In the

United States Court of Appeals

for the Seventh Circuit

No. 21-2955

ALEXANDER MILCHTEIN and
ESTER RIVA MILCHTEIN,

Plaintiffs-Appellants,

v.

MILWAUKEE COUNTY, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Wisconsin.
No. 19-CV-1834-JPS — **J.P. Stadtmueller**, *Judge.*

SUBMITTED* MAY 17, 2022 — DECIDED AUGUST 2, 2022

Before SYKES, *Chief Judge*, and KIRSCH and JACKSON-AKIWUMI, *Circuit Judges*.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

SYKES, *Chief Judge*. Alexander and Ester Riva Milchtein live in Milwaukee, Wisconsin, and have 15 children. The family has a long history of encounters with child-welfare authorities. At different points over the last decade, three daughters—C.M., S.M., and D.M.—were removed from the Milchteins' custody and placed in group homes and the foster-care system. The Milchteins allege that these interventions were unwarranted and hindered their ability to raise their children in accordance with their Orthodox Jewish faith.

We saw an earlier round of this dispute in *Milchtein v. Chisholm*, 880 F.3d 895 (7th Cir. 2018), where the Milchteins sought declaratory and injunctive relief with respect to the custody of C.M. and S.M. We affirmed the dismissal of the case as moot because the two daughters had reached the age of majority, eliminating the possibility of meaningful prospective relief. The Milchteins argued that the case remained justiciable due to contemporaneously developing events relating to a third child who was then still a minor; we rejected the argument based on the abstention doctrine set out in *Younger v. Harris*, 401 U.S. 37 (1971).

Now the Milchteins have sued again, this time seeking money damages and adding claims regarding the custody of D.M. The couple's 100-page complaint names over 20 defendants—among them Milwaukee County, several state and county officials, a children's hospital and some of its employees, and a children's group home—and asserts a glut of constitutional claims. The bulk of the claims come under 42 U.S.C. § 1983 and include alleged violations of the rights to familial integrity, free exercise of religion, and due process of law. A final claim is asserted under 42 U.S.C.

§ 1985(3) for an alleged conspiracy to deprive the Milchteins of their constitutional rights.

The district judge dismissed the complaint for failure to state a claim. For some claims he determined that the statute of limitations barred recovery. For other claims he concluded that the complaint failed to allege conduct plausibly exposing any defendant to liability. And yet other claims he held foreclosed by absolute immunity. The judge reasoned correctly across the board, so we affirm.

I. Background

Alexander and Ester Riva Milchtein describe themselves as members of "a very strict Orthodox Jewish community in Milwaukee." Alexander is a rabbi and leads a local synagogue. The Milchteins follow "detailed and specific" religious practices, including Sabbath rituals and strict dietary restrictions, and they seek to raise their children in accordance with their beliefs. They do so partly by home-schooling or sending their children to private Jewish schools; public schooling, they explain, is prohibited in their religious tradition.

The Milchteins filed this lawsuit seeking money damages and equitable relief for actions taken by the defendants with respect to three of their daughters: C.M., S.M., and D.M. On appeal the scope of the case has narrowed considerably. The Milchteins no longer pursue claims for equitable relief, which were dismissed in the district court based on our reasoning in *Milchtein*, 880 F.3d 895. Nor do they advance claims with respect to C.M., which were dismissed as untimely. As the case comes to us, only the claims for money damages regarding the custody of S.M. and D.M. remain.

We tailor our discussion accordingly. Even in its narrowed form, the case involves lengthy factual allegations regarding the involvement of child-welfare authorities in the custody of S.M. and D.M. We recount the background as alleged in the complaint, accepting the allegations as true and giving the Milchteins the benefit of reasonable inferences. *White v. Keely*, 814 F.3d 883, 887–88 (7th Cir. 2016). But of course we do not vouch for anything in this chronology.

A. Events Relating to the Custody of S.M.

In September 2012 Lori Kornblum, an Assistant District Attorney for Milwaukee County, received a report from one of S.M.'s former teachers that S.M. was afraid to go home. Kornblum relayed the report to officials at Milwaukee County Child Protective Services and sought an order from a state-court judge to remove the Milchteins' children from their care on grounds of suspected abuse and neglect.[1] The judge thought the proposed intervention unwarranted but issued an order permitting Child Protective Services officials to interview S.M. at the Milchteins' home.

