

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. 25-40206

ALEXANDRA DEGOLLADO; FADED SMOKE SHOP, L.L.C.; DANIEL
HERRERA, JR.,

Plaintiffs—Appellants,

versus

CITY OF PORT LAVACA, TEXAS; COLLIN RANGNOW, *in his official capacity as Chief of Police for Port Lavaca, Texas*; KYLE CURTIS, *in his official and individual capacities*; KAREN NEAL, *in her official and individual capacities*; ADAM BEARD, *in his official and individual capacities*; JAVIER RAMOS, *in his official and individual capacities*; MAXWELL DUKE, *in his official and individual capacities*; MARIA MORENO, *in her official and individual capacities*; DEVON MOORE, *in his official and individual capacities*; ERIC SALLES, *in his official and individual capacities*; JUSTIN KLARE, *in his official and individual capacities*,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 6:23-CV-14

Before RICHMAN, DUNCAN, and OLDHAM, *Circuit Judges*.

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PER CURIAM:*

Appellants Alexandra Degollado, Daniel Herrera Jr., and Faded Smoke Shop, LLC, appeal from the district court’s dismissal of their claims under 42 U.S.C. § 1983 against officers of the city of Port Lavaca and the city itself. We affirm.

I

We take the facts alleged in the complaint as true in considering this motion to dismiss.¹ In 2019, the federal government descheduled hemp, defined as parts of the plant *Cannabis sativa L.* with a concentration of delta-9 THC of 0.3% or less. Texas then removed hemp, using the same definition as the federal government, from its definition of “controlled substances” in Chapter 481 of the Texas Health and Safety Code. The plaintiffs allege that Texas Health and Safety Code § 481.103 Penalty Group 2 thereafter only covered marijuana, or *Cannabis sativa L.* products with more than 0.3% delta-9 THC, and did not cover hemp or products with delta-8 THC.

A year later, Alexandra Degollado opened Faded Smoke Shop, LLC, in Port Lavaca, Texas, selling allegedly legal products including products with delta-8 THC and hemp with 0.3% or less delta-9 THC concentration. Police soon began investigating her shop and the employees who worked there. A Port Lavaca officer, Corporal Kyle Curtis, indicated that “[t]he police department ha[d] conducted several controlled buys from [Faded Smoke Shop] including Marijuana flower, THC concentrate AKA ‘DAB’, and THC Vape cartridges.” “Products bought as a result of the controlled buys were sent to DPS Crime Lab in Corpus Christi for analysis. On 2/8/21,

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

¹ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

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[Curtis] received lab results from the DPS lab . . . [which] confirmed the edibles purchased from Faded Smoke Shop, LLC, to contain THC.” “Due to the positive test results [he] drafted an arrest warrant Degollado [sic] for Manufacture and Deliver Controlled Substance Penalty Group 2.”

On February 9, 2021, Corporal Curtis presented an affidavit to a magistrate judge that included the following:

I, Cpl Curtis, on 9/8/2020, entered a business located at 1504 W Austin identified as Faded Smoke Shop in an undercover capacity. Upon entry I was greeted by the owner of said business identified as Alexandra Degollado. . . . I purchased 0.12 ounces of a green leafy substance I suspected to be marijuana from Degollado. The marijuana was inside a glass jar with a faded logo. The marijuana was taken to the police department where it field tested positive for marijuana. The product was sent to the DPS Crime Lab for analysis.

However, the lab results do not indicate that the crime lab tested a “green leafy substance.” Additionally, “[n]o images of the positive test for marijuana that Curtis described in the Affidavit exist.” The plaintiffs allege that the product in the jar was clearly marked as containing delta-8 THC.

The lab results showed the only items tested were “2 yellow gummies,” which tested positive for THC. Curtis’s affidavit stated that “the edibles . . . contain[ed] THC a controlled substance listed in Penalty Group 2 TX Health and Safety Code.” However, the lab results did not indicate whether the THC was delta-8 or delta-9 THC, nor its concentration—in other words, the results did not indicate whether the products were marijuana, and thus listed in Penalty Group 2, or legal substances not listed in that group.

Based on this affidavit, the magistrate judge issued a warrant for the search and seizure of products from Faded Smoke Shop and the arrest of

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Degollado and Daniel Herrera, Jr., an employee of Faded Smoke Shop. Port Lavaca officers executed the warrant on February 9, 2021. Officers seized several products from Faded Smoke Shop and sent them to the Bexar County Criminal Investigation Laboratory for testing. Degollado was arrested, and Herrera's parole was revoked due to his arrest.

