

devices but took no actions to prevent such actions as occurred with Plaintiff.

PARTIES AND SERVICE

1. Plaintiff Enrique Quiroz and his heirs all resided in Austin, Travis County, Texas at the time of this incident. This incident described herein was the sole cause of his death. He was not threatening or assaulting any individual or police officer and did not physically resist Defendant officers or commit any crimes or actions which justified the tasing and assaultive abuses caused to him. Plaintiff's injuries caused by these Defendants included their tasing and striking Enrique Quiroz about the face and body before and after placing him in handcuffs when using any force was unreasonable. Defendants caused numerous facial and head bruises, mental, emotional, physical bodily injuries and death . After being tased and assaulted, the Plaintiff was arrested for trespassing inside his wife's home and taken to the hospital when he died solely because of his injuries caused by Defendants. Defendants had actual knowledge that Plaintiff was unarmed and had not caused danger or threatened any individuals. Defendants had actual knowledge that Plaintiff was preparing to depart but determined to take unreasonable forceful actions and use tazers to arrest Plaintiff.

2. Defendants Eduardo Pineda and Spencer Hanna were individually involved in the assault, physical beating and tasing of Enrique Quiroz. Plaintiffs allege and will show that the actions of each of these police officers, individually and as a group, contributed to and caused the death of Plaintiff Quiroz. All officers are being sued individually and were all working as Austin Police officers on the day and at the time of this incident.

Eduardo Pineda and Spencer Hanna can be served at the Austin Police Department, Austin, Texas located at 715 East 8th Street, Austin, Texas 78701.

The City of Austin Texas is a municipality and should be cited by service on **Spencer Cronk, Austin City Manager at 301 W. 2nd, 3rd Floor, Austin, TX 78701.**

JURISDICTION

3. The action arises under 28 U.S.C. Section 1331 and 1443 and statutory provisions as hereinafter more fully appears.

4. This Court has supplemental jurisdiction over state law claims discussed below under 28 U.S.C. Section 1367(a) because they arise out of the same case or controversy.

NATURE OF ACTION

5. This is an action under Title 42 U.S.C. Section 1983, as amended by the Civil Rights Act of 1991 and the Fourteenth Amendment to correct unlawful and unconstitutional practices and policies. Plaintiffs also sue under the Texas Constitution.

FACTS

6. On March 31, 2020, Plaintiff was visiting with some of his children inside the home of his common law wife, Josephine Salazar. Enrique Quiroz was previously placed under a criminal trespass warning and was asked to leave by his wife. Quiroz did not depart as quickly as requested and the police arrived to remove him from the premises. Defendant Austin Police Officers discussed the circumstances of Enrique Quiroz's presence and advised him to depart immediately, per an existing court trespass order. Plaintiff advised that he was leaving, but Defendant officers were determined to arrest Quiroz rather than allow him to vacate the residence. Defendant officers immediately and forcefully grabbed Quiroz and began to force his hands behind his back. Quiroz was thrown to the floor and Defendant officers, individually and as a group, began to taze and strike Quiroz all about his body and caused immediate injury and physical pain to Plaintiff. Defendant

Officers placed Plaintiff in handcuffs and completely restrained him while continuing to strike and assault Quiroz as he lay on the floor. Quiroz did not physically resist, threaten or assault any police officers or individual but attempted to comply with orders. Any resistance from Plaintiff was passive and not physical or aggressive. Defendant Officers, acting together, continued to assault and strike Plaintiff in the head and body using full force of knee kicks and fists on his body. These Defendants, along with other officers who were holding Plaintiff on the ground, had complete control of Plaintiff's hands and completely restrained his arms and hands. Plaintiff's movement was limited to attempting to reach up to protect his head, body and face from the continual assaultive actions coming from these Defendants and others under their directions. All the force used and described herein was excessive and unnecessary.

7. Defendants caused Plaintiff to suffer various serious injuries and physical damages which included tazing and causing physical injury to his body which lead to his death.

8. The individual named Officers' actions were done intentionally and with conscious indifference to the rights, safety and protection of Plaintiff Quiroz and were done to cause the most serious of injuries to his physical body and mind. At all times relevant to this incident, Defendant officers did observe both Plaintiff's hands and knew that Plaintiff's hands were empty and that he made no threats or caused Defendant officers to be in fear for themselves or others. Quiroz did not attempt to physically resist the officers, avoid the officers, escape, elude, struggle or move in any direction.

EXCESSIVE FORCE

9. Defendant Officers' actions were intentional and done with conscious indifference to the rights, safety and suffering of Plaintiff. Defendant Officers had no reasonable beliefs that Plaintiff was fighting or attempting to assault them, evade them or cause either of them any injury. Defendants' actions were the sole cause for Plaintiff pain, suffering and injury and each continued the tazing with knowledge that it could and did lead to the death of Plaintiff. Defendant Officers, individually and as a group, had actual knowledge that tazing a restrained individual was infliction of physical pain and suffering and violated Plaintiff's civil rights as assured by the U.S. Constitution and Texas Constitution. Defendants' actions were conscious, indifferent and in Violation of 42 U.S.C. Section 1983.

NEGLIGENT RETENTION, TRAINING, SUPERVISION AND ABSENCE OF POLICIES, DISCIPLINE AND PROCEDURES

10. Plaintiffs alleges that the conduct of Defendant City of Austin, and the individually identified Defendant Officers were consciously indifferent and constituted negligent and non-existing training, supervision, discipline, absence of actual policies and procedures and unreasonably dangerous retention policies. Plaintiff alleges that Defendant Austin Chief of Police and the City of Austin, Texas did not properly screen, evaluate, train, investigate, discipline, supervise, timely terminate or take other reasonable steps to determine whether Defendants were unfit, incompetent, or a danger to third parties. Defendant Chief of Police and the City of Austin also failed and continues to refuse to discipline these and other officers and were well aware of the extensive history

the police department has when using tazers on individuals they are arresting. The arresting of unarmed and non dangerous individuals by use of tazers is a normal practice of the Austin Police Department and often amounts to police officers using excessive force on individuals they are arresting and/or stopping where there is no fear of violence or danger to the officers or others. Austin Police officers are continuously using tazer devices in similar arrest incidents where the arrested individuals are showing no indications of violence or danger towards the responding officers or others. The use of tazers has become a violent tendency and policy of Austin Police officers, without justification, but yet APD has continually ignored Defendants Officers' past tazing actions. Defendant City had no policies and procedures relating to proper and correct use of tazers which prevented these officers from using unreasonable and unnecessary force. Defendant City's failures to terminate and/or discipline its officers who continue using tazers without justification amounting to excessive force, encourages officers to use tazers when the use of such force is not necessary. The City of Austin has ignored its officers excessive practice of immediately using tazers or glorified and praised Defendant Officers past continual uses of tazers and has made their actions examples for other officers to follow. The actions of these officers reflects the City's deliberate indifference to the use of tazers on non violent individuals and shows the continual violations of individuals civil rights are violations under 42 U.S.C. Section 1983. The failure to train these officers in methods of arresting individuals who are not violent and/or terminate officers who use excessive methods of arresting individuals amounts to City of Austin having no actual policy that doesn't violate individuals civil rights protections.

11. Defendant City of Austin allowed Plaintiff to be abused and have his civil rights violated, acting through its unwritten daily policies, practices and procedures. The use of a tazer on Quiroz shows deliberate, callous and conscious indifference to the constitutional rights of Quiroz and clearly indicates random tazing without fear of punishment resulted in injury to Plaintiff. Failure to train in proper incidents whereby an officer, who has other officers working with hm, should use his tazer was the proximate cause of the violations of Quiroz's constitutional rights under 42 U.S.C. Section 1983.

DAMAGES

12. Plaintiff's injuries and damages are the sole result of the actions and/or omissions of Defendants described herein above:

- a. Physical and emotional pain, suffering and injuries
- b. All reasonable and necessary Attorney's fees incurred by or on behalf of Plaintiffs,
- c. All reasonable and necessary costs incurred in pursuit of this suit;
- d. Emotional pain;
- e. Expert fees as the Court deems appropriate;
- f. Surgeries in the past and those needing to be done in the future.
- g. Prejudgment interest;
- h. Medical and death related Expenses in the past and future;
- i. Mental anguish in the past;

- j. Mental anguish in the future;
- k. Loss of earnings in the past;
- l. Loss of earning capacity, in all probability, to be incurred in the future;
- m. All Appeal Cost and Expenses;

EXEMPLARY DAMAGES

13. Plaintiff would further show that the acts and omissions of Defendants Officers were committed with malice or reckless indifference to the protected rights of Plaintiff. In order to punish said Defendants, Plaintiff also seeks recovery from Defendants for exemplary damages.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages, as addressed to each Officer Defendant, together with interest as allowed by law; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

BOBBY R TAYLOR

/s/Bobby Taylor
Bobby R. Taylor

Texas Bar No. 19685500
1709 E. Martin L. King Jr. Blvd
Austin, Texas, 78702
Tel. 512-476-4886
Fax. (512)476-2818
Attorney for Plaintiff

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

CIVIL COVER SHEET

CASE # 1:21-CV-443

JS 44 (Rev. 10/20)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Enrique Quiroz, Deceased, through Josephine Salazar, Individually, and as Next of Friend of J.R.S., E.F.Q and **+**

(b) County of Residence of First Listed Plaintiff Travis
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Law Office of Bobby R. Taylor
 1709 E. Martin Luther King Jr. Blvd
 Austin, Texas 78702 **+**

DEFENDANTS
 Officers Eduardo Pineda, Spencer Hanna, and City of Austin, Texas

County of Residence of First Listed Defendant Travis
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) [Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander			<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 850 Securities/Commodities/Exchange
				<input type="checkbox"/> 890 Other Statutory Actions
				<input type="checkbox"/> 891 Agricultural Acts
				<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration
				<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 OSC 1983

Brief description of cause:
 Excessive Force and Wrongful Death by Officers

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 5-19-2021 SIGNATURE OF ATTORNEY OF RECORD Bobby R Taylor

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ENRIQUE QUIROZ, Deceased, §
Through JOSEPHONE SALAZAR §
Individually, and as NEXT FRIEND OF §
J.R.S, E.F Q, AND E.Q. Minors; §
MERCEDES QUIROZ, JASMINE §
QUIROZ, ANDREW RAMIREZ AND §
CHRISTINA ESPINOZA as NEXT §
FRIEND OF H.E., A MINOR, §
Plaintiffs, §

CIVIL ACTION NO. 1:21-cv-443-LY

v. §

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA and CITY OF §
AUSTIN, TEXAS, §
Defendants. §

**DEFENDANT CITY OF AUSTIN’S RULE 12(b)(1)
MOTION TO DISMISS STATE-LAW CLAIMS**

Defendant, City of Austin (the “City”), files this motion to dismiss the Plaintiffs’ state-law claims (*see* Orig. Compl. (Dkt 1) ¶4) and claims under the Texas Constitution (*see* Orig. Compl. (Dkt 1) ¶5). The City benefits from sovereign immunity unless the Texas Legislature has specifically waived that immunity. The Texas Tort Claims Act does not waive immunity for state-law negligence claims like those pled by the Plaintiffs. Consequently, to that extent, this Court lacks subject-matter jurisdiction for those claims they should be dismissed against the City.

BACKGROUND

Plaintiffs allege, in part, that: “On March 31, 2020, (Plaintiff’s decedent, Enrique Quiroz) was visiting with some of his children inside the home of his common law wife, Josephine Salazar. Enrique Quiroz was previously placed under a criminal trespass warning and was asked to leave by his wife. Quiroz did not depart as quickly as requested and the police arrived to remove him

from the premises. Defendant Austin Police Officers discussed the circumstances of Enrique Quiroz's presence and advised him to depart immediately, per an existing court trespass order." Plaintiffs further allege that the Defendant officers were determined to arrest Quiroz rather than allow him to vacate the residence and forcefully grabbed Quiroz and caused him immediate injury and physical pain. Orig. Compl. (Dkt 1) ¶6.

ARGUMENT

Plaintiffs have asserted claims under 42 U.S.C. § 1983. As noted above, however, Plaintiffs have also included one or more state-law negligence claims against the City, styled as claims for "negligent retention, training, supervision and absence of policies, discipline and procedures." See Orig. Compl. (Dkt. 1), ¶ 10; see also id. ¶ 4 (asserting the Court has "supplemental jurisdiction over state law claims discussed below") and ¶ 5 (asserting the "Plaintiffs also sue under the Texas Constitution").

Violations of state law are not actionable under § 1983. *Woodard v. Andrus*, 419 F.3d 348, 353 (5th Cir. 2005) (holding that "§ 1983 is only a remedy for violations of federal statutory and constitutional rights"). Furthermore, the Texas Constitution itself contains no private right of action authorizing damages claims. *Daniels v. City of Arlington, Tex.*, 246 F.3d 500, 507 & n.33 (5th Cir. 2001) (holding that "tort damages are not recoverable for violations of the Texas Constitution"); *Calhoun v. City of Austin, Tex.*, No. A-06-CA-185-AA, 2006 WL 2136153, at *1 (W.D. Tex. July 26, 2006) (Austin, M.J.) ("It is well settled law that Texas has no provision comparable to § 1983 and there is no private cause of action for damages implied under the Texas Constitution.").

The Court should dismiss the state-law claims against the City from the case pursuant to FED. R. CIV. P. 12(b)(1), because the City is immune from Plaintiffs' negligence claims on their

face, and that immunity has not been waived by the Texas Tort Claims Act (the “TTCA”).

As a political subdivision of the State of Texas, the City has “full immunity from liability for torts” except to the extent such immunity has been “waived by the TTCA.” *Brown v. City of Houston*, 8 S.W.3d 331, 333-34 (Tex. App.—Waco 1999, pet. denied). This immunity “defeats a trial court’s jurisdiction.” *Harris Cnty. v. Sykes*, 136 S.W.3d 635, 638 (Tex. 2004). Accordingly, dismissal under Rule 12(b)(1) is appropriate. *See Pierce v. Hearne Indep. Sch. Dist.*, 600 Fed. App’x 194, 197-98 (5th Cir. 2015) (unpublished) (affirming 12(b)(1) dismissal of claims per the TTCA); *Chase v. Nix*, No. W-15-CV-258, 2016 WL 11668710, at *4 n.2 (W.D. Tex. June 3, 2016) (dismissing state-law negligence claims under Rule 12(b)(1) because “the TTCA’s limited waiver of sovereign immunity does not apply to negligence claims”).

Plaintiffs’ state-law negligence claims against the City purport to be based on the City’s hiring, retention, supervision, and training of its police officers. These are the precise kinds of negligence claims Texas state courts routinely dismiss pursuant to the TTCA. *See, e.g., Tex. Dep’t Pub. Safety v. Petta*, 44 S.W.3d 575, 580 (Tex. 2001) (holding TTCA barred claims based on failure to furnish training materials, failure to devise adequate tests for hiring officers, and failure to discipline officers after incidents); *City of Waco v. Williams*, 209 S.W.3d 216, 224 (Tex. App.—Waco 2006, pet. denied) (holding allegations of negligent training and negligent implementation of policy barred by TTCA); *City of Sugarland v. Ballard*, 174 S.W.3d 259, 265 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (holding TTCA barred claims for “failure to supervise” as well as “negligent training and supervision”).

These kinds of negligence claims fare no better in federal court, where of course the TTCA still applies. Federal courts in Texas regularly dismiss state-law negligence claims brought against municipal entities under the TTCA. *See, e.g., Starrett v. City of Richardson*, No. 3:18-CV-00191-

L, 2018 WL 4627133, at *11-12 (N.D. Tex. July 27, 2018) (recommending dismissal of negligence claims, including negligent hiring, training, supervision, and retention, under TTCA), report and recommendation adopted, 2018 WL 3802038, aff'd, 766 Fed. App'x 108 (5th Cir. April 1, 2019) (unpublished); *Ramirez v. Dimmit Cnty., Tex.*, No. SA-12-CV-305-DAE, 2014 WL 2780134, at *5 (W.D. Tex. June 19, 2014) (holding TTCA barred negligent hiring claim unrelated to “three specific areas of liability” carved out in TTCA); 2 *Redhawk v. Hays County*, No. A-09-CA-76-SS, 2009 WL 10701310, at *8 (W.D. Tex. July 16, 2009) (“Texas law is clear that claims based on negligent training and supervision do not fall within the express language of the [TTCA’s] waiver provisions”); *Rivera v. City of San Antonio*, No. SA- 06-CA-235-XR, 2006 WL 3340908, at *15 (W.D. Tex. Nov. 15, 2006) (holding TTCA barred negligent hiring and negligent training claims).

Additionally, any state-law claims by Plaintiffs “based on the police department’s policy decisions” is expressly exempted from the TTCA’s waiver of immunity. *See Ballard*, 174 S.W.3d at 265 (citing TEX. CIV. PRAC. & REM. CODE § 101.055 (barring claims arising “from the failure to provide or the method of providing police or fire protection”)).

Consistent with this authority, Plaintiffs’ state-law claims for “negligent retention, training, supervision and absence of policies, discipline and procedures,” as well as whatever purported claims have been pled under the Texas Constitution, are indisputably barred by the TTCA. None of the conduct described in the complaint fits within any waiver of sovereign immunity granted by the TTCA. Accordingly, dismissal of those state-law claims under Rule 12(b)(1) is appropriate.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court grant its motion to dismiss Plaintiffs’ “supplemental” state-law and Texas Constitution claims with prejudice, and for the Court to award all other related relief to which the City is entitled.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

/s/ Monte L. Barton, Jr.
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**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Texas Rules of Federal Procedure, this 19th day of July, 2021.

Via CM/ECF:

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**ATTORNEY FOR DEFENDANTS
EDUARDO PINEDA and SPENCER
HANNA**

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ENRIQUE QUIROZ, Deceased, §
Through JOSEPHONE SALAZAR §
Individually, and as NEXT FRIEND OF §
J.R.S, E.F Q, AND E.Q. Minors; §
MERCEDES QUIROZ, JASMINE §
QUIROZ, ANDREW RAMIREZ AND §
CHRISTINA ESPINOZA as NEXT §
FRIEND OF H.E., A MINOR, §
Plaintiffs, §

CIVIL ACTION NO. 1:21-cv-443-LY

v.

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA and CITY OF §
AUSTIN, TEXAS, §
Defendants. §

**DEFENDANT, CITY OF AUSTIN’S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF’S ORIGINAL COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files its Answer and Affirmative Defenses to Plaintiffs’ Original Complaint and Jury Demand (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant City of Austin responds to each of the specific averments in Plaintiffs’ Complaint as set forth below. To the extent that Defendant City of Austin does not address a specific averment made by Plaintiff, Defendant expressly denies that averment.¹

The City denies the unnumbered allegations in the preamble paragraph which begins with “NOW COMES” and precedes the “Parties and Service” section of the Complaint.

PARTIES AND SERVICE

¹ Paragraph numbers in Defendant’s Answer correspond to the paragraphs in Plaintiffs’ Original Complaint.

1. Denied. The City is without sufficient knowledge to form a belief as to the truth of the allegations concerning Plaintiffs' residence at the time of this incident and therefore denies the same. The remaining allegations are denied.

2. Denied.

JURISDICTION

3. No response is required to Paragraph 3, as it does not contain any factual allegations. The City admits that this Court has federal question jurisdiction over any alleged claims pursuant to 42 U.S.C. § 1983. To the extent a response is required, the City otherwise denies the remaining allegations in Paragraph 3.

4. Denied.

NATURE OF ACTION

5. No response is required to Paragraph 5, as it does not contain any factual allegations. The City denies any claims under the Texas Constitution and otherwise denies the allegations in Paragraph 5.

FACTS

6. Denied.

7. This Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 7 of the Original Complaint and therefore denies same.

8. Denied.

EXCESSIVE FORCE

9. Defendant denies the allegations contained in Paragraph 9.

NEGLIGENT RETENTION, TRAINING, SUPERVISION AND ABSENCE OF POLICIES, DISCIPLINE AND PROCEDURES

10. Defendant denies the allegations contained in Paragraph 10.

11. Defendant denies the allegations contained in Paragraph 11.

DAMAGES

12. Defendant denies all of the allegations contained in Paragraph 12, including subparts a-m.

EXEMPLARY DAMAGES

13. Defendant denies the allegations contained in Paragraph 13.

PRAYER

No response is required to the “Prayer” included in the Complaint, which begins with the phrase “WHEREFORE, PREMISES CONSIDERED,” as it does not contain any factual allegations. To the extent any response is required, the City denies the allegations in the “Prayer” section of the Complaint, and further denies that Plaintiff has any valid or supportable basis for any recovery from the City.

JURY DEMAND

As for Plaintiffs’ jury demand, no response is required of the City Defendant.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.
2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. Defendant City of Austin affirmatively pleads that the Plaintiffs’ claims are barred in whole or in part since Plaintiff Enrique Quiroz’s intentional acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.

4. Defendant City of Austin reserves the right to assert additional affirmative defenses throughout the development of the case.
5. The City asserts that it is absolutely immune from punitive damages under 42 U.S.C. § 1983 pursuant to City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981).
6. Defendant asserts the affirmative defense that Plaintiffs failed to mitigate damages, if any, and asserts this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiffs.
7. Defendants assert the affirmative defense of contributory negligence. Plaintiffs' claims are barred in whole or in part by contributory negligence. Plaintiff, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.
8. Defendants affirmatively plead that the Plaintiff's claims are barred in whole or in part since Plaintiffs intentional acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.
9. The incident in question and the resulting harm to Decedent were caused or contributed to by Decedent's own illegal conduct.
10. Pleading further and in the alternative, Plaintiffs' injuries and damages were caused in whole or in part by the conduct of other persons or entities who are not currently parties to this lawsuit.
11. Pleading further, alternatively, and by way of affirmative defense, Defendant would show that at the time and on the occasion in question, Decedent failed to use care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and

alleged damages that arise therefrom. If applicable and subject to withdrawal, Defendant invokes the comparative responsibility provision of the Texas Civil Practice & Remedies Code.

12. Defendant further pleads any fault to be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.
13. Defendant asserts the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies code, and the due process clause of the United States Constitution.
14. To the extent Defendant did not address a specific averment made by Plaintiffs in the Complaint, Defendant expressly denies all such averments.

DEFENDANTS' PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.
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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Texas Rules of Federal Procedure, this 19th day of July, 2021.

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**ATTORNEY FOR DEFENDANTS
EDUARDO PINEDA and SPENCER HANNA**

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ENRIQUE QUIROZ, Deceased, §
through JOSEPHINE SALAZAR §
Individually, and as NEXT FRIEND §
OF J.R.S., E.F.Q., and E.Q., Minors; §
MERCEDES QUIROZ, JASMINE §
QUIROZ, ANDREW RAMIREZ and §
CHRISTINA ESPINOZA as §
NEXT FRIEND OF H.E., a Minor, §
Plaintiffs, §

v. §

No. 1:21-cv-00443-RP

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA and §
CITY OF AUSTIN, TEXAS, §
Defendants. §

**DEFENDANTS EDUARDO PINEDA AND SPENCER HANNA’S ANSWER
TO PLAINTIFF’S ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendants, Eduardo Pineda and Spencer Hanna (hereinafter “Defendants” or “Pineda and Hanna”) by and through their attorneys of record, and file this Answer to Plaintiff, Enrique Quiroz, deceased, through Josephine Salazar, individually and as next friend of J.R.S., E.F.Q., and E.Q., minors; Mercedes Quiroz, Jasmine Quiroz, Andrew Ramirez and Christina Espinoza as next friend of H.E., a minor (hereinafter “Quiroz”), Original Complaint and in support thereof would respectfully show the Court as follows:

I.

INTRODUCTION

1. In the month leading up to March 31, 2020, Plaintiff, Josephine Salazar, sought and obtained a formal trespass warning issued to Decedent Enrique Quiroz, forbidding him from entering her property henceforth—namely, her apartment home where the facts underlying this lawsuit occurred.¹ On March 31, 2020, Decedent forced his way into Plaintiff Salazar’s home and refused to leave, causing Plaintiff Salazar to seek the help of the Austin Police Department to remove him from her home once again. Decedent’s entry and presence in Plaintiff Salazar’s home against her will—after having already received a formal trespass warning—constituted a Class A misdemeanor under Texas law, which is punishable by up to one year in jail.²

2. Defendants, Austin Police Department Officers Eduardo Pineda and Spencer Hanna, were both called to the scene to assist Plaintiff Salazar. The prior trespass warning was confirmed, and the officers spoke to Plaintiff Salazar outside of the apartment. The officers learned that Decedent had refused to leave, may be under the influence of drugs, and that he had been acting in an erratic or strange manner.

3. Officers Pineda and Hanna entered the apartment, while Plaintiff Salazar remained outside due to her fear that Decedent might resist arrest or fight with the officers. Once inside, the Officers verbally engaged Decedent and noticed that he was a very large and imposing man—weighing as much as both Officers combined. For approximately the next fifteen minutes, the Officers used de-escalation techniques, including conversing with Decedent and even giving him a chance to find evidence on his phone to prove that Plaintiff Salazar had invited him into her apartment. After it was clear that he possessed no such evidence and was indeed acting in an

¹ See Tex. Pen. Code § 30.05.

² See Tex. Pen. Code § 30.05(c)(3)(i).

erratic manner, the officers began to initiate an arrest to remove the man from the residence of a woman—Plaintiff Salazar—who had gone to great lengths to get him to leave her home.

4. During the approximately fifteen-minute period of de-escalation, the officers informed Decedent that he would be arrested absent the above-referenced proof of an invitation. Eventually, the officers issued commands for him to stand up and put his hands behind his back so that he could be placed under arrest. Decedent stood up, but otherwise refused to comply. The officers attempted to take hold of Decedent's arm to initiate the arrest, but Decedent pulled his arm away and resisted any and all subsequent attempts by the officers to arrest him. At that point, the officers had not yet had a chance to frisk Decedent, and—as they would later discover—Decedent was carrying a knife in his pocket.

5. After de-escalation, verbal commands, and attempts at relaxed physical control failed, Officer Pineda was eventually forced to use his Taser device on Decedent to allow them to arrest him. However, the Taser device was not effective, and the officers were still unable to subdue Decedent and place him under arrest. By this point, both officers were forced to go hands-on in an attempt to wrestle Quiroz to the floor so that he could be placed in handcuffs and arrested. For the next approximately five minutes, Decedent dragged and wrestled the two officers across the apartment, and refused all officer commands to submit to arrest. At one point, Decedent grabbed one officer's vest near his throat and yelled threateningly into his face.

6. Eventually—after having dragged and wrestled the two officers outside onto the apartment complex second-floor landing—Decedent was finally taken to the ground and put in handcuffs. Decedent only spent a matter of seconds laying on his stomach while restrained in handcuffs. Almost immediately thereafter, several APD officers arrived as backup and took

control of the scene. Officers Pineda and Hanna had virtually no interactions whatsoever with Decedent from that point forward.

7. The APD officers who had arrived as backup attempted to transport Decedent down the stairs to where EMS had arrived. Decedent—who is believed to have weighed approximately 330 pounds at that time—refused to walk to EMS’s location on his own, and actively resisted being physically carried to where EMS was waiting to help him. Eventually—long after any of Officers Pineda and Hanna’s interactions with Decedent—EMS administered to Decedent what is believed to have been a benzodiazepine via syringe to sedate the still-resisting Decedent. Decedent soon after suffered a medical emergency. Life-saving measures were attempted by EMS, but Decedent ultimately passed away shortly thereafter. Based on information and belief, Decedent was discovered to have been under the influence of numerous illicit drugs during the entire encounter that forms the basis of this lawsuit.

8. In contrast to the description of events contained in the Original Complaint, Officer Pineda and Officer Hanna never punched or kicked or elbowed Decedent, never used force against him once he had already been restrained in handcuffs, and never struck Decedent in the head. The force used by Officers Pineda and Hanna was used only to the extent necessary to subdue Decedent and make it possible to arrest him and remove him from Plaintiff Salazar’s residence, as she had requested. This lawsuit follows.

II.

ORIGINAL ANSWER

A. Parties and Service.

9. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs’ Original Complaint regarding place of residence, and therefore deny the same. Otherwise, denied.

10. As to the allegations contained within Paragraph 2 of Plaintiffs' Original Complaint, Defendants admit that they were working as Austin Police Department officers on the day and time of the incident. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiffs' Original Complaint regarding service. All defendants appear to have formally waived service of summons. Otherwise, denied.

B. Jurisdiction and Venue & Nature of Action.

11. As to the allegations contained within Paragraphs 3 – 5 of Plaintiff's Original Complaint, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants admit that Plaintiffs seek the relief requested therein pursuant to the cited bodies of law. Otherwise, denied.

C. Facts.

12. As to the allegations contained within Paragraphs 6 – 8 of Plaintiff's Original Complaint, Defendants admit that Decedent had been previously issued a criminal trespass warning by Plaintiff Josephine Salazar; that Plaintiff violated that criminal trespass notice by entering Plaintiff Salazar home; that Plaintiff Salazar instructed him to leave and he refused; admit that Officer Pineda used a Taser device to attempt to subdue Decedent; admit that they used a small number of minor knee strikes against Decedent in their attempts to subdue and arrest him; and admit that they wrestled with Decedent for approximately five minutes to attempt to subdue and arrest him in the face of his continuing aggressive physical resistance. Otherwise, denied.

D. Causes of Action.

i. Excessive Force.

13. Defendant deny the allegations contained within Paragraph 9 of Plaintiffs' Original Complaint.

ii. Negligent Retention, Training, Supervision and Absence of Policies, Discipline and Procedures.

14. As to the allegations contained within Paragraphs 10 – 11 of Plaintiff's Original Complaint, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants deny such allegations.

iii. Damages, Exemplary Damages, & Prayer.

15. As to the allegations contained in Paragraphs 12 – 13 and the Prayer, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants admit that Plaintiffs seek the relief requested therein. Otherwise, denied.

III.

AFFIRMATIVE DEFENSES & IMMUNITIES

16. Defendants Pineda and Hanna deny any deprivation under color of statute, ordinance, custom, or abuses of any rights, privileges, or immunities secured to the decedent by the United States Constitution, state law, or 42 U.S.C. § 1983, *et seq.*

17. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith, and would show that their actions were objectively reasonable in light of the law and the information possessed at that time.

18. The incident in question and the resulting harm to Decedent were caused or contributed to by Decedent's own illegal conduct.

19. Pleading further and in the alternative, Plaintiff's injuries and damages were caused in whole or in part by the conduct of other persons or entities who are not currently parties to this lawsuit.

20. Pleading further, alternatively, and by way of affirmative defense, Defendants Pineda and Hanna would show that at the time and on the occasion in question, Decedent failed to use *any* degree of care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom. Defendants Pineda and Hanna invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.³

21. Defendants further plead that, in the unlikely event they are found to be liable, such liability be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.

22. Defendants plead that they had legal justification for each and every action taken by them relating to this incident.

23. Defendants assert the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies Code, and the due process clause of the United States Constitution.

24. Defendants reserve the right to assert additional affirmative defenses throughout the development of this case.

25. To the extent Defendants did not address a specific averment made by Plaintiff in his Original Complaint, Defendants expressly deny all such averments.

IV.

JURY DEMAND

26. Pursuant to Federal Rule of Civil Procedure 48, Defendants hereby request a jury trial.

³ See TEX. CIV. PRAC & REM. CODE ANN. § 33.001.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2021, a copy of Defendants Eduardo Pineda and Spencer Hanna's Answer to Plaintiff's Original Complaint was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorneys of record:

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/s/ Blair J. Leake
Blair J. Leake

threatening or assaulting any individual or police officer and did not physically resist Defendant officers or commit any crimes or actions which justified the tasing and assaultive abuses caused to him. Plaintiff's injuries caused by these Officer Defendants included their tasing and striking Enrique Quiroz about the face and body before and after placing him in handcuffs. Defendants caused numerous facial and head bruises, mental, emotional, physical bodily injuries and death . After being tased and assaulted, the Plaintiff was arrested for trespassing inside his wife's home and taken to the hospital when he died solely because of his injuries caused by Defendants. Defendants had actual knowledge that Plaintiff was unarmed and had not caused danger or threatened any individuals. Defendants had actual knowledge that Plaintiff was preparing to depart but determined to take unreasonable forceful actions and use tazers to arrest Plaintiff.

2. Defendants Edwardo Pineda, Spencer Hanna and the City of Austin have all been served and made their appearances in this lawsuit.

JURISDICTION

3. The action arises under 28 U.S.C. Section 1331 and 1443.

NATURE OF ACTION

4. This is an action under Title 42 U.S.C. Section 1983. as amended by the Civil Rights Act of 1991 and the Fourteenth Amendment to correct unlawful and unconstitutional practices and policies.

FACTS

5. On March 31, 2020, Plaintiff was visiting with some of his children inside the home of his common law wife, Josephine Salazar. Enrique Quiroz was previously placed under a criminal trespass warning and was asked to leave by his wife. Quiroz did not depart as quickly as requested and the police arrived to remove him from the premises. Defendant Austin Police Officers

discussed the circumstances of Enrique Quiroz's presence and advised him to depart immediately, per an existing court trespass order. Plaintiff advised that he was leaving, but Defendant officers were determined to arrest Quiroz rather than allow him to vacate the residence. Defendant officers immediately and forcefully grabbed Quiroz and began to force his hands behind his back. Quiroz was thrown to the floor and Defendant officers, individually and as a group, began to taze and strike Quiroz all about his body and caused immediate injury and physical pain to Plaintiff. Defendant Officers placed Plaintiff in handcuffs and completely restrained him while continuing to strike and assault Quiroz as he lay on the floor. Quiroz did not physically resist, threaten or assault any police officers or individual but attempted to comply with orders. Any resistance from Plaintiff was passive and not physical or aggressive. Defendant Officers, acting together, continued to assault and strike Plaintiff in the head and body using full force of knee kicks and fists on his body. These officer Defendants, along with other officers who were holding Plaintiff on the ground, had complete control of Plaintiff's hands and completely restrained his arms and hands. Plaintiff's movement was limited to attempting to reach up to protect his head, body and face from the continual assaultive actions coming from these Defendants and others under their directions. All the force used and described herein was excessive and unnecessary.

6. Defendant officers caused Plaintiff to suffer various serious injuries and physical damages which included tazing and causing physical injury to his body which lead to his death.

7. The individual named Officers' actions were done intentionally and with conscious indifference to the rights, safety and protection of Plaintiff Quiroz and were done to cause the most

serious of injuries to his physical body and mind. At all times relevant to this incident, Defendant officers did observe both Plaintiff's hands and knew that Plaintiff's hands were empty and that he made no threats or caused Defendant officers to be in fear for themselves or others. Quiroz did not attempt to physically resist the officers, avoid the officers, escape, elude, struggle or move in any direction.

EXCESSIVE FORCE

8. Defendant Officers' actions were intentional and done with conscious indifference to the rights, safety and suffering of Plaintiff. Defendant Officers had no reasonable beliefs that Plaintiff was fighting or attempting to assault them, evade them or cause either of them any injury. Defendants' actions were the sole cause for Plaintiff pain, suffering and injury and each continued the tazing with knowledge that it could and did lead to the death of Plaintiff. Defendant Officers, individually and as a group, had actual knowledge that tazing a restrained individual was infliction of physical pain and suffering and violated Plaintiff's civil rights as assured by the U.S. Constitution. Defendants' actions were conscious, indifferent and in Violation of 42 U.S.C. Section 1983.

NEGLIGENT RETENTION, TRAINING, SUPERVISION AND ABSENCE OF POLICIES, DISCIPLINE AND PROCEDURES IN VIOLATION OF 42 U.S.C. SECTION 1983

9. Plaintiffs alleges that the conduct of Defendant City of Austin, and the individually identified Defendant Officers were consciously indifferent and constituted negligent and non-existing training, supervision, discipline, absence of actual policies and procedures and unreasonably dangerous retention policies in violation of 42 U.S.C. Section 1983. Defendant Chief of Police and

the City of Austin failed and continues to refuse to discipline these and other officers and were well aware of the extensive history the police department has when using tazers on individuals they are arresting. The arresting of unarmed and non dangerous individuals by use of tazers is a normal practice of the Austin Police Department and often amounts to police officers using excessive force on individuals they are arresting and/or stopping where there is no fear of violence or danger to the officers or others. Austin Police officers are continuously using tazer devices in similar arrest incidents where the arrested individuals are showing no indications of violence or danger towards the responding officers or others. The use of tazers has become a violent tendency and policy of Austin Police officers, without justification, but yet APD has continually ignored Defendants Officers' past tazing actions. Defendant City had no policies and procedures relating to proper and correct use of tazers which prevented these officers from using unreasonable and unnecessary force. Defendant City's failures to terminate and/or discipline its officers who continue using tazers without justification amounting to excessive force, encourages officers to use tazers when the use of such force is not necessary. The City of Austin has ignored its officers excessive practice of immediately using tazers or glorified and praised Defendant Officers past continual uses of tazers and has made their actions examples for other officers to follow. The actions of these officers reflects the City's deliberate indifference to the use of tazers on non violent individuals and shows the continual violations of individuals civil rights are violations under 42 U.S.C. Section 1983. The failure to train these officers in methods of arresting individuals who are not violent and/or terminate officers who use excessive methods of arresting individuals amounts to City of Austin having no actual policy that

doesn't violate individuals civil rights protections.

