

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
TEXAS, SAN ANTONIO DIVISION

Kevin J. Berg v. Officer Thomas Michael Rivas, Badge #1640, City of
San Antonio, M. Gandara, Badge #252

Berg · No. SA-25-CV-00661-JKP · Decided January 28, 2026

SUMMARY

The United States District Court for the Western District of Texas granted the City of San Antonio’s Rule 12(b)(6) motion to dismiss a municipal-liability claim arising from alleged First Amendment retaliation against a person filming police activity. The court relied on its contemporaneous dismissal of the claims against the individual officers, concluding that the plaintiff had not plausibly alleged an underlying constitutional violation. The court therefore did not reach whether the alleged policies or customs satisfied the remaining Monell requirements.

CASE DETAILS

COURT	United States District Court for the Western District of Texas, San Antonio Division
WRITING FOR THE COURT	Jason K. Pulliam
JURISDICTION	United States District Court for the Western District of Texas, San Antonio Division
DECIDED	January 28, 2026
DOCKET	SA-25-CV-00661-JKP
DISPOSITION	dismissed
PROCEDURAL POSTURE	The City of San Antonio moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Berg's First Amended Complaint's claim for municipal liability under 42 U.S.C. § 1983. The court granted the City's motion.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded facts as true and views them in the light most favorable to the plaintiff, but dismissal is proper when the complaint lacks a cognizable legal theory, lacks sufficient supporting facts, or otherwise shows that the plaintiff is not entitled to relief under any plausible set of facts consistent with the allegations.

PRECEDENTIAL VALUE	unknown
PARTIES	Kevin J. Berg v. City of San Antonio, Officer Thomas Michael Rivas, M. Gandara

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QUESTIONS PRESENTED

1. Whether Berg plausibly alleged an underlying First Amendment retaliation violation that could support municipal liability under 42 U.S.C. § 1983.
2. Whether the City could be liable under Monell for an alleged policy, custom, or practice when the complaint did not plausibly allege that any individual officer violated Berg's constitutional rights.

HOLDINGS

1. Berg did not plausibly allege that the officers' conduct would chill a person of ordinary firmness from continuing to record police activity or that the alleged threat of arrest was substantially motivated by his recording. Because the complaint did not plausibly allege a constitutional deprivation, it did not state a viable First Amendment retaliation claim.
2. A plaintiff cannot maintain a municipal-liability claim under § 1983 without first plausibly alleging an underlying constitutional violation. Because Berg failed to do so, the court granted the City's Rule 12(b) (6) motion and did not reach whether he adequately pleaded a municipal policy or custom, policymaker knowledge, or causation.

KEY QUOTATIONS

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” (Legal Standard)

“Thus, an underlying constitutional violation is an essential foundational element of municipal liability.” (Discussion)

FACTUAL BACKGROUND

Berg alleged that he filmed Officers Rivas and Gandara while they detained suspects at a gas station. Rivas directed Berg to move away, aimed a vehicle spotlight toward him, and Gandara repeatedly threatened to arrest him if he moved closer to the traffic stop. Berg alleged that the officers' conduct retaliated against his First Amendment right to record police activity and that the City maintained policies, customs, and practices concerning recording-related complaints, training, supervision, investigation, and discipline. He also alleged emotional distress and continuing reluctance to record police activity.

PROCEDURAL HISTORY

Berg filed this civil-rights action against the City of San Antonio and Officers Rivas and Gandara, alleging First Amendment retaliation based on his recording of a police detention and municipal liability under Monell. The City moved to dismiss for failure to state a claim. The court relied on its same-date orders dismissing the claims against Rivas and Gandara, concluded that Berg had not plausibly alleged an underlying First Amendment violation, and granted the City's motion without reaching the remaining Monell elements.

DISPOSITION

dismissed

CASES CITED

- Waller v. Hanlon, 922 F.3d 590, 599 (5th Cir. 2019)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-58, 563 n.8, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Clark v. Amoco Production Co., 794 F.2d 967, 970 (5th Cir. 1986)
- Frith v. Guardian Life Insurance Co., 9 F. Supp. 2d 734, 737-38 (S.D. Tex. 1998)
- Jones v. Greninger, 188 F.3d 322, 324 (5th Cir. 1999)
- Vander Zee v. Reno, 73 F.3d 1365, 1368 (5th Cir. 1996)
- Brand Coupon Network, L.L.C. v. Catalina Marketing Corp., 748 F.3d 631, 635 (5th Cir. 2014)
- Martin K. Eby Construction Co. v. Dallas Area Rapid Transit, 369 F.3d 464, 467 (5th Cir. 2004)
- Foman v. Davis, 371 U.S. 178, 182 (1962)
- Hitt v. City of Pasadena, 561 F.2d 606, 608-09 (5th Cir. 1977)
- DeLoach v. Woodley, 405 F.2d 496, 496-97 (5th Cir. 1968)
- Monell v. Department of Social Services, 436 U.S. 658, 690-94 (1978)
- Connick v. Thompson, 563 U.S. 51, 60 (2011)
- Windham v. Harris County, 875 F.3d 229, 243 (5th Cir. 2017)
- Doe ex rel. Magee v. Covington County School District ex rel. Keys, 675 F.3d 849, 866-67 (5th Cir. 2012)
- Jones v. Lowndes County, 678 F.3d 344, 349 (5th Cir. 2012)
- Flores v. Cameron County, 92 F.3d 258, 263 (5th Cir. 1996)
- Meadowbriar Home for Children, Inc. v. G.B. Gunn, 81 F.3d 521, 532-33 (5th Cir. 1996)