

9.1 Section 1983 Claim—Introductory Instruction

The plaintiff [*name*] brings [his] [her] [*other pronoun*] claim[s] under the federal statute, 42 U.S.C. § 1983, which provides that any person or persons who, under color of state law, deprives another of any rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

Comment

Past decisions of the Supreme Court and the Ninth Circuit used the phrases “under color of law” and “under color of state law” interchangeably. *Compare, e.g., Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994), and *Benavidez v. County of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021) (using phrase “under color of law”), with *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 171 (2023), and *Chaudhry v. Aragon*, 68 F.4th 1161, 1171 (9th Cir. 2023) (using phrase “under color of state law”).

Because recent Supreme Court and Ninth Circuit cases more frequently use the phrase “under color of state law,” rather than “under color of law,” the Committee uses the phrase “under color of state law.” *See, e.g., Talevski*, 599 U.S. at 171 (using phrase “color of state law”); *Torres v. Madrid*, 592 U.S. 306, 319 (2021) (same); *Chaudhry*, 68 F.4th at 1171 (same); *Roberts v. Springfield Util. Bd.*, 68 F.4th 470, 474 n.2 (9th Cir. 2023) (same).

Generally, “a public employee acts under color of state law while acting in his official capacity or while exercising his responsibilities pursuant to state law.” *Paeste v. Government of Guam*, 798 F.3d 1228, 1238 (9th Cir. 2015) (quoting *West v. Atkins*, 487 U.S. 42, 50 (1988)); *but see Thai v. County of Los Angeles*, 127 F.4th 1254, 1261 (9th Cir. 2025) (holding that law enforcement officers from the Los Angeles District Attorney’s Office were acting under color of federal law, not under color of state law, where the source of authority for the joint federal-state task force was federal in nature and the challenged conduct was subject to immediate control of federal supervisors).

The color of law inquiry and the state action inquiry are the same. *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 747 (9th Cir. 2020). When a private actor’s conduct is challenged as “state action” under § 1983, a court looks to two requirements that the private actor must meet: (1) the state policy requirement; and (2) the state actor requirement. *Wright v. Serv. Emps. Int’l Union Loc. 503*, 48 F.4th 1112, 1121 (9th Cir. 2022). Under the first requirement, the question is whether the claimed constitutional deprivation resulted from the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible. *Id.* at 1121-22. Under the second requirement, courts generally use one of four tests outlined by the Supreme Court to examine whether the party charged with the deprivation could be described in all fairness as a “state actor.” *Id.* at 1122. Those tests are the public function test, the joint action test, the state compulsion test, and the governmental nexus test. *Id.*; *see Rawson v. Recovery Innovations*,

Inc., 975 F.3d 742, 747 (9th Cir. 2020).

For a discussion of whether a public official’s social media activity constitutes action under color of state law, see *Lindke v. Freed*, 601 U.S. 187, 199 (2024) (holding that where a city manager deleted comments from posts on his individual social media page and blocked the commenter, a showing of state action would require a plaintiff to show that the city manager “(1) had actual authority to speak on behalf of the State on a particular matter, and (2) purported to exercise that authority in the relevant posts”); *Garnier v. O’onnor-Ratcliff*, 136 F.4th 1181, 1192-94 (9th Cir. 2025) (applying the *Lindke* test to hold that a school board president’s blocking of parents on social media accounts that most closely resembled official accounts constituted state action).

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