APPLICATION EXHIBITS

EXHIBIT 1

United States Court of Appeals for the Fifth Circuit

No. 22-40548

Angela Germaine Spencer, *by and through next friend and mother of* A.S. *a minor*,

Plaintiff—Appellant,

versus

The County of Harrison Texas,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:20-CV-37

ON PETITION FOR REHEARING EN BANC

Before Wiener, Southwick, and Duncan, *Circuit Judges*.

Per Curiam:

Treating the petition for rehearing en banc as a petition for panel rehearing (5th Cir. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (Fed. R. App. P. 35 and 5th Cir. R. 35), the petition for rehearing en banc is DENIED.

EXHIBIT 2

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
August 7, 2023
Lyle W. Cayce
Clerk

No. 22-40548

Angela Germaine Spencer, *by and through next friend and mother of* A.S., *a minor*,

Plaintiff—Appellant,

versus

The County of Harrison Texas,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:20-CV-37

Before Wiener, Southwick, and Duncan, *Circuit Judges*.

Per Curiam:[*]

A 10-year-old boy was handcuffed and shackled as he was transported from a detention center to juvenile court. He appeared before the juvenile court judge with leg shackles. He sued the county responsible for his shackling, contending his constitutional rights were violated by the county's policies and practices for juvenile shackling. The district court granted the

[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

county's summary judgment motion, ruling the plaintiff failed to provide any authority supporting the claimed violation. We AFFIRM.

FACTUAL AND PROCEDURAL BACKGROUND

A.S. is an African American male who was 10 years old when the events underlying this suit occurred. On April 28, 2017, A.S. was restrained by two staff members at his elementary school. During the incident, A.S. hit and kicked the individuals. On May 10, another incident resulted in A.S.'s biting and scratching two staff members. On that same day, a judge of the Juvenile Court of Harrison County, Texas, issued an order for A.S. to be taken immediately into custody for assault on a public servant. The cited authority was Section 52.01(a)(1) of the Texas Family Code for a violation of Section 22.01 of the Texas Penal Code. Law enforcement officers took A.S. to the Harrison County Juvenile Detention Center, where he was placed in the custody of the County's Juvenile Probation Department.

Once A.S. was in custody, trained and certified officers conducted the intake process. He was given a medical-health screening, a risk-and-needs assessment, and a mental-health assessment. On the assessment, A.S. scored a two out of five on suicidal ideation. Based on this, he was placed on "cautionary" status where he was observed regularly by detention center staff. During his stay in detention, A.S. did not receive any written reports of incidents or have any instances of behavior warranting disciplinary action.

On May 12, A.S. was scheduled for a hearing in juvenile court, variously referred to as a "release hearing," "pre-determination hearing," and "probable cause hearing." The hearing was within 48 hours of his detention. For his hearing, A.S. was dressed in standard detention clothes and was leg shackled and handcuffed with a "belly belt." He and other juveniles going to court went through the entrance of the Harrison County Sheriff's Office in the basement of the courthouse, and then went up to the

first floor through a non-public elevator. In the waiting room outside the juvenile courtroom, his handcuffs and belly belt were removed, but his leg shackles remained. The leg shackles — a restraint approved by the Juvenile Court Judge — were used for all detainees taken to juvenile court. After probation staff ensured there were no adult inmates in the courtroom, A.S. and the other juveniles were taken into the courtroom and seated in the jury box. A.S. had counsel at his hearing.[1] At the close of the hearing, A.S. was conditionally released to his mother.

On February 14, 2020, A.S., by and through his next of friend and mother, Angela Germaine Spencer, filed a complaint under 42 U.S.C. § 1983 against Harrison County. The county moved for summary judgment on all claims. The magistrate judge entered a Report and Recommendation that summary judgment should be granted. The only claim relevant in this appeal is for the "unnecessary and excessive restraints" during transport and in the courtroom, a claim A.S. asserts based on the Fourth and/or Fourteenth Amendment.[2] The magistrate judge, in a brief explanation, ruled A.S. failed to provide relevant caselaw supporting the claimed violation. Plaintiff filed objections to the magistrate judge's decision. The district court rejected Plaintiff's objections and adopted the Report and Recommendation. A.S. timely appealed.

DISCUSSION

"We review a district court's grant of summary judgment *de novo*, applying the same standard as the district court." *Hicks-Fields v. Harris*

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[1] The record does not include a transcript from the hearing, nor do the parties address whether Plaintiff's counsel objected to the shackling or requested that his shackles be removed for the hearing.

[2] Plaintiff's counsel at oral argument conceded that the restraint used on A.S. during transport from the detention center to courthouse is not an issue in this appeal.

Cnty., 860 F.3d 803, 807–08 (5th Cir. 2017). Summary judgment is proper "if the movant shows 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).

A county is not subject to vicarious liability in a suit brought under Section 1983; the county must itself have caused the injury. *Hicks-Fields*, 860 F.3d at 808. To establish municipal liability under Section 1983, a plaintiff must show an underlying constitutional violation and also "that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right." *Id.* (quotation marks and citation omitted).

The question here is whether A.S.'s constitutional rights were violated when he was shackled without an individualized assessment of need during his initial detention hearing before the juvenile judge.

Plaintiff maintains the "restraint was unnecessary and excessive and thus violated [A.S.'s] rights, pursuant to the Fourth Amendment of the United States Constitution, to be free from unnecessary and excessive restraint and seizure." Underlying this claimed constitutional violation are due process principles that are intertwined with the goals of the juvenile delinquency process. One basis for Plaintiff's claim is a "presumption of innocence in favor of the accused," which "is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *See Taylor v. Kentucky*, 436 U.S. 478, 483 (1978) (quotation marks and citation omitted). Another basis is the State's "*parens patriae* interest in preserving and promoting the welfare of the child, which makes a juvenile proceeding fundamentally different from an adult criminal trial." *See Schall v. Martin*, 467 U.S. 253, 263 (1984) (quotation marks and citation omitted). That relationship requires "a balance — to respect the informality and flexibility that characterize juvenile proceedings,

and yet to ensure that such proceedings comport with the fundamental fairness demanded by the Due Process Clause." *Id*. at 263 (quotation marks and citations omitted).

Certainly, a defendant's entitlement to a presumption of innocence is a critical component of our criminal justice system. *See Estelle v. Williams*, 425 U.S. 501, 503 (1976). In that light, courts have grappled with the due process concerns of shackling defendants in the courtroom. The Supreme Court has held that "the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination." *Deck v. Missouri*, 544 U.S. 622, 629 (2005). Shackling "'undermines the presumption of innocence and the related fairness of the proceedings,' 'can interfere with a defendant's ability to participate in his own defense,' and affronts the 'dignity and decorum of judicial proceedings that the judge is seeking to uphold.'" *United States v. Banegas*, 600 F.3d 342, 345 (5th Cir. 2010) (quoting *Deck*, 544 U.S. at 630–31).

The concerns precipitating the prohibition of shackling a defendant before the factfinder have not been extended to proceedings such as what occurred here. Plaintiff relies on some opinions from some state courts that analyzed juvenile detainees' rights regarding restraint at the adjudicatory stage of the juvenile delinquency process. *See, e.g.*, *In re Staley*, 352 N.E.2d 3 (Ill. App. Ct. 1976), *aff'd sub nom. In re Staley*, 364 N.E.2d 72 (Ill. 1977) (reversed and remanded for new adjudicatory hearing when juvenile defendant was shackled during bench trial). Although the opinions Plaintiff cites identified considerations for indiscriminate shackling of juveniles, they lack factual application in this case and, of course, are not controlling on this court.

Although we do not diminish concerns regarding juvenile shackling, authority does not dictate the result Plaintiff seeks. Plaintiff fails to provide

authority that recognizes a juvenile's constitutional right not to be shackled without some assessment of necessity during an initial detention hearing before a juvenile judge. We will not create that right.

AFFIRMED.

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

A.S. by and through his next friend and mother ANGELA GERMAINE SPENCER, *Plaintiff*, v. THE COUNTY OF HARRISON, TEXAS, *Defendant*.	§ § § § § § § § § § § §	Case No. 2:20-CV-00037 JRG-RSP

ORDER

Defendant Harrison County, Texas previously filed a motion for summary judgment. Dkt. No. 36. Magistrate Judge Payne entered a Report and Recommendation, Dkt. No. 69, recommending that the motion should be granted to dismiss all claims against Harrison County. Plaintiff A.S. has now filed Objections, Dkt. No. 70, with Harrison County filing a Response, Dkt. No. 71.

After conducting a *de novo* review of the briefing on the motion for summary judgment, the Report and Recommendation, and the briefing on plaintiff A.S.'s Objections, the Court agrees with the reasoning provided within the Report and Recommendation and concludes that the Objections fail to show that the Report and Recommendation was erroneous. Consequently, the Court **OVERRULES** Plaintiff A.S.'s Objections and **ADOPTS** the Report and Recommendation and orders that the motion for summary judgment, Dkt. No. 36, is **GRANTED** and all claims against Harrison County are **DISMISSED**.

So Ordered this
Aug 3, 2022

RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

A.S. by and through his next friend and mother, ANGELA GERMAINE SPENCER,	§	
Plaintiff,	§	
	§	Case No. 2:20-cv-00037-JRG-RSP
v.	§	
THE COUNTY OF HARRISON, TEXAS,	§	
Defendant.	§	

REPORT AND RECOMMENDATION

Before the Court, defendant Harrison County moves for summary judgment against the claims of plaintiff A.S., a minor. Dkt. No. 36. For the following reasons the motion should be **GRANTED**.

I. Background

In the Spring of 2017, A.S. was ten years old, diagnosed with and medicated for Attention-Deficit Hyperactivity Disorder ("ADHD"), and enrolled in the Travis Elementary School in the Marshall Independent School District ("Marshall ISD"). On May 10, 2017, Judge Joe Black issued an Order of Immediate Custody of A.S. for assaulting a teacher. Dkt. Nos. 36-5, 36-6, 36-7. Pursuant to the Order of Immediate Custody, A.S. was detained by the Marshall ISD Police Department[1] and brought to the Harrison County Juvenile Detention Center. On May 12, 2017, A.S. was presented to Judge Black in juvenile court for a pre-trial detention hearing, and Judge Black ordered the release of A.S. subject to additional conditions not relevant here. Dkt. No. 36-8. Soon after, the attorney representing Marshall ISD informed Angela Spencer, A.S.'s mother,

[1] The record shows that Marshall ISD Police Department is not an office or department of Harrison County, is not under the control of Harrison County, and is not funded by Harrison County.

of the school district's decision to drop the charges against A.S. if A.S. was removed from Marshall ISD. Dkt. No. 1 ¶ 100. Angela Spencer agreed to those terms and A.S. was removed from Marshall ISD. *Id*.

On February 14, 2020, A.S. by and through his next friend and mother, Angela Spencer, filed a complaint alleging various constitutional violations pursuant to 42 U.S.C. § 1983 against Harrison County. In the instant motion, Harrison County moves for summary judgment.

II. LEGAL STANDARD

A court "shall grant summary judgment if the movant shows 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). A dispute of material fact is genuine 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). We consider "all evidence in the light most favorable to the party resisting the motion." *Seacor Holdings, Inc. v. Commonwealth Ins. Co.*, 635 F.3d 680 (5th Cir. 2011) (internal citations omitted). It is important to note that the standard for summary judgment is two–fold: (1) there is no genuine dispute as to any material fact, and (2) the movant is entitled to judgment as a matter of law.

The movant has the burden of pointing to evidence proving there is no genuine dispute as to any material fact, or the absence of evidence supporting the nonmoving party's case. The burden shifts to the nonmoving party to come forward with evidence that supports the essential elements of his claim. *Liberty Lobby*, 477 U.S. at 250. The nonmoving party must establish the existence of at least a genuine dispute of material fact for trial by showing that the evidence, when viewed in the light most favorable to him, is sufficient to enable a reasonable jury to render a verdict in his favor. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Duffy v. Leading Edge Products,*

Inc., 44 F.3d 308, 312 (5th Cir. 1995). A party whose claims are challenged by a motion for summary judgment may not rest on the allegations of the complaint and must articulate specific evidence that meets his burden of proof. *Id*. "Conclusory allegations unsupported by concrete and particular facts will not prevent an award of summary judgment." *Duffy*, 44 F.2d at 312 (citing *Liberty Lobby*, 477 U.S. at 247). Further, "a district court may not grant a motion for summary judgment merely because it is unopposed." *Bustos v. Martini Club Inc.*, 599 F.3d 458, 468 (5th Cir. 2010) (citing *Hibernia Nat'l Bank v. Administracion Cent. Sociedad Anonima,* 776 F.2d 1277, 1279 (5th Cir.1985)).

A § 1983 claim has two elements: (1) a violation of constitutional or federally secured rights, and (2) that the violation was committed by a person acting under color of state law. *Rich v. Palko*, 920 F.3d 288, 294 (5th Cir. 2019) (citing *Brown v. Miller*, 519 F.3d 231, 236 (5th Cir. 2008)). "Although municipalities are 'persons' within the meaning of Section 1983 and can be sued directly, they are not liable on a theory of vicarious liability or *respondeat superior*." *Louisiana Div. Sons of Confederate Veterans v. City of Natchitoches*, 821 F. App'x 317, 319–20 (5th Cir. 2020) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978)). At the summary judgment stage, a plaintiff making a direct claim of municipal liability must demonstrate three elements: that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right. *Davidson v. City of Stafford, Texas*, 848 F.3d 384, 395 (5th Cir. 2017), *as revised* (Mar. 31, 2017) (citing *Culbertson v. Lykos*, 790 F.3d 608, 628 (5th Cir. 2015)).

III. Analysis

A. Adequacy of Medical and Mental Healthcare

The complaint alleges that it was cruel and unusual punishment for the detention center to not assess A.S.'s mental health with a psychiatrist or medical professional and to not provide A.S. his proscribed ADHD medication. Dkt. No. 1 ¶¶ 2, 3, 89, 91, 94, 127. To survive a motion for summary judgment, a plaintiff claiming cruel and unusual punishment must demonstrate that (1) an excessive risk to the detainee's physical or mental health existed, (2) that an official knew of the excessive risk, and (3) that the official disregarded the excessive risk. *Ball v. LeBlanc*, 792 F.3d 584, 592-'97 (5th Cir. 2015).

Harrison County moves for summary judgment arguing the following: (1) A.S.'s mother intentionally concealed the fact that A.S. was prescribed medication for ADHD because she did not trust the juvenile detention center, Dkt. No. 36-11 at 9:5-19, (2) A.S. informed the center that he had ADHD, Dkt. No. 36-9 at DEF0029, 45, but did not disclose that he was prescribed medication for it, *Id.* at DEF0031, (3) a medical health screen did not indicate the need for additional medical treatment, *Id.*, and (4) a mental health screen indicated a cautionary status for suicidal ideation, which alone was insufficient for additional mental health treatment but for which the detention center took steps to increase its ability to observe A.S., Dkt. Nos. 36-9 at DEF0033-44, 36-3. A.S.'s opposition to Harrison County's motion for summary judgment does not oppose these facts, and therefor we accept them as true.

Based upon these facts, officials at the juvenile detention center did not know A.S. required prescription ADHD medication. Even if we assume without deciding that withholding ADHD medication equates to an excessive risk to A.S.'s mental health, an official's failure to alleviate a risk that was not perceived does not amount to a punishment. *Farmer v. Brennan*, 511 U.S. 825,

838 (1994) ("[A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment.").

B. Shackling

The complaint alleges that constitutional violations occurred when A.S. was shackled during transport from the detention center to juvenile court and handcuffed when presented to the juvenile judge. Harrison County moves for summary judgment arguing that case law does not support A.S.'s claims. In response, A.S. provides two cases, neither of which support A.S.'s claimed constitutional violation.

First A.S. cites *Youngberg v. Romeo* for the proposition that there is a general right to be free from government restraint. 457 U.S. 307, 316-19 (1982). However, in the section following that cited by A.S., the Supreme Court declared that such a right is "not absolute" against legitimate interests of the state. *Id.* at 320. Here, there is a legitimate interest in seeing to the safe transportation of detainees between the detention center and the juvenile court. A.S. also cited to *Deck v. Missouri* for the proposition that prejudice results from restraints in court. 544 U.S. 622, 629-30. However, *Deck* stands for a more limited proposition: prejudice resulting from restraints before a *jury*. *Id* at 626 ("Blackstone and other English authorities recognized that the rule did not apply at 'the time of arraignment,' or like proceedings before the judge. It was meant to protect defendants appearing at trial before a jury.") (citations omitted). In judicial settings without a jury, such as A.S.'s appearance before Judge Black in juvenile court, *Deck* is not applicable.

C. Temporary Pre-Adjudication Detention

The complaint alleges constitutional violations arising from the temporary pre-adjudication detention of a juvenile. Harrison County moves for summary judgment arguing that any liberty

interest of A.S. that was infringed upon by pre-adjudication detention is outweighed by legitimate state objectives to prevent pretrial crime. See *Schall v. Martin*, 467 U.S. 253, 263-'74 (1984) (finding that pretrial detention under the New York Family Court Act, purportedly designed to protect the child and society from the potential consequences of his criminal acts, comports with the fundamental fairness standard demanded by the Due Process Clause of the Fourteenth Amendment). A.S. does not oppose this argument, and the Court finds it persuasive.

To the extent the complaint alleges that temporary pre-adjudication detention of a juvenile is cruel and unusual punishment, similar logic applies.

> "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." Conversely, 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 punishment that may not constitutionally be inflicted upon detainees *qua* detainees."

Bell v. Wolfish, 441 U.S. 520, 539 (1979); see also *Schall*, 467 U.S. 269-72 (applying *Bell* to detention provisions of New York Family Court Act). A.S. does not argue that juvenile pre-adjudication detention is arbitrary or purposeless, and Harrison County argues persuasively that the prevention of pretrial crime is a legitimate state objection justifying pre-adjudication detention.

D. Detention with Older Juveniles

The complaint alleges constitutional violations arising from housing A.S. with older juveniles. Harrison County argues that A.S. cannot demonstrate how joint housing with older juveniles infringes upon A.S.'s constitutional rights. In opposition, A.S. does not respond to the argument. The analysis above applies here with equal force. To the extent that the complaint may allege that housing with older juveniles deprived A.S. of any liberty interest or due process rights or resulted in cruel and unusual punishment, the government has a legitimate interest that stems from the management of juvenile facilities. See *Bell*, 441 U.S. at 540 ("The Government also has

legitimate interests that stem from its need to manage the facility in which the individual is detained.").

E. Race and Disability Based Discrimination

The complaint alleges discrimination based on race and disability in violation of the Equal Protections Clause of the Fourteenth Amendment, the American with Disabilities Act, and the Rehabilitation Act. Harrison County argues for summary judgment because, among other reasons, A.S. does not demonstrate or present evidence to show he was adversely treated because of his race or his disability. A.S.'s response limits the inquiry by claiming disability discrimination by virtue of restraints placed upon A.S. during transportation and court proceedings. However, the response does not provide any evidence showing that A.S. was adversely treated because of his disability. Such a showing is necessary to succeed. See, *e.g.*, *Davidson v. Texas Department of Criminal Justice*, 91 Fed.Appx (5th Cir. 2004) (affirming dismissal of ADA lawsuit where plaintiff failed to show he was adversely treated because of his handicap).

F. *Miranda* Rights

The complaint alleges that no one informed A.S. of his rights under *Miranda v. Arizona*, 384 U. S. 436 (1966). Harrison County's motion for summary judgement and A.S.'s opposition briefings on this issue are misplaced as of the Supreme Court's decision recently issued in *Vega v. Tekoh*, 597 U.S. ---, No. 21-499, slip op. 16 (June 23, 2022), which held that *Miranda* does not provide a basis for a §1983 claim. In any event, A.S. has not shown that he was subjected to custodial interrogation or that any statement was used against him in any way.

G. Factually Meritless Claims

The complaint alleges that A.S. was subjected to a cavity search, was not timely presented before a judge for adjudication, and was not appointed counsel. Harrison County moves for

summary judgment against these claims on the basis that they are factually meritless, that A.S. was never subjected to a cavity search, was presented to Judge Black for a pre-trial detention hearing in according with Texas law and within forty-eight hours of being detained, and was appointed counsel for the hearing. A.S. does not controvert these facts, and as a result the claims should be dismissed as factually meritless.

H. Failure to Train

The complaint also alleges that Harrison County failed to properly train officials to address A.S.'s disability. Any failure to train argument must show that such failure was the "moving force of the constitutional violation." *Monell*, 436 U.S. at 694. However, A.S. has not demonstrated that any constitutional or federal violation has occurred.

IV. CONCLUSION

For the reasons discussed above, it is RECOMMENDED that Harrison County's motion for summary judgment, Dkt. No. 36, should be **GRANTED** and all claims against Harrison County should be **DISMISSED**.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this report within 14 days bars that party from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see also Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (*en banc*). Any objection to this Report

and Recommendation must be filed in ECF under the event "Objection to Report and Recommendation [cv, respoth]" or it may not be considered by the District Judge.

SIGNED this 27th day of June, 2022.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE