

United States Court of Appeals
for the Fifth Circuit

No. 25-50793

United States Court of Appeals
Fifth Circuit

FILED

August 31, 2026

Lyle W. Cayce
Clerk

JUANITA DOE,

Plaintiff—Appellant,

versus

MIDLAND COUNTY; JUAN CARLOS SERNA-VENEGAS; DAVID
CRINER, *Sheriff*; SARGEANT PETERS; MARISELA MARTINEZ,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:23-CV-91

Before SMITH, HAYNES, and ENGELHART, *Circuit Judges*.

PER CURIAM:*

Juanita Doe was in a prison and was sexually assaulted leading her to sue the assaulter, two other people, and the County. She won against the assaulter but the remaining defendants, sued under 42 U.S.C. § 1983, filed a 12(b)(6) motion to dismiss. The magistrate judge recommended dismissal of

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

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the three. Doe failed to appeal that decision to the district court, and the district judge affirmed the dismissal. Doe now appeals to us. We AFFIRM.

Doe properly received money against the assaulter, Serna-Venegas. Her appeal is only on the other three defendants. We note that “when the district court has not made an independent review of the record, failure to object to an issue in the [magistrate judge’s report and recommendation] . . . results in plain-error review applying to that issue when raised in [this] court.” *James v. Smith*, 152 F.4th 594, 603 (5th Cir. 2025) (quoting *Wallace v. Mississippi*, 43 F.4th 482, 494–95 (5th Cir. 2022)). “Under the plain-error standard, [Doe] must show for reversible plain error: (1) a forfeited error; (2) that was plain (clear or obvious error, rather than one subject to reasonable dispute); and (3) that affected [her] substantial rights.” *Id.* (citation omitted). “[I]f [she] makes that showing, [this court has] the discretion to correct the reversible plain error, but [the court] generally should do so only if it seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.*

Regarding Sheriff Criner, she claims that he is liable due to his deliberate indifference. But the district judge found correctly that Doe failed “to plead any facts showing that Sheriff Criner had prior personal knowledge of . . . Serna-Venegas’s sexual misconduct” because relevant facts only “came to light through an investigation *after* [Doe] reported [Serna-Venegas].” Thus, no plain error as to him, and we affirm.

Regarding Martinez, Doe alleges that Martinez is liable under § 1983 under a theory of bystander liability. Her complaint does not allege that Martinez was present at the scene of Serna-Venegas’s assault on Doe. “[Bystander] liability will not attach where an officer is not present at the scene of the constitutional violation.” *Whitley v. Hanna*, 726 F.3d 631, 646 (5th Cir. 2013). Martinez claimed, and the district court found, that she had

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qualified immunity, and Doe failed to show otherwise regarding her bystander liability claim. Thus, we affirm the qualified immunity claim.

Finally, Doe argues that Midland County failed to adopt policies to prevent sexual abuse. A municipality may be held liable “where ‘the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers.’” *Hicks-Fields v. Harris Cnty.*, 860 F.3d 803, 808 (5th Cir. 2017) (quoting *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978)). The plaintiff must “identify a municipal policy or custom that caused the plaintiff’s injury,” *Goodman v. Harris Cnty.*, 571 F.3d 388, 396 (5th Cir. 2009) (citation modified), and show that the municipality made “a deliberate choice to follow a course of action . . . from among various alternatives by city policymakers,” *City of Canton v. Harris*, 489 U.S. 378, 389 (1989) (citation modified).

To plead such a *Monell* claim, the plaintiff must allege that: “(1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right.” *Peña v. City of Rio Grande City*, 879 F.3d 613, 621 (5th Cir. 2018) (quoting *Hicks-Fields*, 860 F.3d at 808). To survive a motion to dismiss, “[t]he description of a policy or custom and its relationship to the underlying constitutional violation . . . cannot be conclusory; it must contain specific facts.” *Spiller v. City of Tex. City, Police Dep’t*, 130 F.3d 162, 167 (5th Cir. 1997). The district judge concluded that Doe did not sufficiently plead a policy or custom, noting that, while Doe alleged “one or more official policies or customs of which [Midland County] had actual or constructive knowledge, which caused or contributed to the injury to [Doe],” (amended complaint), and then “rattle[d] off twenty examples of policies Midland County *failed* to adopt or implement,” Doe “fail[ed] to plead any facts suggesting Midland County

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maintained an official policy that was permissive of sexual abuse.” We agree with that statement. Accordingly, we affirm on that.

AFFIRMED.