

**PETITION: SMALL CLAIMS CASE**

Filed: 4/14/2023 11:06 AM  
Judge Yvonne M. Williams, JP1  
Travis County, Texas  
J1-CV-23-001475

CASE NO. (court use only) \_\_\_\_\_

In the Justice Court, Precinct 1, Travis County, Texas

**Mark Carruthers**  
PLAINTIFF

VS.

**Austin Police Department 715 East 8th Street Austin, TX 78701**  
DEFENDANT(S)

**COMPLAINT:** The basis for the claim which entitles the plaintiff to seek relief against the defendant is:  
**I am suing the Austin Police Department for discrimination based on my gender. The essence of my case is based on the differing treatment of Audrey Gil, a woman, and myself, a man, by the Austin Police Department under almost identical circumstances in reports/cases involving crimes dating back to 02/04/2022.**

**RELIEF:** Plaintiff seeks damages in the amount of **\$20,000.00**, and/or return of personal property as described as follows (be specific): \_\_\_\_\_, which has a value of \_\_\_\_\_  
Additionally, plaintiff seeks the following:  
**Court Costs.**

plus all costs of court as allowed by law.

**SERVICE OF CITATION:** Service is requested on defendants by personal service at home or work or by alternative service as allowed by the Texas Justice Court Rules of Court. Other addresses where the defendant(s) may be served are:

**Chief of Police Joseph Chacon**  
**715 East 8th Street, Austin, TX, 78701**

If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address: markscarruthers@gmail.com

I declare under penalty of perjury, pursuant to the law of the State of Texas, that all information provided is true and correct.

Mark Carruthers  
Petitioner's Printed Name

/s/ Mark Carruthers  
Signature of Plaintiff or Attorney

**DEFENDANT(S) INFORMATION (if known):**  
DATE OF BIRTH: \_\_\_\_\_

5629 N Lamar Apt 436  
Address of Plaintiff's Attorney, if any, or Plaintiff if none

\*LAST 3 NUMBERS OF DRIVER LICENSE: \_\_\_\_\_

Austin, TX 78751  
City State Zip

\*LAST 3 NUMBERS OF SOCIAL SECURITY: \_\_\_\_\_

**DEFENDANT'S PHONE NUMBER: 512-974-0000**

Ph. 214-687-6215 Fax.  
Phone & Fax No. of Plaintiff's Attorney, if any, or Plaintiff if none  
**markscarruthers@gmail.com**

CAUSE NO. J1-CV-23-001475

MARK CARRUTHERS,  
*Plaintiffs,*

v.

AUSTIN POLICE DEPARTMENT,  
*Defendant.*

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IN THE JUSTICE COURT

OF TRAVIS COUNTY, TEXAS

PRECINCT 1

**DEFENDANT, AUSTIN POLICE DEPARTMENT'S PLEA TO THE JURISDICTION  
AND ORIGINAL ANSWER**

TO THE HONORABLE JUDGE PRESIDING:

COMES NOW, Defendant, Austin Police Department, represented by and through the undersigned Assistant City Attorney, and hereby files its Plea to the Jurisdiction, Original Answer, and Motion to Stay Discovery, and respectfully shows as follows:

**I. PLEA TO THE JURISDICTION**

**A. Standard of Review**

1. A plea to the jurisdiction challenges the court's authority to decide a case. *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 149 (Tex. 2012); *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553–54 (Tex. 2000).

2. The burden is on the plaintiff to affirmatively demonstrate the trial court's jurisdiction. *Heckman*, 369 S.W.3d at 150; *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

3. When assessing a plea to the jurisdiction, the analysis begins with the live pleadings. *Heckman*, 369 S.W.3d at 150; *Miranda*, 133 S.W.3d at 226. The Court may also consider evidence submitted to negate the existence of jurisdiction—and must consider such

evidence when necessary to resolve the jurisdictional issue. *Heckman*, 369 S.W.3d at 150; *Bland*, 34 S.W.3d at 555.

