**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS**

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| MAURA O'NEILL, as administrator of the Estate of Madelyn E. Linsenmeir,<br><br>Plaintiff,<br>v.<br><br>CITY OF SPRINGFIELD, *et al.*<br><br>Defendants. | C.A. No. 20-30036-MGM<br><br>Leave to file excess pages granted on January 31, 2024 |

**PLAINTIFF'S OPPOSITION TO THE MUNICIPAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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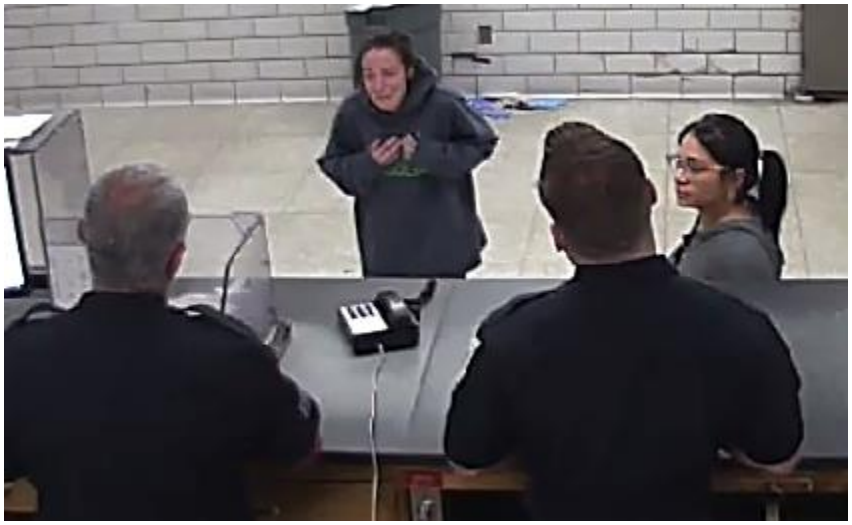
## INTRODUCTION



The image above is of a young woman in police custody begging for medical attention for chest pain and difficulty breathing. The woman is Madelyn Linsenmeir. She is in the booking area of the City of Springfield's police station. And she is talking to three of the individual defendants currently before this Court: Springfield Police Sergeant Moises Zanazanian, Springfield Police Officer Remmington McNabb, and Springfield Police Matron Sheila Rodriguez (collectively, the "Individual Defendants").

Earlier that evening Ms. Linsenmeir had told these same defendants: "*I can't breathe, my chest really hurts.*" "*I have a really really really bad chest . . . it feels like it's caving in, I can't even breathe." "I'm in so much pain right now." "I might need to go to the hospital.*" When she went to her cell, she was in too much pain to lie down, and she reported she was in pain every 15 minutes over a period of hours.

It is undisputed by the City and these Individual Defendants that, if Ms. Linsenmeir had received medical attention at this time, her life would very likely have been saved. But these defendants did nothing for her beyond providing a drink of water from an empty milk carton. They

provided her with no medical evaluation and treatment of any kind. As a result, Madelyn suffered and died.

The City of Springfield and the Individual Defendants (collectively, "Municipal Defendants") are now asking the Court to terminate this case for essentially four reasons. First, they argue that the police may constitutionally deny medical care to prisoners who report chest pain and difficulty breathing. Second, they re-argue the same flawed theory that this Court has already rejected twice: that the police cannot be liable for failing to treat a sick prisoner, so long as they transfer the prisoner to a different jail before the prisoner actually dies. Third, they argue that the City cannot be liable for the denial of care, even though it was the City that created a ticking time bomb by giving booking personnel unfettered discretion to deny medical care to prisoners. And fourth, they argue that a jury could not infer that the defendants intended to deny Ms. Linsenmeir medical care, despite the fact her need was so apparent, and despite the fact that the defendants took multiple affirmative steps to conceal their wrongful actions.

As explained below, all of these arguments are without merit. Summary judgment should be denied, and this case should proceed to trial.

## SUMMARY OF THE FACTS

### I. Ms. Linsenmeir died in custody of a heart infection because Sergeant Zanazanian, Officer McNabb, and Matron Rodriguez ignored her reports of chest pain, difficulty breathing, and other serious symptoms.

#### A. *Ms. Linsenmeir was seriously ill when the Springfield Police Department arrested her and reported the serious symptoms of her illness, yet received no medical attention.*

By September 28, 2018, Ms. Linsenmeir was seriously ill. *See* Municipal Defendants' Statement of Facts (D.E. 165) ("MDSOF") ¶2; Plaintiff's Statement of Facts ("PSOF") ¶27. She sent her mother a message: "I need to go to the hospital I am dying I weigh 90 pounds mom I need

you." PSOF ¶28. She sent her sister a message as well: "I am just in a lot of pain 90 pounds can't eat sleep my chest Hurst [sic] my knee is so swollen i can't even walk." PSOF ¶29

Ms. Linsenmeir was arrested by the Springfield Police Department ("SPD") the next day, which was Saturday, September 29. MDSOF ¶5. Ms. Linsenmeir was taken to the police station and entered the booking area at about 5:34 p.m. MDSOF ¶7. Sergeant Zanazanian was working two consecutive shifts as the booking sergeant: from 4 p.m. to midnight on September 29, and from midnight to 8 a.m. on September 30. PSOF ¶30. Officer McNabb and Matron Rodriguez worked the 4 p.m. to midnight shift with Sergeant Zanazanian. PSOF ¶31. Although Sergeant Zanazanian was the supervisor for the booking area, PSOF ¶32, Officer McNabb and Matron Rodriguez both knew that, if Sergeant Zanazanian was not properly performing his duties, they had the ability to bring that to the attention of the watch commander. PSOF ¶33.

1. <u>During her initial interview, Ms. Linsenmeir was distraught and reported chest pain, difficulty breathing, and other serious medical symptoms.</u>

Ms. Linsenmeir's initial booking interview was audio and video recorded. MDSOF ¶20. Sergeant Zanazanian conducted the interview, and both Officer McNabb and Matron Rodriguez could also hear what was being said. PSOF ¶34. During her initial booking interview, Ms. Linsenmeir "complained of pain, difficulty breathing, swollen extremities, was crying from pain, stated she felt like she might pass out, . . . [and] stated her chest hurt." MDSOF ¶23. Among other things, Ms. Linsenmeir stated the following (PSOF ¶35):

- "*I'm very ill right now. I can't even think straight. I'm gonna like literally pass out from pain.*"
- "*I might need to go to the hospital.*"
- "*I have a really really really bad chest, like I don't know what happened to it, it feels like it's caving in, I can't even breathe, and my knee, and my feet.*"

- Through tears and while visibly supporting herself on the booking desk, Ms. Linsenmeir stated "*I can't breathe, my chest really hurts.*"

- "*I'm in so much pain right now, and I really need some water before… I really feel like I'm going to pass out.*"


*Figure 1: "I can't breathe, my chest really hurts."*

Officer Lindsay Tagliapietra, who was present as the interview began, told Ms. Linsenmeir "Now you see what happens when you come to Springfield, no drugs in Springfield." PSOF ¶36. Sergeant Zanazanian did not say anything to Officer Tagliapietra about this comment and testified in his deposition that he agreed with it. PSOF ¶37. After the interview, Ms. Linsenmeir was taken back to her cell, where every 15 minutes for at least two hours she told Matron Rodriguez that she was in pain. PSOF ¶38. Matron Rodriguez observed that Ms. Linsenmeir was in too much pain to lie down on the bed in her cell. PSOF ¶39. Matron Rodriguez told Sergeant Zanazanian at least twice about Ms. Linsenmeir's complaints in the cell. PSOF ¶40.

2. Ms. Linsenmeir returned to the booking area later that evening and again reported chest pain and difficulty breathing to the Individual Defendants.

Later that evening, Ms. Linsenmeir was brought back to the booking area. MDSOF ¶31. There is a button behind the booking desk that activates the audio recording. PSOF ¶43. Sergeant Zanazanian believed that the button to activate the audio recording "should have been pulled" for this encounter. PSOF ¶44. Yet, when Officer McNabb reached down to prepare to activate the audio recording button, Sergeant Zanazanian waved him away with a hand gesture, indicating he should not audio record the discussion with Ms. Linsenmeir. PSOF ¶45. Officer McNabb immediately walked away from the button, without activating the audio recording. PSOF ¶46.

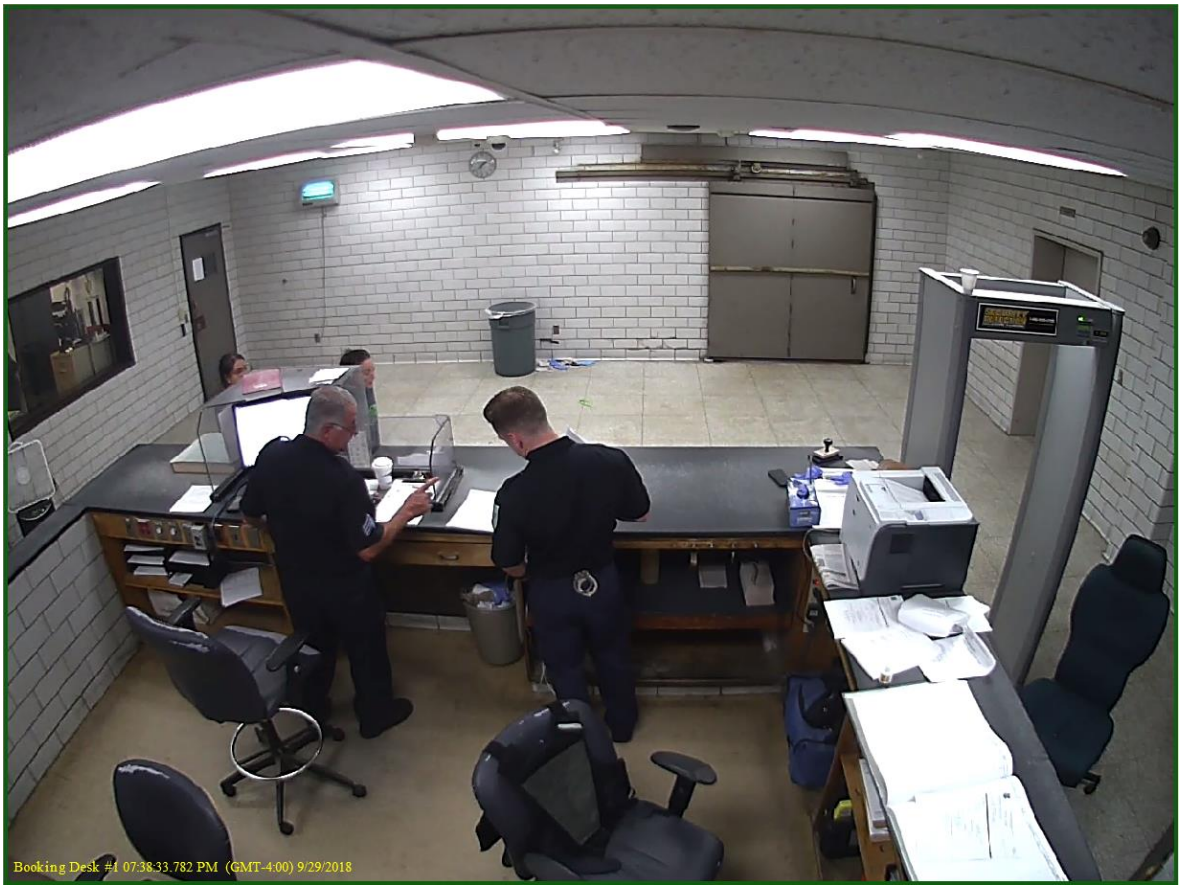



*Fig. 2: Zanazanian waving McNabb away from the audio recording button.*

The silent video footage then depicts Ms. Linsenmeir speaking with Sergeant Zanazanian and Matron Rodriguez for several minutes, after which she was allowed to use the phone. PSOF ¶47.

Sergeant Zanazanian, Officer McNabb, and Matron Rodriguez were all present with Ms. Linsenmeir while she spoke and could hear her talking. PSOF ¶48. Ms. Linsenmeir called her mother, Maureen Linsenmeir, and stated, among other things, that she couldn't breathe. PSOF ¶49. During the phone call, Sergeant Zanazanian said that he would not be providing Ms. Linsenmeir with medical care. PSOF ¶50.

After several minutes, Sergeant Zanazanian gestured to Ms. Linsenmeir to wrap up the call, and Ms. Linsenmeir hung up. PSOF ¶53. Ms. Linsenmeir then broke down in tears, stepped back from the desk, and spoke to the Individual Defendants while making repeated gestures to her chest and rib cage area. PSOF ¶54. The video permits the inference that Ms. Linsenmeir was pleading with the Individual Defendants for medical attention for her chest pain and difficulty breathing. PSOF ¶55.

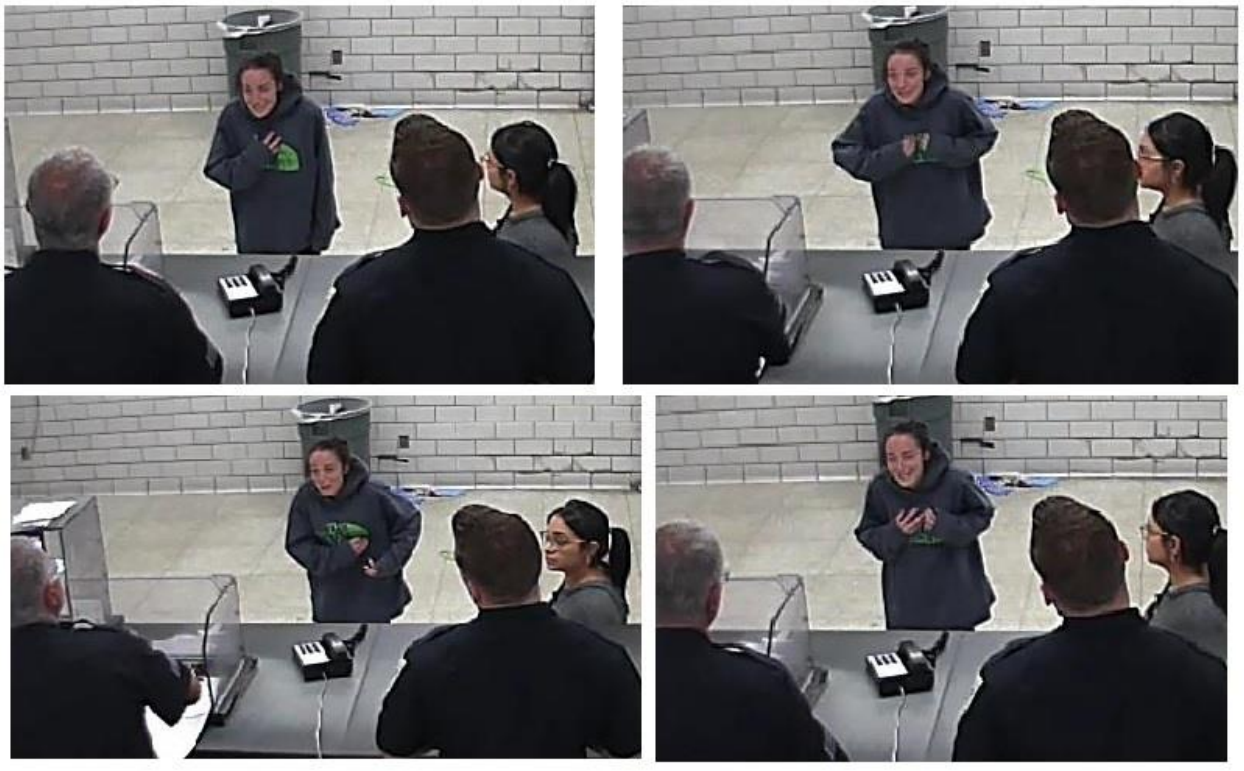


*Figure 3: Ms. Linsenmeir pleads for help after her phone call.*

After that interaction, Ms. Linsenmeir was taken back to the cell, where she continued to cry off and on until at least the end of Matron Rodriguez's shift. PSOF ¶56.

3. Even through Ms. Linsenmeir reported chest pain, difficulty breathing, and other serious symptoms, the SPD's booking staff did not provide any medical evaluation or treatment while she was in SPD custody, or tell anybody outside the SPD that she had reported these symptoms.

Ms. Linsenmeir never told anybody that her chest pain went away or that she had stopped having difficulty breathing. PSOF ¶57. Her need for medical evaluation and treatment were apparent. *See, e.g.*, PSOF ¶¶35, 54-55, 58-61. Officer McNabb testified that, if he had encountered a person making the same complaints on the street, he would offer to call an ambulance and call the ambulance if the person said "yes". PSOF ¶58.

While Ms. Linsenmeir was in SPD custody, nobody called an ambulance. PSOF ¶67. Nor did anyone measure her pulse, temperature, or blood pressure. PSOF ¶67. Nobody listened to her chest or her breathing. PSOF ¶68. Nobody asked her how long she had been having difficulty breathing, how long her chest felt like it was caving in, or any other questions to assess her medical condition. PSOF ¶69. Nobody consulted with a medical professional about her symptoms, or called a medical professional to the station, or took steps to send her to the hospital. PSOF ¶70. In summary, while Ms. Linsenmeir was in SPD custody, nobody gave her or secured for her any medical treatment or evaluation of any kind. PSOF ¶71.

SPD's regional lockup ("RLU") arrangement with the Hampden County Sheriff's Department ("HCSD") and Springfield's implementing rules required the SPD to take sick prisoners to the hospital, not transfer them to HCSD facilities. PSOF ¶72. Transferring sick prisoners to HCSD was not a mechanism to provide medical care. PSOF ¶72. When Ms. Linsenmeir was transferred to HCSD custody at the Women's Correctional Center ("WCC") on Sunday, September 30, MDSOF ¶¶18, 80, Sergeant Zanazanian did not tell HCSD or direct anyone

else to tell HCSD that Ms. Linsenmeir had complained of chest pain and difficulty breathing or any other medical issue. PSOF ¶74. Indeed, Sergeant Zanazanian did not tell *anyone* that Ms. Linsenmeir had reported chest pain and difficulty breathing while she was still alive, nor did he record those symptoms in his prisoner injury report for Ms. Linsenmeir or in any other documentation created while she was still alive. PSOF ¶76.

4. Ms. Linsenmeir died of sepsis from untreated endocarditis, but she would very likely have survived if the Municipal Defendants had provided her with medical attention.

Ms. Linsenmeir was transferred on Sunday, September 30, to the custody of the HCSD at the WCC. MDSOF ¶¶18, 80. The Estate contends that Ms. Linsenmeir was also unlawfully denied medical care while at HCSD, and those issues are being separately briefed in response to the HCSD Defendants' dispositive motion. *See* D.E. 170. On October 4, HCSD's staff found Ms. Linsenmeir "unresponsive" in her cell. PSOF ¶77. HCSD transported Ms. Linsenmeir to the hospital, where she remained (still in custody) until her death on October 7. PSOF ¶78.

Ms. Linsenmeir is no longer alive because, while she was in SPD and HCSD custody, her body was gradually overwhelmed by a progressive infection in her heart until she ultimately became septic and died. PSOF ¶79. The medical examiner's autopsy identified her cause of death as "complications of methicillin-resistant *staphylococcus aureus* septicemia in the setting of tricuspid valve endocarditis." PSOF ¶80. Tricuspid valve endocarditis—also called "right-sided endocarditis"—is a life-threatening, but treatable, medical condition. PSOF ¶81. It requires immediate medical evaluation and treatment, including intravenous antibiotics and sometimes surgery. PSOF ¶82. In particular, the rapid initiation of antibiotics is essential to prevent the infection from spreading and to limit the body's inflammatory response. PSOF ¶82. Even short delays of several hours in providing antibiotics can worsen mortality. PSOF ¶¶84, 88. Ms.

Linsenmeir was "very likely" to survive her endocarditis if she had received medical evaluation and treatment during her time in SPD custody. *See* MDSOF ¶126; PSOF ¶86. The delay in providing her with medical treatment caused her to experience unnecessary pain and suffering, and caused her death by allowing her untreated illness to progress to the point where she could no longer be saved. PSOF ¶¶84-85, 87-88.

B. *The SPD gave officers unfettered discretion to deny medical care.*

On any given day in 2018, SPD's booking and lockup area were staffed with a booking sergeant, a booking officer, a male cell guard, and a female detention attendant known as a "matron." PSOF ¶1. They were supervised by a watch commander, whose office was adjacent to the booking area. PSOF ¶2. The booking sergeant, booking officer, and matron all had responsibility for the health and safety of the female detainees in the booking area and the lockup. MDSOF ¶14; PSOF ¶3.

The only written SPD rule as to when to obtain medical attention for detainees in the booking area and lockup was Rule 26. PSOF ¶5. The Rule stated, "If in the judgment of the Superior Officer or officer of rank in charge, the prisoner is suffering from wounds or injuries which require medical attention, the arrested person shall be taken to a hospital…" PSOF ¶4. Officers were authorized to rely entirely on their own subjective judgment in deciding whether to obtain medical care for a detainee. PSOF ¶6. The City further permitted officers to deny medical care if they believed—with no objective medical evidence required—that someone was lying about their symptoms. PSOF ¶7. And disbelieving prisoner medical complaints was ingrained in the SPD's culture, all the way up to its senior leadership. PSOF ¶¶8-9.

C. *The SPD did not hold officers accountable for violating SPD rules and policies.*

SPD's Internal Investigation Unit ("IIU") was the body tasked with investigating potential violations of SPD rules and policies. PSOF ¶17. Yet the IIU itself did not have any written policies governing its activities. PSOF ¶19. Eschewing acceptable national police standards, the IIU had no policy for selecting which witnesses would be interviewed in internal investigations, how those interviews would be conducted, or how documentary evidence would be collected. PSOF ¶20. These practices were likely to lead to incomplete, unreliable, or inaccurate investigation outcomes, making it more difficult to hold officers accountable for misconduct. PSOF ¶21

After Ms. Linsenmeir's death, the City initiated an investigation that included inquiry into whether Sergeant Zanazanian committed misconduct by failing to provide Ms. Linsenmeir with medical care, and into the reasons for her death. PSOF ¶89-90. The investigation exposed concealment and dishonesty by Sergeant Zanazanian concerning his failure to provide Ms. Linsenmeir with medical treatment. PSOF ¶¶91-92. Specifically, when Sergeant Zanazanian was interviewed by the IIU, he did not disclose that Ms. Linsenmeir had complained of difficulty breathing, he claimed falsely that Ms. Linsenmeir only complained "one time" about chest pain, and he also claimed falsely that Ms. Linsenmeir did not "show symptoms of chest pain." PSOF ¶91. He was also evasive in his written report about the reason he failed to send Ms. Linsenmeir to the hospital—he had to be interviewed a second time and was expressly ordered to provide a supplemental statement covering that topic, which he still failed to do. PSOF ¶92.

The investigation exemplified the weakness of the SPD's ability to hold its officers accountable through the internal investigation process. PSOF ¶¶92-94. The IIU conducted multiple interviews, but it did not attempt to speak with Ms. Linsenmeir's mother, nor a detention attendant who had since resigned,[1] nor anybody at HCSD, nor any other person who was not an active

[1] Detention attendant Shanice Linnehan worked in the booking area on the morning of September 30, 2018, and then resigned in early November 2018. PSOF ¶104.

employee of the SPD. PSOF ¶93. The IIU also failed to investigate whether Sergeant Zanazanian had made false statements during the investigation (as described above); whether Sergeant Zanazanian had improperly omitted Ms. Linsenmeir's symptoms from his prisoner injury report; whether Sergeant Zanazanian had violated the order prohibiting the direct transfer of sick prisoners to HCSD; whether the SPD failed to convey information about Ms. Linsenmeir's medical condition to HCSD at the time of transfer; and whether Officer McNabb or Matron Rodriguez broke any rules by failing to call for medical attention themselves or at least reporting the problem to the Watch Commander. PSOF ¶94.

In its disciplinary agreement with Sergeant Zanazanian, the City agreed to drop four of the five pending charges against him, and he admitted the charge that he violated the SPD's Rule 29, which requires officers to conduct themselves in a manner that "reflect[s] most favorably on the Department" and to obey and comply with all SPD rules. PSOF ¶¶95, 101. Then-Commissioner Clapprood (now the Superintendent), who signed the agreement for the City, later testified that Sergeant Zanazanian did not violate Rule 29. PSOF ¶98. Superintendent Clapprood also testified that Sergeant Zanazanian did not use bad judgment based on what he knew at the time, and that the department determined he violated a rule only based on "the outcome" (*i.e.*, Ms. Linsenmeir died). PSOF ¶99. Sergeant Zanazanian testified that he still did not know how he violated department rules, and the only policy he might have violated was "documentation." PSOF ¶97. The City did not find that Sergeant Zanazanian had violated Rule 26. PSOF ¶13.

## LEGAL STANDARD

"The role of summary judgment is to pierce the pleadings to determine whether there is a genuine need for trial." *Evans Cabinet Corp. v. Kitchen Intern., Inc.*, 593 F.3d 135, 140 (1st Cir. 2010) (citation omitted). The burden is on the moving party to show, through the pleadings,

discovery, and affidavits, "that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986). A genuine issue of material fact exists where the evidence with respect to the material fact in dispute "is such that a reasonable jury could return a verdict for the nonmoving party." *Id*. If the moving party has satisfied its burden, only then does the burden shift to the non-moving party to set forth specific facts showing that there is a genuine, triable issue. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The Court must view the entire record in the light most favorable to the non-moving party and indulge all reasonable inferences in that party's favor. *O'Connor v. Steeves*, 994 F.2d 905, 907 (1st Cir. 1993).

## ARGUMENT

### I. The record creates a genuine dispute of material fact as to the Individual Defendants' liability under 42 U.S.C. § 1983.

#### *A. The Individual Defendants deprived Ms. Linsenmeir of her Fourteenth Amendment right to adequate medical care.*

Because Ms. Linsenmeir was held as a pretrial detainee, the Estate's constitutional claim for denial of medical care is governed by the Fourteenth Amendment. *See Ruiz-Rosa v. Rullan*, 485 F.3d 150, 155 (1st Cir. 2007). "The Fourteenth Amendment provides at least as much protection for pretrial detainees as the Eighth Amendment provides for convicted inmates," *id.* (citing *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983)), and as numerous courts have found, there is good reason to hold that it provides even more. *See, e.g., Short v. Hartman*, 87 F.4th 593, 611 (4th Cir. 2023) (citing cases).

Under the Eighth Amendment, convicted prisoners who challenge the adequacy of their medical care must establish "(1) an objective prong that requires proof of a serious medical need, and (2) a subjective prong that mandates a showing of prison administrators' deliberate indifference

to that need." *Kosilek v. Spencer*, 774 F.3d 63, 82 (1st Cir. 2014). This second prong requires that a prison official "'must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.'" *Ruiz-Rosa*, 485 F.3d at 156 (quoting *Burrell v. Hampshire County*, 307 F.3d 1, 9 (1st Cir. 2002)).

The Supreme Court has held that this subjective standard does not apply to a pretrial detainee's Fourteenth Amendment claim of excessive forces because "pretrial detainees (unlike convicted prisoners) cannot be punished at all...." *Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015). Relying on this same logic and finding that there is no principled reason to distinguish between different due process claims brought by pretrial detainees, at least five circuits have eliminated the subjective element where, as here, a pretrial detainee raises an inadequate medical care claim.[2] These courts have held that it is "sufficient" that a pretrial detainee "show that the defendant's action or inaction was, in *Kingsley*'s words, 'objectively unreasonable': that is, the plaintiff must show that the defendant should have known of that condition and that risk, and acted accordingly." *Short*, 87 F.4th at 611 (internal citations omitted).

While the First Circuit has not yet specified the appropriate standard for Fourteenth Amendment inadequate medical care claims post-*Kingsley*, several district courts in this circuit

[2] *See Short*, 87 F.4th at 606; *Bruno v. City of Schenectady*, 727 F. App'x 717, 720–21 (2d Cir. 2018); *Darnell v. Pineiro*, 849 F.3d 17, 35 & n.9 (2d Cir. 2017); *Brawner v. Scott Cnty., Tennessee*, 14 F.4th 585, 593 (6th Cir. 2021), *cert. denied sub nom. Scott Cnty., Tennessee v. Brawner*, No. 21-1210, 2022 WL 4651298 (Oct. 3, 2022); M*iranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *Gordon v. County of Orange*, 888 F.3d 1118, 1124 (9th Cir. 2018); *but see Whitney v. City of St. Louis, Missouri*, 887 F.3d 860, n.4 (8th Cir. 2018) (cabining *Kingsley* to excessive force claims and continuing to apply subjective deliberate indifference standard to failure to protect claim brought by pretrial detainee); *Strain v. Regalado*, 977 F.3d 984, 989 (10th Cir. 2020) (same, as to inadequate medical care claim brought by pretrial detainee); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 419, n.4 (5th Cir. 2017) (holding panel constrained by pre-*Kingsley* law applying subjective standard in inadequate medical care contexts brought by pretrial detainee but noting plaintiff's claims would fail under either subjective or objective standard); *Dang ex rel. Dang v. Sheriff, Seminole, Cnty. Florida*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017) (same).

have applied an objective standard, and this Court should do the same.[3] Either way, the Estate's claim meets both this and the more stringent subjective deliberate indifference test, as a reasonable jury could find that the Individual Defendants knew of and consciously disregarded Ms. Linsenmeir's serious medical needs.

1. Ms. Linsenmeir suffered from a serious medical condition.

The Municipal Defendants admit that Ms. Linsenmeir had a serious heart infection when she was arrested by SPD and during the time she was in its custody. MDSOF ¶2. Furthermore, Ms. Linsenmeir's complaints of chest pain and difficulty breathing made clear that she was suffering from serious medical conditions during her time in SPD custody. *See, e.g.*, PSOF ¶¶35, 54-55, 58-61.

A medical need is serious when it is "'so obvious that even a lay person would easily recognize the necessity for a doctor's attention.'" *Brison v. Wellpath*, LLC, 662 F. Supp. 3d 67, 72–73 (D. Mass. 2023) (quoting *Leavitt v. Corr. Med. Servs. Inc.*, 645 F.3d 484, 497 (1st Cir. 2011)). A "significant risk of future harm" is also sufficient to demonstrate a serious medical need. *Perry v. Roy*, 782 F.3d 73, 79 (1st Cir. 2015). "The 'seriousness' of an inmate's needs may also be determined by reference to the effect of the delay of treatment." *Leavitt*, 645 F.3d at 497–98.

Complaints of chest pain and difficulty breathing are quintessential examples of conditions that even a lay person can recognize require a doctor's attention. *See, e.g. Cox v. Massachusetts Dep't of Correction*, No. CV 13-10379-FDS, 2018 WL 1586019, at *11 (D. Mass. Mar. 31, 2018)

[3] *See, e.g., Yanes v. Martin*, 464 F. Supp. 3d 467, 469 n.3 (D.R.I. 2020) (holding "the Kingsley standard of 'objective reasonableness' is the appropriate one to be applied to an action" involving detainees rather than prisoners); *da Silva Medeiros v. Martin*, 458 F. Supp. 3d 122, 128 (D.R.I. 2020) (applying objective reasonableness where government agreed it was appropriate standard); *see also Gomes v. U.S. Dep't of Homeland Sec., Acting Sec'y*, 460 F. Supp. 3d 132, 148 (D. Mass. 2020) (noting that "[b]ased on the pertinent reasoning of Kingsley and the persuasive authority of other courts, it is likely that civil detainees no longer need to show subjective deliberate indifference in order to state a due process claim for inadequate conditions of confinement"); *but see Henry v. Hodgson*, No. 16-cv-11606, 2018 WL 6045250, *4 (D. Mass. Nov. 19, 2018) (applying subjective standard without analyzing whether *Kingsley* amended the standard).

("even a lay person would recognize the necessity for medical attention concerning [] serious difficulty breathing").[4] The only case the City cites to argue for the opposite conclusion, *Karmue v. Moore*, 654 F. Supp.3d 118 (D.R.I. 2023)—which it misdescribes as containing "remarkably similar facts" Municipal Defendants Memorandum at 13—involved neither complaints of chest pain nor difficulty breathing. *See Karmue*, 654 F.Supp.3d at 127, 141-143. Further, there will be evidence from which a jury could easily conclude that chest pain and difficulty breathing are symptoms that present a significant risk of future harm, and/or that delays in treating such symptoms present a significant risk of death or serious injury. PSOF ¶ 59-64, 84-87; *see also Perry*, 782 F.3d at 79.

There is no merit to the Municipal Defendants' argument that the record contains no evidence from which a jury could find that Ms. Linsenmeir displayed a serious medical need in SPD custody because Maureen Linsenmeir and HCSD personnel supposedly did not recognize the gravity of her condition. *See* Municipal Defendants Memorandum at 13-14. The contents of Maureen's communications when she had no power to seek medical care for her daughter, and the conduct of HCSD personnel after Ms. Linsenmeir had left SPD custody, are immaterial to whether Ms. Linsenmeir's serious medical need was apparent to the Individual Defendants when she complained of chest pain, difficulty breathing, and broke down in tears.[5]

[4] *See also, e.g., Gladu v. Correct Care Sols.*, No. 2:17-CV-00504-JAW, 2019 WL 5423019, at *11 (D. Me. Oct. 23, 2019) ("a layperson is highly likely to recognize the need for medical attention when a person complains of severe, radiating chest pain, because this symptom is a well-known sign of a heart attack or underlying cardiac condition"); *Olsen v. Dubois*, No. 22-CV-357-PP, 2022 WL 10077748, at *2 (E.D. Wis. Oct. 17, 2022) (finding that plaintiff's complaints of severe chest pain and difficulty breathing adequately alleged a serious medical need); *Mata v. Saiz*, 427 F.3d 745, 754 (10th Cir. 2005) ("severe chest pain, a symptom consistent with a heart attack, is a serious medical condition under the objective prong of the Eighth Amendment's deliberate indifference standard").

[5] In addition, the Estate disputes that HCSD personnel were unaware of the severity of Ms. Linsenmeir's condition. MDSOF ¶96; Halstead Decl. Exs. 28, 30.

Finally, the Municipal Defendants' assertion that because the Estate's medical expert Dr. Simmeon Kimmel determined that Ms. Linsenmeir was likely to survive if she had been treated before October 3, her medical needs were not obvious before that date, is both contradicted by Dr. Kimmel himself and nonsensical. *See* Municipal Defendants Memorandum at 14. To begin, Dr. Kimmel confirms the obviousness of the Ms. Linsenmeir's need for care while in SPD custody,

> Ms. Linsenmeir's condition on September 29, 2018, should have triggered an immediate call for medical attention. Chest pain can be a symptom of multiple serious conditions that cannot be ruled out without a proper medical examination. Determining if a patient's chest pain is dangerous requires immediate medical attention and cannot be ignored.

Kimmel Rep. at 7. What is more, adopting the Municipal Defendants' logic would mean a plaintiff could only establish the existence of a serious medical condition that required medical intervention once that same medical intervention was no longer likely to save their life. That is not and cannot be the law.

2. The Individual Defendants were deliberately indifferent to Ms. Linsenmeir's serious medical condition.[6]

The record also contains evidence that would permit a jury to find that the Individual Defendants were deliberately indifferent to Ms. Linsenmeir's grave medical condition. "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." *Farmer v. Brennan*, 511 U.S. 825, 842 (1994). The "[e]xistence of deliberate indifference usually presents a jury question." *Leavitt*, 645 F.3d at 496 (citation omitted). The record in this case amply demonstrates that the Individual Defendants were aware of a substantial risk to Ms. Linsenmeir's health and did nothing.

[6] This analysis necessarily demonstrates that the Individual Defendants' non-response to Ms. Linsenmeir's serious medical condition was also objectively unreasonable under the *Kingsley* standard for Fourteenth Amendment due process claims.

To begin, a "factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious," *Farmer*, 511 U.S. at 842, and could easily do so here. Sergeant Zanazanian, Officer McNabb, and Matron Rodriguez each admitted that Ms. Linsenmeir complained of difficulty breathing and chest pain. *See* Rodriguez Dep. 58:2–6, 13–16, 19–21; Zanazanian Dep. 35:16–36:10, 37:11–17, 48:18–21. Matron Rodriguez additionally testified that Ms. Linsenmeir continued to complain that she was in pain every 15 minutes for at least two hours, and that she shared this information with Sergeant Zanazanian "about two times." PSOF ¶38, 40. Further evidence of Ms. Linsenmeir's need for medical attention is apparent in her unwell demeanor and clear distress throughout her booking video. *See* Declaration of Lisa C. deSousa ("deSousa Decl.") Ex. D (booking videos). The seriousness of Ms. Linsenmeir's medical condition would be especially apparent to police officers like the Individual Defendants, who were trained first responders. MDSOF ¶118. As the Estate's police expert Howard Jordan states, any reasonable police officer would "have recognized that these symptoms could be life-threatening and required immediate medical attention." PSOF ¶59.[7]

There is further evidence from which a jury could reasonably conclude that the Individual Defendants had actual knowledge that Ms. Linsenmeir faced a substantial risk of harm. Officer McNabb admitted that if he encountered a person on the street with Ms. Linsenmeir's symptoms he would offer to call an ambulance. PSOF ¶58. And Sergeant Zanazanian attempted to conceal the existence of Ms. Linsenmeir's medical complaints both during and after her incarceration: waving away Officer McNabb when he tried to audio record Ms. Linsenmeir's second

[7] It is of no moment that Defendants did not know of the specific underlying diagnosis that was causing Ms. Linsenmeir symptoms. *See* Municipal Defendants Memorandum at 17-19. "[A] guard does not need to know a detainee's specific medical condition to be deliberately indifferent to his or her serious medical need." *Taylor v. Hughes*, 920 F.3d 729, 734 (11th Cir. 2019).

conversation at the booking desk, neglecting to include her complaints of chest pain and difficulty breathing in his prisoner injury report, and failing to disclose that Ms. Linsemeir complained of difficulty breathing in both his IIU interview and report. PSOF ¶¶45, 76, 91-92. These facts support an inference that Sergeant Zanazanian consciously hid what he knew to be serious medical complaints to justify his inaction.

Sergeant Zanazanian's allegation that he did not believe Ms. Linsenmeir was experiencing a medical emergency does not negate deliberate indifference. PSOF ¶103. Courts have repeatedly held that deliberate indifference may be found where a defendant knows of a serious medical condition but ignores it based on a claimed belief that the individual is faking her symptoms. *See, e.g., Greeno v. Daley*, 414 F.3d 645, 655 (7th Cir. 2005) ("The possibility that Zunker and nurse Nordahl did not do more for Greeno because they thought he was malingering and did not really have a severe medical need is an issue for the jury."); *Smith v. Campbell Cnty.*, No. CV 16-13-DLB-CJS, 2019 WL 1338895, at *14 (E.D. Ky. Mar. 25, 2019) ("Dr. Kalfas cannot prevail on summary judgment by arguing that he subjectively believed Smith to be malingering and therefore did not consciously disregard a serious risk of harm."); *see also Perry v. Roy*, 782 F.3d 73, 80 (1st Cir. 2015) (defendants' alleged belief that plaintiff did not have serious condition presented issue of fact). What is more, Sergeant Zanazanian's own words suggest that his disbelief was not genuine. During Ms. Linsenmeir's call with her mother, Sergeant Zanazanian stated that because Ms. Linsenmeir's symptoms arose before she was in SPD custody, the SPD would not be treating her medically because that was not their responsibility. PSOF ¶50. At the very least, Sergeant Zanazanian's allegation that he disbelieved Ms. Linsenmeir is a disputed question of material fact.

In the face of their knowledge of Ms. Linsenmeir's serious medical condition, none of the Individual Defendants called an ambulance, asked further questions to learn more about her

condition, or sought any other kind of medical evaluation or treatment for her. PSOF ¶67-71. Instead, Sergeant Zanazanian sarcastically told Madelyn's mother, Maureen Linsenemeir, while she was on the phone with Ms. Linsenemeir, "If you're so worried about her medically, send an ambulance." PSOF ¶51.

The Individual Defendants' suggestion that Zanazanian's "interactions with Ms. Linsenmeir"—providing her a cup of water, "interviewing" her, and observing her—were sufficient responses to her complaints of chest pain and difficulty breathing, Municipal Defendants Memorandum at 16, are belied not just by common sense, but by their own testimony. As noted above, Officer McNabb admitted that his response would have been to offer to call an ambulance if someone on the street made those same complaints. PSOF ¶58. By comparison, Sergeant Zanazanian's actions are "so clearly inadequate as to amount to a refusal to provide essential care." *Leavitt*, 645 F.3d at 503.

Matron Rodriguez's and Officer McNcabb's attempts to evade responsibility because they "were not charged with deciding whether medical assistance was called" or they "relied upon Zanazanian to determine whether Ms. Linsenmeir needed medical assistance," respectively, are similarly unsuccessful. Municipal Defendants Memorandum at 18-19. Matron Rodriguez and Officer McNabb had the authority to alert a watch commander if they believed Sergeant Zanazanian's response to Ms. Linsenmeir's symptoms were inappropriate and they were aware of this power. PSOF ¶33. Nevertheless, they did nothing. A jury could find deliberate indifference from these facts. Where, as here, "knowledge of the need for medical care is accompanied by the intentional refusal to provide that care, the deliberate indifference standard has been met." *Leavitt.*, 645 F.3d at 499 (cleaned up); *see also Miranda-Rivera v. Toledo-Davila*, 813 F.3d 64, 75 (1st Cir.

2016) (jury could find deliberate indifference where officers refused to take prisoner to medical facility despite awareness of substantial risk).

3. The Individual Defendants' failure to act caused Ms. Linsenmeir's death.

The Municipal Defendants argue that, under the principles of *Coscia v. Town of Pembroke, Mass.*, 659 F.3d 37 (1st Cir. 2011), they cannot be liable for Ms. Linsenmeir's death because she was not in SPD custody at the time she died. Municipal Defendants Memorandum at 8-12. The Court has already rejected this argument twice as a matter of law. *See* May 5, 2021 Order (D.E. 32) (denying motion to dismiss premised on *Coscia* because it "is materially distinguishable from this case"); June 3, 2021 Order (D.E. 43) (ruling that inapplicability of *Coscia* is not a controlling question of law as to which there is substantial grounds for difference of opinion). As explained below, there is no basis for the Court to reverse its prior rulings—indeed, the Estate's showing that the Municipal Defendants caused Ms. Linsenmeir's death has only grown more robust in discovery.

i. The Individual Defendants caused Ms. Linsenmeir's conscious suffering and death because they unlawfully refused her care that would have saved her life.

The relevant timeline is not in dispute: Ms. Linsenmeir was taken into SPD custody on September 29, was transferred to HCSD's custody on September 30, and was taken to the hospital on October 4 (still in custody), and died at the hospital on October 7 (still in custody). If SPD had provided Ms. Linsenmeir with appropriate medical evaluation and treatment on September 29 or 30, a reasonable jury could conclude that her life would have been saved. PSOF ¶86. If HCSD had done so from September 30 to October 2, a reasonable jury could conclude she would have lived. Kimmel Rep. at 11. In other words, both custodians had separate opportunities to provide Ms. Linsenmeir with adequate medical care that would have saved her life, both failed to do so in

violation of the law, and so both are separate but-for and proximate causes of her death, as well as of her conscious pain and suffering. That is all the Estate needs to show for causation purposes.

Under Section 1983, questions of causation are generally governed by common law tort principles. *See Drumgold v. Callahan*, 707 F.3d 28, 48 (1st Cir. 2013). Where multiple actors are concurrently or consecutively the cause of indivisible harm, then both are liable for the harm, whether or not they act in concert. *See* Restatement (Second) of Torts § 879; *see also Doull v. Foster*, 487 Mass. 1, 16-17 (2021); *Chao v. Ballista*, C.A. No. 07-10934, 2011 WL 13244758, at *1 (D. Mass. May 5, 2011). Additionally, causation under § 1983 can also be established "not only by some kind of [ ] personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury." *Sanchez v. Pereira–Castillo*, 590 F.3d 31, 50–51 (1st Cir. 2009) (quoting *Gutierrez–Rodriguez v. Cartagena*, 882 F.2d 553, 561 (1st Cir. 1989)) "Put another way, an actor is 'responsible for those consequences attributable to reasonably foreseeable intervening forces, including the acts of third parties.'" *Id*. at 51 (quoting *Gutierrez–Rodriguez*, 882 F.2d at 561); *see Stamps v. Framingham*, 813 F.3d 27, 36–39 (1st Cir. 2017). The First Circuit has thus explained that, in § 1983 cases, "questions of proximate cause are generally best left to the jury[.]" *Young v. City of Providence ex rel. Napolitano*, 404 F.3d 4, 23 (1st Cir. 2005).

There is ample evidence from which a jury could conclude that the Municipal Defendants caused Ms. Linsenmeir's conscious suffering and death. When Ms. Linsenmeir reported chest pain, difficulty breathing, and other symptoms, it was reasonably foreseeable that a serious medical consequence would occur. Yet the Municipal Defendants did not obtain medical care for her. To make matters worse, they didn't tell anybody at HCSD about Ms. Linsenmeir's condition when they transferred her to the WCC. PSOF ¶74-75. As Dr. Kimmel concluded, "Ms. Linsenmeir's

death was caused by delays in appropriate medical evaluation and treatment." PSOF ¶87. Her chances of survival were "very likely" during her time in SPD custody. PSOF ¶86. "[H]er chances of survival if appropriately evaluated and treated were highest on September 29 and declined with the passage of time," including because "rapid initiation of antibiotics is essential" and "even short delays of several hours in providing antibiotics can worsen mortality." PSOF ¶85. By denying Ms. Linsenmeir medical care and causing a delay in her receipt of treatment, the Municipal Defendants caused Ms. Linsenmeir's death. Independent of their responsibility for her death, the Municipal Defendants are also liable for Ms. Linsenmeir's conscious pain and suffering while she was alive, including while she was alive in the SPD's custody. *See Consolo v. George*, 58 F.3d 791, 794 (1st Cir. 1995) (holding liability may be based "*not only* upon a finding that the officers' deliberate indifference caused [the plaintiff's] medical condition to worsen, but *also* upon a finding that their deliberate indifference left him in pain and suffering for a longer period than would otherwise have been the case had he been afforded prompt medical attention."); *Gayton v. McCoy*, 593 F.3d 610, 625 (7th Cir. 2010) (jury could find that as a result of denial of medical care the decedent "incurred many more hours of needless suffering for no reason") (internal quotation marks and citation omitted). The Municipal Defendants' failure to obtain medical care for Ms. Linsenmeir while she was in their custody allowed her painful symptoms to continue unabated, both at SPD and at HCSD. *See Gayton*, 593 F.3d at 625 ("[T]he plaintiff need not prove that Nurse Hibbert's inaction necessarily led to Taylor's death, but rather that her suffering was exacerbated by Nurse Hibbert's failure to provide her with adequate medical care.").

Accordingly, the Court cannot enter summary judgment because the Estate has provided evidence showing a causal link between Ms. Linsenmeir's death and suffering and the Municipal Defendants' failure to provide her with medical care. *See Leavitt*, 645 F.3d at 501 n.26 (stating

that "given the amount of evidence on causation and injury available in the record, this issue cannot be resolved at the summary judgment stage") (citing *Sullivan v. City of Springfield*, 561 F. 3d 7, 14 (1st Cir. 2009); *Gayton*, 593 F.3d at 624 ("only in the rare instance that a plaintiff can proffer no evidence that a delay in medical treatment exacerbated an injury should summary judgment be granted on the issue of causation")).

ii. *Coscia* has no applicability because Madelyn was continually in custody from her arrest until her death, and was not released to seek her own care.

The Court should not reverse its prior ruling that "the narrow exception to general tort causation principles outlined in *Coscia* does not apply here." May 5, 2021 Order (D.E. 32). *Coscia*'s exception arises from the inherent differences between a state of custody and a state of release. *See* 659 F.3d at 41. In custody, "'the prisoner is unable by reason of the deprivation of his liberty to care for himself,'" and therefore "'must rely on prison authorities to meet his medical needs.'" *Id.* at 41 (quoting *Deshaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 198–99 (1989); *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)). But because the government's duty arises from the fact that "a person in custody 'must rely' on those who control him," the court reasoned that this notion "does not support liability for harm occurring after release when the individual is no longer forced to rely on authorities who limit action on his own behalf or intervention by others on the outside that would avoid harm." *Id.* Therefore, "[w]ith the restoration of the detainee's liberty, . . . the legal chain of preventative . . . causation must be taken to have ended." *Id.* (emphasis added). The First Circuit accordingly held that, at least in the context of suicide, "in the absence of a risk of harm created or intensified by state action there is no due process liability for harm suffered by a prior detainee after release from custody in circumstances that do not effectively extend any state impediment to exercising self-help or to receiving whatever aid by others may normally be available." *See id.*

Consequently, the Court correctly held that *Coscia* does not apply here because (1) "the decedent in *Coscia* was released from custody to his own recognizance, whereas Ms. Linsenmeir was not released but was merely transferred to WCC" and her "liberty was never restored and she could not seek or receive medical care on her own" and (2) "the Coscia decedent's physical harm (suicide) occurred after his release, while Ms. Linsenmeir's harm (heart infection) occurred while she was in custody." May 5, 2021 Order (D.E. 32). Those facts have been confirmed in discovery.

Moreover, the evidence collected provides further reasons for *Coscia*'s inapplicability: A jury could conclude that the Municipal Defendants' denial of care "intensified" Ms. Linsenmeir's infection and created "augmented risk" by allowing it to progress and her chances of survival to decline. *See Coscia*, 559 F.3d at 41. And a jury could conclude that the Municipal Defendants created an "impediment" to Ms. Linsenmeir's receipt of care by concealing her symptoms from HCSD. *See id.* Finally, even if *Coscia* relieved the Municipal Defendants of liability for her death after she was transferred to HCSD's custody—which it does not—nothing in *Coscia* could possibly relieve the Municipal Defendants of liability for the unnecessary pain and suffering that Ms. Linsenmeir experienced while she was in SPD custody. Even though Ms. Linsenmeir's death occurred while she was in custody of HCSD and not SPD, this is not a basis for relief from liability.

*B. The Individual Defendants are not entitled to qualified immunity.*

Qualified immunity does not protect the Individual Defendants because clearly established law made plain that a reasonable officer could not lawfully refuse to provide medical care to a prisoner experiencing chest pain and difficulty breathing.

Officers are not entitled to qualified immunity if "(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time." *Irish v. Fowler*, 979 F.3d 65, 76 (1st Cir. 2020) (citation omitted). The "clearly established"

analysis has two sub-parts. *Alfano v. Lynch*, 847 F.3d 71, 75 (1st Cir. 2017). The first typically "requires the plaintiff to identify either controlling authority or a consensus of cases of persuasive authority sufficient to send a clear signal to a reasonable official that certain conduct falls short of the constitutional norm." *Id.* (citations omitted). The second "asks whether an objectively reasonable official in the defendant's position would have known that his conduct violated that rule of law." *Id.* (cleaned up). "At bottom, the salient question is whether the state of the law at the time of the alleged violation gave the defendant fair warning that his particular conduct was unconstitutional." *Glik v. Cunniffe*, 655 F.3d 78, 81 (1st Cir. 2011) (citation omitted).

As discussed above, the record supports a jury finding that the Individual Defendants violated the Constitution. Their conduct also violated clearly established law. As the First Circuit stated in 2014, "It is clearly established ... that jail officials violate the due process rights of their detainees if they exhibit a deliberate indifference to the medical needs of the detainees...." *Penn v. Escorsio*, 764 F.3d 102, 110 (1st Cir. 2014). The Individual Defendants admit this but assert that this articulation of the right is too general, and that no clearly defined right applied to the particular conduct in this case. *See* Municipal Defendants Memorandum at 20. This argument misses the mark for two reasons.

First, the First Circuit has rejected qualified immunity for the denial of medical care to an arrestee based solely on the fact that "the law on denial of medical care has long been clear in the First Circuit." *Miranda-Rivera*, 813 F.3d at 75. No additional, materially similar case was required to clearly establish the law in that case, *see id.*, and none is required here. As is well-established, the "existing legal principle need not be derived from a case directly on point," *French v. Merrill,* 15 F.4th 116, 126 (1st Cir. 2021) (quoting *White v. Pauly*, 580 U.S. 73, 79 (2017) (per curiam), and "fundamentally" or "materially" similar facts are not required for a law to be clearly

established, *Hope v. Pelzer*, 536 U.S. 730, 741 (2002); *see also Irish*, F.3d at 77. The relevant question is simply whether an officer was given "fair and clear warning." *French*, 15 F.4th at 126-127 (quoting *White*, 580 U.S. at 79-80).

Here, the First Circuit has held in wide-ranging circumstances that delays in seeking medical treatment for detainees can constitute unconstitutional deliberate indifference. *See Miranda-Rivera*, 813 F.3d at 74-75 (potentially dangerous intoxication and other symptoms); *Perry*, 782 F.3d at 80 (jaw pain); *Consolo v. George*, 58 F.3d 791, 794 (1st Cir. 1995) (pelvic injury). This case law provides sufficient warning that an officer who refuses to provide medical treatment for a detainee experiencing chest pain and shortness of breath—symptoms equally or more serious than those in this caselaw—violates the law. It cannot be and is not the law that there must be a case presenting the exact set of facts for every medical condition.

Second, the Supreme Court has emphasized that "officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Hope*, 536 U.S. at 741 (quoted in *Irish*, 979 F.3d at 77). Specifically, a legal principle can be clearly established "in an obvious case" even where there is not "a body of relevant case law." *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004) (quoted in *Irish* 979 F.3d at 77). Even if there was not a relevant body of case law here—though there is—the need to provide medical treatment to someone experiencing chest pain and difficulty breathing cannot be anything other than "obvious."

The Individual Defendants' final argument—that no reasonable officer would have known that failing to seek a medical evaluation or provide any other medical treatment for Ms. Linsenmeir violated clearly established law, *see* Municipal Defendants Memorandum at 21—is similarly unpersuasive, and at most raises a factual dispute that cannot be resolved on summary judgment. Simply put, even a lay person, much less a police officer trained to recognize medical emergencies,

would know that chest pain and difficulty breathing are potentially life-threatening symptoms that require attention. Indeed, Municipal Defendant's own police practices expert cites a list of "warning signs of a medical emergency" that includes chest pain and difficulty breathing. Declaration of Julius Halstead *("*Halstead Decl.") Ex. 21 at 14. That same list emphasizes "[g]etting medical help right away for someone who is having a medical emergency can save their life." *See* https://medlineplus.gov/ency/article/001927.htm. Under these circumstances, any reasonable officer would have recognized that Ms. Linsenmeir's symptoms required immediate medical attention, PSOF ¶59, and that disregarding the risk of harm presented by her symptoms violated her clearly established rights.

## II. Genuine disputes of material fact preclude summary judgment on the Estate's *Monell* claim.

To successfully make out a *Monell* claim, a plaintiff must show, first, that her "harm was caused by a constitutional violation," and second, that "the City [was] responsible for that violation.'" *Young*, 404 F.3d at 25-26. The city's policy, practice or custom must "actually have caused the plaintiff's injury," and the city must have been deliberately indifferent to the plaintiff's constitutional rights. *Id*. at 26. Even if no individual officer is held liable for a constitutional violation, a municipal defendant can be held responsible. *See Perrot v. Kelly*, No. 18-CV-10147-DPW, 2023 WL 2939277, at *19 (D. Mass. Feb. 15, 2023), *report and recommendation adopted*, No. CV 18-10147-DPW, 2023 WL 2607763 (D. Mass. Mar. 23, 2023).

Here, the record supports a jury determination that the City of Springfield is liable for the violation of Ms. Linsenmeir's Fourteenth Amendment rights for two reasons: (1) the City's policy and practices authorized officers to deny necessary medical care based solely on their discretion, including their subjective determination of whether a prisoner was lying, and (2) the City's policy

and practice of failing to investigate and discipline officer misconduct.[8] As explained below, these actions and inactions were the moving forces behind the violation of Ms. Linsenmeir's Fourteenth Amendment due process rights, as they sent a clear message to the Individual Officers that they could, consistent with the City's policy, unlawfully deny necessary medical care to Ms. Linsenmeir based on a purported subjective determination that she was lying, or alternatively, that even if their actions violated the City's policy, they would not face any repercussions.

*A. The City of Springfield's policy and practices regarding prisoner injury gave officers sole discretion to improperly deny needed medical care.*

A city may be held liable when its "employees' 'execution of a government's policy or custom ... inflicts the injury' and is the 'moving force' behind the constitutional violation that a municipality can be liable." *Young,* 404 F.3d at 25 (citing *Monell v. Department of Soc. Servs. of New York*, 436 U.S. 658, 694 (1978)). SPD's Rule 26, as implemented by the SPD, was such a policy. The Rule stated, "If in the judgment of the Superior Officer or officer of rank in charge, the prisoner is suffering from wounds or injuries which require medical attention, the arrested person shall be taken to a hospital . . . ." PSOF ¶4. There were no other written rules or instructions as to when to obtain medical attention for detainees in the booking area or lockup. PSOF ¶5. Instead, officers were authorized to rely entirely on their own subjective judgment. PSOF ¶6.

This complete abdication of responsibility for medical decisions to officer discretion was compounded by the City's clear instruction that officers' exercise of this discretion could include the denial of medical care if they believed someone was lying about their symptoms. PSOF ¶7. Indeed, the City encouraged skepticism of prisoners' medical complaints. Former Police Chief John Barbieri, who was chief when Ms. Linsenmeir was held in SPD, testified that prisoners "want

[8] The City argues that the Estate has not shown an unconstitutional failure to train, Municipal Defendants Memorandum at 25-27, but the Estate does not seek to hold the City liable on this basis.

to go to the hospital rather than stay in" the police lockup, PSOF ¶8, and current police Superintendent Cheryl Clapprood testified that prisoners often lie about their medical conditions. PSOF ¶9. The City's own motion argues that it was acceptable to deny medical care to Ms. Linsenmeir in part because "[s]ometimes people will feign a medical condition for their own reasons, including to get out of lock up." Municipal Defendants Memorandum at 26. The City's police expert echoes this cynicism, stating that the Individual Defendants were conditioned to doubt prisoners' medical complaints. Halstead Decl. Ex. 21, Linskey Rep. at 12 ("This was likely not the first time Sergeant Zanazanian, Officer McNabb or Matron Rodriquez encountered a person who was drug addicted and exacerbating a medical concern in an effort to be sent to a medical facility instead of a jail").

This prevailing attitude reflects deliberate indifference to the legitimate medical complaints of those in City custody. Subjective determinations of whether someone is lying about their medical symptoms are unreliable and likely to result in dangerously wrong decisions. PSOF ¶¶10, 12. Because of that likelihood, officers "should not be making the determination themselves whether someone's symptoms or complaints warrant medical attention; EMTs or other medical professionals should make that determination." PSOF ¶26. Jordan Rep. at 8. As Howard Jordan states, "[a]llowing police officers to deny medical care based on their stated belief that someone is lying about their symptoms can lead to officers' improperly denying medical care. Officers can become jaded or callous toward prisoners; to counteract this, there needs to be a clear set of rules requiring officers not to discount serious symptoms." Jordan Rep. at 8. Yet Rule 26 authorized exactly this behavior. Indeed, the City did not find that Sergeant Zanazanian violated this Rule when he ignored Ms. Linsenmeir's serious medical complaints based on his purported assessment

of her veracity, and Sergeant Zanazanian's supervisor testified that the procedures for providing medical care *were* followed in Ms. Linsenmeir's case. PSOF ¶13.

That the City sent some prisoners to the hospital under Rule 26 on other occasions is irrelevant. Municipal Defendants Memorandum at 23-24. To establish *Monell* liability, the Estate does not need to show that *no one* received medical attention, but rather that the City's policy and practices about when to call for medical attention made it highly likely that officers would deny medical care to some who needed it. And here, a jury could readily conclude that the City's policy and practice were highly likely to, and did, cause the violation in this case: "It was inevitable that the failure to have a clear policy requiring officers to obtain a medical evaluation when prisoners show symptoms of illness or injury, or request medical attention, would lead to improper decisions leading to catastrophic consequences, as it did in the case of Ms. Linsenmeir." PSOF ¶16.

*B. The City failed to investigate and discipline misconduct, allowing officers to believe they could violate people's rights with impunity.*

A plaintiff can also establish *Monell* liability where the municipality has a custom, policy, or practice of failing to investigate, discipline, or supervise its officers that demonstrates deliberate indifference and was the direct cause of the alleged constitutional violation. *See DiRico v. City of Quincy*, 404 F.3d 464, 468–69 (1st Cir. 2005); *see also City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989). The record also supports a finding of liability under this theory, as the evidence reveals at least two ways in which the City failed to hold its officers accountable for their actions and therefore failed to prevent misconduct.

First, the City failed to properly investigate officer misconduct. The Estate's expert identified numerous IIU deficiencies that fell below nationally accepted police standards. These include the lack of formal policies regarding the IIU, and the lack of a standard practice as to how to conduct witness interviews or even which witnesses to interview at all. PSOF ¶¶18-20.

According to Howard Jordan's expert opinion, these practices are likely to lead to incomplete, unreliable, or inaccurate investigation outcomes, making it more difficult to hold officers accountable for misconduct. PSOF ¶21. The U.S. Department of Justice ("DOJ") came to a similar conclusion after a two-year investigation of the SPD. The DOJ found that the SPD lacked "adequate policies, guidance, and training for officers regarding how to conduct internal investigations," and, more broadly, that the "SPD does not have adequate systems in place to detect, address, and prevent officer misconduct." PSOF ¶23.[9]

Second, the trivial disciplinary sanction against Sergeant Zanazanian in this case—his settlement included a single charge with two days' suspension and some training—provide evidence of a pre-existing practice of failing to hold officers accountable. PSOF ¶96; *see Bordanaro v. McLeod*, 871 F.2d 1151, 1166 (1st Cir. 1989) (endorsing use of post-event evidence of the lack of proper internal investigation of the incident, and the failure take strong disciplinary action against the officers involved, to show what customs or policies were in effect before the date of the incident). Although Sergeant Zanazanian was initially charged with several violations of City policy, the City dropped all but one charge and allowed him to settle the matter without a hearing. PSOF ¶95. Indeed, the City dropped the charge that he violated Rule 26, the only department rule concerning when to obtain medical assistance for prisoners, and Sergeant Zanazanian testified *after* he was disciplined that he still did not know how he violated department rules, except possibly "documentation." PSOF ¶97. By dropping numerous charges and imposing *de minimus* punishment for egregious misconduct that led to someone's death, the City ratified and

[9] Although the bulk of the investigation focused on the Narcotics Unit, these findings pertain to the SPD as a whole. A jury may consider the DOJ's findings both under Fed. R. Evid. 703 because Plaintiff's expert reasonably relies on them, Jordan Rep. at 11 (noting that professionals in policing field rely on DOJ investigations), and under Rule 803(8) as an official report, *see, e.g.*, *Simpkins v. Boyd Cnty. Fiscal Ct.*, No. 21-5477, 2022 WL 17748619, at *8 (6th Cir. Sept. 2, 2022) (admitting DOJ report on City's police practices); *see also id.* (doing so despite DOJ report's disclaimer, identical to that in DOJ report here, that it was not intended to be evidence).

enabled unlawful officer behavior. *Cf.* Halstead Decl. Ex. 8 (Jordan Rep. at 9). "[I]t is not enough that an investigative process be in place.... The investigative process must be real. It must have some teeth." *Hutchins v. McKay*, 285 F. Supp. 3d 420, 429 (D. Mass. 2018) (denying summary judgment to City of Springfield in case alleging among other things that the City failed to discipline and supervise its officers). Here, there were none.[10]

A jury could conclude that these deficiencies indicated deliberate indifference on the part of the City. The need to hold officers accountable for violations is obvious, as is the reality that a lack of accountability systems will lead to misconduct. As Howard Jordan explains, "When there do not exist policies or procedures to hold people accountable, officers will do what they want because there are no consequences. Left unchecked, officers will engage in rogue behavior or corruption." PSOF ¶25; *see, e.g.*, *Bordanaro*, 871 F.2d at 1162 ("The absence of a strictly enforced disciplinary system led the officers … to believe they were above the law and would not be sanctioned for their misconduct."); *see also Douglas v. City of Springfield*, No. CV 14-30210-MAP, 2017 WL 123422, at *10 (D. Mass. Jan. 12, 2017) ("If a jury concluded that Springfield's IIU process was ineffective or weak, it could further conclude that a resulting failure to take appropriate action in response to complaints of excessive force might lead Springfield's officers to believe such conduct would be tolerated."); *Blanchard v. Swaine*, No. CIV. 08-40073-FDS, 2010 WL 4922699, at *12 (D. Mass. Nov. 29, 2010) (denying summary judgment where jury could find that "city's failure to follow its written policies sends a message to officers that rules will not be strictly enforced and that officer violations will not be disciplined"). These facts support the

[10] The lack of accountability described above was especially problematic because it took place against a backdrop of a "written directive system" for officers that Superintendent Clapprood admitted was "confusing, poorly organized and include[d] more individual directives that are outdated and no longer in effect." Halstead Decl. Ex. 4 (PERF 2020 at 14); Clapprood Dep. 151:8-22. The Police Executive Research Forum ("PERF"), a nationally recognized forum advising and consulting with police departments on best practices, which was contracted by the SPD. Clapprood Dep. 148:11-19. In 2018, PERF found that "officers have no clear rules guiding their conduct." Halstead Decl. Ex. 36 (PERF 2019 at 11) (describing PERF investigations as thorough and reliable, and relied on by law enforcement professionals).

reasonable conclusion that the City's policy and practices led Officer Zanazanian to believe that he could act impunity, and that this was the moving force behind his unconstitutional action.

## III. Summary judgment is inappropriate on the Estate's wrongful death claim because a genuine dispute of material fact exists as to whether the Municipal Defendants caused Ms. Linsenmeir's death by intentional conduct.

The Court previously denied the Municipal Defendants' motion to dismiss the Estate's wrongful death claim because certain factual allegations in the complaint "raise[d] a plausible inference of intentional conduct." D.E. 32. Those same factual allegations have now been borne out by discovery. The Individual Defendants refused to provide Ms. Linsenmeir with any medical evaluation or care after she complained of severe chest pain, difficulty breathing, and other serious symptoms. PSOF ¶75. And they intentionally did not activate audio recording during a portion of the encounter, even though Sergeant Zanazanian believed that recording was required. PSOF ¶45. The Court has already identified these as facts that raise a plausible inference of the requisite intent, and the evidence would permit a jury to reach that finding.

Discovery has revealed additional facts that further support that inference. Officer McNabb testified that he would have offered to call an ambulance for a person exhibiting Ms. Linsenmeir's symptoms if he had encountered them on the street, PSOF ¶58, but he didn't do that for Ms. Linsenmeir. And Matron Rodriguez chose not to record Ms. Linsenmeir's symptoms or obtain medical care for her despite Ms. Linsenmeir's complaints of pain approximately every 15 minutes for at least two hours, and despite Matron Rodriguez's belief that she was required to log prisoners' complaints of serious symptoms. PSOF ¶¶38, 41-42. Moreover, Officer McNabb and Matron Rodriguez both knew that if Sergeant Zanazanian was not properly performing his duties, they could bring this fact to their watch commander's attention. PSOF ¶33. They did not do so.

The new evidence of intentional behavior also includes additional steps taken by Sergeant Zanazanian to conceal conduct that he knew at the time was wrong. Sergeant Zanazanian omitted Ms. Linsenmeir's complaints of chest pain and difficulty breathing from his prisoner injury report. PSOF ¶76. In fact, he never told *anyone* that Ms. Linsenmeir complained of these symptoms while she was alive. PSOF ¶74. And Sergeant Zanazanian was—according to the SPD's own internal investigator—uncooperative in the resulting internal investigation: he failed to disclose Ms. Linsenmeir's complaints of breathing difficulty, he falsely claimed that she had only complained of chest pain "one time," and he disobeyed instructions to provide a written report explaining why he did not seek medical care for Ms. Linsenmeir. PSOF ¶91.

Accordingly, given that the Court has already ruled that the facts in the complaint could support an inference of intentional conduct, and given that the record contains those facts and additional facts that support the same inference, summary judgment should be denied. *See Stepanischen v. Merchants Despatch Transp. Co.*, 722 F.2d 922, 928 (1st Cir. 1983) (courts are "particularly cautious" when asked to grant summary judgment on issues of intent).

The Municipal Defendants appear to suggest that the Estate must prove an elevated standard of intent: not merely the intent to deny Ms. Linsenmeir necessary healthcare, but rather an intent to kill her. *See* Municipal Defendants Memorandum at 28. Such an elevated standard has no basis in the law, however. This Court and other courts in this District have recognized that the requisite intent is the intent to do the wrongful act, not to commit murder. *See* D.E. 32; *see also Foster v. McGrail*, 844 F. Supp. 16, 25-26 (D. Mass. 1994) (requiring either "intent to harm," knowledge "that the act would result in a violation of a legally protected right," or "an intentional wrongful act"). In *Geigel v. Boston Police Dep't*, for example, the district court found that the plaintiffs had adequately alleged intentional conduct because the defendants had failed to monitor

the decedent and obtain medical treatment for him notwithstanding the "obvious signs" of distress that he displayed. No. 22-cv-11437, 2024 WL 68387, at *5 (D. Mass. Jan. 5, 2024); *see also Gage v. City of Westfield*, 26 Mass. App. Ct. 681, 691 (1988) (describing willful conduct as "action intended to do harm"); *Justiniano v. Walker*, No. 15-cv-11587, 2016 WL 5339722, at *4 (D. Mass. Sept. 22, 2016) (finding intent to harm sufficient to state a wrongful death claim). The Individual Defendants similarly made the decision to deny Ms. Linsenmeir lifesaving care in spite of her obvious medical need and even took affirmative steps to conceal their wrongdoing. From these facts, a jury could infer the requisite state of mind, and the Municipal Defendants' motion for summary judgment as to Count IV should therefore be denied.

## CONCLUSION

For the foregoing reasons, the Estate respectfully requests that the Court deny the Municipal Defendants' Motion for Summary Judgment.

Respectfully Submitted,

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By her attorneys,

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Dated: January 31, 2024

**CERTIFICATE OF SERVICE**

I hereby certify that, on January 31, 2024, I served the foregoing document on all parties by filing it via the Court's CM/ECF system and that a copy will be sent via the CM/ECF system electronically to all counsel of record.

*/s Julius A. Halstead*
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