No. 22-186

In the Supreme Court of the United States

TROY MANSFIELD,

Petitioner,

v.

WILLIAMSON COUNTY,

Respondent.

On Petition for Writ of Certiorari to the
U.S. Court of Appeals for the Fifth Circuit

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Respondent does not dispute that its prosecutors withheld evidence from Troy Mansfield and knew they had no complaining witness when they used a light sentence to compel him to plead guilty days before trial. Respondent also does not dispute that this evidence—the alleged victim's statement that "nothing happened"—was exculpatory. But the courts below held that, under circuit precedent, Mansfield "does not have a *Brady* claim for his pre-trial guilty plea." Pet.App.9a (citing *Alvarez v. City of Brownsville*, 904 F.3d 382 (5th Cir. 2018) (en banc)).

This case thus squarely presents the question whether the due-process right to exculpatory evidence recognized in *Brady v. Maryland*, 373 U.S. 83 (1963), applies to pretrial plea negotiations—a recurring and important issue of federal constitutional law.

Respondent does not contest that there is an "acknowledged" split of authority among 14 circuits and state high courts on this issue (Pet. 14), which Judges Higginbotham and Costa called on this Court to resolve. Pet.App.12a–15a. Ten of these courts have recognized that *Brady* applies during plea bargaining (Pet. 14), while the Fifth Circuit and "[three] of its sister courts" are in the minority (Opp. 22).

A broad and diverse group of amici—current and former prosecutors, former state and federal judges, academics, and a spectrum of public-interest organizations—agree with Judges Higginbotham and Costa that, in a criminal justice system where almost all convictions are obtained through pleas, the importance of the question presented is "not debatable." Pet.App.15a; *see also* Pet.App.12–13a.

None of the issues raised in the opposition precludes this Court's review. Respondent misconstrues the

holding below and attempts to shift the focus to issues of liability that have no bearing on the *Brady* question and should be decided (if necessary) on remand. Respondent's efforts to reframe the question, raise red herrings, and minimize the glaring need to resolve the *Brady* issue betray the weakness of its position.

The Court should take this opportunity to finally resolve this entrenched split and ensure that the amount of process due a criminal defendant no longer depends on geographic happenstance. It should grant the petition, reverse the decision below, and hold that the knowing failure to disclose exculpatory evidence (or at least evidence of factual innocence) during plea negotiations violates due process.

I. In a "system of pleas," it is important for the Court to resolve the split.

Respondent does not contest that authorities are split or deny that the question presented is important. Instead, it tries to change the question. Mansfield is *not* seeking "[a] new constitutional rule expanding *Brady*" beyond trial. Opp. 18. *Brady* is a *due process* right, and the text of the Fourteenth Amendment says nothing about trial. *See* Pet.App.13a; *Alvarez*, 904 F.3d at 407–08 (Costa, J., dissenting); Tex. C.R. Project Br. 24 n.18. *Brady* itself relied on a prior decision involving a violation at the plea stage. 373 U.S. at 87 (citing *Wilde v. Wyoming*, 362 U.S. 607 (1960)); *see* Pet.App.14a; Miller Br. 6–7. Petitioner asks this Court to confirm what many circuits and state high courts have held: the due process right recognized in *Brady* applies at the plea stage and was never confined to trial in the first place. *See* Opp. 21–22.

The Fifth Circuit's contrary decision reaffirms intercircuit and federal-state splits that invite outcomes so

arbitrary as to be "[un]tenable." Pet.App.15a; *see* Pet. 13–14; Judges Br. 11 ("As it now stands, a defendant's constitutional right to receive exculpatory materials at the plea stage turns on the fortuity of where he is tried."). The Court should intervene.

1. Respondent ignores the concern of jurists like Judge Bibas (Pet. 13, 27–28), Judges Higginbotham and Costa (Pet.App.12a–13a), and the 15 federal and state judges who support certiorari as amici (Judges Br. 2–3)—not to mention the prosecutors, scholars, and ideologically diverse groups who also submitted amicus briefs—that a *Brady* right that only applies at trial is "render[ed] … a dead letter" in a criminal justice system dominated by plea bargaining. *See* Corbett Br. 2, 10–12; *see also* Law Professors Br. 2–3, 16–25; Cato Br. 9–13; Tex. C.R. Project Br. 21–22.

The status quo is already a "system of pleas" rather than "a system of trials" (*Lafler v. Cooper*, 566 U.S. 156, 170 (2012)), and Respondent's view of *Brady* will hasten the jury trial's "extinction." Cato Br. 9. Without knowing whether exculpatory evidence exists, a defendant cannot accurately assess the relative strength of his own position and will err on the side of caution and accept a plea bargain. *See id.* at 10.

