United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
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Lyle W. Cayce
Clerk

No. 24-50480

MARY DOE, *as next friend* JANE JUSTICE DOE, *a minor child*; JOHN DOE, *as next friend* JANE JUSTICE DOE, *a minor child*,

Plaintiffs—Appellees,

versus

APRIL JEWELL,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:23-CV-566

Before HIGGINBOTHAM, WILLETT, and HO, *Circuit Judges*.

PATRICK E. HIGGINBOTHAM, *Circuit Judge*:[*]

Parents of a pre-kindergarten student bring claims under 42 U.S.C. § 1983 against April Jewell, a school principal, for failure to respond to sexual molestation of their daughter by a faculty member. The district court denied Jewell's motion to dismiss on the basis of qualified immunity finding that she failed her duty to protect the student. We AFFIRM.

[*] JUDGE WILLETT and JUDGE HO concur in all but footnote 37 of this opinion.

I

A

On August 3, 2023, Plaintiff Jane Doe, through her parents Mary and John Doe, filed suit in the Western District of Texas against Lorena Independent School District and April Jewell, the school principal of Lorena Primary School, under the Education Amendments of 1972 and 42 U.S.C. § 1983.[1] Plaintiffs sued Jewell in her official and personal capacity for violations of § 1983. They allege violations of Jane's Fourteenth amendment right to bodily integrity in failing to supervise arbitrary and conscience-shocking executive action.

The district court referred the case to a magistrate judge and, after a flurry of motions and summons, Jewell and LISD filed motions to dismiss pursuant to FED. R. CIV. P. 12(b)(6). The magistrate's report and recommendation ("R&R") recommended denying qualified immunity for Jewell and denying both motions. The district judge noted that Jewell, but not LISD, had objected to the R&R, stated that it conducted a *de novo* review of the entire record, overruled Jewell's objections, and adopted the R&R. Jewell filed a timely notice of appeal of the denial of qualified immunity.

B

The complaint alleges that April Jewell was the principal at Lorena Primary School during the 2020-2021 academic year, when Nicolas Crenshaw, a long-term substitute teacher, sexually abused Jane, a pre-

[1] For the purposes of policymaking, the Board of Trustees and the District are "one and the same entity." *New Caney Indep. Sch. Dist. Bd. Of Trs. v. Burnham Autocountry*, 960 S.W.2d 957, 959 (Tex. App. 1998).

kindergarten student. We turn first to the factual background, as alleged, which culminated in Crenshaw's arrest and conviction.[2]

Jane was a five-year-old student in Stephanie Heslep's pre-kindergarten classroom at Lorena Primary in the fall of 2020. In October, Melinda Sams, a special education classroom aide, observed Crenshaw giving special attention to two female students—Jane Doe and Student A—placing them on his lap, allowing them to wear his hoodies and to use his phone, and lying under a blanket at naptime with Jane. Sams reported this conduct to Heslep, and for a time Crenshaw's behavior improved.[3]

Sams, noticing more inappropriate behavior, took photographs, including one of Crenshaw lying underneath the blanket with Jane. In January 2021, Sams showed these photos to Vice Principal Denae Gerik. In February, Jewell reprimanded Sams for taking the photographs. Jewell did not ask to see them, but observed that because of the photographs, she would "have to go to Rusty[,]" the district official responsible for Title IX compliance.[4]

Toni Peebles, an instructional aide, also reported Crenshaw's behavior to Jewell in January 2021. In March 2021, a third employee, Marie Willis, noticed Crenshaw's "inappropriate behavior" with Jane and Student A. She reported to Jewell that Crenshaw regularly had Jane sitting in his lap, wearing his clothes, and holding his hand around school. Jewell asked Willis if she had seen photographs and Willis responded that she had not seen all of them. Still, Jewell did not inform Jane's parents of Crenshaw's behavior.

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[2] Jane's parents, John and Mary Doe, brought suit on Jane's behalf. *See* FED R. CIV. P. 17. The district court granted the Plaintiff's motion for use of pseudonyms under *Doe v. Stegall*, 653 F.2d 180, 185 (5th Cir. 1981).

