

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GENEVA REED-VEAL,	§	
Individually and as Mother and	§	
Personal Representative of the	§	
Estate of SANDRA BLAND,	§	
deceased,	§	
<i>Plaintiff,</i>	§	
	§	
VS.	§	CIVIL ACTION NO. 4:15-CV-02232
	§	(JURY TRIAL REQUESTED)
	§	
BRIAN ENCINIA, ET AL.,	§	
<i>Defendants.</i>	§	

COUNTY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW WALLER COUNTY, ELSA MAGNUS, and OSCAR PRUDENTE (collectively "County Defendants"), file this their Motion for Summary Judgment, and would respectfully show unto the Court as follows:

**I.
INTRODUCTION**

Plaintiff Geneva Reed-Veal ("Plaintiff" or "Reed-Veal") is the mother of Decedent Sandra Bland ("Decedent" or "Bland"). She asserts wrongful death and survival causes of action against the County Defendants arising from Bland's July 13, 2015 suicide, while detained in the Waller County Jail.

Bland was arrested by a state law enforcement officer on Friday, July 10, 2015 for a traffic violation and assault on a public servant. The County defendants

had no involvement in the stop, Bland's arrest, or her transport to the Waller County Jail. Similarly, the County Defendants had no personal knowledge of the events that led to Bland being arrested and transported to the Jail, other than what was provided by the arresting trooper.

When Bland arrived at the jail, Defendant Oscar Prudente performed an initial intake screening in which Bland confirmed she was not currently suicidal, although she acknowledged a prior attempted suicide after losing a baby on or about May 30, 2014. Approximately two hours and forty-five minutes later, Defendant Elsa Magnus completed Bland's booking process and performed a separate suicide screening. At that time, Bland again confirmed she was not suicidal, although she acknowledged the prior suicide attempt after losing a baby. Screening officers observed that Bland appeared angry she had been arrested, but not that she was depressed or suicidal. Based on Bland's answers to the screening questions, and the screening officer's observations of Bland, she was not identified as a candidate for suicide watch. Pursuant to state standards, Bland was classified as "medium-assaultive," and she was assigned to a group cell. However, because the jail had no other female detainees who shared that classification, she was housed alone.

Although detainees are generally required to use a phone with a pin account (charged to the detainee), jail staff allowed Bland numerous free phone calls on

their staff phone on Friday and Saturday (July 10-11, 2015). Bland also had access to a phone in her cell with which she could make unlimited collect calls. A magistrate set Bland's bond at \$5,000 midday Saturday, and she could have bonded out any time thereafter for approximately \$515, which included bail bond fees. Despite several calls to family and friends, no bond was posted. Bland exhibited no signs of suicidal tendencies through the weekend. Nonetheless, she committed suicide on Monday July 13, 2015, by hanging herself in her cell between 7:55 a.m. and 8:58 a.m.

Reed-Veal claims that Defendants Prudente and Magnus violated Bland's rights through deliberate indifference to an alleged serious risk of suicide. She also claims Waller County's customs or policies were the moving force behind violations of Bland's rights. However, as set forth below, Defendants Prudente and Magnus did not have any subjective knowledge of and were not deliberately indifferent to any alleged serious risk of suicide. Further, they are entitled to qualified immunity because their actions did not violate clearly established law, and because their actions were objectively reasonable. In addition, no policy or custom of Waller County resulted in any violation of Bland's rights. Read-Veal also asserts negligence claims against Prudente, Magnus, and the County. However, those claims are barred by governmental immunity. Accordingly, summary judgment is appropriate.

II.
ISSUES PRESENTED

1. Whether Defendants Elsa Magnus and Oscar Prudente violated Bland's rights.
2. Whether Defendants Elsa Magnus and Oscar Prudente are entitled to qualified immunity.
3. To the extent Defendants Magnus and Prudente violated Bland's rights, whether Defendant Waller County had any custom or policy that was the moving force behind any such alleged violation of rights.
4. Whether Defendant Waller County had any official custom or policy that violated Bland's rights.
5. Whether County Defendants' immunity has been waived for negligence claims.

III.
UNDISPUTED MATERIAL FACTS

A. Bland's History

Reed-Veal alleges that Bland was a resident of Naperville, Illinois.¹ However, she is believed to have been moving to the Prairie View, Texas and/or Houston areas in July 2015. Although not principally relevant here, all indications are that she was staying with her male friend LaVaughn Mosley on July 10, 2015, and that she had a job interview at Prairie View A&M the same day, in Prairie View, Waller County, Texas.

¹ See Document No. 11 at ¶ 1.

B. Bland's Arrest

Co-Defendant Brian Encinias, a Texas Department of Public Safety Trooper, arrested Bland in Prairie View, Texas at approximately 4:30 p.m. on Friday, July 10, 2015, for a traffic violation and assault on a public servant.² Bland declined medical treatment by emergency medical personnel who responded to the scene of the arrest,³ and there is no indication Bland was suicidal at this time. However, it was discovered in her autopsy performed four days later that she was under the influence of marijuana.⁴ Trooper Encinias transported Bland to the Waller County Jail, in Hempstead, Texas, and they arrived at the jail at approximately 5:30 p.m.⁵

C. Intake / Booking

Upon arrival at the Waller County Jail, Trooper Encinias completed a form which asked his opinion as to whether Bland was suicidal or mentally ill, to which he responded "No."⁶

PHYSICAL CONDITION (OFFICER OBSERVATION):	<u>Good</u>	LIST FIREARMS IN POSSESSION OF PRISONER:	<u>None</u>
IS PRISONER SUICIDAL OR MENTALLY ILL ? :	<u>NO</u>	ARRESTING OFFICER:	<u>B. Encinias</u>
		BADGE:	<u>14271</u>
		AGENCY:	<u>DPS</u>

Thereafter, Defendant Jailer Oscar Prudente conducted an initial intake screening of Bland at approximately 5:30 p.m., and he asked her several questions to identify potential suicide risk and other illnesses or conditions which may

² See Exhibit A (Affidavit and Complaint for Arrest Warrant).

³ See Exhibit B (EMS Records from Arrest).

⁴ See Exhibit C (Autopsy Report)

⁵ See Exhibit D (Intake Form Completed by Encinias).

require special treatment.⁷ He documented her answers as follows, which noted that she was not “thinking about killing yourself today.”⁸

Have you ever been very depressed?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Do you feel this way now?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Have you had thoughts of killing yourself in the last year?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	
Are you thinking about killing yourself today?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	
Have you ever attempted suicide?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	When? 2014 Why? lost baby How? pills
Have you experienced a recent loss?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	God Mother late 2014
STAFF OBSERVATIONS (please elaborate as needed):			
Does the individual seem (circle all that apply): confused, pre-occupied, hopeless, sad, paranoid, in an unusually good mood or believes he/she is someone else? N/A <input checked="" type="checkbox"/>			
Is this person's speech (circle all that apply): rapid, hard to understand, hesitant, or childlike? N/A <input checked="" type="checkbox"/>			
Observed to be under the influence of Alcohol? <input type="checkbox"/> Drugs? <input type="checkbox"/> Withdrawals? <input type="checkbox"/> N/A <input checked="" type="checkbox"/>			
Observed to have visible signs of self-harm (i.e. cuts on arms etc.): Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Does the screener suspect mental illness/mental retardation? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			

Further, Bland’s reported previous suicide attempt was a year before and related to losing a baby, not anything to do with the reason for her arrest, or the fact that she had been arrested or was in jail.⁹ Simply put, Bland did not provide any information to suggest she may be suicidal, and the circumstances surrounding her arrest did not suggest that she may be suicidal. Accordingly, Jailer Prudente did not have any subjective awareness that Bland may be suicidal.¹⁰ Jailer Prudente’s

⁶ See Exhibit D (Intake Form Completed by Encinias).
⁷ See Exhibit E (Intake Form Completed by Prudente).
⁸ See Exhibit E (Intake Form Completed by Prudente).
⁹ See Exhibit E (Intake Form Completed by Prudente).
¹⁰ See Exhibit F (Prudente Affidavit).

shift ended at 7:00 p.m. on July 10, 2015, and he did not work again at the jail until after Bland’s suicide on July 13, 2015.¹¹

Defendant Jailer Elsa Magnus came on duty at 7:00 p.m. on July 10, 2015.¹² Approximately two hours and forty-five minutes after Bland arrived at the jail, Jailer Magnus formally “booked” Bland into the jail at approximately 8:15 p.m. During that process, Jailer Magnus asked Bland several of the same questions Jailer Prudente previously asked, and documented Bland’s responses electronically, as follows:¹³

SO # 026981	BLAND, SANDRA ANNETTE			Booked 07/10/2015 8:15 PM
DOB 02/07/1987	Desc	Black Female	175	
Medical Intake	07/10/2015 8:17 PM	Officer	MAGNUS, ELSA	Badge # EM3679
Insurance	No	Carrier		Policy #
Comment				
TB Test Date		by		Test Results
Date Test Read		by		Reaction
X-Rays Ordered		by		X-Ray Results
Treatment for TB Given	No			

Intake Questionnaire

1. Allergies?	No	8. Alcoholism?	No	15. Other Conditions?	No
2. Asthma?	No	9. Mental Illness?	No	16. Treatment Info:	N/A
3. Heart Trouble?	No	10. Venereal Disease?	No	17. Recent Injuries:	N/A
4. Hypertension?	No	11. Tuberculosis?	No	18. Treatment - Recent Injury:	N/A
5. Diabetes?	No	12. Attempted Suicide?	No	19. Special Needs:	N/A
6. Epilepsy?	Yes	13. Communicable Diseases?	No	20. Pregnant?	No
INMATE STATES SHE HAS EPILEPSY					
7. Drug Addiction?	No	14. Hepatitis?	No		

¹¹ See Exhibit F (Prudente Affidavit).

¹² See Exhibit G (Magnus Affidavit).

¹³ See Exhibit H (Screening Form Completed by Magnus).

Thereafter, Jailer Magnus asked Bland questions specifically relating to suicide, and Bland provided answers conflicting with the answers she had previously provided:

SO # 026981		BLAND, SANDRA ANNETTE				
DOB 02/07/1987		Desc Black Female		Booked 07/10/2015 8:15 PM		
Suicide Questionnaire						
1.	Does arresting officer or any other person believe that the inmate is at risk?	No		12.	Have you had thoughts of killing yourself in the last year?	No
2.	Any current medical problems, recent hospitalizations or serious injuries or withdrawal concerns? INMATE STATES SHE HAS EPILEPSY	Yes		13.	Are you thinking about killing yourself today?	No
3.	If female are you pregnant?	No		14.	Have you ever attempted suicide? If yes... When? Why? How? IN 2015, LOST BABY, BY TAKING PILLS	Yes
4.	Medications? KEPPRA	Yes		15.	Have you experienced a recent loss? GOD MOTHER PASSED IN LATE 2014	Yes
5.	Have you ever received services for mental health or mental retardation?	No		16.	Does the individual seem: confused, pre-occupied, hopeless, sad, paranoid, etc...	No
6.	Do you receive a social security check?	No		17.	Is this person's speech: rapid, hard to understand, hesitant, or childlike?	No
7.	Have you ever been in special education?	No		18.	Observed to be under the influence of: Alcohol? Drugs? Withdrawals?	None (No)
8.	Do you have any previous military service?	No		19.	Observed to have visible signs of harm (i.e., cuts on arms, etc.):	No
9.	Do you hear any noises or voices that other people don't seem to hear?	No		20.	Does the screener suspect mental illness/mental retardation?	No
10.	Have you ever been depressed?	No		21.	If yes, when was a magistrate notified? Date/Time? How? Written/Electronic	N/A
11.	Do you feel this way now?	No		22.	Additional Comments	N/A

Despite providing conflicting information—which is not unusual as detainees “cool off” in the time between intake and booking—Bland did not provide any information to suggest she may be suicidal, and the circumstances surrounding her

arrest did not suggest that she may be suicidal.¹⁴ Bland also had not been arrested for any particularly embarrassing offense—*i.e.*, child pornography or sexual assault—or for any offense which would likely carry a lengthy prison sentence, offenses which are more likely to result in suicide.¹⁵ She was also more angry than depressed, expressly telling Magnus, “I’m not depressed. I’m pissed off.”¹⁶ Finally, Bland was allowed, as a courtesy to her, to make free telephone calls on the jail staff’s phone. She made telephone contact with a male friend (LaVaughn Mosley), and she was expected to bond out of jail the following day.¹⁷ Accordingly, Jailer Magnus did not have any subjective awareness that Bland may be suicidal.¹⁸

Given the lack of information to suggest Bland may be suicidal, Jailer Magnus proceeded to classify Bland for housing. According to state standards, Bland was classified as “medium-assaultive.”¹⁹ The cell at the Waller County Jail for medium-assaultive female detainees is a multi-person cell. However, there were no other female detainees in that classification when Bland was arrested, and Bland was housed alone.²⁰

¹⁴ See Exhibit G (Magnus Affidavit).

¹⁵ See Exhibit G (Magnus Affidavit).

¹⁶ See Exhibit G (Magnus Affidavit).

¹⁷ See Exhibit G (Magnus Affidavit).

¹⁸ See Exhibit G (Magnus Affidavit).

¹⁹ See Exhibit I (Classification Records).

²⁰ See Exhibit G (Magnus Affidavit).

Jailer Magnus remained on duty until 7:00 a.m. on July 11, 2015.²¹ During the remainder of that shift, she had no other significant interaction with Bland, and she did not observe any behavior that would suggest Bland may have been suicidal.²² After Jailer Magnus' shift ended at 7:00 a.m. on July 11, she next worked from 7:00 p.m. on July 11 to 7:00 a.m. on July 12 (Saturday night and early Sunday morning).²³ During that shift, she had no significant interaction with Bland, and she did not observe any behavior that would suggest Bland may have been suicidal.²⁴ After Magnus' shift ended Sunday morning at 7:00 a.m. on July 12, Magnus did not work in the jail again until after Bland's suicide on July 13, 2015.²⁵

Although Magnus was not involved in the process of presenting Bland to a magistrate, Bland saw a magistrate judge on Saturday, July 11, 2015.²⁶ After her bond was set, Bland was given several additional free phone calls.²⁷ She attempted to reach LaVaughn Mosley several times, but it appeared he was intentionally ignoring her calls.²⁸ She also made contact with at least one of her sisters, who advised she would not bail Bland out of jail.²⁹ Bland also made contact with a bail

²¹ See Exhibit G (Magnus Affidavit).

²² See Exhibit G (Magnus Affidavit).

²³ See Exhibit G (Magnus Affidavit).

²⁴ See Exhibit G (Magnus Affidavit).

²⁵ See Exhibit G (Magnus Affidavit).

²⁶ See Exhibit J (Smith Affidavit).

²⁷ See Exhibit J (Smith Affidavit).

²⁸ See Exhibit J (Smith Affidavit).

²⁹ See Exhibit J (Smith Affidavit).

bondsman, who in turn made contact with Bland's mother and possibly other relatives. However, none of her friends and family provided the approximately \$515 necessary to bail her out of jail.

D. Bland's Suicide

As noted above, Prudente did not work over the weekend, and Magnus did not work after 7:00 a.m. on July 12. At that time, Bland had not exhibited any signs of suicidal tendencies. On the morning of Monday, July 13, 2015—more than 60 hours since Prudente had worked, and more than 24 hours since Magnus had worked—jail personnel visually observed Bland at 5:01 a.m. and 5:54 a.m.³⁰ Jail personnel also visually observed Bland at 6:42 a.m. and 6:56 a.m.³¹ There was a shift change at 7:00 a.m., and jail personnel again visually observed Bland at 7:07 a.m.³² The jail controller also had an intercom communication with Bland at 7:55 a.m., in which she requested additional free phone calls.³³

Shortly thereafter, and at some point between 7:55 a.m. and 8:58 a.m.—and likely between 7:55 a.m. and 8:30 a.m.³⁴—Bland committed suicide by hanging herself in the jail cell, using a rolled/twisted plastic trash bag as a ligature, and tying it around the support of a privacy partition in the cell.³⁵ It is apparent now

³⁰ See Exhibit K (Video from July 13, 2015). Bland's cell is to the right side of the video and is not visible. However, jail personnel who walk in that hallway and look to the left are looking into Bland's cell.

³¹ See Exhibit K (Video from July 13, 2015).

³² See Exhibit K (Video from July 13, 2015).

³³ See Exhibit L (Door & Intercom Log); Exhibit M (Incident Report) at pp. 2-4.

³⁴ See Exhibit N (EMS Records from Suicide) (noting likely death 20-50 minutes before EMS arrived at 9:06 a.m.).

³⁵ See Exhibit C (Autopsy Report).

that Bland's inability to secure her release from jail—and her family and friends' refusal to bail her out of jail—led her to commit suicide.

Jail personnel discovered Bland at 8:58 a.m. At that time, Jailer Prudente had not been on duty in over 60 hours, since 7:00 p.m. on Friday, July 10, 2015. Jailer Magnus had not been on duty in over 24 hours, since 7:00 a.m. on Sunday, July 12, 2015. Accordingly, they could not possibly have been involved in providing any medical care, or the alleged lack of same.

Nonetheless, jail personnel responded immediately—jailers used a radio to request that the cell door be opened, the controller immediately opened same, and jail personnel held Bland up while removing the ligature.³⁶ Jail personnel notified EMS, who arrived within minutes.³⁷ While waiting for EMS to arrive, jail personnel administered CPR.³⁸ EMS personnel declared Bland dead within minutes of arriving on site.³⁹ The autopsy confirmed that Bland had committed suicide by hanging herself.⁴⁰

E. County Policies

The Waller County Sheriff's Office has Jail and Detention Policies and Procedures which provide, in relevant part:

³⁶ See Exhibit M (Incident Report) at pp. 2-4.

³⁷ See Exhibit M (Incident Report) at pp. 2-4; Exhibit N (EMS Records from Jail).

³⁸ See Exhibit M (Incident Report) at pp. 2-4; Exhibit N (EMS Records from Jail).

³⁹ See Exhibit M (Incident Report) at pp. 2-4; Exhibit N (EMS Records from Jail).

⁴⁰ See Exhibit C (Autopsy Report).

- **How to Use This Manual.** Jail personnel “must understand and follow the procedures,” and “it is an important requirement” to “be familiar with the details of this manual and readily apply its guidelines.” Jail personnel are further instructed to “read the operational policies,” ask questions as needed, and “repeat the process until you are confident you know each policy well enough to apply it in spirit as well as in practice.”⁴¹
- **Objective Statements.** The first objective is “Protection of Life and Property.”⁴²
- **Management Philosophy & Goals.** “The Jail Division provides reasonable detention services in a safe, secure, and humane environment,” according to applicable statutes and regulations, and within prescribed ethical and constitutional limits. Goals include providing “clean, safe, and healthy living conditions,” providing for “basic medical, dental, and psychiatric needs,” and providing “due process and other legal safeguards.”⁴³
- **Professional Conduct.** All jail personnel are instructed to “remember that they are sworn to uphold the law and abide by the policies and procedures of this agency, while protecting the rights of all people as afforded by the Constitution of the United States of America and the State of Texas.”⁴⁴
- **Rules of Staff Conduct.** Jail personnel are instructed to “follow both the spirit and content of the rules and policies established,” and to obey all general and special rules and orders, and all applicable laws.⁴⁵ Jail personnel are further instructed to “be attentive to their duties at all times.”⁴⁶ Supervisors are further instructed to enforce the rules, policies, and procedures, including preventing violations of rules and taking immediate action to correct deficiencies.⁴⁷
- **Officer & Employee Discipline.** Supervisors are instructed to discipline jail personnel for violations of policies.⁴⁸

In addition to these general provisions, the Policies and Procedures also provide specific guidance on operations, including:

⁴¹ See Exhibit O (Jail Policies) at Policy 1.01, “How to Use This Manual.”

⁴² See Exhibit O (Jail Policies) at Policy 1.02, “Objective Statements.”

⁴³ See Exhibit O (Jail Policies) at Policy 2.01.

⁴⁴ See Exhibit O (Jail Policies) at Policy 2.04.

⁴⁵ See Exhibit O (Jail Policies) at Policy 2.07, General Guidelines, and Rules 1.1 – 1.3.

⁴⁶ See Exhibit O (Jail Policies) at Policy 2.07, Rules 2.1 and 2.3.

⁴⁷ See Exhibit O (Jail Policies) at Policy 2.07, Rule 2.2.

- **Jail Admission.** At initial intake, jail personnel are required to observe the arrestee for obvious signs of injury or illness, and refer any arrestee in need of immediate emergency medical or mental attention to the appropriate provider. If the arrestee is accepted into the jail, then jail personnel are required to observe inmates in holding or detoxification cells at intervals of every 30 minutes.⁴⁹ Thereafter, detainees are given at least two telephone calls within the first four hours, on a prepaid or collect basis.⁵⁰ Upon booking, the Medical, Dental, Mental, and Suicide Screening form must also be completed based on jail personnel's interview of the detainee, with suicidal claims or threats to be reported to the Jail Administrator.⁵¹ Finally, detainees must be housed in accordance with the classification system.⁵²
- **Management of Security Program.** Jail personnel on the floor for direct inmate supervision must provide "visual, face-to-face observation of inmates at least once every hour. Observation is performed at least every thirty minutes in areas where inmates are known to be assaultive, potentially suicidal, mentally ill, or who have demonstrated bizarre behavior. There must be two-way voice communication capability between inmates and staff at all times."⁵³
- **Sanitation Plan.** The jail has a sanitation plan which describes the cleaning duties and schedule to maintain a healthy housing and work environment,⁵⁴ which includes a waste disposal plan.⁵⁵
- **Health Services Plan.** The jail has a comprehensive health services plan for medical, dental, and mental health evaluation and treatment, which provides that medical and mental health services will not be neglected, and care will be provided on a reasonable basis. The plan also calls for an initial intake evaluation, along with continued observation and evaluation, and a plan for addressing emergency medical situations.⁵⁶
- **Mental Disabilities & Suicide Prevention Plan.** In addition to the comprehensive health services plan, the jail also has a separate policy addressing suicide prevention. The policy is to "provide the appropriate care for any inmates who have mental problems or who may be suicidal."

⁴⁸ See Exhibit O (Jail Policies) at Policy 3.03.

⁴⁹ See Exhibit O (Jail Policies) at Policy 4.02, Initial Processing, Steps 2 and 9.

⁵⁰ See Exhibit O (Jail Policies) at Policy 4.02, Telephone Access; Policy 12.05, Telephone Plan.

⁵¹ See Exhibit O (Jail Policies) at Policy 4.02, Medical, Dental, Mental, and Suicide Screening.

⁵² See Exhibit O (Jail Policies) at Policy 4.02, Housing Assignment; Policy 4.03, Classification Plan.

⁵³ See Exhibit O (Jail Policies) at Policy 5.01, Staff Visibility.

⁵⁴ See Exhibit O (Jail Policies) at Policy 9.01.

⁵⁵ See Exhibit O (Jail Policies) at Policy 9.02.

⁵⁶ See Exhibit O (Jail Policies) at Policy 11.01.

To accomplish that goal, all staff receive two hours of annual training on recognizing, supervising, documenting, and handling potentially suicidal inmates.⁵⁷ In the event of any outcry or other information indicating an inmate may be suicidal, jail personnel are to contact the local MHMR agency for an immediate mental health screening.⁵⁸

- **Mental Disabilities & Suicide Prevention Plan (cont'd).** Further, potentially suicidal inmates will be placed on suicide watch, with no personal property or bed linens, and only a paper gown to wear. Depending on the determination of the local MHMR agency as to the degree of suicide risk posed, potentially suicidal inmates will then be observed every 5, 15, or 30 minutes.⁵⁹
- **Mental Disabilities & Suicide Prevention Plan (cont'd).** In the event of an attempted suicide, specific instructions are provided for responding, including, for example, cutting down the inmate if hanging, and rendering first aid.⁶⁰

The County also took other action to ensure that jail personnel were reminded of policies and procedures. For example, the jail supervisors periodically sent reminder emails to jail personnel, and the jail maintained a “Memo Book,” which all jail personnel could access and were instructed to review. The Memo Book contained printed versions of some of the emails jail supervisors sent to jail personnel, including reminders on how to complete suicide screening forms, what to do with detainees placed on suicide watch, and conducting regular face-to-face observation of detainees.⁶¹

⁵⁷ See Exhibit O (Jail Policies) at Policy 11.02, Training.

⁵⁸ See Exhibit O (Jail Policies) at Policy 11.02, Identification.

⁵⁹ See Exhibit O (Jail Policies) at Policy 11.02, Housing & Supervision.

⁶⁰ See Exhibit O (Jail Policies) at Policy 11.02, Response to Suicide or Suicide Attempt.

F. Jailer Training

Jailer Elsa Magnus has been a licensed jailer in Texas since March 19, 2008, and held a temporary jailer's license before that.⁶² Becoming a licensed jailer requires a 96-hour course on jail operations from an accredited academy, and passing a written test. Jailer Magnus had the following, formal training:

Feb. 22, 2008:	Completed Basic Jail Course (96 hours)
Sep. 30, 2009:	Completed LEMIT Jail Course (8 hours)
Jul. 9, 2010:	Completed County MHMR Course (2 hours)
May 9-13, 2011:	Completed TJA Jail Course (appx. 32 hours)
May 31, 2011:	Completed LEMIT Jail Course (4 hours)
Sep. 29, 2011:	Completed LEMIT Jail Course (8 hours)
Dec. 11, 2012:	Completed County Suicide Prevention Course (2 hours)
Jun. 13, 2014:	Completed Jail Classification Course (4 hours)
Dec. 16, 2014:	Completed LEMIT Legal Issues Course (4 hours)
Dec. 17, 2014:	Completed LEMIT Suicide Course (4 hours) ⁶³

Jailer Oscar Prudente became a licensed jailer in Texas on April 15, 2014. He also became a licensed peace officer in Texas on May 11, 2015. He received the following, formal training:

Apr. 4, 2014:	Completed Basic Jail Course (96 hours)
Jun. 13, 2014:	Completed Jail Classification Course (4 hours)
May 6, 2015:	Basic Peace Officer Course (643 hours) ⁶⁴

⁶¹ See Exhibit P (Excerpts from Memo Book).

⁶² See Exhibit Q (Excerpts from Magnus' Training Records); *see also* Exhibit G (Magnus Affidavit).

⁶³ See Exhibit Q (Excerpts from Magnus' Training Records); *see also* Exhibit G (Magnus Affidavit).

⁶⁴ See Exhibit R (Excerpts from Prudente's Training Records); *see also* Exhibit E (Prudente Affidavit).

IV.
SUMMARY JUDGMENT EVIDENCE

In support of this Motion, County Defendants rely on, and incorporate by reference as if set forth at length herein, the following evidence:

- Exhibit A — Affidavit and Complaint for Arrest Warrant;
- Exhibit B — EMS Records from Arrest;
- Exhibit C — Autopsy Report;
- Exhibit D — Trooper Encinias' Intake Form;
- Exhibit E — Jailer Prudente's Intake Form;
- Exhibit F — Jailer Prudente's Affidavit;
- Exhibit G — Jailer Magnus' Affidavit;
- Exhibit H — Jailer Magnus' Screening Forms;
- Exhibit I — Classification Records;
- Exhibit J — Jailer Dormic Smith's Affidavit;
- Exhibit K — Video from July 13, 2015 (on CD/DVD);
- Exhibit L — Door/Intercom Log;
- Exhibit M — Excerpts from Waller County Incident/Offense Report;
- Exhibit N — EMS Records from Suicide;
- Exhibit O — Excerpts from Waller County Jail Policies & Procedures;
- Exhibit P — Excerpts from Waller County Jail Memo Book;
- Exhibit Q — Excerpts from Jailer Magnus' Training Records; and
- Exhibit R — Excerpts from Jailer Prudente's Training Records.

V.
SUMMARY JUDGMENT STANDARD

A party in a lawsuit may move a court to enter summary judgment before trial. FED. R. CIV. P. 56. Summary judgment is appropriate when the moving party establishes that there is no genuine dispute of material fact and/or the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986); *Stewart v. Murphy*, 174 F.3d 530, 533 (5th Cir. 1999). “[T]he substantive law will identify which facts are material,” and only

disputes about those facts will preclude the granting of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A material fact is one “that might affect the outcome of the suit under governing law,” and a dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*; *Smith v. Brenoetty*, 158 F.3d 908, 911 (5th Cir. 1998).

Once the movant meets its burden under Rule 56, the non-movant must designate specific facts showing that there is a genuine dispute for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). Conclusively assertions, unsupported by specific facts presented in admissible evidence opposing the motion for summary judgment, are insufficient to defeat a proper motion for summary judgment. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871 (1990). The party opposing summary judgment must respond by setting forth specific evidence in the record and articulating the precise manner in which that evidence supports his or her claim. *Forsyth v. Barr*, 19 F.3d 1527, 1537 (5th Cir.), *cert. denied*, 513 U.S. 871 (1994).

VI.
ARGUMENTS & AUTHORITIES

A. Section 1983 Failure to Prevent Suicide Claims Against Jailers Magnus and Prudente Fail as a Matter of Law.

It appears Plaintiff is claiming that Jailers Magnus and Prudente were (1) deliberately indifferent to Bland's alleged serious risk of suicide by failing to adequately monitor her and (2) deliberately indifferent to Bland's serious medical need after she was discovered hanging in her cell.⁶⁵ As set forth below, the evidence conclusively establishes Jailers Magnus and Prudente were not deliberately indifferent to any serious risk of suicide or serious medical need. Further, Jailers Magnus and Prudente are entitled to qualified immunity because they did not violate any of Bland's clearly established rights, and their conduct was objectively reasonable.

i. No Subjective Awareness of Serious Risk of Suicide.

Bland had a right under the Fourteenth Amendment to the United States Constitution to protection from known suicidal tendencies during her detention. *See Thompson v. Upshur County, Tex.*, 245 F.3d 447, 457 (5th Cir. 2001); *Jacobs v. West Feliciana Sheriff's Dep't*, 228 F.3d 388, 393 (5th Cir. 2000); *Nunez v. Deviney*, 4:06-CV-0579-BE, 2007 WL 2059726, at *2 (N.D. Tex. July 17, 2007) (citing *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 639 (5th Cir.1996)).

⁶⁵ See Document No. 22 at Count III (claims against Elsa Magnus) and Count V (claims against Oscar Prudente).

In *Hare*, the Fifth Circuit adopted the subjective deliberate indifference test for claims of failure to protect from suicide risk. *See Hare v. City of Corinth, Miss.*, 74 F.3d 633, 647-48 (5th Cir.1996). To establish such a claim, a plaintiff must establish: (1) that the defendant had subjective knowledge of a substantial and serious risk that the pretrial detainee might commit suicide; and (2) that the defendant nevertheless disregarded the risk of suicide by responding to it with deliberate indifference. *Id.* at 650. In other words, “the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw that inference.” *Jones v. Throckmorton County, Tex.*, 1:02–CV–182–C, 2004 WL 419811, at *4 (N.D. Tex. March 8, 2004) (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). “An official’s failure to alleviate a significant risk that he should have perceived but did not, while not commendable, does not rise to the level of deliberate indifference.” *Nunez v. Deviney*, 4:06–CV–0579–BE, 2007 WL 2059726, at *2 (N.D. Tex. July 17, 2007) (citing *Farmer*, 511 U.S. at 838).

Courts have noted that “[s]uicide is inherently difficult for anyone to predict, particularly in the depressing prison setting.” *Domino v. Texas Dept. of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001) (citing *Collignon v. Milwaukee Co.*, 163 F.3d 982, 990 (7th Cir. 1998)). As such, a detainee’s comments that his arrest will cause him to “lose everything” or that his “life will be over” or other comments

that he is exasperated with living, do not demonstrate that officials have actual knowledge of a substantial risk of suicide. *See, e.g., Branton v. City of Moss Point*, 261 Fed. Appx. 659, 661 (5th Cir. 2008). Additionally, a detainee's affirmative answer on an intake screening exam, indicating that he recently lost a family member or was worried about other major problems, does not establish actual subjective knowledge of a suicide risk. *See, e.g., Whitt v. Stephens County*, 236 Fed. Appx. 900, 903 (5th Cir. 2007).

When a detainee reports a prior suicide attempt, courts look to its temporal proximity. In such scenarios, courts have held that knowledge of a suicide attempt three years before the detention could not establish actual awareness of a serious risk of suicide, *see, e.g., Calton v. Livingston*, No. H-09-2507, 2011 WL 2118700, at *13 (S.D. Tex. May 27, 2011), but courts have found a fact issue as to whether a jailer who *personally* placed a detainee on suicide watch three months before the detention at issue had actual awareness of a serious risk of suicide, *see, e.g., Shepard v. Hansford County*, --- F.Supp.3d ---, No. 2:14 -CV-00147, 2015 WL 3368001 (N.D. Tex. May 22, 2015).

Here, Bland reported a prior suicide attempt after she lost a baby on or about May 30, 2014. However, she also reported that she was not suicidal. Jailers Prudente and Magnus were face-to-face with Bland, and observed her demeanor, and both concluded that she was not facing a serious risk of suicide. For example,

Bland's prior suicide attempt was remote in time, and the circumstances surrounding her prior suicide attempt—*i.e.*, taking pills after losing a baby—were not of the same nature as being arrested in connection with a traffic stop. Bland also had not been arrested for any particularly embarrassing offense—*i.e.*, child pornography or sexual offense—or any offense that would likely carry a lengthy prison sentence, offenses which are more likely to result in a suicide attempt. She was also more angry than depressed, expressly telling Magnus, "I'm not depressed. I'm pissed off." Finally, she made telephone contact with a male friend (LaVaughn Mosley) when she was booked, and she expected to be bonded out of jail the following day. None of these circumstances support a conclusion that Bland faced a serious risk of suicide.

Jailers Magnus and Prudente have also both confirmed that they were not subjectively aware of any risk of suicide. That conclusion is supported by the fact that Bland did not attempt suicide until after she had been in jail for two-and-a-half days, and her family and friends had refused to bail her out of jail. For the foregoing reasons, the evidence conclusively establishes that Jailers Magnus and Prudente were not subjectively aware of any serious risk of suicide, defeating Plaintiff's claims against them.

ii. No Deliberate Indifference.

As noted above, Jailers Magnus and Prudente were not subjectively aware of any serious risk of suicide. Accordingly, they could not have been deliberately indifferent to any such risk. *See, e.g., Brumfield*, 551 F.3d at 332 (cannot be deliberately indifferent if no known suicide danger).

Further, “[d]eliberate indifference is an extremely high standard to meet.” *Domino v. Texas Dept. of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001). It must be proven that the officials “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.” *Id.* Put another way, a plaintiff must establish more than mere negligence, and even more than gross negligence. *See Hare v. City of Corinth, Miss.*, 74 F.3d 633, 646 (5th Cir. 1996). In this case, there is no evidence of deliberate indifference, and Plaintiff’s claims fail as a matter of law.

iii. Qualified Immunity – No Violation of Clearly Established Law.

Defendant Jailers Magnus and Prudente are also entitled to qualified immunity on the claim that they failed to prevent Bland’s suicide. At the outset, “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.” *Taylor v. Barkes*, 575 U.S. ---,

135 S.Ct. 2042, 2044 (Jun. 1, 2015). “To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Id.* As such, “qualified immunity protects all but the plainly incompetent or those who knowingly violate the law.” *Id.*

The United States Supreme Court recently addressed the issue of whether detainees have a clearly established right to the proper implementation of adequate suicide prevention protocols. *See Taylor*, 135 S.Ct. at 2044. That is essentially the issue in this case because, whatever allegations Plaintiff makes, she is arguing that Prudente and Magnus violated Bland’s rights by failing to prevent her suicide. On that issue, the Supreme Court held that there is no such clearly established right.

More specifically, in *Taylor*, a nurse used a screening form to ask the arrestee questions that might indicate whether he was suicidal. *Id.* at 2043. Although he was on psychiatric medication and disclosed a prior suicide attempt, he indicated he was not suicidal at the time of the screening. *Id.* Accordingly, the nurse did not put him on suicide watch. *Id.* The following morning, jail personnel observed the detainee acting normally, but he committed suicide at approximately 11:35 a.m., on the morning following his arrest. *Id.*

On June 1, 2015, the *Taylor* court held that there was no clearly established right, as follows:

No decision of this Court establishes a right to the proper implementation of adequate suicide prevention protocols. No

decision of this Court even discusses suicide screening or prevention protocols. And “to the extent that a ‘robust consensus of cases of persuasive authority’ ” in the Courts of Appeals “could itself clearly establish the federal right respondent alleges,” *City and County of San Francisco v. Sheehan*, 575 U.S. —, —, 135 S.Ct. 1765, 1779, — – L.Ed.2d — (2015), the weight of that authority at the time of Barkes's death suggested that such a right did *not* exist. *See, e.g., Comstock v. McCrary*, 273 F.3d 693, 702 (6th Cir. 2001) (“the right to medical care for serious medical needs does not encompass the right to be screened correctly for suicidal tendencies”); *Tittle v. Jefferson Cty. Comm'n*, 10 F.3d 1535, 1540 (11th Cir. 1994)(alleged “weaknesses in the [suicide] screening process, the training of deputies[,] and the supervision of prisoners” did not “amount to a showing of deliberate indifference toward the rights of prisoners”); *Burns v. Galveston*, 905 F.2d 100, 104 (5th Cir. 1990) (rejecting the proposition that “the right of detainees to adequate medical care includes an absolute right to psychological screening”); *Belcher v. Oliver*, 898 F.2d 32, 34–35 (4th Cir. 1990) (“The general right of pretrial detainees to receive basic medical care does not place upon jail officials the responsibility to screen every detainee for suicidal tendencies.”).

Id. at 2044-45. The *Taylor* court went on to hold that the individual defendants at issue were entitled to qualified immunity. *Id.* at 2045.

Similarly, Fifth Circuit precedent provides that “jailers must take measures to prevent inmate suicides,” but only “*once they know of the suicide risk*,” *Calton v. Livingston*, No. H-09-2507, 2011 WL 2118700, at *16 (S.D. Tex. May 27, 2011) (emphasis added), and there is no clearly-established right to any specific actions jail officials must take, once they know of a suicide risk. *See Jacobs v. West Feliciana Sheriff's Dept.*, 228 F.3d 388, 394–95 (5th Cir. 2000).

Further, to the extent Plaintiff would argue that alleged violations of state statutes or regulations relating to suicide screening and prevention give rise to a clearly-established right, that argument has already been considered and rejected. More specifically, in *Davis v. Scherer*, the Supreme Court held that “[o]fficials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision” because the law requires that the constitutional right allegedly violated be clearly established, and not simply that a state statutory or administrative provision be clearly established. 468 U.S. 183, 194-96 & n.12 (1984). Accordingly, state statutes and regulations, or the alleged violation of same, have no relevance to the issue of whether a constitutional right was clearly established, or was violated. *Id.*

In this case, Defendant Jailers Magnus and Prudente conducted suicide screenings of Bland, and she indicated she was not suicidal. She disclosed a prior suicide attempt, but based on the totality of the circumstances, including Bland’s demeanor and the charges against her, Magnus and Prudente did not find her to be suicidal. Bland did not have a clearly-established right to any different or more effective implementation of suicide prevention protocols. There is also no evidence that any different or more effective protocols would have prevented her suicide in this case. Accordingly, Defendant Jailers Magnus and Prudente are entitled to qualified immunity.

iv. Qualified Immunity – No Objectively Unreasonable Conduct.

Next, even if Bland had a clearly established right to the proper implementation of adequate suicide prevention protocols—which is denied, and is contrary to Supreme Court authority from June 2015—Defendant Jailers Magnus and Prudente would still be entitled to qualified immunity because their actions were objectively reasonable.

More specifically, the qualified immunity analysis is two-fold; even if there was a violation of a clearly-established right, the governmental actor is still entitled to qualified immunity if his actions were objectively reasonable. *See Freeman v. Gore*, 483 F.3d 404, 410–11 (5th Cir. 2007). Whether an official's conduct was objectively reasonable is a question of law for the court, not a matter of fact for the jury. *Williams v. Bramer*, 180 F.3d 699, 703 (5th Cir. 1999). The Court simply asks whether it would be objectively reasonable for an officer to believe that his actions were constitutional. *See Lytle v. Bexar County, Tex.*, 560 F.3d 404, 410 (5th Cir. 2009).

At the summary judgment stage, “a plaintiff must present evidence to raise a fact issue ‘material to the resolution of the questions whether the defendants acted in an objectively reasonable manner in view of the existing law and facts available to them.’” *Calton v. Livingston*, No. H–09–2507, 2011 WL 2118700, at *15 (S.D. Tex. May 27, 2011) (quoting *Lampkin v. City of Nacogdoches*, 7 F.3d 430, 435

(5th Cir. 1993)). Notably, the Supreme Court has rejected the argument that conduct that violates even clear state statutes or regulations is “objectively unreasonable;” all that matters is whether the conduct was objectively unreasonable in light of the clearly established constitutional right at issue. *Davis v. Scherer*, 468 U.S. 183, 194-96 & n.12 (1984) (rejecting lower court’s holding that “if an official violates his agency’s explicit regulations, which have the force of state law, that is evidence that his conduct is unreasonable.”)

In this case, there is no evidence that Defendant Jailers Magnus’ and Prudente’s actions were objectively unreasonable. To the contrary, they assessed Bland, asked her several questions in an attempt to determine whether she was suicidal, and concluded based on the totality of the evidence that she was not. Accordingly, summary judgment is appropriate.

B. Section 1983 Failure to Provide Medical Care Claims Against Jailers Magnus and Prudente Fail as a Matter of Law.

i. No Subjective Awareness of Serious Medical Need.

Plaintiff alleges that Jailers Magnus and Prudente were deliberately indifferent to Bland’s need for medical treatment after she was found hanging in her cell on Monday morning. However, Jailers Magnus and Prudente had not worked in the jail in over 24 and 60 hours, respectively, and were not present when Bland committed suicide, or the time shortly thereafter. Accordingly, they could

not possibly have had any subjective awareness of any serious medical need after Bland was discovered hanging, and this claim fails as a matter of law.

ii. No Deliberate Indifference.

Because Jailers Magnus and Prudente were not present when Bland committed suicide, or the time shortly thereafter, they were not aware of any serious medical need. Accordingly, they could not have been deliberately indifferent to any such need, and this claim fails as a matter of law.

iii. Qualified Immunity.

Jailers Magnus and Prudente would also be entitled to qualified immunity on this claim because there is no evidence that any of their actions with respect to any alleged lack of medical care after Bland was discovered hanging violated any clearly-established constitutional rights, or were objectively unreasonable.

C. Negligence Claims Against Jailers Magnus and Prudente Fail as a Matter of Law.

As noted above, negligent acts and omissions are categorically below the threshold of constitutional torts. Nonetheless, Plaintiff asserts negligence claims against Jailers Magnus and Prudente, alleging that they (1) failed to adequately monitor Sandra Bland to keep her safe and secure, (2) failed to keep her free from injury, (3) failed to keep her in a safe and suitable environment, (4) failed to provide adequate medical care after she was found hanging, and (5) failed to

transport her to a medical facility after she was found hanging.⁶⁶ As set forth below, however, these state-law claims must be dismissed under the Texas Tort Claims Act (“TTCA”) in favor of claims against the County.

The TTCA contains an election of remedies provision, which forces a plaintiff to elect whether to assert claims against a governmental unit, or its employees. TEX. CIV. PRAC. & REM. CODE § 101.106. Where a plaintiff files suit against both a governmental unit and its employees, “the employees shall immediately be dismissed on the filing of a motion by the governmental unit.” *Id.* at (e). In this case, Plaintiff asserts negligence claims against Defendant Jailers Magnus and Prudente, and against their governmental employer, Waller County.⁶⁷ Accordingly, County Defendants move for dismissal of Plaintiff’s negligence claims against Defendant Jailers Magnus and Prudente.

D. Negligence Claims Against Waller County Fail as a Matter of Law.

Plaintiff also asserts negligence claims against Waller County, alleging (1) inadequate training of jail personnel, (2) inadequate policies regarding face-to-face observation of jail detainees, (3) inadequate monitoring of Sandra Bland, (4) failure to keep her safe and secure, (5) failure to keep her free from injury, (6) failing to keep her in a safe and suitable environment, (7) failing to provide adequate medical care after she was found hanging, and (8) failing to transport her

⁶⁶ See Document No. 22 at Count IV (claims against Elsa Magnus) and Count VI (claims against Oscar Prudente).

to a medical facility after she was found hanging.⁶⁸ However, none of these allegations relates to operation or use of motor-driven vehicles or equipment, and none of these allegations relate to the condition or a governmental employee's use of tangible property, and Waller County is therefore immune from such claims.

More specifically, Waller County's immunity for negligence claims is only waived under the TTCA, which provides as follows:

A governmental unit in the state is liable for:

- (1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:
 - (A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and
 - (B) the employee would be personally liable to the claimant according to Texas law; and
- (2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

TEX. CIV. PRAC. & REM. CODE § 101.021. Plaintiff has not alleged any "operation or use of a motor-drive vehicle or motor-drive equipment," and the County's immunity is not waived under section (1). Next, Plaintiff has not alleged any "condition or use of tangible personal or real property," and the County's

⁶⁷ See Document No. 22 at Count IV (claims against Elsa Magnus), Count VI (claims against Oscar Prudente), and Count VII (claims against Waller County).

⁶⁸ See Document No. 22 at Count VII (claims against Waller County).

immunity is not waived under section (2). Plaintiff has not alleged any other waiver of the County's immunity, and there is none. Accordingly, Plaintiff's negligence claims against the County should be dismissed for lack of subject matter jurisdiction.

E. Section 1983 Claims Against Waller County Fail as a Matter of Law.

Plaintiff also asserts Waller County is liable under *Monell* because it had an official custom or policy that was the moving force behind alleged violations of Bland's rights.⁶⁹ As set forth below, this claim fails as a matter of law because Bland's rights were not violated, and the County did not have any custom or policy that was the moving force behind any alleged violation of Bland's rights. In reality, Waller County has policies and provisions in place to prevent suicides.

Plaintiff also asserts a failure to train claim against the County, alleging the County did not train Jailers Magnus and Prudente on recognizing, supervising, documenting, and handling mentally disabled and suicidal detainees.⁷⁰ As set forth below, this is demonstrably false as both Magnus and Prudente were trained on these issues. Finally, Plaintiff alleges the County failed to have an established procedure for visual, face-to-face observation of detainees every 60 minutes (or 30 minutes for suicidal detainees).⁷¹ This is also demonstrably false, as set forth

⁶⁹ See Document No. 22 at Count VIII.

⁷⁰ See *id.*

⁷¹ See *id.*

below, because the County had policies providing for such observation, and published reminders for all jailers.

i. No Respondeat Superior Liability.

To the extent Plaintiff seeks to impose liability on the County for the actions of its employees, a local governmental entity cannot be held liable for a constitutional tort simply because it employs a tortfeasor. *Board of the County Comm'rs of Bryan County, Okla. v. Brown*, 520 U.S. 397, 403 (1997).

ii. No Monell Liability in This Case.

To establish liability against the County, Plaintiff would have to establish the County adopted a policy or custom that caused a constitutional violation. *See id.*; *City of St. Louis v. Praprotnik*, 485 U.S. 112, 122 (1988); *see also Duvall v. Dall. County, Tex.*, 631 F.3d 203, 209 (5th Cir. 2011); *Piotrowski v. City of Hous.*, 237 F.3d 567, 578 (5th Cir. 2001). Plaintiff alleges the County violated Bland's rights in numerous respects, but her allegations are factually unsupported and legally insufficient to support liability, as set forth below.

a. Ignoring Threat of Suicide.

Plaintiff alleges it was County policy to ignore Bland's threat of suicide. However, Bland never threatened suicide, but instead confirmed to two different jailers that she was not suicidal. *See discussion supra* at Part III.C. Accordingly, this claim is factually baseless. In any event, the County had a suicide prevention

policy that required jailers to screen detainees for suicide risks, and to take action if suicide risks were noted—*i.e.*, place the detainee on suicide watch, and refer the detainee to a Mental Health and Mental Retardation (“MHMR”) facility. *See* discussion *supra* at Part III.E. Accordingly, even if Bland presented a risk of suicide which should have been discovered but was not, that was not the result of any County policy.

b. Screening Inmates for Suicide

As set forth above, the County had a suicide prevention policy that included screening, referrals to MHMR, and suicide watch. *See* discussion *supra* at Part III.E. The County also ensured that its screening officers were appropriately trained on these issues. Plaintiff’s claim that the County did not have any such policy is baseless.

Again, to the extent any jailers did not follow County policies, same is insufficient to support County liability. *See, e.g., Calton v. Livingston*, No. H-09-2507, 2011 WL 2118700, at *12 (S.D. Tex. May 27, 2011) (officer’s failure to follow prison rules does not warrant relief).

c. Training Jailers on Suicide Risk Detection & Prevention.

Plaintiff next alleges the County failed to implement a suicide prevention plan to train personnel on recognizing, supervising, documenting, and handling suicidal detainees. This claim is also factually baseless because the County had

appropriate policies in place, and because all jailers were trained on these matters, including Defendant Jailers Magnus and Prudente. *See* discussion *supra* at Part III.E; Part III.F. Further, there is no evidence that any County policy was the moving force behind Bland's suicide, or the failure to prevent same. Ultimately, Bland's decision to commit suicide was hers alone, after she denied any suicidal intentions to jail personnel, and after her friends and family refused to bail her out of jail.

d. Face-to-Face Observation of Detainees.

Plaintiff alleges the County violated Bland's rights by failing to have an established procedure for face-to-face observation of detainees every 60 minutes, or 30 minutes for suicidal detainees. However, this allegation is factually unsupported because County policy required such observation, and the County routinely reminded jailers of the policy. *See* discussion *supra* at Part III.E.

To the extent any jailers failed to make a face-to-face observation, despite County policy, that would not be sufficient to support County liability. *See, e.g., Estate of Pollard v. Hood County*, 579 Fed. Appx. 260 (5th Cir. 2014) (failure to strictly comply with 15-minute observation orders not actionable); *Calton v. Livingston*, No. H-09-2507, 2011 WL 2118700, at *12 (S.D. Tex. May 27, 2011) (officer's failure to follow prison rules does not warrant relief). Further, there is no

evidence that any County policy was the moving force behind Bland's suicide, or the failure to prevent same.

e. Structural Design of the Jail.

Plaintiff alleges the structural condition of the facility did not facilitate face-to-face observations. However, this is, again, factually unsupported. Jail personnel were not prevented from performing face-to-face observations by any structural limitations at the Waller County Jail. Moreover, this complaint goes to whether the County had a policy requiring face-to-face observation, which it did, as discussed in the preceding sections. In any event, there is no evidence that the jail had any structural condition that violated Sandra Bland's rights.

f. Inadequate Staffing.

Next, Plaintiff alleges that inadequate staffing prevented face-to-face observations. This allegation is also factually unsupported. The jail had adequate staffing under State Jail Commission standards, and there is no evidence that any inadequate staffing affected jailers' ability to perform face-to-face observations. Moreover, this complaint goes to whether the County had a policy of requiring face-to-face observation, which it did, as discussed above.

g. Assigning "Hashtags" to Detainee's Records

Plaintiff next alleges the County violated Bland's rights by failing to assign a "hashtag" to Bland's records to bring Bland to the attention of mental health

personnel. This allegation is factually unsupported because the County had a policy requiring screening detainees for suicide watch, and referring suicidal detainees to Mental Health and Mental Retardation (“MHMR”). *See* discussion *supra* at Part III.E.

To the extent any jailers failed to refer Bland for an MHMR evaluation, despite County policy, that still would not be sufficient to support County liability. *See, e.g., Calton v. Livingston*, No. H-09-2507, 2011 WL 2118700, at *12 (S.D. Tex. May 27, 2011) (officer’s failure to follow prison rules does not warrant relief).

h. Classification for Housing Assignments

The State Commission on Jail Standards publishes instructions on classifying detainees for housing assignments. Waller County has adopted and implemented those instructions as policy, and Bland was properly classified for housing assignments in this case. *See* discussion *supra* at Part III.C. Further, any failure to follow rules or regulations regarding housing classifications is not actionable, and claims based on same are frivolous. *See, e.g., Reed v. Mgmt. & Training Corp.*, No. 3:12-CV-1264-P-BH, 2012 WL 3020082 at *3 (N.D. Tex. June 15, 2012).

i. Medical Care

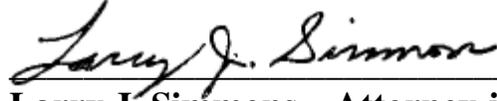
The County also had a comprehensive policy addressing medical care for detainees, including care in emergency situations. *See* discussion *supra* at Part III.E. Despite Plaintiff's baseless allegation that County personnel did not provide medical care after Bland was discovered hanging, the evidence establishes that EMS personnel were immediately notified and responded within minutes. *See* discussion *supra* at Part III.D. While jail personnel waited for EMS to arrive, they performed CPR. *See id.* EMS personnel made the decision not to transport Bland to see a physician after declaring her dead.

For all the foregoing reasons, Waller County did not have any official policy or custom that was the moving force behind Sandra Bland's decision to commit suicide, or behind any alleged violation of her rights. Accordingly, Plaintiff's claims fail as a matter of law, and summary judgment is appropriate.

VII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants WALLER COUNTY, ELSA MAGNUS, and OSCAR PRUDENTE pray that their Motion for Summary Judgment be granted, that Plaintiff's section 1983 claims be dismissed with prejudice, that her negligence claims be dismissed for lack of subject matter jurisdiction, that all costs be borne by the party incurring same, and for such other and further relief to which Defendants may be justly entitled.

Respectfully submitted,



Larry J. Simmons – Attorney-in-Charge

State Bar No. 00789628

Southern District of Texas No. 18830

B. Eliot New – Of Counsel

State Bar No. 24060328

Southern District of Texas No. 884608

GERMER PLLC

P.O. Box 4915

Beaumont, TX 77704

(409) 654-6700 – Telephone

(409) 835-2115 – Facsimile

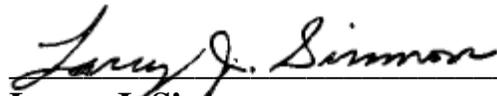
COUNSEL FOR DEFENDANTS,

WALLER COUNTY, ELSA MAGNUS AND

OSCAR PRUDENTE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **County Defendants’ Motion for Summary Judgment** has been forwarded to all known counsel of record pursuant to the Federal Rules of Civil Procedure on this the 11th day of November 2015.



Larry J. Simmons