2. Respondent says a constitutional rule is unnecessary because it is "unlikely" that "an innocent person" would "falsely plead guilty." Opp. 21. This naïve assumption ignores the reality of the "trial penalty" defendants face for exercising their constitutional right to go to trial rather than plead out. *See* Law Professors Br. 16–17; Nat'l Ass'n of Crim. Def. Lawyers, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It* 6 (2018), http://bit.ly/3hHeIgI (trial penalty "results from the

discrepancy between the sentence the prosecutor is willing to offer in exchange for a guilty plea and the sentence that would be imposed after a trial").

Data confirm that our "prosecutor-dictated plea bargain system" has "led a significant number of defendants to plead guilty to crimes they never actually committed." *See* Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. Rev. of Books (Nov. 20, 2014), http://bit.ly/3hCvWMu; *see also* Innocence Project, *DNA Exonerations in the United States* (last visited Nov. 12, 2022), http://bit.ly/3Etz5r1 (11.7% of 354 exonerees pled guilty); *Trial Penalty*, *supra*, at 17 (up to 27% of defendants who have pled guilty may be factually innocent, including "359 specific instances" of exonerations after pleas). Even a Texas judge, prosecuted on a false charge by a political rival, chose to plead guilty and take 10 years' probation rather than risk a 20-year sentence. Kathy Wise, *The Most Lawless County in Texas*, D Mag. (Oct. 19, 2022), http://bit.ly/3g3gSae (determinative question was, "Do you want to be right or do you want to be free?").

For Mansfield, too, "[t]he benefit of pleading—180 days in jail … versus the risk of a life sentence with a trial—was too great to pass up." Pet.App.13a. The trial penalty thus answers "the age-old question of why an innocent person might plead guilty." *Id.*

3. The disclosure policies and procedures that have been adopted in the Federal Manual and various state codes weigh in *favor* of review, not against it. *Compare* Opp. 18–20, *with* Corbett Br. 14–18. As amici prosecutors point out, "for decades, various jurisdictions have recognized and implemented a pre-plea right to exculpatory evidence," and "[n]one has had any problem doing so." Corbett Br. 17. The "impact" Respondent

warns of has simply never materialized. *See id.* (reforms are efficient); Judges Br. 12–17 (administrability concerns are misplaced).

At the same time, the current patchwork of disclosure rules does not obviate the need for an answer to the constitutional question. Texas is indeed "a good example" (Opp. 18)—of why it is necessary to recognize the federal due-process right to exculpatory evidence at plea bargaining. Texas recognized this right long before Mansfield was prosecuted, but the prosecution did not disclose despite this precedent *and* a court order. *See Ex parte Lewis*, 587 S.W.2d 697, 700 (Tex. Crim. App. 1979); Pet.App.40a–41a. And yet the federal courts responsible for the *same geographical area* do not consider this a constitutional violation.

The difference between the jurisdictions that recognize a right to exculpatory evidence at plea bargaining and those that don't is that, in the latter, an unethical prosecutor can hide evidence without being held accountable. Corbett Br. 19 (discussing "perverse incentives for unchecked prosecutors to withhold exculpatory evidence"). Review is needed to cure "the want of certitude [that] shadows the federal criminal dockets across the country." Pet.App.13a.

II. There are no vehicle problems.

As the question presented plainly merits review, Respondent instead tries to cast doubt on this case's suitability. These arguments frequently mischaracterize the record, and none precludes or hinders review.

1. Respondent's assertion that the Court "has no path" to address the question presented conflates Mansfield's two theories of liability and muddles the decisions below. Opp. 8.

a. Mansfield based his § 1983 claim on two distinct due-process violations: (1) prosecutors' failure to disclose exculpatory evidence under *Brady*, and (2) their affirmative lies about the evidence they intended to present at trial. Pet. 10; Pet.App.22a. The courts below rightly ruled on these questions separately. The district court found that Mansfield's *Brady* claim was foreclosed by circuit precedent. Pet.App.22a–26a. But as for the second theory, the court declined to recognize a due process violation when prosecutors lie about or misrepresent evidence during plea negotiations. Pet.App.30a, 34a. The district court did not reach the issue of municipal liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), as to either theory. Pet.App.20a.

b. Like the district court, the Fifth Circuit expressly held that the *Brady* claim was "foreclosed" by circuit precedent. Pet.App.8a. Its "hold[ing] that Mansfield does not have a *Brady* claim for his pre-trial guilty plea" and "[t]hus … failed to identify a violation of the Fourteenth Amendment to support his § 1983 claim" directly raises and cleanly frames the question presented for this Court's review. Pet.App.9a.

