No. 24-20521

CONSOLIDATED WITH 25-20038

United States Court of Appeals for the Fifth Circuit

KEDRIC CRAWFORD
Plaintiff – Appellant

v.

BRYCE PERKINS; NATHANIEL BROWN; ALYSSA McDANIEL; IVAN MARTINEZ; BRET RASCH; KEVIN DUNLAP; SHANE MICHAEL DUNLAP; KEITH DOUGHERTY; HARRIS COUNTY; ED GONZALEZ, SHERIFF; LAXMAN SUNDAR; CITY OF BAYTOWN; SAMUEL SERRETT
Defendants - Appellees

Appeal from the United States District Court for the Southern District of Texas in Case No. 4:20-CV-3003

BRIEF OF APPELLEES ED GONZALEZ, HARRIS COUNTY, AND DR. LAXMAN SUNDER

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit 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.

Appellant:	**Counsel for Appellant:**
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City of Baytown, Texas Keith Dougherty Kevin Dunlap Shane Dunlap Ivan Martinez Alyssa McDaniel Bryce Perkins Bret Rasch	Steven Selbe Gordon, Rees, Scully, Mansukhani, LLP 1900 West Loop South, Suite 1000 Houston, Texas 77027

/s/ Seth Hopkins
Attorney of record for Appellees Harris County, Texas, Sheriff Ed Gonzalez, and Dr. Laxman Sunder

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 34(a) and Fifth Circuit Rule 28.2.3, Appellees believe oral argument is unnecessary because the dispositive issues have been authoritatively decided, the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. Neither the facts nor the legal arguments are unusually complex.

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RESPONSE TO STATEMENT OF JURISDICTION: THIS COURT LACKS JURISDICTION BECAUSE THE DISTRICT COURT HAS NOT DISMISSED ALL PARTIES AND ALL CLAIMS

While the district court dismissed the claims against Harris County, Texas, Dr. Laxman Sunder, and Harris County Sheriff Ed Gonzalez, it has not dismissed all claims against Defendant Teddy Sims. Mr. Crawford and Sims filed cross-motions for summary judgment and several evidentiary motions which were pending when Mr. Crawford filed his two notices of appeal.[1]

28 U.S.C. § 1291 codifies the ancient doctrine that "the whole case and every matter in controversy in it [must be] decided in a single appeal." *McLish v. Roff*, 141 U.S. 661, 665-666 (1891). For an appellate court to have jurisdiction over an appeal, there must be a final judgment as to all parties. *Luckett v. Spivy*, 490 F.2d 87 (5th Cir. 1974); *International Harvester Credit Corporation v. Belding*, 462 F.2d 624 (5th Cir. 1972). There are only a few narrow exceptions that permit a party to file an interlocutory appeal, and none of them apply here.[2]

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[1] See ROA.1498-1521; ROA.1526-1666; ROA.1667-1689; ROA.1690-1719. The district court terminated these motions without prejudice while this matter is on appeal. See Doc. 206, No. 4:20-cv-3003, in the Southern District of Texas.

[2] A party can file an interlocutory appeal of certain rulings affecting injunctions, receiverships, and admiralty cases. 28 U.S.C. § 1292(a). A party can appeal rulings that thwart arbitration. 9 U.S.C. § 16. A party can appeal certain rulings related to class actions. Fed. Rule of Civ. Proc. 23(f). A party can appeal the denial of qualified immunity. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). A party can also appeal an interlocutory ruling when a judge finds that it involves a controlling question of law as to which there is substantial ground for difference of opinion and an immediate

Mr. Crawford asserts that this Court has jurisdiction because "the district court issued a final order dismissing ***several*** of Plaintiff Kedric Crawford's claims with prejudice." Appellant's Brief at 10 (emphasis added). However, for this Court to have jurisdiction, ***all*** of Mr. Crawford's claims would need to be dismissed. Accordingly, this Court lacks jurisdiction to hear this appeal. Out of an abundance of caution, the Harris County defendants have responded to Mr. Crawford's brief on the merits.

appeal may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). None of these apply to this case.

RESPONSE TO STATEMENT OF THE ISSUES

The Harris County Appellees respectfully suggest that not all of Mr. Crawford's issues apply to them, and that a more accurate statement of the issues involving them is as follows:

Issue 1: Whether the District Court properly dismissed the claims against defendants when Mr. Crawford missed his court-ordered deadline and three extensions to serve defendants on April 30, 2021 (ROA.353), July 7, 2021 (ROA.369), October 5, 2021 (ROA.375-376), and November 4, 2021 (ROA.594; ROA.734-740) and provided no grounds for missing these deadlines sufficient to establish good cause.

Issue 2: Whether the district court properly dismissed the claims against Harris County and its officials when Mr. Crawford failed to plead facts sufficient to state a claim for denial of a serious medical need under *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

STATEMENT OF THE CASE

I.
FACTS

On July 6, 2019, Mr. Crawford was injured and arrested by Baytown City police officers during a traffic stop. Appellant's Brief at 12. Mr. Crawford does not plead any claim against the Harris County defendants regarding the traffic stop or the injuries that occurred during the stop.

After the arrest, Mr. Crawford was brought to Ben Taub Hospital, where he was treated for his injuries and released by medical personnel to the Harris County Jail. ROA.437; ROA.454-455. His only claim against the Harris County defendants is that he "made request for wound care, and pain." ROA.455. Mr. Crawford does not allege any injury at the Harris County Jail or infection or exacerbation of his wounds or other injuries. He suggests he should have been provided with "an ice pack or aspirin" during the three days in custody. ROA.455.

II.
PROCEDURAL HISTORY

A. There are three consolidated district court cases and two consolidated appeals.

Mr. Crawford filed three lawsuits in the district court and two appeals in this Court in connection with this matter. The district court consolidated: (1) *Crawford v. City of Baytown, et al.*, Southern District of Texas No. 4:20-cv-3003, (2) *Crawford v. Harris County and Sheriff Ed Gonzalez*, Southern District of Texas No. 4:21-cv-624, and (3) *Crawford v. Dougherty, et al.*, Southern District of Texas No. 4:21-cv-627. The lead case in the district court is No. 4:20-CV-3003.

This Court consolidated: (1) *Crawford v. Perkins*, No. 24-20521 and (2) *Crawford v. Perkins*, No. 25-20038. The lead case in the Fifth Circuit Court of Appeals is No. 24-20521. Each of the consolidated appeals has an identical Record of Appeal that contains 204 docket entries with corresponding page numbers and transcripts from hearings held on March 3, 2021 and March 21, 2021.

B. Procedural history

1. Procedural history prior to the motions to dismiss

On June 22, 2020, Mr. Crawford filed suit against the City of Baytown, Chief Keith Dougherty, Teddy Sims, and Officer Doe. ROA.28-48. Teddy Sims and the City of Baytown were served on August 24, 2020 and removed the case to federal

court two days later. ROA.23-27; ROA.67-68. The City of Baytown moved to dismiss for failure to state a claim. Motion at ROA.87-101; Response at ROA.104-117; Reply at ROA.152-160. On September 30, 2020, the district court ordered jurisdictional discovery. Mr. Crawford was ordered to provide evidence of his damages, and Sims was ordered to provide access to videos from the incident. ROA.103.

On November 11, 2020, Mr. Crawford amended his complaint to add Samuel Serrett, Nathaniel Brown, Alyssa McDaniel, Kevin Dulap, and Sergeant Kevin Davis as defendants. ROA.185-214. The district court dismissed the claims against Dougherty because Mr. Crawford failed to serve him on time. ROA.232.

On February 28, 2021, Mr. Crawford voluntarily dismissed the City of Baytown (Amended Notice at ROA.265-266) and Teddy Sims. Amended Notice at ROA.267-268. Mr. Crawford withdrew the dismissals, and the district court permitted the claims against them to remain. ROA.277. Mr. Crawford again dismissed the City of Baytown (ROA.352), then filed a Motion for New Trial to reinstate claims against the City of Baytown (ROA.361-363), which the court denied. ROA.364.

On February 26, 2021, while the matters against the Baytown defendants were pending before District Judge Lynn Hughes, Mr. Crawford filed *Crawford v. Harris*

County, No. 4:21-cv-00624, Southern District of Texas. That case was based on the same facts and assigned to Judge Andrew Edison. On the same day, Mr. Crawford also filed *Crawford v. Dougherty, et al.*, Southern District of Texas No. 4:21-cv-627. That case was based on the same facts and assigned to Judge David Hittner.

On March 4, 2021, Judge Hughes consolidated the three cases into the oldest docket number. ROA.273. The court advised Mr. Crawford's counsel of the possibility of sanctions for the "concurrent filing of several lawsuits" and ordered her to appear in person. ROA.278. Mr. Crawford filed two emergency motions requesting additional notice and opportunity to respond. ROA.317-319; ROA.322-330. The court issued two clarifications. ROA.320; ROA.331-332. On March 16, 2021, the court sanctioned counsel based on its finding that Mr. Crawford filed multiple suits to engage in judge-shopping and avoid the court's jurisdiction. ROA.356-359.

The district court ordered Mr. Crawford to amend his complaint to consolidate the three lawsuits into a single complaint by April 2, 2021 and serve all defendants by April 30, 2021. ROA.353. The order specified that if the defendants were not timely served, they could be dismissed with prejudice. ROA.353.

On Mr. Crawford's request, the court extended the deadline to amend until April 23, 2021 and to serve all defendants until July 7, 2021. ROA.369. When Mr.

Crawford had not amended by April 28, 2021, the court issued an Order to Show Cause why the case should not be dismissed for want of prosecution. ROA.372.

Mr. Crawford sought a second extension (ROA.373-374) and was given until July 7, 2021 to amend and October 5, 2021 to serve or re-serve the defendants. ROA.375-376.

Mr. Crawford filed a First Amended Complaint on July 6, 2021 (ROA.377-416) and again on July 7, 2021. ROA.417-460. He named the City of Baytown, Chief Keith Dougherty, Teddy Sims, Samuel Serrett, Nathaniel Brown, Alyssa McDaniel, Shane Michael Dunlap, Sergeant Ivan Martinez, Bryce Perkins, Brett Rasch, Harris County, Dr. Laxman Sunder,[3] and Sheriff Ed Gonzalez. ROA.417.

Mr. Crawford missed his October 5, 2021 deadline to serve 11 of the defendants, including Sheriff Gonzalez and Dr. Sunder. ROA.589. On November 2, 2021, Mr. Crawford moved for a third extension to serve them (ROA.587-592), and the court extended the deadline until November 7, 2021. ROA.594. When Mr. Crawford missed that deadline and requested a fourth extension to serve these defendants, the district court denied the request. ROA.734-740.

[3] Mr. Crawford incorrectly spells Dr. Sunder's name as "Sundar" in the trial court and on appeal. This brief contains the correct spelling everywhere except the caption.

2. Motions to dismiss

Harris County moved to dismiss because it was not timely served and the Complaint failed to plead facts to support a relevant official policy, practice, or custom that was the moving force of Mr. Crawford's constitutional injuries, as required by *Monell v. Department of Social Services*, 463 U.S. 658 (1978). Amended motion at ROA.528-583. Mr. Crawford responded at ROA.741-780. Harris County replied at ROA.991-1017.

Dr. Sunder moved to dismiss based on lack of proper service within the deadline imposed by the court and the failure to plead facts sufficient to overcome qualified and official immunity. ROA.595-666. Mr. Crawford responded at ROA.1018-1038, and Dr. Sunder replied at ROA.1041-1047.

Harris County Sheriff Ed Gonzalez moved to dismiss because Mr. Crawford's official capacity claims are redundant to those against Harris County, Mr. Crawford never pleaded facts showing that Sheriff Gonzalez was personally involved in any of the events leading to his injuries, and Sheriff Gonzalez has official and qualified immunity. ROA.982-990. Mr. Crawford responded at ROA.1018-1038.

Nataniel Brown moved to dismiss based on lack of service. ROA.667-672. Mr. Crawford responded at ROA.1018-1038, and Brown replied at ROA.1054-1056.

Teddy Sims moved to dismiss based on the failure to state a claim under the Fourteenth Amendment, malicious prosecution, or the *Franks v. Delaware* doctrine, and failure to overcome qualified immunity. ROA.674-684. Mr. Crawford responded at ROA.1018-1038, and Sims replied at ROA.1057-1059.

The City of Baytown moved to dismiss employees who were not served (ROA.686-690) and claims against the City for failure to serve. ROA.692-698. Mr. Crawford responded at ROA.1018-1038, and the City replied at ROA.1048-1053.

On December 16, 2021, the district court dismissed the claims against all defendants except Sims. ROA.1071-1072.

3. Procedural history after the motions to dismiss

Following dismissal, Mr. Crawford moved to recuse Judge Hughes and set aside the sanctions against his counsel.[4] The district court denied the motions, but reduced the attorney's fees sanction. ROA.1097-1102.

The district court stayed the case until the resolution of the criminal case against Sims. ROA.1150. On February 13, 2023, the case was reassigned to Judge Drew Tipton (ROA.1163), who administratively closed it. ROA.1224. On March 20, 2024, the district court reopened the case. ROA.1249.

[4] The motion to recuse begins at ROA.2058 and the motion to set aside the sanction begins at ROA.2079. The court sealed these documents at ROA.1073 and ROA.1081. Because these portions of the record are sealed, they are unavailable in the County's copy of the Record of Appeal, which ends at ROA.2046.

Mr. Crawford requested and was denied the opportunity to file a Second Amended Complaint. ROA.1260-1323; denial at ROA.1324; Motion for reconsideration at ROA.1341-1345; denial at ROA.1346.

Mr. Crawford moved for summary judgment on his claims against Sims. ROA.1498-1524; Sims' response at ROA.1764-1788; Crawford's reply at 1819-1840. Sims also moved for summary judgment. ROA.1526-1666; Crawford's response at ROA.1789-1808; Sims' reply at ROA.1855-1870. The parties also filed various evidentiary motions. The district court has not ruled on these motions.

On November 18, 2024, Mr. Crawford filed a notice of appeal of the denial of his motion to sever, which was docketed as No. 24-20521. ROA.1871-1872. On February 7, 2025, Mr. Crawford supplemented that notice and appealed the defendants' dismissals and the denial of his motion to file a Second Amended Complaint. ROA.1921-1922. That was docketed as No. 25-20038. On February 10, 2025, Mr. Crawford filed another supplemental notice of appeal. ROA.1924-1923.

On May 15, 2025, Mr. Crawford asked this Court to stay his appeal pending resolution of the summary judgment motions.[5] He filed his brief on June 20, 2025 and his corrected brief on July 11, 2025.

[5] The district court terminated the summary judgments without prejudice pending the outcome of this appeal. Because this occurred after the appeal was filed, it is not in the record.

SUMMARY OF THE ARGUMENT

The district court found that Mr. Crawford filed three lawsuits to engage in judge-shopping and avoid the court's jurisdiction. ROA.356-359. It gave Mr. Crawford an opportunity to consolidate the lawsuits and serve the defendants. By April 2, 2021, Mr. Crawford had identified the defendants he wanted to sue, but he missed his court-ordered deadline and three extensions to serve them on April 30, 2021 (ROA.353), July 7, 2021 (ROA.369), October 5, 2021 (ROA.375-376), and November 4, 2021. ROA.594; ROA.734-740. The district court found Mr. Crawford's reasons for missing these deadlines either lacked credibility or were legally insufficient (ROA.375; ROA.737) and that Mr. Crawford had a history of missing deadlines in this case. ROA.737-740.

Harris County was also properly dismissed from the case because Mr. Crawford failed to plead a constitutional violation for denying him adequate medical care for a serious medical need. *Estelle v. Gamble*, 429 U.S. 97, 104-105 (1976). He acknowledged that he was brought to Ben Taub Hospital for his injuries and released by hospital physicians to the Jail. He never identified what treatment the Jail should have provided other than to speculate that he should have had an ice pack or aspirin. ROA.455.

Mr. Crawford also never identified an official policy attributed to an official Harris County policymaker under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). He relied on a report from the United States Department of Justice that this Court has already held to be insufficient to establish a custom. *Hicks-Fields v. Harris County, Texas*, 860 F.3d 803, 809 (5th Cir. 2017). From within that report, he provided three examples where detainees had poor medical outcomes that were never determined to be constitutional violations, never determined to be the result of anything the Jail did, and which occurred at least 10 years prior to Mr. Crawford being arrested. As a matter of law, this is insufficient to establish a custom at the Harris County Jail. *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 850 (5th Cir. 2009).

Sheriff Ed Gonzalez and Dr. Laxman Sunder were properly dismissed because they were not served. They were also properly dismissed because Mr. Crawford does not allege they were personally involved in providing Mr. Crawford with medical care and plead a case against them only in their official capacities. Finally, Mr. Crawford failed to overcome qualified immunity.

ARGUMENT

I.
STANDARD OF REVIEW

A. Standard of review to dismiss a claim for failure to serve.

When service of process is challenged under Federal Rule of Civil Procedure 4(m), the serving party bears the burden of proving good cause for failure to effect timely service. *Thrasher v. City of Amarillo*, 709 F.3d 509, 511 (5th Cir. 2013) (internal citations omitted). A trial court's determination of good cause and decision to extend the service period is reviewed for abuse of discretion. *Id.*

B. Standard of review to dismiss a claim under Rule 12.

A court of appeals reviews a district court's dismissal of a case *de novo*. *Martinez v. Nueces County, Texas*, 71 F.4th 385, 388 (5th Cir. 2023). Rule 12(b)(6) permits dismissal if a plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Rule 12 must be read in conjunction with Rule 8(a)(2), which requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); see also *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

To survive dismissal, legal conclusions in a complaint "must be supported by factual allegations." *Ashcroft*, 556 U.S. 662 at 664. Further, those factual allegations

must be detailed enough to "state a claim to relief that is plausible on its face." *Ashcroft*, 556 U.S. at 678 (quoting *Twombly* , 550 U.S. 554, 570 (2007)).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 678. While a court accepts well-pled factual allegations in a light most favorable to the plaintiff, courts are not bound to accept as true "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," or legal conclusions couched as factual assertions. *Shaw v. Villanueva*, 918 F.3d 414, 415 (5th Cir. 2019).

The facts alleged "must be enough to raise a right to relief above the speculative level." *Cicalese v. University of Texas Medical Branch* , 924 F.3d 762, 765 (5th Cir. 2019) (quoting *Twombly*, 550 U.S. at 555). When the allegations in a complaint "could not raise a claim of entitlement to relief, this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court." *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (quoting *Twombly*, 550 U.S. at 558).

II.
THE DISTRICT COURT PROPERLY DISMISSED THE CLAIMS AGAINST SHERIFF GONZALEZ AND DR. SUNDER UNDER FED. R. CIV. P. 4(m) BECAUSE MR. CRAWFORD MISSED FOUR COURT-ORDERED DEADLINES TO SERVE THEM

(Response to pages 20-29 of Appellant's Brief.)

Federal Rule of Civil Procedure 4(c)(1) makes the plaintiff "responsible for having the summons and complaint served within the time allowed by Rule 4(m)." Fed. R. Civ. P. 4(c)(1). Federal Rule of Civil Procedure 4(m) requires that a plaintiff serve process on defendants within 90 days of filing suit:

> **Time Limit for Service.** If a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

Fed. R. Civ. P. 4(m).

When a party challenges service of process, the serving party bears the burden of proving good cause for failing to effect timely service. This Court held in *Thrasher*:

> Proof of good cause requires "at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice." Additionally, some "showing of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified is normally required."

Thrasher v. City of Amarillo, 709 F.3d 509, 511 (5th Cir. 2013) (internal citations omitted).

Mr. Crawford filed his first lawsuit in state court on June 22, 2020. ROA.28-48. At that time, he was aware of the identities and service addresses of the City of Baytown, Baytown Police Chief Keith Dougherty, and Sims. ROA.29.

Mr. Crawford filed two more lawsuits on February 26, 2021 (*Crawford v. Harris County,* No. 4:21-cv-00624, Southern District of Texas and *Crawford v. Dougherty, et al.*, Southern District of Texas No. 4:21-cv-627). When the district court learned of the three overlapping cases, it ordered Mr. Crawford to consolidate them by April 2, 2021 and serve all defendants by April 30, 2021. ROA.353. The district court's order warned that if the defendants were not served by this deadline, they could be dismissed with prejudice. ROA.353.

Mr. Crawford missed this deadline. On April 2, 2021, he informed the Court of the names of the defendants he wanted to sue and acknowledge which defendants he knew he needed to serve, including Harris County, Sheriff Ed Gonzalez, and Dr. Laxman Sunder. ROA.365-366.

The court gave him until April 23, 2021 to amend and July 7, 2021 to serve the defendants. ROA.369. This provided Mr. Crawford 96 days to serve the defendants he identified on April 2, 2021. The district court again warned that if the defendants

were not served by this new deadline, they could be dismissed with prejudice. ROA.369.

Five days after Mr. Crawford missed his April 23, 2021 deadline to amend, the court issued an Order to Show Cause why the case should not be dismissed for want of prosecution. ROA.372. The next day, Mr. Crawford's counsel advised that she had surgery and was on bed rest for four days. ROA.373. The court made the following factual finding:

> The excuse given by Kedric Crawford's counsel for an extension is poor at best. Counsel knew about her surgery well before the court's previous deadline to amend the complaint of April 23, 2021, and she was well aware of this deadline. Just because the court sets a deadline does not mean that counsel must wait until the last minute to amend. A reasonable attorney would clearly know to file early if a known, later conflict would prevent her from timely obeying a court order. Counsel's excuse would not have stopped her – at a minimum – from filing this motion for extension *before* her surgery. Waiting to move six days after the deadline had past and only after the court had set a show cause hearing is shallow manipulation.

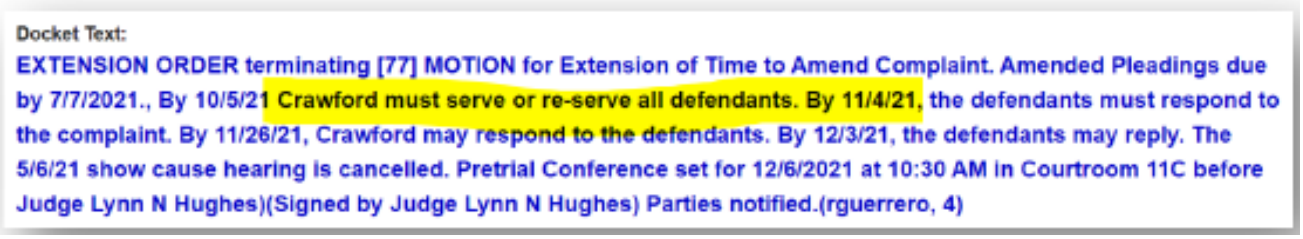
ROA.375.

Nevertheless, the court gave Mr. Crawford a second extension—until July 7, 2021—to amend his lawsuit. It warned that if he did not serve the defendants by October 5, 2021, the claims against them could be dismissed. ROA.375-376. By now, Mr. Crawford had 186 days from April 2, 2021 when he was originally ordered to

amend his lawsuit and had identified the defendants, until October 5, 2021, the date he was required to serve them. Mr. Crawford missed that deadline too.

On November 2, 2021—28 days after missing his third service deadline—Mr. Crawford asked for another extension based on two things. ROA.587. First, he contends that the docket entry was confusing. ROA.587-588. The docket entry states: "By 10/5/21 Crawford must serve or re-serve all defendants. By 11/4/21, the defendants must respond to the complaint." ROA.10, Docket Entry 79.

Mr. Crawford read this to mean that he was to serve the defendants by November 4, 2021 instead of October 5, 2021. ROA.588. To support this interpretation, he provided a screenshot of the docket entry where he highlighted a portion that disregarded the words "By 10/5/21" and disregarded the period after "defendants" and disregarded the fact that the next sentence was capitalized:


Docket Text:
EXTENSION ORDER terminating [77] MOTION for Extension of Time to Amend Complaint. Amended Pleadings due by 7/7/2021., By 10/5/21 Crawford must serve or re-serve all defendants. By 11/4/21, the defendants must respond to the complaint. By 11/26/21, Crawford may respond to the defendants. By 12/3/21, the defendants may reply. The 5/6/21 show cause hearing is cancelled. Pretrial Conference set for 12/6/2021 at 10:30 AM in Courtroom 11C before Judge Lynn N Hughes)(Signed by Judge Lynn N Hughes) Parties notified.(rguerrero, 4)

ROA.588 (highlight in original).

Mr. Crawford admitted he could not comply with even the November 4, 2021 deadline. He contends counsel was busy with other matters because of COVID-19 and unspecified trials in early September 2021 and on October 12, 2021. ROA.588.

He further acknowledged that he had not served 11 defendants, including Sheriff Ed Gonzalez and Dr. Laxman Sunder. ROA.589.

The court gave Mr. Crawford a final chance to serve by November 7, 2021. ROA.594. Mr. Crawford missed that deadline too, and the court declined to give him a fourth extension. ROA.734-740.

The court made factual findings that Mr. Crawford was not entitled to a fourth extension based on excusable neglect under the *Adams* factors. These factors are: (1) the danger of prejudice to the defendants, (2) the length of the delay and its potential impact on the case, (3) the reason for the delay, including if it was within the reasonable control of Mr. Crawford, and (4) whether Mr. Crawford acted in good faith. ROA.734, citing *Adams v. Travelers Indemnity Company of Connecticut*, 465 F.3d 156, 161 n. 8 (5th Cir. 2006).

The district court found that counsel's misinterpretation of docket entry 79 and miscalendering of the service deadline was "flimsy" because the docket entry's description "delineated" the deadline "in one sentence between two periods." ROA.736. The court also pointed out that there was a corresponding order that stated: "By October 5, 2021, Crawford must serve or re-serve all defendants. If not, they may be dismissed with prejudice." ROA.736, citing ROA.375-376.

The court then found:

> The bulk of the excuses of Crawford's counsel largely amount to her saying that she has more work than she could competently handle at the time. The Texas Rules of Professional Conduct put competence at the forefront and explain that: "[a] lawyer's workload should be controlled so that each matter can be handled with diligence and competence." Being busy with other work is insufficient to demonstrate excusable neglect.

ROA.737, citing *Winters v. Teledyne Movible Offshore, Inc.*, 776 F.2d 1034, 1036 (5th Cir. 1985). The court then provided a timeline of 17 events, many of which were examples of Mr. Crawford being late meeting various deadlines. ROA.738-739.

This led the court to make a factual finding that Mr. Crawford's failure to serve by the third extension was not excusable neglect:

> Crawford's counsel has shown a continual pattern of missed deadlines and procrastination in this case. Each incident in isolation may be considered excusable neglect. A nearly year-long pattern of neglect is no longer excusable. In this case alone, there are multiple instances of failing to timely serve—nearly a year apart from each other.
>
> The court is also aware that it took over two months from the time the summons were issued for Crawford's counsel to even start the process of executing them. "Perhaps no professional shortcoming is more widely resented than procrastination."

ROA.740, quoting Tex. Rules of Professional Conduct 1.01, c.7.

The district court did not abuse its discretion, particularly with respect to the three Harris County defendants. These defendants were easy to find in downtown

Houston within a mile of the federal courthouse. Nothing prevented Mr. Crawford from serving them between April 2, 2021 and November 7, 2021.

On appeal, Mr. Crawford argues that a heightened standard should apply. Appellant's Brief at 26-29. The courts apply a heightened standard when the failure to serve results in the statute of limitations expiring and a plaintiff being barred from filing a future suit. *Thrasher*, 705 F.3d at 512. In those cases, there should be "a clear record of delay or contumacious conduct by the plaintiff" and a lesser sanction would not better serve the interests of justice. *Id.* at 512-513. Even if there is no clear record of delay, the heightened standard can also be satisfied if there is a finding that the delay was caused by intentional conduct. *Id.* at 514.

The district court gave Mr. Crawford four opportunities to protect his statute of limitations and serve his lawsuit. His last extension was granted even though he requested it 28 days after missing his third deadline. ROA.353; ROA.369; ROA.375-376; ROA.594; ROA.734-740. This is not an instance of a plaintiff inadvertently missing a deadline and losing the opportunity to maintain his lawsuit, and the district court did not abuse its discretion in establishing a clear record of delay that meets the heightened standard. See, ROA.737-740. The district court also did not abuse its discretion in finding that after three missed extensions, no lesser sanction was appropriate.

Mr. Crawford cites *Millan* to argue that this was not contumacious conduct. In that case, Hurricane Katrina damaged Mr. Millan's home, and he served his insurance company in accordance with information on the Louisiana Secretary of State's website. That information was incorrect, and the district court extended his deadline. *Millan v. USAA General Indemnity Company*, 546 F.3d 321, 323-324 (5th Cir. 2008).

Mr. Millan complied with the order but failed to pay the proper fee. *Id.*, 546 F.3d at 324. This Court found that part of the confusion may have been caused by the fact that the insurer communicated with Mr. Millan under the name USAA, while the proper entity was USAA GIC. *Id.*, 546 F.3d at 325, 327-328. The insurer was aware of the confusion and that the wrong entity was served, but "made no mention of the alleged misnomer," treated it as service on USAA GIC, and waited until a reply brief on the merits of the case to argue that the wrong entity was served. *Id.*, 546 F.3d at 327. This Court held: "These facts do not establish a clear record of delay and, indeed, suggest the opposite." *Id.*, 546 F.3d at 328.

Millan is easily distinguished from the case at bar. Mr. Millan diligently attempted to serve his insurer twice but was thwarted by the fact that the insurer was communicating with him under the wrong name and hid behind this misnomer. In

contrast, Harris County, Sheriff Gonzalez, and Dr. Sunder never attempted to conceal their identifies and were easy for Mr. Crawford to find and serve.

Mr. Crawford also cites *Pioneer* for the principle that the "lack of prejudice weighs heavily in favor of extension." Appellant's Brief at 23. However, that case did not focus on the prejudice caused by the delay—it focused on what it means for a party to commit excusable neglect. The Supreme Court contemplated the spectrum of reasons parties fail to comply with court deadlines:

> At one end of the spectrum, a party may be prevented from complying by forces beyond its control, such as by an act of God or unforeseeable human intervention. At the other, a party simply may choose to flout a deadline. In between lie cases where a party may *choose* to miss a deadline although for a very good reason, such as to render first aid to an accident victim discovered on the way to the courthouse. . .

Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, et al., 507 U.S. 380, 387–88 (1993). The Court held that the fact that "counsel was experiencing upheaval in his law practice" was not a factor in determining excusable neglect. *Id.*, 507 U.S. at 398. This forecloses on Mr. Crawford's argument that his counsel's workload could constitute excusable neglect.

In *Pioneer*, the Court was willing to find excusable neglect in an age before electronic notices when a bankruptcy court's form did not follow its standard format and contained a "peculiar and inconspicuous placement" of a meeting date. The

attorney acted in good faith to comply with the notice when he discovered that it was concealed on the form. *Id.*

While Mr. Crawford might try to analogize this case to *Pioneer* based on his contention that Docket Entry 79 was confusing (ROA.10, Docket Entry 79), there was nothing confusing about the date on the order instructing Mr. Crawford when he needed to serve defendants. ROA.736, citing ROA.375-376. Further, Mr. Crawford received a third extension based on that argument, but he missed that deadline as well. Based on these facts, the district court did not abuse its discretion in finding that Mr. Crawford engaged in a pattern of tardiness and did not meet his burden of showing good cause or excusable neglect.

The district court also found that defendants were prejudiced by the delay in service. Mr. Crawford counters this by arguing the defendants were aware of the lawsuit, so there was no prejudice by him not serving them. Appellant's Brief at 23.

The district court properly found that legal notice is different from being aware of a lawsuit. This is because "[d]elay in serving a complaint affects every aspect of a defendant's trial preparations." ROA.737, quoting *Porter v. Beaumont Enterprise and Journal*, 743 F.2d 269, 272 (5th Cir. 1984).

There are additional reasons the defendants are prejudiced. Mr. Crawford was released from the Harris County Jail more than six years ago. Many of the employees

who might have been witnesses have left Harris County, and Dr. Sunder is no longer the medical director[6] and would be required to take time from his current employment to defend himself based on a six-year-old claim that he had nothing to do with. As time passes, other witnesses will be harder to track, and even for witnesses who are available, their memories fade.

Sheriff Gonzalez and Dr. Sunder are particularly prejudiced because it is unclear whether Mr. Crawford attempted to sue them in their individual capacities. This puts them in limbo by not knowing whether they are even proper defendants.

Meanwhile, the defendants must continue to keep attorneys assigned to this case and keep it on their dockets. While Mr. Crawford is not responsible for all of the delays in this case, he is responsible for most of the delays in 2021, which could easily have been avoided by serving the defendants.

III.
THE DISTRICT COURT PROPERLY DISMISSED THE CLAIMS AGAINST HARRIS COUNTY BECAUSE MR. CRAWFORD FAILED TO PLEAD A CLAIM UNDER *MONELL*

(Response to pages 29-32 of Appellant's Brief.)

Mr. Crawford's only claim against Harris County and its officials is that he was denied his Fourth and Fourteenth Amendment right to adequate medical care for his

[6] Dr. Sunder's current employment is not in the record but can be readily found. See, e.g., https://health.usnews.com/doctors/laxman-sunder-175763 (retrieved July 14, 2025).

serious medical needs while in jail. ROA.455. Mr. Crawford's First Amended Complaint acknowledges that he was brought to Ben Taub Hospital, treated, and then released by the hospital to the Harris County Jail. ROA.454-455. He does not plead that he suffered any new injury or exacerbation of an existing injury in jail, and while he contends that he made requests for medical care after he was released from the hospital, he does not suggest what care he asked for or should have received in jail, except "an ice pack or aspirin." ROA.455.

To establish a constitutional violation of the right to medical care, a pre-trial detainee must show deliberate indifference to a serious medical need that caused "unnecessary and wanton infliction of pain." *Estelle*, 429 U.S. 97, 104-105 (1976). A serious medical need is "one for which treatment has been recommended or for which the need is so apparent that even laymen would recognize that care is required." *Gobert v. Caldwell*, 463 F.3d 339, fn.12 (5th Cir. 2006).

Mr. Crawford's First Amended Complaint did not plead a serious medical need. He admits that medical personnel at Ben Taub Hospital diagnosed and treated him and that the physicians there determined he was clear to go to the Harris County Jail. He has not pleaded that he was denied any particular treatment recommended by a physician—such as stiches, treatment for an infection, or a prescription for a certain pain medication. He has also not pleaded that his denial of over-the-counter

items such as an ice pack and aspirin amounted to deliberate indifference. Thus, Mr. Crawford has not pleaded a constitutional violation for indifference to a serious medical need.

Assuming Mr. Crawford had pleaded a constitutional injury, he did not meet the pleading standard required by *Monell* to impose liability on Harris County for that constitutional injury. A county cannot be held liable for negligence under 42 U.S.C. § 1983. *Kingsley v. Henderickson*, 576 U.S. 389, 396 (2015). A county cannot be vicariously liable for the acts of employees. *Estate of Davis v. City of North Richland Hills*, 406 F.3d 375, 381 (5th Cir. 2005).

A county can only be liable under § 1983 when a plaintiff shows that an official policymaker adopted an unconstitutional policy "with deliberate indifference to the known or obvious consequences that constitutional violations would result." *Piotrowski v. City of Houston*, 237 F.3d 567, 579-580 (5th Cir. 2001); *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978). Mr. Crawford has not identified any specific policy.

In the absence of an official policy, a plaintiff can show that an unconstitutional practice can be so persistent and widespread that it fairly represents an official policy. To establish the existence of an official policy this way, a plaintiff must show official misconduct "is so common and well settled as to constitute a custom that fairly

represents the municipality's policy." *Cox v. City of Dallas, Texas*, 430 F.3d 734, 748-749 (5th Cir. 2005). A court cannot infer a policy "merely because harm resulted from some interaction with a governmental entity." *Colle v. Brazos County, Texas*, 981 F.2d 237, 244-245 (5th Cir. 1993).

The high threshold of establishing a policy through a custom requires showing unconstitutional conduct with "similarity and specificity; prior indications cannot simply be for any and all 'bad' or unwise acts, but rather must point to the specific violation in question." *Peterson v. City of Fort Worth, Texas*, 588 F.3d 838, 850 (5th Cir. 2009) (internal quotation marks omitted).

A custom also requires "sufficiently numerous prior incidents," as opposed to "isolated instances." *Id.*, quoting *McConney v. City of Houston*, 863 F.2d 1180, 1184 (5th Cir. 1989). For example, the size of a police department and number of arrests "may be relevant to determining whether a series of incidents can be called a pattern." *Id.*, quoting *Pineda v. City of Houston*, 291 F.3d 325, 329 (5th Cir. 2002). In *Pineda*, 11 incidents of Fourth Amendment violations "cannot support a pattern of illegality in one of the Nation's largest cities and police forces [Houston]." *Pineda*, 291 F.3d at 329.

To try to show a custom, Mr. Crawford relies on a 2009 Department of Justice report. ROA.456. That report reflected the opinion of an employee of the

Department of Justice ten years before Mr. Crawford's stay in the Jail, and it has not been adjudicated to be accurate by any court.

Mr. Crawford contends that this 2009 report found that the sick call process was slow in the jail facility at 1200 Baker Street. ROA.456-457. Without citing any sources, Mr. Crawford gave three anonymous examples of people (presumably from the 2009 report) who he believes were provided inadequate medical care.

In the first example, the Jail sent a 74-year-old detainee to the hospital when he complained of incontinence. That person died in the hospital while receiving treatment. ROA.457. In the second example, a detainee complained of leg pain and was provided pain medication. The person later collapsed and died. While it is unclear from Mr. Crawford's pleadings what the person died of, he contends that medical staff did not provide an adequate emergency response, such as using the defibrillator. ROA.457. In the third example, the Jail regularly sent a person with chronic liver cirrhosis to the hospital for treatment. That person died while being treated in the hospital, and Mr. Crawford contends that more should have been done to care for him, including putting him in a special housing unit. ROA.457-458.

The first problem with using these examples as evidence of a policy or custom is that they presumably come from the 2009 Department of Justice report, which means they occurred at least 10 years prior to Mr. Crawford's 2019 incarceration.

Sheriff Gonzalez began his first term in 2017,[7] and he was never the policymaker for the Jail when the Department of Justice report was released. See *Hicks-Fields v. Harris County, Texas*, 860 F.3d 803, 809 (5th Cir. 2017) (finding that two years between the U.S. Department of Justice Report and an incident is "irrelevant to showing a pattern of unconstitutional behavior at that time.")

In *Hicks-Fields,* this Court found the Department of Justice report failed to establish a policy or custom against Harris County under circumstances far less attenuated. A guard punched a jail detainee with a history of mental health problems, and the detainee died after a delay in medical care. The family alleged the Department of Justice report established a custom of jailers using excessive force, denying medical care, and failing to train. This Court held that the examples given in the report "do not resemble—with sufficient similarity—the constitutional violations alleged by Plaintiffs so as to establish the required pattern of that unconstitutional conduct." *Hicks-Fields*, 860 F.3d at 810. The three examples that Mr. Crawford cites in his First Amended Complaint are not closely enough related in time to reflect the custom when Mr. Crawford was in jail, or the custom under Sheriff Gonzalez.

[7] https://ballotpedia.org/Ed_Gonzalez

The second problem with using these examples as evidence of a policy or custom is that the examples themselves do not show clear constitutional injuries. While the three people referenced by Mr. Crawford had poor medical outcomes, there is no evidence that the outcomes were the result of anything the Jail (or anyone else) did. There is also no evidence that any court adjudicated the outcomes to have been the result of any official policy or custom.

The third problem with using these examples as evidence of a policy or custom is that there is no clear correlation between whatever policies the examples supposedly show and whatever policy Mr. Crawford complains about. Mr. Crawford's complaint is that doctors did not provide him unspecified wound care or pain medication. He cannot point to any policy or custom of denying wound care or pain medication. In fact, in his second example, he admits that the detainee who complained of leg pain did receive pain medication. That suggests that the Harris County Jail had a policy of providing pain medication.

The fourth problem with using these examples as evidence of a pattern or custom is that there are not enough examples to satisfy Mr. Crawford's burden. In *Peterson*, in the absence of record evidence, this Court looked to the City of Fort Worth's website to show it employed 1,500 officers and dealt with 67,000 incidents of crime per year to conclude that "27 incidents of excessive force over a period of

four years do not reflect a pattern that can be said to represent official policy of condoning excessive force…" *Peterson*, 588 F.3d at 852.

The official Harris County Sheriff's Office website explains how health care in the Jail has been prioritized since Sheriff Gonzalez was elected and explains that the Harris County Sheriff's Office has "more than 5,000 employees to protect the 4.8 million residents living with the 1,700 square miles of Harris County."[8] Just as this Court found that 27 incidents of excessive force among a department with 1,500 officers did not establish a custom in *Peterson*, Mr. Crawford's three examples between 2009 and 2019 in a department with 5,000 employees could not establish a custom—even if those were clear examples of constitutional violations.

For these reasons, Mr. Crawford did not satisfy his pleading burden under *Monell*. The district court properly dismissed Harris County from this case.

[8] "About Sheriff Ed Gonzalez", retrieved on July 17, 2025 from https://harriscountyso.org/AboutUs/AboutMe.

IV.
THE DISTRICT COURT PROPERLY DISMISSED THE CLAIMS AGAINST SHERIFF ED GONZALEZ

A. The district court did not abuse its discretion for dismissing Sheriff Ed Gonzalez because he was never served.

As discussed, Sheriff Ed Gonzalez was never served in this lawsuit despite Mr. Crawford receiving three extensions to complete service on all defendants. Rule 4(m) requires that a district court "must dismiss the action" against a defendant not timely served. The district court did not abuse its discretion for dismissing the claims against Sheriff Gonzalez on this basis.

B. Mr. Crawford did not plead any claims against Sheriff Gonzalez in his individual capacity.

Even if Sheriff Gonzalez had been served, there are no claims against him in his individual capacity. While Mr. Crawford does not identify whether his suit was against Sheriff Gonzalez in his individual or official capacity, the pleadings suggest it was intended only as an official capacity suit.

Sheriff Gonzalez's name appears in Mr. Crawford's First Amended Complaint in connection with his *Monell* claims against Harris County. One conclusory paragraph says Sheriff Gonzalez and its policymakers "failed to assess, diagnose, and treat Crawford." ROA.455 at ¶ 223. The next paragraph is captioned "*Monell Claims*" and reads: "The Harris County sheriff at all relevant times was

Sheriff Ed Gonzalez." ROA.455 at ¶ 224. There are no specific allegations of any personal involvement by Sheriff Gonzalez to violate Mr. Crawford's constitutional rights.

Mr. Crawford also does not appear to be appealing any individual claims against Sheriff Gonzalez. There are only five references to Sheriff Gonzalez in the body of Mr. Crawford's brief, and each reference discusses him in the context of a policymaker for Harris County. See Appellant's Brief at 15, 18, 31, and 37.

When a plaintiff names an official but makes no personal claim against that official, the complaint should be construed as against the person in his or her official capacity. *Nueces County v. Ferguson* , 97 S.W.3d 205, 215-216 (Tex. App. 2002). The Supreme Court has held that a lawsuit against an official in her or her official capacity is not a suit against the official, but rather is a suit against the official's office. See *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989).

The Supreme Court observed that in three of its prior Section 1983 opinions, "we have plainly implied that a judgment against a public servant 'in his official capacity' imposes liability on the entity that he represents provided, of course, the public entity received notice and an opportunity to respond. We now make that point explicit." *Brandon v. Holt* , 469 U.S. 464, 471-472 (1985). This is a second reason to dismiss the claims against Sheriff Gonzalez.

C. Assuming there were any claims against Sheriff Gonzalez, Mr. Crawford has not overcome qualified immunity.

Even if Sheriff Gonzalez had been sued in his individual capacity and served, he asserted the defense of qualified and official immunity in the district court. ROA.985-987. That defense has not been overcome.

A person who alleges his constitutional rights were violated by a public employee acting under color of law may sue for money damages under 42 U.S.C. § 1983. However, public employees are entitled to the affirmative defense of qualified immunity for § 1983 civil rights claims.

"Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Reichle v. Howards*, 566 U.S. 658, 664 (2012). Qualified immunity is "an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 512 (1985). Thus, when an official asserts qualified immunity in a motion to dismiss, "the court has an 'obligation . . . to carefully scrutinize [the complaint] before subjecting public officials to the burdens of broad-reaching discovery." *Longoria v. San Bernito Independent Consolidated School District*, 942 F.3d 258, 263-264 (5th Cir. 2019).

Once a defendant invokes qualified immunity, "the burden shifts to the plaintiff to show that the defense is not available." *Cooper v. Brown*, 844 F.3d 517, 522 (5th Cir. 2016 (citation omitted).

Mr. Crawford did not meet his burden to overcome qualified immunity. For the reasons discussed, *supra*, he did not demonstrate that Sheriff Gonzalez violated his constitutional rights and he did not demonstrate that those rights were clearly established at the time of the incident. Accordingly, the claims against Sheriff Gonzalez were properly dismissed for this reason as well.

V.
THE DISTRICT COURT PROPERLY DISMISSED THE CLAIMS AGAINST DR. LAXMAN SUNDER

A. The district court did not abuse its discretion for dismissing Dr. Laxman Sunder because he was never served.

As discussed, Dr. Sunder was never served in this lawsuit despite Mr. Crawford receiving three extensions to complete service on all defendants. Rule 4(m) requires that a district court "must dismiss the action" against a defendant not timely served. The district court did not abuse its discretion for dismissing the claims against Dr. Sunder on this basis.

B. Mr. Crawford did not plead any claims against Dr. Sunder in his individual capacity.

Even if Dr. Sunder had been served, there are no claims against him in his individual capacity. While Mr. Crawford does not identify whether his suit was against Dr. Sunder in his individual or official capacity, the pleadings suggest it was intended only as an official capacity suit.

Dr. Sunder's name appears in Mr. Crawford's First Amended Complaint in connection with his *Monell* claims against Harris County. One conclusory paragraph refers to Dr. Sunder as one of the policymakers who "failed to assess, diagnose, and treat Crawford." ROA.455 at ¶ 223. There are no specific allegations of any personal involvement by Dr. Sunder to violate Mr. Crawford's constitutional rights.

Mr. Crawford also does not appear to be appealing any individual claims against Dr. Sunder. There are only six references to Dr. Sunder in the body of Mr. Crawford's brief, and each reference discusses him in the context of a policymaker for Harris County. See Appellant's Brief at 15, 18, 19, 31, and 37. As explained in the discussion about Sheriff Gonzalez, *supra*, when a plaintiff names an official but makes no personal claim against that official, the complaint should be construed as against the person in his or her official capacity. *Nueces County*, 97 S.W.3d at 215-216 (Tex. App. 2002); *Brandon v. Holt*¸ 469 U.S. 464, 471-472 (1985).

C. Assuming there were any claims against Dr. Sunder, Mr. Crawford has not overcome qualified immunity.

Even if Dr. Sunder had been sued in his individual capacity and served, he asserted the defense of qualified and official immunity in the district court. ROA.985-987. That defense has not been overcome. As explained in the discussion about Sheriff Gonzalez, *supra*, Mr. Crawford had the burden of overcoming qualified immunity by showing that Dr. Sunder violated his constitutional rights and that those rights were clearly established at the time of the incident. Mr. Crawford failed to do that in the trial court or on appeal.

CONCLUSION AND PRAYER

The Harris County Appellees respectfully asks this Court to Affirm the district court's judgment in its entirety, award costs, and for any other relief to which they are entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 17, 2025, I filed a true and correct copy of the foregoing brief via the Court's CM/ECF system, which will automatically serve a copy on all parties' counsel.

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of FED. R. APP. P. 32(a)(7)(B) because, excluding the parts of the document exempted by FED. R. APP. P. 32(f), and 5th CIR. R. 32.1: this document contains 8,395 words.

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