10. Defendant City of Austin allowed Plaintiff to be abused and have his civil rights violated, acting through its unwritten daily policies, practices and procedures. The use of a tazer on Quiroz shows deliberate, callous and conscious indifference to the constitutional rights of Quiroz and clearly indicates random tazing without fear of punishment resulted in injury to Plaintiff. Failure to train in proper incidents whereby an officer, who has other officers working with hm, should use his tazer was the proximate cause of the violations of Quiroz's constitutional rights under 42 U.S.C. Section 1983.

DAMAGES

11. Plaintiff's injuries and damages are the sole result of the actions and/or omissions of Defendants described herein above:

- a. Physical and emotional pain, suffering and injuries
- b. All reasonable and necessary Attorney's fees incurred by or on behalf of Plaintiffs,
- c. All reasonable and necessary costs incurred in pursuit of this suit;
- d. Emotional pain;
- e. Expert fees as the Court deems appropriate;
- f. Surgeries in the past and those needing to be done in the future.
- g. Prejudgment interest;
- h. Medical and death related Expenses in the past and future;

- i. Mental anguish in the past;
- j. Mental anguish in the future;
- k. Loss of earnings in the past;
- l. Loss of earning capacity, in all probability, to be incurred in the future;
- m. All Appeal Cost and Expenses;

EXEMPLARY DAMAGES

12. Plaintiff would further show that the acts and omissions of Defendants Officers were committed with malice or reckless indifference to the protected rights of Plaintiff. In order to punish said Defendants, Plaintiff also seeks recovery from Defendants for exemplary damages.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages, as addressed to each Officer Defendant, together with interest as allowed by law; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

BOBBY R TAYLOR

/s/Bobby Taylor
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Attorney for Plaintiff

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2021, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system, as well as by sending a copy to lead counsel by email.

/s/BobbyTaylor
Bobby Taylor

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intended to suggest it has any state law claims against the City Defendant while arguing the only basis was in its claims against the individual Defendant Officers.

2. Plaintiffs have filed Plaintiff's First Amended Complaint on today's date and have removed any and all statements and references that Defendant City of Austin interpreted to allege the City of Austin violated any state law claims. The wording "supplemental jurisdiction" has been removed and any references to the Texas Constitution have also been deleted in the First Amended Complaint.

3. Plaintiffs has dropped every reference to state law claims that could be assumed to include Defendant City of Austin in their First Amended Complaint. Plaintiffs are not alleging any state law claims against the City for negligent retention, training, supervision, absence of policies, discipline and procedures". This is a false reading of Plaintiff's Original Complaint and misleads this Court. Plaintiff describes the case as arising under 28 U.S.C. Section 1331 and 1443. The Complaint describes the nature as being under Section 1983 and the Civil Rights Act of 1991. This suit does not allege any state law violations against the City of Austin. All allegations against the City of Austin, those specifically described and identified in Paragraph 10 are constitutional violation of 42 U.S.C. Section 1983 by the City of Austin. Paragraph 11 states that the City of Austin "allowed Plaintiff to be abused and have his civil right violated, which resulted in injury to Plaintiff".

II. ARGUMENTS

4. Under FRCP 8(a), pleadings must include a "short and plain" statement of the grounds for jurisdiction, the claims presented, and the relief sought. *Swierkiewicz v. Sorema*, 534 U.S. 506, 512 (2002). The purpose of a motion to dismiss is to ensure that the defendant is given at least minimal notice of the plaintiff's claims. *Vicom, Inc. V. Harbridge Mechant Servs*, 20 F.3d 771, 775 (7th Cir. 1994). In reviewing the sufficiency of a complaint, the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), overruled on other grounds, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The complaint must be liberally construed in favor of the plaintiff and all facts pleaded

therein must be taken as true. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164. 113 S.Ct. 1160. 1161 (1993); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). In order to survive a motion to dismiss, a complaint need only contain “a short and plain statement of the claim showing that the pleader is entitled to relief” *Swierkiewicz* at 506, (quoting *Fed. R.Civ. P. 8(a)(2)*). A complaint is sufficient if it “gives the defendant fair notice of what plaintiff’s claim is and the grounds upon which it rests.” *Id.* (Quoting *Conley v. Gibson*, 355 U.S. 41, 47; 78 S.Ct. 99, 103 (1957)). A motion to dismiss under Rule 12(b)(6) “is viewed with disfavor and rarely granted”. *Lowrey v. Texas A&M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997).

5. Plaintiff’s Original Complaint gave Defendant City of Austin actual notice of Plaintiff’s civil rights complaints against the City and left no doubts that Plaintiff was seeking protection of his 42 U.S. C. Section 1983 civil rights. Defendant’s argument that Plaintiff was seeking a state law claim was a misreading. Plaintiff’s civil rights alleged to have been violated were clearly established at the time. If, this Court accepts Defendants’ arguments in their motion, Plaintiff seeks the opportunity to amend pleadings.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff request this Court deny Defendant’s Motion To Dismiss in its entirety. Plaintiffs also seek any further relief to which they are entitled.

Respectfully submitted,

THE LAW OFFICE OF BOBBY R. TAYLOR, P.C.

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By: /s/Bobby Taylor

Bobby R. Taylor

State Bar No. 19685500

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2021, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system, as well as by sending a copy to lead counsel by email.

Bobby Taylor

/s/BobbyTaylor

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UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ENRIQUE QUIROZ, Deceased, §
Through JOSEPHONE SALAZAR §
Individually, and as NEXT FRIEND OF §
J.R.S, E.F Q, AND E.Q. Minors; §
MERCEDES QUIROZ, JASMINE §
QUIROZ, ANDREW RAMIREZ AND §
CHRISTINA ESPINOZA as NEXT §
FRIEND OF H.E., A MINOR, §
Plaintiffs, §

CIVIL ACTION NO. 1:21-cv-443-LY

v. §

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA and CITY OF §
AUSTIN, TEXAS, §
Defendants. §

**DEFENDANT, CITY OF AUSTIN’S AMENDED ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF’S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant City of Austin files its Amended Answer and Affirmative Defenses to Plaintiffs’ First Amended Complaint and Jury Demand (Doc. No. 8). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court the following:

FIRST AMENDED ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), Defendant City of Austin responds to each of the specific averments in Plaintiffs’ Complaint as set forth below. To the extent that Defendant City of Austin does not address a specific averment made by Plaintiff, Defendant expressly denies that averment.¹

The City denies the unnumbered allegations in the preamble paragraph which begins with “NOW COMES” and precedes the “Parties and Service” section of the Complaint.

¹ Paragraph numbers in Defendant’s Answer correspond to the paragraphs in Plaintiffs’ Original Complaint.

PARTIES AND SERVICE

1. Denied. The City is without sufficient knowledge to form a belief as to the truth of the allegations concerning Plaintiffs' residence at the time of this incident and therefore denies the same. The remaining allegations are denied.
2. Admit.

JURISDICTION

3. No response is required to Paragraph 3, as it does not contain any factual allegations. The City admits that this Court has federal question jurisdiction over any alleged claims pursuant to 42 U.S.C. § 1983. To the extent a response is required, the City otherwise denies the remaining allegations in Paragraph 3.

NATURE OF ACTION

4. No response is required to Paragraph 5, as it does not contain any factual allegations. To the extent a response is required, the City denies any allegations of unlawful or unconstitutional practices and policies. Further, this defendant, City of Austin, states the following: That upon information and belief from the pleadings, including Plaintiff's First Amended Complaint (Dkt. 8), the parties are in agreement that Plaintiff's claims against the City of Austin are limited to allegations brought under Section 1983, as discussed and addressed in related filings, including the City of Austin's Motion to Dismiss (Dkt. 5.), Plaintiffs' First Amended Complaint (Dkt. 8), and the Plaintiff's Response to the Motion to Dismiss (Dkt. 9), so that any claims originally asserted by the Plaintiffs' based on state law or the Texas Constitution which were included in the original Complaint (Dkt. 1) have been removed by the Plaintiffs and are not included in their First Amended Complaint (Dkt. 8). Plaintiffs are not alleging any state law claims against the City of Austin and their claims against the City will be limited to allegations brought under Section 1983.

FACTS

5. Defendant denies the allegations contained in Paragraph 5.
6. This Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 of the First Amended Complaint and therefore denies same.
7. Defendant denies the allegations contained in Paragraph 7.

EXCESSIVE FORCE

8. Defendant denies the allegations contained in Paragraph 8.

**NEGLIGENT RETENTION, TRAINING, SUPERVISION
AND ABSENCE OF POLICIES, DISCIPLINE AND PROCEDURES
IN VIOLATION OF 42 U.S.C. SECTION 1983**

9. Defendant denies the allegations contained in Paragraph 9.
10. Defendant denies the allegations contained in Paragraph 10.

DAMAGES

11. Defendant denies all of the allegations contained in Paragraph 11, including subparts a-m.

EXEMPLARY DAMAGES

12. Defendant denies the allegations contained in Paragraph 12.

PRAYER

No response is required to the “Prayer” included in the Complaint, which begins with the phrase “WHEREFORE, PREMISES CONSIDERED,” as it does not contain any factual allegations. To the extent any response is required, the City denies the allegations in the “Prayer” section of the Complaint, and further denies that Plaintiff has any valid or supportable basis for any recovery from the City.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as

a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. Defendant City of Austin affirmatively pleads that the Plaintiffs' claims are barred in whole or in part since Plaintiff Enrique Quiroz's intentional acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.
4. Defendant City of Austin reserves the right to assert additional affirmative defenses throughout the development of the case.
5. The City asserts that it is absolutely immune from punitive damages under 42 U.S.C. § 1983 pursuant to *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).
6. Defendant asserts the affirmative defense that Plaintiffs failed to mitigate damages, if any, and asserts this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiffs.
7. Defendants assert the affirmative defense of contributory negligence. Plaintiffs' claims are barred in whole or in part by contributory negligence. Plaintiff, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.
8. Defendants affirmatively plead that the Plaintiff's claims are barred in whole or in part since Plaintiffs intentional acts or the acts of others for which this defendant has no responsibility were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.

9. The incident in question and the resulting harm to Decedent were caused or contributed to by Decedent's own illegal conduct.
10. Pleading further and in the alternative, Plaintiffs' injuries and damages were caused in whole or in part by the conduct of other persons or entities who are not currently parties to this lawsuit.
11. Pleading further, alternatively, and by way of affirmative defense, Defendant would show that at the time and on the occasion in question, Decedent failed to use care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom. If applicable and subject to withdrawal, Defendant invokes the comparative responsibility provision of the Texas Civil Practice & Remedies Code.
12. Defendant further pleads any fault to be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.
13. Defendant asserts the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies code, and the due process clause of the United States Constitution.
14. To the extent Defendant did not address a specific averment made by Plaintiffs in the Complaint, Defendant expressly denies all such averments.

DEFENDANTS' PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

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**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Texas Rules of Federal Procedure, this 10th day of August, 2021.

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**ATTORNEY FOR DEFENDANTS
EDUARDO PINEDA and SPENCER HANNA**

/s/ Monte L. Barton, Jr.
MONTE L. BARTON, JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ENRIQUE QUIROZ, Deceased,	§	
through JOSEPHINE SALAZAR	§	
Individually, and as NEXT FRIEND	§	
OF J.R.S., E.F.Q., and E.Q., Minors;	§	
MERCEDES QUIROZ, JASMINE	§	
QUIROZ, ANDREW RAMIREZ and	§	
CHRISTINA ESPINOZA as	§	
NEXT FRIEND OF H.E., a Minor,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	No. 1:21-cv-00443-RP
	§	
OFFICERS EDUARDO PINEDA,	§	
SPENCER HANNA and	§	
CITY OF AUSTIN, TEXAS,	§	
<i>Defendants.</i>	§	

**DEFENDANTS EDUARDO PINEDA AND SPENCER HANNA’S ANSWER
TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendants, Eduardo Pineda and Spencer Hanna (hereinafter “Defendants” or “Pineda and Hanna”) by and through their attorneys of record, and file this Answer to Plaintiff, Enrique Quiroz, deceased, through Josephine Salazar, individually and as next friend of J.R.S., E.F.Q., and E.Q., minors; Mercedes Quiroz, Jasmine Quiroz, Andrew Ramirez and Christina Espinoza as next friend of H.E., a minor (hereinafter “Quiroz”), First Amended Complaint and in support thereof would respectfully show the Court as follows:

I.

INTRODUCTION

1. In the month leading up to March 31, 2020, Plaintiff, Josephine Salazar, sought and obtained a formal trespass warning issued to Decedent Enrique Quiroz, forbidding him from entering her property henceforth—namely, her apartment home where the facts underlying this lawsuit occurred.¹ On March 31, 2020, Decedent forced his way into Plaintiff Salazar’s home and refused to leave, causing Plaintiff Salazar to seek the help of the Austin Police Department to remove him from her home once again. Decedent’s entry and presence in Plaintiff Salazar’s home against her will—after having already received a formal trespass warning—constituted a Class A misdemeanor under Texas law, which is punishable by up to one year in jail.²

2. Defendants, Austin Police Department Officers Eduardo Pineda and Spencer Hanna, were both called to the scene to assist Plaintiff Salazar. The prior trespass warning was confirmed, and the officers spoke to Plaintiff Salazar outside of the apartment. The officers learned that Decedent had refused to leave, may be under the influence of drugs, and that he had been acting in an erratic or strange manner.

3. Officers Pineda and Hanna entered the apartment, while Plaintiff Salazar remained outside due to her fear that Decedent might resist arrest or fight with the officers. Once inside, the Officers verbally engaged Decedent and noticed that he was a very large and imposing man—weighing as much as both Officers combined. For approximately the next fifteen minutes, the Officers used de-escalation techniques, including conversing with Decedent and even giving him a chance to find evidence on his phone to prove that Plaintiff Salazar had invited him into her apartment. After it was clear that he possessed no such evidence and was indeed acting in an

¹ See Tex. Pen. Code § 30.05.

² See Tex. Pen. Code § 30.05(c)(3)(i).

erratic manner, the officers began to initiate an arrest to remove the man from the residence of a woman—Plaintiff Salazar—who had gone to great lengths to get him to leave her home.

4. During the approximately fifteen-minute period of de-escalation, the officers informed Decedent that he would be arrested absent the above-referenced proof of an invitation. Eventually, the officers issued commands for him to stand up and put his hands behind his back so that he could be placed under arrest. Decedent stood up, but otherwise refused to comply. The officers attempted to take hold of Decedent's arm to initiate the arrest, but Decedent pulled his arm away and resisted any and all subsequent attempts by the officers to arrest him. At that point, the officers had not yet had a chance to frisk Decedent, and—as they would later discover—Decedent was carrying a knife in his pocket.

5. After de-escalation, verbal commands, and attempts at relaxed physical control failed, Officer Pineda was eventually forced to use his Taser device on Decedent to allow them to arrest him. However, the Taser device was not effective, and the officers were still unable to subdue Decedent and place him under arrest. By this point, both officers were forced to go hands-on in an attempt to wrestle Quiroz to the floor so that he could be placed in handcuffs and arrested. For the next approximately five minutes, Decedent dragged and wrestled the two officers across the apartment, and refused all officer commands to submit to arrest. At one point, Decedent grabbed one officer's vest near his throat and yelled threateningly into his face.

6. Eventually—after having dragged and wrestled the two officers outside onto the apartment complex second-floor landing—Decedent was finally taken to the ground and put in handcuffs. Decedent only spent a matter of seconds laying on his stomach while restrained in handcuffs. Almost immediately thereafter, several APD officers arrived as backup and took

control of the scene. Officers Pineda and Hanna had virtually no interactions whatsoever with Decedent from that point forward.

7. The APD officers who had arrived as backup attempted to transport Decedent down the stairs to where EMS had arrived. Decedent—who is believed to have weighed approximately 330 pounds at that time—refused to walk to EMS’s location on his own, and actively resisted being physically carried to where EMS was waiting to help him. Eventually—long after any of Officers Pineda and Hanna’s interactions with Decedent—EMS administered to Decedent what is believed to have been a benzodiazepine via syringe to sedate the still-resisting Decedent. Decedent soon after suffered a medical emergency. Life-saving measures were attempted by EMS, but Decedent ultimately passed away shortly thereafter. Based on information and belief, Decedent was discovered to have been under the influence of numerous illicit drugs during the entire encounter that forms the basis of this lawsuit.

8. In contrast to the description of events contained in the First Amended Complaint, Officer Pineda and Officer Hanna never punched or kicked or elbowed Decedent, never used force against him once he had already been restrained in handcuffs, and never struck Decedent in the head. The force used by Officers Pineda and Hanna was used only to the extent necessary to subdue Decedent and make it possible to arrest him and remove him from Plaintiff Salazar’s residence, as she had requested. This lawsuit follows.

II.

ORIGINAL ANSWER

A. Parties and Service.

9. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs’ First Amended Complaint regarding place of residence, and therefore deny the same. Otherwise, denied.

10. As to the allegations contained within Paragraph 2 of Plaintiffs' First Amended Complaint, Defendants admit that they have been served and have appeared.

B. Jurisdiction and Venue & Nature of Action.

11. As to the allegations contained within Paragraphs 3 – 4 of Plaintiffs' First Amended Complaint, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants admit that Plaintiffs seek the relief requested therein pursuant to the cited bodies of law. Otherwise, denied.

C. Facts.

12. As to the allegations contained within Paragraphs 5 – 7 of Plaintiffs' First Amended Complaint, Defendants admit that Decedent had been previously issued a criminal trespass warning by Plaintiff Josephine Salazar; that Plaintiff violated that criminal trespass notice by entering Plaintiff Salazar's home; that Plaintiff Salazar instructed him to leave and he refused; admit that Officer Pineda used a Taser device to attempt to subdue Decedent; admit that they used a small number of minor knee strikes against Decedent in their attempts to subdue and arrest him; and admit that they wrestled with Decedent for approximately five minutes to attempt to subdue and arrest him in the face of his continuing aggressive physical resistance. Otherwise, denied.

D. Causes of Action.

i. Excessive Force.

13. Defendants deny the allegations contained within Paragraph 9 of Plaintiffs' First Amended Complaint.

ii. Negligent Retention, Training, Supervision and Absence of Policies, Discipline and Procedures.

14. As to the allegations contained within Paragraphs 9 – 10 of Plaintiffs’ First Amended Complaint, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants deny such allegations.

iii. Damages, Exemplary Damages, & Prayer.