4. A court must grant the plea to the jurisdiction if the plaintiff's pleadings affirmatively negate the existence of jurisdiction, or if the defendant presents undisputed evidence that negates the existence of the court's jurisdiction. *Heckman*, 369 S.W.3d at 150; *Miranda*, 133 S.W.3d at 226-27.

**B. Claims Against Austin Police Department are Barred Because it is a  
Nonjural Entity Incapable of Being Sued**

5. The court does not have jurisdiction over the allegations against Defendant, Austin Police Department, because as a department nested within the City of Austin it is not a legal entity subject to suit. *See Darby v. Pasadena Police Dep't.*, 939 F.2d 311, 313-14 (5th Cir. 1991). The City alone has the authority to designate whether one of its own departments is subject to suit as a separate legal entity. *Id.*

6. For a plaintiff to sue a city department, it must enjoy the status of a separate legal existence. *Id.* And "unless the true political entity has taken explicit steps to grant the servient agency with jural authority, the agency cannot engage in any litigation except in concert with the government itself." *Id.* Without such authority and existence, the plaintiff merely "seeks recovery from a legal entity that does not exist for his purposes." *Id.*

7. If no jural entity exists, the suit is subject to dismissal. Here, the City has not designated the Austin Police Department to be a separate legal entity with its own separate, distinct, indivisible ability or capacity to sue or be sued.

8. Therefore, the court does not have jurisdiction over Plaintiff's allegations, because Austin Police Department is not a legal entity capable of being sued, and the court must dismiss all causes of action against Defendant with prejudice to the re-filing of same.

## **II. GENERAL DENIAL**

9. The Austin Police Department generally denies each and every allegation in Plaintiff's Original Petition and any amendments or supplements to the same. Tex. R. Civ. P. 92.

### **PRAYER FOR RELIEF**

WHEREFORE, Defendant prays a hearing be set to address its plea to the jurisdiction. Defendant further prays all relief requested by Plaintiff be denied and dismissed, and that the Defendant recover any additional relief to which he is entitled under law or in equity.

RESPECTFULLY SUBMITTED,

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

/s/ Brandon Livengood  
BRANDON LIVENGOOD  
State Bar No. 24128022  
brandon.livengood@austintexas.gov  
City of Austin  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone (512) 974-3042  
Facsimile (512) 974-1311

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing on all parties or their attorneys of record, in compliance with the Texas Rules of Civil Procedure, this 8<sup>th</sup> day of May 2023.

**Via e-Service and/or facsimile:**

Mark Carruthers  
5629 N Lamar Apt. 436  
Austin, Texas 78751  
markscarruthers@gmail.com  
*Pro Se Plaintiff*

/s/ Brandon Livengood  
BRANDON LIVENGOOD

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jessica Best on behalf of Brandon Livengood

Bar No. 24128022

jessica.best@austintexas.gov

Envelope ID: 75411660

Filing Code Description: Answer

Filing Description: DEFENDANT, AUSTIN POLICE DEPARTMENTS  
PLEA TO THE JURISDICTION AND ORIGINAL ANSWER

Status as of 5/8/2023 2:45 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Brandon Livengood		brandon.livengood@austintexas.gov	5/8/2023 1:47:17 PM	SENT
Jessica Best		jessica.best@austintexas.gov	5/8/2023 1:47:17 PM	SENT
Henry Taylor		henry.taylor@austintexas.gov	5/8/2023 1:47:17 PM	SENT

CAUSE NO. J1-CV-23-001475

MARK CARRUTHERS,  
*Plaintiffs,*

v.