Because Mansfield's *Brady* claim was foreclosed, the Fifth Circuit, like the district court, did not assess municipal liability as to the failure to disclose exculpatory evidence. It did, however, address *Monell* in the context of the *other* theory of liability premised on "lying about evidence [prosecutors] were under order to disclose." *See* Pet.App.5a–6a; *see also* Pet.App.7a ("We cannot conclude that the closed-file policy caused the prosecutors to lie."); *id.* ("[O]ur issue here is *Monell* liability and we cannot conclude that the closed-file policy was the moving force that caused the prosecutors to lie."). The court avoided the constitutional issue whether the lies violated due process. Pet.App.6a–8a.

c. The Fifth Circuit's holding that there was no *Monell* liability for the prosecutors' lies did not answer the separate and distinct question of how *Monell* applies to the *Brady* theory. Should Mansfield prevail and confirm that prosecutors' withholding of exculpatory evidence under the closed-file policy violated his *Brady* right, municipal liability for that violation should be addressed in the first instance on remand. *See, e.g.*, *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 379 (2009) (leaving *Monell* claim for remand); *Tennessee v. Garner*, 471 U.S. 1, 22 (1985) (leaving liability issues that "[h]inge[] on *Monell*" for remand).

Mansfield has presented evidence that Williamson County's policymaker imposed a policy directing prosecutors to withhold exculpatory evidence to force even innocent defendants to plead guilty. Pet.App.19a–20a; *see Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 405 (1997) ("the conclusion that the action … directed by … [a municipality's] authorized decisionmaker itself violates federal law will also determine that the municipal action was the moving force"); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481 (1986) ("If the decision to adopt [a] particular course of action is properly made by [the] government's authorized decisionmakers, it surely represents an act of official government 'policy'"). Mansfield also alleged that prosecutors regularly failed to disclose exculpatory evidence in accordance with the policy, which could "lead to constitutional violations." Pet.App.20a, 21a n.4; *see G.M. ex rel. Lopez v. Shelton*, 595 F. App'x 262, 264 (5th Cir. 2014) (per curiam) (municipality "may be sued if the employees acted in accordance with an official policy or custom" (citing *Monell*)).

Municipal liability poses no obstacle to this Court's review of the question presented.

2. Respondent also asserts that it is not liable for its prosecutors' actions because the Williamson County District Attorney's closed-file policy should be attributed to the State. Opp. 12–13. Respondent already lost this argument—the magistrate properly found that "Mansfield has alleged a viable § 1983 claim against the County," and the district court agreed. Supp.App.14a, 17a. Though Respondent raised the state-vs.-county argument as an alternative ground for affirmance (5th Cir. Resp. Br. 27–31), the Fifth Circuit chose not to address it. And Respondent did not cross-appeal to preserve the argument for future proceedings. *See, e.g.*, *FTC v. Dantuma*, 748 F. App'x 735, 739 (9th Cir. 2018) ("parties who were satisfied with the district court's judgment must file a cross-appeal to preserve issues for review in subsequent appeals following a remand"), *vacated on other grounds sub nom. Publ'rs Bus. Servs. v. FTC*, 141 S. Ct. 2589 (2021); *Kessler v. Nat'l Enters., Inc.*, 203 F.3d 1058, 1059–60 (8th Cir. 2000) (dismissing cross-appeal raising issue not preserved by cross-appeal at time of first appeal); *Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 32–33 (D.C. Cir. 1990) (cross-appeal necessary to preserve adverse ruling on threshold issue when appellee lost on that issue below but won on merits). Remand, not certiorari, is the proper place to confirm that Respondent forfeited this argument and that any later-decided cases cannot dislodge the district court's settled ruling.

Still, this issue has no effect on the constitutional question whether *Brady* applies at plea bargaining, is not jurisdictional, and does not preclude review.

3. Neither does Respondent's argument as to the "clearly established" law at the time of Mansfield's plea. Opp. 14–16. This attempt to import qualified-immunity principles into a municipal-liability case in the

guise of a "deliberate indifference" argument contravenes this Court's precedent. *Owen v. City of Independence*, 445 U.S. 622, 638 (1980) ("municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983"); *see also Alvarez*, 904 F.3d at 405 (Graves, J., dissenting) (detailing problems applying clearly-established principle to *Brady* claims). And this defense was not pled below (*see* Dist. Ct. ECF 25 ¶ 31), likely because the law that applied to Texas prosecutors was clear and the risk of a constitutional violation was obvious: well before Mansfield's 1993 prosecution, Texas's court of last resort, relying on *Brady*, had held that "the prosecutor's duty to disclose favorable information … extends to defendants who plead guilty as well as to those who plead not guilty." *Lewis*, 587 S.W.2d at 700–01; *see also Alvarez*, 904 F.3d at 406 (Costa, J., dissenting). And to dispel any uncertainty, the state court ordered prosecutors to disclose the evidence. Pet.App.40a–41a.

Attempting to cast doubt on Texas's long-standing rule, Respondent relies on dicta from a 2016 case that could not possibly bear on misconduct in 1993, did not cite *Lewis*, and did not involve exculpatory evidence. Opp. 15 (citing *Ex parte Palmberg*, 491 S.W.3d 804, 814 (Tex. Crim. App. 2016)). Both before and after *Palmberg*, the Texas Court of Criminal Appeals has granted relief for *Brady* violations arising in the guilty-plea context. *See, e.g.*, *Ex parte Johnson*, 2009 WL 1396807, at *1 (Tex. Crim. App.) (vacating guilty plea under *Brady* in sexual assault case where prosecutors withheld evidence that victim recanted allegation); *Ex parte Hernandez-Mendoza*, 2019 WL 4858440, at *1 (Tex. Crim. App.) (per curiam); *Ex parte Hirschler*, 2016 WL 6778197, at *1 (Tex. Crim. App.) (per curiam) (citing *Brady*); *Ex parte Disnard*, 2015 WL 6182228, at *1 (Tex. Crim. App.) (per curiam)

(same). These decisions' repeated reliance on *Brady* refutes Respondent's suggestion that *Lewis* and its progeny are confined to state law. Opp. 15–16.

Though not relevant to the question presented, the law was clear: for decades, "Texas has interpreted the federal *Brady* right to require the government to provide exculpatory information 'to defendants who plead guilty as well as to those who plead not guilty.'" *Alvarez*, 904 F.3d at 406 (Costa, J., concurring) (quoting *Lewis*). Despite this, prosecutors did not do so here. On remand, the deliberate-indifference requirement will not preclude recovery.

4. Respondent tries to create a fact issue by reaching outside the record to question Mansfield's innocence. Opp. 2 (citing footnote in briefing alluding to evidence it might present at future trial). Yet the record shows that the victim told prosecutors "nothing happened" with Mansfield. Pet.App.42a. There is no dispute that such statements directly support Mansfield's assertion of factual innocence, and that this evidence was exculpatory. Prosecutors withheld it anyway, and negotiated a plea knowing they had no complaining witness for trial. Pet.App.44a, 94a. These are the only facts relevant to the *Brady* question presented, and they are undisputed. Any purported fact issues can be left for remand. *See, e.g.*, *Kentucky v. King*, 563 U.S. 452, 471 (2011); *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002); *Flippo v. West Virginia*, 528 U.S. 11, 14–15 (1999).

5. Finally, Respondent's reliance on *United States v. Conroy*, 567 F.3d 174 (5th Cir. 2009), to argue that Mansfield's guilty plea precludes him from asserting a *Brady* violation (Opp. 17) is circular—*Conroy* is among the precedents this case challenges. Pet. 14, 18, 22. Should the Court hold that prosecutors violated Mansfield's due process rights by knowingly withholding exculpatory evidence, nothing in the plea agreement

they (unconstitutionally) obtained waived Mansfield's right to challenge that conduct. Pet.App.46a–47a. This Court "has rejected the plea = waiver argument" before and should do so again. *Alvarez*, 904 F.3d at 408–09 (Costa, J., dissenting) (citing *Lafler*, 566 U.S. at 164).

* * *

None of the issues Respondent raises implicates the Court's jurisdiction or limits its ability to resolve this important and recurring issue of federal constitutional law. "Only [this] Court can fully address this signal flaw in the jurisprudence of plea bargaining" and "definitively resolve the acknowledged circuit split." Pet.App.12a. It should do so now.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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NOVEMBER 14, 2022

SUPPLEMENTAL APPENDIX

APPENDIX Q

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TROY MANSFIELD,	§	
	§	
Plaintiff,	§	
V.	§	A-18-CV-49-LY
	§	
WILLIAMSON COUNTY,	§	
	§	
Defendant.	§	

REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE

TO THE HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE:

Before the court is Williamson County's Motion to Dismiss for Failure to State a Claim for Relief (Dkt. #4). As the matter is well briefed, the court DENIES Plaintiffs Request for a Hearing (Dkt. #10). Having considered the parties' written submissions, the pleadings, the relevant case law, as well as the entire case file, the undersigned issues the following Report

and Recommendation to the District Court that the motion to dismiss be denied.[1]

I. BACKGROUND[2]

Troy Mansfield brings this § 1983 action against Williamson County alleging that it maintained specific policies and practices during its criminal prosecutions, including the policy not to disclose exculpatory evidence to the accused (referred to as a "closed file" policy[3]), that led him to plead guilty to a crime he did

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[1] The motions were referred by United States District Judge Lee Yeakel to the undersigned for a Report and Recommendation as to the merits pursuant to 28 U.S.C. § 636, Rule 72 of the Federal Rules of Civil Procedure, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas.

[2] These facts reflect what was pleaded in the Complaint.

[3] For ease of reference, the court refers to the policies/practices at issue collectively as the "closed file" policy, but specifically, Mansfield pleaded the following polices or practices caused his constitutional violations:

- Maintaining and implementing a closed file policy;
- Failing to disclose witness recantations/statements indicating a defendant's innocence;
- Failing to follow court orders concerning the disclosure of evidence;
- Failing to disclose exculpatory evidence to individuals facing criminal charges;
- Purposefully training, tolerating, and permitting prosecutors or investigators to conceal exculpatory evidence to circumvent their disclosure obligations;
- Tolerating and failing to discipline prosecutors or investigators for fraudulent behavior and for circumventing Brady and court orders mandating disclosure of exculpatory evidence and inadequate supervision; and
- Retaining prosecutors or investigators that conceal exculpatory evidence or fraudulently obtain guilty pleas.

Compl. at ¶ 73.

not commit.[4] Dkt. #1 (Compl.) at ¶ 71 (listing the policies and practices). Mansfield specifically names Ken Anderson, the Williamson County District Attorney from 1985-2001, as one of the policy makers. Compl. at ¶ 26.

Williamson County moves to dismiss the Complaint on the basis that the District Attorney was an agent of the State, not the County, because Mansfield's conviction was for a state law felony. Citing various cases, the parties dispute whether Williamson County can be a potentially liable entity in this suit.

II. APPLICABLE LAW

In *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978), the Supreme Court held that a government entity cannot be held liable under 42 U.S.C. § 1983 solely because its employee committed a constitutional tort. *Id.* at 691. Put differently, a plaintiff cannot prevail on a theory of respondeat superior. *Id.* Thus, when a non-policy-making local governmental employee acts in a manner inconsistent with established governmental policy, the governmental employer cannot be held liable under Section 1983. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121-22 (1988); *McConney v. City of Houston*, 863 F.2d 1180, 1184 & n.2 (5th Cir. 1989).

Municipalities and other local governments may incur Section 1983 liability, however, where official policy or custom causes a constitutional violation.

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[4] On January 22, 2016, the trial judge signed an order vacating his conviction on the basis that his due process rights were violated and his guilty plea was not voluntary. Compl. at ¶ 69.

Bennet v. City of Slidell, 728 F.2d 762, 766 (5th Cir. 1984). For municipal liability to attach, the plaintiff must show three elements: (1) a policymaker; (2) an official policy; and (3) a "violation of constitutional rights whose 'moving force' is the policy or custom." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001) (quoting *Mowell*, 436 U.S. at 694). Municipal policy for purposes of Section 1983 liability may consist of:

> 1. A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official to whom the lawmakers have delegated policy-making authority; or
>
> 2. A persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy. Actual or constructive knowledge of such custom must be attributable to the governing body of the municipality or to an official to whom that body had delegated policy-making authority.

Johnson v. Deep East Tex. Regional Narcotics Trafficking Task Force, 379 F.3d 293, 309 (5th Cir. 2004). The description of a policy or custom and its relationship to the underlying constitutional violation, moreover, cannot be conclusory; it must contain

specific facts. *Spiller v. City of Texas City, Police Dep't*, 130 F.3d 162, 167 (5th Cir. 1997).

In order to prevail on a municipal liability claim, a plaintiff must show "(1) that the policy itself violated federal law or authorized or directed the deprivation of federal rights or (2) that the policy was adopted or maintained by the municipality's policymakers with deliberate indifference as to its known or obvious consequences." *Johnson*, 379 F.3d at 309. Simple negligence or even heightened negligence will not support liability. *Id.*, *see also Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 397, 407 (1997).

III. ANALYSIS

This motion presents a legal issue rather than a pleading issue—can Williamson County be liable for an alleged policy created by its District Attorney that injured Mansfield in his felony criminal case? Citing various Fifth Circuit cases, Williamson County argues that in felony cases the District Attorney acts as an agent of the State, not the County, and therefore the County cannot be liable. *See Echols v. Parker*, 909 F.2d. 795, 801 (5th Cir. 1990); *Krueger v. Reimer*, 66 F.3d 75 (5th Cir. 1995); *Esteves v. Brock*, 106 F.3d 674, 677-78 (5th Cir. 1997); *Mowbray v. Cameron County*, 274 F.3d 269, 278 (5th Cir. 2001); *Brown v. Lyford*, 243 F.3d 185, 192 (5th Cir. 2001). Citing other Fifth Circuit cases, Mansfield argues the County is responsible where the District Attorney was responsible for the County policy and conclusively demonstrated his ability to change the policy on his own. *See Crane v. State of Tex.*, 766 F.2d 193, 194 (5th Cir. 1985); *Davis v. Ector County*, 40 F.3d 111, 784 (5th Cir. 1994); *Turner v. Upton County*, 915 F.2d 133, 137 (1990).

Mansfield further argues that the County is liable even under the cases it cites because the closed file policy was an administrative or managerial policy for which the County remains liable.

In *Crane v. State of Texas*, the Fifth Circuit acknowledged a District Attorney has attributes of both a state and county official and held the county was liable for the District Attorney's unconstitutional county policy of issuing misdemeanor capias without a finding of probable cause. 766 F.2d 193, 195 (5th Cir. 1985) ("For present purposes, then, we conclude that he is properly viewed as a county official, elected by its voters and responsible for its relevant policy. In such circumstances, we see no injustice in holding the County responsible for his actions of this sort"). In *Turner v. Upton County, Texas*, the Fifth Circuit similarly found the county could be liable for an alleged conspiracy between the sheriff and district attorney to plant illegal drugs on and bring false charges against the plaintiff because the sheriff and district attorney were the county's final policy makers. 915 F.2d 133, 137-38 (1990) ("Just as the alleged actions of the sheriff were, under the circumstances, the actions of the county for section 1983 purposes, so too the alleged actions of the elected district attorney may have been, even though he covered more than this county."). Mansfield relies on these cases to demonstrate that counties can be liable for the unconstitutional policies of their district attorneys.

Williamson County distinguishes *Crane* because the policy at issue concerned misdemeanor warrants and *Turner* because the sheriff was also implicated in the conspiracy. Williamson County relies on several cases, including *Echols v. Parker*, where the Fifth

Circuit held the state of Mississippi responsible for plaintiffs attorneys' fees in a § 1983 action against local officials, including the district attorney, for enforcing an unconstitutional state statute. 909 F.2d. 795, 797, 801 (5th Cir. 1990) ("A county official pursues his duties as a state agent when he is enforcing state law or policy. He acts as a county agent when he is enforcing county law or policy"). In *Esteves v. Brock*, the Fifth Circuit affirmed the district court's dismissal of a § 1983 case brought against Leslie Brock, an Assistant District Attorney for Harris County, and Harris County. 106 F.3d 674 (5th Cir. 1997). Esteves, proceeding *pro se*, alleged Brock violated his equal protection rights by wrongfully excluding blacks from his jury, pursuant to a Harris County custom of excluding blacks from juries. *Id.* at 676. The Fifth Circuit affirmed Brock's dismissal because her "use of peremptory strikes in a racially discriminatory manner was part of her presentation of the state's case, she [was] entitled to absolute immunity from personal liability." *Id.* at 611. The Fifth Circuit then held Harris County could not be liable because "Texas law makes clear, however, that when acting in the prosecutorial capacity to enforce state penal law, a district attorney is an agent of the state, not of the county in which the criminal case happens to be prosecuted." *Id.* at 678. The Fifth Circuit further held:

> Because the use of peremptory challenges during a judicial proceeding is an integral part of the prosecutorial function of enforcing state criminal law, these actions cannot fairly be attributed to the county. Given that a district attorney represents the state in criminal prosecutions, the county, which has no

> affirmative control over the prosecutor's decisions in a particular case, should not be held liable when a prosecutor engages in unconstitutional conduct during a criminal proceeding.

Id. However, the Fifth Circuit also acknowledged an exception to this general principle:

> Our decision today does not absolve a county of all responsibility for the actions of a district attorney in the performance of his or her duties. For those duties that are administrative or managerial in nature, the county may be held liable for the actions of a district attorney who functions as a final policymaker for the county.

Id.

In *Mowbray v. Cameron Comity*, the Fifth Circuit cited Tamer to dismiss § 1983 claims against Cameron County, where the plaintiff argued the county was liable for the unconstitutional acts of its final policymakers. 274 F.3d 269, 278 (5th Cir. 2001). The Fifth Circuit noted that the plaintiff had only alleged constitutional deprivations against "prosecutors, lower level police officers, and a lab technician." *Id.* The Fifth Circuit reasoned,

> The sheriff is the county's final policymaker in this context. [Turner, 915 F.2d] at 136. The district attorney, "when acting in the prosecutorial capacity [or] instituting criminal proceedings to enforce state law," is not.

> *Esteves v. Brock*, 106 F.3d 674, 678 (5th Cir. 1997). Mowbray has alleged no constitutional deprivation against the county sheriff, and her allegations against the prosecutors involve only actions as state officers; accordingly, the district court did not err in dismissing her Turner claim.

Id. The Fifth Circuit also rejected her argument that the county was liable for failing to train its prosecutors on their Brady duties because the prosecutors were state officers and thus the county could not be liable for failing to adequately train them. *Id.*

Mansfield argues that later Fifth Circuit panel decisions, such as *Esteves*, cannot overrule earlier panel decisions and thus *Crane* and *Turner* remain the law. Mansfield also argues that the *Esteves* decision's reliance on *Echols* was misplaced because *Esteves* incorrectly described *Echols* as a case concerning Texas law: "In *Echols v. Parker* we found that a Texas district attorney is a state official when instituting criminal proceedings to enforce state law." *Esteves*, 106 F.3d at 678, compare with *Echols*, 909 F.2d at 801 ("Thus, the district court correctly ordered the State of Mississippi to pay Echols' § 1988 attorney's fees.").

Reconciling *Crane* and *Turner* with *Esteves* is not an easy task. The Fifth Circuit has been forced to address the cases, and its attempts are only somewhat helpful.

> This circuit has stated on numerous occasions that district attorneys and assistant district attorneys in Texas are agents of the state when acting in their

> prosecutorial capacities. *See, e.g., Esteves v. Brock*, 106 F.3d 674, 678 (5th Cir. 1997) (holding that a district attorney acted as a state official in using peremptory challenges during jury selection); *Krueger v. Reimer*, 66 F.3d 75, 77 (5th Cir. 1995) (holding that the actions of a Texas district attorney within the scope of his prosecutorial function during a criminal proceeding do not constitute official policy for which a county can be held liable); *Echols v. Parker*, 909 F.2d 795, 801 (5th Cir. 1990) (holding that a Texas district attorney is a state official when instituting criminal proceedings to enforce state law); *cf. Crane v. Texas*, 766 F.2d 193 (5th Cir. 1985) (holding that Texas district attorney acted as county official in setting county policy for the authorization of misdemeanor warrants). The District Attorney Defendants in this case were clearly acting in their capacities as prosecutors in determining whether and when to bring charges against Quinn. *See Echols*, 909 F.2d at 801. The District Attorney Defendants are protected by Eleventh Amendment immunity with respect to their actions in handling the criminal case against Quinn.

Quinn v. Roach, 326 F. App'x 280, 292-93 (5th Cir. 2009). Although Quinn addressed the plaintiffs claims against the prosecutors, it does not expressly review

the dismissal of the plaintiffs § 1983 claim against the county. *Id.* at 283 ("The district court … [held] ... (3) that Quinn had failed to allege the existence of an 'official policy' that could subject the County to liability under § 1983."). The Fifth Circuit also addressed the cases in *Spikes v. Phelps*.

> *Esteves* is reconcilable with an earlier Texas case, *Crane v. Texas*, 766 F.2d 193 (5th Cir. 1985), based on the different function that the district attorney was performing in *Crane* (setting county policy for the authorization of misdemeanor warrants) as opposed to Esteves (enforcing Texas criminal law by prosecution). Thus, Texas district attorneys are shielded by Eleventh Amendment immunity for acts performed as state officers in the scope of criminal prosecution, but they are not so shielded when they act with respect to local policies.

Spikes v. Phelps, 131 F. App'x 47, 49 n.l (5th Cir. 2005).

The undersigned finds the reasoning in *Brown v. City of Houston* persuasive to reconcile these cases and resolve this issue. *See Brown v. City of Houston*, 2018 WL 1333883 (S.D. Tex. March 15, 2018). Brown brought a § 1983 case against the City of Houston, Harris County, the Harris County District Attorney, and Houston Police Department members, alleging constitutional violations, including "egregious" Brady violations, leading to his conviction for capital murder. *Id.* at *1. Brown made no allegations about the district attorney's actions in prosecuting his case, but instead

alleged "the elected Harris County District Attorneys created, adopted, and implemented an unconstitutional policy, practice, or custom, in their capacities as final policymakers for the County, leading to his conviction." *Id.* at *3.

The district court denied Harris County's motion to dismiss and determined that Brown sufficiently stated a claim against Harris County for unconstitutional policies, practices, or customs. *Id.* Harris County moved the court to reconsider, arguing it could not be liable for the district attorney's decisions, the county was an improper party, and Brown lacked standing to sue the county for the actions of a district attorney acting in an official, prosecutorial capacity. *Id.* On reconsideration, the court held Brown had standing because he had shown the allegedly unconstitutional policy was the "moving force" behind his injury. *Id.* at *5. In determining whether the county could be liable for a district attorney's unconstitutional policies or customs, the court noted that "a County District Attorney's Office has a 'hybrid nature,' functioning as an arm of the State of Texas by enforcing State law and as a local entity." *Id.* at *4 (citing *Cram*, 766 F.2d at 193; *Carter v. City of Philadelphia*, 181 F.3d 339, 352 (3d Cir. 1999) (collecting cases); *Esteves*, 106 F.3d at 678; *Echols*, 909 F.2d at 801). "The recurring theme that emerges from these cases is that county or municipal law enforcement officials may be State officials when they prosecute crimes or otherwise carry out policies established by the State, but serve as local policy makers when they manage or administer their own offices." *Id.* (quoting *Carter*, 181 F.3d at 352). "[A] county may only be held liable for acts of a district attorney when he 'functions as a final policymaker for the county.'" *Id.* (quoting *Brown v. Lyford*, 243 F.3d

185, 192 (5th Cir. 2001) (quoting *Esteves*, 106 F.3d at 678)).

The line between acting in a "prosecutorial capacity" and acting as a "final policymaker" is determined by state law and the facts of each case. *Id.* (citing *Esteves*, 106 F.3d at 677). "'When the official representing the ultimate repository of law enforcement power in the county makes a deliberate decision to abuse that power to the detriment of its citizens, county liability under section 1983 must attach, provided that the other prerequisites for finding liability under that section are satisfied.'" *Id.* (quoting *Turner*, 915 F.2d at 138). The court then reconciled *Esteves* and *Crane*, reasoning that in *Esteves*, the Fifth Circuit held that a county could be liable for a district attorney's actions that are administrative or managerial in nature where the district attorney functions as the county's final policymaker, which were the duties at issue in *Crane*. *Id.* at * (citing *Esteves*, 106 F.3d at 678, and *Crane* 759, F.2d at 429-30). The district court rejected Harris County's argument that the Fifth Circuit cases "draw the liability line between anything related to a County District Attorney prosecuting cases and performing 'administrative tasks, such as providing offices and supplies.'" *Id.*

Similarly here, Mansfield challenges the Williamson County District Attorney's "closed file" policy, which he alleges led to his constitutional violations. Whether to have an open or closed file policy rested with the district attorney of each county. Compl. at ¶ 5. The State and Attorney General had no ability to mandate specific file policies. *Id.* As a result, the file policies varied from county to county. *Id.*

Eventually, Williamson County's policy was changed at the County level. *Id.* at ¶ 44. Mansfield is not seeking to impose County liability for the independent actions of the prosecutors in his criminal case, but for a pervasive County policy that led to his constitutional violation. Accordingly, Mansfield has alleged a viable § 1983 claim against the County, and the undersigned will recommend the motion be denied as to this ground.

Citing *Mowbray*, the County also argues that any claim based on improperly training, supervising, or controlling the District Attorney's Office employees should be dismissed because the basis for those allegations is conduct taken in connection with Plaintiffs criminal case. Dkt. #4 (Mtn.) at ¶ 9. In *Mowbray*, the Fifth Circuit dismissed the failure to train claim because the individual prosecutors were acting as state officers during the prosecution and therefore the county could not be liable for its failure to properly train them. *Mowbray*, 274 F.3d at 278. In this instance, Mansfield alleges the County had a policy or practice of "[purposefully training, tolerating, and permitting prosecutors or investigators to conceal exculpatory evidence to circumvent their disclosure obligations." Compl. at ¶ 71. This appears to be a different claim than what was alleged in *Mowbray*, and it is intertwined with the overall policy or practice of failing to disclose exculpatory evidence that Mansfield alleges here. Accordingly, the undersigned will not recommend dismissal of this allegation at this time.

VII. RECOMMENDATION

For the reasons given above, the undersigned **RECOMMENDS** that the District Court **DENY**

Williamson County's Motion to Dismiss for Failure to State a Claim for Relief (Dkt. #4).

IV. OBJECTIONS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Am*, 474 U.S. 140, 150-53 (1985), *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415 (5th Cir. 1996)(en banc).

SIGNED August 7, 2018

/s/
MARK LANE
UNITED STATES MAGISTRATE JUDGE

APPENDIX R

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TROY MANSFIELD,	§	
	§	
Plaintiff,	§	
V.	§	CIVIL NO.
	§	1:18-CV-049-LY
	§	
WILLIAMSON COUNTY,	§	
	§	
Defendant.	§	

ORDER ON REPORT AND RECOMMENDATION

Before the court are Defendant's Motion to Dismiss for Failure to State a Claim for Relief filed March 1, 2018 (Doc. #4); Plaintiff Troy Mansfield's Response to Defendant Williamson County's Motion to Dismiss filed April 5, 2018 (Doc. #7); and Defendant's Reply in Support of the Motion to Dismiss for Failure to State a Claim for Relief filed April 12, 2018 (Doc. #9). The motion, response, and reply were referred to the United States Magistrate Judge for Report and Recommendation. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72; Loc. R. W. D. Tex. Appx. C, 1(d).

The magistrate judge filed his Report and Recommendation on August 7, 2018 (Doc. #15), recommending that this court deny the motion to

dismiss. Defendant Williamson County's Objections to the Report and Recommendation of the United States Magistrate Judge was filed August 21, 2018 (Doc. #16). Plaintiff Troy Mansfield's Response in Opposition to Defendant Williamson County's Objections to Magistrate's Report and Recommendations filed September 4, 2018 (Doc. #18). In light of the objections, the court has undertaken a de novo review of the entire case file and finds that the Report and Recommendation should be accepted and approved for substantially the reasons stated therein.

In it objections Defendant Williamson County asserts that the magistrate judge misapplies Fifth Circuit precedent. Williamson County further argues that the magistrate judge incorrectly relies on a recent federal district court opinion from Southern Districts of Texas. The court concludes, however, that the magistrate judge properly applies the case law of the Fifth Circuit and district court. Therefore, the court will overrule Williamson County's objections.

IT IS THEREFORE ORDERED that Defendant Williamson County's Objections to the Report and Recommendation of the United States Magistrate Judge filed August 21, 2018 (Doc. #16) are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation of the United States Magistrate Judge (Doc. #15) is **APPROVED** and **ACCEPTED** as set forth herein.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss for Failure to State a Claim for Relief filed March 1, 2018 (Doc. #4) is **DENIED**

SIGNED this 26th day of November, 2018.

/s/
LEE YEAKEL
UNITED STATES DISTRICT JUDGE