No. 23-

IN THE

Supreme Court of the United States

RALPH LISBY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF ASHLYNN LISBY, DECEASED,

Petitioner,

v.

JONATHAN HENDERSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A POLICE OFFER, AND CITY OF INDIANAPOLIS, INDIANA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Rule 14 A

Petitioner invokes the protection of 42 U.S.C. § 1983, which provides that one who deprives another of any rights, privileges, or immunities secured by the Constitution and law, shall be liable to the party injured in an action at law.

Unfortunately, cases against police officers due to motor vehicle collisions are not uncommon. Circuit Courts across this country have struggled with the level of severity of an officer's actions required to support a 42 U.S.C. § 1983 claim against a police officer. Indeed, such fact-specific inquiries should be left to the factfinders, i.e., the jury. Instead, the Seventh Circuit's decision below demonstrates the flawed approach taken to these cases at the circuit level. Relying upon the facts pled at the initial stage of a case, without an opportunity for meaningful discovery, the Circuit Court unreasonably and untimely disposed of the Petitioner's claims.

The Seventh Circuit's decision below deprived Petitioner from conducting any discovery to support his 42 U.S.C. § 1983 claim against a police officer. Petitioner pled sufficient facts to survive a judgment on the pleadings in the context of a 42 U.S.C. § 1983 claim.

This case presents the following questions:

1. Whether, in light of the procedural posture of this case, the Court should convert Respondents' Motion for Partial Judgment on the Pleadings to a Motion for Summary Judgment.

2. Whether the Petitioner pled sufficient facts to support his 42 U.S.C. § 1983 claim against Respondent Jonathan Henderson.

PARTIES TO THE PROCEEDING

Petitioner, plaintiff-appellant below, is Ralph Lisby, as the Personal Representative of the Estate of Ashlynn Lisby, deceased.

Respondents are Jonathan Henderson ("Henderson"), Individually and in his official capacity as a police officer, and the City of Indianapolis, Indiana ("Indianapolis")

CORPORATE DISCLOSURE STATEMENT

Ralph Lisby is an individual.

RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are related to this case:

United States District Court for the Southern District of Indiana:

> *Lisby v. Henderson and City of Indianapolis Indiana*, No. 1:22-cv-00010-JMS-TAB (consolidated with 1:21-cv-01186-SEB-DLP, February 17, 2022)

United States District Court for the Southern District of Indiana:

> *Lewis et al v. Henderson and City of Indianapolis, Indiana*, No. 1:21-cv-01186-SEB-DLP (September 29, 2022) (partial judgment)

United States Court of Appeals for the Seventh Circuit:

> *Lisby v. Henderson and City of Indianapolis, Indiana*, No. 22-2867 (July 18, 2023) (judgment).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ralph Lisby, as the Personal Representative of the Estate of Ashlynn Lisby, deceased, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS AND RULINGS BELOW

The opinion of the Seventh Circuit is reported at 74 F.4th 470. App., *infra*, 1a-7a.

The opinion of the United States District Court is not reported. App., *infra*, 8a-23a.

JURISDICTION

The Seventh Circuit entered judgment on July 18, 2023. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 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, 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.

STATEMENT

This case presents a fundamental and recurring question, which this Court has not squarely resolved: what level of specificity of a defendant's conduct alleged in a plaintiff's complaint is necessary to support a claim under 42 U.S.C. § 1983 at the pleadings stage. This case also presents a significant and recurring question concerning whether a district court can properly dispose of 42 U.S.C. § 1983 claims.

This incident arises out of a motor vehicle collision on May 6, 2020, in which IMPD Officer Jonathan Henderson collided with pedestrian Ashlynn Lisby. Lisby was fatally injured at the scene and passed away on May 6, 2020. (*Lisby Dkt.* No. *1-2* ¶ *25*).[1] Immediately prior to the collision, Ashlynn Lisby was walking lawfully on the shoulder of Harding Street/State Road 37. (*Lisby Dkt.* No. *1-2* ¶ *9*). On May 6, 2020, Officer Henderson was driving his issued police vehicle to roll call with the

1. *Lisby v. Henderson and City of Indianapolis Indiana*, No. 1:22-cv-00010-JMS-TAB is referred to as the "Lisby" docket, while *Lewis et al v. Henderson and City of Indianapolis, Indiana*, No. 1:21-cv-01186-SEB-DLP is referred to as the "Lewis" docket.

Indianapolis Metropolitan Police Department ("IMPD"). (*Lisby Dkt.* No. *1-2* ¶ *10*). Henderson, by counsel in their answer, admits that Henderson was operating his IMPD vehicle while uniformed in his IMPD attire, but fails to admit he was on his way to roll call. (*Lisby Dkt.* No. *16*). Officer Henderson was within the course and scope of his employment as a police officer employed by the City of Indianapolis at the time of the crash. (*Lisby Dkt.* No. *1-2* ¶ *15*). Immediately prior to the collision, Officer Henderson looked away from the road and made an illegal lane shift to the right lane of State Road 37 in the dark in order to enter the I-465 East on-ramp. (*Lisby Dkt.* No. *1-2* ¶ *11-13*). The speed limit for the I-465 East on-ramp was 45 miles per hour. (*Lisby Dkt.* No. *1-2* ¶ *11*). Immediately prior to impact with Ashlynn Lisby, Officer Henderson was traveling 78 miles per hour. (*Lisby Dkt.* No. *1-2* ¶ *11*). Officer Henderson was not responding to an emergency run at the time of the collision on May 6, 2020. (*Lisby Dkt.* No. *1-2* ¶ *10*). Henderson admits that he was not on an emergency run when he fatally struck Lisby on the day in question. (*Lisby Dkt.* No. *16*).

The District Court disposed of Petitioner's 42 U.S.C. § 1983 claim at the pleadings stage, finding that here, Officer Henderson's conduct as alleged was "less outrageous" than the conduct of the officer in *Flores v. City of South Bend*, 997 F.3d 725 (7th Cir. 2021). (*Lewis Dkt. No. 105*)

Similarly, without explaining its reasoning, the Seventh Circuit distinguished this matter from *Flores*, stating that Petitioner's complaint does not allow an inference that Officer Henderson had "actual knowledge of impending harm which he consciously refused to prevent." (*Lisby Appeal Dkt. No. 32*)

The basis of federal jurisdiction for the 7th Circuit Court of Appeals is due to federal question jurisdiction under the U.S. Constitution, Article III, Section 2 as it arises under 42 U.S.C. § 1983.

