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

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, ***Plaintiffs***,	§	
v.	§	Case No. 2:22-cv-00059-AM-VRG
DANIEL DEFENSE, LLC, et al., ***Defendants***.	§	

DEFENDANTS UVALDE COUNTY SHERIFF RUBEN NOLASCO, UVALDE COUNTY CONSTABLE EMMANUEL ZAMORA, AND UVALDE COUNTY CONSTABLE JOHNNY FIELD'S 12(b)(6) MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, UVALDE COUNTY SHERIFF RUBEN NOLASCO, UVALDE COUNTY CONSTABLE EMMANUEL ZAMORA, and UVALDE COUNTY CONSTABLE JOHNNY FIELD ("Uvalde County Defendants") in their individual capacities, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully request that the Court dismiss the Plaintiffs' First Amended Complaint and would show the Court as follows.

I. SUMMARY OF THE ARGUMENT

1. Plaintiffs' lawsuit seeks to hold first responders liable for the murderous acts of a private citizen. No viable theory of recovery exists that would allow them to do so—as established by precedents from the Supreme Court, Fifth Circuit, and other federal circuits. The subject incident is truly a tragedy of the highest order. Nevertheless, Plaintiffs' lack of any viable legal claim means they have necessarily failed to state a claim for which relief may be granted, and their claims against the Uvalde County Defendants must be dismissed.

2. Plaintiffs possess no substantive due process remedy against the first responders. As a general rule, state actors cannot be held liable for failing to protect a person from the violence of another. Plaintiffs' two proposed exceptions to that general rule are (i) state-created danger and (ii) custodial relationship (which only exists when a person has been effectively incarcerated by the state). The Fifth Circuit has consistently and categorically rejected every state-created danger theory presented to it, and such rejections are dispositively fatal for the first exception. In support of the second exception, Plaintiffs allege that the officers' acts of establishing a perimeter around the classroom effectively *incarcerated* the children inside. Controlling case law disagrees, and such argument is also unthinkable to the point of impossibility when taken to its logical conclusion. It hinges on the premise that if a child victim ran out of the classroom the police officers would have reacted by *forcing her back into the classroom with the child murderer therein*. The same factual premise is required for Plaintiffs' Unlawful Seizure claim. Common sense must prevail and work to discard all claims herein against the Uvalde County Defendants for their incurable dependence on such an unthinkable factual premise.

II. INTRODUCTORY FACTUAL CONTEXT[1]

3. This lawsuit arises out of the tragic school shooting that took place on May 24, 2022 at Rob Elementary School in Uvalde, Texas. 18-year-old Salvador Ramos was a former student of the school. Earlier that same day, Ramos shot his own grandmother in the face, leaving her in critical condition. Armed with an AR-15 style rifle and seven 30-round magazines, Ramos drove to the school, crashed his truck, shot at two people standing outside of a nearby funeral home, and then ran toward the school while firing shots into westward-facing windows. He then ran down the length of the school building and entered through the West Hallway door at approximately 11:33:00 a.m.[2] Once inside, Ramos turned right down the South Hallway, walked a short distance to adjoining classrooms 111 and 112, and fired a series of rounds from the hallway into the classrooms. At 11:33:32, the suspect entered classroom 111 and began firing at children, initially at a very rapid pace. At 11:33:37, Ramos backed out into the hallway, fired several rounds into room 112, and then reentered room 111 where he fired *over 100 rounds* in the next 2.5 minutes.[3]

4. Various officers entered the school and several of them attempted to immediately enter rooms 111 and 112 at 11:37:00. Ramos took aim and fired at the officers roughly eleven times, driving them back. Two officers were injured by building fragments caused by the suspect's rounds passing through the walls.[4]

5. By all accounts, the Uvalde County Defendant movants herein played a very minor role—or in some cases no role at all—in the entire incident. The first reference in the ALERRT report to

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[1] The Uvalde County Defendants understand that the Court is limited to considering the content of Plaintiff's First Amended Complaint, but have provide factual content from the ALERRT report generated from the investigation of the shooting in order to provide important factual context for the Court. No portion of this section is meant to be relied upon by the Court.
[2] **Ex. 1**, ALERRT Report, pgs. 5 – 6.
[3] *Id.* at pgs. 5 – 6.
[4] *Id.* at pgs. 8 – 9.

any USO Deputy or Constable even arriving on the scene is not until 11:51:20.[5] One USO Deputy arrived with a breaching sledgehammer at 12:47:57, constituting the first affirmative act or direct involvement documented in the ALERRT report by any USO Deputy or any other Defendant movant herein.[6] Two minutes and six seconds later, an Ad Hoc team of officers—including at least one USO Deputy—assaulted the room and neutralized the suspect. Ramos only fired four rounds between the time any USO Deputies are documented to be inside the school at 11:51:20 and when they assaulted the room at 12:47:57.[7] Ramos only fired six rounds total between the time he opened fired at police attempting entry the first time, and when the Ad Hoc team assaulted the classroom for a second time. The obvious inference is that most of the shots that injured or killed Plaintiffs herein were fired at the very beginning of the senseless mass shooting—and thus before ostensibly any USO Deputies had even arrived—as *Ramos fired over 100 rounds in the first three minutes and four seconds of his entry into the school*.

6. Ramos's senseless and tragic violence perpetrated against children became the deadliest school shooting in Texas history, and the third deadliest in American history. Plaintiffs herein subsequently filed this lawsuit seeking to hold the officials and police officers herein liable for the heinous acts of a child murderer—Salvador Ramos—whom they have no affiliation with whatsoever.

III. BACKGROUND AS PORTRAYED IN THE COMPLAINT

7. This section is meant to recount the entirety of Plaintiffs' substantive description of the acts the Uvalde County Defendants are on notice of regarding conduct for which they specifically are being sued. Plaintiffs allege that Constables Field and Zamora arrived at the scene by roughly

[5] *Id.* at pg. 10.
[6] *Id.* at pg. 11.
[7] *Id.* at pg. 10 (the Shooter fired four shots at 12:21:08).

11:41 a.m.[8] Plaintiffs also note that the Constables did not engage the shooter at 11:44[9]—three minutes after their arrival—and that Constable Zamora posited the Shooter had committed suicide.[10] Otherwise, Plaintiffs fail to describe or give notice as to any other act performed by either Constable, whether by name or by title.

8. Plaintiffs allege that Sheriff Nolasco spoke with the Shooter's grandmother who told Nolasco about Ramos shooting her, and that he allegedly did not share the name of the suspect who shot his grandmother with other agencies.[11] The Plaintiffs also allege that Nolasco arrived at the scene, believed the Shooter was a barricaded suspect, told his deputies that it was important to determine the chain of command at the scene, and had not yet himself completed active shooter training.[12] They also allege Sheriff Nolasco and others received a radio dispatch that the classrooms were full of victims[13] and that he "kept parents from entering the school" during an active shooting,[14] but fail to provide a description or notice of any specific act he himself allegedly performed in furtherance of such end. Plaintiffs make vague allegations that multiple individuals—including Sheriff Nolasco—created new active shooter policies during the shooting and/or failed to follow existing active shooter policies.[15] Otherwise, Plaintiffs fail to describe or give notice as to any other act performed by Sheriff Nolasco, whether by name or by title.

[8] Pls.' 1st Amd. Compl., pg. 50, ¶ 148, Dkt # 26.
[9] *Id.* at pg. 51, ¶ 151.
[10] *Id.* at pg. 55, ¶ 169.
[11] *Id.* at pgs. 48 – 50, ¶¶ 146–47.
[12] *Id.* at pgs. 53, ¶¶ 160–62.
[13] *Id.* at pg. 54, ¶ 166.
[14] *Id.* at pg. 57, ¶ 176.
[15] *See id.* at 59 – 60, 78, & 80.

IV. STANDARD OF REVIEW

9. Groundless claims should be exposed "at the point of minimum expenditure of time and money by the parties and the court."[16] Early disposition is therefore required when a cause of action is simply not plausible.[17] For a claim to have facial plausibility, the pleader must allege "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[18] A plausible claim must contain "factual allegations adequate to raise a right to relief above a speculative level."[19] This "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."[20] While the Court must accept plausible factual allegations as true, "'conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss."[21] In short, a plaintiffs' factual allegations must "nudge[] their claims across the line from conceivable to plausible [or] their complaint *must be dismissed*."[22]

V. ARGUMENT

A. Plaintiffs simply have no legal remedy by way of the Fourteenth Amendment's substantive due process clause, and thus claims VI & VIII must fail.

10. The truly tragic aspects of the cold blooded murder of schoolchildren at issue do not change the fact that Plaintiffs have no legal claim against any first responders for the murders committed by the Shooter. The legal reality is that state actors do ***not*** have a duty to protect public school

[16] *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 558 (2007) (citation and quotation marks omitted).
[17] *Id.* at 559.
[18] *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009).
[19] *Fin. Sec. Assurance, Inc. v. Stephens, Inc.,* 500 F.3d 1276, 1282 (11th Cir. 2008) (citation and brackets omitted).
[20] *Twombly,* 550 U.S. at 555.
[21] *Drs. Bethea, Moustoukas & Weaver LLC v. St. Paul Guardian Ins. Co.*, 376 F.3d 399, 403 (5th Cir. 2004) (citing *Fernandez–Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir.1993)).
[22] *Twombly,* 550 U.S. at 570 (emphasis added).

children against violence from third parties that would be legally actionable under the substantive due process clause or otherwise. Similarly situated plaintiffs in cases such as *Vielma, Hernandez*, *Rohrbough, Ireland,* and *Schnurr* have already tried and failed to advance similar claims against first responders responding to tragic mass shootings. Such precedents offer this Court roadmaps to analyze and rule on Plaintiffs' legally-doomed substantive due process claims.

11. Plaintiffs' two proposed exceptions provide no succor. As a threshold matter, the Fifth Circuit has held time and time again that state-created danger is explicitly *not* an available theory of recovery. No further analysis should be needed as to any of Plaintiffs' claims that rely on such theory. Plaintiffs' other proposed exception—that officers' act of establishing a perimeter around the Shooter was the legal equivalent of *incarcerating* the children and teachers—constitutes tortured logic that should be discarded outright. No controlling precedent supports Plaintiffs' attempt to create a custodial relationship where there is none. Claims V & VIII that rely on substantive due process must fail accordingly.

i. State actors do not have a constitutional duty to protect, as born out by Supreme Court decisions, Fifth Circuit decisions, and school shooting decisions elsewhere.

12. Plaintiffs' substantive due process claims cannot survive dispositive scrutiny. They allege that individual law enforcement defendants—usually referenced as a whole, without differentiating between any specific individuals or even agencies—violated their substantive due process rights.[23] Plaintiffs have failed to state a substantive due process claim for which relief may be granted.

13. The Supreme Court has consistently maintained the general rule is that "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due

[23] Pls.' 1st Amd. Compl., pgs. 74 – 75, ¶¶ 284–87, Dkt. # 26.

Process Clause [of the Fourteenth Amendment]."[24] The Supreme Court has also made it clear that "the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm," lest the Fourteenth Amendment becomes a "font of tort law to be superimposed upon whatever systems may already be administered by the States."[25]

14. The two *Vielma* decsions, made by the District Court, M.D. of Florida[26] and the Eleventh Circuit,[27] respectively, deal with the infamous Pulse nightclub shooting of 2016. The *Vielma* Shooter entered into a nightclub and murdered and injured dozens of people using an assault rifle. Rather than immediately charging in to confront the Shooter, the initial officer on the scene "'stayed outside," and later "'some time'" after the shooting began, various Orlando police officers finally engaged the Shooter, resulting in the Shooter "barricade[ing] himself with several hostages." Similar to the perceived temporal delay in the case at bar, it wasn't until "***roughly three hours later***" that law enforcement officers finally "entered [the nightclub] and 'neutralized [the] Shooter.' All told, forty-nine people were killed, and fifty-three injured, by the Shooter."[28] The District Court paid respect to the horrible losses at issue, noting that:

> These Plaintiffs have suffered immeasurably, and if magnitude of loss determined whether Plaintiffs could recover, then they surely would. But Plaintiffs assert constitutional claims that are patently foreclosed by Supreme Court and Eleventh Circuit precedent that requires this Court to dismiss the suit.[29]

[24] *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.,* 489 U.S. 189, 197 (1989).
[25] *Cty. of Sacramento v. Lewis,* 523 U.S. 833, 847 (1998) (emphasis added) (citation omitted).
[26] *Vielma v. Gruler*, 347 F. Supp. 3d 1122 (M.D. Fla. 2018), aff'd, 808 F. App'x 872 (11th Cir. 2020).
[27] *Vielma*, 808 F. App'x 872 (11th Cir. 2020).
[28] *Vielma v. Gruler*, 347 F. Supp. 3d at 1128.
[29] *Vielma*, 347 F. Supp. 3d at 1127–28.

The District Court went on to provide an in-depth examination at the historical context of § 1983 civil rights law, as well as Fourteenth Amendment substantive due process seminal precedents and their progeny. Citing *DeShaney,* the trial court ultimately concluded that "[i]t has long been held that 'a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause,'" and that a mass shooting case is no different.[30] "[The substantive due process claim] against [the *Vielma* officer] cannot survive [because] this entire circumstance begins and ends with a private actor…[the shooting was] a spontaneous act of violence carried out by 'a thug with no regard for human life.'"[31] The first responders herein likewise cannot and should not be held liable for the heinous acts of the child murderer, Salvador Ramos.

15. The Eleventh Circuit agreed:

> Plaintiffs claim that the injured and murdered victims' Fourteenth Amendment substantive due process rights were violated when, upon hearing the gunshots, Officer Gruler failed to immediately reenter the club to attempt to disarm or shoot [the Shooter]. The Fourteenth Amendment provides that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law." As the district court correctly observed, Plaintiff's entire claim against Officer Gruler boils down to an argument that the Due Process Clause imposes an affirmative duty on police officers to protect individuals from private acts of violence. But that is precisely the argument that the Supreme Court rejected in *DeShaney* …, which held that, outside the custodial context, "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause."[32]

The Eleventh Circuit ultimately affirmed the dismissal of all claims against the individual officers and the municipality. The Uvalde County Defendants sued herein cannot be deliberately

[30] *Vielma*, 347 F. Supp. 3d at 1130 (citing *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. at 197.).
[31] *Id*.
[32] *Vielma*, 808 F. App'x at 878 (emphasis added) (internal citations omitted).

indifferent to a constitutional right that does not exist, and dismissal of all substantive due process claims against the Uvalde County Defendants is legally warranted.

ii. The Fifth Circuit has consistently held that Plaintiff's state-created danger theory does *not* exist as a viable legal theory of recovery.

16. "[The Fifth Circuit has] 'repeatedly declined to recognize the state-created danger doctrine in this circuit.'"[33] Even mere *days* ago, the Fifth Circuit reiterated the non-existence of this legal doctrine in *Fisher*:

> A disabled public-school student was sexually assaulted by another student with known violent tendencies. Despite knowing of this attack, the victim's teachers let both her and her aggressor wander the school unsupervised, and she was against assaulted by the very same student…[which resulted in a lawsuit where] the victim's mother sued various school officials…under the so-called "state-created danger" doctrine…the school officials sought dismissal on qualified immunity grounds, arguing the state-created danger doctrine was not clearly established in this circuit when the underlying events occurred…[T]he school officials are right. ***This circuit has never adopted a state-created danger exception to the sweeping "no duty to protect" rule…Accordingly, we REVERSE and REMAND***.[34]

Such precedents are dispositively fatal to Plaintiffs' claims against the Uvalde County Defendants. To date, the Fifth Circuit has ***never*** allowed a state-created danger case in a non-custodial setting.

17. The legal right to dismissal is especially true for the Uvalde County Defendants based on the defense of Qualified Immunity they all share, including and especially pursuant to the "clearly established law" prong. The §1983 plaintiff bears the burden of proof, "[a]nd that burden is heavy: A right is clearly established only if relevant precedent has placed the constitutional questions

[33] *See e.g., Yarbrough v. Sante Fe Indep. Sch. Dist.*, No. 21-40519, 2022 WL 885093, at *1 (5th Cir. Mar. 25, 2022), cert. denied sub nom. *Yarbrough v. Santa Fe Indep. Sch. Dist*., 143 S. Ct. 118 (2022); *see also Kovacic v. Villarreal*, 628 F.3d 209, 214 (5th Cir.2010); *see also Bustos v. Martini Club, Inc.,* 599 F.3d 458, 466 (5th Cir.2010) ("[T]his circuit has not adopted the state-created danger theory."); *see also Cancino v. Cameron Cnty., Texas*, 794 F. App'x 414, 415 (5th Cir. 2019) ("[W]e have not adopted the state-created danger theory of liability in this circuit").
[34] *Fisher v. Moore*, 2023 WL 2533113, 62 F.4th 912, at *5 (5th Cir. 2023) (emphasis added).

beyond debate."[35] In *Morrow*, the Fifth Circuit exhaustively laid out the "four applicable commandments" that a plaintiff must satisfy to establish that the constitutional question is beyond debate.[36]

18. First, the relevant constitutional question must be framed with specificity and granularity.[37] The Supreme Court has "repeatedly told courts not to define clearly established law at [that] high level of generality."[38] "Rather, the dispositive question is whether the violative nature of *particular* conduct is clearly established."[39] Second, clearly established law comes only from holdings, not dicta.[40] Third, "overcoming qualified immunity is especially difficult in excessive-force cases."[41] This is because this is an area of the law in which "the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issues."[42] The law must be "so clearly established that—in the blink of an eye, in the middle of a high-speed chase—every reasonable officer would know it immediately."[43] Finally**,** the last commandment is that courts "must think twice before denying qualified immunity." "Because of the importance of qualified immunity to society as a whole, the Supreme Court often corrects lower courts when they wrongly subject officers to liability."[44] The recent *Fisher* decision[45] makes it very clear that no clearly established law existed before this incident—***nor has any been created since***—that would have alerted these officers that a

[35] *Fisher*, 2023 WL 2533113, at *5.
[36] *Id*.
[37] *Id*.
[38] *Id.* (citing *Ashcroft v. Al-Kidd*, 563 U.S. 731, 742 (2011).
[39] *Id*. (citing *Mullenix v. Luna*, 577 U.S. 7, 12 (2015).
[40] *Sorenson v. Ferrie*, 134 F.3d 325, 329 n.7 (5th Cir. 1998).
[41] *Id*. at 876.
[42] *Id*.
[43] *Id*.
[44] *Id*.
[45] *See Fisher*, 2023 WL 2533113, at *5.

constitutional violation could occur by way of a state-created danger fact pattern. The Uvalde County Defendants are thus entitled to Qualified Immunity that acts as a shield against the substantive due process claims levied against them.

iii. Plaintiffs' tortured shoehorning of a "custodial relationship" theory of recovery defies common sense and controlling precedent.

19. Plaintiffs' attempts to shoehorn the facts of this case into a "custodial relationship" theory of recovery constitute tortured logic that should be discarded outright, both for factual and legal reasons. Plaintiffs allege that law enforcements officers' efforts to "establish a perimeter" around the active shooter constituted the equivalent of *the incarceration of the victims*—a twisted attempt to make the incident actionable as a substantive due process claim pursuant to a custodial relationship theory of recovery.[46] No "custodial relationship" could have been created in the manner described as a matter of law, and Plaintiffs have thus failed to plead a viable "custodial relationship" theory of recovery for which relief may be granted.

20. This, too, is an issue that has already been litigated elsewhere specifically in the context of a school shooting. In *Hernandez*, the Eleventh Circuit was tasked with reviewing a trial court's dismissal of a § 1983 lawsuit against law enforcement officials regarding the infamous Marjory Stoneman Douglas school shooting that resulted in 17 deaths and injuries to 17 others.[47] The allegations included a claim—which largely mirrors the inaction argument advanced by Plaintiffs herein—that at least three police officers "stood outside the school with their guns drawn, but [] did not enter the school or attempt to stop the [ongoing] shooting." Just like in the case at bar,[48]

[46] Pls.' 1st Amd. Compl., pgs. 74 – 75, 78 – 80, Dkt. # 26.
[47] *L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323, 1327 (11th Cir. 2020).
[48] Plaintiffs make numerous conclusory, overbroad allegations to the effect of some or all of the Uvalde County Defendants having allegedly barricaded the school children inside and prevented access to rescue and emergency services, though it is sometimes unclear which Defendants Plaintiffs are specifically accusing, respectively, nor what specific acts were taken to effect any

the *Hernandez* officers were accused of "barr[ing] emergency responders from entering the building to stop [the Shooter] or to aid his victims," and further that the Commander at the scene "ordered police to 'stage,' or gather outside of the school, instead of permitting officers to enter the building and pursue [the Shooter]." The *Hernandez* plaintiffs argued "these actions were not only incompetent but unconstitutional."[49] The Eleventh Circuit rejected such arguments outright.

21. The Eleventh Circuit noted it is "well-established that 'schoolchildren are not in a custodial relationship with the state'."[50] Citing its prior decisions, the Eleventh Circuit held that a custodial relationship exists only if the government places restrictions on an individual "that are ***similar in kind to incarceration or other forms of involuntary confinement***."[51] "Ordinarily there are no custodial relationships in the public-school system, even if officials are aware of potential dangers or have expressed an intent to provide aid on school grounds."[52] Just as in the case at bar, the *Hernandez* plaintiffs tried to carve out an exception because of the armed nature of the police officers—and the allegedly-connected prevention of access to emergency services the *Hernandez* plaintiffs likewise claimed—at the school who did not intervene immediately. The Eleventh Circuit rejected such arguments outright, holding:

> The officers' presence on school grounds, whether by itself or in a combination with truancy and compulsory attendance laws, does ***not*** restrain students' freedom to act in a way that is comparable to incarceration or institutional confinement. Because the students were not in custody at school, they were ***not*** in a custodial relationship with officials.[53]

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such alleged barricade or detainment. *See e.g.,* Pls.' 1st Amd. Compl., ¶¶ 142-44, 151-52, 157, 184, 161, 169, & 176, Dkt. # 26.

[49] *Id*.

[50] *Id.* (citing *Nix v. Franklin Cnty. Sch. Dist*., 311 F.3d 1373, 1378 (11th Cir. 2002)).

[51] *Id.* (citing *Wyke v. Polk Cnty. Sch. Bd*., 129 F.3d 560, 569–70 (11th Cir. 1997)) (emphasis added).

[52] *Id.*

[53] *Id.* at 1330 (emphasis added).

Plaintiffs' novel legal argument that a custodial relationship was created by the Uvalde County Defendants alleged act of establishing a perimeter to surround the Shooter is just as "unavailing" as the armed-police-officer argument rejected by the Eleventh Circuit.[54] Just as in *Hernandez*, the Plaintiffs herein were ***not*** in custody at school, and thus they likewise were ***not*** in a custodial relationship with any of the defendants herein.

22. Other circuits have likewise rejected custodial relationship theories of recovery in the context of school shootings and/or violence.[55] There are several opinions that resulted from the infamous Columbine school shooting,[56] which collectively are ostensibly the source of Plaintiffs' invalid "establish a perimeter" theory meant to create a legal duty where no such duty exists. In *Schnurr*, the plaintiffs likewise attempted an end-around of the "incarceration" requirement by alleging that "the individual Sheriff Defendants restrained the Library Plaintiffs from leaving the Library by instructing the Library Plaintiffs to stay in the library and await help."[57] The Court declined to follow either novel theory, and held that "these allegations do not amount to restraint as contemplated by *Deshaney*," and that "the 'restraint' here is in no way 'similar' to incarceration or institutionalization."[58] The Court also noted—but only as it applied to state immunity—"while the Sheriff Defendants' decision to '***secure the perimeter***' and not enter the School might in

[54] *Id.* at 1329.
[55] *See e.g. Morrow v. Balaski*, 719 F.3d 160, 170 (3d Cir.2013) (en banc) (stating that "every other Circuit Court of Appeals that has considered [whether public schools have a constitutional duty to protect students] in a precedential opinion has rejected the argument that a special relationship generally exists between public schools and their students."); *see also e.g. Graham v. Indep. Sch. Dist. No. I-89*, 22 F.3d 991, 994 (10th Cir. 1994) (rejecting the argument that a duty to protect was created because the school knew of gunman's violent propensities).
[56] *See e.g., Rohrbough v. Stone,* 189 F. Supp. 2d 1088 (D. Colo. 2001); *Schnurr v. Bd. of Cty. Comm'rs of Jefferson Cty.,* 189 F. Supp. 2d 1105 (D. Colo. 2001); *Ireland v. Jefferson Cty. Sheriff's Dep't,* 193 F. Supp. 2d 1201 (D. Colo. 2002).
[57] *See Schnurr v. Bd. of Cnty. Comm'rs of Jefferson Cnty*., 189 F. Supp. 2d 1105, 1132-34 (D. Colo. 2001).
[58] *Id.*

hindsight constitute negligence or arguably gross negligence," but otherwise determined such acts were not legally actionable pursuant to § 1983.[59]

23. Just as in *Hernandez*, the Fifth Circuit has consistently and explicitly rejected the existence of a custodial relationship in a school setting.[60] Our Circuit has only recognized three contexts that may create a "custodial relationship," which are incarceration, involuntary institutionalization, and foster care.[61] As explained by the Fifth Circuit in *Magee*:

> Public schools do ***not*** take students into custody and hold them there against their will in the same way that a state takes prisoners, involuntarily committed mental health patients, and foster children into its custody." Without a special relationship, a public school has no constitutional duty to ensure that its students are safe from private violence. That is not to say that schools have absolutely no duty to ensure that students are safe during the school day. Schools may have such a duty by virtue of a state's tort or other laws. However, "[s]ection 1983 imposes liability for violations of rights protected by the Constitution, not for violations of duties of care arising out of tort law."[62]

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[59] *Schnurr,* 189 F. Supp. 2d at 1140-42 (emphasis added) (the court also held that under *Colorado* law—in contrast to its dismissal of the § 1983 substantive due process claim—the deputies did create a duty to protect by instructing the students to stay in the library. However, the court specifically did *not* base its state-law-claim relationship holding on the "establish a perimeter" theory.).

[60] *See e.g., Doe v. San Antonio Indep. Sch. Dist.,* 197 Fed.Appx. 296, 298–301 (5th Cir. 2006) (finding no special relationship between a school and a fourteen-year-old special education student when the student was allowed to leave with her "uncle," who later allegedly molested her); *Teague v. Tex. City Indep. Sch. Dist.*, 185 Fed.Appx. 355, 357 (5th Cir.2006) (finding no special relationship between a school and an eighteen-year-old special education student who was sexually assaulted by another special education student); *Johnson v. Dallas Indep. Sch. Dist*., 38 F.3d 198, 199, 202–03 (5th Cir.1994) (finding no special relationship between a high school and a student shot and killed in the school hallway during the school day by a boy who was not a student but had gained access to the school); *Leffall v. Dallas Indep. Sch. Dist*., 28 F.3d 521, 522, 529 (5th Cir.1994) (finding no special relationship between a high school and a student fatally wounded by a gunshot fired in the school parking lot after a school dance).

[61] *Doe ex rel. Magee v. Covington Cnty. Sch. Dist. ex rel. Keys*, 675 F.3d 849, 856 (5th Cir. 2012) (en banc).

[62] *Magee,* 675 F.3d at 857–58 (emphasis added) (internal citations omitted).

24. As explained by the Fifth Circuit previously in *Johnson*, even if *arguendo* a custodial relationship existed, a school shooting victim would still have no remedy to recover against state actors for violence perpetrated by another:

> [The school shooting victim's] death is attributable to the fortuity that an armed, violent non-student trespassed on campus. There can be no liability of state actors for this random criminal act unless the fourteenth amendment were to make the schools virtual guarantors of student safety—***a rule never yet adopted even for those in society, such as prisoners or the mentally ill or handicapped, who are the beneficiaries of a "special relationship" with the state***.[63]

In the *DeShaney* decision cited *supra*, the Supreme Court clarified that "when the State takes a person ***into its custody*** and holds him there ***against his will***, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being."[64] The teachers and students at issue were never taken into police custody, nor were they held or detained by police against their will. Common sense dictates that the only purpose of the perimeter was to contain *only the Shooter*. There is no universe where any officer would have forced a fleeing child victim back into the classroom with the child murderer therein.

25. Plaintiffs likewise do not allege that the officers locked the classroom doors[65] or otherwise physically barred any victims from leaving the classrooms. The only person ostensibly acting to prevent the victims from leaving was the Shooter—an individual whose actions state actors should not and cannot be held liable for pursuant to Fifth Circuit law. Plaintiffs' attempt at equating police surrounding the Shooter as effectively *incarcerating* the school children therein constitutes tortured logic, has no legal backing, and should be discarded outright.

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[63] *Johnson v. Dallas Indep. Sch. Dist.,* 38 F.3d 198, 203 (5th Cir. 1994) (emphasis added).
[64] *DeShaney,* 489 U.S. at 199 (emphasis added).
[65] *See Maxwell ex rel. Maxwell v. School Dist. of City of Philadelphia*, 53 F. Supp. 2d 787, 137 Ed. Law Rep. 238 (E.D. Pa. 1999) (in a Circuit that does allow state-created danger claims, the trial court held that the act of locking of the door of a classroom where sexual assault occurred gave rise to potential state-created danger claim).

iv. Even if Plaintiffs had stated a viable substantive due process claim, Plaintiffs have only described negligence, which is not actionable pursuant to § 1983.

26. The Uvalde County Defendants maintain—as demonstrated *supra*—Plaintiffs cannot recover under a substantive due process claim, whether via a state-created danger theory, a custodial relationship theory, or otherwise. Assuming *arguendo* that Plaintiffs *could* recover under either such theory, Plaintiffs' First Amended Complaint would still fail as merely having alleged negligence rather than intentional acts. "***[L]iability for negligently inflicted harm is categorically beneath the threshold of constitutional due process***."[66] The conduct "most likely" to be conscience-shocking is that which is *"**intended*** to injure in some way unjustifiable by any government interest."[67] The Fifth Circuit has made it clear that "the linchpin for concluding that a substantive due process violation can be made out under the state-created danger theory is the 'affirmative conduct' requirement," and that "***[t]he 'affirmative conduct' requirement prevents the state from being held liable for acts of omission***."[68] Nothing in Plaintiffs' First Amended Complaint dares to suggest that any of the Uvalde County Defendants herein specifically ***intended*** to cause the school children harm.

27. Even accepting Plaintiffs' allegation as true, the alleged conduct is at most negligence—namely, that officers failed to reengage a school shooter as fast as possible. Plaintiffs fail to articulate any affirmative or intentional act performed by any Uvalde County Defendant toward the victims. Acting and failing to act are two very different legal concepts with often very different legal consequences. Just as in the Columbine *Rohrbough* case, the Uvalde County Defendants were "forced to make 'split-second judgments-in circumstances that are tense, uncertain, and

[66] *Lewis*, 523 U.S. at 848.
[67] *Id.* (emphasis added).
[68] *McClendon v. City of Columbia*, 305 F.3d 314, 336–37 (5th Cir. 2002) (internal citations omitted) (emphasis added).

rapidly evolving.' … Under such circumstances, ***unless an intent to harm a victim is alleged, there is no liability under the Fourteenth Amendment redressable by an action under § 1983***."[69] Notwithstanding their irrational "establish a perimeter" theory against all "Law Enforcement Individual Defendants," Plaintiffs fail to even offer up *any affirmative acts at all*, and certainly fail to do so—whether by name or by title—against any of the Uvalde County Defendants in particular. Plaintiffs' case built on omissions alone must be dismissed accordingly.

B. The Uvalde County Defendants are entitled to a dismissal of the "Unreasonable Seizure" claim outright.

28. Plaintiffs have failed to articulate the required elements of an Unlawful Seizure claim against such defendants because none of them legally "seized" any of the students or teachers—and the First Amended Complaint contains no plausible statements to the contrary. The force used was not excessive under the circumstances because the Uvalde County Defendants used *no force at all* against the students and teachers. The only other way that an Unlawful Seizure claim could lie would be if the Uvalde County Defendants had detained or arrested the students or teachers, which never occurred, nor was an arrest or detainment even—*plausibly*—articulated anywhere within the First Amended Complaint. When considering whether a seizure occurred, courts must assess "in view of all of the circumstances surrounding the incident, [whether] a reasonable person would have believed that he was not free to leave."[70] "Violation of the Fourth Amendment [for an Unlawful Seizure claim] requires an intentional acquisition of physical control."[71] Nothing in the First Amended Complaint would lead to the plausible conclusion that the students or teachers

[69] *See Rohrbough v. Stone*, 189 F. Supp. 2d 1088, 1100 (D. Colo. 2001) (citing *Lewis*, 523 U.S. at 853).
[70] *Michigan v. Chesternut*, 486 U.S. 567, 573 (1988).
[71] *Brower v. Cnty. of Inyo*, 489 U.S. 593, 598 (1989).

believed they could not leave the classrooms for any reason other than the threat of being killed by the murderer inside.

29. It defies the most basic common sense to suggest *any* police officer would have *ever* told the teachers or students that they were not allowed to flee the classrooms, nor do Plaintiffs articulate that any movant herein ever issued such an order to the subject victims.[72] The subject officers likewise never physically restrained the students or teachers' respective freedom to walk away from their respective classrooms.[73] Plaintiffs' Unlawful Seizure claims against the Uvalde County Defendants must be dismissed accordingly.

C. The Uvalde County Defendants are also entitled to Qualified Immunity for Unlawful Seizure.

30. There is no "clearly established law" in the Fifth Circuit or Supreme Court that would put officers on notice that the act of failing to immediately engage a violent third-party school shooter would constitute a violation of the U.S. Constitution—nor any of the other conduct specifically attributed to the movants within the First Amended Complaint. The Uvalde County individual defendants raise the defense of—and are entitled to—Qualified Immunity to shield them from all claims against them in their individual capacities.

VI. CONCLUSION

31. Salvador Ramos's act of mass child murder was indescribably horrible. His horrors do not change the unconditional lack of a viable legal claim against the first responders who arrived at

[72] *See Flores v. Rivas*, No. EP-18-CV-297-KC, 2020 WL 563799, at *3 (W.D. Tex. Jan. 31, 2020) (Holding that even a police command issued to the plaintiffs not to leave was on its own insufficient to support an Unlawful Seizure claim, and further holding that the plaintiffs had failed to actually articulate when and how exactly the officers ordered the plaintiffs not to leave.).

[73] *See Lincoln v. Turner*, 874 F.3d 833, 844 (5th Cir. 2017) (holding that Fourth Amendment protections attach "whenever a police officer ***accosts an individual and restrains his freedom to walk away***.") (emphasis added).

the scene to engage him. Plaintiffs' First Amended Complaint fails to describe *any* actionable conduct by the Uvalde County Defendants, whether by name or by title. Plaintiffs' deficiently conclusory statements about the acts of the individual law enforcement defendants as a whole likewise fail to state a claim for which relief may be granted.

32. State-created danger simply does not exist as a cause of action within the Fifth Circuit, and thus it was not "clearly established law" at the time of the incident as a matter of law. Even if it did exist, Plaintiffs' pleadings would fail to meet the hypothetical elements needed to survive dispositive scrutiny. Plaintiffs' custodial relationship theory also would require a finding that the Uvalde County Defendants had effectively *incarcerated* the children and teachers inside of the classroom. Likewise, Plaintiffs' Unlawful Seizure claim would require an affirmative act of either physically forcing a fleeing child *back into a classroom with a child murderer*, or an act by an officer that a reasonable person in the classroom would interpret to mean that the officers would not allow children to flee their classrooms. The only person preventing any child from fleeing the classrooms—whether physically or with commands—was the child murderer himself. Plaintiffs may recover against the Shooter for his horrific acts, but they *cannot* hold first responders liable for the horrors perpetrated by another. Plaintiffs' claims against the Uvalde County Defendants must be dismissed accordingly.

VII. PRAYER FOR RELIEF

33. WHEREFORE, PREMISES CONSIDERED, the Uvalde County Defendants respectfully request that this Court dismiss all claims against them in their individual capacities, and for all other relief to which they may be entitled, whether in law or in equity.

Respectfully submitted,

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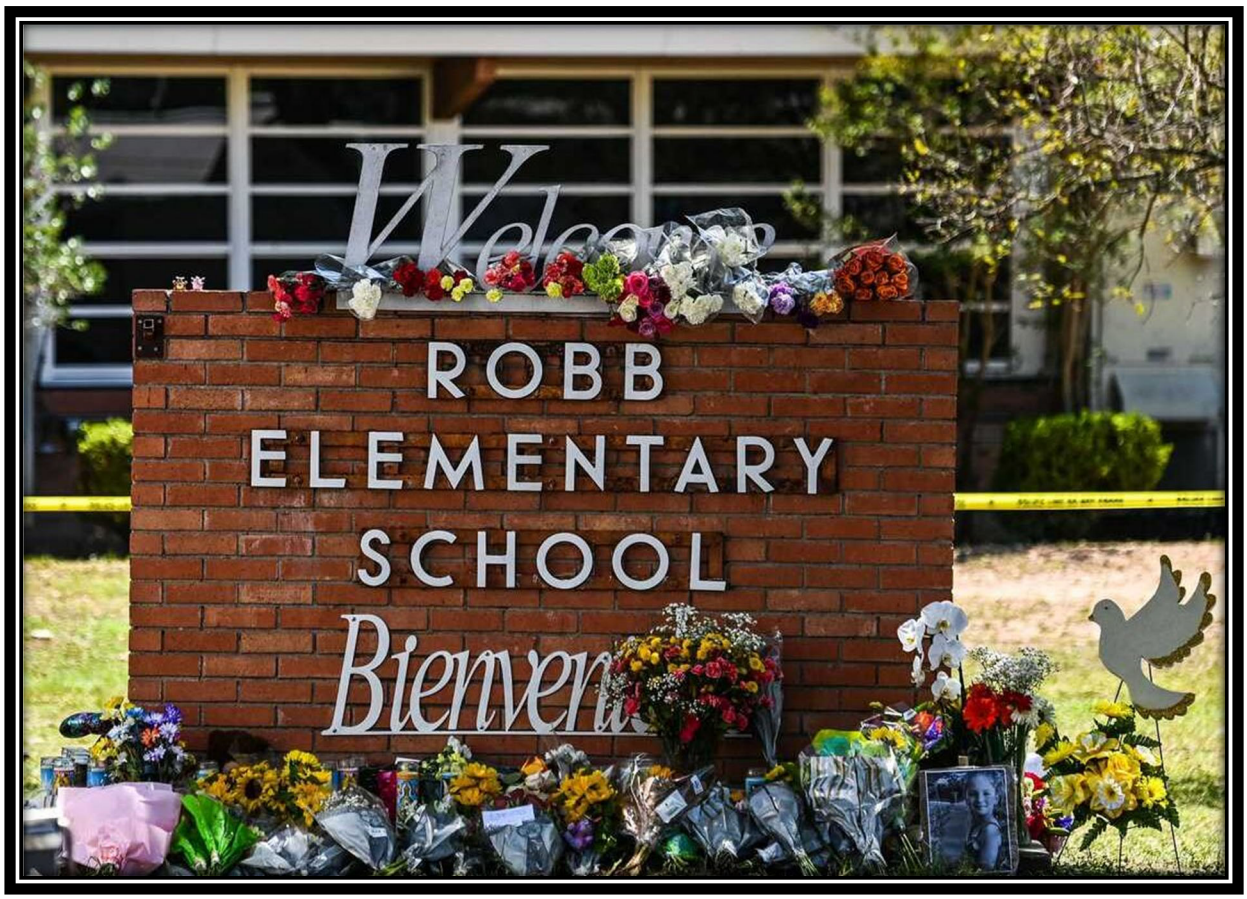
CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2023, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail, in accordance with the Federal Rules of Civil Procedure.

/s/ Blair J. Leake
Blair J. Leake

Exhibit 1

Robb Elementary School Attack Response Assessment and Recommendations



ADVANCED LAW ENFORCEMENT RAPID RESPONSE TRAINING

ALERRT

TEXAS STATE UNIVERSITY

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The following abbreviations are used throughout the report.

ISS – Internal School Surveillance
FH – Funeral Home video footage
OS – Officer Statement
IOI – Investigating Officer Interview
BWC – Body Worn Camera
UPD CS – Uvalde Police Department Call Sheet
RL – Radio Logs
UCISD PD – Uvalde Consolidated Independent School District Police Department
UPD – Uvalde Police Department
DPS – Texas Department of Public Safety
BP – Border Patrol
BORTAC – Border Patrol Tactical Teams

This report was created using school video, third party video exterior of school, body cameras, radio logs, verbal testimony of officers on scene, and verbal statements from investigators. This report should not be considered a definitive or final report as all investigatory options have not been exhausted at this point. This report should be considered a living document. It is subject to changes as new or further evidence becomes available. This report is being compiled for the explicit purpose of identifying training gaps to be addressed by police officers across the state of Texas. The authors of this report are subject matter experts in their field of active attack incidents, patrol, and tactical operations with over 150 years of combined experience. These are the expert opinions based on experience, research, and studies of other incidents and not a formal accusation of the responders on this incident.

Introduction

Robb Elementary School in Uvalde, Texas was attacked on May 24, 2022. The attack resulted in 21 fatalities (19 students and 2 teachers) and 17 injuries. The Texas Department of Public Safety contacted the Advanced Law Enforcement Rapid Response Training (ALERRT) Center soon after the attack to assess the law enforcement response. The ALERRT Center was selected for this task for a variety of reasons. First and foremost, ALERRT is nationally recognized as the preeminent active shooter / attack response training provider in the nation. ALERRT was recognized as the national standard in active shooter response training by the FBI in 2013. ALERRT's excellence in training was recognized in 2016 with a Congressional Achievement Award.

More than 200,000 state, local, and tribal first responders (over 140,000 law enforcement) from all 50 states, the District of Columbia, and U.S. territories have received ALERRT training over the last 20 years. The ALERRT course catalog includes several courses designed to prepare first responders to 1) isolate, distract, and neutralize an active shooter, 2) approach and breach a crisis site using traditional and non-traditional methods, 3) incorporate effective command to manage a rapidly evolving active situation, and 4) manage traumatically injured patients to improve survivability. ALERRT's curriculum is developed and maintained by a team of subject matter experts with over 150 years combined law enforcement, fire, and tactical experience.

ALERRT training is research based. The ALERRT research team not only evaluates the efficacy of specific response tactics (Blair & Martaindale, 2014; Blair & Martaindale, 2017; Blair, Martaindale, & Nichols, 2014; Blair, Martaindale, & Sandel, 2019; Blair, Nichols, Burns, & Curnutt, 2013;) but also has a long, established history of evaluating the outcomes of active shooter events to inform training (Martaindale, 2015; Martaindale & Blair, 2017; Martaindale, Sandel, & Blair, 2017). Specifically, ALERRT has utilized case studies of active shooter events to develop improved curriculum to better prepare first responders to respond to similar situations (Martaindale & Blair, 2019).

For these reasons, ALERRT staff will draw on 20 years of experience training first responders and researching best practices to fulfill the Texas DPS request and objectively evaluate the law enforcement response to the May 24, 2022, attack at Robb Elementary School. This initial report will be focused on the portion of the response up until the suspect was neutralized.

The information presented in this report is based on a incident briefing held for select ALERRT staff on June 1, 2022. The briefing, which was held for approximately 1 hour, was led by an investigating officer with knowledge of the event and investigative details. Briefing materials included surveillance footage from the school, Google Maps, a brief cell phone video, and verbal questions and answers between ALERRT staff and the investigator. We were first oriented to the location of this incident by the investigator via Google Maps. We were then given a chronological timeline of events and actions by the investigator as we reviewed the cell phone and school surveillance video. All times presented in this report are based on timelines provided by investigators. Additionally, we have received additional information as the investigation is still ongoing. The timeline presented here is based on the most current information as of 6/30/2022.

The report will begin by presenting a thorough timeline of events as evidenced through video footage and details garnered from the ongoing investigation. Each entry cites the data source (refer to abbreviations presented on the Table of Contents). Following the timeline, we will comment on tactics utilized by responding officers. Information related to breaching options will be presented as a supplemental attachment at the end of the report. The tactical discussion is the opinion of ALERRT, and it is based on years of extensive training, research, and an ever-evolving understanding of active shooter response. The concepts discussed are foundational to ALERRT's nationwide training curriculum. While the discussion will be frank and objective, it is not meant to demean the actions taken by law enforcement during this incident. Rather, the discussion is intended to improve future response. For this reason, attention will be drawn to actions that worked well and actions that did not.

Detailed Timeline

Figure 1. Overhead View

At 11:27:14, a female teacher (Female 1) exits the exterior door in the west hall propping the door open with a rock to prevent it from closing behind her (see Figure 2 for suspect entry point). (ISS)

At 11:28:25, the suspect becomes involved in a motor vehicle crash in a dry canal near the elementary school. Two people from a nearby business approached the crash scene at 11:29:02. The suspect engaged them both with a rifle. The two people were able to flee back to the business unharmed and called 9-1-1. (FH)

At 11:29:40, Female 1 returns through the west entry deliberately kicking the rock from the door jamb. Female 1 pulls the door shut and continues to look out of the exterior door as she is frantically speaking on her cell phone. Female 1 attempts to enter a door on the south side of the west hallway only to find it locked. Female 1 knocked on the door, and it was eventually answered by another female (Female 2). Female 1 appears to advise Female 2 of the emergency whereupon Female 2 re-enters her room and secures the door. Female 1 moves into a room closest to the exit on the north side of the west hallway. Female 1 re-enters the hallway numerous times yelling down the hall for students to get into their classrooms. (ISS)

At 11:30:14, the suspect, wearing dark clothing and carrying a bag, left the crash scene and climbed a chain-link fence onto the elementary school property. The suspect walked deliberately across the open grounds between the fence and the teachers' parking lot. The suspect moved towards the school buildings on the westmost side of the campus. Although a defect that might have been caused by a bullet was located on a building south of the affected structure, it could not be

substantiated at this time that any rounds were fired at a teacher and children on the playground at the time of the crash. (FH)

At 11:31:36, the suspect is captured on video between the cars shooting, and a Uvalde Patrol unit is captured arriving at the crash site. (FH)

At 11:31:43, a Uvalde Consolidated Independent School District Police officer drives through the west gate near the crash site and across the field to the south side of the affect building, at a high rate of speed. (FH)

At 11:32:08, the suspect reached the west teachers' parking lot adjacent to the affected building and fired through windows into the westmost rooms prior to entering the building. (FH and audio file from ISS)

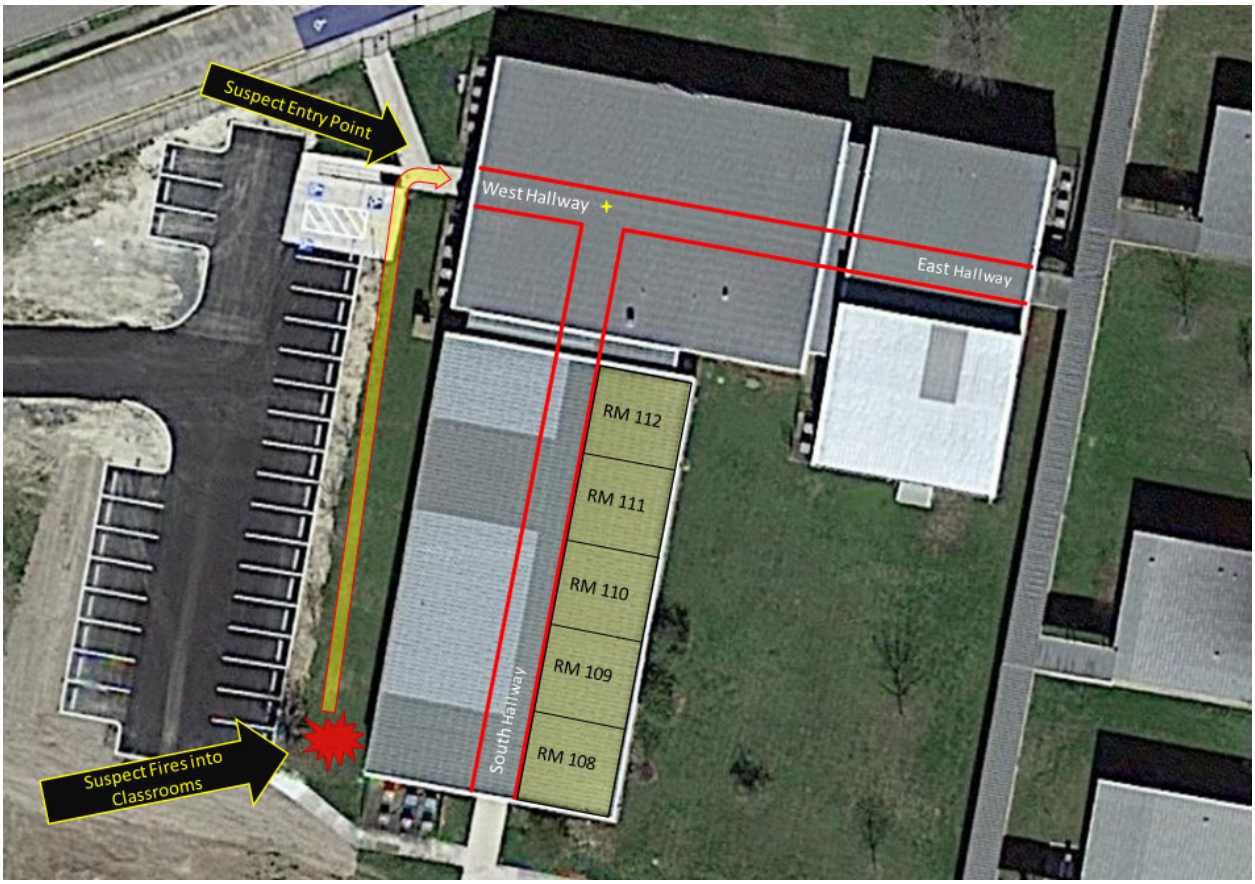

Figure 2. Suspect Entry Point

Prior to the suspect's entry into the building at 11:33:00, according to statements, a Uvalde Police Officer on scene at the crash site observed the suspect carrying a rifle outside the west hall entry. The officer, armed with a rifle, asked his supervisor for permission to shoot the suspect. However, the supervisor either did not hear or responded too late. The officer turned to get confirmation from his supervisor and when he turned back to address the suspect, he had entered the west hallway unabated. (OS per investigating officer interview).

Note: *The internal school surveillance (ISS) video consisted of a ceiling-mounted camera that was situated at the intersection of three intersecting hallways (as indicated by the yellow star in Figure 3) This camera captured 1) the suspect's entry point, which was the short (West) hallway leading to an exterior door; 2) a second long hallway (South) with multiple classrooms on either side of the hall and an exterior door at the southmost end of the hall; and 3) a third hallway (East) that leads to other classrooms, restrooms, a teachers' lounge, a library, and an exterior door at the eastmost end of the hallway.*

Figure 3. West Building Layout

At 11:33:00, the suspect enters the school from the exterior door in the west hall while holding a rifle. The suspect looked around the hallway and then continued to walk down the west hallway before turning right (down the south hallway). The suspect walked past a series of rooms with closed doors and a firewall "break." before making his way to room 111 and 112. (ISS)

At 11:33:24, upon reaching rooms 111 and 112, the suspect fired a series of rounds from the hallway in the direction of classrooms 111 and 112. (ISS)

At 11:33:32, the suspect made entry into what appears to be classroom 111. Immediately, children's screams could be heard along with numerous gunshots in the classrooms. The rate of fire was initially very rapid then slowed, lasting only a few seconds. (ISS)

At 11:33:37, the suspect backed out of what appears to be classroom 111 into the south hallway. The suspect made a slight turn to what appears to be his left and fires a series of rounds from the hallway into classroom 112. The suspect then re-enters what appears to be classroom 111 and continues to fire what is estimated to be over 100 rounds by 11:36:04 (according to audio analysis). During the shooting the sounds of children screaming, and crying, could be heard (according to audio analysis). (ISS)

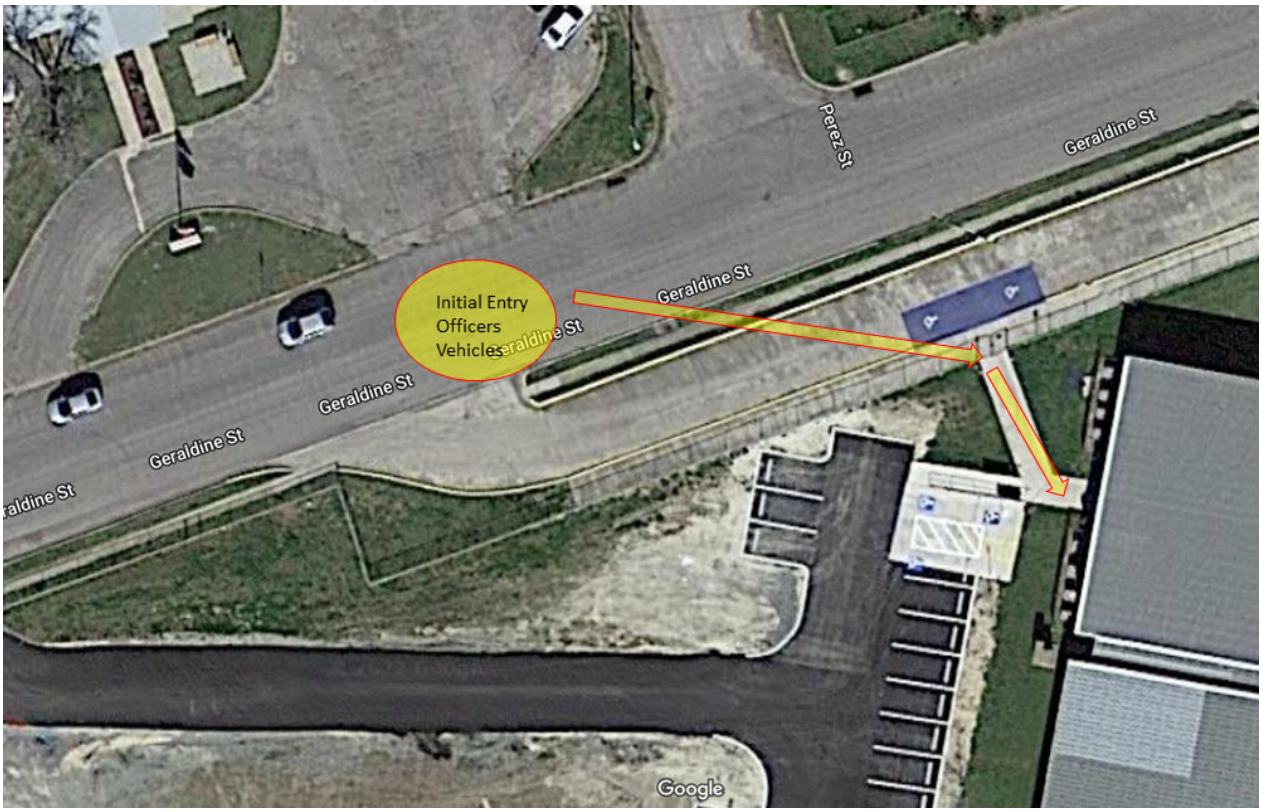

Figure 4. Officers Initial Entry into West Building

After the suspect made entry into the west building, three Uvalde Police Department (UPD) officers gathered on Geraldine Street (behind police vehicles) in front of the school drop-off / pick-up area. Then the officers, using a bounding overwatch tactic, move quickly (one at a time) to the west door.

At 11:35:55, all three Uvalde Police Department (UPD) officers entered the structure through the west door into the west hallway. These officers were equipped with the following: one with external armor and two with concealable body armor, two rifles, and three pistols. At 11:36:00, four officers entered the south hallway through the south door closest to the suspect. It is not clear what equipment these officers had with them. Four more officers entered the west hallway through the west door at 11:36:03. Three of these officers were from the UPD and one was from the Uvalde Consolidated Independent School District Police Department (UCISD PD). They were equipped with three external body armor carriers and one with concealable body armor and pistols. (ISS)

It did not appear that any of the officers were in possession of breaching tools, medical equipment, ballistic shields, or "go-bags." (ISS)

NOTE: *A "go-bag" is typically a bag or backpack that is widely used in the law enforcement community to respond to critical incidents. The "go-bag" commonly consists of spare ammunition, medical equipment, and breaching tools. The purpose of the "go-bag" is to carry equipment needed for a specialized response, when carrying that equipment on a regular basis is not feasible. Taking a "go-bag" into a crisis site facilitates the availability and implementation of these tools in a patrol response where tactical assets and teams are not readily available.*

At 11:36:04, the last shots from the initial barrage from the suspect were fired. There were seven officers in the west hallway and four officers in the south hallway. (ISS)

At 11:36:10, officers from the west and south hallway advanced to rooms 111 and 112. As the officers entered the threshold of rooms 111 and 112, they were fired upon by the suspect, who was in room 111. The gunfire at 11:37:00 and 11:37:10 drove the officers away from the threshold of room 111 and 112 and back to the west and south hallways prior to either team making contact with either room 111 or 112 classroom doors. (ISS)

At 11:38:38, the suspect concludes firing, according to audio estimates 11 rounds are fired. (ISS)

Investigators advised that two officers were injured by building material fragments caused by the suspect's rounds passing through the walls. (IOI and ISS)

Officers generally remained at the intersection of the west and south hallway and in the south hallway near the south entrance until the final assault. (IOI and ISS)

At 11:38:11, officers on scene, but outside of the hallway, call for additional assistance to include a tactical team with specialized capabilities. (BWC and UPD CS)

At 11:38:37, an officer outside of the hallway advises the suspect "is contained." (BWC)

At 11:40:58, the suspect fires 1 round according to audio estimates. (ISS)

At 11:41:30, dispatch asked via radio if the door was locked, a UPD officer responds, "I am not sure, but we have a hooligan to break it." (BWC)

At 11:44:00, the suspect fires one more round according to audio estimates. (ISS)

At 11:48:18, a UCISD PD officer enters through the west hallway door and states, “She says she is shot,” referring to his wife. He is escorted outside of the building. (BWC)

By 11:51:20, law enforcement from various agencies (including UPD, UCISD PD, Uvalde Sheriff's Office (USO), Fire Marshals, Constable Deputies, Southwest Texas Junior College Police Department (SWTJC PD), and the United States Border Patrol (BP) had arrived at the scene and were moving inside and out to evaluate the situation. (ISS, UPD CS, RL)

At 11:52:08, the first ballistic shield entered the west hallway. (ISS)

At 11:53:10, a Texas Department of Public Safety (DPS) special agent arrived at the perimeter and was advised to man the perimeter. Another officer makes a comment about there being kids still in the building, the DPS special agent advised, “if there is then they just need to go in.”

At 11:56:49, the DPS special agent states “there's still kids over here. So, I'm getting the kids out!” (BWC)

At 12:03:51, a second ballistic shield arrives, and at 12:04:16 a third shield arrives on scene in the west hallway. (ISS)

At 12:06:16, UPD RL notes that no Command Post is set up, advised bodies needed to keep parents out. (RL)

At 12:10:17, officers in the west hallway begin passing out and donning gas masks. (ISS)

At 12:14:10, CS gas cannisters and launcher deliverable varieties are brought in. (ISS)

By 12:13:00, dispatchers had received numerous 9-1-1 calls from a child explaining that there were several children and one of her teachers deceased and another teacher hurt in room 112. (UPD 9-1-1)

At 12:15:27, it appears tactical team members of United States Border Patrol Tactical Teams (BORTAC) arrive and assist with fortifying the law enforcement position at the intersection with ballistic shields. (ISS)

At 12:20:46, a fourth ballistic shield arrives in the west hallway. (ISS)

At 12:21:08, four shots are fired by the suspect from within one of the two classrooms. (ISS)

At 12:21:22, BORTAC members move to a set of double doors within 36’ of rooms 111 and 112 bringing two ballistic shields. However, no assault on the rooms was conducted. (ISS)

At 12:23:35, BP medical team members began setting up medical triage in the east hallway in front of the restrooms. They had numerous backboards, medical kits, a defibrillator as well as bleeding control supplies. (ISS)

From 12:21:16 until 12:34:38, a continuous conversation takes place in the south hallway, involving UCISD PD Chief Arredondo and a UPD officer discussing tactical options and considerations including snipers, windows, and how to get into the classroom. They also discussed who has the keys, testing keys, the probability of the door being locked, and if kids and teachers are dying or dead. (BWC)

At 12:35:39, BP agents arrive in the west hallway with the first observed breaching tool, a Halligan tool. (ISS)

From 12:37:45 until 12:47:25, UCISD PD Chief Arredondo attempts to negotiate with the suspect, speaking in English and Spanish. The Chief also calls someone to try to look into the windows from outside, he then begins asking for more keys. At 12:46:18, he exclaims, “If y’all are ready to do it, you do it. But you should distract him out that window.” At 12:47:25, Chief Arredondo states, “He’s going in! He’s going in! Tell those guys on the west that they’re going in! Let ’em know!” (BWC)

At 12:47:57, a USO deputy arrives in the west hallway with a sledgehammer. (ISS)

At 12:50:03, an ad Hoc team assaults room 111, neutralizing the suspect. The suspect had concealed himself in a book closet, he then emerged when the team made entry. Footage showed officers frantically carrying the dead and injured to the casualty collection point (CCP) in the east hallway. Some law enforcement officers rushed casualties directly through the exterior door at the end of the west hallway. It is unknown if medical personnel (EMS) were staged nearby for direct patient handoff. (ISS)

The result of this incident was 19 children and two adults killed with an additional 17 reported injuries. Additionally, the suspect was neutralized through gunfire in the assault.