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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

BRIAN ZIMMERMANN, parent of JPZ,
Plaintiff-Appellee,

v.

SCOTT LABISH, Macomb County Sheriff Deputy, also acting as Romeo Community School District SRO, and MACOMB COUNTY, MICHIGAN (25-1734); MELISSA ARENDTS, 9th Grade Academy Principal, and ROMEO COMMUNITY SCHOOL DISTRICT (25-1756),
Defendants-Appellants.

Nos. 25-1734/1756

Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 2:22-cv-12338—Terrence George Berg, District Judge.

Argued: April 29, 2026

Decided and Filed: August 27, 2026

Before: COLE, GRIFFIN, and READLER, Circuit Judges.

COUNSEL

ARGUED: James M. Surowiec, MACOMB COUNTY CORPORATION COUNSEL, Mount Clemens, Michigan, for Appellants Scott Labish and Macomb County. Lindsay P. Hazen, GIARMARCO, MULLINS & HORTON, P.C., Troy, Michigan, for Appellants Melissa Arendts and Romeo Community School District. Nicholas A. Coulson, COULSON P.C., Detroit, Michigan, for Appellee. **ON BRIEF:** James M. Surowiec, MACOMB COUNTY CORPORATION COUNSEL, Mount Clemens, Michigan, for Appellants Scott Labish and Macomb County. Lindsay P. Hazen, Kenneth B. Chapie, Christopher D. Messing, GIARMARCO, MULLINS & HORTON, P.C., Troy, Michigan, for Appellants Melissa Arendts and Romeo Community School District. Nicholas A. Coulson, COULSON P.C., Detroit, Michigan, for Appellee.

OPINION

READLER, Circuit Judge. Fourteen-year-old JPZ was suspended from school for his involvement in a school bus altercation. Several hours after returning home, JPZ committed suicide. JPZ's father, Brian Zimmermann, in his capacity as administrator of JPZ's estate, sued the Romeo Community School District, the school principal, the school resource officer, and Macomb County, alleging both federal due process and supplemental state law claims. The district court denied defendants' motions to dismiss Zimmermann's claims on immunity grounds.

Today's case presents us with an unspeakable tragedy: the loss of a young life. As judges, however, we must ask how those heartbreaking allegations settle within our constitutional framework. And in this case, as a legal matter, the unfortunate circumstance of JPZ's death does not align with our broader due process jurisprudence. Accordingly, we reverse the district court's decision denying defendants' motions to dismiss based on qualified and state governmental immunity.

I.

As he began ninth grade in the Romeo Community School District (RCSD), JPZ was involved in an altercation with another student. Following the incident, Principal Melissa Arendts contacted JPZ's mother to inform her of the episode and of Arendts's decision to suspend JPZ for three days. Arendts then asked that JPZ be picked up from school.

JPZ's grandmother, Angela, volunteered to take JPZ home. When Angela arrived at the school, she found JPZ secluded in a room awaiting the arrival of Scott Labish, a deputy in the Macomb County Sheriff's Department who served as a school resource officer for RCSD. When Labish arrived, he was in full uniform. With Angela and Arendts present, Labish subjected JPZ to a series of questions, some allegedly threatening in nature. In addition, Labish informed JPZ of a purportedly "new 'Three Strike' law whereby a student who incurred three disciplinary 'strikes' would be criminally prosecuted." Complaint, R. 61, PageID 1720. Labish told JPZ

that, because this was JPZ's "second strike," another strike would result in his expulsion from RCSD as well as criminal charges and likely imprisonment. *Id.*, PageID 1721. That remark prompted Angela to question whether JPZ would really be prosecuted for violating the school code of conduct. Labish responded that "the laws have changed." *Id.* JPZ became visibly distraught by the news and fled the school, leaving behind Angela, Labish, and Arendts. A few hours later, while at home, JPZ took his own life.

Brian Zimmermann filed a complaint in his capacity as administrator of JPZ's estate. Zimmermann sought monetary damages against four defendants: Arendts, Labish, RCSD, and the Macomb County Sheriff's Department. (On appeal, the parties construe Zimmermann's allegations against the Sheriff's Department as brought against Macomb County. Because neither party contests the issue, we do the same.) The complaint included five counts, divided by defendant as follows: deprivation of substantive due process rights in violation of 42 U.S.C. § 1983 against Labish and Arendts; conspiracy to commit deprivation of constitutional rights against Labish and Arendts; intentional infliction of emotional distress against Labish and Arendts; *Monell* liability against RCSD and the Macomb County Sheriff's Department; and wrongful death against all defendants.

Defendants filed Rule 12 motions to resolve the case in their favor based on qualified and state governmental immunity as well as deficiencies in Zimmermann's *Monell* claim. Defendants sought either to dismiss the amended complaint for failure to state a claim under Rule 12(b)(6) or judgment on the pleadings under Rule 12(c). The district court dismissed Zimmermann's wrongful death claim but allowed the remaining four counts to proceed. Via an interlocutory appeal, defendants challenge the district court's partial denial of their Rule 12 motions. We turn to those issues now.

II.

We begin with Zimmermann's constitutional claims asserted under § 1983. In a nutshell, Zimmermann claims that Arendts's and Labish's actions made it more likely that JPZ would commit suicide, thereby depriving JPZ of his substantive due process right to be free from state-created danger. Relatedly, Zimmermann alleges that Arendts and Labish also conspired to

violate JPZ's due process rights, and that RCSD and Macomb County each adopted policies that contributed to the constitutional injury inflicted on JPZ.

We review de novo the district court's denial of a Rule 12(b)(6) motion to dismiss on qualified immunity grounds. *Sutton v. Metro. Gov't of Nash. & Davidson Cnty.*, 700 F.3d 865, 871 (6th Cir. 2012). At the motion to dismiss stage, we ask whether the complaint contains "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation modified). If so, in the qualified immunity setting, we then ask "whether the complaint alleges [a] violation of a clearly established constitutional right." *Courtright v. City of Battle Creek*, 839 F.3d 513, 518 (6th Cir. 2016) (citation modified). The plaintiff "bears the burden of showing that a defendant is not entitled to qualified immunity," but "that burden is not high at the 12(b)(6) stage." *MacIntosh v. Clous*, 69 F.4th 309, 315 (6th Cir. 2023).

A. *State-Created Danger.* In his complaint, Zimmermann asserts that defendants Arendts and Labish deprived JPZ of the substantive due process rights guaranteed to him under the Fourteenth Amendment. Zimmermann's due process theory rests on what has come to be known as the state-created danger doctrine. The doctrine warrants some explanation.

We begin with the understanding that, as the Supreme Court explained in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989), a state government normally may not be held liable for the actions of private third-party actors, as "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." 489 U.S. at 195. In other words, the Due Process Clause does not impose affirmative duties of care on the government to protect its citizens against third-party actions. *Id.* In recognizing this general limitation in the Clause's reach, *DeShaney* has also been understood to carve out two exceptions to this overarching principle. One covers instances where a person is held in state custody against his will. In that setting, the state assumes "some responsibility for [the person's] safety and general well-being." *Id.* at 200 ("The affirmative duty to protect arises not from the State's knowledge of the individual's predicament . . . but from the limitation which it has imposed on his freedom to act on his own behalf."). We mention this "custodial exception," however, only for the sake of

completeness. As Zimmermann does not allege that JPZ was held in custody when he took his own life, the custodial exception is not at issue here.

The second exception attributed to *DeShaney* is the so-called state-created danger exception. The exception's origin is somewhat tenuous. In *DeShaney*, the Supreme Court made the following observation about the facts at hand: "While the State may have been aware of the dangers that [the victim] faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them." 489 U.S. at 201. From this reflection, circuit courts have derived a state-created danger theory of liability that serves as an exception to *DeShaney*'s general prohibition on holding a state government liable for the actions of private persons. *See Johnson v. City of Philadelphia*, 975 F.3d 394, 399 & n.6 (3d Cir. 2020) (recognizing the state-created danger exception and citing six other circuits as also recognizing the exception). In general, these courts have understood *DeShaney* to create liability for state actors "where they affirmatively place an individual in danger" and act "with deliberate indifference" to the danger facing the plaintiff. *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (citation modified). Not all jurists, however, share in that conclusion. *See, e.g.*, *Fisher v. Moore*, 73 F.4th 367, 374 (5th Cir. 2023) ("[W]e decline to adopt the state-created danger theory of constitutional liability . . . ."); *Est. of Romain v. City of Grosse Pointe Farms*, 935 F.3d 485, 493 (6th Cir. 2019) (Murphy, J., concurring) (expressing doubt as to whether *DeShaney* supports a state-created danger exception); *Murguia v. Langdon*, 61 F.4th 1096, 1126 (9th Cir. 2023) (Ikuta, J., dissenting in part) (expressing that the "expansion of our state-created danger doctrine into the realm of tort law conflicts with Supreme Court precedent").

As for our Circuit, we recognize liability under the state-created danger theory where the government "creates a perilous situation that renders citizens more vulnerable to danger." *Schroder v. City of Fort Thomas*, 412 F.3d 724, 728 (6th Cir. 2005); *see Kallstrom v. City of Columbus*, 136 F.3d 1055, 1067 (6th Cir. 1998) (first recognizing the state-created danger exception for § 1983 liability). Pleading a viable state-created danger claim requires three plausible allegations. First, that the government actor took an affirmative act that either created or increased the risk that the plaintiff would be exposed to private acts of violence by a third party. *Schroder*, 412 F.3d at 728. Second, that the state action created a "special danger" to the

plaintiff, one that can be "distinguished from a risk that affects the public at large." *Id*. And third, that the government actor acted with deliberate indifference. *Ewolski v. City of Brunswick*, 287 F.3d 492, 511 (6th Cir. 2002).

Zimmermann's amended complaint asserts that Arendts's and Labish's conduct gave rise to liability under the state-created danger doctrine. According to Zimmermann, Arendts and Labish—by holding JPZ in isolation and subjecting him to abusive questioning—either created the risk that JPZ would commit suicide or, at the very least, rendered JPZ more vulnerable to the risk of suicide. We see two flaws in Zimmermann's theory. One, he has not alleged that Arendts or Labish took affirmative acts that made it more likely that JPZ would be exposed to private acts of violence by a third party. And two, even if that were not the case, Zimmermann has failed to allege that Arendts or Labish acted with deliberate indifference.

1. To begin, Zimmermann has not adequately alleged that Arendts and Labish acted in a way that created or increased the risk that JPZ would commit suicide. As to Arendts, the complaint alleges that she (1) "wrongfully secluded [JPZ] absent any justifiable emergency circumstances," (2) "contacted Labish and requested he meet with [JPZ] to punish, humiliate, and manipulate him," (3) "stood by and acquiesced to the severe punishment inflicted on [JPZ]," and (4) "failed to correct all the lies stated by . . . Labish to manipulate [JPZ] into thinking he could be criminally charged for non-criminal acts." Complaint, R. 61, PageID 1727–28; *see also id.*, PageID 1729. As to Labish, the complaint alleges that he (1) subjected JPZ "to cruel punishment through the use of threats, intimidation[,] and deceit," (2) "repeatedly and aggressively berated [JPZ]," and (3) "falsely described [a] new 'Three Strike' law." *Id.*, PageID 1720.

None of this conduct qualifies as an actionable affirmative act. Start with the allegations that Arendts improperly "stood by and acquiesced" or "failed to correct" Labish as he misled JPZ as to his legal culpability. Both allegations concern acts of omission. That fact is dispositive, as the failure to act is not an "affirmative act" under a theory of state-created danger. *See Stiles ex rel. D.S. v. Grainger County*, 819 F.3d 834, 855 (6th Cir. 2016) (failing to punish students or failing to enforce school policies are not affirmative acts); *see also Wilson v. Gregory*, 3 F.4th 844, 858 (6th Cir. 2021) (holding that a government actor's failure to act does

not satisfy the affirmative action requirement). That is so even when an individual fails to act in the face of circumstances demanding "a more active role." *M.J. ex rel. S.J. v. Akron City Sch. Dist. Bd. of Educ.*, 1 F.4th 436, 449 (6th Cir. 2021) (citation modified).

Zimmermann's allegation that Arendts "contacted Deputy Labish and requested he meet with [JPZ] to punish, humiliate, and manipulate him," Complaint, R. 61, PageID 1727, likewise fails to satisfy the affirmative act requirement. The claim appears to be transitive: Arendts requested Labish meet with JPZ; Labish punished, humiliated, and manipulated JPZ; therefore, Arendts punished, humiliated, and manipulated JPZ. That is not enough to survive a motion to dismiss. *See Iqbal*, 556 U.S. at 676 (requiring plaintiff to allege "that *each* Government-official defendant, through the official's *own* individual actions, has violated the Constitution" (emphasis added)); *see also Lanman v. Hinson*, 529 F.3d 673, 684 (6th Cir. 2008) (Plaintiff must "allege, with particularity, facts that demonstrate what *each* defendant did to violate the asserted constitutional right.").

That leaves Arendts's decision to seclude JPZ and Labish's decision to employ scared-straight tactics. True, that behavior more fairly "amounts to affirmative conduct." *Koulta v. Merciez*, 477 F.3d 442, 446 (6th Cir. 2007). But our analysis does not end there. We also ask whether JPZ "was safer before" Arendts secluded him and Labish questioned him "than he was after" the fact. *Id.* (quoting *Cartwright v. City of Marine City*, 336 F.3d 487, 493 (6th Cir. 2003)). That inquiry, put another way, considers whether Arendts's and Labish's actions breached an affirmative duty of care they owed to JPZ by either causing harm or increasing the risk that he would be harmed. *See King ex rel. King v. E. St. Louis Sch. Dist. 189*, 496 F.3d 812, 818 (7th Cir. 2007).

Can a state actor be held liable when an individual commits suicide outside the custodial setting mentioned above? In our Circuit, the answer is no. We have "not . . . extended the state-created-danger exception to . . . instances of suicide by someone not in official custody." *Wilson*, 3 F.4th at 859; *cf. Sanford v. Stiles*, 456 F.3d 298, 312 (3d Cir. 2006) (per curiam) (stating that a high school student's suicide was "too attenuated to justify imposition of liability" (citation modified)); *Martin v. Shawano-Gresham Sch. Dist.*, 295 F.3d 701, 712 (7th Cir. 2002) (explaining that plaintiff's substantive due process claim failed because the school "did not

create or increase a risk that" the student "would commit suicide" by suspending the student from school); *Hasenfus v. LaJeunesse*, 175 F.3d 68, 73 (1st Cir. 1999) (holding that "negligence is not a due process violation" and "the primary responsibility for safeguarding children from [suicide] . . . is that of their parents"); *Wyke v. Polk Cnty. Sch. Bd.*, 129 F.3d 560, 569–70 (11th Cir. 1997) (rejecting plaintiff's claim that "the school had a constitutional duty to protect him from harming himself").

To understand why noncustodial suicide falls outside the scope of the state-created danger theory of liability, start from the premise that the pathway for liability under this exception is quite narrow. *See Est. of Romain*, 935 F.3d at 491. Our understanding of the affirmative act prong of the state-created danger exception assumes at least two things. One, that a state actor consciously creates or increases a risk that a third-party "private tortfeasor" will commit an "act[] of violence" against the victim. *Kallstrom*, 136 F.3d at 1066; *see also Doe v. Jackson Loc. Sch. Dist. Bd. of Educ.*, 954 F.3d 925, 933–34 (6th Cir. 2020). And two, that the victim in fact experiences harm at the hands of that "third party." *Cartwright*, 336 F.3d at 493; *see, e.g.*, *Lipman v. Budish*, 974 F.3d 726, 742 (6th Cir. 2020) (concluding that releasing a young girl into the custody of her abusers "significantly increased her risk of abuse"); *Nelson v. City of Madison Heights*, 845 F.3d 695, 700–02 (6th Cir. 2017) (holding that an officer's disclosure of an informant's name to a drug dealer's companion substantially increased the informant's risk of harm); *Kallstrom*, 136 F.3d at 1066–67 (holding that an officer's release of a list of undercover police officers to defense counsel increased the risk of harm to officers and their family members). Only then will we open the door to substantive due process liability. And as suicide is not a harm inflicted by a third party, it falls outside of this exception.

The general common-law tort principles governing our approach to § 1983 claims undergird that conclusion. Section 1983 creates a unique species of tort liability for the deprivation of constitutional rights. *See Heck v. Humphrey*, 512 U.S. 477, 483–84 (1994); *Manuel v. City of Joliet*, 580 U.S. 357, 362 (2017). We thus read § 1983 liability "against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe v. Pape*, 365 U.S. 167, 187 (1961), *overruled on other grounds by Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Powers v. Hamilton Cnty. Pub. Def. Comm'n*, 501

F.3d 592, 609 (6th Cir. 2007). So when assessing a § 1983 claim, we "look first to the common law of torts." *Heck*, 512 U.S. at 483. With respect to today's case, we analyze Zimmermann's substantive due process–based state-created danger claim through the lens of the tort principles of duty and causation.

Take duty first. The default rule is that the Constitution does not "impose[] upon the State" a blanket "affirmative dut[y] of care and protection" to its citizens. *DeShaney*, 489 U.S. at 198; *see also Daniels v. Williams*, 474 U.S. 327, 336 (1986). Instead, the Due Process Clause provides only negative rights that shield against government action. *DeShaney*, 489 U.S. at 196. Only in limited circumstances (for example, when the State holds a person in custody), does the State owe an affirmative duty of care. *See id.* at 199–200 (explaining that the Constitution only imposes a "duty to assume some responsibility" for a person's "safety and general well-being" when "the State takes a person into its custody and holds him there against his will"). Noncustodial suicide is not one of those limited circumstances. Although a state must protect an individual from "third part[ies]" when the government has functionally employed the third party to violate the negative rights the Constitution protects by creating the "risk" to the individual, *Cartwright*, 336 F.3d at 493, that logic does not give rise to a broader affirmative duty to protect an individual from themselves outside the custodial setting, *see Cruzan ex rel. Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 298–99 (1990) (Scalia, J., concurring) (explaining that the Constitution does not require the state to prevent suicide).

So too for causation. An individual not in custody who decides to take his own life breaks the requisite causal chain between the alleged government action and the alleged deprivation of the individual's substantive due process rights. Recall that a plaintiff asserting a claim of state-created danger must show that a government action was the actual and proximate cause of his injury. *Cf. Sanford*, 456 F.3d at 304 (requiring that "the harm ultimately caused [be] foreseeable and fairly direct"); *Hart v. City of Little Rock*, 432 F.3d 801, 805 (8th Cir. 2005) (requiring that the government conduct place the individual at a "significant risk of serious, immediate, and proximate harm"). When an individual takes his own life, however, he severs the causal chain. *See Buchholz v. Meyer Njus Tanick, PA,* 946 F.3d 855, 866 (6th Cir. 2020) ("A self-inflicted injury, by definition, is not traceable to anyone but the plaintiff."). After all, unlike

an act involving a private tortfeasor, suicide reflects an individual acting alone, tragically "mak[ing] a free and affirmative choice to end his life." *Jahn v. Farnsworth*, 617 F. App'x 453, 463 (6th Cir. 2015) (quoting *Cutlip v. City of Toledo*, 488 F. App'x 107, 116 (6th Cir. 2012)). The responsibility for that action, in other words, "remains with him," the individual, *id.*, rather than a third-party tortfeasor. As a result, no liability can be traced to a government actor, yet one more reason why suicide is not cognizable under the state-created danger exception.

Seeing things otherwise, Zimmermann urges us to follow the Tenth Circuit's contrary lead, one set out in its decision in *Armijo ex rel. Chavez v. Wagon Mound Public Schools*, 159 F.3d 1253 (10th Cir. 1998). There, a special education student was suspended and driven home by the school counselor without parental notification. *Armijo*, 159 F.3d at 1257. The counselor knew that the student "was constantly depressed," *id.*, so much so that the student had previously told school officials that he was "better off dead," and had recently threatened "to shoot [him]self," *id.* at 1256. Yet despite knowing of the challenges the student was facing and knowing that the student had access to firearms, the counselor dropped the student off at his home, where no one else was present. *Id.* at 1264. While at home, the student committed suicide. On this record, the Tenth Circuit concluded that the school's actions affirmatively placed the student "in a position of danger," and that it knew the environment it created was "dangerous." *Id.* at 1263 (citation modified).

Unlike the Tenth Circuit, we have already rejected the notion that the private act of suicide can be the basis for a state-created danger claim. In any event, the facts here are not like those in *Armijo*. Unlike the student there, JPZ never expressed a desire to hurt himself and was suspended in accordance with school protocol. Nor was JPZ left alone at home. Rather, Arendts held JPZ in a classroom until his grandmother arrived to pick him up. And when JPZ later left school of his own volition, that situation was no different than if he had left school during a normal school day. The facts here are thus quite unlike the facts in *Armijo*, where a school employee drove home a student whom he knew was suicidal and distraught without notifying the student's parents and with the knowledge that a firearm was readily accessible to the student there. In other words, the allegations here pale in comparison to the events at issue in *Armijo*, where the school's actions made the questions of duty and causation a much closer call. *Cf.*

Martin, 295 F.3d at 710–11 (holding that a school was not liable after it suspended a student who later committed suicide at his own home). *Armijo* is thus distinguishable as a factual matter, even were we to adopt *Armijo*'s test for liability, which we do not.

We recognize that JPZ's encounter with Labish was arguably frightening. Labish, who arrived "in full uniform (and armed)," threatened JPZ with suspension and criminal punishment if he incurred another disciplinary "strike." Complaint, R. 61, PageID 1720. But despite this aggressive approach, Labish did not affirmatively place JPZ "in a position of danger." *Armijo*, 159 F.3d at 1263 (citation modified). He did not release JPZ to the custody of his abusers, *see Lipman*, 974 F.3d at 742, nor did he remove JPZ from school premises and leave him alone with access to firearms, *see Armijo*, 159 F.3d at 1264. At worst, Labish's tactic was an example of the controversial but not uncommon scared-straight method of discipline. *See* Benjamin W. Fisher et al., *School Climate, Student Discipline, and the Implementation of School Resource Officers*, Off. Just. Programs' Nat'l Crim. Just. Reference Serv. (2022), https://perma.cc/CXY4-RTQ7; *cf. M.J. ex rel. S.J.*, 1 F.4th at 449 (holding that school administrators, who knew of the use of scared-straight tactics, were not liable because they lacked specific awareness of a "substantial risk of serious harm" resulting from the handcuffing and battery of students). And it falls well short of demonstrating that Arendts and Labish created or increased the risk that JPZ would commit suicide upon returning home from school. *See Wilson*, 3 F.4th at 856; *Jahn*, 617 F. App'x at 463.

2. Had we concluded that Zimmermann properly alleged an affirmative act by Arendts and Labish that made it more likely JPZ would be exposed to private acts of violence, Zimmermann's claim would still come up short due to his failure to allege that either Labish or Arendts acted with deliberate indifference. *See McQueen v. Beecher Cmty. Schs.*, 433 F.3d 460, 469 (6th Cir. 2006). To meet that mark, Zimmermann must plead that Arendts's and Labish's behavior was "so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998); *Jackson*, 954 F.3d at 933–34. For a government actor's conduct to rise to the conscience-shocking level, the actor must "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Ewolski*, 287 F.3d at 513 (citation

modified). And if the government actor draws that inference, he still is not liable for deliberate indifference unless he "act[s] in a manner or fail[s] to act in a manner demonstrating reckless or callous indifference toward the individual's rights." *Id.* (citation modified).

Zimmermann has not alleged that either Arendts or Labish knew that JPZ was at a substantial risk of suicide. Much to the contrary, Zimmermann admits that JPZ had never expressed to anyone, let alone to Arendts and Labish, a desire to harm himself. *See* Appellee Br. (25-1756) at 25 (arguing that Arendts and Labish "created" the danger that JPZ would commit suicide "out of thin air"). As a result, it was impossible for Arendts and Labish to know that JPZ was inclined to harm himself. That reality precludes any conclusion that the two inferred that JPZ was at risk of harming himself and subsequently demonstrated "deliberate indifference" toward that fact. *See McQueen*, 433 F.3d at 463; *Jackson*, 954 F.3d at 933–34.

Seeking to avoid that conclusion, Zimmermann points to the fact that Arendts knew of JPZ's ADHD diagnosis. But that allegation, standing alone, is insufficient. Zimmermann's complaint fails to explain how knowledge of an ADHD diagnosis gives rise to the inference that JPZ was at a specific risk of suicide. In short, Zimmermann has not alleged that Arendts acted in a conscience-shocking manner. *See McQueen*, 433 F.3d at 470 (knowledge of a student's preexisting "behavioral problems" does not give rise to an inference that violent behavior would result).

Stepping back, Zimmermann says we have set the bar too high. To his mind, "at the pleading stage[,] it will virtually always be impossible to establish whether [a] defendant subjectively 'drew the inference' of a 'substantial risk of serious harm.'" Appellee Br. (25-1756) at 30. Zimmermann's framing, however, overlooks a threshold problem. Before we even get to the stage of assessing what inference could have been drawn to support his deliberate indifference claim, Zimmermann needed to allege facts that would allow one to fairly draw such an inference. And Zimmermann has not done so. The allegations in the complaint are a far cry from the range of behavior we have said may give rise to the requisite mental culpability on a school official's part. *See, e.g.*, *Webb v. McCullough*, 828 F.2d 1151, 1154, 1159 (6th Cir. 1987) (holding that it is "literally shocking to the conscience" when a high school principal broke down a bathroom door, threw a student to the floor, and slapped her); *Doe v. Warren Consol. Schs.*, 93

F. App'x 812, 820 (6th Cir. 2004) (concluding school superintendent acted with deliberate indifference when he approved the transfer of a teacher who exhibited a pattern of sexual misconduct from a middle school to an elementary school). Here, allegations that Labish employed scared-straight tactics on JPZ and that Arendts kept JPZ alone in a classroom before his grandmother arrived simply do not allow one to infer that Arendts and Labish acted with callous disregard for JPZ's safety.

All things considered, Zimmermann's allegations do not reflect conscience-shocking behavior on the part of Arendts and Labish. The two may have been unwise to sequester an impulsive student and then mislead him as to the consequences of his conduct, but nothing in the complaint suggests that either did so with malice or sadism. *See Ewolski*, 287 F.3d at 516 ("[I]mprudence and poor execution do not rise to the level of constitutionally arbitrary abuses of power."). Absent that type of allegation, Zimmermann's state-created danger claim fails to demonstrate a viable theory of deliberate indifference.

* * *

To sum up, Arendts and Labish are entitled to qualified immunity as to Zimmermann's state-created danger claim. *District of Columbia v. Wesby*, 583 U.S. 48, 62–63 (2018); *Hayden v. Green*, 640 F.3d 150, 154 (6th Cir. 2011). The district court erred in holding otherwise.

B. *Conspiracy*. Zimmermann also alleges that Arendts and Labish conspired "to violate [JPZ]'s clearly established constitutionally-protected substantive due process rights to liberty and bodily integrity." Complaint, R. 61, PageID 1728. Arendts's and Labish's liability for conspiring to harm JPZ is contingent on Zimmermann adequately alleging that either Arendts or Labish violated a constitutional right held by JPZ. *See Stricker v. Township of Cambridge*, 710 F.3d 350, 365 (6th Cir. 2013). But as just explained, Zimmermann failed to allege such a violation. As a result, his conspiracy claim likewise does not survive defendants' motion to dismiss.

C. *Monell Liability*. As to defendants RCSD and Macomb County, Zimmermann asserts that the school district and the county "maintain a custom, policy, or practice that caused the deprivation of [JPZ]'s constitutional rights." Complaint, R. 61, PageID 1725.

While municipalities are typically not entitled to appeal on an interlocutory basis a denial of a motion to dismiss on *Monell* grounds, *Lane v. City of LaFollette*, 490 F.3d. 410, 423 (6th Cir. 2007), "we may exercise jurisdiction over the appeal of a municipal-liability claim if it is 'inextricably intertwined with the qualified immunity analysis properly before'" us, *Courtright*, 839 F.3d at 523 (quoting *Lane*, 490 F.3d at 423). That begs the following question: When is a municipal liability claim inextricably intertwined with the qualified immunity analysis? The answer: where the qualified immunity appeal would necessarily resolve the municipal appeal. *King v. City of Rockford*, 97 F.4th 379, 399 (6th Cir. 2024); *see Crockett v. Cumberland Coll.*, 316 F.3d 571, 579 (6th Cir. 2003).

That is the case here. *Monell* claims require a plaintiff to allege a constitutional violation by an individual government official and to connect the official's conduct to a municipal policy or custom. *See Monell*, 436 U.S. at 694–95. And, again, our conclusion that neither Arendts nor Labish—the individual state actors—committed a constitutional violation against JPZ necessarily resolves Zimmermann's *Monell* claim. *See Mattox v. City of Forest Park*, 183 F.3d 515, 524 (6th Cir. 1999); *Andrews v. Wayne County*, 957 F.3d 714, 725 (6th Cir. 2020) ("Axiomatically, there can be no *Monell* municipal liability under § 1983 unless there is an underlying unconstitutional act." (citation modified)). In other words, the *Monell* claims here are "inextricably intertwined" with our qualified immunity analysis. *See Dibrell v. City of Knoxville*, 984 F.3d 1156, 1165 (6th Cir. 2021). Accordingly, we reverse the district court's denial of RCSD and Macomb County's motion to dismiss.

III.

Finally, Zimmermann alleges a state law claim for intentional infliction of emotional distress against Arendts and Labish. According to Zimmermann, the two "exhibited conduct so outrageous in character and extreme in degree as to go beyond all possible bounds of decency." Complaint, R. 61, PageID 1729. The district court denied Arendts's and Labish's invocation of state governmental immunity. We disagree.

Unlike denials of qualified immunity, over which we have interlocutory jurisdiction, denials of state immunity are not inherently final orders ripe for our review. *See* 28 U.S.C.

§ 1291. Whether we have interlocutory jurisdiction in a federal-question action involving pendent state-law claims turns instead on state law. We "look to state immunity law to determine whether a denial of immunity based on state law is appealable." *Livermore ex rel. Rohm v. Lubelan*, 476 F.3d 397, 407 (6th Cir. 2007). Here, Michigan law gives us an answer. In the Wolverine State, an order denying governmental immunity constitutes a final order for purposes of federal appellate review. Mich. Ct. R. 7.202(6)(a)(v); *Conmy v. Dep't of Transp.*, 724 N.W.2d 297, 298 (Mich. Ct. App. 2006) (per curiam); *Smith v. County of Lenawee*, 600 F.3d 686, 689 (6th Cir. 2010). Thus, the district court's denial of Labish's and Arendts's state immunity falls within our jurisdictional reach. *See McGrew v. Duncan*, 937 F.3d 664, 670 (6th Cir. 2019).

Turn now to the merits of Arendts's and Labish's state governmental immunity defense. To be eligible for governmental immunity for intentional tort claims, Arendts and Labish must demonstrate three things. One, that their "acts were undertaken during the course of employment and [each] was acting, or reasonably believed that he was acting, within the scope of his authority." *Odom v. Wayne County*, 760 N.W.2d 217, 228 (Mich. 2008). Two, that "the acts were undertaken in good faith, or were not undertaken with malice." *Id.* And three, that "the acts were discretionary, as opposed to ministerial." *Id.* There is no dispute that Arendts and Labish satisfy the first and third considerations in that they were acting within the scope of their employment and their acts were discretionary. That leaves for resolution whether the two were acting in good faith.

We believe they were. The good-faith element is "subjective in nature." *Id.* at 229. "It protects a defendant's honest belief and good-faith conduct with the cloak of immunity while exposing to liability a defendant who acts with malicious intent." *Id.* On that latter point, Zimmermann has failed to adequately allege malicious intent. Again, the fact that Labish employed scared-straight tactics on a high school student and that Arendts held the student alone in a classroom before his grandmother arrived do not allow for the inference that either defendant acted with callous disregard for JPZ's safety.

Burland v. French, No. 305652, 2012 WL 2362442 (Mich. Ct. App. June 21, 2012), is instructive. *Burland* concerned a sophomore student who committed suicide after the school

principal suspended the student for allegedly selling drugs. *See Burland*, 2012 WL 2362442, at *1–3. The Michigan Court of Appeals held that the principal was entitled to governmental immunity from an intentional infliction of emotional distress claim because there was no evidence that the principal "acted maliciously or for an improper purpose" and, instead, acted according to reasonable suspicion and "in good faith" that a drug transaction would occur on school grounds. *Id.* at *6. We similarly detect no malicious intent here, where the allegations at most show that Arendts and Labish were attempting to correct JPZ's future behavior at school. Accordingly, both defendants are entitled to governmental immunity under Michigan law.

* * * * *

We reverse the judgment of the district court denying defendants' motions to dismiss and remand the case for further proceedings consistent with this opinion.