HANDOUT

By Michael E. Gottfried

UNITED STATES DISTRICT COURT OF ARIZONA PRISONER EARLY MEDIATION PILOT PROGRAM TRAINING

August 28, 2014

Michael E. Gottfried
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA
1275 West Washington Street
Phoenix, Arizona 85007
(602) 542-7693 Direct
Michael.Gottfried@azag.gov

General Section 1983 Principles[1]

Michael E. Gottfried,
Arizona Assistant Attorney General

A. Enforcement of the U.S. Constitution and federal law

Section 1983 provides:

> 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 … .

42 U.S.C. § 1983.

B. Cause of action

Courts have required plaintiffs to "plead that (1) the defendants acting under color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes." *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986).

C. "Person" under § 1983

States are not persons for purposes of § 1983. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 (1997); *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).

State officials sued in their personal capacity are persons for purposes of § 1983. *See Hafer v. Melo*, 502 U.S. 21, 31 (1991).

"Personal-capacity suits seek to impose personal liability upon a government official for actions [the official] takes under color of state law." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Liability in a personal-capacity suit can

[1] Derived from Kent Brintnall's "Section 1983 Outline" (2002), updated Jan. 2014.

be demonstrated by showing that the official caused the alleged constitutional injury. *See id.* at 166.

"[M]unicipalities and other local government units . . . [are] among those persons to whom § 1983 applies." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978); *see also Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1057 (9th Cir. 2012) ("A government entity may be held liable under 42 U.S.C. § 1983 if an 'action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.'" (quoting *Monell*, 436 U.S. at 690)).

State officials sued in their official capacity for damages are not persons for purposes of § 1983. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 69 n.24 (1997).

State officials sued in their official capacity for injunctive relief, however, are persons for purposes of § 1983. *See Will*, 491 U.S. at 71 n.10.

Holley v. Cal. Dep't of Corr., 599 F.3d 1108, 1111 (9th Cir. 2010) (treating suit against state officials in their official capacities as a suit against the state of California).

D. "Under color of state law"

A defendant has acted under color of state law where he or she has "exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *West v. Atkins*, 487 U.S. 42, 49 (1988) (quoting *United States v. Classic*, 313 U.S. 299, 326 (1941)).

Even if the deprivation represents an abuse of authority or lies outside the authority of the official, if the official is acting within the scope of his or her employment, the person is still acting under color of state law. *Anderson v. Warner*, 451 F.3d 1063, 1068 (9th Cir. 2006).

However, "[i]f a government officer does not act within [the] scope of employment or under the color of state law, then that government officer acts as a private citizen." *See Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996) (finding no action under color of state law where a police officer returned to a home where a search had taken place the day before, forced his way in, and tortured the two people residing in the home).

Generally, employees of the state are acting under color of state law when acting in their official capacity. *See West v. Atkins*, 487 U.S. 42, 49 (1988); *Anderson v. Warner*, 451 F.3d 1063, 1068 (9th Cir. 2006).

Physicians who contract with prisons to provide medical services are acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 53-54 (1988).

E. Violations of state law

Section 1983 does not provide a cause of action for violations of state law. *See Galen v. Cnty. of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007).

F. No vicarious liability

"Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

G. Qualified Immunity

"[G]overnment officials performing discretionary functions [are entitled to] a qualified immunity, shielding them from civil damages liability as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635, 638 (1987).

The Supreme Court has set forth a two-part analysis for resolving government officials' qualified immunity claims. *See Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled in part on other grounds by Pearson v. Callahan*, 555 U.S. 223, 236 (2009). First, the court must consider whether the facts "[t]aken in the light most favorable to the party asserting the injury . . . show [that] the [defendant's] conduct violated a constitutional right[.]" *Saucier*, 533 U.S. at 201. Second, the court must determine whether the right was clearly established at the time of the alleged violation. *Saucier*, 533 U.S. at 201.

To be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what [the official] is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

H. Eleventh Amendment Immunity

The Eleventh Amendment to the United States Constitution states that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. "The Amendment . . . enacts a sovereign immunity from suit, rather than a nonwaivable limit on the Federal Judiciary's subject-matter jurisdiction." *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 267 (1997).

"The Eleventh Amendment prohibits federal courts from hearing suits brought against an unconsenting state. Though its language might suggest otherwise, the Eleventh Amendment has long been construed to extend to suits brought against a state by its own citizens, as well as by citizens of other states." *Brooks v. Sulphur Springs Valley Elec. Coop.*, 951 F.2d 1050, 1053 (9th Cir. 1991).

The Eleventh Amendment bars suits against state agencies, as well as those where the state itself is named as a defendant. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993).

The Eleventh Amendment also bars damages actions against state officials in their official capacity. *Flint v. Dennison*, 488 F.3d 816, 824-25 (9th Cir. 2007).

"The [E]leventh [A]mendment does not bar actions against cities and counties." *Greater L.A. Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987).

The doctrine of *Ex Parte Young*, 209 U.S. 123 (1908) – that the Eleventh Amendment does not bar suits for prospective declaratory or injunctive relief against state officials in their official capacity – is a well-recognized exception to the general prohibition of the Eleventh Amendment. *See Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 269 (1997).

States may waive their Eleventh Amendment immunity by making an unequivocal statement that they have consented to suit in federal court. *See Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 305-06 (1990).

A state's act of removing a lawsuit from state court to federal court waives its Eleventh Amendment immunity. *See Lapides v. Bd. of Regents*, 535 U.S. 613, 616 (2002).

I. Damages

"A plaintiff who establishes liability for deprivations of constitutional rights actionable under 42 U.S.C. § 1983 is entitled to recover compensatory damages for all injuries suffered as a consequence of those deprivations." *Borunda v. Richmond*, 885 F.2d 1384, 1389 (9th Cir. 1988).

Punitive damages are available under § 1983. *See Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 17 (1991).

J. Statute of limitations

Because § 1983 contains no specific statute of limitations, federal courts should borrow state statutes of limitations for personal injury actions in § 1983 suits. *See Wallace v. Kato*, 549 U.S. 384, 387 (2007).

Arizona: two years, *see Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 974 (9th Cir. 2004).

K. Prison Litigation Reform Act (42 U.S.C. § 1997e(d)) - Enacted 1996

Screening

The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a).

Exhaustion of prison administrative remedies required

Currently, under the Prison Litigation Reform Act, "[n]o action shall be brought with respect to prison conditions under . . . [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a) (2013).

Attorneys' fees limited to no more than 150% damages

Dannenberg v. Valadez, 338 F.3d 1070, 1073-75 (9th Cir. 2003) (holding that § 1997e(d), limiting defendants' liability for attorney's fees to 150 percent of any monetary judgment, is inapplicable where prisoner secures both monetary and injunctive relief).

Injunctions limited and narrowly drawn

The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief. 18 U.S.C. § 3626(a)(1)(A) (1997).

L. Interests Protected by Due Process - *Sandin v. Conner*

The procedural guarantees of the Fifth and Fourteenth Amendments' Due Process Clauses apply only when a constitutionally protected liberty or property interest is at stake. *See Ingraham v. Wright*, 430 U.S. 651, 672-73 (1977).

In *Sandin v. Conner*, 515 U.S. 472 (1995), the Supreme Court held that state law creates liberty interests deserving protection under the Fourteenth Amendment's Due Process Clause only when the deprivation in question (1) restrains the inmate's freedom in a manner not expected from his or her sentence and (2) "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 483-84.

Sandin "refocused the test for determining the existence of a liberty interest away from the wording of prison regulations and toward an examination of the hardships caused by the prison's challenged action relative to 'the basic conditions' of life as a prisoner."

The Supreme Court has held that prisoners have a state-created liberty interest in avoiding assignment to a state's "Supermax" facility. *See Wilkinson v. Austin*, 545 U.S. 209, 223-24, 228 (2005).

When a prisoner is placed in administrative segregation, prison officials must, within a reasonable time after the prisoner's placement, conduct an

informal, non-adversary review of the evidence justifying the decision to segregate the prisoner. *See Hewitt v. Helms*, 459 U.S. 460, 476 (1983), *abrogated in part on other grounds by Sandin v. Connor*, 515 U.S. 472 (1995).

When a prisoner faces disciplinary charges, prison officials must provide the prisoner with (1) a written statement at least twenty-four hours before the disciplinary hearing that includes the charges, a description of the evidence against the prisoner, and an explanation for the disciplinary action taken; (2) an opportunity to present documentary evidence and call witnesses, unless calling witnesses would interfere with institutional security; and (3) legal assistance where the charges are complex or the inmate is illiterate. *See Wolff v. McDonnell*, 418 U.S. 539, 563-70 (1974).

M. Constitutionality of prison regulations – *Turner v. Safely*.

A regulation that impinges on constitutional rights "is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987).

Legitimate penological interests include "the preservation of internal order and discipline, the maintenance of institutional security against escape or unauthorized entry, and the rehabilitation of the prisoners." *Procunier v. Martinez*, 416 U.S. 396, 412 (1974)

In determining whether a prison regulation is reasonably related to a legitimate penological interest, the court should consider the following factors: (1) whether there is a valid, rational connection between the regulation and the interest used to justify the regulation; (2) whether prisoners retain alternative means of exercising the right at issue; (3) the impact the requested accommodation will have on inmates, prison staff, and prison resources generally; and (4) whether the prisoner has identified easy alternatives to the regulation which could be implemented at a minimal cost to legitimate penological interests. *Turner*, 482 U.S. at 89-91.

N. Deference to prison administrators

Courts should accord prison officials great deference when analyzing the constitutional validity of prison regulations. *See Beard v. Banks*, 548 U.S. 521, 528 (2006); *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003); *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 353 (1987); *Turner*, 482 U.S. at 84-85.