IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
May 13, 2020

Lyle W. Cayce
Clerk

No. 19-50663

RODRICK JACKSON,

Plaintiff–Appellant,

versus

CITY OF HEARNE, TEXAS; JOHN NARON; PEE WEE DRAKE; RUBEN GOMEZ; EMMETT AGUIRRE; MARGARET SALVAGGIO; BRYAN F. RUSS, JR.; THOMAS WILLIAMS; STEPHEN YOHNER; PATRICIA MENDOZA; STEPHANIE RODRIGUEZ; PAT ARMSTRONG; HAZEL EMBRA; JOYCE RATTLER,

Defendants–Appellees.

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

Before SMITH, HO, and OLDHAM, Circuit Judges.

JERRY E. SMITH, Circuit Judge:

Rodrick Jackson sued the City of Hearne, several of its officials and officers, and private citizens under 42 U.S.C. §§ 1983 and 1985 for alleged violations of his First Amendment, equal protection, and due process rights. The district court granted defendants' motion to dismiss, and we affirm.

I.

Because we are evaluating a motion to dismiss, we are cabined to the

facts alleged in the complaint, which we assume are true and construe in the light most favorable to the plaintiff. *See True v. Robles*, 571 F.3d 412, 417 (5th Cir. 2009). Those facts are that Jackson is a former minister in Hearne, which he describes as "a corrupt little town with a long history of racial discrimination." He views himself as a fighter of corruption who has long opposed the "members of the corrupt ruling class . . . known locally as the 'Booger County Mafia,'" who "r[u]n local government . . . for their own personal benefit, with little or no consideration for black residents."

According to Jackson, the Hearne Police Department ("H.P.D.") is embedded in local crime and corruption. For instance, former Police Sergeant Stephen Yohner "had a history of seizing contraband from suspects and keeping it for personal use" or selling it. "After Defendant Yohner was forced to resign for sexual misconduct, [Police Chief Thomas] Williams was observed dumping some of [Yohner's] illegal drugs down a toilet at the police building." Williams also did nothing to prevent Yohner from sexually harassing a female police officer.

In 2015, Jackson began obtaining city records through the Texas Public Information Act and publicizing his findings. After Jackson requested the city's utility billing records, then-City Manager Lloyd Drake ordered city employees to shut off Jackson's electricity, which was not turned back on for a day. Former Councilmembers Hazel Embra and Joyce Rattler—who "initially ran for city council as reformers" but later "switched sides and pledged their loyalty to [Mayor Ruben] Gomez and the Mafia"—laughed at Jackson when he informed them that Drake had disconnected his electricity. Embra and Rattler "kept [Drake] employed as city manager *because* he was corrupt and retaliatory, and because he would do the dirty work of the Mafia." "In exchange for pledging her loyalty to [Mayor] Gomez and the Mafia, [Councilmember] Embra

was appointed municipal judge (even though she had no qualifications whatsoever) and the salary for the position was doubled."

The next year, Jackson ran for and obtained a city council seat on a platform of cleaning up corruption. While on city council, Jackson "had frequent and public conflicts with Mafia cronies at city hall," particularly Gomez and City Manager John Naron.

In 2016, a local resident named Stephanie Rodriguez "beat her daughter with a shoe and a belt before evicting her" after learning that she had been sleeping with a boy from school. Out of the kindness of his heart, Jackson took the minor in. But, as the story goes, no good deed goes unpunished. The minor soon decided that she wanted to move back to her mother's house. To procure sympathy from her abusive mother, she left Jackson's house and told people that he had sexually molested her. The H.P.D. was soon notified of the minor's allegations and sent a caseworker to interview her. They never, however, interviewed Jackson, much to his dismay.

The next day, former city attorney Bryan F. Russ, Jr., summoned Yohner to his law office. There, Russ and Rodriguez demanded criminal charges against Jackson. Yohner referred the allegations to the Robertson County District Attorney ("D.A."), who rejected the case after reviewing the evidence.

