ty risk status and the particular risks of the specific exemption requested. 135 S.Ct. at 863. The specific exemption requested here is to allow Plaintiffs to wear long hair or a kouplock. In the district court, TDCJ presented photographs of objects small enough in size to hypothetically be hidden in a kouplock, and evidence that inmates at other institutions hide contraband in various styles of short and long hair, indicating that the grooming policy does further an interest in preventing the transfer of contraband. But TDCJ has not demonstrated on the present record that a total ban on the growing of kouplocks, even as to low security risk inmates such as Plaintiffs, is the least restrictive means of furthering that interest. Were Plaintiffs to be caught using their kouplocks to smuggle contraband or for some other prohibited purpose, any accommodation could be withdrawn. *Id.* at 867; *see also Ali*, 822 F.3d at 794–95, 2016 WL 1741573, at *14 ("TDCJ has not shown why it is impracticable to revoke kufi privileges for those inmates that resist such searches."). In addition, a fact question may be presented on this point based on George Sullivan's testimony that, in his experience, inmates are unlikely to hide contraband in their hair.

Because TDCJ's interests in preventing the wearing of long hair or kouplocks were not evaluated in light of the specific characteristics of each Plaintiff as purportedly low security risk Native American inmates, remand for further findings on this issue is appropriate.

IV. CONCLUSION

The district court did not err in granting summary judgment on Plaintiffs' First Amendment claim, medicine-bag RLUIPA claim, and pipe-ceremony RLUIPA claim. Because the district court did not strike Plaintiffs' summary judgment evidence, including George Sullivan's expert testimony, and because genuine issues of material fact remain regarding the legitimacy of TDCJ's cost and security concerns created by the wearing of a kouplock by Plaintiffs as low security risk Native American inmates, and further because the district court did not consider Plaintiffs' grooming-policy claim in light of Plaintiffs' individual circumstances, we VACATE and REMAND in part for further proceedings as to Plaintiffs' grooming-policy claim under RLUIPA. We AFFIRM the judgment of the district court in all other respects.

Ricardo SALAZAR–LIMON, Individually and as Next Friend of EFS, Plaintiff–Appellant

v.

CITY OF HOUSTON; Chris C. Thompson, Defendants–Appellees.

No. 15-20237

United States Court of Appeals, Fifth Circuit.

Filed June 15, 2016

Revised June 16, 2016

Background: Arrestee brought § 1983 action in state court against arresting officer and city alleging use of excessive and unreasonable deadly force which caused arrestee to be partially paralyzed. Action was removed. The United States District Court for the Southern District of Texas, Lee H. Rosenthal, J., 97 F.Supp.3d 898, granted summary judgment for city and granted qualified immunity to officer. Arrestee appealed.

Holding: The Court of Appeals, Jolly, Circuit Judge, held that officer's use of deadly force was not clearly excessive or unreasonable.

Affirmed.

1. Federal Courts ⚿3675

In reviewing an appeal from a summary judgment, Court of Appeals views facts in light most favorable to non-moving party and draws all reasonable inferences in its favor. Fed. R. Civ. P. 56.

2. Federal Courts ⚿3604(4)

Court of Appeals reviews district court's grant of summary judgment de novo, also applying same standards as district court. Fed. R. Civ. P. 56.

3. Federal Civil Procedure ⚿2470, 2470.4

Summary judgment is only appropriate if there is no genuine issue as to any material fact and moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56.

4. Federal Courts ⚿3675

On a motion for summary judgment, court of appeals must view facts in light most favorable to non-moving party and draw all reasonable inferences in its favor. Fed. R. Civ. P. 56.

5. Federal Civil Procedure ⚿2470.1

As to materiality of issue required to preclude summary judgment, substantive law will identify which facts are material; only disputes over facts that might affect outcome of suit under governing law will properly preclude entry of summary judgment. Fed. R. Civ. P. 56.

6. Civil Rights ⚿1304

To establish a claim under § 1983, a plaintiff must (1) allege a violation of a right secured by the Constitution or laws of the United States and (2) demonstrate that alleged deprivation was committed by a person acting under color of state law. 42 U.S.C.A. § 1983.

7. Civil Rights ⚿1343, 1354

Claims under § 1983 may be brought against persons in their individual or official capacity, or against a governmental entity. 42 U.S.C.A. § 1983.

8. Civil Rights ⚿1351(1), 1354

A municipality and/or its policymakers may be held liable under § 1983 when execution of a government's policy or custom by those whose edicts or acts may fairly be said to represent official policy inflicts the constitutional injury. 42 U.S.C.A. § 1983.

9. Civil Rights ⚿1376(1, 2)

To overcome a qualified immunity defense in a § 1983 action, a plaintiff must allege a violation of a constitutional right, and then must show that the right was clearly established in light of the specific context of the case. 42 U.S.C.A. § 1983.

10. Federal Civil Procedure ⚿2491.5

At summary judgment stage of § 1983 action in which defendant claims qualified immunity, it is plaintiff's burden to rebut a claim of qualified immunity once defendant has properly raised it in good faith, and this is a demanding standard. 42 U.S.C.A. § 1983.

11. Civil Rights ⚿1376(2)

Qualified immunity from liability in § 1983 action protects all but the plainly incompetent or those who knowingly violate the law. 42 U.S.C.A. § 1983.

12. Federal Civil Procedure ⚿2546

Burden of demonstrating absence of genuine issue of material fact on motion for summary judgment is not satisfied with some metaphysical doubt as to the material facts, by conclusory allegations, by un-

substantiated assertions, or by only a scintilla of evidence. Fed. R. Civ. P. 56.

13. Federal Civil Procedure ⚿2543

Although court resolves factual controversies in favor of nonmoving party on motion for summary judgment, it does so only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts. Fed. R. Civ. P. 56.

14. Federal Civil Procedure ⚿2543

On a motion for summary judgment, court does not, in the absence of any proof, assume that nonmoving party could or would prove necessary facts to survive summary judgment. Fed. R. Civ. P. 56.

15. Arrest ⚿68.1(4)

To establish a claim of excessive force under Fourth Amendment, plaintiff must demonstrate: (1) an injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable. U.S. Const.Amend. 4.

16. Arrest ⚿68.1(4)

Use of deadly force is not unreasonable when an officer would have reason to believe the suspect poses a threat of serious harm to the officer or others. U.S. Const.Amend. 4.

17. Arrest ⚿68.1(4)

Inquiry into whether use of force was excessive is confined to whether officer or another person was in danger at moment of threat that resulted in officer's use of deadly force. U.S. Const.Amend. 4.

18. Arrest ⚿68.1(4)

Police officer's use of deadly force was not clearly excessive or unreasonable, and thus, officer was entitled to qualified immunity from liability in arrestee's § 1983 action considering totality of circumstances, including arrestee's resistance, intoxication, his disregard for officer's orders, threat he and the other three men in his truck posed while unrestrained, and officer's actions leading up to shooting. U.S. Const.Amend. 4; 42 U.S.C.A. § 1983.

Appeal from the United States District Court for the Southern District of Texas, Lee H. Rosenthal, J.

Sean M. Palavan, Talabi & Associates, P.C., Houston, TX, for Plaintiff–Appellant.

Robert William Higgason, Suzanne Reddell Chauvin, Esq., City of Houston, Legal Department, John B. Wallace, J. Wallace Legal, Houston, TX, for Defendants–Appellees.

Before REAVLEY, JOLLY, and ELROD, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:

Ricardo Salazar–Limon ("Salazar") appeals the judgment dismissing his 42 U.S.C. § 1983 claims, which alleged that Officer Chris C. Thompson of the Houston Police Department ("HPD"), in Houston, Texas, applied excessive and unreasonable deadly force during his arrest, causing Salazar to be partially paralyzed. Salazar also asserted a claim, under *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978), against the City of Houston based on the same conduct and injuries. The district court granted qualified immunity to Officer Thompson in his individual capacity (finding that Salazar's constitutional rights had not been violated during the arrest) and also denied Salazar's claims under *Monell*. Salazar appealed. We AFFIRM.

I.

[1] In reviewing an appeal from a summary judgment, we "view the facts in the

light most favorable to the non-moving party and draw all reasonable inferences in its favor." *See Deville v. Marcantel*, 567 F.3d 156, 163–64 (5th Cir. 2009).

On October 29, 2010, around midnight, Salazar was driving on Houston's Southwest Freeway. Three other men were in his truck. Salazar had drunk at least four or five beers in the previous two hours—and had the remainder of the 12–pack with him in the truck.

Officer Thompson observed Salazar's truck weaving between lanes and speeding in excess of the posted limit. In response, Officer Thompson turned on his lights and sirens, and Salazar pulled over on the right shoulder of the elevated overpass, next to a low retaining wall. About two feet separated the freeway wall from the passenger side of Salazar's truck. Officer Thompson parked his patrol car about four feet behind Salazar's truck. Before getting out of the patrol car, Officer Thompson ran a search on Salazar's license plate to see if the truck was stolen; it was not.

