

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

Brady Fuller,

Plaintiff,

v.

City of Santa Fe,

Defendant.

Civ. No. 18-cv-0283

**PLAINTIFF'S REPLY IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

**TABLE OF CONTENTS**

**NATURE AND STAGE OF PROCEEDING ..... 1**

**ISSUES TO BE RULED UPON..... 1**

**SUMMARY OF ARGUMENT ..... 1**

**ARGUMENT ..... 3**

**I. The Uncontested Facts Demonstrate Three Constitutional Violations ..... 4**

A. Santa Fe Jailed Mr. Fuller in Violation of His Right to a Hearing ..... 4

B. Santa Fe Jailed Mr. Fuller in Violation of His Right to Counsel..... 6

C. Santa Fe Jailed Mr. Fuller in Violation of His Right to Adequate Food ..... 7

**II. The Uncontested Facts Demonstrate a Santa Fe Municipal Policy ..... 8**

**III. The Uncontested Facts Demonstrate Policymakers’ Acquiescence ..... 10**

A. It is Uncontested That the Municipal Judge Issued the Unconstitutional Jail Release Procedures ..... 10

B. It is Uncontested That the Police Chief Knew that Defendants Were Jailed Without Hearings or Food .. 12

**CONCLUSION ..... 16**

**CERTIFICATE OF SERVICE ..... 17**

## **NATURE AND STAGE OF PROCEEDING**

The City of Santa Fe jailed Mr. Fuller in a modern-day debtors' prison under policies that prioritize collection of revenue over the fair administration of justice. Santa Fe jailed Mr. Fuller for failure to pay his fines, without producing him for a hearing, appointing counsel for his defense, or even giving him enough food to eat. The parties have filed cross-motions for summary judgment. This brief is a reply in support of Mr. Fuller's motion for summary judgment.

## **ISSUES TO BE RULED UPON**

The Court should grant Mr. Fuller summary judgment, because undisputed material facts show that he is "entitled to judgment as a matter of law." *Jauch v. Choctaw Cnty.*, 874 F.3d 425, 428–29 (5th Cir. 2017) (quoting *Green v. Life Ins. Co. of N. Am.*, 754 F.3d 324, 329 (5th Cir. 2014) and Fed. R. Civ. P. 56(a)).

## **SUMMARY OF ARGUMENT**

Santa Fe's opposition brief largely repeats legal theories that this Court has already rejected. The Court has already adopted Magistrate Judge Edison's Memorandum and Recommendations (ECF No. 68, hereinafter "Mem.") in full, denying Defendant's motion to dismiss in its entirety. ECF No. 78. Under those prior legal conclusions, the undisputed material facts show that Mr. Fuller is entitled to summary judgment. Mr. Fuller has established each of the three elements of municipal liability: a constitutional violation, caused by an official policy, and final policymakers' acquiescence in that policy. *Jauch v. Choctaw Cnty.*, 874 F.3d 425, 435 (5th Cir. 2017).

**I. The Uncontested Facts Demonstrate Three Constitutional Violations:**

**A. Santa Fe jailed Mr. Fuller without a hearing.** It is uncontested that Santa Fe jailed Mr. Fuller without a hearing on his reasons for failing to pay his fines.<sup>1</sup>

**B. Santa Fe jailed Mr. Fuller for uncounseled convictions.** It is uncontested that Mr. Fuller was not represented by counsel for his underlying convictions. It is also uncontested that Santa Fe jailed Mr. Fuller as a result of those convictions.<sup>2</sup>

**C. Santa Fe deprived Mr. Fuller of adequate food.** It is uncontested that Santa Fe fed Mr. Fuller less than half of the calories he required, and less than a third of the protein he required, for three days straight.<sup>3</sup>

**II. The Uncontested Facts Demonstrate an Official Policy.** It is uncontested that these constitutional violations were caused by standard operating procedure of the Santa Fe Municipal Court and the Police Department.

**III. The Uncontested Facts Demonstrate Policymakers' Acquiescence.** It is uncontested that the Municipal Judge and the Police Chief knew of and acquiesced in this

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<sup>1</sup> This Court has already rejected Santa Fe's argument that the burden was on Mr. Fuller to ask for a hearing. Mem. at 21–23 (“[T]he Supreme Court in *Bearden* emphatically stated that before a person is incarcerated for failing to pay a fine, a court ‘*must* inquire’ into a defendant’s reasons for nonpayment . . . .”) (quoting *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983)) (emphasis in original). And Santa Fe’s speculative arguments about what the municipal court *would have found* on the merits are immaterial to Mr. Fuller’s due process claim. *Carey v. Phipps*, 435 U.S. 247, 266–67 (1978) (“[T]he right to procedural due process . . . does not depend upon the merits of a claimant’s substantive assertions . . . . [T]he denial of procedural due process should be actionable without proof of actual injury . . . .”).

<sup>2</sup> The right to counsel does not merely prohibit “automatic conversion” of a fine to a jail sentence, as Santa Fe argues; it prohibits any “actual imprisonment” resulting from a conviction against a defendant who was not represented by counsel. *Alabama v. Shelton*, 535 U.S. 654, 661 (2002).

<sup>3</sup> Santa Fe does not contest that Mr. Fuller received inadequate calories and nutrition, but instead argues there was no violation because Mr. Fuller did not suffer “physical injury.” This Court already rejected that argument, holding it was “not persuaded that physical injury is a required element” because “conditions themselves constitute the harm . . . for example, where inadequate food . . . constitute[s] miserable conditions.” Mem. at 34 (citation omitted).

standard operating procedure.<sup>4</sup> Specifically, it is uncontested that the Municipal Judge reduced this procedure to writing, which the Police Chief posted in the jail. It is also uncontested that the Police Chief had the option to bring defendants to court for a hearing, but instead chose to bring them to jail.

Mr. Fuller has thus demonstrated uncontested facts entitling him to summary judgment. To the extent that Santa Fe makes legal arguments to the contrary, the Court has already rejected those arguments in large part, and they otherwise fail under Supreme Court precedent.

### **ARGUMENT**

Santa Fe has not responded to Mr. Fuller's summary judgment motion by contesting any issues of material fact. Instead, Santa Fe raises legal arguments that this Court has already rejected and that are foreclosed by Supreme Court precedent. The Court should grant Mr. Fuller's motion because he has established each of the three elements of municipal liability: a constitutional violation, caused by an official policy, and final policymakers' acquiescence in that policy. *Jauch v. Choctaw Cnty.*, 874 F.3d 425, 435 (5th Cir. 2017).

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<sup>4</sup> The Court has already rejected Santa Fe's argument that the Municipal Judge cannot be a policymaker. Mem. at 14–15 (holding that municipal judges are policymakers for “post-arrest policies and rules governing the issuance of *capias pro fine* warrants” when they “establish policies or procedures in their administrative capacity.”). And though Santa Fe argues that the Police Chief lacks policymaking authority, it is uncontested that the City Manager delegated to the Police Chief the powers to “[d]irect and coordinate the work of all divisions of the police department (. . . [including] municipal court administration),” “development and review of policies and procedures,” “responsib[ility] for long and short range planning for the department; [and] establish[ing] departmental performance goals.” Meadows Tr. 179:17–181:16; Police Chief Job Description, Meadows Tr. Ex. 1.

**I. The Uncontested Facts Demonstrate Three Constitutional Violations**

**A. Santa Fe Jailed Mr. Fuller in Violation of His Right to a Hearing**

The constitutional violation in this case is clear. It is “fundamentally unfair” and therefore “impermissible” to jail a defendant without “inquir[ing] into the reasons for failure to pay.” *Bearden v. Georgia*, 461 U.S. 660, 661, 672–73 (1983). It is uncontested that Santa Fe jailed Mr. Fuller without holding such a hearing. Fuller’s MSJ at 7–8.

Santa Fe makes two arguments to the contrary, each of which this Court has rejected. First, Santa Fe argues that it was Mr. Fuller’s burden to request a hearing. Santa Fe Opp. at 14. But this Court has already held that it “strongly disagrees that the burden rests with [a criminal defendant] to bring the inability to pay issue to the Court’s attention” because “the Fifth Circuit has consistently interpreted *Bearden* as requiring courts to make an affirmative inquiry into the reasons for failure to pay a fine before imprisoning an individual.” Mem. at 21.<sup>5</sup>

Second, Santa Fe argues that Mr. Fuller was actually able to pay the fine. Santa Fe Opp. at 12–13. This amounts to an argument that, even if the Municipal Court had held a hearing for Mr. Fuller, the Court would have jailed him anyway. But Mr. Fuller need not

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<sup>5</sup> It bears mentioning that Santa Fe grossly mischaracterizes *ODonnell v. Harris County*, 892 F.3d 147, 164 (5th Cir. 2018). The Fifth Circuit did not hold that it is arrestees’ burden to affirmatively claim that they cannot afford bail, as Santa Fe argues. Santa Fe Opp. at 16. The Fifth Circuit upheld an injunction requiring *the government to ask arrestees* about their ability to pay, with notice that the information would be used to determine their release from jail, followed by a hearing for the arrestee concerning the necessity of jail, and findings on the record justifying any order that would hold the arrestee in jail. *ODonnell*, 892 F.3d at 159–61.

Santa Fe also briefly claims that, under *ODonnell*, Mr. Fuller must identify a protected liberty interest created by Texas law. Santa Fe Opp. at 17. But Mr. Fuller does not claim deprivation of such an interest; he claims deprivation of his rights under the federal Constitution. *Bearden*, 461 U.S. at 665 (holding that jail for failure to pay implicates both due process and equal protection rights under the federal Constitution).

prove that the Municipal Court *would have found* that he was unable to pay. “The right to procedural due process . . . does not depend upon the merits of a claimant’s substantive assertions . . . .” *Carey v. Piphus*, 435 U.S. 247, 266–67 (1978). Mr. Fuller need only prove that the Municipal Court *did not inquire* into ability to pay. As this Court has already held, “a court ‘*must inquire*’ into a defendant’s reasons for nonpayment.” Mem. at 21. Failure to make that inquiry is actionable, even if the jury awards no more than nominal damages.<sup>6</sup> *Carey*, 435 U.S. at 266–67 (“[T]he denial of procedural due process should be actionable without proof of actual injury. . . to recover nominal damages . . . .”). *Accord Archbold-Garrett v. New Orleans City*, 893 F.3d 318, 323 (5th Cir. 2018) (“Appellants allege inadequate pre-deprivation due process[, ]which is itself actionable . . . .”) (citing *id.*)).

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<sup>6</sup> Though damages are a question for the jury and immaterial to summary judgment, it is unlikely that the jury would sympathize with Santa Fe’s attempted character assassination of Mr. Fuller. *E.g.* Santa Fe Opp. at 15 (referring to Mr. Fuller’s “purported wife”). There is ample evidence that Mr. Fuller was unable to pay his fine, and that his household’s net worth was below the federal poverty line. Deposition of Brady Fuller at 63:5-6, ECF No. 93–7 (“I did try to enter into a payment plan, and then I defaulted on that again because I couldn’t pay it.”). *See also id.* at 28:2–5 (“Q: Does your wife get child-support payments for . . . [her son who they support]? A: [ ] She is supposed to, but . . . [her ex] doesn’t pay.”), 50:9–11 (“Q: So during the time that you had primary custody [of your daughter] . . . did you get child-support payments? A: No. I think she paid one payment, like \$120.”), 71:23–25 (“He asked me why I turned myself in. And I told him . . . because [ ] I couldn’t pay the fine. . . .”), 115:6–23 (“Q: . . . Did you ever file anything . . . for the purpose of informing the Court you did not have enough money to pay the fine assessed against you? A: No, I didn’t know I could. . . . Q: . . . [A]m I correct that you agreed to satisfy the payment plans . . . ? A: Technically, no . . . I told [the Judge] I didn’t think I could pay it.”), 120:13–121:11 (“A: I did my best at the time to make the payments. . . . Q: But you had some money you could have made partial payments on the fines, couldn’t you? . . . A: No. . . . Q: Did anybody at the Santa Fe court ever tell you they would not take a partial payment? . . . A: Yeah, the . . . payment plan [says] . . . [i]f you don’t make the payment plan, there will be a warrant issued for your arrest. Q: Did you ever ask anybody in Santa Fe to change the terms of any of the payment plans? A: I was told I had no choice.”), 123:15–124:15 (testifying that his family relied on Medicaid, food stamps, and reduced school lunches at the time he was jailed).

**B. Santa Fe Jailed Mr. Fuller in Violation of His Right to Counsel**

It is uncontested that Mr. Fuller was not represented by counsel for his underlying Santa Fe Municipal Court convictions, and that he was jailed as a result of those convictions. It is a violation of the Sixth Amendment right to counsel when an “uncounseled conviction . . . results in imprisonment [and] ends up in actual deprivation of a person’s liberty.” *Alabama v. Shelton*, 535 U.S. 654, 662 (2001) (quoting *Nichols v. United States*, 511 U.S. 738, 746 (1994) and *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972)). Remarkably, Santa Fe concedes that “actual imprisonment defines the line for appointment of counsel.” Santa Fe Opp. at 13. And Santa Fe concedes that Mr. Fuller was actually imprisoned. Santa Fe MSJ at 8, 11 (describing when Mr. Fuller was “booked . . . into lockup,” and three days later, “released”). Mr. Fuller is entitled to summary judgment on his right to counsel claim.

Santa Fe’s two arguments to the contrary are wrong. First, Santa Fe argues that Mr. Fuller’s right to counsel was not violated because he was not indigent. Santa Fe MSJ at 15. But even if Mr. Fuller were a billionaire, it would be unconstitutional to jail him for an uncounseled criminal conviction. “[N]o person may be imprisoned for any offense . . . unless he was represented by counsel at his trial.” *Shelton*, 535 U.S. at 662 (quoting *Argersinger*, 407 U.S. at 37).<sup>7</sup>

Second, Santa Fe argues that the Municipal Judge sentenced Mr. Fuller to a fine, not jail time. Santa Fe MSJ at 15. This is no different than the argument that the Supreme

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<sup>7</sup> While indigence is relevant to Santa Fe’s obligation to *appoint* counsel, it is irrelevant to Santa Fe’s authority to jail Mr. Fuller, once convicted, for a conviction for which he was not represented by counsel.



Court rejected in *Shelton*. It is uncontested that Mr. Fuller’s fine included a condition that, “once . . . triggered, the defendant [was] incarcerated . . . for the underlying offense.”<sup>8</sup> *Shelton*, 535 U.S. at 662. As the Supreme Court held in *Shelton*, “[t]he uncounseled conviction at that point results in imprisonment . . . This is precisely what the Sixth Amendment, as interpreted in *Argersinger* and *Scott*, does not allow.” *Id.* The Fifth Circuit has repeatedly interpreted *Shelton* to hold that it “violates a defendant’s Sixth Amendment right to counsel if [a conviction] is uncounseled and results in imprisonment,” which is exactly what happened to Mr. Fuller. *United States v. Hernandez-Castillo*, 381 F. App’x 397, 402 (5th Cir. 2010). *Accord United States v. Castillo*, 598 F. App’x 320, 321 (5th Cir. 2015); *United States v. Serna*, 87 F. App’x 365, 366 (5th Cir. 2004).

### C. Santa Fe Jailed Mr. Fuller in Violation of His Right to Adequate Food

It is uncontested that when Santa Fe officers fed Mr. Fuller, they fed him less than half the calories he required, and less than a third of the protein he required.<sup>9</sup> It is also uncontested that Santa Fe subjected Mr. Fuller to these half-rations for three days

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<sup>8</sup> Mr. Fuller’s judgment and sentence specified that “**FAILURE TO MAKE MONTHLY PAYMENTS WILL RESULT IN A CAPIAS PRO FINE,**” which is a warrant authorizing one day of jail time for every \$100 owed. Fuller Case File at CSF 2528.

<sup>9</sup> At most, Santa Fe fed Mr. Fuller the same thing they fed every prisoner: approximately 1000 calories and 17 grams of protein per day. Pop Tart Nutritional Information, Ex. 9 (360 calories and 4 grams of protein per package of 2 pop tarts); Banquet Frozen Meal Nutritional Information, Ex. 10 (260–350 calories and 11–13 grams of protein per meal). This is about enough to feed a toddler and far too little to feed a sedentary adult of any age. USDA Dietary Guidelines for Americans 2015–2020, Ex. 11, App’x 2 at 77–78 & App’x 7 at 97 (recommending that children aged 1–3 eat 1000 calories and 13 grams of protein per day, and that sedentary adult females over 50 eat 1600 calories and 46 grams of protein per day). It is also uncontested that Mr. Fuller was 27 years old when Santa Fe jailed him, Fuller Tr. 9:12, 93:9–12, which meant he required approximately 2400 calories and 56 grams of protein a day. USDA Dietary Guidelines, App’x 2 at 78 & App’x 7 at 97. The Texas Department of Criminal Justice uses these standards to feed their prisoners. TDCJ Food Service Procedures Manual, Ex. 12 at 1.

straight.<sup>10</sup> Finally, it is uncontested that the Police Chief knew exactly what his officers fed to prisoners but did nothing about it.<sup>11</sup> Thus, Mr. Fuller has demonstrated that due to the Police Chief's deliberate indifference, Mr. Fuller was deprived of "two nutritionally adequate meals daily" that are "well balanced and contain nutritional value to preserve health," as this Court has ruled the Eighth Amendment requires. Mem. at 32.

Santa Fe claims that the Police Chief lacked knowledge, but none of the evidence Santa Fe cites creates a genuine issue about the Police Chief's admission that he knew what prisoners were fed.<sup>12</sup> Santa Fe also repeats its argument that that Mr. Fuller has not demonstrated physical injury, but the Court has already ruled that "physical injury is [not] a required element of an Eighth Amendment claim based on prison conditions." *Id.* at 34.

## **II. The Uncontested Facts Demonstrate a Santa Fe Municipal Policy**

It is uncontested that it was Santa Fe's standard operating procedure to jail people for failure to pay their fines without holding a hearing on their reasons for failure to pay, without regard to whether they were represented by counsel at trial, and without adequate food. This standard operating procedure constitutes a municipal policy. *ODonnell*, 892

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<sup>10</sup> On the evening of Tuesday, December 8; all day Wednesday, December 9; all day Thursday, December 10; and through the morning and afternoon of Friday, December 11. Santa Fe MSJ at 8 ("Marshal Millo booked Fuller into the lock-up on December 8, 2015, at approximately 4:00 p.m."), 11 ("[A] police officer released Fuller on Friday, December 11, 2015, at approximately 3:50 p.m."). Santa Fe's description of a shorter jail term, Santa Fe Opp. at 11 n.5, is not supported by any evidence.

<sup>11</sup> The Police Chief admitted it in his declaration. Santa Fe MSJ Ex. 23, ECF No. 92-23 ¶ 7 ("The standard detainee meal plan while I was Chief consisted of the following. For breakfast, each detainee was provided one package of pop tarts, which contained two pop tarts. For lunch, each detainee was provided one package of pop tarts, which contained two pop tarts. For dinner, each detainee was provided with a Banquet meal that contained one meat and two vegetables.").

<sup>12</sup> Santa Fe cites Plaintiff's Responses to Interrogatories, Chief Campbell's Declaration, Michael Thaler's Declaration and Initial Report, and Michael Thaler's Declaration and Supplemental Report for its argument. Santa Fe Opp at 12 (citing Santa Fe MSJ Exs. 11, 23, 26, 27). None of these creates an issue of fact as to whether the Police Chief knew what detainees were fed.

F.3d at 155 (holding municipality liable for policymakers’ “acquiescence in longstanding practice or custom which constitutes the standard operating procedure of the governmental entity.”). *See* Plaintiff’s MSJ at 9–12.

This policy caused the violation of Mr. Fuller’s rights: “[w]here a plaintiff claims that a particular municipal action itself violates federal law . . . ,’ the causation determination ‘is straightforward.’” *Jauch*, 874 F.3d at 435 (quoting *Bd. of Cnty. Comm’rs v. Brown*, 520 U.S. 397, 404 (1997)). Santa Fe’s policy itself violated the constitutional rights of defendants jailed under *capias pro fine* warrants, including Mr. Fuller. Plaintiff’s MSJ at 8. Santa Fe disputes causation by claiming that Mr. Fuller failed to show the deliberate indifference of a policymaker, but Mr. Fuller need not make that showing where the “particular municipal action itself” —here, jailing people without hearings—violates the Constitution. *Jauch*, 874 F.3d at 435 (quoting *Bd. of Cnty. Comm’rs*, 520 U.S. at 404).<sup>13</sup>

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<sup>13</sup> In addition to this facially unconstitutional policy, Santa Fe’s liability is also supported by policymakers’ failure to supervise and train their staff. A municipality is liable for failure to supervise or train if its action, while facially lawful, was taken with “deliberate indifference” to the known or obvious consequences. *Littell v. Houston Indep. Sch. Dist.*, 894 F.3d 616, 624 (5th Cir. 2018) (quoting *Bd. of Cnty. Comm’rs*, 520 U.S. at 407). Deliberate indifference to the need for supervision and training can be established through a pattern of constitutional violations making the need “plainly obvious to the policymakers,” or by proof that the violation was the “obvious” or “highly predictable consequence” of the inadequacy in supervision or training. *Id.* (quoting *Bd. of Cnty. Comm’rs*, 520 U.S. at 409). Mr. Fuller has established both, as outlined in detail in his motion for summary judgment. Plaintiff’s MSJ at 8 n.27. Santa Fe has not contested these facts.

### III. The Uncontested Facts Demonstrate Policymakers' Acquiescence

#### A. It is Uncontested That the Municipal Judge Issued the Unconstitutional Jail Release Procedures

The Municipal Judge knew of and acquiesced in the unconstitutional policy described above. It is uncontested that the Municipal Judge issued written procedures summarizing the policy to jail defendants without hearings. Plaintiff's MSJ at 9–12. It is also uncontested that the Municipal Judge knew that this policy was used to jail people without hearings, because he personally signed forms memorializing each person's jail term. He did so despite the fact that he never appoints counsel for defendants or elicits waivers of the right to counsel.<sup>14</sup>

As this Court already held, “municipal judges are considered policymakers if they establish policies or procedures in their administrative capacity.” Mem. at 14 (citing *ODonnell*, 892 F.3d at 155–56). Specifically, the Municipal Judge's “broad authority to promulgate rules that will dictate post-arrest policies consistent with the provisions of state law” makes him a “local officer[] whose unlawful decisions represent the official policy.” *ODonnell*, 892 F.3d at 155.<sup>15</sup> *See also* Tex. Gov't Code § 21.001(a), “Inherent Power and Duty of Courts” (providing the court with “all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders”). The Municipal Judge exercises this policymaking authority regularly, as Santa Fe conceded. Santa Fe

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<sup>14</sup> Municipal Court Website Rights Advisory, Snider Tr. Ex. 18 (“No attorney will be appointed for you.”); Getty Tr. 70:2–6 (agreeing that rights advisory is accurate); Snider Tr. 164:11–165:8 (“Q: [D]oes Judge Getty ever discuss the right to counsel with the defendant? A: No . . . Q: Have you ever seen Judge Getty appoint a defense attorney for any defendant in any proceeding? A: No.”).

<sup>15</sup> Contrary to Santa Fe's argument, Santa Fe Opp. at 1–8, 16–18; this rule is fully consistent with *Johnson v. Moore*, 958 F.2d 92, 93–94 (5th Cir. 1992), which observed that a “judge's administrative duties [are] actions pursuant to which may constitute county policy under Monell . . . .”

Opp. at 5–6 (collecting testimony affirming that the Municipal Judge, not the City Council, has final authority to make administrative rules).

Santa Fe argues at length that judges are not policymakers when they act in a *judicial capacity*, *Id.* at 2–7, 16–18, but Judge Getty did not do so here. Judge Getty’s Jail Release Procedures are administrative in nature because they mandate the same specific action with respect to every defendant (jailing those who do not pay 24 hours for every \$100 they owe), without contemplating exercise of judicial discretion in the procedures’ implementation. *ODonnell v. Harris Cnty.*, 227 F. Supp. 3d 706, 744–45 (S.D. Tex. 2016), *aff’d in relevant part*, 892 F.3d at 155 (asking whether rules “contemplate the exercise of judicial discretion, [or] mandate . . . any particular action with respect to any defendant”) (citing *Supreme Court of Va. v. Consumers Union*, 446 U.S. 719, 731 (1980)). The release procedures do not concern “orderly trial of cases,”<sup>16</sup> but instead mandate payments for release from jail, and direct jail personnel about administering the tasks of collecting payments and releasing people from jail. *See id.* at 744 (holding rules of a court administrative because they “mandate the use of secured financial bail . . . and instruct sheriffs . . . and other county officers in how to administer their tasks of imposing and collecting secured financial bail”).

The jail release procedures were not an individualized decision in Judge Getty’s judicial capacity. They are administrative rules that “dictate post-arrest policies” in Santa Fe. *ODonnell*, 892 F.3d at 155. Mr. Fuller challenges these administrative rules because

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<sup>16</sup> As was the case in *Harris v. City of Austin*, No. 15-cv-956, 2016 WL 1070863, at \*9 (W.D. Tex. Mar. 16, 2016), on which Santa Fe relies. *ODonnell* distinguished *Harris* on this basis. 227 F. Supp. 3d at 744.

they prohibited police from releasing someone from jail with unpaid fines—even if that person had not had an ability to pay hearing, and even if the fines were for an uncounseled conviction.<sup>17</sup>

**B. It is Uncontested That the Police Chief Knew that Defendants Were Jailed Without Hearings or Food**

The Police Chief knew of and acquiesced in the unconstitutional policy described above. It is uncontested that the Police Chief posted written procedures summarizing the policy to jail defendants without hearings on the wall of the jail. Plaintiff’s MSJ at 9–12. The Court specifically referred to this allegation as the “most shocking,” Mem. at 28, and the City of Santa Fe admitted to it under oath.<sup>18</sup> Finally, it is uncontested that the Police Chief knew exactly what his prisoners were fed.<sup>19</sup>

Santa Fe argues that none of this matters because the City Council, and not the Police Chief, is the policymaker for the City of Santa Fe. Santa Fe MSJ at 20–23. But it is uncontested that the City Manager hired the Police Chief to “develop[] and review

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<sup>17</sup> Contrary to Santa Fe’s argument, Santa Fe Opp. at 13, Mr. Fuller does not claim that the City had an obligation to appoint counsel for him. He claims that the City had an obligation to refrain from jailing him for an uncounseled conviction. *Davis v. Tarrant County*, 565 F.3d 214 (5th Cir. 2009), which concerned municipal liability for a judge’s decision about which attorney to appoint, is not applicable.

<sup>18</sup> Jail Release Procedures (“Sit out time in jail (100.00 per day (24 hrs) per charge).”), ECF No. 93-2 at 60. The Municipal Judge signed this document and “gave it to the chief and asked him to post it so that everybody understood [] what I was trying to say.” Getty Tr. 94:4–6. It is posted in the jail to this day. Meadows Tr. 107:18–19 (“It’s posted in our jail.”). Both Judge Getty and Chief Meadows made these admissions in their capacity as Santa Fe representatives.

<sup>19</sup> Santa Fe MSJ Ex. 23 (“The standard detainee meal plan while I was Chief consisted of the following. For breakfast, each detainee was provided one package of pop tarts, which contained two pop tarts. For lunch, each detainee was provided one package of pop tarts, which contained two pop tarts. For dinner, each detainee was provided with a Banquet meal that contained one meat and two vegetables.”).

[policies and procedures” for the Police Department.<sup>20</sup> This was a formal delegation of policymaking authority conferred by the City Charter,<sup>21</sup> in accordance with this Court’s holding that “[c]ourts have consistently found that chiefs of police are official law enforcement policymakers for the purposes of municipal liability under § 1983.” Mem. at 26. *See also* Plaintiff’s MSJ at 9–10.

The Police Chief could have used this final policymaking authority to establish a procedure for officers to bring all *capias pro fine* arrestees to court—as the *capias pro fine* warrants at issue specifically permitted. *See Capias Pro Fine Warrants for Brady Fuller*, Plaintiff’s MSJ Ex. 2, ECF No. 93-3 at 182, 188 (“YOU ARE THEREFORE COMMANDED to bring said Defendant before the Municipal Court of the City of Santa Fe, Texas immediately . . .”). This is the critical point distinguishing the Police Chief here from the Sheriff in *ODonnell*: the Police Chief was not “legally obligated” to bring people directly to jail. 892 F.3d at 156. *Accord Tarter v. Hury*, 646 F.2d 1010, 1013 (5th Cir. 1981) (asking whether constitutional violation was something officer was

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<sup>20</sup> More comprehensively, the City Manager hired the Police Chief to “[d]irect and coordinate the work of all divisions of the police department (. . . [including] municipal court administration),” “development and review of policies and procedures,” “responsib[ility] for long and short range planning for the department; [and] establish[ing] departmental performance goals.” Meadows Tr. 179:17–181:16; Police Chief Job Description, Meadows Tr. Ex. 1. These job duties directly reflect the Fifth Circuit’s definition of final policymaking authority to “decide the goals for a particular city function and devise the means of achieving those goals.” *Zarnow v. City of Wichita Falls*, 614 F.3d 161, 167 (5th Cir. 2010). Santa Fe is correct that the City Charter did not originally designate the Police Chief as a policymaker—but the City Manager’s delegation of policymaking authority transformed him into one. *Jett v. Santa Fe Indep. Sch. Dist.*, 491 U.S. 701, 709 (1989) (“[T]he school district could be held liable . . . if those officials were delegated policymaking authority . . .”).

<sup>21</sup> Santa Fe’s City Charter authorizes the City Manager to “direct and supervise the administration of all departments, offices and agencies of the City.” Plaintiff’s MSJ, Ex. 8.

“specifically required to do under court order or at a judge’s direction”).<sup>22</sup> The Police Chief could have brought every arrestee to court. Instead, he acquiesced in his officers’ standard operating procedure of bringing arrestees to jail, where they were held one day for every \$100 they owed, without an ability to pay hearing.

Finally, even if the Court agreed with Santa Fe that the City Council is the relevant policymaker—though it is not—Santa Fe would still be liable. Municipalities are liable for unconstitutional practices that are so persistent and widespread that the policymaker would have known of them had they properly exercised their responsibilities, which is “constructive knowledge.” *Bennett v. City of Slidell*, 728 F.2d 762, 768 (5th Cir. 1984). The uncontested facts demonstrate that any policymaker could be charged with constructive knowledge that Santa Fe jailed people without hearings—the policy was written up, signed by the Municipal Judge, and posted in the jail.<sup>23</sup> The Municipal Judge, City Marshal, and current Police Chief all testified to this standard operating procedure without difficulty.<sup>24</sup> The procedure was carried out nearly every day<sup>25</sup> and integrated into

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<sup>22</sup> Santa Fe’s argument to the contrary ignores that Santa Fe’s *capias pro fine* warrants did not order the Police Chief to jail people. The warrants gave the Chief the option to bring arrestees to court or to jail; he chose jail. Santa Fe Opp. at 8, 17.

<sup>23</sup> *See supra* at 9 n.5.

<sup>24</sup> Getty Tr. 57:14–16 (“If they’re under *capias pro fine*, they don’t request a hearing, then, yes, they would serve it out like we’ve set up, yes.”); Meadows 109:2–24 (agreeing that payment or “Sit out time in jail, \$100 per day, 24 hours per charge” was procedure at the time Santa Fe jailed Mr. Fuller); Millo Tr. 61:10–25 (“So in the scenario where someone had no one to call and they couldn’t pay any of the money, what would you do? A: I would . . . put them in their cell and lock the door.”), 74:4–5 (“You set out a fine . . . at \$100 a day per warrant.”).

<sup>25</sup> Millo Tr. 81:11-82:5, 107:13-108:3.



Santa Fe infrastructure by way of form warrants authorizing jail time<sup>26</sup>; software allowing the Police Department to recall *capias pro fine* warrants without judicial approval<sup>27</sup>; and tailor-made forms indicating that officers had already arrested, jailed, and released defendants under *capias pro fine* warrants with time served.<sup>28</sup> The Police Chief knew of these practices<sup>29</sup>: the Court Administrator even alerted the Police Chief personally whenever she did not receive these tailor-made forms because of a recordkeeping error, and the Police Chief helped her correct the oversight.<sup>30</sup> Incoming police officers were explicitly trained not to produce defendants arrested under *capias pro fine* warrants for hearings.<sup>31</sup> There can be no genuine dispute that jailing people for

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<sup>26</sup> Snider Tr. 199:16–19, 201:13–24 (“Q: So the warrants were all form warrants, they all have the same language unless you went in and changed the actual form; is that correct? A: Yes. . . . Q: . . . [W]ould it be fair to say [it has changed] a handful of times or maybe less since you were hired? A: Yes. Q: [] So once a change is made, that becomes the standard warrant out of the Santa Fe Municipal Court; is that correct? A: Yes.”).

<sup>27</sup> Snider Tr. 185:10–18 (“Q: [S]o is it the duty of someone at the Police Department to recall warrants after someone is arrested under a *capias pro fine* warrant? A: Yes. They were given access to be able to recall warrants . . . . Q: So they don’t need Judge Getty’s approval to recall a warrant; is that correct? A: No.”).

<sup>28</sup> *E.g.*, Fuller Case File at CSF 2518, Snider Tr. Ex. 6; Snider Tr. 287:8–25 (agreeing Fuller’s time served form was “typical”).

<sup>29</sup> Getty Tr. 94:4–6 (“[I] gave it to the chief and asked him to post it so that everybody understood what—what I was trying to say.”). *Accord* Snider Tr. 226:15–20 (“Q: Do you think Chief Campbell was knowledgeable about the way that *capias pro fine* warrants were being executed? A: . . . I think he knew how it was done. Q: . . . [D]o you know [] if Chief Campbell was aware that Officer Millo was booking people into jail under *capias pro fine* warrants in the manner we have been discussing today? A: Yes. Q: Do you believe that the police chief was aware that Officer Millo was generally releasing those people who did not make any payments after they served their time at approximately \$100 a day? . . . A: Yes.”).

<sup>30</sup> Snider Tr. 97:16–98:9 (“A: Everyone from the chief, to the captain, to the lieutenant. Q: So when you were missing time served paperwork, it wouldn’t be unusual for you to shoot an e-mail to the supervisors in the Police Department? A: Correct.”), 234:5–235:1 (“Q: And you forwarded this to Chief Campbell . . . ? A: Yes. . . . Q: . . . Is it safe to say there were some offline conversations about the lack of time served paperwork from the jail? A: Yes. Q: Okay. So the Chief was well aware of this problem; is that fair to say? . . . A: Yes.”), 245:24–253:6 (discussing multiple conversations with Chief Campbell about procedures for releasing *capias pro fine* arrestees from the jail).

<sup>31</sup> Millo Tr. 119:8-122:11.

failure to pay, without a hearing inquiring into the reasons for failure to pay, was a widely known standard operating procedure in the Santa Fe Municipal Court and Santa Fe Police Department. Any policymaker properly exercising their responsibilities would have known of it.

### CONCLUSION

For the foregoing reasons, the Court should grant Mr. Fuller's motion for summary judgment.

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Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that I filed this brief via the ECF system, which serves this motion on all counsel of record.

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