Two Child Protective Services social workers went to the Milchteins' home hoping to interview S.M. There they learned that she was attending a boarding school in Illinois. The social workers traveled to Illinois and interviewed S.M., and she allegedly told them that she was not in fact afraid to return home. Child Protective Services then dropped the investigation, but the social workers told S.M. that the agency could help her if she returned to Milwaukee.

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[1] Despite its name, Milwaukee County Child Protective Services is an arm of the State of Wisconsin, not Milwaukee County.

A few months later in December 2012, S.M. took a bus home to Milwaukee. Upon arriving she contacted one of the social workers who had previously interviewed her and explained that she was fearful to return home. Child Protective Services officials placed S.M. into foster care. Meanwhile, the state initiated protective-services proceedings on behalf of S.M. on charges of parental neglect and abuse; a trial was set for August 2013.

In April 2013 the court dismissed the parental neglect charge but allowed the abuse charge to go forward. In August, however, the state voluntarily dismissed the remaining charge, explaining that the chances of prevailing did not justify the impact on the potential witnesses.

After learning that her protective-services case was dismissed, S.M. ran away from C.M.'s apartment, where she had spent the night prior to a scheduled hearing in her case. A week later she placed a call from a bus station to Sara Waldschmidt, a case worker employed by Children's Hospital and Health System, Inc. (The complaint does not explain how S.M. knew Waldschmidt.) Waldschmidt referred the matter to Child Protective Services. No agency official was available to retrieve S.M., so David Blumberg (who had previously fostered C.M.) picked her up from the bus station. The Milchteins say that this occurred without a court order. At Child Protective Service's request, Blumberg and his family agreed to foster her.

While staying with the Blumbergs, S.M. lived a lifestyle incompatible with her parents' beliefs and wishes. She followed her own religious beliefs rather than theirs, she attended public school, and she received guitar and driving lessons. The Milchteins also claim that they were prohibited

from attending or scheduling S.M.'s medical appointments despite expressing a desire to do so. S.M.'s protective order expired when she turned 18, and the Milchteins say that they have never reunited with their daughter.

B. Events Relating to the Custody of D.M.

In 2016 D.M. attempted suicide while she was attending a boarding school in Israel. After a stay in an Israeli hospital, she returned to Milwaukee and lived with her parents. In April 2017 she ran away from home after an argument with her father. On April 5 a Milwaukee County court adjudicated D.M. a runaway and permitted her to stay for up to 20 days at Pathfinder's Youth Shelter, a home for runaway children, without the Milchteins' consent.

While D.M. was staying at Pathfinder's, Child Protective Services and Milwaukee County's Department of Health and Human Services ("DHHS") sought a court order to take temporary physical custody of her because she was afraid to return home. The order was issued, and on April 24 D.M. was taken into custody by an official not named as a defendant in this case. In July 2017 after several more hearings regarding D.M.'s custody, the court ordered D.M. to be placed at Bella's Group Home because she was "habitually truant from home" and living at home would be contrary to her welfare.

At Bella's Group Home, D.M. lived a lifestyle inconsistent with her parents' beliefs and wishes. She used a cell phone not provided by her parents, took a bus on the Sabbath, and on one occasion attended a Christian church. The Milchteins voiced their concerns about these activities to the group home. In response Bella's told Sara Woitel, a

DHHS social worker assigned to D.M.'s case, that it did not want to be contacted directly by the Milchteins. The group home asked Woitel to convey this request to the Milchteins, and she did so.

On July 26 Bella's provided 30 days' notice that it would be removing D.M. from the group home, citing D.M.'s behavioral problems and interference from her parents. Woitel communicated the removal decision to the Milchteins. Before the 30-day period elapsed, however, Bella's rescinded the removal decision. On September 12 the group home again provided 30 days' notice of removal, and Woitel again communicated the removal decision. This time Bella's did not rescind the decision.

On October 2 an "off-the-record meeting" (as the complaint describes it) was convened to discuss D.M.'s upcoming removal from Bella's. In attendance were the judge assigned to D.M.'s case, D.M. and her lawyers, and the Milchteins. According to the Milchteins, the upshot of the meeting was that no judicial action was immediately necessary regarding D.M.'s placement.

Despite that resolution, the next day Woitel sought an emergency hearing concerning D.M.'s upcoming removal from Bella's before a different judge—one who had not been involved in D.M.'s case. The October 3 hearing proceeded ex parte because the Milchteins did not receive notice of it. The Milchteins claim that Woitel made false statements at the hearing regarding the family's home situation and their fitness to care for D.M. They also allege that Woitel made similar false statements in work reports and that those statements were included in documents she submitted as evidence at the hearing.

After hearing from Woitel and D.M.'s attorney, the new judge "acted as an [i]ntake [w]orker" and took temporary physical custody of D.M. The judge then ordered Child Protective Services to provide for her placement outside the Milchteins' home. A follow-up hearing was scheduled for the next day, October 4. The complaint does not say what transpired at the follow-up hearing or whether the Milchteins attended it.

Later that month, D.M. was again placed at Pathfinder's Youth Shelter. Mark Mertens, a DHHS administrator who at times acted as D.M.'s guardian, signed a form consenting to D.M.'s stay at the shelter. Kelly Pethke, another DHHS administrator, authorized the release of D.M.'s medical and educational records for the purpose of assisting any family who might foster D.M. In November 2017 D.M. was placed with a foster family, and in May 2018 she left the foster family and returned to the Milchteins' home.

C. Proceedings Below

On December 15, 2019, the Milchteins filed this suit seeking damages for alleged violations of their constitutional rights to familial integrity, free exercise of religion, and due process of law. The defendants for these § 1983 claims include: several Wisconsin state officials; Milwaukee County and DHHS; DHHS officials Mertens, Pethke, and Woitel; and Children's Hospital and Health System, Inc., and some of its employees, including Waldschmidt. The Milchteins also allege an unlawful conspiracy between Woitel and Bella's Group Home to deprive them of their constitutional rights in violation of § 1985(3).

Across two orders, the judge dismissed all claims with prejudice for failure to state a claim. He concluded that the claims relating to the custody of S.M. were untimely because the complaint's allegations confirmed that they had accrued prior to the six-year limitations period. He dismissed those relating to the custody of D.M. on separate grounds: the complaint either failed to plead any conduct that might subject the defendants to liability or pleaded only conduct for which the defendants were entitled to absolute immunity.

II. Discussion

We review the judge's dismissal orders de novo. *White*, 814 F.3d at 887–88. To survive a motion to dismiss for failure to state a claim, the Milchteins' complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A. Claims Relating to the Custody of S.M.

The Supreme Court has held that the Fourteenth Amendment's Due Process Clause shields certain aspects of the parent–child relationship from state interference. *See, e.g.*, *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923). This component of substantive due process—sometimes called the right to "familial integrity," *Sebesta v. Davis*, 878 F.3d 226, 232 (7th Cir. 2017), or "familial relations," *Doe v. Heck*, 327 F.3d 492, 517 (7th Cir. 2003)—includes a parent's interest in the "care, custody, and management" of his children, *Brokaw v. Mercer*

County, 235 F.3d 1000, 1018 (7th Cir. 2000) (quoting *Santosky v. Kramer*, 455 U.S. 745, 753 (1982)). The Milchteins contend that S.M.'s removal from their home deprived them of this right.

The complaint also invokes a right to "familial association" protected by the First Amendment (as incorporated through the Fourteenth Amendment). This framing exhibits a common confusion about the constitutional right to "association." *See Montgomery v. Stefaniak*, 410 F.3d 933, 937 (7th Cir. 2005). The Supreme Court has explained that the Constitution protects "'freedom of association' in two distinct senses": "expressive association," which concerns the ability to associate for First Amendment activities, and "intimate association," which is a component of substantive due process and concerns the right to "enter into and maintain certain intimate human relationships." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617–18 (1984). The Milchteins' claims regarding the custody and care of their daughters are better understood under the rubric of substantive due process. *See, e.g.*, *Sebesta*, 878 F.3d at 232–33. We note, however, that the present analysis would be no different even if the complaint could be read to concern the right to associate for expressive purposes.

The judge dismissed as untimely all claims relating to the custody of S.M. In § 1983 actions, state law provides the applicable statute of limitations; specifically, we look to "the statute of limitations for personal injury actions in the state in which the alleged injury occurred." *Behav. Inst. of Ind., LLC v. Hobart City of Common Council*, 406 F.3d 926, 929 (7th Cir. 2005). We have long looked to Wisconsin's six-year limita-

tions period.[2] WIS. STAT. § 893.53 (2015); *Kennedy v. Huibregtse*, 831 F.3d 441, 442 (7th Cir. 2016). Accrual of a § 1983 claim—a matter governed by federal law—occurs "when the plaintiff knows or should know that his or her constitutional rights have been violated." *Kelly v. City of Chicago*, 4 F.3d 509, 511 (7th Cir. 1993) (quotation marks omitted).

The Milchteins sued on December 15, 2019, so claims accruing prior to December 15, 2013, are untimely. A complaint need not anticipate affirmative defenses like the statute of limitations and will not be dismissed just because it does not confirm its own timeliness. *Indep. Tr. Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930, 935 (7th Cir. 2012). Nevertheless, dismissal for untimeliness is proper when the plaintiff's allegations establish that the statute of limitations bars recovery. *See, e.g.*, *Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir. 2009).

The complaint clearly sets out the timeline of relevant events. In December 2012 Child Protective Services officials seized S.M. because she was afraid to go home. In August 2013 Sara Waldschmidt received a call from S.M., who had run away a week earlier after learning that her protective-services case had been dismissed. Waldschmidt reported the call to Child Protective Services, leading to S.M.'s placement with the Blumbergs (who are not defendants). Waldschmidt's referral is the last allegation against any defendant relating to S.M.'s custody. The defendants main-

[2] The statute was recently amended to provide a three-year limitations period, *see* WIS. STAT. § 893.53 (2018), but here all agree that the older version of the statute applies.

tain that the Milchteins' injury occurred—and thus any claims accrued—by August 2013 at the latest, conclusively establishing them as untimely.

The Milchteins do not dispute that they could have sued by the time S.M. had been placed with the Blumbergs. They instead argue that their complaint is saved by undated allegations that plausibly occurred within the limitations period and give rise to independent claims for relief. They identify just one such allegation, however: at some unspecified time, the Milchteins "were denied" the chance to schedule and attend S.M.'s medical appointments. This allegation opts for the passive voice and fails to tell us which defendant (if any) is responsible for denying the couple access to S.M.'s appointments. The Milchteins' briefs are likewise silent on how the allegation might plausibly be understood to be directed at a particular defendant or defendants. Because we cannot pin the allegation on any defendant, it cannot state a claim for relief.

In a final effort, the Milchteins argue that their claims are timely by application of the continuing-violation doctrine, a special accrual rule under which a claim accrues not just once but repeatedly as a defendant continually wrongs a plaintiff. *See United States v. Midwest Generation, LLC*, 720 F.3d 644, 646 (7th Cir. 2013); *Heard v. Sheahan*, 253 F.3d 316, 318 (7th Cir. 2001). As the Milchteins see it, a claim accrued each day they were separated from S.M. and unable to raise her in accordance with their beliefs. We decline to consider whether the continuing-violation doctrine applies here, however, because the couple failed to raise the argument below. Indeed, it was the judge who first raised the issue—he speculated that the doctrine does not apply—in

his order dismissing the claims. The argument is therefore waived on appeal, *Mahran v. Advoc. Christ Med. Ctr.*, 12 F.4th 708, 713 (7th Cir. 2021), and the judge properly dismissed as untimely all claims relating to the custody of S.M.

B. Claims Relating to the Custody of D.M.

The remaining claims, which relate to the custody of D.M., fall into three groups. First, there are § 1983 claims against three DHHS officials for violations of the rights to familial integrity, free exercise of religion, and due process of law. Next, there are § 1983 claims against Milwaukee County and DHHS flowing from their officials' actions in removing D.M. from the Milchteins' home. And last, there is a § 1985(3) claim against Bella's Group Home and Sara Woitel, a DHHS social worker, for unlawfully conspiring to deprive the Milchteins of their constitutional rights.

1. ***Familial Integrity and Free Exercise of Religion***

We begin with a subset of the claims against the three DHHS officials. Mark Mertens was an administrator who at times acted as D.M.'s guardian, Kelly Pethke was also an administrator for the agency, and Sara Woitel was a social worker assigned to D.M.'s case. The Milchteins claim that the trio violated their right to familial integrity by causing D.M.'s absence from their home.[3] They also claim that the

[3] Like the claims concerning the custody of S.M., those relating to the custody of D.M. are best understood as invoking the component of substantive due process that protects the right to familial relations, not the First Amendment right to expressive association. But again the analysis does not turn on how we frame the Milchteins' claims. As we explain, the complaint fails to state a claim relating to the custody of D.M. because it either fails to allege any conduct plausibly exposing any defendant to liability or alleges only conduct for which the defendants

defendants violated their First Amendment right to free exercise of religion (as incorporated through the Fourteenth Amendment) by limiting their ability to raise D.M. in accordance with their religious beliefs and inculcate her with religious instruction.

Critically here, § 1983 "creates a cause of action based on personal liability and predicated upon fault." *Vance v. Peters*, 97 F.3d 987, 991 (7th Cir. 1996) (quotation marks omitted). A government official is liable only if he personally caused or participated in a constitutional deprivation. *Brokaw*, 235 F.3d at 1012; *Vance*, 97 F.3d at 991. Consequently, a claim will not survive a motion to dismiss unless it "plead[s] that [a] Government-official defendant, through the official's own individual actions, has violated the Constitution." *Iqbal*, 556 U.S. at 676.

The Milchteins point to just two specific allegations that they say subject either Mertens, Pethke, or Woitel to liability for violations of their rights to familial integrity and free exercise of religion. The first: after the October 3 hearing concerning D.M.'s removal from Bella's Group Home, Pethke signed forms authorizing the release of D.M.'s medical and educational records. For example, an exhibit to the complaint shows that Pethke authorized the release of certain hospital records to Woitel for the purpose of assisting any family that might foster D.M. The second: also after the October 3 hearing, Mertens signed a form consenting to D.M.'s placement at Pathfinder's Youth Shelter.

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are entitled to absolute immunity; those conclusions hold no matter which theory of liability we consider.

Neither allegation plausibly states a claim. We cannot reasonably infer that Pethke violated the Milchteins' right to familial integrity or free exercise of religion just by authorizing the release of D.M.'s records. Likewise, we cannot reasonably infer that Mertens's approval of D.M.'s stay at a youth shelter—when D.M. was not in her parents' custody and after a judge had ordered her continued placement outside the home—effected a constitutional deprivation.

Lacking allegations of specific wrongful conduct, the Milchteins contend that we can infer liability based solely on the defendants' official roles. Among the three we have two DHHS administrators—one who acted as D.M.'s guardian—and a DHHS social worker; at least one of them, the Milchteins insist, must be responsible for violating their constitutional rights. But the conclusion does not follow. No matter how closely the three were involved in D.M.'s case, other officials might be the cause of any constitutional violation. As a case in point, the complaint identifies the official who initially took D.M. into custody, and that person is not even a named defendant. Moreover, the Milchteins' theory doesn't tell us who specifically is responsible—is it Mertens or Pethke or Woitel?—and for what conduct. An allegation that a group of defendants is liable "without any details about who did what" does not state a claim for relief. *Bank of Am., N.A. v. Knight*, 725 F.3d 815, 818 (7th Cir. 2013).

Finally, the Milchteins argue that Mertens is liable as a supervisor of others who directly caused constitutional violations. An official may be liable in a supervisory capacity if he was "personally involved in [a] constitutional violation." *Gill v. City of Milwaukee*, 850 F.3d 335, 344 (7th Cir. 2017). This might occur if a supervisor knowingly facilitates,

approves, or condones constitutional violations carried out by his subordinates. *Matthews v. City of East St. Louis*, 675 F.3d 703, 708 (7th Cir. 2012). But here the complaint doesn't tell us how Mertens's subordinates committed any constitutional violations. In fact, it does not even identify any persons that Mertens supervised. The complaint fails to state a claim against Mertens, Pethke, or Woitel for violations of the rights to familial integrity or free exercise of religion.

2. ***Due Process of Law***

A separate § 1983 claim against the DHHS officials concerns just Woitel. She sought a court order for intervention in D.M.'s case from one judge after another judge had concluded that judicial intervention was unnecessary despite her upcoming removal from Bella's Group Home. An ex parte hearing followed at which she allegedly misrepresented the Milchteins' ability and willingness to care for D.M. As a result the state court took custody of D.M. and ordered Child Protective Services to find her a new placement outside the Milchteins' home. The Milchteins contend that this sequence of events violated their right to the due process of law.

Woitel maintains that she is entitled to absolute immunity. In the district court, the judge agreed based on *Millspaugh v. County Department of Public Welfare*, 937 F.2d 1172 (7th Cir. 1991). There, two mothers alleged that a social worker's actions with respect to their children violated their right to the due process of law. *Id.* at 1174. The social worker had taken custody of the children after applying for and obtaining a court order to do so. *Id.* at 1173–74. She then failed to notify the mothers of subsequent custody hearings (causing

them to proceed ex parte), failed to furnish the court with evidence favorable to their case, and continued to pursue the litigation even after it was clear that they were entitled to custody. *Id.* at 1174–75.

The *Millspaugh* social worker argued that she was entitled to absolute or qualified immunity for her actions. We observed that a social worker pursuing a child-custody case acts like a prosecutor and witness, both of whom are entitled to absolute immunity for their actions taken in court, including in ex parte proceedings. *Id.* at 1175–76. Joining a growing consensus among the federal courts, we extended the same immunity to the defendant, holding that "social workers and like public officials are entitled to absolute immunity in child custody cases on account of testimony and other steps taken to present the case for decision by the court." *Id.* at 1176. Qualified immunity shielded the acts of applying for physical custody and retrieving the children; these actions, we reasoned, were more like those of a police officer applying for a warrant and collecting evidence. *Id.*; *see also Brokaw*, 235 F.3d at 1014 n.10 (citing *Millspaugh* and drawing the same distinction between acts covered by absolute immunity versus qualified immunity); *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846, 853–54 (7th Cir. 1990).

Woitel argues that her in-court conduct falls on the absolute-immunity side of the line delineated in *Millspaugh*. The Milchteins do not argue otherwise, and they make no effort to distinguish their case as it relates to Woitel's pursuit of the hearing, her presentation of testimony and evidence, or her apparent failure to apprise them of the hearings. We therefore conclude that Woitel is entitled to absolute immunity for those actions.

The Milchteins instead argue that absolute immunity does not apply to Woitel's "extrajudicial" statements that "promulgat[ed] … falsehoods" and harmed them outside the judicial process. The couple refers to statements that Woitel made prior to the October 3 hearing regarding the Milchteins' fitness to care for D.M. As the Milchteins see it, the fact that those statements eventually made their way into court as evidence should not preclude recovery for out-of-court harm. But the Milchteins fail to explain how harm caused by the statements plausibly entitles them to relief, whether under a due-process theory or any other. Indeed, the argument sounds in defamation, which is not a constitutional tort actionable under § 1983. *Olivieri v. Rodriguez*, 122 F.3d 406, 407–08 (7th Cir. 1997).

Woitel argues in the alternative that the claim is barred by qualified immunity. Because her actions are protected by absolute immunity, we do not reach the more limited immunity defense. The complaint fails to state a § 1983 claim against any of the DHHS officials.

3. *Claims Against the Municipal Entities*

We move next to the § 1983 claims against the two municipal entities, Milwaukee County and DHHS. As the Supreme Court held in *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978), a municipal entity is not vicariously liable for the constitutional torts of its employees. Instead, a municipal entity may be liable only for "conduct that is properly attributable to the municipality itself." *First Midwest Bank v. City of Chicago*, 988 F.3d 978, 986 (7th Cir. 2021).

A municipal entity is liable under § 1983 only if a municipal "policy or custom" is the "moving force" behind a

constitutional violation and if the municipal defendant can be said to be culpable or at fault for the violation. *See Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 403–06 (1997) (quotation marks omitted). The four elements of that formulation—a municipal policy or custom, moving force causation, municipal fault, and an underlying constitutional violation—must be "scrupulously applied" to avoid collapsing municipal liability into the respondeat superior liability forbidden in *Monell*. *First Midwest Bank*, 988 F.3d at 987. Here it is enough to focus on just one of them: a municipal policy or custom. As we frequently explain, a policy or custom subjecting a municipality to liability may come in one of three forms: "(1) an express municipal policy; (2) a widespread, though unwritten, custom or practice; or (3) a decision by a municipal agent with final policymaking authority." *Milestone v. City of Monroe*, 665 F.3d 774, 780 (7th Cir. 2011) (quotation marks omitted).

The Milchteins do not point to an express policy of Milwaukee County or DHHS, nor do they purport to identify the decision of a final policymaker, so their case turns on the identification of an unwritten but widespread practice. An unwritten practice may subject a municipality to liability only if it is "so entrenched and well-known as to carry the force of policy." *Hahn v. Walsh*, 762 F.3d 617, 640 (7th Cir. 2014) (quotation marks omitted). Providing "[b]oilerplate allegations of a municipal policy," *Baxter ex rel. Baxter v. Vigo Cnty. Sch. Corp.*, 26 F.3d 728, 736 (7th Cir. 1994) (quotation marks omitted), or pointing to a few isolated incidents of official action will not suffice to show the existence of such a practice, *see Thomas v. Cook Cnty. Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2010); *Gable v. City of Chicago*, 296 F.3d 531, 538 (7th Cir. 2002).

The Milchteins contend that Milwaukee County and DHHS had widespread practices of removing children from their families without a court order and absent exigent circumstances and of detaining such children for needlessly long periods of time. Besides boilerplate recitations in the complaint, however, they provide virtually no allegations to support the existence of this policy. The Milchteins argue that their allegations of official action with respect to their three daughters are adequate to plead the existence of a widespread practice. They are not. As noted, identifying just a few instances of official action is usually insufficient to show the existence of an entrenched practice with the force of policy. What's more, the Milchteins overstate their case by a factor of three: the complaint implicates Milwaukee County and DHHS actors only with respect to the removal of D.M., not C.M. and S.M. The claims against the municipalities fail.

4. *Conspiracy to Violate Constitutional Rights*

The last claim comes under § 1985(3), which provides a cause of action for persons who are victims of a conspiracy to deprive them of the "equal protection of the laws" or "equal privileges and immunities under the laws." *See Bowman v. City of Franklin*, 980 F.2d 1104, 1108–09, 1108 n.4 (7th Cir. 1992) (quotation marks omitted). A plaintiff bringing a § 1985(3) claim must plead the following elements:

> (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either

> injured in his person or property or deprived of any right or privilege of a citizen of the United States.

United Bhd. of Carpenters v. Scott, 463 U.S. 825, 828–29 (1983); *see also Majeske v. Fraternal Ord. of Police*, 94 F.3d 307, 311 (7th Cir. 1996). Additionally, the plaintiff must plead that the conspiracy was motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus."[4] *Bowman*, 980 F.2d at 1109 (quoting *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)).

The alleged conspiracy centers on D.M.'s time at Bella's Group Home, where she was allowed to live a lifestyle inconsistent with her parents' beliefs. The Milchteins voiced concerns to the group home, which then asked Woitel to tell them not to contact it directly. The Milchteins contend that these actions were part of a conspiracy intended to deprive them of their constitutional right to familial integrity (which we assume qualifies for protection under the statute) and motivated by discriminatory animus toward their religion.

For at least two reasons, the Milchteins have failed to state a claim under § 1985(3). The first reason concerns the conspiracy element, which requires the couple to allege an express or implied agreement among the defendants to deprive them of their constitutional rights. *Wilson v. Giesen*,

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[4] For conspiracies among only private actors, a plaintiff must also allege that the conspiracy was "'aimed at interfering with rights' that are 'protected against private, as well as official, encroachment'" (such as Thirteenth Amendment rights). *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 268 (1993) (quoting *United Bhd. of Carpenters v. Scott*, 463 U.S. 825, 833 (1983)). This requirement does not apply here, where the Milchteins allege the involvement of a government official.

956 F.2d 738, 744 (7th Cir. 1992). Here the complaint tells us only that Bella's asked Woitel to tell the Milchteins not to contact it directly. This allegation alone does not plausibly support an inference that Bella's and Woitel had agreed to deprive the couple of any constitutional right.

The second reason concerns the discriminatory animus requirement, which the Milchteins must support with specific allegations suggesting the existence of such a motivation. *Briscoe v. LaHue*, 663 F.2d 713, 723 (7th Cir. 1981). As we understand the Milchteins' argument, they ask us to infer animus toward their religion because Bella's allowed D.M. to take part in activities inconsistent with her parents' religious beliefs. We have said that religious classifications likely qualify for protection under § 1985(3). *See Brokaw*, 235 F.3d at 1024; *Murphy v. Mount Carmel High Sch.*, 543 F.2d 1189, 1192 n.1 (7th Cir. 1976). But even if Bella's facilitated D.M.'s behavior, that alone does not support an inference that it did so out of animus toward the Milchteins' beliefs.

For the foregoing reasons, the judgment of the district court is AFFIRMED.