

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES COURT
SOUTHERN DISTRICT OF TEXAS

JAN 13 1999

Michael N. Milby, Clerk

CLAUDIA NAVARRO PINEDA, et al. §
Plaintiffs §
§
vs. §
§
THE CITY OF HOUSTON, et al. §
Defendants §

Civil Action: H:98-3877

**PLAINTIFFS' RESPONSE TO THE CITY OF HOUSTON'S
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

FOREMAN, DEGEURIN,
NUGENT & GERGER

MITHOFF & JACKS, L.L.P.

Paul C. Nugent
State Bar No. 15132600
David B. Gerger
State Bar No. 07816360
Mike Degeurin
State Bar No. 05637500
909 Fannin, Suite 590
Houston, Texas 77010
Telephone: (713) 655-9000
Facsimile: (713) 655-1812

Richard Warren Mithoff
State Bar No. 14228500
Attorney-in-Charge
Michael L. Phifer
State Bar No. 15908700
One Allen Center
500 Dallas, Suite 3450
Houston, Texas 77002
Telephone: (713) 654-1122
Facsimile: (713) 739-8085

LAW OFFICE OF
KEITH P. ELLISON

HOGAN DUBOSE
& TOWNSEND, L.L.P.

Keith P. Ellison
State Bar No. 06580520
1100 Louisiana Street, Suite 4600
Houston, Texas 77002
Telephone: (713) 659-8080
Facsimile: (713) 650-0146

Jennifer Bruch Hogan
State Bar No. 03239100
Roger Townsend
State Bar No. 20167600
Richard P. Hogan, Jr.
State Bar No. 09802010
1400 Lyric Centre
440 Louisiana Street
Houston, Texas 77002-1634
Telephone: (713) 222-8800
Facsimile: (713) 222-8810

ATTORNEYS FOR PLAINTIFFS

FILED
99 JAN 13 PM 4:50
U.S. COURTS
SOUTHERN DISTRICT
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TO THE HONORABLE SIM LAKE, UNITED STATES DISTRICT JUDGE:

Plaintiffs file this response to the City of Houston's motion to dismiss the plaintiffs' complaint for failure to state a claim.

I. Governing Standard of Review

A motion to dismiss for failure to state a claim "is viewed with disfavor and is rarely granted." *Lowrey v. Texas A&M Univ.*, 117 F.3d 242, 247 (5th Cir. 1997) (quoting *Kaiser Alum. & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir. 1982)).

As the Supreme Court has stated: "[A] complaint should not be dismissed for failure to state a claim unless it appears *beyond doubt* the plaintiff can prove *no* set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02 (1957) (emphasis added). Accordingly, a "complaint should not be dismissed merely because the plaintiff's allegations do not support the legal theory he intends to proceed on, since the court is under a duty to examine the complaint to determine if the allegations provide for relief on *any possible* theory." 5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1357 (2d ed. 1990) (emphasis added) [hereinafter "WRIGHT & MILLER"].

Thus, a complaint should not be dismissed even if the court doubts that the plaintiff will prevail in the action. WRIGHT & MILLER § 1357. This is so because "a case should be tried on the proofs rather than the pleadings." *Id.* For this reason, dismissal for failure

to state a claim is justified “only in the unusual case in which plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief.” *Id.*

Moreover, in making this determination, “[t]he complaint must be liberally construed in favor of the plaintiff, and all facts pleaded in the complaint must be taken as true.” *Lowrey v. Texas A&M Univ.*, 117 F.3d at 247. Thus, the Supreme Court has expressly rejected any heightened pleading requirement for claims against municipalities under section 1983:

We think that it is impossible to square the “heightened pleading standard” applied by the Fifth Circuit in this case with the liberal system of “notice pleading” set up by the Federal Rules. Rule 8(a)(2) requires that a complaint include only “a short and plain statement of the claim showing that the pleader is entitled to relief.” In *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957), we said in effect that the Rule meant what it said:

“[T]he Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is ‘a short and plain statement of the claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Id.*, at 47, 78 S. Ct., at 103 (footnote omitted).

Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 168, 113 S. Ct. 1160, 1163 (1993).

In resolving the conflicting authorities presented in *Leatherman*, the Court chose the rule from the Ninth Circuit that had approved a claim against police officers based on “nothing more than a bare allegation that the individual officers’ conduct conformed to

official policy, custom, or practice.” *Id.* at 165, 113 S. Ct. at 1162 (quoting *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 624 (9th Cir. 1988)). If that was enough for the Supreme Court, then the plaintiffs’ allegations here likewise are sufficient.

Accordingly, in the light of these standards, the plaintiffs will respond to each of the City’s challenges:

II. Summary of Argument

The City’s motion fails to meet the requirements for dismissal under rule 12(b)(6), because the plaintiffs have stated valid claims for relief. Therefore, the City’s motion should be denied.

III. The Plaintiffs Have Stated a Claim Under 42 U.S.C. § 1983.

A. The Allegations in the Complaint Are Sufficient To State a Claim Under Section 1983.

As discussed above, “all the Rules require is ‘a short and plain statement of the claim’ that will give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. at 168, 113 S. Ct. at 1163 (quoting *Conley v. Gibson*, 355 U.S. at 47, 78 S. Ct. at 103). Given this generous standard, Plaintiffs’ Original Complaint easily satisfies Rule 12(b)(6).

In part, the plaintiffs have alleged that: (1) each of the individual defendants was acting within the course and scope of his employment as a City of Houston Police Officer and under color of state law; (2) each deprived the plaintiffs of rights, privileges, and

immunities secured by the United States Constitution and laws; (3) these deprivations directly resulted from official policies, customs, or practices of the City of Houston; and (4) these policies, customs, and practices were each a cause of and resulted in the death of Pedro Oregon Navarro and the injuries and damages suffered by the plaintiffs. Plaintiffs' Orig. Complaint at 2-3, 7. The plaintiffs further identified the improper policies, customs, and practices of the City of Houston to include:

- Applying or allowing less stringent standards in the recruitment of officers for the gang task force than for other special assignments in the police department;
- Applying or allowing less stringent standards in the pre-employment screening of officers for the gang task force than for other special assignments in the police department;
- Applying or allowing less stringent standards in the assignment of officers for the gang task force than for other special assignments in the police department;
- Applying or allowing less stringent standards in the training of officers for assignment to the gang task force than for other special assignments in the police department;
- Applying or allowing less stringent standards in the supervision of officers for the gang task force than for other special assignments in the police department;
- Regularly relying on members of the gang task force rather than the narcotics squad for carrying out drug raids; and
- Regularly relying on unauthorized informants in conducting investigations.

Plaintiffs' Orig. Complaint at 2-3.

Thus the plaintiffs allege claims for, *inter alia*, inadequate training and inadequate recruitment, and screening practices. The Fifth Circuit has recognized that these are valid theories of recovery under Section 1983. *See, e.g., Baker v. Putnal*, 75 F.3d 190, 200 (5th Cir. 1996).

Because this Court is obliged to take all facts pleaded in the complaint as true, there is no basis for dismissal under Rule 12(b)(6). Plaintiffs are not required to make any greater showing in order to avoid dismissal. Nevertheless, the plaintiffs attach and incorporate the sworn statement of defendant David Russell Perkins—which substantiates many of the facts supporting the plaintiffs’ claim under section 1983—and they hereafter detail their grounds for recovery under Section 1983. *See* Tab A.

B. The Plaintiffs Have Stated a Claim for Inadequate Training.

A municipality may be held liable under 42 U.S.C. § 1983 for inadequate training when “the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.” *City of Canton v. Harris*, 489 U.S. 378, 388, 109 S. Ct. 1197, 1204 (1989); *see also Board of County Commissioners v. Brown*, ___ U.S. ___, 117 S. Ct. 1382, 1390 (1997). In this case, the City’s deliberate failure to provide adequate training for its gang task force officers, specifically including, *inter alia*, inadequate supervision, assignment, and testing of officers and regularly relying on unauthorized informants and on members of the gang task force rather than the narcotics squad for drug raids, represents an official “policy” or “custom” that will support liability under Section 1983. *See Canton*, 489 U.S. at 398, 109 S. Ct. at 1205.

1. **The allegations in the complaint were sufficient to show the City was “deliberately indifferent” in its training policies.**

In the light of the extraordinary duties—and powers—entrusted to the gang task force, the patently inferior training the City provided for task force officers is sufficient to establish that the City was “deliberately indifferent” to the gang task force’s violations of Pedro Oregon’s federal rights. The Supreme Court has recognized that “deliberate indifference” may be inferred under circumstances similar to the present case:

[I]t may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need. In that event, the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury.

Canton, 489 U.S. at 390, 109 S. Ct. at 1205.

In this case, the plaintiffs’ allegations are sufficient to support this conclusion. Although the gang task force is promoted by the City of Houston as the answer to the gang problem in Houston, the City’s deliberate indifference to the lack of uniformity in all aspects of training of such officers, both before and after assignment to the gang task force, is apparent from the sworn testimony of one of the members of the gang task force involved in the incident in question:

Q Did you receive, at any time prior to starting your duties with the Gang Task Force, any specialized training for that work?

A Only the in-service schools that I’ve been through. No specialized training, like a gang school or anything like that, no sir.

- Q Is there such a thing, that you are aware of, as a gang school?
- A Yes, sir.
- Q Is there such a thing as specialized gang training?
- A Yes, sir.
- Q Were you required by the Department to undergo any kind of training of that kind?
- A Not upon being hired, no, sir.
- Q Once you were hired and once you were accepted for work in the Gang Task Force, were you required to undergo any type of training of that kind, either gang school or gang training?
- A I don't believe so, no, sir.
- Q Did you receive any specialized training once you were assigned to the Gang Task Force?
- A No, sir.
- Q Did you receive any specialized training once you were assigned to the Gang Task Force in the use of authorized or registered informants?
- A No, sir.
- Q Did you receive any specialized training once you were assigned to the Gang Task Force with respect to consent searches?
- A No, sir.
- Q Did you receive any specialized training once you were assigned to the Gang Task Force with respect to narcotics, narcotics searches, narcotics arrests?
- A No, sir.

Q I assume, in your work with the Gang Task Force, which you have described as involving certain intelligence-gathering activities and meeting with individual gang members, that that type of work can involve, on occasion, violence.

A Yes, sir.

Q And I assume that that can, on occasion, involve violence between different gangs or within certain gangs.

A Yes, sir.

Q Or other crimes related to gang members.

A Yes, sir.

Q Did you ever receive any specialized training once you were assigned to the Gang Task Force that would relate to the use of weapons or the use of force as it would relate specifically to gang-related activity and controlling or handling gang activity?

A No, sir.

Q Were you ever provided with any standard operating procedure manuals or written materials of any kind once you were assigned to the Gang Task Force?

A I had general orders from the City of Houston, standard operating procedures from the police department itself. As far as individual standard operating procedures from Gang Task Force, no, sir.

Q So you had what you called general orders and certain procedures from the police department itself?

A Yes, sir. It doesn't cover exactly what a gang task force does. They have their individual standard operating procedures.

Q So with respect to what you were or were not supposed to do as a member of the Gang Task Force, did the Houston Police Department ever provide you with any written standard operating procedures for that work?