

United States Court of Appeals for the Fifth Circuit

No. 25-40820
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 22, 2026

Thomas B. Plunkett, III
Clerk

ISMAEL RINCON,

Plaintiff—Appellant,

versus

CARLOS IBARRA, *In His Individual and Official Capacity*; GERARDO
JALOMO, *In His Individual and Official Capacities*; ROBERTO
FERNANDEZ,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:23-CV-17

Before DAVIS, STEWART, and DUNCAN, *Circuit Judges.*

PER CURIAM:*

Pro se Plaintiff-Appellant Ismael Rincon sued the City of Laredo and three of its police officers after the officers detained and arrested him, and searched his car and impounded it during a COVID-19 curfew. The district

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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court dismissed the City at the pleading stage then granted the officers qualified immunity on summary judgment. We AFFIRM.

On February 1, 2021, the City of Laredo declared COVID-19 a “public health emergency” and adopted an Emergency Order that, among other things, imposed a standing curfew from 6:00 p.m. until 5:00 a.m. “for all social activities not occurring at an essential or non-essential business.” The Order continues: “A social activity would be congregating in any area outside of an individual’s household other than for engaging and seeking the services of essential or non-essential businesses as outlined in this Order or Governor Greg Abbott’s Executive Order No. GA-32, or any subsequent amendments thereto.”

At about 1:29 a.m. on February 6—five days after the City adopted the Order—Rincon drove into a vacant parking lot in Laredo and parked. Defendants-Appellees Officers Carlos Ibarra and Gerardo Jalomo were nearby completing paperwork, suspected Rincon was violating the curfew, and approached him on foot. Rincon explained to the officers that he was eating but declined to say more and refused to give his name or license. After being ordered out of the car, a frisk produced what was later determined to be a pellet gun. Rincon was handcuffed about two minutes into the encounter. Asked whether he had additional weapons with him, Rincon said he had “plenty” more. Ibarra then searched the car’s passenger compartment. Other officers arrived and inventoried the car’s contents. The car was towed and its firearms seized.

When Defendant-Appellee Sergeant Roberto Fernandez arrived on the scene, Ibarra told him that a holstered handgun had been in plain view in the cupholder of Rincon’s car. Ibarra’s affidavit reflects Rincon was arrested for that unlawful carrying and cited for the curfew violation and failure to identify, all of which were later dismissed. A subsequent internal-affairs

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review found that Jalomo's body camera did not support Ibarra's claim that a handgun was in the cupholder.

Rincon filed this action, asserting false arrest, unlawful search and seizure, and malicious prosecution as to the officers, and failure to train as to the City. The district court dismissed the failure-to-train and malicious-prosecution claims on Defendants' Rule 12(b)(6) motion.¹ In the same ruling, the court granted the officers qualified immunity on the false-arrest claim based on the curfew violation. Three claims thus remained: (1) false arrest for failure to identify, (2) false arrest for unlawful carrying, and (3) unreasonable search and seizure.

After the case was reassigned, the officers moved for summary judgment based on qualified immunity, which the district court granted. Rincon timely appealed. His appeal rests on one theory: that the curfew did not apply to a lone motorist eating in a parked car, which rendered every subsequent step by the officers unlawful. Our review is de novo, construing liberally Rincon's pro se briefs.²

Rincon bears the burden of negating qualified immunity, with all inferences drawn in his favor.³ "This burden is not easy to meet because qualified immunity 'provides ample protection to all but the plainly incompetent or those who knowingly violated the law.'"⁴ He must show that

¹ Rincon does not challenge the Rule 12(b)(6) dismissal of the malicious-prosecution claim.

² See *Hanks v. Rogers*, 853 F.3d 738, 743 (5th Cir. 2017) (stating standard for summary judgment based on qualified immunity); *T.O. v. Fort Bend Indep. Sch. Dist.*, 2 F.4th 407, 413 (5th Cir. 2021) (stating standard for grant of Rule 12(b)(6) motion).

³ See *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010).

⁴ *Stout v. Vincent*, 717 F. App'x 468, 471 (5th Cir. 2018) (per curiam) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

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the officers' conduct violated a constitutional right and that the right "was 'clearly established' at the time of the violation."⁵ We may take the two inquiries in either order.⁶

In support of his false-arrest claim, Rincon argues that the Order's term "congregating" limits the Order to group activity, not a lone motorist. We don't decide whether the Order reached him, however, because the question on qualified immunity is whether the arrest was supported by *arguable* probable cause—whether a reasonable officer could have believed the Order applied to someone in Rincon's position.⁷

We conclude that belief was reasonable. As the first district judge found, it's unclear whether the Order's description of "social activity" was exhaustive or illustrative and, at the time, no decision had construed the term "congregating" as the Order used it. A reasonable officer could have believed that Rincon's presence satisfied other elements of the curfew provision, as well: he was outside his household, during curfew hours, with no apparent business purpose.

For his part, Rincon offers no contemporaneous decision holding the arrest of a lone motorist under a similar COVID-19 emergency order violated the Fourth Amendment. He relies on the general rule that an arrest requires probable cause, but that general rule does not clearly establish that his arrest in this instance lacked even arguable probable cause. The officers therefore are entitled to qualified immunity on the false-arrest claim premised on the curfew violation. And because at least arguable probable

⁵ *Tolan v. Cotton*, 572 U.S. 650, 655–56 (2014) (per curiam).

⁶ See *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

⁷ See *Brown v. Lyford*, 243 F.3d 185, 190 (5th Cir. 2001).

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cause supported Rincon's arrest, his false-arrest claims based on unlawful carrying and failure to identify also fall under qualified immunity.⁸

As to the warrantless search and seizure, Rincon's argument depends on his contentions that the officers had no legal basis to detain and arrest him, a premise we rejected above. He also points to disputed facts as to whether he was speeding or kept a handgun in plain view. Viewing the record in Rincon's favor, we assume he is right on both counts but neither fact was material to the district court's decision.⁹

What is undisputed is that, before the car was searched, a frisk had produced what appeared to be a holstered handgun, and Rincon said he had "plenty" more weapons. A reasonable officer could have believed that justified a protective search of the car's passenger compartment.¹⁰ And with the arrest supported by arguable probable cause, a reasonable officer also could have believed that impounding and inventorying the car was proper.¹¹ The officers are entitled to qualified immunity on Rincon's search-and-seizure claim.

⁸ See *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004); *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001); *Wells v. Bonner*, 45 F.3d 90, 95 (5th Cir. 1995). Rincon contends the officers lacked reasonable suspicion to stop him in the first place. Reasonable suspicion requires considerably less than probable cause. See *United States v. Sokolow*, 490 U.S. 1, 7 (1989). When the officers first engaged, Rincon was parked in an empty lot in the early morning during curfew hours with no apparent business purpose. A reasonable officer could read the curfew to reach an individual outside his household without an obvious business purpose and therefore reasonably suspect Rincon of violating the curfew. Cf. *Heien v. North Carolina*, 574 U.S. 54, 57 (2014) (holding that a reasonable mistake of law can give rise to reasonable suspicion).

⁹ See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("Only disputes over facts that might affect the outcome of the suit" properly preclude summary judgment.).

¹⁰ See *Michigan v. Long*, 463 U.S. 1032, 1049-51 (1983).

¹¹ See *South Dakota v. Opperman*, 428 U.S. 364, 368-69 (1976).

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Regarding the claims against the City, a municipality is liable under § 1983 only when a policy, custom, or a deliberately indifferent failure to train or supervise causes a constitutional violation.¹² The district court dismissed Rincon’s claim because the complaint pleaded no official policy, pattern, policymaker, deliberate indifference, or causation. Rincon’s brief barely addresses the district court’s reasoning and does not explain how it erred.¹³ Regardless, the district court correctly dismissed this claim. AFFIRMED.

¹² See *City of Canton v. Harris*, 489 U.S. 378, 388–90 (1989). The City and Fernandez argue the City’s Rule 12(b)(6) dismissal is not properly before us. We disagree. A notice of appeal “encompasses all orders that, for purposes of appeal, merge into the designated judgment” unless expressly limited. FED. R. APP. P. 3(c)(4), (c)(6).

¹³ See *Hernandez v. Causey*, 124 F.4th 325, 335 (5th Cir. 2024) (“Where a party’s opening brief barely addresses the district court’s analysis and wholly neglects to explain how it erred, the party forfeits that argument.” (cleaned up)).