

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW
HAMPSHIRE**

Frank Staples and Kathleen Bussiere v. Governor, NH, State of et al.

Staples · No. 24-cv-331-LM-TSM · Decided March 30, 2026

OPINION

UNITED STATES DISTRICT COURT DISTRICT OF NEW HAMPSHIRE Frank Staples and Kathleen Bussiere Case No. 24-cv-331-LM-TSM v. Governor, NH, State of et al. ORDER After due consideration of the objection filed, I herewith approve the Report and Recommendation (doc. no. 85) of Magistrate Judge Talesha L. Saint-Marc dated February 12, 2026 in every respect except one.

I dismiss plaintiffs’ individual capacity claims against Governor Sununu and Attorney General Formella stemming from the October 13, 2021 incident arising under the First, Fourth, and Fourteenth Amendments on qualified immunity grounds instead of for failure to state a claim upon which relief may be granted. See, e.g., *Mitchell v. Miller*, 790 F.3d 73, 77-78 (1st Cir.

2015). Even assuming plaintiffs have plausibly alleged constitutional violations against Governor Sununu and Attorney General Formella, plaintiffs failed to demonstrate those violations were of clearly established rights. *Id.* at 77 (“The plaintiff bears the burden of demonstrating that the law was clearly established....”); see also doc. no. 85 at 2 & n.3 (noting that plaintiffs failed to file an objection to the motion to dismiss).

And contrary to plaintiffs’ arguments in their objection to the R&R (doc. no. 88 at 8), qualified immunity may be decided at the motion to dismiss stage when “the facts that a plaintiff has alleged” do not make out a violation of a constitutional right that was clearly established at the time of the alleged misconduct. *Haley v. City of Boston*, 657 F.3d 39, 47 (1st Cir.

2011) (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (1984)). The defendants’ motion to dismiss (doc. no. 60) is granted. Plaintiff Staples’s motion for preliminary injunction (doc. no. 66) is denied. The clerk shall enter judgment and close the case. United State District Judge Date: March 30, 2026 cc: Frank Staples, pro se Kathleen Bussiere, pro se Counsel of Record