No. _____

IN THE SUPREME COURT OF THE UNITED STATES

YOUNG COUNTY, TEXAS; YOUNG COUNTY SHERIFF'S DEPARTMENT, PETITIONERS

v.

NICHOLE SANCHEZ; CASY SIMPSON; EDWARD LAROY SIMPSON, II, INDIVIDUALLY AND AS THE REPRESENTATIVE OF THE ESTATE OF DIANA LYNN SIMPSON, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

In *Monell v. Dep't of Soc. Servs.* and subsequent precedent, the Court articulated stringent requirements for imposing liability on municipalities under 42 U.S.C. § 1983. Municipal liability cannot be based on a *respondeat superior* theory. When evaluating the constitutionality of prison conditions, the Court held in *Bell v. Wolfish* that liability can only be imposed if the condition amounts to punishment of the pretrial detainee. The Court also warned that the judicial branch cannot become enmeshed in the minutiae of operating jails or prisons which should be left to local officials who are better equipped to run their facilities.

In reversing Petitioner's summary judgment in this case challenging certain alleged "conditions of confinement" at the Young County Jail, the Fifth Circuit discarded Supreme Court principles and imposed extraordinary burdens on local jails to detect when detainees, who have denied being suicidal, are in fact suicidal and prevent them from killing themselves. Indeed, the Fifth Circuit has become an outlier in analyzing the constitutionality of prison conditions with an approach that conflicts with at least the First, Third, Sixth, Tenth and Eleventh Circuits.

1. Has the Fifth Circuit violated the dictates of *Monell* and its progeny by exposing Young County to liability based on a theory of *respondeat superior?*

2. Has the Fifth Circuit undertaken the seriously

destructive micro-management of county jails by ignoring legitimate, non-punitive procedures in violation of *Bell v. Wolfish*?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to the proceeding in this Court are listed in the caption of the case on the title page. No corporations are involved in this proceeding.

Other proceedings in other courts that are directly related to this proceeding include:

- *Sanchez, et al. v. Young Cty., Texas, et al.*, No. 7:15-cv-00012-O; U.S. District Court for the Northern District of Texas. Judgment entered January 22, 2019.

- *Sanchez, et al. v. Young County, Texas, et al.*, 956 F.3d 785 (5th Cir. 2020), U.S. Court of Appeals for the Fifth Circuit. Judgment entered July 7, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Young County, Texas respectfully petitions this Court for a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit. *See Sanchez, et al. v. Young Cty., Texas*, 956 F.3d 785 (5th Cir. 2020), attached in the Appendix ("App.") hereto at 5a—27a.

OPINIONS AND ORDERS BELOW

The Fifth Circuit's order denying rehearing *en banc* is unreported and is reprinted in the Appendix hereto at 1a—2a.

The Fifth Circuit's opinion affirming in part and reversing in part the district court's judgment is reported at 956 F.3d 785 (5th Cir. 2020) and is reprinted in the Appendix hereto at 5a—27a.

The district court's opinion granting Petitioner's motion for summary judgment is unreported and is reprinted in the Appendix hereto at 29a—53a.

JURISDICTION

The Fifth Circuit had appellate jurisdiction because the district court's order granting Petitioner's motion for summary judgment was a "final decision"

within the meaning of 28 U.S.C. § 1291.

The Fifth Circuit denied *en banc* review on June 29, 2020. Petitioners timely filed this petition for writ of certiorari. *See* Order List: 589 U.S. (March 19, 2020). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents brought the underlying actions under 42 U.S.C. § 1983, which states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to

be a statute of the District of Columbia.

Respondents allege that Petitioner violated their rights under the Fourteenth Amendment to the United States Constitution, which states in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Factual Background

In May 2013, Ms. Diana Simpson, a registered nurse, left her job and her husband and drove through rural Texas with the intent of committing suicide via a lethal dose of medication. She eventually parked her car on the side of a road in Graham, Young County, Texas.

After receiving a report of a missing person, Graham Police Department officers located Ms. Simpson in her car just after 5:00 p.m. on Sunday, May 19, 2013. ROA.766, 771. The officers made

contact with her and determined that she exhibited signs of possible impairment (i.e., slow in giving answers, speaking very quietly, hard time keeping eyes open, etc.). ROA.776, 771. Ms. Simpson consented to a search of her vehicle where officers found several medications inside, some of which were unopened, and others which were missing individual capsules. ROA.760-64, 766-67. An officer questioned Simpson about the medication, but she gave him conflicting responses. She initially denied having taken any medication at all (ROA. 771), but later stated she "had taken two Benadryl." (ROA.774). Later still, she told the officer she had taken all the medication "that was missing that morning." ROA.767, 772. When asked, Ms. Simpson denied that she was trying to hurt herself. ROA.767, 772.

Because Simpson appeared to be impaired, the officers summoned medics with the City of Graham to their location to evaluate her condition. ROA.768, 771, 774. The EMTs arrived and asked Simpson if she was trying to hurt herself, which she again denied. ROA.774. She also told the medics that she was not depressed. ROA.774. They evaluated Simpson and advised the officers that her "vital signs were fine," her blood sugar was normal, and that she was not dehydrated or suffering from heat stroke. ROA.771. Ms. Simpson had slightly elevated blood pressure and a slightly low pulse, but she confirmed that "she normally has high blood pressure and a low pulse." ROA.774. She also told the EMTs she did not want to be taken to the hospital. ROA.774. In fact, Mrs. Simpson was adamant that she would not go to the hospital, despite the fact she reportedly told an intern accompanying the EMTs on the scene that she was

trying to kill herself. ROA.138-39. When asked again by the EMTs, in the presence of the officers, whether she was suicidal, Ms. Simpson again denied taking any pills and denied that she was trying to hurt herself. ROA.139.

After a one and one-half hour discussion, the EMTs deemed Ms. Simpson "impaired but not altered." ROA.774. She again declined an offer to go to the hospital; the officers eventually arrested her for public intoxication and transported her to the Young County Jail. ROA.767.

Around the same time Ms. Simpson was being evaluated by the City officers and EMTs, her husband called dispatch and reported she had threatened to take her life and that she "had a BOLO report" out on her. ROA.809-10. The jailer answering Mr. Simpson's call *knew that EMTs were on the scene* and passed that information along. ROA.811, 815. Mr. Simpson was not aware that his wife had taken any drugs and he did not tell anyone at the Jail that she had. ROA.810.

Mrs. Simpson arrived at the Young County Jail at approximately 6:30 p.m. ROA.766, 771, 818 (¶3), 834 (89:21-23). In accordance with the County's Mental Disabilities & Suicide Prevention Plan, Young County jailer Gaylon Rich interviewed Simpson and completed the self-report questions portion of her Screening Form for Suicide and Medical and Mental Impairments. ROA.767, 785, 788-91, 836 (97:20 – 98:6), 840 (128:2-25). Simpson did not indicate any behaviors or conditions indicative of suicide. *See* ROA.785, 836 (98:7-12), 837 (102:10-12, 104:7-10), 841 (132:4-11).

She was also responsive, spoke coherently, and advised jailer Rich that she didn't want to hurt herself. *See* ROA.767, 818 (¶5), 836 (98:7-12), 842 (133:13 – 134:21, 136:11-17). In response to the screening form questions, Ms. Simpson indicated she was not depressed, was not thinking about killing herself, had never attempted suicide, and had never sought any mental health treatment. *See* ROA.785, 837 (102:10-12), 841-42 (132:24 – 133:6). After Rich completed the initial suicide intake screening, she escorted Mrs. Simpson to a female holding cell. *See* ROA.767-68, 819 (¶6), 843 (137:21 – 138:7).

In accordance with requirements of the Texas Commission on Jail Standards, a dispatcher also ran a Continuity of Care Query (CCQ) at the time of Ms. Simpson's arrest.[1] ROA.828 (19:11-13), 829 (48:15-25), 839 (122:7-9), 855 (60:25 – 61:7). The CCQ query resulted in a "possible" match for Simpson. ROA.839 (121:22 – 122:6), 825. At the time, *Jail Standards only required the Young County Jail to notify a magistrate within 72 hours of any "possible" or "positive" match*.[2] *See* Tex. Code Crim. P. 16.22(a)(1).

Mr. Simpson called the County Jail again. ROA.811,815. He was again told his wife had been

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[1] A CCQ query searches a computerized database designed to detect whether an arrestee has been previously seen at a state-run mental health treatment facility in Texas.

[2] The purpose of notifying the magistrate is to allow them to make determine whether a further assessment is necessary in connection with bail. *See* https://www.tcjs.state.tx.us/docs/Mental_Health_1622_Flowchart.pdf. (accessed July 10, 2019).

evaluated by medical personnel and refused to go to the hospital. ROA.811. Jailer Mike Burt advised Mr. Simpson that they would call MHMR if an arrestee showed any signs of being suicidal, but that MHMR would not come to see intoxicated inmates until they were sober. ROA.811,814,858.[3]

While in the female holding cell, Simpson was observed approximately every 25 to 30 minutes by County jailers, and a camera was continuously active in the holding cell. ROA.819 (¶7), 830 (51:4-10), 833 (82:1-19), 855 (57:13 – 58:12), 859 (89:7-14), 860 (95:9-15). Hence, the observation of Ms. Simpson included documented cell checks and also visual observation by a camera mounted in the holding cell. *Id.*

Around 1:45 a.m., when another female arrestee was placed in the holding cell, Ms. Simpson was observed to be "fine." *See* ROA.819 (¶8), 844 (176:22-177:17). Simpson was also observed to be "moving around" and breathing during the periodic cell checks. *See* ROA.819 (¶9). At approximately 2:50 a.m., jailer Rich entered Simpson's holding cell to wake her in order to finish the booking process but found her unresponsive. *See* ROA.819 (¶10). Jailers summoned EMS who transported Ms. Simpson to the hospital where she was subsequently pronounced dead. *See* ROA.819 (¶11).

An autopsy was performed and concluded that Simpson had "highly toxic … near lethal" levels of

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[3] There is no evidence in the record disputing this obvious MHMR policy.

Diphenhydramine and Diltiazem in her system, as well as other drugs. App. at 32a. The cause of death was "mixed drug intoxication." *Id.* Prior to Ms. Simpson's passing, no other inmate death had occurred at the Young County Jail. *See* ROA.874 (121:3-12).

B. Procedural History

In November 2015, Petitioner moved for summary judgment on all of Respondents' Section 1983 claims, which alleged that Petitioner had deprived Ms. Simpson of constitutionally adequate medical care. ROA.59-153. The district court granted the motion after concluding that Respondents' claims were based on an "episodic acts or omissions" theory of liability. ROA.547-70. The Fifth Circuit affirmed the district court's judgment but remanded the case for the district court to consider Respondents' claim based on a "conditions of confinement" theory. *Sanchez v. Young Cty.*, 866 F.3d 274 (5th Cir. 2017), *cert denied*, 139 S.Ct.126, 202 L.Ed. 198 (2018)("*Sanchez I*"). Meanwhile, this Court denied review of the Fifth Circuit's judgment dismissing the episodic acts or omissions claim. 139 S.Ct. 126, 202 L.Ed. 198 (2018).

On remand, the district court again granted Petitioner's motion for summary judgment on the conditions of confinement claim. App. at 29a—53a. Respondents appealed, and the Fifth Circuit reversed in part and affirmed in part. App. at 5a—27a. The Court of Appeals concluded that Respondents raised material fact disputes as to whether Petitioner maintained *de facto* policies of failing to monitor and failing to assess pretrial detainees' medical needs, and

whether these alleged policies, or "conditions of confinement," caused Simpson to be denied adequate medical care. App. at 27a. The Fifth Circuit affirmed the district court's decision that Respondents' failure to train claim was barred. App. at 27a. Petitioner moved for rehearing *en banc* which was denied. App. at 1a—2a.

REASONS FOR GRANTING THE PETITION

This appeal involves questions of exceptional importance because the Fifth Circuit's decision conflicts with decisions of this Court and other appellate courts across the country in evaluating the constitutionality of prison conditions and imposing municipal liability under 42 U.S.C. § 1983.

More specifically, the panel's analysis violates principles announced by this Court beginning with *Monell v. Dep't of Soc. Servs.* by expanding potential liability of governmental entities based merely on a theory of *respondeat superior*.

The Fifth Circuit has become an outlier in analyzing the constitutionality of prison conditions and the correct standards to be applied. Contrary to other circuit courts, the panel erred by dispensing with the requirement to show a municipal custom or policy was implemented with deliberate indifference to a detainee's needs. This circuit split alone justifies this Court's review.

Finally, the panel's decision also conflicts with this Court's instructions in *Bell v. Wolfish* for assessing the

constitutionality of pretrial conditions of confinement by ignoring reasonable, non-punitive objectives in county jail administration. The panel imposes unprecedented burdens on municipalities in handling intoxicated detainees and usurps the discretionary authority that should be left to local, better-equipped officials on matters of jail management.