15. As to the allegations contained in Paragraphs 11 – 12 and the Prayer, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants admit that Plaintiffs seek the relief requested therein. Otherwise, denied.

III.

AFFIRMATIVE DEFENSES & IMMUNITIES

16. Defendants Pineda and Hanna deny any deprivation under color of statute, ordinance, custom, or abuses of any rights, privileges, or immunities secured to the decedent by the United States Constitution, state law, or 42 U.S.C. § 1983, *et seq.*

17. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith, and would show that their actions were objectively reasonable in light of the law and the information possessed at that time.

18. The incident in question and the resulting harm to Decedent were caused or contributed to by Decedent’s own illegal and/or dangerous conduct.

19. Pleading further and in the alternative, Plaintiffs’ injuries and damages were caused in whole or in part by the conduct of other persons or entities who are not currently parties to this lawsuit.

20. Pleading further, alternatively, and by way of affirmative defense, Defendants Pineda and Hanna would show that at the time and on the occasion in question, Decedent failed to use *any* degree of care or caution that a person of ordinary prudence would have used under the same or

similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom. Defendants Pineda and Hanna invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.³

21. Defendants further plead that, in the unlikely event they are found to be liable, such liability be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.

22. Defendants plead that they had legal justification for each and every action taken by them relating to this incident.

23. Defendants assert the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies Code, and the due process clause of the United States Constitution.

24. Defendants reserve the right to assert additional affirmative defenses throughout the development of this case.

25. To the extent Defendants did not address a specific averment made by Plaintiffs in their First Amended Complaint, Defendants expressly deny all such averments.

IV.

JURY DEMAND

26. Pursuant to Federal Rule of Civil Procedure 48, Defendants hereby request a jury trial.

V.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants Eduardo Pineda and Spencer Hanna pray that upon a final hearing of this cause, the Court dismiss all of Plaintiffs' claims with prejudice, that all costs of court be assessed against Plaintiffs, that they be awarded attorney fees incurred in the defense of this suit, and for all further relief to which they may be justly entitled.

³ See TEX. CIV. PRAC & REM. CODE ANN. § 33.001.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS

EDUARDO PINEDA AND

SPENCER HANNA

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2021, a copy of Defendants Eduardo Pineda and Spencer Hanna's Answer to Plaintiffs' First Amended Complaint was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorneys of record:

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/s/ Blair J. Leake
Blair J. Leake

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ENRIQUE QUIROZ, Deceased, §
through JOSEPHINE SALAZAR §
Individually, and as NEXT FRIEND §
OF J.R.S., E.F.Q., and E.Q., Minors; §
MERCEDES QUIROZ, JASMINE §
QUIROZ, ANDREW RAMIREZ and §
CHRISTINA ESPINOZA as §
NEXT FRIEND OF H.E., a Minor, §
Plaintiffs, §

v. §

No. 1:21-cv-00443-RP

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA and §
CITY OF AUSTIN, TEXAS, §
Defendants. §

**DEFENDANTS EDUARDO PINEDA AND SPENCER HANNA’S
MOTION TO STAY DISCOVERY**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendants Eduardo Pineda and Spencer Hanna, and files this, their motion to stay discovery of this civil matter pending the resolution of their criminal proceedings, and would respectfully show the Court as follows:

I. BACKGROUND

A. The day of the incident.

1. In the month leading up to March 31, 2020, Plaintiff Josephine Salazar sought and obtained a formal criminal trespass warning issued to Decedent Enrique Quiroz, forbidding him from entering her property henceforth—namely, her apartment home where the facts underlying this lawsuit occurred.¹ On March 31, 2020, Quiroz forced his way into Plaintiff Salazar’s home and refused to leave, causing Plaintiff Salazar to seek the help of the Austin Police Department to remove him from her home once again. Quiroz’s entry and presence in Plaintiff Salazar’s home against her will—after having already received a formal criminal trespass warning—constituted a Class A misdemeanor under Texas law, which is punishable by up to one year in jail.²

2. Defendants, Austin Police Department Officers Eduardo Pineda and Spencer Hanna, were both called to the scene to assist Plaintiff Salazar. The prior trespass warning was confirmed, and the officers spoke to Plaintiff Salazar outside of the apartment. The officers learned that Quiroz had refused to leave, may be under the influence of drugs, and that he had been acting in an erratic or strange manner.

3. Officers Pineda and Hanna entered the apartment, while Plaintiff Salazar remained outside due to her fear that Quiroz might resist arrest or fight with the officers. Once inside, the Officers verbally engaged Quiroz and noticed that he was a very large and imposing man—weighing as much as both Officers combined. For approximately the next fifteen minutes, the Officers used de-escalation techniques, including conversing with Quiroz and even giving him a chance to find evidence on his phone to prove that Plaintiff Salazar had invited him into her

¹ See Tex. Pen. Code § 30.05.

² See Tex. Pen. Code § 30.05(c)(3)(i).

apartment. After it was clear that he possessed no such evidence and was acting in an erratic manner, the officers began to initiate an arrest to remove Quiroz from the residence of a woman—Plaintiff Salazar—who had to seek police intervention to force a man to leave her home a second time.

4. The officers issued commands for Quiroz to stand up and put his hands behind his back so that he could be placed under arrest for criminal trespass. Quiroz stood up but otherwise refused to comply. The officers attempted to take hold of Quiroz's arm to initiate the arrest, but Quiroz pulled his arm away and resisted any and all subsequent attempts by the officers to arrest him. At that point, the officers had not yet had a chance to frisk Quiroz, and—as they would later discover—Quiroz was carrying a knife in his pocket.

5. After de-escalation, verbal commands, and attempts at relaxed physical control failed, Officer Pineda was eventually forced to use his Taser device on Quiroz to allow them to arrest him. However, the Taser device was not effective, and the officers were still unable to subdue Quiroz and place him under arrest. By this point, both officers were forced to go hands-on in an attempt to wrestle Quiroz to the floor so that he could be placed in handcuffs and arrested. For the next approximately five minutes, Quiroz dragged and wrestled the two officers across the apartment, and refused all officer commands to calm down and allow himself to be put under arrest. At one point, Quiroz grabbed one officer's vest near his throat and yelled profane threats into his face.

6. Eventually—after having dragged and wrestled the two officers outside onto the apartment complex second-floor landing—Quiroz was finally wrestled to the ground and put in handcuffs. Quiroz only spent a matter of seconds laying on his stomach while restrained before he was sat upright by the officers. Almost immediately thereafter, several other APD officers

arrived as backup and took control of the scene. Officers Pineda and Hanna were relieved and had no interactions whatsoever with Quiroz from that point forward.

7. The APD officers who had arrived as backup attempted to transport Quiroz down the stairs to where EMS had arrived. Quiroz—who is believed to have weighed approximately 330 pounds at that time—refused to walk to EMS’s location on his own, and actively resisted being physically carried to where EMS was waiting to help him. Eventually—long after Officers Pineda and Hanna’s earlier interactions with Quiroz had concluded—an EMS medical professional administered an involuntary injection of what is believed to have been a benzodiazepine or other sedative drug to sedate the still-resisting Quiroz. Quiroz suffered a medical emergency almost immediately after being injected with the benzodiazepine. Life-saving measures were attempted by EMS, but Quiroz ultimately passed away shortly thereafter. Based on information and belief, Quiroz was discovered to have been under the influence of numerous illicit drugs during the entire encounter that forms the basis of this lawsuit.

8. In contrast to the description of events contained in the First Amended Complaint, Officer Pineda and Officer Hanna never punched or kicked or elbowed Quiroz, never used force against him once he had already been restrained in handcuffs, and never struck Quiroz in the head. The force used by Officers Pineda and Hanna was used only to the extent necessary to subdue Quiroz and make it possible to arrest and remove him from Plaintiff Salazar’s residence as she had requested.

B. The Travis County District Attorney has telegraphed criminal proceedings for Officers Pineda and Hanna arising out of Plaintiffs’ allegations.

9. Travis County District Attorney Jose Garza has made it clear that he will pursue what ostensibly will be felony Aggravated Assault by a Public Servant charges against Officers Pineda

and Hanna related to the conduct alleged by Plaintiff herein.³ District Attorney Garza issued one of several press releases that plainly state that he will present Officers Pineda and Hanna to a grand jury in “early fall of 2021” for the exact same conduct and accusations underlying this lawsuit.⁴ The District Attorney’s press releases also list as suspects the other APD Officers—Officers Dowdell, Parker, Yaletchko, and Garcia—who were involved in the subduing of Quiroz after they took over and relieved Officers Pineda and Hanna as backup. The other officers are not parties to this lawsuit. Likewise, for reasons unknown, Plaintiffs did not sue the medical professional who injected Quiroz with a sedative drug immediately prior to the medical emergency that led to his death, nor did the District Attorney list such medical professional as a possible criminal defendant.

10. Based on District Attorney Garza’s campaign promises and corresponding thirteen indictments of local first responders in his less-than-one-year tenure as the Travis County’s District Attorney—and with grand jury presentations for roughly 40 other Travis County first responders already announced by his office—the likely result of the grand jury presentation related to Officers Pineda and Hanna is not hard to predict.⁵

11. Officers Pineda and Hanna assert that their ability to effectively defend themselves in this civil lawsuit will be crippled by the fact that their pending felony indictment makes it de facto necessary for them to invoke their Fifth Amendment rights during civil discovery. Accordingly, Defendant Pineda and Hanna’s civil counsel respectfully requests that this Court temporarily stay civil discovery in this suit in order to ensure that Defendants Pineda and Hanna are able to fully

³ See **Ex. 1**, *District Attorney’s September 13, 2021 Press Release*, pg. 4, available at https://www.traviscountytexas.gov/images/district_attorney/docs/Press_Releases/2021/Case_Summaries_September_13.pdf.

⁴ *Id.*

⁵ See *e.g. Id.* at pgs. 1–3 (listing and describing the 13 indictments of local first responders within the past year).

defend themselves, their actions, and their reputations in both this suit *and* the parallel criminal proceedings—without one defense being necessarily and fundamentally crippled by the other.

II. ARGUMENTS & AUTHORITIES

A. Standard Applied to a Motion to Stay.

12. “A district court has the inherent power to stay proceedings incidental to its power to control the disposition of its docket.”⁶ This Court recently granted stays of discovery similar to the one requested herein in *Ambler, Drake, and Nembhard*.⁷ Courts may utilize their power to stay discovery “when the interests of justice seems to require such action.”⁸ In *Campbell*, the Fifth Circuit admonished district courts to “be sensitive to the difference in the rules of discovery in civil and criminal cases.”⁹ “While the Federal Rules of Civil Procedure have provided a well-stocked battery of discovery procedures, the rules governing criminal discovery are far more restrictive.”¹⁰ The Fifth Circuit further advised that “in ruling on requests for stays of the civil side of parallel civil/criminal proceedings, [j]udicial discretion and procedural flexibility should be utilized to harmonize the conflicting rules and policies applicable to one suit from doing violence to those pertaining to the other.”¹¹

⁶ Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31, pg. 2 (citing *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983)).

⁷ See Order, *Ambler v. Williamson County*, 1:20-cv-01068-LY (W.D. Tex. July 27, 2021), Dkt. # 89; see also Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31; see also Text Order, *Nembhard v. Williamson County*, 1:21-cv-00350-RP (W.D. Tex. Aug. 26, 2021).

⁸ *United States v. Kordel*, 397 U.S. 1, 12, n. 27 (1970).

⁹ *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962).

¹⁰ *Id.*

¹¹ *Id.*

13. Courts have established several factors to be considered in determining whether a stay is appropriate.¹² The current variation of these factors was first articulated in *Plumbers & Pipefitters*, and has been adopted and applied by District Courts in the Fifth Circuit:¹³

- (1) The extent to which the issues in the criminal case overlap with those presented in the civil case;
- (2) The status of the criminal case, including whether the criminal defendant has been indicted;
- (3) The private interests of the plaintiff in proceeding expeditiously weighed against the prejudice to plaintiff caused by the delay;
- (4) The private interests of and burden on the defendant;
- (5) The interests of the courts; and
- (6) The public interest.¹⁴

B. On balance, the factors weigh in favor of staying discovery to relieve Officers Pineda and Hanna of the impossible choice between either harming their criminal defense or harming their civil defense.

a. The “overlap” factor weighs in favor of a stay of discovery because the facts and legal issues align to create a danger of self-incrimination.

14. The first factor—the degree to which civil issues overlap with criminal issues—has been deemed the most important factor.¹⁵ The primacy and importance of the overlap factor is because “[i]f there is no overlap, there would be no danger of self-incrimination and accordingly no need

¹² See *Walker v. Wilburn*, No. 3:13-CV-4896-D, 2015 WL 5873392, at *5 (N.D. Tex. Oct. 5, 2015) (citing *Heller Healthcare Fin., Inc. v. Boyes*, 2002 WL 1558337, at *2 (N.D. Tex. July 15, 2020); see also *Trs. of Plumbers & Pipefitters Nat’l Pension Fund v. Transworld Mech. Inc.*, 886 F.Supp. 1134, 1139 (S.D. NY. 1995)(establishing current variation of test); see also *Golden Quality Ice Cream Co., Inc. v. Deerfield Specialty Papers, Inc.*, 87 F.R.D. 53 (E.D. Pa. 1980) (establishing initial test).

¹³ See *Plumbers and Pipefitters*, 886 F.Supp at 1139; see also *Librado v. M.S. Carriers, Inc.*, CIV.A. 3:02-CV-2095D, 2002 WL 31495988, at *1 (N.D. Tex. Nov. 5, 2002); see also *Alcala v. Tex. Webb County*, 625 F.Supp.2d 391, 398 – 99 (S.D. Tex. 2009); see also *Walker*, 2015 WL 5873392 at *5.

¹⁴ *Walker*, 2015 WL 5873392 at *5; see also *Alcala*, 625 F.Supp.2d at 399; see also *Sec. & Exch. Comm’n v. Kiselak Capital Grp., LLC*, No. 4:09-CV-256-A, 2011 WL 4398443, at *2; see also *Agueros*, 2008 WL 2937972, at *1.

¹⁵ See *S.E.C. v. AmeriFirst Funding, Inc.*, CIV A 307-CV-1188-D, 2008 WL 866065, at *2 (N.D. Tex. Mar. 17, 2008 (citing *Volmar Distribs., Inc. v. New York Post Co.*, 152 F.R.D. 36, 39 (S.D.N.Y. 1993)).

for a stay.”¹⁶ *A court should consider whether the defendant could effectively defend the civil lawsuit without being pressured into waiving his Fifth Amendment rights if no stay is entered.*¹⁷ Some courts have decided that the overlap factor weighs in favor of a stay simply because the subject matter of the two proceedings was substantially similar.¹⁸ Courts have weighed this factor in favor of a stay even when the overlap of the issues was not “entirely coterminous.”¹⁹

15. The underlying legal subject matter of Officers Pineda and Hanna’s criminal exposure and this civil lawsuit is undoubtably substantially similar. The District Attorney explicitly indicated that he will present Officers Pineda and Hanna to a grand jury “in early fall of 2021” for the exact same alleged conduct Plaintiffs complain of in this lawsuit.²⁰ It is also readily apparent that the officers *cannot* effectively defend this civil suit without being pressured into waiving their Fifth Amendment rights.²¹

16. Assuming the grand jury will find cause to indict them, Officers Pineda and Hanna would predictably be indicted for Aggravated Assault by a Public Servant in the First Degree.²²

¹⁶ *AmeriFirst Funding, Inc.*, 2008 WL 866065, at *2 (citing *Trs. of Plumbers & Pipefitters Nat’l Pension Fund*, 886 F.Supp. at 1139)).

¹⁷ *See Alcalá*, 625 F.Supp.2d at 400.

¹⁸ *See Sec & Exch. Comm’n v. Mutuals.com Inc.*, CIV. A.3:03-CV-2912-D, 2004 1629929, at *3 (N.D. Tex. July 20, 2004); *see also Dominguez v. Hartford Fin. Svcs. Grp., Inc.*, 530 F.Supp.2d 902, 907 (S.D. Tex. 2008); *see also Doe v. Morris*, No.11-1532, 2012 WL 359315, at *1 (E.D. La. Feb. 2, 2012).

¹⁹ *Heller Healthcare Fin., Inc.*, 2002 WL 1558337, at *2.

²⁰ **Ex. 1**, *District Attorney’s September 13, 2021 Press Release*, pg. 4 (emphasis added).

²¹ *See Alcalá*, 625 F.Supp.2d at 400.

²² Because Quiroz later died after he was involuntarily injected with a sedative by a medical professional at the scene, the officers could also arguably be indicted for Manslaughter, Criminally Negligent Homicide, or even Murder in the First Degree, but such charges are less likely due to the seemingly obvious intervening causes of death. *See* TEX. PENAL CODE § 19.02, 19.04, & 19.06; *see also Hutcherson v. State*, 373 S.W.3d 179, 186 (Tex. App. 2012) (holding that the doctrine of “intervening cause” is built into standard Texas jury charges for the crimes of

Aggravated Assault by a Public Servant in the First Degree requires the State to prove Officers Pineda and Hanna caused serious bodily injury to Quiroz while Pineda and Hanna were acting as public servants under color of his office/employment.²³ The Texas Penal Code allows for a peace officer to use force against another person “when and to the degree the actor *reasonably* believes the force is *immediately necessary* to make or assist in making an arrest or search.”²⁴

17. Here, Plaintiffs’ Excessive Force claim in this civil suit requires them to prove that Quiroz: (1) suffered a physical injury; (2) which resulted directly and only from a use of force by Defendants Pineda and Hanna while acting under color of State law that was clearly *excessive to the need*; and (3) the excessiveness of the force employed was objectively *unreasonable*.²⁵

18. Demonstrably, these legal tests for the telegraphed criminal grand jury proceeding and this civil lawsuit overlap significantly—in that both require an examination of the force allegedly used by Officers Pineda and Hanna, and whether it was reasonable and necessary. This legal overlap—arising from the exact same event and involving the exact same parties—reveals that these issues are effectively “coterminous.”²⁶ This Court in *Drake*—an ongoing civil suit wherein the grand jury presentation is likewise scheduled for the fall of 2021—held recently that “the likely substantial overlap between the expected indictment against [the officer for using a less lethal round against the plaintiff] and claims against him in the current suit favor a stay of discovery against him.”²⁷

Murder, Manslaughter, and Criminally Negligent Homicide, because a plausible intervening cause would negate causation beyond a reasonable doubt.).

²³ See TEX. PENAL CODE § 22.02(a)(1) and (b)(2)(A).

²⁴ Tex. Penal Code Ann. § 9.51 (West) (emphasis added).

²⁵ See *Knight v. Caldwell*, 970 F.2d 1430, 1432, n.3 (5th Cir. 1992); see also *Johnson v. Morel*, 876 F.2d 477 (5th Cir. 1989).

²⁶ *Heller Healthcare Fin., Inc.*, 2002 WL 1558337, at *2

²⁷ Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31, pg. 4 (staying discovery for ninety days).

19. Permitting civil discovery before the criminal matters have been resolved would force Officers Pineda and Hanna to choose between either (1) revealing their criminal defense strategies and providing criminal impeachment testimony, or (2) asserting their Fifth Amendment rights in civil discovery and thus being unable to fully defend themselves in this lawsuit—precisely the situation this factor seeks to avoid. In the context of that impossible decision, the first and most important overlap factor weighs *heavily* in favor of the stay of discovery requested herein.

b. The “status of the criminal case” factor does not weigh against a stay enough to merit denying them the chance to present a vigorous defense in both legal actions.

20. Officers Pineda and Hanna recognize that the “strongest case for a stay exists where a party is indicted for a serious offense and must defend a civil action involving the same matter.”²⁸ Whether the civil and criminal issues will overlap *prior* to an indictment is normally a “matter of speculation.”²⁹ In the aforementioned *Drake* case, Officers Pineda and Hanna acknowledge and respect that this Court held that the lack of an indictment weighed against a stay of discovery, but that on balance a stay of discovery was still warranted.³⁰ Apart from *Drake*, this Court and others within the Fifth Circuit have held that this factor *can* be found to weigh in favor of a stay of discovery where the status of the investigation renders the potential indictment imminent.³¹ The grand jury presentation of this matter is scheduled to take place in

²⁸ *Id.* (emphasis added) (internal quotations removed); see also *Lizarraga v. City of Nogales Arizona*, 2007 WL 215616, at *3 (D. Arizona, January 24, 2007).

²⁹ *Acala*, 625 F. Supp. 2d at 401.

³⁰ Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31, pg. 5.

³¹ See *Slack v. City of San Antonio, Texas*, No. CV SA-18-CA-1117-FB, 2019 WL 11097069, at *1 (W.D. Tex. May 28, 2019) (granting a stay of discovery, and stating that the Court’s expectation of a “swift resolution” to the investigation merited a short stay of discovery.); see also *See Brown v. Kenner Police Dep’t*, Civil Action No. 17-3445, 2017 WL 5157563, at *1-2 (E.D. La. Nov. 7, 2017).

“early fall of 2021,” and thus likewise constitutes an imminent determination of whether or not the officers will be indicted. Thus, either the second factor weighs in favor of a stay because the indictment determination is imminent as in *Brown* and *Slack*, or at the very least as in *Drake*, this factor does not weigh heavily enough against a stay to merit denying Officers Pineda and Hanna the right to present a vigorous legal defense in both cases.

c. The factor related to Plaintiffs’ interests does not negate the need for a stay, because mere delay alone is legally insufficient, and Plaintiffs’ interests do not outweigh the interests of Defendants when compared.

21. Courts recognize that a “civil plaintiff has an interest in the prompt resolution of its claims and in obtaining discovery while information is still fresh in witnesses’ minds.”³² However, “[n]ormally in evaluating the plaintiff’s burden resulting from the stay, courts may insist that the plaintiff establish more prejudice than simply a delay in his right to expeditiously pursue his claim.”³³ Courts recognize that this allegation of prejudice is typically insufficient—even if the criminal case is “proceeding slowly and uncertainly, with no specific trial date,” because “Texas law recognizes a right to a speedy trial.”³⁴ Moreover, the events of this lawsuit were largely captured via video evidence, which does not have the corresponding threat of degradation like that of a human witness’s memory.

22. The above notwithstanding, Officers Pineda and Hanna acknowledge and respect that this Court in *Drake* found that the plaintiff had a heightened interest due to the fact that the defendant officer had not yet been indicted, which is also true here.³⁵ When weighed however, this Court also found that the prejudice to the plaintiff was outweighed by the prejudice to the defendant

³² See *Mutuals.com Inc.*, 2004 WL 1629929, at *3.

³³ *Walker*, 2015 WL 5873392 at *7 (citing *Alcala*, 625 F.Supp.2d at 397).

³⁴ *Librado*, 2002 WL 31495988, at *2; see also *Walker*, 2015 WL 5873392 at *7.

³⁵ Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31, pg. 5.

officer—the only party to the suit facing a potential prison sentence.³⁶ In *Slack*, in contrast, this Court held that the short time the case had been on the docket and the lack of any showing of “discovery or witnesses that would be lost during the stay” shifted the analysis to the extent that the plaintiff’s interests factor weighed in favor of granting a stay of discovery.³⁷ The case at bar has likewise only been pending for a short amount of time, and Plaintiffs will likewise be unable to prove that any discovery opportunities will be irreparably lost if a stay is granted. Because mere delay alone is insufficient as a legal argument for this factor, and because the potential consequences of this motion for the respective parties are far more grievous for Officers Pineda and Hanna, this factor either favors a stay of discovery, or at the very least does not weigh heavily enough against a stay overall to merit denying Officers Pineda and Hanna the right to present a vigorous legal defense in *both* cases.³⁸

d. The factor related to Defendants’ interests weighs *heavily* in favor of a stay, because the lack of a stay would unavoidably cripple either their criminal defense or their civil defense.

23. With all due respect to Plaintiffs’ claims and the tragic medical emergency and resulting death of Quiroz, the potential consequences tied to the results of this motion to stay are far more grievous for Defendants Pineda and Hanna. The fourth factor considers the private interest of the defendant in securing a stay, and the burden that would result if the stay were denied.³⁹ “[A]bsent a stay, [the officer] faces a conflict between asserting his Fifth Amendment rights and fulfilling his legal obligations as a witness in this civil action. This conflict may be largely, if not

³⁶ *Id.* at 5-6.

³⁷ See *Slack v. City of San Antonio, Texas*, 2019 WL 11097069, at *2.

³⁸ See *id.*

³⁹ *Librado*, 2002 WL 31495988, at *3; see also *Walker*, 2015 WL 5873392, at *8.

completely, eliminated by granting a stay.”⁴⁰ A defendant officer also has an interest in a stay “to avoid exposing [his] criminal defense strategy to the prosecution.”⁴¹

24. The insidious civil-law threat looming over Officers Pineda and Hanna—should they choose to invoke their Fifth Amendment Constitutional rights during depositions—is the potential for harmful adverse inferences in this civil case. Legally, when a party invokes his or her Fifth Amendment privilege during a deposition, the invocation of such privilege is potentially admissible against the invoking party, specifically as an inference allowing a civil jury to interpret such invocations adversely against the invoking party.⁴²

25. Applied here in more direct terms, Plaintiffs would have the right to petition this Court to instruct the jurors that they are allowed to interpret Officers Pineda and Hanna’s decisions to invoke their Constitutional rights to mean that their testimony—had they testified—would have proven they used excessive force against Quiroz. Such an inference would inevitably be fatal for their civil defense, and a corresponding liability verdict would inevitably affect their reputations, their current employment as police officers, and their ability to find future employment in any field.

26. In contrast, the criminal-law insidious threat looming over Officers Pineda and Hanna—should they choose *not* to invoke their Fifth Amendment Constitutional rights—is that written discovery and depositions in this lawsuit will force Pineda and Hanna to potentially create a record of evidence that the Travis County District Attorney’s office may use for potential impeachment evidence during their criminal trial. Officers Pineda and Hanna would be forced to

⁴⁰ See *Librado v. M.S. Carriers, Inc.*, No. CIV.A. 3:02-CV-2095D, 2002 WL 31495988, at *3 (N.D. Tex. Nov. 5, 2002).

⁴¹ *Walker*, 2015 WL 5873392, at *8.

⁴² See *F.D.I.C. v. Fid. & Deposit Co. of Maryland*, 45 F.3d 969, 977 (5th Cir. 1995) (reiterating that courts have discretion as to whether to allow a party’s Fifth Amendment invocation into evidence, and permit an adverse inference to be drawn from the same).

each create a sworn, seven-hour record about their split-second decisions to use force against the large, imposing Quiroz once the de facto wrestling match began.⁴³ Such impeachment evidence would otherwise never be obtainable to use against almost any other criminal defendant.

27. Absent a stay, Officers Pineda and Hanna would thus effectively be forced to choose between (1) the civil jury holding their decision not to testify against them; *or* (2) providing information and potential impeachment fodder to the Travis County District Attorney, who would otherwise not be entitled obtain any sworn testimony from Officers Pineda or Hanna prior to any criminal trial. ***Other than the granting of this stay, there is no third alternative option that would allow Officers Pineda and Hanna to avoid suffering prejudice in one case or the other.***

28. Like in *Librado* and in *Walker*, Officers Pineda and Hanna’s dilemma of being forced to pick between the two testimonial poisons will be “largely, if not completely, eliminated by granting a stay of appropriate scope.”⁴⁴ This Court in *Drake* agreed, holding that the officer defendant’s interests outweighed any prejudice the plaintiff may have faced based on the outcome of the motion to stay.⁴⁵ The fourth factor relating to the defendant’s interests consequently weighs heavily in favor of granting the requested stay of discovery.

- e. **The factor related to the Courts’ interests weighs in favor of a stay, because the criminal case’s results could have legal effects on the burden of proof in this suit, and could also increase the likelihood of settlement.**

⁴³ See TEX. PENAL CODE § 22.02(a)(1) and (b)(2)(A); see also *Graham v. Connor*, 490 U.S. 386, 396–97, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (1989) (“The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make *split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving*—about the amount of force that is necessary in a particular situation.”) (emphasis added).

⁴⁴ *Librado*, 2002 WL 31494988, at *3; see also *Walker*, 2015 WL 5873392 at *8.

⁴⁵ Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31, pgs. 5–6.

29. The fifth factor takes this Court's own interests into account, including judicial efficiency.⁴⁶ While progressing civil cases on a docket is no doubt important, courts have recognized that “granting a stay of discovery serves the interests of the courts, because conducting the criminal proceedings first advances judicial economy.”⁴⁷ To advance judicial economy here, the Court should analyze whether—and to what extent—the outcome of the parallel criminal proceedings would “streamline” the issues in this lawsuit.⁴⁸ The judicial efficiency analysis also turns upon the degree of overlap between the criminal and civil cases, with an eye toward whether a conviction in the criminal case would “speak to the actual bases of liability” in the latter civil action.⁴⁹

30. Due to differences in the standards of proof between civil and criminal persecutions, “the possibility always exists for a collateral estoppel or res judicata effect on some or all of the overlapping issues.”⁵⁰ Resolution of the criminal case consequently may also increase the likelihood of reaching a settlement that resolves the civil lawsuit outright.⁵¹ All of the possible efficiencies discussed *supra* are palpable in the case at bar.

31. Officers Pineda and Hanna acknowledge and respect that this Court found in *Drake* that the factor regarding the Court's interest favored neither party.⁵² In *Slack*, this Court had earlier held that this factor “supports a stay” even pre-indictment, because the case had only been

⁴⁶ *Offill*, 2008 WL 958072, at *3

⁴⁷ *Id.*; see also *Walker*, 2015 WL 5873392 at *8.

⁴⁸ See *Alcala*, 625 F.Supp.2d at 406.

⁴⁹ *Id.*

⁵⁰ *Offill*, 2008 WL 958072, at *3; see also *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 568 (1951).

⁵¹ See *Offill*, 2008 WL 958072 at *3; see also *Alcala*, 625 F.Supp.2d at 406 (noting a potential criminal conviction against the civil defendant might significantly decide that gambling occurred, the wrongful conduct in dispute in the overlapping civil case, and therefore promote settlement of the civil litigation).

⁵² Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31, pg. 6.

pending on the Court’s docket for seven months, and thus a temporary stay of discovery would “not ‘unduly interfere with the management of its docket.’”⁵³ The fifth factor of judicial efficiency consequently should be viewed in this case as either neutral or weighing in favor of granting Officers Pineda and Hanna’s requested stay.

f. The factor related to the public’s interests weighs in favor of a stay, because the public has an interest in preserving citizens’ abilities to invoke their Constitutional rights.

32. The public has an interest in the just and Constitutional resolution of disputes with minimal delay.⁵⁴ However, that resolution must be weighed against the possibility that the “integrity” of a citizen’s Constitutional rights might be in jeopardy.⁵⁵ The Fifth Circuit has also recognized that the public has an interest in protecting law enforcement, and “ensuring the criminal discovery process is not subverted.”⁵⁶

33. Considering these principles, the public’s interests also weigh in favor of granting Deputy Pineda and Hanna’s requested stay. Staying civil discovery will protect the integrity of Pineda and Hanna’s criminal process by refraining from jeopardizing their Constitutional rights pursuant to the Fifth Amendment. The public has a vested interest in maintaining the integrity of a citizen’s choice to invoke the Fifth Amendment—and also in being shielded from the unavoidable tainting of that Constitutional right discussed *supra*.⁵⁷

⁵³ See *Slack v. City of San Antonio, Texas*, 2019 WL 11097069, at *1 (citing *Bean v. Alcorta*, 220 F. Supp. 3d 772, 777 (W.D. Tex. 2016)).

⁵⁴ See *Collins*, 2011 WL 3874910, at *4; see also *Librado*, 2002 WL 31495988, at *3; see also *Frierson v. City of Terrell*, CIV.A.3:02CV2340-H, 2003 WL 21355969, at *4 (N.D. Tex. June 6, 2003).

⁵⁵ *Frierson*, 2003 WL 21355969, at *4.

⁵⁶ *Offill*, 2008 WL 958072, at *4 (citing *Campbell*, 307 F.2d at 487).

⁵⁷ See *Campbell*, 307 F.2d at 487.

34. Officers Pineda and Hanna acknowledge and respect that this Court found in *Drake* that the factor regarding the public’s interest favored neither party.⁵⁸ In *Slack*, this Court previously held that the public interest factor weighed in favor of granting a stay because “a review and criminal investigation of the incident has begun.”⁵⁹ The investigation in this case is likewise underway to the extent that a grand jury presentation of the findings of such investigation is scheduled to take place any day now—the fall of 2021. The public’s interests in preserving the ability of all citizens to invoke their Constitutional rights—and otherwise be afforded fair trials in both civil and criminal actions—thus should likewise be viewed as either neutral, or weighing in favor of granting Deputy Pineda and Hanna’s requested stay.

III. PRAYER

35. WHEREFORE, PREMISES CONSIDERED, Defendants Pineda and Hanna respectfully request that this Court grant their motion to stay civil discovery, and for all other relief to which Defendants Pineda and Hanna may justly be entitled in law or equity.

Respectfully submitted,

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⁵⁸ Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31, pg. 6.

⁵⁹ See *Slack*, 2019 WL 11097069, at *4.

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**ATTORNEYS FOR DEFENDANT
EDUARDO PINEDA AND SPENCER
HANNA**

CERTIFICATE OF CONFERENCE

Counsel for Defendants Pineda and Hanna has complied with the Court's requirement to confer. Defense counsel conferred with all counsel of record. Plaintiff's counsel is opposed to this motion. Defendant City of Austin is not opposed to this motion.

_____/s/ Blair J. Leake
Blair J. Leake

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November, 2021, a true and correct copy of the above and foregoing Motion was electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following counsel of record:

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_____/s/ Blair J. Leake
Blair J. Leake

2. Plaintiffs have continuously sought relevant videos, offense reports, autopsy reports and other documents which relate to and explain the events that led to the death of Enrique Quiroz, but has been denied any and all information about events immediately prior to Mr. Quiroz being determined to be deceased. Plaintiff's counsel has sought a copy the Medical Examiner's Report and Autopsy and have been denied. Counsel has sought an opportunity to view the officers' videos of the events which occurred at the time of Quiroz's death and have been denied other than viewing one brief video which was modified and limited in what was shown. Plaintiff's counsel has communicated directly with the Medical Examiner's office and have been advised that the District Attorney has refused to allow them to produce relevant medical information about Mr. Quiroz's causes of death. Counsel has communicated with an individual prosecutor in the District Attorney's Civil Rights Office for more than a year and continuously been denied access to any details which explains why Mr. Quiroz is deceased. Counsel has communicated with attorneys in the City Attorney's office and been continuously denied all evidence except the one opportunity to view a short modified video with family members.

3. Plaintiffs filed this lawsuit knowing additional individuals might need to be identified and additional parties might be responsible for events which caused the death of Mr. Quiroz and time was becoming a factor. Since the filing of this lawsuit, Counsel has sought information about what the medical examiner's autopsy and video evidence would produce to assist in identifying all legally liable parties but have been denied any information. Plaintiff's counsel has attempted to have a Rule 26(f) conference, but other counsels would not agree to any earlier dates even though Plaintiff's counsel was always ready and able to agree to abiding by this Court's Protective Order. No assistance in making any discovery available to Plaintiff's counsel have been provided. Defendants' counsels have all been approached by Plaintiff's counsel for purposes of getting assistance with understanding the medical considerations which affect this case, but has received no information which provided much needed incident details.

4. Plaintiff has consented to the Agreed Protective Order and has sent Plaintiff's Request for Production to the City of Austin. Plaintiff have Interrogatories ready to present to the individual officers, but needs immediate access to the discovery being held by all Defendants to determine what additional individuals might be legal parties to this lawsuit and any additional causes of action.

5, Defendants's Motion states "an EMS medical professional administered an involuntary injection of what is believed to have been a benzodiazepine or other sedative drug" in paragraph 7 of their Motion. This information is critical information which everyone continues to refuse to detail to Plaintiff. Defendants Pineda and Hanna also admit tasing Plaintiff in their pleadings.

II. ARGUMENTS

6. The Statute of Limitation occurs on March 31, 2022 and Plaintiff has taken every action reasonably possible to get critical details about what occurred to Enrique Quiroz. Defendants have critical information, videos, medical examiner's reports and other evidence which Plaintiff must have to prosecute this case. Plaintiff asks that this Court deny any requests to Stay any Discovery and allow Plaintiff to receive all relevant discovery, either by agreements of counsels, or by discovery proceedings.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff request this Court deny Defendant's Motion To Stay Discovery in its entirety. Plaintiffs also seek any further relief to which they are entitled.

Respectfully submitted,

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By: /s/Bobby Taylor
Bobby R. Taylor
State Bar No. 19685500
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2021, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system, as well as by sending a copy to lead counsel by email.

/s/BobbyTaylor
Bobby Taylor

Via Electronic Filing:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ENRIQUE QUIROZ, Deceased,	§	
through JOSEPHINE SALAZAR	§	
Individually, and as NEXT FRIEND	§	
OF J.R.S., E.F.Q., and E.Q., Minors;	§	
MERCEDES QUIROZ, JASMINE	§	
QUIROZ, ANDREW RAMIREZ and	§	
CHRISTINA ESPINOZA as	§	
NEXT FRIEND OF H.E., a Minor,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	No. 1:21-cv-00443-RP
	§	
OFFICERS EDUARDO PINEDA,	§	
SPENCER HANNA and	§	
CITY OF AUSTIN, TEXAS,	§	
<i>Defendants.</i>	§	

**JOINT NOTICE REGARDING MEET & CONFER COURT DIRECTIVE
REGARDING PENDING MOTION TO STAY DISCOVERY**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Officer Eduardo Pineda and Officer Spencer Hanna and the City of Austin and Plaintiffs Josephine Salazar, Mercedes Quiroz, Jasmine Quiroz, Andrew Ramirez and Christina Espinoza (collectively, the “Parties”), by and through their respective counsel, file this Joint Notice Regarding Meet & Confer Court Directive Regarding Pending Motion to Stay Discovery, and would respectfully show the Court as follows:

I. The parties have reached a potential compromise agreement.

Pursuant to this Court’s order¹, the parties have engaged in a diligent meet and confer process that has involved numerous telephone conferences and emails in a good faith effort to

¹ See Order Setting Hearing, Dkt. # 24.

reach a compromise to forestall the need for this Court to formally adjudicate the pending motion to stay discovery.² As a result of those efforts, the parties have reached a potential compromise agreement that could result in the mooted of any need to stay discovery.

The parties would need this Court's assistance and approval in order to effectuate the proposed agreement, because it entails moving various deadlines and settings. The parties consequently believe that discussing this proposed agreement during Wednesday's hearing will provide the parties and this Court the chance to make a good faith effort to put the proposed agreement into effect.

II. The proposed agreement would stay all discovery for 60 days to potentially moot the need for a stay of discovery.

The terms of the parties' proposed compromise agreement are as follows.

- i. **Pending Motion Deferral** – The pending motion to stay discovery will be deferred, but not waived. Nothing in this Agreement shall preclude any defendant from moving for a stay of discovery at a later date.
- ii. **60-Day Stay** – All discovery in this case shall be stayed for a period of sixty days. The purpose of the proposed 60-day stay would be that the need for a motion to stay discovery would be rendered moot in the event that the Travis County grand jury delivers a “No Bill” during the next 60 days. Such an eventuality would also theoretically unburden the parties of the need to litigate with third parties to obtain the medical examiner's findings regarding the decedent's toxicology results and causes of death, because “the District Attorney has refused to allow [the Medical

² See Defs.' Pineda and Hanna's Mot. to Stay Disc., Dkt. # 16.

Examiner's office] to produce relevant medical information about Mr. Quiroz's causes of death."³

- iii. **New Trial Date and Deadlines** – The parties agree that a new trial date and scheduling order deadlines will need to be agreed to as part of this agreement. The parties agree to work in good faith with each other and this Court to agree upon mutually agreeable new deadlines and a new trial setting.

PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, after a hearing or other conference between the Court and the parties, the parties request that this Court stay discovery as requested herein, enter a new scheduling order and trial setting, and for all other relief to which the parties may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS
EDUARDO PINEDA AND
SPENCER HANNA**

³ Pls.' Unopposed Mot. to Amend Scheduling Order to Suppl. or Join Parties, Dkt. # 25, pg. 2.

– AND –

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ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ENRIQUE QUIROZ, Deceased, through	§	
JOSEPHINE SALAZAR Individually,	§	
and as NEXT FRIEND OF J.R.S., E.F.Q.,	§	
and E.Q., Minors; MERCEDES QUIROZ,	§	
JASMINE QUIROZ, ANDREW	§	A-21-CV-443-RP
RAMIREZ and CHRISTINA ESPINOZA	§	
as NEXT FRIEND OF H.E., a Minor,	§	
Plaintiffs,	§	
v.	§	
	§	
OFFICERS EDUARDO PINEDA,	§	
SPENCER HANNA and CITY OF	§	
AUSTIN, TEXAS,	§	
Defendants.	§	

ORDER

Before the court is Defendants Eduardo Pineda and Spencer Hanna’s Motion to Stay Discovery (Dkt. #16) (“the Motion”), Plaintiff’s Response to Defendants Pineda and Hanna’s Motion to Stay Discovery (Dkt. #17), and Defendants Eduardo Pineda and Spencer Hanna’s Reply in Support of Motion to Stay Discovery (Dkt. #19).¹ In compliance with this court’s order setting this matter for a hearing, the parties met and conferred in an effort to resolve the issues raised by the Motion. Dkt. #24. In the wake of those discussions, the parties filed a Joint Notice Regarding Meet & Confer Court Directive Regarding Pending Motion to Stay Discovery (“Joint Notice”). Dkt. #26.

¹ On November 30, 2021, the Motion was referred by United States District Judge Robert Pitman, via text order, to the undersigned for resolution pursuant to 28 U.S.C. § 636(b)(1)(A), Rule 72 of the Federal Rules of Civil Procedure, and Rule 1(c) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas.

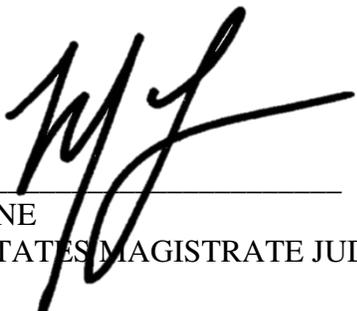
On January 12, 2022, a hearing was held via Zoom on the Motion and the Joint Notice. After reviewing the pleadings, the relevant case law, and the entire case file, the court **GRANTS** the Motion for the reasons stated in the Joint Notice.

For the reasons stated at the hearing and in compliance with the agreement reached by the parties, **IT IS ORDERED** that Defendants Eduardo Pineda and Spencer Hanna's Motion to Stay Discovery (Dkt. #16) is **GRANTED**.

IT IS FURTHER ORDERED that, consistent with the agreement reached by the parties, discovery is **STAYED** for a period of 60 (sixty) days from the date this Order is entered.²

IT IS FURTHER ORDERED that, in light of the mutually agreeable 60-day stay, the parties submit a proposed revised scheduling order to the District Judge for his consideration within 14 days.

SIGNED on January 12, 2022.



MARK LANE
UNITED STATES MAGISTRATE JUDGE

² This Order applies to all parties, including the City, as the second page of the Joint Notice refers to "all discovery" and the City signed the Joint Notice. However, as stated at the hearing, this Order does not preclude Plaintiffs moving the court for relief regarding discovery they need to identify additional defendants.

Quiroz. Plaintiffs also received the Medical Examiner's report which detailed the causes of death and all matters which are relevant to this incident. The medical report and records clearly documented the status of injuries suffered by Enrique Quiroz, described the death as a Homicide and listed the causes of death to include "the restraint procedures used" by APD officers. Additionally, the medical records and offense reports identified medications which were injected into Mr. Quiroz as he was in police custody.

4. Austin Police Officers who were involved with the arrest, physical beating of and Homicide of Enrique Quiroz are currently awaiting the Grand Jury's investigation into their actions. Because of such, all parties to this lawsuit have agreed to delay any and all discovery pending further Orders of this Court and actions of the Grand Jury. Because of such, Plaintiffs' counsel has been denied any opportunity to depose any of the officers and others involved and has been delayed in seeking needed discovery to prepare this case for disposition.

5. Plaintiff seeks to file Plaintiff's Second Amended Complaint to give actual notice to all other individuals who Plaintiffs believe could have liability relating to the in custody death of Quiroz based upon the offense report and medical records. Plaintiff is adding two additional Austin Police Officers who had hands on contact with Quiroz and the EMS technician who injection medicines into the body of Quiroz as he lay handcuffed in the custody of APD.

6. The First Amended Scheduling Order allows all motions to amend or supplement pleadings or to join additional parties to be filed before May 13, 2022, which is a time outside the Statute of Limitations.

PRAYER

Wherefore, Premises Considered, Plaintiffs seek consent and permission to file Plaintiff's Second Amended Complaint to comply with Statute of Limitations and Federal Rules of Civil Procedures.

Respectfully submitted,

By:/s/BobbyTaylor
Bobby R. Taylor
Texas Bar No. 19685500
1709 E. Martin L. King, Jr. Blvd.
Austin, Texas 78702
Tel. (512)476-4886
Fax. (512)476-2818
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on March 25th, 2022 a true and correct copy of Plaintiffs' Motion For Leave to File Plaintiffs' Second Amended Complaint was send along with a copy of the Second Amended Complaint to all attorneys currently involved in this lawsuit.

/s/BobbyTaylor
Bobby R. Taylor

Plaintiffs complain about the City of Austin's failures to provide adequate policies, practices, training and procedures in violation of the U.S. Constitution.

PARTIES AND SERVICE

1. Plaintiff Enrique Quiroz and his heirs all resided in Austin, Travis County, Texas at the time of this incident. This incidents and actions of named Defendants described herein were the sole causes of Plaintiff's death. He was not threatening or assaulting any individuals or police officers and Hanna and Pineda described his resistance as "passive". Plaintiff did not physically assault or strike any officer and was not causing any officers to fear for their life or safety. During all relevant times, Defendant City of Austin had numerous additional officers immediately available. Plaintiff was handcuffed with one set of handcuffs with his hands and arms behind his back on the floor and stairs. He was eventually hobbled so that any moving and breathing were extremely difficult. Plaintiff was not resisting as he laid handcuffed on the stairs. Plaintiff had taken no actions which justified the tasing and assaultive abuses caused to him prior to being handcuffed. Plaintiff's injuries caused by these Officer Defendants included their tasing and striking Enrique Quiroz about the face and body before placing him in handcuffs. He was continuously handcuffed with his hands and arms behind his back while laying on his stomach, face down for an extended period of time. He was continuously restrained without consideration of his body side, weight and position during his being handcuffed and hobbled. Defendants caused numerous facial and head bruises, mental, emotional, physical bodily injuries and death . EMS employee Leggio administered medications which included Versed, Narcan and Epinephrine without verifying Plaintiff's medical status and conditions. Defendants had actual knowledge that Plaintiff was unarmed and had not caused danger or threatened any individuals. Defendants detained and restrained Plaintiff without considerations for the damages being done by the restraint procedures used and the effects of

medications used on Plaintiff.

2. Defendants Edwardo Pineda, Spencer Hanna and the City of Austin have all made their appearances in this lawsuit. All other Defendants need to be served in this lawsuit.

JURISDICTION

3. The action arises under 28 U.S.C. Section 1331 and 1443.

NATURE OF ACTION

4. This is an action under Title 42 U.S.C. Section 1983. as amended by the Civil Rights Act of 1991 and the Fourteenth Amendment to correct unlawful and unconstitutional practices and policies.

FACTS

5. On March 31, 2020, Plaintiff was visiting with some of his children inside the home of his common law wife, Josephine Salazar. Enrique Quiroz was previously placed under a criminal trespass warning and was asked to leave by his wife. Quiroz did not depart as quickly as requested and the police arrived to remove him from the premises. Defendant Austin Police Officers Hanna and Pineda discussed the circumstances of Enrique Quiroz's presence and advised him to depart immediately, per an existing court trespass order. Plaintiff advised that he was leaving, but Defendant officers were determined to arrest Quiroz rather than allow him to vacate the residence. Hanna and Pineda forcefully grabbed Quiroz and began to force his hands behind his back. Quiroz was thrown to the floor and Defendant officers began to tase, kick and strike Quiroz all about his body and caused immediate injury and physical pain to Plaintiff. The assault on Plaintiff lasted more than five (5) minutes and included continual tasing and kicking Plaintiff as he lay on the ground. Defendant Hanna and Pineda forced Plaintiff's arms to the back and locked him in one single pair of handcuffs which restrained his movement and breathing. Plaintiff weighed approximately Three

Hundred pounds and stood approximately Five (5) feet Nine inches tall. Pineda and Hanna placed their body weight and knees on Plaintiff's body as he laid on his stomach with his hands cuffed to his back. Plaintiff asked Defendants to loosen restraints and modify their handcuffing position as his size made breathing difficult. Any resistance from Plaintiff was passive and not physical or aggressive. Defendants Hanna and Pineda, acting together, continued to assault and strike Plaintiff in the head and body using full force of knee kicks and fists on his body. Other officers arrived, including Officers Dowdell and Parker who cooperated with Defendants Hanna and Pineda in restraining Plaintiff and holding him down on his stomach or hunched over as they applied additional pressures. All Defendant Officer had complete control of Plaintiff's hands and body and completely restrained his movements and breathing abilities. Defendant Leggio injected Plaintiff with medications which included Versed, Narcan and Epinephrine which were damaging to Defendant's body at the time of Leggio's actions. All the physical force used and medical actions described herein was excessive, unnecessary and caused or contributed to Plaintiff's death.

6. Defendants caused Plaintiff to suffer various serious injuries and physical damages which included tazing, and illegal restraint procedures causing physical injury to his body and lead to his death.

7. The individual named Officers' actions were done intentionally and with conscious indifference to the rights, safety and protection of Plaintiff Quiroz and were done to cause the most serious of injuries to his physical body and mind. At all times relevant to this incident, Defendant officers did observe both Plaintiff's hands and knew that Plaintiff's hands were empty and that he made no threats or caused Defendant officers to be in fear for themselves or others. Quiroz did not

attempt to physically resist the officers, avoid the officers, escape, elude, struggle or move in any direction. Defendant Leggio administered medications which were dangerous to Plaintiff's health and welfare.

EXCESSIVE FORCE

8. Defendants' actions were intentional and done with conscious indifference to the rights, safety and suffering of Plaintiff. Defendant Officers had no reasonable beliefs that Plaintiff was fighting or attempting to assault them, evade them or cause either of them any injury. Defendants' actions were the sole cause for Plaintiff pain, suffering and injury and each continued the tazing with knowledge that it could and did lead to the death of Plaintiff. Defendant Officers and Leggio, individually and as a group, had actual knowledge that tazing a restrained individual and the physical restraints methods used as well as the medications shot into his body was infliction of physical pain and suffering and violated Plaintiff's civil rights as assured by the U.S. Constitution. Defendants' actions were conscious, indifferent and in Violation of 42 U.S.C. Section 1983.

NEGLIGENT RETENTION, TRAINING, SUPERVISION AND ABSENCE OF POLICIES, DISCIPLINE AND PROCEDURES IN VIOLATION OF 42 U.S.C. SECTION 1983

9. Plaintiffs alleges that the conduct of Defendant City of Austin, and the individually identified Defendant Officers were consciously indifferent and constituted negligent and non-existing training, supervision, discipline, absence of actual policies and procedures and unreasonably dangerous retention policies in violation of 42 U.S.C. Section 1983. Defendant Chief of Police and the City of Austin failed and continues to refuse to discipline these and other officers and were well

aware of the extensive history the police department has when using tazers on individuals they are arresting. The arresting of unarmed and non dangerous individuals by use of tazers is a normal practice of the Austin Police Department and often amounts to police officers using excessive force on individuals they are arresting and/or stopping where there is no fear of violence or danger to the officers or others. Austin Police officers are continuously using tazer devices in similar arrest incidents where the arrested individuals are showing no indications of violence or danger towards the responding officers or others. The use of tazers has become a violent tendency and policy of Austin Police officers, without justification, but yet APD has continually ignored Defendants Officers' past tazing actions. Defendant City had no policies and procedures relating to proper and correct use of tazers which prevented these officers from using unreasonable and unnecessary force. Defendant City's failures to terminate and/or discipline its officers who continue using tazers without justification amounting to excessive force, encourages officers to use tazers when the use of such force is not necessary. The City of Austin has ignored its officers excessive practice of immediately using tazers or glorified and praised Defendant Officers past continual uses of tazers and has made their actions examples for other officers to follow. The actions of these officers reflects the City's deliberate indifference to the use of tazers on non violent individuals and shows the continual violations of individuals civil rights are violations under 42 U.S.C. Section 1983. The failure to train these officers in methods of arresting individuals who are not violent and/or terminate officers who use excessive methods of arresting individuals amounts to City of Austin having no actual policy that doesn't violate individuals civil rights protections.

10. Defendant City of Austin allowed Plaintiff to be abused and have his civil rights

violated, acting through its unwritten daily policies, practices and procedures. Defendant Officers ignored the dangers of the physical restraints used on Plaintiff and the handcuffing behind his back and keeping him laying face down for extended periods of time. The use of a tazer on Quiroz shows deliberate, callous and conscious indifference to the constitutional rights of Quiroz and clearly indicates random tazing and dangerous restraint methods without fear of punishment resulted in death to Plaintiff. Failure to train in proper incidents whereby an officer, who has other officers working with him, should use his properly restrain and taze was the proximate cause of the violations of Quiroz's constitutional rights under 42 U.S.C. Section 1983. Defendants actions included using dangerous and harmful restraint methods which also violated Plaintiff's rights under the U.S. Constitution.

DAMAGES

11. Plaintiff's injuries and damages are the sole result of the actions and/or omissions of Defendants described herein above:

- a. Physical and emotional pain, suffering and injuries
- b. All reasonable and necessary Attorney's fees incurred by or on behalf of Plaintiffs,
- c. All reasonable and necessary costs incurred in pursuit of this suit;
- d. Emotional pain;
- e. Expert fees as the Court deems appropriate;
- f. Surgeries in the past and those needing to be done in the future.
- g. Prejudgment interest;

- h. Medical and death related Expenses in the past and future;
- i. Mental anguish in the past;
- j. Mental anguish in the future;
- k. Loss of earnings in the past;
- l. Loss of earning capacity, in all probability, to be incurred in the future;
- m. All Appeal Cost and Expenses;

EXEMPLARY DAMAGES

12. Plaintiff would further show that the acts and omissions of Defendants Officers were committed with malice or reckless indifference to the protected rights of Plaintiff. In order to punish said Defendants, Plaintiff also seeks recovery from Defendants for exemplary damages.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages, as addressed to each Defendant, together with interest as allowed by law; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

BOBBY R TAYLOR

/s/Bobby Taylor
Bobby R. Taylor
Texas Bar No. 19685500
1709 E. Martin L. King Jr. Blvd
Austin, Texas, 78702
Tel. 512-476-4886
Fax. (512)476-2818
Attorney for Plaintiff

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

CERTIFICATE OF SERVICE

I hereby certify that on March 25th, 2022, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system, as well as by sending a copy to lead counsel by email.

/s/BobbyTaylor
Bobby Taylor

Via Electronic Filing:
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Austin, Texas 78701

Plaintiffs complain about the City of Austin's failures to provide adequate policies, practices, training and procedures in violation of the U.S. Constitution.

PARTIES AND SERVICE

1. Plaintiff Enrique Quiroz and his heirs all resided in Austin, Travis County, Texas at the time of this incident. This incidents and actions of named Defendants described herein were the sole causes of Plaintiff's death. He was not threatening or assaulting any individuals or police officers and Hanna and Pineda described his resistance as "passive". Plaintiff did not physically assault or strike any officer and was not causing any officers to fear for their life or safety. During all relevant times, Defendant City of Austin had numerous additional officers immediately available. Plaintiff was handcuffed with one set of handcuffs with his hands and arms behind his back on the floor and stairs. He was eventually hobbled so that any moving and breathing were extremely difficult. Plaintiff was not resisting as he laid handcuffed on the stairs. Plaintiff had taken no actions which justified the tasing and assaultive abuses caused to him prior to being handcuffed. Plaintiff's injuries caused by these Officer Defendants included their tasing and striking Enrique Quiroz about the face and body before placing him in handcuffs. He was continuously handcuffed with his hands and arms behind his back while laying on his stomach, face down for an extended period of time. He was continuously restrained without consideration of his body side, weight and position during his being handcuffed and hobbled. Defendants caused numerous facial and head bruises, mental, emotional, physical bodily injuries and death . EMS employee Leggio administered medications which included Versed, Narcan and Epinephrine without verifying Plaintiff's medical status and conditions. Defendants had actual knowledge that Plaintiff was unarmed and had not caused danger or threatened any individuals. Defendants detained and restrained Plaintiff without considerations for the damages being done by the restraint procedures used and the effects of

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attempt to physically resist the officers, avoid the officers, escape, elude, struggle or move in any direction. Defendant Leggio administered medications which were dangerous to Plaintiff's health and welfare.

EXCESSIVE FORCE

8. Defendants' actions were intentional and done with conscious indifference to the rights, safety and suffering of Plaintiff. Defendant Officers had no reasonable beliefs that Plaintiff was fighting or attempting to assault them, evade them or cause either of them any injury. Defendants' actions were the sole cause for Plaintiff pain, suffering and injury and each continued the tazing with knowledge that it could and did lead to the death of Plaintiff. Defendant Officers and Leggio, individually and as a group, had actual knowledge that tazing a restrained individual and the physical restraints methods used as well as the medications shot into his body was infliction of physical pain and suffering and violated Plaintiff's civil rights as assured by the U.S. Constitution. Defendants' actions were conscious, indifferent and in Violation of 42 U.S.C. Section 1983.

NEGLIGENT RETENTION, TRAINING, SUPERVISION AND ABSENCE OF POLICIES, DISCIPLINE AND PROCEDURES IN VIOLATION OF 42 U.S.C. SECTION 1983

9. Plaintiffs alleges that the conduct of Defendant City of Austin, and the individually identified Defendant Officers were consciously indifferent and constituted negligent and non-existing training, supervision, discipline, absence of actual policies and procedures and unreasonably dangerous retention policies in violation of 42 U.S.C. Section 1983. Defendant Chief of Police and the City of Austin failed and continues to refuse to discipline these and other officers and were well

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10. Defendant City of Austin allowed Plaintiff to be abused and have his civil rights

violated, acting through its unwritten daily policies, practices and procedures. Defendant Officers ignored the dangers of the physical restraints used on Plaintiff and the handcuffing behind his back and keeping him laying face down for extended periods of time. The use of a tazer on Quiroz shows deliberate, callous and conscious indifference to the constitutional rights of Quiroz and clearly indicates random tazing and dangerous restraint methods without fear of punishment resulted in death to Plaintiff. Failure to train in proper incidents whereby an officer, who has other officers working with him, should use his properly restrain and taze was the proximate cause of the violations of Quiroz's constitutional rights under 42 U.S.C. Section 1983. Defendants actions included using dangerous and harmful restraint methods which also violated Plaintiff's rights under the U.S. Constitution.

DAMAGES

11. Plaintiff's injuries and damages are the sole result of the actions and/or omissions of Defendants described herein above:

- a. Physical and emotional pain, suffering and injuries
- b. All reasonable and necessary Attorney's fees incurred by or on behalf of Plaintiffs,
- c. All reasonable and necessary costs incurred in pursuit of this suit;
- d. Emotional pain;
- e. Expert fees as the Court deems appropriate;
- f. Surgeries in the past and those needing to be done in the future.
- g. Prejudgment interest;

- h. Medical and death related Expenses in the past and future;
- i. Mental anguish in the past;
- j. Mental anguish in the future;
- k. Loss of earnings in the past;
- l. Loss of earning capacity, in all probability, to be incurred in the future;
- m. All Appeal Cost and Expenses;

EXEMPLARY DAMAGES

12. Plaintiff would further show that the acts and omissions of Defendants Officers were committed with malice or reckless indifference to the protected rights of Plaintiff. In order to punish said Defendants, Plaintiff also seeks recovery from Defendants for exemplary damages.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; exemplary damages, as addressed to each Defendant, together with interest as allowed by law; costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

BOBBY R TAYLOR

/s/Bobby Taylor
Bobby R. Taylor
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Tel. 512-476-4886
Fax. (512)476-2818
Attorney for Plaintiff

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

CERTIFICATE OF SERVICE

I hereby certify that on March 25th, 2022, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system, as well as by sending a copy to lead counsel by email.

/s/BobbyTaylor
Bobby Taylor

Via Electronic Filing:
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PARTIES AND SERVICE

1. Denied. The City is without sufficient knowledge to form a belief as to the truth of the allegations concerning Plaintiffs' residence at the time of this incident and therefore denies the same. The remaining allegations are denied.
2. Admit.

JURISDICTION

3. No response is required to Paragraph 3, as it does not contain any factual allegations. The City admits that this Court has federal question jurisdiction over any alleged claims pursuant to 42 U.S.C. § 1983. To the extent a response is required, the City otherwise denies the remaining allegations in Paragraph 3.

NATURE OF ACTION

4. No response is required to Paragraph 4, as it does not contain any factual allegations. To the extent a response is required, the City denies any allegations of unlawful or unconstitutional practices and policies.

FACTS

5. Defendant denies the allegations contained in Paragraph 5.
6. This Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 6 and therefore denies same.
7. Defendant denies the allegations contained in Paragraph 7.

EXCESSIVE FORCE

8. Defendant denies the allegations contained in Paragraph 8.

**NEGLIGENT RETENTION, TRAINING, SUPERVISION
AND ABSENCE OF POLICIES, DISCIPLINE AND PROCEDURES
IN VIOLATION OF 42 U.S.C. SECTION 1983**

9. Defendant denies the allegations contained in Paragraph 9.

10. Defendant denies the allegations contained in Paragraph 10.

DAMAGES

11. Defendant denies all of the allegations contained in Paragraph 11, including subparts a-m.

EXEMPLARY DAMAGES

12. Defendant denies the allegations contained in Paragraph 12.

PRAYER

No response is required to the “Prayer” included in the Complaint, which begins with the phrase “WHEREFORE, PREMISES CONSIDERED,” as it does not contain any factual allegations. To the extent any response is required, the City denies the allegations in the “Prayer” section of the Complaint, and further denies that Plaintiff has any valid or supportable basis for any recovery from the City.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.
2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. Defendant City of Austin affirmatively pleads that the Plaintiffs’ claims are barred in whole or in part since Plaintiff Enrique Quiroz’s intentional acts were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.
4. Defendant City of Austin reserves the right to assert additional affirmative defenses throughout the development of the case.

5. The City asserts that it is absolutely immune from punitive damages under 42 U.S.C. § 1983 pursuant to City of Newport v. Fact Concerts, Inc., 453 U.S. 247 (1981).
6. Defendant asserts the affirmative defense that Plaintiffs failed to mitigate damages, if any, and asserts this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiffs.
7. Defendants assert the affirmative defense of contributory negligence. Plaintiffs' claims are barred in whole or in part by contributory negligence. Plaintiff, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.
8. Defendants affirmatively plead that the Plaintiff's claims are barred in whole or in part since Plaintiffs intentional acts or the acts of others for which this defendant has no responsibility were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.
9. The incident in question and the resulting harm to Decedent were caused or contributed to by Decedent's own illegal conduct.
10. Pleading further and in the alternative if applicable, Plaintiffs' injuries and damages were caused in whole or in part by the conduct of other persons or entities who are not currently parties to this lawsuit.
11. Pleading further, alternatively, and by way of affirmative defense, Defendant would show that at the time and on the occasion in question, Decedent failed to use care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom. If applicable and subject to

withdrawal, Defendant invokes the comparative responsibility provision of the Texas Civil Practice & Remedies Code.

12. Defendant further pleads any fault to be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.
13. Defendant asserts the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies code, and the due process clause of the United States Constitution.
14. To the extent Defendant did not address a specific averment made by Plaintiffs in the Complaint, Defendant expressly denies all such averments.

DEFENDANTS' PRAYER

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which it is entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

/s/ Monte L. Barton Jr.
MONTE L. BARTON JR.
State Bar No. 24115616
monte.barton@austintexas.gov
City of Austin
P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 13th day of April, 2022.

Via CM/ECF:

Bobby R. Taylor
State Bar No. 19685500
1709 E. Martin L. King Jr. Blvd
Austin, Texas 78702
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**ATTORNEY FOR DEFENDANTS
EDUARDO PINEDA and SPENCER HANNA**

/s/ Monte L. Barton, Jr.
MONTE L. BARTON JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ENRIQUE QUIROZ, Deceased, §
through JOSEPHINE SALAZAR §
Individually, and as NEXT FRIEND §
OF J.R.S., E.F.Q., and E.Q., Minors; §
MERCEDES QUIROZ, JASMINE §
QUIROZ, ANDREW RAMIREZ and §
CHRISTINA ESPINOZA as §
NEXT FRIEND OF H.E., a Minor, §
Plaintiffs, §

v. §

No. 1:21-cv-00443-RP

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA and §
CITY OF AUSTIN, TEXAS, §
Defendants. §

**DEFENDANTS EDUARDO PINEDA AND SPENCER HANNA’S ANSWER
TO PLAINTIFFS’ SECOND AMENDED COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendants, Eduardo Pineda and Spencer Hanna (hereinafter “Defendants” or “Pineda and Hanna”) by and through their attorneys of record, and file this Answer to Plaintiff, Enrique Quiroz, deceased, through Josephine Salazar, individually and as next friend of J.R.S., E.F.Q., and E.Q., minors; Mercedes Quiroz, Jasmine Quiroz, Andrew Ramirez and Christina Espinoza as next friend of H.E., a minor (hereinafter “Quiroz”), Second Amended Complaint (Dkt. # 33) and in support thereof would respectfully show the Court as follows:

I.

INTRODUCTION

1. In the month leading up to March 31, 2020, Plaintiff, Josephine Salazar, sought and obtained a formal trespass warning issued to Decedent Enrique Quiroz, forbidding him from entering her property henceforth—namely, her apartment home where the facts underlying this lawsuit occurred.¹ On March 31, 2020, Decedent forced his way into Plaintiff Salazar’s home and refused to leave, causing Plaintiff Salazar to seek the help of the Austin Police Department to remove him from her home once again. Decedent’s entry and presence in Plaintiff Salazar’s home against her will—after having already received a formal trespass warning—constituted a Class A misdemeanor under Texas law, which is punishable by up to one year in jail.²

2. Defendants, Austin Police Department Officers Eduardo Pineda and Spencer Hanna, were both called to the scene to assist Plaintiff Salazar. The prior trespass warning was confirmed, and the officers spoke to Plaintiff Salazar outside of the apartment. The officers learned that Decedent had refused to leave, may be under the influence of drugs, and that he had been acting in an erratic or strange manner.

3. Officers Pineda and Hanna entered the apartment, while Plaintiff Salazar remained outside due to her fear that Decedent might resist arrest or fight with the officers. Once inside, the Officers verbally engaged Decedent and noticed that he was a very large and imposing man—weighing approximately as much as both Officers *combined*. For approximately the next fifteen minutes, the Officers used de-escalation techniques, including conversing with Decedent and even giving him a chance to find evidence on his phone to prove that Plaintiff Salazar had invited him into her apartment. After it was clear that he possessed no such evidence and was indeed acting in an erratic

¹ See TEX. PEN. CODE § 30.05.

² See TEX. PEN. CODE § 30.05(c)(3)(i).

manner, the officers began to initiate an arrest to remove the man from the residence of a woman—Plaintiff Salazar—who had gone to great lengths to get him to leave her home.

4. During the approximately fifteen-minute period of de-escalation, the officers informed Decedent that he would be arrested absent the above-referenced proof of an invitation. Eventually, the officers issued commands for him to stand up and put his hands behind his back so that he could be placed under arrest. Decedent stood up, but otherwise refused to comply. The officers attempted to take hold of Decedent's arm to initiate the arrest, but Decedent pulled his arm away and resisted any and all subsequent attempts by the officers to arrest him. At that point, the officers had not yet had a chance to frisk Decedent, and—as they would later discover—Decedent was carrying a knife in his pocket.

5. After de-escalation, verbal commands, and attempts at relaxed physical control failed, Officer Pineda was eventually forced to use his Taser device on Decedent to allow the officers to arrest him. However, the Taser device was not effective, and the officers were still unable to subdue Decedent and place him under arrest. By this point, both officers were forced to go hands-on in an attempt to wrestle Quiroz to the floor so that he could be placed in handcuffs and arrested. For approximately the next five minutes, Decedent dragged and wrestled the two officers across the apartment, and refused all officer commands to submit to arrest. At one point, Decedent grabbed one officer's vest near his throat and yelled threateningly into his face.

6. Eventually—after having dragged and wrestled the two officers outside onto the apartment complex second-floor landing—Decedent was finally taken to the ground and put in handcuffs. Decedent only spent a matter of seconds laying on his stomach while restrained in handcuffs. Almost immediately thereafter, several APD officers arrived as backup and took control of the

scene. Officers Pineda and Hanna had virtually no interactions whatsoever with Decedent from that point forward.

7. The APD officers who had arrived as backup attempted to transport Decedent down the stairs to where EMS had arrived. Decedent—who is believed to have weighed approximately 330 pounds at that time—refused to walk to EMS’s location on his own, and actively resisted being physically carried to where EMS was waiting to help him. Eventually—long after any of Officers Pineda and Hanna’s interactions with Decedent—EMS administered to Decedent what is believed to have been a benzodiazepine via syringe to sedate the still-resisting Decedent. Decedent soon after suffered a medical emergency. Life-saving measures were attempted by EMS, but Decedent ultimately passed away shortly thereafter. Based on information and belief, Decedent was discovered to have been under the influence of numerous illicit drugs during the entire encounter that forms the basis of this lawsuit.

8. In contrast to the description of events contained in the Second Amended Complaint, Officer Pineda and Officer Hanna never punched or kicked or elbowed Decedent, never used force against him once he had already been restrained in handcuffs, and never struck Decedent in the head. The force used by Officers Pineda and Hanna was used only to the extent necessary to subdue Decedent and make it possible to arrest him and remove him from Plaintiff Salazar’s residence, as she had requested. This lawsuit follows.

II.

ORIGINAL ANSWER

A. Parties and Service.

9. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs’ Second Amended Complaint regarding place of

residence, and therefore deny the same. Defendants admit that an EMS employee administered medications to the Decedent that included Versed. Otherwise, denied.

10. As to the allegations contained within Paragraph 2 of Plaintiffs' Second Amended Complaint, Defendants admit that they have been served and have appeared. Otherwise, Defendants are without sufficient knowledge to form a belief as to the truth of the remaining allegations therein.

B. Jurisdiction and Venue & Nature of Action.

11. As to the allegations contained within Paragraphs 3 – 4 of Plaintiffs' Second Amended Complaint, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants admit that Plaintiffs seek the relief requested therein pursuant to the cited bodies of law. Otherwise, denied.

C. Facts.

12. As to the allegations contained within Paragraph 5 of Plaintiffs' Second Amended Complaint, Defendants admit that Decedent had been previously issued a criminal trespass warning by Plaintiff Josephine Salazar; admit that Plaintiff violated the criminal trespass notice by entering Plaintiff Salazar's home; admit that Plaintiff Salazar instructed him to leave and he refused; admit that they personally discussed the circumstances of Decedent's presence and the problems it posed due to a prior trespass warning; admit that Officer Pineda used a Taser device generally to attempt to subdue Decedent; admit that they attempted to use a small number of minor knee strikes against Decedent in their attempts to subdue and arrest him; and admit that they wrestled with Decedent for approximately five minutes to attempt to subdue and arrest him in the face of his continuing aggressive physical resistance; admit that he was approximately 5'9" tall

and that he weighed more than 300 lbs; and admit that someone from EMS injected Decedent with medication that included Versed. Otherwise, denied.

13. As to the allegations contained within Paragraphs 6 – 7 of Plaintiffs’ Second Amended Complaint, Defendants admit that someone from EMS administered medications to Decedent that ultimately proved to be dangerous to Decedent’s health. Defendants deny the remaining allegations contained within Paragraphs 6 – 7 of Plaintiffs’ Second Amended Complaint.

D. Causes of Action.

i. Excessive Force.

14. Defendants deny the allegations contained within Paragraph 8 of Plaintiffs’ Second Amended Complaint.

ii. Negligent Retention, Training, Supervision and Absence of Policies, Discipline and Procedures.

15. As to the allegations contained within Paragraphs 9 – 10 of Plaintiffs’ Second Amended Complaint, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants deny such allegations.

iii. Damages, Exemplary Damages, & Prayer.

16. As to the allegations contained in Paragraphs 11 – 12 and the Prayer, no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants admit that Plaintiffs seek the relief requested therein. Otherwise, denied.

III.

AFFIRMATIVE DEFENSES & IMMUNITIES

17. Defendants Pineda and Hanna deny any deprivation under color of statute, ordinance, custom, or abuses of any rights, privileges, or immunities secured to the decedent by the United States Constitution, state law, or 42 U.S.C. § 1983, *et seq.*

18. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith, and would show that their actions were objectively reasonable in light of the law and the information possessed at that time.

19. The incident in question and the resulting harm to Decedent were caused or contributed to by Decedent's own illegal and/or dangerous conduct.

20. Pleading further and in the alternative, Plaintiffs' injuries and damages were caused in whole or in part by the conduct of other persons or entities.

21. Pleading further, alternatively, and by way of affirmative defense, Defendants Pineda and Hanna would show that at the time and on the occasion in question, Decedent failed to use *any* degree of care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom. Defendants Pineda and Hanna invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.³

22. Defendants further plead that, in the unlikely event they are found to be liable, such liability be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.

23. Defendants plead that they had legal justification for each and every action taken by them relating to this incident.

24. Defendants assert the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies Code, and the due process clause of the United States Constitution.

25. Defendants reserve the right to assert additional affirmative defenses throughout the development of this case.

³ See TEX. CIV. PRAC. & REM. CODE ANN. § 33.001.

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April 2022, a copy of Defendants Eduardo Pineda and Spencer Hanna's Answer to Plaintiffs' Second Amended Complaint was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorneys of record:

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monte.barton@austintexas.gov

/s/ Blair J. Leake
Blair J. Leake

the extent that these Defendants do not address a specific averment made by Plaintiff, Defendants expressly denies that averment.¹

These Defendants deny the unnumbered allegations in the preamble paragraph which begins with “NOW COMES” and precedes the “Parties and Service” section of the Complaint.

PARTIES AND SERVICE

1. Denied. These Defendants are without sufficient knowledge to form a belief as to the truth of the allegations concerning Plaintiffs’ residence at the time of this incident and therefore denies the same. The remaining allegations constitute speculation and conjecture about the application of law and facts, including medical information which is available to all parties, and to which no response is required at this time and the allegations are therefore denied to the extent they may be construed to seek liability against these defendants.
2. Admit.

JURISDICTION

3. No response is required to Paragraph 3, as it does not contain any factual allegations. These defendants admit that this Court has federal question jurisdiction over any alleged claims pursuant to 42 U.S.C. § 1983. To the extent a response is required, these defendants otherwise deny the remaining allegations in Paragraph 3.

NATURE OF ACTION

4. No response is required to Paragraph 4, as it does not contain any factual allegations. To the extent a response is required, these defendants deny any allegations of unlawful or unconstitutional practices and policies.

FACTS

¹ Paragraph numbers in Defendants’ Answer correspond to the paragraphs in Plaintiffs’ Second Amended Complaint.

5. Defendants deny the allegations contained in this Paragraph. These Defendants are without sufficient knowledge to form a belief as to the truth of the allegations prior to their arrival. The remaining allegations constitute speculation and conjecture about the application of law and facts, including medical information which is available to all parties, and to which no response is required at this time and the allegations are therefore denied to the extent they may be construed to seek liability against these defendants.
6. Defendants deny the allegations contained in this Paragraph. These Defendants are without sufficient knowledge to form a belief as to the truth of the allegations prior to their arrival. The remaining allegations constitute speculation and conjecture about the application of law and facts, including medical information which is available to all parties, and to which no response is required at this time and the allegations are therefore denied to the extent they may be construed to seek liability against these defendants.
7. Defendants deny the allegations contained in Paragraph 7.

EXCESSIVE FORCE

8. Defendants deny the allegations contained in Paragraph 8.

**NEGLIGENT RETENTION, TRAINING, SUPERVISION
AND ABSENCE OF POLICIES, DISCIPLINE AND PROCEDURES
IN VIOLATION OF 42 U.S.C. SECTION 1983**

9. Defendants deny the allegations contained in Paragraph 9.
10. Defendants deny the allegations contained in this Paragraph. The allegations constitute speculation and conjecture about the application of law and facts and to which no response is required at this time and the allegations are therefore denied to the extent they may be construed to seek liability against these defendants.

DAMAGES

11. Defendants deny all of the allegations contained in Paragraph 11, including subparts a-m.

EXEMPLARY DAMAGES

12. Defendants deny the allegations contained in Paragraph 12.

PRAYER

No response is required to the “Prayer” included in the Complaint, which begins with the phrase “WHEREFORE, PREMISES CONSIDERED,” as it does not contain any factual allegations. To the extent any response is required, these defendants deny the allegations in the “Prayer” section of the Complaint, and further deny that Plaintiff has any valid or supportable basis for any recovery.

AFFIRMATIVE DEFENSES

1. These defendants deny any deprivation under color of statute, ordinance, custom, or abuses of any rights, privileges, or immunities secured to the decedent by the United States Constitution, state law, or 42 U.S.C. § 1983, et seq.
2. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith, and would show that their actions were objectively reasonable in light of the law and the information possessed at that time. Defendants are entitled to qualified/official immunity for actions taken in the course and scope of their employment.
3. Defendants affirmatively plead that the Plaintiffs’ claims are barred in whole or in part since Enrique Quiroz’s acts, intentional or otherwise, were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case. Pleading further and in the alternative, Plaintiffs’ injuries and damages were caused in whole or in part by the conduct of other persons or entities for which these defendants are

not responsible.

4. Defendants reserve the right to assert additional affirmative defenses throughout the development of the case.
5. Defendants assert that punitive damages are not available and would be contrary to the protections of the United States Constitution by allowing a jury or fact finder standardless discretion..
6. Defendants assert the affirmative defense that Plaintiffs failed to mitigate damages, if any, and assert this failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiffs.
7. Defendants assert the affirmative defense of contributory negligence. Plaintiffs' claims are barred in whole or in part by contributory negligence. Plaintiff's decedent, by his actions, failed to exercise ordinary care for his safety. His actions contributed at least fifty-one percent to the alleged injuries and the damages asserted in this case.
8. Defendants affirmatively plead that the Plaintiffs claims are barred in whole or in part since Plaintiff's decedent committed intentional acts, for which these defendants have no responsibility, that were the proximate cause, or a proximate contributing cause, of the alleged injuries and damages asserted in this case.
9. The incident in question and the resulting harm to Decedent were caused or contributed to by Decedent's own illegal conduct.
10. Pleading further and in the alternative if applicable, Plaintiffs' injuries and damages were caused in whole or in part by the conduct of other persons or entities who are not currently parties to this lawsuit.
11. Pleading further, alternatively, and by way of affirmative defense, Defendants would

show that at the time and on the occasion in question, Decedent failed to use care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was a producing cause or the sole proximate cause of the incident and alleged damages that arise therefrom. If applicable and subject to withdrawal, Defendants invoke the comparative responsibility provision of the Texas Civil Practice & Remedies Code.

12. Defendants further plead any fault to be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.
13. Defendants assert the limitations and protections of Chapters 41 & 101 of the Texas Civil Practice & Remedies code, and the due process clause of the United States Constitution.
14. To the extent Defendants did not address a specific averment made by Plaintiffs in the Complaint, Defendants expressly deny all such averments.
15. Defendants plead that they had legal justification for each and every action taken by them relating to this incident.

DEFENDANTS' PRAYER

Defendants pray that all relief requested by Plaintiffs be denied, that the Court dismiss this case with prejudice, and that the Court award Defendants costs and attorney's fees, and any additional relief to which they are entitled under law or equity.

RESPECTFULLY SUBMITTED,

ANNE L. MORGAN, CITY ATTORNEY
MEGHAN L. RILEY, LITIGATION DIVISION CHIEF

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**ATTORNEYS FOR DEFENDANTS,
ZANE DOWDELL, LUCAS PARKER,
and WILLIAM LEGGIO**

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Rules of Federal Procedure, this 3rd day of June, 2022.

Via CM/ECF:

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**ATTORNEY FOR DEFENDANTS
EDUARDO PINEDA and SPENCER HANNA**

/s/ Monte L. Barton, Jr.
MONTE L. BARTON JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ENRIQUE QUIROZ, Deceased, through §
JOSEPHINE SALAZAR, individually, and as §
next friend of J.R.S., E.F.Q, and E.Q., Minors; §
MERCEDES QUIROZ, JASMINE QUIROZ, §
ANDREW RAMIREZ and CHRISTINA §
ESPINOZA as next friend of H.E., a Minor, §
Plaintiffs, §

v. §

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA, ZANE DOWDELL, §
LUCAS PARKER, WILLIAM LEGGIO, and §
CITY OF AUSTIN, TEXAS, §
Defendants. §

No. 1:21-cv-00443-RP

**DEFENDANTS' UNOPPOSED MOTION TO STAY THE CASE
PENDING THE RESOLUTION OF CRIMINAL PROCEEDINGS OF
DEFENDANTS EDUARDO PINEDA AND SPENCER HANNA**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Officer Eduardo Pineda and Officer Spencer Hanna, Defendants in the above-entitled and numbered cause and file this unopposed motion to stay the case pending the resolution of the ongoing criminal cases against Defendants Eduardo Pineda and Spencer Hanna, and in support thereof would respectfully show this Court as follows:

I. FACTUAL BACKGROUND

1. Based on an amicable conference and agreement between counsel, Magistrate Judge Lane granted Defendants Pineda and Hanna's Motion to Stay Discovery on January 12, 2022.¹ Magistrate Judge Lane's Order stayed discovery in this matter for 60 (sixty) days, pursuant the

¹ Order Granting Motion to Stay Discovery, Dkt. # 28.

parties' agreement as outlined in the Joint Notice. This 60-day discovery stay expired on March 14, 2022. The agreement and order contemplated the right to file an additional motion to stay discovery after the 60-day stay if the grand jury proceedings and/or any corresponding criminal prosecutions had not concluded.

2. On August 16, 2022, the parties filed a Joint Motion for Continuance and to Amend the Scheduling Order (Dkt. # 42) ("Joint Motion"), because the Travis County Grand Jury had still yet to convene regarding the potential pending charges against Defendants Pineda and Hanna pertaining to the incident that forms the basis of this case. This Court granted the parties' Joint Motion and entered the Second Amended Scheduling Order on August 19, 2022 (Dkt. # 43), setting the jury trial for November 13, 2023.

3. Travis County District Attorney Jose Garza issued his latest press release outlining the current pending Civil Rights Unit Case Summaries on September 30, 2022.² According to this latest press release, the Travis County Grand Jury has still yet to convene regarding the potential charges against Defendant Officers Pineda and Hanna stating, "[t]he case is being jointly investigated by the Austin Police Department's Special Investigations Unit and the Travis County District Attorney Office's Civil Rights Unit."³

4. If this case proceeds as currently scheduled, full and open discovery will be frustrated because Defendants Pineda and Hanna will likely be advised to assert their Fifth Amendment rights not to testify in response to any eligible discovery request issued to them in this civil lawsuit

² See **Ex. 1**, Travis County DA Civil Rights Unit Case Summaries – Sept. 30, 2022, pg. 8 https://www.traviscountytexas.gov/images/district_attorney/docs/Press_Releases/2022/Case_Summaries_Sept_30_2022.pdf.

³ *Id.*

until their pending criminal jeopardy has been resolved. The parties collectively would prefer that this case be litigated on the merits after full and open discovery has taken place.

5. It is unlikely the parties will be able to proceed with their desired full and open discovery in time to meet important pending deadlines, including Plaintiffs' expert deadline on December 14, 2022.

II. RELIEF REQUESTED

6. Although some discovery has occurred, any further discovery will certainly involve the Defendants Pineda and Hanna, and Plaintiff does not want discovery to be frustrated by their expected Fifth Amendment invocations, nor repeat discovery because Pineda and Hanna were deprived of the opportunity to cross-examine or otherwise participate in any given deposition.

7. Fragmented discovery causes undue burden and expense to the Plaintiffs as well as to the Defendants, and frustrates determining the correct proportionality of discovery and costs to all parties. The parties have thus shown good cause for the case be stayed pending the outcome of the potential criminal prosecutions, and this request for a stay is not merely for delay as shown by the facts set forth herein.

8. In the alternative, if a stay is not granted, the parties' request the Second Amended Scheduling Order (Dkt. # 43) be vacated pending the resolution of the grand jury proceedings and resulting criminal cases, if any.

9. Counsel for Defendants Pineda and Hanna have conferred with counsel for all parties, and all counsel have indicated that they are unopposed to and support the relief requested herein.

III. PRAYER FOR RELIEF

10. WHEREFORE, PREMISES CONSIDERED, Defendants Eduardo Pineda and Spencer Hanna respectfully requests that this Court grant this unopposed motion to stay discovery pending

the resolution of the grand jury proceedings and any resulting criminal prosecutions that occur related to this incident. In the alternative, if the stay is denied, then Defendants request that the Second Amended Scheduling Order (Dkt. # 43) be vacated until the resolution of the grand jury proceedings and any resulting criminal prosecutions that occur related to this incident, and for all other relief to which they may be entitled.

Respectfully submitted,

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By: /s/ Blair J. Leake
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**ATTORNEYS FOR DEFENDANTS
EDUARDO PINEDA AND
SPENCER HANNA**

CERTIFICATE OF CONFERENCE

On November 15, Defendants' counsel conferred with all counsel via email and all counsel are unopposed to this motion.

 /s/ Blair J. Leake
Blair J. Leake

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 2022, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail and/or U.S. First Class Mail in accordance with the Federal Rules of Civil Procedure as follows:

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Monte L. Barton, Jr.

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City of Austin – Law Department

P.O. Box 1546

Austin, Texas 78767-1546

/s/ Blair J. Leake

Blair J. Leake

IT IS FURTHER ORDERED that the parties shall file quarterly status reports to keep the Court apprised of the progress of the criminal proceedings and any other relevant matters. The first joint status report shall be filed on or before **March 5, 2023**.

SIGNED on December 5, 2022.

A handwritten signature in blue ink, appearing to read "R. Pitman", is written above a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ENRIQUE QUIROZ, Deceased, through §
JOSEPHINE SALAZAR, individually, and as §
next friend of J.R.S., E.F.Q, and E.Q., Minors; §
MERCEDES QUIROZ, JASMINE QUIROZ, §
ANDREW RAMIREZ and CHRISTINA §
ESPINOZA as next friend of H.E., a Minor, §
Plaintiffs, §

v. §

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA, ZANE DOWDELL, §
LUCAS PARKER, WILLIAM LEGGIO, and §
CITY OF AUSTIN, TEXAS, §
Defendants. §

No. 1:21-cv-00443-RP

**FIRST JOINT STATUS REPORT REGARDING
PENDING CRIMINAL PROCEEDINGS AGAINST
DEFENDANTS EDUARDO PINEDA AND SPENCER HANNA**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

1. The parties file this quarterly joint status report pursuant to this Court's December 5, 2022 and March 14, 2023 Orders.¹ The parties also collectively sincerely apologize to this Court for having failed to file a joint status report in the allotted time and have worked to file this pleading as promptly as possible once the error was highlighted by the Court.

2. Travis County District Attorney Jose Garza issued his latest press release outlining the current pending Civil Rights Unit Case Summaries on February 23, 2023.² Prior iterations of the

¹ Orders, Dkts. # 45 – 46.

² See Travis County DA Civil Rights Unit Case Summaries – Feb. 23, 2023, pg. 7
https://www.traviscountytexas.gov/images/district_attorney/docs/Press_Releases/2023/Case_Summaries_February_23_2023.pdf.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2023, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service/E-Mail and/or U.S. First Class Mail in accordance with the Federal Rules of Civil Procedure as follows:

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/s/ Blair J. Leake

Blair J. Leake

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ENRIQUE QUIROZ, Deceased, through §
JOSEPHINE SALAZAR, individually, and as §
next friend of J.R.S., E.F.Q, and E.Q., Minors; §
MERCEDES QUIROZ, JASMINE QUIROZ, §
ANDREW RAMIREZ and CHRISTINA §
ESPINOZA as next friend of H.E., a Minor, §
Plaintiffs, §

v. §

No. 1:21-cv-00443-RP

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA, ZANE DOWDELL, §
LUCAS PARKER, WILLIAM LEGGIO, and §
CITY OF AUSTIN, TEXAS, §
Defendants. §

**SECOND JOINT STATUS REPORT REGARDING
PENDING CRIMINAL PROCEEDINGS AGAINST
DEFENDANTS EDUARDO PINEDA AND SPENCER HANNA**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

1. The parties file this quarterly joint status report pursuant to this Court’s December 5, 2022 Order (Dkt. # 45).
2. Travis County District Attorney Jose Garza issued his latest press release outlining the current pending Civil Rights Unit Case Summaries on April 19, 2023.¹ Prior iterations of the same civil rights report identified specific expected grand jury presentation dates—at least roughly—for each listed case. However, the District Attorney’s Office has now chosen to assign fourteen cases a “grand jury term of presentation” date of “TBD,” including the grand jury presentation for the

¹ See Travis County DA Civil Rights Unit Case Summaries – Apr. 19, 2023, pg. 7
https://www.traviscountytexas.gov/images/district_attorney/docs/Press_Releases/2023/Case_Summaries_April_19_2023.pdf.

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2023, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail in accordance with the Federal Rules of Civil Procedure as follows:

Bobby R. Taylor

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P.O. Box 1546

Austin, Texas 78767-1546

/s/ Blair J. Leake

Blair J. Leake

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ENRIQUE QUIROZ, Deceased, through §
JOSEPHINE SALAZAR, individually, and as §
next friend of J.R.S., E.F.Q, and E.Q., Minors; §
MERCEDES QUIROZ, JASMINE QUIROZ, §
ANDREW RAMIREZ and CHRISTINA §
ESPINOZA as next friend of H.E., a Minor, §
Plaintiffs, §

v. §

OFFICERS EDUARDO PINEDA, §
SPENCER HANNA, ZANE DOWDELL, §
LUCAS PARKER, WILLIAM LEGGIO, and §
CITY OF AUSTIN, TEXAS, §
Defendants. §

No. 1:21-cv-00443-RP

**THIRD JOINT STATUS REPORT REGARDING
PENDING CRIMINAL PROCEEDINGS AGAINST
DEFENDANTS EDUARDO PINEDA AND SPENCER HANNA**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

1. The parties file this quarterly joint status report pursuant to this Court’s December 5, 2022 Order (Dkt. # 45).
2. Travis County District Attorney Jose Garza issued his latest press release outlining the current pending Civil Rights Unit Case Summaries on June 30, 2023.¹ Prior iterations of the same civil rights report identified specific expected grand jury presentation dates—at least roughly—for each listed case. However, the District Attorney’s Office has now chosen to assign thirteen cases a “grand jury term of presentation” date of “TBD,” including the grand jury presentation for the

¹ See Travis County DA Civil Rights Unit Case Summaries – June 30, 2023, pg. 7
https://www.traviscountytexas.gov/images/district_attorney/docs/Press_Releases/2023/PR_Case_Summaries_June_30_2023.pdf.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2023, a true and correct copy of the foregoing document was caused to be served upon all counsel of record via E-File/E-Service and/or E-Mail in accordance with the Federal Rules of Civil Procedure as follows:

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/s/ Blair J. Leake

Blair J. Leake

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

QUIROZ et al,

Plaintiffs,

v.

PINEDA et al,

Defendants.

§
§
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1-21-CV-443-RP

ORDER

IT IS ORDERED that the trial date of November 13, 2023 is **VACATED**.

IT IS ORDERED that the parties shall continue to file quarterly status reports pursuant to this Court's previous order, (Dkt. 45), to keep the Court apprised of the progress of the criminal proceedings and any other relevant matters.

The Court will revisit scheduling at a later date.

SIGNED on September 26, 2023.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE