

Supervisory Liability Post-Iqbal

Prior to *Iqbal*, most courts allowed liability where a supervisor was deliberately indifferent to the risk to the public. The supervisor must have been personally involved in the alleged constitutional misconduct by taking some action to cause the violation. This meant that before *Iqbal* plaintiffs had to establish that the officer whom committed the unconstitutional conduct, intended to cause the injury and his supervisor was on notice of the risk of injury and acted with deliberate indifference to that risk. However, the Supreme Court provided that this analysis was too similar to vicarious liability, which is not available for a supervisory liability claim in a Bivens or §1983 action.

Iqbal changed the long-held supervisory liability analysis, and provided that a plaintiff must plead that the supervisor personally violated the Constitution through his own actions. To state a claim based on a violation of a clearly established right, the plaintiff must show that the supervisor implemented a policy or course of action with the intent to violate a constitutional right. A supervisor's mere knowledge of his underling's purpose is insufficient to establish that the supervisor violated the Constitution. *Iqbal* focuses on discrimination claim, but the Court's new analysis has affected lower court's decisions on supervisory liability claims relating to other constitutional injuries.

Some courts have abandoned supervisory liability entirely, while others have required that plaintiff's clearly establish that the supervisory official's actions were the proximate cause of the injuries. Another approach is that the state of mind required for the alleged constitutional right is equally attaches to a supervisory liability claim.

In *T.E. v. Grindle*, the plaintiffs brought an equal protection action after being sexually assaulted by their band teacher. In their claim the plaintiff's alleged that the principal of the

elementary school was liable for the band teacher's discriminatory conduct, because she was on notice of the conduct and did not take any action. Although the plaintiff's would have recovered based on the principal's "deliberate indifference" under past precedent, *Iqbal* now requires that the supervisor possessed the required intent, and thus it abandoned the supervisory liability theory entirely.

In *Starr v. Baca*, the Court held that the Supreme Court in *Iqbal* did not intend to change the longstanding case law on deliberate indifference and concluded "a plaintiff may state a claim for supervisory liability based upon the supervisor's knowledge of and acquiescence in unconstitutional conduct by others." The Court provided that in order for supervisory liability to attach, the plaintiff must show that the supervisor's breach of a duty was the proximate cause of the injury.

The Court in *Sanchez v. Pereira-Castillo* found that although *Iqbal* held that supervisory officials cannot be held liable for the unconstitutional conduct of their underlings, they may be liable on the basis of supervising with deliberate indifference to a civil rights violation. Thus even after *Iqbal* a plaintiff can succeed on a §1983 action based on a supervisor's deliberate indifference if that is the state of mind required for the constitutional deprivation.