

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Lyle W. Cayce
Clerk

No. 23-50465

JENNIFER BELKNAP, *individually and as dependent administrator of ESTATE OF DAKOTA EUGENE BELKNAP, and on behalf of, BILLY BELKNAP, DESTINY HOPE BELKNAP, minor K.W.B., minor M.R.B., minor P.E.S., and THE ESTATE OF DAKOTA EUGENE BELKNAP and DAKOTA EUGENE BELKNAP'S HEIRS; BILLY BELKNAP,*

Plaintiffs—Appellees,

versus

TISHA MARIE SPINKS; HARRY ERNEST VANSKIKE, JR.,

Defendants—Appellants.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:22-CV-1028

Before RICHMAN, OLDHAM, and RAMIREZ, *Circuit Judges.*

PRISCILLA RICHMAN, *Circuit Judge:**

This § 1983 case arises from the tragic suicide of Dakota Belknap while in pretrial detention. Belknap hung himself in his cell after being removed from suicide watch. Members of Belknap's family (the Belknaps)

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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sued jail officers Tisha Spinks and Harry Vanskike, among others, alleging violations of Belknap's constitutional rights. Vanskike and Spinks invoked qualified immunity in a Rule 12(b)(6) motion to dismiss, which the district court denied. We affirm in part and reverse in part.

I

The lion's share of the Belknaps' complaint consists of summaries of interview recordings taken by the Texas Ranger who investigated Belknap's death. We interpret the complaint to adopt the witnesses' statements as factual allegations, except when the complaint indicates otherwise.

The complaint alleges the following facts. In December 2020, Dakota Belknap was arrested and booked into jail. As part of the booking process, jailer Donald Moore completed a suicide-and-mental-health form with Belknap. The form reflected that Belknap had attempted suicide by cutting his wrist three days before his arrest. The form also reflected that Belknap answered "Yes" when asked "Prior to arrest, did you feel down, depressed, or have little interest or pleasure in doing things?" and "Do you have nightmares, flashbacks or repeated thoughts or feelings related to PTSD or something terrible from your past?" Belknap indicated his PTSD-related feelings were "from [the] ordeal on Friday," the day Belknap attempted suicide. Additionally, the form reflects that Belknap answered "No" when asked "Are you thinking of killing or injuring yourself today?" As supervisor, Sergeant Harry Vanskike signed the form. He also checked a box next to the word "SUICIDAL." Jailer Tisha Spinks was also aware of the intake form, and specifically that Belknap had a high risk of suicide in the past.

Belknap's answers required the jailers to place Belknap on suicide watch as well as notify a supervisor, a judge, and a mental health professional. Belknap was placed on suicide watch. Moore notified a judge, writing that

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Belknap “stated he is depressed and attempted suicide on Friday, December 11, 2020, by cutting wrists but didn’t get to finish it.”

Jail staff also asked a mental health department (MHMR)¹ employee to talk with Belknap. Belknap told that employee: “I have depression, and would like to get help with it.” Completing an evaluation form, the MHMR employee rated Belknap on a scale from zero (lowest) to three (highest) for his suicide risk. She rated him a one for suicidal ideation, a one for suicidal intent, and a one for suicide history. She wrote: “Client does not appear to be a threat of harm to himself or others at this time.” The employee believed that jail personnel fully understood that her evaluation was a here-and-now determination and did not predict Belknap’s state even ten hours later. Vanskike received the evaluation prior to Belknap’s suicide.

The next day, the day of Belknap’s suicide, Belknap was taken from suicide watch and put in a different cell. The complaint’s allegations about how Belknap was removed from suicide watch are not entirely clear. It alleges that a jail nurse had the authority to decide whether pretrial detainees would remain on suicide watch. Although it alleges that the nurse conducted a mental health evaluation on the day of Belknap’s suicide, it does not state whether the nurse determined if Belknap should remain on suicide watch or communicated a determination to others. The complaint alleges only that the nurse “failed to either continue his suicide watch . . . or initiate a new suicide watch upon her evaluation of him.”

¹ The employee is referenced in the complaint as a “MHMR” employee, which is not defined. We understand “MHMR” to refer to the Texas Department of Mental Health and Mental Retardation. *See* 26 TEX. ADMIN. CODE § 3.57 (2025) (Tex. Health & Hum. Servs. Comm’n, Texas Department of Mental Health and Mental Retardation (TXMHMR)).

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The complaint says that there is a conflict between what Spinks and Vanskike said occurred the day of Belknap's suicide. The complaint alleges that Spinks told the investigating Texas Ranger that Belknap was already off suicide watch when she started her shift, but the complaint notes that "[t]his seemed to conflict with what Sergeant Vanskike would tell the Ranger." "Contrary to what Jailer Spinks said to the Ranger, Sergeant Vanskike said that he knew that Jailer Spinks wanted to move Dakota to another cell. Sergeant Vanskike [sic] that she said, 'I'm going to put him in E-cell.'" "Sergeant Vanskike said that he told Jailer Spinks, 'Make sure MHMR clears him before you move him anywhere.'" The complaint alleges elsewhere that, on the same day, Spinks approached Vanskike and told him she was going to move Belknap out of suicide watch to a different cell. In his interview with the Texas Ranger, Vanskike related that his attitude at the time regarding moving Belknap was "I don't care. I mean, I don't care, because make a decision. I'm tired of making them for you."

