

FILED

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FEB 22 2022

PRISONER'S CIVIL RIGHTS COMPLAINT (Rev. 07/2021)

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY RN

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY W  
DEPUTY

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION

Andrew Trevino #219873  
Plaintiff's Name and ID Number

1:22 CV 0152 RP

Travis County Correctional Complex  
Place of Confinement

CASE NO. \_\_\_\_\_  
(Clerk will assign the number)

v.

Detective Timothy Price #6818  
Defendant's Name and Address

\_\_\_\_\_  
Defendant's Name and Address

\_\_\_\_\_  
Defendant's Name and Address  
(DO NOT USE "ET AL.")

INSTRUCTIONS - READ CAREFULLY

NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the clerk of the United States district court for the appropriate district of Texas in the division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. If you are confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), the list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate district court, the division and an address list of the divisional clerks.

**FILING FEE AND *IN FORMA PAUPERIS* (IFP)**

1. In order for your complaint to be filed, it must be accompanied by the statutory filing fee of \$350.00 plus an administrative fee of \$52.00 for a total fee of **\$402.00**.

2. If you do not have the necessary funds to pay the fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis*, setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six-month history of your inmate trust account. If you are an inmate in TDCJ-CID, you can acquire the application to proceed *in forma pauperis* and the certificate of inmate trust account, also known as *in forma pauperis* data sheet, from the law library at your prison unit.

3. The Prison Litigation Reform Act of 1995 (PLRA) provides "... if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." See 28 U.S.C. § 1915. Thus, the court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the court will apply 28 U.S.C. § 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your inmate trust account, until the entire \$350.00 statutory filing fee has been paid. (The \$52.00 administrative fee does not apply to cases proceeding *in forma pauperis*.)

4. If you intend to seek *in forma pauperis* status, do not send your complaint without an application to proceed *in forma pauperis* and the certificate of inmate trust account. Complete all essential paperwork before submitting it to the court.

**CHANGE OF ADDRESS**

It is your responsibility to inform the court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motion for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

**I. PREVIOUS LAWSUITS:**

A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment? \_\_\_ YES ✓ NO

B. If your answer to "A" is "yes," describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)

1. Approximate date of filing lawsuit: \_\_\_\_\_

2. Parties to previous lawsuit:

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

3. Court: (If federal, name the district; if state, name the county.) Trew's County

4. Cause number: \_\_\_\_\_

5. Name of judge to whom case was assigned: \_\_\_\_\_

6. Disposition: (Was the case dismissed, appealed, still pending?) \_\_\_\_\_

7. Approximate date of disposition: \_\_\_\_\_

II. PLACE OF PRESENT CONFINEMENT: Travis County Correctional Complex

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted all steps of the institutional grievance procedure?  YES  NO

Attach a copy of your final step of the grievance procedure with the response supplied by the institution.

IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: Andrew Treviño #2119873  
3614 Bill Price Rd.  
DelValle, Tx 78617

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Timothy Price #6818, Austin Police Department  
Homicide Detective

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

causing bodily injury to my left hand lower back and  
right hand.

Defendant #2: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #3: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #4: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #5: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember the complaint must be stated briefly and concisely. **IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.**

November 9, 2021, 7:30 pm, I was picked-up by U.S. Marshall's and taken to Austin Police Department Homicide Division. Detective Timothy Price #6818 was waiting. As he asked me the same questions as before and I gave him the same answer. I then turned around, and he placed handcuffs on me extremely tight. Causing nerve damage and numbing in my left hand and swelling in my right hand. To my knowledge this is called Assault and Battery, I have physical injuries to prove it.

VI. RELIEF:

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Compensatory Damage Relief, Monetary Damage Relief

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases.

Andrew Treviño

B. List all TDCJ-CID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you.

Don't remember

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed?  YES  NO

B. If your answer is "yes," give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): \_\_\_\_\_

2. Case number: \_\_\_\_\_

3. Approximate date sanctions were imposed: \_\_\_\_\_

4. Have the sanctions been lifted or otherwise satisfied?  YES  NO

C. Has any court ever warned or notified you that sanctions could be imposed? \_\_\_\_\_ YES  NO

D. If your answer is "yes," give the following information for every lawsuit in which a warning was issued. (If more than one, use another piece of paper and answer the same questions.)

1. Court that issued warning (if federal, give the district and division): \_\_\_\_\_

2. Case number: \_\_\_\_\_

3. Approximate date warning was issued: \_\_\_\_\_

Executed on: \_\_\_\_\_  
DATE



\_\_\_\_\_  
(Signature of Plaintiff)

**PLAINTIFF'S DECLARATIONS**

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand, if I am released or transferred, it is my responsibility to keep the court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions or appeals (from a judgment in a civil action) in a court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire filing fee and costs assessed by the court, which shall be deducted in accordance with the law from my inmate trust account by my custodian until the filing fee is paid.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Day) (month) (year)



\_\_\_\_\_  
(Signature of Plaintiff)

**WARNING: Plaintiff is advised any false or deliberately misleading information provided in response to the above questions may result in the imposition of sanctions. The sanctions the court may impose include, but are not limited to, monetary sanctions and the dismissal of this action with prejudice.**

Law Suit

Intentional Tort; False Imprisonment, Emotional Distress, Libel, (false, defamatory claims in written or printed form), and slander (false, defamatory claim in spoken form).

The year "2020"

On the 8<sup>th</sup> of December Craig "Gravy" Robinson was murdered on Riverside at 2300 block.

On the 21<sup>st</sup> of December I was arrested for Unauthorized Use of Motor Vehicle, Evading Arrest and Possession of Firearm.

As I tried posting bond with an paid attorney Charles Popper, he stated "I can not do it, you have a hold on you" so I asked why he said "Homicide"

After that the beginning of 2021 January Detective Price #6818 and Detective Griggers #6450 came and asked me about the 8<sup>th</sup> of December 2020 incident. I told them I was at my apartment at 2621 Goodrich Ave #415, Austin, Tx 78704. I was living with my two wives at the time Rachel Clements and Meka Fowler. I'm a mobile mechanic, welder, carpenter and landscaper by profession. As I waited for court I signed for 5 years probation and I.S.F.

As I went to I.S.F in March 2021 and finish the program June 29, 2021 ~~100%~~ TDCJ does a Detainer and outter county warrant check prior to release. I had

No warrants and No Detainer's.

When I was released I was taken to McKinneyfalls Parkway Probation on June 29, 2021.

This Homicide was dismissed because no evidence. There are still at NO evidence.

I have witnesses and physical evidence that is in the Evidence Room (my Phone) "WYZE" app camera at my Apartment and location on my phone

This warrant is based on (Heresay Accusation's) (False Defamatory Claim In spoken and written form)

Private Investigator Ms Alexander already confirmed it on my Witnesses and they said I was at home.

"Cruel and Unusual Punishment"

Thankyou

Andre Zis

# Lawsuit

## Defamation:

Defamation is a tort, the threshold requirement for which is the publication of a False statement of fact to a third party. The fact must be defamatory concerning the plaintiff, and the publisher must make the statement with requisite degree of fault.

On October 22, 2021 a warrant and picture was posted by Detective Price #6818.

This warrant was for a Homicide that happened December 8, 2020, it was dismissed early 2021 due to no physical evidence only false statements that slander my name. I was released from ISF June 29, 2021. This is a facility with Texas Department Criminal Justice, as they did a detainer check and outter county warrant check I was clean.

Austin Police Department Homicide Detective Timothy Price #6818 has harrassed, humiliated, and intimidated me and I do fear for my life.



Andrew Trevino # 9119873  
TC 10-7082  
3614 Bill Price Rd.  
Del Valle, Tx 78617

AUSTIN TX 786  
RIO GRANDE DISTRICT  
9 FEB 2022 PM 3 L



SCREENED BY DSO District Court of Texas

FEB 11 2022

Western District of Texas  
Office of the Clerk  
01 West 5th St. Suite 1100

Austin, TX 78701

Case 1:22-cv-00152-RP-DH Document 1-2 Filed 02/11/22 Page 1 of 4  
78701-381275  
572198-10287

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FEB 22 2022

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY RN

Andrew Treviño #2119873  
Plaintiff's name and ID Number

1:22 CV 0152 RP

Travis County Correctional Complex  
Place of Confinement

CASE NO. \_\_\_\_\_  
(Clerk will assign the number)

v.

APPLICATION TO PROCEED  
IN FORMA PAUPERIS

Detective Timothy Price #6818  
Defendant's name and address

I, Andrew Treviño, declare, depose, and say that I am the Plaintiff in the above entitled case. In support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty, I am unable to pay in advance the filing fee for said proceedings or to give security for the filing fee. I believe I am entitled to relief.

I further declare that the responses which I have made to questions and instructions below are true.

1. Have you received, within the past 12 months, any money from any of the following sources?

- |   |                                  |                       |    |
|---|----------------------------------|-----------------------|----|
| a. Business, profession or form of self-employment? | Yes                              | <input type="radio"/> | No |
| b. Rent payments, interest or dividends?            | Yes                              | <input type="radio"/> | No |
| c. Pensions, annuities or life insurance payments?  | Yes                              | <input type="radio"/> | No |
| d. Gifts or inheritances?                           | Yes                              | <input type="radio"/> | No |
| e. Family or friends?                               | <input checked="" type="radio"/> | Yes                   | No |
| f. Any other sources?                               | Yes                              | <input type="radio"/> | No |

If you answered YES to any of the questions above describe each source of money and state the amount received from each during the past 12 months.

\$20 Friend

2. Do you own cash, or do you have money in a checking or savings account, including any funds in prison accounts?

Yes  No

If you answered YES, state the total value of the items owned.

\_\_\_\_\_



CIVIL COVER SHEET

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

Andrew Trevino

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

T. Price

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

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, 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): 42:1983. Brief description of cause: Prisoner Civil Rights

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 SIGNATURE OF ATTORNEY OF RECORD

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**

**ANDREW TREVINO**  
*Plaintiff,*

§  
§  
§  
§  
§  
§  
§

v.

**CIVIL ACTION NO. 1:22-cv-0152-RP**

**DETECTIVE TIMOTHY PRICE,**  
*Defendant.*

**DEFENDANT’S MOTION TO DISMISS**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendant Timothy Price and files this Motion to Dismiss pursuant to Rule 12(b)(1)&(6) of the Federal Rules of Civil Procedure as follows:

**I. INTRODUCTION**

Plaintiff asserts state law claims against Austin Police Department Detective Timothy Price arising out of Detective Price’s questioning of Plaintiff during a homicide investigation. Defendant seeks dismissal of Plaintiff’s claims for assault and battery, false imprisonment and defamation under Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

**II. FACTS**

While the facts as alleged in the Complaint are unclear, it appears that the Plaintiff alleges that he was arrested for unauthorized use of a motor vehicle, evading arrest and possession of a firearm on December 21, 2020. Plaintiff alleges that he “signed for” five years of probation and was placed in an intermediate sanction facility from March 2021 to June 29, 2021. Plaintiff appears to allege that Defendant Detective Price issued a warrant for Plaintiff’s arrest for a homicide which had occurred on December 8, 2020. Plaintiff alleges that on November 9, 2021, federal marshals picked up the Plaintiff and took him to the Austin Police

Department's Homicide Division where Defendant Detective Price questioned him about the December 8, 2020, murder. Plaintiff alleges that Price then handcuffed Plaintiff and placed the handcuffs on Plaintiff "extremely tight."

### **III. RULE 12(b) MOTIONS TO DISMISS**

#### **A. Rule 12(b)(1) Lack of Subject Matter Jurisdiction.**

Rule 12(b)(1) allows a party to move to dismiss an action for lack of subject matter jurisdiction. *Fed. Rules Civ. Proc., Rule 12(b)(1)*. The court must dismiss "when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Mississippi, Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5<sup>th</sup> Cir. 1998). The burden of establishing subject matter jurisdiction is on the party seeking to invoke it. *Ramming v. United States*, 281 F.3d 158, 161 (5<sup>th</sup> Cir. 2001). A plaintiff must overcome an initial presumption that the federal court lacks subject matter jurisdiction and has the burden to allege facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *City of Austin v. Ender*, 30 S.W.3d 590, 593 (Tex.App.—Austin 2000).

#### **B. Rule 12(b)(6) Failure to State a Claim.**

Rule 12(b)(6) asks a court to dismiss a complaint for failure to state a claim upon which relief can be granted." *Fed. Rules Civ. Proc., Rule 12(b)(6)*. The plaintiff must plead sufficient facts to state a claim for relief that is facially plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, at 678. Although a plaintiff's factual allegations need not establish that the defendant is probably liable, they must establish more than a "sheer possibility" that a defendant has acted unlawfully. *Id.* Determining plausibility is a

“context-specific task,” and must be performed in light of a court’s “judicial experience and common sense.” *Iqbal*, at 679. In deciding a motion to dismiss under Rule 12(b)(6), a court generally accepts as true all factual allegations contained within the complaint. *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993). However, a court is not bound to accept legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Although all reasonable inferences will be resolved in favor of the plaintiff, the plaintiff must plead “specific facts, not mere conclusory allegations.” *Tuchman v. DSC Commc’ns Corp.*, 14 F.3d 1061, 1067 (5<sup>th</sup> Cir. 1994).

#### **IV. ARGUMENT AND AUTHORITIES**

##### **Dismissal is warranted of state law claims pursuant to Rule 12(b)(1) and/or 12(b)(6).**

##### **A. Plaintiff does not assert any claims under federal law.**

The only claims asserted by the Plaintiff in his complaint are state law claims of assault and battery, false imprisonment, libel and slander. Plaintiff’s complaint contains no reference to any federal statute, cause of action or other federal right sufficient to support federal question jurisdiction.

A federal district court has subject matter jurisdiction over civil cases “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §1331. “Federal courts are courts of limited jurisdiction and must have statutory or constitutional power to adjudicate a claim.” *Bank of Am., N.A. v. Horace*, No. 3:13-CV-01317, 2013 WL 1718090, at \*1 (N.D. Tex. Apr. 19, 2013) (citing *Home Builders Ass'n of Miss. v. City of Madison*, 143 F.3d 1006, 1010 (5<sup>th</sup> Cir.1998)). Absent jurisdiction conferred by statute or the Constitution, federal courts have no authority to adjudicate claims and must dismiss an action if subject-matter jurisdiction is lacking. *Home Builders*, 143 F.3d at 1010. In this regard, federal courts have “an independent duty” to

determine whether subject-matter jurisdiction exists in each case. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583, 119S.Ct. 1563, 143 L.Ed.2d 760 (1999). “The burden of establishing subject matter jurisdiction in federal court rests on the party seeking to invoke it.” *Id.* (quoting *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998)).

