Appendix A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 24, 2026
Lyle W. Cayce
Clerk

No. 25-30132

TARA FOGLEMAN-LAXEY,

Plaintiff—Appellant,

versus

JOSHUA GUILLORY, *in his personal and official capacities*; LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT; SCOTT MORGAN, *in his official capacity*; MARK GARBER, *in his individual and official capacity*; DONALD LANDRY, *in his official and personal capacities*; POLICE OFFICER DOES, *in their individual capacities*; LISA CARSTENS, *in her individual capacity*,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:21-CV-3038

Before ELROD, *Chief Judge*, and RICHMAN and WILLETT, *Circuit Judges*.

PER CURIAM:

This appeal arises out of the arrest of Plaintiff-Appellant Tara Fogleman-Laxey at a protest in front of the home of the mayor of Lafayette, Louisiana. This arrest became the basis of her lawsuit alleging that law enforcement and city officials committed violations under the First, Fourth, and Fourteenth Amendments as well as Louisiana state law. The district

court dismissed all of her claims. Because Fogleman-Laxey fails to overcome the qualified immunity defense under the standard the Supreme Court has repeatedly prescribed, we AFFIRM.

I

On August 29, 2020, Tara Fogleman-Laxey staged a protest. Billed as a "community barbeque," the protest took place on the public street in front of the house of Lafayette Mayor-President Joshua Guillory and sought to "promote a discussion" with Mayor Guillory about the killing of a 31-year-old man who had recently died after being shot by officers of the Lafayette Police Department. The protest primarily involved her grilling hotdogs and hamburgers on the street in front of Mayor Guillory's home. The protest was peaceful. Fogleman-Laxey spent most of the time grilling behind her pick-up truck, which was parallel parked.

At some point during the demonstration, members of the Lafayette Police Department arrived. Defendant-Appellee Lieutenant Lisa Carstens approached Fogleman-Laxey and informed her that she was obstructing a public roadway. Fogleman-Laxey alleges that Carstens told her: "please vacate. Reason being, under the statute, this is obstructing the roadway." When Fogleman-Laxey responded that the positioning of her grill did not block the roadway, Lieutenant Carstens replied: "A barbeque pit in the roadway is an obstruction." Fogleman-Laxey asserts she offered to move her grill. Lieutenant Carstens, according to the complaint, "refused to allow her to move it." Fogleman-Laxey also pleads that she offered to move the grill onto the grass median between the street and the sidewalk. This too was allegedly rebuffed. An unidentified officer then informed her that it was in her "best interest" to stop the protest. But Fogleman-Laxey refused.

The protest concluded when Lieutenant Carstens arrested Fogleman-Laxey for obstruction of a public passageway, a violation of Louisiana R.S.

§ 14:100.1. Paragraph (A) of the statute reads: "No person shall wilfully obstruct the free, convenient, and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor, or passage of any public building, structure, water craft, or ferry, by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon or therein."

Later at the police station, Plaintiff was also charged with disturbing the peace under Louisiana R.S. § 14:103. Law enforcement personnel transported her to the police station, then to the Lafayette Parish Correctional Center (LPCC). She pleads that there she was strip searched while not receiving the accommodations she believed necessary to protect her against the then-ongoing COVID-19 pandemic. Fogleman-Laxey remained in custody for several hours before LPCC officials released her.

Several months later in January 2021, Fogleman-Laxey confronted Mayor Guillory at a local civic meeting regarding his COVID-19 policies. The next day, Defendant-Appellee District Attorney Donald Landry filed formal charges, known as a Bill of Information, against her for her earlier obstruction of a public passageway and disturbing the peace. These charges were dropped when Fogleman-Laxey agreed to sign a civil "stay away" order in state district court.

Fogleman-Laxey filed a complaint bringing a series of constitutional and state law claims against Mayor Guillory, the Lafayette Consolidated Government, the former police chief Scott Morgan, Sheriff Mark Garber, District Attorney Landry, Lieutenant Carstens, and Police Officer Does 1 through 10. She asserts principally that appellees unlawfully arrested her in retaliation for her exercise of her First Amendment rights and that they violated her Fourth Amendment rights when arresting her without probable

cause. Defendants filed motions to dismiss and motions for judgment on the pleading, which were granted.

Fogleman-Laxey filed a timely notice of appeal.

II

We review a district court's grant of a motion to dismiss *de novo*. *Alexander v. Verizon Wireless Servs., L.L.C.*, 875 F.3d 243, 249 (5th Cir. 2017). "The standard for Rule 12(c) motions for judgment on the pleadings is identical to the standard for Rule 12(b)(6) motions to dismiss for failure to state a claim." *Waller v. Hanlon*, 922 F.3d 590, 599 (5th Cir. 2019). To survive these motions, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). We may affirm the district court's judgment "on any basis supported by the record." *Texas v. Travis County*, 910 F.3d 809, 811 (5th Cir. 2018) (citing *Ballew v. Cont'l Airlines, Inc.*, 668 F.3d 777, 781 (5th Cir. 2012)).

