

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
WASHINGTON

Nicole Carby v. City of Kennewick, Mr. Guerro (brother to  
Kennewick Chief of Police), Supervisor Benton County Jail, and  
Rudy Ruelas

Carby · No. 4:25-CV-05106-TOR · Decided December 16, 2025

SUMMARY

The U.S. District Court for the Eastern District of Washington considers the City of Kennewick’s motion to dismiss Nicole Carby’s pro se complaint asserting constitutional, 42 U.S.C. § 1983, Bivens, and Washington-law claims. The court concludes that the complaint fails to state cognizable claims, that service of process was insufficient and untimely, and that several asserted statutory claims lack adequate factual or legal support. The motion is granted in part, and Carby’s claims against the City of Kennewick are dismissed without prejudice, without leave to amend.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | United States District Court for the Eastern District of Washington                                                                                                                                                                                                                                                                                                                                                                                                 |
| JURISDICTION       | U.S. District Court for the Eastern District of Washington                                                                                                                                                                                                                                                                                                                                                                                                          |
| DECIDED            | December 16, 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DOCKET             | 4:25-CV-05106-TOR                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DISPOSITION        | dismissed                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE | Plaintiff proceeding pro se brought claims concerning alleged constitutional violations, unlawful detention, failure to provide Miranda warnings, denial of a jury trial, municipal liability under 42 U.S.C. § 1983, and various Washington-law theories. The City of Kennewick moved to dismiss for failure to state a claim, insufficient service of process, failure to plead municipal liability under Monell, and failure to satisfy pre-filing requirements. |
| STANDARD OF REVIEW | On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, construes them in the light most favorable to the nonmoving party, and asks whether the complaint contains sufficient factual matter to state a facially plausible claim. Legal conclusions and conclusory assertions are not accepted as factual allegations. For                                                                                                           |

|                           |                                                                                                                                                                         |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | challenged service, the plaintiff bears the burden of establishing proper service.                                                                                      |
| <b>PRECEDENTIAL VALUE</b> | unpublished                                                                                                                                                             |
| <b>PARTIES</b>            | Nicole Carby v. City of Kennewick, Mr. Guerro (brother to Kennewick Chief of Police), Supervisor Benton County Jail, Rudy Ruelas, Current Benton County Jail Supervisor |

## TOPICS

motions to dismiss

service of process

section 1983

municipal liability

civil procedure

## PRACTICE AREAS

civil procedure

civil rights

municipal liability

constitutional law

remedies

## QUESTIONS PRESENTED

1. Whether the complaint stated a plausible claim for relief under Rule 12(b)(6), including claims under Bivens, 42 U.S.C. § 1983, the federal Constitution, and Washington law.
2. Whether Carby adequately pleaded municipal liability against the City of Kennewick under § 1983 and Monell.
3. Whether Carby's November 6, 2021 unlawful-detention claim was barred by the applicable statute of limitations.
4. Whether the alleged Miranda, due-process, jury-trial, unlawful-arrest, and Washington-law claims were pleaded with sufficient factual detail and legal support.
5. Whether service by certified or registered mail satisfied Federal Rule of Civil Procedure 4(j)(2) and Washington service requirements, and whether dismissal without prejudice was appropriate.

## HOLDINGS

1. The complaint failed to state a claim because it consisted largely of conclusory legal assertions, statutory citations, and generalized allegations that did not identify the specific facts supporting each claim or provide fair notice of the claims against the City.
2. The complaint failed to state a Bivens claim against the City because it did not identify the federal agent or constitutional provision involved, and the City is not a federal agency and does not employ federal agents.
3. Carby failed to state a § 1983 claim against the City because she did not allege facts showing that a municipal policy, custom, failure to train or supervise, or final-policymaker decision directly caused a deprivation of federal rights.
4. The claim based on the November 6, 2021 detention was time-barred because Washington's three-year limitations period expired on November 6, 2024. The claim based on the August 20, 2022 detention was filed before the limitations period expired.

5. The complaint failed to state a § 1983 claim based on the alleged failure to provide Miranda warnings or a telephone call and failed to plead sufficient facts supporting a due-process violation.
6. The jury-trial allegation failed to state a claim because the complaint did not establish that Carby timely requested a jury trial, that she had a jury-trial right in the referenced proceeding, or what specific conduct violated that right; moreover, the identified remedy generally would be vacatur or a new trial rather than damages.
7. Although an unlawful-arrest claim under § 1983 requires an arrest without probable cause or other legal justification, Carby's allegations were insufficiently developed to state a plausible claim against the City.
8. The Washington-law allegations failed because Carby pleaded legal conclusions without sufficient facts, cited statutes that did not create the asserted private claims or whose requirements she did not satisfy, and did not clarify how the City was responsible for allegations concerning other entities or actors.
9. Service by certified or registered mail did not satisfy Federal Rule of Civil Procedure 4(j)(2) or Washington law because Carby did not personally deliver the summons and complaint to the City's chief executive officer or a person authorized under Washington law.
10. The court denied leave to amend because amendment would be futile.
11. The court warned that refiling could create claim-splitting or preclusion issues because Carby's other action appeared to involve similar claims and facts, but it did not adjudicate those issues.

#### KEY QUOTATIONS

*“a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face.’” (at 2)*

*“a mere listing of statutes coupled with conclusory and generalized assertions, fails to clarify the specific factual allegations supporting each element of her claims.” (at 3)*

*“a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” (at 11)*

*“if (a) the party that had to be served personally received actual notice, (b) the defendant would suffer no prejudice from the defect in service, (c) there is a justifiable excuse for the failure to serve properly, and (d) the plaintiff would be severely prejudiced if his complaint were dismissed.” (at 12)*

#### FACTUAL BACKGROUND

Carby alleged that she was unlawfully detained on August 20, 2022, and November 6, 2021, that officials violated her Miranda and due-process rights, and that jail guards and inmates assaulted her, causing serious injuries. She also alleged denial of a jury trial, falsification of documents, election-related whistleblowing, child-trafficking and abuse allegations, and other constitutional and Washington-law violations. Carby served the City by registered or certified mail and asserted that actual notice and substantial compliance made service sufficient.

#### PROCEDURAL HISTORY

Carby filed the complaint on August 19, 2025. The City of Kennewick moved to dismiss on October 2, 2025; Carby opposed the motion, and the City filed a reply. The court granted the motion in part and dismissed Carby's claims against the City without prejudice, directing entry of judgment of dismissal.

## DISPOSITION

dismissed

## CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545, 555-56, 570 (2007)
- Papasan v. Allain, 478 U.S. 265, 286 (1986)
- Kwan v. SanMedica Int'l, 854 F.3d 1088, 1096 (9th Cir. 2017)
- Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)
- United States v. United Healthcare Ins. Co., 848 F.3d 1161, 1180 (9th Cir. 2017)
- Depot, Inc. v. Caring for Montanans, Inc., 915 F.3d 643, 652-53 (9th Cir. 2019)
- Interpipe Contracting, Inc. v. Becerra, 898 F.3d 879, 886 (9th Cir. 2018)
- Carlson v. Green, 446 U.S. 14, 18 (1980)
- Horton by Horton v. City of Santa Maria, 915 F.3d 592, 599, 602-03 (9th Cir. 2019)
- Board of County Commissioners v. Brown, 520 U.S. 397, 415 (1997)
- Pearson v. Callahan, 555 U.S. 223, 232 (2009)
- Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694 (1978)
- Wallace v. Kato, 549 U.S. 384, 387, 397 (2007)
- Vega v. Tekoh, Vega v. Tekoh, 597 U.S. 134, 152 (2022)
- Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018)
- Mondor v. United States District Court for the Central District of California, 910 F.2d 585, 587 (9th Cir. 1990)
- Dubner v. City & County of San Francisco, 266 F.3d 959, 964-65 (9th Cir. 2001)
- Bennett v. Hardy, 113 Wash. 2d 912, 921 (1990)
- Carmody v. Trianon Co., 7 Wash. 2d 226, 234 (1941)
- Borzeka v. Heckler, 739 F.2d 444, 447 (9th Cir. 1984)
- Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004)
- S.J. v. Issaquah School District No. 411, 470 F.3d 1288, 1293 (9th Cir. 2006)
- Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986)
- Reyes v. Fircrest School, No. C11-0778JLR, 2012 WL 3144915, at \*2-3 (W.D. Wash. Aug. 1, 2012)
- Meadowdale Neighborhood Committee v. City of Edmonds, 27 Wash. App. 261, 267 (1980)
- Nitardy v. Snohomish County, 105 Wash. 2d 133, 134-35 (1986)

- United States v. 2,164 Watches, More or Less Bearing a Registered Trademark of Guess?, Inc., 366 F.3d 767, 773 (9th Cir. 2004)
- Novak v. United States, 795 F.3d 1012, 1020 (9th Cir. 2015)
- Mendoza v. Amalgamated Transit Union International, 30 F.4th 879, 886 (9th Cir. 2022)
- Adams v. California Department of Health Services, 487 F.3d 684, 688 (9th Cir. 2007)

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-eastern-district-of-was/2025/nicole-carby-v-city-of-kennewick-mr-guerro-brother-to-17rjik4d>