

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

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Lyle W. Cayce
Clerk

No. 25-40481

MARTINA PENA, *Individually*, and *as next best friend of* A.P.;
ARISTEDES PENA, *Individually*, and *on behalf of* ESTATE OF ALBERTO
PENA,

Plaintiffs—Appellants,

versus

STARR COUNTY, TEXAS; EVELARIO GARZA; UBALDO SUAREZ;
CHESTER CERVANTES; DANIEL GARCIA; HECTOR LOPEZ, III;
JOEL GARZA; EMILIO GARZA; JESUS BARRERA, JR.; CESAR
JUAREZ, JR.,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:22-CV-276

Before STEWART, ENGELHARDT, and DOUGLAS, *Circuit Judges*.

DANA M. DOUGLAS, *Circuit Judge*:

Alberto Pena was arrested for criminal mischief in Starr County, Texas. In the course of the arrest by Starr County Deputies Miguel Cervantes and Daniel Garcia, Pena banged his head on the interior of a patrol car three times and may have gone unconscious. After transporting Pena to the Starr County Jail, Deputy Cervantes filed an arrest complaint noting that

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Pena was under the influence of alcohol and drugs, but did not inform the jail of the head strikes or possible unconsciousness. During the day shift at the jail, Pena banged his head and other body parts against surfaces of his detox cell several times, including one episode in which he hit his head fourteen times against his cell window and fell to the floor, again possibly unconscious. Day shift Officer Joel Garza (“Officer Garza”) and Sgt. Hector Lopez III regularly checked on Pena and placed him in a full-body restraint, but did not seek medical help.¹ Night shift Officers Cesar Juarez Jr. and Ubaldo Suarez, under the supervision of Sgt. Evelario Garza, observed Pena rolling on the floor and brought Pena’s cousin Edgar, another inmate, to speak with him. Edgar later testified that Pena showed signs of distress and complained that he could not breathe, but the officers dispute this. Shortly after this conversation, Pena stopped moving and was observed to be foaming at the mouth. Pena was then taken to the Starr County Memorial Hospital and pronounced dead.

Pena’s parents, child, and estate sued pursuant to 42 U.S.C. § 1983, alleging deliberate indifference to Pena’s medical needs by the Starr County officer defendants, failure to supervise by Sgt. Garza, a practice and custom of deliberate indifference by Starr County, and wrongful death and survival actions against all defendants. The defendants separately moved for summary judgment, and the district court granted the motions. We AFFIRM.

¹ Because Officer Emilio Garza’s actions are not at issue in this appeal, all references to “Officer Garza” are to Officer Joel Garza. *See infra* note 3. After the first reference, Sgt. Evelario Garza is referred to as “Sgt. Garza.”

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I

A

On August 13, 2020, Starr County Sheriff's Deputies Cervantes and Garcia and Lt. Erasmo Rios Jr. arrested Alberto Pena for criminal mischief for causing damage to property. Pena's father advised Deputy Cervantes that Pena was highly intoxicated and under the influence of drugs. Deputy Cervantes noted Pena's slurred speech, unsteady balance, and odor of alcohol, and handcuffed him without incident. Lt. Rios and Deputy Garcia placed him in the back of Deputy Cervantes's patrol unit.

Before the patrol unit departed, Pena hit the interior of the patrol car with his head twice. It is disputed whether he lost consciousness or was observed to have done so, but it is undisputed that Deputy Garcia saw Pena slumped over and mumbling to himself with his eyes closed, and that Deputy Garcia tapped his face and shouted to provoke a response. On the drive to the jail, as Deputy Garcia followed Deputy Cervantes's car in his own vehicle, Pena again hit himself on the interior of the patrol car, causing the officers to stop the car so that Lt. Rios could monitor him from the back seat.

Deputy Cervantes arrived at the Starr County Jail with Pena around 3:16 PM. He completed an arrest complaint noting that Pena was under the influence of drugs and alcohol, but did not inform the jail of the head strikes or possible unconsciousness.

B

Once at the jail, Pena was placed in a detox holding cell. At around 3:34 PM, Pena struck his forehead on the cell door's ballistic glass window three times, loudly enough to draw the attention of detention officers. Sgt. Lopez, Officer Garza, and another officer promptly entered the cell to try to

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get Pena to calm down. Pena appeared responsive and compliant, and conversed with the officers.

At approximately 4:29 PM, Pena was taken to the jail's booking area, where he was booked without incident and escorted back to the detox cell by Officer Garza. Pena walked to booking without assistance and conversed with Officer Garza while being escorted. At approximately 5:38 PM, Pena struck his head fourteen times in a single burst against the ballistic glass window. After the final strike, he collapsed to the floor and stayed on the ground rocking back and forth on his elbows and knees. It is disputed whether he lost consciousness or was perceived to have done so. Sgt. Lopez and Officers Garza and Javier Gonzalez promptly entered the cell to talk to him, then escorted him out of his cell and escorted him back around 5:41 PM. Pena again walked without assistance and conversed with officers before returning to his cell.

Pena was conscious and occasionally active—pacing his cell, talking, holding a note against the cell window, and gesturing toward officers—from approximately 5:41 PM to 6:39 PM. During this period, he also struck the cell door, the door's window, and the floor several times with his shoulder and hands. After Pena became more aggressive, Sgt. Lopez and Officers Garza, Gonzales, and Jesus Barrera Jr. entered the cell at 6:39 PM and spoke with him.

