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NCLA Asks Eighth Circuit to Reject Blanket Immunity for Federally Cross-Deputized State Police Officer

Hamdi Mohamud v. Heather Weyker

Washington, DC (July 15, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *Mohamud v. Weyker* before the U.S. Court of Appeals for the Eighth Circuit. NCLA urges the Court to rule that Americans maintain the right to pursue damages against state or local law enforcement officers who violate their constitutional rights—even when those officers were cross-deputized at the time of the rights violations. Cross-deputized officers have limited federal authority to fulfill specific duties on joint federal-state task forces, while maintaining the full authority of their state or local positions. But in an alarming trend, many courts across the country—including the district court in this case—have effectively immunized cross-deputized officers, ruling that such officers, who operate under both state and federal law, cannot be held liable for damages under either. NCLA asks the Eighth Circuit to break with this dangerous practice and permit plaintiffs to hold cross-deputized state and local officers accountable under 42 U.S.C. § 1983 for constitutional violations committed under color of state law.

According to the Plaintiff-Appellant in this case, Defendant Heather Weyker, a Saint Paul, Minnesota police officer, framed teenager Hamdi Mohamud—among other innocent individuals—for the state-level crime of witness tampering, convincing another state officer to arrest her under false pretenses. As a result, Ms. Mohamud spent over two years behind bars in pre-trial detention before being released without charges, in addition to the 30 other individuals whom Officer Weyker had framed. Shockingly, the district court ruled that Weyker was insulated from liability under § 1983 for her unconstitutional conduct as a state officer because she had been cross-deputized at the time and thus temporarily held federal law enforcement authority too. As a result, Ms. Mohamud was denied any way to recover damages or to hold Weyker accountable for her deplorable actions.

The Supreme Court’s 2022 ruling in *Egbert v. Boule* rendered it virtually impossible for most plaintiffs to pursue damages against *federal* officials for constitutional violations. As such, § 1983, enacted as part of the Civil Rights Act of 1871, is often a plaintiff’s only viable vehicle for recovering damages for constitutional violations committed by cross-deputized officers who operate under the color of both state *and* federal law. Congress designed the Civil Rights Act of 1871 to deter state actors from abusing their authority and to provide victims a route to relief if such deterrence fails. Various courts nationwide betray that statutory design when they reject the § 1983 claims of plaintiffs like Ms. Mohamud against cross-deputized officers and decide that these officers act exclusively under the authority of federal law, regardless of the particular facts or circumstances. This practice ignores the realities of the dual-pronged authority wielded by cross-deputized officers.

§ 1983 contains no liability carveout for state or local officers who also happen to be assisting with federal joint task forces. At minimum, Weyker was not operating *exclusively* under federal authority when she relied on her state law enforcement position and state authority to have Ms. Mohamud arrested for a state crime. The Eighth Circuit must reverse the district court’s nonsensical ruling and allow Ms. Mohamud to proceed with her action for damages under § 1983.

NCLA released the following statements:

“When state or local police officers violate the Constitution, there must be a way to hold them accountable. Luckily, Congress enacted just such a way, and it’s been around for over 150 years: § 1983 of the Civil Rights Act of 1871. Allowing cross-deputized police officers to skate by free of liability for even the most heinous misconduct eliminates any deterrent effect that § 1983 might otherwise have had on bad actors, denies victims any viable route to relief, defies voluminous Supreme Court precedent, and turns § 1983 on its head.”

— **Casey Norman, Litigation Counsel, NCLA**

“The U.S. Supreme Court disfavors and narrowly construes so-called *Bivens* liability for federal officials because the Court, rather than Congress, created that cause of action. To be consistent then, federal courts ought to construe § 1983—which Congress did create—broadly enough to encompass cross-deputized state and local officers.”

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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