Whether federal-question jurisdiction exists over a case “must be determined by reference to the ‘well pleaded complaint.’” *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808, 106 S. Ct. 3229, 92 L.Ed.2d 650 (1986) (citation omitted). In other words, the complaint itself must “raise issues of federal law sufficient to support federal question jurisdiction.” *Rodriguez v. Pacificare of Tex., Inc.*, 980 F.2d 1014, 1017 (5<sup>th</sup> Cir. 1993). Courts “start with the long-established axiom that a plaintiff is master of his complaint and may generally allege only a state law cause of action even where a federal remedy is also available.” *Bernhard v. Whitney Nat'l Bank*, 523 F.3d 546, 551 (5th Cir. 2008). “[G]enerally, there is no federal jurisdiction if the plaintiff properly pleads only a state law cause of action.” *Id.* When, as here, a complaint sets forth only state-law claims, a federal district court has federal-question jurisdiction only if: “(1) the state law claims necessarily raise a federal issue, or (2) the state law claims are completely preempted by federal law.” *Bernhard*, 523 F.3d at 551.

Here, Plaintiff has pleaded only state law causes of action. He pleads assault and battery, false imprisonment, libel, slander, “defamation” and “emotional distress” none of which raise issues of federal law sufficient to support federal question jurisdiction. Moreover, even setting aside the Plaintiff’s labels of his causes of action, the facts alleged in the Complaint do not assert any federal claims. Plaintiff’s asserted causes of action and his factual claims alleged in the complaint do not raise a federal issue and do not turn on the construction of federal law. As a result, Plaintiff has not established federal subject matter jurisdiction.

**B. Plaintiff fails to establish a waiver of immunity under Texas law and thus deprives the Court of jurisdiction.**

Moreover, Plaintiff's state law tort claims fail for additional reasons under Texas law: (1) the Texas Tort Claims Act ("TTCA") requires dismissal of all state tort claims against a police officer, (2) Price's actions as alleged in the Complaint were reasonable, and (3) Price is immune from suit. Pursuant to section 101.106(a) and (f) of the Texas Tort Claims Act (TTCA), Defendant requests that all state tort claims against him be dismissed in their entirety based on the Court's lack of subject-matter jurisdiction. TEX. CIV. PRAC. & REM. CODE §§101.057, 101.106(f). Section 101.106(f) provides that claims against government employees based on conduct within the general scope of an employee's employment must be dismissed, as they can only be brought against the employees in their official capacities.

The TTCA defines the term "scope of employment" as the performance for a governmental unit of the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority. TEX. CIV. PRAC. & REM. CODE §§101.001(5). In determining whether an employee was acting within the scope of employment, Texas courts have noted that the TTCA "focuses on 'performance...of the duties of an employee's office or employment,' which calls for an objective assessment of whether the employee was doing her job when she committed an alleged tort, not her state of mind when she was doing it." *Laverie v. Wetherbe*, 517 S.W.3d 748 (Tex. 2017). The inquiry is whether there is a connection between the employee's job duties and the alleged tortious conduct. *Id.* "The answer may be yes even if the employee performs negligently or is motivated by ulterior motives or personal animus so long as the conduct itself was pursuant to her job responsibilities." *Id.* Thus, intentional torts can fall within the scope of employment. *Id.* at \*8-9; see also *Alexander v. Walker*,

435 S.W.3d 789, 792 (Tex. 2014) (holding that claims for assault and other intentional torts involved conduct within officers' scope of employment).

Here, it is clear from the allegations in the Complaint that Price was acting in his capacity as an APD detective and discharging the duties assigned to him. Therefore, his conduct in questioning and detaining Plaintiff was within the general scope of his employment. Likewise, his issuance of a warrant for the Plaintiff was also within the general scope of his employment. As a result, Plaintiff's assault claim, as well as his claims for false imprisonment and defamation are considered to be against Price in his official capacity only.

Any claim asserted by Plaintiff against the City of Austin, or Price in his official capacity, is futile because the TTCA clearly establishes that the state has not waived immunity for intentional torts, and Plaintiff cannot establish any other exception to immunity under the TTCA. *See* §101.057, which preserves immunity in regard to all intentional tort claims. Under section 101.106(f), a tort action is brought "under" the TTCA, even if the government has not waived its immunity for such actions. *Franka v. Velasquez*, 332 S.W.3d 370-71 (Tex.2011). All of Plaintiff's claims alleged in the Complaint are intentional torts for which Price is immune from suit and liability in his official capacity. *See Donohue v. Dominguez*, 486 S.3d 50, 54-55 (Tex. App.-San Antonio 2016) (civil claims for assault, false imprisonment are claims subject to the Texas Tort Claims Act); *City of Hempstead v. Kmiec*, 902 S.W.2d 118, 122 (Tex. App.—Houston 1995) (Texas Tort Claims Act does not waive immunity for defamation claim since it is an intentional tort).

Accordingly, Plaintiff has not met his burden of establishing subject matter jurisdiction in federal court or stated a claim upon which relief may be granted. As a result, the Court should dismiss Plaintiff's claims.

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Timothy Price respectfully requests that the Court grant this Motion to Dismiss and dismiss the Plaintiff's claims against him with prejudice and with all costs assessed to the Plaintiff. Defendant requests any additional relief to which he may be entitled.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird

H. Gray Laird

Assistant City Attorney

State Bar No. 24087054

[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)

City of Austin Law Department

P.O. Box 1546

Austin, Texas 78767-1546

Telephone: (512) 974-1342

Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I certify that, on the 18th day of March 2022, I served a copy of *Defendant's Motion to Dismiss* on all parties, in compliance with the Federal Rules of Civil Procedure as follows:

**VIA CERTIFIED MAIL:**

Andrew Trevino, No. 2119873  
Travis County Correctional Complex  
3614 Bill Price Road  
Del Valle, Texas 78617

A-22-CV-152-RP

RECORDED  
MAR 24 2022  
CLERK  
[Signature]

NO. A-22-CV-152-RP

Andrew Trewino #211 9873  
[plaintiff]  
v.  
Timothy Price #6818  
[defendant]

IN THE \_\_\_\_\_ COURT  
\_\_\_\_\_ COUNTY, TEXAS  
[\_\_\_\_\_ JUDICIAL DISTRICT]

FILED

MAR 24 2022

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature] DEPUTY CLERK

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

Andrew Trewino <sup>707</sup>/<sub>936</sub> Name, with identifying information if available, e.g.: John Smith (last three numbers of social security number: 123; last three numbers of driver's license number: 456), the plaintiff in this action, complains of T. Price #6818/APD name, the defendant in this action, and for cause of action shows the following:

1. Selection of Discovery Level

The plaintiff \_\_\_\_\_ [affirmatively pleads that he/she/it seeks only monetary relief aggregating \$100,000 or less, including damages of any kind, penalties, costs, expenses, prejudgment interest, and attorney's fees, so that this action is subject to the expedited actions process of Civil Procedure Rule 169 and discovery must therefore be conducted under Civil Procedure Rule 190.2 or pleads that discovery should be conducted in accordance with \_\_\_\_\_ (a discovery control plan under Civil Procedure Rule 190.3 or a tailored discovery control plan under Civil Procedure Rule 190.4)].

2. Statement of Relief Sought

The plaintiff seeks \_\_\_\_\_ [specify relief sought, e.g., only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, prejudgment interest, and attorney's fees or monetary relief of \$100,000 or less and non monetary relief or monetary relief in an amount \_\_\_\_\_ (specify applicable range of monetary relief sought as provided by Tex. R. Civ. P. 47(c), e.g., over \$100,000 but not more than \$200,000)]. The damages sought are within the jurisdictional limits of the court.

3. Parties and Service of Citation

The plaintiff is an individual residing in Travis County, Texas. The defendant is APD Homicide Division T. Price #6818 [the State of Texas or a Texas county or an incorporated municipality or a school district or other government unit as the case may be], [if other than State of Texas or a county, add: \_\_\_\_\_] situated in \_\_\_\_\_ County, Texas]. The defendant may be served with process by serving the Honorable Robert Pitman [name], Judge [title, e.g., Secretary of State or County Judge, or its mayor or its superintendent or as the case may be], at 501 W. 5th St Ste. 1100 [address], Travis County, Texas.

**4. Venue**

Venue is proper in this court because the cause of action or a part of the cause of action arose in this County.

**5. Circumstances of Incident**

The plaintiff suffered Multiple [personal injuries or compensable harm from the death of \_\_\_\_\_ (name of plaintiffs' decedent) or damage to \_\_\_\_\_ (his or her) property] when: \_\_\_\_\_ [describe occurrence sued on, e.g., The plaintiff was driving her car on \_\_\_\_\_ Avenue in a westerly direction toward the intersection of \_\_\_\_\_ Highway and \_\_\_\_\_ Avenue, in \_\_\_\_\_, Texas, when plaintiff's car was struck by a school bus owned by \_\_\_\_\_ (name of governmental unit) and driven by \_\_\_\_\_ (name of employee, officer, or agent of defendant)].

**6. Immunity Waived**

The defendant \_\_\_\_\_ [name of governmental unit] may be held to answer in a court of law for the occurrence just described because the plaintiff's claim \_\_\_\_\_ [describe applicable statutory waiver(s) of sovereign immunity or reasons why sovereign immunity is inapplicable, e.g., asserts that an employee of the defendant \_\_\_\_\_ was negligent in the operation of a motor vehicle, so that sovereign immunity is waived under the Texas Tort Claims Act or arises from the use of tangible personal property by the defendant \_\_\_\_\_, so that sovereign immunity is waived under the Texas Tort Claims Act or arises from the performance of a proprietary function, i.e. \_\_\_\_\_ (specify function, e.g., the operation of a public utility) by a municipality, so that the defendant \_\_\_\_\_ may not claim sovereign immunity].

**7. Unit's Employees Acted in Scope of Employment**

At all times material, all of the agents, servants, and employees of the defendant who were in any way connected with the occurrence were acting within the course and scope of their employment or official duties and in furtherance of the duties of their office or employment.

**8. Causation**

The occurrence described in this petition was proximately caused by the negligence of T. Price #6818 [name of governmental unit] and its agents, servants, and officers in one or more of the following particulars: \_\_\_\_\_ [continue with identification of negligent acts and omissions, e.g., in furnishing defective equipment or failing to keep a proper lookout].

Treviño V. Price # 6818  
A-22-CV-152-RP

**9. Damages; Personal Injury**

As the direct and proximate result of negligence of the defendant, the plaintiff has suffered Severe Nerve Damage describe damages, e.g., severe, painful, and permanent injuries. The plaintiff has undergone surgery, and has incurred substantial, reasonable, and necessary doctor, hospital, and medical expenses, and in reasonable medical probability will incur substantial doctor, hospital, and medical expenses in the future. The plaintiff has suffered severe physical impairment and loss of earning capacity, and will continue to do so in the future. The plaintiff has sustained much physical pain and suffering and will continue to suffer in this respect for a long time in the future if not for the balance of her natural life. The plaintiff has been damaged in all these respects in an amount within the jurisdictional limits of the court].

10. Notice Provided [Provided or Excused]

[Alternative One. Allege compliance with notice requirements]

Prior to the filing of this lawsuit, and within \_\_\_\_\_ [state time period prescribed, e.g., six months] from the date of the occurrence described in this petition, the plaintiff presented notice of \_\_\_\_\_ [his or her] claim to \_\_\_\_\_ [name and capacity], as prescribed by \_\_\_\_\_ [the Texas Tort Claims Act or applicable city charter or ordinance provision]. A true copy of the notice is attached as Exhibit A and incorporated by reference.

[Alternative Two. Allege excuse from notice requirements]

At all relevant times, the defendant has had actual notice of the plaintiff's claim and cause of action because \_\_\_\_\_ [allege facts constituting actual notice, e.g., the incident forming the basis of this action was investigated by \_\_\_\_\_ (name), a member of the \_\_\_\_\_ (name of defendant municipality) Police Department, in the discharge of \_\_\_\_\_ (his or her) official duties. As a result of that investigation, \_\_\_\_\_ (name of defendant municipality) acquired full, complete, and actual knowledge of the occurrence giving rise to the plaintiff's cause of action and that the plaintiff was asserting a claim based on the occurrence].

WHEREFORE, the plaintiff requests that the defendant be cited to appear and answer, and that on final trial the plaintiff have:

1. Judgment against the defendant for the actual and special damages suffered by the plaintiff as a result of the defendant's conduct, in an amount within the jurisdictional limits of the court.
2. Costs of suit.
3. Prejudgment and postjudgment interest as provided by law.
4. Such other and further relief to which the plaintiff may be justly entitled.

Respectfully submitted,

\_\_\_\_\_ [firm name, if any]

By: \_\_\_\_\_ [signature]

\_\_\_\_\_ [typed name]

\_\_\_\_\_ [address]

\_\_\_\_\_ [telephone number]

\_\_\_\_\_ [email address]

\_\_\_\_\_ [fax number, if any]

\_\_\_\_\_ [state bar i.d. number]

Attorney for \_\_\_\_\_

**[Include declaration under penalty of perjury if charter or ordinance requires verification]**

**JURAT**

DelValle, TX

My name is Andrew Treviño [declarant's first, middle, and last names], my date of birth is October 7, 1982 [date], and my address is 3614 Bill Price Rd 78617 street, city, state, zip code, country]. I declare under penalty of perjury that every statement in the foregoing Answer is within my personal knowledge and is true and correct.

Executed in Travis County, State of Texas, on the 17 day of March 2022 [month, year].

/s/ Andrew Treviño #2119873 [signature]

Declarant

**Notice of Claim Under Texas Tort Claims Act**

To: Timothy Price #6818 [Name of governmental unit or specific official to whom notice must be given]

From: Andrew Treviño [Name of claimant or person presenting claim on behalf of claimant]

This notice of injury and claim for damages is given under Negligence/Intentional Tort [the Texas Tort Claims Act or applicable charter or ordinance under which notice is presented].

**1. Identity of Claimant**

The injured party is Andrew Treviño [name of claimant], who resides at 364 B:11 Price Rd. [address], Travis County, Texas.  
DeValle, Tx 78617

**2. Date, Time, and Place of Incident**

The occurrence giving rise to this claim took place at APD Homicide Division [state time, date, and place of occurrence, e.g., 7:40 o'clock, Tuesday (day), Nov 9, 2021 (date), at \_\_\_\_\_ (address), Austin (name of city), Travis County, Texas].

**3. Circumstances of Incident**

The incident occurred in the following manner:

**[Alternative One. Condition of tangible personal property]**

\_\_\_\_\_ [state occurrence, stressing role of tangible personal property, e.g., \_\_\_\_\_ (name) was attempting to paint a building located at \_\_\_\_\_ (address). \_\_\_\_\_ (Name) received severe and probably permanent injuries resulting from electrical burns suffered when a metal paint roller extension \_\_\_\_\_ (he or she) was using came into contact with (or so close to) an electrical power line owned by the City of \_\_\_\_\_ so that an electric current was caused to travel through the paint roller extension into the claimant's body].

**[Alternative Two. Special defect in public roadway]**

\_\_\_\_\_ [state occurrence, stressing role of special defect, e.g., \_\_\_\_\_ (name) was riding as a passenger in a pickup truck being driven by \_\_\_\_\_ (name) in a prudent manner when the truck ran into a large excavation covering almost the entire width of the roadway and constituting a special defect. After contact with the special defect in the roadway, the truck ran off the roadway and collided with a large oak tree].

**[Alternative Three. Motor vehicle liability]**

LexisNexis(R) Forms FORM 719-293.100

\_\_\_\_\_ [state occurrence, stressing role of motor vehicle, e.g., \_\_\_\_\_ (name) was driving \_\_\_\_\_ (his or her) automobile in a southerly direction on Smith Street in a reasonable and prudent manner when \_\_\_\_\_ (his or her) car was suddenly struck broadside in the area of the left front and rear doors by a large orange school bus owned and operated by the \_\_\_\_\_ School District].

**4. Unit's Responsibility for Incident**

The occurrence giving rise to this claim was a direct and proximate result of the negligence of the Timothy Price #6818 [name of governmental unit] as follows:

**[Alternative One. Condition of tangible personal property]**

\_\_\_\_\_ [specify, e.g.,

- 1. In failing to adequately inspect the electrical wires in question.
- 2. In allowing uninsulated or insufficiently insulated electrical wires to be located so near the building in question].

**[Alternative Two. Special defect in public roadway]**

\_\_\_\_\_ [specify, e.g.,

- 1. In failing to properly maintain the roadway as a reasonably prudent person would have done.
- 2. In failing to warn the public by the use of road signs (or in some other manner) that the roadway was in a dangerous condition. In this connection, claimant says the \_\_\_\_\_ (name of governmental unit) should have known of the condition of the roadway that constituted a special defect within the meaning of the Texas **Tort** Claims Act].

**[Alternative Three. Motor vehicle liability]**

\_\_\_\_\_ [specify, e.g., the school bus was being driven by \_\_\_\_\_ (name), an employee of the \_\_\_\_\_ (name of governmental unit), acting within the course and scope of (his or her) employment. The collision was proximately caused by the negligence of \_\_\_\_\_ (name of employee) in failing to keep a proper lookout].

**5. Injury to Claimant**

As a direct and proximate result of the occurrence, the claimant suffered the following injuries and other losses: Severe Nerve Damage [describe nature and extent of injury, e.g., claimant's leg was broken in three places, with severe laceration to the knee joint]. (Requiring Surgery)

**6. Damages Suffered by Claimant**

**[Optional. If city charter or ordinance requires that specific damages be set out in notice]**

As a direct and proximate result of the actions of \_\_\_\_\_ [name of governmental unit], claimant has, as of the date of this notice, sustained the following damages:

C

Trevino V. Price #6818  
A-22-CV-152-RP

LexisNexis(R) Forms FORM 719-293.100

- 1. \$ \_\_\_\_\_ for TBD [specific item of damage, e.g., medical expenses].
- 2. \$ \_\_\_\_\_ for TBD [specific item of damage, e.g., lost wages].

[Continue to list each compensable item of damages, estimated future expenses, and lost wages].

**7. Witnesses to Incident**

[Optional. If city charter or ordinance requires list of witnesses]

Attached to this notice is a list of names and addresses of witnesses to the event described above.

[OR]

Claimant does not know of any witnesses at this time who claim to have seen the incident; however, claimant's personal physician, Meagher #5230 [name], and claimant's attorney, \_\_\_\_\_ [name], may be contacted for further information.

Respectfully submitted,

\_\_\_\_\_ [firm name, if any]

By: \_\_\_\_\_ [signature]

\_\_\_\_\_ [typed name]

\_\_\_\_\_ [address]

\_\_\_\_\_ [telephone number]

\_\_\_\_\_ [email address]

\_\_\_\_\_ [fax number, if any]

\_\_\_\_\_ [state bar i.d. number]

Attorney for \_\_\_\_\_

[Include declaration under penalty of perjury if charter or ordinance requires verification]

**JURAT**

My name is Andrew Trevino [declarant's first, middle, and last names], my date of birth is October 7, 1982 [date], and my address is 3614 Bill Price Rd, 78617 [street, city, state, zip code, country]. I declare under penalty of perjury that every statement in the foregoing Notice of Injury and Claim is within my personal knowledge and is true and correct.

DeValley, TX

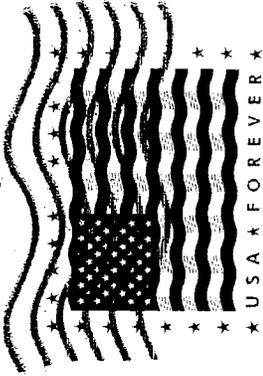
Executed in Travis County, State of Texas, on the 17 day of March 2022 [month, year].

/s/ Andrew Trevino [signature]

Declarant

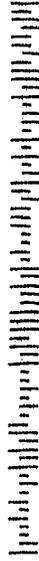
Andrew Trevino #2119873  
TCCU / 10-7-82  
3614 Bill Price Rd.  
DeValle, TX 78617

SCREENED BY CSC  
MAR 24 2022



AUSTIN TX 786  
RIO GRANDE DISTRICT  
22 MAR 2022 PM 4 L

U.S. District Clerk  
501 W. 5<sup>th</sup> St. Ste. 1100  
Austin, TX 78701



78701-361275

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

**ANDREW TREVINO**

*Plaintiff,*

v.

**DETECTIVE TIMOTHY PRICE,**

*Defendant.*

§  
§  
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§  
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§  
§

**CIVIL ACTION NO. 1:22-cv-0152-RP**

**DEFENDANT’S MOTION TO DISMISS**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendant Timothy Price and files this Motion to Dismiss pursuant to Rule 12(b)(1)&(6) of the Federal Rules of Civil Procedure as follows:

**I. INTRODUCTION**

After Defendant filed his Motion to Dismiss (Doc. 7) pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure, Plaintiff filed another “Original Petition” (Doc. 9) which appears to assert another state law claim against Defendant Price. This Petition does not contain any facts at all about the incident which purportedly is the subject of the lawsuit and does not contain any factual allegations sufficient to establish federal jurisdiction.

**II. ARGUMENT AND AUTHORITIES**

For the reasons more fully set forth in Defendant’s Original Motion to Dismiss (Doc. 7), Defendant requests that the Court dismiss the Plaintiff’s claims asserted in Plaintiff’s Petition (Doc. 9) since the Petition (Doc. 9) contains no reference to any federal statute, cause of action or other federal right sufficient to support federal jurisdiction.

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Timothy Price respectfully requests that the Court grant this Motion to Dismiss and dismiss the Plaintiff's claims against him with prejudice and with all costs assessed to the Plaintiff. Defendant requests any additional relief to which he may be entitled.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird

H. Gray Laird  
Assistant City Attorney  
State Bar No. 24087054  
[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)  
City of Austin Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546  
Telephone: (512) 974-1342  
Facsimile: (512) 974-1311  
**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I certify that, on the 6th day of April 2022, I served a copy of *Defendant's Motion to Dismiss* on all parties, in compliance with the Federal Rules of Civil Procedure as follows:

**VIA CERTIFIED MAIL:**

Andrew Trevino, No. 2119873  
Travis County Correctional Complex  
3614 Bill Price Road  
Del Valle, Texas 78617

RECEIVED

PRISONER'S CIVIL RIGHTS COMPLAINT (Rev. 05/2015)

APR 7 2022

FILED

APR 07 2022

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF TEXAS  
\_\_\_\_\_ DIVISION

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ DEPUTY CLERK

Andrew Trevino #2119873  
Plaintiff's Name and ID Number

Travis County Correctional Complex  
Place of Confinement

CASE NO. A-22-CV-152-RP  
(Clerk will assign the number)

v.

Austin Police Department Homicide Division  
Defendant's Name and Address

\_\_\_\_\_  
Defendant's Name and Address

\_\_\_\_\_  
Defendant's Name and Address  
(DO NOT USE "ET AL.")

**INSTRUCTIONS - READ CAREFULLY**

**NOTICE:**

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the clerk of the United States district court for the appropriate district of Texas in the division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. If you are confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), the list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate district court, the division and an address list of the divisional clerks.

**FILING FEE AND IN FORMA PAUPERIS (IFP)**

1. In order for your complaint to be filed, it must be accompanied by the statutory filing fee of \$350.00 plus an administrative fee of \$52.00 for a total fee of **\$402.00**.
2. If you do not have the necessary funds to pay the fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis*, setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six-month history of your inmate trust account. If you are an inmate in TDCJ-CID, you can acquire the application to proceed *in forma pauperis* and the certificate of inmate trust account, also known as *in forma pauperis* data sheet, from the law library at your prison unit.
3. The Prison Litigation Reform Act of 1995 (PLRA) provides "... if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." See 28 U.S.C. § 1915. Thus, the court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the court will apply 28 U.S.C. § 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your inmate trust account, until the entire \$350.00 statutory filing fee has been paid. (The \$52.00 administrative fee does not apply to cases proceeding *in forma pauperis*.)
4. If you intend to seek *in forma pauperis* status, do not send your complaint without an application to proceed *in forma pauperis* and the certificate of inmate trust account. Complete all essential paperwork before submitting it to the court.

**CHANGE OF ADDRESS**

It is your responsibility to inform the court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motion for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

**I. PREVIOUS LAWSUITS:**

- A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment? \_\_\_ YES \_\_\_  NO
- B. If your answer to "A" is "yes," describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
  1. Approximate date of filing lawsuit: \_\_\_\_\_
  2. Parties to previous lawsuit:
 

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_
  3. Court: (If federal, name the district; if state, name the county.) Travis County
  4. Cause number: \_\_\_\_\_
  5. Name of judge to whom case was assigned: \_\_\_\_\_
  6. Disposition: (Was the case dismissed, appealed, still pending?) \_\_\_\_\_
  7. Approximate date of disposition: \_\_\_\_\_

II. PLACE OF PRESENT CONFINEMENT: Travis County Correctional Complex

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted all steps of the institutional grievance procedure?  YES  NO

Attach a copy of your final step of the grievance procedure with the response supplied by the institution.

IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: Andrew Trevin #2119873  
3614 Bill Price Rd.  
DelValle, Tx 78617

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Austin Police Department Homicide Division  
715 E. 8<sup>th</sup> st. ; Austin, Tx 78701

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Negligence and Intentional Tort

Defendant #2: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #3: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #4: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Defendant #5: \_\_\_\_\_

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

On the 9<sup>th</sup> day of November 2021 at 7:30 pm I was arrested by US Marshal's and taken to APD Homicide for questioning. After Detective Price #6818 finished I stood up so he can place cuffs, he then used excessive force towards me causing severe nerve damage and chronic pain to my left hand and arm. I now require surgery to my left hand and arm. After the Assault, Battery and Negligence I no longer feel safe or protected by APD

VI. RELIEF:

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Compensatory and Monetary Relief

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases.

Andrew Trevino

B. List all TDCJ-CID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you.

Don't Remember

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed?  YES  NO

B. If your answer is "yes," give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): \_\_\_\_\_

2. Case number: \_\_\_\_\_

3. Approximate date sanctions were imposed: \_\_\_\_\_

4. Have the sanctions been lifted or otherwise satisfied?  YES  NO

C. Has any court ever warned or notified you that sanctions could be imposed? \_\_\_\_\_ YES  NO

D. If your answer is "yes," give the following information for every lawsuit in which a warning was issued. (If more than one, use another piece of paper and answer the same questions.)

1. Court that issued warning (if federal, give the district and division): \_\_\_\_\_
2. Case number: \_\_\_\_\_
3. Approximate date warning was issued: \_\_\_\_\_

Executed on: 4-3-22  
DATE

Andrew Trevino  
Andrew Trevino  
(Signature of Plaintiff)

**PLAINTIFF'S DECLARATIONS**

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand, if I am released or transferred, it is my responsibility to keep the court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions or appeals (from a judgment in a civil action) in a court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire filing fee and costs assessed by the court, which shall be deducted in accordance with the law from my inmate trust account by my custodian until the filing fee is paid.

Signed this 3<sup>rd</sup> day of April, 2022.  
(Day) (month) (year)

Andrew Trevino  
Andrew Trevino  
(Signature of Plaintiff)

**WARNING: Plaintiff is advised any false or deliberately misleading information provided in response to the above questions may result in the imposition of sanctions. The sanctions the court may impose include, but are not limited to, monetary sanctions and the dismissal of this action with prejudice.**

**FILED**

APR 21 2022

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_  
DEPUTY CLERK

Andrew Trevino #2119873

V

Civil Action No. A-22-CV-152-RP

Detective Timothy Price #6818

TO Honorable Robert Pittman, United States District Judge;  
Comes now Plaintiff Andrew Trevino and files  
factual allegation toward his claim.

I: Introduction

Facts of the lawsuit appears to be on  
physical injury, excessive force and defamation.

II: Argument and Authorities

Federal statute, cause of action are as stated  
under the Federal Tort Claim Act (FTCA)  
Negligence and Intentional Tort

- Defendant Detective Timothy Price #6818 failed to use reasonable care and he breached in his duty to keep me safe, which this is considered Negligence.
- Defendant Detective Timothy Price #6818 also caused Plaintiff Andrew Trevino severe nerve damage to where he requires 3 surgery's to his left hand.

- Defendant, Detective Timothy Price #6818 cause physical injury toward Plaintiff (Treviño) by using excessive force for no probable cause, this Federal Tort Claim Act (FTCA) cause of action is considered Intentional Tort.

- Due to the Battery that Defendant, Detective Timothy Price #6818, Plaintiff (Treviño) under goes chronic pain and medical service, Plaintiff had went to Dell Seaton on March 29, 2022 at 7:45 am, Dr. Watkins had notified Plaintiff, Andrew Treviño that he will be needing 3 surgery's.

- Dr. Watkins specialized in hand surgery.

Further process of this, Plaintiff (Treviño) has complaint # (2022-0041) from the Office of Police Oversight, which he recieved February 4, 2022.

- Plaintiff also exhausted the requirements of Prison Litigation Reform Act (PLRA).

Dated: April 18, 2022

Andrew Treviño  
#2119873

RECEIVED

APR 21 2022

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
DEPUTY CLERK

Application for Appointment of Counsel

Andrew Treviño #2119873



Austin Police Department  
Detective Timothy Price #10816

Civil Action No A-22-CV-152-RP

(g) Andrew Treviño #2119873

(h) I do not have access to the law library

(i) Phone, mail and asked family

(j) English

(k) I understand that if a lawyer volunteers to represent me, and my lawyer learns that I can afford to pay for a lawyer, the lawyer may give this information to the court.

