NPAP
National Police Accountability Project



LOCAL LAW ENFORCEMENT'S DUTY TO INTERVENE IN FEDERAL AGENTS' MISCONDUCT

1 Do law enforcement officers have a duty to intervene in another officer's misconduct?

Yes; if they:

1. Are present;
2. Observe an officer committing a constitutional violation (e.g., excessive force, false arrest) or have reason to believe an officer is committing a violation; and
3. Have a realistic opportunity and time to intervene to prevent the harm from occurring.[1]

2 Can local law enforcement officers be held liable for failing to intervene when federal agents commit constitutional violations?

Yes; law enforcement officers have a duty to protect people from constitutional violations at the hands of other officers—even if they outrank them or work for a different agency.[2]

The Fifth Circuit has explicitly found a cross-agency duty to intervene[3]. Other circuits have found officers liable for failing "to uphold the law and protect the public from illegal acts, regardless of who commits them."[4] District courts in these circuits have either explicitly adopted the Fifth Circuit's language approving of cross-agency liability or found cross-agency liability.[5]

3 What legal claims can be brought against officers who fail to intervene?

Local law enforcement officers can be held liable for misconduct under 42 U.S.C. § 1983 ("Section 1983") and their employing agency can be sued under Section 1983 pursuant to Monell v. Department of Soc. Svcs., 436 U.S. 658 (1978) **(Monell)** for the officer's misconduct.

Federal agents can be held liable for misconduct pursuant to Bivens v. Six Unknown Fed. Narcotics Agents (1971) 403 U.S. 388 **("Bivens")** and their employing federal agency can be sued under the Federal Tort Claims Act **("FTCA")** for the agent's misconduct.

4 How does Qualified Immunity factor into failure-to-intervene claims?

As with all claims against law enforcement officers for civil rights violations, law enforcement officers may be shielded from liability by the doctrine of **qualified immunity**. But how the court applies the doctrine will depend on the jurisdiction as circuits are split over how to assess the "clearly established" prong of qualified immunity in failure-to-intervene cases.[6]

Key law enforcement officer bystander liability decisions by circuit

CIRCUIT	KEY CASES
1	**Gaudreault v. Salem, 923 F.2d 203, 207 n.3 (1st Cir. 1990)** ("An officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held liable under section 1983 for his nonfeasance.") **Martinez v. Colon, 54 F.3d 980, 985 (1st Cir. 1995)** ("[P]olice officers sometimes have an affirmative duty to intervene that is enforceable under the Due Process Clause.")
2	**Gagnon v. Ball, 696 F.2d 17, 21 (2d Cir.1982)** (finding liability for officer who failed to intervene and instead participated in an unlawful arrest) **O'Neill v. Krzeminski, 839 F.2d 9, 11 (2d Cir. 1988)** ("A law enforcement officer has an affirmative duty to intercede on the behalf of a citizen whose constitutional rights are being violated in his presence by other officers.") **Anderson v. Branen, 17 F.3d 552, 557 (2d Cir. 1994)** ("[An] officer who fails to intercede is liable for preventable harm if the officer observes or has reason to know that excessive force is being used, a citizen has been unjustifiably arrested, or any constitutional violation has been committed by a law enforcement officer.") (internal citations omitted)
3	**Smith v. Mensinger, 293 F.3d 641, 650-51 (3d Cir. 2002)** ("[A] police officer has a duty to take reasonable steps to protect a victim from another officer's use of excessive force," but only "if there is a realistic and reasonable opportunity to intervene.") **Baker v. Monroe Twp., 50 F.3d 1186, 1193–94 (3d Cir.1995)** (premising liability on senior officer's knowledge of, and acquiescence in, treatment of victim) **El v. City of Pittsburgh, 975 F.3d 327, 335 (3d Cir. 2020)** ("There may be a genuine issue of fact regarding a reasonable opportunity to intervene where the allegedly excessive force lasts about fifteen minutes or where the event unfolds in multiple stages." (internal citations omitted)
4	**Randall v. Prince George's Cnty., Md., 302 F.3d 188, 203 (4th Cir. 2002)** ("The concept of bystander liability is premised on a law officer's duty to uphold the law and protect the public from illegal acts, regardless of who commits them. . . Therefore, if a bystanding officer (1) is confronted with a fellow officer's illegal act, (2) possesses the power to prevent it, and (3) chooses not to act, he may be deemed an accomplice and treated accordingly.")