At about 5:00 pm, Spinks and an inmate trustee brought Belknap dinner. About twenty-five minutes later, they returned to retrieve the tray. Spinks opened the window to Belknap's cell and saw him hanging. Spinks instructed the trustee to run and get Vanskike. The trustee ran to Vanskike, who was outside smoking a cigarette, and told him that Spinks needed him because "We got one hanging." Vanskike said "a few short words, because 'don't need this.'" Vanskike went to find a cutting tool but could not find it. He arrived at Belknap's cell and entered with Spinks.

Belknap was sitting and slumped over, hanging from a ligature made of bedding and plastic tied to the top of the bunk. Spinks froze while Vanskike tried to lift Belknap. Vanskike shouted at Spinks to help, and they untied the ligature from Belknap's neck and laid him on the floor. Spinks saw that Belknap's eyes were wide open and did not know if he was alive or dead. Vanskike checked Belknap's pulse, and his expression caused Spinks to

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believe that he felt no pulse. Belknap had not urinated or defecated on himself. Spinks screamed, “Call EMS. Call Chief!” to nearby jailers. Vanskike said: “Shut this f**king door. That Godd**ned Ranger is going to be up here, snooping around and secure that f**king door.”

Vanskike then went outside the jail to resume smoking his cigarette. Although he had been trained in CPR, neither he nor Spinks attempted CPR or any other lifesaving measure. Other jailers stood by the cell, and they did not attempt any lifesaving measure either. When an officer arriving at the jail encountered Vanskike smoking outside, Vanskike said, “Yeah, he’s gone.”

EMS personnel arrived and began lifesaving measures about twenty-three minutes after Belknap was found. After administering CPR, paramedics were able to obtain a strong pulse. Belknap was transferred to a hospital, where he was diagnosed with anoxic brain injury. Two days later, he was announced brain dead. The Belknaps allege that Belknap would not have suffered a brain injury that resulted in his death had Vanskike and Spinks immediately intervened with medical care when they found him hanging in his cell.

In October 2022, the Belknaps sued Vanskike and Spinks, as well as Leon County, Southern Health Partners, Inc. (the company providing jail healthcare), and the jail nurse. All defendants moved to dismiss under Rule 12(b)(6).

The magistrate judge recommended that the defendants’ motions be granted in part and denied in part. He recommended that the Belknaps’ Eighth Amendment claims be dismissed, as well as some claims against the nurse. He recommended that all other claims should not be dismissed. The district court adopted the magistrate judge’s report and recommendation. Vanskike and Spinks timely appealed.

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II

“We have appellate jurisdiction under the collateral order doctrine to review a district court’s denial of a motion to dismiss on the basis of qualified immunity when the resolution turns on an issue of law.”²

“We review de novo the district court’s order on a motion to dismiss for failure to state a claim under Rule 12(b)(6).”³ “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”⁴ “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”⁵

Vanskike and Spinks’s motion to dismiss invoked qualified immunity. “The doctrine of qualified immunity protects government officials from civil damages liability when their actions could reasonably have been believed to be legal.”⁶ A qualified-immunity inquiry has two prongs: “whether the plaintiff has alleged a violation of a constitutional right and whether the right at issue was ‘clearly established’ at the time of the alleged violation.”⁷ We have “discretion in deciding which of the two prongs of the qualified

² *Parker v. LeBlanc*, 73 F.4th 400, 404 (5th Cir. 2023).

³ *Converse v. City of Kemah*, 961 F.3d 771, 774 (5th Cir. 2020).

⁴ *Id.* (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

⁵ *Id.* (quoting *Iqbal*, 556 U.S. at 678).

⁶ *Cope v. Cogdill*, 3 F.4th 198, 204 (5th Cir. 2021) (quoting *Morgan v. Swanson*, 659 F.3d 359, 370 (5th Cir. 2011) (en banc)).

⁷ *Id.* (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)).

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immunity analysis should be addressed first.”⁸ “A right is ‘clearly established’ if it is ‘one that is sufficiently clear that every reasonable official would have understood that what he is doing violates that right.’”⁹ To say that a right is clearly established, the plaintiff must “be able to point to controlling authority—or a robust consensus of persuasive authority—that defines the contours of the right in question with a high degree of particularity.”¹⁰ Alternatively, “plaintiffs are . . . excused of their obligation to identify an analogous case in ‘extreme circumstances’ where the constitutional violation is ‘obvious.’”¹¹

The Belknaps allege violations of Belknap’s Fourteenth Amendment rights. They base their claims on three instances of conduct: (A) Vanskike and Spinks taking Belknap off suicide watch and relocating him to a cell with tie-off points and loose bedding; (B) Vanskike and Spinks failing to initiate lifesaving measures when they discovered Belknap hanging in his cell; and (C) Vanskike and Spinks’s failure to intervene to stop the other’s alleged constitutional violations. We review the district court’s denial of the jailers’ Rule 12(b)(6) qualified-immunity motion with respect to each of these claims in turn.

