

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

ATHIGE DENZIL DESILVA, individually, §  
as heir at law to the ESTATE OF §  
DR. MAURIS DESILVA, and on behalf §  
of all wrongful death beneficiaries, §  
Plaintiff, §

V §

CHRISTOPHER TAYLOR, §  
KARL KRYCIA, & §  
THE CITY OF AUSTIN, §  
Defendants. §  
§  
§

Civil Action No. 1:21-CV-00129

**PLAINTIFF'S COMPLAINT**

Plaintiff ATHIGE DENZIL DESILVA files this lawsuit against CHRISTOPHER TAYLOR, KARL KRYCIA, and THE CITY OF AUSTIN and would show the Court and Jury the following in support thereof:

1. On July 31, 2019, Dr. Mauris DeSilva had a mental breakdown. A neighbor called 911, hoping that the Austin Police Department could help him. Instead, Austin PD Officers Christopher Taylor and Karl Krycia came to the condominium where Dr. DeSilva lived and shot and killed him in the hallway.

2. Mr. Denzil DeSilva brings this lawsuit to seek justice for the violation of his son's civil rights due to the inadequate polices of and training by the Austin Police Department regarding responding to mental health crises and the extremely reckless, if not deliberate, indifference to the life and safety of Dr. Mauris DeSilva by Officers Taylor and Krycia.

**I. PARTIES**

3. Plaintiff, ATHIGE DENZIL DESILVA, is a citizen of Minnesota. He was Dr.

MAURIS DESILVA's father, is an heir at law to his Estate, and is a wrongful death beneficiary under Texas Law.

4. Defendant, CHRISTOPHER TAYLOR, is an officer with the Austin Police Department. He is sued in his individual capacity and was acting under color of law at all relevant times. He may be served at the Austin Police Department, 715 E. 8<sup>th</sup> St. Austin, Texas.

5. Defendant, KARL KRYCIA, is an officer with the Austin Police Department. He is sued in his individual capacity and was acting under color of law at all relevant times. He may be served at the Austin Police Department, 715 E. 8<sup>th</sup> St. Austin, Texas.



*Figure 1 Dr. Mauris DeSilva with his parents on his graduation day.*

6. Defendant, CITY OF AUSTIN, is a municipality that operates the Austin Police Department and may be served through its City Clerk at 301 W. 2<sup>nd</sup> St., Austin, TX 78701. Brian Manley is Austin's policymaker when it comes to policing. *Service is hereby requested at this time.*

## **II. JURISDICTION AND VENUE**

7. This case is brought pursuant to 42 U.S.C. § 1983. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

8. This Court has specific *in personam* jurisdiction over Defendants because this case arises out of conduct that caused the death of Dr. Mauris DeSilva, which occurred in Austin, Travis County, Texas, within the Western District of Texas.

9. Venue of this cause is proper in the Western District pursuant to 28 U.S.C. §1391(b) because a substantial portion of the events or omissions giving rise to Plaintiffs' claims occurred in Austin, Texas, which is within the Western District of Texas.

## **III. FACTS**

### ***A History of Mental Health Police Contacts***

10. Mauris DeSilva grew up in Sri Lanka with his parents. He held a doctorate in biomedical engineering. In July 2019, he lived in the Spring Condominiums at 300 Bowie St., Austin, Texas, 78703.

11. During the last years and months of his life, Dr. DeSilva struggled with increasingly severe mental illness. Austin PD was well aware of this fact.

12. In February 2015, Dr. DeSilva grabbed a knife and threatened to hurt himself. Austin PD responded to the scene and took Dr. DeSilva to the hospital without incident.

13. According to Austin PD's own records, on May 22, 2019, Dr. DeSilva required an "Emotionally Disturbed Person" Intervention by Austin PD and on July 7, 2019, Dr. DeSilva was committed on an Emergency Detention. This was mere weeks before Dr. DeSilva's tragic death.

***An Ongoing Mental Health Crisis***

14. Shortly before 5:00 o'clock p.m. on July 31, 2019, a resident of Spring Condominiums, Grayson Ramage, called 911 to report that he was worried that his neighbor, Dr. Maruis DeSilva, was having "another mental episode."

15. Mr. Ramage requested a mental health officer be sent to the location and asked the call operator if a mental health officer would be dispatched. The operator responded, "Yes, yes, I requested a mental health officer on the call, yes."

16. Dr. DeSilva went downstairs and was seen by Todd Cobb, an employee of Spring Condominiums. Mr. Cobb saw that Dr. DeSilva was holding a knife to his neck and called 911.

17. At around the same time, Oliver Karen and Reena Kaven both saw Dr. DeSilva outside the Spring Condominium holding a knife up to his neck then enter the building using a key card. They each called 911 to report this information.

18. Austin PD Officer Benjamin Lynch was the only mental health officer on duty at this time. Officer Lynch had just finished another call and was immediately available to respond to this call. Officer Lynch did not respond to this call.

19. Instead, Austin Police Officers Christopher Taylor and Karl Krycia responded to the scene. Officers Joseph Cast and Phillip Zuniga responded as backup. None of these officers were mental health officers.

20. Upon arrival, the officers entered the building, spoke to lobby staff, and reviewed security footage. They learned that Dr. DeSilva was on the fifth floor.

21. At this point, the officers on scene knew that Dr. DeSilva had a history of mental health contacts, was currently experiencing a mental health crisis, and had not threatened or

harmed anyone other than himself.

***The Murder of Dr. DeSilva***

22. From their review of the surveillance footage, the officers knew that Dr. DeSilva was standing on the fifth floor a few feet from the freight elevator holding a knife. They also knew that there was a stairwell entrance down the hall from Dr. DeSilva.

23. Rather than take the stairs, Officers Taylor, Krycia, Cast, and Zuniga entered the freight elevator accompanied by Martin Guardado, an employee of Spring Condominiums.

24. On the ride up to the fifth floor, Officers Taylor and Krycia agreed they should have “lethal” coverage and drew their firearms and pointed them at the elevator door. Officer Cast drew his taser. Officer Zuniga remained hands free.

25. When the elevator door opened, Dr. DeSilva was standing in the hallway across from the elevator with his back facing the officers. He was looking in a mirror and holding a knife to his neck.

26. Officers Taylor and Krycia shouted at Dr. DeSilva and instructed him to drop the knife. Dr. DeSilva complied with this request and lowered his knife.

27. Officers shouted, “hey man,” at Dr. DeSilva. In response, Dr. DeSilva turned and took one step in the direction of the officers.

28. Officer Cast immediately fired one round of his taser for a cycle of five seconds. Rather than wait and see if the less lethal taser shot would be effective, Officers Taylor and Krycia simultaneously fired multiple shots at Dr. DeSilva.

29. The bullets struck Dr. DeSilva’s chest, but they were not instantly fatal. He was transported to Dell Seton Medical Center at UT, where he was pronounced dead due to multiple gunshot wounds.

30. Despite having knowledge of Dr. DeSilva's prior mental health contacts and of his ongoing mental health crisis, officers responded as if this were the scene of a violent crime.

31. Officers Taylor and Krycia had no basis to reasonably believe to fear that either their lives or the lives anyone else present were in danger when they shot and killed Dr. DeSilva.

*A Pattern of Police Brutality*

32. Chief of Police Brian Manley is the policymaker for the City of Austin concerning police policies, training, and staffing.

33. Austin PD has a history of using deadly force against unarmed non-white males. The following disturbing pattern of incidents have taken place over the course of more than a decade and include the following victims:

- a. In 2003, Austin PD Officer Scott Glasgow shot and killed twenty-year-old Jesse Lee Owens, an African American, during a traffic stop. A Travis County grand jury indicted Glasgow for negligent homicide, though the charges were later dropped. Owens was unarmed. Following this event, the City of Austin failed to re-train officers or alter its training.
- b. In 2005, Austin PD Officer Julie Schroeder shot and killed unarmed Daniel Rocha, who was Hispanic. Although the City publicly denied that its officers used excessive force or violated policy, it entered into a \$1,000,000.00 settlement with Mr. Rocha's estate. Once again, the City failed to re-train officers or alter its training after this incident.
- c. In 2008, Austin PD Officer Michael Olsen shot and killed unarmed Kevin Brown, who was African American. Again, the City denied in publicly filed court documents that Olsen used excessive force. However, behind the scenes, Chief

Acevedo fired Officer Olsen and the City settled claims related to Mr. Brown's death for \$1,000,000.00. Following this event, the City of Austin failed to re-train officers or alter its training in any meaningful way.

- d. In 2009, Austin PD officer Leonardo Quintana gunned down eighteen-year-old Nathaniel Sanders, another African American, who was alleged to be unarmed. Sanders died with a bullet wound to the back of his head. In the same incident, another young African-American man, Sir Lawrence Smith, was shot while simply fleeing the incoming gunfire. After waking to gunshots and glass breaking, Smith tried to escape the danger by fleeing by car—as he had every right to do. Though Mr. Smith was unarmed, Officer Quintana shot him in the chest. No remedial action was taken by Austin PD as a result of these shootings. Instead, the City settled the cases for \$925,000.00.
- e. In 2012, Austin PD officer Eric Copeland shot and killed Ahmede Bradley, an African American, after a traffic stop. During the interaction, Mr. Bradley allegedly fled on foot from the scene. Officer Copeland recklessly chased down Mr. Bradley and used deadly force in the ensuing struggle. Again, no remedial action was taken by Austin PD.
- f. In 2013, Austin PD officer Charles Kleinert shot and killed Larry Jackson, Jr. after chasing him from the scene of a bank robbery that took place hours earlier. Mr. Jackson, an African American, was unarmed and shot in the back of the head. Instead of taking remedial action, the City paid a \$1,700,000.00 settlement.
- g. In 2014, the City refused to discipline Officer Greg White for shooting Jawhari Smith, an African-American, who had his hands up and had just dropped an

empty BB gun. Instead of providing new training, the City settled the case.

- h. In 2016, Officer Gregory Freeman shot and killed David Joseph, an African-American. Mr. Joseph was naked, unarmed, and standing in an empty street when Officer Freeman approached him and drew his weapon. Although Officer Freeman was ultimately terminated for the shooting and Chief Art Acevedo condemned his conduct, the County failed to bring criminal charges against him and the City denied in public court filings that Officer Freeman had used excessive force. Despite the egregiousness of the shooting and paying a \$3,250,000.00 settlement, the City did not initiate new or different training for its officers.

34. In prior litigation, an Austin PD sergeant in charge of training police officers testified that Austin PD trains officers to always treat a knife as a deadly weapon even though a knife does not pose the same danger as a gun.

***An Inadequate Policy for Mental Health-Related Incidents***

35. At the time of Dr. DeSilva's homicide, the Ex-Assistant Chief Justin Newsom recognized that the Austin Police Department had so far failed to provide mental health training to Austin PD officers. He stated, "We just haven't had time to get around to writing this plan to try and train everybody as a mental health officer."

36. According to a recent article in the *Texas Observer*, "[o]f the 15 most populous U.S. cities, Austin has the highest per capita rate of fatal mental-health related police shootings: According to a 2018 city audit, a third of the 24 people killed in police shootings from 2010 through 2016 had confirmed mental health conditions, compared to a national average of 22

percent.”<sup>1</sup>

37. It is obvious that mental health training of additional officers is required to prevent unjust outcomes — including death at the hands of police officers — for people going through a mental breakdown. Yet, even as City policymakers recognized this deadly problem, Officers Christopher Taylor and Karl Krycia received no training regarding mental health crisis response before they shot and killed Dr. DeSilva.

### ***An Ongoing Danger to the Public***

38. Even as it claimed to continue to investigate Dr. DeSilva’s shooting, Austin PD continued to dispatch Defendants Taylor and Krycia, where they would be called upon to make life and death decisions, despite their erratic and violent history. As a consequence, Austin citizens, especially vulnerable minorities, remained in potential danger from Officers Taylor and Krycia.

39. Less than a year after Dr. DeSilva’s homicide, Officer Taylor shot and killed Michael Ramos, firing without hesitation even though his victim was unarmed and defenseless.

## **IV. CLAIMS**

### ***A. § 1983 claims against Defendants Taylor and Krycia***

40. Plaintiffs incorporate by reference all of the foregoing and further allege as follows:

41. Defendants Taylor and Krycia, who were acting under color of law, shot Dr. DeSilva when he posed no threat of serious bodily injury or death to anyone other than himself. In fact, Dr. Mauris DeSilva had been holding a knife to his own neck and had put it down when asked to by Defendants Taylor and Krycia. Dr. DeSilva had done nothing threatening.

---

<sup>1</sup> Michelle Raji, *Why is APD Responding to Mental Health Crises Like Violent Crimes?*, TEXAS OBSERVER, June 4, 2020, <https://www.texasobserver.org/mauris-desilva-austin-protests-police/>.

42. As a consequence, Defendants Taylor and Krycia's use of force against Dr. Mauris DeSilva was clearly excessive to the need, objectively unreasonable in light of established law, and directly caused his death. Therefore, Defendants Taylor and Krycia's actions violated Dr. Mauris DeSilva's Fourth and Fourteenth Amendment rights to be free from excessive force/unreasonable seizure. *See Hafer v Melo*, 502 US 21, 25; *see also Mann v Taser Int'l, Inc.* 588 F. 3d 1291 (11th Cir. 2009).

43. As a direct and proximate result of Defendants Taylor and Krycia's actions, Dr. Mauris DeSilva suffered greatly before dying. Plaintiff lost his brilliant son, and the anguish he feels and will feel for the rest of his life is truly horrific. Plaintiff Denzil Desilva is devastated beyond words.

***B. § 1983 Monell claim against the City of Austin***

44. Plaintiff incorporates by reference all of the foregoing and further allege as follows:

- The City of Austin had the following policies and/or practices in place when Defendants Taylor and Krycia ruthlessly shot Mauris DeSilva:
- Dispatching inadequately trained or screened officers to life and death crisis situations;
- Dispatching inadequately trained or screened officers to mental health crisis calls;
- Failing to adequately supervise officers during encounters where long-range weapons are deployed;
- Failing to train officers concerning alternatives to the use of deadly force.
- Failing to train officers to de-escalate encounters involving a mental health crisis

rather than resort to deadly force.

- Using excessive deadly force.
- Discriminating against minority suspects by using unwarranted deadly force at disproportionately higher rates;
- Failing to change practices following wrongful shootings or train officers about known wrongful shootings;
- Distinguish the different range of damage can cause a knife against a gun;
- Failing to train on the dangers of institutional mental health; and
- Adopting and promulgating a policy of underfunding Mental Health officers within the APD such that there were not enough Mental Health officers to address the needs of a city of Austin's size, which directly led to injuries and deaths such as Dr. DeSilva's.

45. To be clear each of the policies delineated above which lead directly to the unconstitutional act complained of were either (1) official policies adopted and promulgated by officers of the City of Austin; or (2) government practices and customs that, although not officially authorized, were widespread and well settled; or (3) were caused by an official with final policy making authority. *See Thomas v. Cook Cnty. Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2010) (citing *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978)). These policies were promulgated with deliberate indifference to Dr. Mauris DeSilva's Fourth and Fourteenth Amendment rights under the United States Constitution. Moreover, the known and obvious consequence of these policies was that the City of Austin police officers would be placed in recurring situations in which the constitutional violations described within this complaint would result. Accordingly, these policies also made it highly predictable that the particular violations

alleged here, all of which were under the color of law, would result.

46. Consequently, the policies delineated above were a moving force of the Plaintiff's constitutional deprivations and injuries, and proximately caused severe damages.

#### V. DAMAGES

47. Defendants deprived Dr. Mauris DeSilva of his civil rights under the United States Constitution and federal law. Moreover, these acts and omissions by Defendants, their agents, employees, and/or representatives, proximately caused and/or were the moving force of the injuries and damages to Plaintiffs and proximately caused and/or were the moving force of the wrongful death of Dr. Mauris DeSilva.

48. Accordingly, Plaintiff in his individual capacities, in his capacities as heir at law on behalf of the Estate of Dr. Mauris DeSilva, and as representatives of all wrongful death beneficiaries of Dr. Mauris DeSilva, assert claims under 42 U.S.C. §1983 and the Texas wrongful death and survivorship statutes.

49. Plaintiff Denzil DeSilva, in his capacities as heirs at law on behalf of the Estate of Dr. Mauris DeSilva, have incurred damages including, but not limited to, the following:

- Physical pain and mental anguish suffered by Mauris DeSilva before he died; and,
- Funeral and burial expenses.

50. Plaintiff, Denzil DeSilva, in his individual capacities asserting wrongful death claims, have incurred damages including, but not limited to, the following:

- Past and future mental anguish; and
- Past and future loss of companionship, society, services, and affection with their

son.

**VI. PUNITIVE/EXEMPLARY DAMAGES**

51. As Defendant's employees' conduct was deliberately reckless, excessive, and reprehensible, Plaintiff asserts a claim for or exemplary damages against the City of Austin.

**VII. DEMAND FOR JURY**

52. Pursuant to Federal Rule of Civil Procedure 48, Plaintiff requests a jury trial.

**VIII. PRAYER FOR RELIEF**

53. Accordingly, Plaintiff ask that judgment be awarded against Defendants for:

- (a) Compensatory damages against all Defendants, jointly and severally,
- (b) Punitive damages as to Defendant City of Austin only,
- (c) Attorneys' fees, including reasonable and necessary expenses such as expert fees, pursuant to 42 U.S.C. § 1988,
- (d) Costs of court;
- (e) Judgment at the highest rate allowable under the law; and
- (f) All other relief to which Plaintiffs are justly entitled.

Respectfully submitted,

DUNAWAY LAW FIRM, P.C.  
1411 West Avenue, Suite 100  
Austin, Texas 78701  
PHONE (512) 469-7941  
FAX (512) 479-9510  
[atty@austinfairlaw.com](mailto:atty@austinfairlaw.com)



Aspen J. Dunaway  
State Bar No. 24034425  
Rosa Alonso  
State Bar No. 24121310  
Board Certified, Personal Injury Trial Law Texas  
Board of Legal Specialization  
ATTORNEYS FOR PLAINTIFF



J. Bradley Vinson  
Smith & Vinson Law Firm, Partner  
SBN: 24100021  
Attorney for Plaintiff  
1411 West Ave. #124  
Austin, Texas 78701  
Tel: 512.368.9044  
Fax: 512.368.8265



Jarrod L. Smith  
Smith & Vinson Law Firm, Partner  
SBN: 24094095  
Attorney for Plaintiff  
1411 West Ave. #124  
Austin, Texas 78701  
Tel: 512.368.9044  
Fax: 512.368.8265

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

**ATHIGE DENZIL DESILVA, individually,** §  
**as heir at law to the ESTATE OF DR.** §  
**MAURIS DESILIVA, and on behalf of all** §  
**wrongful death beneficiaries,** §  
*Plaintiff,* §

**CIVIL ACTION NO. 1:21-cv-00129-RP**

v. §

**CHRISTOPHER TAYLOR, KARL** §  
**KRYCIA, & THE CITY OF AUSTIN,** §  
*Defendants.* §

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

TO THE HONORABLE JUDGE OF SAID COURT:

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

**ORIGINAL ANSWER**

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

1. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 1 of the Original Complaint and therefore denies same. Defendant denies the remaining allegations contained in Paragraph 1 of the Complaint.

---

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

2. Defendant denies the allegations contained in Paragraph 2.
3. Upon information and belief, Defendant admits the allegations contained in Paragraph 3.
4. Defendant admits the allegations contained in Paragraph 4.
5. Defendant admits the allegations contained in Paragraph 5.
6. Defendant admits the allegations contained in Paragraph 6.
7. Defendant admits the allegations contained in Paragraph 7.
8. Defendant admits that this Court has *in personam* jurisdiction over Defendants. Defendant denies the remaining allegations contained in Paragraph 8 of the Complaint.
9. Defendant admits the allegations contained in Paragraph 9.
10. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 10 of the Original Complaint and therefore denies same.
11. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the Original Complaint and therefore denies same.
12. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 12 of the Original Complaint and therefore denies same.
13. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 13 of the Original Complaint and therefore denies same.
14. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 14 of the Original Complaint and therefore denies same.
15. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of the Original Complaint and therefore denies same.
16. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 16 of the Original Complaint and therefore denies the same.
17. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations

- contained in Paragraph 17 of the Original Complaint and therefore denies the same.
18. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 18 of the Original Complaint and therefore denies the same.
  19. Defendant admits the allegations contained in Paragraph 19.
  20. Defendant admits the allegations contained in Paragraph 20.
  21. Defendant denies the allegations contained in Paragraph 21.
  22. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 22 of the Original Complaint and therefore denies the same.
  23. Upon information and belief, Defendant admits the allegations contained in Paragraph 23.
  24. Upon information and belief, Defendant admits the allegations contained in Paragraph 24.
  25. Defendant admits the allegations contained in Paragraph 25.
  26. Defendant admits the allegations contained in the first sentence of Paragraph 26.  
Defendant denies the remaining allegations contained in Paragraph 26.
  27. Defendant admits the allegations contained in the first sentence of Paragraph 27.  
Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 27 of the Original Complaint and therefore denies the same.
  28. Defendant admits the allegations contained in the first sentence of Paragraph 28.  
Defendant denies the remaining allegations contained in Paragraph 28.
  29. Upon information and belief, Defendant admits the allegations contained in Paragraph 29.
  30. Defendant denies the allegations contained in Paragraph 30.
  31. Defendant denies the allegations contained in Paragraph 31.
  32. Defendant admits the allegations contained in Paragraph 32.
  33. Defendant denies the allegations contained in Paragraph 33.
  34. Defendant denies the allegations contained in Paragraph 34.

35. Defendant denies the allegations contained in Paragraph 35.
36. Defendant denies the allegations contained in Paragraph 36.
37. Defendant denies the allegations contained in Paragraph 37.
38. Defendant denies the allegations contained in Paragraph 38.
39. Defendant denies the allegations contained in Paragraph 39.
40. Defendant adopts and incorporates its responses to the previous paragraphs of the Complaint.
41. Defendant denies the allegations contained in Paragraph 41.
42. Defendant denies the allegations contained in Paragraph 42.
43. Defendant denies the allegations contained in Paragraph 43.
44. Defendant denies the allegations contained in Paragraph 44.
45. Defendant denies the allegations contained in Paragraph 45.
46. Defendant denies the allegations contained in Paragraph 46.
47. Defendant denies the allegations contained in Paragraph 47.
48. Defendant denies the allegations contained in Paragraph 48.
49. Defendant denies the allegations contained in Paragraph 49.
50. Defendant denies the allegations contained in Paragraph 50.
51. Defendant denies the allegations contained in Paragraph 51.
52. This paragraph is merely the Plaintiff's demand for jury trial and requires no admission or denial of the Defendant.
53. Defendant denies the allegations contained in Paragraph 53.

**AFFIRMATIVE DEFENSES**

1. Defendant City of Austin asserts the affirmative defense of governmental immunity as a municipal corporation entitled to immunity while acting in the performance of its governmental functions, absent express waiver.
2. Defendant City of Austin asserts the affirmative defense of governmental immunity since its employees are entitled to qualified/official immunity for actions taken in the course and scope of their employment, absent express waiver.
3. As a political subdivision, Defendant City of Austin denies that it can be liable for exemplary/punitive damages under 42 U.S.C. § 1983.
4. Defendant reserves the right to assert additional affirmative defenses throughout the development of the case.

**DEFENDANT'S PRAYER**

Defendant City of Austin prays that all relief requested by Plaintiff be denied, that the Court dismiss this case with prejudice, and that the Court award Defendant 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/ H. Gray Laird  
H. GRAY LAIRD III  
State Bar No. 24087054  
[gray.laird@austintexas.gov](mailto:gray.laird@austintexas.gov)  
City of Austin  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone (512) 974-1342  
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANT CITY OF  
AUSTIN**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Federal Rules of Civil Procedure, this 24th day of March, 2021.

**Via CM/ECF:**

**Aspen James Dunaway**

SBN: 24034425

**Rosa Alonso**

SBN: 24121310

Dunaway Law Firm, PC

1411 West Avenue, Ste 100

Austin, TX 78701

(512) 469-7941

Fax: 512/479-9510

Email: atty@austinfairlaw.com

**Brad Vinson**

SBN: 24100021

**Jarrod L. Smith**

SBN: 24094095

Smith & Vinson, PLLC

1411 West Avenue, Ste 124

Austin, TX 78701

(512) 368-9044

Fax: (512) 368-6265

**ATTORNEYS FOR PLAINTIFF**

/s/ H. Gray Laird III  
H. GRAY LAIRD III

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

ATHIGE DENZIL, Individually,	§	
As Heir at Law to the ESTATE OF	§	
DR. MAURIS DESILVA, and on behalf	§	
OF ALL WRONGFUL DEATH	§	
BENEFICIARIES,	§	
Plaintiff	§	
vs.	§	Case No. 1:21-cv-00129-RP
	§	
CHRISTOPHER TAYLOR,	§	
KARL KRYCIA, AND	§	
THE CITY OF AUSTIN	§	
Defendants	§	

---

**DEFENDANTS KARL KRYCIA AND CHRISTOPHER TAYLOR’S ANSWER  
TO PLAINTIFF’S ORIGINAL COMPLAINT**

---

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendants, Karl Krycia and Christopher Taylor, by and through their attorneys of record, and files this Answer to the Original Complaint of Plaintiff Athige Denzil, Individually, As Heir at Law to the Estate of Dr. Mauris DeSilva, and on behalf of All Wrongful death Beneficiaries (DeSilva), and in support thereof would respectfully show the Court as follows:

**I. INTRODUCTION**

1. On July 31, 2019, multiple people called the Austin 911 emergency line to report that a man was brandishing a knife and acting erratically at the Spring Condominiums in downtown Austin. Dispatch broadcast that information to nearby APD police officers over police radio channels. APD Officers Karl Krycia and Christopher Taylor—the two individual defendants herein—took the call, and were thus shouldered with the unenviable task of preventing an erratic,

knife-wielding man from harming himself or others. Once they arrived and had been joined by two other responding officers, a condominium employee informed them that the man was acting “unstable,” that he was “known to be unstable,” and that the man appeared to be brandishing a large kitchen knife at or near other residents.

2. Officers Krycia and Taylor also learned that the man had first been spotted standing outside beating on emergency doors while brandishing his knife. A condominium employee told them that he had actually attempted—but failed—to disable the man’s key fob to prevent him from entering the building with his knife, ostensibly for the obvious reason that an unstable knife-wielding man was a potentially deadly threat to the condominium’s employees and residents.

3. The officers were told that the knife-wielding man subsequently entered the condominium building, and were provided information leading them to believe the man had barricaded himself inside his own condominium room. At that point, the officers made the decision to wait for additional resources to arrive before engaging the barricaded suspect.

4. However, the officers soon learned that the man had exited his room and travelled to the fifth floor, where the condominium’s gym and other shared spaces are located. Suddenly, what the officers believed was a “barricaded suspect” situation had evolved into an exigent circumstance requiring swift action to prevent imminent danger to others, because the suspect was now moving freely through an occupied residential building while wielding a large knife and acting erratically. The fact that he was seen on the floor containing a gym and other shared condominium spaces made it even more likely he would encounter other residents and cause potentially deadly consequences.

5. The officers also learned that the man had been seen menacingly waving his knife at security cameras, which further concerned the officers regarding the man's intentions. Officer Cast began watching the live surveillance footage on a nearby screen, and relayed to the other officers that the man did appear to be on the fifth floor, and that he was indeed brandishing his knife toward the camera.

6. The officers quickly put together a plan to confront the man to try and prevent him from hurting himself or others. Officer Phillip Zuniga was designated to verbally engage and, if necessary, attempt to physically subdue the man. Officer Joseph Cast was designated to prepare to use less lethal force in the form of a Taser, if necessary. Officers Krycia and Taylor were assigned with the task of preparing—as a last resort—to use lethal force if the knife-wielding man acted in a manner that posed an imminent threat of death or serious bodily injury to another. The condominium's private security guard and the four police officers all entered the elevator and travelled to the fifth floor with their assigned roles in mind.

7. As soon as the elevator doors opened, the knife-wielding man appeared standing almost directly in front of the officers—not even two quick steps away from stabbing distance to the people inside the elevator. The officers immediately instructed the man to drop the knife. Instead of dropping the knife, the man began walking *toward* the officers while still holding the knife in his hand. Still issuing commands, the officers waited until the knife-wielding man was almost within arm's reach before finally discharging their weapons in defense of both themselves and the other people in the elevator with them. Plaintiff now files this lawsuit alleging that the officers had no reason to believe that the man—who they had just been told was “known to be unstable,” brandishing a large knife, actively refusing police commands to drop his weapon, and

who had suddenly moved within *mere feet* of the officers and a nearby civilian *while still holding a large knife*—posed no threat of serious harm whatsoever.

## II. ORIGINAL ANSWER

8. Defendants are without sufficient knowledge to form a belief as to whether decedent had a mental breakdown, nor the specific motive behind any person's 911 call reporting that the decedent was brandishing a knife in public. Defendants admit that they discharged their firearms in defense of themselves and others in the subject hallway, and that the decedent died as a result of his injuries.

9. Defendants deny the allegations contained in Paragraph 2.

10. Defendants are without sufficient knowledge to form a belief as to the allegations contained within Paragraph 3.

11. Defendants admit the allegations contained in Paragraphs 4 – 7.

12. Defendants admit that this Court has *in personam* jurisdiction over Defendants, as described. Defendants deny the remaining allegations contained in Paragraph 8.

13. Defendants admit the allegations contained in Paragraph 9.

14. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained in Paragraphs 10 – 18 of the Original Complaint as specifically described, and therefore deny the same.

15. Defendants admit the allegations contained in Paragraph 19, but feel obliged to note that they have each been formally trained regarding how to deal with subjects undergoing mental health difficulties.

16. Defendants admit the allegations contained in Paragraph 20.

17. Defendants admit that one condominium employee made a statement about the decedent acting unstable, that he was “known to be unstable,” and that the employee mentioned mental health officers, and that the employee stated the condominium has previously had to call the police several times in the past regarding the decedent. Otherwise, Defendants deny the remaining allegations contained in Paragraph 21.

18. As to the allegations contained in Paragraph 22, Defendants admit that they had information indicating that Decedent was located on the fifth floor. Defendants deny the remaining allegations contained in Paragraph 22 as written.

19. As to the allegations contained in Paragraph 23, Defendants admit that they travelled to the fifth floor with an employee of the condominium building. Otherwise, Defendants are without sufficient knowledge to form a belief as to the remaining allegations contained within Paragraph 23.

20. As to the allegations contained in Paragraph 24, Defendants admit that the four officers each had an assigned role, and that Defendants were each tasked with using lethal force if ultimately proved necessary. Defendants deny that they extended and pointed their guns at the elevator door prior to the doors opening and observing the knife-wielding decedent.

21. As to the allegations contained in Paragraph 25, Defendants admit that the decedent was initially standing facing away from the officers looking in the mirror and holding a knife to his throat, before then quickly turning and walking toward the officers. Defendants deny the description of the events contained in Paragraph 25 to the extent it suggests the decedent was not close in proximity to the elevator doors when they opened.

22. As to the allegations contained in Paragraph 26, Defendants admit that they shouted instructions for the decedent to drop his knife. Defendants deny that the decedent ever complied with their commands to drop his weapon.

23. As to the allegations contained in Paragraph 27, Defendants admit that one officer initially said, “hey, man,” to the decedent to engage and get his attention. Defendants deny the chronological suggestion that an officer said, “hey, man” *after* instructing him to drop his weapon, or that the decedent took a step toward the officers specifically *in response to* an officer saying, “hey, man.” The decedent instead began moving toward the officers immediately after the officers began instructing him to drop his weapon and show them his hands. Defendant is without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in Paragraph 27 of the Original Complaint as written, and therefore deny the same.

24. As to the allegations contained in Paragraph 28, Defendants admit that Officer Cast fired his Taser, and that Defendants each discharged their weapons at the decedent in defense of themselves and others. Defendants deny the remaining allegations contained in Paragraph 28, as written.

25. Upon information and belief, Defendants admit the allegations contained in Paragraph 29.

26. Defendants deny the allegations contained in Paragraphs 30 – 31.

27. Defendants admit the allegations contained in Paragraph 32.

28. Defendants are without sufficient knowledge to form a belief as to whether the allegations contained in Paragraphs 33 – 38 are true, and therefore deny the same.

29. As to the allegations contained in Paragraph 39, Defendants admit that Defendant Taylor justifiably discharged his firearm at Michael Ramos in defense of himself and others while acting

in the course and scope of his duties as a police officer, and that Ramos died as a result of his injuries. Otherwise, denied.

30. As to the allegations contained in Paragraph 40, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

31. Defendants deny the allegations contained in Paragraphs 41 – 51.

32. The allegations contained in Paragraph 52 require no admission or denial by the Defendants.

33. Defendants deny the allegations contained in Paragraph 53.

### **III. JURY DEMAND**

34. Defendants Krycia and Taylor demand a jury trial.

### **IV. AFFIRMATIVE DEFENSES & IMMUNITIES**

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

36. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith, and would show that their actions were objectively reasonable in light of the law and with the information possessed at that time, and that no clearly established law exists prohibiting them from defending themselves against an uncooperative suspect approaching them holding a large knife in extremely close quarters.

37. The incident in question and the resulting harm to the decedent were caused or contributed to by the decedent's own illegal and/or reckless conduct.

38. Pleading further, alternatively, and by way of affirmative defense, Defendants would show that at the time and on the occasion in question, the decedent failed to use *any* degree of care or caution that a person of ordinary prudence would have used under the same or similar circumstances, and that such failure was the producing cause or the sole proximate cause of the incident in question and the alleged damages that arise therefrom. Defendants invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.<sup>1</sup>

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

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

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

42. Defendants assert the limitations and protections of Chapter 101 of the Texas Civil Practice & Remedies Code.

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

#### V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants Karl Krycia and Christopher Taylor pray that upon a final hearing of this cause, the Court dismiss all of Plaintiff's claims with prejudice, that all costs of court be assessed against Plaintiff, and for all further relief Defendants Krycia and Taylor may be justly entitled to in either law or equity.

---

<sup>1</sup> See TEX. CIV. PRAC & REM. CODE ANN. § 33.001.

Respectfully submitted,

**WRIGHT & GREENHILL, P.C.**  
900 Congress Avenue, Suite 500  
Austin, Texas 78701  
512-476-4600  
512-476-5382 – Fax

/s/ Blair J. Leake

By: \_\_\_\_\_

Blair J. Leake  
State Bar No. 24081630  
[bleake@w-g.com](mailto:bleake@w-g.com)  
Stephen B. Barron  
State Bar No. 24109619  
[sbarron@w-g.com](mailto:sbarron@w-g.com)  
Archie Carl Pierce  
State Bar No. 15991500  
[cpierce@w-g.com](mailto:cpierce@w-g.com)

**ATTORNEYS FOR DEFENDANTS  
KARL KRYCIA AND CHRISTOPHER  
TAYLOR**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11th day of May 2021, a copy of Defendants Krycia and Taylor's Answer to Plaintiff's Original Complaint was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorneys of record:

Aspen J. Dunaway  
Rosa Alonso  
Dunaway Law Firm, P.C.  
1411 West Avenue, Suite 100  
Austin, Texas 78701  
Email: [atty@austinfairlaw.com](mailto:atty@austinfairlaw.com)

J. Bradley Vinson  
Jarod L. Smith  
Smith & Vinson Law Firm, Partner  
1411 West Avenue, Suite 124  
Austin, Texas 78701

H. Gray Laird  
Assistant City Attorney  
[Gray.laird@austintexas.gov](mailto:Gray.laird@austintexas.gov)  
P.O. Box 1546  
Austin, Texas 78767-1546

/s/ Blair J. Leake

---

Blair J. Leake







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

ATHIGE DENZIL, Individually,	§	
As Heir at Law to the ESTATE OF	§	
DR. MAURIS DESILVA, and on behalf	§	
OF ALL WRONGFUL DEATH	§	
BENEFICIARIES,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 1:21-cv-00129-RP
	§	
CHRISTOPHER TAYLOR,	§	
KARL KRYCIA AND	§	
THE CITY OF AUSTIN,	§	
<i>Defendants.</i>	§	

---

**DEFENDANTS KARL KRYCIA AND CHRISTOPHER TAYLOR’S  
MOTION TO STAY DISCOVERY**

---

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendants Karl Krycia and Christopher Taylor, and files this, their motion to stay discovery pending the resolution of their criminal case, and would respectfully show the Court as follows:

## I. SUMMARY OF THE ARGUMENT

1. Officers Karl Krycia and Christopher Taylor each made a split-second decision to use deadly force to stop a knife-wielding suspect walking toward an elevator full of people, and waited to do so until the suspect was only a few feet away from the potential victims. Both officers have now been indicted for first-degree murder for their efforts by Travis County District Attorney Jose Garza—with serious concerns beginning to surface about how the case was presented to the grand jury. Defendants respectfully request that this Court exercise its discretion to stay discovery in this civil suit until they have had the chance to vigorously defend themselves in the upcoming criminal trial.

2. If the requested stay is not granted, the officers will be forced with an impossible decision between two—*and only two*—options during depositions and discovery. First, the officers can invoke their Fifth Amendment rights, which will then allow Plaintiff to ask for the right for the jury to know of their Constitutional refusal to testify, and to hold that refusal against them in reaching their verdict. The officers' only other option would be to testify fully during depositions to vigorously defend this suit, which would correspondingly weaken their criminal defense by, for example, providing impeachment evidence for the prosecutors to use at Defendants' murder trial. There will be no third option available to the officers if this motion is not granted. If this case is not stayed, harm to one case or the other will be all but inevitable. In contrast, the officers' impossible dilemma will be “largely, if not completely, eliminated by granting a stay of appropriate scope.” Defendants respectfully request that this Court grant a stay of discovery to relieve them of the insidious legal dilemma currently looming over them.

## II. BACKGROUND

### A. The use of force against Mauris DeSilva.

3. This lawsuit arises out of the death of a knife-wielding suspect, decedent Mauris DeSilva.<sup>1</sup> On July 31, 2019, multiple people called the Austin 911 emergency line to report that a man was brandishing a knife and acting erratically at the Spring Condominiums in downtown Austin. Dispatch broadcasted the information to nearby APD police officers over police radio channels. APD Officers Karl Krycia and Christopher Taylor—the two individual defendants herein—took the call, and were thus shouldered with the unenviable task of preventing an erratic, knife-wielding man from harming himself or others. Once they arrived and had been joined by two other responding officers, a condominium employee informed them that the suspect was acting “unstable,” that he was “known to be unstable,” and that the man appeared to be brandishing a large kitchen knife at or near other residents.

4. Officers Krycia and Taylor also learned that the man had first been spotted standing outside beating on emergency doors while brandishing his knife. A condominium employee told them that he had attempted—but failed—to disable the man’s key fob to prevent him from entering the building with his knife, ostensibly because an unstable knife-wielding man constituted a deadly threat to the condominium’s employees and residents.

5. The officers were told that the knife-wielding man subsequently entered the condominium building and were provided information leading them to believe the man had barricaded himself inside his own condominium. At that point, the officers made the decision to wait for additional resources to arrive before engaging the barricaded suspect.

---

<sup>1</sup> Defense counsel has chosen not to provide any primary source documents and video footage pertaining to the underlying incident because such evidence is not necessary for this Court to rule on this motion. However, defense counsel is ready and willing to supplement this motion with all such supporting documents and footage if this Court so desires.

6. However, the officers soon learned that the man had exited his room and travelled to the fifth floor, where the condominium's gym and other shared spaces are located. Suddenly, what the officers believed was a stable "lone barricaded suspect" situation had now evolved into an imminently dangerous situation. The erratic, knife-wielding suspect was now moving freely through the common areas of an occupied residential building, and swift action was needed.

7. The officers also learned that the man had been seen menacingly waving his knife at security cameras, which further concerned the officers regarding the man's intentions. APD Officer Cast began watching the live surveillance footage on a nearby screen and relayed to the other officers that the man did appear to be on the fifth floor—the floor with the shared and common areas of the condominium—and that he was indeed brandishing his knife toward the camera.

8. The officers quickly put together a plan to confront the man to try and prevent him from physically harming or killing anyone. Officer Phillip Zuniga was designated to verbally engage and, if necessary, attempt to physically subdue the man. Officer Joseph Cast was designated to prepare to use less lethal force in the form of a Taser, if necessary. Officers Krycia and Taylor were assigned with the task of preparing—as a last resort—to use lethal force if the knife-wielding man acted in a manner that posed an imminent threat of death or serious bodily injury to another. The condominium's private security guard and the four police officers all entered the elevator and travelled to the fifth floor with their assigned roles in mind.

9. As soon as the elevator doors opened, the knife-wielding man appeared standing almost directly in front of the officers—not even two quick steps away from stabbing distance to the people inside the elevator. The officers immediately instructed the man to drop the knife. Instead of dropping the knife, the man began walking *toward* the officers while still holding the knife in

his hand. Still issuing commands, the officers waited until the knife-wielding man was almost within arm's reach before finally discharging their weapons in defense of both themselves and the other people in the elevator with them.

**B. After Officers Krycia and Taylor were cleared of wrongdoing by APD. Subsequently, District Attorney Jose Garza campaigned on promises to aggressively prosecute first responders, was elected, and then indicted both officers.**

10. Officers Krycia and Taylor's uses of force against DeSilva were investigated and cleared by the Austin Police Department. Almost a year and a half after the incident at issue, Jose Garza was elected to serve as the Travis County District Attorney. District Attorney Garza's campaign was largely based on promises that suggested he would aggressively prosecute police officers, and he actively criticized the incumbent and now former District Attorney, for not having prosecuted and convicted more police officers during her term in office.<sup>2</sup> After Garza was elected, his office posted a prosecutor job opening looking for a candidate who is committed to "prosecuting [criminal cases against police officers], even when the prosecution is not favored by all stakeholders," and who would maintain a "do not call" list that would purportedly blacklist local police officers from testifying in court to aid in the conviction of suspected criminals.<sup>3</sup> During his less-than-one-year term in office, District Attorney Garza's office has indicted 13

---

<sup>2</sup> See e.g. Katie Hall, *Between primary and protests, focus of Travis County DA's race shifts to police reform*, AUSTIN AMERICAN STATESMAN (June 29, 2020, 3:20 PM), available at <https://www.statesman.com/story/news/local/2020/06/29/between-primary-and-protests-focus-of-travis-county-darsquos-race-shifts-to-police-reform/113728354/>.

<sup>3</sup> Job posting for "Civil Rights Team Lead – Attorney VII," dated May 7, 2021, available at [https://media.kvue.com/assets/KVUE/images/86020977-6a49-4016-bcf3-173ef91dae96/86020977-6a49-4016-bcf3-173ef91dae96\\_1140x641.jpg](https://media.kvue.com/assets/KVUE/images/86020977-6a49-4016-bcf3-173ef91dae96/86020977-6a49-4016-bcf3-173ef91dae96_1140x641.jpg).

local first responders, and has scheduled criminal grand jury presentations for roughly another 40 other local first responders to take place in the near future.<sup>4</sup>

11. The District Attorney's office consulted with Dr. Howard Williams as a use of force expert to review the use of deadly force against DeSilva described herein. *Dr. Williams allegedly advised the District Attorney's office that the force used was appropriate and legally justified under the circumstances.*<sup>5</sup> Garza allegedly responded to his force consultant's analysis by refusing to allow Dr. Williams—nor the officers themselves—to testify at the grand jury presentation.<sup>6</sup> The grand jury presentation—seemingly curated to omit any information or analysis that might have cleared the officers or provided their own perceptions related to the legal doctrines of self-defense and justification—unsurprisingly led to an indictment of both officers for the crime of first-degree murder.<sup>7</sup>

12. Defendants' collective legal counsel have serious concerns about proceeding forward with civil discovery before their respective client's criminal case has resolved because of the very real and unjust peril of the two officers being forced to choose between either: (1) asserting their Fifth Amendment rights, which would consequently cripple the Defendants' ability to vigorously defend this civil suit; *or* (2) waive their respective Constitutional rights, testify in

---

<sup>4</sup> *District Attorney's September 13, 2021 Press Release*, pg. 4, available at [https://www.traviscountytexas.gov/images/district\\_attorney/docs/Press\\_Releases/2021/Case\\_Summaries\\_September\\_13.pdf](https://www.traviscountytexas.gov/images/district_attorney/docs/Press_Releases/2021/Case_Summaries_September_13.pdf).

<sup>5</sup> See **Ex. 1**, August 27, 2021 Press Release, by Ken Ervin and Doug O'Connell, criminal defense attorneys for Officer Christopher Taylor; see also Marisa Charpentier, *Austin Police Officer Who Shot Mike Ramos Indicted On a Second Murder Charge*, KUT (August 27, 2021, 5:37 PM), available at <https://www.kut.org/crime-justice/2021-08-27/austin-police-officer-who-shot-mike-ramos-indicted-on-a-second-murder-charge>.

<sup>6</sup> *Id.*

<sup>7</sup> See Tony Plohetski and Katie Hall, *2 Austin police officers indicted on murder charges*, AUSTIN AMERICAN STATESMAN (August 27, 2020, 3:20 PM), available at <https://www.statesman.com/story/news/2021/08/27/austin-police-officer-michael-ramos-shooting-indicted-second-murder-charge/5608063001/>.

discovery herein, and consequently cripple Defendants' ability to vigorously defend against the criminal first-degree murder charges looming over them. Defendants accordingly move this Court for a temporary stay of all discovery in this civil lawsuit as it pertains to the individual Defendants in order to ensure that they are able to fully defend themselves in *both* legal actions.

### III. ARGUMENTS & AUTHORITIES

13. "There's no question that a district judge can stay a federal civil rights case pending the resolution of a defendant's parallel criminal proceeding."<sup>8</sup> As a demonstrative example, this Court recently granted a stay of discovery for several individual defendants in the *Javier Ambler v. Williamson County, et al.*, civil suit based on the existence of ongoing parallel criminal proceedings for several of the individual defendants therein, as well as in other pending civil suits.<sup>9</sup> Courts are empowered to utilize discretion on such motions "when the interests of justice seems to require such action."<sup>10</sup> In *Campbell*, the Fifth Circuit admonished district courts to "be sensitive to the difference in the rules of discovery in civil and criminal cases."<sup>11</sup> "While the Federal Rules of Civil Procedure have provided a well-stocked battery of discovery procedures, the rules governing criminal discovery are far more restrictive."<sup>12</sup> The Fifth Circuit further advised that "in ruling on requests for stays of the civil side of parallel civil/criminal proceedings, [j]udicial discretion and procedural flexibility should be utilized to harmonize the

---

<sup>8</sup> *Agueros v. Vargas*, CIV A SA07-CV0994 XR, 2008 WL 2937972, \*1 (W.D. Tex. July 21, 2008); see also *United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983).

<sup>9</sup> See Order, *Ambler v. Williamson County*, 1:20-cv-01068-LY (W.D. Tex. July 27, 2021), Dkt. # 89; see also e.g. Text Order, *Nembhard v. Williamson County*, 1:21-cv-00350-RP (W.D. Tex. Aug. 26, 2021).

<sup>10</sup> *United States v. Kordel*, 397 U.S. 1, 12, n. 27 (1970).

<sup>11</sup> *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962).

<sup>12</sup> *Id.*

conflicting rules and policies applicable to one suit from doing violence to those pertaining to the other.”<sup>13</sup>

14. Courts have established several factors to be considered in determining whether a stay is appropriate.<sup>14</sup> The current variation of these factors was first articulated in *Plumbers & Pipefitters*, and has been adopted and applied by District Courts within the Fifth Circuit:<sup>15</sup>

- (1) The extent to which the issues in the criminal case overlap with those presented in the civil case;
- (2) The status of the criminal case, including whether the criminal defendant has been indicted;
- (3) The private interests of the plaintiff in proceeding expeditiously weighed against the prejudice to plaintiff caused by the delay;
- (4) The private interests of and burden on the defendant;
- (5) The interests of the courts, and;
- (6) The public interest.<sup>16</sup>

**B. The factors weigh in favor of staying discovery to relieve the two officers of the impossible choice between (1) harming their criminal defense or (2) harming their civil defense.**

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

15. The first factor—the degree to which civil issues overlap with criminal issues—has been deemed the most important factor.<sup>17</sup> The primacy and importance of the overlap factor is because

---

<sup>13</sup> *Id.*

<sup>14</sup> See *Walker v. Wilburn*, No. 3:13-CV-4896-D, 2015 WL 5873392, at \*5 (N.D. Tex. Oct. 5, 2015) (citing *Heller Healthcare Fin., Inc. v. Boyes*, 2002 WL 1558337, at \*2 (N.D. Tex. July 15, 2020); see also *Trs. of Plumbers & Pipefitters Nat’l Pension Fund v. Transworld Mech. Inc.*, 886 F.Supp. 1134, 1139 (S.D. NY. 1995)(establishing current variation of test); see also *Golden Quality Ice Cream Co., Inc. v. Deerfield Specialty Papers, Inc.*, 87 F.R.D. 53 (E.D. Pa. 1980) (establishing initial test).

<sup>15</sup> See *Plumbers and Pipefitters*, 886 F.Supp at 1139; see also *Librado v. M.S. Carriers, Inc.*, CIV.A. 3:02-CV-2095D, 2002 WL 31495988, at \*1 (N.D. Tex. Nov. 5, 2002); see also *Alcala v. Tex. Webb County*, 625 F.Supp.2d 391, 398 – 99 (S.D. Tex. 2009); see also *Walker*, 2015 WL 5873392 at \*5.

<sup>16</sup> *Walker*, 2015 WL 5873392 at \*5; see also *Alcala* at 399; see also *Sec. & Exch. Comm’n v. Kiselak Capital Grp., LLC*, No. 4:09-CV-256-A, 2011 WL 4398443, at \*2; see also *Agueros*, 2008 WL 2937972, at \*1.

“[i]f there is no overlap, there would be no danger of self-incrimination and accordingly no need for a stay.”<sup>18</sup> A court should consider whether the defendant could effectively defend the civil lawsuit without being pressured into waiving his Fifth Amendment rights if no stay is entered.<sup>19</sup> Some courts have decided that the overlap factor weighs in favor of a stay simply because the subject matter of the two proceedings was substantially similar.<sup>20</sup> Courts have weighed this factor in favor of a stay even when the overlap of the issues was not “entirely coterminous.”<sup>21</sup>

16. The incident that forms the basis of this lawsuit and the incident that forms the basis of the subject criminal charges are the same incident—the use of deadly force against decedent DeSilva on July 31, 2019. Consequently, the factual overlap is a *fait accompli*, and the corresponding self-incrimination minefield inherent in sitting for a deposition in this civil suit for the two officers merits a stay of discovery until the criminal case has been adjudicated.

17. The conduct at issue in both legal actions is so intertwined as to make the legal aspect of the “overlap” factor likewise undeniable. Defendants have been indicted for the charge of first-degree murder. A person commits first-degree murder if he “intentionally or knowingly causes the death of an individual, [or] intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.”<sup>22</sup> The Texas Penal Code allows for a peace officer to use force against another person “when and to the degree the actor

---

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

<sup>18</sup> *AmeriFirst Funding, Inc.*, 2008 WL 866065, at \*2 (citing *Trs. of Plumbers & Pipefitters Nat’l Pension Fund*, 886 F.Supp. at 1139)).

<sup>19</sup> See *Alcala* at 400.

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

<sup>21</sup> *Heller Healthcare Fin., Inc.*, 2002 WL 1558337, at \*2.

<sup>22</sup> See Tex. Penal Code Ann. § 19.02 (West).

reasonably believes the force is immediately necessary to make or assist in making an arrest or search...if...the actor reasonably believes the arrest or search is lawful.”<sup>23</sup> Justification is a statutory defense that allows a jury to determine that a murder was justified because the defendant was acting in self-defense, or in defense of third persons.<sup>24</sup> The legal doctrines of self-defense, deadly force, and defense of third persons are covered in detail in the Texas Penal Code, and collectively consider the *reasonableness* of the defendants’ respective decisions to use force under the specific circumstances faced.<sup>25</sup>

18. Plaintiff’s Excessive Force claim in this civil case requires him to prove that decedent DeSilva: (1) suffered a physical injury; (2) which resulted directly and only from a use of force by Defendants while acting under color of State law that was clearly *excessive to the need*; and (3) the excessiveness of the force employed was *objectively unreasonable*.<sup>26</sup> Demonstrably, these legal tests for the criminal and civil cases overlap significantly—in that both require an examination of the force used against DeSilva and *whether that force was reasonable* under the circumstances. This legal overlap—arising from the exact same event and involving the exact same parties—reveals that these issues are effectively “coterminous.”<sup>27</sup>

19. Allowing civil discovery would force the two officers to—at minimum—give sworn deposition testimony about matters that would strike at the very heart of the legal elements at

---

<sup>23</sup> Tex. Penal Code Ann. § 9.51 (West).

<sup>24</sup> Tex. Penal Code Ann. § 9.02, 9.21—9.22 (West); *see also Crayton v. State*, No. 03-14-00570-CR, 2016 WL 6068250, at \*9 (Tex. App.—Austin Oct. 14, 2016, pet. ref’d).

<sup>25</sup> *See* Tex. Penal Code Ann. § 9.31-33

<sup>26</sup> *See Knight v. Caldwell*, 970 F.2d 1430, 1432, n.3 (5th Cir. 1992); *see also Johnson v. Morel*, 876 F.2d 477 (5th Cir. 1989).

<sup>27</sup> *Heller Healthcare Fin., Inc.*, 2002 WL 1558337, at \*2

issue in their parallel criminal proceedings.<sup>28</sup> Permitting civil discovery at this time will thus force the officers to choose between testifying under oath on matters directly implicated in their looming criminal trial, or asserting their Fifth Amendment rights and being unable to fully defend themselves in this lawsuit—precisely the scenario this factor seeks to avoid. In the context of that impossible decision, the first and most important overlap factor weighs *heavily* in favor of a stay of discovery.

**b. The “status of the criminal case” factor weighs in favor of a stay because the two officers are under active indictments.**

20. The second factor is the status of the criminal case.<sup>29</sup>

*“A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct for two reasons: first, the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued, and second, the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved due to Speedy Trial Act consideration.”*<sup>30</sup>

The “strongest case for a stay exists where a party is [*currently*] indicted for a serious offense and must defend a civil action involving the same matter.”<sup>31</sup> Whether the civil and criminal issues will overlap prior to an indictment is a mere “matter of speculation.”<sup>32</sup> Post-indictment, however, “is when the degree of overlap between a criminal and civil case can most readily be

---

<sup>28</sup> FED. R. CIV. P. 37 (Allowing civil parties to obtain Court orders compelling responses to interrogatories, requests for production, requests for admission and to compel a party to attend a deposition).

<sup>29</sup> See *Alcala* at 398; see also *Walker*, 2015 WL 5873392 at \*5.

<sup>30</sup> *Kiselak Capital Group, LLC*, 2011 WL 4398443, at \*2 (emphasis added); see also *S.E.C. v. Offill*, CIV. A.3:07-CV-1643-D, 2008 WL 958072, at \*2 (N.D. Tex. Apr. 9, 2008).

<sup>31</sup> *Id.* (emphasis added) (internal quotations removed); see also *Lizarraga v. City of Nogales Arizona*, 2007 WL 215616, at \*3 (D. Arizona, January 24, 2007).

<sup>32</sup> *Alcala* at 401.

determined.”<sup>33</sup> The criminal indictment “helps clarify the alleged conduct at issue and can be easily compared against the civil complaint.”<sup>34</sup>

21. This lawsuit does not deal with potential indictments. Defendants Krycia and Taylor are under active indictments for murder—the most serious of criminal charges—for the exact same conduct that forms the basis of the Plaintiff’s lawsuit. Due to the active indictments and the extremely serious nature of the criminal charges, the second factor—the status of the criminal case—weighs heavily in favor of granting the requested stay of discovery.

**c. Mere delay alone is legally insufficient to tip the “Plaintiff’s interests” factor against a stay, especially where—as here—the incident was captured via video footage.**

22. Courts recognize that a “civil plaintiff has an interest in the prompt resolution of its claims and in obtaining discovery while information is still fresh in witnesses’ minds.”<sup>35</sup> However, “[n]ormally in evaluating the plaintiff’s burden resulting from the stay, courts may insist that the plaintiff establish more prejudice than simply a delay in his right to expeditiously pursue his claim.”<sup>36</sup> Courts recognize that this allegation of prejudice is typically insufficient—even if the criminal case is “proceeding slowly and uncertainly, with no specific trial date,” because “Texas law recognizes a right to a speedy trial.”<sup>37</sup>

23. The events of this lawsuit were captured via video footage evidence, and video footage has no corresponding threat of degradation like that of a human witness’s memory. The relevant witnesses have likewise already been questioned and the evidence has already been collected and preserved. Moreover, the requested stay of discovery would not prevent or delay Plaintiff’s counsel from conducting discovery or depositions related to the claims made against Defendant

---

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See *Mutuals.com Inc.*, 2004 WL 1629929, at \*3.

<sup>36</sup> *Walker*, 2015 WL 5873392, at \*7 (citing *Alcala* at 397).

<sup>37</sup> *Librado*, 2002 WL 31495988, at \*2; see also *Walker*, 2015 WL 5873392 at \*7.

City of Austin, and thus there are plenty of available avenues for Plaintiff to work up and move this case forward during the pendency of the requested stay. Because mere delay alone is insufficient as a legal argument for this factor, any argument by Plaintiff that does not go beyond a mere temporal delay would thus fail to defeat the requested stay of discovery.<sup>38</sup>

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

24. The undersigned cannot overemphasize Officers Krycia and Taylor’s private interest in the stay requested herein. Facing the most serious criminal punishments available under Texas law, the officers will be scrutinized about their split-second decision to discharge their service weapons at a knife-wielding suspect—approaching from mere feet away—in the defense of themselves and the persons standing next to them.<sup>39</sup> The fourth factor considers the private interest of the defendant in securing a stay, and the burden that would result if the stay were denied.<sup>40</sup> *“[A]bsent a stay [the officer] faces a conflict between asserting his Fifth Amendment rights and fulfilling his legal obligations as a witness in this civil action. This conflict may be largely, if not completely, eliminated by granting a stay.”*<sup>41</sup> A defendant officer also has an interest in a stay “to avoid exposing [his] criminal defense strategy to the prosecution.”<sup>42</sup>

25. The insidious civil-law threat looming over these two officers—should they choose to invoke their Fifth Amendment Constitutional rights during depositions—is the potential for harmful adverse inferences. Legally, when a party invokes his or her Fifth Amendment privilege

---

<sup>38</sup> *See id.*

<sup>39</sup> *See* TEX. PENAL CODE § 19.02(c); *see also* TEX. PENAL CODE § 12.32 (statutorily setting the punishment range for felonies of the first degree as ranging up to life in prison).

<sup>40</sup> *Librado*, 2002 WL 31495988, at \*3; *see also Walker*, 2015 WL 5873392, at \*8.

<sup>41</sup> *See Librado v. M.S. Carriers, Inc.*, No. CIV.A. 3:02-CV-2095D, 2002 WL 31495988, at \*3 (N.D. Tex. Nov. 5, 2002) (emphasis added).

<sup>42</sup> *Walker*, 2015 WL 5873392, at \*8.

during a deposition, the invocation of such privilege is potentially admissible against the party, specifically as an inference wherein the jury may be allowed to interpret such invocation adversely against the invoking party.<sup>43</sup> Applied here in more direct terms, Plaintiff would have the right to petition this Court to allow the jury to hold it against Officers Krycia and Taylor that they refused to answer questions about their decision to shoot DeSilva, as if they had something to hide. Such an inference would likely be fatal for their civil defense.

26. In contrast, the insidious criminal-law threat looming over the officers—should they choose to ***not*** invoke their Fifth Amendment Constitutional rights during depositions—the officers will be scrutinized under oath for seven hours or more, thus creating potential murder trial impeachment evidence to be used against them regarding their split-second decision to use deadly force against a knife-wielding suspect.<sup>44</sup> The two officers would effectively be forced to choose between (1) the civil petit jury holding their decision not to testify against them; ***or*** (2) providing information and impeachment testimony that will make convicting them of first-degree murder more likely. ***The decision forces them to choose between rendering more likely either (1) financial liability or (2) a felony criminal conviction—there is no third alternative option, absent the granting of this motion.*** Like in *Librado* and in *Walker*, the officers’ dilemma of being forced to pick between the two testimonial poisons will be “largely, if not completely, eliminated by granting a stay of appropriate scope.”<sup>45</sup> The fourth factor of Defendants’ interests

---

<sup>43</sup> See *F.D.I.C. v. Fid. & Deposit Co. of Maryland*, 45 F.3d 969, 977 (5th Cir. 1995) (reiterating that courts have discretion as to whether to allow a party’s Fifth Amendment invocation into evidence, and permit an adverse inference to be drawn from the same).

<sup>44</sup> See Tex. Penal Code Ann. § 9.02, 9.21—9.22 (West) (Self-defense and Justification statutes at issue); see also *Crayton v. State*, No. 03-14-00570-CR, 2016 WL 6068250, at \*9 (Tex. App.—Austin Oct. 14, 2016, pet. ref’d) (explaining how Self-defense functions as a means of Justification within the Texas Penal Code).

<sup>45</sup> *Librado*, 2002 WL 31494988, at \*3; see also *Walker*, 2015 WL 5873392 at \*8.

consequently weighs in favor of granting the requested stay of discovery, as Officers Krycia and Taylor's interests are inexorably intertwined with the outcome of this motion.

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

27. The fifth factor takes this Court's own interests into account, including judicial efficiency.<sup>46</sup> While progressing civil cases on a docket is no doubt important, courts have recognized that “granting a stay of discovery serves the interests of the courts, because conducting the criminal proceedings first advances judicial economy.”<sup>47</sup> To advance judicial economy here, the Court should analyze whether—and to what extent—the outcome of the parallel criminal proceedings would “streamline” the issues in this lawsuit.<sup>48</sup> The judicial efficiency analysis also turns upon the degree of overlap between the criminal and civil cases, with an eye toward whether a conviction in the criminal case would “speak to the actual bases [sic] of liability” in the latter civil action.<sup>49</sup> Due to differences in the standards of proof between civil and criminal prosecutions, “the possibility always exists for a collateral estoppel or res judicata effect on some or all of the overlapping issues.”<sup>50</sup> Resolution of the criminal case consequently may also increase the likelihood of reaching a settlement that resolves the civil lawsuit outright.<sup>51</sup> All of the possible efficiencies discussed *supra* are palpable in the case at bar.

---

<sup>46</sup> *Offill*, 2008 WL 958072, at \*3

<sup>47</sup> *Id.*; *see also Walker*, 2015 WL 5873392 at \*8.

<sup>48</sup> *See Alcalá* at 406.

<sup>49</sup> *Id.*

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

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

The fifth factor of judicial efficiency consequently weighs in favor of granting the requested stay of discovery.

**f. The final “public interest” factor weighs in favor of a stay, because the public has an interest in preserving citizens’ abilities to invoke their Constitutional rights.**

28. The public has an interest in the just and Constitutional resolution of disputes with minimal delay.<sup>52</sup> However, that resolution must be weighed against the possibility that the “integrity” of a citizen’s Constitutional rights might be in jeopardy.<sup>53</sup> The Fifth Circuit has also recognized that the public has an interest in protecting law enforcement, and “ensuring the criminal discovery process is not subverted.”<sup>54</sup> Considering these principles, the public interest factor also weighs in favor of granting Officers Krycia and Taylor’s requested stay. The public has a vested interest in maintaining the integrity of a citizen’s choice to invoke the Fifth Amendment—and in being shielded from the unavoidable tainting of that Constitutional right discussed *supra* if this motion is not granted.<sup>55</sup> The public interest factor thus likewise weighs in favor of granting the requested temporary stay of discovery until the criminal parallel proceedings have concluded.

**IV. PRAYER**

29. WHEREFORE, PREMISES CONSIDERED, Defendants Karl Krycia and Christopher Taylor respectfully request that this Court grant their motion to temporarily stay civil discovery as it pertains to them, and for all other relief to which they may justly be entitled in law or equity.

Respectfully submitted,

---

<sup>52</sup> See *Collins*, 2011 WL 3874910, at \*4; see also *Librado*, 2002 WL 31495988, at \*3; see also *Frierson v. City of Terrell*, CIV.A.3:02CV2340-H, 2003 WL 21355969, at \*4 (N.D. Tex. June 6, 2003).

<sup>53</sup> *Frierson*, 2003 WL 21355969, at \*4.

<sup>54</sup> *Offill*, 2008 WL 958072, at \*4 (citing *Campbell* at 487).

<sup>55</sup> See *Campbell*, 307 F.2d at 487.







## FOR IMMEDIATE RELEASE

August 27, 2021

Re: Statement from Defense Counsel for Austin Police Officer Chris Taylor

Yesterday a Travis County grand jury under the direction of District Attorney Jose Garza indicted Officer Christopher Taylor for Murder. The incident in question occurred on over two years ago on July 31, 2019.

Officer Taylor responded to a 911 call of a man armed with a knife inside a residential condominium. Officer Taylor took an elevator to the appropriate floor and, after the elevator doors opened, the man approached Officer Taylor still armed with the knife. The man refused to drop the knife as instructed. He advanced to within three to four feet of Officer Taylor before Officer Taylor had no choice but to use deadly force to protect himself. What happened was undoubtedly tragic, particularly if it is true the man was experiencing a psychiatric episode, but in no way was this murder.

We have spoken with Dr. Howard Williams, a use of force expert consulted by the DA's Office in this case and several other police officer cases. We know Dr. Williams advised the DA's office that Officer Taylor's use of deadly force was appropriate and legally justified. We also know DA Garza did not let Dr. Williams testify for the grand jury. We believe this to be a continuation of DA Garza's pattern of controlling what the grand jury sees and excluding certain evidence not calculated to produce an indictment.

Until now we have refrained from accusing District Attorney Jose Garza of waging a war on police officers. After today's two new murder indictments, we do not know how else to characterize what he is doing.

Officer Taylor will be exonerated by a jury.

**PRESS CONFERENCE TODAY AT 2:30. 505 WEST 12<sup>TH</sup> STREET, SUITE 200, AUSTIN, TX 78701.**

Signed,

Ken Ervin & Doug O'Connell  
Attorneys Chris Taylor

Ken Ervin  
(512) 476-4475  
[ken@ervinlaw.com](mailto:ken@ervinlaw.com)

Doug O'Connell  
(512) 547-7256  
[doug@dougoconnell.com](mailto:doug@dougoconnell.com)

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

ATHIGE DENZIL, Individually,	§	
As Heir at Law to the ESTATE OF	§	
DR. MAURIS DESILVA, and on behalf	§	
OF ALL WRONGFUL DEATH	§	
BENEFICIARIES,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 1:21-cv-00129-RP
	§	
CHRISTOPHER TAYLOR,	§	
KARL KRYCIA AND	§	
THE CITY OF AUSTIN,	§	
<i>Defendants.</i>	§	

---

**ORDER GRANTING DEFENDANTS KARL KRYCIA AND  
CHRISTOPHER TAYLOR’S MOTION TO STAY DISCOVERY**

---

CAME ON to be heard Defendants Karl Krycia and Christopher Taylor’s Motion to Stay Discovery. After considering said Motion and the response of Plaintiff, if any, the Court is of the opinion that the Motion should be GRANTED. Discovery as to Defendants Krycia and Taylor shall hereby be stayed until the resolution of their criminal proceedings.

It is therefore, ORDERED, ADJUDGED AND DECREED that Defendants Karl Krycia and Christopher Taylor’s Motion to Stay Discovery is GRANTED.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

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

ATHIGE DENZIL, Individually,	§	
As Heir at Law to the ESTATE OF	§	
DR. MAURIS DESILVA, and on behalf	§	
OF ALL WRONGFUL DEATH	§	
BENEFICIARIES,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 1:21-cv-00129-RP
	§	
CHRISTOPHER TAYLOR,	§	
KARL KRYCIA AND	§	
THE CITY OF AUSTIN,	§	
<i>Defendants.</i>	§	

---

**ORDER GRANTING DEFENDANTS KARL KRYCIA AND CHRISTOPHER  
TAYLOR’S UNOPPOSED MOTION FOR LEAVE TO EXCEED PAGE LIMIT OF  
DEFENDANTS’ MOTION TO STAY DISCOVERY**

---

CAME ON this day to be heard Defendants Karl Krycia and Christopher Taylor’s Unopposed Motion for Leave to Exceed Page Limit of Defendants’ Motion to Stay Discovery. After considering said motion and the response of Plaintiff, if any, the Court is of the opinion that the Motion should be GRANTED.

It is therefore, ORDERED, ADJUDGED AND DECREED that Defendants Karl Krycia and Christopher Taylor’s Motion for Leave to Exceed Page Limit of Defendants’ Motion to Stay Discovery is GRANTED.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

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

ATHIGE DENZIL, Individually,	§	
As Heir at Law to the ESTATE OF	§	
DR. MAURIS DESILVA, and on behalf	§	
OF ALL WRONGFUL DEATH	§	
BENEFICIARIES,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 1:21-cv-00129-RP
	§	
CHRISTOPHER TAYLOR,	§	
KARL KRYCIA AND	§	
THE CITY OF AUSTIN,	§	
<i>Defendants.</i>	§	

---

**DEFENDANTS KARL KRYCIA AND CHRISTOPHER TAYLOR’S  
MOTION TO STAY DISCOVERY**

---

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendants Karl Krycia and Christopher Taylor, and files this, their motion to stay discovery pending the resolution of their criminal case, and would respectfully show the Court as follows:

## I. SUMMARY OF THE ARGUMENT

1. Officers Karl Krycia and Christopher Taylor each made a split-second decision to use deadly force to stop a knife-wielding suspect walking toward an elevator full of people, and waited to do so until the suspect was only a few feet away from the potential victims. Both officers have now been indicted for first-degree murder for their efforts by Travis County District Attorney Jose Garza—with serious concerns beginning to surface about how the case was presented to the grand jury. Defendants respectfully request that this Court exercise its discretion to stay discovery in this civil suit until they have had the chance to vigorously defend themselves in the upcoming criminal trial.

2. If the requested stay is not granted, the officers will be forced with an impossible decision between two—*and only two*—options during depositions and discovery. First, the officers can invoke their Fifth Amendment rights, which will then allow Plaintiff to ask for the right for the jury to know of their Constitutional refusal to testify, and to hold that refusal against them in reaching their verdict. The officers' only other option would be to testify fully during depositions to vigorously defend this suit, which would correspondingly weaken their criminal defense by, for example, providing impeachment evidence for the prosecutors to use at Defendants' murder trial. There will be no third option available to the officers if this motion is not granted. If this case is not stayed, harm to one case or the other will be all but inevitable. In contrast, the officers' impossible dilemma will be “largely, if not completely, eliminated by granting a stay of appropriate scope.” Defendants respectfully request that this Court grant a stay of discovery to relieve them of the insidious legal dilemma currently looming over them.

## II. BACKGROUND

### A. The use of force against Mauris DeSilva.

3. This lawsuit arises out of the death of a knife-wielding suspect, decedent Mauris DeSilva.<sup>1</sup> On July 31, 2019, multiple people called the Austin 911 emergency line to report that a man was brandishing a knife and acting erratically at the Spring Condominiums in downtown Austin. Dispatch broadcasted the information to nearby APD police officers over police radio channels. APD Officers Karl Krycia and Christopher Taylor—the two individual defendants herein—took the call, and were thus shouldered with the unenviable task of preventing an erratic, knife-wielding man from harming himself or others. Once they arrived and had been joined by two other responding officers, a condominium employee informed them that the suspect was acting “unstable,” that he was “known to be unstable,” and that the man appeared to be brandishing a large kitchen knife at or near other residents.

4. Officers Krycia and Taylor also learned that the man had first been spotted standing outside beating on emergency doors while brandishing his knife. A condominium employee told them that he had attempted—but failed—to disable the man’s key fob to prevent him from entering the building with his knife, ostensibly because an unstable knife-wielding man constituted a deadly threat to the condominium’s employees and residents.

5. The officers were told that the knife-wielding man subsequently entered the condominium building and were provided information leading them to believe the man had barricaded himself inside his own condominium. At that point, the officers made the decision to wait for additional resources to arrive before engaging the barricaded suspect.

---

<sup>1</sup> Defense counsel has chosen not to provide any primary source documents and video footage pertaining to the underlying incident because such evidence is not necessary for this Court to rule on this motion. However, defense counsel is ready and willing to supplement this motion with all such supporting documents and footage if this Court so desires.

6. However, the officers soon learned that the man had exited his room and travelled to the fifth floor, where the condominium's gym and other shared spaces are located. Suddenly, what the officers believed was a stable "lone barricaded suspect" situation had now evolved into an imminently dangerous situation. The erratic, knife-wielding suspect was now moving freely through the common areas of an occupied residential building, and swift action was needed.

7. The officers also learned that the man had been seen menacingly waving his knife at security cameras, which further concerned the officers regarding the man's intentions. APD Officer Cast began watching the live surveillance footage on a nearby screen and relayed to the other officers that the man did appear to be on the fifth floor—the floor with the shared and common areas of the condominium—and that he was indeed brandishing his knife toward the camera.

8. The officers quickly put together a plan to confront the man to try and prevent him from physically harming or killing anyone. Officer Phillip Zuniga was designated to verbally engage and, if necessary, attempt to physically subdue the man. Officer Joseph Cast was designated to prepare to use less lethal force in the form of a Taser, if necessary. Officers Krycia and Taylor were assigned with the task of preparing—as a last resort—to use lethal force if the knife-wielding man acted in a manner that posed an imminent threat of death or serious bodily injury to another. The condominium's private security guard and the four police officers all entered the elevator and travelled to the fifth floor with their assigned roles in mind.

9. As soon as the elevator doors opened, the knife-wielding man appeared standing almost directly in front of the officers—not even two quick steps away from stabbing distance to the people inside the elevator. The officers immediately instructed the man to drop the knife. Instead of dropping the knife, the man began walking *toward* the officers while still holding the knife in

his hand. Still issuing commands, the officers waited until the knife-wielding man was almost within arm's reach before finally discharging their weapons in defense of both themselves and the other people in the elevator with them.

**B. After Officers Krycia and Taylor were cleared of wrongdoing by APD. Subsequently, District Attorney Jose Garza campaigned on promises to aggressively prosecute first responders, was elected, and then indicted both officers.**

10. Officers Krycia and Taylor's uses of force against DeSilva were investigated and cleared by the Austin Police Department. Almost a year and a half after the incident at issue, Jose Garza was elected to serve as the Travis County District Attorney. District Attorney Garza's campaign was largely based on promises that suggested he would aggressively prosecute police officers, and he actively criticized the incumbent and now former District Attorney, for not having prosecuted and convicted more police officers during her term in office.<sup>2</sup> After Garza was elected, his office posted a prosecutor job opening looking for a candidate who is committed to "prosecuting [criminal cases against police officers], even when the prosecution is not favored by all stakeholders," and who would maintain a "do not call" list that would purportedly blacklist local police officers from testifying in court to aid in the conviction of suspected criminals.<sup>3</sup> During his less-than-one-year term in office, District Attorney Garza's office has indicted 13

---

<sup>2</sup> See e.g. Katie Hall, *Between primary and protests, focus of Travis County DA's race shifts to police reform*, AUSTIN AMERICAN STATESMAN (June 29, 2020, 3:20 PM), available at <https://www.statesman.com/story/news/local/2020/06/29/between-primary-and-protests-focus-of-travis-county-darsquos-race-shifts-to-police-reform/113728354/>.

<sup>3</sup> Job posting for "Civil Rights Team Lead – Attorney VII," dated May 7, 2021, available at [https://media.kvue.com/assets/KVUE/images/86020977-6a49-4016-bcf3-173ef91dae96/86020977-6a49-4016-bcf3-173ef91dae96\\_1140x641.jpg](https://media.kvue.com/assets/KVUE/images/86020977-6a49-4016-bcf3-173ef91dae96/86020977-6a49-4016-bcf3-173ef91dae96_1140x641.jpg).

local first responders, and has scheduled criminal grand jury presentations for roughly another 40 other local first responders to take place in the near future.<sup>4</sup>

11. The District Attorney's office consulted with Dr. Howard Williams as a use of force expert to review the use of deadly force against DeSilva described herein. *Dr. Williams allegedly advised the District Attorney's office that the force used was appropriate and legally justified under the circumstances.*<sup>5</sup> Garza allegedly responded to his force consultant's analysis by refusing to allow Dr. Williams—nor the officers themselves—to testify at the grand jury presentation.<sup>6</sup> The grand jury presentation—seemingly curated to omit any information or analysis that might have cleared the officers or provided their own perceptions related to the legal doctrines of self-defense and justification—unsurprisingly led to an indictment of both officers for the crime of first-degree murder.<sup>7</sup>

12. Defendants' collective legal counsel have serious concerns about proceeding forward with civil discovery before their respective client's criminal case has resolved because of the very real and unjust peril of the two officers being forced to choose between either: (1) asserting their Fifth Amendment rights, which would consequently cripple the Defendants' ability to vigorously defend this civil suit; *or* (2) waive their respective Constitutional rights, testify in

---

<sup>4</sup> *District Attorney's September 13, 2021 Press Release*, pg. 4, available at [https://www.traviscountytexas.gov/images/district\\_attorney/docs/Press\\_Releases/2021/Case\\_Summaries\\_September\\_13.pdf](https://www.traviscountytexas.gov/images/district_attorney/docs/Press_Releases/2021/Case_Summaries_September_13.pdf).

<sup>5</sup> See **Ex. 1**, August 27, 2021 Press Release, by Ken Ervin and Doug O'Connell, criminal defense attorneys for Officer Christopher Taylor; see also Marisa Charpentier, *Austin Police Officer Who Shot Mike Ramos Indicted On a Second Murder Charge*, KUT (August 27, 2021, 5:37 PM), available at <https://www.kut.org/crime-justice/2021-08-27/austin-police-officer-who-shot-mike-ramos-indicted-on-a-second-murder-charge>.

<sup>6</sup> *Id.*

<sup>7</sup> See Tony Plohetski and Katie Hall, *2 Austin police officers indicted on murder charges*, AUSTIN AMERICAN STATESMAN (August 27, 2020, 3:20 PM), available at <https://www.statesman.com/story/news/2021/08/27/austin-police-officer-michael-ramos-shooting-indicted-second-murder-charge/5608063001/>.

discovery herein, and consequently cripple Defendants' ability to vigorously defend against the criminal first-degree murder charges looming over them. Defendants accordingly move this Court for a temporary stay of all discovery in this civil lawsuit as it pertains to the individual Defendants in order to ensure that they are able to fully defend themselves in *both* legal actions.

### **III. ARGUMENTS & AUTHORITIES**

13. “There’s no question that a district judge can stay a federal civil rights case pending the resolution of a defendant’s parallel criminal proceeding.”<sup>8</sup> As a demonstrative example, this Court recently granted a stay of discovery for several individual defendants in the *Javier Ambler v. Williamson County, et al.*, civil suit based on the existence of ongoing parallel criminal proceedings for several of the individual defendants therein, as well as in other pending civil suits.<sup>9</sup> Courts are empowered to utilize discretion on such motions “when the interests of justice seems to require such action.”<sup>10</sup> In *Campbell*, the Fifth Circuit admonished district courts to “be sensitive to the difference in the rules of discovery in civil and criminal cases.”<sup>11</sup> “While the Federal Rules of Civil Procedure have provided a well-stocked battery of discovery procedures, the rules governing criminal discovery are far more restrictive.”<sup>12</sup> The Fifth Circuit further advised that “in ruling on requests for stays of the civil side of parallel civil/criminal proceedings, [j]udicial discretion and procedural flexibility should be utilized to harmonize the

---

<sup>8</sup> *Agueros v. Vargas*, CIV A SA07-CV0994 XR, 2008 WL 2937972, \*1 (W.D. Tex. July 21, 2008); see also *United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983).

<sup>9</sup> See Order, *Ambler v. Williamson County*, 1:20-cv-01068-LY (W.D. Tex. July 27, 2021), Dkt. # 89; see also e.g. Text Order, *Nembhard v. Williamson County*, 1:21-cv-00350-RP (W.D. Tex. Aug. 26, 2021).

<sup>10</sup> *United States v. Kordel*, 397 U.S. 1, 12, n. 27 (1970).

<sup>11</sup> *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962).

<sup>12</sup> *Id.*

conflicting rules and policies applicable to one suit from doing violence to those pertaining to the other.”<sup>13</sup>

14. Courts have established several factors to be considered in determining whether a stay is appropriate.<sup>14</sup> The current variation of these factors was first articulated in *Plumbers & Pipefitters*, and has been adopted and applied by District Courts within the Fifth Circuit:<sup>15</sup>

- (1) The extent to which the issues in the criminal case overlap with those presented in the civil case;
- (2) The status of the criminal case, including whether the criminal defendant has been indicted;
- (3) The private interests of the plaintiff in proceeding expeditiously weighed against the prejudice to plaintiff caused by the delay;
- (4) The private interests of and burden on the defendant;
- (5) The interests of the courts, and;
- (6) The public interest.<sup>16</sup>

**B. The factors weigh in favor of staying discovery to relieve the two officers of the impossible choice between (1) harming their criminal defense or (2) harming their civil defense.**

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

15. The first factor—the degree to which civil issues overlap with criminal issues—has been deemed the most important factor.<sup>17</sup> The primacy and importance of the overlap factor is because

---

<sup>13</sup> *Id.*

<sup>14</sup> See *Walker v. Wilburn*, No. 3:13-CV-4896-D, 2015 WL 5873392, at \*5 (N.D. Tex. Oct. 5, 2015) (citing *Heller Healthcare Fin., Inc. v. Boyes*, 2002 WL 1558337, at \*2 (N.D. Tex. July 15, 2020); see also *Trs. of Plumbers & Pipefitters Nat’l Pension Fund v. Transworld Mech. Inc.*, 886 F.Supp. 1134, 1139 (S.D. NY. 1995)(establishing current variation of test); see also *Golden Quality Ice Cream Co., Inc. v. Deerfield Specialty Papers, Inc.*, 87 F.R.D. 53 (E.D. Pa. 1980) (establishing initial test).

<sup>15</sup> See *Plumbers and Pipefitters*, 886 F.Supp at 1139; see also *Librado v. M.S. Carriers, Inc.*, CIV.A. 3:02-CV-2095D, 2002 WL 31495988, at \*1 (N.D. Tex. Nov. 5, 2002); see also *Alcala v. Tex. Webb County*, 625 F.Supp.2d 391, 398 – 99 (S.D. Tex. 2009); see also *Walker*, 2015 WL 5873392 at \*5.

<sup>16</sup> *Walker*, 2015 WL 5873392 at \*5; see also *Alcala* at 399; see also *Sec. & Exch. Comm’n v. Kiselak Capital Grp., LLC*, No. 4:09-CV-256-A, 2011 WL 4398443, at \*2; see also *Agueros*, 2008 WL 2937972, at \*1.

“[i]f there is no overlap, there would be no danger of self-incrimination and accordingly no need for a stay.”<sup>18</sup> A court should consider whether the defendant could effectively defend the civil lawsuit without being pressured into waiving his Fifth Amendment rights if no stay is entered.<sup>19</sup> Some courts have decided that the overlap factor weighs in favor of a stay simply because the subject matter of the two proceedings was substantially similar.<sup>20</sup> Courts have weighed this factor in favor of a stay even when the overlap of the issues was not “entirely coterminous.”<sup>21</sup>

16. The incident that forms the basis of this lawsuit and the incident that forms the basis of the subject criminal charges are the same incident—the use of deadly force against decedent DeSilva on July 31, 2019. Consequently, the factual overlap is a *fait accompli*, and the corresponding self-incrimination minefield inherent in sitting for a deposition in this civil suit for the two officers merits a stay of discovery until the criminal case has been adjudicated.

17. The conduct at issue in both legal actions is so intertwined as to make the legal aspect of the “overlap” factor likewise undeniable. Defendants have been indicted for the charge of first-degree murder. A person commits first-degree murder if he “intentionally or knowingly causes the death of an individual, [or] intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.”<sup>22</sup> The Texas Penal Code allows for a peace officer to use force against another person “when and to the degree the actor

---

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

<sup>18</sup> *AmeriFirst Funding, Inc.*, 2008 WL 866065, at \*2 (citing *Trs. of Plumbers & Pipefitters Nat’l Pension Fund*, 886 F.Supp. at 1139)).

<sup>19</sup> See *Alcala* at 400.

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

<sup>21</sup> *Heller Healthcare Fin., Inc.*, 2002 WL 1558337, at \*2.

<sup>22</sup> See Tex. Penal Code Ann. § 19.02 (West).

reasonably believes the force is immediately necessary to make or assist in making an arrest or search...if...the actor reasonably believes the arrest or search is lawful.”<sup>23</sup> Justification is a statutory defense that allows a jury to determine that a murder was justified because the defendant was acting in self-defense, or in defense of third persons.<sup>24</sup> The legal doctrines of self-defense, deadly force, and defense of third persons are covered in detail in the Texas Penal Code, and collectively consider the *reasonableness* of the defendants’ respective decisions to use force under the specific circumstances faced.<sup>25</sup>

18. Plaintiff’s Excessive Force claim in this civil case requires him to prove that decedent DeSilva: (1) suffered a physical injury; (2) which resulted directly and only from a use of force by Defendants while acting under color of State law that was clearly *excessive to the need*; and (3) the excessiveness of the force employed was *objectively unreasonable*.<sup>26</sup> Demonstrably, these legal tests for the criminal and civil cases overlap significantly—in that both require an examination of the force used against DeSilva and *whether that force was reasonable* under the circumstances. This legal overlap—arising from the exact same event and involving the exact same parties—reveals that these issues are effectively “coterminous.”<sup>27</sup>

19. Allowing civil discovery would force the two officers to—at minimum—give sworn deposition testimony about matters that would strike at the very heart of the legal elements at

---

<sup>23</sup> Tex. Penal Code Ann. § 9.51 (West).

<sup>24</sup> Tex. Penal Code Ann. § 9.02, 9.21—9.22 (West); *see also Crayton v. State*, No. 03-14-00570-CR, 2016 WL 6068250, at \*9 (Tex. App.—Austin Oct. 14, 2016, pet. ref’d).

<sup>25</sup> *See* Tex. Penal Code Ann. § 9.31-33

<sup>26</sup> *See Knight v. Caldwell*, 970 F.2d 1430, 1432, n.3 (5th Cir. 1992); *see also Johnson v. Morel*, 876 F.2d 477 (5th Cir. 1989).

<sup>27</sup> *Heller Healthcare Fin., Inc.*, 2002 WL 1558337, at \*2

issue in their parallel criminal proceedings.<sup>28</sup> Permitting civil discovery at this time will thus force the officers to choose between testifying under oath on matters directly implicated in their looming criminal trial, or asserting their Fifth Amendment rights and being unable to fully defend themselves in this lawsuit—precisely the scenario this factor seeks to avoid. In the context of that impossible decision, the first and most important overlap factor weighs *heavily* in favor of a stay of discovery.

**b. The “status of the criminal case” factor weighs in favor of a stay because the two officers are under active indictments.**

20. The second factor is the status of the criminal case.<sup>29</sup>

*“A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct for two reasons: first, the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued, and second, the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved due to Speedy Trial Act consideration.”*<sup>30</sup>

The “strongest case for a stay exists where a party is [*currently*] indicted for a serious offense and must defend a civil action involving the same matter.”<sup>31</sup> Whether the civil and criminal issues will overlap prior to an indictment is a mere “matter of speculation.”<sup>32</sup> Post-indictment, however, “is when the degree of overlap between a criminal and civil case can most readily be

---

<sup>28</sup> FED. R. CIV. P. 37 (Allowing civil parties to obtain Court orders compelling responses to interrogatories, requests for production, requests for admission and to compel a party to attend a deposition).

<sup>29</sup> See *Alcala* at 398; see also *Walker*, 2015 WL 5873392 at \*5.

<sup>30</sup> *Kiselak Capital Group, LLC*, 2011 WL 4398443, at \*2 (emphasis added); see also *S.E.C. v. Offill*, CIV. A.3:07-CV-1643-D, 2008 WL 958072, at \*2 (N.D. Tex. Apr. 9, 2008).

<sup>31</sup> *Id.* (emphasis added) (internal quotations removed); see also *Lizarraga v. City of Nogales Arizona*, 2007 WL 215616, at \*3 (D. Arizona, January 24, 2007).

<sup>32</sup> *Alcala* at 401.

determined.”<sup>33</sup> The criminal indictment “helps clarify the alleged conduct at issue and can be easily compared against the civil complaint.”<sup>34</sup>

21. This lawsuit does not deal with potential indictments. Defendants Krycia and Taylor are under active indictments for murder—the most serious of criminal charges—for the exact same conduct that forms the basis of the Plaintiff’s lawsuit. Due to the active indictments and the extremely serious nature of the criminal charges, the second factor—the status of the criminal case—weighs heavily in favor of granting the requested stay of discovery.

**c. Mere delay alone is legally insufficient to tip the “Plaintiff’s interests” factor against a stay, especially where—as here—the incident was captured via video footage.**

22. Courts recognize that a “civil plaintiff has an interest in the prompt resolution of its claims and in obtaining discovery while information is still fresh in witnesses’ minds.”<sup>35</sup> However, “[n]ormally in evaluating the plaintiff’s burden resulting from the stay, courts may insist that the plaintiff establish more prejudice than simply a delay in his right to expeditiously pursue his claim.”<sup>36</sup> Courts recognize that this allegation of prejudice is typically insufficient—even if the criminal case is “proceeding slowly and uncertainly, with no specific trial date,” because “Texas law recognizes a right to a speedy trial.”<sup>37</sup>

23. The events of this lawsuit were captured via video footage evidence, and video footage has no corresponding threat of degradation like that of a human witness’s memory. The relevant witnesses have likewise already been questioned and the evidence has already been collected and preserved. Moreover, the requested stay of discovery would not prevent or delay Plaintiff’s counsel from conducting discovery or depositions related to the claims made against Defendant

---

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *See Mutuals.com Inc.*, 2004 WL 1629929, at \*3.

<sup>36</sup> *Walker*, 2015 WL 5873392, at \*7 (citing *Alcala* at 397).

<sup>37</sup> *Librado*, 2002 WL 31495988, at \*2; *see also Walker*, 2015 WL 5873392 at \*7.

City of Austin, and thus there are plenty of available avenues for Plaintiff to work up and move this case forward during the pendency of the requested stay. Because mere delay alone is insufficient as a legal argument for this factor, any argument by Plaintiff that does not go beyond a mere temporal delay would thus fail to defeat the requested stay of discovery.<sup>38</sup>

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

24. The undersigned cannot overemphasize Officers Krycia and Taylor’s private interest in the stay requested herein. Facing the most serious criminal punishments available under Texas law, the officers will be scrutinized about their split-second decision to discharge their service weapons at a knife-wielding suspect—approaching from mere feet away—in the defense of themselves and the persons standing next to them.<sup>39</sup> The fourth factor considers the private interest of the defendant in securing a stay, and the burden that would result if the stay were denied.<sup>40</sup> *“[A]bsent a stay [the officer] faces a conflict between asserting his Fifth Amendment rights and fulfilling his legal obligations as a witness in this civil action. This conflict may be largely, if not completely, eliminated by granting a stay.”*<sup>41</sup> A defendant officer also has an interest in a stay “to avoid exposing [his] criminal defense strategy to the prosecution.”<sup>42</sup>

25. The insidious civil-law threat looming over these two officers—should they choose to invoke their Fifth Amendment Constitutional rights during depositions—is the potential for harmful adverse inferences. Legally, when a party invokes his or her Fifth Amendment privilege

---

<sup>38</sup> *See id.*

<sup>39</sup> *See* TEX. PENAL CODE § 19.02(c); *see also* TEX. PENAL CODE § 12.32 (statutorily setting the punishment range for felonies of the first degree as ranging up to life in prison).

<sup>40</sup> *Librado*, 2002 WL 31495988, at \*3; *see also Walker*, 2015 WL 5873392, at \*8.

<sup>41</sup> *See Librado v. M.S. Carriers, Inc.*, No. CIV.A. 3:02-CV-2095D, 2002 WL 31495988, at \*3 (N.D. Tex. Nov. 5, 2002) (emphasis added).

<sup>42</sup> *Walker*, 2015 WL 5873392, at \*8.

during a deposition, the invocation of such privilege is potentially admissible against the party, specifically as an inference wherein the jury may be allowed to interpret such invocation adversely against the invoking party.<sup>43</sup> Applied here in more direct terms, Plaintiff would have the right to petition this Court to allow the jury to hold it against Officers Krycia and Taylor that they refused to answer questions about their decision to shoot DeSilva, as if they had something to hide. Such an inference would likely be fatal for their civil defense.

26. In contrast, the insidious criminal-law threat looming over the officers—should they choose to ***not*** invoke their Fifth Amendment Constitutional rights during depositions—the officers will be scrutinized under oath for seven hours or more, thus creating potential murder trial impeachment evidence to be used against them regarding their split-second decision to use deadly force against a knife-wielding suspect.<sup>44</sup> The two officers would effectively be forced to choose between (1) the civil petit jury holding their decision not to testify against them; ***or*** (2) providing information and impeachment testimony that will make convicting them of first-degree murder more likely. ***The decision forces them to choose between rendering more likely either (1) financial liability or (2) a felony criminal conviction—there is no third alternative option, absent the granting of this motion.*** Like in *Librado* and in *Walker*, the officers’ dilemma of being forced to pick between the two testimonial poisons will be “largely, if not completely, eliminated by granting a stay of appropriate scope.”<sup>45</sup> The fourth factor of Defendants’ interests

---

<sup>43</sup> See *F.D.I.C. v. Fid. & Deposit Co. of Maryland*, 45 F.3d 969, 977 (5th Cir. 1995) (reiterating that courts have discretion as to whether to allow a party’s Fifth Amendment invocation into evidence, and permit an adverse inference to be drawn from the same).

<sup>44</sup> See Tex. Penal Code Ann. § 9.02, 9.21—9.22 (West) (Self-defense and Justification statutes at issue); see also *Crayton v. State*, No. 03-14-00570-CR, 2016 WL 6068250, at \*9 (Tex. App.—Austin Oct. 14, 2016, pet. ref’d) (explaining how Self-defense functions as a means of Justification within the Texas Penal Code).

<sup>45</sup> *Librado*, 2002 WL 31494988, at \*3; see also *Walker*, 2015 WL 5873392 at \*8.

consequently weighs in favor of granting the requested stay of discovery, as Officers Krycia and Taylor's interests are inexorably intertwined with the outcome of this motion.

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

27. The fifth factor takes this Court's own interests into account, including judicial efficiency.<sup>46</sup> While progressing civil cases on a docket is no doubt important, courts have recognized that "granting a stay of discovery serves the interests of the courts, because conducting the criminal proceedings first advances judicial economy."<sup>47</sup> To advance judicial economy here, the Court should analyze whether—and to what extent—the outcome of the parallel criminal proceedings would "streamline" the issues in this lawsuit.<sup>48</sup> The judicial efficiency analysis also turns upon the degree of overlap between the criminal and civil cases, with an eye toward whether a conviction in the criminal case would "speak to the actual bases [sic] of liability" in the latter civil action.<sup>49</sup> Due to differences in the standards of proof between civil and criminal prosecutions, "the possibility always exists for a collateral estoppel or res judicata effect on some or all of the overlapping issues."<sup>50</sup> Resolution of the criminal case consequently may also increase the likelihood of reaching a settlement that resolves the civil lawsuit outright.<sup>51</sup> All of the possible efficiencies discussed *supra* are palpable in the case at bar.

---

<sup>46</sup> *Offill*, 2008 WL 958072, at \*3

<sup>47</sup> *Id.*; see also *Walker*, 2015 WL 5873392 at \*8.

<sup>48</sup> See *Alcala* at 406.

<sup>49</sup> *Id.*

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

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

The fifth factor of judicial efficiency consequently weighs in favor of granting the requested stay of discovery.

**f. The final “public interest” factor weighs in favor of a stay, because the public has an interest in preserving citizens’ abilities to invoke their Constitutional rights.**

28. The public has an interest in the just and Constitutional resolution of disputes with minimal delay.<sup>52</sup> However, that resolution must be weighed against the possibility that the “integrity” of a citizen’s Constitutional rights might be in jeopardy.<sup>53</sup> The Fifth Circuit has also recognized that the public has an interest in protecting law enforcement, and “ensuring the criminal discovery process is not subverted.”<sup>54</sup> Considering these principles, the public interest factor also weighs in favor of granting Officers Krycia and Taylor’s requested stay. The public has a vested interest in maintaining the integrity of a citizen’s choice to invoke the Fifth Amendment—and in being shielded from the unavoidable tainting of that Constitutional right discussed *supra* if this motion is not granted.<sup>55</sup> The public interest factor thus likewise weighs in favor of granting the requested temporary stay of discovery until the criminal parallel proceedings have concluded.

#### **IV. PRAYER**

29. WHEREFORE, PREMISES CONSIDERED, Defendants Karl Krycia and Christopher Taylor respectfully request that this Court grant their motion to temporarily stay civil discovery as it pertains to them, and for all other relief to which they may justly be entitled in law or equity.

Respectfully submitted,

---

<sup>52</sup> See *Collins*, 2011 WL 3874910, at \*4; see also *Librado*, 2002 WL 31495988, at \*3; see also *Frierson v. City of Terrell*, CIV.A.3:02CV2340-H, 2003 WL 21355969, at \*4 (N.D. Tex. June 6, 2003).

<sup>53</sup> *Frierson*, 2003 WL 21355969, at \*4.

<sup>54</sup> *Offill*, 2008 WL 958072, at \*4 (citing *Campbell* at 487).

<sup>55</sup> See *Campbell*, 307 F.2d at 487.





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

ATHIGE DENZIL DESILVA, individually, §  
as heir at law to the ESTATE OF §  
DR. MAURIS DESILVA, and on behalf §  
of all wrongful death beneficiaries, §  
Plaintiff, §  
§  
V §  
§  
CHRISTOPHER TAYLOR, §  
KARL KRYCIA, & §  
THE CITY OF AUSTIN, §  
Defendants. §  
§

Case No. 1:21-cv-00129-RP

**PLAINTIFF'S RESPONSE TO DEFENDANT KARL KRYCIA'S AND CHRISTOPHER  
TAYLOR'S MOTION TO STAY DISCOVERY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Athiga Denzil DeSilva ("Plaintiff"), Plaintiff in the above styled and numbered cause, and files this, his Response to Defendant Krycia and Taylor's Motion to Stay Discovery. Plaintiff would show as follows:

**I.  
INTRODUCTION**

1. On July 31, 2019, Dr. Mauris DeSilva had a mental breakdown. A neighbor called 911, hoping that the Austin Police Department could help him. Instead, Austin PD Officers Christopher Taylor and Karl Krycia came to the condominium where Dr. DeSilva lived and shot

and killed him in the hallway.

2. Mr. Denzil DeSilva brings this lawsuit to seek justice for the violation of his son's civil rights due to the inadequate polices of and training by the Austin Police Department regarding responding to mental health crises and the extremely reckless, if not deliberate, indifference to the life and safety of Dr. Mauris DeSilva by Officers Taylor and Krycia.

3. As part of the litigation process plaintiff is entitled to the full range of discovery from defendants, including depositions.<sup>1</sup> A request was made for the depositions of Officer's Krycia and Taylor so the plaintiff and the public could learn why Dr. DeSilva received a hail of bullets when he simply needed a hospital bed. Unfortunately, the defendant rebuffed the request because the officers in question feel they may have to take the Fifth Amendment at select times during the civil litigation. As shown below, this attempt to block plaintiff's right to the natural course of discovery is improper.

### **ARGUMENT AND AUTHORITIES**

4. It has long been established that there is a ~~clear-cut distinction between private interests in civil litigation and the public interest in a criminal prosecution, between a civil trial and a criminal trial, and between the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.~~<sup>2</sup> Furthermore, a blanket invocation of the 5<sup>th</sup> Amendment, which is essentially what Defendants Krycia and Taylor are attempting, is not permitted under Texas law.<sup>3</sup> An abatement of discovery in a claim is akin to a blanket assertion of the Fifth

---

<sup>1</sup> *Layman v Junior Players Golf Acad.*, 314 F.R.D. 379, 382 (D.S.C. 2016).

<sup>2</sup> *Campbell v. Eastland*, 307 F.2d 478, 487 (5<sup>th</sup> Circ. 1962).

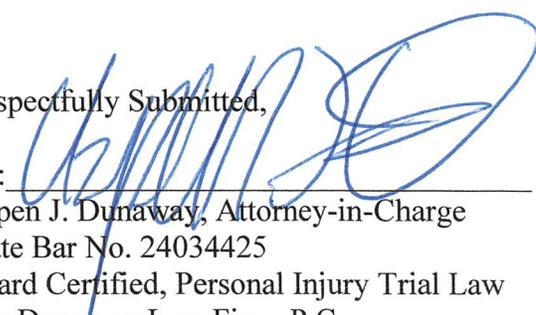
<sup>3</sup> *Gebhardt v. Gallardo*, 891 S.W.2d 327 (Tex.App. – San Antonio 1995, orig. proceeding) *citing to United States v. White*, 589 F.2d 1283 (5<sup>th</sup> Circ. 1979).

Amendment privilege and is without legal justification.<sup>2</sup> The Motion to Stay Discovery should be denied.

**PRAYER**

5. WHEREFORE, Plaintiff respectfully prays that upon final hearing and trial hereof of Plaintiff's claims, this Court deny Defendant Taylor's and Defendant Krycia's Motion to Stay Discovery for any other relief, legal or equitable, as may be warranted or to which Plaintiff is entitled.

Respectfully Submitted,

By: 

Aspen J. Dunaway, Attorney-in-Charge  
State Bar No. 24034425  
Board Certified, Personal Injury Trial Law  
The Dunaway Law Firm, P.C.  
1411 West Avenue, Suite 100  
Austin, Texas 78701  
Telephone: (512) 469-7941  
Telecopier: (512) 479-9510

ATTORNEY FOR PLAINTIFF DESILVA

---

<sup>2</sup>Id.

**CERTIFICATE OF SERVICE**

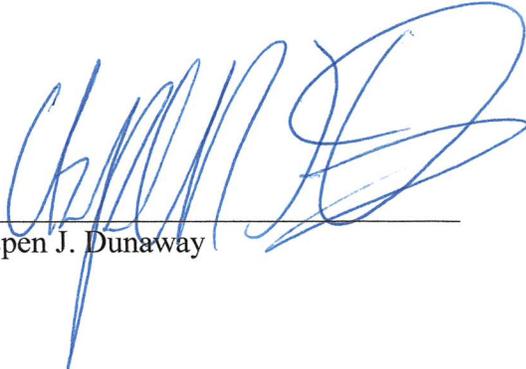
This is to certify that a true and correct copy of the foregoing document has been served on the following counsel of record in accordance with the Texas Rules of Civil Procedure on the 30 day of December 2021.

**Via Fax: (512) 476-5382**

Wright & Greenhill, P.C.  
900 Congress Avenue, Suite 500  
Austin, Texas 78701  
Attn: Blair J. Leake,  
Stephen B. Barron & Archie Carl Pierce  
**Attorneys for Krycia & Taylor**

**Via Fax: (512) 974-1311**

City of Austin  
Anne L. Morgan, City Attorney Meghan Riley, Chief, Litigation  
P. O. Box 1546  
Austin, Texas 78767-1546  
Attn: H. Gray Laird III  
**Attorney for the Defendant City of Austin**

  
\_\_\_\_\_  
Aspen J. Dunaway

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

ATHIGE DENZIL, Individually,	§	
As Heir at Law to the ESTATE OF	§	
DR. MAURIS DESILVA, and on behalf	§	
OF ALL WRONGFUL DEATH	§	
BENEFICIARIES,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Case No. 1:21-cv-00129-RP
	§	
CHRISTOPHER TAYLOR,	§	
KARL KRYCIA AND	§	
THE CITY OF AUSTIN,	§	
<i>Defendants.</i>	§	

---

**DEFENDANTS KARL KRYCIA AND CHRISTOPHER TAYLOR’S  
REPLY IN SUPPORT OF MOTION TO STAY DISCOVERY**

---

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOW COMES Defendants Karl Krycia and Christopher Taylor, and files this, their reply in support of their motion to stay discovery pending the resolution of their criminal case, and in support thereof would respectfully show the Court as follows:

## I. ARGUMENTS & AUTHORITIES

### A. Plaintiff's representation that a stay of discovery based on parallel criminal proceedings is an altogether improper motion contravenes a nationwide body of accepted legal precedent related to this Court's power and discretion.

1. Plaintiff's contention that a request for a stay of discovery based on a parallel criminal proceeding is somehow legally improper on its face lacks any basis in the law.<sup>1</sup> Such an argument contravenes longstanding stay of discovery legal precedents nationwide, including several recent precedents from this Court.

2. A motion to stay discovery based on a parallel criminal proceeding is such an accepted legal motion and practice that federal practitioner reference guides have devoted entire articles to such motions.<sup>2</sup> Earlier this year, this Court granted such a stay of discovery in *Ambler*.<sup>3</sup> This Court likewise granted stays of discovery based on either parallel criminal proceedings, or expected parallel criminal proceedings, in *Nembhard* and in *Drake* the same year.<sup>4</sup>

3. Citing two Supreme Court precedents and a Fifth Circuit precedent in *Drake*, this Court reiterated that in the American legal system “[a] district court has the inherent power to stay proceedings incidental to its power to control the disposition of its docket.”<sup>5</sup> In the same

---

<sup>1</sup> See Pl. Resp. to Defs.’ Mot. to Stay Discovery, Dkt. # 18, pgs. 2 – 3.

<sup>2</sup> See e.g. Kimberly J. Winbush, Annotation, *Pendency of Criminal Prosecution as Ground for Continuance or Postponement of Civil Action to Which Government Is Not Party Involving Facts or Transactions upon Which Prosecution Is Predicated—Federal Cases*, 33 A.L.R. Fed. 2d 111 (2009) (containing a nationwide survey of legal decisions regarding motions to stay discovery based on parallel criminal proceedings).

<sup>3</sup> See Order, *Ambler v. Williamson County*, 1:20-cv-01068-LY (W.D. Tex. July 27, 2021), Dkt. # 89 (acknowledging and granting motions to stay discovery based on “pending resolution of ongoing state criminal prosecutions” filed by four different Defendants).

<sup>4</sup> See Text Order, *Nembhard v. Williamson County*, 1:21-cv-00350-RP (W.D. Tex. Aug. 26, 2021); see also Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31.

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

decision, this Court cited cases from other district courts within the Fifth Circuit granting stays of discovery based on a parallel criminal proceeding, noting that “[t]he district court has wide discretion to issue a stay, including ‘the authority to stay a civil proceeding pending the resolution of a criminal proceeding when the interests of justice so require.’”<sup>6</sup> It should thus be accepted as black letter law that this Court has the power and discretion to legally and properly grant Defendants’ motion to stay discovery.

**B. Plaintiff’s contention that a stay of discovery amounts to a blanket Fifth Amendment assertion is inherently untrue.**

4. Plaintiff’s legal contention that a stay of discovery is the equivalent of a blanket Fifth Amendment invocation is inherently untrue, which is a proposition that can be judged based on a comparison of the rights the two mechanisms convey or impede.<sup>7</sup> As the name implies, a *stay* of discovery only pauses or halts discovery until a later date when the stay is lifted. In contrast to the Fifth Amendment, a stay of discovery does *not* grant a movant the right to be free from government compulsion to provide a substantive answer to a potentially incriminating discovery question once the stay has been lifted.

5. No aspect of a stay of discovery impedes Plaintiff’s eventual right to conduct full discovery directed toward movants—including but not limited to Plaintiff’s right to compel Defendants to provide substantive answers to potentially incriminating deposition questions.<sup>8</sup> Only the Fifth Amendment of the U.S. Constitution—or a protective order issued by the proper

---

<sup>6</sup> See Order, *Drake v City of Austin*, 1:20-cv-00956-RP (W.D. Tex. Sept. 21, 2021), Dkt. # 31, pg. 2 – 3 (citing *inter alia Dominguez v. Hartford Fin. Servs. Grp., Inc.*, 530 F. Supp. 2d 902, 905 (S.D. Tex. 2008) (holding that stay of civil action, pending resolution of criminal prosecution, was warranted).

<sup>7</sup> Pl. Resp. to Defs.’ Mot. to Stay Discovery, Dkt. # 18, pgs. 1 – 2.

<sup>8</sup> See *Wilson v. Martin Cty. Hosp. Dist.*, 149 F.R.D. 553, 555 (W.D. Tex. 1993) (noting that deponents are almost always required to answer deposition questions even if an objection is made to the question); see also Fed. R. Civ. P. § 30(c)(2) (“the testimony is taken subject to any objection.”).

Court—grants such a right to a deponent. A stay of discovery is thus inherently and necessarily separate and distinct from the invocation of a person’s Fifth Amendment privilege.

**C. Plaintiff failed to address the established and accepted five-factor test to determine whether a stay of discovery should be granted.**

6. Plaintiff’s Response fails to in any way address the six factors that must be weighed by this Court when ruling on the motion to stay discovery before it.<sup>9</sup> At most, Plaintiff’s “Introduction” section might be read as at least partially addressing the factor related to Plaintiff’s interests in the court’s ultimate ruling on the stay, as it references Plaintiff’s desire for this lawsuit to unfold pursuant to “the natural course of discovery.”<sup>10</sup> Nothing in Defendants’ motion to stay would impede Plaintiff’s ability to conduct discovery related to other witnesses or parties in this lawsuit. As it stands, most of the materials directly related to the underlying incident—such as the reports, witness statements, and body camera footage from all of the officers—have already been obtained by Plaintiff’s counsel as the result of a different legal proceeding in state court based on the same underlying incident.<sup>11</sup>

7. Plaintiff’s failure to address the six factors that must be addressed in this Court’s ultimate ruling should be treated as a failure to oppose the motion itself. To the extent this Court believes that at least one factor was addressed by Plaintiff’s brief, a mere delay of one aspect of Plaintiff’s discovery—in the form of a chronological order of discovery not aligned to Plaintiff’s tastes—is

---

<sup>9</sup> See e.g. *Walker v. Wilburn*, No. 3:13-CV-4896-D, 2015 WL 5873392, at \*5 (N.D. Tex. Oct. 5, 2015) (citing *Heller Healthcare Fin., Inc. v. Boyes*, 2002 WL 1558337, at \*2 (N.D. Tex. July 15, 2020); see also *Trs. of Plumbers & Pipefitters Nat’l Pension Fund v. Transworld Mech. Inc.*, 886 F. Supp. 1134, 1139 (S.D. NY. 1995) (establishing current variation of test); see also *Golden Quality Ice Cream Co., Inc. v. Deerfield Specialty Papers, Inc.*, 87 F.R.D. 53 (E.D. Pa. 1980) (establishing initial test).

<sup>10</sup> See Pl. Resp. to Defs.’ Mot. to Stay Discovery, Dkt. # 18, pg. 2.

<sup>11</sup> Order on Pet’r DeSilva’s Pet. to take Depositions Under Rule 202, *DeSilva v. City of Austin*, No. C-1-CV-19-009949; Travis Cnty. Ct. No. 1.







staff, and reviewed security footage. They learned that DeSilva was on the fifth floor of the condominiums, where the common areas of the building were located, brandishing his knife toward security cameras. *Id.* ¶ 22. The officers and Martin Guardado, a private security guard employed by Spring Condominiums, took an elevator to the fifth floor.

Plaintiff alleges that when the elevator doors opened, DeSilva was standing in the hallway across from the elevator with his back to the officers, looking in a mirror and holding a knife to his neck. *Id.* ¶ 25. The officers allege that when the elevator doors opened, DeSilva “was standing almost directly in front of the officers—not even two quick steps away from stabbing distance to the people inside the elevator.” Dkt. 17 at 4. Both parties agree that the officers shouted at DeSilva to drop the knife. Dkt. 1 ¶ 26. Plaintiff contends that DeSilva “complied with this request and lowered his knife.” *Id.* ¶ 26. The officers contend that instead of dropping the knife, DeSilva “began walking *toward* the officers while still holding the knife in his hand.” Dkt. 17 at 4.

The officers allege that they waited until DeSilva “was almost within arm’s reach before discharging their weapons in defense of both themselves and the other people in the elevator with them.” *Id.* at 5. Plaintiff alleges that before the officers shot DeSilva, Officer Cast used a taser on DeSilva, but “rather than wait and see if the less lethal taser shot would be effective, Officers Taylor and Krycia simultaneously fired multiple shots at Dr. DeSilva.” Dkt. 1 ¶ 28. DeSilva died of multiple gunshot wounds to his chest.

On February 5, 2021, DeSilva’s father, Athige Denzil DeSilva, as heir to DeSilva’s estate, filed this civil rights lawsuit under 42 U.S.C. § 1983 against the City of Austin and Officers Taylor and Krycia. Plaintiff alleges that Defendants Taylor and Krycia violated DeSilva’s rights under the Fourth and Fourteenth Amendments to the United States Constitution, and that the City is liable under *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658 (1978), for failure to train

and supervise its police officers. Plaintiff seeks compensatory and punitive damages and attorneys' fees and costs.

Although APD investigated and cleared Defendants Taylor and Krycia's use of deadly force against DeSilva, after Plaintiff filed this lawsuit, Travis County District Attorney Jose Garza charged Taylor and Krycia with first-degree murder for DeSilva's death. Dkt. 17 at 5-6. On August 27, 2021, a Travis County grand jury indicted Taylor and Krycia on first-degree murder charges. Case Nos. D-1-DC-21-900071 and D-1-DC-19-900111 at <https://www.traviscountytexas.gov/district-clerk/online-case-information>.<sup>1</sup>

In support of their Motion to Stay Discovery, Defendants Krycia and Taylor argue that the Court should stay discovery pending resolution of their criminal cases because:

Defendants' collective legal counsel have serious concerns about proceeding forward with civil discovery before their respective client's criminal case has resolved because of the very real and unjust peril of the two officers being forced to choose between either: (1) asserting their Fifth Amendment rights, which would consequently cripple the Defendants' ability to vigorously defend this civil suit; **or** (2) waive their respective Constitutional rights, testify in discovery herein, and consequently cripple Defendants' ability to vigorously defend against the criminal first-degree murder charges looming over them. Defendants accordingly move this Court for a temporary stay of all discovery in this civil lawsuit as it pertains to the individual Defendants in order to ensure that they are able to fully defend themselves in **both** legal actions.

Dkt. 17 at 6-7. Plaintiff opposes the Motion.

## II. Legal Standards

"When a defendant in a civil case is facing criminal charges, a district court may, in its discretion, stay the civil action." *U.S. ex rel. Gonzalez v. Fresenius Med. Care N. Am.*, 571

---

<sup>1</sup> The Court takes judicial notice of the state court docket under Federal Rule of Evidence 201. *Stiel v. Heritage Numismatic Auctions, Inc.*, 816 F. App'x 888, 892 (5th Cir. 2020) (holding that district court may take judicial notice of state court docket).

F. Supp. 2d 758, 761 (W.D. Tex. 2008); *see also United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983) (“Certainly, a district court may stay a civil proceeding during the pendency of a parallel criminal proceeding.”). Such a stay contemplates “special circumstances” and the need to avoid “substantial and irreparable prejudice.” *Little Al*, 712 F.2d at 136.

In determining whether civil discovery should be allowed to proceed during the pendency of a parallel criminal case, the Fifth Circuit has directed district courts to employ “judicial discretion and procedural flexibility” to “harmonize the conflicting rules and to prevent the rules and policies applicable to one suit from doing violence to those pertaining to the other.” *In re Grand Jury Subpoena*, 866 F.3d 231, 234 (5th Cir. 2017) (quoting *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962)). Because civil and criminal proceedings are subject to different procedural rules, “less restrictive civil discovery could undermine an ongoing criminal investigation and subsequent criminal case.” *Id.*

When deciding whether “special circumstances” warrant a stay, courts in the Fifth Circuit have found the following factors relevant: (1) the extent to which the issues in the criminal and civil cases overlap, (2) the status of the criminal case, (3) the private interests of the plaintiffs in proceeding expeditiously, (4) the burden on the defendants, (5) the interest of the courts, and (6) the public interest. *Olson ex rel. H.J. v. City of Burnet*, No. A-20-CV-00162-JRN, 2020 WL 9076545, at \*1 (W.D. Tex. July 17, 2020) (citing *Alcala v. Texas Webb Cnty.*, 625 F. Supp. 2d 391, 397-98 (S.D. Tex. 2009)). Courts have found special circumstances where a defendant attempts to preserve his Fifth Amendment right against self-incrimination and resolve “the conflict he would face between asserting this right and defending the civil action.” *Bean v. Alcorta*, 220 F. Supp. 3d 772, 775 (W.D. Tex. 2016) (quoting *Alcala*, 625 F.Supp.2d at 397).

### III. Analysis

Defendants Taylor and Krycia address each of the above factors in depth and argue that all factors weigh in favor of a stay. Plaintiff failed to address any of these factors in his response brief. The Court could grant the motion on this basis alone, but considers each factor nonetheless.

#### A. Whether Issues in the Criminal and Civil Cases Sufficiently Overlap

The extent to which issues in the criminal case overlap with those presented in the civil case generally is regarded as “the most important factor in the analysis.” *Slack v. City of San Antonio, Texas*, No. CV SA-18-CA-1117-FB, 2019 WL 11097069, at \*2 (W.D. Tex. May 28, 2019). “Where there is significant overlap, self-incrimination is more likely and thus weighs in favor of a stay.” *Bean*, 220 F. Supp. 3d at 776

The same incident forms the basis of this lawsuit and the criminal charges—the alleged use of deadly force against DeSilva on July 31, 2019. Because there is significant overlap between the issue presented in this case and Defendants’ criminal proceedings, there is a significant danger of self-incrimination. *See Bean*, 220 F. Supp. 3d at 776 (finding that first and most important factor strongly weighed in favor of stay). The first and most important factor weighs strongly in favor of staying the case.

#### B. Status of the Criminal Cases

Because Taylor and Krycia already have been indicted, the second factor also weighs in favor of a stay. As explained in *Librado v. M.S. Carriers, Inc.*, No. 3:02-CV-2095D, 2002 WL 31495988, at \*2 (N.D. Tex. Nov. 5, 2002):

A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct for two reasons: first, the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued, and second, the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved due to Speedy Trial Act considerations.

*See also Walker v. Wilburn*, No. 3:13-CV-4896-D, 2015 WL 5873392, at \*7 (N.D. Tex. Oct. 5, 2015) (“Because Officer Wilburn has been indicted, the court concludes that the status of the criminal case weighs in favor of a stay.”).

### **C. Whether Plaintiff’s Private Interests Outweigh the Prejudice Caused by a Delay**

The Court next weighs “the private interests of the plaintiff in proceeding expeditiously against the prejudice that will be caused by the delay that will result from the stay.” *Sec. & Exch. Comm’n. v. Mutuals.com, Inc.*, No. 3:03-CV-2912-D, 2004 WL 1629929, at \*3 (N.D. Tex. July 20, 2004). When evaluating the third factor, courts “may require a plaintiff to establish more prejudice than simply a delay in its right to expeditiously pursue his claim.” *Bean*, 220 F. Supp. 3d at 776.

While it is clear that Plaintiff’s interest in proceeding expeditiously will not be advanced by a stay, Plaintiff has not alleged that he will suffer any prejudice other than delay in his right to pursue his claim. Plaintiff identifies no discovery that is available now but would be unavailable later should a stay be granted. Plaintiff also has not alleged that any witnesses will be unable to testify nor that any particular evidence will degrade if a stay is granted. Because Plaintiff is “unlikely to face any significant prejudice if a stay is granted,” the third factor favors granting a stay.

### **D. Defendants’ Private Interests**

Next, the Court considers the private interests of Defendants Taylor and Krycia in securing the stay and the burden that would result if the stay were denied. *Id.* “Absent a stay, [an Officer] faces a conflict between asserting his Fifth Amendment rights and fulfilling his legal obligations as a witness in [the parallel] civil action.” *Librado*, 2002 WL 31495988, at \*3. Such a conflict would be eliminated by a stay of discovery. *Id.* Additionally, Defendants have an interest in staying the civil trial to avoid exposing their criminal defense strategies to the prosecution. *Alcala*, 625 F. Supp. 2d at 397 (holding that a stay may be justified in order to prevent “exposing the defense

theory to the prosecution in advance of trial, or otherwise prejudicing the criminal case”). The Court concludes that the fourth factor also weighs in favor of a stay.

#### **E. Court’s Interests**

Next, the Court’s interests are considered when determining whether to grant a motion to stay. *See Walker*, 2015 WL 5873392, at \*9; *Librado*, 2002 WL 31495988, at \*3. On the one hand, “courts have a strong interest in moving matters expeditiously through the judicial system.” *Jean v. City of Dallas, Texas*, No. 3:18-CV-2862-M, 2019 WL 4597580, at \*5 (N.D. Tex. Sept. 22, 2019) (cleaned up). On the other hand, granting a stay “serves the interests of the courts, because conducting the criminal proceedings first advances judicial economy.” *Id.* Resolution of the criminal case may increase prospects for settlement of the civil case and, “[d]ue to differences in the standards of proof between civil and criminal prosecutions, the possibility always exists for a collateral estoppel or res judicata effect on some or all of the overlapping issues.” *Id.* The Court finds that its interests do not weigh against a stay.

#### **F. Public Interest**

Finally, the public interest must be considered in determining whether to grant a stay. *See Walker*, 2015 WL 5873392, at \*9; *Librado*, 2002 WL 31495988, at \*3. “The public has an interest in the just and constitutional resolution of disputes with minimal delay.” *Walker*, 2015 WL 5873392, at 9. Defendants Taylor and Krylicia have been indicted and their cases are pending. The sixth factor typically weighs against the grant of a stay only where, unlike here, a civil case is pending and no criminal investigation has begun. *Meyers v. Pamerleau*, No. 5:15-CV-524-DAE, 2016 WL 393552, at \*7 (W.D. Tex. Feb. 1, 2016). Moreover, “[w]hile the public certainly has an interest in the prompt resolution of the instant civil case, it also has an interest in protecting the constitutional rights of criminal defendants.” *Id.* Accordingly, the final factor also supports a stay.

**IV. Conclusion**

Finding that each of the relevant factors weighs in favor of a stay, Defendants Taylor and Krycia's Motion to Stay Discovery (Dkt. 17) is **GRANTED**. The Court temporarily **STAYS** all discovery in this case involving Defendants Taylor and Krycia pending resolution of their criminal proceedings in state court.

It is **FURTHER ORDERED** that this case is **REMOVED** from the Magistrate Court's docket and **RETURNED** to the docket of the Honorable Robert Pitman.

**SIGNED** on February 23, 2022.



---

SUSAN HIGHTOWER  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

ATHIGE DENZIL DESILVA,  
individually, as heir at law to the  
ESTATE OF DR. MAURIS DESILIVA,  
and on behalf of ALL WRONGFUL DEATH  
BENEFICIARIES,

*Plaintiff,*

Case No. 1:21-cv-00129-RP

v.

Jury Trial

CHRISTOPHER TAYLOR,  
KARL KRYCIA, and  
THE CITY OF AUSTIN,

*Defendants.*

**PLAINTIFF'S UNOPPOSED MOTION TO STAY THE CASE  
PENDING THE RESOLUTION OF THE TRIAL OF  
DEFENDANTS, TAYLOR AND KRYCIA**

---

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Athige Denzil DeSilva, files his motion to stay the case pending the resolution of the pending criminal case against Defendants, Christopher Taylor, and Karl Krycia, and respectfully shows the Court the following:

Magistrate Judge Hightower granted Defendants Taylor and Krycia's Motion to Stay Discovery pending resolution of their criminal case on February 23, 2022 (Dkt. 23). The Plaintiff filed his Motion for Continuance and Motion for Entry of Agreed Amended Scheduling Order on April 14, 2022 (Dkt. 25). The Court entered the agreed First Amended Scheduling Order on April 16, 2022 (Dkt. 26) setting the jury trial for June 20, 2023.

### A. The Issue

1. The Magistrates' Order (Dkt. 23) ruled:

“The Court temporarily STAYS all discovery in this case *involving* Defendants Taylor and Krycia pending the resolution of their criminal proceedings.” [Emphasis supplied]

2. A proper interpretation of the word, “involving” means, “related to, part of, or connected with,” discovery in the case such that any fact that merely touches upon or could be used by the prosecution about conduct of the Defendants implicates their 5<sup>th</sup> Amendment rights.

3. Rather than move to stay the whole case, Plaintiff's former lead counsel, Dunaway, sought to only continue some deadlines (Dkt. 26).

4. Plaintiff has been diligently conducting what limited discovery he can under the First Amended Scheduling Order.

5. Because Plaintiff's meeting the scheduling deadline to file his designated use-of-force expert's report is based on some discovery that must center on the overlapping issue of “exigent circumstances,” it “involves” the use of discovery against the Defendants.

6. Plaintiff filing his use-of-force expert report will then trigger Taylor and Krycia to file of their expert's report in response “involving” their use of discovery on the overlapping issue of “exigent circumstances” placing Plaintiff in violation of the Court's Order (Dkt. 23).

7. This scheduling order deadline shows that the Plaintiff is placed into an untenable position when he simultaneously conducts limited discovery but must

comply with the Stay Order's discovery limitation *involving* the Defendant's because it makes the Plaintiff's discovery unavoidably fragmented, unduly burdensome, and expensive and continuing discovery will likely draw objections such as the one set forth below relating to the production of the Medical Examiner's Office autopsy report file.

8. Continued discovery efforts are problematic because Plaintiff cannot intuit nor guess what facts to be discovered will be negatory, explanatory, or exculpatory, arguably "involving" discovery that implicates the Defendants' 5<sup>th</sup> Amendment rights.

### **B. Relief Requested**

9. Because of this dilemma Plaintiff respectfully shows he has good cause that the case be stayed pending the outcome of the criminal prosecutions and this request for a stay is not merely for delay as shown by the facts set forth below.

10. In the alternative, if a stay is not granted, Plaintiff requests the First Amended Scheduling order be vacated pending the resolution of the criminal cases.

### **C. Facts**

11. **Due diligence.** Due to the nature of this case, all discovery arguably "involves" the Defendants.

12. Plaintiff obtained over 21 gigabytes of discovery from the City of Austin on September 19, 2022 that was subject to Court's Protective Order (Dkt.14) but further use of such discovery arguably "involves" the Defendants.

13. Plaintiff has served subpoenas for employment, health, and medical records, including one to the Travis County Medical Examiner's Office for the autopsy records that are necessary to further inform Plaintiff's use of force expert.

14. The physician conducting the autopsy needs to be identified and designated by the October 28, 2022 deadline as a non-testifying expert whose autopsy file would constitute a report that requires disclosure under Fed. R. Civ. P. 26(a)(2)(B).

15. Applicable and recent 5<sup>th</sup> Circuit case law requires Plaintiff be able to amend his Complaint relying on discovery of details necessary to comply with such law relying on Plaintiff's use-of-force expert's amended report that must arguably "involve" the same facts that would be used to prosecute Taylor and Krycia, i.e., facts relating to the overlapping liability-guilt-defense issue of "exigent circumstances."

16. The Travis County Attorney's Office initially blocked the subpoena to the Medical Examiner but later, after negotiation and agreement of all counsel in this case, Plaintiff re-issued his subpoena pursuant to an "Agreement of Counsel" on October 12, 2022 in compliance with the Court's Protective Order.

17. Previously, on September 16, 2022, all of Plaintiff's counsel met with Josh Smalley, chief of the Travis County District Attorney's Civil Rights unit conducting the prosecution of Taylor and Krycia to determine a trial date and to broadly learn what categories of evidence would be involved in these Defendant prosecution understanding that the "investigation" phase had ended with the Grand Jury indictment.

18. On October 13, 2022 the Attorney General's office posted to Plaintiff's lead counsel a copy of its letter to Matthew Entsminger of the Travis County Sheriff's Office withholding from disclosure ME19-03804; 1065744-1 (the DeSilva autopsy file records) because it relates to an ongoing criminal investigation even though an agreement had

just been reached on such discovery illustrates the need for resolution of the criminal case before proceeding with the civil case.

19. This meeting with the District Attorney's Office confirmed that although 60 Austin police officers had been indicted since April 2022, mostly for use of force, there has only been one prosecution and that resulted in a mistrial.

20. To properly amend its pleadings, Plaintiff also filed an Application for Letters of Administration pending in Austin County Probate Court No 1, Case No. C-1-22-001418 (Estate of Mauris DeSilva) to be able to amend the Complaint for damages to enable the Decedent's Estate to validate its claim.

21. Because the Decedent died intestate, an attorney ad litem had to be appointed as necessary for the declaration of heirship. Although the attorney ad litem has answered and filed her investigation report, the testifying witnesses are in Minnesota. Plaintiff is a necessary witness who must be personally present.

22. Plaintiff, Athige DeSilva, is 77 years old and the sole care giver for his wife who is not mobile, causing a delay until arrangements can be made for him and the others to give testimony.

23. Defense counsel do not oppose this motion.

24. **Good cause.** The above facts show good cause. Also, although some discovery has occurred any further discovery will certainly "involve" the Defendants and Plaintiff does not want to violate the Court's Order implicating the 5<sup>th</sup> Amendment rights of Taylor and Krycia or repeat discovery because they were deprived of the opportunity to cross-examine or to participate in that discovery.

25. Fragmented discovery causes undue burden and expense to the Plaintiff as well as to Taylor and Krycia and frustrates determining the correct proportionality of discovery and costs to all parties

26. **No undue delay.** The District Attorney advises the trial date for Taylor and Krycia will not occur before the summer of 2023 and public knowledge of the ongoing exodus of experienced trial attorneys from that office questions trial scheduling. The current jury trial setting in this case is for June 20, 2023.

27. From their visit with chief of the civil rights division prosecutor, Josh Smalley, Plaintiff's counsel understands the trial of Taylor and Krycia has no priority and is likely dependent on the District Attorney achieving prior convictions of at least some of the 60 pending indictments of Austin police officers.

#### **D. Argument**

28. The Court's Order (Dkt. 23) hinders this Plaintiff's further compliance with the First Amended Scheduling Order requiring either a complete stay of the case or guidance from the Court.

29. "[A] district court may stay a civil proceeding during the pendency of a parallel criminal proceeding. *United States v. Little Al*, 712 F.2d 133, 136 (5th Cir. 1983) (citing *SEC v. First Fin. Grp. of Tex., Inc.*, 659 F.2d 660, 668 (5th Cir. Oct. 1981)). "Such a stay contemplates 'special circumstances' and the need to avoid 'substantial and irreparable prejudice.'" *Id.* Because the Court has already ruled on Taylor and Krycia's special circumstances, i.e., having to choose between preserving their

privilege against self-incrimination or losing the civil suit, the requirement of a showing of special circumstances has been met.

**30. Civil and criminal liability are intertwined and overlapping.** Even though the burdens of proof are different in the two cases, the central issue is the same for civil or criminal liability; facts that determine whether “exigent circumstances” existed.

31. "The stay of a pending matter is ordinarily within the trial court's wide discretion to control the course of litigation." *In re Ramu Corp.*, 903 F.2d 312, 318 (5th Cir. 1990) (common sense, fact bound analysis), *See United States v. Krodel*, 397 U.S. 1, 12, n. 27 (1970). The standard for the exercise of a court's discretion has been held as follows:

“As the Fifth Circuit has instructed, in ruling on requests for stays of the civil side of parallel civil/criminal proceedings, “[j]udicial discretion and procedural flexibility should be utilized to harmonize the conflicting rules and to prevent the rules and policies applicable to one suit from doing violence to those pertaining to the other. In some situations it may be appropriate to stay the civil proceeding ...”

*United States v. Gieger Transfer Serv., Inc.*, 174 F.R.D. 382, 385 (S.D. Miss. 1997) (quoting *Campbell v. Eastland*, 307 F.2d 478, 487 (5th Cir. 1962)).

32. At this juncture, Plaintiff agrees with Defendants Taylor and Krycia that the critical issues in the criminal case overlap with those needed to prevail in the civil case. Because the central issue of “exigent circumstances” forms the commonsense

basis for indictment as well as for civil liability that constitutes a central overlapping issue to both cases requiring a stay.

33. Prior case law placed some weight on the Speedy Trial Act for staying the civil case because that seemed to guarantee a fast resolution of the criminal charges but also because of the dangers already noted in the order to limit discovery such that:

“A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct for two reasons: first, the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued, and second, the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved due to Speedy Trial Act considerations. *See In re Par Pharmaceutical, Inc.*, 133 F.R.D. at 13 (“The weight of authority in this Circuit indicates that courts will stay a civil proceeding when the criminal investigation has ripened into an indictment”) (citing cases); *Parallel Proceedings*, 129 F.R.D. at 203-04; *Volmar*, 152 F.R.D. 39 (citing *Dresser*, 628 F.2d at 1375-76).

*Trustees of Plumbers Pen. v. Transworld*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995)

### **E. Conclusion**

34. Due to changing circumstances, if the District Attorney later confirms that he is unwilling or unable to continue the prosecution of the Defendants, then Plaintiff reserves the right to move the Court to reweigh the special circumstances to avoid prejudicial delay to Plaintiff and Defendants and the public interest in justice.

35. In requesting this stay, Plaintiff contends that the resolution of the criminal case first operates to serve judicial economy and lifts from Plaintiff the burden of fragmented discovery. Moreover, the criminal prosecution discovery can be used later

in the civil case and the risk of loss of evidence is low due to the criminal investigation. Certainly, resolution of the criminal case should simplify the issues that impinge on “exigent circumstances.” See “*Texaco Inc. v. Borda*, 383 F.2d 607, 609 (3d Cir.1967). (“It may well be that the trial of the criminal case will reduce the scope of discovery in the civil action. And perhaps it might also simplify the issues.” fn. omitted.)

#### F. Prayer

For the reasons set forth herein, Plaintiff, Athige Denzil DeSilva, respectfully requests that this Court grant his motion for stay and for all other relief to which he may be entitled in law or equity. In the alternative, if the stay is denied, then Plaintiff requests the First Amended Scheduling Order be vacated until the resolution of the criminal cases.

Respectfully submitted,

/s/ Lamar Treadwell, Pro hac vice

Lamar Treadwell

SBN: 20205000

1308 E. Common Street, Suite 205

New Braunfels, Texas 78130

Cell: 505/ 660-0602

E-Fax 505/ 213-0094

[Lamar@treadwelltriallaw.com](mailto:Lamar@treadwelltriallaw.com)

SMITH & VINSON LAW FIRM

1411 West Ave., Suite 124

Austin, Texas 78701

Tel: 512/ 368-9044

Fax 512/ 368-8265

---

J. Bradley Vinson, Partner

SBN: 24100021

[Brad@smithandvinson.com](mailto:Brad@smithandvinson.com)

---

Jarrod L. Smith, Partner  
24094095  
[jarrod@smithandvinson.com](mailto:jarrod@smithandvinson.com)

### **Certificate of Conference**

Counsel for the Plaintiff has complied with the requirement to confer. Previously in discussions, and this week, Plaintiff's counsel conferred by e-mail and by telephone with all counsel and upon conferring, all counsel of record are unopposed / opposed.

/s/ Lamar Treadwell  
Lamar Treadwell

### **Certificate Of Service**

I certify that on the 27<sup>th</sup> day of October 2022, a true and correct copy of the above and foregoing Motion was electronically filed with the Clerk of the Court using the C/ECF system, which automatically served a Notice of Electronic Filing on all known counsel of record pursuant to the Federal Rules of Civil Procedure.

/s/ Lamar Treadwell  
Lamar Treadwell

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

ATHIGE DENZIL DESILVA,  
Individually, as heir at law to the  
ESTATE OF DR. MAURIS DESLIVA,  
and on behalf of all wrongful death  
Beneficiaries,

CIVIL ACTION NO. 1:21-cv-00129

Plaintiff,

JURY DEMAND

V.

CHRISTOPHER TAYLOR,  
KARL KRYCIA, and the  
CITY OF AUSTIN,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO STAY THE CASE**

The Court, upon consideration of Plaintiff, Athige Denzil DeSilva's Unopposed Motion for Stay the Case Pending the Resolution of the Trial or Defendants, Taylor and Krycia, the Court FINDS the motion should be GRANTED and that the case should be stayed until further order of the court.

It is therefore ORDERED that Plaintiff's Motion for Stay is GRANTED and it is FURTHER ORDERED that this case be STAYED until further order of the Court.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

---

ROBERT PITTMAN  
UNITED STATES DISTRICT JUDGE

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

ATHIGE DENZIL DESILVA, individually, §  
as heir at law to the Estate of Dr. Mauris DeSilva, §  
and on behalf of all wrongful death beneficiaries §

Plaintiff, §

v. §

1:21-CV-129-RP

CHRISTOPHER TAYLOR, et al., §

Defendants. §

**ORDER**

On October 27, 2022, Plaintiff Athige Denzil Desilva, (“Plaintiff”), filed an unopposed motion to stay the case. (Dkt. 44). The parties state that this case should be stayed pending the outcome of criminal prosecutions against Defendants Christopher Taylor and Karl Kyrzia. (*Id.* at 3).

In light of the unopposed request to stay and for good cause shown, the Court **ORDERS** that this action is **STAYED** pending the outcome of the criminal prosecutions against Defendant Christopher Taylor and Karl Kyrzia.

**IT IS FURTHER ORDERED** that the parties shall file quarterly status reports to keep the Court apprised of the progress of the criminal proceedings and any other relevant matters. The first joint status report shall be filed on or before **January 27, 2023**.

**SIGNED** on October 27, 2022.



---

ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE



**From:** TXW\_USDC\_Notice@txwd.uscourts.gov  
**To:** [cmecf\\_notices@txwd.uscourts.gov](mailto:cmecf_notices@txwd.uscourts.gov)  
**Subject:** Activity in Case 1:21-cv-00129-RP DeSilva v. Taylor et al Case Stayed  
**Date:** Wednesday, May 3, 2023 8:47:25 AM

---

\*\*\* External Email - Exercise Caution \*\*\*

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court [LIVE]**

**Western District of Texas**

### **Notice of Electronic Filing**

The following transaction was entered on 5/3/2023 at 8:46 AM CDT and filed on 10/27/2022

**Case Name:** DeSilva v. Taylor et al

**Case Number:** [1:21-cv-00129-RP](#)

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**Case Stayed (cc3)**

**1:21-cv-00129-RP Notice has been electronically mailed to:**

Blair J. Leake BLeake@W-G.com, shouston@w-g.com

Henry Gray Laird , III gray.laird@austintexas.gov, kelly.resech@austintexas.gov,  
priscilla.chavez@austintexas.gov

James Bradley Vinson brad@smithandvinson.com, contact@smithandvinson.com

Jarrold Lee Smith jarrod@smithandvinson.com, contact@smithandvinson.com

Lamar D. Treadwell Lamar@treadwelltriallaw.com

Ryan Sellars Squires rsquires@scottdoug.com, lgarcia@scottdoug.com,  
mpatterson@scottdoug.com

Stephen B. Barron sbarron@w-g.com, shouston@w-g.com

**1:21-cv-00129-RP Notice has been delivered by other means to:**

**CAUTION:** This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to [cybersecurity@austintexas.gov](mailto:cybersecurity@austintexas.gov).

**From:** TXW\_USDC\_Notice@txwd.uscourts.gov  
**To:** [cmecf\\_notices@txwd.uscourts.gov](mailto:cmecf_notices@txwd.uscourts.gov)  
**Subject:** Activity in Case 1:22-cv-00960-RP DeSilva et al v. Taylor et al Case Stayed  
**Date:** Tuesday, May 23, 2023 8:49:32 AM

---

\*\*\* External Email - Exercise Caution \*\*\*

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court [LIVE]**

**Western District of Texas**

### **Notice of Electronic Filing**

The following transaction was entered on 5/23/2023 at 8:48 AM CDT and filed on 9/26/2022

**Case Name:** DeSilva et al v. Taylor et al

**Case Number:** [1:22-cv-00960-RP](#)

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**Case Stayed (cc3)**

**1:22-cv-00960-RP Notice has been electronically mailed to:**

Blair J. Leake    BLeake@W-G.com, shouston@w-g.com

Henry Gray Laird , III    gray.laird@austintexas.gov, kelly.resech@austintexas.gov,  
priscilla.chavez@austintexas.gov

James Bradley Vinson    brad@smithandvinson.com, contact@smithandvinson.com

Jarrod Lee Smith    jarrod@smithandvinson.com, contact@smithandvinson.com

Lamar D. Treadwell    Lamar@treadwelltriallaw.com

Ryan Sellars Squires    rsquires@scottdoug.com, lgarcia@scottdoug.com,  
mpatterson@scottdoug.com

Stephen B. Barron sbarron@w-g.com, shouston@w-g.com

**1:22-cv-00960-RP Notice has been delivered by other means to:**

**CAUTION:** This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to [cybersecurity@austintexas.gov](mailto:cybersecurity@austintexas.gov).