2012) (*citing Hampton Co. Nat'l Sur., LLC v. Tunica Cty.*, 543 F.3d 221, 227 (5th Cir. 2008)).

- Species of Vicarious Liability:
  - Policymaker
  - Policy
  - Constitutional Violation
- Failure-to-Train Claims
  - Deliberate Decision
  - Affirmative Link

# First Amendment Retaliation Claims

(1) Constitutionally protected activity;

(2) The defendants' actions caused injury that would chill Free Speech; and

(3) The defendants' adverse actions were substantially motivated against the plaintiff's exercise of constitutionally protected conduct.

*Izen v. Catalina*, 398 F.3d 363, 367 (5th Cir. 2005) (*quoting Keenan v. Tejeda*, 290 F.3d 252, 260 (5th Cir.2002).

- Retaliation:
  - Protected Activity
  - Defendant's actions
  - Plaintiff's injury
- "Substantially Motivated"
  - Detailed in case law

# That Sounds Like Proximate Cause

These different "versions" of causation standards are all similar to proximate cause, but should not be called the same – each has their own line of case law tailored to the underlying right.

- "Moving force"
  - Municipal Liability
- "Closely related"
  - Failure-to-train, municipal liability
- "Affirmative link"
  - Failure-to-train, municipal liability

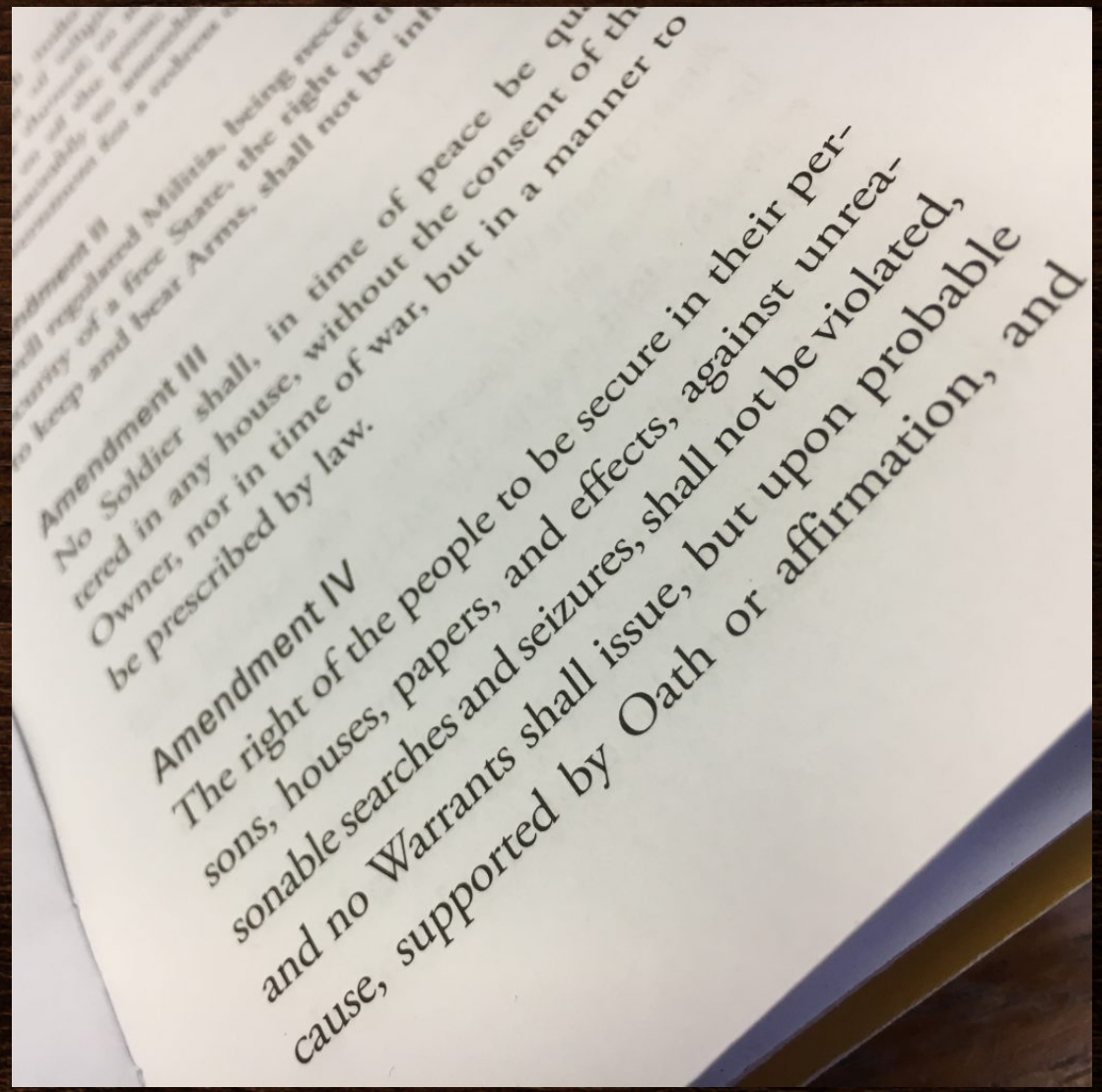
# § 1983 Causation Can Be Difficult…

Causation can get lost amidst the many other complicated issues that sometimes preclude consideration of the causation issue.

- Qualified Immunity
- Municipal Liability
- Constitutional "reasonableness" standard

# Ninth Circuit's Provocation Rule

Permits excessive force claim under 4th Amendment where officer intentionally or recklessly provokes violent confrontation if the provocation is an independent Fourth Amendment violation.



# The County of Los Angeles v. Mendez (2017)

# Lawsuit & Appeal

4th Amendment Claims

- Warrantless entry claim
- Knock and Announce claim
- Excessive Force claim

District Court Ruling

Ninth Circuit Court of Appeals

# District Court

- Warrantless entry claim - Deputy Conley liable
- Knock-and-announce claim – Both deputies liable;
- Excessive force claim – reasonable use of force under *Graham v. Connor*, but the provocation rule allows recovery.
- Court awarded 4 million in damages

# District Court

An interesting turn…

"It 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."

"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."

Then we learn from the Supreme Court's opinion:

"[…] 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.

# Ninth Circuit Court of Appeals

- Warrantless entry claim – Deputies violated clearly-established law
- Knock-and-announce claim – Both deputies entitled to Qualified Immunity;
- Excessive force claim – reasonable use of force under *Graham v. Connor*, but the provocation rule allows recovery (upheld)
- Court awarded 4 million in damages


Supreme Court: "the provocation rule …is incompatible with our excessive force jurisprudence"

*Graham v. Connor (1989)*

- The Objective Reasonableness standard
- Operative question in excessive force – "whether totality of circumstances justifies a particular sort of search or seizure".
- Judged from the perspective of reasonable officer on the scene, rather than 20/20 vision of hindsight.

# The Supreme Court's Comments on Causation

- "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."
- "a different Fourth Amendment violation cannot transform a later, reasonable use of force into an unreasonable seizure."

# Hypothetical: Officer Jumps in Front of Car

- Police Officer jumps in front of a car of a total stranger
- Stranger is wholly innocent, not included in any police activity nor at fault in any way
- Officer recognizes threat to his life, and fires into the vehicle, killing the driver.
- Would the police officer exercise reasonable force in firing in defense of his life?

# Hypothetical: Warrant v. No Warrant

- Police Officers approach a house
- Officers in full uniform, properly identify themselves
- Officers have a valid warrant
- The officers subsequently react to the sight of a firearm and shoot the homeowner.
- Now imagine the same, except the officers do not have a warrant and instead unreasonably believe they have an exception (or know they do not). Any liability for the warrantless entry?

# Lessons to Take Back to the Office

- Tort Law supplants § 1983 analysis when needed
- No more provocation rule, analyze each alleged violation separately

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