No. 18-56436

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Before the Honorable Sandra S. Ikuta, Kenneth Kiyul Lee,
and Algenon L. Marbley
(Panel decision filed April 16, 2020)

JANE DOE, et al,

Plaintiff-Appellant,

v.

PASADENA UNIFIED SCHOOL DISTRICT, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the
Central District of California, Case No.. 2:18-cv-00905 PA
The Honorable Percy Anderson

APPELLANTS' PETITION FOR PANEL REHEARING AND REHEARING EN BANC

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

INTRODUCTION AND RULE 35(B) STATEMENT

The panel majority's decision in this action puts millions of immigrant parents throughout the states of the Ninth Circuit at risk of facing severe threats by school officials, who would, under the majority's ruling, face no consequence for such threats. In this action, a school principal threatened to report an immigrant mother to federal immigration enforcement authorities; at summary judgment, the courts must assume the truth of this threat. Nonetheless, the panel majority upholds a grant of summary judgment by a district court that believed plaintiff's claim to be too unimportant to be in federal court.

The panel majority first concludes that the principal's threat – even though a threat that would only be threatening to an undocumented immigrant – was not motivated by plaintiff's assumed immigration status. The panel majority decides – without allowing a trier of fact to consider the evidence – that the threat to plaintiff was "not because of her immigration status, but rather because of her threat to complain about his school lunch policy." Op. at 3.[1] "While [principal] Ruelas tailored his threat to her immigration status, he did not threaten her because of it." Id. These conclusions – particularly as applied at summary judgment -- would overturn decades of precedent on discriminatory motivation. In another context,

[1] Appellants refer to the panel majority's memorandum opinion as "Op." They refer to the dissenting memorandum opinion as "Dis. Op."

this logic would hold that the crassest and demeaning misogynistic harassment is not gender discrimination if the motivation is to prevent the targeted woman employee from seeking or competing for a promotion. Future defendants will assert that no threat or statement is discriminatory on its face; instead, a court must excuse the most blatant and open anti-minority, anti-woman, or anti-immigrant actions so long as defendant can assert some additional, more self-serving motivation.

The panel majority compounds this egregious and damaging error by concluding that defendants were also entitled to qualified immunity even though the issue was never briefed before the district court, which raised and ruled on the issue sua sponte. Monstrously, the panel majority holds that "parents did not enjoy a 'clearly established' right to be free from a school official's threats." Op. at 5. This conclusion is surely a surprise to parents and school officials alike.

Between these two errors – contradicting Circuit precedent – it is difficult to imagine a clearer invitation for school officials to threaten immigrant parents who have the audacity to advocate for what they believe to be in their child's best interests. As explained below, the panel also disregarded the clear prospect that a trier of fact would conclude that the principal's exclusion of plaintiff from a volunteer program would chill her free speech, and ignored undisputed evidence that the school board witnessed a threat to plaintiff at a public board meeting and

did nothing in response. The court should rehear this case en banc to ensure that immigrant parents are protected as the law and Constitution envision.

Accordingly, Appellants Jane Doe, K. D., and M. D. petition for rehearing by the panel and rehearing en banc under Federal Rule of Appellate Procedure 35 and 40 and 9th Cir. R. 40-1 and 35-1 to 35-3. Rehearing is necessary because the panel majority's Equal Protection ruling (1) irreconcilably conflicts with this Court's decisions concerning discriminatory intent, and (2) raises questions of exceptional importance concerning children's equal educational opportunity guarantees.

Additionally, with respect to First Amendment retaliation, the panel majority overlooked that (1) Doe suffered distress and stigma as a result of the principal's retaliatory ban on volunteering, which is in and of itself chilling, and (2) it failed to consider the whether the principal's retaliatory acts together would chill a person of ordinary firmness's protected speech. Further, the majority's decision to affirm the district court's sua sponte grant of qualified immunity to Defendants irreconcilably conflicts with this Court's rulings requiring notice or opportunity to respond guaranteed under Fed. R. Civ. Proc. 56(c). Moreover, the majority overlooked statutes that use mandatory language to confer rights that are significantly constrained by applicable statutes can give rise to a protected property or liberty interest. Finally, rehearing should be granted because the panel

misunderstood the law governing municipal liability; Doe need not demonstrate the existence of any district policy or custom because her claim is premised directly on the actions of Pasadena Unified School District's "final policymaking authority."

REASONS FOR GRANTING REHEARING AND REHEARING EN BANC

I. The Equal Protection Claim Ruling Irreconcilably Conflicts With This Court's Rulings and Raises Questions of Exceptional Importance Concerning Equal Educational Opportunity Guarantees.

A. The Majority's Ruling Concerning Discriminatory Intent Irreconcilably Conflicts With This Court's and the Supreme Court's Rulings (and the District Court's Conclusions).

The United States Supreme Court and this Court have long held that an Equal Protection claim's "'[d]iscriminatory purpose' [requirement]… implies that the decisionmaker… selected or reaffirmed a particular course of action at least in part 'because of'… its adverse effects upon an identifiable group." Navarro v. Block, 72 F.3d 712, n.5 (9th Cir. 1995) (quoting Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 279 (1979).) The majority erroneously rejected Appellants' Equal Protection claim by adopting a reasoning that irreconcilably conflicts with this binding precedent.

The heart of Plaintiffs' Equal Protection claim is the Defendant principal's threat to call immigration enforcement on Jane Doe, a mother of an elementary school student, when she complained that school staff were taking away and discarding her anemic daughter's meals during lunch before she was finished

eating. EOR 116. Notwithstanding its recognition that Doe's perceived immigration status motivated the "tailor[ing]" of the threat, the majority simultaneously ruled that no reasonable trier of fact could find Doe's status motivated the making of the threat, even in part. See Op. at 2-3. Without explanation, the majority asserted that the motivation for the immigration threat was solely Doe's complaint. Id. Appellants cannot find any other case in which this Court ruled that a discriminatory action's design was tailored to a plaintiff's protected status, but that status did not motivate the discriminatory action even in part.

The majority's ruling is irreconcilably inconsistent with this Court's precedent because the tailoring of discrimination to a plaintiff's status by definition reflects the "select[ion of a]… particular course of action at least in part 'because of'" that status. See Navarro, 72 F.3d at n.5. The majority's ruling further conflicts with this Court's recognition that retaliation that is motivated by a complaint can simultaneously be motivated by discriminatory intent sufficient to support an Equal Protection claim. Alaska v. EEOC, 564 F.3d 1062, 1069, n.5 (9th Cir. 2009) (holding that plaintiff's First Amendment allegations of retaliatory discharge for complaining also "allege[d] conduct that would violate the Equal Protection clause."); see also, e.g., Vega v. Hempstead Union Free School District, 801 F.3d 72, 82 (2nd Cir. 2015). Thus, the majority's decision reflects a departure

from well-established precedent based on a distinction that, as the dissenting judge notes, is unsupported by the facts or the law.2 Dis. Op. at 10.

Accordingly, review is necessary "to secure or maintain uniformity of the court's decisions" concerning an Equal Protection claim's intent requirement. Fed. R. App. P. 35.

B. The Majority Opinion Raises Issues of Exceptional Importance Because it Dangerously Signals That School Officials' Inherently Biased Threats are Immune From Sanction under Federal Law.

The majority opinion raises an issue of exceptional importance because, at a time in which American society is bitterly divided on immigration issues, it signals to school officials across the country that threats of immigration enforcement or deportation against children's parents are immune from sanction under federal law. Two realities recognized by this Court or federal agencies demonstrate that the opinion has far more dangerous and far-reaching implications if the underlying immigration threat is erroneously perceived as constitutionally permissible.

First, the United States Department of Justice, the Department of Education, and Immigration and Customs Enforcement recognize that school environments are exceptionally sensitive to immigration enforcement issues. U.S. Dep't of Justice, Civil Rights Div. & U.S. Dep't of Educ., Office for Civil Rights, "Dear

[2] At a minimum, the majority's ruling reflects that it has inappropriately weighed the evidence and construed the facts in the light most favorable to the moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

Colleague" Letter re: Public Education Enrollment Practices (May 8, 2014), https:\\www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf ("[P]ractices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents' or guardians' actual or perceived citizenship or immigration status… contravene Federal law"); U.S. Immigration and Customs Enforcement, Federal guidance re Enforcement Actions at or Focused on Sensitive Locations (October 24, 2011), https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf (federal policy is "designed to ensure that [immigration] enforcement actions do not occur at nor are focused on sensitive locations such as schools…"); see also Maria P. v. Riles, 43 Cal.3d 1281, 1293 (1987) (California Supreme Court recognizing that action enjoining school officials' reports of undocumented status to federal authorities protected children's constitutional right to equal educational opportunities).

Second, this Court recognizes that immigration threats, even where implicit, are significantly chilling to undocumented individuals. Rivera v. NIBCO, Inc., 364 F.3d 1057, 1065 (9th Cir. 2004) (mere immigration status inquiries chill undocumented individuals' rights); Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1071–72 (9th Cir. 2000) (threats of deportation recognized as chilling undocumented individuals' rights); see also Cazorla v. Koch Foods of Mississippi, L.L.C., 838 F.3d 540, 563-64 (5th Cir. 2016) ("[T]hreats of

deportation are among the most familiar and dreaded means by which unscrupulous employers retaliate against immigrant employees.").

In irreconcilable conflict with these principles, the majority ruling signals that school officials' direct immigration threats are immune from sanction under federal law. Given that significant numbers of undocumented students and parents reside in the United States, the majority's ruling could have far-reaching implications on school officials' conduct and potentially may chill parents from sending their children to school. 3 Therefore, review is necessary because the majority opinion is inconsistent with the law and to address a question of exceptional importance concerning children's equal educational opportunity guarantees.

II. The Majority Overlooked That the Volunteer Ban Caused Doe Stigma, and Failed to Consider Whether This Distress Together With the Volunteer Ban and Immigration Threat Would Chill Protected Speech.

In affirming the district court's grant of summary judgment on Doe's First Amendment retaliation claim, the majority overlooked the facts and law demonstrating it should have considered all of the defendant's retaliatory conduct together in assessing whether it would chill protected speech.

[3] The majority's assertion that there was no evidence that the threat had adverse psychological effects on the minor Plaintiffs is incorrect. K. D. and M. D. submitted testimony concerning the trauma they suffered as a result of the threat. EOR 112, 114.

The majority stated that "…Doe has not shown, or even alleged, that the 'distinct' program [she participated in] was inferior" to the school's regular volunteer program from which she was barred.4 Op. at 4. However, regardless of whether the "distinct" opportunity was inferior, being singled out for exclusion from the school's volunteer program for two years, when parents who did not complain about the principal were not similarly excluded, caused Doe distress and stigma – harm that can chill protected speech. See EOR 118-119; Scheffler v. Molin, 743 F.3d 619, 622 (8th Cir. 2014) (embarrassment and distress can sufficiently chill First Amendment speech); Mattox v. City of Forest Park, 183 F.3d 515, 521 (6th Cir.1999) (same).

Further, the majority should have considered the principal's multiple acts of retaliation -- the immigration threat and 2-year volunteer ban -- together in assessing whether the person of ordinary firmness's protected speech would be chilled. Mazzeo v. Young, 510 F. App'x 646, 648 (9th Cir. 2013) (considering defendant's multiple retaliatory actions together in assessing whether they would chill protected speech); Coszalter v. City of Salem, 320 F.3d 968, 975–76 (9th Cir.2003) (same). By way of example, because the majority considered

[4] The majority erroneously asserted that Doe provided no evidence that her volunteering was curtailed, Op. at 4, but she in fact did. EOR 117-19. The majority also apparently erroneously understood that the principal allowed Doe to participate in the distinct opportunity in lieu of participating in the regular volunteer program. Op. at 4. He did not. EOR 119.

defendant's retaliatory acts in isolation, see Op. at 4, it did not consider that the principal's willingness to retaliate as demonstrated by the ongoing volunteer ban reasonably increased Doe's perception that he would follow through on his immigration threat, thus increasing that threat's chilling effect. Indeed, Doe testified that the principal's actions together caused her to reduce her participation in school events "to reduce the risk of retaliation or follow-through on the immigration threat." EOR 119.

Rehearing should be granted so that the totality of the principal's retaliatory actions are considered together, including the stigma and emotional distress that resulted from being repeatedly targeted by a school principal, in assessing whether such retaliation would chill protected speech.

III. The Majority's Decision to Affirm the District Court's Sua Sponte Grant of Qualified Immunity Irreconcilably Conflicts With This Court's Rulings, Including Norse v. City of Santa Cruz - the Very Case the Majority Cites in Support of its Decision.

In addressing qualified immunity in Norse v. City of Santa Cruz, this Court reaffirmed that "[s]ua sponte grants of summary judgment are only appropriate if the losing party has reasonable notice that the sufficiency of his or her claim will be in issue." Thus, "a district court that 'does not comply with the advance notice and response provisions of Rule 56(c) has no power to enter summary judgment.'" 629 F.3d 966, 971-72 (9th Cir. 2010) (en banc) (citing United States v. 14.02 Acres of Land More or Less in Fresno Cnty., 547 F.3d 943, 955 (9th Cir. 2008)).

Applying these due process principles, this Court reversed the district court's grant of summary judgment on the issue of qualified immunity, an issue the district court had raised sua sponte. Norse, 629 F.3d at 972-73. This Court reasoned that the two-days notice and opportunity to respond did not afford appellants "full and fair opportunity to ventilate the issues" under FRCP 56(c). Id.

In contrast to the inadequate notice in Norse, the district court here did not provide any notice or opportunity to respond when it sua sponte raised and granted qualified immunity. Nor was qualified immunity briefed at any point in litigation. Notwithstanding that the district court "ha[d] no power to enter summary judgment" on the issue of qualified immunity, the majority affirmed the district court's sua sponte grant of qualified immunity.5 Op. at 5. Significantly, the majority cited to Norse to support its decision although it irreconcilably conflicts with this Court's express reasoning and ruling in that case. Compare Op. at 5, n.1 with Norse, 629 F.3d at 973.

Appellants are not aware of any instance in which this Court affirmed a district court's sua sponte grant of summary judgment on qualified immunity where no FRCP 56(c) notice and opportunity to respond was afforded and the issue was never briefed. Review is necessary to maintain uniformity of this Court's

[5] The majority erroneously stated that the district court did not address qualified immunity, *see* Op. at 5, n.1, although it *sua sponte* raised and granted defendants qualified immunity. EOR 0009-EOR0010.

decisions that afford litigants the right of notice and opportunity to respond, and to be free from unfair surprise under Fed. R. Civ. P. 56(c).

IV. The Majority Overlooked That a Protected Property or Liberty Interest is Created Where Statutes use Mandatory Language.

The majority held that Jane Doe had no protected property or liberty interest in volunteering at her children's school because California Education Code sections 35021 and 51101 "provide government officials discretion to deny parents opportunities to volunteer." Op. at 6. However, the majority did not consider whether the California Education Code together with other applicable codes "impose[] significant limitations on the discretion of the decision maker" to deny volunteering opportunities. See Braswell v. Shoreline Fire Dept., 622 F.3d 1099, 1107 (9th Cir. 2010) (a reasonable expectation of entitlement giving rise to a protected property interest exists if state law imposes significant limitations on the discretion of the decision maker); see also Ass'n of Orange Cnty. Deputy Sheriffs v. Gates, 716 F.2d 733, 734 (9th Cir. 1983).

California Education Code section 55101 contains mandatory language that parents and guardians "have the right" "to participate in the education of their children," including by volunteering. Cal. Educ. Code § 51101. That express right is constrained: (1) where volunteering would conflict with a valid restraining order protective order, or order for custody or visitation, Cal. Educ. Code § 51101(d); (2) California Education Code 35021's condition to secure approval from a

supervising teacher, Cal. Educ. Code § 35021(a); and, (3) California Penal Code section 626.4 restrictions on school access where an individual has willfully disrupted the orderly operation of a campus. See Macias v. Fillippini, 2018 WL 2264243, at *8 (E.D. Cal. 2018) (finding a due process right derived from constraining language when considering Cal. Educ. Code section 51101 and Cal. Penal Code section 626.4 together).

Thus, rehearing should be granted to consider whether a parent has a liberty or property interest in volunteering in their children's school based on the constraining limitations located across several applicable statutes.

V. The School District can be Held Directly Liable for its Board's Repeated "Deliberate Indifference" to Multiple Immigration Threats Against Doe.

The majority affirmed summary judgment on Doe's First Amendment retaliation claim against Pasadena Unified School District because "Doe does not point to any school district policy that amounted to 'deliberate indifference' to her constitutional rights." Op. at 7. However, Appellants sued the school district directly because of its own conduct, not indirectly because of a subordinate's conduct. A municipality can be held directly liable for isolated constitutional violations where its "final policymaking authority" acted with "deliberate indifference" to a subordinate's constitutional violation or if it ratifies such violation. Christie v. Iopa, 176 F.3d 1231, 1238-40 (9th Cir. 1999); see also, e.g.,

Gernetzke v Kenosha Unified Sch. Dist. No. 1, 274 F3.d 464, 468 (7th Cir. 2001) (School board was district's final policymaking authority). Rehearing should be granted so that the proper standard can be applied to Doe's claim against the school district.

Rehearing should also be granted because the majority overlooked significant facts. Jane Doe repeatedly complained directly to the school district's board at board meetings about (1) the school principal's threat to call immigration on her, EOR 116, and (2) the fact that the district referred her complaint about the principal back to that very principal, EOR 119. See also EOR 125 (PUSD letter telling Doe that her complaint about the threat "has been referred" to the principal, that he was "provided with a copy," and he "will be contacting [Doe] directly"). Doe further testified that a second district employee announced to the board at a board meeting that she wanted to call immigration enforcement on Doe if the principal did not follow through on his threat, and that the school board made no efforts to address that intimidation. EOR 119.

Thus, rehearing should be granted to determine whether there exists a genuine issue of material fact as to whether Pasadena Unified School District was "deliberately indifferent" to, or ratified, its employees' immigration threats and retaliation against Doe.

CONCLUSION

For the reasons stated above, Plaintiff-Appellants respectfully request that their petition for panel rehearing and rehearing en banc be granted.

Date: April 30, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which sent notification of such filing to the following:

/s/ Mariana Esquer
Mariana Esquer

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 11. Certificate of Compliance for Petitions for Rehearing or Answers

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9th Cir. Case Number(s) 18-56436

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[**X**] Prepared in a format, typeface, and type style that complies with Fed. R. App. P. 32(a)(4)-(6) and **contains the following number of words:** 3,252**.**
(Petitions and answers must not exceed 4,200 words)

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Signature s/ Juan Rodriguez **Date** April 30, 2020
*(use "*s/[typed name]*" to sign electronically-filed documents)*

ADDENDUM

Page(s)

NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JANE DOE, an individual; et al., Plaintiffs-Appellants, v. PASADENA UNIFIED SCHOOL DISTRICT; et al., Defendants-Appellees.	No. 18-56436 D.C. No. 2:18-cv-00905-PA-FFM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Argued and Submitted February 3, 2020
Pasadena, California

Before: IKUTA and LEE, Circuit Judges, and MARBLEY, Chief District Judge.**

Jane Doe, an undocumented immigrant, and her children sued Pasadena Unified School District and school principal Juan Ruelas for numerous constitutional violations. Doe alleges that Ruelas threatened to call immigration if she complained about his school lunch policy to the school board. The district court granted

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Algenon L. Marbley, Chief United States District Judge for the Southern District of Ohio, sitting by designation.

Pasadena Unified School District's and Ruelas' summary judgment motion. We review de novo the district court's summary judgment decision. *See Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001) (en banc). We affirm.

1. Equal Protection Claim. While Ruelas' threat may be unseemly and unbecoming of a school principal, Doe has not presented evidence that his threat — which was never acted upon — denied her or her children equal protection of the law.

