

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

CHRISTINA ZAMORA, INDIVIDUALLY §
AND AS NEXT FRIEND OF M.Z.; §
RUBEN ZAMORA, INDIVIDUALLY §
AND AS NEXT FRIEND OF M.Z.; AND §
JAMIE TORRES, INDIVIDUALLY AND §
AS NEXT FRIEND OF K.T., §
Plaintiffs, §

vs. §

CASE NO. 2:23-cv-00017-AM

DANIEL DEFENSE, LLC; DANIEL §
DEFENSE, INC.; OASIS OUTBACK, §
LLC; CITY OF UVALDE; UVALDE §
CONSOLIDATED INDEPENDENT §
SHOOL DISTRICT; UVALDE §
CONTY; UVALDE CONSOLIDATED §
INDEPENDENT SCHOOL DISTRICT §
POLICE DEPARTMENT (“UCISD-PD”) §
CHIEF PEDRO ‘PETE’ ARREDONDO; §
UVALDE POLICE DEPARTMENT §
 (“UPD”) LIEUTENANT AND ACTING §
CHIEF MARIANO PARGAS; FORMER §
UPD OFFICER AND UCISD SCHOOL §
BOARD MEMBER JESUS “J.J.” §
SUAREZ; UPD OFFICER MAX §
DORFLINGER; UVALDE COUNTY §
SHERIFF RUBEN NOLASCO; UVALDE §
COUNTY CONSTABLE EMMANUEL §
ZAMORA; UVALDE COUNTY §
CONSTABLE JOHNNY FIELD; TEXAS §
DEPARTMENT OF PUBLIC SAFETY §
 (“TDPS”) CAPTAIN JOEL §
BETANCOURT; TDPS SERGEANT §
JUAN MALDONADO; TDPS RANGER §
CHRISTOPHER KINDELL; and DOES 1- §
119, §
Defendants. §

**DEFENDANT UVALDE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT’S
RESPONSE TO PLAINTIFFS’ OPPOSED MOTION FOR LEAVE TO AMEND
COMPLAINT**

COMES NOW, Defendant Uvalde Consolidated Independent School District (UCISD) and files this Response to Plaintiffs' Opposed Motion for Leave to Amend Complaint and respectfully would show the Court as follows:

I. PROCEDURAL HISTORY

1. On February 22, 2023, Plaintiffs Christina Zamora, Individually and as Next Friend of M.Z., Ruben Zamora, Individually and as Next Friend of M.Z. and Jamie Torres, Individually and as Next Friend of K.T. filed suit following the tragedy at Robb Elementary School, during which M.Z. and K.T. were wounded by Salvador Ramos. ECF 1. Plaintiffs asserted that M.Z.'s and K.T.'s constitutional rights were violated, putting forth several theories of liability against UCISD pursuant to 42 U.S.C. § 1983. *Id.*

2. On June 13, 2023, UCISD filed its motion to dismiss in part for lack of subject matter jurisdiction and motion to dismiss for failure to state a claim upon which relief can be granted. ECF 103. The Plaintiffs did not amend their pleading in accordance with LR CV-15 in response to UCISD's motion to dismiss. *See* ECF 126. UCISD's motion to dismiss remains pending.

3. One year later, on June 14, 2024, Plaintiffs filed their Opposed Motion for Leave to Amend Complaint, seeking leave to amend on the basis of purported "new" facts. ECF 173. The main thrust of Plaintiffs' amendment concerns new factual and legal allegations against Defendant Daniel Defense, and as to UCISD, Plaintiffs' allegations are limited to assertions that former UCISD Chief of Police Arredondo was the de facto on-scene incident commander and new alleged quotes from law enforcement officers that fear of Ramos's rifle caused them to disregard their training and treat Ramos as a barricaded subject rather than an active shooter. ECF 173 at 4-5. Plaintiffs claim these new allegations further establish municipal liability as to UCISD because: (1) Arredondo was allegedly acting as a final policymaker when he allegedly

chose to disregard the active shooter policy and institute a policy to barricade the victims inside the classroom; and (2) by virtue of the authority Arredondo wielded, he and other law enforcement officers were able to involuntarily confine those trapped in the classroom by treating Ramos as a barricaded subject and not an active shooter. ECF 175 at 9-10.

II. ARGUMENT & AUTHORITIES

4. Plaintiffs' request for leave to amend their complaint should be denied because their proposed amendment is futile. Leave to amend may be denied if the proposed amendment would cause undue delay or prejudice to the non-movant, if it is motivated by bad faith or dilatory motives, if there have been repeated failures to cure deficiencies with prior amendment, or if the amendment is futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962); see also *Martin's Herend Imports, Inc. v. Diamond & Gem Trading*, 195 F.3d 765, 770 (5th Cir. 1999); *Wimm v. Jack Eckerd Corp., et al.*, 3 F.3d 137, 139 (5th Cir. 1993). "Amendments are futile where the proposed amendment fails to state a claim, and courts review them under the 'same standard of legal sufficiency as applies under Rule 12(b)(6).'" *Nix v. Major League Baseball*, 62 F.4th 920, 935–36 (5th Cir. 2023) (internal citation omitted).

5. The Plaintiffs have not and cannot argue against futility with respect to their claims against UCISD. In fact, Plaintiffs acknowledge "[w]hen futility is advanced as the reason for denying an amendment to a complaint, the court is usually denying leave because the theory presented in the amendment lacks legal foundation or because the theory has been adequately presented in a prior version of the complaint." ECF 173 at 6 (quoting *Jamieson By & Through Jamieson v. Shaw*, 772 F.2d 1205, 1208 (5th Cir. 1985)). However, Plaintiffs make no argument that their requested amendment as to UCISD is not futile, instead attempting to conflate futility with a distinct element for the court to consider—repeated failures to cure deficiencies. ECF 173

at 6. Because the proposed amendments are futile, the Court is well within its discretion to deny Plaintiffs leave to amend their complaint.

6. Futility is present in this case in the first instance because Plaintiffs' injuries were caused by a non-governmental actor, Ramos, and they cannot establish entitlement to the only exception to the rule that a governmental entity's failure to protect an individual from private violence does not violate the Constitution—the "special relationship"—which is available in the Fifth Circuit only in situations of incarceration, institutionalization, or other similar restraint of personal liberty. *DeShaney v. Winnebago County Dep't. of Social Servs.*, 489 U.S. 189, 195, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989); *Walton v. Alexander*, 44 F.3d 1297, 1302 (5th Cir. 1995). Similar cases regarding the response to mass shooter incidents have consistently found that constitutional claims against first responders and their employers are not cognizable, even where they asserted the "custodial" relationship exception to *DeShaney*. *See, e.g. Vielma v. Gruler*, 347 F. Supp. 3d 1122 (M.D. Fla. 2018), *aff'd*, 808 F. App'x 872 (11th Cir. 2020); *Vielma*, 808 F. App'x 872 (11th Cir. 2020); *L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323, 1327 (11th Cir. 2020).

7. Plaintiffs' proposed amendments are further futile, because even if they could establish a constitutional violation, in order to state a claim against UCISD, they must also allege facts showing governmental liability under Section 1983, which requires: (1) a policymaker with final policymaking authority; (2) an official policy; and (3) a violation of constitutional rights whose "moving force" is the policy or custom. *See Monell v. Department of Social Services of New York*, 436 U.S. 658, 691 (1978); *Doe ex rel. Magee v. Covington County Sch. Dist. ex rel. Keys*, 675 F.3d 849, 866 (5th Cir. 2012)(en banc). "[A] governmental entity cannot be held liable solely because it employs a tortfeasor—or, in other words, a governmental entity

cannot be held liable under § 1983 on a *respondeat superior* theory.” *Doe on Behalf of Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 214 (5th Cir. 1998)(5th Cir. 1998) (citing *Monell*, 436 U.S. at 691).

8. In their proposed Amended Complaint, as in their Original Complaint, Plaintiffs assert, without benefit of factual allegations showing a delegation of policymaking authority or any type of legal support, that UCISD’s former Chief of Police, Arredondo, was a final policymaker. ECF 173 at 9-10. Such allegation fails as a matter of law. Whether a particular official has “final policy-making authority” is a question of state law. *St. Louis v. Praprotnik*, 485 U.S. 112, 128 (1988). It is settled law that, in Texas, only the board of trustees has final policy-making authority in an independent school district. TEX. EDUC. CODE §11.151; *Jett v. Dallas Indep. School Dist.*, 7 F.3d 1241, 1245 (5th Cir. 1993). Superintendents of schools, school administrators, principals, teachers, and school staff, including chiefs of police, do not have final policy-making authority in a school district. *See Jett*, 7 F.3d at 1245; *Teague v. Texas City Indep. Sch. Dist.*, 386 F.Supp.2d 893, 896 (S.D. Tex. 2005), *aff’d* 185 Fed. Appx. 355 (5th Cir. 2006); *Ali v. La Marque ISD Educ. Found., Inc.*, No. CIV.A. G-05-276, 2005 WL 1668146, at *3 (S.D. Tex. July 14, 2005). Plaintiffs’ request to amend is futile because their proposed amended complaint cannot cure the pleading deficiencies identified in UCISD’s pending motion to dismiss.

WHEREFORE, PREMISES CONSIDERED, based on the foregoing, Uvalde Consolidated Independent School District prays that this Court deny Plaintiffs’ request for leave to amend their complaint as to UCISD and to dismiss with prejudice all of Plaintiffs’ claims against it. Should the Court grant Plaintiffs’ motion for leave to amend, UCISD requests that the

Court issue an order granting it leave to respond to Plaintiffs' First Amended Complaint within 21 days of the Court's order granting Plaintiffs' Opposed Motion for Leave to Amend.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
UVALDE CONSOLIDATED INDEPENDENT
SCHOOL DISTRICT**

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 21st day of June, 2024, a true and correct copy of the foregoing was electronically served on all counsel of record through the Clerk of the Court using the CM/ECF system.

//s// Katie E. Payne
Katie E. Payne

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**ORDER DENYING PLAINTIFFS’ OPPOSED MOTION FOR LEAVE TO AMEND
COMPLAINT**

Defendant Uvalde Consolidated Independent School District's Response to Plaintiffs' Opposed Motion to Leave to Amend Complaint (Dkt. No. 173) has been carefully considered by this Court. The Court, having reviewed and considered the said Motion and having reviewed the items on file herein, is of the opinion that said Motion should be DENIED.

Therefore, it is hereby ORDERED, ADJUDGED, and DECREED that Plaintiffs' Opposed Motion to Leave to Amend Complaint (Dkt. No. 173) is in all things DENIED.

IT IS SO ORDERED on this the ____ day of _____, 2024.

CHIEF UNITED STATES DISTRICT JUDGE
ALIA MOSES