A couple of weeks later, however, the H.P.D. issued Jackson a misdemeanor assault citation—equivalent to a traffic ticket, with a maximum fine of $500. Williams informed Jackson that he was issued the citation because of "pressure from the family." Jackson interpreted that to mean pressure from Rodriguez, who—ashamed of her abuse—knew she could distract from that issue by shifting blame to Jackson. Although Yohner issued the citation, Williams and Police Lieutenant Pat Armstrong pulled the strings backstage.

The H.P.D. had never charged a person with a Class C misdemeanor after the D.A. rejected felony charges. Additionally, "[a]t the time charges were filed . . . city council members were fully aware of the fact that Defendant Williams was running a rogue police department, and that he had a history of hiring incompetent police officers." Motivated to retaliate against Jackson because of their political disagreements, Naron authorized funding for a special prosecutor after the D.A. rejected the criminal case. He did that without consulting city council, although the council—including Councilmembers Emmett Aguirre and Margaret Salvaggio—later ratified his decision.

Municipal Judge Tommy Starns initially presided over the misdemeanor case. Jackson moved to compel the prosecution to produce information surrounding Yohner's resignation. The city sent Starns letters through his clerk, explaining that information regarding Yohner's suspension would not be available until the Texas Attorney General issued a ruling on its release. According to Jackson, Naron made the clerk give the judge the *ex parte* information to protect Yohner from the embarrassment of having his file released and to deny Jackson access to the evidence that he needed to defend himself. At Jackson's request, Starns recused from the case.

Although a jury acquitted Jackson, he claims great harm not only financially but physically, emotionally, and spiritually. In addition to the stigma of the charge, Jackson lost his job as a school bus driver and no longer works as a minister.

Jackson sued under § 1983 and § 1985 for violations of his First Amendment, equal protection, and due process rights.[1] The defendants moved to

[1] The defendants are the city, Naron, Drake, Gomez, Aguirre, Salvaggio, Russ, Williams, Yohner, Rodriguez, Armstrong, Embra, and Rattler.

dismiss all of Jackson's claims, which the court granted. Jackson appeals.

II.

We review a Rule 12(b)(6) dismissal *de novo*, "accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff." *True*, 571 F.3d at 417. "Dismissal is appropriate when the plaintiff has not alleged 'enough facts to state a claim to relief that is plausible on its face' and has failed to 'raise a right to relief above the speculative level.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)).

To plead a constitutional claim under § 1983, Jackson must allege that a state actor violated a constitutional right. *Johnson v. Dall. Indep. Sch. Dist.*, 38 F.3d 198, 200 (5th Cir. 1994). "To state a claim under § 1985(3), a plaintiff must allege facts demonstrating (1) a conspiracy; (2) for the purpose of depriving a person of the equal protection of the laws; and (3) an act in furtherance of the conspiracy; (4) which causes injury to a person or a deprivation of any right or privilege of a citizen of the United States." *Lockett v. New Orleans City*, 607 F.3d 992, 1002 (5th Cir. 2010) (per curiam).

III.

Jackson alleges that Williams, Yohner, Armstrong, Naron, Gomez, Aguirre, and Salvaggio violated his First Amendment, equal protection, and due process rights. The court held that those defendants were entitled to qualified immunity ("QI").

"[QI] shields federal and state officials from money damages unless a plaintiff pleads facts showing (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." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (quotation marks omitted). "[L]ower courts have discretion to decide which of the

two prongs of [QI] analysis to tackle first." *Id.* (citing *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)).

"To be clearly established, a right must be 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). "In other words, existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* (quotation marks omitted).

The plaintiff has the burden of establishing a constitutional violation and overcoming a QI defense. *McClendon v. City of Columbia*, 305 F.3d 314, 323 (5th Cir. 2002) (en banc) (per curiam). To do so, the plaintiff "must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a [QI] defense with equal specificity." *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012).

A.

