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PRACTICE BRIEF · CIVIL RIGHTS

Qualified Immunity After Taylor v. Riojas: The Ninth Circuit's Narrowing Path and California's Bane Act Alternative

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Qualified immunity — the doctrine that shields government officials from civil liability unless they violated a "clearly established" constitutional right — has been the subject of sustained judicial and legislative scrutiny since the summer of 2020. The Supreme Court's per curiam decision in *Taylor v. Riojas*, 592 U.S. 7 (2020), offered a modest but symbolically significant push back: the Court reversed a grant of qualified immunity in a case involving prison conditions that "any reasonable officer should have recognized" as unconstitutional, even without a case directly on point.

Five years after *Taylor*, the Ninth Circuit's treatment of qualified immunity has evolved — but unevenly. And for California civil rights plaintiffs, the parallel state cause of action under the Bane Act (Civil Code § 52.1) increasingly serves as the more reliable path to recovery.

I. The Qualified Immunity Framework

Under *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), and its progeny, a government official sued under 42 U.S.C. § 1983 is entitled to qualified immunity unless (1) the official violated a constitutional right, and (2) that right was "clearly established" at the time of the violation. The second prong requires not merely a general constitutional principle but a sufficiently analogous prior case — ideally from the same circuit or the Supreme Court — that put the unlawfulness of the specific conduct "beyond debate."

This "clearly established" requirement has produced a doctrine critics call "heads I win, tails the case gets dismissed": because courts can resolve qualified immunity at the second prong without reaching the constitutional question, violations can persist without precedent accumulating to put future officials on notice.

> *"Taylor v. Riojas did not abolish qualified immunity. It reminded lower courts that obvious constitutional violations do not require a case directly on all fours. Courts have applied that reminder inconsistently."*

Qualified Immunity — Two-Prong Decision Framework
Step 1 — Did the official violate a constitutional right?
Yes →
Step 2 — Was that right "clearly established" at the time?
Requires a sufficiently analogous prior case, or an "obvious" violation under Taylor v. Riojas.
Yes →
No immunity. §1983 claim proceeds to trial.
Bane Act claim also available; no QI defense applies to state cause of action.
No →
Qualified immunity granted. §1983 claim dismissed.
But Bane Act claim (Civ. Code § 52.1) may still proceed in California court.
No →
No constitutional violation established. §1983 claim fails at Step 1.
Saucier sequencing allows courts to skip Step 1 under Pearson v. Callahan (2009).
Framework per Harlow v. Fitzgerald, 457 U.S. 800 (1982); Taylor v. Riojas, 592 U.S. 7 (2020)

II. The Ninth Circuit After Taylor

The Ninth Circuit's post-*Taylor* jurisprudence has produced a split in approach. A line of decisions has applied *Taylor*'s "obvious case" principle to deny qualified immunity in cases involving:

- Excessive force against non-resisting detainees
- Deliberate indifference to serious medical needs where the constitutional standard was unambiguous on the facts
- First Amendment retaliation for speech that triggered immediate adverse employment action

At the same time, other Ninth Circuit panels have granted qualified immunity in cases where the facts did not map precisely onto a prior opinion, even where the underlying conduct was arguably more egregious. The doctrine's application continues to depend heavily on panel composition and the specific analogical distance between the facts at bar and the asserted clearly-established precedent.

III. California's Bane Act: A More Reliable Vehicle

Civil Code § 52.1, the Tom Bane Civil Rights Act, prohibits interference with constitutional or statutory rights by "threats, intimidation, or coercion." Unlike § 1983, the Bane Act:

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- **Has no qualified immunity defense** — the doctrine is a creature of federal common law and does not apply to state statutory claims in California courts
- **Permits damages "including, but not limited to, damages under Section 52"** (§ 52.1(c)); whether that phrase carries § 52's trebling formula is unsettled
- **Permits an attorney-fee award** to the plaintiff in the court's discretion (§ 52.1(i))
- **Covers a broader range of state constitutional and statutory rights** beyond what § 1983 reaches

The California Court of Appeal's decision in *Cornell v. City and County of San Francisco*, 17 Cal.App.5th 766 (2017), held that, where an unlawful arrest is proved, the coercion need not be independent of the constitutional violation. The plaintiff must still show that the officer had "a specific intent to violate the arrestee's right to freedom from unreasonable seizure." The Ninth Circuit followed that standard in *Reese v. County of Sacramento*, 888 F.3d 1030 (9th Cir. 2018), and treated reckless disregard of the right as evidence of the required intent.

BANE ACT PLEADING CONSIDERATIONS

- Plead both § 1983 and Bane Act claims in all California civil rights cases — the Bane Act survives qualified immunity
- Properly allege the "reckless disregard" mental state under Cornell — conclusory pleading of intent is insufficient
- Bane Act claims against public entities must comply with Government Claims Act filing requirements; failure to file a timely government tort claim bars the state-law cause of action
- For § 1983 purposes, identify the most analogous Ninth Circuit precedent and frame the factual comparison carefully — Taylor's "obvious case" doctrine works best when the constitutional violation is stark and the harm is severe

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California civil rights plaintiffs in 2026 have more tools than ever — but navigating between federal qualified immunity doctrine and California's Bane Act requires precise pleading and a clear theory of recovery on both tracks.

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