

NO. 13-CV-315-JED-TLW

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

**CHRISTINE WRIGHT, as Special
Administrator of the Estate of
Lisa Salgado, Deceased,
Plaintiff,**

v.

STANLEY GLANZ, et. al. ,

Defendants.

**DEFENDANTS STANLEY GLANZ AND VIC REGALADO'S
MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT
OF CLAIMS OF PLAINTIFF CHRISTINE WRIGHT**

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**DEFENDANTS STANLEY GLANZ AND VIC REGALADO’S BRIEF IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

Defendants, Stanley Glanz, in his Individual Capacity, and Vic Regalado, in his Official Capacity, by and through their attorneys Brewster & De Angelis, move for Summary Judgment pursuant to Fed. R. Civ. P. 56, as the undisputed facts of this case do not establish that Lisa Salgado’s constitutional rights were violated or that the right she asserts is clearly established. As no individual violated Salgado’s constitutional rights nor was the right asserted clearly established, Glanz is entitled to qualified immunity on the supervisory liability claim asserted by the Plaintiff. Additionally, Sheriff Regalado is entitled to judgment in his Official Capacity in the absence of any violation of any clearly established right. For their Brief in Support of their Motion for Summary Judgment, Glanz and Regalado state the following:

I. STATEMENT OF THE CASE

Christine Wright, as Special Administrator of the Estate of Lisa Salgado, deceased, brought suit on May 31, 2013 against Stanley Glanz, in his individual and official capacities¹, Correctional Healthcare Companies, Inc.; Andrew Adusei, M.D.²; Phillip Washburn, M.D. and Christina Rogers, R.N. when she joined her claims with three other Plaintiffs (McCaffrey, Revilla, and Young). The Defendants moved to dismiss for failure to state a claim and improper joinder. (Dkt. Nos. 21, 22 and 32). The district court denied the motion to dismiss for improper joinder (Dkt. Nos. 42 and 44) and allowed the claims to remain together for purposes of discovery. Defendants renewed the motion for separate trials in each case (Dkt. No. 171). By

¹ This action was originally brought against former Sheriff Stanley Glanz, in his Official Capacity. On November 1, 2015, former Sheriff Glanz resigned. On April 5, 2016, Vic Regalado was elected Sheriff of Tulsa County in a general special election. Rule 25(d) of the Federal Rules of Civil Procedure provides that “[a]n action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending”, rather “[t]he officer's successor is automatically substituted as a party.”

² Plaintiff Wright does not make any allegations in the Complaint against Defendant Dr. Adusei as he was not involved in the delivery of medical care to Lisa Salgado.

Minute Order dated 9/19/16, the Court granted the motion to sever and entered new scheduling orders for each of the “Revilla” Plaintiffs. (Dkt. No. 176).

The Amended Complaint and the Wright/Salgado Allegations: In ¶¶40-51 of Plaintiff’s Amended Complaint the allegations of Plaintiff Wright/Salgado are set forth (Dkt. No. 4). Wright alleges that Salgado presented to the jail with serious and life threatening medical problems including [REDACTED] [REDACTED] *Id.* at ¶ 41. She further alleges that such conditions required monitoring and medications. *Id.* While acknowledging care and treatment, she generally complains of poor or inadequate treatment by a nurse and Dr. Washburn. She claims that Salgado’s death, after three days in the jail, was the result of a failure to treat medical conditions of which the medical staff including nurses and physicians had notice. *Id.* at ¶ 48. Beyond matters concerning the adequacy and effectiveness of medical care, Wright also alleges that the efforts to resuscitate Salgado were unnecessary and merely an effort to obscure the fact that she died in jail and that medical documents were altered to reflect that she died outside of the jail. *Id.* at ¶ 47. Finally, she alleges that Salgado’s medical records were altered. *Id.* at ¶ 50. None of these claims proved to be founded after discovery.

Wright’s claims against Glanz and Regalado are brought under 42 U.S.C. § 1983 alleging a violation of Salgado’s constitutional rights as a pretrial detainee under the Fourteenth Amendment for cruel and unusual punishment. More specifically, her claim is based upon allegations of deliberate indifference to a serious medical need. The claim against Glanz in his Individual Capacity is a supervisory liability claim. The claim against Regalado, in his Official Capacity, is a *Monell* type claim. Plaintiff also maintains a state law claim for a violation of the Oklahoma Constitution under Art. 2, §§ 7 and 9.

As shown below, Salgado received more than adequate medical care during her stay at the jail. She presented to the jail after being medically cleared by a local hospital for complaints of [REDACTED] which were determined to be [REDACTED]” in nature. She was medically screened and evaluated, assessed, provided treatment for [REDACTED], provided medications and her dietary needs were addressed by the medical and jail staff. There is no evidence that any of the Defendants appreciated that Salgado presented a risk of a fatal medical condition and chose to disregard it. No individual was indifferent to her care, no individual looked the other way while she suffered and no individual violated her constitutional right against cruel and unusual punishment. The Court should grant Glanz, in his Individual Capacity, qualified immunity in this matter, and judgment as a matter of law to Sheriff Regalado in his Official Capacity.

II. STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Glanz and Regalado submit the following undisputed material facts for purposes of this Motion:

a. June 16, 2011 – St. Francis Hospital

1. On June 16, 2011, Salgado presented at St. Francis Hospital (“SFH”) with complaints of [REDACTED] (Exhibit 1, *St. Francis Hospital Discharge Summary*, SFHS01103-1104).

2. Salgado reported to medical staff at SFH that she experienced similar [REDACTED] in the past, she had been [REDACTED] which was “regular for her”), and she recently experienced [REDACTED] “too numerous to count.” (Exhibit 2, *St. Francis Hospital History and Physical* SFHS01105).

3. While at SFH, Salgado was diagnosed and treated for [REDACTED] [REDACTED] in the past – [REDACTED] (Exhibit 1, SFHS01103).

4. Salgado underwent a [REDACTED] for her [REDACTED] (Exhibit 3, *St. Francis Hospital Lab Records*, SFHS01189-01195; Exhibit 4, *St. Francis Radiology Records*, SFHS01196; Exhibit 5, *St. Francis Hospital Cardiology Records*, SFHS01198). An [REDACTED] performed on Salgado on June 16, 2011 came back normal, showing no signs of an [REDACTED]. (Exhibit 6, SFHS01198, 1204-1206).

5. Physicians further ruled out [REDACTED] [REDACTED]. (Exhibit 1, SFHS01103).

6. No diagnosis of [REDACTED] was made by medical staff at SFH. (Exhibit 7, Dr. Allen Dep., at 210:12-14).

7. Plaintiff’s expert, Dr. Allen, testified that he could not “specifically draw a conclusion” as to the cause of Salgado’s [REDACTED] on presentation at SFH on June 16, 2011 and that [REDACTED] [REDACTED] (Exhibit 7, at 210:1-11).

8. Salgado was discharged from St. Francis on June 18, 2011 in stable condition. (Exhibit 3, SFHS01103).

³ As Plaintiff’s expert Dr. Allen explained, [REDACTED] [REDACTED] (Exhibit 7, at 207:16-21).

c. June 24, 2011 – Arrest

15. At approximately 8:06 PM on June 24, 2011, less than two (2) hours after leaving SJMC, Salgado was involved in a motor vehicle accident. (Exhibit 13, *Broken Arrow Police Department Arrest and Booking Data*, GLANZ-Revilla05339-05340).

16. At 8:55 PM Salgado was arrested by the Broken Arrow Police Department (“BAPD”) for driving under the influence, driving under suspension, and failing to maintain insurance. (Exhibit 13, GLANZ-Revilla05340).

17. At the scene of the accident, BAPD Officer Golden located a diabetic insulin pack in Salgado’s vehicle. Officer Golden requested a Broken Arrow EMS to check Salgado’s [REDACTED]. [REDACTED] It was determined that Salgado’s [REDACTED]. (Exhibit 13, GLANZ-Revilla05340).

18. Salgado was placed into custody without incident and transported to the Broken Arrow City Jail. (Exhibit 13, GLANZ-Revilla05340).

19. At the Broken Arrow City Jail, Salgado consented to blood alcohol content testing by breathalyzer. During the fifteen minute deprivation period, Salgado passed out. Salgado was unable to complete the breathalyzer, and was transported to Hillcrest Hospital South for blood alcohol testing via blood sample. After Salgado’s blood sample was drawn she was transported back to the Broken Arrow City Jail. (Exhibit 13, GLANZ-Revilla05340).

d. June 25, 2011 – SJMC Medical Clearance

20. At 7:32 AM on June 25, 2011, Salgado was taken back to SJMC by Broken Arrow Police officers to be medically cleared for [REDACTED] (Exhibit 14, *St. John Medical Center Records dtd. June 25, 2011*, SJS00697, 700).

21. St. John Medical Center physicians noted that Salgado had just been discharged from their facility the day prior and that they were in the process of formally discharging her when she got angry that she would not be receiving any more narcotics and left AMA. (Exhibit 14, SJS00700).

22. Salgado underwent another [REDACTED] on June 25, 2011, [REDACTED] [REDACTED] on June 24, 2011. (Exhibit 14, SJS00686).

23. SJMC physicians determined that Salgado was [REDACTED] and that her [REDACTED] was [REDACTED] and that Salgado did not have [REDACTED]. (Exhibit 14, SJS00704; Exhibit 15, *Deposition of Phillip Washburn, M.D.*, at 283:1-10; Exhibit 7, at 227:23-228:5).

24. Physicians at SJMC gave Salgado medical clearance to be booked into the jail with [REDACTED] by medical staff. (Exhibit 14, SJS00704; Exhibit 7, at 280:1-9; Exhibit 16, *Medical Clearance Form*, GLANZ-Revilla05353). No prescriptions or treatment were ordered to be given at the jail, except for [REDACTED] by medical staff. A prescription form signed by the Emergency Room physician specifically stated that Salgado was “medically stable” enough to go to jail.

25. Plaintiff’s expert, Dr. Allen, testified that he was not critical of the emergency room physician for discharging Salgado even though she presented with a several week history of [REDACTED] were taken. (Exhibit 7, at 223:19-224:4).

e. June 25, 2011 – DLMCJC Booking and Intake Assessments

26. At approximately 10:00 AM on June 25, 2011, Salgado was booked into the David L. Moss Criminal Justice Center (“DLM”). (Exhibit 17, *Intake Screening Form*, GLANZ-Revilla05297; Exhibit 18, *Booking Summary*, GLANZ-Revilla05409).

27. At 10:10 AM, Salgado was interviewed by Officer Long and an Intake Screening Form was completed and signed by Salgado (Exhibit 17). The Intake Screening Form reflects that Salgado answered that she was under a general doctor's care, currently taking prescription medications, and had been treated in a clinic, hospital, or emergency room in the last four (4) days.

28. Salgado completed a Classifications Questionnaire and she answered that she did not require segregation from the general population for any reason. The Classifications Questionnaire is signed by Salgado. (Exhibit 19, *Classifications Questionnaire*, GLANZ-Revilla05413-05414).

29. At 10:38 AM, a "Receiving Screening" was performed by Faye Dean Taylor, LPN. Salgado indicated that she had been seen outpatient at SJMC for [REDACTED] and that her current medications included [REDACTED] [REDACTED] (Exhibit 20, CHC Medical Record, GLANZ-Revilla05494-05497). Salgado reported that her medical problems included [REDACTED] [REDACTED] Salgado further reported that she required a [REDACTED] Salgado denied using any drugs, including opiates and benzodiazepines, and she indicated that she was having no signs or symptoms of substance withdrawal. (Exhibit 20, GLANZ-Revilla05496).

30. Salgado told the healthcare provider during her Receiving Screening that she was not currently experiencing any symptoms. (Exhibit 20, GLANZ-Revilla05496; Exhibit 7, at 229:22-230:6). Despite Salgado reporting that she was not currently experiencing any symptoms, healthcare providers monitored her vital signs and [REDACTED] during her initial screening. (Exhibit 20, GLANZ-Revilla05490). Salgado's [REDACTED]

[REDACTED]. (Exhibit 20, GLANZ-Revilla05490).

31. During the Receiving Screening, Salgado appeared alert, cooperative, and responsive. Her mobility was normal and breathing was regular. Consistent with Salgado's answer on her Classifications Questionnaire that she did not require segregation from the general population for any reason, Nurse Taylor noted that Salgado was cleared for placement in "General Population." (Exhibit 20, GLANZ-Revilla05497).

32. The Receiving Screening is signed by Salgado. (Exhibit 20(a), GLANZ-Revilla05310).

33. Plaintiff's expert, Dr. Allen, testified that he agreed Salgado's health screening was reasonable. (Exhibit 7, at 228:16-231:9).

34. A mental health screening was also completed during the booking process. (Exhibit 21, *Mental Health Screening Form*, GLANZ-Revilla05412).

35. Video of the West prebooking, sally port, and intake waiting room areas between 10:51 AM and 1:40 PM, shows Salgado standing, walking, and sitting, without complication. (Exhibit 22).

f. June 25, 2011 – June 28, 2011 Medical Treatment at DLMCJC

36. In response to Salgado's self-reported medical condition of [REDACTED], on the same day as her booking into the jail, June 25, 2011, Dr. Washburn entered orders to monitor Salgado's [REDACTED] twice daily. (Exhibit 20, GLANZ-Revilla05489).

37. The nurses followed Dr. Washburn's order to monitor Salgado's [REDACTED] twice daily. In the four (4) days Salgado was in DLM, her [REDACTED] was recorded ten (10)

times. (Exhibit 20, GLANZ-Revilla05490; Exhibit 23, *Medication Administration Record*, GLANZ-Revilla05406-05407; Exhibit 24, *Witness Statement of Karen Metcalf*, GLANZ-Revilla05332; Exhibit 25, *Deposition of Karen Metcalf, LPN (Oct. 12, 2015)*, 138:24-139:15, 144:19-146:1).

38. Salgado was also placed on a [REDACTED] [REDACTED]. (Exhibit 20, GLANZ-Revilla05496-05507).

39. Plaintiff's expert, Dr. Allen, testified that Dr. Washburn's order for [REDACTED] twice daily was "a good thing," and that it was reasonable to order a [REDACTED] for Salgado. (Exhibit 7, at 234:13-235:5).

40. In the four (4) days Salgado was in DLM, Salgado's vital signs were recorded nine (9) times. (Exhibit 20, GLANZ-Revilla05490, 05505, 05494; Exhibit 27, *Infirmiry Admission Record*, GLANZ-Revilla05342; Exhibit 28, *Problem Oriented Record*, GLANZ-Revilla05343).

41. Plaintiff's expert, Scott Allen, M.D., agreed that no healthcare provider ignored any of Salgado's signs or symptoms on June 25, 2011. (Exhibit 7, at 237:17-238:4).

g. June 26, 2011

42. On June 26, 2011 at 4:46 AM, Salgado reported to the medical unit for [REDACTED] [REDACTED]. Her [REDACTED] (Exhibit 23, GLANZ-Revilla05407; Exhibit 20, GLANZ-Revilla05490).

43. At 2:18 PM, Salgado reported to the medical unit and was administered [REDACTED] in response to complaints of [REDACTED]. (Exhibit 23, GLANZ-Revilla05407, line 24).

44. At 2:35 PM, Salgado's [REDACTED] was taken again in the medical unit. Her [REDACTED] [REDACTED]. (Exhibit 23, GLANZ-Revilla05407; Exhibit 20, GLANZ-Revilla05490).

45. In response to her [REDACTED], Salgado was [REDACTED] [REDACTED] at 2:43 PM. (Exhibit 23, GLANZ-Revilla05407, line 22).

46. Salgado also reported [REDACTED] for the first time during her incarceration at DLMCJC, which she reported began at approximately 4:15 PM. (Exhibit 20, GLANZ-Revilla05505).

47. Salgado's description of [REDACTED] was consistent with the [REDACTED] she described in her prior visits to St. Francis and St. John Medical Center, which was diagnosed as [REDACTED]. (Exhibit 2, SFHS01105; Exhibit 14, SJS00700; Exhibit 26, *Deposition of Plaintiff's Expert Dipan Shah, M.D. (June 27, 2016)*, 90:7-21).

48. In response to Salgado's complaints of [REDACTED], Nurse Mary Hudson, LPN, initiated the [REDACTED]. (Exhibit 20, GLANZ-Revilla05500-05504). The [REDACTED] includes completing a "[REDACTED]." (Exhibit 20, GLANZ-Revilla05505-05506).

49. Salgado's vital signs were recorded five (5) times and she remained stable throughout the visit. (Exhibit 20, GLANZ-Revilla05505-05506; 05490).

50. Nurse Hudson listened to Salgado's heart and lungs, and concluded that Salgado's chest sounds were normal: her lungs were clear to auscultation ("cta") bilaterally in all lobes, her heart had no rubs, bruits or murmurs, with normal S1 and S2. (Exhibit 20, GLANZ-Revilla05505).

51. Nurse Hudson further noted that Salgado appeared to be [REDACTED] and refused to follow instructions on pursed lip breathing. (Exhibit 20, GLANZ-Revilla05505).

52. Nurse Hudson gave Salgado a [REDACTED] into, and Salgado reported that she could not [REDACTED]. At this time, Salgado did not have any [REDACTED]. (Exhibit 20, GLANZ-Revilla05506).

53. Although Salgado reported [REDACTED], Nurse Hudson noted that Salgado had no [REDACTED] while in the Medical Unit, and was observed spitting in a biohazard bag. (Exhibit 20, GLANZ-Revilla05505).

54. Dr. Washburn was contacted and he ordered that Salgado be administered [REDACTED] (Exhibit 20, Glanz-Revilla05506-05507).

55. Dr. Washburn also ordered an [REDACTED]. (Exhibit 20, Glanz-Revilla05506-05507).

56. Pursuant to Dr. Washburn's orders, Salgado's [REDACTED] was performed. (Exhibit 7, at Dep., 242:18-23; Exhibit 20, GLANZ-Revilla05515-05516).

57. The [REDACTED] came back on [REDACTED], one reading [REDACTED] and the second [REDACTED]" (Exhibit 7, at 244:21-24; Exhibit 20, GLANZ-Revilla05515-05516).

58. Dr. Washburn had the [REDACTED] results read over the phone to him. (Exhibit 15, at 221:15-21).

59. At 4:15 PM Salgado's vitals were assessed and recorded. Salgado's [REDACTED]
[REDACTED]
[REDACTED] (Exhibit 20, GLANZ-Revilla05505).

60. At approximately 4:23 PM, Salgado was administered [REDACTED] in response to her complaints of [REDACTED]. (Exhibit 23, GLANZ-Revilla05407, lines 19-21).

61. Salgado was given three additional doses of [REDACTED] at 4:30 PM, 4:35 PM, and 4:45 PM (Exhibit 23, GLANZ-Revilla05407).

62. Plaintiff's expert, Dr. Allen, testified that Dr. Washburn's medication orders were reasonable and appropriate. (Exhibit 7, at., 248:2-7).

63. At 4:25 PM Salgado's vitals were again assessed and recorded. Salgado's [REDACTED] [REDACTED] Exhibit 20, GLANZ-Revilla05506).

64. At 4:35 PM Salgado's vitals were again assessed and recorded. Salgado's [REDACTED] [REDACTED] (Exhibit 20, GLANZ-Revilla05506).

65. Salgado reported to jail healthcare providers that her [REDACTED] stopped at approximately 5:30 p.m. (Exhibit 20, GLANZ-Revilla05505).

66. Salgado was referred to see Dr. Washburn the following day, on June 27, 2011, for complaints of [REDACTED], and was returned to her pod. (Exhibit 20, GLANZ-Revilla05507).

h. June 27, 2011

67. On June 27, 2011 at 6:59 AM, Salgado reported to the medical unit for [REDACTED] [REDACTED]. (Exhibit 20, GLANZ-Revilla05490).

68. At 10:24 AM, Nurse Karen Metcalf noted that she assessed Salgado for complaints of [REDACTED]. She further noted that Dr. Washburn had seen Salgado and ordered a [REDACTED] [REDACTED]. (Exhibit 20, GLANZ-Revilla05491, 05490; Exhibit 25, at 135:21-136:19; Exhibit 26, at 207:19-24). Nurse Metcalf

charted⁵ Salgado's [REDACTED]
[REDACTED] (Exhibit 20, GLANZ-Revilla05494).

69. A [REDACTED] was performed pursuant to Dr. Washburn's order. (Exhibit 20, GLANZ-Revilla05519).

70. At 3:14 PM, Salgado's [REDACTED]. (Exhibit 20, GLANZ-Revilla05490).

71. In response to her [REDACTED], Salgado was administered eight (8) units of [REDACTED] at 3:14 PM, and [REDACTED] at 5:33 PM. (Exhibit 23, GLANZ-Revilla05407).

72. At approximately 5:30 PM, the radiology report of Salgado's [REDACTED] was signed by radiologist Benjamin Huang, M.D., who noted "normal size heart and configuration" and [REDACTED]." (Exhibit 20, GLANZ-Revilla05519).

73. At approximately 7:00 PM, after receiving the radiology report, Dr. Washburn ordered that Salgado be admitted to the medical unit. (Exhibit 29, *Doctor's Order Form*, GLANZ-Revilla05341; Exhibit 27, GLANZ-Revilla05342). Dr. Washburn prescribed Salgado [REDACTED]. (Exhibit 20, GLANZ-Revilla05489, lines 1-2, 6; Exhibit 29, GLANZ-Revilla05341). Dr. Washburn prescribed [REDACTED] for his differential diagnosis of [REDACTED], because [REDACTED] are suggestive [REDACTED] is a known cause of [REDACTED]. (Exhibit 26, at 208:17-209:17; Exhibit 7, at 200:19, 201:9, 250:17-253:3).

74. At approximately 6:42 PM, Salgado was administered [REDACTED]. (Exhibit 23, GLANZ-Revilla05407, line 16).

⁵ Nurse Metcalf testified that she remembers taking Salgado's vitals at 7:00 AM, and charting Salgado's vitals at 10:24 AM. (Exhibit 25 at 90:23-91:20).

75. Nurse Raymond Stiles charted that upon her admission to the medical unit, Salgado complained of [REDACTED] and stated that she had been [REDACTED]. (Exhibit 27, GLANZ-Revilla05342).

76. At approximately 7:05 PM, Salgado's vital signs were taken. Salgado's [REDACTED]
[REDACTED]
[REDACTED] (Exhibit 27, GLANZ-Revilla05342).

77. At approximately 10:00 PM, Salgado's vital signs were recorded. Her [REDACTED]
[REDACTED] (Exhibit 28, GLANZ-Revilla05343).

78. After Salgado's admission to the medical unit at approximately 7:00 PM, a security check was performed approximately every thirty (30) minutes by a detention officer for a total of ten (10) security checks on the evening of June 27, 2011. (Exhibit 30, *Security Check Forms*, GLANZ-Revilla05452).

i. June 28, 2011

79. On June 28, 2011, Salgado remained in the medical unit and a security check was performed approximately every thirty minutes (30) for a total of thirty-eight (38) security checks. (Exhibit 30, GLANZ-Revilla05452, 05300).

80. At approximately 4:20 AM, Salgado's [REDACTED]
[REDACTED]. (Exhibit 20, GLANZ-Revilla05490; Exhibit 28, GLANZ-Revilla05343).

81. At 4:21 AM, Salgado was administered [REDACTED]
[REDACTED] (Exhibit 23, GLANZ-Revilla05406; Exhibit 28, GLANZ-Revilla05343). Salgado was also administered [REDACTED] and [REDACTED] for her

[REDACTED]. (Exhibit 23, GLANZ-Revilla05406-05407; Exhibit 20, GLANZ-Revilla05489).

82. At approximately 5:10 AM, Salgado's [REDACTED] [REDACTED] (Exhibit 28, GLANZ-Revilla05343).

83. Salgado's vital signs were taken again after 5:10 AM. (Exhibit 28, GLANZ-Revilla05343). Her [REDACTED] [REDACTED].

84. Dr. Washburn assessed Salgado during his morning rounds. (Exhibit 20, GLANZ-Revilla05491). At that time, Dr. Washburn observed Salgado to be lying quietly and not in distress. When Dr. Washburn asked her about her pain from the day before, Salgado reported that her [REDACTED] and was better at that time. She also reported no further [REDACTED] [REDACTED]. After a physical examination Dr. Washburn noted that Salgado had just [REDACTED] [REDACTED]. He listened to her chest, charting that her heart and lungs were clear, though he acknowledged the [REDACTED] the day before. He further noted that Salgado was alert and answered questions appropriately at the time of his assessment. On his assessment, Dr. Washburn charted Salgado's diagnoses as [REDACTED] [REDACTED] [REDACTED].

[REDACTED] Dr. Washburn's plan was to order another [REDACTED]. However, Salgado advised him that she had no [REDACTED], which was confirmed on examination. Dr. Washburn prescribed Salgado more [REDACTED] in response to her complaints of [REDACTED]. (Exhibit 20, GLANZ-Revilla05489; Exhibit 23, GLANZ-Revilla05406).

85. At 3:00 PM, Nurse Metcalf assessed Salgado. Salgado's [REDACTED] which prompted administration of [REDACTED]. Salgado was awake, and her breathing was even and unlabored. (Exhibit 24, GLANZ-Revilla05332; Exhibit 25, at 138:24-139:15).

86. At approximately 5:10 PM, Nurse Metcalf assessed Salgado. Salgado was administered [REDACTED] in response to her [REDACTED], another dose of [REDACTED]. (Exhibit 23; Exhibit 24, GLANZ-Revilla05332; Exhibit 25, at 144:19-146:1, 146:2-147:5, 148:2-25). Nurse Metcalf assisted Salgado in sitting up to take her medications, and—consistent with what she had reported to Dr. Washburn—Salgado reported to Nurse Metcalf that she was feeling a better. Salgado took her medication without difficulty, and Nurse Metcalf assisted her to lay back down. (Exhibit 24, GLANZ-Revilla05332; Exhibit 25, at 144:19-146:1, 148:2-25).

87. At approximately 5:30 PM, Nurse Metcalf made rounds and saw that Salgado was resting with her eyes closed and observed her breathing but did not disturb her. (Exhibit 24, GLANZ-Revilla05332; Exhibit 25, at 146:2-147:5).

88. At approximately 7:20 PM, Nurse Metcalf and Nurse Paul Wallace discovered Salgado non-responsive in her cell while making rounds. (Exhibit 25, at 147:8-17).

89. EMSA was called at 7:27 PM. (Exhibit 31, *Witness Statement of Susan Pinson*, GLANZ-Revilla05644).

90. EMSA entered Salgado's cell at 7:40 PM. (Exhibit 31, GLANZ-Revilla05644).

91. Despite efforts to resuscitate Salgado at the jail on June 28, 2011 by jail staff and EMSA providers, she was ultimately pronounced dead at approximately 9:00 p.m. (Exhibit 24, GLANZ-Revilla05332).

92. Plaintiff's expert, Dr. Allen, testified that each of Salgado's medical complaints, signs and symptoms that she exhibited or complained of were being treated by the medical and nursing staff at DLM. (Exhibit 7, at 258:21-259:1, 261:4-9).

93. The cause of Salgado's death remains unknown. (Exhibit 26, at 238:12-23; Exhibit 7, at 197:7-20, 260:24-261:3).

94. During her period of incarceration in 2011, Salgado did not have any personal contact with Stanley Glanz.

95. During her period of incarceration in 2011, Glanz did not have any contemporaneous knowledge of Salgado's treatment by TCSO employees or medical personnel.

III. SUMMARY JUDGMENT STANDARD

Summary judgment shall be granted where the undisputed material facts establish that one party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). At the summary judgment stage, facts must be viewed in the light most favorable to the nonmoving party only if there is a "genuine" dispute as to those facts. Fed. Rule Civ. Proc. 56(c). As we have emphasized, "[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Scott v. Harris*, 550 U.S. 372, 380 (2007)(citations omitted). "The first step is to distill the record to uncontested facts and contested material facts favorable to the party claiming injury. But only *genuine* issues of contested *material* fact are entitled to favored status."

Weigel v. Broad, 544 F.3d 1143, 1156–57 (10th Cir.2008) (O'Brien, J., dissenting). “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372, 380 (2007).

In the context of qualified immunity and whether the right asserted is clearly established,

“the objective is *not* to determine whether a plaintiff survives summary judgment because plaintiff's evidence raises material issues that warrant resolution by a jury. Instead, the principal purpose is to determine whether plaintiff's factual allegations are sufficiently grounded in the record such that they may permissibly comprise the universe of facts that will serve as the foundation for answering the *legal* question before the court.”

“It is only *after* plaintiff crosses the legal hurdle comprised of his or her two-part burden of demonstrating the violation of a constitutional right that was clearly established, that courts should be concerned with the *true* factual landscape—as opposed to the factual landscape as plaintiff would have it. Based upon that true factual landscape, courts should determine whether defendant can carry the traditional summary judgment burden of establishing that there are no genuine issues of material fact for jury resolution and that defendant is entitled to judgment as a matter of law.

Thomson v. Salt Lake Cty., 584 F.3d 1304, 1326 (10th Cir. 2009).

