

FILED

MAY 26 2022

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GE'MICAH VOLTER-JONES,

Plaintiff

v.

CITY OF AUSTIN, EDWARD BOUDREAU,
Individually, and DERRICK LEHMAN,
Individually

Defendants

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CAUSE OF ACTION: ___-CV-___

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff GE'MICAH VOLTER-JONES (hereinafter referred to as "Mr. Volter-Jones" or "Plaintiff") brings this Original Complaint under the First, Fourth and Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983 against the CITY OF AUSTIN, Texas (hereinafter referred to as "the City" or "Austin, Texas) incorporating all parts of the municipality including the Austin Police Department (hereinafter "APD" or "Police Department"), EDWARD BOUDREAU (hereinafter "Defendant Boudreau" or "Officer Boudreau"), individually, and DERRICK LEHMAN (hereinafter "Defendant Lehman" or "Officer Lehman"), individually, and shows this Honorable Court the following:

I. PARTIES

1. Plaintiff GE'MICAH VOLTER-JONES is a citizen of the United States and is a permanent resident of Travis County, Texas.

2. Defendant CITY OF AUSTIN, is a municipal government in the United States. The City of Austin, Texas may be served through its Mayor or City Clerk at 301 W. 2nd Street, Austin, TX 78701. *Service is hereby requested at this time.*

3. Defendant EDWARD BOUDREAU is an individual employed as a police officer with the Austin Police Department. He is sued in his individual capacity for compensatory and punitive damages. At all relevant times, Edward Boudreau was acting within the scope of his employment and under color of law as an Austin Police Department officer. Austin Police Department Chief of Police at the time of the excessive force shooting, Brian Manley, was his ultimate supervisor, and the City's policy maker for law enforcement issues. Defendant Boudreau may be served with process at the Austin Police Department, 715 E. 8th Street, Austin, Texas, 78701. *Service is hereby requested at this time.*

4. Defendant DERRICK LEHMAN is an individual employed as a police officer with the Austin Police Department. He is sued in his individual capacity for compensatory and punitive damages. At all relevant times, Defendant Lehman was acting within the scope of his employment and under color of law as an Austin Police Department officer. Austin Police Department Chief of Police at the time of the excessive force shooting, Brian Manley, was his ultimate supervisor, and the City's policy maker for law enforcement issues. Defendant Lehman may be served with process at the Austin Police Department, 715 E. 8th Street, Austin, Texas, 78701. *Service is hereby requested at this time.*

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to the First, Fourth, and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 under 28 U.S.C. §§ 1331 and 1343.

6. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b)(2), as all parts of the events or omissions giving rise to the claim occurred in Travis County, Texas, which is within this United States District Court for the Western District of Texas, Austin division.

III. FACTS

7. Austin has a long history of mobilization and direct action.¹

8. On May 28th, 2020, following the police killings on May 25th, 2020 of George Floyd in Minneapolis, Minnesota² and on April 24th, 2020 of Mike Ramos in Austin, Texas³, anti-violence supporters organized demonstrations against police brutality in central Austin and the media publicly it to the community.⁴

9. The Austin Police Department was aware of the planned demonstrations for Saturday, May 30th, 2020 and released a statement affirming that they would keep the community safe.⁵

10. On Friday, May 29th, 2020, as per current Chief Chacon, the City of Austin Police Department mobilized a “125-officer special crowd control management team” in anticipation of the demonstrations scheduled for Saturday, May 30th, 2020.⁶

¹ <https://library.austintexas.gov/blog/taking-it-streets-visual-history-protest-and-demonstration-austin> and <https://storymaps.arcgis.com/stories/754a36d75f6440dea43b73f5562c6291>

² Hill, E., Tiefenthäler, A., Triebert, C., Jordan, D., Willis, H., & Stein, R. (2020, May 31). *How George Floyd was killed in police custody*. The New York Times at <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>

³ <https://www.kut.org/austin/2020-05-20/austin-police-report-confirms-michael-ramos-was-fatally-shot-says-officer-considered-car-a-weapon>

⁴ <https://spectrumlocalnews.com/tx/austin/news/2020/05/28/george-floyd-protest-event-planned-for-saturday-in-austin-> “The event organizer wrote the following on Facebook, in part: “Across the whole country, the fight against the police and for people’s justice is the same. Come join us this Saturday in solidarity with Minneapolis and to demand justice for George and Mike!”

⁵ “The Austin Police Department is aware of the planned protest occurring this weekend. We will have the appropriate number of officers on duty to ensure every citizen’s right to gather and peacefully protest is protected, while also keeping our community safe.” at <https://www.kvue.com/article/news/local/austin-protest-police-ramos-black-lives-matter-floyd-derek-chauvin/269-1e126940-ecda-48c5-b0dc-10bfbec6d0f7>

⁶ <https://www.statesman.com/story/news/2022/02/23/austin-police-chiefs-depositions-2020-protest-officers-force/6820028001/>

11. The City of Austin Police Department had between 1,143 police officers⁷ and 2,100 officers⁸ employed on May 30th, 2020. Between 99.98%⁹ and 99.995%¹⁰ of APD police officers employed on May 30th, 2020 acted reasonably by refraining from excessive force shootings of less-lethal rounds, thus they protected and served the Austin community and honorably upheld their motto, “One Austin, Safer Together.”¹¹

12. Mr. Volter-Jones arrived downtown on the morning of May 30, 2020 to attend the public anti-violence demonstrations. Mr. Volter-Jones parked his vehicle in the West Campus area of the University of Texas.

13. Mr. Volter-Jones is an artistic and commercial photographer. For example, on 2019, Mr. Volter-Jones was hired as a commercial photographer to document the EU Antitrust Chief Margrethe Vestager at a SXSW event in Austin, Texas and his photography was published in Bloomberg BusinessWeek on March 13, 2019.¹² Mr. Volter-Jones was attending the anti-violence demonstrations as a private individual without a professional photography commission or assignment, yet he took numerous personal photos of the events that day as they transpired.

14. Mr. Volter-Jones is an advocate for peace and demonstrated in opposition to unreasonable police violence, excessive force and brutality. He had previously attended other peaceful demonstrations, including Women’s Marches, without any harm from police.

⁷ <https://www.kxan.com/investigations/apd-overtime-during-protests-may-near-1-million/>

⁸ <https://www.kvue.com/article/news/local/austin-protest-police-ramos-black-lives-matter-floyd-derek-chauvin/269-1e126940-ecda-48c5-b0dc-10bfbec6d0f7>

⁹ 11/2100 or 1143 disciplined by APD at <https://www.npr.org/2022/02/17/1081609073/19-austin-police-officers-indicted-from-investigation-into-2020-protests-sources>

¹⁰ 19/1143 or 2100 criminally indicted, Ibid.

¹¹ <https://www.austintexas.gov/department/police>

¹² <https://www.bloomberg.com/news/articles/2019-03-13/eu-antitrust-chief-margrethe-vestager-on-her-next-act>

15. On May 30, 2020, the temperature in central Austin reached a high of 87.1° degrees Fahrenheit.¹³

16. Mr. Volter-Jones brought with him to the demonstrations bottled water, his camera and backpack.

17. Mr. Volter-Jones assembled with other anti-violence demonstrators and walked from the morning throughout the day from the Capitol and throughout downtown Austin.

18. The APD provided employee officers with less-than-lethal Kinetic Impact Projectiles (KIPs) in the form of bean bag round munitions which “*send a projectile at 600 feet per second.*”¹⁴ Since 1974, law enforcement has known via the findings of the US Army Land Warfare Laboratory in the National Criminal Justice Reference Service (NCJRS) that the use of Kinetic Impact Projectiles (KIPs) such as bean bag munitions “*means accepting a high incidence of serious injury to any person hit in the head or trunk areas.*”¹⁵

19. On May 30th, 2020 at approximately 1:25 pm, all APD officers were “*ordered to work.*”¹⁶

20. On May 30th, 2020, at approximately 1:30 pm, Governor Greg Abbott announced he sent “*state resources to Austin, Dallas, Houston and San Antonio to maintain public safety.*” DPS sent more than 1,500 officers to assist local police departments.¹⁷

21. During the day and early evening, Mr. Volter-Jones witnessed demonstrators being bloodied and severely injured by police officers shooting less-than-lethal Kinetic Impact Projectiles (KIPs) bean bag rounds into crowds from unsafe distances (most frighteningly for

¹³ <https://weatherspark.com/h/d/8004/2020/5/30/Historical-Weather-on-Saturday-May-30-2020-in-Austin-Texas-United-States#metar-16-53>

¹⁴ <https://www.statesman.com/story/news/2022/02/23/austin-police-chiefs-depositions-2020-protest-officers-force/6820028001/>

¹⁵ <https://www.ojp.gov/pdffiles1/Digitization/34846NCJRS.pdf>

¹⁶ Ibid.

¹⁷ Ibid.

him, police officers were shooting on demonstrators from the top of the IH-35 highway down onto the lower level of IH-35).¹⁸ As no other police officers stopped or arrested the police who were shooting into the crowds of anti-violence demonstrators, it was evident that Police Chief Manley and his senior leadership at APD had directed the shooting to continue; thus, the City of Austin and individual unreasonable police officers were thereby committing excessive force and US Constitution First Amendment violations.

22. Mr. Volter-Jones observed other demonstrators who had sanitizers (as this was during the COVID-19 pandemic), additional water and some demonstrators were acting as “street medics” providing first aid to people injured by police violence.

23. By 7 pm, Mr. Volter-Jones had marched from the Capitol to the Ann W. Richards Congress Avenue Bridge and was walking near 1000 E. Riverside Dr., Austin, Texas, 78704. Plaintiff recalled that after turning left onto East Riverside Drive, the informal group of demonstrators he was walking with (an estimated 30-40 people) started heading back downtown.

24. Plaintiff Volter-Jones witnessed APD bring in busloads of additional officers who dispersed themselves in a line in front of peaceful demonstrators and barricaded off the exit areas to the middle and left of the group. Mr. Volter-Jones recalls that there was an individual, whom he recalled as “an older black gentleman”, next to him recording a Facebook live (about the police officers blocking the group exits and pathways), who said, *'Please don't kill me. Please don't kill me. Let us pass.'*

25. Mr. Volter-Jones observed the line of police officers (a group of approximately 40-60 officers) at a distance of approximately 15-20 feet away from where he was standing.

¹⁸ <https://www.kvue.com/article/news/local/protests/austin-protests-texas-austinite-hit-in-jaw-less-lethal-round/269-a1694517-4f08-4a02-bed2-975b388c0ed8>

26. Mr. Volter-Jones was unarmed, defenseless and not a threat to anyone. Mr. Volter-Jones had previously suffered from clinical anxiety and perceived that his life was in danger. Mr. Volter-Jones was prevented from safe movement away from the police officers blocking him into the area (he reasonably feared that running, or even moving quickly, away would likely result in unreasonable police officers shooting him, as he had witnessed them shoot and injure demonstrators throughout that day).

27. Overcome with anxiety and fear at witnessing police shooting and injuring multiple anti-violence demonstrators, being physically surrounded by officers armed with weapons while nearby demonstrators begged not to be killed by the police; Mr. Volter-Jones panicked.

28. As an expression of Mr. Volter-Jones' fear, he engaged in a startle reflex, a set of skeletomuscular contractions elicited by an intense stimulus of sudden onset¹⁹ (e.g., police holding weapons and pointing at the group he was in while blocking off movement pathways) and as a result tossed an empty water bottle up into the air. No one (or property) was hit by the empty water bottle. Mr. Volter-Jones witnessed a police officer catch the empty water bottle in their hand.

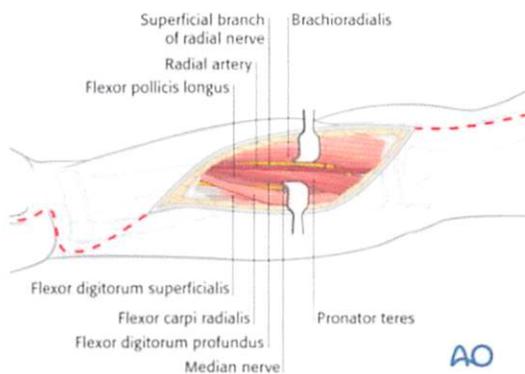
29. Mr. Volter-Jones witnessed an officer (now identified as Edward Boudreau), open his mouth, say words (that Plaintiff couldn't clearly hear from 15-20 feet away) and pointed at Plaintiff. Then, another officer (now identified as Derrick Lehman) next to the first officer who pointed at him, raised a 12-gauge shot gun loaded with less-than-lethal Kinetic Impact Projectiles (KIPs) bean bag rounds and shot Mr. Volter-Jones with a round at a velocity of 600 ft per second.

¹⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6707516/>

30. Mr. Volter-Jones observed the less-than-lethal bean bag bullet round fire out of an Austin police officer's gun and into his forearm, he recalled it was almost as if the shooting was in slow motion. Mr. Volter-Jones recalls that he was screaming in pain and his hand started violently shaking. A street medic attended to him after being shot and wrapped his arm up in a makeshift bandage. Mr. Volter-Jones then was assisted by friends to his vehicle and to the emergency room at Ascension Seton Medical Center Austin at 1201 W 38th St, Austin, TX 78705.

31. The Kinetic Impact Projectiles (KIPs) bean bag shot severely damaged Volter-Jones's forearm necessitating emergency surgery for compartment syndrome²⁰, as his medical providers informed him that “the blood flow stopped” to his arm.

Illustration of deep volar compartment fasciotomy²¹



32. The shooting also caused Volter-Jones to suffer significant pain, mental anguish, impairment, injury, and disfigurement.

33. Mr. Volter-Jones was not questioned, cited, or charged with any crime related to the events on May 30th, 2020.

²⁰ “Acute compartment syndrome is a surgical emergency, in the setting of which immediate actions should be taken to avert muscle and nerve cell death[.]” at <https://www.ncbi.nlm.nih.gov/books/NBK553899/>

²¹ <https://surgeryreference.aofoundation.org/orthopedic-trauma/pediatric-trauma/forearm-shaft/further-reading/compartmentsyndrome#volar-compartment-fasciotomy-of-the-forearm>

34. In June of 2020, APD, led by former Chief Manley, reviewed the incident on May 30th, 2020, and put Officer Derrick Lehman on administrative duty for his involvement in the use of force during protests against racial injustice, specifically for shooting Plaintiff.²² APD determined that a Level 1 less-lethal force protest-related critical incident had occurred at the date, time and location that Officer Edward Boudreau and Officer Lehman unreasonably shot Mr. Volter-Jones (20-5022436 | May 30, 2020 | Approximately 7:12 p.m. | 1000 E. Riverside Dr.).²³

35. In February of 2022, the Travis County District Attorney's Office indicted and arrested Officers Derrick Lehman (D-1-DC-20-900071) and Edward Boudreau (D-1-DC-22-900020) for felony aggravated assault by a public servant based on criminal law arising out of the same facts herein of the May 30, 2020 shooting of Plaintiff.²⁴

IV. CAUSES OF ACTION

A. 42 U.S.C. § 1983 (*Monell*) and the FIRST, FOURTH AMENDMENT TO THE US

CONSTITUTION APPLIED THROUGH THE FOURTEENTH AMENDMENT – AS TO DEFENDANT CITY OF AUSTIN ONLY

36. Plaintiff incorporates the preceding paragraphs as if alleged herein.

37. The City of Austin is a municipality founded in 1839 as the capital of the Republic of Texas. After the annexation of Texas by the United States in 1845, Austin became the capital of the state of Texas.²⁵

²² <https://www.austintexas.gov/news/protest-response-resistance-investigation-update>

²³ <https://www.austintexas.gov/news/protest-response-resistance-investigation-update-0>

²⁴ <https://cbsaustin.com/news/local/16-indicted-apd-officers-now-out-on-bond>

²⁵ <https://library.austintexas.gov/ahc/brief-history-austin>

38. The Austin Police Department is a department of the City of Austin that was formally created by the Austin City Council in 1862.²⁶

39. The City of Austin is responsible for their policy making employee. The City of Austin's policymaker for policing matters currently is Police Chief Joseph Chacon. At the time of this excessive force shooting of Plaintiff on May 30th, 2020, current Police Chief Chacon was one of four assistant APD Chiefs²⁷ and the City of Austin Police Chief was Brian Manley.²⁸

40. Plaintiff was deprived of his rights, privileges, and immunities secured him by the United States Constitution on May 30th, 2020.

