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UNITED STATES of AMERICA 5TH CIRCUIT AUSTIN DIVISION COURT

Julian Reyes

Plaintiff

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

v.

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Case no. 1:21CV0992 LY

CITY OF AUSTIN, INC,
AUSTIN POLICE DEPARTMENT
SERGEANT TROY WISMAR
BADGE # 3968, CORPORAL
CHRISTOPHER CARLISLE
BADGE # 3368, OFFICER
PATRICK WALSH BADGE # 7345,
OFFICER KYU SUK AN BADGE
UNKNOWN, OFFICER SARAH
FOSTER BADGE #UNKNOWN,
GREG MCCORMACK (CITY OF
AUSTIN), and other responsible
“JOHN DOE” parties to be named later
through the proper discovery of evidence,
all individually and all defendants
in their official capacities

Defendants

Civil Rights Complaint

1. Plaintiff: Pro Se, Julian Reyes 10900 Research Blvd suite 160C Box 147
Austin, Texas 78759 mailbox. No home address. Chronically homeless for
about 20 years.

2. Defendants being: City of Austin, Inc, Austin Police Department and the following City of Austin Public Servant Employees: Corporal Christopher Carlisle badge #3368, Corporal Troy Wismar badge #3968, Officer Patrick Walsh badge #7345, Officer Kyu Sue An badge #unknown, Officer Sarah Foster badge #unknown, Greg McCormack City of Austin, and others parties to be named later through the proper discovery of evidence, all individually and all defendants in their official capacities. Address to City of Austin Law Department is at 301 E 2nd Street, Austin, Texas 78701. Austin Police Department is at 715 E. 8th Street, Austin, Texas 78701.

3. This incident and complaint happened in Austin, Travis County, Texas, which this Court has legal jurisdiction over as this Court also resides here. Also as the 5th Federal Court Circuit encompasses all of Texas, Louisiana and Mississippi. These are Constitutional issues, that are novel and important to all Citizens. Therefore I request the Western District Court of the U.S.A. in Austin, to try my Civil Complaint involving 1st, 4th, 14th, 8th Constitutional Amendments violations under section U.S.C. 42 1983 as well as section 1985 Conspiracy of Parties. As multiple agents of Municipal and Corporate government conspired to deprive me of my rights and they were all involved in this crime against myself and essentially the rights afforded to all the Citizens and the Free Press.

4. On or about November 5th 2019, in the City of Austin, Travis County, Texas, U.S.A.. Under this Court's functional jurisdiction, Corporals Carlisle, Wismar, and several officers were joined by the FrontSteps manager, Greg McCormack to conspire together to deprive people of their rights. Several people were in front of the Salvation Army there to protest brutal sweeps and theft by 'The State' to deprive unhoused poor people from their rights to seek emergency shelter, to sleep in a tent they own, to own property and essential survival gear, ids, medications, etc, to sit down, to rest, to survive and their international human rights as well. Also these defendant individuals and their agencies have a pattern and practice of violating poor unhoused people's rights, property rights, 4th amendment rights, many of the City's victims are black, brown or disabled. Many victims of the City of Austin are also veterans. At my arrest Corporal Christopher Carlisle badge #3368 came to my tent where I was inside, filming the police and he said that I was being charged and arrested for my political beliefs and views, basically for protesting, filming and defending the rights of unhoused and marginalized, gentrified poor people living on the streets in Austin. His words thus informing me that I was then an indigent political prisoner in the 5th Circuit in Austin, Travis County, Texas, United States of America. This is what the War on the Poor looks like on the streets of Austin to those of us that are fighting for freedom, safety, housing

and our inalienable rights. To defend the Constitutions and to defend the intent of a government that serves the people.

After Corporal Carlisle told me that I was falsely arrested for the class C misdemeanor of “camping.” I was also filming the police and did not consent to any search or seizure of my property or work product, as I am also a member of the Challenger Street Newspaper, a reporter and videographer for about 10 years now.

On November 18th, 2019 the case was dismissed on it’s merits by the Community Court. On prima fascia evidence that did not support the charge.

Since that time I have been falsely arrested in retaliation for filming the Austin Police department several times, so many times I have lost count. The cases are consistently reviewed by the City’s prosecutors, the County prosecutors and dismissed on their merits as no prima fascia evidence supports the charges. I am innocent of all charges, but the police know you can beat the rap, but you can’t beat the (retaliatory) ride. This practice of false arrests to deprive Citizens of their rights should be stopped immediately. These cases of retaliation show a clear pattern and practice of conspiracy to deprive me of my rights to be in a tent, to film the Austin Police Department at work in public, and to protest the City’s lack of real housing options for the unhoused poor of Austin, who suffer needlessly on the

streets while the City of Austin's general budget is over \$4.2 Billion and the City has vacant lands, thousands of acres, hundreds of buildings, trillions in assets. Yet the City does barely anything to secure permanent, supportive, key-first, safe and decent housing for our unhoused Citizen friends and neighbors on the streets. There is no shortage of budget, no shortage of housing or spaces in buildings in Austin. There is simply hoarding, disinformation, deliberate non-transparency, greed, hatred and denial by the City of Austin and its leadership. Housing is the solution. Simply put. And the only legal means of moving people out of sight for the comfort of wealthier individuals.

I read the Officer's complaint and Corporal Carlisle states on that form that he told me to go to Emma Long Park and McKinney State Park. I do not believe he said that. He said he offered me space in the ARCH homeless shelter. I have never stayed at the ARCH shelter and that suggestion is offensive, the ARCH shelter has a reputation on the streets as being abusive, unclean, unsafe and policed heavily by Austin Police Department. McKinney State Park is secluded, no services or even a convenience store or grocery store. They only allow you to stay a short time, they do not want unhoused people there, they cost money that I do not have. So neither was a helpful, viable, safe, solution. And I have no recollection of him saying those things to me as well. I believe this is a falsehood on a charging document by Corporal Carlisle. I'm not sure why he felt that was appropriate to put on his

complaint. Or why police officers lie on documents and under oath to protect their position when they know they are in the wrong and the charges are retaliatory. I would like Corporal Carlisle to produce video of him saying that to me. As proof. Hopefully soon in discovery of evidence in this case.

I believe that I have filed a complaint with the Police Oversight Office or the Office of Police Monitor. Nothing was done. I have no access to their files, they consider it “APD protected personnel records.” I hope to attain more information form discovery about their failures to hold the police accountable and transparent to the public. As is their charge and oath. I have filed multiple police complaints with the City and the Internal Affairs at APD. Most all the cases were ignored, dismissed, or administratively closed without good cause.

I believe that Officer Patrick Walsh badge #7345 was the officer that falsely arrested me under color of law and violated my rights and freedoms.

Greg McCormack, presently with the City of Austin, but at the time of this incident he was on site talking to police, prior to my false arrest, about how to remove and arrest me to deprive me of my rights. He was working for the ARCH homeless shelter at the time and was involved in clearing out all the people camped outside waiting for housing and some for shelter, under project Guided Path, by the

City of Austin, Inc.. Citizens there were all refused shelter or housing, delayed or told to wait it out. Greg McCormack not only conspired to deprive me of my rights, he also conspired against other unhoused marginalized and poor people on Austin's streets and was in charge of the abusive, unsafe, unclean ARCH shelter as the director of FrontSteps corporation.

5. Julian Reyes, a pro se plaintiff, and am seeking full damages in the amount of \$1,000,000 U.S.A. dollars for all losses, of lost time, stolen freedoms and rights, and for the Constitutional and other violations specified below and in other later amendments to this complaint, as more information becomes available and through discover of evidence to come. And censure, punishments and charges for the responsible parties, including restorative justice to create a safer, more servicing government in Austin. I also seek injunctions to protect Citizens' rights whether unhoused on the streets of Austin or members of the Press to protect us from future targeting, stalking, retaliation, false arrest, deprivation of rights, harassment, and threats by the Austin Police Department, City of Austin, inc., and their agents, acting alone or in groups, most especially those involved in filming police interactions in public or defending their homes from theft under color of law by 'The State.' Reyes is also seeking reformative justice, remedy, and mediation on the issues of training, injustice, patterns and practice of police abuses that led up

to this egregious incident by Austin Police Department, the City of Austin, et al. and Greg McCormack.

In fact I was just arrested for a class c, fine only, misdemeanor this Sunday October 24th, 2021, for my free speech on a public sidewalk. And this is one of about 10 so arrests by Austin Police agents, acting together, to deprive me of my rights to free speech and free press, transparency of government, accountability of police, and due process rights. My cameras have been seized and the Austin Police Officer, Detective Stitler is still refusing to give me back my primary work equipment and evidence to defend myself in court, even though it has been about 10 days since the unlawful seizure of these items. I cannot do the work of the free press here in Austin without my work tools and work product. The Police know that, I have informed them, they are not budging, they are asserting their right to abuse, retaliate, deprive, and seize my cameras, video and megaphone. There has been a clear pattern of deprivation of rights in a similar manner in all the cases against me for the last 8 or so years.

So as you see the City and it's police are continually keeping me busy in court defending my rights and my person from unlawful and unnecessary retaliatory imprisonment and punishment for clearly and well established constitutional rights. This time and energy keeps me from working on this case

and talking to more lawyers for assistance with this case. I believe that the federal civil courts are the venue for seeking justice and protections of law for all people in this matter. See Glick v Cunliffe and Turner v Driver as well as others to be listed later.

As a matter of fact I currently have 8 or 9 open retaliatory, police abuse, arrests in 2 courts in Austin, some in Travis County Criminal Court 9, Judge Kim Williams is aware of the police retaliation in my cases. As I have informed her several times in court. And I have 2 more false arrest cases for first amendment exercise in the City of Austin Municipal Court system and its subordinate the Downtown Austin Community Court. All are misdemeanor arrests for filming the police depriving poor people of their rights except this Sunday's arrest which was for protesting for homes for the unhoused people of Austin and for corporate funding of housing, gentrification as the cost of rent is way too high in Austin for the common person who lives here without fat stacks of cash to live here anymore. Myself and others became unhoused due to rent, evictions and chronic illness, without a safety net. So I was arrested again Sunday for my free speech and the case is still new and pending. In the current covid state of procedures and backlog in the courts it could be 2 more years of time spent waiting and working these cases. That alone is too much for me. I do have pro bono indigency criminal defense attorneys. But they do not know how to connect me with Civil Rights

attorneys yet, although we have been trying to contact several to date. So the punishment for free speech and filming by the Austin Police Department and their agents is ongoing, constant, formidable and time consuming. A clear pattern and practice of targeting, abuse and deprivations of rights and conserving to do so. That is why I filed this complaint case, as no other means of accountability of justice worked including calling the District Attorney's Office, Civil Rights Division. This court has the responsibility for justice and access to law in this case. And also this Court has the jurisdiction in this case. I am overwhelmed and have fallen ill with pneumonia recently but am healing as best I can.

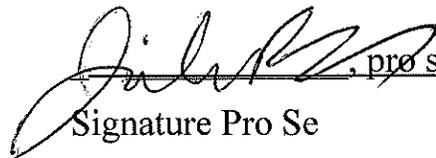
My main constitutional question right now is does the government, including the Justice Department and Courts, serve the People or do we serve you? As in the Police and government has an intense surveillance state whereby thousands or more cameras can film us in public and other spaces, without fear of litigation, retaliation, or false arrest. Yet when I film the Austin police, when there is something questionable under law that they are doing, under color of law, do the Citizens have the right to film the police without fear of retaliation, deprivation of rights, conspiracy of parties, false arrest, abuse, harassment and interference? I think this is a key question that I would like to have answered in this case, by this court. Is transparency and accountability the

law? Or are they just meaningless words in 2021, post George Floyd and Mike Ramos, and so many more victims in the U.S.A..

If a hearing would be necessary, I pray for that opportunity to show and state my case. Also I cannot keep up with this case by myself until I have the help, abilities and access of legal advice or counsel. **Oral Argument Requested.** No rights waived, all rights reserved.

SIGNED this 3rd day of November, 2021.

Respectfully submitted,

 . pro se
Signature Pro Se

Mr. Julian Reyes
512 785-1749
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Suite 160c Box 147
Austin, Texas, U.S.A. 78759
justicenowpeople@protonmail.com

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

Julian Reyes
Travis

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Pro Se

DEFENDANTS City of Austin, Inc, APD,
Wisnor, Carlisle, Walsh, et al
Travis

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)

1:21CV0992

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

- 1 U.S. Government Plaintiff
Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

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

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
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.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983, 1985, 19, 4th, 14th, & 8th amendments
Brief description of cause: False Arrest for camping misdemeanor Class C

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 1,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11-2-2021 SIGNATURE OF ATTORNEY OF RECORD Pro Se

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

the threshold pleading standards require factual allegations regarding each material element necessary to sustain recovery under an actionable legal theory. Because Plaintiff has failed to do so, the claims against all named parties must be dismissed.