[3] The complaint also alleges that Heslep "routinely permitted Crenshaw to lie under a blanket with Jane at nap time when the lights in the classroom were turned off."

[4] Rusty Grimm was the school district's Director of Support Services.

After Willis came forward, Heslep's class was split into small groups of four to five students for parts of the day, and Jane was assigned to Crenshaw's group. As a coach tasked with handling behavior intervention at Lorena Primary School, Willis responded to Crenshaw's classroom multiple times for crying and screaming students, only to find the door locked and Crenshaw as the sole adult in the room with the students.[5] In mid-March 2021, Jane began "screaming, crying, and begging" her parents to let her stay home instead of going to school. She also complained to the school nurse that "'it hurts when [she] go[es] potty' and pointed to her private area."

In April 2021, Jewell, Gerik, Willis, Heslep, the Special Education Director, and two or three other employees held a meeting where Crenshaw's behavior—from being alone with students to locking the door to student outbursts—was discussed. In that meeting, Jewell said that "we can't be picky" and "who we have is what we have to work with." Shortly after this meeting, Willis was removed from pre-kindergarten, and eventually transferred out of Lorena Primary School.

On May 7, 2021, Jane was out of the classroom at a field day and Crenshaw was the sole employee in the classroom with Student A.[6] During naptime, he touched her genitals. The next day, Jane's parents were notified of a police investigation into Crenshaw's inappropriate behavior towards another student.

Jane's mother, Mary Doe, spoke on the phone with Jewell on May 19, 2021. During their conversation, Jewell said that she was sorry, started crying, and told Mary that she should have informed Mary earlier in the year about Crenshaw's inappropriate behavior with Jane.

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[5] The complaint alleges that it is unusual to lock doors when a staff member is alone with a student.

[6] The complaint notes that Heslep was out of the classroom when this happened.

On June 13, 2021, Jane told her parents that Crenshaw had been sexually abusing her. Jane's parents immediately reported Crenshaw's sexual abuse to law enforcement, who conducted a forensic interview with Jane two days later. During the interview, Jane testified that Crenshaw penetrated her vagina with his finger and caused her to contact his erect penis, whereupon she had to wipe her hand off afterwards.

When Crenshaw was interviewed by law enforcement, he admitted that he had Jane sit on his lap, causing sexual arousal.[7] With these admissions, Crenshaw was indicted by a grand jury on August 5, 2021 on five counts of aggravated sexual assault of a child, one count of continuous sexual assault of a child, and one count of indecency with a child by contact, all arising out of his sexual abuse of Jane Doe from October 2020 through May 2021. Crenshaw pleaded guilty, and was sentenced to a minimum of sixty years in prison.

Jane's parents in turn filed a grievance with the School District, requesting an explanation of how this continuous abuse was able to persist unabated. The School District in turn refused to conduct a Title IX investigation or answer the Does' inquiries.

II

A denial of a motion to dismiss based on qualified immunity is an immediately reviewable collateral order.[8] "[W]e review *de novo* the denial of a qualified-immunity-based motion to dismiss."[9] Dismissal is appropriate only when a plaintiff has not alleged, "enough facts to state a claim to relief

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[7] He also admitted to going home, watching pornography, and thinking of Jane while masturbating.

[8] *Club Retro, LLC v. Hilton*, 568 F.3d 181, 193-94 (5th Cir. 2009) (quoting *Behrens v. Pelletier*, 516 U.S. 299, 307 (1996)). *See, e.g.*, *Edmiston v. Borrego*, 75 F.4th 551, 557 (5th Cir. 2023).

[9] *Id.* at 557 (citation omitted).

that is plausible on its face" and has not "raise[d] a right to relief above the speculative level."[10] This Court has "jurisdiction only to decide whether the district court erred in concluding as a matter of law that officials are not entitled to [qualified immunity] on a given set of facts."[11]

"In reviewing a ruling on a Rule 12(b)(6) motion, our court considers only 'the facts stated in the complaint and the documents either attached to or incorporated in the complaint.'"[12] This Court accepts "well-pleaded facts as true and view[s] all facts in the light most favorable to the plaintiff."[13] "Our task, then, is to determine whether the plaintiff stated a legally cognizable claim that is plausible, not to evaluate the plaintiff's likelihood of success."[14] And we "draw[] all reasonable inferences in the nonmoving party's favor."[15]

Our scope of review is confined to "whether a given course of conduct would be objectively unreasonable in light of clearly established law."[16] Here, our analysis is limited to the standard two-part qualified immunity question:

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[10] *Alexander v. City of Round Rock*, 854 F.3d 298 (5th Cir. 2017) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

[11] *Hicks v. LeBlanc*, 81 F.4th 497, 502 (5th Cir. 2023) (quoting *Ramirez v. Escajeda*, 921 F.3d 497, 499 (5th Cir. 2019)).

[12] *Doe v. Ferguson*, 128 F.4th 727, 733-34 (5th Cir. 2025) (quoting *Ferguson v. Bank of New York Mellon Corp.*, 802 F.3d 777, 780 (5th Cir. 2015)).

[13] *Thompson v. City of Waco*, 764 F.3d 500, 502-03 (5th Cir. 2014). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

[14] *Doe ex rel. Magee v. Covington Cnty. Sch. ex rel Keys*, 675 F.3d 849, 854 (5th Cir. 2012) (en banc) (citations omitted).

[15] *Benfield v. Magee*, 945 F.3d 333, 336 (5th Cir. 2019) (citation omitted). This does not extend, however, to "legal conclusions, conclusory statements, or naked assertions devoid of further factual enhancement." *Id.* at 336-37 (quoting *Iqbal*, 556 U.S. at 678).

[16] *Roque v. Harvel*, 993 F.3d 325, 331-32 (5th Cir. 2021) (citation omitted).

whether the conduct was unconstitutional and whether the unconstitutionality was "clearly established" at the time the challenged conduct occurred.[17] To be "clearly established" in the context of qualified immunity analyses, "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."[18] Plaintiffs carry the burden of demonstrating that qualified immunity is inappropriate.[19]

This Court has repeatedly underscored the flexibility and discretion invested in a panel when reviewing these issues, and the court can "decline entirely to address" the first part of the question and "skip straight to the second . . . ."[20] We accept the inherent value of addressing both parts "to develop robust case law on the scope of constitutional rights,"[21] and turn to both below.

III

Beginning with the first prong in the qualified immunity analysis, whether the plaintiff alleged a violation of a federal constitutional or statutory right,[22] Jane brings two claims: (A) that her Fourteenth Amendment right to bodily integrity was violated by Jewell's failure to supervise; and (B) that

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[17] *Id. See also Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019) ("The first question is whether the officer violated a constitutional right. The second question is whether the right at issue was 'clearly established' at the time of [the] alleged misconduct.").

[18] *Terwilliger v. Reyna*, 4 F.4th 270, 284 (5th Cir. 2021) (citation, quotation marks, and brackets omitted).

[19] *Id.* at 280.

[20] *Roque*, 993 F.3d at 332 (quoting *Morgan v. Swanson*, 659 F.3d 359, 384 (5th Cir. 2011)).

[21] *Id.* (quoting *Joseph v. Bartlett*, 981 F.3d 319, 331 n.40 (5th Cir. 2020)).

[22] *Pearson v. Callahan*, 555 U.S. 223, 232 (2009).

Jewell's conduct constituted arbitrary and conscience-shocking executive action.

A

A supervisory school official can be held personally liable for a subordinate's violation of "an elementary or secondary school student's constitutional right to bodily integrity in physical sexual abuse cases."[23] Three hurdles await putative plaintiffs:

> (1) the defendant learned of facts or a pattern of inappropriate sexual behavior by a subordinate pointing plainly toward the conclusion that the subordinate was sexually abusing the student;
> (2) the defendant demonstrated deliberate indifference toward the constitutional rights of the student by failing to take action that was obviously necessary to prevent or stop the abuse; and
> (3) such failure caused a constitutional injury to the student.[24]

Jewell devotes much of her argument to the assertion that the district court erred in finding that Jane's claims met the *Taylor* standard. We disagree.