Meanwhile, the legal landscape surrounding delta-8 THC in Texas began to shift. We take judicial notice of these facts.² In March of 2021, the Commissioner of the Texas Department of State Health Services published an updated Schedule I list of controlled substances with amendments to the terms "tetrahydrocannabinols" and "marihuana extract."³ The Department also posted a statement online reading: "All other forms of THC, including Delta-8 in any concentration and Delta-9 exceeding 0.3%, are considered Schedule I controlled substances."⁴

On May 27, 2021, the Bexar County Crime Lab returned lab results on the products seized from Faded Smoke Shop. The lab analyzed the type of THC that was present in the products and found all the tested products contained delta-8 THC.

On October 22, 2021, the Commissioner and the Texas Department of State Health Services were sued by plaintiffs who alleged that "delta-8 THC that was derived from hemp was de-scheduled and no longer deemed a controlled substance and that the Department and the Commissioner had improperly amended the schedules of controlled substances to make delta-8

² See FED. R. EVID. 201.

³ *Tex. Dep't of State Health Servs. v. Sky Mktg. Corp.*, 711 S.W.3d 227, 236-37 (Tex. App.—Austin 2023), *aff'd in part and rev'd in part*, 733 S.W.3d 689 (Tex. 2026); Brief of Appellants at 16-17, *Sky Mktg. Corp.*, 711 S.W.3d 227 (No. 03-21-00571).

⁴ *Sky Mktg. Corp.*, 711 S.W.3d at 237.

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THC derived from hemp an illegal Schedule I controlled substance.”⁵ On November 8, 2021, a Texas state trial court issued a temporary injunction against the Commissioner’s amendments to the March 2021 Schedule and the rule the Department had posted online.⁶ The Commissioner and Department appealed, although the Texas Court of Appeals reinstated the injunction on November 18, 2021, and maintained that delta-8 THC had always been illegal under Texas law.⁷

On April 13, 2022, Degollado and Herrera were indicted by a grand jury for “knowingly possess[ing], with intent to deliver, a controlled substance, namely tetrahydrocannabinol (Delta-8), in an amount of four grams or more but less than 400 grams.” The district attorney later moved to dismiss their cases because “Officers [were] unavailable to testify due to a credibility issue.” Degollado applied to have her seized items returned, but the police retained \$14,000 worth of products on the grounds that the products were illegal.

Degollado, Herrera, and Faded Smoke Shop, represented by counsel, filed suit against Corporal Curtis, the Port Lavaca officers who conducted the search and seizure (Adam Beard, Maxwell Duke, Justin Klare, Devon Moore, Maria Moreno, Karen Neal, Javier Ramos, and Eric Salles), Port Lavaca chief

⁵ *Id.*; Brief of Appellants at 16, *Sky Mktg. Corp.*, 711 S.W.3d 227 (No. 03-21-00571).

⁶ *Sky Mktg. Corp.*, 711 S.W.3d at 238; Brief of Appellants at 16-17, *Sky Mktg. Corp.*, 711 S.W.3d 227 (No. 03-21-00571).

⁷ Brief of Appellants at 2, 17, *Sky Mktg. Corp.*, 711 S.W.3d 227 (No. 03-21-00571) (“At issue in this case is whether delta-8 THC derived from CBD, which was itself derived from hemp, is still a Schedule I controlled substance. The answer to that question is yes. The definition of THC has always included THCs naturally contained in the plant as well as synthetic equivalents with similar chemical structure and pharmacological activity. While the 2018 Farm Bill allows for THCs in hemp, it does not allow for synthetic THCs—that is THC derived from CBD through a chemical process.”).

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of police Colin Rangnow, and the city of Port Lavaca, asserting constitutional violations under 42 U.S.C. § 1983. The defendants moved to dismiss their complaint. The district court granted the motion to dismiss and dismissed all the plaintiffs' claims with prejudice. The plaintiffs timely appealed.

II

“We review ‘de novo a district court’s grant or denial of [a] Rule 12(b)(6) motion to dismiss, accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff.’”⁸ “Under this standard ‘[d]ismissal is appropriate when the plaintiff has not alleged enough facts to state a claim to relief that is plausible on its face and has failed to raise a right to relief above the speculative level.’”⁹

III

We begin with the dismissal of the federal claims against the officer-defendants. The plaintiffs brought claims against Corporal Curtis for unlawful arrests and unlawful search and seizure under the Fourth Amendment, as well as a claim of failure to intervene under the Fourteenth Amendment against the remaining officer-defendants. In their motion to dismiss, the officer-defendants asserted qualified immunity. “Qualified immunity ‘ensure[s] that before they are subjected to suit, officers are on

⁸ *Shakeri v. ADT Sec. Servs., Inc.*, 816 F.3d 283, 290 (5th Cir. 2016) (quoting *Hines v. Alldredge*, 783 F.3d 197, 200-01 (5th Cir. 2015), *abrogated on other grounds as recognized by, Hines v. Quillivan*, 982 F.3d 266, 271-72 (5th Cir. 2020)).

⁹ *Id.* (alteration in original) (quoting *True v. Robles*, 571 F.3d 412, 417 (5th Cir. 2009)).

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notice their conduct is unlawful.’”¹⁰ “[I]t ‘protects all but the plainly incompetent or those who knowingly violate the law.’”¹¹

“Where, as here, the motion to dismiss asserts a qualified-immunity defense, the plaintiff ‘must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm alleged and that defeat a qualified immunity defense with equal specificity.’”¹² “To defeat a qualified-immunity defense, the plaintiff must show ‘(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct.’”¹³ “The qualified-immunity analysis contains two prongs, which we can consider in either order.”¹⁴ “Plaintiffs bear the burden of identifying the clearly established law, and the right’s contours must be ‘sufficiently clear that a reasonable official would understand that what he is doing violates that right.’”¹⁵

A

We first consider the failure-to-intervene claim. The plaintiffs point to no cases supporting that there was a clearly established right violated by the officers’ failure to intervene in the warrant-authorized search and seizure of Faded Smoke Shop, as was their burden to do. Nor do they argue that “the alleged constitutional violation here was so ‘obvious’ as to obviate the

¹⁰ *Winfrey v. Rogers*, 901 F.3d 483, 493 (5th Cir. 2018) (alteration in original) (quoting *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)).

¹¹ *Id.* (quoting *Mullenix v. Luna*, 577 U.S. 7, 12 (2015)).

¹² *Nevarez v. Dorris*, 135 F.4th 269, 274 (5th Cir. 2025) (quoting *McLin v. Ard*, 866 F.3d 682, 688 (5th Cir. 2017)).

¹³ *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)).

¹⁴ *Id.* at 275.

¹⁵ *Id.* (quoting *Culberson v. Clay County*, 98 F.4th 281, 286 (5th Cir. 2024)).

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need for clearly established law.”¹⁶ “That ends the second-prong analysis.”¹⁷

We recognize that “an officer could be held liable for a search authorized by a warrant when the affidavit presented to the magistrate was ‘so lacking in indicia of probable cause as to render official belief in its existence unreasonable,’” but in that “situation, we have rightly recognized that liability should attach only to the ‘affiant and person who actually prepared, or was fully responsible for the preparation of, the warrant application.’”¹⁸ Even had the plaintiffs carried their burden to identify this as relevant clearly established law, they only allege that Corporal Curtis, not the other officers named in their failure-to-intervene claim, prepared the affidavit. At any rate, because plaintiffs do not point to any law clearly establishing their Fourteenth Amendment claim, the officer-defendants are entitled to qualified immunity on this claim.¹⁹

B

We next turn to the claims against Corporal Curtis. The plaintiffs assert *Franks v. Delaware*²⁰ is the clearly established law that Corporal Curtis violated. “Since *Franks v. Delaware*, it has been clearly established that a defendant’s Fourth Amendment rights are violated if (1) the affiant, in support of the warrant, includes ‘a false statement knowingly and

¹⁶ *Id.* at 275 n.5 (citing *Taylor v. Riojas*, 592 U.S. 7, 8-10 & n.2 (2020)).

¹⁷ *Id.* at 275.

¹⁸ *Melton v. Phillips*, 875 F.3d 256, 264 (5th Cir. 2017) (en banc) (first quoting *Malley v. Briggs*, 475 U.S. 335, 345 (1986); and then quoting *Michalik v. Hermann*, 422 F.3d 252, 261 (5th Cir. 2005)).

¹⁹ *See id.* at 265-66.

²⁰ 438 U.S. 154 (1978).

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intentionally, or with reckless disregard for the truth’ and (2) ‘the allegedly false statement is necessary to the finding of probable cause.’”²¹ Here, the plaintiffs allege Corporal Curtis “was mistaken, deliberately misleading by omission, or lied within the affidavit.”

The plaintiffs must also show that the clearly established constitutional right at issue was violated. “Under the first prong of *Franks*, [the plaintiffs] must present evidence that [Curtis], through material omissions or otherwise, made ‘a false statement knowingly and intentionally, or with reckless disregard for the truth.’”²² The plaintiffs first argue in their briefing before this court that “the affidavit implied that a DPS lab test was performed on the green leafy substance even though it was subjected to no such testing.” But the affidavit stated only that the “green leafy substance” “was sent to the DPS Crime Lab for analysis.” Additionally, the plaintiffs only alleged in their complaint that “[t]he lab results from DPS . . . [did] not contain the ‘green leafy substance.’” That the lab records did not reflect a test was performed on this substance does not make the statement that the substance was sent to the lab false. Even if we considered it to be false, the statement that the products were sent for testing is immaterial to whether the

²¹ *Winfrey v. Rogers*, 901 F.3d 483, 494 (5th Cir. 2018) (internal citation omitted) (quoting *Franks*, 438 U.S. at 155-56); *see also Hart v. O’Brien*, 127 F.3d 424, 442 (5th Cir. 1997) (accepting a *Franks* claim as sufficient allegation of a constitutional violation in the qualified immunity context), *abrogated on other grounds by, Kalina v. Fletcher*, 522 U.S. 118 (1997); *Terwilliger v. Reyna*, 4 F.4th 270, 285 (5th Cir. 2021) (noting that “it is clearly established that a warrant is not evidence of probable cause” if the elements of a *Franks* violation are shown); *cf. Melton*, 875 F.3d at 266 (holding *Franks* did not clearly establish a Fourth Amendment violation when “no false statement . . . made its way into the warrant” because “*Franks* expressly requires a falsehood to be included in the warrant application”).

²² *Winfrey*, 901 F.3d at 494 (quoting *Franks*, 438 U.S. at 155).

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affidavit provided probable cause because it avers nothing about what the test results ultimately showed.²³

The plaintiffs appear to also challenge the statement in the affidavit that the “green leafy substance” “field tested positive for marijuana,” as they argue on appeal that they “plausibly alleged that officers knew field tests cannot distinguish legal hemp from illegal marijuana.” Such an allegation does not appear in the complaint. Rather, the complaint alleged only that “[n]o images of the positive test for marijuana . . . exist.” This is insufficient to allege that the statement regarding the field test was false.

Finally, the plaintiffs challenge the statement that “[t]he DPS Crime [Lab] confirmed the edibles to contain THC a controlled substance listed in Penalty Group 2 TX Health and Safety code” because the lab results showed only that the edibles contained THC, but not “the concentration or whether the [THC] was legal hemp products or the Delta variants that are included in Penalty Group 2.” We agree that the plaintiffs alleged this statement is inaccurate—the DPS lab results did not show that the products contained “a controlled substance listed in Penalty Group 2” because the lab did not test the concentration or type of THC. The lab results, which indicated only the presence of THC, were equally consistent with legal hemp, not listed in Penalty Group 2, and illegal marijuana.

“Still, ‘negligence alone will not defeat qualified immunity.’”²⁴ “[A] proven misstatement can vitiate an affidavit only if it is established that the misstatement was the product ‘of deliberate falsehood or of reckless

²³ See *id.* (“[W]e must proceed further to the second prong of *Franks* in order to resolve whether ‘the allegedly false statement is necessary to the finding of probable cause.’” (quoting *Franks*, 438 U.S. at 156)).

²⁴ *Id.* (quoting *Brewer v. Hayne*, 860 F.3d 819, 825 (5th Cir. 2017)).

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disregard for the truth.’”²⁵ “Recklessness requires proof that the defendant ‘in fact entertained serious doubts as to the truth of the statement.’”²⁶ The plaintiffs allege that because the federal law descheduling hemp “had been in effect for over a year and the Texas Administrative Code had been in effect for at least six months,” “Curtis had a duty as a peace officer and a higher ranking officer to ensure that the basis for the Search and Arrest Warrant was indeed a crime.” But Corporal Curtis *did* attempt to ensure he had proof of a crime—he sent products suspected to be illicit substances that were obtained through controlled buys to the DPS crime lab for testing.

Corporal Curtis submitted “[s]eized [d]rugs” to the DPS crime lab for analysis. He indicated that there was a “[s]uspect,” namely Degollado, associated with the submission. He requested the crime lab “[e]xamine [the products] for the presence of controlled substances.” Clearly, the purpose of this submission was for the lab to confirm officers had probable cause to make an arrest. In response to this submission, the DPS crime lab indicated the tested products contained THC. THC is, in at least some circumstances, a controlled substance. It was not unreasonable for Corporal Curtis to rely on the lab results and believe that the crime lab meant it had detected the presence of something illegal, even if the results were ambiguous. It certainly may have been negligent to assume the crime lab results meant the substances were illegal in light of Texas’s legal landscape surrounding hemp, but we cannot say that it was reckless to do so, especially considering the ambiguity surrounding the legality of other types of THC aside from delta-9. We therefore conclude that the plaintiffs have not alleged

²⁵ *Id.* (alteration in original) (quoting *United States v. Martin*, 615 F.2d 318, 329 (5th Cir. 1980)).

²⁶ *Id.* (quoting *Hart*, 127 F.3d at 449).

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sufficient facts that would support a finding that Curtis “acted intentionally, knowingly, or recklessly.”²⁷

Because Corporal Curtis lacked the requisite scienter in making these inaccurate statements in the affidavit, the plaintiffs fail to establish a *Franks* violation. Without showing that a clearly established constitutional right was violated, the plaintiffs cannot sustain their burden to defeat the qualified immunity defense. Corporal Curtis is accordingly entitled to qualified immunity on this claim, and dismissal was proper.

IV

We now turn to the plaintiffs’ municipal liability claim against the city of Port Lavaca. To state a claim of municipal liability under 42 U.S.C. § 1983, the plaintiffs “must plead facts that plausibly establish that ‘(1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right.’”²⁸ “[T]here are three ways to establish an official policy under *Monell*: (1) written policy statements, ordinances, or regulations; (2) a widespread practice that is so common and well-settled as to constitute a custom that fairly represents municipal policy; or (3) even a single decision may constitute municipal policy in rare circumstances, when the official or entity possessing final policymaking authority for an action performed the specific act that forms the basis of the § 1983 claim.”²⁹

This case involves the second category, as the plaintiffs allege a failure to train. “[W]here a failure to train reflects a ‘deliberate’ or ‘conscious’

²⁷ *Id.*

²⁸ *St. Maron Props., L.L.C. v. City of Houston*, 78 F.4th 754, 760 (5th Cir. 2023) (quoting *Peña v. City of Rio Grande City*, 879 F.3d 613, 621 (5th Cir. 2018)).

²⁹ *Id.*

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choice by a municipality—a ‘policy’ as defined by our prior cases—[] a city [can] be liable for such a failure under § 1983.”³⁰ “[T]he inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.”³¹ “[I]t may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.”³²

“Because the ‘standard for [municipal] fault’ is a ‘stringent’ one, ‘[a] pattern of similar constitutional violations by untrained employees is ordinarily’ required to show deliberate indifference.”³³ The plaintiffs do not plead such a pattern. However, “it is true that ‘a plaintiff [. . .] may establish deliberate indifference’ through ‘a single incident.’”³⁴ This is no easy task. In this circuit, “[w]e have consistently rejected application of the single incident exception and have noted that ‘proof of a single . . . incident ordinarily is insufficient to hold a municipality liable for inadequate training.’”³⁵

The plaintiffs pled “Curtis still failed to be properly supervised and trained as to the legality of Delta 8” and Port Lavaca’s “inadequate training

³⁰ *City of Canton v. Harris*, 489 U.S. 378, 389 (1989).

³¹ *Id.* at 388.

³² *Id.* at 390.

³³ *Peña*, 879 F.3d at 623 (alterations in original) (quoting *Connick v. Thompson*, 563 U.S. 51, 62 (2011)).

³⁴ *Id.* at 624 (quoting *Burge v. St. Tammany Par.*, 336 F.3d 363, 373 (5th Cir. 2003)).

³⁵ *Gabriel v. City of Plano*, 202 F.3d 741, 745 (5th Cir. 2000) (quoting *Snyder v. Trepagnier*, 142 F.3d 791, 798 (5th Cir. 1998)).

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policy directly caused injury to Plaintiff.” Under our precedent, this is not enough to sustain the heavy burden required to meet the single incident exception for failure to train theories of municipal liability. We accordingly conclude the district court did not err in dismissing this claim.

V

We next consider the plaintiffs’ malicious prosecution claim. The district court determined this claim was barred against both the officer-defendants and the city of Port Lavaca under the Texas Tort Claims Act (TTCA). The plaintiffs now argue that the district court erred by interpreting their federal malicious prosecution claim as a state-law claim.

In their complaint, the plaintiffs cite a case from the Eastern District of Texas for the elements of a malicious prosecution claim. However, that case held that “if Plaintiff intended to allege a claim for malicious prosecution *under state law*, such a claim fails,” and listed the elements that “[p]ursuant to *Texas law*, a plaintiff asserting a malicious prosecution claim must establish.”³⁶ As the plaintiffs themselves acknowledged in their complaint, that case itself cited a Supreme Court of Texas decision.

Further, in the jurisdiction and venue section of their complaint, the plaintiffs alleged that the district court had “supplemental jurisdiction to hear the common law claims under 28 U.S.C. § 1367.” Given that all of the plaintiffs’ other claims arise squarely under federal law—namely, 42 U.S.C. § 1983—it seems likely that this referred to the malicious prosecution claim. Taking this together with the fact that their complaint lists the elements of a state-law malicious prosecution claim from a Supreme Court of Texas

³⁶ *Horner v. City of Highland Village*, No. 17-cv-00774, 2018 U.S. Dist. LEXIS 85382, at *13-14 (E.D. Tex. May 22, 2018) (unpublished) (emphasis added) (citing *Richey v. Brookshire Grocery Co.*, 952 S.W.2d 515, 517 (Tex. 1997)).

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decision, we agree with the district court that plaintiffs pled a state-law claim. To the extent the plaintiffs now attempt to bring a federal malicious prosecution claim on appeal, they have “forfeit[ed] [this] argument by failing to raise it in the first instance in the district court.”³⁷

Having determined that the plaintiffs pled a state-law malicious prosecution claim, we now consider whether that claim is barred by the TTCA. “[T]he TTCA ‘waives governmental immunity for certain negligent conduct, but [it] does not waive immunity for claims arising out of intentional torts.’”³⁸ “[I]ntentional conduct, no matter how it is pled, falls under the TTCA’s sovereign immunity waiver exception.”³⁹ “Given that malicious prosecution is an intentional tort,”⁴⁰ this claim is barred by sovereign immunity. Dismissal of this claim was proper.

VI

Finally, the plaintiffs assert that the district court erred in dismissing their post-dismissal retention claims. The plaintiffs raise this claim for the first time on appeal, as they did not plead a post-dismissal retention claim in their complaint, nor did the district court consider such a claim. “It is a bedrock principle of appellate review that claims raised for the first time on

³⁷ *Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021).

³⁸ *Aguirre v. City of San Antonio*, 995 F.3d 395, 422 (5th Cir. 2021) (quoting *City of Watauga v. Gordon*, 434 S.W.3d 586, 594 (Tex. 2014)).

³⁹ *Id.* (citing *Tex. Dep’t of Pub. Safety v. Petta*, 44 S.W.3d 575, 580 (Tex. 2001)).

⁴⁰ *Humphreys v. City of Ganado*, 467 F. App’x 252, 256 (5th Cir. 2012) (unpublished); see also *City of Hempstead v. Kmiec*, 902 S.W.2d 118, 122 (Tex. App.—Houston [1st Dist.] 1995, no writ); *Closs v. Goose Creek Consol. Indep. Sch. Dist.*, 874 S.W.2d 859, 869 (Tex. App.—Texarkana 1994, no writ).

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appeal will not be considered.”⁴¹ Whatever merit such a claim may have had, we find that the plaintiffs have forfeited it.

* * *

For the foregoing reasons, we AFFIRM the district court’s dismissal of the plaintiffs’ claims.

⁴¹ *Stewart Glass & Mirror, Inc. v. U.S. Auto Glass Disc. Ctrs., Inc.*, 200 F.3d 307, 316-17 (5th Cir. 2000).