Jackson bases his equal protection claim on selective prosecution. "Generally, the government has broad discretion in determining who [*sic*] to prosecute." *United States v. Sparks*, 2 F.3d 574, 580 (5th Cir. 1993). Accordingly, "the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation." *Oyler v. Boles*, 368 U.S. 448, 456 (1962). "A prima facie showing of unconstitutional selective prosecution requires [the plaintiff] first to demonstrate that [he] w[as] singled out for prosecution while others similarly situated who committed the same crime were not prosecuted."[2] The plaintiff "next must show that the government's discriminatory selection of [him] for prosecution was invidious or done in bad

[2] *Sparks*, 2 F.3d at 580; *see also United States v. Armstrong*, 517 U.S. 456, 465 (1996).

faith—i.e., that the government selected its course of prosecution because of, rather than in spite of, its adverse effect upon an identifiable group."[3]

Jackson fails to allege disparate treatment of similarly situated persons. His complaint provides several comparators: (1) Yohner, who was not indicted after committing unspecified sexual misconduct; (2) Williams and Yohner (a second time), who were not charged with misdemeanors after a grand jury refused to indict them for destroying evidence and violating drug laws; (3) four private citizens (John Gonzales, Beatrice Vaca, Tyvell Shepard, and Michael Bates) who were not charged with misdemeanor assault after the D.A. rejected the H.P.D.'s charges (of indecency with a child, felony burglary and assault, aggravated assault with a deadly weapon, and aggravated assault with a deadly weapon, respectively); and (4) Stephen Stem, a former H.P.D. officer who was not charged with misdemeanor assault after a grand jury rejected (unspecified) charges against him.

None of those individuals is similarly situated to Jackson. Unlike Jackson, a grand jury refused to indict Williams, Yohner, and Stem. And none of the four individuals who were not given misdemeanor assault citations after the D.A. rejected the H.P.D.'s charges served as councilmembers. Because Jackson does not plead disparate treatment among similarly situated persons, he does not state an equal protection claim.

Jackson also contends that the court erred by denying him discovery on

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[3] *Sparks*, 2 F.3d at 580 (quotation marks omitted); *see also Armstrong*, 517 U.S. at 465 ("The claimant must demonstrate that the federal prosecutorial policy had a discriminatory effect and that it was motivated by a discriminatory purpose." (quotation marks omitted)); *Bryan v. City of Madison*, 213 F.3d 267, 277 (5th Cir. 2000) ("[T]o successfully bring a selective prosecution or enforcement claim, a plaintiff must prove that the government official's acts were motivated by improper considerations, such as race, religion, or the desire to prevent the exercise of a constitutional right.").

similarly situated comparators. To get to discovery, Jackson must allege sufficient facts in his complaint to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). "Because [Jackson's] complaint is deficient under Rule 8, he is not entitled to discovery, cabined or otherwise." *Id.* at 686.[4]

Jackson's alleged constitutional right was also not clearly established. He doesn't point to any authoritative caselaw that would have provided fair warning that any defendant's conduct violated the Constitution under the circumstances. Instead, he broadly generalizes that because "[e]very case that the [p]laintiff cites in this brief was either decided before 2018, or it internally cites cases that were decided before 2018," "it was clearly established that government officials could not selectively prosecute someone based on his First Amendment activities," "tamper[] with a criminal defendant's right to a fair trial," or "retaliate against someone for exercising his First Amendment rights." Because Jackson failed to cite any authority showing that the right was clearly established, he has waived that issue.[5] He has not pleaded a

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[4] In a letter submitted under Federal Rule of Appellate Procedure 28(j), Jackson asserts, for the first time, that the we should join three circuits in holding "that the standards for obtaining discovery are more relaxed for selective enforcement claims versus selective prosecution claims." Because Jackson did not raise that theory in his opening brief—in which he repeatedly refers to his "selective prosecution" claim and doesn't use the word "enforcement" once—it is waived. *See United States v. Hernandez*, 633 F.3d 370, 377 n.13 (5th Cir. 2011).