CIRCUIT	KEY CASES
5	**Hale v. Townley, 45 F.3d 914, 919 (5th Cir. 1995)** (finding that an officer, even if affiliated with a different law enforcement agency, may be held liable for failing to intervene in excessive force, and that factual disputes as to whether an officer had "a reasonable opportunity to realize the excessive nature of the force and to intervene to stop it" preclude summary judgment) **Timpa v. Dillard, 20 F.4th 1020, 1039 (5th Cir. 2021)**, cert. denied, 142 S. Ct. 2755 (2022) (finding that officers who were present and stood nearby laughing while another officer used excessive force in restraining an already-subdued subject supports an inference of "acquiescence in the alleged use of force," making them liable for failure to intervene)
6	**Smith v. Ross, 482 F.2d 33, 36-37 (6th Cir. 1973)** ("[A] law enforcement officer can be liable under § 1983 when by his inaction he fails to perform a statutorily imposed duty to enforce the laws equally and fairly, and thereby denies equal protection to persons legitimately exercising rights guaranteed them under state or federal law. Acts of omission are actionable in this context to the same extent as are acts of commission.") **Goodwin v. City of Painesville, 781 F.3d 314, 328–29 (6th Cir. 2015)** (where there was a prolonged application of a taser, a reasonable jury could conclude that the two bystander officers failed to intervene to protect the victim)
7	**Byrd v. Brishke, 466 F.2d 6, 11 (7th Cir. 1972)** ("[I]t is clear that one who is given the badge of authority of a police officer may not ignore the duty imposed by his office and fail to stop other officers who summarily punish a third person in his presence or otherwise within his knowledge.") **Yang v. Hardin, 37 F.3d 282, 285 (7th Cir. 1994)** ("This responsibility to intervene applies equally to supervisory and nonsupervisory officers. An officer who is present and fails to intervene to prevent other law enforcement officers from infringing the constitutional rights of citizens is liable under § 1983 if that officer had reason to know: (1) that excessive force was being used, (2) that a citizen has been unjustifiably arrested, or (3) that any constitutional violation has been committed by a law enforcement official; and the officer had a realistic opportunity to intervene.")
8	**Putman v. Gerloff, 639 F.2d 415, 423–24 (8th Cir. 1981)** (holding that the duty to intervene applies regardless of the relative rank of the officers) **Webb v. Hiykel, 713 F.2d 405, 408 (8th Cir. 1983)** (finding bystander officer was "under a duty to prevent the use of [] force, even if the officers beating [the plaintiff] were his superiors")

CIRCUIT	KEY CASES
9	**United States v. Koon, 34 F.3d 1416, 1447 n.25 (9th Cir. 1994)** ("[A]n officer who failed to intercede when his colleagues were depriving a victim of his Fourth Amendment right to be free from unreasonable force in the course of an arrest would, like his colleagues, be responsible for subjecting the victim to a deprivation of his Fourth Amendment rights.") **Harvell v. Rigney, No. 25-719, 2026 U.S. App. LEXIS 8737, at *5 (9th Cir. Mar. 23, 2026)** ("Officers can be held liable for failing to intercede in situations where excessive force is claimed to be employed by other officers only if 'they had an opportunity to intercede.")
10	**Mick by & Through Mick v. Brewer, 76 F.3d 1127, 1136 (10th Cir. 1996)** ("Tenth Circuit precedent clearly established before June 18, 1992 that a law enforcement official who fails to intervene to prevent another law enforcement official's use of excessive force may be liable under 1983.") (citing Lusby v. T.G. & Y. Stores, Inc., 749 F.2d 1423, 1433 (10th Cir. 1984), vacated on other grounds, 474 U.S. 805 (1985) (ruling that officer who did not prevent fellow officer's use of allegedly excessive force against an arrestee "may be liable [under 1983] if he had the opportunity to intervene but failed to do so")) **Fogarty v. Gallegos, 523 F.3d 1147, 1162 (10th Cir. 2008)** ("An officer who fails to intervene to prevent a fellow officer's excessive use of force may be held liable under § 1983.")
11	**Byrd v. Clark, 783 F.2d 1002, 1007 (11th Cir. 1986)** ("If a police officer, whether supervisory or not, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable under Section 1983.") **Wilkerson v. Seymour, 736 F.3d 974, 980 (11th Cir. 2013)** ("[A] participant in an arrest, even if not the arresting officer, may be liable if he knew the arrest lacked any constitutional basis and yet participated in some way.")
DC Circuit	**Masel v. Barrett, 707 F. Supp. 4, 10 (1989)** (denying summary judgment on failure-to-intervene claim against officer who watched other officers drag plaintiff over a concrete barrier) **Jackson v. District of Columbia, 327 F. Supp. 3d 52, 67 (D.D.C. 2018)** ("Courts in this District have borrowed the Fourth Circuit's test for [] bystander liability, holding an officer liable if he: (1) knows that a fellow officer is violating an individual's constitutional right; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act.") (internal citation omitted)

[1] See Ambler v. Nissen, 116 F.4th 351, 362 (5th Cir. 2024), cert. denied, 145 S. Ct. 2683 (2025); Timpa v. Dillard, 20 F.4th 1020, 1038–39 (5th Cir. 2021); Ting v. United States, 927 F.2d 1504, 1512 (9th Cir. 1991); Gaudreault v. Municipality of Salem, Mass., 923 F.2d 203, 207 n.3 (1st Cir. 1990); O'Neill v. Krzeminski, 839 F.2d 9, 11 (2d Cir. 1988); Bruner v. Dunaway, 684 F.2d 422 (6th Cir. 1982); Putman v. Gerloff, 639 F.2d 415, 423–24 (8th Cir. 1981).

[2] See Hale v. Townley, 45 F.3d 914, 919 (5th Cir. 1995); Bruner v. Dunaway, 684 F.2d 422, 426-27 (6th Cir. 1982); Byrd v. Brishke, 466 F.2d 6, 11 (7th Cir. 1972).

[3] Hale v. Townley, 45 F.3d 914, 919 (5th Cir. 1995).

[4] See Randall v. Prince George's Cnty., Md., 302 F.3d 188, 203 (4th Cir. 2002).

[5] See Ramos-Torres v. Municipality of Caguas, No. CV 12-1706 (JAG), 2016 U.S. Dist. LEXIS 87681, at *17-20 (D.P.R. July 5, 2016); Tanner v. San Juan Cnty. Sheriff's Off., 864 F. Supp. 2d 1090, 1156 (D.N.M. 2012).

[6] The first approach uses the standard test for qualified immunity, asking whether the alleged misconduct of the directly acting officer violated "clearly established law." See Helm v. Rainbow City, Alabama, 989 F.3d 1265, 1277–78 (11th Cir. 2021) (rejecting defendant's argument "that the district court should have conducted an officer-specific analysis to determine whether his failure to intervene violated clearly established law" because "in cases where the use of force is declared clearly unconstitutional, the officers that failed to intervene are" equally unentitled to qualified immunity). The second approach, in contrast, adds an additional requirement: to clear the barrier of qualified immunity, the plaintiff must be able show (1) that the directly acting officer violated "clearly established law" by engaging in the alleged wrongful conduct and (2) that the defendant officer violated "clearly established law" by failing to intervene under the circumstances. See Weimer v. County of Fayette, Pennsylvania, 972 F.3d 177, 191–92 (3d Cir. 2020) (finding that, to establish qualified immunity, "the question here is whether [the plaintiff] had a clearly established right to have [the prosecutor] take reasonable steps to protect her from an unconstitutional police investigation"); Joseph on behalf of Estate of Joseph v. Bartlett, 981 F.3d 319, 345 (5th Cir. 2020) (holding that the plaintiffs failed "to demonstrate that the law was 'clearly established'—that, as of . . . the date of their encounter with [the plaintiff], any reasonable officer would have known that the Constitution required them to intervene" and determining that plaintiffs failed to "identify a single case to support the argument that any reasonable officer would have known to intervene under these circumstances").