REASONS FOR GRANTING THE PETITION

The Court should grant review to revisit and address the fundamental question of what level of conduct, alleged at the pleadings stage, is required to support a claim under 42 U.S.C. § 1983. Only this Court has the authority to reconcile the different standards being applied across the Circuit Courts throughout the United States of America.

I. REVIEW IS WARRANTED TO RECONCILE CONFLICTS AMONG THE UNITED STATES COURT OF APPEALS

A. DELIBERATE INDIFFERENCE STANDARD

Claims under 42 U.S.C. § 1983 are meant to protect persons from violation of due process rights by government actors. Per 42 U.S.C. § 1983, a person seeking relief must plead sufficient facts to establish that the officer acted with "criminal recklessness – which is the same as 'deliberate indifference.'" *Hill v. Shobe*, 93 F.3d 418, 421 (7th Cir. 1996); *Archie v. City of Racine*, 847 F.2d 1211, 1222 (7th Cir. 1988). Criminal recklessness in this context has long served as an effective proxy for intent, but courts do not demand "smoking gun" proof of actual intent. *Flores v. City of South Bend*, 997 F.3d 725, 729 (7th Cir. 2021); *Hill*, 93 F.3d at 421. It is enough to plead plausibly "that the defendant had actual knowledge of impending harm which he consciously refused to prevent." *Hill*, 93 F.3d at 421.

The deliberate indifference standard demands close attention to the details of each specific case, as behavior considered reasonable in an emergency situation might be criminally reckless when state actors have time to appreciate the effects of their actions. *See County of Sacramento v. Lewis*, 523 U.S. 833, 850 (U.S. 1998). Officers giving chase have more latitude, while officers responding to a nonemergency situation or inserting themselves into a situation that is already under control face a different set of constraints. *Flores*, 997 F.3d at 729. The key question in a 42 U.S.C. § 1983 claim is whether the officer had "sufficient knowledge of the danger" such that "one can infer he intended to inflict the resultant injury." *Id.* Importantly, the law does not provide a shield against constitutional violations for state actors who consciously take extreme and obvious risks. *Id.* at 730. Courts have repeatedly cautioned against reading classifications too rigidly, noting that deliberate indifference is merely the manifestation in certain situations of a more general inquiry, which is whether the government conduct at issue shocks the conscience. *Bublitz v. Cottey*, 327 F.3d 485 (7th Cir. 2003). In *Sanford v. Stiles*, the Third Circuit recognized that "it is possible that actual knowledge of the risk may not be necessary where the risk is 'obvious.'" 456 F.3d 298, 309 (3d Cir. 2006).

B. DELIBERATE INDIFFERENCE STANDARD AS APPLIED BY THE SEVENTH CIRCUIT COURT OF APPEALS

The 7th Circuit has set forth conflicting opinions in issuing its opinion in this matter alongside *Flores*. In *Flores*, the 7th Circuit Court of Appeals held that a police officer's conduct reflected deliberate indifference

in violation of substantive due process rights, and the plaintiff was entitled to proceed with her case under 42 U.S.C. § 1983. *Flores*, 997 F.3d at 728. Erica Flores was killed when Officer Justin Gorny of the South Bend police department sped through residential streets and a red light at speeds up to 98 mph. *Id.* Officer Gorny was on his way to a routine traffic stop, which he was not invited to aid, and crashed into Flores' car and killed her. *Id.* Flores' personal representative sued Gorny and the City under 42 U.S.C. § 1983, asserting that Gorny violated Flores' substantive-due-process rights. *Id.* In this case, Gorny knew that the traffic stop was not an emergency, and that none of the responding officers were asking for external assistance. *Id.* Still, Gorny disregarded the 30 mile-per-hour speed limit and "roared through a residential neighborhood at 78 miles per hour" making infrequent use of his lights or sirens. *Id.* While in a residential neighborhood, Gorny reached an intersection, disregarded the red light, sped through the intersection and crashed into Erica Flores' car, which was proceeding lawfully on a green light. *Id.*

The Court of Appeals explicitly noted that "[a]n officer who is not responding to an emergency can act so recklessly that a trier of fact would be entitled to find subjective knowledge of an unjustifiable risk to human life and conscious disregard of that risk." *Id.* at 729-30. The Court therefore held that Gorny's reckless conduct, unjustified by any emergency or even an order to assist in a routine traffic stop that five officers had under control, allows the inference that he subjectively knew about the risk he created and consciously disregarded it. *Id.* at 730. Unlike a mere allegation of speeding, the complaint in *Flores* shows that Gorny, with no justification, chose to race through a residential area with a posted speed limit

of 30 miles per hour at rates of speed between 78 and 98 miles per hour, two-to-three times the limit, when he charged through an intersection on a red light. *Id.* The result was that Flores, complying with the traffic signals and regulations, was hit and killed. *Id.* Through his course of action, Gorny was "willing to let a fatal collision occur." *Id.* Therefore, the Court found that a jury could find, based on these allegations, that Gorny displayed criminal recklessness, or deliberate indifference, to the known risk. *Id.*

Conversely, in *Hill*, an on-duty police officer, driving over the speed limit, ran a red light and struck another vehicle. 93 F.3d 418. The District Court characterized the plaintiffs' complaint as alleging that a state actor was driving recklessly and knew that such recklessness could cause a fatal collision. *Id.* at 420. The Court specifically noted that the *Hill* plaintiff made only a conclusory allegation of recklessness, which is insufficient to defeat a motion to dismiss. 93 F.3d at 421. It further noted that "[u]nder the subjective standard, plaintiffs were required to demonstrate that [the officer] was willing to let a fatal collision occur. They did not do so." *Id.* The 7th Circuit held that the plaintiffs failed to allege a constitutional violation because they did not allege that the officer was driving with criminal recklessness or deliberate indifference. *Id.*