Doe claims that Ruelas' threat caused her children emotional distress, interfering with their equal education opportunities. She relies on *Brown v. Board of Education* to argue that psychological impact on children can violate the equal protection clause. But Ruelas' single instance of a threat — no matter how inappropriate — cannot compare to the shameful chapter in our nation's history of sustained and systematic segregation. Moreover, the *Brown* court relied on expert evidence that long-standing segregation policies had a psychological effect on minority students and hindered their ability to learn. *See Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954), *supplemented* 349 U.S. 294 (1955). Doe, on the other hand, has not presented any such evidence.

Doe's Equal Protection claim also fails because it amounts to a First Amendment retaliation claim, not an Equal Protection claim. Doe has not shown that Ruelas threatened her *because of* her immigration status. "To state a claim

under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff *based upon* membership in a protected class." *Barren v. Harrington,* 152 F.3d 1193, 1194 (9th Cir. 1998) (emphasis added); *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003) ("Intentional discrimination means that a defendant acted at least in part *because of* a plaintiff's protected status.") (quoting another source). Here, Ruelas threatened Doe not because of her immigration status, but rather because of her threat to complain about his school lunch policy. While Ruelas tailored his threat to her immigration status, he did not threaten her because of it. So Doe's complaint should be analyzed under the rubric of the First Amendment.

2. First Amendment Claim. To prevail on her First Amendment retaliation claim, Doe must present evidence that "(1) [s]he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity, and (3) the protected activity was a substantial or motivating factor in the defendant's conduct." *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 770 (9th Cir. 2006). Doe must also provide evidence of Ruelas' subjective "[i]ntent to inhibit speech." *See Mendocino Envtl. Ctr. v. Mendocino Cty*., 192 F.3d 1283, 1300 (9th Cir. 1999).

Doe sets forth two bases for her First Amendment retaliation claim.

First, she claims that Ruelas retaliated by limiting her volunteer opportunities. But she has not pointed to any evidence that Ruelas in fact curtailed them. To the contrary, she continued to volunteer and even won a volunteering award. Doe's claim that she was forced to participate in a "distinct" volunteer program also fails because Doe has not shown, or even alleged, that the "distinct" program was inferior.

Second, she claims that Ruelas retaliated by threatening to call immigration enforcement. Whether a threat can support a First Amendment retaliation claim depends on the individual circumstances of the case. In the employment context, this court has said that "[m]ere threats and harsh words are insufficient" to constitute a retaliation claim without plaintiff also showing she suffered harm as a result (*e.g.*, loss of a tangible interest or government benefit). *See Nunez v. City of Los Angeles*, 147 F.3d 867, 874–75 (9th Cir. 1998) (supervisor allegedly threatened to "transfer or dismiss" plaintiff). In the prison context, an implicit threat can create apprehension in a prisoner sufficient to support a First Amendment retaliation claim. *See Brodheim v. Cry*, 584 F.3d 1262, 1270–71 (9th Cir. 2009). More recently in *Mulligan v. Nichols*, this court suggested in dicta that a government official's speech may support a First Amendment retaliation claim — even absent the loss of tangible rights or government benefits — under certain circumstances. 835 F.3d 983, 989 n.5 (9th Cir. 2016).

This court's *Brodheim* case does not control here because a school principal does not have the same authority over a parent that a prison guard has over an inmate. On the other hand, the important interest in allowing government supervisors to speak freely in managing their employees (as in *Nunez*) may not apply with the same force in this case, where Ruelas' threat did not have a plausible pedagogical purpose.

We, however, need not decide whether Ruelas' threat implicates the First Amendment because Ruelas is entitled to qualified immunity, even assuming Doe has a viable claim.[1] Ruelas' conduct did not violate Doe's "clearly established . . . constitutional rights of which a reasonable person would have known." *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (quoting another source). The Supreme Court has cautioned that a constitutional right is "clearly established" only if a statute or precedent "squarely governs the specific facts at issue." *Id.* at 1153 (internal quotation marks omitted). Here, in light of the mixed case law in this circuit, parents did not enjoy a "clearly established" right to be free from a school official's threats. *Id.* at 1152–53 (warning courts "not to define clearly established law at a high level of generality").[2]

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[1] Although the district court did not address qualified immunity, we may affirm on the basis of qualified immunity where, as here, it is "supported by the record." *Norse v. City of Santa Cruz*, 629 F.3d 966, 975, 978 (9th Cir. 2010) (en banc).

[2] For purposes of qualified immunity, Doe cannot rely on the language in *Mulligan v. Nichols*, 835 F.3d at 989 n.5, because that case was decided in 2016, and Ruelas' threat occurred in 2015. *See Kisela*, 138 S. Ct. at 1152 (noting that the

3. Due Process Claim. Doe's Due Process claim fails because she does not have a protected property or liberty interest in volunteering. To obtain relief under § 1983 for a procedural due process violation, Doe must prove: "(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; and (3) lack of process." *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 983 (9th Cir. 2011) (quoting another source). "[A] statute will create an entitlement to a governmental benefit either if the statute sets out conditions under which the benefit *must* be granted or if the statute sets out the *only* conditions under which the benefit may be denied." *Allen v. Beverly Hills*, 911 F.2d 367, 370 (9th Cir. 1990) (quoting another source). "[A] benefit is not a protected entitlement if government officials may grant or deny it in their discretion." *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005).

Doe relies on sections 35021 and 51101 of the California Education Code, but both statutes provide government officials discretion to deny parents opportunities to volunteer. Cal. Educ. Code § 35021 (stating that any person "may be permitted" by the school board to serve as a school volunteer); Cal. Educ. Code § 51101 (stating that parents "have the right and should have the opportunity" to volunteer "with the approval, and under the direct supervision, of the teacher"); *see also Gonzales*, 545

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clearly established question "is judged against the backdrop of the law at the time of the conduct") (quoting another source).

U.S. at 759–61 (reasoning that even statutes with mandatory language such as "shall use every reasonable means" may still afford the official some discretion). In any event, as noted above, she has not presented evidence Ruelas limited her volunteer opportunities.

4. Municipal Liability. Doe argues that Pasadena is subject to municipal liability because it was aware of Ruelas' retaliatory conduct. To impose liability on a municipality under § 1983 for an employee's conduct, Doe must establish:

> (1) that [s]he possessed a constitutional right of which [s]he was deprived; (2) that the municipality had a policy; (3) that this policy "amounts to deliberate indifference" to the plaintiff's constitutional right; and (4) that the policy is the "moving force behind the constitutional violation."

Oviatt v. Pearce, 954 F.2d 1470, 1474 (9th Cir. 1992) (quoting *City of Canton v. Harris*, 489 U.S. 378, 389–91 (1989)). Deliberate indifference is "a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 410 (1997).

The evidence presented is insufficient to establish municipal liability. Doe cites evidence that the school board knew about Ruelas' retaliatory threats against her and other parents and teachers. But Doe does not point to any school district policy that amounted to "deliberate indifference" to her constitutional rights and does not explain how outstanding discovery could contain such evidence.

Additionally, Doe's *Monell* claim fails because we have rejected her claims that Ruelas violated her constitutional rights. *See Quintanilla v. City of Downey*, 84 F.3d 353, 355 (9th Cir. 1996).

5. Rule 56(d) Request. The district court did not abuse its discretion in denying Doe's Rule 56(d) request because she sought duplicative and irrelevant evidence. *See Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 899 (9th Cir. 2012). Doe thus did not show that she was missing "facts essential to justify [her] opposition." Fed. R. Civ. P. 56(d).

AFFIRMED.

FILED

APR 16 2020

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Jane Doe v. Pasadena, 18-56436

MARBLEY, Chief District Judge,* **DISSENTING.**

I. Equal Protection Claim

A plaintiff bringing an Equal Protection claim must prove intentional discrimination, at least in part, because of plaintiff's protected status. In order to survive a motion for summary judgment by the School District, "there is no specific test that an equal protection plaintiff is required to meet" and "a plaintiff must only produce evidence sufficient to establish a genuine issue of fact as to the defendant's motivations." *Fed. Deposit Ins. Corp. v. Henderson*, 940 F.2d 465, 471 (9th Cir. 1991).

The stigma and loss of dignity from the school principal's threat to call immigration authorities on the Student Plaintiffs' mother singled them out for discriminatory treatment on the basis of their national origin in violation of the Equal Protection Clause. This stigma is a recognized harm that inherently interferes with their ability equally to access education. Indeed, this reasoning is fundamental to the desegregation cases. It is the "feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Freeman*

* The Honorable Algenon L. Marbley, Chief United States District Judge for the Southern District of Ohio, sitting by designation.

v. Pitts, 503 U.S. 467, 485 (1992) (quoting *Brown v. Board of Education*, 347 U.S. 483, 494 (1954)).

The majority erroneously concludes Principal Ruelas's threat was motivated only by Doe's intention to file a complaint and therefore should be analyzed exclusively under the First Amendment. The majority's approach ignores that the heart of Ruelas's threat—to call immigration enforcement—was motivated, at least in part, by Plaintiffs' perceived national origin. The majority admits Ruelas "tailored his threat to [Doe's] immigration status" but simultaneously claims "he did not threaten her because of it." This conclusion is not supported by the record or the case law. Plaintiffs are entitled to an inference and opportunity to demonstrate at trial that Ruelas's threat was made on the basis of Doe's perceived national origin and thus in violation of the Equal Protection Clause. *See Vega v. Hempstead Union Free School District*, 801 F.3d 72, 82 (2d Cir. 2015) ("[w]hen a supervisor retaliates against an employee because he complained of discrimination, the retaliation constitutes intentional discrimination against him for purposes of the Equal Protection Clause").

II. First Amendment Claim

The majority declines to reach the merits of Doe's First Amendment claim because it finds Ruelas is entitled to qualified immunity. I respectfully dissent and would find Ruelas's threat to call immigration enforcement violates the First

Amendment and that the constitutional right to be free from retaliation is clearly established.