I. THE PANEL'S DECISION CONFLICTS WITH PRINCIPLES GOVERNING MUNICIPAL LIABILITY FROM *MONELL v. DEP'T OF SOC. SERVS.* AND ITS PROGENY

This Court held in *Monell v. Dep't of Soc. Servs*. that municipalities are "persons" which may be liable for constitutional violations under 42 U.S.C. § 1983. 436 U.S. 658, 690 (1978). Municipal liability, however, cannot be predicated on a theory of *respondeat superior*. *Id.* at 691. A governmental entity can only be liable for injuries inflicted pursuant to a government "policy or custom." *Id*. at 694. A plaintiff seeking to impose liability on a governmental entity, like Petitioner, must show: (1) a constitutional violation occurred; and (2) a municipal policy was the moving force behind the violation. *See id.*

After *Monell*, this Court outlined some of the contours for municipal liability in *Oklahoma City v. Tuttle*. There, the Court held that municipal liability under *Monell* cannot be established, or even inferred, absent of showing of wrongdoing by the municipal "decisionmakers." 471 U.S. 808, 821 (1985). Municipal liability based on alleged misconduct of a low-level

employee, who has no authority to make government policy, is forbidden as *respondeat superior* liability. *Id.* at 823-24. "[M]unicipal liability under § 1983 attaches where – and only where – a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481-84, 106 S. Ct. 1292, 1299-300 (1986).

Moreover, a plaintiff must demonstrate that the policy or custom of a municipality "reflects deliberate indifference to the constitutional rights of its inhabitants." *City of Canton v. Harris*, 489 U.S. 378, 392, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989). Hence, the relevant policymaker must have actual or constructive knowledge of the custom or policy giving rise to *Monell* liability. *See Bennett v. City of Slidell*, 735 F.2d 861, 862 (5th Cir. 1984) (en banc) (per curiam), *cert. denied*, 472 U.S. 1016, 105 S. Ct. 3476, 87 L. Ed. 2d 612 (1985); *see generally Kingsley v. Hendrikson*, 135 S. Ct. 2466, 2472 (2015)(liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process).

Here, the panel separated Respondents' "conditions of confinement" claim into three categories: (1) the failure to assess the medical needs of detainees; (2) the failure to adequately monitor detainees; and (3) the failure to train jail employees. App. at 16a. The panel further subdivided the failure to assess allegations into two distinct inquiries: (i) whether Petitioner maintained a *de facto* policy of placing intoxicated detainees into a holding cell to "sleep off"

their intoxication before completing the book-in process; and (ii) whether a failure to complete suicide screening and medical intake forms of detainees upon arrival caused a violation of Ms. Simpson's rights. App. at 21a—23a.

A. The panel violated this Court's standards governing municipal liability in analyzing Respondents' "failure to assess" claim.

1. The Jail's alleged "sleep it off" policy.

The panel concluded that "consistent jailer testimony" raised a fact dispute about whether the jail left intoxicated detainees in a holding cell to "sleep off" their intoxication before finishing the book-in process. App. at 21a—22a. None of the testimony, however, came from a municipal policymaker.[4] Additionally, the jailer testimony in the record falls far short of showing a policy or custom of depositing all intoxicated detainees into a holding cell to "sleep it off." The jail administrator never testified about detainees "sleeping off" intoxication. *See id.* Another jailer simply testified that he told Mr. Simpson in a phone call that his wife needed to "sleep it off." App. at 22a. What's left is testimony from *one* jailer that sometimes, if a detainee is "very very drunk," he or she would be put into a holding cell until they become coherent enough to complete the book-in process. *Id.*; ROA.1218, p.222.

[4] The relevant policymaker is the now deceased Young County Sheriff (Bryan Walls). *See* App. at 19a ("…no one disputes that the County sheriff is the relevant policymaker…")

The panel violated this Court's pronouncements in *Monell*, *Tuttle* and other cases by impermissibly inferring the existence of a "sleep it off" policy based on the testimony of a single, non-policymaking official. This potentially exposes the County to liability based on a *respondeat superior* theory, which this Court has rejected. *See Tuttle*, 471 U.S. at 823-24.

Equally important, there is *no evidence* that any alleged "sleep it off" policy was approved, implemented, encouraged, or even known to the former Sheriff. Nor is there evidence that such a policy was enacted with deliberate indifference to any detainee's medical needs. *See City of Canton*, 489 U.S. at 392. "It is not sufficient for a plaintiff to identify a custom or policy, attributable to the municipality, that caused his injury. A plaintiff must also demonstrate that the custom or policy was adhered to with deliberate indifference to the constitutional rights of the [the jail's] inhabitants." *Castro v. Cty. of L.A.*, 833 F.3d 1060, 1073-76 (9th Cir. 2016)(quoting *City of Canton*, 489 U.S. at 392)(internal quotations omitted). In fact, prior to Ms. Simpson's death, no other detainee or inmate died in Young County's custody as a result of the Jail's system of providing medical care or otherwise. *See* ROA.874 (121:3-12). This fact alone negates any notion that the alleged "sleep it off" policy reflects deliberate indifference to the detainee's needs.

2. Completion of Intake Screening Forms.

The panel also erred in assessing whether the County's alleged policy of failing to complete suicide

and medical intake forms at a detainee's booking caused a violation of Ms. Simpson's constitutional rights. The panel concluded that this alleged policy, when viewed in conjunction with other alleged policies, could have a "mutually enforcing effect" of depriving Ms. Simpson of medical care, ignoring the fact that the same jailers who booked in the prisoner were still on duty. App. at 23a—24a.

The panel recites other alleged jail policies that Respondents claimed to exist. *Id.* What's missing, however, is any evidentiary support that the policies meet the threshold to potentially subject Petitioner to liability under *Monell*. Similar to its analysis of the jail's alleged "sleep it off" policy, the panel erroneously accepts the notion that such policies might have existed by virtue of a jailer's testimony who has no policymaking function. *See* App. at 25a (discussing alleged policies based on testimony of single, individual jailers). This Court prohibits drawing such inferences as they only give rise to *respondeat superior* liability.

Furthermore, the panel cites this Court's decision in *Wilson v. Seiter* for the proposition that "conditions of confinement may be constitutionally inadequate, if, when viewed in combination, they have a 'mutually enforcing effect that produces the deprivation of a single, identifiable human need.'" App. at 23a—24a. Yet, this Court made the statement in the context of petitioner's argument that <u>all</u> conditions of confinement – even those that are disputed to exist – must be "considered as part of the overall conditions challenged." *Wilson*, 501 U.S. 294, 304 (1991). The

Court rejected that argument recognizing that only existing conditions that might combine to deprive a detainee of a basic human need are relevant. Here, the panel impermissibly speculated about the mutually enforcing effect of municipal customs or policies that fall short of the requirements in *Monell* and its progeny. The error subjects the County and counties across the Fifth Circuit to potential liability absent any Supreme Court precedent.

B. The panel also violated this Court's and the Fifth Circuit's precedent in analyzing Respondents' "failure to monitor" claim.

In reversing the County's summary judgment, the panel ignored the fact that no detainee had previously died at the Young County Jail but relied in part on the results of routine, annual inspections of the Jail by the Texas Commission on Jail Standards ("TCJS"), before and after Ms. Simpson's death. App. at 18a. According to the panel, these reports showed that jailers failed to adequately monitor other detainees. *Id*. The panel also opined that this "prior misconduct" was effectively ratified by the former Sheriff as policymaker because, *after Ms. Simpson's death,* he never punished any jailers or took remedial action to correct deficiencies. *Id*.

The State of Texas created the TCJS to help improve the operation of jails across the State. *See* 37 TEX. ADMIN. CODE § 251.1. TCJS inspections typically occur frequently and randomly. When deficiencies in the jail's operation are identified, they must be

corrected before the jail will be deemed compliant. *See* 37 TEX. ADMIN. CODE § 297.5. Under TCJS protocol, many deficiencies are, and must be, corrected "on site" before the inspector leaves the premises.

Like other rules and regulations, the standards enforced by the TCJS do not establish constitutional minima for adequate medical care under the Due Process Clause. Indeed, this Court has observed that federal or state rules and regulations should not be used as a measuring stick to judge the constitutionality of prison conditions. *See Bell v. Wolfish*, 441 U.S. 520, 544 n.27, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979) ("For this same reason, the draft recommendations of the Federal Corrections Policy Task Force of the Department of Justice regarding conditions of confinement for pretrial detainees are not determinative of the requirements of the Constitution.").

Here, the panel erroneously concluded that the TCJS reports showed systematic problems with the County's observation of detainees although, in fact, the TCJS found "no deficiencies" with the jail's operations, or any such deficiencies were corrected "on site" as required. ROA.1306, 1308, 1317, 1320, 1322, 1327, 1329, 1331, 1333. More importantly, however, the panel's fixation on the inspections and the former Sheriff's supposed post-hoc ratification of the "prior misconduct" conflicts with this Court's and the Fifth Circuit's precedent governing municipal liability, thus warranting the Court's review.

In *St. Louis v. Praprotnik*, the Court stated, "[i]f the authorized policymakers approve a subordinate's decision *and the basis for it*, their ratification would be chargeable to the municipality because their decision is final." 485 U.S. 112, 127 (1988) (emphasis added). Following the Court's lead, the Fifth Circuit has observed:

> It is important to recognize that the ratification theory, in whatever context it arises, is necessarily cabined in several ways. *Praprotnik* itself recognized that policymakers who "simply go[] along with" a subordinate's decision do not thereby vest final policymaking authority in the subordinate, nor does a "mere failure to investigate the basis of a subordinate's discretionary decisions" amount to such a delegation. [citation omitted]. Such limitations on municipal liability are necessary to prevent the ratification theory from becoming a theory of *respondeat superior*, which theory *Monell* does not countenance. *See id.* at 126 ("If the mere exercise of discretion by an employee could give rise to a constitutional violation, the result would be indistinguishable from *respondeat superior* liability.").

Milam v. City of San Antonio, 113 F. App'x 622, 626-27 (5th Cir. 2004). Given these constraints, the Fifth Circuit has limited the ratification theory to "extreme factual situations" and its application is "seldom, if ever, found by this court." *Peterson v. City of Fort*

Worth, 588 F.3d 838, 848 n.2 (5th Cir. 2009).

One thing is clear: this Court and circuit courts have uniformly held that ratification can support municipal liability only when the final policymaker approves the subordinate's conduct *and the reasons for it*. *Praprotnik*, 485 U.S. at 127; *Culbertson v. Lykos*, 790 F.3d 608, 621 (5th Cir. 2015)("If a final policymaker approves a subordinate's recommendation *and also the subordinate's reasoning*, that approval is considered ratification chargeable to the municipality."); *Gillette v. Delmore*, 979 F.2d 1342, 1347-48 (9th Cir. 1992)("Likewise, *Prapotnik* requires that a policymaker approve a subordinate's decision *and the basis for it* before the policymaker will be deemed to have ratified the subordinate's discretionary decision."); *Lytle v. Carl*, 382 F.3d 978, 988 n.2 (9th Cir. 2004)("Accordingly, ratification requires both knowledge of the alleged constitutional violation, and proof that the policymaker specifically approved of the subordinate's act."); *Kristofek v. Vill. Of Orland Hills*, 832 F.3d 785, 800 (7th Cir. 2016); *Vives v. City of N.Y.*, 524 F.3d 346, 356 n.9 (2d Cir. 2008).

Ratification cannot give rise to *Monell* liability when a policymaker merely:

- defends a subordinate's actions (*World Wide St. Preachers Fellowship v. Town of Columbia*, 591 F.3d 747, 755 (5th Cir. 2009);
- knows of or refuses to overrule a subordinate (*Christie v. Iope*, 176 F.3d 1231, 1239 (9th Cir. 1999);
- fails to discipline a subordinate (*Santiago v.*

Fenton, 891 F.2d 373, 382 (1st Cir. 1989), *Clouthier v. County of Contra Costa*, 591 F.3d 1232, 1253 (9th Cir. 2010);

- determines that an official complied with department policies (*Peterson*, 588 F.3d at 848); or
- fails to investigate a subordinate's conduct (*Peterson*, 588 F.3d at 848 n.2).

Here, the panel based its ratification theory solely on the allegation that the former Sheriff knew about the TCJS reports and the details of Ms. Simpson's death, yet failed to punish jailers or take remedial action to address alleged inadequacies. App. at 19a. As shown above, this rationale directly conflicts with *Prapotnik* and every circuit court across the country, including the Fifth Circuit.

Under the panel's decision, municipalities could find themselves liable simply by turning over a jail death investigation to an outside source – like the Sheriff did here. The mere lack of disciplinary action following the investigation cannot give rise to *Monell* liability, especially if disciplinary action was not called for. Hence, the panel's decision dramatically expands the reach of ratification to potentially support municipal liability in violation of *Monell*. For this reason, the Court should grant this petition.

3. The Fifth Circuit's Analysis Has Created a Circuit Conflict for Conditions of Confinement Claims Alleging Inadequate Medical Care

Other circuit courts have a uniform approach to reviewing constitutional claims for inadequate medical care by pretrial detainees. Indeed, the Fifth Circuit appears to be the only circuit court in the country to distinguish such claims between two theories: "episodic acts or omissions" and "conditions of confinement." In *Sanchez I*, the Fifth Circuit rejected Respondents' episodic acts or omissions claims because Respondents failed to create a genuine fact dispute as to whether jail officials were deliberately indifferent to Ms. Simpson's medical needs. *Sanchez I*, 866 F.3d 274 (5th Cir. 2017. By contrast, when the case returned to the Court of Appeals, this panel jettisoned any inquiry into deliberate indifference on the conditions of confinement claim. Without explicitly saying so, the panel appears to rely on *Duvall v. Dallas Cty., Tex.*, 631 F.3d 203 (5th Cir. 2011), in which the Fifth Circuit pointedly noted:

> In *Shepherd*, a recent appeal involving "conditions of confinement," we did not require the plaintiff to make a showing of deliberate indifference under *Monell*, presumably because it is unnecessary in "conditions of confinement" cases.

Id. at 209, n.19; *see* App. at 16a. Hence, the panel's failure to view the conditions of confinement claim through the lens of deliberate indifference places the Fifth Circuit in conflict with the First, Third, Sixth, Tenth and Eleventh Circuits, <u>*all*</u> of which employ a deliberate indifference inquiry in analyzing municipal liability for unconstitutional prison conditions. This divergent approach between circuit courts in cases

involving substantially similar facts warrants this Court's review.

In *Manarite v. City of Springfield*, a pretrial detainee, who was highly intoxicated but did not exhibit any suicidal tendencies, committed suicide after jail officials failed to take his shoelaces. 957 F.2d 953, 954-55 (1st Cir. 1992). The First Circuit, applying the standards set forth by this Court in *Wilson v. Seiter*, *Canton v. Harris*, and *Estelle v. Gamble*, affirmed summary judgment on plaintiffs' claims against the police chief and the City after concluding there was insufficient evidence of deliberate indifference to the detainee's medical needs. *Id.* at 957-60.

In *Colburn v. Upper Darby Township*, the arrestee was detained for public intoxication and later committed suicide by shooting herself with a handgun. 946 F.2d 1017, 1020-21 (3d Cir. 1991). One of the claims asserted by plaintiffs challenged the township's alleged policy "regarding the treatment of intoxicated arrestees." *Id.* at 1028. Relying on *City of Canton*, the Third Circuit rejected *Monell* liability observing:

> We know of no authority suggesting that a failure to hold intoxicated detainees, a class constituting two-thirds of the detainee population, in an institution devoted specifically to detoxification or to subject them to around-the-clock personal surveillance constitutes deliberate indifference to a serious need of such detainees.

Id. at 1029. Notably, the Third Circuit concluded:

> We must remain mindful of *Colburn I's* admonition that we cannot place municipalities and their custodial officers and employees 'in the position of guaranteeing that inmates will not commit suicide.'

Id. at 1030-31.

The Sixth Circuit similarly applies a deliberate indifference standard to conditions of confinement cases. In *Schack v. City of Taylor*, the detainee was arrested for disorderly intoxication and placed into a detox cell to "sober[] up a little bit" before completing the booking process. 177 Fed. App'x 469, 470 (6th Cir. 2006). Shortly after being placed into the cell, the detainee stood up from a bench, fell over hitting his head on a concrete wall, and later died. *Id.* The Sixth Circuit reversed the district court's denial of summary judgment holding that even if the plaintiff could show the subjective component of deliberate indifference, he could not satisfy the objective component because "[i]n conditions-of-confinement challenges like this one, a claimant must establish an excessive risk" of injury—one that violates contemporary standards of decency. *Id.* at 472 (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). The court noted: "[p]lacing an intoxicated man, even a highly intoxicated man, in a detoxification cell while awaiting booking does not violate contemporary standards of decency." *Id.* (citation omitted).

The Tenth and Eleventh Circuits also require a showing of deliberate indifference in conditions of confinement cases. *See e.g., Barrie v. Grand Cnty.*, 119 F.3d 862 (10th Cir. 1997); *Tittle v. Jefferson Cnty. Comm'n*, 10 F.3d 1535 (11th Cir. 1994). In *Tittle*, two detainees arrested for robbery and violating parole, respectively, both committed suicide by hanging themselves with bed sheets in their cells. 10 F.3d at 1536-37. Both detainees were screened for suicidal tendencies, and both denied ever receiving psychiatric care, denied ever attempting suicide, denied any illness or injury, and denied any substance abuse. *Id.* One of the detainees (Harrell), however, had previously attempted suicide and had been under psychiatric care. *Id.* at 1538. In addition, a childhood friend of that detainee called the Jefferson County Jail and told a jailer about the previous suicide attempt and "that the deputies should watch him carefully because Harrell might again try to kill himself." *Id.* Finally, jail records indicated that, prior to Harrell's suicide, there had been 27 attempted suicides in the jail and two successful suicides. *Id.*

The representatives of the detainees' estates sued Jefferson County alleging Section 1983 claims based on the county's policies of inadequately screening detainees for suicidal tendencies, inadequately supervising detainees, and maintaining a defective jail. *Id.* at 1539-40. The Eleventh Circuit affirmed a summary judgment for the County: there could be no *Monell* liability without showing the alleged policies demonstrated deliberate indifference to the detainees' rights. *Id.*

Unlike these other circuit courts, the panel never utters the term deliberate indifference. These contrasting approaches present an untenable circuit conflict for claims challenging unconstitutional prison conditions. In fact, the Fifth Circuit has become an outlier. More importantly, its conflating of concepts between episodic acts or omissions and conditions of confinement has led to a misapplication of this Court's principles in *Monell*, which is likely to continue without this Court's intervention.

II. THE PANEL'S DECISION CONFLICTS WITH THIS COURT'S TEST IN *BELL V. WOLFISH* FOR ASSESSING UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT

The panel recites the test for unconstitutional conditions of confinement which this Court set forth in *Bell v. Wolfish*. App. at 15a—16a. The panel, however, limits its analysis to the first element only: whether an identifiable condition existed at the Young County Jail. Nowhere does the panel address the second requirement to impose liability on the County: whether the condition is reasonably related to a legitimate government objective. By failing to even acknowledge, much less analyze, the reasonable, non-punitive objectives in county jail administration, the panel's decision strays from *Bell v. Wolfish* and potentially opens the floodgates for meritless conditions of confinement claims.

The pivotal issue in a conditions of confinement case is whether the condition amounts to punishment. *See Bell*, 441 U.S. at 535. Due process of law prohibits pretrial detainees from being punished prior to adjudication of guilt. *Id.* Here, Respondents adduced no evidence that the County intended to punish any detainees, including Ms. Simpson.

Absent a showing of intent to punish, a court ***must*** determine if an established condition is reasonably related to a legitimate, non-punitive objective. *Id.* at 539. If the condition is arbitrary or purposeless, then and only then, intent to punish can be inferred. *Id.* But, these constitutional questions must be answered with due regard to the fact that judges and courts should not become involved in "how best to operate a detention facility." *Id.* This Court stressed:

> In determining whether restrictions or conditions are reasonably related to the Government's interest in maintaining security and order and operating the institution in a manageable fashion, courts must heed our warning that '[such] considerations are peculiarly with the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.

Bell, 441 U.S. at 540 n.23 (quoting *Pell v. Procunier*, 417 U.S. 817, 827 (1974) (internal quotations included).

A prison or jail facility's legitimate, non-punitive objectives exist in various forms. These include the need to maintain order and security and to effectively manage the jail facility. *Id.* at 540. Prior to this case, the Fifth Circuit also recognized a jail official's legitimate interest in relying on information provided by a detainee in assessing their medical or mental health needs. *See Whitt v. Stephens Cty.*, 529 F.3d 278, 284 (5th Cir. 2008).

Notwithstanding the Court's warnings, the panel erroneously proceeds to "second-guess" the actions of Young County jail officials and wades into the minutiae of jail administration without regard to any legitimate objectives that might exist. *See id.* at 544-45. For example, the panel's discussion of the jail's alleged detox protocol of allowing detainees to "sleep off" intoxication ignores the realities of jail operations across the country. The only jailer who referred to this alleged protocol stated that "very, very drunk" detainees may be too incoherent and cannot answer questions during the book-in process. ROA.1218, p. 222. Jail officials no doubt have a legitimate interest in ensuring that a detainee understands intake questions and responds accordingly.

Indeed, in a strikingly similar case, the Fifth Circuit has observed, "it seems objectively reasonable for the Jailers to allow an intoxicated inmate to 'sleep it off,' with periodic monitoring to safeguard her well-being." *Estate of Allison v. Wansley*, 524 Fed. App'x.

963, 972 (5th Cir. 2013). There, the Fifth Circuit adopted similar reasoning by the Fourth Circuit in *Grayson v. Peed*, 195 F.3d 692, 696 (4th Cir. 1999):

> [The deceased inmate's] symptoms hardly distinguish him from the multitude of drug and alcohol abusers the police deal with every day. [The deceased inmate] was found in possession of drugs while acting irrationally and slurring his speech. However, an officer could hardly be faulted under [*Estelle v. Gamble*, 429 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)] for believing that [the deceased inmate] needed nothing so much as to sleep it off. To accept appellant's claim would be to mandate as a matter of constitutional law that officers take all criminal suspects under the influence of drugs or alcohol to hospital emergency rooms than detention centers. That would be a startling step to take.

Wansley, 524 Fed. App'x at 972. To say, on one hand, it is objectively reasonable for jail officials to allow intoxicated inmates to "sleep off" intoxication, but on the other hand, such an alleged policy may amount to punishment under the Due Process Clause, is plain nonsense.

Similarly, in analyzing Respondents' "failure to assess" claim, the panel also ignores the Fifth Circuit's earlier recognition that jailers should be able to rely on information from detainees concerning their medical or mental state and condition. *See Whitt*, 529 F.3d at 284. Rather, in the panel's own words, its

decision imposes an unprecedented burden on county jails to "detect and treat a suicidal detainee" in order to "prevent[] an overdosee from successfully killing herself." App. at 25a—26a.

Not only is this new rule a completely unreasonable burden to place on local jail facilities, it conflicts with prior decisions of this Court, the Fifth Circuit, and circuit courts across the nation that jail officials owe no duty to detainees to ascertain whether they are truly suicidal and prevent them from hurting themselves. *See e.g., Evans v. City of Marlin, Tex.*, 986 F.2d 104, 108 (5th Cir. 1993) ("Absent such a right [to a complete psychological examination], the failure to train custodial officials in screening procedures to detect latent suicidal tendencies does not rise to the level of a constitutional violation."); *Whitt*, 529 F.3d 278, 284 n.10 (citing *Burns v. City of Galveston*, 905 F.3d 100, 104 (5th Cir. 1990) ("Failure to train police officers in screening procedures geared toward detection of detainees with suicidal tendencies may rise to the level of a constitutional deprivation *only* if the right of detainees to adequate medical care includes an absolute right to psychological screening. We perceive no such right."); *Danese v. Asman*, 875 F.2d 1239,1244 (6th Cir. 1989) (upholding qualified immunity because there was no authority "that the officers had the constitutional duty to determine if Danese was seriously inclined to commit suicide and then stop him."); *Grayson v. Peed*, 195 F.3d 692, 696 (4th Cir. 1999); *see also Burnette v. Taylor*, 533 F.3d 1325, 1333 (11th Cir. 2008) ("The Constitution does not require a police officer or jail official to seek medical attention for every arrestee or inmate who

appears to be affected by drugs or alcohol.")(other citations omitted).

In another recent case a Fifth Circuit panel returned to the well-established principal that conditions of confinement cases are very difficult to establish and generally pertain to widespread, obvious activity of jail administrators. In *Garza v. City of Donna*, 922 F.3d 626 (5th Cir. 2019), the court examined a jail suicide case as an "episodic act" (deliberate indifference) rather than its alternative, the disciplined until now approach, of "conditions" cases. In *City of Donna*, the plaintiffs claimed *inter alia*, that the jail had failed to monitor the inmate and the court held:

> Appellants' conditions theory is an effort to fit a square peg into a round hole. Prior conditions cases have concerned durable restraints or imposition on inmates' lives like overcrowding, deprivation of phone or mail privileges, the use of disciplinary segregation, or excessive heat. *See Yates v. Vollier*, 868 F.3d 354, 360 (5th Cir. 2017) (heat); *Scott v. Murphy*, 114 F.3d at 51, 53 & n.2 (5th Cir. 1997) (en banc) (collecting other examples). The import of the Donna jail's signs is too nebulous to amount to an official rule or restriction, and the signs do not operate as a continuing burden on inmate life in the way that dangerously high temperatures or overcrowded cells do. As such, the district court was correct to reject Appellants' conditions theory.

Id. at 633-34.

Yet here, the Fifth Circuit panel determined to wade into jail operations again without any specific analysis of deliberate indifference, and has effectively disallowed the use of holding cells or "drunk tanks" in Texas, Louisiana, and Mississippi.

Instead of following this Court's instructions to accord prison administrators wide-ranging deference to implement policies or practices that facilitate efficient jail management, the Fifth Circuit has erroneously immersed itself in "how best to operate a detention facility" without regard to constitutional requirements. *See Bell*, 441 U.S. at 539; *see also Whitley v. Albers*, 475 U.S. 312 (1986); *Farmer v. Brennan*, 511 U.S. 825 (1994); *Lewis v. Casey*, 518 U.S. 343 (1996); *Beard v. Banks*, 548 U.S. 521 (2006). The extraordinary burdens the panel places on county jails are unprecedented and not constitutionally required. This Court should, therefore, grant this petition for certiorari.

CONCLUSION

For the reasons explained above, Petitioners respectfully submit that this Court should grant this petition for writ of certiorari.

Respectfully submitted,

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APPENDICES

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-10222

[Filed June 29, 2020]

D.C. Docket No. 7:15-CV-00012-O

NICHOLE SANCHEZ; CASY SIMPSON; EDWARD LAROY SIMPSON, II, Individually and as the Representative of the Estate of Diana Lynn Simpson,
Plaintiffs – Appellants
v.

YOUNG COUNTY, TEXAS; YOUNG COUNTY SHERIFF'S DEPARTMENT,
Defendants – Appellees

Appeal from the United States District Court
For the Northern District of Texas

ON PETITION FOR
REHEARING EN BANC

(Opinion 4/22/20, 5th Cir., _____, _____, F.3d _____)

Before CLEMENT, HIGGINSON, and ENGELHARDT, Circuit Judges.

PER CURIAM:

(x) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), The Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT

/s/ Edith Brown Clement
UNITED STATES CIRCUIT JUDGE

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-10222

[Filed April 22, 2020]

D.C. Docket No. 7:15-CV-00012-O

NICHOLE SANCHEZ; CASY SIMPSON; EDWARD LAROY SIMPSON, II, Individually and as the Representative of the Estate of Diana Lynn Simpson,
Plaintiffs – Appellants
v.

YOUNG COUNTY, TEXAS; YOUNG COUNTY SHERIFF'S DEPARTMENT,
Defendants – Appellees

Appeal from the United States District Court
For the Northern District of Texas

Before CLEMENT, HIGGINSON, and ENGELHARDT, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District court is affirmed in part, reversed in part, and the cause is remanded to the District court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that each party bear its own costs on appeal.

[Court's Seal]

Certified as a true copy
and issued as the mandate
On Jul 07, 2020

Attest: /s/ Lyle W. Cayce
Clerk, U.S. Court of
Appeals, Fifth Circuit

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 19-10222

[Filed April 22, 2020]

NICHOLE SANCHEZ; CASY SIMPSON; EDWARD LAROY SIMPSON, II, Individually and as the Representative of the Estate of Diana Lynn Simpson,
Plaintiffs – Appellants
v.

YOUNG COUNTY, TEXAS; YOUNG COUNTY SHERIFF'S DEPARTMENT,
Defendants – Appellees

Appeal from the United States District Court for the Northern District of Texas

Before CLEMENT, HIGGINSON, and ENGELHARDT, Circuit Judges.

Diana Simpson died of a drug overdose while she was a pretrial detainee at the Young County Jail. Her family (Plaintiffs) sued Young County for her death under 42 U.S.C. § 1983. We previously affirmed summary judgment for the County in part, dismissing Plaintiffs' episodic acts-or-omissions

theory of liability. *Sanchez v. Young County (Sanchez I)*, 866 F.3d 274, 280 (5th Cir. 2017). But we remanded for the district court to evaluate Plaintiffs' conditions-of-confinement theory in the first instance. *Id.* at 279. The district court granted summary judgment for the County on that theory, too. Plaintiffs appeal. We reverse in part and remand.

I.

Simpson's death was a suicide. This was not her first attempt. After her previous attempt, she told her husband that, were she to try again, she could get cash from an ATM and go to a motel so that he could not find her. Once there, she would overdose on pills. So her husband was understandably concerned when, a few weeks after Simpson said this, he noticed a cash withdrawal from his bank account.

He tried to contact Simpson, but she did not respond. He called the hospital where she worked, but she was not there. When she did not report for her shift the next evening, he called law enforcement and filed missing-person and be-on-the-lookout reports. Eventually, someone saw her car on the side of the road in a nearby city and called the police.

Police officers found Simpson asleep in her vehicle. They woke her and noticed that her "speech was slurred, that she was slow on her answers, and that [she was] talking real[ly] quiet[ly]." She "had a hard time keeping her eyes open to talk," "kept leaning her head back against" the headrest, and

"had a hard time getting her [license] out of her wallet that was in her lap" and "trying to get a cup of water to her mouth" for a drink. She denied being diabetic or having any medical conditions. She initially denied taking any medications and said that she had something to drink the previous night to help her sleep. The officers called EMS to come evaluate her. EMS medics determined that her vitals were "fine" and that her blood sugar was normal, but noted that her blood pressure was high and her pulse was low.

According to the officers, she "was unsteady on her feet and almost fell down;" she "had to be assisted while walking and could not stand on her own." With Simpson's permission, they searched her car and found beer cans—some empty—and empty blister packs for twenty-four pills. These pills included antihistamines, muscle relaxers, and antipsychotics. They asked her how much she took. Her answer: "all of it." She denied to officers that she was trying to hurt herself and declined to go to the hospital. But she told one of the medics that she was trying to kill herself.

The officers determined that Simpson, if left alone, was a danger to herself or to others, "due to her being on some type of medication," so they arrested her for public intoxication and took her to Young County Jail.

When Simpson arrived, Jailers started the book-in process. They never finished. On the suicide-screening form, they completed only the detainee-question portion; left undone was the portion for

jailer observations. Completing that form is mandatory, but because they thought that Simpson was drunk, they put her in a holding cell at 6:30 p.m. to "sleep it off." Several jailers stated that this and other book-in forms, such as a computer-based medical intake form, did not have to be completed at intake; they could be completed later. Jailers also stated that they could review the state-mandated Continuity of Care Query results later. See 37 TEX. ADMIN CODE § 273.5(b), (c). The Query results show if a detainee has received state-provided mental health services.

The Query results confirmed that Simpson had received such services, but jailers did not review this information. Nor did they consider the be-on-the-lookout report, the arrest report, the officers' statements, or that officers brought to the jail a bag of the empty pill packs—all of which suggested that Simpson had taken medication and could be in danger. Instead, jailers relied on Simpson's responses to their questions and put on her screening form that she was not on medication.

Simpson's husband called the jail three times to check on her. But jailers apparently did not consider the information that he provided when determining whether Simpson needed medical care. In his first call, before she arrived at the jail, he told jailers that she had been missing for two days and was suicidal. In his second call, after she had arrived, he again said that she was threatening suicide and asked that the jail get her help. That jailer did not think these warnings were relevant because, according to him, the jail would not contact mental-health services

unless Simpson was sober and attempted or admitted to attempting suicide at the jail. Her husband's third call was after she died.

When a jailer returned to complete the book-in process at 2:55 a.m., Simpson was on the cell floor, unresponsive and naked from the waist down. She had been lying there, half-naked, almost the entire night. Jailers took her to the hospital where she was pronounced dead. Her cause of death was "mixed drug intoxication."

While Simpson was in the cell, jailers performed periodic cell checks. The only way to see Simpson in the cell during these checks was to slide open an observation window on the cell door. These call checks were logged using an electronic wand system. According to the cell-check logs, jailers checked on Simpson every 25 minutes between 6:52 p.m. and 2:54 a.m., and two jailers swore that the logs were accurate. But a subsequent Texas Ranger investigation revealed at least four discrepancies with the logs and video recordings of Simpson's cell. First, the jail somehow lost the recording for 7:52 p.m.—2:00 a.m. The investigating Texas Ranger made several unsuccessful attempts to obtain this missing recording—the jail administrator sent CDs supposedly containing the missing recording several times, but none covered the missing six-hour window. The administrator's explanations for these mix-ups were that he downloaded the wrong day, then that the system had been upgraded, and then that the video was inexplicably gone. The company that performed the upgrade, however, stated that the upgrade would not affect the recording. Second,

the records that *are* available show that no one checked on Simpson between 6:52 p.m. and 7:52 p.m., despite cell-check logs showing otherwise. Third, the recordings show a cell check at 2:45 a.m., but that check was not logged; and the log shows a cell check at 2:18 a.m., but that check is not on the recording. Fourth, the recordings show that contrary to jailers' statements, Simpson does not move at all after 2:00 a.m.

The County did not conduct its own investigation of Simpson's death, and the County sheriff and jail administrator testified that there were no issues with jail policies and that Simpson's death was a suicide that no one could have detected. No jailers were reprimanded or fired because of Simpson's death.

In the five years before Simpson's death, numerous Texas Commission on Jail Standards reports noted that the County jail failed to document observations of inmates, filed to conduct hourly face-to-face observations, failed to conduct thirty-minute observations of detainees in holding or detox cells, and failed to properly complete intake screening forms. After Simpson's death, Commission reports noted several more potential shortcomings at the jail; failing to notify the magistrate or state mental-health services of inmates who may have mental-health issues, exceeding thirty-minute observation intervals of holding and detox cells, failing to provide "efficient and prompt care to inmates for acute situations," and using observation forms without properly recording times.

Plaintiffs sued the County for Simpson's death under § 1983, alleging Eighth and Fourteenth Amendment violations, and under the Texas Tor Claims Act. After removing the case to federal court, the County moved for summary judgment on all claims. The district court granted the motion. Plaintiffs appealed the dismissal of only their § 1983 claim. We affirmed in part, dismissing Plaintiffs' § 1983 claim to the extent that it was based on an episodic-acts-or-omissions liability theory. *Sanchez I*, 866 F.3d at 280. But we held that the district court erred in failing to consider Plaintiffs' alternative conditions-of-confinement theory and, therefore, remanded for the district court to consider whether a genuine dispute of material fact existed under that theory. *Id.* at 280-81.

On remand, Plaintiffs amended their complaint to allege twelve de facto policies that caused Simpson to be denied her constitutional right to medical care:

a. Defendant Young County had no actual procedure for an assessment or determination of the suicide risk of pretrial detainees, despite the existence of a form, as the de facto policy of Young County officials was not to complete forms. Indeed, the policymaker undertook no efforts to ensure that forms were properly used or filled out thereby providing a de facto policy of not requiring adherence to proper suicide assessment.

b. Defendant Young County systematically ignored the written policies for observation of pretrial detainees posing a suicide risk.

c. Defendant Young County, while having a written policy, did not, in practice, place pretrial detainees deemed a suicide risk in the cells that would allow for maximum visual observation at all times of the safety and welfare of those detainees[.]

d. Defendant Young County's systematic failure to complete the required intake screening instrument resulted in the misclassification and misplacement of highly [ ] intoxicated pretrial detainees in cells that lacked maximum visual observation at all times by Young County Jail staff.

e. Defendant Young County had no enforced policy for the proper monitoring of highly [ ] intoxicated pretrial detainees.

f. Defendant Young County had a longstanding policy, custom, and practice of detaining highly [ ] intoxicated detainees without constitutionally adequate visual surveillance or audio monitoring, which did not allow for maximum visual observation at all times by Young County Jail staff.

g. Defendant Young County chose a policy to only conduct "cell checks" on pretrial detainees every twenty-five minutes. But its policy and custom was to house highly [ ] intoxicated pretrial

detainees in cells that lacked adequate audio and visual surveillance while only checking those cells once every twenty-five minutes and not actually entering the cells to closely monitor the detainees' health and safety. Instead, the jail staff was allowed to use a wand system whereby they could record a "cell check" without ever actually entering the cell.

h. Defendant Young County had no enforced policy to comply with [Commission] requirements related to the [Query] system, including its required training, use and required follow-up.

i. Defendant Young County, by policy, allowed untrained personnel without proper jailer certificates and training to monitor inmates with documented mental and medical issues.

j. Defendant Young County did not adequately train staff on how to properly recognize inmates at risk for overdose, suicide, or to monitor and keep [inmates safe] from overdose or suicide in violation of [Texas law].

k. Defendant Young County had no alcohol or detox policy for persons with documented coherency issues, documented drug ingestion and documented suicide tendencies such as Ms. Simpson.

l. Despite a written policy, Defendant Young County failed to have an established procedure for visual, face-to-face observation of all inmates by jailers, in violation of [Texas law].

The County again moved for summary judgment, and the district court again granted the motion. It found that Plaintiffs alleged three types of de facto policies: failure to train, failure to observe detainees, and failure to complete forms and identify suicidal tendencies upon intake. It held that Plaintiffs failed to create a fact issue over whether the alleged training and observation policies were pervasive. The court did find a fact issue over whether the third policy is pervasive, but held that, even if it is, it did not cause Simpson's death. Plaintiffs again appeal.

II.

We review a district court's grant of summary judgment de novo. *Bridges v. Empire Scaffold, L.L.C.*, 875 F.3d 222, 225 (5th Cir. 2017). Summary judgment is appropriate when no genuine dispute of material facts exists and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). A genuine dispute of material facts exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A court must resolve all reasonable doubts and draw all reasonable inferences in the light most favorable to the nonmovant. *See Walker v. Sears & Roebuck & Co.*, 853 F.2d 355, 358 (5th Cir. 1988). A court should enter summary judgment against a party when it has the burden of proof at trial yet fails to establish an element of its case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). If "reasonable minds could differ" on "the import of the evidence," a court must deny the motion. *Anderson*, 477 U.S. at 250.

III.

Municipalities can be held liable for violating a person's constitutional rights under § 1983. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). For pretrial detainees, such rights include the right to medical care, *Sanchez I*, 866 F.3d at 279, and the right to be protected from known suicidal tendencies, *Flores v. County of Hardeman*, 124 F.3d 736, (5th Cir. 1997). These procedural and substantive due-process rights stem from the Fourteenth Amendment. *Hare v. City of Corinth*, 74 F.3d 633, 639 (5th Cir. 1996) (en banc) (citing *Bell v. Wolfish*, 441 U.S. 520 (1979)). This Circuit characterizes such § 1983 violations of a pretrial detainee's rights as either episodic-acts-or-omissions claims or conditions-of-confinement claims. *Id.* at 644. For both claims, a plaintiff has two burdens: to show (1) that a constitutional violation occurred and (2) that a municipal policy was the moving force behind the violation. *See Monell*, 436 U.S. at 694. We previously affirmed summary judgment on Plaintiffs' episodic-acts-or-omissions claim in *Sanchez I*, remanding with instructions that the district court analyze whether a genuine dispute of material fact precluded summary judgment on their conditions-of-confinement claim. *Sanchez I*, 866 F.3d at 281. Such claims are challenges to the "general conditions, practices, rules, or restrictions of pretrial confinement." *Hare*, 74 F.3d at 644. The issue is whether the conditions "amount to punishment." *Bell*, 441 U.S. at 535.

To prevail on a conditions-of-confinement claim, the plaintiff must show a condition—a "rule," a "restriction," an "identifiable intended condition or practice," or "sufficiently extended or pervasive" "acts or omissions" of jail officials—that is not reasonably related to a legitimate government objective and that caused the constitutional violation. *Duvall v. Dallas County*, 631 F.3d 203, 207 (5th Cir. 2011) (quoting *Hare*, 74 F.3d at 645).

Plaintiffs argue that the County has numerous de facto policies that systematically deny medical care to highly intoxicated detainees—e.g., policies of placing highly intoxicated detainees into holding or detox cells to "sleep it off" without proper medical or risk-of-suicide assessment or treatment, of ignoring outside information when assessing a detainee's medical needs and of failing to train jailers to evaluate detainees' mental-health and medical needs. We find that these policies are best framed as covering three categories: failure to assess, failure to monitor, and failure to train. Plaintiffs argue that the district court erred in finding no genuine disputes of material fact about whether the County had these alleged de facto policies or whether they caused a violation of Simpson's constitutional rights.

A.

Plaintiffs claim that the County denied Simpson adequate medical care by failing to train its jail employees. The district court examined this failure-to-train theory as a conditions-of-confinement claim. *Sanchez v. Young County* (*Sanchez II*), No. 7:15-CV-00012-O, 2019 WL 280092, at *5 n.3 (N.D. Tex. Jan.

22, 2019). It should have examined their theory as an episodic-act-or-omissions claim. *See Flores*, 124 F. 3d at 738 (treating the plaintiff's training-and-staffing-based allegations as an episodic-acts-or-omissions claim even though the plaintiff attempted to plead them as a conditions-of-confinement claim). Failure-to-train claims are not conditions-of-confinement claims, so dismissing Plaintiffs' claim as such was error.[1]

Nevertheless, we agree that this claim should be dismissed. As the County correctly argues, the claim is barred. We affirmed the dismissal of Plaintiffs' episodic-acts-or-omissions claim in *Sanchez I*. 866 F.3d at 281. The law-of-the-case doctrine therefore prohibits us from reexamining this legal issue. See *United States v. Teel*, 691 F.3d 578, 582 (5th Cir. 2012). And Plaintiffs do not argue that any exceptions to this doctrine apply here. Thus, we affirm the district's court's dismissal of Plaintiffs' failure-to-train claim.

B.

The district court dismissed Plaintiffs' claims based on a failure to monitor because it held that Plaintiffs failed to raise a fact issue over whether the County had an "unofficial custom or practice—much less *pervasive* acts—of failing to monitor detainees." The court held that the evidence "plainly contradicts Plaintiffs' characterizations" of the County's

[1] The district court, for its part, correctly noted that we treat failure to train claims as episodic-acts-or-omissions claims. *Sanchez II*, 2019 WL 280092, at *5 n.3.

practices because Plaintiffs did not offer evidence of other detainees who jailers failed to monitor; the County's use of an electronic wand system did not prove a failure to complete cell checks, and any discrepancies in these checks do not show a de facto policy; and several jailers attested to the existence of written monitoring policies. It therefore concluded that Plaintiffs' allegations show that the failures were individual ones, not generalized failures that evidenced a de facto policy. This conclusion was error, however, because the court failed to consider all of Plaintiffs' evidence and arguments or to view them in light most favorable to Plaintiffs.

First, the district court incorrectly faulted Plaintiffs for not "provid[ing] evidence of other detainees [who] jailers failed to observe." Plaintiffs did provide such evidence: the Texas Commission on Jail Standards reports about inadequate detainee monitoring from before and after Simpson's death. Those reports are evidence that jailers failed to monitor other detainees. The district court erred in discounting these reports.

Second, the district court did not even consider evidence that the county policymaker effectively ratified the prior misconduct. In municipal-liability cases, the issue is whether the complained-of "act [ ] may fairly be said to represent official policy." *Monell*, 436 U.S. at 694. Practices that are "sufficiently extended or pervasive, or otherwise typical of extended or pervasive misconduct," can represent official policy. *Hare*, 74 F.3d at 645. This is because pervasive practices can be evidence that the official policymaker knew of and acquiesced to the

misconduct, making the municipality culpable. *See Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001).

Showing a pervasive pattern is a heavy burden. *See Shepherd v. Dallas County*, 591 F.3d 445, 452 (5th Cir. 2009). But here, no one disputes that the County sheriff is the relevant policymaker or that he knew about the Commission reports and about the details of Simpson's death. And Plaintiffs argue that even after her death, the sheriff neither punished any jailers involved nor took any action to correct the jail's alleged deficiencies. When the official policymaker knows about misconduct yet allegedly fails to take remedial action, this inaction arguably shows acquiescence to the misconduct such that a jury could conclude that it represents official policy. *See Duvall*, 631 F.3d at 208-09 (upholding jury finding that a county jail maintained an unconstitutional condition where there was evidence that the county policymaker knew of unconstitutional conditions yet failed to revise its policies); *Grandstaff v. City of Borger*, 767 F.2d 161, 171 (5th Cir. 1985) (holding that, because the city policymaker failed to change policies or to discipline or reprimand officials, the jury was entitled to conclude that the complained-of-practices were "accepted as the way things are done and have been done in" that city); *see also Piotrowski*, 237 F.3d at 578 n.18 (explaining that *Grandstaff* affirmed municipal liability because a policymaker's post-incident actions can ratify the prior misconduct). Plaintiffs' evidence therefore creates a fact issue about whether the sheriff acquiesced to the allegedly inadequate monitoring practices.

Third, the district court misunderstood the relevance of evidence about the County's electronic wand system. The court did not consider how discrepancies between cell-check logs and video recordings of Simpson's cell—or the inexplicably missing six hours of these recordings—might affect the jailers' credibility. This evidence might suggest to a jury that jailers were dishonest about how they monitored Simpson and that they tried to cover up their failure to monitor. A jury might then reasonably conclude that, in light of multiple reports that the jail inadequately monitored detainees, such dishonesty and an apparent cover-up is "typical of extended or pervasive misconduct." *Hare*, 74 F.3d at 645; *see Kennett-Murray Corp. v. Bone*, 622 F.2d 887, 895 (5th Cir. 1980) (holding that inconsistent testimony "present[s] questions of credibility which require jury resolution"). This creates a fact issue over whether jailers habitually failed to properly monitor detainees.

Fourth, the existence of written monitoring policies does not, as a matter of law, negate Plaintiffs' above-mentioned evidence that the allegedly inadequate monitoring practices were pervasive. Indeed, Plaintiffs allege that the jail had a practice of ignoring its written policies. A jury might conclude that such written policies undercut Plaintiffs' failure-to-monitor theory, but the written policies do not compel that conclusion. Plaintiffs' evidence, when viewed in the light most favorable to *them*, creates several disputes of material fact about whether the jail has a de facto policy of inadequately

monitoring detainees. Thus, the district court's contrary holding was error.

C.

The district court categorized Plaintiffs' failure-to-assess allegations as making two claims: that the County had a pervasive practice of (1) "misclassifying and misplacing highly intoxicated pretrial detainees in cells that lacked maximum visual observation at all times," and (2) "not ensuring intake assessment forms were properly used or filled out." For the first claim, the court held that Plaintiffs did not provide evidence that the alleged practice of placing intoxicated detainees in holding cells before completing the book-in process is pervasive. For the second claim, though the court found that Plaintiffs created a fact issue over whether jailers "pervasively failed to timely complete suicide screening and medical intake forms when intoxicated detainees first arrived" at the jail, it held that Plaintiffs failed to create a fact issue over whether this alleged practice caused a violation of Simpson's constitutional rights.

For the first claim, the district court's holding was error. Our holding in an uncannily similar case, *Montano v. Orange County*, 842 F.3d 865 (5th Cir. 2016), makes this clear. One way a plaintiff can prove the existence of a de facto policy is through the "consistent testimony of jail employees." *Id* at 875. At least three jailers here testified that the jail's protocol with highly intoxicated detainees is to place them in holding cells to "sleep off" their apparent intoxication before completing book-in. For example,

(1) the jail administrator testified that intoxicated detainees are put in holding cells before completing medical and other intake forms; (2) another jailer stated that the "protocol for alcohol or drug detox" is to place detainees "in the holding cell after their initial book-in," allowing "very very drunk" inmates to "sleep for a while"; and (3) the jailer who spoke to Simpson's husband when he called the jail stated that Simpson would have to "sleep it off" before she could receive help or treatment. Indeed, the district court noted this practice, stating that several jailers "testified that medical forms were generally completed later during the book-in process than the suicide screening—after a detainee had time to regain sobriety." This seemingly consistent testimony creates a fact issue over whether the County has a policy of placing highly intoxicated detainees in holding cells to "sleep off" their apparent intoxication without completing book-in procedures like medical and suicide screening. And as we held in *Montano*—a case we affirmed after a full trial—a de facto policy can be established through consistent testimony that a jail has a practice of leaving intoxicated detainees in a cell until they become coherent. *Id*. Thus, given the similarities between these cases, *Montano* controls our holding: consistent jailer testimony about a de facto policy creates a factual dispute that precludes summary judgment.

To the extent the County disputes that this is the jail's detox protocol or that jailer testimony is consistent, resolving those disputes is the province of the jury. Who the jury believes depends on who it finds credible. And credibility determinations are the

"purest of jury issues. *Hindman v. City of Paris*, 746 F.2d 1063, 1068 (5th Cir. 1984). The County might show that this alleged "sleep it off" policy is not pervasive, but whether it succeeds is for the jury to decide.

For the second claim, we agree with the district court that the jailers' testimony on whether they "pervasively failed to timely complete suicide screenings and medical intake forms when intoxicated detainees first arrived" at the jail "was strikingly consistent." We therefore also agree that Plaintiffs raised a fact issue over whether this practice showed a de facto policy. But we disagree that Plaintiffs failed to create a fact issue about causation.

The district court concluded that the failure to complete the bottom of the suicide-screening form was not itself a but-for cause of Simpson being denied needed medical care. That might be so, but the court erred in viewing the failure to complete this form in isolation. We do not require a plaintiff to show that a "policy or practice [was] the exclusive cause of the constitutional deprivation." *M.D. ex rel. Stukenberg v. Abbott*, 907 F.3d 237, 254 (5th Cir. 2018). Courts "may . . . consider how individual policies or practices interact with one another within the larger system." *Id.* at 255. This is because confinement conditions may be constitutionally inadequate if, when viewed in combination, they have a "mutually enforcing effect that produces the deprivation of a single, identifiable human need." *Wilson v. Seiter*, 501 U.S. 294, 304 (1991).

Plaintiffs allege numerous de facto policies affecting highly intoxicated detainees. For example, policies where jailers are not required to complete suicide or medical-screening forms, review Query results, or complete the book-in process; a policy of not contacting mental-health services unless the detainee is sober and attempts suicide or indicates on the suicide-screening form that she is suicidal; a policy of accepting detainees arrested for public intoxication without a known blood-alcohol content or further medical clearance so long as they are responsive and not falling down at intake; and a "sleep it off" detox policy that does not include further medical assessments or adequate monitoring. Plaintiffs also allege a policy of disregarding outside information when assessing a detainee's medical needs. The district court did not address these alleged policies, much less consider how they might interact.

Reasonable minds might disagree about whether these alleged policies interacted to violate Simpson's constitutional rights. But a jury is "free to choose among reasonable constructions of the evidence." *E.E.O.C. v. Boh Bros. Constr.Co.*, 731 F.3d 444, 452 (5 th Cir. 2013) (en banc) (quoting *United States v. Ramos-Cardenas*, 524 F.3d 600, 605 (5th Cir. 2008)). A jury could reasonably conclude that policies where jailers are not required to review Query results or to complete medical forms during the book-in process for highly intoxicated detainees—coupled with a policy of ignoring outside information when assessing medical needs—were a substantial factor in causing Simpson to be denied medical care. One jailer testified that outside information such as

missing-person and be-on-the-lookout reports are not considered when assessing an inmate at book-in. Another jailer testified that, when determining whether to contact mental-health services, jail policy is to consider only the query information, the suicide-screening form, and jailers' own observations, but not outside information from family members or the arresting officer. And even though reviewing the query results here might have led to Simpson receiving medical care—one jailer admitted that, had she reviewed the Query results, she would have known that Simpson's responses at intake were not true—the alleged practice is to not review those results until completing book-in. That might happen hours later, because the jail's alleged policy is to place highly intoxicated detainees like Simpson into a holding cell to "sleep it off" before completing book-in.

Indeed, viewing the evidence in light most favorable to Plaintiffs, how jailers could ever detect and treat a suicidal detainee who took a fatal overdose of drugs is unclear. The Coutny's alleged policies are to place seemingly intoxicated detainees in a cell to sober up before they receive further medical screening. In situations like the one here, where a detainee is arrested for public intoxication but her blood-alcohol content is unknown, jailers do nothing to confirm their suspicion that the detainee is merely intoxicated or to confirm that the detainee is not too in intoxicated to safely sleep it off. *Cf. Montano*, 842 F.3d at 879 (faulting the defendant for not addressing why, under its policies, "detainees were expected to heal themselves, particularly when the assumed drug influence was never established").

Unless the detainee decides to abandon her suicide effort, she will sit in a cell to sober up before she can receive further medical screening. But someone who has ingested a lethal dose of drugs, like Simpson did, will never sober up, so she will never get further medical screening.

The County has no apparent process or policy for preventing such an overdosee from successfully killing herself. The jail has no medical staff, jailers do not consider outside information that contradicts what a detainee states at intake, or after intake, jailers do not conduct follow-up assessments. The only follow-up they do is periodic monitoring. And Plaintiffs claim that this monitoring is pervasively inadequate.

Given the different, compounding ways that these alleged policies might interact a jury could reasonably conclude that they had a "mutually enforcing effect" that deprived Simpson of needed medical care. *Wilson*, 501 U.S. at 304. The district court therefore erred as a matter of law in finding no genuine dispute of material fact about causation.

The County argues, however, that we already decided this causation issue in its favor in *Sanchez I*. That is incorrect. Although we stated that Plaintiffs did not offer proof that failing to complete intake forms caused Simpson's death, we did so when evaluating Plaintiffs' episodic-acts-or-omissions claims. *Sanchez I*, 866 F.3d at 280. We explicitly remanded for the district court to consider Plaintiffs' conditions-of-confinement claim "in the first instance" and, therefore, could not have decided the

causation issue for that claim. *Id*. at 281. Moreover, our previous holding addressed whether an episodic act or omission, in isolation, caused Simpson harm. But as the Supreme Court has held and as our court has confirmed, conditions-of-confinement claims can be based on multiple interacting policies. *Wilson*, 501 U.S. at 304; *Stukenberg*, 907 F. 3d at 254. And in any event, Plaintiffs produced additional causation evidence on remand that we did not review in *Sanchez I*. Because a fact issue exists over whether multiple policies interacted to cause constitutionally inadequate confinement conditions, the district court erred in granting summary judgment for the County.

Plaintiffs raised several material factual disputes that preluded summary judgment. They offered sufficient evidence to create fact issues over whether the County has de facto policies of failing to monitor and failing to assess pretrial detainees' medical needs and whether these policies caused Simpson to be denied needed medical care. Plaintiffs' failure-to-train claim, however, was barred. We therefore reverse in part and affirm in part the district court's grant of summary judgment and remand for further proceedings consistent with this opinion.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

No. 7:15-cv-00012-O
[Filed January 22, 2019]

NICHOLE SANCHEZ, et al. – Plaintiffs
v.
YOUNG COUNTY, TEXAS, et al. – Defendants

FINAL JUDGMENT

The Court issued its order granting Defendants' Motion for Summary Judgment. *See* ECF No. 83. It is therefore **ORDERED, ADJUDGED**, and **DECREED** that Defendants' Motion for Summary Judgment (ECF No. 44) is **GRANTED**, and this case is **DISMISSED with prejudice**.

So **ORDERED** on this 22nd day of January, 2019.

/s/ Reed O'Connor
Reed O'Connor
UNITED STATES
DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

No. 7:15-cv-00012-O
[Filed January 22, 2019]

NICHOLE SANCHEZ, et al. – Plaintiffs
v.
YOUNG COUNTY, TEXAS, et al. – Defendants

MEMORANDUM OPINION AND ORDER

Before the Court are Defendants' Motion for Summary Judgment and Brief in Support (ECF Nos. 44-45), filed October 15, 2018; Plaintiffs' Response and Brief in Support (ECF Nos. 49-50), filed November 5, 2018; and Defendants' Reply (ECF No. 53), filed November 11, 2018. Having reviewed the motion, related briefing, and applicable law, the Court finds that Defendants' motion should be and is hereby **GRANTED**.

I. FACTUAL BACKGROUND

This case arises out of the death of Diana Lynn Simpson ("Mrs. Simpson"), a pretrial detainee in the Young County Jail (the "Jail"). Mrs. Simpson battled depression and attempted suicide a year before her

death. *See* Pls.' Br. Supp. Resp. 3, ECF No. 50 [hereinafter, "Pls.' Br. Resp."]. Two weeks before her death, Mrs. Simpson told her husband Edward Leroy Simpson ("Mr. Simpson") that if she "were to take her own life again, she would withdraw cash from the ATM, check into a motel using the cash so that he could not track her, and take a lethal dose of pills while at the hotel." *Id.* On May 18, 2013, Mrs. Simpson, a nurse, was working the night shift at Stephens Memorial Hospital in Breckenridge ("Stephens Memorial"). *Id.* She often slept at Stephens Memorial after her shifts because the Simpsons' home was 75 miles away. *Id.* The next day, Mr. Simpson checked his online bank account and noticed a cash withdrawal. *Id.* at 4. Because of Mrs. Simpson's previous threats, Mr. Simpson tried to call her, then called Stephens Memorial to determine whether she was sleeping there. *Id.* Stephens Memorial personnel informed him she left after her shift. *Id.* Mr. Simpson tracked Mrs. Simpson's cell phone location and determined her general location. *Id.* Mr. Simpson again tried to call her and sent text messages. *Id.* He then called local law enforcement agencies to explain his wife was missing and at risk for suicide. *Id.* He called Stephens Memorial again that evening and learned she had not shown up for her next shift.

The next morning, Mr. Simpson filed a missing persons report, at the suggestion of Breckenridge law enforcement. *Id.* He also posted a photograph of Mrs. Simpson's vehicle and license plate number on Facebook, requesting that anybody who saw the vehicle contact authorities. *Id.* at 4-5. That evening, Mr. Simpson and the City of Graham Police

Department ("Graham Police Department") received a call from a woman who saw a vehicle matching the description. *Id*. Corporal Kyle Ford (Ford") of the Graham Police Department investigated and found Mrs. Simpson sleeping in her vehicle. *Id*. at 5; *see* also Defs.' Br. Supp. Mot. 4, ECF No. 45 [hereinafter, "Defs.' Mot."]. Ford determined she exhibited signs of possible intoxication, such as being "slow in giving answers, speaking very quietly, [having a] hard time keeping eyes open, etc." Pls.' Br. Resp. 5, ECF No. 50. Ford asked Mrs. Simpson whether she was diabetic or had any medical conditions, and she replied, "no." *Id*.; Defs.' Mot. 4, ECF No. 45. Although Mrs. Simpson first denied taking any medication, the officer observed a pill bottle in her passenger floorboard, and after subsequently searching her vehicle, located a substantial number of partially empty blister packs of medication. *See* Pls.' Br. Resp. 5, ECF No. 50. Mrs. Simpson also admitted to drinking the previous night, and Ford noticed three unopened beer cans in an ice chest in her front passenger seat, and other opened beer cans discarded in plain view on the back seat. *Id*. Ford asked Mrs. Simpson how much of the medication in her car she had taken, and she replied she had taken all that was missing that morning. *Id*. Ford asked Mrs. Simpson if she was trying to hurt herself, and she replied she was not. *Id*. at 6.

Ford summoned City of Graham paramedics to evaluate Mrs. Simpson, who told Ford that she did not show any signs of suffering from a medical problem, and that her vital signs were normal. *See* Defs.' Mot. 4-5, ECF No. 45. Ford determined he had probable cause to arrest Mrs. Simpson for public

intoxication. Pls.' Br. Resp. 6, ECF No. 50; Defs.' Mot. 5, ECF No. 45. Ford asked her if she wanted to be taken to the hospital but she declined. Pls.' Br. Resp. 6, ECF No. 50; Defs.' Mot. 5, ECF No. 45. Ford arrested Mrs. Simpson and transported her to the jail. *Id*. Officer Gaylon Rich ("Rich") at the Jail conducted Mrs. Simpson's intake medical screening, which did not indicate any behavior or conditions indicative of suicide. Defs.' Mot. 6, ECF No. 45. Mrs. Simpson was "responsive, coherent[], and advised Rich that she didn't want to hurt herself." *Id*. Mrs. Simpson also indicated she was not depressed, was not thinking about killing herself, and had never attempted suicide. *Id*. She was taken to a holding cell after completing the initial medical screening but before finishing the booking process. *Id*. at 7.

After learning Mrs. Simpson was arrested, Mr. Simpson called the Jail multiple times to warn them that she had threatened to take her own life. Pls.' Br. Resp. 9, ECF No. 50. In one call, a jailer told Mr. Simpson that the Jail would not call MHMR (mental health services) until a person was sober. Pls.' Br. Supp. Resp. 9, ECF No. 50. The next morning, Mr. Simpson called the Jail to check on Mrs. Simpson, and he was told she died. *Id*. The subsequent autopsy report notes that at her time of death, Mrs. Simpson had "highly toxic . . . near lethal" levels of various drugs in her system, her cause of death was "mixed drug intoxication," and the manner of death was "consistent with and highly suspicious of suicide." Defs.' Mot. 8, ECF No. 45 (citing Defs.' App. Supp. Mot. Ex. I (Autopsy Report), App 46-47, ECF No. 46).

Plaintiffs originally brought this action against Defendants in state court for violation of: (1) 42 U.S.C. § 1983, under the Eighth and Fourteenth Amendments of the United States Constitution; and (2) the Texas Tort Claims Act (the "TTCA"). *See* generally Compl., ECF No. 1-3. Defendants removed the action, and the Court granted summary judgment for Defendants on Plaintiffs' episodic act or omission and TTCA claims. *See* Order, ECF No. 20. Plaintiffs appealed, and the Fifth Circuit affirmed that conclusion but remanded the case for consideration of Plaintiffs' unconstitutional conditions of confinement claim. *See* Opinion of USCA, ECF No. 25.

II. LEGAL STANDARD

A. Motion for Summary Judgment

The Court may grant summary judgment where the pleadings and evidence show "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "[T]he substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute as to any material facts exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*. The movant must inform the court of the basis of its motion and demonstrate from the record that no genuine dispute as to any material fact exists. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

When reviewing the evidence on a motion or summary judgment, courts must resolve all reasonable doubts and draw all reasonable inferences in the light most favorable to the non-movant. *See Walker v. Sears, Roebuck & Co.*, 853 F.2d 355, 358 (5th Cir. 1988). The court cannot make a credibility determination in light of conflicting evidence or competing inferences. *Anderson*, 477 U.S. 255. If there appears to be some support for disputed allegations, such that "reasonable minds could differ as to the import of the evidence," the court must deny the motion. *Id.* at 250.

Defendants move for summary judgment on Plaintiffs' only remaining claim—that Mrs. Simpson was subjected to unconstitutional conditions of confinement in violation of 42 U.S.C. § 1983. Defs.' Mot., ECF No. 45.

B. Section 1983 Unconstitutional Conditions of Confinement

A section 1983 conditions of confinement claim allows pretrial detainees to sue based on the theory that the conditions of their confinement are constitutionally inadequate. See *Duvall v. Dallas Cty.*, 631 F.3d 203, 207 (5th Cir. 2011). To prevail on a conditions of confinement claim, Plaintiffs must plead facts to establish three elements: "(1) 'a rule or restriction . . . or the existence of an identifiable intended condition or practice . . . [or] that the jail official's acts or omissions were sufficiently extended or pervasive'; (2) which was not reasonably related to a legitimate governmental objective; and (3) which

caused the violation of 'a detainee's' constitutional rights." *Montano v. Orange Cty.*, 842 F.3d 865, 874 (5th Cir. 2016). A "pretrial detainee . . . [has] a clearly established [Fourteenth Amendment] . . . right not to be denied, by deliberate indifference, attention to 'her' serious medical needs." *Garza v. City of Donna*, 2017 U.S. Dist. LEXIS 206958 at *15 (S.D. Tex. 2017) (quoting *Estate of Pollard v. Hood Cty., Tex.*, 579 Fed. Appx. 260, 265 (5th Cir. 204)).

Defendants argue that Plaintiffs have not provided evidence of constitutionally inadequate conditions of confinement at the Jail. Defs.' Mot. 13-18, ECF No. 45. Plaintiffs assert that their evidence creates at least a genuine issue of material fact about whether Young County exercised de facto policies sufficient to satisfy the first prong of the conditions of confinement test. Pls.' Resp. 18, ECF No. 50. Defendants reply that Plaintiffs do not plead facts to establish the de facto policy element and, alternatively, Plaintiffs cannot show the alleged de facto policies caused a violation of Plaintiffs' constitutional rights. *See* Defs.' Reply, ECF No. 53.

1. Sufficiently Extended or Pervasive Policy

A condition or practice sufficient to satisfy the first element of a conditions of confinement claim can be established by either a formal written policy or a de facto policy. *See Montano*, 842 F.3d at 875. Fifth Circuit precedent holds that "a condition may reflect . . . [a] de facto policy, as evidence by a pattern of acts or omissions 'sufficiently extended or pervasive, or otherwise typical of extended or pervasive misconduct by ['jail' officials, to prove an

intended condition or practice.'" *Shepherd v. Dallas Cty.*, 591 F.3d 445, 452 (5th Cir. 2009) (quoting *Hare v. City of Corinth*, 74 F.3d 633, 645 (5th Cir. 1996) (en banc)); *see also Montano*, 842 F.3d at 875. And "evidence showing only 'isolated instances of inadequate medical care' . . . would be insufficient' to show a de facto policy. *Shepherd*, 591 F.3d at 455 (quoting *Hare*, 74 F.3d at 644-45). Rather, as mentioned above, "a detainee challenging jail conditions must demonstrate a pervasive pattern of serious deficiencies in providing for his basic human needs; any lesser showing cannot prove punishment in violation of the detainee's due process rights." *Id.* at 454 (emphasis added); Notably, the Court examines the evidence "for policy implementation, not policy outcome." *Montano*, 842 F.3d at 875.

2. Reasonable Relation to Legitimate Government Interest

If a pattern of acts or omissions is sufficiently pervasive to constitute a de facto policy, the Court must then decide whether the policy is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979) (citing *Flemming v. Nestor*, 363 U.S. 603, 613-617 (1960)). In *Bell*, the Supreme Court held that "if a particular condition or restriction of pretrial detention is reasonably related to a legitimate governmental objective, it does not without more, amount to 'punishment.'" *Id.* at 539. But "if a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the

governmental action is 'unconstitutional] punishment." *Id*.

3. Causation

If a condition of confinement is not reasonably related to a legitimate governmental objective, Plaintiffs must show that the de facto policy caused a violation of the detainee's constitutional rights. This prong derives from the Fourteenth Amendment—specifically, from the guarantee that citizens will not be punished before adjudication of guilt. *See Bell*, 441 U.S. 535. To establish causation, Plaintiffs much show by a preponderance of the evidence that the condition is "a substantial factor in bringing about the harm and without which the harm would not have occurred." *Montano*, 842 F.3d at 882.

4. Violation of a Constitutional Right

Some complained of conditions implicate a constitutional right while others do not. For instance, the Fifth Circuit has held that there is no constitutional "right to psychological screening" for pretrial detainees. *See Burns v. City of Galveston*, 905 F.2d 100, 104 (5th Cir. 1990); *see also Garza v. City of Donna*, 2017 U.S. Dist. LEXIS 106958 at *43 (S.D. Tex. 2017). Further, the Fifth Circuit has held that "the failure to train custodial officials in screening procedures to detect latent suicidal tendencies does not rise to the level of constitutional violation." *See Evans v. City of Marlin*, 986 F.2d 104, 108 (5th Cir. 1993); *see also Garza*, 2017 U.S. Dist. LEXIS 206958 at *43.

III. **ANALYSIS**

In the Amended complaint, Plaintiffs assert that Defendants maintained twelve different unconstitutional system-wide jail conditions, customs, or practices that Plaintiffs contend "resulted in an extreme deprivation of the minimal measures of life's necessities." The allegations are as follows:

- Defendants had no actual procedure for assessment or determination of the suicide risk of pretrial detainees, despite the existence of an assessment form, as the de facto policy was not to complete the forms.

- Defendants systematically ignored the written policies for observation of suicidal pretrial detainees.

- Defendants, while having a written policy that pretrial detainees deemed a suicide risk be placed in cells that would allow for maximum visual observation at all times, systematically disregarded this policy.

- Defendants' systemic failure to complete the required intake screening form resulted in the misclassification and misplacement of highly-intoxicated pretrial detainees in cells that lacked maximum visual observation by Jail staff.

- Defendants had no enforced policy for the proper monitoring of highly-intoxicated pretrial detainees.

- Defendants had a longstanding policy, custom, and practice of detaining highly-intoxicated detainees without constitutionally adequate visual surveillance or audio monitoring, which did not allow for a maximum visual observation at all times by Jail staff.

- Defendants' policy and custom was to house highly-intoxicated pretrial detainees in cells that lacked adequate audio and visual surveillance, while only completing "cell checks" once every twenty-five minutes. Instead of actually entering the cells to closely monitor the detainees' health and safety, the jail staff was allowed to use a wand system whereby they could record a "cell check" without ever actually entering the cell.

- Defendants had no enforced policy to comply with the Texas Commission on Jail Standards ("TCJS") requirements related to the Continuity of Care Query ("CCQ") system, including its required training, use, and required follow-up—resulting in a failure to train.

- Defendants, by policy, allowed untrained personnel without proper jailer certificates and training to monitor inmates with documented mental and medical issues.

- Defendants did not adequately train staff on how to properly recognize inmates at risk for overdose, suicide, or how to monitor and keep safe inmates from overdose or suicide in violation of 37 TEX. ADMIN. CODE, part 9, Section 273.5(a)(1).

- Defendants had no alcohol or detox policy for persons with documented coherency issues, documented drug ingestion, and documented suicide tendencies, such as Mrs. Simpson.

- Despite a written policy, Defendants failed to have an established procedure for visual face-to-face observation of all inmates by jailers, in violation of 37 TEX. ADMIN. CODE, part 9, Section 273.5(a)(5).

See Am. Compl., ECF No. 34.

A. De Facto Policies

In their motion for summary judgment, Defendants argue that they never adopted—implicitly or otherwise—the de facto policies alleged by Plaintiffs, and that Plaintiffs cannot provide evidence sufficient to create a genuine issue of material fact about whether any of the alleged conditions of confinement were unconstitutional. *See* Defs.' Mot., ECF No. 45. Plaintiffs respond that fact issues exist as to whether Defendant maintained unconstitutional conditions of confinement that

caused Mrs. Simpson's death [1] and point to a declaration by a medical doctor who states that "if given appropriate medical care prior to her deterioration into cardiac arrest she would have survived this mixed-drug intoxication." Pls. Br. Resp. 39-50, ECF No. 50; Pls.' App. Supp. Resp. (Declaration of Robert Bassett), App. 352, ECF No. 51. Each assertion in the amended complaint appears to fit into one of three categories of de facto policies Plaintiffs allege were in place at the Jail—failure to properly train officers, failure to properly observe intoxicated pre-trail detainees, or failure to properly complete forms and identify suicidal tendencies at intake. The Court will examine each of the three categories of alleged de facto policies in turn. For the reasons set forth below, the court finds that Plaintiffs cannot satisfy the elements of their claim as a matter of law.

1. Failure to Train Policy

In the Amended Complaint, Plaintiffs argue that the Defendants maintained a de facto policy of

[1] In the Response, Plaintiffs allege a number of contested issues of fact. *See* Pls.' Br. Resp. 39, ECF No. 50. But "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of material fact" and "the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986). Accordingly, the Court will examine those factual disputes—if any—which are material to Plaintiff's conditions of confinement claim.

failing to train its jailers by (1) not training employees to comply with TCJS requirements related to the CCQ system; (2) allowing untrained personnel without proper certification[2] and training to monitor inmates with documented mental and medical issues; (3) failing to adequately train staff on how to properly recognize inmates at risk for overdose and suicide—or to monitor and keep safe inmates from overdose or suicide; and (4) failing to train employees on alcohol or detox policies for persons with documented coherency issues, documented drug ingestion, and documented suicidal tendencies. *See* Am. Compl., ECF No. 34. Defendants argue Plaintiffs cannot create a genuine issue of material fact as to the existence of a de facto policy of failing to adequate train employees to handle suicidal or intoxicated detainees because Sheriff Walls adequately trained his staff on those issues and any instance of failing to train was not pervasive. Defs.' Mot. 18, ECF No. 45. Plaintiffs respond that Defendants" de facto policy allowed jailers to place detainees in holding cells without reviewing their CCQ and the jailers were not adequately trained to make medical or mental health care assessments.[3] Pls.' Br. Resp. 23-27, ECF

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[2] Plaintiffs do not explain their "proper certification" argument in the complaint and do not address the issue at all in the Response. Instead, Plaintiffs focus on their "failure to train" argument. Additionally, the evidence provided in Plaintiffs' Appendix does not indicate jailers lacked required certifications. *See e.g.*, Pls.' App. Supp. Resp. (Annual Jail Report), App. 282, ECF No. 51 ("reviewed all 19 officer TCLEOSE certification records").

[3] The Court examines this claim under the conditions of confinement theory but notes that the Fifth Circuit generally characterizes failure to train claims as episodic acts or

No. 50. Defendants reply that Young County jailers were trained on intake procedures, that Plaintiffs present a generalized claim and have not shown how inadequate training was pervasive, or even affected any other similarly situation detainees. Defs.' Reply 14-15, ECF No. 53.

In *Duvall*, the Fifth Circuit examined whether a jail adopted a pervasive unconstitutional custom or policy of implicitly allowing a MRSA infection to run rampant in the facility. *See Duvall*, 631 F.3d at 203. It noted that the evidence "was amply sufficient to prove that the violations were serious, extensive and extended, and that they were much more than de minimis." *Id*. at 208. In that case, the evidence showed that the jail's incidence of MRSA was twenty times higher than comparable jails, and the county was aware of the situation for at least three years. *Id*. While factually distinct, the legal standard espoused in *Duvall* applies to the case at hand—*failing* to act can be evidence of a de facto policy if sufficiently pervasive.

Here, Plaintiffs assert that Defendants had a pervasive and unconstitutional policy of failing to train employees. But Plaintiffs fail to identify evidence showing that the failure to train on these subjects was pervasive.[4] In fact, evidence provided

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omissions claims. *See Johnson v. Johnson Cty.*, 2006 WL 1722570, at *4 n.4 (N.D. Tex. 2006) (Fitzwater, J.) ("[Plaintiff], too, includes a training-based claim. This claim is treated as an 'episodic act or omission' claim under circuit precedent.") (internal citations omitted) (collecting cases).

[4] Plaintiffs point to a declaration including a jail expert's opinion on the Jail's policies and rely primarily on a generalized policy argument that jailers received inadequate

by Plaintiffs shows the opposite—that Young county policies mandated training, that it did provide training on intake procedures, that jailers were required to complete relevant training courses, that intoxicated inmates were examined on a case-by-case basis, and that jailers were trained to complete suicide-risk screenings upon intake.[5] Plaintiff allege factually specific violations of official policies and label those *violations* a de factor policy—when in fact they simply point out episodic acts or omissions. *Cf. Estate of Henson v. Wichita County, Tex.*, 795 F.3d 456, 466 (5th Cir. 2015) ("Plaintiff's evidence of a de facto 'policy' . . . [came] mostly from [one] previous case," and that evidence was not sufficient to show an unconstitutional policy). While it is unfortunate that County employees violated various policies, the evidence does not show these individual violations derive from a pervasive failure to train. Accordingly, the Court finds that Defendants did not exercise a de facto policy of failing to train employees and the Defendants" motion for summary judgment on the failure to train claims should be and is hereby **GRANTED**.[6]

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medical training—rather than explaining how Defendants pervasively failed to train jailers on the specific issues identified in the amended complaint. *See* Pls.' Br. Resp., ECF No. 50.

[5] *See* Pls.'App. Supp. Resp. (Deposition of Gaylon Rich), App. 131-132, ECF No. 51; *Id*. at App. 164; Id. (Deposition of Bobby Joe Cook), at App. 185; *Id*. at App. 179; Id. (Deposition of Michael Burt) at App. 193-194.

[6] Because the Court finds there is no pervasive pattern of failing to train, it does not reach the causation element which is necessary to prove an unconstitutional condition of confinement. *But see Grandstaff v. City of Borger*, 767 F.2d 161, 169 (5th Cir. 1985) ("An 'inadequate' training program alone is

2. Failure to Observe Detainees Policy

In the Amended Complaint, Plaintiffs argue that Defendant maintained a de facto policy of failing to observe inmates by (1) systematically ignoring the written policies for observation of pretrial detainees posing a suicide risk; (2) not placing pretrial detainees deemed a suicide risk in the cells that would allow for maximum visual observation of the safety and welfare of those detainees at all times—despite maintaining a written policy to do so; (3) failing to enforce a policy for the proper monitoring of highly-intoxicated pretrial detainees; (4) detaining highly-intoxicated detainees without constitutionally adequate visual surveillance or audio monitoring; (5) using an electronic wand system to complete cell checks instead of actually entering cells to monitor the detainees' health and safety; and (6) failing to establish a procedure for visual, face-to-face observation of all inmates by jailers. *See* Am. Compl., ECF No. 34. Defendants argue Plaintiffs cannot provide evidence of a de factor policy of failing to create or enforce a policy for observing suicidal or intoxicated detainees. Defs.' Mot. 17, ECF No. 45. Defendants state the evidence shows the county followed their health services plan—detainee cells are physically checked each half-hour and cells are viewable by camera at all times. *Id*.

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not ordinarily the moving force between an injured plaintiff's harm. Because the police officer [or jailer] who injures the plaintiff does not rely upon inadequate training as tacit approval of his conduct. It is not enough that the city could, but does not, reduce the risk of harm to the plaintiff."

Plaintiffs respond that individual TCJS violation citations provide evidence that Young County has a de facto policy of not regularly conducting cell checks. Pls.' Br. Resp. 34, ECF No. 50. Plaintiffs note physical checks are particularly important at the Jail because the windows on female detainee cells were kept closed to prevent male detainees from seeing female detainees. *Id*. at 33. Defendants reply that Plaintiffs do not provide evidence that observation was pervasively deficient in these types of instances, that the inspection reports relied on by Plaintiffs are both random and inconclusive, that video cameras are only one means used to observe the cells, and that Plaintiffs rely on inconsistencies with certain documentary reports generated by an electronic wand accountability system—rather than evidence that officers *pervasively* failed to personally observe inmates. Defs.' Reply 12-14, ECF No. 53.

The Fifth Circuit remanded this case and directed the Court to consider "whether there is any genuine issue of material fact that Mrs. Simpson was subjected to the County's unconstitutional conditions of confinement." *Sanchez v. Young Cty.*, 866 F.3d 274, 279 (5th Cir. 2017). A "'condition of confinement' case is a 'constitutional attack on general conditions, practices, rules, or restrictions of pretrial confinement." *Scott v. Moore*, 114 F.3d 51, 53 (5th Cir. 1997). And *Shepherd* clarified that "more often, however, a plaintiff's claim, properly characterized, faults specific jail officials for their acts or omissions because the plaintiff cannot establish the existence of an officially sanctioned unlawful condition." *Shepherd*, 591 F.3d at 452. "In these cases, 'an actor usually is interposed between

the detainee and the municipality, such that the detainee complains first of a particular act of, or omissions by, the actor and then points derivatively to a policy, custom, or rule (or lack thereof) of the municipality that permitted or caused the act or omission.'" *Id.* at 452 (citing Scott, 114 F.3d at 53).

Having reviewed the record and considered Plaintiffs' arguments, the Court finds that Plaintiffs do not raise a genuine issue of material fact that Defendants employed an unofficial custom or practice—much less *pervasive* acts—of failing to monitor detainee.[7] Plaintiffs do not provide evidence

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[7] The evidence plainly contradicts Plaintiffs' characterizations in a number of ways. First, jailers conducting cell checks were expected to look through cell windows during those checks. *See* Pls.' App. Sup. Resp. (Deposition of Gaylon Rich), App. 154, ECF No. 51; *Id.* (Deposition of Bobby Joe Cook), at App. 176-177. Second, Defendants had a policy of conducting routine cell checks, and also used video cameras. *Id.* Third, Defendants had a special policy for observing detainees identified as suicide risks. *Id.* (Deposition of Michael Burt), at App. 204. Fourth, the fact that the County employed a wand system to document cell checks is not proof that they did not complete proper cell checks. And discrepancies between wand system data and actual visual surveillance merely highlight jailer-specific acts or omissions—not a de facto policy. Finally, Plaintiffs failed to provide evidence that Defendants *pervasively* failed to provide face-to-face observation of inmates. Plaintiffs also failed to provide evidence of any other detainees who were subject to allegedly insufficient observation to aid their contention that this was a pervasive problem. *See Estate of Henson*, 795 F.3d at 466 (The evidence "falls short of proving conduct so *pervasive* and *typical* as to constitute an intended condition or practice.") (emphasis added); *Cf. Montano*, 842 F.3d at 876 ("the evidence was sufficient for a reasonable juror to infer a de facto policy that every seemingly detoxifying detainee was left in the bubble without emergency medical care" and "[g]iven the

of other detainees that jailers failed to observe—which would be the first step to show such a practice is pervasive. Rather, Plaintiffs assert specific factual claims about the night Mrs. Simpson passed away and subsequent TCJS citations. Each of those claims involve a failure or failures by an interposed actor—rather than evidence of either an official or de facto policy—and are more accurately characterized as episodic act or omissions arguments. Accordingly, the Court finds Defendants' motion for summary judgment on the failure to observe claims should be and is hereby **GRANTED**.

3. Failure to Complete Forms and Identify Suicidal Tendencies Upon Intake Policy

In the Amended Complaint, Plaintiffs argue that Defendants maintained a de facto policy of failing to properly complete intake procedures and identify suicide risks by (1) not ensuring intake assessment form were properly used or filled out; and (2) misclassifying and misplacing highly intoxicated pretrial detainees in cells that lacked maximum visual observation at all times. *See* Am. Compl., ECF No. 34. Defendants argue Plaintiffs cannot provide sufficient evidence to show a pervasive pattern of failing to adhere to written suicide policies. Defs.' Mot. 13-14, ECF No. 45. Plaintiffs respond that (1) testimony from jail officials establishes that Young County had a routine custom of placing intoxicated detainees in a detox holding cell to let them "sleep it off" before completing relevant intake forms or

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striking uniformity of the jail employees' testimony, further evidence was not required for a reasonable juror to infer a de facto policy for conditions or practices." (emphasis added).

identifying possible suicide risks; and (2) jailers only consider the self-reporting questions in the suicide-screening form—not outside information. Pls.' Br. Resp. 22, 29, ECF No. 50. Defendants reply that Plaintiffs produce no evidence of any other intoxicated detainees being automatically placed into a holding cell before completing the book in process, that testimony confirms detainees are assessed on a case-by-case basis, and that jailers may properly rely on a detainee's responses to the suicide-screening questionnaire upon initial intake. Defs.' Reply 407, ECF No. 53.

In *Shepherd*, the Fifth Circuit noted that "isolated examples of illness, injury, or even death, standing alone, cannot prove that conditions of confinement are constitutionally inadequate." *Shepherd*, 591 F.3d at 454. In *Montano*—while affirming a jury's verdict—the Circuit clarified that when there is "striking uniformity" in jail employees' testimony "further evidence [is] not required for a reasonable juror to infer a de factor policy for conditions or practices." *Montano*, 842 F.3d at 876. The Circuit stated that "[j]urors heard consistent testimony that a given protocol was followed for every similarly-situated detainee." *Id.* (emphasis added). Here, however, Plaintiffs have not provided any uniform evidence of intoxicated detainees being automatically placed in holding cells before completing book-in to permit a conclusion that this alleged practice was pervasive.[8] Not only do the

[8] Plaintiffs point to portions of testimony about general intake procedures where one jailer said CCQ's should be reviewed at book-in if received in time, two jailers said that intoxicated detainees were put in a holding cell *after* initial book-in, and

jailers' testimony undercut Plaintiffs' claims, but the generalized testimony of the three jailers Plaintiffs rely on hardly provides striking uniformity about jail protocol for every similarly-situated intoxicated detainee.

The testimony of the jailers was strikingly consistent however, on one issue—jailers may have pervasively failed to timely complete suicide screenings and medical intake forms when intoxicated detainees first arrived at the Jail. The Court finds that Plaintiffs have raised a genuine issue of material fact as to whether Defendants had a de facto policy of failing to complete intake forms before placing intoxicated pre-trial detainees in holding cells. Accordingly, the Court will consider whether failing to complete these forms was *causally* linked to unconstitutional denial of adequate medical care.

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one jailer said that officer observations could be completed after initial book-in. Pls.' App. Supp. Resp. (Deposition of Gaylon Rich), App. 150, ECF No. 51; *Id*. at 167; *Id*. (Deposition of Bobby Joe Cook), at App. 179-180. But the testifying jailers also stated that inmates were evaluated on a case-by-case basis, and even testified that violent inmates are placed in a different cell than the one Diana Simpson was placed in. *See* Pls.' App. Sup. Resp. (Deposition of Bobby Joe Cook), App. 179, ECF No. 51; *Id*. (deposition of Michael Burt), at App. 192; (Deposition of Bobby Joe Cook), at App. 177. They further testified that a suicide screening is completed before a detainee is placed in a holding cell, and that a decision to contact MHMR at intake is case-by-case but that *MHMR* refuses to come to the Jail to see intoxicated detainees. *Id*. (Deposition of bobby Joe Cook) at app. 179. The jailers also testified that medical forms were generally completed later during the book-in process than the suicide screening—after a detainee had time to regain sobriety. *Id*. (Deposition of Michael Burt), at App. 194.

B. Constitutional Violation and Causation

As stated above, to prevail on a conditions of confinement claim, Plaintiffs must show it "caused the violation of [a detainee's] constitutional rights." *Montano*, 842 F.3d at 874 (emphasis added). Plaintiffs allege each deficient condition of confinement violated Mrs. Simpson's constitutional rights—denial of medical care.[9] See Pls.' Br. Resp., ECF No. 50. Defendants argue that Plaintiffs cannot provide evidence creating a genuine issue of material fact as to whether any alleged unconstitutional condition of confinement caused Mrs. Simpson to be deprived of constitutionally required medical care. Defs.' Mot. 19, ECF No. 45. Plaintiffs respond that the evidence establishes Mrs. Simpson required serious care from the Jail upon intake and throughout her custody because she could not act on her own after being detained. Defendants reply that Plaintiffs only provide evidence of causal links between the acts or omissions of individual jailers and any denial of medical care—not between the alleged de facto policies and denial of medical care. Defs.' Reply 16-25, ECF No. 53.

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[9] Plaintiffs also generally respond that Defendants had a de facto policy of denying medical care to intoxicated detainees but do not point to evidence of intoxicated detainees, apart from Mrs. Simpson, being denied medical care. Further, jailers testified that the Jail does not accept intoxicated detainees when they struggle to walk and blood alcohol content is tested at a certain level—unless they are first taken to a hospital for care. Pls.' App. Supp. Resp. (Deposition of Gaylon Rich), App. 140, ECF No. 51; *Id.* (Deposition of Bobby Joe Cook), at App. 175.

The Fifth Circuit's prior opinion provided that "regardless whether there was a fact issue that failure of jailers to 'complete' Mrs. Simpson's intake screening questionnaire and to request a CCQ reflected County 'policies or customs,' these are matters of file documentation. There is no proof that any such alleged deficiencies in jail procedures were causally linked to Mrs. Simpson's death under the circumstances of this case." *Sanchez*, 866 F.3d at 280. The evidence does not raise a fact issue indicating that failure to complete the intake-screening form itself denied Mrs. Simpson medical care. Nothing about failing to complete that form—when examining the facts of this case—was causally linked to Defendants' failure to provide Mrs. Simpson requisite medical care.[10] Not to mention, Mrs. Simpson's "intake questionnaire was substantially completed, in any event." *Id*. As tragic

[10] Plaintiffs' jail expert provides that "not completing the required medical/mental health and suicide screening risk form resulted in critical information about Mrs. Simpson's condition to be lost." Pls.'App. Supp. Resp. (report of Jail Operations Expert Jeff Eiser) App. 300, ECF No. 51. Plaintiffs' medical expert provides that "if given appropriate medical care prior to her deterioration into cardiac arrest she would have survived this mixed-drug intoxication." *Id*. (Medical Expert Record Review of Robert Bassett), at App. 352. But neither Plaintiffs nor the experts address how any of the "critical information" left off the form was causally linked to a violation of Mrs. Simpson's constitutional rights—for example, how competing that portion of the form would have led to medical care, or how including any missing information could have prevented harm to Mrs. Simpson. Essentially, both Plaintiffs and the experts fail to explain how not completing the bottom portion of the form itself was "a substantial factor in bringing about the harm and *without which the harm would not have occurred*." Montano, 842 F.3d a5 882 (emphasis added).

as the facts may be, there is no evidence that completing the bottom-quarter of the screening form alone—the section reserved for a jailer's medical observations—would have changed the facts that Mrs. Simpson ingested alcohol and pills, denied multiple offers of medical care, told jailers she was not suicidal, and appeared to those jailers to be merely intoxicated. For the reasons stated above, the court finds that Defendants' motion for summary judgment on the failure to complete forms claim should be and is hereby GRANTED.

IV. CONCLUSION

The Fifth Circuit has somberly noted, "[t]he Constitution does not require that officers always take arrestees suspected to be under the influence of drugs or alcohol, or reported by relatives to be at risk, to a hospital against their wishes." *Id.* at 281. That is what has occurred here. Accordingly, based on the foregoing Defendants' Motion for Summary Judgment (ECF No. 44) is **GRANTED**.[11] A Final Judgment will be issued separately.

SO ORDERED on this 22nd day of January, 2019.

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[11] The Court disposed of all claims and accordingly, does not reach a discussion of wrongful death or survivorship damages. *But see Montano*, 842 F.3d at 882 (wherein the Fifth Circuit clarified that a causal link is required between an unconstitutional condition of confinement and the detainee's death to recover wrongful death damages. Notably, a causal link can exist in a wrongful death case if a county unconstitutionally denies medical care as a result of a de facto policy—but only if that denial of care *causes* detainee's death).

/s/ Reed O'Connor
Reed O'Connor
UNITED STATES DISTRICT JUDGE