Qualified Immunity

Brown v. Burmaster

181 F.4th 642 (5th Cir. 2026)

Responding to a residential disturbance, New Orleans Police Officer Derrick Burmaster shot and killed 16-week-old puppy Apollo as Officer Burmaster encountered Apollo and another older dog while making entry to the residence.[1] Apollo's owners sued Officer Burmaster and the City of New Orleans, asserting a Fourth Amendment and *Monell* claim. After the district court denied summary judgment, a prior panel of the Fifth Circuit dismissed Officer Burmaster's appeal of the denial of qualified immunity,[2] and the case proceeded to trial. A jury found that Officer Burmaster violated the Fourth Amendment rights of Apollo's owners, but found that Officer Burmaster was entitled to qualified immunity.[3] That same jury found that no City policy caused Apollo's death yet held the City liable anyway.[4] The question presented to the Fifth Circuit was whether both verdicts could stand. Only one could.[5]

On the qualified-immunity question, the Fifth Circuit addressed the respective roles of the jury and district court in resolving the qualified-immunity analysis at trial. Of course, qualified immunity only has two prongs,[6] and the jury has at least some role in determining both.[7] First, the jury determines whether a state actor violated some federal right enjoyed by the plaintiff,[8] and then, once the district court articulates the "clearly established" rule of law at the time, the jury decides the "fact-bound question" of "whether the defendant's conduct violated that clearly established law."[9] So the jury's task is to determine whether a violation of federal law occurred, and if so, the district court must instruct the jury as to what law was "clearly established" by the time of the underlying incident. Once the district court so instructs the jury, the jury determines whether the defendant's conduct violated that clearly established law as articulated by the district court.[10]

In articulating the jury's role in deciding the second prong of qualified immunity, the Fifth Circuit resolved preexisting tensions among precedents indicating that the jury *never* has a role in deciding whether a defendant is entitled to qualified immunity.[11] In *Melear v. Spears*, 862 F.3d 1177, 1184 (5th Cir. 1989), the Fifth Circuit instructed that a jury's role is to "determine the objective legal reasonableness of an officer's conduct by construing the facts in dispute." There, the Fifth Circuit said that a jury can determine whether an officer not only violated federal law, but also whether an officer violated "clearly established" law once "the clarity of the law is embodied in the court's charge to the jury."[12] Then came *Ramirez v. Killian*, 113 F.4th 415, 429 (5th Cir. 2024), which instructed that "[a jury] does not decide the purely *legal* question of whether the officer's actions were objectively reasonable in light of clearly established law—the second step [of the qualified-immunity analysis]."[13]

Resolving that tension began with determining exactly to which prong of the contemporary qualified-immunity analysis the "objective reasonableness" inquiry belongs—the answer is to some degree both.[14] The panel held that the "objective reasonableness" is a descriptor for the first prong of the qualified-immunity analysis in the Fourth Amendment context and for the second prong, stating that "it is always objectively unreasonable to violate clearly established law."[15] According to the panel, *Ramirez* didn't change that framework or rely on outdated precedents to the contrary; rather, *Ramirez* reaffirmed what has always been the rule: "Although the qualified immunity defense is often decided long before trial, 'if . . . there remain *disputed issues of material fact* relative to immunity, the jury, properly instructed, may decide the question.'"[16]

So the jury decides whether a state actor violated a plaintiff's federal rights, and if so, whether that conduct was also violative of clearly established law at the time based on the district court's articulation of the clearly established law. In this case, the jury engaged in that analysis, finding that the defendants violated plaintiff's federal rights, but that their conduct did not violate "clearly established law" at the time.[17] Thus, the jury found the defendants immune from suit.[18] That verdict was affirmed on appeal as being rendered in accordance with Fifth Circuit precedent.

While the Fifth Circuit affirmed the jury's verdict on qualified immunity, the Court reversed the jury's inconsistent verdicts regarding municipal liability, where the jury found that the City of New Orleans had no policy or custom that caused the constitutional violation at issue, yet held the City liable anyway. In doing so, the Fifth Circuit reaffirmed the core tenet of municipal liability of causation—that "[m]unicipal liability requires 'both municipal culpability and causation.'"[19] Because "[t]he jury found causation absent and liability present," the Court concluded that the verdict was "at war with itself," could not be harmonized, and must be reversed and remanded for a new trial on municipal liability.[20]

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[1] *Brown v. Burmaster*, 181 F.4th 642, 645 (5th Cir. 2026).
[2] *Brown v. Burmaster*, Case No. 23-30180, 2025 WL 227785 (5th Cir. Jan. 17, 2025) (per curiam) (dismissing appeal for want of jurisdiction to review the genuineness of factual disputes).
[3] *Brown*, 181 F.4th at 645.
[4] *Id.*
[5] *Id.*
[6] *Lewis v. Walley*, 168 F.4th 327, 332 n.2 (5th Cir. 2026) ("Under current Supreme Court precedent, QI has only two prongs.").
[7] *Brown*, 181 F.4th at 647–48. At least as of 2018, one scholar has noted a circuit split on this issue. Alexander A. Reinert, *Qualified Immunity at Trial*, 93 Notre Dame L. Rev. 2065, 2072–73 (2018).
[8] *Id.* at 648 (reading *Ramirez* as "requiring the district court to identify the clearly established law—not as authorizing the judge to make the disputed factual findings needed to apply that law").
[9] *Id.*
[10] *Id.*
[11] *See, e.g.*, *Ramirez v. Killian*, 113 F.4th 415, 429 (5th Cir. 2024) ("The jury decides the *factual* question of whether the officer violated the plaintiff's rights—the first step of the qualified immunity analysis. It does not decide the purely *legal* question of whether the officer's actions were objectively reasonable in light of clearly established law—the second step.").
[12] *Melear*, 862 F.3d at 1184.
[13] That reasoning appears to come from the Supreme Court's decision in *Hunter v. Bryant*, 502 U.S. 224, 227–28 (1991). *See Mangieri v. Clifton*, 29 F.3d 1012, 1015–16 (5th Cir. 1994) ("Following the Supreme Court's decision in *Hunter v. Bryant*, . . . we held that in evaluating a claim of qualified immunity, the district court is to make a determination of the objective reasonableness of the official's act as a matter of law." (citing *Lampkin v. City of Nacogdoches*, 7 F.3d 430, 435 (5th Cir. 1993) (holding that a district court commits "post-*Bryant* error by holding that the objective reasonableness prong of the qualified immunity standard is generally a factual question for the jury")).
[14] *Ramirez*, 113 F.4th at 429.
[15] *Brown*, 181 F.4th at 646 n.9.
[16] *Ramirez*, 113 F.4th at 429 (quoting *Snyder v. Trepagnier*, 142 F.3d 791, 800 (5th Cir. 1998)).
[17] The jury was specifically asked whether plaintiffs proved Officer Burmaster "acted in an objectively unreasonable manner," whether Officer Burmaster caused plaintiffs damages, and whether Officer Burmaster was nevertheless immune. *Brown v. Burmaster*, Case No. 2:22-CV-847, ECF No. 269 (E.D. La. June 12, 2025).
[18] *Id.*
[19] *Brown*, 181 F.4th at 651.
[20] *Id.*



1. *Aramark Services, Incorporated Group Health Plan v. Aetna Life Insurance Company*

No. 24-40323

Aramark sponsored self-funded employee health-benefit plans and retained Aetna to administer them under a Master Services Agreement. Aramark and the plans alleged that Aetna paid improper provider claims, retained undisclosed fees, inadequately pursued subrogation recoveries, and commingled plan assets with its own funds. They sought recovery under the Employee Retirement Income Security Act (ERISA) for alleged breaches of fiduciary duty and prohibited transactions. The parties' agreement generally required arbitration, but excepted claims seeking injunctive relief or "any other form of equitable relief." The characterization of Aramark's requested monetary recovery therefore became central to whether the dispute belonged in Court or arbitration.

Aramark filed suit in the Eastern District of Texas in September 2023. Aetna sought to compel arbitration and moved to stay the Texas litigation under the Federal Arbitration Act. The district court denied the stay, concluding that the parties had not clearly and unmistakably delegated arbitrability to the arbitrator for claims within the equitable-relief exception and that Aramark's claims sought equitable relief.

On December 18, 2025, a panel of the Fifth Circuit affirmed. *Aramark Services, Inc. Group Health Plan v. Aetna Life Insurance Co.*, 162 F.4th 532 (5th Cir. 2025). Relying on *CIGNA Corp. v. Amara*, 563 U.S. 421 (2011), and *Gearlds v. Entergy Services, Inc.*, 709 F.3d 448 (5th Cir. 2013), the majority held that monetary "surcharge"—compensation for losses caused by a fiduciary's breach—could constitute equitable relief under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). The panel assumed Aetna's fiduciary status for purposes of resolving the appeal without finally deciding that question.

Judge Jones agreed with the arbitrability analysis but dissented from the majority's treatment of the requested monetary relief. She argued that *Amara's* discussion of surcharge was *dicta* and that subsequent Supreme Court authority required a narrower understanding of the remedies traditionally available in equity. Her dissent identified contrary Fourth and Sixth Circuit decisions and urged reconsideration of *Gearlds*.

The Fifth Circuit granted rehearing en banc on April 28, 2026, and vacated the panel opinion. This case presents an exceptionally important question concerning the remedies available for ERISA fiduciary misconduct: whether make-whole monetary compensation qualifies as equitable relief without identification of particular funds or property remaining in the defendant's possession. The Court's answer will affect the liability of plan administrators, the remedies available to plans and beneficiaries, and an existing disagreement among the circuits. It also determines how equitable-relief exceptions in arbitration agreements operate in substantial employee-benefits disputes. The case was argued en banc on September 24, 2026.