At approximately 6:48 PM, Pena struck the door with his left foot. Around the same time, the officers were advised that he was making threats to Officer Gonzalez, and Sgt. Lopez decided to place Pena in a full-body WRAP restraint system. At about 6:50 PM, Sgt. Lopez and Officers Gonzalez and Barrera approached Pena's cell. Officer Gonzalez deployed pepper spray, then Pena kneeled and was handcuffed and escorted out of the

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cell. He was escorted back by the same officers around 6:53 PM in a WRAP restraint system on a rolling cart.

Around 7:48 PM, Pena was almost entirely flat on the rolling cart due to squirming. Officers Garza and Barrera entered the cell, repositioned him in an upright position, and gave him water.

C

Night shift came on duty at 8 PM. At 8:05 PM, Pena broke loose from the cart, fell to the ground, and rolled around on the floor. At about 8:11 PM, officers observed him out of the cart and kicking the cell door, and night shift supervisor Sgt. Garza and Officers Suarez, Juarez, Emilio Garza, and Barrera entered the cell. The officers removed Pena from the WRAP chair and kept him upright while adjusting the chair's straps, in addition to adjusting his handcuffs and pouring water over his head.

At approximately 8:51 PM, Officer Suarez escorted Pena's cousin and fellow inmate Edgar Pena to the holding cell's window to calm Pena down. Edgar spoke with Pena for a few minutes, then was escorted away. Edgar testified in a deposition that he observed Pena turning purple with saliva and bubbles on his mouth, complaining that he was unable to breathe and asking that his restraints be loosened, but the officers dispute whether this was the case and whether they perceived it.²

Around 9:01 PM, Pena stopped moving. At approximately 9:12 PM, Officer Emilio Garza conducted an observation check on Pena and saw foam on Pena's mouth. Around 9:13 PM, officers entered Pena's cell, removed him from the cart, and attempted CPR. Emergency Medical Services

² Except for this complaint about breathing, Pena is not alleged to have complained about his medical condition, nor is he alleged to have specifically requested medical care.

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paramedics and the Rio Grande City Fire Department arrived between 9:25 PM and 9:28 PM, and Pena was transported to Starr County Memorial Hospital in Rio Grande City, where he was pronounced dead at 10:12 PM.

Pena had several substances including alcohol, cocaine by-products, and marijuana ingredients in his system at the time of his death. The autopsy report listed Pena's cause of death as "Cardiorespiratory Arrest While Under the Influence of Mixed Drugs" and his manner of death as "Accidental." The Penas' medical expert concluded that concussive head injury and prolonged restraint in the WRAP system also played a significant role in Pena's death, identified perivascular hemorrhages and swelling in Pena's brain, and testified in a deposition that prompt medical attention based on his intoxicated state and resulting head trauma and unconsciousness could have saved his life.

II

Pena's mother, Martina, both individually and as next best friend of Pena's minor child A.P.; his father Aristedes; and his estate (collectively, "the Penas") sued Starr County, Sgt. Garza, and Officer Suarez in the Southern District of Texas on August 12, 2022. The Penas filed an amended complaint on June 27, 2023, adding as defendants Deputies Cervantes and Garcia, Lt. Rios, Sgt. Lopez, and Officers Gonzalez, Barrera, Juarez, and Joel and Emilio Garza. The Penas brought their suit pursuant to 42 U.S.C. § 1983, alleging deliberate indifference to Pena's medical needs by the deputies and detention officers, failure to supervise by Sgt. Garza, and a practice and custom of deliberate indifference by Starr County, and brought wrongful death and survival actions against all defendants. Lt. Rios and Officer Gonzalez moved to dismiss for insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5), and the Penas stipulated to dismissal of these defendants in exchange for acceptance of trial

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subpoenas. The district court dismissed the claims against Lt. Rios and Officer Gonzalez in light of the Penas' voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a).

Defendants Deputies Cervantes and Garcia, Officers Garza, Juarez, and Suarez, Sgt. Lopez, Sgt. Garza, and Starr County separately moved for summary judgment. On August 1, 2025, the district court granted the motions on the grounds that (1) there was no dispute of material fact as to whether Deputies Cervantes and Garcia or Officers Juarez and Suarez were deliberately indifferent to Pena's medical needs and they were entitled to qualified immunity; (2) although there was a dispute of fact as to whether Officer Garza and Sgt. Lopez were deliberately indifferent to Pena's medical needs, they were entitled to qualified immunity because the law was not clearly established at the time; and (3) there was no factual dispute regarding the Penas' supervisory liability claim against Sgt. Garza or their policy-or-practice claim against Starr County due to their failure to show a pattern of violations, official policy, or conduct constituting punishment. After granting the Penas ten days to show cause why they did not timely serve Officers Emilio Garza and Barrera in its August 1 opinion, the district court subsequently dismissed the claims against Officers Emilio Garza and Barrera pursuant to Federal Rule of Civil Procedure 4(m) on August 12, 2025.³ With no claims remaining, the district court entered a final judgment closing the case that same day.

Pena filed a timely notice of appeal on August 14, 2025.

³ The Penas do not challenge the district court's order of dismissal as to Officers Emilio Garza and Barrera, so they are not addressed here.

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III

We have jurisdiction to review a district court’s decision granting motions for summary judgment under 28 U.S.C. § 1291.

