United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED
February 25, 2021

Lyle W. Cayce
Clerk

No. 20-10521

CINDY MARTINEZ,

Plaintiff—Appellant,

versus

CITY OF NORTH RICHLAND HILLS; JEREMIAH DUDEK, #2020; MELANY KRAZER, #806; TERRY MOORE, #2035; DESIREE MONSIVAIS, #774; JUAN MORALES, #2072; JAMES POOLE, #777; GAVIN COLBY, #2038; MICHAEL BIRKES, #2064; DONALD MAYWALD, #2052; DWIGHT THOMPSON, #2054; JUSTIN SMITH, #710; ROBERT BOYKIN, #782; DALYA HASAN, #772; BEN NEGRETE, #776; MICHAEL LARA, #568; J. D. SOURBER; MICHAEL CASTRO; GRANT VICTORIOUS; SHRONDA DAVIS; JEFFREY MENTON,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CV-343

Before HAYNES, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Plaintiff–Appellant Cindy Martinez appeals the dismissal of her 42 U.S.C. § 1983 action against the City of North Richland Hills (City) and twenty detention officers[1] (Individual Defendants) for alleged violations of Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the Fourteenth Amendment. The district court granted Appellees' motions to dismiss after finding that Martinez failed to state a claim. We affirm.

I

On November 27, 2017, Cindy Martinez was arrested and booked into the North Richland Hills Jail (the Jail) for charges that were later dismissed. In her operative complaint, Martinez alleges that when she was booked in jail, she had no injuries and was able to walk unassisted. Martinez is an epileptic, and upon arrival, she allegedly told Officer Jeremiah Dudek that due to her epilepsy, she is required to take medication to prevent seizures. Martinez alleges that she requested the Individual Defendants provide her with the medication she requires to prevent her seizures and they refused to provide her with medication, but "were aware of her epilepsy, seizures, and need for medication" due to a medical intake form.

Martinez alleges that on November 30, 2017, she had a seizure and fell to the floor at the Jail, fracturing her hip and femur. According to Martinez, the Individual Defendants did not document her seizure. Instead, they

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* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

[1] Twenty North Richland Hills Detention Officers are named in the Second Amended Complaint: Michael Birkes, Robert Boykin, Ben Castro, Gavin Colby, Shronda Davis, Jeremiah Dudek, Dalya Hasan, Melany Krazer, Michael Lara, Donald Maywald, Jeffrey Menton, Desiree Monsivais, Terry Moore, Juan Morales, Ben Negrete, James Poole, Justin Smith, J. D. Sourber, Dwight Thompson, and Grant Victorious.

transferred her to the Tarrant County Jail without disclosing that Martinez had been injured. Martinez alleges she was placed in a wheelchair and shortly thereafter she had another seizure. Martinez was booked into the Tarrant County Jail before she was transferred to the hospital. Martinez states that her fractures have forced her to use a walker and to undergo physical therapy and ongoing medical treatment.

On April 26, 2019, Martinez filed her original complaint against City for violations of Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the Fourteenth Amendment for refusal to provide medication or medical assistance prior to and after the seizure and for refusing to document a medical emergency. She also alleged claims against Individual Defendants for violations of the Fourteenth Amendment because they refused to provide medical care before and after the seizure and refused to document a medical emergency, all with deliberate indifference. City and Individual Defendants filed Rule 12(b)(6) motions to dismiss. Martinez filed an amended complaint, adding defendants, but substantively leaving her complaint unchanged. Again, City and Individual Defendants filed motions to dismiss. Martinez was granted leave to amend her complaint yet again, adding only more individual defendants.

Individual Defendants filed a third Rule 12(b)(6) motion to dismiss Martinez's second amended complaint, alleging that Martinez failed to state a plausible claim for relief under 42 U.S.C. § 1983 and the Fourteenth Amendment, that her claims against Michael Lara in his individual capacity are redundant, and that the Detention Officers are entitled to qualified immunity. City also filed its third Rule 12(b)(6) motion to dismiss, alleging that Martinez failed to plead plausible claims for relief regarding all of her claims. After a response and reply, the district court issued an order and final judgment granting both motions to dismiss. Martinez timely appealed.

II

We review the district court's grant of a motion to dismiss de novo. *See Budhathoki v. Nielsen*, 898 F.3d 504, 507 (5th Cir. 2018). Rule 8(a)(2) of the Federal Rules of Civil Procedure provides, in a general way, the applicable standard of pleading. It requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a) (2), "in order to give the defendant fair notice of what the claim is and the grounds upon which it rests," *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555 (2007). Although a complaint need not contain detailed factual allegations, the "showing" contemplated by Rule 8 requires the plaintiff to do more than simply allege legal conclusions or recite the elements of a cause of action. *Twombly*, 550 U.S. at 555.

Accordingly, "[w]e accept all well-pleaded facts as true and view those facts in the light most favorable to the plaintiff." *Whitley v. Hanna*, 726 F.3d 631, 637 (5th Cir. 2013). The facts, taken as true, must "state a claim that is plausible on its face." *Amacker v. Renaissance Asset Mgmt. LLC*, 657 F.3d 252, 254 (5th Cir. 2011). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not entitled to an assumption of truth. *Id.* Where a complaint is devoid of facts that would put the defendant on notice as to what conduct supports the claims, the complaint fails to satisfy the requirement of notice pleading. *Anderson v. U.S. Dep't of Housing & Urban Dev.*, 554 F.3d 525, 528 (5th Cir. 2008).

III

In their Rule 12(b)(6) motion, Individual Defendants argue Martinez failed to plead facts that are sufficient to permit a reasonable inference that

her constitutional rights were violated by the detention officers. In particular, that Martinez, even after amending her complaint twice, continues to combine all the detention officers together in her allegations, which does not provide enough factual information as to the actions of each of the Individual Defendants.

Section 1983

"To state a claim under § 1983, a plaintiff must allege facts showing that a person, acting under color of state law, deprived the plaintiff of a right, privilege or immunity secured by the United States Constitution or the laws of the United States." *Bryant v. Military Dep't of Miss.*, 597 F.3d 678, 686 (5th Cir. 2010). Whether Martinez has a viable § 1983 claim requires examining two separate issues. First, it must be determined whether Martinez's complaint contains enough facts showing that her constitutional rights were violated, or whether the facts pled amount to a constitutional violation. Second, assuming that Martinez has stated a claim, a related issue is whether any of the Defendants are entitled to immunity for their actions.

Rights of Pretrial Detainees

"The constitutional rights of a pretrial detainee…flow from both the procedural and substantive due process guarantees of the Fourteenth Amendment." *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 639 (5th Cir. 1996) (citing *Bell v. Wolfish,* 441 U.S. 520 (1979)). "Since the State *does* punish convicted prisoners, but *cannot* punish pretrial detainees, a pretrial detainee's due process rights are said to be 'at least as great as the Eighth Amendment protections available to a convicted prisoner.'" *Id.* (quoting *City of Revere v. Massachusetts Gen. Hosp.,* 463 U.S. 239, 244 (1983)).

Under the Due Process Clause of the Fourteenth Amendment, the State owes "pretrial detainees…[a duty to provide] basic human needs, including medical care and protection from harm." *Hare*, 74 F.3d at 650; *see*

U.S. Const. amend. XIV; *City of Revere*, 463 U.S. at 244. With regard to the failure to provide medical care, this court notes "a due process claim could never be based on a jail official's negligent failure to provide either medical care or protection from harm." *Hare*, 74 F.3d at 642; *see also Partridge v. Two Unknown Police Officers of Houston, Tex.*, 791 F.2d 1182, 1187 (5th Cir. 1986) (rejecting liability for merely negligent failure to provide medical care).

This court determines the legal standard used to measure the due process rights of pretrial detainees based on whether the detainee challenges the constitutionality of a condition of her confinement or whether she challenges an episodic act or omission of an individual government official. *Hare*, 74 F.3d at 644–45. There is no rule barring a plaintiff from pleading both alternative theories, and a court may properly evaluate each separately. *See Shepherd v. Dall. Cty.*, 591 F.3d 445, 452 n.1 (5th Cir. 2009). Martinez alleges both theories.

a. Condition of Confinement

A challenge to a condition of confinement is a challenge to "general conditions, practices, rules, or restrictions of pretrial confinement." *Hare*, 74 F.3d at 644. When a plaintiff is challenging a condition of confinement, this court applies the test established by the Supreme Court in *Bell,* and asks whether the condition is "reasonably related to a legitimate governmental objective." *Id.* at 646; *Bell,* 441 U.S. at 539. "[I]f a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees." *Bell*, 441 U.S. at 539. Because "[a] State's imposition of a rule or restriction during pretrial confinement manifests an avowed intent to subject a pretrial detainee to that rule or restriction," the plaintiff need not demonstrate that the state actor or municipal entity acted with intent to

punish. *Hare*, 74 F.3d at 644. Thus, "a true jail condition case starts with the assumption that the State intended to cause the pretrial detainee's alleged constitutional deprivation." *Id.* at 644–45.

b. Episodic Acts or Omissions

An episodic-acts-or-omissions claim, by contrast, "faults specific jail officials for their acts or omissions." *Shepherd*, 591 F.3d at 452; *see also Scott v. Moore*, 114 F.3d 51, 53 (5th Cir. 1997) (en banc) ("[W]here the complained-of harm is a particular act or omission of one or more officials, the action is characterized properly as an 'episodic act or omission' case…"). In an episodic act or omission case, courts employ different standards depending on whether the liability of the individual defendant or the municipal defendant is at issue. *See Hare*, 74 F.3d at 649 n. 4.

Martinez "must establish that the official(s) acted with subjective deliberate indifference to prove a violation of [her] constitutional rights." *Flores v. Cty. of Hardeman*, 124 F.3d 736, 738 (5th Cir. 1997) (affirming summary judgment as to an individual defendant because there was no genuine issue of material fact indicating that he acted with deliberate indifference). "Deliberate indifference in the context of an episodic failure to provide reasonable medical care to a pretrial detainee means that: (1) the official was aware of facts from which an inference of substantial risk of serious harm could be drawn; (2) the official actually drew that inference; and (3) the official's response indicates the official subjectively intended that harm occur." *Thompson v. Upshur Cty.*, 245 F.3d 447, 458–59 (5th Cir. 2001).

Fourteenth Amendment

Martinez's Fourteenth Amendment claim is a medical-inattention claim. When officials demonstrate deliberate indifference to a pretrial

detainee's serious medical needs, they violate the Fourteenth Amendment.[2] Deliberate indifference is a demanding standard. *See Domino v. Tex. Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001) (explaining that "deliberate indifference is an extremely high standard to meet"). It requires that an official both know the pretrial detainee faces "a substantial risk of serious harm" and disregard "that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Individual Defendants

Martinez is correct that creating a category of multiple defendants into a clearly defined term does not, of itself, warrant dismissal. But while referring to a collective group of defendants is not a fatal pleading deficiency, "[e]ach defendant is [still] entitled to know what he or she did that is asserted to be wrongful." *Heartland Consumer Products LLC v. DineEquity, Inc.*, No. 1:17-CV-01035-SEB-TAB, 2018 WL 465784, at *4 (S.D. Ind. Jan. 18, 2018). Deliberate indifference, however, cannot be shown through the actions of the cumulative group. *See Lawson v. Dallas Cty.*, 286 F.3d 257, 262 (5th Cir. 2002). Instead, each named member of that group must be shown to have acted, independently, with deliberate indifference. *Id.* The court disregards bare assertions of collective responsibility, unsupported by concrete factual allegations. *See Iqbal*, 556 U.S. at 678 ("Nor does a complaint suffice if it

[2] *Hare,* 74 F.3d at 647-48. The deliberate-indifference analysis under the Eighth and Fourteenth Amendments are the same. Therefore, cases discussing deliberate indifference in the Eighth Amendment context are applicable in this analysis. *See id.* at 647 ("[N]o constitutionally relevant difference exists between the rights of pretrial detainees and convicted prisoners to be secure in their basic needs. Since the Supreme Court has consistently adhered to a deliberate indifference standard in measuring convicted prisoners' Eighth Amendment rights to medical care and protection from harm, we adopt a deliberate indifference standard in measuring the corresponding set of due process rights of pretrial detainees.").

tenders naked assertion[s] devoid of further factual enhancement." (quoting *Twombly*, 550 U.S. at 557)).

The mere fact that a detention officer was clocked in at the Jail while Martinez was housed there is not enough to impose individual liability for a claim under Section 1983 with sufficient specificity. As the Seventh Circuit has noted, "liability is personal." *Bank of Am., N.A. v. Knight*, 725 F.3d 815, 818 (7th Cir. 2013). Because the notice pleading requirement of the Federal Rules of Civil Procedure entitle each defendant to know what he or she did that is asserted to be wrongful, allegations based on a "theory of collective responsibility" cannot withstand a motion to dismiss. *Id.* (affirming dismissal of complaint because "a complaint based on a theory of collective responsibility must be dismissed.")

Martinez's only allegation against Officer Dudek is that he completed her intake form. This lone allegation does not state a claim because there is no allegation that he failed to act. There are also no allegations that would demonstrate that Dudek subjectively intended Martinez to be harmed by documenting her alleged condition nor that he was responsible for treating her. Martinez's claim against the Dudek is dismissed.

Martinez asserts officers typically shared info via email, including descriptions and medical information. While she was detained, Martinez was moved to another cell (D2), which, she alleges, is designated for inmates experiencing medical issues. Martinez's specific contention against Defendants Robert Boykin, Dwight Thompson, Melany Krazer, Donald Maywald, and Terry Moore is that each sent a briefing e-mail while Martinez was detained. Boykin acknowledged in an email on the day of the seizure that Martinez was in that cell. Another email, sent on the same day hours later from another officer, describes D2 as being empty. To connect knowledge—conscience and intentional decision to refuse to help—with the other

defendants, Martinez asserts the briefing emails were exchanged with and actually viewed by *all* officers, regardless of other responsibilities and shift activities going on at the facility. Boykin allegedly told Martinez to "sit down and shut up" because he believed people were unable to know when they would have a seizure. It's unclear how soon after this interaction Martinez had a seizure.

Everything else, including the complaint sections "refusal to produce medication or medical assistance prior to seizure" and "refusing to document medical emergency," refer to the Individual Defendants collectively and without specific distinction as to individual knowledge possessed, and the action and/or inaction committed by each. Martinez's conclusory allegations fail to provide any detail as to how these individuals specifically violated Section 1983 and her Fourteenth Amendment rights by being deliberately indifferent to her serious medical needs. Further, there are no allegations to support that they actually drew the inference that their acts or omissions could *cause* Martinez serious harm and that they acted or failed to act with the intent to harm Martinez. The claims against the Boykin, Thompson, Krazer, Maywald, and Moore are dismissed.

Martinez asserts no specific, substantive allegations against defendants Justin Smith, Dalya Hasan, Desiree Monsivais, Juan Morales, James Poole, Gavin Colby, Michael Birkes, Michael Castro, Grant Victorious, Shronda Davis, or Jeffrey Menton other than that they were working at the Jail at some point during Martinez's incarceration from November 27, 2017 through November 30, 2017.[3] These allegations are not sufficient to state a claim for deliberate indifference because they fail to show

[3] Negrete and Sourber were identified by name in the complaint as having provided Martinez with Tylenol.

these Defendants acted or failed to act with the required mental state. Accordingly, Martinez's claims against the Individual Defendants are dismissed.

Michael Lara

Martinez asserts claims against Michael Lara both individually and in his official capacity. Martinez alleges that Lara failed to supervise or train the other Individual Defendants and knew of the risk this created. "Supervisory prison officials may be held liable for a Section 1983 violation only if there was personal involvement in the constitutional deprivation, or a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Fortune v. McGee*, 606 F. App'x 741, 743 (5th Cir. 2015). Because Martinez has failed to state a claim against Individual Defendants for deliberate indifference, Martinez has failed to state the causation element of a Section 1983 claim against Lara for his failure to supervise and train. *See Rios v. City of Del Rio*, 444 F.3d 417, 425 (5th Cir. 2006) ("It is facially evident that [the test for supervisory liability] test cannot be met if there is no underlying constitutional violation."). Martinez's claims against Michael Lara are dismissed.

IV

Martinez next argues that the district court erred in granting City's motion to dismiss and whether she was discriminated against because of her disability. City argues the district court properly dismissed Martinez's claims because she failed to plead sufficient facts to show she was discriminated against because of her disability nor did she plead sufficient facts to support a finding that City violated her constitutional rights by a pervasive practice of failing to provide medical care or documenting medical emergencies.

Americans with Disabilities Act

Title II of the ADA protects against disability discrimination in the provision of public services, and provides:

> [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.

To state a Title II ADA claim, a plaintiff must allege facts demonstrating that (1) the plaintiff is a qualified individual within the meaning of the ADA; (2) the plaintiff is being excluded from participation in, or being denied benefits of services for which the public entity is responsible, or is otherwise being discriminated against by a public entity; and (3) that such exclusion, denial of benefits, or discrimination is by reason of the plaintiff's disability. *See Hale v. King*, 642 F.3d 492, 499 (5th Cir. 2011); *Melton v. Dall. Area Rapid Transit*, 391 F.3d 669, 671–72 (5th Cir. 2004).

Martinez alleges that she satisfies these elements because (1) she is a qualified individual as someone who suffers from epilepsy; (2) she was denied benefits because she was denied access to non-emergency or chronic medical care in the form of medication that would have prevented a seizure; and (3) she was denied these benefits because of her disability. Martinez asserts that she was denied access to necessary medical care because it was more expensive to treat a person with a chronic condition than to wait for the pre-trial detainee's medical condition to become acute and send the pre-trial detainee to the hospital and this fact alone satisfies the third element.

City does not challenge that Martinez has epilepsy but contends that Martinez's allegations in support of the third element are conclusory statements. Threadbare recitals of the elements of a cause of action,

supported by mere conclusory statements, do not suffice to show that Martinez is entitled to relief. *See Iqbal*, 556 U.S. at 678.

After two amendments, Martinez still fails to satisfy the third element of her ADA claim. While Martinez alleges that she had epilepsy and was denied access to non-emergency and chronic medical care, she does not allege or explain *how* her alleged disability of epilepsy *prevented* her access to City's non-emergency or chronic medical care. *Delano-Pyle v. Victoria Cty., Tex.*, 302 F.3d 567, 574 (5th Cir. 2002) (a plaintiff suing for a violation of the ADA may recover compensatory damages only on a showing of intentional discrimination). The fact that Martinez alleges a disability and that she was denied benefits does not necessarily mean that her disability was the *reason* she was denied benefits. *See Hay v. Thaler*, 470 F. App'x 411, 418 (5th Cir. 2012) (affirming dismissal of ADA claim when the plaintiff did "not allege, much less explain, how his alleged disabilities made it more difficult for him to access the benefits of TDCJ's services or gave him less meaningful access to those services"). We affirm dismissal of Martinez's Title II ADA claim.

Rehabilitation Act

Martinez also asserts a claim against the City under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), based on the allegation that Martinez was "deprived of access to medical care by a policy that prohibits non-emergency medical care for disabled inmates who require a continuum of care and instead only calls for care when symptoms such as seizures are acute."

Section 504 of the Rehabilitation Act protects against disability discrimination by recipients of federal funding and provides that:

> No otherwise qualified individual with a disability in the United State…shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or

> be subjected to discrimination under any program or activity receiving Federal financial assistance.

29 U.S.C. § 794(a).

Martinez alleges that she was denied access to necessary medical care because it was more expensive in terms of personnel costs and medical costs to treat a person with a chronic condition than to wait for the pre-trial detainee's medical condition to become acute and send the pre-trial detainee to the hospital. However, Martinez fails to satisfy the causation element of her claim—that she was denied benefits of non-emergency chronic medical care *because* of her epilepsy. *See Hay*, 470 F. App'x 411, 418 (5th Cir. 2012). We affirm the dismissal of Martinez's claim against City under Section 504 of the Rehabilitation Act.

Monell Claim

Martinez next alleges two claims under *Monell*: that the City violated her rights under the Fourteenth Amendment and under Section 1983 based on the conditions of her confinement. Municipal liability under Section 1983 requires proof of three elements: a policymaker; an official policy; and a violation of constitutional rights whose "moving force" is the policy or custom. *Monell v. Dep't of Soc. Servs. of N.Y.,* 436 U.S. 658, 694 (1978). To satisfy the first element, Martinez must adequately plead the facts to show that an official policy was promulgated or ratified by a municipal policymaker. *Groden v. City of Dallas*, 826 F.3d 280, 283 (5th Cir. 2016). "A 'policymaker' must be one who takes the place of the governing body in a designated area of city administration." *Webster*, 735 F.2d at 841 (quoting *Bennett v. City of Slidell*, 728 F.2d 762, 769 (5th Cir. 1984)). "City policymakers not only govern conduct; they decide the goals for a particular city function and devise the means of achieving those goals. [T]hey are not supervised except as to the totality of their performance." *Bennett*, 728 F.2d at 769.

There is a fundamental difference between decision makers and policymakers. "Discretion to exercise a particular function does not necessarily entail final policymaking authority over that function." *Bolton v. City of Dallas*, 541 F.3d 545, 548-49 (5th Cir. 2008) (per curiam). A municipality is liable *only* for acts directly attributable to it "through some official action or imprimatur." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001) (emphasis added). A city is not liable under Section 1983 on the theory of respondeat superior. *See Monell*, 436 U.S. at 694.

To state a conditions-of-confinement claim, a plaintiff must allege (1) "a rule or restriction or…the existence of an identifiable intended condition or practice…[or] that the jail official's acts or omissions were sufficiently extended or pervasive; (2) which was not reasonably related to a legitimate governmental objective; and (3) which caused the violation of [the inmate's] constitutional rights." *Estate of Henson v. Wichita Cty.*, 795 F.3d 456, 468 (5th Cir. 2015). In an episodic-act-or-omission case against a municipality, "an actor is usually interposed between the detainee and the municipality, such that the detainee complains first of a particular act of, or omission by, the actor and then points derivatively to a policy, custom or rule (or lack thereof) of the municipality that permitted or caused the act or omission." *Flores,* F.3d at 738. To succeed in holding City liable, Martinez must demonstrate an employee's subjective indifference and additionally that the employee's act "resulted from a municipal policy or custom adopted or maintained with objective deliberate indifference to her constitutional rights. *Hare*, 74 F.3d at 649 n. 14.

Martinez bases her *Monell* claims on the City's alleged failure to train detention officers on how to provide medical care. A *Monell* claim for failure to train may be brought "[o]nly where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants," thereby showing the necessary "policy or custom"

to establish § 1983 liability. *City of Canton v. Harris*, 489 U.S. 378, 389, (1989). Martinez relies on *Groden* and *Geers* to support her claim that she has sufficiently pled a claim under *Monell*. *See Groden,* 826 F.3d 280 and *Blanchard-Daigle v. Geers*, 802 F. App'x 113, 117 (5th Cir. 2020). Martinez argues that because she named the entity and the person in charge of the entity, she met her burden in the context of Rule 12(b)(6) under *Groden*. This is a flawed interpretation of *Geers*.

Martinez fails to allege any policymaker who acted to ratify an unconstitutional policy. Martinez's complaint does not contain any specific City policy, nor does she plead any facts that would permit the conclusion that the unidentified custom or policy was the "moving force" behind the detention officers' alleged misconduct.

Further, Martinez fails to provide non-conclusory allegations of a pervasive practice on behalf of the City for failing to provide medical care or document medical emergencies. As this court has previously noted, "a detainee challenging jail conditions must demonstrate a pervasive pattern of serious deficiencies in providing for his basic human needs; any lesser showing cannot prove punishment in violation of the detainee's Due Process rights." *Shepherd*, 591 F.3d at 454.

Because Martinez fails to provide non-conclusory allegations or allege facts to support the second and third elements of her *Monell* claims under either an episodic acts or conditions of confinement theory, her *Monell* claims are dismissed.

Failure to Train

Lastly, Martinez has failed to state a failure to supervise or train claim because she failed to state a claim that her rights were violated by any of the Individual Defendants. *See Rios*, 444 F.3d at 425. Moreover, Martinez fails to allege facts, other than her alleged incident, to show City engages in a

persistent, widespread practice of refusing to provide medical care or document medical emergencies. *See Peña v. City of Rio Grande City*, 879 F.3d 613, 622 (5th Cir. 2018) (recognizing that "plausibly to plead a practice so persistent and widespread as to practically have the force of law, a plaintiff must do more than describe the incident that gave rise to his injury"). Martinez's Section 1983 failure-to-train claim was properly dismissed.

V

For the foregoing reasons, the judgment of the district court is AFFIRMED.