II. **Motion to Dismiss**

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 U.S. Supreme Court has adopted a two-step approach to determine if a claim should be dismissed under Rule 12(b)(6). *Iqbal*, 556 at 663, citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). First, though generally a court should accept the veracity of well pleaded facts and view them in a light most favorable to the plaintiff, this tenet is inapplicable to allegations that are “threadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Id.* Second, a complaint can survive a motion to dismiss only if it states a factually plausible claim for relief. *Id.* A claim is facially plausible if the plaintiff “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. And a complaint must identify factual and legal grounds which could entitle a plaintiff to relief against each defendant sued. *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (emphasis added).

Furthermore, the allegations in a complaint must raise a right to relief that is more than speculative, assuming that the allegations are true. *Twombly*, 550 U.S. at 555. The well pleaded facts must allow the court to infer the possibility of the defendant’s misconduct and show that the plaintiff is entitled to relief. *Iqbal*, at 678. 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, the court’s evaluation of pleading sufficiency requires the court to distinguish **pleading**

allegations within a complaint that contain factual content from **mere assertions** that do not. A list of generalized legal standards, without providing substantive factual matter supporting them, does not state a claim. *See Vulcan Materials Co. v. City of Tehuacana*, 238 F.3d 382, 387 (5th Cir. 2001). The Court should not “strain to find inferences favorable to the plaintiffs” or “accept conclusory allegations, unwarranted deductions, or legal conclusions.” *R2 Invs. LDC v. Phillips*, 401 F.3d 638, 642 (5th Cir. 2005) (quoting *Southland Sec. Corp. v. Inspire Solutions, Inc.*, 365 F.3d 353, 361 (5th Cir. 2004).

III. **Argument & Authorities**

A. Plaintiff fails to state a Claim against the City of Austin¹

A City may be liable for constitutional violations under § 1983, but there is no *respondeat superior* liability. *See Monell v. Dep’t of Social Services of City of New York*, 436 U.S. 658, 690-694 (1978). A municipality is only liable for “acts directly attributed to it through some official action or imprimatur.” *Peterson v. City of Forth Worth*, 588 F.3d 838, 847 (5th Cir. 2009). Generally, this requires a Plaintiff to show “the deprivation of a federally protected right caused by action taken pursuant to an official municipal policy.” *Valle v. City of Houston*, 613 F.3d 536, 541(5th Cir. 2010). Plaintiff’s pleading does not reference or specify a specific official policy practice or custom, an alleged policy maker or whether any such policy was the moving force behind any of the alleged violations of his rights. Without those basic requirements, the claims against the City fail under the federal pleadings standards and must be dismissed.

In the absence of an express policy, a plaintiff is permitted to show a “persistent,

¹ Plaintiff also names the Austin Police Department as a party. The Austin Police Department is not a separate legal entity that is subject to suit. Rather, it is a department within the City. Because the police department is a non-jural entity, it also must be dismissed. *See Darby v. Pasadena Police Dep’t.*, 939 F.2d 311, 313-14 (Fifth Cir. 1991).

widespread practice of City officials or employees, which, although not authorized by official policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy.” *Piotrowski v. City of Houston*, 237 F.3d 567, 579 (5th Cir. 2001)(quoting *Webster v. City of Houston*, 735 F.2d 838 (5th Cir. 1984(*en banc*)). However, even in such instances identified as a pattern or practice, the Plaintiff must plead more than a series of isolated incidents. *See Burge v. St. Tammy Parish*, 336 F.3d 363, 370 (5th Cir. 2003). Plaintiff’s pleading also fails to assert a pattern and practice cause of action against the City. Although Plaintiff conclusively states that the defendants have a pattern and practice of “violating poor unhoused people’s rights,” (Doc. No. 1, page 3), he again makes no factual references beyond two specific individual arrests and vague references to additional municipal court citations that are the subject of his complaint. Without more, his pleadings fail to state a cause of action against the City.

B. The Officers are entitled to official/qualified immunity.

Plaintiff names five officers and additional doe officers in his vaguely-worded complaint. Two officers: Sarah Foster and Kyu Suk are not mentioned beyond the caption. Plaintiff lobs vague and conclusory allegations against the remaining three officers that appear related to his November 2019 citation for violating the City’s camping ban. The named Officers are entitled to official/qualified immunity from individual capacity claims, if any. Immunity requires a heightened pleading standard wherein plaintiff must state facts with particularity, not conclusory allegations. *Elliott v. Perez*, 751 F.2d 1472 (5th Cir. 1985). “Qualified immunity shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged conduct.” *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2080 (2011). The plaintiff has the burden to negate the assertion of qualified immunity once raised.

When an individual alleges a claim for wrongful arrest, qualified immunity shields defendant officers from suit if a “ ‘reasonable officer could have believed [the arrest at issue] to be lawful, in light of clearly established law and the information the [arresting] officer possessed.’ *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). Plaintiff did not plead sufficient facts to establish that the facts and circumstances within the citing officers’ knowledge during the November 5, 2019, incident where he was cited for a Class C Misdemeanor Camping Ban violation, were insufficient to establish probable cause. In fact, Plaintiff acknowledges the basis for the probable cause complaint: that he was arrested for the class C misdemeanor of camping and was told to move to alternative locations of Emma Long Park, McKinney State Park or seek a spot at the Arch. The basis for Plaintiff’s false arrest allegations seem to be that he doesn’t believe that was the reason for the citation, and the true reason was his filming the police. However, conclusory statements without more, cannot serve as the basis for a valid complaint under 1983 and certainly are insufficient to overcome the named Officers’ entitlement to qualified immunity.² Without more, Plaintiff’s claims against Officers Carlisle and Walsh must fail.

Plaintiff has failed to state a claim against Officers Kyu Suk, Sarah Foster and Sergeant Troy Wismar. The first two officers are not mentioned in the body of the Complaint and the only reference to Sergeant Wismar is that he was joined by front steps manager to conspire to deprive people of their rights. (Doc. No. 1, page 3). Read most generously to the plaintiff, he may have alleged a claim for bystander liability or conspiracy against the Officers. As explained below, such a claim fails.

² Plaintiff’s additional allegations related to October 2021 are equally deficient. The conclusory allegation of a wrongful arrest on a public sidewalk, without more does not support the well-established pleading standards let alone a complaint that can overcome qualified immunity.

Bystander liability may be established where an officer (1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act. *Kitchen v. Dallas County*, 759 F.3d 468, 480 (5th Cir. 2014). Here, Plaintiff does not plead sufficient facts to establish the officer's involvement in the incident. Further, he pleads no constitutional violation for which the officers had a duty to intervene. Without more, the Officers should be dismissed.

C. Greg McCormack Is Not a State Actor and Must be Dismissed.

Plaintiff names Greg McCormack as one of several defendants and describes his role as both the "director of FrontSteps corporation" (Doc. No. 1, Page 7) and "working for the ARCH homeless shelter at the time...." (Doc. No. 1, page 6). State action is a prerequisite to sustaining a legal claim under § 1983. *See Miss. Women's Med. Clinic v. McMillian*, 866 F.2d 788, 792-93 (5th Cir. 1989). To show state action, Plaintiff must show an official custom policy or practice of the City or that the actions of FrontSteps' employees, although private, are actions "fairly attributable to the City" and therefore State actors. *See Lugar v. Edmonston Oil*, 457 U.S. 922 937 (1982). acts under color of state law and therefore a state actor.

Here, Plaintiff's only attempts to connect McCormack to the City are his description that he was on site talking to the police about how to remove and arrest him. (Doc. No. 1, page 6). Separately, he connects McCormack with work performed on behalf of the Arch homeless shelter in clearing out people who were camped outside the shelter. Such statements do not point to a policy of the City. Further, they do not identify the requisite control or authority that would amount to State action that could be attributed to McCormack. Without more, the claims against McCormack must be dismissed.

D. Section 1985 Conspiracy is not properly pled.

Section 1985 prohibits conspiracies to deprive an individual of equal protection or equal privileges and immunities under the law on the basis of race. *Griffin v. Breckenridge*, 403 U.S. 88, 102–03 (1971). While Plaintiff vaguely references a conspiracy (Doc. No. 1, p. 4), he has not alleged any facts to support a racially discriminatory conspiracy (indeed Plaintiff does not even identify his race or the race of the Defendants). Therefore, Plaintiff’s section 1985 claim should be dismissed.

E. Plaintiff’s claim of an Eighth Amendment Violation are Misplaced.

Plaintiff alleges that his Civil Complaint involve “8th Constitutional Amendment.” (Doc. No. 1, page 2). As a general rule, a pretrial detainee’s rights are analyzed under the Due Process Clause rather than the Eighth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535, N. 6 (1979). Here, Plaintiff makes no factual allegations in support of his conclusory legal claim of Eighth Amendment. Further, there is no cause of action under the Eighth Amendment based upon his status as a pretrial detainee. To the extent Plaintiff’s Complaint includes an Eighth Amendment claim, it should be dismissed.

IV.
Conclusion and Prayer for Relief

Defendants request that the Court grant this Motion to Dismiss Plaintiff’s claims and parties identified above pursuant to FRCP 12(b)(6). Defendants further request such other and further relief to which they may show to be justly entitled, at law and in equity.

RESPECTFULLY SUBMITTED,

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

/s/ Meghan L. Riley
MEGHAN L. RILEY
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meghan.riley@austintexas.gov
Telephone (512) 974-2458
Facsimile (512) 974-1311

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 24th day of January 2022.

Via U.S. First-Class Mail & Certified Mail:

Julian Reyes
Pro Se
10900 Research Blvd.
Suite 160c Box 147
Austin, Texas, 78759
justicenowpeople@protonmail.com

PLAINTIFF, PRO SE

/s/ Meghan L. Riley
MEGHAN L. RILEY

FILED

FEB - 8 2022

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

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

JULIAN REYES,
PLAINTIFF,

V.

CITY OF AUSTIN ET AL.,
DEFENDANTS.

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CAUSE NO. 1:21-CV-992-LY

ORDER

IT IS HEREBY ORDERED that all pending and future discovery motions as well as all other nondispositive motions in this case are **REFERRED** to United States Magistrate Judge Susan Hightower for resolution pursuant to 28 U.S.C. § 636(b)(1)(A), Federal Rule of Civil Procedure 72, and Rule 1(c) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, as amended.

IT IS FURTHER ORDERED that all pending and future dispositive motions are **REFERRED** to United States Magistrate Judge Susan Hightower for Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), Federal Rule of Civil Procedure 72, and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, as amended.

SIGNED this 8th day of February, 2022.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE

Reyes alleges that on November 5, 2019, APD Corporal Christopher Carlisle, Sergeant Troy Wismar, and “several officers” conspired together with Greg McCormack, who then worked for the Austin Resource Center for the Homeless (“ARCH”),¹ “to deprive people of their rights” during a protest in front of the Salvation Army. *Id.* Reyes alleges that he was inside his tent filming the police when Carlisle came to his tent and “said that I was being charged and arrested for my political beliefs and views, basically for protesting, filming and defending the rights of unhoused and marginalized, gentrified poor people living on the streets of Austin.” *Id.* Reyes alleges that McCormack “was on site talking to the police, prior to my false arrest, about how to remove and arrest me to deprive me of my rights.” *Id.* at 6. He further alleges that APD Officer Patrick Walsh wrongfully arrested him for committing the misdemeanor offense of violating the City’s camping ban. *Id.* at 4, 6.

Reyes alleges that the camping charge was dismissed on the merits on November 18, 2019. *Id.* at 4. He further alleges that: “Since that time I have been falsely arrested in retaliation for filming the Austin Police department several times, so many times I have lost count.” *Id.*

On October 24, 2021, Reyes alleges, he was arrested on a Class C misdemeanor “for my free speech on a public sidewalk.” *Id.* at 8. He alleges that his cameras, which are his “primary work equipment and evidence to defend myself in court,” were seized by APD. *Id.* Reyes further alleges that his 2021 arrest “is one of about 10 [or] so arrests by Austin Police agents, acting together, to deprive me of my rights to free speech and free press, transparency of government, accountability of police, and due process rights.” *Id.* He avers that “I currently have 8 or 9 open retaliatory, police abuse, arrests in 2 courts in Austin.” *Id.* at 9. All but one, Reyes alleges, “are misdemeanor arrests for filming the police depriving poor people of their rights.” *Id.*

¹ Reyes alleges McCormack was director of Front Steps, which manages the ARCH shelter. Dkt. 1 at 7.

On November 3, 2021, Reyes filed this lawsuit, alleging that his repeated arrests violated his rights under First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution.² *Id.* at 2. Reyes also asserts a claim for conspiracy under 42 U.S.C. § 1985. He alleges that APD has a “practice of false arrests to deprive Citizens of their rights,” including the First Amendment right “to film the Austin Police Department at work in public.” Dkt. 1 at 4. He further alleges that this practice culminated in his multiple false arrests, rendering the City liable for the individual APD officers’ actions under Section 1983. *Id.*

Defendants the City of Austin (the “City”), Greg McCormack, and APD Officers Troy Wismar, Christopher Carlisle, Patrick Walsh, Kyu Suk An, and Sarah Foster move to dismiss Reyes’ claims for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).³ Reyes did not respond to Defendants’ motion.

