



MUNICIPAL TORT AND CIVIL RIGHTS LITIGATION UPDATE

- Sean D. Richmond
- Senior Deputy City Attorney
- Sacramento City Attorney's Office

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HART V. REDWOOD CITY

99 F.4TH 543
(9TH CIR. 2024)

SUMMARY OF FACTS

- Suicidal subject advances toward Officers armed with a knife.
- After the deployment of ineffective less lethal force, Officer fires lethal rounds killing the subject.

➤ **PROCEDURAL STATUS**

- Qualified immunity denied in the trial court.

➤ **COURT ANALYSIS**

- Was the officers conduct reasonable?
- How is the government interest determined?
- Hart posed an immediate threat to Officer Gomez
- Hart's mental illness did not change the outcome.



HART V. REDWOOD CITY

99 F.4TH 543
(9TH CIR. 2024)

HOLDING

- There was no constitutional violation and even if there were, Officer Gomez would have been entitled to qualified immunity as he did not violate clearly established law.
- Regarding the Officers' pre-shooting conduct, the Court noted that California state law does factor pre-shooting conduct into whether an officer acts "reasonably when using deadly force," *Hayes v. County of San Diego*, 736 F.3d 1223 (9th Cir. 2013)



SCOTT V.
SMITH

109 F.4TH 1215
(9TH CIR. 2024)

SUMMARY OF FACTS

- Scott called LVPD for help claiming that assailants were trying to enter his home with a saw to harm him.
- When the Officers arrived at Scott's apartment and Scott came to the door, he was holding a metal pipe. He dropped the pipe on the Officers' order.
- Scott pulled a knife out of his pocket and gave it to the Officers.
- The Officers grabbed Scott's arms and forced him to the ground.
- He was placed on his stomach and an Officer placed his full body weight on Scott's back.
- After approximately two minutes, Scott died from asphyxia.

PROCEDURAL STATUS

- Qualified immunity denied in the trial court..



SCOTT V. SMITH

109 F.4TH 1215
(9TH CIR. 2024)

COURT ANALYSIS

- Was the officers conduct reasonable?
- How is the government interest determined?
- Scott did not pose an immediate threat to the Officers.
- Scott's mental illness should have been considered.
- Deadly force was completely unnecessary.
- Scott's 4th Amendment rights were clearly established by Drummond ex rel. Drummond v. City of Anaheim, 343 F.3d 1052 (9th Cir. 2003).
- Scott's 14th Amendment rights were also violated; however, those rights were not clearly established.



SCOTT V. SMITH

109 F.4TH 1215
(9TH CIR. 2024)

HOLDING

- Officers were not entitled to qualified immunity on Plaintiff's 4th Amendment claim when placing a bodyweight restraint on an unarmed and cooperative subject who lost consciousness and died as a result of the restraint.
- Officers were entitled to QI on the 14th Amendment claim, however, this case now clearly established Plaintiff's 14th Amendment rights.



ROSENBAUM V. CITY OF SAN JOSE

107 F.4TH 919
(9TH CIR. 2024)

SUMMARY OF FACTS

- SJPd Officers, including K9, responded to a domestic violence call.
- Plaintiff was located on a second-floor landing inside the residence.
- Plaintiff refused to come down. Officers gave him a K9 warning.
- K9 was deployed to apprehend Plaintiff.
- When Officers reached the second floor, K9 was biting the right arm of the unarmed Plaintiff.
- K9 dragged Plaintiff onto his stomach, while Officers placed their body weight on his back and legs.
- K9 continued to bite Plaintiff for approximately 20 seconds after he had clearly surrendered.
- Sustained serious and permanent nerve damage.

PROCEDURAL STATUS

- Qualified Immunity denied at trial court.



ROSENBAUM V. CITY OF SAN JOSE

107 F.4TH 919
(9TH CIR. 2024)

COURT ANALYSIS

- It is clearly established that when an officer allows a police dog to continue biting a suspect who has fully surrendered and is under officer control, it is a violation of Plaintiff's 4th Amendment rights.
- In some cases, such as this one, the conduct is so clearly a violation, that on-point appellate authority is not even necessary.
- The court distinguished other K9 cases where it was not clear the subject was unarmed.

HOLDING

- Officers not entitled to qualified immunity when a police K9 was deployed on Plaintiff and continued to bite him for nearly 20 seconds after surrendering and laying prone on his stomach.



SANDERLIN V.

DWYER
2024 WL 4033065
(9TH CIR. 2024)

SUMMARY OF FACTS

- George Floyd protest in San Jose went from peaceful to chaotic.
- Crowd dispersal announcements made by SJPd.
- While armed with a 40 mm less lethal rifle, Officer Panighetti observed two subjects who appeared to be preparing to throw cans of paint at Officers.
- Plaintiff stepped between Officer Panighetti and the two subjects while holding a sign over his head.
- Panighetti ordered Plaintiff to move and warned him that he would “hit” him if he did not move. Plaintiff did not move.
- Panighetti fired one foam bullet round at Plaintiff striking him in the groin.
- The injury was severe and required an emergency surgery.

PROCEDURAL STATUS

- Panighetti denied qualified immunity as to Plaintiff’s claims under the 1st and 4th Amendments.



SANDERLIN V.

DWYER
2024 WL 4033065
(9TH CIR. 2024)

COURT ANALYSIS

- As to the 1st Amendment claim, whether Plaintiff was engaged in a constitutionally protected activity and whether the protected activity was a substantial or motivating factor in Panighetti's conduct were factual disputes that a jury must decide.
- It is clearly established that police officers may not use their authority to retaliate against individuals for protected speech.
- As to the 4th Amendment claim, a seizure of Plaintiff was effectuated.
- A jury could determine the force used was unreasonable.
- The case of Nelson v. City of Davis, 685 F.3d 867 (9th Cir. 2012) clearly establishes that “the firing of a projectile that risked causing serious harm, in the direction of non-threatening individuals who had committed at most minor misdemeanors ... constitute[d] unreasonable force in violation of the Fourth Amendment.”

HOLDING

- Officer was denied qualified immunity when he struck Plaintiff in the groin with a deployed foam bullet at a George Floyd protest.



BLACK LIVES MATTER LOS ANGELES V.

CITY OF LOS
ANGELES
113 F.4TH 1249
(9TH CIR. 2024)

SUMMARY OF FACTS

- 10 days of George Floyd protests in Los Angeles in the Summer of 2020.
- LAPD set curfews, declared some of the demonstrations unlawful, used non-lethal force to control crowds, and arrested thousands of people.

PROCEDURAL STATUS

- Plaintiffs filed this putative class action against the City and then-LAPD Chief Michel Moore, alleging that the LAPD used excessive force, arrested protestors without probable cause, and restricted their First Amendment rights.
- The trial court granted Plaintiff protestors' motion for certification of three classes seeking damages from city and fourth class seeking injunctive relief against department.



BLACK LIVES MATTER LOS ANGELES V.

CITY OF LOS
ANGELES
113 F.4TH 1249
(9TH CIR. 2024)

COURT ANALYSIS

- FRCP 23 requires that the members of the class have the burden of proving by a preponderance of the evidence that they have common questions that can be resolved together, and these common questions predominate over individual ones.
- The question of whether reasonable force was used on the entire class depended on the facts of many different, individual situations.

HOLDING

- Plaintiffs did not adequately prove that they have raised a question which can be solved on a class-wide basis because the different claims arise in various different circumstances of alleged police brutality.
- The court vacated and remanded to the trial court, finding that further analysis of commonality and predominance was required before these classes could be certified.



CITY OF GRANTS PASS V.

JOHNSON
144 S.CT. 2202
(2024)

SUMMARY OF FACTS

- *Martin v. City of Boise* (9TH Cir. 2019): The 8th Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.
- *Robinson v. California* (USSC 1962): It violated the Eighth Amendment's Cruel and Unusual Punishment Clause to criminalize a person's status, rather than their conduct.
- Grants Pass had a series of ordinances on the books that prohibited camping—which it defined as sleeping with any form of protection from the elements—in any public space.

PROCEDURAL STATUS

- Several unhoused individuals in Grants Pass filed a class action lawsuit to prevent the City from enforcing these ordinances.
- A federal district court enjoined enforcement of these ordinances saying that, under *Martin*, these ordinances effectively criminalized the status of homelessness in violation of the Punishment Clause.
- The City appealed the District Court's injunction on Punishment Clause grounds to the 9th Circuit. The 9th Circuit affirmed the injunction, and the City appealed to the U.S. Supreme Court.



CITY OF GRANTS PASS V.

JOHNSON
144 S.CT. 2202
(2024)

COURT ANALYSIS

- The Grants Pass ordinances were distinguishable from Robinson because they criminalized conduct (i.e., sleeping, camping) rather than status (i.e., being homeless).
- The majority looked to Powell v. Texas, in which the Court found that a law criminalizing public intoxication was not the same as criminalizing someone's status as an alcoholic.
- In analyzing cases under the 8th Amendment, the majority found that fining people for sleeping in public was neither cruel (because it did not cause "terror, pain, disgrace" or other "atrocious" punishments) nor unusual (in that punishing such behavior was commonplace around the country).

HOLDING

- Prohibiting sleeping or camping in public did not violate the Cruel and Unusual Punishment Clause.



LINDKE V.

FREED

601 U.S. 187 (2024)

SUMMARY OF FACTS

- James Freed developed a very popular presence on Facebook.
- In 2014, Freed was appointed City Manager for Port Huron, Michigan.
- On his page, he shared both personal updates about himself and his family and professional updates, including directives and policies he initiated in his official capacity.
- Kevin Lindke came across Freed's page and did not approve of how Freed was handling the pandemic and posted derogatory commentary.
- Freed blocked Lindke from his Facebook page.

PROCEDURAL STATUS

- Lindke sued Freed under 42 U.S.C. § 1983 for violating his First Amendment rights by deleting his comments and blocking him.
- The district court granted summary judgment to Freed, and the U.S. Court of Appeals for the 6th Circuit affirmed.



LINDKE V.

FREED
601 U.S. 187 (2024)

COURT ANALYSIS

- The distinction between private conduct and state action turns on substance, not labels private parties can act with the authority of the state, and state officials have private lives and their own constitutional rights.
- The fact that Freed's page has government information does not necessarily mean it is an official conduit of state authority.
- For the actions of a private person to be covered by section 1983, the state has to be responsible for the person's conduct.

HOLDING

- A public official who prevents someone from commenting on the official's social-media page engages in state action under 42 U.S.C. § 1983 only if the official both (1) possessed actual authority to speak on the state's behalf on a particular matter, and (2) purported to exercise that authority when speaking in the relevant social-media posts.





THANK YOU

- Sean D. Richmond
- Senior Deputy City Attorney
- Sacramento City Attorney's Office
- Email: srichmond@cityofsacramento.org
- Phone: (916) 808-5346

CITY OF ONTARIO
V.

WE BUY HOUSES
ANY CONDITION
103 CAL.APP.5TH
1212 (2024)

SUMMARY OF FACTS

- The City of Ontario filed an eminent domain action to acquire properties owned by We Buy Houses Any Condition, LLC, located near the Ontario International Airport.
- The City argued that the properties did not conform to land use requirements and suffered from airport-related impacts and blight.
- The resolution did not describe any specific proposed project.

PROCEDURAL STATUS

- Trial court granted summary judgment in favor of We Buy Houses, finding that the City had not articulated a proposed project as required to exercise its power of eminent domain.



CITY OF ONTARIO
V.

WE BUY HOUSES
ANY CONDITION
103 CAL.APP.5TH
1212 (2024)

COURT ANALYSIS

- A taking must describe a specific project, which is necessary to determine public interest, necessity, and compatibility with the greatest public good and least private injury.
- The City failed to identify a proposed project with sufficient specificity in its resolution of necessity, as required by the Eminent Domain Law.

HOLDING

- Under Eminent Domain, a public entity must identify a specific project supporting the condemnation



DANIELSON V.
COUNTY OF
HUMBOLDT
103 CAL.APP.5TH 1
(2024)

SUMMARY OF FACTS

- Plaintiff was seriously injured by dogs owned by Donald Mehrstens.
- Plaintiff filed a lawsuit against several parties, including Mehrstens and the County of Humboldt.
- Plaintiff claimed that the County failed to discharge certain mandatory duties regarding dangerous and unvaccinated dogs under both state law and the Humboldt County Code, which she argued led to her injuries.

PROCEDURAL STATUS

- The trial court sustained the County's demurrer without leave to amend, leading to Danielson's appeal.



DANIELSON V.
COUNTY OF
HUMBOLDT
103 CAL.APP.5TH 1
(2024)

COURT ANALYSIS

- The duties Plaintiff identified were not mandatory within the meaning of Government Code section 815.6, and therefore, the County was immune from liability as a matter of law.
- Even if the Humboldt County Code had created a mandatory duty to hold a potentially dangerous dog hearing, it was uncertain that the hearing would have resulted in the dog's destruction or quarantine.
- The vaccination statutes created a mandatory duty to set up an impoundment system, but did not mandate the impound of any specific, unvaccinated animals.
- Plaintiff failed to identify any statute creating a mandatory duty which was breached by the County.

HOLDING

- The County was immune from suit under Gov. Code §§ 815 and 820.2 as the duties at issue were deemed discretionary rather than mandatory.