1

Taylor's first prong focusses on whether Jewell knew about facts or a pattern of inappropriate sexual behavior by a subordinate.[25] The Does allege that by the end of March 2021, a minimum of three school employees had reported to Jewell significant concerns with Crenshaw's behavior towards

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[23] *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 454 (5th Cir. 1994) (en banc). We recently reaffirmed the continued vitality of *Taylor* in the Fifth Circuit in *Doe v. Ferguson*. 128 F.4th at 733.

[24] *Id.*

[25] *Taylor*, 15 F.3d at 454.

Jane. Such behavior includes Jane sitting in Crenshaw's lap; Jane wearing Crenshaw's clothes; Jane holding Crenshaw's hand; Crenshaw locking the door while he was the only adult in the room; and Crenshaw lying underneath a blanket with Jane during nap time.[26] Taken together, these actions constitute inappropriate sexual behavior and point toward the conclusion that Crenshaw—Jewell's subordinate—was sexually abusing a student.

Jewell not only knew about this behavior; she also was present at a meeting where multiple employees discussed Crenshaw's habit of being alone with students and locking the door to his classroom. And, Jewell knew that Sams' photographs of Crenshaw depicted inappropriate behavior.[27]

Jewell may be correct that some of the above actions by a teacher *can* be innocent. But Crenshaw's oft-reported behavior creates a pattern of inappropriate sexual behavior pointing directly to sexual abuse of Jane.

Jewell reminds that the duty to respond was not hers alone, as *all* teachers are "reporters" of abuse under law. While true, this ignores the reality that all teacher complaints flowed towards to Jewell, the inquiry is focused on Jewell, and that teachers reported to her as the head of the school. Jewell acted in a supervisory capacity to the other school employees, and the information pooled in her lap. While reasonable minds can debate whether

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[26] Plaintiffs allege that Sams had informed Jewell and Gerik of much of this behavior in a meeting that took place on or around February 4, 2021. They allege that Willis also told Jewell "of Crenshaw's inappropriate behavior."

[27] Drawing all reasonable inferences in favor of the Plaintiff, Jewell asking Willis if she had seen the photographs of Crenshaw leads to the conclusion that Jewell had notice of the photographs. Plaintiffs allege that Sams showed the photographs to the Vice Principal—who told her he would go to Jewell—prompting Jewell to express concern, not with Crenshaw's conduct, but that the photographs would trigger a meeting with the Title IX coordinator. Even if Jewell had not seen the photographs herself, she understood that their content and nature might trigger a Title IX investigation. Jewell's meeting with Sams concerning the photographs and referencing them in another staff meeting with Willis buttresses this inference.

Sams and Willis should have done more, both reported to supervisors—and may have suffered retaliation for doing so.

The litany of behaviors Jewell knew about outmatched any awareness of an inappropriately close relationship that administrators were aware of in other *Taylor* cases.[28] For these reasons, the Plaintiffs have sufficiently alleged that Jewell had learned of facts and a pattern of behavior pointing plainly toward the conclusion that Crenshaw was sexually abusing Jane.

2

Taylor's second prong turns to whether Jewell was deliberately indifferent toward Jane's constitutional rights and "fail[ed] to take action that was obviously necessary to prevent or stop the abuse."[29] In *Doe v. Dallas Independent School District*, this court observed that "[t]he deliberate indifference standard is a high one,"[30] and that "[a]ctions and decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference and thus do not divest the official of qualified immunity."[31]

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[28] *See M.E. v. Alvin Independent School District*, 840 Fed. Appx. 773 (5th Cir. 2020). In *Alvin*, it was clear that the parents knew of an inappropriately close (but not sexual) relationship between the victim and the perpetrator, but the context is radically different. *Id.* at 774-75. Put plainly, the physical behaviors in Jane Doe's case—the straddling and the lying down—are not present in *Alvin*.

[29] *Taylor*, 15 F.3d at 454.

[30] 153 F.3d 211, 219 (5th Cir. 1998).

[31] *Id.* In *Dallas Independent School District*, the principal met with the child and his mother about the teacher who was molesting him. This court noted that the principal (wrongly) determined that the allegations were false but still warned the teacher about his behavior. *Id.* This court found it to be a case of "good faith but ineffective responses that might satisfy a school official's obligation in these situations, *e.g.*, warning the state actor, notifying the student's parents, or removing the student from the teacher's class." *Taylor*, 15 F.3d at 456 n.12.

The *Taylor* en banc court noted that this second prong "will often be a fact-laden question,"[32] and offered how a school official could *properly* deal with "incomplete information": reporting rumors, warning the subordinate that severe action will be taken if the rumors are confirmed, investigating if information continues to come in, or even holding a closed-door hearing.[33]

The Plaintiffs allege that Jewell did not properly investigate, reprimand, or warn Crenshaw; inform Jane's parents of the concerns and complaints made against him; or report Crenshaw's misconduct to law enforcement. Plaintiffs further allege that Jewell disregarded numerous reports over the course of an entire school year of excessive physical and sexually-charged contact with and "favoritism" of certain students. Moreover, Jewell's decision to reprimand Sams and subdivide the classrooms may have made it easier for Crenshaw to be alone with Jane and other students. While Jewell reassigned Willis to another room, the effect was to remove another pair of watchful eyes.

The complaint sufficiently alleges deliberate indifference by Jewell towards the repeated reports of Crenshaw's sexually inappropriate bbehavior and, in turn, to Jane's bodily integrity. Accepting the factual allegations as true, Jewell did nothing to stop the abuse, and nothing to free herself from liability through the litany of examples in our caselaw where principals were able to defeat accusations of deliberate indifference.[34]

The Plaintiffs have sufficiently alleged that Jewell acted with deliberate indifference towards Jane by failing to take action that would have stopped the abuse Jane suffered at the hands of Crenshaw.

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[32] *Taylor*, 15 F.3d at 456 n.12.

[33] *Id.*

[34] *See id.*

In a word, *Taylor*'s third prong is causation. In particular, this translates to the school official's "fail[ure] to take action" that "caus[ed] a constitutional injury to the student."[35] Plaintiffs allege that Jewell's direct and deliberate actions and inactions resulted in Jane's sexual abuse at the hands of Crenshaw—and that a jury could conclude that *if* Jewell had "investigated Crenshaw, removed Jane from his class, instructed him to stay away from Jane, increased supervision of Crenshaw instead of eliminating it, or at the very least informed [the Does] of the reports concerning Crenshaw's behavior, Crenshaw would not have been able to abuse Jane or continue abusing her."

The *Taylor* court noted that if the principal had "responded at all" to a certain piece of information, the violations of that student's rights "would not have been as severe or prolonged."[36] Here, Plaintiffs urge that Jewell intervened in ways that *increased* Jane's exposure to Crenshaw's sexual predation and caused her to be molested repeatedly over an entire school year. On the present record, Jewell reprimanded and removed concerned adults from Jane's orbit and failed to alert Jane's parents, despite repeated reports by her subordinates. The Plaintiff's allegations meet *Taylor*'s third prong. Because Plaintiffs properly pleaded all three elements required by *Taylor*, they have made a showing that Jewell's failure to supervise violated Jane's constitutional right to bodily integrity.

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[35] *Id.* at 454.

[36] *Taylor*, 15 F.3d at 457.

B

The "shocks-the-conscience test" is a demanding and difficult test to apply.[37] "It has been described as conduct that 'violates the decencies of civilized conduct'; conduct that is 'so brutal and offensive that it [does] not comport with traditional ideas of fair play and decency'; conduct that 'interferes with rights implicit in the concept of ordered liberty'; and conduct that 'is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.'"[38] But the Supreme Court has "made it clear that the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm."[39] The Court has identified "conduct intended to injure in some way unjustifiable by any government interest" as "the sort of official action most likely to rise to the conscience-shocking level."[40]

That said, the test is not confined to intentional acts—it also reaches certain instances of deliberate indifference.[41] "To act with deliberate indifference, a state actor must consciously disregard a known and excessive risk to the victim's health and safety."[42] The Supreme Court has cautioned against rote application of that standard: "Deliberate indifference that shocks in one environment may not be so patently egregious in another, and our

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[37] *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 854 (1998). JUDGE HIGGINBOTHAM would not invoke this doctrine here, as in his view it is a judicial creature responding to voids in the reach of § 1983. With *Taylor* on the books, that void here has been filled. With no void, the shocks-the-conscience test does no work.

[38] *Doe ex rel. Magee v. Covington Cnty. Sch. Dist. ex rel. Keys*, 675 F.3d 849, 867 (5th Cir. 2012) (quoting *Lewis,*523 U.S. at 846–47 & n. 8 (citation and internal quotation marks omitted)).

[39] *Id.* at 848.

[40] *Id.* at 849.

[41] *Id.* at 849–50.

[42] *Hernandez ex rel. Hernandez v. Texas Dep't of Protective & Regul. Servs.*, 380 F.3d 872, 880 (5th Cir. 2004).

concern with preserving the constitutional proportions of substantive due process demands an exact analysis of circumstances before any abuse of power is condemned as conscience shocking."[43] We must therefore evaluate the allegations here without "fastidious squeamishness or private sentimentalism."[44]

Knowledge of danger plays an important role in our analysis of a state actor's inaction. "[T]his court has never required state officials to be warned of a specific danger. Rather, we have held that 'the official must be both *aware of facts* from which the inference could be drawn that a substantial risk of serious harm exists, and he *must also draw the inference.*'"[45] And "we may infer the existence of this subjective state of mind from the fact that *the risk of harm is obvious.*"[46]

Here, the pleaded facts present a stark picture. When told a grown man was lying under a blanket with a young girl, Jewell reprimanded—not the man—but the staff member who spoke up. When informed that photos documented additional inappropriate conduct, Jewell scolded the aide who took them and refused even to look. And as concerns mounted, she brushed them off, telling subordinates, "we can't be picky" about who cares for young children.

The danger to Doe and her pre-kindergarten classmates was obvious. Admittedly, Plaintiffs likely cannot show that Jewell consciously concluded that Crenshaw was molesting students. But they do allege that she refused to view photographic evidence of pedophilic behavior, and that she met

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[43] *Lewis*, 523 U.S. at 850.

[44] *M. D. by Stukenberg v. Abbott*, 907 F.3d 237, 251 (5th Cir. 2018) (quoting *Rochin v. California*, 342 U.S. 165, 172 (1952)).

[45] *Hernandez ex rel. Hernandez*, 380 F.3d at 881 (emphasis added) (quoting *Smith v. Brenoettsy,* 158 F.3d 908, 912 (5th Cir.1998)).

[46] *Hope v. Pelzer,* 536 U.S. 730, 738 (2002) (citations omitted and emphasis added).

employee concerns with hostility. This shifts Crenshaw's misconduct from "possible" to "obvious." Multiple employees complained; some had photographic proof. Jewell's reaction was struthious inaction.

These allegations, if proven, depict a school official who "failed to act despite h[er] knowledge of a substantial risk of serious harm" to her students—conduct that can qualify as conscience-shocking.[47] This conclusion is anchored in context: deliberate indifference by a school official to suspected sexual abuse. In *Taylor*, we recognized a student's "constitutional right to bodily integrity in physical sexual abuse cases," relying on "shocks-the-conscience" precedent.[48] *Taylor* thus treats supervisory deliberate indifference in the school-abuse setting as the functional equivalent of conscience-shocking conduct. While not every Fourteenth Amendment violation meets that high bar, here—given the context and allegations—Jewell's deliberate indifference does.

IV

Now we address whether Jewell is immune from suit for her alleged violations of Jane's constitutional right to bodily integrity. She is not. "When a defendant invokes qualified immunity, the burden is on the plaintiff to demonstrate the inapplicability of the defense."[49] In general, "public officials acting within the scope of their official duties are shielded from civil liability by the qualified immunity doctrine."[50] This doctrine balances "the need to hold public officials accountable when they exercise power irresponsibly and

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[47] *Hernandez ex rel. Hernandez*, 380 F.3d at 881.

[48] *See Taylor* at 454, 451 (citing *Shillingford v. Holmes*, 634 F.2d 263, 265 (5th Cir.1981); *see also Doe ex rel. Magee*, 675 F.3d at 868 (citing *Shilingfold* as a shocks-the-conscience case).

[49] *Ramirez v. Guadarrama*, 3 F.4th 129, 133 (5th Cir. 2021) (per curiam) (quoting *McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir. 2002) (per curiam)).

[50] *Chiu v. Plano Indep. Sch. Dist.*, 260 F.3d 330, 342 (5th Cir. 2001)

the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably."[51]

Our analysis is limited to the standard qualified immunity questions: whether the alleged conduct was unconstitutional and whether its unconstitutionality was clearly established.[52] To be "clearly established" in the context of qualified immunity analyses, "the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right."[53] In addition, "[a] clearly established right is one that is sufficiently clear that every reasonable official would have understood what [s]he is doing violates that right."[54] A "general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though 'the very action in question has [not] previously been held unlawful."[55]

The central concept here is of "fair warning" to a defendant: "[t]he law can be clearly established 'despite notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights.'"[56] In determining whether Jewell had "fair

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[51] *Pearson*, 555 U.S. at 231.

[52] *Roque*, 993 F.3d at 332. *See also Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019) ("The first question is whether the officer violated a constitutional right. The second question is 'whether the right at issue was "clearly established" at the time of [the] alleged misconduct.'" (alteration in original)).

[53] *Terwilliger v. Reyna*, 4 F.4th 270, 284 (5th Cir. 2021) (citation, quotation marks, and brackets omitted).

[54] *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam) (internal citation and quotation marks omitted).

[55] *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (internal citation omitted).

[56] *Kinney v. Weaver*, 367 F.3d 337, 350 (5th Cir. 2004) (quoting *Hope*, 536 U.S. at 740).

warning," this court looks to the Supreme Court and circuit precedent.[57] "[T]here must be adequate authority at a sufficiently high level of specificity to put a reasonable official on notice that his conduct is definitely unlawful."[58]

On the allegations, the *Taylor* test has been satisfied and the allegations of Jewell's attendant failure to supervise Crenshaw and the resulting sexual abuse violated Jane's Fourteenth Amendment right to bodily integrity.[59] The question remains as to whether Jane's right to be free from such abuse was "clearly established" in October 2020.

At least since 1987, students have enjoyed a clearly established substantive due process right to bodily integrity under the Fourteenth Amendment that is violated by sexual abuse by a school employee.[60] It is also well-established that a supervisory school official may be liable for breaching the duty to stop or prevent child abuse.[61] Its contours are sufficiently clear given the breadth of the *Taylor* opinion and litigation that followed. Given our multi-prong test established by the en banc court, as well as lengthy cases applying *Taylor* with detailed fact patterns, we are persuaded that this right was clearly established by the 2020-2021 school year.

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[57] *Pearson*, 555 U.S. at 244.

[58] *Walsh v. Hodge*, 975 F.3d 475, 485-86 (5th Cir. 2020) (quoting *Vincent v. City of Sulphur*, 805 F.3d 543, 547 (5th Cir. 2015)).

[59] *See supra* Part III A. *See also Morgan v. Swanson*, 659 F.3d 359, 412 (5th Cir. 2011).

[60] *Taylor*, 15 F.3d at 445 (quoting an earlier case where the Fifth Circuit held that by 1985 it was clearly established that the Due Process Clause protected a student from being lashed to a chair, *Jefferson v. Ysleta Indep. Sch. Dist.*, 817 F.2d 303, 305 (5th Cir. 1987)).

[61] *Doe v. Rains Cnty. Indep. Sch. Dist.*, 66 F.3d 1402, 1410-13 (5th Cir. 1995).

V

Jewell appealed "from those portions of the Order that deny Defendant Jewell's assertion of qualified immunity from Plaintiffs' claims." Defendants note that the district court declined to dismiss official capacity claims against Jewell, and that such official-capacity claims are redundant as to the LISD claims.[62] After all, the suit in *Taylor* was brought against a supervisor in his personal capacity.[63] The real party in interest when Jewell is sued in her official capacity is Lorena Independent School District.