AUSTIN POLICE DEPARTMENT,  
*Defendant.*

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IN THE JUSTICE COURT

OF TRAVIS COUNTY, TEXAS

PRECINCT 1

**ORDER GRANTING DEFENDANT’S PLEA TO THE JURISDICTION**

Having considered Defendant’s Plea to the Jurisdiction, and any opposition thereto, the Court finds Defendant, Austin Police Department’s, request is reasonable and necessary, and it shall and hereby is **GRANTED**; and it is further,

**ORDERED**, the above captioned case is DISMISSED with prejudice to refile the same.

Signed on this the \_\_\_\_\_ day of May 2023.

\_\_\_\_\_  
Presiding Judge

CAUSE NO. J1-CV-23-001475

MARK CARRUTHERS,  
*Plaintiffs,*

v.

AUSTIN POLICE DEPARTMENT,  
*Defendant.*

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IN THE JUSTICE COURT

OF TRAVIS COUNTY, TEXAS

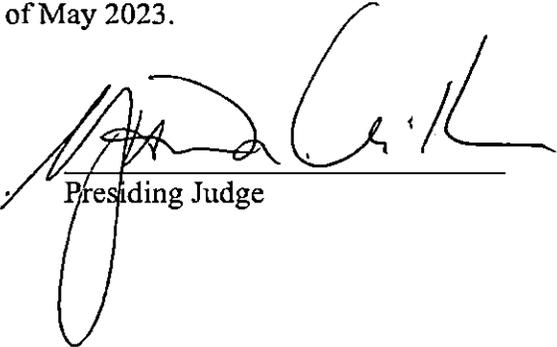
PRECINCT 1

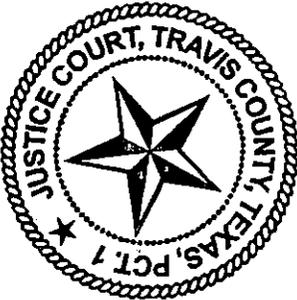
**ORDER GRANTING DEFENDANT’S PLEA TO THE JURISDICTION**

Having considered Defendant’s Plea to the Jurisdiction, and any opposition thereto, the Court finds Defendant, Austin Police Department’s, request is reasonable and necessary, and it shall and hereby is **GRANTED**; and it is further,

**ORDERED**, the above captioned case is **DISMISSED** with prejudice to refiling the same.

Signed on this the 16<sup>th</sup> day of May 2023.

  
\_\_\_\_\_  
Presiding Judge



CAUSE NO. J1-CV-23-001475

MARK CARRUTHERS,

*Plaintiff,*

v.

AUSTIN POLICE DEPARTMENT,

*Defendant.*

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IN THE JUSTICE COURT

OF TRAVIS COUNTY, TEXAS

PRECINCT 1

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**PLAINTIFF’S REQUEST FOR APPEAL**

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TO THE HONORABLE JUDGE PRESIDING:

MARK CARRUTHERS (“Plaintiff”) files this Appeal and would respectfully show the Court as follows:

**SUMMARY OF APPEAL**

Plaintiff requests an appeal of the decision to dismiss based on Defendant’s Plea to the Jurisdiction. Plaintiff contends that Defendant’s claim that the court does not have jurisdiction over the allegations against the Defendant, Austin Police Department, because as a department nested within the City of Austin it is not a legal entity subject to suit based on *Darby v. Pasadena Police Dep’t* is correct, however, Plaintiff should not be denied leave to amend his complaint to fix this defect. The City of Austin received actual notice of the Plaintiff’s claim against it. The City of Austin was not prejudiced in any way, despite Plaintiff’s improper filing.

Furthermore, Plaintiff contends that dismissing this case based on the remaining jurisdictional issues presented by Defendant would be a violation of Plaintiff’s rights. Plaintiff can only financially afford to file a lawsuit in this court and struggled to do that with

confidence. Plaintiff has supplied the court with a Statement of Inability to Pay Court Costs.

Plaintiff's Statement of Inability to Pay Court Costs was not served to Defendant as Plaintiff considers it private information and unnecessary. Due to the Plaintiff's inability to pay court costs, securing an attorney to file in a higher court would be impossible. As a Pro Se Plaintiff, it can be difficult to navigate any court proceedings. The expectation that Plaintiff be able to navigate court proceedings in a higher court seems excessive. An attorney would need to be provided to Plaintiff so that Plaintiff can identify the proper court for filing, even if Plaintiff is only re-filing in another Justice of the Peace precinct in Travis County. An attorney would need to be provided to Plaintiff so Plaintiff can properly follow the rules of the court as proceedings become more difficult.

Finally, Plaintiff requests that proceedings be fast-tracked so that Plaintiff is not denied the opportunity to request forcible action from the Defendant in the higher court in which the Defendant has requested these proceedings be moved. One aspect of Plaintiff's civil complaint is inaction on the part of the Defendant with respect to criminal complaints of Blackmail and Illegal Wiretapping that Plaintiff filed with the Defendant against Audrey Gil on October 11, 2022 and February 14, 2023 respectively. Plaintiff contends that further inaction on these complaints by Defendant would be denying protections to Plaintiff that have been provided by Defendant to Ms. Gil in almost identical circumstances. Plaintiff has been charged with Felony Criminal Mischief in response to a complaint filed by Ms. Gil in March of 2022. The actions taken by the Defendant in charging Plaintiff concerning Ms. Gil's complaint, have provided Ms. Gil with protections that Plaintiff is being denied due to inaction on the part of Defendant concerning Plaintiff's own criminal complaints against Ms. Gil. Plaintiff is restricted from contacting Ms. Gil due to the charges levied against him by Defendant. If proper action was taken and the law followed by Defendant with respect to Plaintiff's criminal complaints against

Ms. Gil, Plaintiff would be offered these same protections that are currently being denied by Defendant. Ms. Gil continues to be a physical risk to Plaintiff and Defendant's inaction is contributing to that largely. Further inaction by Defendant also allows for the illegal audio recording made by Ms. Gil, and still in her possession, to be used repeatedly, something Ms. Gil has already done multiple times by emailing said recording on March 14, 2022 and June 4, 2022. This illegal behavior by Ms. Gil needs to be stopped. A fast-track hearing is requested.

**BACKGROUND ON CRIMINAL COMPLAINTS FILED BY PLAINTIFF AGAINST**

**AUDREY GIL**

Plaintiff's complaints to Defendant were filed concerning criminal acts performed by Ms. Gil in Plaintiff's residence on February 4, 2022. As of today, it has been more than 200 days since Plaintiff filed the Blackmail complaint. It has been more than 16 months since the Blackmail occurred. No charges have been filed against Ms. Gil despite her admittance to the crime in a June 4, 2022 email. No warrant issued. No detective from the Austin Police Department with knowledge of Plaintiff's Blackmail complaint has contacted the Plaintiff. Similarly, the Illegal Wiretapping charges filed by Plaintiff on February 14, 2023 had not been assigned to a proper detective as of April 6, 2023 when Plaintiff spoke with Detective Kelly of the Austin Police Department. Detective Kelly said Plaintiff's Illegal Wiretapping complaint would be forwarded to a proper Detective but no contact has been made. No charges have been filed against Ms. Gil despite Ms. Gil's emails of the illegal recording and an October 2022 statement made by Sgt. Blake of the Austin Police Department accusing Ms. Gil of trespassing according to state law while Ms. Gil made the recording in Plaintiff's residence. No warrant has been issued for Ms. Gil concerning these charges. A May 9, 2023 article published by KVUE

ABC in Austin attributed a quote to Austin Police Department Lt. Sheldon Askew, saying that the time between filing a report and getting it assigned has dropped from more than 30 days to an average of 3 to 5 business days using the new online submission system offered by the City of Austin/Austin Police Department. This online submission system was used by Plaintiff to submit his Illegal Wiretapping complaint against Ms. Gil. Defendant's delay is unacceptable and should not be allowed to continue. Ms. Gil was still exhibiting dangerous behaviors with regards to contacting Plaintiff as of March 2023. Plaintiff should not continue to be denied protections provided to Ms. Gil by Defendant without a hearing.

### **CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court reverse the decision to dismiss and hold a fast-track hearing so that Plaintiff might have the opportunity to secure a court appointed attorney to file in the proper court. Any further inaction by the Defendant concerning the criminal complaints filed by the Plaintiff risk further injury to Plaintiff.

Respectfully submitted,

*/s/ Mark Carruthers*  
Mark Carruthers  
P.O. BOX 181176  
Austin, TX, 78718  
Telephone (214) 687-6215  
E-Mail: [markscarruthers@gmail.com](mailto:markscarruthers@gmail.com)  
**PRO SE 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, in compliance with the Texas Rules of Civil Procedure, this 9th day of June 2023.

**Via e-Service and/or facsimile**

Brandon Livengood  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546  
brandon.livengood@austintexas.gov  
**ATTORNEY FOR THE DEFENDANT**

/s/ Mark Carruthers  
Mark Carruthers

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Envelope ID: 76470445

Filing Code Description: Motion to Reconsider Judgment

Filing Description: Mark Carruthers - Request for Appeal

Status as of 6/9/2023 2:14 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jessica Best		jessica.best@austintexas.gov	6/9/2023 1:32:07 PM	SENT
Brandon Livengood		brandon.livengood@austintexas.gov	6/9/2023 1:32:07 PM	SENT
Henry Taylor		henry.taylor@austintexas.gov	6/9/2023 1:32:07 PM	SENT

CAUSE NO. J1-CV-23-001475

MARK CARRUTHERS,

*Plaintiff,*

v.

AUSTIN POLICE DEPARTMENT,

*Defendant.*

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IN THE JUSTICE COURT

OF TRAVIS COUNTY, TEXAS

PRECINCT 1

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**PLAINTIFF’S MOTION TO DISMISS**

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TO THE HONORABLE JUDGE PRESIDING:

MARK CARRUTHERS (“Plaintiff”) files this **PLAINTIFF’S MOTION TO DISMISS** and would respectfully show the Court as follows:

**SUMMARY OF MOTION TO DISMISS**

Plaintiff requests that the Court dismiss Plaintiff’s case with the Austin Police Department. Plaintiff has become a Pro Se Defendant in the 167th District Court and as such has learned the proper way to file suit with the Government. Plaintiff will refile in the proper court after sending the proper notices, and is likely to add Defendants. Plaintiff would like to thank the Court for granting his appeal, and being willing to hear his arguments. This system does not always treat citizens as one might expect but this was a different experience.

Respectfully submitted,

/s/ Mark Carruthers

Mark Carruthers

P.O. BOX 181176

Austin, TX, 78718

Telephone (214) 687-6215

E-Mail: [markscarruthers@gmail.com](mailto:markscarruthers@gmail.com)

**PRO SE 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, in compliance with the Texas Rules of Civil Procedure, this 2nd day of August 2023.

**Via e-Service and/or facsimile**

Brandon Livengood  
City of Austin  
P.O. Box 1546  
Austin, Texas 78767-1546  
brandon.livengood@austintexas.gov  
**ATTORNEY FOR THE DEFENDANT**

/s/ Mark Carruthers  
Mark Carruthers

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Envelope ID: 78154828

Filing Code Description: Motion to Dismiss

Filing Description:

Status as of 8/3/2023 9:00 AM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jessica Best		jessica.best@austintexas.gov	8/2/2023 10:13:27 PM	SENT
Brandon Livengood		brandon.livengood@austintexas.gov	8/2/2023 10:13:27 PM	SENT
Henry Taylor		henry.taylor@austintexas.gov	8/2/2023 10:13:27 PM	SENT