41. Officers Derrick Lehman and Edward Boudreau were, and still are, employed as police officers of the City of Austin Police Department.

42. The persons who deprived Mr. Volter-Jones of his US Constitutional rights, Derrick Lehman and Edward Boudreau, were acting under the color of state and local law of their governmental entity employer, the City of Austin, while executing the policies or customs thereof.

43. The injury to Mr. Volter-Jones was caused by the following City of Austin policies, practices, or customs (that were in place when Defendants, Austin Police Officers Derrick Lehman and Edward Boudreau, shot and injured Plaintiff Volter-Jones), these policies were conscious choices by the City of Austin municipality's final decision-making officials (APD Police Chief) and demonstrate deliberate indifference to the plaintiff's constitutional rights:

- a) Failure to procure appropriate quality of less-lethal weapons and/or ammunition (including the provision of kinetic impact projectiles such as bean bag rounds) for municipality public-safety purposes;

²⁶ Page 3 at https://library.austintexas.gov/library/austin_police_department_subject_guide.pdf

²⁷ <https://www.statesman.com/story/news/2022/02/23/austin-police-chiefs-depositions-2020-protest-officers-force/6820028001/>

²⁸ <https://apnews.com/article/austin-police-texas-racial-injustice-01004b35f8e59ec26c16c7c4d2f1cb8c>

- b) Failure to provide instruction and experiential training to employee police officers in reasonable rules of engagement and tactical deployment for officer safety;**
- c) Failure to providing instruction, training and performance feedback to employee police officers on reasonable rules of engagement and tactical deployment of less-lethal weapons systems and ammunitions in crowd control settings (including angle, distance, of firing less-lethal weapons);**
- d) Failure to distribute less-lethal weapons and/or ammunition to employee police officers in an organized manner;**
- e) Failure to maintain less-lethal weapons and/or ammunition stock to protect the safety thereof, enable tracking and prevent expiration;**
- f) Failure to maintain officers' uniforms and equipment to ensure identifying information is visible to other officers and the public (even if wearing masks or other tactical or protective gear);**
- g) Failure to adequately train officers concerning de-escalation of force, use of force against non-violent protestors (who were not suspected of, investigated, cited or arrested for any crime), and the dangers of injury associated with kinetic projectiles with utilization of real and virtual educational exercises to ensure police officers have experienced the physical, sensory and psychological reactions in themselves and citizens inherent in large crowds of impassioned demonstrators;**
- h) Failure to plan communication protocols to ensure reporting and body-camera recording requirements maintained real time data and analysis of events on the ground to protect officer and public safety;**
- i) Failure to adequately analyze and assess (e.g., with after-action reviews) crowd control events of City of Austin and other similar municipalities to learn and implement evidence-based best practices for the safety of officers and the community at large;**
- j) Failure to adequately ensure administrative transparency and trust with other departments and the community at large by providing timely, fact based, solution-oriented leadership communication prioritizing accountability and shared responsibility by both officers and community members;**

- k) Using, authorizing, and/or tolerating excessive force against non-violent protestors;
- l) Failure to adequately discipline officers, including officers known to have used excessive force in the past;
- m) Failure to support an ethical organizational culture by adequately rewarding and recognizing the majority of officers who act reasonably by refraining from using lethal or less-lethal force unless it is clearly and unequivocally permitted and necessary;
- n) Failure to adequately supervise officers;
- o) Failure to adequately promote officers who role-model and communicate effective community-building actions integrated with ethical decision-making and critical thinking;
- p) Failure to adequately protect the career retention and mental health of officers by engaging in modern, evidence-based practices (drawing on multidisciplinary fields such as psychology, sociology, communication, public health, law and civics) focused on police officers helping and serving the community and not “at war” as war combatants face mental health consequences and, “[S]uicide claims more law enforcement lives than felonious killings or accidental deaths in the line of duty.”²⁹;
- q) Failure to train officers regarding demonstrators’ free speech and assembly rights;
- r) Not intervening to stop constitutional violations, including use of excessive force;
- s) Failure to train or instruct officers about specific incidents the City of Austin considers unreasonable, excessive force, or in violation of the Constitution.

44. Each of the policies, practices, or customs delineated above was actually known, constructively known and/or ratified by City of Austin and its policymaker for law enforcement purposes, Chief of Police, Brian Manley, and was promulgated with deliberate indifference to

²⁹ <https://www.policechiefmagazine.org/the-le-suicide-data-collection/>

Volter-Jones's First, Fourth and Fourteenth Amendment rights under the United States Constitution.

45. Upon information and belief, Derrick Lehman and Edward Boudreau still have not been disciplined by APD for using unreasonable force and violence against Mr. Volter-Jones. Likewise, neither former Chief Manley nor any of Derrick Lehman and Edward Boudreau's supervisors have been disciplined for tacitly or actively tolerating, authorizing, or endorsing this type of unconstitutional conduct while leaving officers without the education, training, tools and clearly defined practices to prevent these entirely predictable events.

46. As per current APD Chief Chacon (then Assistant Chief),

47. The City of Austin Police Department had previously provided public safety to demonstrators without unreasonably shooting any demonstrators even when the protestors failed to obey public health laws and/ or blocked the interstate highway. On May 1st, 2020, only 29 days before the excessive force shooting of Mr. Volter-Jones, the Austin Police Department reported that, "*Fifteen protesters from the group Rent Strike ATX were arrested in Downtown Austin on Friday afternoon for obstructing Interstate 35.*"³⁰ None of the demonstrators blocking the IH35 highway, who were protesting for rent relief, were reportedly shot by the police. On Saturday, April 18th, 2020, six weeks before the unreasonable shooting of Mr. Volter-Jones, anti-public health demonstrators in downtown Austin (including at the state Capitol) violated public health legal mandates while police officers stood by reportedly without shooting anyone.³¹

³⁰ <https://www.kvue.com/article/news/local/blocking-obstructing-interstate-highway-35-arrests/269-123a4f9c-05a5-42db-a402-112af7021b5f>

³¹ Protestors "*took turns yelling into megaphones, recording each other on their phones and parading up and down 11th Street at the Congress Avenue intersection. About two dozen Austin police and Texas Department of Public Safety officers stood by. After an initial confrontation with several protesters edging into the street, the police mostly observed the protest, declining to issue citations for the generally unmasked and non-social-distancing participants.*" at https://www.expressnews.com/news/politics/texas_legislature/article/Responding-to-Infowars-call-protesters-mass-in-15210224.php#photo-19314163

48. This lack of disciplinary action as to senior leaders is all the more disturbing as former Chief Manley acknowledged that numerous demonstrators were victims of unreasonable force by APD officers on May 30th and 31st, 2020.

49. On June 1, 2020, a reporter asked the [former] chief [Manley] what he would say to the families of those injured by police. *"What I say to them now is my heart is with you," Manley said before an emotional pause. "I'm praying for your child. I'm hoping they have a complete and quick recovery. And I will make myself open to speak with you and answer questions."*³² Manley stated, *"That is not what we set out to do as a police department. That was not what we set out to do this weekend."*³³

50. Within days of her son being shot, Mr. Volter-Jones' mother attended the City Council meeting and personally called Police Chief Manley's office to speak with him about her concerns about the police shooting people with less-than-lethal Kinetic Impact Projectiles (KIPs) bean bag rounds. Former Chief Manley (nor anyone else from APD) has yet to return her call.

51. Former Chief Manley retired from the City of Austin Police Department effective March 28th, 2021 to *"pursue that next opportunity."*³⁴

52. Current Police Chief Joe Chacon was publicly reported on February 23rd, 2022 to have stated in a deposition in October 2021 (related to City of Austin police shooting and injuring demonstrators with bean bag rounds on May 30th and May 31st, 2020), *"We knew the protests were coming and we were certainly trying to plan for it. I don't think we planned for the scope of these protests – for the sheer size of the crowd that was going to be coming out ... I*

³² <https://www.kvue.com/article/news/local/austin-texas-protest-chief-brian-manley-speaks/269-904cf6f3-e619-44ed-ab31-0582508e9c04>

³³ <https://www.texastribune.org/2020/06/01/austin-police-george-floyd-mike-ramos/>

³⁴ <https://www.kut.org/austin/2021-02-12/austin-police-chief-brian-manley-steps-down-after-30-years-with-department>

don't think in the end it was adequate for the size of everything that we saw[.]"³⁵ Chief Chacon stated, the police *"were expecting hundreds and got thousands"* of demonstrators.³⁶

53. The City of Austin Police Department had historically planned effectively and provided public safety to demonstrators without unreasonably shooting and harming protestors; even with very large crowds. Reportedly, 50,000 demonstrators assembled at the Texas State Capitol on January 21st, 2017 for a Woman's March.³⁷ On February 15th, 2003 reportedly 10,000 anti-war demonstrators rallied at the Texas Capitol (where some *"marchers took over the Congress Avenue Bridge for about 30 minutes"* without police shooting anyone)³⁸ and 20,000 anti-war *"demonstrators peacefully marched through downtown Austin"* on Friday, May 8th, 1970.³⁹

54. The consequence of these City of Austin policies, practices, or customs on May 30th, 2020, was that Austin Police Department 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 color of law, would result.

55. The City of Austin is directly liable for its policymakers' failures, poor leadership and policies and customs resulting in two employee police officers, Defendants Derrick Lehman and Edward Boudreau, possessing and unreasonably deploying less-lethal bean bag rounds in an act of excessive force that deprived Mr. Volter-Jones of his US Constitutional rights; which was the direct proximate cause of his injury and permanent disfigurement.

³⁵ <https://www.kvue.com/article/news/investigations/defenders/chacon-speaks-on-2020-austin-police-protests/269-525b4cc7-8d88-4089-8e70-5232ec7fafa7>

³⁶ <https://www.statesman.com/story/news/2022/02/23/austin-police-chiefs-depositions-2020-protest-officers-force/6820028001/>

³⁷ <https://austin.culturemap.com/news/city-life/01-23-17-womens-march-austin-pictures-recap-signs/#slide=0>

³⁸ <https://web.archive.org/web/20030401235115/www.austin360.com/aas/metro/021603/0216antiwar.html>

³⁹ <https://drive.google.com/file/d/1rzV9KVqXrfl5XPHsY-SZpESzPAHIRkEX/view>

56. As a direct result of official policy of the City of Austin, permanently disfigured demonstrators like Mr. Volter-Jones could not trust in the integrity of self-regulation via internal investigations into his shooting (by APD itself). Mr. Volter-Jones's conclusion of fact is evidenced by, in September 20, 2021, the City of Austin, Office of Police Oversight, Preliminary Analysis – 2020 Summer Protests report stated, "*Internal Affairs continued the practice of disqualifying complaints by administratively closing them or assigning them a D classification (no policy violation) without the level of thoroughness required by APD policies.*"⁴⁰ Without the ability to access justice for the harm done to him through the defendant's inadequate investigation of their shooting of Plaintiff, Mr. Volter-Jones's only path toward enforcement of the rule of law and his US Constitutional rights is through the pleadings herein in this court.

57. The City of Austin policy and customs that resulted in any individual employee being provided weapons and ammunition and sent out in the community without training, supervision, instruction, or communication foreseeably resulted in serious injuries and violations of the foundational rule of law in this nation codified in the US Constitution.

58. On May 30th, 2020, the overwhelming number of City of Austin police officers did not violate US Constitutional rights and did not engage in excessive force; despite the paucity of appropriate resources available. Unfortunately, Defendants Derrick Lehman and Edward Boudreau crossed the line into unreasonable excessive force and US Constitutional violations which severely injured Plaintiff, a member of the community.

59. The reasonable actions and individual ethics of the majority of the police officers enabled them to remain law-abiding despite the lack of policy, custom or practices to help them effectively engage in safe crowd control. On May 30th, 2020, the majority of police officers

⁴⁰ <https://www.austintexas.gov/edims/document.cfm?id=367521>

were fending for themselves, navigating by their own moral and ethical guidance against the City of Austin policies, customs and practices that placed them (and the entire community) in peril. That is shameful. Current Police Chief Joe Chacon agrees and was publicly reported on February 23rd, 2022 to have stated in a deposition in October 2021, *“I would say that there is some level of shame because I represent the police department. I don’t like that this happened. I want to take steps to make sure we never have anything like this happen again.”*⁴¹

B. 42 U.S.C. § 1983 FOURTH AMENDMENT EXCESSIVE FORCE –AS TO DEFENDANT EDWARD BOUDREAU, INDIVIDUALLY

60. Plaintiff incorporates the preceding paragraphs as if alleged herein.

61. Austin Police Department Officer Edward Boudreau is a person. Defendant Boudreau is an individual employed as a police officer with the Austin Police Department publicly reported to hold the rank of Corporal (having passed the written examination of January 9th, 2020 for the Corporal/Detective Promotion Examination).⁴² On May 30th, 2020, he had over 12 years of service with the Austin Police Department.⁴³

62. On May 30th, 2020, Defendant Boudreau was acting as a government actor under color of statute, ordinance, regulation, custom, or usage, of any State or Territory, in this instance as an employee of the City of Austin (a municipality in the State of Texas). Defendant Boudreau was in a police uniform with identifying markings as an on-duty APD officer on May 30th, 2020 between 7:00 pm – 7: 30 pm at approximate location, 1000 E. Riverside Dr., Austin, Texas, 78704.

⁴¹ <https://www.kvue.com/article/news/investigations/defenders/chacon-speaks-on-2020-austin-police-protests/269-525b4cc7-8d88-4089-8e70-5232ec7fafa7>

⁴² <https://www.austintexas.gov/edims/document.cfm?id=335761>

⁴³ <https://www.austintexas.gov/edims/document.cfm?id=335761>

63. Defendant Boudreau subjected a citizen of the United States, Plaintiff Ge'Micah Volter-Jones, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws (Amendment 1, in part, "right of the people peaceably to assemble, and to petition the Government for a redress of grievances").

64. Defendant Boudreau engaged in a Fourth Amendment "seizure" of Plaintiff Ge'Micah Volter-Jones by shooting his person with a 12-gauge shotgun loaded with a Kinetic Impact Projectiles (KIPs) bean bag round at the velocity of 600 feet per second from 15-20 feet away. Mr. Volter-Jones's freedom of movement was restrained by physical force or show of authority⁴⁴ by the impact of the shotgun round on his person. Therefore, Defendant Edward Boudreau violated Volter-Jones's clearly established Fourth Amendment right to be free from excessive force and unreasonable seizure.

65. This use of force was excessive and unreasonable because from the perspective of a reasonable officer on the scene⁴⁵, in light of the facts and circumstances confronting them, as only one (1) officer, Derrick Lehman (out of a group of police officers standing side by side) fired a shot into the crowd at this time and location. A second officer, Edward Boudreau, intentionally and knowingly caused the shooting by giving the firing officer verbal instruction to engage in the unreasonable excessive force. It is evident what a reasonable officer on the scene would have done because all of the other officers present (approximately a group of 40-60 police officers) were reasonable and did not shoot into the crowd and injure anti-violence demonstrators.

⁴⁴ *United States v Mendenhall*, 446 US 544, 546 (1980)

⁴⁵ *Graham v Connor*, 490 US 386, 396 (1989).

66. Defendant Boudreau did violate clearly established statutory or constitutional rights of which a reasonable person would have known⁴⁶ (e.g., the constitutional right for Mr. Volter-Jones to peaceably assemble and petition for Government for redress of grievances). In addition to the conduct of Defendant Boudreau amounting to a constitutional violation⁴⁷ the constitutional right was clearly established at the time of the conduct⁴⁸ and thus qualified immunity is not applicable.

67. Mr. Volter-Jones was severely injured by the shotgun round and underwent emergency surgery on May 30th, 2020 as he had lost blood flow to his arm due to the bullet hitting near an artery. Mr. Volter-Jones was told by medical providers that he had compartment syndrome and recalls his physician telling him that he “needed emergency surgery to keep [his] hand and have function in it.” Mr. Volter-Jones is permanently disfigured.

68. The City of Austin Police Department officers shot Mr. Volter-Jones and he was hit on his right upper extremity. The bullet he was hit with was the proximate and actual cause of his injuries, emergency surgery and permanent disfigurement. Thus, Defendant Edward Boudreau shall be jointly and severally liable to the party injured, Mr. Volter-Jones, in an action at law, suit in equity, or other proper proceeding for redress for the use of excessive force.

69. Mr. Volter-Jones has shown: (1) injury, (e.g., his arm had a loss of blood flow requiring emergency surgery), (2) which resulted directly and only from a use of force that was clearly excessive (e.g., the only cause of the loss of blood flow was being shot by the 12-gauge shotgun with a round with a velocity of 600 feet per second at less than 100 feet of distance), and (3) the excessiveness of which was clearly unreasonable (e.g., evidenced by the reasonable

⁴⁶ *Harlow v Fitzgerald*, 457 US 800, 818 (1982)

⁴⁷ *McDonald v. McClelland*, 779 F. App'x 222, 225 (5th Cir. 2019)

⁴⁸ *Lytle v. Bexar Cnty.* 560 F.3d 404, 410 (5th Cir. 2009)

actions of the other officers not to shoot while facing the same crowd with the same circumstances).⁴⁹

70. Defendant's conduct was intentional, wanton, malicious and oppressive, or was with reckless disregard of Plaintiff's established constitutional rights; thus, Mr. Volter-Jones is entitled to punitive damages.

C. 42 U.S.C. § 1983 FOURTH AMENDMENT EXCESSIVE FORCE –AS TO DEFENDANT DERRICK LEHMAN, INDIVIDUALLY

71. Plaintiff incorporates the preceding paragraphs as if alleged herein.

72. Austin Police Department Officer Derrick Lehman is a person. Derrick Lehman is an individual employed as a police officer with the Austin Police Department publicly reported to hold the rank of Senior Police Officer.⁵⁰ On May 30th, 2020, he had over 10 years of service with the Austin Police Department.⁵¹

73. On May 30th, 2020, Defendant Lehman was acting as a government actor under color of statute, ordinance, regulation, custom, or usage, of any State or Territory, in this instance as an employee of the City of Austin (a municipality in the State of Texas). Defendant Lehman was in a police uniform with identifying markings as an on-duty APD officer on May 30th, 2020 between 7:00 pm – 7: 30 pm at approximate location, 1000 E. Riverside Dr., Austin, Texas, 78704.

74. Defendant Lehman subjected a citizen of the United States, Plaintiff Ge'Micah Volter-Jones, to the deprivation of any rights, privileges, or immunities secured by the

⁴⁹ Tarver v. City of Edna, 410 F.3d 745, 751 (5th Cir. 2005).

⁵⁰ <https://www.linkedin.com/in/derrick-lehman>

⁵¹ <https://www.austintexas.gov/news/protest-response-resistance-investigation-update-0>

Constitution and laws (Amendment 1 “*right of the people peaceably to assemble, and to petition the Government for a redress of grievances*”).⁵²

75. Defendant Lehman engaged in a Fourth Amendment “seizure” of Plaintiff Ge’Micah Volter-Jones by shooting his person with a 12-gauge shotgun loaded with a Kinetic Impact Projectiles (KIPs) bean bag round at the velocity of 600 feet per second from 15-20 feet away. Mr. Volter-Jones’s freedom of movement was restrained by physical force or show of authority⁵³ by the impact of the shotgun round on his person. Therefore, Defendant Lehman violated Volter-Jones’s clearly established Fourth Amendment right to be free from excessive force and unreasonable seizure.

76. This use of force was excessive and unreasonable because from the perspective of a reasonable officer on the scene⁵⁴, in light of the facts and circumstances confronting them, as only one (1) officer, Derrick Lehman (out of a group of police officers standing side by side) fired a shot into the crowd at this time and location. A second officer, Edward Boudreau, intentionally and knowingly caused the shooting by giving the firing officer verbal instruction to engage in the unreasonable excessive force. It is evident what a reasonable officer on the scene would have done because all of the other officers present (approximately a group of 40-60 police officers) were reasonable and did not shoot into the crowd and injure anti-violence demonstrators.

77. Defendant Lehman did violate clearly established statutory or constitutional rights of which a reasonable person would have known⁵⁵ (e.g., the constitutional right for Mr. Volter-

⁵² <https://constitution.congress.gov/constitution/amendment-1/>

⁵³ *United States v Mendenhall*, 446 US 544, 546 (1980)

⁵⁴ *Graham v Connor*, 490 US 386, 396 (1989).

⁵⁵ *Harlow v Fitzgerald*, 457 US 800, 818 (1982)

Jones to peaceably assemble and petition for Government for redress of grievances) and thus qualified immunity is not applicable.

78. Mr. Volter-Jones was severely injured by the shotgun round and underwent emergency surgery on May 30th, 2020 as he had lost blood flow to his arm due to the bullet hitting near an artery. Mr. Volter-Jones was informed by medical providers that he had compartment syndrome and recalls his physician telling him that he “needed emergency surgery to keep [his] hand and have function in it.” Mr. Volter-Jones is permanently disfigured.

79. Defendant Lehman shot Mr. Volter-Jones and he was hit on his right upper extremity. The bullet he was hit with was the proximate and actual cause of his injuries, emergency surgery and permanent disfigurement.

80. Thus, Defendant Lehman shall be jointly and severally liable to the party injured, Mr. Volter-Jones, in an action at law, suit in equity, or other proper proceeding for redress for the use of excessive force.

81. Mr. Volter-Jones has shown: (1) injury, (e.g., his arm had a loss of blood flow requiring emergency surgery), (2) which resulted directly and only from a use of force that was clearly excessive (e.g., the only cause of the loss of blood flow was being shot by the 12-gauge shotgun with a round with a velocity of 600 feet per second at less than 100 feet of distance), and (3) the excessiveness of which was clearly unreasonable (e.g., evidenced by the reasonable actions of the other officers not to shoot while facing the same crowd with the same circumstances).⁵⁶

⁵⁶ Tarver v. City of Edna, 410 F.3d 745, 751 (5th Cir. 2005).

82. Defendant's conduct was intentional, wanton, malicious and oppressive, or were with reckless disregard of Plaintiff's established constitutional rights; thus, Mr. Volter-Jones is entitled to punitive damages.

D. 42 U.S.C. § 1983 FIRST AMENDMENT RETALIATION – AS TO DEFENDANT EDWARD BOUDREAU

83. Plaintiff incorporates the preceding paragraphs as if alleged herein.

84. Mr. Volter-Jones exercised his US Constitution First Amendment rights by engaging in protected free speech and assembly by attending the demonstration against police violence on May 30th, 2020.

85. The government's retaliatory conduct (shooting him with a 12-gauge shotgun) adversely affected Mr. Volter-Jones protected speech. A government official, Defendant Boudreau, took adverse action against Mr. Volter-Jones by shooting him and such shooting would chill a person of ordinary firmness from continuing in the exercise of their protected speech First Amendments rights (as they would immediately be in excruciating pain and then undergoing emergency surgery within hours of the shooting). The adverse action (of Defendant Boudreau shooting Mr. Volter-Jones) was substantially motivated against Plaintiff's exercise of the protected activity⁵⁷ (to stop Mr. Volter-Jones with continuing to assemble and engage in free speech). Evidence of a causal connection between the retaliatory animus and injury⁵⁸ is that upon being subject to being shot (the retaliatory animus), the shooting itself caused injury to Mr. Volter-Jones (loss of blood flow to his limb and compartment syndrome, necessitating

⁵⁷ Peterson v. Kopp, 754 F.3d 594, 602 (8th Cir. 2014)

⁵⁸ Quraishi v. St. Charles County, Mo., 986 F.3d 831, 837 (8th Cir. 2021)

emergency surgery). Defendant Boudreau's attack on the defenseless Volter-Jones was unreasonable.

86. Numerous APD officers watched Derrick Lehman and Edward Boudreau shoot Volter-Jones, who posed no danger to anyone, but not one officer intervened to stop the excessive and unreasonable conduct. Defendant's conduct was intentional, wanton, malicious and oppressive, or were with reckless disregard of Plaintiff's established constitutional rights; thus, Mr. Volter-Jones is entitled to punitive damages.

E. 42 U.S.C. § 1983 FIRST AMENDMENT RETALIATION – AS TO DEFENDANT DERRICK LEHMAN

87. Plaintiff incorporates the preceding paragraphs as if alleged herein.

88. Mr. Volter-Jones exercised his US Constitution First Amendment rights by engaging in protected free speech and assembly by attending the demonstration against police violence on May 30th, 2020.

89. The government's retaliatory conduct (shooting him with a 12-gauge shotgun) adversely affected Mr. Volter-Jones protected speech. A government official, Defendant Lehman, took adverse action against Mr. Volter-Jones by shooting him and such shooting would chill a person of ordinary firmness from continuing in the exercise of their protected speech First Amendments rights (as they would immediately be in excruciating pain and then undergoing emergency surgery within hours of the shooting). The adverse action (of Defendant Lehman shooting Mr. Volter-Jones) was substantially motivated against Plaintiff's exercise of the protected activity⁵⁹ (to stop Mr. Volter-Jones with continuing to assemble and engage in free

⁵⁹ Peterson v. Kopp, 754 F.3d 594, 602 (8th Cir. 2014)

speech). Evidence of a causal connection between the retaliatory animus and injury⁶⁰ is that upon being subject to being shot (the retaliatory animus), the shooting itself caused injury to Mr. Volter-Jones (e.g., loss of blood flow to his limb and compartment syndrome, necessitating emergency surgery). Defendant Lehman's attack on the defenseless Volter-Jones was unreasonable.

90. Numerous APD officers watched Derrick Lehman and Edward Boudreau shoot Volter-Jones, who posed no danger to anyone, but not one officer intervened to stop the excessive and unreasonable conduct. Defendant's conduct was intentional, wanton, malicious and oppressive, or were with reckless disregard of Plaintiff's established constitutional rights; thus, Mr. Volter-Jones is entitled to punitive damages.

V. DAMAGES

91. As a result of Defendants' (who are jointly and severally liable) unconstitutional violations of his rights and the resultant damages and injuries suffered by Plaintiff, Mr. Volter-Jones seeks the following damages:

- a. Past, present, and future medical expenses;
- b. Past, present, and future economic damages, including (but not limited to) loss of earning capacity;
- c. Past, present, and future physical pain and suffering;
- d. Past, present and future mental anguish;
- e. Past, present and future physical impairment;
- f. Past, present and future physical disfigurement;

⁶⁰ *Quraishi v. St. Charles County, Mo.*, 986 F.3d 831, 837 (8th Cir. 2021)

g. and loss of consortium.

VI. JURY DEMAND

92. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby requests a jury trial on all of the issues so triable.

VII. ATTORNEY'S FEES AND COSTS

93. Pursuant to 42 U.S.C. § 1988, Plaintiff requests costs and fees, including but not limited to expert fees and attorneys' fees.

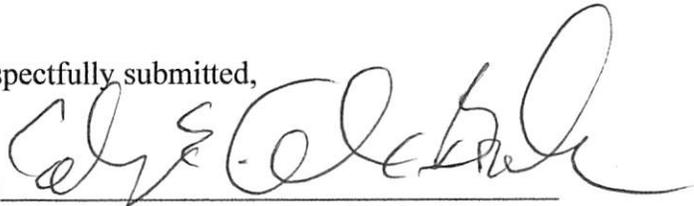
VIII. PRAYER FOR RELIEF

94. To right this injustice, Plaintiff requests the Court:

- a. Award actual compensatory damages against the City of Austin, and actual compensatory and exemplary punitive damages against Lehman and Boudreau;
- b. Award pre-judgment and post-judgment interest at the highest rate allowable under the law; and,
- c. Award and grant any other just relief as the Court deems proper.

Dated: May 26, 2022.

Respectfully submitted,

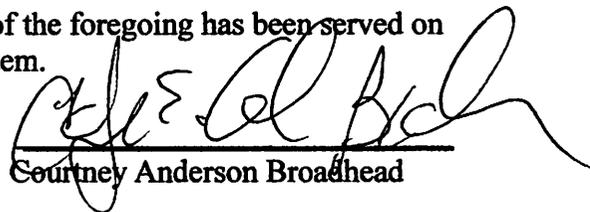
By: 

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Tel. 737.373.3373
Fax. 512.277.7227
ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of the foregoing has been served on all counsel of record via the Court's electronic case filing system.



Courtney Anderson Broadhead

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

GE' MICHAH VOLTER-JONES
Plaintiff

§
§
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§
§

v.

CIVIL ACTION No. 1:22-CV-00511-RP

**CITY OF AUSTIN , EDWARD
BOUDREAU, AND DERRICK LEHMAN**
Defendants

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

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant City of Austin (“the City”) 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, the City respectfully shows the Court the following:

ORIGINAL ANSWER

Pursuant to Federal Rule of Civil Procedure 8(b), the City responds to each of the specific averments in Plaintiffs’ Original Complaint [Doc No. 1] as set forth below. To the extent that the City does not address a specific averment made by Plaintiffs, the City expressly denies that averment.¹

I. PARTIES

1. Admitted, upon information and belief.
2. The City admits Paragraph 2.
3. The City admits that Edward Boudreau is a police officer with the Austin Police Department and that he was acting in the course and scope as an Austin Police Officer on May 30,

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

2020. The City further admits that at the time of the incident, Brian Manley was the Chief of Police for the Austin Police Department and set policy for the Department. The City denies the remaining allegations contained in Paragraph 3 of the Complaint.

4. The City admits that Derrick Lehman is a police officer with the Austin Police Department and that he was acting in the course and scope as an Austin Police Officer on May 30, 2020. The City further admits that at the time of the incident, Brian Manley was the Chief of Police for the Austin Police Department and set policy for the Department. The City denies the remaining allegations contained in Paragraph 4 of the Complaint.

II. JURISDICTION AND VENUE

5. The City admits the allegations contained in Paragraph 5.

6. The City admits the allegations contained in Paragraph 6.

III. FACTS

7. The allegations of this paragraph, including Footnote (n.1), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

8. The allegations of this paragraph, including Footnotes (n.2,3,4), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

9. The allegations of this paragraph, including Footnote (n.5), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can

be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

10. The allegations of this paragraph, including Footnote (n.6), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

11. The allegations of this paragraph, including Footnotes (n.7,8,9,10,11), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

12. The allegations of this paragraph are referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

13. The allegations of this paragraph, including Footnote (n.12), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

14. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

15. The allegations of this paragraph, including Footnote (n.13), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

16. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

17. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

18. The allegations of this paragraph, including Footnotes (n.14,15), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

19. The allegations of this paragraph, including Footnote (n.16), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

20. The allegations of this paragraph, including Footnote (n.17), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can

be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

21. The allegations of this paragraph, including Footnote (n.18), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated and are therefore denied. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

22. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

23. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

24. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

25. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

26. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated, and are denied. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

27. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated, and are denied. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

28. The allegations of this paragraph, including Footnote (n.19), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated, and are denied. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

29. Defendant admits that Police Officers Boudreau and Lehman were on duty and that Officer Lehman shot a less-than-lethal bean bag round which impacted Mr. Volter-Jones after he threw an object toward the police. The remaining allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

30. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

31. The allegations of this paragraph, including Footnotes (n.20,21), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

32. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

33. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

34. The allegations of this paragraph, including Footnotes (n.22,23), seem vague and ambiguous, referring to and asserting unsupported conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated, and are denied. To the extent any further response is required, the Defendant denies any allegations asserting fault or liability.

35. The allegations of this paragraph, including Footnote (n.24), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

IV. CAUSES OF ACTION

A. 42 U.S.C. §1983 (*Monell*) and the FIRST, FOURTH AMENDMENT TO THE US CONSTITUTION APPLIED THROUGH THE FOURTEENTH AMENDMENT - As To DEFENDANT CITY OF AUSTIN ONLY

This Defendant denies the allegations as stated in sub-heading A. The allegations call for conclusions of law or fact which do not otherwise require a response.

36. Paragraph 36 does not allege facts and does not require a response.

37. The City admits the allegations contained in Paragraph 37 but clarifies that Austin became the capital of the State of Texas in 1846. The allegations of this paragraph, including Footnote (n.25), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

38. The City admits the allegations contained in Paragraph 38 of the Complaint. The allegations of this paragraph, including Footnote (n.26), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

39. The City admits that Joseph Chacon is the current Chief of Police for the Austin Police Department and sets policy for the Department. The City further admits that on May 30, 2020, Chief Chacon was as Assistant Chief for the Austin Police Department and that Brian Manley was the Chief of Police. The City denies the remaining allegations in Paragraph 39 of the Complaint. The allegations of this paragraph, including Footnotes (n.27,28), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can

be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

40. The City denies Paragraph 40.

41. The City admits paragraph 41.

42. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

43. The allegations of this paragraph, including subparts a) through s), and Footnote (n.29), seem vague and ambiguous, referring to and asserting unsupported conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

44. The allegations of this paragraph are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

45. The allegations of this paragraph are vague and ambiguous, referring to and asserting unsupported or irrelevant conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

46. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do

not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

47. The allegations of this paragraph, including Footnotes (n.30,31), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

48. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

49. The allegations of this paragraph, including Footnotes (n.32,33), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

50. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

51. The allegations of this paragraph, including Footnote (n.34), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

52. The allegations of this paragraph, including Footnotes (n.35,36), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

53. The allegations of this paragraph, including Footnotes (n.37,38,39), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

54. The allegations of this paragraph are vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

55. Denied. The allegations of this paragraph are vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

56. The allegations of this paragraph, including Footnote (n.40), are vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

57. Denied. The allegations of this paragraph are vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and

which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

58. The allegations of this paragraph are vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response. and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

59. The allegations of this paragraph, including Footnote (n.41), are vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

B. 42 U.S.C. § 1983 FOURTH AMENDMENT EXCESSIVE FORCE - AS TO DEFENDANT EDWARD BOUDREAU, INDIVIDUALLY

This Defendant denies the allegations as stated in sub-heading B. The allegations call for conclusions of law or fact which do not otherwise require a response.

60. Paragraph 60 does not allege facts and does not require a response.

61. The allegations of this paragraph, including Footnotes (n.42,43), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability. If a response is required of the City, the City admits that Officer Boudreau is a person employed as a City of Austin Police Officer.

62. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do

not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

63. The allegations of this paragraph are vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

64. The allegations of this paragraph, including Footnote (n.44), are vague and ambiguous, referring to and asserting conclusions of law or fact which do not require a response and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

65. The allegations of this paragraph, including Footnote (n.45), are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

66. The allegations of this paragraph, including Footnotes (n.46,47,48), are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

67. The allegations of this paragraph are vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

68. The allegations of this paragraph are vague and ambiguous, referring to and asserting conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

69. The allegations of this paragraph, including Footnote (n.49), are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

70. The allegations of this paragraph are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

C. 42 U.S.C. § 1983 FOURTH AMENDMENT EXCESSIVE FORCE - AS TO DEFENDANT DERRICK LEHMAN, INDIVIDUALLY

This Defendant denies the allegations as stated in sub-heading C. The allegations call for conclusions of law or fact which do not otherwise require a response.

71. Paragraph 71 does not allege facts and does not require a response.

72. The allegations of this paragraph, including Footnotes (n.50,51), seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability. If a response is required of the City, the City admits that Officer Lehman is a person employed as a City of Austin Police Officer.

73. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do

not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

74. The allegations of this paragraph are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

75. The allegations of this paragraph, including Footnote (n.53), are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

76. The allegations of this paragraph, including Footnote (n.54), are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

77. The allegations of this paragraph, including Footnotes (n.55), are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

78. The allegations of this paragraph are vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

79. The allegations of this paragraph are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

80. The allegations of this paragraph are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

81. The allegations of this paragraph, including Footnote (n.56), are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

82. The allegations of this paragraph are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

D. 42 U.S.C.§1983 FIRST AMENDMENT RETALIATION - AS TO DEFENDANT EDWARD BOUDREAU

This Defendant denies the allegations as stated in sub-heading D. The allegations call for conclusions of law or fact which do not otherwise require a response.

83. Paragraph 83 does not allege facts and does not require a response.

84. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do

not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

85. The allegations of this paragraph, including Footnotes (n.57,58), are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

86. The allegations of this paragraph are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

E. 42 U.S.C. § 1983 FIRST AMENDMENT RETALIATION - AS TO DEFENDANT DERRICK LEHMAN

This Defendant denies the allegations as stated in sub-heading E. The allegations call for conclusions of law or fact which do not otherwise require a response.

87. Paragraph 87 does not allege facts and does not require a response.

88. The allegations of this paragraph seem vague and ambiguous, referring to and asserting conclusions of law or fact without stating a claim upon which relief can be granted, and which do not require a response as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

89. The allegations of this paragraph, including Footnotes (n.59,60), are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

90. The allegations of this paragraph are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

V. DAMAGES

91. The allegations of this paragraph, including subparagraphs a. through g., are vague and ambiguous, referring to and asserting unsupported conclusions of law or fact which do not require a response, and are denied as stated. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

VI. JURY DEMAND

92. The allegations of this paragraph do not require a response. To the extent any response is required, the Defendant denies any allegations asserting fault or liability.

VII. ATTORNEY'S FEES AND COSTS

93. Denied.

VIII. PRAYER FOR RELIEF

94. Defendant denies the allegations as stated, including subparts a. - c.

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. Pleading further and in the alternative, Plaintiff's injuries and damages were caused in whole or in part by the conduct of other persons or entities for whom this defendant has no responsibility.

5. To the extent applicable and subject to withdrawal, Defendant asserts the affirmative defense of comparative fault and that Plaintiff failed to mitigate damages, if any, and asserts failure to mitigate as both an affirmative defense and as a reduction in the damage amount, if any, due Plaintiff.

6. Defendant asserts the affirmative defense of statute of limitations as to all claims outside the applicable limitations period(s), both statutory and administrative, if any.

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

8. Defendant hereby invokes applicable defenses based on the doctrine of Official Immunity and any related defenses. Defendant discharged its obligations and public duties in good faith, its actions were objectively reasonable in light of the law and the information possessed at that time.

9. To the extent applicable and subject to withdrawal, Defendant asserts the incident in question and the resulting harm to Plaintiff were caused or contributed to by Plaintiff's own conduct.

10. Defendant further pleads that, in the unlikely event it is found to be liable, such liability be reduced by the percentage of the causation found to have resulted from the acts or omissions of other persons.

11. Defendant pleads legal justification for the actions and conduct by it relating to this incident.

12. To the extent Defendant did not address a specific averment made by Plaintiff, Defendant expressly denies all such averments.

13. Defendant reserves the right to assert additional affirmative defenses as may be applicable throughout the development of the case, including estoppel, illegality, laches, waiver, or any other matter which may constitute an avoidance or affirmative defense.

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

CERTIFICATE OF SERVICE

I certify that on the 17th day of June 2022, I served a copy of *Defendant City of Austin's Answer and Affirmative Defenses to Plaintiff's Original Complaint* on all parties, by and through their attorney of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

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ATTORNEY FOR PLAINTIFF

/s/ Monte L. Barton Jr.
Monte L. Barton Jr.

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

GE'MICAH VOLTER-JONES,
Plaintiff,

v.

CITY OF AUSTIN, EDWARD BOUDREAU,
and DERRICK LEHMAN,
Defendants.

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Case No. 1:22-cv-00511-LY

**DEFENDANTS EDWARD BOUDREAU AND DERRICK LEHMAN'S
ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendants, Sergeant Edward Boudreau, and Officer Derrick Lehman, by and through their attorneys of record, and files this their Original Answer to Plaintiff's Original Complaint and in support thereof would respectfully show the Court as follows:

I. INTRODUCTION

1. Between May 25 and July 31 of 2020, approximately 2,037 law enforcement officers were injured during protests related to the in-custody death of George Floyd in Minnesota.¹ During those protests, approximately 62% of major U.S. cities experienced looting.² 56% of major U.S. cities experienced arson incidents—a statistic which does not include the 97 police vehicles set on fire during that time period, which was an act of violence reported by over 26% of major city law

¹ *Report on the 2020 Protests & Civil Unrest*, Major Cities Chiefs Association 9–12 (October 2020), <https://majorcitieschiefs.com/wp-content/uploads/2021/01/MCCA-Report-on-the-2020-Protest-and-Civil-Unrest.pdf>.

² *Id.*

enforcement agencies nationwide.³ Approximately 72% of major city law enforcement agencies reported officer injuries.⁴

2. State and local governments in 21 different U.S. states were forced to call up the U.S. National Guard to defend persons and property from violent rioters.⁵ Property Claims Services designated the riots as a “multi-state catastrophe event,” which is the first such designation for a civil disorder event since 1992.⁶ Conservative insurance estimates of property damage caused during the riots exceeds \$1 billion dollars—the “costliest civil disorder in U.S. history.”⁷

3. The weapons used by the “protest” rioters nationwide varied. The most common weapons used “were improvised or weapons of opportunity such as rocks, bricks, pieces of landscape, and bottles (including frozen and glass bottles).”⁸ Over three quarters of major city law enforcement agencies reported rioters using such weapons.⁹ “Another common violent tactic used by protestors involved throwing ‘Molotov cocktails’ at officers,” which was reported by a staggering 46% of major city law enforcement agencies nationwide.¹⁰ “Another common tactic was to use peaceful protesters as human shields while violent individuals attacked officers and attempted to incite violence by throwing objects from deep within crowds.”¹¹

4. 63% of agencies reported incendiary fireworks thrown or launched at officers.¹² 51% of agencies reported officers being confronted by protestors wielding firearms—including “AR-15s,

³ *Id.*

⁴ *Id.*

⁵ *Facts + Statistics: Civil Disorders*, Insurance Information Institute, <https://www.iii.org/fact-statistic/facts-statistics-civil-disorders>.

⁶ *Id.*

⁷ *Id.*

⁸ *Report on the 2020 Protests & Civil Unrest* at 11.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 11 – 12.

shotguns, and handguns.”¹³ Other weapons wielded by protestors commonly included bats, hammers, metal poles, and shields.¹⁴ Five different agencies reported “police officers being shot or critically injured” during the riots, one agency reported rioters discharging their firearms from moving vehicles, and at least two agencies “reported protestors being shot and killed by other protestors.”¹⁵

5. It is undisputed that many protestors committed no violence whatsoever during the protests. It is equally undisputed that a significant number of protestors *did* commit violent acts during the protests. When a previously peaceful protest suddenly includes persons who are carrying deadly weapons, injuring police officers, throwing Molotov cocktails, looting buildings, and setting cars on fire, the protest is no longer a protest. It is a riot.

6. Austin was by no means immune to the violence. Rioters looted buildings and businesses; shattered windows—including buildings with important historical significance; set cars and other property on fire; broke open an ATM; and defaced the Capitol grounds and numerous other properties.¹⁶ Rioters in Austin also launched or threw items that included—but were not limited to—“rocks, bricks, eggs, water bottles, and Molotov cocktails” at Austin Police Department officers.¹⁷ Starting on May 30, the Austin Police Department was forced to issue a “citywide request for assistance, which means all Austin officers [were] asked to report to duty.”¹⁸ DPS sent

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See e.g. Ken Herman, *Herman: A sad Sunday morning on Sixth Street*, AUSTIN AMERICAN STATESMAN (May 31, 2020, 1:38 PM), <https://www.statesman.com/news/20200531/herman-sad-sunday-morning-on-sixth-street>.

¹⁷ Heather Osborne, Ariana Garcia & Katie Hall, *Fires set as Austin protests against police violence spread, scatter*, AUSTIN AMERICAN STATESMAN (May 30, 2020, 11:07 AM), <https://www.statesman.com/news/20200530/fires-set-as-austin-protests-against-police-violence-spread-scatter>.

¹⁸ *Id.*

“more than 1,500 officers to assist local police departments” statewide, and the governor ultimately “activated the Texas National Guard.”¹⁹ By the time of the incident underlying this lawsuit, the Austin protests were no longer protests—they were riots. It is thus within the context of an ongoing riot that the force used by APD officers must be analyzed.

7. On May 30, APD Sergeant Edward Boudreau and Officer Derrick Lehman personally observed rioters throwing projectiles at APD officers that included but were not limited to rocks, glass bottles, fluid-filled water bottles, and more.

8. APD Officer Lehman was one of the APD officers tasked with policing the protests and riots to protect the citizens of Austin and the city itself on the day in question. APD officers on the scene had reason to believe that the protests would turn violent or even deadly—including the knowledge that rioters had burned a police precinct to the ground in a related “protest” two days earlier.²⁰ By the time Officer Lehman arrived, protestors were in the process of attempting to take over and block Interstate 35, creating a potentially deadly situation for themselves as well as oncoming drivers travelling on the highway.

9. Plaintiff Volter-Jones’s conduct on May 30, 2020 crossed the line from peaceful protestor to violent rioter. Plaintiff’s violent acts far exceeded anything that protected by the First Amendment.

10. Over the course of the protest-turned-riot, Officer Lehman never purposefully impacted any person who was not either actively committing a violent act or was obviously preparing to imminently commit a violent act. Officer Lehman never aimed his weapon at any rioter’s head,

¹⁹ *Id.*

²⁰ *See e.g.* Sarah Kerr, Mike Shum, Katie G. Nelson, Dmitry Khavin & Haley Willis, *Minneapolis Precinct Fire: How a Night of Chaos Unfolded*, N.Y. TIMES (May 29, 2020), <https://www.nytimes.com/video/us/100000007162707/minneapolis-police-protest-burn.html?searchResultPosition=1>.

neck, or face. At all times, Officer Lehman acted pursuant to his training and accepted police procedures. Officer Lehman's conduct as a law enforcement officer was reasonable, especially when the requisite consideration is given to his surrounding circumstances that were "tense, uncertain, and rapidly evolving."²¹ He is entitled to the protections of Qualified Immunity as a result.

II. ORIGINAL ANSWER

A. Parties

11. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraph 1 of Plaintiff's Original Complaint.

12. Defendants admit the allegations contained within Paragraph 2 of Plaintiff's Original Complaint.

13. As to the allegations contained within Paragraphs 3 – 4 of Plaintiff's Original Complaint, Defendants deny that any APD officer may be validly served at 715 E. 8th Street, Austin Texas 78701 through means other than personal service of process. Defendants otherwise admit the remaining allegations therein.

B. Jurisdiction and Venue.

14. Defendants admit allegations contained within Paragraphs 5 – 6 of Plaintiff's Original Complaint.

C. Facts.

15. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraph 7 of Plaintiff's Original Complaint.

²¹ See *Graham v. Connor*, 490 U.S. 386, 397 (1989).

16. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraph 8 of Plaintiff's Original Complaint.

17. As it pertains to the allegations contained in Paragraphs 9 – 10 of Plaintiff's Original Complaint, Defendants admit that the Austin Police Department responded to and provided law enforcement support for large crowds of people gathered on May 30, 2020. Otherwise, denied.

18. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraph 11 of Plaintiff's Original Complaint as written, and therefore denies the same.

19. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraphs 12 – 17 of Plaintiff's Original Complaint.

20. With regard to Paragraph 18 of Plaintiff's Original Complaint, denied.

21. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraphs 19 – 20 of Plaintiff's Original Complaint as written, and therefore denies the same.

22. Defendants cannot admit or deny what Plaintiff Volter-Jones claims to have observed. Otherwise, Paragraphs 21 – 25 are otherwise denied.

23. Paragraph 26 is denied.

24. Paragraph 27 is denied.

25. Paragraph 28 is denied.

26. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraph 29 – 31 of Plaintiff's Original Complaint. Otherwise, denied.

27. Defendants deny Plaintiff is entitled to damages. Paragraph 32 is denied.

28. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraph 33 of Plaintiff's Original Complaint. Otherwise, denied.

29. Officer Lehman was put on administrative duty. Austin Police Department never determined Officer Lehman violated policy for the conduct that makes the basis of this suit. Otherwise, Paragraph 34 is denied.

30. As to the allegations contained within Paragraph 35 of Plaintiff's Original Complaint, Defendants admit that the Travis County District Attorney issued 21 indictments to APD officers, including to Defendants. The indictments and the cited news article related to the indictments speak for themselves. Defendant denies the remaining allegations and characterizations in Paragraph 35 of Plaintiff's Original Complaint.

D. Causes of Action.

i. 42 U.S.C. § 1983 (*Monell*) and the First and Fourth Amendment to the U.S. Constitution applied through the Fourteenth Amendment – as to Defendant City of Austin Only

31. As to the allegations contained in Paragraph 36, Defendants adopt and incorporate their responses to the previous Paragraphs of the Complaint.

32. Pursuant to Federal Rule of Procedure 8(b)(A) no answer is necessary from these Defendants as to Paragraphs 37 – 59 because these paragraphs support causes of action explicitly not asserted against them. To the extent any answer is deemed necessary, Defendants deny the allegations therein.

ii. 42 U.S.C. § 1983 – Fourth Amendment Excessive Force – as to Defendant Edward Boudreau, Individually

33. As to the allegations contained in Paragraph 60, Defendant Boudreau adopts and incorporate their responses to the previous Paragraphs of the Complaint.

34. As to the allegations contained in Paragraphs 61 – 63 of Plaintiff’s Original Complaint, Defendant admits that he was acting under the color of law during the protests and riots that form the backdrop of this lawsuit.

35. Defendant Boudreau denies using a less-lethal shotgun on the date in question. Paragraph 64 is denied. Pursuant to Federal Rule of Civil Procedure 8(b) a Defendant need not respond to a Plaintiff’s alleged conclusions regarding the law.

36. Defendant Boudreau denies pointing out Volter-Jones to Defendant Lehman to be impacted. Paragraph 65 is denied. Pursuant to Federal Rule of Civil Procedure 8(b) a Defendant need not respond to a Plaintiff’s alleged conclusions regarding the law.

37. Paragraph 66 requires no response. Plaintiff summarily claims a constitutional violation occurred. Pursuant to Federal Rule of Civil Procedure 8(b) a Defendant need not respond to a Plaintiff’s alleged conclusions regarding the law.

38. As to the allegations contained in Paragraphs 67 – 69, Defendants are without sufficient knowledge to form a belief as to the truth of the allegations. Otherwise, denied.

39. Paragraph 70 is denied. Plaintiff is not entitled to damages.

iii. 42 U.S.C. § 1983 – Fourth Amendment Excessive Force – as to Defendant Derrick Lehman, Individually

40. As to the allegations contained in Paragraph 71, Defendant Lehman adopts and incorporate their responses to the previous Paragraphs of the Complaint.

41. As to the allegations contained in Paragraphs 72 – 74 of Plaintiff’s Original Complaint, Defendant Lehman admits that he was acting under the color of law during the protests and riots that form the backdrop of this lawsuit. Pursuant to Federal Rule of Civil Procedure 8(b) a Defendant need not respond to a Plaintiff’s alleged conclusions regarding the law. Otherwise, denied.

42. Defendant is without sufficient knowledge to form a belief as to the truth of the allegations contained within Paragraph 75 of Plaintiff's Original Complaint. Pursuant to Federal Rule of Civil Procedure 8(b) a Defendant need not respond to a Plaintiff's alleged conclusions regarding the law. Otherwise, denied.

43. Defendant Lehman denies Volter-Jones was pointed out to him Defendant Boudreau to be impacted. Paragraph 76 is denied. Pursuant to Federal Rule of Civil Procedure 8(b) a Defendant need not respond to a Plaintiff's alleged conclusions regarding the law.

44. Paragraph 77 requires no response. Plaintiff summarily claims a constitutional violation occurred. Pursuant to Federal Rule of Civil Procedure 8(b) a Defendant need not respond to a Plaintiff's alleged conclusions regarding the law.

45. As to the allegations contained in Paragraphs 78 – 81, Defendants are without sufficient knowledge to form a belief as to the truth of the allegations. Otherwise, denied.

46. Paragraph 82 is denied. Plaintiff is not entitled to damages.

iv. 42 U.S.C. § 1983 – First Amendment Retaliation – as to Defendant Edward Boudreau, Individually

47. As to the allegations contained in Paragraph 83, Defendant adopts and incorporates his responses to the previous Paragraphs of the Complaint.

48. Paragraphs 84 – 86 are denied. At no point did Defendant Boudreau take any action designed to chill any citizen's protected right to free speech or to peacefully assemble. The only actions ever taken by this Defendant were in response to riotous behavior. Pursuant to Federal Rule of Civil Procedure 8(b) this Defendant need not respond to or rebut Plaintiff's alleged legal conclusions regarding the law of the First Amendment. Otherwise, denied.

v. 42 U.S.C. § 1983 – First Amendment Retaliation – as to Defendant Derrick Lehman, Individually

49. As to the allegations contained in Paragraph 87, Defendant Lehman adopts and incorporates his responses to the previous Paragraphs of the Complaint.

50. Paragraphs 88 – 90 are denied. At no point did Defendant Lehman take any action designed to chill any citizen’s protected right to free speech or to peacefully assemble. The only actions ever taken by this Defendant were in response to riotous behavior. Pursuant to Federal Rule of Civil Procedure 8(b) this Defendant need not respond to or rebut Plaintiff’s alleged legal conclusions regarding the law of the First Amendment. Otherwise, denied.

vi. Damages, Jury Demand, Attorney’s Fees and Costs, and Prayer.

51. As to the allegations contained in Paragraphs 91 – 94 no answer is necessary from these Defendants. To the extent any answer is deemed necessary, Defendants admit that Plaintiff seeks the relief requested therein. Defendants deny that their conduct entitles Plaintiff to compensatory damages, punitive damages, or attorney’s fees.

III. AFFIRMATIVE DEFENSES & IMMUNITIES

52. 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.*

53. Defendants hereby invoke the doctrine of Qualified Immunity and Official Immunity. Defendants discharged their obligations and public duties in good faith and would show that their actions were objectively reasonable in light of the law and the information possessed at that time, and that no clearly established law exists prohibiting them from using force to defend themselves and/or other persons from an active or imminent assault with a potentially deadly weapon or projectile, whether during a riot or otherwise.

54. Further and in the alternative, the incident in question and the resulting harm to Plaintiff were caused or contributed to by another persons' own illegal and/or violent or reckless conduct, including but not limited to the conduct of Plaintiff himself. To the extent legally applicable herein, Defendants invoke the comparative responsibility provisions of the Texas Civil Practice & Remedies Code.²²

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

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

57. 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.

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

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

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

IV. JURY DEMAND

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

²² See TEX. CIV. PRAC & REM. CODE ANN. § 33.001.

V. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants, Edward Boudreau and Derrick Lehman 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, that Defendants be awarded attorney fees incurred in the defense of this suit, and for all further relief to which they may be justly entitled.

Respectfully submitted,

WRIGHT & GREENHILL, P.C.

4700 Mueller Blvd., Suite 200

Austin, Texas 78723

(512) 476-4600

(512) 476-5382 – Fax

By: /s/ Stephen B. Barron

Blair J. Leake

State Bar No. 24081630

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sbarron@w-g.com

**ATTORNEYS FOR DEFENDANTS
EDWARD BOUDREAU AND
DERRICK LEHMAN**

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

GE'MICAH VOLTER-JONES,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 1:22-cv-00511-LY
	§	
CITY OF AUSTIN, EDWARD	§	
BOUDREAU, individually, and	§	
DERRICK LEHMAN, individually,	§	
Defendant.	§	

**PLAINTIFF'S ALTERNATIVE DISPUTE
RESOLUTION REPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, through their counsel, files this Alternative Dispute Resolution Report pursuant to Local Rule CV-88 and the Court's Scheduling Order [Docket No. 12]. Plaintiff shows the Court as follows:

1. Status of settlement negotiations: Prior to filing suit, counsel for Plaintiff sent settlement demands to Defendant City of Austin. Plaintiff and Defendant City of Austin are presently actively engaged in negotiations.
2. Identity of persons known, or reasonably believed to be responsible for settlement negotiations for each party:
 - A. For Plaintiff:** Courtney E. Anderson Broadhead, counsel for Plaintiff;
 - B. For Defendant City of Austin:** Monte L. Barton, Jr., counsel for Defendant;
 - C. For Defendants Edward Boudreau and Derrick Lehman:** Blair J. Leake, counsel for Defendants.
3. Plaintiff believes that mediation would provide a forum to attempt meaningful efforts to accomplish resolution of this case and that mediation would be the preferred method of ADR. Counsel for the Plaintiff certifies that their client has been informed of the ADR procedures available in the Western District of Texas. Plaintiff and counsel believe that should mediation be necessary, they will be able to mutually agree with Defendants upon a provider election method, specific

mediator and date. Plaintiff has proposed to Defendants that the mediator's fees be split equally amongst each party.

Date: September 7, 2022.

Respectfully submitted,

Anderson Broadhead Law Firm, PLLC
660 S. Bagdad Rd., Ste. 120, Leander, TX 78641
Tel. 737.373.3373
Fax. 512.277.7227

By: /s/ Courtney E. Anderson Broadhead
COURTNEY E. ANDERSON BROADHEAD
State Bar No: 24006185
Email: CAB@AndBroLaw.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record on this 7th day of September 2022.

Via email:

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ATTORNEY FOR DEFENDANT CITY OF AUSTIN

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900 Congress Avenue, Suite 500 Austin, Texas 78701

**ATTORNEYS FOR INDIVIDUAL DEFENDANTS
EDWARD BOUDREAU AND DERRICK LEHMAN**

/s/ Courtney E. Anderson Broadhead

COURTNEY E. ANDERSON BROADHEAD

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

**GE'MICAH VOLTER-JONES,
Plaintiff,**

v.

**CITY OF AUSTIN, EDWARD
BOUDREAU, individually, and
DERRICK LEHMAN, individually,
Defendant.**

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CIVIL ACTION NO. 1:22-cv-00511-RP

**DEFENDANT CITY OF AUSTIN'S OPPOSED
MOTION TO STAY DISCOVERY AND FURTHER PROCEEDINGS**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Defendant the City of Austin (the "City") files this motion to stay further proceedings and corresponding scheduling order deadlines in this matter, including discovery, pretrial exchanges, dispositive motion deadlines, and trial, pending resolution of the criminal proceeding related to this case that remains pending in Travis County criminal district court.

1. On April 10, 2023, the Court granted Defendant Officers' (Edward Boudreau and Derrick Lehman) Motion to Stay Discovery [Dkt. 17], as to those two defendants until the resolution of the criminal proceedings they both face in connection with their alleged conduct during a May 2020 protest, which is the same conduct that forms the basis for the claims of the plaintiff, Mr. Volter-Jones, in the civil lawsuit against them and Defendant City of Austin. The discovery issues are common to and intertwined among all defendants, including the City of Austin. The remaining defendant, The City of Austin, joins in and fully adopts and incorporates the Defendant Officers' Motion to Stay Discovery, and separately moves the Court to Stay Discovery and all Further Proceedings for the reasons stated [Dkt. 17] and also set out below.

2. As for the Plaintiff's pending claims against Defendant City of Austin ("COA"), the

current scheduling order [Dkt. 16] set this case for trial on December 4, 2023.

3. The Travis County Grand Jury has yet to convene regarding the pending charges against Defendants Boudreau and Lehman. As a result, the usual and ordinary discovery has been delayed. The remaining discovery issues are common to and intertwined among all parties. Consequently, defendant, COA, respectfully submits that it would be better for the interests of all parties for all discovery and deadlines in this lawsuit be stayed until the resolution of the criminal proceedings now pending against co-defendants, Officer Boudreau and Officer Lehman.

4. Discovery involving the individual officers—who are critical fact witnesses under indictment—has forced upon the individual officers the impossible choice of invoking their Fifth Amendment rights in light of the pending criminal cases or defending themselves against civil liability by waiving those rights and testifying. The officers have not waived their Fifth Amendment protections. This situation is on point with other cases involving parallel proceedings where the Court has entered stays of discovery and/or other proceedings in recent matters arising out of the May 2020 protests, as well as in other cases involving parallel civil and criminal proceedings over officer conduct. *See, e.g.*, Order (Dkt. 39), *Sanders v. City of Austin*, No. 1:22-cv-00314-RP (W.D. Tex. Nov. 15, 2022) (Howell, M.J.) (staying all discovery against officer defendant); *Doe v. City of Austin*, No. 1:22-CV-00299-RP, 2022 WL 4234954, at *8 (W.D. Tex. Sept. 14, 2022) (Hightower, M.J.) (staying all discovery against city and officer defendant); *Kirsch v. City of Austin*, No. A-20-CV-01113-RP, 2022 WL 4280908, at *3 (W.D. Tex. Aug. 5, 2022) (Howell, M.J.) (staying all discovery against officer defendant); *DeSilva v. Taylor*, No. 1:21:cv-00129-RP, 2022 WL 545063, at *4 (W.D. Tex. Feb. 23, 2022) (Hightower, M.J.) (staying all discovery against officer defendants); Order Staying Case (Dkt. 89), *Ambler v. Williamson Cnty.*, No. 1:20-CV-1068-LY (W.D. Tex. July 27, 2021) (staying entire case).

5. Given the lack of resolution of the criminal case that factually overlaps this one, COA

respectfully submits that it will not be able to conduct additional and necessary discovery that is unavailable while the criminal case is pending. Further, it is not possible to conduct expert discovery without the necessary and currently unavailable testimony of the individual officers, as essential fact witnesses. Without this unavailable testimony and other evidence, COA will not be able to prepare its defenses for summary judgment, much less for trial. The practical effects of the parallel criminal proceedings preclude the completion of expert disclosures and reports, summary judgment briefing, trial preparation, and presentation of the claims and defenses at trial. The City (“COA”) therefore moves to stay all further proceedings in this case until the resolution of the corresponding parallel criminal proceedings pending against the officer defendants who are essential witnesses in the case.

6. Once the overlapping criminal matters are resolved, the parties will be able to complete remaining discovery, summary judgment proceedings, and any pretrial preparations.

7. Defendant, The City of Austin, does hereby request for the Court to stay the deadlines and discovery as to all parties consistent with the Court’s Order [Dkt. 19].

PRAYER FOR RELIEF

For the above stated reasons, defendant, The City of Austin, respectfully requests that the Court grant the requested temporary stay of all deadlines and discovery until the criminal parallel proceedings have concluded, and for all further relief to which the parties may be justly entitled.

RESPECTFULLY SUBMITTED,

/s/ Monte L. Barton Jr.
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MEGHAN RILEY, CHIEF OF LITIGATION
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**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF CONFERENCE

I certify that on April 12, 2023, I conferred via email with Counsel for Plaintiff, Courtney Anderson Broadhead, and she advised that the plaintiff was opposed to this Motion to Stay All Discovery

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

CERTIFICATE OF SERVICE

I certify that on May 9, 2023, I served a copy of this Opposed Motion to Stay Deadlines and Discovery on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

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ATTORNEYS FOR PLAINTIFF

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**ATTORNEYS FOR DEFENDANTS
EDWARD BOUDREAU and**

DERRICK LEHMAN

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

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

GE'MICAH VOLTER-JONES,
Plaintiff,

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v.

CIVIL ACTION NO. 1:22-cv-00511-RP

CITY OF AUSTIN, EDWARD
BOUDREAU, individually, and
DERRICK LEHMAN, individually,
Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANT
CITY OF AUSTIN'S MOTION TO STAY DISCOVERY**

TO THE HONORABLE ROBERT PITMAN, UNITED STATES DISTRICT JUDGE:

Plaintiff Ge'Micah Volter-Jones ("Plaintiff") respectfully opposes the Motion to Stay Discovery and Further Proceedings filed by Defendant City of Austin ("the City") in the above-captioned matter. The Court should deny the City of Austin's Motion to Stay Discovery [Dkt 20].

I. SUMMARY OF THE ARGUMENT

The City of Austin's Motion to Stay Discovery was filed in this court on May 9th, 2023. It should be denied because under the Alcala factors, the City of Austin fails to meet their burden to establish a stay¹.

Defendant omitted events transpiring during this case proceeding that have rendered moot their request for a stay of further proceedings "pending resolution of the [overlapping] criminal proceeding" against individual Defendants Edward Boudreau and Derrick Lehman (in Travis County criminal district court). [Dkt. 20]

After the criminal proceeding indictments against the individual officers in this case were made public, the chief executive of the state of Texas, the Governor, made public the promise and assurance to them that they would not face any criminal consequences. [Exhibit 1] This is a promise from the

¹ *Alcala v. Texas Webb County*, 625 F. Supp. 2d 391 (S.D. Tex. 2009)

state of Texas that defendants may rely on in this civil matter as:

1. The state of Texas made a unilateral and unconditional promise to “exonerate any police officer unjustly prosecuted.” [Exhibit 1]
2. The pardon promise of the state of Texas is intended to induce reliance thereon on by the defendants. The state must fulfill contractual public promises that there will be no criminal punishment; that a defendant relies on to their detriment by providing testimony in a civil case.²
3. On April 8th, 2023, the Governor took overt action to fulfill his prior promise to “exonerate” criminal defendants who shot people in Austin, Texas (who were demonstrating against the police violence that caused the death of George Floyd). By publicly promising that the office of the Governor was “taking action as swiftly as Texas law allows regarding the pardon” of the convicted murderer defendant Daniel Perry; the Governor ensured that his prior promise to defendants in this case was not speculation, but an enforceable promise. [Exhibit 2]

Thus, there is no unresolved parallel criminal action which would necessitate Fifth Amendment invocation and thus deprive defendant City of Austin of essential witness evidence for their defense. For the individual defendants and their employer, the City of Austin, the shield of invoking the Fifth Amendment is superfluous to the effective grant of immunity conferred by the Governor.

Plaintiff requests a hearing on this issue.

For these reasons, the court should deny Defendant City of Austin’s motion.

II. PROCEDURAL HISTORY

On May 26th, 2022, Plaintiff filed this Original Complaint. [Dkt. 1]

² Commonwealth v. Cosby, 252 A. 3d 1092, 1131 (Pa 2021); Pennsylvania v. Cosby, (US Supreme Court cert denied March 7th, 2022)

On August 26th, 2022, Defendant City of Austin served first Discovery Requests (Interrogatories and Requests for Production) on Plaintiff.

On September 25th, 2022, Plaintiff served Discovery Responses to Defendant City of Austin.

On September 26th, 2022, the Initial Pretrial Conference was held. This case is scheduled for jury trial on December 4, 2023. [Dkt 16]

On March 9th, 2023, Motion for Discovery Stay was filed by Defendants Edward Boudreau, and Derrick Lehman. Plaintiff subsequently withdrew their opposition.

On April 10th, 2023, the court granted Defendant Officers' (Edward Boudreau and Derrick Lehman) Motion to Stay Discovery. [Dkt. 19]

On April 12th, 2023, Defendant City of Austin and Plaintiff agreed in writing via email to a joint 20-day Extension to Designate Experts.

On May 9th, 2023, Defendant City of Austin's Motion to Stay Discovery was filed in this court. [Dkt. 20]

III. FACTUAL BACKGROUND

The Office of the Governor is the Chief Executive in the state of Texas.³

As the Chief Executive of Texas, the Governor is the only entity with the power to pardon under the Texas Constitution, Article IV, Section 11 (b).⁴

A pardon in Texas restores "certain citizenship rights forfeited upon criminal conviction, such as the right to serve on a jury, to hold public office, and to serve as executor or administrator of an estate. [...] A person receiving a full pardon after a conviction is entitled to an expunction of all arrest

³ Office of the Texas Governor | Greg Abbott at <https://gov.texas.gov/governor-abbott/duties>

⁴ Texas Constitution, Article IV. "In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction or successful completion of a term of deferred adjudication community supervision, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures."

records relating to the conviction.”⁵

Gregory W. Abbott is the current Governor of Texas (since 2015).⁶ Mr. Abbott is an attorney (Texas Bar Card Number: 00794500, licensed in Texas since 11/08/1985).⁷

On May 30th, 2020, in Austin, Texas, Plaintiff was participating in a public free speech demonstration against excessive force violence by police officers (in response to the deaths of George Floyd on May 25th, 2020 in Minneapolis, Minnesota and Mike Ramos on April 24th, 2020 in Austin, Texas). Plaintiff was shot by individual Austin Police officer defendants (acting under the color of state and local law of their governmental employer, Defendant the City of Austin), with a 12-gauge shot gun loaded with less-than-lethal Kinetic Impact Projectiles (KIPs) bean bag rounds. Plaintiff was severely injured, underwent emergency surgery and is permanently disfigured.

Plaintiff was not questioned, cited, or charged with any crime related to the events on May 30th, 2020.

On July 25th, 2020, in Austin, Texas there was a public free speech demonstration against excessive force violence by police officers (in response to the deaths of George Floyd and Mike Ramos).⁸ Plaintiff did not participate in this event. An anti-violence protestor unrelated to plaintiff, Garrett Foster, was fatally shot five times with an AK-47 rifle⁹ by a member of the public, Daniel Perry.¹⁰

On or about February 17th, 2022, the Travis County Grand Jury signed the indictment against the individual Defendants herein, DERRICK LEHMAN and EDWARD BOUDREAU, for Aggravated Assault by Public Servant against Plaintiff, a first-degree criminal felony by the 390th

⁵ TEXAS BOARD OF PARDONS AND PAROLES at https://www.tdcj.texas.gov/bpp/exec_clem/Effects_of_a_Full_Pardon.html

⁶ Office of the Texas Governor | Greg Abbott at <https://gov.texas.gov/governor-abbott/duties>

⁷ State Bar of Texas at

https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&template=/Customsource/MemberDirectory/MemberDirectoryDetail.cfm&ContactID=148193

⁸ Associated Press at <https://apnews.com/article/shootings-violence-u-s-news-austin-texas-a00748a564346acd7a483ab0b3855efa>

⁹ C. Osborn for the Austin American-Statesman at <https://www.statesman.com/story/news/local/2023/04/07/daniel-perry-verdict-guilty-murder-garrett-foster-austin-protest/70090982007/>

¹⁰ A. Coronado for the Associated Press at <https://apnews.com/article/austin-texas-e6ba2ff02bbe2a1931cb9837d0dbfd69>

District Court Special Grand Jury. The cases are pending in the 450th District Court. [Dkt 17-1]

On February 23rd, 2022, the Texas Governor issued a press release entitled, “Governor Abbott Issues Statement in Support of Austin Police Department Officers.” [Exhibit 1] It stated in part, “In 2020, Texas experienced violent protests that wreaked havoc on our cities.” The Governor continued to make promises that,

“Time will tell whether the accusations against the courageous Austin police officers is a political sham. Time will also tell whether I, as Governor, must take action to exonerate any police officer unjustly prosecuted.”¹¹ [Exhibit 1]

The same day, the office of the Travis county District Attorney released a statement in response to the Governor’s promise, stating in part, “In these cases, Austin police officers indiscriminately fired deadly weapons into crowds of people. Many of the people hit were innocent bystanders and they suffered severe and lasting injuries.”¹²

To exonerate is defined as “a situation in which a defendant who was convicted of a crime was later relieved of all legal consequences of that conviction through a decision by a prosecutor, a governor, or a court, after new evidence of his or her innocence was discovered.”¹³

On April 7th, 2023, a Travis County jury returned a criminal verdict of murder against the defendant Daniel Perry, accused of fatally shooting the anti-violence protestor Garrett Foster.¹⁴ Publicly disseminated sentencing evidence included that within days after the murder of George Floyd on May 25th, 2020,

¹¹ Ex. 1, Governor Abbott Issues Statement In Support Of Austin Police Department Officers at <https://gov.texas.gov/news/post/governor-abbott-issues-statement-in-support-of-austin-police-department-officers>

¹² P. Livengood, KVUE News at <https://www.kvue.com/article/news/investigations/defenders/use-of-force/austin-texas-officer-indictments-gov-abbott-response/269-bf7d606b-34dd-4c68-88a4-eb5e599bcfff>

¹³ Timothy Cole Exoneration Review Commission p. 7, at <https://www.txcourts.gov/media/1436589/tcerc-final-report-december-9-2016.pdf>

¹⁴ J. Vertuno, for Associated Press (AP) News, May 9th, 2023

“[the defendant] sent a text message to an acquaintance as protests over Floyd’s death got underway. “I might go to Dallas to shoot looters,” [the defendant] wrote.”¹⁵ On June 1, 2020, [the defendant] wrote that “now it is my turn to get banned (from Facebook) by comparing the black lives matter movement to a zoo full of monkeys that are freaking out flinging their s--t.”¹⁶

On April 8th, 2023, the Governor of Texas “tweeted” from @GregAbbott_TX,

“I am working as swiftly as Texas law allows regarding the pardon of [convicted murderer] Sgt. Perry[;] Texas has one of the strongest “Stand Your Ground” laws of self-defense that cannot be nullified by a jury or a progressive District Attorney.[...] I look forward to approving the Board’s pardon recommendation as soon as it hits my desk. Additionally, I have already prioritized reining in rogue District Attorneys, and the Texas Legislature is working on laws to achieve that goal.”¹⁷ [Exhibit 2]

On May 10th 2023, Defendant Daniel Perry was sentenced to 25 years in prison for fatally shooting a 28 year old US Air Force veteran, who was attending a Black Lives Matter rally in Austin Texas on July 25th, 2020.¹⁸

IV. LEGAL STANDARD

A. There exists “no general constitutional, statutory, or common law prohibition against the prosecution of parallel criminal and civil actions, even where such actions proceed simultaneously.”¹⁹

B. Whether to stay a civil action is “one of court discretion” exercised “when the interests of

¹⁵ J. Vertuno, for Associated Press (AP) News, May 9th, 2023 at <https://apnews.com/article/black-lives-matter-protest-shooting-texas-sentence-04abb51c52d41fa259b2f2ed8ee72f37>

¹⁶ T. Plohetski and C. Osborn, Austin American Statesman April 13th, 2023 at <https://www.statesman.com/story/news/local/2023/04/13/daniel-perry-trial-social-media-racist-anti-protester-comments-gov-abbott-garrett-foster/70113166007/>

¹⁷ Greg Abbott via Twitter at @GregAbbott_TX at https://twitter.com/GregAbbott_TX/status/1644778789493243907

¹⁸ Reuters at <https://www.reuters.com/world/us/us-army-sergeant-sentenced-25-years-texas-protesters-murder-2023-05-10/>

¹⁹ *Alcala v. Texas Webb County*, 625 F. Supp. 2d 391 (S.D. Tex. 2009) p. 7, citing *SEC v. First Fin. Group of Texas, Inc.*, 659 F.2d 660, 666-67 (5th Cir. 1981) (citing *United States v. Kordel*, 397 U.S. 1, 11 (1970)).

justice so require.”²⁰ “[S]imultaneous prosecutions of civil and criminal actions are “generally unobjectionable.”²¹

C. “[T]here is a strong presumption in favor of discovery, and it is the party who moves for a stay that bears the burden of overcoming this presumption.”²²

D. “A district court should stay the civil case only upon a showing of ‘special circumstances,’ so as to prevent the defendant from suffering substantial and irreparable prejudice.”²³

E. In “making the determination whether to stay discovery, the court balances,

(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 defendant has been indicted;

(3) the private interests of the plaintiff in proceeding expeditiously, weighed against the prejudice to the plaintiff caused by a delay;

(4) the private interests of and burden on the defendant;

(5) the interests of the courts; and

(6) the public interest[.]”²⁴

F. Executive clemency is contractual because it requires acceptance by the convicted person.²⁵

G. This court does not have judicial review of the State of Texas pardon decision by the Chief Executive, the Governor of Texas. “Pardon powers are committed, as is our tradition, to the authority of the executive.”²⁶ As per former United States Supreme Court Chief Justice Rehnquist, pardon “decisions have not traditionally been the business of courts; as such, they are rarely, if ever,

²⁰ *Alcala v. Texas Webb County*, 625 F. Supp. 2d 391, 396 (S.D. Tex. 2009) p. 7, citing *Kordel*, 397 U.S. at 12 n. 27; *Dominguez v. Hartford Fin. Servs. Group, Inc.*, 530 F.Supp.2d 902, 905 (S.D. Tex. 2008).

²¹ *Jostens, Inc. v. Hammons*, Civil Action 4:20-CV-00225 (E.D. Tex. Jun. 10, 2022) citing *Standard Sanitary Mfg. Co. v. United States*, 226 U.S. 20, 52 (1912)

²² *Id.* at 397-98.

²³ *Id.* at 398.

²⁴ *Id.* at 398-400 (string cite omitted).

²⁵ *Speth v. State*, 6 S.W.3d 530, 534 (Tex. Crim. App. 1999)

²⁶ *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998)

appropriate subjects for judicial review.”²⁷ The Texas Court of Criminal Appeals “has no power to control nor right to review the Governor’s exercise of his clemency power.”²⁸

V. ARGUMENT

A. The extent to which the issues in the criminal case overlap with those presented in the civil case supports proceeding.

Inaccurate facts pled by City of Austin defendant include, “The Travis County Grand Jury has yet to convene regarding the pending charges against Defendants Boudreau and Lehman. As a result, the usual and ordinary discovery has been delayed. The remaining discovery issues are common to and intertwined among all parties.” [Dkt 20, page 2, Section 3].

The Travis County Grand Jury has in fact convened and at the July Term, 2021 indicted the individual Defendants (signed on February 17th, 2022) [Dkt 17-1 and Dkt 17-2] in the following cases: STATE OF TEXAS VS EDWARD BOUDREAU, D-1-DC-22-900020 and STATE OF TEXAS VS DERRICK LEHMAN, D-1-DC-20-900071 [Dkt 17-3].

The plaintiff is not a party to any criminal case (he is only the victim of the state felony crimes for which individual defendants are under indictment).

The greatest concern when a defendant faces simultaneous civil and criminal proceedings is the risk of self-incrimination.²⁹ In this case, limited issues related to individual actions of the individual defendants in this case overlap with the factual events in the indicted Travis county criminal case.

There is no overlapping issue wherein the defendant City of Austin will not have more evidentiary access than their employees, the individual defendants. The City defendant has internal access to all of the records in relation to the weapon(s), ammunition, witness statements, personnel

²⁷ 523 U.S. 272, 280 (1998) at 276 (citing *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458 (1981))

²⁸ *Vandyke v. State*, 2017 Tex. Crim. App. LEXIS 1311 (2017) citing *Ex parte Gore*, 4 S.W.2d 38, 39 (Tex. Crim. App. 1928)

²⁹ *Jostens, Inc. v. Hammons*, Civil Action 4:20-CV-00225 (E.D. Tex. Jun. 10, 2022) citing *Tajonera v. Black Elk Energy Offshore Ops., L.L.C.*, No. 13-0366, 2015 U.S. Dist. LEXIS 163518, at *33 (E.D. La. Dec. 4, 2015).

records and audio and video recording of the actual shooting in real time. Individual defendants only have their own recollections of personal experiences; they did not decide to purchase, pay for, design training, hire trainers, set training outcomes, create storage and maintenance thereof of physical evidence, or review of practices of policies related to the evidence or events of the case herein.

In addition, defendant City of Austin has in their possession a wealth of prior discovery in similar cases (including specific data related to records of the shooting of plaintiff herein), and access to all current employees (and data on past employees) to mitigate against any potential selective invocation of the Fifth Amendment privilege by individual defendants. For example, the City is able to effectively defend itself with utilization of essential witnesses they employ (or have employed); the City may ask current and past coworkers and supervisors of the individual defendants, “Did you have knowledge of any assaults on anyone else committed by [individual defendant]?” For these reasons, this factor weighs in favor of this case proceeding.

B. The status of the criminal case is that there is no unresolved criminal case that might subject any of the defendants to criminal responsibility.

There is no criminal proceeding against Defendant City of Austin.

The separate criminal proceedings against the individual Defendants in this matter are moot as:

- 1) Discovery has been stayed by this court [Dkt. 19]; and,
- 2) Preemptive criminal case resolution has been undertaken by specific actions of the Governor of Texas (“the Governor”).

The individual City of Austin employee defendants in this case are engaged in a criminal process in Travis county, Texas, with an outcome that is certain and resolved. The resolution is evidenced by the fact that the case will either not end in any conviction (due to dismissal, mistrial, or

acquittal), or it will end in a conviction.

If it ends in a conviction, the Governor previously made an enforceable public promise specifically to the individual defendants in this case that they would not be subject to any criminal penalties, as he would “exonerate” them. [Exhibit 1]

Subsequently, on April 8th, 2023, the Governor stated that he had “instructed the Board” and provided his assurance that, “I look forward to approving the Board’s pardon recommendation as soon as it hits my desk.” The Governor thus proved that his prior promise to pardon was a trustworthy and valid offer and could and should be relied upon by defendants that they would not be subject to any criminal responsibility. The criminal case against the individual defendant employees is rendered moot based on the reliable public promises made by the Chief Executive of the state of Texas and the actions of the Governor’s subsequent pardon instruction. Thus, the status of the criminal proceeding weighs in favor of this case proceeding.

C. Proceeding expeditiously is fair and unprejudicial.

The three-year anniversary of plaintiff’s shooting will be on May 30th, 2023. Even though defendant City of Austin has reviewed the shooting and publicly stated in June of 2020 that they determined that a Level 1 less-lethal force critical incident occurred at the date, time and location that only plaintiff was shot and injured; zero accountability, assistance or compensation from the defendants has been forthcoming. In addition, although the defendant City of Austin has all of the evidence regarding this civil matter in their control and possession; the changes of personnel at the City during the pendency of this case (new City Manager, new mayor, etc.) prejudice plaintiff and jeopardize the preservation of evidence. “With the passage of time, witnesses become unavailable, memories of conversations and dates fade, and documents can be lost or destroyed.”³⁰

³⁰ *Alcala v. Texas Webb County*, 625 F. Supp. 2d at 405

The City of Austin defendant has publicly published report(s) admitting their responsibility for failures to train, etc., resulting in their employees shooting plaintiff (thus causing his injury and disfigurement). For example, in their After Action Report released September 16th, 2022, the defendant City of Austin stated, “APD recognizes that the less-lethal beanbag munition did not perform as expected, which resulted in unintended injuries” [and] “identifies 17 critical areas of analysis and lists problem identification, findings, recommendations, and subsequent implementation of improvements.”³¹

Plaintiff is simultaneously a victim of a crime that is prepared to testify in a criminal trial with no set trial date (that has been rendered effectively impotent and moot by the Governor of Texas) and this civil litigation with a set trial date against a defendant City who asserts they don’t have access to the evidence of their culpability for shooting him that they themselves have previously published in reports to the public.

Proceeding with the case herein against defendant the City of Austin is the only potential path for legal remedy available for plaintiff to pursue at this juncture. Even if a different individual Chief Executive of Texas were to take the office of Governor in the future; as per the Pennsylvania v. Cosby case, the promises of the current Governor to “exonerate” the defendants will be enforceable.

Plaintiff has only these civil proceedings to hold those responsible for his shooting accountable for their actions. There is no method for plaintiff to petition the Governor or the courts in regard to the public promise to pardon(s) those who were indicted for crimes against him by the grand jury members in Travis County, Texas.

It is more likely than not that the public awareness of the promised pardon will impact the civil jury selection in this case. Some potential jurors may impute that plaintiff is making “unjust” or “sham” civil claims herein, as per the promised pardon language. [Exhibit 1] Potential jurors may

³¹ City of Austin “Austin Police Announce Key Changes to Policing of Protests” on September 16th, 2022 at <https://www.austintexas.gov/news/austin-police-announce-key-changes-policing-protests>

likely believe that for the highest ranking official in the state, the Texas Governor, to make the public promise to pardon individual defendants that the Governor must have access to information that “proves” the plaintiff in this case, as per his statement:

engaged in “violent protests,” “wreak[ed] havoc on our cities,” was engaged in “criminal assault” on the state Capitol, “shut down” the interstate, participated in “criminal activity” and/or “physically attacked” police officers. [Exhibit 1]

The only opportunity for plaintiff to rebut those untrue characterizations about him, is in this proceeding. The longer the public statements about plaintiff remain unaddressed in court proceedings, the stronger they become in the public consciousness.

Thus, to stay this case as per the Motion of Defendant the City of Austin will be inherently unfair to plaintiff as it will foreclose the only path legally available to him as a party to seek redress or justice. Staying this case is overwhelmingly prejudicial to plaintiff as his emotional, medical, psychological and financial burdens continue to mount as he endures almost three years post-shooting with no consequences to those who injured and permanently disfigured him. Factors of fairness and prejudice weigh for proceeding against defendant City of Austin as scheduled.

D. Defendant’s interest in justice is not burdened by proceeding.

The City is entitled and obligated to zealously defend themselves. The individual defendants in this case are reassured by statute and case law that they will be able rely on the public promises of the state of Texas via the office of the Governor. Neither state nor federal courts have the right to judicial review of the Governor’s pardon power. The individual defendants are secure as they have been promised zero risk of criminal consequence for shooting plaintiff.

The motion herein by Defendant City of Austin cited cases in “recent matters arising out of the May 2020 protests,” where discovery was stayed only on the officer defendants, “Sanders v. City of

Austin, No. 1:22-cv-00314-RP (W.D. Tex. Nov. 15, 2022) (Howell, M.J.) (staying all discovery against officer defendant); *Kirsch v. City of Austin*, No. A-20-CV-01113-RP, 2022 WL 4280908, at *3 (W.D. Tex. Aug. 5, 2022) (Howell, M.J.) (staying all discovery against officer defendant)[.]” [Dkt 20]

Another cited case, “*DeSilva v. Taylor*, No. 1:21:cv-00129-RP, 2022 WL 545063, at *4 (W.D. Tex. Feb. 23, 2022) (Hightower, M.J.) (staying all discovery against officer defendants)” did not stay discovery against the city and did not relate to the May 2020 protests. It was related to a July 31, 2019 police action resulting in a fatality.³²

The cited case, *Ambler v. Williamson Cnty.*, No. 1:20-CV-1068-LY (W.D. Tex. July 27, 2021), was granted a stay of the entire case yet it was not related to the May 2020 protests herein and did not include the City of Austin as a party. It was related to a March 28, 2019 fatal event in Williamson county, Texas.³³ The only other case defendant City of Austin cited was one with an unidentified plaintiff, *Doe v. City of Austin*, No. 1:22-CV-00299-RP, 2022 WL 4234954, at *8 (W.D. Tex. Sept. 14, 2022). [Dkt 20]. This case has an identified plaintiff.

The City may effectively engage in discovery with their own employees to ascertain the events witnessed by those other employees, including those on the scene of the shooting who did not discharge their weapons (yet witnessed the individual defendants do so). Issues pertaining to the purchase of the weapon(s) used in the shooting (in addition to the training, maintenance, storage, check-in and checkout process thereof), the records on all ammunition used in this shooting, the records of the actions of the individual defendants (in regard to their hiring, training, evaluation, discipline, performance reviews) and a wealth of other information is available to the City to ensure they defend themselves against any allegations by Plaintiff that are not supported by factual evidence.

It is common for an employer to have to defend themselves against an employee, or former

³² *DeSilva v. Taylor*, No. 1:21:cv-00129-RP, 2022 WL 545063, at *4 (W.D. Tex. Feb. 23, 2022)

³³ *Ambler v. Williamson Cnty.*, Case No. 1-20-CV-1068-LY (W.D. Tex. Feb. 25, 2021)

employee, that is an opposing party (e.g., in employment cases where the employer is held responsible for the actions of their employee under respondeat superior liability, for wrongful termination, etc.). In this case, the City of Austin still employs the individual defendants and the parties are not in opposition in any public civil or criminal proceeding. The City of Austin has unfettered and uncompromised ability to defend themselves in this matter through their possession and control of the physical evidence, personnel and recorded record of the events. In assessing the full and fair defense available to this specific employer defendant City of Austin, their unique role in regard to evidence determining inception, control, documentation thereof and as possessor of all relevant evidence should be afforded a realistic assessment by this court and weighs against a stay.

E. The court’s interest (in case management and efficient use of judicial resources) is only served by proceeding.

Courts “have a “strong interest in moving matters expeditiously through the judicial system.”³⁴ The potential of criminal responsibility has been foreclosed by the public promise of pardon and the criminal case has no trial date at this juncture. As there is no trial date for the criminal proceeding and no Texas court Speedy Trial Act; the defendant City of Austin is effectively “seeking an indefinite stay, which will frustrate resolution of this case for an undefined period of time.”³⁵ Stay orders will be reversed when they are “immoderate or of an indefinite duration.”³⁶ This court faces a certain trial date pending herein or a stay based on a non-existent trial date with no risk of criminal responsibility or conviction for defendants’ individual employees (due to the promised executive pardon).

The criminal case has no practical meaning as the sole entity with the power to “exonerate” by the power to pardon, the Governor, promised to do so and then took overt action to support the validity

³⁴ *Jostens, Inc. v. Hammons*, Civil Action 4:20-CV-00225 (E.D. Tex. Jun. 10, 2022) citing *SEC v. Kiselak Capital Grp., LLC*, No. 4:09-CV-256-A, 2011 WL 4398443, at *4 (N.D. Tex. Sept. 20, 2011)

³⁵ *Jostens, Inc. v. Hammons*, Civil Action 4:20-CV-00225 (E.D. Tex. Jun. 10, 2022)

³⁶ *US v. Mallavarapu*, 2010 WL 3896422, at *6 (W.D. La. Sept. 30, 2010) (citing *In re Beebe*, 56 F.3d 1384, at *3 (5th Cir. 1995))

of his promise to pardon. Any other entity publicly proclaiming they would “exonerate” defendants would be inconsequential as that entity would have no actual power to do so. The Governor’s public promise to “exonerate” those who shot individual(s) protesting against the death of George Floyd became enforceable (if it was relied on to the detriment of a criminal defendant who testified in a civil case) when he acted to pardon “as swiftly” as allowed by law, the defendant Daniel Perry who was criminally convicted of murder by a jury in Travis County, Texas. Thus, it is a highly inefficient utilization of this court’s resources to stay this actually unresolved federal civil case “pending” an already resolved state criminal case with a certain and known outcome (e.g., if convicted, defendants will be pardoned by the office of the Governor). This factor weighs in favor of proceeding this case.

F. The interests of parties not related to the civil litigation and that of the public are only served by proceeding with civil litigation.

Parties not related to this civil litigation (and that of the general public) are ill-served by foreclosure of criminal consequences via the promised gubernatorial pardon and ending this civil process with a “stay” against the defendant City of Austin. “[T]he public has an interest in the just and constitutional resolution of disputes with minimal delay.”³⁷

The public is aware of the nexus between the proffered pardon action for convicted murderer Daniel Perry in April 2023 and the previously promised pardons for City of Austin individual defendant officers indicted for crimes in February 2022. This nexus is evidenced by articles including one published on April 16th, 2023 in the Austin American-Statesman, “Indicted officers may seek pardons – Potential action for Perry raises questions”³⁸ and on April 17th, 2023, “What Gov. Greg Abbott's Daniel Perry pardon request could mean for indicted police officers[.]”³⁹

³⁷ *Jostens, Inc. v. Hammons*, Civil Action 4:20-CV-00225 (E.D. Tex. Jun. 10, 2022) citing *Kiselak Capital*, 2011 WL 4398443

³⁸ T. Plohetski, Austin American-Statesman, April 16th, 2023 page 1A

³⁹ T. Plohetski, Austin American-Statesman at <https://www.statesman.com/story/news/local/2023/04/17/greg-abbott-pardon-austin-protests-police-officers-indicted/70111045007/>

The public taxpayer should have access to transparent information on issues including how firearms are obtained, trained on, maintained for operational safety, on where and how they are assigned to individual officers and where are all of the firearms involved in this case (and similarly situated ones) are currently located.

The public is the funding source for defendant and for their legal defense. This public funding aspect results in a heightened interest in the just resolution of disputes with minimal delay. Resolution of this civil matter (via alternative dispute resolution, settlement or trial verdict) will end the expenditure of taxpayer funds. Staying this matter for an indeterminate amount of time in deference to a resolved criminal matter outcome continues the expenditure of taxpayer funds, deprives the public of information regarding public finance, and weakens public trust in the integrity of the justice system. This factor thus weighs in favor of proceeding with this case.

VI. PRAYER FOR RELIEF

As plaintiff has shown, the defendant City of Austin has failed meet their burden to establish factors showing that justice warrants a stay. Procedurally, the individual defendants have already been granted a stay by this court. They have no possible exposure to the risk of self-incrimination as they are subject to no discovery at this juncture. The defendant City of Austin is not subject to criminal responsibility as they are not criminally indicted and face no criminal charges. The individual defendants have the right to invoke their fifth amendment rights if and when they are ever subject to discovery in this civil case. They also have the public promise from the government that they may rely upon, via the Chief Executive of the government of Texas (where they are employed by a subsidiary municipality), that upon any future criminal conviction the office of the Governor will “exonerate” them; an effective grant of immunity.

NOW COMES Plaintiff Ge’Micah Volter-Jones (“Volter-Jones”) and hereby asks the court to

deny the Motion to Stay Discovery filed on May 9th, 2023 in its entirety and permit this case to proceed and for all other relief to which plaintiff may be entitled.

RESPECTFULLY SUBMITTED,

Anderson Broadhead Law Firm, PLLC
660 S. Bagdad Rd., Ste. 120, Leander, TX 78641
Tel. 737.373.3373
Fax. 512.277.7227

By: /s/ Courtney E. Anderson Broadhead
COURTNEY E. ANDERSON BROADHEAD
State Bar No: 24006185
Email: CAB@AndBroLaw.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of May 2023, a true and correct copy of the foregoing document was caused to be served upon all parties or their counsel of record via E-File/E-Service/E-Mail/or U.S. First Class Mail, in compliance with the Federal Rules of Civil Procedure, as follows:

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Assistant City Attorney
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P. O. Box 1546
Austin, Texas 78767-1546
Telephone (512) 974-2409
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Telephone: (512) 476-4600
Facsimile: (512) 476-5382

**ATTORNEYS FOR DEFENDANTS
EDWARD BOUDREAU and
DERRICK LEHMAN**

/s/ Courtney E. Anderson Broadhead
COURTNEY E. ANDERSON BROADHEAD

EXHIBIT 1



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Governor Abbott Issues Statement In Support Of Austin Police Department Officers

February 23, 2022 | Austin, Texas | [Press Release](#)

Governor Greg Abbott today issued a statement of support for the officers of the Austin Police Department:

"Last year, Austin set an all-time record for the number of murders. It comes as no surprise that murders increased after Austin decreased funding for law enforcement. In Texas, we do not defund and denigrate our law enforcement officers. Instead we support them for risking their own lives and safety to protect our communities from people who endanger and attack our communities. In 2020, Texas experienced violent protests that wreaked havoc on our cities. In Austin, law enforcement officers defended the state Capitol from criminal assault, protected the Austin Police Department headquarters from being overrun, cleared the interstate from being shut down, and disrupted criminal activity in areas across the city. Many officers were physically attacked while protecting Austin. Those officers should be praised for their efforts, not prosecuted. Time will tell whether the accusations against the courageous Austin police officers is a political sham. Time will also tell whether I, as Governor, must take action to exonerate any police officer unjustly prosecuted."