The inescapable fact, however, is that this case is an interlocutory appeal of a *sole issue*, whether Jewell was properly denied qualified immunity. Our jurisdiction here extends only to that issue.[64]

VI

We AFFIRM the district court's denial of qualified immunity and AFFIRM its finding of conscience-shocking executive action.

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[62] *See Hafer v. Melo*, 502 U.S. 21, 25 (1991). *See also Eltalawy v. Lubbock Indep. Sch. Dist.*, 816 Fed. Appx. 958, 963 (5th Cir. 2020) (unpublished).

[63] *Taylor*, 15 F.3d at 454.

[64] *See Rich v. Palko*, 920 F.3d 288 (quoting *Cantrell v. City of Murphy*, 666 F.3d 911, 921 (5th Cir. 2012)). *See also Ramirez v. Escajeda*, 921 F.3d 497 (5th Cir. 2019) (holding that a defendant who abandoned the qualified immunity portion of his appeal, but not his motion to dismiss for failure to state a claim, eliminated jurisdiction over his appeal).

JAMES C. HO, *Circuit Judge*, concurring:

It should shock the conscience if a school principal's extreme dereliction of duty predictably results in the sexual abuse of a five-year-old girl by a suspected pedophile on the faculty.

The Supreme Court has repeatedly held that governmental action that "shocks the conscience" violates the Fifth and Fourteenth Amendments. *See*, *e.g.*, *County of Sacramento v. Lewis*, 523 U.S. 833, 848 n.8 (1998). The Court has further held that deliberate indifference can in some circumstances shock the conscience. *See*, *e.g.*, *Rosales-Mireles v. United States*, 585 U.S. 129, 137-38 (2018).

The members of the panel today unanimously agree with the district court that, if the allegations in this case are proven at trial, April Jewell was indeed deliberately indifferent to keeping a sexual predator on her school's faculty. To put it simply, Jewell ignored an obvious risk of serious harm to a student in her care. And that's enough to establish deliberate indifference under governing precedent. *See*, *e.g.*, *Kelson v. Clark*, 1 F.4th 411, 419 (5th Cir. 2021); *see also Carmona v. City of Brownsville*, 126 F.4th 1091, 1100 (5th Cir. 2025) (Ho, J., concurring in the judgment).

When told that a grown man was caught lying under a blanket with a young girl, Jewell reprimanded the staff member who spoke up. When informed that there were photos showing additional inappropriate behavior, Jewell scolded the classroom aide who took the photos and refused to look at them. When concerns grew, she brushed them off, telling her subordinates that "we can't be picky" about who we entrust to care for young children. And she declined to report any of this to the child's parents.

This is a shocking betrayal of public trust in school administrators.

To be sure, the "shocks the conscience" theory of the Due Process Clause has come under withering criticism in both judicial and academic

circles. *See*, *e.g.*, *Lewis*, 523 U.S. at 861–62 (Scalia, J., concurring in the judgment); Rosalie Berger Levinson, *Time to Bury the Shocks the Conscience Test*, 13 CHAP. L. REV. 307 (2010).

But until the Supreme Court overturns its own precedent, it remains binding on us as an inferior court. *See*, *e.g.*, *Jackson Women's Health Org. v. Dobbs*, 945 F.3d 265 (5th Cir. 2019), *rev'd*, 597 U.S. 215 (2022).

So we have had no trouble enforcing the "shock the conscience" standard against excessively large monetary damage awards—despite sharp criticism in certain quarters. *See*, *e.g.*, *Caldarera v. Eastern Airlines, Inc.*, 705 F.2d 778, 784 (5th Cir. 1983) (noting that excessive awards "shock the judicial conscience" and ordering remittitur); *Wackman v. Rubsamen*, 602 F.3d 391, 405 (5th Cir. 2010). *But see*, *e.g.*, *BMW v. Gore*, 517 U.S. 559, 598–99 (1996) (Scalia, J., dissenting) (criticizing use of the Due Process Clause to combat excessive damage awards).

If a disappointing hit to a company's bottom line can shock the conscience, then surely so too can a principal who is willfully blind as a child's innocence is destroyed at the hands of a pedophile.

I concur.