IV. QUALIFIED IMMUNITY

Public officials are immune from suit under 42 U.S.C. § 1983 unless they have “violated a statutory or constitutional right that was clearly established at the time of the challenged conduct.” An officer “cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in [his] shoes would have understood that he was violating it,” *ibid.*, meaning that “existing precedent ... placed the statutory or constitutional question beyond debate.” This exacting standard “gives government officials breathing room to make reasonable but mistaken judgments” by “protect [ing] all but the plainly incompetent or those who knowingly violate the law.”

City & Cty. of San Francisco, Calif. v. Sheehan, 135 S. Ct. 1765, 1774, 191 L. Ed. 2d 856 (2015)(citations omitted). When a defendant moves for summary judgment on the basis of qualified immunity, “the burden shifts to the plaintiff to show that: (1) the defendant violated a constitutional right and (2) the constitutional right was clearly established.” *Koch v. City of Del City*, 660 F.3d 1228, 1238 (10th Cir. 2011) (quoting *Martinez v. Beggs*, 563 F.3d 1082, 1088 (10th Cir. 2009)), *cert. denied*, — U.S. — (2012). “If, and only if, the plaintiff meets this two-part test does a defendant then bear the traditional burden of the movant for summary judgment—showing that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law.” *Id.* (quoting *Clark v. Edmunds*, 513 F.3d 1219, 1222 (10th Cir. 2008)). The constitutional right at issue should not be defined at a high level of generality but a “more particularized” inquiry is required to determine whether a violation of clearly established law has taken place. “The court must ask whether “every reasonable official would have understood that *what he [did] violate[d] that right.*” To satisfy this standard, “[w]e do not require a case directly on point,” but neither may a district court deny immunity unless “existing precedent [has] placed the statutory or constitutional question *beyond debate.*” *Id.* (emphasis added). *Kerns v. Bader*, 663 F.3d 1173, 1182-83 (10th Cir. 2011)(citations omitted).

In the instant matter as shown below, Salgado’s constitutional rights were not violated and/or the right she asserts is not clearly established. Accordingly, Plaintiff’s supervisory liability claim against former Sheriff Glanz and her *Monell* claim against Sheriff Regalado fail as a matter of law.

V. ARGUMENT AND AUTHORITIES

(1) Salgado did not suffer any violation of her constitutional rights.

Prison officials violate the Eighth Amendment when they are deliberately indifferent to an inmate's serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir.1980), *cert. denied*, 450 U.S. 1041, 101 S.Ct. 1759, 68 L.Ed.2d 239 (1981). The test for deliberate indifference includes both an objective and a subjective component. *Sealock v. Colorado*, 218 F.3d 1205, 1209 (10th Cir.2000).

The objective component is met if the deprivation is “sufficiently serious.” A medical need is sufficiently serious “if it is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.” The subjective component is met if a prison official “knows of and disregards an excessive risk to inmate health or safety.”

Id. (internal citations omitted).

To show deliberate indifference to his serious medical needs the plaintiff must demonstrate that prison officials “refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs.” *Domino v. Texas Dept. of Criminal Justice*, 239 F.3d 752, 756 (5th Cir.2001) (quoting *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir.1985)). “Medical records of sick calls, examinations, diagnoses and medications may rebut an inmate's allegations of deliberate indifference.” *Banuelos v. McFarland*, 41 F.3d 232, 235 (5th Cir.1995).

Baker v. Wilkinson, No. CIV-13-140-JHP-SPS, 2014 WL 298140, at *5 (Jan. 28, 2014); *See also Burns v. Laurance*, No. 10-CV-2691-WJM-CBS, 2015 WL 507658, at *13 (D. Colo. Feb. 3, 2015). Further, in context of a jail death, plaintiff must produce evidence showing that the Defendants appreciated that Salgado had a risk of a fatal medical condition and chose to disregard that risk. *Bruner-McMahon v. Jameson*, 566 F. App'x 628, 634 (10th Cir. 2014) (citing

Self v. Crum, 439 F.3d 1227, 1231 (10th Cir. 2006) (citing *Sealock*, 218 F.3d at 1208, 1211, 1212 n. 7).

“[W]hen a prisoner does in fact receive medical care; he has no Eighth Amendment claim based merely on his disagreement with the nature of the diagnosis.” *Alloway v. Wackenhut Correctional Facility*, 2001 WL 874183, 15 Fed.Appx. 743 (10th Cir.2001) (unpublished) citing *Ledoux v. Davies*, 961 F.2d 1536, 1537 (10th Cir.1992); *Estelle v. Gamble*, 429 U.S. 97, 107, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (“matter[s] of medical judgment” do not give rise to § 1983 claim); *Ramos*, 639 F.2d at 575 (difference of opinion between inmate and prison medical staff regarding treatment or diagnosis does not itself state a constitutional violation), *cert. denied*, 450 U.S. 1041, 101 S.Ct. 1759, 68 L.Ed.2d 239 (1981); *Smart v. Villar*, 547 F.2d 112, 114 (10th Cir.1976); *Lemmons v. Waters*, 11-CV-500-JED-PJC, 2013 WL 5592977 (N.D. Okla. Oct. 10, 2013).

In the instant matter, no challenge is made that Salgado’s condition was not sufficiently serious but the medical staff at the jail was not indifferent and did not disregard the risk of a fatal medical condition. The medical records reflect that no individual refused to treat her, ignored her complaints, intentionally treated her incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs. The medical record indicates evaluation, diagnosis and treatment of Salgado’s medical condition throughout her stay at the jail.

a. The medical record does not reflect any deliberate indifference to a serious medical need of Salgado during her incarceration from June 25-28, 2011.

Plainly put, the material facts drawn from the medical records, logs and documents in this case demonstrate continual monitoring, assessment, diagnosis, and treatment in a medical unit that is not indifferent to the needs of the individuals under their care. During Salgado’s stay, she

was thoroughly assessed and cared for by medical staff including physical assessments, vital sign checks and monitoring, and evaluations by doctors and nurses. She was given numerous medications to control [REDACTED]. While in general population she had access to the medical personnel in the medical unit; was monitored for [REDACTED]. [REDACTED]. When necessary and when her condition required closer monitoring she was admitted to medical for further observation, evaluation and treatment by jail medical personnel.

On June 25, 2011 she had the following contacts and interaction with medical personnel: At booking she was medically screened by Nurse Taylor, LPN who gathered and documented appropriate current and background medical information including her medical problems which included [REDACTED]. [REDACTED] Fact No. 29; (Exhibit 20, GLANZ-Revilla05494-05497). Her vitals were monitored at the medical screening. Fact No. 30; (Exhibit 20, GLANZ-Revilla05496).⁶ A mental health screening was also completed during the booking process. (Exhibit 21, GLANZ-Revilla05412). In response to Salgado's self-reported medical condition of [REDACTED] Dr. Washburn entered orders to monitor Salgado's [REDACTED] [REDACTED] twice daily. (Exhibit 20, GLANZ-Revilla05489).

June 26, 2011 is characterized by numerous encounters with healthcare personnel; evaluations and monitoring; an [REDACTED] [REDACTED] all addressed through examination, monitoring, diagnosis, consideration and medical treatment. At 4:46 AM, Salgado reported to the medical unit for [REDACTED]. Her [REDACTED] [REDACTED]. (Exhibit 23, GLANZ-Revilla05407; Exhibit 20, GLANZ-Revilla05490).

⁶ Plaintiff's expert, Dr. Allen, testified that he agreed Salgado's health screening was reasonable. (Exhibit 7, at 228:16-231:9).

At 2:18 PM, Salgado reported to the medical unit and was administered [REDACTED] in response to complaints of [REDACTED]. (Exhibit 23, GLANZ-Revilla05407, line 24). At 2:35 PM, Salgado's [REDACTED] was taken again in the medical unit. Her [REDACTED] (Exhibit 23, GLANZ-Revilla05407; Exhibit 20, GLANZ-Revilla05490). In response to her [REDACTED], Salgado was administered [REDACTED] at 2:43 PM. (Exhibit 23, GLANZ-Revilla05407; Exhibit 20, GLANZ-Revilla05490). While in medical, she reported [REDACTED] and in response Nurse Hudson initiated the [REDACTED]. (Exhibit 20, GLANZ-Revilla05500-05504). Salgado's vital signs were recorded five (5) times and she remained stable throughout the visit. (Exhibit 20, GLANZ-Revilla05505-05506, 05490). Nurse Hudson listened to Salgado's heart and lungs, and concluded that Salgado's chest sounds were normal: her lungs were clear to auscultation ("cta") bilaterally in all lobes, her heart had no rubs, bruits or murmurs, with normal S1 and S2. (Exhibit 20, GLANZ-Revilla05505). Nurse Hudson further noted that Salgado appeared to be [REDACTED] and refused to follow instructions on pursed lip breathing. (Exhibit 20, GLANZ-Revilla05505). Nurse Hudson gave Salgado [REDACTED] into, and Salgado reported that she could [REDACTED]. At this time, Salgado did not have any [REDACTED]. (Exhibit 20, GLANZ-Revilla05506). Dr. Washburn was contacted and he ordered that Salgado be administered [REDACTED] and also ordered an [REDACTED] (Exhibit 20, GLANZ-Revilla05506-05507). The [REDACTED] was performed and Dr. Washburn had the [REDACTED] results read over the phone to him. (Exhibit 15, at 221:15-21, 242:18-23). At 4:15 PM; 4:25 PM and 4:35 PM, Salgado's vitals were assessed and recorded all within normal limits. (Exhibit 20, GLANZ-Revilla05505-06). At approximately 4:23 PM, Salgado was administered [REDACTED] and [REDACTED] in response to her complaints of [REDACTED]. Salgado was given three

additional doses of [REDACTED] at 4:30 PM, 4:35 PM, and 4:45 PM (Exhibit 23, GLANZ-Revilla05407).⁷ Salgado reported to jail healthcare providers that her [REDACTED] stopped at approximately 5:30 p.m. (Exhibit 20, GLANZ-Revilla05505). Salgado was referred to see Dr. Washburn the following day, on June 27, 2011, for complaints of [REDACTED], and [REDACTED], and was returned to her pod. (Exhibit 20, GLANZ-Revilla5507).

Again, June 27, 2011 is characterized by numerous encounters with healthcare personnel; evaluations and monitoring; an [REDACTED], [REDACTED] [REDACTED] all addressed through examination, monitoring, diagnosis, consideration and medical treatment. At 6:59 AM, Salgado reported to the medical unit for [REDACTED]. Her [REDACTED] [REDACTED]. (Exhibit 20, GLANZ-Revilla05490). At 10:24 AM⁸, Nurse Metcalf noted that she assessed Salgado for complaints of [REDACTED]. She further noted that Dr. Washburn had seen Salgado and ordered a [REDACTED] and [REDACTED]. (Exhibit 20, GLANZ-Revilla05491, 05490; Exhibit 25, at 135:21-136:19; Exhibit 26, at 207:19-24). A [REDACTED] was performed. (Exhibit 20, GLANZ-Revilla5519). At 3:14 PM, Salgado's [REDACTED]. (Exhibit 20, GLANZ-Revilla05490). Salgado was administered eight (8) units of [REDACTED] at 3:14 PM, and [REDACTED] at 5:33 PM. (Exhibit 23, GLANZ-Revilla05407). At approximately 5:30 PM, the [REDACTED] report of Salgado's [REDACTED] [REDACTED] was signed by radiologist Benjamin Huang, M.D., who noted [REDACTED] [REDACTED]" and [REDACTED]." (Exhibit 20, GLANZ-Revilla05519). At approximately 7:00 PM, after receiving the radiology report, Dr. Washburn ordered that Salgado be admitted to the medical unit. (Exhibit 29, GLANZ-Revilla05341; Exhibit 27,

⁷ Plaintiff's expert, Dr. Allen, testified that Dr. Washburn's medication orders were reasonable and appropriate. (Exhibit 7, at., 248:2-7).

⁸ Nurse Metcalf testified that she remembers taking Salgado's vitals at 7:00 AM, and charting Salgado's vitals at 10:24 AM. (Exhibit 25 at 90:23-91:20).

GLANZ-Revilla05342). Dr. Washburn prescribed Salgado [REDACTED] and [REDACTED]. (Exhibit 20, GLANZ-Revilla05489, lines 1-2, 6; GLANZ-Revilla05341). Dr. Washburn prescribed [REDACTED] for his [REDACTED] [REDACTED] [REDACTED] (Exhibit 26, at 208:17-209:17; Exhibit 7, at 200:19, 201:9, 250:17-253:3). Nurse Raymond Stiles charted that upon her admission to the medical unit, Salgado complained of [REDACTED] and stated that she had been [REDACTED]. At 7:05 PM and at 10:00 pm, Salgado's vital signs were taken and noted within normal limits. (Exhibit 27, GLANZ-Revilla05342; Exhibit 28, GLANZ-Revilla05343). After Salgado's admission to the medical unit at approximately 7:00 PM, a security check was performed approximately every thirty (30) minutes by a detention officer for a total of ten (10) security checks on the evening of June 27, 2011. (Exhibit 30, GLANZ-Revilla05452).

Salgado spent June 28, 2011 in medical where security checks were performed every thirty minutes (30) for a total of thirty-eight (38) security checks. (Exhibit 30, GLANZ-Revilla05452, 05300). At approximately 4:20 AM, Salgado's [REDACTED] was tested and was [REDACTED]. (Exhibit 20, GLANZ-Revilla05490; Exhibit 28, GLANZ-Revilla05343). At 4:21 AM, Salgado was administered [REDACTED] in response to her [REDACTED]. (Exhibit 23, GLANZ-Revilla05406; Exhibit 28, GLANZ-Revilla05343). Salgado was also administered [REDACTED] in response to her complaints of [REDACTED] for her [REDACTED] [REDACTED]. (Exhibit 23, GLANZ-Revilla05406-05407; Exhibit 20, GLANZ-Revilla05489). At approximately 5:10 AM, Salgado's [REDACTED] was tested and had [REDACTED] [REDACTED]. (Exhibit 28, GLANZ-Revilla05343). Salgado's vital signs were taken again after 5:10

AM. Her [REDACTED]
[REDACTED]. (Exhibit 28, GLANZ-Revilla05343).

Dr. Washburn assessed Salgado during his morning rounds. (Exhibit 20, GLANZ-Revilla05491). At that time, Dr. Washburn observed Salgado to be lying quietly and not in distress. When Dr. Washburn asked her about her [REDACTED] from the day before, Salgado reported that her [REDACTED] and was better at that time. She also reported no further [REDACTED] [REDACTED]. After a physical examination Dr. Washburn noted that Salgado had just [REDACTED] [REDACTED]. He listened to her chest, charting that her heart and lungs were clear, though he acknowledged the [REDACTED] seen on her [REDACTED] the day before. He further noted that Salgado was alert and answered questions appropriately at the time of his assessment. In his assessment, Dr. Washburn charted Salgado's diagnoses as being [REDACTED]

[REDACTED] Dr. Washburn's plan was to order [REDACTED] and to [REDACTED]. However, Salgado advised him that she had no [REDACTED], which was confirmed on examination. Dr. Washburn prescribed Salgado more [REDACTED] in response to her complaints of [REDACTED]. (Exhibit 20, GLANZ-Revilla05489; Exhibit 23, GLANZ-Revilla05406).

At 3:00 PM, Nurse Metcalf assessed Salgado. Salgado's [REDACTED], which prompted administration of [REDACTED]. Salgado was awake, and her breathing was even and unlabored. (Exhibit 24, GLANZ-Revilla05332; Exhibit 23, at 138:24-139:15). At approximately 5:10 PM, Nurse Metcalf assessed Salgado. Salgado was administered [REDACTED] in response to her [REDACTED], another dose of [REDACTED] [REDACTED]. (Exhibit 25; Exhibit 24, GLANZ-

Revilla05332; Exhibit 25, at 144:19-146:1, 146:2-147:5, 148:2-25). Nurse Metcalf assisted Salgado in sitting up to take her medications, and—consistent with what she had reported to Dr. Washburn—Salgado reported to Nurse Metcalf that she was feeling a better. Salgado took her medication without difficulty, and Nurse Metcalf assisted her to lay back down. (Exhibit 24, GLANZ-Revilla05332; Exhibit 25, at 144:19-146:1, 148:2-25). At approximately 5:30 PM, Nurse Metcalf made rounds and saw that Salgado was resting with her eyes closed and observed her breathing but did not disturb her. (Exhibit 24, GLANZ-Revilla05332; Exhibit 25, at 146:2-147:5). At approximately 7:20 PM, Nurse Metcalf and Nurse Paul Wallace discovered Salgado non-responsive in her cell while making rounds. (Exhibit 25, at 147:8-17). EMSA was promptly called at called at 7:27 PM and entered Salgado’s cell at 7:40 PM. (Exhibit 31, *Witness Statement of Susan Pinson*, GLANZ-Revilla05644. Despite efforts to resuscitate Salgado at the jail on June 28, 2011 by jail staff and EMSA providers, she was ultimately pronounced dead at approximately 9:00 p.m. (Exhibit 24, GLANZ-Revilla05332).

Plaintiff’s expert, Dr. Allen, testified that each of Salgado’s medical complaints, signs and symptoms that she exhibited or complained of were being treated by the medical and nursing staff at DLM. (Exhibit 7, at 258:21-259:1, 261:4-9).

In the four (4) days Salgado was in DLM, her [REDACTED] was recorded ten (10) times. (Exhibit 20, GLANZ-Revilla05490; Exhibit 23, GLANZ-Revilla05406-05407; Exhibit 24, GLANZ-Revilla05332; Exhibit 25, at 138:24-139:15, 144:19-146:1). She was also placed on a [REDACTED]

(Exhibit 20, GLANZ-Revilla05496-05507).⁹ She received an [REDACTED] and [REDACTED] both of which

⁹ Plaintiff’s expert, Dr. Allen, testified that Dr. Washburn’s order for [REDACTED] twice daily was “a good thing,” and that it was reasonable to order a [REDACTED] for Salgado. (Exhibit 7, at 234:13-18, 234:19-235:5). He also testified that agreed that no healthcare provider ignored any of Salgado’s signs or symptoms on June 25, 2011. (Exhibit 7 at 237:17-238:4).

were evaluated by the physician. Nursing staff initiated the [REDACTED] to treat Salgado. (Exhibit 20, GLANZ-Revilla05500-05504). She was treated for [REDACTED] throughout her incarceration. In the four (4) days Salgado was in DLM, Salgado's vital signs were recorded nine (9) times in the medical records. (Exhibit 20, GLANZ-Revilla05490, 05505, 05494; Exhibit 27, GLANZ-Revilla05342; Exhibit 28, GLANZ-Revilla05343).

The medical treatment outlined above does not support any claim for indifference, deliberate or otherwise. It is doubtful that the medical care described even rises to the level of negligence. Nonetheless, neither an incorrect diagnosis nor the failure to alleviate a significant risk that should have been perceived, but was not, is sufficient to establish deliberate indifference. *Durkee v. Minor*, No. 16-1003, 2016 WL 6677601, at *2 (10th Cir. Nov. 14, 2016). Unsuccessful treatment, medical malpractice, and acts of negligence do not constitute deliberate indifference; nor does a prisoner's disagreement with his medical treatment, absent exceptional circumstances." *Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir.2006). The subjective component is not satisfied, absent an extraordinary degree of neglect, where a doctor merely exercises his considered medical judgment. *Self v. Crum*, 439 F.3d 1227, 1232 (10th Cir. 2006). No neglect occurred in this matter.

The record does not demonstrate any level of indifference to the care and treatment of Salgado by any medical provider while she was in the medical unit at the jail between June 25-28, 2011. Accordingly, the true factual landscape of this case demonstrates that no individual violated the constitutional rights of Lisa Salgado.

(2) The conduct of the medical staff as outlined above is not a clearly established violation of the constitutional rights of an individual.

Regarding the requisite proof of clearly established law, "[a] plaintiff may satisfy this standard by identifying an on-point

Supreme Court or published Tenth Circuit decision; alternatively, ‘the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains.’ ”

Cox v. Glanz, 800 F.3d 1231, 1247 (10th Cir. 2015)(citations omitted). The Supreme Court has admonished plaintiffs and courts “not to define clearly established law at a high level of generality,” *Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2084, 179 L. Ed. 2d 1149 (2011). Though “a case directly on point” is not required, “existing precedent must have placed the statutory or constitutional question beyond debate.” *Stanton v. Sims*, 134 S. Ct. 3, 5 (2013) (per curiam) (quoting *al-Kidd*, 131 S. Ct. at 2083).

There is no existing “robust consensus of cases of persuasive authority” (*City & Cty. of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765, 1778, 191 L. Ed. 2d 856 (2015)) clearly establishing that an individual who was being actively treated for every variety of complaint would result in liability for a civil rights violation of deliberate indifference by the jail medical staff. Specifically, there isn’t any robust consensus of authority which would place the sheriff on notice that if a jail physician fails to appreciate a risk of a fatal medical condition in the absence of any deliberate indifference, he may be held liable as a supervisor. The case law is to the contrary. *See Self v. Crum*, 439 F.3d 1227, 1231 (10th Cir.2006) (citing *Sealock*, 218 F.3d at 1208, 1211, 1212 n. 7)(concluding that the subjective component was not met where a prison nurse misdiagnosed an inmate's chest pains as the flu, and failed to recognize symptoms suggesting an impending heart attack.) Accordingly, Glanz is entitled to qualified immunity as a matter of law.

Given the medical records and the facts as outlined above, it is clear that no individual violated the constitutional rights of Salgado and there is no case law which would have placed the sheriff on notice that the constant, reasonable and necessary medical treatment she was receiving had been clearly established as a violation of her constitutional rights.

(3) Stanley Glanz, in his Individual Capacity, is entitled to qualified immunity as a matter of law.

Salgado's individual-capacity claim against Glanz is predicated on a supervisory-liability theory. It is undisputed that Sheriff Glanz had no personal contact with Salgado or direct and contemporaneous knowledge of Salgado's treatment by the medical or jail staff in June of 2011. In the absence of any direct personal contact or knowledge of Plaintiff's treatment at the jail, "[s]upervisory liability 'allows a plaintiff to impose liability upon a defendant-supervisor who creates, promulgates, [or] implements ... a policy ... which subjects, or causes to be subjected that plaintiff to the deprivation of any rights ... secured by the Constitution.'" This does not equate to "liability under a theory of respondeat superior." A plaintiff arguing for the imposition of supervisory liability "therefore must show an 'affirmative link' between the supervisor and *the constitutional violation*." *Cox v. Glanz*, 800 F.3d 1231, 1248-49 (10th Cir. 2015)(citations omitted). "In order to establish a § 1983 claim against a supervisor for the unconstitutional acts of his subordinates, a plaintiff must first show the supervisor's subordinates violated the constitution." *Serna v. Colorado Dep't of Corr.*, 455 F.3d 1146, 1151 (10th Cir. 2006)(emphasis added); *Martinez v. Beggs*, 563 F.3d 1082, 1091-92 (10th Cir. 2009)(where individual county Defendants did not violate jail inmate's constitutional rights, Sheriff not liable, in his individual capacity, as a matter of law for policy, training or supervision). In sum, a necessary predicate to supervisory liability is an underlying "constitutional violation."

As set forth in the statement of material facts and argued above, there can be no dispute that Salgado received constant and appropriate medical care, or at the very least was not treated by any individual at the jail with indifference to her medical needs. The medical record simply does not demonstrate any level of indifference to the care and treatment of Salgado by any

medical provider while she was in the medical unit at the jail between June 25-28, 2011. Accordingly, Stanley Glanz should be granted qualified immunity as a matter of law.

- (4) Absent an underlying constitutional violation by the jail medical staff, Vic Regalado, in his Official Capacity,¹⁰ is entitled to judgment in his favor as a matter of law.**

For the same reasons that Glanz is entitled to qualified immunity, current Sheriff Vic Regalado is entitled to judgment in his favor on the Official Capacity claim. “A claim of inadequate training, supervision, and [pursuit] policies under § 1983 cannot be made out against a supervisory authority absent a finding of a constitutional violation by the person supervised.” *Trigalet v. City of Tulsa, Oklahoma*, 239 F.3d 1150, 1154 (10th Cir. 2001). “A county or sheriff in his official capacity cannot be held “liable for constitutional violations when there was no underlying constitutional violation by any of its officers.” *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1317–18 (10th Cir.2002); *Camuglia v. City of Albuquerque*, 448 F.3d 1214, 1223 (10th Cir.2006) (recognizing a municipality may not be held liable for a policy or practice in the absence of an underlying constitutional violation by an individual official) cited with approval in *Lynch v. Barrett*, 703 F.3d 1153, 1164 (10th Cir. 2013). “If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have *authorized* the use of constitutionally excessive force is quite beside the point.” *City of Los Angeles v. Heller*, 475 U.S. 796, 799, 106 S.Ct. 1571, 89 L.Ed.2d 806 (1986)(emphasis added).

The medical records do not demonstrate any individual at the jail was indifferent to the care and treatment of Salgado while she was in the medical unit. Accordingly, absent an underlying constitutional violation by the jail medical staff, Vic Regalado, in his Official Capacity, is entitled to judgment in his favor as a matter of law.

¹⁰ See fn. 2.

(5) There is no pattern, practice or policy at issue when the individual's constitutional rights were not violated.

In the past, Plaintiff's counsel consistently characterized their client's claims as a "comprehensive indictment of the entire health services system in place at the David L. Moss Criminal Justice Center." Counsel proceeds to set forth evidence they believe establishes that the policies, patterns and practices at the jail are the "moving force" behind any constitutional violations as required by *Monell* claims. *Monell v. Department of Social Services*, 436 U.S. 658, 691 (1978). In *Oklahoma City v. Tuttle*, 471 U.S. 808 (1985), the Court held that a constitutional policy could subject the municipality to liability only if the plaintiff could demonstrate that a constitutional policy affirmatively caused a series of unconstitutional incidents. *Id.* at 824, 105 S.Ct. at 2436. As argued above, Salgado did not suffer any deprivation of her constitutional rights. Plaintiff's generalized theories of risk and systemic injury arguments are not at issue when in absence of any underlying constitutional violation. In the absence of any predicate or underlying civil rights violation, there is no liability for "systemic injury." *Martinez v. Beggs*, 563 F.3d 1082, 1092 (10th Cir. 2009)("To the extent [the systemic injury] argument suggests that the county can be liable, even if no individual government actor is liable, it is precluded by our prior precedent.").

In the context of the Individual Capacity claim against Glanz, the result is the same. Rather than show the policy was a "moving force," Plaintiff must demonstrate an "affirmative link" between a supervisor and the alleged constitutional injury. *Dodds*, 614 F.3d at 1195. Implicit in the analysis of any policy, pattern or practice as an "affirmative link" is the existence of a constitutional injury. As amply demonstrated above, Salgado did not suffer any constitutional injury.

Accordingly, Stanley Glanz should be granted qualified immunity as a matter of law and Vic Regalado, in his Official Capacity, entitled to judgment in his favor as a matter of law.

VI. STATE LAW CONSTITUTIONAL CLAIMS

(1) As with Plaintiff's federal civil rights, her state civil rights under Art. II, §§ 7 and 9 were not violated either.

In the Court's Order dated March 17, 2014, (Dkt. No. 42), the court speculated that "there was no reason to find that the Oklahoma Due Process Clause does not extend to pretrial detainees 'the degree of protection against denial of medical attention which applies to convicted inmates under' the state's equivalent (Okla. Const. art. 2, § 9) of the Eighth Amendment prohibition against cruel or unusual punishment." *Id.* at 15. As set forth above, Salgado was not denied medical attention during her stay at the jail in the medical unit. *Fact Nos.* 1-42.

VII. CONCLUSION

Defendants Glanz, in his Individual Capacity and Regalado, in his Official Capacity, request that the court grant them judgment in their favor in this matter on the issues of qualified immunity and official capacity liability. As set forth above, Salgado received more than adequate medical care prior to her death in the jail. She presented to the jail after being medically cleared by a local hospital for complaints of ██████████ which were determined to be ██████████" in nature. She was medically screened and evaluated, assessed, provided treatment for ██████████ and ██████████, provided medications and her ██████████ were addressed by the medical and jail staff. There is no evidence that any of the Defendants appreciated that Salgado presented a risk of a fatal medical condition and chose to disregard it. No individual was indifferent to her care, no individual looked the other way while she suffered and no individual violated her constitutional right against cruel and unusual punishment. Further, there is no existing "robust consensus of cases of persuasive authority" (*City & Cty. of San Francisco, Calif. v. Sheehan*, 135

S. Ct. 1765, 1778, 191 L. Ed. 2d 856 (2015)) that would it sufficiently clear, such that every reasonable official would have understood that if a jail physician fails to appreciate a risk of a fatal medical condition in the absence of any deliberate indifference and is actively the individual for every variety of complaint, he may be held liable as a supervisor.

In the absence of any violation of Salgado's constitutional rights by an individual on the medical or jail staff, Glanz is entitled to qualified immunity on Plaintiff's supervisory claims against him and Regalado is entitled to judgment on the Official Capacity claims against him. Further, Glanz and Regalado should be granted judgment on the state law constitutional claims as no individual violated her rights under the Oklahoma state constitution.

Respectfully submitted,

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