Officer Thompson approached the driver's window of Salazar's truck and asked Salazar for his license and proof of insurance. Lacking a U.S. license, Salazar complied by giving Officer Thompson his Mexican driver's license. Officer Thompson returned to his patrol car and checked the driver's license, which showed Salazar had no open warrants or charges pending against him. Officer Thompson then returned to the driver's window of Salazar's truck, asking Salazar to step out. Salazar complied, walked to the back of his truck, and stood next to Officer Thompson in the space between the back of the truck and the front of the patrol car.

Officer Thompson and Salazar dispute certain details of what happened next, but it is undisputed that: 1) Officer Thompson tried to handcuff Salazar; 2) Salazar resisted; 3) a brief struggle ensued (in which neither party was injured);[1] and 4) after the brief struggle, Salazar pulled away, turned his back to Officer Thompson, and walked away along the retaining wall and the passenger side of his truck.

At this point, Officer Thompson pulled out his handgun and ordered Salazar to stop. Salazar did not immediately comply and took "one or two" more steps. Officer Thompson testified he then saw Salazar turn left and reach toward his waistband, which was covered by an untucked shirt that hung below his waist.[2] Further, Officer Thompson testified that he perceived the combination of Salazar's actions to be consistent with a suspect retrieving a weapon from his waistband. Officer Thompson fired a single shot, hitting Salazar in the right lower back.

Upon inspection, Officer Thompson determined that Salazar was not armed. Salazar survived, but the gunshot wound left him partially paralyzed.

Salazar was charged with, and pleaded nolo contendere to, resisting arrest and driving while intoxicated.

In Texas state court, Salazar sued Officer Thompson, the City of Houston, and

1. Salazar contends in his briefing that he did not "struggle" with Officer Thompson at any point. Salazar alleged in his complaint, however, that he had a "brief struggle" with Officer Thompson after Officer Thompson pulled out his handcuffs. Salazar was convicted on his nolo contendere plea to resisting arrest. The charging instrument alleged that Salazar "push[ed] [Officer Thompson] with his hand."

2. Salazar disputes the direction of the turn, or indeed that he was turning at all at the time he was shot. This factual dispute does not preclude summary judgment for the reasons noted infra.

various HPD officials, alleging constitutional and state-law violations. The defendants timely removed the case. Salazar dismissed his claims against all of the HPD officers, except Officer Thompson. Officer Thompson moved for summary judgment, asserting qualified immunity. The City of Houston moved for summary judgment, asserting Salazar's failure to sufficiently plead *Monell* liability as a matter of law.

Addressing Salazar's Fourth Amendment claims against Officer Thompson, the district court determined that "Salazar [ ] pointed to no summary judgment evidence contradicting Thompson's testimony that he shot because, when Salazar reached for his waistband and turned toward him, he believed that Salazar had a gun and would shoot." *Salazar–Limon v. City of Houston*, 97 F.Supp.3d 898, 909 (S.D. Tex. 2015). The district court thus concluded that Officer Thompson's use of deadly force was not excessive under the circumstances and that Salazar's constitutional rights were not violated, and accordingly granted qualified immunity to Officer Thompson, dismissing the claims against him. *See id.*

Turning to Salazar's *Monell* claims against the City of Houston, the district court granted the City of Houston's summary judgment motion based on the insufficiency of Salazar's claims as a matter of law. Specifically, the district court denied Salazar's *Monell* claims because the "constitutional violation of a municipal official is a prerequisite to municipal liability," and Salazar "ha[d] not raised a factual dispute material to determining whether [his] *constitutional rights* were violated." *Id.* at 910 (emphasis added) (citations omitted). Thus, "[w]ithout an underlying [constitutional] violation," the district court held, "the § 1983 claims against the municipality fail." *Id.*

Salazar appealed to this Court, arguing that the district court erred in granting Officer Thompson and the City of Houston's motions because genuinely disputed material facts precluded summary judgment. Accordingly, Salazar argues that the district court's grant of summary judgment was error and that the judgment should be reversed and remanded for trial against Officer Thompson and the City of Houston.[3]

II.

[2–5] We review the district court's grant of summary judgment de novo, also applying the same standards as the district court. *See Newman v. Guedry*, 703 F.3d 757, 761 (5th Cir. 2012). Summary judgment is only appropriate if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). "On a motion for summary judgment, [we] must view the facts in the light most favorable to the non-moving party and draw all reasonable inferences in its favor." *Deville v. Marcantel*, 567 F.3d 156, 163–64 (5th Cir. 2009). "As to materiality, the substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

III.

[6, 7] To establish a claim under § 1983, "a plaintiff must (1) allege a viola-

3. Salazar does not appeal the district court's dismissal of his other federal (conspiracy) and state-law (negligence against Officer Thompson in his official capacity, negligence against the City of Houston, and loss of consortium) claims.

tion of a right secured by the Constitution or laws of the United States and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law." *Whitley v. Hanna*, 726 F.3d 631, 638 (5th Cir. 2013), *cert. denied*, —— U.S. ——, 134 S.Ct. 1935, 188 L.Ed.2d 960 (2014). Additionally, "[c]laims under § 1983 may be brought against persons in their individual or official capacity, or against a governmental entity." *Goodman v. Harris Cnty.*, 571 F.3d 388, 395 (5th Cir. 2009).

[8] A municipality and/or its policymakers may be held liable under § 1983 "when execution of a government's policy or custom ... by those whose edicts or acts may fairly be said to represent official policy, inflicts the [constitutional] injury...." *Monell*, 436 U.S. at 694, 98 S.Ct. 2018; *see also Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009) (requiring plaintiffs asserting *Monell*-liability claims to show "(1) an official policy (2) promulgated by the municipal policymaker (3) [that was also] the moving force behind the violation of a constitutional right").

A.

First, we turn to Salazar's claims against Officer Thompson. Salazar contends that the district court erred by resolving disputed issues of material fact, and on that basis, by granting Officer Thompson qualified immunity, holding that Officer Thompson did not use excessive or unreasonable force in Salazar's arrest.

[9] Because Officer Thompson was sued in his individual capacity, he asserted the defense of qualified immunity. *See Goodman*, 571 F.3d at 395; *Salazar–Limon*, 97 F.Supp.3d at 900. When evaluating a qualified immunity defense, we conduct a "well-known" two-prong inquiry. *Bazan ex rel. Bazan v. Hidalgo Cty.*, 246 F.3d 481, 490 (5th Cir. 2001). "In order to overcome a qualified immunity defense, a plaintiff must allege a violation of a constitutional right, and then must show that 'the right was clearly established ... in light of the specific context of the case.' " *Thompson v. Mercer*, 762 F.3d 433, 437 (5th Cir. 2014) (quoting *Saucier v. Katz*, 533 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001)).

[10, 11] Thus, "[a]t summary judgment, it is the plaintiff's burden to rebut a claim of qualified immunity once the defendant has properly raised it in good faith." *Cole v. Carson*, 802 F.3d 752, 757 (5th Cir. 2015). And, "[t]his is a *demanding standard*." *Vincent v. City of Sulphur*, 805 F.3d 543, 547 (5th Cir. 2015), *cert. denied*, —— U.S. ——, 136 S.Ct. 1517, 194 L.Ed.2d 607 (2016) (emphasis added). "Put simply, qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.' " *Id.* (quoting *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986)).

[12–14] Moreover, "[t]his burden is not satisfied with 'some metaphysical doubt as to the material facts,' by 'conclusory allegations,' by 'unsubstantiated assertions,' or by only a 'scintilla' of evidence." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc) (citations omitted). And, although "[w]e resolve factual controversies in favor of the nonmoving party," we do so only "when there is an *actual controversy*, that is, when both parties have submitted evidence of contradictory facts." *Id.* (emphasis added). Accordingly, we do not, "in the absence of any proof, assume that the nonmoving party could or would prove the necessary facts" to survive summary judgment. *Id.* (citing *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990)).

Turning to the constitutional claim here, Salazar contends that Officer Thompson violated his Fourth Amendment rights by applying excessive force during his arrest.

[15] To establish a claim of excessive force under the Fourth Amendment, Salazar "must demonstrate: '(1) [an] injury, (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable.' " *Deville*, 567 F.3d at 167 (quoting *Tarver v. City of Edna*, 410 F.3d 745, 751 (5th Cir. 2005)). "Excessive force claims are necessarily fact-intensive." *Id.*

[16, 17] "The '[u]se of deadly force is not unreasonable when an officer would have reason to believe the suspect poses a threat of serious harm to the officer or others.' " *Carnaby v. City of Houston*, 636 F.3d 183, 188 (5th Cir. 2011) (quoting *Mace v. City of Palestine*, 333 F.3d 621, 624 (5th Cir. 2003)). And, this "inquiry is confined to whether the [officer or another person] was in danger *at the moment of the threat* that resulted in the [officer's use of deadly force]." *Rockwell v. Brown*, 664 F.3d 985, 993 (5th Cir. 2011) (citation omitted).

Salazar contends that the district court erred because it resolved disputed issues of material fact in Officer Thompson's favor. Specifically, Salazar asserts that the district court erred by finding that: 1) the highway was dimly lit; 2) Officer Thompson adequately warned Salazar prior to the shooting; 3) Salazar turned sharply towards Thompson; and 4) Salazar reached for his waistband, making threatening movements with his hands.

Of the four issues, only one need be addressed—whether Salazar reached for his waistband before being shot. Unless Salazar has presented competent summary judgment evidence that he did not reach toward his waistband (for what Officer Thompson perceived to be a weapon), Officer Thompson's decision to shoot was not a use of unreasonable or excessive deadly force.[4]

[18] Here, the record evidence shows that Officer Thompson testified that: 1) he saw Salazar reach for his waistband; 2) his view of Salazar's waistband was obscured (either by Salazar's low-hanging shirt, the angle at which Salazar turned, or some combination of the two); and 3) he perceived Salazar's movements to be consistent with those of an arrestee reaching for a concealed weapon. In the proceedings before the district court, however, Salazar did not deny reaching for his waistband;[5]

4. *See Deville*, 567 F.3d at 167 (we must "consider ... 'the severity of the crime at issue, whether the suspect poses an *immediate threat* to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.' ") (emphasis added) (citing *Graham*, 490 U.S. at 396, 109 S.Ct. 1865); *Carnaby*, 636 F.3d at 188 ("The '[u]se of deadly force is not unreasonable when an officer would have reason to believe the suspect poses a threat of serious harm to the officer or others.' ") (citation omitted); *Rockwell*, 664 F.3d at 993 ("The excessive force inquiry is confined to whether the [officer or another person] was in danger *at the moment of the threat* that resulted in the [officer's use of deadly force].") (citation omitted); *Manis v. Lawson*, 585 F.3d 839, 844 (5th Cir. 2009) ("This court has found an officer's use of deadly force to be reasonable when a suspect moves out of the officer's line of sight such that the officer could reasonably believe the suspect was reaching for a weapon.") (citations omitted); *see also Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379, 385 (5th Cir. 2009); *Reese v. Anderson*, 926 F.2d 494, 501 (5th Cir. 1991); *Young v. City of Killeen, TX*, 775 F.2d 1349, 1352–53 (5th Cir. 1985).

5. *See Salazar-Limon*, 97 F.Supp.3d at 906 ("uncontroverted record evidence shows that Salazar ... reached for his waistband before Thompson fired"); *id.* at 906–07 ("undisputed summary judgment evidence shows that: ... as [Salazar] walked away from Officer

nor has he submitted any other controverting evidence in this regard. To the point, Salazar has not presented *any* competent summary judgment evidence to controvert or challenge Officer Thompson's testimony noted above. And, in the absence of such controverting evidence, we cannot assume that Salazar "could or would prove the necessary facts" to survive summary judgment. *Little*, 37 F.3d at 1075 (citing *Lujan*, 497 U.S. at 888, 110 S.Ct. 3177).

Thus, based on our precedent and the undisputed facts, considering the totality of the circumstances—which include Salazar's resistance, intoxication, his disregard for Officer Thompson's orders, the threat he and the other three men in his truck posed while unrestrained, and Salazar's actions leading up to the shooting (including suddenly *reaching towards his waistband*)—it seems clear that it was not unreasonable for an officer in Officer Thompson's position to perceive Salazar's actions to be an *immediate* threat to his safety.[6] And, it follows that it was not "clearly excessive" or "unreasonable" for Officer Thompson to use deadly force in the manner he did to protect himself in such circumstances.[7]

Accordingly, we agree with the district court that Salazar's constitutional rights were not violated; and, we hold that the district court did not err in granting Officer Thompson qualified immunity.

B.

We next turn to Salazar's claims against the City of Houston. Salazar asserts three theories of municipal liability under *Monell*: 1) unofficial policy, custom or practice for failure to discipline; 2) unofficial policy, custom or practice for failure to train and/or supervise; and 3) ratification.[8]

Because Salazar has not shown a violation of his constitutional rights, however, all of his *Monell* claims against the City of Houston fail as a matter of law. *See Peterson*, 588 F.3d at 847 (requiring plaintiffs asserting *Monell*-liability claims to show "(1) an official policy (2) promulgated by the municipal policymaker (3) [that was also] the moving force behind the *violation of a constitutional right*") (emphasis added).

IV.

In sum, the record evidence, read in the light most favorable to Salazar, does not

Thompson toward his own truck, he reached toward his waistband'').

6. Furthermore, we note that, in the context of the facts of this case, it is immaterial whether Salazar turned left, right, or at all before being shot. Specifically, we have never required officers to wait until a defendant turns towards them, with weapon in hand, before applying deadly force to ensure their safety. *See, e.g., Manis*, 585 F.3d at 844 (''This court has found an officer's use of deadly force to be reasonable when a suspect moves out of the officer's line of sight such that the officer could reasonably believe the suspect was reaching for a weapon.'' (collecting cases)); *Mendez v. Poitevent*, No. 15-50790, 823 F.3d 326, 330–32, 2016 WL 2957851 at *2 (May 19, 2016) (qualified immunity applies to shooting of fleeing suspect who had physically clashed with officer leaving officer disoriented and with impaired vision); *Colston v. Barnhart*, 130 F.3d 96, 99 (5th Cir. 1997) (qualified immunity applies to shooting without warning after suspect struggled with two officers knocking them to the ground while resisting arrest).

7. *See* cases cited *supra* note 4.

8. Salazar also argues that the HPD use of force policy is ''facially deficient'' because it uses the term ''imminent threat,'' as opposed to ''immediate threat.'' *See Deville*, 567 F.3d at 167 (''whether the suspect poses an immediate threat to the safety of the officers or others'') (citing *Graham*, 490 U.S. at 396, 109 S.Ct. 1865). In short, this argument is meritless as municipalities are not required to incorporate specific language from our case law, or that of the Supreme Court, in order to satisfy *Monell*.

show that his Fourth Amendment rights were violated. Thus, the district court's judgment is, in all respects

AFFIRMED.

Robert GRODEN, Plaintiff–Appellant

v.

CITY OF DALLAS, TEXAS; Sergeant Frank Gorka, Defendants–Appellees.

No. 15-10073

United States Court of Appeals, Fifth Circuit.

Filed June 16, 2016

Background: Author of several books brought § 1983 action against city and city police officer, alleging that city adopted policy of arresting vendors without probable cause in city plaza to retaliate against unpopular but constitutionally protected speech, and that he was arrested pursuant to the policy. The United States District Court for the Northern District of Texas, David C. Godbey, J., 2015 WL 247728, granted city's motion to dismiss. Author appealed.

Holdings: The Court of Appeals, E. Grady Jolly, Circuit Judge, held that:

(1) as matter of first impression, to survive city's motion to dismiss for failure to state claim, author was only required to plead facts, which established that city's policy was promulgated or ratified by city's policymaker, and was not required to supply answer to legal question of the specific identity of city's policymaker; abrogating *Covington v. Covington*, 2015 WL 5178078;

(2) author pled sufficient facts to suggest that city council promulgated or ratified city policy, as required to state § 1983 claim against city; and

(3) author alleged that city had unconstitutional policy, as required to state § 1983 claim against city.

Reversed and remanded.

1. Civil Rights ⚿1394

To survive a motion to dismiss for failure to state a § 1983 claim, a plaintiff is not required to single out the specific policymaker of a municipality's alleged unconstitutional policy in his § 1983 complaint; instead, a plaintiff need only plead facts that show that the defendant or defendants acted pursuant to a specific official policy, which was promulgated or ratified by the legally authorized policymaker. 42 U.S.C.A. § 1983; Fed. R. Civ. P. 12(b)(6).

2. Federal Courts ⚿3587(1), 3667

The Court of Appeals reviews de novo a district court's grant or denial of a motion to dismiss for failure to state a claim, accepting all well-pleaded facts as true and viewing those facts in the light most favorable to the plaintiff. Fed. R. Civ. P. 12(b)(6).

3. Civil Rights ⚿1345

Municipalities are not liable for the unconstitutional actions of their employees under respondeat superior. 42 U.S.C.A. § 1983.

4. Civil Rights ⚿1351(1)

To establish municipal liability under § 1983, a plaintiff must show that (1) an official policy (2) promulgated by the municipal policymaker (3) was the moving force behind the violation of a constitutional right. 42 U.S.C.A. § 1983.