[5] *See L & A Contracting Co. v. S. Concrete Servs., Inc.*, 17 F.3d 106, 113 (5th Cir. 1994) ("Southern cites no authority in its one-page argument . . ., however, and we consider the challenge abandoned for being inadequately briefed."); *United States v. Upton*, 91 F.3d 677, 684 n.10 (5th Cir. 1996) ("[C]laims made without citation to authority or references to the record are considered abandoned on appeal."); *see also* FED. R. APP. P. 28(a)(8)(A). Even if Jackson hadn't waived that argument, he would still lose. He complains that Williams, Armstrong, and Yohner (collectively, "Officers") charged him with a misdemeanor after a teenager complained that he had sexually molested her. With that in mind, it is not "sufficiently clear that every reasonable [officer] would have understood that" issuing Jackson a misdemeanor citation after a teenager accused him of sexually molesting her would violate the Constitution. *Reichle*, 566 U.S. at 664 (cleaned up).

Likewise, Jackson's equal protection claims against Gomez, Aguirre, and Salvaggio

constitutional violation, and the individual defendants are entitled to QI, so his conspiracy claim also fails.[6]

B.

Jackson claims that Naron violated his due process rights by submitting letters to the judge *ex parte*.[7] The district court correctly determined that Jackson failed to allege a constitutional violation. Additionally, Naron's conduct did not violate clearly established law.

In 1998, "[a]fter extensive research, [this court] could locate no Fifth Circuit case that found ex parte 'contacts' to constitute a reversible violation of due process. What [the court] did find were a vast number of cases holding the contrary—often in far more serious . . . contexts."[8] *Ex parte* "communication amounts to a due process violation . . . only to the extent that a fair and just hearing would be thwarted . . . and to that extent only."[9]

Jackson alleges that Naron communicated with the court *ex parte*. But he also concedes that Starns then recused, so the *ex parte* communication did

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(collectively, "Leaders"), as well as City Manager Naron—based on their funding a special prosecutor and failing to prevent the police from selectively prosecuting Jackson—were not clearly established. The Officers had probable cause to issue a misdemeanor. And the court cannot conclude that every reasonable councilmember, mayor, or city manager would have understood that he or she violated Jackson's rights by approving funding to prosecute a citation supported by probable cause. Jackson provides no authority suggesting otherwise.

[6] *See Hale v. Townley*, 45 F.3d 914, 920 (5th Cir. 1995) ("[A] conspiracy claim is not actionable without an actual violation of section 1983.").

[7] Jackson's complaint purports to assert all claims against all defendants, but the only defendant to whom the due process claim is relevant is Naron.

[8] *Crowe v. Smith*, 151 F.3d 217, 234 (5th Cir. 1998); *see id.* at 234 n.24 (collecting cases).

[9] *Young v. Herring*, 938 F.2d 555, 557 (5th Cir. 1991) (quotation marks omitted); *see also Hernandez v. Terrones*, 397 F. App'x 954, 970 (5th Cir. 2010) (per curiam) (holding, in the context of suggestive identification procedures never used at trial, that "for there to be a due process violation[,] . . . the defendant's right to a fair trial must be impaired").

not negatively impact the trial at which he was acquitted. Because Jackson has not alleged facts establishing that the *ex parte* communication violated his right to a fair and just hearing, he has not pleaded a cognizable injury. *See Young*, 938 F.2d at 557.

Moreover, Jackson has not produced any caselaw establishing that a comparable *ex parte* contact violates the Due Process Clause. Even if Naron's conduct violated Jackson's due process rights, those rights were not clearly established. *See Reichle*, 566 U.S. at 664.

C.

The district court correctly held that the Officers, Leaders, and Naron were entitled to QI on Jackson's First Amendment retaliation claim. On appeal, Jackson "disavow[s] a retaliatory prosecution claim" and states that his First Amendment claims arise exclusively "from (1) Defendant Naron's *ex parte* communications and (2) Defendant Russ's efforts to derail an initiative petition."[10] Jackson therefore waives his First Amendment claims against everyone else. *See Yohey v. Collins*, 985 F.2d 222, 224–25 (5th Cir. 1993).

First Amendment retaliation requires that (1) the defendant was "engaged in constitutionally protected activity, (2) the defendant['s] actions caused [him] to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and (3) the defendant['s] adverse actions were substantially motivated against the plaintiff['s] exercise of constitutionally protected conduct." *Culbertson v. Lykos*, 790 F.3d 608, 618 (5th Cir. 2015).

Jackson asserts that Naron retaliated by "trying to rig" his criminal trial. As alleged in the complaint, however, Naron merely informed the court that certain discovery would not be available until the Attorney General had issued

[10] Jackson's claim against Russ is discussed below.

a ruling on its release. Moreover, as we have said, the judge recused, so the *ex parte* communication did not harm Jackson. Naron's conduct thus would not "chill a person of ordinary firmness."[11]

Even if Jackson alleged a constitutional violation, it would not be clearly established. He again produces no precedent establishing that anything close to Naron's conduct violates the Constitution.

IV.

Jackson fails to state a claim against the other defendants: the city, Russ, Drake, Emra, Rattler, and Rodriguez.

A.

Jackson asserts that the city violated his First Amendment and equal protection rights. Municipalities face § 1983 liability "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury . . . ." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). To state a § 1983 clam against a municipality, "a plaintiff must show that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right." *Hicks-Fields v. Harris Cty.*, 860 F.3d 803, 808 (5th Cir. 2017).

"Official policy" includes unwritten practices that are "so common and well settled as to constitute a custom that fairly represents municipal policy." *Johnson v. Moore*, 958 F.2d 92, 94 (5th Cir. 1992). Moreover, "the unconstitutional conduct must be directly attributable to the municipality through some

[11] *Culbertson*, 790 F.3d at 618; *see also, e.g., Smart v. Holder*, 368 F. App'x 591, 592–93 (5th Cir. 2010) (per curiam) (holding that a reasonable individual would not be chilled by a Special Assistant U.S. Attorney's contacting that person's supervisor and suggesting that the supervisor cut off the individual's access to resources used to prosecute the lawsuit).

sort of official action or imprimatur; isolated unconstitutional actions by municipal employees will almost never trigger liability." *Piotrowski v. City of Hous.*, 237 F.3d 567, 578 (5th Cir. 2001) (footnote omitted). "Prior indications cannot simply be for any and all 'bad' or unwise acts, but rather must point to the specific violation in question." *Estate of Davis ex rel. McCully v. City of N. Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005).

For several reasons, Jackson fails to state a *Monell* claim. As discussed above, he fails to allege a constitutional violation against any defendant. That alone forecloses his claim. He also fails to identify any municipal policy or custom, much less one that violated a constitutional right. Finally, instead of showing a pattern of the specific violation in question, Jackson emphasizes that "the department had never before (and has never since) charged a defendant with a Class C misdemeanor after the [D.A.] rejected a felony charge." But a single incident doesn't establish a custom or policy.[12]

B.

Jackson claims that Russ violated his equal protection and First Amendment rights based on two distinct sets of facts. First, Jackson alleges that Russ—a former city attorney—summoned Yohner to his law office and "used his political influence to demand criminal charges against" Jackson. Because the Officers did not violate the Constitution by issuing Jackson a citation, Russ did not violate the Constitution by encouraging the Officers to issue it.

Second, Jackson purports to incorporate documents from *City of Hearne v. Johnson*, 929 F.3d 298 (5th Cir. 2019), into his complaint for a separate claim. As a general matter, "courts must consider the complaint in its entirety,

[12] *See Peterson v. City of Fort Worth*, 588 F.3d 838, 851 (5th Cir. 2009) ("A pattern requires sufficiently numerous prior incidents, as opposed to isolated instances." (quotation marks omitted)).

as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

Jackson's complaint does not specify how the incorporated documents relate to this case, offering only the conclusional allegation that "[a]s set forth in the [incorporated] documents, Defendant Russ unlawfully impeded the [p]laintiff's effort to put the initiative on the ballot and to vote on a forensic audit of city finances." Even if the documents from *Johnson* were properly incorporated into the complaint, however, we are nevertheless bound by our holding that the complained-of conduct constitutes only a "procedural injury [that] does not impact any concrete interest."[13]

C.

Jackson asserts § 1983 and § 1985 claims against Drake, Embra, and Rattler based primarily on Drake's allegedly "direct[ing] city employees to shut off [Jackson's] electricity in retaliation for his records requests and the public embarrassment that they caused city officials." The court correctly held that the statute of limitations bars Jackson's claims. For § 1983 actions, limitations is determined by reference to the forum state's law.[14] In Texas, the pertinent period is two years.[15] "While the limitations period is determined by reference to state law, the standard governing the accrual of a cause of action under [§] 1983 is determined by federal law." *Burrell v. Newsome*, 883 F.2d 416, 418

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[13] *Johnson*, 929 F.3d at 302; *see Teague v. City of Flower Mound*, 179 F.3d 377, 383 (5th Cir. 1999) (describing the rule of orderliness).

[14] *Owens v. Okure*, 488 U.S. 235, 239 (1989); *Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994).

[15] *See Stanley v. Foster*, 464 F.3d 565, 568 (5th Cir. 2006); TEX. CIV. PRAC. & REM. CODE § 16.003(a).

(5th Cir. 1989). The limitations period begins to run "the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." *Piotrowski*, 237 F.3d at 576.

Jackson alleges that Drake directed city employees to shut off his electricity on July 21, 2015. Because Jackson knew that his house did not have power, the limitations period began to run that day. Jackson didn't file this suit until January 2018, and he didn't bring Embra and Rattler into the suit until April 2018, when he filed his First Amended Complaint. More than two years had elapsed.

Jackson now states that he "never sought damages for events that happened more than two years before he filed suit. Instead, he cited the earlier events (1) to show a pattern of events that began in 2015 and continued after he filed this case; and (2) to establish conspiracy liability over Defendants Drake, Embra, Rattler, and other Defendants." Jackson reasons that "[i]f Defendant Drake conspired against the [p]laintiff outside the limitations period, . . . he is nonetheless liable for the subsequent acts of his co-conspirators."

Jackson doesn't state any facts to support his conclusional allegation that Drake, Embra, and Rattler participated in a conspiracy. Relying on pure speculation, Jackson says that "[b]ased on conversations that he heard or participated in, . . . Naron, Gomez, Aguirre, and Salvaggio, as well as the entire city council, were fully aware of the circumstances surrounding the Class C charge, *i.e.*, that the [p]laintiff had been selectively charged for purposes of political retaliation." That statement is not specific enough to establish a conspiracy.[16]

[16] *See Lynch v. Cannatella*, 810 F.2d 1363, 1369–70 (5th Cir. 1987) ("Plaintiffs who

Additionally, assuming *arguendo* that Drake, Embra, and Rattler participated in a conspiracy with the other defendants, Jackson does not allege facts that amount to a constitutional violation. And defendants cannot be liable for a conspiracy that failed to violate the plaintiff's rights.[17]

D.

Jackson's § 1983 claims against Rodriguez were dismissed because Jackson failed to show that she was a state actor. That leaves only the § 1985 conspiracy claim against her. As discussed above, Jackson alleges no underlying constitutional violations. Accordingly, Rodriguez cannot be held liable for participation in a conspiracy that failed to violate any of the plaintiff's rights. *See Mowbray*, 274 F.3d at 280; *Hale*, 45 F.3d at 920.

The judgment of dismissal is AFFIRMED.

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assert conspiracy claims under civil rights statutes must plead the operative facts upon which their claim is based. Bald allegations that a conspiracy existed are insufficient.").

[17] *See Mowbray v. Cameron Cty.*, 274 F.3d 269, 280 (5th Cir. 2001) (holding that there cannot be a conspiracy claim where QI protects the alleged civil rights violators); *Hale*, 45 F.3d at 920 ("[A] conspiracy claim is not actionable without an actual violation of [§] 1983").