III

The district court dismissed Fogleman-Laxey's complaints on the grounds that she could not overcome individual appellees' assertion of qualified immunity and that she failed to plead the municipal appellees were liable under *Monell*. We agree.

A

To overcome the qualified immunity defenses at the motion to dismiss stage, Fogleman-Laxey must plausibly allege a violation of a constitutional right that was clearly established at the time of the purported violation. *Morgan v. Chapman*, 969 F.3d 238, 245 (5th Cir. 2020) (citing *Longoria ex rel. M.L. v. San Benito Indep. Consol. Sch. Dist.*, 942 F.3d 258, 264 (5th Cir. 2019)). She bears the burden of meeting both requirements when seeking to defeat a qualified immunity defense. *Melton v. Phillips*, 875 F.3d 256, 261 (5th

Cir. 2017) (citation omitted). When demonstrating that a right is "clearly established," a plaintiff must show that the defendant officials had "fair warning" based on past precedent. *See Hicks v. LeBlanc*, 81 F.4th 497, 504 (5th Cir. 2023); *see also Tucker v. City of Shreveport*, 998 F.3d 165, 173 (stating that the "plaintiff has the burden to point to clearly established law") (citation omitted). This does "not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). The precedent plaintiff presents must not be defined at a high level of generality. *Id.* at 742; *see also Bailey v. Ramos*, 125 F.4th 667, 674 (5th Cir. 2025) (clarifying "he or she must point to 'authority at a sufficiently high level of specificity to put a reasonable official on notice that his conduct is definitively unlawful'") (citation omitted). Still, courts should "use [their] full knowledge of its own and other relevant precedents." *Id.*, 125 F.4th at 682 n. 60 (quoting *Elder v. Holloway*, 510 U.S. 510, 516 (1994)).

Fogleman-Laxey made no attempt before the district court to demonstrate that the individual defendants violated clearly established law. Accordingly, the district court found dismissal on qualified immunity grounds warranted. On appeal, she offers a paragraph as to why she should overcome the assertion of qualified immunity.[1] She cites a case that purports to support why the law related to her First Amendment claim is clearly established. She cites another in support of her claim that the law pertaining to her Fourth Amendment claim is clearly established.

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[1] Fogelman-Laxey devotes slightly more of her brief to why the case law pertaining to qualified immunity is wrong as a textual and historic matter. However, she offers no associated controlling precedent to support her claim why appellees should not be entitled to qualified immunity.

Fogleman-Laxey has likely forfeited any argument that these newly raised cases clearly established her constitutional rights. However, to the extent she did not, neither case Fogleman-Laxey offers, notably for the first time on appeal, suffices. She cites *Bailey v. Illes* and merely notes that "this Court recently declined to permit a qualified immunity defense to claims stemming from an arrest that violated the First Amendment by abridging protected speech." Fogleman-Laxey does not explain why *Bailey* clearly establishes that the conduct in question in this case is unlawful. Nor could she given that the officer conduct and facts at issue in *Bailey* are markedly different.

Bailey involved an in-home arrest for a COVID-19-related Facebook post that law enforcement viewed to be "terrorizing." *See Bailey*, 87 F.4th at 289–90. To state the obvious, the in-home arrest for a Facebook post at issue in *Bailey* is wholly dissimilar from Fogleman-Laxey's grilling on the street. To draw any sort of comparison would require abstracting the conduct to an impermissibly high level of generality. *See Mullenix v. Luna*, 577 U.S. 7, 12 (2015) (citation omitted). Fogleman-Laxey offers no other support to show that no reasonable officer would have known that arresting her for grilling in the street in violation of a statute that proscribes obstructing the "normal use" of the "street" would violate her constitutional rights. *See* Louisiana R.S. § 14:100.1(A). Nor have we found any on our review of past precedents. In sum, no precedent exists that would have put the Defendant officers on fair notice that they were violating Fogleman-Laxey's constitutional rights when arresting her for grilling in a street. Thus, Fogleman-Laxey fails to meet her burden.[2]

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[2] The complaint pleads in broad terms that defendants retaliated against Fogleman-Laxey for her speech during the protest, the civic meeting, "or a combination of both." However, her claim that defendants engaged in retaliation for her speech during the

Fogleman-Laxey's effort to show that appellees violated her clearly established Fourth Amendment rights fails for similar reasons. She cites *Green v. Thomas* and states "this court recently declined to afford qualified immunity to a defendant who made a pretextual arrest without probable cause." This statement, which comprises her entire explanation for why the relevant law is clearly established, is again presented at too high a level of generality to overcome the assertion of qualified immunity. Also, the facts and officer conduct examined in *Green* in no way resembles what is at issue here.

In *Green*, the plaintiff alleged that his Fourth Amendment rights were violated when a detective manipulated a photo lineup and withheld exonerating evidence from the grand jury. 129 F.4th 877, 880 (5th Cir. 2025). Again, manipulating and withholding evidence to secure an indictment for murder, as in *Green*, is very different than arresting someone who is grilling in the street for obstructing the "normal use" of that street. Thus, *Green* could not provide "fair warning" to appellees. *Green* does not offer appellees fair notice for yet another reason—it was decided over four years after the events of this case. Having also not discovered any cases showing that Fogleman-Laxey's clearly established constitutional rights were violated when she was arrested for barbecuing in the street, Appellees are entitled to qualified immunity as to the Fourth Amendment claim as well.

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meeting lacks the specificity needed to survive a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (stating Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation") (citation omitted). Furthermore, her First Amendment retaliation claim on appeal is concerned with her protest activity, not her speech during the meeting. Arguments not adequately briefed on appeal are deemed waived. *See United States v. Scroggins*, 599 F.3d 433, 446 (5th Cir. 2010) (citation omitted). Consequently, the issue of whether appellees retaliated against her for questioning the city's COVID-19 policies is not properly presented and we express no opinion on the merits of any such claim.

The dissenting opinion disagrees with this qualified-immunity analysis. Indeed, the dissenting opinion criticizes qualified immunity as "judicially invented, textually indefensible, and at war with the law Congress actually wrote." *Post*, at 12. Even assuming that is true, we are in no position to remedy that. Supreme Court precedent and our own Rule of Orderliness demand that we apply the doctrine of qualified immunity as it exists today. *See United States v. Wilkerson*, 124 F.4th 361, 367 (5th Cir. 2024) (citation omitted). We are stuck with it whether we like it or not. Moreover, the dissenting opinion's specific criticisms of our analysis are unconvincing.

The dissenting opinion first posits that we fail to "use [our] full knowledge of [our] own and other relevant precedents." *Post*, at 13 (citing *Elder*, 510 U.S. at 516). This is not so, nor have we "artificially boxed [ourselves] in" by only examining the two cases that Fogleman-Laxey raised. *Cf. post*, at 14. The reality is that nobody has found the sufficiently specific precedent needed by Fogleman-Laxey. Notably, the dissenting opinion itself does not offer any authorities containing "a sufficiently high level of specificity" as to have put the defendants "on notice that [their] conduct [was] definitely unlawful." *See Ramos*, 125 F.4th at 674 (quoting *Buehler v. Dear*, 27 F.4th 969, 981 (5th Cir. 2022)).

Instead, the dissenting opinion offers cases merely to state broad statements of law, such as persons have the "'right to be free from arrest' without probable cause." *Post*, at 4 (quoting *Mangieri v. Clifton*, 29 F.3d 1012, 1016 (5th Cir. 1994)). None of the cited cases contain the sort of specificity needed for Fogleman-Laxey to carry her burden. So, the state of play is that neither we nor the dissenting opinion nor Fogleman-Laxey can offer any case to suggest that Fogleman-Laxey's clearly established rights were violated. Perhaps this is because no clearly established rights were violated.

The dissenting opinion also states that this opinion "resolv[es] factual disputes." *Post*, at 11. Not so. On the face complaint (and in colored photographs), Fogleman-Laxey is grilling on the street. Although the dissenting opinion effectively reads out of the statute the "*normal use* of any sidewalk, street, highway, bridge, alley, road, or other passageway," *see post*, at 16, it is clear from the complaint that Fogleman-Laxey's grilling would obstruct the "normal use" of that portion of the street, such as parking a car. Nothing in the statute limits its application to instances where an offender is blocking traffic. *Cf. post*, at 16. And, while the statute may "target[] 'traffic or passage,' " *Post*, at 20, it also "targets" the "normal use" of the street. To say otherwise would also read the "or" out of the statute.

Finally, the dissenting opinion seeks to Monday-Morning Quarterback the law enforcement officers' probable cause determination by pointing to a case where a Louisiana court declined to conclude that probable cause. *See post*, at 19 (citing *State v. Malveaux*, 852 So. 2d 463, 467 (La. App. 3 Cir. 6/4/03).[3] But whether a court would have concluded differently on a wholly distinct set of facts is not the standard when assessing whether law enforcement officers are entitled to qualified immunity. Instead, as the Supreme Court has "explained many times: 'Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *City of Escondido v. Emmons*, 586 U.S. 38, 42 (2019) (quoting *Kisela v. Hughes*, 584

[3] The court arrived at this conclusion after stating that it could not be determined from the record the width of the road or "whether Defendant was walking down the center line of the street or in the middle of the lane in which the officers were traveling." *Malveaux*, 852 So. 2d at 467.

U.S. 100, 104 (2018)). Applying that standard here, Fogleman-Laxey's complaint fails both prongs.

B

We turn to the district court's dismissal of the municipal appellees. A citizen may sue a municipality that violates her constitutional rights "under color of any statute, ordinance, regulation, custom, or usage." 42 U.S.C. § 1983; *see also Monell*, 436 U.S. at 690. "To succeed, the plaintiff must identify a federal right that was violated 'pursuant to an official municipal policy.'" *Edwards v. City of Balch Springs*, 70 F.4th 302, 307 (5th Cir. 2023) (quoting *Liggins v. Duncanville*, 52 F.4th 953, 955 (5th Cir. 2022)). "This claim, also known as a *Monell* claim, requires '(1) an official policy (2) promulgated by the municipal policymaker (3) [that] was the moving force behind the violation of a constitutional right.'" *Id.* (alteration in original) (quoting *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009)).

The district court rejected that these defendants bear *Monell* liability because the complaint offers on "conclusory and speculative" allegations that an official policy and custom existed. Fogleman-Laxey brief does not make any argument as to why her allegations are not "conclusory and speculative." Upon review, we agree with the district court that her allegations that Mayor Guillory "ordered and/or directed Chief Morgan and the Police Department to arrest" her are conclusory. Her failure to properly plead an official policy or custom is fatal to her *Monell* claim.

IV

For the aforementioned reasons, the district court's judgment is AFFIRMED.

DON R. WILLETT, *Circuit Judge*, dissenting:

Few abuses of public power are more corrosive to self-government than turning the machinery of the State against its critics. The Constitution checks that impulse, placing "[c]riticism of government . . . at the very center of the constitutionally protected area of free discussion."[1] The First Amendment does not contract when public officials grow thin-skinned.

Criticizing those in power is an American birthright. Government may answer the criticism, reject it, or ignore it altogether. What it may not do is arrest the critic. The First Amendment is not rationed by politics or popularity, nor does it turn on the patience of the official being criticized. No matter whose ox is gored, handcuffing someone in retaliation for protected speech violates the First Amendment and, when unsupported by probable cause, the Fourth as well.

That is what Tara Fogleman-Laxey says happened here. Her complaint names the Mayor, Police Chief, Sheriff, and District Attorney of Lafayette, Louisiana, along with several city police officers—nearly the whole of the parish's law enforcement leadership. She says they answered a peaceful neighborhood cookout protesting a fatal police shooting with arrest. At the Rule 12 stage, those allegations are not ours to doubt. We must accept well-pleaded facts as true and draw every reasonable inference in Fogleman-Laxey's favor. Do that—as the Rules require—and this case is not close. If she proves what she alleges, § 1983 provides a remedy.

The majority says otherwise. But to get there, it discards the pleading-stage rules that bind us—discounting allegations, resolving factual disputes, and substituting its own account of what happened—then invokes qualified

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[1] *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966).

immunity to seal the result. That distorts both doctrines: Rule 12 becomes summary judgment in miniature, and qualified immunity a vehicle for resolving disputed facts. Rule 12 is about gatekeeping, not factfinding. The question is not whether Fogleman-Laxey's account strikes us as persuasive, probable, or ultimately provable. It is whether her allegations, taken as true, "state a claim to relief that is plausible on its face."[2] Because the majority decides now what the Rules reserve for later, I respectfully dissent.

I. Qualified Immunity Does Not Bar These Claims at the Pleading Stage

America's principal civil rights statute is not subtle. Section 1983 declares that "[e]very person" who, under color of state law, deprives another of "rights, privileges, or immunities" "*shall be liable* to the party injured."[3] The statutory command is categorical. It admits of no exceptions. Yet courts have grafted onto it a countertextual escape hatch: qualified immunity. The doctrine is entirely judicially invented, textually indefensible, and at war with the law Congress actually wrote.[4] I have explained elsewhere my concerns with the doctrine's doctrinal footing.[5] Still, it is binding.

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[2] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008) ("A motion for judgment on the pleadings is subject to the same standard as a motion to dismiss under Rule 12(b)(6)." (citation omitted)).

[3] 42 U.S.C. § 1983 (emphasis added).

[4] The majority rightly notes that *stare decisis* requires us to apply qualified immunity. *See* Maj. Op. at 8. True enough. But the doctrine still asks whether the officers made a reasonable mistake about probable cause. If the pleaded facts supply no arguable probable cause, precedent does not require a factually identical roadside-cookout case before the claim may proceed.

[5] *See, e.g.*, *Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part); *Rogers v. Jarrett*, 63 F.4th 971, 979–81 (5th Cir. 2023) (Willett, J., concurring).

But the adjective still matters: "[q]ualified immunity is, as the term implies, qualified. It is not absolute."[6] It does not shield officials who violate clearly established rights.[7]

To be sure, the Supreme Court has insisted that "the clearly established right must be defined with specificity."[8] But it has been equally clear about what specificity does *not* demand. Specificity is not sameness: a plaintiff need not identify "a case directly on point."[9] The question is whether "existing precedent" has "placed the statutory or constitutional question beyond debate"[10]—whether "[t]he contours of the right" were "sufficiently clear that a reasonable official would understand that what he is doing violates that right."[11]

In answering that question, we must "use [our] full knowledge of [our] own and other relevant precedents."[12] The majority recites that principle—then declines to follow it. Indeed, it goes so far as to say Fogleman-Laxey forfeited reliance on two relevant cases because she invokes cite them below.[13] That claim directly contradicts the Supreme Court's holding that

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[6] *Skop v. City of Atlanta*, 485 F.3d 1130, 1144 (11th Cir. 2007) (citation omitted); *see also Wilson v. Midland County*, 89 F.4th 446, 449 n.3 (5th Cir. 2023) (comparing absolute and qualified immunity), *on reh'g en banc*, 116 F.4th 384 (5th Cir. 2024); *Ramirez*, 2 F.4th at 521 (WILLETT, J., dissenting from the denial of rehearing en banc) ("[N]either is qualified immunity an impenetrable shield against every manner of wrongdoing . . . .").

[7] *See Davis v. Scherer*, 468 U.S. 183, 197 (1984).

[8] *City of Escondido v. Emmons*, 586 U.S. 38, 42 (2019) (per curiam).

[9] *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

[10] *Id.*

[11] *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

[12] *Elder v. Holloway*, 510 U.S. 510, 516 (1994) (cleaned up).

[13] *See* Maj. Op. at 6.

we must analyze qualified immunity "in light of all relevant precedents, not simply those cited to, or discovered by the district court."[14] It also contradicts an even more fundamental premise of litigation: that "parties cannot waive the application of the correct law."[15] Our obligation to apply governing law does not depend on whether Fogleman-Laxey found every relevant case first.

Instead, the majority proceeds as though we were "artificially boxed in by only those cases cited in the plaintiff's brief."[16] It largely confines its analysis to the authorities Fogleman-Laxey happened to cite, supplemented by a conclusory assurance that the court conducted a "review of past precedents."[17] That is too narrow a review. Qualified immunity must be tested against the governing law, not just against the cases a plaintiff happened to cite.

Here, the governing law points the other way. We have long held that both rights are clearly established: the "right to be free from retaliation for exercising the[] [F]irst [A]mendment right to free speech"[18] and the "right to be free from arrest" without probable cause.[19] This case sits at the core of

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[14] *Elder*, 510 U.S. at 512.

[15] *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 923 (11th Cir. 2018); *see also Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 304 n.9 (2023) (GORSUCH, J., concurring) ("[N]o party may waive the proper interpretation of the law by failing to invoke it." (cleaned up)).

[16] *Bailey v. Ramos*, 125 F.4th 667, 682 n.60 (5th Cir. 2025).

[17] Maj. Op. at 6.

[18] *Rolf v. City of San Antonio*, 77 F.3d 823, 828 (5th Cir. 1996); *see, e.g.*, *Keenan v. Tejada*, 290 F.3d 252, 258 (5th Cir. 2002); *Colson v. Graham*, 174 F.3d 498, 508 (5th Cir. 1999); *see also Nieves v. Bartlett*, 587 U.S. 391, 398 (2019).

[19] *Mangieri v. Clifton*, 29 F.3d 1012, 1016 (5th Cir. 1994) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)).

those protections. On the pleaded facts, "a reasonable official would understand" that arresting a peaceful protestor, without probable cause, because of her protest "violates th[ose] right[s]."[20] And it makes no difference whether "the very action in question has previously been held unlawful."[21] Fair notice does not require a factual twin.

Qualified immunity defeats Fogleman-Laxey's Fourth Amendment claim only if there was "'arguably' . . . probable cause for the . . . arrest."[22] Defendants invoke Louisiana Revised Statute § 14:100.1(A), which criminalizes willfully obstructing "the free, convenient, and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway . . . by impeding, hindering, stifling, retarding, or restraining traffic or passage thereon or therein."[23] But naming an offense is not establishing probable cause. The pleaded facts still must furnish an objective basis to believe the offense occurred. Here, the complaint alleges no blocked lane, stopped vehicle, or impeded passage. On the pleaded facts, the link between conduct and offense is missing.

Probable-cause analysis is "not readily, or even usefully, reduced to a neat set of legal rules."[24] But one rule is settled: probable cause to arrest means "probable cause to believe that *a criminal offense* has been or is being

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[20] *Anderson*, 483 U.S. at 640.

[21] *Id.*; *see also Ramirez*, 2 F.4th at 523 (WILLETT, J., dissenting from the denial of rehearing en banc) ("Even if the precise fact pattern is novel, there is no need for a prior case exactly on point where the violation is obvious.").

[22] *Brown v. Lyford*, 243 F.3d 185, 190 (5th Cir. 2001) (quoting *Hart v. O'Brien*, 127 F.3d 424, 444 (5th Cir. 1997)).

[23] LA. REV. STAT. ANN. § 14:100.1(A).

[24] *Illinois v. Gates*, 462 U.S. 213, 232 (1983).

committed."[25] The scene may have been unwelcome and annoying, but annoyance is not a§ 14:100.1(A) violation.

To be sure, "[p]robable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction."[26] Nor does it demand proof beyond a reasonable doubt. But it does require something more than irritation; it requires facts tethered to the offense the law defines. The inquiry is concrete: the elements of the offense and the facts confronting the officer. Put simply, "[t]he existence of actual or arguable probable cause depends on the elements of the alleged crime and the operative fact pattern."[27]

By its terms, § 14:100.1(A) requires three things: (1) "impeding, hindering, stifling, retarding, or restraining traffic or passage," (2) on a "public sidewalk, street, highway, bridge, alley, road, or other passageway," (3) willfully.[28] The location is not the dispute; the operative questions are obstruction of traffic or passage and wilfulness, Nothing pleaded supplies either. The majority never does the indispensable work of matching the pleaded facts to the statutory elements. Instead, it treats "obstruction" as an atmosphere—protest near a roadway plus irritation—rather than an offense with statutory elements.

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[25] *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (emphasis added); *see also Case v. Montana*, 607 U.S. 107, 109 (2026) ("The probable-cause requirement is rooted in, and derives its meaning from, the criminal context . . . .").

[26] *Adams v. Williams*, 407 U.S. 143, 149 (1972).

[27] *Garcia v. Casey*, 75 F.4th 1176, 1187 (11th Cir. 2023) (cleaned up); *see also Alexander v. City of Round Rock*, 854 F.3d 298, 306–07 (5th Cir. 2017) (reversing a Rule 12 dismissal where the offense required force and the pleaded facts alleged none).

[28] *See* La. Rev. Stat. Ann. § 14:100.1(A).

The gravamen of a § 14:100.1(A) offense turns on interference with movement—"impeding, hindering, stifling, retarding, or restraining traffic or passage." Louisiana courts do not "interpret [§ 14:100.1(A)] so narrowly" as to require that "traffic was actually impeded."[29] A traffic jam is unnecessary; obstruction is not. Louisiana cases do not erase "traffic or passage" from the statute. Where there is no evidence that others "could not have continued driving in their lane of travel because of [the suspect's] presence on the street,"[30] Louisiana courts have found probable cause lacking.[31]

That is this case. Indeed, the photographs embedded in the complaint reinforce, rather than contradict, that account. They show that Fogleman-Laxey was not blocking traffic at all. Her grill sat in a parking gap between two parked vehicles, with the travel lane open. The grill occupied space through which moving traffic could not pass whether she was there or not:

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[29] *State v. Barnard*, 847 So. 2d 99, 102 (La. Ct. App. 2003).

[30] *State v. Malvaux*, 852 So. 2d 463, 467 (La. Ct. App. 2003); *see also State v. Sherman*, 896 So. 2d 1194, 1204–05 (La. Ct. App. 2005) (following *Malvaux*), *rev'd on other grounds*, 931 So. 2d 286 (La. 2006).

[31] The majority faults me for consulting Louisiana decisions construing § 14:100.1(A), calling that "Monday-Morning Quarterback[ing]." Maj. Op. at 9. But arguable probable cause necessarily depends on "the elements of the alleged crime," *Garcia*, 75 F.4th at 1187, and state courts are the final authorities on what state criminal statutes mean. *See United States v. Escalante*, 239 F.3d 678, 680 (5th Cir. 2001) ("As state courts are the ultimate authority on issues of state law, federal courts are bound by their interpretations of state law."). *Malvaux* and *Barnard* both predated this arrest by nearly two decades and construed the very statute the officers invoked. Consulting those cases is not Monday-morning hindsight; it is everyday probable-cause analysis under the law that governed at the time. *See also Alexander*, 854 F.3d at 306 (finding no arguable probable cause because the argument in favor of probable cause was "counter to Texas precedent on the issue").





Another image shows a vehicle moving freely through the travel lane past the protest:



Those images weaken—not strengthen—the claim of arguable probable cause. Louisiana courts have rejected probable cause even where a suspect "was walking down the middle of the street."[32] If a grill squeezed between parked cars is enough where "walking down the middle of the street" was not, § 14:100.1(A) stops functioning as an obstruction statute. It

[32] *Malvaux*, 852 So. 2d at 467.

becomes a general roadside-presence offense—something the text does not create and, in this context, the First Amendment makes especially suspect.

At most, the grill occupied space where another car *might* have parked—though, given the gap between her vehicle and the one beside it, even that is doubtful. But § 14:100.1(A) is not a parking ordinance. Its operative terms are "traffic or passage"—both terms of movement.[33]

Occupying roadside space is not the same as obstructing passage. Otherwise parking itself would become criminal whenever it occupies space another car might have used. Section 14:100.1(A) says nothing of the kind.

The majority says that I have read the "normal use" language out of § 14:100.1(A). I have not. The statute creates no freestanding "normal use" offense. It does not criminalize *every* obstruction of the "normal use of any public sidewalk."[34] The word "by" is doing statutory work: any interference with "normal use" must occur "by impeding, hindering, stifling retarding, or restraining traffic or passage thereon or therein."[35] Because any obstruction Fogleman-Laxey may have caused does not even arguably "imped[e], hinder[], stifl[e], retard[], or restrain[] traffic or passage,"[36] arguable probable cause was lacking.

The willfulness element independently points the same way. One cannot willfully obstruct traffic that one has not obstructed at all. And even assuming some obstruction, Louisiana's high court, discussing the term

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[33] La. Rev. Stat. Ann. § 14:100.1(A) (emphasis added).

[34] *Id.*

[35] *Id.*

[36] *Id.*

"willful," has described it as involving "more than just knowledge."[37] The term denotes something stronger than mere inadvertence or innocent presence; it requires a "conscious wrong or evil purpose . . . or at least inexcusable carelessness."[38]

Nothing in the pleadings supplies any "indicia of *mens rea*."[39] No pleaded fact suggests that cars swerved, slowed, or changed lanes, or that Fogleman-Laxey deliberately entered a travel lane. At minimum, the complaint supplies no arguable basis to infer willful obstruction.

The majority bypasses that element-by-element inquiry. It does not ask whether the officers had arguable probable cause, even though our precedent makes that the dispositive question.[40] The majority says it need not, because "[n]one of the cited cases contain the sort of specificity needed for Fogleman-Laxey to carry her burden."[41] But the Supreme Court's specificity rule cannot do the work of probable cause. Qualified immunity "do[es] not require a case directly on point."[42] Instead, when "existing precedent" has "placed the statutory or constitutional question beyond debate," we are bound to reject qualified immunity[43]—even "without dependence on the fact patterns of other cases."[44] Specificity is required; factual identity is not. The Supreme Court does not require a case on all

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[37] *In re Denton*, 339 So. 3d 574, 590 (La. 2022) (quotation omitted).

[38] *Id.* (quotation omitted).

[39] *See District of Columbia v. Wesby*, 583 U.S. 48, 59 (2018) (quotation omitted).

[40] *See Brown*, 243 F.3d at 190; *Alecander*, 854 F.3d at 306–07.

[41] Maj. Op. at 8.

[42] *al-Kidd*, 563 U.S. at 741.

[43] *Id.*

[44] *Cole v. Carson*, 935 F.3d 444, 453 (5th Cir. 2019) (en banc).

fours, and our precedent does not permit us to demand one here. The majority's demand for a case resolving this exact fact pattern cannot be squared with these holdings. When probable cause is not even *arguably* present, the constitutional question is "beyond debate" and qualified immunity does not apply.[45] The method is straightforward: compare the pleaded facts with the operative statutory elements. Where the complaint plausibly alleges that the offense's operative elements are not even arguably present, qualified immunity does not demand a prior case involving the same grill, the same curb, and the same protest.

Qualified immunity leaves room for reasonable mistakes. But it does not protect an arrest for conduct that does not even arguably satisfy the operative elements of the offense invoked. On these pleaded facts, it is at least *plausible* that there was no arguable basis to think Fogleman-Laxey violated § 14:100.1(A). At the motion-to-dismiss stage, that is enough.

A developed record may reveal facts supporting probable cause. But none appears in the complaint, and Rule 12 does not let us to supply those missing facts ourselves. The Supreme Court's instructions in such cases are unequivocal: when plausibly alleged facts negate probable cause, the claim survives.

According to the complaint and its exhibits, Fogleman-Laxey was engaged in roadside activity without obstructing the travel lane. But if mere roadside presence were enough, § 14:100.1(A) would criminalize crawfish boils, tailgates, yard sales, and countless other forms of ordinary civic life throughout Louisiana. And when the roadside activity is political protest in

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[45] *See al-Kidd*, 563 U.S. at 741.

"the archetype of a traditional public forum,"[46] the constitutional stakes are hgher still. A public street does not stop being a public forum because the protest is unwelcome. The majority's reading is incompatible with § 14:100.1(A). And it is incompatible with the Constitution.

* * *

At the pleading stage, the Supreme Court says we must—not may—"assume" the "veracity" of "well-pleaded factual allegations . . . and then determine whether they plausibly give rise to an entitlement to relief."[47] Proof comes later. Rule 12 does not permit us to demand it before discovery.

Fogleman-Laxey plausibly alleges an arrest without arguable probable cause and retaliation for protected speech. At this stage, that is enough for her claims against the individual defendants to proceed.

II. The *Monell* Claim Is Plausibly Pleaded

The same Rule 12 error infects the *Monell* analysis. Even if qualified immunity were to bar the individual-capacity claims, it would not shield the City.[48] Municipal liability follows its own demanding rules.

Under *Monell v. Department of Social Services*, a municipality is liable under § 1983 only "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury."[49] That limitation is

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[46] *Frisby v. Schultz*, 487 U.S. 474, 480 (1988); *see also McCullen v. Coakley*, 573 U.S. 464, 501 (2014) (Scalia, J., concurring in the judgment) ("Public streets and sidewalks are traditional forums for speech on matters of public concern.").

[47] *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

[48] *See Owen v. City of Independence*, 445 U.S. 622, 638 (1980) (holding that municipalities are not entitled to qualified immunity for the actions of their officers).

[49] 436 U.S. 658, 694 (1978).

deliberate. It prevents municipal liability from collapsing into the *respondeat superior* regime the Supreme Court has expressly rejected.[50]

"Our cases make clear that under *Monell*, a single decision may create municipal liability *if* that decision were made by a final policymaker responsible for that activity."[51] The complaint does more than invoke the word "policy." It identifies a decision and a decisionmaker: Mayor Guillory "ordered and/or directed" the arrest and detention.[52] That is an alleged historical fact we must accept as true.

The majority does not dispute this legal framework. Instead, it converts a pleading question into a credibility judgment.[53] That is not pleading analysis; it is factfinding. Before discovery has begun, the majority simply rejects the alleged historical fact and then dismisses the *Monell* claim because the fact it rejected is missing. But "at the pleading stage," we must "assume the truth of the facts alleged"—even when we doubt them.[54] Rule 12 does not permit that move.

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[50] *See id.* at 691 ("[W]e conclude that a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.").

[51] *Bennett v. Pippin*, 74 F.3d 578, 586 (5th Cir. 1996) (emphasis in original) (cleaned up).

[52] Lafayette does not contest that Mayor Guillory is a policymaker under *Monell*. Nor did it argue otherwise in the district court. Accordingly, we must accept for purposes of this appeal that Mayor Guillory had final policymaking authority. *See Gilbert v. Donahoe*, 751 F.3d 303, 311 (5th Cir. 2014) (explaining that we can affirm on alternative ground only "so long as the argument was raised below").

[53] *See* Maj. Op. at 10.

[54] *DeVillier v. Texas*, 601 U.S. 285, 288 n.1 (2024).

The majority calls the allegation "conclusory or speculative." It is true that *Twombly* "requires more than labels and conclusions."[55] But *Twombly* does not license courts to discard factual allegations merely because they seem unlikely. *Twombly* itself instructs that plausibility is assessed "on the assumption that all the allegations in the complaint are true (*even if doubtful in fact*)."[56]

The oft-invoked reference to "labels and conclusions" has a narrower meaning: "a formulaic recitation of the elements of a cause of action will not do."[57] As *Papasan v. Allain*—the very case *Twombly* cites—explains, "[a]lthough for the purposes of this motion to dismiss we must take all the factual allegations in the complaint as true, we are not bound to accept as true a legal conclusion couched as a factual allegation."[58] "The Mayor directed the arrest" describes an alleged historical act; it does not recite a legal element. The complaint says he did it, and Rule 12 requires us to treat that facts as true for now.

Our decision last month in *Thompson v. McGehee* makes the inconsistency impossible to square. There, this same panel held that the plaintiff had "plausibly alleged . . . retaliatory animus" in part because officials allegedly "directed" her arrest.[59] Nothing in the pleadings explains why the *Thompson* plaintiff's allegation is factual while Fogleman-Laxey's nearly identical allegation is conclusory. A pleading rule cannot change

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[55] 550 U.S. at 555.

[56] *Id.* (emphasis added) (citations omitted); *see also Iqbal*, 556 U.S. at 679 ("When there are well-pleaded factual allegations, a court should assume their veracity *and then* determine whether they plausibly give rise to an entitlement to relief." (emphasis added)).

[57] *Twombly*, 550 U.S. at 555.

[58] 478 U.S. 265, 286 (1986).

[59] 183 F.4th 353, 371 (5th Cir. 2026).

meaning from one complaint to the next. "Directed" was factual in *Thompson*. It is factual here.

* * *

Twombly lets courts disregard legal conclusions, not well-pleaded facts. The complaint alleges that the Mayor ordered the arrest. The question at Rule 12 stage is not whether we believe he did; it is whether the complaint plausibly alleges that he did. It does. The *Monell* claim should proceed.

III. Conclusion

Respectfully, the majority decides too much too soon. Rule 12 asks for a plausible claim, not proof. Fogleman-Laxey alleges a peaceful protest, an arrest unsupported by the operative elements of the cited offense, retaliatory motive, and a mayor-directed decision to make that arrest. The case may look different after discovery, and summary judgment may end it. Until then, the complaint—not our intuition about what probably happened—sets the factual premise. And on that premise, these claims are plausible.

Qualified immunity protects reasonable mistakes, and Rule 12 protects the line between pleading and proof. Neither permits us to supply facts the complaint lacks or reject facts it plausibly alleges. Fogleman-Laxey may lose once the facts are developed, but she should not lose because we developed them ourselves. Because the majority does just that, I respectfully dissent.

United States Court of Appeals

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August 24, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 25-30132 Fogleman-Laxey v. Guillory
USDC No. 6:21-CV-3038

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

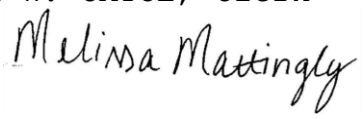
Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that Appellant pay to Appellees the costs on appeal. A bill of cost form is available on the court's website www.ca5.uscourts.gov.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

Enclosure(s)

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