

became upset with the fact that packages needed to be delivered to their appropriate address on the third floor and committed disorderly conduct by grabbing two of the packages and calling Judge Mitchell a “**Asshole**” as he went up the stairwell. Defendant County Judge Mitchell did order Deputy Rodriguez to arrest Plaintiff Cox. Deputy Rodriguez ascended to the Second Floor and caught up to Plaintiff Cox handcuffing one of his hands. County Judge Mitchell ascended the stairs to the second floor and ordered the Deputy to remove the handcuff. Through information and belief, only one wrist of Plaintiff Cox was ever handcuffed. In any event, Plaintiff Cox retrieved his cell phone from his pocket and gave it to Judge Mitchell with the name and phone number of his supervisor. County Judge Mitchell used Cox’s cell phone to call the UPS Supervisor and report the incident. Subsequent to County Judge Mitchell having a conversation with Cox’s Supervisor, the cell phone was returned to Plaintiff Cox and the incident was over. The entire incident was five to ten minutes.

Plaintiff has brought six causes of action against Uvalde County and Uvalde County Judge Mitchell, in his individual capacity as follows:

- (1) First Cause of Action – Fourth Amendment Seizure and Kidnapping;
- (2) Second Cause of Action – Fifth Amendment Violation of Self Incrimination;
- (3) Third Cause of Action – Fourteenth Amendment Equal Protection;
- (4) Fourth Cause of Action – Fourteenth Amendment Due Process; (Shocks the Conscience);
- (5) Fifth Cause of Action – Municipal liability under *Monell*; and,
- (6) Sixth Cause of Action – Supplemental Claim of Offensive Conduct under the TEXAS PENAL CODE – Assault.

Defendants **UVALDE COUNTY** and **COUNTY JUDGE MITCHELL**, in his individual capacity, deny that any cause of action exists for the six causes of action Plaintiff is alleging. Defendant

Uvalde County asserts that *Monell* liability does not exist and has not been alleged pursuant to Plaintiff's Complaint. Defendant COUNTY JUDGE MITCHELL, in his individual capacity, asserts qualified immunity under both prongs of the qualified immunity analysis. Defendant Judge Mitchell asserts that Plaintiff has failed to state a constitutional deprivation and that his actions were objectively reasonable under established law. County Judge Mitchell, in his individual capacity, further asserts absolute judicial immunity in acting as a County Judge when confronted with a subject committing disorderly conduct.

II. LEGAL ANALYSIS

FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6) authorizes dismissal of a complaint for failure to state a claim upon which relief may be granted. Review is limited to the contents of the complaint and matters properly subject to judicial notice. In analyzing a motion to dismiss for failure to state a claim, the court accepts all well pleaded facts as true, viewing them in the light most favorable to the plaintiff. To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead, "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). 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. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The plaintiff must do more than recite the formalistic elements of a cause of action. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). The tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions and courts are not bound to accept as true a legal conclusion couched as a factual allegation. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Thus, although all reasonable inferences will be resolved in favor of the plaintiff, the plaintiff must plead specific facts, not merely conclusory allegations. When a complaint fails to adequately state

a claim such deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

III. MONELL

Defendant UVALDE COUNTY asserts municipal liability under Section 1983 may not be predicated on Respondeat Superior. *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001). Governmental entities such as the City of New Braunfels can be found liable under 42 U.S.C. §1983 only where the governmental entity causes the constitutional violation at issue. *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978).

Defendant UVALDE COUNTY asserts there are three ways to establish municipal liability under Section 1983:

“First, a plaintiff must show written policy statements, ordinances, or regulations. Second, a plaintiff can show a widespread practice that is so common and well settled as to constitute a custom that fairly represents municipal policy. Third, even a single decision may constitute municipal policy in rare circumstances when the official or entity possessing final policy making authority for an action performs the specific act that forms the basis of the Section 1983 claim.

Webb v. Town of Saint Joseph, 925 F.3d 209, 214 (5th Cir. 2019). Of relevance to the case at bar, to establish a custom or pattern prior indications cannot simply be for “bad” or “unwise” acts, but rather must point to the specific violations in question. *Estate of Davis Ex Rel. McCulley v. City of North Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005).

In *Vardeman v. City of Houston*, 59 F.4th 1045 (5th Cir. 2022), the Fifth Circuit analyzed a Section 1983 claim against a municipality in a context of an officer striking the plaintiff. In *Vardeman*, plaintiff brought a Section 1983 action against a police officer concerning alleged excessive force when the officer punched plaintiff in the face, knocking him to the ground and stood over the plaintiff for a time, after the plaintiff failed to move his vehicle from an airport passenger pick up area. The trial court granted motion to dismiss and the officer’s plea of qualified

immunity. On appeal, the Fifth Circuit reversed as to the police officer but affirmed as to the City of Houston. The Court held that the Plaintiff cannot establish municipal liability by stating that any and all “bad” or “unwise” acts but most point to specific violation in question. The Court held that plaintiff’s complaint did not adequately allege a pattern or practice against the municipality and therefore, affirmed dismissal. *Id.* at 1052.

Defendant UVALDE COUNTY further asserts that Plaintiff’s allegations of negligent supervision and training failed to state a cause of action against this governmental entity. *Rivera v. City of San Antonio*, 2006 WL 3340908 *15 (W.D. Tex. Nov. 15, 2006); *Starrett v. City of Richmond*, 2018 WL 4627133*12 (N.D. Tex. July 27, 2018). In the case at bar, Plaintiff’s conclusory allegations of a custom and policy failed to state a cause of action under 42 U.S.C. §1983 against Uvalde County, as a matter of law. *Vardeman v. City of Houston*, 59 F.4th 1045, 1052 (5th Cir. 2022).

IV. JUDGE MITCHELL

A. DE MINIMIS NON CURAT LEX

Defendant Judge Mitchell, in his individual capacity, asserts the maxim of De Minimis Non Curat Lex which translates as “The Law Does not Regard [or concern itself] with Trifles”.¹ This maxim is often used to denote types of harm where there is no “actionable wrong” in constitutional cases. *Hessel v. O’Hearn*, 977 F.2d 299, 303 (7th Cir. 1992). In the Fourth Amendment context, the maxim is commonly used where the de minimis amount of injury sustained is not cognizable. *Alexander v. Round Rock*, 854 F.3d 298, 309 (5th Cir. 2017)(cleaned up).

¹ Max L. Veech & Charles R. Moon, De Minimis Non Curat Lex, 45 Mich.L.Rev. 537, 538 (1947).

Williams v. City of Champagne, 524 F.3d 826 (7th Cir. 2008), is instructive to the case at bar. In *Williams*, a juvenile robbery suspect was detained in handcuffs for approximately 15 minutes before being exonerated by robbery victims. The Seventh Circuit in affirming the trial court's motion for summary judgment relied on the maxim of *de minimis non curat lex*. The Court reasoned that the brevity of the restraint defeats plaintiff's claims for damages, which is his only claim. He suffered no harm. Any increment of emotional distress could not have been significant.

In the case at bar, Plaintiff's five to ten minute detention while the County Judge communicated with Plaintiff's supervisor does not rise to a constitutional tort, as a matter of law.

B. ABSOLUTE JUDICIAL IMMUNITY.

Defendant County Judge Mitchell asserts absolute judicial immunity against Plaintiff's claims. Absolute Judicial Immunity extends to all judicial acts which are not performed in the clear absence of all jurisdiction. *Adams v. McIlhany*, 764 F.2d 294, 297 (5th Cir.) (cert. denied 474 U.S. 1101 (1986)). Thus, a judge has no immunity (1) for actions taken outside his judicial capacity or (2) for actions that are judicial in nature, but occur in the complete absence of all jurisdiction. *Morales v. Waco*, 502 U.S. 9, 11 (1991). Judicial immunity is not overcome by allegations of bad faith or malice. Rather, case law makes clear immunity is overcome only by two sets of circumstances. First, a judge is not immune from liability for non-judicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, of judicial in nature, taken the complete absence of all jurisdiction.

In the case at bar, County Judge Mitchell's duties are the day-to-day operations of the Uvalde County Courthouse. In his capacity as county judge, while stepping outside his judicial chambers, directed the UPS Carrier to deliver to the appropriate location. Judge Mitchell was called "an asshole" which Judge Mitchell construed as disorderly conduct. Defendant Mitchell

did order the bailiff to arrest Plaintiff Cox which led to his detainment for approximately 5 to 10 minutes. Defendant Mitchell asserts judicial immunity for his actions on the date in question.

Malina v. Gonzales, 994 F.2d 1121 (5th Cir. 1993) is instructive to the case at bar. In *Malina*, a motorist and his wife brought a cause of action for damages against a state judge after the judge stopped the motorist on the interstate using a flashing red light on his vehicle, summoning a police to the scene, and issuing a contempt citation and jail sentence. The trial court denied the judge's motion to dismiss based on judicial immunity and the judge appealed. The Fifth Circuit analyzed the various stages of the stop and held that judicial immunity did not apply to the stopping and the seizure of the motorist on the interstate using a flashing red light, but that the judge was entitled to judicial immunity for the contempt citation and sentencing to jail for five hours as judicial acts. *Id.* at 1125.

C. QUALIFIED IMMUNITY.

Defendant Judge Mitchell, pleading in the alternative, and without waiving any of the foregoing, further asserts qualified immunity for Plaintiff's actions. Defendant Judge Mitchell asserts both prongs of the qualified immunity analysis. Defendant Judge Mitchell asserts that Plaintiff Cox did not sustain a constitutional deprivation and further asserts that Judge Mitchell's actions were objectively reasonable based on established law.

Defendant Judge Mitchell asserts his defense of qualified immunity for each of Plaintiff's causes of action as follows:

(1) **FIRST CAUSE OF ACTION – FOURTH AMENDMENT SEIZURE AND KIDNAPPING.**

Plaintiff has failed to state a cause of action for a Fourth Amendment seizure and kidnapping. Plaintiff has failed to state a cause of action for a Fourth Amendment seizure case, as a matter of law. *See, Glenn v. Tyler*, 242 F.3d 307, 313 (5th Cir. 2001). Plaintiff being detained for 5 to 10 minutes does not constitute an unreasonable seizure based under the circumstances, as a matter of law. Plaintiff cannot claim a kidnapping case under 42 U.S.C. §1983. *See, Ferrara v. Wallace*, 2021 WL 11702086 at *3 (W.D. Tex. – San Antonio Division Jan. 7, 2021).

(2) **SECOND CAUSE OF ACTION – FIFTH AMENDMENT VIOLATION OF SELF-INCRIMINATION.**

Defendant Judge Mitchell asserts that Plaintiff's Second Cause of Action – Fifth Amendment Self-Incrimination does not state a cause of action under 42 U.S.C. §1983. *See, Murray v. Earle*, 405 F.3d 278, 286 (5th Cir. 2006).

(3) **THIRD CAUSE OF ACTION – FOURTEENTH AMENDMENT EQUAL PROTECTION.**

Defendant Judge Mitchell asserts that Plaintiff has failed to state a cause of action for his Third Cause of Action under the Fourteenth Amendment Equal Protection Class of One. Plaintiff has failed to state a cause of action for an equal protection claim of a class of one, as a matter of law. *Kelly v. City of Wick Village, Texas*, 264 F.App'x 437, 444 (5th Cir. 2008).

(4) **FOURTH CAUSE OF ACTION – FOURTEENTH AMENDMENT DUE PROCESS; SHOCKS THE CONSCIENCE.**

Defendant Judge Mitchell asserts that Plaintiff has failed to state a cause of action for his Fourth Cause of Action under the Fourteenth Amendment Due Process – Shocks the Conscience. Plaintiff's Complaint does not allege a shock the conscience Fourteenth

Amendment violation. *See, County of Sacramento v. Lewis*, 523 U.S. 833, 853 (1998); *Littlejohn v. New Orleans City*, 493 F.Supp.3d 509, 521 (E.D. La. 2020).

(5) **FIFTH CAUSE OF ACTION – MUNICIPAL LIABILITY UNDER *Monell*.**

Defendant Judge Mitchell denies Plaintiff's Fifth Cause of Action concerning *Monell* liability. Plaintiff has failed to show a custom or policy that lead to his alleged constitutional deprivation. *Webb v. Town of St. Joseph*, 925 F.3d 209, 214 (5th Cir. 2019). Furthermore, Plaintiff has failed to show that a rare circumstance when an official or entity performs an act causing a violation of a constitutional violation attributable to the municipality. *Estate of Davis Ex Rel. McCulley v. City of North Richland Hills*, 406 F.3d 375, 383 (5th Cir. 2005). Plaintiff has failed to show a custom or policy that was a direct proximate cause of Plaintiff's alleged constitutional deprivation. *Board of County Commissioners of Bryan County Ok v. Brown*, 520 U.S. 397, 404 (1997).

(6) **SIXTH CAUSE OF ACTION – SUPPLEMENTAL CLAIM OF OFFENSIVE CONDUCT UNDER THE TEXAS PENAL CODE – ASSAULT.**

Defendant Judge Mitchell asserts that Plaintiff has failed to state a cause of action under the Sixth Cause of Action – Supplemental Claims of Official Contact under the Texas Penal Code. Defendant would show unto the Court that State Criminal Statutes are not cognizable under 42 U.S.C. §1983, as a matter of law. *Gipson v. Callahan*, 18 F.Supp.2d 662, 668 (W.D. Tex. 1997).

WHEREFORE, PREMISES CONSIDERED, Defendants **UVALDE COUNTY** and **COUNTY JUDGE MITCHELL** pray that the Court dismiss Plaintiff's claims and for such other and further relief as they may show themselves justly entitled.

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**UVALDE COUNTY AND COUNTY JUDGE
WILLIAM R. MITCHELL**

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May 2025, I electronically filed the foregoing Defendant Uvalde County, Et Al's Motion to Dismiss with the Clerk of the Court using the CM/ECF system via electronic delivery of same to:

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Pro Se Plaintiff
P.O. Box 63
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Via Certified Mail RRR 7022 3330 0001 2691 3338

/s/ Charles S. Frigerio
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