(l) I understand that my answers on my Application for the Court to Request Counsel are false my case may be dismissed.

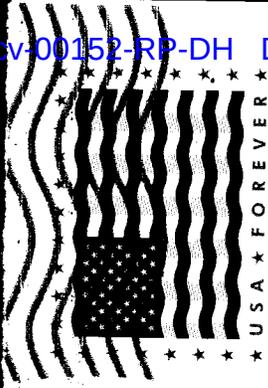
(m) I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 18, 2022

Andrew Treviño

~~152-RP~~

Andrew Treviño #2119873  
TCCC/10-7-82  
3614 Bill Price Rd.  
DelValle, Tx 78617



AUSTIN TX 786  
RIO GRANDE DISTRICT  
19 APR 2022 PM 3 L

SCREENED BY CSO  
APR 21 2022

District Clerk  
United States District Court  
Western District of Texas  
501 W. 5th St, Ste 1100  
Austin, TX 78701

78701-381275



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

**ANDREW TREVINO**

*Plaintiff,*

v.

**DETECTIVE TIMOTHY PRICE  
AND AUSTIN POLICE DEPARTMENT,**

*Defendants.*

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**CIVIL ACTION NO. 1:22-cv-0152-RP**

**DEFENDANTS' MOTION TO DISMISS**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

COME NOW, Defendants Timothy Price and the Austin Police Department file this Motion to Dismiss pursuant to Rule 12(b)(1)&(6) of the Federal Rules of Civil Procedure as follows:

**I. INTRODUCTION**

After Defendant Price filed his second Motion to Dismiss (Doc. 12) pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure, Plaintiff filed a second Amended Complaint (Doc. 13) which appears to assert a “negligence and intentional tort” claim against Defendant Price and/or the Austin Police Department. Plaintiff did not obtain leave of Court or written consent from the Defendants before filing the Amended Complaint.

**II. ARGUMENT AND AUTHORITIES**

Rule 15 (a)(1) of the Federal Rules of Civil Procedure provides that a party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Rule 15

further provides, that in all other cases, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.”

Here, Plaintiff filed one amended complaint (Doc. 9) as permitted by Rule 15. He did not obtain leave of court or written consent from the Defendants to file the second amended complaint. As a result, the Court should dismiss Plaintiff’s second amended complaint (Doc. 13).

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendants Timothy Price and the Austin Police Department respectfully request that the Court grant this Motion to Dismiss and dismiss the Plaintiff’s claims against them with prejudice and with all costs assessed to the Plaintiff. Defendants request any additional relief to which they may be entitled.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird

H. Gray Laird  
Assistant City Attorney  
State Bar No. 24087054  
[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)  
City of Austin Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546  
Telephone: (512) 974-1342  
Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I certify that, on the 27th day of April 2022, I served a copy of *Defendants' Motion to Dismiss* on all parties, in compliance with the Federal Rules of Civil Procedure as follows:

**VIA CERTIFIED MAIL:**

Andrew Trevino, No. 2119873  
Travis County Correctional Complex  
3614 Bill Price Road  
Del Valle, Texas 78617

Clerk, U. S. District Court  
Western District of Texas  
By: [Signature]  
Deputy

May 8, 2022  
Sunday

Andrew Trevino #2119873  
TCC, 10-7-82  
3614 Bill Price Rd.  
DelValle, TX 78617

RE: Case No. 1:22-cv-0152-RP; Trevino v Price

Dear Honorable Judge Robert Pitman

As I reviewed back over Doc 7, Doc 12 and Doc 16 "Defendants Motion to Dismiss" all repeat the same information of the Federal Rules of Civil Procedures 12(b)(4) and (6).

I complied with details and exhibits of Dell Seaton visit's and Doctor visit here at Travis County Correctional Complex. I am soon to be taken too Dell Seaton for another visit with Dr. Watkins (hand surgeon). My left hand requires multiple surgarys and the process will an has been started at Dell Seaton Hospital.

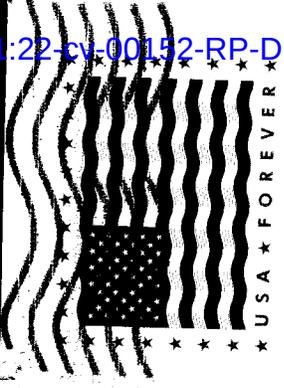
I request for permission to move (apply) forward for a "default judgment" because the defendant is not fully stating what evidence they have for dismissal.

Respectfully,

Andrew Trevino  
#2119873

1. drew. vitro #2119823  
TCCC/10-7-82  
3614 Bill Price Rd.  
DelValle, Tx 78617

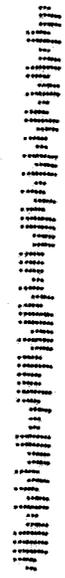
AUSTIN TX 786  
RIO GRANDE DISTRICT  
9 MAY 2022 PM 2 L



SCREENED BY CSO  
MAY 11 2022

Judge Robert Pitman  
U.S. District Court  
Western District of Texas  
501 W. 5<sup>th</sup> St, ste 1100  
Austin, Tx 78701

78701-381399



RECEIVED

MAY 9 2022

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature] DEPUTY

FILED

MAY 23 2022

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature] DEPUTY CLERK

Andrew Trevino #2119873

v.

Civil Action No. A-22-cv-152-RP

Det. Timothy Price #6818

May 16, 2022

I. Introduction

Plaintiff (Andrew Trevino) has received several medical visits and appointments for the physical injury of the severe nerve damage that Defendant Det. Timothy Price #6818 caused.

II. Facts

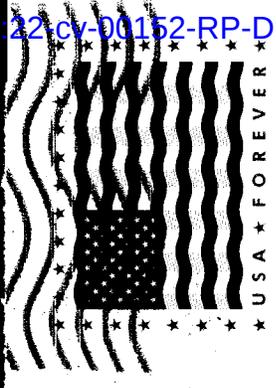
- 1.) Plaintiff (Trevino) first visit was with Travis County Correctional Complex (TCCC) Doctor.
- 2.) TCCC Dr. Meagher #5236, documented an appointment to Dell Seaton for Plaintiff's left-hand.
- 3.) On March 29, 2022 at 7:30 am, Plaintiff (Andrew Trevino) was taken to Dell Seaton Hospital for physical test on his left-hand.
- 4.) Dr. Watkins (Hand Surgeon) had notified Plaintiff (Trevino) that there would be 3 surgery process done all in one day therein Dell Seaton Hospital.
- 5.) On May 5, 2022 Plaintiff revisited with Dr. Meagher #5236 for a follow-up and advised Plaintiff he was due for another visit to Dell Seaton soon.

Respectfully,

Andrew Trevino  
#2119873

Andrew Trevino #2119873  
TCCC / 10-7-1982  
3614 Bill Price Rd.  
DelValle, TX 78617

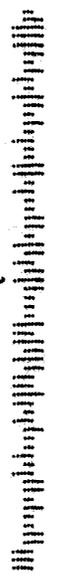
AUSTIN TX 786  
RIO GRANDE DISTRICT  
19 MAY 2022 PM 3 L



SCREENED BY CSC

MAY 23 2022

District Clerk  
US District Court  
Western District of Texas  
501 West 5<sup>th</sup> St. Ste. 100  
Austin, TX 78701



78701-381235

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

**ANDREW TREVINO  
(Travis County No. 56602),  
PLAINTIFF,**

**V.**

**TIMOTHY PRICE  
DEFENDANT.**

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**A-22-CV-568-RP  
A-22-CV-152-RP**

**ORDER**

Before the Court is Plaintiff's civil rights complaint brought against Defendant Timothy Price, a detective with the Austin Police Department, in Cause No. A-22-CV-568-RP. Plaintiff alleges Price used excessive force on him on November 9, 2021, when Price placed handcuffs on Plaintiff "really tight." Plaintiff contends the placement of the handcuffs caused him nerve damage that required surgery.

After reviewing Plaintiff's complaint and his previously filed complaints in Cause No. A-22-CV-152-RP, which is currently pending, the Court is of the opinion Plaintiff did not intend to file a new lawsuit and instead was attempting to file another amended complaint in his pending cause.

It is therefore **ORDERED** that the Clerk of Court shall file Plaintiff's complaint in Cause No. A-22-CV-152-RP as an amended complaint and shall close Cause No. A-22-CV-568-RP.

**SIGNED** on June 16, 2022.



**ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE**

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

RECEIVED

JUN 6 - 2022

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ DEPUTY

UNITED STATES DISTRICT COURT

for the

District of

Division

1:22 CV 00568 RP

Case No.

(to be filled in by the Clerk's Office)

Andrew Trevino # 2119873  
Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Timothy Price # 6818  
Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

**I. The Parties to This Complaint**

**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Andrew Treviño  
 All other names by which you have been known: \_\_\_\_\_  
 ID Number 2119873  
 Current Institution TCCC  
 Address 3614 Bill Price Rd.  
DelValle Tx 78617  
City State Zip Code

**B. The Defendant(s)**

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name Timothy Price  
 Job or Title (*if known*) Homicide Detective  
 Shield Number #6818  
 Employer Austin Police Department  
 Address \_\_\_\_\_  
Austin Tx  
City State Zip Code  
 Individual capacity     Official capacity

Defendant No. 2

Name \_\_\_\_\_  
 Job or Title (*if known*) \_\_\_\_\_  
 Shield Number \_\_\_\_\_  
 Employer \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_  
City State Zip Code  
 Individual capacity     Official capacity

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

**Defendant No. 3**

Name \_\_\_\_\_

Job or Title *(if known)* \_\_\_\_\_

Shield Number \_\_\_\_\_

Employer \_\_\_\_\_

Address \_\_\_\_\_

City

State

Zip Code

Individual capacity

Official capacity

**Defendant No. 4**

Name \_\_\_\_\_

Job or Title *(if known)* \_\_\_\_\_

Shield Number \_\_\_\_\_

Employer \_\_\_\_\_

Address \_\_\_\_\_

City

State

Zip Code

Individual capacity

Official capacity

**II. Basis for Jurisdiction**

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)*, you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against *(check all that apply)*:

Federal officials (a *Bivens* claim)

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

*Cruel and Unusual Punishment; Deprivation of Life; Negligence; Intentional Tort*

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

*Negligence; Damages; Intentional Tort; Cruel and Unusual Punishment*

**III. Prisoner Status**

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- Pretrial detainee
- Civilly committed detainee
- Immigration detainee
- Convicted and sentenced state prisoner
- Convicted and sentenced federal prisoner
- Other (explain) \_\_\_\_\_

**IV. Statement of Claim**

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

*Excessive force causing severe Nerve Damage*

B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

*Austin Police Department Headquarters (Homicide Division)*

C. What date and approximate time did the events giving rise to your claim(s) occur?

November 9, 2021 @ 7:30 pm

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

Handcuffs were placed on me really tight, Det Timothy Price #6818 used excessive force and Transporting officer had to loosen the cuffs in the garage. I was in front of APD officer that transported me to Central Booking car.

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

Nerve Damage; Dr Meagher referred me to Dell Seaton Hospital Hand specialize Dr Wachtman. Dr. Wachtman referred me to get an EMG done by Dr. Nguyen.  
Dr. Wachtman 3-29-22 (Hand Surgeon)  
Dr. Nguyen 5-17-22 (EMG)

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

money damage  
Medical damage  
financial damage  
To recover after surgery and ect. ask court for relief of 2 million. (Im a welder mechanic an carpenter)

**VII. Exhaustion of Administrative Remedies Administrative Procedures**

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

- Yes
- No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Austin Police Department Homicide Division Floor

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

- Yes
- No
- Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

- Yes
- No
- Do not know

If yes, which claim(s)?

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Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

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D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

Yes

No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes

No

E. If you did file a grievance:

1. Where did you file the grievance?

Travis County Sheriffs Office

---

2. What did you claim in your grievance?

Excessive Force; Negligence; Intentional Tort

---

3. What was the result, if any?

Told me to file an Office of Police Oversight

---

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

Sally Hernandez sent me a Police of Oversight application

---

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

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F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

---

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

---

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Office of Police oversight complaint # 2022-0041

---

*(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)*

### VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

Yes

No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

---

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

---

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes

No

B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) Andrew Treviño

Defendant(s) Det. Timoth Price #6818

2. Court (if federal court, name the district; if state court, name the county and State)

Travis County, Texas

3. Docket or index number

A-22-cv-152-RP

4. Name of Judge assigned to your case

Robert Pittman

5. Approximate date of filing lawsuit

January 9, 2022

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition. \_\_\_\_\_

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

\_\_\_\_\_

C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

Pro Se 14 (Rev. 12/16) Complaint for Violation of Civil Rights (Prisoner)

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- Yes
- No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) \_\_\_\_\_

Defendant(s) \_\_\_\_\_

2. Court *(if federal court, name the district; if state court, name the county and State)*

\_\_\_\_\_

3. Docket or index number

\_\_\_\_\_

4. Name of Judge assigned to your case

\_\_\_\_\_

5. Approximate date of filing lawsuit

\_\_\_\_\_

6. Is the case still pending?

Yes

No

If no, give the approximate date of disposition \_\_\_\_\_

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

\_\_\_\_\_

**IX. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk’s Office with any changes to my address—where case—related papers may be served. I understand that my failure to keep a current address on file with the Clerk’s Office may result in the dismissal of my case.

Date of signing: June 1, 2022

Signature of Plaintiff Andrew Treviño

Printed Name of Plaintiff Andrew Treviño

Prison Identification # 2119873

Prison Address 3614 Bill Price Rd

DelValle TX 78617

City State Zip Code

**B. For Attorneys**

Date of signing: \_\_\_\_\_

Signature of Attorney \_\_\_\_\_

Printed Name of Attorney \_\_\_\_\_

Bar Number \_\_\_\_\_

Name of Law Firm \_\_\_\_\_

Address \_\_\_\_\_

City State Zip Code

Telephone Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

CIVIL COVER SHEET

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

Andrew Trevino

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Timothy Price

County of Residence of First Listed Defendant (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

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, 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): 42:1983. Brief description of cause: Prisoner Civil Rights

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 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

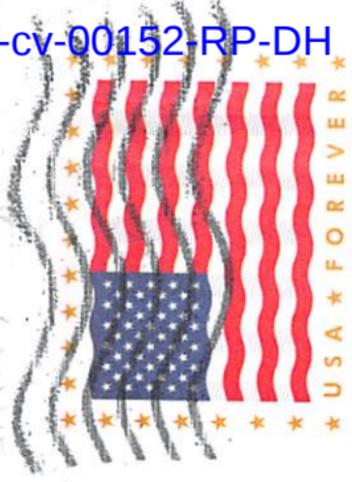
The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Andrew Treviño # 21198673  
TCC / 10-7-1982  
3614 Bill Price Rd.  
DelValle, Tx 78617

AUSTIN TX 786  
RIO GRANDE DISTRICT  
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JUN 03 2022 U.S. District Court  
Western District  
501 W. 5<sup>th</sup> St. Ste. 100

Austin, TX 78701

78701-381275

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

**ANDREW TREVINO**  
**(Travis County No. 56602),**  
**PLAINTIFF,**

**V.**

**TIMOTHY PRICE**  
**DEFENDANT.**

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**A-22-CV-152-RP**

**ORDER**

Before the Court are Plaintiff’s original complaint and four amended complaints and Defendant’s three motions to dismiss. After consideration of the pleadings in this case, Defendant’s motions to dismiss are dismissed and Plaintiff is ordered to file a final amended complaint that will take the place of all of his previously filed complaints.

In his original complaint Plaintiff alleges he was arrested in 2020 for unauthorized use of a motor vehicle, evading arrest, and possession of a firearm. Plaintiff indicates he “signed for 5 years probation and I.S.F.” According to Plaintiff, he went to an Intermediate Sanctions Facility (ISF) in March 2021 and finished the program in June 2021. Plaintiff apparently was also accused of a homicide committed on December 8, 2020. Plaintiff asserts at the time of the homicide he was at his apartment living with his two wives. He claims the “homicide was dismissed” for lack of evidence. In October 2021, Price allegedly obtained a warrant for Plaintiff’s arrest for the homicide. Plaintiff claims the warrant slanders his name because he did not have outstanding warrants at the time he was released from the ISF. Plaintiff asserts he was picked up by the U.S. Marshals and was transported to the Austin Police Department. There, he claims Price placed handcuffs on him

“extremely tight,” causing nerve damage, numbing, and swelling to his hands. Plaintiff contends this was an assault and battery.

Price moved to dismiss Plaintiff’s complaint and argued Plaintiff only alleged state-law claims. Price additionally argued Plaintiff failed to establish a waiver of immunity under Texas law, depriving the Court of jurisdiction.

Instead of responding to Price’s motion to dismiss Plaintiff filed a complaint pursuant to the Texas Tort Claims Act. He alleges Price was negligent and committed intentional torts.

Price responded to the amended complaint with a second motion to dismiss. He argues Plaintiff still fails to assert any federal claims.

Once again, Plaintiff failed to respond to the motion to dismiss and filed an amended complaint. This time he alleges claims of excessive force, defamation, negligence, and intentional torts.

Price moves to dismiss the amended complaint. He argues Plaintiff did not obtain leave to file an amended complaint.

Plaintiff failed to respond to the motion to dismiss. Instead he filed a new complaint against Price alleging Price used excessive force on him on November 9, 2021, when Price placed handcuffs on Plaintiff “really tight.” Plaintiff asserts the placement of the handcuffs caused him nerve damage that required surgery. Plaintiff’s complaint was filed in a new cause, Cause No. A-22-CV-568-RP. The Court later determined Plaintiff was not attempting to file a new case and was instead attempting to file another amended complaint in the instant cause.

As it is not clear whether Plaintiff understands that his amended complaint takes the place of his previously filed complaints in this cause, the Court will allow Plaintiff to file a final amended

complaint. Any claims not included in the amended complaint against Defendant Timothy Price will be deemed waived. Alternatively, Plaintiff may advise the Court that the complaint he executed on June 1, 2022, is his final amended complaint.

It is therefore **ORDERED** that Plaintiff, on or before **July 15, 2022**, shall file a final amended complaint asserting all of the claims he has against Defendant Timothy Price. Alternatively, Plaintiff may notify the Court that the complaint he executed on June 1, 2022, is his final amended complaint.

It is further **ORDERED** that the Motions to Dismiss, filed by Defendant Price, are **DISMISSED WITHOUT PREJUDICE** to refiling after Plaintiff files his final amended complaint or notifies the Court that the complaint he executed on June 1, 2022, is his final amended complaint.

**SIGNED** on June 16, 2022.

A handwritten signature in blue ink, appearing to read "R. Pitman", with a horizontal line extending to the right.

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

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

**ANDREW TREVINO**

*Plaintiff,*

v.

**DETECTIVE TIMOTHY PRICE,**

*Defendant.*

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**CIVIL ACTION NO. 1:22-cv-0152-RP**

**DEFENDANT’S MOTION TO DISMISS**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendant Timothy Price files this Motion to Dismiss pursuant to Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure as follows:

**I. INTRODUCTION**

Plaintiff asserts claims against Austin Police Department Detective Timothy Price arising out of Detective Price’s questioning of Plaintiff during a homicide investigation. (Doc. 20) Defendant seeks dismissal of Plaintiff’s Section 1983 claim as well as his state law claims for negligence and intentional torts under Rules 12(b)(1) and (6) of the Federal Rules of Civil Procedure.

**II. FACTS**

The facts as alleged in the Plaintiff’s most recent Complaint are minimal. The only factual allegations contained in the Third Amended Complaint are as follows: “Handcuffs were placed on me really tight, Det. Timothy Price #6818 used excessive force and transporting officer had to losen [sic] the cuffs in the garage. I was in front of APD officer that transported me to Central Booking car.” (Doc. 20, ¶ IV(D)) Plaintiff alleges that he sustained nerve damage as a result of the incident. (Doc. 20, ¶ V.)

**III. Rule 12(b)(1) Lack of Subject Matter Jurisdiction.**

Rule 12(b)(1) allows a party to move to dismiss an action for lack of subject matter jurisdiction. *Fed.Rules Civ.Proc., Rule 12(b)(1)*. The court must dismiss “when the court lacks the statutory or constitutional power to adjudicate the case.” *Home Builders Ass’n of Mississippi, Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5<sup>th</sup> Cir. 1998). The burden of establishing subject matter jurisdiction is on the party seeking to invoke it. *Ramming v. United States*, 281 F.3d 158, 161 (5<sup>th</sup> Cir. 2001). A plaintiff must overcome an initial presumption that the federal court lacks subject matter jurisdiction and has the burden to allege acts that affirmatively demonstrate the court’s jurisdiction to hear the cause. *City of Austin v. Ender*, 30 S.W.3d 590, 593 (Tex.App.—Austin 2000).

**IV. Rule 12(b)(6) Failure to State a Claim.**

Rule 12(b)(6) asks a court to dismiss a complaint for failure to state a claim upon which relief can be granted.” *Fed.RulesCiv.Proc., Rule 12(b)(6)*. The plaintiff must plead sufficient facts to state a claim for relief that is facially plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, at 678. Although a plaintiff’s factual allegations need not establish that the defendant is probably liable, they must establish more than a “sheer possibility” that a defendant has acted unlawfully. *Id.* Determining plausibility is a “context-specific task,” and must be performed in light of a court’s “judicial experience and common sense.” *Iqbal*, at 679. In deciding a motion to dismiss under Rule 12(b)(6), a court generally accepts as true all factual allegations contained within the complaint. *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993). However,

a court is not bound to accept legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Although all reasonable inferences will be resolved in favor of the plaintiff, the plaintiff must plead “specific facts, not mere conclusory allegations.” *Tuchman v. DSC Commc’ns Corp.*, 14 F.3d 1061, 1067 (5<sup>th</sup> Cir. 1994).

## **V. ARGUMENT AND AUTHORITIES**

### **A. Qualified Immunity and Plaintiff’s Claims of Excessive Force**

#### **1. The Qualified Immunity Standard**

“The doctrine of qualified immunity immunizes government officials acting within their discretionary authority from civil damages if their conduct does not violate clearly established constitutional law of which a reasonable person would have known.” *Modica v. Taylor*, 456 F.3d 174, 179 (5<sup>th</sup> Cir. 2006). Whether an individual is entitled to qualified immunity is determined by following a two-part analysis. In one part of the analysis, the court must determine whether the facts as alleged in the Complaint show that the official violated a “clearly established” constitutional right. *Price v. Roark*, 256 F.3d 354, 369 (5<sup>th</sup> Cir. 2001). If there is no constitutional violation, the inquiry ends in favor of the official asserting qualified immunity. *Mace v. City of Palestine*, 333 F.3d 621, 624 (5<sup>th</sup> Cir. 2003). In the other part of the analysis, the court must determine whether the official’s conduct was objectively reasonable in light of the clearly established law. *Saucier v. Katz*, 533 U.S. 194, 202 (2001), *overruled on the other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009). In other words, courts look to whether “it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted.” *Price*, 256 F.3d at 369. Qualified immunity protects officials who merely make a mistake in judgment and it shields “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 344-45 (1986).

**2. Excessive Force Standard**

To succeed on an excessive force claim under 42 U.S.C. § 1983 and overcome qualified immunity, a plaintiff bears the burden of showing “(1) an injury (2) which resulted directly and only from the use of force that was excessive to the need and (3) the excessiveness of which was clearly unreasonable.” *Manis v. Lawson*, 585 F.3d 835, 843 (5th Cir. 2009). “In gauging the objective reasonableness of the force used,” the court “must balance the amount of force used against the need for the force.” *Ikerd v. Blair*, 101 F.3d 430, 434 (5th Cir. 1996). This objective standard requires a court to focus on the facts and circumstances confronting the officer, without regard to the officer’s subjective intent or motivation. *Ramirez v. Knoulton*, 542 F.3d 124, 128-29 (5th Cir. 2008).

**a. Plaintiff fails to allege a constitutional injury.**

It is well-settled in the Fifth Circuit that in order to state a claim for excessive force, the Plaintiff’s alleged injury, though not required to be significant, must be more than *de minimis*. *Freeman v. Gore*, 483 F.3d 404, 416 (5<sup>th</sup> Cir. 2007); *Glenn v. City of Tyler*, 242 F.3d 307, 314 (5<sup>th</sup> Cir. 2001). Moreover, it is well-established in the Fifth Circuit that an officer’s act of handcuffing too tightly, without more, does not amount to [a claim of] excessive force.” *Glenn*, 242 F.3d at 314. Nor does the development of “‘acute contusions of the wrist’ and [a] psychological injury from being handcuffed” give rise to a claim of excessive force. *Tarver v. City of Edna*, 410 F.3d 745, 752 (5th Cir. 2005); *see also Freeman*, 483 F.3d at 416–17 (finding plaintiff’s allegations that deputies twisted her arms behind her back while handcuffing her, “jerked her all over the carport” and applied the handcuffs too tightly, causing bruises and marks on her wrists and arms, to allege only *de minimis* harm).

The Fifth Circuit has reasoned that “minor, incidental injuries that occur in connection with the use of handcuffs to effectuate an arrest [are insufficient to] give rise to a constitutional claim for excessive force.” *Freeman*, 483 F.3d at 416 (citing *Glenn*, 242 F.3d at 314 (5th Cir.2001) (swollen wrist and bruising of the wrists and arms held to constitute only *de minimis* harm); *see also Myers v. Valdez*, No. 3–05–CV–1799–L, 2005 WL 3147869, at \*2 (N.D. Tex. Nov.17, 2005) (noting that allegations of “pain, numbness in extremities, loss of mobility, lack of sleep, extreme tension in neck and back, extreme rash [and] discomfort” are insufficient to establish “physical injury” requirement or more than *de minimis* injury).

Here, Plaintiff only alleges that the handcuffs were placed on him “really tight” and that he sustained nerve damage. (Doc. 20) Plaintiff alleges that a doctor recommended that he have an EMG, but the Third Amended Complaint contains no specific factual allegations stating whether Plaintiff actually had an EMG performed or whether any testing confirmed that he actually sustained nerve damage. As a result, Plaintiff’s Third Amended Complaint fails to allege that he suffered more than *de minimis* injuries sufficient to support a claim for excessive force.

**b. Qualified Immunity protects Detective Price from suit.**

Plaintiff’s Third Amended Complaint fails to provide specific non-conclusory factual allegations sufficient to withstand each prong of the qualified immunity analysis. The Third Amended Complaint contains no factual allegations sufficient to demonstrate that Price’s actions violated a clearly established constitutional right. The Third Amended Complaint also fails to demonstrate that Price’s actions in merely handcuffing Plaintiff were not objectively reasonable under clearly established law. As a result, Price has qualified immunity and Plaintiff’s Section 1983 claim should be dismissed.

**B. Plaintiff fails to establish a waiver of immunity under Texas law and thus deprives the Court of jurisdiction.**

Plaintiff's Third Amended Complaint also appears to assert state law claims for "negligence" and "intentional tort." (Doc. 20) Plaintiff's state law tort claims fail under Texas law since: (1) the Texas Tort Claims Act ("TTCA") requires dismissal of all state tort claims against a police officer, (2) Price's actions as alleged in the Third Amended Complaint were reasonable, and (3) Price is immune from suit. Pursuant to section 101.106(a) and (f) of the Texas Tort Claims Act (TTCA), Defendant requests that all state tort claims against him be dismissed in their entirety based on the Court's lack of subject-matter jurisdiction. TEX. CIV. PRAC. & REM. CODE §§101.057, 101.106(f). Section 101.106(f) provides that claims against government employees based on conduct within the general scope of an employee's employment must be dismissed, as they can only be brought against the employees in their official capacities.

The TTCA defines the term "scope of employment" as the performance for a governmental unit of the duties of an employee's office or employment and includes being in or about the performance of a task lawfully assigned to an employee by competent authority. TEX. CIV. PRAC. & REM. CODE §§101.001(5). In determining whether an employee was acting within the scope of employment, Texas courts have noted that the TTCA "focuses on 'performance...of the duties of an employee's office or employment,' which calls for an objective assessment of whether the employee was doing her job when she committed an alleged tort, not her state of mind when she was doing it." *Laverie v. Wetherbe*, 517 S.W.3d 748 (Tex. 2017). The inquiry is whether there is a connection between the employee's job duties and the alleged tortious conduct. *Id.* "The answer may be yes even if the employee performs negligently or is motivated by ulterior motives or personal animus so long as the conduct itself was pursuant to her job responsibilities." *Id.* Thus, intentional torts can fall within the scope of employment. *Id.* at \*8-9; see also *Alexander v. Walker*,

435 S.W.3d 789, 792 (Tex. 2014) (holding that claims for assault and other intentional torts involved conduct within officers' scope of employment).

Here, it is clear from the allegations in the Third Amended Complaint that Price was acting in his capacity as an APD detective and discharging the duties assigned to him. Therefore, his conduct in detaining and handcuffing Plaintiff was within the general scope of his employment. As a result, Plaintiff's claims are considered to be against Price in his official capacity only.

Any claim asserted by Plaintiff against the City of Austin, or Price in his official capacity, is futile because the TTCA clearly establishes that the state has not waived immunity for intentional torts, and Plaintiff cannot establish any other exception to immunity under the TTCA. *See* §101.057, which preserves immunity in regard to all intentional tort claims. Under section 101.106(f), a tort action is brought "under" the TTCA, even if the government has not waived its immunity for such actions. *Franka v. Velasquez*, 332 S.W.3d 370-71 (Tex.2011). As a result, Plaintiff's claim that Price committed an intentional tort fails since Price is immune from suit and liability in his official capacity for intentional torts. *See Donohue v. Dominguez*, 486 S.3d 50, 54-55 (Tex. App.-San Antonio 2016) (civil claims for assault, false imprisonment are claims subject to the Texas Tort Claims Act); *City of Hempstead v. Kmiec*, 902 S.W.2d 118, 122 (Tex. App.—Houston 1995) (Texas Tort Claims Act does not waive immunity for defamation claim since it is an intentional tort).

With regard to Plaintiff's negligence claim, Plaintiff does not allege that a specific waiver of Price's official capacity governmental immunity applies. Plaintiff's Third Amended Complaint fails to contain specific factual allegations to demonstrate that any of the Texas Tort Claims Act's limited waivers of immunity apply.

The Texas Tort Claims Act provides in pertinent part:

“A governmental unit in the state is liable for:

(1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:

(A) the property damage, personal injury or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and

(B) the employee would be personally liable to the claimant according to Texas law; and

(2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.”

*Tex. Civ. Prac. & Rem. Code Ann. §101.021.*

Although Plaintiff does not allege a specific waiver of immunity, the only one which would arguably apply is *Tex. Civ. Prac. & Rem. Code Ann. §101.021(2)* which waives immunity for personal injury or death caused by the use of tangible personal property, i.e, the handcuffs. However, the Supreme Court of Texas has held that claims of excessive force in the context of an arrest and the use of handcuffs arise out of a battery rather than negligence. *City of Watauga v. Gordon*, 434 S.W.3d 586, 593-594 (Tex. 2014) As a result, since the claim for excessive force actually arises out of an intentional tort for which governmental immunity has not been waived, the claim should be dismissed. *Id.*

Accordingly, Plaintiff has not met his burden of establishing subject matter jurisdiction in federal court or stated a claim upon which relief may be granted. As a result, the Court should dismiss Plaintiff’s claims.

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Timothy Price respectfully requests that the Court grant this Motion to Dismiss and dismiss the Plaintiff's claims against him with prejudice and with all costs assessed to the Plaintiff. Defendant requests any additional relief to which he may be entitled.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird

H. Gray Laird

Assistant City Attorney

State Bar No. 24087054

[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)

City of Austin Law Department

P.O. Box 1546

Austin, Texas 78767-1546

Telephone: (512) 974-1342

Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I certify that, on the 20th day of July 2022, I served a copy of *Defendant's Motion to Dismiss* on all parties, in compliance with the Federal Rules of Civil Procedure as follows:

**VIA CERTIFIED MAIL:**

Andrew Trevino, No. 2119873  
Travis County Correctional Complex  
3614 Bill Price Road  
Del Valle, Texas 78617

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

**ANDREW TREVINO**

**V.**

**TIMOTHY PRICE**

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**A-22-CV-152-RP**

**ORDER**

Defendant has filed a Motion to Dismiss Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Having reviewed that motion, the Court believes the motion to dismiss should be treated for all purposes as a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Notice Pursuant to Rules 12(d) and 56(e)

Pursuant to Rules 12(d) and 56(e) of the Federal Rules of Civil Procedure, the parties are hereby notified that the Court will treat Defendant’s Motion to Dismiss, filed July 20, 2022, as a motion for summary judgment in accordance with Rule 56 of the Federal Rules of Civil Procedure.<sup>1</sup>

Summary Judgment Procedure and Proof

As Plaintiff is proceeding pro se, the Court will, in the interest of justice, provide a short explanation to Plaintiff regarding the standard for summary judgment in this case and allow Plaintiff an opportunity to respond to the motion. *See Barker v. Norman*, 651 F.2d 1107, 1128-29 (5th Cir. 1981) (“When summary judgment is inappropriate because the supporting or opposing materials are

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<sup>1</sup> Rule 56(e) of the Federal Rules of Civil Procedure permits a court to grant summary judgment in favor of a party that did not request it, but only upon proper notice to the adverse party. *NL Industries, Inc. v. GHR Energy Corp.*, 940 F.2d 957, 965 (5th Cir. 1991).

improper, the district court has ample discretion to call upon the parties to remedy the defects, by submitting affidavits or otherwise.” (citation omitted)).

Summary judgment is appropriate if the moving party can show that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). The evidence must be viewed in the light most favorable to the non-moving party. *TIG Specialty Ins. Co. v. Pinkmonkey.com, Inc.*, 375 F.3d 365, 369 (5th Cir. 2004).

The Court must evaluate the evidence offered by the party who filed the motion for summary judgment (the “moving party” or “movant”) and the party who opposes the motion (the “adverse party” or “non-movant”) to determine whether the evidence raises a material fact question which is genuine. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). If genuine issues of material fact exist, the motion must be denied. Once the movant has met its burden of showing the Court, with evidence or simply by pointing to the pleadings, that there is no genuine issue of material fact on a dispositive issue, the non-movant must “go beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” See *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). That is, the non-movant cannot merely rest on the allegations in the complaint. See *International Shortstop, Inc. v. Rally’s, Inc.*, 939 F.2d 1257, 1263 (5th Cir. 1991), *cert. denied*, 502 U.S. 1059 (1992); see also *Wallace v. Texas Tech Univ.*, 80 F.3d 1042, 1047 (1996) (“[P]leadings are not summary judgment evidence.”). Furthermore, “[n]either ‘conclusory allegations’ nor ‘unsubstantiated assertions’ will satisfy the non-movant’s burden.” *Id.* (citation omitted).

In deciding whether to grant summary judgment, the court should view the evidence in the light most favorable to the party opposing summary judgment and indulge all reasonable inferences

in favor of that party. *See International Shortstop*, 939 F.2d at 1263. “The standard of review is not merely whether there is a sufficient factual dispute to permit the case to go forward, but whether a rational trier of fact could find for the non-moving party based upon the record evidence before the court.” *James v. Sadler*, 909 F.2d 834, 837 (5th Cir. 1990) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 106 S. Ct. 1348, 1356 (1986)).

It is therefore **ORDERED** that Defendant shall file on or before August 22, 2022, any additional summary judgment evidence Defendant wishes the Court to consider in ruling upon Defendant’s motion.

It is further **ORDERED** that Plaintiff shall file on or before September 22, 2022, a response with the Clerk of the Court, in which he will present what arguments and competent summary judgment evidence he has to controvert or disprove the matters alleged in Defendant’s motion.

**SIGNED** this 21st day of July 2022.



DUSTIN M. HOWELL  
UNITED STATES MAGISTRATE JUDGE

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

**ANDREW TREVINO**

*Plaintiff,*

v.

**DETECTIVE TIMOTHY PRICE,**

*Defendant.*

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**CIVIL ACTION NO. 1:22-cv-0152-RP**

**DEFENDANT’S SUPPLEMENT TO MOTION TO DISMISS**

TO THE HONORABLE DUSTIN M. HOWELL, UNITED STATES MAGISTRATE JUDGE:

Defendant Timothy Price files this Supplement to his Motion to Dismiss (Doc.24) as follows:

**I. INTRODUCTION**

In accordance with the Court’s July 21, 2022 order (Doc. 25) which notified the parties that the Court will treat Defendant’s Motion to Dismiss as a motion for summary judgment and which instructed the Defendant to file any additional summary judgment evidence, Defendant Timothy Price files the following summary judgment evidence, all of which are attached to this supplement as exhibits.

**II. SUMMARY JUDGMENT EVIDENCE**

**1. Affidavit of Timothy Price**

The Affidavit of Defendant Timothy Price describes his role in the detention and interrogation of Plaintiff Andrew Trevino including the fact that Price did not handcuff Trevino or use any force on Trevino. Attached to Price’s Affidavit is a clip from the APD interview room video which shows the handcuffing of Trevino by Officer Ellis in the interview room.

**2. Affidavit of Douglas Ellis**

The Affidavit of Officer Douglas Ellis describes his role in the detention of Plaintiff Andrew Trevino. Attached to Ellis's Affidavit is a clip from the APD interview room video which shows Ellis handcuffing Trevino in the interview room. Also attached to Ellis's Affidavit are videos from Ellis's patrol vehicle's dashboard camera (Exhibit B) and Ellis's patrol vehicle's backseat camera (Exhibit C) which depict Ellis's interaction with Trevino including Ellis's adjustment of the handcuffs.

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Timothy Price respectfully requests that the Court grant his Motion to Dismiss and dismiss the Plaintiff's claims against him with prejudice and with all costs assessed to the Plaintiff. Defendant requests any additional relief to which he may be entitled.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird

H. Gray Laird  
Assistant City Attorney  
State Bar No. 24087054  
[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)  
City of Austin Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546  
Telephone: (512) 974-1342  
Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I certify that, on the 22nd day of August 2022, I served a copy of the foregoing document on all parties, in compliance with the Federal Rules of Civil Procedure as follows:

**VIA CERTIFIED MAIL:**

Andrew Trevino, No. 2119873  
Travis County Correctional Complex  
3614 Bill Price Road  
Del Valle, Texas 78617

# **ATTACHMENT 1**

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

ANDREW TREVINO  
*Plaintiff,*

v.

DETECTIVE TIMOTHY PRICE,  
*Defendant.*

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CIVIL ACTION NO. 1:22-cv-0152-RP

**AFFIDAVIT OF TIMOTHY PRICE**

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned Notary Public, on this day appeared Timothy Price who, being by me first duly sworn, stated as follows:

1. "My name is Timothy Price. I am over the age of eighteen years and I am competent to make this affidavit. I have never been convicted of a felony or any crime involving moral turpitude.

2. I have read the lawsuit filed against me by Andrew Trevino, and I am personally familiar with the allegations therein.

3. I am currently a Sergeant with the Austin Police Department ("APD") of the City of Austin, Texas.

4. On November 9, 2021, Austin Police Department officers arrested Andrew Trevino in connection with the investigation of a homicide which occurred on December 8, 2020.

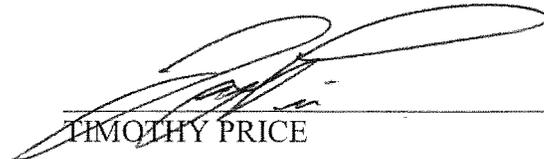
5. During my investigation of the homicide, I interviewed Andrew Trevino at the APD

Homicide Division's office. I did not handcuff Trevino at any time. Instead, APD Officer Ellis handcuffed Trevino. I did not use force of any kind on Trevino at any time.

6. I witnessed Officer Ellis handcuff Trevino in the interview room and a true and accurate depiction of the handcuffing is shown on the video clip from the interview room's video camera which is attached to this affidavit as Exhibit A. Based on my observation of Officer Ellis's handcuffing of Trevino, I did not see any actions of Officer Ellis which were unreasonable or which violated any policy of the Austin Police Department.

7. I have read the foregoing affidavit, and I declare under penalty of perjury that I have personal knowledge of the facts stated therein, and they are true and correct.

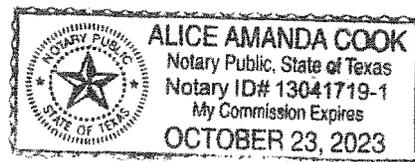
SIGNED this 17<sup>th</sup> day of August, 2022.

  
TIMOTHY PRICE

BEFORE ME, personally appeared Timothy Price, proved to me through a government issued identification to be the person whose name is subscribed in the foregoing instrument and acknowledged to me that he executed the same for purposes and consideration thereby expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this 17<sup>th</sup> day of August, 2022, to certify which witness my hand and official seal.

  
NOTARY PUBLIC - STATE OF TEXAS



# **ATTACHMENT 2**

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

ANDREW TREVINO  
*Plaintiff,*

v.

DETECTIVE TIMOTHY PRICE,  
*Defendant.*

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CIVIL ACTION NO. 1:22-cv-0152-RP

**AFFIDAVIT OF DOUGLAS ELLIS**

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned Notary Public, on this day appeared Douglas Ellis who, being by me first duly sworn, stated as follows:

1. "My name is Douglas Ellis. I am over the age of eighteen years and I am competent to make this affidavit. I have never been convicted of a felony or any crime involving moral turpitude.

2. I am currently a Senior Police Officer with the Austin Police Department ("APD") of the City of Austin, Texas.

3. On November 9, 2021, Austin Police Department officers detained and arrested Andrew Trevino in connection with the investigation of a homicide which occurred on December 8, 2020.

4. During the detention of Trevino, I responded to a call for service at 17:55 requesting a prisoner transport. I arrived at the offices of the Homicide Division at 18:10. I met with Det Price and he handed me Trevino's property and a booking sheet.

5. Detective Price told Trevino to turn around and put his hands behind his back. As

I pulled my hinged handcuffs out to place on Trevino, Trevino asked if he could be double-cuffed because he had “two messed up shoulders.” I told him that I would double-cuff him when we returned to my patrol unit. Trevino’s response was “All right.” A true and accurate depiction of the handcuffing following Trevino’s interview with Detective Price is shown on the video clip from the interview room’s video camera which is attached to this affidavit as Exhibit A.

6. Not once during my interaction with Trevino did he complain about the handcuffs being too tight, nor was there any type of physical pull, push, or struggle that would cause the handcuffs to dig into Trevino’s left hand and cause injury. As I escorted Trevino to my patrol vehicle, I did not have any grip on Trevino’s arms, wrists or the handcuffs.

7. When we got to my patrol vehicle., I retrieved a second pair of handcuffs and added them to the first pair that was already on Trevino. I removed him from the vehicle and moved him back to the front of the vehicle as indicated in my dash camera video and completed the swap out of handcuffs in front of the camera so Trevino would be more comfortable. (Ex. B; Timestamp 11 minutes and 30 seconds) Trevino also asked if he could stretch his shoulders prior to locking the handcuffs and I allowed him to do so. (Ex. B; Timestamp 11 minutes 47 seconds).

9. I did not use force of any kind on Trevino. I followed APD policy and procedure when I handcuffed Trevino. A true and accurate depiction of the adjustment of the handcuffs is shown in the dashboard video from my patrol vehicle which is attached to this affidavit as Exhibit B.

10. Once Trevino was handcuffed and secured in the backseat of my patrol vehicle, I transported him from APD’s Homicide Division’s offices to the Travis County Jail without any further incident. A true and accurate depiction of Trevino’s transport was shown in the in car camera video depicting the backseat from my patrol vehicle which is attached to this affidavit as

Exhibit C.

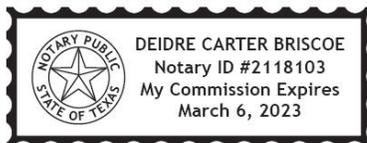
11. I have read the foregoing affidavit, and I declare under penalty of perjury that I have personal knowledge of the facts stated therein, and they are true and correct.

SIGNED this 19th day of August, 2022.

  
\_\_\_\_\_  
DOUGLAS ELLIS

BEFORE ME, personally appeared Douglas Ellis, proved to me through a government issued identification to be the person whose name is subscribed in the foregoing instrument and acknowledged to me that he executed the same for purposes and consideration thereby expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of August, 2022,  
to certify which witness my hand and official seal.



Deidre Carter-  
Briscoe

Digitally signed by Deidre Carter-  
Briscoe  
Date: 2022.08.19 13:22:13 -05'00'

\_\_\_\_\_  
NOTARY PUBLIC - STATE OF TEXAS

# Trevino Interrogation Video Clip

*Submitted via DVD to the Clerk of the Court.*

**Exhibit A**

# Officer Ellis DMAV Main Front Camera View

*Submitted via DVD to the Clerk of the Court.*

## **Exhibit B**

# **Exhibit B**

# Officer Ellis DMAV Back Seat Camera View

*Submitted via DVD to the Clerk of the Court.*

## **Exhibit C**

RECEIVED

SEP 12 2022

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]

FILED

SEP 12 2022

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

Andrew Trevino

Plaintiff,

v.

Civil Action No. 1-22-cv-152-RP

Det. Timothy Price

Defendant

Plaintiff's Response to  
Defendant's Motion to Dismiss

I

As I (Andrew Trevino, Plaintiff) explained in Document #20, v. Injuries of Dr. Galen Wachtman and Dr. Nam Nguyen had completed their test and results were severe nerve damage which result into Plaintiff Andrew Trevino receiving multiple surgery to his left hand.

II

Facts.

\* On March 29, 2022 Andrew Trevino had physical test done to his left hand conducted by "Doctor Galen Wachtman" at Dell Seaton (Downtown)

\* On May 17, 2022 Andrew Trevino had an EMG conducted on his left-hand completed by "Doctor Nam Nguyen" at Dell Seaton Ascension (Jefferson Building)

\* On August 31, 2022 surgery was done to repair damaged nerves, this process was performed by Professional Hand Surgeon Dr. Galen Wachtman at Dell Seaton (Downtown) Hospital.

### III. Summary Judgement Evidence.

#### Affidavit of Andrew Trevino

1. The affidavit is my sworn statement of (Doc #20) being accurate and detailed with date's and names of the Doctor's as well time's.

2. Evidence such as exhaust remedies, appointments with Doctors, EMG and the actual surgery being done.

3. I have read the foregoing affidavit, and I declare under penalty of perjury that I have personal knowledge of the facts stated therein, and they are true and correct.

signed this 2<sup>nd</sup> day of September 2022

Andrew Trevino  
Andrew Trevino

Andrew Treviño #2119873  
TCCU-10-7-1982  
3614 Bill Price Rd.  
DelValle, Tx 78617

Treviño

Affidavit

v

Case: 1-22-cv-152-RP

Price

### Affidavit of Andrew Treviño

I, Plaintiff Andrew Treviño, being duly sworn according to the law depose and say, I am the Plaintiff in the above entitled proceeding,

- ① As I was done answering Det. Timothy Price I was asked to stand and face the wall as the handcuffs were placed on me.
- ② As the other officer escorted me to the garage, I asked if he can loosen and double cuff me
- ③ I maintained calm until I got to booking notified medical of problem.

All of the information I have submitted is true and correct,

Andrew Treviño

Andrew Treviño

September 2, 2022

Sworn to before me  
this day of 2022

---

Notary Public

#### IV Summary Judgement Procedure and Proof

- ① Plaintiff received surgery on his left-hand on August 31, 2022 due to the excessive force and all medical documents are filed.
- ② Plaintiff suffers continuous pain and will not be able to return to his profession as a welder, mechanic and self-contractor.
- ③ Plaintiff seeks Compensatory Damage and medical expenses to be taken care of.

#### Prayer

Wherefore, Plaintiff Andrew Treviño respectfully requests that the Court grant this Summary Judgement and with all costs assessed to the Defendant. Plaintiff requests any additional relief to which he may be entitled.

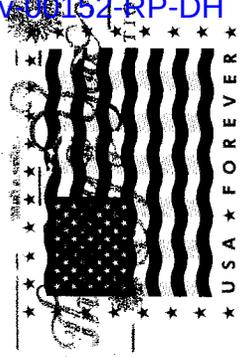
signed on  
4 day of September  
2022

Respectfully submitted  
Andrew Treviño

Andrew Treviño

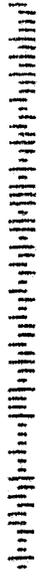
Andrew Trevino #2119873  
TCCC / 10-7-82  
3614 Bill Price Rd.  
DeWalle, Tx 78617

Legal  
Mail



AUSTIN TX 787  
RIO GRANDE DISTRICT  
8 SEP 2022 PM 3 L

District Clerk  
U.S. District Court  
Western District of Texas  
501 W. 5th St. Ste. 1100  
Austin, Tx 78701



78701-981275

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

ANDREW TREVINO

*Plaintiff,*

v.

DETECTIVE TIMOTHY PRICE,

*Defendant.*

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CIVIL ACTION NO. 1:22-cv-0152-RP

**DEFENDANT’S REPLY IN SUPPORT OF MOTION TO DISMISS**

TO THE HONORABLE DUSTIN M. HOWELL, UNITED STATES MAGISTRATE JUDGE:

Defendant Timothy Price files this Reply in Support of its Motion to Dismiss (Doc.24) as follows:

**I. Plaintiff’s response fails to counter Defendant’s summary judgment evidence.**

Plaintiff’s response (Doc. 29) merely outlines the medical treatment Plaintiff received for his injury to his wrist. Plaintiff does not address or rebut in any way the evidence attached to Defendant’s supplement to the motion to dismiss. The Affidavit of Timothy Price clearly establishes that Price did not handcuff the Plaintiff or use any force on the Plaintiff. Plaintiff presents no evidence to dispute Price’s Affidavit. Nor does Plaintiff present sufficient evidence to rebut the video evidence presented by Defendant which demonstrates that there was no excessive force used when APD personnel handcuffed the Plaintiff. As a result, the Court should dismiss the Plaintiff’s claims against the Defendant with prejudice.

**II. Prayer**

WHEREFORE, PREMISES CONSIDERED, Defendant Timothy Price respectfully requests that the Court grant his Motion to Dismiss and dismiss the Plaintiff’s claims against him with prejudice and with all costs assessed to the Plaintiff. Defendant requests any additional relief

to which he may be entitled.

RESPECTFULLY SUBMITTED,

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

/s/ H. Gray Laird

H. Gray Laird

Assistant City Attorney

State Bar No. 24087054

[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)

City of Austin Law Department

P.O. Box 1546

Austin, Texas 78767-1546

Telephone: (512) 974-1342

Facsimile: (512) 974-1311

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I certify that, on the 19th day of September 2022, I served a copy of the foregoing document on all parties, in compliance with the Federal Rules of Civil Procedure as follows:

**VIA CERTIFIED MAIL:**

Andrew Trevino, No. 2119873  
Travis County Correctional Complex  
3614 Bill Price Road  
Del Valle, Texas 78617

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

**ANDREW TREVINO**

**V.**

**DETECTIVE TIMOTHY PRICE**

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**A-22-CV-152-RP**

**ORDER**

Before the Court are Plaintiff Andrew Trevino’s complaint brought pursuant to 42 U.S.C. § 1983, Defendant Timothy Price’s Motion to Dismiss, which this Court construed as a motion for summary judgment, Price’s additional summary judgment evidence, Trevino’s response, and Price’s reply. Trevino, proceeding *pro se*, has been granted leave to proceed *in forma pauperis*. After consideration of the above-referenced pleadings, the Court grants summary judgment.

**I. BACKGROUND**

At the time Trevino filed his original complaint, he was confined in the Travis County Correctional Complex. In his original complaint Trevino alleges he was arrested in 2020 for unauthorized use of a motor vehicle, evading arrest, and possession of a firearm. Trevino indicates he “signed for 5 years probation and I.S.F.” According to Trevino, he went to an Intermediate Sanctions Facility (ISF) in March 2021 and finished the program in June 2021. Trevino apparently was also accused of a homicide committed on December 8, 2020. Trevino asserts at the time of the homicide he was at his apartment living with his two wives. He claims the “homicide was dismissed” for lack of evidence. In October 2021, Price allegedly obtained a warrant for Trevino’s

arrest for the homicide. Trevino claims the warrant slanders his name because he did not have outstanding warrants at the time he was released from the ISF. Trevino asserts he was picked up by the U.S. Marshals and was transported to the Austin Police Department. There, he claims Price placed handcuffs on him “extremely tight,” causing nerve damage, numbing, and swelling to his hands. Trevino contends this was an assault and battery.

Price moved to dismiss Trevino’s complaint and argued Trevino only alleged state-law claims. Price additionally argued Trevino failed to establish a waiver of immunity under Texas law, depriving the Court of jurisdiction.

Instead of responding to Price’s motion to dismiss, Trevino filed a complaint pursuant to the Texas Tort Claims Act. He alleges Price was negligent and committed intentional torts.

Price responded to the amended complaint with a second motion to dismiss. He argued Trevino still failed to assert any federal claims.

Once again, Trevino failed to respond to the motion to dismiss and filed an amended complaint. This time he alleged claims of excessive force, defamation, negligence, and intentional torts.

Price moved to dismiss the amended complaint. He argued Trevino did not obtain leave to file an amended complaint.

Trevino failed to respond to the motion to dismiss. Instead, he filed a new complaint against Price, alleging Price used excessive force on him on November 9, 2021, when Price placed handcuffs on Trevino “really tight.” Trevino asserts the placement of the handcuffs caused him nerve damage that required surgery. Trevino’s complaint was filed in a new cause, Cause No. A-22-CV-568-RP.

The Court later determined Trevino was not attempting to file a new case and was instead attempting to file another amended complaint in the instant cause.

As it was not clear whether Trevino understood that his amended complaint takes the place of his previously filed complaints in this cause, the Court allowed Trevino to file a final amended complaint. The Court warned that any claims not included in the amended complaint against Price will be deemed waived. Alternatively, the Court advised that Trevino may notify the Court that the complaint he executed on June 1, 2022, is his final amended complaint.

Trevino responded in July that the complaint he executed on June 1, 2022, was his final amended complaint. In his amended complaint (ECF #20), Trevino alleges Price placed handcuffs on him really tightly on November 9, 2021, and the transporting officer had to loosen the cuffs in the garage. Trevino contends the handcuffs caused nerve damage. Trevino seeks \$2 million in damages. Price filed a Motion to Dismiss. The Court converted the Motion to Dismiss to a motion for summary judgment and provided the parties the opportunity to file summary judgment evidence.

Price asserts his entitlement to qualified immunity. He also argues Trevino failed to allege a constitutional injury. Price contends that Trevino's allegation that he suffered nerve damage and that a doctor recommended that he have an EMG is insufficient. Price further argues Trevino failed to demonstrate that Price's actions in handcuffing Trevino were not objectively reasonable under clearly established law. Regarding Trevino's state law claims, Price argues Trevino failed to establish a waiver of immunity under Texas law and deprives the Court of jurisdiction.

In his supplemental summary judgment evidence Price provides the Court with his affidavit in which he asserts he did not handcuff Trevino. Price further provides the Court with the affidavit

of the officer who did handcuff Trevino. In addition, Price included video clips from the interview room, the dashcam of the patrol officer's vehicle, and the patrol vehicle's backseat camera.

Trevino responds he required multiple surgeries to treat the nerve damage to his left hand.

## II. ANALYSIS

### A. Summary Judgment Standard

“Summary judgment must be granted ‘if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Trammell v. Fruge*, 868 F.3d 332, 338 (5th Cir. 2017) (quoting FED. R. CIV. P. 56(a)). The court views the facts in the light most favorable to the non-moving party and draw all reasonable inferences in the non-movant's favor. *Hanks v. Rogers*, 853 F.3d 738, 743 (5th Cir. 2017) (quoting *Deville v. Marcantel*, 567 F.3d 156, 163–64 (5th Cir. 2009)).

“A qualified immunity defense alters the usual summary judgment burden of proof. Once an official pleads the defense, the burden then shifts to the plaintiff, who must rebut the defense by establishing a genuine fact issue as to whether the official's allegedly wrongful conduct violated clearly established law.” *Id.* at 744 (quoting *Brown v. Callahan*, 623 F.3d 249, 253 (5th Cir. 2010)).

### B. Qualified Immunity

“Qualified immunity shields public officials sued in their individual capacities from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Kokesh v. Curlee*, 14 F.4th 382, 391 (5th Cir. 2021) (cleaned up). “The qualified immunity inquiry includes two parts. In the first we ask whether the officer's alleged conduct has violated a federal right; in the second we ask whether the right in question was ‘clearly established’ at the time of the alleged violation, such that

the officer was on notice of the unlawfulness of his or her conduct.” *Cole v. Carson*, 935 F.3d 444, 451 (5th Cir. 2019) (*en banc*). The court need not decide the first question before the second, and it may decide the case solely on the basis that the right was not clearly established. *Pearson v. Callahan*, 555 U.S. 223, 236–37 (2009).

C. Excessive Force

To prevail on a Fourth Amendment excessive force claim, a plaintiff must show “(1) an injury (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable.” *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 382 (5th Cir. 2009) (quoting *Freeman v. Gore*, 483 F.3d 404, 416 (5th Cir. 2007)).

The summary judgment evidence conclusively establishes that Price did not handcuff Trevino. Rather, the evidence shows Trevino alone in an interview room rotating and rubbing his shoulders. Price entered the room, followed by a patrol officer, and told Trevino to turn around and put his hands behind his back. As the patrol officer pulled his hinged handcuffs out, Trevino asked if he could be double-cuffed because he had “two messed up shoulders.” The patrol officer indicated he only had one set of handcuffs on him but would double-cuff him when they returned to the patrol vehicle. Trevino’s response was “alright.”

The patrol officer asserts Trevino never complained about the handcuffs being too tight and denies there was any type of physical pull, push, or struggle that would cause the handcuffs to dig into Trevino’s left hand and cause injury. The video evidence shows the patrol officer escorted Trevino to the patrol vehicle. The patrol officer did not have any grip on Trevino’s arms, wrists, or the handcuffs.

The dashcam video shows the patrol officer retrieved a second pair of handcuffs and added them to the first pair to make Trevino more comfortable. Trevino asked if he could stretch his shoulders before being recuffed, and the patrol officer granted his request. Trevino told the patrol officer his shoulders were injured because he was “jumped” the previous evening. The patrol officer secured Trevino in the backseat of the patrol vehicle. When Trevino stated the temperature in the vehicle was too cold, the officer indicated he would change the temperature. When Trevino indicated he had not eaten, the officer indicated he could check if food was available when they got to the jail. The officer transported Trevino to the Travis County Jail without incident. The interaction between Trevino and the patrol officer was cordial and polite.

The summary judgment evidence conclusively demonstrates no force, let alone excessive force, was used during the handcuffing or transport of Trevino. Furthermore, the summary judgment evidence shows Price did not handcuff Trevino. Therefore, he is entitled to summary judgment.

D. Supplemental Jurisdiction

Trevino also asserts state law claims. Pursuant to 28 U.S.C. § 1367, a district court generally has supplemental jurisdiction over claims that are so related to claims in the action over which it has original jurisdiction that they form part of the same case or controversy. However, a district court may decline to exercise supplemental jurisdiction over a claim if the court has dismissed all claims over which it has original jurisdiction. As, the summary judgment disposes of Trevino’s federal claims, the Court declines to exercise supplemental jurisdiction over Trevino’s state law claims.

It is therefore **ORDERED** that Defendant Price’s Motion to Dismiss, which the Court converted to a Motion for Summary Judgment, is **GRANTED** with respect to Plaintiff Trevino’s federal claims.

It is further **ORDERED** that Plaintiff Trevino's state law claims are **DISMISSED WITHOUT PREJUDICE**, as the Court declines to exercise supplemental jurisdiction.

**SIGNED** on September 20, 2022.

A handwritten signature in blue ink, appearing to read "Robert Pitman", with a long horizontal line extending to the right.

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

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

**ANDREW TREVINO**

**V.**

**DETECTIVE TIMOTHY PRICE**

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**A-22-CV-152-RP**

**FINAL JUDGMENT**

Before the Court is the above-entitled cause. Upon review of the entire case file and this Court's Order granting Defendant's Motion to Dismiss, which was converted to a Motion for Summary Judgment, the Court renders the following Final Judgment.

**IT IS HEREBY ORDERED** that Plaintiff Andrew Trevino shall **TAKE NOTHING** in this cause against Defendant Price regarding Plaintiff's federal law claims.

**IT IS FURTHER ORDERED** that Plaintiff's state law claims are **DISMISSED WITHOUT PREJUDICE**, as this Court declines to exercise supplemental jurisdiction over such claims.

**IT IS FINALLY ORDERED** that the above entitled cause of action is hereby **CLOSED**.

**SIGNED** on September 20, 2022.



**ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE**

RECEIVED

FILED

NOV 18 2022

NOV 18 2022

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ DEPUTY

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ DEPUTY

Notice Of Appeal

Andrew Treviño  
(Plaintiff)

v.

Timothy Price  
(Defendant)

In The United  
States District  
Court For The  
Western District of Texas  
Case No: A-22-CV-152RP

Notice Of Appeal

Notice is hereby given that Andrew Treviño, plaintiff in the above-named case, hereby appeal to the United States Court of Appeal for the Western District of Texas Austin Division Circuit, entered in this action on the 12<sup>th</sup> day of October, 2022.

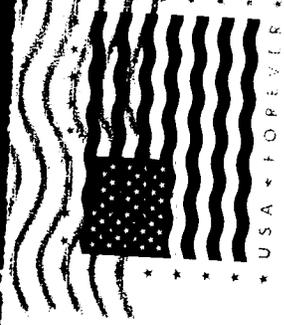
Dated Oct 13, 2022

Andrew Treviño

Andrew Treviño #2119873  
TCCC / 10-7-82  
3614 Bill Price Rd.  
DelValle, Tx 78617

Andrew Trevino # 2119873  
TCCC / 10-7-82  
3614 Bill Price Rd.  
DelValle, TX 78617

AUSTIN TX 786  
RIO GRANDE DISTRICT  
16 NOV 2022 PM 3 L



Postmark: AUSTIN TX NOV 16 2022

District Clerk, U.S. Dist. Court  
Western District of Texas  
501 West 5<sup>th</sup> Street, Ste. 1100  
Austin, TX 78701

78701-381275



RECEIVED

MAR 2 2023

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature] DEPUTY

United States District Court  
for the Western District  
of Texas, Austin Division

FILED

MAR 02 2023

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature] DEPUTY CLERK

Andrew Treviño  
Plaintiff

v.

Douglas Elles  
Timothy Price  
Defendant

Cause No. A-22-CV-152-RP  
Appellate No. 22-51032

Plaintiff's Memorandum  
Opinion and Order

Plaintiff Andrew Treviño bring this action against Defendant Timothy Price and Defendant Douglas Elles.

Treviño was arrested, injured and detained on November 9, 2023.

Treviño bring suit under 42 U.S.C. § 1983 and various provisions of the Constitution, and to also assert common laws claim for false arrest, false imprisonment, negligent infliction of emotional distress, physical injury and deprivation of Liberty...

## I. Background

Plaintiff Andrew Trevino suffered severe pain to left wrist that led to surgery on August 31, 2022.

- Exhibit A of Dell Seton Medical Center.
- Exhibit B Medical Chart of all procedure done before surgery.
- January 7, 2022 Grievance
- January 9, 2022 Office Police Monitor
- February 9, 2022 Beginning of 42 USC 1983

## II.

Plaintiff then received the following information

February 4, 2022 OPM #2022-0041

February 28, 2022 cause # A-22-CV-152-RP

## III.

Plaintiff followed all medical appointments X, Ray, Provider, follow ups, Seton medical visits and medication for pain.

Provider - Dr. Meagher (TCCC)

Surgeon - Galen Wachtman (SMC)

Emg - Nam Nguyen (Jefferson SMC)

Trevino v. Price

Exhibit A

Patient: TREVINO, ANDREW  
MRN: 4102768

Printed by: Garland, Molly RN  
Printed on: 8/31/2022 8:25 CDT

Dell Seton Medical Center at The University of Texas  
Admit Date: 08/31/22 05:33 / Discharge Date:  
Discharge Instructions for ANDREW TREVINO

DOB: 10/07/1982  
MRN: 4102768  
FIN: 3115052755

Patient acknowledges the return of:

Discharge Status: Discharge to Home

Diagnosis/Condition Instructions:  
Plastic Surgery

Activity: Keep arm/hand raised above the level of the heart with pillow for 3 days.  
No strenuous activity until follow-up

Diet: Regular

Hygiene: May shower or take a sponge bath. Make every effort to keep the dressing dry.  
If it becomes wet, replace it with a new dry one - a large bandaid works well.

Vaccinations:

If you smoke, you must stop! Ask your doctor about resources & medicine to help quit.

Call your doctor immediately if you are/have:

- o Increased shortness of breath (unable to finish a sentence without taking a breath)
  - o Unable to sleep flat in bed or you wake up because of shortness of breath
  - o Worsening cough or have spells of sudden dizziness
  - o Redness or drainage from IV/wound/incision site
  - o Unexplained weight gain (2-5 pounds in 2-4 days)
  - o Increased fatigue with activity
  - o Persistent nausea, vomiting, or diarrhea
  - o Temperature greater than \_\_\_\_\_ for more than two days or a change in color of mucous
- Call 911 if you have sudden chest pain or severe shortness of breath.

Other Instructions:

- o Drink plenty of fluids, unless your doctor advises you not to
- o Avoid contact with others who are sick
- o Read nutrition labels & ingredients on packages to help guide your food choices
- o Find ways to reduce stress or to perform tasks to save your energy
- o Remain active with exercise; take frequent breaks and increase activity gradually

Discharge Plans:

Devices & Equipment:

Medical Follow Up Care/Appointments:

If patient is discharged home within 2 hours of Insulin dosing, instruct the patient to eat and recheck glucose 2 hours after the Insulin dose was administered, Provide the time the Insulin was administered and the time the finger stick glucose check is due on the patient discharge instruction sheet

- o If you had General Anesthesia or Intravenous Sedation; \* Do NOT conduct any legal business or make any important decisions for 24 hours;\* Do NOT drive a vehicle or operate any machinery to include cooking, etc., for 24 hours;\* Someone should assist you when you first walk;\* Do NOT drink any alcoholic beverages or take recreational drugs;\* It is common to have throat discomfort following General Anesthesia - this should resolve within 48 hours  
Leave dressing in place for 5 days. You may add tape or bandaid on top of dressing if becomes loose or falls off.

Call clinic or go to ED if: Temperature is 101.5 F or higher, Excessive bleeding or drainage, Swelling worsens or redness spreads, Continued nausea or vomiting, and/or Increasing pain.

- o Follow-up appointment in 2 weeks. Please call clinic to make/confirm the appointment. Will need sutures removed.
- o Tramadol 50 mg PO q4hr for 7 days. # 42 tablets Refills: ONPI 1093371759Ebony Miller, PA-C

Additional Instructions:

Handouts given to you during your stay:

# Exhibit B

## Medical Chart

Procedure Prior  
 to surgery

Date	Time	
11-18-2021	? -	Medication "Norproxine"
12-14-2021	? -	Medication "shot 60mg" DV
12-31-2021	?	Med-line "Provider Appt"
2022		
1-9-2022	-	Provider
2-14-2022	-	X-Ray "Hand"
2-16-2022	-	Dr. Meagher "Explained Results"
3-2-2022		Provider "Right Hip".
3-17-2022		Dr. Meagher "Follow up"
3-24-2022	7:45am	Dr. Watkins "Explained Surgery Process" <sup>Pett</sup> Seaton
4-5-2022		"PT" Physical Therapy Trent McGinty
4-7-2022		"PT"
4-14-2022		"PT"
4-21-2022		"PT"
4-28-2022	5 pm	PT
5-5-2022	5:30pm	PT / Dr. Meagher Int 11:30am
5-12-2022	5:30pm	PT
5-17-2022	9:40am	Jefferson (EMG) 1600 W. 38 <sup>th</sup> 312 <sup>Dr.</sup> Win Dr. Shuttan
5-19-2022	5:00pm	P.T.
5-26-2022	6:00pm	P.T.
6-2-2022	5: pm	P.T.
6-6-2022	10 Am	Dr. Meagher (2 of 3 wks for Wachtman)
8-31-22	5:00 am	Surgery on left-hand

#### IV. Argument

Plaintiff Andrew Treviño spoke to the Provider Dr. Meagher and provider requested X-rays to be done on left-hand.

Plaintiff Andrew Treviño was then sent to Dell Seton Medical Center for further physical test to left hand.

Dr. Wachtman then referred Plaintiff Andrew Treviño to receive an Electromyograph (EMG) by Dr. Nguyen.

Left hand had nerve damage that led to surgery leaving Plaintiff Andrew Treviño out of returning to his profession, Welder, Mechanic, Carpenter, and Roadside Assistance.

Plaintiff unable to return to his profession will leave him in financial problems, for request of Money Damage \$1,000,000.<sup>00</sup>

Werner Co. v. DeVallee, No. 02-19-00043-CV  
(Tex. App. March 25, 2021)

Date: February 27, 2023

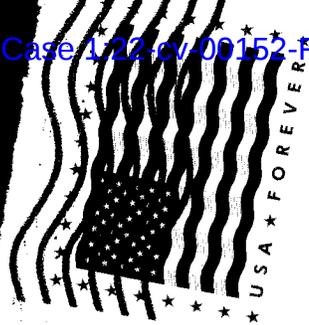
Respectfully submitted

Andrew Treviño

Andrew Treviño #2119873  
3614 Bill Price Rd.  
DelValle, Tx 78617

"Legal"

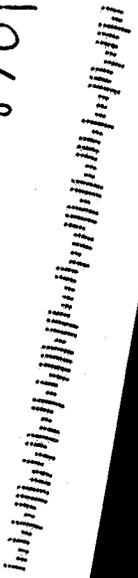
AUSTIN TX 786  
RIO GRANDE DISTRICT  
28 FEB 2023 PM 2 L



District Clerk  
U.S. District Court  
Western District of Texas  
501 West 5<sup>th</sup> Street Ste. 1100  
Austin, Tx 78701

SCREENED BY CSO  
MAR 02 2023

78701-381275



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

**ANDREW TREVINO**

**V.**

**DETECTIVE TIMOTHY PRICE**

§  
§  
§  
§  
§

**A-22-CV-152-RP**

**ORDER**

Pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure, a notice of appeal in a civil case must be filed within 30 days of entry of judgment. The Court’s judgment in this case was entered on September 20, 2022. Therefore, Plaintiff’s notice of appeal was due on or before October 20, 2022.

Plaintiff’s *pro se* notice of appeal is dated October 13, 2022. The envelope in which it was contained is postmarked November 16, 2022, and it was received by the Court on November 18, 2022. As the Fifth Circuit Court of Appeals is unable to determine from the record whether Plaintiff delivered the notice of appeal to jail officials for mailing on or before October 20, 2022, the case was remanded to this Court to make that determination.

It is therefore **ORDERED** that Plaintiff Andrew Trevino shall file an advisory on or before April 21, 2023, in which he answers the following questions:

1. On what day did you deposit your notice of appeal in the institution’s internal mail system? Attach any proof you may have.

2. If you did not deposit your notice of appeal in the institution's internal mail system on or before October 20, 2022, explain why the notice of appeal was not timely deposited.

3. Plaintiff is to include the following declaration at the end of his advisory:

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Title 28 U.S.C. Section 1746.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2023.

---

Andrew Trevino

**SIGNED** on March 30, 2023.



ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

RECEIVED

APR 14 2023

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature] DEPUTY

FILED

APR 14 2023

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature] DEPUTY CLERK

In the United States District Court  
For the Western District of Texas  
Austin Division

Andrew Treviño

cause No: A-22-CV-152 RP

v.

Timothy Price

Response to Document 40

① Notice of Appeal was sent out October 13, 2022.

② Travis County Correction Complex has Inadequate Law Library which delays my process on legal material when requested.

I had also sent a request to Mailroom about this matter. I don't know why it has November 16, 2022, when sent it October 13, 2022.

There has been alot of mail issues from what other's said.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Title 28 U.S.C Section 1746

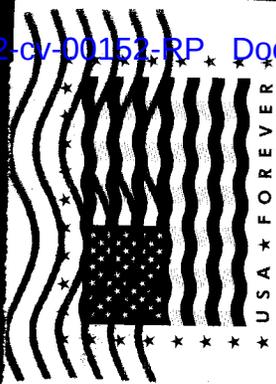
signed this 5 day of April, 2023

Andrew Treviño  
Andrew Treviño

Andrew Treviño  
# 2119873  
3614 Bill Price Rd.  
DelValle, Tx 78617

Andrew Treviño #a119873  
3614 Bill Price Rd.  
DelValle, Tx 786617

AUSTIN TX 786  
RIO GRANDE DISTRICT  
12 APR 2023 PM 3 L



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APR 14 2023

District Clerk  
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501 W. 5th Street, Ste. 1100  
Austin, Tx 78701

78701-381275