We review a district court’s grant of summary judgment *de novo*. *E.E.O.C. v. LHC Grp., Inc.*, 773 F.3d 688, 694 (5th Cir. 2014). Summary judgment is appropriate “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.” *McVae v. Perez*, 120 F.4th 487, 491 (5th Cir. 2024) (quoting FED. R. CIV. P. 56(a)). When reviewing a motion for summary judgment, the court views the evidence “in the light most favorable to the nonmoving party.” *Id.* There is no genuine dispute “if a reasonable jury could not return a verdict for” the nonmoving party. *Id.* To survive summary judgment when a defendant makes a good-faith assertion of qualified immunity, “the plaintiff must then present evidence demonstrating that the defense does not apply.” *Id.* (citing *Ratliff v. Aransas Cnty.*, 948 F.3d 281, 287 (5th Cir. 2020)).

A

First, the Penas alleged that the deputy and detention officer defendants—arresting officers, day shift, and night shift—were deliberately indifferent to Pena’s medical needs.

“To succeed on a deliberate-indifference claim, plaintiffs must show that (1) the official was ‘aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,’ and (2) the official actually drew that inference.” *Dyer v. Houston*, 964 F.3d 374, 380 (5th Cir. 2020) (quoting *Domino v. Tex. Dep’t of Crim. Just.*, 239 F.3d 752, 755 (5th Cir. 2001)). On the first prong, “[w]hether 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 . . . and a factfinder may conclude that a prison official knew of a substantial risk from

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the very fact that the risk was obvious.” *Farmer v. Brennan*, 511 U.S. 825, 842 (1994). As to the second prong, “[a] prison official acts with deliberate indifference ‘only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.’” *Delaughter v. Woodall*, 909 F.3d 130, 136 (5th Cir. 2018) (quoting *Farmer*, 511 U.S. at 847). “It is . . . fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.” *Garza v. City of Donna*, 922 F.3d 626, 635 (5th Cir. 2019) (quoting *Farmer*, 511 U.S. at 836).

To overcome qualified immunity, a plaintiff must establish that “the plaintiff’s version of th[e] disputed facts . . . constitute[s] a violation of clearly established law.” *Joseph ex rel. Est. of Joseph v. Bartlett*, 981 F.3d 319, 330 (5th Cir. 2020). “To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates the right.” *Dyer*, 964 F.3d at 383 (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). This does not require a “directly on point” case, but “existing precedent” must “place[] the statutory or constitutional question beyond debate.” *Id.* (alteration in original) (quoting *Morgan v. Swanson*, 659 F.3d 359, 372 (5th Cir. 2011) (en banc)).

i

We first start with the arresting officers, Deputies Cervantes and Garcia. It is undisputed that, at the time of Pena’s arrest, Deputy Cervantes was told Pena was under the influence of drugs and alcohol and noted signs of intoxication. It is also undisputed that, while in Deputy Cervantes’s patrol unit under Deputy Garcia’s observation before leaving the scene of the arrest, Pena hit the interior of the patrol unit with his head twice. Pena again hit himself against the interior of the vehicle later on the drive to the jail in Deputy Cervantes’s vehicle, causing the officers to stop so that Lt. Rios could

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switch vehicles to monitor Pena in the back of the car. Upon arrival at the Starr County Jail, Officer Cervantes completed an arrest complaint noting that Pena was under the influence of drugs and alcohol. The deputies did nothing further to inform authorities at the jail of any potential head injury or need for medical care.

The parties dispute whether Pena lost consciousness in the patrol unit or was believed by either deputy defendant to have done so. Deputy Garcia's testimony is ambiguous on this issue: he testified that he observed Pena lying on his side with his eyes closed "acting like he was unconscious," and that Pena "look[ed] passed out," but drew a distinction between this state and actual unconsciousness. Deputy Garcia also acknowledged that Lt. Rios told Pena he had "knocked himself out," and relayed via radio that Pena had "lost consciousness for a few seconds." Viewing this evidence in the light most favorable to Pena, we assume a reasonable jury could find that Pena was unconscious for a brief period in the back of the patrol car, and that Deputy Garcia at least suspected that this was so.

To carry his burden to show that clearly established law was violated on his version of the facts, Pena relies primarily on *Dyer v. Houston*, where a pretrial detainee "died after violently bashing his head over 40 times against the interior of a patrol car while being transported to jail." 964 F.3d at 377. In that case, we held that fact issues precluded summary judgment as to all officer defendants because a reasonable jury could find that the officers were aware of the detainee's repeated, violent bashing of the head and that it posed an obvious risk of serious injury, but did not seek medical care or inform jail officials. *Id.* at 385.

The encounter at issue in *Dyer*, however, began with the detainee's "erratic behavior" requiring physical restraint, during which time the detainee was "rolling" and "yelling" while officers tried to calm him. *Id.* at

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378. Once in the patrol car, the detainee bit an officer as he attempted to secure him, was placed in leg restraints, screamed and “thrashed violently,” then slammed his head nineteen times against the interior of the car. *Id.* at 378–79. After the patrol car stopped so he could be resecured, the detainee continued to scream and thrash, provoking the officers to tase him several times, then “bashed his head another 27 times before they arrived at jail.” *Id.* at 379. We described the officers’ awareness of the risk to the detainee in terms of his being “in the grip of a drug-induced psychosis.” *Id.* at 381. Although Pena was seriously intoxicated and perceived as such by both deputies, given that the erratic and “delusional” behavior at issue in *Dyer* went far beyond ordinary intoxication, we cannot say that *Dyer* established with the requisite clarity that *any* combination of intoxication and three self-inflicted head strikes automatically requires medical care, or informing jail authorities. *Id.* at 384.⁴ Wherever the line is between ordinary intoxication and the erratic behavior resulting from drug-induced psychosis at issue in *Dyer*, Pena’s behavior did not clearly cross it.⁵

The Penas’ other principal case likewise includes an additional element of erratic behavior. In *Thompson v. Upshur County*, which *Dyer* relied

⁴ Closest to the facts here, the *Dyer* court held that even an officer who arrived late at the scene was not entitled to qualified immunity as matter of law when he testified that he *assumed* the patrol car carrying the detainee was pulled over because the detainee was banging his head on the car, and that he tried to prevent the detainee from banging his head. *Dyer*, 964 F.3d at 382–83. At the same time, this was in the context of the officer’s apparently arriving in time to see the detainee bite another officer and be placed in leg restraints, *id.* at 378, and the court’s contextualization of the encounter in terms of a “drug-induced psychosis” applied to all officers involved, *id.* at 381.

⁵ Also unlike in *Dyer*, the Penas do not show Pena sustained a “visible and serious head [or other] injury.” 964 F.3d at 377. We did not emphasize this point with respect to the officer defendants in *Dyer*, and the Penas argue that unconsciousness should itself be understood as a visible and serious sign of injury. Because we find *Dyer* distinguishable on other grounds, we need not address this argument here.

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on for its clearly established law analysis, a detainee suffered from *delirium tremens*, including shaking and hallucinations, colliding with objects in his cell, falling, and hitting his head repeatedly, resulting in a visible, bloody head injury. 245 F.3d 447, 452–54, 463–64 (5th Cir. 2001). In *Dyer*, we described *Thompson* in terms of the officer defendants’ having custody of a “delusional detainee who was severely harming himself.” 964 F.3d at 384. Again, the deputies here were not confronted with the kind of delusional, erratic behavior at issue in *Dyer*.

Finally, the Penas’ appeal to the line of cases finding “obvious” constitutional violations is also unavailing. In *Hope v. Pelzer*, the Supreme Court reiterated that “[w]e may infer the existence of th[e] subjective state of mind [of deliberate indifference] from the fact that the risk of harm [to the detainee] is obvious.” 536 U.S. 730, 738 (2002). The Court also explained that, for purposes of identifying clearly established law, a “general constitutional rule” may apply “with obvious clarity” to challenged conduct, even if that conduct has not been specifically addressed in prior cases. *Id.* at 741 (quoting *United States v. Lanier*, 520 U.S. 259, 271 (1997)). Notably, *Pelzer* dealt with the “obvious cruelty” of hitching a prisoner to a post for an extended period of time in a painful position, as punishment for prior conduct and without any necessity. *Id.* at 745. Although failing to act in the face of an obvious risk of harm may, under appropriate circumstances, constitute an obvious constitutional violation, *see Easter*, 467 F.3d at 465 (describing a failure to seek medical treatment such that “no reasonable official could have believed such conduct was lawful”), the Penas do not show that the deputies’ failure to seek medical help for or inform the jail of Pena’s multiple head strikes and possible unconsciousness rose to this level of obviousness.

On balance, even viewing the evidence in the light most favorable to the Penas, the Penas have not carried their burden to show that clearly

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established law was violated by Deputies Cervantes and Garcia. We therefore conclude that the deputies are entitled to qualified immunity.

ii

Turning to the detention officers on the day shift at Starr County Jail, it is undisputed that Pena was placed in a detox holding cell at the jail and struck his forehead on the cell's ballistic glass window three times around 3:34 PM. Sgt. Lopez, Officer Garza, and another officer promptly entered the cell to try to calm Pena down. At that time, Pena appeared responsive and compliant, and even conversed with the officers. About an hour later, Pena was taken to the jail's booking area, walking without assistance and conversing with Officer Garza while being escorted back.

Around 5:38 PM, Pena struck his head fourteen times against the ballistic glass in a quick, loud burst of hard strikes. Pena then crumpled to the ground and remained on the floor, rocking back and forth on his elbows and knees. It is disputed whether he lost consciousness when he fell. Sgt. Lopez and Officers Garza and Gonzalez promptly entered the cell to talk to Pena, then escorted him out of his cell and back. Pena again walked without assistance and conversed with officers before returning to his cell. Pena was occasionally active—pacing, talking, and gesturing—throughout the next hour.

Around 6:27 PM, Pena struck the door's glass five times with his right fist, then, around 6:33 PM, struck his right shoulder, and, around 6:38 PM, struck his right hand on the door, and then his hand once more against the cell wall. Sgt. Lopez and Officers Garza, Gonzalez, and Barrera entered the cell at 6:39 PM and spoke with him. At approximately 6:48 PM, Pena struck the door with his left foot. Officers were advised that Pena was making threats to Officer Gonzalez, and Sgt. Lopez decided to place him in a full-body WRAP restraint system. Around 6:50 PM, Sgt. Lopez and Officers

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Gonzalez and Barrera approached Pena's cell, and Officer Gonzalez deployed pepper spray to make Pena face the wall. Pena was handcuffed and escorted out of the cell, then was escorted back around 6:53 PM in the WRAP restraint system on a rolling cart. Around 7:48 PM, Pena was almost entirely flat on the rolling cart due to squirming. Officers Garza and Barrera entered the cell, repositioned him in an upright position, and gave him water.

Unlike the other individual defendants, the district court ruled that there was indeed a fact dispute as to whether Sgt. Lopez and Officer Garza were deliberately indifferent to Pena's medical needs. Specifically, the court determined that "a factual dispute exists as to whether Defendants Lopez and Garza were aware of facts from which the inference could be drawn that a substantial risk of serious harm existed and that these officers drew that inference," because they "took no steps to address [Pena's] serious medical needs—a high state of intoxication." The court concluded that Sgt. Lopez and Officer Garza were aware of a substantial risk of harm to Pena because "they chose to place Alberto in a WRAP restraint system." The district court also determined, however, that the day-shift officers did not violate clearly established law, rejecting the Penas' appeal to *Dyer* and *Thompson*.

We decline to decide whether the district court correctly identified a fact dispute, because, even on the version of the facts most favorable to the plaintiffs, Sgt. Lopez and Officer Garza's failure to seek medical care for Pena did not violate clearly established law. See *Morrow v. Meachum*, 917 F.3d 870, 874 (5th Cir. 2019) (stating that a court may decide "one question or both" — that is, whether there was a constitutional violation and whether the relevant law was clearly established—when addressing qualified immunity). The Penas' argument on this issue is the same as their argument with respect to Deputies Cervantes and Garcia: *Dyer*, together with *Thompson* and the "obvious" violation line of cases, clearly established that failure to seek care for a detainee under these circumstances was deliberate indifference.

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This is a closer question than with respect to the arresting deputies, because Sgt. Lopez and Officer Garza saw more “erratic behavior,” and more of Pena’s “severely harming himself”: Pena’s repeated bursts of head strikes, crumpling to the floor and possible unconsciousness, strikes to other body parts, rocking and swaying, and his occasional failure to cooperate, culminating in threats to an officer and full-body restraint. *Dyer*, 964 F.3d at 378, 384. At the same time, as with the deputies, we cannot say that “every reasonable official would have understood” that a failure to seek medical treatment for Pena would be unlawful. *Dyer*, 964 F.3d at 383 (quoting *Reichle*, 566 U.S. at 664). To overcome qualified immunity, “existing precedent” must place the “constitutional question beyond debate,” and “the contours of the right in question” must be defined “with a high degree of particularity.” *Id.* (quoting *Morgan*, 659 F.3d at 371–72). *Dyer* and *Thompson* make it clear that failure to seek care for a “delusional detainee who [i]s severely harming himself” may give rise to liability for deliberate indifference. *Id.* at 384. They do not make it clear, however, that failure to seek care for a detainee exhibiting Pena’s unique mix of symptoms—some consistent with more routine intoxication—would do the same. *See Stapleton v. Lozano*, 125 F.4th 743, 749–52 (5th Cir. 2025) (discussing a failure to “immediately recognize ambiguous symptoms” from intoxication “as a medical emergency” and finding no plausibly pleaded claim of deliberate indifference). On these facts, reasonable officers could have concluded that the symptoms exhibited by Pena did not rise to the level of the withdrawal-based *delirium tremens* episode in *Thompson* and the “drug-induced psychosis” in *Dyer* because they lacked an ingredient of obvious delusion.

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Therefore, the day shift officers did not have the “fair warning” required. *Dyer*, 964 F.3d at 381, 383.⁶

For the reasons given above, we hold that a reasonable jury could find that failure to seek care under the circumstances showed deliberate indifference, but that it was not clearly established that this was so. Thus, Sgt. Lopez and Officer Garza are entitled to qualified immunity.

iii

Night shift came on duty at 8 PM. At 8:05 PM, Pena broke loose from the WRAP restraint cart and fell to the ground, then rolled around on the floor. At about 8:11 PM, detention officers observed him out of the cart and kicking the cell door. Night shift supervisor Sgt. Garza and Officers Suarez, Juarez, Emilio Garza, and Barrera entered the cell, removed Pena from the WRAP chair, and kept him upright while adjusting the chair’s straps, in addition to adjusting his handcuffs and pouring water over his head.

At approximately 8:51 PM, Officer Suarez escorted Pena’s cousin and fellow inmate, Edgar, to the holding cell’s window to calm Pena down. Edgar testified that he had previously heard Pena screaming out for his parents and son for help. Edgar spoke with Pena for a few minutes, then was escorted away. It is undisputed that Officers Juarez and Suarez were present for this conversation and observed Pena during it. Edgar testified that he observed his cousin turning purple with saliva and bubbles on his mouth, and that Pena indicated that he was unable to breathe and asked for his restraints to be loosened, but it is disputed whether this was the case or whether the officers

⁶ The Penas also fail to show that any alleged indifference on Sgt. Lopez and Officer Garza’s part falls within the “obvious” violation line of cases, for substantially the same reasons stated above with respect to Deputies Cervantes and Garza. *See supra* Section III.A.i.

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perceived it. Edgar also testified that he discussed Pena's breathing difficulty with Sgt. Garza, but it is now undisputed that Sgt. Garza was not present, though Officer Emilio Garza was. Officer Juarez testified that he saw that Pena's eyes were swollen and his pupils dilated. Officers Juarez and Suarez both testified that they did not see the discoloration and mouth foam described by Edgar, or hear Pena complain about breathing, either directly or through Edgar.

At about 9:01 PM, Pena stopped moving. At approximately 9:12 PM, Officer Emilio Garza conducted an observation check on Pena and saw foam on his mouth. Around 9:13 PM, officers entered Pena's cell, removed him from the cart, and attempted CPR. Officer Suarez testified in a deposition that at that time Pena had some foam at the mouth and a "bluish color" around his lips. After paramedics and the Fire Department arrived, Pena was transported to Starr County Memorial Hospital, where he was pronounced dead at 10:12 PM.

The district court concluded that no reasonable jury could find that Officers Juarez and Suarez were deliberately indifferent to Pena's serious medical needs, and that, even if it could, *Dyer* and *Thompson* did not give them fair warning of a clearly established right to medical attention under the circumstances. It also noted that Edgar's testimony that Pena complained he could not breathe was "contradicted by the fact that [Pena] was yelling during this period of time," and that the night shift officers "had very limited interaction with [Pena]."

On appeal, to show that clearly established law was violated on their version of the facts, the Penas rely on the general rule that awareness of a serious risk of harm can be inferred where it is obvious, and argue that Pena's skin discoloration, mouth foam, and complaints of breathing issues rendered his need for medical care obvious. The Penas also cite *Sims v. Griffin*, 35

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F.4th 945 (5th Cir. 2022), for the proposition that officers may not ignore a detainee’s obvious distress and cries for help, but must instead seek medical assistance. They again rely on *Hope v. Pelzer* for the rule that precedent addressing similar circumstances is not needed when the constitutional violation is “obvious.” See 536 U.S. at 741. The Appellees argue in response that the Penas have not made it clear what substantial risk Officers Juarez and Suarez were even ostensibly aware of, that their argument on this issue ultimately depends on Edgar’s testimony, which is unreliable, and that they point to no clearly established law showing that failing to provide medical care based on any of the symptoms at issue was unlawful.

We agree with the Appellees that Officers Juarez and Suarez did not violate clearly established law. To carry his burden on this issue, Pena relies mostly on *Sims*. In *Sims*, applying the general rule from *Easter v. Powell* that officers may not evince a wanton disregard for serious medical needs, we held that clearly established law would be violated where officers allegedly knew a detainee “had swallowed a bag full of drugs, vomited multiple times, screamed for help, pleaded to go to the hospital, and had steadily deteriorated since his arrival at the jail,” but did not seek medical attention. *Sims*, 35 F.4th at 952. Much like *Dyer*, *Sims* featured significant indicators of a medical crisis that were not present here: possible ingestion of a bag full of narcotics, repeated vomiting—“throwing up a dark black liquid and part of a plastic bag”—and steady signs of deterioration such as a failure to sleep, eat, or walk, crying out incoherently for help, and the detainee’s lying in his own vomit and smearing himself with it. *Sims*, 353 F.4th at 947–48. As Appellees point out, in *Stapleton v. Lozano* we held that the failure to treat “ambiguous symptoms” such as bloodshot eyes, slurred speech, swaying and unsteadiness, and kneeling and rocking on the floor did not rise to the level of deliberate indifference, given that these were “typical symptoms of alcohol intoxication” with unclear meanings. 125 F.4th at 749–52. Taking

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Edgar's testimony as true, the facts here are somewhere between *Stapleton* and *Sims*, but *Sims* did not make it so clear that "every reasonable official would have understood" that a failure to seek medical treatment for Pena would be unconstitutional. *Dyer*, 964 F.3d at 383 (quoting *Reichle*, 566 U.S. at 664).⁷

The Penas' appeal to the line of cases involving obvious risks of harm and obvious cruelty also fails. Even assuming Pena showed some discoloration and saliva or bubbles at the mouth, and that he was complaining about breathing problems and asked Edgar to tell the officers to loosen the straps on his restraint, as Edgar testified, Pena was also "yelling and yelling and yelling" at the time. Edgar himself described the mouth saliva he observed as typical of severe intoxication in phone calls that evening. Furthermore, video evidence shows that Pena's symptoms and need for

⁷ The detainee in *Sims* was also alleged to have "asked to go to the hospital," 35 F.4th at 952, like the detainee in *Easter* to whose "request for medical treatment" the defendant "turned a deaf ear," including specific requests for prescription refills and an electrocardiogram when the defendant prison nurse knew the detainee had a "history of cardiac problems [and] was experiencing severe chest pains" and was without his prescribed heart medication. 467 F.3d at 461–65. These facts firmly tied these cases to the rule that deliberate indifference will be found where an officer "refused to treat [a detainee], ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Easter*, 467 F.3d at 464 (quoting *Domino*, 239 F.3d at 756). Here, Edgar testified that Pena asked him to tell the officers to loosen his restraints, and that he did so and pointed out Pena's breathing problems, which the officers also, according to Edgar, heard Pena complain about directly but which the officer Edgar spoke with dismissed due to his understanding of how the WRAP restraint works. The officers' ignoring ambiguous signs of distress, without more, does not clearly rise to the level of deliberate indifference under *Sims* and *Easter*. See *Hernandez ex rel. Hernandez v. Tex. Dep't of Protective & Reg. Servs.*, 380 F.3d 872, 883 (5th Cir. 2004) ("[A]ctions and decisions by prison officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference and do not divest officials of qualified immunity." (citation omitted)).

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medical care were no more obvious than this description suggests. *See McVae*, 120 F.4th at 491 (“[W]hen video footage captures the incident at issue, we rely on the facts depicted in the footage.” (citing *Carnaby v. City of Hou.*, 636 F.3d 183, 187 (5th Cir. 2011))). Although we again observe that doing nothing in the face of an obvious risk of harm may constitute an obvious constitutional violation, *see Easter*, 467 F.3d at 465, the Penas do not show that the officers’ failure to seek medical care based on the symptoms described by Edgar, viewed together with the video, rose to the level of obvious cruelty addressed in this line of cases.

In sum, the Penas have not carried their burden to show a fact dispute as to whether Officers Juarez and Suarez violated clearly established law. Thus, these officers are entitled to qualified immunity.

B

The Penas also brought a failure to supervise claim against night shift supervisor Sgt. Garza, arguing on appeal that he “failed to ensure his subordinate jailers were adequately monitoring Alberto, which led to an extended period of inattention and his death.” Specifically, the Penas point to the discrepancy between the Texas Commission on Jail Standards’ (“TCJS”) requirement that detainees in WRAP restraints be checked every 15 minutes and the nineteen-minute gap preceding the 9:12 PM check when Pena was found dead, arguing that Sgt. Garza is responsible for this discrepancy and that a prompter observation check could have saved Pena’s life.

As the district court held, the Penas allege at most a single violation of state standards, which is insufficient to support a theory of supervisory liability for a constitutional violation here. Supervisory liability requires a showing of deliberate indifference that caused, through a failure to train or supervise, a violation of the plaintiff’s rights. *Smith v. Brenoettsy*, 158 F.3d

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908, 911–12 (5th Cir. 1998). “To satisfy the deliberate indifference prong, a plaintiff usually must demonstrate a pattern of violations” and an inadequacy in training or supervision that is “obvious and obviously likely to result in a constitutional violation.” *Cousin v. Small*, 325 F.3d 627, 637 (5th Cir. 2003) (quoting *Thompson*, 245 F.3d at 459). The Penas do not show that the single nineteen-minute gap between observation checks was a constitutional violation, nor that it was part of a pattern of violations of state standards to which Sgt. Garza was deliberately indifferent. Instead, they point to one prior incident of detainee suicide, involving a different policy of allegedly insufficient checks of suicidal detainees. To establish a pattern, however, prior incidents must be sufficiently numerous and similar. *Est. of Davis ex. rel McCully v. City of N. Richland Hills*, 406 F.3d 375, 382–83 (5th Cir. 2005). In other words, “[p]rior indications cannot simply be for any and all ‘bad’ or unwise acts”; rather, the prior acts must be “fairly similar to what ultimately transpired.” *Id.* at 383 (quoting *Snyder v. Trepagnier*, 142 F.3d 791, 799 (5th Cir. 1998)). The two loosely related incidents here do not establish a pattern, and the Penas point to nothing else showing Sgt. Garza’s awareness of a serious risk or an obvious likelihood of constitutional violations.

For these reasons, the Penas have not shown a dispute of material fact as to whether Sgt. Garza was deliberately indifferent to Pena’s rights due to a failure to supervise.

C

The Penas also brought a claim against Starr County under *Monell v. N.Y. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978), alleging that the county has a policy of failing to adequately monitor its jail cells and to provide appropriate medical care. They advanced both “episodic acts or omissions” and “unconstitutional conditions of confinement” theories under this heading. On appeal, they emphasize that Starr County Sheriff Fuentes allegedly failed

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to create and enforce policies requiring the adequate monitoring of inmates and medical training on topics such as how to detect head injuries, how to determine if a state of intoxication requires medical care, and how to detect a lack of oxygen and other medical distress. The district court's reasoning as to Starr County was much the same as its reasoning with respect to Sgt. Garza. Applying *Monell*'s requirement that to be held liable for an unconstitutional policy, a municipality must be shown to have in place an official policy that was the moving force of a constitutional violation, the district court determined that the Penas' showing was deficient because there were no underlying violations and no evidence supporting a finding of an official policy or custom or an intended condition resulting in punishment.

An episodic acts or omissions claim requires a showing that the constitutional violation "resulted from a municipal policy or custom adopted and maintained with objective deliberate indifference." *Garza*, 922 F.3d at 634 (quoting *Brumfield v. Hollins*, 551 F.3d 322, 331 (5th Cir. 2008)). "To show deliberate indifference, a plaintiff normally must allege a pattern of similar constitutional violations by untrained employees." *Hutcheson v. Dall. Cnty.*, 994 F.3d 477, 482 (5th Cir. 2021). For the reasons set out above with respect to Sgt. Garza, the Penas' allegations of a policy of not conducting cell checks every 15 minutes are deficient on this score.

Likewise, a conditions of confinement claim requires showing "an intended condition or practice" or that jail officials' actions are "sufficiently extended or pervasive," which we have stated amounts in essence to the same policy requirement. *Est. of Bonilla v. Orange Cnty.*, 982 F.3d 298, 308 (5th Cir. 2020). Thus, the Penas' conditions of confinement claim against Starr County also fails for lack of showing a "pervasive pattern of serious deficiencies in providing for his basic human needs," rather than just two loosely related incidents, and for a consequent failure to show that Pena's

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injuries resulted from any such pervasive practice. *Id.* at 309 (quoting *Shepherd v. Dall. Cnty.*, 591 F.3d 445, 454 (5th Cir. 2009)).⁸

The Penas’ episodic acts or omissions claim with respect to an alleged policy of failure to train on how to provide adequate medical care presents a closer question. A failure-to-train claim requires proof that “(1) the [county] failed to train or supervise the officers involved; (2) there is a causal connection between the alleged failure to supervise or train and the alleged violation of the plaintiff’s rights; and (3) the failure to train or supervise constituted deliberate indifference.” *Hutcheson*, 994 F.3d at 482 (quoting *Peña v. City of Rio Grande City*, 879 F.3d 613, 623 (5th Cir. 2018)). To make a showing of deliberate indifference leading to Pena’s injury, the Penas point to the “consistent testimony of jail employees” that they were not trained to identify latent head injuries and the like or to identify detainees’ needs for medical care at all, and to officials’ failure to reprimand the officers involved for their roles in Pena’s death or otherwise remediate after the incident. As the Penas point out, we have held that consistent official testimony may support a finding of a de facto policy in a case where a jail’s “explicit custom” was known to contradict the county’s official prescriptions, *Montano v. Orange Cnty.*, 842 F.3d 865, 875 (5th Cir. 2016), and that the lack of apparent reprimand or other remediation after the incident may do the same, *Sanchez*, 956 F.3d at 793. Here, several officers testified to a lack of medical training, and Sgt. Lopez specifically testified that he had received no training from Starr County about how to detect a need for medical attention from a head injury or how to “determine whether anyone is in distress that necessitates

⁸ Moreover, to the extent that they are really failure to train claims, such claims fall under the banner of episodic acts or omissions, not conditions of confinement. *Sanchez v. Young Cnty.*, 956 F.3d 785, 792 (5th Cir. 2020).

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medical attention” at all. The Penas also point to evidence showing a lack of reprimand or remediation after the fact.

Despite some similarities between these facts and our de facto policy cases, the cases the Penas rely on involved more discrete policies than the general categories of “lack of training on identifying head injuries” or “lack of training on when detainees require medical attention.” In *Montano*, a jail’s custom of isolating intoxicated detainees in a cell and simply leaving them until they became coherent contradicted the county’s official policy, which prescribed a four-to-eight hour detoxification period, in a specific way. 842 F.3d at 875. In *Sanchez*, a de facto policy of ignoring the jail’s written policy of placing potentially suicidal detainees in cells allowing for maximum visual observation, shown by numerous reports of similar failures and evidence of a specific log system that did not require actually entering a cell to conduct observation checks, pointed toward “extended or pervasive” misconduct of the kind required to attribute practices to an official policymaker without an explicit policy. 956 F.3d at 789, 792–93; *see also Grandstaff v. City of Berger*, 767 F.2d 161, 171 (5th Cir. 1985) (discussing a lack of reprimand following an “incompetent and catastrophic performance” characterized by “repeated acts or abuse” including shooting at a fugitive on the highway and toward a home, showing a disregard of human life). Thus, it is not clear that this line of cases supports the Penas’ liability theory here.

More fundamentally, because the Penas do not point to a specific pattern of similar violations, they must fall back on the “extremely narrow” “single-incident exception” to the typical pattern requirement. *Hutcheson*, 994 F.3d at 482 (quoting *Valle v. City of Hou.*, 613 F.3d 536, 549 (5th Cir. 2010)). Their lack of specificity regarding the contours of the alleged de facto policy weakens any potential showing that the county’s objective deliberate indifference as to any particular policy *caused* any particular officer’s constitutional violation, such that the “specific injury suffered” was the

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“highly predictable consequence of a failure to train.” *Id.* (quoting *Valle*, 613 F.3d at 549); *see also Garza*, 922 F.3d at 637 (noting that the alleged failure to train must be “‘closely related to the ultimate injury’ and not just attributable to a particular officer’s shortcomings” (quoting *City of Canton v. Harris*, 489 U.S. 378, 391 (1989))). The Supreme Court rejected a similar claim alleging a district attorney’s office failed to train prosecutors on their *Brady* obligations on the grounds that the plaintiff had not shown an “obvious need for . . . *specific* training,” noting that “[a]ttorneys are trained in the law” and subject to “threshold requirements . . . designed to ensure that all new attorneys have learned how to find, understand, and apply legal rules.” *Connick v. Thompson*, 563 U.S. 51, 64 (2011) (emphasis added). Similarly, here, Appellees point to record evidence that Starr County detention officers had some first aid training from the county and, at least in some cases, some medical training from prior jailer certification programs that they were expected to apply. The Penas do not point to evidence that, as a general matter, such training was so obviously insufficient that failure to supplement it further could amount to deliberate indifference on the part of the county. *See Kitchen v. Dall. Cnty., Tex.*, 759 F.3d 468, 485 (5th Cir. 2014) (describing the high bar for single-incident-based liability and requiring some showing that risk from a particular lack of training was patently obvious), *abrogated in part on other grounds by Kingsley v. Hendrickson*, 576 U.S. 389 (2015). In other words, they do not show why we should not apply the typical pattern requirement.

For these reasons, we hold that the Penas have shown no dispute of material fact as to whether Starr County was deliberately indifferent to Pena’s medical needs due to any official policy or practice, or intended an unconstitutional condition of confinement.

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D

The district court dismissed the Penas' wrongful death and survival actions against all defendants for the same reasons it dismissed his constitutional claims: because such claims require an underlying constitutional violation with a causal connection to the death in question. Because we hold that all individual defendants are entitled to qualified immunity and that there is no dispute of material fact as to whether Starr County violated Pena's rights, we also conclude that the Penas' wrongful death and survival statute claims brought pursuant to 42 U.S.C. § 1983 must fail.

IV

The Penas have not shown a dispute of material fact as to whether any of the individual defendants violated clearly established law, nor as to their *Monell* claim against Starr County. We AFFIRM.