C. DELIBERATE INDIFFERENCE STANDARD APPLIED INCONSISTENTLY ACROSS FEDERAL COURTS

These cases against police officers are heavily dependent on the facts of each individual case. Further adding to the confusion amongst the federal courts, the

standard of "deliberate indifference" is not being applied uniformly. The Northern District of Illinois interpreted *Hill* in *McDorman v. Smith*, noting that *Hill* "merely holds that the plaintiffs in that case had failed to allege the requisite intent by the driver." 2005 WL 1869683, at *2 (N.D. Ill. Aug. 2, 2005). It further cited *Hill*, noting that a "plaintiff who asserts that he is the deliberate object of state action which caused injury may state a claim under § 1983." *Id.* In *McDorman*, the Court explicitly noted that the plaintiff alleged that the officer drove with deliberate indifference, meaning she alleged the requisite intent to state a constitutional violation. *Id.*

The Eastern District of Wisconsin examined a case similar to the instant case at the pleadings stage and again at the summary judgment stage. *See Estate of Stinson v. Milwaukee Cnty.*, 2022 WL 1303279 (E.D. Wis. May 2, 2022). As pled, an officer, not on an emergency call, looked down at his car's computer while maintaining a speed of approximately thirty miles per hour. 2022 WL 1303279, at *1. It was unclear how long he looked down, but it was long enough to miss a four-second yellow light and eleven seconds of the following red light. *Id.* The officer drove straight through the intersection in a right-turn only lane, ignoring the red light and fatally striking another vehicle. *Id.* The Eastern District of Wisconsin examined the *Flores* and *Hill* cases, noting that they are the Seventh Circuit's bookends for stating allegations sufficient to state a substantive due process claim arriving from a death caused by a car crash involving a police officer, and that *Stinson* falls somewhere between the two cases. *Id.* The defendants argued that the officer did not see the yellow or red light, and therefore that there was no intent on the officer's part to cause harm. *Id.* at *3. However, the

Court rejected this argument, determining that "one does not need to know, for a fact, that a light is red to know, for a fact, that driving without looking will cause an accident." *Id.* The question, therefore, was whether the officer "looked down at his computer for such a long period of time *knowing* that it would result in harm to others, or whether he was merely negligent." *Id.* The court therefore determined that the allegations in the complaint were sufficient to survive judgment on the pleadings. *Id.*

The Eastern District of Wisconsin then examined the same case at the summary judgment stage after denying judgment on the pleadings. *See Estate of Stinson*, 2022 WL 10585785. Facts were developed that at the time of the collision, the defendant officer was traveling 24 to 27 miles per hour, which was under the speed limit. *Id.* at *3-4. As he approached the intersection, he looked at his computer screen, but he did not recall exactly how long or how many times he looked at his computer. *Id.* at *4. He also testified that he was not using the computer immediately prior to or at the time of the collision. *Id.* Additionally, the officer's personal cell phone was unlocked, but he testified that it was not in use immediately prior to or at the time of the collision. *Id.* The district court determined that summary judgment was inappropriate as to the 42 U.S.C. § 1983 claim because whether the officer acted with the requisite intent "not only requires considering the undisputed facts of the case but also requires weighing competing inferences from those facts and assessing [the officer's] credibility, which are functions best left to the jury." *Id.* at *6. It determined that a reasonable "jury could conclude that [the officer] looked away from the road for such a significant period…that he would have known his conduct was likely to result in harm and yet consciously decided not to abate his risky behavior." *Id.*

Courts all over the country have grappled with this issue. In 2012, the District Court of Connecticut noted that the Second Circuit has a lower standard for deliberate indifference than the Seventh Circuit. *Servin v. Anderson*, 2012 WL 171330, at *5, n.3 (D. Conn. Jan. 20, 2012). In 2003, the Southern District of Indiana noted that there "is some question…as to whether the 'deliberate indifference' standard replicates in different words the standards of civil recklessness or criminal recklessness," citing *Hill*, among other cases. *Dunnam v. Arney*, 2003 WL 21254638, at *3, n.2 (S.D. Ind. Apr. 21, 2003).

In *Sauers v. Borough of Nesquehoning*, 905 F.3d 711, 715, 718 (3d Cir. 2018), an officer observed a minor traffic offense and followed a car at 100 miles per hour, lost control of his car around a curve, spun out, and crashed into the plaintiff's car, injuring the plaintiff and killing his wife. The Third Circuit held that these allegations supported an inference of deliberate indifference, because the officer had time to phone other officers along the route and ask them to affect the traffic stop. *Id.* In addition, the traffic violation was too minor to warrant the dramatic chase. *Id.*

Similarly, the 10th Circuit in *Browder v. City of Albuquerque*, 787 F.3d 1076, 1081 (10th Cir. 2015) addressed a 42 U.S.C. § 1983 claim with an off-duty officer. In *Browder*, an off-duty officer was driving home at an average of 66 miles per hour over an 8.8-mile stretch through 10

intersections before running through a red light and crashing into the plaintiff's car. *Id.* The 10th Circuit held that these facts showed a "conscious contempt of the lives of others and thus a form of reckless indifference. *Id.*

The Court noted that it perhaps is not appropriate or necessary to demand specific intent, "such a demanding for of means rea," to "suggest arbitrary or conscience-shocking conduct in cases where the officer isn't pursuing any emergency or any official business at all." *Id*. at 1081. The Court ultimately determined that, although a jury might ultimately conclude that the officer was simply negligent, the facts alleged in the complaint were sufficient to allege a substantive due process claim. *Id*. This opinion has been referenced by a number of Courts, including the Fourth Circuit in *Dean for & on behalf of Harkness v. McKinney*, 976 F.3d 407, 419 (4th Cir. 2020).

CONCLUSION

Petitioner has demonstrated that different courts have used different standards to determine whether a Petitioner has alleged sufficient facts to state a substantive due process claim under 42 U.S.C. § 1983. Some courts find that merely making the allegation of deliberate indifference is enough, while other courts require facts that are sufficient to satisfy the standard of deliberate indifference, almost as if they are weighing evidence.

