No. 20-30739

IN THE

United States Court of Appeals for the Fifth Circuit

ERIE MOORE, JR.; TAMARA GREEN;
TIFFANY ROBINSON,
Plaintiffs-Appellants,

v.

LASALLE MANAGEMENT COMPANY, L.L.C., INCORRECTLY NAMED AS LASALLE CORRECTIONS, L.L.C.; RAY HANSON; GERALD HARDWELL; ROY BROWN; REGINALD WILLIAMS; KENNETH HART; DANIELLE WALKER; DUAN ROSENTHAL; JEREMY RUNNER; REGINALD CURLEY, INCORRECTLY NAMED AS REGINALD CURLY; CITY OF MONROE; SHERIFF OF OUACHITA PARISH; DONALD MURPHY; CHASE WELLS; TOMMY CROWSON, INCORRECTLY NAMED AS OFFICER CROWSON; WILLIAM MITCHELL, INCORRECTLY NAMED AS NURSE MITCHELL; ALTON HALE; RICHWOOD CORRECTIONAL CENTER, L.L.C.; ARCHIE AULTMAN, INCORRECTLY NAMED AS AULTMAN,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana, USDC No. 3:16-CV-1007

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to 5th Cir. R. 28.2.1, the number and style of the case are as follows: *Moore v. LaSalle Management Company, L.L.C.*, 5th Cir. No. 20-30739.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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STATEMENT REGARDING ORAL ARGUMENT

Counsel for Appellants respectfully requests oral argument. The case involves over a dozen Defendants, a record spanning over 30,000 pages, and legal questions of first impression and great importance. Oral argument would assist the Court in navigating this lengthy record and in deciding these complex legal issues.

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INTRODUCTION

Erie Moore, Sr., was a Louisiana native, a 57-year-old mill worker, a father of three, and a grandfather who loved to sing. In October 2015, while Mr. Moore was briefly in the custody of a jail run by a private, for-profit company, guards battered him, abused him, and left him for dead on the jailhouse floor. Despite an extraordinary record of violence against Mr. Moore, despite the incriminating videos of these incidents, and despite the guards' utter failure to procure medical care for the person they had so badly injured, the district court credited evidence favorable to Defendants, disregarded genuinely disputed factual issues, and granted their motions for summary judgment.

Mr. Moore was arrested on October 12 for nonviolent, misdemeanor disturbance of the peace: The arresting officer entered a donut shop in the City of Monroe, Louisiana, and reportedly found Mr. Moore there raising his voice and cursing. Mr. Moore was then transferred to the custody of Richwood Correction Center, a private detention facility operated on contract with the City by a for-profit corrections company, LaSalle Management. LaSalle runs a number of similar facilities in Texas and Louisiana.

While housed in a lockdown cell with a known violent cellmate, Mr. Moore was involved in an apparent altercation, the details of which were not captured on video. Guards found that cellmate on the floor having an apparent seizure, and he later died at the hospital. Following that incident, Richwood guards used chemical spray on Mr. Moore, punched him in the head, and repeatedly slammed his head into the floor.

Despite this excessive, deadly force—observed by several guards and captured on video—no one called an ambulance. Instead, they carried Mr. Moore to a camera-free corridor of Richwood known as the Four-Way. There, they beat him and again applied chemical spray, this time to his groin, while his hands were cuffed behind his back and his legs in shackles. They later laughed about the incident, bragged to a fellow guard that they had "finished" Mr. Moore in the Four-Way, and agreed to cover for each other in court.

For nearly two hours, guards stood by while Mr. Moore lay unconscious in the Four-Way, the bleeding in his brain gradually diminishing any chance of survival. Richwood's on-site nurse saw that Mr. Moore was unconscious and lying shackled on the ground, but he

conducted no further examination and provided no treatment—he did not even check Mr. Moore's pulse.

No one from Richwood ever did call an ambulance. It took the arrival of deputies from the local sheriff's office, who immediately realized something was gravely wrong and transferred Mr. Moore in quick succession to the parish jail, the local hospital, and then by helicopter to the university hospital in Shreveport.

Mr. Moore never woke up. He was in a coma by the time he arrived at the hospital, and he died from his injuries a month later. The Ouachita Parish Coroner ruled his death a homicide, caused by blunt-force trauma to the head sustained while in custody at Richwood.

In opposing Defendants' motions for summary judgment, Plaintiffs proffered evidence showing that Mr. Moore's constitutional deprivations at Richwood were not an aberration. In fact, several of the guards' tactics were established practices at the facility, including routinely punishing people in the camera-free Four-Way, applying chemical spray to restrained prisoners, and falsifying reports to cover up the abuses. About a year after Mr. Moore's death, two of the same

guards pleaded guilty to federal charges arising from similar acts used against other individuals in their custody.

Yet the very people responsible for protecting Mr. Moore's rights did nothing. Even after the coroner ruled Mr. Moore's death a homicide, LaSalle conducted no investigation and imposed no discipline. Nor did the City of Monroe. On the contrary, the evidence shows that neither paid Richwood much attention at all. In fact, neither LaSalle's corporate management nor the City conducted any regular monitoring of Richwood and its staff; rather, they left LaSalle's employees to run the facility in a state of lawless abuse.

Mr. Moore's family sued the individual guards, the nurse, Richwood, LaSalle, and the City, among others, for Mr. Moore's wrongful death and the violation of his constitutional rights. At summary judgment, the district court correctly concluded that the evidence was sufficient to raise a genuine dispute that Richwood guards used excessive force against Mr. Moore. But it nevertheless entered summary judgment in Defendants' favor, ruling that despite all the foregoing—the injuries captured on video, the failure to provide medical

care, the jailhouse culture of brutality and indifference—Plaintiffs could not show that Defendants' actions caused Mr. Moore's death.

To reach that conclusion, the district court committed the classic summary-judgment error: It weighed the evidence and drew inferences in Defendants' favor. Instead of asking whether Defendants had shown the absence of genuine factual disputes, the district court asked whether Plaintiffs had "carr[ied] their burden of establishing" the constitutional violations at issue. ROA.27298. That was a question for a jury. The district court then rejected Plaintiffs' claims for punitive damages and vicarious liability, and it granted the defense of qualified immunity to the individual Defendants—defying the binding precedent of this Court and the Supreme Court. Those rulings protect Defendants here—and those in the future—from the legal accountability necessary to stop continued abuse in private detention facilities.

There is no real mystery about what happened to Erie Moore. The Court will see for itself in the graphic videos from inside Richwood. There are, at the very least, genuine disputes of material fact as to whether Defendants caused Mr. Moore's death. His children deserve

the opportunity to put their evidence to a jury and vindicate their father's rights. This Court should reverse.

JURISDICTION

The district court had jurisdiction over the complaint pursuant to 28 U.S.C. §§ 1331, 1343(a), and 1367(a). On October 30, 2020, the district court entered eight summary judgments in favor of Defendants on most—but not all—of Plaintiffs' claims. ROA.27141-27459.[1] By order dated November 10, 2020, the district court granted Plaintiffs' unopposed motion to deem the aforementioned judgments final pursuant to Federal Rule of Civil Procedure 54(b). ROA.27518-27520.

On November 24, 2020, Plaintiffs timely filed a notice of appeal from the district court's orders and final judgments. ROA.27558-27560; Fed. R. App. P. 4(a)(1)(A). This Court has jurisdiction under 28 U.S.C. § 1291.

[1] Addendum A at the end of this brief contains a list of the district court's opinions and judgments, along with citations to the Record on Appeal.

STATEMENT OF ISSUES

Issues Concerning The Individual Defendants

1. Where the medical evidence indicates that a pretrial detainee sustained a fatal blunt-force head injury during the same period of time in which guards punched him in the head, slammed his head into the floor, picked him up, and then dropped him head-first back onto the floor, could a reasonable jury find that the guards' actions were a substantial factor in his death? § II.A.

2. Where the same guards participated in those uses of force, failed to intervene, failed to seek medical care for the resulting injuries, and then transported the pretrial detainee to a camera-free area where they proceeded to beat him and then left him to languish for nearly two hours, could a reasonable jury find that the guards were deliberately indifferent to the serious risk to his health? § II.B.1.

3. Where, following those injuries, a nurse observed the pretrial detainee lying unconscious, face-up, with his hands cuffed behind his back, and where that nurse conducted no examination—other than to confirm he was unconscious—and offered no medical care, could a

reasonable jury find that the nurse was deliberately indifferent to the serious risk to his health? § II.B.2.

4. May a nurse employed by a private detention facility assert the defense of qualified immunity, despite this Court's precedent that such a defense is categorically unavailable to such employees? § II.C.

5. In light of the uses of force and deliberate indifference just described, could a reasonable jury find that the guards and nurse acted with reckless or callous indifference to the pretrial detainee's rights—and thereby award punitive damages? § II.D.

Issues Concerning The Corporate Defendants

6. May private companies operating detention facilities be held vicariously liable for the actions of their employees under the doctrine of respondeat superior? § III.A.

7. Where there is evidence that a detention facility had ongoing customs of using chemical spray against restrained pretrial detainees and of using a camera-free area in order to inflict punishment on such detainees—and where that evidence includes federal convictions of some of the facility's guards for precisely these abuses against other detainees—could a reasonable jury hold the private companies

operating the facility liable under *Monell v. Department of Social Services*, 436 U.S. 658 (1978)? § III.B.2-3.

8. Where the private companies operating a detention facility failed to train their guards on the use of defensive tactics, despite the obvious need for such tactics in their day-to-day employment, could a reasonable jury hold the companies liable under *Monell*? § III.B.4.

9. May punitive damages be imposed against private companies operating detention facilities? § III.C.1-2.

10. In light of the abusive customs and training failures just described, could a reasonable jury find that the private companies acted with reckless or callous indifference to the pretrial detainee's rights? § III.C.3.

Issue Concerning The Municipal Defendant

11. Where a city contracts with private companies to operate a detention facility for its pretrial detainees, and where the city delegates all policy-making authority to those companies, may the city be held liable under *Monell* for the abusive customs and training failures established by the companies? § IV.

STATEMENT OF THE CASE

The City of Monroe contracts with LaSalle to house its arrestees at Richwood Correctional Center.

In February 2001, the City Council in Monroe, Louisiana (the "City"), determined to replace the city jail with a privately managed facility. It approved an agreement with an entity called Richwood Correctional Center, LLC, to provide detention services at a medium-security facility just outside the city limits in Ouachita Parish. See ROA.23193-23212, 24822. Richwood indemnified the City from liability for claims arising from operation of the facility. ROA.23204. LaSalle Management Company, LLC, was the actual operator of the facility and employer of the facility's staff, pursuant to an agreement with Richwood. *See* ROA.976-987. These two LLCs have overlapping members and are ultimately owned by the same extended family. *See* ROA.1062-1063, 1066-1078, 10521.

Once the contract with the City was signed, both the City and LaSalle's corporate management wiped their hands of administration and oversight at Richwood. No one from the City inspected or conducted oversight at Richwood. According to the police chief, "no one really did anything with the facility." ROA.24720; *accord* ROA.24726.

Although the police chief was aware of the contract's existence, he never reviewed its terms—not even after he was asked to hand over a copy as part of this litigation. ROA.24717-24718. He received no reports from Richwood or LaSalle, just letters informing him that the contractual rates were increasing. ROA.24721. The police chief never met, spoke with, or corresponded with LaSalle's corporate management, and his only interactions with Richwood supervisors were to discuss the handoff of arrestees from police to the jail. ROA.24727-24728. Across his entire tenure, he made a single, half-hour visit to the facility to discuss a change in that process. ROA.24728. When there were emergencies at Richwood, no one informed the City—except to bill the City for any resulting medical charges. ROA.24721.

LaSalle's corporate management took a willfully blind approach, too, leaving oversight to their wardens. According to one of LaSalle's corporate deponents, the company was not aware of key contractual requirements. *See* ROA.24786. LaSalle employed a nominal chief of operations, but his job was marketing: "to go out and find inmates to fill the empty beds." ROA.24510. His visits to the facilities were for the purpose of "[c]hecking for bed space" and answering questions from

wardens about, for example, "buying groceries." ROA.24513. According to LaSalle, it "leaves all of the operational decisions of each facility to the warden," who was the highest-ranking LaSalle employee at Richwood. ROA.9242. Neither the warden, the assistant warden, nor the chief of operations had ever even seen the contract, which purported to define out the standard of care to be provided to detainees. *See* ROA.9242, 24009, 24229, 24515. And as a rule, LaSalle and its employees do not investigate the deaths of detainees in its facilities; it does not even require wardens to report such deaths. ROA.10527, 10529.

Richwood maintains unlawful punishment practices involving chemical spray and a camera-free corridor called the Four-Way.

Absent oversight by the City or LaSalle, the Richwood staff was left to run the detention facility as it saw fit. Abuse ensued. At the time of the events in question, Richwood maintained two relevant practices that violated the constitutional rights of those in its custody.

First, although guards were ostensibly trained not to use chemical spray on restrained individuals, ROA.23755, both guards and their supervisors did so "routinely," according to a former Richwood employee, "many, many times," ROA.23755.

Second, Richwood staff deliberately employed a small section of the facility, outside the view of any cameras, to punish individuals in their custody. They regularly used a roughly 12-by-12 foot area within the facility known as the Four-Way, where several corridors intersected. *See* ROA.24058. It was common knowledge among guards and detainees that there were no surveillance cameras in the Four-Way. ROA.24748. As a result, there was a "wide[]spread practice" of taking detainees to the Four-Way, the "express[] purpose" of which "was to question the [detainees] and to 'teach them a lesson' off camera, that is to use force and punish [them]." ROA.23755-23756. In the cells, by contrast—as one of the guards, Defendant Runner, explained—"[w]e're on camera, so I would not … punch an inmate." ROA.24609.

Monroe Police arrest Erie Moore for disturbance of the peace, and Richwood houses him in a cell with a known violent detainee.

It was in this facility—and amid this culture of abuse—that Defendants killed Erie Moore, Sr. On October 12, 2015, at 6:15am, a City police officer entered a Donut Palace in Monroe and encountered Mr. Moore, allegedly raising his voice and using profanity. ROA.23264, 24903. The officer arrested Mr. Moore for misdemeanor disturbance of

the peace by profane language or threats. ROA.23264. During the arrest, Moore indicated that he thought the officer "was going to kill him." ROA.23265. Although the officer later included this detail in his report, and even though the statement could have reflected ideations of suicide-by-cop, the arresting officer chose not to inform the booking officer at Richwood when he delivered Moore to their custody. ROA.24903. He declined to do so because, in his view, such statements were "normal," "especially [for] black men." ROA.24903.

Suspecting that he was intoxicated, Richwood placed Mr. Moore in a lockdown cell—a cell that held another detainee, Vernon White, who was known to be violent. See ROA.23415, 24317. Mr. White had earlier been in an altercation with a previous cellmate in which he threw "several punches." ROA.23237. In that incident, "it was clear" to guards that Mr. White "was the aggressor." ROA.23237.

Despite that earlier altercation, and despite knowing that both Mr. White and Mr. Moore were "kinda volatile," ROA.23518, and "had been unpredictable in their behavior since their arrival" at Richwood, ROA.23183, Richwood decided to house them together, ROA.24317. Although Richwood staff would later falsely claim that this double-

housing was necessary because they were out of lockdown space, *see* ROA.23415, 23474, the shift supervisor who made the decision, Defendant Hardwell, admitted that other empty lockdown cells were available, ROA.24317.

Predictably, at 7:07am on October 13, Mr. Moore and Mr. White got into an altercation. ROA.23234. A guard used chemical spray on Mr. Moore to extract him from the cell. ROA.23234. Despite the altercation, once they had been offered medical attention for the spray, both men were returned to the same cell. ROA.23234.

Following an incident in the lockdown cell, the guards extract Mr. White and spray and punch Mr. Moore's head.

At roughly 6:00 p.m. on October 13, as one of the guards, Defendant Runner, was passing by that lockdown cell, he observed Mr. White shaking on the floor of the cell. ROA.23173, 23467. Mr. White had earlier appeared to have at least two seizures and one fainting incident in his cell, *see* Manual Attachments ("M.A.") 4A, 4B, 4C,[2] and

[2] The video exhibits were submitted as manual attachments in the district court at ECF Nos. 230-13, 241-18, and 298-13. Addendum B at the end this brief contains a list and descriptions of the videos. Plaintiffs' counsel understands that this Court may obtain access to the videos, which are part of the Record on Appeal, by requesting them

Runner suspected another seizure, ROA.23467, 24608. Video from the camera inside the cell does not clearly show what occurred in the moments before Runner arrived. Mr. White was in the blind spot under the cell's camera, but the video evidence suggests another physical altercation between the two men. *See* M.A. 43; ROA.24303 (describing blind spot). There is no evidence that Mr. Moore sustained any injuries in this incident. *See* ROA.24013, 24300.

In order to obtain medical care for Mr. White's apparent seizure, guards entered the lockdown cell and extracted him. *See* M.A. 1.[3] As the guards entered the cell, Mr. Moore was squatting opposite Mr. White, apparently defecating. M.A. 1 (6:08:10); ROA.23173. Even though he was in this vulnerable position, the guards attacked Mr. Moore. First, Defendant Loring deployed chemical spray to Moore's face. M.A. 1 (6:08:20-24) (showing Loring spraying from in the doorframe, from behind another guard); ROA.23173, 23469. Then,

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from the district court directly. Timestamps for the video exhibits refer to the "a.m." or "p.m." clock time displayed in the video, as opposed to the time within the video clip.

[3] References to Manual Attachment 1 in this brief refer to the "Extended" version submitted at summary judgment. *See* ECF No. 298-13.

without giving Mr. Moore even a second to respond to that initial force, Defendant Runner escalated the force and punched Moore in the head, knocking him to the ground. M.A. 1 (6:08:24-28). All this was caught on video.

The guards significantly downplayed Runner's punch and knock-down use of force. Defendants Hardwell, Williams, and Loring made no mention of it in their reports following the incident. ROA.23218, 23220, 23221, 23228. Williams later admitted in an interview with investigators that Runner had "pushed" Moore. ROA.23505. Runner himself consistently mischaracterized the force, saying that he "placed arrestee Moore on the floor with a push from my hand." ROA.23173; *accord* ROA.23469; ROA.23471. Defendants' reports are belied by the video, which depicts an obvious wind-up and swinging punch to the head. M.A. 1 (6:08:24-28).

Defendants immediately called emergency services to transport Mr. White to the hospital, and Mr. White departed by ambulance within a half hour of his extraction from the cell. ROA.23218. Mr. White was later pronounced dead at the hospital. ROA.23218.

The guards leave Mr. Moore in the cell and later return to spray and batter him again.

Richwood policy requires that detainees be evaluated for medical care following any use of force, including chemical spray. ROA.23167. That did not happen for Mr. Moore. Instead, the guards left him to languish in his cell for an hour before they returned at 7:03 p.m. ROA.23229. Even then, they did not return to transfer Mr. Moore to a hospital or call an ambulance, as they had done for Mr. White. *See* ROA.23221, 23229. On the contrary, their plan was to turn Mr. Moore over to the custody of the nearby parish jail, not to obtain medical care. *See* ROA.24290.

The guards again twice used force against Mr. Moore. Mr. Moore was lying on his bunk as the guards arrived, yet Defendant Hardwell can be seen shaking his chemical spray, preparing to spray the defenseless man. M.A. 7 (7:00:05-10). Mr. Moore sat up in his bunk and put his hands in the air, then clasped them as if pleading with the guards. M.A. 7 (7:00:20-32). Hardwell then approached Mr. Moore and sprayed him directly in the face. M.A. 7 (7:00:32-35); ROA.23230. In the video recording, Hardwell is visibly the aggressor at every turn; Mr. Moore remained seated and attempted to shield his face from the

incoming spray. *See* M.A. 7. And again, rather than provide medical care, Hardwell left the cell and "let [the spray] sit on [Moore] for a little while." ROA.23398.

Second, Hardwell reentered with the other guards, grabbed Mr. Moore, picked him up into the air, and slammed him head-first onto the floor. M.A. 2 (cell camera); M.A. 3 (hallway camera). Hardwell had attended no training at Richwood. ROA.24282. Unsurprisingly, Richwood's warden did not recognize Hardwell's take-down as any kind of technique that would have been taught to guards, ROA.24224.

Defendants again significantly downplayed the use of force in ways that are belied by the video evidence. In his reports and interviews that night, Hardwell stated that he had merely "plac[ed]" his arms around Moore, "remov[ed] him from the cell," and "plac[ed] him on the floor." ROA23230; *accord* 23398. In his deposition, Hardwell still falsely denied that he "threw" or "slammed" Moore into the ground. ROA.24292 ("placed him on the ground"). Defendant Williams likewise said that Moore was merely "carried" from the cell and "placed" on the floor. ROA.23231. Defendant Runner described Hardwell as having

"properly removed" Moore from the cell, ROA.23232, and only later admitted that Hardwell had performed a "hard drop," ROA.24610.

Once they had handcuffed Moore on the floor, guards attempted to carry him down the hallway. M.A. 3 (7:04:35-58). During their first attempt, they dropped him head-first onto the hallway floor. M.A. 3 (7:04:46-50). Defendants attempted to cover up this third head injury, too. Hardwell, Williams, and Runner all used the same word, claiming that Moore was merely "escorted" down the hall, as if he were able to walk on his own. ROA.23230-23232. None of them mentioned that they carried and dropped Mr. Moore or that his head was slammed against the floor. ROA.23230-23232, 23510. None of this was necessary: Richwood had both a stretcher and wheelchairs available for use at the time, and Defendants offered no explanation for why they decided to carry Mr. Moore in the first place. ROA24308-24309, 24534.

The guards spray and beat Mr. Moore in the Four-Way.

Although they had now caused three consecutive impacts to Mr. Moore's head, as well as two chemical sprays to his face, the guards did not call an ambulance. Instead, pursuant to the customs described

above, they brought Mr. Moore to the camera-free Four-Way for additional punishment.

Once in the Four-Way, and consistent with those customs, the guards again deployed chemical spray on Mr. Moore—even though he was lying on his back, shackled and with his arms cuffed behind him. When another guard, Defendant Foster, arrived in the Four-Way, he saw the guards "in a pepper spraying mode." ROA.24491; *see also* ROA.23661 (custodian could smell "fresh" spray in the Four-Way afterward). And the spray was not just used on Moore's face; they sprayed his groin, as well. When sheriff's deputies finally arrived later that night, they could smell the chemical spray, and the front of Moore's pants were "saturated" with it. ROA.24134; *see also* ROA.24701.

The guards, including Defendant Foster, also physically beat Mr. Moore in the Four-Way. The beating only came to light years later, in 2018, when Foster bragged about it to a new guard named John Badger. *See* ROA.24479. Foster had previously been passed over for a promotion, and he was vying for another position that had come available. ROA.24485, 24487. He told Badger that, if he was again

rejected, he would come clean to the Moore family about the beating. ROA.24485, 24487.

Foster then proceeded to describe the beating to Badger. He explained that the guards had taken Mr. Moore to the camera-free Four-Way and that Foster had intervened to stop another guard from killing Moore. *See* ROA.24485, 24490, 24497. Ultimately, though, Foster claimed that "[t]hey finished him." ROA.24491; *accord* ROA.24487. Afterward, Foster explained that the guards "laughed and talked about it" and discussed "how they was going to protect one another in court." ROA.24487. According to Foster, "We have each other['s] backs. This is what we do." ROA.24490.

Hearing a "commotion" in the Four-Way, ROA.24979, Richwood's on-site nurse, Defendant Mitchell, entered and saw Defendants Loring, Hardwell, Curley, and Runner wrestling with Moore and getting "pretty rough" with him, ROA.24994; *see also* ROA.24977-24979, 24989. On subsequent visits to the Four-Way, Mitchell witnessed the unconscious Moore, with handcuffs secured too tightly and digging into his skin. *See* ROA.24982. He also noticed a knot on Moore's forehead, which had not

been there when Mitchell saw him earlier in the day. ROA.24983, 24988.

Mitchell never provided any medical assistance to Mr. Moore, who was now lying unconscious in a corridor after repeated head traumas, chemical sprays, and a beating. Mitchell did not even take Mr. Moore's vital signs or check his pupils. ROA.24991. The only examination he conducted was to pat Moore's chest and do a "quick" sternum rub, to which Moore responded with only a grimace and a grunt. ROA.24995. Mitchell admitted that a healthy patient who was merely sleeping would have reacted to and woken from the sternum rub, yet he did nothing more. ROA.24996.

In short, Mitchell's so-called examination confirmed only what he already knew: that Moore was unconscious. Despite that, he did nothing more. He made no diagnosis and provided no treatment. He did not call an ambulance. Like the guards, Mitchell left Mr. Moore to lay unconscious in the Four-Way for nearly two hours.

Sheriff's deputies arrive, realize something is seriously wrong, and rush Mr. Moore to the hospital.

Around 9:00 p.m., Ouachita Parish sheriff's deputies arrived at Richwood to investigate Mr. White's death and to transfer Mr. Moore to

the parish jail. ROA.23177, 23179. In those two hours, no one at Richwood had called an ambulance for Mr. Moore or provided any medical care to him as he lay unconscious in the Four-Way.

That's how the deputies found him when they arrived. When they attempted to pick Mr. Moore up and carry him to their car, he remained unconscious, and they determined a medical evaluation was necessary. ROA.24568. It was "obvious" to them that Moore was not merely sleeping or feigning sleep, as the Richwood guards had claimed, and that something was seriously wrong. ROA.24569; *see also* ROA.24124. The deputies observed blood and a knot on Moore's head; they never saw him regain consciousness or open his eyes. ROA.24126, 24136.

Contrary to the deputies' observations, the Defendant guards continued their attempts to downplay the seriousness of the injuries they had inflicted on Mr. Moore. Defendants Foster and Williams claimed in their depositions that, as the deputies put Moore in their car, he was "kicking the glass" and "hollering," not unconscious as the deputies themselves reported. ROA.24544; *accord* ROA.24852.

When Mr. Moore and the deputies arrived at the parish jail, an emergency medical technician met them at the doors and immediately

performed an evaluation. ROA.24956. The technician tried unsuccessfully to wake Moore, including the same sternum rub technique used by Mitchell. ROA.24956. With no reaction to the sternum rub, he proceeded to check Moore's pupils, which were unequal. ROA.24956. As he explained, "if you see unequal pupils[,] you need to get the person to the hospital as fast as possible." ROA.24958.

In short, although the Richwood guards and nurse had let Mr. Moore languish, unconscious, for nearly two hours, the sheriff's deputies immediately recognized that there was an ongoing medical emergency. Using the emergency lights on their car, they rushed Mr. Moore to the local hospital, E.A. Conway, and arrived there at 9:35 p.m. ROA.23178, 24138.

Mr. Moore is diagnosed with a subdural hematoma, and his death the following month is ruled a homicide.

When Mr. Moore arrived at Conway, he was in a coma and had to be intubated. ROA.24175, 24179. Mr. Moore needed more advanced care than was available at Conway, so just after midnight, he was evacuated by helicopter to the university hospital in Shreveport. ROA.23971-23972.

His treating physicians diagnosed Mr. Moore with a "traumatically induced" "subdural hematoma." ROA.23746. A subdural hematoma is a blood clot that "sits under the brain," and Mr. Moore had amassed roughly a cup of blood inside his skull. ROA.24247-24248. The bleeding caused a "large shift of the midline," which "means that the brain itself is displaced to the other side" of the skull. ROA.24334; *accord* ROA.23746.

Based on imaging of the blood, the physicians estimated that Mr. Moore had sustained this traumatic injury within the prior 24 hours. ROA.23746, 24335, 24594. Dr. David Nelson, who treated Mr. Moore in the emergency room, testified that in light of Mr. Moore's behavior that evening—in particular, the fact that "he was up running around causing trouble" enough apparently to warrant chemical spray—the subdural hematoma was sustained sometime after 7:00 p.m., while Mr. Moore was in custody at Richwood. ROA.24186-24187.

Mr. Moore never woke up, remaining in a coma for nearly a month, and he died on November 14, 2015. *See* ROA.23258. The Ouachita Parish coroner ruled his death a "homicide," caused by "head

injuries received while in jail" that resulted in "pneumonia complicating [those] blunt force head injuries." ROA.23258; *accord* ROA.24936.

LaSalle conducts no investigation and takes no action, and the customs of punishment continue unabated.

No one at LaSalle or Richwood ever investigated the incidents on October 13, 2015, or the uses of force against Mr. Moore. ROA.24052, 24220-24221. No discipline was imposed. ROA.24055. And no policies were revised. ROA.24232. As described above, the City of Monroe likewise conducted no investigations at Richwood. ROA.24720.

One year later, in 2016, the Richwood guards used the same methods of punishment and cover-up against five individuals in their custody. A group of guards, including Defendants Rosenthal, Douglas, and Loring, deployed chemical spray into the faces of those detainees while they were handcuffed and on their knees in the camera-free Four-Way. ROA.24059.[4]

[4] *Accord United States v. Douglas*, 957 F.3d 602, 604-05 (5th Cir. 2020) (per curiam); Factual Basis for Plea at 1-3, *United States v. Douglas*, No. 3:18-cr-00085-01 (Jan. 30, 2019), ECF No. 135-2 [hereinafter Douglas Plea]; Factual Basis for Plea at 1-2, *United States v. Loring*,

This time, they got caught. Douglas, who sprayed two of the detainees and admitted to falsifying his subsequent reports, pleaded guilty in federal court to one count of conspiracy to deprive them of their civil rights under 18 U.S.C. §§ 242, 371 and received a 60-month sentence. Douglas Plea at 1-3; *Douglas*, 957 F.3d at 606.[5] Loring, who stood by and failed to intervene, also admitted to falsifying reports in an effort to cover up the abuse. Loring Plea at 1-2. He pleaded guilty to one count of conspiracy to commit falsification of records under 18 U.S.C. §§ 371, 1519 and received a 46-month sentence.[6] In this case, both consistently refused to answer questions in their depositions,

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No. 3:18-cr-00085-02 (Mar. 13, 2019), ECF No. 145-2 [hereinafter Loring Plea].

Douglas and Loring's convictions were entered by the district judge who presided over this case and were cited in opposition to Defendants' summary-judgment motions. *See, e.g.*, ROA.22673. The facts discussed herein related to Defendants' criminal proceedings are not disputed. To the extent there is any doubt as to their admissibility, the relevant adjudicative facts are subject to judicial notice, Fed. R. Evid. 201, and the contents of the pleas are party admissions, Fed. R. Evid. 801(d)(2).

[5] *Accord* Judgment at 1-2, *United States v. Douglas*, No. 3:18-cr-00085-01 (June 7, 2019), ECF No. 174.

[6] Judgment at 1-2, *United States v. Loring*, No. 3:18-cr-00085-02 (Sept. 4, 2019), ECF No. 185.

invoking their Fifth Amendment right against self-incrimination. ROA.24085-24095, 24795-24808.

The Moore family files this suit, and the district court enters summary judgment.

On July 8, 2016, Mr. Moore's three children filed this suit against LaSalle, Richwood, the City of Monroe, and several other Defendants, including the individual guards and their supervisors. ROA.64-82. The parties conducted extensive discovery and filed cross-motions for partial summary judgment.

The district court concluded, correctly, that the evidence was sufficient for a reasonable jury to find that several Defendants used excessive force against Mr. Moore. But it granted summary judgment to Defendants with respect to a host of other claims, including all claims arising from Mr. Moore's death and all claims against the corporate and municipal entities. *See infra* Addendum A (listing opinions and judgments).

In this appeal, Plaintiffs challenge the district court's grants of summary judgment in Defendants' favor in the following orders:

1. The district court granted summary judgment to Defendants on the question whether Defendants' conduct caused Mr. Moore's death. ROA.27362-27391.

2. The district court granted summary judgment to Defendants Curley, Williams, Hardwell, and Runner on Plaintiffs' claims for deliberate indifference and punitive damages. ROA.27308-27358.

3. The district court granted summary judgment to Defendant Mitchell on Plaintiffs' claims for deliberate indifference and punitive damages, as well as Mitchell's qualified-immunity defense. ROA.27169-27202.

4. The district court granted summary judgment to Defendants LaSalle Management Company, LLC, and Richwood Correctional Center, LLC, on Plaintiffs' claims for vicarious liability, *Monell* liability, and punitive damages. ROA.27252-27304.

5. The district court granted summary judgment to Defendant City of Monroe on Plaintiffs' claims for *Monell* liability. ROA.27393-27430.

SUMMARY OF ARGUMENT

II. A. In granting summary judgment on causation, the district court disregarded key evidence and inferences from which a reasonable jury could conclude that Defendants caused Mr. Moore's death. The coroner ruled that Mr. Moore's death was a homicide arising from blunt-force trauma to his head sustained while in jail. Plaintiffs' medical evidence likewise demonstrates that the fatal injury, a subdural hematoma, was inflicted while Mr. Moore was in custody at Richwood. More specifically, the injury occurred in the very same period of time in which guards were captured on video causing at least three traumatic blows to Mr. Moore's head. There was no evidence of other such traumas—only the district court's speculation about other hypothetical causes. Such speculation is not enough to sustain summary judgment in Defendants' favor. A jury should be permitted to determine whether Defendants' actions were a substantial factor in causing Mr. Moore's death.

B. After inflicting the indisputably traumatic injuries captured in the video recordings, Defendants left Mr. Moore to languish unconscious for nearly two hours in a camera-free area of the facility customarily

used for detainee punishment. No one called an ambulance or administered medical care; rather, guards continued to beat him and vowed to cover up for each other in court. The on-site nurse determined that Mr. Moore was unconscious and then did nothing more—not even a check of his pulse. From this evidence, which the district court disregarded in favor of Defendants' own testimony, a jury could reasonably find that Defendants acted with deliberate indifference to Mr. Moore's serious medical needs.

C. The district court permitted Defendant Mitchell to assert the defense of qualified immunity against Plaintiffs' deliberate-indifference claim. This Court has since held that qualified immunity is categorically unavailable for private medical staff like Mitchell, directly undermining the district court's contrary ruling, which should now be reversed.

D. A jury could also conclude that Defendants acted with reckless or callous disregard to Mr. Moore's constitutional rights. Defendants caused and observed repeated, traumatic blows to his head and, instead of seeking medical treatment, continued their brutal treatment outside the view of the facility's cameras. Afterward, they agreed to cover for

each other in court and falsely downplayed Mr. Moore's injuries. The district court erred by concluding that no facts could support the imposition of punitive damages.

III. A. Private companies like LaSalle and Richwood should be subject to vicarious liability under the doctrine of respondeat superior in § 1983 suits to the same extent they would be in any other tort action. The district court erred in extending *Monell*'s municipal protections to such companies—protections that are without any basis in the common law, the statute, or the Constitution.

B. Even if subject solely to *Monell* liability, LaSalle and Richwood were responsible for Mr. Moore's injuries. They adopted two customs that violated Mr. Moore's rights: using chemical spray against restrained detainees and bringing detainees to a camera-free area for punishment. They also failed to train guards sufficiently on defensive tactics, despite the obvious need for them in the detention context. The district court ignored evidence of these customs and training failures, from which a jury could reasonably find LaSalle and Richwood liable.

C. Private companies like LaSalle and Richwood should be liable for punitive damages in § 1983 suits, and the contrary ruling below

ignored the statute and common law in favor of the district court's own policy considerations. Neither precedent nor policy supports immunizing such companies from punitive damages. And a reasonable jury could find that LaSalle and Richwood's widespread, abusive customs warrant punitive damages in this case.

IV. The district court's grant of summary judgment to the City of Monroe rested on the thin reed that its contractors were not themselves liable under *Monell*. That underlying ruling was error, and the City likewise should be held liable for the injuries inflicted on its arrestee Mr. Moore.

ARGUMENT

I. Standard of Review.

This Court reviews the district court's orders granting summary judgment de novo. *Batiste v. Lewis*, 976 F.3d 493, 500 (5th Cir. 2020). Summary judgment is warranted only when there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (quoting *Rogers v. Bromac Title Servs., L.L.C.*, 755 F.3d 347, 350 (5th Cir. 2014)). The Court "construe[s] all facts and inferences in the light most favorable to the nonmovant." *Id.*

II. The District Court Erred In Granting Summary Judgment To The Individual Defendants.

The district court was right in one crucial respect: A jury could find based on the record evidence that Defendants Foster, Runner, Rosenthal, and Hardwell used excessive force against Mr. Moore.

But the district court erred in otherwise limiting Plaintiffs' claims, including for wrongful death and deliberate indifference. Despite all the evidence proffered by Plaintiffs—including the videos, the coroner's ruling, and the medical testimony—the district court credited Defendants' version of the facts. That was error, because the evidence would permit a reasonable jury to find that Defendants caused Mr. Moore's death, that they were deliberately indifferent to his injuries, and that they acted with the intent necessary to impose punitive damages. The district court erred in deciding these factual disputes in Defendants' favor, and this Court should reverse.

A. A reasonable jury could find that Defendants caused Mr. Moore's death.

Notwithstanding the overwhelming evidence that Defendants caused Mr. Moore's death, the district court granted their motion for summary judgment on the matter of causation. In doing so, it

improperly weighed the evidence and construed it in favor of the moving parties. A jury—not the district court—should be permitted to determine when and how Mr. Moore's fatal injury was inflicted.

1. The district court erred when it resolved the key dispute of material fact—timing of the fatal injury—in Defendants' favor.

Plaintiffs offered testimony that Mr. Moore's fatal injury likely occurred during the time he was exclusively in Defendants' custody, and all of his treating physicians agreed that this was either likely or possible. Yet faced with several opinions on this timing question, the district court inexplicably chose the evidence more favorable to Defendants, concluding that the fatal injuries could have occurred as early as two days before his arrival at the hospital. ROA.27385. The district court then granted summary judgment as to causation, looking to that two-day window and concluding that Plaintiffs had failed to rule out purported causes before Defendants used force against Mr. Moore. *See* ROA.27380-27389.

Given the conflicting evidence, the district court should not have resolved the timing question. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts

are jury functions, not those of a judge," and at summary judgment "all justifiable inferences are to be drawn in … favor" of the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Yet the district court simply swept aside the opinions of Mr. Moore's treating physicians that his fatal injuries occurred during the time he was in Defendants' custody. In so doing, the district court substituted its own judgment for what should have been a jury question, in direct violation of the standards governing summary judgment.

Contrary to the district court's conclusion, Plaintiffs' evidence establishes a window of time far narrower than two days. Dr. David Nelson, the emergency room physician who treated Mr. Moore, testified that the fatal trauma to Mr. Moore's head more likely than not occurred in the five-hour window prior to his 9:30 p.m. presentation at E.A. Conway Hospital. ROA.24175, 24185. As Dr. Nelson explained, the subdural hematoma Mr. Moore suffered was an "acute event," because Moore "was up running around causing trouble and then five hours later he's in a coma." ROA.24186. By contrast, Dr. Nelson explained, he could rule out the possibility of a "slowly progressing" chronic subdural hematoma, because that would have presented "signs and

symptoms long before" Moore's hospitalization. ROA.24186. Dr. Nelson concluded that in that scenario—*if* Mr. Moore had sustained a hematoma "that was slowly bleeding out" prior to that five-hour window—he would not have been capable of physically exerting himself: He would not, for example, "have been able to cause enough resistance to be maced." ROA.24187. Indeed, Dr. Nelson agreed, if the facts showed that Mr. Moore was standing and moving about in a normal fashion at 7:00 p.m. (and they do), then the trauma occurred between that 7:00 p.m. mark and Moore's 9:30 p.m. presentation at the hospital—a 2.5-hour window. ROA.24187.

There was, therefore, admissible medical evidence that Mr. Moore's fatal injuries were inflicted in the 2.5 hours just before his presentation at the hospital. The district court's contrary conclusion, that "the medical evidence allows for a 48-hour window," failed to credit Plaintiffs' evidence or draw inferences in their favor.

Plaintiffs' other medical evidence also supports a window narrower than the 48 hours credited by the district court. Dr. Gonzalez-Toledo, a neuroradiologist, testified that Mr. Moore's fatal head trauma occurred in a 0-to-24 hour window before his presentation at the

hospital in Monroe. ROA.24335. Dr. Gonzalez-Toledo based his opinion on an analysis of the color and shading of the blood in Mr. Moore's skull, which changes with time after an injury. ROA.24335, 24337.

Dr. John T. Owings—a surgical critical care doctor who also treated Mr. Moore—testified that Mr. Moore sustained the subdural hematoma while in custody. *See* ROA.24579-24580, 24584-24585. Dr. Owing's assessment mirrored Dr. Nelson's: A slow bleed over the course of days was incompatible with Mr. Moore's CT-scans as well as his ability to move and function right up until Defendants' uses of force. In short, the subdural hematoma "was not present during the time of that video" taken in the cell—i.e., before roughly 7:00 p.m. ROA.24584-24585. Instead, the injury "either formed after that point or immediately before that point." ROA.24584; *see also* ROA.24593. Dr. Owings's assessment of the other medical evidence confirmed that the injury was recent and that a one-day window was "more likely" than the two-day window ultimately adopted by the district court. ROA.24593.

In sum, all of Mr. Moore's treating physicians agreed that Mr. Moore's fatal injury occurred in the window of time when the guards were slamming him to the floor and beating him. One doctor testified

that Mr. Moore's fatal head trauma more likely than not occurred in the 2.5-hour window prior to presentation at the hospital, while two other treating physicians testified that the trauma indeed could have occurred in that window. During that time, until he was removed from Richwood by sheriff's deputies, Moore was exclusively in contact with LaSalle employees. ROA.24013. Drawing all reasonable inferences in favor of Plaintiffs, that means that Moore's injuries must have been caused by Defendants.

This timing is confirmed by Mr. Moore's observable behavior, as captured on video and noted by multiple witnesses. After booking and even after the altercation with White, Moore was conscious and speaking. *See, e.g.*, ROA.23364 (Curley stating that before Moore's cell extraction, Moore "was just hollering and beating on the door"); ROA.24583 (Dr. Owings noting that at the time of the videotaped interaction with White, Moore "was in control of his body faculties"; "[h]e was able to form words," and "[h]e was moving both sides of his body symmetrically"). But after Mr. Moore was taken from the Four-Way, he did not regain consciousness or speak again. *See* ROA.24160.

The district court was required, drawing all reasonable inferences in favor of the non-moving party, to conclude that a reasonable jury could credit the 2.5-hour window. Instead, the district court credited the testimony more favorable to Defendants—that the injury could have occurred any time in a broader 48-hour window. The district court thus erroneously viewed the key evidence on timing in the light most favorable to the moving Defendants and improperly resolved a genuine factual dispute.

2. A reasonable jury could find that Defendants inflicted fatal injuries on Mr. Moore during the relevant period of time

The district court's resolution of this factual question concerning the timing of Mr. Moore's fatal injury was the cornerstone for the rest of its erroneous causation analysis. Relying on its 48-hour window, the district court ruled that Plaintiffs' causation evidence was "simply inadequate" because it could not rule out causes arising as early as a day before Mr. Moore's arrest. ROA.27385.

That was error twice over: First, for the reasons just described, the district court should have analyzed the possible causes within the narrower period of hours just before Mr. Moore's arrival at the hospital.

Second, even looking to the district court's 48-hour period, the other causes hypothesized by the district court were just that—hypotheses lacking foundation in any evidence. This section and the next address these two errors in turn.

Accepting Plaintiffs' evidence, as the district court should have, Mr. Moore sustained his fatal injury in the very same narrow window of time in which Defendants were striking his head and slamming it to the ground, before taking him to an off-camera area and beating him, as they described it, "[to] death." ROA.24487.

In the hours just before Mr. Moore's arrival at the hospital, the video evidence shows three instances in which Richwood guards punch, take down, and drop Mr. Moore, resulting in his head hitting the floor:

First, at 6:08 p.m., the video shows Defendant Runner punching Mr. Moore with so much force that Moore's head hit the ground. M.A. 1 (6:08:24-28). Next, approximately an hour later, video shows Defendant Hardwell slamming Mr. Moore's entire body to the ground, again causing his head to hit the ground. M.A. 2, 3. Then, just minutes later, the two guards carrying Mr. Moore dropped him, causing his head to hit the ground a third time. M.A. 3.

In the fourth instance of injuries, Mr. Moore was taken to the Four-Way, a room with no cameras, for further punishment. Defendant Foster bragged that he and three other Richwood officers "beat him [to] death," ROA.24487, and "finished him," ROA.24491, in this area of the jail that "didn't have cameras at the time," ROA.24485, and he disclosed that they planned to "protect one another in court," ROA.24487. All this is of course consistent with Mr. Moore's treating physicians' conclusions that his fatal injuries likely occurred in Mr. Moore's final hours in custody at Richwood.

And there's more: Additional medical evidence supports Plaintiffs' argument that the uses of force captured on video and the beating in the Four-Way caused Mr. Moore's death. Dr. Teri Barr O'Neal, the Ouachita Parish Coroner, testified that Mr. Moore's manner of death was a "homicide." ROA.24936. According to Dr. O'Neal, Mr. Moore's coming into "contact with a hard floor," for example, would be "consistent" with the fatal injury. ROA.24937. In her official ruling, the coroner identified the fatal injury as "head injuries received while in jail" and identified Richwood as the location of those fatal injuries. ROA.23258. Dr. Frank Peretti, who performed the autopsy on Mr.

Moore, likewise found that Mr. Moore had suffered blunt force trauma to the head. ROA.24246-24247. Dr. Nelson testified that a subdural hematoma like the one Mr. Moore suffered would require "significant force," which could include a body being slammed head-first into a hard floor or a strike to the back of the head. ROA.24182. And Defendant Runner admitted to "push[ing]" Mr. Moore by hitting the back of Mr. Moore's head, ROA.5863, a move documented on video that a jury could easily conclude was a wanton punch.

Notably, Defendants admit that Hardwell used force to take Mr. Moore down, although they downplay the severity of Hardwell's hard slam of Mr. Moore into the floor, which the Court can view for itself. *See* M.A. 2, 3; ROA.24224, 24292. Defendant Runner, who was present and witnessed this force, saw Hardwell perform a "hard drop" on Mr. Moore from a standing position while bringing Moore out of the cell. ROA.24610-24611. And as discussed above, the video evidence in this case shows both Runner's and Hardwell's respective uses of force against Mr. Moore, providing the jury with an ample basis, together with the medical testimony, to determine whether those uses of force were a substantial factor in the formation of the fatal hematoma. The

district court thus erred in disregarding this extensive body of evidence and concluding that no reasonable jury could find that defendants caused Mr. Moore's death.

3. The district court erred by granting summary judgment on the basis of its own speculation about hypothetical causes other than Defendants.

The district court further erred when it concluded that because there were, hypothetically, possible causes of Mr. Moore's death other than the use of force by Defendants, a reasonable jury would be unable to determine that Defendants' well-documented uses of force caused Moore's death.

Under Louisiana law, plaintiffs must prove the elements of a wrongful-death claim, including causation, "by a preponderance of the evidence, not by some artificially created greater standard." *Lasha v. Olin Corp.*, 625 So. 2d 1002, 1005 (La. 1993). Causation may "be proved by circumstantial evidence" alone; indeed, as Louisiana tort law recognizes, "[i]n many instances, it can be proved only by such evidence." *Naquin v. Marquette Cas. Co.*, 153 So. 2d 395, 397 (La. 1963). In proving causation, a plaintiff relying on circumstantial evidence must rule out other "reasonably *probable* explanations," *Crews*

v. Broussard Plumbing & Heating, 38 So. 3d 1097, 1101 (La. Ct. App. 2010), but "[t]his does not mean … that [a plaintiff] must negate all other *possible* causes." *Naquin*, 153 So. 2d at 397.

The district court should not have even performed this analysis, because Plaintiffs offered direct video and medical evidence of causation. That direct evidence was enough on its own to put the factual issue to a jury. But even if the circumstantial-evidence analysis did apply, the district court plainly misapplied it when it granted summary judgment based on a series of speculative and merely "*possible*" causes, not just the reasonably probable ones. According to the district court, because of these merely theoretical possibilities, it would be impossible for a jury to find that Defendants' actions killed Mr. Moore. *E.g.*, ROA.27385. This was error for the reasons described below with respect to each of the district court's hypothesized causes.

First, the district court speculated that Mr. Moore sustained a fatal injury before he arrived at Richwood. To justify that possibility, the district court relied on the error described above, namely, that "the medical evidence allows for a 48-hour window for a potential injury to have occurred prior to Moore's arrival at E.A. Conway hospital."

ROA.27385. The district court then compounded its error by concluding that "[t]he injury is just as likely to have been inflicted before Moore was brought to [Richwood] for booking" because at the time, "Moore was acting erratically." ROA.27385. But there was zero evidence in the record to support the district court's theory that there was *any* pre-booking injury, much less a fatal one. It was imaginary. And the district court's conclusion about Mr. Moore's erratic behavior failed to draw the relevant inferences in Plaintiffs' favor: Moore's physicians testified that the movement and behavior captured on video was inconsistent with an earlier, slow-bleeding hematoma. *E.g.*, ROA.24185-24187, 24683-24585, 24593.

Second, and again relying on its erroneously assumed 48-hour window for Mr. Moore's fatal injuries, the district court concluded that it was "also just as likely that [the fatal injury] was inflicted during the physical altercation between Moore and White which resulted in White's death." ROA.27385. This too was pure speculation, unsupported by even a single piece of evidence in the record. The injury conjured up by the district court was not captured on video, there was no testimony to support it, and the only eyewitnesses are deceased.

Moreover, the assistant warden, Defendant Aultman, testified that he was not aware that White inflicted any injuries on Moore whatsoever, much less a fatal head injury. ROA.24013. And—most importantly—even if White did injure Mr. Moore, it was trivial enough that Moore afterwards continued to walk around, talk, and—according to Defendants—actively resist to the point where chemical spray was used to subdue him. *See* ROA.24185-24187, 23363-23364, 23388. An imaginary injury with no record support, even if theoretically "*possible*," does not amount to a "reasonably *probable* explanation[]" for Mr. Moore's death—and therefore cannot warrant summary judgment. *Crews*, 38 So. 3d at 1101.

Third, based its interpretation of the video, the district court concluded that the guard who dropped Mr. Moore onto his head in the hallway "did not intentionally drop Moore" and that that hallway drop was therefore merely negligent. ROA.27385. Based on that inference, drawn improperly in favor of Defendants, the district further erred by putting the burden on Plaintiffs to rule out that possible cause, too. The district court did not cite a single piece of testimony—not even testimony by the *Defendants themselves*—to suggest, much less compel,

a finding that the drop was unintentional. And, in light of Defendant Foster's admission that immediately after this drop, he and three other guards intentionally beat Mr. Moore to death in the Four-Way, a reasonable jury could be expected to view with a jaundiced eye any assertion by the Defendants that this drop was unintentional. The district court's conclusion that a reasonable jury would be compelled to find the drop unintentional constituted improper fact-finding that stemmed—once again—from the court's failure to view the record evidence in the light most favorable to Plaintiffs as the non-moving parties.[7]

Even assuming the drop was unintentional and further assuming it was one cause of Mr. Moore's death, ample evidence in the record would permit a jury to conclude that the three other admittedly intentional uses of force—Runner's punch, Hardwell's takedown, and

[7] Even if a reasonable jury would be compelled to find that the drop in question was unintentional, Defendants' actions before and after the drop amounted at least to deliberate indifference to Mr. Moore's health. Defendants were transporting Mr. Moore for the purpose of punishment in the Four-Way, not for transfer to a hospital. And they callously disregarded Mr. Moore's injuries when they chose to lug him recklessly down the hallway rather than obtain a stretcher or wheelchair, which they knew were available. These, too, were constitutional violations that were substantial factors in causing his death. *See infra* § II.B.1.

the Four-Way beating—were at a minimum substantial factors in causing Mr. Moore's fatal subdural hematoma. *See Bonin v. Ferrellgas, Inc.*, 877 So. 2d 89, 94 (La. 2004) ("[W]here there are concurrent causes of an accident, the proper inquiry is whether the conduct in question was a substantial factor in bringing about the accident."). Again, all these uses of force occurred during the same narrow window identified in the medical evidence, and all but the Four-Way beating were captured on video. It would take only the mildest of inferences for a jury to conclude such force was a substantial factor in causing Mr. Moore's death.

Disregarding the substantial-factor analysis, the district court concluded that because none of the doctors identified one single act on its own that caused the subdural hematoma, their testimony was thus "perfectly equivocal" and provided "no support" for Plaintiffs' allegations. ROA.27384 (quoting *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 245 (5th Cir. 2002)). But the concurrent-cause theory expressly permits for multiple causes so long as each was a substantial factor. *Bonin*, 877 So. 2d at 94. Moreover, in a § 1983 action, a plaintiff can also show concurrent causation where the defendant officers

"functioned as a unit." *Simpson v. Hines*, 903 F.2d 400, 403 (5th Cir. 1990). The district court concluded that there was "no evidence that Defendants or any other potential actors functioned as a unit." ROA.27388. That conclusion was flawed, because it ignored evidence favorable to Plaintiffs and because the district court's analysis encompassed the imaginary possibilities of injuries inflicted pre-arrest and by Mr. White. *See* ROA.27388. Instead of drawing all reasonable inferences in favor of the non-moving Plaintiffs, the district court drew each inference in favor of Defendants to conclude that every conceivable possible source of injury was a "potentially concurrent cause[]" and thus part of the "unit" analysis. ROA.27387.

The district court overlooked the ample evidence from which a reasonable jury could have found that the individual Defendants "functioned as a unit" with regard to their treatment of Mr. Moore. Together, as a unit, they bludgeoned Mr. Moore in his cell; dragged him down the hallway, dropping him several times along the way; and took him into the Four-Way to "finish him." Afterward, they used conspicuously identical language to downplay Mr. Moore's injuries and their own misconduct, and they agreed to have each other's backs in

court. Moreover, as described in more detail below, Defendants carried out these abuses pursuant to widespread customs of punishment and cover-up at Richwood. *See infra* § III.B.2-3. It is hard to imagine a clearer example of officers functioning as a "unit" than that presented here.

Defendants' coordinated efforts to cover up the killing after the fact provide yet more evidence of working as a unit. For example, Defendants Hardwell, Williams, and Loring all omitted Runner's punch and knock-down use of force from their reports following the incident. ROA.23218, 23220-23221, 23228. Hardwell, Williams, and Runner all used the same word—"escorted"—when they falsely implied that Mr. Moore was conscious and upright following his injuries. ROA.23230-23232. And Defendant Foster explained that after the final fatal beating in the Four-Way, the guards discussed "how they was going to protect one another in court." ROA.24487. All of the above would permit a reasonable jury to find that Defendants acted as a unit in killing Mr. Moore and covering it up. *See Simpson*, 903 F.3d at 403.

In rejecting the concurrent-cause theory, the district court got the "unit" analysis wrong. In *Simpson*, for example, ten different officers

used force to restrain and search a detainee. 903 F.2d at 401-02. The death report stated that he died as a result of asphyxiation during the "struggle to subdue him." *Id.* at 402. The defendant officers argued that they could not "be held individually liable absent evidence that each defendant's actions caused severe injuries." *Id.* at 403. But as this Court held, that "argument [was] unpersuasive where the officers discussed beforehand how to handle the situation and functioned as a unit once inside Simpson's cell." *Id.* In this case, by slicing and dicing the evidence in ways favorable to Defendants, and by including merely hypothetical causes to defeat Plaintiffs' "unit" argument, the district court adopted the very analysis rejected by this Court *Simpson*.

For all of these reasons, the district court erred in granting Defendants' motion for summary judgment on causation of death. Because the district court held that its causation ruling extended equally to the *Monell* and state-law claims for the same reasons, ROA.27389-27390, this Court should reverse as to those claims, as well.

B. A reasonable jury could hold Defendants liable for their deliberate indifference.

After Defendants inflicted the fatal injuries described above, they let Mr. Moore languish in the Four-Way for nearly two hours. No one

ever called an ambulance. No one examined Mr. Moore beyond establishing that he was, indeed, unconscious. That is deliberate indifference. At a bare minimum, any reasonable viewer of the video evidence in this case would know that Mr. Moore was gravely injured and in urgent need of medical care. Nevertheless, the district court granted the individual Defendants summary judgment on Plaintiffs' deliberate-indifference claims and further concluded that punitive damages were not available. *See* ROA.27187-27198, 27346-27349, 27355-27356. Both rulings were erroneous.

The Fourteenth Amendment protects the right of pretrial detainees "not to have their serious medical needs met with deliberate indifference on the part of the confining officials." *Thompson v. Upshur Cnty., Tex.*, 245 F.3d 447, 457 (5th Cir. 2001) (citing, *inter alia*, *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). In order to prevail on such a claim, a plaintiff must show that the defendant knew of and disregarded an excessive risk to inmate health or safety. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). "Whether 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 that

may be inferred "from the very fact that the risk was obvious." *Hare v. City of Corinth*, 74 F.3d 633, 654 (1996) (Dennis, J., concurring) (citing *Farmer*, 511 U.S. at 841). To demonstrate that an official disregarded a serious medical risk, a plaintiff must show the defendant "refused to treat him, 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." *Domino v. Tex. Dep't of Crim. Just.*, 239 F.3d 752, 756 (5th Cir. 2001) (quoting *Johnson v. Treen*, 759 F.3d 1236, 1238 (5th Cir. 1985)).

In granting Defendants' motions for summary judgment, the district court concluded "[t]here is no evidence that any Defendant was deliberately indifferent to a known risk." ROA.27347. In so ruling, the district court ignored ample evidence to the contrary.

1. The Defendant guards were deliberately indifferent.

Contrary to the district court's opinion, Plaintiffs' evidence would allow a jury to reasonably conclude that Defendants Runner, Curley, Williams, and Hardwell were "aware of facts from which the inference could be drawn that a substantial risk of serious harm" to Moore existed, *Farmer*, 511 U.S. at 837, and that they "engaged

in … conduct … clearly evinc[ing] a wanton disregard for any serious medical needs," *Domino*, 239 F.3d at 756.

In *Dyer v. Houston*, 964 F.3d 374, 382 (5th Cir. 2020), this Court reversed summary judgment where the detainee sustained severe head trauma after bashing his head against the interior of a patrol car. The Court relied on evidence that the officers "'were either aware or should have been aware, because it was so obvious, of an unjustifiably high risk to [the detainee]'s health,' did nothing to seek medical attention, and even misstated the severity of [his] condition to those who could have sought help." *Id.* at 385 (quoting *Tamez v. Manthey*, 589 F.3d 764, 770 (5th Cir. 2009) (per curiam)). The same was all true here.

As in *Dyer*, the record contains considerable evidence that Defendants were aware of multiple injuries to Mr. Moore's head before leaving him in the Four-Way, despite their assertions to the contrary, and that they misstated the severity of those injuries. The video shows Runner punching Mr. Moore on the right side of his head with enough force to throw him to the ground. M.A. 1 (6:08:24-28); ROA.4967. It further shows Hardwell slamming Mr. Moore onto the floor and the

guards again dropping Mr. Moore head-first onto the floor. M.A. 2, 3; ROA.4967.

Tellingly, Runner and Williams both failed to disclose in their reports that they dropped Mr. Moore on his head while they carried him to the Four-Way. *See* ROA.6312-6313. Furthermore, Runner, Williams, and Hardwell all indicated in their reports that Mr. Moore was "escorted" to the booking area even though Mr. Moore was in fact unconscious and was carried instead to the Four-Way. ROA.6311-6313. This deception suggests that the guards sought to avoid divulging the severity of the injuries they inflicted for fear of the possible consequences. A reasonable inference follows that Defendants knew these head injuries, which caused Mr. Moore to lose consciousness, were serious and substantial. It further permits an inference that they intentionally disregarded the risk to Mr. Moore's health caused by those impacts.

Despite all this, the district court credited Defendants' testimony denying knowledge of the seriousness of Mr. Moore's injuries. But that was error: The district court should have drawn inferences concerning Defendants' knowledge in Plaintiffs' favor, and Defendants' denials are

not dispositive. *See*, *e.g.*, *Vaughn v. Gray*, 557 F.3d 904, 909 (8th Cir. 2009) ("Appellants' self-serving contention that they did not have the requisite knowledge does not provide an automatic bar to liability in light of the objective evidence to the contrary."). Furthermore, the presence of circumstantial evidence in this case makes "[k]nowledge … a question for the jury." *Brown v. Bolin*, 500 F. App'x 309, 319 (5th Cir. 2012) (citing *Farmer*, 511 U.S. 843 & n.8).

Defendants' own testimony supports the further inference that, following Mr. Moore's injuries, they knew he was seriously injured and in need of medical care. Defendant Foster confirmed at his deposition that Mr. Moore appeared to be "sleeping or … unconscious" in the Four-Way for more than an hour. ROA.3742. According to Foster's testimony, Curley would also have seen Mr. Moore unconscious. *See* ROA.3742. During that entire time, Foster never saw Mr. Moore move at all. ROA.3743. Williams, Runner, and Hardwell also at times viewed Mr. Moore apparently asleep in the Four-Way. ROA.6584, 6802, 8881. Given this conceded knowledge, a jury could reasonably conclude that Defendants knew Mr. Moore was in fact unconscious due to the repeated head injuries—and knew that he was in serious need of

medical care. And the jury would know that instead of taking any steps to help Mr. Moore, Foster and others proceeded to beat him yet further in the Four-Way. With this evidence, a jury could hold Defendants liable for their deliberate indifference. *See Dyer*, 964 F.3d at 382; *Simpson*, 903 F.2d at 403-04 (finding a reasonable inference that officers were at least callously indifferent to detainee's medical needs when they left him unconscious in his cell, despite the defendants' claimed lack of awareness).

Observations by the sheriff's deputies upon arriving at Richwood cast further doubt on Defendants' statements that they did not know or appreciate the risks associated with Mr. Moore's injuries. According to their testimony, no deputy ever saw Mr. Moore conscious, talking, standing, sitting up, or otherwise exercising his gross motor skills. The deputies described Mr. Moore as "unconscious and sleeping" and like dead weight, ROA.4973, not responding in any fashion, ROA.3335, and not appearing to be conscious the entire night, ROA.3355. When Mr. Moore was finally carried to be transported, it was immediately apparent to Deputy Holyfield that Mr. Moore was not sleeping and that there was something seriously wrong with him. ROA.4989. This

evidence reinforces the reasonable conclusion that Defendants were deliberately indifferent. *See Hare*, 74 F.3d at 654 (Dennis, J., concurring); *Bias v. Woods*, 288 F. App'x 158, 162-63 (5th Cir. 2008) (affirming denial of qualified immunity for a prison physician who was aware of a prisoner's unconsciousness but delayed his care for several hours); *Austin v. Johnson*, 328 F.3d 204, 210 (5th Cir. 2003) (holding that "a reasonable person would not have waited nearly two hours to call an ambulance once [plaintiff] became unconscious").

The district court's conclusion to the contrary was based on a readily distinguishable case. According to the district court, *Cleveland v. Bell*, 938 F.3d 672 (5th Cir. 2019), supports a grant of summary judgment to the guards because there, as here, a nurse saw a detainee multiple times before his death, ROA.27347. However, in *Cleveland* the defendant denied knowledge of any medical emergency, and "nothing suggest[ed]" that her denial was "[in]sincere." 938 F.3d at 676. Here, by contrast, in light of the evidence that Defendants downplayed Mr. Moore's injuries in their reports and participated in a coordinated cover-up, a reasonably jury could easily discredit their testimony and find their denials insincere.

The fact that a nurse observed Mr. Moore after his injuries does not absolve Defendants of their own disregard of those injuries. Like the officers in *Dyer*, Defendants here did not seek medical care for Mr. Moore, nor did they inform anyone of the severe blows to Mr. Moore's head. *Dyer*, 964 F.3d at 382. That failure to report such obvious injuries would permit a reasonable jury to infer that Defendants were deliberately indifferent.

The district court further erred when it invented a new and baseless defense for the guards, concluding they were not liable because "none were assigned to provide medical care [or] had authority to provide medical care." ROA.27347-27348. There is, of course, no such legal requirement. Instead, the Constitution "impos[es] a duty on *prison officials* to 'ensure that inmates receive adequate … medical care,'" and even "[t]he mere delay of medical care can constitute [a]…violation." *Easter v. Powell*, 467 F.3d 459, 463 (5th Cir. 2006) (emphasis added). This Court has never suggested that the constitutional duty to provide adequate care extends only to medical staff. *See*, *e.g.*, *Dyer*, 964 F.3d 374. Neither the district court nor Defendants cited any authority imposing such a restriction.

For all these reasons, the district court erred in granting summary judgment on Mr. Moore's claims of deliberate indifference against Defendants Runner, Curley, Williams, and Hardwell.

2. Defendant Mitchell was deliberately indifferent.

The district court similarly erred in granting summary judgment in favor of Defendant Mitchell, because a reasonable jury could conclude that he was deliberately indifferent to Mr. Moore's serious medical needs. *See* ROA.27187-27198.

Here again, the district court relied on *Dyer*, 964 F.3d 374, a case where paramedics provided medical care to a detainee before officers took him to jail. In *Dyer*, this Court affirmed dismissal of the appellants' claims for deliberate indifference because the paramedics were merely negligent in not taking further steps to provide additional medical care. *Id.* at 381. After the paramedics' examinations, the detainee walked to the police car "without resistance or struggle" and was driven to the jail without further incident. *Id.* at 378. This Court emphasized that "the decision whether to provide additional treatment is a classic example of a matter for medical judgment, which fails to

give rise to a deliberate-indifference claim." *Id.* at 381 (internal quotation marks omitted).

But this is not a question of providing *additional* treatment, and *Dyer* is therefore distinguishable: There is no evidence of treatment here at all.

Moreover, Nurse Mitchell's own deposition testimony suggests that there was not even a legitimate examination, even though Mr. Moore was unconscious for at least an hour and nonresponsive to Mitchell's questions. During the extended period Mr. Moore remained in the Four-Way, Mitchell only medically "assess[ed]" him one time, and even that is an overly generous description of what Mitchell did. Instead of engaging in any sort of medical examination, Mitchell testified that he "[j]ust, you know, spoke with him." ROA.26166. Mr. Moore was unable to respond to Mitchell's questions and "really didn't…give [Mitchell] a…solid… answer on anything." ROA.26166. In addition to Mr. Moore's inability to respond, Mitchell noticed a "vanilla wafer"-sized knot on Mr. Moore's forehead, which he had not seen in visits with Mr. Moore before his extraction from the lockdown cell. ROA.26168, 26175.

Mr. Moore was thereafter only observed sleeping or unconscious, yet Mitchell did not even take Mr. Moore's vitals, like blood pressure or temperature. ROA.25803. Finally, when Mitchell attempted to rouse Mr. Moore by patting on his chest and conducting a sternum rub, Mr. Moore exhibited only a grimace and a grunt. ROA.26181. Mitchell acknowledged that a typically healthy person would awake after a sternum rub, and he knew that a person with a brain bleed may appear to be sleeping. ROA.26182-26183. Yet he did not take any action to diagnose or address Mr. Moore's condition. The sternum rub merely established that Mr. Moore was unconscious—an obvious fact, already known to Mitchell, that called out at the very least for a legitimate examination.

Even accepting that an "incorrect diagnosis by prison medical personnel does not suffice to state a claim for deliberate indifference," *Domino*, 239 F.3d at 756, there is evidence here from which a jury could reasonably infer that Mitchell did not merely err in diagnosis. Rather, he conducted no genuine examination, made no diagnosis, and offered no medical treatment at all. For these reasons, the district court erred

in granting summary judgment on Mr. Moore's claims of deliberate indifference against Mitchell.

C. Defendant Mitchell's qualified-immunity defense must be rejected.

The district court made an additional error with respect to Defendant Mitchell: It granted summary judgment in his favor on the defense of qualified immunity. *See* ROA.27187-27198. The district court's decision contravenes the binding precedent of this Court and the Supreme Court, and it was wrong at the time it was decided in October 2020. In the intervening months, this Court has further clarified that the defense is not available to defendants like Mitchell. The district court's contrary ruling, rendered without the benefit of this Court's most recent guidance, must be reversed.

To the extent that there was any lingering doubt about the availability of the qualified-immunity defense for private medical providers in detention facilities, this Court has now conclusively resolved it: Employees of "a private firm systematically organized to perform the major administrative task of delivering healthcare services to inmates[] [and] detainees" are "categorically ineligible to claim qualified immunity." *Sanchez v. Oliver*, 995 F.3d 461, 475 (5th Cir.

2021). In reaching that conclusion, this Court further noted that it was joining in the "unanimous[]" agreement of the other five Circuits to have addressed the issue. *Id.* at 467 (collecting cases).

The district court's contrary ruling was rendered before *Sanchez*, and it committed precisely the error this Court described in that opinion. The district court relied on the Supreme Court precedent applicable to "an individual retained, as an individual, to perform discrete government tasks." *Id.* at 468 (citing *Filarsky v. Delia*, 566 U.S. 377, 393 (2012)). In this case and in *Sanchez*, by contrast, this Court is faced with an employee of a "private firm, systematically organized to assume a major lengthy administrative task … with limited direct supervision by the government, undertak[ing] that task for profit and potentially in competition with other firms." *Id.* (alterations in original) (quoting *Filarsky*, 566 U.S. at 393); *accord Richardson v. McKnight*, 521 U.S. 399, 413 (1997).

There can be no dispute that LaSalle is a private firm that is systematically organized to assume the major lengthy administrative task of pretrial detention, for profit and potentially in competition with other firms. *See, e.g.*, ROA.1073-1076 (LaSalle corporate registration

information); ROA.1741 (LaSalle contention that it has contracts for "eight other facilities"); ROA.23195 (contract spanning at least five years). The district court remarked that LaSalle was subject to "potential oversight" by the government. ROA.27191. But that potential, which was virtually never exercised, is insufficient to distinguish *Sanchez*. There, as here, the employee "was overseen" by the private company, which "took the lead in developing policy," and the municipality "could not fire or discipline [the company's] employees." 995 F.3d at 470; *see also infra* § III.B.3; ROA.23195-23196 (Richwood contract).

Sanchez controls here, and this Court should apply it and reverse.

D. A reasonable jury could find that Defendants' actions warrant punitive damages.

Contrary to the district court's conclusions, a reasonable jury could conclude that punitive damages are warranted for Defendants Runner, Hardwell, Williams, and Curley. Punitive damages are available in § 1983 cases when a defendant's official conduct "is 'motivated by evil intent' *or* demonstrates 'reckless or callous indifference' to a person's constitutional rights." *Sockwell v. Phelps*, 20 F.3d 187, 192 (5th Cir. 1994) (emphasis added) (quoting *Smith v. Wade*,

461 U.S. 30, 56 (1983)). Reckless and callous indifference "requires 'recklessness in its subjective form.'" *Williams v. Kaufman Cnty.*, 352 F.3d 994, 1015 (5th Cir. 2003) (quoting *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 536 (1999)). A defendant is reckless in this sense when he "disregards a risk of harm of which he is aware." *Kolstad*, 527 U.S. at 536 (quoting *Farmer*, 511 U.S. at 837). Applying those standards, this Court has on multiple occasions affirmed punitive-damages awards in § 1983 excessive-force cases. *See, e.g.*, *Cowart v. Erwin*, 837 F.3d 444, 455-56 (5th Cir. 2016); *Hinshaw v. Doffer*, 785 F.2d 1260, 1267-68, 1270 (5th Cir. 1986), *abrogated in part on other grounds by Johnson v. Morel*, 876 F.2d 477 (5th Cir. 1989).

Here, Plaintiffs have presented abundant evidence that Defendants Runner, Hardwell, Williams, and Curley recklessly disregarded multiple serious head injuries sustained by Mr. Moore. These Defendants each played a prominent role in the October 13, 2015 incidents that resulted in Moore's death from blunt force trauma to the head. The district court correctly denied summary judgment—and qualified immunity—to these guards for their use of excessive force. ROA.27355. It also correctly identified a genuine dispute that

Defendant Foster acted with intent sufficient to trigger punitive damages. ROA.27164. But it concluded without elaboration that Plaintiffs had "show[n] no facts demonstrating evil intent or reckless or callous indifference" on the part of Runner, Hardwell, Williams, and Curley. ROA.27356.

This was error: A reasonable jury could infer the necessary intent. The record reveals multiple instances in which Mr. Moore suffered severe physical injury either at the hands of, or in the presence of, these Defendants—yet they took no action to prevent it or, even worse, inflicted further injury. Instead of calling promptly for medical attention, they agreed to conceal what happened and to cover for each other. And instead of sending Mr. Moore to the hospital, they kept him lying on the floor, shackled and unconscious, in a camera-less corridor for nearly two hours.

Start with Runner. The video shows that he suddenly and forcefully punched Moore in the head, which caused Mr. Moore to fall to the floor and hit his head. M.A. 1 (6:08:24-28); *see also* ROA.4967, 13308-13309. Runner then stood by as Hardwell grabbed Mr. Moore from the cell and slammed him head-first onto the hallway floor, and he

observed the guards drop Mr. Moore head-first on the ground yet again. M.A. 2-3; *see also* ROA.4967, 13306-13307. Runner did all this despite his knowledge that slamming an individual's head on the concrete floor may be deadly. ROA.3600-3601. He meanwhile failed to call for medical care at every step of this cascading series of injuries. That is more than enough evidence from which a reasonable jury could conclude that Runner "disregard[ed] a risk of harm of which he [wa]s aware." *Kolstad*, 527 U.S. at 536 (quoting *Farmer*, 511 U.S. at 837).

Next, consider Hardwell. He was the highest-ranking officer among those present when Runner struck Mr. Moore in the back of his head, and he was therefore responsible for any use of force. *See* ROA.25569-70. His failure to intervene in—or take any action after—Runner's strike thus implicitly condoned Runner's conduct. *See* ROA.25569-70. And as just described, Hardwell then threw Mr. Moore's head to the ground and failed to seek medical help, even after Mr. Moore was dropped to the floor, causing a third impact. *See* M.A. 2-3. Drawing all factual inferences in Mr. Moore's favor, a reasonable jury could readily conclude that Hardwell acted with reckless or callous

disregard of Mr. Moore's rights to be free from excessive force and to receive adequate medical care.

Finally, with respect to Williams and Curley, the evidence indicates that, at minimum, the two perpetuated a chain of injuries and then, like Runner and Hardwell, failed to provide or seek any medical care. When Runner struck Mr. Moore, Curley and Williams stood by and did nothing. When Hardwell threw Mr. Moore to the ground, Curley and Williams stood by and did nothing, and Williams assisted with force of his own. *See* ROA.11495, 13155. When the guards took Mr. Moore to the Four-Way to be beaten, Curley and Williams stood by and did nothing.

Indeed, Williams and Curley were undisputedly present during at least some of the time Moore was in the Four-Way, which strongly indicates their reckless or callous indifference to Mr. Moore's constitutional rights. As the district court correctly concluded, a reasonable jury could find that Foster and other guards beat Mr. Moore in the Four-Way. ROA.27165. From that same evidence, a reasonable jury could find that the other guards who were present in the Four-Way likely engaged in the very behavior Foster reported—or at least bore

witness to Mr. Moore's beating and failed to intervene, call for help, or report the guards who participated in the beating. Especially in combination with their prior actions in the cell and the hallway, Williams and Curley's involvement in the Four-Way incident is ample evidence that they acted with reckless or callous indifference to Mr. Moore's constitutional right to be free from excessive force and to receive adequate medical care.

Incident after incident, Runner, Hardwell, Curley, and Williams took turns inflicting and observing each other inflict excessive force on Mr. Moore, particularly to his head—all without ever taking steps to intervene, to check on Mr. Moore's condition, or to seek medical attention. That is "more than enough evidence from which" a reasonable jury could conclude that their conduct patently "disregard[ed] the [constitutional] rights of [Moore] as long-established by the Supreme Court and recognized by this Court," and that they therefore "acted with reckless indifference toward the constitutional rights" of Mr. Moore. *Kaufman Cnty.*, 352 F.3d at 1015; *see also* ROA.27355 (district court concluding that "it was clearly established that violently slamming or striking a suspect who is not actively

resisting arrest constitutes excessive use of force"). The district court's unexplained conclusion that there were "no facts" to support punitive damages, ROA.27356, thus is simply untenable, and its grant of summary judgment to Runner, Hardwell, Williams, and Curley on punitive damages must be reversed.

III. The District Court Erred In Granting Summary Judgment To The Corporate Defendants.

The district court erred in granting summary judgment to LaSalle and Richwood. At the threshold, the district court applied the wrong standard to these corporate entities, immunizing them from vicarious liability for their employees' actions and applying the protections of *Monell* that are reserved for municipalities. Even under *Monell*, the district court erred by failing to acknowledge genuine factual issues regarding the abusive customs at Richwood and the availability of punitive damages. Its rulings immunizing LaSalle and Richwood from liability lacked a basis in the statute, common law, or Supreme Court precedent and should be reversed.

A. A reasonable jury could hold LaSalle and Richwood liable under respondeat superior.

The liability of LaSalle and Richwood should have been straightforward: Companies are routinely held vicariously liable in tort for the wrongful conduct of their employees. Yet the district court held, as a matter of law, that private companies like LaSalle and Richwood cannot be held vicariously liable under § 1983. Citing *Baker v. Putnal*, 75 F.3d 190 (5th Cir. 1996), it held that LaSalle and Richwood could only be liable under *Monell* and could "not be liable for the acts of employees under a theory of respondeat superior." ROA.27295. But *Baker* held only that, per *Monell*, "[*m*]*unicipalities* are not vicariously liable for the actions of their employees under § 1983." 75 F.3d at 200 (emphasis added). Neither this Court nor the Supreme Court has ever held that the limitations on municipal § 1983 liability established in *Monell* apply to private companies.[8]

[8] Indeed, many district courts, including the Eastern District of Texas, have held that "neither *Monell* nor its progeny can be read to shield private corporations from vicarious liability when their employees have committed a § 1983 violation while acting within the scope of their employment." *Hutchison v. Brookshire Bros.*, 284 F. Supp. 2d 459, 473 (E.D. Tex. 2003); *see also Segler v. Clark Cnty.*, 142 F. Supp. 2d 1264, 1268 (D. Nev. 2001); *Gowan v. Bay Cnty.*, 744 So. 2d 1136, 1138 (Fla.

The reason is clear: as explained in more detail below, extending *Monell* to private companies would conflict with clear Supreme Court precedent that § 1983 must be read as incorporating common-law principles, including the common-law doctrine of respondeat superior for private employers. The district court erred in concluding otherwise.

1. Section 1983 incorporates the common-law principle that private companies may be held liable for their employees' conduct.

The Supreme Court has instructed that "the tort liability created by § 1983 cannot be understood in a historical vacuum"—noting that "members of the 42d Congress were familiar with common-law principles, ... and that they likely intended these common-law principles to obtain, absent *specific provisions to the contrary*." *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 258 (1981) (emphasis added). "[T]he statute was not meant to effect a radical departure from ordinary tort law," *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012), and should not be interpreted to do so "absent clear legislative intent," *Pulliam v.*

Dist. Ct. App. 1999); *Groom v. Safeway, Inc.*, 973 F. Supp. 987, 991 & n.4 (W.D. Wash. 1997); *Niemann v. Whalen*, 911 F. Supp. 656, 664 (S.D.N.Y. 1996); *Moore v. Wyo. Med. Ctr.*, 825 F. Supp. 1531, 1547-49 (D. Wyo. 1993).

Allen, 466 U.S. 522, 529 (1984). Indeed, it is a basic principle of statutory construction that courts should "presume that Congress legislates against the backdrop of the common law." *Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 140 S. Ct. 1009, 1016 (2020).

Those common-law principles include the doctrine of respondeat superior: that private corporations can be held vicariously liable for their employees' tortious conduct committed within the scope of employment. That age-old principle was well established when Congress enacted the Civil Rights Act of 1871, now codified at 42 U.S.C. § 1983. *See, e.g.*, Joseph Story, *Commentaries on the Law of Agency* 536-600 (Little, Brown 5th ed. 1857); O.W. Holmes, Jr., *Agency*, 4 Harv. L. Rev. 345, 356 (1891); *Gray v. Portland Bank*, 3 Mass. 364, 385 (1807).

The Supreme Court has further explained that, at the time § 1983 was enacted, the doctrine of respondeat superior extended to private-prison contractors, like LaSalle and Richwood. In *Richardson v. McKnight*, the Supreme Court explained that "private contractors were heavily involved in prison management during the 19th century," and it "found no evidence that the law gave purely private companies or their employees any special immunity" from prisoner lawsuits alleging

mistreatment. 521 U.S. 399, 405-06 (1997) (citing cases). The common-law cases cited in *Richardson* apply the doctrine of respondeat superior to private-prison contractors. *See Dalheim v. Lemon*, 45 F. 225, 231 (C.C.D. Minn. 1891) ("the negligence of the subordinate … is in the eyes of the law the negligence of the master himself"); *Tillar v. Reynolds*, 131 S.W. 969, 971 (Ark. 1910).

Nothing in the text of § 1983 suggests that Congress intended to abrogate this common-law principle of respondeat superior for private corporations. Section 1983 provides liability for any person who, under color of the law, "subjects, or causes to be subjected," any person to the deprivation of federal rights. 42 U.S.C. § 1983. While the statute requires a plaintiff to establish causation—an essential element of any tort—it does not otherwise exclude any particular theory of liability. Because the text of the statute does not expressly preclude vicarious liability for private corporations, it must be assumed that Congress intended to incorporate the common-law doctrine of respondeat superior when it enacted § 1983. The role of courts "is to interpret the intent of Congress in enacting § 1983, not to make a freewheeling policy choice,"

and courts are "guided in interpreting Congress' intent by the common-law tradition." *Malley v. Briggs*, 475 U.S. 335, 342 (1986).

Notably, the Supreme Court expressly applied the doctrine of respondeat superior in its *only* decision addressing the scope of § 1983 liability as applied to private companies. In *Adickes v. S. H. Kress & Co.,* the Court held that a plaintiff could recover from a private restaurant under § 1983 if she could show that the restaurant's employee "in the course of employment" agreed or conspired with city police to deprive her of her constitutional rights. 398 U.S. 144, 152 (1970). Although *Adickes* was decided at a time when municipalities were still entirely immune from § 1983 actions, the Supreme Court did not apply that immunity to private corporations, instead allowing for respondeat superior liability. In the intervening 50 years, the Supreme Court has never cast doubt on *Adickes*.[9]

Accordingly, basic principles of statutory construction and Supreme Court precedent establish that § 1983 incorporates common-

[9] The fact that *Adickes* predates *Monell* only underscores the point, because in the face of *total* immunity for municipalities pre-*Monell*, the Supreme Court applied *no* limitations on liability for private companies.

law principles of tort liability, including the doctrine of respondeat superior for private employers.

2. Applying respondeat superior to private companies sued under § 1983 is consistent with *Monell*.

Nothing in *Monell* suggests that § 1983 abrogated the doctrine of respondeat superior for private companies. In *Monell*, the Supreme Court reasoned that municipalities cannot be vicariously liable for their employees' conduct under § 1983 because: (a) the language of § 1983—"shall subject, or cause to be subjected"—"cannot be easily read to impose liability vicariously on *governing bodies*" and (b) "[e]qually important, creation of a federal law of respondeat superior would have raised all the constitutional problems associated with the obligation to keep the peace … [that] Congress chose not to impose." 436 U.S. at 692-93 (emphasis added). Neither argument applies to private companies. To the contrary, both the text of § 1983 and the constitutional concerns expressed in the legislative history support the application of respondeat superior to private companies.

Monell held that the language of § 1983—"shall subject, or cause to be subjected"—"cannot be easily read *to impose* liability vicariously

on *governing bodies*." 436 U.S. at 692 (emphasis added). That is because "certain rather complicated municipal tort immunities existed at the time § 1983 was enacted," and so it was *not* clear that "the 'common law' at the time applied the doctrine of *respondeat superior* to municipal[ities]." *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 818 n.5 (1985). As explained above, those "complicated municipal tort immunities" did not extend to private-prison contractors, who were routinely held liable for their employees' conduct under the doctrine of respondeat superior. *See Richardson*, 521 U.S. at 405-06.

Because the traditional common-law doctrine of respondeat superior for private companies applies "absent specific provisions to the contrary," there is no need to look beyond the text in determining the scope of § 1983 liability for private companies. *City of Newport,* 453 U.S. at 258. But if there were any doubt, the *Monell* Court's assessment of § 1983's legislative history confirms that *Monell* does not extend to private companies. The reason is simple: Imposing vicarious liability on private companies does not implicate any of the federalism concerns that troubled the Court in *Monell*.

Monell recounted how, in enacting the Civil Rights Act of 1871, Congress rejected an amendment proposed by Senator Sherman, which would have made a municipality "liable for damage done to the person or property of its inhabitants by *private* persons 'riotously and tumultuously assembled.'" 436 U.S. at 664. The Court explained that "opponents of the Sherman amendment found it unconstitutional substantially because … [the] amendment, by putting municipalities to the Hobson's choice of keeping the peace or paying civil damages, attempted to impose obligations on municipalities by indirection that could not be imposed directly, thereby threatening to 'destroy the government of the States.'" *Id.* at 676-79. In other words, *Monell* reasoned that Congress did not intend to impose vicarious liability on municipalities because doing so would raise the same federalism concerns that led Congress to reject the Sherman amendment. *Id.* at 693-94.

No such federalism concerns arise in applying the doctrine of respondeat superior to private companies sued under § 1983. "Imposing liability on private corporations affects neither the state's police power nor its ability to regulate its municipalities. Instead, allowing the

imposition of vicarious liability would seem to keep Congress within its broad power to regulate interstate commerce." *Hutchison v. Brookshire Bros., Ltd.*, 284 F. Supp. 2d 459, 473 (E.D. Tex. 2003); *accord Estate of Alvarez v. Johns Hopkins Univ.*, 275 F. Supp. 3d 670, 690-91 (D. Md. 2017).

In short, the two prongs of the Supreme Court's decision in *Monell*—its textual analysis and its assessment of legislative history—are specific to municipalities and do not justify eliminating the traditional common-law doctrine of respondeat superior for private employers.

The courts that have extended *Monell*'s limitations on municipal liability to private companies have done so with little analysis and, for the most part, prior to *Richardson*. A few courts, shortly after *Monell* was decided, automatically applied the *Monell* standard to private companies. For example, one court stated—without explanation—that "[n]o element of the [*Monell*] Court's ratio decidendi lends support for distinguishing the case of a private corporation" from that of a municipality. *Powell v. Shopco Laurel Co.,* 678 F.2d 504, 506 (4th Cir. 1982). As discussed above, that assessment of *Monell* is wrong, yet

many courts have simply cited back to these first few cases without questioning their assumptions.

More recently, however, courts have cast doubt on those early cases. In *Shields v. Illinois Department of Corrections*, 746 F.3d 782 (7th Cir. 2014), for example, the Seventh Circuit questioned its own precedent. The court explained that prior decisions applying *Monell* to private companies are "without persuasive explanations" and that it "may need to reconsider" whether *Monell* extends to private corporations "if and when [it is] asked to do so." *Id.* at 786. Many district courts—bound by early circuit court decisions on this issue—have likewise called those decisions into question.[10]

The cases applying *Monell* to private companies also should be rejected because they predate—or rely on cases that predate—the Supreme Court's decision in *Richardson*. In *Richardson*, the Court found that no special immunities or forms of limited liability applied to private prisons in 1871, citing common-law cases holding private

[10] *See, e.g.*, *Shehee v. Saginaw Cnty.*, 86 F. Supp. 3d 704, 712 (E.D. Mich. 2015) ("Perhaps it is time to question the rationale for allowing private contractors to avoid liability for the acts of its employees."); *Revilla v. Glanz*, 8 F. Supp. 3d 1336, 1341 (N.D. Okla. 2014); *Herrera v. Santa Fe Pub. Sch.*, 41 F. Supp. 3d 1027, 1179-80 (D.N.M. 2014).

prisons vicariously liable for the acts of their employees. *See* 521 U.S. at 405-06. This, combined with mounting precedent that § 1983 must be read to incorporate common-law principles, undermines the pre-*Richardson* cases extending *Monell* to private companies.

The district court therefore erred in assuming that the limitations on municipal liability established in *Monell* apply equally to private companies. In addition to considering whether there was a company policy or custom that caused Mr. Moore's injuries, the court should have assessed whether individuals employed by LaSalle and Richwood committed constitutional torts while acting within the scope of their employment.[11] Its failure to do so constituted reversible error.

B. A reasonable jury could hold Defendants liable under *Monell*.

Even if the *Monell* standard did apply to private companies, it is satisfied here. The district court failed to address the merits of Plaintiffs' arguments regarding the existence of two abusive customs at

[11] There is no doubt, on the merits, that the individual Defendants were acting within the scope of their employment when they violated Mr. Moore's constitutional rights through their use of excessive force and their deliberate indifference. Defendants' motion and the district court's ruling were based solely on the unavailability of vicarious liability as a matter of law, not its application to the facts here.

LaSalle and Richwood—the improper use of the Four-Way and chemical spray to punish people in their custody. It also failed even to consider whether a single, egregious violation of Mr. Moore's constitutional rights could establish LaSalle and Richwood's deliberate indifference to the need for proper training.

1. LaSalle and Richwood can be held liable for constitutional violations under § 1983.

Under § 1983, individuals may sue private corporations acting under color of state law for civil-rights violations. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936-39 (1982). This Court has specifically held that "private prison-management corporations and their employees may be sued under § 1983 by a prisoner who has suffered a constitutional injury." *Rosborough v. Mgmt. & Training Corp.*, 350 F.3d 459, 461 (5th Cir. 2003) (per curiam).

For the reasons just discussed, the district court erred in limiting that liability and immunizing LaSalle and Richwood from vicarious liability. But even under the *Monell* standard applicable to municipalities, Plaintiffs' evidence more than passes muster.

To establish municipal liability under § 1983, a plaintiff must show "(1) that a constitutional violation occurred and (2) that a

municipal policy was the moving force behind the violation." *Sanchez v. Young Cnty.*, 956 F.3d 785, 791 (5th Cir. 2020) (citing *Monell*, 436 U.S. at 694), *cert. denied*, 141 S. Ct. 901 (2020). "Official municipal policy includes … practices so persistent and widespread as to practically have the force of law." *Connick v. Thompson*, 563 U.S. 51, 61 (2011); *see also Brown v. Bryan Cnty.*, 219 F.3d 450, 457 (5th Cir. 2000). At Richwood, LaSalle employees established customs of abuse against the detainees in their custody. Rather than protect the detainees, supervisors participated in those abuses—in some cases leading to federal convictions. *See infra* § III.B.2. And those same supervisors utterly failed to train their employees on the proper defensive tactics that would have saved Mr. Moore's life. *See infra* § III.B.3. For these reasons, even under the *Monell* standard, summary judgment for LaSalle and Richwood was improper.

2. A reasonable jury could find that Richwood's disciplinary policies and customs caused Mr. Moore's constitutional injuries.

In ruling for LaSalle and Richwood, the district court disregarded genuine issues of material fact regarding abusive disciplinary policies or customs. Rather than considering Plaintiffs' evidence, the district court

summarily found that Plaintiffs "failed to carry their burden of establishing" that Richwood's policies were inadequate and caused Mr. Moore's injuries. ROA.27298. To survive summary judgment, however, Plaintiffs did not need to conclusively establish anything—they only needed to "present evidence from which a jury might return a verdict in [their] favor." *Anderson*, 477 U.S. at 257.

The district court failed to recognize that Plaintiffs presented ample evidence of at least two distinct customs or policies sufficient to defeat summary judgment as to *Monell* liability. The first involved use of the Four-Way to punish detainees out of the view of cameras. The second involved the use of chemical spray on retrained detainees as a method of punishment.

Regarding the use of the Four-Way, it is undisputed that Richwood guards took Mr. Moore there after the incident with Mr. White. *See* ROA.27255. Moore remained in handcuffs and leg restraints while in the Four-Way, and he was put on the floor on his back. *E.g.*, ROA.24984. Defendant Foster later bragged that he and three other officers beat and kicked Moore in the Four-Way. Foster

stated that "they beat him [to] death," ROA.24487, and "they finished him," ROA.24491.

Plaintiffs also offered evidence that guards sprayed Mr. Moore with chemical spray—including in his groin—when he was in the Four-Way in handcuffs and leg restraints. *See* ROA.23445, 24134, 24701. Foster described the guards as being "in a pepper spraying mode" just before they started beating Mr. Moore in the Four-Way. ROA.24491.[12] And a detainee assigned to custodial duty described cleaning fresh pepper spray from the Four-Way after Mr. Moore was taken away. ROA.14708. Deputy Wells also smelled pepper spray on Mr. Moore, ROA.24123, and both he and Deputy Lambright noticed that Mr. Moore's pants were "wet from pepper spray," ROA.24134; *accord* ROA.24701.

This was not an isolated incident: Mr. Moore's punishment in the Four-Way followed the established customs at Richwood. According to Yolanda Jackson, who worked as a booking officer at Richwood from

[12] This was not the only time Moore was sprayed at Richwood. He was sprayed at least two other times while in his cell. *See* ROA.27254-27255, 27311, 27325-27329 (citing guards' testimony); ROA.23455 (Mitchell stating that Moore had been sprayed "probably three to four times").

2012 until the fall of 2015, "there was a wide[]spread practice at [Richwood] of taking prisoners … into an area called the foyer or fourway." ROA.21084. There were no cameras in the Four-Way, and the "express[] purpose of taking prisoners into the foyer was to question the prisoners and to 'teach them a lesson' off camera." ROA.21085. Jackson stated that she "witnessed officers routinely mistreating and taunting prisoners," as well as "beating them by punching or slapping." ROA.21086. Assistant Warden Turner also testified that the Four-Way was used as a place to interrogate people. ROA.13996; *see also* ROA.24485 (Badger describing how Moore was taken to an area where "they didn't have cameras at the time"); ROA.8005 (Runner stating that he "would not … punch a[n] inmate" on camera).

Mr. Moore's abuse also followed the Richwood custom of using chemical spray to punish. Jackson explained that there was a "practice of routinely using chemical spray on prisoners for minor transgressions." ROA.21084. And she "witnessed [Richwood] officers including supervisors use chemical spray on handcuffed prisoners routinely, many, many times." ROA.21804. This Court has held that "officers may not 'use gratuitous force against a prisoner who has

already been subdued … [or] incapacitated.'" *Cowart v. Erwin*, 837 F.3d 444, 454 (5th Cir. 2016) (alterations in original) (citation omitted). This includes the use of chemical spray on restrained individuals.[13]

Despite all this evidence, the district court failed to even address whether there were policies of using the Four-Way or chemical spray to punish people at Richwood. Rather, it concluded, without any analysis, that Jackson's declaration "cannot establish or raise an issue that Moore was punished in the Four-Way because she had no personal knowledge of Moore's incident." ROA.27298. But Jackson never claimed to have personal knowledge of Moore's punishment in the Four-Way, and her testimony was not offered for that issue. Rather, she provided a sworn declaration regarding the *custom or practice* of using the Four-Way and chemical spray to punish. *See* ROA.21083-21087. The district court erred by disregarding Jackson's declaration and the

[13] *See Doucet v. City of Bunkie*, 316 F. App'x 321, 322 (5th Cir. 2009) (per curiam) (affirming district court's ruling that use of chemical spray on handcuffed arrestee was unreasonable); *see also Est. of Moreland v. Dieter*, 395 F.3d 747, 757 (7th Cir. 2005) ("To discharge a canister of pepper spray into the face of a fully restrained, incapacitated individual is vicious and unconscionable."); *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 903 (6th Cir. 2004) ("[I]t is clearly established that the Officers' use of pepper spray against Champion after he was handcuffed and hobbled was excessive.").

testimony of other employees, which raised issues of material fact regarding these customs. *See Sanchez*, 956 F.3d at 792-793 (reversing summary judgment where district court disregarded plaintiffs' evidence regarding jail's unofficial custom or practice).

Indeed, two Defendants in this case refused even to answer questions related to the Four-Way, contending under oath that their compelled responses would be incriminating in contravention of the Fifth Amendment. Defendant Loring did so when asked if he had any knowledge of the Four-Way or an area at Richwood with no cameras. ROA.21909-21910. Similarly, Defendant Douglas pleaded the Fifth in response to questions regarding the use of the Four-Way. ROA.22292, 22301. Both defendants later pleaded guilty to federal conspiracy charges arising from the use of "an area of the prison that did not have security cameras" to interrogate and spray five detainees while they were restrained—abuses they covered up by falsifying their reports. Douglas Plea at 1; *see also* Loring Plea at 1-2.

Defying the summary-judgment standard, the district court noted that "LaSalle and Richwood dispute Plaintiffs' allegations" and rejected Plaintiffs' claims because they "failed to carry their burden of

establishing" LaSalle and Richwood's liability under *Monell*. ROA.27298. Again, this was not Plaintiffs' burden to carry at this stage; they needed only to offer enough evidence to raise a genuine dispute. *See* Fed. R. Civ. P. 56(a); *Bargher v. White*, 928 F.3d 439, 444 (5th Cir. 2019). The evidence would permit a reasonable jury to find that Richwood had these longstanding customs and that Moore's death was a tragic instance of those customs.

3. LaSalle and Richwood ratified these customs pursuant to their policy not to investigate detainee deaths.

LaSalle and Richwood's ratification of these abuses provides further evidence that they were established customs that trigger *Monell* liability. The district court improperly disregarded—and indeed failed to even address—Plaintiffs' evidence that LaSalle and Richmond deliberately did not investigate Mr. Moore's death, took no responsive action, and thereby ratified these customs.

This Court has explained that the failure to investigate or take any responsive action can be evidence of the existence of a policy or custom. "If prior policy had been violated, we would expect to see a different reaction." *Grandstaff v. City of Borger*, 767 F.2d 161, 171 (5th

Cir. 1985). "If what the officers did and failed to do … was not acceptable to the police chief, changes would have been made." *Id.*; *see also Bordanaro v. McLeod*, 871 F.2d 1151, 1167 (1st Cir. 1989) ("Post-event evidence can shed some light on what policies existed in the city on the date of an alleged deprivation of constitutional right.").

The district court simply disregarded the fact that LaSalle and Richwood never bothered to investigate the tragic death of Mr. Moore. To the extent the district court referred to investigations at all, it merely recited testimony that "LaSalle does not investigate deaths in a facility" but rather leaves investigations to law enforcement. ROA.27275. In other words, once the sheriff's office is involved in investigating a detainee's death, LaSalle considers itself relieved of any responsibility to investigate its own employees' actions.

It should go without saying that the LaSalle entities' blanket policy of not investigating deaths cannot insulate them from liability. The sheriff's legal authority to investigate criminality is not a substitute for the facility's investigation of conduct and practices that cause constitutional injury. They are two wholly separate inquiries: One stems from state criminal law, while the other is compelled by the

Constitution. The sheriff can bring criminal charges, but he cannot discipline or fire LaSalle and Richwood staff. Nor can he revise Richwood policies to prevent future deaths and constitutional abuses from occurring. All of that is a matter of internal administration, human resources, and jail safety that LaSalle and Richwood abdicated. *See* ROA.27266-27268, 27275-27276.

Here, Plaintiffs demonstrated that neither LaSalle, Richwood, nor Warden Hanson investigated or took any disciplinary action against the officers who beat and sprayed Mr. Moore. *See* ROA.10234, 13994, 27266-27267. It was undisputed that Warden Hanson was the policymaker for Richwood and that the warden's office oversees internal investigations there. *See* ROA.10225, 10231, 13992, 13994-13995. As warden, Hanson also was responsible for disciplining the employees. ROA.27267 (citing ROA.10075).

Nevertheless, Hanson testified that he never conducted any investigation into any of the events that led to Mr. Moore's death. ROA.10235-10236. Nor did he ask anyone else at Richwood to investigate those events. ROA.10235-10236. Indeed, Hanson testified that Richwood "took a back seat" to the sheriff's investigation, and he

did not "recall doing anything specifically in regards to the investigation … in the Erie Moore/Vernon White situation." ROA.10234. And Hanson never asked any questions about what happened to Mr. Moore in the Four-Way. ROA.10234. Nor did Hanson make changes to any of Richwood's policies as a result of what happened to Mr. Moore. ROA.10276.

As this Court explained in *Grandstaff*, "[t]he disposition of the policymaker may be inferred from his conduct after the events of that night." 767 F.2d at 171. Here, as in *Grandstaff*, "[f]ollowing this incompetent and catastrophic performance, there were no reprimands, no discharges, and no admissions of error." *Id.*

These failures had further tragic consequences. As described above, the customs of punishment at Richwood continued for at least another year into 2016, resulting in the federal convictions of two of the Defendants here. Hanson admitted that the guards' use of chemical spray in that incident constituted "unnecessary or excessive force." ROA.27289 (citing ROA.10245); *see also* ROA.13996.

Defendants argued that the investigation of this 2016 incident proves that LaSalle and Richwood supervisors were adequately

monitoring and disciplining unwarranted uses of force at Richwood. On the contrary, the 2016 investigation shows precisely what should have happened—but did not—after Mr. Moore's 2015 death. The failure to investigate the events leading up to Mr. Moore's death showed the "disposition of the policymaker" and raised triable issues of fact regarding whether they had a policy or custom of using the Four-Way and chemical spray to punish detainees. *See Grandstaff*, 767 F.2d at 171-72. "When the official policymaker knows about misconduct yet allegedly fails to take remedial action, this inaction arguably shows acquiescence to the misconduct such that a jury could conclude that it represents official policy." *Sanchez*, 956 F.3d at 793.

The district court erred by failing to acknowledge genuine factual issues regarding LaSalle and Richwood's abusive customs, failing to address evidence that the corporate entities ratified these customs, and failing to draw any factual inferences in Plaintiffs' favor. This Court should reverse.

4. A reasonable jury could find that LaSalle and Richwood's failure to train their employees caused Mr. Moore's constitutional injuries.

LaSalle and Richwood's affirmative customs are not the only acts or omissions that contributed to Mr. Moore's injuries: LaSalle and Richwood also failed to train their employees on skills that were obviously necessary to the safe and legal carrying out of their duties. "[I]t is well established that 'a municipality's policy of failure to train' its personnel can give rise to liability under 42 U.S.C. § 1983." *Kitchen v. Dallas Cnty.*, 759 F.3d 468, 484 (5th Cir. 2014) (quoting *Sanders-Burns v. City of Plano*, 594 F.3d 366, 380 (5th Cir. 2010)), *abrogated on other grounds by Kingsley v. Hendrickson*, 576 U.S. 389 (2015). To succeed on a *Monell* claim arising from a failure to train, a plaintiff must demonstrate that: "'(1) [the defendant's] training policy procedures were inadequate, (2) [the defendant] was deliberately indifferent in adopting its training policy, and (3) the inadequate training policy directly caused [the constitutional violation].'" *Id.* (quoting *Sanders-Burns*, 594 F.3d at 381). A plaintiff can establish deliberate indifference to the need for proper training by demonstrating either (1) that a municipality had "notice of a pattern of similar violations" or

(2) that the risks of constitutional violations regarding a single incident were "'so predictable that failing to train the [employees] amounted to conscious disregard' for the injured party's rights." *Id.* at 484-85 (emphasis and alteration in original omitted). As this Court has explained, "under certain circumstances, § 1983 liability can attach for a single decision not to train an individual officer even where there has been no pattern of previous constitutional violations." *Brown*, 219 F.3d at 459.

The district court erred in concluding that LaSalle and Richwood's training in *some* skills meant there was adequate training in all respects, including the specific deficits raised by Plaintiffs, namely, defensive tactics—methods of non-lethal force for restraining and controlling detainees. The district court repeatedly credited LaSalle and Richwood with training guards on matters like CPR, prison-rape prevention, and first aid. *See, e.g.*, ROA.27278-27282; ROA.27319-27320, 27324, 27327. That evidence is irrelevant to the claims here. Training on unrelated matters cannot absolve a failure to train on defensive tactics where that need is foreseeable. But the district court concluded simply that LaSalle and Richwood "provided extensive

training" as a general matter without addressing the specific training in question. ROA.27297.

Moreover, the district court incorrectly stated that "[a] municipal policy cannot ordinarily be implied from a single constitutional violation," without acknowledging the important single-incident exception at issue in this case. ROA.27296. This Court has explained that "a single decision by a policy maker may, under certain circumstances, constitute a policy for which the [municipality] may be liable." *Brown*, 219 F.3d at 462. And where, as here, the constitutional violation was "the highly predictable consequence" of a failure to train, *Monell* liability may attach. *Kitchen*, 759 F.3d at 484.

To establish the failure to train, Plaintiffs relied on a report by Kenny Sanders, an expert in police training, police restraints, and the use of force. *See* ROA.23117. Sanders explained that, based on his review of sign-in rosters for classes, deposition testimony, and training records, the training at Richwood "was grossly insufficient." ROA.23134. He explained that employees "receive[d] credit for training that far exceeded the time actually spent in the classroom." ROA.23134. And he found that Richwood staff were placed "in positions

of supervising inmates" without being "adequately trained." ROA.23134.

Sanders also reviewed the depositions of several Richwood employees, which revealed specific areas of deficient training. For example, Defendant Runner stated that he had never received any refresher training on use of force. ROA.7993, 23134. In the absence of that training, Runner punched Mr. Moore while he was squatting in his cell. M.A. 1 (6:08:24-28); ROA.8005-8006. Likewise, Defendant Hardwell admitted that, from 2009 to 2015, he never received any training in defensive tactics. ROA.23135. Without proper training, Hardwell slammed Mr. Moore's head on the ground while trying to extract him from his cell. M.A. 2, 3; ROA.13159-13161. Warden Hanson and Assistant Warden Aultman confirmed that guards were not trained in defensive tactics at Richwood; they were only provided defensive tactics training during their initial academy training—for some, years prior to the events at issue. ROA.9375, 10228.

In addition, Sanders explained that "[t]he Defensive Tactics training in the POST curriculum requires an annual recertification," which Richwood employees did not receive. ROA.23136. He further

stated that, without "proper refresher training in defensive tactics, such needed skills are generally lost." ROA.23136. Moreover, without such refresher training, "it is predictable and foreseeable that employees will then revert to gross motor skills or street-fighting skills," which "can result in the use of unnecessary force." ROA.23136. Indeed, that's precisely what happened here: Defendants' inadequate training led to the use of street-fighting tactics that caused Mr. Moore's injuries. *See* ROA.27345-27346 (denying summary judgment to correctional officers on excessive force claims); *Valle v. City of Houston*, 613 F.3d 536, 545 (5th Cir. 2010) (finding sufficient evidence of causation to survive summary judgment where officers received no training in escalation of force, resulting in lethal seizure).

Not only did LaSalle and Richwood fail to train employees on these critical skills, they were deliberately indifferent to the obvious need to do so. "[W]ith respect to specific officers, a need for more or different training can be so obvious and the inadequacy of training so likely to result in a violation of constitutional rights that the city can reasonably be said to have been deliberately indifferent to the need for training." *Brown*, 219 F.3d at 459. Here, the need for regular training

in defensive tactics and cell extraction was necessary and obvious for the reasons Sanders described. Even Warden Hanson expressly acknowledged that the Richwood guards "need[ed] additional training." ROA.21006. Yet "LaSalle would not authorize payment to officers to attend in service training." ROA.21006.

Despite this evidence, the district court ruled simply that "Defendants hired experienced correctional officers and provided extensive training for them" and that Richwood "was in compliance with the [Basic Jail Guidelines]." ROA.27275. The district court erred in disregarding Plaintiffs' evidence of a failure to train on a specific set of essential skills, and this Court should reverse. *See, e.g.*, *Brown*, 219 F.3d at 465.

C. A reasonable jury could impose punitive damages on LaSalle and Richwood.

The district court also erred in holding that § 1983 does not allow for punitive damages against private corporations. As the Supreme Court has recognized, the general rule—which accounts for § 1983's common-law backdrop—is that punitive damages are available against nearly any defendant properly sued for monetary relief. *Smith*, 461 U.S. at 56. Consistent with that rule, every other court to consider the

question has held that punitive damages are available against private corporations sued under § 1983.[14] But the district court here struck its own path, instead viewing the availability of punitive damages as a pure question of public policy. Misconstruing the policy considerations offered in *City of Newport*, 453 U.S. 247, the district court created a never-before-recognized immunity from punitive damages for private companies sued under § 1983.[15]

The district court was wrong. *City of Newport* did not authorize courts to evaluate the appropriateness of punitive damages based on public policy. Instead, *City of Newport* looked to the common law as it existed in 1871 and recognized that *municipalities* enjoyed a long-

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[14] *See, e.g.*, *Revilla v. Glanz*, 8 F. Supp. 3d 1336, 1342 (N.D. Okla. 2014); *Lawes v. Las Vegas Metro. Police Dep't*, No. 12-CV-01523, 2013 WL 3433150, at *2 (D. Nev. July 8, 2013); *Est. of Gee ex rel. Beeman v. Bloomington Hosp.*, No. 06-CV-00094, 2012 WL 639517, at *12 (S.D. Ind. Feb. 27, 2012); *Segler v. Clark Cnty.*, 142 F. Supp. 2d 1264, 1269 (D. Nev. 2001). The question appears to be one of first impression in the federal Courts of Appeals. *Cf. Woodward v. Corr. Med. Servs. of Ill., Inc.*, 368 F.3d 917, 930 (7th Cir. 2004) (upholding a $1.5 million award of punitive damages against a private prison company sued under § 1983 without addressing potential immunity from punitive damages).

[15] During discovery, the district court initially ruled that punitive damages are unavailable against private companies. ROA.2342-2355. At summary judgment, it instead ruled on the merits. ROA.27302. Plaintiffs address both issues here.

standing immunity from punitive damages. Because no such immunity existed under the common law in 1871 for private corporations, the district court erred in creating one for LaSalle and Richwood here. And at any rate, the district court's policy justifications do not support extending immunity from punitive damages to private companies.

1. Private companies can be liable for punitive damages under § 1983.

As a rule, § 1983 plaintiffs may seek punitive damages against a defendant as long as "the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith*, 461 U.S. at 56.

This availability of punitive damages under § 1983 is statutory; it derives from an interpretation of § 1983 that properly accounts for the common-law tradition preceding the statute's 1871 enactment. In other words, the availability of punitive damages is not, as the district court suggested, "a product of a jurisprudential gloss on the common law." ROA.2345. As discussed above, *see supra* § III.A, the Supreme Court has instructed that § 1983 must be interpreted in line with the basic interpretive principle that "we generally presume that Congress

legislates against the backdrop of the common law." *Comcast Corp.*, 140 S. Ct. at 1016. And because the availability of punitive damages was "accepted as settled law by nearly all state and federal courts" before the enactment of § 1983, the statute likewise makes punitive damages generally available. *Smith*, 461 U.S. at 35.

Here, the correct approach—interpreting § 1983 against the common-law backdrop of 1871—compels the conclusion that punitive damages are available in § 1983 suits against private corporations. "Corporations were not immune from liability for punitive damages in 1871." Barbara Kritchevsky, *Civil Rights Liability of Private Entities*, 26 Cardozo L. Rev. 35, 77 & n.293 (2004). The contemporaneous common-law cases bear this out.[16]

Indeed, the Supreme Court implicitly recognized this history in *City of Newport*, the primary authority on which the district court relied. As the Supreme Court recognized, at least one nineteenth-century court held that punitive damages were unavailable against municipalities because "there is not the same reason for holding

[16] *E.g.*, *Lake Shore & M.S. Ry. Co. v. Prentice*, 147 U.S. 101, 111 (1893); *Atl. & Great W. Ry. Co. v. Dunn*, 19 Ohio St. 162, 172 (1869); *Goddard v. Grand Trunk Ry.*, 57 Me. 202, 223 (1869).

municipal corporations, engaged in the performance of acts for the public benefit, liable for the willful or malicious acts of its officers, *as there is in the case of private corporations*." *City of Newport*, 453 U.S. at 262 (emphasis added) (quoting *Hunt v. City of Boonville*, 65 Mo. 620, 625 (1877)). The existence of this common-law liability should have been enough to establish the availability of punitive damages against LaSalle and Richwood, without the district court's resort to policy-based reasoning.

The district court, however, viewed the availability of punitive damages as a policy question subject to judicial expansion and contraction. The district court's conclusion—which departs from every other court to consider the question—was mistaken. *City of Newport* did not give courts carte blanche to simply weigh "the policy issues surrounding the application of punitive damages," ROA.2348, in order to determine whether such damages should be available. Rather, as with other cases interpreting § 1983, *City of Newport* began with the common law as it existed in 1871: "By the time Congress enacted what is now § 1983, the immunity of a municipal corporation from punitive damages at common law was not open to serious question." 453 U.S. at

259. And "[g]iven that municipal immunity from punitive damages was well established at common law by 1871," the Court "proceed[ed] on the familiar assumption that 'Congress would have specifically so provided had it wished to abolish the doctrine.'" *Id.* at 263 (quoting *Pierson v. Ray*, 386 U.S. 547, 555 (1967)). Finding no indication that Congress so intended—"[i]ndeed, the limited legislative history relevant to this issue suggests the opposite"—the Court concluded that § 1983 incorporated the immunity from punitive damages enjoyed by municipalities under pre-1871 common law. *Id.* In short, *City of Newport* recognized a narrow exception—grounded in a historical, common-law immunity—to the general rule that punitive damages are available under § 1983.

The district court ignored this well-established approach to statutory interpretation. Instead, the court below assumed that awarding punitive damages against a private prison corporation would simply raise the same policy concerns as awarding them against a city. ROA.2346, 2348. The district court not only failed to consider the common-law backdrop of § 1983, it even faulted Plaintiffs for failing to rebut the district court's own policy rationales. *See* ROA.2352 (suggesting that Plaintiffs bore the burden of proving a punitive

damages award against LaSalle would not raise the "cost of doing business" and of "address[ing] the market implications of imposing the punitive damages they seek"). The upshot is that the district court engaged in "a freewheeling policy choice," *Malley*, 475 U.S. at 342, rather than the careful interpretive analysis dictated by Supreme Court precedent.

For these reasons, the district court erred in weighing policy considerations to decide this matter of statutory interpretation. Policy may enter the analysis only when deciding whether Congress intended to adopt a preexisting common-law immunity. It may not be used, as the district court did, to invent novel immunities out of whole cloth.

2. The district court's policy rationales do not justify an immunity from punitive damages for private companies.

Even if it were appropriate to consider policy rationales in this statutory-interpretation analysis, the district court failed to justify its policy choice to confer blanket immunity from punitive damages on private companies. First, the district court opined that, as in *City of Newport*, "a punitive damage award against LaSalle would harm the public fisc and citizens of the Town" because "the risk of punitive

damages will necessarily be considered in the contract terms of any future agreement to provide governmental services." ROA.2346-2347. This reasoning badly misreads *City of Newport*. The Supreme Court did not conclude, as the district court assumed, that *any* harm to public coffers was unacceptable under § 1983. After all, any damages liability imposed on governmental entities—punitive or otherwise—will have some effect on the public fisc. Yet, as the Supreme Court recognized, § 1983 was "designed to expose state and local officials to a new form of liability," despite the potential risk that damages liability posed to public finances. *City of Newport*, 453 U.S. at 259; *see also Monell*, 436 U.S. at 690 ("Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies.").

Instead, *City of Newport* expressed concern over the unique impact that punitive damages would have on municipalities in particular because of their special status as public-facing, democratically accountable entities. As the Court explained, "municipalities and other units of state and local government face the possibility of having to assure compensation for persons harmed by

abuses of governmental authority covering a large range of activity in everyday life." *City of Newport*, 453 U.S. at 270. "[E]xposure for the malicious conduct of individual government employees," the Court reasoned, "may create a serious risk to the financial integrity of these governmental entities." *Id.* The Court also noted that a jury might be prejudiced by "the unlimited taxing power of a municipality," thus "encouraging it to impose a sizable award." *Id.*

These concerns are not implicated by allowing punitive damages against a private entity, whose "core mission" is "to accumulate wealth for its owners," a mission that "differs fundamentally from the democratic mission of government." Jack M. Sabatino, *Privatization and Punitives: Should Government Contractors Share the Sovereign's Immunities from Exemplary Damages?*, 58 Ohio St. L.J. 175, 227 (1997). Nor do private companies "enjoy the government's virtually unbounded legal authority to raise tax revenues or to tap treasury reserves." *Id.* at 228. There is no comparable concern that juries will be unduly prejudiced by a private defendant's wealth.

And even if the district court were correct that "the risk of punitive damages will necessarily be considered in the contract terms of

any future agreement to provide governmental services," ROA.2347, considering such costs in government contracting is not only appropriate but likely necessary:

> Privatization, which is often pursued to save the taxpayers money, can only be in the public interest if the firms hired by government are held accountable for their work. If the price of that accountability makes contracting out a government function to private firms too expensive, then perhaps that function should not be privatized in the first place. A seemingly low bid on a contract for public services could mask a bidder's proclivity to perform those services in a slipshod manner.

Sabatino, *supra*, at 236.

The district court's second erroneous policy theory was that "a private entity like LaSalle is incapable of malicious action outside of its employees." ROA.2347. But this reasoning "would apply to ordinary tort cases as easily as to § 1983 suits; hence, it hardly presents an argument for adopting a different rule under § 1983." *Smith*, 461 U.S. at 49. As noted above, courts have long recognized that a corporation may be held liable for punitive damages in tort, even though such liability stems from its employees' actions. *See Am. Soc. of Mech. Eng'rs v. Hydrolevel Corp.*, 456 U.S. 556, 576 & n.14 (1982). Even before the enactment of § 1983, courts had roundly rejected the argument "that a

corporation cannot be supposed to act willfully or maliciously," because "there is a human intelligence and volition which controls the affairs of a corporation, just like those of an individual, and which may act willfully, maliciously or recklessly, thus laying the basis for exemplary damages." *Jeffersonville R.R. Co. v. Rogers*, 28 Ind. 1, 7 (1867). There is no reason to impose a stricter requirement for § 1983.

Finally, the district court reasoned that imposing punitive damages on private companies would create a "backdoor to vicarious liability," which "is not allowed in § 1983 litigation." ROA.2348. This reasoning improperly conflates the doctrinal bases for *Monell* and *City of Newport*. As discussed above, this Court should hold that private companies sued under § 1983 are subject to vicarious liability. *See supra* § III.A. But even if this Court concludes otherwise, the justifications for providing *Monell* protections to private corporations do not extend to punitive damages. Again, *Monell*'s reasoning rests on a combined reading of a textual ambiguity in § 1983 and the statute's legislative history. 436 U.S. at 691.

In *City of Newport*, by contrast, the Court relied on the pre-1871 immunity from punitive damages afforded to municipalities, an

immunity that has no application to private companies like LaSalle and Richwood. 453 U.S. at 259-60. Extending that immunity to private companies would amount to "a freewheeling policy choice," *Malley*, 475 U.S. at 342, rather than proper statutory interpretation. This Court should instead be "content to adopt the policy judgment of the common law"—that, no matter if the defendant is a private individual or a corporation, "reckless or callous disregard for the plaintiff's rights, as well as intentional violations of federal law, should be sufficient to trigger a jury's consideration of the appropriateness of punitive damages." *Smith*, 461 U.S. at 51.

In sum, neither legal doctrine nor public policy justifies the district court's conclusion that punitive damages are categorically unavailable against private companies sued under § 1983. This Court should reverse the district court's contrary holding.

3. A reasonable jury could find that LaSalle and Richwood violated Mr. Moore's constitutional rights with reckless or callous indifference.

Having established that LaSalle and Richwood are not categorically immune from punitive damages, the question becomes whether the evidence raises a genuine issue of material fact that they

possessed the requisite intent for punitive damages. It does. In concluding without elaboration that Plaintiffs had "produced no facts that would permit a reasonable jury" to find that LaSalle and Richwood possessed the necessary intent, ROA.27302, the district court ignored critical evidence that they knew of, yet willfully disregarded and refused to address, the serious risk of injury their operations posed for detained individuals like Mr. Moore.

Punitive damages are appropriate when a defendant's conduct "is 'motivated by evil intent' *or* demonstrates 'reckless or callous indifference' to a person's constitutional rights." *Sockwell v. Phelps*, 20 F.3d 187, 192 (5th Cir. 1994) (quoting *Smith*, 461 U.S. at 56(emphasis added)). Reckless or callous indifference "requires 'recklessness in its subjective form,' i.e., 'a subjective consciousness' of a risk of injury or illegality and a 'criminal indifference to civil obligations.'" *Kaufman Cnty.*, 352 F.3d at 1015 (quoting *Kolstad*, 527 U.S. at 536).

Here, there was significant evidence that LaSalle and Richwood acquiesced in rampant abuses, including the very abuses suffered by Mr. Moore, against detained individuals at Richwood. For instance, Plaintiffs presented evidence of a "wide[]spread practice" of taking "pre-

trial detainees" into the Four-Way—where "there were no cameras located"—for the "*express*[] *purpose* … [of] 'teach[ing] them a lesson' off camera" by "us[ing] force and punish[ing]" the detained individuals. ROA.21084-21085 (emphasis added). Despite numerous objections by some Richwood employees to this well-documented practice that "many officers" openly discussed, the facility continued to allow the practice. ROA.21085.

Plaintiffs also presented evidence that Richwood employees, including supervisors, "routinely" "use[d] chemical spray on handcuffed" detained individuals who posed no physical threat and had committed at most "minor transgressions," such as talking too loudly. ROA.21084. Supervisors again brushed aside internal complaints by Richwood employees about this alarming practice, asserting that guards "do what they want with [detained individuals], without regard to policy." ROA.21084. These well-known abuses—the beating of detained individuals in the Four-Way out of camera view and the excessive use of chemical spray—are precisely the harms Richwood guards inflicted on Mr. Moore.

Given how widespread and openly discussed these behaviors were, as well as how frequently they were objected to, it would blink reality to deny that the policymakers at LaSalle and Richwood were aware of them. And clearly these practices could and did result in unconstitutional uses of force or otherwise create an unacceptable "risk of injury" to detained individuals. *Kaufman Cnty.*, 352 F.3d at 1015. Yet LaSalle and Richwood took no steps to prevent the transgressions from continuing. That is textbook "reckless or callous indifference" to the constitutional rights of Mr. Moore and other detained individuals. At minimum, drawing all inferences from the record in the light most favorable to Plaintiffs, a reasonable factfinder could so conclude. *See, e.g.*, *Cowart*, 938 F.3d at 455-56; *Hinshaw*, 785 F.2d at 1267-68, 1270.

IV. The District Court Erred In Granting Summary Judgment To The City Of Monroe.

The district court's ruling with respect to the City of Monroe was straightforward: Because "LaSalle and Richwood are not liable under § 1983 for the violation of Moore's rights, under *Monell*," then "[i]t necessarily follows that" the City is not, either. ROA.27420. For the reasons described above, the district court erred in granting summary judgment to LaSalle and Richwood on Plaintiffs' *Monell* claims. *See*

supra § III.B. Its grant of summary judgment to the City should therefore be reversed, as well.

The City suggested below that it should not be liable for the policies and customs of LaSalle and Richwood because it had not delegated final policy-making authority to those entities. *See, e.g.*, ROA.12338 ("No City official has ever testified that any policy-making authority was delegated to RCC during its contractual relationship."). The district court correctly declined to rule for the City on this basis at summary judgment.

Even in the City's own words, there is a genuine dispute whether it delegated policy-making authority over its pretrial detainees to LaSalle and Richwood. The City admits that its contract with Richwood "required the development of some policies and procedures." ROA.12327. "Some" is an understatement. The City retained no policy-making authority when it came to Richwood.

Indeed, the only supposed policy the City can point to is not a policy at all. The City argued that it should be insulated from liability because its contract cited the Louisiana Basic Jail Guidelines. ROA.12352-12353. But that portion of the contract was itself a

delegation, not a jail policy: It directed Richwood to develop the policies that would govern the facility and noted merely that, whatever policies were ultimately developed, they must comply with all applicable laws. ROA.23195-23196 ("R.C.C. shall operate, manage, supervise and maintain the facility … in accordance with state and local law, including the … Louisiana Basic Jail Guidelines and this Agreement, provided that the level and the quality of services provided by R.C.C. … shall exceed the minimum standards promulgated by the Louisiana Basic Jail Guidelines.").

Because the City delegated its policy-making authority to Richwood and LaSalle, it is liable for the constitutional violations that followed from those entities' policies and customs. *E.g.*, *Garza v. City of Donna*, 922 F.3d 626, 637 (5th Cir.), *cert. denied*, 140 S. Ct. 651 (2019); *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 705 & n.9, 706 & n.11 (11th Cir. 1985).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court reverse the judgments of the district court and remand for trial.

Dated: June 14, 2021

Respectfully Submitted,

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ADDENDUM A: OPINIONS & JUDGMENTS

October 30, 2020

Defendants / Issues	Op. (ECF; ROA)	Judgmt. (ECF; ROA)
Hart, Brown & Foster	348; 27141	349; 27167
Mitchell, Walker & Hale	350; 27169	351; 27203
Crowson	352; 27204	353; 27229
Plaintiffs' S.J. Motion	354; 27230	355; 27251
Richwood, LaSalle, Hanson & Aultman	356; 27252	357; 27305
Runner, Rosenthal, Curley & Williams	358; 27308	359; 27359
Causation of Death	360; 27362	361; 27392
City of Monroe	362; 27393	363; 27431
Sherriff, Wells & Murphy	364; 27432	365; 27459

ADDENDUM B: VIDEO EXHIBITS

Manual Attachments (M.A.)

M.A. 4A	Oct. 10, 6:49 a.m.	Mr. White's first apparent seizure
M.A. 4B	Oct. 10, 9:55 a.m.	Mr. White's apparent fainting
M.A. 4C	Oct. 12, 12:14 p.m.	Mr. White's second apparent seizure
M.A. 6	Oct. 13, 7:09 a.m.	Spraying of Mr. White and Mr. Moore; extraction of both from the cell
M.A. 43	Oct. 13, 5:07 p.m.	Incident between Mr. Moore and Mr. White in the cell
M.A. 1	Oct. 13, 6:08 p.m.	Extraction of Mr. White from cell; use of force against Mr. Moore (extended version submitted at summary judgment)
M.A. 7	Oct. 13, 7:00 p.m.	Spraying of Mr. Moore
M.A. 3	Oct. 13, 7:02 p.m.	Extraction of Mr. Moore into hallway; use of force against Mr. Moore
M.A. 2	Oct. 13, 7:05 p.m.	Extraction of Mr. Moore from cell
M.A. 5	Oct. 13, 7:12 p.m.	Cleaning of the cell

* M.A. 1 (Extended), 4A-4C, and 5-7 were manually attached as noticed on the district-court docket at ECF No. 298-13. M.A. 2 and 3 were manually attached as noticed at ECF No. 230-13. M.A. 43 was manually attached as noticed at ECF No. 241-18.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on June 14, 2021.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a) because this brief contains 22,902 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). On April 12, 2021, this Court granted Appellants leave to file a brief of up to 35,000 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 5th Cir. R. 32.1 and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Century Schoolbook 14-point font.

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