II. Legal Standards

A. Rule 12(b)(6)

Rule 12(b)(6) allows a party to move to dismiss an action for failure to state a claim on which relief can be granted. In deciding a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court accepts “all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff.” *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (citation omitted). The Supreme Court has explained that a complaint must contain sufficient factual matter “to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

² Although Plaintiff included an Eighth Amendment violation his Section 1983 claim, the Court construes his claim under the Fourteenth Amendment. *See Esquivel v. Eastburn*, No. SA-20-CV-00377-OLG, 2021 WL 1667132, at *6 (W.D. Tex. Apr. 28, 2021) (construing pretrial detainee’s Eighth Amendment claims under Fourteenth Amendment).

³ Defendants cite Rule 12(b)(1) in the title of their motion but seek dismissal under Rule 12(b)(6) only. Also, the Austin Police Department is not subject to suit because it is not a separate legal entity from the City of Austin. *Taylor v. Anderson*, No. A-13-CV-464-LY, 2014 WL 547032, at *5 n.3 (W.D. Tex. Feb. 10, 2014) (citing *Darby v. Pasadena Police Dep’t*, 939 F.2d 311, 313-14 (5th Cir. 1991)).

(quoting *Bell Atlantic 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*, 556 U.S. at 678.

While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).

Twombly, 550 U.S. at 555 (cleaned up). In determining whether a plaintiff’s claims survive a Rule 12(b)(6) motion to dismiss, the factual information to which the court addresses its inquiry is generally limited to (1) the facts set forth in the complaint, (2) documents attached to the complaint, and (3) matters of which judicial notice may be taken under Federal Rule of Evidence 201. *Walker v. Beaumont Indep. Sch. Dist.*, 938 F.3d 724, 735 (5th Cir. 2019).

B. Section 1983

42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

To state a claim under Section 1983, a plaintiff must (1) allege a violation of a right secured by the Constitution or laws of the United States, and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law. *Whitley v. Hanna*, 726 F.3d 631, 638 (5th Cir. 2013). Claims under Section 1983 may be brought against persons in their individual or official capacity, or against a governmental entity. *Goodman v. Harris Cnty.*, 571 F.3d 388, 395 (5th Cir. 2009). It is well established that a municipality or a local governmental unit is not liable

under Section 1983 on the theory of *respondeat superior*. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). “A municipality is almost never liable for an isolated unconstitutional act on the part of an employee; it is liable only for acts directly attributable to it through some official action or imprimatur.” *Peterson v. City of Fort Worth*, 588 F.3d 838, 847 (5th Cir. 2009) (internal quotation marks omitted). A municipality is liable under Section 1983 for its officers and employees’ actions when they are executing an official policy or custom. *Piotrowski v. City of Houston*, 237 F.3d 567, 579 (5th Cir. 2001).

III. Analysis

Reyes did not file a response to Defendants’ Motion to Dismiss. Nonetheless, the Court addresses the merits of the motion, as the Fifth Circuit Court of Appeals has not approved the automatic grant of dispositive motions. *Johnson v. Pettiford*, 442 F.3d 917, 918-19 (5th Cir. 2006).

A. Municipal Liability

To establish municipal liability under Section 1983, a plaintiff must plead facts that plausibly establish (1) an official policy (2) promulgated by a policymaker (3) that was the “moving force” behind the violation of the constitutional right. *Piotrowski*, 237 F.3d at 578. The City contends that Reyes has failed to adequately plead all three of these elements. Specifically, Defendants argue that Reyes has not sufficiently alleged that any APD policy, practice, or custom caused a violation of his constitutional rights, identified an alleged policymaker, or shown that a City policy was the moving force behind his constitutional violation.

1. Official Policy

An official policy can include written policy statements, ordinances, or regulations, as well as a widespread practice that is “so common and well-settled as to constitute a custom that fairly represents municipal policy.” *Webster v. City of Houston*, 735 F.2d 838, 841 (5th Cir. 1984). A policy or custom is official when it results from the decision or acquiescence of the municipal

officer or body with final policymaking authority over the subject matter of the offending policy. *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989).

Municipal liability claims based on a local government's customs generally require that the plaintiff demonstrate a pattern of conduct, because "one act is not itself a custom." *Pineda v. City of Houston*, 291 F.3d 325, 329 (5th Cir. 2002). "A pattern requires similarity and specificity; '[p]rior indications cannot simply be for any and all bad or unwise acts, but rather must point to the specific violation in question.'" *Peterson*, 588 F.3d at 851 (quoting *Estate of Davis ex rel. McCully v. City of N. Richland Hills*, 406 F.3d 375, 381 (5th Cir. 2005)). A pattern also requires sufficiently numerous prior incidents, not isolated instances. *McConney v. City of Houston*, 863 F.2d 1180, 1184 (5th Cir. 1989).

A "First Amendment right to record the police does exist, subject only to reasonable time, place, and manner restrictions." *Turner v. Lt. Driver*, 848 F.3d 678, 688 (5th Cir. 2017); *see also Kokesh v. Curlee*, 14 F.4th 382, 393 (5th Cir. 2021) (stating that recording state trooper "is a protected activity under the First Amendment"). Reyes alleges that the City has a widespread practice or custom in which police officers falsely arrest people to prevent them from exercising their First Amendment right to record police activities. Dkt. 1 at 4.

In his Complaint, Reyes alleges facts regarding multiple instances in which he was purportedly arrested by APD while filming police activity. Reyes identifies two separate arrests and alleges that "about 10 [or] so" additional arrests occurred under similar circumstances. *Id.* at 3, 8.

Once again, at the motion to dismiss stage of a proceeding, the Court must assume that all allegations in the complaint are true. *Twombly*, 550 U.S. at 555. The Court finds that Reyes has made specific factual allegations allowing a reasonable inference that the City had a policy, practice, or custom of arresting individuals to prevent them from filming police activities.

Therefore, his pleadings are sufficient to state a viable claim under Section 1983. *See, e.g., Sanchez v. Gomez*, 283 F. Supp. 3d 524, 536 (W.D. Tex. 2017) (denying motion to dismiss where plaintiffs alleged nine instances of use of excessive force against mentally ill victims in four years), *appeal dismissed*, 2018 WL 1989633 (5th Cir. Feb. 22, 2018); *Barr v. City of San Antonio*, No. SA-06-CA-0261-XR, 2006 WL 2322861, at *4 (W.D. Tex. July 25, 2006) (finding allegations of four prior lawsuits against city concerning unlawful arrest and excessive force sufficient to state a “policy or custom” claim under Section 1983).

2. Policymaker

Defendants further argue that Reyes’ Section 1983 claim fails because he does not reference any alleged policymaker in his Complaint. The Fifth Circuit Court of Appeals has specifically rejected this contention, holding that the identity of the policymaker is a question of state law, not fact, and therefore courts should not grant motions to dismiss for failing to plead the specific identity of the policymaker. *Groden v. City of Dallas*, 826 F.3d 280, 284 (5th Cir. 2016) (“[T]he specific identity of the policymaker is a legal question that need not be pled; the complaint need only allege facts that show an official policy, promulgated or ratified by the policymaker, under which the municipality is said to be liable.”); *see also Balle v. Nueces Cnty.*, 952 F.3d 552, 559 (5th Cir. 2017) (reversing dismissal of claim against county because plaintiff was not required to plead identity of policymaker).

3. Nexus

To satisfy the third element and show that a policy was the “moving force” behind the constitutional violation under Section 1983, there must be “a direct causal link” between the policy and the violation, not merely a “but for” coupling between cause and effect. *Peterson*, 588 F.3d at 848. Reyes alleges that, because of the City’s custom of arresting those who film police activities, APD officers wrongfully arrested him on multiple occasions, which resulted in his constitutional

injury. He specifically alleges that all but one of his misdemeanor arrests are “for filming the police depriving poor people of their rights” and not for any actual violation of the law. Dkt. 1 at 9. The facts alleged in Reyes’ Complaint state a plausible claim that the City’s policy was the “moving force” behind the alleged violations of his constitutional rights under the First, Fourth, and Fourteenth Amendments.

For the foregoing reasons, the undersigned Magistrate Judge recommends that the District Court deny Defendants’ Motion to Dismiss Reyes’ Section 1983 claim against the City of Austin.

B. Individual Defendants

Reyes also asserts Section 1983 claims against several APD officers and McCormack, a private citizen. Defendants argue that the APD officers are entitled to qualified immunity, and that Reyes fails to state a claim against McCormack.

1. Officers Sarah Foster and Kyu Suk An

Reyes names APD Officers Sarah Foster and Kyu Suk An as defendants, but alleges no facts against either officer in his Complaint. Dkt. 1 at 2. “To be liable under § 1983, [an officer] must have been personally involved in the alleged constitutional deprivation or have engaged in wrongful conduct that is causally connected to the constitutional violation.” *Turner*, 848 F.3d at 695-96; *see also Watson v. Interstate Fire & Cas. Co.*, 611 F.2d 120, 123 (5th Cir. 1980) (stating that “vicarious liability cannot be the basis for recovery” under Section 1983 and that “[l]iability may be found only if there is personal involvement of the officer being sued”). Reyes’ claims against these two defendants fail as a matter of law because he pleads no allegations that they were personally involved in or causally connected to his allegedly wrongful arrests. *See Turner*, 848 F.3d at 696 (stating that plaintiff failed to allege officer violated Fourth Amendment rights where he did not allege that police officer had any personal involvement in his arrest). Accordingly, the claims against Officers Sarah Foster and Kyu Suk An should be dismissed.

2. Corporal Christopher Carlisle, Officer Patrick Walsh, Sergeant Troy Wismar, and John Doe Officers

Defendants argue that the remaining APD officers are entitled to qualified immunity from Reyes' individual capacity claims. Qualified immunity extends to government officials performing discretionary functions "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "Qualified immunity shields from liability 'all but the plainly incompetent or those who knowingly violate the law.'" *Romero v. City of Grapevine*, 888 F.3d 170, 176 (5th Cir. 2018) (quoting *Malley v. Briggs*, 475 U.S. 335, 341 (1986)). An official who violates a federal right is entitled to qualified immunity if his or her actions were objectively reasonable. *Spann v. Rainey*, 987 F.2d 1110, 1114 (5th Cir. 1993). Therefore, "qualified immunity represents the norm." *Harlow*, 457 U.S. at 807.

Once a defendant invokes qualified immunity, the burden shifts to the plaintiff to show that the defense is not available. *Kovacic v. Villarreal*, 628 F.3d 209, 211 (5th Cir. 2010). To rebut the qualified immunity defense, a plaintiff must show that (1) the allegations make out a violation, and (2) the violation was "clearly established" at the time of the defendant's conduct. *Id.* To do so, the plaintiff "must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a qualified immunity defense with equal specificity." *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012).

Because he did not respond to Defendants' grounds for dismissal of his Section 1983 claims based on qualified immunity, Reyes has failed to meet his burden to negate Defendants' qualified immunity defense. See *Brumfield v. Hollins*, 551 F.3d 322, 326 (5th Cir. 2008) (stating that plaintiff has burden to negate qualified immunity defense once properly raised); *S.C. v. Round Rock Indep. Sch. Dist.*, No. A-19-CV-1177-SH, 2020 WL 1446857, at *8 (W.D. Tex. Mar. 25,

2020) (finding that plaintiffs did not meet burden to negate defense when they failed to respond to defendant's grounds for dismissal based on qualified immunity). Accordingly, the undersigned Magistrate Judge recommends that Reyes' claims against Carlisle, Walsh, Wismar, and the John Doe Officers be dismissed for failure to state a claim.

3. Greg McCormack

For a private citizen to be held liable under Section 1983, the plaintiff must allege that the citizen conspired with or acted in concert with state actors. *Childers v. San Saba Cnty.*, No. A-14-CV-916-LY-ML, 2015 WL 13694667, at *14 (W.D. Tex. Nov. 30, 2015) (citing *Mylett v. Jeane*, 879 F.2d 1272, 1275 (5th Cir. 1989)). The plaintiff must allege (1) an agreement between the private and public defendants to commit an illegal act, and (2) a deprivation of constitutional rights. *Cinel v. Connick*, 15 F.3d 1338, 1343 (5th Cir. 1994). "Allegations that are merely conclusory, without reference to specific facts, will not suffice." *Priester v. Lowndes Cnty.*, 354 F.3d 414, 420 (5th Cir. 2004).

Defendants argue that Reyes' Section 1983 claim against McCormack fails because Reyes has alleged neither that McCormack was a state actor nor facts showing that McCormack entered a conspiracy with the City to deprive Reyes of his constitutional rights. Reyes alleges that McCormack, then working for the ARCH homeless shelter, "was involved in clearing out all the people camped outside" the shelter and talked to APD officers about removing Reyes immediately before his arrest on November 5, 2019. Dkt. 1 at 6. Accordingly, Reyes can pursue a Section 1983 against McCormack only if he can show a conspiracy between McCormack and the City.

Reyes has not alleged facts showing the existence of an agreement between McCormack and any state actor to commit an illegal act. He makes only a conclusory allegation that McCormack "conspired to deprive [him] of [his] civil rights." *Id.* at 7. This is insufficient to state a claim. *See Priester*, 354 F.3d at 421 (holding that dismissal of Section 1983 claim was appropriate because

plaintiff did not allege an agreement between defendants to commit an illegal act or specific facts to show an agreement). The Court recommends that Reyes' Section 1983 claim against McCormack be dismissed.

C. Civil Conspiracy under Section 1985

Finally, Defendants assert that Reyes has failed to allege facts to support a civil conspiracy claim under Section 1985. The Court agrees that Reyes has not stated such a claim. Assuming that Reyes asserts his claim under Section 1985(3), he does not allege that he was arrested because of his race. *See Lockett v. New Orleans City*, 607 F.3d 992, 1002 (5th Cir. 2010) (stating that "the conspiracy must also have a racially based animus"). Therefore, Plaintiff's Section 1985 claim should be dismissed.

IV. Recommendations

Based on the foregoing, the undersigned Magistrate Judge **RECOMMENDS** that the District Court **GRANT IN PART AND DENY IN PART** Defendants' Motion to Dismiss (Dkt. 8) under Rule 12(b)(6).

The Court **RECOMMENDS** that the District Court **GRANT** the Motion and **DISMISS** with prejudice Plaintiff's claims against Greg McCormack and APD Officers Troy Wismar, Christopher Carlisle, Patrick Walsh, Kyu Suk An, and Sarah Foster, and **DENY** Defendants' Motion as to Plaintiff's Section 1983 claims against the City of Austin.

Should the District Court adopt this Report and Recommendation, Plaintiff's only remaining cause of action will be his Section 1983 claim against the City of Austin.

V. Warnings

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v.*

United States Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except on grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED on March 15, 2022.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE

UNITED STATES of AMERICA 5TH CIRCUIT AUSTIN DIVISION COURT

FILED

Julian Reyes
Plaintiff

MAR 31 2022

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

v.

§
§
§
§
§
§

Case no. 1:21-cv-00992-LY-SH

CITY OF AUSTIN, INC,
AUSTIN POLICE DEPARTMENT
OFFICERS CARLILE, WISMAR, et
al AND OTHER PARTIES TO BE
LISTED LATER, ALL
DEFENDANTS INDIVIDUALLY
AND IN THEIR OFFICIAL CAPACITIES,
RESPECTIVELY
Defendants

Motion for Stay

1. As I do not currently have access to a lawyer on this case or to case law. As such I would like to request a motion to stay on this case, and on any responses to this court on this case for at least 30 days while I seek legal attention on these matters, and before the defendants and court are able to further deprive me of access to my rights and law. I am a simple pro se Citizen that has been repeatedly targeted and arrested, an abuse of law, for my constitutional exercises of filming the police, and city crews, which is free speech as well as freedom of the press as I am a credentialed member of the

Challenger Street Newspaper, a 501c3 nonprofit that is over 10 years old now. I have been with them for about 10 years and the agents are aware of this fact, as well as the Mayor and City Council and Greg McCormack. They are both aware of my journalist status and of the status of the Challenger Street Newspaper, the local street press. Print and online distribution and sales. Including street vendors that are unhoused.

2. I apologize, after looking through the report and recommendations I need to correct this case, perhaps even file a new amended complaint as this case and the other while not duplicates, are hard for me to work and understand all the case law and how qualified immunity works.

3. Is it true that the police and officials of the City of Austin and their profiteers that work within their business model, another 'homeless industrial complex,' may conspire to deprive any Citizen of their 1st, 4th and 14th amendment rights in Austin, the 5th Circuit and that is ok with the current state of the law? I need access to law, to an attorney and the case law on qualified immunity to properly respond to the Courts' recommendations.

4. As I am operating without counsel and the incidents of false arrest and deprivation of rights are frequent and often get confused. Others parties to be

named later through the proper discovery of evidence, all all defendants individually and in their official capacities are responsible for this incident on this date. And only through proper discovery of evidence will we actually know the extent of this targeting, incidents, and witnesses. To dismiss and give immunity at this early stage is an injustice under color of law. It would better serve the people and serve justice to revisit all qualified immunities issues after the evidence is presented, to make sure that the truth comes out and the facts, under the law. Not above the law.

5. This incident and complaint happened in Austin, Texas, which this Court has jurisdiction over. As the 5th Circuit encompasses all of Texas, Louisiana and Mississippi. These are Constitutional issues, that are novel and important. Therefore I request the Western District Court of the U.S.A. in Austin, to try my Civil Complaint involving 1st, 4th, 14th, 8th Constitutional Amendments both in the State of Texas and similar Constitutional Rights amendments of the Unites States of America, violations under section U.S.C. 42 1983 as well as section 1985 Conspiracy of Parties. Because multiple agents of Municipal and Corporate government did conspire to deprive me of my rights and they were all involved in this crime against myself and essentially the rights afforded to all the Citizens and the Free Press. And that is a furtherance of APD's ongoing practices racist targeting of persons and and the same targeting of me

repeatedly by the City and it's agents acting together with the desired goals to deprive me of my rights, falsely arrest me repeatedly, make a mockery of the Constitution and cause me to not be able to defend my rights in Court. As the City and it's employees have countless funds and lawyers to protect these unlawful agents and these actions. The City and police also also know about my indigency, health issues, and mental strain that they have caused me. They know I am an important source of Press, news from the streets of Austin, Texas. News that otherwise would not be spoken. Breaking news. Many are life or death stories and struggles of real people on the poor streets of wealthy Austin. People and stories that the City and police would rather not be heard or seen by the public. The unwanted people on Austin's streets. I have spoken to the Chiefs of Police both Manley and Acevedo and informed them of this ongoing issue, of targeting, of interference with 1st amendment constitutional rights of filming police, of protesting, and that I am in fear for my life and that of other activists and filmers. Yet the pattern and practice only continues and escalates. In fact I have done my duty as a concerned Citizen and have filed many police complaints regarding this issue, and have not had any justice or change in their obedience of the law in these regards. Thus showing that the policies and practices of several departments are being used to enable targeting, false arrest, harassment, police abuse, and utilizing the law do do so. Under color of law they violate the constitutions and my rights. The

harassment and targeting, threats and arrests continue. I have also spoken to the entire City Council including Mayor Steven Adler and City Manager Spencer Cronk of these issues and their responsibility if they did not prevent further illicit targeting of myself and others. And have informed the Judge on the majority of my now dismissed criminal cases related to these unlawful arrests.

6. On or about November 5th 2019, in the City of Austin, Travis County, Texas, U.S.A.. Under this Court's functional jurisdiction, Officers Carlise, Wismar, and others did conspire together and with others to deprive people of their rights. This was a separate incident and separate officers that the other previous cases filed in this court . Those officers and other people worked together to deprive me of my rights to free speech and press. And to allow agents to violate our due process and that we may never be free from undue search and seizure, and retaliative, punitive arrests. To ignore this important set of facts and give immunity to lawbreakers in power is to give a free pass to law-breaking police, policy makers, chains of command and leadership that violate the constitutional law in the U.S.A. and in the 5th Circuit.

7. The location is Neches and 8th street of this incident, case 1:21-cv-00992-LY-SH. Although this incident occurred at the same location as the

Reyes v ALAS, HALE, et al case , 12100022LYSH. In fact this case and complaint is a separate incident and separate date with different actors other than those responsible for making policies and practices that deprive citizen filmers and press of their constitutional rights to film and be protected from illegal search, seizure, arrest and threats. Those are the Mayor, City Council, and the Chain of Command at APD. This incident and case did not arise out of the same exact same series of events. Though the false arrest for freedom of speech is similar in manner. In actuality this case and incident have separate facts, unlawful field agents and separate dates.

8. Not to mention there is a pattern and practice of City leadership directed police abuse, targeting not allowing people to sit down, to rest, to survive and allow people their international human rights laws. Which is why I put protest and film in the first place, as the law has been nothing but helpful in these oppressive policies and practices that cost human lives and suffering, needlessly.

9. These defendant individuals and their agencies have a pattern and practice of violating poor unhoused people's rights, property rights, 4th, 14th, amendment rights, many of the City's victims are black, brown or disabled. Many victims of the City of Austin are also veterans. This is what the War on

the Poor looks like on the streets of Austin. Racism is a clear pattern and practice in several areas of policing and control that runs from the streets to the lens. And a clear pattern and practice of interfering and depriving filmers of their free speech and free press rights. To hide the Truth and real news from the publics' view. And we shall see more evidence of these patterns and practices as we get to discovery of evidence. Please do not dismiss any agents until we can get an attorney on this and get the evidence to prove the stated facts of this complaint. Not before evidence has been gathered in the interest of Justice and the preservation of the constitutions as laws.

10. In this incident of police abuse and retaliation I was falsely arrested for the class misdemeanor of "Camping" I was filming the police and did not consent to any search or seizure of my property or work product, as I am also a member of the Challenger Street Newspaper, a reporter and videographer.

11. I request a Stay for this case because the City and it's police are continually keeping me busy in court defending my rights and my person from unlawful and unnecessary retaliatory imprisonment and punishment for clearly and well established constitutional rights. This time and energy keeps me from working on this case and talking to more lawyers for assistance with this case.

I believe that the federal civil courts are the venue for seeking justice and protections of law for all people in this matter.

12. I request leniency on this case and a stay order, to allow time to seek counsel and file motions. please consider this my request if necessary. As I am just a layman and pro se, without legal counsel trying to do my best to get this civil rights complaint and motions filed in time and as accurately as I am able.

13. I would also like the opportunity to amend my complaint as there may have been errors that made a recommendation that was not guided by the actual facts as they occurred. It's hard to keep up all these cases yet Justice must be made for all. Not just protecting the police and their leadership and trainers.

If a hearing would be necessary, I pray for that opportunity to show and state my case as to why I cannot keep up with this case as if I had the abilities and access of legal advice or counsel. **Oral Argument Requested.** No rights waived, all rights reserved.

SIGNED this 31st day of March, 2022.

Respectfully submitted,

 , pro se

Signature Pro Se

Mr. Julian Reyes

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

JULIAN REYES,	§	
PLAINTIFF,	§	
	§	
V.	§	CAUSE NO. 1:21-CV-992-LY
	§	
CITY OF AUSTIN ET AL.,	§	
DEFENDANTS.	§	

ORDER ON REPORT AND RECOMMENDATION

Before the court is the above-referenced cause. On January 24, 2022, Defendants City of Austin, Troy Wismar, Christopher Carlisle, Patrick Walsh, Kyu Suk An, Sarah Foster, and Greg McCormack filed a Rule 12(b)(1) & (6) Motion to Dismiss (Doc. #8), which was referred to a United States Magistrate Judge for Report and Recommendation. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72; Loc. R. W.D. Tex. App’x C, R. 1(d). The magistrate judge rendered a Report and Recommendation on March 15, 2022 (Doc. #10), recommending that the court grant in part and deny in part Defendants’ motion to dismiss. Specifically, the magistrate judge recommends that the court dismiss Plaintiff Julian Reyes’s claims against the individual defendants and deny the motion to dismiss with respect to Reyes’s civil-rights claims against the City of Austin. *See* 42 U.S.C. § 1983 (“Section 1983”).

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within 14 days after being served with a copy of the report and recommendation and thereby secure *de novo* review by the district court. *See* 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b). A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed

factual findings and legal conclusions accepted by the district court. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

On March 31, 2022, Reyes filed a Motion for Stay (Doc. #12), which the court construed as a motion for extension to file objections to the Report and Recommendation. The court granted Reyes's extension request and allowed Reyes until May 2, 2022, to file objections to the Report and Recommendation (Doc. #13). To date, no objections have been filed. Having reviewed the report and recommendation along with the case file and applicable law, the court finds no plain error and accepts the report and recommendation for substantially the reasons stated therein. *See* FED. R. CIV. P. 72(b).

IT IS THEREFORE ORDERED that the United States Magistrate Judge's Report and Recommendation (Doc. #10) is hereby **APPROVED** and **ACCEPTED** by the court.

IT IS FURTHER ORDERED that Defendants City of Austin, Troy Wismar, Christopher Carlisle, Patrick Walsh, Kyu Suk An, Sarah Foster, and Greg McCormack's Rule 12(b)(1) & (6) Motion to Dismiss (Doc. #8) is **GRANTED IN PART AND DENIED IN PART AS FOLLOWS**: Reyes's claims against Greg McCormack, Trey Wismar, Christopher Carlisle, Patrick Walsh, Kyu Suk An, and Sarah Foster are **DISMISSED WITH PREJUDICE**. The motion is in all other respects **DENIED**. Reyes's Section 1983 claims against the City of Austin remain pending before the court.

SIGNED this 10th day of May, 2022.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE

UNITED STATES of AMERICA 5TH CIRCUIT AUSTIN DIVISION COURT

Julian Reyes
Plaintiff

v.

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§
§
§
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§

Case no. 1:21-cv-00992-LY-SH

CITY OF AUSTIN, INC.,
AUSTIN POLICE DEPARTMENT,
al AND OTHER PARTIES TO BE
LISTED LATER, ALL
DEFENDANTS INDIVIDUALLY
AND IN THEIR OFFICIAL
CAPACITIES, RESPECTIVELY
Defendants

et

Motion for Appointment of Counsel

1. As I do not currently have access to a lawyer on this case or to case law. As such I would like to request a motion to appoint counsel on this case, and I have completed the form (Exhibit A) from the court on this issue.

2. While I continue to seek legal attention on these matters, and before the defendants and court are able to further deprive me of access to my rights and law. I am a simple pro se Citizen that has been repeatedly targeted and arrested, an abuse of law, for my constitutional exercises of filming the police, and city crews, which is free speech as well as freedom of the press as I am a

credentialed member of the Challenger Street Newspaper, a 501c3 nonprofit that is over 10 years old now. I have been with them for about 10 years and the City's agents are aware of this fact, as well as the Mayor, City Council and City Manager. They are both aware of my journalist status and of the status of the Challenger Street Newspaper, the local street press. Print and online distribution and sales. Including street vendors that are unhoused.

3. This case does present the kind of exceptional circumstances that would merit the Court appointing an attorney. Specifically, the overwhelming complexity of the court rules and procedures, and the discovery of evidence in a complex claim of multiple agents and incidents of false arrest to deter citizens' filming which has had a chilling effect on filming police in Austin. The discovery of evidence on this case will be difficult and complex and will require legal counsel and assistance.

4. In essence, I allege that I was subject to false arrest, imprisonment, search and seizure by agents working together for the City of Austin, and that multiple agents, listed defendants illegally seized my cameras and property when the police arrested me for filming them and protesting for housing and decent practices and patterns towards the unhoused residents of Austin. These

facts definitely present novel legal issues, and the facts underlying the claims seem very complex to me. See *Turner v Driver* and *Houston v Hill*.

5. Moreover, I may not be incarcerated presently. But I have been arrested almost a dozen times by APD, including malicious prosecution. See *Houston v Hill*. And I still need access to the law and the court that counsel would provide in the interest of the greater issue of social justice. I have not had ready access to law libraries, due to pandemic conditions. I do not have the information and discovery ability to investigate this case and pattern and practice of police retaliation properly, with all its multiple agents, and complexities. I have no access to witnesses, hopefully discovery from the City with counsel will provide this knowledge and fact finding. In the interest of Justice and seeking remedy for these grievances. Therefore I can not adequately investigate or handle court proceedings on this case. Or on the other cases, as has been seen in the multiple dismissals due to simple rules and process and deadlines, on record. Which counsel would understand, which I do not understand. All of this complexities, filing rights, first amendment, 4th, 14th make this case both novel, complex and overwhelmingly difficult for me. These previous cases never see the discovery process, they are simply dismissed, erroneously by the Court, prematurely without any semblance of the Justice which is the calling of the Justice System and this 5th Circuit. To serve

the people, like me, that wish to be served justice for grievances from an oppressive government that will retaliate against you for simply free speech and a camera.

6. While I do know how to file complaints with this court, I do not have understanding of the court's processes, rules and the discovery and case law access and training to proceed with this case to completion of justice, without assistance of counsel.

7. Also, this case is in its early stages. Yet I am certain that as this case progresses, the evidence will consist of conflicting testimony and contested facts and omissions of evidence by the City which is typical, which will require skillful presentation which I am not capable or trained on presenting. This will become clear at a later stage of the litigation, but for now, I have not even filed an answer to all recommendations and qualified immunity motions as I am not able to keep up presently with this case complexity and rules and so I am still seeking time and counsel based on the facts of the case, the evidence that is missing, and the complexity of both the case, the rules and procedures of this court and the complexities of law and no access to relevant case law or training.

8. The City has already been motioning to dismiss the parties. Which was too complex and unreachable case law for me. I can see that investigating and performing discovery are also too complex and difficult for my limited knowledge and means.

9. Is it true that the police and officials of the City of Austin and their profiteers that work within their business model, another 'homeless industrial complex,' may conspire to deprive any Citizen of their 1st, 4th and 14th amendment rights in Austin, the 5th Circuit and that is ok with the current state of the law? I need access to law, to an attorney and the case law on qualified immunity to properly respond to the defendants multiple attorneys and their determination to continue these injustices, using their knowledge of law to prevent all accountability and justice as well as transparency.

10. As I am operating without counsel and the incidents of false arrest and deprivation of rights are frequent and often get confused. These cases, the Court's Rules, and Court Procedures are complex and confusing to me. Other parties to be named later through the proper discovery of evidence, all all defendants individually and in their official capacities are responsible for this incident on this date. And only through a complex process and proper discovery of evidence will we actually know the extent of this targeting,

incidents, and witnesses. Investigating and performing discovery are too complex and difficult for my limited knowledge and means. To dismiss and give immunity at this early stage is an injustice under color of law. It would better serve positive change, the people and serve justice to revisit all qualified immunities issues after the evidence is presented, to make sure that the truth comes out and the facts, under the law. Not above the law.

11. This incident and complaint happened in Austin, Texas, which this Court has jurisdiction over. As the 5th Circuit encompasses all of Texas, Louisiana and Mississippi. These are Constitutional issues, that are novel and important. Therefore I request the Western District Court of the U.S.A. in Austin, to try my Civil Complaint involving 1st, 4th, 14th, 8th Constitutional Amendments both in the State of Texas and similar Constitutional Rights amendments of the United States of America, violations under section U.S.C. 42 1983 as well as section 1985 Conspiracy of Parties. Because multiple agents of Municipal and Corporate government did conspire to deprive me of my rights and they were all involved in this crime against myself and essentially the rights afforded to all the Citizens and the Free Press. Making this case difficult and complex, and the evidence and investigation complex beyond my means to achieve Justice. And that is a furtherance of APD's ongoing practices racist targeting of persons and and the same targeting of me repeatedly by the City and it's

agents acting together with the desired goals to deprive me of my rights, falsely arrest me repeatedly, make a mockery of the Constitution and cause me to not be able to defend my rights in Court. As the City and its employees have countless funds and lawyers to protect these unlawful agents and these actions. The City and police also know about my indigency, health issues, and mental strain that they have caused me. They know the Challenger Newspaper and I are important source of Press, news from the streets of Austin, Texas. News that otherwise would not be spoken. Breaking news. Many are life or death stories and struggles of real people on the poor streets of wealthy Austin. People and stories that the City and police would rather not be heard or seen by the public. The unwanted people on Austin's streets. I have spoken to the Chiefs of Police both Manley and Acevedo and informed them of this ongoing issue, of targeting, of interference with 1st amendment constitutional rights of filming police, of protesting, and that I am in fear for my life and that of other activists and filmers. Yet the pattern and practice only continues and escalates. In fact I have done my duty as a concerned Citizen and have filed many police complaints regarding this issue, and have not had any justice or change in their obedience of the law in these regards. Thus showing that the policies and practices of several departments are being used to enable targeting, false arrest, harassment, police abuse, and utilizing the law do do so. Under color of law they violate the constitutions and my rights. The

harassment and targeting, threats and arrests continue. I have also spoken to the entire City Council including Mayor Steve Adler and City Manager Spencer Cronk of these issues and their responsibility if they did not prevent further illicit targeting of myself and others. And have informed the Judge on the majority of my now dismissed criminal cases related to these unlawful arrests.

12. While there is no automatic right to the appointment of counsel in a section 1983 case, a district court may assign counsel even if is not required to appoint counsel for an indigent plaintiff in the presence of exceptional circumstances. When weighing whether such circumstances for an indigent plaintiff a court should consider: (1) the type and complexity of the case; (2) whether the indigent is capable of adequately presenting his case; (3) whether the indigent is in a position to investigate adequately the case; and (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross examination.

13. In this case, I have asked to proceed in forma pauperis, and declared indigency, so that I am still indigent and have not been able to retain private

counsel on this case. Although I am still trying diligently, as seen by Exhibit A.

14. On or about November 5th 2019, in the City of Austin, Travis County, Texas, U.S.A.. Under this Court's functional jurisdiction, Officers Carlise, Wismar, and others did conspire together and with others to deprive people of their rights. This was a separate incident and separate officers that the other previous cases filed in this court . Those officers and other people worked together to deprive me of my rights to free speech and press. And to allow agents to violate our due process and that we may never be free from undue search and seizure, and retaliative, punitive arrests. To ignore this important set of facts and give immunity to lawbreakers in power is to give a free pass to law-breaking police, policy makers, chains of command and leadership that violate the constitutional law in the U.S.A. and in the 5th Circuit.

15. The location is Neches and 8th street of this incident, case 1:21-cv-00992-LY-SH. Although this incident occurred at the same location as the Reyes v ALAS, HALE, et al case , 12100022LYSH. In fact this case and complaint is a separate incident and separate date with different actors other than those responsible for making policies and practices that deprive citizen filmers and press of their constitutional rights to film and be protected from

illegal search, seizure, arrest and threats. Those are the Mayor, City Council, and the Chain of Command at APD. This incident and case did not arise out of the same exact same series of events. Though the false arrest for freedom of speech is similar in manner. In actuality this case and incident have separate facts, unlawful field agents and separate dates.

16. Not to mention there is a pattern and practice of City leadership directed police abuse, targeting not allowing people to sit down, to rest, to survive and allow people their international human rights laws. Which is why I put protest and film in the first place, as the law has been nothing but helpful in these oppressive policies and practices that cost human lives and suffering, needlessly. This has created a chilling effect on free speech and filming in public of police in Austin and my street advocacy work for the people.

17. These defendant individuals and their agencies have a pattern and practice of violating poor unhoused people's rights, property rights, 4th, 14th, amendment rights, many of the City's victims are black, brown or disabled. Many victims of the City of Austin are also veterans. This is what the War on the Poor looks like on the streets of Austin. Racism is a clear pattern and practice in several areas of policing and control that runs from the streets to our lens. And a clear pattern and practice of interfering and depriving filmers of

their free speech and free press rights. To hide the Truth and real news from the publics' view. And we shall see more evidence of these patterns and practices as we get to discovery of evidence. When we have counsel to assist with this process and investigation of the evidence. Please do not dismiss any agents until we can get an attorney on this and get the evidence to prove the stated facts of this complaint. Not before evidence has been gathered in the interest of Justice and the preservation of the constitutions as laws.

18. In this incident of police abuse and retaliation I was falsely arrested for the class misdemeanor of "Camping" I was filming the police and did not consent to any search or seizure of my property or work product, as I am also a member of the Challenger Street Newspaper, a reporter and videographer.

19. I request a counsel for this case also because the City of Austin and it's police are continually keeping me busy in court defending my free speech rights and my person from unlawful and unnecessary retaliatory imprisonment and punishment for clearly and well established constitutional rights. This time and energy keeps me from working on this case and talking to more lawyers for assistance with this case. I believe that the federal civil courts are the venue for seeking justice and protections of law for all people in this matter.

20. I request leniency on this case to seek and acquire legal counsel and file motions. Please consider my request necessary. As I am just a layman and pro se, without legal counsel trying to do my best to get this civil rights complaint and motions filed in time and as accurately as I am able with limited access to law and no legal training to speak of.

If a hearing would be necessary, I pray for that opportunity to show and state my case as to why I cannot keep up with this case as if I had the abilities and access of legal advice or counsel. **Oral Argument Requested.** No rights waived, all rights reserved.

SIGNED this 22nd day of May, 2022.

Respectfully submitted,

s/ Julian Reyes, pro se

Signature Pro Se

Mr. Julian Reyes

512 785-1749

10900 Research Blvd

Suite 160c Box 147

Austin, Texas, U.S.A. 78759

justicenowpeople@protonmail.com

Certificate of Service

I, Julian Reyes, pro se litigant, hereby certify that I have communicated this motion/document with the 5th Circuit Court of Austin using the CM/ECF filing system, which will cause a copy of the document to be electronically delivered to defendants' counsel.

 s/ Julian Reyes, pro se

Attachment 6 - Motion for Appointment of Counsel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
Austin DIVISION

Julian Reyes

(Name of plaintiff or plaintiffs)

Civil Action Number:

v.

1:21-cv-992LY

(Case Number to be supplied by the Intake Clerk)

City of Austin, et al

(Name of defendant or defendants)

MOTION FOR APPOINTMENT OF COUNSEL

Comes now, Julian Reyes, Plaintiff in the above-styled and numbered matter, and respectfully requests appointment of counsel as provided by in 42 U.S.C. §2000e-5(f)(1). In support thereof, Plaintiff will show the following:

I. That Plaintiff has made a diligent effort to employ counsel.

- CONTACTED PRIVATE ATTORNEYS. (List all attorneys who specialize in labor law, employment discrimination or civil rights complaints you contacted and state why each would not represent you.) awaiting responses from Austin Lawyers Guild, Texas Fair Defense Project, Brian McGivern, Jeff Edwards, Skip Davis, Malcomb Greenstein & Hemming Law Firm did not
- CONTACTED LEGAL AID ASSOCIATION. (Texas Rio Grande Legal Aid Inc.: (888)helpus 988-9996 (State when this association was contacted and why it could not assist you.)

Many lawyers contacted

- CONTACTED LOCAL LAWYER REFERRAL SERVICE. (San Antonio Bar Association Lawyer Referral Service: (210) 227-1853). (List the lawyers to whom you were referred, the attorneys you contacted, and why they could not assist you.)

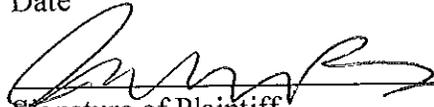
State BAR Referral Service don't have civil rights lawyers that will sue police

II. Please state your level of education:

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

5-21-2022

Date


Signature of Plaintiff

UNITED STATES of AMERICA 5TH CIRCUIT AUSTIN DIVISION COURT

Julian Reyes
Plaintiff

v.

§
§
§
§
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§

Case no. 1:21-cv-00992-LY-SH

CITY OF AUSTIN, INC,
AUSTIN POLICE DEPARTMENT
OFFICERS CARLILE, WISMAR, et
al AND OTHER PARTIES TO BE
LISTED LATER, ALL
DEFENDANTS INDIVIDUALLY
AND IN THEIR OFFICIAL CAPACITIES,
RESPECTIVELY
Defendants

Motion for Stay/Leave

1. As I do not currently have access to a lawyer on this case or to case law. As such I would like to request a motion to stay or leave, whichever is technically appropriate in this court, for this case, and on any responses to this court on this case for at least 30 days while I seek legal attention on these matters, and before the defendants and court are able to further deprive me of access to my rights and law. Also I will be offline without access to this case and internet until late in June, or possibly July 1st.

2. I am a simple pro se Citizen that has been repeatedly targeted and arrested, an abuse of law, for my constitutional exercises of filming the police, and city crews, which is free speech as well as freedom of the press as I am a credentialed member of the Challenger Street Newspaper, a 501c3 nonprofit that is over 10 years old now. I have been with them for about 10 years and the agents are aware of this fact, as well as the Mayor and City Council and Greg McCormack. They are both aware of my journalist status and of the status of the Challenger Street Newspaper, the local street press. Print and online distribution and sales. Including street vendors that are unhoused.

3. I apologize, after looking through the report and recommendations I need to correct this case, perhaps even file a new amended complaint as this case and the other while not duplicates, are hard for me to work and understand all the case law and how qualified immunity works.

4. Is it true that the police and officials of the City of Austin and their profiteers that work within their business model, another 'homeless industrial complex,' may conspire to deprive any Citizen of their 1st, 4th and 14th amendment rights in Austin, the 5th Circuit and that is ok with the current state of the law? I need access to law, to an attorney and the case law on qualified immunity to properly respond to the Courts' recommendations.

5. As I am operating without counsel and the incidents of false arrest and deprivation of rights are frequent and often get confused. Others parties to be named later through the proper discovery of evidence, all all defendants individually and in their official capacities are responsible for this incident on this date. And only through proper discovery of evidence will we actually know the extent of this targeting, incidents, and witnesses. To dismiss and give immunity at this early stage is an injustice under color of law. It would better serve the people and serve justice to revisit all qualified immunities issues after the evidence is presented, to make sure that the truth comes out and the facts, under the law. Not above the law.

6. This incident and complaint happened in Austin, Texas, which this Court has jurisdiction over. As the 5th Circuit encompasses all of Texas, Louisiana and Mississippi. These are Constitutional issues, that are novel and important. Therefore I request the Western District Court of the U.S.A. in Austin, to try my Civil Complaint involving 1st, 4th, 14th, 8th Constitutional Amendments both in the State of Texas and similar Constitutional Rights amendments of the Unites States of America, violations under section U.S.C. 42 1983 as well as section 1985 Conspiracy of Parties. Because multiple agents of Municipal and Corporate government did conspire to deprive me of my rights and they were

all involved in this crime against myself and essentially the rights afforded to all the Citizens and the Free Press. Making this case difficult and complex, and the evidence and investigation complex beyond my means to achieve Justice. And that is a furtherance of APD's ongoing practices racist targeting of persons and and the same targeting of me repeatedly by the City and it's agents acting together with the desired goals to deprive me of my rights, falsely arrest me repeatedly, make a mockery of the Constitution and cause me to not be able to defend my rights in Court. As the City and it's employees have countless funds and lawyers to protect these unlawful agents and these actions. The City and police also also know about my indigency, health issues, and mental strain that they have caused me. They know the Challenger Newspaper and I are important source of Press, news from the streets of Austin, Texas. News that otherwise would not be spoken. Breaking news. Many are life or death stories and struggles of real people on the poor streets of wealthy Austin. People and stories that the City and police would rather not be heard or seen by the public. The unwanted people on Austin's streets. I have spoken to the Chiefs of Police both Manley and Acevedo and informed them of this ongoing issue, of targeting, of interference with 1st amendment constitutional rights of filming police, of protesting, and that I am in fear for my life and that of other activists and filmers. Yet the pattern and practice only continues and escalates. In fact I have done my duty as a concerned Citizen

and have filed many police complaints regarding this issue, and have not had any justice or change in their obedience of the law in these regards. Thus showing that the policies and practices of several departments are being used to enable targeting, false arrest, harassment, police abuse, and utilizing the law do do so. Under color of law they violate the constitutions and my rights. The harassment and targeting, threats and arrests continue. I have also spoken to the entire City Council including Mayor Steve Adler and City Manager Spencer Cronk of these issues and their responsibility if they did not prevent further illicit targeting of myself and others. And have informed the Judge on the majority of my now dismissed criminal cases related to these unlawful arrests.

7. On or about November 5th 2019, in the City of Austin, Travis County, Texas, U.S.A.. Under this Court's functional jurisdiction, Officers Carlise, Wismar, and others did conspire together and with others to deprive people of their rights. This was a separate incident and separate officers that the other previous cases filed in this court . Those officers and other people worked together to deprive me of my rights to free speech and press. And to allow agents to violate our due process and that we may never be free from undue search and seizure, and retaliative, punitive arrests. To ignore this important set of facts and give immunity to lawbreakers in power is to give a free pass to

law-breaking police, policy makers, chains of command and leadership that violate the constitutional law in the U.S.A. and in the 5th Circuit.

8. The location is Neches and 8th street of this incident, case 1:21-cv-00992-LY-SH. Although this incident occurred at the same location as the Reyes v ALAS, HALE, et al case , 12100022LYSH. In fact this case and complaint is a separate incident and separate date with different actors other than those responsible for making policies and practices that deprive citizen filmers and press of their constitutional rights to film and be protected from illegal search, seizure, arrest and threats. Those are the Mayor, City Council, and the Chain of Command at APD. This incident and case did not arise out of the same exact same series of events. Though the false arrest for freedom of speech is similar in manner. In actuality this case and incident have separate facts, unlawful field agents and separate dates.

9. Not to mention there is a pattern and practice of City leadership directed police abuse, targeting not allowing people to sit down, to rest, to survive and allow people their international human rights laws. Which is why I put protest and film in the first place, as the law has been nothing but helpful in these oppressive policies and practices that cost human lives and suffering,

needlessly. This has created a chilling effect on free speech and filming in public of police in Austin and my street advocacy work for the people.

10. These defendant individuals and their agencies have a pattern and practice of violating poor unhoused people's rights, property rights, 4th, 14th, amendment rights, many of the City's victims are black, brown or disabled. Many victims of the City of Austin are also veterans. This is what the War on the Poor looks like on the streets of Austin. Racism is a clear pattern and practice in several areas of policing and control that runs from the streets to our lens. And a clear pattern and practice of interfering and depriving filmers of their free speech and free press rights. To hide the Truth and real news from the publics' view. And we shall see more evidence of these patterns and practices as we get to discovery of evidence. When we have counsel to assist with this process and investigation of the evidence. Please do not dismiss any agents until we can get an attorney on this and get the evidence to prove the stated facts of this complaint. Not before evidence has been gathered in the interest of Justice and the preservation of the constitutions as laws.

11. In this incident of police abuse and retaliation I was falsely arrested for the class misdemeanor of "Camping" I was filming the police and did not

consent to any search or seizure of my property or work product, as I am also a member of the Challenger Street Newspaper, a reporter and videographer.

12. I request a Stay for this case because the City and it's police are continually keeping me busy in court defending my rights and my person from unlawful and unnecessary retaliatory imprisonment and punishment for clearly and well established constitutional rights. This time and energy keeps me from working on this case and talking to more lawyers for assistance with this case. I believe that he federal civil courts are the venue for seeking justice and protections of law for all people in this matter.

13. I request leniency on this case and a stay order, to allow time to seek counsel and file motions. please consider this my request if necessary. As I am just a layman and pro se, without legal counsel trying to do my best to get this civil rights complaint and motions filed in time and as accurately as I am able.

14. I would also like the opportunity to amend my complaint as there may have been errors that made a recommendation that was not guided by the actual facts as they occurred. It's hard to keep up all these cases yet Justice must be made for all. Not just protecting the police and their leadership and trainers.

If a hearing would be necessary, I pray for that opportunity to show and state my case as to why I need time for this case and how I cannot keep up with this case as if I had the abilities and access of legal advice or counsel. **Oral Argument Requested.** No rights waived, all rights reserved.

SIGNED this 22nd day of May, 2022.

Respectfully submitted,

s/ Julian Reyes, pro se

Signature Pro Se

Mr. Julian Reyes

512 785-1749

10900 Research Blvd

Suite 160c Box 147

Austin, Texas, U.S.A. 78759

justicenowpeople@protonmail.com

Certificate of Service

I, Julian Reyes, pro se litigant, hereby certify that I have communicated this motion/document with the 5th Circuit Court of Austin using the CM/ECF filing system, which will cause a copy of the document to be electronically delivered to defendants' counsel.

____ s/ Julian Reyes, pro se

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

JULIAN REYES,
Plaintiff,

v.

CITY OF AUSTIN,
Defendant.

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CIVIL ACTION NO. 1:21-CV-0992-LY

**DEFENDANT CITY OF AUSTIN'S NOTICE OF APPEARANCE AND
DESIGNATION OF LEAD COUNSEL**

TO THE HONORABLE JUDGE LEE YEAKEL:

PLEASE TAKE NOTICE that the undersigned attorney, who is admitted to practice in this Court and is a member in good standing, hereby enters an appearance in the above-styled and numbered cause and is designated as lead counsel for Defendant City of Austin in this case:

Sara E. Rice
State Bar No. 24110273
Assistant City Attorney
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767
(512) 974-6463 Telephone
(512) 974-1311 Facsimile
sara.rice@austintexas.gov

Service of all pleadings, papers, orders, and documents required to be served in this action should be served on Sara Rice.

RESPECTFULLY SUBMITTED,

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

/s/ Sara E. Rice

SARA E. RICE
Assistant City Attorney
State Bar No. 24110273
sara.rice@austintexas.gov
City of Austin Law Department
P.O. Box 1546
Austin, Texas 78767-1546
Telephone: (512) 974-6463
Facsimile: (512) 974-1311

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 24th day of May 2022.

Via CM/ECF:

Julian Reyes
Pro Se
10900 Research Blvd.
Suite 160c Box 147
Austin, Texas, 78759
justicenowpeople@protonmail.com

PLAINTIFF, PRO SE

/s/ Sara E. Rice

SARA E. RICE

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

JULIAN REYES,
Plaintiff,

v.

CITY OF AUSTIN,
Defendant.

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CIVIL ACTION NO. 1:21-CV-0992-LY

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

TO THE HONORABLE JUDGE LEE YEAKEL:

Defendant City of Austin (“Defendant” or the “City”) files this Answer and Affirmative Defenses to Plaintiff’s Complaint (Doc. No. 1). Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant respectfully shows the Court as follows:

PROCEDURAL HISTORY

On March 15, 2022 the Magistrate Court issued its Report and Recommendations. On April 1, 2022, Plaintiff filed a Motion to Stay, which the Court construed as a Motion to Extend Time to File Objections, giving Plaintiff until May 2, 2022 to file his objections. On May 10, 2022, this Honorable Court adopted the Magistrate’s Report and Recommendations, issued an order dismissing Plaintiff’s claims against individual defendants and denied the Motion to Dismiss Plaintiff’s civil rights claims against the City.

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b) and 15(a)(3), the City responds to each of the specific averments in Plaintiff’s Original Petition as set forth below. To the extent that the City does not address a specific averment made by Plaintiff, the City expressly denies that averment. Several sections of Plaintiff’s Petition do not contain any pertinent factual allegations

that must be admitted or denied. To the extent the City does not respond to a factual allegation, that allegation is denied. Plaintiff has failed to consistently number his averments in his Original Petition; therefore the City will comply with a response to each specific averment to the best of their ability, but respectfully request that the Court reserve to the City a right to make modifications or corrections to rectify erroneous responses reasonably made due to Plaintiff's lack of consistently numbering his paragraphs.

PARTIES

1. The City lacks knowledge or information sufficient to form a belief about the truth of the Plaintiff's residence as averred in Paragraph 1.
2. The City admits it is the sole remaining defendant as averred in Paragraph 2 and its mailing address is proper. The City avers the remaining defendants have been dismissed.

JURISDICTION AND VENUE

3. The City admits the allegation in the first sentence of Paragraph 3 and that the Court has jurisdiction over the Defendant. To the extent there are allegations against the City in the second, third, and fourth paragraph, the City denies any and all allegations. The City denies the conspiracy alleged in the final sentence of Paragraph 3.

FACTS

4. The City admits that Plaintiff was arrested on November 5, 2019, in front of Salvation Army in the 700 block of Neches in Austin, Texas as alleged in Paragraph 4. The City admits several officers, including former defendants, were at the 700 block of Neches at the time of the arrest. The City admits Corporal Carlisle interacted with Plaintiff. The City admits that Plaintiff was arrested for Camping and Obstruction in Certain Public Areas Prohibited, a Class C misdemeanor. The City further admits the Class C misdemeanor Camping charge was dismissed.

5. The City denies the remaining allegations in Paragraph 4.
6. The City denies the allegations in the first unnumbered paragraph immediately following Paragraph 4.
7. The City admits the charge against Plaintiff was dismissed on November 18, 2019, as alleged in the second unnumbered paragraph immediately following Paragraph 4. The City denies the remaining allegations.
8. To the extent there are allegations against the City in the third unnumbered paragraph following Paragraph 4, the City denies any and all allegations.
9. To the extent there are allegations against the City in the fourth unnumbered paragraph following Paragraph 4, the City denies any and all allegations.
10. To the extent there are allegations against the City in the fifth unnumbered paragraph following Paragraph 4, the City denies any and all allegations.
11. The City denies the allegations in the sixth unnumbered paragraph following Paragraph 4.
12. The City denies the allegations in the seventh unnumbered paragraph following Paragraph 4.
13. The City denies the allegations in Plaintiff's numbered Paragraph 5.
14. The City denies the allegations in the first unnumbered paragraph following Paragraph 5.
15. The City denies the allegations in the second unnumbered paragraph following Paragraph 5.
16. The City specifically denies that it is engaging in a clear pattern or practice of targeting, abuse and deprivation of rights as alleged in the third unnumbered paragraph following Paragraph 5.

17. The City generally denies the remaining allegations in the third unnumbered paragraph following Paragraph 5.

18. The City denies the allegations in the fourth unnumbered paragraph following Paragraph 5.

AFFIRMATIVE DEFENSES

1. The City asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. The City asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. As a political subdivision, the City denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983.

4. The City reserves the right to assert additional affirmative defenses throughout the development of the case.

DEFENDANT'S PRAYER

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

RESPECTFULLY SUBMITTED,

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

/s/ Sara E. Rice
SARA E. RICE
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 24th day of May 2022.

Via CM/ECF:

Julian Reyes

Pro Se

10900 Research Blvd.

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PLAINTIFF, PRO SE

/s/ Sara E. Rice
SARA E. RICE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JULIAN REYES,
Plaintiff

v.

**CITY OF AUSTIN, INC., AUSTIN
POLICE DEPARTMENT, and
JOHN DOES,**
Defendants

§
§
§
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CASE NO. 1:21-CV-00992-LY-SH

ORDER

Before the Court are Plaintiff’s Motion for Appointment of Counsel (Dkt. 15) and Motion for Stay/Leave (Dkt. 16), both filed May 22, 2022.¹

I. Background

Plaintiff Julian Reyes, acting *pro se*, brought this civil rights action under 42 U.S.C. § 1983. Reyes is a reporter and videographer for the Challenger Street Newspaper operated by homeless individuals in Austin, Texas. Complaint, Dkt. 1 ¶ 4. Reyes alleges that officers with the Austin Police Department (“APD”) repeatedly have wrongfully arrested him in retaliation for filming their interactions with unhoused people. *Id.* Reyes alleges that his repeated arrests violated his rights under First, Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. *Id.* ¶ 3. He alleges that APD has a “practice of false arrests to deprive Citizens of their rights,” including the First Amendment right “to film the Austin Police Department at work in public.” *Id.* ¶ 4. He further claims that this practice culminated in his multiple false arrests, rendering the City of Austin (“the City”) liable for the individual APD officers’ actions under § 1983. *Id.*

¹ The District Court referred all dispositive and non-dispositive motions in this case to the undersigned Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas (“Local Rules”). Dkt. 9.

The undersigned Magistrate Judge granted Reyes *in forma pauperis* status and recommended that the District Court grant Defendants' Motion to Dismiss Reyes' claims against individual defendants Greg McCormack and APD Officers Troy Wismar, Christopher Carlisle, Patrick Walsh, Kyu Suk An, and Sarah Foster, but deny the motion as to Reyes' § 1983 claims against the City. Dkts. 5, 10. The District Court adopted the Report and Recommendation, and Reyes' only remaining cause of action is his § 1983 claims against the City. Dkt. 14.

II. Appointment of Counsel

Reyes asks the Court to appoint counsel to represent him in this action. Dkt. 15. Reyes avers that he has contacted private attorneys, legal aid associations, and a lawyer referral service, but has been unable to secure representation. Dkt. 15-1. Reyes seeks appointment of counsel based on the "overwhelming complexity of the court rules and procedures" and "the discovery of evidence in a complex claim of multiple agents and incidents of false arrest," and because "the evidence will consist of conflicting testimony and contested facts and omissions of evidence by the City." Dkt. 15 ¶¶ 3, 7. The City did not file a response to Reyes' motion.

The Court may appoint counsel in *in forma pauperis* proceedings pursuant to 28 U.S.C. § 1915(e)(1). District courts have discretion under § 1915(e)(1) to appoint an attorney to represent an indigent litigant. "But the appointment of counsel in a civil case is a privilege and not a constitutional right. It should be allowed in civil actions only in exceptional cases." *Lopez v. Reyes*, 692 F.2d 15, 17 (5th Cir. 1982); *see also Naranjo v. Thompson*, 809 F.3d 793, 799 (5th Cir. 2015) ("Even when a plaintiff has nonfrivolous § 1983 claims, a trial court is not required to appoint counsel unless the case presents exceptional circumstances.") (cleaned up). The Fifth Circuit Court of Appeals has identified factors courts should consider in determining whether exceptional circumstances warrant the appointment of counsel, including:

- (1) the type and complexity of the case;
- (2) the petitioner's ability adequately to present and investigate his case;
- (3) the presence of evidence which largely consists of conflicting testimony so as to require skill in presentation of evidence and in cross-examination; and
- (4) the likelihood that appointment will benefit the petitioner, the court, and the defendants by "shortening the trial and assisting in just determination."

Tampico v. Martinez, 987 F.3d 387, 392 (5th Cir. 2021) (quoting *Parker v. Carpenter*, 978 F.2d 190, 193 (5th Cir. 1992)).

The Court is mindful that Reyes has requested appointment of counsel in at least four previous civil rights actions in this Division.² In the first, *Reyes v. Walsh*, 1:15-CV-327-RP, which Reyes filed after his dog was shot and killed by Austin police in 2013, counsel was appointed and represented Reyes through settlement of his claims for unlawful seizure of his person. Reyes' requests were denied in three subsequent cases. *Reyes v. Tex. Dep't of Public Safety*, 1:16-CV-889-RP, Dkt. 41 (denying third motion to appoint counsel because "the legal and factual issues in this case are not so complex as to present the sort of exceptional circumstances that would justify appointing counsel"); *Reyes v. Berry*, 1:17-CV-908-RP, Dkt. 19 ("At this stage in the litigation, the Court finds that this case appears to raise neither novel nor complex issues."); *Reyes v. Sebek*, 1:19-CV-367-LY, Dkt. 21.

The Court has carefully considered the relevant factors and concludes that counsel should be appointed based on the circumstances presented at the current stage of this case. First, Reyes asserts a municipal liability claim against the City, alleging violations of his First, Fourth, and Fourteenth Amendments rights.

² A sixth case, *Reyes v. City of Austin, Inc.*, 1:22-CV-22-LY, was dismissed as duplicative of this action and therefore frivolous pursuant to § 1915(e)(2). *Id.* at Dkt. 4, Dkt. 9.

Section 1983 cases are “by their nature more complex than many other cases,” but that alone is insufficient to warrant the appointment of counsel. *Jackson v. Dallas Police Dep’t*, 811 F.2d 260, 262 (5th Cir. 1986). Because Reyes alleges that he is a journalist with the Challenger Street Newspaper, however, evaluation of his § 1983 claim may involve particularly complex issues. Reyes’ Fourth Amendment false arrest and First Amendment retaliatory arrest claims against the City likely will turn on whether there was probable cause for his arrest. *See, e.g., Villarreal v. City of Laredo*, 44 F.4th 363, 374 (5th Cir. 2022) (stating that to prevail on Fourth Amendment false arrest claim, plaintiff, a journalist, must show that she was seized and the seizure was unreasonable because it lacked probable cause); *Buehler v. Dear*, 27 F.4th 969, 993-94 (5th Cir. 2022) (affirming dismissal of First Amendment retaliatory arrest claim because officers had probable cause to arrest plaintiff filming police). The existence of probable cause, however, is not necessarily dispositive of Reyes’ Fourteenth Amendment claim. *See, e.g., Villarreal*, 44 F.4th at 377 (stating that probable cause is not a bar to a selective enforcement claim under the Fourteenth Amendment). Reyes also alleges numerous false arrests, involving several different agents of the City. *Cf. Kiser v. Dearing*, 442 Fed. App’x. 132, 134 (5th Cir. 2011) (denying request for appointment of counsel where “facts surrounding the single incident and the subsequent disciplinary hearing [were] relatively straightforward”). The Court finds that the first factor weighs in favor of appointing counsel.

Second, Reyes has demonstrated that he is unable to adequately investigate and present his case. Reyes alleges that he has been “chronically homeless for about 20 years.” Dkt. 1 ¶ 1. He further contends that his repeated arrests by the Austin Police Department interfere with his ability to prosecute the case. The fact that Reyes failed to respond to Defendants’ Motion to Dismiss (Dkt. 8) demonstrates his inability to prosecute his case. In addition, the effort required to prosecute this case is greater at this stage of the proceeding, given that Reyes’ claims against the

City survived the motion to dismiss stage and his case may proceed to summary judgment or trial. The Court finds that the second factor also weighs in favor of appointing counsel.

Third, it is likely that the evidence will consist largely of conflicting testimony concerning the City's purported practice of making false arrests to prevent the exercise of First Amendment rights, requiring skill in presentation of evidence and in cross-examination. This factor also weighs in favor of appointing counsel. *Cf. Jackson*, 811 F.2d at 262 (denying request for appointment of counsel where "review of the record indicates that the evidence will consist primarily of official records and other documentary type evidence").

With respect to the fourth factor, appointment of counsel likely will benefit Reyes, the court, and the City by promoting efficient and just adjudication of Reyes' claims.

As each of the relevant factors weighs in favor of appointing counsel, the Court finds that exceptional circumstances warrant the appointment of counsel in this case. Accordingly, the Court **GRANTS** Plaintiff's Motion for Appointment of Counsel (Dkt. 15). The Court hereby appoints the following attorney to represent Julian Reyes in the above-styled and numbered cause:

Peter D. Kennedy
Graves Dougherty Hearon & Moody
401 Congress Avenue, Suite 2700
Austin, Texas 78701

III. Motion to Stay

Reyes asks the Court to stay this action "for at least 30 days while I seek legal attention on these matters," and because he expected to lose internet access until late June or early July 2022. Dkt. 16 ¶ 1. He also asserts that he has been unable to find counsel and prepare a defense due to alleged harassment by the City and police. *Id.* ¶ 12. Defendants did not respond to Reyes' motion to stay.

A district court's power to stay proceedings is incidental to its inherent power to "control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Although a district court has wide discretion to stay proceedings, its power is not unbounded. *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983). A court must weigh the competing interests when exercising its discretion to issue a stay. *Landis*, 299 U.S. at 254-55. The moving party "must make out a clear case of hardship or inequity in being required to go forward." *Id.* at 255.

The Court finds that the balance of interests does not justify staying this case. Reyes' argument that he expected to lose internet access until July 2022 is moot, and he has provided no additional information regarding his current access. Because no scheduling order has been entered in this case, furthermore, there are no pending deadlines for which Reyes would require an extension of time. Plaintiff's Motion to Stay (Dkt. 16) is **DENIED** without prejudice to refiling.

IV. Motion to Amend

Finally, the Court construes Reyes' Motion for Stay/Leave as embodying a motion for leave to amend. *See* Dkt. 16 ¶ 14 ("I would also like the opportunity to amend my complaint . . ."). Reyes did not attach a proposed amended complaint to his Motion to Amend, as required by Local Rule CV-7(b). Despite proceeding *pro se*, Reyes must comply with the Federal Rules of Civil Procedure and Local Rules. *See Martin v. Harrison Cnty. Jail*, 975 F.2d 192, 193 (5th Cir. 1992). Reyes also does not specify any legal or factual information he proposes to add. For these reasons, the Court **DENIES** Plaintiff's Motion to Amend (Dkt. 16) without prejudice to refiling.

SIGNED on September 16, 2022.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE

III. Jurisdiction and Venue.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 42 U.S.C. §§ 1983, 1988, and 2000aa-6(h).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the City of Austin is located in this district and a substantial part of the events or omissions giving rise to the claims occurred in this district.

IV. Factual Allegations.

6. Plaintiff Julian Reyes is a reporter and videographer. His work is published in *The Challenger Street Newspaper*, which is published by homeless individuals and advocates in Austin, Texas. Reyes' video journalism is also published on YouTube and elsewhere.

7. Reyes has been repeatedly and wrongly arrested by officers with the Austin Police Department ("APD") while filming APD officers' interactions with unhoused people and other public actions.

8. For instance, on November 5, 2019, Reyes was filming the APD officers engaged in disrupting a protest in front of the Salvation Army homeless shelter in downtown Austin, Texas. While observing and filming, an APD officer informed him, by words and actions, that Reyes was being arrested for protesting, filming, and advocating for the rights of unhoused people living on the streets of Austin. Another APD officer arrested Reyes as he was engaged in observing and filming APD officers interacting with other people who were also engaged in exercising their First Amendment rights.

9. Reyes' arrest on November 5, 2019, was purportedly for committing the misdemeanor offense of violating the City's camping ban. However, the camping charge against Reyes was dismissed on the merits on or about November 18, 2019. Reyes' arrest was without

probable cause and was a pretext to stop Reyes from recording the police, to retaliate against him for doing so, and to discourage him from doing so in the future.

10. On October 24, 2021, Reyes was arrested on a Class C misdemeanor while exercising his free speech rights on a public sidewalk. During this arrest, Reyes' cameras, which are his primary work equipment, were seized by APD. Reyes' cameras contained work product and documentary materials that he intended to publish to the public.

11. Reyes' October 24, 2021, arrest was without probable cause and was a pretext to stop Reyes from recording the police, to retaliate against him for doing so, and to discourage him from doing so in the future. This charge was likewise dismissed.

12. Between June 2, 2014, through March 2023, Reyes was repeatedly arrested and/or interfered with by APD officers while engaged in the exercise of his rights to free speech and the press. City of Austin records reflect that on at least thirteen occasions, Reyes was arrested or interfered with by APD while filming APD activities. All, or nearly all, of these arrests were for filming the police while engaged in their duties, not for any violation of the law. By January 2017, if not sooner, the APD had labelled Reyes an "anti-police activist" based on his exercise of his rights to free speech and the press and repeatedly noted this disparaging label for Reyes in official police reports. APD repeatedly arrested Reyes on other charges which, on information and belief, were pretexts for retaliating against Reyes for exercising his rights to free speech and press and intended to discourage him from further exercising those rights.

V. Causes of Action.

A. Section 1983.

13. Reyes incorporates the allegations in the above paragraphs of this Complaint as though fully alleged herein.

14. Reyes' observation and recording of APD officers as alleged herein was an exercise of his constitutional rights to free speech and press as applied to the states and their subdivisions by the Fourteenth Amendment.

15. In committing the acts complained of, the City of Austin and its APD officers acted under color of state law to deprive Reyes of those constitutional rights.

16. The First Amendment right to record the police, made applicable to the states and their subdivisions through the Fourteenth Amendment, is well-established and was well-established at the time of each of Reyes' arrests.

17. Reyes' arrests are the result of a widespread practice or custom in which APD police officers falsely arrest people, or arrest them on pretextual bases, to prevent them from exercising their constitutional right to record police activities.

18. Reyes' arrests in particular are the result of a common practice or custom in which APD police officers falsely arrest Reyes in particular, or arrest him on pretextual bases, to prevent him from exercising his constitutional right to observe and record police activities, to retaliate against him for having exercised his constitutional right to observe and record police activities in the past, and/or to discourage him from exercising his constitutional right to observe and record police activities in the future.

19. Such arrests are so common and regular that they constitute a pattern of conduct, not isolated incidents. Such arrests constitute a custom that fairly represents City of Austin policy that is promulgated, endorsed, and/or tolerated by the City. This policy or practice was the moving force behind Reyes' arrests.

20. As a direct and proximate result of the City of Austin's violation of his constitutional rights, Reyes suffered actual damages.

B. Violation of the Privacy Protection Act of 1980 (42 U.S.C. §§ 2000aa, *et seq.*) – Seizure of Work Product Materials.

21. Reyes incorporates the allegations in the above paragraphs of this Complaint as though fully alleged herein.

22. The City of Austin’s seizures of Reyes’ cameras, videos, and other materials constituted the unlawful seizure of work product materials as defined in 42 U.S.C. § 2000aa-7(b), in violation of 42 U.S.C. § 2000aa(a). Reyes brings this action pursuant to 42 U.S.C. § 2000aa-6(a)(1) & (f).

23. The City of Austin, through its agents, seized Reyes’ work product materials while knowing, believing, or with reason to believe that Reyes possessed such materials with the purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce.

24. The seized materials constituted materials, in anticipating of communicating such materials to the public, that were prepared, produced, authored, or created by Reyes and/or others, were possessed for the purposes of communicating such materials to the public, and included Reyes and/or others’ mental impressions, conclusions, opinions, and theories.

25. There was no probable cause to believe that Reyes had committed a criminal offense to which the materials related or reason to believe that the immediate seizure of such materials was necessary to prevent the death of, or serious bodily injury to, a human being.

26. The City of Austin’s unlawful seizures caused Reyes actual damages. Reyes sues to recover his actual damages, but not less than liquidated damages of \$1,000 for each violation, reasonable attorneys’ fees and other litigation costs incurred, and pre-judgment interest.

C. Violation of the Privacy Protection Act of 1980 (42 U.S.C. §§ 2000aa, *et seq.*) – Seizures of documentary materials.

27. The City of Austin’s seizures of Reyes’ cameras, videos, and other materials constituted seizures of documentary materials as defined in 42 U.S.C. § 2000aa-7(a), in violation of 42 U.S.C. § 2000aa(b). Reyes brings this action pursuant to 42 U.S.C. § 2000aa-6(a)(1) & (f).

28. The seized materials were possessed by Reyes in connection with the purpose of disseminating to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce.

29. The seized materials consisted of materials upon which information was recorded, and including written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and/or other mechanically, magnetically, or electronically recorded cards, tapes, or discs. The materials were not contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used as, the means of committing a criminal offense.

30. There was no probable cause to believe that Reyes had committed a criminal offense to which the materials related; no reason to believe that the immediate seizure of such materials was necessary to prevent the death of, or serious bodily injury to, a human being; no reason to believe that the giving of notice pursuant to a subpoena duces tecum would result in the destruction, alteration, or concealment of such materials; and no court order directing compliance with a subpoena duces tecum.

31. The City of Austin’s unlawful seizures caused Reyes actual damages. Reyes sues to recover his actual damages, but not less than liquidated damages of \$1,000 for each violation, reasonable attorneys’ fees and other litigation costs incurred, and pre-judgment interest.

VI. Prayer for Relief.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Julian Reyes seeks judgment against Defendant City of Austin as follows:

1. Declaring that the City of Austin's policy and practice regarding the arrest of Reyes and others while engaged in recording police activity violates the First and Fourteenth Amendments;
2. Enjoining the City of Austin from further violations of Reyes' rights under the First and Fourteenth Amendments and the Privacy Protection Act of 1980;
3. Awarding Reyes his actual damages and minimum damages of \$1,000 per violation of the Privacy Protection Act;
4. Awarding Reyes reasonable attorneys' fees incurred in this lawsuit pursuant to 42 U.S.C. § 1988 and 2000aa-6(f);
5. Awarding costs of court herein; and
6. Granting such other and further relief deemed just and proper.

Respectfully submitted,

/s/ Peter D. Kennedy

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ATTORNEYS FOR PLAINTIFF JULIAN REYES

CERTIFICATE OF SERVICE

I certify that on June 26, 2023, I caused a copy of the forgoing document to be served by the Electronic Case Filing System for the United States District Court for the Western District of Texas on all parties registered or otherwise requesting electronic notice in this case.

/s/ Peter D. Kennedy

Peter D. Kennedy

I. INTRODUCTION

1. The City lacks knowledge or information sufficient to form a belief as to the truth of Plaintiff's occupations and/or avocations in the first sentence of Paragraph 1. The City denies allegations in the second sentence of Paragraph 1.

II. PARTIES

2. The City lacks knowledge or information sufficient to form a belief as to the truth about Plaintiff's residence in Paragraph 2.

3. The City admits to Paragraph 3.

III. JURISDICTION AND VENUE

4. The City admits to Paragraph 4.

5. The City admits to Paragraph 5.

IV. FACTUAL ALLEGATIONS

6. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and therefore denies same.

7. The City denies Paragraph 7.

8. The City denies the allegations in the first and second sentences of Paragraph 8. The City denies the allegations in the third sentence of Paragraph 8, except that the City admits only that an APD officer arrested Plaintiff.

9. The City admits the allegations in the first sentence of Paragraph 9. The City admits the allegation in the second sentence of Paragraph 9 that the charge was dismissed on or about November 18, 2019. The City denies the allegation in the second sentence of Paragraph 9 that the charge was dismissed on the merits. The City denies the allegation in the third sentence of Paragraph 9.

10. The City denies the allegations in the first sentence of Paragraph 10, except that the City admits the allegation that Plaintiff was arrested on October 24, 2021 on a Class C misdemeanor. The City denies the allegations in the second sentence of Paragraph 10, except that the City admits the allegation only that the cameras were seized. The City denies the allegations in the third sentence of Paragraph 10.

11. The City denies the allegations in Paragraph 11.

12. The City denies the allegations in Paragraph 12.

V. CAUSES OF ACTION

A. Section 1983.

The allegations, if any, contained within the foregoing subtitle “A.” are denied.

13. The City denies the allegations in Paragraph 13.

14. The City denies the allegations in Paragraph 14.

15. The City denies the allegations in Paragraph 15.

16. To the extent Paragraph 16 makes allegations, the City denies said allegations.

17. The City denies the allegations in Paragraph 17.

18. The City denies the allegations in Paragraph 18.

19. The City denies the allegations in Paragraph 19.

20. The City denies the allegations in Paragraph 20.

B. Violation of the Privacy Protection Act of 1980 (42 U.S.C. §§ 2000aa, *et seq.*) - Seizure of Work Product Materials.

The allegations, if any, contained within the foregoing subtitle “B.” are denied.

21. The City denies the allegations in Paragraph 21.

22. The City denies the allegations in Paragraph 22.

23. The City denies the allegations in Paragraph 23.

24. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and therefore denies said allegations.

25. The City denies the allegations in Paragraph 25.

26. The City denies the allegations in Paragraph 26.

C. Violation of the Privacy Protection Act of 1980 (42 U.S.C. §§ 2000aa, *et seq.*) – Seizures of documentary materials.

The allegations, if any, contained within the foregoing subtitle “C.” are denied.

27. The City denies the allegations in Paragraph 27.

28. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 and therefore denies said allegations.

29. The City admits the allegations in the first sentence of Paragraph 29. The City denies the allegations in the second sentence of Paragraph 29.

30. The City denies the allegations in Paragraph 30.

31. The City denies the allegations in Paragraph 31.

VI. PRAYER FOR RELIEF

The City denies the allegations in Section VI. Paragraphs 1-6 and specifically denies that Plaintiff is entitled to any relief whatsoever of and from the Defendant.

AFFIRMATIVE DEFENSES

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.

2. The City asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.

3. As a political subdivision, the City denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983.
4. The incidents in question and the resulting harm to Plaintiff were caused or contributed to by Plaintiff's own illegal conduct.
5. The City reserves the right to assert additional affirmative defenses throughout the development of the case.
6. Pleading further and in the alternative, Plaintiff's injuries and damages were caused in whole or in part by the conduct of other persons or entities for whom the City is not liable or responsible and who are not currently parties to the lawsuit.
7. To the extent the City did not address a specific averment made by Plaintiff in the First Amended Complaint, the City specifically denies all such averments.

DEFENDANT'S PRAYER

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

RESPECTFULLY SUBMITTED,

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

/s/ Sara E. Rice

SARA E. RICE

Assistant City Attorney

State Bar No. 24110273

sara.rice@austintexas.gov

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Austin, Texas 78767-1546

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 6th day of July 2023.

Via CM/ECF:

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pkennedy@gdhm.com

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ATTORNEYS FOR PLAINTIFF

/s/ Sara E. Rice

SARA E. RICE