A

The Belknaps allege that Vanskike and Spinks violated Belknap’s Fourteenth Amendment rights by taking Belknap off suicide watch and relocating him to a cell with tie-off points and loose bedding. “The

⁸ *Pearson*, 555 U.S. at 236.

⁹ *Cope*, 3 F.4th at 204 (quoting *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)).

¹⁰ *Morgan*, 659 F.3d at 371-72 (internal quotation marks and footnote omitted) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011)).

¹¹ *Cope*, 3 F.4th at 206 (quoting *Taylor v. Riojas*, 592 U.S. 7, 8-9 (2020)).

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constitutional rights of a pretrial detainee are found in the procedural and substantive due process guarantees of the Fourteenth Amendment.”¹² “It has been clearly established in this Circuit since at least 1989 that ‘pretrial detainees have a Fourteenth Amendment right to be protected from a known risk of suicide’”¹³ “And it is well-settled law that jail officials violate this right if ‘they had gained actual knowledge of the substantial risk of suicide and responded with deliberate indifference.’”¹⁴ In other words, “the plaintiffs must establish that the officers . . . were aware of a substantial and significant risk that [the detainee] might kill [him]self, but effectively disregarded it.”¹⁵

We (1) discuss whether the complaint plausibly alleges that Vanskike violated Belknap’s rights, (2) discuss the same question for Spinks, and (3) determine whether Belknap’s allegedly violated right was clearly established in December 2020.

1

The district court held that the complaint plausibly alleged that Vanskike had actual knowledge of a substantial risk Belknap would kill himself and, in allowing Belknap to be removed from suicide watch, was deliberately indifferent toward that risk. It held that the complaint sufficiently alleged Vanskike’s actual knowledge by alleging that Vanskike

¹² *Id.* (quoting *Estate of Henson v. Wichita County*, 795 F.3d 456, 462 (5th Cir. 2015)).

¹³ *Sanchez v. Oliver*, 995 F.3d 461, 466 (5th Cir. 2021) (quoting *Converse v. City of Kemah*, 961 F.3d 771, 775 (5th Cir. 2020)).

¹⁴ *Converse*, 961 F.3d at 775 (quoting *Hare v. City of Corinth*, 74 F.3d 633, 650 (5th Cir. 1996) (en banc)).

¹⁵ *Cope*, 3 F.4th at 207 (alteration in original) (quoting *Jacobs v. W. Feliciana Sheriff’s Dep’t*, 228 F.3d 388, 395 (5th Cir. 2000)).

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signed Belknap's screening form and acknowledged in writing that Belknap had a risk of suicide. It held that the complaint sufficiently alleged his deliberate indifference to that risk by alleging that Vanskike responded "I don't care. I mean, I don't care, because make a decision," when Spinks asked whether she should move Belknap to a new cell.

We have held that a complaint sufficiently alleged deliberate indifference when it alleged that an officer knew a detainee was suicidal, had been trained to not give suicidal detainees blankets, and yet prepared the detainee's cell and gave him a blanket.¹⁶ Conversely, on summary judgment, we have held a reasonable jury could not find deliberate indifference in a case in which an officer "exercised his judgment" that he could cease suicide-prevention procedures after twelve hours because the detainee had not "exhibit[ed] any overt signs that he intended to commit suicide" and did not tell anyone he was contemplating suicide.¹⁷

Here, the complaint does not plausibly allege facts from which a jury could infer that Vanskike was deliberately indifferent to the risk of Belknap's suicide. The complaint alleges that when Spinks approached Vanskike about moving Belknap, Vanskike told Spinks: "Make sure MHMR clears him before you move him anywhere." According to this allegation, Vanskike accounted for, rather than disregarded, Belknap's risk of suicide.

We acknowledge that the complaint also alleges that Vanskike, when asked by Spinks whether to move Belknap, was thinking: "Good. . . . I don't care. I mean, I don't care, because make a decision. I'm tired of making them for you." Contrary to the district court, we do not see anywhere in the complaint alleging that Vanskike communicated this sentiment to Spinks.

¹⁶ *Converse*, 961 F.3d at 779-80.

¹⁷ *Flores v. County of Hardeman*, 124 F.3d 736, 737-39 (5th Cir. 1997).

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The complaint instead alleges that Vanskike told the Texas Ranger investigating Belknap's death that "it was his attitude" regarding "Spinks making a decision to" relocate Belknap. In other words, Vanskike's not caring was with respect to being "tired of making [decisions] for [Spinks]." Even granting that Vanskike's alleged internal attitude toward moving Belknap was callous, we cannot agree that the complaint alleges that Vanskike "effectively disregarded"¹⁸ the risk of Belknap's suicide. According to the complaint, Vanskike accounted for that risk by instructing Spinks to seek approval from mental health professionals before moving Belknap off suicide watch.

Because we conclude that the complaint does not plausibly allege that Vanskike was deliberately indifferent to the risk of Belknap's suicide, we need not address whether the complaint sufficiently alleged actual knowledge. We reverse the district court's denial of Vanskike's motion to dismiss on this claim.