EXHIBIT 2



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I am working as swiftly as Texas law allows regarding the pardon of Sgt. Perry.

Texas has one of the strongest "Stand Your Ground" laws of self-defense that cannot be nullified by a jury or a progressive District Attorney.

Unlike the President or some other states, the Texas Constitution limits the Governor's pardon authority to only act on a recommendation by the Board of Pardons and Paroles. Texas law DOES allow the Governor to request the Board of Pardons and Paroles to determine if a person should be granted a pardon. I have made that request and instructed the Board to expedite its review.

I look forward to approving the Board's pardon recommendation as soon as it hits my desk.

Additionally, I have already prioritized reining in rogue District Attorneys, and the Texas Legislature is working on laws to achieve that goal.

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TxgrlThatsme @TxgrlThatsme · Apr 8
Does the law require he wait until appeals are exhausted? Not sure.

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Greg Abbott @GregAbbott_TX · Apr 8
No

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Aries-Atlas @elebull · Apr 8
Thank you! The DA intentionally mislead the Grand Jury which is a violation of federal law. Texas needs to pass HB2640 requiring DA's to present exculpatory evidence in Grand jury proceedings.

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

GE'MICAH VOLTER-JONES,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 1:22-cv-00511-RP
	§	
CITY OF AUSTIN, EDWARD	§	
BOUDREAU, individually, and	§	
DERRICK LEHMAN, individually,	§	
<i>Defendants.</i>	§	

**ORDER DENYING DEFENDANT
CITY OF AUSTIN'S MOTION TO STAY DISCOVERY**

On this day the Court considered Defendant City of Austin's opposed motion to stay and the response of the Plaintiff. After considering the motion, response, arguments of counsel, and applicable law, the Court does not find the motion meritorious.

It is therefore ORDERED, ADJUDGED, and DECREED that the motion to stay is hereby DENIED.

SIGNED this _____ day of _____, 2023.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

EXHIBIT 1



Office of the Texas Governor | Greg Abbott

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FOR THE WESTERN DISTRICT OF TEXAS
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GE'MICAH VOLTER-JONES,	§	
<i>Plaintiff,</i>	§	
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v.	§	CIVIL ACTION NO. 1:22-cv-00511-RP
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CITY OF AUSTIN, EDWARD	§	
BOUDREAU, individually, and	§	
DERRICK LEHMAN, individually,	§	
<i>Defendants.</i>	§	

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On this day the Court considered Defendant City of Austin's opposed motion to stay and the response of the Plaintiff. After considering the motion, response, arguments of counsel, and applicable law, the Court does not find the motion meritorious.

It is therefore ORDERED, ADJUDGED, and DECREED that the motion to stay is hereby DENIED.

SIGNED this _____ day of _____, 2023.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

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

GE'MICAH VOLTER-JONES,
Plaintiff,

v.

CITY OF AUSTIN, EDWARD
BOUDREAU, individually, and
DERRICK LEHMAN, individually,
Defendant.

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CIVIL ACTION NO. 1:22-cv-00511-RP

**DEFENDANT CITY OF AUSTIN'S REPLY SUPPORTING ITS
MOTION TO STAY DISCOVERY AND FURTHER PROCEEDINGS**

TO THE HONORABLE DUSTIN HOWELL, UNITED STATES MAGISTRATE JUDGE:

Defendant the City of Austin (the "City") files this reply in rebuttal to Plaintiff's response [Dkt 21] in opposition to the City's pending motion to stay [Dkt 20] further proceedings and corresponding scheduling order deadlines in this matter, including discovery, pretrial exchanges, dispositive motion deadlines, and trial, pending resolution of the criminal proceeding related to this case that remains pending in Travis County criminal district court.

1. Defendant respectfully submits that Plaintiff's Response [Dkt 21] filed on May 22, 2023, does not satisfy either the time limits or page limits of local rule 7(d). Accordingly, Defendant requests for the Court to grant the City's Motion [Dkt 20].

2. Further, Defendant respectfully submits that plaintiff's argument about the authority of the Governor of Texas to unilaterally grant pardons does not apply in this situation. Consequently, the defendant officers remain the subject of unresolved parallel criminal proceedings as a result of Travis County Grand Jury indictments on February 17, 2022. Defendant, City of Austin, maintains and reasserts the arguments from its pending Motion [Dkt 20], and again, in support points out that on April 10, 2023, the Court granted Defendant

Officers' (Edward Boudreau and Derrick Lehman) Motion to Stay Discovery [Dkt. 17], as to those two defendants until the resolution of the criminal proceedings they both face in connection with their alleged conduct during a May 2020 protest, which is the same conduct that forms the basis for the claims of the plaintiff, Mr. Volter-Jones, in the civil lawsuit against them and Defendant City of Austin. The discovery issues are common to and intertwined among all defendants, including the City of Austin. The remaining defendant, The City of Austin, joins in and fully adopts and incorporates the Defendant Officers' Motion to Stay Discovery, and separately moves the Court to Stay Discovery and all Further Proceedings for the reasons stated [Dkt. 17] and also set out in Defendant City of Austin's motion [Dkt 20].

3. Once the overlapping criminal matters are resolved, the parties will be able to complete remaining discovery, summary judgment proceedings, and any pretrial preparations.

4. Defendant, The City of Austin, does hereby request for the Court to stay the deadlines and discovery as to all parties consistent with the Court's Order [Dkt. 19].

PRAYER FOR RELIEF

For the above stated reasons, defendant, The City of Austin, respectfully requests that the Court grant the requested temporary stay of all deadlines and discovery until the criminal parallel proceedings have concluded, and for all further relief to which the parties may be justly entitled.

RESPECTFULLY SUBMITTED,

/s/ Monte L. Barton Jr.

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City of Austin

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Telephone (512) 974-2409
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN**

CERTIFICATE OF SERVICE

I certify that on May 30, 2023, I served a copy of this Reply in Support of City of Austin's Motion to Stay Deadlines and Discovery on all parties, by and through their attorneys of record, in compliance with the Federal Rules of Civil Procedure.

Via CM/ECF:

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**ATTORNEYS FOR DEFENDANTS
EDWARD BOUDREAU and
DERRICK LEHMAN**

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GE'MICAH VOLTER-JONES,
Plaintiff

§
§

v.

§

No. 1:22-CV-00511-RP

CITY OF AUSTIN; EDWARD
BOUDREAU, POLICE OFFICER;
AND DERRICK LEHMAN,
POLICE OFFICER;
Defendants

§
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ORDER

Before the Court is Defendant City of Austin’s Motion to Stay Discovery and Further Proceedings, Dkt. 25. The District Court referred the motion to the undersigned for disposition. After considering the briefs and exhibits filed, along with the applicable law, the Court grants the City’s motion.

I. BACKGROUND

This is one of several civil cases filed against the City of Austin and various Austin Police Department officers over officer conduct during protests that took place in Austin in late May 2020. Dkt. 1, at 3. Plaintiff, Ge’Micah Volter-Jones, alleges that he was injured when officers, including the Defendant Officers here, fired “less-than-lethal Kinetic Impact Projectiles” into the crowd of protesters. *Id.*, at 7-8. Volter-Jones asserts claims under 42 U.S.C. § 1983 against Officers Boudreau and Lehman and against the City. *Id.*, at 9-24. The Court previously granted the Defendant Officers’ unopposed motion to stay discovery pending the resolution of the criminal

proceedings against them. Dkt. 19. The City did not join this motion; accordingly, the relief granted in that order applied only to the Defendant Officers. *Id.*

The City now seeks to stay discovery and all further proceedings until the pending criminal proceedings against the Defendant Officers are resolved. Dkt. 20. Volter-Jones asserts *Monell*¹ liability against the City—alleging constitutional violations arising from policies, practices, and customs that he contends contributed to the alleged use of excessive force in his case. Dkt. 1, at 9-17. The City argues that, due to the unavailability of testimony from the Defendant Officers and similarly situated officers, it cannot obtain the additional fact and expert discovery it needs and that this prevents the City from adequately preparing its claims and defenses for summary judgment and trial. Dkt. 20, at 2-3.

II. LEGAL STANDARDS

“The Court has broad discretion to stay proceedings in the interest of justice and in order to control its docket.” *Raymond v. J.P. Morgan Chase Bank*, No. SA-20-CA-161-OLG, 2020 WL 10731935, at *1 (W.D. Tex. Sept. 24, 2020). “Proper use of this authority calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.” *Id.* (internal quotation marks omitted). “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 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

¹ *Monell v. New York City Dep’t of Social Servs.*, 436 U.S. 658 (1978).

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.

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. Tex. 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); *see also, e.g., In re Grand Jury Subpoena*, 866 F.3d 231, 234 (5th Cir. 2017) (observing that “less restrictive civil discovery could undermine an ongoing criminal investigation and subsequent criminal case”).

III. DISCUSSION

As noted above, the Court has already stayed discovery in this case as to the Defendant Officers. And the undersigned recently granted a similar motion filed by the City in a related case arising out of officer conduct in the same protests. *See Sanders v. City of Austin*, No. 1:22-CV-00314-RP, Dkt. 72 (W.D. Tex. May 12, 2023);

see also, e.g., *Doe v. City of Austin*, No. 1:22-CV-00299-RP, 2022 WL 4234954, at *7 (W.D. Tex. Sept. 14, 2022) (“[T]he Court finds that a stay of discovery against the City is appropriate because Doe’s *Monell* claims against the City are inextricably intertwined with her claims against Dodds.”). For the same reasons as those cases,² the Court concludes here that the City’s requested stay is appropriate. The factors set out above confirm this conclusion.

A. Overlap Between the Criminal and Civil Cases

“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.” *DeSilva v. Taylor*, No. 1:21-CV-00129-RP, 2022 WL 545063, at *3 (W.D. Tex. Feb. 23, 2022) (internal quotation marks omitted). “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. And while some facts related to the City’s policies, practices, and customs will not likely feature in the criminal proceedings against the Defendant Officers, Volter-Jones’s *Monell* claim is predicated on constitutional violations alleged to have been committed by the Defendant Officers—the same conduct that forms the factual basis of the criminal proceedings pending against them.

As in *Doe*, “[t]o defend against [Volter-Jones]’s allegations that the City’s policies and procedures was the moving force behind [the Defendant Officers]’ constitutional violations, the City will need discovery from [the Defendant Officers]

² The City also argues that Volter-Jones’s response was filed late and over-length. See Dkt. 25, at 1. While the undersigned agrees, the Court declines to grant the motion on this basis, particularly where, as discussed below, the City also prevails on the merits.

and likely must depose [them]. Conversely, in order for [Volter-Jones] to prove that the City is liable under *Monell*, [he] must first demonstrate that [the Defendant Officers] committed a constitutional violation, and that the constitutional violation was caused by the City's policies." 2022 WL 4234954, at *7. Accordingly, this factor, the "most important," weighs in favor of granting a stay. *See, e.g., DeSilva*, 2022 WL 545063, at *3 ("Because there is significant overlap between the issue presented in this case and Defendants' criminal proceedings, there is a significant danger of self-incrimination. The first and most important factor weighs strongly in favor of staying the case.").

B. Status of the Criminal Case

"The 'strongest case' for a stay exists where a party is indicted for a serious offense and must defend a civil action involving the same matter." *Alcala*, 625 F. Supp. 2d at 401. The Defendant Officers have been indicted. Dkts. 17-1, 17-2, 17-3.

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.

Librado v. M.S. Carriers, Inc., No. 3:02-CV-2095D, 2002 WL 31495988, at *2 (N.D. Tex. Nov. 5, 2002). Now that the Defendant Officers have been indicted, they are at risk of potentially making incriminating statements in this civil case, thereby precluding their availability as witnesses.

Volter-Jones minimizes this factor, citing various "enforceable public promise[s]" made by Governor Greg Abbott. Dkt. 21, at 9-10. Volter-Jones contends

the Governor—on pain of contractual liability if he doesn’t follow through—has committed to pardoning the Defendant Officers if they are convicted in their criminal trials. Thus (the argument goes), any concerns the Defendants have about incriminating themselves with testimony in this case are unfounded. Though creative, this argument is meritless. The undersigned concludes that this factor weighs in favor of a stay.

C. Plaintiff’s Interests

To be sure, Volter-Jones does have an interest in having his claim prosecuted expeditiously. But when evaluating this factor, “courts may require a plaintiff to establish more prejudice than simply a delay in its right to expeditiously pursue his claim.” *DeSilva*, 2022 WL 545063, at *3. Volter-Jones contends that the delay caused by a stay could “jeopardize the preservation of evidence.” Dkt. 21, at 10. But, as in *DeSilva*, Volter-Jones “identifies no discovery that is available now but would be unavailable later should a stay be granted” and “has not alleged that any witnesses will be unable to testify nor that any particular evidence will degrade if a stay is granted.” *DeSilva*, 2022 WL 545063, at *3. Volter-Jones’s conclusory statements to the contrary fail to tip this factor in his favor. Volter-Jones invokes his gubernatorial-nullification argument here as well, but this novel theory holds no more sway in this context than with the previous factor.

D. Burden on Defendant

Absent a stay, the City will be forced to defend against Volter-Jones’s claim without the availability of the two witnesses most central to the factual allegations

underlying the claim. In addressing this factor, the best Volter-Jones could muster to distinguish *Doe*, which the undersigned finds is the case most on-point with this one, is to note that the plaintiff in that case was unidentified, while the plaintiff here is identified. It is unclear how this distinction is material to the analysis, and Volter-Jones does not bother to explain. This factor weighs in favor of a stay.

E. Interest of the Courts

Volter-Jones correctly argues that the Court has an interest in moving its docket along. Dkt. 21, at 14. But, as the Court in *DeSilva* noted, “granting a stay ‘serves the interests of the courts, because conducting the criminal proceedings first advances judicial economy.’” 2022 WL 545063, at *4 (quoting *Jean v. City of Dallas*, No. 3:18-CV-2862-M, 2019 WL 4597580, at *5 (N.D. Tex. Sept. 22, 2019)). Moreover, “[r]esolution 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.* (quoting *Jean*, 2019 WL 4597580, at *5). For all of these reasons, the Court concludes that this factor, too, weighs in favor of a stay.

F. The Public Interest

Finally, the Court considers the public’s interest. “The public has an interest in the just and constitutional resolution of disputes with minimal delay.” *Walker v. Wilburn*, No. 3:13-CV-4896-D, 2015 WL 5873392, at *9 (N.D. Tex. Oct. 5, 2015). “The sixth factor typically weighs against the grant of a stay only where, unlike here, a

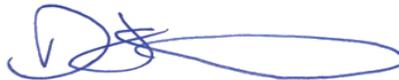
civil case is pending and no criminal investigation has begun.” *DeSilva*, 2022 WL 545063, at *4 (citing *Meyers v. Pamerleau*, No. 5:15-CV-524-DAE, 2016 WL 393552, at *7 (W.D. Tex. Feb. 1, 2016)). Moreover, “[w]hile the public certainly has an interest in the prompt resolution of the instant civil case, it also has an interest in protecting the constitutional rights of criminal defendants.” *Meyers*, 2016 WL 393552, at *7. Accordingly, the final factor also supports a stay.

IV. ORDER

The Court **GRANTS** Defendant City of Austin’s Motion to Stay Discovery and Further Proceedings, Dkt. 20, and **ORDERS** that all further proceedings in this case are **STAYED** until further order of this Court.

IT IS FURTHER ORDERED that this cause of action is removed from the docket of the undersigned and **RETURNED** to the docket of the Honorable Robert Pitman.

SIGNED June 8, 2023.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATE JUDGE

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

GE'MICAH VOLTER-JONES,

Plaintiff,

v.

CITY OF AUSTIN, et al.,

Defendants.

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1:22-CV-511-RP

ORDER

On June 8, 2023, the Court granted the City of Austin's motion to stay and stayed this case. (Dkt. 26). Accordingly, the parties are **ORDERED** to file joint quarterly status reports with the next report being due **on or before September 8, 2023**.

SIGNED on July 10, 2023.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE