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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 22-10360

United States Court of Appeals
Fifth Circuit
FILED
August 1, 2023
Lyle W. Cayce
Clerk

OTIS CRANDEL, *as dependent administrator of*, and *on behalf of* BILLY WAYNE WORL, JR., EMILY GARCIA, JAMES MATTHEW GARCIA, and JARED ANDREW GARCIA, *individually*, THE ESTATE OF BRENDA KAYE WORL, and BRENDA KAYE WORL'S *heirs-at-law*; BILLY WAYNE WORL, JR., *Individually*,

Plaintiffs–Appellants,

versus

DALENA HALL; CARI RENEA MCGOWEN,

Defendants–Appellees,

CONSOLIDATED WITH

No. 22-10361

OTIS CRANDEL, *as dependent administrator of*, and *on behalf of* BILLY WAYNE WORL, JR., EMILY GARCIA, JAMES MATTHEW GARCIA, and JARED ANDREW GARCIA, *individually*, THE ESTATE OF BRENDA KAYE WORL, and BRENDA KAYE WORL'S *heirs-at-law*; BILLY WAYNE WORL, JR., *Individually*,

Plaintiffs–Appellants,

versus

VEGAS HASTINGS; DANIEL PIPER,

Defendants–Appellees,

Appeal from the United States District Court
for the Northern District of Texas
USDC Nos. 1:21-CV-75, 1:21-CV-75

Before BARKSDALE, SOUTHWICK, and HIGGINSON, *Circuit Judges*.

RHESA HAWKINS BARSKDALE, *Circuit Judge*:

This opinion is rendered contemporaneously with the opinion for the appeal in 22-50102, *Edmiston v. Borrego*. The two opinions concern the suicide by two pretrial detainees in two Texas jails and, inter alia, failure-to-protect claims. Moreover, the same counsel for plaintiffs appear in each appeal.

For the challenge at hand to four defendants' being awarded summary judgment based on qualified immunity, primarily at issue is whether they possessed subjective knowledge of a substantial risk of suicide by detainee Brenda Kaye Worl. The two jailer-defendants and two officer-defendants filed two separate summary-judgment motions; and the resulting two contested judgments were entered pursuant to Federal Rule of Civil Procedure 54(b) ("[T]he court may direct entry of final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay".).

This action under 42 U.S.C. § 1983 arises out of Worl's death while in pretrial detention in the Callahan County, Texas, Jail. Plaintiffs' challenge to the adverse summary judgments includes contesting

evidentiary rulings. Plaintiffs fail to show the requisite genuine dispute of material fact for whether the four defendants had subjective knowledge of a substantial risk of suicide; therefore, they fail to show a constitutional violation. And, even if the court abused its discretion in sustaining defendants' evidentiary objections, any error was harmless. Accordingly, the two summary judgments based on qualified immunity are proper. Therefore, the two Rule 54(b) judgments are AFFIRMED.

I.

Plaintiffs assert claims against Dalena Hall, Cari Renea McGowen, Officer Vegas Hastings, and Officer Daniel Piper for failing to protect Worl, in violation of the Fourteenth Amendment. (The claims against these four defendants for bystander liability were also dismissed based on qualified immunity.)

Plaintiffs also claim under § 1983 and *Monell v. Department of Social Services of New York City*, 436 U.S. 658 (1978), that the jail-suicide-prevention policies of Callahan County and City of Clyde, Texas, caused a violation of Worl's constitutional rights. Those claims are not at issue in these two consolidated appeals.

A.

The following recitation of facts is, unless otherwise noted, based on the summary-judgment record, including, *inter alia*: party affidavits, depositions, reports, the Officers' body-cam videos, and jail-surveillance video. Along that line, to the extent minor differences exist between the affidavits and depositions, the latter controls. *E.g., S.W.S.*

Erectors v. Infax, Inc., 72 F.3d 489, 495 (5th Cir. 1996). Additionally, we give weight to the extensive videos from the Officers' body-cameras and the jail-surveillance cameras. These provide compelling summary-judgment evidence regarding the four defendants' interactions with Worl.

At 10:13 p.m. on 2 April 2019, Callahan County dispatch received a 911 call from Worl, charging domestic abuse by her husband. Hall, a jailer-dispatcher with the Callahan County Jail, received the call and dispatched Clyde, Texas, Police Officers Hastings and Piper (the Officers). (As shown in the Officers' body-cam videos, two other unidentified officers were also at the Worls' home that night. These two officers are not parties in this action.)

The Officers arrived at the scene at 10:17 p.m., and Worl and her husband, Billy Worl, spoke with them. It appeared to the Officers that the incident involved conduct by both parties. Billy Worl stated, as documented in Officer Hastings' report, and as recorded in his body-cam video, that the couple had "drank a couple boxes of wine"; and the Officers noted he smelled of alcohol and Worl appeared to be intoxicated.

Due to jail-capacity concerns—there was only room for one of the Worls—the Officers arrested Worl for assault, partially due to her behavior at the scene after they arrived and because she had two prior arrests for assault. Officer Hastings transported Worl to the jail for booking; Officer Piper followed to observe.

After arriving at the jail a few minutes after 11:00

p.m., one of Worl's hands slipped out of her handcuffs as she waited to be booked. Instead of securing her hand, McGowen, also a jailer-dispatcher with the jail, removed the handcuffs. Officer Hastings then escorted Worl to the booking area, where Hall attempted to begin the booking process.

Worl was uncooperative and refused to answer questions, including those for the jail's "Screening Form for Suicide and Medical/Mental/Developmental Impairments". Officer Piper and McGowen assisted Hall and Officer Hastings.

After the four defendants attempted to persuade Worl to comply, it was decided that it would be best to allow Worl to calm-down before continuing. McGowen conducted a pat-down of Worl, confiscating her coat, shoes, and an eyeglass lens she had felt in Worl's coat pocket. McGowen then, in the presence of Officer Hastings, asked Worl whether she had ever attempted suicide; in response, she presented her arms and said, "I don't know. Have I?".

McGowen, with Officer Hastings "observ[ing] from the adjacent hallway", then placed Worl in the jail's visitation room at 11:33 p.m. McGowen, in her affidavit, explained: because Worl was "brought in on an assault charge and because of her behavior", "it was not safe to place [her] in a cell with another inmate"; and, because the jail was then at full capacity, Worl was placed in the visitation room. In her deposition, McGowen expanded on this, explaining that Worl was placed in the visitation room so "she wouldn't be out in the open just to run around"; and that she could not be placed in a cell with another inmate because "[s]he might be

combative with the other inmate".

The visitation room is a small area used to permit detainees to converse with visitors who sit outside the room in the hallway, on the other side of the two observation windows. Detainees speak with visitors through telephones mounted on the room's wall. The room includes a bench, two small tabletops, and two mounted telephones—one of the telephone's cords appears longer than the other.

Worl was not observed constantly. At 11:45 p.m., 12 minutes after she was placed in the visitation room, Hall checked on Worl through a viewing window and observed her crying as she sat on the visitation-room bench. Two minutes later, at 11:47 p.m., McGowen checked on Worl. From the viewing window, McGowen could see only the top of Worl's head. McGowen returned to the dispatch office to retrieve a key to the room. Once she entered it, she discovered Worl on the floor with her head facing down. McGowen "gently lifted [Worl's] head back" and discovered one of the telephone cords wrapped around her neck. She removed the cord.

McGowen then yelled for Hall to contact emergency medical services (EMS). Hall paged EMS at 11:48 p.m. and the Callahan County Sheriff at 11:52 p.m. Officers Hastings and Piper performed CPR on Worl until EMS arrived at 12:00 a.m. EMS obtained a pulse and transported Worl to the hospital, where she was placed on life support. She died the next day (4 April 2019).

B.

This action was filed in March 2021. Defendants'

two summary-judgment motions (one for the two jailers, the other for the two Officers), based on qualified immunity, were granted in March 2022. In doing so, the district court sustained objections to plaintiffs' summary-judgment evidence.

In granting summary judgment, the district court concluded: "there [was] no evidence before the Court, beyond speculative evidence, to raise a genuine issue of material fact as to whether [defendants] appreciated that Worl was a suicide risk or that the phone cord would likely be an instrument of suicide"; and that Worl was "intoxicated, belligerent, uncooperative, and refused to answer questions related to mental health and suicide risk" was insufficient to make defendants subjectively aware of a substantial risk of self-harm.

The court ruled defendants' objections regarding, *inter alia*, authentication and hearsay, were meritorious. In the alternative, even if it considered the exhibits, they did not "raise a genuine issue of material fact as to deliberate indifference" by defendants.

A summary-judgment order and a Rule 54(b) judgment were entered in March 2022 for each of the two motions in favor of the two jailers and two officers in their individual capacities. *See* FED. R. CIV. P. 54(b). (The court's summary-judgment orders did not address plaintiffs' bystander claims, but the claims were dismissed in the court's 54(b) judgments, providing that "Plaintiffs' claims asserted against [defendants] in their individual capacit[ies] are" dismissed.)

II.

Primarily at issue in this appeal are the failure-to-protect claims against jailer-dispatchers Hall and McGowen and Officers Hastings and Piper (defendants). Following addressing that issue, we turn to their sustained objections to plaintiffs' summary-judgment evidence.

A.

Pursuant to the two-part test, discussed *infra*, plaintiffs generally claim genuine disputes of material fact exist for whether the jailers and Officers: subjectively knew Worl was at substantial risk of serious self-harm; and failed to appreciate the risk by knowingly placing unsupervised Worl in the visitation room containing a telephone cord, a commonly known obvious ligature. Because they fail to show genuine disputes of material fact regarding defendants' subjective knowledge of Worl's substantial risk of suicide, defendants are entitled to qualified immunity on the failure-to-protect claim.

It follows that, because the failure-to-protect claims fail, no violation exists for bystander claims against the jailers and Officers. *See Joseph ex rel. Est of Joseph v. Bartlett*, 981 F.3d 319, 343 (5th Cir. 2020) (noting bystander liability requires, *inter alia*, that officer "knew a fellow officer was violating an individual's constitutional right"). Therefore, we address only the failure-to-protect claims.

A summary judgment is reviewed *de novo*. *E.g., Estate of Henson v. Wichita Cnty.*, 795 F.3d 456, 461 (5th Cir. 2015). 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 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).

Ordinarily, our court "must view the evidence in the light most favorable to the party resisting the motion". *Trevino v. Celanese Corp.*, 701 F.2d 397, 407 (5th Cir. 1983). When, however, defendants, as in this instance, assert qualified immunity, the burden of proof shifts to plaintiffs to "rebut the defense by establishing a genuine fact issue as to whether the official's allegedly wrongful conduct violated clearly established law". *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010).

"Qualified immunity protects officers from suit unless their conduct violates a clearly established [statutory or] constitutional right." *Converse v. City of Kemah*, 961 F.3d 771, 774 (5th Cir. 2020) (quoting *Mace v. City of Palestine*, 333 F.3d 621, 623 (5th Cir. 2003)). Plaintiffs maintain, solely for the purpose of preserving the issue for further review, that qualified immunity should be "abolished or modified so that it is inapplicable here". For this appeal, we proceed with the qualified-immunity doctrine intact.

Again, when defendants assert qualified immunity, "a plaintiff seeking to overcome qualified immunity must show: (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct". *Id.* (citation omitted). We have discretion to elect which prong of this two-prong analysis to

address first. *E.g., Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

As stated, "[t]o overcome the officials' qualified immunity defense Plaintiffs must first demonstrate that each official violated [Worl's] statutory or constitutional right". *Converse*, 961 F.3d at 775. "[T]he Fourteenth Amendment protects[, *inter alia*,]pretrial detainees' right to medical care and to 'protection from known suicidal tendencies'". *Baldwin v. Dorsey*, 964 F.3d 320, 326 (5th Cir. 2020) (emphasis added) (quoting *Garza v. City of Donna*, 922 F.3d 626, 632 (5th Cir. 2019)); *see also Converse*, 961 F.3d at 775 ("We have repeatedly held that pretrial detainees have a Fourteenth Amendment right to be protected from a *known* risk of suicide." (emphasis added)).

Where the claimed violation of that right turns, as in this instance, on an official's alleged acts or omissions, the question is whether the official "had gained *actual knowledge* of the substantial risk of suicide and responded with deliberate indifference". *Converse*, 961 F.3d at 775 (emphasis added) (quoting *Hare v. City of Corinth*, 74 F.3d, 633 650 (5th Cir. 1996) (en banc)). It is undisputed that "[d]eliberate indifference is an extremely high standard to meet". *Domino v. Tex. Dep't of Crim. Just.,* 239 F.3d 752, 756 (5th Cir. 2001).

Accordingly, an "official will not be held liable if he merely 'should have known' of a risk". *Converse*, 961 F.3d at 775 (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). Rather, to satisfy this high standard, plaintiffs must show the official: was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists"; and "also

[drew] the inference". *Id.* (quoting *Farmer*, 511 U.S. at 837). An official with such knowledge then "shows a deliberate indifference to that risk 'by failing to take reasonable measures to abate it'". *Id.* at 776 (quoting *Hare*, 74 F.3d at 648).

Plaintiffs, however, maintain this court should instead apply the objective-unreasonableness standard the Court adopted in *Kingsley v. Hendrickson for claims of excessive force (not failure to protect)* by officers against a pretrial detainee. 576 U.S. 389 (2015). But, we are bound by our rule of orderliness. *E.g., Jacobs v. Nat'l Drug Intel. Ctr.,* 548 F.3d 375, 378 (5th Cir. 2008) ("It is a well-settled Fifth Circuit rule of orderliness that one panel of our court may not overturn another panel's decision, absent an intervening change in the law, such as by statutory amendment, or the Supreme Court, or our *en banc* court."). This rule renders this assertion meritless. *See Cope v. Cogdill*, 3 F.4th 198, 207 n.7 (5th Cir. 2021) (explaining *Kingsley* "did not abrogate [this court's] deliberate-indifference precedent"), *cert. denied*, 142 S. Ct. 2573 (2022); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017) ("Because the Fifth Circuit has continued to rely on Hare and to apply a subjective standard post-*Kingsley*, this panel is bound by our rule of orderliness.").

Regarding qualified immunity's second prong, for a right to be "clearly established" it must be "sufficiently clear that every reasonable official would have understood that what he is doing violates that right". *Est. of Bonilla v. Orange Cnty.*, 982 F.3d 298, 306 (5th Cir. 2020) (quoting *Ashcroft v. al-Kidd*, 563

U.S. 731, 741 (2011)). Critically, "[c]ourts must not 'define clearly established law at a high level of generality'"; rather, we must undertake the inquiry "in light of the specific context of the case". *Cope*, 3 F.4th at 204 (quoting *Mullenix v. Luna*, 577 U.S. 7, 12 (2015)).

Pursuant to our above-discussed discretion to elect which of the two qualified-immunity prongs to consider first, we begin with the first. For the reasons that follow, there was no violation of a statutory or constitutional right. Therefore, we do not reach the second prong (whether clearly established).

Again, for the first prong, and to prevail against summary judgment for the claimed violation at hand, plaintiffs must establish a genuine dispute of material fact for whether Hall, McGowen, Officer Hastings, or Officer Piper "(1) had subjective knowledge of substantial risk of serious harm and (2) responded to that risk with deliberate indifference". *Id*. at 210 (citation omitted); *Callahan*, 623 F.3d at 253. In the context of detainee suicide, the requisite substantial risk of serious harm must be specific; plaintiffs must allege defendants "were aware of a substantial and significant risk that the detainee might kill himself". *Cope*, 3 F.4th at 207 (alteration omitted) (citation omitted).

When, as here, multiple government actors are defendants and assert qualified immunity, we "evaluate each [actor's conduct] separately, to the extent possible". *Poole v. City of Shreveport*, 691 F.3d 624, 628 (5th Cir. 2012).

Because plaintiffs, for the reasons discussed infra,

fail to establish genuine disputes of material fact regarding defendants' subjective knowledge of a substantial risk of suicide, whether defendants responded with deliberate indifference does not come into play.

1.

For the jailers, plaintiffs generally maintain genuine disputes of material fact exist for their subjective knowledge of Worl's substantial risk for serious self-harm, including suicide. They contend the conduct of both Hall and McGowen raise genuine disputes of material fact showing they subjectively understood the risk.

Regarding such genuine disputes *vel non*, we consider whether anything concerning Worl led Hall or McGowen to form the requisite subjective knowledge of a substantial risk, specifically a risk of suicide. *E.g., Farmer*, 511 U.S. at 842; *Cope*, 3 F.4th at 207–08 (official witnessed decedent attempt suicide day before incident in question); *Converse*, 961 F.3d at 776, 778–79 (official was present when decedent was pulled off bridge while he attempted to jump and where official heard decedent express he should have jumped and would make another attempt to do so when released); *Hyatt v. Thomas*, 843 F.3d 172, 178 (5th Cir. 2016) (even though decedent stated he did not want to commit suicide, official knew decedent suffered from depression, had recently attempted suicide, and his wife believed him to be suicidal).

Both Hall and McGowen noted Worl's intoxication and lack of cooperation. That they recognized that Worl may have been intoxicated and observed her

defiant demeanor is insufficient, however, to create a genuine dispute of material fact on whether they formed the requisite subjective knowledge of a substantial risk of suicide. *E.g., Est. of Bonilla*, 982 F.3d at 305 (explaining even if detainee was intoxicated, it "would not indicate [official] inferred she was a suicide risk").

Regarding the lack of mental-health screening, plaintiffs emphasize that the jailers' failure to conduct the screening shows a genuine dispute of material fact that Worl needed to be treated as suicidal. This assertion also fails. Our court has acknowledged there is no independent constitutional right to mental-health screening. *E.g., id*. at 307 (quoting *Taylor v. Barkes*, 575 U.S. 822, 826 (2015)) ("No decision of this Court establishes a right to proper implementation of adequate suicide prevention protocols. No decision of this Court even discusses suicide screening or prevention protocols."). (Additionally, even if plaintiffs could assert a right to suicide screening, "evidence of inadequate screening . . . would not raise an issue of deliberate indifference without additional evidence that [the jailers] knew that [Worl] was in fact at risk for suicide". *Id.* at 305.) Even if Worl's refusal to cooperate should have alerted Hall and McGowen to a substantial risk of suicide, the summary-judgment record does not show a genuine dispute of material fact for whether they actually perceived that risk. *Converse*, 961 F.3d at 775–76.

Absent additional, independent evidence that the jailers believed Worl was at risk for suicide, failure to screen does not establish a genuine dispute of

material fact for the jailers' subjective knowledge regarding Worl's risk of suicide. *E.g., Est. of Bonilla*, 982 F.3d at 305. We turn to the conduct by each of the two jailers.

a.

Hall, as dispatcher on duty, received the 911 call shortly after 10:00 p.m. regarding a domestic disturbance between the caller, Worl, and her husband. She dispatched the two Officers to the Worls' home.

In preparation for Worl's booking, Hall, according to her deposition, began entering Worl's information into the intake system and obtained background information on her. This background information included a check through the Texas Health and Human Services Commission's Continuity of Care Query (CCQ) system "to determine if Worl had previously received state mental healthcare or had a known intellectual or developmental disability". The CCQ check came back as "no match".

Once Worl arrived at the jail, Hall, in her deposition, described her as "uncooperative and vocal" and "[a]lmost in a combative state". She further explained in her deposition that, although the Officers told her Worl had been drinking, she did not observe anything leading her to independently believe Worl was intoxicated.

Hall, in the presence of the Officers, unsuccessfully attempted to book Worl. Later, McGowen joined them in attempting to complete the booking process. Hall observed McGowen: advise Worl that, if she would not cooperate, she would be

placed in the visitation room; and then confiscate items from Worl. Hall was not present when Worl was placed in the room.

Hall, according to her affidavit, "never heard Worl make any statements to indicate she intended to harm herself, nor was [she] aware of any such statements to anyone else"; and, based on her observations, she "did not believe Worl was engaging in suicidal behavior or had mental health issues". Plaintiffs fail to establish a genuine dispute of material fact that Worl did or said anything to show Hall that she was suicidal or intended to harm herself or that Hall otherwise drew that inference. *E.g., Converse*, 961 F.3d at 776, 778–79; *Hyatt*, 843 F.3d at 178.

Because plaintiffs fail to establish a genuine dispute of material fact regarding Hall's subjective knowledge of a substantial risk of suicide, they fail to show a violation by Hall of Worl's statutory or constitutional right. Therefore, Hall is entitled to qualified immunity.

b.

McGowen, as Hall described in her deposition, was the jail's "acting supervisor" on duty on 2 April. During her shift, the Officers, via radio, notified her that: they had arrived at the jail; and a female, later identified as Worl, was being brought in. After the Officers arrived, but prior to Worl's being taken to booking, "Worl advised [Officer Hastings] she slipped her hand out of her handcuff". McGowen then spoke with Officer Hastings regarding McGowen's removing Worl's handcuffs as they could be used as a weapon.

Officer Hastings then escorted Worl to booking; McGowen returned to the dispatch office.

A few minutes later, as stated in her affidavit and confirmed in her deposition, she "heard Worl raising her voice"; went to the booking area to determine whether Hall needed assistance; and Hall "advised [her] that Worl was not complying and was refusing to be booked in or to answer any questions", including the questions regarding the mental-health screening form.

When Worl continued to be noncooperative, McGowen conducted a pat-down of Worl, confiscating her coat, shoes, and an eyeglass lens she had felt in Worl's coat pocket. She instructed Worl that she would be placed in a holding cell (visitation room) until she could calm down and comply with the booking process. Prior to placing Worl in the visitation room, and in the presence of Officer Hastings, McGowen asked Worl if she had ever attempted suicide. In response, as stated in McGowen's deposition, Worl "shook her arms at [her] and said, 'I don't know. Have I?'"

McGowen, in her affidavit, stated she "did not observe any injuries, scars or markings on Worl's wrists or arms and took [Worl's response] as an attempt by Worl to show [her] she had not attempted suicide". McGowen then, with Officer Hastings, placed Worl in the visitation room at 11:33 p.m., and returned to the dispatch office.

McGowen, in her affidavit, stated that, during the time Worl was in the jail, she "never heard [Worl] make any statements to indicate she intended to

harm herself, nor was [she] aware of Worl making any such statements to anyone else". Pursuant to her prior training intended to assist her in recognizing inmates who are potentially suicidal or who may need mental-health assistance, and based on her observations of Worl, McGowen, as stated in her affidavit, "did not believe Worl was engaging in any suicidal behavior or had mental health issues".

Regarding McGowen's questioning Worl about whether she had previously attempted suicide, her response was vague and insufficient to establish a genuine dispute of material fact for whether McGowen was subjectively aware of a risk of suicide. *E.g., Converse,* 961 F.3d at 775. McGowen's actions, including her conducting a pat-down, do not create a genuine dispute of material fact that those actions amounted to anything more than general jail protocol.

Because plaintiffs fail to establish a genuine dispute of material fact regarding McGowen's subjective knowledge of a substantial risk of suicide, they fail to show a violation by McGowen of Worl's statutory or constitutional right. Therefore, McGowen is entitled to qualified immunity.

2.

For the two Officers, plaintiffs generally maintain that genuine disputes of material fact exist regarding the Officers' subjective knowledge of Worl's substantial risk for serious self-harm, including suicide. They contend the conduct of Officers Hastings and Piper create genuine disputes of material fact for whether they subjectively understood that risk.

As discussed *supra*, and regarding such genuine

disputes *vel non*, we consider whether anything concerning Worl led the Officers to form the requisite subjective knowledge of a substantial risk, specifically a risk of suicide. *E.g., Farmer*, 511 U.S. at 842; *Cope*, 3 F.4th at 207–08; *Converse*, 961 F.3d at 776, 778–79; *Hyatt*, 843 F.3d at 178.

Officers Hastings and Piper were dispatched to the Worls' home in response to the 911 call. The Officers spoke with both Worls to determine the situation. When, as seen in his body-cam video, Officer Piper asked Billy Worl whether Worl had any history of mental health, he responded no. However, when questioned whether she had any "mental health disabilities, like bipolar", he responded "yes, but in the past".

Plaintiffs claim that, instead of taking Worl to the jail, the Officers were required by Texas Health and Safety Code § 573.011(a)(1) to transport her to a mental-health-treatment facility. In doing so, plaintiffs contend the Officers acted with deliberate indifference; however, they fail to show genuine disputes of material fact regarding the Officers' subjective knowledge requiring such response. They assert Officer Hastings was aware of the procedure and could have utilized it.

The summary-judgment record does not show a genuine dispute of material fact that either Officer perceived a substantial risk of suicide. And, to the extent plaintiffs contend the Officers were required to take Worl into custody under Chapter 573, that procedure is permissive, not mandatory. *See* TEX. HEALTH & SAFETY CODE § 573.001(a) ("A peace officer, without a warrant, may take a person into custody . .

. ." (emphasis added)).

Regarding the lack of mental-health screening at the jail, plaintiffs maintain: the Officers knew the screening form had not been completed; and such knowledge creates a genuine dispute of material fact for whether Worl should have been treated as suicidal. As discussed *supra*, this assertion fails. Although our court has acknowledged there is no constitutional right to screening, even if Worl's refusal to cooperate should have alerted the Officers to a substantial risk of suicide, the summary-judgment record does not create a genuine dispute of material fact they perceived that risk. *E.g., Est. of Bonilla*, 982 F.3d at 307 (quoting *Taylor*, 575 U.S. at 826); *Converse*, 961 F.3d at 775–76.

Absent evidence that the Officers formed the opinion that Worl was at a risk for suicide, knowledge that she was not screened does not establish a genuine dispute of material fact for the Officers' subjective knowledge regarding Worl's risk of suicide. *E.g., Est. of Bonilla*, 982 F.3d at 305. We turn to the conduct by each of the two Officers.

a.

Officer Hastings, the arresting officer that night, explained in his deposition that he formed the opinion Worl was intoxicated because he was told she and her husband had consumed two boxes of wine. After arresting Worl, Officer Hastings transported her in his patrol vehicle.

Upon arriving at the jail, as shown in Officer Hastings' body-cam video, Worl told him she was "happy to be [t]here", and she thanked him for getting

her out of the situation at her home. He escorted her to the booking area, where she was, as he described in his deposition, "irritated" when asked questions; he was unsuccessful in attempting to calm her down.

When they failed to complete the booking process, McGowen placed Worl in the visitation room while Officer Hastings observed. The Officer stated in his deposition that he did not recall McGowen's confiscating items from Worl, but conceded it is standard practice to do so because detainees can harm themselves with certain items. He further recounted Worl's presenting her arms to him and McGowen in response to being asked whether she had previously attempted suicide, but noted that he did not see any scars and that it wasn't clear why she was presenting her arms.

Officer Hastings' forming the opinion that Worl was intoxicated and uncooperative does not create a genuine dispute of material fact for whether he formed the required subjective knowledge of a substantial risk of suicide. *E.g., id.* at 305. Evidence does not show Worl did, or said, anything explicitly or implicitly to establish a genuine dispute of material fact that Officer Hastings drew the inference she was a substantial risk of suicide.

Because plaintiffs fail to establish a genuine dispute of material fact regarding Officer Hastings' subjective knowledge of a substantial risk of suicide, they fail to show a violation by Officer Hastings of Worl's statutory or constitutional right. Therefore, Officer Hastings is entitled to qualified immunity.

b.

Officer Piper, the assisting officer on the scene that night, described in his deposition Worl's state at her home as "belligerent" and "[n]ot responding to [the Officers], yelling, and screaming, not wanting to give [the Officers] what she needed to tell [them], arguing with other officers". (As noted, two unidentified officers were also there.) In his deposition, he further explained that, although Worl was argumentative, he did not believe she was combative in a physical sense. He believed she was intoxicated and stated he could smell alcohol. He also stated in his deposition that Worl said, "she was too drunk"; and he agreed that an intoxicated individual may not act rationally.

Although not referenced by either party, our review of the summary-judgment record, specifically the body-cam videos, revealed that, upon the Officers' *arriving* at the Worls' home, Worl stated in Officer Piper's presence: "I don't care if I die tonight" and "I'm tired of this". Worl was turned away from Officer Piper when she made these statements.

Despite her statement's being muffled, it is well established that video recordings are given a presumption of reliability and significant evidentiary weight because "[a]n electronic recording will many times produce a more reliable rendition . . . than will the unaided memory of a police agent". *United States v. White*, 401 U.S. 745, 753 (1971). Accordingly, where testimony conflicts with video evidence, our court must view the "facts in the light depicted by the videotape". *Scott v. Harris*, 550 U.S. 372, 380–81 (2007); *see also United States v. Vickers*, 442 F. App'x 79, 86, 87 & n.7 (5th Cir. 2011).

Even assuming Officer Piper heard these statements, it does not alter our analysis. The statements fail to create a genuine dispute of material fact that Officer Piper had *actual knowledge* of a risk of suicide or was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]" and that he "also [drew] the inference". *E.g., Converse*, 961 F.3d at 775. Worl made these statements when the Officers first arrived at the Worls' home, at a time when Worl was not aware that she was going to be taken to jail. Considered in context, Worl's statements and tone appear to be directed at her frustration with her very distressing living situation. Moreover, that plaintiffs do not mention this interaction suggests they do not believe it is evidence regarding suicide propensity.

At the jail, Officer Piper assisted in attempting to book Worl; and he remembered talking to her to explain that, if she was noncompliant, they would have to wait for her to become sober before she could be processed. He did not assist in placing Worl in the visitation room.

Although Officer Piper conceded in his deposition that he formed the opinion Worl was intoxicated, and he agreed that an intoxicated individual may not act rationally, this is insufficient to create a genuine dispute of material fact that the Officer formed the requisite subjective knowledge of a substantial risk of suicide. Likewise, his observing her noncompliance does not create genuine disputes of material fact. *E.g., Est. of Bonilla*, 982 F.3d at 305. The summary-judgment record does not show Worl did, or said, anything explicitly or implicitly to create a genuine

dispute of material fact that Officer Piper drew the inference she was a substantial risk of suicide.

Because plaintiffs fail to establish a genuine dispute of material fact regarding Officer Piper's subjective knowledge of a risk of suicide, they fail to show a violation by Officer Piper of Worl's statutory or constitutional right. Therefore, Officer Piper is entitled to qualified immunity.

B.

In their responses in opposition to the two summary-judgment motions, plaintiffs attached exhibits for the summary-judgment record. In reply, defendants objected, albeit briefly, to many of those exhibits. In each of its two summary-judgment orders, the court in a brief note sustained the objections, ruling they were meritorious.

Preserved challenges to evidentiary rulings are reviewed for abuse of discretion. *E.g., Caparotta v. Entergy Corp.,* 168 F.3d 754, 755 (5th Cir. 1999). "A district court abuses its discretion if it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Certain Underwriters at Lloyd's v. Axon Pressure Prods., Inc*., 951 F.3d 248, 256 (5th Cir. 2020) (citation omitted). Evidentiary rulings are "subject to the harmless error doctrine"; therefore, even if the court abused its discretion, "the ruling will be reversed only if it affected the substantial rights of the complaining party". *Adams v. Mem'l Hermann*, 973 F.3d 343, 349 (5th Cir. 2020) (citation omitted); *see also* FED. R. EVID. 103(a); *Perez v. Tex. Dept. of Crim. Just., Inst. Div.*, 395 F.3d 206, 210 (5th Cir. 2004) ("An erroneous

evidentiary ruling is reversible error only if the ruling affects a party's substantial rights.").

The exhibits at issue generally contain research, as plaintiffs describe, regarding "widespread knowledge of jail suicides by telephone cords in the corrections community and the public generally", including expert reports, scholarly and news articles, and media depictions addressing telephone cords as ligatures.

Even assuming the court abused its discretion, the contested exhibits concern only defendants' knowledge regarding the risk of telephone cords as ligatures; they do not bear on defendants' subjective knowledge regarding whether Worl was a substantial suicide risk. Accordingly, the court's sustaining defendants' objections did not affect plaintiffs' substantial rights. Therefore, this assumed error was harmless. *Perez*, 395 F.3d at 210.

III.

For the foregoing reasons, the two Rule 54(b) judgments are AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 22-50102

United States Court of Appeals
Fifth Circuit
FILED
August 1, 2023
Lyle W. Cayce
Clerk

SHANON EDMISTON, *Individually*; HELEN HOLMAN, *as dependent administrator of*, and *on behalf of*, LISA WILLIAMS *a/k/a* LISA SCHUBERT, E.S., J.S. #*1,* J.S. #*1*; SHANON EDMISTON, THE ESTATE OF JOHN ROBERT SCHUBERT, JR., AND JOHN ROBERT SCHUBERT, JR.'S *heirs-at-law*,

Plaintiffs–Appellees,

versus

OSCAR BORREGO, SR.; OSCAR E. CARRILLO; PETER E. MELENDEZ,

Defendants–Appellants,

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:21-CV-132

Before BARKSDALE, SOUTHWICK, and HIGGINSON, *Circuit Judges*.

RHESA HAWKINS BARSKDALE, *Circuit Judge*:

This opinion is rendered contemporaneously with the opinion for the appeal in 22-10360, *Crandel v. Hall*, consolidated on appeal with 22-10361, *Crandel*

v. Hastings. The two opinions concern the suicides by two pretrial detainees in two Texas jails and, *inter alia*, failure-to-protect claims. Moreover, the same counsel for plaintiffs appear in each appeal.

At hand is an interlocutory appeal contesting the denial of motions to dismiss asserting qualified immunity against failure-to-protect claims concerning the pretrial detainee. Primarily at issue is whether the complaint plausibly alleges the three appellants possessed subjective knowledge of a substantial risk of suicide by detainee John Robert Schubert, Jr. This action under 42 U.S.C. § 1983 arises out of his death while in pretrial detention in the Culberson County, Texas, Jail. Plaintiffs fail to plausibly allege appellants possessed the requisite subjective knowledge. VACATED and RENDERED.

I.

Plaintiffs assert claims in district court under § 1983 against Oscar Borrego, Sr., Sheriff Oscar E. Carrillo, Deputy Peter E. Melendez, Adelaida Zambra, and Ernesto Diaz for failing to protect Schubert, claiming violations of the Eighth and Fourteenth Amendments. They also have claims against individual defendants under a theory of bystander liability, and a claim against the Sheriff for supervisory liability. And, against Culberson County, plaintiffs assert a claim under § 1983 and *Monell v. Department of Social Services of New York City*, 436 U.S. 658 (1978), on the basis that its policies related to jail-suicide prevention caused a violation of Schubert's constitutional rights. But, this interlocutory appeal concerns only the failure-to-protect claims against Borrego, Sheriff Carrillo, and

Deputy Melendez (appellants).

A.

Because denial of a motion to dismiss is at issue, the following recitation of fact is, unless otherwise noted, based on plaintiffs' operative 75-page complaint. As done in the complaint, approximate times are used. And, for the statements, including by appellants, obtained on 7 July 2019, and contained in the Texas Rangers' report, discussed *infra*, the district court relied on the statements in the report as included in the complaint; therefore, we do not distinguish between the report and the complaint.

On 6 July 2019, in Van Horn, Texas, Borrego, a jailer with the jail, received a series of calls concerning a male—later identified as Schubert—needing assistance. In the first call, at 11:05 p.m., the male caller asserted someone was trying to kill him. In the second call, at 11:09 p.m., an off-duty trooper stated a man was at his door saying someone was trying to kill him. And, in the third and final call, at 11:12 p.m., someone at the El Capitan Hotel in Van Horn said a man told the hotel clerk someone was trying to kill him. Schubert, who had been wandering around Van Horn, was both the initial unknown caller and the subject of the second and third calls.

Borrego directed Culberson County Sheriff's Deputy Melendez to respond. The Deputy was dispatched initially to a location in Van Horn regarding Schubert's knocking on a resident's door, but Schubert was not present when the Deputy arrived. After being notified of the third call, the Deputy located Schubert at 11:15 p.m. at the El

Capitan Hotel.

The Deputy spoke with Schubert, later providing in a statement (included in the complaint) that Schubert "appeared nervous and said that people were trying to kill [him]". The Deputy said Schubert: accurately stated the day of the week, the approximate time, and his location in Van Horn; provided his name and date of birth; but gave an incorrect year.

The Deputy took Schubert to a Border Patrol Station to obtain information to identify him correctly. In doing so, the Deputy learned Schubert had an active warrant for parole violation.

Based on the warrant, the Deputy arrested Schubert and transported him to the jail. They arrived at 12:14 a.m. on 7 July, and Schubert was placed in the booking area.

Culberson County Sheriff Carrillo heard Borrego's dispatch to Deputy Melendez and followed up to check on the situation involving Schubert. After learning that the Deputy arrested Schubert, the Sheriff "decided to go to the jail and check on [Schubert] and jail personnel". Arriving at the jail after 12:59 a.m., the Sheriff was advised Schubert had a warrant for parole violation.

With Borrego present, Schubert told the Sheriff: "he had hitchhiked from El Paso and was in a half-way house in Horizon, Texas"; "he had left the Horizon facility without permission and was not allowed to stay at the facility once he returned"; and "they were mean to him at the facility, and . . . he had had enough". Throughout the interview, Schubert

was not wearing a shirt, because, as he explained, it was wet.

Schubert appeared to be cooperative and truthful in his responses. Borrego and the Sheriff did not complete a "Screening Form for Suicide and Medical/Mental/Developmental Impairments", which plaintiffs allege is required by the Texas Commission on Jail Standards (TCJS).

After the Sheriff spoke with Schubert, Borrego, at 1:35 a.m., provided Schubert jail-issued clothing pursuant to the Sheriff's instruction. Deputy Melendez and Borrego escorted Schubert to a cell at 1:42 a.m. Schubert repeated to the Deputy that someone was trying to kill him. Borrego, pursuant to the Sheriff's instruction, provided Schubert with a mattress. He was not placed on suicide watch.

The Sheriff and Borrego left the jail at 1:48 a.m. The Deputy went back on patrol at about the same time.

When Borrego went to the dispatch office at 1:48 a.m. to clock out, he asked Zambra, another jail employee, to run a driver's-license and criminal-history check on Schubert. (Zambra, a defendant in this action, is not a party to this interlocutory appeal on qualified immunity. The district court granted her motion to dismiss, based on such immunity.)

Zambra printed a copy of Schubert's driver's license and criminal history at 2:17 a.m.; and, at 2:28 a.m., she requested a medical-history report: a "Continuity of Care Query" (CCQ). It was later noted by the TCJS, in its 8 August 2019 report (a copy of the report summary is included in the body of the

complaint), that the CCQ came back as "no match".

At 2:42 a.m., Zambra "manually" checked on the jail's detainees. When she checked Schubert's cell, she could see him "half-kneeling with a white sheet mangled on his neck and tied to a top grey shelf". She went to the "catwalk hallway" to get a better view of Schubert and called out to him through the jail bars, but he did not respond. Next, she "called Deputy Melendez and Sheriff Carrillo [at 2:44 a.m.] and asked that they come to the jail as soon as possible".

The Sheriff, after hearing Zambra's radio call at 2:47 a.m., arrived first and removed the sheet from Schubert's neck, laid him on a bunk, and began CPR. Upon the Sheriff's instruction, Zambra called the rescue team at 2:50 a.m. EMTs were dispatched at 2:56 a.m., and arrived at the jail at 2:59 a.m. Upon their arrival, Schubert was not breathing and did not have a pulse. He was pronounced dead, with his autopsy report listing his cause of death as suicide through asphyxia due to hanging.

B.

This action was filed in June 2021. Although additional claims were added, at issue in this interlocutory appeal, as discussed *supra*, are only plaintiffs' claims under § 1983 against Borrego, Sheriff Carrillo, and Deputy

Melendez for failure to protect, in violation of the Eighth and Fourteenth Amendments. All individual defendants filed motions to dismiss, asserting qualified immunity.

The district court in January 2022 denied in part

appellants' motions, concluding they were not entitled to qualified immunity against the failure-to-protect claims. In doing so, the court concluded the complaint plausibly alleged: each of the appellants possessed the requisite subjective knowledge of a risk of suicide or serious harm; and, they failed to take action to abate that risk. The court concluded the "risk was obvious", based on: Schubert's fragile psychological state; his statements regarding an unidentified assailant; and appellants' knowledge about the risk of jail suicides. The court further concluded it is clearly established that, when an official is subjectively aware of the risk of suicide and responds by giving the detainee loose bedding, an obvious ligature, he acts with deliberate indifference and is not entitled to qualified immunity.

Regarding plaintiffs' other claims, the district court, *inter alia*, dismissed the bystander-liability claims against the three appellants and the supervisory-liability claim against the Sheriff.

II.

This interlocutory appeal by Borrego, the Sheriff, and the Deputy (again, appellants) followed. Such an appeal from the denial of qualified immunity is permitted pursuant to the collateral-order doctrine. *E.g., Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009). Along that line, our court has jurisdiction to "review a district court's order denying a motion to dismiss on the basis of qualified immunity only to the extent that the appeal concerns the purely legal question of whether the defendants are entitled to qualified immunity on the facts". *Bevill v. Fletcher*, 26 F.4th 270, 274 (5th Cir. 2022) (alteration omitted) (citation omitted).

"On interlocutory appeal, we review [*de novo* the] denial of a qualified-immunity-based motion to dismiss . . . ." *Benfield v. Magee*, 945 F.3d 333, 336 (5th Cir. 2019). At this stage, we must "accept all well-pleaded facts as true, drawing all reasonable inferences in the nonmoving party's favor". *Id*. "We do not, however, accept as true legal conclusions, conclusory statements, or naked assertions devoid of further factual enhancement." *Id*. at 336–37 (alteration omitted) (citation omitted).

"A plaintiff seeking to overcome a motion to dismiss because of qualified immunity . . . must plead facts that allow the court to draw the reasonable inference that the defendant is liable for the harm alleged." *Bevill*, 26 F.4th at 274 (citation omitted). That is, "a plaintiff must plead factual allegations that, if true, 'raise the right to relief above the speculative level'", meaning that the relief is "plausible, not merely possible". *Benfield*, 945 F.3d at 337 (first quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); then citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

Plaintiffs, in response to questioning at oral argument, submitted a Federal Rule of Appellate Procedure 28(j) letter maintaining that, under *Sullivan v. Leor Energy, LLC,* 600 F.3d 542, 546 (5th Cir. 2010), we may consider documents attached to a dismissal motion that "are referred to in the plaintiff's complaint and are central to the plaintiff's claim". This is an exception to the general rule that, in reviewing a motion to dismiss, the court may not go outside the complaint and any attachments to it. *Collins v. Morgan Stanley Dean Witter,* 224 F.3d 496,

498 (5th Cir. 2000) (citing FED. R. CIV. P. 12 (b)(6)). *Sullivan* relies on our decision in *Scanlan v. Texas A&M University,* 343 F.3d 533 (5th Cir. 2003). *Scanlan* in turn relied on *Collins*, which promulgated this "limited exception" for when our court may go outside the complaint, including attachments to it, in reviewing a motion to dismiss. *Scanlan*, 343 F.3d at 536; *see Collins*, 224 F.3d 496.

We need not consider this narrow exception's application *vel non*, however, because, as noted *supra* and explained below, the district court relied on the statements as included *in* the complaint. In denying dismissal, the court stated: "All facts are taken as true from the allegations in Plaintiffs' Complaint. . . . Defendants Borrego, Zambra, Melendez, Diaz, and Carrillo attached their sworn statements to their respective Motions. . . . These statements are *effectively identical* to those alleged in the Complaint upon which the Court relies." (Emphasis added.) *Cf. Scanlan*, 343 F.3d at 536 (citing *Collins*, 224 F.3d at 496) (explaining that, in *Collins*, our court "approved *the district court's consideration of documents* attached to the motion to dismiss" and "that the plaintiffs did not object to, or appeal, the district court's consideration of those documents was central to this Court's approval of that practice" (emphasis added)).

"Qualified immunity protects officers from suit unless their conduct violates a clearly established [statutory or] constitutional right." *Converse v. City of Kemah*, 961 F.3d 771, 774 (5th Cir. 2020) (quoting *Mace v. City of Palestine*, 333 F.3d 621, 623 (5th Cir. 2003)). In our court, plaintiffs assert, solely for the

purpose of preserving the issue for further review, that qualified immunity should be "abolished or modified so that it is inapplicable here". For this appeal, we proceed with the qualified-immunity doctrine intact.

When, as in this instance, defendants assert qualified immunity as a basis for dismissing a complaint, "plaintiff seeking to overcome qualified immunity must [plead facts allowing us to draw a reasonable inference]: '(1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct'". *Id*. (quoting *Cass v. City of Abilene*, 814 F.3d 721, 728 (5th Cir. 2016)); *Bevill*, 26 F.4th at 274. We have discretion to elect which of the two prongs for this analysis should be addressed first. *E.g., Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

For this first prong, in order "[t]o overcome [appellants'] qualified immunity defense, [p]laintiffs must first demonstrate that each official violated [Schubert]'s statutory or constitutional right". *Converse*, 961 F.3d at 775. "[T]he Fourteenth Amendment protects pretrial detainees' right to medical care and to 'protection from *known* suicidal tendencies'". *Baldwin v. Dorsey*, 964 F.3d 320, 326 (5th Cir. 2020) (emphasis added) (quoting *Garza v. City of Donna*, 922 F.3d 626, 632 (5th Cir. 2019)); *see also Converse*, 961 F.3d at 775 ("We have repeatedly held that pretrial detainees have a Fourteenth Amendment right to be protected from a *known* risk of suicide." (emphasis added)).

Where the claimed violation of that Fourteenth Amendment right turns on alleged acts or omissions

of an official, as in this action, the question is whether the "official breached his constitutional duty to tend to the basic human needs of persons in his charge". *Hare v. City of Corinth*, 74 F.3d 633, 645 (5th Cir. 1996) (en banc) (explaining difference in episodic and conditions-of-confinement claims); *see also Cope v. Cogdill*, 3 F.4th 198, 206– 07 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 2573 (2022). Officials breach their constitutional duty, violating a detainee's rights, when "they had gained actual knowledge of the substantial risk of suicide and responded with deliberate indifference". *Converse*, 961 F.3d at 775 (emphasis added) (quoting *Hare*, 74 F.3d at 650). It is undisputed that "[d]eliberate indifference is an extremely high standard to meet". *Domino v. Tex. Dep't of Crim. Just.*, 239 F.3d 752, 756 (5th Cir. 2001).

Accordingly, an "official will not be held liable if he merely 'should have known' of a risk". *Converse*, 961 F.3d at 775. Rather, to satisfy this high standard, plaintiff must plausibly allege both that the official was "aware of facts from which the inference could be drawn that a substantial risk of serious harm exist[ed]" and that he "also [drew] the inference". *Id.* at 775– 76 (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). An official with such knowledge "shows a deliberate indifference to that risk 'by failing to take reasonable measures to abate it'". *Id.* (quoting *Hare*, 74 F.3d at 648).

Plaintiffs, however, maintain this court should instead apply the objective-unreasonableness standard the Court adopted in *Kingsley v. Hendrickson* for *claims of excessive force (not failure to protect)* by officers against a pretrial detainee. 576

U.S. 389 (2015). But, we are bound by our rule of orderliness. *E.g., Def. Distrib. v. Platkin*, 55 F.4th 486, 495 n.10 (5th Cir. 2022) ("The rule of orderliness means that one panel of our court may not overturn another panel's decision, absent an intervening change in law, such as by statutory amendment, or the Supreme Court, or our en banc court." (citation omitted)). This rule renders this objective-unreasonableness assertion meritless. *See Cope*, 3 F.4th at 207 n.7 (explaining Kingsley "did not abrogate [this court's] deliberate-indifference precedent"); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017) ("Because the Fifth Circuit has continued to rely on *Hare* and to apply a subjective standard post-*Kingsley*, this panel is bound by our rule of orderliness.").

Regarding the second prong of the qualified-immunity analysis, for a right to be "clearly established" it must be "sufficiently clear that every reasonable official would have understood that what he is doing violates that right". *Est. of Bonilla v. Orange Cnty.,* 982 F.3d 298, 306 (5th Cir. 2020) (quoting *Ashcroft v. al-Kidd,* 563 U.S. 731, 741 (2011)). Critically, courts "must not 'define clearly established law at a high level of generality'"; rather, we must undertake the inquiry "in light of the specific context of the case". *Cope*, 3 F.4th at 204 (quoting *Mullenix v. Luna,* 577 U.S. 7, 12 (2015)).

Pursuant to our above-discussed discretion to begin our two-prong qualified-immunity analysis with either prong, we elect to begin with the first. For the reasons that follow, plaintiffs fail to plausibly allege a violation of a statutory or constitutional

right. Therefore, we do not reach the second prong (whether clearly-established).

To overcome appellants' motions to dismiss based on qualified immunity, plaintiffs must, as stated *supra*, have pled facts permitting our court to draw a reasonable inference that Borrego, Sheriff Carrillo, and Deputy Melendez "(1) had subjective knowledge of a substantial risk of serious harm and (2) responded to that risk with deliberate indifference". *Id*. at 210 (citation omitted). In the context of detainee suicide, the requisite substantial risk of serious harm must be specific; plaintiffs must allege defendants "were aware of a substantial and significant risk that the detainee might kill himself". *Id*. at 207 (alteration omitted) (citation omitted).

For the reasons that follow, plaintiffs fail to plausibly allege appellants had the requisite subjective knowledge of a substantial risk of suicide. Accordingly, whether they responded to that putative risk with deliberate indifference does not come into play.

A.

We first address plaintiffs' blanket allegation that appellants "were aware of the excessive risk of [Schubert's] health and safety and were aware of facts from which an inference could be drawn of serious harm, suffering and death. Moreover, they in fact drew that inference". As stated *supra*, we must carefully discern factual allegations from legal conclusions in plaintiffs' complaint. This statement about appellants' state-of-mind merely restates the standard required to demonstrate the requisite

subjective knowledge; therefore, we do not accept it as a well-pleaded allegation when evaluating the sufficiency of the complaint. *See Doe v. Robertson*, 751 F.3d 383, 388 (5th Cir. 2014) (observing allegation that defendants "exhibited deliberate indifference" was "merely a legal conclusion", even if it "might have 'been couched as a factual allegation'" (quoting *Iqbal*, 556 U.S. at 678)).

Regarding plaintiffs' well-pleaded allegations concerning the lack of mental-health screening, plaintiffs allege appellants ignored TCJS' instructions and put Schubert at risk. These allegations fail. Our court has acknowledged there is no independent constitutional right to suicide screening. *E.g., Est. of Bonilla*, 982 F.3d at 307 (citing *Taylor v. Barkes*, 575 U.S. 822, 826 (2015)) ("No decision of this Court establishes a right to proper implementation of adequate suicide prevention protocols. No decision of this Court even discusses suicide screening or prevention protocols.").

The well-pleaded allegations do not give rise to a plausible inference that Schubert had previously experienced suicidal tendencies, nor that he acted in a way to alert officials of a substantial risk of suicide. Further, plaintiffs do not allege he had documented instances of mental illness, as the earlier-discussed CCQ came back as "no match". (Therefore, even if plaintiffs could assert a right to suicide screening, allegations "of inadequate screening or a violation of facility procedure would not raise an issue of deliberate indifference" without additional allegations plausibly demonstrating appellants subjectively knew Schubert was at risk for suicide. *Id.*

at 305.)

Additionally, plaintiffs allege the following. Culberson County had been previously cited by the TCJS for violating jail standards relating to the completion of the screening form and prevention of jail suicides. The TCJS had also cited the county's jail for being non-compliant with various requirements, including requirements to ensure that all jailers were up-to-date on their licensing, that only jailers with the proper training perform inmate-classification duties, that jailers make sure to log that they have searched for whether the inmate has previously received mental-health treatment, and that jailers attend the required suicide-prevention training. Plaintiffs further allege a prior suicide at the jail put appellants "on notice". In response to Schubert's death, the TCJS, in its above-referenced 8 August 2019 report, stated the jail: exhibited two violations of minimum standards; and was issued a notice of non-compliance.

B.

With these general allegations considered, we turn to specific allegations regarding appellants' entitlement *vel non* to qualified immunity. When, as here, multiple government actors are defendants and assert qualified immunity, we "evaluate each officer's actions separately, to the extent possible". *Poole v. City of Shreveport*, 691 F.3d 624, 628 (5th Cir. 2012).

Again, because motions to dismiss are under review, we must consider the well-pleaded allegations in the complaint. For the reasons that follow, we hold plaintiffs "have failed to [allege] that [Schubert's] tendencies were known to anyone—let alone

[appellants]". *Est. of Bonilla*, 982 F.3d at 305.

1.

Borrego, a jailer for the Culberson County Jail, received the three 911 calls, one in which a male (later identified as Schubert) stated an unknown person was trying to kill him and two in which others reported a man was going around saying that someone was trying to kill him. Borrego also, with Sheriff Carrillo, witnessed Schubert's explaining his history of drug abuse and his leaving a halfway house. Borrego did not complete a mental-health screening form for Schubert.

Plaintiffs also allege Borrego "formed the opinion . . . that [Schubert] was mentally ill and needed immediate mental health treatment" and that "[Schubert] did not need to be jailed". We do not accept this "conclusory statement", however, because it amounts to a "naked assertion[] devoid of further factual enhancement". *Benfield*, 945 F.3d at 336–37 (citation omitted).

Accepting the well-pleaded allegations as true and drawing reasonable inferences in plaintiffs' favor, we consider whether Borrego "had the requisite knowledge of a substantial risk". *Farmer*, 511 U.S. at 842; *Benfield*, 945 F.3d at 336. Our court has repeatedly held officials have the requisite subjective knowledge when circumstantial evidence directs an official to the specific risk of suicide. *E.g., Cope*, 3 F.4th at 207–08 (official witnessed decedent attempt suicide the day before incident in question); *Converse*, 961 F.3d at 776, 778–79 (official was present when decedent was pulled off bridge while he attempted to

jump and where official heard decedent express that he should have jumped and would make another attempt to do so when released); *Hyatt v. Thomas*, 843 F.3d 172, 178 (5th Cir. 2016) (even though decedent stated he did not want to kill himself, official knew decedent suffered from depression, had recently attempted suicide, and his wife believed him to be suicidal).

Plaintiffs do not plausibly allege Schubert did or said anything to indicate he was suicidal or otherwise intended to harm himself. The allegations that Schubert told Borrego he had recently left a half-way house and may have abused drugs did not automatically impute knowledge to Borrego of a substantial risk of suicide. *E.g., Est. of Bonilla*, 982 F.3d at 305 ("[T]he fact of [the decedent's] intoxication would not indicate that [the defendant] inferred [he] was a suicide risk".). Additionally, the allegations do not plausibly show that Schubert's prior or active drug use demonstrated to Borrego that Schubert faced a substantial risk of suicide. *E.g., id.*

Because plaintiffs fail to allege sufficient facts to plausibly show Borrego was subjectively aware of the risk of suicide, their allegations do not state a failure-to-protect claim against him. *Cf. Converse*, 961 F.3d at 778–80. Accordingly, Borrego is entitled to qualified immunity against the claim.

2.

Sheriff Carrillo was monitoring the radio when he heard the dispatch to Deputy Melendez. The Sheriff learned Schubert had been taken into custody after three 911 calls, one in which Schubert (again,

unidentified at the time) called to say that an unknown person was trying to kill him and two others called to report that a man (Schubert) was going around saying that someone was trying to kill him. After Schubert was transported, the Sheriff "decided to go to the jail and check on [Schubert] and jail personnel".

Plaintiffs allege that, while interviewing Schubert, the Sheriff, as did Borrego, learned Schubert had a history of drug abuse and had recently left a halfway house. Although plaintiffs allege Schubert was cooperative and appeared truthful in his responses, plaintiffs also allege: the Sheriff was still required to conduct a mental-health screening form in accordance with TCJS; and, because "the form had not been completed", the Sheriff "had to operate on the belief that [Schubert] was suicidal" and "was required to put [Schubert] on suicide watch".

Our court requires, as stated *supra*, defendant have "actual knowledge of the substantial risk of suicide". *Id*. at 775. Plaintiffs fail to allege Schubert did or said anything to indicate he was suicidal.

Because plaintiffs fail to allege sufficient facts to plausibly show the Sheriff was subjectively aware of the risk of suicide, their allegations do not state a failure-to-protect claim against him. *Cf. id*. at 778–80. Accordingly, Sheriff Carrillo is entitled to qualified immunity against the claim.

3.

The following allegations concern the third and final appellant, Deputy Melendez. He was dispatched to respond to the 911 calls in which Schubert was the

subject. Borrego directed the Deputy to a location in Van Horn regarding an individual—unknown at the time—stating someone was trying to kill him. Upon the Deputy's locating Schubert at the El Capitan Hotel at 11:13 p.m., he spoke with Schubert and described him as appearing nervous. Schubert also reiterated that "there was someone trying to kill him". Schubert was oriented regarding time and place. He also "provided his correct name and a date of birth which was correct other than . . . off by two years".

The Deputy took Schubert to a Border Patrol station in order to identify him. After further investigation, the Deputy was able to identify Schubert and learned he "allegedly had an active warrant for an alleged parole violation". Pursuant to the warrant, the Deputy took Schubert to the jail.

The Deputy was dispatched to another call shortly after arriving at the jail with Schubert, but he later returned and assisted Borrego in escorting Schubert to his cell. During this time, Schubert repeated that someone was trying to kill him, but did not provide a name or description.

Plaintiffs allege the Deputy "was well aware that [Schubert] was not in his right mind. He knew that [Schubert] was mentally ill. He likewise formed the belief that [Schubert] was a danger to himself and/or others". Again, these are "naked assertions devoid of further factual enhancement", and they do not plausibly allege the requisite subjective knowledge. *Benfield*, 945 F.3d at 336–37 (citation omitted).

The key distinction between the Deputy and the other two appellants is plaintiffs' assertion that the

Deputy erred in his means and method of taking Schubert into custody. Texas Health and Safety Code Chapter 573 permits officers to take an individual into custody without a warrant if, *inter alia*, they "ha[ve] reason to believe and do[] believe that the person is a person with mental illness; and because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained". TEX. HEALTH & SAFETY CODE § 573.001(a)(1). Plaintiffs concede that a violation of Chapter 573 is not *per se* a constitutional violation; accordingly, they offer any alleged violation as evidence that a constitutional violation occurred.

In this court, plaintiffs maintain they alleged Schubert was taken into custody pursuant to this provision. Plaintiffs' assertion stretches the bounds of the complaint.

The complaint does not allege Schubert was taken into custody under this statute; rather, it alleges the Deputy "*should have* transported [Schubert] to the nearest-inpatient mental health facility" pursuant to Chapter 573. (Emphasis added.) Additionally, to the extent plaintiffs allege the Deputy was required to take Schubert into custody under Chapter 573, that chapter is permissive, not mandatory. *See* § 573.001(a) ("A peace officer, without a warrant, *may* take a person into custody . . . ." (emphasis added)). Accordingly, this allegation is without merit.

We next consider whether the allegations about the facts known to the Deputy at the time plausibly provided the requisite subjective knowledge of a substantial risk of suicide. In addition to his initial knowledge from the dispatch, Schubert, while

escorted to his cell, reiterated to the Deputy that someone was trying to kill him. Again, plaintiffs' assertions do not plausibly allege the Deputy had actual knowledge that Schubert posed a substantial risk of suicide. *E.g., Converse,* 961 F.3d at 775.

Because plaintiffs fail to allege sufficient facts to plausibly show the Deputy was subjectively aware of the risk of suicide, their allegations do not state a failure-to-protect claim against him. *Cf. id*. at 778–80. Accordingly, Deputy Melendez is entitled to qualified immunity against the claim.

III.

For the foregoing reasons, the district court's denying Borrego, Sheriff Carrillo, and Deputy Melendez' motions to dismiss the failure-to-protect claims is VACATED and judgment is RENDERED for them.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

OTIS CRANDEL, *as Dependent Administrator of, and on behalf of*, BILLY WAYNE WORL, JR., EMILY GARCIA, JAMES MATTHEW GARCIA, and JARED ANDREW GARCIA, *Individually, the Estate of Brenda Kaye Worl*, and *Brenda Kaye Worl's Heirs-at-Law*; and BILLY WAYNE WORL, JR., *Individually*,	)	
Plaintiffs,	)	
v.	)	
CALLAHAN COUNTY, TEXAS, *Et Al.*,	)	
Defendants.	)	Civil Action No. 1:2l-CV-075-C

ORDER

On this date, the Court considered Defendants Vegas Hastings and Daniel Piper's Motion for Summary Judgment [on the Issue of Qualified Immunity], along with Plaintiffs' Response, Hastings and Piper's Reply, and Plaintiffs' Sur-reply.

I. BACKGROUND

This lawsuit arises from the tragic death of Brenda Worl, who committed suicide shortly after being arrested. On the evening of April 2, 2019, Brenda called 911 after she and her husband had been engaged in a domestic altercation. Police officers from the City of Clyde, Texas, in Callahan County, were dispatched to the scene. Officers Vegas Hastings and Daniel Piper arrived at the residence and, after taking statements from the Worls, decided to arrest Brenda after determining that she had two prior assault convictions and would possibly assault someone again. Hastings also believed that Brenda was intoxicated. They decided to charge Brenda with a Class-C misdemeanor offense of assault by contact. After arriving at the Callahan County Jail with Officer Hastings, Brenda became agitated, angry, non-cooperative, belligerent, and non-responsive to the questions asked during the booking process by Dalena Hall relating to mental health and suicide. Hall was employed as a Jailer/Dispatcher, along with Renea McGowen at the Callahan County Jail. Brenda became loud enough during booking that Officer Piper and McGowen went to the booking area to assist Hastings and Hall. Brenda continued to be uncooperative and refused to answer screening questions. McGowen decided to place Brenda in a visitation room to allow her to calm down and because she could not be placed in a cell with other detainees/inmates due to her agitated behavior. As with most visitation rooms in a jail setting, the visitation room had two telephones (one with a short cord and the other with a cord about three feet in

length) for communications with visitors outside the room through glass windows. Prior to placing Brenda in the visitation room, McGowen, in the presence of Hastings, again asked her if she had ever attempted suicide. Rather than answer the question, Brenda presented her arms and yelled, “I don’t know, have I?” Hastings described the odd response as not really giving any clarification to the question. Prior to placing Brenda in the visitation room, McGowen took Brenda’s shoes, coat, eyeglasses, and a loose eyeglass lens found in the coat pocket so that Brenda could not use those items to hurt others or herself. Brenda was placed in the visitation room at 11:33 p.m. and the Officers and Jailers left the booking area and went to the dispatch office. McGowen later left the dispatch office and checked on Brenda. She returned to the office and informed the others that she could only see the top of Brenda’s head because she was sitting on the floor and could not see what she was doing. Hastings and McGowen then went to the visitation room and opened the door, at which point they observed Brenda sitting on the floor with a phone cord wrapped around her neck. Hastings immediately went back to the dispatch office to inform Hall and Piper and asked them to call EMS. During this time McGowen had removed the cord and dragged Brenda from the visitation room.

McGowen asked Hastings to begin administering CPR, he continued the CPR, with Piper’s assistance, until the EMS arrived. Although a pulse was found by the EMS, tragically, Brenda Worl did not survive.

The individual Defendants have filed their respective Motions for Summary Judgment on the

issue of qualified immunity

II. STANDARDS

A. Summary Judgment

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 genuine dispute of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-movant, *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); that is, "[a]n issue is material if its resolution could affect the outcome of the action." *Wyatt v. Hunt Plywood Co.,* 297 F.3d 405, 409 (5th Cir. 2002). To demonstrate the existence of a material fact issue non-movants are required "to identify specific evidence in the record, and to articulate the 'precise manner' in which that evidence support[s] their claim." *Forsyth v. Barr,* 19 F.3d 1527 1537 (5th Cir. 1994) (quoting *Topalian v. Ehrman,* 954 F.2d 1125, 1131 (5th Cir. 1992)); *see also Celotex Corp. v. Catrell,* 477 U.S. 317, 322-23 (1986) (if an adverse party completely fails to make a showing sufficient to establish an essential element of that party's case on which it will bear the burden of proof at trial, then all other facts are rendered immaterial and the moving party is entitled to summary judgment). A district court is under no duty to sift through the record in search of evidence to support a party's opposition to summary judgment. *Forsyth,* 19 F.3d at 1537.

Typically, the party moving for summary judgment must demonstrate the absence of a genuine dispute of material fact. *Little v. Liquid Air Corp.* 37

F.3d 1069, 1075 (5th Cir. 1994) (en bane). However, "[a] qualified immunity defense to § 1983 liability alters the usual summary judgment burden of proof; once an official pleads the defense of qualified immunity in a § 1983 action, the burden then shifts to the plaintiff." *Brown v. Callahan* 623 F.3d 249, 253 (5th Cir. 2010); *see also Collier v. Montgomery,* 569 F.3d 214, 217 (5th Cir. 2009) ("Although nominally an affirmative defense, the plaintiff has the burden to negate the assertion of qualified immunity once properly raised."). Nonetheless all of the evidence and reasonable inferences deducted therefrom are to be construed in a light most favorable to the nonmoving party. *Xtreme Lashes, LLC* v. *Xtended Beauty, Inc.* 576 F.3d 221, 226 (5th Cir. 2009) · *see also Brown,* 623 F.3d at 253 ("The plaintiff bears the burden of negating qualified immunity but all inferences are drawn in his favor." (citation omitted)).

B. Qualified Immunity

The qualified immunity defense has two prongs, and a court may rely on either prong of the defense in its analysis. *Manis v. Lawson,* 585 F.3d 839, 843 (5th Cir. 2009). The court first decides whether an official's conduct violated a constitutional right of the plaintiff that was clearly established at the time of the violation. *Id.* To be clearly established for purposes of qualified immunity, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. *Brown v. Miller,* 519 F.3d 231, 236 (5th Cir. 2008). The unlawfulness of the defendant's actions must have been readily apparent from sufficiently similar situations, but it is not necessary that the defendant's

exact actions have been illegal. *Id.* at 236-37.

If the defendant's actions violated a clearly established constitutional right, the court then asks whether qualified immunity is still appropriate because the defendant's actions were "objectively reasonable" in light of "law which was clearly established at the time of the disputed action." *Collins v. Ainsworth,* 382 F.3d 529, 537 (5th Cir. 2004) (citations omitted). Whether an official's conduct was objectively reasonable is a question of law for the court, not a matter of fact for the jury. *Williams v. Bramer,* 180 F.3d 699, 703 (5th Cir. 1999). An official's actions must be judged in light of the circumstances that confronted him, without the benefit of hindsight. *Graham v. Connor,* 490 U.S. 386, 396-97 (1989). In essence, a plaintiff must allege facts sufficient to demonstrate that no reasonable officer could have believed his actions were proper. *Babb v. Dorman,* 33 F.3d 472, 477 (5th Cir. 1994).

As the Fifth Circuit has noted "the analysis for objective reasonableness is different from that for deliberate indifference (the subjective test for addressing the merits). Otherwise, a successful claim of qualified immunity ... would require defendants to demonstrate that they prevail on the merits, thus rendering qualified immunity an empty doctrine." *Hare v. City of Corinth,* 135 F.3d 320, 328 (5th Cir. 1998). "For qualified immunity to be surrendered, pre- existing law must dictate, that is, truly compel (not just suggest or allow or raise a question about), the conclusion for every like-situated, reasonable government agent that what defendant is doing violates federal law in the circumstances." *Thompson*

v. Upshur County, 245 F.3d 447, 460 n.9 (5th Cir. 2001) (quotation marks and citation omitted). Again, the plaintiff bears the burden to demonstrate objective unreasonableness. *Id.* at 460.

III. DISCUSSION

The precedent in this circuit is that qualified immunity must be analyzed as to each individual Defendant and the Defendants may not be lumped together in analysis. *See Meadours v. Ermel,* 483 F.3d 417, 421 (5th Cir. 2007) ("we should consider the conduct of each officer independently" and "the district court erred in considering the officers' actions collectively").

"Deliberate indifference is an extremely high standard to meet." *Domino v. Texas Dep't of Crim. Justice,* 239 F.3d 752, 756 (5th Cir. 2001). In order to demonstrate deliberate indifference, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Domino,* 239 F.3d at 755 (quoting *Farmer v. Brennan,* 511 U.S. 825 837 (1994)). "[A]n official's failure to alleviate a significant risk that he should have perceived but did not" cannot amount to deliberate indifference. *Farmer,* 511 U.S. at 838.

"[T]he law is clearly established that jailers must take measures to prevent inmate suicides once they know of the suicide risk...." *Hare v. City of Corinth,* 135 F.3d 320, 328-29 (5th Cir. 1998). However an official "violates a pretrial detainee's constitutional right to be secure in his basic human needs only when the official had subjective knowledge of a substantial

risk of serious harm to the detainee and responded to that risk with deliberate indifference." *Estate of Henson v. Wichita Cnty.,* 795 F.3d 456, 464 (5th Cir. 2015) (internal quotation marks and citation omitted).

Here, Plaintiffs spend a great amount of briefing arguing that Defendants Hall and McGowen had subjective knowledge of the risk of serious harm when placing Brenda Worl in a visitation room by herself without supervision where phone cords were present. Said individual Defendants counter that Worl presented no indication of suicide prior to placing her in the room to calm down while awaiting for a location/cell in which to place her. Yet, that is not the central issue to be determined by the Court. Rather, the admissible evidence does not indicate that Defendants McGowen or Hall were subjectively aware that Worl intended to harm herself at the time. The evidence is that Worl was likely intoxicated, belligerent, uncooperative and refused to answer questions related to mental health and suicide risk. Unlike the defendants in *Cope v. Cogdill,* 3 F.4th 198 (5th Cir. 2021), who were clearly aware that the detainee was suicidal and had tried to commit suicide in that jail facility in the days prior, no evidence is before the Court indicating a fact question as to whether McGowen or Hall had such knowledge in relation to Worl. There is no evidence that Worl had attempted suicide shortly before being detained or that she presented herself as a high risk when being booked. Moreover, as the United States Court of Appeals determined in *Cope,* "[t]he danger posed by phone cord was not as obvious as the dangers posed

by bedding which is a well-documented risk that has been frequently used in suicide attempt." *Id.* at 210-211. Like the Plaintiffs in *Cope,* who argued that certain defendants in that case were deliberately indifferent by housing the detainee in a cell with the means of committing suicide readily available to the detainee in the form of a lengthy phone cord Plaintiffs here also contend the same. Here, however, there is no evidence before the Court beyond speculative evidence, to raise a genuine issue of material fact as to whether McGowen or Hall appreciated that Worl was a suicide risk or that the phone cord would likely be an instrument of suicide by Worl. Thus, the admissible evidence relied upon by Plaintiffs to attempt to show that McGowen and Hall *should have* appreciated a risk of the phone cords is insufficient under the circumstances to show a violation of clearly established rights at the time Worl committed suicide or that either was deliberately indifferent.[1] Negligence, and even gross negligence, is insufficient to show deliberate indifference. As stated above, "an official's failure to alleviate a significant risk that he should have perceived but did not" cannot amount to deliberate indifference. *Farmer*, 511 U.S. at 838.

IV. CONCLUSION

Therefore for the reasons argued in Defendants Dalena Hall and Cari Renea McGowen's Motion for

[1] The Defendants have raised objections to Exhibits A-1, A-3–A-93, and Exhibit P offered by the Plaintiffs in support of Plaintiffs' Response. The Court finds said objections meritorious and they are **SUSTAINED**. Yet, even if considered, said Exhibits do not raise a genuine issue of material fact as to deliberate indifference by Hall or McGowen.

Summary Judgment and Reply, the Court finds that the Motion should be **GRANTED** and Plaintiffs claims against Defendant Delena Hall and Cari Renea McGowen in their individual capacities are **DISMISSED.**

SO ORDERED.

Dated March 14, 2022.

/s/
SAM R. CUMMINGS
SENIOR UNITED STATES
DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

OTIS CRANDEL, *as Dependent Administrator of, and on behalf of*, BILLY WAYNE WORL, JR., EMILY GARCIA, JAMES MATTHEW GARCIA, and JARED ANDREW GARCIA, *Individually, the Estate of Brenda Kaye Worl*, and *Brenda Kaye Worl's Heirs-at-Law*; and BILLY WAYNE WORL, JR., *Individually*,

Plaintiffs,

v.

CALLAHAN COUNTY, TEXAS, *Et Al.*,

Defendants.

Civil Action No. 1:2l-CV-075-C

ORDER

On this date, the Court considered Defendants Vegas Hastings and Daniel Piper's Motion for Summary Judgment [on the Issue of Qualified Immunity], along with Plaintiffs' Response, Hastings and Piper's Reply, and Plaintiffs' Sur-reply.

I. BACKGROUND

This lawsuit arises from the tragic death of Brenda Worl, who committed suicide shortly after being arrested. On the evening of April 2, 2019, Brenda called 911 after she and her husband had been engaged in a domestic altercation. Police officers from the City of Clyde, Texas, in Callahan County, were dispatched to the scene. Officers Vegas Hastings and Daniel Piper arrived at the residence and, after taking statements from the Worls, decided to arrest Brenda after determining that she had two prior assault convictions and would possibly assault someone again. Hastings also believed that Brenda was intoxicated. They decided to charge Brenda with a Class-C misdemeanor offense of assault by contact. After arriving at the Callahan County Jail with Officer Hastings, Brenda became agitated, angry, non-cooperative, belligerent, and non-responsive to the questions asked during the booking process by Dalena Hall relating to mental health and suicide. Hall was employed as a Jailer/Dispatcher, along with Renea McGowen at the Callahan County Jail. Brenda became loud enough during booking that Officer Piper and McGowen went to the booking area to assist Hastings and Hall. Brenda continued to be uncooperative and refused to answer screening questions. McGowen decided to place Brenda in a visitation room to allow her to calm down and because she could not be placed in a cell with other detainees/inmates due to her agitated behavior. As with most visitation rooms in a jail setting, the visitation room had two telephones (one with a short cord and the other with a cord about three feet in

length) for communications with visitors outside the room through glass windows. Prior to placing Brenda in the visitation room, McGowen, in the presence of Hastings, again asked her if she had ever attempted suicide. Rather than answer the question, Brenda presented her arms and yelled, "I don't know, have I?" Hastings described the odd response as not really giving any clarification to the question. Prior to placing Brenda in the visitation room, McGowen took Brenda's shoes, coat, eyeglasses, and a loose eyeglass lens found in the coat pocket so that Brenda could not use those items to hurt others or herself. Brenda was placed in the visitation room at 11:33 p.m. and the Officers and Jailers left the booking area and went to the dispatch office. McGowen later left the dispatch office and checked on Brenda. She returned to the office and informed the others that she could only see the top of Brenda's head because she was sitting on the floor and could not see what she was doing. Hastings and McGowen then went to the visitation room and opened the door, at which point they observed Brenda sitting on the floor with a phone cord wrapped around her neck. Hastings immediately went back to the dispatch office to inform Hall and Piper and asked them to call EMS. During this time McGowen had removed the cord and dragged Brenda from the visitation room.

McGowen asked Hastings to begin administering CPR, he continued the CPR, with Piper's assistance, until the EMS arrived. Although a pulse was found by the EMS, tragically, Brenda Worl did not survive.

The individual Defendants have filed their respective Motions for Summary Judgment on the

issue of qualified immunity

II. STANDARDS

A. Summary Judgment

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 genuine dispute of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-movant, *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986); that is, "[a]n issue is material if its resolution could affect the outcome of the action." *Wyatt v. Hunt Plywood Co.,* 297 F.3d 405, 409 (5th Cir. 2002). To demonstrate the existence of a material fact issue non-movants are required "to identify specific evidence in the record, and to articulate the 'precise manner' in which that evidence support[s] their claim." *Forsyth v. Barr,* 19 F.3d 1527 1537 (5th Cir. 1994) (quoting *Topalian v. Ehrman,* 954 F.2d 1125, 1131 (5th Cir. 1992)); *see also Celotex Corp. v. Catrell,* 477 U.S. 317, 322-23 (1986) (if an adverse party completely fails to make a showing sufficient to establish an essential element of that party's case on which it will bear the burden of proof at trial, then all other facts are rendered immaterial and the moving party is entitled to summary judgment). A district court is under no duty to sift through the record in search of evidence to support a party's opposition to summary judgment. *Forsyth,* 19 F.3d at 1537.

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B. Qualified Immunity

The qualified immunity defense has two prongs, and a court may rely on either prong of the defense in its analysis. *Manis v. Lawson,* 585 F.3d 839, 843 (5th Cir. 2009). The court first decides whether an official's conduct violated a constitutional right of the plaintiff that was clearly established at the time of the violation. *Id.* To be clearly established for purposes of qualified immunity, the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. *Brown v. Miller,* 519 F.3d 231, 236 (5th Cir. 2008). The unlawfulness of the defendant's actions must have been readily apparent from sufficiently similar situations, but it is not necessary that the defendant's

exact actions have been illegal. *Id.* at 236-37.

If the defendant's actions violated a clearly established constitutional right, the court then asks whether qualified immunity is still appropriate because the defendant's actions were "objectively reasonable" in light of "law which was clearly established at the time of the disputed action." *Collins v. Ainsworth,* 382 F.3d 529, 537 (5th Cir. 2004) (citations omitted). Whether an official's conduct was objectively reasonable is a question of law for the court, not a matter of fact for the jury. *Williams v. Bramer,* 180 F.3d 699, 703 (5th Cir. 1999). An official's actions must be judged in light of the circumstances that confronted him, without the benefit of hindsight. *Graham v. Connor,* 490 U.S. 386, 396-97 (1989). In essence, a plaintiff must allege facts sufficient to demonstrate that no reasonable officer could have believed his actions were proper. *Babb v. Dorman,* 33 F.3d 472, 477 (5th Cir. 1994).

As the Fifth Circuit has noted "the analysis for objective reasonableness is different from that for deliberate indifference (the subjective test for addressing the merits). Otherwise, a successful claim of qualified immunity ... would require defendants to demonstrate that they prevail on the merits, thus rendering qualified immunity an empty doctrine." *Hare v. City of Corinth,* 135 F.3d 320, 328 (5th Cir. 1998). "For qualified immunity to be surrendered, pre- existing law must dictate, that is, truly compel (not just suggest or allow or raise a question about), the conclusion for every like-situated, reasonable government agent that what defendant is doing violates federal law in the circumstances." *Thompson*

v. Upshur County, 245 F.3d 447, 460 n.9 (5th Cir. 2001) (quotation marks and citation omitted). Again, the plaintiff bears the burden to demonstrate objective unreasonableness. *Id.* at 460.

III. DISCUSSION

The precedent in this circuit is that qualified immunity must be analyzed as to each individual Defendant and the Defendants may not be lumped together in analysis. *See Meadours v. Ermel,* 483 F.3d 417, 421 (5th Cir. 2007) ("we should consider the conduct of each officer independently" and "the district court erred in considering the officers' actions collectively").

"Deliberate indifference is an extremely high standard to meet." *Domino v. Texas Dep't of Crim. Justice,* 239 F.3d 752, 756 (5th Cir. 2001). In order to demonstrate deliberate indifference, "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Domino,* 239 F.3d at 755 (quoting *Farmer v. Brennan,* 511 U.S. 825 837 (1994)). "[A]n official's failure to alleviate a significant risk that he should have perceived but did not" cannot amount to deliberate indifference. *Farmer,* 511 U.S. at 838.

"[T]he law is clearly established that jailers must take measures to prevent inmate suicides once they know of the suicide risk...." *Hare v. City of Corinth,* 135 F.3d 320, 328-29 (5th Cir. 1998). However an official "violates a pretrial detainee's constitutional right to be secure in his basic human needs only when the official had subjective knowledge of a substantial

risk of serious harm to the detainee and responded to that risk with deliberate indifference." *Estate of Henson v. Wichita Cnty.,* 795 F.3d 456, 464 (5th Cir. 2015) (internal quotation marks and citation omitted).

Plaintiffs argue that Defendants Hastings and Piper had subjective knowledge of the risk of serious harm when arresting Brenda Worl and in placing her in a visitation room during the booking process by herself without supervision where phone cords were present. All individual Defendants in this lawsuit contend that Worl presented no indication of suicide prior to placing her in the room to calm down while awaiting for a location/cell in which to place her. The admissible evidence does not indicate that Defendants Hastings or Piper were subjectively aware that Worl intended to harm herself at the time. The evidence is that Worl was likely intoxicated, belligerent, uncooperative and refused to answer questions related to mental health and suicide risk. As pointed out by the Parties in their briefing, in *Cope v. Cogdill,* 3 F.4th 198 (5th Cir. 2021) the individual defendants were clearly aware that the detainee was suicidal and had tried to commit suicide in that jail facility in the days prior. Here, no evidence is before the Court indicating a fact question as to whether Hastings or Piper had such knowledge in relation to Worl. There is no evidence that Worl had attempted suicide shortly before being arrested and detained or that she presented herself as a high risk when being booked. Moreover, as the United States Court of Appeals determined in *Cope,* "[t]he danger posed by phone cord was not as obvious as the dangers posed

by bedding which is a well-documented risk that has been frequently used in suicide attempt." *Id.* at 210-211. Like the Plaintiffs in *Cope,* who argued that certain defendants in that case were deliberately indifferent by housing the detainee in a cell with the means of committing suicide readily available to the detainee in the form of a lengthy phone cord Plaintiffs here also contend the same. Here, however, there is no evidence before the Court beyond speculative evidence, to raise a genuine issue of material fact as to whether Hastings or Piper appreciated that Worl was a suicide risk or that the phone cord would likely be an instrument of suicide by Worl. Thus, the admissible evidence relied upon by Plaintiffs to attempt to show what the individual Defendants *should have* appreciated a risk of the phone cords is insufficient under the circumstances to show a violation of clearly established rights at the time Worl committed suicide or that either was deliberately indifferent.[1] Negligence, and even gross negligence, is insufficient to show deliberate indifference. As stated above, "an official's failure to alleviate a significant risk that he should have perceived but did not" cannot amount to deliberate indifference. *Farmer*, 511 U.S. at 838.

IV. CONCLUSION

Therefore for the reasons argued in Defendants

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[1] The Defendants have raised objections to Exhibits A-1, A-3–A-93, and Exhibit P offered by the Plaintiffs in support of Plaintiffs' Response. The Court finds said objections meritorious and they are **SUSTAINED**. Yet, even if considered, said Exhibits do not raise a genuine issue of material fact as to deliberate indifference by Hall or McGowen.

Vegas Hastings and Daniel Piper's Motion for Summary Judgment and Reply, the Court finds that the Motion should be **GRANTED** and Plaintiffs claims against Defendant Vegas Hastings and Daniel Piper in their individual capacities are **DISMISSED.**

SO ORDERED.

Dated March 14, 2022.

/s/
SAM R. CUMMINGS
SENIOR UNITED STATES
DISTRICT JUDGE

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SHANON EDMISTON, *individually*; HELEN HOLMAN, *as dependent administrator of*, and *on behalf of*, LISA WILLIAMS a/k/a LISA SCHUBERT, E.S., J.S. #1, J.S. #2; and SHANON EDMISTON, the ESTATE OF JOHN ROBERT SCHUBERT, JR., and JOHN ROBERT SCHUBERT, JR.'s *heirs-at-law*, Plaintiffs, v. CULBERSON COUNTY, TEXAS; OSCAR BORREGO, SR.; OSCAR E. CARRILLO; ERNESTO DIAZ; PETER E. MELENDEZ; and ADELAIDA ZAMBRA , Defendants.	§ §	CAUSE NO. EP-21-CV-132-KC

ORDER

On this day, the Court considered Defendants' Motions to Dismiss for Failure to State a Claim. ECF No. 15 ("Borrego Motion"), ECF No. 16 ("Zambra Motion"), ECF No. 17 ("Melendez Motion"), ECF No.

18 ("Diaz Motion"), ECF No. 19 ("Carrillo Motion"), ECF No. 20 ("County Motion"). For the reasons discussed herein, the Borrego, Melendez, and Carrillo Motions are **GRANTED** in part and **DENIED** in part. The Zambra and Diaz Motions are **GRANTED**. The County's Motion is **DENIED**.

I. BACKGROUND[1]

A. July 6–7, 2019 Incident

This case arises from the suicide of John Robert Schubert, Jr. On the evening of July 6, 2019, Schubert was wandering around Van Horn, Texas. Compl. ¶ 12, ECF No. 1. At approximately 11:05 p.m., Jailer Oscar Borrego, Sr. answered a 911 call from Schubert during which Schubert said someone was trying to kill him. Compl. ¶ 15. At 11:09 p.m., Jailer Borrego received another 911 call, this time from an off-duty officer, reporting that a man, identified by Plaintiffs as Schubert, knocked on the officer's door and said that someone was trying to kill him. Compl. ¶ 15. Shortly thereafter, Jailer Borrego received still another 911 call from the El Capitan Hotel in Van Horn reporting that a man, later identified as Schubert, told a hotel employee that someone was trying to kill him. Compl. ¶ 16.

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[1] All facts are taken as true from the allegations in Plaintiffs' Complaint. *See Arnold v. Williams*, 979 F.3d 262, 265 n.1 (5th Cir. 2020). Defendants Borrego, Zambra, Melendez, Diaz, and Carrillo attached their sworn statements to their respective Motions. *See* Borrego Mot., Ex. 1; Zambra Mot., Ex. 1; Melendez Mot., Ex. 2; Diaz Mot., Ex. 2; Carrillo Mot., Ex. 1. These statements are effectively identical to those alleged in the Complaint upon which the Court relies.

Jailer Borrego notified Deputy Peter Melendez, who traveled to the hotel to locate the man reported in the 911 calls. Compl. ¶¶ 16, 33. At 11:15 p.m., Deputy Melendez found Schubert at the hotel. Compl. ¶ 33. Schubert appeared nervous and told Deputy Melendez that someone was trying to kill him, but he did not give the name or a description of the alleged assailant. Compl. ¶ 33. Deputy Melendez then took Schubert to a Border Patrol station for identification and learned that Schubert had an active arrest warrant for an alleged parole violation. Compl. ¶¶ 22, 34.

On July 7, 2019, at 12:14 a.m., Deputy Melendez brought Schubert to the Culberson County jail and put him in the jail's booking area. Compl. ¶ 17. Deputy Melendez was then dispatched for another call and left the jail. Compl. ¶ 36. Around the same time, Jailer Adelaida Zambra arrived at the jail for her work shift, and Jailer Borrego told her that he would handle Schubert so that she could handle dispatching duties. Compl. ¶ 42.

Sometime after 12:59 a.m., Sheriff Oscar Carrillo, who had been monitoring the police radio and heard the radio calls related to Schubert, arrived at the jail. Compl. ¶¶ 21–22. Sheriff Carrillo asked Schubert questions about what he was doing in Van Horn, and Schubert told Sheriff Carrillo that he had departed from a halfway house facility in Horizon, Texas, without permission, and he would not be allowed to return to the facility. Compl. ¶ 23. He also reported that he had hitchhiked from El Paso, where he had been in rehab. Compl. ¶¶ 23, 28. Schubert appeared cooperative and truthful in his responses to Sheriff

Carrillo. Compl. ¶ 24. During the conversation, Schubert was not wearing a shirt, and he told Sheriff Carrillo that he was not wearing the shirt because it was wet. Compl. ¶ 28. Two other officers witnessed some or all of this questioning: Jailer Borrego was present for the interview, Compl. ¶ 24, and Deputy Ernesto Diaz witnessed at least part of the conversation between Sheriff Carrillo and Schubert after arriving at the jail at approximately 1:10 a.m. Compl. ¶¶ 30–31.

At 1:35 a.m., Jailer Borrego gave Schubert jail clothing and placed him in an individual cell. Compl. ¶¶ 18–19, 28. At this point, Deputy Melendez returned to the jail and assisted Jailer Borrego in locking Schubert into the cell. Compl. ¶ 36. Schubert repeated to Deputy Melendez that someone was trying to kill him, but he did not give the name or a description of the alleged assailant. Compl. ¶ 36. Jailer Borrego also provided Schubert with a mattress at

Sheriff Carrillo's direction. Compl. ¶ 24. At 1:48 a.m., after locking Schubert in the cell, Jailer Borrego, Sheriff Carrillo, and Deputy Diaz left the jail, leaving Jailer Adelaida Zambra as the sole jail employee on duty to monitor both radio dispatch and the detainees. Compl. ¶¶ 19, 28. Upon leaving the jail, Jailer Borrego told Jailer Zambra that Schubert was locked in an individual cell and requested a license and criminal history check on Schubert. Compl. ¶ 43. Jailer Zambra conducted the checks and also requested Schubert's medical history report. Compl. ¶¶ 44–45.

At approximately 2:42 a.m., Jailer Zambra

manually checked on the jail's detainees. Compl. ¶ 46. When she arrived near Schubert's cell, she saw Schubert kneeling on the ground, hanging from a sheet that was tied around his neck and secured to a shelf. Compl. ¶ 46. She called out to Schubert, but he was unresponsive. Compl. ¶ 46. At approximately 2:44 a.m., Jailer Zambra called Deputy Melendez and Sheriff Carrillo and reported the situation. Compl. ¶ 46. Soon after, Sheriff Carrillo arrived at the jail, removed the sheet from Schubert's neck, and proceeded to perform CPR. Compl. ¶ 47. Jailer Zambra called emergency services at approximately 2:50 a.m. Compl. ¶ 47. Emergency services arrived at the jail at 2:59 p.m., at which point Schubert was not breathing and did not have a pulse. Compl. ¶ 49. Schubert was transported to Culberson Hospital emergency room, where he was later pronounced dead. Compl. ¶ 27. The autopsy of Schubert's body indicates that the cause of his death was asphyxia by hanging. Compl. ¶ 50.

At no point during Schubert's detention did any of the Individual Defendants complete a Screening Form for Suicide and Medical/Mental/Developmental Impairments, which the Texas Commission on Jail Standards ("TCJS") requires be completed for all for new detainees. Compl.¶¶ 19, 59; *see* 37 Tex. Admin. Code § 273.5(b) (2021) ("An approved mental disabilities/suicide prevention screening instrument shall be completed immediately on all inmates admitted."). The form includes questions about whether the detainee is experiencing suicidal ideations, substance abuse problems, depression, paranoia, hallucinations, or other mental health

issues. Compl. ¶ 59. If a detainee answers affirmatively, the interviewing officer is required to notify a supervisor, magistrate, or mental health services immediately. Compl. ¶ 59.

In the Inmate Death Report related to Schubert's death, Sheriff Carrillo indicated that it was "unknown" whether Schubert was intoxicated during his detention or whether Schubert had any medical conditions. Compl. ¶ 53. The Report also states that Schubert was not on suicide watch. Compl. ¶ 53.

Following Schubert's death, the Texas Commission on Jail Standards conducted a Death- In-Custody Review of the incident. Compl. ¶ 56. The inspector found two violations of minimum standards and issued a notice of non-compliance to Culberson County. Compl. ¶¶ 56–57. The TCJS technical assistance memorandum addressing these violations warned Culberson County to "ensure all inmates are properly classified prior to placing them into a . . . cell." Compl. ¶ 68. The Special Inspection Report from TCJS also indicated that "deficiencies exist[ed]" at the facility that required "immediate consideration" and for the jail officials "to promptly initiate and complete appropriate corrective measures." Compl. ¶ 58.

B. Past Incidents at Culberson County Jail

In their Complaint, Plaintiffs allege several past events related to jail suicides and suicide prevention practices in Culberson County, which Plaintiffs argue are relevant to their claims in this case. First, two years prior to Schubert's death, another detainee committed suicide while in the custody of Culberson County. On November 2, 2017, Melody Kopera died

after hanging herself with a sheet at the Culberson County jail, where she had been detained after being arrested. Compl. ¶ 91. Kopera was screened for mental health issues and suicide risk upon arrival, and she stated that she had a history of drug use, felt depressed, suffered from Post- Traumatic Stress Disorder, had been receiving mental health treatment, and had attempted suicide in the past. Compl. ¶¶ 92, 99. She said that she believed she had recently suffered a concussion and was also worried that someone might hurt or kill her. Compl. ¶¶ 92, 99. Though Kopera's responses to the screening questions strongly suggested suicide risk, she was not put on suicide watch, and jail employees did not notify a magistrate, supervisor, or mental health professional. Compl. ¶¶ 92, 98. On October 28, 2017, Kopera was found hanging in her cell by a bed sheet that was tied to a shelf. Compl. ¶¶ 92, 102–03. She was later pronounced dead. Compl. ¶ 92. TCJS found one violation of minimum jail standards related to Kopera's death and issued a notice of non-compliance to Culberson County. Compl. ¶¶ 92–93. Specifically, Culberson County violated TCJS's "Identification" standard by failing to refer Kopera to a mental health professional and notify a magistrate of her screening responses. Compl. ¶ 95.

At the time of Kopera's death, Sheriff Carrillo was the sheriff of Culberson County, and Deputy Melendez was employed by the Culberson County Sheriff's Department. Compl. ¶¶ 93, 102–03. Both Sheriff Carrillo and Deputy Melendez were contacted at the time of Kopera's suicide and were physically involved in the effort to save her life. Compl. ¶¶ 102–

03. In response to the incident, Sheriff Carrillo submitted an Operation Plan to TCJS to address areas of noncompliance with state standards. Compl. ¶ 100. In response, TCJS advised him to "ensure that [jail] personnel receive training on how to properly complete the suicide screening instrument, and on proper notification to required entities." Compl. ¶ 100.

Furthermore, in the years prior to the incidents of this case, TCJS issued several other notices of state standards violations to Culberson County related to mental health classification of detainees and suicide prevention practices. First, on March 8, 2012, TCJS issued a notice that Culberson County jail needed to ensure that jailers were following the screening form direction and notifying a magistrate or mental health professional when a detainee suffering from mental illness is taken into custody, and that TCJS warned that a remedial order would be issued if the jail did not ensure proper notifications, among other things. Compl. ¶¶ 106–07. Then, on April 6, 2016, the TCJS determined that several Culberson County jailers who were responsible for classifying detainees were not appropriately licensed. Compl. ¶ 108. On February 22, 2017, a TCJS inspector provided technical assistance because Culberson County jailers were not recording the results of mental health record searches on detainees' screening forms. Compl.¶ 110. Finally, on December 5, 2018, TCJS reviewed Culberson County's Suicide Prevention Training program and reported that it did not cover the

required training topics.[2] Compl. ¶ 111.

C. Procedural History

On June 8, 2021, Plaintiffs initiated this action, alleging that Schubert's suicide in Defendants' custody was caused by Defendants' violations of Schubert's constitutional rights. Compl. Plaintiffs bring claims under 42 U.S.C. § 1983 against the Defendants Borrego, Zambra, Melendez, Diaz, and Carrillo ("Individual Defendants") in their individual capacities for failing to protect Schubert, in violation of the Eighth and Fourteenth Amendments of the United States Constitution. Compl. ¶¶ 118–22. Plaintiffs also bring claims against the Individual Defendants under a theory of bystander liability. Compl. ¶ 121. Against Culberson County, Plaintiffs bring a claim under § 1983 and *Monell v. Department of Social Services of N.Y.C.*, 436 U.S. 658 (1978), arguing that the County's policies related to suicide prevention in jails caused the violation of Schubert's constitutional rights. Compl. ¶¶ 126–30.

On August 13, 2021, the Individual Defendants filed separate Motions to Dismiss, each arguing that Plaintiffs failed to state a constitutional violation and asserting qualified immunity. Borrego Mot., Zambra Mot., Melendez Mot., Diaz Mot., Carrillo Mot. Culberson County also filed a Motion to Dismiss,

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[2] TCJS has also issued memoranda to all Texas jails addressing jail suicide prevention practices. In July 2015, TCJS sent a memorandum to all sheriffs and jail administrators, including Sheriff Carrillo, regarding the use of phone cords by detainees to commit suicide. Compl. ¶ 72. The memorandum included several suggestions for reducing the risk of detainee suicides by phone cord. Compl. ¶ 72.

arguing that Plaintiffs failed to allege constitutional violations by the Individual Defendants or that any such violations were caused by County policies. County Mot. Plaintiffs filed a Response to the Individual Defendants' Motions collectively, ECF No. 24 ("Response to Individual Defendants"), and a Response to the County's Motion, ECF No. 23 ("Response to County"). Each Defendant then filed a Reply. ECF No. 28 ("County Reply"), ECF No. 29 ("Carrillo Reply"), ECF No. 30 ("Zambra Reply"), ECF No. 31 ("Borrego Reply"), ECF No. 32 ("Melendez Reply"), ECF No. 33 ("Diaz Reply").

II. DISCUSSION

A. Standard

A motion to dismiss pursuant to Rule 12(b)(6) challenges a complaint on the basis that it fails to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). In ruling on a Rule 12(b)(6) motion, the court must accept well-pleaded facts as true and view them in a light most favorable to the plaintiff. *Calhoun v. Hargrove*, 312 F.3d 730, 733 (5th Cir. 2002); *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). Though a complaint need not contain "detailed" factual allegations, a plaintiff's complaint must allege sufficient facts "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Colony Ins. Co. v. Peachtree Constr., Ltd.*, 647 F.3d 248, 252 (5th Cir. 2011). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

"[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation and internal quotation marks omitted); *Colony Ins. Co.*, 647 F.3d at 252. Ultimately, the "[f]actual allegations [in the complaint] must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555 (citation omitted). Nevertheless, "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" *Id.* at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

B. Analysis

Against the Individual Defendants, Plaintiffs bring claims under 42 U.S.C. § 1983 for their failure to protect Schubert, in violation of the Eighth and Fourteenth Amendments. Plaintiffs also argue that each Individual Defendant may be held liable under a theory of bystander liability for failing to stop his or her fellow officers from violating Schubert's rights. Each Individual Defendant has moved to dismiss all § 1983 claims against him or her, arguing that Plaintiffs failed to allege that he or she committed any constitutional violation and raising qualified immunity.

Plaintiffs also bring a claim against Culberson County under § 1983 and *Monell*, arguing that the County's policies and customs related to suicide prevention in jails caused the violation of Schubert's constitutional rights. Culberson County has moved to

dismiss on the grounds that that Plaintiffs failed to allege violations by the Individual Defendants and, alternatively, that any such violations were not caused by County policies. In addition to their § 1983 claims, Plaintiffs also set out several other causes of action under state and federal law, which Defendants do not address in their Motions.

1. Section 1983 claims against the Individual Defendants

Title 42 U.S.C. § 1983 provides a cause of action against state actors who violate federal rights while acting under the color of law. *Id.* ("Every person who, under color of any [state law] subjects, or causes to be subjected, [a person] to the deprivation of any rights . . . secured by the Constitution and laws, shall be liable to the party injured."). To state a claim under § 1983, a plaintiff must allege "that some person deprived him of a federal right" and "that the individual who has deprived him of that right acted under color of state or territorial law." *Arnold v. Williams*, 979 F.3d 262, 266 (5th Cir. 2020) (quoting *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)).

The doctrine of qualified immunity shields government officials from liability "so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Lincoln v. Turner*, 874 F.3d 833, 847 (5th Cir. 2017) (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)). When a defendant official invokes qualified immunity, the burden shifts to the plaintiff to demonstrate that the defense does not apply. *Id*. A plaintiff seeking to defeat qualified immunity must show "(1) that the official violated a statutory or

constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Morgan v. Swanson*, 659 F.3d 359, 371 (5th Cir. 2011) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)).

A clearly established right is one that is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (cleaned up). This inquiry "does not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *al- Kidd*, 563 U.S. at 741. The law can be clearly established despite "notable factual distinctions between the precedents relied on and the cases then before the Court, so long as the prior decisions gave reasonable warning that the conduct then at issue violated constitutional rights." *Lincoln*, 874 F.3d at 848 (quoting *Flores v. City of Palacios*, 381 F.3d 391, 399 (5th Cir. 2004)).

a. Failure to protect

"The constitutional rights of a pretrial detainee . . . flow from both the procedural and substantive due process guarantees of the Fourteenth Amendment." *Hare v. City of Corinth*, 74 F.3d 633, 639 (5th Cir. 1996) (citing *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979)); *accord. Hyatt v. Thomas*, 843 F.3d 172, 177 (5th Cir. 2016).[3] "The rights of a pretrial detainee

[3] Plaintiffs bring their failure to protect claims under both the Fourteenth and Eighth Amendments. Compl. ¶¶ 119–20. The Eighth Amendment protects convicted inmates. *Hare*, 74 F.3d at 639. Plaintiffs note that, at the time of his death, Schubert was

include . . . the right to protection from known suicidal tendencies." *Garza v. City of Donna*, 922 F.3d 626, 632 (5th Cir.), *cert. denied*, 140 S. Ct. 651 (2019) (cleaned up); *see Hare*, 74 F.3d at 639.

In the Fifth Circuit, a claim against a government official for failure to protect a pretrial detainee requires a showing that the official acted with deliberate indifference to the detainee's needs or safety.[4] *See Baldwin v. Dorsey*, 964 F.3d 320, 326 (5th

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being detained on an alleged parole violation related to a prior offense for which he was convicted. Resp. Individual Defs. 22. "In suits brought by detained parolees, both the Fourteenth and Eighth Amendment standards apply." *Ard v. Rushing*, 597 F. App'x 213, 218–19 (5th Cir. 2014) (citing *Hamilton v. Lyons*, 74 F.3d 99, 106 (5th Cir.1996)). In any event, the analysis under the Fourteenth and Eighth Amendments is identical in this case. *See id.*(explaining that claims for failure to protect are analyzed under the deliberate indifference standard under both the Eighth and Fourteenth Amendments).

[4] Plaintiffs argue that *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), counsels the Court to apply an objective reasonableness standard in this case, rather than deliberate indifference. Compl. ¶¶ 113–17. In *Kingsley*, the Supreme Court held that pretrial detainees alleging excessive force need only show that the force used against them was objectively unreasonable and do not need to establish that the official was subjectively aware that the use of force was unreasonable. *See* 567 U.S. at 395. Plaintiffs argue that because their failure-to-protect claims arise under the same constitutional provision as the claims in *Kingsley*—the Due Process Clause—the same objective reasonableness standard should apply here. Compl. ¶ 114. And as Plaintiffs note, Compl. ¶ 115, at least one Court of Appeals has extended *Kingsley* to failure-to-protect claims by pretrial detainees. *See Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) ("On balance, we are persuaded that *Kingsley* applies, as well, to

Cir. 2020), *cert. denied*, 141 S. Ct. 1379 (2021). A defendant official shows deliberate indifference only if "he knows that [a detainee] face[s] a substantial risk of serious bodily harm" and "disregards that risk by failing to take reasonable measures to abate it." *Hyatt*, 843 F.3d at 179 (quoting *Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006)); *accord. Garza*, 922 F.3d at 635.

"Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." *Williams v. Hampton*, 797 F.3d 276, 288 (5th Cir. 2015) (quoting *Farmer v. Brennan*, 511 U.S. 825, 842 (1994) (cleaned up)). In some cases, "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Farmer*, 511 U.S. at 842; *see e.g., Easter v. Powell*, 467 F.3d 459, 463–64

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failure-to-protect claims brought by pretrial detainees against individual defendants under the Fourteenth Amendment.").

However, the Fifth Circuit has explicitly declined to extend *Kingsley* beyond the excessive force context. For example, in *Cope v. Cogdill*, 3 F.4th 198 (5th Cir. 2021), the Fifth Circuit rejected the plaintiff's argument that *Kingsley* applied to her claim for failure to provide medical care, explaining that *Kingsley* "did not abrogate [the Fifth Circuit's] deliberate-indifference precedent" for cases involving pretrial detainees. *Id.* at 208 n.7. And in *Alderson v. Concordia Parish Correctional Facility*, 848 F.3d 415 (5th Cir. 2017), the court applied deliberate indifference to a failure-to-protect claim, *see id.* at 419–20, notwithstanding a concurring opinion suggesting that *Kingsley* should be extended to at least some failure-to-protect claims by pretrial detainees, *id.* at 424–25 (Graves, J., concurring). Accordingly, the Court applies the deliberate-indifference standard here.

(5th Cir. 2006) (holding that a prison nurse's knowledge of risk may be inferred where she was aware that the detainee had a heart condition and he presented obvious signs of cardiac problems); *Brannan v. City of Mesquite*, No. 3:19-CV-1263-X, 2020 WL 7344125, at *3–4, 6 (N.D. Tex. Dec. 14, 2020) (finding facts existed to show that a risk of serious harm was obvious to the defendant officer where he observed the arrestee swallow what he believed to be methamphetamine and observed her decline during a jail interview). "While the obviousness of a risk is not conclusive and a prison official may show that the obvious escaped him . . . he would not escape liability if the evidence showed that he . . . refused to verify underlying facts that he strongly suspected to be true or declined to confirm inferences of risk." *Farmer*, 511 U.S. at 843 n.8. Moreover, if evidence exists that a particular type of harm is "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the [defendant] had been exposed to [that] information . . . such evidence could be sufficient to permit a trier of fact to find . . . [that the defendant had] actual knowledge of the risk." *Id.* at 842–43 (cleaned up). Because the liability of each defendant official must be considered separately in a § 1983 action, *see Stewart v. Murphy*, 174 F.3d 530, 537 (5th Cir. 1999), the Court considers Plaintiffs' claims against each Individual Defendant in turn.

i. Jailer Borrego

Plaintiffs allege that Jailer Borrego received three 911 calls, two reporting Schubert's odd behavior and one call from Schubert himself asking for help. Compl.

¶ 15. Borrego then dispatched Deputy Melendez to investigate. Compl. ¶ 16. After Schubert was brought to the jail, Jailer Borrego witnessed Sheriff Carrillo and Schubert having a conversation in which Schubert revealed that he was recently in rehab and had departed a halfway house. Compl. ¶ 24. Jailer Borrego locked Schubert in a cell apparently containing bedding, before leaving the jail at approximately 1:48 a.m. Compl. ¶¶ 18–19, 24.

a. Existence of a constitutional violation

As noted, Plaintiffs must show that Jailer Borrego had the requisite knowledge of Schubert's risk of serious harm and that he disregarded that risk. *See Hyatt*, 843 F.3d at 179. On the knowledge requirement, Borrego argues that "knowledge of Schubert knocking on doors, asking for help, and claiming someone is trying to kill him does not create an inference that Schubert was mentally ill or suicidal." Borrego Mot. 15–16. The Court is not persuaded. From the 911 calls, Jailer Borrego knew Schubert was walking around Van Horn, telling strangers that an assailant—who Schubert was not able to name or describe—was trying to kill him and that he had contacted 911 in fear. Compl. ¶¶ 15–16, 36. From this, a fact finder may infer that Borrego understood that Schubert was delusional and experiencing a mental health crisis, and thus at risk of serious harm.

Jailer Borrego also argues that, even if he knew that Schubert was suffering from mental illness or delusional, that would "not invariably lead to a conclusion that Borrego believed [Schubert] was

suicidal." Borrego Mot. 18–19. On a motion to dismiss, Plaintiffs do not need to plead facts that would "invariably" show that Jailer Borrego knew Schubert was at risk of suicide—they only need to plead "factual content that allows the court to draw the reasonable inference" that he knew Schubert was at risk. *Iqbal*, 556 U.S. at 678. From the signs of Schubert's mental health crisis and the fact that jail suicides are a widely known problem, both generally and at this particular jail, Compl. ¶ 71, the Court can make the "reasonable inference" that Borrego was aware that Schubert was at risk of suicide, and serious harm more generally.

Furthermore, Jailer Borrego witnessed the conversation between Sheriff Carrillo and Schubert, during which Schubert stated information that would further support an inference that Schubert was at risk of serious harm. Schubert told Sheriff Carrillo, in the presence of Jailer Borrego, that he had a history of drug problems such that he recently was in rehab, that he hitchhiked from El Paso, and that he recently left a halfway house where he would not be allowed to return. Compl. ¶¶ 23–24. Viewing these facts in the light most favorable to Plaintiffs, they suggest that Borrego was aware that Schubert was in a fragile psychological state—he was managing substance abuse issues and did not have a stable home or means of transportation. On top of Jailer Borrego's knowledge that Schubert was wandering around fearing an unidentified assailant, these facts reinforce the conclusion that Borrego knew that Schubert was at risk of suicide because the risk was obvious. *See Farmer*, 511 U.S. at 842 ("[A] factfinder

may [infer] kn[owledge] of a substantial risk from the very fact that the risk was obvious.") Plaintiffs have adequately pleaded the knowledge component of their deliberate indifference claim against Jailer Borrego.

Having established the requisite knowledge of risk, Plaintiffs must show that Jailer Borrego "fail[ed] to take reasonable measures to abate it." *See Hyatt*, 843 F.3d at 179. According to the Complaint, Jailer Borrego took no measures at all. Compl. ¶¶ 15–20. In particular, he placed Schubert in a cell that apparently contained loose bedding and failed to remove it.[5] Compl. ¶ 18. Fifth Circuit law is clear that an officer acts with deliberate indifference when he or she provides a suicidal detainee with loose bedding, despite knowing that the detainee is at risk of committing suicide and that the bedding would provide the detainee with the means to do so. *See Converse v. City of Kemah*, 961 F.3d 771, 777–78 (5th Cir. 2020) (citing *Jacobs v. W. Feliciana Sheriff's Dep't*, 228 F.3d 388, 395–96 (5th Cir. 2000)). In *Converse*, the court determined that a reasonable jury could find that a jail official was deliberately indifferent when he failed to remove bedding from a suicidal detainee's cell, despite suicide prevention

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[5] The Court notes that that Plaintiffs do not explicitly allege that Schubert's cell contained sheets or bedding. However, they allege that he was placed in the cell and then hung himself in his cell with a sheet shortly thereafter, with no intervening events during which some third party could have provided him with the sheet. Compl. ¶¶ 17, 46. Because the Court views the facts in the light most favorable to Plaintiffs, the Court assumes that Schubert's cell contained bedding when he was placed there by Borrego and other of the Individual Defendants. *See Calhoun*, 312 F.3d at 733.

training that addressed the risks posed by loose bedding and exposure to news stories on the frequency of jail suicides. *See* 961 F.3d at 777–78.

As in *Converse*, here Plaintiffs allege that the Individual Defendants, through their training and exposure to news, knew that detainees often use items in their cells, such as bedding, to hang themselves. Compl. ¶¶ 70–71. As such, a fact finder may conclude that Jailer Borrego knew that the bedding in Schubert's cell posed a substantial risk to a suicidal inmate like Schubert. Because he placed Schubert in a cell with bedding and a tie-off point despite that risk, a fact finder could determine that Jailer Borrego acted with deliberate indifference under Fifth Circuit law. *See Converse*, 961 F.3d at 777–78.

Moreover, Plaintiffs allege that Jailer Borrego did not conduct the required screening form that is designed to determine whether a detainee presents a risk of suicide. Compl. ¶ 19. As Jailer Borrego points out, there is no clearly established independent constitutional right to suicide screening. *See* Borrego Mot. 19–20; Borrego Reply 4; *Bonilla ex rel. Est. of Bonilla v. Orange Cnty.*, 982 F.3d 298, 307 (5th Cir. 2020) ("No decision of this Court establishes a right to the proper implementation of adequate suicide prevention protocols [or] even discusses suicide screening or prevention protocols." (quoting *Taylor v. Barkes*, 575 U.S. 822, 826 (2015))). And failure to comply with jail protocol, alone, "does not constitute deliberate indifference if [the defendant] is unaware of [the detainee]'s risk of self-harm." *See Rogge v. City of Richmond*, 995 F. Supp. 2d 657, 670 (S.D. Tex.

2014) (citing *Whitt v. Stephens Cnty.*, 529 F.3d 278, 284 (5th Cir. 2008)).

But here, Plaintiffs allege that Jailer Borrego *was* aware of Schubert's risk of self-harm and still declined to conduct the required screening or take any other measures to further assess or manage that risk. Compl. ¶ 19. As articulated by the Supreme Court, an official cannot "escape liability if [he] . . . refuse[s] to verify underlying facts that he strongly suspect[s] to be true or decline[s] to confirm inferences of risk." *Farmer*, 511 U.S. at 843 n.8. An official may be held liable for failing to protect a detainee when the officer is aware of a high likelihood of harm to the detainee "but resists opportunities to obtain final confirmation." *Id*. Here, Jailer Borrego had a clear opportunity to confirm an inference of Schubert's suicide risk: he could have conducted state-mandated mental health screening designed to determine a detainee's risk of suicide or other harm. Instead, after learning that Schubert had been wandering around town, apparently delusional, Jailer Borrego declined to confirm his inference of risk. While Jailer Borrego's failure to screen Schubert does not amount to a constitutional violation on its own, it adds to the facts that give rise to a deliberate indifference claim against him.

b. Qualified immunity

To overcome Jailer Borrego's assertion of qualified immunity, Plaintiffs must allege a violation of a clearly established constitutional right. *See Lincoln*, 874 F.3d at 847. As a general matter, at the time of Schubert's death, pretrial detainees had the clearly established right to be protected from their known

suicidal tendencies. *See Hare*, 74 F.3d at 644. But the Fifth Circuit has also noted that the law is not "established with any clarity as to what measures . . . jailers must take to prevent inmate suicides once they know of the suicide risk." *Baldwin*, 964 F.3d at 328 (quoting *Hare v. City of Corinth*, 135 F.3d 320, 328 (5th Cir. 1998). Here, however, Borrego took *no* measures to reduce Schubert's known risk of suicide. Compl. ¶¶ 15–20. It is beyond debate that a suicidal prisoner has the right to at least some level of protection, *see Hare*, 74 F.3d at 644, and Jailer Borrego provided none.

And not only did Jailer Borrego fail to take protective measures, but he also placed Schubert in a cell that apparently contained loose bedding, despite knowing that loose bedding poses a risk to suicidal detainees. Compl. ¶¶ 18, 71. In 2000, the Fifth Circuit held in *Jacobs* that a jail official acts with deliberate indifference when he or she provides a detainee who is known to be suicidal with items that may be used as ligatures "even though he knew that those items should not be in the hands of a seriously suicidal detainee." 228 F.3d at 397. There, the court denied qualified immunity to a sheriff who ordered a suicidal detainee to have a blanket and towel in her cell, which contained tie-off points, despite knowing the risks those items posed to the detainee. *Id.* The deputy who provided the items to the detainee was also denied qualified immunity because he was also aware of the risks they posed. *Id.* at 397–98.

The Court notes that in *Jacobs*, the defendant officials were aware that another detainee had previously committed suicide in the same cell using

similar items and tie-off points. *Id.* at 395, 397. However, the Fifth Circuit has explained that *Jacobs*' holding was not limited to cases in which the defendants were aware of a prior suicide in the same facility. *Converse*, 961 F.3d at 777 (noting that the Fifth Circuit has "never held . . . that multiple suicides must occur in the same cell before a jail official is required to take preventative measures."). Rather, under *Jacobs*, "[t]he proper inquiry . . . is whether the [defendants] had the subjective knowledge that the bedding posed a substantial risk of suicide, not how the[y] obtained that knowledge." *Converse*, 961 F.3d at 777. In *Converse*, the court affirmed the denial of qualified immunity under *Jacobs* when the defendant officials provided loose bedding to a suicidal detainee despite knowing of the risks it posed through training and exposure to news. *Id.*

As noted, Jailer Borrego placed in Schubert in a cell containing loose bedding and failed to remove it, even though he knew that Schubert was at risk of suicide. Compl. ¶ 18. And like the defendants in *Converse*, Borrego knew through his training, experience, and exposure to news that loose bedding posed a danger to suicidal detainees like Schubert. Compl. ¶ 71. Therefore, Plaintiffs have stated facts sufficient to overcome Jailer Borrego's assertion of qualified immunity. *See Jacobs*, 228 F.3d at 397. Jailer Borrego's Motion is denied.

ii. Sheriff Carrillo

Plaintiffs allege that, after listening to the police radio calls reporting Schubert's behavior, Sheriff Carrillo went to the Culberson County jail and had a

conversation with Schubert. Compl. ¶¶ 21–23. Schubert told Sheriff Carrillo that he had hitchhiked from El Paso, where he was in rehab, and that he had recently left a halfway house where he would not be permitted to return. Compl. ¶ 23. Sheriff Carrillo did not place Schubert on suicide watch or take any other measures to prevent him from harming himself, nor did he complete or require other officials to complete the state-mandated suicide screening form for Schubert. Compl. ¶¶ 24–25. Schubert was placed in a cell that apparently contained loose bedding prior to Sheriff Carrillo leaving the jail at 1:48 a.m. Compl. ¶ 28.

a. Existence of a constitutional violation

With respect to whether Sheriff Carrillo knew of Schubert's risk of serious harm, Carrillo makes substantially the same arguments as Jailer Borrego: the 911 calls and fact that Schubert was wandering around and telling strangers that an unknown person was trying to kill him did not indicate to Carrillo that Schubert was suffering from mental illness, and any signs of Schubert's mental illness did not lead Carrillo to the conclusion that Schubert was suicidal. Carrillo Mot. 14, 17. For the reasons discussed, these arguments fail.

Like Jailer Borrego, Sheriff Carrillo also knew, through his conversation with Schubert, that Schubert had experienced problems with drugs, was recently in rehab, and had left a halfway house where he would not be allowed to return. Compl. ¶ 23. These facts reinforce the inference that Schubert presented a suicide risk. But Sheriff Carrillo argues that his

conversation with Schubert allowed him to assess Schubert and led him to believe, albeit incorrectly, that Schubert was *not* at risk of suicide. Carrillo Mot. 18. Sheriff Carrillo notes that Schubert appeared honest and cooperative during the conversation. Carrillo Mot. 18. This shows that Sheriff Carrillo took some steps to assess Schubert's mental state. But as discussed, the facts Sheriff Carrillo learned from his conversation with Schubert confirm, rather than dispel, the conclusion that that Schubert was at risk of suicide. As such, this argument is unavailing.

Furthermore, Sheriff Carrillo had knowledge of the pervasiveness of jail suicides. Less than two years prior to the events of this case, Sheriff Carrillo witnessed Melody Kopera's death by suicide in Culberson County jail under similar circumstances. Compl. ¶ 102. Sheriff Carrillo also received at least one memorandum from TCJS warning jailers of the problem of jail suicides by strangulation. Compl. ¶ 72. As such, there is reason to believe that, at the time of Schubert's death, the risk of jail suicides was "longstanding, pervasive, well-documented, [and] expressly noted by prison officials," and "the circumstances suggest that [Sheriff Carrillo] had been exposed to [that] information. *See Farmer*, 511 U.S. at 842–43 (cleaned up). So a factfinder may infer that he had actual knowledge of the risk. *See id.* Taking Plaintiffs' allegations together, a reasonable fact finder could determine that Sheriff Carrillo was subjectively aware of Schubert's risk of serious harm.

And like Jailer Borrego, Sheriff Carrillo took no actions to reduce that risk. Compl. ¶¶ 21–29. Although Sheriff Carrillo had a discussion with

Schubert, he did not use the information he learned during the conversation to take any protective measures—he did not provide him with access to psychiatric treatment or require Schubert to be put on suicide watch. Compl. ¶¶ 24–25. Instead, Sheriff Carrillo had Schubert placed in a cell apparently containing tie-off points and loose bedding, Compl. ¶¶ 28, despite Carrillo's knowledge that bedding posed a risk to suicidal detainees, Compl. ¶ 71 (alleging that all Individual Defendants knew that detainees commonly hang themselves with items from their cells, including bedding, through news, training, and experience). Sheriff Carrillo was also aware that at least one other detainee previously committed suicide at Culberson County jail, Melody Kopera, and that she also used loose bedding to hang herself in her cell. Compl. ¶ 102. This provided additional notice to Sheriff Carrillo that locking a detainee at risk of suicide in a cell with loose bedding posed a significant risk. *See Jacobs*, 228 F.3d at 395, 397 (noting that the defendants were aware of a prior suicide in analyzing whether the defendants understood he risk loose bedding posed to suicidal detainees). Therefore, Plaintiffs have stated a claim that Sheriff Carrillo acted with deliberate indifference to Schubert's known risk of suicide.[6] *See Converse*, 961 F.3d at 777–

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[6] Plaintiffs also assert that Sheriff Carrillo has supervisory liability in this case because he did not require the other Individual Defendants to screen Schubert or to complete the TCJS-required screening form. Compl. ¶ 24. A supervisor may be held liable for the failure to supervise or train if: "(1) the supervisor either failed to supervise or train the subordinate official; (2) a causal link exists between the failure to train or supervise and the violation of the plaintiff's rights; and (3) the

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b. Qualified immunity

As noted, pretrial detainees have a clearly established constitutional right to be protected from their known suicidal tendencies. *See Hare*, 74 F.3d at 644. And an official may be held liable if he or she provides a suicidal detainee with loose bedding or fails to remove bedding from a cell containing tie-off points, if the officer knows that bedding poses a suicide risk. *See Jacobs*, 228 F.3d at 397. Like Jailer Borrego, Sheriff Carrillo failed to act on his knowledge of Schubert's suicide risk in any meaningful way, and he had Schubert locked in a cell

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failure to train or supervise amounts to deliberate indifference." *Goodman v. Harris Cnty.,* 571 F.3d 388, 395 (5th Cir. 2009). "To satisfy the deliberate indifference prong, a plaintiff usually must demonstrate a pattern of violations and that the inadequacy of the training [or supervision] is 'obvious and obviously likely to result in a constitutional violation.'" *Cousin v. Small*, 325 F.3d 627, 637 (5th Cir. 2003) (quoting *Thompson v. Upshur Cnty.,* 245 F.3d 447, 459 (5th Cir. 2001)).

Here, Plaintiffs' claim fails on the deliberate indifference prong because the failure to train or supervise jailers in suicide screening, alone, is not "obviously likely to result in a constitutional violation." *See Cousin*, 325 F.3d at 637. As noted, the failure to screen detainees for suicide risk—on its own—does not violate a clearly established constitutional right. *See Taylor*, 575 U.S. at 826. In some cases, like this one, the failure to screen a detainee may contribute to the circumstances that, as a whole, amount to a constitutional violation. But the Fifth Circuit has said that it is not "obvious" that the failure to ensure one's employees screen each new detainee, alone, would create a pattern of constitutional violations. *See id*. As such, plaintiffs' supervisory liability claim against Sheriff Carrillo fails. *See Cousin*, 325 F.3d at 637.

with bedding even though he knew that bedding poses a risk to suicidal inmates, Compl. ¶¶ 23–24, 28, in violation of clearly established law. *See Jacobs*, 228 F.3d at 397. Carrillo's Motion is denied.

iii. Deputy Melendez

Deputy Melendez was dispatched to the El Capitan Hotel to locate Schubert after reports of his bizarre behavior, and he spoke with Schubert at the hotel. Compl. ¶ 33. During their conversation, Schubert told Deputy Melendez that someone was trying to kill him and appeared nervous. Compl. ¶ 33. Deputy Melendez then arrested Schubert for an alleged parole violation and transported him to Culberson County jail. Compl. ¶¶ 34–35. Later, Deputy Melendez helped Jailer Borrego lock Schubert into a cell apparently containing bedding and tie-off points, and during the lock-in process Schubert repeated that someone was trying to kill him. Compl. ¶ 36.

a. Existence of a constitutional violation

Like the other Individual Defendants, Deputy Melendez argues that he did not know that Schubert was suicidal. Melendez Mot. 17. But, like Jailer Borrego and Sheriff Carrillo, Deputy Melendez knew that Schubert was wandering around the streets of Van Horn repeating to strangers that an unidentified assailant was trying to kill him. Indeed, it was Deputy Melendez who was tasked with responding to the 911 calls, both those of the third parties and Schubert's own call. Given these circumstances, it is reasonable to conclude that Melendez was aware that Schubert

was suffering from mental illness and at risk of suicide. Moreover, Deputy Melendez heard Schubert continue to talk about the assailant even as he locked Schubert in a jail cell— where Schubert would presumably be safe from any actual assailant. Compl. ¶ 36. This adds support to the idea that there was no actual assailant and Schubert was experiencing a mental health crisis that put Schubert at a high risk of suicide or other serious harm.

Deputy Melendez also "fail[ed] to take reasonable measures to abate [that risk]." *See Hyatt*, 843 F.3d at 179. Like the other Individual Defendants, Deputy Melendez took no action to reduce Schubert's risk of suicide. Compl. ¶¶ 33–36. Rather, he assisted in locking Schubert in a cell that contained loose bedding, Compl. ¶ 36, despite knowing that bedding poses a risk to suicidal inmates, Compl. ¶ 71. Like Sheriff Carrillo, Deputy Melendez also witnessed the suicide of Melody Kopera, which also involved the use of loose bedding to create a ligature, Compl. ¶ 103, providing additional notice that locking a detainee at risk of suicide in a cell with loose bedding posed a significant risk. *See Jacobs*, 228 F.3d at 395, 397.

Plaintiffs also allege that Deputy Melendez acted with deliberate indifference by transporting Schubert to jail, rather than to a mental health facility, in violation of Texas Health and Safety Code § 573.001. Compl. ¶¶ 37–39. Section 573 permits peace officers to take persons into custody if the officer has reason to believe the person is suffering from mental illness and poses a substantial risk of serious harm to themselves or others. Tex. Health & Safety Code Ann. § 573.001(a)(1) (2021). It requires the officer to take

the arrestee to the nearest appropriate inpatient mental health facility or emergency medical services provider, rather than a detention facility. § 573.001(d)–(e). Viewing the facts in the light most favorable to Plaintiffs, the Court presumes that Deputy Melendez arrested Schubert pursuant to section 573.011(a)(1). And as discussed, Melendez had reason to believe Schubert was suffering from mental illness and posed a risk to himself. As such, under section 573, Deputy Melendez should have taken Schubert to a mental health facility or emergency room, not to jail.

As Deputy Melendez notes, a violation of section 573 does not necessarily amount to a constitutional violation. *See* Melendez Mot. 18; *Tweedy v. Boggs*, 983 F.2d 232, 232 n.1 (5th Cir. 1993) ("[A] violation of state law, without more, will not justify federal judicial intervention [under § 1983]."). However, state law may "serve as a useful guide in a federal court's determination and redress of constitutional deprivations." *Tweedy*, 983 F.2d at 232 n.1 (quoting *Smith v. Sullivan*, 611 F.2d 1039, 1045 (5th Cir. 1980)). Section 573 is clearly designed to ensure detainees suffering from mental illness, like Schubert, receive proper treatment and thereby reduce the likelihood that that they will harm themselves or others. So Deputy Melendez's decision to violate the provision in the circumstances of this case supports Plaintiffs' deliberate indifference claim against him. Taking Plaintiffs' allegations all together, Plaintiffs have sufficiently alleged that Deputy Melendez violated Schubert's constitutional rights.

b. Qualified immunity

Like Jailer Borrego and Sheriff Carrillo, Deputy Melendez took no action to reduce Schubert's known risk of suicide, and he participated in placing him in a jail cell containing loose bedding. Compl. ¶ 36. As such, his actions violated clearly established law. *See Jacobs*, 228 F.3d at 397. Deputy Melendez's Motion is denied.

iv. Deputy Diaz and Jailer Zambra

Unlike the other Individual Defendants, Deputy Diaz and Jailer Zambra are not alleged to have interacted with Schubert in any meaningful way prior to his suicide, so it is not reasonable to infer that either official was aware that Schubert was at risk of committing suicide. Deputy Diaz arrived at the jail at 1:20 a.m. and witnessed Schubert speaking with Sheriff Carrillo at some point, although it is not clear what part of their conversation he heard. Compl. ¶¶ 30–32. But he is not alleged to have had any other interactions with Schubert. Jailer Zambra was primarily handling dispatch duties prior to checking in on Schubert, and she did not interact personally with Schubert until she found him hanging in his cell. Compl. ¶¶ 42, 46–47. Plaintiffs do not allege that either Diaz or Zambra were aware that Schubert was wandering around Van Horn experiencing delusions or of any information about Schubert's background. On these allegations, a reasonable fact finder could not conclude that either Deputy Diaz or Jailer Zambra had the requisite knowledge for deliberate indifference. *See Williams*, 797 F.3d 288 (requiring sufficient evidence of subjective deliberate

indifference for failure-to-protect claims). Deputy Diaz and Jailer Zambra's Motions are granted, and the claims against them are dismissed.

b. Bystander liability

Plaintiffs also argue that each Individual Defendant is liable as a bystander to their fellow officials' constitutional violations. Compl. ¶ 121. "[A]n officer may be liable under § 1983 under a theory of bystander liability where the officer (1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act." *Whitley v. Hanna*, 726 F.3d 631, 646 (5th Cir. 2013). As the Individual Defendants note, *see, e.g.*, Carrillo Mot. 22–23, bystander liability generally arises in the excessive force context. *Whitley*, 726 F.3d at 647 n.11 (5th Cir. 2013); *see e.g., Hale v. Townley,* 45 F.3d 914, 919 (5th Cir. 1995) (recognizing bystander liability claim against officer for failing to stop another officer's use of excessive force); *Hamilton v. Kindred*, 845 F.3d 659, 663 (5th Cir. 2017) (same). The Fifth Circuit has noted that "other constitutional violations also may support a theory of bystander liability." *Whitley*, 726 F.3d at 647 n.11. However, the Fifth Circuit has not specified which constitutional violations, beyond excessive force, may underlie a bystander liability claim, nor has it recognized such a claim that the Court is aware of. *See Frakes v. Masden*, No. CV H-14-1753, 2015 WL 7583051, at *9 (S.D. Tex. Nov. 25, 2015) ("The Fifth Circuit did not, in either *Richie* or *Whitley*, recognize bystander liability in a context other than the use of excessive force."), *aff'd sub nom. Frakes v. Ott*, 668 F. App'x 130

(5th Cir. 2016).

In any event, here, Plaintiffs' bystander liability claims against the Individual Defendants are subsumed by their claims that each officer is directly liable for their own failure to protect Schubert. The two claims require substantially the same showing: that the defendant official knew that the plaintiff's health or safety was at risk and intentionally chose to disregard that risk. *Compare Hamilton*, 845 F.3d at 663 (bystander liability) *with Hyatt*, 843 F.3d at 179 (direct liability for failure to protect). In this case, Plaintiffs allege that each Individual Defendant was directly responsible for Schubert's wellbeing during his detention and were thus required to personally protect him from his known suicidal tendencies. Compl. ¶ 35 ("[N]o Individual Defendant can use the excuse that another Individual Defendant had custody of [Schubert]. Each Individual Defendant owed his or her own constitutional duties to [Schubert]."). So it makes little sense to ask whether each Individual Defendant failed to intervene in *another officer's* deliberate indifference to Schubert's safety; instead, the Court simply considers whether each Individual Defendant acted with deliberate indifference, as discussed above.[7]

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[7] The cases cited by Plaintiffs do not persuade the Court otherwise. Each case involves allegations that officers failed to intervene when another officer or other person harmed the plaintiff; none involved officers failing to intervene when another officer failed to stop the plaintiff from harming him or herself. *See, e.g.*, *Batiste v. City of Beaumont*, 421 F. Supp. 2d 1000, 1006 (E.D. Tex. 2006) (considering plaintiff's allegations that defendant witnessed but failed to intervene when other

Moreover, at the time of the events at issue here, it was not clearly established that an official could be held liable under a theory of bystander liability when the underlying constitutional violation is failure to protect. *See Frakes,* 2015 WL 7583051, at *9. As such, the Individual Defendants are entitled to qualified immunity on Plaintiffs' bystander liability claims, and those claims are dismissed.

2. Section 1983 claims against Culberson County

Plaintiffs also seek to hold Culberson County liable under § 1983 and *Monell*, on the grounds that its mental health and suicide prevention policies caused the violation of Schubert's constitutional rights. Compl. ¶¶ 126–29. To state a *Monell* claim against a local government, "a plaintiff must show the deprivation of a federally protected right caused by action taken 'pursuant to an official municipal policy.'"[8] *Valle v. City of Houston*, 613 F.3d 536, 541–42 (5th Cir. 2010) (quoting *Monell*, 436 U.S. at 691).

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officers used force against her under a failure-to-protect theory); *Cantu v. Jones*, 293 F.3d 839, 844–45 (5th Cir. 2002) (discussing defendant officer's failure to prevent plaintiff from being attacked by a fellow inmate under the deliberate indifference standard).

[8] Plaintiffs must also identify a policymaker whose decisions may be attributed to the local government. *See Valle v. City of Houston*, 613 F.3d 536, 541 (5th Cir. 2010). Plaintiffs state that Sheriff Carrillo was "the likely chief policymaker for jail operations for the County," Compl. ¶ 86, and Culberson County concedes as much, County Mot. 19 (citing Tex. Loc. Gov't Code Ann. § 351.041 (West 2020) ("The sheriff of each county is the keeper of the county jail.")). So the Court assumes Sheriff Carrillo is the relevant policymaker.

The policy element "distinguish[es] acts of the municipality from acts of *employees* of the municipality, and thereby make[s] clear that municipal liability is limited to action for which the municipality is actually responsible." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (1986). For § 1983 purposes, a municipal or local government policy may be a "policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by [a policymaker]" or a "persistent, widespread practice of city officials or employees, which, although not [officially] authorized . . . is so common and well settled as to constitute a custom that fairly represents municipal policy." *Bennett v. City of Slidell*, 735 F.2d 861, 862 (5th Cir. 1984) (en banc) (per curiam).

Claims by pretrial detainees against local governments "may be brought under two alternative theories: as an attack on a 'condition of confinement' or as an 'episodic act or omission.'" *Shepherd v. Dallas Cnty.*, 591 F.3d 445, 452 (5th Cir. 2009) (quoting *Hare*, 74 F.3d at 644–45). Conditions-of-confinement claims relate to general conditions or rules of a jail facility such as "durable restraints or impositions on inmates' lives like overcrowding, deprivation of phone or mail privileges, the use of disciplinary segregation, or excessive heat." *Garza*, 922 F.3d at 633–34. Episodic-acts-or-omissions claims arise from the "particular act or omission of one or more officials," and "an actor usually is interposed between the detainee and the municipality [or local government]." *Id.* at 632 (quoting *Scott v. Moore*, 114 F.3d 51, 53 (5th Cir. 1997) (en banc)).

This is an episodic-acts-or-omissions case. As in

Olabisiomotosho v. City of Houston, 185 F.3d 521 (5th Cir. 1999), Plaintiffs' allegations focus on the Individual Defendants' "failure to take better care of [a detainee and] . . . failure to medically screen [him] and secure [him] to treatment," among other actions. *Id.* at 526. "Such a complaint perfectly fits the definition of the episodic [act or] omission." *Id.* To establish municipal liability for an episodic act or omission, "the plaintiff must demonstrate a municipal employee's subjective indifference [to the plaintiff's safety or needs] and additionally that the municipal employee's act 'resulted from a municipal policy or custom adopted or maintained with objective deliberate indifference to the [plaintiff']s constitutional rights." *Id.* (quoting *Hare*, 74 F.3d at 649 n.14); *accord. Sanchez v. Young Cnty.*, 866 F.3d 274, 280 (5th Cir. 2017).

a. Employee's subjective indifference

As discussed, Plaintiffs have successfully pleaded that three of the Individual Defendants, who were employed by Culberson County at the time of Schubert's death, violated Schubert's constitutional right to protection from known suicidal tendencies with subjective deliberate indifference. Plaintiffs allege that Jailer Borrego, Sheriff Carrillo, and Deputy Melendez each knew that Schubert was at risk of committing suicide and yet failed to take *any* measures to reduce that risk. Each officer failed to screen Schubert, offer him psychiatric treatment, or place him on suicide watch, and all three participated in giving him access to loose bedding that they knew posed a risk to suicidal detainees. Compl. ¶¶ 15–29,

33–36. These actions and inactions, when the Individual Defendants knew of Schubert's risk of suicide, violated Schubert's constitutional right to protection. *See Converse*, 961 F.3d at 777–78.

b. Resulting from policy adopted or maintained with objective deliberate indifference

The second prong of the test asks whether those violations "resulted from a municipal policy or custom adopted and maintained with objective deliberate indifference." *Hare*, 74 F.3d at 649 n.14. Plaintiffs allege several policies and customs that they argue collectively caused the violation of Schubert's constitutional rights: First, Plaintiffs allege that Culberson County's custom was to violate the screening provision of its written mental disability plan, which required all detainees to be screened for suicide risk and other mental health problems using the TCJS form and notify appropriate parties when a detainee is determined to be at risk. Compl. ¶¶ 83–84. Next, they allege that Culberson County had customs of not requiring arrestees suffering from mental illness to be transported to a mental health facility, in violation of Texas Health and Safety Code § 573.001, and of failing to staff its jail with a mental health professional. Compl. ¶¶ 86–87. Plaintiffs also allege that, although Culberson County had a policy requiring "inmates who were known to be assaultive, potentially suicidal, mentally ill, or who had demonstrated bizarre behavior" to be checked on at least once every thirty minutes, but the policy also allowed inmates to be observed on a discretionary, "as needed" basis. Compl. ¶ 88. Finally, Plaintiffs allege

that Culberson County had the custom of understaffing their jails. Compl. ¶ 89. To succeed on their *Monell* claim, Plaintiffs must show that these policies caused the constitutional violations at issue and that the polices evince objective deliberate indifference by Culberson County.

i. Sufficiency of allegations of Culberson County policies

But first, as a threshold matter, Culberson County argues that Plaintiffs' policy allegations are conclusory and that Plaintiffs "fail to allege facts of specific, similar, persistent, repeated, and constant violations." County Mot. 15. To sufficiently allege a policy or custom, its "description . . . and its relationship to the underlying constitutional violation . . . cannot be conclusory; it must contain specific facts." *Henderson v. Anderson*, 463 F. App'x 247, 250 (5th Cir. 2012) (quoting *Spiller v. City of Texas City, Police Dep't*, 130 F.3d 162, 167 (5th Cir. 1997).

On a motion to dismiss, courts in the Fifth Circuit have required "more than boilerplate allegations," but not "facts that prove the existence of a policy." *Thomas v. City of Galveston*, 800 F. Supp. 2d 826, 844 (S.D. Tex. 2011); *see Sanchez v. Gomez*, 283 F. Supp. 3d 524, 532 (W.D. Tex. 2017) (adopting *Thomas*'s description of the appropriate pleading standard for allegations of municipal policies); *Callaway v. City of Austin*, No. A-15-CV-00103-SS, 2015 WL 4323174, at *9 (W.D. Tex. July 14, 2015) (same). Allegations of past incidents of misconduct, or "any other minimal elaboration a plaintiff can provide, help[s] to satisfy the requirement of providing not only fair notice of the nature of the claim, but also grounds on which the

claim rests, and also to permit the court to infer more than the mere possibility of misconduct." *Thomas*, 800 F. Supp. 2d at 844 (cleaned up).

None of Plaintiff's allegations are conclusory. First, the allegation that Culberson County's custom was to violate the screening provision of its mental disability plan—that is, fail to screen detainees appropriately—contains sufficient facts. It describes a specific county plan to screen detainees according to the TCJS form and a concrete custom of failing to do so; it is more than a boilerplate allegation of generally inadequate policies or an overall policy of failing to protect detainees. Moreover, the Complaint lists several instances when the County was noted by TCJS, a commission of the state of Texas, to have violated standards directly related to screening and mental health classifications: TCJS issued a notice in 2016 that several jailers who were responsible for classifying detainees did not have the appropriate training. Compl. ¶ 108. Then in 2017, TCJS reported that Culberson County jailers were not logging mental health database information on intake screening forms for incoming detainees. Compl. ¶ 110. And in 2018, TCJS reported that Culberson County's Suicide Prevention Training program did not cover the required training topics. Compl. ¶ 111. This history of past misconduct related to mental health screening supports Plaintiffs' allegation that Culberson County has a custom of failing to follow screening protocols. *See Thomas*, 800 F. Supp. 2d at 844 (explaining that allegations of past misconduct related to an alleged policy helps to satisfy the pleading standard for municipal policies).

Plaintiffs' allegations that Culberson County had customs of not requiring arrestees suffering from mental illness to be transported to a facility, Compl. ¶ 86, and of not staffing its jail with a mental health professional, Compl. ¶ 87, are also sufficiently specific. These are not boilerplate allegations; they contain enough elaboration that the County has adequate notice of Plaintiffs' accusations, and the Court can infer more than the possibility of misconduct. *See Thomas*, 800 F. Supp. 2d at 844. For the same reasons, Plaintiffs' allegation that the County had a policy requiring "inmates who were known to be assaultive, potentially suicidal, mentally ill, or who had demonstrated bizarre behavior" to be checked at least once every thirty minutes but allowed those inmates to be observed on a discretionary, "as needed" basis, Compl. ¶ 88, is also sufficiently specific.

Finally, Plaintiffs' allegation that Culberson County understaffed its jails, Compl. ¶ 89, is not conclusory. Prior to the events of this case, Jailer Zambra repeatedly complained to her supervisors that the jail was understaffed; she "told them to hire more people and that some of the employees are working long hours and many days due to shortness of employees." Compl. ¶ 48. Plaintiffs allege that the County took no action in response to Jailer Zambra's complaints. Compl. ¶ 48. This is enough elaboration for the Court to find the allegation not conclusory.

ii. Causation

Next, Plaintiffs must show that those policies caused the constitutional violation at issue. *See Hare*, 74 F.3d at 649 n.14. Culberson County argues

Plaintiffs failed to allege that any of its individual policies caused the violation of Schubert's rights. County Mot. 20–22. The "causation component [of a *Monell* claim] requires that the plaintiffs identify, with particularity, the policies or practices they allege cause the constitutional violation[] and demonstrate a 'direct causal link.'" *Stukenberg ex rel. M.D. v. Abbott*, 907 F.3d 237, 255 (5th Cir. 2018) (quoting *Piotrowski v. City of Houston*, 237 F.3d 567, 580 (5th Cir. 2001)). However, the Fifth Circuit does not require courts "to consider each [individual] policy or practice in a vacuum." *Id.* at 255. "The court may properly consider how individual policies or practices interact with one another within the larger system." *Id.* When a plaintiff alleges that several policies collectively violated his or her constitutional rights, a fact finder may consider the "different, compounding ways that these alleged policies might interact [and] reasonably conclude that they had a mutually enforcing effect that deprived [the plaintiff of his or her rights]." *Sanchez v. Young Cnty.*, 956 F.3d 785, 796 (5th Cir.), *cert. denied*, 141 S. Ct. 901 (2020) (citing *Wilson v. Seiter*, 501 U.S. 294, 304 (1991)). Jail policies may violate prisoners' rights "in combination when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need." *Wilson*, 501 U.S. at 304.

Here, the identifiable human need is the need to be protected from one's suicidal tendencies while in custody. And a reasonable fact finder may conclude that the alleged policies, taken together, interacted to cause the violation of Schubert's rights. Per

Culberson County custom, the Individual Defendants failed to screen Schubert. Compl. ¶¶ 19, 84. This reduced or eliminated the chance that an employee would notify a magistrate or mental health services of Schubert's situation, which likely would have been required if the TCJS form directions were followed. As a result, Schubert was deprived of an opportunity to obtain mental health care. Compl. ¶ 73. The County policy of not taking detainees suffering from mental illness to a facility upon arrest or staffing its jail with a mental health professional further limited his opportunities to get necessary care. Compl. ¶¶ 86–87.

Moreover, the failure to check on Schubert for nearly an hour—consistent with Culberson County's lax "as needed" checking policy—gave Schubert the time to form a ligature with the jail bedding and hang himself in his cell, which he may have been less likely to do if he had been able to get mental health care. Compl. ¶ 88. Finally, if the jail was understaffed per County custom, the jailer on duty would be even less likely to check on Schubert frequently and less able to detect whether he needed mental health treatment or other attention. Compl. ¶ 89. In fact, on the night of Schubert's death, Jailer Zambra was the sole employee on duty and responsible for both dispatch duties and monitoring detainees, which likely influenced her failure to check on Schubert for forty-two minutes. Compl. ¶¶ 43–44. Taken together, a fact finder could determine that these policies mutually reinforced each other to deprive Schubert of protection from his known suicidal tendencies, in violation of the Constitution. *See Sanchez*, 956 F.3d at 796.

iii. Objective deliberate indifference

Finally, Plaintiffs must show that the policies were "adopted or maintained with objective deliberate indifference to the pretrial detainee's constitutional rights." *See Hare*, 74 F.3d 649 n.14. "A county acts with deliberate indifference where its policymakers promulgate or fail to promulgate a policy or custom, despite the known or obvious consequences that constitutional violations will result." *Shepard v. Hansford Cnty.*, 110 F. Supp. 3d 696, 715 (N.D. Tex. 2015) (citing *Piotrowski*, 237 F.3d at 579). Because the standard is objective, courts "consider[] not only what the policymaker actually knew, but what he should have known, given the facts and circumstances surrounding the official policy and its impact on the plaintiff's rights." *Lawson v. Dallas Cnty.*, 286 F.3d 257, 264 (5th Cir. 2002). Objective deliberate indifference may "be inferred . . . from a pattern of constitutional violations." *Garza*, 922 F.3d at 637.

Here, Plaintiffs have alleged one prior troubling violation that occurred in the Culberson County jail, which is factually similar to this case and consistent with the County customs that Plaintiffs allege. Less than two years before Schubert's death, Melody Kopera committed suicide in the same facility. Compl. ¶ 91. Kopera's answers to the TCJS screening questions strongly suggested she was at risk of suicide. Compl. ¶¶ 92, 99. But her screening was not properly completed, because there was no notification to a magistrate or mental health professional. Compl. ¶ 98. For this failure, TCJS sanctioned Culberson

County. Compl. ¶ 95. Moreover, in line with the County policies, Compl. ¶¶ 86–87, Kopera was not provided with any psychiatric care when she was arrested or during her detention. Compl. ¶ 99. Finally, Kopera was left for twenty-two minutes before she was found suspended. Compl. ¶ 96. Though less than the time that Schubert was left alone, the very strong indicators of suicide risk in Kopera's case suggest that leaving her for even twenty-two minutes may have been indifferent to her safety. Compl. ¶¶ 92, 99. This failure to check on a suicidal detainee frequently is consistent with Culberson County's lax checking policy, as alleged by Plaintiffs. Compl. ¶ 88.

Moreover, in the years before the events of this case, Culberson County received a string of other citations from TCJS for violating state minimum jail standards related to suicide prevention, demonstrating the County's cavalier attitude towards the safety rules designed to protect detainees from harm. These citations include failing to ensure jailers made mental health notifications to appropriate parties, Compl. ¶ 106–07, allowing jailers without proper training to classify detainees, Compl. ¶ 108, failing to record the results of mental health record searches on detainee's screening forms, Compl. ¶ 110, and maintaining an inadequate Suicide Prevention Training program, Compl. ¶ 111.

Although a pattern of violating state standards does not necessarily amount to a pattern of federal constitutional violations, it supports the inference that Culberson County has maintained the customs alleged by Plaintiffs despite the "obvious consequences that constitutional violations will

result." *See Shepard*, 110 F. Supp. 3d at 715. The constitutional violation at issue in this case is the failure to protect a detainee from his known suicidal tendencies, and the TCJS standards that Culberson County has repeatedly violated are specifically designed to prevent detainees from committing suicide. As such, those repeated violations objectively and reasonably indicate a lack of concern for detainees' safety and a pattern of disregard for their constitutional rights to be protected. Coupled with Melody Kopera's relatively recent suicide while in custody, Culberson County's history of alleged disregard for the rules designed to protect the very constitutional right at issue here supports a finding that the County's policies were maintained with objective deliberate indifference. Because Plaintiffs have sufficiently pleaded that the Individual Defendants violated Schubert's rights with subjective deliberate indifference and that those violations were caused by policies maintained with objective deliberate indifference by Culberson County, Plaintiffs' *Monell* claim may go forward. *See Olabisiomotosho*, 185 F.3d at 526. Culberson County's Motion is denied.

3. Other claims

In addition to their § 1983 claims, Plaintiffs seek "all remedies and damages available pursuant to Texas and federal law, including but not necessarily limited to the Texas wrongful death statute (Tex. Civ. Prac. & Rem. Code § 71.002 *et seq.*), the Texas survival statute (Tex. Civ. Prac. & Rem. Code § 71.021), the Texas Constitution, common law, and all related and/or supporting case law." Compl. ¶ 118.

Plaintiffs do not elaborate further on these claims. However, Defendants' Motions to Dismiss address only Plaintiffs' § 1983 claims alleging federal constitutional violations, and do not address any other causes of action set out in the Complaint. Thus, to the extent that Plaintiffs assert any additional claims, the Court does not dismiss them now.

III. CONCLUSION

For the reasons set forth above, the Court enters the following orders:

The Borrego Motion, ECF No. 15, is **GRANTED** in part and **DENIED** in part. The Motion is granted as to Plaintiffs' bystander liability claim and denied as to Plaintiffs' failure to protect claim. Plaintiffs' bystander liability claim against Jailer Borrego is **DISMISSED**.

The Carrillo Motion, ECF No. 19, is **GRANTED** in part and **DENIED** in part. The Motion is granted as to Plaintiffs' bystander and supervisory liability claims and denied as to Plaintiffs' failure to protect claim. Plaintiffs' bystander and supervisory liability claims against Sheriff Carrillo are **DISMISSED**.

The Melendez Motion, ECF No. 17, is **GRANTED** in part and **DENIED** in part. The Motion is granted as to Plaintiffs' bystander liability claim and denied as to Plaintiffs' failure to protect claim. Plaintiffs' bystander liability claim against Deputy Melendez is **DISMISSED**.

The Zambra Motion, ECF No. 16, is **GRANTED**. The Plaintiffs' § 1983 claims against Zambra are **DISMISSED**.

The Diaz Motion, ECF No. 18, is **GRANTED**. Plaintiffs' § 1983 claims against Deputy Diaz are **DISMISSED**.

The County Motion, ECF No. 20, is **DENIED**.

SO ORDERED.

SIGNED this 13th day of January, 2022.

/s/
KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE