UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

SANDRA C. TORRES, INDIVIDUALLY AND AS MOTHER AND REPRESENTATIVE OF THE ESTATE OF DECEDENT, E.T., et al.,	§	
Plaintiffs,	§	Case No. 2:22-CV-00059-AM
v.	§	
DANIEL DEFENSE, LLC, et al.,	§	
Defendants.	§	

PLAINTIFFS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION TO AMEND

To the Honorable Chief U.S. District Court Judge Moses:

Sandra C. Torres, individually and as mother and representative of the estate of decedent, E.T., and as next friend of E.S.T., Minor Child; Eli Torres, Jr.; and Justice Torres (collectively "Plaintiffs") file this brief in further support of their Motion to Amend the Complaint and in reply to the opposition filed by Defendant Uvalde Consolidated Independent School District ("UCISD"). The Court should grant Plaintiffs' motion for the reasons set forth below.

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PRELIMINARY STATEMENT

On June 14, 2024, Plaintiffs moved to amend their complaint to add additional facts and allegations regarding the May 24, 2022, mass shooting at Robb Elementary School in Uvalde, Texas, that have surfaced in recent months. ECF No. 146. The proposed amendments include additional allegations as to the appalling failures in the law enforcement response to the shooting, including by those employed by and working on behalf of Defendant UCISD.

Plaintiffs' motion is not futile. In fact, Plaintiffs' proposed amended complaint alleges facts related to the specific issues UCISD raised in moving to dismiss and now recycles in their opposition, including: (1) Defendant Pedro "Pete" Arredondo's policymaking authority on the day of the shooting, thereby establishing municipal liability as to UCISD; and (2) the law enforcement defendants' choice to trap Plaintiffs and the other students and teachers of Robb Elementary in classrooms 111 and 112 with the shooter, in violation of their Fourteenth Amendment rights.

With these additional facts, Plaintiffs' proposed amended complaint states claims against UCISD under *Monell v. New York City Dept. of Soc. Servs*, 436 U.S. 658 (1978) for its role in violating their rights under the Fourteenth Amendment.[1] The Court should grant Plaintiffs' motion.

ARGUMENT

I. LEGAL STANDARD

"The language of [Fed. R. Civ. P. 15(a)(2)] evinces a bias in favor of granting leave to amend," *Marucci Sports, LLC v. NCAA*, 751 F.3d 368, 378 (5th Cir. 2014),[2] and "[a]mendments should be liberally allowed." *Halbert v. City of Sherman*, 33 F.3d 526, 529 (5th Cir. 1994); *see also* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave [to amend] when justice so requires."). Where, as here, the proposed amendments do not "lack[] legal foundation," *Jamieson By & Through Jamieson v. Shaw*, 772 F.2d 1205, 1208 (5th Cir. 1985), those amendments are not futile.

[1] Defendant UCISD's opposition does not raise arguments as to Plaintiff's Fourth Amendment claim.
[2] All citations have been "cleaned up."

Where futility is the sole issue, courts must grant motions to amend if the newly pleaded facts would supplement existing claims or cure legal deficiencies in the complaint. *Id.* at 1211 ("the determination that the [amended] complaint is legally sufficient and not cumulative deprives the district court of all 'substantial reason' to deny leave and severely restricts its discretion to do so. In such a case, leave to amend should be granted. Justice requires no less."). Even if the Court is uncertain as to the viability of the proposed amendment on the merits, it should err on the side amendment. *See Jaraba v. Blinken*, 568 F. Supp. 3d 720, 740 (W.D. Tex. 2021) (considering new facts in motion to dismiss opposition as proposed amendments and granting leave to amend as to new allegations that were not "'clearly futile,'" even though "the Court cannot be certain at this stage that" they state "a viable claim"). At this stage, these amendments are—at very least—not "clearly futile."

II. PLAINTIFFS' MOTION IS NOT FUTILE

A. Arredondo Was an Official Policymaker

UCISD fails to even acknowledge the substantive facts regarding Defendant Arredondo's dereliction of his duties in responding to the shooting at Robb Elementary. UCISD ignores allegations that: the U.S. Department of Justice concluded that "Arredondo 'was the de facto on-scene incident commander' with the 'necessary authority' to command officers that day," ECF No. 146-1 at 55; Arredondo prioritized his own life over those of the children he confined with the shooter, calling dispatch and saying "we don't have enough fire power right now it's all pistol and he has an AR15," *id.* at 57; Arredondo exercised his authority by absurdly trying to "start negotiations" with an active shooter, *id.* at 67; and that Arredondo even prevented a law enforcement stack/entry team with a shield from entering the south side hallway, telling them to "hold on," *id.* at 69.

Instead, UCISD regurgitates the arguments it made in moving to dismiss, all of which remain incorrect. Preliminarily, "the specific identity of the policymaker is a legal question that need not be pled." *Groden v. City of Dallas*, 826 F.3d 280, 284 (5th Cir. 2016). At the pleading stage, the matter is not "settled" in UCISD's favor, *contra* ECF No. 150 at 5, and the Fifth Circuit "has 'previously found

that Texas police chiefs are final policymakers for their municipalities, and it has often not been a disputed issue in the cases.'" *Roundtree v. City of San Antonio, Texas*, No. SA18CV01117JKPESC, 2022 WL 903260, at *5 (W.D. Tex. Mar. 28, 2022) (quoting *Garza v. City of Donna*, 922 F.3d 626, 637 (5th Cir. 2019) and collecting cases). Even if the trustees had ultimate authority and responsibility over "the management of the public schools," Tex. Educ. Code § 11.151(b) (*see* ECF No. 150 at 5, citing statute), UCISD may still "delegate policymaking power by an express statement, by a job description or by other formal action"—such as delegating the policymaking powers related to a police department, including its response to a mass school shooting, to its police chief—while "retain[ing] the prerogative of the purse and final legal control by which it may limit or revoke the authority of the official." *Bennett v. City of Slidell*, 728 F.2d 762, 769 (5th Cir. 1984).[3]

At the pleading stage, "[P]laintiffs can state a claim for municipal liability as long as they plead sufficient facts to allow the court to reasonably infer that [UCISD] either adopted a policy that caused [the plaintiff's] injury or delegated to a subordinate officer the authority to adopt such a policy." *Longoria Next Friend of M.L. v. San Benito Indep. Consol. Sch. Dist.*, 942 F.3d 258, 271 (5th Cir. 2019) (citing *Groden*, 826 F.3d at 284, 286). Here, not only is Arredondo's alleged "job description," *Bennett*, 728 F.2d at 769, as the police chief relevant to him being a policymaker, but Arredondo "had co-authored UCISD's active shooter plan [and] was required by policy to set up a command post and serve as the on-site commander," ECF No. 26, Am. Compl. ¶ 130, again supporting the inference that UCISD delegated the policy as to its law enforcement response to a school shooting to Arredondo.[4]

Plaintiffs' proposed amendments bolster that inference, alleging facts as to Arredondo's exercise of authority that other officers deferred to—*e.g.*, trying to "start negotiations" with an active shooter, ECF No. 146-1 at 67—but they also include the U.S. DOJ's conclusion that "Arredondo

[3] UCISD's reliance on *Jett v. Dallas Indep. School Dist.*, 7 F.3d 1241, 1245 (5th Cir. 1993) also remains inapposite, as it had nothing to do with whether police chiefs have policymaking authority over police responses to crimes in progress at a school. *See* ECF No. 122 at 7-8.

[4] Further, under Fifth Circuit case law, policymakers are those who "decide the goals for a particular city function and devise the means of achieving those goals," *Bennett*, 728 F.2d at 769. Police chiefs are traditionally those who "decide the goals" and means of achieving them for police departments.

'was the de facto on-scene incident commander' with the 'necessary authority' to command officers that day," *id.* at 55. Plaintiffs have met their burden at the pleading stage to raise a reasonable inference as to Arredondo's policymaking authority; the proposed amendments are therefore not "clearly futile."

B. The Proposed Amended Complaint Adds Additional Decisions Arredondo Made in Violation of Plaintiffs' Fourteenth Amendment Rights

Next, UCISD repeats their arguments as to Plaintiffs' "custodial relationship" claim under the Fourteenth Amendments.[5] Notably, UCISD cites but does not discuss the holding in *Walton v. Alexander*, which provides that a special relationship may be found when someone "is involuntarily confined against his will through the affirmative exercise of state power," 44 F.3d 1297, 1306 (5th Cir. 1995). A special relationship exists where "the state has effectively taken the plaintiff's liberty under terms that provide no realistic means of voluntarily terminating the state's custody *and* which thus deprives the plaintiff of the ability or opportunity to provide for his own care and safety." *Walton*, 44 F.3d. at 1305. Further, *Walton* was re-heard *en banc*, holding that a special relationship might be found for "categor[ies] of persons in custody by means of 'similar restraints of personal liberty." *Walton v. Alexander*, 20 F.3d 1350, 1354 (5th Cir. 1994), *on reh'g en banc*, 44 F.3d 1297 (5th Cir. 1995).

UCISD trots out the same inapposite and out-of-circuit cases it previously cited, *Vielma v. Gruler*, 808 Fed. Appx. 872 (11th Cir. 2020) and *L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323 (11th Cir. 2020). But in *Vielma*, Plaintiffs alleged "Florida law prohibited them from carrying a weapon in a nightclub, the State had effectively placed them in custody." 808 F. App'x at 885 n. 4. *L.S. ex rel. Hernandez* is similarly distinguishable, as the plaintiffs there only alleged that school resource officers and the state compulsory attendance law gave rise to a custodial relationship. 982 F.3d at 1330. These are a far cry from the type of "affirmative exercise of state power" and "restraints of personal liberty" envisioned in *Walton*; neither case appeared to allege that the state had "effectively taken the plaintiff's

[5] UCISD does not address Plaintiffs other claims under the Fourth and Fourteenth Amendment in their opposition.

liberty under terms that provide no realistic means" of escaping "and which thus deprives the plaintiff of the ability or opportunity to provide for his own care and safety." *Walton*, 44. F.3d at 1300, 1305.

By contrast, Plaintiffs allege here that Arredondo, on behalf of UCISD, took their lives in his hands, and took affirmative actions to place them in a situation which provided "no realistic means of voluntarily terminating" the barricade outside the classrooms, and the students and their parents "of the ability or opportunity to provide for [their] own care and safety." *Walton*, 44 F.3d. at 1305. Plaintiffs' amendments add additional conduct by Arredondo in doing so. *See* ECF No. 146-1 at 55, 57, 67, 69. As the "'de facto on-scene incident commander' with the 'necessary authority' to command officers that day," *id.* at 55, Arredondo tried to "start negotiations," *id.* at 67 with the shooter—inevitably leading to the shooter (and Plaintiffs) remaining in the classrooms unable to escape—and prevented a law enforcement team equipped with a shield from attempting to save the students, telling them to "hold on" before breaching, *id.* at 69. These are new examples of Arredondo taking action so as to "provide no realistic means of [Plaintiffs] voluntarily terminating" the confinement he had subjected them to, and to "deprive[] the plaintiff[s]"—or anyone else—"of the ability or opportunity" to save them from the shooter. *Walton*, 44 F.3d. at 1305.[6]

Plaintiffs' proposed amendments bolster the case that Arredondo's actions established a "custodial relationship" between them and the agency he acted on behalf of, Defendant UCISD. The amendments therefore do not "lack[] legal foundation," *Jamieson By & Through Jamieson*, 772 F.2d at 1208, and are not "clearly futile."

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' Motion to Amend the Complaint.

Dated: New York, New York
June 28, 2024

[6] Plaintiffs need only plead one affirmative action to establish *Monell* liability. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 470 (1986) ("It is plain that municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances."); *see also Brooks v. George Cty.*, 84 F.3d 157, 165 (5th Cir. 1996).

Respectfully submitted,

By: ***/s/Laura Keeley***

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[PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO AMEND

The Court is in receipt of Plaintiffs' Motion for Leave to Amend Complaint. For good cause shown, the motion is GRANTED.

SIGNED and ENTERED this ____ day of _____, 2024.

_____
Chief U.S. District Judge Alia Moses