

## Civil Rights Update

*David A. Perkins and Seth A. TeBeest*  
*Heyl, Royster, Voelker & Allen, P.C., Peoria*

# Employees of Private Security Firm Granted Qualified Immunity in Section 1983 Action

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In a narrow ruling, the Court of Appeals for the Seventh Circuit granted qualified immunity to the employees of a private security contractor working under the supervision of the Rockford Housing Authority. While the holding is limited to a very narrow set of facts, *Meadows v. Rockford Housing Authority*, 861 F.3d 672, 673 (7th Cir. 2017) draws a clear distinction between contractors who will qualify for protection and those who will not.

### Background of the Case

Don Meadows, an employee of the Rockford Housing Authority (RHA), leased an RHA apartment for a substantially reduced rent. *Meadows*, 862 F.3d at 673. During the summer of 2010, another RHA employee, Charles Doyle, became suspicious when he saw an unfamiliar person leaving Meadows's apartment and locking up. *Id.* Doyle reported his observation to the RHA's executive director, John Cressman who in turn referred the matter to John Novay, deputy chief of Metro Enforcement, a private contractor providing security services to the RHA. *Id.*

Novay investigated the matter and spoke with the unauthorized tenant. *Id.* at 674. He learned that Meadows was subleasing the apartment, which was a violation of the lease. *Id.* Novay confiscated the subtenant's key and escorted him off the premises. *Id.* at 674. After hearing about the eviction and finding some of his possessions out of place, Meadows changed the lock on the apartment door. *Meadows*, 862 F.3d at 674.

In the meantime, Doyle informed Cressman of what Novay had found. *Id.* Cressman "suggested 'it might be a good idea' to change the locks on the apartment to protect the other tenants and their property." *Id.* Doyle relayed to the Director of Metro Enforcement, Larry Hodges, that the locks "should be changed for security and safety purposes." *Id.* Hodges then ordered Novay to supervise a locksmith in changing the lock on Meadows's door. *Id.* When they arrived, Novay and the locksmith found that Meadows had installed a new lock. *Id.* Hodges told Novay to have the locksmith pick the lock and replace it. *Meadows*, 862 F.3d at 674.

After picking the lock, the locksmith left to retrieve another, at which point Meadows arrived to find Novay inside the apartment. *Id.* Enraged, Meadows attempted to physically remove Novay from the premises and called the police. *Id.* The police arrived and admonished Novay for the inappropriate method of eviction. *Id.* After the new lock had been installed, Meadows received a key. *Id.*

### The 1983 Claim

Initially, Meadows brought 1983 claims for violation of the Fourth Amendment against the RHA, Metro Enforcement, Hodges, and Novay. *Id.* After abandoning his claim against Metro Enforcement, and the trial court granting

summary judgment in favor of the RHA, Meadows was left with claims against the two Metro Enforcement employees. *Meadows*, 862 F.3d at 674-75. The trial court ordered the parties to submit briefs regarding the application of qualified immunity to Hodges and Novay. *Id.* at 675. The trial court then granted summary judgment to the defendants holding that they were entitled to qualified immunity since they were acting under orders from Doyle, an RHA official. *Id.*

### Appellate Court's Review of Case Law

Meadows appealed to the Seventh Circuit arguing that under *Richardson v. McKnight*, 521 U.S. 399 (1997), the trial court lacked a sufficient factual basis to conclude that employees of a private security firm were eligible for qualified immunity protection. *Id.* at 676.

The Seventh Circuit reviewed *Richardson*, a case in which the Supreme Court discussed the “history and [] purposes” underlying qualified immunity for government employees, when it evaluated whether to grant the protection to prison guards employed by a private contractor. *Id.* In *Richardson*, the Supreme Court said that “‘the most important special government immunity-producing concern’ is that officials, if not protected by qualified immunity, will proceed with ‘unwarranted timidity’ in the exercise of their government functions.” *Id.* (citing *Richardson*, 521 U.S. at 409). However, the Supreme Court also noted that this concern was alleviated when “competitive market pressures” are at play. It reasoned that in the context of private prison security services, guards who are too aggressive will face lawsuits, exposing their employers to damages, thereby increasing the company’s costs and making it less competitive. *Meadows*, 862 F.3d at 676. On the other hand, firms that are too timid risk being replaced by more effective providers. *Id.*

Holding that the prison guards were not entitled to qualified immunity, the Supreme Court’s clear rationale underlying its decision was that the guards worked for a private firm that was “systematically organized to assume a major lengthy administrative task...with limited direct supervision by the government,” and had “undertak[en] that task for profit and potentially in competition with other firms.” *Id.* The Supreme Court also distinguished the facts before it from a scenario that “involve[d] a private individual briefly associated with a government body, serving as an adjunct to government in an essential government activity, or acting under close official supervision.” *Id.* (quoting *Richardson*, 521 U.S. at 413) (emphasis added by *Meadows* court).

Next, the Seventh Circuit examined *Filarsky v. Delia*, 566 U.S. 377 (2012). In contrast to *Richardson*, the defendant in *Filarsky* was a private attorney hired by a municipality to aid in an investigation. *Id.* at 677. In holding that the attorney was eligible for qualified immunity protection, the Supreme Court reasoned that in a situation where an individual is working closely with public employees, he or she could face liability for essentially the same conduct as that carried out by government employees who benefit from qualified immunity. *Id.* This could have the effect of discouraging private individuals from accepting government assignments. *Meadows*, 862 F.3d at 677. The Supreme Court also pointed out that a lawsuit against the private individual could serve as a distraction to the public employees who would likely be embroiled in the litigation. *Id.* at 677-78.

### Appellate Court's Ruling

The Seventh Circuit upheld the district court’s grant of summary judgment in favor of Hodges and Novay. In so doing, it relied a great deal on the *Richardson* court’s repeated emphasis on the “‘limited direct supervision by the government,’” and lack of “‘a private individual...acting under close official supervision.’” *Id.* at 676 (quoting



*Richardson*, 521 U.S. at 413). Juxtaposing the language in *Richardson* with the facts in *Filarsky*, the Seventh Circuit ruled that because Hodges and Novay were working under the “direct supervision of RHA officials,” they had qualified immunity from Meadows’s §1983 claims. *Id.* at 678.

### Significance of the Ruling

The *Meadows* court was explicit that its holding is narrow, and should, “by no means, be read to guarantee qualified immunity to all employees of private security companies that provide contractual security services to government entities.” *Id.* The critical take away from this case is that both *Richardson* and *Filarsky* are both good law. The Seventh Circuit said as much. *Id.* at 677. However, the case also makes clear that there is one defining factor that will determine whether an employee of a private contractor providing services to a government entity will receive qualified immunity – the level of supervision the government has over the contractor. In *Richardson* the private prison guards worked for a large, multistate, private prison management firm. The firm was systematically organized to perform a major administrative task for profit, and there were market forces in effect that tempered the need for qualified immunity. In *Filarsky*, the contractor was an individual, working in close coordination with public employees, yet facing liability for the same activity as that carried out by government employees.

Given the clearly drawn distinctions between these two cases, it is no surprise that the Seventh Circuit sided with Hodges and Novay, though the opinion does not discuss whether their employer was as large and sophisticated as that in *Richardson*. Of course, not all cases will be so easily distinguishable. While the level of supervision is probably the most important factor to take into account, in a closer case, counsel should also consider the size of the private contractor, its level of sophistication, and the competitive landscape for the services it provides. One additional factor is whether the private contractor is standing in the shoes of the government, serving as an adjunct in its stead.

### About the Authors

**David A. Perkins** is a shareholder at *Heyl, Royster, Voelker & Allen, P.C.* Mr. Perkins concentrates his practice in the areas of civil rights, municipal liability, first party property claims, and general tort litigation. He has spoken on a wide variety of subjects, including: civil rights liability, municipal liability, the investigation of fire losses, and first-party property claims. He is a member of the Peoria County, Illinois State, and American Bar Associations and the Illinois Association of Defense Trial Counsel.

**Seth A. TeBeest** is an associate with *Heyl, Royster, Voelker & Allen, P.C.* in its Peoria office. He concentrates his practice on tort litigation, business transactions, and intellectual property. Mr. TeBeest received his J.D. from Valparaiso University Law School in 2013, and he obtained an M.S. in Intellectual Property Management and Markets (IPMM) from the Illinois Institute of Technology (IIT) in 2014. He has served as an adjunct professor in the legal writing program at the Chicago-Kent College of Law and in the IPMM program at IIT.

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