Petitioner alleged sufficient facts to support a 42 U.S.C. § 1983 claim: Officer Henderson was not on an emergency call, was looking down at his computer, illegally shifted lanes and struck Ashlynn Lisby on the shoulder of the road; he was traveling 78 miles per hour prior to impact and was traveling 55 miles per hour at the point of impact in an area where the speed limit was 45 miles per hour. Petitioner then alleges that Henderson's acts were arbitrary, shock the conscience, and were done willfully, wantonly, and maliciously, and with such reckless disregard of the consequences so as to reveal

a conscious and deliberate indifference to the lives of those around him, including Lisby. Just like the officer in *Stinson*, a jury could conclude that Officer Henderson looked away from the road for such a significant period that he would have known his conduct was likely to result in harm and yet consciously decided not to abate his risky behavior. This is a fact determination that should be made by a jury, not a decision to be made by the district court at the pleadings stage.

In short, Petitioner alleged sufficient facts to support a 42 U.S.C. § 1983 claim and should have been permitted to conduct discovery on his well-pled Complaint. As a result, the judgment on the pleadings should have been denied, or should have been converted to a motion for summary judgment. Guidance is needed by this Court to reconcile the stark differences amongst federal courts in applying this standard.

Respectfully submitted,

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October 2023

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, DATED JULY 18, 2023

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 22-2867

RALPH LISBY, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF ASHLYNN LISBY, DECEASED,

Plaintiff-Appellant,

v.

JONATHAN HENDERSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A POLICE OFFICER, AND CITY OF INDIANAPOLIS, INDIANA,

Defendants-Appellees.

April 12, 2023, Argued
July 18, 2023, Decided

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
No. 1:21-cv-01186-SEB-DLP —
Sarah Evans Barker, *Judge.*

Before SCUDDER, KIRSCH, and LEE, *Circuit Judges.*

Appendix A

KIRSCH, *Circuit Judge*. While driving to work, Indianapolis Police Officer Jonathan Henderson tragically struck and killed pedestrian Ashlynn Lisby on the shoulder of a highway. Relevant to this appeal, Lisby's estate sued Officer Henderson under 42 U.S.C. § 1983, alleging that he had violated Lisby's Fourteenth Amendment substantive due process rights. The district court entered judgment on the pleadings for Officer Henderson on that claim, concluding that the complaint failed to plead sufficient facts plausibly suggesting that Officer Henderson had acted with the criminal recklessness necessary to establish a due process violation. We agree with the district court and affirm.

I

Because the estate's claim was dismissed on the pleadings under Federal Rule of Civil Procedure 12(c), we take the facts from the amended complaint as true and view the pleadings in the light most favorable to the estate. See *Bergal v. Roth*, 2 F.4th 1059, 1060 (7th Cir. 2021).

On the night of May 6, 2020, Ashlynn Lisby and Marcus Lewis Jr. walked along the shoulder of State Road 37 in Indianapolis. Lisby was eight-months pregnant with Lewis's child at the time, and the two were walking back to their motel. Officer Jonathan Henderson of the Indianapolis Metropolitan Police Department was driving to work in his police vehicle on the same road. He was driving 78 miles per hour, or 33 miles per hour over the posted speed limit, when he illegally changed lanes over a solid white line and his vehicle partially crossed the fog

line onto the shoulder of the road. Officer Henderson then struck Lisby without seeing her while still traveling at 55 miles per hour. Lisby was transported to a hospital, where she was pronounced dead. Lisby and Lewis's child was born at the hospital by emergency Cesarian section but died shortly after delivery. It is undisputed that Officer Henderson was acting within the course and scope of his employment as a police officer when he killed Lisby.

Ralph Lisby, Ashlynn's father and the representative of her estate, sued the City of Indianapolis and Officer Henderson in state court. Lisby brought a Fourteenth Amendment claim under 42 U.S.C. § 1983 against Officer Henderson and state-law negligence claims against both Officer Henderson and the City. The defendants removed the suit to federal court and moved for partial judgment on the pleadings. The district court granted the motion for partial judgment on the pleadings, disposing of all federal claims and relinquishing its supplemental jurisdiction over the remaining state-law claims. The sole issue on appeal is whether the district court properly granted the motion with respect to Lisby's § 1983 claim against Officer Henderson.

II

We review a district court's grant of judgment on the pleadings de novo, accepting all well-pleaded facts as true and drawing all reasonable inferences in the light most favorable to the non-moving party. *Bergal*, 2 F.4th at 1060; *Adams v. City of Indianapolis*, 742 F.3d 720, 727-28 (7th Cir. 2014).

Appendix A

As a preliminary matter, Lisby argues the district court should have converted the motion for judgment on the pleadings to a motion for summary judgment and allowed the parties to conduct discovery. The district court ordinarily has discretion to convert a motion for judgment on the pleadings to a motion for summary judgment; only when the district court considers materials beyond the pleadings is it required to convert a Rule 12(c) motion to one for summary judgment. Fed. R. Civ. P. 12(d); *Federated Mut. Ins. Co. v. Coyle Mech. Supply Inc.*, 983 F.3d 307, 313 (7th Cir. 2020). Because the district court did not stray beyond the pleadings, and Lisby has not identified any evidence that would have any bearing on the motion, the district court did not err in dismissing the complaint on the pleadings. See *United States v. Rogers Cartage Co.*, 794 F.3d 854, 861 (7th Cir. 2015).

Our analysis of whether allegations of a police officer's dangerous driving during a non-emergency rise to the level of a substantive due process violation is guided by our decisions in *Hill v. Shobe*, 93 F.3d 418 (7th Cir. 1996), and *Flores v. City of South Bend*, 997 F.3d 725 (7th Cir. 2021). These cases hold that a plaintiff seeking relief under § 1983 for such a claim must plead sufficient facts to establish that the officer acted with "criminal recklessness—which is the same as deliberate indifference." *Flores*, 997 F.3d at 729 (quoting *Hill*, 93 F.3d at 421). "It is enough to plead plausibly 'that the defendant had actual knowledge of impending harm which he consciously refused to prevent.'" *Id.* (quoting *Hill*, 93 F.3d at 421). "The key question is whether the officer had sufficient knowledge of the danger such that one can infer he intended to inflict the resultant injury." *Id.* (cleaned up).

Hill and *Flores* illustrate what is required at the pleading stage. In *Hill*, we held that "motor vehicle accidents caused by public officials or employees do not rise to the threshold of a constitutional violation actionable under § 1983, absent a showing that the official knew an accident was imminent but consciously and culpably refused to prevent it." 93 F.3d at 421. In other words: "For a defendant to be reckless in a constitutional sense, he must be criminally reckless." *Id.* The complaint in *Hill* alleged that an on-duty police officer ran a red light and killed the plaintiff; at the time, the officer was speeding late at night in a non-emergency situation, and he wasn't using his headlights, emergency lights, or sirens. *Id.* at 420. We found the allegations insufficient to infer the officer subjectively knew of the danger he created and that he consciously disregarded it. *Id.* at 421. Merely showing that the officer created a "recognizable but generic risk to the public at large," we explained, was insufficient. *Id.* at 421-22.

In *Flores*, however, we found that the plaintiff had alleged enough to survive a motion to dismiss on her § 1983 claim regarding an officer's reckless driving. 997 F.3d at 728, 730. The complaint alleged that the defendant officer heard over the radio that five other officers were preparing for a routine traffic stop; without any request for his assistance or justification, the defendant officer raced through a residential neighborhood at speeds of up to 98 miles per hour—nearly 70 miles per hour over the speed limit. *Id.* at 728. The officer did not properly use his lights or sirens and ultimately charged through a red light and crashed into the victim's car, killing her. *Id.* We found

that the complaint's allegations of the officer's "reckless conduct, unjustified by any emergency or even an order to assist in a routine traffic stop that five officers had under control, allows the inference that he subjectively knew about the risk he created and consciously disregarded it." *Id.* at 730. In such a situation, the officer's decision to "driv[e] blind through an intersection at 78 to 98 miles per hour" could be viewed as criminally reckless. *Id.* "The law does not provide a shield against constitutional violations for state actors who consciously take extreme and obvious risks." *Id.*

We conclude that Lisby's complaint was properly dismissed. The complaint alleges that Officer Henderson was going about 30 miles per hour over the speed limit on the highway when he illegally changed lanes, partially crossed onto the shoulder, and struck Lisby without seeing her. Lisby argues that Officer Henderson reasonably understood that his driving was dangerous and he was willing to let a fatal collision occur. But the mere knowledge that driving at high speed at night could have fatal consequences is not enough to allege a constitutional violation: "Allegations of a public official driving too fast for the road conditions are grounded in negligence, not criminal recklessness, ... and unintended loss of life resulting from a state employee's lack of due care does not implicate the due process clause." *Hill*, 93 F.3d at 421 (citations omitted). Instead, as we said in *Flores*, the complaint must allege facts permitting an inference that he had "actual knowledge of impending harm which he consciously refused to prevent." *Flores*, 997 F.3d at 729 (quoting *Hill*, 93 F.3d at 421).

Lisby's complaint does not allow such an inference. Unlike the officer in *Flores*, Officer Henderson was not racing through a residential area at speeds tripling the posted speed limit, but was merging onto an on-ramp of a major highway. Allegations of Officer Henderson's highway speeding and illegal lane change, when coupled with the allegation that he never saw Lisby before the fatal collision, do not suggest that he disregarded extreme or obvious risks and was "willing to let a fatal collision occur." *Id.* at 730 (quoting *Hill*, 93 F.3d at 421). We agree with the district court that Officer Henderson's actions, as alleged in the complaint, are grounded in negligence rather than criminal recklessness. As such, Lisby failed to allege a constitutional violation.

AFFIRMED

APPENDIX B — OPINION OF THE UNITED STATES COURT DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION, DATED SEPTEMBER 29, 2022

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION

No. 1:21-cv-01186-SEB-DLP

MARCUS LEWIS, JR. INDIVIDUALLY AND AS NATURAL FATHER OF MARCUS LEWIS, III, DECEASED, RALPH LISBY AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF ASHLYNN LISBY, DECEASED,

Plaintiffs,

v.

JONATHAN HENDERSON INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A POLICE OFFICER, CITY OF INDIANAPOLIS, INDIANA,

Defendants.

September 29, 2022, Decided;
September 29, 2022, Filed

Appendix B

ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND REMANDING TO STATE COURT

Following a tragic accident in which an Indianapolis Metropolitan Police Officer, while driving to work, hit and killed a pregnant woman, the woman's estate and the baby's father brought two separate suits against the Officer and the City of Indianapolis, respectively. The two suits were consolidated on our docket, after which Defendants filed a Motion for Partial Judgment on the Pleadings, seeking to dismiss all the claims against the Officer as well as all federal claims. As we explain hereafter, the Motion must be granted in full, which leaves only state law claims pending against the City of Indianapolis. As to those, we also conclude that it is appropriate for us to relinquish our supplemental jurisdiction and remand them to state court.

I. FACTUAL BACKGROUND

The well-pleaded factual allegations from both of the First Amended Complaints, which may or may not be objectively true, are accepted as such, along with all inferences in favor of Plaintiffs as the non-moving parties. *Nat'l Fidelity Life Ins. Co. v. Karaganis*, 811 F.2d 357, 359 (7th Cir. 1987). On May 6, 2020, at approximately 9:24 p.m., Marcus Lewis Jr. and Ashlynn Lisby were walking northbound along the shoulder of State Road 37, also known as Harding Street, in Indianapolis, Indiana. Lewis and Lisby were returning to the motel where they had been staying, and at the time, Lisby was eight months pregnant with a child Lewis had sired. Meanwhile, Officer

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Jonathan Henderson of the Indianapolis Metropolitan Police Department was driving northbound on Harding Street approaching the intersection with Thompson Road. Immediately north of the intersection of Harding Street and Thompson Road, two left turn lanes lead to the on-ramp of I-465 West, two through lanes allow motorists to continue northward passing under the 1-465 overpass, and one right turn lane leads to the on-ramp to I-465 East. The speed limit for vehicles at this location on Harding Street is forty-five miles per hour.

Officer Henderson, traveling in the right through lane, passed through the intersection of Harding Street and Thompson Road. While traveling at a speed of seventy-eight miles per hour, Officer Henderson made a lane shift, causing his car to cross over the solid white line into the right turn lane leading to the I-465 East on-ramp. As he merged onto the 1-465 East entrance ramp, Officer Henderson crossed the fog line on the right side of the turn lane, with his vehicle partly on the shoulder on the right side of the road. While glancing in the rear-view mirror as he merged onto the ramp, Officer Henderson struck Lisby, who was walking on the shoulder of the road. Lewis, who was walking a few feet away, witnessed the accident. Officer Henderson's speed was fifty-five miles per hour at the time his car impacted with Lisby. Officer Henderson did not see Lisby before he struck her. At the time of the collision, a nearby streetlamp was not illuminated, which Officer Henderson maintains contributed to the collision.

After the accident, Lisby was transported to Eskenazi Hospital, where she was pronounced dead. Lewis's child

was born alive at Eskenazi via an emergency Cesarian section but tragically was also pronounced dead at 10:36 p.m. that same evening. The parties agree that while operating his police vehicle, Officer Henderson was acting within the course and scope of his employment as a police officer employed by the City of Indianapolis. Following the collision, the Indianapolis Metropolitan Police Department prepared an "Indiana Officer's Standard Crash Report" setting forth its conclusion that "pedestrian's action" was the primary cause of the accident. Docket No. 70, at 5. The report also stated that none of Officer Henderson's actions contributed to the accident, though it does not include any mention of the facts that he was speeding, made a lane shift over a solid line, and was driving partially on the shoulder of Harding Street. Officer Henderson was not subjected to any discipline or other sanction by the Indianapolis Metropolitan Police Department.

On August 17, 2020, Lisby's father, Ralph Lisby, as the personal representative of the Estate of Ashlynn Lisby ("Estate"), filed suit for negligence in Indiana state court against Officer Henderson and the City of Indianapolis. On May 12, 2021, Lewis filed suit in our court against Officer Henderson and the City of Indianapolis (collectively, "Defendants"[1]), alleging: (1) a 42 U.S.C. § 1983 claim against Officer Henderson brought on behalf

1. The Indiana Department of Transportation and the State of Indiana were also initially named as Defendants, but all parties stipulated to their dismissal with prejudice after the Motion for Partial Judgment on the Pleadings was filed. The court entered an order of dismissal as to these two Defendants on March 11, 2022. Docket No. 62.

of his prenatal child, (2) a state law wrongful death claim against Officer Henderson and the City of Indianapolis for the death of his prenatal child, and (3) a state law negligent infliction of emotional distress claim against Officer Henderson and the City of Indianapolis for having witnessed the death of his prenatal child. On December 7, 2021, the Estate filed an amended complaint in state court adding a 42 U.S.C. § 1983 claim. On January 4, 2022, Defendants removed the Estate's suit to our court, which, as we have previously noted, was consolidated with Lewis's suit into a single cause of action on February 14, 2022.

On February 24, 2022, Defendants moved for Partial Judgment on the Pleadings, asserting that, though "[b]oth Plaintiffs have pled proper state law wrongful death claims for the death of Lisby and the prenatal child, as well as a state law tort claim of negligent infliction of emotional distress against the City of Indianapolis," (Docket No. 54, at 2), "the remainder of the claims are improperly pled and should be dismissed." They specifically seek judgment in their favor on the following grounds: (1) Lewis is not a proper plaintiff in a § 1983 claim filed on behalf of his prenatal child, (2) Lewis and Lisby's prenatal child are not legally authorized to bring a § 1983 claim for injuries sustained in utero, (3) the facts of Plaintiffs' Complaints fail to state a claim to support a constitutional due process violation against any party, and (4) Officer Henderson is individually immune from suit for any state law torts he may have committed within the scope of his employment.

On April 19, 2022, Lewis filed his First Amended Complaint which dropped all of his previously asserted

federal claims and dismissed Officer Henderson as a defendant. Thus, Defendants' Motion for Partial Judgment on the Pleadings is moot as to Lewis's First Amended Complaint. The claims asserted in the Estate's Complaint remain for resolution here. Defendants' Motion currently seeks judgment on the following two grounds: (1) the facts within the Estate's Amended Complaint fail to state a constitutional due process claim under 42 U.S.C. § 1983 against Officer Henderson; and (2) Officer Henderson is individually immune from suit for any state law tort he may have committed within the scope of his employment. "Should this Motion be granted in its entirety," Defendants explain, "only state law claims would remain, including the Estate's state law tort claim under the Wrongful Death Act for the death of Lisby against the City of Indianapolis, and the claims within Lewis' pending First Amended Complaint would remain untouched." Docket No. 71, at 2.

II. DISCUSSION AND DECISION

We first address the Estate's negligence claim against Officer Henderson. Because Officer Duncan was indisputably acting within the scope of his employment at the time of the collision, the Indiana Tort Claims Act bars the Estate's tort claim asserted against him personally. Whether the Estate has properly alleged a constitutional violation against Officer Henderson, the answer is also unavailing as to Plaintiffs: because negligence claims such as this cannot support a constitutional violation that would give rise to an award of damages under 42 U.S.C. § 1983, we must dismiss this claim as well. Thus, only state law claims remain in this litigation against the City

of Indianapolis. In our discretion, we choose to relinquish supplemental jurisdiction over these claims and remand them to state court.

A. STANDARD OF REVIEW

A motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) is subject to the same standard as a Rule 12(b)(6) motion to dismiss. A party may move for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedures after the complaint and answer have been filed. "Only when it appears beyond a doubt that the plaintiff cannot prove any facts to support a claim for relief and the moving party demonstrates that there are no material issues of fact to be resolved will a court grant a Rule 12(c) motion." *Moss v. Martin*, 473 F.3d 694, 698 (7th Cir. 2007). "Judgment on the pleadings is appropriate when there are no disputed issues of material fact and it is clear that the moving party," in this case the City of Indianapolis and Officer Henderson, are "entitled to judgment as a matter of law." *Unite Here Local 1 v. Hyatt Corp.*, 862 F.3d 588, 595 (7th Cir. 2017). "The court may consider only matters presented in the pleadings and must view the facts in the light most favorable to the nonmoving party." *Karaganis*, 811 F.2d at 359. "The court, however, is not bound by the nonmoving party's legal characterizations of the facts." *Id.*

B. NEGLIGENCE CLAIM AGAINST OFFICER HENDERSON

Defendants contend that Officer Henderson is immune from personal suit for any state law tort claims otherwise

actionable under the Indiana Tort Claims Act, which "limit[s] when a plaintiff may sue a governmental employee personally." *Bushong v. Williamson*, 790 N.E.2d 467, 471 (Ind. 2003). "If a plaintiff alleges that an employee was acting within the scope of his employment . . . the plaintiff is barred from bringing a state law tort claim against the employee personally unless the governmental entity answers that the employee was acting outside the scope of his employment." *Ocasio v. Turner*, 19 F. Supp. 3d 841, 860-61 (N.D. Ind. 2014) (citing Ind. Code §§ 34-13-3-5(b), (c)(2)). Defendants have not so alleged; indeed, the Estate's negligence claim specifically alleges that the collision was "directly and proximately caused by the carelessness and negligence of the Defendant, Jonathan Henderson," and "the Defendant, City of Indianapolis who is responsible for the actions of Defendant, Jonathan Henderson, an employee within the course and scope of his employment." Docket No. 66-1, at 3. Rather than rebut this argument, the Estate, in response to instant Motion, asserted that: "Officer Henderson was within the course and scope of his employment as a police officer employed by the City of Indianapolis at the time of the crash." Docket No. 66, at 3. Thus, the parties agree that Officer Henderson was acting within the scope of his employment when he struck Lisby. Accordingly, as a matter of law, he is immune from suit as to any state law tort claims asserted against him individually. *See, e.g., Lessley v. City of Madison, Ind.*, 654 F. Supp. 2d 877, 902 (S.D. Ind. 2009). The Motion for Partial Judgment on the Pleadings as to the Estate's negligence claim against Officer Henderson is granted.

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C. § 1983 CLAIM AGAINST OFFICER HENDERSON

The Estate also has asserted a 42 U.S.C. § 1983 claim against Officer Henderson for allegedly violating Lisby's due process rights guaranteed under the Fourteenth Amendment of the United States Constitution, which provides, in relevant part, that no State shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. However, according to well-established precedent, the Fourteenth Amendment is not a "font of tort law to be superimposed upon whatever systems may already be administered by the States." *Paul v. Davis*, 424 U.S 693, 701, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976). The Due Process Clause is violated by executive action only when it "can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense." *Collins v. Harker Heights*, 503 U.S. 115, 128, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992). The Supreme Court has "accordingly rejected the lowest common denominator of customary tort liability as any mark of sufficiently shocking conduct and [has] held that the Constitution does not guarantee due care on the part of state officials; liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *County of Sacramento v. Lewis*, 523 U.S. 833, 848-49, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998). "It is, on the contrary, behavior at the other end of the culpability spectrum that would most probably support a substantive due process claim; conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-

shocking level." *Id.* at 849; *see also Daniels v. Williams*, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986) ("Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property.").

Here, the Estate's § 1983 claim seeks to hold Officer Henderson liable for actions "done willfully, wantonly, and maliciously," that were "reckless," "dangerous," "arbitrary," and "shock the conscience." Docket No. 66-1, at 5. We note that these allegations conflict with the Estate's negligence claim, which it fully incorporated in support of its § 1983 claim. *Id.* at 2-4. Even ignoring this inconsistency, the Estate's "conclusory allegation of recklessness . . . is insufficient to defeat a motion to dismiss." *Hill v. Shobe*, 93 F.3d 418, 421 (7th Cir. 1996) (citing *Palda v. General Dynamics Corp.*, 47 F.3d 872, 875 (7th Cir. 1995)). "For a defendant to be reckless in a constitutional sense, he must be criminally reckless." *Id.* "Criminal recklessness—which is the same as 'deliberate indifference'—is a proxy for intent." *Id.* (internal citation omitted). "For this reason, the Supreme Court teaches, the test for 'criminal recklessness' is subjective, not objective." *Id.* (citing *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)). "Under the subjective standard, it is not enough to show that a state actor should have known of the danger his actions created." *Id.* "Rather, a plaintiff must demonstrate that the defendant had actual knowledge of impending harm which he consciously refused to prevent." *Id.* "In other words, the state actor must have sufficient knowledge of the danger that one can infer he intended to inflict the

resultant injury." *Id.* "A lesser degree of knowledge does not violate the due process clause." *Id.*

In *Hill v. Shobe*, an on-duty Indianapolis police officer who had run a red traffic light, collided with another vehicle, ultimately killing the passenger. 93 F.3d at 420. Even though the officer was not responding to a police emergency, he was speeding, and, even though the incident occurred sometime during nighttime, the officer was driving without any headlights, emergency lights, or siren. The officer was sued under § 1983 by the passenger's estate, but the Seventh Circuit concluded that the estate could not demonstrate the requisite level of criminal recklessness on behalf of the officer, dismissing the claim on the grounds that "[a]llegations of a public official driving too fast for the road conditions are grounded in negligence, not criminal recklessness, and unintended loss of life resulting from a state employee's lack of due care does not implicate the due process clause." *Id.* at 421. Under the subjective standard, the appellate court ruled, the estate was required to demonstrate that the officer was willing to let a fatal collision occur, which it failed to do by pleading recklessness. "The fact that a public official committed a common law tort with tragic results fails to rise to the level of a violation of substantive due process." *Id.* (citing *Daniels v. Williams*, 474 U.S. 327, 333, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986)). The Seventh Circuit also ruled that "motor vehicle accidents caused by public officials or employees do not rise to the threshold of a constitutional violation actionable under § 1983, absent a showing that the official knew an accident was imminent but consciously and culpably refused to prevent it." *Id.*

"It is insufficient to show that a public official acted in the face of a recognizable but generic risk to the public at large." *Id.* at 421-22.

Here, the Estate incorporated the following facts into its § 1983 claim: (1) Officer Henderson made an illegal lane shift to the right lane of State Road 37 in order to enter the I-465 East on-ramp while traveling at 78 miles per hour, despite posted speed limits of 45 miles per hour, (2) Officer Henderson had diverted his view from the road when he crossed onto the shoulder of the road where he struck Lisby, (3) a nearby street light was not illuminated, which contributed to the collision, and (4) the collision was "directly and proximately caused by the carelessness and negligence" of Officer Henderson. Docket No. 66-1, at 3. The Estate included no other factual allegations in its § 1983 claim beyond the conclusory allegation of recklessness. In response to the Motion for Judgment on the Pleadings, the Estate argues that "Officer Henderson reasonably knew, as most people do, that driving at excessive speeds, carelessly and illegally changing lanes, and driving outside the travel lane in the dark could result in injury to others, including pedestrians or other motorists." Docket No. 66, at 8. "Even more as a police officer," the Estate maintains, "Henderson likely knew more than most the potentially deadly consequences of speeding, careless lane changes, and unsafe driving." *Id.* "His choices in spite of that knowledge and experience show that he was willing to let a fatal collision occur." *Id.* As the Seventh Circuit has previously explained in addressing similar arguments, "[i]t is insufficient to show that a public official acted in the face of a recognizable

but generic risk to the public at large." *Hill*, 93 F.3d at 421-22. It is also insufficient simply to allege that Officer Henderson *should* have known of the danger his actions created; for this claim to survive, the Estate must allege that he had "actual knowledge of impending harm which he consciously refused to prevent." *Id.* at 421.

The Estate's reliance on *Flores v. City of South Bend* is unpersuasive. 997 F.3d 725 (7th Cir. 2021). There, a police officer, in attempting to respond to a routine traffic stop (despite not having been requested to intervene), drove 78 miles per hour in a 30 mile per hour zone through a residential area. At another point, the officer drove 98 miles per hour in a residential area, which was 68 miles an hour and three times more than the posted speed limit. The officer ran a red light while traveling through an intersection with an obstructed view and crashed into a car that had been proceeding lawfully, thereby killing the driver. The Seventh Circuit concluded that driving blind through an intersection at 78 to 98 miles per hour could certainly be viewed by a jury as criminal recklessness. *Id.* at 730. "The law does not provide a shield against constitutional violations for state actors who consciously take extreme and obvious risks," and, through his course of action, the officer "was 'willing to let a fatal collision occur.'" *Id.* (quoting *Hill*, 93 F.3d at 421. However, we do not share the Estate's view that "[t]he same is true here as it is in *Flores*." Docket No. 66, at 7. Here, Officer Henderson's conduct is clearly less outrageous: he was not driving through a residential area at speeds greatly exceeding the limit, and he was merging onto an on-ramp to a major highway, which is not a place a driver would

ordinarily expect to encounter pedestrians at 9:24 PM. Officer Henderson's actions sound in negligence, and as such, the Estate has failed to allege a constitutional violation on that basis. Accordingly, the Motion for Partial Judgment on the Pleadings must be granted as to the Estate's § 1983 claim, which resolves all the claims brought against Officer Henderson in this litigation.

D. SUPPLEMENTAL JURISDICTION

The federal supplemental-jurisdiction statute provides that a court "may decline to exercise supplemental jurisdiction" over state-law claims if the court "has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367(c)(3). "Although the decision is discretionary, '[w]hen all federal claims in a suit in federal court are dismissed before trial, the presumption is that the court will relinquish federal jurisdiction over any supplemental state-law claims.'" *RWJ Mgmt. Co., Inc. v. BP Products N. Am., Inc.*, 672 F.3d 476, 479 (7th Cir. 2012) (quoting *Al's Serv. Ctr. v. BP Products N. Am., Inc.*, 599 F.3d 720, 727 (7th Cir. 2010)). "The presumption is rebuttable, 'but it should not be lightly abandoned, as it is based on a legitimate and substantial concern with minimizing federal intrusion into areas of purely state law.'" *Id.* (quoting *Khan v. State Oil Co.*, 93 F.3d 1358, 1366 (7th Cir. 1996)); *see also Huffman v. Hains*, 865 F.2d 920, 923 (7th Cir. 1989) ("[R]espect for the state's interest in applying its own law, along with the state court's greater expertise in applying state law, become paramount concerns.").

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The Seventh Circuit has identified circumstances that may rebut the presumption:

> (1) the statute of limitations has run on the pendent claim, precluding the filing of a separate suit in state court; (2) substantial judicial resources have already been committed, so that sending the case to another court will cause a substantial duplication of effort; or (3) when it is absolutely clear how the pendent claims can be decided.

Sharp Elecs. Corp. v. Metro. Life Ins. Co., 578 F.3d 505, 514-15 (7th Cir. 2009) (internal quotation marks omitted). These circumstances do not portend here. A remand of this case to state court will moot any statute of limitations restrictions.[2] Having disposed of the federal claims via a judgment on the pleadings, "it is difficult to see how 'substantial judicial resources' have been committed to this case." *Id.* at 515 (citing *Davis v. Cook County*, 534 F.3d 650, 654 (7th Cir. 2008)). "Finally, we are not prepared to say that the proper resolution of the state-law claims is absolutely clear." *Id.* Because none of the adverse

2. Even if Lewis's case had not been consolidated with the Estate's claims which were properly removed from state court, 28 U.S.C. § 1367 supplies "a tolling rule that must be applied by state courts." Artis v. District of Columbia, 138 S.Ct. 594, 599, 199 L. Ed. 2d 473 (2018). Specifically, the period of limitations for any claim asserted under our supplemental jurisdiction "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d). Thus, Lewis could have separately filed this case in state court without a statute of limitations problem.

consequences of a remand are threatened here, we elect to, in our discretion, relinquish federal jurisdiction over the supplemental state-law claims and remand the case to state court.

III. CONCLUSION

Accordingly, Defendants' Motion for Partial Judgment on the Pleadings [Docket No. 53] is **GRANTED**. With all claims against Defendant Henderson being dismissed, the Court finds, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for delay. Accordingly, partial final judgment shall be entered in favor of Defendant Henderson and against Plaintiffs. Moreover, the court relinquishes its supplemental jurisdiction over the remaining state law claims, and therefore, **REMANDS** the case—both the Estate's claims and Lewis's claims against the City of Indianapolis—to the Marion Superior Court as Case No. 49D13-2008-CT-027956. *See* 28 U.S.C. § 1447 (for cases removed from state court, "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.").

IT IS SO ORDERED.

Date: 9/29/2022

/s/ Sarah Evans Barker
SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana