

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 3, 2026

Lyle W. Cayce  
Clerk

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No. 25-20045

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LYNWOOD MOREAU,

*Plaintiff—Appellant,*

*versus*

HARRIS COUNTY, TEXAS,

*Defendant—Appellee,*

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JEFFREY STAUBER, INDIVIDUALLY AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED

*Plaintiffs—Appellant,*

*versus*

HARRIS COUNTY, TEXAS,

*Defendant—Appellee,*

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EDWARD LOPEZ

*Plaintiff—Appellant,*

*versus*

HARRIS COUNTY, TEXAS,

*Defendant—Appellee,*

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ANTHONY McCONNELL

*Plaintiff—Appellant,*

*versus*

HARRIS COUNTY, TEXAS,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC Nos. 4:19-CV-4719, 4:19-CV-646,  
4:20-CV-1424, 4:20-CV-2121

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Before SMITH, WIENER,<sup>1</sup> and HIGGINSON, *Circuit Judges*.

STEPHEN A. HIGGINSON, *Circuit Judge*:

Plaintiffs are lieutenants and captains in the Harris County Sheriff's Office who allege they were denied overtime payments in violation of the Fair Labor Standards Act. Harris County, however, asserted that plaintiffs were not owed overtime, as they were exempt administrative and executive employees. The proceedings were handled by a magistrate judge, who agreed in part, concluding that all plaintiffs were paid on a salary basis, that captains were exempt, and that certain lieutenants involved in running county jails were administratively exempt. The case proceeded to trial as to the remaining lieutenants, and the jury found that these lieutenants were exempt administrative and executive employees. Plaintiffs moved for judgment as a

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<sup>1</sup> Judge Wiener was present for oral argument but is unable to participate in this decision. The case is decided by a quorum. *See* 28 U.S.C. § 46(d).

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matter of law or, alternatively, a new trial, asserting a number of grounds: that the magistrate judge improperly submitted questions of law to the jury, that Harris County had not offered sufficient evidence to meet its affirmative-defense burden and that, in concluding the lieutenants qualified for both exemptions, the jury rendered an inconsistent verdict.

We conclude that the magistrate judge correctly determined plaintiffs are paid on a salary basis, did not err in charging the jury, and did not err in denying plaintiffs' renewed motion for judgment as a matter of law or motion for a new trial. Accordingly, we AFFIRM.

I.

A.

The Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, and its implementing regulations require that covered employees be paid overtime for hours worked beyond forty hours per week, *Helix Energy Sols. Grp., Inc. v. Hewitt*, 598 U.S. 39, 43 (2023). “Congress enacted the FLSA to eliminate both ‘substandard wages’ and ‘oppressive working hours.’” *Id.* at 44 (quoting *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 739 (1981)). The FLSA “addresses the former concern by guaranteeing a minimum wage.” *Id.* “It addresses the latter by requiring time-and-a-half pay for work over 40 hours a week.” *Id.* The FLSA’s overtime mandate presents the central issue in this case.

The FLSA and its implementing regulations also provide several “exemptions” for “bona fide executive, administrative, [and] professional” employees that render them ineligible for overtime. *See* 29 U.S.C. § 213(a)(1). An employer has the burden of proving that an exemption applies. *Faludi v. U.S. Shale Sols., L.L.C.*, 950 F.3d 269, 273 (5th Cir. 2020). An employee must meet three conditions to fall within any exemption: “First, the employee must meet certain criteria concerning the performance

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of executive, administrative, and professional duties.” *Hewitt v. Helix Energy Sols. Grp., Inc.*, 15 F.4th 289, 290 (5th Cir. 2021), *aff’d*, 598 U.S. 39 (2023). “Second, the employee must meet certain minimum income thresholds.” *Id.* “Finally, the employee must be paid on a ‘salary basis.’” *Id.* But the exemptions do not apply to certain first responders—including “police officers,” “detectives,” “deputy sheriffs,” “correctional officers,” and the like—if they perform frontline duties. *See* 29 C.F.R. § 541.3(b)(1)–(4).

At issue here are the “administrative” and “executive” exemptions.<sup>2</sup> *See* 29 C.F.R. §§ 541.100, 541.200. The administrative exemption applies to employees: (1) compensated on a salary or fee basis no less than \$455 per week, excluding board, lodging, and other facilities; (2) whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employers customers; and (3) whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. *Id.* § 541.200(a). The executive exemption applies to employees: (1) compensated on a salary basis (salary-basis test); (2) paid at least \$455 (or \$684) per week (salary-level test); and (3) and who carry out specific responsibilities, including “managing the enterprise, directing other employees, and exercising power to hire and fire” (duties test). *Helix*, 598 U.S. at 45; *see also* 29 C.F.R. § 541.100(a).<sup>3</sup>

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<sup>2</sup> The salary floors have changed since this litigation commenced, so we consider the weekly salary amounts as set out by the magistrate judge and the parties, which were in effect during the relevant times. *See Faludi*, 950 F.3d at 273 (using the exemption in place at the time of employment).

<sup>3</sup> The Secretary of Labor has enacted a separate rule, not at issue here, for employees earning at least \$100,000 in total annual compensation. *See Helix Energy*, 598 U.S. at 45–46 (describing the two standards).

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The Department of Labor has also promulgated regulations providing that the exemptions do not apply to certain law enforcement officers whose primary duties are frontline work. *See* 29 C.F.R. § 541.3(b)(1); *see also id.* at § 541.3(b)(2)–(3).

B.

Plaintiffs are lieutenants and captains who work for the Harris County Sheriff's Office (HCSO). HCSO has two general commands: (1) the Law Enforcement Command, which, as its name portends, focuses on “enhancing the safety and earning the trust of Harris County residents by keeping the peace” through law enforcement; and (2) the Criminal Justice Command, which operates the County jail system. Each command has the same organizational structure (starting from the bottom): deputies; sergeants; lieutenants; captains; majors; and an assistant chief at the helm. Of the two commands, plaintiffs fall into three specific categories: (1) law enforcement patrol; (2) law enforcement investigation; and (3) criminal justice.

The parties debate the responsibilities of both lieutenants and captains, which is key to determining whether an exemption applies. Plaintiffs describe lieutenants as not “in charge of any recognized subdivision” but rather the “watch commander[s] for a given shift within a district” and “usually the highest-ranking officer on duty in his assigned district or division.” According to plaintiffs, lieutenants are “primarily responsible for front-line law enforcement work.” Harris County likewise describes the lieutenants as “watch commanders” but notes that they are “responsible for the entire operation of an assigned watch or division,” charged with personnel and resource management. Harris County describes law enforcement lieutenants as squarely focused on the administration and management of personnel. The County describes criminal justice

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lieutenants as “problem solvers” with significant “autonomy” who are focused on the administration of HCSO’s jails.

As to captains, plaintiffs describe them as “in charge of each of the bureau’s divisions or districts.” Harris County labels captains as “managers” and notes that “the scope of their authority” distinguishes lieutenants and captains.

Lieutenants and captains must work forty hours a week. They each accrue compensatory—or comp—time for all hours worked above forty in each workweek, up to 240 hours, from which they can draw time for weeks in which they worked less than forty hours. When a lieutenant or captain lacks comp time, the parties agree that the policy would permit Harris County to dock pay. (Harris County asserts, however, that the record does not show HCSO ever actually docked pay.)

C.

Plaintiff Moreau brought suit individually and as the representative of a putative class against Harris County for the County’s alleged failure to pay overtime. The complaint asserted that: (1) Harris County failed to pay overtime in violation of 29 U.S.C. § 207(a); (2) Harris County failed to award compensatory time off in violation of 29 U.S.C. § 207(o)(1); (3) Harris County failed to pay overtime compensation after plaintiffs accrued 240 hours of comp time, in violation of 29 U.S.C. § 207(o)(3); (4) Harris County failed to pay out unused comp time upon termination of employment, in violation of 29 U.S.C. § 207(o)(4); and (5) Harris County failed to maintain accurate records of hours worked, in violation of 29 U.S.C. § 211(c) and federal regulations. Plaintiff Moreau’s case was consolidated with three others. The district court never certified the class, but approximately fifty individuals filed notices of consent and opted into the class. The parties also consented to the jurisdiction of Magistrate Judge Peter Bray.

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Harris County moved for summary judgment three times. The district court initially denied Harris County's first two motions—which the County submitted when Moreau was the only plaintiff in the case—for summary judgment. But the magistrate judge later granted in part Harris County's third motion for summary judgment. Specifically, the magistrate judge concluded that criminal justice lieutenants and all captains are exempt administrative employees. The magistrate judge concluded, however, that there were genuine issues of material fact as to whether the lieutenants in the law enforcement patrol and investigative categories were exempt administrative employees and determined that their overtime claims would proceed to trial. And the magistrate judge determined that defendants were also entitled to summary judgment on the plaintiffs' other claims, which are not pressed on appeal.

The issues relating to the twenty-nine plaintiffs—all lieutenants—whose claims were not disposed of at summary judgment proceeded to trial, which was held from July 22–26, 2024.

Before trial, the parties submitted various proposed jury charges. At trial, plaintiffs requested special interrogatories to the jury under Federal Rule of Civil Procedure 49 about certain fact questions related to plaintiffs' duties and the amount of time they devoted to those duties. The magistrate judge overruled that objection, specifying that “what constitutes exempt work is a question of law, but whether . . . their work involves the primary duties being exempt, that's a question for the jury.”

The charge submitted to the jury asked, *inter alia*: (1) whether Harris County has proved by a preponderance of the evidence that all plaintiffs were exempt administrative employees; and (2) whether Harris County proved by a preponderance of the evidence that all plaintiffs were exempt executive employees.

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Trial focused on the applicability of the law enforcement and administrative exemptions. After Harris County presented its case, the plaintiffs moved for judgment as a matter of law on the County's executive and administrative exemption defenses under Federal Rule of Civil Procedure 50. At the close of evidence, plaintiffs moved for judgment as a matter of law. The magistrate judge denied the motion.

The jury returned a verdict finding that plaintiffs were exempt as administrative and executive employees. The plaintiffs requested that the magistrate judge order the jury to continue deliberations because the jury's answers were "inconsistent"—that is, the "jury's answer to [both] questions meant that the plaintiffs had two primary duties." The magistrate judge denied this request and entered judgment on the verdict in favor of Harris County.

The plaintiffs then renewed their motion for judgment as a matter of law and, in the alternative, for a new trial under Federal Rule of Civil Procedure 59. Plaintiffs argued, among other things, that there was insufficient evidence for the jury to find that plaintiffs' "primary job duty . . . involved management of a customarily recognized department or subdivision of Harris County or that they could hire or fire anyone" (for the executive exemption), or that plaintiffs' "primary job duty . . . was exempt administrative work" (for the administrative exemption). Instead, plaintiffs asserted that their primary duty was "frontline law-enforcement work, which is nonexempt." They also resubmitted their argument that the jury's verdict was inconsistent and mandated a new trial.

The magistrate judge denied plaintiffs' post-trial motions. Plaintiffs timely appealed.

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## II.

Four distinct issues are presented in this appeal: whether the magistrate judge erred (1) in concluding all plaintiffs are paid on a salary basis; (2) in concluding that the criminal justice lieutenants qualified for the administrative exemption; (3) in charging the jury; and (4) in denying plaintiffs' Rule 50(b) or Rule 59 motions. We address each alleged error in turn and, finding none, AFFIRM.

### A.

At summary judgment, the magistrate judge concluded that all plaintiffs were paid on salary basis, a necessary element of both the administrative and executive exemptions. On appeal, plaintiffs contest this determination. Their argument is two-fold. First, Harris County's comp time scheme functioned as a "reduction based on the quantity of work performed." Second, Harris County did not satisfy two exceptions to the salary-basis test: the public-employer safe-harbor rule and the reasonable-relationship test. We find these arguments unavailing, and affirm the magistrate judge.

### I.

We review the summary judgment order de novo, applying the same standards as did the magistrate judge. *Johnson v. Bd. of Supervisors of Louisiana State Univ. & Agric. & Mech. Coll.*, 90 F.4th 449, 454 (5th Cir. 2024). "Summary judgment is proper when the moving party can demonstrate that, viewing the evidence in the light most favorable to the non-moving party, there is no genuine dispute of material fact and that they are entitled to judgment as a matter of law." *Id.* at 454–55. "A genuine dispute as to a material fact exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 455 (quoting *Rogers v. Bromac Tile Servs., LLC*, 755 F.3d 347, 350 (5th Cir. 2014)). And a panel

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“may affirm summary judgment on any ground supported by the record, even if it is different from that relied on by the district court.” *Id.* (quoting *Reed v. Neopost USA, Inc.*, 701 F.3d 434, 438 (5th Cir. 2012)).

As explained above, an employer has the burden of proving that an exemption applies. *Faludi*, 950 F.3d at 273. Once an employer has “establish[ed] beyond peradventure *all* of the essential elements” of the exemption—an affirmative defense—the “burden shifts to the nonmovant to establish an issue of fact that warrants trial.” *Dewan v. M-I, L.L.C.*, 858 F.3d 331, 334 (5th Cir. 2017), *abrogated on other grounds by Encino Motorcars, L.L.C. v. Navarro*, 584 U.S. 79 (2018).

## II.

The salary-basis test “generally means what its label suggests: an employee is paid on a salary basis if he or she receives the same wage each pay period, regardless of ‘the quality or quantity of the work performed.’” *Escribano v. Travis Cnty.*, 947 F.3d 265, 267 (5th Cir. 2020) (quoting 29 C.F.R. § 541.602(a)). Specifically, the regulation provides that the salary basis test is satisfied where an employee “regularly receives . . . a predetermined amount constituting all or part of the employee’s compensation” where the amount of compensation is “not subject to reduction because of variations in the quality or quantity of work performed.” 29 C.F.R. § 541.602(a).

A Department of Labor regulation entitled, “Effect of improper deductions from salary,” provides that employers that make improper deductions shall lose the exemption “if the facts demonstrate that the employer did not intend to pay employees on a salary basis.” *Id.* § 541.603(a); *see also Escribano*, 947 F.3d at 274 n.8.

In *Escribano*, our court contrasted this regulation with a prior interpretation of the salary-basis test that permitted courts to consider

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whether an employer had a practice or policy of deductions. *See* 947 F.3d at 274. We concluded that this regulation required “evidence of an impermissible reduction practice” for an employer to lose the exemption. *Id.* at 274 (“The County never docked the plaintiffs’ pay, nor does any evidence show that other detectives had their pay reduced.”). The *Escribano* panel joined the First, Sixth, and Tenth Circuits in so holding. *See, e.g., Litz v. Saint Consulting Grp., Inc.*, 772 F.3d 1, 4 (1st Cir. 2014) (affirming a grant of summary judgment where plaintiffs could not demonstrate that defendant “had an actual practice” of reducing pay and where the “undisputed record show[ed] no project manager was paid less than the stipend amount”); *Ellis v. J.R.’s Country Stores, Inc.*, 779 F.3d 1184, 1196–98 (10th Cir. 2015); *Baden-Winterwood v. Life Time Fitness, Inc.*, 566 F.3d 618, 634 (6th Cir. 2009). The *Escribano* court also noted that, under the current regulation, “the existence of a policy” is only partial evidence of a practice—and insufficient without more—to cause the exemption to be lost. *See* 947 F.3d at 274–75 (citing *Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 69 Fed. Reg. 22,181 (2004) (hereinafter “*Defining and Delimiting*”); *see also Defining and Delimiting*, 69 Fed. Reg. 22,181 (“We believe that final section 541.603 calls for a case-by-case factual inquiry.”)).

The *Escribano* court thus read “subject to reduction” in § 541.602(a) through the lens of § 501.603(a). Put another way, the court understood that an employer must show that there is no actual practice of salary reductions to satisfy the salary-basis test. A plaintiff may rebut such a showing by offering contrary evidence.

Harris County meets its burden here and plaintiffs do not overcome it—nor do plaintiffs effectively distinguish *Escribano*. Harris County offered evidence that its lieutenants and captains all earn a standard, guaranteed salary based on their role and years of experience. Their pay is calculated on

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a regular, non-hourly basis—every two weeks. Harris County provides employees with several forms of “paid leave,” including compensatory time. Exempt employees earn an hour of compensatory time for each hour worked over forty per week. Where an employee—exempt or non-exempt—does not work forty hours in a given week, they are subject to “deductions for partial-day absences.”

The record demonstrates that plaintiffs earned the same amount each pay period, satisfying the first two parts of the salary-basis test. *See* 29 C.F.R. § 541.602(a) (“An employee will be considered to be paid on a ‘salary basis’ . . . if the employee *regularly receives* each pay period . . . a predetermined amount constituting all or part of the employee’s compensation.”). Plaintiffs attempt to argue on reply that nothing in the record “guaranteed” they would receive a certain amount of pay, citing a Sixth Circuit case in support. But that case—*Hughes v. Gulf Interstate Field Servs., Inc.*, 878 F.3d 183 (6th Cir. 2017)—is distinguishable. There, the Sixth Circuit concluded that the plaintiffs had introduced evidence that they were paid on a shift basis. *See id.* at 189. Thus, the salary-basis test under 29 C.F.R. § 541.604, not under 29 C.F.R. § 541.602, applied. *See id.* Yet here, there is no such evidence of pay by shifts or the like.

The Supreme Court has since explained that the “basis”—or the “unit of time used to calculate pay”—on which an employee is paid “determine[s] which test applies.” *Helix*, 598 U.S. at 52; *accord Kelly v. City of Alexandria*, 163 F.4th 95, 101–02 (4th Cir. 2025) (describing *Helix*’s dictates). As the Fourth Circuit recently explained in a case examining whether a city paid firefighting chiefs on a salary basis:

[T]he question is what role the hourly rate plays in the chief’s pay. Here, beyond the fact that some of the chiefs’ compensation can (in a sense) be “calculate[d]” using an

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hourly rate, the chiefs have little in common with the hourly-, daily-, and shift-rate workers that *Helix* described.

*Kelly*, 163 F.4th at 102. There, the Fourth Circuit rejected the chiefs' contention that their pay was calculated on an hourly basis because the "unit or method for calculating pay was an hourly unit." *Id.* The city, even when the chiefs worked fewer than the standard hours in a pay period, "makes up the difference." *Id.* The chiefs' pay did not fluctuate based on the number of hours worked, nor was it always a "function of how many hours [a chief] has labored." *Id.* (citation modified). That the city used "paid leave to reach the predetermined amount" did not change the conclusion. *Id.* at 103 .

The same is true here. Plaintiffs are paid every two weeks, and their work is distinguishable from the standard hourly laborer, even if HCSO's policy takes hours into account. *See Kelly*, 163 F.4th at 101–02. So the only question is whether this payment is subject to reduction.

As our court held in *Escribano*, following the 2004 amendments to the overtime regulations, actual practice is the cornerstone inquiry.<sup>4</sup> *See Escribano*, 974 F.3d at 274. A policy allowing for impermissible reductions is not "sufficient evidence by itself to cause the exemption to be lost." *Id.* (quoting 69 Fed. Reg. at 22,181)). Instead, we look to whether there is "evidence of an impermissible reduction practice." *Id.* ("The County never docked the plaintiffs' pay, nor does any evidence show that other detectives had their pay reduced."). And, as in *Escribano*, we find no such evidence.<sup>5</sup>

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<sup>4</sup> The cases on which plaintiffs principally rely in arguing that Harris County's policy fails to satisfy the salary-basis test all predate the Department of Labor's regulatory change.

<sup>5</sup> Plaintiffs attempt to distinguish *Escribano* in part because the parties in that case stipulated to the fact that plaintiffs and their peer detectives "earned the same predetermined amount each pay period." Here, although the parties do not stipulate to it, record evidence demonstrates that Harris County pays lieutenants a set amount.

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Certainly, Harris County's policy could allow for impermissible—and potentially violative—deductions in salary. (The County itself provides that the policy could raise concerns for private employers). But the record does not demonstrate that Harris County actually effectuated any deductions. To the contrary, Harris County offered evidence that plaintiffs were paid consistently, which plaintiffs do not rebut.

We conclude that Harris County paid plaintiffs on a salary basis, not subject to reduction.<sup>6</sup>

B.

The magistrate judge concluded that Harris County demonstrated that criminal justice lieutenants qualified for the administrative exemption because their primary duty is the “administration of HCSO’s jails.” The judge further concluded that although these plaintiffs “sometimes performed floor duty tasks” that would be considered non-administrative, no testimony demonstrated that these tasks “could plausibly be considered” their primary duty.

Plaintiffs argue that Harris County could not establish that Plaintiff Moreau and other plaintiffs employed as criminal justice lieutenants qualified for the administrative exemption and, as such, that the magistrate judge erred in granting summary judgment on these grounds. But plaintiffs merely assert

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Moreover, plaintiffs argue that *Escribano* is distinguishable in that it was not a summary judgment case but, rather, was decided on a Rule 50(b) motion. However, those standards are parallel. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, (2000) (“[T]he standard for granting summary judgment mirrors the standard for judgment as a matter of law, such that the inquiry under each is the same.”) (internal quotation marks and citation omitted)).

<sup>6</sup> We do not find it necessary to address plaintiffs’ additional argument that the *Escribano* court did not address the public-employer safe-harbor rule.

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that Harris County’s summary judgment evidence was insufficient, recite the administrative-exemption standard, and describe relevant case law. While they do reference a few record citations that they argue stand for the proposition that the criminal justice lieutenants are “primarily responsible for ensuring that inmates were in cells, searching inmates and ensuring cell doors were locked,” it is unavailing. Plaintiffs never apply the standard nor any precedent to the facts of their case, instead merely asserting that “[n]one of Harris County’s summary-judgment evidence” supported the magistrate judge’s conclusion. Plaintiffs also neglect to address Harris County’s response, wherein it argues that the magistrate judge correctly concluded these plaintiffs’ primary duty was non-manual work directly relating to the management or general operations of HCSO and that summary judgment was thus appropriate.

The Supreme Court has instructed that the FLSA exemptions must be given “a ‘fair reading’ rather than a narrow construction.” *Gilchrist v. Schlumberger Tech. Corp.*, 143 F.4th 620, 629 (5th Cir. 2025) (per curiam) (citation omitted).<sup>7</sup> For the administrative exemption, an employer must prove that an employee is (1) compensated on a salary basis no less than \$455 per week, excluding board, lodging, and other facilities; (2) whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employers customers; and (3) whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. 29 C.F.R. § 541.200. Regulations further explain work “directly related to management

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<sup>7</sup> Both parties rely on our decision in *Dewan*. However, as another panel of our court recognized just a year ago, *Dewan* was decided before *Encino*. As such, some of its analysis is no longer applicable. See *Gilchrist*, 143 F.4th at 629 (explaining *Encino*’s instruction and impact on *Dewan*).

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or general business operations” as the type of work “related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.” 29 C.F.R. § 541.201(a). Examples of qualifying duties include accounting, budgeting, quality control, personnel management, human resources, and employee benefits, among other similar activities. *Id.* at § 541.201(b). A primary duty is the “principal, main, major or most important duty” performed by an employee. *Id.* at § 541.700(a).

Plaintiffs’ argument focuses on the second prong: whether their duties relate to the management or general business operations of HCSO. Here, Harris County has the better argument. Our case, *Jones v. New Orleans Regional Physician Hospital Organization, Inc.*, 981 F.3d 428 (5th Cir. 2020), is instructive. There, we addressed whether the administrative exemption applied to various managed care company employees responsible for: (1) signing up physicians and providers who wanted to join their network; (2) working on projects to improve operational processes and efficiencies; and (3) working with the company’s Pharmacy Department to deal with payments to pharmacies for filing members’ prescriptions. *Id.* at 432. Examining the contracting specialists, who were responsible for the first category of work, we concluded that their work was in “supporting and servicing the company’s business operations” and rejected the argument that their specific duties were not delineated in 29 C.F.R. § 541.201(b), instead emphasizing that the regulations’ list was not exhaustive and was open to analogy. *See id.* at 434–35.

Even construing the evidence in the light most favorable to plaintiffs, the criminal justice lieutenants’ primary duty is the “administration of HCSO’s jails,”—arguably even “personnel management” and “quality control,” 29 C.F.R. § 541.201(b). As Harris County points out, record evidence affirms that the criminal justice lieutenants make sure “everything

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runs properly on a day-to-day basis.” They make sure that the work performed by those underneath them is done in a timely and correct manner. To do so, they focus on administrative tasks. This work is the type of “management” work that the regulations regard as qualifying. The minimal record evidence plaintiffs offer largely reinforce, rather than contradict, this conclusion.

Nor do the lieutenants’ occupation as law enforcement officers change the calculus. Although regulations exempt some police officers and the like from the exemptions, they only do so where those officers’ *primary duty* is front-line work. *See* 29 C.F.R. § 541.3(b)(1) (listing work such as “preventing or detecting crimes; conducting investigations or inspections for violations of law; . . . preparing investigative reports; or other similar work.”). As the Tenth Circuit stated in a similar case, “high-level employees who perform some first responder duties, like police lieutenants or fire chiefs, can nonetheless be exempt executives if their primary duty is managerial and they meet the other elements of the test.” *Maestas v. Day & Zimmerman, LLC*, 664 F.3d 822, 827 (10th Cir. 2012).

Accordingly, we determine that the magistrate judge correctly concluded that, based on the summary judgment evidence, the criminal justice lieutenants’ primary duty is the administration of HCSO’s jails.

C.

Plaintiffs raise three specific contentions with regard to the jury charge: (1) the magistrate judge erred in refusing their request for “granulated” jury instructions that broke down the exemptions into sub-issues of fact under Federal Rule of Civil Procedure 49; (2) the magistrate judge erred in permitting the jury to answer in the affirmative as to both exemptions; and (3) the jury instructions improperly delegated questions of law to the jury.

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I.

Before addressing the merits of this issue, we must contend with the parties' disagreement about the standard of review. We generally review jury instruction decisions for abuse of discretion. *United States v. Greenlaw*, 84 F.4th 325, 352–53 (5th Cir. 2023). When a party fails to properly object, however, our “review of a jury instruction challenge is limited to review for plain error.” *Jimenez v. Wood Cnty.*, 660 F.3d 841, 845 (5th Cir. 2011).

Here, Harris County contends that plaintiffs failed to preserve their objections and, as such, plain error is the proper standard of review. At the same time, it phrases its jury-instruction argument in abuse-of-discretion terms. Plaintiffs do not disagree that where a party fails to object, plain error review is the appropriate standard; but they assert that abuse of discretion is the appropriate standard here. On reply, however, plaintiffs do not respond to Harris County's assertion that they failed to preserve their objection.

Whether plaintiffs' jury charge issue is reviewed for plain error or abuse of discretion turns on the objection itself. “To avoid plain error review, a specific objection must have been made on the ground raised on appeal, rather than a general objection to the instructions as a whole or an objection on a different ground.” *Fiber Sys. Int'l, Inc. v. Roehrs*, 470 F.3d 1150, 1158 (5th Cir. 2006).

Plaintiffs requested that the judge submit to the jury specific questions of fact relating to the exemptions. When the magistrate judge solicited objections to the final charge, plaintiffs' counsel objected as follows:

We would request under Rule 49 that special interrogatories be sent to the jury. There's never harm in doing that. The court of appeals presumes harm in broad form submission, and so we would request that the special interrogatories be sent to the jury.

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Harris County contends this objection was too “general” to preserve the issue. It alleges that this objection, “[c]oupled with [plaintiffs’] pre-trial proposed verdict form, is insufficient because [their] proposed instructions did not propose special interrogatories.”

Our precedent dictates that the rule against general objections may be overcome where it is sufficiently clear to the trial court the detailed basis of a party’s objection. Put differently, “[a] party may be excused from the requirement of making a specific objection only where ‘the party’s position previously has been made clear to the trial judge and it is plain that a further objection would be unavailing.’” *See Russell v. Plano Bank & Tr.*, 130 F.3d 715, 720 (5th Cir. 1997) (quoting 9A Charles Alan Wright & Arthur R. Miller, *FEDERAL PRACTICE AND PROCEDURE* § 2553 (2d ed. 1995)).

For the purposes of the present appeal, we assume without deciding that the exception applies to two of the jury charge issues plaintiffs raise—that the magistrate judge erred in refusing their request for granulated jury instructions under Rule 49 and that the jury instructions improperly delegated questions of law to the jury—and so we examine these challenges under the “less deferential abuse of discretion standard.” *United States v. Avants*, 367 F.3d 433, 446 (5th Cir. 2004). In so doing, we note that plain-error review would result in the same outcome in this case. And we review the other challenge—relating to the jury’s ability to find more than one exemption applied—for plain error.

## II.

Our court’s pattern instruction for cases involving FLSA exemption claims provides the following language: “In this case, Defendant [name] claims that it is exempt from the FLSA’s overtime provisions. To establish that it is exempt, Defendant [name] must prove each of the following facts by a preponderance of the evidence: [specify essential elements of the claimed

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exemption].” Fifth Circuit Pattern Jury Instruction (Civil Cases) § 11.24, 285. It likewise provides that the exemption elements “set out in 29 C.F.R. § 541 may be used as a guideline” for the essential elements of the claimed exemption. *See id.* Our pattern jury question for the FLSA exemption asks: “Has Defendant [name] proved that Plaintiff [name] was exempt from the overtime-pay requirement as an [administrative] [executive] [specify other] employee? Answer ‘Yes’ or ‘No.’”].” *Id.* § 11.24, 287.

“A district court does not err . . . if the jury charge tracks the Fifth Circuit Pattern instructions and correctly states the law.” *United States v. Ryan*, 156 F.4th 583, 596 (5th Cir. 2025) (quoting *United States v. Uhlenbrock*, 125 F.4th 217, 228 (5th Cir. 2024)). Here, the magistrate judge’s jury charge mirrored the Fifth Circuit Pattern instructions, noting that it was Harris County’s burden to prove—for both the administrative and executive exemptions—certain elements outlined by Department of Labor regulations. The questions similarly tracked the pattern question for exemptions. These instructions not only tracked the Fifth Circuit Pattern instructions, they also correctly stated the law. The magistrate judge therefore did not abuse its discretion in refusing plaintiffs’ more granular request. *See Ryan*, 156 F.4th at 596.

Nor did the magistrate judge impermissibly delegate a legal question to the jury. “The decision ‘whether an employee is exempt under the [FLSA] is primarily a question of fact.’” *Smith v. City of Jackson*, 954 F.2d 296, 298 (5th Cir. 1992) (quoting *Blackmon v. Brookshire Grocery Co.*, 835 F.2d 1135, 1137 (5th Cir. 1988)). That is so despite the fact that “the ultimate decision whether the employee is exempt from the FLSA’s overtime compensation provisions is a question[] of law.” *Lott v. Howard Wilson Chrysler-Plymouth, Inc.*, 203 F.3d 326, 331 (5th Cir. 2000) (citations omitted). This assessment matches that in the Fifth Circuit Pattern instructions. *See* Fifth Circuit Pattern Jury Instruction (Civil Cases) § 11.24, 278, 278 n.1.

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## III.

As explained above, we review the next issue—whether the magistrate judge erred by impermissibly permitting the jury to answer affirmatively as to both exemptions—under the more deferential plain-error standard. We conclude that the magistrate judge did not plainly err, although this challenge raises a more complex issue.

Plaintiffs argue that, because the administrative and executive exemptions each require that the administrative or executive work be the employee’s “primary duty,” only *one* can provide the exemption. 29 C.F.R. §§ 541.200(a)(2); 541.100(a)(2)). The statute defines “primary duty” as “the principal, main, major or most important duty that the employee performs.” 29 C.F.R. § 541.700(a). That definition accords with common legal parlance. *See, e.g., Primary*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining “primary” as “First; principal; chief; leading.”). Plaintiffs make a compelling argument that words must be given their plain meaning absent ambiguity, *Tex. Foods Indus. Ass’n. v. U.S. Dept. of Agric.*, 81 F.3d 578, 582 (5th Cir. 1996).

We have not squarely addressed this primary-duty-exclusion question, nor have our sister circuits. Harris County asserts that the two exemptions have overlapping management functions. The magistrate judge made the same point when addressing plaintiffs’ motion for judgement as a matter of law—and finding no basis to grant it.

Further complicating the issue—the FLSA permits a separate combination exemption for employees who “perform a combination of exempt duties as set forth in the regulations in this part for executive, administrative, professional, outside sales and computer employees.” 29 C.F.R. § 541.708. It states that “an employee whose primary duty involves a combination of exempt administrative and exempt executive work may

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qualify for exemption.” *Id.* And it explicitly provides that “work that is exempt under one section of this part will not defeat the exemption under any other section.” *Id.*

Other circuit courts, however, have identified the combination as exclusive of the administrative and executive exemptions. In *Shockley v. City of Newport News*, the Fourth Circuit concluded that “[e]mployees whose primary duty is *neither* management nor administration may qualify for a combination exemption based upon both their administrative and management responsibilities.” 997 F.2d 18, 29 (4th Cir. 1993). In *IntraComm, Inc. v. Bajaj*, the Fourth Circuit again addressed the combination exemption and cited a Secretary of Labor Amicus brief for the proposition that the “combination exemption addresses the situation that exists when an employee does not meet the primary-duty requirement of any individual exemption.” 492 F.3d 285, 294 (4th Cir. 2007).

Yet for an error to be plain, it must “be clear or obvious, rather than subject to reasonable debate.” *Jimenez*, 660 F.3d at 847 (quoting *United States v. Ellis*, 564 F.3d 370, 377–78 (5th Cir. 2009)). As the foregoing discussion and back-and-forth between the parties indicates, whether a jury charge permitting the jury to conclude multiple exemptions apply is “subject to reasonable debate.” Accordingly, the magistrate judge did not plainly err in this aspect of the jury instruction.

D.

Finally, we turn to examining whether the magistrate judge erred in denying plaintiffs’ Rule 50(b) or Rule 59 motions. We conclude the magistrate judge did not.

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## I.

We review a post-verdict challenge to the sufficiency of the evidence *de novo* to determine whether “a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue.” *Nobach v. Woodland Vill. Nursing Ctr., Inc.*, 799 F.3d 374, 377–78 (5th Cir. 2015) (internal quotation marks and citations omitted). We must “draw all reasonable inferences in the light most favorable to the verdict and cannot substitute other inferences that we might regard as more reasonable.” *E.E.O.C. v. Boh Bros. Const. Co., L.L.C.*, 731 F.3d 444, 452 (5th Cir. 2013). “Thus, a Rule 50 motion must be denied unless the facts and inferences point so strongly and overwhelmingly in the movant’s favor that reasonable jurors could not reach a contrary conclusion.” *Wantou v. Wal-Mart Stores Tex., L.L.C.*, 23 F.4th 422, 431 (5th Cir. 2022) (internal quotation marks and citation omitted).

As to the executive exemption, plaintiffs contend on appeal that the evidence was insufficient for the jury to reach two conclusions: (1) that plaintiffs’ primary job duty included the management of a customarily recognized department or subdivision of Harris County, because being “in charge” of a “particular shift” is insufficient; and (2) that plaintiffs had hiring or firing abilities or could “make recommendations as to either.” But significant record evidence supports the jury’s findings on each. That is especially so when construing the evidence in the light most favorable to the verdict.

On plaintiffs’ first argument—that plaintiffs did not manage a “customarily recognized” department or subdivision—the jury examined, *inter alia*, the following evidence: HCSO is divided into bureaus, divisions, sections, and shifts; some lieutenants supervise specific sections (e.g., the

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homicide section, child abuse section, SWAT Unit); some lieutenants supervise shifts (e.g., night shift); and these were “permanent positions.”

Department of Labor regulations provide that a customarily recognized department or subdivision “must have a permanent status and a continuing function,” as compared to “a mere collection of employees assigned from time to time to a specific job or series of jobs.” 29 C.F.R. § 541.103(a). The Department has also emphasized that “‘groupings’ or ‘teams’ may constitute a department or subdivision” and that a “case-by-case analysis is required.” *Defining and Delimiting*, 69 Fed. Reg. at 22, 134.

Plaintiffs argue that they looked more like “working foremen” as opposed to those responsible for a department or subdivision, citing an Eleventh Circuit case in support of this proposition. But the regulations to which plaintiffs cite—some of which are no longer in effect—describe working foremen or supervisors as doing the type of work that nonexempt employees do, with only “occasional[]” managerial responsibilities. *See, e.g.*, 29 C.F.R. § 541.106 (contrasting working supervisors with “an assistant manager in a retail establishment [who] may perform work such as serving customers, cooking food, stocking shelves and cleaning the establishment” without “preclud[ing] the exemption if the assistant manager’s primary duty is management”).

Regardless, the working foremen concept does not negate any evidence that a shift may suffice as a recognized department or subdivision of HCSO. If anything, HCSO offers a Second Circuit case—which plaintiffs do not distinguish on reply—emphasizing the context-dependent nature of determining a recognized department or subdivision. *See Ramos v. Baldor Specialty Foods, Inc.*, 687 F.3d 554, 561–65 (2d Cir. 2012) (describing other circuit and district court cases, which provide that a station or shift of

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firefighters, front-end staff in a grocery stores, and one of two 12-hour night shifts all constitute recognized departments or subdivisions, and further concluding that a team of “pickers” at a food warehouse constituted a recognized department); *see also West v. Anne Arundel Cnty.*, 137 F.3d 752, 763 (4th Cir. 1998), *abrogated on other grounds by Morrison v. Cnty. of Fairfax*, 826 F.3d 758 (4th Cir. 2016) (“A station or a shift constitutes a recognized department or subdivision of the Fire Department and is comprised of many more than the regulatory minimum of ‘two or more other employees.’”).

On plaintiffs’ second argument—that plaintiffs lacked input on hiring and firing—the jury examined, *inter alia*, the following evidence: lieutenants sat on interview boards for candidates; lieutenants made recommendations regarding interview transfers; and lieutenant recommendations were, at least sometimes, followed.

The fourth element of the executive exemption requires that an employee have “the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.” 29 C.F.R. § 541.100. Regulations further propose factors to be considered as to whether an employee’s suggestions and recommendations are given “particular weight,” enumerating various factors. *See id.* § 541.105.

In *Miller v. Travis County*, we affirmed a jury’s conclusion that the recommendations of lieutenants in the Travis County Sheriff’s Office had no “particular weight” in determining employee status. *See* 953 F.3d 817, 818 (5th Cir. 2020). Reviewing the district court’s denial of Travis County’s motion for judgment as a matter of law, we emphasized that Department of Labor regulations “illuminate what ‘particular weight’ means.” *Id.* at 820. We rejected the county’s argument that the evidence of lieutenant

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involvement was so “overwhelming” that “the jury acted irrationally in concluding otherwise.” *Id.* The county had offered evidence that the lieutenants sat on boards (but lacked special influence), that the lieutenants made recommendations (but that their recommendations were not especially significant), and that the same was true for termination decisions. *See id.* at 820–821. We noted that “[t]he jury would’ve been justified in finding for the county on the particular-weight prong.” *Id.* at 821. The jury merely “chose not to, weighing the evidence differently from how the county would’ve preferred.” *Id.* In sum: “There was evidence on both sides, and the jury picked a winner. Our task is not to determine whether the verdict was correct—only whether there was a sufficient basis to render it.” *Id.*

*Miller* provides a helpful guide here, where similar deference is due to the jury’s assessment that Harris County satisfied this element of the executive exemption test.

As to the administrative exemption, plaintiffs contend on appeal that the evidence was insufficient for the jury conclude: (1) that plaintiffs’ primary duty was the “performance of office or non-manual work directly related to the management or general business operations” of Harris County; and (2) that plaintiffs regularly exercised discretion and intendent judgment when performing these duties.

On plaintiffs’ duties, the jury heard the following evidence that lieutenants were responsible for ensuring shifts were adequately staffed and managing subordinates time off; preparing and reviewing reports and other work products and ensuring they are submitted in a timely manner; allocating and distributing equipment of equipment, as well as providing training on specialty equipment; reviewing subordinate work such as dispatched calls and video footage from pursuits and use of force; managing subordinates “in the field”; and playing a “logistical support role.”

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Department of Labor regulations distinguish administrative work as the type of work “directly related to assisting with the running or servicing of the business” as opposed to work such as “on a manufacturing production line” or “selling a product in a retail or service establishment.” 29 C.F.R. § 541.201(a). In examining a prior version of the regulations, we described “[p]roduction activities in the context of municipal services [as] activities that appear to be related to the primary service goal of the agency.” *Smith*, 954 F.2d at 298. Regulations list various examples of employees that qualify for the administrative exemption, including employees that do “quality control” work, 29 C.F.R. § 541.201(b), and employees who “lead[] a team of other employees assigned to complete major projects for the employer,” *id.* at § 541.203(c).

If HCSO’s primary goal is the provision of public safety, it was not unreasonable for the jury to conclude that plaintiffs’ work responsibilities were the type of supporting activities that helped drive HCSO’s management and general business. *See Smith*, 954 F.2d at 297–99 (describing the supervision of firefighting efforts as “nonmanual work”); *see also Emmons v. City of Chesapeake*, 982 F.3d 245, 253–54 (4th Cir. 2020). Accordingly, we affirm the magistrate judge’s dismissal of plaintiffs’ Rule 50 motion.<sup>8</sup>

## II.

We will reverse the magistrate judge’s denial of a Rule 59 motion for a new trial “only when there is a clear showing of an abuse of discretion.”

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<sup>8</sup> We do not address plaintiffs’ argument that they lacked discretion and independent judgment required of exempt administrative employees because they failed to raise it at the close of evidence and it is thus waived. *See Morante v. American General Financial Center*, 157 F.3d 1006, 1010 (5th Cir. 1998).

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*Carr v. Wal-Mart Stores, Inc.*, 312 F.3d 667, 670 (5th Cir. 2002) (internal quotation marks and citations omitted).

Plaintiffs argue that a new trial is necessary because the jury rendered an inconsistent verdict—the same reason they take issue with the jury charge. That is, in concluding that both the administrative and executive exemptions applied, the jury “had to necessarily determine that they had multiple primary duties.” Plaintiffs contend that, “as a proposition of law, logic, and common sense, such a conclusion is impossible.” Harris County reasons that nothing in the FLSA or its implementing regulations preclude a party from satisfying the administrative and executive exemptions simultaneously. The magistrate judge reached the same conclusion.

As addressed above, the regulations and case law on this issue raise complicated questions. Nevertheless, it was not unreasonable for the magistrate judge to conclude that the exemptions sufficiently overlapped so as to permit the jury to conclude both applied. Accordingly, there was no abuse of discretion.

### III.

For the foregoing reasons, we AFFIRM.