

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

Simone Nicole Griffith,	§	
Plaintiff,	§	
	§	Case no. 1:21-cv-1170
v.	§	
	§	
City of Austin,	§	
Austin Police Officer Rodriguez, and	§	
Austin Police Officer Escamilla,	§	
Defendants.	§	

**Complaint**

**I. Introduction**

This is a lawsuit about two Austin Police officers who repeatedly punched a young woman because she had the temerity to be mentally ill and shout rude nonsense.

This lawsuit is also about the City of Austin's appalling treatment of unhoused and mentally ill Austinites. The City's policies regarding homelessness created the environment in which two highly trained public servants believed it was their duty to beat a vulnerable woman in crisis.

**II. Parties**

1. Simone Griffith is a resident of Austin, Texas for the time being. She does not have a safe or permanent place to live in Austin or anywhere else.

2. The City of Austin is a Texas municipal corporation in the Western District of Texas. Brian Manley, Joseph Chacon, and Spencer Cronk developed and implemented the City's policies that will be relevant in this lawsuit.

3. Officer Rodriguez and Officer Escamilla are the Austin police officers who beat Simone Griffith on Nov. 1, 2021.

**III. Jurisdiction**

4. This Court has federal question subject matter jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. § 1331.

5. This Court has general personal jurisdiction over Officer Rodriguez and Officer Escamilla because they work and live in Texas. The City of Austin is subject to general personal jurisdiction because it is a Texas municipality.

6. This Court has specific personal jurisdiction over Officer Rodriguez and Officer Escamilla and the City because this case is about their conduct that occurred here in Austin, Texas.

#### IV. Venue

7. Under 28 U.S.C. § 1391(b), the Western District of Texas is the correct venue for this lawsuit because the relevant events occurred in Austin.

#### V. Facts

8. Simone is 26 years old, and she is profoundly mentally ill. She is an easy target for those who prey on vulnerable people. When Simone is lucid, she remembers her past traumas and understands how susceptible she is to further mistreatment and abuse. At times in her life, Simone has been institutionalized but no government agency or institution takes responsibility for her safety. Simone has no one to protect her. She has been subjected to physical and sexual abuse living on the streets. She is deeply traumatized by her experiences.

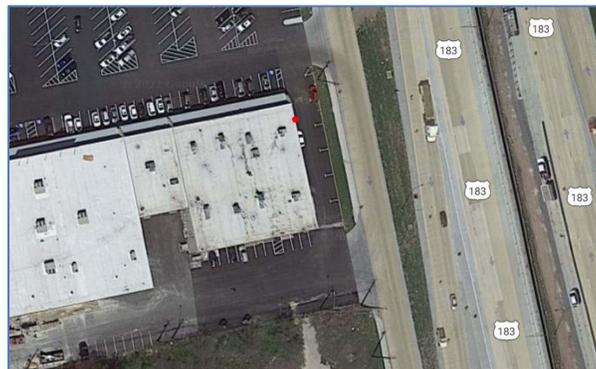
9. Simone was dropped off in Austin in summer 2021 by a caseworker from another Texas county after she was released from a psychiatric institution.

10. It is not safe for Simone to sleep in the woods. She had nowhere safe to sleep on Nov. 1, 2021.

11. On Nov. 1, 2021, Simone was sleeping outside between a strip mall and Highway 183. These images from google street view show the thin strip of pavement where Simone was trying to rest in safety.



The red circle on this google maps image shows Simone's location from above.



12. Officer Rodriguez was dispatched to the strip mall because of a trespass call. When he encountered Simone, Rodriguez ordered her to leave the property.

13. Rodriguez did not offer to help Simone find a safe place to sleep. He did not offer Simone any help whatsoever.

14. Simone refused to get up and she yelled nonsense at Rodriguez that he meticulously documented in his arrest report.

15. The care with which Rodriguez documented the rude and aberrant things that Simone yelled at him shows the importance that he placed on the exact phrasing of each of Simone's various obscenities.

16. Rodriguez determined that the following statements were significant enough to warrant inclusion in the official record of why he arrested Simone for criminal trespass and how he conducted the arrest.

I advised Zafari at this point to tell Nicole she was no longer welcome at the property in my presence. Zafari proceeded to tell Nicole in my presence she needed to leave the premises. Nicole proceeded to tell Zafari, "SHUT THE FUCK UP, I AINT DOING NOTHING". "I AINT DOING ANYTHING WRONG, I KNOW

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THE MOTHER FUCKING LAW BITCH". I asked Nicole if she wanted to be under arrest for not leaving the property peacefully and she proceeded to yell back, "GET THE FUCK ON" which implied to me to leave her alone.

Due to Nicole's aggressive verbal behavior I advised dispatch to send me an additional unit.

I proceeded to give Nicole several more commands approximately 3 times to get up. Nicole refused to get up after every single command. I again repeated to Nicole to get up and that she was under arrest. Nicole still refused.

I told Nicole again she was under arrest in which she replied, "No I am not". "I aint doing anything wrong bitch boy". I again asked Nicole to get up in which she replied, "I DONT HAVE TO GET UP FOR YOU". "YOU ARE NOT THE LAW BITCH".

17. Rodriguez dishonestly characterized Simone's repeated invectives calling him "BITCH" and "bitch boy" as "aggressive" verbal behavior in his report.

18. "Aggressive" means "characterized by or tending toward unprovoked offensives, attacks, invasions, or the like".

19. "Defensive" means "made or carried on for the purpose of resisting attack".

20. Simone had been provoked and she was scared. She yelled rude insults up at Rodriguez from the ground in a display of *defensive*, not aggressive, verbal behavior.

21. It is not reasonable for a highly trained and lethally armed police officer to interpret an unarmed, fearful, cornered, impoverished, mentally ill young woman calling him "bitch boy" from a prone position on the pavement as an attack.

22. Rodriguez dishonestly documented in his report that his decision to escalate the situation by calling for additional police officers was necessitated by Simone's alleged "aggressive" verbal behavior.

Due to Nicole's aggressive verbal behavior I advised dispatch to send me an additional unit.

23. Officer Escamilla arrived next.

24. Now there were three men (two male police officers and a male security guard) cornering Simone on the ground.

25. Rodriguez meticulously documented in his report that he had now been at the scene—trying to reason with a clearly unreasonable Simone—for three minutes.

Approximately three minutes had passed while talking with Nicole and trying to get her to peacefully leave the business establishment. At this point Ofc Escamilla arrived on the scene and I briefed him on the situation.

26. At the Austin Police Academy, Rodriguez and Escamilla were trained to treat unhoused people like vermin.

27. At the Austin Police Academy, Rodriguez and Escamilla were trained that instructors would punch them in the face if they expressed compassion for vulnerable people like Simone.

28. Rodriguez and Escamilla were trained that Austin Police Department policy is to repeat orders over and over and over, even when the person on the receiving end of the commands is not capable in that moment of getting the message.

29. Rodriguez documented that he thoroughly followed City of Austin policy by reiterating his ineffective commands to the frightened and unreasonable Simone.

I proceeded to give Nicole several more commands approximately 3 times to get up. Nicole refused to get up after every single command. I again repeated to Nicole to get up and that she was under arrest. Nicole still refused.

30. Having spent 180 entire seconds futilely repeating the same commands, Rodriguez decided to arrest Simone because Rodriguez and Escamilla knew of no other approach to communicating with a frightened human being.

31. Rodriguez and Escamilla proceeded to assault Simone.

32. Simone did not suddenly become rational and cooperative when two armed men attacked her. Rather, she curled up into herself, trying desperately not to be touched by these strangers.

33. In keeping with the official custom of the Austin Police Department, Rodriguez described what happened next in stilted police parlance: "I reached for Nicole's [sic] right arm/hand and she immediately proceeded to pull her arm/hand inward immediately being Defensively Resistant."

I reached for Nicole's right arm/hand and she immediately proceeded to pull her arm/hand inward immediately being Defensively Resistant.

34. In other words, Rodriguez grabbed Simone and she, quite naturally, pulled her arm back.

35. Pursuant to their Austin Police Academy training and the policies of the City of Austin, Rodriguez and Escamilla escalated their simple assault on Simone to a full-on beating because she fearfully pulled her arms and legs into the fetal position.

36. Again, Rodriguez and Escamilla had not been trained by the City of Austin in—and knew of no—other approaches to arresting a terrified, recalcitrant person on the ground.

37. A bystander captured a two-minute, 51-second [video of Rodriguez and Escamilla beating Simone](#) per their Austin Police Academy training and the official customs of the City of Austin regarding unhoused people.

38. As stated above, Austin Police are trained by the City of Austin to interact with frightened, unreasonable people by reiterating commands, even if those commands are not effective.

39. Rodriguez, again, meticulously documented that he and Escamilla fulfilled their Austin Police training by repeating themselves over and over even while they were assaulting Simone.

I asked Nicole one more time that she had to get up. At this point Ofc Escamilla and I proceeded to attempt to place handcuffs on Nicole. I reached for Nicole's right arm/hand and she immediately proceeded to pull her arm/hand inward immediately being Defensively Resistant. Nicole proceeded to strike/scratch my face with her right hand and was screaming belligerently. Ofc Escamilla and I proceeded to tell Nicole not to resist but she kept fighting back. Nicole began kicking me as I was trying to gain control of her hands/arms to place handcuffs on her. Ofc Escamilla kept telling Nicole to stop resisting. Nicole kept pulling her hands across her face and refusing to comply with all the lawful orders as we tried to gain control of her arms. At this point Ofc Escamilla and I began to attempt and roll Nicole on her stomach.

Ofc Escamilla and I told Nicole several times to turn around as she was facing us upwards so she could lay on her stomach. Nicole proceeded to tell us, "I CANT TURN AROUND". "I DONT NEED TO LISTEN TO YALL".

Nicole kept refusing to turn around on her stomach. Ofc Escamilla and I kept telling Nicole to turn around all while she was defensively refusing.

At some point we were able to get Nicole on her belly. Ofc Escamilla and I told Nicole again to Stop Resisting and to give us her hands. Nicole kept refusing to comply with every lawful order given to her. Nicole kept her hands tucked across her face.

Again Ofc Escamilla advised Nicole to Stop Resisting as Nicole responded with, "I SHOUDNT BE UNDER ARREST".

40. The care with which Rodriguez documented his many, so-called “lawful” orders shows the importance that the City of Austin placed on this during his training.

41. On the other hand, and again, according to his training, Rodriguez determined that the following events described in paragraphs nos. 43 to 48 below were NOT significant enough to include in a report regarding the why and how of Simone’s arrest.

42. Each of Rodriguez and Escamilla's actions described in paragraphs nos. 43 to 48 below were carried out according to their City of Austin training and the official customs of the Austin Police Department.

43. Rodriguez and Escamilla trapped the frightened Simone up against the building and put all four hands on her at once.



44. Rodriguez and Escamilla continued squishing Simone between the building, the pavement, and their two male bodies for approx. 20 more seconds even though this tactic was terrorizing Simone and was not effective.



45. Rodriguez and Escamilla dragged Simone off the curb by her hair.



46. One officer held Simone down and covered his body-worn camera while the other officer brutally kned Simone in her side. This screenshot from the bystander video shows the kneeling officer winding up his right leg to impact Simone very hard with his knee.



47. One officer held Simone down while the other officer punched Simone eight times in approx. 11 seconds (from 00:43-00:54 on the bystander video).

Punch no. 1 wind-up



Punch no. 1 follow-through



Punch no. 2 wind-up



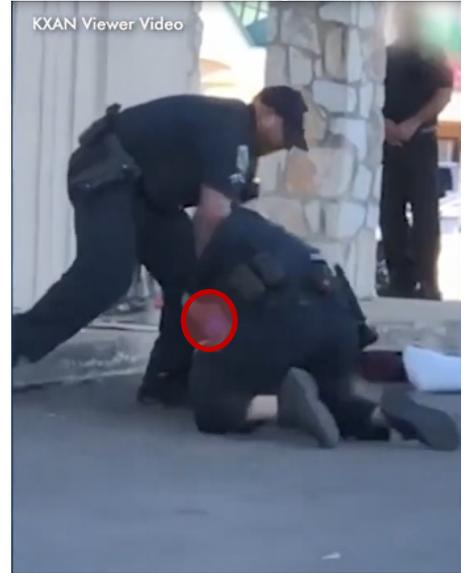
Punch no. 2 follow-through



Punch no. 3 wind-up



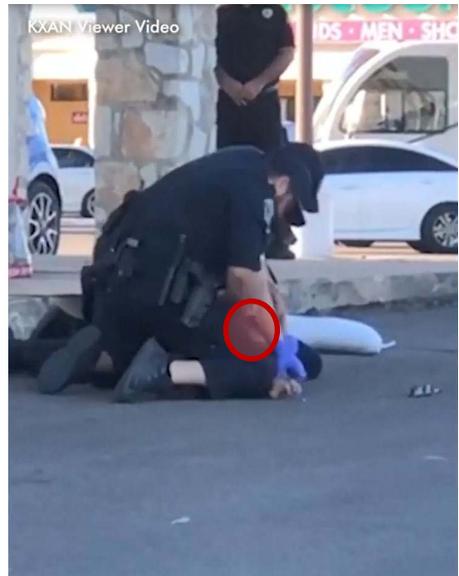
Punch no. 3 follow-through



Punch no. 4 wind up



Punch no. 4 lands



Punch no. 5 wind-up



Punch no. 5 lands



Punch no. 6 wind-up



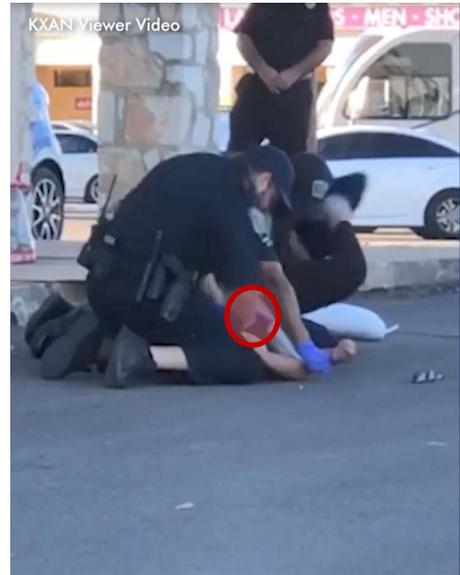
Punch no. 6 lands



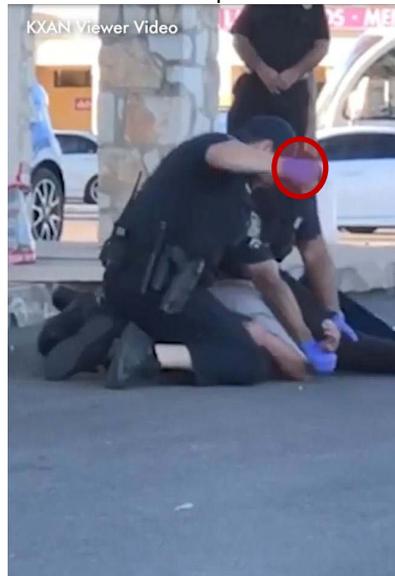
Punch no. 7 wind-up



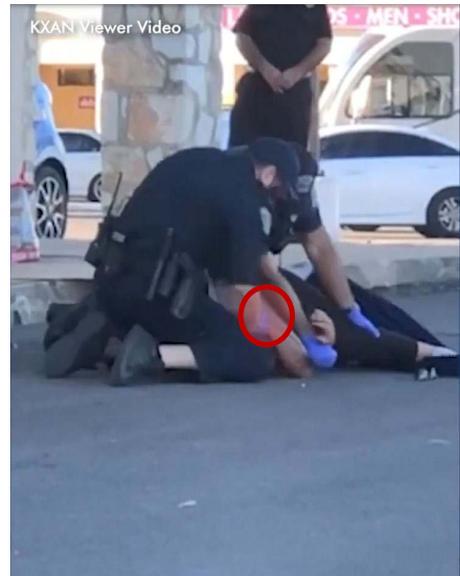
Punch no. 7 lands



Punch no. 8 wind-up



Punch no. 8 lands



48. Rodriguez and Escamilla brutally beat Simone for approx. two minutes and four seconds. They stopped the beating once Simone was handcuffed.



49. In his report, Rodriguez recorded the details of his and Escamilla's violent arrest of Simone per his Austin Police training regarding how to document significant events during an arrest.

50. Again, the pink highlighting shows Rodriguez's written record of repeated commands as described above. The green highlighting shows Rodriguez's written record of his and Escamilla's physical actions during the violent arrest.

I asked Nicole one more time that she had to get up. At this point Ofc Escamilla and I proceeded to attempt to place handcuffs on Nicole. I reached for Nicole's right arm/hand and she immediately proceeded to pull her arm/hand inward immediately being Defensively Resistant. Nicole proceeded to strike/scratch my face with her right hand and was screaming belligerently. Ofc Escamilla and I proceeded to tell Nicole not to resist but she kept fighting back. Nicole began kicking me as I was trying to gain control of her hands/arms to place handcuffs on her. Ofc Escamilla kept telling Nicole to stop resisting. Nicole kept pulling her hands across her face and refusing to comply with all the lawful orders as we tried to gain control of her arms. At this point Ofc Escamilla and I began to attempt and roll Nicole on her stomach.

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Nicole kept refusing to turn around on her stomach. Ofc Escamilla and I kept telling Nicole to turn around all while she was defensively refusing.

At some point we were able to get Nicole on her belly. Ofc Escamilla and I told Nicole again to Stop Resisting and to give us her hands. Nicole kept refusing to comply with every lawful order given to her. Nicole kept her hands tucked across her face.

Again Ofc Escamilla advised Nicole to Stop Resisting as Nicole responded with, "I SHOUDNT BE UNDER ARREST".

Nicole finally was placed under handcuffs and immediately stopped resisting.

51. According to Rodriguez, the police officers' significant physical actions during the arrest were limited to the following events:

- a. Rodriguez and Escamilla proceeded to attempt to place handcuffs on Simone.
- b. Rodriguez reached for Simone's right hand/arm.
- c. Rodriguez was trying to gain control of Simone's hands/arms to place handcuffs on her.

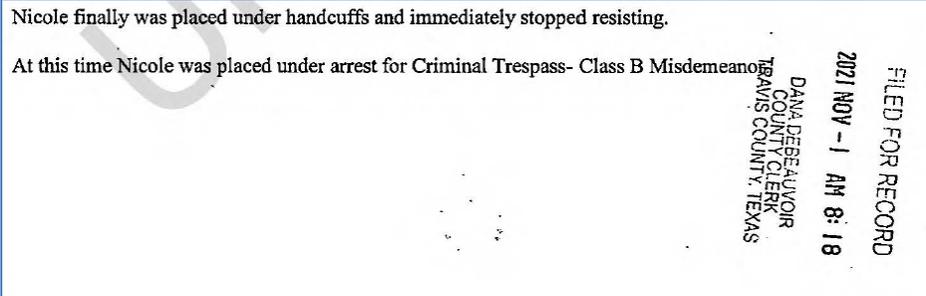
- d. Rodriguez and Escamilla began to attempt to roll Simone on her stomach.
- e. At some point, Rodriguez and Escamilla were able to get Simone on her belly.
- f. Simone finally was placed under handcuffs [by Rodriguez and Escamilla].

52. Rodriguez's report is highly misleading to the point of painting a false picture of the arrest.

53. It is not reasonable for a police officer to omit from his arrest report the fact that he and another officer held a woman down and punched her eight times while trying to effectuate the arrest.

54. Rodriguez's dishonesty and attempted cover-up his and Escamilla's brutal assault of Simone was carried out according to his Austin Police training and the official customs of the City of Austin regarding unhoused people.

55. Rodriguez ends his arrest report with the fact that Simone "immediately stopped resisting" once she was placed in handcuffs.



56. Even though Simone "immediately stopped resisting", the heftier of the two officers kneeled on Simone's back for approx. 14 seconds after she was in handcuffs.

57. The following screen shots from the bystander video show the bulkier officer resting his considerable weight on Simone's back for no apparent reason.











58. The stouter officer only removes his significant weight from Simone's body after he notices a bystander driving by and filming his physical abuse of Simone.





**VI. Claims**

**A. Rodriguez and Escamilla violated Simone's Fourth and Fourteenth Amendment rights when they beat her for lying down.**

59. Simone incorporates sections I through V above into her claim.

60. Simone brings this claim under 42 U.S.C. § 1983.

61. Rodriguez and Escamilla were acting as Austin police officers (*ie* under color of law)

when they beat Simone. They beat Simone even though Simone did not pose the least bit of danger to anyone.

62. Although Rodriguez and Escamilla were following their Austin Police Academy training when they assaulted Simone, a reasonable person, much less a reasonable police officer would know that repeatedly punching an unarmed woman in the head violates clearly established law.

63. On Nov. 1, 2021 it was clearly established “that an officer violates the Fourth Amendment if he abruptly resorts to overwhelming physical force rather than continuing verbal negotiations with an individual who poses no immediate threat or flight risk, who engages in, at most, passive resistance”. See Hanks v. Rogers, 853 F.3d 738, 747 (5th Cir. 2017).

**B. Rodriguez and Escamilla acted with such reckless disregard for Simone’s humanity, this case warrants damages that will deter this type of misconduct in the future.**

64. Simone incorporates sections I through VI.A above into her punitive damages claim.

65. Rodriguez and Escamilla’s assault on Simone was heinous.

66. Simone seeks punitive damages to deter this type of excessive force perpetrated against vulnerable Austinites in the future.

**C. City of Austin policies led Rodriguez and Escamilla to view Simone as a cockroach and to believe they had a duty to beat her.**

67. Simone incorporates sections I through VI.B above into her *Monell* claim.

68. Simone brings this claim under 42 U.S.C. § 1983.

69. Austin had these policies, practices, and customs on Nov. 1, 2021:

- a. Using excessive force against non-violent unhoused and mentally ill people,
- b. Training officers that non-violent unhoused and mentally ill Austinites have less civil rights than mentally stable Austinites with safe shelter,
- c. Failing to investigate violence by Austin police officers against non-violent unhoused and mentally ill Austinites, and
- d. Failing to discipline Austin Police officers who are excessively brutal if the victim was unhoused and mentally ill.

70. Officials and policymakers at the City of Austin and the Austin Police Department knew about these policies and directed Austin police to comply with them.

71. These policing policies were instituted by City policymakers who were and are deliberately indifferent to the humanity of unhoused and mentally ill Austinites.

72. City policymakers are aware of the obvious consequences of these policies. For instance, it has been reported nationally that Austin Police kill more mentally ill residents per capita than any other police department in the United States.

73. These policies were the reason that Rodriguez and Escamilla believed it was their duty to beat-up a vulnerable, young, mentally ill woman in crisis.

74. In other words, the City's inhumane policies with regards to unhoused and mentally ill Austinites proximately caused Simone's physical injuries and trauma.

**VII. Damages**

Simone incorporates sections I through VI above into this section on damages.

Simone seeks recovery for all her damages including her physical pain from the beating and her past and future mental anguish from the trauma of being assaulted, pre and post judgment interest, attorney's fees, expenses, and costs.

**VIII. Request for jury trial**

Simone requests a jury trial.

**IX. Prayer**

For all these reasons, Simone Griffith requests that the City of Austin and Officers Rodriguez and Escamilla be summoned to appear and answer her allegations. After a jury trial regarding her claims, Simone seeks to recover the damages listed above in an amount to be determined by the jury and any other relief to which she is entitled.

Respectfully submitted,  
/s/ Rebecca Webber  
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Attorney for Plaintiff Simone Griffith

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

SIMONE NICOLE GRIFFITH,	§	
	§	
Plaintiff,	§	
v.	§	
	§	CIVIL ACTION NO. 1:21-CV-1170
THE CITY OF AUSTIN,	§	
AUSTIN POLICE OFFICER	§	
RODRIGUEZ, and AUSTIN	§	
POLICE OFFICER ESCAMILLA,	§	
	§	
Defendants.	§	

**DEFENDANTS' ORIGINAL ANSWER**

Defendants the City of Austin, Austin Police Officer Jorge Rodriguez, and Austin Police Officer Robert Escamilla (“Defendants”) file this Original Answer to Plaintiff Simone Nicole Griffith’s Complaint (Dkt. 1). Pursuant to Federal Rules of Civil Procedure 8 and 12, the Defendants would show the Court as follows:

**ORIGINAL ANSWER**

Pursuant to Federal Rule of Civil Procedure 8(b), the Defendants respond to the allegations made in Plaintiff’s Complaint as set forth below. Any allegation in the Complaint not specifically addressed below is denied.

Defendants deny the allegations in the un-numbered preamble paragraphs labeled “Introduction.”

1. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 1.

2. Defendants admit the City of Austin is a Texas municipal corporation located in the Western District of Texas. Defendants otherwise deny the allegations in Paragraph 2.

3. Defendants admit that Officer Rodriguez and Officer Escamilla were police officers with the Austin Police Department on November 1, 2021, and that they participated in the arrest of Plaintiff on that date. Defendants otherwise deny the allegations in Paragraph 3.

4. No response is required to portions of Paragraph 4, as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants admit that this Court has federal question jurisdiction over any alleged claims pursuant to 42 U.S.C. § 1983.

5. No response is required to Paragraph 5, as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants admit that this Court can properly exercise personal jurisdiction over Defendants.

6. No response is required to Paragraph 6, as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants admit that this Court can properly exercise personal jurisdiction over Officer Rodriguez and Officer Escamilla.

7. No response is required to Paragraph 7, as it contains legal conclusions to which no response is required. To the extent any further response is required, Defendants admit that venue is proper in the Western District of Texas.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8.

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 9.

10. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10.

11. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 11.

12. With respect to the allegations in Paragraph 12, Defendants admit that Officer Rodriguez was dispatched to the strip mall as a result of a citizen call. Defendants deny the remaining allegations in Paragraph 12.

13. Defendants deny the allegations in Paragraph 13.

14. With respect to the allegations in Paragraph 14, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 14.

15. With respect to the allegations in Paragraph 15, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 15.

16. With respect to the allegations in Paragraph 16, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 16.

17. Defendants deny the allegations in Paragraph 17.

18. Defendants deny the allegations in Paragraph 18.

19. Defendants deny the allegations in Paragraph 19.

20. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 20.

21. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 21.

22. Defendants deny the allegations in Paragraph 22.

23. Defendants admit that Officer Escamilla reported to the scene of the arrest. Defendants deny any remaining allegations in Paragraph 23.

24. Defendants deny the allegations in Paragraph 24.

25. Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 25.

26. Defendants deny the allegations in Paragraph 26.

27. Defendants deny the allegations in Paragraph 27.

28. Defendants deny the allegations in Paragraph 28.

29. With respect to the allegations in Paragraph 29, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 29.

30. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 30 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 30.

31. Defendants deny the allegations in Paragraph 31.

32. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 32 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 32.

33. With respect to the allegations in Paragraph 33, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 33.

34. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 34 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 34.

35. Defendants deny the allegations in Paragraph 35.

36. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 36 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 36.

37. Defendants deny the allegations in Paragraph 37.

38. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 38 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 38.

39. With respect to the allegations in Paragraph 39, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 39.

40. With respect to the allegations in Paragraph 40, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants do not understand the remaining allegations in Paragraph 40, and thus they are denied.

41. With respect to the allegations in Paragraph 41, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 41.

42. With respect to the allegations in Paragraph 42, Defendants admit that the officers acted in the encounter and arrest using tactics and officer discretion in a manner authorized by Austin Police Department policy and training. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 42 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 42.

43. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 43 about Plaintiff's state of mind. Defendants admit that the officers went hands-on as part of the arrest. Defendants deny the remaining allegations in Paragraph 43.

44. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 44 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 44.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants deny the allegations in Paragraph 46.

47. Defendants deny the allegations in Paragraph 47.

48. Defendants deny the allegations in Paragraph 48.

49. With respect to the allegations in Paragraph 49, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 49.

50. With respect to the allegations in Paragraph 50, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 50.

51. With respect to the allegations in Paragraph 51, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 51.

52. Defendants deny the allegations in Paragraph 52.

53. Defendants deny the allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. With respect to the allegations in Paragraph 55, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 55.

56. Defendants deny the allegations in Paragraph 56.

57. Defendants deny the allegations in Paragraph 57.

58. Defendants deny the allegations in Paragraph 58.

59. Defendants incorporate their responses to the above-numbered paragraphs in response to the allegations in Paragraph 59.

60. Defendants admit the allegations in Paragraph 60.

61. With respect to the allegations in Paragraph 61, Defendants admit that Officer Rodriguez and Officer Escamilla were acting in their capacity as police officers during the arrest of Plaintiff on November 1, 2021. Defendants deny the remaining allegations in Paragraph 61.

62. Defendants deny the allegations in Paragraph 62.

63. No response is required to Paragraph 63, as it contains legal conclusions to which no response is required. To the extent any further response is required, Defendants deny that the quoted language accurately reflects the sentence partially quoted from the cited case law.

64. Defendants incorporate their responses to the above-numbered paragraphs in response to the allegations in Paragraph 64.

65. Defendants deny the allegations in Paragraph 65.

66. Defendants deny the allegations in Paragraph 66.

67. Defendants incorporate their responses to the above-numbered paragraphs in response to the allegations in Paragraph 67.

68. No response is required to portions of Paragraph 68, as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants deny that Plaintiff has a valid claim for relief pursuant to 42 U.S.C. § 1983.

69. Defendants deny the allegations in Paragraph 69.

70. Defendants deny the allegations in Paragraph 70.

71. Defendants deny the allegations in Paragraph 71.

72. Defendants deny the allegations in Paragraph 72.

73. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 73 about Plaintiff's state of mind or mental conditions. Defendants deny the remaining allegations in Paragraph 73.

74. Defendants deny the allegations in Paragraph 74.

75. Defendants incorporate their response to the above-numbered paragraphs in response to the un-numbered paragraphs under the "Damages" heading. Defendants deny the allegations in those un-numbered paragraphs.

76. No response is required to the request for jury trial.

77. No response is required to the un-numbered paragraph under the “Prayer” heading. Defendants deny that Plaintiff is entitled to relief.

#### **AFFIRMATIVE DEFENSES**

78. 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.

79. Defendant City of Austin asserts the affirmative defense of governmental immunity because its employees are entitled to qualified and/or official immunity for actions taken in the course and scope of their employment, absent express waiver.

80. Defendant City of Austin asserts that it is absolutely immune from punitive damages under 42 U.S.C. § 1983 pursuant to *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

81. Defendants assert the affirmative defense of comparative fault.

82. Officer Rodriguez and Officer Escamilla assert the defense of qualified immunity. Specifically, any and all actions by one or both of them that may be the subject of Plaintiff’s claims did not violate clearly established statutory or constitutional rights of Plaintiff about which a reasonable officer would have known.

83. Officer Rodriguez and Officer Escamilla assert the defense of official immunity. Specifically, any and all actions by one or both of them that may be the subject of Plaintiff’s claims involved discretionary duties within the scope of their authority performed in good faith.

84. The Defendants reserve the right to assert additional affirmative defenses in accordance with the Federal Rules of Civil Procedure and any orders of this Court.

**PRAYER**

Defendants respectfully request that the Court deny all relief requested by Plaintiff; enter a take-nothing judgment in Defendants' favor; and award Defendants any further relief to which they may show themselves to be entitled.

Respectfully submitted,

**BUTLER SNOW LLP**

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 14, 2022, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system.

/s/ Karson Thompson  
Karson Thompson

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

Simone Nicole Griffith,	§	
Plaintiff,	§	
	§	Case no. 1:21-cv-1170
v.	§	
	§	
City of Austin,	§	
Austin Police Officer Jorge Rodriguez, and	§	
Austin Police Officer Robert Escamilla,	§	
Defendants.	§	

**Amended Complaint**

**I. Introduction**

This is a lawsuit about two Austin Police officers who repeatedly punched a young woman in the head because she had the temerity to be mentally ill and shout rude nonsense and called them “bitch boy.” Defendants Officer Jorge Rodriguez and Officer Robert Escamilla beat Ms. Simone Griffith, a sexual assault survivor suffering from severe mental illness and chronic homelessness, as she lay cowering on the ground. Unaware of a bystander who had filmed the incident, Officers then proceeded to attempt to cover up the beating by leaving out any mention of the number of times they punched Simone from their report.

This lawsuit is also about the City of Austin’s appalling treatment of unhoused and mentally ill Austinites. The City’s policies and practices regarding homelessness created the environment in which two highly trained public servants believed it was their duty to beat a vulnerable woman in crisis. Officer Rodriguez’s and Escamilla’s coverup was unnecessary as far as the City of Austin was concerned: after reviewing the bystander video and other evidence of the beating, the City of Austin determined that the officers’ disgusting behavior was consistent with the City’s own policies and preferred practices.

**II. Parties**

1. Simone Griffith is a resident of Austin, Texas for the time being. She does not have a safe or permanent place to live in Austin or anywhere else.
2. The City of Austin is a Texas municipal corporation in the Western District of Texas. Brian Manley, Joseph Chacon, and Spencer Cronk developed and implemented the City’s policies that will be relevant in this lawsuit.
3. Officer Rodriguez and Officer Escamilla are the Austin police officers who beat Simone Griffith on Nov. 1, 2021.

### III. Jurisdiction

4. This Court has federal question subject matter jurisdiction over this 42 U.S.C. § 1983 lawsuit under 28 U.S.C. § 1331.

5. This Court has general personal jurisdiction over Officer Rodriguez and Officer Escamilla because they work and live in Texas. The City of Austin is subject to general personal jurisdiction because it is a Texas municipality.

6. This Court has specific personal jurisdiction over Officer Rodriguez and Officer Escamilla and the City because this case is about their conduct that occurred here in Austin, Texas.

### IV. Venue

7. Under 28 U.S.C. § 1391(b), the Western District of Texas is the correct venue for this lawsuit because the relevant events occurred in Austin.

### V. Facts

#### A. Officers Rodriguez and Escamilla beat Simone Griffith as she cowered on the ground.

8. Simone is 26 years old, and she is profoundly mentally ill. She is an easy target for those who prey on vulnerable people. When Simone is lucid, she remembers her past traumas and understands how susceptible she is to further mistreatment and abuse. At times in her life, Simone has been institutionalized but no government agency or institution takes responsibility for her safety. Simone has no one to protect her. She is a survivor of human trafficking and has been subjected to physical and sexual abuse living on the streets. She is deeply traumatized by her experiences.

9. Simone was dropped off and abandoned in Austin in summer 2021 by a caseworker from another Texas county after she was released from a psychiatric institution. She did not have roots in Austin and is very vulnerable in this unfamiliar city where she has no family.

10. It is not safe for Simone to sleep in the woods, and despite the best efforts of community members, she has been unable to secure a permanent bed in any shelter or hotel. She had nowhere safe to sleep on Nov. 1, 2021.

11. On Nov. 1, 2021, Simone was sleeping outside between a strip mall and Highway 183. These images from google street view show the thin strip of pavement where Simone was trying to rest in safety.



The red circle on this google maps image shows Simone's location from above.



12. Officer Rodriguez was dispatched to the strip mall because of a trespass call. When he encountered Simone, Rodriguez ordered her to leave the property.

13. Rodriguez did not offer to help Simone find a safe place to sleep. He did not offer Simone any help whatsoever. Nor did he make any efforts to call any crisis or mental health response unit, such as the City of Austin's Homeless Outreach Street Team, the Extended Crisis Mobile Outreach Team, or Crisis Intervention Team.

14. Simone refused to get up and she yelled rude nonsense at Rodriguez that he meticulously documented in his arrest report.

15. The care with which Rodriguez documented the rude things that Simone yelled at him shows the importance that he placed on the exact phrasing of each of Simone's various obscenities.

16. Rodriguez determined that the following statements were significant enough to warrant inclusion in the official record of why he arrested Simone for criminal trespass and how he conducted the arrest.

I advised Zafari at this point to tell Nicole she was no longer welcome at the property in my presence. Zafari proceeded to tell Nicole in my presence she needed to leave the premises. Nicole proceeded to tell Zafari, "SHUT THE FUCK UP, I AINT DOING NOTHING". "I AINT DOING ANYTHING WRONG, I KNOW

THE MOTHER FUCKING LAW BITCH". I asked Nicole if she wanted to be under arrest for not leaving the property peacefully and she proceeded to yell back, "GET THE FUCK ON" which implied to me to leave her alone.

Due to Nicole's aggressive verbal behavior I advised dispatch to send me an additional unit.

I proceeded to give Nicole several more commands approximately 3 times to get up. Nicole refused to get up after every single command. I again repeated to Nicole to get up and that she was under arrest. Nicole still refused.

I told Nicole again she was under arrest in which she replied, "No I am not". "I aint doing anything wrong bitch boy". I again asked Nicole to get up in which she replied, "I DONT HAVE TO GET UP FOR YOU". "YOU ARE NOT THE LAW BITCH".

17. Rodriguez dishonestly characterized Simone's repeated invectives calling him "BITCH" and "bitch boy" as "aggressive" verbal behavior in his report.

18. "Aggressive" means "characterized by or tending toward unprovoked offensives, attacks, invasions, or the like."

19. "Defensive" means "made or carried on for the purpose of resisting attack."

20. Simone, a survivor of horrific sexual and physical abuse, had been provoked by the male officer and she was scared. She yelled rude insults up at Rodriguez from the ground in a display of *defensive*, not aggressive, verbal behavior.

21. It is not reasonable for a highly trained and lethally armed police officer to interpret an unarmed, fearful, cornered, impoverished, mentally ill young woman calling him "bitch boy" from a prone position on the pavement as aggression or as an attack of any kind.

22. Rodriguez dishonestly documented in his report that his decision to escalate the situation by calling for additional police officers was necessitated by Simone's alleged "aggressive" verbal behavior.

Due to Nicole's aggressive verbal behavior I advised dispatch to send me an additional unit.

23. Officer Escamilla arrived next.

24. Now there were three men (two male police officers and a male security guard) cornering Simone on the ground.

25. Rodriguez meticulously documented in his report that he had now been at the scene—trying to reason with a clearly unreasonable Simone—for three entire minutes.

Approximately three minutes had passed while talking with Nicole and trying to get her to peacefully leave the business establishment. At this point Ofc Escamilla arrived on the scene and I briefed him on the situation.

26. Rodriguez documented that he thoroughly followed City of Austin policy by reiterating his ineffective commands to Simone, who was clearly frightened, not lucid, and incapable of responding positively to the commands.

I proceeded to give Nicole several more commands approximately 3 times to get up. Nicole refused to get up after every single command. I again repeated to Nicole to get up and that she was under arrest. Nicole still refused.

27. Having spent 180 entire seconds futilely repeating the same commands, Rodriguez decided to arrest Simone because he and Escamilla knew of no other possible approach to communicate with a frightened human being.

28. Rodriguez and Escamilla proceeded to assault Simone.

29. Simone did not suddenly become rational and cooperative when two armed men attacked her. Rather, she curled up into herself, trying desperately not to be touched by these strangers.

30. In keeping with the official custom of the Austin Police Department, Rodriguez described what happened next in stilted, biased police parlance: "I reached for Nicole's [sic] right arm/hand and she immediately proceeded to pull her arm/hand inward immediately being Defensively Resistant."

I reached for Nicole's right arm/hand and she immediately proceeded to pull her arm/hand inward immediately being Defensively Resistant.

31. In other words, Rodriguez grabbed Simone and she, quite naturally, pulled her arm back.

32. Pursuant to their Austin Police Academy training and the policies of the City of Austin, Rodriguez and Escamilla escalated their simple assault on Simone to a full-on beating because she fearfully pulled her arms and legs into the fetal position.

33. Again, Rodriguez and Escamilla had not been trained by the City of Austin in—and knew of no—other approaches to arresting a terrified, recalcitrant person on the ground. They had been trained to beat people like Simone so they beat Simone per their training.

34. A bystander captured a two-minute, 51-second [video of Rodriguez and Escamilla beating Simone](#) per their Austin Police Academy training and the official customs of the City of Austin regarding unhoused people.

35. As stated above, Austin Police are trained by the City of Austin to interact with frightened, unreasonable people by reiterating commands, even if those commands are not effective, and even if they are actively assaulting and battering the frightened person.

36. Rodriguez, again, meticulously documented that he and Escamilla fulfilled their Austin Police training by repeating themselves over and over even while they were assaulting Simone.

I asked Nicole one more time that she had to get up. At this point Ofc Escamilla and I proceeded to attempt to place handcuffs on Nicole. I reached for Nicole's right arm/hand and she immediately proceeded to pull her arm/hand inward immediately being Defensively Resistant. Nicole proceeded to strike/scratch my face with her right hand and was screaming belligerently. Ofc Escamilla and I proceeded to tell Nicole not to resist but she kept fighting back. Nicole began kicking me as I was trying to gain control of her hands/arms to place handcuffs on her. Ofc Escamilla kept telling Nicole to stop resisting. Nicole kept pulling her hands across her face and refusing to comply with all the lawful orders as we tried to gain control of her arms. At this point Ofc Escamilla and I began to attempt and roll Nicole on her stomach.

Ofc Escamilla and I told Nicole several times to turn around as she was facing us upwards so she could lay on her stomach. Nicole proceeded to tell us, "I CANT TURN AROUND". "I DONT NEED TO LISTEN TO YALL".

Nicole kept refusing to turn around on her stomach. Ofc Escamilla and I kept telling Nicole to turn around all while she was defensively refusing.

At some point we were able to get Nicole on her belly. Ofc Escamilla and I told Nicole again to Stop Resisting and to give us her hands. Nicole kept refusing to comply with every lawful order given to her. Nicole kept her hands tucked across her face.

Again Ofc Escamilla advised Nicole to Stop Resisting as Nicole responded with, "I SHOUDNT BE UNDER ARREST".

37. The care with which Rodriguez documented his many, so-called "lawful" orders shows the importance that the City of Austin placed on this during his training.

38. On the other hand, and again, according to his Austin Police training regarding report writing, Rodriguez determined that the following events described in paragraphs nos. 40 to 45 below were NOT significant enough to include in a report regarding the why and how of Simone's arrest.

39. Each of Rodriguez and Escamilla's actions described in paragraphs nos. 40 to 45 below were carried out according to their City of Austin training and the official customs of the Austin Police Department.

40. Rodriguez and Escamilla trapped the frightened Simone up against the building and put all four hands on her at once.



41. Rodriguez and Escamilla continued squishing Simone between the building, the pavement, and their two male bodies for approx. 20 more seconds even though this tactic was terrorizing Simone and was not effective.



42. Utilizing their Austin Police training that women with long hair should be jerked around using their hair, Rodriguez and Escamilla dragged Simone off the curb by her hair. Having been the victim of horrific physical abuse, Simone was highly triggered and traumatized by being dragged by her hair. She remembers this detail of the beating with unusual clarity.



43. Next, one officer held Simone down with one hand and covered his body-worn camera with his other hand, while the other officer brutally kned Simone in her side. This screenshot from the bystander video shows the kneeling officer winding up his right leg to impact Simone very hard with his knee.



44. One officer held Simone down while the other officer punched Simone eight times in approx. 11 seconds (from 00:43-00:54 on the bystander video).

Punch no. 1 wind-up



Punch no. 1 follow-through



Punch no. 2 wind-up



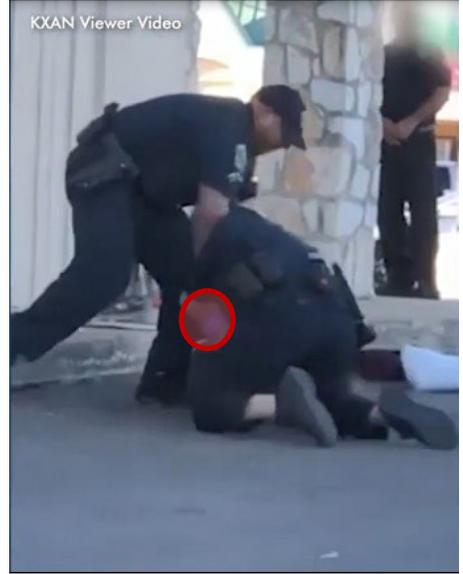
Punch no. 2 follow-through



Punch no. 3 wind-up



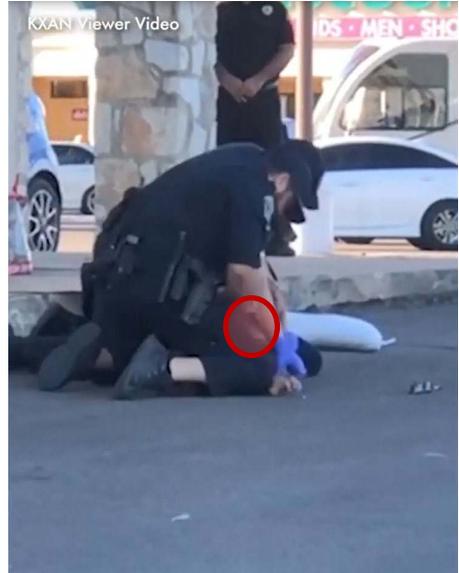
Punch no. 3 follow-through



Punch no. 4 wind-up



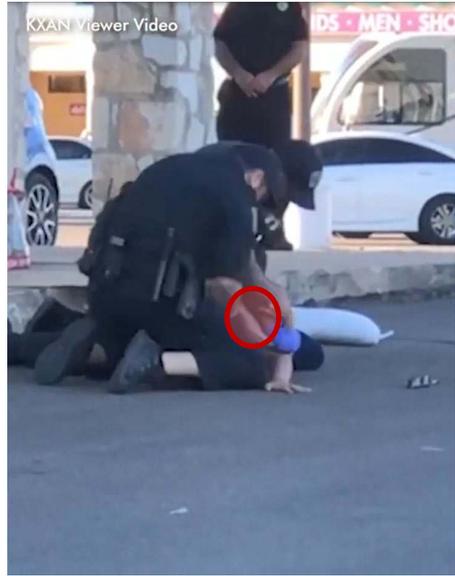
Punch no. 4 lands



Punch no. 5 wind-up



Punch no. 5 lands



Punch no. 6 wind-up



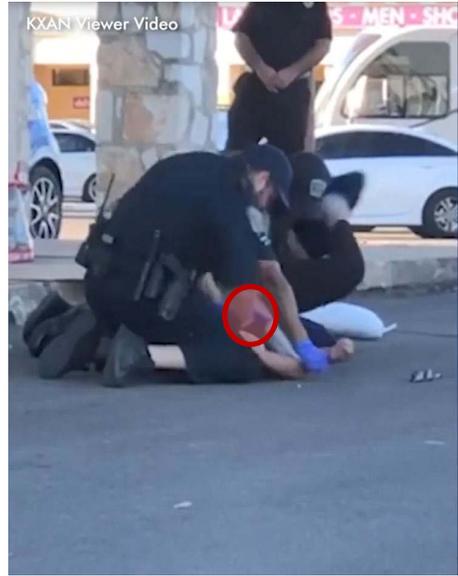
Punch no. 6 lands



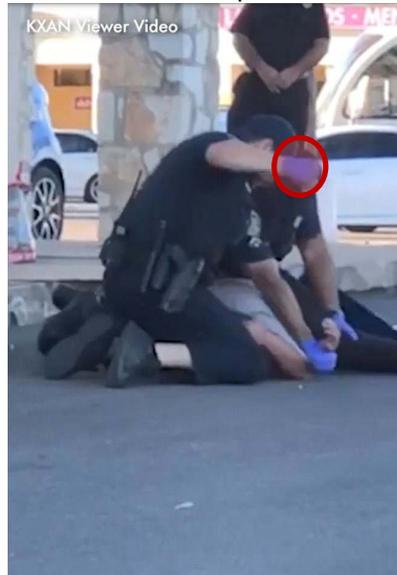
Punch no. 7 wind-up



Punch no. 7 lands



Punch no. 8 wind-up



Punch no. 8 lands



45. Rodriguez and Escamilla brutally beat Simone for approximately two minutes and four seconds. They stopped the active beating once Simone was handcuffed but they did not stop hurting her.



46. In his report, Rodriguez recorded the details of his and Escamilla's violent arrest of Simone per his Austin Police training regarding how to document significant events during an arrest. He went into great detail about nearly everything, except that oddly he left out any mention of punching Simone in the head and kneeing her in her side.

47. Again, the pink highlighting shows Rodriguez's written record of repeated commands as described above. The green highlighting shows Rodriguez's written record of his and Escamilla's physical actions during the violent arrest.

I asked Nicole one more time that she had to get up. At this point Ofc Escamilla and I proceeded to attempt to place handcuffs on Nicole. I reached for Nicole's right arm/hand and she immediately proceeded to pull her arm/hand inward immediately being Defensively Resistant. Nicole proceeded to strike/scratch my face with her right hand and was screaming belligerently. Ofc Escamilla and I proceeded to tell Nicole not to resist but she kept fighting back. Nicole began kicking me as I was trying to gain control of her hands/arms to place handcuffs on her. Ofc Escamilla kept telling Nicole to stop resisting. Nicole kept pulling her hands across her face and refusing to comply with all the lawful orders as we tried to gain control of her arms. At this point Ofc Escamilla and I began to attempt and roll Nicole on her stomach.

Ofc Escamilla and I told Nicole several times to turn around as she was facing us upwards so she could lay on her stomach. Nicole proceeded to tell us, "I CANT TURN AROUND". "I DONT NEED TO LISTEN TO YALL".

Nicole kept refusing to turn around on her stomach. Ofc Escamilla and I kept telling Nicole to turn around all while she was defensively refusing.

At some point we were able to get Nicole on her belly. Ofc Escamilla and I told Nicole again to Stop Resisting and to give us her hands. Nicole kept refusing to comply with every lawful order given to her. Nicole kept her hands tucked across her face.

Again Ofc Escamilla advised Nicole to Stop Resisting as Nicole responded with, "I SHOUDNT BE UNDER ARREST".

Nicole finally was placed under handcuffs and immediately stopped resisting.

48. According to Rodriguez, the police officers' significant physical actions during the arrest were limited to the following events:

- a. Rodriguez and Escamilla proceeded to attempt to place handcuffs on Simone.
- b. Rodriguez reached for Simone's right hand/arm.
- c. Rodriguez was trying to gain control of Simone's hands/arms to place handcuffs on her.
- d. Rodriguez and Escamilla began to attempt to roll Simone on her stomach.
- e. At some point, Rodriguez and Escamilla were able to get Simone on her belly.
- f. Simone finally was placed under handcuffs [by Rodriguez and Escamilla].

49. Rodriguez's report is highly dishonest to the point of painting a false picture of the arrest. Rodriguez's report is full of untruths.

50. After seeing a bystander video of the officers beating Simone in the news, the Judge who had signed off on the probable cause affidavits became angry that she had been misled by the officers, saying, "the cops of course lied to me" to obtain her signature.

51. It is not reasonable for a police officer to omit from his arrest report the fact that he and another officer held a woman down and punched her eight times while trying to effectuate the arrest.

52. Rodriguez's dishonesty and attempted cover-up his and Escamilla's brutal assault of Simone was carried out according to his Austin Police training and the official customs of the City of Austin regarding unhoused people.

53. Rodriguez ends his arrest report with the fact that Simone "immediately stopped resisting" once she was placed in handcuffs.

Nicole finally was placed under handcuffs and immediately stopped resisting.

At this time Nicole was placed under arrest for Criminal Trespass- Class B Misdemeanor

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TRAVIS COUNTY, TEXAS

54. Even though Simone “immediately stopped resisting”, the heftier of the two officers kneeled on Simone’s back for approx. 14 seconds after she was in handcuffs.

55. The following screen shots from the bystander video show the bulkier officer resting his considerable weight on Simone’s back for no apparent reason.









56. The stouter officer only removes his significant weight from Simone's body after he notices a bystander driving by and filming his physical abuse of Simone.



57. This encounter with the police left Simone, already a survivor of horrific abuse, traumatized and frightened of police. While talking to her care providers and slipping in and out of lucidity, she repeats over and over that she was beaten by the police.

58. As a petite, young woman living on the streets, Simone is vulnerable to physical and sexual violence. If she is victimized again, she knows the police will not help her.

59. Simone is not the only woman victimized by the Defendant Officers. Earlier this year, Officer Rodriguez was charged with assault causing bodily injury for beating his wife, including by

striking her in the head, similarly to how he beat Simone. His wife told authorities that he has a history of family violence and had been beating her “often.”

**B. Officers Rodriguez and Escamilla took Ms. Simone Griffith’s belongings, including her ID and other important documents, which were never returned to her despite her best efforts**

60. After beating and arresting Simone, Officers Rodriguez and Escamilla confiscated Simone’s belongings – literally everything she owned except the clothes on her back. This included all her identification and other documents, her bedding, her clothing, and her medication.

61. Even after she was released from jail, none of Simone’s belongings were returned. Upon information and belief, they were thrown away pursuant to the City of Austin’s policy and practice of throwing away the belongings of people experiencing homelessness.

62. Without her identification, Simone could not access any services. She lost her Social Security Income.

63. Counsel for Simone spent four weeks working to get new identification documents for her.

**C. Officers Rodriguez and Escamilla beat Simone pursuant to and in furtherance of the City of Austin’s policies and practices**

64. Every action that Officer Rodriguez and Officer Escamilla took was influenced by the City of Austin’s policies, practices, and trainings, and was condoned by the City of Austin.

65. After reviewing the evidence and watching the bystander video detailed above, the City of Austin found that the officers’ actions “complied with the law and with APD policies.”

66. As such, the City of Austin did not discipline the officers in any way for beating Simone, simply because she was suffering from mental illness and acting unruly.

67. The City has a policy and practice of protecting its officers from any consequences of their violence, whether on or off duty. When it became known that Officer Rodriguez had been beating his wife and he was charged with assault causing bodily injury for striking, choking, and breaking the bones of his wife, the City enabled him to quietly quit his job so that no investigative action would be taken against him by the department.

68. This is a policy of the City in order to cover up officers’ histories of violence: officers are encouraged to quit so that the police department does not have to investigate the case internally. Officers leave the department without any marks on their record, which allows them to later take jobs as officers in other jurisdictions.

69. In addition to condoning the beating of Simone by its officers, the City of Austin also condoned the officers' attempt to cover up the assault by neglecting to mention it in any way in their probable cause affidavit.

70. After learning of the beating, the magistrate that had signed off on the arrest based on the probable cause affidavit stated that she had called the Austin Police Department to report that the officers had lied to her to obtain her signature. She reported that despite her efforts, nobody at the City cared that the officers had lied.

71. The City of Austin's actions in the case are not surprising and are in fact consistent with the City's treatment of people who, like Simone, are unhoused and suffer from mental health issues.

72. While APD and the City of Austin tout a number of mental health and crisis first responder programs — including the Homeless Outreach Street Team, the Extended Crisis Mobile Outreach Team, and the Crisis Intervention Team — officers like Officer Rodriguez and Officer Escamilla are not trained to request any of those resources when encountering people in crisis like Simone.

73. It is unclear why programs like these crisis intervention programs exist if officers are not trained to use them when encountering people like Simone in crisis. They are useful as a public relations tool to make the Austin Police Department seem like it is compassionate towards vulnerable residents.

74. In reality, instead of training its officers to protect and serve vulnerable people like Simone, it trains officers like Rodriguez and Escamilla to act as "warriors" who fight vulnerable residents.

75. At City of Austin trainings, officers are trained to treat people who are unhoused and experiencing mental illness like vermin.

76. Cadets reported that at the City of Austin trainings, "instructors repeatedly degraded the homeless and prostitutes, referring to them as 'cockroaches' and suggesting they 'find a transient' if they were bored and wanted a felony arrest."<sup>1</sup>

77. During its police academy training, instructors punched recruits in the face if they expressed compassion for vulnerable people like Simone.

78. The City of Austin also trains its officers in its policy of repeating orders over and over and over, even when the person on the receiving end of the commands is not mentally capable of complying.

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<sup>1</sup>Tony Pohetski, *Is Austin Training Police to Be Too Aggressive? 10 Ex-cadets Say Yes*, AUSTIN AMERICAN STATESMAN (Apr. 27, 2018), available at <https://www.kvue.com/article/news/local/are-austin-polices-cadets-trained-to-be-warriors-or-guardians/269-545190415>.

79. In January 2021, a City-appointed community review panel of APD's Training Academy video curriculum reported extremely problematic findings. See, ANDERSON, ET. AL, COMMUNITY REPORT AUSTIN CITY COUNCIL RESOLUTION 66 AUSTIN POLICE DEPARTMENT TRAINING VIDEO REVIEW PANEL (Jan. 18, 2021).<sup>2</sup>

80. The review panel's report found that:

- a. There was a "'warrrior' versus 'service' mentality in which officers see themselves as the 'good guys and the public they interact with often as 'bad guys'" (*id.* at 14);
- b. The "training curriculum lacked substantive content on how to effectively interact with people with disabilities" and that the videos could lead officers to see behaviors as "aggressive" when those behaviors "may in fact be indicative of mental health crises or disability" (*id.* at 10);
- c. There was "a focus on police officers 'winning' by overcoming resistance and threat from the community" and "see[ing] community as a roadblock in their effort to control and 'win'" (*id.* at 15);
- d. "Overall, the videos displayed a great deal of dehumanization and lack of respect or just common humanity, both in terms of the verbal and physical interactions and the way community members were portrayed" (*id.* at 6).

81. These trainings, policies, and practices create a culture where officers are encouraged to use excessive force against people who are experiencing homelessness and who are having mental health crises, and to afford them fewer civil rights than others.

82. The City of Austin condones officer violence against people who are unhoused and who have mental illnesses, and fails to investigate and discipline officers for excessive force when the victim is unhoused or suffers from mental illness.

83. These trainings, policies, and practices have a large-scale effect: The City of Austin has a national reputation for its violent policing against unhoused persons and those with mental illness. Of all comparable major cities, the City has the highest per capita rate of fatal mental health-related police shootings.<sup>3</sup>

84. Another direct effect of the City of Austin's trainings, policies, and practices was that on November 1, 2021, Rodriguez and Escamilla beat Simone Griffith, punching her eight times in the head although she posed no threat to them and was cowering on the ground during the assault.

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<sup>2</sup> Report available at

<https://docs.google.com/document/d/17IZB6nqQXtxX0f7y3mqPE9mDW0tlicQuKtrkKMZkeAI/edit>.

<sup>3</sup> Michelle Raji, *Why is APD Responding to Mental Health Crises Like Violent Crimes?*, Tex. Observer, June 4, 2020, available at <https://www.texasobserver.org/mauris-desilva-austin-protests-police/>.

**D. Officers Rodriguez's and Escamilla's seizure of Simone's property was done pursuant to and in furtherance of the City of Austin's policies and practices.**

85. Rodriguez's and Escamilla's decision to seize and destroy Simone's belongings was also consistent with and in furtherance of the City of Austin's policies and practices.

86. For years, the City of Austin has seized and destroyed unhoused residents' belongings in frequent "sweeps," which are coordinated by the Austin Police Department, Austin Resource Recovery, and private City of Austin contractors such as Relief Enterprises.

87. In these sweeps, police officers force people who are experiencing homelessness to leave their shelters and property under threat of criminal prosecution and arrest. Police and others working for or hired by the City of Austin seize their property and place it in trucks for destruction and removal without adequate notice and without an opportunity to preserve the property.

88. Because the City of Austin has a clear policy and practice of seizing and destroying the belongings of people who are unhoused, Rodriguez and Escamilla believed it was their duty to unlawfully seize and destroy all of Simone's possessions.

**VI. Claims**

**A. Rodriguez and Escamilla violated Simone's Fourth and Fourteenth Amendment rights when they beat her for lying down.**

89. Simone incorporates sections I through V above into her claim.

90. Simone brings this claim under 42 U.S.C. § 1983.

91. Rodriguez and Escamilla were acting as Austin police officers (*i.e.* under color of law) when they beat Simone. They beat Simone even though Simone did not pose the least bit of danger to anyone.

92. Although Rodriguez and Escamilla were following their Austin Police Academy training when they assaulted Simone, a reasonable person, much less a reasonable police officer, would know that repeatedly punching an unarmed woman in the head violates clearly established law.

93. On Nov. 1, 2021 it was clearly established "that an officer violates the Fourth Amendment if he abruptly resorts to overwhelming physical force rather than continuing verbal negotiations with an individual who poses no immediate threat or flight risk, who engages in, at most, passive resistance." *See Hanks v. Rogers*, 853 F.3d 738, 747 (5th Cir. 2017).

**B. By seizing and failing to return her property, Defendants Rodriguez and Escamilla violated Simone Griffith's right to be free from unreasonable government seizure under the Fourth**

**Amendment to the United States Constitution and Article 1, Section 9 of the Texas Constitution.**

94. Simone incorporates sections I through VI.A above into her claim.

95. Simone brings this claim under 42 U.S.C. § 1983.

96. The Fourth Amendment of the United States Constitution protects the rights of persons to be free from unreasonable seizure of their property.

97. The Texas Constitution also provides that “The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures.”

98. Defendants Rodriguez and Escamilla violated Simone’s rights under the Fourth Amendment to the United States Constitution and Article 1, Section 9 of the Texas Constitution when they took Simone’s belongings without any notice or chance to reclaim them.

**C. By seizing and failing to return her property, Defendants violated Simone Griffith’s right to be free from unreasonable government seizure under the Fourth Amendment to the United States Constitution and Article 1, Section 9 of the Texas Constitution.**

99. Simone incorporates sections I through VI.B above into her claim.

100. Simone brings this claim under 42 U.S.C. § 1983.

101. The Fourth Amendment of the United States Constitution protects the rights of persons to be free from unreasonable seizure of their property.

102. The Texas Constitution also provides that “The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures.”

103. The City of Austin maintained a policy of practice of taking and throwing away the belongings of people experiencing homelessness, and these policies and practices directly led to Rodriguez and Escamilla unlawfully seizing Simone’s belongings.

**D. Rodriguez and Escamilla acted with such reckless disregard for Simone’s humanity, this case warrants damages that will deter this type of misconduct in the future.**

104. Simone incorporates sections I through VI.C above into her punitive damages claim.

105. Rodriguez and Escamilla’s assault on Simone was heinous.

106. Simone seeks punitive damages to deter this type of excessive force perpetrated against vulnerable Austinites in the future.

**E. City of Austin policies led Rodriguez and Escamilla to view Simone as a cockroach and to believe they had a duty to beat her.**

107. Simone incorporates sections I through VI.D above into her *Monell* claim. *Monell v. Department of Soc. Svcs.*, 436 U.S. 658 (1978).

108. Simone brings this claim under 42 U.S.C. § 1983.

109. The City of Austin had a policy, practice, and custom of encouraging its officers to use excessive force against people who, like Simone, are unhoused and struggle with their mental health.

110. The City of Austin reviewed the actions of Rodriguez and Escamilla and found that the beating of Simone was consistent with its policies and practices.

111. The City of Austin's policies, practices, customs, and trainings were the reason that Rodriguez and Escamilla believed it was their duty to beat-up a vulnerable, young, mentally ill woman in crisis.

112. In other words, the City's inhumane policies with regards to unhoused and mentally ill Austinites proximately caused Simone's physical injuries and trauma.

**VII. Damages**

Simone incorporates sections I through VI above into this section on damages.

Simone seeks recovery for all her damages including her physical pain from the beating and her past and future mental anguish from the trauma of being assaulted, lost social security benefits, lost property, pre and post judgment interest, attorney's fees, expenses, and costs.

**VIII. Request for jury trial**

Simone requests a jury trial.

**IX. Prayer**

For all these reasons, Simone Griffith requests that the City of Austin and Officers Rodriguez and Escamilla be summoned to appear and answer her allegations. After a jury trial regarding her claims, Simone seeks to recover the damages listed above in an amount to be determined by the jury and any other relief to which she is entitled.

Respectfully submitted,  
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Attorneys for Plaintiff Simone Griffith

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

SIMONE NICOLE GRIFFITH,	§	
	§	
Plaintiff,	§	
v.	§	
	§	CIVIL ACTION NO. 1:21-CV-1170
THE CITY OF AUSTIN,	§	
AUSTIN POLICE OFFICER	§	
RODRIGUEZ, and AUSTIN	§	
POLICE OFFICER ESCAMILLA,	§	
	§	
Defendants.	§	

**DEFENDANTS’ FIRST AMENDED ANSWER**

Defendants the City of Austin, Austin Police Officer Jorge Rodriguez, and Austin Police Officer Robert Escamilla (“Defendants”) file this First Amended Answer to Plaintiff Simone Nicole Griffith’s Amended Complaint (Dkt. 13). Pursuant to Federal Rules of Civil Procedure 8 and 12, the Defendants would show the Court as follows:

**FIRST AMENDED ANSWER**

Pursuant to Federal Rule of Civil Procedure 8(b), the Defendants respond to the allegations made in Plaintiff’s Amended Complaint as set forth below. Any allegation in the Amended Complaint not specifically addressed below is denied.

Defendants deny the allegations in the un-numbered preamble paragraphs labeled “Introduction.”

1. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 1.
2. Defendants admit the City of Austin is a Texas municipal corporation located in the Western District of Texas. Defendants otherwise deny the allegations in Paragraph 2.

3. Defendants admit that Officer Rodriguez and Officer Escamilla were police officers with the Austin Police Department on November 1, 2021, and that they participated in the arrest of Plaintiff on that date. Defendants otherwise deny the allegations in Paragraph 3.

4. No response is required to portions of Paragraph 4, as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants admit that this Court has federal question jurisdiction over any alleged claims pursuant to 42 U.S.C. § 1983.

5. No response is required to Paragraph 5, as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants admit that this Court can properly exercise personal jurisdiction over Defendants.

6. No response is required to Paragraph 6, as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants admit that this Court can properly exercise personal jurisdiction over Officer Rodriguez and Officer Escamilla.

7. No response is required to Paragraph 7, as it contains legal conclusions to which no response is required. To the extent any further response is required, Defendants admit that venue is proper in the Western District of Texas.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8.

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 9.

10. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10.

11. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 11.

12. With respect to the allegations in Paragraph 12, Defendants admit that Officer Rodriguez was dispatched to the strip mall as a result of a citizen call. Defendants deny the remaining allegations in Paragraph 12.

13. Defendants deny the allegations in Paragraph 13.

14. With respect to the allegations in Paragraph 14, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 14.

15. With respect to the allegations in Paragraph 15, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 15.

16. With respect to the allegations in Paragraph 16, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 16.

17. Defendants deny the allegations in Paragraph 17.

18. Defendants deny the allegations in Paragraph 18.

19. Defendants deny the allegations in Paragraph 19.

20. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 20.

21. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 21.

22. Defendants deny the allegations in Paragraph 22.

23. Defendants admit that Officer Escamilla reported to the scene of the arrest. Defendants deny any remaining allegations in Paragraph 23.

24. Defendants deny the allegations in Paragraph 24.

25. Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 25.

26. With respect to the allegations in Paragraph 26, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 29.

27. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 27 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 27.

28. Defendants deny the allegations in Paragraph 28.

29. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 29.

30. With respect to the allegations in Paragraph 30, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 30.

31. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 31 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 31.

32. Defendants deny the allegations in Paragraph 32.

33. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 33 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 33.

34. Defendants deny the allegations in Paragraph 34.

35. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 35 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 35.

36. With respect to the allegations in Paragraph 36, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 36.

37. With respect to the allegations in Paragraph 37, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants do not understand the remaining allegations in Paragraph 37, and thus they are denied.

38. With respect to the allegations in Paragraph 38, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 38.

39. With respect to the allegations in Paragraph 39, Defendants admit that the officers acted in the encounter and arrest using tactics and officer discretion in a manner authorized by Austin Police Department policy and training. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 39 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 39.

40. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 40 about Plaintiff's state of mind. Defendants admit that the officers went hands-on as part of the arrest. Defendants deny the remaining allegations in Paragraph 40.

41. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 41 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 41.

42. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 42 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 42.

43. Defendants deny the allegations in Paragraph 43.

44. Defendants deny the allegations in Paragraph 44.

45. Defendants deny the allegations in Paragraph 45.

46. With respect to the allegations in Paragraph 46, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 46.

47. With respect to the allegations in Paragraph 47, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 47.

48. With respect to the allegations in Paragraph 48, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 48.

49. Defendants deny the allegations in Paragraph 49.

50. Defendants deny the allegations in Paragraph 50.

51. Defendants deny the allegations in Paragraph 51.

52. Defendants deny the allegations in Paragraph 52.

53. With respect to the allegations in Paragraph 53, Defendants admit that an incident report was generated regarding the encounter with and arrest of Plaintiff. Defendants deny the remaining allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. Defendants deny the allegations in Paragraph 55.

56. Defendants deny the allegations in Paragraph 56.

57. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 57 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 57.

58. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 58 about Plaintiff's state of mind. Defendants deny the remaining allegations in Paragraph 58.

59. Defendants deny the allegations in Paragraph 59.

60. Defendants deny the allegations in Paragraph 60.

61. Defendants deny the allegations in Paragraph 61.

62. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 62 concerning Social Security Income. Defendants deny the remaining allegations in Paragraph 62.

63. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 63.

64. Defendants deny the allegations in Paragraph 64.

65. Defendants admit that the Austin Police Department's Special Investigations Unit conducted an investigation into the use of force by Officer Rodriguez; that the investigation included a review of evidence including video footage; and that the investigation concluded that Officer Rodriguez's actions were within law and policy. Defendants deny any remaining allegations in Paragraph 65.

66. Defendants admit no disciplinary action was taken. Defendants deny the remaining allegations in Paragraph 66.

67. Defendants deny the allegations in Paragraph 67.

68. Defendants deny the allegations in Paragraph 68.

69. Defendants deny the allegations in Paragraph 69.

70. Defendants deny the allegations in Paragraph 70.

71. Defendants deny the allegations in Paragraph 71.

72. Defendants deny the allegations in Paragraph 72.

73. Defendants deny the allegations in Paragraph 73.

74. Defendants deny the allegations in Paragraph 74.

75. Defendants deny the allegations in Paragraph 75.

76. With respect to Paragraph 76, Defendants admit that the quoted language appears in the cited article. Defendants deny the remaining allegations in Paragraph 76.

77. Defendants deny the allegations in Paragraph 77.

78. Defendants deny the allegations in Paragraph 78.

79. With respect to Paragraph 79, Defendants admit community members reviewed training videos and produced the report identified. Defendants deny the remaining allegations in Paragraph 79.

80. With respect to Paragraph 80, Defendants state that the language in the cited report speaks for itself. Defendants deny the remaining allegations in Paragraph 80.

81. Defendants deny the allegations in Paragraph 81.

82. Defendants deny the allegations in Paragraph 82.

83. Defendants deny the allegations in Paragraph 83.

84. Defendants deny the allegations in Paragraph 84.

85. Defendants deny the allegations in Paragraph 85.

86. Defendants deny the allegations in Paragraph 86.

87. Defendants deny the allegations in Paragraph 87.

88. Defendants deny the allegations in Paragraph 88.

89. Defendants incorporate their responses to the above-numbered paragraphs in response to the allegations in Paragraph 89.

90. Defendants admit the allegations in Paragraph 90.

91. With respect to the allegations in Paragraph 91, Defendants admit that Officer Rodriguez and Officer Escamilla were acting in their capacity as police officers during the arrest of Plaintiff on November 1, 2021. Defendants deny the remaining allegations in Paragraph 91.

92. Defendants deny the allegations in Paragraph 92.

93. No response is required to Paragraph 93, as it contains legal conclusions to which no response is required. To the extent any further response is required, Defendants deny that the quoted language accurately reflects the sentence partially quoted from the cited case law.

94. Defendants incorporate their responses to the above-numbered paragraphs in response to the allegations in Paragraph 94.

95. Defendants admit the allegations in Paragraph 95 with respect to any alleged violation of the Fourth Amendment to the United States Constitution. Defendants deny that Section 1983 may be used to enforce the Texas Constitution.

96. No response is required to Paragraph 96 as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants deny that Plaintiff has a valid claim for relief pursuant to 42 U.S.C. § 1983.

97. No response is required to Paragraph 97 as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants deny that Plaintiff has a valid claim for relief pursuant to 42 U.S.C. § 1983.

98. Defendants deny the allegations in Paragraph 98.

99. Defendants incorporate their responses to the above-numbered paragraphs in response to the allegations in Paragraph 99.

100. Defendants admit the allegations in Paragraph 100 with respect to any alleged violation of the Fourth Amendment to the United States Constitution. Defendants deny that Section 1983 may be used to enforce the Texas Constitution.

101. No response is required to Paragraph 101 as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants deny that Plaintiff has a valid claim for relief pursuant to 42 U.S.C. § 1983.

102. No response is required to Paragraph 102 as it contains legal conclusions to which no response is required. To the extent any further response is required, the Defendants deny that Plaintiff has a valid claim for relief pursuant to 42 U.S.C. § 1983.

103. Defendants deny the allegations in Paragraph 103.

104. Defendants incorporate their responses to the above-numbered paragraphs in response to the allegations in Paragraph 104.

105. Defendants deny the allegations in Paragraph 105.

106. Defendants deny the allegations in Paragraph 106. Defendants aver that the City of Austin is immune from punitive damages under § 1983.

107. Defendants incorporate their responses to the above-numbered paragraphs in response to the allegations in Paragraph 107.

108. Defendants admit the allegations in Paragraph 108.

109. Defendants deny the allegations in Paragraph 109.

110. With respect to Paragraph 110, Defendants admit that the Austin Police Department's Special Investigations Unit conducted an investigation into the use of force by Officer Rodriguez and that the investigation concluded that Officer Rodriguez's actions were within law and policy. Defendants deny any remaining allegations in Paragraph 110.

111. Defendants deny the allegations in Paragraph 111.

112. Defendants deny the allegations in Paragraph 112.

113. Defendants incorporate their response to the above-numbered paragraphs in response to the un-numbered paragraphs under the “Damages” heading. Defendants deny the allegations in those un-numbered paragraphs.

114. No response is required to the request for jury trial.

115. No response is required to the un-numbered paragraph under the “Prayer” heading. Defendants deny that Plaintiff is entitled to relief.

#### **AFFIRMATIVE DEFENSES**

116. 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.

117. Defendant City of Austin asserts the affirmative defense of governmental immunity because its employees are entitled to qualified and/or official immunity for actions taken in the course and scope of their employment, absent express waiver.

118. Defendant City of Austin asserts that it is absolutely immune from punitive damages under 42 U.S.C. § 1983 pursuant to *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

119. Defendants assert the affirmative defense of comparative fault.

120. Officer Rodriguez and Officer Escamilla assert the defense of qualified immunity. Specifically, any and all actions by one or both of them that may be the subject of Plaintiff’s claims did not violate clearly established statutory or constitutional rights of Plaintiff about which a reasonable officer would have known.

121. Officer Rodriguez and Officer Escamilla assert the defense of official immunity. Specifically, any and all actions by one or both of them that may be the subject of Plaintiff's claims involved discretionary duties within the scope of their authority performed in good faith.

122. The Defendants reserve the right to assert additional affirmative defenses in accordance with the Federal Rules of Civil Procedure and any orders of this Court.

### **PRAYER**

Defendants respectfully request that the Court deny all relief requested by Plaintiff; enter a take-nothing judgment in Defendants' favor; and award Defendants any further relief to which they may show themselves to be entitled.

Respectfully submitted,

**BUTLER SNOW LLP**

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**ATTORNEYS FOR DEFENDANTS**

### **CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2022, a true and correct copy of the foregoing document was served on all counsel of record by filing with the Court's CM/ECF system.

/s/ Karson Thompson  
Karson Thompson