2

The district court held that the complaint adequately pleaded that Spinks was aware of the risk of Belknap's suicide and that she was deliberately indifferent in moving him. It observed that the complaint alleges Spinks knew about Belknap's suicide history and screening form, and also that Spinks asked Vanskike's approval to move Belknap—facts from which a jury could infer Spinks knew of the risk involved. It also held that the complaint alleged Spinks's deliberate indifference because it alleged Spinks transferred Belknap to a cell with tie-off points and loose bedding.

¹⁸ *Cope*, 3 F.4th at 207 (quoting *Jacobs*, 228 F.3d at 395).

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Spinks argues the complaint does not plausibly allege she actually knew of or was deliberately indifferent to the risk of Belknap's suicide. She points to several allegations in the complaint that she contends demonstrate that she acted responsibly. The complaint alleges that Belknap told the booking officer he was not thinking of killing himself that day. It explains that, because of Belknap's prior suicide attempt, jailers notified a judge and placed Belknap on suicide watch. Finally, the complaint alleges that a MHMR employee interviewed Belknap and rated him a low risk of suicide. Spinks contends these allegations do not even show she was negligent in moving Belknap, and they therefore necessarily fail to show deliberate indifference.

We disagree. The complaint plausibly alleges that Spinks was actually aware of the risk that Belknap would commit suicide and reacted with deliberate indifference. First, we consider actual knowledge. Under the more exacting summary judgment standard, we have considered evidence sufficient when a jailer knew of a detainee's recent suicide attempt and history of depression, and the jailer accordingly withheld items due to suicide risk.¹⁹ That was despite the detainee's "statement that he was not presently considering suicide and [the jailer's] averment that she did not consider him to be a suicide risk."²⁰ True, summary-judgment evidence might vindicate Spinks's argument that she was unaware of Belknap's suicide risk because she relied on the MHMR employee's assessment or Belknap's statement that he was not thinking of killing himself the day he was arrested. But at the

¹⁹ *Hyatt v. Thomas*, 843 F.3d 172, 178 (5th Cir. 2016); *see also Converse*, 961 F.3d at 776 (holding that allegations the officer received a call that the detainee was prepared to jump off a bridge, heard the detainee say he would "jump tomorrow," and heard the detainee banging on his cell and yelling for medical help were sufficient to allege actual knowledge).

²⁰ *Hyatt*, 843 F.3d at 178.

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pleading stage, we “draw all reasonable inferences in favor of the nonmoving party.”²¹ The complaint alleges Spinks knew about Belknap’s intake form, and it alleges that Spinks knew Belknap had a high risk of suicide in the past. Spinks’s identification of other, favorable allegations is unavailing. The complaint adequately alleges actual knowledge.

Next, we turn to deliberate indifference. The complaint contains some allegations helpful to Spinks—for example, Spinks checked with her supervising officer before moving Belknap. But there are facts in the complaint from which a jury could reasonably infer that Spinks effectively disregarded the risk of Belknap committing suicide. Unlike for Vanskike, the complaint does not allege that Spinks received the MHMR employee’s assessment, which rated Belknap a low suicide risk. Indeed, the complaint is unclear whether the nurse, who allegedly had authority to decide whether a prisoner remained on suicide watch, communicated to Spinks (or others) that Belknap could be removed. The complaint also does not indicate whether Spinks checked with MHMR before moving Belknap, as Vanskike instructed. As pleaded, a jury could infer from the facts in the complaint that Spinks, knowing of Belknap’s suicide history, decided to move him to a cell with tie-off points and loose bedding. The jury could further infer that she did this despite being unaware of a mental-health professional’s sign-off. That would be deliberately indifferent.²²

²¹ *Kelson v. Clark*, 1 F.4th 411, 416 (5th Cir. 2021) (quoting *Morgan v. Swanson*, 659 F.3d 359, 370 (5th Cir. 2011) (en banc)).

²² See *Converse*, 961 F.3d at 779-80 (holding that a complaint alleged sufficient facts supporting deliberate indifference when it alleged an officer, knowing of a detainee’s recent suicide attempt, prepared a cell for a detainee containing a blanket—despite knowing of the risk of prisoner suicide with blankets).

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The complaint adequately alleged that Spinks, with deliberate indifference, moved Belknap into a cell with tie-off points and loose bedding despite knowing his risk of suicide.

3

We now must determine whether the right Spinks allegedly violated was clearly established in December 2020. We hold that it was.

In *Converse v. City of Kemah*,²³ multiple officers responded to a report that a man, Chad Silvis, was preparing to jump off a bridge.²⁴ The officers arrested Silvis and booked him into jail.²⁵ An officer prepared Silvis's cell and gave him a blanket.²⁶ Silvis banged his hands against his cell door and yelled that he should have jumped.²⁷ Within a couple hours, Silvis hanged himself with the blanket.²⁸ The district court granted the defendants' 12(b)(6) motion on qualified immunity grounds, and we reversed.²⁹ Our analysis for one of the officers involved, Officer Way, is instructive. Officer Way was present when Silvis was on the bridge, escorted Silvis to his cell with the blanket, instructed another officer to remove Silvis's shoes before locking the cell, and did not regularly check on Silvis.³⁰ We concluded the complaint alleged a violation of clearly established law.³¹ We reasoned that Officer Way

²³ 961 F.3d 771 (5th Cir. 2020).

²⁴ *Id.* at 773.

²⁵ *Id.* at 773-74.

²⁶ *Id.* at 774.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 773-74.

³⁰ *Id.* at 778-79.

³¹ *Id.*

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locked Silvis in a cell with loose bedding and tie-off points despite knowing Silvis was suicidal and the risk loose bedding posed to suicidal detainees.³² We noted that Officer Way failed to remove the blanket or regularly check on Silvis—it was not enough that Officer Way directed that Silvis’s shoes be removed.³³ We held that these allegations were sufficient to state a claim.³⁴

In *Jacobs v. West Feliciana Sheriff’s Department*,³⁵ an arrested woman, Sheila Jacobs, told officers she attempted to shoot herself shortly before her arrest.³⁶ They placed her in a cell used for detainees on suicide watch.³⁷ The cell had several tie-off points, which another detainee had previously used to hang himself.³⁸ Jacobs was not given sheets on the first night of her detention.³⁹ Two days later, Jacobs’s attorney requested that the officers leave Jacobs in the cell and give her bedding—and the officers provided her with a sheet.⁴⁰ Jacobs hung herself with the sheet that night.⁴¹ In a consequent lawsuit, the district court denied the officers involved summary judgment based on qualified immunity, and the officers appealed.⁴² Consider our analysis affirming the denial of qualified immunity for Deputy Reech, an officer at the jail. At all times during Jacobs’s detention, Deputy Reech knew

³² *Id.* at 779.

³³ *Id.*

³⁴ *Id.*

³⁵ 228 F.3d 388 (5th Cir. 2000).

³⁶ *Id.* at 390.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 390-91.

⁴⁰ *Id.* at 391.

⁴¹ *Id.*

⁴² *Id.* at 392.

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that she was a suicide risk.⁴³ Despite knowing that the cell contained tie-off points, he ordered Jacobs to be placed in the suicide-watch cell.⁴⁴ Deputy Reech observed Jacobs lying on the bunk when she had the sheet.⁴⁵ He did not take the bedding from Jacobs, nor did he check in on her as frequently as he was supposed to do.⁴⁶ We held that this evidence was sufficient for a jury to find that Deputy Reech acted with deliberate indifference.⁴⁷

These cases clearly establish that detainees with a known substantial risk of suicide have a right for officers to not, with deliberate indifference, allow them to be held in a cell with access to bedding and tie-off points. Spinks argues she relied on the MHMR employee's assessment, which she contends distinguishes this case from our precedents. But, as discussed above, a jury could infer from the facts in the complaint that Spinks did not receive the assessment and moved Belknap off suicide watch without checking with any mental-health professional. That renders inapposite *Waller v. Terry County*,⁴⁸ a district court case that Spinks invokes in her reply brief. *Waller*, unlike this case, involved "uncontroverted" evidence that the defendant relied on the opinions of medical professionals who evaluated the detainee.⁴⁹ As discovery illuminates Spinks's knowledge and actions on the day of Belknap's death, a different result may obtain. At this stage, however,

⁴³ *Id.* at 397.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 397-98.

⁴⁸ No. 5:21-CV-189-H, 2023 WL 5333237 (N.D. Tex. Aug. 18, 2023).

⁴⁹ *Id.* at *9.

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the complaint adequately alleges conduct that would have violated Belknap's clearly established rights.

Spinks objects that her alleged conduct was less culpable than the defendants' in *Cope v. Cogdill*,⁵⁰ a case in which we reversed the district court's denial of summary judgment on qualified immunity grounds.⁵¹ In *Cope*, a screening form reflected that a pretrial detainee said he wished he could kill himself that day and that he had attempted suicide two weeks prior.⁵² The jail administrator placed the detainee on temporary suicide watch.⁵³ But the cell in which he was housed contained a thirty-inch telephone cord, which the detainee used to hang himself.⁵⁴ In the relevant part of our analysis we reasoned: "The danger posed by the phone cord was not as obvious as the dangers posed by bedding, which is a well-documented risk that has been frequently used in suicide attempts."⁵⁵ We held that the administrator's "holding of [the detainee] in a cell containing a phone cord did not violate a clearly established constitutional right."⁵⁶ Thus, *Cope* focused on the difference between a telephone cord and bedding, and in this case Belknap hung himself with bedding. *Cope* does not shield Spinks.

In sum, our cases clearly establish that pretrial detainees who are at a known risk of suicide have a right to be kept out of cells containing tie-off points and loose bedding. The complaint in this case plausibly alleges that

⁵⁰ 3 F.4th 198 (5th Cir. 2021).

⁵¹ *Id.* at 212.

⁵² *Id.* at 202.

⁵³ *Id.*

⁵⁴ *Id.* at 203; *id.* at 213 (DENNIS, J., dissenting).

⁵⁵ *Id.* at 210-11.

⁵⁶ *Id.* 211.

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Spinks was deliberately indifferent by relocating Belknap to a cell with tie-off points and loose bedding despite knowing that he was at a substantial risk of suicide. The district court did not err by denying Spinks's motion to dismiss on this claim.

B

The Belknaps claim that Vanskike and Spinks violated Belknap's Fourteenth Amendment rights by failing to provide lifesaving measures when they found him hanging in his cell. "[P]retrial detainees have a constitutional right, under the Due Process Clause of the Fourteenth Amendment, not to have their serious medical needs met with deliberate indifference on the part of the confining officials."⁵⁷ A plaintiff "can show deliberate indifference only for each officer who (1) was 'aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,' and (2) actually 'dr[ew] the inference.'"⁵⁸

We begin and end by discussing whether the complaint plausibly alleges a constitutional violation by (1) Vanskike and (2) Spinks.

1

The district court held that the complaint plausibly alleged that Vanskike was deliberately indifferent by failing to administer emergency medical care to Belknap after Vanskike removed him from the ligature. The court reasoned: "Plaintiffs argue that nearly anybody would know that [Belknap's] best chance at survival was for someone to perform CPR until

⁵⁷ *Thompson v. Upshur County*, 245 F.3d 447, 457 (5th Cir. 2001) (citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)).

⁵⁸ *Sims v. Griffin*, 35 F.4th 945, 949-50 (5th Cir. 2022) (quoting *Domino v. Tex. Dep't of Crim. Just.*, 239 F.3d 752, 755 (5th Cir. 2001) (alteration in original)).

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EMS arrived.” The court identified that, instead of administering care, Vanskike returned to his smoke break.

Vanskike contends that the complaint alleges that, upon discovering Belknap, he thought Belknap was dead. He maintains he could not be deliberately indifferent to Belknap’s medical needs while believing he was dead.

We agree. Although a claim that an officer “denied [Belknap] treatment” could support a claim of deliberate indifference,⁵⁹ the Belknaps’ complaint does not allege facts permitting an inference that Vanskike believed Belknap was anything but beyond help. The complaint alleges that Vanskike, who is trained in CPR, checked Belknap’s pulse after Spinks removed Belknap from the ligature. It alleges that Vanskike’s face was distraught, which caused Spinks to believe that he felt no pulse. It further alleges that Vanskike, in response to the Ranger’s questions, stated that Belknap had not urinated or defecated on himself based on his recollection. True, the allegation about the lack of bodily fluids might be a fact from which an officer at the scene could infer that Belknap could be resuscitated. But the complaint does not allege facts supporting that *Vanskike* made that inference.⁶⁰ To the contrary, the complaint alleges that after returning from his smoke break, Vanskike said “Yeah, he’s gone,” when another officer asked what was happening. In the summary judgment context, we have held that a reasonable jury could not agree that an officer was deliberately

⁵⁹ See, e.g., *Carlucci v. Chapa*, 884 F.3d 534, 538 (5th Cir. 2018) (discussing deliberate indifference in the Eighth Amendment context).

⁶⁰ See *Sims*, 35 F.4th at 949-50 (explaining that, to establish deliberate indifference, the plaintiff must show that the defendant officer “actually ‘dr[ew] the inference’” that a substantial risk of serious harm exists (quoting *Domino*, 239 F.3d at 755 (alteration in original))).

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indifferent by not attempting medical care after checking a decedent's pulse and finding none.⁶¹ So too here, even drawing inferences in favor of the Belknaps. The complaint does not plausibly allege facts from which one could infer Vanskike believed Belknap could be saved.

The Belknaps resist this conclusion on two grounds. First, they highlight that Vanskike was trained in CPR and therefore could know that the absence of a pulse does not mean Belknap could not be resuscitated. But there are no allegations supporting the inference that, at the time, Vanskike believed that Belknap could be resuscitated by CPR. Second, the Belknaps suggest that Vanskike's "Yeah, he's gone" comment could have been intended to conceal his failure to administer CPR. There are no factual allegations in the complaint, however, to support that speculation.

In sum, the complaint fails to plead facts from which a jury could infer that Vanskike believed that Belknap could be helped. Accordingly, the complaint is inadequate to support the inference that Vanskike knew there was a substantial risk of serious harm. The only plausible inference from the facts in the complaint is that Vanskike believed the harm had already come to pass and Belknap was beyond saving. The district court erred by denying Vanskike's motion to dismiss on this claim.

2

The district court held that the complaint also plausibly alleged that Spinks was deliberately indifferent by failing to administer lifesaving care to

⁶¹ See *Brumfield v. Hollins*, 551 F.3d 322, 332-33 (5th Cir. 2008) (affirming summary judgment when three officers had found no pulse and assumed the decedent was dead by hanging); see also *Whitt v. Stephens County*, 529 F.3d 278, 280-81, 283 (5th Cir. 2008) (holding that a jury could not find deliberate indifference when a sheriff arrived at a scene where officers had assumed an inmate had died, even though no one had checked his pulse).

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Belknap. The court explained that Spinks did nothing to help Belknap after calling for assistance.

Spinks, like Vanskike, contends that the complaint alleged that Spinks was not deliberately indifferent because she believed Belknap to be dead. We agree.

The complaint alleges that twenty-five minutes after bringing Belknap dinner, Spinks found him hanging in his cell. It alleges that Vanskike checked Belknap's pulse after Spinks removed Belknap from the ligature. It alleges that Vanskike's face was distraught, which caused Spinks to believe that he felt no pulse. It alleges that Spinks reacted by screaming "Call EMS. Call Chief!" It alleges that Belknap had not urinated or defecated on himself.

These facts do not permit an inference that Spinks believed Belknap could be resuscitated. Although the complaint alleges that Spinks found Belknap hanging after seeing him twenty-five minutes prior, it does not allege that Spinks believed that twenty-five minutes was too little time for Belknap to be beyond help. Instead, the complaint alleges that Spinks interpreted Vanskike's expression to mean that Vanskike checked and found no pulse.

Here too, the Belknaps make two points. First, they argue that even if Belknap had no pulse, that is no excuse for Spinks failing to provide CPR and instead doing nothing. They contend that there are other explanations for Vanskike being unable to find a pulse, such as his lack of skill. While Spinks's failure to check Belknap's pulse herself may have been negligent, negligence does not amount to deliberate indifference.⁶² More

⁶² See *Brumfield v. Hollins*, 551 F.3d 322, 333 (5th Cir. 2008) ("While the deputies' conclusion that Smith was already dead and their resulting failure to make any attempt to save Smith's life are arguably negligent, negligent conduct alone does not amount to deliberate indifference.").

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fundamentally, the complaint does not allege facts supporting the contention that, at that point, Spinks believed CPR had the possibility of resuscitating Belknap. The complaint does not even allege Spinks was trained to administer CPR.

Second, the Belknaps emphasize that Spinks called for EMS, not a coroner. They claim that allows an inference that Spinks had not concluded Belknap was beyond help—but that he was experiencing a medical emergency. However, even making inferences in the Belknaps' favor, it is speculative to infer that Spinks's spur-of-the-moment call for EMS reflected her assessment that Belknap might be resuscitated with medical assistance. The complaint does not allege, for example, that it was jail policy to call a coroner rather than EMS when a jailer thinks someone is beyond saving.

Accordingly, the complaint fails to plausibly allege facts from which one could infer that Spinks believed Belknap was at a substantial risk of harm rather than already being beyond saving. The district court erred by denying Spinks's motion to dismiss this claim.

C

Finally, the Belknaps contend Vanskike and Spinks are each liable for failure to intervene in the unconstitutional actions of the other. “An officer is liable for failure to intervene when that officer: (1) knew a fellow officer was violating an individual's constitutional rights, (2) was present at the scene of the constitutional violation, (3) had a reasonable opportunity to prevent the harm but nevertheless, (4) chose not to act.”⁶³ “Bystander liability requires

⁶³ *Joseph ex rel. Estate of Joseph v. Bartlett*, 981 F.3d 319, 343 (5th Cir. 2020).

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more than mere presence in the vicinity of the violation; ‘we also consider whether an officer “acquiesced in” the alleged constitutional violation.’”⁶⁴

The district court held that the complaint plausibly states claims against the jailers. It stated: “As discussed above, Plaintiffs plausibly alleged that Spinks and Vanskike each violated [Belknap’s] rights, that each of them knew about the violations, that they both had the opportunity to prevent the harm, and that they chose not to act.” The district court did not analyze whether the alleged failure to intervene violated Belknap’s clearly established rights.

Because the complaint does not, in the main, plausibly allege constitutional violations, most of the Belknaps’ failure-to-intervene claims also necessarily fail. The exception is the Belknaps’ failure-to-intervene claim against Vanskike predicated on Spinks removing Belknap from suicide watch. We address this claim in the first instance, as the magistrate judge’s recommendation did not address it.⁶⁵

Although the Belknaps plausibly alleged Spinks violated Belknap’s constitutional rights, the failure-to-intervene claim against Vanskike nevertheless fails. The complaint does not allege facts from which a jury could infer that Vanskike “acquiesced in” Spinks’s alleged constitutional violation.⁶⁶ Vanskike instructed Spinks to clear moving Belknap with a mental-health professional. The complaint therefore does not state a claim for failure to intervene against Vanskike.

⁶⁴ *Id.* (quoting *Whitley v. Hanna*, 726 F.3d 631, 647 (5th Cir. 2013)).

⁶⁵ *See Hale v. King*, 642 F.3d 492, 498 (5th Cir. 2011) (“Determining whether [a plaintiff] has stated a claim for relief . . . requires only that we apply the Rule 12(b)(6) standard. . . . We are well-suited to perform this task ourselves.”).

⁶⁶ *Bartlett*, 981 F.3d at 343 (quoting *Whitley*, 726 F.3d at 647).

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Accordingly, the court erred by denying the motion to dismiss on these claims.

* * *

For the foregoing reasons, we AFFIRM the district court's denial of Spinks's motion to dismiss with respect to the claim predicated on Spinks removing Belknap from suicide watch. We REVERSE with respect to all other claims and REMAND for further proceedings.

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ANDREW S. OLDHAM, *Circuit Judge*, concurring in part and dissenting in part:

The circumstances surrounding Dakota Belknap's death are tragic. But despite the unfortunate events in this case, jailer Tisha Marie Spinks is entitled to qualified immunity. Taking as true the well-pleaded facts in the complaint, Spinks did not violate clearly established law.

*

“We are bound by the restrictive analysis of ‘clearly established’ set forth in numerous Supreme Court precedents.” *Cope v. Cogdill*, 3 F.4th 198, 204 (5th Cir. 2021). A right is “clearly established” if it is “one that is sufficiently clear that every reasonable official would have understood that what [s]he is doing violates that right.” *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam) (quotation omitted). We cannot define clearly established legal principles “at a high level of generality.” *Id.* at 16. Instead, clearly established law must “clearly prohibit the officer’s conduct in the *particular circumstances before him.*” *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018) (emphasis added); *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011) (the question is “whether the violative nature of particular conduct is clearly established”).

The inquiry is particularly context-dependent when a pretrial detainee struggles with suicidal ideation. To allege an official was deliberately indifferent to an inmate’s needs, plaintiffs must allege both that the official was “aware of facts from which the inference could be drawn” that an inmate has a “substantial risk” of suicide and that the official “also dr[ew] the inference.” *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The measures officers must take to comply with the Fourteenth Amendment once they recognize a detainee’s suicide risk depend on context. While “the law is clearly established that jailers must take measures to prevent inmate suicides once they know of the suicide risk, we cannot say that the law is established

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with any clarity as to what those measures must be.” *Hyatt v. Thomas*, 843 F.3d 172, 177–78 (5th Cir. 2016) (quotation omitted). “[E]ven if an officer responds without the due care a reasonable person would use—such that the officer is only negligent—there will be no liability.” *Id.* at 178. The qualified immunity inquiry, therefore, requires tightly-drawn comparisons to our existing pretrial detention suicide cases.

And our existing pretrial detention cases are easily distinguishable from the facts alleged here. Take *Converse v. City of Kemah*, for example. 961 F.3d 771 (5th Cir. 2020). There, police intercepted a man preparing to jump off a bridge and “forcefully pull[ed him] off the bridge railing” to arrest him. *Id.* at 773. The officers booked him and took away his shoes, indicating they knew he was still suicidal. *Id.* at 774. They even heard the man shouting from his cell that he “should have jumped”—clear evidence of a continuing suicide risk. *Ibid.* Yet the officers gave him a blanket, which he then used to hang himself. *Ibid.*

The facts alleged in the complaint do not look like the facts in *Converse*. True, Belknap was placed on suicide watch after the mental health department (“MHMR”) report revealed that he struggled with depression and had attempted suicide three days before his arrest. But the officer also had information indicating a lessened threat of suicide. The MHMR report said Belknap was not currently “thinking of killing or injuring” himself, and the employee evaluating him considered him not “to be a threat of harm to himself or others at this time.” ROA.24–25. The complaint also alleges that Belknap was visited multiple times over a two-day period by individuals required to monitor his mental health—including once by the MHMR employee, once by a judge, and twice by the jail nurse. Oral Argument at 24:45–31:18; ROA.25, 38–42, 51. And Spinks checked in with her supervisor before removing Belknap from suicide watch and into a cell with ligatures.

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ROA.50–51. At minimum, the officers here had reasons to believe the suicide risk had abated or disappeared in ways not presented in *Converse*.

Jacobs v. West Feliciana Sheriff's Department, 228 F.3d 388 (5th Cir. 2000), also is inapposite. In *Jacobs*, a woman shot her uncle then tried and failed to shoot herself. *Id.* at 390. She told the officers about the attempt, and they placed her on suicide watch. *Ibid.* The officers conceded they were aware of her earlier attempt, didn't give her sheets her first night at the jail, and regarded her as a suicide risk "at all times during her detention." *Id.* at 396. Yet they detained her in a cell they knew had tie-off points (because someone else had committed suicide the same way) and still gave her bedding on her second day in custody. *Id.* at 391. At bottom, the officers provided a detainee with a sheet despite their subjective knowledge that she remained "a suicide risk at all relevant times." *Id.* at 394–96.

Here, by contrast, Spinks removed Belknap from suicide watch after the jail conducted multiple rounds of mental health monitoring and after Spinks checked in with her supervisor. Spinks thus concluded the suicide risk had abated. And even if Spinks miscalculated the severity of Belknap's mental health challenges, *Jacobs* does not "clearly establish" that officers are deliberately indifferent unless they ignore reliable information suggesting an inmate's mental health condition has improved and keep the inmate on suicide watch until all possible risk of suicide has disappeared.

*

The majority nonetheless interprets our precedents to establish pretrial detainees' "right to be kept out of cells containing tie-off points and loose bedding" when they "are at a known risk of suicide." *Ante* at 16. But that assumes the conclusion. The entire dispute in this case is whether Belknap was "at a known risk of suicide," *ibid.*, after officers received and credited information that he was *no longer at risk of suicide*. None of our

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previous cases confront that question. And the absence of such precedent precludes denying qualified immunity in this case. *See, e.g., Laviage v. Fite*, 47 F.4th 402, 408 (5th Cir. 2022) (“[Q]ualified immunity shields officers unless existing precedent squarely governs the specific facts at issue, such that the question has been placed beyond debate.” (quotations omitted)).

None of that takes away from the tragedy of Belknap’s death. It is only to say that we cannot impose personal liability on Spinks for being either “plainly incompetent” or a criminal “who knowingly violate[d] the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).