MUNICIPAL TORT AND CIVIL RIGHTS LITIGATION UPDATE

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CIVIL RIGHTS

Law Enforcement Liability

Duarte v. City of Stockton, 60 F.4th 566 (9th Cir. 2023)

Duarte v. City of Stockton– Ninth Circuit

- Plaintiff pleaded "nolo contendere" to the charge. The plea was "held in abeyance" pending completing ten hours of community service and obeying to all laws. After the six months of abeyance elapsed, the charges were "dismissed."
- *Heck v. Humphrey* did not bar his Section 1983 claim because the criminal charges against him were dismissed without entry of a conviction.

Duarte v. City of Stockton– Facts

- Police responded to shots being fired and so-called "sideshow" activity.
- Plaintiff stood within a few feet of a group of police officers detaining someone else. When Plaintiff did not back up, officers forcefully took him to the ground. Police eventually struck him in the leg with a baton, breaking a bone.
- Plaintiff was charged with arresting arrest.

DUARTE V. STOCKTON – IMPACT

Without a conviction, *Heck v. Humphrey* does not apply.

Murguia v. Langdon, 73 F.4th 1103 (9th Cir. 2023)

Murguia v. Langdon – Facts

- Dad of twins called 911 seeking emergency mental health assistance for his ex-wife.
- Tulare County deputy sheriffs arrived at the home where they separated Dad from Mom and the twins; they then allowed Mom and a neighbor to take the twins to church and prevented Dad from following.
- A City of Visalia police officer drove Mom and the twins from the church to a shelter.
- Tulare police officers, acting in part on information provided by a social worker, transported Mom and the twins from the shelter to a motel, where Mom drowned the twins.

Murguia v. Langdon – Ninth Circuit

- Special-relationship exception did not apply because the defendants did not have custody of the twins.
- The state-created danger exception did apply to the Tulare police officer who arranged a motel room and left Mom isolated there with the twins.
- Also social worker liability.
- Dissent: Cannot be a constitutional violation in the absence of any abuse of power entrusted to the state. There was negligence, mistakes of judgment, and the failure to provide safety and security to the children.

Murguia v. Langdon – Rehearing Dissent

- Judge Bumatay -- joined by Judges Callahan, Ikuta and R. Nelson -- argued that the state-created danger doctrine should be narrowed.
- Noted that the 5th Circuit has not adopted the doctrine and asserted that the doctrine "finds no support in the text of the Constitution."
- Cited *Dobbs v. Jackson Women's Health Organization.*

Murguia v. Langdon – Impact

- Highlights where the Ninth Circuit has deviated from Supreme Court precedent and a circuit split.
- This can bolster a Supreme Court certiorari petition.
- Dissents from denials of en banc petitions have been described as providing one judge's blueprint for how the favored party ought to frame the case before the Supreme Court.

CIVIL RIGHTS

Non-Law Enforcement Liability

Coal. on Homelessness v. City & Cnty. of San Francisco
93 Cal. App. 5th 928 (2023)

Coal. on Homelessness v. City & Cnty. of San Francisco – Facts

- SFMTA towed vehicles except where the amounts owed are $2,500 or less and "when a parking enforcement officer . . . can identify that [a] car is being used as shelter…."

Coal. on Homelessness v. City & Cnty. of San Francisco – Ninth Circuit

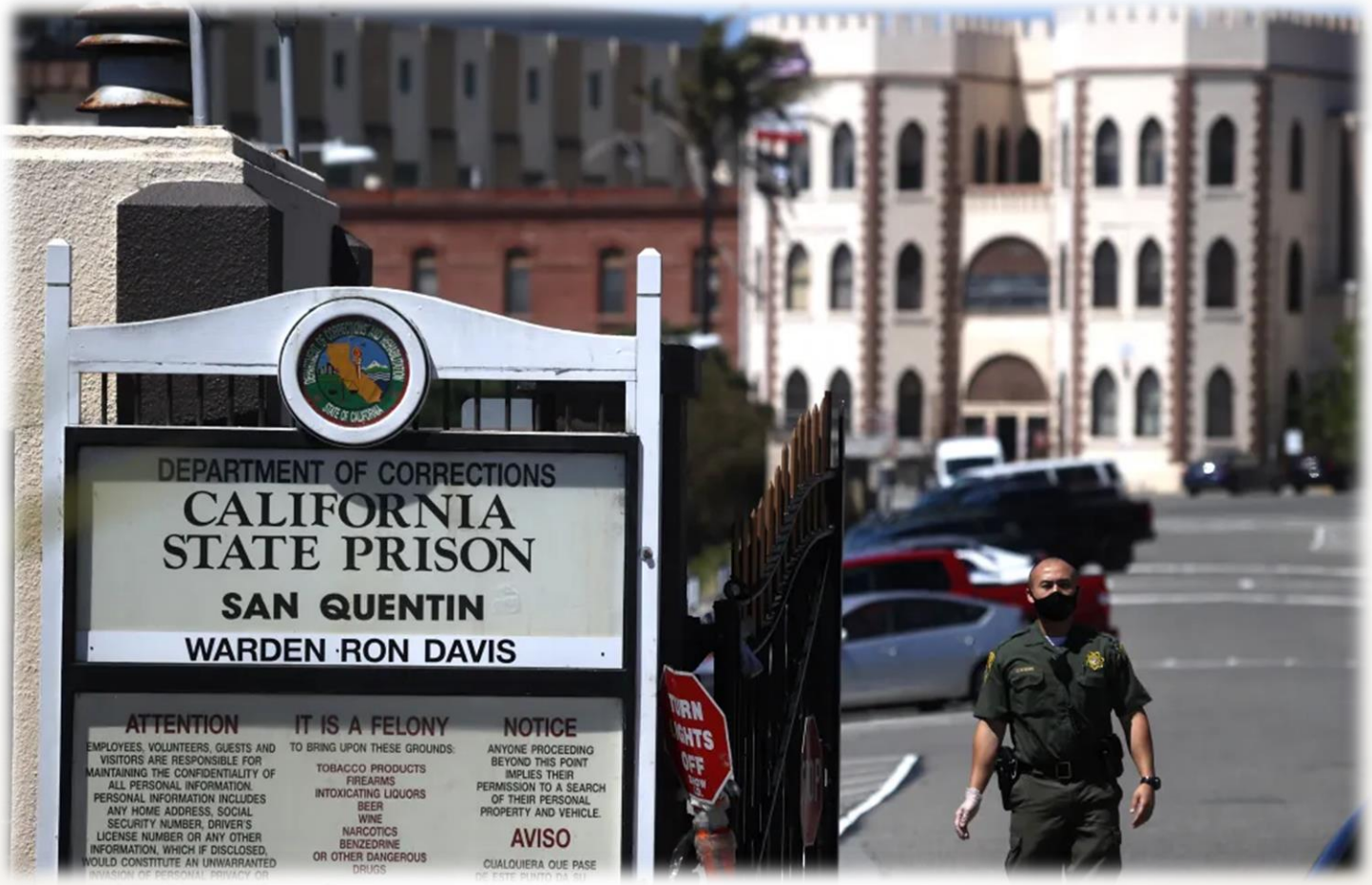
- Main issue was whether the challenged warrantless tows were permissible under the vehicular community caretaking exception to the Fourth Amendment's warrant requirement.
- City did not show that legally parked cars with unpaid parking tickets that present no threat to "public safety and the efficient movement of vehicular traffic" may be towed.
- Also rejected the argument that the city could justify towing cars for unpaid parking tickets by analogizing to warrantless property seizures in the forfeiture context.

Coal. on Homelessness v. City & Cnty. of San Francisco – Impact

While a city has legitimate and important interests in enforcing parking regulations, there are no cases relying on that rationale to approve towing under the community caretaker exception.

Case decisions have limited caretaking tows to those that address present, location-based obstacles to public safety or convenience.

Polanco v. Diaz, 76 F.4th 918,(9th Cir. 2023)



Polanco v. Diaz– Ninth Circuit

- Plaintiffs sufficiently alleged a violation of Polanco's substantive due process right to be free from a state-created danger.
- Key facts: failing to adequately test or screen inmates prior to the transfer, the transfer itself, and housing the inmates in open-aired cells.
- Decisions placed Polanco in a more dangerous position than he was in before.

Polanco v. Diaz– Facts

- A San Quentin correctional officer, Gilbert Polanco, was assigned to transfer 122 inmates from a prison experiencing a major COVID outbreak to San Quentin, where no cases had been reported.
- Prison officials did not provide personal protective equipment or take other measures to minimize COVID transmission.
- Polanco soon contracted COVID and later died from complications.

Polanco v. Diaz – Impact

State-created danger doctrine applies when a state actor creates a danger that results in an injury to the plaintiff.

Judge Nelson's dissent: The Supreme Court has admonished the Ninth Circuit "not to define clearly established law at a high level of generality. . . . As is not uncommon in our circuit, the majority regrettably fails to heed this guidance."

Bernal v. Sacramento Cnty. Sheriff's Dep't, 73 F.4th 678 (9th Cir. 2023)

Bernal v. Sacramento Cnty. – Facts

- Law enforcement coordinated a response to a report of a minor threatening to "shoot up" their high school.
- Sheriff deputies called the minor's mother who refused to provide the minors location because she did not know if the person calling was a sheriff's deputy.
- The deputies contacted the minor's parents at their residence, however the minor's parents tried to leave when the deputies attempted to question them. The deputies used force to detain and question the minor's parents to locate the minor.
- The minor was located, arrested, and pled no contest to a misdemeanor.

Bernal v. Sacramento Cnty. – Ninth Circuit

- The unique exigency of preventing a school shooting permits law enforcement to use reasonable force to detain and question non-suspects who have information that could assist law enforcement in preventing the school shooting.

- This exception to the Fourth Amendment's protections is very limited.

BERNAL V. SACRAMENTO

IMPACT

Law enforcement can use reasonable force to detain and question non-suspects who have information about a potential school shooter.

HILL V. CITY OF FOUNTAIN VALLEY, 70 F.4TH 507 (9TH CIR. 2023)

Hill v. City of Fountain Valley – Facts

- 911 caller reported a car driving erratically with a blind folded female passenger. Officers responded to the Hill family residence, where the car was registered, to investigate a possible kidnapping.

- Officers questioned members of the Hill Family found at the residence and placed one under arrest before it was discovered that the suspected "kidnapping" was part of an anniversary celebration.

Hill v. City of Fountain Valley – Ninth Circuit

- The officer's actions were reasonable under the circumstances because of the exigency presented by a potential kidnapping and the facts known to the officers.

- Summary judgment granted to all officers on all claims except to the state law cause of action of false arrest for the one family member who was placed under arrest.

HILL V. CITY OF FOUNTAIN VALLEY

IMPACT

Updated guidance on plaintiff claim requirements, and when officers can rely on exigent circumstances to make an arrest.

HOPSON V. ALEXANDER, 71 F.4TH 692 (9TH CIR. 2023)

Hopson v. Alexander – Facts

- Plain clothes detective observes Hopson and Jones engaging in suspicious activity in a gas station parking lot that caused the detective to believe Hopson and Jones were preparing to rob the gas station.
- The detective, and other officers, approached Hopson and Jones with their guns drawn and placed them under arrest. A handgun with an extended magazine was found in Hopson's possession. No one was injured during the arrest.
- Hopson's criminal charges were dismissed because the criminal trial court found that the stop lacked reasonable suspicion.

Hopson v. Alexander – Ninth Circuit

- Mr. Hopson sued for violations of his Fourth and Fourteenth Amendment rights based on excessive force and stopping him without reasonable suspicion.
- The District Court dismissed the suspicion-less stop claim on summary judgment citing *Terry v. Ohio*, 392 U.S. 1 (1968).
- The District Court did not dismiss the excessive force claim, finding a factual dispute. The officers filed an interlocutory appeal based on qualified immunity.
- The Ninth Circuit reversed the District Courts finding on excessive force, holding the officers were entitled to qualified immunity on that claim.

HOPSON V. ALEXANDER

IMPACT

Provides additional guidance on qualified immunity and *Terry v. Ohio.*

EST. OF STRICKLAND V. NEVADA COUNTY 69 F.4TH 614 (9TH CIR. 2023)

Est. of Strickland v. Nevada County – Facts

- Law enforcement responds to reports of a man with a gun. The man, later identified as Mr. Strickland, was mentally ill and told the officers he was carrying a BB gun with an orange tip. The officers told Mr. Strickland they could not tell if the gun was real and ordered him to drop it.
- Mr. Strickland refused to drop the gun and the officers attempt to use less lethal options failed to disarm Mr. Strickland.
- Mr. Strickland then pointed the gun at the officers and the officers responded with deadly force, killing Mr. Strickland.

Ets. of Strickland v. Nevada County – Ninth Circuit

- Mr. Strickland's estate sued the officers for excessive force.
- Defendant's motion to dismiss the case for failure to state a claim was granted, and the case was dismissed with prejudice at the complaint stage.
- Plaintiff was not given leave to amend because based on the facts in the complaint, the court found any amendment would be futile.
- The Ninth Circuit upheld the dismissal finding "the complaint establishes that Strickland pointed the replica gun's barrel at the officers and so it was objectively reasonable for the officers to respond with lethal force. Under these pleaded facts, it would be futile to allow leave to amend." Strickland, 69 F.4th 614 at 623-624.

EST. OF STRICKLAND V. NEVADA COUNTY

IMPACT

It is objectively reasonable for officers to use lethal force when a person points a gun in their direction, even when that gun might be fake.

LEON V. COUNTY OF RIVERSIDE, 14 CAL.5TH 910 (CALIFORNIA SUPREME COURT)

Leon v. County of Riverside – Facts

- Mr. Leon was shot and killed near his home. When deputies arrived, they heard additional guns shots and dragged Mr. Leon to cover where they unsuccessfully tried to revive him. The moving of Mr. Leon pulled his pants down exposing his naked body.
- Mr. Leon was left exposed for approximately eight hours, while deputies investigated the shooting.
- It was later determined that the shooter had killed himself after killing Mr. Leon.

Leon v. County of Riverside – California Supreme Court

- Mr. Leon's wife sued for negligent infliction of emotional distress.
- The County moved for summary judgment based on the immunity under Government Code section 821.6 because the suit was based on steps taken investigating a homicide.

- Government Code section 821.6 states:
  - "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause."

Leon v. County of Riverside – California Supreme Court

- The trial court granted the County's motion.
- The Court of Appeals affirmed.
- The California Supreme Court reversed the grant of immunity, finding section 821.6 immunity did not apply because the claim did not concern alleged harms caused by the institution or prosecution of judicial or administrative proceedings.

Leon v. County of Riverside – Impact

The California Supreme Court overturned *Amylou R.* and its progeny, narrowing the scope of conduct that qualifies for the immunity provided under Government Code Section 821.6.

The ruling in *Leon* only applied to section 821.6 immunity and does not affect other defenses or immunities.

MUNICIPAL TORT LIABILITY

Tansavatdi v. City of Rancho Palos Verdes, 14 Cal. 5th 639 (2023)

Tansavatdi v. City of Rancho Palos Verdes – Facts

- Auto v. Cyclist
- Section of roadway did not have a bike lane while the road went past a community park.
- When the cyclist approached an intersection, he rode in the right-turn-only lane but went straight through the intersection. The truck driver believed the cyclist would turn right because he was in the right-turn-only lane. The cyclist collided with the truck and died from his injuries.

Tansavatdi v. City of Rancho Palos Verdes – California Supreme Court

- The California Supreme Court found that a public entity can be entitled to design immunity, but still be held liable for failure to warn if a plaintiff establishes
  - (1) the public entity had actual or constructive notice that its design resulted in a dangerous condition;
  - (2) the dangerous condition qualified as a concealed trap; and
  - (3) the absence of a warning sign was a substantial factor in causing the injury.

Tansavatdi v. City of Rancho Palos Verdes – Impact

Even if a condition was knowingly created as part of an approved design, public entities must warn when they have notice that an approved road design presents a hidden or concealed danger to the public.

Cities cannot "remain silent" when they have notice that a reasonably approved design is dangerous to the public.

This may cause erosion of design immunity.

STACK V. CITY OF LEMOORE, 91 CAL. APP. 5TH 102 (2023) REH'G DENIED (MAY 22, 2023), REVIEW DENIED (JULY 26, 2023)

Stack v. City of Lemoore – Facts

- Plaintiff tripped and fell while jogging.
- A concrete sidewalk panel was displaced by 1 3/4 inches above its adjacent panel (the first defect). The lifted panel sloped slightly downward away from the first defect, ran into the next sidewalk panel, which in turn sloped upward and created a second elevated ridge where it met with the following downward-sloping, raised panel (the second defect) – i.e., three panels in a wave formation.
- Plaintiff was familiar with both defects from having jogged over this sidewalk some 300 times in two years. During this particular jog, he was focused ahead on the second defect, and he caught his toe on the lip of the first defect and fell, breaking his wrist.

Stack v. City of Lemoore – Court of Appeal

- City argued that the sidewalk condition must be deemed trivial as a matter of law because of its open and obvious nature, the plaintiff admitted familiarity with the condition, and the absence of prior accidents.
- The Court of Appeal disagreed, emphasizing a "holistic, multi-factor analysis" as to whether a defect is trivial:
  - Size of the defect (the most important factor)
  - Additional factors
    - Nature and Quality of the Condition;
    - Obstructions;
    - Lighting and Weather Conditions;
    - Prior Accidents

Stack v. City of Lemoore – Court of Appeal

- The 1 ¾ height differential of the first defect weighted heavily against finding the sidewalk condition trivial as a matter of law.
- The height was "nearly double the one-inch threshold where courts grow reluctant to take the issue from the jury."
- The fact that he jogged this stretch of sidewalk some 300 times over a two-year period before his accident did not bear on the triviality of the defect encountered.

Stack v. City of Lemoore – Impact

When a defect is greater than one inch, courts are reluctant to find it not dangerous as a matter of law

Court decided to "part ways" with precedent weighing a the plaintiff's familiarity with the defect as part of the dangerous condition analysis.

THANK YOU !

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