

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 MOTION FOR SUMMARY JUDGMENT

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NATURE AND STAGE OF PROCEEDING

The City of Santa Fe operates a modern-day debtors' prison under policies that prioritize collection of revenue over the fair administration of justice. Santa Fe jails people solely for failure to pay their fines, without producing them for a hearing, appointing counsel for their defense, or even giving them enough food to eat. Plaintiff Brady Fuller now moves for summary judgment.

ISSUES TO BE RULED UPON

Mr. Fuller is entitled to summary judgment because there is “no genuine dispute as to any material fact and [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

There is no genuine dispute that Santa Fe subjected Mr. Fuller to its longstanding, well-settled practice of (1) jailing defendants who fail to pay their fines without first holding a hearing “inquir[ing] into the reasons for the failure to pay,” *Bearden v. Georgia*, 461 U.S. 660, 672 (1983); (2) “trigger[ing]” jail terms for defendants who do not pay their fines for misdemeanor convictions entered without defense counsel, *Alabama v. Shelton*, 535 U.S. 654, 662 (2002); and (3) depriving prisoners of a “nutritionally and calorically adequate diet,” by feeding them, at most, Pop Tarts and a small frozen dinner, *Berry v. Brady*, 192 F.3d 504, 508 (5th Cir. 1999)).

ARGUMENT

Santa Fe deprived Mr. Fuller of his constitutional rights in accord with its longstanding, well-settled practice.¹ There is no genuine dispute over the facts below, which entitle Mr. Fuller to summary judgment.

I. Santa Fe Jailed Mr. Fuller for Failure to Pay in Violation of His Right to an Ability to Pay Hearing

A. Santa Fe Municipal Court Issued Warrants Authorizing Jail Terms, Without a Hearing, Based Solely on Failure to Pay a Fine

At the time Santa Fe jailed Mr. Fuller, it was the longstanding, well-settled practice of Santa Fe Municipal Court to issue a warrant triggering a jail term based solely on a defendant's failure to pay his fines. If court clerks did not receive payment from a defendant, they automatically generated a form "capias pro fine" warrant for the defendant, which the municipal judge signed.² That capias pro fine warrant authorized officers to arrest the defendant and jail him one day for every \$100 he owed.³

¹ The facts below describe Santa Fe's longstanding and well-settled practices at the time Mr. Fuller was convicted and jailed in 2015, referred to in the Amended Complaint as the Debtors' Prison Policy and the Hungry Man Policy. This motion cites depositions of the municipal judge for close to 40 years ("Getty"), Ex. 1; the court administrator for close to 5 years ("Snider"), Ex. 2; the warrant officer/city marshal who served 10 years before he retired ("Millo"), Ex. 3; and the Police Chief, who has been employed at the Police Department for over 20 years ("Meadows"), Ex. 4.

² Snider Tr. 176:11–17 ("Q: Does the judge do any kind of independent check before signing the warrants? . . . A: Generally, he trusts me."), 176:21–177:3 ("Q: [To generate capias pro fine warrants], how do you come about that stack of files? . . . A: That stack of files would probably be payment plans or extensions that have not made payment in two or three months."), 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."); Getty Tr. 48:16–21 ("[I]f the affidavit indicates that someone has failed to satisfy the judgment against them and the warrant is in roughly the form that's generated by the clerk's software, that's something you would typically go ahead and sign? A: Yes.").

³ The warrant authorized officers to jail the defendant until he is "otherwise legally discharged"; the Texas Code of Criminal Procedure specifies that prisoners are to be discharged after serving up to 24 hours for every \$100 owed. Fuller Santa Fe Municipal Court Case Files ("Fuller Case Files"), Snider Tr. Ex. 6 at CSF 2523, 2529 (capias pro fine warrants: "place [him] in jail until such time as [he] pays the amount due . . . or until [he] is otherwise legally discharged"); Tex. Code Crim. Proc. Art. 45.048 ("A defendant placed in jail on account of failure to pay the fine and costs shall be discharged on habeas corpus by showing that the defendant . . . has remained in jail a sufficient

The municipal court did not hold an ability to pay hearing before issuing these *capias pro fine* warrants.⁴ The municipal court did not give defendants notice that they had a right to such a hearing, or that their ability to pay was at issue, or any information about submitting financial information or requesting alternatives to full payment. Instead, letters that court clerks sent to defendants read: “THE FINES MUST BE PAID IN FULL. . . . IF YOU FAIL TO PAY YOUR FINE WITHIN TEN DAYS FROM THE DATE OF THIS LETTER, A CAPIAS WARRANT WILL BE ISSUED FOR YOUR ARREST”⁵ The municipal court did not make any findings concerning ability to pay.⁶ And the municipal court did not consider alternatives at all.⁷ Instead, the court automatically authorized jail time for defendants who failed to pay. Most people subject to these warrants were “very poor,” not a “real criminal,” and “in a cycle that they’re never going to get out of.”⁸

The municipal court issued Mr. Fuller’s *capias pro fine* warrants in accord with this practice. When Mr. Fuller failed to make payments toward June 2015 fines he owed

length of time to satisfy the fine and costs, at the rate of not less than \$100 for each period served, as specified by the convicting court in the judgment in the case.”).

⁴ Getty Tr. 49:11-50:1 (“Q: If a defendant did not ask to come to court, was it your normal practice to schedule a hearing anyway? A: No.”); Snider Tr. 175:7-12 (“Q: We’ve discussed that in 2015 someone who missed . . . a payment . . . would not get a hearing before their case went to a *capias pro fine* warrant; is that correct? A: Yes.”).

⁵ *E.g.*, Fuller Case Files at CSF 2524–2525 (letters from the court); Getty Tr. 143:20–22 (agreeing there was “nothing unusual” about letters to Mr. Fuller).

⁶ Santa Fe Municipal Court Responses to Public Information Act Requests (“PIA Responses”), Snider Tr. Ex. 16 at 2 (stating no indigency findings existed for a sixth-month period shortly following Mr. Fuller’s jail term); Snider Tr. 218:2–16 (“[T]here were not a lot of indigency findings to my knowledge. Q: And if there were any, they were difficult for you to find? A: Yes.”).

⁷ The court did not even make available forms for payment plans, community service, indigent status, or waiver or reduction of fines. Snider Tr. 218:8–20; PIA Responses at 1.

⁸ Millo Tr. 29:11–33:9.

in Santa Fe Municipal Court,⁹ rather than holding a hearing on the reasons Mr. Fuller failed to pay, the Santa Fe Municipal Court issued *capias pro fine* warrants authorizing officers to jail him.¹⁰ The court did not contact Mr. Fuller about his missed payments before issuing these warrants, much less notify Mr. Fuller of any process for presenting information about his ability to pay or asking for an alternative to full payment.¹¹ The only options the Santa Fe Municipal Court ever offered Mr. Fuller to resolve a *capias pro fine* warrant were to pay the fine in full or go to jail.¹²

B. Santa Fe Officers Chose to Jail Defendants, Without a Hearing, Based Solely on Their Failure to Pay a Fine

Though Santa Fe’s *capias pro fine* warrants facially gave officers the option to bring defendants to court,¹³ Santa Fe officers had a longstanding, well-settled practice to treat *capias pro fine* warrants as requiring a payment or jail time. The language in the warrant didn’t matter, because most officers did not even have the ability to read what the

⁹ Santa Fe’s Response to Plaintiff’s First Requests for Admission (“RFA”), Ex. 5 at Nos. 4, 8.

¹⁰ Fuller Case Files at CSF 2523, 2529 (*capias pro fine* warrants: “place [him] in jail until such time as [he] pays the amount due . . . or until [he] is otherwise legally discharged”).

¹¹ Fuller Tr., Ex. 6 at 73:1–5 (“Q: Between [] when the Judge put you on the payment plan . . . and the time the trooper stopped you, did you have any contact with anybody at the Santa Fe court? A: No. I did not.”), 115:6–10 (“Q: Did you ever file anything . . . informing the court you did not have enough money to pay the fine . . . ? A: No, I didn’t know I could.”), 116:5–12 (“Q: . . . [D]id you ever ask . . . [for] a non-monetary method of satisfying [] your convictions . . . ? . . . A: I didn’t know I could.”). While Mr. Fuller received the customary warning letters prior to his June 2015 convictions, he did not receive any letter after missing payments toward his June 2015 fines.

¹² Fuller Case Files at CSF 2524–2525 (letter from the court: “THE FINES MUST BE PAID IN FULL. . . . IF YOU FAIL TO PAY YOUR FINE WITHIN TEN DAYS FROM THE DATE OF THIS LETTER, A CAPIAS WARRANT WILL BE ISSUED FOR YOUR ARREST”); Municipal Court Website Information on Warrants, Snider Tr. Ex. 19 (“If you have a Capias Pro-Fine warrant, your options are: *Pay in full; *You may turn yourself in at the Santa Fe Police Department”); Snider Tr. 231:3–9 (testifying warrant information is accurate); Fuller Tr. 60:13–61:3 (“[Officer Millo] let me know that I had a warrant and that I needed to either pay it or turn myself in. . . . And he told me that [] if I didn’t have the money that my best option was to turn myself in.”), 61:22–23 (“And he told me that if I didn’t, then he would have to come to my work and arrest me.”), 107:6–11 (judge claimed the only options for a *capias pro fine* warrant were to “pay it or sit it out.”).

¹³ Fuller Case Files at CSF 2523, 2529 (*capias pro fine* warrant: “bring said Defendant before the Municipal Court of the City of Santa Fe, Texas immediately or” jail him).

warrant said¹⁴—and the one officer who did, the city marshal, didn’t bother to read it.¹⁵

Instead, the officers’ practice was that “a *capias pro fine* warrant . . . stands for the money or the body. You either pay or you stay, is what we put it in simple language.”¹⁶

Santa Fe officers arresting people under *capias pro fine* warrants would handcuff them and take them straight to jail.¹⁷ Officers did not produce the defendant for a hearing, or even contact a judge, before or after jailing the defendant.¹⁸ In fact, if a defendant subject to a *capias pro fine* warrant came to the court and asked to see the judge, Santa Fe officers would jail him instead.¹⁹ Officers kept defendants locked up long enough to satisfy their fines with jail credit, and officers calculated when release was appropriate.²⁰

¹⁴ Snider Tr. 177:22–25 (“Nothing is actually given to the Police Department.”).

¹⁵ Millo Tr. 153:9–24 (“Q: Is it fair to say that you didn’t read the paragraphs that were in each individual warrant? . . . A: No, I did not. . . . I think if you had a—my opinion, if you had a *capias* warrant and regular warrant, they are going to say the same thing. Bring before me, blah, blah, blah, blah, blah. A *capias pro fine* is you don’t need to put it before the judge. I don’t know why they put it in there. That’s above my pay grade.”).

¹⁶ Millo Tr. 21:1–4.

¹⁷ Meadows Tr. 19:9–14, 26:7–19 (“Q: [W]hen a police officer is bringing somebody in under a *capias pro fine* warrant . . . [w]here’s the first place they drive once the person is in the car? A: Here to the police department. Q: So is the next step booking them into the jail? A: Yes.”); Getty Tr. 51:6–10 (“Q: So I’d like to ask what you know about what happens when someone gets arrested under a *capias pro fine* warrant. . . . A: Well, they’re booked into jail.”).

¹⁸ Snider Tr. 40:6–7 (court staff only see the municipal judge “three times a month on court days”), 215:2–9 (“Q: . . . [S]omeone arrested under a *capias pro fine* warrant was brought directly to the jail and generally did not see a judge until they [] paid or served out their time . . . ? A: Yes.”), 219:10–11 (“This judge has never signed a commitment form to place someone in jail.”). *Accord* Meadows Tr. 19:9–14, 26:15–19; Getty Tr. 51:6–10.

¹⁹ Snider Tr. 119:25–120:21 (“Q: Would it be general practice to arrest someone who showed up at the Muniicpal Court with an open *capias pro fine* warrant? . . . A: It’s been done many times”), 133:4–15 (“Q: [Y]ou testified earlier someone came to the window with an open *capias pro fine* warrant, they would be taken to jail; is that correct? A: They could be, yeah. . . . Q: You think it happened most times? A: Probably.”) 250:3–8 (“ . . . [I]t was unbelievable to many people in Santa Fe Municipal Court that you would offer a payment plan to someone whose case had gone to *capias pro fine*; is that correct? A: Yes.”).

²⁰ Jail Release Procedures, Getty Tr. Ex. 8. *See also* Getty Tr. 43:18–25, 44:6–8, 57:9–16; Millo Tr. 30:15–24; Snider Tr. 121:9–12 (“Q: [G]enerally what are the options for someone who is arrested under a *capias pro fine* warrant? A: In 2015, to pay the fine, or sit the time out in jail.”), 191:19–21 (“[W]e wouldn’t know what they’re going to do to take care of their warrant until we get the paperwork that shows how they were released.”).

Both the municipal judge and the police chief knew of this policy: the policy was recorded in writing, signed by the municipal judge, and posted in the jail.²¹

Santa Fe arrested Mr. Fuller in accord with this practice, resulting in the jail term he challenges in this case, when a state trooper stopped him because his temporary license plate was flapping in the wind.²² The trooper alerted Santa Fe that he had stopped someone with *capias pro fine* warrants, and the Santa Fe city marshal, Officer Millo, took custody of Mr. Fuller.²³ Officer Millo took Mr. Fuller directly to jail.²⁴ He did not produce Mr. Fuller for a hearing either before or after booking Mr. Fuller into jail.²⁵ Santa Fe jailed Mr. Fuller for three days, from 4:13 PM on Tuesday, December 8, to 3:51 PM on Friday, December 11, when officers released him for time served.²⁶

²¹ The municipal judge gave the jail procedures document to the chief personally and asked him to post in in the jail. 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. 226:12–20 (“Q: Do you think Chief Campbell [the police chief when Mr. Fuller was jailed] 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.”); Meadows Tr. 107:18–19 (“[T]his top page I have. It’s posted in our jail.”); Fuller Tr. 107:6–11 (“Was told [by the judge] that I had to either pay it or sit it out.”), 113:2–12 (same).

²² Fuller Tr. 67:3–68:4.

²³ Fuller Tr. 68:1–16.

²⁴ *Id.*

²⁵ RFA No. 11 (“After Mr. Fuller’s June 15, 2015 conviction, Santa Fe Municipal Court never held any hearing or made any findings concerning Mr. Fuller’s ability to pay his fine.”); Fuller Tr. 73:1–5 (“Between then when the Judge put you on the payment plan at that time and the time the trooper stopped you, did you have any contact with anybody at the Santa Fe court? A: No. I did not.”), 128:10–20 (“Q: Did Officer Millo take you to court at that point? A: No, he did not. Q: Did he put you before a judge in any way? A: No. Q: Did Officer Millo tell you you had a right to a hearing? A: No, he did not.”).

²⁶ Fuller Inmate Log, Meadows Tr. Ex. 10 at CSF 0154.

C. Santa Fe is Liable for Jailing Mr. Fuller Without an Ability to Pay Hearing

These facts establish that Mr. Fuller is entitled to judgment as a matter of law because he has demonstrated each element of municipal liability: a constitutional violation, caused by an official policy or custom, that final policymakers knew of or acquiesced in. *Jauch v. Choctaw Cnty.*, 874 F.3d 425, 435 (5th Cir. 2017) (discussing three elements of municipal liability). *See ODonnell v. Harris Cnty.*, 892 F.3d 147, 155 (5th Cir. 2018) (“[U]nlawful decisions include acquiescence in longstanding practice or custom which constitutes the standard operating procedure of the governmental entity.”).

First, these practices plainly violate the Constitution. The Supreme Court has explicitly held that it is “fundamentally unfair” and thus “impermissib[le]” to “imprison[] a defendant solely because of his lack of financial resources.” *Bearden v. Georgia*, 461 U.S. 660, 661, 672–73 (1983). Courts must first “inquire into the reasons for the failure to pay.” *Id.* at 672. If the failure to pay was not willful, the court must consider alternative punishments, such as tailoring the fine to the person’s limited resources. *Id.* Jail is permissible only if the court concludes, after an ability to pay hearing, that all available alternatives are inadequate to satisfy the state’s interest in punishment and deterrence. *Id.* *Accord ODonnell*, 892 F.3d at 162–63 & n.6 (holding that “imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible” and requiring “case-by-case evaluation of a given arrestee’s circumstances”) (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978)). Santa Fe’s customary practice of issuing *capias pro fine* warrants authorizing jail terms without a hearing, and jailing

people under those warrants without a hearing, is unconstitutional. *Accord* Mem. & Recs. (“Mem.”) at 21, ECF No. 68, *adopted*, ECF No. 78 (“[T]o detain an individual—even just overnight—without providing an ability to pay hearing beforehand would, in effect, often result in individuals being jailed solely because they cannot afford to pay the fine. That is something the Supreme Court has expressly held is not permitted.”).

Second, causation is “straightforward,” because the “particular municipal action itself violates federal law.” *Jauch*, 874 F.3d at 435 (quoting *Bd. of Cnty. Comm’rs v. Brown*, 520 U.S. 397, 404 (1997)). Specifically, Santa Fe’s official policy was to jail people arrested under *capias pro fine* warrants unless they paid money. Santa Fe’s standard operating procedure was to issue *capias pro fine* warrants authorizing these jail terms without a hearing, and to bring defendants arrested under *capias pro fine* warrants straight to jail, rather than bringing them to court for a hearing. Both Santa Fe’s official policy and its standard operating procedures were to jail people without ability to pay hearings, which inherently violates federal law.²⁷

²⁷ 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* at 409).

Here, Mr. Fuller has established both. The pattern of regular *Bearden* violations, if not enough to demonstrate a standard operating procedure, is surely enough to make it “plainly obvious” to the municipal judge and police chief that they needed to help “officers to obtain the legal knowledge they require to conform their behavior to their clear and recurring constitutional obligations.” *Id.* at 625 (quotation marks omitted). And even without a pattern, *Bearden* violations were a highly predictable consequence of failure to train. “‘The constitutional duty . . . [to hold ability to pay hearings] is clear,’ with ample ‘constitutional guide-posts for municipalities’” to use to supervise and train staff; as discussed above, *Bearden* is quite specific about the procedures required. *Id.* at 625–26 (quoting *City of Canton v. Harris*, 489 U.S. 378, 386–92 (1989)). Because officers arrest people under *capias pro fine* warrants nearly every day, Millo Tr. 108:1–3, the duty to provide these hearings arises “in recurrent situations that a particular employee is certain to face.” *Id.* at 626 (quoting *Canton*, 489 U.S. at 396). And, as is true with constitutional rules about deadly force, “there is no reason to assume police academy applicants are familiar with

Third, Santa Fe is liable for Mr. Fuller’s jail term through both the municipal judge and the police chief, who are both the “local officers whose unlawful decisions represent the official policy” of Santa Fe. *ODonnell v. Harris Cnty.*, 892 F.3d 147, 155 (5th Cir. 2018). State law on court rules gives municipal judges final policymaking authority to establish administrative rules for issuing *capias pro fine* warrants, as well as post-arrest administrative policies for people arrested under *capias pro fine* warrants. Tex. Gov’t Code § 21.001(a), “Inherent Power and Duty of Courts.”²⁸ See *ODonnell*, 892 F.3d at 155 (holding judges are policymakers in virtue of “broad authority to promulgate rules that will dictate post-arrest policies consistent with the provisions of state law”). And the Court has already held 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. The same is true in Santa Fe. The Santa Fe Police Chief’s delegated powers include ““Direct[ing] and coordinat[ing] the work of all divisions of the police department (. . . [including] municipal court administration),” “development and review

constitutional constraints” on arrests and jail terms for failure to pay. *Id.* at 626 (citation omitted). In these circumstances, both the Supreme Court and the Fifth Circuit have held that “there is an obvious need for *some* form of training,” and the same is true of supervision. *Id.* at 626–27.

Santa Fe was deliberately indifferent to this need because the person with final authority to supervise the officer with primary responsibility for arresting people under *capias pro fine* warrants, the court administrator, freely admitted that she did not supervise him at all. Santa Fe, Tex. Code of Ordinances Ch. 7 § 4(D)(3), attached as Ex. 7 (“A city marshal/bailiff shall . . . serve under the direct supervision of the judge of the municipal court and/or municipal court clerk.”); Getty Tr. 15:1–11 (“Generally he reports to the clerk [Lisa Snider].”); Snider Tr. 124:5–13 (“[Y]ou don’t supervise Millo. . . . I would not tell Millo what to do. That—it just didn’t happen. . . . I just expected Millo to do what he thought was right.”), 139:1–140:6 (“I mean, that Millo was not one to be supervised. Q: Okay, I see you making air quotes when you say “Supervised?” A: Yes. . . . Millo did what Millo wanted to do pretty much every day I really didn’t pay that much attention. . . . I couldn’t tell you—well, I could probably figure out how many times someone was kept, but I really don’t know how many were released with a payment plan when Millo was here.”), 210:3–4 (“He probably just kept on doing what he always did.”). This is deliberate indifference.

²⁸ “A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.” The Santa Fe municipal judge’s standing orders are well within the scope of this broad authority.

of policies and procedures,” and “responsib[ility] for long and short range planning for the department; establish[ing] departmental performance goals,”²⁹ which directly reflects the Fifth Circuit’s definition of a 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).

Mr. Fuller has demonstrated, at a minimum, that the municipal judge officially adopted the policy that the Court noted was “perhaps most shocking”: the judge approved written procedures, which the police chief agreed to post in the jail booking area, requiring jail time for arrestees who cannot pay without any corresponding procedure for producing the arrestee for a hearing.³⁰ Mr. Fuller has also demonstrated the municipal judge’s and the police chief’s “acquiescence in a longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity.” *ODonnell*, 892 F.3d at 155; *see also Jauch*, 874 F.3d at 435. The municipal judge, city marshal, and current police chief all testified to this standard operating procedure without difficulty.³¹ The procedure was carried out nearly every day,³² and integrated into Santa Fe

²⁹ Police Chief Job Description, Meadows Tr. Ex. 1. The City Manager delegated these powers to the Police Chief in his job description, which has not changed since 2009. Meadows Tr. 179:17–181:16 (“[T]o your knowledge, did the city manager draft that job description? A: Yes. Q: And hire Chief Campbell to perform the duties described in essential job functions in that description? A: Yes.”). The City Manager formally delegated his power to “direct and supervise the administration of all departments.” Santa Fe, Tex. Home Rule Charter § 4.02(b), attached as Ex. 8.

³⁰ Jail Release Procedures (“Sit out time in jail (100.00 per day (24 hrs) per charge).” 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.”).

³¹ 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 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.”).

³² Millo Tr. 81:11–82:5, 107:13–108:3.

infrastructure by way of form warrants authorizing jail time,³³ software allowing the Police Department to recall *capias pro fine* warrants without judicial approval³⁴ and tailor-made forms indicating that officers had already arrested, jailed, and released defendants under *capias pro fine* warrants with time served.³⁵ The police chief knew of these practices³⁶: 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.³⁷ Incoming police officers were explicitly trained not to produce defendants arrested under *capias pro fine* warrants for hearings.³⁸ There can be no genuine dispute that jailing people for failure to pay, without a hearing inquiring into the reasons for failure to pay, was standard operating procedure

³³ 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.”).

³⁴ 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.”).

³⁵ *E.g.*, Fuller Case File at CSF 2518; Snider Tr. 287:8–25 (agreeing Fuller’s time served form was “typical”).

³⁶ 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.”).

³⁷ 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).

³⁸ Millo Tr. 119:8-122:11.

in the Santa Fe Municipal Court and Santa Fe Police Department. Neither the municipal judge nor the police chief issued any policy to stop it.³⁹

Accordingly, Mr. Fuller has demonstrated that his right to an ability to pay hearing was violated by an administrative policy officially adopted by the municipal judge, and by standard operating procedure in which the municipal judge and the police chief acquiesced. He is entitled to summary judgment on Claim 1.

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

A. Santa Fe Municipal Court Sentenced Defendants to Potential Jail Time Without Appointing Counsel for Their Defense

Santa Fe Municipal Court never appoints counsel for defendants, and never elicits waivers of the right to counsel from defendants.⁴⁰ Instead, the Court accepts no contest and guilty pleas from unrepresented defendants in a system of “assembly-line justice,”⁴¹ and triggers jail terms for those who fail to pay their fines. *Argersinger v. Hamlin*, 407 U.S. 25, 36 (1972). But the Sixth Amendment caselaw is clear: uncounseled misdemeanor convictions are unreliable, and cannot serve as a basis for incarceration.

³⁹ For example, the municipal judge could have issued a standing order requiring clerks to schedule ability to pay hearings before issuing *capias pro fine* warrants. The police chief could have issued a rule requiring officers to execute *capias pro fine* warrants by taking defendants to court, rather than to jail. These are just two of many options available to these policymakers. And, as discussed above, the city marshal’s supervisor was deliberately indifferent to the need to supervise and train the city marshal.

⁴⁰ 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.”).

⁴¹ Snider Tr. 114:14–115:9 (“[H]e takes the plea from everyone and then he calls people up one at a time . . .”), 170:16–171:11 (“[H]e gives them the opportunity to state anything they want to about the charge. Then he finds them guilty and then he then he tells them how much the fine is. And they are sent to the window to make arrangements.” . . . Q: [D]oes the judge affirmatively ask people about their finances? . . . A: . . . No.).

Mr. Fuller was not represented by counsel, nor did he waive his right to counsel, at any point during his plea or sentencing.⁴² Yet the court’s sentence contemplated a potential jail term if Mr. Fuller failed to pay by specifying that a *capias pro fine* warrant would issue.⁴³ That warrant did, in fact, issue, triggering a jail term resulting from an uncounseled criminal conviction.

B. Santa Fe is Liable for Jailing Mr. Fuller in Violation of His Right to Counsel

Mr. Fuller has demonstrated the three elements of municipal liability for his Sixth Amendment claim: Santa Fe jailed him in violation of the Sixth Amendment right to counsel, as a result of longstanding, well-settled practices in which the municipal judge and the police chief acquiesced.

First, Mr. Fuller was jailed in violation of the Sixth Amendment. The Sixth Amendment requires appointment of counsel in all misdemeanor prosecutions that “end up in the actual deprivation of a person’s liberty.” *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972). For decades, the Supreme Court has consistently drawn the line at actual imprisonment. *Id.* (requiring counsel in any “case that actually leads to imprisonment even for a brief period”); *Scott v. Illinois*, 440 U.S. 367, (1979) (“[A]ctual imprisonment [i]s the line defining the constitutional right to appointment of counsel.”); *Nichols v. United States*, 511 U.S. 738, 746 (1994) (holding constitutional line is “between criminal proceedings that resulted in imprisonment, and those that did not”); *Glover v. United*

⁴² Fuller Tr. 99:11–101:1, 111:24–117:3, 126:1–8, 127:16–128:2; Fuller Case Files (lacking indication of counsel).

⁴³ Fuller Case File at CSF 2528 (payment plan: “**FAILURE TO MAKE MONTHLY PAYMENTS WILL RESULT IN A CAPIAS PRO FINE . . .**”).

States, 531 U.S. 198, 203 (2001) (“any amount of actual jail time has Sixth Amendment significance”); *Alabama v. Shelton*, 535 U.S. 654, 662 (2002) (“It is thus the controlling rule that absent a knowing and intelligent waiver, no person may be imprisoned for any offense unless he was represented by counsel at his trial.” (quotation marks omitted)).

Here, Mr. Fuller was actually imprisoned as a result of his uncounseled conviction in Santa Fe Municipal Court. The court triggered Mr. Fuller’s jail term by issuing a *capias pro fine* warrant, which authorized officers to jail him until his fine was satisfied with jail credit. Fuller Case File at CSF 2528 (payment plan: “**FAILURE TO MAKE MONTHLY PAYMENTS WILL RESULT IN A CAPIAS PRO FINE . . .**”), 2529 (*capias pro fine* warrant: “[P]lace [him] in jail . . . until [he] is otherwise legally discharged.”) . It does not matter that the court sentenced Mr. Fuller to a payment plan first, and a jail term that would be triggered only if he failed to pay. This type of jail term is a “suspended sentence” of incarceration, which is “imposed for the offense of conviction.” *Shelton*, 535 U.S. at 662. Once the jail term was triggered, Mr. Fuller’s uncounseled conviction resulted in imprisonment for his underlying offense.⁴⁴ *Id.* As the Supreme Court held in *Alabama v. Shelton*, “This is precisely what the Sixth Amendment, as interpreted in *Argersinger* and *Scott*, does not allow.” *Id.*

Shelton settles this case. And if there were any doubt, the rationale for holding that the Sixth Amendment protects Mr. Fuller from a jail term for his conviction in Santa Fe Municipal Court is the same rationale that applies throughout Sixth Amendment caselaw:

⁴⁴ The court administrator specifically testified that, to her knowledge, the Santa Fe Municipal Court had never jailed anyone for contempt of court. Snider Tr. 113:15–18.

uncounseled convictions lack reliability. “[T]he central premise . . . [is] that actual imprisonment is a penalty different in kind from fines or the mere threat of imprisonment,” which calls for higher confidence in the underlying conviction. *Shelton*, 535 U.S. 661. Thus, “the key Sixth Amendment inquiry [is] whether the adjudication of guilt corresponding to the [] sentence is sufficiently reliable to permit incarceration.” *Id.* at 667; accord *Argersinger*, 407 U.S. at 31 (“The assistance of counsel is often a requisite to the very existence of a fair trial.”).

The Court’s concerns about the unreliability of uncounseled convictions, outlined in detail in *Argersinger v. Hamlin*, apply here with full force. The “legal and constitutional questions” involved in municipal court prosecutions are just as complex as those in a felony trial, where counsel is required as a matter of fairness. *Id.* at 33.⁴⁵ The municipal court habitually ignores the requirement that guilty pleas must be knowing, intelligent, and voluntary: in Santa Fe, defendants can be convicted without appearing before the municipal judge.⁴⁶ Even when defendants appear in person, they are invited to enter guilty pleas without any colloquy to ensure their understanding that they are being convicted of a crime, without being advised of the “prospect of going to jail,” and without being advised that the prosecutor may offer a plea deal—and so are not “treated fairly by the prosecution.”⁴⁷ *Id.* at 34. There is also a stark imbalance of resources

⁴⁵ *E.g.*, Snider Tr. 182:23–183:11 (describing legal research prosecutor undertakes to interpret penal code).

⁴⁶ Getty Tr. 33:13–25, Snider Tr. 147:13–148:9.

⁴⁷ Getty Tr. 22:3–16; Snider Tr. 165:25–167:3 (“Q: Does the judge ever advise people that they’re pleading guilty or no contest to a crime? A: I—I don’t think so—ever come up. . . . Q: Does he ever advise people that they are risk of being arrested or jailed if they don’t pay the fines that could results from their conviction? A: Yes . . . he does state it to some people who are, you know, refusing to take care of their business Q: It sounds like that warning generally comes after the person’s already convicted and fails to make payments, is that correct? A: Yeah.”).

between the City and pro se defendants who are ultimately jailed. Santa Fe employs a city attorney with experience and training prosecuting Class C misdemeanors.⁴⁸ The city attorney has an office at the justice center paid for by the city.⁴⁹ Court personnel help the prosecutor by designing charging documents to facilitate successful prosecution and providing him with administrative support.⁵⁰ By contrast, the most people who are jailed under *capias pro fine* warrants are severely lacking in time and money,⁵¹ and many do not have the legal wherewithal to successfully assert their innocence at trial.⁵²

The court also suffers from systemic administrative issues and misguided budgetary concerns that further undermine the reliability of convictions. Fine amounts are driven by the city's budgetary needs.⁵³ The municipal court declined to dismiss large numbers of cases, despite identifying them as cases that could not be successfully prosecuted, meaning that defendants may plead to cases that cannot be successfully prosecuted at all.⁵⁴ This is especially troubling because the municipal judge expressed the

⁴⁸ RFA No. 35.

⁴⁹ Snider Tr. 151:17-152:5.

⁵⁰ Snider Tr. 26:11–27:3 (“I had to redo all of the complaints for all of the charges. And—because they were incorrect.”), 86:12–87:7 (“Most of the complaints were worded incorrectly. . . . [T]hey weren’t taken specifically out of the traffic code. . . . I believe they were invalid complaints. Not only that, a major issue that changed was they used to . . . not even print complaints. . . . There are complaints in some cases, not all.”), 90:8–9 (“[I]t’s a toss-up what had a complaint and what didn’t.”), 152:16-23 (describing administrative support role).

⁵¹ Millo Tr. 29:11–33:9 (“[O]nes I’m dealing with may have had a minimum paying job, and they need every dollar they had.”).

⁵² *E.g.*, Fuller Tr. 91:12–25 (expressing uncertainty about the meaning of “plea”); *Argersinger*, 407 U.S. at 31 (“Even the intelligent and educated layman . . . lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one.”) (quoting *Powell v. Alabama*, 287 U.S. 45, 68–69 (1932)).

⁵³ Snider Tr. 40:17–22 (Q: Do you remember anything that kind of spurred you to . . . [say] we should probably increase these fines? A: Probably the budget workshops, working on budgeting.”).

⁵⁴ Snider Tr. 90:19–91:24 (“Q: When you pulled the cases . . . where the complaining officer was no longer employed . . . , did you find a lot of cases? A: Yes. Q: Did Judge Getty dismiss all of those cases? A: He did not I didn’t want to get rid of every single case that we had. . . . That is crazy. . . . Q: Why did you dismiss some of the

view that he lacks authority to dismiss cases sua sponte.⁵⁵ Further, significant problems with recordkeeping practices at the court resulted in routine errors,⁵⁶ such as cases remaining open although the defendant had satisfied her obligations,⁵⁷ warrants issuing incorrectly,⁵⁸ and failure to accurately track whether defendants had already been jailed.⁵⁹ Santa Fe engages in exactly the type of “assembly-line justice” described in *Argersinger*, eliciting and accepting pleas *en masse* without any lawyer—neither prosecutor nor judge nor defender—having so much as glanced at the case file.⁶⁰ *Id.* at 36.

Even if Santa Fe had given Mr. Fuller a robust ability to pay hearing before jailing him, that hearing would not have been enough to compensate for the lack of counsel at trial, because “a hearing so timed and structured . . . does not even address the key Sixth Amendment inquiry” into the reliability of the underlying sentence. *Shelton*, 535 U.S. at

warrants? A: . . . [I]t’s very unlikely you’re going to be able to prosecute any of them anyway, the officers were no longer here.”), 272:3–5 (“Q: [D]o you know whether anyone was ultimately arrested on those cases? A: No . . .”).

⁵⁵ Getty Tr. 112:13–18 (“Q: Do you not dismiss cases sua sponte when you find that they can’t be successfully prosecuted? A: No. . . . I don’t have the authority to do that.”). *Accord* Snider Tr. 162:12–15 (“That’s illegal.”).

⁵⁶ Snider Tr. 32:16–24 (agreeing that court records cleanup was an “ongoing project”), 52:6 (describing 30,000 cases with recordkeeping errors: “So, you know, 30,000 in corrections to me is a lot.”).

⁵⁷ Snider Tr. 30:5–31:15 (“A: [T]hey definitely weren’t doing those correctly, because we ended up with cases that were still open in our court software, but the case jacket was in the closed file. . . . Q: So that’s one example of someone who fulfilled everything that was required by the Court and yet the [] case remained open . . . ? A: Yes.”).

⁵⁸ Snider Tr. 275:2–21 (describing warrants issuing where officers had not written a ticket). *Compare id.* at 163:7–10 (“[Y]ou’re messing with somebody’s . . . liberty, that’s the kind of stuff you don’t want to make a mistake on.”).

⁵⁹ Snider Tr. 93:25–94:4 (“There was no release paperwork. . . . [T]he records clerk told me that ‘Oh, you might get it, some days you might not.’”), 211:4–22 (“[W]e might run across . . . warrants that were no longer active . . . [but] they still have a warrant status. . . . Q: And if this happened to also be a case where dispatch failed to recall the warrant, would that warrant still be active? A: Yes. Q: And that would be true even though the person had served their time at \$100 a day for their outstanding fine? A: Yes.”), 233:17–25 (agreeing that the municipal court received time served paperwork “Sometimes if we are lucky”).

⁶⁰ Snider Tr. 151:12–16, 162:3–11 (agreeing that defendants might plead guilty or no contest in a case obviously lacking probable cause), 163:7–21 (“Judge Getty would never know if there’s a problem with the file. He doesn’t review the file. . . . He would be found []—guilty and a fine would be assessed.”).

667. It was simply unconstitutional to jail Mr. Fuller for his underlying uncounseled criminal conviction.

The other elements of municipal liability are equally clear. As established above, it was standard operating procedure to issue warrants authorizing jail terms for—and execute those warrants by actually imprisoning—any defendant who missed a payment toward his fines, regardless of whether he was represented at trial. The municipal judge and the police chief knew of this policy and did not stop it.⁶¹

Accordingly, Santa Fe is liable for a custom resulting in Mr. Fuller’s imprisonment in violation of the Sixth Amendment right to counsel.

III. Santa Fe Officers Deprived Mr. Fuller of Adequate Food While Keeping Him Locked in Jail

A. Santa Fe Did Not Allocate Prisoners Adequate Food, and Failed to Ensure That Prisoners Were Actually Fed

When Santa Fe officers fed Mr. Fuller, they fed him the same thing they fed every prisoner: pop tarts for breakfast, pop tarts for lunch, and a Banquet brand frozen meal for dinner.⁶² Santa Fe officers did not feed prisoners anything outside of these “meals.”⁶³ This diet adds up to approximately 1000 calories and 17 grams of protein per day,⁶⁴

⁶¹ For example, rather than issuing *capias pro fine* warrants, the municipal judge could have issued a standing order that hearings should be scheduled for people who failed to pay their fines for uncounseled misdemeanor convictions. The police chief could have issued a rule that *capias pro fine* warrants must be executed by taking the defendant to court, rather than to jail. These are just two of many options available to these policymakers.

⁶² Fuller Dep. 81:5–83:19; Millo Dep. 66:1–17 (“Q. What would you feed them for breakfast? . . . A: Pop Tarts. Q: What would you feed them for lunch? A: Pop tarts. Q: What would you feed them for dinner? A: A Banquet frozen dinner. . . . Q: Was it part of the normal meal routine to have additional snacks? A: No. It actually got me a letter of reprimand.”); Meadows Tr. 97:14–98:8 (describing same standard diet).

⁶³ Meadows Tr. 98:6-9.

⁶⁴ 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).

which is about enough to feed a toddler and far too little to feed a sedentary adult of any age.⁶⁵ Mr. Fuller was 27 years old when Santa Fe jailed him,⁶⁶ which meant he required approximately 2400 calories and 56 grams of protein a day under federal standards used by the Texas Department of Criminal Justice to feed its prisoners.⁶⁷

On top of the gross inadequacy of food allocated to prisoners, Santa Fe also failed to designate anyone with responsibility for feeding prisoners, leading to a significant risk that they would not be fed at all. There was no system for consistent communication about who the marshal was booking into jail.⁶⁸ The police chief agreed that people on duty know whether prisoners were fed by “just being together” during their shift.⁶⁹ But the staff on duty often got busy—as can be expected—and did not have time to feed prisoners.⁷⁰ And there was no way for a supervisor to check whether prisoners were fed, because meals were not consistently logged.⁷¹

⁶⁵ USDA Dietary Guidelines for Americans 2015–2020, Ex. 11, App’x 2 at 77–78 & App’x 7 at 97 (recommending that children ages 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).

⁶⁶ Fuller Tr. 9:12, 93:9–12.

⁶⁷ USDA Dietary Guidelines, App’x 2 at 78 & App’x 7 at 97; TDCJ Food Service Procedures Manual, Ex. 12 at 1.

⁶⁸ Meadows 162:5-8 (“Q: Are there procedures in place for the marshal to notify the on-duty sergeant when booking someone into jail? A: Not on our end.”).

⁶⁹ Meadows Tr. 106:23-24 (“Q: So essentially they will know by—A: Just being together.”), 121:10-17 (“[J]ust knowledge of your shift and what your shift is doing.”).

⁷⁰ Millo Tr. 126:4–19 (“You walk in that jail, them prisoners let you know whether they’ve been fed or not. . . . And then I go to dispatch and I say hey, anybody feed them their noon meal? No, we got tied up in such and such.”), 128:2–5 (describing prisoners complaining about not being fed: “[P]eople complain about that. And I don’t blame them. If I was in jail, I’d want to get fed, too. The little bit they feed you.”).

⁷¹ Meadows Tr. 102:24-25 (“I can’t say that in 2015 they were always logged); Millo Tr. 69:1-12.

Unsurprisingly, jail staff forgot to feed prisoners on multiple occasions.⁷² In the absence of any failsafe to report missed meals, the police chief testified that the best way for someone to get attention from a police officer was to kick their cell door.⁷³ Prisoners have had to call a family member and have them notify jail personnel from outside that their loved one had not been fed.⁷⁴ Rather than implementing a system to prevent this problem, the chief's response was that supervisors should simply make a note to "be on top of my game a little bit better."⁷⁵ The police chief at the time Mr. Fuller was jailed was well aware that prisoners were not reliably fed—the problem was so widespread that when a new police chief was hired after Mr. Fuller was jailed, the court administrator requested a meeting during his first week to discuss responsibility for feeding prisoners.⁷⁶

This risk translated into actual deprivation of food for Mr. Fuller, who was completely deprived of food for multiple meals because Santa Fe officers forgot to feed him.⁷⁷ Officers forgot to feed him his frozen meal for dinner one night, and forgot to feed

⁷² Millo Tr. 237:11-14; Nitpick Email, Millo Tr. Ex. 13 (responding to email about prisoner who was not fed: "[T]his will not be a platform for Marshal Wood to nitpick if jail . . . feedings are conducted or not . . . It's a very good possibility that Sergeant Weiland was not even aware the prisoner was in our facility. . . . [T]he evening shift change can be a very busy time . . . and feedings/jail checks can and will be delayed.").

⁷³ Meadows Tr. 104:8-10 ("A common practice with people in jail are to bang on the door.").

⁷⁴ Meadows Tr. 105:4-6 ("Q: Have people let officers know that they haven't been fed through family members calling the department? A: It's happened. Uh-huh.").

⁷⁵ Meadows Tr. 105:12-18.

⁷⁶ Snider Tr. Ex. 20 at 11-12 (Email from Lisa Snider to Chief Campbell 8 months after Mr. Fuller was jailed: "I realize this is only day 2 for you, and at your earliest convenience, I would like to meet with you and discuss some important issues that need resolution," later indicating that they discussed "Jail checks & feeding prisoners" and "Suggestion of getting another board to write information on everyone in jail."); Millo Tr. 235:14-24 ("You're the chief. You come into work. . . . [H]e sees he got three guys in there . . . and he goes, I'm going to talk to that guy. . . . And while he's back there, you can't help but talk to the others too, because everybody wants to know how much time have I got left, boss? . . . Boss, they ain't fed me.").

⁷⁷ Fuller Tr. 81:5-83:19.

him pop tarts on at least one other occasion.⁷⁸ On these days, Santa Fe provided Mr. Fuller well under 1000 calories a day—not even enough food to keep a toddler healthy.⁷⁹ He got so hungry that he had to kick at the jail door to remind them to feed him.⁸⁰

B. Santa Fe is Liable for Depriving Mr. Fuller of Adequate Food in Violation of the Eighth Amendment

Mr. Fuller has demonstrated the three elements of municipal liability for his Eighth Amendment claim: Santa Fe jailed him and deprived him of adequate food as a result of longstanding, well-settled practices in which the police chief acquiesced.

As this Court previously ruled, the Eighth Amendment requires Santa Fe to provide its prisoners with the “minimal civilized measure of life’s necessities.” Mem. at 31 (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). Food is one of life’s necessities. The Fifth Circuit has repeatedly held that this includes nutritionally and calorically adequate food. *Id.* at 31–32 (citing, *inter alia*, *Gates v. Cook*, 376 F.3d 323, 332–33 (5th Cir. 2004) (“adequate food”); *Berry v. Brady*, 192 F.3d 504, 508 (5th Cir. 1999) (“nutritionally and calorically adequate diet”)). *See also Brown v. Plata*, 563 U.S. 493, 511 (2011) (“A prison that deprives prisoners of basic sustenance . . . is incompatible with the concept of human dignity and has no place in civilized society. If government fails to fulfill this obligation, the courts have a responsibility to remedy the resulting

⁷⁸ *Id.*, *see, e.g., id.* 76:16–17 (“I remember banging on the door for a couple of hours trying to get somebody to come.”), 83:1–15 (“It was late that night when I asked. Well, I was banging on the door to get somebody. . . . An officer came in and yelled at me for banging on the door. And I explained to him that I wasn’t trying to be a problem, but I was just—I was hungry. I hadn’t eaten. . . . [And he] came back about three hours—three to four hours later and gave [food] to me.”). Officers logged only two meals during Mr. Fuller’s three-day jail term. Fuller Inmate Log, Meadows Tr. Ex. 10 at CSF 0154.

⁷⁹ USDA Dietary Guidelines, App’x 2 at 77–78/Fuller 0140–41, App’x 7 at 97/Fuller 160 (recommending that children ages 1–3 eat 1000 calories and 13 grams of protein per day).

⁸⁰ Fuller Tr. 76:16–17 (“I remember banging on the door for a couple of hours trying to get somebody to come.”).

Eighth Amendment violation.”); *Shelby v. Dupree*, 574 Fed. App’x 397, 399 (5th Cir. 2014) (requiring “well-balanced meals containing sufficient nutritional value to preserve [prisoners’] health”).

Santa Fe’s prisoner diet constitutes cruel and unusual punishment if it is an objective denial of life’s necessities, and prison officials subjectively were deliberately indifferent to this deprivation. *Woods v. Edwards*, 51 F.3d 577, 581 (5th Cir. 1995). Mr. Fuller’s evidence of the 1000-calorie prison diet easily satisfies both elements: the prisoner diet was widely known among jail staff, and it consisted of significantly less than half the calories and protein that young men like Mr. Fuller require to stay healthy. *Accord* Millo Tr. 128:2–5 (describing prisoners complaining about not being fed: “[P]eople complain about that. And I don’t blame them. If I was in jail, I’d want to get fed, too. The little bit they feed you.”). Moreover, the police chief knew that prisoners were regularly deprived of meals altogether, yet he did not assign responsibility to any one officer or create any other system to ensure that prisoners were reliably fed.

Mr. Fuller has satisfied other elements of municipal liability: the inadequate diet fed to prisoners was standard operating procedure, and the diet “itself violates federal law.” *Jauch*, 874 F.3d at 435 (quoting *Bd. of Cnty. Comm’rs*, 520 U.S. at 404). Santa Fe’s liability is also supported by the failure to assign responsibility to feed prisoners or supervise whether feedings occurred, which, while facially lawful, was taken with “deliberate indifference” to a pattern of missed meals making the need for change “plainly obvious” to the police chief. *Littell*, 894 F.3d at 624 (quoting *Bd. of Cnty. Comm’rs*, 520 U.S. at 407). The police chief knew of both of these problems, and did not

issue any policy to ensure that prisoners were adequately fed, or that distribution of meals was supervised. Accordingly, Mr. Fuller is entitled to summary judgment on his Eighth Amendment claim.

CONCLUSION

For the foregoing reasons, Mr. Fuller is entitled to summary judgment.

Dated: May 24, 2019

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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CERTIFICATE OF CONFERENCE

I certify that I conferred with counsel for the City of Santa Fe about this motion before filing a letter requesting a pre-motion conference, and by email this afternoon. The City of Santa Fe is opposed.

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