Defendants do not dispute that Doe was engaged in protected activity or that the protected activity was a motivating factor in Defendants' conduct, so the question is whether Ruelas's threat would chill a person of ordinary firmness from exercising their constitutional rights. *See Pinard*, 467 F.3d at 770. The threat to call immigration enforcement "intimated that punishment would imminently follow" if Doe filed a complaint against Ruelas. *Mulligan*, 835 F.3d at 990. *See also Brodheim*, 584 F.3d at 1270. A reasonable juror could find that a school principal's threat to expose an individual who appears undocumented to federal immigration enforcement would have a chilling effect on speech.

Ruelas is not entitled to qualified immunity because "[t]he constitutional right to be free from retaliation [is] clearly established." *O'Brien v. Welty*, 818 F.3d 920, 936 (9th Cir. 2016) (citing *Krainski v. Nevada ex rel. Bd. Of Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 969 (9th Cir. 2010)). The majority cites *Nunez v. City of Los Angeles*, in which the plaintiff complained about his police department's practice of promoting inexperienced, favored candidates. The Court found that his employer's scolding and threats to dismiss or transfer him were "[m]ere threats and harsh words" and he actually suffered "no adverse employment action whatsoever." 147 F.3d at 870-75. This Court later clarified in *Coszalter v. City of Salem*, that the

relevant inquiry under the First Amendment is "whether the state had taken action designed to retaliate against and chill political expression" and distinguished *Nunez* as a case where "the would-be retaliatory action is so insignificant that it does not deter the exercise of First Amendment rights." 320 F.3d 968, 975 (9th Cir. 2003). Principal Ruelas's threat to call immigration enforcement, which carries with it the threat of deportation, cannot be characterized as a de minimis harm, or mere "bad-mouthing." *Id.* at 976.

The Court need not have decided a case on precisely analogous facts for a constitutional right to be considered clearly established. In *O'Brien*, this Court held "[r]etaliation for engaging in protected speech has long been prohibited by the First Amendment," therefore "[a] reasonable official…would thus have known that taking disciplinary action against O'Brien in retaliation for the expression of his views violated his First Amendment rights." 818 F.3d. at 936. *See also Pinard*, 467 F.3d at 770. Likewise, in *Brodheim* this Court concluded, "we [have] made [] clear… that an allegation that a person of ordinary firmness would have been chilled is sufficient to state a retaliation claim." 584 F.3d 1262, 1270 (9th Cir. 2009). The majority finds *Brodheim* inapplicable, but this Court has made clear there is "no reason why a different standard should apply" in prison versus non-prison contexts. *Id.* A reasonable official in Ruelas's shoes would have known that a threat to call

immigration enforcement for engaging in protected speech was retaliation prohibited by the First Amendment and as such, he is not entitled to qualified immunity.

III. Due Process Claim

The majority claims Doe does not have a protected property or liberty interest in volunteering and relies on *Allen v. City of Beverly Hills*, where this Court held there was no property interest in continued employment because of the City's significant discretion in making lay-off decisions. 911 F.2d at 371. However, the California Education Code, on which Plaintiff bases her claim, grants much less discretion than the laws at issue in *Allen*. While § 35201 uses permissive language ("may be permitted"), § 55101 contains the mandatory language that parents and guardians "have the right" "to participate in the education of their children," including by volunteering. The school's discretion to prohibit parents or guardians from volunteering is significantly constrained. The statute confers the right "[e]xcept as provided in subdivision (d)," which creates an exception to parents' right to volunteer when it would conflict with a valid restraining order, protective order, or order for custody or visitation. Cal. Educ. Code § 51101(d). *See Macias v. Flippini*, 2018 WL 2264243, at *8 (E.D. Ca. 2018) (finding a due process right derived from Cal. Educ. Code § 51101 and Cal. Penal Code § 626.4 for parents not to be banned indefinitely from campus without adequate procedures). *See also Kaiser Foundation Health Plan, Inc. v. Burwell*, 147 F.Supp.3d 897 (N.D. Cal. 2015) ("Whether an

expectation of entitlement is sufficient to create a property interest will depend largely upon the extent to which the statute contains mandatory language that restricts the discretion of the decisionmaker."). I would find Plaintiff has at least alleged a triable issue of material fact as to whether her Due Process right to volunteer at her children's school were violated by Ruelas's threat to call immigration enforcement.

IV. Municipal Liability

The Supreme Court in *Monell v. Department of Social Services of City of New York* held that § 1983 imposes liability on a municipality when an employee acts "under color of some official policy" thereby causing a violation of another's constitutional rights. 436 U.S. 658, 692 (1978).

The majority concludes without explanation that Doe has not alleged the school district had a policy that amounted to deliberate indifference and that the school board's knowledge of Ruelas's threats is not enough. But the school district need not have an official policy to be held liable under *Monell*. Rather, "a custom" can be "inferred from a pattern of behavior" even "toward a single individual," that would cause a jury to conclude there was a custom or practice that amounted to deliberate indifference. *Oyenik v. Corizon Health Inc.*, 696 Fed. Appx. 792, 794-95 (9th Cir. 2017). A municipality also can be held liable for an *isolated* constitutional violation when the person causing the violation has "final policymaking authority"

or "if the final policymaker 'ratified' a subordinate's actions." *Christie v. Iopa*, 176 F.3d 1231, 1235-38 (9th Cir. 1999). Plaintiff alleges she repeatedly made the School Board, the District's final policymaking authority, aware of Ruelas's threats, creating a triable issue of fact as to whether the school district's inaction constituted deliberate indifference to her constitutional rights.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Kamilla Sali-Suleyman	None	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: IN CHAMBERS — COURT ORDER

Before the Court is a Motion for Summary Judgment filed by defendants Pasadena Unified School District ("PUSD") and Juan Ruelas ("Ruelas") (collectively "Defendants") (Docket No. 66). Defendants contend that they are entitled to summary judgment on the claims alleged against them in the First Amended Complaint filed by plaintiffs Jane Doe ("Doe") and her minor children K.D. and M.D. (collectively "Plaintiffs").[1/] Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for September 24, 2018, is vacated, and the matter taken off calendar.

I. Factual and Procedural Background

Plaintiffs commenced this action in Los Angeles Superior Court on August 22, 2017. Defendants later removed the action to this Court on the basis of the Court's federal question jurisdiction, 28 U.S.C. § 1331, and the Complaint's claims for civil rights violations pursuant to 42 U.S.C. § 1983.

After the dismissals of certain parties, Plaintiffs' First Amended Complaint's remaining claims are: (1) violation of the Equal Protection Clause of the Fourteenth Amendment pursuant to 42 U.S.C. § 1983 based on national origin and perceived immigration status on behalf of Doe, K.D., and M.D. against Ruelas; (2) retaliation in violation of the First Amendment pursuant to 42 U.S.C. § 1983 on behalf of Doe against Ruelas and PUSD; (3) violation of the Fourteenth Amendment's Procedural Due Process Clause pursuant to 42 U.S.C. § 1983 and under Article I,

[1/] Plaintiffs have, during the course of the litigation, dismissed the claims originally filed on behalf of Doe's third child, L.D., and another individual, Eva Del Rio. Plaintiffs have also dismissed their claims asserted against defendants Maria Reina, Brian McDonald, Elizabeth Pomeroy, Scott Phelps, Patrick Cahalan, Kimberly Kenne, Roy Boulghourhian, Lawrence Torres, and Elizabeth Palomares.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

section 7 of the California Constitution on behalf of Doe against Ruelas and PUSD; (4) race and national origin discrimination in violation of California Education Code section 220 on behalf of Doe against PUSD; (5) civil rights violations pursuant to the Unruh Civil Rights Act, Cal. Civ. Code § 51 on behalf of Doe against Ruelas; and (6) for a writ of mandate pursuant to California Civil Code section 1085 on behalf of Doe against PUSD.

According to Doe, she met with Ruelas, the principal at PUSD's Madison Elementary School, on August 25, 2015, to complain about the school's policy of throwing away students' lunches if the students did not finish them in a short period of time. At the time, Doe's child K.D. was a student at Madison and suffered from anemia. Doe was concerned that the lunch policy would exacerbate K.D.'s condition. Doe states that she told Ruelas that if he did not address the problem, Doe would file a complaint against him with PUSD. In response, according to Doe, Ruelas said that if Doe filed a complaint he would "send immigration to school." (Jane Doe Dep. 198:1-3; see also Jane Doe Decl. ¶ 8 ("Ruelas threatened to contact federal immigration enforcement against me if [I] filed a complaint against him with the PUSD.").)[2/] Doe attended a PUSD School Board meeting two days later, on August 27, 2015. At that meeting, Doe complained about the lunch policy but did not mention Ruelas' alleged threat to send immigration authorities to the school. (Jane Doe Dep. 280:18-23.)

Doe attended another meeting of the PUSD School Board on September 24, 2015, and described the events that occurred on August 25, 2015. Doe filed a complaint with PUSD on September 29, 2015. On October 22, 2015, PUSD's Chief Human Resources Officer sent to Doe a letter stating that Doe's complaint did not fall within the guidelines of PUSD's Uniform Complaint Procedures, and had been referred to Ruelas. According to Doe, she met with Ruelas and a family liaison in October or November 2015 to discuss her concerns. Doe states that the family liaison told Doe that Doe was defaming Ruelas, and that Ruelas could take action against her. Doe claims to have left the meeting feeling intimidated, humiliated, and emotionally distressed.

Doe had volunteered at Madison prior to the August 25, 2015 incident, and applied to volunteer at the school during the 2015-16 school year. In October or November 2015, PUSD notified Doe that she had passed a background check and was approved to volunteer at the

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[2/] Plaintiffs applied to proceed in this action under pseudonyms. In support of that application, Doe stated that she is undocumented and does not have legal authority to be present in the United States. There is no evidence that Ruelas knew Doe's immigration status when he allegedly made the threat on August 25, 2015. Plaintiffs admit that nobody affiliated with PUSD ever asked Plaintiffs about their immigration status.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

school. Beginning in November 2015, Doe states that she reported to Madison's volunteer coordinator on multiple occasions, but was told by the volunteer coordinator that a list of approved parent volunteers had not yet been created and, as a result, Doe could not volunteer. During this time, however, Doe says that she observed other parents volunteering. Despite renewing her volunteer application for the 2016-17 school year, Doe says that the volunteer coordinator told her in September or October 2016, that Doe could not volunteer at Madison because Ruelas did not want her to volunteer. Doe believes that Ruelas barred her from volunteering during the 2015-16 and 2016-17 school years because she complained to PUSD about Ruelas' threat to contact immigration.

Although Doe claims that she was prevented from volunteering at Madison during the 2015-16 and 2016-17 school years, she did volunteer in what she calls a "distinct program" that did not require her to report to the school's volunteer coordinator. Madison maintains visitor sign in sheets showing that Doe visited the school on 30 different days during the 2015-16 school year and 9 times during the 2016-17 school year. K.D. testified that she saw her mother volunteer in her classroom during the 2015-16 school year, and that Doe helped some of the school's teachers, including Ms. Guzman, with photocopying, stapling, and other paperwork. According to M.D.'s deposition testimony, there was a big division between those who supported Ruelas, and those who did not. (M.D. Dep. 162:4-17.) Among those who did not support Ruelas was Ms. Guzman. (Id.) Some of the teachers, parents, and others in the community did not like a lot of the new rules that Ruelas implemented while he was the principal at Madison. (Id.)

Near the end of the 2015-16 school year, and again at the end of the 2016-17 school year, Ruelas hosted events at the school to recognize volunteers for their support of the school. Doe is listed as a volunteer in the programs produced for both events and Ruelas issued to Doe a Volunteer Appreciation Award on May 20, 2016. In August 2016, Doe complained to Ruelas that a classroom aide had pulled L.D. by the arm. Ruelas assigned L.D. to a different class as a result of Doe's concern about the classroom aide and L.D.'s desire not to stay in the classroom with the aide who had pulled her by the arm. Doe volunteered at Madison during the 2017-18 school year without incident.

Following the 2016 Presidential Election, the PUSD School Board passed, on December 22, 2016, a Board resolution titled "Safe Zones for Students Threatened by Immigration Enforcement," in which the Board reiterated, among other things, that every PUSD site is a safe place for the students and their families, that PUSD personnel shall not inquire about immigration status, and that all personnel shall treat all students equitably in receipt of all school services. At that same meeting of the Board, Doe spoke during the public comment period and

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

informed the Board that she was offended that PUSD responded to her complaint about Ruelas threatening to have immigration come to Madison by referring the complaint back to Ruelas.[3/]

II. Legal Standard

FRCP 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show an absence of an issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Once the moving party does so, the non-moving party must go beyond the pleadings and designate specific facts showing a genuine issue for trial. Id. at 324. The court does "not weigh the evidence or determine the truth of the matter, but only determines whether there is a genuine issue for trial." Balint v. Carson City, 180 F.3d 1047, 1054 (9th Cir 1999). A "'scintilla of evidence,' or evidence that is 'merely colorable' or 'not significantly probative,'" does not present a genuine issue of material fact. United Steelworkers of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1542 (9th Cir), cert denied, 493 U.S. 809, 110 S. Ct. 51, 107 L. Ed. 2d 20 (1989) (emphasis in original, citation omitted).

The substantive law governing a claim or defense determines whether a fact is material. T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 631-32 (9th Cir 1987). The court must view the inferences drawn from the facts "in the light most favorable to the nonmoving party." Id. at 631 (citation omitted). Thus, reasonable doubts about the existence of a factual issue should be resolved against the moving party. Id. at 630-31. However, when the non-moving party's claims are factually "implausible, that party must come forward with more persuasive evidence than would otherwise be [required] . . . ." California Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir 1987), cert denied, 484 U.S. 1006, 108 S. Ct. 698, 98 L. Ed. 2d 650 (1988) (citation omitted). "No longer can it be argued that any disagreement about a material issue of fact precludes the use of summary judgment." Id. "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 106 S. Ct. at 2552.

[3/] Defendants filed objections to some of the evidence submitted by Plaintiffs in opposition to the Motion for Summary Judgment. To the limited extent the Court may have cited to or relied on any evidence subject to an objection, and for purposes of this Motion only, the Court overrules Defendants' objections to that evidence.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

III. Analysis

Defendants' Motion for Summary Judgment raises numerous arguments in support of their contentions that Plaintiffs cannot prevail on any of their federal or state law claims. Because the Court's subject matter jurisdiction is based on Doe's claims brought pursuant to 42 U.S.C. § 1983, the Court will address those claims first.

Section 1983 does not itself create substantive rights but instead provides "a method for vindicating federal rights elsewhere conferred." Baker v. McCollan, 443 U.S. 137, 144 n.3, 99 S. Ct. 2689, 2694 n.3, 61 L. Ed. 2d 433 (1979). To state a § 1983 claim, a plaintiff must show (1) a deprivation of a constitutional or federal statutory right; and (2) that the defendant acted under color of state law. See West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 2254–55, 101 L. Ed. 2d 40 (1988). "In order for a person acting under color of state law to be liable under section 1983 there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability under section 1983." Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) (citing Monell v. New York City Dept. of Soc. Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)).

A. First Claim for Violation of the Equal Protection Clause of the Fourteenth Amendment

Plaintiffs Doe, K.D., and M.D. assert their equal protection claim against Ruelas. Plaintiffs contend that Ruelas treated them differently based on their perceived immigration status and national origin. "'The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike.'" Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001) (quoting City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985)). "'To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class.'" Id. (quoting Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998)). "'Discriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group.'" Id. at 687 (quoting Navarro v. Block, 72 F.3d 712, 716 n.5 (9th Cir. 1995)).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

Although Defendants' Motion for Summary Judgment argues that perceived immigration status is not a protected class, Defendants' Motion does not contend that national origin is anything other than a protected class. In any event, assuming for purposes of this Motion that both perceived immigration status and national origin are protected classes, see Plyler v. Doe, 457 U.S. 202, 223-24, 102 S. Ct. 2382, 2397-98, 72 L. Ed. 2d 786 (1982), Plaintiffs' equal protection claim nevertheless fails because there is no evidence that they were treated differently because of their perceived immigration status or national origin. Specifically, neither K.D. nor M.D., who was not a student at Madison while Ruelas served as its principal, claim to have been denied any educational opportunities by Ruelas. Nor has Doe provided any evidence, other than the alleged threat on August 25, 2015, that she was treated differently because of her perceived immigration status or national origin.

In fact, while Doe's equal protection claim is apparently based on her being treated differently in her efforts to volunteer at Madison, she claims in her Declaration that she was denied certain volunteer opportunities "for having complained to the District about [Ruelas'] threat to contact ICE." This is not an equal protection claim, but a First Amendment retaliation claim. Although the Ninth Circuit has not considered the issue, the First, Second, Fourth, Seventh, and Eleventh Circuits have all concluded that allegations that a plaintiff was treated differently in retaliation for the exercise of First Amendment rights do not implicate the Equal Protection Clause. See Nestor Colon Medina & Sucesores, Inc. v. Custodio, 964 F.2d 32, 45 (1st Cir. 1992); Bernheim v. Litt, 79 F.3d 318, 323 (2d Cir. 1996); Kirby v. City of Elizabeth City, 388 F.3d 440, 447 (4th Cir. 2004); Boyd v. Illinois State Police, 384 F.3d 888, 898 (7th Cir. 2004); Ratliff v. Dekalb County, 62 F.3d 338, 340-41 (11th Cir. 1995); see also Papas v. Leonard, No. 3:10-CV-00550-BR, 2012 WL 1445853, at *14-15 (D. Or. Apr. 25, 2012); Webber v. First Student, Inc., Civ. No. 11-3032-CL, 2011 WL 3489882 (D. Or. July 12, 2011). Plaintiffs cannot simply recharacterize their First Amendment retaliation claim as a violation of the Equal Protection Clause.

Apart from the facts that may support a First Amendment retaliation claim, Plaintiffs have no evidence that they were treated differently because of their perceived immigration status or national origin. Plaintiffs have therefore failed to create a triable issue as to a material fact in support of their claim for violations of their rights under the Equal Protection Clause of the Fourteenth Amendment. Ruelas is therefore entitled to summary judgment on this claim.

B. Second Claim for First Amendment Retaliation

The FAC's second claim for First Amendment retaliation is brought on behalf of Doe against Ruelas and PUSD. "The First Amendment forbids government officials from retaliating

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

against individuals for speaking out." Blair v. Bethel School Dist., 608 F.3d 540, 543 (9th Cir. 2010). To prevail on a § 1983 First Amendment retaliation claim, a plaintiff must prove:

> (1) he engaged in constitutionally protected activity; (2) as a result, he was subjected to adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protected activity; and (3) there was a substantial causal relationship between the constitutionally protected activity and the adverse action.

Id. Defendants do not contest that Doe was engaged in constitutionally protected activity. "Because it would be unjust to allow a defendant to escape liability for a First Amendment violation merely because an unusually determined plaintiff persists in his protected activity, we conclude that the proper inquiry asks 'whether an official's acts would chill or silence a person of ordinary firmness from future First Amendment activities.'" Mendocino Envtl. Ctr. v. Mendocino Cty., 192 F.3d 1283, 1300 (9th Cir. 1999) (quoting Crawford-El v. Britton, 93 F.3d 813, 826 (D.C. Cir. 1996)). "Intent to inhibit speech, which 'is an element of the claim,' can be demonstrated either through direct or circumstantial evidence." Id. at 1300-01 (citation omitted). "[T]iming can be considered as circumstantial evidence of retaliatory intent." Pratt v. Rowland, 65 F.3d 802, 808 (9th Cir. 1995).

Here, Doe's First Amendment Retaliation claim is based on both the alleged limitations on her ability to volunteer at Madison and Ruelas' alleged threat to have immigration authorities come to Madison if Doe filed a complaint with PUSD concerning the lunch policy. As the undisputed facts make clear, Doe did volunteer at Madison approximately 30 times during the 2015-16 school year and another 9 times during the 2016-17 school year. Doe was acknowledged as a volunteer in both years and her daughter testified that Doe volunteered in the classroom of at least one teacher during this time. In support of her First Amendment retaliation claim on this ground, Doe contends that this was a "distinct" volunteer program. Doe has not, however, submitted any facts describing how this "distinct" program was inferior to, or in any way different from, the volunteer opportunities she desired to participate in or had participated in before. As a result, Doe has not created even a triable issue of fact that this "distinct" volunteer program was an "adverse action," let alone an "adverse action by the defendant that would chill a person of ordinary firmness from continuing to engage in the protected activity." Blair, 608 F.3d at 543; see also Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012) ("'A plaintiff who fails to allege a chilling effect may still state a claim if he alleges he suffered some other harm,' that is 'more than minimal.'" (citations omitted)).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

Doe also contends that Ruelas' threat to have immigration authorities come to Madison if Doe submitted a complaint to PUSD concerning his lunch policy constitutes retaliation in violation of the First Amendment. In some circumstances, "the mere threat of harm can be an adverse action, regardless of whether it is carried out because the threat itself can have a chilling effect." Brodheim v. Cry, 584 F.3d 1262, 1270 (9th Cir. 2009). The Ninth Circuit has also stated, however, that "[r]etaliation claims involving government speech warrant a cautious approach by courts." Mulligan v. Nichols, 835 F.3d 983, 989 (9th Cir. 2016). According to the Ninth Circuit:

> Restricting the ability of government decisionmakers to engage in speech risks interfering with their ability to effectively perform their duties. It also ignores the competing First Amendment rights of the officials themselves. . . . [The] marketplace of ideas [fostered by the First Amendment] is undermined if public officials are prevented from responding to speech of citizens with speech of their own.

Id.; see also Nunez v. City of Los Angeles, 147 F.3d 867, 875 (9th Cir. 1998) ("All [the plaintiff] has shown is that he was bad-mouthed and verbally threatened [with a transfer or termination]. It would be the height of irony, indeed, if mere speech, in response to speech, could constitute a First Amendment violation."). The Ninth Circuit has therefore "set a high bar when analyzing whether speech by government officials is sufficiently adverse to give rise to a First Amendment retaliation claim." Mulligan, 835 F.3d at 989. The Ninth Circuit's approach, which it describes as consistent with the views of other circuits, provides that "a citizen's First Amendment rights are not violated 'in the absence of a threat, coercion, or intimidation intimating that punishment, sanction, or adverse regulatory action will imminently follow.'" Id. at 990 (quoting Suarez Corp. v. McGraw, 202 F.3d 676, 687 (4th Cir. 2000)).

The undisputed evidence is that no immigration authorities ever appeared at Madison. Therefore, even assuming for the sake of this motion that Ruelas made the threat to have immigration authorities appear at Madison, there is no evidence that he ever took any action to make good on his threat. As a result, Doe's effort to establish liability for Ruelas' alleged threat presents a issue of pure speech, as opposed to speech combined with some action, and implicates Ruelas' own First Amendment rights. Importantly, that alleged threat was contingent upon Doe filing a complaint with PUSD and Doe volunteered 30 times in the year following the alleged threat. Therefore, the undisputed facts establish that the threat lacked the "imminence" required by the Ninth Circuit to state a viable First Amendment retaliation claim based on a "mere threat." See id.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

Doe's First Amendment retaliation claim, whether based on the denial of certain volunteer opportunities or the threat to have immigration authorities appear at the school, and whether analyzed separately or collectively, fails because Doe has not created a triable issue of fact in support of the necessary elements of her claim that Ruelas' alleged conduct was either an imminent threat or an "adverse action" that would chill the First Amendment activities of a person of ordinary firmness.

The Court additionally concludes that Ruelas is entitled to qualified immunity on Doe's First Amendment retaliation claim. "Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (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." Ashcroft v. al-Kidd, 563 U.S. 731, 735, 131 S. Ct. 2074, 2080, 179 L. Ed. 2d 1149 (2011) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396 (1982)). Courts "have discretion to decide which of the two prongs of qualified immunity analysis to tackle first." Id. (citing Pearson v. Callahan, 555 U.S. 223, 236, 129 S. Ct. 808, 818, 172 L. Ed. 2d 565 (2009)). "Qualified immunity attaches when an official's conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" White v. Pauly, __ U.S. __, 137 S. Ct. 548, 551, 196 L. Ed. 2d 463 (2017) (quoting Mullenix v. Luna, __ U.S. __, 136 S. Ct. 305, 308, 193 L. Ed. 2d 255 (2015)). To determine if conduct violates a "clearly established" law or constitutional right, the Supreme Court does "not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." al-Kidd, 563 U.S. at 741, 131 S. Ct. at 2083. "'In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law.'" Kisela v. Hughes, __ U.S. __, 138 S. Ct. 1148, 1152 (2018) (quoting White, 137 S. Ct. at 551). The Supreme Court "has 'repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a high level of generality.'" Id. (quoting City & County of San Francisco v. Sheehan, __ U.S. __, 135 S. Ct. 1765, 1775-76 (2015)). "Because the focus is on whether the officer had fair notice that her conduct was unlawful, reasonableness is judged against the backdrop of the law at the time of the conduct." Brosseau v. Haugen, 543 U.S. 194, 198, 125 S. Ct. 596, 599, 160 L. Ed. 2d 583 (2004).

As the Court has already explained, Doe has not established a triable issue of fact in support of her claim that Ruelas violated her First Amendment rights. Doe's First Amendment claim against Ruelas therefore fails at the first step of the qualified immunity analysis. Doe's claim also fails at the second step of the qualified immunity analysis because it is not clearly established that allegedly preventing someone from volunteering at a school in precisely the manner they would like while that person is allowed to volunteer in another capacity would constitute an adverse action that would chill a person of ordinary firmness from exercising their

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

First Amendment rights. The Ninth Circuit's conflicting treatment of First Amendment retaliation claims based on "mere threats" also establishes that the law governing Doe's claim arising out of Ruelas' alleged threat to have immigration authorities come to Madison is not clearly established. Indeed, even at the "high level of generality" the Supreme Court rejects, a reasonable government official would not have fair notice of the types of statements that could create liability for First Amendment retaliation. Compare Mulligan, 835 F.3d at 989-90 (affirming summary judgment in favor of defendants for mere threat) and Nunez, 147 F.3d at 874-75 (same) with Brodheim, 584 F.3d at 1270 (reversing summary judgment in favor of defendant and stating that, "[b]y its very nature, a statement that 'warns' a person to stop doing something carries the implication of some consequence of a failure to heed that warning."). The parties have not cited to, and the Court's research has not found, a prior case in which a threat allegedly made by a government official during a conversation with a member of the public that did not include a warning of imminent adverse consequences was nevertheless sufficient to trigger liability for retaliation under the First Amendment. Because the law governing the conduct and statements allegedly undertaken by Ruelas is not clearly established, he is entitled to qualified immunity on Doe's First Amendment retaliation claim.

In their Opposition, Plaintiffs argue, pursuant to Federal Rule of Civil Procedure 56(d), that "outstanding discovery issues warrant denial of summary judgment because evidence could exist that would show a genuine dispute." Under Rule 56(d), the Court has discretion to extend a response deadline where "the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition." Accordingly, to meet its burden under Rule 56(d), Defendant must show: "(1) it has set forth in affidavit form the specific facts it hopes to elicit from further discovery; (2) that the facts sought exist; and (3) that the sought-after facts are essential to oppose summary judgment." Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp., 525 F.3d 822, 827 (9th Cir. 2008). An extension is not justified merely because discovery is incomplete or desired facts are unavailable. Jensen v. Redev. Agency of Sandy City, 998 F.2d 1550, 1554 (10th Cir. 1993). Rather, "the party filing the affidavit must show how additional time will enable him to rebut the movant's allegations of no genuine issue of fact." Id. "[T]he party seeking a continuance bears the burden to show what specific facts it hopes to discover that will raise an issue of material fact." Continental Maritime v. Pacific Coast Metal Trades, 817 F.2d 1391, 1395 (9th Cir. 1987). "The burden is on the party seeking additional discovery to proffer sufficient facts to show that the evidence sought exists, and that it would prevent summary judgment." Chance v. Pac-Tel. Teletrac, Inc., 242 F.3d 1151, 1161 n.6 (9th Cir. 2001).

Plaintiffs have not met their burden to justify a Rule 56(d) continuance. Plaintiffs' efforts to obtain other complaints that PUSD may have received concerning Ruelas, including

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

complaints in which Ruelas may have been accused of retaliating against others who filed complaints against him, would not provide any facts concerning the nature of the volunteer activities Doe was prevented from participating in or how her participation in a "distinct" program could constitute an adverse action that would chill a person of ordinary firmness. Nor would the outstanding discovery provide any evidence concerning the imminence of Ruelas' alleged threat to have immigration authorities come to Madison. Moreover, Plaintiffs did not propound the outstanding discovery until nearly three months after the Court issued its Civil Trial Scheduling Order. Plaintiffs have not provided an explanation for the delay in seeking the outstanding discovery. The Court therefore denies Plaintiffs' request pursuant to Rule 56(d).

Because Ruelas is entitled to summary judgment on Doe's First Amendment retaliation claim, PUSD is also entitled to summary judgment on the same claim. "[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell, 436 U.S. at 694, 98 S. Ct. at 2037-38; see also id. at 691, 98 S. Ct. at 2036 ("[A] municipality cannot be held liable under § 1983 on a respondeat superior theory."). "There are three ways to show a policy or custom of a municipality: (1) by showing 'a longstanding practice or custom which constitutes the 'standard operating procedure' of the local government entity;' (2) 'by showing that the decision-making official was, as a matter of state law, a final policymaking authority whose edicts or acts may fairly be said to represent official policy in the area of decision;' or (3) 'by showing that an official with final policymaking authority either delegated that authority to, or ratified the decision of, a subordinate.'" Menotti v. City of Seattle, 409 F.3d 1113, 1147 (9th Cir. 2005) (quoting Ulrich v. City & County of San Francisco, 308 F.3d 968, 984-85 (9th Cir. 2002)).

In the absence of a specific unconstitutional custom or policy, a plaintiff may attempt to impose liability on a municipality for a constitutional injury through a second route to municipal liability:

> [A] plaintiff need not allege that the municipality itself violated someone's constitutional rights or directed one of its employees to do so. Instead, a plaintiff can allege that through its omissions the municipality is responsible for a constitutional violation committed by one of its employees, even though the municipality's policies were facially constitutional, the municipality did not direct the employee to take the unconstitutional action, and the municipality

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

did not have the state of mind required to prove the underlying violation.

Gibson v. County of Washoe, 290 F.3d 1175, 1186 (9th Cir. 2002) (citing City of Canton v. Harris, 489 U.S. 378, 387-89, 109 S. Ct. 1197, 1204-05, 103 L. Ed. 2d 412 (1989)). Under this second route to municipal liability, a plaintiff must show: (1) that a municipal employee violated the plaintiff's rights; (2) that the municipality has customs or policies that amount to deliberate indifference (as that phrase is defined by Canton, 489 U.S. at 387, 109 S. Ct. at 1204); and (3) that these policies were the moving force behind the violation of the plaintiff's constitutional rights, in the sense that the municipality could have prevented the violation with an appropriate policy. See Gibson, 290 F.3d at 1193.

Under either method of establishing municipal liability, an official policy or custom cannot be established by random acts or isolated events. Thompson v. City of Los Angeles, 885 F.2d 1439, 1443–44 (9th Cir. 1989). Additionally, where there is no underlying constitutional violation by an individual government employee, there can be no Monell liability by the local government. See Quintanilla v. City of Downey, 84 F.3d 353, 355 (9th Cir. 1996) ("[A] public entity is not liable for § 1983 damages under a policy that can cause constitutional deprivations, when the factfinder concludes that an individual officer, acting pursuant to the policy, inflicted no constitutional harm to the plaintiff."); Forrester v. City of San Diego, 25 F.3d 804, 808 (9th Cir. 1994) (holding that "a finding that the arrests did not involve the use of unreasonable force" renders "moot the question of whether the city's policy authorized the use of constitutionally excessive force.").

Doe's Monell claim for First Amendment retaliation against PUSD fails because her claim against Ruelas fails. Because Ruelas did not violate Doe's First Amendment rights, PUSD cannot be liable for a First Amendment violation. Moreover, Doe has not alleged the existence of an unconstitutional policy or any custom that could amount to deliberate indifference. Indeed, at most, Doe has some evidence of a small number of isolated events that are insufficient to impose municipal liability. The Court therefore concludes that both Ruelas and PUSD are entitled to summary judgment on Doe's First Amendment retaliation claim.

C. Third Claim for Due Process Violations

Doe's third claim alleges a violation of the Fourteenth Amendment's Procedural Due Process Clause pursuant to 42 U.S.C. § 1983 and under Article I, section 7 of the California Constitution on behalf of Doe against Ruelas and PUSD. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property'

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). "A section 1983 claim based upon procedural due process thus has three elements: (1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; (3) lack of process. The Due Process Clause does not create substantive rights in property; the property rights are defined by reference to state law." Portman v. Cty. of Santa Clara, 995 F.2d 898, 904 (9th Cir. 1993); Shanks v. Dressel, 540 F.3d 1082, 1090 (9th Cir. 2008). "Not every procedural requirement ordained by state law, however, creates a substantive property interest entitled to constitutional protection. Rather, only those 'rules or understandings' that support legitimate claims of entitlement give rise to protected property interests." Shanks, 540 F.3d at 1091 (internal citations omitted). As the Supreme Court has explained:

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to v[i]ndicate those claims.

Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

"[S]tate law creates a legitimate claim of entitlement when it imposes significant limitations on the discretion of the decision maker." Gerhart v. Lake Cnty., Mont., 637 F.3d 1013, 1019 (9th Cir. 2011) (internal quotation marks omitted); see also Doyle v. City of Medford, 606 F.3d 667, 673–74 (9th Cir. 2010) (citing cases holding that "a statute may create a property interest if it mandates a benefit when specific non-discretionary factual criteria are met"). "[A] benefit is not a protected entitlement if government officials may grant or deny it in their discretion." Town of Castle Rock, Colo. v. Gonzales, 545 U.S. 748, 756, 125 S. Ct. 2796, 162 L. Ed. 2d 658 (2005).

In support of her assertion that she possesses a property or liberty interest in volunteering at the elementary school her children attended, Doe relies on California Education Code sections 35021 and 51101. California Education Code section 35021 provides:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

> Notwithstanding any other law, any person, except a person required to register as a sex offender . . . . may be permitted by the governing board of any school district to . . . serve as a nonteaching volunteer aide under the immediate supervision and direction of the certificated personnel of the district to perform noninstructional work which serves to assist the certificated personnel in performance of teaching and administrative responsibilities.

Cal. Educ. Code § 35021. California Education Code section 51101 states:

> [T]he parents and guardians of pupils enrolled in public schools have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children as follows:
>
> . . .
>
> (3) To volunteer their time and resources for the improvement of school facilities and school programs under the supervision of district employees, including, but not limited to, providing assistance in the classroom with the approval, and under the direct supervision, of the teacher. Although volunteer parents may assist with instruction, primary instructional responsibility shall remain with the teacher.

Cal. Educ. Code § 51101(a).

The parties have not cited to any case in which either section 35021 or 51101 of the California Education Code have ever been used to establish a property or liberty interest protected by the Fourteenth Amendment's Due Process Clause. Moreover, because section 35021 states that an individual "may be permitted by the governing board of any school district to . . . serve as a nonteaching volunteer aide," section 35021 creates the type of discretionary entitlement that does not give rise to a property or liberty interest triggering procedural due process protections. Similarly, section 51101(a)(3), although phrased in somewhat more mandatory language, is still subject to the approval of the teacher, and therefore also confers significant discretion on the decision maker that falls short of creating a property or liberty

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

interest under the Fourteenth Amendment's Due Process Clause. As a result, Doe's procedural due process claim fails and both Ruelas and PUSD are entitled to summary judgment.

Even if Doe could be considered to have a property or liberty interest in volunteering at Madison, California Education Code sections 35021 and 51101 do not establish a property or liberty interest in volunteering in precisely the manner the parent may wish to volunteer. As the California Education Code makes clear, a parent's "right" to volunteer is still subject to the approval of the teacher or other school authorities. Therefore, even assuming a parent has a general right to volunteer, subject to approval, that general right does not support a right to volunteer in any specific program at the school. Moreover, as with her First Amendment retaliation claim, Doe has not provided any evidence about how the "distinct" program she did volunteer in was inferior to the volunteer opportunities she claims to have been denied. The fact that Doe did volunteer in a "distinct" volunteer program establishes that she was not denied the very property or liberty interest she seeks to vindicate. Because Doe's due process claim is not that she was denied the right to volunteer in its entirety, but only to volunteer in a particular manner, her claim fails because the undisputed facts establish that she was allowed to volunteer and was therefore not denied the limited property or liberty interest that could conceivably be considered to have been created by the California Education Code.

The Court also concludes that, even if Doe had a property or liberty interest in volunteering in a particular manner, a reasonable official in Ruelas' position would not have known that depriving a parent of a specific volunteer opportunity, when that parent was volunteering in a different program at the school, would amount to a constitutional violation. The Court's conclusion is supported by a complete lack of relevant precedent establishing that such a right was clearly established during the 2015-16 and 2016-17 school years. For this reason, Ruelas is entitled to qualified immunity on Doe's Fourteenth Amendment procedural due process claim.

The Court additionally concludes that, for the same reasons as PUSD is entitled to summary judgment on Doe's Monell claim for First Amendment retaliation, PUSD is also entitled to summary judgment on Doe's Monell claim for violations of the Fourteenth Amendment's Due Process Clause. Specifically, as a result of the Court's conclusion that Ruelas did not violate Doe's procedural due process rights, PUSD is also entitled to summary judgment. See Quintanilla, 84 F.3d at 355. Doe has also not alleged the existence of an unconstitutional policy or any custom that could amount to deliberate indifference and, at most, has some evidence of a small number of isolated events that are insufficient to impose municipal liability.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 18-905 PA (FFMx)	Date	September 26, 2018
Title	Jane Doe, et al. v. Pasadena Unified School District, et al.		

D. Supplemental State Law Claims

The Court has supplemental jurisdiction over Doe's remaining state law claims under 28 U.S.C. § 1367(a). Once supplemental jurisdiction has been established under § 1367(a), a district court "can decline to assert supplemental jurisdiction over a pendant claim only if one of the four categories specifically enumerated in section 1367(c) applies." Exec. Software v. U.S. Dist. Court for the Cent. Dist. of Cal., 24 F.3d 1545, 1555–56 (9th Cir. 1994). The Court may decline supplemental jurisdiction under § 1367(c) if: "(1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction." Here, the Court has resolved all of the federal claims over which it has original jurisdiction. Accordingly, the Court declines to exercise supplemental jurisdiction over Doe's state law claims. See 28 U.S.C. § 1367(c)(3).

Conclusion

For all of the foregoing reasons, the Court concludes that Ruelas and PUSD are entitled to summary judgment on the federal claims asserted in this action. The Court declines to exercise supplemental jurisdiction over the remaining state law claims and dismisses those claims without prejudice. Pursuant to 28 U.S.C. § 1367(d), this Order acts to toll the statute of limitations on the state law claims for a period of thirty (30) days, unless state law provides for a longer tolling period. The Court will issue a Judgment consistent with this Order.

IT IS SO ORDERED.

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JANE DOE, an individual; K. D., a minor; M. D., a minor; EVA DEL RIO, an individual, Plaintiffs, v. PASADENA UNIFIED SCHOOL DISTRICT; JUAN RUELAS, in his individual and official capacities as principal of Madison Elementary School; MARIA REINA, in her individual and official capacities Defendants	Case No. 2:18-cv-00905-PA (FFM) Assigned to Courtroom: 9(a) The Hon. Percy Anderson **DECLARATION OF M.D.**

I, M.D., am 17 years old and declare as follows:

1. Between June 1, 2017 and May 1, 2017 I was a student at the Pasadena Unified School District.

2. On or about December 22, 2016, during the public comment portion of a PUSD Board meeting, my mother spoke before the PUSD. I did not hear my mother's comments.

3. However, minutes later, Defendant Reina told the PUSD Board that if Mr. Ruelas did not contact immigration on my mother that Ms. Reina would.

4. As Defendant Reina stated that she wanted to call immigration enforcement on my mother, she pointed at mother and called her by her true name. At this point I learned of Defendant Ruelas' threat against our mother.

5. Upon learning from Defendant Reina of Mr. Ruelas' threat against our mother at the December 22, 2016 board meeting, both K.D. and I suffered emotional distress.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed August 30, 2018, in Los Angeles, California.

M.D.

M.D.
Declarant

Thomas A. Saenz (SBN 159430)
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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JANE DOE, an individual; K. D., a minor; M. D., a minor; EVA DEL RIO, an individual,

Plaintiffs,

v.

PASADENA UNIFIED SCHOOL DISTRICT; JUAN RUELAS, in his individual and official capacities as principal of Madison Elementary School; MARIA REINA, in her individual and official capacities

Defendants

Case No. 2:18-cv-00905-PA (FFM)

Assigned to Courtroom: 9(a)
The Hon. Percy Anderson

DECLARATION OF K.D.

I, K.D., declare as follows:

1. On or about December 22, 2016, during the public comment portion of a PUSD Board meeting, my mother spoke before the PUSD Board. I did not hear or pay attention to what my mother said.

2. Howevever, minutes later, Ms. Reina told the PUSD Board that if Mr. Ruelas did not contact immigration on my mother that Ms. Reina would.

3. As Ms. Reina stated that she wanted to call immigration enforcement on my mother, she pointed at my mother and called her by her true name. At this point I learned of Defendant Ruelas' threat against our mother.

4. Between August 2015 and June 2017 I was a student at Madison Elementary where I came into contact or saw Defendants Ruelas and Reina. Upon hearing from Defendant Reina of Mr. Ruelas' threat against our mother at the December 22, 2016 board meeting, I suffered emotional distress. My continued contact with Defendants Ruelas and Reina caused me to recall my emotional distress.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed August 30, 2018, in Los Angeles, California.

K.D

K.D.
Declarant

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JANE DOE, an individual; K. D., a minor; M. D., a minor; EVA DEL RIO, an individual,

Plaintiffs,

v.

PASADENA UNIFIED SCHOOL DISTRICT; JUAN RUELAS, in his individual and official capacities as principal of Madison Elementary School; MARIA REINA, in her individual and official capacities

Defendants

Case No. 2:18-cv-00905-PA (FFM)

Assigned to Courtroom: 9(a)
The Hon. Percy Anderson

DECLARATION OF JANE DOE

DECLARATION OF JANE DOE

I, JANE DOE, declare as follows:

1. I am over 18 years of age. This document has been translated to me by my attorney.

2. I am a Plaintiff in the above-entitled case.

3. Except as stated herein, the matters stated below are of my own personal knowledge. I am a monolingual Spanish-speaker and have had the contents of the motion and this declaration translated to me by my counsel, Joel Marrero. If called to testify as a witness, I could and would testify competently hereto.

4. I am K.D. and M.D.'s mother.

5. Between June 1, 2015 and May 1, 2017 M.D. was a minor in the Pasadena Unified School District.

6. Since June 1, 2015 K.D. has been a minor at the Madison Elementary School. Madison Elementary is a school within the Pasadena Unified School District.

7. Before June 1, 2015 I served as a parent volunteer at Madison Elementary.

8. On August 25, 2015, I met with Principal Ruelas to complaint about the School's practice that involved throwing away students' lunches if not consumed in a short period of time. At the time one of my minor daughters, K.D., suffered from anemia and, as a result, I was concerned that the reduced lunch time hours would impact my daughter's condition. I asked Mr. Ruelas that if the problem was not addressed I would be forced to file a complaint against him with the PUSD. In response, Defendant Ruelas threatened to contact federal immigration enforcement against me if filed a complaint against him with the PUSD.

9. On September 24, 2015, I described the events that occurred on or about August 25, 2015, including Defendant Ruelas's threat to contact federal immigration enforcement should I file a complaint against him, to the PUSD Board during the public comment period of the Board's meeting. On or about September 29, 2015, I filed a formal complaint under PUSD Uniform Complaint Procedures with Defendant PUSD (the "District Complaint"); the complaint alleged (1) race-based discrimination and (2) complained that Defendant Ruelas threatened to retaliate by contacting federal immigration enforcement against me if I pursued my administrative complaint against him. A true and correct copy is attached hereto as **Exhibit A**.

10. On or about October 22, 2015, Defendant PUSD's Human Resources office sent me a letter asserting that my District Complaint did not fall within coverage of the Uniform Complaint Procedures ("PUSD Letter"). A true and correct copy is attached hereto as **Exhibit B**.

11. The PUSD Letter further stated that the District referred my District Complaint to Defendant Ruelas, the principal whom I complained about; that the District gave Defendant Ruelas a copy of the District Complaint; and that Defendant Ruelas would contact me shortly.

12. In or about October or November 2015, I met Ivonne Manzano, a family liaison at the School, and Defendant Ruelas to discuss my complaints concerning Defendant Ruelas.

13. During that meeting, Ms. Manzano asserted that Defendant Ruelas made no immigration enforcement-related threats to me. At the meeting, Ms. Mazano told me that I was "defaming" Defendant Ruelas and that Defendant Ruelas could take action against me.

14. I left that meeting feeling intimidated, humiliated and emotionally distressed.

15. Prior to the 2015-2016 school year, I had for years volunteered at Madison Elementary School without any problems. I had also, for years, participated in family and/or community engagement events held at the School.

16. In or about October or November 2015, PUSD notified me that I passed a District background check and had been approved to volunteer at the District for the 2015-16 school year.

17. Beginning in or about November 2015, and following my meeting with the PUSD representative and Defendant Ruelas, I, on multiple occasions, went to Madison Elementary School and reported to its volunteer coordinator so that I could perform volunteering duties at the School. In each instance, the volunteer coordinator informed me that a list of approved parent volunteers had not yet been created and that therefore I could not yet volunteer at the School.

18. I observed others volunteering at the School during some of the period of time during which the School's volunteer coordinator told me that a list of approved volunteer coordinators had not yet been developed.

19. I believe that Defendant Ruelas barred me from volunteering at the School in the 2015-16 school year for having complained to the District about his threat to contact ICE.

20. On or about September or October 2016, I reported to Madison Elementary School's volunteer coordinator and submitted paperwork to renew my permission from PUSD to volunteer for the 2016-17 school year.

21. On or about September or October 2016, the Madison Elementary School's volunteer coordinator called me and told me that I could not volunteer at the School because Defendant Ruelas did not want me to volunteer.

22. I believe Defendant Ruelas barred me from volunteering at Madison Elementary School in the 2016-17 school year because I complained to the District about his threat to call ICE.

23. I was not permitted to volunteer at Madison Elementary School during the 2015-16 and 2016-17 school years, as I had in prior years, except that during the 2015-16 school year, I volunteered in a distinct program located on Madison Elementary School grounds because I did not have to report to the School's volunteer coordinator in order to do so.

24. On December 22, 2016, during the public comment portion of a PUSD Board meeting, I informed the PUSD Board that I was offended that the District responded to my complaint about Defendant Ruelas's threat to call ICE to the School by referring my complaint to Defendant Ruelas, the very principal who was the subject of my complaint.

25. Minutes later, Defendant Reina, who, on information and belief, was employed at the time as a "Noon Aide" at the School, told the PUSD Board that she wanted to call immigration enforcement on me if Mr. Ruelas did not follow through on his threat against me.

26. Superintendent McDonald and each individual member of the PUSD Board, witnessed or have knowledge of my and Defendant Reina's comments at the December 22, 2016 PUSD Board meeting, and made no effort to address Defendant Reina's immigration enforcement statements at the Board meeting.

27. I suffered emotional distress as a result of Defendant Ruelas' conduct, Reina's conduct, and PUSD's policy and custom of disregarding of retaliation or threats of retaliation complaints against Defendant Ruelas. Commencing in the fall 2015 semester, I decreased my participation in family engagement events at the School to reduce the risk of retaliation or follow-through on Defendant Ruelas's threat to call ICE.

28. My inability to volunteer at Madison Elementary School and decreased participation in family and community engagement events at the School because of fear that Defendant Ruelas may call ICE, have caused me emotional distress.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed August 31, 2018, in Los Angeles, California.

JANE DOE

JANE DOE
Declarant

HUMAN RESOURCES

October 22, 2015

Ms. Blanca Silva
115 East Orange Grove Blvd
Pasadena, CA. 91103

Re: Uniform Complaint Re: Madison Elementary School

Dear Ms. Silva:

Your above referenced complaint was received by the Pasadena Unified School District and as the District Compliance Officer; this matter had been referred to my attention. A review of the complaint reveals that this matter does not fall within the guidelines of the Uniform Complaint Procedures.

However, in order to address your concerns, this matter has been referred to:

Mr. Juan Ruelas, Principal
Madison Elementary School
515 Ashtabula St,
Pasadena, California 91104
Phone: 626-396-5780
ruelas.juan@pusd.us

Mr. Ruelas has been provided with a copy of your complaint and will be contacting you directly.

Respectfully,

Kathleen M. Sanchez
Chief Human Resources Officer

cc: James Madison Elementary School, Principal